

Decision No. 71744

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of PACKERS' COLD STORAGE, INC., ) a corporation, for a Certificate of ) Convenience and Necessity to operate food ) warehouses in Fullerton, Anaheim and ) La Habra, California. )	Application No. 47763 (Filed July 21, 1965) (Amended August 30, 1965 and October 26, 1966)
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Wadsworth, Fraser, McClung & Dahl,  
 by E. L. Fraser and Thomas  
Henry, Jr., for applicant.  
Knapp, Gill, Hibbert & Stevens, by  
Wyman C. Knapp, and Jack L. Dawson,  
 for Pacific States Cold Storage  
Warehousemen's Association,  
 protestant.  
James Quintrall, for Los Angeles  
Warehousemen's Association, inter-  
 ested party.  
George L. Hunt and John R. Laurie,  
 for the Commission staff.

O P I N I O N

Public hearings on the above-entitled matter were held before Examiner Rogers in Los Angeles, California, on December 8, 1965, and June 27 and September 7 and 14, 1966. Neither the protestant nor the interested party presented any evidence in support of its position.

Applicant is a California corporation. It requests a certificate of public convenience and necessity authorizing it to conduct operations as a warehouseman as defined in Section 239(b) of the Public Utilities Code and as a food warehouseman as defined in Section 2508 of the Public Utilities Code, in the Cities of La Habra, Fullerton and Anaheim, California.

### History

This application was filed as the result of an "Investigation on the Commission's own motion into the operations, rates and practices of Packers' Cold Storage, Inc., a corporation, Anaheim Cold Storage, Inc., a corporation, and La Habra Cold Storage, Inc., a corporation", Case No. 6409, which was an investigation to determine whether any of the named respondents was a warehouseman or food warehouseman and subject to the jurisdiction of the Commission under Sections 216 and 2507 of the Public Utilities Code, and whether any of the respondents had 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.

By order of the Commission, an examiner's Proposed Report was issued on August 21, 1962, in Case No. 6409. Insofar as this application is concerned, the material factual matters set out in said Proposed Report are substantially as follows:

Packers' Cold Storage, Inc. (Packers'), Anaheim Cold Storage, Inc. (Anaheim), and La Habra Cold Storage, Inc. (La Habra), are California corporations. Each maintains separate corporate books and records, bank accounts, insurance, bills of lading, and warehouse receipts. Each files separate franchise tax returns and its property is separately assessed by the Orange County Assessor. Thomas A. Henry (Sr.) owns all of the outstanding stock of Packers' and a majority of the outstanding stock of Anaheim and La Habra, which have some common employees. None has filed tariffs as a warehouseman or food warehouseman.

A corporation named Anaheim Processors is closely related to respondents. Thomas A. Henry (Sr.) is chairman of the board of Processors. Processors is an industry co-packer for all the major citrus growers in Southern California. Processors' facilities are located near the warehouses operated by respondents. Radiation Corporation of California is a wholly owned subsidiary of Anaheim. Radiation conducts experiments in connection with preserving food through radiation. Thomas A. Henry (Sr.) is the president of Radiation.

Richard Wagner is a graduate engineer with a background in food technology. He is the president of Processors and the vice president of Radiation.

Henry Dahl is the chief administrative officer of Packers', Anaheim and La Habra.

On or about November 12, 1959, Packers' sold the only warehouse it owned.

The hearing examiner included in his Proposed Report his proposed findings and order.

Exceptions to the Proposed Report were filed by the Commission's staff, Packers', Anaheim and La Habra, and a group of 25 cold storage warehousemen through their attorney-in-fact, Jack L. Dawson.

On September 24, 1963, the Commission issued its decision in Case No. 6409. (La Habra Cold Storage, 61 Cal. P.U.C. 436.) It found that food warehousemen (Public Utilities Code Section 2501, et seq.) are warehousemen as defined in Section 239(b) of the Public Utilities Code and, as such, are required to secure a certificate of

public convenience and necessity under Section 1051 thereof, and ordered that the three respondent companies cease and desist operations as warehousemen or food warehousemen until and unless they secure the appropriate authorities from this Commission.

The California Supreme Court denied certiorari on March 10, 1965. (Packers Cold Storage v. Commission, S.F. No.21801.)

