

Decision No. 85868

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application)
of DISTRIBUTION SYSTEMS, INC., a)
California corporation, and)
ENCINAL TERMINALS, a California)
corporation, For an order)
authorizing DISTRIBUTION SYSTEMS,)
INC., to acquire control of)
certain warehouse prescriptive)
rights and warehouse properties)
from ENCINAL TERMINALS)

Application No. 56452
(Filed May 3, 1976)

OPINION AND ORDER

Encinal Terminals, a California corporation, possesses prescriptive operative rights as a public utility warehouseman for the operation of storage or warehouse floor space at Alameda and San Leandro. By this application, it seeks authority to transfer, and Distribution Systems, Inc., a California corporation, to acquire the aforementioned operative rights and warehouse property.

Distribution Systems, Inc., operates principally as a management company for Encinal Terminals and for various highway carriers regulated by the Interstate Commerce Commission which it controls pursuant to authority from said commission. Because Encinal Terminals will be transferring the warehouse prescriptive rights and property in question to its parent by a dividend in kind, there is no contractual consideration for the transaction. No change in operations is contemplated.

The application was listed on the Commission's Daily Calendar of May 4, 1976. No objection to the granting of the application has been received.

After consideration the Commission finds that the proposed transfer would not be adverse to the public interest and, with

reasonable certainty, the project involved in this proceeding will not have a significant effect on the environment. A public hearing is not necessary. The order which follows will provide for, in the event the transfer is completed, revocation of the prescriptive operative rights held by Encinal Terminals and the issuance of a certificate in appendix form to Distribution Services, Inc. The Commission concludes that the effective date of this order should be the date hereof as there is an immediate need to consummate the transfer.

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

Distribution Services, Inc., 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 cancelled 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, Encinal Terminals may transfer the operative rights and property referred to in the application to Distribution Services, Inc.
2. Within thirty days after the transfer, the transferee shall file with the Commission written acceptance of the certificate and a true copy of the instrument of transfer.
3. Transferee 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, 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. 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 Distribution Services, Inc., 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.

5. The prescriptive operative rights as determined by the Commission's order dated August 23, 1960, as amended by order dated October 25, 1960, in Case 6880 are revoked effective concurrently with the effective date of the tariff filings required by paragraph 3.

6. Transferee 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.

The Executive Director of the Commission shall cause service of certified copies of the order to be made upon Encinal Terminals and Distribution Systems, Inc., or to mail certified copies thereof to them at their last known addresses as shown in the Commission's records and to mail a copy of this order to Jack L. Dawson, Agent.

The effective date of this order is the date hereof.

Dated at San Francisco, California, this 25th day of May, 1976.

President
William S. Brown, Jr.
James L. Sturgeon

Commissioners
Robert B. ...

Commissioner D. W. Holmes, being necessarily absent, did not participate in the disposition of this proceeding.

Commissioner Leonard Ross, being necessarily absent, did not participate in the disposition of this proceeding.

Distribution Systems, 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>
Alameda	220,338
San Leandro	182,908

(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.

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