

Decision No. 80413

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application  
of UNITED STATES COLD STORAGE  
OF CALIFORNIA, a corporation, for  
authorization to cease operations  
as a public warehouseman at  
Petaluma, California.

Application No. 53253  
(Filed April 6, 1972)

John G. Lyons, Attorney at Law, for applicant. ✓  
Leroy J. Lounibus, Jr., Attorney at Law, for  
Petaluma Co-operative Creamery, protestant.  
Stephen D. Butler, Attorney at Law, for Walter  
F. Kieckhefer, interested party.  
Peter N. Kujachich, for the Commission staff.

O P I N I O N

United States Cold Storage of California, a corporation,  
requests authority to discontinue operations as a public utility  
warehouseman at Petaluma.

A public hearing was held before Examiner Daly at San  
Francisco on July 18, 1972, at which time and place the matter  
was submitted. The authority was restated in Decision No. 77473  
dated July 7, 1970, in Application No. 48568.

The operating authority is prescriptive in nature and as  
set forth in Commission order dated June 6, 1960, in Case No. 6515,  
authorizes operations in 38,114 square feet of space in the City  
of Petaluma.

Applicant also operates cold storage public utility  
warehouses in Marysville, Sacramento, San Francisco and Oakland  
in addition to its cold storage warehouse in Petaluma.

Applicant alleges that the Petaluma plant was originally  
constructed to serve the wine industry, but the various wineries  
have developed their own storage facilities; that the poultry  
and egg industry formerly comprised a substantial volume of  
applicant's business, but recently enacted regulations of the  
Chicago Mercantile Exchange have eliminated cooler storage of

eggs under contracts of the Exchange; that applicant lost its apple storage customers when the cooperative constructed a large cooler storage facility in Sebastopol; and that as a result of changes in the pattern of cold storage warehousing in Petaluma, applicant's operations have been unprofitable for several years.

Applicant sent written notice to all of its customers who stored with applicant during 1971. Of the 90 customers notified, 70 expressed their consent to the proposed abandonment, 3 expressed dissatisfaction, 1 acknowledged receipt of the notice and the others did not respond. The three that expressed dissatisfaction were notified by the Commission of their right to a hearing. One customer informed the Commission by letter, dated April 21, 1972, that she wished to withdraw her protest, one failed to respond and the third, the Petaluma Co-operative Creamery, requested a hearing.

The financial results of applicant's Petaluma plant covering just utility<sup>1/</sup> operations for the past five years are as follows:

<u>Utility</u>	<u>1971</u>	<u>1970</u>	<u>1969</u>	<u>1968</u>	<u>1967</u>
Revenues	\$113,409.63	\$ 89,233.86	\$112,187.08	\$141,970.84	\$100,608.04
Costs	85,353.95	94,488.87	93,305.18	106,724.33	122,746.42
Gross Profit (Loss)	28,055.68	(5,255.01)	13,881.40	35,246.51	(22,138.38)
Pro Rata Branch Admin. and Corporate Admin. Expense	41,324.62	25,567.22	25,028.72	27,787.05	28,793.95
Net Profit (Loss)	(13,266.94)	(30,822.23)	(11,147.32)	7,459.46	(50,932.33)

According to applicant's Petaluma Branch Manager, applicant has available space in its San Francisco and Oakland warehouses and is willing to assume the cost of transferring the property of its Petaluma customers to these warehouses.

---

<sup>1/</sup> Applicant also conducts non-utility operations which consists primarily of the selling of ice.

If the authority herein requested is granted, applicant proposes to sell its Petaluma plant and property to Walter F. Kieckhefer, a shopping center and real estate developer, for a consideration of \$180,000. Mr. Kieckhefer is presently in the process of constructing a shopping center within the immediate vicinity of applicant's Petaluma plant and he proposes to remodel the warehouse for the purpose of leasing to small stores.

The controller of the Petaluma Co-operative Creamery testified that his company is engaged in the processing, selling, and distribution of dairy products throughout the San Francisco Bay Area. The company has used the facilities of applicant for the past 15 years, primarily for the storage of butter and orange juice concentrate. In 1971 it stored powdered milk with applicant, but commencing in October, 1971, applicant refused to accept the powdered milk. The Co-operative has facilities of its own to accommodate 40,000 pounds of butter and 5,000 bags of powdered milk and requires public warehouse facilities for the excess, which is approximately 30 percent of its present production. The Co-operative's controller further testified that there is no other public cold storage in Petaluma and that the cost of transporting its products to the nearest such facility in San Francisco would substantially contribute to the total cost of its overall operations.

