

Decision No. 27815

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
HIGHWAY EXPRESS & FORWARDING COMPANY,
a corporation, to sell and issue cap-
ital stock.

Application No. 19592

In the Matter of the Application of
WILLARD E. MULLIKIN, JR.,
doing business under the fictitious
name of HIGHWAY EXPRESS & FORWARDING
COMPANY, to sell, and Highway Express
& Forwarding Company, a corporation,
to purchase, an express and forward-
ing business operated between certain
points in the State of California.

Application No. 19593

- Hugh Gordon, for applicants.
- Edward Stern, for Railway Express Agency, Inc.,
interested party.
- H. W. Hobbs, for Southern Pacific Company and
Pacific Motor Transport Company,
interested parties.
- Wallace K. Downey, for Motor Freight Terminal
Company, interested party.

BY THE COMMISSION:

O P I N I O N

In Application No. 19593 the Railroad Commission is asked to make its order authorizing Willard E. Mullikin, Jr. to sell to Highway Express & Forwarding Company, a corporation, operating rights and all other assets of his express and forwarding business.

In Application No. 19592 the Commission is asked to authorize Highway Express & Forwarding Company to issue at \$5.00 a share, 280 shares of no par common stock in payment for the properties of Willard E. Mullikin, Jr. and 250 shares of common stock for the extension and improvement of the facilities and services it proposes to acquire.

A public hearing on the two applications was held by Examiner Satterwhite. The matters were submitted and will be disposed of in this decision.

It is recited in Application No. 19593 that Willard E. Mullikin, Jr., doing business under the firm name and style of Highway Express & Forwarding Company, is engaged in the operation of an express and forwarding business in the State of California, subject to the jurisdiction of the Railroad Commission.

Highway Express & Forwarding Company, one of the applicants herein, is a corporation organized under the laws of the State of California for the purpose of taking over the business and properties of Willard E. Mullikin, Jr., and thereafter of operating them. Its Articles of Incorporation, filed as Exhibit "C" in Application No. 19593, show that it was formed on or about July 19, 1934, with an authorized capital stock of 2,500 shares, all without par value.

It appears that an agreement, dated August 15, 1934 (Exhibit "A" in Application No. 19593) has been made by and between Willard E. Mullikin, Jr. and Highway Express & Forwarding Company, under the terms of which said Willard E. Mullikin, Jr. has agreed to transfer to the corporation, applicant herein, his operating rights, furniture, fixtures, office equipment and supplies, and all other assets, including cash, accounts receivable and good will, such transfer to be made subject only to current liabilities in consideration for the issue by the corporation of 280 shares of its capital stock or such lesser amount as may be authorized by the Commission. A statement of the assets and liabilities of Willard E. Mullikin, Jr., as of July 31, 1934, appears in Exhibit "B" (Application No. 19593) as follows:-

A S S E T S

Cash on hand	\$158.08
Accounts receivable	649.92
Prepaid expenses	40.00
Cash on deposit, Tariff Bureau	30.00
Office supplies and equipment	121.71
Cash in bank	163.10
Notes receivable	647.38
Development costs	<u>308.14</u>
Total assets	\$ 2,119.33

L I A B I L I T I E S

Accounts payable	\$417.56
C.O.D.'s payable	226.94
Advances payable	16.24
Reserve for taxes	<u>29.70</u>
Total liabilities	<u>691.04</u>
Net worth	<u>\$ 1,427.29</u>

The record indicates that the item of \$308.14 designated as development costs, represents expenditures in connection with proceedings before the Commission, including fees, traveling expenses, costs of preparing papers and similar items.

The proposed issue by the corporation of 280 shares for the assets is on a basis of approximately \$5.00 a share, considering the foregoing figures. It is further proposed to make the additional issue of 250 shares, which is planned for the purpose of providing working funds to carry on the business, also at the price of \$5.00 a share, making a total issue of 530 shares at an aggregate price of \$2,650.00.

As stated in numerous previous decisions, the Commission does not look with favor on the issue of no par stock at a price of less than \$25.00 a share. In this case we do not believe that we should authorize the issue at \$5.00 a share as here proposed. Accordingly, we will authorize the issue of 56 shares at \$25.00 each, yielding \$1,400.00, in payment for the properties of Willard E. Mullikin, Jr., and of 50 shares at \$25.00, yielding \$1,250.00, to provide for working funds and for the extension and improvement of the facilities and

services to be acquired by the corporation.

