

Decision No. 59717

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of LOMPOC MILLING COMPANY,
a Corporation, and STOCKTON WIRE
PRODUCTS, a Corporation, to Merge
under the Laws of the State of
California, with STOCKTON WIRE
PRODUCTS to become the owner of
Public Utility Property.

Application No. 41822
and Amendment

O P I N I O N

In this application filed on January 4, 1960, and amended on February 4, 1960, the Commission is asked to issue its order authorizing Stockton Wire Products, a corporation, to acquire, through merger, the properties and operations of Lompoc Milling Company, a corporation, and authorizing Stockton Wire Products to issue shares of its capital stock.

Lompoc Milling Company, sometimes hereinafter referred to as "Lompoc", as a part of its over-all operations, mainly nonutility in nature, operates as a public utility warehouseman at Lompoc, California. Stockton Wire Products, sometimes hereinafter referred to as "Stockton", is engaged in the nonutility business of manufacturing, selling and distributing galvanized Cornerite and allied products, which are used in the construction of buildings. The capital stock of both Lompoc and Stockton is closely held, with one stockholder holding in excess of seventy per cent of the outstanding stock of each corporation.

The application shows that the operations of Lompoc are being conducted at a loss whereas those of Stockton are being conducted at a profit. In order to strengthen the financial position of Lompoc, to reduce the overhead and administrative costs of the two corporations and at the same time make available to Stockton, building facilities which can be converted to its manufacturing use, the stockholders and boards of directors of the two corporations have approved a merger agreement under the terms of which Stockton and Lompoc shall be merged into a single corporation with Stockton as the surviving corporation. To effectuate the merger, Stockton proposes to issue 4,750 shares of its common stock in exchange for 9,500 shares of the capital stock of Lompoc which are outstanding.

As of November 30, 1959, Stockton had outstanding 28,699 shares of its capital stock of an aggregate book value of \$256,737.37 and a book value per share of \$8.95. As of the same date, or November 30, 1959, Lompoc had outstanding 9,500 shares of its capital stock which had an aggregate negative book value of \$9,924.04, or \$1.04 per share. Giving consideration to present value of the lands owned by Lompoc, the boards of directors of the two corporations have determined that the net worth of Lompoc, for the purpose of determining the exchange value of its shares of capital stock, is approximately \$49,875, or \$5.25 per share. They have also agreed, based on the price used in a recent offer to purchase shares from minority stockholders, that Stockton's capital stock has an exchange value of \$10.50 per share. It is on such a finding that the agreed basis of exchange, one share of Stockton for two shares of Lompoc, was determined. The foregoing

determination of the relative value of the net worth of the two corporations is solely for the purpose of determining the number of shares of Stockton which are to be issued in exchange for the outstanding shares of Lompoc. Except for the changes in net worth brought about by the issue and exchange of capital stock, the merger will not result in any change in the recorded balances in the asset and liability accounts of the two corporations. A balance sheet prepared on a pro forma basis as of November 30, 1959, so as to give effect to the merger, is as follows:

<u>Assets</u>	
Current assets -	
Cash	\$ 50,771.00
Accounts receivable - Net of reserves	105,196.90
Merchandise inventory	108,556.81
Other current assets	<u>2,048.31</u>
	\$266,573.02
Investments	121,277.40
Depreciable property - Less reserves	
totaling \$145,690.90	216,979.11
Land	11,200.00
Intangible property	<u>3,674.90</u>
	\$619,704.43
Total	
<u>Liabilities</u>	
Current liabilities -	
Accounts payable	\$ 17,168.68
Notes payable	35,966.48
Interest payable	20,498.76
Provision for income taxes	14,293.01
Other current liabilities	<u>13,464.17</u>
	\$101,391.10
Long-term liabilities	271,500.00
Capital -	
Capital stock	33,449.00
Donated premium	15,769.75
Retained earnings	<u>197,594.58</u>
	246,813.33
Total	\$619,704.43

Concurrently with the merger Stockton proposes to continue to own and operate the warehouse business and facilities in Lompoc, which are presently owned and operated by Lompoc Milling Company. In this connection, Stockton seeks a certificate declaring that public convenience and necessity requires, or will require, it to own and operate the warehouse business and facilities in Lompoc presently owned and operated by Lompoc Milling Company.

