

Decision No. 30570

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
H. W. AND H. M. HENDRIX,
co-partners, doing business as Hendrix
Truck Co., Sellers, and
HENDRIX TRUCK CORPORATION,
a corporation, Buyer, for an order of
the Railroad Commission authorizing
(a) the former to sell and convey,
and the latter to purchase and acquire,
the properties and rights herein, and
(b) the latter to issue its capital
stock.

Application No. 21694

ORIGINAL

O'Melveny, Tuller & Myers, and Kent Allen, and
Reginald L. Vaughan, for applicants.

BY THE COMMISSION:

O P I N I O N

This is an application for an order of the Railroad Commission authorizing H. W. and H. M. Hendrix to sell and transfer operating rights and properties to Hendrix Truck Corporation, and authorizing Hendrix Truck Corporation to issue its capital stock, in such amounts as the Commission may deem proper, in payment for such rights and properties and for certain properties to be acquired from F. H. Eichberg.

Heretofore, in Decision No. 30498, dated January 3, 1938, in Application No. 20725, the Commission made its order granting a certificate of public convenience and necessity providing for the operation by H.W.Hendrix and H. M. Hendrix, co-partners doing business under the firm name and style of Hendrix Truck Co., of an automotive truck service as a highway common carrier as such is defined in Section 2-3/4 of the Public Utilities Act, seasonally, from approximately November 1st of each year to approximately August 1st of the succeeding year, for the transportation of

- (a) Hay, straw, grain, fresh fruits, fresh vegetables, edible nuts, fresh or dried beans, and fresh or dried peas from the Imperial Valley points of Calexico, Heber, Holtville, Sandia, Brawley, El Centro, Imperial, Seeley, Mt. Signal, Westmoreland, Calipatria and Niland and an area within a radius of fifteen miles from each of said points, on the

one hand, to Los Angeles, on the other hand, and

- (b) Box shook, empty crates or boxes, fertilizer, insecticides, and seeds from Los Angeles, on the one hand, to farms only located within the area referred to in paragraph (a), on the other hand.

During the hearings held on Application No. 20725, and in the application itself, it was stated that if, as and when E. W. and H. M. Hendrix received a certificate of public convenience and necessity it would be their intention to transfer such certificate, together with other properties, to a corporation to be formed for the purpose of conducting the operations under the certificate.

Accordingly, Hendrix Truck Corporation, one of the present applicants herein, was organized under the laws of the State of California on or about December 8, 1957, with an authorized capital stock of \$25,000. divided into 2500 shares of the par value of \$10. each, all shares being of one class. It now proposes to issue such an amount of shares as the Commission might authorize in payment for the certificate of public convenience and necessity, automotive equipment and other assets to be acquired from E. W. and H. M. Hendrix and from F. H. Eichberg.

The properties, aside from the certificate, to be thus acquired are referred to in Exhibits "C" and "E" as follows:-

1. From F. H. Eichberg:	
Cash and accounts receivable	\$1,782.27
Land and buildings at depreciated cost	750.00
Furniture, fixtures and truck equipment at depreciated cost	8,725.00
Deposits	176.00
Sub total	<u>11,433.27</u>
Current liabilities	1,222.99
Balance	<u>10,210.28</u>
2. From E. W. Hendrix and H.M.Hendrix	
1932 Ford truck-estimated present value	200.00
Warehouse and lot in Brawley	1,200.00
Total	<u>\$11,610.28</u>

The equipment to be acquired from F. H. Eichberg includes eight trucks, one coupe, one trailer and office furniture and fixtures

and miscellaneous equipment reported to have cost approximately \$24,000. but having an estimated value, as shown in the preceding tabulation, of \$8,725.

The Commission has considered this matter and is of the opinion that it should at this time, upon the showing made in the application, authorize the issue by the corporation of \$11,610. par value of its capital stock. In authorizing the transfer of the certificate of public convenience and necessity, however, the Commission wishes to place Hendrix Truck Corporation 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 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 \$11,610. of 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, therefore,

IT IS HEREBY ORDERED that H. W. Hendrix and H. M. Hendrix be, and they hereby are, authorized to sell and transfer on or before March 31, 1938, to Hendrix Truck Corporation, the certificate of public convenience and necessity granted to them by Decision No. 30498, dated

January 3, 1938, and the properties referred to in the foregoing opinion, such sale and transfer to be in accordance with the terms and conditions of the agreement filed with the application herein as "Exhibit E".

IT IS HEREBY FURTHER ORDERED that Hendrix Truck Corporation be, and it hereby is, authorized to issue, on or before March 31, 1938 not exceeding \$11,610. par value of its capital stock in consideration for the transfer to it of the certificate and of the properties of H.W. and H. M. Hendrix and F. H. Eichberg, referred to in the foregoing opinion.

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

1. Applicants 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, applicants H. W. and H. M. Hendrix withdrawing and applicant Hendrix Truck Corporation accepting and establishing as its own such tariffs and all effective supplements thereto.

2. Applicants ~~H. W. and H. M. Hendrix~~ shall within twenty(20) days after the effective date of the order herein withdraw all time schedules filed in their names with the Railroad Commission and applicant Hendrix Truck Corporation shall within Twenty(20) days after the effective date of the order herein file, in duplicate, in its own name time schedules covering service to be given by it, which time schedules shall be identical with the time schedules now on file with the Railroad Commission in the names of applicants H. W. and H. M. Hendrix, or time schedules satisfactory to the Railroad Commission.

3. 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.

4. No vehicle may be operated by applicant Hendrix Truck Corporation 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.

5. 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.

6. Hendrix Truck Corporation 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 within thirty(30) days after such issue, a 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.

7. The authority herein granted will become effective fifteen(15) days after the date hereof.

DATED at San Francisco, California, this 31st day of January
1938.

Arthur M. ...
Leon ...
Frank ...

Ray & Alley
Commissioners