

Decision No. 32676

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
MARINE SERVICE CORPORATION, a corporation,)
to sell and transfer; and of MARIN)
EXPRESS SERVICE, a corporation, to acquire)
certificates of public convenience and)
necessity, and operative rights, issued)
by this Commission in Decision No. 26452,)
on Application No. 19133, in so far as)
said decision pertains to automotive serv-)
ice, and Decision No. 30076, on Applica-)
tion No. 21424, together with motor)
vehicle equipment and furniture, fixtures)
and equipment, in exchange for stock.)

ORIGINAL

Application No. 23177

BY THE COMMISSION:

O P I N I O N

Marine Service Corporation, a corporation, has petitioned the Railroad Commission for an order approving the sale and transfer by it to Marin Express Service, a corporation, of an automotive operative right for the transportation of property as a highway common carrier between San Francisco and San Rafael and intermediate points. Marin Express Service has petitioned for authority to acquire said operative right and to hereafter operate thereunder, and to issue its common capital stock in the amount hereinafter set forth.

The sale and transfer is to be in accordance with an agreement, dated November 4, 1939, filed with the application as Exhibit "B," which provides, among other things, for the transfer by Marine Service Corporation of an operative right, as hereinafter set forth, four units of automotive equipment and miscellaneous furniture, fixtures, equipment and supplies. The consideration to be paid by Marin Express Service is the sum of \$1,820 for the automotive equipment and \$500 for the miscellaneous furniture, fixtures,

equipment and supplies, both payments to be made in the capital stock of the purchasing corporation. The consideration stated is said to represent the market or fair value of the physical property, no value being assigned to the operative right in this application.

The operative right herein proposed to be transferred is that which was acquired by applicant Marine Service Corporation under the authority of the Commission's Decision No. 26452, dated October 23, 1933, on Application No. 19133, and Decision No. 30076, dated August 23, 1937, on Application No. 21424.⁽¹⁾

This is not a matter requiring a public hearing and we are of the opinion that the authority requested is in the public interest and it will be granted.

Marin Express Service is hereby placed 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.

O R D E R

IT IS ORDERED that Marine Express Corporation, a corporation, is hereby authorized to transfer to Marin Express Service, a

(1) The Commission by its decision on Application No. 21424 and Case No. 4267, made its finding with respect to the scope of the highway common carrier operative rights of Marine Service Corporation between San Francisco and San Rafael and intermediate points.

corporation, and Marin Express Service is hereby authorized to acquire from Marine Service Corporation the operative rights and property referred to in the foregoing opinion, in accordance with the terms of the agreement, marked Exhibit "B," attached to the application herein, and to hereafter operate thereunder.

IT IS FURTHER ORDERED that Marin Express Service hereby is authorized to issue, on or before February 29, 1940, not exceeding \$2,320 par value of its common capital stock in payment for the properties referred to herein to be acquired by it, under the authority herein granted pursuant to the terms of the agreement (Exhibit "B," attached to the application) dated November 4, 1939, it being the opinion of the Commission that the money, property or labor to be procured or paid for through the issue of said stock is reasonably required for the purpose specified herein, and that the expenditure for said purpose is not, in whole or in part, reasonably chargeable to operating expenses or to income, provided that Marin Express Service shall file with the Commission a verified report showing the amount of stock issued by it under the authority herein granted, the names of those to whom it was issued and the consideration received, such report to be filed within thirty (30) days after such issue.

This order is subject to the following conditions:

1. The authority herein granted shall lapse and be void if applicant shall not have complied with all of 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.

2. 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.

3. Applicant Marine Service Corporation shall within thirty (30) days after the effective date of the order herein, and upon not less than five (5) days' notice to the Commission and the public, unite with applicant Marin Express Service, in common supplement to the tariffs on file with the Commission covering the service given under the operative rights herein authorized to be transferred, applicant Marine Service Corporation withdrawing, and applicant Marin Express Service accepting and establishing, such tariffs and all effective supplements thereto.

4. Applicant Marine Service Corporation shall within thirty (30) days after the effective date of the order herein, and upon not less than five (5) days' notice to the Commission and the public, withdraw all time schedules filed in its name with the Railroad Commission and applicant Marin Express Service shall within thirty (30) days after the effective date of the order herein, and upon not less than five (5) days' notice to the Commission and the public, file in duplicate, in its own name, time schedules covering service heretofore given by applicant Marine Service Corporation which time schedules shall be satisfactory to the Railroad Commission.

5. 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.

6. No vehicle may be operated by applicant Marin Express Service 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.

7. Applicant shall, prior to the commencement of service authorized herein and continuously thereafter, comply with all of the provisions of this Commission's General Order No. 91.

The effective date of this order shall be twenty (20) days from the date hereof.

Dated at San Francisco, California, this 27th day of December, 1939.

Robert A. Rife
Chairman
Ray H. Rice
Commissioner

COMMISSIONERS