

Decision No. 41598

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application
of COOK-McFARLAND COMPANY, a cor-
poration, for authority to discon-
tinue public utility warehouse
service.

Application No. 28862

In the Matter of the Application
of COOK-McFARLAND COMPANY to sell
and DONALD W. AYRES, doing busi-
ness as AYRES WAREHOUSE COMPANY,
to purchase the warehouse operative
rights of the seller.

Application No. 28959

J. D. Taggart for applicant, Cook-McFarland Company;
Gordon and Knapp, by Wyman C. Knapp, for applicant Donald W.
Ayres; Arlo D. Poe for Los Angeles Warehousemen's Association,
interested party.

O P I N I O N

Cook-McFarland Company, having petitioned for reopening and modification of Decision No. 41080, in Application No. 28862; Cook-McFarland Company and Donald W. Ayres having petitioned for reconsideration and rehearing of Decision No. 41229, in Application No. 28959; the Commission having considered said petitions and having ordered the proceedings reopened, to determine whether said decisions should be amended or rescinded, a rehearing was held before Examiner Chiesa, at Los Angeles, on April 23, 1948, and the matters were then submitted for decision.

On November 12, 1947, Cook-McFarland Company, a corporation, engaged in the public utility warehouse business in the City of Los Angeles, filed Application No. 28862 requesting authority to

permanently cease and discontinue its operations as a public utility warehouseman⁽¹⁾.

As justification for the proposed discontinuance of service, applicant states, and the record shows, that applicant has been operating 44,500 square feet of public utility warehouse floor space at 915-927 Mateo Street which, until recently, was almost entirely used by storers of liquors in cases and barrels; that principal storers have built or leased warehouse premises elsewhere; that the decrease in liquor storage requirements has resulted in a space occupancy of approximately 17 per cent or 6,800 square feet; that applicant is unable to recover its business; that operating costs have increased considerably; that operations have resulted in a loss and that greater losses will be incurred because of continuing withdrawals from storage, and, that the remaining storers have consented to the transfer of their property to other warehouses.

On December 15, 1947, Cook-McFarland Company filed a supplement to its application of November 12, 1947, stating therein that on or about December 9, 1947, applicant had "received an offer to purchase its said warehouse prescriptive right for the sum of \$1,500, subject to approval of such transfer by the Commission". In said "Supplement to Application" this Commission was asked (1) to consider said supplement in conjunction with, and as a supplement to, Application No. 28862, then on file, and (2) to make "its Order authorizing applicant to cease and discontinue its operations as a

(1) This applicant is not certificated. It bases its authority to engage in the public warehouse business on prescriptive right resulting from continued operation since prior to the enactment of Sections 2 $\frac{1}{2}$ and 50 $\frac{1}{2}$ of the Public Utilities Act.

public utility warehouseman without prejudice to the sale of such warehouse franchise rights as it may now own," (emphasis added).

The record shows that applicant desired immediate authority to discontinue or suspend its operations in order to avoid any additional losses and that such authority be granted pending the filing and consideration of an application to sell and transfer its operative rights.

On December 18, 1947, Application No. 28959 was filed by Cook-McFarland Company, as seller, and Donald W. Ayres, doing business as Ayres Warehouse Company, as buyer, requesting authority to sell and transfer said warehouse operative right.

The record shows that, on December 17, 1947, applicants entered into a written agreement whereby the buyer agreed to pay \$1,500 for seller's warehouse operative right, subject to approval by this Commission; that applicant Donald W. Ayres is experienced in the public warehouse business and is financially responsible; that upon receipt of authority to transfer said operative rights Donald W. Ayres proposes, within 120 days, to acquire suitable warehousing properties and establish a public utility warehouse operation in the City of Los Angeles, adopting the same rates as published by his predecessor.

On December 22, 1947, an ex parte order (Decision No. 41080, on Application No. 28862), effective December 22, 1947, was issued authorizing applicant (Cook-McFarland Company) to discontinue operations as a public warehouseman, subject to certain mandatory conditions, including the filing of a written acceptance of said order. A written acceptance was filed December 30, 1947.

