

Decision No. 38712

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 five year
bank notes to be made payable to
the order of The Anglo California
National Bank of San Francisco in
the face amount of \$2,700,000, to-
gether with interest payable
quarterly at the rate of 3½ per
cent per annum, said notes to mature
five years after date.

ORIGINAL

Application
No. 27261

O P I N I O N

In this application, National Ice and Cold Storage Company of California asks permission to issue and sell at par to The Anglo California National Bank of San Francisco a 3½% note in the principal sum of \$2,700,000, payable on or before five years after date, and execute a loan agreement and a pledge agreement.

National Ice and Cold Storage Company of California, hereinafter referred to as applicant, is a California corporation. It is engaged in the public utility cold storage warehouse business, in manufacturing and selling ice, and in the car icing business. Its investment in plant property as of December 31, 1945, is reported as follows:

Land	\$ 842,825.11
Buildings	3,072,756.49
Machinery and equipment	2,220,016.94
Motor vehicles	163,520.97
Office furniture and equipment	52,437.84
Total	<u>6,351,557.35</u>
Less reserve for depreciation	<u>3,020,632.88</u>
Net plant property	<u>\$3,330,924.47</u>

Its operating revenues for 1945 amounted to \$4,005,501.80, segregated as follows:

Cold storage	\$2,181,970.03
Ice	1,671,086.92
Other	152,444.79

Its net income for 1945 is reported at \$339,212.22.

Applicant has outstanding \$2,694,569 face amount of first mortgage 6% bonds, due December 1, 1952. The bonds may be redeemed at applicant's option on any interest payment date on ninety days' notice upon the payment of the principal thereof, the accrued interest, and a premium of 5%. Applicant intends to redeem its bonds on June 1, 1946. For the purpose of providing itself with funds to redeem said bonds, applicant has negotiated a loan with The Anglo California National Bank of San Francisco in the amount of \$2,700,000. The loan is to be evidenced by a promissory note, a copy of which is on file in this application attached to Exhibit "A". The note will bear interest at the rate of 3½% per annum, payable quarterly. The principal of the note is payable in nine semi-annual payments (December 1 and May 31) of \$75,000 each, commencing December 1, 1946, with a final payment of \$2,025,000 on or before May 31, 1951. In addition to the semi-annual principal payments provided in the note, applicant agrees to pay on the principal annually an amount equal to 20% of its net earnings in excess of \$150,000 after setting up reserves for depreciation and current federal, state and local taxes.

A copy of the loan agreement is on file in this application as Exhibit "A". It requires applicant to deposit with the Bank the following shares of stock:

2080 shares City Ice Delivery Company Capital no par value
 177129 shares Consumers Ice & Cold Storage Company Capital
 \$1.00 par value
 1575 shares Fresno Consumers Ice Company Capital \$100 par
 value
 282 shares Peninsula Ice Company Capital \$100 par value
 166 shares San Jose Ice & Cold Storage Company Capital
 no par value
 San Jose Ice & Cold Storage Company Fraction
 2/3
 83239 shares Southern Counties Ice Company Capital \$1.00
 par value
 3034 shares Valley Ice Company Capital \$50.00 par value

The said shares of stock are the only properties that will be deposited with the Bank to secure the payment of the note. A copy of the pledge agreement is attached to Exhibit "A". However, applicant agrees that it will not, without the prior written consent of the Bank, either directly or indirectly:

- (a) Create or permit any lien or other encumbrance (other than the lien of the pledge herein provided for, liens securing the payment of the Note provided for herein, and liens for taxes not delinquent, or being contested in good faith) to exist on its property, real or personal, now owned or hereafter acquired, except that the Company may (a) create liens in connection with workmen's compensation, unemployment insurance, and social security; and (b) secure the performance of letters of credit, bids, trade contracts, leases, statutory obligations, surety and appeal bonds, and other obligations of like nature made in the ordinary course of business.
- (b) Cause, create or permit any controlled subsidiary to create any lien or other encumbrance on any property or assets at any time owned by it, except liens in favor of the Company or created to secure the purchase of property and such liens as the Company itself is authorized by the provisions hereof to create or permit.

