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29504

Decision No. 29504

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of )  
MERCHANTS ICE AND COLD STORAGE COMPANY )  
for an order authorizing the execution )  
of an agreement with its bondholders )  
to extend maturity date of bonds and )  
trust indenture and exchange bonds )  
for new bonds. )

Application No. 20687

Hettman and Scampini, by A. J. Scampini,  
for applicant.

BY THE COMMISSION:

ORIGINAL

O P I N I O N

In its amended petition filed in this matter on December 23, 1936, Merchants Ice and Cold Storage Company asks permission to carry into effect a reorganization plan (Exhibit B) designed to extend for a period of five years the serial maturity dates of its outstanding bonds. The bonds will continue to bear interest at the original rate, to-wit, 6 $\frac{1}{2}$ % per annum, payable semi-annually on April 1st and October 1st of each year.

The original application was filed on July 24, 1936. The application was set for hearing on August 17th. At such hearing applicant offered proof of publishing the notice of the hearing and mailing such notice to its bondholders and stockholders. At the hearing applicant asked that the hearing be continued to August 31st. At the time applicant represented to the Commission that negotiations were then pending between the company and certain representatives of its bondholders looking towards the making of certain amendments to the reorganization plan. The request of the applicant was granted.

Thereafter and on August 31st upon request of applicant the hearing was continued to September 21st and on September 21st the hearing, upon request of applicant, was further continued to October 12th. Thereafter the matter was dropped from the calendar, pending the filing of an amended plan of reorganization. The amended plan of reorganization was filed on December 23rd. The Commission thereupon set this application for hearing on January 20th. It directed applicant to publish a notice of the hearing and to mail a copy of the notice of the hearing and a copy of the amended reorganization plan to its bondholders and its stockholders. At the hearing applicant submitted proof showing it had published and mailed the notice of the hearing, as directed by the Commission.

No one appeared at the hearing to protest the granting of this application.

Merchants Ice and Cold Storage Company is a public utility engaged in the business of the manufacture and sale of ice and in the general commercial cold storage business in the State of California and elsewhere. For 1935 applicant's revenues from its utility business are reported at \$261,764.84 and from its nonutility business at \$88,926.91. As of October 31, 1936 Merchants Ice and Cold Storage Company reports assets and liabilities as follows:-

<u>ASSETS</u>		
Property . . . . .		\$2,089,596.03
Land . . . . .	\$ 865,608.55	
Buildings, machinery and equipment-depreciated . . . . .	<u>1,223,987.48</u>	
Investments . . . . .		26,436.40
Due from Acme Ice Cream Co. . . . .		51,397.70
Globe Brewing Company . . . . .		1,200.20
Merchants Ice Acceptance Corporation . . . . .		3,148.91
Current assets . . . . .		159,296.11
Cash . . . . .	\$ 1,951.11	
Notes receivable-Net . . . . .	8,676.25	
Accounts receivable-Net . . . . .	147,767.09	
Contract receivable . . . . .	625.00	
Accrued interest receivable . . . . .	<u>276.66</u>	
Deferred charges . . . . .		62,145.81
Unamortized bond discount expense . . . . .	23,726.48	
Unamortized commission sale of preferred stock . . . . .	15,582.50	
Taxes applicable to future period . . . . .	134.70	
Insurance premium unexpired portion . . . . .	6,132.14	
Special insurance deposit . . . . .	1,180.52	
Prepaid interest . . . . .	1,435.55	
Replacements . . . . .	7,280.43	
Other deferred items . . . . .	5,941.31	
Reorganization expense . . . . .	<u>732.18</u>	
Total . . . . .		<u>\$2,393,221.16</u>

