

Decision No. 27205

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
HUENEME DOCK CORPORATION,
a California corporation, for auth-
ority to issue stock and bonds and
to mortgage its property.)

) Application No. 19469

ORIGINAL

McCutchen, Olney, Mannon & Greene,
and
Kirlin, Campbell, Hickox, Keating and McGramm,
for applicant.

BY THE COMMISSION:

O P I N I O N

Hueneme Dock Corporation, hereinafter sometimes referred to as the Company, asks permission to issue 14,000 shares of Class A stock, 2,450 shares of Class B stock and \$1,600,000.00 face value of 5% serial bonds, all for the purposes hereinafter stated.

Applicant proposes to acquire, construct and operate at Hueneme, Ventura County, a terminal project, consisting of a ship canal, central maneuvering basin, slips, docks, transit sheds, railroad facilities and other properties necessary for the shipping, loading and storing of commodities. It intends to operate for profit a wharfinger and warehouse business in a manner which brings it under the jurisdiction of the Railroad Commission.

As part of the first unit, jetties are to be constructed into the Pacific Ocean on either side of the submarine valley, which approaches close to the shore at Point Hueneme, California. A ship canal 400 feet wide at the bottom and 35 feet deep is to be dredged and constructed through submerged and tide lands and uplands at Point Hueneme to a distance of about 1,700 feet inshore from mean high tide

opening into a central maneuvering basin approximately 1,200 by 1,400 feet and 30 feet deep and constructed upon lands to be acquired by the company. A wharf 1,200 feet long is to be built along the southerly side of said basin and railroad trackage connecting the same with the line of the Ventura County Railroad. A transit shed about 160 by 500 feet is to be erected and about a 15-acre open transit space is to be provided.

The estimated cost of constructing the first unit and acquiring lands is \$2,600,000.00. This sum includes land at \$500,000.00. The United States Government through the Federal Administrator of Public Works, will, subject to certain conditions, acquire from applicant \$1,600,000.00 of 5% serial bonds. The balance, \$1,000,000.00, is to be financed through the issue of stock. In addition, applicant will obtain if necessary the sum of \$400,000.00 for working capital, additions and betterments and other corporate purposes.

The government has agreed to acquire the \$1,600,000.00 of bonds subject to several conditions, which are contained in the loan agreement filed in this proceeding. It is not necessary to relate such conditions. The evident purpose of the conditions is to secure the payment of the government loan. To this end the company must provide, if necessary, through the issue of stock, cash, properties or services having a fair value of \$1,400,000.00, which includes about 1,073 acres of land. It shall enter into a management contract with the McCormick Steamship Company; into a contract with the Ventura County Railroad Company to assure rail transportation to the port; and into a contract with the American Beet Sugar Company covering its shipments through the company's port. So long as any of the bonds are outstanding limitations are placed upon the company's administrative expenses and dividend payments for the ostensible purpose

of enabling the company to meet its bond sinking fund, bond purchase fund and bond reserve fund obligations.

The American Appraisal Company has placed a value of \$555,633. on 1,059.3 acres of land that are to be a part of the project. This does not include a portion of the United States Lighthouse Reservation acquired by the company at public auction.

E. P. McAuliffe, an assistant engineer and land appraiser for the Commission, has placed a maximum value of \$387,013.00 on the 1,059.3 acres. The lighthouse property (13.5 acres) acquired at a cost of \$13,500.00 is not included in his appraisal. The difference in the two appraisals arises from different values assigned to land classified as potential townsite land and potential beach subdivision land.

Though there is a substantial difference between the land appraisals before us, we do not deem it necessary to modify on that account applicant's request to issue stocks and bonds. We are proceeding on the theory that the company will acquire the lands described in Exhibit "E" and that the company's proposed mortgage will be a first lien on such lands.

