

Decision No. 21446

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
 NELLIE B. HIGGINS,)
 operating under the firm name and)
 style of Higgins Transportation)
 Company, seller, and Higgins Trans-)
 portation Company, a corporation,)
 buyer, for an order of the Railroad)
 Commission of the State of California)
 authorizing the former to sell and)
 convey and the latter to purchase and)
 acquire all of the properties, rights,)
 privileges, franchises, and/or permits)
 referred to in this application, also)
 for an order authorizing the latter to)
 issue and sell its capital stock.)

Application No. 15747

R. L. Vaughan, for applicants.

BY THE COMMISSION:

O P I N I O N

Nellie B. Higgins, an individual doing business under the firm name and style of Higgins Transportation Company, has applied to the Railroad Commission for permission to transfer to Higgins Transportation Company, a corporation, certain rights and properties used in her common carrier business on San Francisco Bay and its tributaries. Higgins Transportation Company, a corporation, has joined in the application and has asked permission to purchase and acquire such rights and properties and to issue \$30,000.00 of its common capital stock, \$29,500.00 in payment for the rights and properties and \$500.00 to qualify its directors.

The application shows that since July, 1931, Nellie B. Higgins has been engaged in the business of operating vessels as a common carrier of freight upon the inland waters of the State of

California, her schedule of rates providing for operations between Stockton, Sacramento, San Francisco and intermediate points and landings on San Francisco Bay, San Joaquin River, Sacramento River, Mokelumne River, Old River, Middle River and tributaries. According to financial reports filed with the Commission, the revenues and expenses from the operation of the business for the calendar years 1927 and 1928 and the first four months of 1929 have been as follows:-

ITEM	Year 1927	:	Year 1928	:	1929 4 months
Operating revenue	\$24,860.36	:	\$ 45,018.84	:	\$ 12,273.75
Operating expenses	33,996.72	:	39,643.52	:	10,884.15
Net operating revenue	\$ 9,136.36 (1)	:	\$ 5,375.32	:	\$ 1,389.60
LESS:					
Interest	\$ 172.08	:	\$ 517.10	:	\$ 313.65
Other deductions	1,207.15	:	172.50	:	-
Balance	\$10,515.59	:	\$ 4,685.72	:	\$ 1,075.95

(1) Loss in 1927.

It now appears that Nellie B. Higgins, believing her operations can be conducted more efficiently and economically through a corporate organization, has caused to be organized a corporation known as Higgins Transportation Company, for the purpose of taking over and thereafter operating her business and properties. The record in this proceeding shows that under date of June 1, 1929, Nellie B. Higgins and Higgins Transportation Company entered into an agreement whereby she has agreed to sell and convey all of her rights and properties, to the corporation in exchange for \$29,500.00 of its common capital stock. These rights and properties, it is reported, include the operative right permitting operations as aforesaid, two freighters, cash and other current assets.

In making this application for permission to transfer the properties and to issue the stock, applicants have filed in their

Exhibit "B" a balance sheet showing the assets and liabilities of Nellie B. Higgins, as of May 1, 1929, as follows:

ASSETS:

Property and equipment.....	\$38,287.54	
Less-Depreciation reserve.....	<u>11,118.88</u>	\$27,168.66
Cash.....		453.29
Accounts receivable.....		10,815.54
Prepaid insurance.....		<u>1,124.79</u>
Total Assets.....		<u>\$39,562.28</u>

LIABILITIES:

Accounts payable.....		\$ 5,983.21
Notes payable.....		12,004.43
Proprietor's account.....		20,498.69
Surplus.....		<u>1,075.95</u>
Total Liabilities.....		<u>\$39,562.28</u>

The property and equipment accounts include only the cost of the two freighters, the "John W. Higgins", built in 1921, being reported at \$25,525.93, and the "Meridith", built in 1928, at \$12,761.61. The balance in the reserve for depreciation account has been accumulated, according to the testimony herein, at the rate of ten percent of the cost of the equipment per annum during a portion of the life of the equipment and at the rate of five percent per annum thereafter. The notes payable, payment of which will be assumed by the corporation, include the following:

<u>PAYEE</u>	<u>Date of Issue</u>	<u>Date Due</u>	<u>Rate of Interest</u>	<u>Amount</u>
Bank of Italy, Stockton	Feb. 1, 1929	Aug. 1, 1929	7	\$3,300.00
Atlas-Imperial Diesel Engine Co.	May 25, 1928	\$350. monthly	7	2,707.00
H.J. & W.C. Colberg	July 14, 1928	July 14, 1929	7	<u>5,997.43</u>
Total				<u>\$12,004.43</u>

