

ORIGINAL

Decision No. 56970

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of: )  
 :  
 (a) SAME DAY DELIVERY SERVICE, a )  
 California corporation, to purchase, )  
 and of EMIL P. FLESCHNER, an )  
 individual doing business as SAME )  
 DAY DELIVERY SERVICE, to sell, a )  
 certificate of public convenience )  
 and necessity for the transportation )  
 of general commodities between various )  
 points in Southern California, pursuant )  
 to Sections 851-853 of the California )  
 Public Utilities Code. )  
 :  
 (b) SAME DAY DELIVERY SERVICE, a )  
 California corporation, to issue shares )  
 of its common capital stock pursuant to )  
 Sections 816-830 of the California )  
 Public Utilities Code. )  
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Application No. 40181

O P I N I O N

This is an application for an order of the Commission  
 (1) authorizing Emil P. Fleschner, doing business as Same Day  
 Delivery Service, to transfer operative rights, business and assets  
 to Same Day Delivery Service, a California corporation, and (2) author-  
 izing said corporation to assume indebtedness and to issue \$30,882  
 par value of its common stock.

Under authority granted by Decision No. 55242, dated  
 July 9, 1957, in Application No. 36375, Emil P. Fleschner under-  
 took operations as a highway common carrier of general commodities,  
 with some exceptions, between various points and places in Southern  
 California. He also obtained permits to operate as a city carrier,  
 a radial highway common carrier and a highway contract carrier.  
 A condensed statement of his assets, liabilities and capital at

March 31, 1958, prepared from Exhibit B attached to the application,  
is as follows:

<u>Assets</u>		
Current assets -		
Cash	\$ 9,211	
Accounts receivable	<u>11,528</u>	
Total current assets		\$20,739
Tangible assets, less reserves		29,668
Other assets		<u>890</u>
Total		<u>\$51,297</u>
<u>Liabilities and Capital</u>		
Current liabilities		\$13,999
Long-term liabilities		6,416
Proprietary capital		<u>30,882</u>
Total		<u>\$51,297</u>

Applicant Fleschner reports revenues and net income,  
before income taxes, as follows:

	1957	1958 3 Mos.
Revenues	\$268,220	\$70,707
Net income	23,137	8,720

It now appears that Emil P. Fleschner has concluded his operations can be conducted more advantageously by means of a corporate form of organization and that he proposes to transfer his operative rights, business and assets to Same Day Delivery Service, a new corporation which he has formed for the express purpose of taking over such rights, business and assets and of continuing the operations. The corporation, in acquiring the operative rights, business and assets, will assume the outstanding liabilities and will issue shares of its stock having an aggregate par value equal to the proprietor's investment.

A review of the application shows that there will be no change in the rates or service as the result of the transfer, that the same operative properties will be available to the corporation as now are utilized by Emil P. Fleschner, and that nothing is claimed for value of the operative rights. 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 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. Emil P. Fleschner may transfer to Same Day Delivery Service, a corporation, the operative rights created by this Commission's Decision No. 55242, dated July 9, 1957, in Application No. 36375, and his business and assets, as set forth in the application. Such transfer may be made as of July 1, 1958.
2. Same Day Delivery Service, a corporation, in payment for such rights, business and assets, may issue not exceeding \$30,882 par value of its common 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 Emil P. Fleschner has withdrawn or canceled and Same Day Delivery Service, 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. Same Day Delivery Service, 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 15<sup>th</sup> day of July, 1958.

E. Lynn Fox  
President  
Peter E. Mitchell  
Rafael Gutierrez  
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Commissioners