

ORIGINAL

Decision No. 53841

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of L. W. POTTER, an individual doing business as L. W. POTTER TRUCKING COMPANY, to transfer certificates of public convenience and necessity, permits, and property to L. W. POTTER TRUCKING COMPANY, a corporation, and to issue stock and assume certain obligations.

Application No. 38379

O P I N I O N

This is an application for an order of the Commission (1) authorizing L. W. Potter to transfer operative rights and property to L. W. Potter Trucking Company, a corporation, and (2) authorizing said corporation to assume the payment of liabilities and to issue \$38,450 par value of capital stock.

L. W. Potter possesses a certificate of public convenience and necessity granted by the Commission by Decision No. 45681, dated May 8, 1951, as amended by Decision No. 45955, dated July 17, 1951, authorizing limited petroleum irregular route carrier operations in the Counties of Kern, San Luis Obispo, Santa Barbara and Ventura. In addition, under the authority of Decision No. 50533, dated September 14, 1954, he acquired a certificate of public convenience and necessity from Giacomazzi Bros. Transportation Co., authorizing the establishment and operation of a service as a petroleum irregular route carrier for the transportation of petroleum and petroleum products in tank trucks and tank trailers between all points and places in the State of California. The application shows that the latter decision in effect superseded the previously

granted authority. It appears from this Commission's records that L. W. Potter has also permits to operate as a city carrier, radial highway common carrier and a petroleum contract carrier. In Exhibit "C" filed with the application he has reported freight revenue for the first six months of 1956 in the amount of \$112,578.35 and net profit at \$16,560.50.

For the purpose of incorporating his trucking business, L. W. Potter has organized L. W. Potter Trucking Company. He proposes to withhold from transfer to such corporation all assets and liabilities attributable to his storage tank rental business, and practically all the investments, tangible assets, liabilities related to the excluded properties, and reserves for depreciation assignable to his trucking operations. The application shows that eliminated assets used in the trucking operations will be utilized in the operation of the corporation on a fair and equitable lease basis, and the equipment will be leased on a long-term arrangement assuring the corporation of exclusive control thereof. The assets and liabilities proposed to be acquired by the corporation, together with the capital stock to be issued, are summarized in a condensed pro forma balance sheet as of June 30, 1956, as follows:

<u>Assets</u>	
Current assets	\$31,765.80
Fixed assets	14,532.51
Deferred assets	<u>10,058.86</u>
Total	<u>\$56,357.17</u>
<u>Liabilities and Capital</u>	
Current liabilities	\$15,224.87
Contract payable	2,632.30
Capital stock	<u>38,450.00</u>
Total	<u>\$56,357.17</u>

A review of the application shows that the corporation will take over the indicated assets and liabilities at their book values and that there will be no change in the equipment or services available to the public or in the rates. We are of the opinion, and so find, that the transfer under the terms as proposed, and subject to the conditions of the order herein, will not be adverse to the public interest and should be authorized.

Applicants are hereby placed on 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 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. L. W. Potter may transfer to L. W. Potter Trucking Company, a corporation, his petroleum irregular route carrier operative rights acquired under the authority of Decision No. 50533, dated September 14, 1954, and assets as set forth in this application, such transfer to be made on or before December 31, 1956,

Provided, however, that the authority herein granted is subject to the condition that the property withheld by applicant L. W. Potter from transfer to said corporation is not relieved from its devotion to the public use and that its status as public utility operative property shall continue as though no transfer had taken place, anything in any lease or other contract or agreement between applicant and said corporation to the contrary notwithstanding.

2. L. W. Potter Trucking Company, a corporation, in payment for said operative rights and assets may assume the payment of outstanding liabilities and may issue not exceeding \$38,450 par value of its capital stock.

3. On not less than five days' notice to the Commission and to the public, effective concurrently with the consummation of such transfer, 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 L. W. Potter has withdrawn or canceled and L. W. Potter 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.

4. The operative rights granted by Decision No. 45681, dated May 8, 1951, as amended by Decision No. 45955, dated July 17, 1951, are revoked.

5. L. W. Potter 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. This order will become effective on the date hereof.

Dated at San Francisco, California, this 1st day of

M.F. ~~September~~, 1956. ^{October}

John E. Mitchell President
Justus J. Cooney
Raul Antares
Thomas Dade
W. H. Hardy Commissioners