

Decision No. 46015

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Investigation)	
into the rates, rules, regulations,)	
charges, agreements, services,)	Case No. 5282
operations and practices of)	
Lawrence Warehouse Company.)	

Appearances

Reginald L. Vaughn and William R. Wallace, Jr., for Lawrence Warehouse Company, respondent.

Harry A. Mazzer and D. B. Brodie, for Ted's Boneless Beef Company, interested party.

Jack L. Dawson, for Pacific States Cold Storage Warehousemen's Association, interested party.

O P I N I O N

This proceeding is an investigation by the Commission on its own motion into the lawfulness of certain agreements made by the Lawrence Warehouse Company relating to its operations as a public utility cold storage warehouseman at Stockton.

The agreements in question were entered into between respondent warehouse company and a meat processing company, Ted's Boneless Beef, Inc., for a term of ten years commencing with February 13, 1950. Under the provisions of said agreements respondent engaged itself to reserve for the meat company all of its freezing and storage facilities. In consideration for the reservation of facilities the meat company agreed to supply respondent with a minimum of 1,667 tons of meat per year for freezing. Respondent also undertook to lease certain properties to the meat company for an annual rental equivalent to the

insurance carried and the taxes paid on the leased property. The rental terms, however, were subject to a condition that they would not become applicable until the meat company had furnished respondent with an aggregate of 16,670 tons of meat to be frozen.

The issues as to these agreements are:

- (a) Whether the agreements will result in deviations, either directly or indirectly, from the provisions of respondent's tariff, in violation of Section 17(b) of the Public Utilities Act, and
- (b) Whether the agreements make or grant any preference or advantage to the meat company and subject other of respondent's warehouse patrons to any prejudice or disadvantage, in violation of Section 19 of the Public Utilities Act.

Public hearings of the matters involved were held before Commissioner Potter and Examiner Abernathy at Stockton and at San Francisco on May 3 and May 7, 1951, respectively.¹ Evidence was submitted by respondent's president and by a consulting engineer who was called in respondent's behalf. The president of Ted's Boneless Beef, Inc. testified for his company. Evidence in behalf of the meat company was submitted also by a real estate broker and by a civil engineer.

At the outset of the hearings the attorneys for respondent and for Ted's Boneless Beef, Inc. disclaimed any purpose on the part of their companies of violating the Public Utilities Act, and they proposed to renegotiate the agreements to remove therefrom

¹ The hearing on May 7, 1951, was held before Examiner Abernathy.

any preferential or improper provisions. Subsequently, respondent submitted a new agreement which it had entered into with the meat company to supersede the previous arrangements. This agreement provides for the lease to the meat company of the properties involved at a rental of \$750 a month and for the furnishing of refrigerant to the company at a charge of 73 cents per ton. It was made effective January 1, 1951, so as to cover the period when the meat company took possession of the properties. Respondent's president testified that the new agreement has the effect of placing the meat company on the same footing as other patrons of his company's public utility services and that no preference as to rates, services or storage space will be given to the meat company. He also testified that his company had adhered to its tariff provisions under the previous agreements in assessing charges for the public utility services it had performed for the meat company.

Much testimony was submitted by the witnesses to show the propriety of the rental for the properties which were transferred to the meat company in accordance with the lease agreement. These properties were described as consisting mainly of a "Quonset hut" which has been remodeled so as to be suitable for the meat company's operations. Assertedly, the building has never been dedicated to public use and is not included among respondent's public utility operating properties. Respondent's president testified that upon a total investment in the properties of \$87,076 a consulting engineer had developed a figure of \$15,263 as being a fair annual rental. He said that the meat company had refused to agree to this rental, however, claiming that the expenses which had been incurred in the remodeling were considerably more than justified and that the building had been remodeled to a greater capacity than was needed

and greater than the company could afford. The witness conceded that the claims had some basis. He said that when negotiations were begun it was estimated that the investment in the building, as altered to meet the meat company's requirements, would be about \$50,000. Due largely to lack of proper supervision, however, the work that was done was more expensive and more extensive than originally planned; consequently, respondent's investment in the building was increased substantially. He testified that in view of the various factors involved his company is of the opinion that the agreed rental of \$750 a month, or \$9,000 a year, is fair and adequate.

