

ORIGINAL

Decision No. 75141

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
SCHAEFER'S MEATS, a corporation, for)
a certificate of public convenience)
and necessity authorizing operation)
as a cold storage warehouseman at)
Oakland, California.)

Application No. 50272
(Filed May 27, 1968)

James K. Koford, for applicant.
John G. Lyons, for Dreisbach Cold Storage Co.,
Merchants Ice and Cold Storage Company,
National Ice and Cold Storage Company of
California, and Union Ice and Storage Com-
pany, protestants.
Carl B. Blaubach, for the Commission staff.

O P I N I O N

Schaefer's Meats, a corporation, requests a certificate of public convenience and necessity to operate a cold storage warehouse in Oakland, California.

Public hearing was held before Examiner Power at San Francisco on September 5, 1968 and October 2, 1968, with the matter being submitted on the latter date.

For the past thirty years applicant and its predecessor, Mr. Otto Schaefer, who is president and sole stockholder of applicant, have been engaged in the wholesale meat business. The business is located at 1110-98th Avenue in Oakland. Recently applicant constructed a one-story, frame and stucco building consisting of 9,630 square feet of storage space which it desires to dedicate to a public use. The new structure is located on D Street and is adjacent to applicant's wholesale meat business. The new facility is completely refrigerated.

As of August 31, 1968, applicant indicated a net worth in the amount of \$253,544.

Three public witnesses testified on behalf of applicant's proposed service. Their testimony is summarized as follows:

1. Mr. R. E. Croell

Meat Buyer for Lucky Stores with office located in San Leandro. Requires cold storage space for up to 70,000 cases of frozen turkeys. Turkeys are purchased in July and kept in storage for the Thanksgiving and Christmas holidays. Seventy-five percent of these turkeys must be stored in Oakland, but has experienced difficulty in finding immediate storage space in Oakland. Is presently using National Ice and Cold Storage Company of California in Oakland, but deliveries must be made over an extended period of time as space becomes available. Also used Dreisbach Cold Storage Co. in past years, but recently that company has been unable to provide space when needed. Presently have turkeys stored at other locations in and out of the state waiting to be moved into Oakland as space becomes available.

Has never used the facilities of Union Ice and Storage Company.

2. Mr. Enoch S. Christoffersen

President of Valchris, Inc. located in Turlock, California. Engaged in the processing and distribution of turkeys. Processed 38 million pounds of turkeys in 1967.

There is a shortage of refrigerated storage space for turkeys in the Bay Area. The problem has existed for a number of years. Storage facilities have expanded, but the available space never seems to meet the need. Last year it was necessary to haul turkeys to remote places in order to find storage space.

3. Mr. Elwyn Acker

Office Manager for Oakdale Poultry Company, Oakdale, California.

Had a great deal of trouble storing turkeys in 1967. The problem existed in Oakland also. In October 1967 his company was instructed to

deliver 2,000 cases of turkeys to National Ice and Cold Storage in Oakland. At first the shipment was turned down, but after several telephone calls the company accepted 200 cases.

The peak period for the storage of turkeys is between August and January.

Protestants take the position that there is no shortage of space and that granting of the application will only divert business from the existing warehouses which could result in the need for additional rate increases.

The following is a summary of protestants' showing:

1. Mr. Richard D. McKelvey

Vice President-Secretary of National Ice and Cold Storage of California.

Presently operates 102,000 square feet of cold storage space in Oakland. Stores perishable commodities, meats, poultry, fruit, vegetables, prepared foods and eggs. The storage of meats constitutes 27 per cent of the company's total business. Stores turkeys every year and actively solicits such business. Is presently storing turkeys for Lucky Stores. Has solicited the business of Oakdale Poultry Company and is presently storing for that company in its San Francisco facilities, but not in Oakland. Has solicited the business of Christoffersen Poultry Company in the past, but not this year, however, the company has made no request for service.

2. Mr. Charles M. Ziehn, Jr.

Warehouse Manager for National Ice and Cold Storage Company of California.

In July of 1968 received a request from Mr. Hope of Lucky Stores for the storage of 33,000 cases of turkeys, but it was understood that as in the past, delivery would be spread over a period of time at the rate of two truck loads a day. Stored 32,200 cases of frozen turkeys for Lucky Stores in 1967 and never refused service to said company.

Stored nothing for Oakdale Poultry in 1967, and there are no records relating to a refusal to accept 2,000 cases of turkeys.

National Ice and Cold Storage Company of California had an occupancy of 84 percent in October 1967 and an occupancy of 71 percent in November 1967. It's occupancy for October 1968 was 88 percent.

