

1977 No. 295

WATER, ENGLAND AND WALES

The East Anglian Water (Capital Powers) Order 1977

Made - - - - - 23rd February 1977

Coming into Operation 1st March 1977

The Secretary of State for the Environment, in exercise of powers conferred by sections 23 and 50 of the Water Act 1945(a) and now vested in him(b) and of all other powers enabling him in that behalf, hereby orders as follows:—

1.—(1) This order may be cited as the East Anglian Water (Capital Powers) Order 1977 and shall come into operation on 1st March 1977.

Citation
and
commence-
ment.

(2) The East Anglian Water Acts and Orders 1853 to 1974 and this order may be cited together as the East Anglian Water Acts and Orders 1853 to 1977.

2.—(1) In this Order, unless the context otherwise requires, the several words and expressions to which meanings are assigned by the enactments incorporated with this order shall have the same respective meanings; and—

Interpreta-
tion.

“the Company” means the East Anglian Water Company;

“directors” means the board of directors for the time being of the Company;

“the existing enactments” means the East Anglian Water Acts and Orders 1853 to 1974;

“the existing loan capital” means the debenture stocks specified in Part II of the Schedule to this order issued under the authority of the existing enactments;

“the existing share capital” means the ordinary capital and preference capital specified in Part I of the Schedule to this order issued under the authority of the existing enactments;

“the Secretary of State” means the Secretary of State for the Environment;

“share” means share in the share capital of the Company and includes stock except where a distinction between stock and shares is expressed or implied, and “share capital” shall be construed accordingly;

“the undertaking” means the undertaking of the Company as for the time being authorised by any enactment.

(2) Unless the context otherwise requires, any reference in this order to any enactment shall be construed as a reference to that enactment as amended by, or having effect by virtue of, any subsequent enactment, including this order.

(a) 1945 c. 42.

(b) S.I. 1951/142, 1900, 1970/1681 (1951 I, pp. 1348, 1347; 1970 III, p. 5551).

Incorporation of enactments.

3.—(1) The following enactments (so far as they are applicable for the purposes of, and are not inconsistent with, the provisions of the existing enactments and this order) are hereby incorporated with this order, namely—

(a) the Companies Clauses Consolidation Act 1845(a) except sections 56 to 60 (which relate to the conversion of borrowed money into capital) and sections 161 and 162 (which provide for affording access to the special Act);

(b) the Companies Clauses Act 1863(b) (except Part IV thereof):

Provided that—

(i) section 98 of the said Act of 1845 (which requires proceedings to be entered in books) as so incorporated shall have effect as if after the words “shall be signed by the chairman of such meeting” there were inserted the words “or of the next succeeding meeting”;

(ii) section 14 of the said Act of 1863 (which relates to dividends on preference capital) as so incorporated shall have effect as if—

(A) after the words “each year” there were inserted the words “or out of the profits from previous years available for payment of dividends, or partly out of the one and partly out of the other”; and

(B) before the words “profits available” there were inserted the word “such”;

(iii) section 22 of the said Act of 1863 (which contains regulations as to the creation and issue of debenture stock) as so incorporated shall have effect as if the words “and to the same amount as” were omitted.

(2) In the construction of the enactments so incorporated with this order, the expression “the special Act” shall be read as a reference to this order and the expression “the company” shall mean the Company.

(3) For the purposes of this order section 94 of the Third Schedule to the Water Act 1945 (which requires undertakers to keep a copy of the special Act at their principal office and to deposit copies with certain officers) shall apply to the undertaking and is hereby incorporated with this order.

Capital and borrowing powers.

4.—(1) Subject to and in accordance with the provisions of this order, the Company may from time to time raise by the creation and issue of share capital or by borrowing on mortgage of the undertaking or by the creation and issue of debenture stock, or wholly or partly by any one or more of those modes respectively, such sums as, when added to any money raised by the issue of the existing share capital or borrowed by the issue of the existing loan capital and in either case outstanding at the date, or respective dates, on which the Company exercise the powers of this section, shall be sufficient to produce after taking into account any premiums or discounts which may be obtained or allowed on the issue of such share capital in the aggregate twelve million five hundred thousand pounds:

Provided that the aggregate of any sums so borrowed shall not (when added to any money borrowed by the issue of the existing loan capital

(a) 1845 c. 16.

(b) 1863 c. 118.

and outstanding at the date, or respective dates, on which the Company exercise the powers of this section) exceed in the whole—

- (a) the amount (including premiums and allowing for discounts) which for the time being has been raised by the Company by the creation and issue of share capital; and
- (b) with the consent of the Secretary of State an additional amount not exceeding ten per cent of such first-mentioned amount.

(2) The Company may raise sums by the creation and issue of share capital under subsection (1) of this section by the creation and issue of further amounts of ordinary stock or of preference stock or by the creation and issue of new ordinary shares or stock or new preference shares or stock, or wholly or partly by one or more of those modes respectively.

(3) For the purposes of this section the amount raised by the issue of any share capital shall be taken to be the amount raised after taking into account any premiums or discounts which may be obtained or allowed on the issue or re-issue thereof.

(4) The Company may exercise their powers of borrowing money under this section without obtaining any certificate of a justice under section 40 of the Companies Clauses Consolidation Act 1845.

(5) For the purposes of this order the nominal amount of any share capital or debenture stock which has been, or shall hereafter be, issued for a consideration other than cash shall be deemed to have been raised by the issue of such share capital or debenture stock, as the case may be.

