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Decision No. 89282 AUG 22 1978

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of:

SHIFFLET BROTHERS, INC., a California corporation to encumber utility property pursuant to Sections 851, et seq., of the Public Utilities Code.

) Application No. 57700
) (Filed November 23, 1977)
) and Amendment
) (Filed May 17, 1978)

In the Matter of the Application of:

EARL F. ANDERS, an individual, to acquire further control of SHIFFLET BROTHERS, INC., a California corporation, pursuant to Section 854 of the Public Utilities Code.

O P I N I O N

Shifflet Brothers, Inc. (Shifflet) seeks authority to issue a promissory note secured by deeds of trust and a security agreement for the redemption of a portion of its outstanding capital stock. Earl F. Anders (Anders) seeks authority to acquire control of Shifflet.

Shifflet, by an amended application, also seeks authority to issue promissory notes secured by second deeds of trust.

Shifflet is a California corporation which conducts operations pursuant to a certificate of public convenience and necessity granted by Decision No. 73096, dated September 19, 1967, in Application No. 49623. Such certificate authorizes Shifflet to transport cement from points within California, including points within the counties of Butte and Sutter. The company has permitted authority to operate within the state as a dump truck carrier, a highway contract carrier, a livestock carrier, and a radial highway common carrier.

Shifflet also has limited interstate authority to transport specified commodities over irregular routes within California and from designated points in California to Oregon. Such authority was granted in certificates of public convenience and necessity issued by the Interstate Commerce Commission.

Shifflet, in addition to its operations as a for-hire motor carrier, has certain ranch and farming operations.

In Exhibit F, attached to the amended application, Shifflet reports total operating revenues and net income of \$2,519,046 and \$75,430, respectively for the year 1977. The ranch operations incurred a net loss for the year of \$15,428.

Shifflet has issued 6,000 shares of \$10 par value capital stock. An equal number of shares are owned by Anders and Clifton Shifflet. Anders proposes to purchase 277 shares from Clifton Shifflet for \$59,092.41, and the company proposes to redeem Clifton Shifflet's remaining 2,723 shares for \$580,897.59. As a result of the proposed transactions Anders would control the company, and he seeks authority for such control.

Shifflet, in addition to the redemption of stock, proposes to enter into a covenant not to compete with Clifton and Alice Shifflet for an additional sum of \$10,000. The Covenant Not to Compete, attached to the application as part of Exhibit A, provides that Clifton and Alice Shifflet will not compete with the company in the business of commercial trucking within the State of California for a period of sixteen years.

Shifflet proposes to redeem the stock and enter into the covenant not to compete with Clifton and Alice Shifflet for a total sum of \$590,907.59, payable \$25,907.59 down, and the balance of \$565,000 would be evidenced by a promissory note. The note would be secured by four second deeds of trust and a security agreement for the company's vehicles. The note would be paid in annual

installments of \$33,000 in principal, plus interest at the rate of 6% per annum. The first payment would be due one year from the close of escrow.

The application indicates that Mr. Clifton Shifflet wishes to withdraw from active ownership and management of the corporation while the co-owner, Anders, desires to continue as an owner, officer and director of the corporation. Thus the transactions proposed by applicants would not result in a significant change in operations of the corporation, but would result in internal changes which all of the directors and two shareholders determined would be in the best interests of the corporation and the public.

A pro forma balance sheet giving effect to the proposed transactions is summarized as follows from Exhibit G, attached to the amended application:

<u>Assets</u>	<u>Amount</u>
Current assets	\$ 233,348
Land	639,056
Carrier operating equipment - net	614,761
Farm equipment - net	131,711
Other assets	71,816
Total	<u>\$1,690,692</u>
<u>Liabilities and Capital</u>	
Current liabilities	\$ 394,164
Deferred credits	78,253
Long-term debt	1,185,117
Common stock equity	33,158
Total	<u>\$1,690,692</u>

Exhibit H attached to the application contains Shifflet's pro forma statement illustrating the net income and cash flow for the first year after redemption of Mr. Clifton Shifflet's stock. The exhibit shows estimated net income of \$69,000 and cash flow of \$331,000, which is sufficient to service debt and increase working capital.

