

ORIGINAL

Decision No. 50635

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application)	
of JOE MACHADO, an individual,	:	
doing business as MACHADO TRUCKING)	
COMPANY, to transfer certificates	:	
of public convenience and neces-)	Application
sity, permits, and property, to	:	No. 35760
MACHADO TRUCKING COMPANY, a cor-)	
poration, and to issue stock and	:	
assume certain obligations.)	
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Marvin Handler, for applicants.

OPINION

In this proceeding the Commission is asked to make an order authorizing Joe Machado, doing business as Machado Trucking Company, to transfer his operative rights and properties to Machado Trucking Company, a corporation, and authorizing the corporation to issue 360 shares of its no par value common stock.

The application was filed on September 3, 1954. Thereafter, a public hearing was held before Examiner Coleman in San Francisco on October 6, 1954, at which time the matter was taken under submission.

Applicant Machado is engaged in business as a highway carrier of property in California, operating under certificates of public convenience and necessity granted by the Commission and under permits authorizing service as a radial highway common carrier,

a highway contract carrier and a city carrier.^{1/} It appears that his operations in recent years have not been successful. In 1952 he reported a net loss of \$19,513 and in 1953 a net loss of \$23,400, although during the first six months of 1954 he developed a net profit of \$2,915 due, in part, to realized economies in operations.

Applicant Machado has built up a fleet of 66 units of equipment, according to Exhibit B, and owns and operates terminal facilities at Pomona and occupies, under lease, other facilities in San Jose, Oakland, Los Angeles and Fresno. He has found it necessary to become heavily indebted not only to finance his capital costs but also to meet operating expenses and to obtain working capital.

The record shows that proceedings have been initiated by the carrier to obtain financial and managerial assistance in order to place the operations on a sound basis. The first step in the program is the incorporation of the business and the transfer of the properties, except the Pomona terminal, to the new corporation, which has been set up for the express purpose of receiving them,^{2/} the transfer to be made subject to outstanding liabilities. A pro forma balance sheet giving effect to the transfer of the properties is as follows:

^{1/} For many years applicant Machado operated as a permitted carrier only. By Decision No. 46643, dated January 8, 1952, the Commission granted him a certificate of public convenience and necessity authorizing service as a highway common carrier generally between San Francisco and Los Angeles serving intermediate points, and between Richmond and Gilroy, on the one hand, and Los Angeles, on the other. In 1954, by Decision No. 50221, dated June 29, the Commission granted him a certificate permitting the extension of his service between Los Angeles territory, on the one hand, and Pasadena, San Bernardino, Redlands, Riverside, Santa Ana, and intermediate points, on the other hand.

^{2/} This application involves the transfer of the certificated rights. Separate applications will be filed for the transfer of the permits.

Assets

Current assets -		
Cash and deposits	\$11,376.38	
Accounts receivable	30,185.19	
Prepayments	28,110.95	
Materials and supplies	<u>13,874.20</u>	
Total current assets		\$ 83,546.72
Fixed assets less reserves		<u>147,285.46</u>
	Total	<u>\$230,832.18</u>

Liabilities and Capital

Current liabilities -		
Notes payable	\$31,793.00	
Federal transportation tax	8,752.42	
Employees' payroll withholding	22,323.34	
Interline account balances	1,552.77	
Accounts payable--subhaulers	11,830.98	
Accounts payable--trade	37,554.30	
Accrued taxes	9,226.57	
Other current liabilities	<u>6,928.83</u>	
Total current liabilities		\$129,962.21
Equipment obligations		<u>97,231.41</u>
Total liabilities		227,193.62
Capital		<u>3,638.56</u>
	Total	<u>\$230,832.18</u>

The terms of the transfer provide for the retention of the Pomona terminal by applicant Machado and for a capital contribution of \$5,000 to be made at the time the stock is sold.

The pro forma statement indicates substantially no equity investment. However, the record shows that plans have been made whereby applicant Machado will surrender 60% of the stock issue to Earl Fischer and Alec McTavish, that Alec McTavish, who is associated with J. A. Nevis Trucking, Inc., will be elected president and general manager of the new corporation, and that the controlling interests will make up to \$25,000 available to the corporation for working capital and the payment of pressing obligations. It is planned that the present Los Angeles terminal of applicant Machado will be sub-leased and that the J. A. Nevis Trucking, Inc. terminal in that city will be used by both companies, the rental to be determined on a

revenue basis, along with joint use of freight solicitors, terminal managers and dispatchers. In addition, the two carriers at a later date may use a San Francisco terminal jointly. In this connection it appears that freight is noncompetitive between the two carriers, applicant Machado presently being engaged in transporting general commodities and J. A. Nevis Trucking, Inc. confining its activities primarily to the transport of truck load lots.

As a general proposition we would not look with favor on an initial capital structure such as is proposed for Machado Trucking Company and would insist on a larger equity investment. However, it appears that the arrangements now being made should improve the financial condition of the carrier and should place it in a position where it will have the opportunity to develop its potential business on a sound basis. The incorporation and reorganization of the operations no doubt will improve the creditors' position through the use of the additional capital to be devoted to the enterprise and should result in better service to the shippers. Under the circumstances disclosed at the hearing we are of the opinion that the proposed transfer will not be adverse to the public interest.

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.

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

A public hearing having been held on the above entitled matter, and the Commission having considered the evidence and being of the opinion 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 herein authorized is reasonably required by applicant corporation 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. Joe Machado, doing business as Machado Trucking Company, may transfer to Machado Trucking Company, a corporation, on or before December 31, 1954, his highway common carrier operative rights and properties.

2. Machado Trucking Company, a corporation, on or before December 31, 1954, in acquiring such operative rights and properties, may assume the payment of outstanding liabilities of Joe Machado and may issue not exceeding 360 shares of its no par value common stock.

3. Machado Trucking Company, a corporation, may be substituted in the place of Joe Machado as a party to joint rates and through routes now in effect.

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 Joe Machado, doing business as Machado Trucking Company, has withdrawn or canceled and Machado Trucking Company, 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. Machado Trucking Company, a corporation, 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.

6. The authority herein granted will become effective upon the date hereof.

Dated at San Francisco, California, this 13th day of October, 1954.

Robert E. Mitchell
President

Justin F. Carroll

Deane Higgins

Ray G. Lester

Commissioners

Commissioner Kenneth Fetter, being necessarily absent, did not participate in the disposition of this proceeding.