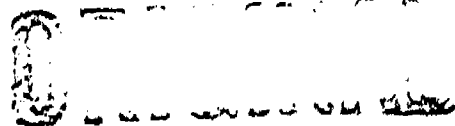


Decision No. 28368



BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the matter of the Application of)
WALKUP DRAYAGE & WAREHOUSE COMPANY,)
a corporation, for an order authoriz-) Application No. 20253
ing the issue of preferred stock.)

Fitzgerald, Abbott & Beardsley, for applicant.

BY THE COMMISSION:

O P I N I O N

In this proceeding Walkup Drayage & Warehouse Company asks permission to issue and sell at par \$85,000. per value (850 shares) of 5% cumulative preferred stock and use the proceeds for the purposes hereinafter stated.

Walkup Drayage & Warehouse Company is engaged in the public utility warehouse business, in the business of a common carrier, transporting goods for compensation by automobile trucks, and in the drayage business. The company has an authorized stock issue of \$200,000. divided into \$100,000. of common and \$100,000. of 5% cumulative preferred. Of its authorized stock \$50,000. of common stock is now outstanding.

The company for the three years ending December 31, 1934 has reported revenues and expenses as follows:-

	<u>1934</u>	<u>1933</u>	<u>1932</u>
Warehouse operating revenues	\$49,768.07	\$44,407.91	\$45,230.85
Warehouse operating expenses	<u>29,744.25</u>	<u>28,166.01</u>	<u>33,720.39</u>
Net warehouse operating revenues	<u>\$20,023.82</u>	<u>\$16,241.90</u>	<u>\$11,510.46</u>
ADD: Nonoperating revenues:			
Rent from buildings, etc.	\$13,485.28	\$12,627.65	\$12,036.41
Miscellaneous	<u>322,962.77</u>	<u>259,657.24</u>	<u>271,692.19</u>
Total nonoperating revenues	<u>\$336,448.05</u>	<u>\$272,284.89</u>	<u>\$283,728.60</u>
Gross Income	<u>\$356,471.87</u>	<u>\$288,526.79</u>	<u>\$295,239.06</u>

	<u>1934</u>	<u>1933</u>	<u>1932</u>
<u>DEDUCT: Nonoperating revenue deductions:</u>			
Rent expenses	\$ 5,233.50	-	-
Interest expenses	2,719.76	\$ 1,719.17	\$ 3,662.20
Nonoperating taxes	1,455.34	-	-
Miscellaneous	<u>293,125.34</u>	<u>239,109.16</u>	<u>247,814.75</u>
Total nonoperating revenue deductions.....	\$302,533.94	\$240,828.33	\$251,476.95
Rent	23,362.65	23,172.00	23,172.00
State and local taxes on land and buildings	627.61	352.38	206.50
Federal taxes	1,944.38	4,300.00	-
Total deductions	<u>\$328,468.58</u>	<u>\$268,652.71</u>	<u>\$274,855.45</u>
Net income.....	<u>\$ 28,003.29</u>	<u>\$ 19,874.08</u>	<u>\$ 20,385.61</u>

As of November 1, 1935 Walkup Drayage & Warehouse Company reports assets and liabilities as follows:-

A S S E T S

Trucks and equipment.	\$ 162,520.42
Cost new	\$458,643.24
Less depreciation	<u>296,122.82</u>
Stock of corporations	\$ 110,200.00
Cash	18,471.59
Accounts receivable-warehouse, etc.	33,321.08
Due from W. G. Walkup	56,693.92
Due from Merchants Express Corporation	18,314.72
Miscellaneous accounts receivable	1,468.72
Insurance funds	1,253.95
Deferred charges	1,132.50
Advanced expenses	<u>1,759.88</u>
Total.....	<u>\$ 405,036.78</u>

