

Decision No: 38185

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
FREIGHT TRANSPORT COMPANY for certi-)
ficate of public convenience and)
necessity to operate as a "warehouse-)
man" under Section 50 $\frac{1}{2}$ of the Public)
Utilities Act:)

Application No. 26039

ORIGINAL

BY THE COMMISSION:

Appearances

- Hugh Gordon, for applicant.
- Arlo D. Poe and C. G. Munson, for Los Angeles Warehousemen's Association, protestant.
- W. E. Fessenden, for California Warehouse Company, protestant.
- E. S. Stanley, for Star Truck and Warehouse Co., protestant.
- Charles O. Simpson, for Metropolitan Warehouse Co. and Westland Warehouses, Inc., protestants.
- C. H. Smith, for Davies Warehouse Company, protestant.
- Nathan Nibley, for Jennings, Nibley Warehouse Co., Ltd., protestant.

OPINION

By this application Freight Transport Company, a corporation, seeks a certificate from this Commission declaring that public convenience and necessity require that applicant establish and operate a public utility warehouse in the City of Los Angeles.

Public hearings were had before Examiner Bryant at Los Angeles, briefs have been filed, and the matter is now ready for decision.

As an alternative, applicant requests that the Commission find that its operations are and will be those of a private warehouseman.

According to the application, Freight Transport Company is operating in the Los Angeles area as a city carrier, contract carrier, and radial highway common carrier, and also as a common carrier in interstate commerce. Terminal facilities are maintained at 1900-1904 Atlantic Street, Los Angeles, in a building of approximately 23,000 square feet of floor space. Some of this space not otherwise required has been used for storage of property incidental to the transportation operations of the company. It is alleged that all warehousing performed has been done under private contract with the owners of the property stored; but that during the past year an increasing number of requests have been received for storage facilities, which, if granted, may change applicant's status to that of a public warehouseman.

The president of applicant corporation described the operations of his company. He explained that its services consist almost entirely of the distribution of pool cars, of the local delivery of rail shipments consigned to its care, and of hauling performed for Western Carloading Co., Inc., a transcontinental freight forwarder for which Freight Transport Company acts as delivering agent. In connection with each of these services some storage facilities are provided for the holding of shipments or portions of shipments which can not be delivered for reasons such as inability or refusal of consignees to accept delivery. He stated that such property is held until it can be delivered or until instructions for disposition are furnished by the shipper. He said also that his company warehouses some property on which it has performed no transportation service.

The witness testified that on occasion, when his company's storage facilities were full, he had arranged on behalf of its customers to secure space elsewhere. Sometimes he arranged for space with the public warehouses; at times he had difficulty locating suitable space and had to call several warehouses to find it. In certain instances

he arranged for space with other customers. The witness also detailed economies and conveniences to shippers that accrue from a combined warehouse and drayage operation. He said that if the carrier has warehousing facilities, it can hold shipments not immediately deliverable and can provide prompt delivery when conditions permit. If it does not possess warehousing facilities, it must take these shipments to a warehouse for storage and pick them up later when delivery can be effected. He explained that a transportation charge must be made for the delivery to the warehouse, whereas his company makes no such charge for returning undelivered shipments to its terminal. Besides, he said, it is a convenience to the customer to be able to deal with only the carrier instead of having to deal with both carrier and warehouseman.

He declared that his company's business is trucking and that if authority is granted to operate a public warehouse business, his choice would be "to continue exactly as we have done in the past, to do a storage business in relation to helping out our trucking business. That is necessary if you want to give a good truck service to your customers. Beyond that, as a principal business, I mean a warehouse as a principal business, it is not exactly suitable to me or me to it." He said that if a certificate were granted, he would not solicit storage merchandise from other than his drayage customers, but that if merchandise were tendered for storage by others, "...if I was a public warehouse, I guess I would have to take it."

The witness explained that in the past his company had made individual storage agreements with its customers, and that in computing storage charges it adhered to no definite formula but gave such weight as the circumstances required to factors such as space occupied, density, and number of units stored. He stated that if this application

were granted, a scale of rates and charges identical with those of other public utility warehouses would be adopted. He admitted he had no definite nor recent information concerning the rates of the public warehouses; nevertheless, he surmised that such rates were not substantially different from those which his company has observed.

