

ORIGINAL

Decision No. 37455

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of )  
JOHN FOX, doing business under the )  
fictitious name of John McCarthy & )  
Son, for a certificate of public )  
convenience and necessity to oper- )  
ate the business of warehouseman. )

Application No. 24946

In the Matter of the Application of )  
DANIEL GALLAGHER TEAMING, MERCANTILE )  
and REALTY COMPANY, a California )  
corporation, for a certificate of )  
public convenience and necessity to )  
operate the business of warehouseman. )

Application No. 24947

BY THE COMMISSION:

Appearances

- ✓ O'Day & Kearns, for applicants.
- ✓ Reginald L. Vaughan, for Warehousemen's Association of the Port of San Francisco, protestant.
- ✓ L. A. Bailey, for California Warehousemen's Association, protestant.
- ✓ S. M. Haslett, for Haslett Warehouse Company.
- ✓ Ben Cassinerio, for Central Warehouse & Drayage Company.
- ✓ Malcolm W. Lamb, for South End Warehouse Company.
- ✓ C. E. Geneva, for Dodd Warehouses and North Point Dock Warehouse.
- ✓ Henry F. Miller, for San Francisco Warehouse Company.

INTERIM OPINION

In these applications, filed April 27, 1942, John Fox an individual doing business as John McCarthy and Son, and Daniel Gallagher Teaming, Mercantile and Realty Company, a corporation, seek authority to operate public utility warehouses in the City and County of San Francisco. Public hearings have been had at San Francisco on July 15, 17, 29 and 30, 1942, August 9, 1944, and

October 18, 19 and 20, 1944.<sup>1</sup> An adjourned hearing has been scheduled for December 11, 1944.

On October 21, 1944, supplemental applications were filed in which it is urged that public convenience and necessity require that applicants be immediately authorized to engage in warehouse operations. The authorizations thus requested are for such time as may be necessary for completion of the hearings and disposing of applicants' requests for permanent certificates. In support of the granting of the temporary certificates, applicants allege that there is now, and will continue to be, a critical shortage of warehouse facilities in the City and County of San Francisco and that they have facilities which are available to provide public storage. Each applicant proposes to operate 100,000 square feet for storing and handling "general commodities, to include among other things tin, hemp, manganese, wool, cotton, crude rubber, raw materials and other commodities to be stored by and for the United States Government or any of its agencies.\*\*\*\*" The rates proposed to be charged are those set forth in California Warehouse Tariff Bureau Warehouse Tariff No. 1-E, C.R.C. No. 83 of L. A. Bailey, Agent.

The granting of the temporary certificates is opposed by California Warehousemen's Association and Warehousemen's Association

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<sup>1</sup> The initial hearing was scheduled for May 28, 1942, but pursuant to the request of protestant, Warehousemen's Association of the Port of San Francisco, it was postponed. At the conclusion of the July-1942 series of hearings, the proceedings were adjourned to September 8, 1942. However, protestant again requested certain postponements, the matters finally being reset for hearing on November 5, 1942. Prior to this adjourned hearing date, applicants asked that the proceedings be removed from the calendar to be reset at a future date upon request. Such request was not made until May 8, 1944. An adjourned hearing was then scheduled for June 26, 1944. This hearing was postponed to August 9, 1944, at protestant's request. At that time, after taking certain evidence, the matters were continued to October 18, 1944.

of the Port of San Francisco. It is urged that the supplemental applications seeking such certificates be denied unless and until the Associations have an opportunity to make a full presentation of the facts and reasons upon which they rely as demonstrating that there is no merit to these requests. It is claimed, moreover, that no occasion exists for the sought emergency treatment, that had applicants diligently prosecuted the original applications the proceedings would have been submitted "many months ago," and that it would be "unfair" to grant temporary operating authority without an opportunity being afforded to show why such action should not be taken.

Applicants deny that they have failed diligently to prosecute the applications. The lengthy continuance had at their request, they assert, was necessitated by the severe illness of John Fox one of the applicants.

The evidence thus far adduced at the hearings in these proceedings clearly shows that war conditions have resulted in unusually heavy demands being imposed upon the public storage facilities operated in San Francisco. It has been shown that it has been necessary upon occasion to refuse goods for storage because of lack of space. In other instances, the record indicates, manpower stringencies have not permitted warehousemen now furnishing public storage to provide service at the time or with the expedition required by storers. Cargo originally planned to be stored at San Francisco has been diverted elsewhere so that storage facilities at this port may be kept available for cargo not susceptible of being handled at other locations.

