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Decision No. 59628

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of CALIFORNIA WATER & TELEPHONE COMPANY To issue and sell 210,000 shares of its Common Stock	Application No. 41784

Bacigalupi, Elkus & Salinger, by Charles de Y. Elkus, Jr., Alvin Pelavin and Claude Rosenberg, for applicant; Louise Page and Utility Users League by Edward L. Blincoe, intervenors.

O P I N I O N

California Water & Telephone Company has filed this application for authorization to issue and sell 210,000 shares of its common stock of the par value of $12.50 each and of the aggregate par value of $2,625,000.

The application was filed on December 23, 1959. After due notice, public hearings were held before Examiner Donovan in San Francisco on January 15, 1960, and in Los Angeles on January 28, 1960, at which time the matter was taken under submission.

The company proposes to sell 200,000 of the 210,000 shares of common stock, for which authorization is herein sought, by means of a negotiated underwriting at a price of not less than $25.50 per share. It proposes to offer the remaining 10,000 shares for sale to its employees under a restricted employees stock purchase plan at the same price per share to be paid by the underwriters, which price shall be not less than $25.50 per share.

In support of its request for authority to sell shares of its common stock by means of a negotiated underwriting rather than by competitive bidding, applicant produced testimony to show that under present conditions and those likely to exist in the foreseeable future, better results would be obtained by a sale under the terms as proposed than if the shares of stock were to be offered at competitive bidding, in that, among other things, there is more certainty of consummation of the transaction under satisfactory terms, there is greater flexibility in timing the transaction with prevailing conditions, that the necessary market preparation and stabilization can be accomplished and that better distribution in the service area can be effected.

The record shows that applicant has been experiencing, and will continue to experience, a continual growth in its service area. Since the end of 1945, it reports it has received $69,137,824 of new money authorizations from the Commission. Its construction budget for 1960 totals $13,387,000 and of this requirement only approximately $5,000,000 will be available from internal sources. Applicant must seek additional funds from external sources if it is to meet the service requirements being placed upon it.

The company now seeks to avail itself of present money market conditions by selling shares of common stock rather than some other form of security. By the sale of common stock at this time it will improve its capital ratios by establishing a larger base of permanent equity capital to support future debt financing, which will become necessary as it proceeds with its construction program. Based on detail contained in applicant's October 31, 1959 balance sheet, its capital ratios as of that date, and as adjusted to give effect to the proposed financing, are as follows:

	Oct. 31, 1959	As Adjusted
Bonds	40%	38%
Debentures	9	8
Subtotal	49	46
Preferred stock	15	14
Common stock equity	36	40
Total	100%	100%

Upon selling its shares of common stock, applicant proposes to use the proceeds, after paying expenses incident to the issue estimated at $25,109, to reimburse its treasury for moneys expended for construction, completion, extension or improvement of its facilities which were not obtained from the sale of evidences of ownership or indebtedness and to use the funds so received, upon such reimbursement of its treasury, to finance, in part, its 1960 construction program. It reports that working capital funds on hand as of December 31, 1959, which were available for construction purposes, amounting to approximately $1,000,000, will be expended prior to February 29, 1960, that the funds to be derived from the proposed issue of common stock, totaling approximately $5,200,000, will be expended prior to June 1, 1960, and that the company will, at that time, have to issue additional securities as it proceeds with its construction program.

As to applicant's request for authority to issue and sell not to exceed 10,000 shares of its common stock to employees under a restricted employees stock purchase plan, it advises that it has prepared such plan in response to numerous requests to make stock available to such employees as may wish to subscribe. The plan, a copy of which is attached to the application as Exhibit B, is open to all employees having one or more years of continuous employment as of January 1, 1960, and provides that any one employee may purchase not less than 10 shares nor more than the number of shares which may be purchased with ten per cent of his annual salary. The price per share will be the same as that paid by the underwriters and, in any event, not less than $25.50 per share, said purchase price to be paid by payroll deductions in thirteen installments at the rate of $2 per month per share for the first twelve installments with the balance of the purchase price being paid in the thirteenth installment.

Applicant also requested, through the form of a motion, that upon submission of this matter a decision be rendered as early as convenient and that it be effective on the date of the decision. In support of this request applicant introduced evidence to show that a delay could necessitate a renegotiation of its proposed underwriting agreement due to the declining tendency of the present stock market, that stabilizing efforts by underwriters could only cover a short period of time, that it has an urgent need for the money to be derived from the proposed issue of stock, that full and complete hearings were held and that past Commission policy has been to make financing orders effective on the date of the decision.