The amended application also indicates that Shifflet inadvertently issued long-term promissory notes and executed security agreements without Commission authority. Exhibit J, attached to the amended application, sets forth the long-term notes payable as of December 31, 1977 in connection with Shifflet's motor carrier and farming operations. The obligations were incurred for the purchase of land and equipment to operate the farm and to improve and expand the equipment and facilities of the motor carrier operations. All of the long-term obligations are secured by either the real or personal property, except for a loan of \$50,000, issued in March 1977, which is secured by the 1977-1978 wheat and rice crop. The amount due under this loan has been retired. Long-term notes issued for the purchase of farm equipment and motor carrier equipment are secured by the equipment, therefore they do not require Commission approval. Issuance of secured long-term notes for purchases of land require Commission authorization.

The following tabulation, based on data contained in Exhibit J, sets forth each note for the acquisition of land issued by Shifflet without Commission approval. Included in the tabulation, is the outstanding balance due on each note as of December 31, 1977:

<u>Description of Note</u>	<u>Amount Outstanding</u>			
1. Date of Note, December, 1971; Payee, Mary Cardoza; Land acquired, 110 acres; Original amount, \$50,000; Term, 10 years; Interest rate, 6%.	\$ 20,000			
2. Date of notes, January, 1973; Land acquired, 120 acres.				
<u>Payee</u>	<u>Original Amount</u>	<u>Term</u>	<u>Interest Rate</u>	
Walter Owen	\$ 30,933	15 yrs.	4%	22,062
Walter Owen	110,400	15 yrs.	6.5%	73,600
Federal Land Bank	56,667	25 yrs.	6%	45,333
3. Date of note, February, 1974; Payee, Wm. & Harry Phillips; Land acquired, 470 acres; Original amount, \$207,000; Term, 15 years; Interest rate, 7%.				166,080
4. Date of note, October, 1976; Payee, Metropolitan Life Ins. Co.; Land acquired, 480 acres; Original amount, \$60,000; Term, 15 years; Interest rate, 9.75%.				<u>58,200</u>
Total				<u>\$385,275</u>

The Finance Division and Transportation Division have reviewed the application as amended. They have determined that the acquisition of the stock by Shifflet, the control of Shifflet by Anders, and the issuance of notes for the acquisition of land and the execution of security agreements are reasonable and not adverse to the public interest.

After consideration the Commission finds that:

1. Shifflet inadvertently issued six long-term promissory notes for proper purposes in an aggregate principal amount of \$515,600.01 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.
2. The issuance of six promissory notes and execution of related deeds of trust to replace those executed without Commission authority are for proper purposes and would not be adverse to the public interest.

3. The issue of a promissory note and execution of related second deeds of trust and a security agreement in connection with the redemption of 2,723 shares of its capital stock and covenant not to compete are for proper purposes and would not be adverse to the public interest.
4. Control of Shifflet Brothers, Inc., by Earl F. Anders would not be adverse to the public interest.
5. The monies, property or labor to be procured or paid for by the notes 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 granted. There is no known opposition and no reason to delay granting applicants' request. A public hearing is not necessary. Applicants have requested that the order be made effective on the date it is granted.

In issuing our order herein, we place Shifflet 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 amount to be included in proceedings for the determination of just and reasonable rates.

O R D E R

IT IS ORDERED that:

1. Shifflet Brothers, Inc., on or after the effective date hereof and on or before December 31, 1978, for the purposes specified in the application, may issue a promissory note in the principal amount not exceeding \$565,000 and may execute and deliver second deeds of trust and a security agreement. The instruments shall be in substantially the same form as those attached to Exhibit A of the application, as amended.

2. Earl F. Anders may control Shifflet Brothers, Inc.

3. Within 30 days after acquiring control of Shifflet Brothers, Inc., Earl F. Anders shall so inform the Commission in writing.

4. Shifflet Brothers, Inc., on or after the effective date hereof and on or before December 31, 1978, may issue six promissory notes in the aggregate principal amount not exceeding \$515,600.01, 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 submitted as Exhibit J in this proceeding.

5. Shifflet Brothers, 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.

This order shall become effective when Shifflet Brothers, Inc. has paid the fee prescribed by Section 1904(b) of the Public Utilities Code, which fee is \$1,902.

Dated at San Francisco, California, this 22nd day
of AUGUST, 1978.

Robert Batminal
President

William F. ...

...

Commissioners

Commissioner Richard D. Gravello, being necessarily absent, did not participate in the disposition of this proceeding.

Commissioner Claire T. Dedrick, being necessarily absent, did not participate in the disposition of this proceeding.