LIABILITIES

Capital stock . . . . .		\$1,415,725.00
Common . . . . .	\$ 999,575.	
Preferred 7% cumulative . . . . .	416,150.	
First mortgage 6% serial gold bonds . . . . .		659,500.00
Long term installment note . . . . .		10,539.76
Current liabilities . . . . .		190,238.15
Notes payable . . . . .	86,017.10	
Notes payable, advanced by stockholders . . . . .	34,904.00	
Notes payable, endorsed by stockholders . . . . .	17,743.10	
Accounts payable . . . . .	32,377.70	
Accounts payable . . . . .	2,800.00	
Accrued wages . . . . .	994.69	
Accrued payroll taxes . . . . .	1,848.06	
Capital stock taxes . . . . .	1,600.00	
Accrued bond interest . . . . .	3,593.98	
Accrued other interest . . . . .	1,191.40	
Accrued taxes . . . . .	7,168.14	
Deferred credit . . . . .		200.00
Surplus . . . . .		117,018.25
Total . . . . .		<u>\$2,395,221.16</u>

The company's investment in buildings, machinery and equipment is reported at \$2,204,255.09 against which it has accumulated a reserve for depreciation of \$980,267.61, leaving a net investment in buildings, machinery and equipment of \$1,223,987.48.

Applicant on April 1, 1924 issued \$1,200,000. of 6½% serial bonds maturing as follows:-

- \$25,000. per annum from April 1, 1925 to April 1, 1929, both inclusive.
- 30,000. per annum from April 1, 1930 to April 1, 1934, both inclusive.
- 40,000. per annum from April 1, 1935 to April 1, 1939, both inclusive.
- 45,000. per annum from April 1, 1940 to April 1, 1943, both inclusive.
- 545,000. on April 1, 1944.

The company has paid all of its bonds which have matured, and in addition has redeemed some prior to their maturity. It now has \$659,500. of bonds outstanding. It has paid all matured interest.

The company asks permission to execute a supplemental trust indenture, under the terms of which it would extend for a period of five years the maturity date of each series of bonds now outstanding. The following tabulation shows the amount of bonds due serially under the company's trust indenture as it now reads and as it will read after

the proposed amendments have been made effective:-

<u>Original maturity</u>	<u>Principal amount</u>	<u>Extended maturity</u>
April 1, 1937	\$40,000.	April 1, 1942
April 1, 1938	40,000.	April 1, 1943
April 1, 1939	38,000.	April 1, 1944
April 1, 1940	45,000.	April 1, 1945
April 1, 1941	45,000.	April 1, 1946
April 1, 1942	45,000.	April 1, 1947
April 1, 1943	44,000.	April 1, 1948
April 1, 1944	362,500.	April 1, 1949

In its amended trust indenture applicant, among other things, covenants that until such time as it shall have retired \$297,000. face value of bonds, it will not pay or declare any dividends on any class of its stock, nor will it make any distribution of either cash or assets to any of its stockholders. Further covenants are contained in Section 8 of applicant's proposed supplemental trust indenture, which section reads as follows:-

" Section 8. The Company covenants that until such time as all the Bonds shall have been paid or otherwise retired:

(a) The Company will pay, or become obligated to pay, to its officers and other persons engaged by it in an executive or administrative capacity, for services rendered by them, only such salaries, bonuses, commissions and other remuneration (hereinafter collectively called 'compensation') as shall be reasonable; and, specifically, the Company will not pay or become obligated to pay such persons annual compensation in an aggregate amount in excess of \$25,000.00 per year; provided, however, that the board of directors of the Company, by a majority vote of the entire board, including specifically the Affirmative vote of the director representing the Bondholders, may increase such aggregate compensation, and may distribute the compensation of the various officers and executives of the Company in such manner as the board by such vote may deem advisable; provided, always, that any such increase in the aggregate amount of compensation of such officers and executives, and the compensation of any particular officer or executive, shall not be unreasonable in relation to the earnings of the Company and the services rendered by such officer or executive;

