

LEM

Decision No. 22647.

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)	
PERRY H. GREEN, HUBERT S. GREEN,)	
J. CLARKE SMITH and C. A. FOLETTA to)	
sell and transfer, and Pacific Freight)	
Lines Company, a California corpora-)	
tion, to purchase and acquire an auto-)	Application No. 16596
mobile freight line operating between)	
Los Angeles and San Bernardino.)	

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

Suhr and Hallyer, for Perry H. Green, Hubert J.
Green, J. Clarke Smith and C. A. Foletta.

BY THE COMMISSION:

O P I N I O N

The Railroad Commission is asked to enter its order authorizing applicants Perry H. Green, Hubert S. Green, J. Clarke Smith and C. A. Foletta, who are engaged in a transportation business under the fictitious name of San Bernardino Transportation Company, to sell and transfer the operative rights, business and properties, described in Exhibits "A", "B" and "C" attached to the petition in this application, to Pacific Freight Lines Company. Pacific Freight Lines Company asks permission to purchase and acquire said properties, and to issue in payment therefor, 500 shares of its capital stock. In addition, Pacific Freight Lines Company asks permission to issue and sell 100 shares of its capital stock at \$100.00 per share and use \$5,000.00 of

the proceeds as working capital and \$5,000.00 to pay expenses incident to the acquisition of the aforesaid properties.

The record shows that Perry H. Green, Hubert S. Green, J. Clarke Smith and C. A. Foletta are 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 and San Bernardino. Their transportation business is being conducted under a prescriptive operative right established by C. W. Viall, which was transferred by him to Bert Tillett under the authority granted by Decision No. 13428, dated April 18, 1924, in Application No. 9901, and subsequently transferred by said Bert Tillett to the present owners under the authority granted by Decision No. 20307, dated October 9, 1928, in Application No. 15063. The operative right to which reference has been made does not confer upon the owners thereof the right to do any intermediate business between Los Angeles and San Bernardino.

In Exhibit No. 3, Sanderson and Porter, consulting engineers, estimate the replacement cost of the properties of San Bernardino Transportation Company at \$66,251.00 and the replacement cost less depreciation at \$47,108.00. These two amounts are made up of the following items:-

I T E M	:REPLACEMENT :COST NEW	:REPLACEMENT COST :NEW LESS DEPRECIATION
Land	\$ 14,500.00	\$14,500.00
Land improvements	1,569.00	1,404.00
Buildings	10,682.00	10,332.00
Office furniture and fixtures	1,147.00	780.00
Equipment	1,656.00	1,237.00
Trucks and trailers	36,697.00	18,855.00
Total	\$ 66,251.00	\$47,108.00

These figures do not include any expenditures for acquiring operative rights.

The San Bernardino Transportation Company in its annual report for the year ending December 31, 1929 reports the investment in its properties at \$40,984.45, segregated as follows:-

Intangible capital	-\$ 500.00
Land	12,000.00
Buildings	7,820.32
Machinery and tools	668.13
Freight cars	19,205.00
Furniture	791.00
Total.....	<u>\$40,984.45</u>

Its reserve for accrued depreciation is reported at \$4,988.82, leaving a net investment of \$35,995.63.

The company in its annual report shows operating revenues of \$52,888.62 and operating expenses of \$51,274.52, leaving net operating revenue of \$1,614.10. Subsequent to the hearing had on this application, there was filed with the Commission a statement prepared by Barrow, Wade and Guthrie, certified public accountants, in which they report the operating revenue of San Bernardino Transportation Company for the year 1929 at \$53,120.43 and operating expenses, including depreciation, at \$51,198.38, leaving net operating revenue of \$1,932.05.

Pacific Freight Lines Company asks permission to issue in payment for the aforesaid properties, 500 shares of its capital stock. In addition, it asks authority to issue and sell, for cash, 100 shares of its capital stock at \$100.00 per share and use \$5,000.00 of the proceeds as working capital and \$5,000.00 to pay expenses incurred in connection with the acquisition of the aforesaid properties. The record shows that the expenses incurred to date were \$3,750.00.

We have considered the testimony submitted and believe that Pacific Freight Lines Company should be permitted to issue 557 shares of stock for the purposes stated in the order following.

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 property 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 by the issue of the stock herein authorized is reasonably required by Pacific Freight Lines Company for the purposes herein specified, and that such 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) Perry H. Green, Hubert S. Green, J. Clarke Smith and C. A. Foletta be, and they hereby are, authorized to sell and transfer, on or before October 1, 1930, to Pacific Freight Lines Company the operating rights, properties, assets and business referred to in the foregoing opinion and described in Exhibits "A", "B" and "C" filed in this proceeding, such properties to be transferred free and clear of all indebtedness.

(2) Pacific Freight Lines Company be, and it hereby is, authorized to purchase and acquire the aforesaid properties and to issue on or before October 1, 1930, not exceeding 471 shares of its common capital stock of no par value in payment therefor, and in addition,

to issue and sell, on or before October 1, 1930, for cash at not less than \$100.00 a share, 86 shares of its common capital stock of no par value to provide working capital and to pay expenses incurred in acquiring properties.

(3) This application insofar as it involves the issue of 43 shares of stock be, and it hereby is, denied.

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

1. Perry H. Green, Hubert S. Green, J. Clarke Smith and C.A.

Foletta 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, the former on the one hand withdrawing, and the latter on the other, accepting and establishing such tariffs and all effective supplements thereto.

2. Perry H. Green, Hubert S. Green, J. Clarke Smith and C.A.

Foletta shall withdraw immediately time schedules filed in its name with the Railroad Commission covering its service 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 service, which time schedules shall be identical with those now on file in the name of Perry H. Green, Hubert S. Green, J. Clarke Smith and C. A. Foletta, or time schedules satisfactory to the Commission.

3. The rights and privileges herein authorized to be transferred may not hereafter be sold, leased, transferred or assigned, or service thereunder discontinued, decreased or changed, unless written consent of the Railroad Commission is first secured.

4. No vehicle may be operated by Pacific Freight Lines Company under the authority granted herein 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.
5. 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.
6. The authority herein granted will become effective upon the date hereof.

DATED at San Francisco, California, this 9th day of July, 1930.

Edmund G. Smith
Leon C. Curly
Thos. D. Smith

Commissioners.