

EAE/tt

Decision No. 91158 , DEC 18 1979

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of Application)
of ()

ED. J. LYNG CO., a division)
of NORTHERUP KING CO., a)
Delaware corporation.)

Application No. 59204
(Filed October 12, 1979)

OPINION AND ORDER

Applicant ED. J. LYNG CO., a division of NORTHERUP KING CO., which is a Delaware corporation, possesses a prescriptive operative right as a public utility warehouseman for the operation of storage or warehouse floor space in Modesto under the name of ED. J. LYNG COMPANY, INC. The rates, rules and regulations governing applicant's operations are contained in California Warehouse Tariff Bureau Tariff No. 38-A, Cal. P.U.C. No. 267, Jack L. Dawson, Agent.

By this application it seeks authority to transfer its prescriptive operative right from ED. J. LYNG COMPANY, INC. to ED. J. LYNG CO., a division of NORTHERUP KING CO.

According to applicant, it was a California corporation operating under the name of ED. J. LYNG COMPANY, INC. prior to 1970. In 1970, NORTHERUP, KING & CO., a Minnesota corporation, acquired all of the stock of ED. J. LYNG COMPANY, INC., which operated as a wholly owned corporation.

In 1976, SANDOZ SEED CO., a Delaware corporation and subsidiary of SANDOZ LIMITED, a Swiss corporation, acquired all of the stock of NORTHERUP, KING & CO. From 1976 until February 1977 SANDOZ SEED CO. owned and operated NORTHERUP, KING & CO. as a wholly owned subsidiary.

In February 1977, NORTHRUP, KING & CO. and SANDOZ SEED CO. merged, resulting in the formation of a new company named NORTHRUP KING CO.; and in the liquidation of NORTHRUP, KING & CO. In the early part of 1977 all of the stock of ED. J. LYNG COMPANY, INC., was liquidated and it became ED. J. LYNG CO., a division of NORTHRUP KING CO.

Applicant alleges it was not aware of the provisions of Section 1052 of the California Public Utilities Code, (Cal. P.U. Code) requiring it to obtain authorization from this Commission for the transfer of the aforementioned rights. Consequently, no authorizations were obtained.

Applicant states that the principal office and place of business of ED. J. LYNG CO., a division of NORTHRUP KING CO., is N. 99 Highway and Coldwell Avenue, Modesto, California 95352; and that the principal office and place of business of NORTHRUP KING CO. is 1500 Jackson St. N.E., Minneapolis, Minnesota 55440.

Applicant avers that ED. J. LYNG CO. has been filing annual reports with the Public Utilities Commission, of the State of California, since 1949, and has been operating as a public warehouseman for the storage and processing of agricultural products since 1924, as defined by Section 239 of the Cal. P.U. Code pursuant to authority granted by Section 1052 of the Cal. P.U. Code.

The original prescriptive operative rights of the applicant, ED. J. LYNG CO., included a floor space capacity of 50,000 square feet. Applicant asserts that it increased its storage and/or warehouse floor space by 27,600 square feet so that, at the present time, the warehouse service consists and involves the use of approximately 77,600 square feet of leased floor space. In addition to the above storage space, applicant separately operates a 25,000 square foot warehouse, presently under lease. Applicant also leases cylindrical bins in Modesto with a capacity of 2,528 tons.

Accordingly, the prescriptive operative right as a public utility warehouseman of ED. J. LYNG COMPANY, Inc., Modesto will be revoked and a certificate of public convenience and necessity to operate as a public utility warehouseman for the operation of storage or warehouse floor space at Modesto will be granted to ED. J. LYNG CO., a division of NORTHERUP KING CO.

After consideration, the Commission finds that the aforementioned transfer of the operative right would not be adverse to the public interest. A public hearing is not necessary.

The Commission concludes that the application should be granted and the effective date of this order should be the date hereof as there is an immediate need to complete this matter.

ED. J. LYNG 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 to operate as a public utility warehouseman for the operation of storage or warehouse floor space at Modesto possessed by ED. J. LYNG COMPANY, INC., is revoked and in its place and stead a certificate of public convenience and necessity to operate as a public utility warehouseman, as shown in Appendix A, attached hereto and made a part hereof, is granted to ED. J. LYNG CO., a division of NORTHERUP KING CO.

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


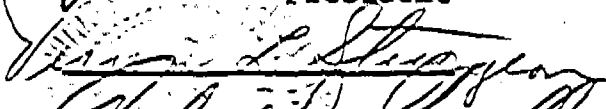

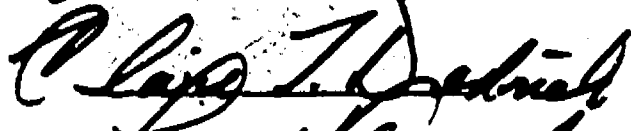

- (a) Within thirty days after the effective date of this order, applicant shall file a written acceptance of the certificate granted. Applicant is placed on notice that if it accepts the certificate it will be required, among other things, to file annual reports of its operations.
- (b) Within one hundred and 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 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 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 61-Series.
- (e) Applicant shall maintain its accounting records on a calendar year basis in conformance with the application 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 its operations in such form, content and number of copies as the Commission from time to time, shall prescribe.

A. 59204 - tt

The Executive Director shall cause service of copies of this order to ED. J. LYNG CO. at P. O. Box 3777, Modesto, California 95352 and to Jack L. Dawson, Agent.

The effective date of this order is the date hereof.

Dated DEC 16 1979, at San Francisco, California.


President




Commissioners

ED. J. LYNQ CO., a division of NORTHERUP KING CO., which is a Delaware corporation, (NORTHERUP KING CO., being a subsidiary of SANDOZ LIMITED, a Swiss corporation) 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 California 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> (Except as shown)
Modesto	77,600
Modesto	25,000
Modesto	Cylindrical Bins 2,528 Tons Capacity

(The floor space shown is exclusive of the 50,000 square feet of expansion permissible under Section 1051 of the Public Utilities Code.)

(END OF APPENDIX A)

Issued by California Public Utilities Commission.

Decision No. 91158, Application No. 59204.