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Decision No. 84263

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Proposed Reduced Rates and Charges for Storage of Tobacco - Smoking, Chewing or Cigarettes, by the APPLGATE WAREHOUSE COMPANY, a corporation, in its public warehouse at Sacramento, California, as set forth in California Warehouse Tariff Bureau, Warehouse Tariff No. 52, Public Utilities Commission No. 224, Item 656.

Case No. 9798 (I&S)  
(Filed October 8, 1974)

William W. Applegate, for Applegate Warehouse Company, respondent.

Loughran & Hegarty, by Frank Loughran and Ann Pougiales, Attorneys at Law, for California Distribution Centers, Inc., petitioner.

### O P I N I O N

This is an investigation by the Commission into the lawfulness of a reduced rate proposed by Applegate Warehouse Company, a corporation, for the warehousing of tobacco products at Sacramento. Public hearing was held November 25, 1974 before Examiner Thompson at Sacramento and the matter was taken under submission December 13, 1974 on the filing of written suggested findings and conclusions.

On August 30, 1974 respondent published a rate in Item 656 of the California Warehouse Tariff Bureau, Warehouse Tariff No. 52, Cal. P.U.C. No. 224, to become effective October 10, 1974. The item provides for a rate of \$.40 per 100 pounds, minimum 100,000 pounds per calendar month, for the first month's storage of tobacco, smoking, chewing, or cigarettes at respondent's warehouse at Sacramento. The rate for subsequent months' storage is \$.16 per 100 pounds. The

rates include storage, unloading rail cars or trucks, handling in and out of the warehouse, services incidental to withdrawal from storage, marking, preparing bills of lading, and inventory, both physical and book.

On September 24, 1974, California Distribution Centers, Inc., (petitioner) filed its Petition for Suspension with the Commission concerning the proposed rate. Petitioner operates a public utility warehouse in Sacramento and currently enjoys the warehousing accounts of the major tobacco companies. Its rates for the storage and handling of tobacco products are published in Item 650 of the same tariff. That item provides a rate of \$.495 per 100 pounds, minimum 150,000 pounds, for the first month's storage, unloading of rail cars, handling in and out of warehouse, and preparation for shipment. The rate does not include clerical expense incidental to handling storer's orders for withdrawal of merchandise from storage. An extra charge of \$1.05 applies to each withdrawal, or upon written request the warehouseman will apply a rate of \$.155 per 100 pounds for withdrawal in lieu of the \$1.05 charge. Petitioner does not charge for additional months' storage.

On October 8, 1974 the Commission suspended the operation of respondent's proposed rate and ordered an investigation of its lawfulness. Petitioner contends that the proposed rate is unreasonable by reason of it being insufficient and by reason of comparison with other rates for the warehousing of tobacco products.

Sufficiency of the Proposed Rate

Unless there are special circumstances, rates for warehousing that do not provide the full costs of providing the service and contribute some return upon investment are unreasonably low. Here respondent does not claim any special circumstances, it contends that the rate will provide it with a reasonable profit. Estimates, based upon the evidence presented at the hearing, of the cost of providing

the services included in the proposed rate were provided by respondent and petitioner in their respective suggested findings and conclusions. The estimates are based generally upon annual expenses in various cost categories applied to the time required to perform the services.

One of the services is the unloading of two rail cars (50,000 pounds each). Typical rail shipments of tobacco include from eight to thirty line items depending upon the shipper. Approximately 70 to 75 percent of the contents of the shipments are cases of cigarettes which on the average weigh approximately 40 pounds per case. The cases of cigarettes are of three sizes: on a pallet of 35" x 48" dimension and stacking the cases three high, 30 cases of 70 mm cigarettes can be placed, 24 cases of 85 mm cigarettes can be placed, or 18 cases of 100 mm cigarettes can be placed. In many instances the shipment contains a number of brands of cigarettes of the same size (Winston and Salem, for example). Respondent asserts that the services of two men will be used to unload the cars and place the merchandise in the warehouse. The items will be loaded onto pallets at or in the rail car, and the pallets will be taken into the warehouse by forklift and placed at the designated space in the warehouse for the particular line item. The article will remain on the pallets while in storage.

The actual physical activity involved at the rail cars prior to actually handling the contents includes the breaking of the seals of the cars, opening the doors of the cars, checking the condition of the cars, placing of a plate between the car door and the unloading platform on which to operate the forklift, and the removal of any blocking in the door of the car. After the unloading of the rail car the receiver is required to restore the car to clean order by removing therefrom all material that may have been provided by the shipper for protection of the shipment.

