

ORIGINAL

Decision No. 80981

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
USCO SERVICES, INC., a corporation,)
for a Certificate of Public Con-)
venience and Necessity authorizing)
it to extend its operations as a)
Public Utility Warehouseman in the)
City of South San Francisco, Cali-)
fornia, pursuant to Section 1051,)
et seq., of the California Public)
Utilities Code.)

Application No. 52791
(Filed July 29, 1971)

PACIFIC COAST SERVICE COMPANY, a
California corporation,

Complainant,

vs.

USCO SERVICES, INC., a Delaware
corporation,

Defendant.

Case No. 9293
(Filed November 18, 1971)

Murchison and Davis, by Donald Murchison, Attorney at
Law, for USCO Services, Inc., applicant in
Application No. 52791 and defendant in Case No. 9293.
Pillsbury, Madison and Sutro, by Maurice D. L. Fuller, Jr.
and Roy Williams, Attorneys at Law, for Pacific
Coast Service Company, protestant in Application No.
52791 and complainant in Case No. 9293.
Peter N. Kujachich, for the Commission staff.

O P I N I O N

Application

Applicant USCO Services, Inc., hereinafter called USCO, by
its application herein, is seeking a certificate of public convenience
and necessity authorizing it to extend its operations as a public
utility warehouseman to utilize 85,000 square feet of storage floor
space at South San Francisco, California, without limiting the

expansion permissible under Section 1051 of the Public Utilities Code. USCO proposes to publish rates, rules and charges which are reasonable, compensatory and nondiscriminatory and to operate under such rates, rules and charges at 444 Allerton Avenue, South San Francisco.

USCO is presently engaged in business as a public utility warehouseman in the City of Vernon and in the City and County of San Francisco, California, pursuant to certificate of public convenience and necessity granted by Decision No. 76906, issued March 10, 1970, in Application No. 51648. It is authorized to operate 5,000 square feet of warehouse floor space in Vernon and 25,000 square feet of warehouse floor space in San Francisco, exclusive of the expansion permissible under Section 1051 of the Public Utilities Code.

Complaint

Complainant Pacific Coast Service Company, hereinafter called Pacific Service, in its complaint against USCO alleges that:

1. USCO is a Delaware corporation with its principal office and place of business at 444 Allerton Avenue, South San Francisco, California, 94080.

2. Pacific Service is a California corporation conducting a public utility warehouse business at 229-230 Ryan Way, South San Francisco, California, pursuant to Decision No. 78055, dated December 3, 1970.

3. USCO, at least since April 15, 1971, has been and is now conducting a public utility warehouse business at 444 Allerton Avenue, South San Francisco, California, without a certificate of public convenience and necessity.

4. On or about July 8, 1971, Mr. Ben D. Lichtig, Jr., an employee of Pacific Service, inquired of the manager of USCO's warehouse facilities at South San Francisco as to the availability and cost of warehousing materials and supplies at USCO's South San Francisco warehouse. Said manager advised Mr. Lichtig that USCO

was operating the South San Francisco facility as a public utility warehouse. A letter dated July 21, 1971, from the branch manager of USCO, 444 Allerton Avenue, South San Francisco, to the attention of Mr. Ben D. Lichtig, Jr., reads as follows:

"You recently visited us discussing the possibility of storing material with our organization. We are wondering if anything further has developed at this time."

5. Pacific Service wrote a letter to the Commission dated July 9, 1971, alleging that it had come to Pacific Service's attention that USCO was operating a public utility warehouse at 444 Allerton Avenue, South San Francisco, without a certificate of public convenience and necessity. The Secretary of the Commission by letter dated July 16, 1971, replied: " . . . This matter will be assigned for study and, if violations are disclosed, corrective measures will be taken."

6. On July 29, 1971, USCO filed the application herein.

7. USCO is conducting an advertising campaign directed at soliciting public warehouse business for its 444 Allerton Avenue facilities. USCO is distributing a pamphlet soliciting public utility warehouse business on a nationwide basis to prospective customers. On the third page of said pamphlet, USCO lists its 444 Allerton Avenue, South San Francisco warehouse facility.

