

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of FRANCIS E. PENHALL and M. E. PENHALL, co-partners doing business under the firm name and style of Penhall Brothers, to sell, and Penhall Brothers, Incorporated, a corporation, to purchase an automobile freight line operating between Los Angeles and various points in Orange County for the transportation of milk and dairy products as well as certain other property both operative and nonoperative, and for authority for Penhall Brothers Incorporated, a corporation, to issue shares of its capital stock to Francis E. Penhall and M. E. Penhall in consideration for operative rights and other property to be transferred by said co-partners to said corporation.

Application No. 19854

ORIGINAL

Rex W. Boston, for applicants.

BY THE COMMISSION:

O P I N I O N

The Commission is asked to enter its order authorizing Francis E. Penhall and Merton E. Penhall, co-partners doing business under the firm name and style of Penhall Brothers, to sell automobile truck equipment, other personal property and an operative right to Penhall Brothers Incorporated, and authorizing said Penhall Brothers Incorporated to issue in payment for the said properties 2754 shares of no par value common stock at \$10. per share.

It is of record that Francis E. Penhall and Merton E. Penhall are now and have for a number of years past been co-partners, and as such have, among other lines of business, been engaged in the operation of a common carrier automobile freight line for the transportation of milk and dairy products between Los Angeles on the one hand and various points located in Los Angeles and Orange Counties, including Downey, Hynes, Clearwater, Buena Park, Westminster, Smeltzer, Wintersberg and

Talbert on the other hand. The common carrier operations are carried on under authority granted by the Railroad Commission by its Decision No. 23114 dated November 28, 1930 in Application No. 16469. In addition to operating the above described common carrier automobile truck service Francis E. Penhall and Merton E. Penhall, are engaged in and carry on numerous other lines of business activity, including the operation of tank trucks and tank trailers, the operation of a garage and general automotive repair business and the operation of two automobile service stations, one of which is located in the Town of Westminster and the other in the City of Brawley.

In their common carrier business, Penhall Brothers, co-partners, use three trucks and two trailers and in their tank truck business, three trucks and three trailers. The net value of the property which they propose to transfer to Penhall Brothers Incorporated is in Exhibit "D" reported as follows:-

Trucks and trailers, common carrier division	\$ 4,250.00
Trucks and trailers, tank truck division	15,732.67
Garage equipment	2,275.00
Service station division	2,985.00
Office equipment	400.00
Operative right	2,000.00
Total.....	<u>\$27,842.67</u>

Penhall Brothers Incorporated, a corporation, was organized under the laws of California. It has an authorized stock issue of 7500 shares without par value. Paragraph six of the corporation's Articles of Incorporation, reads as follows:-

"No shareholder shall sell, transfer or hypothecate his stock or any part thereof without first giving to the other shareholders in said corporation the right to buy said stock or loan money thereon upon the same terms and conditions as could be obtained in the open market. A shareholder desiring to sell, transfer or hypothecate any or all of the shares of stock belonging to him shall give ten (10) days' written notice to the Secretary of said corporation, stating therein the number of shares which the shareholder desires to transfer, sell or hypothecate and the sale price thereof, or the amount that is desired to be borrowed thereon. The Secretary of said corporation shall immediately notify the shareholders of said corporation, in writing, of the offer of said shareholder to sell said stock or his request for a loan thereon. If any shareholder desires to buy said stock at the price named in said notice, or if any shareholder desires to loan the amount of

money named in said notice, accepting the amount of stock set out in said notice as collateral for said loan, said shareholder shall give to the Secretary of said corporation notice of his acceptance of the terms set out in the notice of said shareholder desiring to sell or borrow as the case may be, within the ten (10) day period required by this provision. The Secretary of said corporation shall immediately notify in writing said shareholder of the acceptance of his offer and the transaction shall be completed in accordance with the terms thereof. If there is no acceptance on the part of any shareholder in said corporation of the terms set out in said notice to sell or transfer said shares or borrow thereon within the ten (10) day period herein prescribed, then and in that event said shareholder shall have the right to transfer, sell or hypothecate his shares of stock upon the open market or to anyone who is not a shareholder in said corporation, but in no event shall he sell said shares for a less amount than was specified in his notice to the shareholders of the corporation, or be permitted to borrow in the open market upon said stock a less amount than was specified in said notice."

