

**ORIGINAL**

Decision No. **88356** JAN 17 1978

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

In the Matter of the Application of )  
**MORGAN-MORAN TRANSPORTATION, INC.** )  
 a California corporation, for a )  
 Certificate of Public Convenience ) **Application No. 57156**  
 and Necessity authorizing the ) **(Filed March 18, 1977)**  
 transportation of general )  
 commodities between points within )  
 San Francisco Territory and other )  
 designated points. )

Michael C. Leiden, for Morgan-Moran Transportation, Inc., applicant  
James T. Proctor, Attorney at Law, for Peninsula Air Delivery, protestant.  
Stanley E. Garrett, for the Commission staff.

**O P I N I O N**

By this application Morgan-Moran Transportation, Inc. seeks a certificate of public convenience and necessity pursuant to Sections 1063 and 1064 of the Public Utilities Code and Section 206(a)(6) of the Interstate Commerce Act authorizing the transportation of general commodities, with certain exceptions, between all points and places within the San Francisco Territory. Applicant was granted a radial highway common carrier permit (File No. T-116,216) on December 29, 1976 authorizing the transportation of general commodities, with certain exceptions, between all points within the State of California. The proposed service would be on a daily, on-call basis, seven days a week, and would be performed in intrastate and interstate and foreign commerce wholly within the State of California. Applicant was formed in December 1976. Prior to that time, since 1967, Ronald C. Moran, doing business as Ronald C. Moran Trucking, operated under permitted authority No. T-93,070. Richard B. Morgan, doing business as

Richard B. Morgan Trucking, had operated since 1971 under permitted authority No. T-101,145. It is alleged that as a result of the change in management and growth in operations, applicant now finds that the volume of business in less than truckload shipments has increased to such a point and that its operations have expanded to the extent that it should obtain certificated authority to continue to perform the service and satisfy the demands of the shippers now being served.

The application was protested by Peninsula Air Delivery (PAD).

Duly noticed hearings were held on July 18 and September 26, 1977 before Administrative Law Judge Bernard A. Peeters in San Francisco.

Discussion

At the end of the second day of hearing PAD moved to dismiss the application. The motion was taken under submission with a direction to PAD to reduce its motion to writing and serve it upon applicant by October 3, 1977. Applicant was given until October 10, 1977 to respond. The matter was then adjourned to a date to be set.

PAD's motion to dismiss is based upon the evidence of record which it claims demonstrates the following:

- (1) Applicant is unwilling and/or incapable of complying with this Commission's Rules of Practice and Procedure, and Code of Ethics;
- (2) Applicant has filed, under penalty of perjury, an application which contains serious inaccuracies and misstatements;
- (3) Applicant has willfully failed to serve a copy of its application upon protestant, a known potential common carrier competitor;
- (4) Applicant has improperly and willfully refused to produce certain information requested through informal discovery procedure, as well as certain information directed to be produced by the Administrative Law Judge;

- (5) Applicant has attempted to frustrate this Commission's duty to develop a full and complete record;
- (6) Applicant has failed to prosecute its application in good faith;
- (7) Applicant has, through its officers who appeared as witnesses, demonstrated a total lack of credibility; and
- (8) Applicant has failed to comply with instructions issued by the Administrative Law Judge.

PAD's motion was timely filed on October 3, 1977. Applicant's reply was filed on October 14, 1977.

We have reviewed the motion and reply to the motion and are of the opinion that no good reason exists to deny the motion. There is ample support in the record for the allegations upon which the motion is grounded. Applicant had every opportunity to prove its case. In fact, the matter was specifically adjourned after the first day of hearing, for two months, to give applicant an opportunity to get its case organized to the fullest extent before being required to go forward again. On the second day of hearing applicant's case was in no better shape than on the first. In fact, it was admitted by applicant's officers that the exhibits submitted were unreliable; its witnesses were contradictory and had to be admonished several times to answer questions. In short, applicant not only failed to carry its burden of proof, after ample opportunity to prepare its case, but also disregarded various instructions, cautions, and directives of the Administrative Law Judge. We cannot, and will not, condone such cavalier and disrespectful conduct in presenting a case before us.

Findings of Fact

1. Applicant was given ample time to fully prepare its case and present it to the Commission.
2. Applicant failed to carry its burden of proof.
3. Applicant's exhibits are unreliable according to its own officers' testimony.
4. No good cause has been shown to deny the motion.

Conclusion

The motion should be granted.

O R D E R

IT IS ORDERED that the motion to dismiss is granted. The application is dismissed.

The effective date of this order shall be twenty days after the date hereof.

Dated at San Francisco, California, this 17th

day of JANUARY, 1978.

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 President  
*William Synow Jr.*  
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*Richard D. ...*  
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*Clare J. ...*  
 Commissioners

Commissioner Robert Batinovich, being necessarily absent, did not participate in the disposition of this proceeding.