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Decision No. 9656-

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF  
THE STATE OF CALIFORNIA

\* \* \*

- In the Matter of the Application of )  
 EAST BAY WATER COMPANY, )  
 a corporation, for an order - )  
 (1) Authorizing increase of bonded )  
     indebtedness; )  
 (2) Authorizing issue of bonds; )  
 (3) Authorizing issue of Class "A" )  
     six (6) per cent. cumulative )  
     preferred stock; )  
 (4) Authorizing pledge of bonds. )

Application  
Number  
7092.

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McKee, Pasheira & Warhaftig for East Bay Water Company;  
 Frank V. Cornish for city of Berkeley;  
 W.J. Locke for city of Alameda;  
 Leon E. Gray for city of Oakland;  
 J. Allison Bruner for city of San Leandro.

ROWELL, Commissioner.

O P I N I O N

In this proceeding, EAST BAY WATER COMPANY herein-  
 after sometimes referred to as applicant, or the company, asks  
 permission to increase its authorized bonded indebtedness, to exe-  
 cute a unifying and refunding mortgage, to pledge \$2,500,000.00 of  
 its first mortgage 5-1/2 per cent. bonds, to issue and sell  
 \$2,500,000.00 of 7-1/2 per cent. unifying and refunding mortgage  
 bonds and to issue and sell \$63,225.86 of its 6 per cent. Class  
 "A" cumulative preferred stock.

At the time this application was filed applicant  
 had an authorized stock issue of \$9,500,000.00 divided into the  
 following classes:

Class "A" 6 per cent. cumulative preferred,....	\$6,000,000.
Class "B" 6 per cent. non-cumulative preferred,	3,000,000.
Common,.....	<u>500,000.</u>
Total,.....	\$9,500,000.

In Schedule "B", filed in this proceeding, the stock outstanding is reported as follows:

Class "A" 6 per cent. cumulative preferred,....	\$5,132,100.
Class "B" 6 per cent. non-cumulative preferred,	2,987,200.
Common,.....	<u>100,000.</u>
Total,.....	\$8,219,300.

Applicant's stockholders have recently voted to increase its authorized stock from \$9,500,000.00 to \$15,500,000.00, which consists of:

Class "A" 6 per cent. cumulative preferred,....	\$10,000,000.
Class "B" 6 per cent. non cumulative preferred,	5,000,000.
Common,.....	<u>500,000.</u>
Total,.....	\$15,500,000.

Prior to September 28th applicant had an authorized bonded debt of \$16,250,000. divided into \$15,000,000. of first mortgage 5-1/2 per cent. bonds due January 1, 1946, and \$1,250,000.00 of 6 per cent five year collateral trust notes due August 1, 1923. All of the collateral trust notes have been issued and are outstanding. Of the authorized first mortgage bonds, according to Schedule "E", \$11,428,900.00 are outstanding in the hands of the public and \$1,634,000.00 deposited as collateral to secure the payment of the five year notes, making a total of \$13,062,900.00. Deducting the \$13,062,900.00 from the authorized issue of \$15,000,000.00 leaves \$1,937,100.00 of these bonds unissued.

In Schedule "F" applicant reports \$737,706.63 of notes payable while its accounts payable, as reported in its July 31, 1921 balance sheet, amount to \$292,088.02

Heretofore by Decision No. 9553, dated September 23, 1921, the Commission authorized applicant to issue \$825,000. of its first mortgage 5-1/2 per cent. bonds to pay in part the

cost of acquiring the properties of The Union Water Company of California and The Union Water Development Company. The \$825,000. are not included in the \$13,062,900.00 of bonds mentioned as outstanding in the preceding paragraph. The \$825,000. constitutes part of the \$1,937,100.00 of unissued bonds. Deducting the \$825,000. from the \$1,937,100. of unissued bonds leaves \$1,112,100. of first mortgage bonds available for future construction.

It has been concluded by the stockholders of East Bay Water Company to increase the company's authorized bonded indebtedness from \$16,250,000. to \$66,250,000., the increase to be represented by a new authorized bond issue of \$50,000,000. The mortgage under which the \$50,000,000. of bonds are to be issued provides, among other things, that the bonds may be issued at any time in such series, maturity or maturities, interest rates, redemption and convertible and sinking fund provisions, as may be designated by the Board of Directors at the time of the issue of each of such series. While the order herein will permit applicant to execute a mortgage to secure an authorized bond issue of \$50,000,000., it should be understood by all that such authority does not give applicant permission to issue and sell any of the \$50,000,000. of bonds. Authority to execute a mortgage does not carry with it permission to issue and sell bonds, nor does it in any way limit the Commission's power to determine the terms and conditions under which it will authorize the issue, sale or pledge of bonds secured by such mortgage. A copy of applicant's proposed mortgage has been filed in this proceeding.

Applicant asks permission to issue \$2,500,000. of its unifying and refunding mortgage 15-year 7-1/2 per cent. gold bonds, and sell said bonds at 94 per cent. of their face value plus accrued interest. The bonds are callable on any interest payment date at 105 and accrued interest. While the order herein permits the issue of 7-1/2 per cent. bonds, such authority does not commit the Commission to the policy of authorizing the issue of 7-1/2 per cent. bonds when market conditions justify a lower interest rate. A fifteen year 7-1/2 per cent. bond if sold at

94, the company will realize the sum of \$2,350,000.00. This amount it asks permission to use for the following purposes:-

- (a).- \$1,976,250 to reacquire \$2,325,000 of its first mortgage 5-1/2 per cent. bonds;
- (b).- \$ 373,750 to reimburse its treasury and finance the construction of additions and betterments.

