

**ORIGINAL**

Decision No. 59412

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of

WESTERN REFRIGERATION COMPANY,  
a corporation;  
SAN MARTIN COLD STORAGE CO.,  
a corporation;  
SANTA MARIA FREEZER AND COLD STORAGE CO.,  
a corporation;  
WESTERN COLD STORAGE CO.,  
a corporation;  
LLAGAS REFRIGERATING CO.,  
a corporation;

for an order (1) authorizing Western Refrigeration Company to issue shares of its capital stock (2) authorizing Western Refrigeration Company to acquire all of the outstanding capital stock of San Martin Cold Storage Co., Santa Maria Freezer and Cold Storage Co., and Llagas Refrigerating Co.; (3) authorizing Santa Maria Freezer and Cold Storage Co. to merge or dissolve Western Cold Storage Co.; (4) authorizing Western Refrigeration Company to merge or dissolve San Martin Cold Storage Co., Santa Maria Freezer and Cold Storage Co., and Llagas Refrigerating Co.; (5) declaring that public convenience and necessity require or will require the transaction of a refrigerated warehouse business by Western Refrigeration Company in Santa Maria and San Martin; (6) authorizing San Martin Cold Storage Co., Santa Maria Freezer and Cold Storage Co., Western Cold Storage Co., and Llagas Refrigerating Co., to withdraw or cancel their rates, rules and regulations and Western Refrigeration Company to adopt or establish the same as its own; and (7) authorizing Western Refrigeration Company to issue its promissory note or notes maturing more than 12 months from the date thereof to Bank of America National Trust and Savings Association and to mortgage its properties to secure said promissory note; authorizing Western Refrigeration Company to issue its promissory notes maturing more than 12 months from the date thereof to owners of common stock of San Martin Cold Storage Co., Santa Maria Freezer and Cold Storage Co., and Llagas Refrigerating Co.; and authorizing Western Refrigeration Company to borrow money on open account from Southeastern Public Service Company.

Application  
No. 41735

O P I N I O N

In this application authority is requested which will enable Western Refrigeration Company, through acquisition of outstanding capital stock and by merger, to acquire the properties and operations now owned or operated by San Martin Cold Storage Co., Santa Maria Freezer & Cold Storage Co., Western Cold Storage Co., and Llagas Refrigerating Co. Western Refrigeration Company also requests authority to issue shares of its common stock and its promissory notes and to mortgage its properties in order to finance, in part, such acquisition.

The record in this proceeding shows that Llagas Refrigerating Co., hereinafter sometimes referred to as "Llagas", using facilities it leases from San Martin Cold Storage Co., hereinafter sometimes referred to as "San Martin", is engaged in the freezing and cold storage warehouse business serving residents of Santa Clara County, while Western Cold Storage Co., hereinafter sometimes referred to as "Cold Storage", using facilities leased from Santa Maria Freezer & Cold Storage Co., hereinafter sometimes referred to as "Santa Maria", is engaged in the freezing and cold storage warehouse business serving residents of Santa Maria Valley.

Western Refrigeration Company, hereinafter sometimes referred to as "Western", a newly organized California corporation, proposes to issue 1,000 shares of its \$1 par value common stock, for cash, to Southeastern Public Service Company, a Delaware corporation, and thereafter, as a wholly-owned subsidiary of Southeastern Public Service Company, to issue its promissory

notes together with funds acquired from open account advances from its parent, to acquire and to subsequently operate the refrigerated warehouse business which is now being carried on by Llagas, San Martin, Cold Storage and Santa Maria.

Southeastern Public Service Company, hereinafter sometimes referred to as "Southeastern", through subsidiaries, now operates refrigerated warehouses in Utah, Colorado and Kansas, and ice, food processing, low pressure gas and natural gas production and transmission business in other parts of the United States. For the year 1958, its reported revenues were \$14,239,848 and its net income, \$1,090,634. As of December 31, 1958, its recorded investment in assets, including \$144,232 of deferred charges, totaled \$16,076,230. Southeastern now desires to expand its refrigerated warehouse business into California thereby developing adequate storage arrangements for existing customers and attracting new business. As a part of its expansion program, Southeastern has caused the formation of Western Refrigeration Company, which company, as its wholly-owned subsidiary, proposes to acquire the warehouse facilities and operations previously referred to which are located in Santa Clara Valley and in Santa Maria Valley.

At the present time, Western Cold Storage Co. is a wholly-owned subsidiary of Santa Maria. It is proposed to merge Cold Storage into Santa Maria pursuant to the provisions of Section 4124 of the California Corporations Code or to dissolve Cold Storage pursuant to Part 9 of Division 1 of said code. All of the estate, property, rights, privileges, franchises of Cold Storage will vest in and be held by Santa Maria and all of the liabilities and obligations of Cold Storage will be assumed by Santa Maria.

