

Decision No. 86062

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of the
 CONSOLIDATED DISTRIBUTION SERVICES, Inc.,
 a California corporation, for a certifi-
 cate of public convenience and necessity
 to operate a public warehouse in the City
 of Union City, California, pursuant to
 the provisions of Section 1051 of the
 California Public Utilities Code.

Application No. 56001
 (Filed October 10, 1975)

Cotton, Seligman & Ray, by Clifford S. Adams
 and Brooks McChesney, Attorneys at Law,
 for applicant.

Vaughan, Paul & Lyons, by John G. Lyons, Attorney
 at Law, for Bay Cities Warehouse Company, Inc.,
 Gibraltar Warehouses, and Northern California
 Warehouse, Inc.; Walter J. Bozek, for Bay Cities
 Warehouse Co., Inc.; Ken Garliepp, for Northern
 California Warehouse, Inc.; and Joseph J.
Cazessus, for Gibraltar Warehouses; protestants.
Geoffrey W. Meloche, for the Commission staff.

O P I N I O N

Consolidated Distribution Services, Inc. (CDI), a
 corporation, seeks a certificate of public convenience and necessity
 to operate 140,000 square feet of public utility warehouse floor
 space in Union City, pursuant to Section 1051 of the Public Utilities
 Code.

Public hearing was held and the matter was submitted before
 Examiner Mallory on May 12 and 13, 1976 in San Francisco. Evidence
 in support of the application was presented by applicant's president,
 a competing warehouseman, and representatives of Robert Mondavi Winery

and Anchem Products. Evidence opposing the requested certificate, except for the storage of wine, was offered by officers of Bay Cities Warehouse Company, Inc. (Bay Cities) and Gibraltar Warehouses (Gibraltar).

Applicant's president testified that he is a recognized authority on public warehousing and distribution management, having authored a standard textbook on those subjects, having a degree in industrial engineering, and having been the national manager of warehouse and distribution services for a large aluminum manufacturing and sales company. As a result of his experience and writings he was requested to make studies for small- and medium-size wineries to improve their ability to market their output in competition with the giants of the wine industry which maintain their own extensive marketing facilities. Completion of those studies indicated that the smaller wineries need to pool their shipments to wholesalers to gain the advantage of truckload, carload, or container-load rates, that some wineries do not have facilities to ship by rail, and that some wineries require additional temperature-controlled warehouse space. According to the witness, no public warehouseman in the San Francisco Bay Area offered or provided the services required by the small- and medium-size northern California wineries. As a result, CDI was formed to provide those services.

CDI leased warehouse space in Union City and began operations for the wine industry in July 1974. The witness stated that by trial and error methods proper insulation of the warehouse was accomplished, and blowers were installed which permitted the temperature in the warehouse to be maintained within a narrow temperature range required for the storage of quality wines. Computer programs were developed to provide prompt and accurate inventory control and

accounting of the Internal Revenue taxes paid by CDI on behalf of the wineries on wine stocks removed from bond. Pool shipments are made on a regular basis to wholesalers in California and nationally. Applicant's witness testified that CDI now serves a significant portion of the wine industry at two locations in Union City.

The witness stated that experience showed that wine storage and shipping reach a peak in the preholiday season and lessen in other parts of the year; therefore, additional commodities were sought to fill the warehouse in off-peak periods for wine. Chocolate candy requires the same range of temperatures as wine for proper storage. A candy account and food accounts were referred to CDI by J & R Warehouse which could not accommodate those accounts in its own warehouse. Other warehouse accounts assertedly were referred by persons familiar with CDI service. At the present time the storage of wine accounts for 75 to 80 percent of applicant's warehouse business; the balance consists of the storage of candy; canned tuna, mushrooms, olives, and pineapple; cookies; pickled pigs feet and cucumbers; chinaware; data processing paper products; and chemicals. Applicant intends to publish rates for these commodities on the same levels as assessed by existing warehousemen.

Representatives of Robert Mondavi Winery and Anchem Products testified in support of the application. The financial vice president for Mondavi explained the various services performed by CDI for wineries, which include transportation of bottled wine from the winery to CDI's warehouse in refrigerated van equipment under Internal Revenue bond, storage of wine for aging purposes, maintenance of proper temperature for storage of quality wines, inventory control, payment of taxes to IRS when the wine is shipped, and consolidation of shipments to achieve lower outbound transportation costs. According

to the witness, CDI provides an integrated service to Mondavi that is not offered by any other public warehousemen.

