

ORIGINAL

Decision No. 57714

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's	)	
own motion into the operations, rates	)	
and practices of CHARLES W. CARTER	)	
COMPANY, doing business as Automotive	)	Case No. 6083
Warehouse Co. and Automotive and	)	
Industrial Warehouse Co.	)	

Kindel and Anderson, by Richard Schauer, for respondent.  
Carl F. Peters, for Los Angeles Warehousemen's Association, interested party.  
Hugh N. Orr, for the Commission staff.

O P I N I O N

On April 8, 1958 the Commission issued an order instituting an investigation on its own motion into the operations, rates and practices of Charles W. Carter Company, doing business as Automotive Warehouse Company and Automotive and Industrial Warehouse Company.

A public hearing was held on June 12, 1958 in Los Angeles at which time the matter was submitted.

Purposes

The order of investigation was issued for the purpose of determining:

1. Whether the respondent is a warehouseman within the definition of Section 239 of the Public Utilities Code, subject to the jurisdiction of this Commission in accordance with Section 216 of the Code;
2. Whether the respondent has violated Section 1051 of the Public Utilities Code by failing to secure a certificate of public convenience and necessity required by that section;
3. Whether the respondent has violated Section 489 by failing to file the published tariffs as required therein.

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. Charles W. Carter Company is a California corporation. As the Charles W. Carter Company, it is engaged in the purchase and sale of automotive parts at the wholesale level. This corporation also operates the Automotive Warehouse Company and the Automotive and Industrial Warehouse Company. These latter companies are operated as divisions of the Charles W. Carter Company and are not separate corporations.

2. The Automotive Warehouse Company and the Automotive and Industrial Warehouse Company store property for various manufacturers. Under their method of operations these two warehouse companies receive property from various manufacturers, together with lists of the manufacturers' customers to whom the warehouse company is authorized to deliver the stored property. These customers are jobbers and wholesalers. For the most part, sales of the property stored are made by the manufacturers' own salesmen and representatives. In those instances where the sales are made on a cash basis, the purchase price is either given to the warehouse company at the time it delivers the property to the customer or by a carrier on a c.o.d. shipment where the property has been given by the warehouseman to a common carrier for delivery to the customer. Monies so collected by the warehouse companies are kept in trustee accounts for the respective manufacturers and are remitted monthly to the manufacturers. The warehouse companies' compensation for the storage of the property and other services rendered by them is in most cases determined on a percentage of the gross sales price of the property delivered by the warehouse companies to the customers. This percentage varies from

2½ percent to 7 percent of the monthly gross sales. In some cases a fixed minimum charge is also provided for and in some cases a fixed charge is provided rather than a charge based upon a percentage of gross sales.

3. At the present time the two warehouse companies have about 47 manufacturers' accounts. Of these 47 accounts, however, the commodities stored by only 12 accounts occupy 80 percent or better of respondent's warehouse space. All of the manufacturers which store commodities in the warehouses enter into either written or oral contracts with the warehouse companies. These contracts vary with respect to their terms.

4. The products stored by the warehouse companies consist primarily of automotive parts. However, a small minority of electric and electronic merchandise is also stored and serviced.

5. The general functions of the two warehouse companies are to receive property of the manufacturers, provide warehouse space for the property, and ship it to the manufacturers' accredited customers. The warehouse companies package the materials to be shipped to the customers, break large quantities into smaller units, and prepare the necessary invoices relative to the merchandise sold. These invoices are prepared on forms supplied by the manufacturer. Employees of the warehouse companies maintain back orders and take both phone and mail orders from the manufacturers' customers.

6. The Automotive Warehouse Company is located at 1406 South Grand Avenue, Los Angeles, and employs six bonded warehousemen, two PBX-bookkeepers, and one full-time manager. On the second floor of the warehouse are located twenty-six separate offices available for renting to manufacturers' agents and salesmen.

7. The Automotive and Industrial Warehouse Company is located at 1346 South Hope Street, Los Angeles, and employs four warehousemen, one PBX-bookkeeper, and one full-time manager. This building also has available ten offices for manufacturers' representatives.

8. Both the Automotive Warehouse Company and the Automotive and Industrial Warehouse Company have their names listed in the classified section of the local telephone directory under the designation "Warehouses - Private." Most of the accounts of the two warehouses were obtained through inquiries made by various jobbers as to facilities and service of the warehouses. The warehouse companies have turned down various accounts. During the past two and one-half years, the warehouse companies have entered into negotiations for some 30 or more accounts, of which about 13 to 18 were refused. The warehouse companies will accept storage, however, from anyone as long as it is a profitable transaction. However, they will not take bad credit risks and they will not take automotive lines which are competitive with the automotive lines presently stored by the warehouse companies. An officer of respondent testified that respondent would accept commodities in other lines if they had some semblance of an automotive nature, if they were offered by an existing account, if they were something to be sold for resale, if they were something respondent's employees could be taught to handle, and if they were profitable.

9. Neither of the two warehouse companies issues warehouse receipts.

10. The two warehouse companies do not employ salesmen. The sales made relative to the merchandise stored in the warehouses are made primarily by salesmen employed by the manufacturer. However, the employees of the two warehouse companies are trained in facilitating sales and encouraging sales when customers call in.

11. The Charles W. Carter Company does not have a certificate of public convenience and necessity to operate as a warehouseman. Likewise, the Charles W. Carter Company has not filed with this Commission tariffs as a warehouseman.

