

ORIGINAL

Decision No. 41149

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of:)

- A. ROBERT SNOWDEN, an individual doing business as Snowden Red Line to sell and DESERT EXPRESS, a corporation, to purchase automobile freight lines operated between Los Angeles, California and certain points in the Antelope Valley and between certain points in the Antelope Valley; and)
- B. ARVIN LINE, a corporation, to sell and DESERT EXPRESS, a corporation, to purchase an automobile freight line operated between Bakersfield, California, and Arvin and Mojave, California; and,)
- C. DESERT EXPRESS, a corporation, for authority to issue shares of its common capital stock.)

Application
No. 28951

-----)

Glanz & Russell by Arthur Glanz, for applicants.
Gordon and Knapp by Sanford A. Waugh, for Pacific Freight Lines and Pacific Freight Lines Express, interested party.

OPINION

In this application, the Commission is asked to make an order authorizing Robert Snowden, an individual doing business as Snowden Red Line, and Arvin Line, a corporation, to transfer operative rights and properties to Desert Express, a corporation, and authorizing Desert Express to issue not exceeding 750 shares of its no par value capital stock at and for the sum of \$100 per share and use the proceeds for the purposes hereinafter stated.

Applicant Robert Snowden is engaged in the business of transporting property as a highway common carrier between,

speaking generally, Los Angeles and Mojave, between Los Angeles and Atolia via Mojave, and between Los Angeles and Kramer via Lancaster. He is conducting the transportation business under certificates of public convenience and necessity acquired pursuant to the Public Utilities Commission's Decision No. 36999, dated April 11, 1944, as amended by Decision No. 37865, dated May 8, 1945, and by Decision No. 38334, dated October 30, 1945. He also is the owner of a certificate of public convenience and necessity granted by the Interstate Commerce Commission. As of September 30, 1947, Robert Snowden reports assets and liabilities as follows:

Assets

| | | |
|--|------------------|--------------------|
| Cash | | \$(4,556.86) |
| Working fund & special deposits | | 850.00 |
| Accounts receivable | | 4,294.62 |
| Accounts receivable - other | | 975.30 |
| Tax refund-Liquidating dividend (approved) | | 5,348.48 |
| Supplies & packing material-inventory | | 2,276.87 |
| Land | | 2,940.00 |
| Buildings | \$18,060.00 | |
| Less: Reserve for depreciation | <u>3,858.90</u> | 14,201.10 |
| Revenue eqpt. & service cars | 51,836.05 | |
| Less: Reserve for depreciation | <u>23,190.07</u> | 28,645.98 |
| Leasehold improvements & office eqpt. | 1,648.35 | |
| Less: Reserve for depreciation | <u>392.16</u> | 1,256.19 |
| Franchises and goodwill purchases | | 25,000.00 |
| Advances and prepayments | | <u>4,497.77</u> |
| | Total | <u>\$85,729.45</u> |

Liabilities

| | |
|-------------------------------------|--------------------|
| Equipment contracts payable | \$19,732.79 |
| Interline advances and beyonds | 1,560.97 |
| C.O.D.'s payable | 7,457.87 |
| Notes payable - other | 700.00 |
| Other reserves and accruals | 16,251.04 |
| Notes payable-real estate-long term | 7,481.02 |
| Other deferred credits | 5,000.00 |
| Proprietorship-Capital | <u>27,545.76</u> |
| | Total |
| | <u>\$85,729.45</u> |

(Red figure)

For the first nine months of 1947, Robert Snowden reports operating revenues at \$129,022.80 and operating expenses and other disbursements at \$135,306.31. His loss for the nine months is reported at \$6,283.51. During recent months he has been operating at a profit.

Applicant Arvin Line, a corporation, is engaged in business as a highway common carrier and as a passenger stage corporation transporting property and passengers generally between Bakersfield and Arvin, and Bakersfield and Mojave. It is the owner of operative rights represented by certificates of public convenience and necessity acquired under the authority granted by Decision No. 37797, dated April 17, 1945, as amended by Decision No. 40081, dated March 25, 1947. In this application it seeks permission to transfer its operative right authorizing it to engage in the highway common carrier transportation business and its freight equipment to Desert Express. Its freight operating revenues from January 1, 1947, to October 31, 1947, are reported at \$15,675.98 and its operating expenses applicable to its freight transportation business at \$12,344.64. Its net profit for the period amounted to \$3,331.34.