Pacific Service requested the Commission to issue an order providing that:

1. USCO cease and desist from operating any storage or warehouse floor space in South San Francisco, California, without a certificate of public convenience and necessity until the Commission makes and files its decision on the complaint, or until further order of the Commission.

2. USCO cease and desist from soliciting public utility business personally, by advertising or otherwise, to the effect that it has available public utility warehouse facilities within the city of South San Francisco, California.

3. USCO's application herein for a certificate of public convenience and necessity to operate a public utility warehouse at 444 Allerton Avenue, South San Francisco not be acted upon until the Commission makes and files its decision on the complaint herein.

Temporary Restraining Order

By Decision No. 79429, issued herein on November 30, 1971, the Commission ordered that:

1. Until further order of the Commission, USCO is restrained from holding itself out as a public utility warehouse in South San Francisco, and from engaging in the activities of a public utility warehouse in South San Francisco, and soliciting business as a public utility warehouse in South San Francisco.

2. USCO should appear and show cause at a public hearing why a cease and desist order should not be issued prohibiting USCO from holding itself out, soliciting business as, and engaging in the activity of a public utility warehouse in South San Francisco until such time as it has obtained a certificate of public convenience and necessity from the Commission.

3. That Case No. 9293 is consolidated with Application No. 52791.

Answer

On December 3, 1971, USCO filed an answer denying the allegations of the complaint herein except for the following admissions:

1. The principal office of USCO is 444 Allerton Avenue, South San Francisco, California, 94080.

2. On or about July 8, 1971, Mr. Ben D. Lichtig, Jr., who alleged that he was the President of BDL Distributing Co., approached the manager of USCO's private warehouse facility at 444 Allerton Avenue and inquired of said manager as to the availability and cost of warehousing materials and supplies at USCO's 444 Allerton Avenue

location. Said manager of USCO did write the letter to Mr. Lichtig dated July 21, 1971, a copy of which is attached to the complaint herein as Exhibit A.

In its answer, USCO affirmatively made the following allegations:

1. USCO advised Mr. Ben Lichtig, Jr., the President of BDL Distributing Co., that USCO's operations at the Allerton Avenue address were strictly those of a private warehouse operation.
2. The pamphlet of USCO, attached to Pacific Services complaint as Exhibit D, is not, nor has been given to any person, firm or corporation with respect to private warehouse operations, except to such of them who or which initiates, via inquiry or otherwise, negotiations with respect to the availability of private warehouse space at USCO's limited private warehouse facilities at 444 Allerton Avenue.
3. USCO has restricted its private warehouse operations to a limited number of customers under particularly restricted conditions and only under special circumstances.
4. USCO's application herein for a certificate of public convenience and necessity to operate as a public warehouseman at 444 Allerton Avenue, South San Francisco, California, was filed on July 29, 1971.
5. The complaint herein was filed on November 18, 1971, but was not mailed to defendant pursuant to Rule 12 of the Commission's Rules of Practice and Procedure. Thereafter, without permitting USCO opportunity, as provided in said Rule 12 to "point out in writing such jurisdictional or other defects in the complaint as, in defendant's opinion, may require amendment", or dismissal, the Commission served a copy of Decision No. 79429 in said Case No. 9293 on USCO and its attorney and finally served upon USCO a copy of the complaint herein together with a copy of Rule 13 of the Commission's Rules of Practice and Procedure.

6. The Commission did not serve a copy of Rule 12 upon USCO as is customary in matters of this nature.

For a second, separate and affirmative defense to Pacific Service's complaint, USCO alleges that the complaint herein does not state facts sufficient to constitute a cause of action against USCO.

For a third, separate and affirmative defense USCO alleges that the complaint herein should be dismissed on the grounds that the Commission failed to follow the Rules of Procedure prescribed by it, and on the further ground that the Commission by virtue of the manner in which it has proceeded in issuing a Temporary Restraining Order, Order Consolidating Proceedings and Order to Show Cause has exceeded its jurisdiction.

USCO requests an order:

1. Dismissing the complaint herein.
2. Dismissing the Temporary Restraining Order, Order Consolidating Proceedings and Order to Show Cause forthwith.
3. Permitting USCO to proceed with the application herein and to withhold any further action on the complaint herein until such time as the application herein shall have been determined.