Abnormally heavy demands for public storage at San Francisco have prevailed for some time. As early as 1940, San Francisco Warehouse Company was authorized to operate temporarily 564,500 square feet of additional warehouse space for the storage of cotton held as security for loans made by Commodity Credit Corporation (Decision No. 33615 of October 22, 1940, in Application No. 22695). Thereafter, this company was authorized further to increase its warehouse space by 200,000 square feet for the storage of raw materials, including wool, crude rubber, tin, hemp and manganese for the United States Government. At the same time, Haslett Warehouse Company, Gibraltar Warehouses, and Farnsworth and Ruggles, each secured authority to operate 400,000 square feet of additional space for the cotton and raw materials storage referred to in connection with San Francisco Warehouse Company's temporary operations. (Decision No. 33777 of January 3, 1941, in Applications Nos. 23823, 23851, 23852 and 23857). These authorizations were modified by Decision No. 35359 of May 12, 1942, so as to permit the additional space to be utilized "for storage of property destined to ports along the Atlantic Coast of the United States, ports of territories or possessions of the United States or ports of foreign countries when said property is (1) discharged from vessels returned to San Francisco under orders from the United States Government to unload the cargo and clear it from the docks and (2) forwarded to San Francisco for transshipment to the aforesaid ports and stored at San Francisco because vessel space is not available." By the same decision, J. A. Clark Draying Company, Ltd. was granted permission to use 50,000 square feet of additional space for storage of cargo discharged from vessels under the conditions above outlined and of the transshipment freight involved. All of these temporary certificates of public convenience and necessity are still in effect.

It is evident from the record thus far made in the instant applications that, despite the more than 2,000,000 square feet of additional space authorized to be operated by the existing public utility warehousemen, public storage facilities have not been sufficient to meet fully the demands for service. On the other hand, it is equally clear that inadequacies of the present service have been confined to those types of storage for which the operation of a substantial amount of additional space has already been authorized. Obviously, storage of such character differs materially from normal warehouse operations. It is often required on shorter than the usual notice. Removals from storage are frequently requested on short notice. These conditions result from the disturbances in shipping practices attributable to the exigencies of the war. Moreover, the unusually heavy cargoes placed in and removed from storage, and in some cases the characteristics of the property so handled, create difficult storage problems. These problems, in turn, are aggravated by the complexities of doing business under wartime conditions. There is little or no evidence on the record as it now stands which would indicate that additional facilities are required or will be required for general storage operations.

We are, therefore, of the opinion and find that public convenience and necessity will be served by the granting to applicants of temporary authority similar to that held by the various existing warehousemen hereinabove referred to. To this extent the applications will be granted. Further consideration will be given to these matters and to the question of the issuance of permanent authorizations upon the completion of the hearings now in progress. The temporary certificates will be limited at this time to April 30, 1945, and made subject to earlier cancellation, modification or extension should such action become necessary. Their issuance is without prejudice to the conclusions the Commission may reach upon the full record.

Applicants are hereby placed upon 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, they extend to the holder a full or partial monopoly of a class of business. This monopoly feature may be changed or destroyed at any time by the State, which is not in any respect limited to the number of rights which may be given.

#### INTERIM ORDER

Based upon the evidence of record and upon the conclusions and findings set forth in the preceding interim opinion,

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA HEREBY DECLARES that public convenience and necessity require the temporary establishment and operation of 100,000 square feet of warehouse space by John Fox, an individual doing business as John McCarthy & Son, and 100,000 square feet of warehouse space by Daniel Gallagher Teaming, Mercantile and Realty Company, a corporation, to be situated in the City and County of San Francisco and all of said space to be used exclusively (1) for the storage of cotton held as security for loans made by Commodity Credit Corporation; (2) for the storage of raw materials, including wool, crude rubber, tin, hemp and manganese for the United States Government; and (3) for the storage of property destined to ports along the Atlantic Coast of the United States, ports of territories or possessions of the United States or ports of foreign countries, when said property is (a) discharged from vessels returned to San Francisco under orders from the United States Government to unload the cargo and clear it from the docks or (b) forwarded to San Francisco for transshipment to the aforesaid ports and stored at San Francisco because vessel space is not available; and

IT IS HEREBY ORDERED that certificates of public convenience

and necessity therefor, be and they are hereby granted to the afore-  
said John Fox and Daniel Gallagher Teaming, Mercantile and Realty  
Company.

IT IS HEREBY FURTHER ORDERED that the rights and privileges  
hereinabove authorized shall expire on April 30, 1945, unless sooner  
canceled, changed or extended by appropriate order of the Commission.

IT IS HEREBY FURTHER ORDERED that in the operation of the  
public utility warehouse service hereinabove authorized applicants  
shall comply with and observe the following service regulations:

1. Applicants shall file written acceptances of the  
certificates herein granted within a period of  
not to exceed ten (10) days from the effective  
date of this interim order.
2. Applicants shall comply with the provisions of  
General Order No. 61 by filing, in duplicate,  
and concurrently making effective, tariffs satis-  
factory to the Commission, within thirty (30) days  
from the effective date of this interim order and  
on not less than one (1) day's notice to the Com-  
mission and to the public.

This interim order shall become effective twenty (20) days  
from the date hereof.

Dated at San Francisco, California, this 3<sup>rd</sup> day of  
November, 1944.

Richard L. Baker

Francis R. Havens  
Frank A. Clear

Commissioners