

Decision No. 22616

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

In the Matter of the Application of)
 HOWARD M. LANG)
 to sell and transfer and Pacific)
 Freight Lines Company, a California)
 corporation, to purchase and acquire)
 an automobile freight line operated) Application No. 16562
 between Ojai, Ventura, Los Angeles)
 and intermediate points in)
 California.)

O'Melveny, Tuller and Myer, by Paul Fussell
 and Kent Allen, for Pacific Freight
 Lines Company;

Sanborn, Roehl, Smith and Brookman for
 Howard M. Lang.

BY THE COMMISSION:

O P I N I O N

In this proceeding Howard M. Lang asks permission to sell his operative rights, business and properties described in Exhibit "C" to Pacific Freight Lines Company. Pacific Freight Lines Company asks permission to acquire said property and issue in payment therefor 400 shares of its no par value capital stock. In addition, it asks that it be permitted to issue 150 shares of its capital stock to net it \$15,000.00, of which \$10,000.00 will be used for working capital and \$5,000.00 to pay organization fees and expenses and the cost of auditing, engineering and legal expenses in connection with the acquisition of the business and properties involved in this application.

The testimony shows that Howard M. Lang is at present engaged in the operation of an automobile truck line for the transportation of freight for compensation as a common carrier between

Los Angeles, Ventura and Ojai, California, and intermediate points via Ventura Boulevard and Santa Susana Boulevard. He has been operating under the fictitious name of Ojai, Ventura and Los Angeles Express. It appears that he is the owner of a prescriptive right established by Harry M. Hunt for the transportation of freight between Ventura, Ojai and Los Angeles and intermediate points and that he, or his predecessors in interest, have been granted certificates of public convenience and necessity by the following Commission decisions:

Decision No. 7689, dated June 8, 1920,
in Application No. 5683;
Decision No. 11301, dated December 1, 1922,
in Application No. 8439;
Decision No. 12144, dated May 25, 1923,
in Application No. 9057;
Decision No. 18588, dated July 8, 1927,
in Case No. 2299;
Decision No. 18817, dated September 19, 1927,
in Case No. 2299; and
Decision No. 19333, dated February 6, 1928,
in Application No. 14364.

It appears from Exhibit "C" that he has agreed to sell all of his operative rights, together with the trucking equipment used in conjunction therewith, except cash and accounts receivable, as well as all his rights and property in and to and/or to be acquired under an application now pending before the Railroad Commission for a certificate of public convenience and necessity for extended service to Maricopa, to Pacific Freight Lines Company in exchange for 400 shares of that company's common capital stock.

In his 1929 annual report, Howard M. Lang shows operating revenues of \$83,323.87 and operating expenses of \$82,953.71, leaving net operating revenue of \$370.16. Subsequent to the hearing had on this application, there was filed with the Railroad Commission a copy of a report prepared by Barrow, Wade and Guthrie, Certified Public Accountants, in which the net operating revenue of his operations is shown at \$1,071.48, instead of \$370.16. The United States Engineering

Corporation estimates that the operating expenses of Howard M. Lang include \$15,210.00 which can be eliminated, which, if eliminated, leave net operating revenue of \$16,281.48. The record merely shows that certain expenses can be eliminated. It does not show what the operating expenses of Pacific Freight Lines Company will be.

In Exhibit No. 1 prepared by Sanderson and Porter, Consulting Engineers, the replacement cost new of the properties which Howard M. Lang has agreed to sell to Pacific Freight Lines Company is reported at \$39,081.00 and the replacement cost new less depreciation at \$15,389.00. Neither of the figures include any expenditures for operative rights.

