

**ORIGINAL**

66065

Decision No. \_\_\_\_\_

## BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's  
own motion into the operations,  
rates and practices of PACKERS  
COLD STORAGE, INC., a corpora-  
tion; ANAHEIM COLD STORAGE, INC.,  
a corporation; and LA HABRA COLD  
STORAGE, INC., a corporation.

Case No. 6409

Wadsworth, Fraser & McClung, by E. L. Fraser, for  
respondents.

R. L. Whitehead, for Kraft Foods, interested party.

Hugh N. Orr, for the Commission staff.

Vaughan, Paul & Lyons, for the following intervenors  
after hearing: Beall Refrigerating Co., Bercut-  
Richards Cold Storage Co., B-Lo Cold Storage Co.,  
Burbank Refrigerating Company, California Ice and  
Cold Storage Co., Inc., Crystal Ice and Cold  
Storage Warehouse, Eureka Ice & Cold Storage  
Company, Federal Ice & Cold Storage Company,  
Haslett Warehouse Company, Market Wholesale  
Grocery Co., dba Ice Sickle Zero Storage, Kern  
Ice & Cold Storage Company, Lawrence Warehouse  
Company, Lincoln Cold Storage Company, Inc.,  
Los Angeles Cold Storage Co., Merchants Ice and  
Cold Storage Company, Merchants Refrigerating  
Company of California, Modern Ice & Cold Storage  
Co., National Ice and Cold Storage Company of  
California, National Storage Company, Pacific  
Cold Storage, Inc., Patterson Frozen Foods  
Warehouse, Inc., Santa Clara Cold Storage &  
Freezer Co., Terminal Refrigerating Company,  
Triangle Cold Storage Co., Turlock Refrigerating  
Company, Union Ice & Storage Company, U. S. Growers  
Cold Storage, Inc., and Pacific States Cold  
Storage Warehousemen's Association.

O P I N I O N

This is an investigation on the Commission's own motion  
to determine whether any of the respondents is a warehouseman or  
food warehouseman and subject to the jurisdiction of this Commission  
under Sections 216 and 2507. of the Public Utilities Code, and  
whether any of the respondents has violated Public Utilities Code

Sections 1051, 489 or 2551 by failing to secure a required certificate of public convenience and necessity or by failing to file requisite tariffs.

A duly noticed public hearing was held in this matter before Examiner Jarvis in Los Angeles on March 28, 29 and 30, 1961. The matter was submitted subject to the filing of a late-filed exhibit which has been received. On August 7, 1962, the Commission ordered that an Examiner's Proposed Report be filed in the case. The Proposed Report of Examiner Jarvis was filed on August 21, 1962. On September 11, 1962 the Pacific States Cold Storage Warehousemen's Association and a number of enterprises alleged to be food warehousemen filed a petition seeking leave to intervene in the proceeding and file exceptions to the Proposed Report. On September 14, 1962 the Commission entered an order which permitted the petitioners to intervene in the proceeding by filing exceptions to the Proposed Report. The order of September 14, 1962 also extended until October 29, 1962 the time in which exceptions and replies to the Proposed Report could be filed. All exceptions and replies which the parties desired to file have been received and the matter is now ready for decision.

The Commission has considered all of the exceptions. The Commission adopts as its own the findings and conclusions made by the Examiner in the Proposed Report except as hereinafter indicated.

*On page 8 of the Proposed Report the Examiner stated:*

"Before a person may operate as a warehouseman it is necessary that he secure from this Commission a certificate declaring that public convenience and necessity require the service (Public Utilities Code, Sec. 1051), but a food warehouseman does not need a certificate of public convenience

and necessity in order to engage in business. (Public Utilities Code, Secs. 2501, et seq.) The rates and practices of warehousemen and food warehousemen are subject to regulation by this Commission (e.g., Public Utilities Code Sections 1051, et seq. 489, 701, 728, 2501, et seq.)."

The Commission finds these conclusions to be erroneous insofar as they hold that it is not necessary that a food warehouseman hold a certificate of public convenience and necessity in order to engage in business.

The provisions of the Food Warehousemen Act (Public Utilities Code, Secs. 2501, et seq.) do not require a food warehouseman, as therein defined, to have a certificate of public convenience and necessity. However, Public Utilities Code Section 2506 provides that "If any conflict arises between this chapter [Food Warehousemen Act] and Part 1 of this division [Public Utilities Act], the latter prevails." (See also Section 2507, declaring every food warehouseman to be a "a public utility".) Section 239 of the Public Utilities Code (part of the Public Utilities Act) defines a warehouseman and provides, in part, as follows:

- "239. (a) 'Warehouseman' includes: ...  
 "(b) Every corporation or person owning, controlling, operating, or managing any building, structure, or warehouse, in which merchandise, other than secondhand household goods or effects, and other than liquid petroleum commodities in bulk, and other than merchandise sold but retained in the custody of the vendor, is regularly stored for the public generally, for compensation, within this State, except warehouses conducted by any nonprofit, cooperative association or corporation which is engaged in the handling or marketing of the agricultural products of its members and warehouses conducted by the agents, individual or corporate, of such associations or corporations, while acting within the limitations imposed by law on their principals."

