

ORIGINAL

Decision No. 48306

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
 OVERLAND FREIGHT TRANSFER COMPANY for)
 authorization to sell and transfer)
 and of DE PUE DRAYAGE CORPORATION to)
 purchase and acquire a certificate of) Application No. 33807
 public convenience and necessity, and)
 of DE PUE DRAYAGE CORPORATION for)
 authorization to issue stock and evi-)
 dence of indebtedness.)

Reginald L. Vaughan for Overland Freight Transfer
 Company and De Pue Drayage Corporation, applicants;
Douglas Brookman for Merchants Express Corporation,
 protestant; Russell Bevans for Draymen's Association
 of San Francisco, interested party;
John F. Donovan for the Commission Staff.

O P I N I O N

Application

By Decision No. 47391 in Application No. 32112, issued June 30, 1952, applicant Overland Freight Transfer Company, a California corporation, acquired operating rights as a highway common carrier of general commodities except petroleum products in tank vehicles, uncrated household goods, explosives, and livestock, (a) between San Francisco, Bayshore, Daly City, South San Francisco, Richmond, El Cerrito, Albany, Berkeley, Emeryville, Piedmont, Oakland, Alameda, and San Leandro; (b) between all points mentioned in subparagraph (a) on the one hand, and San Pablo, Crockett, and intermediate points along U. S. Highway No. 40, on the other hand, subject to a 20,000-pound weight limitation; (c) between all points mentioned in subparagraph (a), on the one hand, and San Bruno, San Jose, and all intermediate points along U. S. Highways Nos. 101 and 101 By-pass, on the other hand, provided that no shipment shall be transported unless it has either origin or destination in either a Turner-Whittoll warehouse or a Gibraltar warehouse, or unless it moves to or from a

person or firm which has a current storage account with either of said warehouses. Subject to the issuance of an appropriate order by this Commission, applicant Overland Freight Transfer Company as Seller has entered into an agreement with applicant De Pue Drayage Corporation, a California corporation, as Buyer to sell to said De Pue Drayage Corporation all its herein described operating rights as a highway common carrier for the sum of \$5,712.09 payable in cash at the time of consummation of the transfer. Said Seller Overland further agrees not to compete with said Buyer De Pue for a period of five years from October 13, 1952, in the transportation of property between San Francisco, on the one hand, and all points outside of San Francisco embraced in the operating authority proposed to be transferred to said Buyer De Pue.

By Application filed October 15, 1952, applicants Overland and De Pue seek an order from this Commission authorizing such proposed transfer of highway common carrier operating rights.

Applicant De Pue also requests authority to issue at par 1720 shares of its Ten Dollar (\$10.00) par value common stock as follows: 860 shares to Edgar De Pue Osgood and 860 shares to Oscar Gloistein in exchange for assets shown on Exhibit "B" attached to the application.

Said applicant De Pue also requests authorization to issue in consideration of \$10,000 cash a promissory note in the amount of \$10,000 payable to Edgar De Pue Osgood and Oscar Gloistein, due five years from the date of issuance, with interest at six per cent per annum, payable quarterly on the balance outstanding. The proceeds of the promissory note are to be used as follows:

Purchase of operating right from Overland Freight Transfer Company	\$ 5,712.09
Working Capital	<u>4,287.91</u>
Total	\$ 10,000.00

The following is a balance sheet of applicant De Pue as of September 30, 1952, giving effect to the proposed purchase of operating rights and the proposed issuance of stock and promissory note:

ASSETS

Current Assets

Wells Fargo Bank and Union Trust Company Reserve Account (Portion of proceeds of Promissory Note)	\$ 5,783.40 <u>4,287.91</u>	
Total Bank Deposits		\$ 10,071.31
Accounts Receivable		13,161.33
Prepaid Expenses		<u>978.64</u>
<u>Total Current Assets</u>		\$24,211.28

Fixed Assets

Freight Revenue Equipment	\$ 10,614.44	
Less Accumulated Depreciation	<u>1,986.49</u>	
		\$ 8,627.95
Garage and Warehouse Equipment	\$ 525.00	
Less Accumulated Depreciation	<u>149.94</u>	
		375.06
Office Equipment	\$ 210.00	
Less Accumulated Depreciation	<u>32.14</u>	
		<u>177.86</u>
<u>Total Fixed Assets</u>		9,180.87

