

ORIGINAL

Decision No. 52435

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of MANUEL SENNA, an individual doing business as SENNA TRUCKING COMPANY, to sell and transfer, and SENNA TRUCKING CO., INC., a corporation, to purchase and acquire operating rights and other assets, and for said SENNA TRUCKING CO., INC., a corporation, to assume certain liabilities.

Application
No. 37484
(and Amendment)

In the Matter of the application of Senna Trucking Co., Inc., a corporation, for authority to issue shares of its capital stock.

Application
No. 37485
(and Amendment)

Marcuam C. George and Leslie Kessler, for applicants; John F. Donovan for the staff of the Commission.

O P I N I O N

In these proceedings the Commission is asked to make an order, or orders, authorizing Manuel Senna to transfer operative rights and other assets to Senna Trucking Co., Inc., and authorizing Senna Trucking Co., Inc., to issue 4,000 shares of its \$10 par value stock.

A public hearing was held before Examiner Coleman in San Francisco on December 21, 1955, at which time the matters were taken under submission. The Commission has received no protests in the proceedings.

Applicant Senna is engaged in the transportation of lumber and forest products between various points and places within the

state under a certificate of public convenience and necessity acquired by him pursuant to authorization granted by Decision No. 48007, dated December 2, 1952, in Application No. 33613, and in the transportation of general commodities as a permitted carrier and in certain operations as an interstate carrier. He has reported his revenues from all sources, for the nine months ended September 30, 1955, at \$277,027 and net income at \$29,631.

Exhibits filed in the proceedings indicated that applicant Senna has been utilizing 15 trucks and tractors, 31 trailers, and 4 fork lifts in his operations. His balance sheet at the close of September, 1955, shows his reported net investment in tangible and intangible property at \$147,437 and in current and deferred assets at \$72,827, the two items aggregating \$220,264. The statement shows that he has financed himself with current and deferred liabilities of \$15,526, equipment and other long-term obligations of \$74,570, and proprietary capital of \$130,168.

It appears that applicant Senna, in order to effect tax savings, desires to conduct his operations by means of a corporate form of organization. He has organized applicant corporation herein and proposes to transfer to it his certificate of public convenience and necessity, for the sum of \$5,252.55 payable in cash, and certain current assets at their book values. He intends to retain the tangible assets and to lease the equipment to applicant corporation at an annual rental equivalent to the amount of depreciation allowed or allowable thereon, plus amounts equal to any interest paid by lessor on contracts connected with or involving such equipment, plus the cost of insurance and plus all taxes levied against the demised property. He intends to lease the terminal facilities at a monthly

rental of \$500, plus property taxes and fire insurance costs. The lease agreements have been reduced to writing and were filed at the hearing held in these applications.

In acquiring the certificate of public convenience and necessity and the current assets, applicant corporation proposes to assume the payment of certain current liabilities in the amount of \$2,060.71 and to issue to applicant Senna 4,000 shares of stock at their par value of \$10 each. At the outset, upon the conclusion of the transactions, the assets, liabilities and capital of the corporation will consist of the following:

Cash		\$12,359.23
Insurance deposit		2,400.00
Accounts receivable		17,809.57
Prepaid expenses		2,802.52
Materials and supplies		<u>1,436.84</u>
Sub-total		36,808.16
Operative rights		<u>5,252.55</u>
	Total	42,060.71
Liabilities		<u>2,060.71</u>
Balance		<u>\$40,000.00</u>

The record shows that applicant Senna has liquidated or will liquidate all the remaining current liabilities and that the equipment obligations and other long-term debts which are related to the rolling stock and the terminal facilities will remain the obligations of said Senna.

With respect to the operative rights the testimony shows that the agreed price of \$5,252.55 consists of the following items:

Paid to the Board of Trade in acquisition of present certificate (Application No. 33613)	\$4,250.00
Miscellaneous expenses incident to such acquisition....	\$ 452.55
Attorney's fees for application for certificate now pending before the Commission (Application No. 36216) ..	\$ 500.00
Filing fee.....	<u>\$ 50.00</u>
TOTAL.....	<u>\$5,252.55</u>

The record shows that the new operator, following the acquisition of the operative rights, will have available net working capital in the amount of approximately \$34,750. It is asserted that such available working capital is in excess of the working capital normally employed by applicant Senna in the past, and it clearly appears, upon the basis of the information presented to the Commission, that the new corporation will be equipped to carry on the operations.

It is contemplated that applicant corporation will adopt the rates of applicant Senna and will carry on the business with no change in personnel or methods of operations. Upon reviewing the applications and the evidence adduced at the hearing we are of the opinion, and so find, that the transfer of the operative rights as herein proposed will not be adverse to the public interest.

However, with respect to the operative rights, the Commission is without power to authorize the capitalization of the same in excess of the amount (exclusive of any tax or annual charge) actually paid to the state or to a political subdivision as the consideration for the grant of such rights, and in our opinion, therefore, we can not authorize the issue of stock against the claimed value of \$5,252.55 or the sale of stock to provide the cash payment of \$5,252.55.

The order herein will authorize the issue of stock of the aggregate par value of \$34,750. If applicant corporation concludes to pay more than \$34,750 for the rights and assets acquired from applicant Senna, it may do so but it must charge that portion of the amount so paid which is in excess of the amount of the stock issue to Account 1550, Other Intangible Capital, as provided in the uniform system of accounts prescribed for highway carriers, and must finance that excess through some medium other than securities requiring the authorization

of the Commission. In the event Application No. 36216 now pending before the Commission is granted, applicant corporation may capitalize the cost of the rights thus obtained which represent payments made to the state.

Applicant corporation is 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 herein authorized to be transferred.

O R D E R

A public hearing having been held on the above entitled matters and the Commission being of the opinion that the applications should be granted, only as herein provided, that the money, property or labor to be procured or paid for by the issue of \$34,750 par value of stock is reasonably required 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. Manuel Senna may transfer to Senna Trucking Co., Inc., the operative rights acquired by him under authorization granted by Decision No. 48007, dated December 2, 1952, and the current assets as indicated in the foregoing opinion.

2. Senna Trucking Co., Inc., may issue not exceeding \$34,750 par value of its common stock in payment for the net current assets referred to in these proceedings, or may sell said stock at par for cash for the purpose of acquiring said current assets.

3. Application No. 37484, insofar as it involves the issue of \$5,250 of stock, is denied.

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 so as to show that Manuel Senna has withdrawn or canceled and Senna Trucking Co., Inc., 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. Senna Trucking Co., Inc., shall file 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. Senna Trucking Co., Inc., shall file with the Commission a copy of each journal entry used to record on its books the acquisition of the operative rights and assets of Manuel Senna, such filing to be made within 30 days after the date of such entries.

7. This order will become effective 20 days after the date hereof.

Dated at San Francisco, California, this 4th day of January, 1956

John L. Mitchell
President

Justus F. Cravner

Ralph Winters

William J. Walsh

P. H. Hardy
Commissioners