Applicant Desert Express is a new corporation, organized on or about November 28, 1947, under the laws of California. It has an authorized capital stock issue of 2,500 shares, without par value. Its incorporators are A. R. Reader, Winona Frances Reader, and G. E. Miles.

Applicants Robert Snowden and Arvin Line have entered into an agreement dated December 1, 1947, (Exhibit "A" attached to the application), wherein they agree to transfer their freight

operative rights, properties, and business to A. R. Reader, an individual, who has been engaged in the highway common carrier business in California for many years. Said Reader has assigned all of his right, title, and interest in said agreement to Desert Express, a corporation.

Robert Snowden, in addition to selling to Desert Express the operative rights heretofore mentioned, has agreed to sell to Desert Express 16 units of freight equipment, motor truck parts, tires, supplies, office furniture and fixtures. Desert Express agrees to pay for the Snowden properties \$51,000. It has paid \$6,000 of the purchase price and will pay the remainder, \$45,000, upon the date of the transfer of the properties. For the Arvin properties, Desert Express agrees to pay \$20,000 as follows:

(a) \$2,000 upon the execution of the agreement; (b) \$8,000 on the date of the transfer of the properties; (c) \$4,000 eight months after the transfer of the properties; (d) \$6,000 in equal monthly installments of \$375 each, beginning on the ninth month after the transfer of the properties and continuing monthly thereafter until the entire balance has been paid. No interest is payable on the deferred payments so long as such payments are promptly met when due. In the event purchasers shall default payment of any installments, and in that event only, interest shall accrue at the rate of six percent per annum from the date of defaulted payment, on the then unpaid balance of the purchase price, so long as the purchaser shall remain in default of payments of principal and interest.

The agreement recites that certain of Snowden's motor vehicle equipment is subject to either chattel mortgages or is being purchased under conditional sale contracts and as to such

amounts it is provided that the purchaser may elect to assume all or part of the indebtedness. If it does assume the payment of any indebtedness, a corresponding credit will be made on the purchase price. Except as to such amounts as may be assumed by purchaser, the properties will be transferred free and clear of all claims and encumbrances.

On this point, a review of the Commission's records shows that it has authorized Robert Snowden to execute a chattel mortgage and to issue a note for \$12,000 to finance in part the cost of operations and equipment acquired from Forrest F. Sullivan. (Decision No. 36999, dated April 11, 1944.) Aside from this amount it has not authorized applicant Snowden to execute any chattel mortgages, conditional sale contracts or other liens on property used in his highway common carrier operations or to issue any notes or other evidences of indebtedness payable later than twelve months after date of issue. If there are any such evidences of indebtedness they are, in our opinion, void.

Applicants have segregated the total purchase price of \$71,000 to the different items of property as follows:

| | | |
|-------------------------------------|---------------|-----------------|
| Tangible property - | | |
| Acquired from Robert Snowden | \$34,500 | |
| Acquired from Arvin Line | <u>6,500</u> | \$41,000 |
| Operative rights - | | |
| Interstate rights of Robert Snowden | 1,000 | |
| Intrastate rights of Robert Snowden | 13,000 | |
| Intrastate rights of Arvin Line | <u>11,500</u> | 25,500 |
| Goodwill - | | |
| Robert Snowden | 2,500 | |
| Arvin Line | <u>2,000</u> | <u>4,500</u> |
| | Total | <u>\$71,000</u> |

Desert Express, as said, asks permission to issue and sell not exceeding 750 shares of capital stock at \$100 per share.

A. R. Reader has agreed to acquire the stock at that price. If authorized to do so, the company will use the stock proceeds for the following purposes:

| | |
|--|-----------------|
| To provide the down payment to Robert Snowden and Arvin Line | \$ 8,000 |
| To pay the remainder of the purchase price for the Snowden properties | 45,000 |
| To pay the amount due Arvin Line on the date of transfer of the properties | 8,000 |
| To provide the remaining payments due Arvin Line as they fall due | 10,000 |
| To provide working capital | <u>4,000</u> |
| Total | <u>\$75,000</u> |

The testimony shows that the transfer of the Snowden and Arvin Line properties to Desert Express is in the public interest. Applicant Snowden is in ill health. For this reason he has been able to devote only a portion of his time to the management and operation of his transportation business. Further, he has incurred obligations which it has been difficult for him to meet as they fall due. His lack of capital has to some extent curtailed his operations as a highway common carrier. The management of Arvin Line desires to devote all of its attention to the passenger transportation business. It is not in a position to meet the ever-increasing demands from both the passenger and freight portions of the business.