On July 21, 1965, Packers' filed the herein application. It is therein alleged that Anaheim and La Habra "have either discontinued or transferred to Packers' Cold Storage, Inc., all storage accounts which could be deemed to constitute the business of a warehouseman, as defined in Public Utilities Code Section 239(b), or public food warehouseman as defined in Public Utilities Code Section 2508, and, accordingly this application is being made solely by applicant".

On September 13, 1966, prior to the submission of this matter, the Los Angeles Warehousemen's Association and Pacific States Cold Storage Warehousemen's Association filed a petition for a proposed report. No useful purpose would be served by a report as the law has been thoroughly discussed in the Proposed Report and Decision No. 66065 in Case No. 6409 hereinabove referred to. The petition will be denied.

#### Evidence by Applicant

##### Applicant and Affiliates

Packers' is a California corporation formed on December 2, 1963. Its Articles of Incorporation, filed with the Secretary of State of California on December 14, 1953, authorize it to issue

20,000 shares of stock of one class and with an aggregate par value of \$200,000. Two hundred shares of said stock have been issued to Thomas A. Henry (Sr.). There are no other stockholders. On December 8, 1965, applicant's officers were Thomas A. Henry (Sr.), president; Lloyd G. Blount, vice president; Doris C. Henry (wife of Thomas A. Henry (Sr.)), secretary; and Henry S. Dahl, treasurer and assistant secretary. The directors were Richard M. Wagner, Francis L. Taylor, Thomas A. Henry (Sr.), Lloyd G. Blount, and Henry S. Dahl.

In 1953, when Packers' first commenced operation, it owned a citrus concentrate facility in Anaheim, which it leased to a cooperative association and in which it warehoused the products produced by the association. This plant was sold in 1959 and Packers' continued to operate the warehouse under contract with the purchaser until 1962. At that time, Packers' transferred its warehouse operations to Laramie, Wyoming. Packers' is not operating any storage facilities in California. If the certificate is granted, it will acquire by lease the storage facilities in California referred to hereinafter.

Thomas A. Henry (Sr.) is president of Packers', La Habra and Anaheim. He is a senior partner of Citrus Industry Leasing Company. Lloyd G. Blount is the other partner. This latter company and La Habra will lease to Packers' all of Packers' necessary operating equipment. Thomas A. Henry (Sr.) also owns all stock, valued at \$10,000, in Anaheim Processors, Inc.

In its California and Wyoming operations, applicant will have approximately 59 employees, including the corporate officers.

Some of the latter will devote a portion of their time to the Wyoming operation. At the time of the hearings herein, Packers' had no employees in California.

Proposed Warehouse Space

Applicant proposes to conduct dry storage and cold storage operations, including the storage of food. The proposed locations and types of the space are as follows:

Anaheim

1415 N. East Street	86,000 sq. ft., dry
	10,000 sq. ft., cooler
622 E. Cypress Street	22,567 sq. ft., freezer

Fullerton

214 W. Santa Fe Street	58,410 sq. ft., freezer
301 S. Harbor Boulevard (114 W. Walnut)	15,443 sq. ft., dry 6,840 sq. ft., cooler
200 W. Santa Fe Street	12,000 sq. ft., freezer 5,000 sq. ft., cooler

La Habra

310 S. Euclid Street	38,000 sq. ft., dry 22,667 sq. ft., cooler 26,000 sq. ft., freezer
300 S. Euclid Street	16,000 sq. ft., dry

Total Space:	<u>Dry</u>	<u>Cooler</u>	<u>Freezer</u>
	155,443 sq. ft.	44,507 sq. ft.	118,977 sq. ft.

These spaces are to be leased from La Habra (Exhibit 3), Anaheim (Exhibits 4 and 9), Anaheim Processors, Inc. (Exhibit 5), and Fullerton (Exhibit 6), and in some instances are in the same buildings in which the other entities conduct private warehousing or permit private storage.

Existing Warehouse Accounts

Packers', Anaheim, and La Habra were each engaged in the warehousing and food warehousing business when the investigation into their activities (Case No. 6409, supra) was instituted and terminated. Each had various warehouse accounts. La Habra and Anaheim intend to withdraw from public utility warehouse and food warehouse operations as suggested by the examiner in his Proposed Report in Case No. 6409. Accordingly, La Habra and Anaheim have executed agreements assigning their warehouse and food warehouse accounts to Packers' (La Habra Exhibit 7 and Anaheim Exhibit 8). Packers' will not lease warehouse space to customers in warehouses in which it conducts public utility warehousing operations.

