

ORIGINAL

Decision No. 83898

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of  
(a) WAGNER DISTRIBUTION SERVICES, INC.,  
a California corporation, to purchase,  
and SCHICK MOVING AND STORAGE COMPANY,  
a California corporation, to sell,  
public utility warehouse operating  
authority pursuant to Section 1052  
of the Public Utilities Code;  
(b) To transfer said warehouse  
operation, from Santa Ana to  
Anaheim, California;  
(c) To increase the square footage  
authorized under said warehousing  
authority pursuant to Section 851 of  
the Public Utilities Code.

Application No. 54264  
(Filed August 23, 1973)

David Christianson, Attorney at Law, for  
Wagner Distribution Services, Inc.  
and Schick Moving and Storage Company,  
applicant.  
Wadsworth, Fraser, McClung & Dahl, by  
Edgar L. Fraser, Attorney at Law, for  
Packers' Cold Storage, protestant.  
James Quintrall, for himself, interested  
party.  
W. P. Campana, for the Commission staff.

O P I N I O N

Schick Moving and Storage Company (Schick) conducts public warehouse operations at 2061 Ritchey Street, Santa Ana, California, under a prescriptive operative right as a public utility warehouseman set forth in Appendix A of Decision No. 61698 dated March 21, 1961 in Case No. 6954. Schick desires to sell and transfer its prescriptive operative rights to Wagner Distribution Services, Inc. (WDS) and cease its operations as a public utility warehouseman.

WDS seeks to expand from private warehouse operations into public warehousing by purchase of the warehouse rights of Schick. WDS seeks Commission authority to acquire the Schick warehouse rights, to conduct operations as a public utility warehouseman at Anaheim, California, and to increase the storage and warehouse space under the certificate from 1,000 square feet to 50,000 square feet, exclusive of expansion permissible under Section 1051 of the California Public Utilities Code.

Packers' Cold Storage, Inc. (Packers) filed a protest to the application on September 24, 1973. Hearings were held March 8 and 11, 1974 at Los Angeles, California, before Examiner Charles E. Mattson. The matter was submitted subject to the filing of Exhibits 11, 12, and 13 by WDS. These late-filed exhibits were received April 24, 1974 and are received in evidence. Applicants' closing brief was filed June 17, 1974.

Applicants' Evidence

The president of Schick, Arthur C. Schick, Jr., testified that Schick conducts public warehousing operations in Santa Ana under the authority to be transferred. The selling price is \$6,000. A \$500 down payment has been received. The warehousing operations have been dry storage. Witness Schick testified that he is involved in the household goods moving and storage business and has interests other than warehousing which are absorbing all of his energies.

Richard M. Wagner (Wagner), on behalf of WDS, testified that WDS has been organized as a California corporation to conduct public warehousing business. The owners are Wagner (a 49 percent shareholder) and Mape Industries, a Nevada corporation (a 51 percent shareholder).

WDS presently operates private warehousing at 1414 Allec Street, Anaheim, California, with 40,000 square feet in operations and with an additional 40,000 square feet available. WDS presently has a

month-to-month lease in its existing location and plans to move to a new facility to be constructed by Mape Industries, a few blocks away from the existing facility in Anaheim, California. The new facility will be specifically built for WDS and will handle dry warehousing with no refrigeration facilities. The future facility will be located on 8.21 acres of land, and will have approximately 160,000 square feet of space. It will be located on a rail spur and will have dock-high loading facilities. The ceiling will be high enough to allow storage up to 24 feet. Witness Wagner testified that he would expect to use 80,000 square feet and take additional space in increments of 10,000 square feet.

Witness Wagner stated that if the application was granted, he could relocate authorized warehousing from Schick's present location in Santa Ana to the WDS location in Anaheim, a distance of 7 miles. He stated that he recognized that WDS had an ad in the yellow pages of the Orange County telephone book, a listing under "Warehouses-Public". He stated that in April 1973 when he was negotiating for the transfer and purchase from Schick to WDS, he acted under legal advice which indicated that there would be very little difficulty in the transaction. He assumed that in placing the ad in the yellow pages, that he would have authority by the time actual publication took place. He has not placed a further ad nor does he intend to as a result of the contested proceedings.

