

Decision No. 25844.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

PACIFIC STATES COLD STORAGE  
WAREHOUSEMEN'S ASSOCIATION,

Complainant,

vs.

OVERLAND TERMINAL WAREHOUSE  
COMPANY,

Defendant.

**ORIGINAL**

Case No. 3296.

Lawler & Degnan, by Max Felix, and Reginald  
L. Vaughan, for complainant.

E. E. Bennett and Malcolm Davis, for defendant.

WHITSELL, Commissioner:

O P I N I O N

In this proceeding the Pacific States Cold Storage Warehousemen's Association alleges that defendant is operating as a cold storage warehouseman within the City of Los Angeles without having first obtained a certificate of public convenience and necessity, and that the cold storage operations of defendant are unauthorized, illegal and in violation of the Public Utilities Act.

A public hearing was had at Los Angeles and the proceeding submitted.

By Decision No. 23343 on Application No. 16935, defendant was granted a certificate of public convenience and

necessity to operate a public utility warehouse within Los Angeles. The order issued did not specifically prohibit the storage of commodities under cold storage.<sup>1</sup> However at the hearing in Application 16935 a witness for applicant made the following statement:

"We have in mind the establishment of a cooling room system, which is a corrugated and insulated room with mechanical attachments which will provide - rather, will control the temperature from probably 40 degrees and up, for the handling of certain commodities that require cooling but not cold storage." (Emphasis supplied)

Thus it is clear that applicant in requesting the certificate of public convenience and necessity did not seek the right to store commodities under cold storage. The order granting the certificate found that the application should be granted and required the filing of tariffs identical with those attached to the application as Exhibit No. 2. These tariffs provided no charges for cold storage warehousing. They were subsequently published and became effective August 1, 1931. Approximately eight months later defendant filed a tariff naming rates for storage in its warehouse of various commodities at temperatures of not less than 32° Fahrenheit. The tariff was suspended by the Commission upon protests received from competing cold storage warehouses. The tariff was later voluntarily withdrawn by defendant and the suspension proceeding discontinued.

Defendant admits that until the early part of July 1932

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<sup>1</sup> "Cold storage" is defined in the Cold Storage Act (Statutes 1913, page 769 as amended), as follows:

"Section 1: The term 'cold storage' as used in this Act shall be construed to mean a place artificially cooled to a temperature of forty degrees Fahrenheit or below but shall not include such a place in a private home, hotel, restaurant or exclusively retail establishment not storing articles of food for other persons. The term 'cold storage' as used in the Act shall be construed to mean the keeping of 'articles of food' in 'cold storage' for a period exceeding thirty days. \* \* \* "

it was accepting goods for cold storage at temperatures of 40° or below, but that prior to the service of the complaint herein it had ceased such practices and has since received no commodities for storage as a public utility other than those permitted by its tariffs on file with this Commission.

Defendant did however after July 7, 1932, accept commodities from the California Walnut Growers' Association for cold storage warehousing under a lease arrangement. The lease, dated December 15, 1931, provided that for a period extending from January 1, 1932, to January 1, 1933, the Association was to be provided with a minimum of 1600 square feet of space in defendant's cooler room at a rental of \$1920, with the option of leasing additional space at a rate of 10 cents per square foot per month or fraction thereof. Under the terms of the lease the temperature must at no time exceed 33° Fahrenheit. The lease contains no description of the exact space to be occupied. The evidence however shows that Room No. 1 was used exclusively for the storage of the merchandise of the Association with the overflow being stored in Rooms 2 and 3.<sup>2</sup>

There is some evidence in the record that defendant since July 7, 1932, has solicited merchandise for cold storage but whether such storage would be rendered by defendant as a public utility or under a bona fide lease cannot be determined on

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<sup>2</sup> Defendant maintains three rooms which can be artificially cooled to around 30° Fahrenheit. These rooms are numbered respectively 1, 2 and 3, and combined have a total area of approximately 15,000 square feet. The rooms are cork-insulated with mechanical cooling equipment. The temperature charts show that during the period from June 22 to October 29, 1932, the temperature of Room 1 varied between 32° and 36°, the temperature of Room 2 from 32° to 42°; that after February 15, 1932, the temperature of Room 2 did not exceed 39°; that during the period between January 2, 1932, to and including July 31, 1932, the temperature of Room 3 did not exceed 39°; and that between July 23, 1932, and October 29, 1932, the temperature in Room 3 was 40° or above.

this record.

The definition of leased space incorporated in defendant's tariff since the filing of the complaint and in the tariffs of other public utility warehouses following this Commission's decision In Re Investigation on Commission's own Motion of Allen Bros. Inc. et al., Case No. 3278, Decision No. 25024, provides that "no commodities shall be stored under leased space agreements at less than the filed tariff rates for such commodities, unless said lease is," among other things, "made for a definite space to be enclosed by walls, wire or other substantial enclosure with a door which can be locked". The lease of the California Walnut Growers' Association here in question is not so restricted. It merely provides for 1600 square feet of space in defendant's cooler room, of which there are three containing 15,000 square feet, with the option of renting additional space at a stated rate per square foot per month. This form of lease, extending as it does the varying use of the general facilities of defendant, does not comply with the provisions of the above rule and could be used to extend the scope of defendant's undertaking as a public utility.

Upon this record the Commission should find:

1. That defendant has been operating as a cold storage warehouseman storing merchandise at temperature of 40° or below, defined as cold storage in the Cold Storage Act, Statutes of 1913, page 769, as amended, within the City of Los Angeles without first having obtained a certificate of public convenience and necessity.
2. That any and all leases for the storage of commodities not stored by defendant as a public utility warehouseman should comply with the terms of defendant's tariff.
3. That defendant should be ordered to cease and desist

storing commodities as a public utility at temperatures of 40° Fahrenheit or below.

The following form of order is recommended:

O R D E R

A public hearing having been held in the above entitled proceeding, the matter having been duly submitted and being now ready for decision,

IT IS HEREBY FOUND AS A FACT that defendant Overland Terminal Warehouse Company has been operating as a cold storage warehouseman storing food and merchandise at temperatures of 40° Fahrenheit or below without having obtained a certificate of public convenience and necessity therefor.

IT IS HEREBY ORDERED that said defendant Overland Terminal Warehouse Company abstain from operating as a cold storage warehouseman until it shall have obtained the requisite certificate of public convenience and necessity from this Commission.

IT IS HEREBY FURTHER ORDERED that the Secretary of this Commission cause a certified copy of this decision to be served upon said Overland Terminal Warehouse Company.

This decision shall become effective twenty (20) days from and after the date of service above mentioned.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 17<sup>th</sup> day of April, 1933.

C. C. Loney  
Leon O'Connell  
W. A. L...  
W. B. L...  
W. H. L...  
Commissioners.