

Decision No. 61948

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
 EVERGREEN WATER COMPANY, INC., a)
 corporation, For an Order Under)
 Sections 851-853 of the Public)
 Utilities Code Authorizing the Sale,)
 Disposition and Assignment of the)
 City of San Jose, a Municipal)
 Corporation, of the Water System,)
 Permits, Franchises and Assets)
 Necessary and Useful in the Perform-)
 ance of Duties of said Corporation)
 in Providing Water Service to the)
 Public.)

Application No. 43236

O P I N I O N

Evergreen Water Company, Inc., (Seller), by this application filed March 15, 1961, requests authorization to sell its public utility water system to the City of San Jose (City), which joins in the application.

Pursuant to certificates of public convenience and necessity granted to Seller by the Commission in Decisions Nos. 50397 and 53846, dated August 10, 1954 and October 1, 1956, respectively, in Application No. 35455; and Decision No. 58284, dated April 21, 1959, in Application No. 40400, Seller provides public utility water service in the community of Evergreen in Santa Clara County.

The inventory attached to the application indicates that the system had approximately 280 metered services as of February 23, 1961. According to Exhibit C attached to the application, the original cost of the utility plant to be sold was \$214,905.89 as of December 31, 1960, with a related depreciation reserve of \$26,909.32, indicating a net utility plant balance as of that date of \$187,996.57.

The application states that the City is, and for some months has been, annexing the area served by Seller; that the City desires to provide water service in all of said area; that all assets of Seller except cash and insurance policies are to be sold to the City, and that the purchase price and method of payment have been agreed upon.

Attached as exhibits to the application are copies of Ordinances Nos. 8772 and 8738 of the City of San Jose. These ordinances authorize the purchase of the properties and assets of Seller and appropriate the necessary funds therefor. Also attached as an exhibit to the application are excerpts from the minutes of a special meeting of Seller's stockholders, held on February 27, 1961, at which meeting the proposed sale of the system to the City was authorized.

The terms and conditions of the proposed sale are set forth in an instrument entitled "Agreement for Purchase and Sale of Water System", an unexecuted copy of which is attached to the application. The purchase price specified in said agreement is \$195,000 plus the actual net cost to Seller of additions, betterments and extensions made to the water system between November 1, 1960 and the date of the transfer. The agreement provides that any refundable deposits, including interest, are to be returned by Seller to its customers by the closing date, and that the City is to assume and perform each and every term and condition of all the construction advance contracts executed by Seller. The City agrees upon transfer to undertake the distribution of water to all customers then served by Seller and to assume any and all public service obligations now resting upon Seller, subject to the right of the City to fix rates and conditions of water service.

After consideration the Commission finds that the proposed transfer would not be adverse to the public interest. A public hearing is not necessary.

The authorization herein granted relates to the sale of properties only and shall not be construed as representing a finding of the value of the rights and equipment.

O R D E R

1. On or after the effective date hereof and on or before December 31, 1961, Evergreen Water Company, Inc., may sell and transfer its public utility properties to the City of San Jose in accordance with the terms and conditions set forth in the instrument entitled "Agreement for Purchase and Sale of Water System", an unexecuted copy of which is attached to the application. The foregoing authority is conditioned upon the requirements that:

- (a) The City of San Jose shall file with this Commission, within thirty days after the date of actual transfer, a verified copy of a statement to the effect that said City has acquired the property conveyed pursuant to the aforementioned agreement, subject to all legal claims for water service which might have been enforced against Evergreen Water Company, Inc., including such claims as may exist in territory outside the boundaries of said City.
- (b) The City of San Jose shall assume all obligations for refund of construction advances made to Evergreen Water Company, Inc., under the provisions of main extension agreements outstanding as of the date of actual transfer and said City and utility shall jointly file with this Commission, within thirty days after that date, a verified statement showing the name and address of each person or corporation in whose favor any of such refund obligations exist and the unrefunded amount of construction advance subject to repayment to each such person or corporation.

(c) On or before the date of actual transfer, Evergreen Water Company, Inc., shall refund all customers' deposits which are subject to refund.

2. If the authority granted herein is exercised, Evergreen Water Company, Inc., shall within thirty days thereafter, notify this Commission in writing of the date of completion of the property transfer and of its compliance with the conditions hereof.

3. Upon compliance with the conditions of this order, Evergreen Water Company, Inc., shall stand relieved of all further public utility obligations and liabilities in connection with the operation of the public utility properties herein authorized to be sold.

The effective date of this order shall be ten days after the date hereof.

Dated at San Francisco, California, this 10th day of May, 1961.

Everett B. Page
President
John E. ...
S. J. Fox

Frederic B. Halberoff
Commissioner