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Decision No. 2964.

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 autho-)
rizing issue of Class "A" Six (6))
Per Cent Cumulative Preferred Stock.)

Application No. 7430

ORIGINAL

McKee, Tasheira & Wahrhaftig, by A. Tasheira, for
Applicant.

ROWELL, Commissioner.

O P I N I O N

Applicant asks permission to issue \$333,715.10, par value, of its Class "A" Six Per Cent. cumulative preferred stock to reimburse its treasury on account of moneys used, or to be used, for sinking fund payments and to pay for additions and betterments.

The testimony shows that Cyrus Peirce and Company have agreed to purchase \$300,000.00 par value (3,000 shares) of the stock at per share \$77. and accrued dividends. The order herein will authorize the sale of the 3,000 shares at the price mentioned. The remainder of the stock covered in this application, namely \$33,715.10, may be sold only at such minimum price as the Commission may hereafter determine by a supplemental order.

Under its unifying and refunding mortgage, applicant can ask the trustee to certify bonds equal in face amount to 75 per cent. of the cost of additions and betterments, provided of course, it complies with the conditions mentioned in the unifying and refunding mortgage. Applicant has filed a statement in which it reports \$547,171.87 of actual or estimated expenditures for additions and betterments from January 1, 1921 to December 31, 1921. The \$547,171.87 includes \$80,000.00 of estimated

expenditures for December. If we assume that 25 per cent. of the 1921 construction expenditures are financed through the issue of stock, applicant will have to issue stock in the amount of \$136,792.96. The Commission by Decision No. 9655 authorized applicant to issue \$63,225.86 par value of stock. Deducting the \$63,225.86 from the \$136,792.96 leaves a balance of \$73,567.10, which amount is included in the \$33,715.10 of stock covered in this application.

Applicant has not submitted any detailed information regarding its estimated construction expenditures during December, 1921. The order herein, as stated, will permit of the sale at this time of only \$300,000.00 of stock applied for. The remaining \$33,715.10 par value of stock which may not be sold except at such minimum price as the Commission may hereafter determine, represents more than 25 per cent. of the company's estimated December construction expenditures. At the time that applicant requests permission to sell the \$33,715.10 par value of stock, it should file with the Commission a detailed statement of its December construction expenditures and the Commission will thereafter determine the purposes for which the company may use the proceeds obtained from the sale of the \$33,715.10 par value of stock.

Applicant reports sinking fund payments as follows:

| | |
|-----------------------|-----------|
| January 1, 1921,..... | \$132,019 |
| January 1, 1922,..... | 128,129 |
| Total,..... | \$260,148 |

These payments, it appears, have been made or will be made pursuant to applicant's deed of trust executed to the Union Trust Company of San Francisco on January 1, 1916, and its deed of trust executed to the Mercantile Trust Company on September 1, 1921. Under its deeds of trust, applicant can make the sinking fund payments either in cash or in bonds. The record shows that of the \$260,148, \$13,148 represents cash payments and \$247,000 was paid in bonds.

In effect, applicant asks permission to substitute Class "A" 6 per cent. stock for 5-1/2 per cent. first mortgage bonds outstanding. There is no objection to the refunding of funded debt

through the issue of stock as proposed by applicant, provided a company's properties are reasonably capitalized. If the capitalization is in excess of the reasonable value of the properties, surplus earnings should be used to pay funded debt, and no stock issued to reimburse the treasury of a company because it used such earnings to meet sinking fund payments. I find that applicant's properties are capitalized in such a manner that the Commission may properly permit of the refunding of the sinking fund payments as requested.

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 issue \$333,715.10 par value of its Class "A" 6 per cent. cumulative preferred stock, a public hearing having been held and the Commission being of the opinion that the money, property or labor to be procured or paid for through the issue of such stock is reasonably required by applicant and that the expenditures herein authorized are not in whole or in part reasonably chargeable to operating expenses or to income;

IT IS HEREBY ORDERED, that EAST BAY WATER COMPANY be, and it is hereby, authorized to issue on or before October 1, 1922, \$333,715.10 par value of its Class "A" 6 per cent. cumulative preferred stock.

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

- 1.--Of the stock herein authorized to be issued, applicant may sell \$300,000.00 par value (3,000 shares) at not less than \$77.00 and accrued dividends net per share. The remainder of the stock may be sold only at such minimum price as the Railroad Commission may hereafter authorize by supplemental order.

2.--The proceeds from the sale of the \$300,000.00 of stock may be used by applicant to reimburse, in part, its treasury on account of construction expenditures incurred on or before November 30, 1921, and to reimburse itself on account of sinking fund payments referred to in this application. The Commission will hereafter determine the purposes for which the proceeds obtained from the sale of \$33,715.10 par value of stock may be used.

3.--East Bay Water Company shall keep such record of the issue, sale and delivery of the 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.

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

Dated at San Francisco, California, this 4th day of January, 1922.

H. B. Ludiga
H. B. Howard

Charles S. Lawrence

J. J. Anderson

Commissioners.