

ORIGINAL

Decision No. 78959

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application)
of IRVING S. CULVER and GRACE)
LaRUE, Executors of the Will of)
C. L. TILDEN, JR. and IRVING S.)
CULVER, doing business as)
GIBRALTAR WAREHOUSES, for)
authorization to sell and)
transfer public utility)
warehouse operative rights and)
properties to IRVING S. CULVER)
and CHARLOTTE C. TILDEN; and of)
IRVING S. CULVER and CHARLOTTE)
C. TILDEN for authorization to)
sell and transfer public utility)
warehouse operative rights and)
properties to GIBRALTAR)
WAREHOUSES, a corporation; and)
of GIBRALTAR WAREHOUSES, a)
corporation to issue stock)

Application No. 52642
Filed May 27, 1971

O P I N I O N

Irving S. Culver and Grace LaRue, Executors of the Will of C. L. Tilden, Jr., and Irving S. Culver, doing business as Gibraltar Warehouses, seek an order of the Commission authorizing them to transfer their warehouseman and highway common carrier certificates of public convenience and necessity and related assets to Gibraltar Warehouses, a corporation, and the latter seeks authority to issue 22,000 shares of its \$10 par value capital stock.

Irving S. Culver and Grace LaRue, Executors of the Will of C. L. Tilden, Jr., and Irving S. Culver are engaged in business as a public utility warehouseman in the City and

County of San Francisco pursuant to a certificate of public convenience and necessity acquired under authority granted by Decision No. 42182, dated November 3, 1948, in Application No. 29770, and pursuant to a prescriptive operative right acquired under authority granted by Decision No. 50521, dated September 14, 1954, in Application No. 35727. They also operate as a highway common carrier of general commodities in the San Francisco Bay area pursuant to authority granted by Decision No. 71806, dated January 4, 1967, in Application No. 48383, as subsequently amended. In addition, operations are conducted under permits issued by this Commission and under Interstate Commerce Commission authority.

The in-lieu certificate granted by said Decision No. 71806 encompassed previous operating authority and granted an extension thereof. Such previous operating authority was granted by Decision No. 53625, dated August 28, 1956, as amended by Decision No. 54396, dated January 15, 1957, in Application No. 36065, and was the subject of a coextensive Certificate of Registration issued by the Interstate Commerce Commission in Docket No. MC 61720 (Sub - No. 4). Although said Decision No. 71806 superseded and revoked said Decisions Nos. 53625 and 54396, it was not intended to affect said Certificate of Registration.

Gibraltar Warehouses is a California corporation incorporated on or about May 7, 1971. It proposes to acquire the warehouseman and highway common carrier certificates of public convenience and necessity, together with related assets subject to liabilities, of Irving S. Culver and Grace LaRue, Executors of the Will of C. L. Tilden, Jr., and Irving S. Culver in exchange for 22,000 shares of its \$10 par value capital stock. A pro forma balance sheet as of June 1, 1971, is summarized from Exhibit B, attached to the application, as follows:

Assets

| | |
|------------------|------------------|
| Current assets | \$172,800 |
| Not fixed assets | <u>98,000</u> |
| Total | <u>\$270,800</u> |

Liabilities

| | |
|---------------------|------------------|
| Current liabilities | \$ 50,800 |
| Capital stock | <u>220,000</u> |
| Total | <u>\$270,800</u> |

After consideration the Commission finds that:

1. The proposed transfer would not be adverse to the public interest.
2. The proposed stock issue is for a proper purpose.
3. The money, property or labor to be procured or paid for by the issue of the stock herein authorized is reasonably required for the purpose specified herein, which purpose is not, in whole or in part, reasonably chargeable to operating expenses or to income.
4. Public convenience and necessity require that Gibraltar Warehouses, a corporation, be authorized to conduct the warehouse operation described in Appendix A.
5. Public convenience and necessity require that Gibraltar Warehouses, a corporation, be authorized to perform in intrastate commerce the transportation described in Appendix B.
6. Public convenience and necessity require that Gibraltar Warehouses, a corporation, be authorized to perform in interstate or foreign commerce the transportation described in Appendix B unless specifically excluded, which authority will not exceed the authority granted by Decisions Nos. 53625 and 54396.

