

ORIGINAL

Decision 84 02 013

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the matter of the application of)
Randel C. Riley and George A. DeVere,)
d.b.a. Sun Distribution Systems, for)
a Certificate of Public Convenience)
and Necessity to operate as a highway)
common carrier for the transportation)
of general commodities, between)
points in California.)

Application 83-07-56
(Filed July 26, 1983)

O P I N I O N

Applicants Randel C. Riley and George A. DeVere, a partnership doing business as Sun Distribution Systems (SDS), seek a certificate of public convenience and necessity under Public Utilities (PU) Code Sections 1063 and 1064, authorizing them to transport general commodities, with the usual exceptions, between all points in the State of California. Applicants propose to transport commodities requiring the use of special refrigeration or temperature-controlled equipment. They will offer to deliver shipments between any points in the State on the date of pickup or on the morning of the following day. The service will be offered Monday through Friday, inclusive, and on Saturdays upon request. The service will not be offered on Sundays and holidays.

Riley, doing business as SDS, was authorized to operate as a highway contract carrier under File T-136553.

Riley and Devere entered into a partnership doing business as SDS. Letters to the Commission from applicants' consultant dated October 12 and October 18, 1983 were received

on October 24, 1983 as Exhibit 1. The letters were sent to eliminate errors in the application. Exhibit 1 states that a separate application will be filed to transfer Riley's contract carrier authority to Riley and DeVere.^{1/}

The application was listed in the Daily Transportation Calendar on August 1, 1983. No protests were received.

The application states as follows:

1. Riley and DeVere have been in the trucking business for about 20 years. Between December 14, 1981 and September 23, 1982 Riley and DeVere were partners operating under contract carrier permit T-136553. Between September 24, 1982 and June 1983 Riley, doing business as SDS, operated under contract carrier permit T-138,409.^{2/}
2. Many shippers have asked and continue to ask applicants to transport general commodities, with the usual exceptions, between all points and places in California. In order to satisfy such requests, applicants need the authority sought in this application.
3. Since applicants were not in business as a carrier in 1977 they did not have the opportunity to apply for a highway common carrier certificate under the provisions of Senate Bill 860. Applicants now have to compete with thousands of other carriers holding certification as highway common carriers.

^{1/} This permit filing was made on November 7, 1983.

^{2/} The May 31, 1983 SDS balance sheet shows that DeVere had invested in and withdrawn funds from SDS' contract carrier operations.

4. Exhibit C attached to the application contains a list of equipment stated to be owned by SDS consisting of 19 tractors, 2 bobtails, 1 pickup truck, 3 automobiles, 3 converter gears, and 18 trailers. Exhibit 1 states that:
(a) SDS actually owns four tractors, three bobtails, three automobiles, four trailers, and one converter gear;
(b) the remaining equipment listed on Exhibit C is leased by SDS; and
(c) SDS has taken out required insurance on the leased and owned equipment. If the application is granted, applicants intend to use that equipment and to purchase or lease any additional equipment needed to satisfy the requirements of their shippers. If needed, they would use subhaulers in their operations.
5. Granting the proposed certificate would have no significant effect on the human environment and would not involve an action which would significantly affect energy efficiency. If applicants operated as a highway common carrier they could haul freight on return trips. They do not have that authority as a contract carrier. By eliminating some deadhead backhauls applicants would operate at improved energy efficiency levels compared to Riley's present operations.
6. Some shippers do not wish to sign contract carrier contracts. However, those shippers would use applicants' services if applicants held a common carrier certificate.
7. Applicants propose to establish rates substantially in conformity with the rates and charges authorized in the Commission's transition tariffs or in conformity with the authorized rates filed by an established tariff bureau.

The Commission received letters from 10 shippers supporting the application. The shippers describe SDS' service as excellent; state they would increase the volume of their shipments if SDS held common carrier authority; and note that their dealings with SDS would be simplified if SDS held common carrier authority because billings would be based on filed rates, not upon a multiplicity of contracts.

On May 31, 1983 SDS had assets of \$143,118 including \$22,149 in automotive and truck equipment, and liabilities of \$146,772, leaving a negative equity of \$3,654. This negative equity position results from distributions totaling \$46,980 to Riley and DeVere. SDS' income statement for the five months ending May 31, 1983 shows gross sales of \$285,666, total expenses of \$248,067, and net income excluding income taxes and depreciation of \$37,599. Exhibit 1 states that Riley operated at a loss in 1982 and the partnership has subsequently operated at a profit.

Discussion

The application should be granted without hearing. Riley and DeVere have now reapplied to the Commission to reestablish their partnership as a highway contract carrier. There is unnecessary ambiguity in this application because both Riley, an individual, and the partners, Riley and DeVere, were interchangeably using the same fictitious name.