The \$5,997.43 note in favor of H. J. and W. C. Colberg is secured by mortgage on the freighter "Meridith". Since its maturity on July 14, 1929, it has been renewed for one year. It appears that neither the execution of the mortgage nor the renewal of the note was

authorized by this Commission and in our opinion such instruments are void because of the provisions of Sections 51 and 52 of the Public Utilities Act. The other notes likewise appear to be void. The order herein will authorize the corporation to assume the payment of the indebtedness represented by the void notes. Hereafter, in the event the corporation desires or finds it necessary that the amount be evidenced by notes and a mortgage, it should then file a formal application for permission to execute such instruments.

We do not believe, after giving consideration to the value of the properties, the earnings of the business, and other circumstances and conditions disclosed in the application and in the oral testimony, that we should authorize the issue of \$29,500.00 of stock in payment for the rights and properties of Nellie B. Higgins. The order herein, accordingly, will permit the issue of \$24,000.00 of stock for this purpose and the issue of \$500.00 additional, to qualify the directors,

O R D E R

Application having been made to the Railroad Commission for an order authorizing the transfer of properties and the issue of \$30,000.00 of stock, a public hearing having been held before Examiner Fankhauser, and the Railroad Commission being of the opinion that the transfer of properties should be authorized, but that the issue of only \$24,500.00 of stock is reasonably required for the purposes specified herein, which purposes are not in whole or in part reasonably chargeable to operating expense or to income, and that this application, insofar as it involves the issue of \$5,500.00 of stock should be denied without prejudice, therefore,

IT IS HEREBY ORDERED that Nellie B. Higgins, doing business under the firm name and style of Higgins Transportation Company, be, and she hereby is, authorized to grant, bargain, sell and convey, on or before November 1, 1929, unto Higgins Transportation Company, a

corporation, all of her properties, rights, business and assets, referred to in this application, in exchange for \$24,000.00 of the common capital stock of Higgins Transportation Company and the assumption of not exceeding \$18,000.00 of indebtedness by said corporation and upon such transfer of said properties, to cease rendering common carrier operations by vessels upon the inland waters of the State of California.

IT IS HEREBY FURTHER ORDERED that Higgins Transportation Company, a corporation, be, and it hereby is, authorized to purchase and acquire all of said properties, rights, business and assets of Nellie B. Higgins and to issue in payment therefor, on or before November 1, 1929, not exceeding \$24,000.00 of its common capital stock and assume the payment of not exceeding \$18,000.00 of indebtedness.

IT IS HEREBY FURTHER ORDERED that Higgins Transportation Company, a corporation, be, and it hereby is, authorized to issue and sell, on or before November 1, 1929, at par for cash \$500.00 of its common capital stock to its directors, and to use the proceeds to pay organization expenses and to provide working capital.

The authority herein granted is subject to the following conditions:-

1. The stock herein authorized to be issued and the indebtedness to be assumed in payment for said rights, properties, business and assets of Nellie B. Higgins, shall not hereafter be urged before this Commission or other public body as a measure of value thereof for any purpose other than the transfer herein authorized.
2. Nellie B. Higgins and Higgins Transportation Company, a corporation, shall unite immediately in common supplement to the tariffs now on file with the Railroad Commission in the name of Nellie B. Higgins,

applicant Nellie B. Higgins on the one hand withdrawing, and Higgins Transportation Company on the other hand accepting and establishing as its own, such tariffs and all effective supplements thereto.

3. Within sixty days after the transfer of the properties and the issue of the stock as herein authorized, Higgins Transportation Company, a corporation, shall file with the Commission a certified copy of the deed or other instrument of conveyance and a certified report, as required by the Railroad Commission's General Order No. 24, which order, insofar as applicable, is made a part of this order.
4. The authority herein granted will become effective ten days after the date hereof.

IT IS HEREBY FURTHER ORDERED that the application insofar as it involves the issue of \$5,500.00 of stock be, and it hereby is, denied without prejudice.

DATED at San Francisco, California, this 12th day of August, 1929.

Thos D. Lott
Chas. Seaver
Ernest D. ...
Leon ...
W. J. ...
Commissioners.