

LEM

Decision No. 20502

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
EAST BAY WATER COMPANY,)
a corporation, under the laws of)
California, to sell, and of EAST)
BAY MUNICIPAL UTILITY DISTRICT, a)
political corporation under the laws) Application No. 15099
of California, to buy, the whole of)
the plant and system of EAST BAY)
WATER COMPANY.)

A. G. Tasheira, for East Bay Water Company;
T. P. Wittschen, for East Bay Municipal Utility District;
Sidney M. Van Wyck, Jr., in propria persona, intervenor;
John P. Beale, in propria persona, intervenor.

BY THE COMMISSION:

O P I N I O N

The East Bay Water Company, hereinafter sometimes called the Company, asks permission to sell all of its assets, maps, records and properties, including cash, current assets, franchises, good will and any and all real property with the improvements thereon, and any and all personal property, to the East Bay Municipal Utility District, hereinafter sometimes called the District. The sale is to be made pursuant to the terms of the agreement dated September 26, 1928, a copy of which is filed in this proceeding.

The East Bay Water Company is a public utility now engaged in the business of supplying water for domestic and all other purposes to the cities and communities, and to the inhabitants thereof, on the east shore of San Francisco Bay and in the Counties of Alameda and Contra Costa, California. The purchaser, the East Bay Municipal Utility District, is a political corporation organized and existing pursuant to an act of the legislature of the State of California. The District comprises within its limits the entire territory now served by East Bay Water Company, save for certain small localities

outside the limits of said District now served by the East Bay Water Company. T. P. Wittschen, attorney for East Bay Municipal Utility District, takes the position that if the district acquires all the properties of East Bay Water Company it is not only legally but also by virtue of its contract with East Bay Water Company obligated to supply with water those consumers residing outside the district boundaries.

The assets and liabilities of East Bay Water Company as of August 31, 1928, are reported as follows:-

ASSETS:

| | | |
|---|-------------------|-------------------------|
| Fixed capital | | \$31,153,960.94 |
| Cash and deposits | | 586,962.93 |
| Accounts receivable | | 726,034.25 |
| A. Due from consumers | \$ 335,432.46 | |
| B. Miscellaneous accounts re- ceivable | <u>390,601.79</u> | |
| Interest and dividends receivable | | 10,249.49 |
| Investments | | 824,431.57 |
| Materials and supplies | | 344,986.72 |
| Sinking fund | | 27,012.72 |
| Other special funds | | 2,500.00 |
| Treasury securities | | 4,937,200.00 |
| Prepaid expenses | | 164,622.44 |
| B. Prepaid taxes | 5,930.42 | |
| C. Prepaid insurance | 9,566.50 | |
| D. Other prepayments | <u>149,125.52</u> | |
| Unamortized discount on securities and expense | | 3,370,684.20 |
| Other suspense | | 249,577.34 |
| Construction work in progress | | 107,361.00 |
| | | |
| | Total assets..... | <u>\$ 42,515,583.60</u> |

LIABILITIES:

| | | |
|--|------------------------|------------------------|
| Capital stock | | \$ 13,087,200.00 |
| Funded debt | | 25,722,800.00 |
| Accounts payable | | 148,502.18 |
| B. Audited vouchers | \$76,106.07 | |
| C. Consumers deposits | 70,433.23 | |
| D. Miscellaneous accounts payable | <u>1,962.88</u> | |
| Interest accrued | | 80,906.83 |
| Taxes accrued | | 160,538.73 |
| Dividends accrued | | - |
| Revenue billed in advance | | 4,757.04 |
| Consumers advances for construction | | 362,396.45 |
| Donations in aid of construction | | 72,819.97 |
| Reserve for accrued depreciation | | 1,364,713.51 |
| Corporate surplus | | 1,510,948.89 |
| | | |
| | Total liabilities..... | <u>\$42,515,583.60</u> |

The company reports outstanding 130,872 shares (\$13,087,200.00 par value) of stock. The outstanding stock consists of 100,000 shares (\$10,000,000.00 par value) of Class "A" preferred, 29,872 shares (\$2,987,200.00 par value) of Class "B" preferred and 1,000 shares (\$1,000,000.00 par value) of common stock. The funded debt, as reported in the foregoing balance sheet, includes bonds deposited as collateral with the trustee under the company's unifying and refunding mortgage. The bonds actually outstanding are reported at \$20,797,700.

The District has, under certain conditions, agreed to pay the stockholders and to the liquidators of the company the sum of \$13,962,200.00 plus accrued unpaid dividends, at the rate of six percent per annum on the Class "A" preferred stock and six percent per annum on the Class "B" preferred stock from the last dividend date, September 30, 1928, to the date of the transfer of the assets. The District, in addition to the above payment, assumes the payment of all the company's liabilities of whatsoever nature. The \$13,962,200.00 shall be disbursed as follows: - The Class "A" preferred stockholders are to receive \$100.00 per share plus current accrued dividends thereon at the rate of six percent per annum from the last dividend date to date of payment; the Class "B" preferred stockholders are to receive \$100.00 per share with unpaid current accrued dividends thereon at the rate of six percent per annum from the last dividend date to date of payment; while the holders of common stock are to receive \$500.00 per share. The balance of the \$13,962,200.00 and said dividends shall be paid to the holders of Class "B" preferred stock in such amounts as the liquidators of the company may determine.

