

ORIGINAL

Decision No. 56303

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of:

(a) J & J TRANSFER COMPANY, a corporation, to purchase, and of ATOMIC EXPRESS, a corporation, to sell, a certificate of public convenience and necessity for transportation of special commodities between points in the Los Angeles Territory, pursuant to Section 851-853 of the California Public Utilities Code.

Application No. 39711

(b) J & J TRANSFER COMPANY, a corporation, to issue promissory notes, 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 authorizing J & J Transfer Company, a corporation, to issue notes in the aggregate face amount of \$4,350 in payment for operative rights, furniture, fixtures, dock equipment and tools of Atomic Express, a corporation.

J & J Transfer Company is a California corporation which presently is engaged in business as a city carrier, a radial highway common carrier and a household goods carrier. It appears that it desires to expand its operations and that it has made arrangements to purchase the operative rights of Atomic Express for \$3,500 and to purchase furniture, fixtures, dock equipment and tools for the sum of \$1,850. By the terms of the agreement, the purchase price of \$3,500 for the operative rights is payable \$1,000 in cash and

\$2,500 by a promissory note bearing interest at the rate of 6% per annum from November 8, 1957, principal and interest being payable in monthly installments of \$200 commencing on May 1, 1958. The purchase price of \$1,850 for the other property will be payable in monthly installments of \$150, commencing on May 1, 1958, including interest at the rate of 6% per annum.

The operative rights to be purchased by J & J Transfer Company permit operations as a highway common carrier of special commodities between points in the Los Angeles territory. The rights were established by ex parte Decision No. 53817, dated September 25, 1956, in Application No. 36341, whereby a certificate was granted to Samuel S. Lugash, this being one of the so-called policy decisions of the Commission. Thereafter by ex parte Decision No. 55343, dated August 5, 1957, in Application No. 39227, said Lugash was authorized to transfer the operative rights to Atomic Express, a corporation.

The statement of assets filed in Application No. 39227, upon which said Decision No. 55343 was predicated, showed the investment by Lugash in the assets of his business at \$6,782.09, the amount representing tangible property consisting of furniture, fixtures and delivery equipment, with no allowance for operative rights. In the present proceeding, we again are asked to authorize the transfer of these operative rights. There is presented a statement that the agreed purchase price of the operative rights is the sum of \$3,500 and the Commission is asked to authorize the issue of a note for \$2,500 in part payment of the agreed price.

It is not our practice to fix the price that may be paid by the purchaser of public utility operations although, of course, we can decline to approve a transfer of public utility properties if it should appear that the purchaser does not have sufficient financial resources to meet the purchase price and to undertake the obligations of furnishing public utility service, or if the transfer, in our opinion, would be adverse to the public interest. Moreover, it is our stated policy that those to whom certificates have been granted pursuant to the so-called policy decisions will not be permitted to divest themselves of these rights and obligations without a clear and convincing showing on their part.

The verified application shows that J & J Transfer Company owns 22 units of equipment, that its operations have been reasonably successful, and that its financial position, as reflected by its balance sheet of November 23, 1957, is favorable and indicates financial responsibility.^{1/} Moreover, the results of operations of the business now conducted by Atomic Express, as reflected in the financial statements filed in Application No. 39227, showed net income for the first five months of 1957 at \$7,653.

Upon a review of the information before us, it appears to us that J & J Transfer Company should be in a position to meet the obligations, both financial and servicewise, which it will incur upon succeeding to the operations of Atomic Express. It will adopt

^{1/} Exhibit D shows that for the period May 1, 1957 to November 23, 1957, J & J Transfer Company's gross revenues were \$24,722 and its net profit, \$6,004. Its balance sheet shows proprietary capital of \$10,494 and equipment contracts of \$12,950.

the existing tariffs of Atomic Express and will continue to operate under the certificate of public convenience and necessity with no change in service to the public. Atomic Express reports that within the last few months it has suffered labor difficulties which have made it impossible for it to continue the operation of its motor carrier business.