Public Utilities Code Section 1051 (part of the Public Utilities Act) provides, in part, that:

"1051. No warehouseman shall begin to operate any business of a warehouseman, as defined in subdivision (b) of Section 239, without first having obtained from the commission a certificate declaring that public convenience and necessity require or will require the transaction of business by such warehouseman. No such warehouseman shall add to, extend, or otherwise increase his storage or warehouse floor space by more than 50,000 square feet, without first having obtained from the commission a certificate declaring that public convenience and necessity require or will require such addition or extension or increase of such storage or warehouse floorspace, except that any warehouseman may without securing such certificate, extend or increase his storage or warehouse floorspace for the sole and exclusive purpose of storing therein the goods, wares, and merchandise owned by the lessor or owner of the building or premises in which the additional or increased storage or warehouse floorspace is situated."

Thus, a warehouseman as defined in Section 239(b) is required by Section 1051 to have a certificate of public convenience and necessity before commencing operations. The Commission is of the opinion that the definition of warehouseman in Section 239(b) encompasses food warehousemen. Food stored in a food warehouse is "merchandise" within the ambit of Section 239(b).

Consideration of the legislative history of the various code sections involved supports the foregoing construction. Prior to 1927 no warehouseman was required to have a certificate of public convenience and necessity. The Public Utilities Act was reenacted in 1915 after the adoption of certain constitutional amendments in 1914. The predecessor of Section 239 was Section 2(aa) of the Public Utilities Act. As enacted in 1915 (Stats. 1915, Ch. 91, p. 118) Section 2(aa) defined a warehouseman as "every corporation or person...owning, controlling, operating or managing any building or structure in which property is regularly stored for

compensation within this State, in connection with or to facilitate the transportation of property by a common carrier or vessel, or the loading or unloading of the same..." Section 2(aa) applied only to storage by common carriers or vessels and was the forerunner of subdivision (a) of Section 239. The Food Warehousemen Act was enacted in 1919. (Stats. 1919, Ch. 215, p.314.) Section 2(aa) remained in substantially the same form until 1927. In 1927 the Legislature augmented Section 2(aa) by enacting Section 2½ of the Public Utilities Act, which provided:

"Sec. 2½. The term "warehouseman," when used in this act, includes every corporation or person, their lessees, trustees, receivers or trustees appointed by any court whatsoever, owning, controlling, operating or managing any building, or structure, or warehouse, in which merchandise, other than secondhand household goods or effects, and other than merchandise sold but retained in the custody of the vendor, is regularly stored for the public generally, for compensation, within this state, excepting warehouses conducted by any non-profit, cooperative association or corporation which is engaged in the handling or marketing of the agricultural products of its members; also excepting warehouses conducted by the agents, individual or corporate, of such associations or corporations, while acting within the limitations imposed by law on the principal of any such agent." (Stats. 1927, Ch. 878, pp.1918-19).

The Legislature also enacted in 1927 a new section of the Public Utilities Act, Section 50½ (the predecessor of Public Utilities Code Section 1051), which required warehousemen, as defined in Section 2½, thereafter to secure a certificate of public convenience and necessity before engaging in business.<sup>1/</sup> (Stats. 1927, Ch. 878, p. 1919.) Section 2½ (and its successor, Public Utilities Code Section 239) excluded certain types of storage from the

<sup>1/</sup> Section 50½ applied only to warehousemen in incorporated cities or cities and counties having a population of 150,000 or more. This limitation continued in effect until 1959, when it was deleted from Section 1051 of the Public Utilities Code. (Stats. 1959, Ch. 1384, p. 4445.)

definition of a warehouseman: (1) secondhand household goods or effects; (2) merchandise sold but retained in the custody of the vendor; (3) warehouses conducted by any nonprofit cooperative association or corporation which is engaged in the handling or marketing of the agricultural products of its members and warehouses conducted by the agents, individual or corporate, of such associations or corporations, while acting within the limitations imposed by law on the principal of any such agent. If the Legislature had desired to exclude food warehousemen from the certificate provisions of the Public Utilities Act, we believe it would have enumerated an exemption for food warehousemen just as it exempted these other three types of storage.

