

ORIGINAL

Decision No. 86786

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application)
of PENN VAN & STORAGE CO., a Cal-)
ifornia corporation, to purchase,)
and PENN WAY CORPORATION, a Cali-)
fornia corporation, to sell, the)
latter's public utility warehouse)
operating authority and property)
pursuant to Sections 851 and 852)
of the Public Utilities Code.)

Application No. 56917.
(Filed December 6, 1976)

OPINION AND ORDER

Penn Van & Storage Co., a California corporation, possesses a prescriptive operative right as a public utility warehouseman for the operation of storage or warehouse floor space at Santa Ana. A Certificate of Amendment of Articles of Incorporation was filed November 23, 1976, with the Secretary of State of the State of California changing the corporate name from Penn Van & Storage Co. to Penn Way Corporation. By this application Penn Way Corporation seeks authority to sell and Penn Van & Storage Co., a newly formed California corporation, to purchase said warehouse operative right and property.

According to the application, applicant purchaser has the financial resources, experience and personnel to conduct the warehouse services involved. The cash consideration is \$112,422 for the purchase of the operative right and certain assets used in the operation of the facility.

The application was listed on the Commission's Daily Calendar of December 7, 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.

The Commission concludes that the application should be granted. A public hearing is not necessary. The order which follows will provide for amendment of the operative right to reflect the seller's new corporate name and, in the event the transfer is completed, revocation of the prescriptive operative right and the issuance of a certificate in appendix form to the newly formed corporation, Penn Van & Storage Co. The Commission further concludes that the effective date of this order should be the date hereof as applicant purchaser desires to establish the service on January 1, 1977.

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

Penn Van & Storage Co. 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. The prescriptive operative right as determined by the Commission's order dated August 16, 1960, in Case 6838 is amended by substituting therein "Penn Way Corporation" in place and stead of "Penn Van & Storage Co."
2. On or before January 1, 1977, Penn Way Corporation may transfer the operative right and property referred to in the application to Penn Van & Storage Co.
3. 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.

4. Purchaser 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 one day after the effective date of this order on not less than one day's 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.

5. 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.

6. In the event the transfer authorized in paragraph 2 is completed, effective concurrently with the effective date of the tariff filings required by paragraph 4, a certificate of public convenience and necessity is granted to Penn Van & Storage Co. 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.

7. The prescriptive operative right as determined by the Commission's order dated August 16, 1960, in Case 5838 is revoked effective concurrently with the effective date of the tariff filings required by paragraph 4.

8. Purchaser shall maintain its accounting records in conformance with any applicable Uniform System of Accounts or Chart of

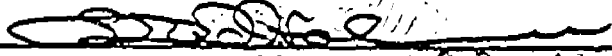
Accounts as prescribed or adopted by this Commission, and each year shall file with the Commission an annual report of its operations in such form, content, and number of copies as the Commission, from time to time, shall prescribe.

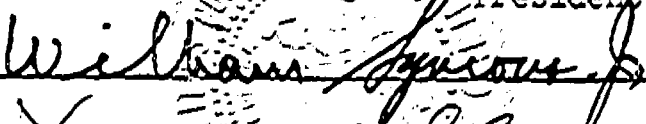

9. Applicant seller shall, at the direction of the owner of any property in storage at the present location, transport such property to any available public utility warehouse in the vicinity of present location at the expense of applicant seller and at no expense or risk to the owner of the property transported.


The Executive Director is directed to cause service of certified copies of the order to be made upon Penn Way Corporation and Penn Van & Storage Co., 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 R. A. Redmond, Agent.

The effective date of this order is the date hereof.

Dated at San Francisco, California, this 21st day of December, 1976.



President





Commissioners

Commissioner Robert Batinovich, being necessarily absent, did not participate in the disposition of this proceeding.

Penn Van & Storage Co., 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>
Santa Ana	10,000

(The floor space shown above 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 No. 86786, Application No. 56917.