

ORIGINAL

Decision No. 62358

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of:
(1) CONSOLIDATED WAREHOUSE COMPANY
OF CALIFORNIA, a corporation, to
sell, and CONSOLIDATED DEPUE
CORPORATION, a corporation, to
purchase, certain authority to
operate as a public warehouseman;
(2) CONSOLIDATED DEPUE CORPORATION
to issue shares of its capital
stock; (3) CONSOLIDATED DEPUE
CORPORATION to assume obligations
of a lease, and to execute and
issue an assumption of liability.

Application No. 43595
Filed July 11, 1961

O P I N I O N

This is an application for an order of the Commission authorizing Consolidated Warehouse Company of California to transfer warehouse operative rights and certain assets to Consolidated DePue Corporation and authorizing the latter to assume obligations and issue \$35,000 of stock.

Consolidated Warehouse Company of California is engaged in operating 58,266 square feet of warehouse space in leased premises located at First and Federal Streets, San Francisco. It is a wholly-owned subsidiary of Consolidated Freightways Corporation of Delaware, a highway motor carrier, and it appears that those in control desire to withdraw from these warehouse operations and that they have made arrangements to sell the operative rights, platform and office

equipment, leasehold improvements and construction, lift trucks and prepaid accounts to Consolidated DePue Corporation at an agreed purchase price of \$25,000, of which \$20,650.75 is assigned to the property and \$4,349.25 to certificate value and good will.

Consolidated DePue Corporation is a recently organized entity. All of the stock will be held by Edgar De Pue Osgood who has been in the warehouse business in San Francisco for many years and is a general partner of DePue Warehouse Company, a limited partnership which operates warehouse facilities in the city.

The new corporation will assume the obligations under the existing lease of the warehouse facilities and will continue the public service operations without change or interruption. It seeks authority to issue and sell \$35,000 par value of stock to Mr. Osgood and to use \$25,000 of the proceeds to pay the agreed purchase price and \$10,000 for working capital.

We have considered this matter and we are of the opinion, and so find and conclude, (1) that the proposed transfer will not be adverse to the public interest; (2) that we cannot authorize the capitalization of the certificate of public convenience and necessity in excess of the amount paid to the state or a political subdivision as the consideration for the grant of such right, nor the capitalization of good will and, accordingly, that we must eliminate \$4,350 in making our stock authorization, on the basis of the information before us;

and (3) that the money, property or labor to be procured or paid for by the issue of \$30,650 of stock is reasonably required for the purposes specified herein, which purposes are not, in whole or in part, reasonably chargeable to operating expenses or to income.

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. 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 properties herein authorized to be transferred.

O R D E R

The Commission having considered this application and being of the opinion that a public hearing is not necessary and that the requests of applicants should be granted only to the extent set forth herein;

IT IS ORDERED that -

1. Consolidated Warehouse Company of California, on or after the date hereof and on or before December 31, 1961, may transfer the warehouse operative right and properties, as set forth in the agreement filed with this application as Exhibit 2, to Consolidated DePue Corporation.

2. Consolidated DePue Corporation may assume the obligations of the lease of the warehouse properties located at First and Federal Streets, San Francisco, a copy of which lease is filed with the application as Exhibit 4, and may execute and deliver such assumption to the lessor.

3. Consolidated DePue Corporation may issue and sell, for cash, to Edgar De Pue Osgood not to exceed \$30,650 par value of stock and use \$20,650 of the proceeds to pay for the properties to be acquired from Consolidated Warehouse Company of California and \$10,000 for working capital.

4. The request of Consolidated DePue Corporation to issue \$4,350 of stock is denied.

5. Consolidated DePue Corporation 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. Effective concurrently with the effective date of tariff filings required by Paragraph 7 hereof, the public utility warehouse operative right held or acquired by Consolidated Warehouse Company of California for the storage of property in the City and County of San Francisco is revoked and simultaneously therewith, an in lieu certificate of public convenience and necessity to operate as a public utility warehouseman for the storage of property is hereby granted to Consolidated DePue Corporation as hereinafter set forth in Appendix A, attached hereto and made a part hereof.

7. In providing service pursuant to the certificate herein granted, Consolidated DePue Corporation shall comply with and observe the following service regulations:

- (a) Within thirty days after the effective date hereof, applicant shall file a written acceptance of the certificate herein granted. By accepting the certificate of public convenience and necessity herein granted, applicant is placed on notice that it will be required, among other things, to file annual reports of its operations. Failure to file such reports, in such form and at such time as the Commission may direct, may result in a cancellation of the public utility warehouse operations authorized by this decision.

- (b) On or before December 31, 1961, and on not less than five days' notice to the Commission and the public, applicant shall establish the service herein authorized and file in triplicate, and make effective concurrently with the consummation of the transfer herein authorized, tariffs satisfactory to the Commission.

8. The authority herein granted shall become effective on the date hereof.

Dated at San Francisco, California,
this 1st day of August, 1961.

Everett H. Rye
 President
 E. E. Mitchell
 L. L. Fox
 George E. Weaver
 Frederick B. Hallock
 Commissioners

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APPENDIX A TO DECISION NO. 62358

DATED AUG 1 1961, IN APPLICATION NO. 43595

Consolidated DePue Corporation, a corporation, is authorized to operate as a public utility warehouseman for the operation of storage or warehouse floor space as follows:

<u>Location</u>	<u>Number of Square Feet of Floor Space</u>
City and County of San Francisco	58,266

(The floor space shown above is exclusive of the 50,000 square feet of expansion permissible under Section 1051 of the Public Utilities Code.)

(End of Appendix A)