

Decision No. 43188

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of

SOLEDAD WAREHOUSE CO.

to issue and sell its preferred stock  
(original issue).

Application  
No. 30501

OPINION

Soledad Warehouse Co., a corporation, has applied to the Commission for an order authorizing it to issue and sell, at par, 200 shares of preferred stock (\$20,000 par value) for the purpose of providing working capital.

Applicant is a California corporation organized on or about July 3, 1948. It is now engaged in the public utility warehouse business in Soledad, Monterey County, and in the operation of a lumber yard. In Exhibit "B" filed in this proceeding it shows, for the period from September 1, 1948, to May 31, 1949, inclusive, revenues from its warehouse operations at \$32,416.83 and lumber yard sales of \$5,390.84, with net income from its warehouse of \$7,937.34 and a net loss from its lumber yard operations of \$1,043.06. It reports its assets and liabilities, as of May 31, 1949, as follows:

<u>Assets</u>		
Current assets-		
Cash	\$ 2,429.29	
Accounts receivable	7,522.29	
Accrued storage	2,357.76	
Inventories	<u>12,702.28</u>	
Total current assets		\$25,011.62
Fixed assets		
Land	6,153.77	
Warehouse	44,787.68	
Lumber yard	<u>13,730.60</u>	
	64,672.05	
Less-depreciation reserve	<u>5,566.04</u>	
Total fixed assets		59,106.01
Organization expense		873.68
Deferred charges		<u>1,883.21</u>
Total		<u>\$86,874.52</u>

<u>Liabilities</u>		
Current liabilities-		
Notes and accounts payable	\$22,691.10	
Accrued salaries	2,333.50	
Other current liabilities	<u>654.13</u>	
Total current liabilities		\$25,678.73
Secured notes		12,603.80
Due to officers		5,000.00
Capital stock (common)		45,000.00
Deficit		<u>(1,408.01)</u>
Total		<u>\$86,874.52</u>

It is reported that applicant recently has purchased the lumber yard, with its inventory of lumber, and that approximately \$20,000 is needed for working capital in the lumber operations. Applicant proposes to obtain such sum through the issue of shares of preferred stock to its existing shareholders of record.

Applicant's authorized and outstanding capital stock consists of the following:

	<u>Authorized</u>		<u>Outstanding</u>	
	<u>Shares</u>	<u>Par Value</u>	<u>Shares</u>	<u>Par Value</u>
Common	1,000	\$100,000	450	\$45,000
Preferred	<u>250</u>	<u>25,000</u>	<u>-</u>	<u>-</u>
Total	<u>1,250</u>	<u>\$125,000</u>	<u>450</u>	<u>\$45,000</u>

The records of the Commission show that the outstanding \$45,000 of common stock was issued pursuant to authority granted by Decision No. 42117, dated October 11, 1948, to the following individuals:-

Thos. B. Porter	\$17,500
J. F. Keough	17,500
Roy E. Prewitt and Minnie F. Prewitt, joint tenants	5,000
Odis D. Cunningham and Bernice Cunningham, joint tenants	<u>5,000</u>
	\$45,000

The Articles of Incorporation provide, among other things, that the holders of the shares of preferred stock shall

be entitled to receive cumulative dividends at the rate of 6% per annum, payable in cash semi-annually, or at such time as the board of directors may from time to time determine; that such shares are redeemable at applicant's option upon the payment of a premium of \$2.00 a share; and that the holders of shares of common stock shall have the sole and exclusive right to notice of shareholders' meetings and the sole and exclusive voting rights, except as otherwise provided by law and except that in the event four or more semi-annual dividends on the shares of preferred stock shall be unpaid in whole or in part, then and until all arrears shall have been paid together with the then current semi-annual dividend, the voting rights of the holders of the common shares shall cease and such voting rights shall vest exclusively in the holders of the preferred shares.

The Commission does not favor the issue of non-voting stock. It has taken the position that those who purchase shares of stock of a corporation, either preferred or common, should have voting rights in proportion to their investment in the enterprise. The preferred stockholders are not creditors, they cannot obtain a judgment against the corporation for failure to pay dividends, and, under this applicant's Articles of Incorporation, in the event of failure to receive dividends they must wait more than two years before they can exercise a voice in the management of the business and properties in which they share ownership. While it is true that in the present proceeding it is proposed to issue shares of preferred stock only to the holders of the presently outstanding common shares, there is nothing to prevent such holders from disposing of their shares of stock, either preferred or common, at a later date. In our opinion the purchasers of applicant's shares of preferred stock, from the date they acquire

said shares, should have voting rights on a parity with the voting rights of the holders of the shares of common stock.

A review of the application indicates that applicant has need for additional working capital to improve and maintain its business. The order herein will authorize applicant to issue and sell said shares of preferred stock, provided it amend its Articles of Incorporation so as to give to the holders of shares of its preferred stock the same voting rights as now are given to the holders of shares of its common stock.

O R D E R

The Public Utilities Commission having considered the above entitled matter and being of the opinion that a public hearing thereon is not necessary, that the money, property or labor to be procured or paid for through the issue of 200 shares of preferred stock is reasonably required by Soledad Warehouse Co. for the purpose indicated herein, 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. Soledad Warehouse Co., after the effective date hereof and on or before December 31, 1949, may issue and sell, at par for cash, 200 shares of its preferred stock and use the proceeds to maintain and improve its business, provided that prior to the issue of said shares of preferred stock or any part thereof it amend its Articles of Incorporation so as to give to the holders of shares of its preferred stock the same voting rights as such Articles now give to the holders of shares of its common stock.

2. Soledad Warehouse Co. shall file with the Commission a report, or reports, as required by General Order No. 24-A, which order, insofar as applicable, is made a part of this order.

3. The authority herein granted will become effective twenty (20) days from the date hereof, and when Soledad Warehouse Co. has filed with the Commission a certified copy of an amendment to its Articles of Incorporation conferring upon the holders of its preferred stock voting rights similar to those possessed by the holders of its common stock.

Dated at San Francisco, California, this 9th day of August, 1949.

R. T. Dutton

Joseph A. Luce

Penelope Lott  
Commissioners