

ORIGINAL

Decision No. 83725

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of BUCK'S TRUCKS for
certificate of public convenience
and necessity to operate a public
warehouse in the City of Newark,
California, pursuant to the
provisions of Section 239(b),
239(c) and 1051 of California
Public Utilities Code.

Application No. 54917
(Filed May 31, 1974)

Naranjan S. Heer, Attorney at Law,
for applicant.
Joseph Cazessus, for Gibraltar
Warehouse, protestant.
W. P. Campana and Maryalis McGuiness,
for the Commission staff.

O P I N I O N

Applicant operates as a radial highway common carrier and a highway contract carrier of general commodities within a 350-mile radius of Fremont. Applicant has been a California corporation since 1968. It leased 5,000 square feet in an empty warehouse and filed this application. After protest a hearing was held before Examiner Fraser on September 16, 1974 at San Francisco and the matter was submitted.

Applicant has applied for authority to convert the leased 5,000 square feet into a public warehouse. The building has a total area of 20,000 square feet, which is available if applicant requires additional space. There are no other public warehouses in Newark, and two shippers have promised to utilize the proposed service. Applicant will join a warehouse tariff bureau and adopt its rates. No special services will be provided, and no goods will be acquired

from other public warehouses since applicant will be serving its regular shippers. A spur track runs into the building leased by applicant, which satisfies the frequent request that rail service should be available at the warehouse. Applicant emphasized that goods have been stored in the leased area for one shipper. Others have requested the same service and applicant called the Public Utilities Commission for information. A Commission representative thereupon advised that a public warehouse certificate should be obtained if storage is provided for several shippers. Applicant's March 31, 1974 balance sheet shows a net worth of \$45,030 and a net profit of \$6,323.83 for the first three months of 1974. Current liabilities total only \$1,862. Applicant proposes to store general commodities, including food, and will palletize to load and unload by forklift. Applicant operates two diesel tractors, two 16-foot bobtail trucks, six trailers, and two forklifts. It now employs three drivers and will hire a fourth if this application is granted. No warehouse personnel will be required. The building is a one-story metal building with a concrete floor. It has one large entrance and no platform.

A representative from protestant Gibraltar Warehouses (Gibraltar) testified that a 5,000-square foot public warehouse in Newark will not affect Gibraltar's business, but applicant may be a competitor if it expands to 20,000 square feet. He advised there are four large public warehouses within a ten-mile radius of applicant and at least two private warehouses. More shippers are providing their own storage. Gibraltar has 133,000 square feet of storage at Union City (about 5 miles from Newark) and 45,000 square feet is not being used. Gibraltar suffered serious losses during 1974 to date and other operators have the same problem. The area may not support another warehouse, and it is risky to grant all requests for operating authority. Gibraltar is listed in the phone book and the National Warehouse Directory, but does not solicit or advertise.

Findings

1. Applicant operates as a permitted carrier of general commodities within a 350-mile radius of Newark.

2. It has applied for authority to operate 5,000 square feet of storage space as a public warehouse for the benefit of certain shippers it serves as a trucker.

3. Protestant does not oppose a grant of 5,000 square feet of storage space, but does not favor further expansion by the applicant.

4. The protest is directed at the possibility of future expansion of applicant's warehouse beyond 20,000 square feet as authorized by Section 1051 of the Public Utilities Code. The protest will be denied in view of the limited scope of applicant's trucking operation and the restriction imposed by the size of the occupied warehouse.

5. There are no public warehouses in Newark, and applicant does not presently intend to exceed the 5,000 square feet requested.

6. Public convenience and necessity require that this application be granted.

7. We find with reasonable certainty that the project involved in this proceeding will not have a significant effect on the environment.

We conclude 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 Buck's Trucks, a corporation, authorizing it to operate as a public utility warehouseman, as defined in Sections 239(b) and (c) 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. 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 19th day of NOVEMBER, 1974.

William Lyons Jr. President
Robert E. McFarland Commissioners

Commissioner Vernon L. Sturgeon, being necessarily absent, did not participate in the disposition of this proceeding.

Bucks Trucks, 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 Sections 239(b) and 239(c) 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>
Newark	5,000

(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. 83725, Application No. 54917.