Notes Receivable 6,275.00

Other Assets

Franchise and Permits	5,712.09	
Sundry Deposits	<u>834.16</u>	
<u>Total Other Assets</u>		<u>6,546.25</u>
<u>TOTAL ASSETS</u>		<u>\$46,713.40</u>

LIABILITIES AND CAPITALCurrent Liabilities

Due to General Officers	\$ 517.91	
Equipment Term Obligations	750.00	
Payroll Taxes Payable	1,037.36	
Federal Transp. Tax Payable	384.85	
Accrued Compensation Insurance	316.83	
Notes Payable, Installments Due Within One Year	<u>3,612.52</u>	\$ 6,619.47
Freight Advances Due De Pue Warehouse Company		<u>9,450.63</u>
<u>Total Current Liabilities</u>		\$16,070.10

Other Liabilities

Notes Payable, Installments Due After One Year		12,216.00
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Capital Stock and SurplusCapital Stock Issued

Edgar De Pue Osgood	\$8,600.00	
Oscar Gloistein	<u>8,600.00</u>	
<u>Total Capital Stock Issued</u>		\$17,200.00

Earned Surplus

Net Income for the period July 1, 1952 to September 30, 1952	<u>727.30</u>	
<u>Total Capital Stock and Surplus</u>		<u>17,927.20</u>
<u>TOTAL LIABILITIES AND CAPITAL</u>		<u>\$46,213.40</u>

Public Hearing

Public hearings were held in San Francisco before Examiner Cline on November 24, 1952, and the matter was submitted for decision.

Merchants Express Corporation appeared as a protestant to oppose the transfer of the operating rights of Overland Freight Transfer Company set forth in subheading (c) of the first paragraph of this opinion. No direct testimony was introduced by this protestant, but its attorney actively participated in the cross-examination of applicants' witnesses. No other party appeared in opposition to the application.

Transfer of Operative Rights

The record shows that applicant Overland is in the process of liquidation and for that reason wishes to dispose of its common carrier operating rights. The record further shows that the owners and officers of applicant De Pue have the experience to qualify them to take over the common carrier operative rights and obligations of applicant Overland and that upon the issuance of the promissory note and common stock which will hereinafter be authorized that applicant De Pue will have adequate financial resources to undertake the common carrier operations of applicant Overland.

Witness Edgar De Pue Osgood, president of applicant De Pue, testified that he was familiar with the restriction contained in subparagraph (c) set forth in the first paragraph of this opinion and that if the common carrier operating rights of applicant Overland are transferred to applicant De Pue that applicant De Pue will comply with this restriction. Whether applicant De Pue in such case continues to handle shipments for the patrons of Turner-Whittell and Gibraltar warehouses will depend upon the wishes of those patrons. Witness Osgood further testified that in the event of the transfer of such common carrier operating rights to applicant De Pue, applicant De Pue would modify its present contract carrier operations to whatever extent might be necessary to comply with statutory and Commission requirements.

We hereby find that the transfer of operating rights, as proposed by applicants, will not be adverse to the public interest and accordingly the transfer will be authorized. In making this order we wish to place applicants 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 as to the number of rights which may be given.

Issuance of Common Stock and Promissory Note

The record shows that in exchange for the 860 shares of common stock proposed to be issued to Oscar Gloistein applicant De Pue will receive assets from Aetna Drayage Company which is wholly owned by Mr. Gloistein, equipment at cost less accrued depreciation, and cash sufficient to make a total investment of \$8,600. In exchange for the 860 shares proposed to be issued to Edgar De Pue Osgood, applicant De Pue will receive a promissory note in the amount of \$6,275 and equipment at cost less accrued depreciation and cash in the amount of \$2,325, making a total investment of \$8,600. In our opinion a promissory note of \$6,275 is not proper consideration upon which we should base an order authorizing the issuance of shares of common stock.

The order herein will authorize the issuance of 860 shares of common stock to Mr. Gloistein in accordance with the application and 233 shares of common stock to Mr. Osgood in consideration of cash and equipment, and will provide that an additional 627 shares may be issued to Mr. Osgood upon the payment to applicant De Pue of the sum of \$6,270 cash to be applied to the payment of indebtedness on equipment loans and notes payable to E. D. Osgood and Oscar Gloistein and to provide working capital.