The actual activity involved in handling the contents of the car involves the placing of empty pallets in position for loading, the loading of each pallet properly with the individual line items so that it can remain stacked on pallets in storage, the counting and examining of the packages of each line item to assure the receipt of undamaged goods and the full amount of goods in the shipment, and the placing of the pallets in the designated position in the warehouse which may or may not require moving of partially laden pallets of merchandise of the same line item already in storage. Respondent estimates that for two rail cars with contents totaling 100,000 pounds the entire function could be performed in six hours by two men. Respondent bases its estimate upon experience in unloading rail shipments of paper. Petitioner estimates that the performance of such function requires 24 man-hours, or two men working twelve hours.

In an attempt to test the reasonableness of the estimates we will assume, for convenience, that the rail shipment comprises uniform packages which may be blocked and loaded 24 to the pallet and representing twelve line items (different brands). It will also be assumed that the weight per package is 40 pounds so that the total shipment of 100,000 pounds represents 2,500 packages. Respondent estimates the total time involved would be six hours. The time in the rail car prior to actually handling the merchandise and subsequent to the unloading of the car would reasonably require a minimum of 10 to 15 minutes for each car. For the moment we will estimate 10 minutes per car for a total of 20 minutes. That leaves 5 hours and 40 minutes for the actual handling of the merchandise in the cars. 2,500 packages at 24 packages per pallet ordinarily would require a minimum of 110 pallets for twelve line items. Respondent's estimate envisages a pallet being placed in storage at an average rate of one every 3.1 minutes. That does seem to be a

very short time for a forklift operator to pick up a laden pallet in the rail car, back out, travel to the designated point of storage, place the laden pallet in the proper storage position on top of another laden pallet, and return to the rail car for another laden pallet. It would not leave much time, if any, for the forklift operator to assist in blocking and loading the pallets in the rail car or to take a load of empty pallets to the rail car for loading. Under respondent's estimate, after allowing 10 seconds for the man in the rail car to walk to a nearby stack of empty pallets and place one on the floor of the car at a position convenient for loading, there would be 19,300 seconds for the man to handle 2,500 packages. This means that the man must identify the package by line item, notice whether the package is crushed or damaged, and place it in the proper block position on the pallet at an average rate of one package per 7.7 seconds. Keeping in mind an average weight of 40 pounds per package and that the average rate considers such activity continued over a long interval of time it would appear that such estimate is overly optimistic. The foregoing analysis does not include any time for the tallying of the contents unloaded against the shipment manifest which is also a necessary function.

The above analysis assumes optimum conditions, such as the packages in the shipment being of uniform size and weight, the contents of the car being in good order without shifting, and a minimum number of pallets being moved between the rail cars and the warehouse. It also requires the assumption that the man in the car will not have to pause in his activities while the forklift operator is removing the laden pallet from the rail car. In the circumstances we are of the opinion that the respondent's estimate falls inordinately short of the period of time required for two men to unload and place in storage two carloads of tobacco weighing a total of 100,000 pounds and comprising from eight to thirty line items. We do not

accept petitioner's estimate of twelve hours for two men to unload 100,000 pounds of tobacco. Its estimate was not supported by any data concerning the operating conditions under which the carloads are unloaded and the contents placed in storage at petitioner's warehouse and whether those conditions would be similar to those that would occur at respondent's warehouse. For the purposes of this proceeding, and based upon the evidence, we are of the opinion that under optimum conditions the minimum amount of time required for the functions outlined above in connection with 100,000 pounds of tobacco in two rail cars is eight hours.

Respondent estimated its labor cost per man-hour as \$8.51. Petitioner estimated \$8.74 per man per hour. Both utilized respondent's actual rates for straight-time wages, payroll taxes, fringe benefits, and workmens' compensation insurance, and 2,088 annual paid hours per employee. The difference results from their respective approaches in applying revenue producing work-hours to the annual labor expense per man. Petitioner's approach is more reflective of actual circumstances. The annual cost per man for warehouse labor based upon straight-time wages for 2,088 hours is \$15,815.58. The number of revenue producing work-hours is 1,809, the difference comprising hours for holidays, vacations, and 20 minutes per working day for breaks, receiving instructions, and preparing work reports. A reasonable estimate of respondent's warehouse labor cost per man per hour is \$8.74. For the unloading of 100,000 pounds of tobacco and placing it in storage respondent's minimum labor cost will amount to 16 hours at \$8.74 per hour for a total of \$139.84.

