

ORIGINAL

Decision No. 58200

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of:

(a) AETNA FREIGHT LINES, INC., a California corporation, to purchase, and of W. J. POPE and V. W. POPE, individually, doing business as AETNA FREIGHT LINES, to sell, a certificate of public convenience and necessity for the transportation of general commodities between various points in California, pursuant to Sections 851-853 of the California Public Utilities Code.

Application No. 40222

(b) AETNA FREIGHT LINES, INC., a California corporation, 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 W. J. Pope and V. W. Pope, doing business as Aetna Freight Lines, to transfer operative rights and equipment to Aetna Freight Lines, Inc., a corporation, and (2) Aetna Freight Lines, Inc., to issue 7,500 shares of its \$10 par value capital stock.

Under authorization granted by Decision No. 50333, dated July 27, 1954, as amended, W. J. Pope and V. W. Pope undertook operations as a highway common carrier for the transportation of general commodities, with certain exceptions, between the Los Angeles territory and points within four miles of Whittier, on the one hand, and the San Francisco territory, on the other hand, and between said Los Angeles territory and points within four miles of Whittier, on the one hand, and the San Diego territory, on the other

hand. According to their 1957 annual report filed with the Commission, their operating revenues for the year amounted to \$527,249, with a net operating loss of \$30,498. According to their financial statement filed with this application, their revenues for the first three months of 1958 were \$169,463 with a net profit for the period of \$18,483.

By Decision No. 57567, dated November 3, 1958, Decision No. 57792, dated December 30, 1958 and Decision No. 58278, dated April 14, 1959, all in Application No. 36083, the Commission revoked the operating authority previously granted by said Decision No. 50333, and granted W. J. Pope and V. W. Pope an in-lieu certificate authorizing operations between additional points.

It appears that applicants Pope now desire to conduct their business by means of a corporate form of organization and that they have made arrangements to transfer their operative rights and equipment to Aetna Freight Lines, Inc., a new corporation which they have formed for the express purpose of taking over such rights and equipment and of continuing the operations. It also appears that the new corporation will acquire the properties at their book values, will assume the payment of long-term indebtedness, and will issue shares of stock in evidence of the reported net book values. A summary statement showing the assets, liabilities and net worth as of March 31, 1958, is as follows:

<u>Assets</u>	
Tangible assets, less depreciation	\$123,243.09
Other investments	2,050.00
Franchises and goodwill	50,000.00
Current assets	66,285.86
Deferred debits	951.46
Total	<u>\$242,530.41</u>
<u>Liabilities and Net Worth</u>	
Current liabilities	\$ 87,036.88
Equipment obligations	55,596.13
Deferred credits	24,291.01
Net worth	<u>75,606.39</u>
Total	<u>\$242,530.41</u>

With respect to the issue of the stock, it is noted that the proposed amount of \$75,000 was determined by including in the assets an allowance of \$50,000 for franchises and goodwill. An examination by our staff indicates that approximately \$14,000 of the amount represents actual expenditures incurred by applicants in obtaining their certificate of public convenience and necessity and that approximately \$36,000 does not reflect actual cost but represents an estimated value set up on the books for goodwill.

Under the terms of the Public Utilities Code, the Commission may authorize the issue of stock for certain specific purposes and no others and, in addition, the Commission is required to make a finding as to the reasonableness of the proposed issue. In our opinion the Commission has no power to authorize the issue of stock to capitalize the estimated amount claimed for goodwill and, therefore, it appears to us that we must exclude the amount of \$36,000 from the reported net worth in arriving at the amount of stock we can authorize. Eliminating this amount, leaves a balance of \$39,000, which appears to be the most we can recognize as the basis for an order authorizing the issue of stock.

On September 10, 1958, the Commission issued an order instituting an investigation on its own motion into the operations, rates and practices of Aetna Freight Lines, being Case No. 6177. The Commission has not as yet issued its decision in this investigation. It will grant the present application to transfer only on the specific condition that the transferee corporation shall agree that the operative rights to be transferred shall be subject to the decision to be issued in Case No. 6177.

We are of the opinion, and so find, that the proposed transfer, under the condition set forth in the order herein, will not be adverse to the public interest. 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 authorization herein granted is not to be construed as a finding of the value of the rights and equipment 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 only to the extent hereinafter

set forth, that the money, property or labor to be procured or paid for by the issue of \$39,000 of stock herein authorized is reasonably required by applicant corporation 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. W. J. Pope and V. W. Pope, on and after the effective date hereof and on or before June 30, 1959, may transfer to Aetna Freight Lines, Inc., the operative rights granted to them by Decision No. 57567, dated November 3, 1958, Decision No. 57792, dated December 30, 1958, and Decision No. 58278, dated April 14, 1959, and the operative equipment as set forth in this application.

2. Aetna Freight Lines, Inc., in acquiring said operative rights and equipment, may assume the payment of outstanding indebtedness as set forth in this application and may issue not to exceed 390 shares of its capital stock of the aggregate par value of \$39,000.

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 W. J. Pope and V. W. Pope, doing business as Aetna Freight Lines, have withdrawn or canceled and Aetna Freight Lines, 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. Aetna Freight Lines, 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 authority herein granted will become effective when Aetna Freight Lines, Inc., has filed with the Commission a stipulation in which it agrees that the operative rights to be acquired by it under such authority shall be subject to the terms and conditions of the decision to be issued in Case No. 6177.

Dated at San Francisco, California, this 12th day of May, 1959.

E. L. Fox
President

W. E. Butler

W. H. G. Goble

Theodore J. Decker

Commissioners