During 1920 applicant to carry forward the construction of its San Pablo reservoir and project sold to certain banks \$1,500,000 of its first mortgage 5-1/2 per cent. bonds at 85 per cent. of their face value and accrued interest. It appears from the record that the banks have agreed to sell the bonds back to the company at the same price they paid for them. The company has, as recited in Decision No. 9553 dated September 23, 1921, an option to buy back at 85, the \$825,000.00 of first mortgage bonds which it is authorized to issue as part payment for the properties of The Union Water Company of California and The Union Water Development Company.

Bearing in mind the fact that applicant will have to spend, in all probability, considerable amounts within the next few years, for new construction, I believe that it is proper for applicant at this time to make provision for future financing. It is desirable that this be done now rather than after its \$15,000,000.00 of first mortgage bonds are all issued and in the hands of the public.

In a statement filed in this proceeding, applicant reports the actual and estimated construction expenditures which have not been financed through the issue of bonds or stock authorized by the Commission at \$252,903.42. Applicant asks permission to finance 75 per cent. of the cost of these expenditures through the issue of its unifying and refunding mortgage bonds and 25 per cent. of the cost through the issue of \$53,225.86 per value of its Class "A" preferred stock.

Applicant in its proposed mortgage agrees that it will not issue and sell any more of its first mortgage bonds. All of the unissued first mortgage bonds will, if their issue is authorized by the Railroad Commission, be deposited with the trustee under the unifying and refunding mortgage. In addition, there will also be deposited with said trustee any and all first mortgage bonds which the company will reacquire and which will not have to be cancelled under applicant's first mortgage. At this time applicant asks permission to deposit with the trustee under the unifying and refunding mortgage the \$2,325,000.00 of first mortgage bonds it intends to acquire from certain banks and The Union Water Company of California and The Union Water Development Company or their creditors, and in addition thereto issue and deposit \$175,000.00 of first mortgage bonds, making a total of \$2,500,000.00 of first mortgage bonds which will be deposited with the trustee under the unifying and refunding mortgage and held as part security for the payment of bonds issued under such mortgage.

I herewith submit the following form of  
Order:

O R D E R

EAST BAY WATER COMPANY having applied to the Railroad Commission for permission to increase its bonded indebtedness, execute a mortgage, issue, sell and pledge bonds and issue and sell stock in the amounts indicated in the foregoing opinion, a public hearing having been held and the Railroad Commission being of the opinion that the money, property or labor to be procured or paid for through the issue of the bonds and stock herein authorized is reasonably required by applicant and that the expenditures are not in whole or in part reasonably chargeable to

operating expenses or to income;

IT IS HEREBY ORDERED, as follows:-

1. - EAST BAY WATER COMPANY may increase its authorized bonded indebtedness from \$16,250,000.00 to \$66,250,000.00;
- 2.-- EAST BAY WATER COMPANY may execute a mortgage or deed of trust substantially in the same form as the mortgage or deed of trust filed in this proceeding and marked for the purpose of identification, Exhibit "M", provided that the authority herein granted to execute such mortgage or deed of trust is for the purpose of this proceeding only and is granted in so far as this Commission has jurisdiction under the terms of the Public Utilities Act and is not intended as an approval of said mortgage or deed of trust as to such other legal requirements to which such mortgage or deed of trust may be subject;
3. - EAST BAY WATER COMPANY may issue \$2,500,000.00 of its 7-1/2 per cent. unifying and refunding mortgage 15-year gold bonds and \$63,225.86 par value of its Class "A" 6 per cent. cumulative preferred stock;
- 4.-- EAST BAY WATER COMPANY may issue \$175,000.00 of its 5-1/2 per cent. first mortgage bonds due January 1, 1946, and deposit said bonds together with \$2,325,000.00 of first mortgage bonds which it is herein permitted to reacquire, with the trustee under its proposed unifying and refunding mortgage.

The authority herein granted is subject to further conditions as follows:-

- A.--The unifying and refunding mortgage bonds herein authorized to be issued shall be sold by applicant, for cash, at not less than 94 per cent. of their face value and accrued interest and the proceeds used

for the following purposes:-

I - Not exceeding \$1,996,250.00 to reacquire \$2,325,000.00 of its first mortgage 5-1/2 per cent. bonds.

II- The remaining proceeds shall be used by applicant to reimburse its treasury, and after such reimbursement be used by applicant to pay in part the notes payable or the cost of additions and betterments referred to in this application, and the accrued interest on the bonds.

B.-- The stock herein authorized shall be sold by applicant, for cash, at not less than \$75.00 per share net to applicant, and the proceeds used to reimburse its treasury, and after such reimbursement to pay in part the notes and the cost of additions and betterments referred to in this application.

C.-- East Bay Water Company shall keep such record of the issue and sale of the bonds and stock herein authorized and of the disposition of the proceeds as will enable it to file on or before the 25th day of each month a verified report as required by the Railroad Commission's General Order No. 24, which order in so far as applicable is made a part of this order.

D.--The authority herein granted will not become effective until applicant has paid the fee prescribed by Section 57 of the Public Utilities Act, which fee amounts to \$175.00.

E.--The authority herein granted will apply only to such bonds

and stock as may be issued, sold and delivered  
on or before March 1, 1922.

The foregoing Opinion and Order are hereby ap-  
proved and ordered filed as the Opinion and Order of the Railroad  
Commission of the State of California.

DATED at San Francisco, California, this 27<sup>th</sup>  
day of October, 1921.

H. B. Bradley  
H. B. Bradley

Charles H. Brown

J. J. Pineda

Commissioners.

Fee \$175.00

OCT 28 1921

Charles H. Brown