

ORIGINAL

Decision No. 57713

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's
own motion into the operations, rates
and practices of AMERICAN WAREHOUSE
COMPANY, a corporation.

Case No. 6082

Marquam C. George, for the respondent.
Alvin B. Christiansen, for California Warehousemen's
Association; R. P. Sampoul, for Colonial Warehouse
Company; Aksel Nyeland, for Lawrence Warehouse
Company, interested parties.
Hugh N. Orr, for the Commission staff.

O P I N I O N

On April 8, 1958, the Commission issued an order institut-
ing an investigation on its own motion into the operations, rates
and practices of American Warehouse Company, a corporation.

A public hearing was held on June 10, 1958, at Fresno at
which time the matter was submitted.

Purposes

The order of investigation was issued for the purpose of
determining whether the respondent is operating as a public utility
warehouse under the provisions of the Public Utilities Code and if
so whether the respondent has violated Sections 489 or 2551 of the
Public Utilities Code by failing to file and publish schedules of its
rates and charges in accordance with the requirements of these
sections.

Facts

Based upon the evidence introduced into the record at the
time of the hearing in this matter, the Commission hereby finds the
following facts to exist:

1. Respondent is a California corporation and was incorporated
in August of 1956.

2. Respondent leases 35,000 square feet of storage space in a warehouse located in Fresno. This storage space is leased from the Northern California Warehouse Company.

3. Respondent operates a warehouse on this leased storage space. In this operation respondent employs four regular employees whose duties consist of stacking, sorting, loading and unloading rail cars and trucks, palletizing property to be stored and operating fork lift trucks. These employees are members of the Teamsters Union and are paid the prevailing wage of warehousemen.

4. Respondent, through the use of this leased storage space, provides storage facilities for approximately 10 different customers. During the period of its operation certain of these customers have been dropped and others have been added. However, at any given period of time respondent has served no more than approximately 10 customers. Since it commenced operations in 1956, respondent has handled altogether approximately 15 different customers.

5. Respondent provides storage facilities for coffee, television sets, household appliances, freezers, canned goods, paper cups, flour, canned meats, sugar, fertilizer, and empty barrels.

6. Respondent issues nonnegotiable warehouse receipts and utilizes a card system index by which an inventory of the commodities on hand and in storage is maintained.

7. The assessment of charges by respondent varies with the commodity handled. The customer is billed for the commodities at the time they are received for storage. On most types of commodities charges are based upon a minimum charge for one month's storage and are predicated on a rate in cents per 100 pounds with the exception of television sets, canned goods, paper cups and canned meats. The charges for these four commodities are predicated on a rate based in cents per carton.

8. The respondent maintains insurance against all liability except damage caused by fire. The various customers provide their own fire insurance for the commodity stored.

9. Respondent maintains an advertisement in the classified section of the Fresno Telephone Directory. This advertisement is located in that section designated "Private Warehouses". Respondent also maintains a listing in the San Joaquin Grocery Manufacturers' Representatives 1957 Directory. This listing uses the term "Private Warehouse".

10. The salesmen for certain of respondent's customers contact respondent and inform it of sales made by them of the commodities stored with respondent. These salesmen also inform respondent when the commodities are to be shipped and any other important instructions regarding delivery. In some instances respondent arranges for the transportation of these commodities to the purchasers. At other times the transportation arrangements are made directly by the salesmen.

11. Respondent also provides desk space and telephone answering service for one of its accounts in addition to providing storage space.

12. All of respondent's accounts contacted the respondent requesting storage space, rather than the respondent contacting them.

13. The letterhead used by respondent on its nonnegotiable warehouse receipts specifies that it is a private warehouse.

14. Respondent's Articles of Incorporation authorize it to conduct business as a warehouse.

15. Respondent does not employ any solicitors.

16. The respondent has entered into purported agreements, either written or oral, with all of the accounts that have stored property with it. Under the terms of these agreements, there is set forth the rates to be charged for the storage of particular commodities.

The agreements provide that the account is to carry its own insurance on all merchandise in storage. The respondent agrees to be responsible for all merchandise while in storage and to submit an inventory of merchandise on hand at the end of each month or as directed. The agreements do not obligate the accounts to store any given quantity of merchandise or any merchandise at all with the respondent.