Twelve customers of Freight Transport Company were called as witnesses by applicant. Several of these public witnesses said they required temporary storage of pool car shipments while they arranged for disposition of undeliverable lots. Others testified that they undertook to perform their own warehousing, but from time to time stored overflow merchandise with applicant for periods ranging from a few weeks to several months. The remaining witnesses testified they relied on Freight Transport Company to perform all of their warehousing, and that they maintained warehouse stock with it throughout the year.

Most of the public witnesses testified that they had had no recent experiences in either storing or soliciting storage space with the established public warehouses. Several said they had used such warehouses to a limited extent two or three years ago and had not been satisfied because the service accorded them had not met the requirements of their businesses. However, four witnesses who dealt in the importation and sale of bales of cotton, cotton linters, and fiber told of difficulties in securing storage space with the established public warehouses. They said they had made repeated attempts to secure suitable space with these warehouses without success and that they were compelled to store at points outside of the Los Angeles area, such as Laredo, Texas; to make arrangements for storage space with their customers, or to store out-of-doors. One witness testified, "We have been using the railroad track for a warehouse in the last 30 days."

As another alternative, they said they had to adjust their sales policies to their inability to secure sufficient storage space for their requirements.

Virtually all of the public witnesses praised the transportation and storage services of applicant and wished to continue using them. They declared that applicant possesses and exercises the special knowledge necessary for the proper handling of their commodities. They asserted that it would be a great convenience and advantage to have the same concern handle both their distribution and warehousing, and testified that if this application were granted they would plan to avail themselves of applicant's combined services.

Officers of Western Carloading Co., Inc., also testified in behalf of applicant. They briefly described their services in forwarding five to ten carloads of assorted merchandise daily from certain eastern states to the Los Angeles area. They stated that their rates include delivery to the consignees, and that Freight Transport Company makes 40 to 50 per cent of their local deliveries. They stated that its services were satisfactory except at times when vehicles were detained due to inability of consignees to accept shipments when tendered. These witnesses also told of some difficulties they had experienced in locating storage space for their customers. They said that they usually had to call several of the public warehouses before suitable space could be found, and mentioned one instance when they had been unable to find space.

Granting of this application was opposed by the Los Angeles Warehousemen's Association (an association of public utility warehousemen operating in the Los Angeles area) and by a number of the members thereof.

The secretary of the Association described the operations

and properties of the public utility warehousemen in the Los Angeles area. He introduced as an exhibit a list of such warehouses, and described their locations, types of construction, and facilities for handling rail and truck shipments. According to the exhibit, there are approximately 37 public warehouse buildings in the Los Angeles area, of which eight are situated within a radius of one mile of applicant's terminal. He said that the public warehousemen store all merchandise offered, except commodities specifically prohibited by law or restricted by insurance limitations. In conjunction with or to facilitate their storage operations, he said that all except two warehousemen operate trucks either as separate companies or as integral parts of their businesses. He stated that practically all warehousemen handle the distribution of pool cars, including delivery and storage as required.

This witness stated that in the ten years prior to 1941 the space occupancy in public warehouses in the Los Angeles area approximated 60 to 70 per cent; since the outbreak of the war, however, the federal government has required an increasing amount of warehouse storage with the result that about 95 per cent of the available floor space was currently occupied. Another reason ascribed by the witness for the increase in occupancy since the outbreak of the war is the lack of manpower which has prevented warehousemen from repiling merchandise to make space for other shipments. He described how the warehousemen had developed a method for allocating amongst themselves the government's space requirements so that they could furnish the storage space needed, and said also that some warehouses had expanded their facilities to a limited degree. He conceded that there had been no material increase in public warehousing facilities in the Los Angeles area for many years.

The witness testified that some warehouses at times have become loaded with government merchandise, and have been unable to accept all civilian merchandise when offered. He explained, however, that there is a daily flow of merchandise in and out of the warehouses, and that some new space is always being thus made available. He expressed the view that the relatively small amount of space proposed to be made available under this application could have no appreciable effect upon the public need for warehouse space, and stated that the existing warehouses could accommodate an equal amount of additional storage with their present facilities.²

Referring to cotton, cotton lintens, and fiber, the witness said the storage of these commodities involved considerable fire hazard, and that their acceptance had the effect of increasing insurance rates on all commodities in the warehouse; consequently not all warehousemen accepted these restricted articles. He named several warehousemen who were unrestricted and who accepted these commodities.

