

ORIGINAL

Decision No. 56062

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of:

(a) AIRWAY'S TANK LINE, a corporation, to purchase, and of M. D. VALOFF and F. W. GARRETT, copartners doing business as AIRWAYS TANK LINE, to sell a certificate of public convenience and necessity for transportation of petroleum products between various points in southern California, pursuant to Sections 851-853 of the California Public Utilities Code.

Application
No. 39593

(b) AIRWAY'S TANK LINE, a corporation, for authority to issue shares of its common capital stock pursuant to Sections 816-830 of the California Public Utilities Code.

O P I N I O N

This is an application for an order of the Commission
(1) authorizing M. D. Valoff and F. W. Garrett, copartners doing business as Airways Tank Line, to transfer operative rights, business and assets to Airway's Tank Line, a corporation, and
(2) authorizing said corporation to assume the payment of liabilities and to issue \$28,240 par value of capital stock.

Under authorization granted by Decision No. 46770, dated February 19, 1952, in Application No. 33077, the copartners acquired a certificate of public convenience and necessity permitting the transportation of petroleum products, with certain exceptions, generally throughout southern California. According to Exhibit B, the operations produced revenues of \$69,444.68 during the first eight months of 1957 and net income of \$16,629.80, after

depreciation. A condensed statement of the assets, liabilities and capital at August 31, 1957, prepared from Exhibit B, is as follows:

Assets

Current and prepaid assets	\$ 35,792
Fixed assets, less reserve	<u>29,046</u>
Total	<u>\$ 64,838</u>

Liabilities and Capital

Current liabilities	\$ 6,239
Long-term obligations	30,358
Proprietary capital	<u>28,241</u>
Total	<u>\$ 64,838</u>

It now appears that it has been concluded the operations can be conducted more advantageously by means of a corporate form of organization and that arrangements have been made for the transfer of the operative rights, business and assets to Airway's Tank Line, a new corporation which has been formed for the express purpose of taking over such rights, business and assets and of continuing the operations. The corporation will acquire the operative rights, business and assets at their book values, will assume the outstanding liabilities and will issue shares of its stock having an aggregate par value approximately equal to the proprietary investment.

A review of the application shows that there will be no change in the management nor in the rates or service as the result of the transfer and that the same operative properties will be available to the corporation as now are utilized in the present operations. Upon reviewing the verified application, we are of the opinion, and so find, that the transfer 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~~ 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. M. D. Valoff and F. W. Garrett may transfer to Airway's Tank Line, a corporation, the operative rights acquired by them pursuant to authorization granted by Decision No. 46770, dated February 19, 1952, and the business and assets as set forth in this application.

2. Airway's Tank Line, a corporation, in payment for such rights, business and assets, may issue not exceeding \$28,240 par value of its capital stock and may assume the payment of outstanding indebtedness.

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 operations here involved to show that M. D. Valoff and F. W. Garrett have withdrawn or canceled and Airway's Tank Line, 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. Airway's Tank Line, 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. This order will become effective on the date hereof.

Dated at San Francisco, California, this 14th day of January, 1958.

[Signature]
President

[Signature]

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Commissioners