

ORIGINAL

Decision No. 50629

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of )  
 A. W. WAY, an individual doing business :  
 as WAY'S REDWOOD EMPIRE FREIGHT LINES, )  
 and GEORGE S. BUTLER and MARJORIE E. :  
 BUTLER, copartners doing business as )  
 BUTLER FREIGHT SERVICE, to sell and :  
 transfer highway common carrier cer- )  
 tificates, equipment, terminal and :  
 business to WAY'S FREIGHT LINE, a )  
 corporation, and of WAY'S FREIGHT LINE :  
 to issue capital stock and promissory )  
 notes. )  
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Application  
No. 35836

O P I N I O N

This is an application for an order of the Commission authorizing A. W. Way, doing business as Way's Redwood Empire Freight Lines, and George S. Butler and Marjorie E. Butler, copartners doing business as Butler Freight Service, to sell and transfer highway common carrier operative rights and properties to Way's Freight Line, a corporation, and authorizing said corporation to issue 500 shares of stock, of the aggregate par value of \$50,000, and promissory notes in the total principal amount of \$114,000.

The application shows that A. W. Way is engaged as a highway common carrier in the transportation of general commodities, with certain exceptions, between the San Francisco Bay territory and the Eureka territory and certain intermediate points and also as a highway contract carrier, a radial highway common carrier and a city carrier, that he now desires to conduct his business under a corporate form of organization, and that he has organized Way's Freight Line to take over his properties and rights and to continue the operations.

He proposes to transfer his assets, subject to outstanding liabilities, to the corporation in exchange for \$50,000 par value of stock, the amount being approximately equivalent to his reported capital investment as of August 31, 1954. The operative rights to be transferred are those acquired by A. W. Way under authorization granted by Decision No. 39081, dated June 11, 1946, in Application No. 27412, as amended, and Decision No. 45102, dated December 5, 1950, in Application No. 30203.

The new corporation proposes to extend the operations through the acquisition of certain highway common carrier rights and properties owned by George S. Butler and Marjorie E. Butler permitting the transportation of general commodities between Eureka, Crescent City and intermediate points, including service to the United States Naval Base on Humboldt Bay, which had been acquired by the Butlers under authorization granted by Decision No. 42153, dated October 26, 1948, in Application No. 29683.

The agreed purchase price to be paid by Way's Freight Line for the Butlers' operative rights, 20 units of equipment and terminal facilities at Crescent City is \$115,000, payable \$1,000 upon execution of the agreement of sale, \$75,000 upon approval by the Commission, and \$39,000 in installments of \$1,000 a month plus interest at the rate of 5% per annum, said deferred payments of \$39,000 to be represented by a note, made jointly by the corporation and A. W. Way personally, secured by a first deed of trust on certain timber land. Applicant corporation proposes to obtain the \$75,000 cash payment through the issue of a note to Morris Plan Company of California, said note to bear interest at the rate of 6% per annum and to be payable in 30 equal monthly installments.

The application shows that the Butlers will retain certain operative rights which were granted them by Decision No. 43424, dated October 18, 1949, in Application No. 29936, permitting the transportation of lumber and forest products as follows:

1. Over U. S. Highway 101 between the California-Oregon State Line and Crescent City;
2. The territory embraced within a fifteen (15) mile lateral adjacent to U. S. Highway 101 between the California-Oregon State Line and Eureka; and
3. With the right to serve all intermediate points on and within the above described route and lateral.

It appears that the Butlers intend to continue with the operations under said certificate but that they desire, and here request, clarification of said certificate so that it will clearly specify operations between Eureka and Crescent City and intermediate points via U. S. Highway 101 as well as north of Crescent City to the California-Oregon line and adjacent to U. S. Highway 101 fifteen miles lateral. In our opinion it is clear, and we so find, that said Decision No. 43424 certificated George S. Butler and Marjorie E. Butler to transport the products named therein between Eureka and the California-Oregon State Line and all intermediate points over and along U. S. Highway 101, via Crescent City, and all points within 15 miles laterally of said U. S. Highway 101.

The transfer of these two highway common carrier services to a single corporation, according to the application, will result in economies in operating costs through the elimination of certain terminal facilities and duplicate services in management now existing in the two separate enterprises.<sup>1/</sup> Upon a review of the

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<sup>1/</sup> For the first six months of 1954, applicant Way reported gross revenues of \$275,588 and net operating loss of \$9,863, and applicants Butler reported gross revenues of \$337,527 and net operating revenues of \$17,824. Applicants estimate the consolidated operation will produce additional gross revenues in excess of \$30,000 a month.

application we are of the opinion that the transactions will not be adverse to the public interest and should be authorized. Applicants are 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 as 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 rights and properties herein authorized to be transferred.

O R D E R  
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The Commission having considered the above entitled matter and being of the opinion that a public hearing is not necessary, that the application should be granted, as herein provided, that the money, property or labor to be procured or paid for by the issue of the shares of stock and the notes herein authorized is reasonably required by applicant 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. A. W. Way, doing business as Way's Redwood Empire Freight Lines, and George S. Butler and Marjorie E. Butler, copartners doing business as Butler Freight Service, may transfer highway

common carrier operative rights, equipment and properties, as outlined in this application, to Way's Freight Line, a corporation.

2. Way's Freight Line, a corporation, in payment for the operative rights, equipment and properties of A. W. Way, may assume his outstanding liabilities and may issue not exceeding 500 shares of its common capital stock, of the aggregate par value of \$50,000.

3. Way's Freight Line, a corporation, may issue its promissory note in the principal sum of \$75,000 to Morris Plan Company of California and its promissory note in the principal sum of \$39,000 to George S. Butler and Marjorie E. Butler for the purpose of financing, in part, the cost of the operative rights, equipment and properties to be acquired from George S. Butler and Marjorie E. Butler.

4. On not less than five days' notice to the Commission and to the public, applicants shall supplement or reissue the tariffs on file with the Commission naming rates, rules and regulations governing the common carrier operations here involved to show that A. W. Way, doing business as Way's Redwood Empire Freight Lines, and George S. Butler and Marjorie E. Butler, copartners doing business as Butler Freight Service, have withdrawn or canceled and Way's Freight Line, a corporation, has adopted or established as its own said rates, rules and regulations. The tariff filings made pursuant to this order shall comply in all respects with the regulations governing the construction and filing of tariffs set forth in the Commission's General Order No. 80.

5. Way's Freight Line, a corporation, shall file with the Commission monthly reports as required by General Order No. 24-A, which order, insofar as applicable, is made a part of this order.

6. The authority herein granted to issue notes will become effective when Way's Freight Line has paid the fee prescribed by Section 1904(b) of the Public Utilities Code, which fee is \$114.00. In other respects the authority herein granted will become effective 20 days after the date hereof.

Dated at San Francisco, California, this 13<sup>th</sup> day of October, 1954.

John E. Mitchell  
President

Justin P. Cassel  
Walter Higgins  
Ray Colter

Commissioners

