

Decision No. 40298

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
CALIFORNIA COLD STORAGE & DISTRIBUTING CO.,
CALIFORNIA ICE AND COLD STORAGE COMPANY and
SAN DIEGO ICE AND COLD STORAGE CO.

for Order Authorizing Issuance of Stocks
Pursuant to the Terms and Provisions of
Agreement of Merger, Order Approving the
Fairness of the Terms and Conditions of the
Exchange of Securities Pursuant to the Terms
and Provisions of said Agreement of Merger,
Order Approving the Acquisition by CALIFORNIA
COLD STORAGE & DISTRIBUTING CO. Pursuant to
Said Agreement of Merger of the Business and
Certificates of Public Convenience and
Necessity and the Rights, Privileges,
Franchises and Permits Held and Owned by
CALIFORNIA ICE AND COLD STORAGE COMPANY and
SAN DIEGO ICE AND COLD STORAGE CO., Order
Granting Permission to Make Such Transfers
When Such Merger Is Completed Pursuant to the
Terms and Provisions of Said Agreement and
the Laws of the State of California and the
State of Delaware, and for Order Authorizing
Sale of Stocks Called for by Unpresented
Fractional Scrip Certificates.

ORIGINAL

Application
No. 28324

Eugene Glenn for applicants. C. L. Wells;
J. A. Brenner; Ernest Little; Geo. E. Barnes; Earl H.
Lemke; stockholders, in propria persona.

O P I N I O N

In this application, the Commission is asked to enter
its order (1) authorizing the execution and consummation of an
Agreement of Merger providing for the merging of California Ice
and Cold Storage Company and San Diego Ice and Cold Storage Co.
and their properties and business into California Cold Storage &
Distributing Co. as the Surviving Corporation pursuant to the
terms and conditions of the Agreement of Merger; (2) authorizing

California Cold Storage & Distributing Co. to issue shares of stock and scrip certificates for the purpose of converting the shares of stock of California Ice and Cold Storage Company and San Diego Ice and Cold Storage Co. into shares of stock of California Cold Storage & Distributing Co.; (3) finding that the exchange of stocks pursuant to the terms and provisions of the Agreement of Merger is fair, and (4) authorizing California Cold Storage & Distributing Co. to sell shares of stock to pay or redeem unrepresented fractional scrip certificates.

A copy of the Agreement of Merger is on file in this application as Exhibit "J". It has been approved by the Board of Directors of each corporation. It must be submitted to the stockholders of California Ice and Cold Storage Company and San Diego Ice and Cold Storage Co., and to become effective must be approved by a two-thirds vote of each class of stock of those companies.

The Commission by its order of April 2, 1947, set this application for public hearing on Wednesday, April 30, 1947, and directed applicants to publish a notice of such hearing on or before April 10, 1947, in a newspaper of general circulation published in the City of San Diego and in a newspaper of general circulation published in the City of Los Angeles, and further directed said applicants to mail a notice of the hearing addressed to each of the stockholders of California Ice and Cold Storage Company and of San Diego Ice and Cold Storage Co. Affidavits have been filed showing that said notices were published and mailed as directed by the Commission. A public hearing was held by Commissioner Rowell and Examiner Fankhauser on said April 30, 1947.

California Ice and Cold Storage Company, hereinafter sometimes referred to as the California Company, is a corporation organized in 1926 under the laws of Delaware and authorized to do business in California. It is engaged in the cold storage warehouse business in Long Beach, California, under the fictitious name of Home Ice & Cold Storage Co. and in Bakersfield under the fictitious name of Bakersfield Ice and Cold Storage Co. It is also engaged in the manufacture and sale of ice in Long Beach and in other nonpublic-utility businesses in Long Beach, Los Angeles, Alhambra, Bakersfield, Santa Ana, San Bernardino and San Diego.

San Diego Ice and Cold Storage Co., hereinafter sometimes referred to as the San Diego Company, is a corporation organized in 1925 under the laws of Delaware and is authorized to do business in California. It is engaged in the cold storage warehouse business in San Diego, and also in nonpublic-utility businesses in San Diego and Oceanside.