On the basis of the foregoing findings we conclude that the application should be granted. A public hearing is not necessary.

The action taken herein shall not be construed as a finding of the value of the properties to be transferred. So far as the highway carrier rights are concerned, the authorization herein granted is for the transfer of a highway common carrier certificate of public convenience and necessity only. Any transfer of permitted operative rights must be the subject of a separate application or applications.

The order which follows will provide for, in the event the transfer is consummated, the revocation of the highway common carrier certificate and the warehouseman certificate and prescriptive operative right presently held by Irving S. Culver and Grace LaRue, Executors under the Will of C. L. Tilden, Jr., and Irving S. Culver, and the issuance of highway common carrier and warehouseman certificates in appendix form to Gibraltar Warehouses, a corporation.

Gibraltar Warehouses, 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, these 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. Irving S. Culver and Grace LaRue, Executors under the Will of C. L. Tilden, Jr., and Irving S. Culver may sell and transfer, and Gibraltar Warehouses, a corporation, may purchase and acquire, the highway common carrier and warehouseman certificates of public convenience and necessity and related assets referred to in the application.

2. Gibraltar Warehouses, a corporation, on or after the effective date hereof and on or before December 31, 1971, in acquiring said certificates and related assets, subject to liabilities, may issue not exceeding 22,000 shares of its \$10 par value capital stock.

3. Gibraltar Warehouses, a corporation, shall file with the Commission a report as required by General Order No. 24-B, which order, insofar as applicable, is hereby made a part of this order.

4. Within thirty days after the consummation of the transfer herein authorized, Gibraltar Warehouses, 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.

5. Gibraltar Warehouses, a corporation, shall amend or reissue the tariffs on file with the Commission naming rates and rules governing the highway common carrier and 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 five days after the effective date of this order on not less than five days' notice to the Commission and the public, and the effective date of the tariff

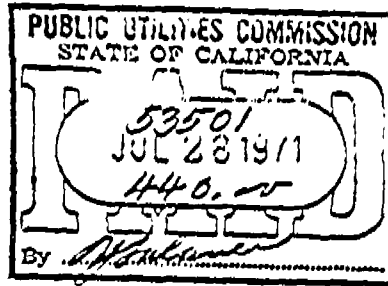
filings shall be concurrent with the consummation of the transfer herein authorized. The tariff filings made pursuant to this order shall comply in all respects with the regulations governing the construction and filing of tariffs set forth in the Commission's General Orders Nos. 61-A and 80-A. Failure to comply with and observe the provisions of General Orders Nos. 61-A and 80-A may result in a cancellation of the operating authority granted by this decision.

6. In the event the transfer authorized in Paragraph No. 1 hereof is consummated, certificates of public convenience and necessity are granted to Gibraltar Warehouses, a corporation, authorizing it to operate as (a) 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, and (b) a highway common carrier, as defined in Section 213 of the Public Utilities Code, between the points particularly set forth in Appendix B attached hereto and made a part hereof.

7. The certificates of public convenience and necessity granted in Paragraph No. 6 of this order shall supersede the certificate of public convenience and necessity acquired pursuant to Decision No. 42182, the prescriptive operative right acquired pursuant to Decision No. 50521 and the certificate of public convenience and necessity granted by Decision No. 71806, as amended, which certificates and prescriptive operative right are revoked effective concurrently with the effective date of the tariff filings required by Paragraph No. 5 hereof.

