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Decision No. 88965 JUN 13 1978

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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

APPLICATION OF VIKING FREIGHT SYSTEM, INC. FOR AUTHORIZATION TO SPLIT ITS' CAPITAL STOCK 3 FOR 1 AND ISSUE 448,641 SHARES IN EXCHANGE AND 5625 SHARES VALUED AT $30,000.00 TO EMPLOYEE STOCK OWNERSHIP PLAN IN LIEU OF 1976 PROFIT-SHARING CONTRIBUTION UNDER CALIFORNIA PUBLIC UTILITIES CODE SECTIONS 816-830.	Application No. 57795 (Filed January 10, 1978) and Amendment (Filed April 3, 1978)

INTERIM OPINION

Viking Freight System, Inc. (Viking) requests authority to (1) split up, convert and exchange its outstanding no par value capital stock consisting of 147,672 shares into 443,016 shares, (2) to issue 5,625 shares to the Viking Employee Stock Ownership Plan and Trust, (3) to issue 6,100 shares to key employees pursuant to its Stock Option Plan, and (4) to issue promissory notes for $237,900 secured by deeds of trust.

Viking is a California corporation operating as a highway common carrier of general commodities by authority granted in Commission Decision No. 82475, dated February 13, 1974, in Application No. 54481. Operations are also conducted under permits issued by this Commission and under contract with the U.S. Postal Service as a carrier of mail between Los Angeles and Salt Lake City.

Viking's results of operation for the years 1975 and 1976, and for the nine months ended September 30, 1977 are set forth in Exhibit D, attached to the application. The company's total operating revenues and net income in 1976 amounted to $7,805,177 and $146,551, respectively. For the nine months ended September 30, 1977, the carrier reported operating revenues and net income of $8,540,966 and $367,056, respectively.

Viking's balance sheet at September 30, 1977 as set forth in Exhibit D, attached to the application, is summarized as follows:

Assets	Amount
Current assets	$1,816,285
Carrier operating property, less accumulated depreciation	5,296,807
Other assets	323,883
Total	$7,436,975
Liabilities and Equity	
Current liabilities	$2,994,362
Long-term debt	3,447,669
Other liabilities and deferred credits	195,159
Stockholder's equity	799,785
Total	$7,436,975

Viking proposes to split up, convert and exchange its no par value capital stock outstanding of 147,672 shares to 443,016 shares. In that regard the application indicates the following:

1. No one person holds a majority interest in Viking's outstanding shares, and the holdings are scattered among 179 shareholders, of whom 112 are presently employees and 27 are former employees.

2. There is no formal market for the shares of stock and no broker making a market is contemplated. Viking has followed a policy of encouraging employees to become stockholders in order to participate in the growth of the business. There has been, since 1969, a fairly steady flow of private stock trades among employees and other shareholders at a steadily increasing price level in line with the growth of the company's revenues and net income per share. During 1976, a total of 2,044 shares changed hands in such transactions. During the first ten months of 1977, 4,179 shares changed hands. Such trades generally ranged from five shares to five hundred shares per transaction, with the bulk of the transfers being less than one hundred shares per transaction.

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3. The most recent stock trades have been in the range of $25.00 to $30.00 per share, compared with a range of $5.00 to $7.00 per share as recently as 1975.

4. In view of the fact that earnings per share for the first nine months of 1977 were $2.46 and are expected to exceed $3.00 per share for the full year, 1977, compared with $.98 for the year 1976, Viking is concerned that the price per share may rise to the point that the average employee may not feel capable of making a normal small purchase of five or ten shares of stock, thus negating the company's policy of encouraging employees to become stockholders by purchasing shares from other stockholders.

5. In the annual meeting of Viking's stockholders on July 23, 1977, they approved the exchange of three shares for each share presently outstanding.

6. Viking will not derive any monetary consideration from the exchange and conversion.

Viking also proposes to issue 5,625 shares with a fair market value of $5.333 per share or a total value of $30,000 to the Viking Employee Stock Ownership Plan and Trust to fulfill its obligation to contribute $30,000 in shares of its own capital stock.

The application indicates that on December 30, 1976, the Board of Directors of Viking voted to convert the Viking Employee Profit-Sharing Plan to an Employee Stock Ownership Plan (ESOP) and to make the 1976 Profit-Sharing contribution in shares of Viking stock at the "fair market value" as of December 31, 1976, with determination of the amount of contribution and "fair market value" of the stock to be determined after completion of the annual audit.

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The basic purpose of the ESOP is to provide eligible employees of Viking with the opportunity of becoming stockholders of Viking. To achieve this purpose, Viking intends to take advantage of the additional one percent investment tax credit provided by the Tax Reduction Act of 1975, as amended by the Tax Reform Act of 1976. With the reduction in federal income taxes payable, Viking will conserve a like amount of cash which it can use for capital expenditures.

The amended application also indicates that Viking inadvertently issued promissory notes, and executed and delivered security agreements without Commission authority. The following is a description of the properties acquired and liabilities incurred:

1. On June 14, 1974, Viking purchased one acre of land adjacent to the north end of its existing property from Frank and Winnifred Surian. This property was to be and is presently being used for parking space for Viking's terminal. The total consideration for the property was $53,300, of which $15,400 was paid in cash and the balance of $37,900 was evidenced by a promissory note bearing interest at 9% per year. The note was repayable over a period of seven years in monthly installments of $719.87, and was secured by a deed of trust.