Exclusive of land and organization expenses, the cost of the company's properties is estimated in Exhibit "D" as follows:-

Dredging	\$765,080.
Jetties	372,275.
Rock Revetment	130,000.
Wharf No. 1 (1200' x 67') . . .	230,206.
Bulkheads	68,000.
Water supply	19,800.
Railroad (6010 lin. feet includ- ing crossovers, etc.)	23,660.
Pavement	31,957.
Transit shed	76,253.
Sub-total.....	<u>\$1,717,231.</u>
Contingencies 4% on \$1,717,231.....	68,589.
Total construction cost..	<u>\$1,785,920.</u>
Auxiliary expense-preliminary, adminic- trative, engineering and legal	214,080.
Total estimated cost....	<u><u>\$2,000,000.</u></u>

The company has submitted an estimate of its operating revenues and expenses for a period of twelve years. For the first, second and third year of operation it submits the following figures:-

I T E M	:	First Year	:	Second Year	:	Third Year
<u>TONNAGE.</u>	:	<u>225,000</u>	:	<u>240,000</u>	:	<u>255,000</u>
Gross revenues	:\$	398,500.	:\$	434,500.	:\$	470,500.
Rentals	:	10,000.	:	11,000.	:	12,000.
Railroad earnings	:	5,000.	:	5,500.	:	6,000.
Total.....	:\$	<u>413,500.</u>	:\$	<u>451,000.</u>	:\$	<u>488,500.</u>
<u>DEDUCT:</u>						
Operating expenses	:	<u>260,500.</u>	:	<u>278,000.</u>	:	<u>295,200.</u>
Net Operating Revenue.	:	<u>153,000.</u>	:	<u>173,000.</u>	:	<u>193,300.</u>
<u>DEDUCT:</u>						
Interest	:	80,000.	:	76,250.	:	72,500.
<u>DEDUCT:</u>						
Federal tax	:	<u>8,000.</u>	:	<u>10,400.</u>	:	<u>13,300.</u>
Operating profit	:	<u>65,000.</u>	:	<u>86,350.</u>	:	<u>107,500.</u>
McCormick' Co.'s 1/4 net receipts	:	<u>10,000.</u>	:	<u>15,337.50:</u>	:	<u>14,375.</u>
Net profit- Operating profit less McCormick Co.'s 1/4 net receipts	:\$	<u>55,000.</u>	:\$	<u>71,012.50:</u>	:\$	<u>93,125.</u>

Applicant has an authorized stock issue of 27,300 shares divided into 24,000 shares of Class A, of a total par value of \$2,400,000., and 3,300 shares of no par Class B stock. The Class A stock is entitled to dividends at the rate of 6% per annum before any dividends are paid on the Class B stock. Prior to January 1, 1940 the dividend on the Class A stock is noncumulative. After January 1, 1940 the dividend is cumulative to the amount earned, but not exceeding 6% per annum. The holders of Class A stock have no voting rights. The holders of Class B stock have the exclusive voting rights. The holders of Class A stock shall not be entitled to any notice of shareholder's meetings or to vote upon the election of directors or upon any question affecting the management or affairs of the corporation,

except where such notice or vote is required by law.

The Class A stock may be redeemed prior to January 1, 1940 by the company at \$105. per share and after January 1, 1940 at \$105. per share and the accumulated and unpaid dividends. Upon liquidation the holders of the Class A stock receive \$100. per share and the accumulated and unpaid dividends.

The Board of Directors is given the exclusive authority and discretion to determine whether or not any dividends shall be paid on the Class A stock prior to January 1, 1940. After January 1, 1940 the dividends on the Class A stock, as said, are cumulative, but the annual amount of dividends shall in no event exceed 6% upon the par value of the stock outstanding on the last day of the calendar year, and subject to said limitation shall be the amount of the net earnings of the corporation for such calendar year. The net earnings are defined to be the net profit of the corporation calculated by deducting from the gross income of the corporation from all sources, all corporate expenses, including in such corporate expenses all losses, expenses of operation and administration, maintenance and repair, depreciation, insurance, rentals, license fees, interest on funded and other debt of the corporation and all income and other taxes and assessments. The amount of the annual net earnings shall be determined in accordance with standard accounting practises consistent with the definition of net earnings herein mentioned, by a certified public accountant chosen by the Board of Directors of the corporation. The accountant's determination of the amount of net earnings shall be final and conclusive.

No dividends may be paid on the Class B stock prior to January 1, 1941 unless all of the Class A shares outstanding theretofore, or shall be concurrently therewith, retired by redemption or purchase by the corporation. After January 1, 1940, the dividends on the Class A shares shall be declared and set apart or paid before any dividends are declared or paid on the Class B stock. The capital stock of the

corporation shall not be subject to assessment.

The company, as said, asks permission to issue 14,000 shares of Class A stock and 2,450 shares of Class B stock in the following units and for the following purposes:-

Purpose	No. of Shares	
	Class A :	Class B
To pay preliminary costs.....	1,000 :	175
For lumber	1,500 :	262½
For lands	5,000 :	875
For construction purposes.....	2,500 :	437½
For cash for working capital, etc.	4,000 :	700
Total.....	14,000 :	2,450

The amount for cash will be issued only as such cash is needed.