Based upon conversations respondent's president had with potential storers of tobacco products, he estimated that the size of the average lot per withdrawal to be 1,500 pounds. He estimated that the total man-hours involved in such activity for 100,000 pounds to be the same number of man-hours required to place the merchandise into storage, namely, 12 man-hours. Petitioner's president testified that its experience in the storage and handling of tobacco products is that the average lot withdrawn is 600 pounds and estimated 27 man-hours (three more than estimated for placing the merchandise into storage) for that activity in connection with 100,000 pounds. The activity normally would involve one man taking a forklift and pallet or pallets to the storage area, pulling the packages listed on the order and placing them on the pallet or pallets, taking the completed order to the shipping area and verifying the completeness and accuracy of the merchandise pulled against the merchandise ordered, and if the order is to be shipped by carrier marking each package with the consignee's name and address. It would appear that the number of man-hours in such activity should exceed the number of man-hours required for unloading and storage not only because of the added activity involved but also because it could be reasonably expected that there would be more trips with the forklift. In the unloading process the pallets would generally contain fully laden pallets of packages of uniform dimension whereas in the case of withdrawals such ordinarily would not be the case. We estimated 16 man-hours as a minimum required to unload and store 100,000 pounds under optimum conditions. For purposes here we estimate that a minimum of 17 hours reasonably would be required for warehouse labor in connection with periodic withdrawals of lots from the storage of 100,000 pounds of tobacco. The estimated labor cost involved in that activity amounts to \$148.58.

Certain clerical activities, such as preparation of warehouse receipts, order forms, bills of lading, and reports to storers as well as maintaining inventory records are entailed in providing the warehousing service. Respondent and petitioner estimated that such clerical services would amount to approximately 10.5 hours in connection with 100,000 pounds of tobacco. Respondent included its clerical costs with its allocations estimates of administrative costs. Petitioner estimated the clerical costs for 10.5 hours based upon the annual expense to respondent at current wages, fringe benefits and rates for payroll taxes, and workmens' compensation insurance. It determined respondent's annual expense for a clerical employee paid for working 2,088 hours is \$7,798.94. Actual hours worked by that employee were estimated at 1,886, the difference between worked hours and paid hours representing 10 paid holidays, one week's vacation, and 20 minutes per working day for breaks. Respondent's labor cost for clerical services was estimated at \$4.14 per hour which applied to 10.5 hours amounts to \$43.42. The estimate is reasonable.

Respondent asserted that physical inventory would be taken once per month. In its brief it estimated one hour for that activity which would provide a labor cost of \$8.74. Petitioner asserts that it is a trade practice to take daily physical inventory of tobacco because of its susceptibility to pilferage and the fact that a case of cigarettes has a value of approximately \$150 per case. Storers do not require daily physical inventory but petitioner asserts that they recommend and encourage it. We make no determination of whether daily physical inventory is a necessary security measure. For the purposes of this proceeding we will adopt respondent's estimate of one hour warehouse labor cost for that function.



Respondent and petitioner made estimates of reasonable compensation for storage and administrative costs. Both agreed that the reasonable rent of the storage space required for the services, figuring a turnover of merchandise three times per month, would be as follows: value per month of 6 cents per square foot of floor space occupied divided by three. They agreed that 1,500 square feet of storage and aisle space would be required for 100,000 pounds of tobacco products. Their estimate of reasonable cost for storage space based upon that formula is \$30. Respondent's proposed rate is not conditioned upon a turnover of merchandise three times per month, however respondent and petitioner apparently are in agreement that such is the custom or trade practice in connection with the storage of tobacco products. Petitioner estimated administrative costs by totaling the expenses shown on its books for the first seven months of 1974 in the categories of maintenance and repairs, depreciation, taxes, and administration and office, dividing that total by 1,368 hours (171 working days @ 8 hours per day), and then dividing that quotient by three (the present number of customers of respondent's warehouse services) to obtain an amount of \$3.86 per hour. That figure was applied to 25 hours (apparently the sum of 12 man-hours for unloading, 12 man-hours for withdrawal labor, and one hour for physical inventory) to obtain an estimated overhead and administrative cost of \$96.50. Respondent's allocation bears no relationship whatever to the services being provided.

