

ORIGINAL

Decision No. 76023

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
 NUSTAD TRANSPORT, a corporation, to)
 purchase; and LTL DELIVERY, a cor-)
 poration, to sell a certificate of)
 public convenience and necessity)
 for the transportation of general)
 commodities between points in the)
 Los Angeles Basin Territory, pur-)
 suant to Sections 851-853 of the)
 California Public Utilities Code;)
 and for said corporation to issue)
 stock, pursuant to the Public Util-)
 ities Code, Section 816 et seq.)

Application No. 51189
 Filed June 24, 1969

O P I N I O N

LTL Delivery requests authority to sell and transfer and Nustad Transport requests authority to purchase and acquire a certificate of public convenience and necessity authorizing operations as a highway common carrier. Nustad Transport also requests authority to issue 240 shares of its common stock having a par value of \$100 per share for \$24,000 and for authority to issue a promissory note in the amount of \$16,000.

The sale includes the transfer of certificates authorizing operations in both interstate and intrastate commerce. The intrastate certificate was granted by Decision No. 61235 dated December 20, 1960, in Application No. 42576 as amended by Decision No. 63060 dated January 9, 1962, in Application No. 42576 and authorizes the transportation of general commodities between points within the Los Angeles Basin Territory. The total cash consideration is \$40,000 with a value of \$11,500 being placed upon the interstate certificate, a value of \$1000 placed upon the intrastate certificate and the balance of \$27,500 being the value placed upon good will.

Applicant purchaser is a newly formed corporation. As consideration for the receipt of \$40,000 to be paid by its president, Mr. Edward Kasner, applicant purchaser proposes to issue to Mr. Edward Kasner 240 shares of its capital stock having a total par value of \$24,000 and to execute a promissory note in the amount of \$16,000 payable over a period of five years with interest at the rate of 4 percent per annum. It is alleged that upon consummation of the transfer Mr. Edward Kasner will provide a minimum of \$25,000 as operating capital to the corporation.

The application was listed on the Commission's Daily Calendar of June 26, 1969. No protests have been received.

Commission records indicate LTL Delivery has not filed Quarterly Report of Gross Operating Revenue nor paid quarterly fees due for the second quarter of 1969 (April 1, 1969 to June 30, 1969). The report should be filed and fees due be paid prior to the transfer of the certificate. The order which follows will so provide.

After consideration the Commission finds that the proposed transfer would not be adverse to the public interest, and 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 such purposes are not, in whole or in part, reasonably chargeable to operating expenses or to income. A public hearing is not necessary. On the basis of these findings, we conclude that the application should be granted.

Nustad Transport 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.

O R D E R

IT IS ORDERED that:

1. On or before July 1, 1970, LTL Delivery may sell and transfer, and Nustad Transport may purchase and acquire, the operative rights referred to in the application.

2. Within thirty days after the consummation of the transfer herein authorized, purchaser 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.

3. Purchaser 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 effective 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. Failure to comply with and observe the provisions of General Order No. 80-A may result in a cancellation of the operating authority acquired pursuant to this decision.

4. Prior to the transfer authorized in paragraph one hereof, there shall be filed with the Commission a report of gross revenue for April, May, and June 1969, earned by LTL Delivery and fees due thereon shall be paid plus penalties if not filed and paid on or prior to August 15, 1969, as required by Sections 5001 to 5011, inclusive, of the Public Utilities Code and as set forth in Quarterly Report of Gross Operating Revenue, Form TL 540 (Rev. 12-68). Failure to file the required report and pay fees due may result in cancellation of the operating authority granted by this decision.

5. On or before the end of the third month after the consummation of the transfer as herein authorized, purchaser 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.

6. Within thirty days after the effective date hereof, purchaser shall file a written acceptance of the certificate, the transfer of which is herein authorized. Purchaser is placed on notice that, if it accepts such certificate, it will be required, among other things, to comply with and observe the safety rules of the California Highway Patrol and the insurance requirements of the Commission's General Order No. 100-E.

7. Purchaser shall maintain its accounting records on a calendar year basis in conformance with the applicable Uniform System of Accounts or Chart of Accounts as prescribed or adopted by this Commission and shall file with the Commission, on or before March 31 of each year, an annual report of its operations in such form, content, and number of copies as the Commission, from time to time, shall prescribe.

8. Purchaser shall comply with the requirements of the Commission's General Order No. 84-Series for the transportation of collect on delivery shipments. If purchaser elects not to transport collect on delivery shipments, it shall make the appropriate tariff filings as required by the General Order.

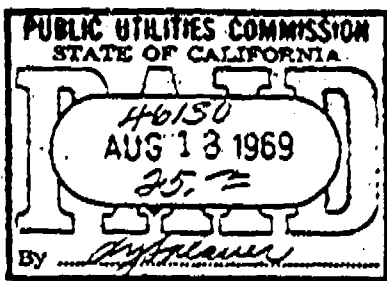
9. After the effective date hereof Nustad Transport, for the purposes specified in this proceeding, may issue not exceeding 240 shares of its capital stock having a par value of \$100 per share.

10. After the effective date hereof Nustad Transport, for the purposes specified in this proceeding, may issue a promissory note in the amount of not exceeding \$16,000, which note shall be in the same form, or in substantially the same form, as that attached to the application as Exhibit No. 4.

11. Nustad Transport shall file with the Commission a report, or reports, as required by General Order No. 24-B, which order, insofar as applicable, is made a part of this order.

The authority herein granted to issue a note will become effective when Nustad Transport has paid the minimum fee prescribed by Section 1904(b) of the Public Utilities Code, which fee is \$25. In other respects the effective date of this order shall be twenty days after the date hereof.

Dated at San Francisco, California, this 12th day of AUGUST, 1969.



Handwritten signatures of William S. ... President, J. P. ... Commissioner, and another Commissioner.

Commissioner J. P. Vukasin, Jr., being necessarily absent, did not participate in the disposition of this proceeding.