However, in exercising jurisdiction over the issue of notes, we are subject to certain limitations placed on us by law and are charged with certain responsibilities.

Under the law we cannot authorize the capitalization of operative rights in excess of the amount paid the state or other political subdivision as the consideration for the grant of such rights.^{2/} In addition, we are required by law, when authorizing the issue of securities, to make a finding as to the reasonableness of the proposed issue.^{3/}

^{2/}

Section 820 of the Public Utilities Code reads as follows:

"The commission shall have no power to authorize the capitalization of the right to be a corporation, or the capitalization of any franchise or permit, or the right to own, operate, or enjoy any such franchise or permit, in excess of the amount (exclusive of any tax or annual charge) actually paid to the State or to a political subdivision thereof as the consideration for the grant of such franchise, permit, or right. No contract for consolidation or lease shall be capitalized, nor shall any public utility issue any bonds, notes, or other evidences of indebtedness against or as a lien upon any contract for consolidation or merger."

^{3/}

Section 818 of the Public Utilities Code requires the Commission, in making an order authorizing the issue of securities, to state that "in the opinion of the commission, the money, property, or labor to be procured or paid for by the issue is reasonably required for the purposes specified in the order, and that, except as otherwise permitted in the order in the case of bonds, notes, or other evidences of indebtedness, such purposes are not, in whole or in part, reasonably chargeable to operating expenses or to income."

In the present proceeding, there is no showing made of the amount, if any, which was paid to the state or to any political subdivision as a consideration for the grant of the operative rights which Atomic Express now proposes to sell for the sum of \$3,500 and we are of the opinion that there is nothing upon which we can base an order authorizing the issue of the \$2,500 note. No doubt Atomic Express, or its predecessor, incurred some expense in obtaining the operative rights, but the amount of such expense has not been presented to us in this proceeding.

In concluding our review of this application, we are of the opinion, and so find:

1. That the transfer of the operative rights and other property of Atomic Express to J & J Transfer Company will not be adverse to the public interest.

2. That no showing has been made upon which we can predicate an order authorizing J & J Transfer Company to issue a note for \$2,500 in payment for the operative rights.

3. That the money, property or labor to be procured or paid for by the issue of the note for \$1,850 is reasonably required for the purpose set forth herein which purpose is not, in whole or in part, reasonably chargeable to operating expenses or to income.

Our order will be entered in accordance with the foregoing findings. In making this order we place J & J Transfer Company 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.

We place J & J Transfer Company upon notice, also, that it will be required to keep its books of account in accordance with the Uniform System of Accounts prescribed by the Commission and to file annual reports in the form to be provided and at the times to be specified.

The action taken herein shall not be construed to be a finding of the value of the rights and property herein authorized to be transferred.

ORDER

The Commission having considered the above-entitled matter and being of the opinion that a public hearing is not necessary and that an order should be entered as hereinabove indicated, therefore,

IT IS HEREBY ORDERED as follows:

1. Atomic Express, on and after the effective date hereof and on or before June 30, 1958, may transfer its highway common carrier operative rights and other property, as set forth in this application, to J & J Transfer Company.

2. J & J Transfer Company, in payment for said other property, may issue its promissory note in the principal amount of not exceeding \$1,850, payable as indicated in the foregoing opinion.

3. The request of J & J Transfer Company to issue a note in the principal amount of \$2,500 is denied.

4. 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 Atomic Express has withdrawn or canceled and J & J Transfer 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.

5. J & J Transfer Company 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. The authorization herein granted to issue a note for \$1,850 will become effective when J & J Transfer Company has paid the minimum fee prescribed by Section 1904(b) of the Public Utilities Code, which fee is \$25. In all other respects, the authorization herein granted will become effective 20 days after the date hereof.

Dated at Los Angeles, California, this 3rd day of MARCH, 1958.

[Signature]
President,
[Signature]
[Signature]
[Signature]

Commissioners

