

ORIGINAL

Decision No. 47685

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
)
 SAN JOSE WATER WORKS,)
 a corporation,)
)
 for an order authorizing it to issue)
 an additional amount of its convertible)
 preferred stock and common stock upon)
 conversion.)
 -----)

Application
 No. 33681

McCutchen, Thomas, Matthew, Griffiths & Greene,
 by Robert Minge Brown, for applicant.

O P I N I O N

This is an application for an order of the Commission authorizing San Jose Water Works to issue and sell 41,000 shares of its Cumulative Convertible Preferred Stock, Series C, of the aggregate par value of \$1,025,000.

In a financial statement filed in this proceeding applicant reports its authorized and outstanding capital stock, as of July 31, 1952, as follows:

	<u>Authorized</u>	<u>Outstanding</u>
Preferred stock -		
4-3/4% cumulative, series A	\$1,000,000	\$ 750,000
4-3/4% cumulative convertible, series B	560,050	560,050
Other series	<u>1,025,000</u>	-
Total preferred	2,585,050	<u>1,310,050</u>
Common stock	<u>6,250,000</u>	<u>3,512,900</u>
Totals	<u>\$8,835,050</u>	<u>\$4,822,950</u>

Applicant now proposes to sell the unissued shares of preferred stock that are authorized by its articles of incorporation and has concluded to classify such shares as Cumulative Convertible Preferred Stock, Series C, and, if authorized by the Commission, to

sell such shares by means of a negotiated underwriting, the dividend and conversion rates and the price to be fixed at the time of sale. Applicant's president testified that, in his opinion, present market conditions and applicant's earnings do not permit the issue, under favorable terms, of common stock or nonconvertible preferred stock, and that it is not desired to increase the bond position at this time. Applicant's capital ratios as of July 31, 1952, and pro forma giving effect to the proposed issue of preferred stock, are as follows:

	<u>July 31, 1952</u>	<u>Pro Forma</u>
Bonds	50.54%	46.97%
Preferred stock	9.73	16.12
Equity capital	<u>39.73</u>	<u>36.91</u>
Totals	<u>100.00%</u>	<u>100.00%</u>

In support of the request for authorization to enter into a negotiated sale, applicant alleges that the size and the character of the proposed issue make it unsuitable for competitive bidding in that a convertible preferred stock necessarily involves such variable factors as price, dividend rate, conversion rate, redemption prices and other terms. Although some of these provisions may be determined in advance of the date of the offering, the conversion price should be fixed in relation to the market value of the common stock at or about the offering date. A certain period of time must elapse between the dates set for submission of bids and the opening of the same, and applicant is of the opinion that the fixing of the conversion features is impractical in competitive bidding transactions. In addition, applicant points out that when the Commission adopted its competitive bidding rule in January of 1946 it was recognized that small issues were not adapted to competitive bidding, those of \$1,000,000 or less being automatically exempted. Applicant suggests that in view of the decline in the value of the dollar since 1946, it is reasonable to conclude that an issue of the size now proposed

is within the spirit of the exemption heretofore approved by the Commission. The testimony further shows that additional expenses in excess of \$5,000 would be incurred by applicant if it submitted its shares of stock for sale at competitive bidding.

If authorized to issue and sell the shares of preferred stock, applicant proposes to use the proceeds to pay outstanding bank loans consisting of unsecured 3% notes representing temporary financing, now in the amount of \$850,000, and to reimburse its treasury for a portion of the moneys actually expended prior to July 31, 1952, for the acquisition of property or for the construction, completion, addition or improvement of its facilities. As shown in some detail in Exhibit A, applicant's unfinanced construction as of April 30, 1951, and its expenditures between that date and July 31, 1952, less the increase in extension deposits, amounted to \$1,548,307.26, an amount which has been paid or provided from some source other than the issue of securities. According to the testimony, applicant's construction expenditures for 1952 are estimated in the aggregate amount of \$967,541 and its refunds of line extension deposits in the amount of \$299,753, a total of \$1,267,294.

Upon reviewing the record it appears that applicant will have need for additional funds for the purposes indicated in its application, and that the Commission is warranted in making a preliminary order at this time exempting the proposed issue from competitive bidding and authorizing the issue and sale of the shares of stock. At a later date, upon the filing of additional information with respect to the terms of the shares of preferred stock and the price at which applicant proposes to dispose of them, the Commission will give further consideration to this application.

O R D E R

A public hearing having been held on the above entitled matter, and the Commission having considered the evidence and being of the opinion that the application should be granted, as herein provided; that the money, property or labor to be procured or paid for by the issue of the shares of stock herein authorized is reasonably required by applicant for the purposes specified herein; and that such purposes are not, in whole or in part, reasonably chargeable to operating expenses or to income; therefore,

IT IS HEREBY ORDERED as follows:

1. The issue and sale of 41,000 shares of Cumulative Convertible Preferred Stock, Series C, by San Jose Water Works, hereby is exempted from the Commission's competitive bidding rule set forth in Decision No. 38614, dated January 15, 1946.
2. San Jose Water Works, after the effective date hereof and on or before December 31, 1952, may issue and sell said 41,000 shares of preferred stock at a price hereafter to be fixed by the Commission.
3. San Jose Water Works shall use the proceeds to be received from the sale of said 41,000 shares for the purposes set forth in this application.
4. The authority herein granted to issue and sell said shares will become effective when the Commission by a supplemental order has fixed the price at which applicant may sell the same. In other respects, the authority herein granted is effective upon the date hereof.

5. Within sixty (60) days after the issue and sale of said shares, applicant shall file with the Commission three (3) copies of its prospectus and a report showing the amount of stock sold, the price at which sold, and the names of those to whom sold.

6. Within six (6) months after the issue and sale of said shares, applicant shall file with the Commission a statement showing in some detail the expenses incurred by it in connection with such issue and sale and the account, or accounts, to which such expenses were charged, together with a statement showing the purposes for which the proceeds were used.

Dated at San Francisco, California, this 16th day of September, 1952.

A. J. [Signature]
President

Justin F. [Signature]
Harold [Signature]
[Signature]

Commissioners