

ORIGINAL

Decision No. 81731

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application  
of FIREBAUGH ELEVATOR & STORAGE  
CO., a corporation, for a Certi-  
ficate of Public Convenience and  
Necessity authorizing operation  
as a public warehouseman at  
Los Banos, California.

Application No. 54013  
(Filed May 4, 1973)

O P I N I O N

Firebaugh Elevator & Storage Co., a California corporation, has been operating as a public warehouseman of agricultural commodities at Firebaugh for many years. As an expansion of its Firebaugh public warehouse operations it obtained a steel structure 140 feet long and 80 feet wide on Tanner Road, Los Banos. This structure is a flat storage warehouse with concrete floor and galvanized roof and walls. Applicant has been storing bulk grain at this facility and has been charging the rates in its tariff for the Firebaugh warehousing operation. Applicant asserts that it did not realize that separate operating authority for operation in Los Banos was required and inadvertently had failed to apply heretofore for the requisite authority. It is seeking that authority here.

The Commission's Division of Finance and Accounts caused an inquiry to be made of the financial capability of applicant to expand its warehouse operations. The report of Robert I. Anderson, Financial Examiner III, states:

"By the subject application, Firebaugh is requesting certification of an agricultural warehouse in Los Banos. The purpose of this memo is to evaluate the financial capability of the applicant to operate such a warehouse. With that in mind, I reviewed the application, visited the warehouse in question, talked to one of the stockholders (Mr. Frank Moradian), obtained certain documentation from the applicant's two stockholders, and examined the applicant's accounting records.

"The December 31, 1972 balance sheet in the application shows:

Fixed assets, net of depreciation		\$ <u>30,542</u>
Financed by:		
Current liabilities	\$61,787	
Less current assets	<u>3,876</u>	\$ 57,911
Long-term debt		\$ 56,972
Net equity		(84,341)
		<u>\$ 30,542</u>

Summaries of results of operations for 1972 shown in the application and those reported to the Commission for 1968 to 1971 are as follows:

	<u>1968</u>	<u>1969</u>	<u>1970</u>	<u>1971</u>	<u>1972</u>
Operating Revenues	\$28,290	\$ 3,940	\$ 14,029	\$ 14,087	\$ 9,964
Operating Expenses	<u>27,138</u>	<u>25,191</u>	<u>21,594</u>	<u>24,785</u>	<u>16,666</u>
Net Op. Rev. (Loss)	\$ 1,153	\$(21,251)	\$ (7,566)	\$(10,698)	\$ (6,702)

These results include both of the applicant's warehouses, one in Firebaugh and the one in Los Banos for which the certificate is sought.

"Based on the above figures it would appear that the applicant is not financially capable of doing anything. However, the situation is not as impossible as it appears.

"The applicant's common stock is owned equally by Mr. Beverly H. Jones and Mr. Frank Moradian whose net worths are \$344,000 and \$505,872, as of May 31, 1973 and March 15, 1973, respectively. These two men have signed a letter to the Commission which states that they 'intend to furnish additional working capital to the corporation as may be needed, to enable the corporation to continue operations as a public utility warehouseman.'

"The long-term debt of \$56,972 is owed to:

Penny Newman Grain Co.	\$40,842
Pacheco Feed and Seed Co.	<u>16,130</u>
	<u>\$56,972</u>

Of the current liabilities \$61,663 is owed to Penny Newman Grain Co. Frank Moradian owns all of the stock of these two creditors.

"As regard the pattern of losses, Mr. Moradian stated that the losses are realistic, that they are the result of low usage of the warehouse space. The 1972 income statement is in accord with the accounting records. Mr. Moradian stated that the rates charged at both warehouses are those authorized by Tariff #38, and that these are the rates which are charged to the affiliates. Most of the grain stored belongs to the affiliates. In requesting the Los Banos certificate, Mr. Moradian states that he hopes to increase the warehouse usage and thereby reduce or eliminate the losses.

"From the above, it is apparent that the applicant, standing alone, is not financially capable. However, when the 'friendly' nature of the creditors and the pledged support of the stockholders are taken into consideration, it is reasonable to conclude that the applicant is financially capable of serving the public at its agricultural warehouse in Los Banos. As far as financial capability is concerned, a certificate should be granted as requested."

There is no other party operating a public utility warehouse for the storage of agricultural commodities at Los Banos. Applicant is presently serving several storers of agricultural commodities at its Los Banos facility. Applicant is an experienced warehouseman and has the financial ability to conduct public warehousing operations at Los Banos. A copy of the application was served upon the California Warehousemen's Association. Notice of the filing of the application appeared in the Commission's Daily Calendar. No protests have been received. We find with reasonable

certainly that the project involved in this proceeding will not have a significant effect on the environment. We find that public convenience and necessity require the operation by applicant of a public utility warehouse for the storage of agricultural commodities in 11,200 square feet of warehouse space at Los Banos, California. We conclude that the application should be granted and that a public hearing is not necessary.

Applicant is 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, such 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.

Applicant's present operation at Firebaugh is covered by a prescriptive operative right set forth in Appendix A of order dated August 16, 1960 in Case No. 6835. So that all of its operative rights will be set forth in one appendix, the prescriptive operative right will be restated in Appendix A attached hereto. Appendix A of order dated August 16, 1960 in Case No. 6835 will be canceled.

O R D E R

IT IS ORDERED that:

1. A certificate of public convenience and necessity is granted to Firebaugh Elevator & Storage Co., a corporation, authorizing it 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 set forth in Appendix A, attached hereto and made a part hereof.

2. In providing service pursuant to the authority granted by this order, applicant shall comply with the following service regulations. Failure so to do may result in a cancellation of the authority.

- (a) Within thirty days after the effective date of this order, applicant shall file a written acceptance of the certificate granted. Applicant is placed on notice that if it accepts the certificate it will be required, among other things, to file annual reports of its operations.
- (b) Within one hundred twenty days after the effective date of this order, applicant shall establish the authorized service 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 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-Series.

3. Appendix A of order dated August 16, 1960 in Case No. 6835 is canceled on the effective date of the tariff filings required by paragraph 2(b) hereof.

4. 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.

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

Dated at San Francisco, California, this 14th day of AUGUST, 1973.

Vernon L. Sturgeon  
President

[Signature]  
[Signature]

Commissioners

Commissioner William Symons, 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.

<u>Location</u>	<u>Number of Square Feet of Floor Space</u>
Los Banos	11,200

<u>Location</u>	<u>Area or Capacity</u>
Firebaugh	9,000 tons bulk storage capacity

(End of Appendix A)