

ORIGINAL

Decision No. 85145

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of

DOMINGUEZ WATER CORPORATION,  
a California corporation,

for authorization to issue and sell  
not to exceed 30,000 shares of its  
Class B preferred shares, Series 1,  
in exchange for property.

Application No. 55685  
(Filed May 9, 1975)

O P I N I O N

Dominguez Water Corporation (Dominguez), a California corporation, seeks authority to issue and sell not to exceed 30,000 shares of its Class B preferred stock in exchange for all of the issued and outstanding stock of Hydro-Metric Service Corporation (HMS), under the terms and conditions of an agreement and plan of reorganization (agreement) entered into with HMS and its present stockholders dated as of March 28, 1975. HMS is engaged in the testing and repair of water meters, a nonregulated business. The agreement is within the provisions of Section 368(a)(1)(B) of the Internal Revenue Code of 1954 as amended, and provides that the present HMS stockholders will exchange all of their HMS shares of capital stock, par value \$10 per share, solely for Dominguez Class B preferred stock, par value \$10 per share. Dominguez, subject to the approval of the Commission, agreed to issue and deliver to the present HMS stockholders 20,000 shares at the close of the transaction and such number of shares not to exceed 10,000 as shall be required under the terms and conditions of the agreement, which contemplates the issuance

of such additional shares based upon increasing amounts of before tax earnings of HMS for each of the years 1975 through 1979.

Dominguez is engaged with its subsidiaries in the business of producing and supplying water for residential, commercial, industrial, and agricultural consumption in a service area primarily within Los Angeles County. The territory served has an estimated population of 100,000. As of December 31, 1974, it served 31,802 customers and had 2,660 fire hydrants connected to its system. Dominguez owns water wells, deep-well turbine pumps, booster pumps, water storage tanks, distribution pipelines, fire hydrants, pump houses, offices, shop buildings, motor vehicles, and other property. It was organized in 1937 under the laws of California and has its principal place of business in Long Beach. It operates under a certificate of public convenience and necessity issued in Decision No. 32739, dated January 16, 1940.

In addition to its application Dominguez has filed declarations of its president and vice-president in support of the proposal. The application and declarations show that the net worth of HMS is \$71,000 and its gross revenues for 1974 were approximately \$172,000. The pro forma net income before taxes, if HMS had been owned by Dominguez, was approximately \$29,000 based upon \$251,000 pro forma gross income. Its forecast of the income and cash requirements of HMS for the years 1975 through 1979, based upon what it states is a conservative approach with respect to the possibilities of future growth and a realistic estimate of the expenses of operation, is that the proposed nonregulated operation could, except for the first few years of operation, be financially self-sufficient. It estimates that approximately \$25,000 of additional funds may be required during the first few years of operation and it expects that HMS will be able to

borrow these funds on its own credit, or at least without any immediate financial burden upon Dominguez. It believes that there is a reasonable probability that over the term of the proposed agreement, the operation of HMS could be self-liquidating and the entire proposed acquisition could be accomplished without any financial detriment to Dominguez.

It states that it has made an in-depth study and investigation of HMS: what it does, what the needs for its services appear to be, and what its future prospects might be; and believes that the proposed acquisition, whether it is successful or not, will have no effect upon the rates and charges to its customers. The business of HMS is closely allied with the company's principal business, i.e., the production, storage, and distribution of domestic and industrial water supplies. In the past it has been a customer of HMS and is one of hundreds of privately and publicly owned water distribution systems which Dominguez believes can benefit from the services to be rendered by HMS. It states that there are many features of the new business similar to the business it is presently conducting, and that it is familiar with the equipment used by HMS, the cost, quality, and sources of supply of many of the meters, pipes, valves, and other equipment being tested by HMS, the equipment required to conduct the test, and the material required for necessary repairs and adjustments. It asserts that both businesses require a substantial knowledge of hydraulics and to a large extent use the same tools, equipment, and techniques.

Dominguez states that its total capitalization is approximately \$12,500,000, of which \$5,200,000 is equity; that under the provisions of the agreement, the maximum possible payment by it for all of the shares of HMS is \$300,000, so that the ratio of this to the

total capitalization of Dominguez would be 2.4 percent, and that this proposed transaction would not materially affect its ability to borrow funds or be adverse to its financial position. It asserts that the obligation to redeem the preferred stock is spread over a ten-year period and will not exceed \$30,000 per year, and that such an obligation would not in any way materially or adversely affect its financial ability to carry out its public utility obligations.

Subject to the approval of the shareholders at its annual meeting, the Board of Directors of Dominguez has authorized issuance of 30,000 shares of Class B preferred stock, with voting rights, having a \$10 liquidation value, a \$1 cumulative dividend, a three-year no-redemption clause, to be retired through a ten percent sinking fund beginning the sixth year. All rights and preferences of these preferred shares as to liquidation and dividends would be on a parity with the already authorized and issued 30,000 preferred shares. At the company's annual meeting of shareholders on May 1, 1975, the proposed amendment to the Articles of Incorporation required to create the new shares with which to acquire EMS passed by a 39 to 1 margin.

Dominguez has no objection to a specific paragraph in the order conditioning the authority to issue the stock upon filing a stipulation that no portion of the capitalization or expenses of EMS, the nonregulated business, would be included in any future rate proceeding. In addition, any sums paid as dividends or for the liquidation of the shares to be issued should not be included in any future rate proceeding.

The Public Utilities Code provides:

"816. The power of public utilities to issue stocks...is a special privilege, the right of supervision, regulation, restriction, and control of which is vested in the State, and such power shall be exercised as provided by law under such rules as the commission prescribes."

"817. A public utility may issue stocks...  
for...the following purposes and no others:

(a) For the acquisition of property.  
..."

