

ORIGINAL

Decision No. 46103

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application)	
of Joe Balestrieri-Bering Sea)	
Codfish Company, a California)	Application No. 32398
corporation, for certificate of)	
public convenience and necessity.)	

Appearances

William B. Acton, for applicant.
 Reginald L. Vaughan, Varnum Paul and
 John G. Lyons, for Haslett Warehouse
 Company, Merchants Ice & Cold Storage
 Company and National Ice & Cold Storage
 Company of California, protestants.
 Jack L. Dawson, for Pacific States Cold
 Storage Warehousemen's Association,
 interested party.

O P I N I O N

By this application, Joe Balestrieri-Bering Sea Codfish Company, a corporation, seeks a certificate of public convenience and necessity authorizing it to operate a public utility cold storage warehouse at San Francisco for the storage of fish.

Public hearing of the application was held at San Francisco on June 27 and August 8, 1951, before Examiner Jacopi. Evidence was offered by applicant's president and by representatives of two public utility cold storage warehousemen.

The application shows that the operative authority is sought for the cold storage of fish and other frozen foods. At the hearing, applicant limited the sought authority to the storage of fish that is first frozen by applicant and then placed in its cold storage facilities.

The record shows that applicant is primarily engaged in the wholesaling of fish in San Francisco. Its supply of fish is obtained from the Pacific Ocean through a fleet of fishing boats which it operates. In connection with these activities, applicant maintains a warehouse structure in San Francisco containing four cold storage rooms and one room that is equipped and used for the freezing of fish before it is placed in storage. The five rooms have a total floor area of 5,180 square feet. About 400,000 pounds of fish could be accommodated in the storage rooms. Except for slightly higher charges for freezing service, applicant proposes to establish the same storage and handling rates and charges as those now applicable at the other public utility cold storage warehouses in San Francisco.

Applicant's president testified that about 25 percent of the fish sold by his company involved requests by the purchasers for cleaning, processing, freezing and storage of the fish by applicant in its facilities until needed by the buyers. He said that applicant had been providing these services to its customers for the past four years and that it was necessary to do so to avoid loss of fish sales to Canadian wholesalers who offer such services to buyers. Assertedly, no public utility cold storage warehouseman in the San Francisco Bay area performs all of the foregoing operations on fish. The president also testified that his company's customers had informed him that negotiation of bank loans on their stored fish would be facilitated if applicant were in a position to issue public utility warehouse receipts for the fish.

According to the president's testimony, about one half of the space in the cold storage rooms is needed for the storage of applicant's own fish. Another one quarter of the space would be devoted to the storage of fish that is sold to applicant's customers but is retained in its storage facilities until it is removed by the purchasers. The remaining one quarter of the storage space would be offered to the public generally. In support of the latter proposal, the president asserted that applicant's customers might find it necessary to purchase fish from other wholesalers during periods when the supply was limited and to store the fish in applicant's facilities.

The granting of the sought certificate was opposed by officials of Merchants Ice & Cold Storage Company and National Ice & Cold Storage Company of California. The local manager for Merchants testified that his company now has about 500,000 pounds of fish stored in its San Francisco facilities and that about 100,000 pounds more could be accommodated. The manager for National asserted that about 127,600 cubic feet of the 750,858 cubic feet of cold storage space operated by his company in San Francisco is now occupied by stored fish. Based on usual demand for space, he said, the company could accommodate an additional amount of about 400,000 pounds of fish.

According to the testimony of these witnesses, the present requirements for cold storage space in San Francisco are temporarily greater than usual. Assertedly, the United States Army has abandoned its own cold storage facilities in San Francisco and is now transferring the operations to a new structure in Alameda containing two million cubic feet of cold storage space. The

protestants and other warehousemen are providing the service for the Army during the moving, which is expected to require about ninety days.² The witnesses for the protestants stated that there would be ample cold storage space available to the public when the new Army plant is in operation.³ Assertedly, space in protestants' facilities that has been regularly used by the Army also would be released as well as that temporarily occupied while the transfer to Alameda is being made. The witness for National estimated that, when this occurs, not more than 50 percent of his company's cold storage space in San Francisco would be occupied. It was also pointed out that the Army is contemplating the erection of a new structure in San Francisco containing about one million cubic feet of cold storage space which would replace the aforesaid facilities that were discontinued.

The manager for National stated that his company provides freezing and glazing services for fish as well as storage. Merchants' manager asserted that his company does not offer freezing service for fish. He pointed out, however, that freezing equipment is included in a new building that will be ready for cold storage service in about ten months. He explained that the new building will replace one of his company's present structures for which

² Applicant stated in the application that the United States Army was looking for additional cold storage space. . It developed at the hearing that applicant had received a telephone inquiry apparently associated with the availability of space during the Army's removal of its facilities to Alameda. In any event, it is clear that the Army has not requested applicant to provide storage space nor has it offered applicant any Army goods for storage.