Witness Wagner is president as well as a 49 percent shareholder of WDS. There is no question raised as to his expertise in operating a public warehouse facility. He was employed by protestant Packers for over 19 years and was president of protestant Packers for the last five years of his employment. On or about February 27, 1973 witness Wagner was terminated by Packers.

WDS in its private warehousing operations suffered a loss of \$52,818.68 during the period May-November 1973. During the month of December, WDS had a profit of \$2,886.20. WDS lost money in its operations in January and February 1974. According to late-filed Exhibit 12-f, WDS made a profit of \$885 in March 1974. Wagner stated that the early losses resulted from the initial operations of WDS which require extensive investment of capital. He indicated that a further investment of \$50,000 may be required. He has discussed his application and his private warehousing operations with the Public Utilities Commission in Santa Ana, and has never been informed that the operations are illegal in any way. It is his full intention to comply with the Public Utilities Code and the rules and regulations of the Commission.

Mape Industries has invested \$45,000 in WDS for stock. Additionally, it has loaned WDS \$37,900. Edward G. Roach, general counsel and vice president of Mape Industries, testified that Mape Industries is willing to invest additional money in WDS's operations as required. Witness Roach introduced evidence that Mape Industries has total assets of \$8,112,365 and total stockholders' equity of \$2,410,538. Witness Roach stated that the purpose of introducing such financial information on Mape Industries was to show financial capability and continuing support for WDS.

The WDS case for public need for the warehouse operations was based upon the population growth of Orange County from 1950 to 1972, and the anticipated development for industrial acreage in the area of the proposed WDS public warehousing facilities. Four witnesses who are presently customers of WDS under its private warehousing operations testified in support of the application.

A witness from the Monsanto Company, a manufacturing plant with annual gross revenue of approximately \$5 million, testified in support of WDS. Monsanto has an average requirement of 18,000 square feet of public warehouse storage in addition to its own available facilities. This company commenced to utilize WDS because of desirable facilities and favorable terms.

A witness from Potlatch Corporation testified that his local plant generates an annual revenue of about \$8 million. The plant has only slight storage facilities and depends upon outside storage. It leases 80,000 square feet and utilizes WDS's facilities for the balance of its requirements, ranging from 100 square feet to 20,000 square feet. The 20,000 square feet are utilized on a cyclical basis, approximately four times a year. This company deals in paper products, and has difficulty with ground level storage. The company utilizes WDS because of the desirable facilities and favorable terms for cyclical storage needs.

A witness from the Container Corporation of America, a manufacturing facility with an annual revenue of approximately \$12 million in 1973, testified in support of the application. His manufacturing facility requires an additional 25,000 square feet of public warehouse storage in addition to its own available facilities. This company commenced to utilize WDS service in May 1974 and has continued to utilize WDS because of desirable facilities and favorable terms.

A witness from S & K Enterprises testified that his company supplies various farm chemicals and fertilizers to farmers in Orange County. This company had gross revenues in 1973 of approximately \$400,000. The company has a 5,200 square foot warehouse and utilizes outside public warehouse space. During the past year the company has stored 3,000 to 4,000 pallets with WDS and has paid up to \$1,000 a month for storage. The witness testified in support of the application because he has received satisfactory service from WDS and has obtained favorable terms for warehousing.

Protestant's Evidence

By brief filed June 7, 1974 protestant Packers sets forth its basic contentions in these proceedings. Protestant Packers states that the application seeks permission to conduct a completely new warehousing operation, storing different commodities at a different location under a new tariff. It is clear from the evidence that under the leadership of protestant's former president, WDS would probably compete for dry storage warehousing customers in the Orange County area. This is in sharp contrast to the situation which has existed in the past, where the dry storage operation of Schick has been under the leadership of a man whose major energies have been absorbed in other operations of his corporation. (The matter of tariff rates is not involved in this proceeding, for in the opening brief the applicants stated that they do not request that the Commission either adopt or reject the tariffs set forth in Exhibit 6, Exhibit 6 is an intended future filing of WDS.)