For the year 1946, California Company and San Diego Company have reported warehouse revenues and expenses and non-utility revenues and expenses as follows:

	<u>California Company</u>	<u>San Diego Company</u>	<u>Total</u>
Warehouse Operations			
Revenues	\$ 263,864.40	\$ 187,711.57	\$ 451,575.97
Expenses	<u>139,657.16</u>	<u>114,068.97</u>	<u>253,726.13</u>
Net	<u>124,207.24</u>	<u>73,642.60</u>	<u>197,849.84</u>
Nonutility Operations			
Revenues	3,405,833.86	2,013,874.44	5,419,708.30
Expenses	<u>2,804,461.28</u>	<u>1,337,208.69</u>	<u>4,641,669.97</u>
Net	<u>601,372.58</u>	<u>176,665.75</u>	<u>778,038.33</u>
Total net operating revenues	<u>725,579.82</u>	<u>250,308.35</u>	<u>975,888.17</u>
Deductions			
Interest	12,611.38	-	12,611.38
Federal income tax	<u>204,975.87</u>	<u>92,544.55</u>	<u>297,520.42</u>
Total deductions	<u>217,587.25</u>	<u>92,544.55</u>	<u>310,131.80</u>
Net profit	<u>\$ 507,992.57</u>	<u>\$ 157,763.80</u>	<u>\$ 665,756.37</u>

California Cold Storage & Distributing Co., hereinafter sometimes referred to as the Surviving Corporation, is a corporation organized in 1946 under the laws of California. It has an authorized stock issue of 85,000 shares, segregated as follows:

- (a) Prior Preferred - 15,000 shares, par value \$25 a share
- (b) Preferred - 40,000 shares, without par value
- (c) Common - 30,000 shares, without par value.

The holders of the Prior Preferred shares are entitled, when and as declared by the Board of Directors, to dividends at the rate of five percent (5%) per annum. The dividends are cumulative if earned and not paid. The Surviving Corporation may, at the option of its Board of Directors on thirty days' notice, redeem the Prior Preferred shares by paying the holders thereof \$25 a share and accumulated dividends. In the event of liquidation, the holders of the Prior Preferred stock are entitled to receive out of the assets of the Surviving Corporation an amount equal to the par value of the Prior Preferred stock and accumulated dividends before any assets are distributed to any other stockholders.

After all dividends have been paid on the Prior Preferred stock, the holders of the Preferred shares are entitled, when and as declared by the Board of Directors, to dividends up to the sum of, but not exceeding, \$1.50 per share per annum. Such dividends are cumulative if earned and not paid. The Preferred stock is not redeemable.

After the declaration of the accumulated and current dividends on the Prior Preferred and on the Preferred shares, the

holders of the Common shares are entitled, when and as declared by the Board of Directors, to dividends out of any funds of the corporation at the time legally available for the declaration of dividends, up to the sum of, but not exceeding \$1.50 per share per annum. Such dividends are not cumulative.

Upon the declaration and payment of dividends as indicated the Board of Directors may, if it so chooses, declare further dividends, but such further dividends shall be paid all holders of Preferred shares and Common shares pro rata, according to their respective shares, without distinction between such classes of Preferred and Common shares.

The Articles of Incorporation of the Surviving Corporation provide further that, except as otherwise provided in the Articles, or as otherwise provided by law, the Prior Preferred shares and the Preferred shares shall have no voting rights and that the exclusive voting power and right of notices of shareholders meetings shall be vested in the holders of the Common shares, each holder thereof to have one vote for each share of such stock held by him. In the event dividends at the rate of five per cent (5%) per annum on the par value of the Prior Preferred shares shall not be paid for two consecutive years, then and until dividends at such rate of five per cent (5%) per annum on the par value of such Prior Preferred shares shall have been paid for two consecutive years, Prior Preferred shares shall have equal voting rights with the Common shares, each holder thereof to have one vote for each share of such Prior Preferred stock held by him. The Articles further provide that in the event dividends at the rate of \$1.50 per annum on the Preferred shares shall

not have been paid for two consecutive years, then and until dividends at such rate of \$1.50 per annum on such shares shall have been paid for two consecutive years, the Preferred shares shall have equal voting rights with the common shares, each holder thereof shall have one vote for each share of such Preferred stock held by him.

The California Company has outstanding 16,000 shares of Class A no par value stock and 15,500 shares of Class B no par value stock. The holders of the Class A stock are entitled to cumulative dividends at the rate of \$1.75 a share. After the payment of such dividends, the holders of the Class B stock are entitled to an annual dividend of \$1.75 a share. Any further distribution of earnings as dividends are paid equally to the holders of Class A and Class B stock. On December 31, 1946, California Company had cumulative unpaid dividends on its Class A stock of about \$193,800, or \$12.1125 per share. It has never paid any dividends on its Common stock. In the event of liquidation, the holders of Class A stock are entitled to \$30 a share plus accumulated dividends. After payment of \$30 a share to the holders of the Class B stock, any further distribution of assets must be made pro rata according to their respective shares, to the holders of record of the Class A stock and the Class B stock without distinction between the classes of stock.

