

Decision No. 29768

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of  
PAUL LUDOLPH,  
an individual, doing business under  
the fictitious firm name and style of  
PAUL LUDOLPH CO., to sell, and PAUL  
LUDOLPH COMPANY, a corporation, to  
purchase certain operative rights,  
automotive equipment and other assets,  
and the application of PAUL LUDOLPH  
COMPANY, a corporation, to issue its  
stock in payment thereof, and concur-  
rently with the foregoing application,  
the application of PAUL LUDOLPH COM-  
PANY to issue certain shares of its  
capital stock for cash.

ORIGINAL

Application No. 21166

BY THE COMMISSION:

O P I N I O N

This is an application for an order authorizing Paul Ludolph to transfer auto truck operating rights, auto trucks and other assets to Paul Ludolph Company, a corporation, and authorizing Paul Ludolph Company to issue \$8,100.00 par value of its common capital stock.

The application shows that Paul Ludolph, doing business under the firm name and style of Paul Ludolph Co., is engaged in transporting freight (primarily dairy products) by auto trucks generally between San Francisco, San Jose and Los Gatos under a certificate of public convenience and necessity granted to him by Decision No. 28293, dated October 21, 1935. Exhibit "C" attached to the application shows that he is engaged also in business as a highway contract carrier between San Francisco and Petaluma, San Francisco and Turlock, San Francisco and Point Reyes and San Francisco and Galt, and as a city carrier in San Francisco, Oakland and Tracy under a city carrier permit and a contract carrier permit heretofore issued by the Commission.

It appears that said Ludolph has concluded that his operations can be conducted more advantageously by a corporate entity and that accordingly to that end he now proposes to transfer his rights and pro-

properties to a new corporation named Paul Ludolph Company which he has caused to be organized. The corporation has agreed to acquire such properties and in payment to issue 41 shares of its common capital stock, of the aggregate par value of \$4,100.00, and to assume all outstanding liabilities and obligations of the business as of March 31, 1937, subject to such changes as may have occurred or may occur in the usual and normal course of business during the time intervening between that date and the date of transfer of the properties.

The assets and liabilities of Paul Ludolph Co. as of March 31, 1937 are reported in Exhibit "A" as follows:-

<u>A S S E T S</u>		
<u>CURRENT ASSETS:</u>		
Accounts receivable . . . . .	\$2,790.13	
Suspense . . . . .	<u>194.74</u>	\$2,984.87
<u>FIXED ASSETS:</u>		
Trucks . . . . .	\$24,086.01	
Depreciation reserve . . . . .	<u>2,864.77</u>	
Balance . . . . .	\$21,221.24	
Office furniture and fixtures . . . . .	147.00	
Tools . . . . .	653.79	
Prepaid license and taxes . . . . .	<u>224.86</u>	22,246.89
<u>INTANGIBLES:</u>		
*Permits and franchises . . . . .		275.00
Surplus . . . . .		<u>1,829.27</u>
Total assets.....		<u>\$27,336.03</u>
<u>L I A B I L I T I E S</u>		
<u>CURRENT LIABILITIES:</u>		
Bank of America (Current) . . . . .	\$810.93	
Bank of America (Loan) . . . . .	1,000.00	
Morris Plan Co. " . . . . .	400.00	
Helen Ludolph " . . . . .	400.00	
Accounts payable . . . . .	<u>3,540.08</u>	\$6,151.01
Contract payments . . . . .		14,074.20
<u>CAPITAL ACCOUNTS:</u>		
Capital . . . . .		6,032.04
Earnings for period . . . . .	1,936.42	
Less drawing account . . . . .	<u>857.64</u>	<u>1,078.78</u>
Total liabilities.....		<u>\$ 27,336.03</u>

\*Set up at actual cost

The physical properties include two 1937 Federal trucks, one 1934 General Motors truck, five 1936 Federal trucks, two 1936 General Motors trucks, one 1932 Fageol truck and one 1933 Fruehauf trailer, together with tools, furniture and fixtures.

