

ORIGINAL

Decision No. 71402

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application)
of A. C. FREEMAN, an individual,)
doing business as UNITED COLD)
STORAGE COMPANY, for authority)
to (a) issue a note, (b) encumber)
utility property, and (c))
transfer utility assets including)
operating rights, and)
))
UNITED COLD STORAGE, a California)
corporation, for authority to)
(a) acquire utility assets)
including operating rights,)
(b) assume and issue notes,)
(c) encumber utility property,)
and (d) issue stock.)

Application No.: 48801
Filed September 20, 1966

O P I N I O N

In this application A. C. Freeman, doing business as United Cold Storage Company, requests authorization from the Commission (1) to execute a Deed of Trust, (2) to issue a promissory note in the principal amount of not to exceed \$74,688.88, and (3) to transfer a warehouse certificate of public convenience and necessity, together with related utility property, to United Cold Storage, a corporation. In addition, United Cold Storage, a corporation, seeks authority (1) to assume a long-term obligation, (2) to execute a Deed of Trust, (3) to issue a promissory note in the principal amount of not to exceed \$102,000, and (4) to issue and sell 7,500 shares of its \$10 par value capital stock.

A. C. Freeman operates a public utility cold storage warehouse in the City of South San Francisco pursuant to the certificate of public convenience and necessity granted by Decision No. 65436, dated May 21, 1963, in Application No. 45363. His annual report for 1965 shows gross revenues as \$181,943 with net income of \$17,919 for the calendar year.

The application shows that during 1964 A. C. Freeman obtained \$90,000 of construction loans pertaining to his warehouseman activities by issuing two long-term notes in favor of Wells Fargo Bank and executing a Deed of Trust, all inadvertently without first seeking authority from this Commission as required by the Public Utilities Code. In this proceeding A. C. Freeman seeks authority to replace said unauthorized documents by executing a Deed of Trust and issuing a note in the principal amount of not to exceed \$74,688.88 repayable in monthly installments of \$1,000 including interest at the rate of 7% per annum on unpaid principal.

United Cold Storage is a California corporation organized on or about September 6, 1966. It proposes to acquire the certificate of public convenience and necessity and related plant assets of A. C. Freeman. The total purchase price is \$249,000, of which not to exceed \$74,688.88 will be covered by the assumption of indebtedness represented by the aforementioned note, and approximately \$6,000 by the assumption of obligations under equipment leases. The balance will be payable by \$71,500 in cash, together with a note for the remainder. In order to complete the transactions United Cold Storage, a corporation, seeks authority

(1) to issue and sell 7,500 shares of its \$10 par value capital stock, at par for cash, to E. J. Willig, Jr. for the purpose of obtaining the \$71,500 cash to be paid to A. C. Freeman as well as a portion of \$28,500 for working cash, the remainder of which is to be obtained by a \$25,000 advance from the stockholder; and

(2) to execute a subordinated Deed of Trust and to issue a note in favor of A. C. Freeman in the principal amount of not to exceed \$102,000 repayable over a period of 15 years in monthly installments of principal and interest at the rate of 6-1/2% per annum on unpaid principal.

The corporation intends to record the assets at the book values of the transferor, and will not set up any value for the certificate of public convenience and necessity.

The Commission has considered this matter and finds that: (1) A. C. Freeman, through inadvertence, issued two long-term notes aggregating \$90,000 and executed a related Deed of Trust for proper purposes without receiving authority to do so from this Commission; (2) Said notes and Deed of Trust are void under Sections 825 and 851, respectively, of the Public Utilities Code; (3) the proposed transactions and documents will not be adverse to the public interest; (4) the money, property or labor to be procured or paid for by the issue of the stock and notes herein authorized is reasonably required for the purposes specified herein; and (5) such purposes are not, in whole or in part, reasonably chargeable to operating expenses or to income.

On the basis of the foregoing findings we conclude that the application should be granted. A public hearing is not necessary. The order which follows will provide for, in the event the transfer is consummated, the revocation of the certificate presently held by A. C. Freeman and the issuance of a certificate to United Cold Storage, a corporation.

United Cold Storage, a corporation, is hereby placed on notice that operative rights, as such, do not constitute a class of property which may be capitalized or used as an element of value in rate fixing for any amount of money in excess of that originally paid to the State as the consideration for the grant of such rights. Aside from their purely permissive aspect, such rights extend to the holder a full or partial monopoly of a class of business. This monopoly feature may be modified or canceled at any time by the State, which is not in any respect limited as to the number of rights which may be given.

