

Decision No. 39761

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ORIGINAL

In the Matter of the Application of )  
HENRY NICKOLS dba Nickols Transportation )  
Co. to sell and transfer his operative )  
properties and rights to a partnership ) : Application  
composed of JOHN A. PETERSON, ELLEN ) : No. 27946  
PETERSON, ARTHUR PETERSON AND LLOYD W. )  
VIVELL. )  
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Reginald L. Vaushan, for applicants; Albert D. Elledge, for Harbor Tug and Barge Company, protestant; Walter G. Westman, for Bay Cities Transportation Company, protestant.

O P I N I O N

Henry Nickols, doing business as Nickols Transportation Co., requests the Commission to enter an order authorizing him to sell and transfer his intrastate vessel operating rights and all his operating properties used in connection therewith to John A. Peterson, Ellen R. Peterson, Arthur R. Peterson, and Lloyd Walter Vivell, a partnership, proposing to do business under the name of Nickols Transportation Co.

Applicant Nickols is engaged in operating a vessel service on the inland waters of California. The Commission by Decision No. 30483, dated January 3, 1938, and Decision No. 30663, dated February 28, 1938, in Case No. 4257, defines the intrastate operative rights of applicant Nickols. The Interstate Commerce Commission issued to him on May 9, 1946, a certificate authorizing him to engage as a common carrier in interstate or foreign commerce by self-propelled vessels and by non self-propelled vessels

with the use of separate towing vessels, in the transportation of commodities generally between ports and points on the San Joaquin and Sacramento Rivers and their tributary waterways below and including Stockton, and below Sacramento, above Antioch, California, and to and including the B. B. Ranch Landing west of Collinsville, California, and between such ports and points on the one hand, and, on the other, ports and points on San Francisco Bay and its tributary waterways. By its order of November 7, 1946, the Interstate Commerce Commission authorized Nickols Transportation Co. to transfer said operative rights to John A. Peterson, Ellen R. Peterson, Arthur R. Peterson, and Lloyd Walter Vivell, copartners doing business as Nickols Transportation Co.

John A. Peterson, one of the purchasers of the Nickols properties, is manager of the Johnny Peterson Towboat Co. He has held that position for the past four years. The company owns three towboats and a barge. It is not now engaged in any common carrier business. The testimony shows that John A. Peterson is generally familiar with the value of towboats and vessels. On behalf of the Purchasers, he conducted the negotiations for the purchase of the Henry Nickols properties described in the agreement filed as Exhibit "2" of Exhibit "A" in this application. The properties which Nickols has agreed to sell consist of the Tug Fox, the Tug Wm. Fisher, Barges Nos. 5, 57 and 103, the Barge Kongo, office equipment, dock equipment, gangplanks, hand trucks, ship tools, grain receivers, sand pumps, the operative rights to which reference has been made herein, and the transportation business of Henry Nickols. Purchasers have agreed to pay for the properties \$110,000. They have made a down payment of \$5,000, will pay \$15,000 additional upon the receipt of an

order of the Interstate Commerce Commission and of the Public Utilities Commission of the State of California authorizing the transfer of the properties, and deliver to Henry Nickols their note for \$90,000. The note is payable in installments of \$1,200 a month with interest at the rate of 5% per annum on the unpaid balances. The payment of the note will be secured by the execution of a mortgage on the tug boats and barges being acquired from Henry Nickols.

As of September 30, 1946, the Johnny Peterson Towboat Co. reports assets and liabilities as follows:

<u>Assets</u>		
<u>Current assets:</u>		
Cash in bank and deposits recoverable	\$14,658.57	
Accounts receivable	\$16,566.03	
Less: Assigned accounts receivable	<u>1,860.70</u>	14,705.33
Claims receivable		5,165.01
Notes receivable		2,512.36
Inventory-Spare parts		<u>3,000.00</u>
Total current assets		\$40,041.27
<u>Fixed assets:</u>		
Tow Boat equipment	\$28,196.76	
Less: Reserve for depreciation	<u>2,946.30</u>	\$25,250.46
Furniture and fixtures	<u>149.47</u>	
Less: Reserve for depreciation	<u>8.89</u>	<u>140.58</u>
Total fixed assets		25,391.04
<u>Investment:</u>		
River Sand Co.	\$ <u>1,213.69</u>	
Total investments		1,213.69
<u>Deferred charges:</u>		
Prepaid insurance	\$ 2,203.28	
Prepaid expenses	<u>6,828.27</u>	
Total deferred charges		<u>9,031.55</u>
Total Assets		<u>\$75,677.55</u>