Hearing

At the public hearing held before Examiner Cline in San Francisco on December 7, 1971, the parties withdrew all objections to the consolidation of the application and complaint herein and agreed that the matter should be continued to a later date for hearing. Further hearings were held before Examiner Cline in San Francisco on January 18 and 19, 1972. The matters were taken under submission upon the filing of concurrent briefs on May 8, 1972.

Position of USCO

At the commencement of the hearing, USCO took the position that it seeks a certificate of public convenience and necessity if, and only if, such a certificate is necessary to authorize USCO to

continue its present method of operation. USCO also took the position that its present method of operation does not require it to obtain a certificate and that if the Commission concurred in such position USCO did not wish a certificate of public convenience and necessity.

Issues

The following issues have been raised by the parties in this proceeding with respect to the application herein:

1. Is USCO fit and able to perform the proposed service?
2. What is the public need for the proposed service?
3. Are the existing services adequate?
4. What impact will the granting of the application have upon Pacific Service?
5. How and to what extent would Pacific Service benefit by a denial of the application?
6. Do public convenience and necessity require the service proposed by USCO?

The following additional issues have been raised by the parties with respect to the complaint herein:

7. Has USCO been operating as a public warehouseman without the benefit of a certificate of public convenience and necessity?
8. Should USCO be ordered to cease and desist operating as a public utility warehouseman?

Findings

Based upon a consideration of the record herein, the Commission makes its findings of fact as follows:

I. USCO's Operations

A. Background

1. USCO is a Delaware corporation. A certified copy of its Articles of Incorporation was filed with the Commission on July 1, 1969, in connection with Application No. 51219. Said Articles have not been amended.
2. USCO is qualified to do business in the State of California pursuant to Statement and Designation by Foreign Corporation

qualifying it to do business in California filed with the Commission July 14, 1969, in connection with Application No. 51219. Said Statement and Designation has not been amended or revoked.

3. USCO is a wholly owned subsidiary of Uniroyal, Incorporated.

4. USCO is engaged in business as a public utility warehouseman in the Cities of Vernon and San Francisco, California, pursuant to authority granted by Decision No. 76906, dated March 10, 1970, in Application No. 51648, and, as such, is authorized to operate 5,000 square feet of warehouse floor space in Vernon and 25,000 square feet of warehouse floor space in San Francisco.

5. USCO also conducts warehousing operations in eighteen to twenty other states.

6. USCO's provision of warehousing service to unaffiliated parties is in many cases incidental to the furnishing of warehousing to Uniroyal.

B. Financial Fitness

7. The balance sheet of USCO as of November 28, 1971, shows total assets of \$1,331,466.50 and net worth (capital and retained earnings) of \$682,710.71. Current assets are more than twice the amount of current liabilities. The profit and loss statement of USCO for the eleven months period ended November 28, 1971 shows net income after taxes of \$391,394.24.

C. South San Francisco Warehouse

(1) Facilities

8. USCO commenced its warehousing operations at 444 Allerton Avenue, South San Francisco in April, 1971.

9. There is only one public warehouseman located within a radius of two miles of USCO's South San Francisco warehouse, namely Pacific Service, and only four public warehouses are located within a radius of four miles of USCO's facility. Immediately south of USCO's facility there are no public warehouses within five miles.

10. The lessee of USCO's warehouse facility in South San Francisco is Uniroyal. USCO is a sublessee of said facility from Uniroyal.

11. USCO's South San Francisco warehouse facilities consist of the lease of all but 10,000 square feet of a 300 x 325 foot building, with storage height of approximately 23 feet and total space of approximately 97,500 square feet, located in a new industrial complex known as Cabot, Cabot & Forbes Office/Industrial Park. USCO's office occupies 7,000 square feet of the building leaving 80,500 square feet available for warehousing operations.

12. Said warehouse building, at the rear, accommodates a Southern Pacific Railroad spur track with three building bays to accommodate three rail cars for unloading and/or loading at the same time. The spur track is conveniently located to a drill track.

13. The entire outside area adjacent to USCO's South San Francisco warehouse facility is fully surfaced and available for parking and loading purposes. Ten tailgate spaces with dock-high loading facilities are maintained on the east and west sides of the building.