Section 1052 of the Public Utilities Code provides that no such certificate shall be required by any warehouseman as to storage or warehouse space actually operated in good faith on September 1, 1959, under tariffs and schedules of such warehouseman lawfully on file with the Commission. Therefore, we shall dismiss the certificate portion of this application without prejudice.

Based on a review of the application, we are of the opinion, and so find, (1) that the acquisition of the stock of Lompoc by Stockton and the subsequent merger of Lompoc into Stockton will not be adverse to the public interest, and (2) that Stockton, by reason of its financial condition, should have the financial resources required to fulfill its public utility obligations.

The authority herein granted is not to be construed as a finding by the Commission of the value of the properties here involved.

In entering our order in this proceeding, we are making no finding as to the reasonableness of the price to be paid for the operative rights, nor as to their value, nor as to the nature, scope and extent of such rights. Stockton Wire Products hereby is placed on notice that operative rights, as such, do not constitute a class of property which may be capitalized or used as an element of value in rate fixing for any amount of money in excess of that originally paid to the state as the consideration for the grant of such rights. Aside from their purely permissive aspect, they extend to the holder a full or partial monopoly of a class of business. This monopoly feature may be changed or destroyed at any time by the state, which is not in any respect limited as to the number of rights which may be given.

O R D E R

The Commission having considered the above-entitled matter, as amended, and being of the opinion that a public hearing is not necessary, that the money, property or labor to be procured or paid for by the issue of the stock herein authorized is reasonably required for the purpose stated herein, which purpose is not, in whole or in part, reasonably chargeable to operating expenses or to income, and that the application, except as it pertains to the granting of a certificate of public convenience and necessity, should be granted; therefore,

IT IS HEREBY ORDERED as follows:

1. Stockton Wire Products, on or after the effective date hereof and on or before July 31, 1960, may purchase all of the outstanding capital stock of Lompoc Milling Company, in accordance with the terms of an Agreement of Merger, a copy of which is attached to the application as Exhibit D.

2. Stockton Wire Products, on or after the effective date hereof and on or before July 31, 1960, may issue 4,750 shares of its capital stock in exchange for the outstanding capital stock of Lompoc Milling Company.

3. Stockton Wire Products, on or after the effective date hereof and on or before July 31, 1960, may merge Lompoc Milling Company in accordance with the applicable provisions of the California Corporations Code.

4. Lompoc Milling Company, on or after the effective date hereof and on or before July 31, 1960, may sell and transfer to Stockton Wire Products such operative rights as it possesses to operate public utility warehouses in Lompoc.

5. On not less than five days' notice to the Commission and to the public, effective concurrently with the consummation of such transfer, applicants shall supplement or reissue the tariffs now on file with the Commission, insofar as they name rates, rules and regulations governing the warehouse operations here involved of Lompoc Milling Company, to show that Lompoc Milling Company has withdrawn or canceled and that Stockton Wire Products concurrently has adopted or established, as its own, said rates, rules and regulations. The tariff filings made pursuant to this order in

all respects shall comply with the regulations governing the construction and filing of warehouse tariffs set forth in the Commission's General Order No. 61.

6. Stockton Wire Products, when acquiring the properties of Lompoc Milling Company, may assume the outstanding obligations of that company.

7. Stockton Wire Products 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.

8. This application insofar as it relates to the granting of a certificate of public convenience and necessity is dismissed without prejudice.

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

Dated at San Francisco, California, this 29th day of February, 1960.

[Signature] President
[Signature]
[Signature]
Theodore Jenner Commissioners