

Decision No. 82315

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of TULELAKE COLD STORAGE COMPANY, also known as Tulelake Cold Storage Co., a partnership consisting of George A. Myers, Percy Murray, Marie Gentry, Richard M. Smith and Rosemary June Myers, for authority to transfer all operating rights and permits of applicant to Tulelake Cold Storage, Inc., a corporation dba Tulelake Cold Storage Co.

Application No. 53808
(Filed January 26, 1973;
amended September 13, 1973)

O P I N I O N

By an agreement of sale dated February 29, 1972, George A. Myers, Percy Murray, Karl D. Gentry (Gentry is deceased and is now represented by Marie Gentry as distributee of the estate of Karl D. Gentry), Richard M. Smith, and Rosemary June Myers, doing business as Tulelake Cold Storage Company, agreed to sell and transfer, and Lowell C. Kenyon agreed to purchase and acquire, all of the assets of the company, including a prescriptive right to operate as a public utility warehouseman near the city of Tulelake. Lowell C. Kenyon has since assigned all of his rights under the agreement to Tulelake Cold Storage, Inc., a newly formed California corporation, which requests authority to issue 37,500 shares of its capital stock for a cash consideration of \$60,000 and authority to execute a deed of trust on the real property to Bank of America.

The agreed cash consideration is \$375,000. A value of \$296,000 was placed upon the real property and improvements thereto, a value of \$65,000 upon machinery, equipment, and supplies, a value of \$10,000 for a covenant not to compete, and a value of \$4,000 for goodwill.

The corporation proposes to issue 37,500 shares of its capital stock to its president, Lowell C. Kenyon, for a cash consideration of \$60,000. As of October 31, 1972, the corporation indicated a net worth in the amount of \$53,136.

After consideration the Commission finds that the proposed transfer would not be adverse to the public interest; that the proposed security issue is for proper purposes and that the property or labor to be purchased or paid by the issue of security authorized by this decision is reasonably required for the purposes specified, which purposes are not, in whole or in part, reasonably chargeable to operating expenses or to income.

A public hearing is not necessary.

The Commission further finds with reasonable certainty that the project involved in this proceeding will not have a significant effect on the environment.

The authorization granted shall not be construed as a finding of the value of the rights and properties authorized to be transferred.

The order which follows will provide for, in the event the transfer is completed, the revocation of the prescriptive right held by applicants sellers and the issuance of a certificate in appendix form to Tulalake Cold Storage, Inc.

Tulalake Cold Storage, Inc., 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 holders 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. On or before June 14, 1974, George A. Myers, Percy Murray, Marie Gentry, as distributee of the estate of Kerl D. Gentry, Richard M. Smith, and Rosemary June Myers may sell and transfer the operative rights and property referred to in the application to Tulalake Cold Storage, Inc.

2. Within thirty days after the transfer the purchaser shall file with the Commission written acceptance of the certificate and a true copy of the bill of sale or other instrument of transfer.

3. Purchaser shall amend or reissue the tariffs on file with the Commission, naming rates and rules governing the warehouse operations transferred to show that it has adopted or established, as its own, the 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 transfer. 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-Series. Failure to comply with the provisions of General Order No. 61-Series may result in a cancellation of the operating authority granted by this decision.

4. On or before the end of the third month after the transfer the purchaser shall cause to be file 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 year to and including the effective date of the transfer.

5. In the event the transfer authorized in paragraph 1 is completed, effective concurrently with the effective date of the tariff filings required by paragraph 3, a certificate of public convenience and necessity is granted to Tulelake Cold Storage, Inc., 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.

6. The prescriptive authority to operate as a public utility warehouseman near the city of Tulelake, presently held by applicant sellers, is revoked effective concurrently with the effective date of the tariff filings required by paragraph 3.

7. Purchaser shall maintain its accounting records in conformance with any applicable Uniform System of Accounts or Chart of Accounts as prescribed or adopted by this Commission, and each year shall file with the Commission an annual report of its operations in such form, content, and number of copies as the Commission, from time to time, shall prescribe.

8. After the effective date hereof purchaser may issue 37,500 shares of its capital stock to Lowell C. Kenyon for a cash consideration of \$60,000.

9. Applicant purchaser may execute the deed of trust according to the terms and conditions as set forth in Exhibit C attached to the application, as amended.

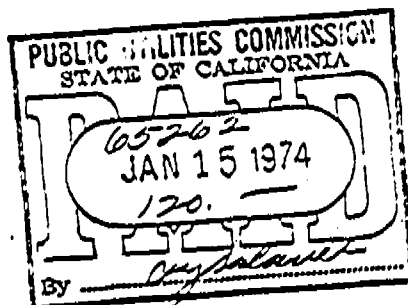
10. The issuer of the securities authorized by this order shall file with the Commission a report, or reports, as required by General Order No. 24-Series.

11. The authority granted by this order to issue an evidence of indebtedness (and to execute and deliver an encumbering document) will become effective when the issuer has paid the fee prescribed

by Section 1904(b) of the Public Utilities Code, which fee is \$120.
In other respects the effective date of this order shall be twenty
days after the date hereof.

Dated at San Francisco, California, this 8th
day of JANUARY, 1974.

Vernon L. Stinson
President
William J. Amos Jr.
J. H. Miller
Commissioners



Tulelake Cold Storage, Inc., 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>
Tulelake	144,000

(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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