14. USCO's South San Francisco warehouse terminal is equipped with telephone, teletype and computer communications systems which connect this facility with all of the other USCO warehouses throughout the United States. The data processing system, which is nationwide in character, is available to all storers in the warehouse. Through the use of this system, orders processed are returned in the form of shipping orders which in turn are filled and shipped the following day.

15. The equipment used at USCO's South San Francisco warehouse operation includes 300 dexion racks, 150 pallet racks, 3 forklifts, 850 pallets, a conveyor belt, 40 order filling trucks, and one data processing machine. The conveyor belt is employed for the moving of merchandise from the packing lines and checking lines to the dock space area for loading onto common carrier trucks.

16. Mr. Procopio, the General Manager of USCO's South San Francisco warehouse, has been with USCO since 1967. He has been

employed with the parent company, Uniroyal, Inc. and USCO, for a period of 35 years and was instrumental in helping to get USCO started in the Uniroyal warehouses in Chicago, Illinois, and Port Clinton, Ohio. Throughout his 35 year career, Mr. Procopio has always been connected with the order processing and warehouse organization of Uniroyal and USCO.

17. There are a total of 45½ employees under the supervision of the General Manager engaged in the order processing and warehouse operations at USCO's South San Francisco warehouse, the one-half constituting an employee engaged for a period of 4 hours per day. Certain of the personnel were transferred in from other locations of the organization.

18. USCO conducts no carrier operations in conjunction with the operation of its warehouses at San Francisco and South San Francisco but employs common carriers to perform the distribution requirements of its storers.

19. By stacking, the volume of commodities stored at USCO's South San Francisco office could be considerably increased. Also a 75' x 100' addition could be made to the warehouse building to provide an additional 7,500 square feet of warehouse space, if needed.

(2) Affiliated Customer - Uniroyal

20. Of the 80,500 square feet of storage floor space available for warehousing at USCO's South San Francisco warehouse, 55,000 square feet is presently dedicated to the sole and exclusive use of the Consumer Products Division of Uniroyal. Uniroyal is committed to pay for said 55,000 square feet without regard to actual use.

21. The Western Division of Uniroyal stores canvas footwear, rubber footwear, industrial type clothing, sporting goods, clothing, golf balls and golf equipment at USCO's South San Francisco warehouse.

22. The special computer data processing system known as the Mohawk system which is available to Uniroyal through USCO's warehouses, enables Uniroyal's service organization to take orders from the trade, transmit such orders through the data processing system to the distribution centers at the USCO's warehouses, where USCO transmits the prepared order for shipment from the USCO warehouses, all within a 24-hour period. Such data processing system is a necessity in Uniroyal's business operations.

23. Uniroyal has not been solicited by Pacific Service as a public warehouse, and, even if it were, Uniroyal would favor USCO.

24. If USCO is granted a certificate of public convenience and necessity to operate a public warehouse at South San Francisco, Uniroyal would continue using USCO's warehousing facilities and services because of the location of USCO's South San Francisco warehouse and because USCO is equipped to handle Uniroyal's warehousing requirements from a service standpoint.

(3) Unaffiliated Customers

a. General

25. In the past USCO has restricted its customers at its South San Francisco warehouse to its parent company Uniroyal and to four unaffiliated customers, one of whom is departing and is being replaced by another customer.

26. At its South San Francisco warehouse USCO services only accounts which are national in organization and in the distribution of its goods and which request the storage space themselves. USCO enters into written warehouse agreements, designated "Private Warehouse Agreement", with its unaffiliated customers which are negotiated at arms length.

27. Such agreements with USCO's unaffiliated customers provide that goods are stored on a month-to-month contract, billed monthly in advance. USCO reserves the right to require removal of any lot upon thirty-days' notice. Such provision for notice does not apply to perishable or hazardous goods, for which USCO is required to give only such notice as is reasonable under the circumstances. The rates of storage are per calendar month. Storage is charged on a calendar month basis, all goods on hand on the first day of a month and all incoming shipments received up to and including the 15th of the month being charged a full month charge, and those received between the 15th and the end of the month, a half month charge. When changes are made in charges, the new rates apply to all goods received on or after the effective date. Charges are due and payable monthly in advance. USCO does not lease any designated space to its unaffiliated customers.