The consulting engineer who had been retained by the warehouse company to determine the rent for the property testified that the method which he used in arriving at his rental figure is sound, but that it does not always result in a sound answer where competitive facilities are involved. He said that inasmuch as the investment was extraordinarily large for the work that was done, and resulted in a greater amount of space than was needed by the meat company, the figure which he had developed is considerably too high. With respect to the refrigerant with which respondent supplies the meat company, the engineer stated that he had developed a cost of 73.95 cents a ton. Because of various judgment factors which had entered into the computation of this cost figure he was of the opinion that the charge of 73 cents a ton which is specified in the agreement is reasonably representative of the actual cost of the refrigerant.

The president of the meat company corroborated the testimony of respondent's president that the remodeling costs substantially exceeded the estimate which had been considered when the work was begun. He attributed the increased costs to construction which he asserted had been done so that the building could be used as a warehouse should his company vacate the premises. The witness testified

that the structure contains about twice the space that his company needs but because of its shape the space cannot be used efficiently.² He asserted that a superior meat processing plant, tailored to his company's requirements, could be constructed for a lesser total cost than that which is represented by respondent's \$87,000 investment in the remodeled building.³

As to the monthly rental of \$750, the witness said his company had agreed to that amount as a compromise and that its original offer had been \$500. He compared the rental figure of \$750 with a rental of \$350 a month which he said an affiliated company is paying for better quarters for meat processing purposes. The real estate broker who appeared as a witness for the meat company and who was qualified on the record as having considerable rental and appraisal experience in the Stockton area testified that in his opinion a reasonable rental for the property in question would be \$600 a month. He appraised the property as having a value of \$67,966.

It is clear from the record herein that respondent warehouse company, by renegotiating the agreements which it had entered into with Ted's Boneless Beef, Inc. as of February 13, 1950, undertook to cure any defects in said agreements which might result in unlawful practices or charges. Since the agreements have been superseded, no finding with respect to their lawfulness is necessary.

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Although more space than needed is furnished the meat company, it appears that the space may not be partitioned satisfactorily to accommodate another tenant.

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The civil engineer who was called as a witness by the meat company testified that the construction firm which he represented had estimated that a suitable building could be constructed for about \$44,000. With an allowance of \$9,000 for the cost of the land for such a building the total investment would be about \$53,000.

As to the agreement which was entered into as of January 1, 1951, the evidence shows that it pertains only to properties apart from those which have been dedicated by respondent to its public utility operations. It does not appear that adherence to the terms of the agreement will result in any direct and unlawful deviations from the provisions of respondent's tariff or in acts of unlawful discrimination or preference with respect to the public utility properties.

There remain for consideration the questions as to whether the terms of the lease of the non-public utility property and whether the charges for the refrigerant which respondent furnishes the meat company are such as to result indirectly in acts of unlawful discrimination or in other violations of the Public Utilities Act. In similar matters involving the leasing of non-utility properties the Commission has pointed out that violations of the Public Utilities Act may occur when the terms of the lease are so favorable to the lessee that it is clear that the real consideration for the lease must be found elsewhere. The standard by which to judge a transaction involving the lease of such properties is whether the lessor has received fair value therefor.⁴ In this instance the record is convincing that the charges for which the lease provides are fair and do not unduly favor the meat company. The charge for the refrigerant likewise appears fair.

It appearing that respondent's agreement as of January 1, 1951, with Ted's Boneless Beef, Inc. is not violative of, and will not result in violations of, the Public Utilities Act, and there appearing no cause for further investigation into the rates, rules,

⁴ See Committee of Albany Naval Station Veterans v. The Atchison, Topeka & Santa Fe Railway Co., Western Improvement Co., and Santa Fe Land Improvement Co., 48 Cal. P.U.C. 160, 163, 164.

regulations, charges, agreements, services, operations and practices of Lawrence Warehouse Company, this proceeding will be terminated.

O R D E R

The above-entitled matter having been duly instituted, investigation having been had, the Commission having been advised, and good cause appearing,

IT IS HEREBY ORDERED that this proceeding be and it is hereby discontinued.

Dated at San Francisco, California, this 31st day of July, 1951.

R. J. [Signature]
Justin J. [Signature]
Harold [Signature]
Wm. [Signature]
John E. [Signature]
COMMISSIONERS