

ORIGINAL

Decision No. 3554:35

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of HENRY J. NICKOLS and JOHN NICKOLS, individuals, doing business as NICKOLS TRANSPORTATION CO., a co-partnership, a public utility, for an order approving the dissolution of the said co-partnership and the sale to and the acquisition of the property and title thereto by HENRY J. NICKOLS, the remaining partner and for an order authorizing the said HENRY J. NICKOLS to mortgage certain of the property of said public utility necessary and useful in the performance of its duties to the public.

Application No. 25054

BY THE COMMISSION:

O P I N I O N

Henry J. Nickols and John Nickols, individuals, doing business as Nickols Transportation Co., a copartnership, are engaged in the business of hauling freight by water as a common carrier. By Decision No. 30483, dated January 3, 1938, as amended by Decision No. 30663, dated February 28, 1938, in Case No. 4257, the Commission found that Nickols Transportation Co. possesses prescriptive rights to operate an "on call" service as a common carrier by vessel for the

transportation of the commodities mentioned in said Decision No. 30483 and in the territories therein described. (1)

Applicants own and operate the diesel boats "Merit" and "Eight Brothers," the tug "Jersey," and "Barge No. 5."

John Nickols asks permission to sell, assign and transfer all of his right, title, claim and interest in and to the property of the partnership to his son, Henry J. Nickols. A copy of the agreement dissolving the partnership is on file in this proceeding as Exhibit E. Under the terms of the agreement, Henry J. Nickols agrees to pay John Nickols \$5,000 for all of his right, title, claim and interest in and to said Nickols Transportation Co. The \$5,000 is not payable until after repayment of a sum of about \$15,000 to be borrowed by Henry J. Nickols for the purpose of converting "Barge No. 5" into a bulk grain carrier.

Applicant Henry J. Nickols, doing business as Nickols Transportation Co., asks permission to issue to Stockton Savings and Loan Bank one note for the face amount of \$12,000 and another note for the face amount of \$3,000. Both notes bear interest at the rate of 6% per annum, payable monthly. The principal of the \$12,000 note is payable as follows: \$206.90 on September 1, 1942, \$206.90 on the first day of each and every month thereafter to and including May 1, 1947, and \$206.70 on June 1, 1947. The principal of the \$3,000 note is payable as follows: \$51.73 on September 1,

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(1) Vol. 41, Opinions and Orders of the Railroad Commission, pages 65, 70, and unprinted Decision No. 30663, dated February 28, 1938.

1942, \$51.73 on the first day of each and every month thereafter to and including May 1, 1947, and \$51.39 on June 1, 1947.

The payment of the \$12,000 note will be secured by a mortgage on the diesel boats "Eight Brothers" and "Merit" and the \$3,000 note by a mortgage on the tug "Jersey" and "Barge No. 5." A copy of the former mortgage is on file in this proceeding as Exhibit A and a copy of the latter as Exhibit B.

Applicant Henry J. Nickols intends to use the \$15,000 realized through the issue of said notes to convert "Barge No. 5" into a bulk grain carrier. This conversion is made necessary because some farmers cannot obtain sacks and other containers to ship all their grain and other crops to market.

#### ORDER

The Commission having considered applicants' requests and it being of the opinion that this is not a matter on which a hearing is necessary; that the money, property or labor to be procured or paid for by the issue of \$15,000 face amount of notes is reasonably required by Henry J. Nickols for the purpose herein stated; that the expenditures for said purpose are not, in whole or in part, reasonably chargeable to operating expenses or to income, and that this application should be granted subject to the provisions of this order, therefore

IT IS HEREBY ORDERED as follows:

a. John Nickols may, after the effective date hereof and on or before September 1, 1942, sell all his right,

title, claim and interest in and to said Nickols Transportation Co., a copartnership, to Henry J. Nickols, said sale to be made pursuant to the terms of the agreement on file in this proceeding as Exhibit E.

b. John Nickols and Henry J. Nickols shall join in a common supplement to the Nickols Transportation Co., a copartnership, tariff now on file with the Railroad Commission, said John Nickols and Henry J. Nickols, copartners, on the one hand withdrawing from said tariff and Henry J. Nickols on the other hand adopting and establishing as his own, said tariff.

c. Henry J. Nickols, an individual, doing business as Nickols Transportation Co., may, after the effective date hereof and on or before September 1, 1942, issue a note in the face amount of \$12,000 and a note in the face amount of \$3,000 for the purpose of converting "Barge No. 5" into a bulk grain carrier, said notes to be substantially in the same form as the notes on file in this proceeding as Exhibits D and C, respectively.

d. Henry J. Nickols, an individual, doing business as Nickols Transportation Co., may, after the effective date hereof and on or before September 1, 1942, execute a "preferred mortgage of documented vessels" and a "chattel mortgage of documented and undocumented vessels" to secure the payment of said notes, said preferred mortgage to be substantially in the same form as Exhibit A on file in this proceeding, and said chattel mortgage to be substantially in the same form as Exhibit B on file in this proceeding, provided that the ap-

proval herein given of said mortgages 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 mortgages as to such other legal requirements to which said mortgages may be subject.

e. The authority herein granted will become effective upon the payment of the fee prescribed by Section 57 of the Public Utilities Act, which fee is Twenty-five (\$25.00) Dollars.

f. Henry J. Nickols shall within thirty (30) days after the issue of said notes, file with the Railroad Commission a true and correct copy of each note and each mortgage executed under the authority herein granted. He shall also within six (6) months after the date hereof file with the Commission a statement showing in detail the cost of converting "Barge No. 5" into a bulk grain carrier.

Dated at San Francisco, California, this 16<sup>th</sup> day of June, 1942.

Carl Rees  
H. J. Nickols  
Richard Jackson  
Commissioners.

\$ 25.00