28. USCO issues warehouse receipts to its customers for goods stored in its South San Francisco warehouse.

29. The brochure which listed USCO's South San Francisco warehouse along with USCO's other warehouses within California and outside California made no distinction between public or private warehousing. Such brochure was distributed by USCO to parties

inquiring regarding warehouse space prior to the filing of the complaint herein. A copy of said brochure was given to the president of BDL Distributing Company when he inquired regarding the availability of warehouse space at USCO's South San Francisco warehouse.

30. Subsequent to the filing of the complaint herein USCO immediately, upon the request of its counsel, withdrew said brochures from distribution and deleted the reference to the South San Francisco warehouse.

31. Exhibit A attached to USCO's brief herein is a copy of the brochure with the South San Francisco warehouse listing deleted therefrom.

32. USCO has no solicitors and performs no solicitation relative to the South San Francisco warehouse operation.

33. Mr. Procopio, in the conduct of his management of the South San Francisco warehouses, uses two business cards, one in the name of Uniroyal, Inc., showing the address 444 Allerton Avenue, South San Francisco, and the other in the name of USCO Services, Inc., showing the address 6025 Third Street, San Francisco, California. Neither card reflects any holding out or advertising of public or private warehouse operations. Similarly the USCO letterhead on which the address is typed contains no reference to warehouse operations.

34. There are no signs on the USCO South San Francisco warehouse.

35. The USCO South San Francisco warehouse is not listed in the white or yellow pages of the telephone directory.

b. Papercraft

36. Papercraft Company, hereinafter called Papercraft, is engaged in the manufacturing of gift wrapping, ribbons, seals, tags and coordinated items and in the distribution of said items nationally throughout the Continental U.S.A.

37. Papercraft presently uses USCO's warehouse services at Vernon and at South San Francisco, California. Papercraft requested these services itself and was not solicited by USCO. The agreements with regard to services and charges were a consequence of arm's length transactions.

38. Papercraft has been using USCO's services at ten other locations throughout the country.

39. Papercraft is presently using approximately 10,000 square feet of warehouse space in USCO's South San Francisco warehouse and would want to continue using the same amount of space in such warehouse if USCO is certificated as a public warehouse. Papercraft is not committed (1) to use any minimum square footage of warehouse space, (2) to pay any minimum dollar charge, or (3) to use the facilities for any minimum period of time.

40. When a problem arises at any of the twelve USCO warehouses, Papercraft can report the problem to only one person at USCO and it will then be taken care of. Papercraft has been using USCO's services nationally for approximately three years and hasn't had one claim for loss or damage yet.

41. Papercraft has not been solicited by Pacific Service and has not inquired of any warehouseman other than USCO regarding warehouse space in the South San Francisco area.

c. Hoover Company

42. The Hoover Company, hereinafter called Hoover, has branch offices throughout the country and it distributes nationally throughout the 50 states.

43. Hoover is presently warehousing in USCO's South San Francisco warehouse under a written agreement denominated private warehouse agreement. Hoover was not solicited by USCO, but sought out USCO's services itself. Hoover requires in the vicinity of 10,000 square feet of warehouse space, but under the agreement with USCO, Hoover is not required to take any minimum amount of space or to pay any minimum amount of money. There also is no time limitation in the agreement.

44. Based upon experience over the years in other states Hoover has found USCO's services to be excellent. Hoover started with USCO's services in Baltimore in October of 1969.

45. In the event USCO is granted a certificate pursuant to its application herein, Hoover would continue to use USCO's services.

46. The 25 cents a pound per article coverage for loss or damage, which is common in California, does not cover Hoover's loss whenever there is an inventory shortage. Hoover's private warehouse contract with USCO provides much more coverage.

47. Hoover's problem with other warehouses in the San Francisco area was bad inventory count and their inability to reimburse Hoover because of the 25-cent per pound per article limitation.

48. Pacific Service has never solicited Hoover's warehouse business, and when it made its decision to store with USCO Hoover did not know of Pacific's existence.

