

Decision No. 58916**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
 IRVING D. OSBURN, RUSSELL K. POWELL)
 and GAIL TURLEY (deceased), partners)
 doing business as B AND O SERVICE)
 COMPANY and B & O SERVICE, INC., for)
 authority for the former to transfer)
 and the latter to acquire, certain)
 operative rights, equipment and other)
 property. }

Application No. 41122
 (Amended)

O P I N I O N

Applicants instituted this proceeding to obtain authority to transfer their business. Prior to January 29, 1959, Irving D. Osburn, Russell K. Powell and Gail Turley, as partners, were carrying on a transportation business under the authority of a petroleum irregular route carrier certificate issued by this Commission. Upon the date mentioned, Turley died. As a feature of the partnership agreement a certain policy of life insurance had been carried, and with the proceeds the Turley interest was acquired from his estate.

This application was filed for authority to transfer the business to the surviving partners. A corporation was subsequently formed and on July 7, 1959 an amended application was filed requesting transfer to this corporation.

The corporation has one class of stock, the par value of which is fixed at \$10 per share. A partnership balance sheet reveals a net worth of \$57,581.40 as of March 31, 1959. The issue of 5,760 shares of stock will be authorized.

The Commission is of the opinion and finds that the money, property or labor to be procured or paid for by the issue of stock authorized by the following order 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.

B & O Service, Inc., is 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, such rights extend to the holder a full or partial monopoly of a class of business over a particular route. This monopoly feature may be modified or canceled at any time by the State, which is not in any respect limited as to the number of rights which may be given.

After consideration the Commission is of the opinion and so finds that the proposed transfer would not be adverse to the public interest. A public hearing is not necessary.

O R D E R

Application having been filed, and amended, and the Commission being of the opinion that the application as amended should be granted,

IT IS ORDERED:

1. That on or before December 1, 1959, Irving D. Osburn, Russell K. Powell and Elizabeth B. Turley as administratrix of the Estate of Gail Turley, deceased, may sell and transfer, and B & O Service, Inc., a California corporation, may purchase and acquire, the operative rights and property referred to in the application herein.

2. That within thirty days after the consummation of the transfer herein authorized, B & O Service, Inc., shall notify the Commission, in writing, of that fact and within said period shall file with the Commission a true copy of any bill of sale or other instrument of transfer which may be executed to effect said transfer.

3. That on not less than five days' notice to the Commission and to the public, effective concurrently with the consummation of such transfer, applicants shall amend or reissue the tariffs on file with the Commission, naming rates, rules and regulations governing the operations here involved to show that Irving D. Osburn, Russell K. Powell and Elizabeth B. Turley as administratrix of the Estate of Gail Turley, deceased, have withdrawn or canceled, and B & O Service, Inc., has adopted or established as its own, said rates, rules and regulations. The tariff filings made pursuant to this order shall comply with the regulations governing the construction and filing of tariffs set forth in the Commission's General Order No. 80.

4. IT IS FURTHER ORDERED that B & O Service, Inc., may issue not to exceed 5,760 shares of its common capital stock of the par value of \$10 per share (total par value \$57,600) for the purpose of acquiring, or of raising funds to acquire, the operative rights and property referred to in the foregoing opinion.

5. IT IS FURTHER ORDERED that B & O Service, Inc., shall file with the Commission a report, or reports, as required by General Order No. 24A, which general order, insofar as it is applicable, is made a part of this order.

The effective date of this order shall be twenty days after the date hereof.

Dated at San Francisco, California, this 25th day of August, 1959.

Ernest W. [Signature]
President
[Signature]
[Signature]
Therese [Signature]
Commissioners