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Decision No. 90939 OCT 23 1979 ORIGINAL

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 5,625 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; amended April 3, 1979)

Toshio Harunaga, Attorney at Law, for Viking Freight Systems, Inc., applicant.
Philip Scott Weismehl, Attorney at Law, and John Bilci, for the Commission staff.

OPINION

Nature of Proceeding

Decision No. 88965 dated June 13, 1978 in this proceeding granted Viking Freight System, Inc. (Viking) authorization to (1) issue and distribute not exceeding 443,016 shares of its no par capital stock in exchange for its no par capital stock of 147,672 shares to effect a 3 for 1 stock split, (2) issue and distribute not exceeding 5,625 shares of its no par 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, and (3) issue two promissory notes in the aggregate principal amount of not exceeding $237,900, and may execute and deliver deeds of trust. The decision further required that a public hearing be scheduled so that all parties could have an opportunity to fully inform the Commission of the benefits or disadvantages of the Stock Option Plan for key employees; a hearing was necessary so that the Commission could have a full record before issuing a final decision on Viking's request to issue stock under its Stock Option Plan.

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.

Hearing in this matter was held before Administrative Law Judge K. Tomita in San Francisco on March 28, 1979, at the conclusion of which the matter was taken under submission.

During August 1976 and 1977 Viking issued a total of 6,100 shares of its no par capital stock to certain key employees pursuant to its Stock Option Plan without authority from this Commission. The shares were issued in good faith under the authority of a permit issued by the California Commissioner of Corporations dated August 10, 1972, when Viking was not a common carrier. Viking acted under a mistaken belief that it had proper authority to issue stock. Viking now desires to correct the error and requests authority pursuant to Sections 816-830 of the Public Utilities Code to retroactively reissue the 6,100 shares which were granted to key employees in 1972 as well as an additional 1,000 shares to enable Mr. Edward Space to exercise the option granted in 1974 at $7.00 per share, the estimated fair market value at that time.

<u>Justification of Stock Option Plan</u>

Russell W. Bangham, secretary-treasurer for Viking, testified on the history and background of the Stock Option Plan for key employees. He testified that in early 1971 the Board of Directors of Viking prepared a long range plan-objective to become as rapidly as possible one of the major intrastate general freight carriers in California. In order to achieve this objective, the directors believed that Viking must consistently provide better and more efficient service than its competitors. A key employee middle manager stock option plan, subject to the approval of shareholders, was formulated to encourage utmost dedication, loyalty, and ingenuity on the part of these key employees. The plan was approved by the shareholders on June 3, 1972, and a permit authorizing the stock issue dated August 10, 1972, was received from the California Commissioner of Corporations.

Mr. Bangham justified the granting of options and the issue of 6,100 shares of stock to the five key employees as these employees had demonstrated their ability to manage Viking's operations efficiently as indicated by the growth in operating revenues from $1,297,811 in 1971 to $20,939,845 in 1978 and the fact that operating ratios ranged from 95.3 percent in 1971 to 90.6 percent in 1977, well below the average for all California carriers. He further testified that the salaries for the optionees ranged from $275 to $345 per week when the options were granted in August 1972, whereas salaries for top drivers averaged upward of $300 per week. He further testified that all five optionees worked extremely long hours and were on call 24 hours a day for emergencies.

Additional reasons given in support of the Stock Option Plan were: (a) optionees are required to remain in employment for a period of not less than three years with no obligation for Viking to retain such employees if considered unsatisfactory; (b) the option price is set at 100 percent of the fair market value on the date that the option is granted; therefore, it is not granted at a price unfavorable to Viking; (c) the options are required to be exercised within five years, but not earlier than two years from the grant of option, (d) the options are not assignable, and (e) the option plan is an incentive to efficiency and lower costs and thereby beneficial to the public.

Mr. Bangham justified the granting of an option to purchase 1,000 shares of stock to Mr. Space as enabling Viking to hire Mr. Space from a competitor at an annual salary approximating the annual salary of a Viking driver at that time. The option price of $7.00 per share represented the approximate market value of Viking stock in 1974. Mr. Bangham testified that the granting of this modest option incentive produced benefits far outweighing the cost in that Mr. Space trained and developed an effective sales representative group that must be given due credit for revenue gains of 67.8 percent, 57.7 percent, and 74.4 percent, respectively, in the last three years.

Staff Position

Staff witness John Bilci, in his exhibit, outlined the advantages and disadvantages of a stock option plan and noted that Viking had failed to make a showing as to the propriety of the adoption of a stock option plan and how such a plan benefits the public which Viking serves. Although Mr. Bilci recommended in his exhibit the denial of Viking's request, he modified his recommendation after reading Mr. Bangham's exhibit by recommending that the Commission approve the issuance of the stock which had been issued. Staff counsel raised no objection to the issuance of the additional 1,000 shares necessary to enable Viking to meet its obligation under the option granted to Mr. Space in 1974. The staff further recommended that any subsequent granting of options under the Stock Option Plan be made only upon Commission approval.

Findings of Fact

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.

2. The issuance of 6,100 shares of no par value capital stock under Viking's Stock Option Plan to the five key employees shown in Exhibit 1 is reasonable and not adverse to the public interest. Accordingly, we will authorize the issuance of 6,100 shares to the five key employees to replace the voided shares.

3. Viking's granting of an option to Mr. Edward Space in 1974 to purchase 1,000 shares of no par capital stock under its Stock Option Plan is reasonable and not adverse to the public interest. We will authorize Viking to issue 1,000 shares of its no par capital stock to enable Viking to meet its obligation under the option granted Mr. Space in 1974.

4. The money, property, or labor to be procured or paid for by the stock herein authorized is reasonably required.

Conclusion of Law

On the basis of the above findings, we conclude that Viking should be authorized to issue the 7,100 shares of its no par capital stock to fulfill its obligations under its Stock Option Plan.

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 par 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 the authorization herein granted is not to be construed as a finding of the value of Viking's stock or property nor as indicative of amounts to be included in proceedings for the determination of just and reasonable rates.

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ORDER

IT IS ORDERED that:

1. Viking Freight System, Inc. (Viking) may issue and distribute not exceeding 6,100 shares of its no par capital stock to key employees at $1.25 per share pursuant to options exercised by the five key employees under Viking's Stock Option Plan.

2. Viking may grant an option to Edward Space pursuant to its Stock Option Plan to purchase 1,000 shares of its no par capital stock at $7.00 per share and may issue such shares upon the exercise of said option.

3. Viking may issue a greater or lesser number of shares at greater or lesser prices in the event any adjustment in its capitalization should occur as contemplated in Section 6 of its Stock Option Plan, Exhibit 1.

4. Viking shall apply the proceeds from the sale of such shares for the purposes set forth in Section 817 of the Public Utilities Code.

5. Viking shall file with the Commission the reports required by General Order No. 24-B, which order, insofar as applicable, is hereby made a part of this order.

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6. This order shall become effective when Viking has paid the fee prescribed by Section 1904.1 of the Public Utilities Code, which fee is $30.

The effective date of this order shall be thirty days after the date hereof.

Dated OCT 23 1979, at San Francisco, California.

President

Commissioner JOHN E. BRYSON

Present but not participating.

Commissioners

Commissioner Vernon L. Sturgeon, being necessarily absent, did not participate in the disposition of this proceeding.

PUBLIC UTILITIES COMMISSION
STATE OF CALIFORNIA
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By