

Decision No. 23525

23525

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of )  
SAN JOAQUIN COMPRESS AND WAREHOUSE )  
COMPANY, a corporation, for a cer- ) Application No. 23525  
tificate of public convenience. )

BY THE COMMISSION:

ORIGINAL

Appearances

- T. N. Harvey, for applicant.
- R. F. St. John, for applicant.
- Charles G. Munson, for Los Angeles Warehousemen's Association, protestant.
- C. E. Smith, for Davies Warehouse Company, interested party.
- John H. Broadhead, for Los Angeles Warehouse Company, interested party.
- C. B. Carter, for Wilmington Transfer and Storage Company, interested party.
- Lloyd Nesbit, for California Cotton Cooperative Association, interested party.

O P I N I O N

Applicant, San Joaquin Compress and Warehouse Company, seeks a certificate from this Commission declaring that public convenience and necessity require the transaction of business by it as a warehouseman for the storage of high density baled cotton in two warehouses owned by the Harbor Department of the City of Los Angeles at Los Angeles Harbor.

Public hearing was had before Examiner Bryant at Los Angeles on August 6, 1940, and the matter is now ready for decision.

It appears from the application and from evidence of record that the property here involved has for several years been leased to the American Cotton Cooperative Association, and used by it for the warehousing of baled cotton; and that since October, 1937, applicant

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1. American Cotton Cooperative Association is a cooperative association with its principal office in New Orleans, Louisiana.

has operated and managed the warehouses under an agreement with this Association. At the date of the public hearing herein there were approximately 46,000 bales stored in the property, of which some 43,000 bales were owned by the Commodity Credit Corporation, an agency of the United States Government.

The rates proposed to be charged by applicant for the storage, handling, and other services are identical with those which have been assessed at the same warehouses in the past under the management agreement with American Cotton Cooperative Association, and are also identical with charges assessed by applicant for similar services at its warehouse in Bakersfield.<sup>2</sup>

A witness called by applicant testified that, other than the property here involved, only one warehouse at Los Angeles Harbor had been used in the past for the storage of cotton in large quantities. He said that this other warehouse, operated by Western Compress Company, was filled to capacity, and stated that unless the certificate herein sought were issued, the agencies of the United States Government and other owners desiring to store baled cotton at Los Angeles Harbor would be deprived of suitable facilities therefor. He readily admitted that other public warehouse space was available at Los Angeles and Los Angeles Harbor, but said that in his opinion such space was not wholly suited for cotton storage from the standpoint of insurance classification, availability of rail facilities for handling in and out of storage, and proximity to steamer docks. He declared that applicant, by reason of its past experience in operating warehouses for the storage of cotton, both at the Harbor and at Bakersfield, was well qualified to continue the operation of the warehouses involved in this application.

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Applicant has for some years operated a public utility warehouse at Bakersfield under tariffs filed with this Commission.

Granting of the certificate herein sought was opposed by Los Angeles Warehousemen's Association, and opposed in part by Wilmington Transfer and Storage Company.

The secretary-treasurer of the Los Angeles Warehousemen's Association stated that members of his association had ample warehouse space available at Los Angeles Harbor, and that this space was open for cotton storage provided remunerative rates and charges could be obtained. He explained also that negotiations were under way between the United States Navy and the Harbor Department of the City of Los Angeles for the use by the Navy of certain waterfront property including that occupied by the two warehouses here involved, and suggested that the Commission defer action upon the instant application for a period of sixty or ninety days awaiting outcome of these negotiations.<sup>3</sup>

A representative of Wilmington Transfer and Storage Company testified that his company was not opposed to granting of the certificate provided it was specifically limited to the precise warehouses here involved, and provided that the rates established by applicant for handling and storage were made comparable with those now assessed<sup>4</sup> by three general warehouses operating in the harbor area. He admitted that the rates and charges of these three companies were not entirely uniform, but explained that he had in mind only that applicant should be required to publish charges higher than those proposed and generally comparable to those of the other three warehouses. He stated that in his opinion any of these three warehouses had facilities equal to those of applicant so far as rail connections and proximity to the docks are concerned, and said that if the space operated by applicant were

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<sup>3</sup> Applicant objected to this procedure, and urged that the Commission act promptly upon its request.

<sup>4</sup> The witness referred to Crescent Warehouse Co., Ltd., Harbor District Warehouse Company, and Wilmington Transfer and Storage Company.

not available he believed these warehouses could arrange to accommodate whatever cotton might be offered for storage, provided their present tariff rates could be secured.

The record indicates that for approximately three years applicant has utilized the property here involved for the conduct of a warehouse business which is apparently identical with that for which it now seeks a certificate of public convenience and necessity from this Commission. Section 50½ of the Public Utilities Act of this state provides in part as follows: "No warehouseman shall hereafter begin to operate any business of a warehouseman, as defined in Section 2½ of this act, in any incorporated city, or city and county of this state having a population of one hundred fifty thousand or more, without first having obtained from the railroad commission a certificate declaring that public convenience and necessity require or will require the transaction of business by such warehouseman ...." Applicant has for some years conducted a public utility warehouse operation in Bakersfield under tariffs regularly filed with this Commission and must be presumed to have been aware of the prohibitions contained in the Public Utilities Act. This Commission has frequently held that a showing of public convenience and necessity cannot properly be predicated upon operations which have been conducted unlawfully, and, except in unusual circumstances, has consistently refused to grant certificates upon such a showing. (See In re Application of T. Phillips, Decision No. 29591 of March 8, 1937, in Application No. 20838; F. Estalle, Decision No. 26429 of October 16, 1933, in Application No. 18995; L. R. Kagarise, Decision No. 26783 of February 6, 1934, in Application No. 19068; S. C. Brooks, 37 C.R.C. 672, 675; G. W. Decker, 36 C.R.C. 317, 320; L. A. Thornewill, 33 C.R.C. 453, 454.)

The only witness to testify on applicant's behalf in this proceeding was apparently an officer of the company. The testimony

of this witness to the effect that other available warehouse space at Los Angeles Harbor is not wholly suited to cotton storage, was admittedly not based upon a comprehensive personal investigation, and is clearly not in harmony with the testimony offered by the secretary-treasurer of the Los Angeles Warehousemen's Association, and by the witness for Wilmington Transfer and Storage Company. Thus the evidence is at least contradictory so far as it relates to the public need for the proposed service.<sup>5</sup> No testimony was offered on behalf of the Commodity Credit Corporation, and no public witnesses appeared in support of the application.

Upon consideration of all the facts of record we are of the opinion and find that applicant has failed to show that public convenience and necessity require the issuance of the certificate herein sought. Under these circumstances the application must be denied.

#### ORDER

Public hearing having been held in the above entitled proceeding and the matter having been duly submitted,

IT IS HEREBY ORDERED that Application No. 23525 be and it is hereby denied.

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<sup>5</sup> The question of proper rates and charges to be assessed for the warehousing and handling of cotton at Los Angeles Harbor, raised by protestants, is not directly involved in this proceeding. The public is entitled to just, reasonable and nondiscriminatory charges for the use of space available in public utility warehouses at Los Angeles Harbor, and if it should appear that charges of any such utility do not in every respect conform to these requirements, the public may be assured of lawful charges upon the filing of appropriate complaints with this Commission.

The effective date of this order shall be twenty (20) days from the date hereof.

Dated at San Francisco, California, this 17<sup>th</sup> day of September, 1940.

Ray L. Riley  
Walter R. Brown  
Raymond W. H. H. H.  
Justice F. Callen  
Commissioners