In consideration of the issuance of the proposed promissory note the applicant De Pue will receive \$10,000 in cash of which \$5,712.09 will be paid to applicant Overland for its highway common carrier operating rights and \$4,287.91 will be retained as working capital. The price to be paid for the operating rights is the cost to applicant Overland of acquiring such rights, including attorney

fees, expert witness fees, transcript fees, notary fees and mimeographing expenses incurred in connection with the application for such rights. Applicant De Pue will be authorized to issue its promissory note for \$10,000 in accordance with its application.

O R D E R

The Commission having considered the above-entitled matter and being of the opinion that the application should be granted, subject to the restrictions, conditions and limitations herein provided; that the money, property, and labor to be procured or paid for through the issuance of the shares of stock and the promissory note herein authorized are reasonably required by De Pue Drayage Corporation, a corporation, for the purposes specified herein; and that such purposes are not, in whole or in part, reasonably chargeable to operating expenses or to income; therefore,

IT IS HEREBY ORDERED as follows:

1. Overland Freight Transfer Company, a corporation, after the effective date hereof and on or before June 30, 1953, may transfer its highway common carrier operative rights to De Pue Drayage Corporation, a corporation, in accordance with the terms and conditions set forth in the Agreement of Sale, a copy of which appears as Exhibit A to the application on file herein.

2. De Pue Drayage Corporation, a corporation, after the effective date hereof and on or before June 30, 1953, may issue \$8,600 par value of its capital stock to Oscar Gloistein and \$2,330 par value of its capital stock to Edgar De Pue Osgood for the purposes set forth in the preceding opinion, other than the purchase of the promissory note of Edgar De Pue Osgood.

3. De Pue Drayage Corporation, a corporation, after the effective date hereof and on or before June 30, 1953, may issue \$6,270 par value of its capital stock, or any part thereof, at par

for cash, to Edgar De Pue Osgood, provided that any cash so received by De Pue Drayage Corporation, a corporation, shall be applied to the payment of its indebtedness on equipment loans and notes payable to Edgar De Pue Osgood and Oscar Gloistein and to provide working capital.

4. De Pue Drayage Corporation, a corporation, after the effective date hereof and on or before June 30, 1953, may issue its promissory note for \$10,000 payable in five years to Edgar De Pue Osgood and Oscar Gloistein in the form set forth in Exhibit C attached to the application on file herein but dated as of its actual date of issue, for \$10,000 cash, of which \$5,712.09 shall be paid to Overland Freight Transfer Company as the purchase price of the highway common carrier operative rights authorized to be transferred by this order and of which \$4,287.91 shall be retained by De Pue Drayage Corporation, a corporation, as working capital.

5. The action taken herein shall not be construed to be a finding of the value of the highway common carrier operative rights herein authorized to be transferred and of the value of the properties herein authorized to be received in consideration of the issuance of common stock and the promissory note.

6. On not less than five days' notice to the Commission and to the public, and concurrently with the transfer authorized herein, Overland Freight Transfer Company, a corporation, shall cancel its tariffs and timetables, and De Pue Drayage Corporation, a corporation, shall comply with the provisions of General Order No. 80 and part 14 of General Order No. 99 by filing in triplicate, and making effective, appropriate tariffs and timetables. ✓

7. De Pue Drayage Corporation, a corporation, upon acquiring the highway common carrier operative rights of Overland Freight Transfer Company, a corporation, and upon issuance of the common stock and promissory note herein authorized shall file with the Commission a copy of each journal entry used to record such transactions.

8. De Pue Drayage Corporation, a corporation, shall file with the Commission monthly reports as required by General Order No. 24-A, which order, in so far as applicable, is made a part of this order.

9. This order shall become effective when De Pue Drayage Corporation has paid the minimum fee prescribed by Section 1904 (b) of the Public Utilities Code, which fee is \$25.00.

Dated at San Francisco, California, this 24th day of February, 1953.

R. F. [Signature]
President

Arthur F. [Signature]

Harold [Signature]

[Signature]

[Signature]
Commissioners

PUBLIC UTILITIES COMMISSION
STATE OF CALIFORNIA

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By [Signature]