

MS/FS

Decision No. 89296 AUG 22 1978

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application)
of WESTAN WAREHOUSE COMPANY, INC.,)
a California corporation, for)
authorization to sell and trans-)
fer, and of PATTERSON WAREHOUSE)
COMPANY, a California corporation,)
for authorization to purchase and)
acquire a prescriptive warehouse)
operative right at Westley,)
California; and of PATTERSON)
WAREHOUSE COMPANY, INC., for)
authorization to issue a prom-)
issory note, a deed of trust and)
a security agreement; and of)
WESTAN WAREHOUSE COMPANY, INC.)
authorization to grant a security)
interest in accounts receivable)
and a promissory note.)

Application No. 58221
(Filed July 11, 1978)

OPINION AND ORDER

Westan Warehouse Company, Inc., (Westan) a California corporation, requests authority to sell and transfer, and Patterson Warehouse Company, Inc. (Patterson) a California corporation, requests authority to purchase and acquire, a prescriptive right authorizing operations as a public utility warehouseman of 18,656 square feet, and 26,544 square feet of expansion authorized by Section 1051 of the Public Utilities Code, of storage space at Westley and Vicinity (Stanislaus County), California. Westan also requests authority to sell and transfer, and Patterson to purchase and acquire certain real and personal property described in Exhibit A to the application, and to issue a promissory note, secured by a deed of trust, on the real property and to enter into a security agreement and financing statement on the the personal property.

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Westan is engaged as a public utility warehouseman at Westley and Vicinity for the operation of 18,656 square feet pursuant to the prescriptive operative right defined in Appendix A to Decision 81129 in Application 53626, and pursuant to a certificate of public convenience and necessity, granted in Decision 81129, for the operation of 30,000 square feet of storage or warehouse floor space, restricted to "Agricultural Commodities", at Turlock, California. Westan proposes to retain its certificate of public convenience and necessity, and transfer only the prescriptive operative right it now holds.

The cash consideration is \$400,000 for the purchase of said operative right and personal, real and leasehold properties, to be payable as follows: \$115,000 in cash, and a promissory note in the amount of \$285,000, secured by a deed of trust on the real property; a security agreement and financing statement granting to seller a security interest in the personal property being transferred herein. The transferee proposes to finance the balance of the acquisition price by issuing said promissory note in the amount of \$285,000, to be repayable in annual installments of \$28,500 each, plus interest at nine and one-half percent (9½%) on the unpaid principal. Attorney for applicants state, in a letter dated August 7, 1978, that a nominal value of \$1.00 has been assigned to the prescriptive operative right for the purpose of the transfer.

Patterson possesses a prescriptive operative right as a public utility warehouseman for the operation of 15,000 square feet of storage or warehouse floor space at Patterson, California, as defined in Appendix A to Decision 69109 in Application 47536. According to the application and the financial statements attached thereto, Patterson has the financial resources, experience and personnel to conduct the warehouse services involved.

Applicants have stated in a letter to the Commission dated August 7, 1978 that they find themselves in urgent need of the most prompt transfer possible because of the forthcoming bean harvest, and the considerable difficulties applicants will face if part of the crops are received by transferor and part received by transferee. Applicants, therefore, request that the Commission make its order effective the date hereof, and allow the transferee to adopt the rates and rules contained in the transferor's tariffs on one day's notice to the Commission and the public.

The application was listed on the Commission's Daily Calendar of July 14, 1978. No objection to the granting of the application has been received.

After consideration, the Commission finds that the proposed sale of the property and the transfer of the operative right would not be adverse to the public interest. 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 right held by Westan Warehouse Company, Inc. for the operation of 18,656 square feet of storage or warehouse floor space and 26,544 square feet floor space expansion authorized by Section 1051 of the Public Utilities Code, and the issuance of a certificate, for said transfer of operative right, in appendix form to Patterson.

The Commission concludes that the application should be granted and the effective date of this order should be as soon as possible because there is an immediate need for the service.

Patterson Warehouse Company, 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.

IT IS ORDERED that:

1. On or before December 15, 1978, Westan Warehouse Company, Inc., may sell and transfer and Patterson Warehouse Company, Inc., may purchase and acquire, the operative right and property referred to in the application.

2. Within thirty days after the transfer, the purchasers 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 carrier operations transferred to show that they have adopted or established, as their 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.

4. On or before the end of the third month after the transfer, the purchasers 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 Patterson Warehouse Company, 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.

6. The authority to operate in Westley and Vicinity granted by Decision 81129 dated March 3, 1973, in Application 53626 is revoked effective concurrently with the effective date of the tariff filings required by paragraph 3, and the remaining authority will be restated as set forth in Appendix B and made a part hereof.

7. The certificate of public convenience and necessity granted in paragraph 1 of this order shall supersede the prescriptive operative right granted by Decision 69109, which certificate is revoked effective concurrently with the effective date of the tariff filings required by paragraph 3, set forth in Appendix A and made a part hereof.

8. Purchaser shall maintain their accounting records on a calendar year basis in conformance with the applicable Uniform System of Accounts or Chart of Accounts as prescribed or adopted by this Commission and shall file with the Commission, on or before March 31 of each year, an annual report of their operations in such form, content, and number of copies as the Commission, from time to time, shall prescribe.

The effective date of this order shall be the date hereof.

Dated at San Francisco, California, this 22nd
day of AUGUST, 1978.

Robert Batistone
President
William J. Gannon
Vernon L. Sturgeon

Commissioners

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

-5- Commissioner Claire T. Dedrick, being necessarily absent, did not participate in the disposition of this proceeding.

Patterson Warehouse Company, 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>
Westley and Vicinity (Stanislaus County)	45,200
Patterson	15,000

(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 No. 89296 Application 58221.

Westan Warehouse Company, 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, restricted to "Agricultural Commodities", as follows:

<u>Location</u>	<u>Number of Square Feet of Floor Space</u>
Turlock	30,000

(The floor space shown is exclusive of the expansion permissible under Section 1051 of the Public Utilities Code.)

Note: The prescriptive operative right for the operation of 18,656 square feet held by Westan Warehouse Company, Inc. at Westley and Vicinity was sold and transferred to Patterson Warehouse Company, Inc. pursuant to Application 58221.

(END OF APPENDIX B)

Issued by California Public Utilities Commission.

Decision No. 81129, Application No. 53626.