

Decision No. 86376**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
Wagner Distribution Services, Inc.
for a Certificate of Public Convenience
and Necessity to conduct operations as
a warehouseman of food commodities.

Application No. 56331
(Filed March 16, 1976)

O P I N I O N

Applicant Wagner Distribution Services, Inc. seeks a certificate of public convenience and necessity to conduct operations as a warehouseman pursuant to Section 239(c) of the Public Utilities Code.

Packers' Cold Storage, Inc. (Packers') has protested the granting of the requested authority on the grounds that:

1. Applicant is insolvent and will be unable to operate the additional facilities.
2. Applicant knowingly and willfully violated the laws, rules, and regulation of the Commission in that applicant:
 - a. Held itself out as a public utility warehouseman,
 - b. Solicited and accepted storage of frozen foods and frozen food products, and
 - c. Has not filed tariffs pertaining to the storage of frozen food products.

Packers' requested that the application be set down for hearing, and that Packers' be authorized to intervene and appear at said hearing, and that the application thereupon be denied.

Senate Bill 1319¹ amended Section 239 of the Public Utilities Code by deleting cold storage and refrigerated warehouses and plants from the definition of "warehouseman". The amended code section will become effective January 1, 1977.

¹/ Chapter 58, Statutes of 1976.

We believe it safe to assume that the action of the legislature was based on circumstances prevailing in the recent past. Therefore, if such operations do not require regulation on January 1, 1977, it is doubtful if our regulatory guidance is, as a matter of practical fact, required today. The proposed operation requires our authorization only because the effective date of the new legislation is still in the future.

We must conclude that to require hearing in this matter would constitute nothing more than procedural harassment, and that the requested authority must be granted forthwith to satisfy legislative intent.

After consideration the Commission finds that public convenience and necessity require that Wagner Distribution Services, Inc. be authorized to engage in operation as a warehouseman as defined in Section 239(c) of the Public Utilities Code as provided in the following order. Public convenience also requires prompt commencement of this service. The Commission, therefore, concludes that the effective date of this order should be the date it is issued.

Applicant 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 Wagner Distribution Service, Inc., a corporation,

authorizing it to operate as a public utility warehouseman, as defined in Section 239(c) of the Public Utilities Code, for the operation of storage or warehouse floor space set forth in Appendix A of this decision.

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.

The effective date of this order is the date hereof.

Dated at San Francisco, California, this 14th
day of SEPTEMBER, 1976.

We dissent because of the
effective date being the
date hereof.

William S. Jones Jr.

[Signature]
President

[Signature]
Commissioner

[Signature]
Commissioners

Appendix A

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(c) 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>
Brea	100,000

(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 86376, Application 56331.