

ORIGINAL

Decision No. 59800

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of FLOYD G. POWERS and RAYMOND L. SMITH, copartners, doing business as AIRWAY TRUCKING COMPANY to sell to AIRWAY TRUCKING CO., a California corporation, Certificates of Public Convenience and Necessity for Transportation of Various Commodities between various points in California, pursuant to Sections 851 to 853 of California Public Utilities Code, and

Application of AIRWAY TRUCKING CO., a California corporation to issue shares of its capital stock pursuant to Sections 816 to 830 of California Public Utilities Code.

Application No. 41831
and Amendment

O P I N I O N

This is an application filed on January 5, 1960, and amended on February 1, 1960, for an order of the Commission (1) authorizing Floyd G. Powers and Raymond L. Smith, copartners, to sell and transfer their operative rights, equipment and other assets to Airway Trucking Co., a corporation, and (2) authorizing Airway Trucking Co., a corporation, to assume the payment of indebtedness and to issue 1,000 shares of its capital stock without par value in exchange for the copartners' operative rights, equipment and other assets.

Floyd G. Powers and Raymond L. Smith, copartners doing business as Airway Trucking Company, in addition to operating under certificates of public convenience and necessity of the

Interstate Commerce Commission and permits of this Commission, operate as a highway common carrier and a petroleum irregular route carrier pursuant to certificates of public convenience and necessity created by this Commission. The certificates of public convenience and necessity proposed to be transferred in this proceeding to Airway Trucking Co., a corporation, were acquired by the copartners pursuant to authority granted by (1) Decision No. 49863, dated March 30, 1954, in Application No. 35225, as amended by orders extending time, and (2) Decision No. 50911, dated December 28, 1954, in Application No. 35869. Subsequent to such acquisition, the certificate of public convenience and necessity involved in said Decision No. 50911 was amended by Decision No. 51095, dated February 7, 1955, in Application No. 30691.

Subject to exceptions and restrictions, the certificates of public convenience and necessity acquired by the copartners under authority of this Commission authorize transportation (1) as a highway common carrier (a) of petroleum products in bulk substantially along all principal routes and between all principal points in California south of San Francisco, Sacramento and Topaz Lake, and (b) of certain oil field and farming equipment over specified routes and between points and places generally covering the State of California, and (2) as a petroleum irregular route carrier between all points and places within the State of California.

For the eight months ended August 31, 1959, the partnership reports operating revenues of \$335,708.80 and a net profit of \$10,995.32. Its assets and liabilities at August 31, 1959, as summarized from Exhibit D attached to the application, are as follows:

Assets

Current assets	\$41,158.47
Carrier operating property, less reserves	23,293.98
Carrier permits and certificates	6,470.00
Transport clearings	<u>2,422.34</u>
Total	<u>\$73,344.79</u>

Liabilities

Current liabilities	\$28,739.67
Equipment obligations	20,475.00
Advances payable	12,697.14
Net worth	<u>11,432.98</u>
Total	<u>\$73,344.79</u>

Airway Trucking Co., a corporation organized on or about March 26, 1957, has no assets and no liabilities, but proposes to acquire the assets, and to assume the liabilities, represented by the foregoing financial statement, in exchange for 1,000 shares of its capital stock without par value, for which it has assigned a value of \$11,432.98, being identical with the reported net worth of the partnership at August 31, 1959. Neither the original application, nor the amendment thereto, contains information upon which to predicate an order for the issue of stock in payment of operative rights. Deducting from the \$11,432.98 total, the \$6,470.00 figure for carrier permits and certificates, results in an amount of \$4,962.98, or approximately \$5,000.00,

for which we shall authorize the corporate applicant to value the 1,000 shares of capital stock.

It appears that there will be no change in the rates or service as a result of the transfer and the Commission is of the opinion, and so finds, that such transfer will not be adverse to the public interest, that the money, property or labor to be procured or paid for by the issue of the stock herein authorized is reasonably required for the purpose specified herein, and that such purpose is not, in whole or in part, reasonably chargeable to operating expenses or to income.

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 action taken herein shall not be construed to be a finding of the value of the certificates of public convenience and necessity, equipment, or other 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 and that the application, as amended, should be granted, as herein provided, therefore,

IT IS HEREBY ORDERED as follows:

1. Floyd G. Powers and Raymond L. Smith, may sell and transfer to Airway Trucking Co., a corporation, which corporation may purchase and acquire, the certificates of public convenience and necessity of this Commission and other properties referred to in this application, as amended.

2. Airway Trucking Co., a corporation, on and after the date hereof and on or before May 31, 1960, in acquiring said certificates of public convenience and necessity and other properties, may assume the payment of outstanding liabilities and may issue not to exceed 1,000 shares of its capital stock without par value at a stated value of not to exceed \$5 per share.

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 Floyd G. Powers and Raymond L. Smith have withdrawn or canceled and Airway Trucking 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. Airway Trucking 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. For accounting purposes only, applicants are authorized to use an effective date of August 31, 1959.

6. This order shall become effective on the date hereof.

Dated at San Francisco, California, this

22nd day of March, 1960.

[Signature]
President

[Signature]

[Signature]

[Signature]

Theodore Jensen
Commissioners