Respondent's annual report for 1973 shows that it has dedicated 19,200 square feet to public utility warehousing. A portion of dedicated commercial warehouse space ordinarily is required for working space and is not available for permanent storage. Working space is required to assemble withdrawn merchandise for marking and for shipment and for the storage of empty pallets and other equipment necessary to the operation of warehousing merchandise. There is

no evidence concerning the amount of working space required for respondent's warehouse operation, however, based upon the evidence of the type of operation involved in the storage and handling of tobacco together with the evidence of a turnover of merchandise three times per month, it would appear that a working space of at least 700 square feet would be required. For the purpose of this proceeding we estimate that respondent has available 18,500 square feet of aisle and storage space for revenue producing purposes. The 1973 annual report shows expenses from warehouse operations in Schedule B-2. Excluding expenses designated labor or payroll, the schedule shows the following expenses:

<u>Plant</u>	
Maintenance and Repair	\$ 3,211.80
Utilities	585.45
Taxes	5,282.96
Depreciation	<u>4,911.75</u>
	\$13,991.96
<u>Administrative &amp; General</u>	
Administrative Salaries*	\$14,400.00
General Insurance	931.00
Office Depreciation	150.86
Other Taxes & Licenses	128.59
General Expense	<u>1,943.10</u>
	\$17,553.55

\*Shown in annual report to be compensation paid to an officer of the corporation.

The average plant expense per month for 1973 was \$1,166 which, based upon 18,508 square feet of warehouse space amounts to 6.3 cents per foot. The parties are agreed that the storage of 100,000 pounds of tobacco will require 1,500 square feet of floor and aisle space. A fair apportionment of the 1973 expense for that space would be \$94.50 per month. The parties also agreed that there would be a turnover of merchandise three times per month which would make a fair apportionment of the 1973 plant expense \$31.50. Utilizing the same approach for administrative and general expense, the fair

apportionment of that 1973 expense would be \$39.50. It must be recognized that the aforementioned estimates of allocated costs are based upon 1973 expenses and that the forces of inflation have probably increased those costs. It should also be emphasized that respondent could recover the full amount of its expenses only if it received revenues from all of its available warehouse space (except for 700 square feet of working space) and if there were to be a total of 300,000 pounds of tobacco moving into and out of storage in 1,500 square feet of space each month. We use those figures only for the purpose of estimating the sufficiency of the proposed rate under conditions most favorable to respondent.

A summary of the above estimated costs follows:

Cost of Unloading	\$139.84
Cost of Withdrawals	148.58
Clerical Costs	43.42
Physical Inventory	8.74
Plant Costs	31.50
Administrative Costs	<u>39.50</u>
Total	\$411.58

The revenue for 100,000 pounds at the proposed rate is \$400. The proposed rate is not sufficient to provide the costs of the services offered at the proposed rate.

Section 455 of the Public Utilities Code contemplates the Commission in investigation and suspension proceedings establishing just and reasonable rates in lieu of the rates it finds insufficient and unreasonable. The cost estimates set forth above do not provide any reasonable basis for determining a rate that would be sufficient. They represent estimates of the cost to respondent of performing the services under the most favorable possible circumstances and under optimum conditions as well as representing 1973 plant and administrative costs. This record does not permit a determination of any reasonable estimate of respondent's cost of performing the services

included in the proposed rate. The burden of presenting data which will permit the determination of a just and reasonable rate is upon respondent. It has not met this burden.

Comparisons with Other Rates

Rate comparisons of similar commodities in the same territory or under the same circumstances and conditions also provide a basis for examining the reasonableness of a particular rate. The only warehouse in Sacramento publishing a volume rate for the storage and handling of tobacco is petitioner. The conditions for application of petitioner's rate are not the same as the conditions governing respondent's proposed rate; it is subject to a minimum of 150,000 pounds per calendar month averaged per calendar year and includes only the labor of unloading rail cars, handling in and out of warehouse, and preparation of shipment. It does not include clerical services for withdrawals. Petitioner does not assess a charge for subsequent months' storage because the turnover of merchandise averages three times per month. Respondent's proposed rate is based upon a minimum of 100,000 pounds and includes all services. Although a separate rate is proposed for subsequent months' storage, respondent believes the turnover of merchandise would be three times per month in which case a charge for subsequent months' storage would not be typical.

Warehouse rate structures typically provide for lower rates per 100 pounds as the minimum weight increases so that petitioner's and respondent's rates are not strictly comparable; however, respondent's proposed rate would be applicable to services performed in connection with monthly storage of 150,000 pounds. The charge for monthly storage and withdrawal of 150,000 pounds at respondent's proposed rate of 40 cents per 100 pounds would be \$600 regardless of the number of withdrawals. At petitioner's rate for 222 or more withdrawals (average weight per withdrawal 677 pounds or less) the

charge would be \$975 or 65 cents per 100 pounds; for 150 withdrawals (average weight of 1,000 pounds per withdrawal) the charge would be \$900 or 60 cents per 100 pounds; and for 100 withdrawals (average weight 1,500 pounds per withdrawal) the charge would be \$847.50 or 56.5 cents per 100 pounds.

