

ORIGINAL

93325

JUL 22 1981

Decision No. _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of TRANS-AERO SYSTEMS CORPORATION, for a certificate of public convenience and necessity to operate as a highway common carrier for the transportation of property in intrastate and interstate and foreign commerce.

Application No. 59924 (Filed September 4, 1980)

Virgil J. McVicker, for Trans-Aero Systems Corporation, applicant.

Daniel W. Baker, Attorney at Law, for Ditto Freight Lines, Inc., Lodi Truck Service, and Ted Peters Trucking., Inc., protestants.

O P I N I O N

Trans-Aero Systems Corporation requests a certificate of public convenience and necessity authorizing operations as a highway common carrier for the transportation of general commodities, with certain exceptions, between points and places on and along the major highways, from Weed in the north to San Diego in the south, serving all off-route points within the counties of Alameda, Los Angeles, Orange, Sacramento, San Francisco, San Mateo, Santa Clara, San Bernardino, and San Diego. Applicant also requests that the Commission make a concurrent finding that public convenience and necessity require applicant's service for the transportation of shipments moving in interstate and foreign commerce between the same points.

Copies of the application were served upon 13 carriers with which the proposed service might compete as well as upon the California Trucking Association, and notice was published in the Federal Register on October 20, 1980. On November 17, 1980 a formal protest

to the application was filed by Ditto Freight Lines, Ted Peters Trucking Company, Inc., and Arthur R. Altnow doing business as Lodi Truck Service.

Public hearing was held before Administrative Law Judge Daly on March 10, 1981, and the matter was submitted upon the receipt of late-filed Exhibit 3, which has been since filed and considered.
Applicant's Presentation

In addition to highway common carrier authority issued pursuant to Decision No. 85886 dated June 2, 1976 in Application No. 56284 and corresponding interstate authority pursuant to a certificate of registration, applicant also holds a statewide certificate issued pursuant to Section 1063.5 of the Public Utilities Code as set forth in Cal-T-104150.

Applicant's main place of business is located in Santa Clara. It owns and operates eight units of equipment and employs one office manager and four drivers. As of July 31, 1980 applicant indicated a net worth of \$128,261.

According to applicant's president, who resides in the State of Washington and spends three or four days a month in Santa Clara supervising applicant's operations, applicant proposes to conduct a daily on-call service Monday through Friday. He further testified that although applicant presently holds statewide intrastate authority, it filed the instant application merely as a means of acquiring corresponding interstate authority.

Attached to the applications are letters of support signed by representatives of Culter-Hammer Distribution Center, Invenex Laboratories, and Ribardo's Colonial Furniture. Each company is located in Santa Clara and each indicated that it is presently using applicant's service and would use it on interstate shipments if applicant is so authorized.

The only witness was the president of Ribardo's Colonial Furniture who testified that his company uses applicant on shipments

from Hayward and San Francisco. The interstate movements consist of shipments of furniture that are delivered to the witnesses' East Bay supplier for further processing before being delivered to the witnesses' place of business in Santa Clara.

Protestants' Presentation

Protestants limited their presentation to documents setting forth their respective intrastate and interstate operating authorities, facilities, operating equipment, and financial condition which were received as late-filed Exhibit 3. In addition to specific highway common carrier authority issued pursuant to Section 1063 of the Public Utilities Code and corresponding registered interstate authority, each has been issued a statewide "grandfather" certificate issued pursuant to Section 1063.5 of the Public Utilities Code.

Discussion

It is clear that applicant's only purpose in filing this application is to obtain statewide interstate authority pursuant to the provisions of Section 10931 of the Interstate Commerce Act, which provides that a carrier must apply for and be issued an intrastate certificate by an appropriate state agency, which must also make a dual finding of public convenience and necessity for both intrastate and interstate operations.

Eased upon the record there is no evidence that will support a finding that public convenience and necessity require applicant's service in shipments moving in interstate commerce. The testimony of the public witness related to shipments that had a break-in-transit in the East Bay for the purpose of further processing. At that point the interstate nature of the shipments terminated and the subsequent movements to Santa Clara were intrastate.

Findings of Fact

1. Applicant is presently authorized to provide service as a highway common carrier for the transportation of general commodities,

with certain exceptions, between all points within the State pursuant to a certificate issued under the provisions of Section 1063.5 of the Public Utilities Code.

2. Section 10931 of the Interstate Commerce Act prescribes the procedure that must be followed to qualify a motor carrier for certificate of registration issued by the Interstate Commerce Commission, and requires the State Commission to make dual findings of public convenience and necessity for both intrastate and inter-
state commerce. ✓

3. There is no evidence in the record upon which a finding can be made that public convenience and necessity require applicant's service on shipments moving in interstate commerce. ✓

Conclusion of Law

The application should be denied.

ORDER

IT IS ORDERED that Application No. 59924 is denied without prejudice.

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

Dated JUL 22 1981, at San Francisco, California.

John E. Gannon
President
Richard B. [unclear]
Samuel W. [unclear]
Victor [unclear]
Martha C. [unclear]
Commissioners