

Decision No. 27585

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
BUTTE COUNTY WAREHOUSE CO.,)
a corporation, for a permit to issue) Application No. 19738
and sell its shares of capital stock)
and for permission to encumber its)
property to E. Salz & Son, Inc.)

In the Matter of the Application of)
PHILLIP O'CONNELL,)
as Receiver of Kitrick & Hall, Inc.,)
a corporation, Seller, for leave to)
sell, and Butte County Warehouse Co.,)
a corporation, Buyer, for leave to) Application No. 19739
purchase, and for an order of the)
Commission authorizing such sale and)
purchase.)

ORIGINAL

Carl R. Schulz, for Butte County Warehouse Co.

DeLancey C. Smith, for Phillip O'Connell, as
Receiver of Kitrick & Hall, Inc.

BY THE COMMISSION:

O P I N I O N

In Application No. 19739 Phillip O'Connell, as Receiver of Kitrick & Hall, Inc., a corporation, asks permission to sell to Butte County Warehouse Co., the properties described in Exhibit "A" attached hereto. The sale of the properties is to be made pursuant to the terms and conditions of the agreement filed as Exhibit "C" in Application No. 19738.

In Application No. 19738 Butte County Warehouse Co. asks permission to issue not exceeding 146,000 shares (\$73,000. par value) of common capital stock and pledge some of its accounts receivable to secure a demand note to which reference will be made hereafter.

On or about May 8, 1931 Phillip O'Connell was appointed Receiver of Kitrick & Hall, Inc. by an order of the United States District Court for the northern district of California, Northern Division, in a certain proceeding filed in said court and entitled "Farmers National Grain Corporation, Plaintiff, vs Kitrick & Hall, Inc., a corporation, Defendant," numbered 586 in equity in the files of said court.

Since then Phillip O'Connell has operated the public warehouses theretofore operated by Kitrick & Hall, Inc. as Receiver of said corporation and is now operating the same. The warehouses are being used primarily for the storage of grain products and are located at Chico, Durham, Esquon, Shippee, Blavo and Nelson, all in Butte County.

On or about November 20, 1934 the Receiver entered into an agreement (Exhibit "C" in Application No. 19738) with Butte County Warehouse Co. under the terms of which he will sell to Butte County Warehouse Co. all the properties described in Exhibit "A" attached hereto. The reason for the sale of the properties is to terminate the receivership proceedings and restore the properties of the receivership estate to operation by a corporation which will be free from the burdens and handicaps incidental to operation of any business by a receiver. The agreement of sale was confirmed by the United States District Court on or about December 10, 1934.

The assets of Phillip O'Connell as Receiver for Kitrick & Hall, Inc. at the close of October 31, 1934, are reported as follows:-

A S S E T S

Petty cash	\$ 20.00		
Cash on hand, First National Bank, Chico....	<u>1,481.27</u>		
		\$	1,501.27
Inventory, Bags and Twine.....			100.00
Accrued Storage Receivable(This represents warehouse charges which will be payable by holders of warehouse receipts when grain represented by such receipts is withdrawn from the warehouses; and pay- ment is computed on the basis of tariff rates for such storage).....			27,537.26
Miscellaneous accounts receivable on date receivership commenced, May 9, 1931, after deduction of reserve for bad accounts			1,183.99
<u>Assets under contract of purchase from Sacramento</u>			
<u>Northern Railway:</u>			
Durham warehouse Property, book value, less depreciation	17,691.17		
Esquon Warehouse Property, book value, less depreciation.....	5,689.17		
Shippee Warehouse Property, book value, less depreciation	4,249.17		
Shares of Northern Warehouse Company stock(13,000 out of a total of 25,000 outstanding shares of this company are included in this item. The sole asset of the company is the warehouse at Blavo known as Northern Warehouse)	<u>9,912.50</u>		
			<u>37,542.01</u>
LESS Balance Due on contract for purchase of same	\$22,712.00		
Also accrued interest on contract 5/1/34 to 10/31/34	<u>681.36</u>		
		<u>23,393.36</u>	14,148.65
<u>Other Physical Assets(Less depreciation):</u>			
DePue Warehouse Property, Durham,	21,017.09		
New Scale at DePue Warehouse....	438.83		
Pratt Warehouse Property, undivided one-half interest	602.25		
Nelson Warehouse Property	1,809.16		
Warehouse Equipment	3,025.46		
Furniture and Fixtures.....	392.35		
Automobiles	<u>53.09</u>		27,338.23
<u>Other Debit Accounts:</u>			
One Share Northern Whse Co. stock	.50		
Deposit on Compensation Insurance Premium	84.00		
Advance Rentals	<u>6.23</u>		<u>90.73</u>
			<u>90.73</u>
Total Assets			<u>\$71,900.13</u>