State Center Warehouse in Fresno maintains volume rates for the storage and handling of tobacco products. For up to 100,000 pounds the first month's storage is 62 cents per 100 pounds (subsequent months' storage 15 cents per 100 pounds), for 100,000 pounds or more the first month's storage rate is 60 cents per 100 pounds (subsequent months' storage 14 cents per 100 pounds).

Warehouses in the San Francisco Bay area and in the Los Angeles metropolitan area maintain volume rates for the first month's storage of tobacco that include all services in connection therewith. Those rates are generally higher than those already mentioned herein and in most instances are based upon minimum weights substantially higher. Some indication of the levels of those rates and minimum weights are set forth below:

<u>Minimum Weight</u>	<u>Rate in cents per 100 lbs.</u>
Up to 500,000 lbs per month	70
500,000 lbs per month	65
15,000,000 lbs per year	62.7
10,000,000 lbs per year	68.2
3,000,000 lbs per year	73.7
3,600,000 lbs per year	60.2

Respondent's proposed rate is at a level of two-thirds or less of the level of rates maintained by other warehousemen in California. There was evidence that respondent's labor costs and investment in land and structures would be lower than those required of warehousemen in the San Francisco and Los Angeles areas. Except for such evidence there is no showing of any differences in circumstances and conditions of performing the services by respondent

from the circumstances and conditions encountered by other warehousemen maintaining volume rates for the storage and handling of tobacco products. Respondent's proposed rate is unreasonably low in comparison with the rates of other warehousemen for the same services.

With respect to the determination of a just and reasonable rate for the services respondent proposes, a warehouseman may meet the rates of its competitors. The services proposed by respondent would compete with the services offered at Sacramento by California Distribution Centers; therefore, rates published and maintained by respondent equal to the rates maintained by petitioner for the same services would not be unreasonably low. It has not been established whether respondent's proposed services would be competitive with the services offered by State Center Warehouse at Fresno or the warehouses in the San Francisco and Los Angeles areas. This record does not permit a determination of whether a rate lower than that maintained by California Distribution Centers would be just and reasonable for the services proposed.

#### Findings

1. Respondent is a warehouseman as defined in Section 239 of the Public Utilities Code with operations at Sacramento. On August 30, 1974 it published in Item 656 of California Warehouse Bureau, Warehouse Tariff No. 52, Cal. P.U.C. No. 224, to become effective October 10, 1974, a rate of \$.40 per 100 pounds, minimum weight 100,000 pounds, for first month's storage, and a rate of \$.16 per 100 pounds for subsequent months' storage, of tobacco.

2. In response to a petition filed September 24, 1974 by California Distribution Centers, Inc., the Commission by its Decision No. 83578 instituted an investigation of the reasonableness of the rate and suspended its operation until January 5, 1975. By Decision No. 83925, dated December 30, 1974, the suspension of the rate was extended to July 1, 1975.

3. A duly noticed public hearing was held in this investigation at which respondents and all other interested persons or their representatives were accorded full opportunity to participate and be heard.

4. The costs to respondent of providing the services to which the rate proposed in Item 656 would apply will exceed the revenues that would result from the application of that rate. The rate is insufficient and is therefore unreasonable.

5. The proposed rate is unreasonable in comparison with rates published by other California warehousemen encompassing the same services rendered in connection with the same commodities.

6. Respondent has not presented evidence which will permit a determination of the lowest rate that would be just and reasonable for the services it proposes in connection with the warehousing of tobacco.

We conclude that the proposed rate should be canceled.

O R D E R

IT IS ORDERED that respondent Applegate Warehouse Company, a corporation, and its tariff publishing agent California Warehouse Tariff Bureau, shall cancel the rates under suspension herein and set forth in Item 656 of Warehouse Tariff No. 52, Cal. P.U.C. No. 224. Tariff publications required as a result of this order shall be filed not later than ten days after the effective date of this order and shall be made effective not later than June 30, 1975.

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

Dated at San Francisco, California, this 1st  
day of APRIL, 1975.

*I dissent.*  
*Leonard Ross*  
Commissioner

*William L. Sturgeon*  
President  
*William Sturgeon*  
*[Signature]*  
Commissioners

Commissioner ROBERT BATINOVICH

Present but not participating.