

ORIGINAL

Decision No. 65603

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of AZUSA TRANSFER COMPANY, a corporation, to transfer, and of AZUSA TRANSPORTATION CO., a corporation, to acquire, the certificate of public convenience and necessity and certain tangible property of AZUSA TRANSFER COMPANY; and of AZUSA TRANSPORTATION CO. for authority to issue capital stock

Application No. 45449
Filed May 20, 1963

O P I N I O N

This is an application for an order authorizing Azusa Transfer Company, a corporation, hereinafter referred to as "transferor", to transfer operative rights and equipment to Azusa Transportation Co., a corporation, hereinafter referred to as "transferee", and authorizing transferee to issue \$25,000 par value of its common stock.

Transferor is a California corporation which is engaged in business as a highway common carrier of certain commodities under and by virtue of a certificate of public convenience and necessity issued by the Commission in Decision No. 61309, dated January 4, 1961, as amended, in Application No. 42603. Its outstanding stock, according to its 1962 annual report, is held by Alvina B. Meier, Barbara M. Raymond and Robert and Elizabeth Bensinger.

It appears that those in control of transferor desire to withdraw from the operation of the business and that arrangements have been made for the transfer of the operative rights and equipment to the transferee, a recently organized California corporation. The agreed consideration to be paid for the operating authorities is the sum of \$5,000 and for the equipment, \$370,000, less an adjustment for depreciation accruing subsequent to April 23, 1963, the date of the purchase and sale agreement. Transferor, in its 1962 annual report, shows the cost of its operative rights at \$9,470.

Pending consummation of the purchase, the parties propose to enter into a lease agreement whereby transferor will lease the operative rights and equipment to transferee for the sum of \$5,500 monthly, which is equivalent to the monthly depreciation charges on the equipment plus \$500 for the operative rights, the payments to be applied on the purchase price.

The new corporation proposes to issue and sell \$25,000 par value of its common stock to Gerald D. Gurley, Alfred J. Deller and Gerald M. Stone to finance the purchase price of the operative authorities and to provide working cash. It proposes to issue its note to Union Bank to provide the \$370,000 purchase price of the motor vehicle equipment, said note to be secured by chattel mortgage and to be payable in 48 equal monthly installments with interest at the rate of 4-1/4% per annum.

Financial statements filed with the application show that transferor for 1961 reported operating revenues of \$1,308,821 and net income of \$32,545, and for 1962, operating revenues of \$2,101,057 with a net loss, however, of \$76,727, after charges for depreciation of \$57,937 in 1961 and \$84,543 in 1962. The staff of the Commission has reviewed the application and the reported results of operations and has examined certain of the records of transferor. It appears that the proposed shareholders of transferee are also the sole shareholders of Progressive Transportation Co., a permitted carrier, and that they are of the opinion they can effect savings in the operating costs of the lines of transferor by consolidation of maintenance and other activities with those of Progressive Transportation Co. and by elimination of executive payrolls and other expenses. In Exhibit G, they set forth, in some detail, a schedule showing calculated savings in the operating expense of the business of transferor in the amount of \$198,368, on the basis of the 1962 operations, and they estimate that had the transfer as proposed been completed and the revised operating methods placed into effect in 1962, the business of transferor could have produced net profit of \$121,640, after provision of \$84,543 for depreciation.

We have considered this matter and the financial statements and representations made to us. True, transferee will enter upon its operations with an unbalanced capital structure consisting of a \$370,000 long-term note and \$25,000

par value of common stock but upon the basis of the detailed information before us, it appears that, following the transfer, economies in operations can reasonably be expected which should permit the transferee to meet its obligations under the note, thereby within a relatively short time correcting the imbalance between debt and equity, and at the same time to maintain the public service.

Upon a full review, therefore, we find that the proposed transfer and lease will not be adverse to the public interest; that a public hearing is not necessary; 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. The issue of the note to purchase equipment comes within the terms of Section 816.5 of the Public Utilities Code. The authorization of the Commission is not required for the note and mortgage.

The action taken herein shall not be construed to be a finding of the value of the operative rights and equipment to be transferred. Azusa Transportation Co. 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.

As heretofore stated, the proposed shareholders of Azusa Transportation Co. are also the sole shareholders of Progressive Transportation Co., a carrier which holds unrestricted radial highway common carrier and highway contract carrier permits. Section 3542 of the Public Utilities Code prohibits a corporation or person from being both a highway common carrier and a highway contract carrier of the same commodities between the same points. Similarly, a highway common carrier may not operate under a radial highway common carrier permit within the scope of its highway common carrier certificate. (People v. Geijsbeek, 153 CA (d) 300.) To avoid possible unlawful alter ego situations the permits of transferor, Azusa Transfer Company and of Progressive Transportation Co., should be restricted to exclude therefrom authority to provide transportation for the commodities and between the points which transferee, Azusa Transportation Co., is authorized to operate as a highway common carrier. The order in this proceeding shall become effective concurrently with the conditioning of the permits as hereinbefore indicated.

O R D E R

IT IS ORDERED that:

1. On or before December 31, 1963, Azusa Transfer Company may sell and transfer, and Azusa Transportation Co. may purchase and acquire, the certificate of public convenience and necessity granted by Decision No. 61309, dated January 4, 1961, as amended, in Application No. 42603, together with the equipment as set forth in this application.

2. Azusa Transportation Co., for the purpose of acquiring said certificate and providing working capital, may issue not to exceed \$25,000 par value of common stock.

3. Pending consummation of the transfer herein authorized, Azusa Transfer Company may lease its operative rights and equipment to Azusa Transportation Co., in accordance with the terms of the lease agreement dated April 23, 1963, a copy of which is annexed to the application herein.

4. Within thirty days after the consummation of the transfer herein authorized, Azusa Transportation Co. 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.

5. Azusa Transportation Co. shall amend or reissue the tariffs on file with the Commission, naming rates, rules and regulations governing the common carrier operations herein to show that it 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 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-A.

6. Azusa Transportation Co. 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.

7. This order shall become effective upon the date the Commission issues revised permits to Azusa Transfer Company and Progressive Transportation Co. conditioned in the manner stated in the preceding opinion.

Dated at San Francisco, California,
this 18th day of June, 1963.

[Signature] President
[Signature]
[Signature]

Commissioners