

ORIGINAL

Decision No. 62014

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of:

SYDNEY B. KIEK and MORLEY M. KIEK
dba Truck-Rite Delivery Service, to
Sell to Astor Truck-Rite, Inc., a
California Corporation, Certificate
of Public Convenience and Necessity
for Transportation of Various
Commodities Between Various Points
in California; and Application of
ASTOR TRUCK-RITE, INC. to Purchase
Assets and Assume Liabilities of
M. Lee Astor dba Astor Freight Lines;
and Application of ASTOR TRUCK-RITE,
INC., a California Corporation, to
Issue Shares of Its Capital Stock.

Application No. 43342
Filed April 20, 1961

O P I N I O N

In this application the Commission is asked to enter its order authorizing Astor Truck-Rite, Inc., to issue a note and 210 shares of common stock of the par value of \$100 each and to assume certain liabilities in payment for properties of Sydney B. Kiek and Morley M. Kiek, doing business as Truck-Rite Delivery Service, and of M. Lee Astor, doing business as Astor Freight Lines.

Astor Truck-Rite, Inc., a California corporation, was organized during December of 1960 by Sydney B. Kiek, Morley M. Kiek and M. Lee Astor to take over and to consolidate their operations under one ownership. The corporation

will purchase the assets of the three individuals at book value, will assume their outstanding liabilities and will issue 70 shares of stock to each of the three and will issue a two-year, unsecured, non-interest bearing note in the amount of \$6,085.33 to M. Lee Astor as additional consideration for his assets, his proprietary investment exceeding that of the other two parties.

The application shows that Sydney B. Kiek and Morley M. Kiek own 11 units of equipment, a certificate of public convenience and necessity granted by Decision No. 61418, dated January 24, 1961, authorizing operations as a highway common carrier of general commodities, with certain exceptions, in the Los Angeles Basin region, and radial highway common carrier, highway contract carrier and city carrier permits. M. Lee Astor owns 16 units of equipment and radial highway common carrier, highway contract carrier and city carrier permits. Separate requests have been, or will be, filed for the transfer of the permits of Sydney B. Kiek and Morley M. Kiek to the corporation and for the suspension of the permits of M. Lee Astor. No amounts are included in the assets for the operative authorities.

Exhibits attached to the application show that during 1960, the operating revenues of Sydney B. Kiek and Morley M. Kiek amounted to \$119,855, with net profit of \$29,331, and the operating revenues of M. Lee Astor amounted to \$187,687, with net profit of \$9,245. A pro forma balance sheet as of January 1, 1961, giving effect to the consolidation of the two operations is as follows:

Assets

Current assets -		
Cash	\$ 3,269	
Accounts receivable	4,586	
Deposits	2,137	
Prepayments	<u>2,571</u>	
Total current assets		\$12,563
Tangible assets, less reserves		<u>46,115</u>
Total		<u>\$58,678</u>

Liabilities and Net Worth

Accounts payable	\$ 7,152
Notes and equipment obligations	11,171
Contracts payable	7,002
Note to M. Lee Astor	6,085
Capital equity	<u>27,268</u>
Total	<u>\$58,678</u>

It appears that the new corporation will acquire a substantial volume of business which appears to have been reasonably profitable in the past and that it will enter upon its operations with a balanced financial position. We find and conclude that the proposed transfers of property and issues of securities will not be adverse to the public interest and we will enter our order granting the application.

In making this order, we 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 operative rights and equipment 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 under the conditions set forth herein, that the money, property or labor to be procured or paid for by the issue of the stock and note herein authorized is reasonably required by applicant corporation 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:

1. Sydney B. Kiek and Morley M. Kiek, doing business as Truck-Rite Delivery Service, on or after the effective date hereof and on or before December 31, 1961, may sell and transfer to Astor Truck-Rite, Inc., the operative rights acquired by them by Decision No. 61418, dated January 24, 1961, and the

operative equipment as set forth in this application and M. Lee Astor, on or after the effective date hereof and on or before December 31, 1961, may sell and transfer his interest in Astor Freight Lines to Astor Truck-Rite, Inc.

2. Astor Truck-Rite, Inc., in acquiring said operative rights and equipment, may assume the payment of outstanding indebtedness as set forth in this application and may issue not to exceed 210 shares of common stock of the total par value of \$21,000.00 and a note in the principal amount of not to exceed \$6,085.33.

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 on file with the Commission naming rates, rules and regulations governing the operations here involved to show that Sydney B. Kiek and Morley M. Kiek, doing business as Truck-Rite Delivery Service, have withdrawn or canceled and Astor Truck-Rite, 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.

4. Astor Truck-Rite, 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 to issue a note will become effective when Astor Truck-Rite, Inc., has paid the minimum fee prescribed by Section 1904(b) of the Public Utilities Code, which fee is \$25.00. In all other respects the authority herein granted will become effective twenty days after the date hereof.

Dated at San Francisco, California, this
22^d day of May, 1961.

Ernest W. Page
President
John J. Mitchell
E. J. Fox
George J. Trever
Fredrick B. Hobloff
Commissioners

