

Decision No. 25232

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the application of )  
NATIONAL ICE AND COLD STORAGE COMPANY )  
OF CALIFORNIA for an order authorizing )  
applicant to execute and deliver a )  
proposed instrument amending supple- )  
menting and/or abrogating that certain )  
First Mortgage dated December 1, 1912 )  
executed by application to The Union )  
Trust Company Limited and George E. )  
Stevenson, trustees, to secure the )  
payment of \$15,000,000.00 of First )  
Mortgage Six Percent Thirty Year Gold )  
Bonds and for the issuance and delivery )  
under the terms, covenants and con- )  
ditions of said proposed instrument )  
amending, supplementing and/or abro- )  
gating said First Mortgage of certain )  
interest certificates, and also for an )  
order authorizing applicant to enter )  
into an agreement with Jessica Shewan )  
and John L. Curley, as executors and as )  
trustees under the last will and testa- )  
ment of James Shewan, deceased, for the )  
refunding of certain obligations owing )  
by applicant to the estate of James )  
Shewan, deceased. )

ORIGINAL

Application No. 18428

BY THE COMMISSION:

O P I N I O N

National Ice and Cold Storage Company of California in this application asks permission to execute an indenture amending its first mortgage dated December 1, 1912, and to execute an agreement to refund an indebtedness owing the James Shewan Estate.

National Ice and Cold Storage Company of California is a corporation organized and existing under and by virtue of the laws of the State of California. It has an authorized stock issue of 50,000 shares of \$100.00 par value seven per cent preferred stock and 50,000 shares of \$100.00 par value common stock. There are issued and outstanding at this time 11,495 shares of the preferred stock and 50,000 shares of the common stock. All of this

stock was issued prior to the enactment of the Public Utilities Act.

Under date of December 1, 1912, applicant executed and delivered to The Union Trust Company Limited of Toronto and to George E. Stevenson of the City of Detroit, State of Michigan, a certain indenture to secure the payment of \$15,000,000.00 first mortgage six per cent thirty-year bonds. Subsequently George E. Stevenson died and was succeeded as the individual trustee under said trust indenture by Platt Kent of the City and County of San Francisco.

It appears that there are now outstanding bonds secured by this trust indenture in the amount of \$3,437,115.00. Because of the inability of the company to pay the interest due on such bonds on June 1, 1932, a meeting of the company's bondholders was called for the purpose of modifying certain provisions of the trust indenture. This meeting was held in the City of New York on June 6, 1932. At this meeting the holders of more than sixty-six per cent of the company's outstanding bonds approved amendments to the company's first mortgage. To carry the amendments into effect, there has been prepared a supplemental trust indenture, a copy of which is filed herein as Exhibit "B". Under the provisions of this indenture the payment of the following interest coupons -

No. 39 due June 1, 1932  
No. 40 due December 1, 1932  
No. 41 due June 1, 1933  
No. 43 due June 1, 1934

will be deferred and the maturity thereof postponed to December 1, 1942, without interest thereon. The company intends to issue to the holders of these coupons interest certificates which will mature on December 1, 1942.

The supplemental trust indenture further modifies the indenture executed on December 1, 1912, in that it obligates the company to create and maintain a sinking fund by paying to the corporate

trustee on the first day of June, 1937, and likewise on the first day of June thereafter until the maturity of the bonds, a sum of money equal to seventy-five per cent of the net profits of the company earned during the preceding calendar year, but in no event to exceed in any calendar year the sum of \$80,000.00.

The supplemental indenture further provides that so long as any bonds remain outstanding under the indenture executed on December 1, 1912, as amended, no dividends shall be declared or paid upon or distributions made upon any class of stock of the company at any time issued and/or outstanding, except with the consent of the holders of sixty-six per cent of the face amount of the bonds for the time being outstanding.

Applicant is now indebted to the James Shewan Estate in the sum of \$224,000.00, represented by two demand notes. Under the proposed agreement filed in this proceeding as Exhibit "C", the demand notes are changed into a contractual obligation, under the terms of which National Ice and Cold Storage Company of California will be required to pay to the Shewan Estate one-half of the amount which would otherwise be payable into the sinking fund, to which reference has been made. In the event the company at its option shall pay into the sinking fund at any time in excess of the amount required by the supplemental trust indenture filed in this proceeding as Exhibit "B", then and in any such event an equivalent sum shall be paid to the Shewan Estate. The Shewan Estate agrees with the company to, and does by the agreement, subordinate the indebtedness of \$224,000.00 and any accrued or unpaid interest thereon to and in favor of all current loans or advances, not to exceed at any one time the sum of \$250,000.00 which may be made to the company at any time prior to January 1, 1936, by the Anglo California National Bank of San Francisco, or its successor, or by any other bank or banker, or

by others.

It appears that the purpose of the supplemental trust indenture filed as Exhibit "B" and the agreement filed as Exhibit "C" is to enable the National Ice and Cold Storage Company of California to obtain credit to conduct its business. It seems that the supplemental trust indenture is being executed pursuant to, and as authorized by article twelve (12) of applicant's first mortgage.

O R D E R

The Commission having been asked to enter its order as indicated in the foregoing opinion, and having considered the request of applicant, and being of the opinion that this is not a matter in which a hearing is necessary and that this application should be granted, therefore,

IT IS HEREBY ORDERED, that National Ice and Cold Storage Company of California be, and it is hereby, authorized to execute a supplemental trust indenture substantially in the same form as that filed in this proceeding as Exhibit "B" and to execute an agreement substantially in the same form as that filed in this proceeding as Exhibit "C", provided that the authority herein granted to execute said supplemental trust indenture and said agreement is for the purpose of this proceeding only, and is an approval insofar as this Commission has jurisdiction under the terms of the Public Utilities Act, and is not intended as an approval of said supplemental trust indenture and said agreement as to such other legal requirements to which said supplemental trust indenture and said agreement may be subject.

IT IS HEREBY FURTHER ORDERED, that National Ice and Cold Storage Company of California be, and it is hereby, authorized

to issue interest certificates similar in form to the interest certificates appearing in said supplemental trust indenture, said interest certificates to be issued in accordance with the terms, covenants and conditions of said proposed supplemental trust indenture, for the purpose of paying or refunding the interest due on June 1, 1932, on December 1, 1932, on June 1, 1933 and on June 1, 1934, on the company's first mortgage six per cent bonds due December 1, 1942.

IT IS HEREBY FURTHER ORDERED, that within thirty (30) days after the execution of the aforesaid supplemental trust indenture and the aforesaid agreement, applicant shall file with the Railroad Commission a certified copy of said supplemental trust indenture and a certified copy of said agreement.

IT IS HEREBY FURTHER ORDERED, that the authority herein granted will become effective when applicant has paid the fee prescribed by Section 57 of the Public Utilities Act, which fee is Six Hundred and Thirty-seven (\$637.00) Dollars.

DATED at San Francisco, California, this 3<sup>d</sup> day of October, 1932.

Fee \$ 637 <sup>00</sup>/<sub>100</sub>

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Fee # 23378

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Commissioners.