- (c). Merge or consolidate with any other corporation, or sell, transfer, assign or lease all, or substantially all, of its assets except in the instance of a merger or consolidation of subsidiaries, which right is specifically granted to the Company.
- (d). Declare or pay any dividends or make any other distribution on account of any shares of the capital stock of the Company now or hereafter outstanding, or purchase, redeem or otherwise acquire for value any of such stock.
- (e). Incur any indebtedness (1) which by its terms matures more than twelve (12) months from the date of the creation thereof, or (2) for money borrowed, exclusive of the borrowing represented by this Agreement, in excess of Two Hundred Fifty Thousand and no/100 Dollars (\$250,000.00)..
- (f). Assume, guarantee or endorse any obligation of any other person, firm, or corporation, except by endorsement of negotiable instruments for deposit or collection in the ordinary course of business, or make any loans to others.
- (g). Deposit any of its funds except in a Bank or Trust Company.
- (h). Sell receivables with or without recourse.
- (i). Use or employ, or permit the use or employment of, its funds or credit, or that of Consumers Ice & Cold Storage Company, for the acquisition of properties or fixed assets of any nature, during any fiscal year, in excess of the amount of its charges for depreciation or that of the Consumers Ice & Cold Storage Company as presently established on their books of account.
- (j). Expend money, or incur liability, for the assets or property of another corporation through purchase of shares in such corporation, save and except as provided in paragraph (c) of this section only.
- (k). Loan or otherwise provide credits to any of its officers, directors, or shareholders, or to any other person, firm or corporation.
- (l). Make, or permit to be made, any material change in the present management of its business without first obtaining the written consent of the bank.

Applicant may at any time prior to the maturity date of the note pay any part of the balance remaining due, and on not less than five days' written notice to the Bank and upon payment to the Bank of an amount equal to the interest thereon.

for sixty days, prepay in full the balance and interest then outstanding on the note.

Applicant's petition shows that \$1,429,569 of its outstanding bonds are owned by non-residents of the United States. Under the Revenue Act of 1942, applicant must pay a tax of 27½% on the face value of the interest coupons paid to non-residents. In 1945 this tax amounted to \$24,508.93. By refunding its outstanding bonds, applicant effects a substantial reduction in its annual interest charges, will save trustee expenses and tax payments on interest coupons paid to non-residents.

Applicant reports that the negotiation of said loan with The Anglo California National Bank of San Francisco does not involve the payment of any fee or other remuneration of any kind, character or description.

O R D E R

The Commission has considered the requests of National Ice and Cold Storage Company of California and is 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 through the issue of said note for \$2,700,000 is reasonably required by applicant for the purpose herein stated; that such purpose is 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. National Ice and Cold Storage Company of California may, after the effective date hereof and on or before June 30,

1946, execute a loan agreement and general pledge agreement and a promissory 3½% note for \$2,700,000, said loan agreement, general pledge agreement and note to be in, or substantially in, the same form as the loan agreement, general pledge agreement and note on file in this application as Exhibit "A" and Exhibits "A" and "B" attached to said Exhibit "A".

2. National Ice and Cold Storage Company of California shall use the proceeds from said note, together with funds in its treasury, to redeem its outstanding 6% first mortgage bonds.

3. The authority herein granted will become effective when applicant has paid the fee prescribed by Section 57 of the Public Utilities Act, which fee is One Thousand Eight Hundred Fifty (\$1,850.00) Dollars.

4. National Ice and Cold Storage Company of California shall file with the Railroad Commission two certified copies of the loan agreement, two certified copies of the general pledge agreement, and two certified copies of the note executed under the authority herein granted, together with a statement showing the purposes for which it expended the cash obtained through the issue of said note.

5. National Ice and Cold Storage Company of California shall file with the Railroad Commission a copy of each of the financial and other statements which it is required to file with the Bank under the provisions of paragraph 7 (e) of the loan agreement, said statements to be filed at or about the time they are filed with the Bank.

Dated at San Francisco, California, this 26th day
of February, 1946.

David Rudman
Justice J. Craven

Joseph H. Powell
Harold A. Hills
Commissioners