It will be observed that in arriving at the \$71,900.13, applicants deducted from the assets \$23,393.36 due under the contract to purchase certain warehouse properties from the Sacramento Northern Railway. This contract will be assumed by Butte County Warehouse Co. In addition it will owe approximately \$12,500.00 to E. Salz & Son, Inc. for moneys loaned to the company to enable the company or the Receiver to pay receivership expenses. For the year ending May 31, 1934 Phillip O'Connell as Receiver of Kitrick & Hall, Inc. reports warehouse operating revenues of \$23,801.04 and operating expenses of \$18,668.33.

The reorganization of Kitrick & Hall, Inc. is being carried out under a plan approved by creditors who hold more than 95% of the claims allowed in the receivership proceeding. A copy of the plan is filed as Exhibit "A" in Application No. 19738. It appears that those creditors who do not join in the plan will receive about 20% of their claims in cash. Creditors or their assignees who join in the plan will receive in exchange for their claims, stock of Butte County Warehouse Co. on the basis of one share of stock for one(1) dollar of such claim as allowed in the receivership.

Butte County Warehouse Co. has an authorized stock issue of \$75,000.00 consisting of 150,000 shares of the par value of 50¢ per share. We are advised that the shares were given such a low par value in order to avoid the issue of fractional shares to creditors and to expedite the reorganization plan. As stated, Butte County Warehouse Co. asks permission to issue approximately 146,000 shares of its common capital stock. This stock will be issued in return for the surrender of claims against Kitrick & Hall, Inc. to be used in the acquisition from Phillip O'Connell, as Receiver of Kitrick & Hall, Inc. of the properties now held by said Receiver.

The company has not yet filed a copy of the pledge agreement which it intends to execute to secure the loan obtained from E. Salz & Son, Inc. We are, however, told by counsel for the company that such agreement will be similar in form to that filed in Application No. 17851. We have no objection to the execution of such agreement.

ORDER

The Commission having been requested to enter its order, as indicated in the foregoing opinion, and being of the opinion that it is not necessary to hold a hearing in the two above entitled applications, that the money, property or labor to be procured or paid for by the issue of not exceeding 146,000 shares of stock by Butte County Warehouse Co., is reasonably necessary for the purpose stated in this order, and that the expenditures for such purpose are not in whole or in part reasonably chargeable to operating expenses or to income, and that this application should be granted as provided in this order, therefore,

IT IS HEREBY ORDERED as follows:-

1. Phillip O'Connell, as Receiver of Kitrick & Hall, Inc., may sell and transfer to Butte County Warehouse Co. on or before March 1, 1935, the properties described in Exhibit "A" attached hereto and a part hereof, such sale of properties to be made pursuant to the terms and conditions of the agreement filed as Exhibit "C" in Application No. 19738.
2. Butte County Warehouse Co. may issue on or before March 1, 1935, not exceeding 146,000 shares of its common capital stock in return for the surrender of claims against Kitrick & Hall, Inc., such shares of stock to be issued pursuant to the plan of reorganization filed as Exhibit "A" in Application No. 19738.

3. Butte County Warehouse Co. may execute on or before March 1, 1935, an agreement pledging all or part of its accounts receivable to secure the payment of a loan from E. Salz & Son, Inc., such agreement to be substantially in the same form as the agreement filed in Application No. 17851, provided that the authority herein granted to execute said agreement, is for the purpose of this proceeding only, and is granted only insofar as this Commission has jurisdiction under the terms of the Public Utilities Act, and is not intended as an approval of said agreement as to such other legal requirements to which it may be subject.
4. Within thirty (30) days after the acquisition of the aforesaid properties by Butte County Warehouse Co., said Butte County Warehouse Co. shall file with the Railroad Commission a copy of each and every deed or assignment and/or bill of sale under which it acquires and holds title to any of the properties herein authorized to be transferred to it, and also a copy of the agreement pledging all or part of its accounts receivable to secure the payment of the loan from E. Salz & Son, Inc.
5. Butte County Warehouse Co. shall keep such record of the issue, sale and delivery of the stock herein authorized to be issued and of the disposition of the proceeds as will enable it to file on or before the 25th day of each month a verified report, as required by the Railroad Commission's General Order No. 24, which order insofar as applicable, is made a part of this order.

