

ORIGINAL

Decision No. 58421

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of:

- (a) ROY MILLER FREIGHT LINES, INC., a California corporation, to purchase, and ROY MILLER, an individual, doing business as MILLER'S TRUCKING, 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.
- (b) ROY MILLER 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.

Application
No. 41096

O P I N I O N

This is an application for an order of the Commission (1) authorizing Roy Miller, an individual doing business as Miller's Trucking, to transfer operative rights and assets to Roy Miller Freight Lines, Inc., a corporation, and (2) authorizing Roy Miller Freight Lines, Inc., to issue 1,000 shares of its \$10 par value common stock.

Applicant Miller has been engaged in business as a radial highway common carrier and as a city carrier under permits granted by the Commission and as a highway common carrier of commodities in the Los Angeles Territory under authorization granted by Decision No. 53727, dated September 4, 1956, in Application No. 36436.

According to his financial statements filed in this proceeding, his gross income aggregated \$54,646 in 1958 and his net income, \$6,224.

It appears that applicant Miller now desires to conduct his business by means of a corporate form of organization and that he has made arrangements to transfer his certificate of public convenience and necessity, tangible equipment and accounts receivable to Roy Miller Freight Lines, Inc., a new corporation which he has formed for the express purpose of taking over such assets and of continuing the operations.^{1/} It appears that the new corporation will acquire the assets at their net book values of \$16,804.72, will assume the payment of indebtedness of \$5,608.26, and will issue 1,000 shares of common stock against the reported net worth of applicant Miller, the difference between the par value of the stock and the reported net worth to be recorded on the corporation's books as paid-in surplus. The application shows that no value has been assigned to the certificate of public convenience and necessity.

A review of the application further shows that there will be no change in the rates or service as the result of the transfer and no curtailment of the facilities and resources available for the conduct of the business by the corporation. We are of the opinion, therefore, and so find, that the proposed transfer will not be adverse to the public interest and we will enter our order granting this application.

^{1/} On April 14, 1959, by resolution, the Commission authorized applicant Miller to transfer his radial highway common carrier and his city carrier permits to the new corporation.

In making our order, we place applicants 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 shall not be construed to be a finding of the value of the rights and assets 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, 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 purposes specified herein, and that such purposes are not, in whole or in part, reasonably chargeable to operating expenses or to income; NOW THEREFORE,

IT IS HEREBY ORDERED as follows:

1. Roy Miller, on and after the effective date hereof and on or before December 31, 1959, may transfer to Roy Miller Freight Lines, Inc., the operative rights acquired by him by virtue of Decision No. 53727, dated September 4, 1956, in Application No. 36436, and the assets as set forth in this application.

2. Roy Miller Freight Lines, Inc., in acquiring said operative rights and assets, may assume the payment of outstanding indebtedness as set forth in this application and may issue not to exceed 1,000 shares of its common stock of the aggregate par value of \$10,000.

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 Roy Miller, doing business as Miller's Trucking, has withdrawn or canceled and Roy Miller 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. Roy Miller 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. This order will become effective on the date hereof.

Dated at San Francisco, California, this
19th day of May, 1959.

E. Lynn Fox
President

Theodore J. Jensen

Commissioners

I concur
Matthew J. Dooley
Matthew J. Dooley, Commissioner
Date MAY 20 1959