Tariffs

Applicant filed proposed tariffs for its cold storage operations (Exhibit 12) and its dry storage operations (Exhibit 13). The proposed tariffs were rejected by the staff and proposed revised pages for each tariff were filed by Packers' (Exhibit 20, cold storage, and Exhibit 21, dry storage). Both non-food, and food commodities as defined in Section 2511 of the Public Utilities Code, are to be warehoused under both tariffs.

Although no tariffs were presented by either the protestant or the interested party for comparison with the proposed tariffs, it appears from the Commission's records that the proposed tariffs differ in form from the existing tariffs of other similar warehousemen in the Los Angeles County area.

Warehouses in Orange County

Exhibit 2 herein is a portion of the Commission's Warehouse List No. 2-G showing all Orange County public utility warehouses as of January 1, 1966. This list shows there is available a total of approximately 50,000 square feet of public utility warehouse space in Orange County, exclusive of the permissible expansion under Section 1051 of the Public Utilities Code. There is no food warehouse space listed therein. The only reference to any cold storage in Orange County is a statement by a witness that there is one cold storage plant therein. This plant has no tariff on file with the Commission.

Results of Operation

The record is unclear concerning what the applicant has been doing relative to the operating of public utility warehouses. The original application alleged that applicant served certain listed accounts as a warehouse. At the hearing, one of the applicant corporation's witnesses stated that applicant was not, at the times of the hearings, conducting any warehousing business in California. However, the applicant presented exhibits showing its results of warehousing operations in California and Wyoming (Exhibit 11) and for the California portion of its operations (Exhibit 14), both for the six months ending May 31, 1966. These documents show a net profit for the total operation for the six months ending May 31, 1966, of \$1,402, and for the California operations only during said period, of \$18,990.



Packers' total assets as of May 31, 1966, amounted to \$789,982 and its total liabilities amounted to \$749,899.

### Services

Packers' normal services in connection with storage will consist of preparation of monthly inventories, preparation of bills of lading, making cash advances when required, preparation of claims reports for damages, collection of money, invoicing the buyer, preparation of extra copies of paperwork when required, loading and unloading rail cars and trucks, stenciling, marking, reweighing, taking and recording weights, preparation of non-negotiable warehouse receipts, and packing or strapping for shipment. All charges are to be those reflected in the tariffs which will be filed with the Commission. Applicant will also provide a pooling service whereby Packers' will act as a shipper on the customer's behalf. In performing this service, it will accumulate orders from various participants going to similar consignees, arrange for transportation, pool the various products onto a master freight bill and make the shipment as a shipper, distributing back the pro rata share of the actual cost of transportation to the various participants. No charge will be made for this service.

### Public Witnesses

The applicant called representatives of Polar Chilled Products Co. of Brea, California, Morton Frozen Foods Division of Continental Baking Company of Rye, New York, Stokeley-Van Camp, Inc., of Oakland, California, and Kitchens of Sara Lee of

Deerfield, Illinois, in support of its application. Two of these companies have stored products requiring zero or sub-Zero temperatures with La Habra, and two have stored such products with Anaheim. All such accounts have been assigned to Packers'. Products stored by the listed companies include citrus concentrates, prepared dinners, desserts, vegetables and bakery goods. They have been storing with either La Habra, Anaheim, or Packers' for periods ranging from one year to eight years. The witnesses stated that their reasons for using the storage facilities of La Habra, Anaheim or Packers' are that the storage facilities are very good; that the fire insurance rates are the lowest possible; that it is a short distance from the plant to the storage facility used; that there are no other frozen food warehouses in Orange County; that the regular charges of the warehouse include storage and handling only; and that the warehouse gives daily or monthly reports, as requested, of the products remaining in storage.

#### Staff Position

It was the stated position of the Commission staff that if the sought certificate is granted the applicant should be subjected to conditions which would definitely separate its public utility warehouse space from the nonpublic utility warehouse operations of the affiliated companies.

