

ORIGINAL

Decision No. 63584

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of:

DOUGLAS S. WHYTE and TONY I. CENBRANO
dba SIEFERT TRUCK SERVICE, a
Copartnership, and SIEFERT TRUCK
SERVICE INC., a Corporation,

for authority of SIEFERT TRUCK
SERVICE INC. to purchase SIEFERT
TRUCK SERVICE, a Copartnership;
and

for authority of SIEFERT TRUCK
SERVICE INC. to issue stock

Application No. 44285
Filed March 21, 1962

O P I N I O N

This is an application for an order of the Commission (1) authorizing Douglas S. Whyte and Tony I. Cenbrano, doing business as Siefert Truck Service, to sell and transfer their highway common carrier certificate of public convenience and necessity, together with the related good will and 14 pieces of equipment, to Siefert Truck Service Inc., and (2) authorizing said corporation to execute a mortgage of chattels and to issue a \$108,000 note and \$20,000 par value of its common capital stock.

By Decision No. 61289, dated December 28, 1960, in Application No. 42260, the Commission granted to Douglas S. Whyte and Tony I. Cenbrano a certificate of public convenience and necessity authorizing them to transport general commodities,

with certain exceptions, between all points and places in the Counties of Contra Costa, Merced, Monterey, Sacramento, San Joaquin and Stanislaus, and between points in the San Francisco Territory and points in the Los Angeles Basin Territory including all points located on and within 25 miles laterally of certain highways. Messrs. Whyte and Cenbrano now propose to sell such certificate of public convenience and necessity, together with the related good will and 14 pieces of equipment, to Siefert Truck Service Inc., for the sum of \$120,000, payable \$12,000 in cash and \$108,000 in installments which will be represented by a 6 percent five-year non-negotiable promissory note payable in monthly installments of 8 percent of the previous month's gross revenue, with interest, for the first 12 installments, and 10 percent or more of the previous month's gross revenue, with interest, for the next 48 months. The indebtedness to be represented by said note will be secured by a mortgage of chattels covering said 14 pieces of equipment and the certificate of public convenience and necessity.

In addition to operating as Siefert Truck Service, Messrs. Whyte and Cenbrano do business as Molasses Truck Service as a permitted carrier, and as an interstate highway common carrier, upon which they now desire to concentrate their efforts. Exhibits C and D attached to the application show that Siefert Truck Service Inc., is a California corporation organized on or about March 6, 1962, for the purpose of acquiring said certificate of public convenience and necessity, good will and

equipment. The proposed holders of the \$20,000 par value of its capital stock consist of Thomas J. Mattesich and Irving A. Williams, the former owning a one-third interest in J. E. Mattesich and Sons of Stockton, a permitted highway trucking operation, and the latter having been engaged in truck and heavy duty equipment repairs and maintenance for the past 20 years. Exhibit E attached to the application shows Thomas J. Mattesich's net worth as amounting to \$119,267 at December 31, 1961, and Exhibit F shows Irving A. Williams as having a net worth of \$50,100 as of March 2, 1962.

The agreement dated March 6, 1962, a copy of which is filed as Exhibit A, shows that the parties have assigned \$10,000 of the purchase price to the operative rights contained in said certificate of public convenience and necessity, \$40,000 to good will, and \$70,000 to the 14 pieces of equipment. The amount assigned for operative rights is asserted to be not excessive because it represents approximately the amount paid for attorney fees, accounting costs, and incidentals in the procurement of said operative rights.

It is not our practice to fix the price which may be paid by the purchaser of a public utility operation although, of course, we can decline to approve a transfer of public utility properties and rights if it should appear that the purchaser does not have sufficient financial resources to meet the purchase price and to undertake the obligations of furnishing public utility service, or if the transfer, in our opinion,

would be adverse to the public interest. In the present case, it appears that the purchaser's proposed shareholders are experienced in trucking operations and have the financial resources which should enable the corporation to finance the acquisition and to continue operations of the highway common carrier service it proposes to acquire and to meet the obligations to be imposed by the proposed note and mortgage of chattels. We find and conclude, therefore, that the execution of the note and mortgage of chattels does not threaten to impair the ability of the purchaser to maintain the public service and that the proposed transfer will not be adverse to the public interest.

In making this finding, we are not passing on or approving the values placed by the parties on the various elements of the properties to be transferred. We place Siefert Truck Service Inc., 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, such rights extend to the holder a full or partial monopoly of a class of business over a particular route. This monopoly feature may be modified or canceled at any time by the State, which is not in any respect limited as to the number of rights which may be given.

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, as herein provided; 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 for the purposes specified herein; and that such purposes are not, in whole or in part, reasonably chargeable to operating expenses or to income; therefore,

IT IS ORDERED that -

1. Douglas S. Whyte and Tony I. Cenbrano, on or after the effective date hereof and on or before July 31, 1962, may sell and transfer, and Siefert Truck Service Inc., may purchase and acquire, the certificate of public convenience and necessity granted by Decision No. 61289, dated December 28, 1960, in Application No. 42260, together with the good will and other assets set forth in the agreement of March 6, 1962, filed in this proceeding as Exhibit A, and in accordance with the terms and conditions of said agreement.

2. Siefert Truck Service Inc., on or after the effective date hereof and on or before July 31, 1962, in payment for said certificate of public convenience and necessity and good will, and in part payment for said other assets, may issue a note in the principal amount of not to exceed \$108,000, and may execute a mortgage of chattels, which note and mortgage

of chattels shall be in the same form, or substantially in the same form, as those attached to said agreement as Schedule B and Schedule C, respectively.

3. Siefert Truck Service Inc., on or after the effective date hereof and on or before July 31, 1962, may issue and sell not to exceed \$20,000 par value of its capital stock, at par, and shall use the proceeds to finance the \$12,000 down payment on the purchase price of said equipment, and shall expend the balance of \$8,000 for working capital.

4. Within thirty days after the consummation of the transfer herein authorized, Siefert Truck Service Inc., shall notify the Commission, in writing, of that 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.

5. On not less than thirty 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 Douglas S. Whyte and Tony I. Cenbrano have withdrawn or canceled, and Siefert Truck Service 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.

6. Siefert Truck Service 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.

7. This order shall become effective when Siefert Truck Service Inc., has paid the fee prescribed by Section 1904(b) of the Public Utilities Code, which fee is \$108.

Dated at San Francisco, California,
this 24th day of APRIL, 1962.

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

Commissioner Everett C. McKeage, being necessarily absent, did not participate in the disposition of this proceeding.

