

**ORIGINAL**Decision No. 66302

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of BANNER WAREHOUSE CO., a corporation, for authority to sell its certificate of public convenience and necessity, and certain property, and R. E. ELLIS WAREHOUSE INC. for authority to purchase the said certificate and property, and issue stock.

Application No. 45923  
Filed October 30, 1962

O P I N I O N

This is an application for an order of the Commission authorizing (1) Banner Warehouse Co. to sell and transfer to R. E. Ellis Warehouse, Inc., its prescriptive operative right as a public utility warehouseman, together with three Motolift fork lifts and related good will; (2) R. E. Ellis Warehouse, Inc., in acquiring said right, fork lifts and good will, to assume outstanding indebtedness, to execute a mortgage of chattels, and to issue a \$12,500 note; and (3) R. E. Ellis Warehouse, Inc., to issue \$5,000 par value of its capital stock for working capital and for meeting \$1,000 of the purchase price.

Banner Warehouse Co. is a California corporation operating as a public utility warehouseman pursuant to a prescriptive right for the operation of 25,000 square feet of storage or warehouse floor space in the City and County

of San Francisco, exclusive of the 50,000 square feet of expansion permissible under Section 1051 of the Public Utilities Code, which right is stated in Decision No. 65268, dated April 23, 1963, in Application No. 44785. It reports that, because of the lack of capital, it has had a difficult time, financially, continuing said operation.

R. E. Ellis Warehouse, Inc., is a California corporation organized on or about October 11, 1963, and proposes to acquire the warehouseman operation of Banner Warehouse Co. which, during the past year, has been working closely in relation to the highway common carrier operation of R. E. Ellis, doing business as R. E. Ellis Draying Co. R. E. Ellis proposes to become the sole shareholder of R. E. Ellis Warehouse, Inc., which intends to continue working closely with the highway common carrier operation.

R. E. Ellis Warehouse, Inc., has agreed to purchase the warehouseman prescriptive operative right, the three fork lifts and the related good will, for a total purchase price of \$13,500 plus assumption of a presently outstanding indebtedness on the fork lifts of \$2,178.40, payable at the rate of \$311.20 per month, or a total purchase price of \$15,678.40, segregated as follows:

Prescriptive operative right	\$ 6,000.00
Equity in three fork lift vehicles	3,820.40
Good will	<u>5,858.00</u>
Total	<u>\$15,678.40</u>

The transferee proposes to issue a \$12,500 installment note to meet a portion of said purchase price, which note will be in favor of Banner Warehouse Co., and will provide for payment of principal in monthly installments of \$300 or more, together with interest computed at the rate of 5% per annum on unpaid principal. In addition, if 10% of the gross receipts from the warehouse operation in any month should exceed the sum of principal and interest otherwise due for that month, such excess will be applied toward reducing the principal. Payment of the note will be secured by a mortgage of chattels on said three fork lifts and prescriptive operative right, and also will be guaranteed by R. E. Ellis.

The Commission has considered this matter and is of the opinion, and finds, that (1) the proposed transfer will not be adverse to the public interest; (2) the money, property or labor to be procured or paid for by the issue of the stock and note herein authorized is reasonably required for the purposes specified herein; (3) such purposes are not, in whole or in part, reasonably chargeable to operating expenses or to income; and (4) in accordance with Section 830 of the Public Utilities Code, assumption of the short-term fork lift indebtedness is exempt from this Commission's jurisdiction.

The action taken herein shall not be construed to be a finding of the value of the operative right, fork lifts and *good will* herein authorized to be transferred nor indicative of amounts to be included in future proceedings for the purpose of fixing rates. A public hearing is not necessary.

O R D E R

IT IS ORDERED that:

1. On or before March 31, 1964, Banner Warehouse Co. may sell and transfer and R. E. Ellis Warehouse, Inc., may purchase and acquire, the operative right, fork lift vehicles and good will referred to in the application.

2. R. E. Ellis Warehouse, Inc., for the purpose of financing, in part, the purchase price of said operative right, fork lift vehicles and good will, may issue an installment note in the principal amount of not to exceed \$12,500, and may execute a mortgage of chattels, which note and mortgage shall be in the same form, or in substantially the same form, as those attached to the application as Exhibit I to Exhibit E, and Exhibit J, respectively.

