

ORIGINALDecision No. 75717

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of PACKERS' COLD STORAGE,)
 INC., a corporation, for a certificate)
 of public convenience and necessity to)
 operate food warehouses in Fullerton,)
 Anaheim, and La Habra, California.)

Application No. 47763
 (Filed April 14, 1969)

Edgar L. Fraser, for Packers' Cold Storage,
 applicant.
Wyman C. Knapp of Knapp, Gill, Hibbert & Stevens,
 and Jack L. Dawson, for Pacific States Cold
 Storage Warehousemen's Association, protestant.
James Quintrail, for Los Angeles Warehousemen's
 Association, interested party.
George L. Hunt, John R. Laurie and Milton J. DeBarr,
 for the Commission staff.

ORDER ON MOTION TO DISMISS OR DENY APPLICATION

Protestant, on March 19, 1969, filed a Motion for Dismissal of the Application or, in the Alternative, Denial Thereof. Applicant filed its opposition thereto on April 8, 1969. Protestant filed a second motion on April 14, 1969, to request that a portion of applicant's pleading be stricken.

The motion to dismiss or deny is based on allegations that applicant has never accepted the certificate granted herein by Decision No. 71744, as amended, dated December 27, 1966; that it did not file a tariff; that its financial status in California is inseparable from its operations in other states; that it has a common ownership and directors with other related corporations, which operate in Wyoming and California; that it has failed to show any public need for its proposed cooler room or dry storage; and that it has failed to show that its proposed rates and tariff regulations are reasonable.

The pleading which expresses applicant's opposition to the motion alleges that there was only 50,000 square feet of public utility warehouse space and no food warehouse space in Orange County when the Commission issued its first decision in the current application on December 20, 1966. It is further alleged that from July 21, 1965, when this application was filed, to the present, the protestant has not provided any new warehouse facilities in Orange County, although Orange County residents find it time consuming and expensive to use warehouse space in Los Angeles or Long Beach. Applicant lists 55 of its present local and national customers according to the type of warehouse service required. Applicant alleges it was ready to file its acceptance of the certificate when the Commission granted the protestant a rehearing on May 2, 1967. Applicant asserts that five exhibits on its financial status were prepared and placed in evidence by applicant's accountant in satisfaction of a request from protestant, also that the accountant was cross-examined for several days by protestant and a Commission staff representative. Applicant asserts that tariffs do not have to be submitted as a prerequisite to obtaining a certificate; that applicant has a tariff on file which has not as yet been refuted by the protestant; and that the letter provided no facts to support its contention that the proposed rates and rules are not reasonable.

Protestant's second motion (to strike) states that ten members of the public have testified for applicant during the present proceeding; while applicant's pleading (filed in opposition to protestant's motion to dismiss) lists 55 customers after a statement that "local and national customers testify" to the efficiency of applicant's method of operation. Protestant alleges that the 55 customer list should be stricken from applicant's pleading on the basis that it is inferred that everyone on the list testified for the applicant.

Based upon the record and pleadings, we find as follows:

1. Protestant's allegations are vague and are not fully supported by the record.
2. Applicant has submitted several financial statements on its own operations and has included reports on the financial status of closely allied companies at the request of protestant. Applicant's accountant was subjected to several days of cross-examination by protestant to explain these exhibits line by line.
3. Mere ownership of a controlling interest in several corporations is not a valid basis for an allegation of improper corporate action.
4. Several of applicant's witnesses testified that they prefer applicant's locations in Orange County for storage. They indicated that if the applicant was not available they might have to transport their goods over congested freeways to downtown Los Angeles at considerable additional expense.
5. There is no requirement that a tariff be filed before a certificate can be issued. Tariffs are filed after the certificate is issued.
6. It has been alleged that the applicant has failed to develop the nature, scope, and reasonableness of its rates, but no evidence has been received to support the allegation.
7. The allegations in protestant's motion do not justify dismissing the application.
8. The motion to deny the application is premature.
9. Any ambiguity in applicant's pleading has been resolved by the explanation provided in protestant's second motion.

We, therefore, conclude that the motion to dismiss or deny the application should be denied.

O R D E R

IT IS ORDERED that the Motion for Dismissal of the Application or, in the Alternative, Denial Thereof, is denied.

IT IS FURTHER ORDERED that the Motion to Strike is denied.

The effective date of this order shall be the date hereof.

Dated at Los Angeles, California, this 27th day of MAY, 1969.

William J. ...
President

[Signature]
[Signature]
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.