

LSC

Decision No. 83817

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of:)

(a) CITY FREIGHT LINES, a corporation,)
to transfer, and of CITY DISTRIBUTION)
SERVICES, a corporation, to acquire,)
a public warehouse certificate)
authorizing storage in the Cities of)
Anaheim, Long Beach and Santa Fe)
Springs, California.)

(b) CITY DISTRIBUTION SERVICES, a)
corporation, for a certificate of)
public convenience and necessity)
authorizing storage of general)
commodities in the City of Carson,)
California.)

(c) CITY DISTRIBUTION SERVICES, a)
corporation, to issue shares of its)
common capital stock and to assume)
indebtedness.)

(d) CITY FREIGHT LINES, a corporation,)
for authority to sell and transfer)
warehouse and utility properties.)

Application No. 55277
(Filed October 29, 1974)
and Amendment
(Filed November 21, 1974)

INTERIM OPINION

City Freight Lines seeks authority to transfer its public utility warehouseman certificate of public convenience and necessity and prescriptive operative right and related assets to City Distribution Services, and the latter seeks authority to issue 15,500 shares of its \$100 par value capital stock and certificates representing 700 shares of its capital stock, and to assume long-term obligations. In addition, City Distribution

Services seeks authority to acquire shares of capital stock of certain California public utilities, and a certificate of public convenience and necessity to operate as a public utility warehouseman in the City of Carson.

City Freight Lines is a California corporation operating as a public utility warehouseman in the Cities of Anaheim and Santa Fe Springs pursuant to a certificate of public convenience and necessity granted by, and a prescriptive operative right in the City of Long Beach stated in, Decision No. 82274, dated December 18, 1973, in Application No. 54500. In addition, the company operates as a highway common carrier, a petroleum irregular route carrier, under permits issued by this Commission and under Interstate Commerce Commission authority.

City Distribution Services is a California corporation incorporated on January 28, 1974. It proposes to acquire said public utility warehouseman certificate of public convenience and necessity and prescriptive operative right, together with certain other assets having a reported May 31, 1974 book value of \$2,069,934.93, for a consideration of 15,500 shares of its \$100 par value common capital stock plus the assumption of liabilities in the aggregate amount of \$519,934.93.

City Distribution Services proposes to acquire, through separate mergers with two nonutility affiliated companies, additional warehouse and motor carrier terminal property and other assets. The total assets to be so acquired aggregate \$945,320.20, offset in part by liabilities in the aggregate amount of \$245,944.47, which City Distribution Services proposes to assume. One of said mergers would result in the conversion of 7,000 shares of \$10 par value capital stock of the merging corporation into 700 shares of \$100 par value capital stock of City Distribution Services, and the latter would issue certificates representing said 700 shares.

As a result of the proposed transactions, the same two shareholders who each hold 50% of the capital stock of City Freight Lines would also each hold 50% of the capital stock of City Distribution Services.

The application indicates that City Freight Lines has been conducting public utility warehouse operations in the City of Carson under the assumption that, since the Carson operations are conducted using a Long Beach post office address, the company's Long Beach operative authority would cover the Carson operations. In order to clarify the uncertainty and to increase the square footage of public utility warehouse storage, City Distribution Services seeks a public utility warehouseman certificate of public convenience and necessity authorizing the storage of general commodities in the City of Carson in the amount of 120,000 square feet. There are no protests to the granting of the certificate.

City Distribution Services proposes to acquire from City Freight Lines various marketable securities including shares of capital stock of General Telephone Company of California, Pacific Gas and Electric Company, Southern California Edison Company and Transcon Lines, each being a California corporation operating as a public utility subject to the jurisdiction of this Commission. In this connection Section 852 of the Public Utilities Code reads as follows:

"852. No public utility shall purchase or acquire, take or hold, any part of the capital stock of any other public utility, organized or existing under or by virtue of the laws of this State, without having been first authorized to do so by the commission. Every assignment, transfer, contract, or agreement for assignment or transfer of any stock by or through any person or corporation to any corporation or otherwise in violation of any of the provisions of this article is void and of no effect, and no such transfer shall be made on the books of any public utility. Nothing herein contained shall prevent the holding of stock heretofore lawfully acquired."

