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91762 MAY 6 1980

ORIGINAL

Decision No. _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

EX PARTE APPLICATION OF BISHER
FREIGHT SERVICE, a partnership
owned by John C. Degenfelder and
Arvonne B. Degenfelder, husband
and wife, as Transferor and
Edwin N. Bacorn and Jill Bacorn,
husband and wife, as Transferees,
to purchase a Certificate of
Public Convenience and Necessity
as a highway common carrier
between San Diego, Mesa Grande,
Oak Grove, Julian, Montezuma
Valley, Cuyamaca and intermediate
points, together with certain
other assets, and to issue a
\$21,500.00 note.

Application No. 59428
(Filed February 5, 1980)

O P I N I O N

John C. Degenfelder and Arvonne B. Degenfelder, doing business as Bisher Freight Service (seller) requests authority to sell and transfer and Edwin N. Bacorn and Jill Bacorn, husband and wife (purchasers) request authority to purchase and acquire a certificate of public convenience and necessity along with certain operating equipment. Purchasers also request authority to execute and deliver a security agreement securing a promissory note in the principal amount of \$21,500 and bearing interest at the rate of 8 percent per annum as consideration for the operating rights and equipment of the carrier.

Authority is sought pursuant to Sections 816 through 818, 851 and 854 of the Public Utilities Code. Notice of the filing of the Application appeared on the Commission's Daily Calendar of February 6, 1980.

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The certificate of public convenience and necessity authorizing operations as a highway common carrier was granted by Decision No. 87790, dated August 30, 1977 in Application No. 57372. The certificate authorizes the transportation of property between various points in San Diego County. The certificate is also the subject of a coextensive Certificate of Registration, issued by the Interstate Commerce Commission under its Docket No. 4363 (Sub No. 3) authorizing the Seller to engage in the transportation of property moving in interstate and foreign commerce. Seller also operates under a highway contract carrier permit issued by this Commission on April 7, 1978 in File No. T-120346. Transfer of this permit will be by a separate Application.

For the year 1978, Bisher Freight Service generated total operating revenues of \$60,785 and net operating income of \$4,304. The carrier's financial position as of June 30, 1979 is summarized as follows:

<u>Assets</u>	<u>Amount</u>
Current Assets	\$ 6,272
Carrier Operating Property, Less Accumulated Depreciation	12,434
Other Assets and Deferred Charges	<u>2,650</u>
Total	<u>\$21,356</u>
 <u>Liabilities and Net Worth</u>	
Current Liabilities	\$ 3,551
Short-Term Liabilities	9,800
Capital and Surplus	<u>8,005</u>
Total	<u>\$21,356</u>

Purchasers propose to continue to use the name "Bisher Freight Service" and to acquire the list of accounts for whom seller now carries general commodities. Purchasers also propose to acquire in addition to the operating rights, two trucks and one van currently owned and operated by the seller. The agreed purchase price is \$21,500.

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Purchasers propose to issue a promissory note, secured by a Motor Vehicle Security Agreement for the sum of \$21,500 payable with interest at the rate of 8 percent. Payments including principal and interest are to be made in monthly installments of \$500. A copy of the proposed note is attached to the Application as Exhibit III.

The Motor Vehicle Security Agreement which purchasers propose to issue to the sellers as collateral for the promissory note will encumber the operating equipment. The equipment to be pledged is described in Exhibit IV, attached to the Application.

The purchasers have managed the carrier since June 1978. Their qualifications are set forth in Exhibit II, attached to the Application, and a personal financial statement, which indicates a net worth of \$25,000, is attached to the Application as Exhibit VI. The staff of the Revenue Requirements Division was informed that Jill Bacorn is the daughter of the sellers.

The Transportation Division has reviewed this matter and agrees with the Revenue Requirements Division that the authority requested is reasonable and not adverse to the public interest.

Seller is party to Western Motor Tariff Bureau, Agent, tariff publications which provide rates and rules for operations under the certificate to be transferred. Purchasers propose to adopt the same tariffs.

A copy of the Application has been forwarded to the California Trucking Association. The purchasers request relief from the Commission's Rules of Practice and Procedure which require wide dissemination of the Application. No protests to the Application have been received.

Findings of Fact

1. The proposed sale and transfer of the operating rights would not be adverse to the public interest.

2. The proposed security agreement and promissory note would be for a proper purpose.

3. The issuance of the proposed note does not require the authorization of the Commission.

4. There is no known opposition and no reason to delay granting the carrier's request.

5. The money, property or labor to be procured or paid for by the issuance of the note herein authorized is reasonably required for the purpose specified herein, which purpose is not, in whole or in part, reasonably chargeable to operating expenses or to income.

Conclusions of Law

1. A public hearing is not necessary.

2. The requested deviation from the Commission's Rules of Practice and Procedure should be authorized.

3. The Commission concludes that the Application should be granted to the extent set forth in the order which follows.

The order which follows will provide for, in the event the transfer is completed, the revocation of the certificate held by John C. Degenfelder and Arvonne B. Degenfelder, doing business as Bisher Freight Service and the issuance of a certificate in appendix form to Edwin N. Bacorn and Jill Bacorn, doing business as Bisher Freight Service.

