

Decision No. 44880

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application)
of SAN DIEGO FORWARDING CO. to)
issue shares of its preferred)
stock pursuant to Section 52 of)
the Public Utilities Act.)
-----)

Application
No. 31779

O P I N I O N

This is an application by San Diego Forwarding Co. for authority to issue and sell 150 shares of its preferred stock of the par value of \$100 each, at par for cash, for the purpose of providing working capital.

The application shows that applicant is a California corporation and that it is engaged in business as an express corporation, as that term is defined in Section 2(k) of the Public Utilities Act. In general, it conducts operations from certain portions in and in the vicinity of the City of Los Angeles, to San Diego. In its financial reports filed with the Commission it has reported its operating revenues at \$238,042 in 1948, at \$232,221 in 1949, and at \$193,417 in the first seven months of 1950. It reports net income of \$10,223 for 1948, a loss of \$1,865 for 1949, and net income of \$3,609 for the seven-month period of 1950.

A financial statement as of July 31, 1950, filed as Exhibit A, shows applicant's assets and liabilities as follows:

Assets

Current assets -		
Cash	\$ 9,658.48	
Accounts receivable	<u>24,709.87</u>	
Total current assets		\$34,368.35
Tangible property -		
Trucking equipment	80,924.95	
Tools and equipment	14,724.89	
Furniture and fixtures	<u>6,327.22</u>	
	101,977.06	
Less: depreciation reserve	<u>64,504.62</u>	
Net tangible property		37,472.44
Prepaid expenses		<u>1,680.50</u>
	Total	<u>\$73,521.29</u>

Liabilities

Current liabilities -		
Advances	\$ 10,265.29	
C.O.D.'s payable	1,573.71	
Taxes and insurance	<u>3,205.35</u>	
Total current liabilities		\$15,044.35
Capital stock		30,000.00
Surplus		<u>28,476.94</u>
	Total	<u>\$73,521.29</u>

The presently outstanding stock consists of 3,000 shares of the par value of \$10 each, all common. Applicant reports that it finds it necessary to issue additional shares of stock in order to provide funds for working capital and that it has made arrangements to issue and sell, at par for cash, 150 shares of preferred stock of the par value of \$100 each for this purpose. It states that its business has been expanding rapidly in recent years, requiring additional funds for working capital, and that it expects within a short time that it will have to make replacements of certain units of its motor vehicle equipment which will require the expenditure of cash funds from its treasury. The application indicates that applicant has need for such additional funds.

By its articles of incorporation applicant is authorized to issue a total of 5,250 shares of stock, of which 250 shares, of the par value of \$100 each, are preferred, and 5,000 shares, of the

par value of \$10 each, are common. The articles provide that the holders of the preferred shares shall be entitled to receive cumulative dividends at the rate of 5% per annum; that in the event of liquidation, dissolution or winding up of the corporation they shall be entitled to be paid \$100 a share and unpaid dividends accrued thereon before any amount shall be paid to the holders of the common stock, and that the corporation has the right to redeem any or all of the outstanding shares of preferred stock on any dividend payment date, at \$100 per share together with all unpaid accumulated dividends thereon, if any. The articles further provide that the voting power shall be vested exclusively in the holders of the shares of common stock, provided, however, that in the event any dividends due on the shares of preferred stock shall not be paid when payable and shall remain so unpaid for a period of one year, then a special meeting of the stockholders of the company shall be called at the request of any of the preferred stockholders, at which time, if the dividends still remain unpaid, the holders of a majority of the shares of preferred stock present or represented at said meeting shall be entitled to elect a majority of the members of the board of directors. One month after the payment of all defaulted dividends upon the shares of preferred stock, the voting power vested in said shares shall cease and the exclusive voting power shall be restored to the holders of the shares of common stock.

It has not been the policy of the Commission to authorize the issue of nonvoting preferred stock. It has taken the position that those who purchase shares of stock in a corporation, either preferred or common, should have voting rights in proportion to their investment in the enterprise. The preferred stockholders are not creditors. They cannot obtain a judgment against the corporation for failure to pay dividends and, under this applicant's

articles of incorporation, in the event of failure to receive dividends they must wait at least one year before they can exercise a voice in the management of the business and properties in which they share ownership. In the opinion of the Commission, the purchasers of applicant's shares of preferred stock should have voting rights on a parity with the voting rights of the shares of common stock.

The order herein will authorize applicant to issue its shares of preferred stock provided that it amend its articles of incorporation so as to give to the holders of said shares the same voting rights as are now given to the holders of shares of common stock, that is, one vote for each \$10 par value of preferred stock.

ORDER

The Commission having considered the above entitled matter, and being of the opinion that a public hearing thereon is not necessary; that the application should be granted, only as herein provided; that the money, property or labor to be procured or paid for through the issue of the 150 shares of preferred stock herein authorized is reasonably required by applicant for the purpose specified herein; and that such purpose is not, in whole or in part, reasonably chargeable to operating expenses or to income; therefore,

IT IS HEREBY ORDERED as follows:

1. San Diego Forwarding Co., after the effective date hereof and on or before March 31, 1951, may issue and sell, at par for cash, 150 shares of preferred stock of the aggregate par value of \$15,000, and use the proceeds for working capital to maintain and

improve its service and facilities, providing that prior to the issue of said shares of preferred stock, or any part thereof, applicant amend its articles of incorporation so as to give to the holders of said shares of preferred stock the same voting rights as such articles now give to the holders of shares of common stock.

2. San Diego Forwarding Co. shall file with the Commission a report, or reports, as required by General Order No. 24-A, which order, insofar as applicable, is made a part of this order.

3. The authority herein granted will become effective when San Diego Forwarding Co. has filed with the Commission a certified copy of its articles of incorporation, amended as indicated herein.

Dated at San Francisco, California, this 10th day of October, 1950.

James J. Cassen
Robert J. Sanchez
Harold P. Hicks
Kenneth J. Pottel
Commissioners