Findings of Fact

1. Riley and DeVere hold statewide general commodity highway contract carrier permit authority.
2. Applicants seek a statewide general commodity highway common carrier certificate of public convenience and necessity, with the usual exceptions. They propose to transport commodities requiring the use of special refrigeration or temperature-controlled equipment.
3. At least 10 shippers support SDS' request for a common carrier certificate of public convenience and necessity. The shippers would use the SDS common carrier service.
4. Applicants have the experience, ability, and financial fitness to provide the proposed service.
5. A public hearing is not necessary.
6. It can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.
7. The following order has no reasonably foreseeable impact upon the energy efficiency of highway carriers.

Conclusions of Law

1. Public convenience and necessity require the proposed operation by Riley and DeVere.
2. Since there is a need for the requested service, the effective date of the order should be today.

Only the amount paid to the State for operative rights may be used in rate fixing. The State may grant any number of rights and may cancel or modify the monopoly feature of these rights at any time.

O R D E R

IT IS ORDERED that:

1. A certificate of public convenience and necessity is granted to Randel C. Riley and George A. DeVere, a partnership, authorizing them to operate as a highway common carrier, as defined in PU Code Section 213, between the points listed in Appendix A.

2. Applicants shall:

- a. File a written acceptance of this certificate within 30 days after this order is effective.
- b. Establish the authorized service and file tariffs within 120 days after this order is effective.
- c. State in their tariffs when service will start; allow at least 10 days' notice to the Commission; and make tariffs effective 10 or more days after this order is effective.
- d. Comply with General Orders Series 80, 100, 123, and 147, and the California Highway Patrol safety rules.
- e. Maintain accounting records in conformity with the Uniform System of Accounts.
- f. Comply with General Order Series 84 (collect-on-delivery shipments). If applicant elects not to transport collect-on-delivery shipments, they shall file the tariff provisions required by that general order.

- g. Comply with General Order Series 102 and 130. If applicants elect to engage subhaulers, applicants shall have the required bond on file, and applicants shall engage only highway carriers who hold appropriate operating authority granted by this Commission.

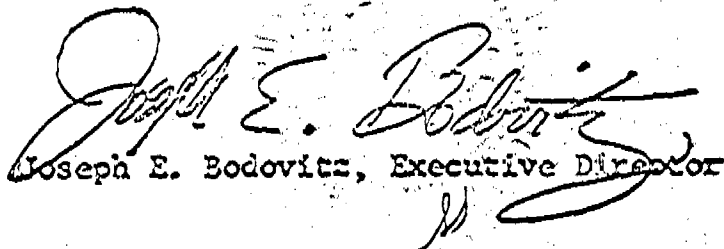
This order is effective today.

Dated FEB 1 1984, at San Francisco, California.

LEONARD M. GRINES, JR.
President

VICTOR CALVO
PRISCILLA C. GREW
DONALD VIAL
WILLIAM T. BAGLEY
Commissioners

I CERTIFY THAT THIS DECISION
WAS APPROVED BY THE ABOVE
COMMISSIONERS TODAY.


Joseph E. Bodovitz, Executive Director

Randel C. Riley and George A. DeVere, by the certificate of public convenience and necessity granted in the decision noted in the margin, are authorized to conduct operations as a highway common carrier as defined in Public Utilities Code Section 213 for the transportation of general commodities as follows:

Between all points and places in the State of California.

Except that under the authority granted, carrier shall not transport any shipments of:

1. Used household goods and personal effects, office, store, and institution furniture and fixtures.
2. Automobiles, trucks, and buses, new and used.
3. Ordinary livestock.
4. Liquids, compressed gases, commodities in semiplastic form, and commodities in suspension in liquids in bulk in any tank truck or tank trailer.
5. Mining, building, paving, and construction materials, except cement or liquids, in bulk in dump truck equipment.
6. Commodities when transported in motor vehicles equipped for mechanical mixing in transit.

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7. Portland or similar cements, either alone or in combination with lime or powdered limestone, in bulk or in packages, when loaded substantially to capacity.
8. Articles of extraordinary value.
9. Trailer coaches and campers, including integral parts and contents when contents are within the trailer coach or camper.
10. Explosives subject to U.S. Department of Transportation regulations governing the transportation of hazardous materials.
11. Fresh fruits, nuts, vegetables, logs, and unprocessed agricultural commodities.
12. Any commodity, the transportation or handling of which, because of width, length, height, weight, shape, or size, requires special authority from a governmental agency regulating the use of highways, roads, or streets.
13. Transportation of liquid or semisolid waste, or any other bulk liquid commodity in any vacuum-type tank truck or trailer.

In performing the service authorized, carrier may make use of any and all public streets, roads, highways, and bridges necessary or convenient for the performance of this service.

Issued by California Public Utilities Commission.

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