The buyer for Anchem Chemicals stated that his company stores five different chemical herbicides used as ripening agents for tomatoes and other crops with CDI. The quantity stored averages 35,000 to 40,000 cases per year. The witness stated that CDI provides a competent and efficient inventory control and delivery service, and Anchem is satisfied with CDI's service and personnel.

The president of J & R Public Warehouse located in Hayward testified in support of the application. The witness stated that J & R has referred accounts to CDI. A candy account was referred to CDI because it could not be accommodated by J & R at the time and because the temperature required for proper storage of chocolate candy is the same as that for wine. The witness supports the application because he believes additional competition is required in the warehouse industry to stimulate better service to the public.

The vice president-administration of Gibraltar testified in opposition to the application. The witness stated that Gibraltar operates 160,000 square feet of warehouse space in Union City, that Gibraltar has 15,000 square feet of space unoccupied at the time of hearing, and that it would have an additional 25,000 square feet of space available in July 1976 when a large account moves its products to its own facility. According to the witness, Gibraltar is ready, willing, and able to provide storage for the accounts now held by CDI (except wine), and that Gibraltar has turned down no accounts except commodities that are incompatible to those already in its warehouse. Gibraltar is losing money from its warehouse operations; failure to keep its warehouse full will require increased rates to present storers.

The representatives of Bay Cities testified in a similar vein. Bay Cities operates 55,000 square feet of warehouse space in Union City, of which 17,000 to 20,000 square feet has been vacant for some time. The witness feels that many of the commodities (other than wine) stored by CDI could be accommodated by Bay Cities. Bay Cities also will require increased rates to offset increased expenses, which increase could be partially offset by increased occupancy.

Both Gibraltar and Bay Cities stated that wine storage under temperature-controlled conditions and under bond was a special service which they are not equipped to handle or prepared to furnish. Therefore, the protestants have no objection to the granting of a certificate for wine storage.

Position of Protestants

As indicated above, protestants do not object to the granting of the application limited to the storage of wines. Protestants argue that the only real support for the application is from the wine industry; the only other public witness support was from Anchem. Protestants urge that the public will suffer if a certificate is issued covering general commodities other than wine because existing public utility warehousemen operating in Union City will have to come before the Commission more frequently for rate increases. Protestants point out that the storage of commodities other than wine is sought only because of the seasonality of the wine storage, which leaves vacant warehouse space in the off season. Protestants argue that the storage of wine should pay its own way and that it should not be subsidized by other commodities.

Protestants also argue that the application is deficient because the precise rates proposed to be assessed by applicant have not been made part of the record.

Discussion

Applicant has demonstrated that it possesses the ability, experience, facilities, equipment, and financial resources to perform the proposed services not only as to the storage of wine, but also for other general commodities.

The argument of protestants that wine storage should stand alone ignores the economics of public warehousing. The principal economic advantage of a public warehouse over a private storage facility is that the fixed costs of operation can be spread over a multiplicity of commodities, each having different seasonal storage requirements. To adopt that argument of protestants would be to force an uneconomic operation on applicant.

Applicant seeks to serve a significant portion of the public in addition to the wine industry. Some such customers are now accommodated in applicant's warehouse. Protestants urge that (except for the storage of wine) the certificate requested by applicant be denied because (1) protestants have empty warehouse space which could accommodate the commodities now in storage at applicant's warehouse, and (2) because certification of another warehouseman in the San Francisco Bay area will cause additional competition for a limited number of potential accounts.

Applicant does not seek and protestants were not granted an exclusive right to perform public utility warehouse service in a given geographic area. Commission orders granting warehouse certificates uniformly contain a so-called monopoly clause.^{1/}

^{1/} Applicant is placed on notice that operative rights, as such, do not constitute a class of property which may be capitalized

(Continued)

The monopoly clause indicates that the partial monopoly now enjoyed by existing warehousemen may be modified at any time; therefore, protestants have no claim to complete protection from competition. The policy of this Commission is to stimulate competition in the transportation and warehousing industries, rather than stifle such competition.^{2/} Where a fully qualified applicant such as CDI presents itself for a new certificate, that request will not be denied solely upon the ground that an existing utility will be subjected to additional competition. To deny a fully qualified applicant on that ground would constitute the sanctioning of an anti-competitive action contrary to the spirit of federal and state antitrust laws and of Northern Power Agency v Public Utilities Commission (1971) 5 C 3d 370. The application should be granted.

