

**ORIGINAL**

Decision No. 69022

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of

R. E. ELLIS, an individual, doing business as R. E. ELLIS DRAYING CO., for authority to transfer assets, and

R. E. ELLIS DRAYING CO., INC., a California Corporation, for authority to acquire assets, assume liabilities, issue stock, and execute promissory note.

Application No. 47491  
Filed April 13, 1965

O P I N I O N

This is an application for an order of the Commission

- (1) authorizing Russell E. Ellis, an individual doing business as R. E. Ellis Draying Co., to sell and transfer a highway common carrier certificate of public convenience and necessity, together with related assets, to R. E. Ellis Draying Co., Inc., and
- (2) authorizing R. E. Ellis Draying Co., Inc., in acquiring said assets, to assume certain obligations and to issue \$30,000 par value of its capital stock and a \$5,794 promissory note.

By Decision No. 61692, dated March 21, 1961, as supplemented by Decision No. 61847, dated April 18, 1961, in Application No. 42930, the Commission granted a highway common carrier certificate of public convenience and necessity to Russell E. Ellis, an individual. Said certificate authorizes the transportation of general commodities, with certain exceptions,

between all points and places in the San Francisco Territory and certain other areas in northern and central California. The carrier also possesses operative rights pursuant to permits issued by this Commission and conducts operations subject to the jurisdiction of the Interstate Commerce Commission.

In this proceeding, Russell E. Ellis proposes to sell and transfer his highway common carrier certificate of public convenience and necessity, together with assets related to his business, to R. E. Ellis Draying Co., Inc. The application shows that the proprietorship capital as of December 31, 1964, was \$49,813.78, and that franchises and goodwill amounted to \$1,296.84.

R. E. Ellis Draying Co., Inc. is a California corporation organized on or about December 29, 1964. In acquiring the seller's assets, the company proposes to assume payment of existing long-term obligations and other liabilities. As part of the consideration for the sale and transfer of such assets and liabilities, the corporation requests authority to issue 30,000 shares of its \$1 par value capital stock having an aggregate par value of \$30,000, and to issue a 6% promissory note in the principal amount of \$5,794 maturing not more than one year from its date. It appears that the purchase price will be based upon the proprietorship capital on the transfer date and that the balance of said purchase price will be represented by an open account payable to the seller.

The Commission has considered this matter and finds that: (1) the proposed sale and transfer would not be adverse

to the public interest; (2) applicant's proposal to issue a \$5,794 promissory note maturing not more than one year from its date does not require authorization from this Commission; (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 the foregoing findings we conclude that the application should be (a) dismissed with respect to the \$5,794 proposed note issue, and (b) granted in all other respects. A public hearing is not necessary.

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, 1965, Russell E. Ellis may sell and transfer, and R. E. Ellis Draying Co., Inc. may purchase and acquire, the highway common carrier certificate of public convenience and necessity and other assets referred to in the application.

2. R. E. Ellis Draying Co., Inc., on or before December 31, 1965, in acquiring said certificate and other assets, may assume payment of outstanding obligations and may issue not to exceed \$30,000 par value of its capital stock, at not less than par.

3. R. E. Ellis Draying Co., 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, R. E. Ellis Draying Co., 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. R. E. Ellis Draying Co., Inc. shall amend or reissue the tariffs on file with the Commission, naming rates and rules governing the highway 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, R. E. Ellis Draying Co., Inc. shall cause to be filed with the Commission, in such form as it may prescribe, an annual report, or reports, related to the operations of the seller for 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 seeks authority to issue a \$5,794 note, is dismissed.

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

Dated at San Francisco, California, this 11th day of MAY, 1965.

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 President  
*John E. ...*  
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*George L. ...*  
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*Augustus ...*  
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*William C. ...*  
 Commissioners

Commissioner Frederick B. Holboff, being necessarily absent, did not participate in the disposition of this proceeding.