

ORIGINAL

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Decision No. _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)	
REPUBLIC VAN & STORAGE CO., INC., a)	
corporation, to transfer, and)	
ATLANTIC WAREHOUSE CO., a)	Application No. 41160
corporation, to purchase operating)	
right of a public warehouseman, and)	
to issue stock.)	

Ivan McWhinney, for applicants.

O P I N I O N

This is an application for an order of the Commission (1) authorizing Republic Van and Storage Co., Inc., to sell and transfer warehouse operative rights to Atlantic Warehouse Co., a corporation, and (2) authorizing Atlantic Warehouse Co. to issue \$20,000 par value of common stock.

The application was filed on May 21, 1959. After notice, a public hearing was held before Examiner Coleman in Los Angeles on June 24, 1959, at which time the matter was taken under submission. There have been no protests filed in this proceeding.

The operative rights to be transferred are prescriptive in character, having been created by virtue of public utility warehouse operations in Los Angeles prior to the enactment, in 1927, of Section 50 $\frac{1}{2}$ of the Public Utilities Act, now Section 1051 of the Public Utilities Code, and are said to authorize the operation of 32,500 square feet of warehouse space. The rights were acquired by the present owner, Republic Van & Storage Co., Inc., in 1951 by purchase from Coast Van Lines, Inc., pursuant to Decision No. 45448, dated March 13, 1951, in Application No. 31846.

Republic Van & Storage Co., Inc., is engaged primarily in highway carrier operations, locally and nationwide, and, to a limited extent, in storage, warehousing, crating and packing activities, including public utility warehousing in Los Angeles. Its warehouse business has been small in volume, although applicant reports that it has been conducting its operations under its operative rights since the date it acquired said rights and that it has never refused or been unable to accept goods offered by the public for storage. However, it now desires to divest itself of its public utility warehouse operations and has made arrangements to sell its operative rights to Atlantic Warehouse Co. for the sum of \$5,000.

Atlantic Warehouse Co., the purchaser of the operative rights, is a new corporation which was organized on February 16, 1959, by individuals who are engaged in motor carrier operations and related activities and who now desire to extend their operations into the field of warehousing. At this time, it is proposed that the new corporation will issue and sell \$20,000 par value of stock to Yellow Cab Co.,^{1/} and will use \$5,000 of the proceeds to finance the purchase price of the operative rights and the remaining \$15,000 to provide working capital.

The record shows that Atlantic Warehouse Co., at the outset, will conduct its operations in a steel and concrete warehouse building located at 518-520 Seaton Street, Los Angeles, owned by Yellow Cab Co., which contains 7,800 square feet of warehouse space and

^{1/} Yellow Cab Co. owns and operates fleets of taxicabs at various points in California and controls, through stock ownership, Atlantic Transfer Co. and Di Salvo Trucking Co., highway common carriers of property, and Airporttransit, a passenger stage corporation.

that there will be made available to it, by Yellow Cab Co., such additional storage space as may be required as the volume of business increases. It appears that those who will be in control of the corporation are familiar with the operation of public warehouses and that the new corporation will have ample resources to undertake and continue the public service obligations. Under these circumstances, we are of the opinion, and so find, that the transfer of the operative rights will not be adverse to the public interest.

However, in passing on the request to issue stock, we are subject to certain limitations which have been imposed upon us by law. Section 820 of the Public Utilities Code reads as follows:

"The commission shall have no power to authorize the capitalization of the right to be a corporation, or the capitalization of any franchise or permit, or the right to own, operate, or enjoy any such franchise or permit, in excess of the amount (exclusive of any tax or annual charge) actually paid to the State or to a political subdivision thereof as the consideration for the grant of such franchise, permit, or right. No contract for consolidation or lease shall be capitalized, nor shall any public utility issue any bonds, notes, or other evidences of indebtedness against or as a lien upon any contract for consolidation or merger."

It is our opinion, because of this provision of the Public Utilities Code, that we cannot recognize the \$5,000 purchase price as a proper base for an order authorizing the issue of stock and that this portion of the application must be denied. We are not, of course, attempting to fix the price at which the present owner may sell its operative rights and if Atlantic Warehouse Co. desires to pay \$5,000 for such rights it may do so, as it clearly appears that the agreed terms are not so burdensome as to impair the public service. However, the new corporation must finance the cost from some source other than securities requiring Commission authorization.

In entering our order in this proceeding, we are making no finding as to the reasonableness of the price to be paid for the operative rights, nor as to their value, nor as to the nature, scope and extent of the rights. Atlantic Warehouse Co. hereby is 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 right. Aside from their purely permissive aspect, they extend to the holder a full or partial monopoly of a class of business. 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 record warrants the granting of the request with respect to the issue of the \$15,000 of stock for working capital.

O R D E R

A public hearing having been held in the above-entitled matter and the Commission having considered the evidence and being of the opinion that the transfer, as requested, should be authorized; that the money, property or labor to be procured or paid for by the issue of \$15,000 par value of stock is reasonably required by Atlantic Warehouse Co. for the purpose specified herein; that such purpose is not, in whole or in part, reasonably chargeable to operating expenses or to income; and that the request to issue \$5,000 of stock to finance the agreed purchase price of the operative rights should be denied; NOW THEREFORE,

IT IS HEREBY ORDERED as follows:

1. Republic Van & Storage Co., Inc., on and after the effective date hereof and on or before December 31, 1959, may sell and transfer to Atlantic Warehouse Co., a corporation, such operative rights as it may possess to operate a public utility warehouse in the City of Los Angeles.

2. Atlantic Warehouse Co., on and after the effective date hereof and on or before December 31, 1959, may issue and sell, at par, for cash, not to exceed \$15,000 of its common stock and use the proceeds for working capital.

3. Republic Van & Storage Co., Inc., shall file with the Commission a copy of the bill of sale covering the transfer of the operative rights, as herein authorized.

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 of Republic Van & Storage Co., Inc., to show that Republic Van & Storage Co., Inc., has withdrawn or canceled and that Atlantic Warehouse Co. concurrently has adopted or established, as its own, said rates, rules and regulations. The tariff filings made pursuant to this order in all respects shall comply with the regulations governing the construction and filing of warehouse tariffs set forth in the Commission's General Order No. 61.

5. Atlantic Warehouse Co. 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.

6. The request of Atlantic Warehouse Co. to issue \$5,000 of stock to finance the purchase price of the operative rights is denied.

7. The authority herein granted shall become effective 20 days after the date hereof.

Dated at San Francisco, California, this 14th day of July, 1959.

[Signature]
President
[Signature]
[Signature]
[Signature]
Commissioners