Liabilities and Partnership Net Worth

<u>Current liabilities:</u>		
Accounts payable	\$32,112.32	
Accrued taxes payable	826.18	
Note payable	<u>1,640.35</u>	
Total current liabilities		\$34,578.85
<u>Partnership net worth:</u>		
John A. Peterson capital	\$19,521.88	
Ellen Peterson capital	17,466.95	
Lloyd W. Vivell capital	<u>4,109.87</u>	
Total partnership net worth		<u>41,098.70</u>
Total Liabilities and Partnership Net Worth		<u>\$75,677.55</u>

The testimony shows that the Purchasers have funds at hand to make the down payments. It further shows that it is Purchasers' intention to consolidate the properties they now own with those they will acquire from Henry Nickols and operate the combined properties under the name of Nickols Transportation Co.

Through cross-examination protestants questioned Purchasers' forecast of operating revenues, their ability to engage in the common carrier transportation service and the price being paid for the Nickols properties. They offered no evidence to show that Purchasers' operations would be illegal or would adversely affect them or that the property being transferred is not worth \$110,000. The purchase price is the result of negotiations. The evidence shows that Henry Nickols is selling the properties because of ill health and that Purchasers desire to extend their operations. Purchasers have had experience in operating towboats, and will retain the operating personnel of Henry Nickols at Stockton. As to future revenues, witnesses for Seller and Purchasers stated that the annual operating revenues of the combined operations will not be less than \$150,000. This sum was determined by considering the operating revenues of the Johnny

Peterson Towboat Co.; the Henry Nickols common carrier revenues over a period of years before he had any interstate rights, his non-common carrier revenues and the revenues that may be obtained under his interstate rights. Obviously, the annual revenues cannot be determined with any degree of certainty. The Seller apparently has confidence in Purchasers' ability to operate successfully the consolidated business, for he is willing to accept their installment note to represent \$90,000 of the purchase price.

The evidence does not show that the transfer of the properties will adversely affect the public interest.

#### O R D E R

A public hearing having been held in the above entitled application, the Commission having considered the evidence submitted at such hearing and it being of the opinion that this application should be granted, that the money, property or labor to be procured or paid for by the issue of the note herein authorized is reasonably required by said Purchasers to pay in part for the properties of Henry Nickols, therefore,

IT IS HEREBY ORDERED as follows:

1. Henry Nickols may, after the effective date hereof and on or before March 1, 1947, sell and transfer his intrastate operative rights described in Decisions Nos. 30483 and 30663, and his properties used in connection therewith, which are more particularly described in Exhibit "2" attached to Exhibit "A" on file in this application, to John A. Peterson, Ellen R. Peterson,

Arthur R. Peterson and Lloyd Walter Vivell, copartners doing business as Nickols Transportation Co. Said copartners may acquire and operate said properties.

2. John A. Peterson, Ellen R. Peterson, Arthur A. Peterson and Lloyd Walter Vivell, copartners doing business as Nickols Transportation Co., may issue to Henry Nickols in part payment for said properties their 5% installment note for the principal sum of not exceeding \$90,000 and execute a mortgage to secure the payment of said note, said note and said mortgage to be in, or substantially in, the same form as the note and mortgage filed as Exhibit "2" of Exhibit "A" on file in this proceeding.

3. Henry Nickols, John A. Peterson, Ellen R. Peterson, Arthur R. Peterson and Lloyd Walter Vivell, doing business as Nickols Transportation Co., shall immediately upon the transfer of the property involved and on not less than one (1) day's notice to the Commission and to the public, supplement or re-issue the tariff on file with the Commission insofar as it names rates, rules and regulations governing the common carrier operations of Henry Nickols to show that he has withdrawn or canceled and that said copartners have concurrently adopted or established as their own said rates, rules and regulations, and that the tariff filed pursuant to this order shall in all other respects comply with the Commission's tariff circular No. 2.

4. The authority herein granted will become effective five (5) days after the date hereof, and when said copartners, or any of them, have paid the fee prescribed by Section 57 of the Public Utilities Act, which fee is Ninety (\$90.00) Dollars.

5. Within thirty (30) days after the transfer of said properties, said copartners, or any of them, shall file with the Commission a copy of the deed or other instrument of transfer under which they have acquired and hold title to said properties, and a copy of the note and a copy of the mortgage executed under the authority herein granted.

6. The action taken herein shall not be construed to be a finding of the value of the properties herein authorized to be transferred.

Dated at San Francisco, California, this 23<sup>rd</sup> day of December, 1946.

Harold P. Kule  
Justice F. Cooney  
Francis D. ...  
Earl ...  
A. J. ...  
 Commissioners