Purchasers are placed on notice that operative rights, as such, do not constitute a class of property which may be used as an element of value in rate fixing for any amount of money in excess of that originally paid to the State for the grant of such rights. Aside from their purely permissive aspect, such rights

extend to the holder a full or partial monopoly of a class of business. This monopoly feature may be modified or cancelled at any time by the State, which is not in any respect limited as to the number of rights which may be given. The authorization granted shall not be construed as a finding of the value of the rights and equipment authorized to be transferred.

O R D E R

IT IS ORDERED that:

1. On or before September 30, 1980, John C. Degenfelder and Arvonne B. Degenfelder may sell and transfer the operating rights and other assets referred to in the Application to Edwin N. Bacorn and Jill Bacorn a partnership, doing business as Bisher Freight Service.
2. On or after the effective date hereof and on or before September 30, 1980, Edwin N. Bacorn and Jill Bacorn may execute and deliver a Motor Vehicle Security Agreement, which document shall be in substantially the same form as Exhibit IV, attached to the Application.
3. Within thirty days after the transfer, the purchasers shall file with the Commission a written acceptance of the certificate and a true copy of the bill of sale or other instrument of transfer.
4. Purchasers shall amend or reissue the tariffs on file with the Commission, naming rates and rules governing the common carrier operations transferred to show that they have adopted or established, as their own, the rates and rules. The tariff filings shall be made effective not earlier than five days after the effective date of this order on not less than five days' notice to the Commission and the public, and the effective date of the tariff filings shall be concurrent with the transfer. The tariff filings made pursuant to this order shall comply in all respects with the regulations governing the construction and filing of tariffs set forth in the

Commission's General Order 80-Series. Failure to comply with the provisions of General Order 80-Series may result in a cancellation of the operating authority granted by this decision.

5. In the event the transfer authorized in paragraph 1 is completed, effective concurrently with the effective date of the tariff filings required by paragraph 3, a certificate of public convenience and necessity is granted to Edwin N. Bacorn and Jill Bacorn authorizing them to operate as a highway common carrier, as defined in Section 213 of the Public Utilities Code, between the points and over the routes set forth in Appendix A, attached hereto and made a part hereof.

6. The certificate of public convenience and necessity granted by Decision No. 87790 is revoked effective concurrently with the effective date of the tariff filings required by paragraph 3.

7. Purchasers shall comply with the safety rules of the California Highway Patrol, and the insurance requirements of the Commission's General Order 100-Series.

8. Purchasers shall maintain their accounting records on a calendar year basis in conformance with the applicable Uniform System of Accounts or Chart of Accounts as prescribed or adopted by this Commission and shall file with the Commission, on or before April 30 of each year, an annual report of their operations in such form, content and number of copies as the Commission, from time to time, shall prescribe.

9. Purchasers shall comply with the requirements of the Commission's General Order 84-Series for the transportation of collect on delivery shipments. If purchasers elect not to transport collect on delivery shipments, they shall make the appropriate tariff filings as required by the General Order.

10. The Applicants are granted a deviation from the Commission's Rules of Practice and Procedure to the extent requested in the Application.

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

Dated MAY 6 1980 , at San Francisco, California.

John E. Beyer President
Harmon L. Stevenson
Michael D. Howell
Charles J. DeFried
James M. Smith Commissioners

Edwin N. Bacorn and
Jill Bacorn
(doing business as Bisher
Freight Service)

Edwin N. Bacorn and Jill Bacorn, 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 Section 213 of the Public Utilities Code for the transportation of property between all points and places as follows:

1. Interstate Highway 8 between San Diego and El Cajon, inclusive.
2. State Highway 67 between El Cajon and Ramona, including points and places within five statute miles laterally of such highway between its junction with San Diego County Road S4 and Ramona.
3. State Highway 78 between Escondido and Julian, inclusive, including points and places within five statute miles laterally of such highway between Escondido and Ramona.
4. State Highway 79 between Oak Grove and Cuyamaca, inclusive.
5. San Diego County Road S4 between its junction with Interstate Highway 15 and its junction with State Highway 67 via Poway, including points and places within five statute miles laterally of such county road.
6. Unnumbered highway between its junction with State Highways 78 and 79 near Julian and Pine Hills, inclusive.
7. Unnumbered highway between its junction with State Highway 79 near Santa Ysabel Mission and Mesa Grande, inclusive.

Issued by California Public Utilities Commission.

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8. San Diego County Road S-22 between its junction with State Highway 79 (approximately 3 1/2 miles south of Warner Springs) and Montezuma Valley, inclusive.
9. Through routes and rates may be established between any and all points designated in subparagraphs 1 through 8 above.

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

Except that pursuant to the authority herein granted, carrier shall not transport any shipments of:

Trailer coaches and campers, including integral parts and contents when the contents are within the trailer coach or camper.

(END OF APPENDIX A)

Issued by California Public Utilities Commission.

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