

ORIGINAL

Decision No. 63871

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of  
GEORGE J. SMITH and GORDON G. SMITH,  
co-partners, d/b/a SMITH TRUCK LINE,  
to sell and transfer,

and of

SMITH TRUCK LINE, INC., a California  
corporation, to purchase and acquire  
the operative rights and property of  
GEORGE J. SMITH and GORDON G. SMITH,  
co-partners, d/b/a SMITH TRUCK LINE,  
conducted under and pursuant to  
Decision No. 61028 dated 7 November  
1960 in Application No. 42412,

and of

SMITH TRUCK LINE, INC., for authority  
to issue 2338 shares of its common  
capital stock without par value in  
payment of the purchase price of the  
operative rights and property  
proposed to be acquired under and  
pursuant to Sections 1063 and 1064.1,  
of the Public Utilities Code of the  
State of California.

Application No. 44461  
Filed May 21, 1962

O P I N I O N

This is an application for an order of the Commission authorizing George J. Smith and Gordon G. Smith, doing business as Smith Truck Line, to transfer operative rights and equipment to Smith Truck Line, Inc., a corporation, and authorizing said corporation to assume certain liabilities and to issue 2,338 shares of its common stock.

The application shows that George J. Smith and Gordon G. Smith, hereinafter referred to as Sellers, are engaged in business as highway common carriers of general commodities, with certain exceptions, along Highway 99 between Modesto and Bakersfield, with service to Los Banos, Dos Palos and certain other points, under a certificate of public convenience and necessity granted by Decision No. 61028, dated November 7, 1960, in Application No. 42412; that said Sellers have concluded to incorporate the business; and that they have organized applicant corporation and propose to transfer to it their operative rights, equipment and assets.

The plans contemplate that the new corporation will take over the assets of the Sellers at book values, will assume the outstanding liabilities, and will issue to the Sellers 2,338 shares of common stock without par value. A condensed statement, prepared from Exhibit B attached to the application, shows the Sellers' assets, liabilities and net worth as of December 31, 1961, as follows:

<u>Assets</u>	
Current assets -	
Cash	\$ 7,515
Accounts receivable	3,801
Prepaid expense	256
Total current assets	<u>\$11,572</u>
Tangible assets, less depreciation	<u>27,752</u>
Total	<u>\$39,324</u>
<u>Liabilities and Net Worth</u>	
Current liabilities	\$ 4,933
Long-term liabilities	11,011
Net worth	<u>23,380</u>
Total	<u>\$39,324</u>

Exhibit B further shows that during the period from January 1 through December 31, 1961, the operating revenues of the business amounted to \$100,723 and the net profit to \$13,049, after making deductions of \$8,733 for depreciation but before taxes on income.

From a review of the application it appears that there will be no change in the management, facilities or operations as a result of the proposed transfer, and that the new corporation will succeed to a going profitable concern, equipped with eighteen units of rolling stock, and will enter upon its operations in what appears to be a good financial position. Under the circumstances as set forth in the application, we find and conclude that the proposed transfer will not be adverse to the public interest and we will enter an order granting applicants' requests.

In making this order we place Smith Truck Line, Inc., 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.

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. The authority granted is for the transfer only of the certificate of public convenience and necessity to operate as a highway common carrier. A separate application must be filed for authority to transfer the highway permits.

O R D E R

The Commission has considered the above-entitled matter, has determined that a public hearing is not necessary, and is of the opinion 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 stock herein authorized is reasonably required by Smith Truck Line, 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 ORDERED as follows:

1. George J. Smith and Gordon G. Smith, doing business as Smith Truck Line, may sell, assign and transfer to Smith Truck Line, Inc., the certificate of public convenience and necessity granted by Decision No. 61028, dated November 7, 1960, in Application No. 42412, and the equipment and assets set forth in this application. For accounting purposes, the transfer may be made as of January 1, 1962.

2. Smith Truck Line, Inc., on and after the effective date hereof and on or before December 31, 1962, may issue not to exceed 2,338 shares of its common stock without par value and assume the payment of outstanding liabilities as set forth in this application in payment for said certificate, equipment and assets.

3. Applicants shall amend or reissue the tariffs on file with the Commission, naming rates, rules and regulations governing the common carrier operations here involved to show that George J. Smith and Gordon G. Smith, doing business as Smith Truck Line, have withdrawn or canceled, and Smith Truck Line, Inc., has adopted or established, as its own, said rates, rules and regulations. The tariff filings shall be made effective not earlier than ten days after the effective date of this order on not less than ten days' notice to the Commission and to the public, and the effective date of the tariff filings shall be concurrent with the consummation of the transfer herein authorized. 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 Truck Line, 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 shall become effective twenty days after the date hereof.

Dated at San Francisco, California,  
this 2nd day of JULY, 1962.

George T. Brown  
President  
Richard Mitchell  
Arnell W. Fox  
Fredrick B. Holbrook  
Commissioners

Commissioner C. Lyn Fox, being necessarily absent, did not participate in the disposition of this proceeding.