

Decision No. 41229

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of COOK-McFARLAND COMPANY )  
to sell and DONALD W. AYRES, doing )  
business as AYRES WAREHOUSE COMPANY to ) Application No. 28959  
purchase the warehouse operative rights )  
of the Seller. )

Appearances

Gordon and Knapp, by Wyman C. Knapp, for applicant,  
Donald W. Ayres.

J. D. Taggart, for applicant, Cook-McFarland Company.

Arlo D. Poe, for Los Angeles Warehousemen's Associ-  
ation, interested party.

O P I N I O N

By this application, Cook-McFarland Company, a California corporation, seeks authority to sell to Donald W. Ayres, an individual, a right to conduct a public utility warehouse business in the City of Los Angeles.

Public hearing was had before Examiner Bryant at Los Angeles on January 30, 1948, at which time the matter was submitted for decision.

The operative right involved in this proceeding is one established by virtue of the conduct of public utility warehouse operations by Cook-McFarland Company prior to the time when a certificate of public convenience and necessity was required.<sup>1</sup> The record indicates that in its earlier operations the company stored general commodities and that in recent years it has devoted most of its facilities to the storage of wines and liquors. In November, 1947, the company applied to the Commission for authority to discontinue operations.

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<sup>1</sup> Certifying provisions for warehousemen were added to the Public Utilities Act by Section 50½, Statutes of 1927, Chapter 878.

Such authority was granted by Decision No. 41080 dated December 22, 1947. The record further indicates that pursuant to the authority so granted the company, prior to the date of hearing in the instant proceeding, terminated its public utility storage operations and formally notified the Commission of its action.<sup>2</sup>

It is to be noted that the Cook-McFarland Company, after having obtained proper authority, has voluntarily divested itself of the duties, responsibilities, and character of a public utility warehouseman. It has removed the vesture which clothed its properties, both tangible and intangible, with the public interest. Without waiting for decision in the instant proceeding, it has lawfully exercised to the ultimate conclusion the authority granted it to terminate operations.

The effect of the termination of services upon the company's operative right cannot be disregarded. Actual operation is the sinew of an operative right; it is not a mere appurtenance but is an essential ingredient of the right itself. Suspension of service with no intention of reestablishing it constitutes abandonment of an operating right and the right is impaired to such a degree that it may no longer be the subject of transfer.<sup>3</sup> In view of the conclusive nature of the action taken by Cook-McFarland Company to end its public utility services, we must conclude and find that the company does not possess an operative right which can be transferred.<sup>4</sup> The

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<sup>2</sup> The formal notification, of which official notice is taken, was filed with the Commission January 26, 1948 as part of the record in Application No. 28862, Decision No. 41080.

<sup>3</sup> Re Operations of Vessels, 43 C.R.C. 50, 53. Re Application of Lee B. Hawkins and Reader Truck Lines, 43 C.R.C. 303, 309.

<sup>4</sup> It should be noted that even though the operative right were still existent, its owner, Cook-McFarland Company, is no longer a public utility over which this Commission has jurisdiction to grant or withhold any right of property disposal.

application will be dismissed.

O R D E R

Cook-McFarland Company having made application to the Public Utilities Commission to transfer a certain right to Donald W. Ayres, who joins in the application, a public hearing having been held thereon, the matter having been submitted, and the Commission being of the opinion, for the reasons expressed above, that the application should be dismissed,

IT IS HEREBY ORDERED that the above entitled application, being Application No. 28959, be and it is hereby dismissed.

Dated at Los Angeles, California, this 17<sup>th</sup> day of February, 1948.

*A. T. [Signature]*

*Joseph [Signature]*

*Harold A. [Signature]*

*Samuel [Signature]*  
Commissioners