8. Within thirty days after the transfer herein authorized is consummated, Gibraltar Warehouses, a corporation, shall file a written acceptance of the certificates herein granted. Gibraltar Warehouses, a corporation, is placed on notice that, if it accepts the certificates of public convenience

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and necessity herein granted, it will be required, among other things, to comply with and observe the safety rules of the California Highway Patrol and the insurance requirements of the Commission's General Order No. 100-F.

9. Gibraltar Warehouses, a corporation, shall maintain its accounting records on a calendar year basis in conformance with the applicable Uniform System of Accounts or Chart of Accounts as prescribed or adopted by this Commission and shall file with the Commission, on or before March 31 of each year, an annual report of its operations in such form, content, and number of copies as the Commission, from time to time, shall prescribe.

10. Gibraltar Warehouses, a corporation, shall comply with the requirements of the Commission's General Order No. 84-Series for the transportation of collect on delivery shipments. If Gibraltar Warehouses, a corporation, elects not to transport collect on delivery shipments, it shall make the appropriate tariff filings as required by the General Order.

11. This order shall become effective when Gibraltar Warehouses, a corporation, has paid the fee prescribed by Section 1904.1 of the Public Utilities Code, which fee is \$440.

Dated at San Francisco, California,
this 27th day of JULY 1971.

Commissioner J. P. Vukasin, Jr., being necessarily absent, did not participate in the disposition of this proceeding.

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

Chairman
William L. Stinson
Arthur W. ...
Vernon L. Stinson

Commissioners

Gibraltar Warehouses, a corporation, 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 as defined in Section 239(b) of the Public Utilities Code for the operation of storage or warehouse floor space as follows:

| <u>Location</u> | <u>Number of Square Feet of Floor Space</u> |
|-------------------------------------|---|
| City and County of San Francisco | 424,000 |

(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.

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Gibraltar Warehouses, a corporation, by the certificate of public convenience and necessity granted in the decision noted in the margin, is authorized to transport general commodities between:

- A. San Francisco, on the one hand, and Oakland, Emeryville, Berkeley, Alameda, San Leandro, Richmond, Albany, Union City, El Cerrito and Fremont, on the other hand, in intrastate commerce.
- B. San Francisco, on the one hand, and Oakland, Emeryville, Berkeley, Alameda, San Leandro, Richmond, Albany, and El Cerrito, on the other hand, in interstate or foreign commerce.
- C. San Francisco, on the one hand, and points on U.S. Highway 101 between Daly City and San Jose, and points on U.S. Highway 101 By-Pass between Bayshore and San Jose, on the other hand, in intrastate, interstate or foreign commerce.

Applicant shall not transport any shipments of:

- 1. Used household goods and personal effects not packed in accordance with the crated property requirements set forth in Item No. 5 of Minimum Rate Tariff No. 4-B.
- 2. Automobiles, trucks and buses, viz.: new and used, finished or unfinished passenger automobiles (including jeeps), ambulances, hearses and taxis; freight automobiles, automobile chassis, trucks, truck chassis, truck trailers, trucks and trailers combined, buses and bus chassis.
- 3. Livestock, viz.: bucks, bulls, calves, cattle, cows, dairy cattle, ewes, goats, hogs, horses, kids, lambs, oxen, pigs, sheep, sheep camp outfits, sows, steers, stags or swine.
- 4. Commodities requiring the use of special refrigeration or temperature control in specially designed and constructed refrigerated equipment.

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5. Liquids, compressed gases, commodities in semi-plastic form and commodities in suspension in liquids in bulk, in tank trucks, tank trailers, tank semitrailers or a combination of such highway vehicles.
6. Commodities when transported in bulk in dump trucks or in hopper-type trucks.
7. Commodities when transported in motor vehicles equipped for mechanical mixing in transit.
8. Trailer coaches and campers, including integral parts and contents when the contents are within the trailer coach or camper.

Such authority does not include the right to render service to, from or between intermediate points.

Applicant shall not establish through routes and joint rates, charges and classifications as to the separate authorities hereinabove set forth in paragraphs A, B and C.

(END OF APPENDIX B)

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