

Decision No. 38186

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of )  
J. O. MURCH and DOROTHY MURCH, co- )  
partners, doing business under the )  
name and style of AMERICAN TRANS- )  
PORTATION COMPANY, for permission to )  
operate as food warehousemen in )  
Los Angeles, California. )

ORIGINAL

Application No. 26470

BY THE COMMISSION:

Appearances.

L. M. Phillips and Benjamin M. Stansbury,  
for applicants.  
Arlo D. Poe and C. G. Munson, for Los Angeles  
Warehousemen's Association, protestant.  
W. E. Fessenden, for California Warehouse  
Company, protestant.  
C. H. Smith, for Davies Warehouse Company,  
interested party.

OPINION.

By this application J. O. Murch and Dorothy Murch, co-partners; seek permission to establish and operate, in the City of Los Angeles, a public utility warehouse devoted to the storage of food, as defined in the Food Warehousemen Act, other than food requiring cold storage.

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

According to the application, J. O. Murch and Dorothy Murch have specialized for many years in the transportation of food products by motor truck, operating as a common carrier interstate and as a radial highway common carrier and as a city carrier intrastate. They allege that public warehouse facilities for food storage in Los

Angeles have not kept pace with the increase in population and that they are compelled to hold loads of food on their trucks because there is no available place where the food may be held pending delivery. Applicants propose to provide warehouse facilities devoted to the storage of food for the relief of their own trucking business, and for the use of other truck operators and of the general public.

The applicant partners testified that difficulties in obtaining public warehouse accommodations in Los Angeles developed before 1942 and have been increasing ever since. They said they had been and were experiencing difficulty in effecting deliveries at public warehouses, and that delays of four or five hours were frequent because the warehouses "have to get so much freight out before we can put it in." They said that unloading was sometimes delayed as much as three days by shortages of public storage space. They stated that the points of pickup or delivery for freight were rather generally congested throughout the Los Angeles area, and that similar unloading difficulties were experienced at places other than public warehouses, but to a lesser degree.

Applicants testified that if the certificate sought were granted, the warehouse operations so authorized would be directed primarily to providing storage space for patrons of their trucking business, although available storage space would not be denied members of the public generally. They would commence operations immediately, utilizing for this purpose a warehouse building already available on their premises. The building has a storage area of approximately 10,000 square feet of floor space, and is not being used except to provide temporary storage for hand trucks, skids and tools. Moreover, they would undertake the construction of a larger warehouse to have a floor area of approximately 44,000 square feet, which they estimated

could be completed within 60 days. They asserted their cash reserves were ample to finance the construction of the new building. Direct rail facilities would not be available to either warehouse.

Both partners testified they had no experience in the warehousing business other than some experience of J. O. Murch about 25 years ago. They would assess the rates and charges observed generally by other warehousemen in the Los Angeles area. They had not made any investigation of these rates, nor of the volume of business they could develop, nor what the rate of turnover of property in storage would be; however, they had talked with others in the warehousing business and believed that with the assistance of experienced help and with the proper supervision they could conduct their proposed warehouse business profitably at the rates contemplated.

Public witnesses called by applicants included representatives of both shippers and carriers. A dealer in nuts and peanut butter testified that difficulties in obtaining public warehouse space during the past year had caused him to store his merchandise at greater expense in cold storage warehouses and to rent a store building to obtain storage space. Moreover, he said that he had been subjected to demurrage charges incurred because of lack of warehouse space. Representatives of two coffee companies told of difficulties they had experienced during the past year in obtaining public warehouse storage space. One said that many times carloads of his company's coffee accumulated four or five days demurrage before they could be switched into a warehouse siding for unloading; he said that on one occasion in 1944 when circumstances compelled him to seek storage for 16 carloads of coffee upon their arrival in Los Angeles, as much as eight days' demurrage charges accrued before storage facilities could be obtained and all the cars unloaded. Commenting on the

absence of rail facilities to applicants' proposed warehouse, he explained that his company's preference would be to store with warehouses that afforded direct rail service. The representative of the other coffee company testified that in December, 1944, he was unable to find storage space for 750 bags of coffee. In this instance he called only the two warehouses with whom he had been storing in the past. Other than this instance he said that with some difficulty he has been able to obtain the storage space required, although demurrage charges accrued before some cars could be unloaded. The representative of a third coffee company testified that he had been able to obtain the storage space he needed by calling several warehouses.

An importer of garlic, chilies, spices, seed and nuts testified of a recent instance wherein a customer of his was assertedly unable to secure warehouse space for two carloads of chilies. Also, he told of a sale of garlic he lost because his customer had difficulty in arranging for warehouse space.

An importer of coffee testified that within recent months he had experienced difficulty in obtaining public storage for coffee in Los Angeles; he referred to a shipment received about four months previously for which he could not find warehouse space after calling two warehouses. He mentioned another shipment which was stored in Long Beach for the reason, he thought, that space could not be obtained in Los Angeles. He did not recall other instances of being unable to obtain storage space, and said that before the war he had no difficulty in obtaining storage.

The other shipper witnesses called by applicants testified that their requirements were primarily for cold storage and that they did not use dry storage warehouses.