(4) Prospective Customers

a. PPG Industries

49. PPG Industries, formerly known as Pittsburgh Plate Glass Company engages in the manufacture of fibreglass, chemicals, glass, paint, antifreeze and furniture.

50. PPG distributes its manufactured commodities throughout the 48 states and has a need for approximately 5,000 square feet of warehouse space in the South San Francisco area.

51. PPG now stores with USCO in six locations, out of a total of 126 warehouses throughout the country, and has received excellent service from USCO.

52. If the application herein is granted, PPG would like to store chromic acid, tri-thane, tri-chlorethylene, perchlorethylene, soda ash, caustic soda and other like chemicals at the USCO South San Francisco warehouse. PPG is willing and able to pay the rates and charges of USCO's proposed published tariff.

53. PPG is constantly growing and acquiring new customers. In the last three years it has grown from an \$800,000,000 company to over a billion-dollar company.

54. PPG likes to have a computer such as is provided by USCO at its South San Francisco office for its inventory records and outbound shipments.

55. PPG has made no inquiry regarding public warehouse service in South San Francisco because it would be pleased with USCO's service.

b. BDL Distributing Company

56. The president of Pacific Service and Pacific Coast Distributing Company, hereinafter called Pacific Distributing, also conducts business under the fictitious name of BDL Distributing Company, hereinafter called BDL. BDL distributes Pearl-Wick products.

57. BDL inquired of USCO regarding the availability of warehouse space for the Pearl-Wick products at USCO's South San Francisco warehouse. BDL was given a USCO brochure which included the South San Francisco warehouse among the listing of USCO warehouses nationwide and was told that warehouse space was available at USCO's South San Francisco warehouse.

58. A couple of weeks subsequent to the inquiry referred to in Finding 57 above USCO followed up with a letter to BDL inquiring whether anything further had developed regarding BDL's request for warehouse space.

c. Cabot, Cabot & Forbes Office/Industrial Park

59. The Cabot, Cabot & Forbes Office/Industrial Park, hereinafter called Industrial Park, in which USCO's South San Francisco warehouse is located, is a joint venture with Bethlehem Steel Corporation and covers an area of approximately 540 acres in South San Francisco with a present development of some 3,000,000 feet of existing warehouse. The Industrial Park is approximately 50 percent completed toward its full development.

60. Exhibit 9 shows the Annual Dollar Value of Industrial Building Permits Issued in the Industrial Park during the years 1964 to June 30, 1971 totals \$13,947,000 and that this total is 50.4 percent of the building permits issued during the same period in South San Francisco and 24.5 percent of the building permits issued in

San Mateo County. The 65 industrial and commercial tenants, many of whom are of substantial nation-wide distribution character such as Friden/Singer, Hotpoint Co., Olivetti, United Parcel, F. W. Woolworth Company and Xerox Corporation, in said park, together with the square footage which they occupy, are listed in Exhibit 10.

61. The Engineer-Coordinator of the Industrial Park who is engaged in the areas of sales, engineering and development would recommend USCO's South San Francisco warehouse to other Industrial Park occupants who have additional need for storage space, in the event USCO is granted the certificate of public convenience and necessity requested herein, in preference to another public warehouse, such as Pacific Service, outside the Industrial Park.

II. Pacific Service's Operations

62. Pacific Service is a California corporation conducting a public utility warehouse business at 229-230 Ryan Way, South San Francisco, California, pursuant to Decision No. 78055 dated December 8, 1970.

63. Pacific Service conducts the major portion of its public warehousing business at a building located at 230 Ryan Way in which it leases 20,000 square feet of which 2,500 square feet is office space and 17,500 square feet is available for public warehousing. The term of the lease is 10 years of which 7-1/2 years are unexpired. The building has two truck bays and a drill spur track at the back. It is a one-story tilt-up concrete building about 12 years old.

64. Pacific Service also conducts a part of its public warehouse operations at a building owned by its Chairman of the Board and Treasurer. The building has about 41,000 square feet which are used as follows: office space - 2,000 square feet; sublet to Belding Heminway - 10,000 square feet; three private warehouse accounts - 14,000 square feet; available for public warehousing - 15,000 square feet. This building also has a drill spur track at the back and three truck bays. It is a tilt-up one-story concrete building about ten years old.

