

ORIGINAL

Decision No. 54734

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of MARION GOPCEVIC and LURAH VOUTE, individuals doing business as DODD WAREHOUSE AND DRAYAGE COMPANY, to sell and transfer and THOMPSON BROS., INC., a corporation, to purchase and acquire highway common carrier and public utility warehouse operative rights and property, and of THOMPSON BROS., INC. to issue evidences of indebtedness and encumber public utility property.

Application No. 38907

O P I N I O N

This is an application for an order authorizing Marion Gopcevic and Lurah Voute to transfer operative rights and tangible assets to Thompson Bros., Inc., and authorizing Thompson Bros., Inc., to issue notes and encumber property.

It appears that Marion Gopcevic and Lurah Voute are individuals doing business as Dodd Warehouse and Drayage Company, and that they are engaged in operating a public utility warehouse for the storage of general commodities in San Francisco and a highway common carrier business consisting of the transportation of general commodities (1) within the San Francisco-East Bay Cartage Zone and (2) between San Francisco and Gilroy and intermediate points; between Oakland and San Jose and intermediate points; between San Francisco and Vallejo and intermediate points; and between Oakland and Pittsburg, with certain exceptions. The operations under Item (2) are restricted as to shipments having

either origin or destination at one of applicants' warehouses, or moving to or from a person or firm which has a current storage account with one or more of said warehouses. These applicants also operate as permit carriers.

The properties utilized by Marion Gopcevic and Lurah Voute include prescriptive warehouse operative rights acquired by reason of operations conducted on, prior to and continuously since August 2, 1927 under tariffs on file with the Commission, and highway common carrier operative rights granted by Decision No. 47423, dated June 30, 1952, Decision No. 50989, dated January 18, 1955, and Decision No. 51292, dated April 5, 1955, together with certain real property and improvements, leasehold interests and revenue equipment.

The application shows that Marion Gopcevic and Lurah Voute desire to withdraw from the operations and they they have made arrangements to sell to Thompson Bros., Inc., their real property and improvements at a base price of \$165,000 and their business assets including equipment, current assets, operative rights, miscellaneous investments and goodwill at a base price of \$117,500. The purchaser intends, and seeks authorization, to issue to Marion Gopcevic and Lurah Voute a promissory note secured by a deed of trust in the principal amount of \$165,000, payable in 120 equal consecutive monthly payments, plus interest at the rate of 5 per cent per annum, and to enter into a loan agreement with the Bank of America National Trust and Savings Association to borrow up to \$75,000 to finance, in part, the purchase price, such borrowing, plus interest of \$3,930, to be

represented by a promissory note, payable over a period of 18 months secured by a pledge of equipment.

Thompson Bros., Inc., is a California corporation which was organized in 1905 and which is engaged in business as a public utility warehouseman of general commodities in San Francisco. In addition, it is a highway common carrier of general commodities in the San Francisco-East Bay Cartage Zone, and between San Francisco and San Jose and intermediate points, under certificates of public convenience and necessity granted by Decision No. 51030, dated January 25, 1955 and Decision No. 52788, dated March 13, 1956. It is also a permit carrier.

Applicants have filed their financial statements in this proceeding, and also pro forma statements giving effect to the purchase and sale which indicate that the assets of Marion Gopcevic and Lurah Voute will be transferred to the purchaser at their book values. The financial statements show the revenues and expenses of the two operations during 1956 as follows:

	<u>Dodd</u>	<u>Thompson</u>
Revenues -		
Freight	\$559,604	\$267,568
Warehouse (net)	6,791	10,282
Other	-	811
Total	<u>566,395</u>	<u>278,661</u>
Expenses	<u>534,697</u>	<u>253,736</u>
Gross ordinary income	\$ 31,698	\$ 24,925

Applicants estimate that upon the consolidation of the operations, annual net savings of \$71,852 will be realized in maintenance, terminal, insurance and safety expenses in the highway common carrier operations and annual net savings of

\$1,480 in the warehouse operations. Their pro forma estimates of 1956 operations, giving effect to these estimated savings, produce gross operating income available for interest and other charges of \$129,954 for the year, as compared with interest charges on the proposed notes and other deductions aggregating \$25,067.

