

Decision No. 50722

**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of:	)	
	:	
El Jo Corporation to Purchase	)	
and of Dutton Bros. & Jones to	:	Application
sell a Certificate of Public	)	No. 35734
Convenience and Necessity	:	
Authorizing the Transportation	)	
of Bulk Petroleum Products via	:	
Irregular Routes.	)	
-----	:	
In the Matter of the Application of:	)	
	:	
EL JO CORPORATION, for permission	)	Application
and approval to issue and sell stock.	:	No. 35735
-----	:	

Charles S. Buck, for applicants;  
Robert H. Shirley, for the staff of the  
 Commission.

O P I N I O N

In Application No. 35734 John A. Dutton, Thomas F. Dutton and Lloyd W. Jones, copartners doing business as Dutton Bros. & Jones, seek authorization to transfer operative rights and properties, subject to outstanding liabilities, to El Jo Corporation.

In Application No. 35735 El Jo Corporation seeks authorization to issue 2700 shares of common stock, of the par value of \$10 each, in part payment for said rights and properties.

The applications were filed with the Commission on August 25, 1954. A public hearing was held before Examiner Coleman in Los Angeles on October 21, 1954, at which time the matters were consolidated for hearing and decision and were taken under submission.

The partnership heretofore has been engaged in business as a petroleum irregular route carrier under a certificate of public convenience and necessity granted by Decision No. 44365, dated June 20, 1950, in Application No. 31093, and in certain nonutility operations, principally the purchasing, selling and spreading of road oil. A summary of the reported results of operation of the business, as reflected in annual reports filed with the Commission, is as follows:

	<u>Freight Revenues</u>	<u>Other Revenues</u>	<u>Total Revenues</u>	<u>Net Income</u>
1950	\$ 91,481	\$ 261,373	\$ 352,854	\$ 32,264
1951	138,277	424,550	562,827	18,245
1952	76,522	1,540,677	1,617,199	9,279
1953	137,803	577,771	715,574	( 1,218)

While the preceding summary indicates a declining trend in the net income during the four years it appears that the operations have taken a favorable turn during 1954. Exhibit B sets forth total revenues of \$25,745 during the first three months of the year, with net income of \$6,564, and the record shows still further expansion has occurred and is anticipated during the remaining months of 1954 in the oil spreading activities.

According to information supplied at the hearing in these applications, the three partners heretofore have entered into an agreement for the dissolution of the partnership which provided, among other things, for the transfer to Thomas F. Dutton and John A. Dutton of certain real property and improvements, which have been utilized in the highway common carrier operations, and for the transfer to Lloyd Jones of the operative rights and the remaining tangible and the current assets, subject to outstanding liabilities. Lloyd Jones, in turn, has made arrangements for the transfer of the operative rights and equipment which he thus would receive, to a

corporation he has caused to be organized for the express purpose of acquiring them. The new corporation will continue the business heretofore performed by the partnership and, under lease arrangements, will occupy the real property and improvements which the parties agreed should be conveyed to the Duttons.

The tangible properties to be acquired by the corporation include 8 tank trucks and 8 tank trailers, shop and garage equipment, two service cars, material and supplies and office and miscellaneous equipment. In Exhibit C filed in these proceedings the book value of the equipment is stated at \$163,969 and the accumulated depreciation at \$74,842, leaving a net book value of \$89,127. The total of the asset accounts as of March 31, 1954, including the net book value of the tangible properties, is reported at \$188,405 and the total liabilities at \$151,853, leaving proprietorship capital in the amount of \$26,552. As to the recorded book figures it appears that the partners were of the opinion that the equipment accounts were inadequate and that they caused an appraisal to be made of the equipment for the purpose of the dissolution, which appraisal was placed in the accounts and is reflected in the figures referred to in the preceding paragraph of this decision.

The staff has made an examination of the accounting records. Upon the basis of this review and the information submitted at the hearing we are of the opinion that the stock issue should be limited to not exceeding 1000 shares. We are informed that applicant Jones will be the sole stockholder of the new corporation and that it is his intention to retain possession of the shares he will receive in exchange for the rights and other assets.

Upon considering these applications we are of the opinion that an order should be entered authorizing the transfers as requested.

to enable applicants to proceed with the dissolution of their partnership affairs. Such transfers will not be adverse to the public interest.

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

A public hearing having been held on the above entitled matters, and the Commission having considered the evidence and being of the opinion that the applications 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. John A. Dutton, Thomas F. Dutton and Lloyd W. Jones, copartners doing business as Dutton Bros. & Jones, are authorized to transfer to John A. Dutton and Thomas F. Dutton the real property and improvements as described in the agreement for dissolution filed in these proceedings as Exhibit 1, and to transfer to El Jo Corporation the operative rights and tangible assets, as indicated in the preceding opinion, subject to outstanding liabilities.

2. El Jo Corporation, in acquiring said operative rights and equipment, may assume the payment of said outstanding liabilities and may issue not exceeding 1000 shares of common stock of the par value of \$10 each.

3. 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 John A. Dutton, Thomas F. Dutton and Lloyd W. Jones, copartners doing business as Dutton Bros. & Jones, have withdrawn or canceled and El Jo 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.

4. El Jo 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.

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

Dated at San Francisco, California, this 3rd day of November, 1954.

John E. Mitchell  
President

Justus J. Casella

Kenneth Potter

Gene Higgins

Raylo Luterer  
Commissioners