

ORIGINAL

Decision No. 39447

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application)
of JOSEPE MILLER, doing business)
as BAY RAPID TRANSIT COMPANY, to)
transfer assets, including certifi-)
cate of public convenience and)
necessity, to BAY RAPID TRANSIT)
COMPANY, a corporation, and to)
issue stock.)
-----)

Application
No. 27825

O P I N I O N

This is an application for an order of the Railroad Commission authorizing Joseph Miller to transfer motor carrier operative rights and properties to Bay Rapid Transit Company, a corporation, and authorizing said corporation to issue \$40,000 par value of its common capital stock.

The application shows that Joseph Miller is the owner of a certificate of public convenience and necessity granted by the Commission by Decision No. 35584, dated July 14, 1942, as amended by Decision No. 38518, dated December 14, 1945, in Application No. 24498, authorizing operations as a passenger stage corporation for the transportation of passengers, baggage and shipments of express, weighing not to exceed 100 pounds each on passenger carrying vehicles, between Pacific Grove, Monterey, Carmel, and intermediate points, over and along certain routes as set forth in said decision as amended. For the year 1945 he reports his operating revenues at \$336,331.98 and operating expenses, exclusive of income taxes, at \$186,835.59. His net operating revenue before income taxes is reported at \$149,496.39.

It appears that Joseph Miller desires to incorporate his business and to that end has caused the organization, on or about July 16, 1946, of Bay Rapid Transit Company, a corporation. He now proposes, subject to receiving permission from this Commission, to transfer to said corporation, in exchange for \$40,000 par value of common capital stock, the certificate of public convenience and necessity granted by Decision No. 35584, as amended, and the assets and liabilities of his business now operated by him under the name of Bay Rapid Transit Company, except \$45,410.37 in cash.

In Exhibit "B" applicant Miller, doing business as Bay Rapid Transit Company, reports his assets and liabilities as of June 30, 1946, as follows:

Assets

Cash in bank		\$ 46,410.37
Working funds		230.16
Special deposits		100.00
Material and supplies		2,317.72
Tangible property		
Carrier operating property	\$105,654.91	
Reserve for depreciation	<u>65,556.06</u>	40,098.85
Intangible property		23,916.15
Deferred debits		<u>949.91</u>
	Total	<u>\$114,023.16</u>

Liabilities

Accounts payable	\$ 18.00
Proprietorship capital	<u>114,005.16</u>
	Total
	<u>\$114,023.16</u>

Information before the Commission indicates that the \$23,916.15 carried in the balance sheet as intangible capital represents the excess of the purchase price paid by Miller when he acquired the operations from his predecessors, in 1932, over the

then ledger balances for the tangible properties acquired. While the amount is properly includible in account 1550--Other Intangible Property, under the prescribed uniform system of accounts, the Commission is not, by this opinion, making any finding that it is a proper amount upon which to base an order fixing rates or authorizing the issue of securities. The remaining assets, however, appear to be ample for the purpose of the present proceeding, to warrant the issue of stock in the amount requested. The order herein will so provide.

Bay Rapid Transit Company is hereby placed upon notice that operative rights, as such, do not constitute a class of property which may be capitalized or used as an element of value in rate fixing for any amount of money in excess of that originally paid to the State as the consideration for the grant of such rights. 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

Joseph Miller and Bay Rapid Transit Company, a corporation, having applied to the Railroad Commission for an order authorizing the transfer of properties and the issue of \$40,000 of stock, and the Commission having considered the matter and being of the opinion that a public hearing is not necessary, that the requests of applicants should be granted, as herein provided, and 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, which purpose is not, in whole or in part, reasonably chargeable to operating expenses or to income,

IT IS HEREBY ORDERED as follows:

1. Joseph Miller, after the effective date hereof, may transfer to Bay Rapid Transit Company, a corporation, the certificate of public convenience and necessity granted to him, by Decision No. 35584, dated July 14, 1942, as amended by Decision No. 38518, dated December 14, 1945, and the properties referred to in the opinion preceding this order.

2. Bay Rapid Transit Company, after the effective date hereof and on or before December 31, 1946, may issue \$40,000 par value of its common capital stock in payment for the properties of Joseph Miller herein authorized to be transferred.

3. Applicants shall comply with the provisions of General Orders No. 79 and No. 80 and Part IV of General Order No. 93-A, by filing, in triplicate, and concurrently making effective, appropriate tariffs and time tables within sixty (60) days from the effective date hereof and on not less than one (1) day's notice to the Commission and to the public.

4. Bay Rapid Transit Company, within thirty (30) days after the issue of the stock herein authorized, shall file with the Commission a statement showing the journal entries used to record on its books the purchase of the properties of Joseph Miller and a report of the issue of the stock as required by the Commission's General Order No. 24-A, which order, insofar as applicable, is made a part of this order.

5. The authority herein granted is not to be construed to be a finding of value of the properties herein authorized to be transferred.

6. The authority herein granted will become effective twenty (20) days from the date hereof.

Dated at Los Angeles, California, this 1st day of October, 1946.

Harold A. Hull
Justus F. Casper
Franklin C. ...
R. J. ...
Commissioners