A major contention of protestant is that WDS has not demonstrated the financial ability to conduct a public warehousing operation. There is no question that WDS has operated at a substantial deficit in recent months. Protestant points out that Exhibit 12-a includes a note receivable of \$39,000 dated March 8, 1974 by Richard M. Wagner payable to WDS. The protestant then deducts the amount of the Wagner note from total assets of WDS and concludes that WDS has a capital deficit, does not have the ability to pay the balance of \$5,500 on the purchase price, and lacks a definitive agreement with Mape Industries legally setting forth an obligation by Mape Industries to continue to support WDS.

The fact is that protestant's view of the financial abilities of WDS would require that this Commission ignore the testimony regarding the ability of Mape Industries, a 51 percent stockholder, to support WDS in its initial operations. We recognize that Mape Industries is not legally obligated to continue to support WDS's operations. However, the sworn testimony of the general counsel and vice president of Mape Industries was to the effect that his corporation would in fact continue to support WDS and intended to supply funds necessary for the initial operations and start-up situation. Clearly, the long-range plan of Mape Industries is to utilize WDS as a subsidiary valuable to Mape Industries' future planned operations.

The cases cited by Packers discuss the requirement that a utility be financially capable to perform intended operations under a requested certificate. The cases involve capital intensive water utility companies where customers would ultimately shoulder the burden of any capital investment required in providing a necessary public utility service.

The evidence in this case involves a financially sound parent corporation which has stated that it intends to continue to support WDS's warehouse operations in the future. Moreover, the 49 percent stockholder is clearly qualified to conduct public utility warehousing operations. To adopt Packers' view would require that we ignore the equity holders' testimony as to their intentions and capability to provide public utility warehousing service in Orange County.

Packers contends that the Fullerton-Anaheim area is oversupplied with public warehousing facilities for dry storage. Packers suggests that the Commission should conclude from the testimony of witness Henry S. Dahl, treasurer of Packers, that Packers has adequate facilities to furnish the same kind of dry storage in the same general area as applicant WDS. Packers argues that the mere fact that a number of shippers desire a proposed service does not justify the finding of public convenience and necessity; the proposed service must fill the needs of the general public.

The evidence indicates that only 10 percent of Packers' gross revenues, approximately \$2,500,000 annually, are derived from dry storage. The evidence shows that the customers of WDS have their own warehousing facilities and they use WDS in overflow situations. It is clear that WDS has developed its private warehousing business from the overflow situation. It is also clear from the testimony that the WDS customers are unable to find an overflow-oriented service meeting their warehousing needs, and further, they have obtained from WDS service and terms that are fulfilling their needs.

The testimony of protestant's witness Dahl does not establish that Packers has made an effort to develop its warehousing business to meet the need for overflow service used by the large customers of WDS in Orange County. Packers contends that there is no increasing public demand for dry storage in the Orange County area involved herein. The fact that the customer witnesses on behalf of WDS sought the service and contractual rights offered by WDS indicates that substantial industries are seeking new service.

Packers contends that WDS has repeatedly violated the law by holding itself out as a public warehouseman. Based upon his many years in the warehousing business, witness Wagner indicated that he sent out newsletters to the 200 to 300 business acquaintances that he had established in his years in the industry business. Packers states that these are nothing more than outright solicitations for business, addressed to the public. In addition, Packers points to the listing in the yellow pages, which was covered by direct testimony of witness Wagner, as evidence that WDS is conducting a public warehouseman storage facility in violation of law.