The contemporaneous construction by this Commission of the 1927 amendments to the Public Utilities Act indicates that the certificate provisions applied to food warehousemen. (See Southwest Honey Corporation, 32 C.R.C. 456, November 30, 1928; Growers Refrigeration Company, 32 C.R.C. 883, April 24, 1929; Lawrence Warehouse Company, 33 C.R.C. 170, June 10, 1929.)

The Attorney General has also construed the certificate provisions of the Public Utilities Act as being applicable to food warehousemen. (36 Ops. Cal. Atty. Gen. 332.)

In view of the foregoing, we hold that the Proposed Report should have found that the activities of Packers Cold Storage, Inc. which constituted regular storage for the public generally also constituted a holding out that Packers was a warehouseman; that Packers was operating without the requisite certificate of public convenience and necessity; and that Packers should be ordered to cease and desist from such activity until it secures such certificate.

In connection with the other exceptions to the Proposed Report, we agree with the position taken by the Examiner. His discussion of the issues involved makes further discussion here unnecessary.

The Examiner's findings of fact and conclusions of law, as corrected in the light of our holding hereinabove, are here restated and made the findings and conclusions of the Commission, as follows:

Findings of Fact

1.a. During December of 1959 La Habra Cold Storage, Inc. regularly stored merchandise, other than secondhand household goods or effects, and other than liquid petroleum commodities in bulk, and other than merchandise sold but retained in the custody of the vendor, for compensation for the public generally.

b. La Habra Cold Storage, Inc. is not a nonprofit cooperative association or corporation.

c. Said conduct by La Habra Cold Storage, Inc. constituted a holding out to the public generally that La Habra was a warehouseman.

d. La Habra Cold Storage, Inc. has conducted the business of a warehouseman without having secured from this Commission a certificate declaring that public convenience and necessity require the transaction of such business.

e. La Habra Cold Storage, Inc. has failed to file with this Commission schedules showing all rates, tolls, rentals, charges and classifications collected or enforced or to be collected or enforced, together with all rules, contracts, privileges and facilities which in any manner affect or relate to rates, tolls, rentals, classifications or service.

2.a. During December of 1959 La Habra Cold Storage, Inc. regularly stored for compensation food commodities regularly received from the public generally.

b. La Habra Cold Storage, Inc. is not a private home, hotel, restaurant or exclusively retail establishment.

c. Said conduct by La Habra Cold Storage, Inc. constituted a holding out to the public generally that La Habra was a food warehouseman.

d. La Habra Cold Storage, Inc. has failed to file with this Commission schedules showing all rates and charges which are in force for warehousing and storage services of every description, including sorting, handling, weighing, elevating and packing charges and all charges directly or indirectly connected with such services, together with all rules which in any manner affect or relate to rates and charges, and showing when they became effective.

3.a. During December of 1959, Anaheim Cold Storage, Inc. regularly stored merchandise, other than secondhand household goods or effects, and other than liquid petroleum commodities in bulk, and other than merchandise sold but retained in the custody of the vendor, for compensation for the public generally.

b. Anaheim Cold Storage, Inc. is not a nonprofit cooperative association or corporation.

c. Said conduct by Anaheim Cold Storage, Inc. constituted a holding out to the public generally that Anaheim was a warehouseman.

d. Anaheim Cold Storage, Inc. has conducted the business of a warehouseman without having secured from this Commission a certificate declaring that public convenience and necessity require the transaction of such business.



e. Anaheim Cold Storage, Inc. has failed to file with this Commission schedules showing all rates, tolls, rentals, charges and classifications collected or enforced or to be collected or enforced together with all rules, contracts, privileges and facilities which in any manner affect or relate to rates, tolls, rentals, classifications or service.

4.a. During December of 1959 Anaheim Cold Storage, Inc. regularly stored for compensation food commodities regularly received from the public generally.

b. Anaheim Cold Storage, Inc. is not a private home, hotel, restaurant or exclusively retail establishment.

c. Said conduct by Anaheim Cold Storage, Inc. constituted a holding out to the public generally that Anaheim was a food warehouseman.

d. Anaheim Cold Storage, Inc. has failed to file with this Commission schedules showing all rates and charges which are in force for warehousing and storage services of every description, including sorting, handling, weighing, elevating and packing charges and all charges directly or indirectly connected with such services, together with all rules which in any manner affect or relate to rates and charges, and showing when they became effective.