L I A B I L I T I E S

Capital stock outstanding	\$ 50,000.00
Notes payable	54,000.00
Current bills	15,891.75
Freight drafts	6,706.76
Contracts payable	75,915.18
Accrued wages	5,785.97
Merchants Express Corporation	83,000.00
Unearned income	170.68
Reserve for Federal income tax	486.10
Surplus	<u>113,080.34</u>
Total.....	<u>\$405,036.78</u>

Under the authority granted by Decision No. 28169 dated August 12, 1935 in Application No. 20090, Walkup Drayage & Warehouse Company acquired all the outstanding stock of Merchants Express Cor-

poration. It agreed to pay for this stock \$110,000., payment to be made as follows:- \$25,000. in cash on the execution of the agreement and \$85,000., together with interest at the rate of 6% per annum in monthly installments of \$1,000. on Sept. 1, 1935, and \$1,000. on the first day of each succeeding month thereafter to and including August 1, 1936; then \$1,500. on Sept. 1, 1936 and \$1,500. monthly thereafter to and including August 1, 1937; then \$2,000. on Sept. 1, 1937 and \$2,000. thereafter monthly until paid.

Applicant reports that of the \$85,000. balance, due under the contract under which it is purchasing the stock of Merchants Express Corporation it has paid \$3,000., leaving \$82,000. unpaid. It appears from applicant's petition that E. F. Salsbury and Webb Richards from whom applicant is acquiring the stock of Merchants Express Corporation, have agreed to accept \$45,000. in full payment for the balance due under the contract, said \$45,000. to be paid in two installments; \$30,000. thereof on or before November 20, 1935 and \$15,000. thereof on or before January 10, 1936. To obtain the funds necessary to make the \$45,000. payment to obtain \$15,000. for additional equipment, \$10,000. to pay on a note due Central Bank of Oakland and \$15,000. for working capital or to pay indebtedness, applicant asks permission to issue \$85,000. par value of its 5% cumulative preferred stock.

Under applicant's Articles of Incorporation the dividends on the preferred stock are payable quarterly on the first day of January, April, July and October of each year. Such dividends shall be payable before any dividends shall be paid upon, or set apart for, the common stock of the corporation and shall be cumulative so that if in any quarterly dividend period, dividends at the rate of 5% per annum shall not have been paid, or set apart for, the preferred stock, the deficiency (but without interest) shall be fully paid,

or set apart for payment, before any dividend shall be paid upon, or set apart for, the common stock. The corporation reserves the right at any time and from time to time at the option of its Board of Directors, to redeem the whole or any part of the outstanding preferred stock by paying \$100. for each share thereof, together with any accrued and unpaid dividends, upon not less than twenty(20) days notice by mail to the holders of record of the stock. The Articles of Incorporation further provide that on April 1, 1936, and quarterly thereafter, so long as any preferred stock remains outstanding, the corporation shall make available, out of such assets as are now, or may thereafter be legally available therefor, a sinking fund to be applied to the purchase or redemption of preferred stock in the amount not less than \$3,000., and any such sum shall be applied to the redemption, within one month after the first day of each such quarterly periods of not less than thirty shares of preferred stock determined by lot, together with accrued dividends thereon, if any. No preferred stock shall be purchased or redeemed during the continuance of any default in the payment of dividends on such stock.

The Articles of Incorporation further provide that so long as any of the preferred stock authorized to be issued shall be outstanding, the corporation shall^{not} have power-

1. To create or issue any other stock with any preference or preferences equal to or greater than those of the preferred stock authorized to be issued by said Articles of Incorporation.
2. To incur any indebtedness by the issuance of any bonds or debentures.
3. Upon the issuance of 850 shares of the preferred stock, (to-wit \$85,000. par value) to issue any part of the remaining authorized preferred shares until said 850 shares shall have been redeemed or otherwise retired.

These provisions cannot be amended except by the vote or written consent of the holders of at least two-thirds of the outstanding shares of each class of stock, regardless of the limitations or restrictions on the voting power thereof.