17. Respondent has turned down accounts which have been offered to it, primarily accounts which wanted to store household goods and automobiles. These accounts were refused because respondent was not set up or equipped to handle that type of storage. In ascertaining what accounts it will accept, respondent considers the volume and the turnover of the merchandise and whether it is going to be consistent or not. In ascertaining whether to accept a new account respondent also considers whether it has space available and whether the new account is a competitor with any existing accounts.

18. Respondent's warehouse is substantially filled at the present time, however, there is additional storage space available to it if respondent desires to obtain it.

19. Respondent has not filed any tariffs with the Commission.

20. The respondent and the Commission staff stipulated that the population of the City of Fresno is less than 150,000.

Statutes and Court Decisions

In a companion decision issued on this same day,^{1/} the Commission has discussed the various statutes and California Supreme Court decisions which are pertinent to any determination of the

^{1/} In the matter of the Investigation of Pajaro Valley Cold Storage Company, Decision No. 57712, in Case No. 6080.

public utility status of a person or corporation operating a warehouse. As was pointed out in that decision if a corporation operates a warehouse in which merchandise is regularly stored for the public generally for compensation, it is not only a "warehouseman" under subsection (b) of Section 239 of the Public Utilities Code but it is also a public utility under the provisions of the Public Utilities Act.^{2/} Likewise, as pointed out in that decision, if a corporation operates a warehouse in which food commodities regularly received from the public generally are stored for compensation, it is a "food warehouseman" under Section 2508 of the Code and therefore a public utility under the provisions of the Food Warehousemen's Act.

It was further pointed out in that decision that the Supreme Court decisions have laid down certain general rules relative to ascertaining whether certain property has acquired public utility status and that it would appear from these court decisions that before property can be held to acquire public utility status, it must have been devoted to a public use; that the test to be applied is whether or not there has been a holding out to the public or any limited portion thereof as contradistinguished from a holding out to serve only particular individuals; that dedication to a portion of the public will suffice; and that the dedication of property to a public use is never presumed without evidence of unequivocal intention which in turn can be shown by evidence that the property or service is available to the public and not just to privileged individuals.

The Commission also pointed out in its decision that an examination of the phrases "regularly stored for the public generally" and "regularly received from the public generally" in the light of

^{2/} It is clear from the facts hereinabove found, that if respondent is a "warehouseman" within the provisions of the Public Utilities Act at all, it is so because of the definition set forth in subsection (b) of Section 239.

the principles set forth in these Supreme Court decisions indicates that the statutory definitions of "warehouseman" in subsection (b) of Section 239 and "food warehouseman" in Section 2508 apply to a great extent, the same tests laid down by the Supreme Court for determining when there has been a devotion or dedication of property to public use.

Conclusions

In view of the foregoing discussion, it would seem that any determination of respondent's status as a public utility requires an examination of all of the facts relative to respondent's operation with a view to ascertaining whether respondent has held itself out to serve the public generally or just selected individuals. An examination of the facts hereinabove found indicate that certain of them tend to show an intent to dedicate property to the public use and serve the public generally and certain other facts indicate a contrary intent. However, from an examination of all of the facts it is the Commission's conclusion that the respondent has regularly stored commodities for the public generally for compensation and that it regularly receives food commodities from the public generally for compensation.

Therefore, based upon all of the evidence introduced at the hearing in this matter, the Commission hereby finds and concludes that the respondent is a "warehouseman" as defined in Section 239 of the Public Utilities Code and a "food warehouseman" as defined in Section 2508 of the Code and that respondent is a public utility pursuant to Section 216 and 2507 of the Code.

Motions

During the course of the hearing a motion was made to strike certain testimony from the record. This motion is hereby denied.

O R D E R

A public hearing having been held in the above-entitled matter and the Commission being fully informed therein,

IT IS ORDERED:

1. That American Warehouse Company shall forthwith file with this Commission and publish schedules of its rates and charges in accordance with the requirements of Sections 489 and 2551 of the Public Utilities Code and shall comply with all other pertinent provisions of the Public Utilities Code and the rules and regulations of this Commission.

2. The Secretary of the Commission is directed to cause personal service of this order to be made upon American Warehouse Company and this order shall be effective twenty days after the completion of such service upon the respondent.

Dated at Los Angeles, California, this 9th day of December, 1958.

Lee J. Fox
President

W. E. ...

Robert ...

...

Theodore ...
Commissioners