

Decision No. 2424E

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
 MERCHANTS ICE & COLD STORAGE COMPANY,)
 a California corporation, for an order)
 authorizing said company to issue,) Application No. 17885
 sell and exchange its securities and)
 to issue notes.)

George Stratton, for Applicant.

BY THE COMMISSION:

O P I N I O N

ORIGINAL

In this proceeding the Railroad Commission is asked to make an order authorizing Merchants Ice and Cold Storage Company to issue 82,290 shares of its common stock, without nominal or par value, in exchange for 82,290 shares of common stock now outstanding of the par value of \$10.00 a share, such exchange to be made on the basis of share for share, and to issue not exceeding 94,410 shares of its common capital stock, without nominal or par value, in exchange for 70,802-1/2 shares of its seven percent cumulative preferred stock now outstanding of the par value of \$10.00 a share and accumulated and unpaid dividends.

The Commission further is asked to authorize the company to issue \$36,037.50 of six percent notes, of which \$18,018.75 will be payable on January 28, 1933, and \$18,018.75 on September 28, 1933.

Merchants Ice and Cold Storage Company is engaged in the manufacture and sale of ice and in the public utility cold storage business in San Francisco. It was organized under the laws of the State of California on or about January 28, 1893, and under its Articles of Incorporation, as amended in July, 1924, had an authorized

capital stock of \$6,000,000.00, divided into 600,000 shares of the par value of \$10.00 each, of which 500,000 shares (\$5,000,000.00 par value) were common and 100,000 shares (\$1,000,000.00 par value) were preferred, the latter bearing cumulative dividends at the rate of seven percent per annum.

As of November 30, 1931, applicant had outstanding \$822,900.00 of common stock and \$708,025.00 of preferred. Its assets and liabilities were reported as follows:

ASSETS

| | | |
|---------------------------------------|---------------------|-----------------------|
| Property: | | |
| Land..... | \$ 865,608.55 | |
| Building, machinery, equipment..... | <u>1,488,562.03</u> | \$2,354,170.58 |
| Cash in sinking fund..... | | 317.35 |
| Investments in other companies..... | | 234,624.40 |
| Due from Acme Ice Cream Company..... | | 38,039.09 |
| Current assets: | | |
| Cash..... | 33,666.36 | |
| Notes and acceptances receivable..... | 35,937.87 | |
| Interest receivable..... | 1,966.05 | |
| Accounts receivable..... | 149,268.07 | |
| Claims receivable..... | 1,483.12 | |
| Materials and supplies..... | <u>2,264.16</u> | 224,585.63 |
| Deferred charges..... | | <u>106,466.22</u> |
| Total Assets..... | | <u>\$2,958,203.27</u> |

LIABILITIES

| | | |
|--|----|-----------------------|
| Common stock..... | \$ | 822,900.00 |
| Preferred stock..... | | 708,025.00 |
| First mortgage bonds..... | | 979,500.00 |
| Long term notes..... | | 36,037.50 |
| Current liabilities: | | |
| Notes payable..... | \$ | 53,218.75 |
| Accounts payable..... | | 16,793.73 |
| Taxes..... | | 22,409.55 |
| Other..... | | 2,658.31 |
| Accrued interest..... | | <u>11,178.75</u> |
| Reserve for doubtful notes and accounts..... | | 106,259.09 |
| | | 14,867.24 |
| Surplus: | | |
| Arising from appreciation in value of land..... | | 148,775.26 |
| Arising from write-up to par value of treasury preferred stock..... | | 72,700.01 |
| Profit and loss..... | | <u>69,139.17</u> |
| | | 290,614.44 |
| Total Liabilities..... | | <u>\$2,958,203.27</u> |

It now is reported that on December 15, 1931, applicant's stockholders approved a proposition to amend its Articles of Incorporation so as to provide for an authorized capital stock of 600,000 shares, divided into 100,000 shares of preferred stock of the par value of \$10.00 each, and 500,000 shares of common stock without nominal or par value and to provide for the conversion of preferred stock into common in the manner and under the conditions as follows:

1. For each share of preferred stock (\$10.00 par value) surrendered for conversion on or before March 15, 1932, there will be issued one and one-third shares of common stock without nominal or par value.
2. For each share of preferred stock (\$10.00 par value) surrendered for conversion subsequent to March 15, 1932, and prior to September 15, 1932, there will be issued one share of common stock without nominal or par value.
3. For each share of preferred stock (\$10.00 par value) surrendered for conversion subsequent to September 15, 1932, and prior to March 15, 1933, there will be issued two thirds of one share of common stock without nominal or par value.
4. For each share of preferred stock (\$10.00 par value) surrendered for conversion subsequent to March 15, 1933, there will be issued one-half of one share of common stock without nominal or par value.