The San Diego Company has outstanding 13,022 shares of Class A stock and 5,000 shares of Class B stock. All of the Class B stock and all but 306 shares of the Class A stock are owned by the California Company. The holders of the Class A stock of the San Diego Company are entitled to annual dividends

of \$2.50 a share, of which \$1.75 is cumulative. The holders of the Class B stock, after the payment of unpaid cumulative dividends and \$2.50 a share on Class A stock are entitled to dividends at the rate of \$7.50 a share. Any further distribution of earnings of San Diego Company must be paid to the holders of Class A and Class B stock on a pro rata basis. Dividends on the Class A stock are in arrears to the extent of .8625¢ a share. In case of liquidation, the holders of the Class A stock are entitled to receive \$25 a share plus accumulated dividends. After such payment, the holders of the Class B stock are entitled to be paid \$75 a share. Thereafter, distribution of assets shall be made equally, share for share alike, between (1) the holders of record of Class A stock and (2) the holders of record of the Class B stock.

The Agreement of Merger provides that the Surviving Corporation will issue to the Class A stockholders of California Company one-half share of its Prior Preferred stock for each Class A share and one and one-fifth shares of its Preferred stock in exchange for each Class A share. The issue of the Prior Preferred stock is designed to liquidate the accumulated dividends on the Class A shares. To the holders of Class B stock of the California Company the Surviving Corporation proposes to issue one and one-fifth shares of its Common stock in exchange for each share of Class B stock. With reference to the San Diego Company, it is proposed to convert the Class A stock of that company into Preferred stock of the Surviving Corporation on the basis of share for share, and the Class B stock into Common stock of the Surviving Corporation on a share for share basis. Since all of the Class B stock is owned by California Company such stock, through the merger, will be canceled. The accumulated dividends will be paid in cash.

The Agreement of Merger provides for the issue of scrip certificates by California Cold Storage & Distributing Co. to such shareholders of California Company and San Diego Company who are entitled to receive fractional shares of stock. The Agreement of Merger provides that the scrip certificates will become void on December 31, 1948. Prior to that time, scrip certificates may be converted into a full share of the appropriate class of stock upon the surrender of scrip certificates aggregating one or more full shares. Scrip certificates do not entitle the holder or bearer to voting rights or dividends. The Surviving Corporation proposes, if the merger is consummated, to render every facility to the holders of scrip certificates to dispose of the same, or acquire additional ones as the shareholder may elect. It is proposed, as soon as practical, after December 31, 1948, to sell such number of shares of each class of stock of the Surviving Corporation called for by the total fractional scrip certificates of each class then outstanding and to pay to the holders of such scrip certificates on surrender thereof their respective proportions of the net proceeds of the sale of such shares. A copy of the scrip certificate is on file in this application as Exhibit "S". The Surviving Corporation asks permission to sell such shares of stock.

Assuming that the California Company and the San Diego Company had been merged under the proposed Agreement of Merger as of December 31, 1946, the Surviving Corporation would have had assets and liabilities as follows:

ASSETS

Current Assets:		
Cash on hand and in banks		\$ 251,258.68
Accounts receivable:		
Customers	\$217,066.14	
Others	<u>91,827.89</u>	
Total	308,894.03	
Less reserve for uncollectible accounts	<u>4,000.00</u>	304,894.03
Inventories		409,523.94
Prepaid expenses		<u>65,460.32</u>
Total current assets		1,031,136.97
Investments		26,969.42
Property, Plant and Equipment:		
Land	358,281.08	
Buildings	573,486.66	
Machinery and equipment	142,083.53	
Office furniture and fixtures	9,740.30	
Automobiles and trucks	<u>60,005.68</u>	
Total		1,143,597.25
Intangibles:		
Goodwill		1,372.10
Other Assets:		
Guarantee deposits	13,652.33	
Interest in surplus reserves of California Casualty Indemnity Exchange	4,144.05	
Less Valuation reserve	<u>1,337.10</u>	<u>2,806.95</u>
Total		16,459.28
Total Assets		<u>\$2,219,535.02</u>

LIABILITIES AND CAPITAL

Current Liabilities:		
Notes payable - unsecured		\$ 50,000.00
Accounts payable - trade		187,835.86
Other accounts payable		26,973.88
Federal and state taxes on income		324,454.13
Other accrued liabilities		36,308.21
Current maturities on long-term debt		<u>35,600.00</u>
Total		661,172.08
Long-term Debt:		
Note payable - secured	\$142,000.00	
Property purchase contract	<u>11,600.00</u>	
Total	153,600.00	
Less installments due in 1947 included in current liabilities above	<u>35,600.00</u>	118,000.00
Portion due subsequent to 1947		
Capital Stock:		
Prior preferred \$25. par value, 8,000 shares	200,000.00	
Preferred, no par value, 19,546 shares stated at \$25.	488,650.00	
Common, no par value, 18,600 shares stated at \$25.	<u>465,000.00</u>	
Total		1,153,650.00
Earned Surplus		<u>286,712.94</u>
Total Liabilities and Capital		<u>\$2,219,535.02</u>

The merger of the California Company and the San Diego Company into the Surviving Corporation will do away with two corporations, will result in decreased overhead expenses, will make it possible to consolidate accounting offices, save taxes, and do business on a more efficient basis.

