

Decision No. 26691

**ORIGINAL**

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of )  
OVERLAND TERMINAL WAREHOUSE COMPANY, )  
a corporation, for a certificate of )  
public convenience and necessity to ) Application No.18877  
engage in the warehouse business as )  
a cold storage warehouseman. )

E. E. Bennett, for applicant.

Max Felix, M. Phillip Davis, of Lawler & Degnan,  
and Reginald L. Vaughan, by Reginald L. Vaughan,  
for Pacific States Cold Storage Warehousemen's  
Association, Los Angeles Ice & Cold Storage  
Company, Merchants' Ice and Cold Storage Company,  
National Ice and Cold Storage Company.  
Terminal Refrigerator Company.  
Growers Cold Storage Corporation, Protestants.

BY THE COMMISSION -

O P I N I O N

Applicant seeks a certificate of public convenience and necessity authorizing it to provide approximately 30,000 square feet of warehouse space for the storage of commodities at temperatures varying from 32 to 40 degrees Fahrenheit. Applicant is now operating a public utility warehouse of large dimensions at Los Angeles. It has been operated as a so-called "dry warehouse" under certificate therefor, as authorized under Sections Nos. 2½ and 50½ of the Public Utilities Act. The present application is to comply with the provisions of Chapter 215, Acts of 1919, known as the "Food Warehousemen's Act." Applicant proposes to devote the space indicated for the storage of commodities intended for human food and at temperatures less than 40 degrees, the minimum of dry storage.

Public hearings herein were conducted by Examiner Kennedy at Los Angeles.

The record shows that applicant proposes to receive for storage all food commodities in its "cooler" department, except fresh vegetables, fresh fruits, poultry or eggs, meat, butter or fresh fish. The commodities named, therefore, will not further be considered.

The other commodities for which rates are proposed are barrel goods in bulk (olives, pickles, relish, sauerkraut, vinegar and water-soda), beer, in packages, cheese (except cottage), fruits, other than fresh, nuts, in shell, and nuts, shelled (meat).

Applicant was supported by the testimony of James P. Curry, traffic manager of the California Walnut Growers' Association, Steve Brody, a food broker, Ernest Klingstein, Famo Products Company, Jacob Glaser, a broker, and S. J. Gold, of the Davis Nut Shelling Company, all handling either dried fruits or nuts, or both. Their testimony is, in effect, that storage of the kind offered by applicant is needed by them; that the commodities for which they need storage are insured in sanitary preservation by a process known as "vacufuming"<sup>(1)</sup> before storage in lower temperatures and which is available only at applicant's warehouse.

A. M. Kathrens, operator of the Vacufume plant, testified that in the year previous California Walnut Growers Association had put 4,000,000 pounds of walnuts through the process, and, in addition, 800,000 pounds of other commodities and the commodities of ten customers of the association, two of the latter testifying, also.

The advantage of using cold storage facilities provided by applicant was in the fact that the witnesses could procure dry or cold storage and vacufuming all at the same plant and thus escape drayage charges of \$1.00 a ton and rehandling in moving products to other warehouses.

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(1) Vacufuming is the placing of the commodities in a steel cylinder, from which air is exhausted, and then the cylinder is filled, under compression, with a gas that acts as a preservative.

Protestants presented W. E. Fessenden, proprietor of the California Warehouse Company, H. C. Stone and Harold J. Nisson of Terminal Refrigerator Company, R. M. Hagan, of Los Angeles Ice and Cold Storage, and several of the customers of these plants as witnesses, who testified that existing facilities are adequate and that there is little demand for dry and cold storage under the same roof. Mr. Fessenden estimated the cost of drayage from applicant's warehouse to his own at 50 cents a ton and said he would be willing to absorb the cost.

By witnesses and exhibits protestants showed that the least amount of cold storage space unoccupied in the metropolitan warehouses was 1,938,456 cubic feet in January, 1932, and the greatest 4,215,077 in February 1933. Protestants urge these facts in dispute of necessity for additional cold storage space. They also point out that applicant proposes lower rates than those maintained by other warehousemen and that the proposed rates are to divert business and not to attract new business. They also urge that the storage business has not been profitable, due to lack of volume and over-adequate facilities. These matters are seriously disputed by applicant.

While the record before us is exhaustive of every element involved, though involved in irreconcilable conflict, some facts appear indisputable and convincing. Applicant has shown by witnesses that a large volume of business is ready to use the facilities offered by applicant and that this volume is not to be diverted from other warehouses. It also appears that applicant, in providing a lower temperature scale of storage, is simply modernizing its plant for the convenience of those patrons and such others as require "one spot" storage of all classes of commodities; that no other warehouse provides the vacufuming process in its building and that patrons attach considerable importance to such conveniences. Though much was said in testimony and argument about the alleged prior use of the

facilities of applicant in a surreptitious manner, we cannot find that the evidence is either conclusive nor sufficient to halt certification. Upon the records we believe applicant has shown public necessity and convenience and the application will be granted.

O R D E R

Overland Terminal Warehouse Company having made application to the Railroad Commission for a certificate of public convenience and necessity to engage in business as a cold storage warehouseman at its warehouse at Ninth and Alameda Streets, in the City of Los Angeles, a city having more than 150,000 population, and the Commission now finding as a fact that public convenience and necessity require such cold storage warehousing by applicant,

IT IS HEREBY ORDERED that a certificate of public convenience and necessity be and it hereby is granted to applicant, Overland Terminal Warehouse Company, a corporation, for the maintenance of approximately 30,000 square feet of cold storage service, to be maintained at a temperature of 32 to 40 degrees Fahrenheit only, provided, however, applicant shall not receive in such storage fresh vegetables, fresh fruits, poultry, eggs, meat, butter or fresh fish, and subject to the following conditions:

1. Applicant shall, within twenty (20) days from date hereof file its written acceptance of the certificate herein granted, stipulating therein that said certificate is accepted as an addition to and enlargement of its rights as granted by Decision No.23343, dated February 21, 1931, on Application No.16935.

2. Applicant shall, within twenty (20) days after date hereof file with the Commission a tariff of charges for such cold storage service, as herein detailed, identical with Exhibit "A", attached to the application or in a form satisfactory to the Railroad Commission.

Dated at San Francisco, California, this 3rd day of January, 1934.

W. J. Leary  
Leon O. White  
W. J. Leary  
W. B. Harris  
W. J. Leary  
COMMISSIONERS.