3. R. E. Ellis Warehouse, Inc., on or before March 31, 1964, may issue and sell, at par for cash, not to exceed \$5,000 par value of its capital stock for working capital, and for providing not to exceed \$1,000 of the purchase price of the properties herein authorized to be transferred.

4. R. E. Ellis may purchase, acquire, take and hold all of the capital stock herein authorized to be issued and sold.

5. R. E. Ellis may assume an obligation as guarantor with respect to the note herein authorized, in accordance with the applicable provisions of a guaranty in the same form, or in substantially the same form, as that filed in this proceeding.

6. This application, insofar as it seeks authority for the assumption of a short-term indebtedness, is dismissed for want of jurisdiction.

7. Within thirty days after the consummation of the transfer herein authorized, R. E. Ellis Warehouse, Inc., shall notify the Commission, in writing, of that fact and within said period shall file with the Commission a true copy of any bill of sale or other instrument of transfer which may be executed to effect said transfer.

8. R. E. Ellis Warehouse, Inc., shall amend or reissue the tariffs on file with the Commission, naming rates, rules and regulations governing the warehouse operations herein to show that it has adopted or established, as its own, said rates, rules and regulations. The tariff filings shall be made effective not earlier than ten days after the effective date of this order on not less than ten days' notice to the Commission and the public, and the effective date of the tariff filings shall be concurrent with the consummation of the transfer herein authorized. The tariff filings made pursuant to this order shall comply in all respects with the regulations governing the construction and filing of tariffs set forth in the Commission's General Order No. 61-A.

9. Concurrently with the effective date of the tariff filings made in accordance with Ordering Paragraph 8 hereof, the operative authority as a public utility warehouseman currently

held by Banner Warehouse Co. is hereby revoked and, in place and stead thereof, a prescriptive operative right as a public utility warehouseman is stated for R. E. Ellis Warehouse, Inc., as more particularly set forth in Appendix A attached hereto and by this reference made a part hereof.

10. In providing service pursuant to the operative authority set forth herein, R. E. Ellis Warehouse, Inc., shall comply with and observe the following service regulation:

Within thirty days after the effective date hereof, it shall file a written acceptance of the operative right herein stated. By accepting the operative right herein stated, it is placed on notice that it will be required, among other things, to file annual reports of its operations. Failure to file said reports, in such form and at such time as the Commission may direct, may result in a cancellation of the operative right set forth in Appendix A hereof.

11. R. E. Ellis Warehouse, Inc., shall file with the Commission a report, or reports, as required by General Order No. 24-A, which order, insofar as applicable, is made a part of this order.

12. This order shall become effective when R. E. Ellis Warehouse, Inc., has paid the minimum fee prescribed

by Section 1904(b) of the Public Utilities Code, which fee  
is \$25.

Dated at San Francisco, California, this 12<sup>th</sup> day  
of NOVEMBER, 1963.

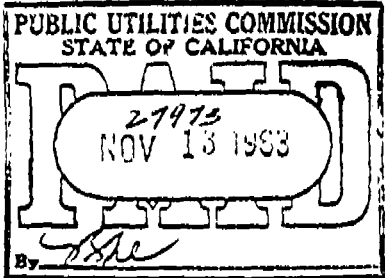
William M. Bennett  
President

John E. ...

... ..

George H. ...

Frederick B. Holdhoff  
Commissioners



R. E. ELLIS WAREHOUSE, INC.  
(a corporation)

Appendix A

R. E. Ellis Warehouse, Inc., a corporation, possesses a prescriptive operative right as a public utility warehouseman for the operation of storage or warehouse floor space as follows:

<u>Location</u>	<u>Number of Square Feet of Floor Space</u>
City and County of San Francisco	25,000

(The floor space shown above is exclusive of the 50,000 square feet of expansion permissible under Section 1051 of the Public Utilities Code.)

End of Appendix A

Issued by California Public Utilities Commission.

Decision No. 66302, Application No. 45923.