A further review of the pro forma statements shows, at the end of 1956, net investment in the working assets in the amount of \$25,726 and net investment in tangible and intangible capital and in other assets in the amount of \$275,046, a total of \$300,772, offset by long-term obligations of \$248,822 including the notes now proposed to be issued, and equity capital of \$51,950.

It is true that at the outset Thompson Bros., Inc., will have what appears to be an unbalanced financial structure. However, it also appears that the operations of the sellers and the buyer have been reasonably successful, that the outstanding indebtedness will be extinguished in substantial annual installments, and that the consolidated earnings should be ample to service the proposed indebtedness without interfering with the public utility duties of the purchaser. It therefore appears to us, and we so find, that the proposed transfer will not be adverse to the public interest, that the money, property or labor to be procured or paid for by the issue of the notes herein authorized is reasonably required by applicant for the purposes specified herein, and that such purposes, except as otherwise authorized, are not, in whole or in part, reasonably chargeable to operating expenses or to income.

The transferors also are engaged in interstate commerce under operative rights granted by the Interstate Commerce Commission,

and they have filed the appropriate application with that federal agency to complete the proposed sale. They have requested that in the event this Commission should approve the transaction that it authorize the sellers to enter into interim leases of the real property and other assets, pending the issue of a final order by the Interstate Commerce Commission, in order that Thompson Bros., Inc., may enter forthwith upon the operations. Copies of the proposed leases have been filed as Exhibits G to J, inclusive, in this proceeding.

The request to execute interim leases appears to be reasonable and will be granted.

Applicants are hereby placed 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, such rights extend to the holder a full or partial monopoly of a class of business and over a particular route in the case of a highway common carrier. 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 property 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 and that the application should be granted, as herein provided; therefore,

IT IS HEREBY ORDERED as follows:

1. Marion Gopcevic and Lurah Voute may transfer their warehouse and highway common carrier operative rights and tangible assets to Thompson Bros., Inc., in accordance with the terms and conditions of the agreement dated January 31, 1957, filed in this proceeding as Exhibit A. Applicants may execute said agreement and consummate the transactions referred to therein.

2. Thompson Bros., Inc., in acquiring said operative rights and tangible assets, may issue a promissory note in the principal amount of not exceeding \$165,000, and execute a deed of trust to secure its payment, and may issue a promissory note in the principal amount of not exceeding \$75,000, plus interest, and execute a mortgage of chattels to secure its payment.

3. Marion Gopcevic and Lurah Voute and Thompson Bros., Inc., may execute interim leases in, or substantially in, the same form as those filed in this proceeding as Exhibits G to J inclusive.

4. On not less than five days' notice to the Commission and to the public, effective concurrently with the consummation of such transfer, applicants shall supplement or reissue the tariffs now on file with the Commission, insofar as they name rates, rules and regulations governing the warehouse operations

here involved, to show that Marion Gopcevic and Lurah Voute, doing business as Dodd Warehouse and Drayage Company, have withdrawn or canceled and that Thompson Bros., Inc., concurrently has adopted or established, as its own, said rates, rules and regulations. The tariff filings made pursuant to this order shall comply in all respects with the regulations governing the construction and filing of warehouse tariffs set forth in the Commission's General Order No. 61.

5. On not less than five days' notice to the Commission and to the public, effective concurrently with the consummation of such transfer, applicants shall supplement or reissue the tariffs on file with the Commission naming rates, rules and regulations governing the common carrier operations here involved to show that Marion Gopcevic and Lurah Voute, doing business as Dodd Warehouse and Drayage Company, have withdrawn or canceled and Thompson Bros., Inc., has adopted or established, as its own, said rates, rules and regulations. The tariff filings made pursuant to this order shall comply in all respects with the regulations governing the construction and filing of tariffs set forth in the Commission's General Order No. 80.

6. Thompson Bros., Inc., shall file with the Commission a report, or reports, as required by General Order No. 24-A, which order, insofar as applicable, is made a part of this order.

7. The authority herein granted will become effective when Thompson Bros., Inc., has paid the fee prescribed by Section 1904(b) of the Public Utilities Code, which fee is \$244.

Dated at Los Angeles, California, this 26th day of March, 1957.

[Signature]
President
[Signature]
[Signature]
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Commissioners

PUBLIC UTILITIES COMMISSION
STATE OF CALIFORNIA
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By [Signature]