Information at hand shows that, broadly speaking, three different interests provide the equity to support the company's bond issue. The Class A and Class B stock will be issued to such interests in payment for land and lumber or issued to them for cash. The stock may be issued in units of ten shares of Class A and one and three fourths shares of Class B stock. Initially the owners of Class A stock will also own the Class B stock. But there is no certainty that this condition will prevail indefinitely. Whether the company will realize the income shown above is in our mind doubtful and obviously dependent to a great extent upon the management of the properties. As the company's Articles of Incorporation now read the owners of Class A stock, because of such stock ownership, have no voice in the management of the properties. We believe that Class A stock should after January 1, 1940 bear cumulative dividends at the rate of 6% per annum, payable quarterly, and that if such dividend is not paid for a period of fifteen consecutive months, the owners of such stock should have one vote for each share of stock owned. Such voting rights should continue until all accumulated dividends are paid. The provision in the Articles of Incorporation that dividends on Class A shares shall be cumulative only in the amount of net earn-

ings, but not exceeding six per cent per annum, should be stricken from the Articles of Incorporation. Any contracts or voting trust agreements relating to the operation and management of the properties should, after January 1, 1940, with the consent of counsel for the Federal government so long as it is the owner of the company's bonds, be subject to change and modification by the Board of Directors of the company. It would be unfair to the owners of Class A stock if, because of the company's failure to pay dividends on their stock, they obtained control of the company but could not effect changes in the management of the properties because of long time contracts or a voting trust agreement.

There was filed with the Commission on August 13th a copy of the company's proposed trust indenture. Inasmuch as some of the parties interested in such instrument have not yet approved the same, the Commission will not at this time authorize its execution. If we hereafter find the trust indenture to be in satisfactory form we will authorize its execution by a supplemental order.

O R D E R

The Commission having been asked to authorize Eueneme Dock Corporation to issue securities in the amounts and for the purposes indicated in the foregoing opinion, and the Commission being of the opinion that this is not a matter on which a hearing is necessary, that the money, property or labor to be procured or paid for by such issue is reasonably required for the purposes herein stated and that the expenditures for such purposes are not in whole or in part reasonably chargeable to operating expense or to income and that the company's request should be granted subject to the provisions of this order, and not otherwise, therefore,

IT IS HEREBY ORDERED as follows:-

1. Hueneme Dock Corporation may after the effective date hereof and prior to December 31, 1935, issue for an aggregate consideration of \$1,400,000.00 payable in cash or properties at their fair value, 14,000 shares of its Class A and 2,450 shares of its Class B common stock, said cash to be expended or said stock issued for the purposes set forth in the foregoing opinion.
2. Hueneme Dock Corporation may, after the effective date hereof and prior to December 31, 1935, issue at not less than par, \$1,600,000.00 of 5% first mortgage serial bonds and use the proceeds for the purpose of paying in part the cost of acquiring and constructing the properties described in Exhibit "D" filed in this proceeding.
3. The authority herein granted to issue stock will become effective when the company has filed with the Commission a copy of its Articles of Incorporation amended, as indicated in the foregoing opinion, and has filed a stipulation duly authorized by its Board of Directors agreeing that it will incorporate in any and all contracts or voting trust agreements a provision to the effect that after January 1, 1940, with the consent of counsel for the United States of America so long as it is the owner of the company's bonds, all such contracts or voting trust agreements are subject to modification by the Board of Directors.
4. The authority herein granted to issue bonds will become effective when the company has paid the fee prescribed by Section 57 of the Public Utilities Act, which fee is Thirteen Hundred (\$1,300.00) Dollars, and when the Commission has authorized the company to execute a trust indenture to

secure the payment of the said bonds.

5. Hueneme Dock Corporation shall keep such record of the issue-sale and delivery of the stock and bonds 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 insofar as applicable, is made a part of this order.

6. Hueneme Dock Corporation shall file with the Commission within a reasonable time after their execution, a certified copy of any and all contracts or voting trust agreements relating to the operation and management of its properties.

DATED at San Francisco, California, this 27th day of August, 1934.

Leon Whitely

M. J. Carr

W. B. Harris

Walter W. ...

COMMISSIONERS.

