

ORIGINAL

Decision No. 67471

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of:

(a) OERTLY BROS. TRUCKING COMPANY, a corporation, to purchase, and of GEORGE C. OERTLY and JOHN W. OERTLY, copartners doing business as OERTLY BROS. TRUCKING CO., to sell a certificate of public convenience and necessity for the transportation of general and special commodities between various points in California south of U. S. Highway 40, pursuant to Section 851-853 of the California Public Utilities Code.

Application No. 46683
Filed May 28, 1964

(b) OERTLY BROS. TRUCKING COMPANY, a corporation, to issue shares of its common capital stock, pursuant to Section 816-830 of the California Public Utilities Code.

O P I N I O N

This is an application for an order of the Commission

(1) authorizing George C. Oertly and John W. Oertly, copartners doing business as Oertly Bros. Trucking Co., to sell and transfer their highway common carrier certificate of public convenience and necessity, together with related motor vehicle equipment and other assets, to Oertly Bros. Trucking Company, a corporation, and (2) authorizing Oertly Bros. Trucking Company, in acquiring said assets, to assume outstanding indebtedness and to issue \$38,800 par value of its common stock.

By Decision No. 60750, dated September 13, 1960, as amended by Decision No. 61411, dated January 24, 1961, in Application No. 41954, the Commission granted to George C. Oertly and John W. Oertly, doing business as Oertly Bros. Trucking Co., a certificate of public convenience and necessity authorizing them to operate as a highway common carrier of general and special commodities between various points and places in California. The copartners desire that their operations be conducted under a corporate form of organization and, in order to accomplish such objective, they seek authority to sell and transfer to Oertly Bros. Trucking Company their operating rights and related assets, subject to existing liabilities, having a net worth as of December 31, 1963, in the amount of \$38,862.81. Oertly Bros. Trucking Company, which was organized under the laws of the State of California on or about December 24, 1963, proposes to issue 388 shares of its common stock having an aggregate par value of \$38,800 in exchange for the assets, subject to existing liabilities, of the copartnership.

The Commission has considered this matter and finds that: (1) no changes in rates or service to the public would result from the proposed transfer; (2) the proposed sale and transfer would not be adverse to the public interest; (3) 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 (4) such purpose is not, in whole or in part, reasonably chargeable to operating expenses

or to income. On the basis of these findings we conclude that the application should be granted. A public hearing is not necessary.

Oertly Bros. Trucking Company 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.

The action taken herein shall not be construed to be a finding of the value of the operative rights and other assets to be transferred. So far as the rights are concerned, the authorization herein granted is for the transfer of only the highway common carrier certificate of public convenience and necessity. The transfer of permitted operative rights must be the subject of a separate application, or applications.

O R D E R

IT IS ORDERED that:

1. On or before December 31, 1964, George C. Oertly and John W. Oertly, doing business as Oertly Bros. Trucking Co., may sell and transfer, and Oertly Bros. Trucking Company may purchase and acquire, the highway common carrier certificate of public convenience and necessity and other assets referred to in this application.

2. Oertly Bros. Trucking Company, in consideration for said assets, may assume the payment of outstanding liabilities of the copartnership and may issue not to exceed 388 shares of its common stock at not less than their par value of \$100 per share.

3. Oertly Bros. Trucking Company shall file with the Commission a report, or reports, as required by General Order No. 24-B, which order, insofar as applicable, is hereby made a part of this order.

4. Within thirty days after the consummation of the transfer herein authorized, Oertly Bros. Trucking Company 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. Certly Bros. Trucking Company shall amend or reissue the tariffs on file with the Commission, naming rates and rules governing the common carrier operations herein to show that it has adopted or established, as its own, said rates and rules. The tariff filings shall be made effective not earlier than ten days after the 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. On or before the end of the third month after the consummation of the transfer as herein authorized, Certly Bros. Trucking Company shall cause to be filed with the Commission, in such form as it may prescribe, an annual report, or reports, covering the period commencing with the first day of the current year to and including the effective date of the transfer.

7. The effective date of this order is the date hereof.

Dated at San Francisco, California, this 7th day of JULY, 1964.

Frederick G. Hallock
President

[Signature]

[Signature]

George H. Traver

Commissioners