

Decision No. 28325

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of  
RICHARDS TRUCKING & WAREHOUSE CO.  
for authority to issue common stock  
of no par value in exchange for  
outstanding common stock of par  
value and to issue new preferred  
stock in exchange for outstanding  
preferred stock.

**ORIGINAL**  
Application No. 18971

Hugh Gordon and Arlo D. Poe,  
for applicant.

BY THE COMMISSION:

O P I N I O N

Richards Trucking & Warehouse Co. asks permission to reduce its stated capital and issue new stock in exchange for stock now outstanding.

Applicant has an authorized stock issue of \$1,000,000.00 divided into 50,000 shares of common of the par value of \$10.00 per share and 50,000 shares of preferred of the par value of \$10.00 per share. The holders of the preferred stock are entitled to cumulative dividends at the rate of eight percent payable quarterly and participate with the common stockholders up to twelve percent.

The company has outstanding 16,237-1/2 shares of common stock and 5464 shares of preferred stock.

Section 300(b) of the general corporation law of California requires every stock corporation to carry on its books a stated capital which shall consist of the aggregate par value of the outstanding shares and treasury shares having par value, and the aggregate amount or value of the agreed consideration received or

to be received from shares without par value. The aggregate par value of applicant's outstanding stock is \$217,015.00. It is of record that applicant's stockholders, at a meeting held April 18, 1933 voted to reduce its stated capital from \$217,015.00 to \$119,590.00 or by the sum of \$97,425.00. It is further reported that of the \$97,425.00 about \$83,000.00 will be credited to earned surplus, in order to wipe out an accumulated deficit and that the balance will be credited to paid-in surplus.

At the stockholders meeting, to which reference has been made, 13,594 shares (83%) of the common stock outstanding and 4,277 shares, (80%) of the preferred stock outstanding were represented. The stockholders attending the meeting or represented at such meeting unanimously approved the proposed changes in applicant's stock.

Applicant has agreed that no part of the paid-in surplus will be distributed to the stockholders. To effect the reduction in the stated capital the 16,237-1/2 shares of common stock will be changed from shares having a par value of \$10.00 per share to shares having no par value. The value of the common stock will be reduced from \$162,375.00 to \$64,950.00. It is also proposed to issue 5,464 shares of six percent non-cumulative preferred stock participating with the common stock up to eight percent in exchange for the 5,464 shares of eight percent cumulative participating preferred stock now outstanding. Disregarding the participating features, this exchange will result in a small annual saving in dividends on the preferred stock, and, according to the opinion of counsel, will wipe out approximately \$40,000.00 of accumulated unpaid dividends on the preferred stock.

As of May 1, 1933 applicant reports its assets and liabilities as follows:-

#### A S S E T S

Real estate . . . . .	\$113,500.00
Buildings (Depreciated) . . . . .	28,296.48
Equipment (Depreciated) . . . . .	39,809.45
Cash (Overdraft) . . . . .	1,669.74
Accounts receivable . . . . .	6,640.40
Deferred charges . . . . .	2,793.32
Inventory of supplies . . . . .	<u>2,033.77</u>

Total assets ..... \$191,403.68

#### L I A B I L I T I E S

Common stock . . . . .	\$162,375.00
Preferred stock . . . . .	54,640.00
Mortgages payable . . . . .	47,250.00
Notes payable . . . . .	3,000.00
Accounts payable . . . . .	5,146.63
Deferred credits . . . . .	239.56
Deficit . . . . .	<u>81,247.51</u>

Total liabilities..... \$191,403.68

It is of record that the principal purpose of changing applicant's capital stock structure is to eliminate from its balance sheet its accumulated deficit and to place applicant in a position, if its earnings increase, to pay some dividend on its outstanding preferred stock. It will be observed that no change is being made in either the number of shares of stock outstanding or in the voting rights of the different classes of stock. The preferred stockholders are consenting to a change in the rate of dividend, and the cumulative features of the preferred stock, but they are not being deprived of any amount which they are entitled to receive in the event the company sells its properties or it is liquidated. The reduction in the stated capital is all effected by a change in the value assigned to the common stock.

While we have no objection to applicant carrying out the rearrangement of its capital stock structure, it should be understood that we are not directly or indirectly expressing any opinion as to whether the holder of present outstanding preferred stock is obligated to accept the new stock in exchange for the stock which he now holds, nor are we expressing any opinion as to whether if he accepts the new stock, he surrenders his right to accumulated dividends on the stock now outstanding.

#### O R D E R

Richards Trucking & Warehouse Co. having asked permission to issue new stock in exchange for stock now outstanding, as indicated in the foregoing opinion, and thereby reduce its stated capital, a public hearing having been held before Examiner Fankhauser and the Commission being of the opinion that this application should be granted subject to the provisions of this order, that the money, property or labor to be procured or paid for by the issue of the stock herein authorized, is reasonably required by applicant for the purpose of reducing its stated capital, and that the expenditures herein authorized are not in whole or in part reasonably chargeable to operating expenses or to income, therefore,

IT IS HEREBY ORDERED, that Richards Trucking & Warehouse Co. may, on or before December 31, 1933, issue 5,464 shares of six per cent non-cumulative participating preferred stock in exchange for 5,464 shares of eight percent cumulative participating preferred stock now outstanding, and also issue 16,237-1/2 shares of no par value common stock in exchange for 16,237-1/2 shares of par value common stock now outstanding.

IT IS HEREBY FURTHER ORDERED, that Richards Trucking & Warehouse Co. shall keep such record of the issue and delivery of the stock 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.

IT IS HEREBY FURTHER ORDERED, that the authority herein granted will become effective when Richards Trucking & Warehouse Co. has filed with the Commission in satisfactory form a stipulation duly authorized by its Board of Directors agreeing that of the \$97,425.00 surplus created through the exchange of its capital stock herein authorized, it will credit approximately \$83,000.00 to earned surplus and the balance to paid-in surplus, and that no part of the paid-in surplus will be distributed to stockholders or used as a basis for the declaration of dividends.

DATED at San Francisco, California, this 17<sup>th</sup> day of September, 1933.

O. C. Leary  
L. A. O'Brien  
W. J. Ann  
M. B. Harris  
W. H. T. Moore

Commissioners