Findings

1. Consolidation Distribution Services, Inc. seeks authority to operate 140,000 square feet of public utility warehouse space in Union City for the storage of general commodities.

2. Financial data submitted with the application and in Exhibit 8 shows that applicant possesses the financial ability to perform the proposed service.

1/ (Continued)

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.

2/ Thompson Bros. Inc. (1972) 73 CPUC 195 states at page 216: "It is long established that the public is best served in the field of transportation by competition subject to regulation (citation)."

3. Applicant leases 140,000 square feet of warehouse space in Union City and maintains the necessary lift trucks, racks, and other apparatus to perform the proposed warehouse services.

4. Applicant now stores quantities of wines, food stuffs, chemicals, and paper goods, and proposes to continue that service.

5. Applicant possesses the ability, experience, facilities, equipment, and financial resources to perform the proposed service.

6. Public convenience and necessity require applicant's service as a public utility warehouseman in 140,000 square feet of floor space in Union City.

7. It can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.

The Commission concludes that the application should be granted.

Consolidated 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 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. A certificate of public convenience and necessity is granted to Consolidated Distribution Services, Inc., a corporation,

authorizing it to operate as a public utility warehouseman as defined in Section 239(b) and 239(c) 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.

2. In providing service pursuant to the authority granted by this order, applicant shall comply with the following service regulations. Failure so to do may result in a cancellation of the authority.

- (a) Within thirty days after the effective date of this order, applicant shall file a written acceptance of the certificate granted. Applicant is placed on notice that if it accepts the certificate it will be required, among other things, to file annual reports of its operations.
- (b) Within one hundred twenty days after the effective date of this order, applicant shall establish the authorized service and file tariffs, in triplicate, in the Commission's office.
- (c) 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 establishment of the service authorized.
- (d) The tariff filings made pursuant to this order shall comply with the regulations governing the construction and filing of tariffs set forth in the Commission's General Order No. 61-Series.

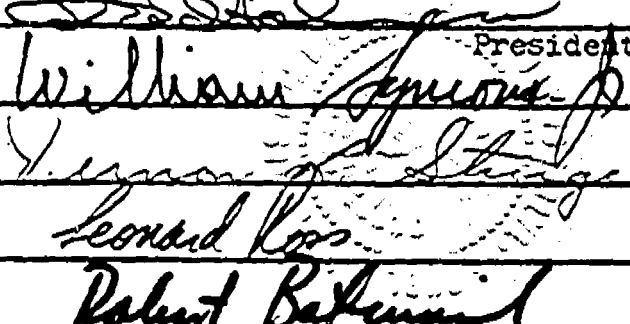
3. Applicant shall comply with the regulations of the California Department of Public Health concerning hazardous or toxic commodities and shall include in its tariff a rule reading substantially as follows:

Hazardous or Toxic Commodities:

The warehouseman will not be required to accept for storage any commodity of a toxic nature which could contaminate other commodities in storage or be hazardous to the health of warehouse personnel. At warehouseman's option such hazardous or toxic commodities, when properly packaged and labeled to reduce contamination and health hazard to a minimum, may be accepted for storage in an area isolated from other commodities subject to contamination. Any additional services in the way of warehouse labor or excessive use of space arising from isolation of such commodities will be charged to the storage account.

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

Dated at San Francisco, California, this 7th day of JULY, 1976.



President
William J. Sweeney

Vernon J. Stangen

Leonard Ross

Robert Bakeman
Commissioners

Appendix A CONSOLIDATED DISTRIBUTION SERVICES, INC. Original Page 1
(a corporation)

<u>Location</u>	<u>Number of Square Feet of Floor Space</u>
Union City	140,000

(END OF APPENDIX A)

Issued by California Public Utilities Commission.
Decision No. 86062, Application No. 56001.