

**ORIGINAL**

Decision No. 65645

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's )  
own motion into warehouse operative )  
rights of Mary McKiernan, doing )  
business as CHULA VISTA TRANSFER & )  
STORAGE. )

Case No. 6948

Application of MARY McKIERNAN to )  
suspend Possessed Prescriptive )  
Operative Right, as a Public Utility )  
Warehouseman. )

Application No. 44976  
(Filed November 27, 1962)

ORDER REVOKING WAREHOUSE OPERATIVE RIGHT

By Application No. 44976, Mary McKiernan requests suspension for one year of her prescriptive warehouse operative right in Chula Vista. The application states that the business of Chula Vista Transfer & Storage was sold on September 27, 1961, land and buildings being excluded from the sale; that on March 1, 1962, the new owners moved all storage lots to a new location; that the warehouse has been vacant since the latter date; and that negotiations are pending for the lease or sale of the warehouse building.

The operative right in question was determined by the Commission's order dated September 1, 1960, in Case No. 6948, which found that Mary McKiernan, doing business as Chula Vista Transfer & Storage, possessed a prescriptive operative right as a public utility warehouseman for the operation of 11,000 square feet of storage or warehouse floor space at Chula Vista. The finding made was that the right existed by reason of good faith operations on September 1, 1959, the "grandfather" date provided in the 1959 amendments to Sections 1051 and 1052 of the Public Utilities Code. The order was issued without public hearing, upon basis of respondent's warehouse

tariff filing and her certified report together with letters which were received in evidence as an ex parte exhibit.

Reexamination of the record in Case No. 6948 in light of subsequent developments and the current Application No. 44976 suggests that whatever prescriptive right may exist should be revoked rather than suspended as requested.

Respondent's exhibit letter in Case No. 6948 indicated that her company had been actively engaged in the warehouse business in Chula Vista for some 16 years, and that the test period of June through November, 1959, was the first time in years that the company did not accept business for public utility storage. However, the initial warehouse tariff filing was made effective July 15, 1958. No public utility warehouse business could lawfully have been conducted prior to that date (Public Utilities Code Section 489). Therefore, if respondent lawfully conducted any public utility warehouse operation prior to the grandfather date, that operation would have had to be performed within the period between July 15, 1958, and May, 1959. The only evidence of any such operation is the foregoing written statement that service was performed for 16 years.

When the Commission staff requested in 1961 that Mary McKiernan file an annual report for the year ended December 31, 1960, the resulting correspondence showed that she had sold the business known as Chula Vista Transfer & Storage. The business acquired by the purchaser was understood and agreed to be not the business of a public utility warehouseman, but rather the business of transporting and storing used household goods. The public utility warehouse operative right was said to have been retained by Mary McKiernan, together with land and buildings. Her letter dated September 18, 1962, states: "We do not have any revenue to report for the year

1961, from public warehousing." The pending Application No. 44976 states the warehouse building has been vacant since March 1, 1962, when the household storage lots were removed to another location by the new owner of the business.<sup>1</sup>

The records of the Commission show that Mary McKiernan never has filed any annual report of public utility warehouse operations as would be required of such a warehouseman by Section 584 of the Public Utilities Code. Under all of the circumstances as they now appear, the lack of annual report filings may be attributable as well to an absence of public utility warehousing operations as to a failure to prepare and file reports thereof as would be required by the statute. The aforesaid statement that the company was actively engaged in the warehouse business for 16 years may have been the result of some misunderstanding on respondent's part concerning the distinctions between the storage of used household goods and the performance of public utility warehousing. In any event, if Mary McKiernan ever performed any service as a public utility warehouseman at Chula Vista, it is clear that the service was discontinued or suspended more than a year ago without her having first obtained or sought authority from this Commission for such discontinuance or suspension.

The Commission finds that Mary McKiernan has performed little if any service as a public utility warehouseman under tariffs lawfully on file with this Commission, has failed to file annual reports of any such service as may have been performed as would be required by Public Utilities Code Section 584, and if any service has been performed she has suspended or discontinued the performance thereof without first having obtained authority to do so.

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<sup>1</sup> The correspondence referred to in this paragraph is received in evidence in Application No. 44976 as ex parte Exhibit No. 1.

The following order will provide for revocation of whatever prescriptive warehouse operative right may be possessed by Mary McKiernan. The order will become effective the thirtieth day after service unless before the effective date of the order there shall be filed with this Commission a written request for a public hearing.

Good cause appearing,

IT IS ORDERED that:

1. Application No. 44976 is hereby denied.
2. The public utility warehouse operative right of Mary McKiernan, doing business as Chula Vista Transfer & Storage, as determined by order dated September 1, 1960, in Case No. 6948, is hereby revoked.
3. Jack L. Dawson, Agent, is hereby authorized and directed to cancel the participation of Mary McKiernan, doing business as Chula Vista Transfer & Storage, from his tariffs on file with the Commission, such cancellation to be made within ninety days after the effective date of this order and on not less than ten days' notice to the Commission and the public.

The Secretary is directed to cause service of a certified copy of this order to be made upon Mary McKiernan or to mail a certified copy thereof to her at her last known address as shown in the Commission's records and to mail a copy of this order to Jack L. Dawson, Agent.

The effective date of this order shall be the thirtieth day after such service upon Mary McKiernan or after the above mailing to Mary McKiernan, as the case may be, unless before such

effective date there shall have been filed with this Commission a written request for a public hearing, in which event the effective date of this order shall be stayed until further order of the Commission.

Dated at San Francisco, California, this 2nd day of July, 1963.

George E. Trover  
President

J. C. Mitchell

Arvid B. F. Page

Fredrick B. Hilduff

William L. Dennis  
Commissioners