3. Mr. John Hansen

Assistant to the General Manager of Union Ice and Storage Company, operates 8,500 square feet of cold storage space in Oakland. Actively solicits business including Lucky Stores, Turlock Refrigeration Company and Oakdale Poultry Company. Within the past four years doubled the size of its freezer space. Is presently operating at an occupancy of 30 percent. The peak period was in July when occupancy reached 90 percent.

Following the September 5, 1968 hearing, contacted Mr. Hope, Vice President of Lucky Stores, and was told that there was no emergency on the storage of turkeys. An appointment was made for September 25, 1968. At the time of the appointment the salesman for Union Ice and Storage Company was told that Lucky Stores was being served by National Ice and Cold Storage Company of California on the storage of turkeys and was satisfied with the service.

4. Mr. Ronald T. Dreisbach

Vice President and General Manager of Dreisbach Cold Storage Company, operates 60,000 square feet of space in Oakland.

Actively solicits business. In 1967 had an occupancy factor of 70 percent. Added 16,000 square feet of space in 1964, 12,000 square feet in 1965, and 10,000 square feet of space in 1967.

Has solicited the companies that appeared in support of applicant and except for a small amount of storage for Lucky Stores has not received a request for storage from said companies in 1968.

5. Mr. Edward J. Willig, Jr.

President and General Manager of United Cold Storage which operates 30,000 square feet of space in South San Francisco.

Presently operating at 82 percent of capacity. Actively solicits business. Has never received a request for service from the companies appearing on behalf of applicant.

6. Mr. Louis Arata

Vice President and General Manager for Merchants Ice and Cold Storage Company in San Francisco.

Operates 90,000 square feet of space. Presently operating between 85 and 90 percent of capacity.

Is now storing for Oakdale Poultry Company. Could accommodate 2 or 3 truckloads of turkeys daily, but it would be difficult to handle several thousand cases at a time.

After consideration the Commission finds:

1. Applicant is presently engaged in the wholesale meat business in Oakland.
2. Applicant has recently completed construction of a new building consisting of approximately 9,630 square feet of cold storage space which it desires to dedicate to a public use for the storage of meat, meat products, dairy products, and frozen foods of all types.
3. Applicant possesses the necessary financial means and ability to conduct the proposed service.
4. During the months from August through January of each year there is a demand for cold storage space for the storage of turkeys.
5. The need for this service extends the capabilities of the existing cold storage facilities to provide immediate storage space and deliveries must be made on a space available basis.

Conclusion

For the most part the existing public utility warehousemen engaged in the business of cold storage in Oakland have over the years increased the size of their facilities in order to keep pace with the growing demands of the frozen food industry. Notwithstanding the additional space, seasonal demands at times create a capacity situation or close to it. On such occasions immediate cold storage space is not available regardless of what type of perishable commodity is being offered.

The inauguration of the proposed service will find a proper place in meeting these peak demands. The Commission therefore finds that public convenience and necessity require the granting of the application.

Schaefer's Meats 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 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.

O R D E R

IT IS ORDERED that:

1. A certificate of public convenience and necessity is granted to Schaefer's Meats, a corporation, as a public utility warehouseman,

as defined in Section 239(b) 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.

2. In providing service pursuant to the certificate herein granted, applicant shall comply with and observe the following service regulations. Failure so to do may result in a cancellation of the operating authority granted by this decision.

- (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.
- (b) Applicant shall comply with Department of Public Health regulations regarding hazardous and/or toxic commodities by including in his tariff a rule reading substantially as follows:

"Hazardous or Toxic Commodities

The warehouseman will not be required to accept for storage any commodity that will affect the rate of insurance or other merchandise in storage, or any commodity of a toxic nature which could contaminate other commodities in storage or be hazardous to the health of warehouse personnel. At warehouseman's option such hazardous or toxic commodities, when properly packaged and labeled to reduce contamination and health hazard to a minimum, may be accepted for storage in an area isolated from other commodities subject to contamination. Any additional services in the way of warehouse labor or excessive use of space arising from isolation of such commodities will be charged to the storage account."

- (c) 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.

- (d) 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.
- (e) 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.

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

Dated at San Francisco, California, this 20th day of DECEMBER, 1968.

William J. Bennett
President

Arthur P. Morrison
Commissioners

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

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

Schaefer's Meats, by the certificate of public convenience and necessity granted in the decision noted in the margin, is authorized to operate as a public utility warehouseman for the operation of cold storage or warehouse floor space as follows:

<u>Commodities</u>	<u>Location</u>	<u>Number of Square Feet of Floor Space</u>
Meats, meat products and poultry	Oakland	9,630

(The floor space shown 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. 75141, Application No. 50272.