#### Findings

The Commission finds that:

1. Anaheim Cold Storage, Inc., and La Habra Cold Storage, Inc., have ceased operating in Orange County, California, as

warehousemen and/or food warehousemen and have transferred all their accounts relative to such operations to applicant, subject to authorization by this Commission for Packers' to conduct such operations.

2. Packers' Cold Storage, Inc., has 155,443 square feet of dry storage space, 44,507 square feet of cooler space, and 118,977 square feet of frozen space available at warehouses in Anaheim, Fullerton, and La Habra in Orange County and in which it intends to store merchandise and/or food and food products for the public generally and all of which space it intends to dedicate to public use, if authorized by this Commission.

3. The officers and management of Packers' Cold Storage, Inc., are experienced warehouse operators. Packers' has the necessary finances, experience, and space available to conduct the proposed operations.

4. Packers' Cold Storage, Inc., has proposed tariffs, including rates, which are reasonable, and rules and regulations. The proposed tariffs need some modifications as to form and content for clarification.

5. Public convenience and necessity require that Packers' Cold Storage, Inc., be granted a certificate of public convenience and necessity as a warehouseman, for the storage of general commodities, as defined in Section 239(b) of the Public Utilities Code, and food warehouseman for the storage of food commodities, as defined in Section 2508 of the Public Utilities Code.

6. Some of the buildings or structures in which applicant intends to conduct its warehouse operations are to be used for similar but nonregulated operations of its affiliated companies.

Such nonregulated operations should be physically separated from the regulated warehouse operations of Packers'.

7. The petition for a proposed report should be denied.

Conclusion

The Commission concludes that the application should be granted subject to the requirements of the order herein and that the petition for a proposed report should be denied.

O R D E R

IT IS ORDERED that:

1. A certificate of public convenience and necessity is granted to Packers' Cold Storage, Inc., as a public utility warehouseman as defined in Section 239(b), and food warehouseman as defined in Section 2508 of the Public Utilities Code for the operation of storage or warehouse floor space as set forth in Appendix A attached hereto and made a part hereof, subject to the conditions set forth in said Appendix A.

2. In providing service pursuant to the certificate herein granted, applicant shall comply with and observe the following service regulations:

- (a) Within thirty days after the effective date hereof, applicant shall file a written acceptance of the certificate herein granted. Applicant 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.

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- (b) Within one hundred twenty days after the effective date hereof, applicant shall establish the service herein authorized and file tariffs, in triplicate, in the Commission's office.
- (c) 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 establishment of the service herein authorized.
- (d) The tariff filings made pursuant to this order shall comply with the regulations governing the construction and filing of tariffs set forth in the Commission's General Order No. 61-A.

3. The petition for a proposed report is denied.

The effective date of this order shall be twenty days after the date hereof.

Dated at San Francisco, California, this 27th day of DECEMBER, 1966.

*E. N. ...*  
President

*Frederick B. ...*

*Augustin*

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Commissioners

Commissioner George G. Grover did not participate in the disposition of this proceeding.

Commissioner William M. Bennett, being necessarily absent, did not participate in the disposition of this proceeding.

Packers' Cold Storage, Inc., a corporation, by the certificate of public convenience and necessity granted by the decision noted in the margin, is authorized to operate public utility storage floor space for the storage of any and all commodities, including food, as follows:

<u>Location</u>	<u>Number of Square Feet of Floor Space</u>
<u>Anaheim</u>	
1415 N. East Street	96,000 square feet
622 E. Cypress Street	22,567 square feet
<u>Fullerton</u>	
214 W. Santa Fe Street	58,410 square feet
301 S. Harbor Boulevard (114 W. Walnut)	22,283 square feet
200 W. Santa Fe Street	17,000 square feet
<u>La Habra</u>	
310 S. Euclid Street	86,667 square feet
300 So. Euclid Street	16,000 square feet

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

This certificate is subject to the condition that at any building partially occupied by Packers' Cold Storage, Inc., and partially occupied by any other business or entity engaged in storing any product, the space used by Packers' shall be so physically separated from any space used by such other business or entity that access between the storage areas of Packers' and the storage areas of such other business or entity within the warehouse is impossible.

Issued by California Public Utilities Commission.

Decision No. 71744, Application No. 47763.