It appears that dividends on the preferred stock have not been paid since April, 1927, and that the accumulated and unpaid amount aggregates more than \$200,000.00. Exhibit No. 5, however, sets forth that the holders of seventy percent of the outstanding stock have approved the proposed amendment to the company's Articles of Incorporation

and the testimony herein indicates that the majority of the preferred stockholders will accept the company's offer to issue to them common stock in exchange for their preferred shares with the accumulated and unpaid dividends. It might be stated at this point, however, that such stockholders who so desire may withhold their preferred stock and retain the same rights they now possess.

It is clear that the removal of the accumulated dividends through the conversion of stocks as here proposed will improve the financial condition of the company. This, we believe, is in the public interest, and from our review of the testimony offered at the hearing in this matter, and our examination of the company's statements and reports, it appears to us that the issue of common shares in the amount requested is not unreasonable. At the conclusion of this transaction, assuming all the preferred stock is converted, applicant would have outstanding 176,700 shares of common stock.

Referring to the request to issue \$36,037.50 of notes, it seems that on September 28, 1931, applicant purchased and reacquired 1441.5 shares of its outstanding preferred stock at fifty percent of its par value, \$72,075.00, paying therefor twenty-five percent in cash, twenty-five percent in notes maturing eight months from September 28, 1931, twenty-five percent in notes maturing sixteen months from September 28, 1931, and twenty-five percent in notes maturing twenty-four months from September 28, 1931, all notes bearing interest at six percent.

Those notes maturing later than one year after date of issue, amounting to \$36,037.50, were not authorized by the Commission and, in our opinion, are void because of the provisions of Section 52 of the Public Utilities Act. It is clear, however, that applicant's failure to obtain permission to issue its notes was through inadvertence and with no intent to evade the provisions of the act. When

the matter of the necessity of obtaining the Commission's consent was brought to its attention, it forthwith filed this request to issue new promissory notes. A list of the notes including the name of the payee and the maturity date in each case was filed in the proceeding on January 15, 1932.

An order approving the application will be entered.

O R D E R

Merchants Ice and Cold Storage Company having applied to the Railroad Commission for permission to issue stock and notes, a public hearing having been held before Examiner Satterwhite and the Railroad Commission being of the opinion that the application should be granted, as herein provided, and that the money, property or labor to be procured or paid for through the issue of said stock and notes is reasonably required for the purposes specified herein, which purposes are not, in whole or in part, reasonably chargeable to operating expenses or to income,

IT IS HEREBY ORDERED as follows:

1. Merchants Ice and Cold Storage Company may issue, on or before March 15, 1933, not exceeding 82,290 shares of its common capital stock, without nominal or par value, in exchange for 82,290 shares of common stock now outstanding of the par value of \$10.00 a share, said exchange to be made on the basis of one share of common stock without nominal or par value for each share of common stock of the par value of \$10.00.

2. Merchants Ice and Cold Storage Company may issue, on or before March 15, 1933, not exceeding 94,410 shares of its common capital stock, without nominal or par value, in exchange for its preferred stock now outstanding, said exchange to be made upon the terms set forth in the opinion preceding this order and further upon the

condition that all claims for accumulated and unpaid dividends on preferred stock exchanged for common stock be waived by the holders of said preferred stock.

3. Merchants Ice and Cold Storage Company may issue not exceeding \$36,037.50 of its six percent promissory notes in lieu of notes of like amount issued without an order from this Commission, one-half of said notes to be issued to mature on January 28, 1933, and one-half on September 28, 1933.

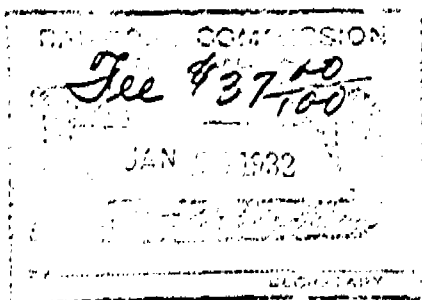
4. The authority herein granted is subject to the following conditions:

(a) Applicant shall keep such record of the issue of the stock and notes herein authorized as will enable it to file, on or before the 25th day of each month, a verified report, as required by the Railroad Commission's General Order No. 24, which order, insofar as applicable, is made a part of this order.

(b) The authority herein granted to issue stock will become effective upon the date hereof.

(c) The authority herein granted to issue notes will become effective when applicant has paid the fee prescribed by Section 57 of the Public Utilities Act, which fee is Thirty-seven (\$37.00) Dollars.

DATED at San Francisco, California, this 25th day of January, 1932.



Fee # 23775

C. A. Seaver
Leon O'Neil
W. J. Lee
W. B. Ryan
Fred G. Westcott
Commissioners.