Applicant's records indicate that the revenues received from the storage of the Co-operative's property for the past seven years are as follows:

<u>Year</u>	<u>Revenues</u>
1965	\$ 991
1966	717
1967	1,265
1968	425
1969	103
1970	985
1971	6,965
6 months of 1972	16,751

Although up to 1970 the Co-operative only stored butter, and orange juice concentrate, because of a surplus of space in 1971, applicant assertedly made a special arrangement to store the powdered milk of the Co-operative. According to the Branch Manager of applicant's Petaluma plant this was intended as a private arrangement and was not considered as being within the scope of applicant's certificated operation, which is limited to cold storage. Since October, 1971, the Co-operative has been storing its powdered milk with private warehouses in the Petaluma area on a month-to-month basis.

The substantial increase of revenue derived from the Co-operative for the first six months of 1972 is attributable to an increase in the storage of butter. In prior years this butter had been sold to a broker and was stored in San Francisco. The transaction terminated in 1971 and the butter is now sold to the United States Department of Agriculture. Because title to the butter does not pass until there has been a government inspection, the butter is initially stored with applicant by the Co-operative. In approximately a month, title passes to the government and the government then assumes the cost of storage.

The orange juice concentrate consists of approximately one truck load a month. It is picked up in Los Angeles by one of the Co-operative's trucks and transported to Petaluma where it is stored with applicant. From there, it is withdrawn by the Co-operative, consistent with its bottle processing requirements.

After consideration the Commission finds that:

1. Applicant has been operating as a public utility cold storage warehouseman for many years in the City of Petaluma.
2. For the past several years, applicant's Petaluma plant has been operating at a loss.
3. Petaluma Co-operative Creamery is the only customer of applicant to protest the granting of the application.

4. Up to 1971, Petaluma Co-operative Creamery stored a limited amount of butter and orange juice concentrate with applicant. Because of an excess of storage space in 1971, applicant entered into an accommodation arrangement with the Co-operative to store powdered milk, a commodity that does not require cold storage and is therefore not covered by applicant's filed tariffs. Applicant refused to accept powdered milk as of October, 1971, and it is now being stored with private warehouses in the Petaluma area on a month to month basis.

Because of the termination of a prior arrangement, the Co-operative transferred the storage of a substantial amount of butter from a cold storage facility in San Francisco to applicant's warehouse in Petaluma. Shortly after inspection this butter becomes the property of the United States Department of Agriculture, which distributes it throughout the United States and overseas. This butter can just as well be stored in San Francisco as in Petaluma.

6. Petaluma Co-operative Creamery will experience an additional cost in transporting its product between a cold storage warehouse in San Francisco and its plant in Petaluma, but this does not justify an order of the Commission requiring applicant to continue operating at a loss in order to accommodate a single customer.

7. Public convenience and necessity no longer require applicant's service as a public utility warehouseman in the City of Petaluma.

#### O R D E R

IT IS ORDERED that:

1. After the effective date hereof, United States Cold Storage of California may discontinue operations as a public utility warehouseman in the City of Petaluma upon the condition that it bears the cost of transferring the goods of its customers to a warehouse of the customers' choice within a radius of 50 miles of the City of Petaluma.

2. Within sixty days after the date hereof, upon compliance with the provision of ordering paragraph 1 hereof and on not less than ten days' notice to the Commission and to the public, applicant shall cancel its tariffs presently on file with the Commission to reflect the authority herein granted.

3. Upon compliance with the tariff requirements set forth in ordering paragraph 2 hereof, the operating authority as set forth in Commission order dated June 6, 1960, in Case No. 6515, and in Decision No. 77473 dated July 7, 1970, in Application No. 48568, is hereby revoked, and, in place and stead thereof, a prescriptive operative right is hereby stated for United States Cold Storage of California, a corporation, as more particularly set forth in Appendix A attached hereto.

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

Dated at San Francisco, California, this 29th  
day of AUGUST, 1972.

Vernon L. Sturgeon  
President  
William Spence Jr.  
John Miller  
John Miller  
Commissioners

United States Cold Storage of California possesses a prescriptive operative right as a public utility warehouseman for the operation of storage or warehouse floor space as follows:

<u>Location</u>	<u>Number of Square Feet of Floor Space</u>
Marysville	8,834

(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. 80413, Application No. 53253,