

58578

ORIGINAL

Decision No. \_\_\_\_\_

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of

RAY WITHERS and ANDREW BYRD, a  
copartnership doing business  
under the firm name and style of

SAN MATEO-BURLINGAME TRANSIT

and

SAN MATEO-BURLINGAME TRANSIT COMPANY,

for Authority to Transfer Operating  
Rights and Certain Assets; for  
Permit to Issue Stock.

)  
Application No. 40674  
(Petition for Modification)

Cyrus J. McMillan, for applicant;  
John F. Donovan, for the staff  
of the Commission.

OPINION ON PETITION FOR MODIFICATION

In this proceeding, as originally presented to the Commission, San Mateo-Burlingame Transit Company, a corporation, requested authorization to issue \$70,000 par value of common stock in payment for the operative rights and assets of Ray Withers and Andrew Byrd, copartners doing business under the firm name and style of San Mateo-Burlingame Transit.

By ex parte Decision No. 58153, dated March 24, 1959, the Commission authorized the corporation to issue not to exceed \$17,000 par value of common stock on the basis of book figures. It denied the application with respect to the remaining \$53,000 of stock.

On April 13, 1959, applicants filed a Petition for Modification of the Order in Decision No. 58153, with respect to the stock issue and requested the Commission to give further consideration to the matter and to authorize the full amount of \$70,000 in payment of said rights and assets. A public hearing on the Petition for Modification was held before Examiner Coleman in San Francisco on May 18, 1959, at which time the matter was taken under submission. The Commission has received no protests in the proceeding.

At the hearing, evidence was introduced which was not of record in the original proceeding. It is the position of applicants that the books do not reflect the cost or values of the properties to be transferred and that present-day values more properly measure the basis upon which the stock issue should be predicated. They presented, as Exhibit A, a statement showing in detail estimated present-day values of \$99,606 for the 40 units of equipment which are used in the operations, and for garage tools and equipment, miscellaneous operating equipment, fare boxes, furniture and office equipment, parts, materials and supplies on hand, plus the cost of obtaining the operative rights. A staff witness, in Exhibit 1, reported the original cost of the tangible operative properties to be transferred at \$100,924.61 and the original cost, less the related reserves, at \$45,453.36.

The transfer of the operative rights and assets from the partnership to the corporation in the present proceeding does not represent a change in management or control. The present members of the partnership merely desire to continue their business by a

corporate form of organization, instead of as a partnership, and have created the applicant corporation as an agency to receive their operative rights and assets and to continue the operations. The record shows that the present partners will own the outstanding shares of stock and will continue to operate the business. Although counsel for applicants has stated that in presenting present-day values applicants are not urging such values as constituting a rate base for the determination of rates, nevertheless, we do not believe that the mere transfer from one form of organization to another, under the circumstances set forth in this proceeding, should be the occasion for writing up the books to reflect estimated present-day values. Moreover, it has not been the policy of the Commission to recognize such values as measuring or determining the amount of stock to be issued. On the contrary, it has been the Commission's policy to use the original cost, estimated if not known, less the related depreciation reserves.

The order herein will authorize the issue of \$37,500 of stock. The following tabulation shows how this amount was determined:

Original cost of facilities, less depreciation	\$45,453.36
Materials and supplies	6,397.15
Intangible (reported expenditure in obtaining certificates)	<u>8,500.00</u>
	60,350.51
Net liabilities to be assumed by corporation	<u>22,887.60</u>
Balance	<u>\$37,462.91</u>

It is our opinion that the money, property or labor to be procured or paid for through the issue of \$37,500 par value of common stock is reasonably required by applicant corporation for the purpose specified herein, that is, the acquisition of the operative rights and assets of Ray Withers and Andrew Byrd under the circumstances set forth in this proceeding, and that such purpose is not, in whole or in part, reasonably chargeable to operating expenses or to income.

The order to be entered herein shall not be construed to be a finding of the value of the operative rights and assets to be transferred to the corporation.

ORDER ON PETITION FOR MODIFICATION

A public hearing having been held in the above-entitled matter and the Commission being of the opinion that an order should be entered, as hereinafter set forth, authorizing San Mateo-Burlingame Transit Company, a corporation, to issue \$37,500 of stock in lieu of \$17,000 par value of common stock as originally authorized; therefore,

IT IS HEREBY ORDERED that Ordering Paragraphs 2 and 3 of the Order in Decision No. 58153, dated March 24, 1959, be, and they hereby are, modified to read as follows:

"2. San Mateo-Burlingame Transit Company, in acquiring such operative rights and assets, may assume the payment of outstanding debts and may issue not to exceed \$37,500 par value of its common stock.

"3. The application insofar as it involves the issue of the remaining \$32,500 par value of stock hereby is denied."

This order shall become effective 20 days after the date hereof.

Dated at San Francisco, California,  
this 16th day of June, 1959.

[Signature]  
President  
[Signature]  
[Signature]

\_\_\_\_\_  
Commissioners

Theodore H. Jenner  
Commissioner Everett C. McKee, being  
necessarily absent, did not participate  
in the disposition of this proceeding.