An intervenor appearing on behalf of Louise Page, reportedly a subscriber of applicant, and for Utility Users League, protested the issue, by applicant, of the 200,000 shares of common stock which is to be sold to an underwriting group. He took no exception to the issue and sale of shares of common stock to applicant's employees under a restricted employees stock purchase plan. His protest was based on the premise that the company's proposal will result in an increased cost to the ratepayer and that applicant should be required to utilize debt financing exclusively until its capital structure included a debt ratio of about 75%. He made three requests to the effect (1) that none of the common stock requested to be issued to the underwriting group be authorized; (2) that none of the funds to be derived from the issue of common stock be allowed to apply for vague reimbursements but only for future uses; and (3) that competitive bidding be required. The requests and position taken by intervenors were based on argument not supported by evidence having probative value.

To require applicant to engage in debt financing to the extent suggested by intervenors, even if possible, which is doubtful, would be in violation of good financing practice, would probably curtail applicant's ability to raise the capital it needs to carry on its construction program and would undoubtedly result in extremely high cost capital, all of which would adversely affect the public interest. In addition, it would violate past Commission policy which is dedicated to the securing for the ratepayer of adequate service at the lowest possible cost commensurate therewith.

This Commission, in numerous financing proceedings involving this as well as other applicants, has considered the possible effect on the ratepayer which might result from the raising of money through the issue of equity rather than debt capital and it is of the opinion that it should not interfere with the judgment of management in this regard unless and until it can be demonstrated that the proposed form of financing will result in an undue burden on the ratepayer. In the instant proceeding the record is quite clear that applicant is now and will, in the foreseeable future, be required to raise substantial sums of money from external sources and that in order to do so, it must attempt to preserve an elastic capital structure which will enable it to obtain additional capital in the future under favorable terms as money market conditions change.

Applicant has been before the Commission on numerous occasions during the past 14 years for authorization to issue securities and to increase rates and the Commission is familiar with its construction program and with the demands for service with which it is faced. From a review of the information before us, it clearly is apparent that applicant has made expenditures for plant well in excess of the proposed security issue for which it has not been reimbursed with funds from permanent capitalization.

It is equally apparent that applicant will have need for the proceeds which it will receive from the proposed offering to finance, in part, its 1960 construction program. With the volume of construction facing applicant, it is obvious that a large part of its requirements must be met with equity funds.

Upon a full consideration of the record, we are of the opinion that intervenors' requests should be denied and that the application should be granted.

In our opinion, the money, property or labor to be procured or paid for by the issue of common stock herein authorized is reasonably required for the purposes specified herein and that such purposes are not, in whole or in part, reasonably chargeable to operating expenses or to income.

In making our order herein we place applicant on notice that the authorization granted herein is for the issuance of securities only, that we will not regard the dividends paid on its shares of stock as determining or fixing the rate of return it should be allowed to earn on its investment in plant and that the approval herein given is not to be construed as being indicative of amounts to be included in a future rate base for the purpose of determining just and reasonable rates.

ORDER

Public hearings having been held on the above-entitled matter and the Commission having considered said matter and being of the opinion that the application should be granted, therefore,

IT IS HEREBY ORDERED as follows:

1. The issue and sale by California Water & Telephone Company of 210,000 shares of its common stock is exempted from the Commission's competitive bidding rule set forth in Decision No. 38614, in Case No. 4761, as amended by Decision No. 49941.

2. California Water & Telephone Company, on and after the effective date hereof and on or before June 30, 1960, may issue and sell not to exceed 200,000 shares of its common stock, by means of a negotiated underwriting, at not less than $25.50 per share and may use the proceeds for the purposes set forth in this application.

3. California Water & Telephone Company, on and after the effective date hereof and on or before December 31, 1961, may issue and sell not to exceed 10,000 shares of its common stock to its employees, in accordance with the purchase plan set forth in the application, at not less than $25.50 per share, and may use the proceeds for the purposes set forth in this application.

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4. California Water & Telephone Company shall file with the Commission a report, or reports, as required by General Order No. 24-A, which order, insofar as applicable, is made a part of this order.

5. The requests of intervenors are denied.

6. The authority herein granted shall become effective on the date hereof.

Dated at San Francisco, California, this 9th day of February, 1960.

President

Commissioners

Commissioner C. Lyn Fox, being necessarily absent, did not participate in the disposition of this proceeding.