Findings

1. Schick conducts public warehousing operations under prescriptive operating rights at Santa Ana, California.
2. WDS conducts private warehousing operations at Anaheim, California, approximately seven miles from Schick's present facility.
3. Schick seeks to sell its public warehousing prescriptive operating rights for \$6,000 and WDS requests permission to purchase such rights.
4. Schick seeks authorization to cease operations as a public warehouseman at Santa Ana, California. Schick desires to devote its business efforts to household goods moving and storage operations.
5. WDS is a California corporation formed by Mape Industries, a 51 percent shareholder, and Richard M. Wagner, a 49 percent shareholder. WDS is presently seeking authority to issue shares to its two stockholders. Its stock will not be publicly traded.
6. Richard M. Wagner, president of WDS, has had 19 years experience in the public utility warehousing business in Orange County. He was employed as president of protestant Packers' Cold Storage, Inc. for five years.

7. Mape Industries, a Nevada corporation, plans to construct a building to be used by WDS for public warehousing operations at Anaheim, California. Mape Industries has invested substantial amounts of money into the operations of WDS and plans to continue to invest funds as required. Mape Industries has stockholders' equity as of June 30, 1973 of \$2,410,538.

8. WDS has operated at a net loss of \$52,818.68 during the period May through November 1973. WDS did not operate at a net profit in the first quarter of 1974.

9. WDS has a dock-high dry storage warehouse facility at Anaheim, California, with 80,000 square feet of floor space available. WDS presently leases 40,000 square feet. The facility is on a railroad spur track and is a modern sprinklered building suitable for dry storage.

10. WDS's operations will accommodate Schick's present customers. WDS states it will move Schick's customers at no cost to the new Anaheim location. WDS intends to continue the warehousing operations of Schick at Anaheim, California. WDS intends to move from its present leased location to a building to be constructed by Mape Industries, such building to be substantially identical to its present warehousing facility. The building will be located on a railroad spur track, and will be a modern, dock-high sprinklered facility.

11. WDS has obtained substantial business from large industrial customers in Orange County who require storage when their own warehousing facilities overflow. The dry storage needs of these large industrial customers have been met by the warehouse service and facilities available from WDS. The needs of these large industrial customers for overflow warehouse facilities in modern, dock-high dry storage warehouse facilities have not been met by existing warehouse operators in the Orange County area.

12. The Orange County area has a high rate of industrial growth and development. The service and facilities of WDS will meet the public need of large industrial customers for dry storage facilities in this area.

13. Packers does not offer warehousing service in the Orange County area substantially similar to the service offered by WDS. Packers' facilities are not substantially similar to the facilities offered by WDS. Packers does not actively solicit and attempt to accommodate dry storage overflow warehousing requirements of industry in the Orange County area.

14. WDS will devote its efforts to public utility warehousing operations. WDS warehousing operations will require 50,000 square feet of storage space, exclusive of the 50,000 square feet of expansion permissible under Section 1051 of the Public Utilities Code. Without such authorized square footage WDS could not meet the public need for warehousing service in the Orange County area. Without such expanded square footage, WDS could not generate adequate revenues to operate a public utility warehouse.

15. The proposed transfer is not adverse to the public interest and should be authorized.

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

The order which follows will provide for, in the event the transfer is completed, the revocation of the rights presently held by Schick and the issuance of a certificate in appendix form to WDS.

WDS 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 February 3, 1975, Schick Moving and Storage Company may sell and transfer the operative rights referred to in the application to Wagner Distribution Services, 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 filed 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 Wagner Distribution Services, 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 operative rights set forth as Appendix A of Decision No. 61698 dated March 21, 1961 in Case No. 6954 are revoked effective concurrently with the effective date of the amended 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.

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8. Prior to the effective date of the amended tariff filings required by paragraph 3 purchaser shall notify the public warehousing customers of seller that purchaser will continue to offer public warehousing service at a new location and purchaser shall transfer goods presently in storage to the new location without charge to seller's customers.

The effective date of this order is the date hereof.

Dated at San Francisco, California, this 30<sup>th</sup>  
day of DECEMBER, 1974.

Vernon L. Sturges  
President  
William J. Spence  
Thomas M. Horn  
Robert E. McDaniel  
Commissioners

Wagner Distribution Services, 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>
Anaheim	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. 83898, Application No. 54264.