

ORIGINAL

Decision No. 82363

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of:

(a) BERNARD J. HECHT dba LOS ANGELES DISTRIBUTION CENTER, to purchase, and the ESTATE OF CLARENCE J. SMITH, deceased, and the ESTATE OF ABBIE MAY SMITH, also known as ABBIE M. SMITH, deceased, to sell, a public utility warehouse operative right pursuant to Sections 851, et. seq. and Section 1052 of the Public Utilities Code; and upon approval thereof

(b) To transfer said warehouse operation from Los Angeles to Montebello, California;

(c) To establish at 50,000 the square footage authorized under said warehousing authority pursuant to Section 1051 of the Public Utilities Code; and

(d) For authorization to increase the tariff applicable to the warehouse operative right to the "Dawson No. 28-A" tariff.

Application No. 54463
(Filed November 19, 1973)

O P I N I O N

Herbert Arthur Houser, as Executor of the Estate of Clarence J. Smith, and Herbert Arthur Houser and Nancy Ellen Smith Porter, as Executors of the Estate of Abbie May Smith, request authority to sell and transfer, and Bernard J. Hecht, doing business as Los Angeles Distribution Center, requests authority to purchase and acquire, a certificate of public convenience and necessity authorizing operations as a public utility warehouseman in Los Angeles.

The certificate is prescriptive in nature and was acquired by Abbie May Smith and Clarence J. Smith by Decision No. 37736 dated March 20, 1945 in Application No. 26549. The agreed cash consideration is \$3,000.

Applicant purchaser also requests authority to transfer the operation from Los Angeles to Montebello and to file rates, rules, and regulations similar to those set forth in California Warehouse Tariff Bureau, Warehouse Tariff No. 28-A, Cal. P.U.C. 193, Jack L. Dawson, Agent.

Applicant purchaser presently operates a private warehouse in Montebello. He owns one warehouse and leases another. Equipment includes modern, high-lift forklifts, fourway hardwood pallets, and pallet racks. As of June 30, 1973, applicant purchaser indicated a net worth in the amount of \$5,899.

It is alleged that applicant purchaser has had many years of experience in the operation of warehouses; that after diligent inquiry, including examination of public and private records, applicant purchaser is informed and believes that there is no authorized public utility warehouseman operating in the city of Montebello; that the tariff presently on file is Dawson's No. 7-C; that there has been no adjustment in the tariff since 1955; that said tariff has become incompatible with the professional operation of a modern public warehouse facility; that applicant purchaser proposes to move the location of the warehouse operation from old, inefficient, and inadequate facilities to new facilities with corresponding higher costs; that the proposed rates and charges set forth in the Dawson No. 28-A tariff have been adopted by many existing public warehouses; and that said rates and charges are fair and reasonable.

A copy of the application was served upon the Los Angeles Warehousemen's Conference of the California Trucking Association. No protest has been received.

After consideration the Commission finds that:

1. The proposed transfer would not be adverse to the public interest.
2. Public convenience and necessity no longer require operations as a public utility pursuant to the prescriptive authority herein considered in the city of Los Angeles.
3. Public convenience and necessity require the services of applicant purchaser as a public utility warehouseman in the city of Montebello.
4. The increases in rates and charges proposed by applicant purchaser are justified.
5. The authorization granted shall not be construed as a finding of the value of the rights and properties authorized to be transferred.
6. We further find with reasonable certainty that the project involved in this proceeding will not have a significant effect on the environment.

The Commission concludes that the application should be granted. The order which follows will provide for, in the event the transfer is completed, the revocation of the certificate presently held by the Estates of Abbie M. Smith and Clarence J. Smith and the issuance of a certificate in appendix form to Bernard J. Hecht. A public hearing is not necessary.

Bernard J. Hecht 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.

O R D E R

IT IS ORDERED that:

1. On or before August 1, 1974, Herbert Arthur Houser as Executor of the Estate of Clarence J. Smith and Herbert Arthur Houser and Nancy Ellen Smith Porter as Executors of the Estate of Abbie May Smith may sell and transfer the operative rights referred to in the application to Bernard J. Hecht.
2. Within thirty days after the transfer the purchaser shall file with the Commission a true copy of the bill of sale or other instrument of transfer.
3. On or before the end of the third month after the transfer, the 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 sellers for the period commencing with the first day of the current year to and including the effective date of the transfer.
4. In the event the transfer authorized in paragraph 1 is completed, effective concurrently with the effective date of the tariff filings required by paragraph 5, a certificate of public convenience and necessity is granted to Bernard J. Hecht, authorizing him 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.
5. Purchaser shall file tariffs, in triplicate, the same, or similar to, those set forth in California Warehouse Tariff Bureau, Warehouse Tariff No. 28-A, Cal. P.U.C. 193, Jack L. Dawson, Agent. The tariff filings shall be made effective on not less than ten days' notice to the Commission and the public, and the effective date of 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.

6. The prescriptive authority acquired by Decision No. 37736 dated March 20, 1945 in Application No. 26549 is revoked effective concurrently with the effective date of the tariff filings required by paragraph 5.

7. Purchaser shall, at the direction of the owner of any property in storage at the present location, transport such property to the new facility of purchaser or any available public utility warehouse in the vicinity of Montebello at the expense of purchaser and at no expense or risk to the owner of the property transported.

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

Dated at San Francisco, California, this 22nd
day of JANUARY, 1974.

Vernon L. Steyer
President
William J. ...
P. ...
...
...
Commissioners

Bernard J. Hecht, 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>
Montebello	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. 82363, Application No. 54463.