

Decision No. 28711

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
 A. NYSTROM and GAIL E. STATER,)
 doing business as a partnership under)
 the name and style of NAPA TRANSPOR-)
 TATION COMPANY(formerly known as Napa)
 Transportation & Navigation Company),)
 NAPA TRANSPORTATION COMPANY, a cor-)
 poration, NAHUM FAY, NORVIN FAY and)
 JOHN C. STONE for an order under the)
 provisions of Sections 51 and 52 of)
 the Public Utilities Act of the State)
 of California authorizing:(1) The)
 sale of the vessels THEODORE ROOSE-)
 VELT and CITY OF NAPA and of all the)
 other properties and of the business)
 of the partnership Napa Transporta-)
 tion Company; (2) Issuance of a Note;)
 (3) Execution of a mortgage upon said)
 vessels and upon a 7/8ths interest in)
 other properties and (4) Issuance of)
 capital stock of the Napa Transporta-)
 tion Company.)

ORIGINAL

Application No. 20431

McCutchen, Olney, Mannon & Greene,
by F. W. Mielke, for Napa Transportation Company,
Nahum Fay, Norvin Fay, John C. Stone and Gail E. Stater.

J. Richard Townsend, for A. Nystrom.

BY THE COMMISSION:

O P I N I O N

This is an application for an order authorizing A. Nystrom and Gail Stater to transfer certain vessels and other properties to Napa Transportation Company, a corporation, and authorizing the corporation to issue \$15,000. of common stock, to execute a mortgage and to issue a note in the principal amount of \$8,000.

It is recited in the application that A. Nystrom and Gail Stater, operating under the firm name and style of Napa Transportation Company, a partnership, are engaged in the transportation of freight by water upon the inland waters of the State of California, principally between Napa on the one hand and points on San Francisco Bay on the other hand, and points intermediate thereto.

It appears that in the conduct of their business the operators at present are using two vessels; one, a vessel of fifty tons net burden known as the "City of Napa" which was built in 1926, and the other a vessel of forty-five tons burden known as the "Theodore Roosevelt" which was built in 1901. The former vessel is reported owned solely by A. Nystrom and the latter jointly by A. Nystrom and Gail Stater. According to the record herein the "City of Napa" was purchased in 1924 for \$21,000. and the "Theodore Roosevelt" in 1930 for \$5,050. The present value of the two vessels is estimated by Mr. Norvin Fay, treasurer of Napa Transportation Company, at \$15,000.

The application shows that arrangements have been made for the transfer of the "City of Napa" and the "Theodore Roosevelt", together with all franchises, permits, certificates of public convenience and necessity, operating rights or other concessions, and cash on hand and other current assets of the present partnership, to a new corporation, applicant herein, named the Napa Transportation Company, which was organized on or about March 5, 1936. In this connection an agreement has been made for the sale by A. Nystrom of all of his interest, right and title in and to the properties for the sum of \$13,000., payable \$5,000. in cash and \$8,000. by a promissory note payable in sixteen monthly installments of \$500. with interest at the rate of 2½% per annum, while an arrangement has been made for the issue of \$2,000. par value of stock for the interest, right and title of Gail Stater. The total purchase price, amounting to \$15,000. is equivalent to the estimated present value of the two vessels.

The \$8,000. note, which will be executed by Nahum Fay and Norvin Fay, as well as by the corporation, will be secured by a preferred mortgage of documented vessels and chattel mortgage. The proposed instrument as filed with the Commission(Exhibit B) covers the two vessels and other property as follows:-

"An undivided 7/8ths interest in the business and good will of the Mortgagor.

An undivided seven-eighths interest in all of the operative rights and franchises of the Mortgagor in connection with its business of the transportation of property on the inland waterways of the State of California.

An undivided seven-eighths interest in all of the rights which the Mortgagor may have under Section 50(d) of the Public Utilities Act of the State of California, or otherwise, to operate vessels as a common carrier or otherwise on the inland waterways of the State of California."

At the hearing, however, it was stated that the proposed indenture would be amended so as to provide a lien on the entire properties listed above instead of a lien on only a seven-eighths interest on such properties. With this change the instrument appears to be in satisfactory form.

To obtain the funds necessary to make the initial payment of \$5,000. to A. Nystrom and to provide for the installments due on the \$8,000. note, applicant corporation proposes to issue and sell at par \$13,000. of its common stock, which is in addition to the \$2,000. of stock to be issued in acquiring the partnership interest of Gail Stater. It plans, accordingly, to issue and sell \$5,000. of stock at this time and \$500. each month to meet the installments due on the note. It is reported that the \$13,000. of stock will be purchased in equal amounts by Nahum Fay and Norvin Fay and incidentally it is to be noted that the \$2,000. of stock to be issued directly in payment for property will be divided equally among Nahum Fay, Norvin Fay, John C. Stone and Gail Stater, so that at the conclusion of the proposed financing it appears that there will be \$15,000. of stock outstanding, of which Nahum Fay and Norvin Fay each will own \$7,000. and John C. Stone and Gail Stater each will own \$500.

