

Decision No. 85818

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Applica- )  
 tion of: (a) DENNIS FIRESTONE, )  
 an individual, doing business as )  
 FURNITURE TRANSPORT SYSTEMS, to )  
 purchase, and MARLIN WAREHOUSING )  
 CORPORATION, a corporation, to )  
 sell public utility warehouse )  
 operating authority, pursuant to )  
 Section 851, et seq., and )  
 Section 1052 of the California )  
 Public Utilities Code; and upon )  
 approval thereof, )

Application No. 56187  
 (Filed January 7, 1976)

(b) To operate as a public ware- )  
 houseman in Gardena, California; )  
 and )

(c) For authorization of MARLIN )  
 WAREHOUSING CORPORATION to cease )  
 operations at Anaheim, )  
 California; and )

(d) To extend or increase )  
 storage or warehouse floor space )  
 from 9,000 square feet to 80,000 )  
 square feet, pursuant to Section )  
 1051 of the California Public )  
 Utilities Code. )

OPINION AND ORDER

Marlin Warehousing Corporation, a California corporation, possesses a certificate of public convenience and necessity as a public utility warehouseman for the operation of storage or warehouse floor space at Anaheim. By this application, it seeks authority to sell, and Dennis Firestone, an individual, doing business as Furniture Transport Systems, to purchase the aforementioned operative right. Applicant purchaser also requests authority to transfer said

warehouse operation from Anaheim to Los Angeles<sup>1</sup> and to increase the authorized floor space from 9,000 square feet to 80,000 square feet.

Dennis Firestone is the major stockholder of K. K. W. Trucking, Inc., which operates as a highway common carrier pursuant to a certificate of public convenience and necessity issued by Decision 81049. Applicant purchaser proposes to sublease on a long-term basis certain real property with all appurtenances thereto totaling approximately 80,000 square feet of space at Los Angeles and to adopt the warehouse tariff rates and rules of applicant seller. Applicants aver that all requisite expense-free arrangements have been made with the storers at Anaheim who desire to transfer their merchandise and none of the storers has any objection to the discontinuance of warehouse operations at that location. According to the application, applicant purchaser has the financial resources, experience and personnel to conduct the warehouse services involved. The cash consideration is \$4,000.

Copy of the application was mailed to Los Angeles Warehousemen's Conference of California Trucking Association on or about December 28, 1975. The application was listed on the Commission's Daily Calendar of January 16, 1976. No objection to the granting of the application has been received.

In the circumstances, the Commission finds that:

1. The proposed transfer would not be adverse to the public interest.
2. Public convenience and necessity no longer require applicant seller's operations as a public utility warehouseman in Anaheim.

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<sup>1</sup> Applicant in a letter dated March 16, 1976 states that the location of the warehouse in Los Angeles is at 516 West 140th Street; although for postal purposes the address is listed as Gardena.

3. Public convenience and necessity require the services of applicant purchaser as a public utility warehouseman in 80,000 square feet of floor space in Los Angeles.

4. 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. A public hearing is not necessary. The order which follows will provide for, in the event the transfer is completed, revocation of the certificate held by Marlin Warehousing Corporation and the issuance of a certificate in appendix form to Dennis Firestone.

The authorization granted shall not be construed as a finding of the value of the right authorized to be transferred.

Dennis Firestone 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.

IT IS ORDERED that:

1. On or before October 1, 1976, Marlin Warehousing Corporation, may transfer the operative right referred to in the application to Dennis Firestone.

2. Within thirty days after the transfer 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 he has adopted or established,

as his own, such 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 61-Series. Failure to comply with the provisions of General Order 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 Dennis Firestone authorizing him 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 granted by Decision 77129 is revoked effective concurrently with the effective date of the tariff filings required by paragraph 3.


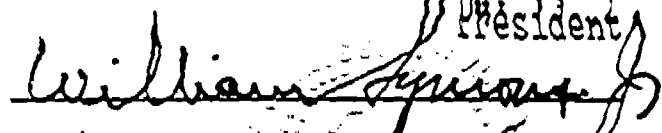
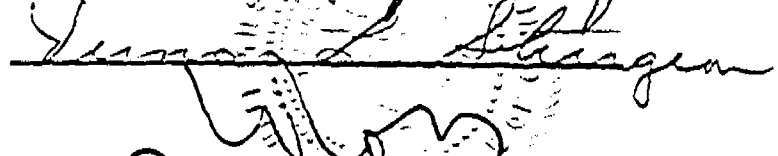
7. Purchaser shall maintain his accounting records in conformance with any applicable Uniform System of Accounts or Chart of Accounts as prescribed or adopted by this Commission, and each year shall file with the Commission an annual report of his operations in such form, content, and number of copies as the Commission, from time to time, shall prescribe.

8. Applicant purchaser shall, at the direction of the owner of any property in storage at the Anaheim location, transport such property to the new facility or any available public utility warehouse in the vicinity of the Anaheim location at the expense of applicant purchaser and at no expense or risk to the owner of the property transported.

The Executive Director of the Commission shall cause service of certified copies of the order to be made upon Marlin Warehousing Corporation and Dennis Firestone or to mail certified copies thereof to them at their last known addresses as shown in the Commission's records.

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

Dated at San Francisco, California, this 11<sup>th</sup> day of May, 1976.

  
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President  
  
\_\_\_\_\_  
Chairman  
  
\_\_\_\_\_  
Robert Batminal  
Commissioners

Dennis Firestone, 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<br/>Feet of Floor Space</u> |
|-----------------|---|
| Los Angeles     | 80,000  |

(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 85818, Application 56187.