The opinion in Decision No. 41080 does not mention the "Supplement to Application" filed on December 15, 1947, requesting authority to discontinue or suspend immediately, without prejudice to the transfer of rights, if approved. A marginal note in said opinion does, however, contain the following statement:

"Application No. 28959, filed December 18, 1947, in which applicant seeks authority to sell its operative rights and Donald W. Ayers seeks authority to purchase them will be scheduled for public hearing."

Said application, in addition to the request for authority to transfer and sell said warehouse operative right, asks

"that this Commission simultaneously dispose of the matters and things involved in Application No. 28862, and the within application, by entering its Ex Parte opinion and order (a) authorizing Buyer to acquire the prescriptive operative rights of Seller upon the terms and conditions hereinabove set forth; and (b) **permitting Seller to terminate its public utility warehouse operations on or before December 31, 1947.**"

The request for simultaneous handling of both matters is significant in view of the subsequent acceptance by Cook-McFarland Company, of the order authorizing it to discontinue its public warehouse operation. The attorney for Cook-McFarland Company, who is also a director of the company, testified at the rehearing that the order of December 22, 1947, was accepted, and the provisions thereof complied with, for the purpose of enabling the applicant to discontinue or suspend its operations as originally proposed, pending final disposition of the transfer matter.

The transfer application was heard on January 30, 1948, and on February 17, 1948, this Commission issued its order in Decision No. 41229, dismissing said application upon the ground that,

pursuant to the discontinuance authorized in Decision No. 41080, and the acceptance thereof, the operative right had been voluntarily abandoned and, therefore, the company did not possess the operative right which it sought to transfer.

The applications were not opposed.

Having fully reviewed the above-entitled matters, we are of the opinion and find that applicant Cook-McFarland Company did not intend to voluntarily forfeit its operative right pending a determination of its application to sell and transfer, that said operative rights were not forfeited, and that the sale and transfer of said public utility warehouse operative right would be in the public interest.

Decision No. 41229 will be annulled and revoked and Application No. 28959 will be granted.

O R D E R

A rehearing having been held in the above-entitled proceedings, evidence having been adduced, the matter having been duly submitted, and the Commission being fully advised in the premises,

IT IS ORDERED:

(1) That the Order in Decision No. 41080, dated December 22, 1947, on Application No. 28862, appearing in lines 4 to 7, inclusive, on page 2 thereof, and reading as follows:

"IT IS HEREBY ORDERED that Cook-McFarland Company be and it is hereby authorized to discontinue the handling and storage of property as a public warehouseman, subject to the following conditions:"

be, and it hereby is, amended to read as follows:

"IT IS ORDERED that Cook-McFarland Company be, and it hereby is, authorized to suspend, until the determination of Application No. 28959, the handling and storage of property as a public warehouseman, subject to the following conditions:"

(2) That in all other respects Decision No. 41080 shall remain in full force and effect.

(3) That Decision No. 41229, dated February 17, 1948, be, and it hereby is, annulled and revoked.

(4) That Cook-McFarland Company, after the effective date hereof, and on or before July 31, 1948, may sell and transfer to Donald W. Ayres the public utility warehouse operative right referred to and described in the agreement on file in Application No. 28959, and designated Exhibit (B) thereof.

(5) That, within one hundred twenty (120) days from the effective date hereof and on not less than five (5) days' notice to the Commission and to the public, Donald W. Ayres shall file rates, rules and regulations identical with those now on file covering his warehouse operations in the City of Los Angeles, California. The tariff filings made pursuant to this Order shall comply with the regulations governing the construction and filing of warehouse tariffs set forth in the Commission's General Order No. 61.

(6) That the action taken herein shall not be construed to be a finding of the value of any property herein authorized to be transferred.

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

Dated at San Francisco, California, this 18th
day of May, 1948.

R. E. [Signature]
James F. [Signature]
[Signature]
Harold P. [Signature]
[Signature]
COMMISSIONERS