

Decision No. 40594

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
the Pico Street Warehouse Company,)
a co-partnership, for a Certificate) Application No. 28421
of Convenience and Necessity as a)
Public Warehouse.)

ORIGINAL

Denis H. Grady and Charles E. Kern for
Pico Street Warehouse Company, applicant.

Arlo D. Poe and Charles G. Munson for
Los Angeles Warehousemen's Association, protestant.

James R. Barry, for Parrot & Co.; J. R. Copeland, for
Holly Sugar Corporation; and M. E. Johnson, for
Kern Food Products; as intervenors in support of
the application.

O P I N I O N

Pico Street Warehouse Company, a copartnership, seeks a certificate of public convenience and necessity for the operation of a public utility warehouse for the storage of sugar in the City of Los Angeles. The application was submitted at a public hearing held before Examiner Bryant at Los Angeles on June 6, 1947, and is ready for decision.

The copartners are Charles E. Kern and Barbara A. Kern, his sister. They propose to conduct their warehouse business in a one-story brick building located at 2835 East Pico Boulevard. The building is owned by and is adjacent to the plant of Kern Food Products, Inc., of which Charles E. Kern is vice president and production manager. It has been leased to the copartners for a period of five years. The building contains about 18,500 square feet of floor space, has a floor of truck-level height, is served by a rail spur track, and is alleged to be suitable in every way for use as a warehouse.

Charles E. Kern testified that since his recent release from the armed forces he had been looking for a profitable business to enter; that friends in the sugar business told him that there was a need for storage space in the Los Angeles area; that he had an opportunity to lease the building in question, and had done so. He said that the production and consumption of sugar are largely seasonal, and that quantities must be held in storage in order to maintain a balance. Regarding the availability of space in the Los Angeles area, he testified that several months prior to the hearing an employee of Kern Food Products, Inc. had reported that he was unable to secure space anywhere in the city for storage of 50,000 bags of sugar. Kern did not know of which warehouse or warehouses the employee had made inquiry. It was Kern's conclusion, however, based upon such investigation as he had made, that his proposed warehouse would be kept full from month to month, and that it could be operated with one regular employee utilizing pallets and lift trucks. The warehouse would be supervised by Kern and his sister; the latter would also handle the billing and other general duties. Rates and charges similar to those assessed by other public warehousemen in the area would be established. Detailed revenue and expense estimates had not been developed, but the witness was assertedly satisfied that the venture would be profitable.

Kern contemplated that everything stored in the warehouse would be on pallets. According to his testimony, the proposed tariff would not limit the storage service to sugar tendered on pallets; it would be the responsibility of Pico Street Warehouse to supply pallets to storers without charge; the pallets would be owned by, and leased from, a Lawrence Warehouse; Lawrence Warehouse would deliver the pallets to the prospective storers in the first instance, subject to

payment of a monthly rental charge by Pico Street Warehouse; and consignees of the sugar would return the pallets to Pico Street Warehouse, unless they had an arrangement with Lawrence Warehouse which would permit transfer of the pallets on books of said warehouse.

Two other witnesses testified in support of the application. Both were representatives of Holly Sugar Corporation, a prospective patron of the proposed warehouse. The local sales agent for the Holly company declared that it was almost impossible to get any quantity of sugar in any present public warehouse in Los Angeles. Referring particularly to the period within 60 days prior to the hearing, he named one warehouse generally patronized by the Holly company which had been unable to take a single carload of sugar, and another which had accepted only isolated carloads, perhaps a month apart. He had not recently inquired of other public warehouses. He believed, however, from his long experience with local warehouses, and from information supplied by a representative of the warehouse with which some storage had been arranged, that there was not available in Los Angeles any considerable amount of space for public storage of sugar. The inability to maintain adequate stocks in the Los Angeles area placed his company at a competitive disadvantage in the distribution of its product, he said, and worked upon it a hardship and an inconvenience. According to this witness, it is necessary for the Holly company to find outside storage for in excess of a million bags this year. He declared that the company was forced recently to lease a building in Los Angeles at a high monthly rental for a period of five years in order to provide some storage space, and that the resulting storage cost per bag of sugar would be considerable. If the Pico Street Warehouse were authorized to operate, he stated, the Holly Sugar Corporation would offer for storage as much sugar as the warehouse would accept.

