

**ORIGINAL**

Decision No. 67862

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of:

(a) YAMASHIRO-NAKO ENTERPRISES, INC. for authority to issue shares of its common capital stock pursuant to Section 816-830 of the California Public Utilities Code.

(b) ESTERO CORPORATION, a corporation, doing business as HI-BALL TRUCKING, to sell, and YAMASHIRO-NAKO ENTERPRISES, INC., a corporation, to purchase a highway common carrier operating right for the transportation of property, pursuant to Section 851-853 of the California Public Utilities Code.

Application No. 46637  
Filed May 14, 1964  
and Amendment  
Filed August 4, 1964

O P I N I O N

This is an application for an order of the Commission (1) authorizing Estero Corporation, doing business as Hi-Ball Trucking, to sell and transfer a highway common carrier certificate of public convenience and necessity, together with the related motor carrier business and goodwill, to Yamashiro-Nako Enterprises, Inc., and (2) authorizing Yamashiro-Nako Enterprises, Inc. to issue 300 shares of its no par value common stock at an aggregate stated value of \$30,000.

Estero Corporation, a California corporation doing business as Hi-Ball Trucking, operates as a highway common carrier of general commodities, with certain exceptions, between Los Angeles and the Los Angeles Harbor District and of certain specific commodities in the Los Angeles Basin Area, under the certificate

of public convenience and necessity granted by Decision No. 63025, dated January 9, 1962, in Application No. 43463. The application shows that the company desires to dispose of its motor carrier operating rights, business and goodwill and that it proposes to sell and transfer said assets to Yamashiro-Nako Enterprises, Inc. for \$18,000.

The application further shows that Yamashiro-Nako Enterprises, Inc. is a California corporation organized on or about February 11, 1964. In this proceeding, it originally sought authority to issue 300 shares of its stock for \$30,000 cash, to apply \$18,000 of the proceeds toward acquisition of operative rights and to utilize \$12,000 for working capital. Subsequent to filing the application, the company reported that its prospective stockholders had agreed to a reduction in the requested stock authorization to \$14,000 and that the \$16,000 balance of the purchase price will be advanced to the corporation on open account from the shareholders. The proceeds of the \$14,000 stock issue will be applied toward payment for the lawful cost of acquiring operative rights in the amount of \$2,000 and the remainder of \$12,000 will be used for working capital purposes.

The Commission has considered this matter and finds that:

(1) the proposed sale and transfer would not be adverse to the public interest; (2) the money, property or labor to be procured or paid for by the issue of the 140 shares of stock herein authorized is reasonably required for the purposes specified herein; and (3) such purposes are 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 (a) dismissed with respect to 160 shares of the proposed stock issue and (b) granted in all other respects. A public hearing is not necessary.

Yamashiro-Nako Enterprises, Inc. 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 the highway common carrier certificate of public convenience and necessity only. 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, Estero Corporation, doing business as Hi-Ball Trucking, may sell and transfer, and Yamashiro-Nako Enterprises, Inc. may purchase and acquire, the highway common carrier certificate of public convenience and necessity, business and goodwill referred to in this application.

2. Yamashiro-Nako Enterprises, Inc., on or before December 31, 1964, for the purposes specified in this proceeding, may issue and sell not to exceed 140 shares of its no par value common stock at a price of \$100 per share for a total cash consideration of \$14,000.

3. Yamashiro-Nako Enterprises, Inc. 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, Yamashiro-Nako Enterprises, Inc. 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. Yamashiro-Nako Enterprises, Inc. 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 thirty days after the date of this order on not less than thirty 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, Yamashiro-Nako Enterprises, Inc. 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. This application, insofar as it relates to the issue and sale of 160 shares of stock in addition to the 140 shares herein authorized, is dismissed.

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

Dated at San Francisco, California, this 22<sup>nd</sup>  
day of SEPTEMBER, 1964.

Frederick B. Holdcroft  
President  
George T. Hoover  
William M. Bennett  
Commissioners