

Decision No. 77656

**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of )  
E.D. OSGOOD dba DE PUE WAREHOUSE )  
COMPANY OF SAN FRANCISCO to lease )  
and sell to THOMPSON-DePUE COMPANY, )  
INC., a public warehouse operative )  
right and equipment. )

Application No. 51817  
(Filed April 9, 1970;  
Amended July 24, 1970)

O P I N I O N

E. D. Osgood, doing business as De Pue Warehouse Company of San Francisco, requests authority to lease, sell and transfer certain warehouse property including a prescriptive right to operate a public utility warehouse in the City and County of San Francisco to Thompson-De Pue Company, Inc., a newly formed corporation. Thompson-De Pue Company, Inc. requests authority to issue 2,000 shares of its \$10 par value capital stock for \$20,000 and authority to execute a promissory note in the amount of \$75,000.

The property includes goodwill, office furniture, equipment and supplies, pallets, racks, fork lifts and two lease agreements with Southern Pacific Company, relating to certain real property located at 255 Channel Street and at 1301 6th Street, both being in San Francisco.

According to the terms of the sales agreement (Exhibit 2 attached to the application) said property and operative right would be leased for a period ending January 1, 1971, in consideration for which applicant purchaser would assume all payments on any purchase contracts, conditional sales contracts, or other obligations incurred by applicant seller. Upon the termination of the lease all of the assets would be transferred to applicant purchaser for a consideration of \$75,000 to be paid over a period of 10 years in monthly installments of \$625.

It is alleged that applicant seller has been employed by applicant purchaser as vice president and will continue to be involved in the public warehouse operations.

After consideration the Commission finds that the proposed lease and 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 the indebtedness 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.

The authorization herein granted shall not be construed as a finding of the value of the rights and properties herein authorized to be transferred.

Thompson-De Pue Company, 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 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. After the effective date hereof E. D. Osgood may lease to Thompson-De Pue Company, Inc. the property and prescriptive right authorizing operations in the City and County of San Francisco

according to the terms and conditions as set forth in Exhibit 2 attached to the application.

2. Within sixty days after the effective date hereof and on not less than ten days' notice to the Commission and to the public, applicants shall amend the tariffs presently on file with this Commission in the name of E. D. Osgood, doing business as De Fue Warehouse Company of San Francisco, to reflect the authority granted in ordering paragraph 1 hereof.

3. Upon the termination of the lease as herein authorized and on or before February 15, 1971, E. D. Osgood may sell and transfer, and Thompson-De Fue Company, Inc. may purchase and acquire, the operative rights and property referred to in the application according to the terms and conditions set forth in Exhibit 2 attached thereto.

4. 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.

5. Purchaser 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 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. Failure to comply with and observe the provisions of General Order No. 61-A may result in a cancellation of the operating authority granted by this decision.

6. 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 fiscal year to and including the effective date of the transfer.

7. In the event the transfer authorized in paragraph 3 hereof is consummated, a certificate of public convenience and necessity is granted to Thompson-De Pue Company, Inc., a corporation, 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 paragraph 7 of this order shall supersede the prescriptive right herein considered which prescriptive right is revoked effective concurrently with the effective date of the tariff filings required by paragraph 5 hereof.

9. Within thirty days after the transfer herein authorized is consummated, purchaser shall file a written acceptance of the certificate herein granted. Purchaser 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.

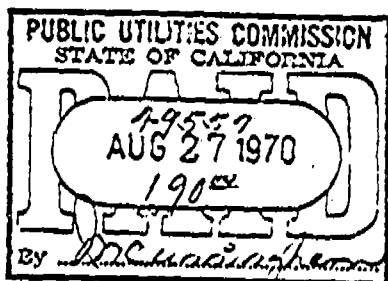
10. Upon the consummation of the transfer herein authorized, Thompson-De Pue Company, Inc. is authorized to execute a promissory note in the amount of \$75,000.

11. Upon the consummation of the transfer herein, Thompson-De Pue Company, Inc. is authorized to issue 2,000 shares of its \$10 par value common stock.

12. Applicant 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.

13. The authority herein granted to execute a note and issue stock will become effective when purchaser has paid the fees prescribed by Section 1904(b) of the Public Utilities Code, which fees total \$190. In other respects the effective date of this order shall be twenty days after the date hereof.

Dated at San Francisco, California, this 25<sup>th</sup> day of AUGUST, 1970.



*[Signature]*  
Chairman  
*[Signature]*  
William [Signature]  
*[Signature]*  
Commissioners

Thompson-De Pue Company, Inc., a corporation, by authority of the decision noted in the margin, is authorized to operate 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 follows:

<u>Location</u>	<u>Number of Square Feet of Floor Space</u>
San Francisco	200,000

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

END OF APPENDIX A

Issued by California Public Utilities Commission.

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