In issuing our order herein, we place United Cold Storage, a corporation, and its shareholders on notice that we do not regard the number of shares outstanding, the total par value of the shares nor the dividends paid as measuring the return the company should be allowed to earn on its investment in plant and that the authorization herein given is not to be construed as a finding of the value of its stock or properties nor as indicative of amounts to be included in proceedings for the determination of just and reasonable rates.

O R D E R

IT IS ORDERED that:

1. A. C. Freeman, on or after the effective date hereof and on or before December 31, 1966, may issue a note in the principal amount of not to exceed \$74,688.88 and may execute a Deed of Trust, said note and Deed of Trust to replace the corresponding documents which were issued and executed without authorization from the Commission, and to be in the same form, or in substantially the same form, as Exhibits E and F attached to the application.

2. On or after the effective date hereof and on or before December 31, 1966, A. C. Freeman may sell and transfer, and United Cold Storage, a corporation, may purchase and acquire, the operative right and property referred to in the application.

3. United Cold Storage, a corporation, on or after the effective date hereof and on or before December 31, 1966, for the purposes set forth in the application, may:

- a. Assume payment of the obligations of A. C. Freeman referred to in the application.
- b. Issue a note in the principal amount of not to exceed \$102,000 and execute a subordinated Deed of Trust, which instruments shall be in the same form, or in substantially the same form, as those attached to the application as Exhibits J and K, respectively.
- c. Issue not to exceed 7,500 shares of its \$10 par value capital stock for cash at par.

4. United Cold Storage, a corporation, shall file with the Commission a report, or reports, as required by General Order No. 24-B, which order, insofar as applicable, is hereby made a part of this order.

5. Within thirty days after the consummation of the transfer herein authorized, United Cold Storage, a corporation, 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.

6. United Cold Storage, a corporation, shall amend or reissue the tariffs on file with the Commission, naming rates and rules governing the warehouse operations herein to show that it has adopted or established, as its own, said rates and rules. 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.

7. On or before the end of the third month after the consummation of the transfer as herein authorized, United Cold Storage, a corporation, shall cause to be filed with the Commission, in such form as the Commission may prescribe, an annual report, or reports, related to the warehouse operations of the transferor for the period commencing with the first day of the current year to and including the effective date of the transfer.

8. In the event the transfer authorized in paragraph 2 hereof is consummated, a certificate of public convenience and necessity is granted to United Cold Storage, a corporation, as a public utility warehouseman, as defined in Section 239(b) of the Public Utilities Code, for the operation of cold storage warehouse floor space as set forth in Appendix A attached hereto and made a part hereof.

9. The certificate of public convenience and necessity granted in paragraph 8 of this order shall supersede the certificate of public convenience and necessity granted to A. C. Freeman by Decision No. 65436, which certificate shall be revoked effective concurrently with the effective date of the tariff filings required by paragraph 6 hereof.

10. Within thirty days after the effective date hereof, United Cold Storage, a corporation, shall file a written acceptance of the certificate herein granted. The company is placed on notice that, if it accepts the certificate of public convenience and necessity herein granted, it will be required, among other things, to file annual reports of its operations. Failure to file such reports, in such form and at such time as the Commission may direct, may result in a cancellation of the public utility warehouse operations authorized by this decision.

11. This order shall become effective when both
A. C. Freeman and United Cold Storage, a corporation, have paid
the fees prescribed by Section 1904(b) of the Public Utilities
Code, which fees are \$75 and \$102, respectively.

Dated at San Francisco, California,
this 11th day of OCTOBER, 1966.

Paul E. Mitchell
President

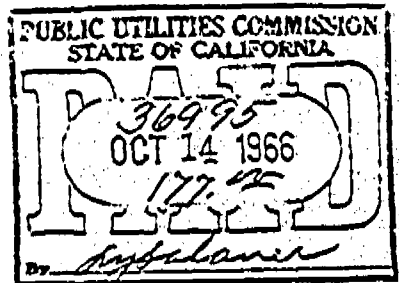
George C. Groves

Frederick B. Holdcroft

William M. Bennett

Commissioners

Commissioner A. W. Gatov, being
necessarily absent, did not participate -
in the disposition of this proceeding.



United Cold Storage, a corporation, by the certificate of public convenience and necessity granted by the decision noted in the margin, is authorized to operate as a public utility warehouseman for the operation of cold storage warehouse floor space as follows:

<u>Location</u>	<u>Number of Square Feet of Floor Space</u>
South San Francisco	22,000

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

(End of Appendix A)

Issued by California Public Utilities Commission.

Decision No. 71402, Application No. 48801.