

LEM

Decision No. 23564

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
UNION TERMINAL WAREHOUSE COMPANY,
a corporation, for permission to sell
and assign, and of PACIFIC MOTOR
TRANSPORT COMPANY, a corporation, to
buy and acquire the warehouse business
and the transportation business and
all assets of the seller except bills
receivable and stocks and bonds held
in other companies.

ORIGINAL

Application No. 17236

Frank Karr and R. E. Wedekind,
for applicants.

BY THE COMMISSION:

O P I N I O N

In this application the Railroad Commission is asked to authorize Union Terminal Warehouse Company to sell the properties referred to in the agreement of March 3, 1931, and filed in this proceeding as Exhibit "B", to Pacific Motor Transport Company, and authorize the Pacific Motor Transport Company to acquire the properties in accordance with the terms of said agreement.

It is of record that the Union Terminal Warehouse Company was incorporated on August 22, 1916 and since then has been engaged in conducting a warehouse business in premises leased by it from Los Angeles Union Terminal Company and Los Angeles Public Market Company and other persons in the County of Los Angeles. It also operates a transportation business under a certificate of public convenience and necessity authorized to be transferred to it under the authority granted by Decision No. 21387, dated July 24, 1929, in Application No. 15795. The certificate of public con-

venience and necessity was originally granted to Akins and Cunningham by Decision No. 14404, dated December 27, 1924, in Application No. 9988. The certificate authorizes the operation of automotive truck service as a common carrier of property for compensation between the City of Los Angeles proper and steamship wharves and docks located at Los Angeles Harbor, namely, Wilmington and San Pedro.

It is alleged that some office furniture and fixtures and some warehouse equipment (all valued at about \$1,000.00) used by Union Terminal Warehouse Company is owned by Union Terminal Warehouse Corporation. It is because of this situation and the stock ownership, to which reference will hereafter be made, that Union Terminal Warehouse Corporation joins in the agreement of March 3, 1931 (Exhibit B). It does not join in the application because it takes the position that it is not a public utility.

The Union Terminal Warehouse Company has \$50,000.00 of stock outstanding, divided into 500 shares of the par value of \$100.00 each. Of the outstanding stock, 250 shares are owned by Union Terminal Warehouse Corporation; 246 shares by Gerald Fitzgerald; one share by A. C. Bing; one share by Clayton E. Yeo; one share by R. A. Schneyer; and one share by A. G. Ehrigott. Of the outstanding stock of the Union Terminal Warehouse Corporation, 500 shares are owned by Union Terminal Warehouse Company; 498 shares by Gerald Fitzgerald; one share by A. C. Bing; and one share by R. A. Schneyer. In the final analysis, the stock control of these properties rests with Gerald Fitzgerald, who has hypothecated the stock to secure the payment of personal loans. He and the pledgee of the stock have consented to the transfer of the properties covered by this application.

It appears that applicant, Union Terminal Warehouse Company, has during the past two years become heavily indebted to Los Angeles Union Terminal Company and Los Angeles Public Market Company

for rent for space occupied in the property and buildings of said companies, which are subsidiaries of Southern Pacific Company. Said applicant has also become indebted to other persons, with the result that unless the transfer outlined in this application is consummated, the company may be compelled involuntarily to discontinue its operations.

The purchaser, Pacific Motor Transport Company, proposes to pay for the properties of the vendors \$65,000.00 as follows:

(1) Payment to Los Angeles Public Market Company for rent due to December 31, 1930	\$15,603.24
(2) Payment to Los Angeles Union Terminal Company for rent due to December 31, 1930	26,658.17
(3) Deposit with a trustee for the payment of other creditors of Union Terminal Warehouse Company.....	22,726.99
(4) Pay to Union Terminal Warehouse Corporation	1.00
Total.....	<u>\$65,000.00</u>

The vendors have agreed to sell all of their properties except bills and accounts receivable and stocks and bonds owned. The purchaser will not assume any of the liabilities of the vendor. As indicated, the amount it pays for the properties will be used to pay indebtedness. It is believed that the assets which the vendors are not selling will be ample to pay any and all liabilities which may not be discharged through the use of the \$65,000.00 paid by the purchaser.

The cost of some of the properties to be transferred are reported as follows:

ITEM	COST	DEPRECIATION	NET
Thirty trucks, autos and trailers	\$34,087.62	\$22,185.05	\$11,902.57
Warehouse equipment	14,214.22	13,233.76	980.46
Furniture and fixtures.....	14,350.33	10,851.76	3,498.57
Total.....	\$62,652.17	\$46,270.57	\$16,381.60

The purchaser will in addition be given the benefit of pre-payments which on December 31, 1930 are reported at \$10,823.17 and will obtain the right to conduct a warehouse business now possessed by Union Terminal Warehouse Company. Union Terminal Warehouse Company in its 1930 annual report submits its revenues and expenses as follows:

Operating revenues	\$ 95,534.83
Operating expenses	<u>107,873.84</u>
Net loss from operation	12,339.01
Nonoperating revenues:	
Rent from buildings, land and equipment.....	26,334.28
Interest income	93.18
Miscellaneous nonoperating revenues	<u>105,386.26</u>
Total nonoperating revenues	<u>131,813.72</u>
Gross income	119,474.71
Deductions:	
Uncollectible operating revenue	115.51
Rent expense	14,133.32
Interest expense	2,558.66
Nonoperating taxes	5.00
Miscellaneous nonoperating expenses	83,760.48
Rent for buildings	41,491.72
Amortization of leasehold interest	200.04
Total deductions	<u>142,264.73</u>
Net loss for year	\$ <u>22,790.02</u>

The record shows that the properties under the proposed new management can be operated more economically than they have been operated by the Union Terminal Warehouse Company. Counsel is of the opinion that the Southern Pacific Company through its subsidiaries can realize more out of the properties ultimately if it buys the same than if it tried to collect the unpaid rent through a court action. It is buying the assets rather than the capital stock for fear that there might be outstanding unknown obligations. It is believed that the \$65,000.00 which is the agreed transfer price, plus the accounts receivable and other assets of Union Terminal Warehouse Company will be sufficient to pay off all known creditors and leave from \$2,000.00 to \$7,000.00 for the selling companies, depending upon what percentage of the accounts receivable can be collected. The purchaser/^{as said} does not assume any of the liabilities of the vendors. It has agreed to pay for the properties \$65,000.00 which is to be distributed as outlined

in the agreement of March 3, 1931 and referred to in this opinion.

It is of record that ^{if} Pacific Motor Transport Company, ac-quires the properties of Union Terminal Warehouse Company and Union Terminal Warehouse Corporation, it will cause to be organized a corporation to which it intends to transfer the warehouse properties now operated by the Union Terminal Warehouse Company. The present application, however, does not involve the transfer of any properties which Pacific Motor Transport Company may acquire under the authority herein granted.

The Commission is not in this proceeding called upon to authorize the issue of any securities in connection with the purchase of the aforesaid properties by Pacific Motor Transport Company. The purchaser, we believe, should charge to its property and equipment accounts the \$62,653.17 reported as the cost of the aforesaid properties and should offset such charge in part by the reported accrued depreciation of \$46,270.57. If the Commission is hereafter called upon to authorize the issue of securities to finance the purchase of the properties referred to in this opinion, it will consider as a basis for the issue of such securities the difference between the reported cost of the properties and the accrued depreciation, plus the cost of any other properties which may be transferred to the purchaser.

Pacific Motor Transport Company is hereby placed upon notice that "Operative rights" do not constitute a class of property which should be capitalized or used as an element of value in determining reasonable rates. Aside from their purely permissive aspect, they extend to the holder a full or partial monopoly of a class of business over a particular route. This monopoly feature may be changed or destroyed at any time by the state which is not in any respect limited to the number of rights which may be given.

ORDER

The Railroad Commission having been requested to enter its order, as indicated in the foregoing opinion, a public hearing having been held before Examiner Fankhauser and the Commission being of the opinion that this application should be granted subject to the provisions of this order, therefore,

IT IS HEREBY ORDERED as follows:

1. Union Terminal Warehouse Company may, on or before October 1, 1931, sell the properties described in the agreement dated March 3, 1931, and filed in this proceeding as Exhibit "B", to the Pacific Motor Transport Company, which company is hereby authorized to acquire and operate the same.
2. Pacific Motor Transport Company, on or before acquiring the properties of Union Terminal Warehouse Company, shall make such tariff and time schedule filings as are required by the Commission's general orders.
3. The operative rights and privileges established by Decision No. 14404, dated December 27, 1924, in Application No. 9988, and which are herein authorized to be transferred, may not hereafter be sold, leased, assigned, transferred nor service thereunder enlarged or discontinued, unless the written consent of the Railroad Commission is first obtained.
4. No vehicle may be operated by Pacific Motor Transport Company unless such vehicle is owned by said company or is leased by it under a contract or agreement on a basis satisfactory to the Railroad Commission.
5. Pacific Motor Transport Company in recording on its books of account the purchase of the properties referred to in this application shall, as of January 1, 1931, charge to plant and equipment and warehouse property and equipment accounts not exceeding \$62,562.17, offset by a reserve for accrued depreciation of \$46,270.57. These figures shall be adjusted because of additions and betterments, and because of retirements and the accruing of depreciation which may have taken place between January 1, 1931 and the date of the transfer of the properties.

6. Within sixty days after the acquisition of the aforesaid properties by Pacific Motor Transport Company, it shall file with the Commission a copy of each and every journal entry made to record the purchase of said properties, such entries to show the debits and credits to the appropriate primary accounts.

7. Within sixty days after the acquisition of the aforesaid properties by Pacific Motor Transport Company, it shall file with the Commission a certified copy of the instrument of conveyance under which it acquires and holds title to said properties.

8. The consideration to be paid for the aforesaid properties shall not be urged before this Commission as determining the cost or value of said properties for the purpose of fixing rates or the issue of securities.

9. The authority herein granted will become effective fifteen (15) days after the date hereof.

DATED at San Francisco, California, this 10th day of April, 1931.

C. L. J. J. J.
Leon A. J. J.
W. J. J. J.
V. J. J. J.
John G. J. J.

Commissioners.