(b) The Company will use or employ its funds and will incur liabilities only for the operation of, and in connection with, its warehousing and refrigerating business, the payment of the interest and principal of the Bonds and the retirement thereof, and such other purposes as are expressly permitted or authorized by the provisions of the Indenture and/or this Supplemental Indenture, and in that behalf the Company expressly covenants that until such time as all the Bonds shall have been paid or otherwise retired: (i) it will not engage in any venture or incur any liability or pay out any of its funds or transfer any of its properties except in the regular course of its warehousing and refrigerating business; (ii) it will not lend its credit or advance any of its funds to any of its shareholders, officers or employees,

nor, without a majority vote of the entire board, including specifically the affirmative vote of the director representing the Bondholders, to any other individual, firm or corporation whatsoever; (iii) it will not pay out any salaries or any other remuneration to any of its officers, employees or attorneys or any other individual, firm or corporation, excepting for services actually rendered in connection with its operations and business; (iv) it will not employ any of its funds in any new or outside enterprise or venture (specifically including therein, without limitation, the brewing business and the ice cream business); (v) it will not purchase, directly or indirectly, any shares of its own stock nor, without the unanimous vote of its entire board, the stock of any other corporation; (vi) it will not divert any of its funds or property to any parent corporation except by means of dividends not herein prohibited and except as is otherwise herein expressly permitted or provided; and (vii) it will not divert any of its funds or property to any affiliate except with the unanimous vote of its entire board;

(c) The Company will apply all funds realized by it upon the sale or liquidation of any of its capital assets, and all collections on account of notes and accounts receivable now outstanding, only to one or more of the following purposes: (i) the establishment and maintenance of a net current position, as herein defined, of \$100,000.00; (ii) expenditures for deferred maintenance of its plant and equipment and necessary improvements thereon in accordance with the 'Deferred Maintenance and Improvement Schedule' hereinabove referred to; (iii) the payment of its bank loans; and (iv) the retirement of the Bonds; provided, however, that after such time as the Company shall have retired Bonds (exclusive of all bonds heretofore retired and Bonds now held in the treasury) of an aggregate principal amount of \$297,000.00, the Company may apply any of said funds to the payment of the indebtedness referred to in Section 2 of Article II of this Supplemental Indenture."

It appears from the record that though applicant has been able to pay its bonds as they matured and to pay the annual interest charges on such bonds it has in doing so, deferred the maintenance of its properties. It is asking its bondholders to extend the maturity of its bonds so that it can accumulate funds for the purpose of constructing additions and betterments to its properties and make improvements to the same; and further, for the purpose of providing itself with proper working funds. It estimates the cost of its proposed additions, betterments and improvements to its properties at \$161,500. They consist of the following:-

Construction of new cooling tower . . . . .	\$25,000.
Installation of new ammonia compressor . . . . .	20,000.
Rebuilding brine balance tanks . . . . .	12,000.
Oiling system and installing automatic control . . . . .	3,000.
Rebuilding air condition equipment in Warehouses 11 & 14	10,000.
Expansion of present garage . . . . .	15,000.
Construction of new poultry freezers . . . . .	17,500.
General repairs to present building Warehouse Nos. 1, 2 and 3 and Warehouse No. 6 . . . . .	59,000.
	<u>\$181,500.</u>

The additions, betterments and improvements will, it is estimated, reduce applicant's operating expenses by about \$400. per month. They are considered by applicant as an immediate necessity in order that its plant may be put in a safe condition, that it may be able to maintain the business which it now enjoys and to more successfully compete for new business.

The supplemental trust indenture provides for the establishment by applicant of a net operating fund of \$100,000. After the establishment of such fund and after the construction of the additions, betterments and improvements to which reference has been made, applicant will apply all of its net earnings to the redemption of its bonds until \$297,000. of such bonds have been redeemed.

