

Decision No. 33170

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, supplementing and/or abrogating in certain particulars that certain First Mortgage dated December 1, 1912, executed by applicant to The Union Trust Company, Limited, and George E. Stevenson, Trustees, to secure the payment of \$15,000,000 of First Mortgage Six Per Cent Thirty Year Gold Bonds, and for the issuance and delivery under the terms, covenants and conditions of said proposed instrument amending, supplementing and/or abrogating in certain particulars said First Mortgage, of certain interest coupons, and also for an order authorizing applicant to carry out an agreement with Henry L. Salsbury as the sole surviving testamentary trustee under the last will and testament of James Shewan, deceased.

ORIGINAL

Application No. 23493

BY THE COMMISSION:

O P I N I O N

This is an application for an order of the Railroad Commission authorizing National Ice and Cold Storage Company of California to execute a trust indenture amending, supplementing and/or abrogating in certain particulars its first mortgage dated December 1, 1912 and certain amendments and supplements

thereto heretofore executed; authorizing it to issue certain interest coupons and authorizing it to execute an agreement and to issue a note.

The record shows that as of December 1, 1912 applicant executed a certain indenture to secure the payment of an authorized issue of \$15,000,000 of first mortgage six per cent bonds, due December 1, 1942, of which there now are outstanding bonds in the total principal amount of \$3,169,249.20, consisting of bonds payable in dollars in the principal amount of \$1,404,000 and bonds payable in sterling in the principal amount of £363,220.

It appears that heretofore, because of the inability of the company to pay bond interest, the bondholders agreed to the execution of a supplemental indenture, dated as of June 1, 1932, which provided, among other things, for the deferring to December 1, 1942, of the payment of the interest coupons due on June 1, 1932, December 1, 1932, June 1, 1933 and June 1, 1934. Later, as of June 1, 1935, a further supplemental indenture was approved which provided for the extension of the maturity date of the bonds from December 1, 1942 to December 1, 1952, and the reduction of the interest rate thereon from six per cent per annum to three and one-half per cent per annum for the period from December 1, 1934 to December 1, 1939. The executions of the supplemental indentures were authorized by the Commission by Decision No. 25232, dated October 3, 1932, and Decision No. 28133, dated July 19, 1935.

The present application shows that at a meeting of the bondholders held on April 29, 1940 certain additional amendments to the trust indenture were approved which will provide,

among other things, that of the interest payable upon the bonds for the period commencing December 1, 1939 and ending June 1, 1942, the company shall be obligated to pay interest only at the rate of four and one-half per cent per annum on June 1, 1940, December 1, 1940, June 1, 1941, December 1, 1941 and June 1, 1942, and that the balance of interest on said bonds for said period, to wit: one and one-half per cent per annum, shall be paid on or before December 1, 1942, without interest. It is proposed that the interest coupons due June 1, 1940, December 1, 1940, June 1, 1941, December 1, 1941, and June 1, 1942 shall be canceled and that there shall be substituted for and in lieu thereof appropriate coupons evidencing the obligation of the company to pay on said dates, interest at the rate of four and one-half per cent per annum, and three deferred interest coupons, two of which shall evidence the obligation of the company to pay, on or before December 1, 1942, one and one-half per cent of the principal amount of said bonds, and one of which shall evidence its obligation to pay three-fourths per cent of said bonds on or before December 1, 1942.

The proposed supplemental indenture will obligate the company to create and maintain a sinking fund from June 1, 1943, which shall represent seventy-five per cent of the net profits of the company earned during the preceding calendar year, with the express provision, however, that the payment into the fund on June 1, 1943, and likewise on the first day of June thereafter until the maturity of the bonds, shall be a sum not less than \$50,000 and in no event more than \$100,000, and that the whole of said sinking fund payments shall be used for the purchase and redemption of bonds.

A copy of the proposed supplemental indenture, dated as of June 1, 1940, has been filed with the application as Exhibit A.

In addition to the outstanding bonds, the company is indebted to the Estate of James Shewan in the amount of \$224,000 evidenced by three and one-half per cent promissory notes, due December 1, 1952, issued under the terms of an agreement, dated as of June 1, 1935, authorized by the Commission by Decision No. 26133, dated July 19, 1935.

It is reported that arrangements now have been made whereby, among other things, the Estate of James Shewan will surrender the notes to the company and will sell to it certain land and improvements, and the company will issue an installment promissory note in the amount of \$112,500 to be secured by a purchase money mortgage, and, if requested by the payee, by a chattel mortgage. However, the documents to be executed to consummate this transaction have not been filed with the Commission and that portion of the application relating to the execution of an agreement with the Estate of James Shewan and the issue of the note is not ready for decision.

The present order, accordingly, will be limited to the execution of the proposed supplemental trust indenture and to the issue of interest coupons.

#### ORDER

National Ice and Cold Storage Company of California having applied to the Railroad Commission for an order authorizing the execution of certain instruments, as set forth in the

foregoing opinion, and the Commission having considered the company's requests and being of the opinion that this is not a matter in which a public hearing is necessary and that an order should be entered at this time to the extent indicated herein,

IT IS HEREBY ORDERED that National Ice and Cold Storage Company of California be, and it hereby is, authorized to execute and deliver an indenture in, or substantially in, the same form as that, dated as of June 1, 1940, filed with the application herein as Exhibit A, provided that the authority herein granted to execute and deliver an 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 indenture as to such other legal requirements to which it may be subject.

IT IS HEREBY FURTHER ORDERED that National Ice and Cold Storage Company of California shall file with the Commission a certified copy of the indenture executed under the authority herein granted within thirty (30) days after its execution.

IT IS HEREBY FURTHER ORDERED that the authority herein granted shall become effective upon the date hereof.

Dated at San Francisco, California, this 4<sup>th</sup> day of June, 1940.

Ray L. Rice  
Frank D. Wick  
Ralph C. ...  
H. Baker  
Justice J. ...  
Commissioners.