

ORIGINAL

Decision No. 62170

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
KENNETH D. RUDD, doing business as)
RUDDWAY DRAYAGE, and RUDDWAY DRAYAGE,)
INC., for authority for the former to)
transfer certain operative rights and)
other property, and for the latter to)
issue stock and a promissory note.)

Application No. 43279
Filed April 3, 1961

O P I N I O N

This is an application for an order of the Commission (1) authorizing Kenneth D. Rudd to transfer operative rights and assets to Ruddway Drayage, Inc., and (2) authorizing Ruddway Drayage, Inc., to issue a note in the principal amount of \$1,789.20 and common stock of the aggregate par value of \$2,000.00.

Kenneth D. Rudd, an individual doing business as Ruddway Drayage, is a highway common carrier of general commodities, with certain exceptions, between points in the San Francisco-East Bay Cartage Zone, and between San Mateo and San Jose and points in the vicinity of San Jose, under certificates of public convenience and necessity granted by Decisions Nos. 53400, 53644 and 60063. In 1960, he reported freight revenues of \$146,939.00 and net income of \$8,808.00, after provision of \$10,012.00 for depreciation.

The application shows that applicant Rudd now desires to conduct his operations by means of a corporate form of organization and that he proposes to transfer his operative rights, office equipment and current assets, subject to current liabilities, to

Ruddway Drayage, Inc., a new corporation which he has organized for the express purpose of taking over and of continuing the highway common carrier business. The corporation will acquire the office equipment and current assets at their net book values of \$3,789.20 and will issue to Kenneth D. Rudd its common stock in the amount of \$2,000.00 and a note in the amount of \$1,789.20 which will be payable 30 days after demand with interest at the rate of 6 per cent per annum. No value is assigned to the operative rights.

Applicant Rudd proposes to withhold from transfer to the corporation all his motor vehicle equipment, and the liabilities applicable to such equipment, and to lease such equipment to the corporation for approximately \$800.00 a month. Applicant Rudd will replace the equipment and also will provide additional equipment as needed.

It appears that there will be no change in the rates or service as a result of the transfer, that the same equipment will be available to the corporation as now is utilized in the operations, and that the rental payments by the corporation will be no greater than the annual depreciation now charged against the operations. We find and conclude, therefore, that the transfer of the operations to the corporation under the terms as proposed, and subject to the conditions of the order herein, will not be adverse to the public interest and that the arrangements as contemplated will not threaten to impair the ability of the corporation to meet its public service obligations. We will enter an order granting the application.

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 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, that the money, property or labor to be procured or paid for by the issue of the note and stock herein authorized is reasonably required by Ruddway Drayage, Inc., for the purpose specified herein, and that such purpose is not, in whole or in part, reasonably chargeable to operating expenses or to income; therefore,

IT IS HEREBY ORDERED as follows:

1. Kenneth D. Rudd may transfer to Ruddway Drayage, Inc., a corporation, his highway common carrier operative rights which he has acquired under the authority of Decisions Nos. 53400, 53644 and 60063 and the assets as set forth in this application,

Provided, however, that the authority herein granted is subject to the condition that the property withheld by applicant Kenneth D. Rudd from transfer to said corporation is not relieved from its devotion to the public use and that its status as public utility operative property shall continue.

2. Ruddway Drayage, Inc., a corporation, in acquiring said operative rights and assets, may assume the payment of outstanding liabilities and may issue not to exceed \$2,000.00 par value of its capital stock and a promissory note in the principal amount of not to exceed \$1,789.20.

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 highway common carrier operations here involved to show that Kenneth D. Rudd has withdrawn or canceled and Ruddway Drayage, 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. Ruddway Drayage, Inc., 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 when Ruddway Drayage, Inc., has paid the minimum fee prescribed by Section 1904(b) of the Public Utilities Code, which fee is \$25.00. If not exercised, the order will expire December 31, 1961.

Dated at San Francisco, California,
this 27th day of June, 1961.

[Signature]
President
[Signature]
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Commissioners

