

ORIGINAL

Decision No. 80009

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of:)

(a) BROADWAY WAREHOUSE, INC., a corporation, to purchase, and TRULOVE TRANSFER & STORAGE, INC., a corporation, to sell public utility warehouse operating authority, pursuant to Section 851, et seq., and Section 1052 of the California Public Utilities Code; and upon approval thereof,

(b) To operate as a public warehouseman in Buena Park, California; and

(c) For authorization to cease operations at Gardena, California,

(d) To extend or increase storage or warehouse floor space from 6,200 square feet to 50,000 square feet pursuant to Section 1051 of the California Public Utilities Code.

Application No. 53167
(Filed February 22, 1972)

O P I N I O N

The applicants herein request authority to sell and transfer the public warehouse certificate owned by Trulove Transfer and Storage, Inc., a corporation, hereinafter referred to as Trulove, seller, to Broadway Warehouse, Inc., a corporation, hereinafter referred to as Broadway, the purchaser.

A certified copy of the Articles of Incorporation of Broadway attached to the application shows its articles were first filed June 10, 1966 under the name of Georgia Warehouse, Inc. Such name was changed to Broadway Warehouse, Inc., by amendment to its articles filed December 5, 1969.

Applicant Broadway alleges it is presently engaged in operations as a private warehouse in Buena Park, California.

Applicant Trulove alleges it presently holds certificated authority as a public utility warehouseman for operations of storage and warehouse space at Gardena, California, under and pursuant to a certificate of public convenience and necessity granted by Decision No. 77919, dated November 10, 1970, in Application No. 52138, as well as a certificate of public convenience and necessity from the Interstate Commerce Commission issued in Docket No. 127290; and California radial highway common carrier permit, highway contract carrier permit, and household goods carrier permit in File No. T-78,904.

Applicant Broadway requests authority to purchase and acquire the public utility warehouseman authority from Trulove and remove it from Gardena to Buena Park, California, and there to operate with storage floor space increased from 6,200 square feet to 50,000 square feet.

Applicant Broadway alleges that the president of Broadway has over 26 years experience in the operation of a private warehouse.

A balance sheet and comparative statement of income attached to the application show that Broadway incurred a \$4,698.30 loss in 1970 and, during its next year of operations, 1971, evidence a net operating profit of \$8,904.84.

Applicant Broadway alleges that no principal or employee of Broadway has an interest in, or otherwise controls, directly or indirectly, a public warehouseman's business in the State of California, and that no public warehouseman holds, controls, or otherwise has an interest in the business of applicant, Broadway, either directly or indirectly.

Applicant Broadway proposes to file its tariff, naming rates and rules governing the warehouse operation herein sought that are the same as, or similar to, those adopted by Trulove and now filed as California Warehouse Tariff Bureau, Warehouse Tariff No. 28-A, Cal. P.U.C. 193, Jack L. Dawson, Agent, including all supplements thereto, said tariff filings shall comply with the regulations governing the construction and filing of tariffs set forth in Commission's General Order No. 61-A.

Applicant Trulove alleges it has made arrangements and provisions for the present storers at Gardena, California, for transferring their respective warehouse requirements to other public utility warehousemen in the immediate area and that none of said storers has any objection to the discontinuance of operations by Trulove as a public warehouseman at Gardena, California. Trulove is prepared to pay the cost incurred in moving goods for its storers at Gardena, California, to Broadway's warehouse facilities at Buena Park, California, should the same be requested.

Applicant Broadway alleges that principals and employees are well qualified and experienced to conduct the management and operations of a public utility warehouse to the benefit of the warehousing public.

Applicant Broadway alleges it has had numerous requests from the public for the use of warehouse facilities and the storage and handling of merchandise at Buena Park, California.

Applicants certify that a copy of the application has been forwarded to: Los Angeles Warehousemen's Association, 1807 East Olympic Boulevard, Los Angeles, California, 90021, and the Association has notified the Commission by letter dated March 16, 1972 that it has no objections to the granting of the application.

The application was listed on the Commission's Daily Calendar of February 24, 1972. No protest has been received.

After consideration, the Commission finds that the proposed transfer and relocation would not be adverse to the public interest.

The Commission further finds that:

1. Applicant Broadway has the facilities, personnel and financial resources to render the service proposed in the application with increased warehouse floor space of 50,000 square feet in Buena Park, California.

2. Public convenience and necessity require that the application be granted.

3. A public hearing is not necessary.

The Commission concludes that the application should be granted as provided by the following order.

Applicant 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.

The action taken herein is for the issuance of a certificate of public convenience and necessity only and is not to be considered as indicative of amounts to be included in proceedings for the purpose of determining just and reasonable rates.

O R D E R

IT IS ORDERED that:

1. On or before July 1, 1972, Trulove Transfer & Storage, Inc., a corporation, may sell and transfer, and Broadway Warehouse, Inc., a corporation, may purchase and acquire, the public utility warehouse rights referred to in the application.

2. The purchaser, Broadway, is authorized to remove the warehouse operations from Gardena, California, and upon completing the purchase to institute the same at Buena Park, California, as herein provided.

3. Within thirty days after the consummation of the transfer herein authorized, purchaser 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.

4. Purchaser shall amend or reissue the tariffs on file with the Commission, naming rates and rules governing the 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 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 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 Order No. 61-A. Failure to comply with and observe the provisions of General Order No. 61-A may result in a cancellation of the operating authority granted by this decision.

5. On or before the end of the third month after the consummation of the transfer as herein authorized, purchaser shall cause to be filed with the Commission, in such form as the Commission may prescribe, an annual report, or reports, related to the operations of the seller for the period commencing with the first day of the current fiscal year to and including the effective date of the transfer.

6. In the event the transfer authorized in paragraph 1 hereof is consummated, a certificate of public convenience and necessity is granted to Broadway Warehouse, Inc., 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 at Buena Park, California, as set forth in Appendix A attached hereto and made a part hereof.

7. The certificate of public convenience and necessity granted to Trulove Transfer & Storage, Inc., by Decision No. 77919, dated November 10, 1970, is revoked effective concurrently with the effective date of the tariff filings required by paragraph 4 hereof.

8. Within thirty days after the transfer herein authorized is consummated, purchaser shall file a written acceptance of the certificate herein granted. Purchaser 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.


9. Purchaser shall comply with the regulations of the California Department of Public Health concerning hazardous or toxic commodities and shall include in its tariff a rule reading substantially as follows:

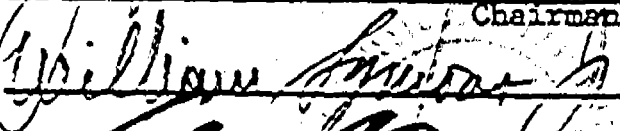
Hazardous or Toxic Commodities:


The warehouseman will not be required to accept for storage 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.


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

Dated at San Francisco, California, this 2nd day of MAY, 1972.



Chairman





Commissioners

Commissioner Vernon L. Sturgeon, being necessarily absent, did not participate in the disposition of this proceeding.

Broadway Warehouse, Inc., 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>
Buena Park	50,000

(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.

Decision No. 80009, Application No. 53167.