Sidney M. Van Wyck, Jr. and John P. Zeale, holders of common stock, have filed petitions of intervention urging the Commission not to grant this application, for the alleged reasons, among others, that the company was not getting an adequate consideration for its properties, and that it had not complied with the rules of procedure of the Commission in that it filed no detailed inventory of its properties

nor the original cost or present value thereof. The company in its petition asked that inasmuch as it was asking permission to sell all of its properties to the District, it be permitted to deviate from the Commission's Rules of Procedure insofar as they require the filing of a detailed description of the property to be sold, together with the original cost to the East Bay Water Company and the present value thereof. Section 51 of the Public Utilities Act provides that no public utility may sell its public utility properties without the consent of the Railroad Commission. In its Rules of Procedure (Rule V) the Commission provides that when an application is made by a public utility for an order authorizing the sale, lease, assignment, mortgage or other disposition of the whole or any part of its property necessary or useful in the performance of its duties to the public, or any franchise or permit, or any right thereunder, or by any means whatsoever, direct or indirect, the merger or consolidation of its property, franchises or permits, or any part thereof, with any other public utility,

1. The petition must be made by all the parties to the proposed transaction, and, in addition to the requirements of Rule III, must show:

(a) In detail the reasons upon the part of each applicant for entering into the proposed sale, lease, assignment, mortgage or other disposition of such property, franchises or permit and all the facts warranting the same and showing that it is for the benefit of the public service.

(b) Detailed description of the property to be sold, leased, mortgaged or otherwise encumbered, together with the original cost to applicant and present value thereof.

In this instance the property is not being transferred to another public utility. We are not concerned with the manner in which the District will finance the purchase or record the transaction on its books. Were we to hold that the above rule required the filing of the data referred to, a matter which we are not ready to concede, the only purpose served by insisting that the data be filed,

would be to secure some one's opinion as to the present value of the properties of East Bay Water Company. We feel that the record in this proceeding and the information in the files of the Commission, which it was stipulated might be considered in evidence, justifies us in reaching a conclusion in this matter without requiring the filing of the information to which reference has been made.

The East Bay Water Company was organized pursuant to the authority granted in Decision No. 3211, dated March 30, 1916, as amended. At three different times the Commission has been called upon to fix the rates charged by the company. (Decision No. 5534, dated July 1, 1918; No. 6745, dated October 11, 1919; and No. 10347, dated April 22, 1922.) By various decisions, other than No. 3211, as amended, it authorized the issue of the outstanding stock and bonds of the company. In Decision No. 14973, dated May 26, 1925, it denied an application of East Bay Water Company to issue some \$10,000,000 of securities to develop its Sacramento River project for the purpose of augmenting its water supply for the East Bay district. Quoting from Decision No. 14973 -

"The record in this case is not such as to enable the Commission to make the finding that it is required to do by Section 52 of the Public Utilities Act. On the contrary, we are confronted by evidence showing that another agency, the East Bay Municipal Utilities District, has been created and directed by the majority of voters of such district to bring in an additional water supply, and unequivocally asserts not only its willingness and desire, but also its ability to bring in a temporary supply of water pending the completion of the District's Mokelumne project, if and when it shall appear that such temporary supply is necessary. It seems clear, therefore, that the responsibility for bringing in a temporary supply of water, pending the completion of the Mokelumne River project, should rest upon the district, and that the evidence proves the willingness of the district to assume such responsibility, as well as the desire of the people residing in the district to hold the district responsible for providing such supply. To authorize the issue of the bonds and stock, or notes, under the circumstances disclosed by the record in this proceeding would, we feel, result in a duplication of facilities and of wasteful expenditure of money, both of which are contrary to public policy, and neither of which are in the public interest."

The company has been filing annual and monthly reports with the Commission.

The testimony shows that the price at which the company asks authority to sell its properties was determined by negotiations extending over a long period of time. As is the case frequently in such negotiations the company originally asked more, and the district offered less than the price finally agreed upon. The president of the company testified that under all the circumstances surrounding the operations of the company and its possible future the proposed selling price was fair and equitable to the stockholders. It was suggested that the district should acquire the properties by condemnation proceedings, the thought being that a price so determined would be in excess of the agreed price. To indicate what such price might be is idle conjecture. In our opinion the district is paying and the company is receiving a reasonable price for its properties.

While we are asked to authorize the transfer of the properties of the company pursuant to the terms of a certain agreement, it is not necessary for us to approve the agreement in all its particulars. We find that the price agreed upon between the parties is reasonable, and having so found, the manner in which the company, if it sells its properties for said price, will distribute the same to its creditors and stockholders, is a matter over which we have no jurisdiction. Our jurisdiction extends only to the sale of the properties of the company and that will be authorized by the following order.

O R D E R

EAST BAY WATER COMPANY, having asked permission to sell all of its properties to the East Bay Municipal Utility District, public

hearings having been held before Examiner Fankhauser and the Commission having considered the evidence submitted and being of the opinion that the sale of the said properties should be authorized, therefore,

IT IS HEREBY ORDERED that East Bay Water Company be, and it is hereby, authorized to sell on or before March 1, 1929, all of its assets to the East Bay Municipal Utility District, for the consideration mentioned in the agreement filed in this proceeding and dated September 26, 1928.

IT IS HEREBY FURTHER ORDERED that the authority herein granted will become effective fifteen (15) days after the date hereof.

DATED at San Francisco, California, this 19th day of November, 1928.

C. Deane

Edward J. ...

Wm. D. ...

M. J. ...
Commissioners.