

ORIGINAL

Decision No. 66463

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 Common
Stock

Application No. 45904
Filed October 28, 1963
and Amendment
Filed November 27, 1963

McCutchen, Doyle, Brown, Trautman & Enersen,
by Robert Minge Brown, for applicant;
Sidney J. Webb, for the Commission staff.

O P I N I O N

In this application, as amended, San Jose Water Works, a corporation, requests an order of this Commission authorizing it to issue and sell, exempt from competitive bidding, not to exceed 97,341 shares of its common stock of the par value of \$12.50 per share and an aggregate par value of \$1,216,762.50.

After due notice, public hearing in this matter was held before Examiner Donovan in San Francisco on December 9, 1963, at which time the matter was taken under submission. The Commission has received no protests in the proceeding.

The application shows that as of September 30, 1963, the company had no outstanding bank loans, but that it anticipates borrowing up to \$2,000,000 in order to finance its current construction program prior to selling said common stock, which

amount will be evidenced by short-term promissory notes. Applicant's reported capital expenditures which had not been financed with permanent securities or advances and donations amounted to \$3,191,276.47 at October 31, 1963, and to approximately \$3,700,000 at November 30, 1963. Applicant estimates that the proceeds to be derived from the proposed stock issue will aggregate around \$3,000,000, which, in addition to defraying the expenses of issuing and selling the shares and repaying short-term bank loans, will be used for reimbursing its treasury for a portion of moneys actually expended from income or from other moneys in its treasury not secured by or obtained from the issue of securities and so expended for the acquisition of property or for the construction, completion, addition or improvement of its facilities.

Applicant proposes to offer to its common shareholders rights to subscribe to one share of common stock for each five shares of its common stock held of record at the close of business on January 3, 1964, at a subscription price not to exceed 10% below (adjusted to the nearest one-eighth) the market price of its common stock at the close of business on December 31, 1963. The subscription rights are to be evidenced by transferable warrants expiring on January 27, 1964.

In addition, applicant proposes to enter into an underwriting agreement with a selected group of underwriters, for whom Dean Witter & Co. will act as representative, whereby the underwriters will agree to purchase the unsubscribed shares

at the subscription price. Said agreement will also provide for compensating the underwriters on the basis of 1% of the offering price of all shares to be offered and 2-3/4% of the offering price for the unsubscribed shares, subject to a reduction equal to 50% of the excess, if any, of the average actual sales price of the unsubscribed shares over such offering price.

The amendment shows that on October 31, 1963, applicant had issued and outstanding 468,407 shares of its common stock, and that, in addition, the company had outstanding shares of convertible preferred stock which, if all were converted, would increase the number of applicant's outstanding shares of common stock to 486,705, the holders of which would be entitled to subscribe to an aggregate of 97,341 shares under the proposed offering. The company's common stock has recently been quoted at a market price of around \$36 per share. Assuming a 10% lower subscription price, the amount to the nearest one-eighth would be \$32.375, which for 97,341 shares would aggregate \$3,151,415 to the nearest dollar. Applicant's present shareholders do not possess pre-emptive rights to subscribe to new offerings of stock and, in view of the fact that the proceeds to be derived from the proposed stock issue might exceed \$3,000,000, the company requests the Commission to grant an exemption from its competitive bidding rule. In support of such request, applicant asserts that the offering is not of a type in which public bidding would be feasible, in view of the facts that it is an offering to shareholders and not an ordinary underwriting, that approximately 91% of its common shares are

held in California, and that the proposed stock selling program will enable the company to maintain a high proportion of ownership by California shareholders, which is to its advantage.

The record shows that applicant's capitalization ratios at September 30, 1963, and giving effect to the proposed common stock offering, are approximately as follows:

	<u>Sept. 30, 1963</u>	<u>Pro forma</u>
First mortgage bonds	57.0%	52.9%
Preferred stock	13.5	12.5
Common stock equity	<u>29.5</u>	<u>34.6</u>
Total	<u>100.0%</u>	<u>100.0%</u>

From a review of the record developed in this proceeding, it is clear that applicant will have need for additional funds to meet its short-term bank borrowings and to enable it to proceed with its construction activities. Considering prevailing market conditions and the nature of the proposed offering, there appears to be no reason why the company should not be authorized at this time to proceed with the sale under negotiated arrangements as proposed in this proceeding. Moreover, the number of shares to be taken by underwriters is indefinite because of the prior offering to shareholders.

After consideration, we find that: (1) the proposed issue of not to exceed 97,341 shares of common stock should be exempted from competitive bidding; (2) the money, property or labor to be procured or paid for by the issue and sale of said shares of stock is reasonably required for the purposes specified

herein; and (3) such purposes are not, in whole or in part, reasonably chargeable to operating expenses or to income. On the basis of these findings, we conclude that the application should be granted.

In issuing our order herein, we place applicant and its shareholders on notice that we do not regard the number of shares outstanding, the total par value of the shares nor the dividends paid as measuring the return applicant should be allowed to earn on its investment in plant and that the authorization herein given is not to be construed as a finding of value of applicant's stock or properties nor as indicative of amounts to be included in future proceedings for the determination of just and reasonable rates.

O R D E R

IT IS ORDERED that:

1. The issue and sale by San Jose Water Works, a corporation, of not to exceed 97,341 shares of common stock hereby is exempted from the Commission's competitive bidding rule.

2. On or after the date hereof and on or before June 30, 1964, San Jose Water Works, a corporation, may offer to the holders of its common stock transferable subscription rights to subscribe for, and for the purposes specified in this proceeding may issue and sell to the holders of its common

stock upon the exercise of said subscription rights, not to exceed 97,341 shares of common stock on the basis of one additional share of common stock of the par value of \$12.50 per share for each five shares held on the record date at a subscription price not to exceed 10% below (adjusted to the nearest one-eighth) the market price of its common stock at the close of business on December 31, 1963.

3. On or after the date hereof and on or before June 30, 1964, San Jose Water Works, a corporation, may issue and sell to a selected group of investment bankers the unsubscribed portion of said not to exceed 97,341 shares of common stock at the subscription price, and may pay to said underwriters compensation for underwriting said unsubscribed shares in accordance with an underwriting agreement to be entered into in conformity with the record in this proceeding.

4. Within thirty days after issuing the stock herein authorized, San Jose Water Works, a corporation, shall file with the Commission three copies of its prospectus and a report showing the number of common shareholders of record at the close of business on January 3, 1964, the number of shares subscribed by shareholders, by others upon purchase of rights to subscribe, and by underwriters, such report to be filed in lieu of a report, or reports, under General Order No. 24-A.

5. Within six months after issuing the stock herein authorized, San Jose Water Works, a corporation, shall file with the Commission a report showing the expenses incurred in connection with the issue and sale of the not to exceed 97,341 shares of common stock and the account, or accounts, to which such expenses were charged.

6. This order shall become effective on the date hereof.

Dated at San Francisco, California, this 17th day of December, 1963.

William W. Bennett
President
George T. Hoover
Frederick B. Hallock
Commissioners