Upon acquiring the properties and business the corporation proposes to issue and sell at par for cash 40 shares (4,000. par value) of its common capital stock to Southern Pacific Company and to use the proceeds for working capital. The Southern Pacific Company has agreed to acquire the 40 shares of stock.

A review of the application indicates that the stock issues proposed are not unreasonable in amount. The order herein accordingly will authorize Paul Ludolph Company to issue such stock and Paul Ludolph to transfer the physical properties and the certificate of public convenience and necessity granted by Decision No. 28293. The city carrier and contract carrier permits are not transferable so that it will be necessary for the new corporation if it proposes to continue such operations to file in its own name new applications for new permits. The Commission at that time will consider the issuance of such permits.

In making this order the Commission wishes to place Paul Ludolph Company 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 operative rights and properties and the issue of \$8,100.00 of stock, and the Commission being of the opinion that this is not a matter in which a public hearing is necessary, that the application should be granted as herein provided, and that the money, property or labor to be procured or paid for through the issue of such

stock is reasonably required for the purposes specified herein and that the expenditures for such purposes are not in whole or in part reasonably chargeable to operating expense or to income,

IT IS HEREBY ORDERED that Paul Ludolph, doing business under the firm name and style of Paul Ludolph Co., be and he hereby is, authorized to transfer on or before July 1, 1937 to Paul Ludolph Company, a corporation, the certificate of public convenience and necessity granted to him by Decision No. 28293, dated October 21, 1935, and the physical properties and other assets referred to in the foregoing opinion, subject to outstanding liabilities and obligations.

IT IS HEREBY FURTHER ORDERED that Paul Ludolph Company, a corporation, be and it hereby is, authorized to issue, on or before July 1, 1937 in payment for said operative rights, properties and assets, \$4,100. par value of its common capital stock and assume the payment of all outstanding liabilities and obligations amounting to approximately \$20,225.00 as of March 31, 1937.

IT IS HEREBY FURTHER ORDERED that Paul Ludolph Company, a corporation, be and it hereby is, authorized to issue and sell on or before July 1, 1937, to Southern Pacific Company at par for cash \$4,000. par value of its common capital stock and to use the proceeds for working capital.

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

1. The consideration to be paid for the property 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 for any purpose other than the transfer herein authorized.

2. Applicant shall within twenty(20) days after the effective date of the order herein, unite in common supplement to the tariffs on file with the Commission, covering service given under the certificate herein authorized to be transferred, applicant Paul Ludolph withdrawing and applicant Paul Ludolph Company accepting and establishing such

tariffs and all effective supplements thereto.

3. Applicant Paul Ludolph shall within twenty(20) days after the effective date of the order herein withdraw all time schedules filed in his name with the Railroad Commission and applicant Paul Ludolph Company shall within twenty(20) days after the effective date of the order herein file, in duplicate, in its own name time schedules covering service heretofore given by applicant Paul Ludolph, which time schedules shall be identical with the time schedules now on file with the Railroad Commission in the name of applicant Paul Ludolph, or time schedules satisfactory to the Railroad Commission.

4. The rights and privileges herein authorized may not be sold, leased, transferred nor assigned, nor service thereunder discontinued, unless the written consent of the Railroad Commission to such sale, lease, transfer, assignment or discontinuance has first been obtained.

5. No vehicle may be operated by applicant Paul Ludolph Company 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. The authority herein granted to sell and transfer the rights and/or property shall lapse and be void if the parties hereto shall not have complied with all the conditions within the periods of time fixed herein unless, for good cause shown, the time shall be extended by further order of the Commission.

7. Paul Ludolph 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 Railroad Commission's General Order No. 24-A, which order insofar as applicable is made a part of this order.

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

DATED at San Francisco, California, this 17<sup>th</sup> day of May, 1937.

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Frank Nelson  
Robert W. ...  
Ray L. Wiley  
Commissioners.