

ORIGINAL

Decision No. 48408

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
 A. E. Nosler, H. W. Nosler and F. M.)
 Nosler, co-partners, dba as Pacific)
 Transfer, Van & Truck Co. to sell) Application
 and Russell S. Stowell and Albert) No. 34019
 Compher to buy the motor trucks, equip-)
 ment, and rights of Pacific Transfer,)
 Van & Truck Co.)

-----)
 In the Matter of the Application of)
 A. E. Nosler, H. W. Nosler and F. M.)
 Nosler, as directors and stockholders)
 of Pacific Transfer, Van & Truck Co.)
 Inc., a corporation and as distributees) Application
 of the assets of said corporation to) No. 34020
 sell and Russell S. Stowell and Albert)
 Compher, as co-partners to buy a)
 warehouse certificate in San Diego.)
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O P I N I O N

In Application No. 34019 A. E. Nosler, H. W. Nosler and F. M. Nosler, partners doing business as Pacific Transfer, Van & Truck Co., seek authorization to transfer highway common carrier operative rights and property and equipment to Russell S. Stowell and Albert Compher.

In Application No. 34020 A. E. Nosler, H. W. Nosler and F. M. Nosler, as directors and stockholders of Pacific Transfer, Van & Truck Co., Inc., a dissolved corporation, and as distributees of the assets of said corporation, seek authorization to transfer warehouse operative rights in San Diego to Russell S. Stowell and Albert Compher.

It appears that prior to 1942 Pacific Transfer, Van & Truck Co., Inc., a corporation, was engaged in the public warehouse business in San Diego and in the operation of a highway common carrier service between San Diego and Coronado Beach, including North Island and Rockwell Field, under a certificate of public convenience and necessity granted by Decision No. 17468, dated October 13, 1926, in Application No. 12058. In 1942, according to information filed in Application No. 25275, proceedings were initiated to dissolve the

corporation and to distribute to its four stockholders, who were members of the Nosler family, all its property and assets, including the operative rights, equipment used in conducting the service, and the warehouse business. The order of the Commission in said application, however, authorized the transfer of the highway common carrier operative rights and the property to said former stockholders, as partners, but did not specifically mention the warehouse operative rights. (Decision No. 35974, dated November 23, 1942.) Thereafter, two of the original partners having died, the highway common carrier rights and property were transferred to a new partnership composed of A. E. Nosler, H. W. Nosler and F. M. Nosler, the present owners, under authorization granted by Decision No. 46493, dated December 4, 1951, in Application No. 32869.

The present proceedings show that since 1942 the present partnership and its predecessor partnership have continued the motor carrier and the warehouse operations.¹ They report, however, that H. W. Nosler, who has operated the business for many years on behalf of the partners, is in ill health and is unable to continue his activities and that the other partners are not able or qualified to take over the management. Accordingly, they have arranged to dispose of their holdings to Russell S. Stowell and Albert Compher.

To effect the transfer, A. E. Nosler, H. W. Nosler and F. M. Nosler, as directors and stockholders of the former corporation, acting in the distribution of its assets, have filed Application No. 34020 to transfer the warehouse operative rights for the sum of \$1,000 in cash. As partners, they have filed Application No. 34019 to transfer the highway common carrier operative rights and the property and equipment to the same individuals for the sum of \$14,000, of which \$7,000 will be payable in cash and \$7,000 will

¹ Their 1951 annual report to the Commission shows revenues and expenses as follows:

	Revenues	Expenses	Net
Freight	\$ 4,231.31	\$ 3,822.73	\$ 408.58
Warehouse	4,163.58	1,588.62	2,574.96
City hauling and truck sales	26,959.09	22,346.87	4,612.22
	\$35,353.98	\$27,758.22	\$7,595.76

be payable in monthly installments of \$500, with interest at the rate of 6% per annum, the deferred payments to be evidenced by a promissory note.²

As stated, the highway common carrier operative rights were established by Decision No. 17468. The warehouse operative rights appear to have been established by reason of operations prior to the effective date of Section 502 of the Public Utilities Act, now Section 1051 of the Public Utilities Code. As to these rights, the Commission has made no finding of their character or extent and at this time we will authorize the transfer of whatever rights the present owners may have.³

Statements filed in these proceedings indicate that the purchasers are experienced in the motor truck transportation business and financially are in a position to take over the operations and to continue the service. Accordingly, in our opinion the proposed transfers will not be adverse to the public interest and authorization should be granted, in line with applicants' requests. The action taken herein, however, shall not be construed to be a finding of the value of the properties herein authorized to be transferred. Applicants Russell S. Stowell and Albert Compher are hereby placed upon notice that operative rights, as such, do not constitute a class of property which may be capitalized or used as an element of value in rate fixing for any amount of money in excess of that originally paid to the state as the consideration for the grant of such rights. 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

² In listing in Application No. 34019 the properties which they seek to transfer, A. E. Nosler, H. W. Nosler and F. M. Nosler make reference to certain highway carrier permits issued to them by this Commission. These permits authorize operations as a city carrier, as a radial highway common carrier, as a highway contract carrier and as a household goods carrier. Applicants should make the transfer of these permits the subject of a separate application.