65. Pacific Service has 200 dexion racks, 150 feet of pallet racks, 3 fork lifts, 2,500 pallets, 10 conveyor belts which total at least 200 feet, 30 order filing tables, teletype, and Mohawk data processing equipment. Only the private customers have made use of the data processing equipment.

66. The Pacific Service facilities are located in the First Utah Construction Industrial Tract in South San Francisco. The Second Utah Industrial Tract is directly across the freeway easterly. The Cabot, Cabot & Forbes Office/Industrial Park is somewhat west of the second Utah Industrial Park. These three industrial parks are within 2-1/2 miles of each other, and are connected with high underpasses under the freeway so there is easy access in and out of all of the tracts.

67. The First Utah Construction Industrial Park has a substantial number of major concerns such as Crown Zellerbach, J. C. Penney, Emporium, Union Carbide, Coyne Cylinder and Standard Oil Company of California. Most of these concerns have their own warehouse facilities and there is very little overflow. Pacific Service has found the same to be the case with the Cabot, Cabot & Forbes Office/Industrial Park.

68. Each of the two principal officers of Pacific Service has substantial warehousing experience.

69. Pacific Service is listed in the telephone directory as a public warehouseman and is available to anybody who has a need for its service.

70. Since its certification Pacific Service has aggressively solicited business, contacting trucking companies, the railroad, airlines, air freight forwarders, importers and exporters, banks, food brokers, governmental offices and organizations, department stores, manufacturing concerns, real estate operations, and houseware distributors.

71. Many concerns meet their warehousing requirements through use of their own facilities, warehouses at the docks, and cooperative warehouses. Much freight is immediate-delivery freight.

72. Pacific Service has never lost a customer to outside storage. It anticipates losing a major account which presently uses about 10,000 square feet in the near future, however, because it is moving into its own facilities.

73. Pacific Service has available 32,500 square feet for public utility use. It can handle additional goods by stacking but does not presently stack in order to minimize labor costs.

74. Pacific Service at all times could have handled the warehouse business that has been handled by USCO, excluding the Uniroyal storage, and it has never turned down anyone applying to it for public warehouse storage.

75. Papercraft and PPG, two unaffiliated customers of USCO, did not know of Pacific Service at the time they decided to store with USCO. Hoover, another USCO customer, made its decision to store with USCO before Pacific Service was certificated.

III. Pacific Distributing's Operations

76. Pacific Distributing conducts business as a private warehouse at 229 Ryan Way, South San Francisco. The two principal officers of Pacific Service hold the same positions with Pacific Distributing. Pacific Distributing took over the private warehouse operations of Pacific Service at the time Pacific Service was certificated as a public utility warehouse.

77. Pacific Distributing has three national accounts which it serves as a private warehouse pursuant to a written lease which provides for designated space within the warehouse and a minimum term of two years. The lessee has the obligation to pay rent whether or not he has any goods stored in the designated space. The number of private warehouse accounts ranges from three to five.

78. Pacific Distributing also renders service to its private warehouse customers pursuant to a service agreement.

79. Pacific Distributing does not solicit private warehouse business and does not issue warehouse receipts.

80. Private customers who have left Pacific Distributing have left because they have outgrown Pacific Distributing's facilities and have decided to build their own warehouse facilities in the Los Angeles area.

III. Ultimate Findings

81. USCO is fit and able to perform public utility warehouseman operations in the city of South San Francisco in the 80,500 square feet of warehouse space and 7,000 square feet of office space available at USCO's South San Francisco warehouse.

82. USCO is operating and conducting a private warehouse operation at its South San Francisco warehouse with respect to the 55,000 square feet of warehouse space presently dedicated to the sole and exclusive use of the Consumer Products Division of USCO's parent corporation, Uniroyal.

83. Subsequent to commencing its warehouse operations at South San Francisco in April, 1971 USCO has been and to the date of hearing was operating as a public utility warehouseman without a certificate of public convenience and necessity at its South San Francisco warehouse with respect to the warehouse services furnished to its four unaffiliated customers, including Papercraft and Hoover Company.

