

Decision No. 59565

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of:

- (a) SMITH TRANSPORTATION CO., a corporation, for authority to issue shares of its common capital stock pursuant to Sections 816-830 of the California Public Utilities Code; and
- (b) GEORGE C. SMITH, JR., an individual, doing business as SMITH TRANSPORTATION CO., to sell, and SMITH TRANSPORTATION CO., a corporation, to purchase certificates of public convenience and necessity as a highway common carrier and certain other property useful in connection with the performance of public utility service pursuant to Sections 851-853 of the California Public Utilities Code.

Application No. 41795

O P I N I O N

This is an application for an order of the Commission authorizing George C. Smith, Jr., an individual doing business as Smith Transportation Co., to sell and transfer his highway common carrier operative rights and certain of the properties used in conducting his public utility operations to Smith Transportation Co., a California corporation, and for the latter to issue shares of its capital stock in payment for the properties to be transferred.

George C. Smith, Jr., sometimes hereinafter referred to as "Seller," operates as a highway common carrier in the transportation of commodities generally, with certain exceptions, between the Los Angeles Territory, on the one hand, and Paso Robles, on the other hand, serving certain intermediate and off-route points as defined in certificates of public convenience and necessity granted by Decision No. 54530, dated February 11, 1957, in Application No. 36359 and Decision No. 57340, dated September 15, 1958, in Application No. 36407.

For the nine months ended September 30, 1959, Seller reports operating revenues of \$832,982.66 and net income, after income taxes, of \$29,804.43. In the September 30, 1959 balance sheet attached to the application as Exhibit B, Seller reports assets and liabilities as follows:

Assets

Current assets -			
Cash		\$ 28,785.59	
Accounts receivable		89,065.77	
Prepayments		40,946.85	
Material and supplies		<u>1,509.61</u>	
Total current assets			\$160,307.82
Fixed assets -			
Structures and land	\$ 26,254.98		
Other carrier property	<u>517,196.85</u>		
Subtotal	543,451.83		
Less: Reserve for depreciation	<u>314,932.48</u>	228,519.35	
Non-carrier property		18,500.00	
Franchises and permits		6,223.60	
Deferred debits and advances		<u>10,479.36</u>	
Total fixed assets			<u>263,722.31</u>
Total assets			<u>\$424,030.13</u>

Liabilities

Current liabilities -			
Notes payable		\$ 2,200.00	
Accounts payable		56,800.08	
Unremitted C.O.D.		23,210.52	
Other current liabilities		<u>16,397.47</u>	
Total current liabilities			\$ 98,608.07
Fixed liabilities -			
Equipment obligations		228,542.44	
Real estate mortgages		7,019.69	
Deferred credits and reserves		<u>329.51</u>	
Total fixed liabilities			235,891.64
Net Worth			<u>89,530.42</u>
Total liabilities			<u>\$424,030.13</u>

In order to guarantee the continuity of the business and to separate the public utility business from other assets he may own, Seller has caused the formation of Smith Transportation Co., a California corporation, to which he proposes to transfer his operative rights and properties, excepting real property and improvements having a book value of \$26,254.98, and non-carrier property having a book value of \$18,500. The corporation will assume the liabilities of Seller excepting the long-term obligation of \$7,019.69 on real property which will not be transferred. Also

the franchises and permits which are carried on Seller's books at \$6,223.60 will be transferred to the corporation but no value will be assigned to such certificates, permits or franchises. Giving effect to the nontransfer of certain properties and the restatement of the value assigned to the franchises and permits as referred to above, the net worth of Seller is reduced from the \$89,530.42 shown in the September 30, 1959 balance sheet to \$64,826.51 which will be increased to \$65,000 through the investment by Seller of cash in the amount of \$173.49. The corporation proposes to issue 6,500 shares of its \$10 par value capital stock in payment for the properties to be acquired.

In explanation of its position of not transferring to the corporation the real property and improvements that are used as terminal facilities, it is stated that the terminal property has been used for several years and is presently not adequate to meet the requirements of the business and that a proposed relocation of U. S. Highway 101 will impair the usefulness of such facilities. It is the intention of the parties to this transfer that Seller will lease the terminal facilities to the corporation until more suitable terminal facilities in Santa Maria can be secured by the corporation.

Seller is now a party to Western Motor Tariff Bureau, Local, Joint and Proportional Freight Tariff No. 18-B, Cal.P.U.C. No. 17 and California Common Carrier Motor Freight Local and Joint Tariff No. 1, Cal. P.U.C. No. 1. It is proposed that the corporation be substituted for the Seller in such tariffs and will

participate in joint through rates with other carriers between the same points and to the same extent as Seller presently participates in such joint through rates.

From a review of the application, it appears that there will be no change in the management or operations as a result of the transfer and no change in rates to be charged the public. We are of the opinion, and so find, that the transfer, as proposed, will not be adverse to the public interest and 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 purpose specified herein, and that such purpose is not, in whole or in part, reasonably chargeable to operating expenses or to income.

Smith Transportation Co., a corporation, 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, 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 action taken herein shall not be construed to be a finding of the value of the operative rights and properties 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, as herein provided, therefore,

IT IS HEREBY ORDERED as follows:

1. George C. Smith, Jr., an individual doing business as Smith Transportation Co., may sell and transfer to Smith Transportation Co., a corporation, the certificates of public convenience and necessity granted to him by Decision No. 54530, dated February 11, 1957 and Decision No. 57340, dated September 15, 1958, and the automotive equipment and other property referred to in this proceeding.

2. Smith Transportation Co., a corporation, for the purpose of acquiring the operative rights and properties herein authorized to be transferred, may issue not to exceed \$65,000 par value of its common stock and may assume the outstanding liabilities of George C. Smith, Jr., doing business as Smith Transportation Co., excepting those pertaining to the real property and structures which are not being transferred.

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 now on file with the Commission, naming rates, rules and regulations governing the operations here involved, to show that George C. Smith, Jr., doing business as Smith Transportation Co., has withdrawn or canceled and Smith Transportation Co., 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. Smith Transportation Co., 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 shall become effective upon the date hereof.

Dated at San Francisco, California, this 1st day of February, 1960.

Robert W. Page
President

W. E. [unclear]

William [unclear]

[unclear]

Theodore [unclear]
Commissioners