Desert Express proposes to consolidate the two separately owned operations into a single operation. It believes that it will be able, by virtue of such consolidation, to afford a more economical and efficient service. It will establish a daily service between Los Angeles and Bakersfield via Mojave and

intermediate points. It will establish a transfer point at Mojave and improve the service between Bakersfield and Atolia and intermediate points, and between Lancaster and Kramer and intermediate points. It will make no changes in the rates now being charged, except for the publication of through rates.

Section 52(b) of the Public Utilities Act provides that the Commission shall have no power to authorize the capitalization of any franchise or permit whatsoever, or the right to own, operate or enjoy any such franchise or permit, in excess of the amount (exclusive of any tax or annual charge) actually paid to the State or to a political subdivision thereof, as the consideration for the grant of such franchise, permit or right. The record shows that \$30,000 of the consideration being paid by Desert Express for the Snowden and Arvin Line rights and properties has been assigned to operative rights and goodwill. Applicants were unable to state how much of the \$30,000, if any, represents expenditures that can be capitalized under the above provision of Section 52(b) of the Public Utilities Act. The \$30,000 should not be capitalized through the issue of stock. A. R. Reader has agreed to advance to Desert Express under an account payable, \$30,000 to provide Desert Express with funds to pay in part the agreed purchase price of Snowden and Arvin Line rights and properties. This advance can be made by A. R. Reader without Commission authorization. The \$30,000 should be charged to Account 1550, Other Intangible Capital, and amortized within six years after the date of the acquisition of the Snowden and Arvin Line rights and properties. The order herein will authorize Desert Express to issue 450 shares of stock.

Desert Express 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.

The action taken herein shall not be construed to be a finding of the value of the properties herein authorized to be transferred.

No one appeared at the hearing to protest the granting of this application.

O R D E R

The Commission having considered the evidence submitted at the hearing had on this application before Examiner Fankhauser, and it being of the opinion the money, property or labor to be procured or paid for through the issue of 450 shares of capital stock by Desert Express is reasonably required by it for the purposes herein specified, which purposes are not, in whole or in part, reasonably chargeable to operating expenses or to income, therefore,

IT IS HEREBY ORDERED as follows:

1. Robert Snowden and Arvin Line may, on or before March 1, 1948, sell to Desert Express the operative rights and properties referred to in the preceding opinion and in this application, and Desert Express may purchase said rights and properties, such sale and purchase to be made in accordance with the terms and conditions of the agreement dated December 1, 1947, filed in this proceeding as Exhibit "A", which agreement applicants may execute, subject to the provisions of this order. The long-term indebtedness incurred by Desert Express under the terms of said agreement is reasonably required for the purchase of said rights and properties.

2. Desert Express may, on or before March 1, 1948, if it so desires, assume the payment of the unpaid balance of the note issued by Robert Snowden under authority granted by Decision No. 36999.

3. Desert Express may, on or before June 30, 1948, issue and sell, at not less than \$100 a share, 450 shares of its capital stock and use the proceeds to finance in part the cost of acquiring said operative rights and properties and of paying indebtedness, if any, assumed in such acquisition, and to provide for the improvement and maintenance of the service.

4. Applicants shall comply with the provisions of General Order 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.

5. Desert Express shall file with the Commission a report as required by General Order No. 24-A, which order, insofar as applicable, is made a part of this order, and a copy of each journal entry used to record on its books the issue of the stock and the acquisition of the properties of Robert Snowden and Arvin Line. The amount charged to Account 1550, Other Intangible Capital, shall be amortized by Desert Express within six (6) years after the acquisition of said operative rights by it.

6. This application, insofar as it involves the issue of 300 shares of capital stock, is denied without prejudice.

7. The authority herein granted will become effective when Desert Express has paid the minimum fee prescribed by Section 57 of the Public Utilities Act, which fee is twenty-five (\$25.00) dollars.

Dated at San Francisco, California, this 19th day of January, 1948.

B. J. [Signature]
Justice P. [Signature]
Harold P. [Signature]
Raymond P. [Signature]
Commissioners