This provision appears on the back of the stock certificate.

Applicant, Penhall Brothers Incorporated, asks permission to issue 2754 shares of no par value stock at \$10.00 per share. We have considered this request and believe the stock should be issued on a basis of not less than \$25.00 per share. Accordingly, the number of shares to be issued should not exceed 1106. The adjustment of the price per share is in line with other decisions of the Commission. Though the properties are to be transferred to a corporation the business of the corporation will be under the management of the present owners of the properties. The rates now on file with the Commission will be adopted by the corporation.

Penhall Brothers Incorporated, a corporation, is hereby put upon notice that operative rights do not constitute a class of property which should be capitalized or used as an element of value 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.

O R D E R

The Commission having been asked to enter its order, as indicated in the foregoing opinion, a public hearing having been held in this application before Examiner Fankhauser and the Commission being of the opinion that the money, property or labor to be procured or paid for by Penhall Brothers Incorporated through the issue of not exceeding 1106 shares of stock, is reasonably required for the purposes herein stated and that the expenditures for such purposes are not in whole or in part reasonably chargeable to operating expenses or to income and that this application should be granted, as herein provided, therefore,

IT IS HEREBY ORDERED that Francis E. Penhall and Merton E. Penhall, co-partners doing business under the firm name and style of Penhall Brothers, may on or before June 30, 1935 sell to Penhall Brothers Incorporated the operative right granted by the Commission's Decision No. 23114 dated November 28, 1930 in Application No. 16469, together with their automobile truck and trailer equipment and other properties described in Exhibit "D" filed in this proceeding.

IT IS HEREBY FURTHER ORDERED that Penhall Brothers Incorporated may on or before June 30, 1935, issue in payment for the aforesaid properties, not exceeding 1106 shares of no par common capital stock.

IT IS HEREBY FURTHER ORDERED that the authority herein granted is subject to the following conditions:-

1. The consideration to be paid for the properties herein authorized to be transferred shall never be urged before this Commission or any other rate fixing body as a measure of value of said property for rate fixing or any purposes other than the transfer herein authorized.

2. Francis E. Penhall and Merton E. Penhall, co-partners, and Penhall Brothers Incorporated shall join immediately in common supplement to be filed in triplicate, to the tariffs on file with the Commission in the name of the transferrers, Francis E. Penhall and Merton E. Penhall on the one hand withdrawing and Penhall Brothers Incorporated on the other hand accepting and establishing such tariffs and all effective supplements thereto.
3. Francis E. Penhall and Merton E. Penhall, co-partners, shall withdraw immediately time schedules filed in their names with the Railroad Commission, ^{and} Penhall Brothers Incorporated shall file, in duplicate, in its own name, new time schedules which shall be identical with those now on file in the name of Francis E. Penhall and Merton E. Penhall, co-partners, or time schedules satisfactory to the Commission.
4. The rights and privileges herein authorized to be transferred may not hereafter be sold, leased, transferred nor assigned, nor service thereunder discontinued, increased or changed by Penhall Brothers Incorporated, unless the written consent of the Railroad Commission has first been secured.
5. No vehicle may be operated by Penhall Brothers Incorporated under the authority granted, unless such vehicle is owned by said applicant or is leased by it under a contract or agreement on a basis satisfactory to the Railroad Commission.
6. Penhall Brothers Incorporated shall keep such record of the issue of the stock herein authorized as will enable it to file, within thirty(30) 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.

7. The authority herein granted will become effective upon the date hereof.

IT IS HEREBY FURTHER ORDERED that this application insofar as it involves the issue of 1648 shares of stock be, and the same is hereby, dismissed without prejudice.

DATED at San Francisco, California, this 22nd day of April, 1935.

Leon C. ...

M. A. ...

W. B. ...

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Commissioners.