12. The two warehouse companies have terminated existing contracts with manufacturers when those contracts no longer brought profit to the warehouse companies.

13. In most cases, contracts have been initiated by the manufacturer rather than by the two warehouse companies.

14. Respondent has not distributed any advertising matter which indicated that the respondent had public warehouses. However, at least one of respondent's employees, through personal contact, has solicited business.

15. The Commission takes official notice that the population of the City of Los Angeles exceeds 150,000. ✓  
✓

#### Statutes and Court Decisions

In a companion decision issued on this same day,<sup>1/</sup> the Commission has discussed the various statutes and California Supreme Court decisions which are pertinent to any determination of the 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. Likewise, as pointed out in that decision, if a corporation operates a warehouse in which property is regularly stored for compensation, in connection with or to facilitate the transportation of property by a common carrier or vessel, or the loading or unloading of property, it is a "warehouseman" under subsection (a) of Section 239 of the Code. However, in this case it must also serve

<sup>1/</sup> In the matter of the investigation of Pajaro Valley Cold Storage Company, Decision No. 52710, in Case No. 6080.

the public or any portion thereof before it becomes a public utility under the provisions of the Public Utilities 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 phrase "regularly stored for the public generally" in the light of the principles set forth in these Supreme Court decisions indicates that the statutory definition of "warehouseman" in subsection (b) of Section 239 applies 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. It was also pointed out that the phrase "service to the public or any portion thereof" would seem to call for essentially these same tests.

#### Analysis of Facts

An examination of the facts indicates that the first question to be decided is whether respondent comes within the definition of "warehouseman" set forth in subsection (a) of Section 239

by storing commodities in connection with or to facilitate the transportation of property by a common carrier or the loading or unloading of property. The evidence indicates that respondent engages the services of a common carrier to deliver some of the commodities stored at its warehouses to customers of the manufacturers of the commodities. However, as pointed out in the Pajaro Valley Cold Storage Company decision, it is the Commission's conclusion that the Legislature, in enacting this definition, intended that there be an additional relationship between the storage of property and its transportation, or loading and unloading, over and above the mere fact that property was shipped to or from a warehouse by means of a common carrier, before the requirements of this definition are met. Any such additional relationship is not shown by the evidence in this investigation. The evidence indicates 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 subparagraph (b) of Section 239 relating to storage for the public generally.

Another matter which must be considered is the respondent's contention that, because the facts show that it performs services for the various accounts it handles over and above the mere storage of commodities, it is not operating as a public utility warehouse. The Commission does not agree with this contention. A warehouseman under the Public Utilities Act is defined in terms of storage for compensation. In ascertaining whether respondent is a warehouseman, therefore, the fact that it is performing services other than mere storage is, in the Commission's opinion, not relevant except as it might show an intent, or the lack thereof, to dedicate property to a public use.

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 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 found indicates that certain of them tend to show an intent to dedicate property to the public use and serve the public generally and that other facts tend to indicate a contrary intent.

The facts which tend to show an intent to dedicate property to the public use and serve the public generally are that respondent is storing commodities for 47 different accounts; that respondent has indicated it would take additional accounts if they were profitable; and that at least one of respondent's employees, through personal contact, has solicited business.

The facts which primarily tend to show a contrary intent are that respondent has entered into contracts with each of the manufacturers for which it has stored merchandise; that respondent does not prepare either negotiable or non-negotiable warehouse receipts; that respondent has turned down accounts; that respondent will not handle any commodity which competes with a commodity that is presently being stored; that the warehouse companies are listed in the telephone directory as private warehouses and not public warehouses; that respondent has not distributed any advertising matter which indicated that the respondent had public warehouses; that in most cases contracts have been initiated by the manufacturer rather than by the two warehouse companies; that of the 47 accounts handled by respondent, the commodities stored by only 12 accounts occupy 80 percent or better of respondent's warehouse space; and that in most cases respondent's compensation is determined on a percentage of the gross sales of the property delivered by the warehouse companies to the customers.

An examination of these facts indicates that there are two strong factors indicating a dedication. These are that respondent



has 47 different accounts and has indicated it would accept any profitable business. After carefully examining all the evidence in this matter, the Commission concludes that respondent has dedicated its property to a public use and that it is regularly storing commodities for the public generally for compensation.

Conclusions

Based upon all of the evidence of record, the Commission hereby finds and concludes that the respondent is a "warehouseman" as defined in Section 239 of the Public Utilities Code and, therefore, that respondent is a public utility under Section 216 of the Code. Likewise, based upon all of the evidence of record, the Commission further finds and concludes that the respondent has violated Section 1051 of the Public Utilities Code.

Motion

At the time of the hearing a motion was made by respondent's counsel 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 the Charles W. Carter Company, doing business as Automotive Warehouse Company and Automotive and Industrial Warehouse Company, shall cease and desist from operating as a warehouseman, as defined in Section 239 of the Public Utilities Code and as a public utility as defined in Section 216 of the Code, until such time as it obtains a certificate of public convenience and necessity from this Commission to so operate.

2. The Secretary of the Commission is directed to cause personal service of this order to be made upon the Charles W. Carter

Company and this order shall be effective twenty days after the completion of such service upon the respondent.

Dated at Los Angeles, California, this 9<sup>th</sup> day of December, 1958.

E. Lynn Fox  
President  
W. E. ...  
Ray ...  
...  
Theresa ...  
Commissioners