

ORIGINAL

Decision No. 72573

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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| In the Matter of the Application |) | |
| of JOHN V. WYTHE, an individual, |) | Application No. 49348 |
| doing business as CONSOLIDATED |) | Filed May 4, 1967 |
| TERMINALS, to transfer a |) | and Amendment |
| warehouse operating right to |) | Filed May 19, 1967 |
| CONSOLIDATED CALIFORNIA |) | |
| TERMINALS, INC., and to issue |) | |
| stock. |) | |
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O P I N I O N

This is an application for an order of the Commission authorizing John V. Wythe, an individual doing business as Consolidated Terminals, to sell and transfer a warehouse operating right, together with certain related equipment, to Consolidated California Terminals, Inc., a California corporation organized on or about March 7, 1967, and for the latter to issue 1,000 shares of its \$10 par value capital stock.

John V. Wythe is authorized to conduct operations as a public utility warehouseman under the certificate of public convenience and necessity created by Decision No. 59949, dated April 19, 1960, in Application No. 41643. Said certificate, which was granted to Consolidated Terminals, Inc. and was transferred to John V. Wythe pursuant to authority granted by Decision No. 68091, dated October 20, 1964, in Application No. 46945, authorizes the operation of 43,000 square feet of

warehouse floor space in San Jose, exclusive of the expansion permissible under Section 1051 of the Public Utilities Code. John V. Wythe also possesses permits issued by the Commission as a radial highway common carrier, a city carrier and a household goods carrier, for which he intends to seek authority to transfer to Consolidated California Terminals, Inc. subsequent to the granting of this application.

The application indicates that continued operation of the business is contingent upon acquisition of additional working capital. In order to provide this additional working capital, John V. Wythe proposes to sell and transfer said certificate of public convenience and necessity, together with certain related assets, to Consolidated California Terminals, Inc., which would issue \$10,000 aggregate par value of its capital stock. The cash proceeds to be derived from \$6,000 aggregate par value of said capital stock would constitute a like amount of working capital. The amendment to the application indicates that the remaining \$4,000 would be allocated to the actual cost of said certificate and to goodwill in the amounts of \$500 and \$3,500, respectively.

It appears that the operations are, and will continue to be, conducted in leased premises. It appears further that the related assets to be acquired are valued at \$7,783.20 to be offset by current liabilities of like amount.

The Commission has considered this matter and finds that: (1) the proposed transfer will not be adverse to the public interest; (2) the money, property or labor to be procured or paid for by the issue of the 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 the foregoing findings we conclude that the application, as amended, should be granted. A public hearing is not necessary. The order which follows will provide for, in the event the transfer is consummated, the revocation of the certificate presently held by John V. Wythe and the issuance of a certificate in appendix form to Consolidated California Terminals, Inc.

Consolidated California Terminals, Inc. 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. 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 as a finding of value of the certificate of public convenience and necessity and equipment herein authorized to be transferred nor as indicative of amounts to be included in proceedings for the determination of just and reasonable rates.

O R D E R

IT IS ORDERED that:

1. On or before September 30, 1967, John V. Wythe may sell and transfer, and Consolidated California Terminals, Inc. may purchase and acquire, the certificate of public convenience and necessity and equipment referred to in this proceeding.

2. Consolidated California Terminals, Inc., on or before September 30, 1967, for the purposes set forth in this proceeding, may issue and sell, at par, not exceeding 1,000 shares of its \$10 par value capital stock.

3. Consolidated California Terminals, Inc. 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, Consolidated California Terminals, 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. Consolidated California Terminals, Inc. shall amend or reissue the tariffs on file with the Commission, naming rates and rules governing the warehouse 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 ten days after the date of this order on not less than ten 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. 61-A.

6. On or before the end of the third month after the consummation of the transfer as herein authorized, Consolidated California Terminals, Inc. shall cause to be filed with the Commission, in such form as the Commission may prescribe, an annual report, or reports, related to the operations of the seller for the period commencing with the first day of the current year to and including the effective date of the transfer.

7. In the event the transfer authorized in Ordering Paragraph No. 1 hereof is consummated, a certificate of public convenience and necessity is granted to Consolidated California Terminals, Inc. as a public utility warehouseman, as defined in Section 239(b) of the Public Utilities Code, for the operation of storage or warehouse floor space as set forth in Appendix A attached hereto and made a part hereof.

8. The certificate of public convenience and necessity granted in Ordering Paragraph No. 7 of this order shall supersede the certificate of public convenience and necessity granted by Decision No. 59949, which certificate is revoked effective concurrently with the effective date of the tariff filings required by Ordering Paragraph No. 5 hereof.

9. Within thirty days after the date hereof, Consolidated California Terminals, Inc. shall file a written acceptance of the certificate herein granted. The company is placed on notice that, if it accepts the certificate of public convenience and necessity herein granted, 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.

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

Dated at San Francisco, California, this 9th day of JUNE, 1967.

[Signature]
President

[Signature]

[Signature]
Commissioners

Commissioner William M. Bennett, being necessarily absent, did not participate in the disposition of this proceeding.

Commissioner William Symons, Jr., being necessarily absent, did not participate in the disposition of this proceeding.

