

ORIGINAL

Decision No. 60803

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of WEST LOS ANGELES MILLING CO., a Corporation, and DURHAM WAREHOUSE CO., INC., a Corporation, for an Order Authorizing the Transfer of Certain Assets of WEST LOS ANGELES MILLING CO. to DURHAM WAREHOUSE CO., INC.; and

Application No. 42649

In the Matter of the Application of DURHAM WAREHOUSE CO., INC., a Corporation, for an Order Authorizing the Issuance of Shares and Notes and/or Other Evidences of Secured Indebtedness.

O P I N I O N

This application was filed on September 6, 1960, for an order of the Commission authorizing West Los Angeles Milling Co., a corporation, to transfer warehouse property to Durham Warehouse Co., Inc., and authorizing Durham Warehouse Co., Inc., to issue 2,500 shares of its common stock of the par value of \$10 each and of the aggregate par value of \$25,000; to execute two deeds of trust and two chattel mortgages; and to issue notes in the aggregate principal amount of \$235,000.

West Los Angeles Milling Co. is engaged in business as a public utility warehouseman in Oxnard, Oceanside and Chino and in the Sacramento Valley at Sutter and Durham. It now desires to dispose of its operations at Durham and, after negotiations, has entered into an agreement to sell its

facilities at this location, including real property, buildings and equipment, to Durham Warehouse Co., Inc., a new corporation which has been organized by certain bean growers in the vicinity for the express purpose of receiving the facilities and continuing the warehouse operations.

The operative rights governing the Durham operations are prescriptive in their nature and were determined by the Commission by its order dated June 28, 1960, in Case No. 6570, as consisting of 57,000 square feet at Durham and vicinity, exclusive of the 50,000 square feet of expansion permissible under Section 1051 of the Public Utilities Code.

The purchase price agreed upon by the new corporation is \$237,053.75, with \$57,053.75 being payable in cash upon the effective date of the transfer and the balance of \$180,000 being represented by a note secured by a first deed of trust and a first chattel mortgage, said note to be payable in annual installments of \$18,000 or more, with interest on the unpaid balance at the rate of 5 per cent per annum.

In order to obtain funds for working capital and to finance initial costs, the new corporation proposes to sell 2,500 shares of its common stock, at par, for cash, and to borrow \$55,000 from J. H. Coulter and Avis N. Navarra, to be represented by two notes, one for \$33,000 and the other for \$22,000, respectively, which will be secured by a second deed of trust and a second chattel mortgage and will be payable, after four years, in monthly installments aggregating \$550,

including interest at the rate of 6 per cent per annum on the outstanding balances. A pro forma balance sheet, giving effect to the acquisition of the property by the new corporation and to the issue of the stock and notes, is as follows:

<u>Assets</u>	
Cash	\$ 22,947
Land, buildings and equipment	<u>237,053</u>
Total	<u>\$260,000</u>
<u>Liabilities and Capital</u>	
Notes payable	\$180,000
Notes payable to stockholders	55,000
Common stock	<u>25,000</u>
Total	<u>\$260,000</u>

In presenting this matter to the Commission, applicants have filed a projected statement of the results of operations during the next five years, showing estimated revenues and net income, as follows:

<u>Year Ended</u>	<u>Revenues</u>	<u>Net Income</u>
July 31, 1961	\$105,000	\$19,084
July 31, 1962	120,200	23,532
July 31, 1963	142,000	26,380
July 31, 1964	185,000	42,340
July 31, 1965	185,000	42,819

In arriving at the net income, applicants have deducted annual depreciation charges of \$9,000 and interest on the outstanding notes.

The application shows that no part of the purchase price is allocated to the operative rights; that the new corporation will adopt the tariffs presently in effect; and that such new corporation does not, at this time, contemplate

any application for increases in rates. While it is true that the new corporation will enter upon its operations with what might be considered an unbalanced financial structure, the terms of the notes provide initially for annual payments of \$18,000 and the company's estimate of business clearly indicates that its earnings should be ample to meet its principal requirements. We find and conclude, therefore, 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 stock and the notes herein authorized is reasonably required for the purposes specified herein; and that such purposes are not, in whole or in part, reasonably chargeable to operating expenses or to income. We will enter our order granting the application.

Durham Warehouse Co., Inc., 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 rights, Aside from their purely permissive aspect, they extend to the holder a full or partial monopoly of a class of business which 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 operative rights 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, therefore,

IT IS HEREBY ORDERED as follows:

1. West Los Angeles Milling Co., a corporation, may transfer its warehouse operative rights governing operations at Durham and its warehouse facilities, as set forth in this application, to Durham Warehouse Co., Inc., under the terms and provisions of the agreement filed in this proceeding as Exhibit A.

2. Durham Warehouse Co., Inc., a corporation, may execute two deeds of trust and two chattel mortgages and may issue its promissory notes in the aggregate principal amount of \$235,000, and \$25,000 par value of its common stock in the manner, and under the terms, and for the purposes set forth in this application.

3. 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 West Los Angeles Milling Co., to show that West Los Angeles Milling Co. has withdrawn or canceled and that Durham Warehouse Co., Inc., a corporation, 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.

4. Durham Warehouse Co., 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.

5. The authority herein granted will become effective when Durham Warehouse Co., Inc., has paid the fee prescribed by Section 1904(b) of the Public Utilities Code, which fee is \$235.

Dated at San Francisco, California, this 4th day of OCTOBER, 1960.

Everett W. Davis
President

W. J. [unclear]

W. J. [unclear]

E. J. [unclear]

Theodore Deener
Commissioners

