

ORIGINAL

Decision No. 41957

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the application of JEFFERYS' MILL & WAREHOUSE COMPANY, INC., for an order authorizing applicant to sell and issue its stock, and to permit JEFFERYS' MILL & WAREHOUSE COMPANY, a co-partnership to transfer its assets to JEFFERYS' MILL & WAREHOUSE COMPANY, INC.

Application No. 29437

Carl E. Rodegerdts, for Applicants

Huls, Commissioner

O P I N I O N

Vernon H. Jeffery and George E. Jeffery, co-partners doing business under the name of Jefferys' Mill & Warehouse Company, ask permission to transfer all of their assets to Jefferys' Mill & Warehouse Company, Inc., a corporation. The corporation asks permission to issue, for the purposes hereinafter stated, 400 shares of its common stock, 1,250 shares of 5% cumulative preferred stock, to assume the indebtedness of the co-partnership, issue a note for \$32,000 and execute a deed of trust to secure the payment of such note.

The co-partnership is engaged in operating public utility warehouses in Winters, California and in purchasing, selling and processing grain. About 10% of its gross revenue is obtained from public utility warehouse business.

The co-partnership, as of May 31, 1948 reports its assets and liabilities as follows:

| <u>Assets</u> | |
|-------------------------------|-----------------|
| Cash | \$ 2,491.68 |
| Accounts receivable | 30,036.69 |
| Merchandise inventory | 16,098.29 |
| Fixed assets | 71,114.77 |
| Cost of fixed assets | \$99,435.08 |
| Less reserve for depreciation | 28,320.31 |
| Prepayments | <u>2,732.97</u> |
| Total assets | \$122,474.40 |

| <u>Liabilities</u> | |
|----------------------------|------------------|
| Notes and accounts payable | \$ 56,600.34 |
| First deed of trust | 26,600.00 |
| Accrued liabilities | 490.39 |
| Deferred credits | 2,273.19 |
| Net worth | <u>36,510.48</u> |
| Total liabilities | \$122,474.40 |

The co-partners have concluded to transfer their public utility and non-utility business and properties to Jefferys' Mill & Warehouse Company, Inc., a California corporation. The corporation will acquire all of the co-partnership assets and assume all of its liabilities.

The corporation has an authorized stock issue of 2,500 shares classified as follows:

- a. 1,250 shares of preferred stock each share having a par value of \$100.00.
- b. 1,250 shares of common stock without par value.

The corporation now asks permission to issue 400 shares of its common stock as part consideration for the transfer to it of the co-partnership assets. Such shares will be issued to the following persons:

| | |
|-------------------|------------|
| Vernon H. Jeffery | 75 shares |
| George E. Jeffery | 125 shares |
| Berna H. Jeffery | 125 shares |
| Helen L. Jeffery | 75 shares |

The corporation's Articles of Incorporation presently provide that the holders of its preferred stock shall have no

voting rights. They further provide that each share of preferred stock shall be entitled to receive or have set apart for it a cumulative dividend to the extent of 5% per annum, beginning one year after the date of issue of said shares. The shares are, at the option of the corporation, redeemable on 90 day's notice at par plus accrued dividends at any time after five years after their issue.

The corporation asks permission to issue and sell 1,250 shares (par value \$125,000) of its preferred stock at \$100 per share, and use the proceeds to pay the expenses incident to the issue of the stock, pay indebtedness and establish and maintain its business.

This Commission, has upon several occasions taken exception to a public utility issuing non-voting preferred stock. The holder of preferred stock is not in a position of a creditor. While it is of record that prospective purchasers of the preferred stock are not interested in voting rights, it is not proposed to limit their right to re-sell the shares of preferred stock at any time. We believe that before the corporation issues and sells any shares of its preferred stock, it should amend its Articles of Incorporation to provide for the quarterly payment of dividends on its preferred stock, such dividends to accumulate from the date of the issue of the stock, and to confer upon the holders of the preferred stock voting rights on a parity with the voting rights of the holders of common stock in the event the corporation fails to pay any quarterly dividend on the preferred stock. The Articles of Incorporation shall also provide for the calling of a meeting of the corporation's stockholders to be held within ninety days after the corporation's failure to pay a quarterly dividend on its preferred stock, such meeting

to be called for the purpose of electing a board of directors. The voting rights of the holders of preferred stock shall remain in effect until all accumulated dividends have been paid.