The Articles of Incorporation further provide that except as otherwise made mandatory by law, the holders of the preferred stock shall have no right to vote for the election of directors or for any other purpose and shall not be entitled to receive notice of any meeting of stockholders and all voting rights shall be vested exclusively in the holders of the common stock; provided, however that if and whenever six quarterly dividends on the preferred stock shall be unpaid, in whole or any part, then the holders of the preferred stock shall be entitled to the exclusive voting right for the election of directors, until all arrears in dividends on the preferred stock shall have been paid in full and the quarterly dividend thereon for the current quarterly dividend period shall have been declared and set apart in full, and thereupon the exclusive voting right of the election of directors shall be divested from the holders of the preferred stock and re-vested in the holders of the common stock.

As stated, applicant now has outstanding \$50,000. of common stock. Applicant's annual report for 1934 shows that this stock is all owned by W. G. Walkup. From applicant's balance sheet filed in this proceeding it appears that W. G. Walkup on November 1, 1935 was indebted to applicant in the sum of \$56,693.92. Applicant, as stated, asks permission to issue \$85,000. of 5% cumulative preferred stock. While its Articles of Incorporation provide against the issue of additional preferred stock and against the issue of bonds or debentures, they place no limit on the creation of other indebtedness or on loans to stockholders. If the holders of the preferred stock receive no dividends, they must wait for eighteen (18) months before they have any

voice in the management of the properties. We do not favor such an arrangement. We believe that if the holders of the preferred stock fail to receive any dividend they should be given a voice in the management of the properties and that their right to vote should continue until the accumulated dividends have been paid. The order herein will provide that the authority to issue the \$85,000. of stock will not become effective until applicant has filed with the Commission an amendment to its Articles of Incorporation which will permit the holders of the preferred stock to vote for any and all purposes if the corporation fails to pay any dividend on such stock.

O R D E R

Walkup Drayage & Warehouse Company having asked permission to issue \$85,000. par value of its 5% cumulative preferred stock, for the purposes hereinbefore stated, the Commission having considered applicant's request and being of the opinion that this is not a matter in which a public hearing is necessary, that the money, property or labor to be procured or paid for by the issue of said stock is reasonably required for the purposes hereinafter stated, that the expenditures for said purposes are not in whole or in part reasonably chargeable to operating expenses or to income and that this application should be granted as herein provided, therefore,

IT IS HEREBY ORDERED that Walkup Drayage & Warehouse Company be, and it is hereby, authorized to issue and sell at not less than par, after the effective date hereof and prior to December 31, 1935, \$85,000. par value of its ^{preferred} ~~common~~ capital stock and use the proceeds realized from the sale of such stock for the following purposes:-

1. To pay the balance due under the conditional sales contract authorized to be executed by Decision No. 22169 dated August 12, 1935\$45,000.
2. To acquire additional equipment or make a down payment on the purchase of additional equipment \$15,000.

3. To pay on the note due Central Bank of
Oakland \$10,000.
4. To provide working capital and/or pay off and
discharge in whole or in part a chattel mortgage
on equipment of Merchants Express Corporation in
favor of Bank of America National Trust and Savings
Association and/or the Federal Reserve
Bank \$15,000.

IT IS HEREBY FURTHER ORDERED that the authority herein granted will not become effective until applicant has filed with the Commission an amendment to its Articles of Incorporation, under which amendment the holders of the preferred stock of the corporation shall be given the right to vote for the election of directors and for any other purpose if and when the company fails to pay dividends on its outstanding preferred stock, such right to vote to continue during such period as the company fails to pay dividends on said preferred stock.

IT IS HEREBY FURTHER ORDERED that Walkup Drayage & Warehouse Company shall keep such record of the issue, sale and delivery of the stock herein authorized and of the disposition of the proceeds 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.

DATED at San Francisco, California, this 18th day of November, 1935.

M. D. C.

M. B. L.

M. S. T.

E. W. R.

Commissioners.