The owner of the California Warehouse Co., testifying as a protestant, said that he operates three public warehouse buildings which have never been filled to capacity. He stated that two of the buildings were unrestricted, and that he stores both cotton and fiber. He once declined to accept a carload of fiber in bulk, but only because he did not have facilities for handling this commodity in bulk.

From the testimony of applicant's president it is apparent that what applicant desires is not authority to conduct a public utility warehouse in the usual sense, but rather such authority as will permit it to make storage space available to desirable shippers and consignees. Little evidence was offered by applicant to show the extent to which there might exist a need for additional public

² Applicant's buildings have a floor area of approximately 23,000 square feet, of which a portion is used for garage and office facilities. Applicant proposes to devote 15,000 square feet to warehousing.

warehouse space in Los Angeles. Of the twelve public witnesses, four had little experience with public warehouses in past years, and did not indicate whether they had sought warehouse space recently; and four made no comment whatever with respect to the availability of space in present warehouses. The remaining four witnesses testified that they had not been able to find sufficient and suitable warehousing facilities in the Los Angeles area; however, these witnesses were interested in the storage of only cotton, cotton fibers, and linters--commodities which, because of their fire hazard and difficult handling are accepted by only a limited number of warehousemen. Applicant's president and the officers of Western Carloading Co., Inc. testified that they had at times found it necessary to call several warehouses when endeavoring to locate suitable storage space for their patrons, and had on some occasions been unable to make satisfactory arrangements. Applicant offered no other evidence directed specifically to the question of whether there is a public need for additional warehouse facilities, nor did it show that its offer of service particularly to selected shippers and consignees would be consistent with the duty of a public utility warehouseman to avoid making or granting any preference or advantage.

Applicant introduced much evidence to show that its transportation and storage services as conducted in the past had been satisfactory to its patrons and that the expansion of these services to include additional warehousing would be a convenience and economy to present customers. Its patrons likewise stressed the convenience and economy of having both transportation and warehousing performed by the same company, and several stated that applicant's trucking service was superior to that offered by public warehouses with which they had experience. However, the record shows that virtually all of the public

warehouses now serving the Los Angeles area offer a combined transportation and warehousing service. Moreover, the asserted superiority of applicant's trucking service cannot be held to establish a public need for the proposed warehouse operation. It was not made to appear that the proposed combined truck and warehouse services would be of a distinctive or specialized nature.

It must be concluded from the evidence as a whole, including particularly that offered by the protestant association, that public warehouse space in the Los Angeles area has approached maximum practical occupancy under wartime conditions. However, it is clear that some space is available. In a proceeding such as this one, the burden of proof rests upon applicant to establish affirmatively that the proposed operation will meet and satisfy a definite public need. Public convenience and necessity cannot be assumed to exist on the basis of evidence that if the proposed service were established, it would be utilized.

Upon careful consideration of all of the facts and circumstances of record the Commission finds as a fact that applicant has not shown that public convenience and necessity require the warehouse operation proposed in this proceeding.

As an alternative to the granting of authority to operate a public utility warehouse, applicant would have its present and proposed operations found to be those of a private warehouseman. No argument or evidence, other than an opinion expressed by applicant's president, was offered in support of the alternative proposal. A finding that applicant's storage operations are not those of a public warehouseman cannot be made on this record.

The application will be denied.

O R D E R

Public hearings having been held in the above entitled application, briefs having been filed and the matter submitted, and based upon the evidence of record and upon the conclusions and findings set forth in the preceding opinion,

IT IS HEREBY ORDERED that the above entitled application be and it is hereby denied.

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

Dated at San Francisco, California, this 28th day of August, 1945.

Harold Anderson
Justice F. Querner
Richard L. ...
Irving ...

CERTIFIED AS A TRUE COPY

Secretary, Railroad Commission
of the State of California.