5.a. During December of 1959 Packers Cold Storage, Inc. regularly stored merchandise, other than secondhand household goods or effects, and other than liquid petroleum commodities in bulk, and other than merchandise sold but retained in the custody of the vendor, for compensation for the public generally.

b. Packers Cold Storage, Inc. is not a nonprofit cooperative association or corporation.

c. Said conduct by Packers Cold Storage, Inc. constituted a holding out to the public generally that Packers was a warehouseman.

d. Packers Cold Storage, Inc. has conducted the business of a warehouseman without having secured from this Commission a certificate declaring that public convenience and necessity require the transaction of such business.

e. Packers Cold Storage, Inc. has failed to file with this Commission schedules showing all rates, tolls, rentals, charges and classifications collected or enforced or to be collected or enforced, together with all rules, contracts, privileges and facilities which in any manner affect or relate to rates, tolls, rentals, classifications or service.

6.a. During December of 1959 Packers Cold Storage, Inc. regularly stored for compensation food commodities regularly received from the public generally.

b. Packers Cold Storage, Inc. is not a private home, hotel, restaurant or exclusively retail establishment.

c. Said conduct by Packers Cold Storage, Inc. constituted a holding out to the public generally that Packers was a food warehouseman.

d. Packers Cold Storage, Inc. has failed to file with this Commission schedules showing all rates and charges which are in force for warehousing and storing services of every description, including sorting, handling, weighing, elevating and packing charges and all charges directly or indirectly connected with such services, together with all rules which in any manner affect or relate to rates and charges, and showing when they became effective.

Conclusions of Law

1. La Habra Cold Storage, Inc. should be ordered to cease and desist from conducting the business of a warehouseman unless it first procures from this Commission a certificate declaring that public convenience and necessity require the transaction of such business.

2. La Habra Cold Storage, Inc. should be ordered to cease and desist from conducting the business of a food warehouseman until it has filed with this Commission the schedules required by Section 2551 of the Public Utilities Code.

3. Anaheim Cold Storage, Inc. should be ordered to cease and desist from conducting the business of a warehouseman unless it first procures from this Commission a certificate declaring that public convenience and necessity require the transaction of such business.

4. Anaheim Cold Storage, Inc. should be ordered to cease and desist from conducting the business of a food warehouseman until it has filed with this Commission the schedules required by Section 2551 of the Public Utilities Code.

5. Packers Cold Storage, Inc. should be ordered to cease and desist from conducting the business of a warehouseman unless it first procures from this Commission a certificate declaring that public convenience and necessity require the transaction of such business.

6. Packers Cold Storage, Inc. should be ordered to cease and desist from conducting the business of a food warehouseman until it has filed with this Commission the schedules required by Section 2551 of the Public Utilities Code.

O R D E R

IT IS ORDERED that:

1. La Habra Cold Storage, Inc. cease and desist from conducting the business of a warehouseman, as defined in Section 239(b) of the Public Utilities Code, unless it first obtains from this Commission a certificate declaring that public convenience and necessity require the transaction of such business.

2. La Habra Cold Storage, Inc. cease and desist from conducting the business of a food warehouseman, as defined in Section 2508 of the Public Utilities Code, until it has filed with this Commission the schedules required by Section 2551 of the Public Utilities Code.

3. Anaheim Cold Storage, Inc. cease and desist from conducting the business of a warehouseman, as defined in Section 239(b) of the Public Utilities Code, unless it first obtains from this Commission a certificate declaring that public convenience and necessity require the transaction of such business.

4. Anaheim Cold Storage, Inc. cease and desist from conducting the business of a food warehouseman, as defined in Section 2508 of the Public Utilities Code, until it has filed with this Commission the schedules required by Section 2551 of the Public Utilities Code.

5. Packers Cold Storage, Inc. cease and desist from conducting the business of a warehouseman, as defined in Section 239(b) of the Public Utilities Code, unless it first obtains from this Commission a certificate declaring that public convenience and necessity require the transaction of such business.

6. Packers Cold Storage, Inc. cease and desist from conducting the business of a food warehouseman, as defined in Section 2508 of the Public Utilities Code, until it has filed with this Commission the schedules required by Section 2551 of the Public Utilities Code.

The Secretary of the Commission is directed to cause personal service of this order to be made upon La Habra Cold Storage, Inc., Anaheim Cold Storage, Inc., and Packers Cold Storage, Inc., and the effective date of this decision shall, as to each particular respondent, be twenty days after the date of such service upon said respondent.

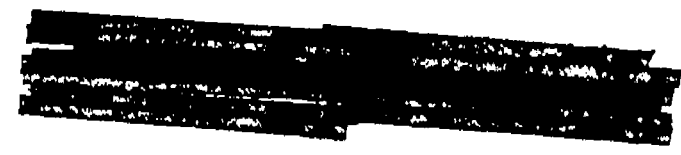
Dated at San Francisco, California, this 24<sup>th</sup> day of SEPTEMBER, 1963.

William B. Beards  
President

Robert W. Page

George H. Grover

~~Commissioners~~  
Commissioners



Commissioner Frederick B. Holabart did not participate in the disposition of this proceeding.