Southeastern and Western have negotiated an agreement with the owners of all the common stock of San Martin, Santa Maria and Llagas for the acquisition by Western of said stock. A copy of the agreement is attached to the application as Exhibit C. As set forth in the agreement, the price to be paid by Western for said stock, subject to adjustment for changes subsequent to October 31, 1959, in net current assets totals \$1,453,973.65 and consists of the following:

Promissory notes of Western, guaranteed by Southeastern, bearing interest at the rate of 6% per annum . . . . .	\$ 533,479.65
Cash . . . . .	482,000.00
26,038 shares of common stock of Southeastern at \$13 per share . . . . .	338,494.00
Cash and shares of common stock of Southeastern at \$13 per share in an amount equal to the excess of current assets over current liabilities of the companies as of November 27, 1959, estimated at . . . . .	100,000.00

The portion of the purchase price to be paid in cash will be obtained from proceeds derived from the sale of Western's shares to Southeastern; from the proceeds of a loan in the principal amount of \$400,000, which Bank of America National Trust and Savings Association has agreed to make to Western; and the proceeds of a loan on open account by Southeastern to Western. The portion of the purchase price payable in shares of common stock of Southeastern will be acquired by Western by means of a loan on open account by Southeastern to Western in the amount of \$338,494, plus an amount equal to the net current assets of Llagas which is estimated to be \$30,000.

Giving effect to the acquisition of the stocks of San Martin, Santa Maria and Llagas, to the subsequent merger of these companies, to the issuance of securities and to the incurring of debt by Western, a pro form balance sheet has been prepared for Western as of October 31, 1959. This balance sheet, in summary form, follows:

Assets

Property, plant and equipment		\$2,370,000
Current assets -		
Cash	\$ 220,137	
Accounts receivable	239,313	
Prepaid expenses	<u>23,572</u>	<u>483,022</u>
Total		<u>\$2,853,022</u>

Liabilities

Long-term debt* -			
6% mortgage notes, due serially to 12/15/66	\$1,396,026		
Due within one year	<u>199,432</u>	1,196,594	
6% notes, due 11/27/62		383,480	
6% notes, due 11/27/64		<u>150,000</u>	1,730,074
Current liabilities -			
Long-term debt due within one year		199,432	
Notes payable		32,000	
Accounts payable		83,804	
Federal income taxes		105,764	
Other		<u>33,554</u>	454,554
Open account - Southeastern Public Service Company			667,394
Common stock, par value \$1 per share, outstanding 1,000 shares			<u>1,000</u>
Total			<u>\$2,853,022</u>

\* All guaranteed by parent, Southeastern Public Service Company.

Concurrently with the merger or dissolution of the companies, Western proposes to continue to own and operate the refrigerated warehouse business and facilities in the localities of San Martin and Santa Maria, which heretofore have been owned and operated by the companies. In this connection, Western seeks a certificate declaring that public convenience and necessity requires, or will require, Western to own and operate the refrigerated warehouse business and facilities in the localities of San Martin and Santa Maria previously owned and operated by the companies.

Section 1052 of the Public Utilities Code provides that no such certificate shall be required by any warehouseman as to storage or warehouse space actually operated in good faith on September 1, 1959, under tariffs and schedules of such warehouseman lawfully on file with the Commission. Therefore, we shall dismiss the certificate portion of this application without prejudice, it being our opinion that Western Refrigeration Company may increase such storage or warehouse space by up to 50,000 square feet in each of the localities of San Martin and Santa Maria in accordance with Section 1051 of the Public Utilities Code without securing further authorization from this Commission.

In the event the application is granted as requested, Western asks that it be authorized to use an effective date of November 27, 1959, for accounting purposes. The use of such date will facilitate the preparation by Southeastern of a prospectus which it proposes filing with the Securities and Exchange Commission and will be authorized in the order which follows.

Based on a review of the application, we are of the opinion, and so find, (1) that the acquisition of the stocks of Santa Maria, Llagas and San Martin by Western and the subsequent merger of these companies into Western will not be adverse to the public interest; and (2) that Western by reason of its own financial condition and through its ability to obtain required cash advances and credit from its parent, should have the financial resources required to fulfill its public utility obligations.

The authority herein granted is not to be construed as a finding by the Commission of the value of the properties for the purpose of determining just and reasonable rates.

In entering our order in this proceeding, we are making no finding as to the reasonableness of the price to be paid for the operative rights, nor as to their value, nor as to the nature, scope and extent of the rights. Western Refrigeration Company hereby is placed on notice that operative rights, as such, do not constitute a class of property which may be capitalized or used as an element of value in rate fixing for any amount of money in excess of that originally paid to the state as the consideration for the grant of such rights. Aside from their purely permissive aspect, they extend to the holder a full or partial monopoly of a class of business. This monopoly feature may be changed or destroyed at any time by the state, which is not in any respect limited as to the number of rights which may be given.