Several holders of stock of the California Company appeared at the hearing. While they did not object to the merger, they did suggest that the Agreement of Merger be modified in several respects. They suggested that the dividends on the Prior Preferred and Preferred stocks of the Surviving Corporation be made cumulative whether earned or not; that the Preferred stock should have voting rights equal to the voting rights of the holders of the Common stock; that the denial of preemptive rights to the stockholders should be eliminated from the Articles of Incorporation; that to protect the interest of the minority stockholders some limitation should be put on the use of earnings by the Surviving Corporation, and that stockholders be furnished with unaudited balance sheets and earnings statements on a quarterly as well as on an annual basis.

Applicants contend that in preparing the Agreement of Merger they endeavored to maintain and perpetuate the rights which the holders of Class A stock of the California Company and San Diego Company now possess, and that in arriving at the bases on which stock of the Surviving Corporation would be exchanged for stock of California Company and San Diego Company, primary consideration was given to the distribution of the assets of those two companies in the event the companies were liquidated and the assets distributed to their stockholders. While it is

realized that the holders of the Class A stock of California Company and San Diego Company now have limited voting rights, we believe that the Articles of Incorporation of the Surviving Corporation should be amended and give the holders of the Prior Preferred stock and of the Preferred stock of the Surviving Corporation voting rights on a parity with the voting rights of the holders of the Common stock and that the Articles should further be amended to provide that the dividends on the Prior Preferred and Preferred stock should be cumulative, whether earned or not. With all stockholders having a voice in the management of the properties and business of the Surviving Corporation, there is no need to require it to confer preemptive rights upon any class of its stockholders or to impose upon it any limitation on the use of its surplus earnings or distribution of its balance sheets and earnings statements.

We find that the exchange of stock as set forth in the Agreement of Merger and pursuant to its terms and provisions is fair and reasonable, provided the Articles of Incorporation of the Surviving Corporation are amended as above indicated. It should be understood that the order herein is permissive and does not require any holder of stock of California Company or San Diego Company to exchange his stock for stock of the Surviving Corporation. Any stockholder who elects not to have his stock converted into the Surviving Corporation has the right to resort to the dissenting shareholder's provision of the law and have the value of his stock determined and be paid in cash an amount equal to the value of his stock.

O R D E R

The Commission having considered the record in this application and it being of the opinion that if the Articles of Incorporation of California Cold Storage & Distributing Co. are amended as indicated in the foregoing opinion, the issue and exchange of stock by said California Cold Storage & Distributing Co. under said amended Articles of Incorporation and on the share basis set forth in said Agreement of Merger is fair and reasonable, that the money, property or labor to be procured or paid for by the issue, exchange and sale of stock herein authorized is reasonably required by California Cold Storage & Distributing Co. for the purposes herein stated, which purposes 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. California Ice and Cold Storage Company, San Diego Ice and Cold Storage Co., and California Cold Storage & Distributing Co. may, after the effective date hereof and on or before December 31, 1947, execute an Agreement of Merger in, or substantially in the form of the Agreement of Merger on file in this application as Exhibit "J".
2. California Ice and Cold Storage Company and San Diego Ice and Cold Storage Co. may, after the effective date hereof and on or before December 31, 1947, sell and transfer their properties, rights, privileges, franchises, and business to California Cold Storage & Distributing Co., and the latter may

assume all obligations, debts, and liabilities of California Ice and Cold Storage Company and San Diego Ice and Cold Storage Co., all in accordance with the said Agreement of Merger.

3. California Cold Storage & Distributing Co. may, after the effective date hereof, issue its shares of stock and scrip certificates in exchange for stock of California Ice and Cold Storage Company and San Diego Ice and Cold Storage Co., and issue and sell shares of stock to pay or redeem scrip certificates not exchanged for shares of stock, all pursuant to the terms and provisions and for the purposes set forth in said Agreement of Merger, said shares of stock to be issued under Articles of Incorporation amended as indicated in the foregoing opinion.

4. The authority herein granted will become effective when California Cold Storage & Distributing Co. has filed with the Commission amendments to its Articles of Incorporation as indicated in the foregoing opinion.

5. The authority herein granted should not be construed as a finding of the value of the properties herein authorized to be transferred.

6. Within ninety (90) days after the execution of said Agreement of Merger, California Cold Storage & Distributing Co. shall file a copy of the same, together with a report showing the number of shares of stock and scrip certificates it issued and the purposes for which the same were issued.

Dated at San Francisco, California, this 20th day
of May, 1947.

Harold P. Hills
James J. Quinn
Frank Powell
A. J. ...
Samuel ...
Commissioners