

ORIGINAL

Decision No. 55288

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application
of K. A. MANSKA, doing business as
CAREY TRUCK LINE, to sell, and
CAREY TRUCK LINE, INC., a corpora-
tion to purchase operating rights
and certain properties of a highway
common carrier, and the application
of CAREY TRUCK LINE, INC., a
corporation, to issue stock.

Application No. 39119

O P I N I O N

In this application the Commission is asked to make an order (1) authorizing K. A. Manska, doing business as Carey Truck Line, to sell his operative right to Carey Truck Line, Inc., and (2) authorizing Carey Truck Line, Inc., to assume obligations and to issue 2,600 shares of common stock of the par value of \$26,000.

The application shows that K. A. Manska, under authorization granted by Decision No. 52171, dated November 1, 1955, in Application No. 37227, acquired a certificate of public convenience and necessity permitting operations as a highway common carrier of oil field, pipe line and refinery equipment, machinery, parts and supplies between certain points and oil fields in southern California. Applicant Manska has reported gross revenues of \$440,545 and a net profit of \$13,899 in 1956, after deducting \$28,060 for depreciation.

It now appears that applicant Manska has concluded to incorporate his business and that he has made arrangements to transfer his operative right, current and prepaid assets and furniture and fixtures to Carey Truck Line, Inc., a corporation which he has caused to be organized to continue the operations. A statement showing the book values of the assets to be transferred to the corporation and the liabilities to be assumed by it is as follows:

Assets

Cash	\$10,471.39	
Accounts receivable	27,197.26	
C.O.D. fund	7,970.73	
Other current assets	1,913.47	
Furniture and equipment	920.18	
Insurance deposit	2,945.90	
Prepaid items	10,760.80	
Intangible assets	<u>3,801.32</u>	
Total assets to be transferred		\$65,981.05

Liabilities

Accounts payable	\$14,097.33	
Accrued expenses	5,915.84	
Other current liabilities	4,955.15	
C.O.D. payable	4,606.93	
Notes payable	<u>10,405.80</u>	
Total liabilities to be assumed		<u>\$39,981.05</u>
Net book value		<u><u>\$26,000.00</u></u>

Applicant Manska intends to retain ownership of his motor vehicles and to lease them to the new corporation and to provide the necessary replacements and additions. The proposed form of lease, which is filed as Exhibit E, covers 44 units of equipment and provides for a monthly rental of \$3,000. It is asserted

that the lease arrangement will minimize taxes but that otherwise there will be no change in operating procedures, personnel or management as the result of the transfer.

From the foregoing statement of assets and liabilities to be transferred, it appears that the new corporation proposes to issue stock equivalent in par value to the net book value of the assets. However, analysis shows that there is included among the assets the sum of \$3,801 for intangible capital which includes, according to an examination made by our staff, \$559 for goodwill, \$3,000 representing the purchase price paid by applicant in acquiring his operative right from his predecessor, and \$242 for attorney fees in connection with the purchase of the business from such predecessor.^{1/}

Under the law, the Commission is empowered to authorize the capitalization of operative rights only up to the amount (exclusive of any tax or annual charge) actually paid to the state or a political subdivision thereof as the consideration for the grant of such right. (Article 5, Section 820 of the Public Utilities Code.) The amount originally paid to the state or political subdivision thereof is not of record in this proceeding and therefore it appears that we have no basis upon which we can predicate an order for the issue of stock in the amount requested in payment for the operative right. Moreover, it has not been our practice to issue stock in payment for goodwill.

^{1/} The operative right formerly was owned by Anna Laura Carey but was sold by her to applicant Manska in 1955 for the sum of \$3,000.

Elimination of the intangible item from the net book value as reported would leave a balance of \$22,200 which, in our opinion, represents the maximum amount of stock we can authorize upon the basis of the information now before us. The order herein will so provide.

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.

ORDER

The Commission has considered the above-entitled matter and is of the opinion and so finds that the proposed transfer, as herein provided, will not be adverse to the public interest, that the money, property or labor to be procured or paid for by the issue of the \$22,200 of common 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. K. A. Manska, doing business as Carey Truck Line, may transfer to Carey Truck Line, Inc., his highway common carrier operative right as set forth in this application, subject to the condition that the operative property not transferred to the corporation shall not be relieved of its devotion to the public use and that its status as public utility operative property shall remain the same as though the transfer authorized herein had not taken place, anything in the lease or other agreements between the parties to the contrary notwithstanding.

2. Carey Truck Line, Inc., a corporation, in acquiring said operative right and assets, may assume the payment of outstanding indebtedness and may issue not exceeding \$22,200 par value of its common 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 K. A. Manska, doing business as Carey Truck Line, has withdrawn or canceled and Carey Truck Line, 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. Carey Truck Line, 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 request to issue \$3,800 of stock is denied.

6. The authority herein granted will become effective twenty days after the date hereof.

Dated at San Francisco, California, this 29th day of JULY, 1957.

President
Paul J. [unclear]

[unclear]

[unclear]

[unclear]
Commissioners