

ORIGINAL

Decision No. 49562

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of SECURITY WAREHOUSE & COLD STORAGE COMPANY to issue up to 10,000 shares of 5% cumulative, non-voting preferred stock at its par value of twenty (\$20.00) dollars per share for the purpose of providing funds for working capital and for the acquisition of additional cold storage facilities for private use.)	
-----)	
)	Application
)	No. 35003

O P I N I O N

Security Warehouse & Cold Storage Company, applicant in this proceeding, is a California corporation engaged in the operation of a cold storage and ice manufacturing plant in San Jose and a cold storage and ice plant, together with freezing facilities and packing houses, in Santa Clara. In this application it seeks authorization to issue 10,000 shares of its 5% cumulative preferred stock and to sell the same at their par value of \$20 each.

The purpose of the proposed issue is to provide applicant with working cash and with funds for the expansion of its quick freezing and storage facilities. According to information filed in the proceeding, applicant had current assets of \$669,656 on September 30, 1953, and current liabilities in the amount of \$377,273, including provision of \$166,880 for federal income taxes. It has reported in Application No. 34908, which was filed on November 27, 1953, proposed expenditures for plant and equipment in the amount of \$600,000, which it intends to meet with cash on hand and with borrowed funds, and it has now set forth in the present proceeding additional requirements for capital expansion in the

amount of \$480,000. It appears that a substantial part of applicant's expenditures can be financed with retained earnings and the use of depreciation moneys but that it is necessary for it to provide additional cash from external sources.

In presenting this application to the Commission applicant has furnished its financial statement showing its assets and liabilities as of September 30, 1953, as follows:

Assets

Tangible assets, less reserve		\$1,382,916.58
Other investments		40,187.75
Current assets -		
Cash	\$287,234.13	
Accounts receivable	332,069.43	
Accrued storage	31,565.12	
Inventories	<u>18,788.13</u>	
Total current assets		669,656.81
Deferred charges		<u>32,198.36</u>
	Total	<u>\$2,124,959.50</u>

Liabilities and Capital

Long-term debt		\$ 123,931.03
Current liabilities	\$210,393.05	
Provision for income tax	<u>168,880.00</u>	
		377,273.05
Deferred credits		<u>37,777.68</u>
Capital -		
Capital stock	700,000.00	
Surplus	<u>885,977.74</u>	
Total capital		<u>1,585,977.74</u>
	Total	<u>\$2,124,959.50</u>

The following statement prepared from applicant's financial reports on file with the Commission indicates its revenues and expenses during the calendar years 1951 and 1952 and during the first nine months of 1953:

	<u>1951</u>	<u>1952</u>	<u>9 Mos. 1953</u>
Revenues	\$1,391,119	\$1,729,384	\$1,468,970
Expenses	<u>1,144,436</u>	<u>1,435,267</u>	<u>1,189,464</u>
Net before income taxes	246,683	294,117	279,506
Provision for income taxes	<u>133,835</u>	<u>177,043</u>	<u>166,880</u>
Net profit	<u>\$ 112,848</u>	<u>\$ 117,074</u>	<u>\$ 112,626</u>

It appears that applicant has an authorized capital stock of 60,000 shares of the par value of \$20 each, divided into 50,000 shares of common stock and 10,000 shares of preferred stock. Presently it has outstanding 35,000 shares of common stock of the aggregate par value of \$700,000 and no shares of preferred. It has paid dividends on its shares of common stock for a number of years in the amount of \$2 annually.

At this time applicant proposes to issue shares of its preferred stock and to sell the same at par for cash. These shares have the right to cumulative dividends at the rate of 5% per annum, are callable at \$20.50 a share at any time, and have no voting rights except as set forth in applicant's articles of incorporation as follows:

Should there be a failure, for a period of twenty-four (24) months, to pay dividends on the outstanding non-voting preferred shares, then the holders of such shares voting as a class shall have the right to cast one vote in elections for directors for each such share held by them, and such stockholders shall have the further right to cumulate their votes, which right shall cease upon the payment of the dividends in arrears, subject, however, to the revivor of such right upon subsequent similar defaults in payment of dividends.

The holder of preferred stock, of course, is not in the position of a creditor, he cannot obtain a judgment against the corporation for failure to pay dividends and in the present case in the event of failure to receive dividends he must wait two years before he can exercise any voice in the management of the business and properties in which he shares ownership. We are of the opinion that if preferred stockholders fail to receive any dividend they should be given the right to vote at once and such rights should continue until the accumulated dividends have been paid. Accordingly,

while we will authorize applicant to issue shares of preferred stock we will provide that such authority will not become effective until applicant has filed with the Commission a copy of an amendment to its articles of incorporation which will permit the holders of the shares of preferred stock to vote for any and all purposes if the corporation fails to pay any dividend on such preferred stock, such right to vote to continue until all accumulated dividends have been paid.

O R D E R

The Commission having considered the above entitled matter and being of the opinion that a public hearing is not necessary, that the application should be granted, as herein provided, that the money, property or labor to be procured or paid for by the issue of the shares of stock herein authorized is reasonably required by applicant for the purposes specified herein, and that such purposes are not, in whole or in part, reasonably chargeable to operating expenses or to income; therefore,

IT IS HEREBY ORDERED as follows:

1. Security Warehouse & Cold Storage Company, on and after the effective date hereof and on or before December 31, 1954, may issue and sell, at not less than par for cash, not exceeding 10,000 shares of its preferred stock for the purposes set forth in this application, provided that such authorization to issue preferred stock will not become effective until applicant has filed with the Commission a copy of an amendment to its articles of

incorporation under which the holders of its preferred shares shall be given the right to vote if and when the corporation fails to pay any quarterly dividend on its outstanding shares of preferred stock, such right to continue until all accumulated dividends have been paid.

2. Security Warehouse & Cold Storage Company shall file with the Commission monthly reports as required by General Order No. 24-A, which order, insofar as applicable, is made a part of this order.

Dated at San Francisco, California, this 18th day of January, 1954.

R. F. Anderson
President

Samuel Pottel
John L. Mitchell
Gene Rogers

Commissioners