After consideration the Commission finds that:

1. The proposed transactions would not be adverse to the public interest.
2. The proposed stock and stock certificates would be for proper purposes.
3. The money, property or labor to be procured or paid for by the stock and stock certificates herein authorized is reasonably required for the purposes specified herein, which purposes are not, in whole or in part, reasonably chargeable to operating expenses or to income.
4. With reasonable certainty the project involved in this proceeding will not have a significant effect on the environment.
5. Public convenience and necessity require that 120,000 square feet of storage or warehouse floor space be provided in the City of Carson by City Distribution Services.
6. City Freight Lines purportedly acquired stock valued in Exhibit 3-A at \$322,281.30 of certain California public utilities consisting of General Telephone Company of California, Pacific Gas and Electric Company, Southern California Edison Company and Transcon Lines without having been first authorized to do so by this Commission.

On the basis of the foregoing findings we conclude that except as it pertains to the acquisition, transfer or holding of capital stock of California public utilities purportedly acquired by City Freight Lines, the application, as amended, should be granted without a public hearing.

The order which follows will provide for, in the event the transfer is completed, the revocation of the warehouseman certificate and prescriptive operative right presently held by City Freight Lines, and the issuance of a certificate in appendix form to City Distribution Services.

City Distribution Services 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.

In issuing this decision we place City Distribution Services and its shareholders on further notice that we do not regard the number of shares outstanding, the total par value of the shares nor the dividends paid as measuring the return it should be allowed to earn on its investment in plant, and that this authorization shall not be construed as a finding of the value of the company's stock, property or certificate of public convenience and necessity, nor as indicative of amounts to be included in proceedings for the determination of just and reasonable rates.

INTERIM ORDER

IT IS ORDERED that:

1. On or before April 30, 1975, City Freight Lines may sell and transfer the warehouseman operative rights and property referred to in the application, as amended, to City Distribution Services.
2. City Distribution Services may assume the liabilities referred to in the application, as amended.
3. Within thirty days after the transfer, City Distribution Services shall file with the Commission written acceptance of the certificate and a true copy of the bill of sale or other instrument of transfer.

4. City Distribution Services 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 five days after the effective date of this order on not less than five 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.

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 4, a certificate of public convenience and necessity is granted to City Distribution Services 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 certificate of public convenience and necessity and prescriptive operative right set forth in Appendix A of Decision No. 82274 are revoked effective concurrently with the effective date of the tariff filings required by paragraph 4.

7. City Distribution Services 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.

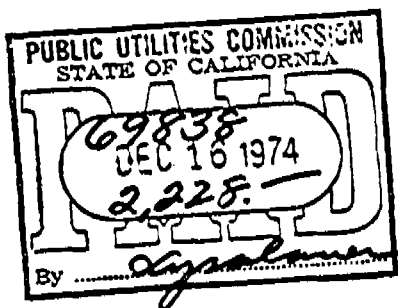
8. On or after the effective date hereof and on or before April 30, 1975, for the purposes set forth in this proceeding, City Distribution Services may issue not exceeding 12,277 shares of its \$100 par value common capital stock and certificates representing not exceeding 700 additional shares of said common capital stock.

9. City Distribution Services shall file with the Commission the report required by General Order No. 24-B, which order, insofar as applicable, is hereby made a part of this order.

10. Insofar as it pertains to the issuance of 3,223 shares of capital stock and the related acquisition, transfer or holding of capital stock of California public utilities purportedly acquired by City Freight Lines, the application, as amended, will be scheduled for a public hearing.

11. This order shall become effective when City Distribution Services has paid the fee prescribed by Section 1904.1 of the Public Utilities Code, which fee is \$2,228.

Dated at San Francisco, California, this 10th day of December, 1974.



Verma L. Sturgeon
President
William J. Simon
Thomas M. Moran
Robert E. Meyland
Commissioners

City Distribution Services, 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>
Anaheim	21,750
Carson	120,000
Long Beach	38,000
Santa Fe Springs	15,000

(The floor space shown above is exclusive of the 50,000 square feet of expansion permissible under Section 1051 of the Public Utilities Code.)

(END OF APPENDIX A)

Issued by California Public Utilities Commission.

Decision No. 83817, Application No. 55277.