

Decision No. 50896

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Lora Lamb, C. Jerry Lamb, Colin J. Boone and Albert F. Cruse, partners, doing business as Lamb Transportation Co., to sell, and Lamb Transportation Company, a corporation, to purchase operating rights of the sellers and also to acquire motor vehicle equipment, in exchange for stock.

Application No. 36565

OPINION

This is an application for an order of the Commission authorizing Lora Lamb, C. Jerry Lamb, Colin J. Boone and Albert F. Cruse, partners doing business as Lamb Transportation Co., to transfer operative rights and properties to Lamb Transportation Company, a corporation, and authorizing the corporation to issue \$24,410 par value of its common capital stock.

The partners are engaged in the transportation of petroleum products in bulk within the State of California and between points in the state and points in Arizona and Nevada under authorization granted by this Commission by Decision No. 48627, dated May 26, 1953, in Application No. 34307, and by certain permits and under authorization granted by the Interstate Commerce Commission.^{1/} In addition, they are engaged in certain nonutility activities, primarily sales of road oil and fuel and diesel oil and leasing of equipment.

It now appears that the partners desire to separate their nonutility activities from their carrier activities and to conduct

^{1/} By Decision No. 48627 the Commission authorized the transfer to Lora Lamb, et al., of the operative rights granted to the present partnership's predecessors by Decision No. 42623, as amended, and Decision No. 44401.

the latter under a corporate form of ownership. To accomplish these ends they have caused the incorporation of Lamb Transportation Company and they propose to transfer to it their operative rights, their carrier equipment, and certain current assets at their book costs of \$420,184.58, subject to equipment obligations of \$355,772.12 which are associated with such equipment. The partners propose to accept \$24,410 par value of common stock in payment of their partnership interests and, in addition, to advance \$40,000 in cash to the new corporation for working capital. This application, so far as the transfer of operative rights is concerned, applies only to the certificates of public convenience and necessity heretofore granted by this Commission. Separate applications are being filed, or have been filed, with the Commission and with the Interstate Commerce Commission for authorization to transfer the permits and the interstate rights.

In financial statements filed with the Commission the partners have reported their highway carrier revenues and the related expenses as follows:

| | <u>1952</u> | <u>1953</u> | <u>1954</u> <u>10 Mos.</u> |
|--|------------------|------------------|-------------------------------|
| Operating revenues - | | | |
| Intercity common carrier | \$215,573 | \$ 253,994 | \$ 284,859 |
| Intercity contract carrier | 476,019 | 541,148 | 576,368 |
| Local cartage | 122,466 | 251,141 | 198,204 |
| Other operating revenues | <u>27,463</u> | <u>6,830</u> | <u>1,964</u> |
| Total operating revenues | 841,521 | 1,053,113 | 1,061,395 |
| Operating expenses, excluding depreciation | <u>737,975</u> | <u>905,855</u> | <u>919,037</u> |
| Balance | 103,546 | 147,258 | 142,358 |
| Depreciation | <u>80,260</u> | <u>105,143</u> | <u>94,687</u> |
| Net operating revenues | <u>\$ 23,286</u> | <u>\$ 42,115</u> | <u>\$ 47,671</u> |

It is true that at the outset the new corporation's financial structure will include equipment obligations of \$355,772.12 and common stock and advances by the present partners in the amount of \$64,410. However, as indicated by the foregoing statement of

revenues and expenses, it clearly appears that the business has been profitable and, during 1952, 1953 and 1954, has generated annual sums ranging from \$103,546 to \$147,258, represented by depreciation and retained earnings, which have been available for servicing obligations and providing a return. Further, the indebtedness to be assumed by the corporation in taking over the carrier activities consists of equipment obligations which are repayable in monthly installments.

Upon reviewing the verified application and the financial statement it is our opinion that the business should be ample to support the proposed capital structure and that the transfer, as here proposed and under the terms and conditions outlined in this proceeding, will not be adverse to the public interest. In making our order in this proceeding 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

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 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. Lora Lamb, C. Jerry Lamb, Colin J. Boone and Albert F. Cruse, partners doing business as Lamb Transportation Co., may transfer their carrier equipment and the operative rights represented by Decision No. 48627, dated May 26, 1953, to Lamb Transportation Company, a corporation, in accordance with the terms and conditions outlined in this proceeding.

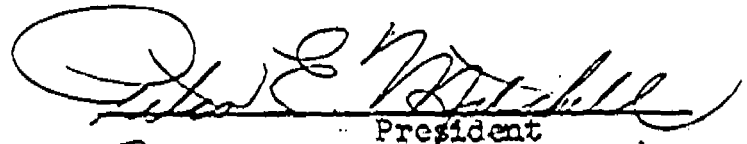
2. Lamb Transportation Company, a corporation, in acquiring said operative rights and equipment, may assume the payment of outstanding equipment obligations and may issue not exceeding \$24,410 par value of its common capital stock.

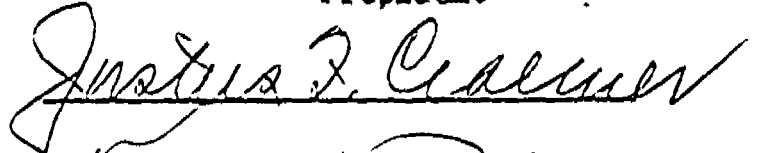
3. On not less than one day's notice to the Commission and to the public, applicants shall supplement or reissue the tariffs on file with the Commission naming rates, rules and regulations governing the common carrier operations here involved to show that Lora Lamb, C. Jerry Lamb, Colin J. Boone and Albert F. Cruse, partners doing business as Lamb Transportation Co., have withdrawn or canceled and Lamb Transportation 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.

4. Lamb Transportation 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.

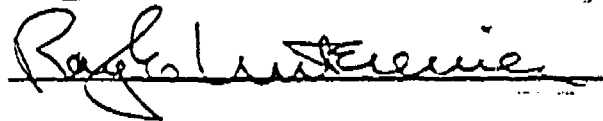
5. The authority herein granted will become effective upon the date hereof.

Dated at San Francisco, California, this 28th day of ~~December~~, 1954.


President







Commissioners