The other witness for the Holly company was its assistant traffic manager, whose headquarters are in Colorado. He explained that he had not made any personal investigation of storage facilities in Los Angeles, but had the benefit of information developed by his superior, the traffic manager. He stated that the traffic manager, accompanied by other officers, had spent a month in Los Angeles making an extensive search for suitable space to store sugar, had found it extremely difficult to find adequate public facilities, and had finally leased a building which would take care of a portion of the company's requirements. The witness said that the Pico Street Warehouse was suitably located, and that his company would use its facilities if they were made available. He testified that the Holly Sugar Corporation had made some investigation into the feasibility of using pallets in its operation, but had none in use at the present time.

The Los Angeles Warehousemen's Association appeared as a protestant. The secretary of this Association testified that there would soon be opened to public storage approximately 480,000 square feet of floor space, located in a Los Angeles municipal warehouse building at San Pedro. He explained that this space was withdrawn from public use at the start of the recent war. This witness also pointed out several respects in which applicant's proposed tariff appeared to be ambiguous, or to provide rates lower than those maintained by existing warehouses. Asked whether he had any objection to granting of the application, except that the proposed rates appeared to differ from those of the Association members, he replied, "I have not offered any."¹

¹ Applicant's counsel declared that Pico Street Warehouse Company had no desire to maintain rates lower than its competitors, and asked that the proposed tariff be considered amended accordingly.

Counsel for the Los Angeles Warehousemen's Association, in closing argument, declared that although the record disclosed a need for storage space by Holly Sugar Corporation, it did not indicate any need by any other company. He directed attention to the absence of testimony on behalf of any other producer or potential storer of sugar. He referred to the fact that a public utility warehouse is one in which merchandise is "regularly stored for the public generally" (Sec. 2½, P.U.A.); declared that the issuance of a certificate to operate such a warehouse involves a determination by the Commission that there is a public need for it (citing Sec. 50½, P.U.A.), and questioned whether the need of a single producer of a single commodity is sufficient to show the facility to be a matter of public convenience and necessity. This counsel suggested that the Pico Street Warehouse Company, with perfect legality, could enter into a contract with Holly Sugar Corporation to store its products without having a certificate at all, the service being that of a private or contract warehouse rather than that of a public warehouse. It was his position that the application should be denied for the reason that the record does not meet the requirements of a showing of public convenience and necessity.

Counsel for applicant responded that no good purpose would be served by calling additional public witnesses to produce the same type of evidence; that Los Angeles had experienced an enormous growth in population in the last four or five years, without a corresponding increase in public storage facilities; and that his client proposed to start in a small way, in an operation which would harm no one, and to which there could be no valid objection.

The question at issue in this proceeding is whether public convenience and necessity require or will require the transaction of the business proposed by the applicant. The evidence shows that Holly Sugar Corporation is in need of warehouse space which the proposed facilities would satisfy in part, and that the Holly Company would use as much of the facilities as applicant may permit. The record does not establish that any other potential storer of sugar has a need for additional warehouse facilities which would be satisfied in whole or in part by the proposed service. The burden rests on an applicant for a certificate to establish affirmatively that some actual public need or demand exists which the proposed service will meet and satisfy (Ralph Speer, 41 C.R.C. 517, 519). The evidence of record in this proceeding does not permit a finding that public convenience and necessity require the transaction of the business proposed by Pico Street Warehouse Company. The application will be denied.

O R D E R

A public hearing having been had in the above entitled application and based upon the evidence received at the hearing 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 Los Angeles, California, this 5th day of
August, 1947.

Harold P. Huls

Justin F. Casner

John H. Russell

Francis P. ...

Commissioners