

Decision No. 35314

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of  
the San Diego Ice and Cold Storage Co.  
for permission to issue a mortgage on  
its property to The First National  
Trust and Savings Bank of San Diego,  
California in the principal sum of  
\$145,000.00

Application  
No. 24859

BY THE COMMISSION:

O P I N I O N

San Diego Ice and Cold Storage Co. is, among other things, engaged in the cold storage warehouse business in the City of San Diego. For 1941, it reports warehouse operating revenues of \$69,425.17 and nonutility operating revenues of \$1,223,264.64. Its income available for the payment of interest, dividends and for surplus amounted to \$53,696.15.

On January 11, 1940, applicant issued to The First National Trust and Savings Bank of San Diego its note for the principal sum of \$145,000. The proceeds of the note, together with other funds on hand, were used to redeem \$194,500 of 6% bonds issued in 1925 under a permit from the Commissioner of Corporations.

The \$145,000 note bears interest at the rate of 5% per annum, payable monthly. The principal of the note is payable at the rate of \$1,000 on the 11th day of each and every consecutive month, beginning February 11, 1940 and continuing to and including November 11, 1940. Beginning December 11, 1940, the payments were increased to \$1,500 and continue monthly at that amount until May 11, 1948, on which date the then remaining unpaid principal becomes due and payable. The monthly payments, which have matured, have all been met, with the result that there is now due on such note the sum of \$109,500. To secure the payment of the note, applicant executed a deed of trust and a mortgage of chattels. A copy of the note, a copy of the deed of trust and a copy of the mortgage of chattels are on file in this proceeding.

It appears that applicant issued the note and executed the deed of trust and mortgage of chattels without authorization from the Commission, through inadvertence, and not with any intent to evade the provisions of the Public Utilities Act. When these provisions were called to its attention, it promptly filed this application for permission to issue the note and to execute the deed of trust and mortgage of chattels. In our opinion, the note and the deed of trust and mortgage of chattels, insofar as they are a lien on public utility properties, are void. We cannot approve void instruments. The order herein will authorize applicant to issue a note to refund the balance due on the note issued on January 11, 1940, and to execute a deed of trust and a mortgage of chattels to secure the payment of the note.

O R D E R

The Commission having considered the request of San Diego Ice and Cold Storage Co., and it being of the opinion that this is not a matter on which a hearing is necessary; that the money, property or labor to be procured or paid for by the issue of the note herein authorized is reasonably required by San Diego Ice and Cold Storage Co. for the purpose of paying indebtedness; that the expenditures for said purpose are not, in whole or in part, reasonably chargeable to operating expenses or to income, and that this application should be granted subject to the provisions of this order, therefore

IT IS HEREBY ORDERED as follows:

1. San Diego Ice and Cold Storage Co. may, after the effective date hereof and on or before July 31, 1942, issue its note for the principal sum of not exceeding \$109,500 for the purpose of paying indebtedness due The First National Trust and Savings Bank of San Diego, said note, except for its face amount and terms of payment, to be in substantially the same form as the note on file in this proceeding.

2. San Diego Ice and Cold Storage Co. may, for the purpose of securing payment of said note, execute, after the effective date hereof and on or before July 31, 1942, a deed of trust and a mortgage of chattels substantially in the same form as the deed of trust and mortgage of chattels on file in this proceeding, provided that the authority

herein granted to execute a deed of trust and mortgage of chattels 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 deed of trust and mortgage of chattels as to such other legal requirements to which said deed of trust and mortgage of chattels may be subject.

3. The authority herein granted will become effective when San Diego Ice and Cold Storage Co. has paid the fee prescribed by Section 57 of the Public Utilities Act, which fee is One Hundred and Ten (\$110.00) Dollars.

4. San Diego Ice and Cold Storage Co. shall file with the Railroad Commission within thirty (30) days after exercising the authority herein granted, a copy of the note, a copy of the deed of trust, and a copy of the mortgage of chattels, executed under the authority herein granted, together with a statement showing the purpose for which it expended the proceeds realized through the issue of said note.

Dated at San Francisco, California, this 5th  
day of May, 1942.

Justus J. Calver  
Ray H. Wiley  
T. D. Allen  
Francis A. Hastings  
Richard L. Lusk  
Commissioners.