A representative of an interstate carrier engaged in the

transportation of general commodities was one of the carrier witnesses called by applicants. He testified that those commodities hauled by his company which required public warehouse space in Los Angeles were primarily potatoes, apples, candy, butter, canned goods, eggs, frozen berries and frozen fish. He said that most of these items required cold storage, although the potatoes, apples and eggs could be held for short periods of time in dry storage. The witness stated that it was his observation that public warehouse space in Los Angeles was scarce and difficult to obtain. He said that inability of warehouses to accept shipments of potatoes, apples and berries had delayed the unloading of his company's equipment for as much as two days. The other carrier witness operated intrastate. He testified that approximately 70 per cent of the commodities he handled were farm products and some canned goods. He said that on two or three occasions the unloading of shipments of coffee from his trucks had been delayed because of inability of the warehouses to accept them. He did not recall other instances of unloading delays at public warehouses.

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.

Appearing as witness for the Association, its secretary named the members thereof who, he said, include all but one or two of the general warehousemen in Los Angeles. He stated that all member warehouses handle general merchandise, including food, and gave estimates of the amount of storage space devoted to the storage of food at various warehouses. None of the storage space of these warehouses has been increased during the past five years. Each of the member warehousemen have both rail spur track facilities and facilities for

the loading and the unloading of freight to and from trucks.

This witness testified that in the years preceding 1940 the warehouses were normally about 65 per cent occupied, but as a result of wartime demands the occupancy of the warehouses increased materially. He introduced an exhibit which indicated that 5.3 per cent of the total gross area of 2,531,219 square feet of the member warehouses was available for occupancy as of March 1, 1945. He said that fourteen of the warehouses had formed an organization which he managed, known as the Federal Emergency Warehouse Association of Los Angeles, for the purpose of meeting the storage requirements of certain agencies of the United States Government. As demands for space were received by the Federal Emergency Warehouse Association, he allocated such demands among the members thereof according to their commitments and convenience at the time. He testified that some other governmental agencies connected with the prosecution of the war made their own contracts directly with the individual warehouses, as did a number of concerns manufacturing war material.

The witness said that another wartime factor that had affected the service of public warehouses was the decrease in available manpower and the decline in its efficiency. He said that the warehouses at times have space that they could develop if they had manpower to pile the goods properly. He stated that the warehouse employees are working to physical capacity. Referring to the unloading of rail cars he testified that most of the warehouses "were paying large demurrage bills which accumulate through the inability to handle and unload the cars as fast as they would like to."

Six member warehousemen were called as witnesses by the Association. They corroborated, in general, the testimony of the

Association's secretary relative to degrees of occupancy, storage services performed for governmental agencies, and manpower shortages. Two said they have at times been filled to capacity, and one said he had no space available except in small blocks. One explained that a public warehouse can never be filled to its full space capacity because of the deductions that have to be made to transact business and to allow merchandise to flow in and out. He said also that inability to secure help had caused him to refuse to accept for storage one shipment of coffee, and another testified that at various times during the past year he had had to refuse shipments for the same reason. Two of these witnesses declared they did not recall ever having been offered coffee for storage by the shipper witnesses called by applicant. Another warehouseman asserted he had never refused to store either coffee or peanuts.

Applicants seek in this proceeding permission to establish themselves as food warehousemen under the Food Warehousemen Act (Statutes 1919, Chapter 215). This act does not require that warehousemen obtain a permit from the Commission before commencing operations. However, the Public Utilities Act contains a requirement that those who seek to engage in the business of warehousing in any incorporated city having a population of 150,000 or more must first secure a certificate from this Commission declaring that public convenience and necessity require or will require the operation of such business.<sup>1</sup> It will be assumed that applicants seek the certificate required by the latter statute.

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<sup>1</sup> Section 50 $\frac{1}{2}$ .

It is apparent that what applicants seek is not authority to operate a public utility warehouse in the usual sense, but authority to provide storage facilities to desirable patrons of their transportation business. Such a purpose is not altogether compatible with the obligation to serve the public generally which they would assume as a public utility. Much of the evidence introduced on their behalf related to delays applicants had experienced in their transportation operations; to impressions of witnesses who themselves had not sought warehouse service; to storage difficulties involving only cold storage commodities; and to other matters of little or no probative value in so far as this application is concerned. The unloading delays to which applicants attested appeared to be largely a result of congestion, general throughout the Los Angeles area, and not necessarily the result of insufficient public warehouse facilities.

Although certain witnesses testified that they had not been able to obtain or had experienced difficulty in obtaining all of the warehouse space they desired, their testimony indicated that the instances in which they encountered these difficulties were infrequent; furthermore, it indicated that their search had not been extended to include all of the public utility warehouses in the area. A conclusion that existing public utility warehousemen have not performed their full obligations to the public requires a more positive showing than has been offered herein.

From testimony of protestants it is apparent that public warehouse space in Los Angeles has approached maximum practical occupancy due to wartime conditions; that the warehousemen have been handicapped by inability to obtain sufficient manpower to permit maximum utilization of their facilities; and that on a few occasions some



have had to refuse acceptance of shipments offered for storage. The evidence indicates, however, that the warehouses as a whole have never been filled to the extent that storage has been refused to witnesses called by applicant.

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

The application will be denied.

ORDER

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 28<sup>th</sup> day of August, 1945.

Edward C. Anderson  
Justice F. C. Casper  
Richard B. Parker

James H. Luce  
Commissioners