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 money, property or labor to be procured or paid for by the issue of the stock and promissory notes herein authorized is reasonably required for the purposes stated herein, which purposes are not, in whole or in part, reasonably chargeable to operating expenses or to income, and that the application, except as it pertains to the granting of a certificate of public convenience and necessity and the incurring of an open account indebtedness, should be granted; therefore,

IT IS HEREBY ORDERED as follows:

1. Western Refrigeration Company, on or after the effective date hereof and on or before June 30, 1960, may issue 1,000 shares of its \$1 par value common stock for a cash consideration of not less than \$1,000 and shall use the proceeds for the purpose set forth in the application.
2. Western Refrigeration Company, on or after the effective date hereof and on or before June 30, 1960, may purchase all of the outstanding common stock of San Martin Cold Storage Co., Santa Maria Freezer & Cold Storage Co., and Llagas Refrigerating Co., in accordance with the terms of the agreement, a copy of which is attached to the application as Exhibit G.



3. Santa Maria Freezer & Cold Storage Co., on or after the effective date hereof and on or before June 30, 1960, may merge or dissolve its wholly-owned subsidiary, Western Cold Storage Co., pursuant to Section 4124 or Part 9 of Division 1 of the California Corporations Code.

4. Western Refrigeration Company, on or after the effective date hereof and on or before June 30, 1960, may merge or dissolve San Martin Cold Storage Co., Santa Maria Freezer & Cold Storage Co., and Llagas Refrigerating Co., pursuant to Section 4124 or Part 9 of Division 1 of the California Corporations Code.

5. Llagas Refrigerating Co. and Western Cold Storage Co., on or after the effective date hereof and on or before June 30, 1960, may sell and transfer to Western Refrigeration Company, a corporation, such operative rights as they may possess to operate public utility warehouses in the localities of San Martin and Santa Maria, respectively.

6. On not less than five days' notice to the Commission and to the public, effective concurrently with the consummation of such transfer, applicants shall supplement or reissue the tariffs now on file with the Commission, insofar as they name rates, rules and regulations governing the warehouse operations here involved of Western Cold Storage Co. and Llagas Refrigerating Co. to show that Western Cold Storage Co. and Llagas Refrigerating Co. have withdrawn or canceled and that Western Refrigeration Company concurrently has adopted or established, as its own, said rates, rules and regulations. The tariff filings made pursuant to this

order in all respects shall comply with the regulations governing the construction and filing of warehouse tariffs set forth in the Commission's General Order No. 61.

7. Western Refrigeration Company, on or after the effective date hereof and on or before June 30, 1960, may issue its promissory notes to Bank of America National Trust and Savings Association in the aggregate principal amount of not to exceed \$400,000, payable serially to December 15, 1966, with interest at the rate of 6% per annum and shall use the proceeds for the purposes set forth in this application and may execute a deed of trust to secure payment of said notes, the notes and deed of trust to be in, or substantially in, the same form as those on file in this proceeding.

8. Western Refrigeration Company, on or after the effective date hereof and on or before June 30, 1960, may issue its promissory note, or notes, in the aggregate principal amount of not to exceed \$533,479.65 to the stockholders of San Martin Cold Storage Co. and Santa Maria Freezer & Cold Storage Co., of which \$383,479.65 shall mature November 27, 1962 and \$150,000 shall mature November 27, 1964. Such note, or notes, shall bear interest at the rate of 6% per annum. Western Refrigeration Company shall use the proceeds from the issue of these notes for the purposes set forth in the application.

9. Western Refrigeration Company, when acquiring the properties of San Martin Cold Storage Co., Santa Maria Freezer & Cold Storage Co., and Llagas Refrigerating Co., may assume the outstanding obligations of these companies.

10. Western Refrigeration Company 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.

11. This application insofar as it relates to the granting of a certificate of public convenience and necessity is dismissed without prejudice.

12. For accounting purposes only, applicants herein are authorized to use an effective date of November 27, 1959.

13. The request of Western Refrigeration Company for authority to incur an open account indebtedness with Southeastern Public Service Company is dismissed for want of jurisdiction.

14. The authority herein granted will become effective when Western Refrigeration Company has paid the fee prescribed by Section 1904(b) of the Public Utilities Code, which fee is \$934.

Dated at San Francisco, California,  
this 21st day of December, 1959.

Everett A. Ross  
President  
John E. [unclear]  
[unclear]  
Theodore [unclear]

Commissioners  
PUBLIC UTILITIES COMMISSION  
STATE OF CALIFORNIA  
**PAID**  
DEC 22 1959  
BY \_\_\_\_\_