

**ORIGINAL**

Decision No. 57181

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application  
of SANTA CRUZ MOTOR EXPRESS, INC.  
for an order authorizing the  
issuance of shares of its stock.

} Application No. 40211

Joseph C. Davish, for applicant

O P I N I O N

Santa Cruz Motor Express, Inc., has filed this application for authorization to issue \$50,000 par value of common stock.

The application was filed on June 27, 1958. A public hearing was held before Examiner Coleman in Santa Cruz on July 30, 1958, and the matter was taken under submission. The Commission has received no protests in the proceeding.

Applicant was organized under the laws of the State of California on or about December 17, 1936, and for many years has been, and now is, engaged in business as a highway common carrier of general commodities between San Francisco and other Bay points, on the one hand, and Santa Cruz and certain other points, on the other hand. Its financial reports filed with the Commission show revenues, expenses and net income, after interest and other charges, for the last five calendar years and the first four months of 1958, as follows:

	<u>Revenues</u>	<u>Expenses</u>	<u>Net Income</u>
1953	\$ 41,063	\$ 40,138	\$ 925
1954	37,494	38,580	<u>1,086</u>
1955	53,370	49,369	4,001
1956	43,233	47,185	<u>3,952</u>
1957	37,334	45,871	<u>8,537</u>
1958 (4 mos.)	11,121	11,883	<u>762</u>

The deficit from operations in 1957 was caused, in part, by losses of \$2,299 on sales of equipment.

Exhibit No. 3, attached to the application, shows applicant's assets, liabilities and capital as of April 30, 1958, as follows:

Assets

Current assets -		
Cash	\$ 651.36	
Accounts receivable	<u>1,482.32</u>	
Total current assets		\$ 2,133.68
Tangible assets, less reserves of \$8,596		9,977.16
Prepaid expense		<u>400.00</u>
Total		<u>\$12,510.84</u>

Liabilities and Capital

Current liabilities -		
Accounts payable	\$5,192.87	
Taxes payable	274.11	
C.O.D.s payable	124.77	
Notes payable	<u>5,300.00</u>	
Total current liabilities		\$10,891.75
Contract payable - operating equipment		<u>3,068.00</u>
Total liabilities		\$13,959.75
Capital -		
Common stock	300.00	
Deficit	<u>1,748.91</u>	
Total capital		<u>1,448.91</u>
Total		<u>\$12,510.84</u>

The financial statements indicate that applicant has been meeting its cash requirements by utilizing depreciation moneys and by increasing its borrowings to a point where they now exceed the reported investment in assets. The statements further show that applicant is, and has been, undercapitalized, that it does not have an adequate amount of working capital, and that insufficient revenues have been developed. Applicant's president testified, and his statements were corroborated by shippers who were present at the hearing, that in many cases shippers had specified the use of applicant's service but that shipping clerks had ignored instructions and had routed the shipments over competing lines. He further asserted that business had been lost by the absence of a full-time office employee to accept orders.

Applicant now seeks to bring additional capital into the business by the sale of \$25,000 par value of stock to its customers. It reports that it is embarking upon a program whereby it hopes to increase the volume of business and to improve its service by undertaking, among other things, to become participants in joint tariffs, to engage in active solicitation and personal contact with shippers, and to set up an office with a full-time employee. Its management is of the opinion that by enlisting shippers as shareholders it can gain, or regain, a substantial volume of traffic which has been lost to other carriers and thereby increase its revenues and make full utilization of its equipment without a corresponding increase in expenses. Should the Commission grant its request to sell stock, it will use the proceeds to augment its working capital, to retire

interest bearing bank loans and other obligations and, if necessary, to acquire additional equipment.

Four shippers were present at the hearing. Their statements indicate that they are in agreement with the utility president's assertion regarding diversion of traffic, that they are aware of applicant's results of operations and that they are willing to invest in applicant's stock, should it be offered for sale.

Before proceeding with the public offering of stock, applicant proposes, and seeks authorization, to issue \$25,000 par value of stock to its present shareholders in exchange for the \$300 par value of stock presently outstanding. It proposes to offset the increase in the stated value of the stock by a new balance sheet account reflecting estimated going concern or other intangible values. It appears to be the desire to achieve a balance between the present shareholders and the prospective shareholders whereby the present shareholders will invest their experience, their past service and equipment in the enterprise and the prospective shareholders, their cash, all on an even basis.

A review of this matter clearly shows that the business is in need of working capital if it is to preserve and increase its operation and we are of the opinion that if applicant's customers are willing to invest their moneys in the enterprise we should not withhold authorization for the issue and sale of the stock to them as here proposed. In approving this request of the company,

however, we wish to emphasize that the action of the Commission should not be taken as a finding or opinion that dividends will be paid nor as an expression of the value of the stock. The most the record shows is that given additional working capital applicant will undertake to improve its financial position and to increase its volume. The order herein must not be construed as obligating the state to pay or guarantee, in any manner whatsoever, the shares of stock authorized to be issued. (Section 828, Public Utilities Code.)

With respect to the issue of stock to the present shareholders, a different situation exists. Under the terms of the Public Utilities Code, the Commission may authorize the issue of stock for certain specific purposes and no other and it is required to make a finding as to the reasonableness of the issue. (Sections 817 and 818 of the Public Utilities Code.)

In the present proceeding it appears that the proposed issue is for the purpose of maintaining for the existing shareholders an equality of control with the new shareholders and that such issue can be accounted for only by establishing on the books as intangible capital an amount equivalent to the increased stock issue. In our opinion, the Commission has no power, under the terms of the Public Utilities Code, to authorize the issue of stock for control purposes or to capitalize estimated amounts for going concern, goodwill, potential values or similarly named intangible items, or in payment of operative rights 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 rights. We therefore conclude that the request to issue \$25,000 of stock must be denied.

O R D E R

Santa Cruz Motor Express, Inc., having applied to the Commission for authority to issue \$50,000 of stock, a public hearing having been held, and the Commission being of the opinion that the request to issue \$25,000 of stock should be dismissed for lack of jurisdiction, that the money, property or labor to be procured or paid for by the issue of \$25,000 of stock herein authorized is reasonably required 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. Santa Cruz Motor Express, Inc., may issue and sell, at par for cash, on or before June 30, 1959, not to exceed \$25,000 par value of common stock for the purposes set forth in this application and in the preceding opinion.

2. The request of Santa Cruz Motor Express, Inc., to issue \$25,000 par value of stock in exchange for \$300 par value of stock now outstanding hereby is denied.

3. Santa Cruz Motor Express, Inc., 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.

4. This order will become effective 20 days after the date hereof.

Dated at San Francisco, California, this 19<sup>th</sup> day of August, 1958.

[Signature]  
President  
[Signature]  
[Signature]  
[Signature]  
Commissioners

Commissioner Ray E. Untereiner, being necessarily absent, did not participate in the disposition of this proceeding.