The co-partnership, heretofore without the Commission's authority executed a deed of trust to secure the payment of the \$32,000, 6% installment note issued to the Bank of Davis. The balance due on this note as well as any other liabilities of the co-partnership will be assumed by the corporation. Applicants ask permission to execute a new deed of trust and note in lieu of that heretofore executed without the Commission's approval. A copy of the note and deed of trust is on file in this application.

I herewith submit the following form of order:

ORDER

A public hearing having been held on the above entitled application and the Commission having considered the testimony submitted at such hearing and it being of the opinion that the money, property or labor to be procured or paid for by Jefferys' Mill & Warehouse Company, Inc. through the issue of the stock and note herein authorized is reasonably required by it for the purposes herein stated, that such 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. Vernon H. Jeffery and George E. Jeffery, co-partners doing business as Jefferys' Mill & Warehouse Company,

after the effective date hereof and on or before December 31, 1948, may transfer all of their assets and business to Jefferys' Mill & Warehouse Company, Inc.

2. Jefferys' Mill & Warehouse Company, Inc., after the effective date hereof and on or before December 31, 1948, may issue in payment for said assets and business not exceeding 400 shares of its common stock and assume all liabilities of the co-partnership.

3. Jefferys' Mill & Warehouse Company, Inc., after the effective date hereof and on or before December 31, 1948, may issue and sell at not less than \$100 per share, 1,250 shares of its 5% cumulative preferred stock.

4. Jefferys' Mill & Warehouse Company, Inc. shall use the proceeds obtained from the sale of said shares of preferred stock or any part thereof to pay expenses (not to exceed 6% of the par value of shares of preferred stock sold) incident to the issue and sale of said shares of preferred stock, to pay indebtedness and to maintain its service and business.

5. Jefferys' Mill & Warehouse Company, a co-partnership and/or Jefferys' Mill & Warehouse Company, Inc., after the effective date hereof and on or before December 31, 1948, may execute a 6% installment note for the sum of not exceeding \$32,000, and a deed of trust to secure the payment of said note, all for the purpose of paying indebtedness, said note and deed of trust to be in substantially the same form as the note and deed of trust on file in this application.

6. Applicants shall, on not less than five (5) days notice to the Commission and to the public, supplement or reissue

tariffs on file with the Commission to show that applicants Vernon H. Jeffery and George E. Jeffery, co-partners, have withdrawn or cancelled and that applicant Jefferys' Mill & Warehouse Company, Inc. has concurrently adopted or established as its own, said rates, rules and regulations, and that the tariff filings made pursuant to this order shall in all other respects comply with the regulations governing the construction and filing of warehouse tariffs set forth in the Commission's General Order No. 61.

7. The authority herein granted to transfer properties, issue common stock and execute a note and deed of trust will become effective when applicants, or either of them have paid the fee prescribed in Section 57 of the Public Utilities Act, which fee is \$32.00.

8. The authority herein granted to issue preferred stock will become effective when Jefferys' Mill & Warehouse Company, Inc. has filed with the Commission a certified copy of an amendment to its Articles of Incorporation giving the holders of preferred stock voting rights as indicated in the foregoing opinion.

9. Applicants shall file with the Commission monthly reports as required by the Commission's General Order No. 24-A, which order, insofar as applicable, is made a part of this order.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Public Utilities Commission of the State of California.

Dated at San Francisco, California, this 17th day
of August, 1948.

R. F. Friedman
Justice J. Calves
James F. Luce
Harold P. Kuls
Kenneth Fetter

Commissioners



PUBLIC UTILITIES COMMISSION
STATE OF CALIFORNIA
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BY a. a. Kippel