2. On August 13, 1974, Viking entered into a contract with Vanderson Construction, Inc., to construct a two-story administration office on the company's property at a total cost of $132,000. The cost during construction was paid out of a short-term revolving credit loan from First National Bank. After the building was completed on March 27, 1975, Viking negotiated a new loan with Franklin Savings and Loan Association for $200,000 and executed a ten-year promissory note bearing interest at 10% per year, secured by a deed of trust. Payments including principal and interest are made in monthly installments of $2,644. The proceeds of the note were used to pay for the office building and to pay the balance due on a mortgage to the California First Bank.

The amended application indicates that Viking, pursuant to its stock option plan, issued stock to certain key employees without authority from the Commission. During August 1976 and 1977, the company issued a total of 6,100 shares of its no par capital stock. The shares were issued in good faith under the authority of a permit issued by the California Commissioner of Corporations. At the time of the issuance of the permit, Viking was not a common carrier. The company acted under a mistaken belief that it had proper authority to issue the stock. Viking now desires to correct the error and requests authority pursuant to Sections 816-830 of the Public Utilities Code to retroactively issue the stock to its key employees as of the dates of issue.

The Finance Division in reviewing the application, as amended, questions the appropriateness of stock option plans for key employees of public utilities and recommends setting aside for hearing the matter of issuing shares pursuant to Viking's stock option plan. The recommendation has merit and we shall, therefore, schedule a hearing so that all parties may have the opportunity to inform us fully of the benefits and disadvantages of the stock option plan.

In all other respects, the Finance Division concludes that the authority sought in the application, as amended, is reasonable. The Transportation Division also reviewed the matter and formed the same conclusion.

After consideration the Commission finds that:

1. Viking inadvertently issued a total of 6,100 shares of no par value capital stock in connection with its stock option plan, without receiving authority from this Commission. The issuance of these shares is void under Section 825 of the Public Utilities Code. A hearing shall be scheduled for the purpose of determining the propriety of such stock option plan.

2. Viking inadvertently issued two long-term promissory notes for proper purposes in respective amounts of $37,900 and $200,000 and executed related deeds of trust, without receiving authority from this Commission. The notes and deeds of trust are void under Sections 825 and 851 of the Public Utilities Code.

3. The issue of stock, except that issued in connection with the stock option plan, and the issue of promissory notes are for proper purposes.

4. The issuance of deeds of trust would not be adverse to the public interest.

5. The monies, property or labor to be procured or paid for by the notes and stock herein authorized are reasonably required for the purposes specified herein, which purposes are 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, as amended, should be (a) deferred insofar as it seeks authority to issue 6,100 shares of capital stock pursuant to the stock option plan until further evidence has been offered in a public hearing, and (b) granted in all other respects.

In issuing our order herein, we place Viking and its shareholders on notice that we do not regard the number of shares outstanding, the total stated value of the shares, nor the dividends paid, as measuring the return it should be allowed to earn on its investment in plant, and that this authorization is not to be construed as a finding of the value of the company's stock or property nor as indicative of the amounts to be included in proceedings for the determination of just and reasonable rates.

INTERIM ORDER

IT IS ORDERED that:

1. Viking Freight System, Inc., on or after the effective date hereof and on or before December 31, 1978, may issue and distribute not exceeding 443,016 shares of its no par capital stock in exchange for its outstanding capital stock of 147,672 shares to effect a 3 for 1 stock split up.

2. Viking Freight System, Inc., on or after the effective date hereof and on or before December 31, 1978, may issue and distribute not exceeding 5,625 shares of its no par value capital stock having a market value of $30,000, to fulfill its obligations to contribute its own capital stock to the Viking Employee Stock Ownership Plan and Trust.

3. Viking Freight System, Inc., on or after the effective date hereof and on or before December 31, 1978, may issue two promissory notes in the aggregate principal amount of not exceeding $237,900, and may execute and deliver deeds of trust. The instruments shall replace corresponding documents which were issued and executed without authorization from the Commission, and shall be in substantially the same forms as those attached to the amended application as Exhibits M, N, P and Q.

4. Viking Freight System, Inc., shall file with the Commission a report, or reports, as required by General Order 24-B, which order, insofar as applicable, is hereby made a part of this order.

5. A public hearing shall be scheduled on a date to be set for the purpose of determining the propriety of the stock option plan and the issuance of stock in connection with such plan.

6. This order shall become effective when Viking Freight System, Inc. has paid the fee prescribed by Sections 1904(b) and 1904.1 of the Public Utilities Code, which fee is $536. In other respects the effective date of this order shall be twenty days after the date hereof.

Dated at San Francisco, California, this 13 day of JUNE, 1978.

Robert Batinovich
President
William Symons, Jr.
Vernon L. Sturgeon
Richard D. Gravelle
Claire T. Dedrick
Commissioners

PUBLIC UTILITIES COMMISSION
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