84. Pacific Service could have handled the warehouse business that has been handled by USCO for its unaffiliated customers, but Pacific Service could not have handled the warehouse business of USCO's parent Uniroyal which has been handled by USCO at its South San Francisco warehouse, the warehouse business of prospective customers such as PPG Industries and BDL Distributing Company and all the other warehouse business that may be developed by aggressive solicitation of the industrial and commercial tenants of Cabot, Cabot & Forbes Office/Industrial Park.

25. Public convenience and necessity require the public utility warehouseman service proposed by USCO in the 80,500 square feet of storage space and 7,000 square feet of office space available for warehouseing at USCO's South San Francisco warehouse.

Conclusions

Based upon the foregoing findings of fact, the Commission concludes as follows:

1. A certificate of public convenience and necessity should be granted to USCO to operate as a public utility warehouseman in the 80,500 square feet of warehouse space available at its warehouse located at 444 Allerton Avenue, South San Francisco, California.

2. Upon acceptance by USCO of the certificate of public convenience and necessity granted to USCO in the order below, the temporary restraining order should be dissolved and the complaint in Case No. 9293 should be dismissed.

O R D E R

IT IS ORDERED that:

1. A certificate of public convenience and necessity is granted to USCO Services, 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 as set forth in Appendix A attached hereto and made a part hereof.

2. The certificate of public convenience and necessity granted in paragraph 1 of this order shall supersede the certificate of public convenience and necessity granted by Decision No. 80466 dated August 31, 1972 in Application No. 53474, which certificate is revoked effective concurrently with the effective date of the tariff filings required by paragraph 4 hereof.

3. Applicant 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.

4. In providing service pursuant to the certificate herein granted, applicant shall comply with and observe the following service regulations. Failure so to do may result in a cancellation of the operating authority granted by this decision.

- (a) Within thirty days after the effective date hereof, applicant shall file a written acceptance of the certificate herein granted. Applicant 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.
- (b) Within one hundred twenty days after the effective date hereof, applicant shall establish the service herein authorized and file tariffs, in triplicate, in the Commission's office.
- (c) 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 establishment of the service herein authorized.

- (d) The tariff filings made pursuant to this order shall comply with the regulations governing the construction and filing of tariffs set forth in the Commission's General Order No. 61-A.

5. On the date of the acceptance by USCO pursuant to ordering paragraph 4(a) above of the certificate of public convenience and necessity granted to USCO in ordering paragraph 1 above, without further order of this Commission the temporary restraining order issued by Decision No. 79429 on November 30, 1971 in Case No. 9293 shall be dissolved and the complaint in Case No. 9293 shall be dismissed.

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

Dated at San Francisco, California, this 23rd day of JANUARY, 1973.

Vernon L. Sturgeon
President

William Symons, Jr.
William Symons, Jr.
Commissioners

Commissioner William Symons, Jr., being necessarily absent, did not participate in the disposition of this proceeding.

L. D. Smith
William Symons, Jr., Commissioner.

USCO Services, 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>
Vernon	5,000
San Francisco	25,000
Santa Ana	100,000
South San Francisco	80,500

(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. 80981, Application No. 52791.

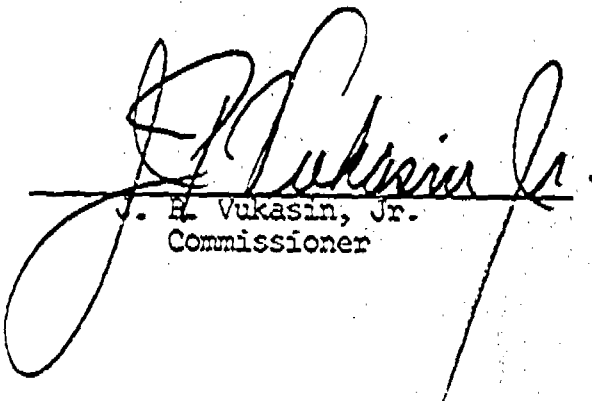
A. 52791 D. 80981

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COMMISSIONER J. P. VUKASIN, JR., dissenting.

I dissent.

The foregoing decision legitimizes an illegal operation. Sound regulation would require compliance with state laws and commission regulations before a certification such as this is granted.



J. P. Vukasin, Jr.
Commissioner

San Francisco, California

January 23, 1973