³ The witness for National stated that, because of the Army's temporary requirements, his company was unable to accept a quantity of fish recently offered for storage.

remodeling is not warranted due to its age and condition.⁴ The witnesses admitted that their companies do not perform the cleaning and processing of fish provided by applicant but their counsel argued that these services were not public utility warehouse operations.

Conclusions

In regard to the storage of fish that has been sold by applicant, its counsel stated at the hearing: "I find that if the owner of the fish can take to his bank a certificate from a licensed public warehouse that he gets his banking accommodation immediately, whereas that might not apply to one who just has a private storage space, and that is the principal reason we have come voluntarily before the Commission to put ourselves under the jurisdiction of the Commission."

Section 2 $\frac{1}{2}$ of the Public Utilities Act defines a "warehouseman" that is subject to the certification and other requirements of the Act.⁵ Insofar as it relates to applicant, the definition provides as follows:

"The term 'warehouseman,' when used in this act, includes every corporation or person, ***, owning, controlling, operating or managing any building, or structure, or warehouse, in which merchandise, *** other than merchandise sold but retained in the custody of the vendor, is regularly stored for the public generally, for compensation within this state, ***." (Emphasis supplied.)

⁴The record shows that the present structure is about 65 years old. The new building will provide about the same amount of space as that contained in the present structure.

⁵The certification requirements in question are set forth in Section 50 $\frac{1}{2}$ of the Act, which provides, among other things, that no warehouseman shall commence to operate any business of a warehouseman in any incorporated city, or city and county of this State having a population of 150,000 or more, without first obtaining from this Commission a certificate declaring that public convenience and necessity require the transaction of business by such warehouseman.

As described in this record, the storage of fish by applicant which it has sold to customers constitutes the storing of "merchandise sold but retained in the custody of the vendor" referred to in the exemption shown in the foregoing definition and, therefore, is not within this Commission's jurisdiction conferred upon it by the Act and we so find. Applicant's expressed desire to obtain operative authority so that it could issue warehouse receipts as a public utility warehouseman would probably serve its customers' interests but this does not affect the determination of whether the proposed storage service is subject to the Commission's regulatory powers under the Act.

We turn now to the portion of the cold storage space that applicant proposes to offer to the public generally. As previously indicated, it was stated in support of the proposal that applicant's customers might find it necessary at times to purchase fish elsewhere and to store it in applicant's facilities. However, no one appeared in support of the application and it was not shown that the existing cold storage facilities in San Francisco are insufficient to meet the storage requirements for fish. In proceedings involving operative authority, the burden of proof rests upon applicant to establish affirmatively that the proposed operation will meet and satisfy a definite public need. Public convenience and necessity cannot be assumed to exist on the basis of evidence indicating that if the proposed service were established it would be available to anyone choosing to use it.

Upon careful consideration of all of the facts and circumstances of record the Commission finds as a fact that applicant has not shown that public convenience and necessity require the establishment and operation of the public utility cold storage warehouse service proposed in this proceeding. The application will be denied.

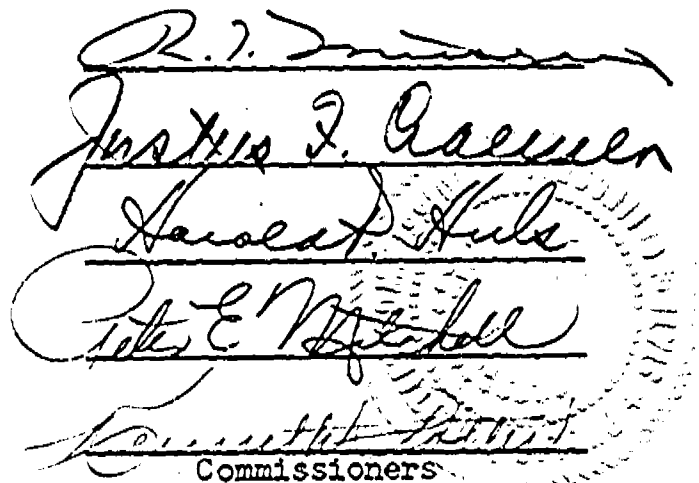
O R D E R

Public hearings having been held in the above-entitled application 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 application of Joe Balestrieri-Bering Sea Codfish Company filed in this proceeding, be and it is hereby denied.

The effective date of this order shall be twenty (20) days after the date hereof.

Dated at San Francisco, California, this 20th day of August, 1951.


R. J. [Signature]
Justin J. Gaenen
Harold Hule
Peter E. [Signature]
[Signature]
Commissioners