Pacific Freight Lines Company is a corporation organized under and by virtue of the laws of the State of California. It has an authorized capital stock issue of 25,000 shares without par value. The company in this proceeding asks authority to issue, as said, 400 shares of its stock in payment for the properties of Howard M. Lang and to issue and sell 150 shares, at \$100.00 per share, to provide itself with working capital and pay organization expenses. The testimony shows that to date it has incurred in connection with the purchase of the properties of Howard M. Lang expenses aggregating \$3,750.00. In addition, expenses amounting to \$650.00 have been incurred in organizing the company. It further appears from the testimony that some of the money which the company asks permission to use as working capital will be used in connection with the operation of the properties which it asks authority to acquire in Application No. 16595. In that proceeding, Pacific Freight Lines Company does not ask authority to issue any stock for working capital.

We have considered the testimony submitted in this proceeding and believe that Pacific Freight Lines Company should be permitted to issue 154 shares of stock in exchange for the properties of Howard M. Lang.

In authorizing the transfer of the operative rights, we wish to place the purchaser upon notice that operative rights do not constitute a class of property which should be capitalized or used as an element of value in determining reasonable rates. Aside from their purely permissive aspect they extend to the holder a full or partial monopoly of a class of business over a particular route. This monopoly feature may be changed or destroyed at any time by the State, which is not in any respect limited to the number of rights which may be given.

ORDER

Application having been made to the Railroad Commission for an order authorizing the transfer of properties and the issue of stock, a public hearing having been held before Examiner Fankhauser, and the Commission being of the opinion that the money, property or labor to be procured or paid for through the issue of stock herein authorized is reasonably required for the purposes specified herein, which purposes are not, in whole or in part, reasonably chargeable to operating expenses or to income, and that this application should be granted to the extent indicated in this order, therefore,

IT IS HEREBY ORDERED as follows:

(1) Howard M. Lang be, and he is hereby, authorized to sell and transfer to Pacific Freight Lines Company the operative rights, properties, assets and business, referred to in the foregoing opinion and in Exhibit "C" filed in this proceeding, such properties to be transferred free and clear of all indebtedness.

(2) Pacific Freight Lines Company be, and it is hereby, authorized to purchase and acquire the aforesaid properties and to issue in payment therefor not exceeding 154 shares of its common

capital stock of no par value, and, in addition, to issue and sell for cash, at \$100.00 per share, 150 shares of its capital stock and use \$10,000.00 realized from the sale of said 150 shares of stock as working capital and \$5,000.00 to pay expenses incident to the organization of Pacific Freight Lines Company and to the acquisition of the properties of Howard M. Lang.

(3) This application, insofar as it involves the issue of 246 shares of stock, be, and the same is hereby, denied.

(4) The authority herein granted is subject to the following conditions:

(a) Howard M. Lang shall unite immediately with Pacific Freight Lines Company in common supplement to the tariffs on file with the Commission covering operations under the operative rights herein authorized to be transferred, said Howard M. Lang on the one hand withdrawing and said Pacific Freight Lines Company on the other hand accepting and establishing such tariffs and all effective supplements thereto.

(b) Howard M. Lang shall withdraw immediately time schedules filed in his name with the Railroad Commission covering his services under the operative rights herein authorized to be transferred, and Pacific Freight Lines Company shall file, in duplicate, in its own name time schedules covering such services, which time schedules shall be identical with those now on file in the name of Howard M. Lang, or time schedules satisfactory to the Commission.

(c) The rights and privileges herein authorized to be transferred may not hereafter be sold, leased, transferred or assigned, or service thereunder discontinued, decreased or changes, unless written consent of the Railroad

Commission is first secured.

(d) No vehicle may be operated by Pacific Freight Lines Company under the authority herein granted unless such vehicle is owned by said company, or is leased by it under a contract or agreement on a basis satisfactory to the Railroad Commission.

(e) Pacific Freight Lines Company shall keep such record of the issue of the stock herein authorized as will enable it to file, within thirty days thereafter, a verified report as required by the Railroad Commission's General Order No. 24, which order, insofar as applicable, is made a part of this order.

(f) The authority herein granted will become effective upon the date hereof.

DATED at San Francisco, California, this 1st day
of July, 1930.

Edmund J. Cook
Thomas S. Curtis

Commissioners.