Under the proposed plan the bondholders are postponing the maturity date of the bonds. They authorize the company and the trustee, with the approval of the holders of not less than 75% in principal amount of the bonds outstanding, to modify and amend any of the terms and provisions of the indenture securing the payment of the bonds, provided that no such amendment shall reduce the principal amount of the bonds outstanding, or give any bond or bonds any preference over any other bond or bonds, nor shall any such amendment become effective until after it shall have been authorized or approved or consented to by such governmental agency as may have jurisdiction in the premises. By postponing the maturity date of the bonds,

the bondholders make it possible for the company to use some of its earnings to pay the cost of needed improvements and allow the company to retain possession of its properties.

We, of course, have no authority to require the owner of any of the company's bonds to deposit the same with a trustee under the reorganization plan. It appears to us, however, that applicant's plan is fair, equitable and reasonable and that its consummation will be beneficial to the creditors and stockholders of the company.

#### O R D E R

The Commission having set this application for public hearing on Wednesday, January 20th at 2 p.m., and having directed a notice of said hearing to be published and a notice of said hearing, together with a copy of the reorganization plan of Merchants Ice and Cold Storage Company to be mailed to each and every person and creditor known to the company who is affected by said reorganization plan, and an affidavit having been filed showing that said notices were published and mailed, as directed by the Commission, and a public hearing having been held by Examiner W. C. Fankhauser on said January 20th, and the Commission having considered the requests of applicant and the record in this application and it being of the opinion that said reorganization plan is fair and reasonable and that applicant should be authorized to perform such acts as may be necessary to carry such reorganization plan into effect, therefore,

IT IS HEREBY ORDERED that Merchants Ice and Cold Storage Company be, and it is hereby, authorized to execute a supplemental trust indenture in substantially the same form as the supplemental indenture filed in this proceeding as Exhibit B, provided that the authority herein granted to execute said supplemental trust indenture is for the purpose of this proceeding only, and is granted only 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 as to such other legal requirements to which said supplemental trust indenture may be subject.

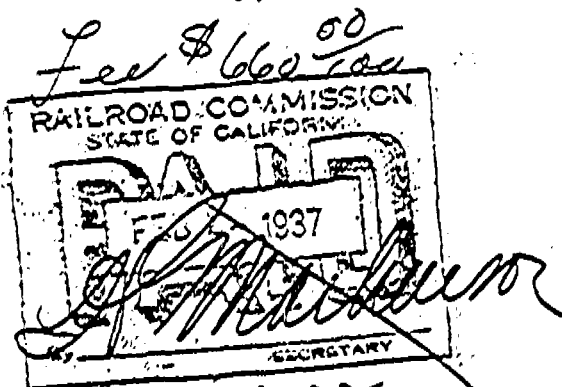
IT IS HEREBY FURTHER ORDERED that Merchants Ice and Cold Storage Company may issue and deliver not exceeding \$659,500. face amount of bonds in exchange for \$659,500. face amount of bonds now outstanding, said bonds to be issued and delivered under the terms and conditions set forth in said supplemental trust indenture and in this application.

IT IS HEREBY FURTHER ORDERED that Merchants Ice and Cold Storage Company be, and it is hereby, authorized to perform such other acts as may be necessary to consummate said reorganization plan.

IT IS HEREBY FURTHER ORDERED that the authority herein granted will become effective when Merchants Ice and Cold Storage Company has paid the fee fixed by Section 57 of the Public Utilities Act, which fee is Six Hundred and Sixty(\$660.) Dollars.

IT IS HEREBY FURTHER ORDERED that within ninety(90) days after the execution of said supplemental trust indenture, Merchants Ice and Cold Storage Company shall file with the Commission two copies of said indenture as executed, and a statement showing the names of the persons to whom said \$659,500. of bonds, or any of them, have been delivered and the face amount of bonds delivered to each person.

DATED at San Francisco, California, this 1<sup>st</sup> day of February, 1937.



Fee # 33132

*Walter H. Moore*  
*Leon A. Whittell*  
*Frank R. Kelly*  
*Raymond W. Kiffin*  
*Ray & Grey*  
Commissioners.