

Decision No. 75701

**ORIGINAL**

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 corporation. )  
 )  
 ) Case No. 8891

E. L. Fraser, for respondent.  
Clyde R. Hoagland, for Redway Truck & Warehouse Company, protestant.  
B. Gene Wilson, for California Ice and Cold Storage; Richard W. Engelhorn, for National Cold Storage Company; Henry H. O'Neal, for Los Angeles Cold Storage Company; Lawrence J. Urban, for B-Lo Cold Storage Company; James Quintrall, for Los Angeles Warehousemen's Association; C. Bartlett Eddy, for Crystal Ice and Cold Storage Company; Jack L. Dawson, for California Warehousemen's Association and Pacific States Cold Storage Warehousemen's Association; Jay G. Snow, for Federal Ice & Cold Storage Company, interested parties.  
Gordon A. Johnson, Counsel, and J. B. Hannigan, for the Commission staff.

O P I N I O N

By order of February 4, 1969, the Commission instituted its investigation into the operations, rates and practices of Packers' Cold Storage, Inc., for the purpose of determining whether it is operating in Oakland as a public utility warehouseman as defined by Sections 216 and 239(b) of the Public Utilities Code, and as a food warehouseman as defined by Sections 2507 and 2508 of the Code, without having obtained a certificate of public convenience and necessity as required by Section 1051, and without having filed tariffs as required by Sections 489 and 2551 of said Code.

The Commission takes official notice that Packers' Cold Storage, Inc., has heretofore been found to have operated at various locations in Southern California as a public utility and food warehouseman without authority. (Decision No. 66065, in Case No. 6409, Inv. La Habra Cold Storage, et al., 61 Cal. P.U.C. 436.) Packers' was ordered to cease and desist. The Supreme Court denied review (S.F. No. 21801).

Packers' subsequently applied for and received authority for the Southern California operation at Fullerton, La Habra and Anaheim, although rehearing of certain issues is still pending (Application No. 47763; Decisions Nos. 71744, 72349 and 73598).

On or about February 18, 1969, Packers' made a motion at hearing in Application No. 47763 to amend the application to seek additional authority covering the Oakland operation. Upon denial of that motion, Packers' filed a separate application (No. 50944) on March 10, 1969 for authority to operate in Oakland. That application was to be heard on April 28, 1969 but was removed from the hearing calendar at the request of the applicant therein.

Public hearing was held in this matter on March 13, 1969 before Examiner Gilman in Fullerton. The matter was submitted on March 13, 1969 upon stipulation between the Commission staff and respondent, and after statements by respondent, staff, California Warehousemen's Association and Pacific States Cold Storage Warehousemen's Association.

The stipulation is as follows:

That during the months commencing October 16, 1968 to on or about February 18, 1969 Packers' Cold Storage did operate a public utility within Sections 216, 239(b), 2507, and 2508 of the Public Utilities Code at Dreisbach Cold Storage Warehouse, 2530 East 11th Street, Oakland, California;

That Packers' Cold Storage should be ordered to cease and desist from any or all unlawful operations and practices, or from operating as a warehouseman, without first having obtained from the Commission a certificate of public convenience and necessity, excepting at the locations at Fullerton, La Habra, and Anaheim;

That Packers' Cold Storage be ordered to cease and desist from commencing operations as a warehouseman at any location in California without first having obtained from the Commission a certificate of public convenience and necessity; it being understood that the continuance of operations at the present locations of Fullerton, La Habra, and Anaheim are not deemed commencing operations within the meaning of this paragraph.

The statements of the warehousemen's associations emphasized the burdens and responsibilities imposed on public utility warehousemen by law, and the difficulties caused by direct competition from unregulated "contract" warehouses. Both urged the Commission to investigate and issue cease and desist orders against all such warehouses offering services to the public or any portion thereof, and to deny applications for warehouse authority based on a history of unlawful conduct.

In mitigation, respondent contended that the patrons of the Oakland service had all, prior to October 16, 1968, been patrons of respondent's Southern California operations, and that as part of that continuing relationship, respondent had offered to transfer parts of its Southern California service to a Bay Area location for greater efficiency and economy, benefiting the patrons. It was further contended, that immediately after the denial of the respondent's motion to expand the scope of its Application No. 47763, the Oakland operation was terminated.

Based on the stipulation of respondent, the Commission concludes that the following order should be issued.

O R D E R

IT IS ORDERED that:

1. Packers' Cold Storage, Inc., shall cease and desist from any and all unlawful operations, or from operating as a warehouseman without first having obtained from the Commission a certificate of public convenience and necessity.

2. Packers' Cold Storage, Inc., shall not commence operations as a warehouseman at any location in California without first having obtained from the Commission a certificate of public convenience and necessity.

3. Nothing herein shall be construed to apply to the operations of Packers' Cold Storage, Inc., which are the subject of Case No. 6409 and Application No. 47763.

The Secretary of the Commission is directed to cause personal service of this order to be made upon respondent. The effective date of this order shall be twenty days after the completion of such service.

Dated at Los Angeles, California, this 27<sup>th</sup> day of MAY, 1969.

William J. ...  
President  
J. ...  
Commissioners

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

Commissioner Fred P. Morrissey, being necessarily absent, did not participate in the disposition of this proceeding.