

**ORIGINAL**

Decision No. 54301

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of )  
 Thomas E. Gilboy and Patricia Gilboy )  
 Shortall, surviving partners, and )  
 Ada Teresa Gilboy and John R. Maloney, )  
 co-executors of the estate of Thomas )  
 W. Gilboy, deceased, doing business ) Application No. 38548  
 as GILBOY COMPANY, to sell, and )  
 GILBOY CO., INC. to (1) issue stock, )  
 (2) acquire common carrier operative )  
 rights and property, (3) issue evidence )  
 of indebtedness and (4) mortgage )  
 property. )

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O P I N I O N

In this application the Commission is asked to enter an order authorizing Gilboy Co., Inc., to issue \$100,100 par value of common stock, to execute a deed of trust and mortgage of chattels, and to issue a note in the principal amount of \$100,000.

Applicant corporation was organized on September 24, 1956 for the purpose of acquiring the business and property of Thomas E. Gilboy and Patricia Gilboy Shortall, surviving partners, and Ada Teresa Gilboy and John R. Maloney, co-executors of the Estate of Thomas W. Gilboy, deceased, doing business as Gilboy Company and conducting operations as a highway common carrier of films and associated commodities, generally in northern California and in interstate commerce. The present owners and operators have joined in the application and seek authorization to sell their operative rights and equipment.

The operative rights to be acquired by the new corporation originally were granted by the Commission by Decisions Nos. 28235, 29269, 34385, 35914, and 43418 and were transferred to the partnership under authorization of Decision No. 46971. The

tangible properties to be transferred along with the operative rights include 30 units of automotive equipment, real property and improvements, and equipment, materials and supplies.

The agreed purchase price to be paid by applicant corporation is \$175,000 which is segregated as follows:

(1)	Intrastate certificates of public convenience and necessity granted by Decisions Nos. 28235, 29269, 34385, 35914 and 43418	\$ 1,750.00
	Interstate certificates of public convenience and necessity in Docket Nos. MC-6998 and MC-6998 Sub. 1	350.00
(2)	Motor vehicle equipment	51,000.00
(3)	Land	60,000.00
(4)	Structures	40,000.00
(5)	Equipment and supplies	21,000.00
(6)	Goodwill	<u>900.00</u>
	Total	<u>\$175,000.00</u>

To finance the purchase price and to provide itself with cash working capital of \$25,100, Gilboy Co., Inc., proposes to issue and sell \$100,100 par value of common stock to its officers and directors, namely, Axel Nelson, Leon Offner, and Frank E. Claverie, and to issue to the sellers a note in the principal amount of \$100,000 secured by a deed of trust and a mortgage of chattels. The note will be payable in monthly installments, over a period of 48 months, with interest at the rate of 5% per annum.

From a review of the proceeding, it appears that those who will be in control of the new corporation are experienced in transportation operations and financially are in a position to assume the obligations under the agreement for the transfer of the rights and properties and to conduct the operations. Under the circumstances

set forth in the application, we are of the opinion, and so find, that the proposed transfer will not be adverse to the public interest and should be authorized.

Applicant corporation is 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 attention of applicant corporation is directed to Decision No. 53205, dated June 12, 1956, in Application No. 37929. In that decision, the Commission denied a request by Gilboy Company to increase rates and found that the present operators in some instances had not been charging for their services according to their filed tariffs. Applicant corporation is placed upon notice that if it proceeds with the acquisition of the Gilboy Company, it will be required to adopt the present rates, rules and regulations and to charge its customers in accordance therewith, unless and until otherwise hereafter authorized or directed by the Commission.

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 and the note herein authorized is reasonably required by applicant corporation for the purposes specified herein, and that such purposes are not, in whole or in part, reasonably chargeable to operating expenses or to income; therefore,

IT IS HEREBY ORDERED as follows:

1. Thomas E. Gilboy and Patricia Gilboy Shortall, surviving partners, and Ada Teresa Gilboy and John R. Maloney, co-executors of the Estate of Thomas W. Gilboy, deceased, may sell and transfer the operative rights and equipment referred to in this proceeding to Gilboy Co., Inc., such sale and transfer to be made on or before March 31, 1957.

2. Gilboy Co., Inc., in order to finance the purchase of said operative rights and equipment and to provide working cash, may issue not to exceed \$100,100 par value of its common stock, may execute a deed of trust and mortgage of chattels and may issue its note in the principal amount of not exceeding \$100,000.

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 Gilboy Company has withdrawn or canceled and Gilboy 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.

4. Gilboy Co., Inc., 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 when Gilboy Co., Inc., has paid the fee prescribed by Section 1904(b) of the Public Utilities Code, which fee is \$100.

Dated at San Francisco, California, this 18 day of DECEMBER, 1956.

[Signature]  
President

[Signature]

[Signature]

[Signature]  
Commissioners

Commissioner Rex Hardy, being necessarily absent, did not participate in the disposition of this proceeding.

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\$100.00