(6) The directors of the Company may by virtue of this subsection and without any further requisite raise by the creation and issue of share capital the same amount as the aggregate amount which the Company were before the date on which this order comes into operation authorised to raise by the creation and issue of any share capital or to borrow and which was not so raised or borrowed before that date.

(7) The unexercised powers of the Company for raising money by the creation and issue of additional share capital under the existing enactments shall cease to be exercisable.

5.—(1) Subject to the provisions of this Order, the Company shall not in respect of any year pay dividends on their paid-up share capital at rates greater than the following rates, that is to say— Maximum rates of dividend.

- (a) on share capital subscribed before the date on which this order comes into operation, the rates which they were entitled to pay thereon immediately before that date;
- (b) on capital subscribed during the initial period—
 - (i) in the case of ordinary capital, ten per cent., or
 - (ii) in the case of preference capital, twelve per cent.; and
- (c) on capital subscribed after the expiration of the initial period—
 - (i) in the case of ordinary capital, seven per cent. or such higher rate not exceeding ten per cent. as the Secretary of State may in respect of any subscription allow; or
 - (ii) in the case of preference capital, seven per cent. or such higher rate not exceeding twelve per cent. as the Secretary of State may in respect of any subscription allow.

In this section “the initial period” means the period of five years beginning with the commencement of this order.

(2) Nothing in paragraphs (b) or (c) of subsection (1) of this section shall prevent the payment of a greater dividend on ordinary shares or stock in order to make up deficiencies in previous dividends during the last five years before the year in respect of which a dividend is being paid.

Interest on borrowed money.

6. The Company shall not pay interest on any moneys borrowed or debenture stock issued under section 4 of this order at a higher rate than seven per cent. per annum or such higher rate as the Secretary of State may from time to time allow:

Provided that the consent of the Secretary of State shall not be required to the payment of interest on moneys borrowed by the company on mortgage of the undertaking, or by the issue of debenture stock, at a rate higher than seven per cent. per annum if the rate is a fixed rate and is certified to the Company as being appropriate in the circumstances of the case by—

(a) the firm of stockbrokers, being members of a recognised stock exchange (as defined in the Prevention of Fraud (Investments) Act 1958(a)), or the bankers who placed the mortgage or placed or underwrote the issue of debenture stock; or

(b) in the case of the raising of money on mortgage, an accountant or firm of accountants being either the duly appointed auditor or auditors of the Company or a person qualified to be so appointed.

Temporary borrowing.

7. Section 3 (Temporary borrowing) of the East Anglian Water (Financial Provisions) Order 1962(b) shall have effect as if for the words "one hundred thousand pounds" there were substituted the words "three hundred and fifty thousand pounds".

Application of certain enactments.

8. The following enactments shall, subject to the provisions of this order, so far as applicable extend and apply in relation to any share capital, debenture stock or mortgages created and issued or granted under the provisions of this order as if those enactments with any necessary modifications were re-enacted in this order—

Lowestoft Water and Gas Act 1931(c)—

Section 72 (Debenture stock);

Section 73 (Priority of mortgages over other debts);

Section 74 (Priority of existing mortgages);

Section 75 (Appointment of receiver);

The East Anglian (Blyth, Eye, Hartismere and Saxmundham) Water Order 1963(d)—

Section 23 (Additional capital to be part of general capital);

Section 24 (Application of money).

Repeal.

9. Section 5 (Maximum rates of dividend) of the East Anglian Water (Capital Powers) Order 1972(e) is hereby repealed.

Costs of Order.

10. All costs, charges and expenses of, and incidental to, the application for this order and the preparation and making of this order may be paid by the Company in whole or in part out of revenue.

(a) 1958 c. 45.
(d) S.I. 1963/1595.

(b) S.I. 1962/978.
(e) S.I. 1972/2050.

(c) 1931 c. xxvii.

SCHEDULE

PART I

Existing Ordinary and Preference Capital

| | <i>Nominal Amount issued</i> |
|---|----------------------------------|
| | £ |
| 3.5% (formerly 5%) Consolidated Ordinary Stock | 714,458 |
| 3.5% (formerly 5%) Ordinary Stock | 308,900 |
| 2.8% (formerly 4%) Consolidated Preference Stock | 201,432 |
| 4.2% (formerly 6%) Redeemable Preference Stock 1978/80.. | 200,000 |
| 3.85% (formerly 5.5%) Redeemable Preference Stock 1980/81 | 740,500 |
| 4.2% (formerly 6%) Redeemable Preference Stock 1982/83.. | 500,000 |
| 4.55% (formerly 6.5%) Redeemable Preference Stock 1983 .. | 455,000 |
| 7% (formerly 10%) Redeemable Preference Stock 1977 .. | 400,000 |
| 7% Redeemable Preference Stock 1978 | 500,000 |
| 10% Redeemable Preference Stock 1979 | 1,500,000 |

PART II

Existing Loan Capital

| | |
|---|---------|
| 4% Perpetual Debenture Stock | 98,472 |
| 5% Perpetual Debenture Stock | 66,718 |
| 3.5% Perpetual Debenture Stock | 39,500 |
| 5.5% Redeemable Debenture Stock 1980/81 | 66,000 |
| 7% Redeemable Debenture Stock 1987/89 | 300,000 |
| 7.75% Redeemable Debenture Stock 1991/92.. .. . | 500,000 |
| 9% Redeemable Debenture Stock 1992/94 | 500,000 |

Signed by authority of
the Secretary of State
23rd February 1977.

A. G. Semple,
An Under Secretary in the
Department of the Environment.