It is of record that Nahum Fay and Norvin Fay each have a one-half interest in the properties and business of Fay Transportation Company and that Fay Transportation Company, in conjunction with The California Transportation Company and Sacramento Navigation Company,

is engaged in the transportation of freight by water under the name and style of The River Lines, between points on San Francisco Bay and points on the Sacramento and San Joaquin Rivers. However, it is set forth distinctly in the application that it is not proposed to merge, consolidate or in any manner affiliate the properties, operations or business of Napa Transportation Company with the Fay Transportation Company or The River Lines or any other common carrier or public utility.

O R D E R

The above entitled application having been filed, a public hearing having been held before Examiner Fankhauser, the matter having been duly submitted and the Railroad Commission having considered said application and being of the opinion that said application should be granted, as herein provided, and that the money, property or labor to be procured or paid for through the issue of the stock and note 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,

IT IS HEREBY ORDERED as follows:-

1. A. Nystrom and Gail Stater may sell and transfer to Napa Transportation Company, a corporation, all of their interest, right and title in and to the vessels named the "City of Napa" and the "Theodore Roosevelt", together with their franchises, permits, certificates of public convenience and necessity, operating right and other concessions, and cash and current assets and other properties of the transportation business heretofore conducted by said A. Nystrom and Gail Stater as a partnership, such sale and transfer to be in accordance with the terms and conditions outlined in this application.

2. Napa Transportation Company, a corporation, may on or before June 30, 1936, issue its promissory note in the principal amount of \$8,000. payable in sixteen monthly installments of \$500. with interest at 2½% per annum, in part payment for the properties herein authorized to be transferred.

3. Napa Transportation Company, a corporation, may, on or before October 31, 1937, issue its common capital stock in the total aggregate amount of \$15,000. in part payment for said properties and in payment of said note for \$8,000. and other cash which may be advanced to it to pay for said properties.

4. Napa Transportation Company, a corporation, in order to secure the payment of said \$8,000. note, may execute a preferred mortgage of documented vessels and chattel mortgage substantially in the same form as that filed in this proceeding as Exhibit B, provided that said indenture be amended so as to provide that it will be a lien on all the properties described therein, instead of a lien on seven-eighths interest in certain of said properties; and provided further that the authority herein granted is for the purpose of this proceeding only, and is granted only insofar as this Commission has jurisdiction under the terms of the Public Utilities Act and is not intended as an approval of said indenture as to such other legal requirements to which it may be subject.

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

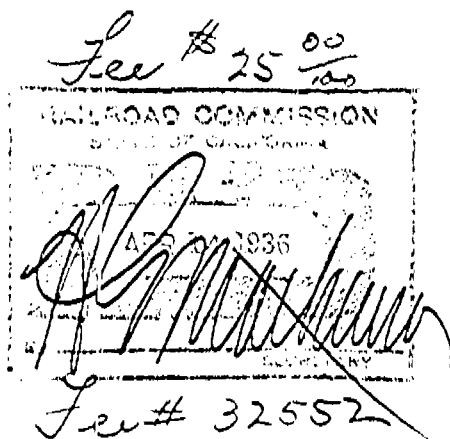
- a. Napa Transportation Company shall keep such record of the issue of the note and stock herein authorized and of the disposition of the proceeds as will enable it to file, on or before the 25th day of each month, a verified report, as required by the Railroad Commission's General Order No. 24, which order insofar as applicable, is made a part of this order.

b. Napa Transportation Company, a corporation, within thirty (30) days after the execution of the indenture herein authorized, shall file a certified copy of such indenture, and of the note issued under its terms, with the Railroad Commission.

c. A. Nystrom and Gail Stater and Napa Transportation Company, a corporation, shall join in common supplement to the tariffs now on file with the Railroad Commission covering the service given by the present partnership, applicants A. Nystrom and Gail Stater on the one hand withdrawing and Napa Transportation Company, a corporation, on the other hand adopting and establishing as its own such tariffs and all effective supplements thereto.

6. The authority herein granted will become effective when Napa Transportation Company, a corporation, has paid the minimum fee prescribed by Section 57 of the Public Utilities Act, which fee is Twenty-five(\$25.) Dollars.

DATED at San Francisco, California, this 13th day of April, 1936.



M B Lewis
Leon Williams
W J C...
W H ...
Frank ...
Commissioners.