

Decision No. 49430

**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of: )

(a) BURTON TRUCK AND TRANSFER CO. )  
for authority to issue shares of its )  
common capital stock pursuant to )  
Sections 816-830 of the California )  
Public Utilities Code. )

(b) STEWARD R. NESCHER, doing )  
business as DIRECT TRUCKING CO. for )  
authority to sell and BURTON TRUCK )  
AND TRANSFER CO. to purchase a )  
highway common carrier operating )  
right for the transportation of )  
property between Los Angeles and )  
Los Angeles Harbor pursuant to )  
Sections 851-853 of the California )  
Public Utilities Code. )

Application  
No. 34921

O P I N I O N

By this application Steward R. Nescher, doing business as Direct Trucking Co., requests authority to sell and Burton Truck and Transfer Co., a corporation, requests authority to purchase, a highway common carrier operating right for the transportation of property between Los Angeles and Los Angeles Harbor, together with other assets used by Nescher in his trucking operations. In addition, Burton Truck and Transfer Co. requests authority to issue 6,000 shares of its common capital stock having an aggregate par value of \$6,000 in part payment for the operating right and other assets.

Burton Truck and Transfer Co. reports that it is engaged in inter-state commerce as a highway common carrier of general commodities, with certain exceptions, between Los Angeles Harbor and Long Beach on the one hand, and Los Angeles on the other hand, and that it is engaged in business within the State of California as a city carrier, radial highway common carrier and contract carrier. For the nine months ended September 30, 1953, it reports gross revenues of \$134,007.10 and net income of \$11,103.18, after deducting \$5,209.50

for depreciation.

Steward R. Nescher is engaged in intrastate commerce within the State of California as a highway common carrier in the transportation of general commodities between Los Angeles and Los Angeles Harbor pursuant to an operative right acquired by him from United Transport under authorization granted by Decision No. 42304, dated December 14, 1948, in Application No. 29746. For the nine months ended September 30, 1953, Nescher reports gross revenues from operations at \$21,821.07 and net income at \$50.34 after deducting \$2,302.09 for depreciation.

Nescher proposes to transfer his highway common carrier operative right, together with all assets used by him in conducting business as Direct Trucking Co., to Burton Truck and Transfer Co. in exchange for 6,000 shares of common capital stock of Burton Truck and Transfer Co., having an aggregate par value of \$6,000, subject to the assumption by Burton Truck and Transfer Co. of all known liabilities of Direct Trucking Co. <sup>(1)</sup> At the conclusion of the transaction, Nescher will own one-third of the outstanding stock of Burton Truck and Transfer Co. and, according to the application, will be elected to the board of directors and employed as an officer by the corporation.

Applicants are of the opinion that the proposed transfer will result in a more economically sound operation with adequate capital and demonstrated earning ability. They also claim that there will be no interruption of service and that in fact more motor vehicle equipment will be available to render the service formerly conducted by Nescher. Burton Truck and Transfer Co. proposes to adopt the tariffs of Nescher and to participate in Tariff No. 18-A of the Southwestern Motor Tariff Bureau.

---

(1) The tangible assets of Nescher include five trucks, three tractors, and four other units of equipment having a book value of \$4,709 and an estimated market value of \$9,525.

From a review of this matter it appears that the transfer will result in no change in the service and we are of the opinion that the proposed transfer will not be adverse to the public interest and should be authorized. In making this order we wish to place applicants on 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 at any time by the state, which is not in any respect limited as to the number of rights which may be given.

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

O R D E R

The Commission having considered the above entitled matter and being of the opinion that a public hearing is not necessary, that the application should be granted, as herein provided, that the money, property or labor to be procured or paid for by the issue of the shares of stock herein authorized is reasonably required by Burton Truck and Transfer Co. for the purpose specified herein and that such purpose is not, in whole or in part, reasonably chargeable to operating expenses or to income; therefore,

IT IS HEREBY ORDERED as follows:

L. Steward R. Neschor, doing business as Direct Trucking Co., may transfer to Burton Truck and Transfer Co. the operative right and properties referred to in this proceeding and Burton Truck and Transfer Co., in payment for the same, may acquire such operative right and properties and assume the payment of outstanding indebtedness of Neschor and issue not exceeding \$6,000 par value of its common stock.

2. Within sixty days after the effective date hereof and on not less than five days notice to the Commission and to the public, Burton Truck and Transfer Co. shall file in triplicate, and concurrently make effective, appropriate tariffs and time tables.

3. Burton Truck and Transfer Co. shall file with the Commission a report as required by General Order No. 24-A, which order, insofar as applicable, is made a part of this order.

4. The authority herein granted will become effective on the date hereof.

Dated at San Francisco, California, this 15<sup>th</sup> day of December, 1953.

R. E. Dunning  
President

James F. Cooney

Frederick Patten

John E. Maxwell

Gene Bergman  
Commissioners