In connection with the operating rights to be transferred, a reference to the records of the Commission shows that on November 21, 1933 Willard E. Mullikin, Jr. filed an application, numbered 19202, for a certificate of public convenience and necessity permitting him to continue in effect the service then performed by him alleged to have been started prior to August 1, 1933, the date specified in Section 50 (f) of the Public Utilities Act, subsequent to which no express corporation or freight forwarder could commence operation unless it has received a certificate of public convenience and necessity. The application was granted by the Commission by Decision No. 26606, dated December 4, 1933, but subsequently the proceeding was re-opened upon the petition of certain other carriers, and set down for hearing along with similar applications filed by somewhat similar operators. Thereafter the Commission by Decision No. 27593, dated December 17, 1934, found that Willard E. Mullikin, Jr., as well as the other operators, did not need to obtain a certificate for his prior operations, and accordingly rescinded the first decision, No. 26606, among others. Decision No. 27593 reads on this point as follows:-

"All of the applicants here claim to have commenced operations between May 1, 1933, and August 1, 1933, the period within which we are satisfied the legislature neither intended to, nor in fact did the statute require that certificates be required as conditions precedent to their operating. As to such operations therefore no certificate is necessary and the orders heretofore issued granting them should be rescinded.

It should be clearly understood, however, that by this action the Commission is not finding that the mere filing of a tariff effective on or before August 1, 1933, constitutes 'operating' to the extent indicated by the tariff as of that date. While the tariffs of certain of these applicants cover extensive territory the record shows that they never handled a shipment to or from many of the points, maintained no representatives there and offered no proof of good faith operation other than such as is said to follow from the mere filing of tariffs. Applicants will be expected forthwith to take such steps as may be necessary to bring their tariffs into conformity with their good faith operations on August 1, 1933."

It should be observed that the Commission did not in Decision No. 27593 define the operating rights established by Willard E. Mullikin, Jr. Neither is such a definition made at this time. Under the authority contained in the order following this opinion Willard E. Mullikin, Jr. may transfer to the applicant corporation only such rights as he may have. In making such an order the Commission is not precluded from determining and fixing the limits to such rights in this or any other proceeding.

Highway Express & Forwarding Company is hereby placed upon notice that operating 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 in the number of rights which may be given.

O R D E R

Willard E. Mullikin, Jr. having applied to the Railroad Commission for an order authorizing the sale and transfer of operating rights and properties, and Highway Express & Forwarding Company having applied for an order authorizing the issue of 530 shares of stock, a public hearing having been held and the Commission being of the opinion that the sale and transfer should be authorized, as provided herein, and that the money, property or labor to be procured or paid for through the issue of 106 shares 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 the request to issue the remaining 424 shares of stock should be dismissed without prejudice,

IT IS HEREBY ORDERED:

1. That Willard E. Mullikin, Jr., doing business under the firm name and style of Highway Express & Forwarding Company, be, and he hereby is, authorized to sell and transfer his operating rights and properties, referred to in the foregoing opinion, to Highway Express & Forwarding Company, a corporation.
2. That Highway Express & Forwarding Company, a corporation, be, and it hereby is, authorized to purchase and acquire said operating rights and properties and to operate the same.
3. That Highway Express & Forwarding Company, a corporation, be, and it hereby is, authorized to issue, on or before June 30, 1935, at not less than \$25.00 a share, 56 shares of its no par capital stock in part payment for the operating rights and properties which Willard E. Mullikin, Jr. is herein authorized to transfer to it.
4. That Highway Express & Forwarding Company, a corporation, be, and it hereby is, authorized to issue and sell for cash on or before June 30, 1935, at not less than \$25.00 a share, 50 shares of its no par capital stock for the purpose of providing for working funds and for the extension and improvement of its facilities and services.
5. That Application No. 19592 insofar as it involves the issue of the remaining 424 shares of stock, be, and it hereby, is dismissed without prejudice.
6. That the authority herein granted is subject to the following conditions:-
 - a. Willard E. Mullikin, Jr., doing business under the firm name and style of Highway Express & Forwarding Company, shall unite immediately with Highway Express & Forwarding Company, a corporation, in common supplement, to be filed in triplicate, to the tariffs filed with the Railroad Commission by said Mullikin, the former

on the one hand withdrawing and the latter on the other hand, accepting and establishing as its own such tariffs and all effective supplements thereto, it being understood, however, that by accepting said tariffs Highway Express & Forwarding Company, a corporation, does not acquire or establish any operative rights not now possessed by Willard E. Mullikin, Jr.

- b. The rights and privileges herein authorized to be transferred may not hereafter be sold, transferred, leased nor assigned, nor service thereunder discontinued, unless the written consent of the Railroad Commission has first been secured.
- c. The authority herein granted is not to be construed as a determination of the operating rights of Willard E. Mullikin, Jr.
- d. Highway Express & Forwarding Company shall keep such record of the issue of the stock herein authorized and of the disposition of the proceeds, as will enable it to file, on or before the 25th day of each month, a verified report, as required by the terms of the Railroad Commission's General Order No. 24, which order insofar as applicable, is made a part of this order.
- e. The authority herein granted will become effective twenty (20) days from the date hereof.

DATED at San Francisco, California, this 29th day of December, 1934.

Leon Wheeler
11/16/34
W. B. Hamer
W. H. ...
PAUL R. ...
Commissioners.