

ORIGINAL

Decision No. 67803

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of:

SIGOURNEY V. HURD, A Proprietorship,
and D & R Transfer Co., a California
Corporation,

for authority of D & R Transfer Co.
to purchase Nilsson Transfer
Company; and

for authority of D & R Transfer Co.
to issue stock.

Application No. 46745
Filed June 22, 1964

O P I N I O N

This is an application for an order of the Commission (1) authorizing Sigourney V. Hurd, an individual doing business as Nilsson Transfer Company, to sell and transfer a highway common carrier certificate of public convenience and necessity, together with motor vehicles and other assets, to D & R Transfer Co., a corporation, and (2) authorizing D & R Transfer Co. to issue \$25,000 par value of its common stock.

By Decision No. 53647, dated August 28, 1956, in Application No. 36214, the Commission granted to Sigourney V. Hurd, an individual doing business as Nilsson Transfer Company, a certificate of public convenience and necessity authorizing him to operate as a highway common carrier of specific commodities in portions of San Joaquin and Stanislaus Counties. He reports that he is physically unable to continue operations as

a motor carrier and, for this reason, he desires to sell and transfer his operating rights and related property to D & R Transfer Co. at an agreed price of \$18,000.

D & R Transfer Co., a California corporation organized on or about May 6, 1964, seeks authority to issue and sell at par, for cash, 2,500 shares of its common stock having an aggregate par value of \$25,000. It plans to apply \$18,000 of the proceeds toward the acquisition of assets from the transferor and to use the remaining \$7,000 for working capital. Applicants report that \$5,000 of the proposed stock issue represents capitalization of operative rights, which they are willing to delete from the requested stock authorization in favor of utilizing open account advances from stockholders to pay for said rights. The application shows that the contemplated shareholders have been engaged in the trucking business for many years in various capacities, that their combined net worth is \$224,735 and that, as corporate officers, they intend to have the corporation carry on the highway common carrier operations to be acquired from the transferor.

The Commission has considered this matter and finds that: (1) the proposed sale and transfer would not be adverse to the public interest; (2) the money, property or labor to be procured or paid for by the issue of \$20,000 par value of stock herein authorized is reasonably required for the purposes specified herein; and (3) such purposes are not, in whole or in part, reasonably chargeable to operating expenses or to

income. On the basis of these findings we conclude that the application should be (a) dismissed with respect to \$5,000 of the proposed stock issue and (b) granted in all other respects. A public hearing is not necessary.

D & R Transfer Co. is hereby 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, 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.

The action taken herein shall not be construed to be a finding of the value of the operative rights and other assets to be transferred. So far as the rights are concerned, the authorization herein granted is for the transfer of the highway common carrier certificate of public convenience and necessity only. The transfer of permitted operative rights must be the subject of a separate application, or applications.

O R D E R

IT IS ORDERED that:

1. On or before December 31, 1964, Sigourney V. Hurd, an individual doing business as Nilsson Transfer Company, may sell and transfer, and D & R Transfer Co. may purchase and acquire, the highway common carrier certificate of public convenience and necessity and other assets referred to in this application.

2. D & R Transfer Co., on or before December 31, 1964, for the purposes specified in the foregoing opinion, may issue and sell at par, for cash, not to exceed \$20,000 par value of its common stock.

3. D & R Transfer Co. shall file with the Commission a report, or reports, as required by General Order No. 24-B, which order, insofar as applicable, is hereby made a part of this order.

4. Within thirty days after the consummation of the transfer herein authorized, D & R Transfer Co. 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. D & R Transfer Co. shall amend or reissue the tariffs on file with the Commission, naming rates and rules governing the common carrier operations herein to show that

it has adopted or established, as its own, said rates and rules. The tariff filings shall be made effective not earlier than thirty days after the date of this order on not less than thirty days' notice to the Commission and the public, and the effective date of the tariff filings shall be concurrent with the consummation of the transfer herein authorized. 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-A.

6. On or before the end of the third month after the consummation of the transfer as herein authorized, D & R Transfer Co. shall cause to be filed with the Commission, in such form as it may prescribe, an annual report, or reports, covering the period commencing with the first day of the current year to and including the effective date of the transfer.

7. This application, insofar as it seeks authority to issue and sell \$5,000 par value of common stock in excess of the amount herein authorized, is hereby dismissed.

8. The effective date of this order is the date hereof.

Dated at San Francisco, California, this 1st day of September, 1964.

Fredrick B. Halbach
President

Walter A. [Signature]

George T. Grover

William W. Bennett

Commissioners

- 5 - Commissioner Peter E. Mitchell, being necessarily absent, did not participate in the disposition of this proceeding.