

**ORIGINAL**

Decision No. 51319

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of )	
A. L. WAY and J. F. RETHERFORD, doing )	
business as MODERN COLD STORAGE CO., )	Application No. 36403
to terminate its status as a public )	
utility and to cancel rates. )	

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

O P I N I O N

By this application filed November 26, 1954, A. L. Way and J. F. Retherford doing business as Modern Cold Storage Co. seek to terminate their status as a public utility and request authority to cancel their rates set forth in California Railroad Commission Tariff No. 1, effective May 27, 1946, and Supplement No. 1, effective October 18, 1950.

As justification for their requested relief, it is alleged that in 1946 applicants filed their schedule of rates with the Public Utilities Commission in the belief that they came within the definition of a "food warehouseman", as that term is defined in Section 2508 of the Public Utilities Code. Applicants state that they now believe that they are not and never have been "food warehousemen" within said definition.

It is further alleged that they do not advertise or otherwise hold themselves out to the public as a warehouse or cold storage plant, and are not listed in the classified section of the telephone directory; that they have never had more than five or six patrons at any one time, and that their present patrons consist almost entirely of persons who have stored food commodities in

applicants' warehouse since 1946. These facts are alleged to justify the belief of applicants that they do not now and never have owned, controlled, operated, or managed any building, structure, warehouse, elevator, or plant in which food commodities regularly received from the public generally are stored for compensation. In the event the Commission grants the application, applicants propose to continue to serve their present customers as they have in the past.

Public hearing was held in Fresno, California, on March 17, 1955, before Examiner Rowe, at which time evidence was adduced and the matter duly submitted for decision.

According to the testimony of the managing partner of applicants they have seventeen or eighteen customers. They have, however, always favored certain customers over others. This warehouse is used during various portions of each year for the storage of grapes, oranges, peaches, plums and nectarines.

This warehouse is located at Exeter, California, a small community approximately fifty-five miles southeast of Fresno. Applicants issue informal warehouse receipts for the produce stored and usually look to the customer who stored the produce with them for payment of the storage charges. On some occasions, however, when the fruit is sold while it is in the warehouse, applicants have collected their storage charges from the purchaser. The witness conceded that one reason for the present request was that applicants could be free to charge higher rates. However, they have not applied for authority to file higher rates with the Commission. There was no evidence that the present rates do not produce reasonable compensation for the use of the warehouse or for the services performed.

The Commission finds that applicants are food warehousemen within the meaning of Section 2508 of the Public Utilities Code,

in that they own, control, operate and manage a warehouse in which food commodities are regularly received from the public generally and stored for compensation. No good reason is revealed in the record in this proceeding which justifies granting the application. It will, therefore, be denied. Applicants' attention is directed to Section 2531 of the Code prohibiting discriminations, preferences and advantages between persons or corporations offering food commodities for storage. They will be expected to discontinue the favored treatment which the managing partner stated had been accorded certain individuals.

O R D E R

Application having been filed, public hearing thereon having been held, and the Commission being fully advised in the premises,

IT IS ORDERED that Application No. 36403 be, and it hereby is, denied.

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

Dated at San Francisco, California, this 12<sup>th</sup> day of April, 1955.

*John E. Hatchell* President  
*Justus J. Caswell*  
*Paulo L. Lutermeier*  
*William H. Hooley*

COMMISSIONERS