The word "property" as used in Section 817(a) is not modified, limited, or defined in any way. The word "property" includes both real and personal property. (Section 17.1 CCP.) The words "personal property" include money, goods, chattels, things in action, and evidences of debt. (Section 17.3 CCP.) "Property" is a generic term and is sufficiently comprehensive to include everything one person can own and transfer to another. It extends to every species of right and interest capable of being enjoyed as such and on which it is practical to place a money value (40 Cal. Jur. 2d. Property, Section 2.) Shares of stock are property. (Tregear v Etiwanda Water Company 76 Cal 537; Kirkland v Levin 63 CA 589; East Coalinga Oil etc. Corp. v Robinson 86 CA 2d 161, 165.)

The assets of HMS consist in part of goodwill. Section 14102 of the Business and Professions Code provides "The good-will of a business is property and is transferable." The Commission has held that goodwill generally does not constitute property related to public utility service. (Santa Cruz Motor Express Inc., 56 CPUC 519; R. Tunzi and Louis A. Tommasini, dba Salinas Valley Freight Line, 54 CPUC 56.) The rationale is that goodwill is intangible and based on earning potential in excess of normal return on tangible assets. HMS will continue to have its independent existence and a merger or consolidation is not involved. Dominguez has not requested that the assets of HMS or the value of HMS stock be a part of its rate base.

The authority of a public utility to issue stock is not limited to public utility purposes. (Farmers Warehouse Co., 2 CRC 124, 126-127; Farmers Warehouse Co., 3 CRC 661; Griffins Transfer and

Storage Co., 3 CRC 977; Western States Warehouse Corp., 19 CRC 527.)

A person may operate part of his business as a public utility and part in a purely private capacity. (Harbor Carriers v Cal. Inland Pilots Assn. (Cal. 1971) 91 PUR 3d 218, 226.)

A member of the Commission's staff prepared and submitted a report dated September 26, 1975. The report recommended that Dominguez be authorized to issue the shares for the purpose of acquiring the outstanding stock of EMS but that Dominguez be: ordered to keep a complete set of financial and accounting records for HMS separate from records of its utility operations, and to maintain detailed records of all transactions between the two companies; placed on notice that no portion of HMS's revenues, expenses, assets, or capitalization will be considered for ratemaking purposes in any future proceeding; and placed on notice that profits earned by HMS from services provided to Dominguez will be limited for rate-making purposes to the return allowed on utility operations.

The application was listed in the Commission's daily calendar on May 14, 1975. No protests to the granting of the application have been received. A public hearing is not necessary.

Findings

1. The proposed purchase by Dominguez of all of the issued and outstanding stock of EMS constitutes the purchase of property.
2. The proposed security issue, under the terms and conditions and for the purpose set forth in the application, is for the purchase of property within the provisions of Section 817(a) of the Public Utilities Code.

3. The proposed security issue is for proper purposes and is not adverse to the public interest. The property to be procured or paid for by the issue of the securities authorized by this decision is reasonably required for the purposes specified, which purposes are not in whole or in part reasonably chargeable to operating expenses or income.

4. Authority for the proposed security issue should be conditioned upon Dominguez agreeing to and filing a declaration to the effect that no portion of the capitalization or expenses of HMS and no dividends or sums paid upon liquidation of the securities to be issued will be included in any future rate proceeding.

5. Dominguez should be: ordered to keep a complete set of financial and accounting records for HMS separate from records of its utility operations, and to maintain detailed records of all transactions between the two companies; placed on notice that no portion of HMS's revenues, expenses, assets, or capitalization will be considered for rate-making purposes in any future proceeding; and placed on notice that profits earned by HMS from services provided to applicant will be limited for ratemaking purposes to the return allowed on utility operations.

#### Conclusions

The Commission concludes that the application should be granted upon the conditions contained in the following order.

In issuing this decision we place the issuer of the authorized stock 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 it should be allowed to earn on its investment in plant, and that this authorization is not to be construed as a finding of the value of the company's stock or property nor as indicative of amounts to be included in proceedings for the determination of just and reasonable rates.

Dominguez Water Corporation is placed on notice that no portion of Hydro-Metric Service Corporation's revenues, expenses, assets, or capitalization will be considered for ratemaking purposes in any future proceeding; and that profits earned by Hydro-Metric Service Corporation from goods or services provided by it to Dominguez Water Corporation will be limited for ratemaking purposes to the return allowed on utility operations.

O R D E R

IT IS ORDERED that:

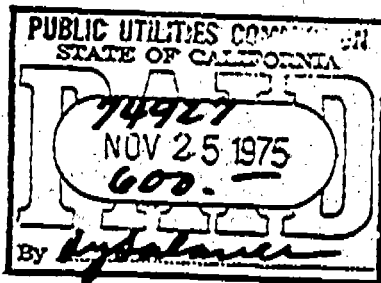
1. Dominguez Water Company is authorized to issue not to exceed 30,000 shares of its Class B preferred shares as requested in its application for the purposes and under the terms and conditions set forth in its application; and on the further condition that prior to such security issue, it agree to and file a declaration to the effect that no portion of the capitalization or expenses of Hydro-Metric Service Corporation, and no dividends on or sums paid upon liquidation of the securities to be issued, will be included in any future rate proceeding.
2. The issuer of the securities authorized by this order shall file with the Commission a report, or reports, as required by General Order No. 24-Series.



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This order will become effective when the issuer has paid the fee prescribed by Section 1904.1 of the Public Utilities Code, which fee is \$600.

Dated at San Francisco, California, this 18<sup>th</sup> day of NOVEMBER, 1975.



William J. ... President  
Vernon L. Sturgeon  
Norm ...  
Robert ... Commissioners