DATED at San Francisco, California, this 17th day of December, 1934.

John A. Whelan
 All of Com.
W. B. Davis
Arthur J. ...
John A. ...
 Commissioners

EXHIBIT A.

The properties which Phillip O'Connell, as Receiver of Kitrick & Hall, Inc. may under the authority granted in this order, sell and transfer to Butte County Warehouse Co., are as follows:-

- (a) All that real property situate, lying and being in the County of Butte, State of California, described as follows, to-wit:

A parcel of land situate in Section Thirty (30), Township Twenty-one(21) North, Range Two (2) East, Mount Diablo Base and Meridian, described as follows, to-wit:

Commencing at the northeasterly corner of Lot Numbered One (1), in Block "Q" of the Town of Durham, California, according to the Official Map of the said Town of Durham, filed as of record November 1, 1881 in the office of the County Recorder of Butte County, California; thence N. $73^{\circ} 54'$ E. 80.00 feet to the point of beginning of the herein described parcel; thence S. $16^{\circ} 06'$ E. 891.50 feet; thence on curve to the left, having a radius of 210.5 feet, a distance of 96.90 feet, to a point in the South boundary of Lot No. 21 of THE FRANKLIN SUBDIVISION, as the same is laid down and numbered on the official map of the said THE FRANKLIN SUBDIVISION, filed as of record October 3, 1900 in the office of the County Recorder of said Butte County, California; thence along southerly boundary of said Lot No. 21, N. $73^{\circ} 54'$ E. 99.00 feet, to a point, which is fifty feet distant, (measured at right angles Westerly) from the center line of the California and Oregon Railroad; thence parallel to, and fifty feet distant from, the aforesaid center line of the said Railroad, N. $16^{\circ} 06'$ W. 985.30 feet; thence at right angles, S. $73^{\circ} 54'$ W. 120.00 feet, to the said point of beginning of the herein described parcel.

EXCEPTING THEREFROM a 50 foot strip of land lying adjacent to the California & Oregon Railroad right of way, said strip of land being the Easterly 50 feet of the aforesaid parcel of land.

- (b) That certain warehouse located upon the real property of Southern Pacific Company at or near the intersection of Elk Street with the right of way of Southern Pacific Company in the town of Nelson, County of Butte, State of California, which warehouse is now generally known as Nelson Warehouse of Kitrick & Hall, Inc.; together with all the appurtenances and equipment thereof, and that certain lease, by and between Southern Pacific Company and receiver, of the real property upon which said warehouse stands.

(c) All that certain real property situate in the County of Butte, State of California, and more particularly described as follows, to-wit:

The Pratt Warehouse situate in the town of Durham in Section thirty (30), Township Twenty-one(21) North, Range Two (2) East, M. D. B. & M., and the lot of land, being about One (1) acre in extent, on which said warehouse stands and which is adjacent thereto; the interest of the party of the first part therein being an undivided one-half interest more or less.

(d) All right, title and interest of Receiver in and to that certain agreement, dated July 17, 1925, by and between Sacramento Northern Railroad, Vendor, and Kitrick & Hall, Vendee; as such agreement is modified and amended by that certain Supplementary Agreement by and between Sacramento Northern Railway, as successor to Sacramento Northern Railroad, and Kitrick & Hall, together with those certain agreements by and between said Sacramento Northern Railway and Receiver, denominated Second Supplementary Agreement, Third Supplementary Agreement and Fourth Supplementary Agreement, respectively, dated June 30, 1931, May 1, 1932, and May 1, 1934; together with all right, title and interest of Receiver in and to all of the property, both real and personal, transferred or agreed to be transferred to Kitrick & Hall and/or to Receiver under or by virtue of said agreement, as so modified;

(e) All right, title and interest of Receiver as lessee or as tenant from month to month, as the case may be, of that certain warehouse located in the City of Chico, County of Butte, State of California, and known as Chico Sperry No. 1 Warehouse of Kitrick & Hall, Inc.;

(f) All accounts receivable of Receiver or of said Kitrick & Hall, Inc., whether now or hereafter due or payable, as same shall stand upon the books of said Receiver as of the date of confirmation, in the manner hereinafter set forth, of the sale herein provided for;

(g) All other property, real and personal, of every kind or character, except cash, belonging to said Kittrick & Hall, Inc., and which is in the possession and under the control of Phillip O'Connell as such receiver.