

ORIGINALDecision No. 60724

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
 F T S TRANSPORT SYSTEM, INC., a cor-
 poration, J. A. NEVIS TRUCKING, INC.,
 a corporation, and JOHN COSTELLO,
 Trustee in Bankruptcy, of Bankrupt
 J. A. Nevis Trucking, Inc., for
 authority for F T S Transport System,
 Inc. to purchase the highway common
 carrier authority of J. A. Nevis
 Trucking, Inc.

Application No. 42474

O P I N I O N

J. A. Nevis Trucking, Inc., a corporation, (hereinafter at times referred to as "Nevis") and John Costello, (hereinafter at times referred to as Costello) Trustee in Bankruptcy, of Bankrupt J. A. Nevis Trucking, Inc., request authority to sell and transfer and F T S Transport System, Inc. (hereinafter at times referred to as F T S) request authority to purchase and acquire certain highway common carrier operative rights and good will. F T S Transport System, Inc., requests authority to issue 1,261 shares of its \$10 par value common stock.

Nevis has operated for many years as a certificated carrier. Due to financial difficulties in 1959 Costello was appointed Receiver of the property of Nevis. Upon the request of the parties the operative rights were temporarily suspended by Decision No. 60136. Sealed bids upon the invitation of Costello were submitted on June 28, 1960 to the Honorable Bernard J. Abrott, Referee in Bankruptcy for the intrastate operative right and good will of Nevis. The bid of F T S at \$12,610 was the highest. A value of \$6,000 is placed upon the operating authority and a value of \$6,610 is placed upon the business and good will.

F T S operates as a highway common carrier in the transportation of limited commodities in intrastate commerce pursuant to Decision No. 59499. It operates approximately 114 pieces of equipment and maintains terminals at Sacramento, Oakland, Pittsburg, Fontana and a dispatching office in Los Angeles. As of December 31, 1959 F T S showed a net worth of \$49,765.45. It proposes to issue the 1,261 shares of stock to its major stockholder. The money derived therefrom will be used to consummate the purchase.

The Commission takes notice of the fact that the transportation rate fund fees and penalties due to the Commission from J. A. Nevis Trucking, Inc., amount to \$2,041.26.

After consideration the Commission finds and concludes that the proposed sale would not be adverse to the public interest and should be authorized and that the order of this Commission suspending the operative rights of J. A. Nevis Trucking, Inc., should be vacated, provided the agreement to sell is modified to provide that the amount paid pursuant to said agreement by F T S Transport System, Inc., shall be applied first toward payment of amounts due to this Commission for transportation rate fund fees and penalties from J. A. Nevis Trucking, Inc., before any payments are made to other creditors and stockholders of J. A. Nevis Trucking, Inc.

The Commission is empowered to authorize the capitalization of operative rights only in an 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 right. Further, it is our opinion we may not authorize the issue of stock against good will. We therefore find and conclude that the request of F T S Transport System, Inc., to issue its shares of stock should be denied. A public hearing is not necessary.

O R D E R

Application having been filed and the Commission being informed in the premises,

IT IS ORDERED:

(1) That, in the event that the agreement of sale is modified to provide that the amount paid pursuant to said agreement by F T S Transport System, Inc., shall be applied first toward payment of amounts due to this Commission for transportation rate fund fees and penalties from J. A. Nevis Trucking, Inc., before any payments are made to other creditors and stockholders of J. A. Nevis Trucking, Inc.; then, on or before December 1, 1960, J. A. Nevis Trucking, Inc., and John Costello, Trustee in Bankruptcy of J. A. Nevis Trucking, Inc., bankrupt, may transfer and F T S Transport System, Inc., may acquire, the operative rights granted by Decisions Nos. 53166, 52512 and 51313 in Applications Nos. 35493 and 36786, which are hereby reinstated, and the order pertaining to the suspension thereof set forth in Decision No. 60136 is cancelled, vacated and set aside.

(2) That, within thirty days after the consummation of the transfer herein authorized, the purchaser shall notify the Commission, in writing, of the fact and within said period shall file with the Commission a true copy of any bill of sale or other instrument of transfer which may be executed to effect said transfer.


(3) That on not less than five days' notice to the Commission and to the public, effective concurrently with the consummation of such transfer, applicants shall amend or reissue the tariffs on file with the Commission, naming rates, rules and regulations governing the common carrier operations here involved, to show


that J. A. Nevis Trucking, Inc., has withdrawn or canceled, and F T S Transport System, Inc., has adopted or established as its own, said rates, rules and regulations. The tariff filings made pursuant to this order shall comply with the regulations governing the construction and filing of tariffs set forth in the Commission's General Order No. 80.

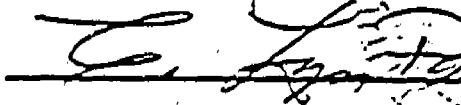
(4) The request of F T S Transport System, Inc., to issue 1,261 shares is denied.

The effective date of this order shall be twenty days after the date hereof.

Dated at San Francisco, California, this 13th day of SEPTEMBER, 1960.



President




Commissioners