

Decision No. 75881

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application)	
of SYSTEM 99)	
a California Corporation, for)	Application No. 51167
authority to issue promissory)	Filed June 16, 1969
notes and to encumber real property)	
therefor)	
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O P I N I O N

System 99 requests an order of the Commission authorizing it to execute and deliver deeds of trust, and to issue promissory notes in the aggregate principal amount of \$298,900.

Applicant is a California corporation operating under the jurisdiction of this Commission as a highway common carrier transporting general commodities in various portions of the State. In addition, the company operates as a highway contract carrier and a radial highway common carrier under permits issued by this Commission, and also operates under the jurisdiction of the Interstate Commerce Commission. For the year 1968, the carrier reports total operating revenues of \$10,246,876 and a net income of \$180,868.

For the purpose of enabling it to obtain a reasonably adequate terminal facility for the size of its operations in the San Jose area, applicant proposes to purchase five acres of unimproved land for a total consideration of \$90,000. As partial payment, the carrier intends to issue a purchase money promissory note in the amount of \$63,900 repayable in three annual installments of \$21,300 plus interest at the rate of 7% per annum on unpaid principal. A deed of trust will secure the note.

In addition, applicant reports that it purchased one acre of land in the Port of Oakland Industrial Park and constructed a building thereon for use as a general office. In this connection the application states that the carrier executed a deed of trust and issued a promissory note dated November 8, 1968, in the principal amount of \$165,000 repayable in 240 monthly installments of \$1,280.40 each including interest at the rate of 7% per annum on unpaid principal.

Also, according to the application the carrier purchased approximately two acres of land and constructed a facility thereon in 1968 for a terminal in the Indio area. The reported cost of the project is \$84,130, of which applicant financed a portion by executing a deed of trust and issuing a promissory note in the principal amount of \$70,000 repayable in 120 monthly installments of \$812.77 each including interest at the rate of 7% per annum on unpaid principal.

Section 818 of the Public Utilities Code requires that applicant first obtain Commission authorization before issuing said \$165,000 and \$70,000 notes. Section 851 of the Public Utilities Code contains a similar provision applying to the corresponding deeds of trust.

After consideration the Commission finds that:

1. During the year 1968 applicant issued a \$165,000 note and a \$70,000 note and executed two deeds of trust, all without first obtaining the required authorization from this Commission.
2. The money, property or labor to be procured or paid for by the issue of the notes herein authorized is reasonably required for the purposes specified herein, which purposes are not, in whole or in part, reasonably chargeable to operating expenses or to income.
3. The notes herein authorized are for proper purposes.
4. The deeds of trust herein authorized will not be adverse to the public interest.
5. A public hearing is not necessary.

On the basis of the foregoing findings we conclude that:

(1) the \$165,000 and \$70,000 notes issued by applicant during 1968 and the corresponding deeds of trust are void in accordance with Sections 825 and 851 of the Public Utilities Code; and (2) the application should be granted with the understanding that applicant will replace said void notes and deeds of trust by valid documents.

O R D E R

IT IS ORDERED that:

1. System 99, on or after the effective date hereof and on or before September 30, 1969, for the purpose specified in this proceeding, may issue a promissory note in the principal amount of not exceeding \$63,900, and may execute and deliver a deed of trust. The note and deed of trust shall be in the same form, or in substantially the same form, as those attached to the application as Exhibit A and Exhibit B, respectively.

2. System 99, on or after the effective date hereof and on or before September 30, 1969, for the purposes specified in this proceeding, may issue two promissory notes in the principal amounts of not exceeding \$165,000 and \$70,000, and may execute and deliver two deeds of trust. The documents shall replace and be in the same form, or in substantially the same form, as the corresponding void documents, copies of which are on file in this proceeding.

3. System 99 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. This order shall become effective when System 99 has paid the fee prescribed by Section 1904(b) of the Public Utilities Code, which fee is \$299.

Dated at San Francisco, California,
this 8th day of JULY, 1969.

William Symons, Jr.
President

Augustin

Fred R. Monsey

Robert

Commissioners

PUBLIC UTILITIES COMMISSION
STATE OF CALIFORNIA
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By: M. Blauer