

Decision No. 83655**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the matter of the Application of
 Leyba Trucking Service, Inc., a
 California corporation d/b/a
 ENTERPRISE TRUCKING SERVICE, for
 a Certificate of Public Convenience
 and Necessity to engage in warehouse
 operations with the Cities of
 Oakland and Emeryville, California.

Application No. 54856
 (Filed May 7, 1974)

E. H. Griffiths, for applicant.
Walter J. Bozek, for Bay Cities Warehouse Co., protestant.
William P. Campana, and Geoffrey W. Meloche, for
 the Commission staff.

O P I N I O N

Leyba Trucking Service, Inc., doing business as Enterprise Trucking Service, requests a certificate of public convenience and necessity authorizing operations as a public utility warehouseman for the storage of general commodities in 40,000 square feet of space in the city of Oakland and 28,000 square feet of space in the city of Emeryville. Copies of the application were served upon 10 public warehouses serving in the cities of Oakland, Emeryville, Hayward, San Francisco, San Leandro, and Union City as well as upon the California Warehouseman's Association. Letters of protest were received from Haslett Company, Alltrans Express, Bay Area Warehouse Co., and Bay Cities Warehouse Company, Inc. Only the latter company appeared in support of its protest at a public hearing which was held before Examiner Daly on September 20, 1974 at Oakland.

Applicant has been conducting a combined warehouse and trucking operation since 1963. The transportation service is performed within 150 miles of Oakland pursuant to radial highway common carrier and highway contract carrier permits duly issued by this Commission. The warehouse portion of applicant's service is being conducted in leased single story, concrete buildings located in Oakland and Emeryville.

For many years applicant conducted its warehouse operations under the impression that the service was that of a private warehouseman. As the result of a formal investigation, the Commission, by Decision No. 82457 dated February 13, 1974 in Case No. 9579, found that applicant's warehouse operations were those of a public utility and applicant was ordered to cease and desist. In compliance with the Commission's order applicant reduced the number of storage accounts from 8 to 4. It is alleged that applicant filed the instant application in response to the urging of its former accounts, who assertedly have a continuing need for applicant's combined warehouse and trucking service.

If certificated, applicant proposes to assess the same rates as those set forth in California Warehouse Tariff Bureau, Warehouse Tariff No. 48-A, Cal. P.U.C. 253. As of December 31, 1973, applicant indicated a net worth in the amount of \$75,389.

Four public witnesses appeared in support of the application, representing such companies as James T. Powell, Inc. (manufacturers' representative and distributor of bottle goods), Midland Ross Corp. (sale and distribution of electric products), Baxter Company, Inc. (manufacturers' representative and distributor of electrical materials), and Pepsi-Cola Company. Each testified that applicant's combined warehouse and trucking service is an integral part of their respective company's business operation. In most instances applicant's employees have an intimate knowledge of the customer's products, not only as to storage and handling, but also as to their distribution and delivery.

The president of Bay Cities Warehouse Company, Inc. testified that his company is conducting operations as a public utility warehouseman in Hayward and has unused storage space available. He further testified that except for a warehouseman's convention, which was being held at the same time as the application was being heard, other companies would have appeared in protest.

After consideration the Commission finds that:

1. Applicant has been conducting operations as a warehouseman and permitted carrier for many years in the cities of Oakland and Emeryville.

2. Applicant's combined services constitute an integral and essential part of its customers' business operation because of the personal knowledge that applicant's employees have acquired with respect to the storage, handling, distribution, and delivery of their products.

3. Although the protestant herein may have unused storage space available, the record fails to demonstrate that it provides the kind of services required to meet the business needs and requirements of applicant's present and former accounts.

4. Public convenience and necessity require applicant's service as a public utility warehouseman in 40,000 square feet of space in the city of Oakland and in 28,000 square feet of space in the city of Emeryville.

5. Applicant possesses the necessary experience and financial experience to conduct the proposed service.

6. With reasonable certainty the project involved in this proceeding will not have a significant effect on the environment.

The Commission concludes that the application should be granted.

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.

O R D E R

IT IS ORDERED that:

1. A certificate of public convenience and necessity is granted to Leyba Trucking Service, 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.

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.

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

Dated at San Francisco, California, this 29th
day of OCTOBER, 1974.

Thomas L. Stearns
President
William J. Quinn
Robert E. McFarland
Commissioners

Enterprise Trucking Service, 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>
Oakland	40,000
Emeryville	23,000

(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. 83655, Application No. 54856.