³ It appears from reports submitted to the Commission by A. E. Nosler, H. W. Nosler and F. M. Nosler, or by their predecessors, that the conduct of the warehouse operations involved has been confined to a gross area of 7,000 square feet and a net occupiable area of 3,000 square feet.

at any time by the state, which is not in any respect limited as to the number of rights which may be given.

O R D E R

The Commission having considered the above entitled matters, and being of the opinion that a public hearing is not necessary and that the applications should be granted, as herein provided, therefore,

IT IS HEREBY ORDERED as follows:

1. A. E. Nosler, H. W. Nosler and F. M. Nosler, copartners doing business as Pacific Transfer, Van & Truck Co., on and after the effective date hereof and on or before June 30, 1953, may transfer to Russell S. Stowell and Albert Compher the certificate of public convenience and necessity granted by Decision No. 17468, dated October 13, 1926, and acquired by them under authorization granted by Decision No. 46493, dated December 4, 1951, and, except as hereinafter noted, the property and equipment referred to in Application No. 34019.

EXCEPTION: The transfer authority herein granted does not apply in connection with the permits held by A. E. Nosler, H. W. Nosler and F. M. Nosler authorizing operations as a city carrier, as a radial highway common carrier, as a highway contract carrier and as a household goods carrier.

2. A. E. Nosler, H. W. Nosler and F. M. Nosler, as directors and stockholders of Pacific Transfer, Van & Truck Co., Inc., a dissolved corporation, and as distributees of the assets of said corporation, on and after the effective date hereof and on or before June 30, 1953, may transfer to Russell S. Stowell and Albert Compher the warehouse operative rights referred to in the foregoing opinion to store property as a public utility warehouseman in the City of San Diego.

3. Russell S. Stowell and Albert Compher, on and after the effective date hereof and on or before June 30, 1953, may issue a note in the principal amount of not exceeding \$7,000, payable in monthly installments of \$500 with interest at the rate of 6% per annum, for the purpose of financing in part the purchase price of said highway common carrier operative rights and property and equipment, it being the opinion of the Commission that the money, property or labor to be procured or paid for by the issue of said note is reasonably required for the purpose specified herein, and that such purpose is not, in whole or in part, reasonably chargeable to operating expenses or to income.

4. Within ninety days after the effective date hereof A. E. Nosler, H. W. Nosler and F. M. Nosler, as Sellers and Russell S. Stowell and Albert Compher as Buyers of the rights and properties involved herein shall file with the Commission a verified copy of the bill of sale covering the transfers herein authorized, showing the date that title to the operative rights and properties is to pass from Sellers to Buyers.

5. A. E. Nosler, H. W. Nosler, and F. M. Nosler as Sellers and Russell S. Stowell and Albert Compher as Buyers shall join in the amendment of tariffs on file with the Commission governing the highway common carriers operations and the public utility warehouse operations of Sellers to show that A. E. Nosler, H. W. Nosler and F. M. Nosler have withdrawn from the tariffs and that Russell S. Stowell and Albert Compher have adopted said tariffs as their own to govern the public utility operations conducted under the operative rights acquired by said Russell S. Stowell and Albert Compher pursuant to the authority herein above granted. The amendments to the tariffs shall be made effective on not less than ten days' notice to the Commission and to the public and the effective date shall coincide with the date that title to such rights and properties as are herein involved is transferred to Russell S. Stowell and Albert Compher.

6. Within thirty days after A. E. Nosler, H. W. Nosler and F. M. Nosler have relinquished control of the rights and properties involved herein, they shall complete their filings of all reports required of them as a highway common carrier and as a public utility warehouseman, including (a) annual reports of the respective operations for the year 1952, (b) corresponding reports of the respective operations for that portion of the year 1953 prior to assumption of the operations by Russell S. Stowell and Albert Compher, and (c) a warehouse occupancy report as of the date of termination of public utility warehouse operations by A. E. Nosler, H. W. Nosler and F. M. Nosler.

7. Russell S. Stowell and Albert Compher shall file with the Commission monthly reports as required by General Order No. 24-A, which order, insofar as applicable, is made a part of this order.

8. The authority herein granted will become effective when Russell S. Stowell and Albert Compher have paid the minimum fee prescribed by Section 1904(b) of the Public Utilities Code, which fee is twenty-five (\$25.00) dollars.

The authority herein granted shall expire unless exercised on or before June 30, 1953.

Dated at San Francisco, California, this 24th day of March, 1953.

A. T. Davidson
President
Justus J. Calver
Harold Kula
Wenrich Pottier
W. E. Mitchell
Commissioners

