

ORIGINAL

Decision No. 68010

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the joint application)
of CALIFORNIA-PACIFIC UTILITIES COMPANY)
and CITY OF NAPA for an order authorizing)
California-Pacific Utilities Company to)
sell its Napa Junction Water System to)
the City and to discontinue its public)
utility service in the County of Napa.)

Application No. 45761
(Filed September 12, 1963)

Orrick, Dahlquist, Herrington & Sutcliffe, by
James F. Crafts, Jr., for California-Pacific
Utilities Co.; Bacigalupi, Elkus & Salinger,
by Claude N. Rosenberg, for City of Napa,
applicants.

Daniel K. York, for County of Napa; Robert H.
Zeller, for American Canyon County Water
District; William L. Knecht, for Napa County
Farm Bureau and California Farm Bureau
Federation; Orville B. Nelson, for Angwin
Chamber of Commerce; David R. York, for
American Canyon Fire District and Southern
Napa County Association, protestants.

Colonel Roy L. Jones, for Upper Valley Associates,
Interested party.

James F. Haley, for the Commission staff.

O P I N I O N

This is a joint application filed by California-Pacific Utilities Company (hereinafter referred to as California-Pacific) and the City of Napa (hereinafter referred to as City) in which the applicants seek an order authorizing California-Pacific to sell its Napa Junction Water System to City and to discontinue its public utility water service in Napa County.

A duly noticed public hearing was held in this matter before Commissioner Grover and Examiner Jarvis at Napa on March 25, 26 and 30 and April 10, 1964. The matter was submitted subject to the filing of a late-filed exhibit and briefs which have been received.

The Napa Junction system is located in an unincorporated area south of City. It had 865 service connections in February of 1964. The system was formerly operated as a unit which also included California-Pacific's Benicia-Solano Water System. In Decision No. 63326 in Application No. 43973, issued on February 26, 1962, the Commission authorized the transfer of the Benicia-Solano portion of the system to the City of Benicia. California-Pacific has no independent source of water supply for the Napa Junction system. The water distributed in the system is purchased from City under a contract which expires in 1970. On September 3, 1963, City and California-Pacific entered into the agreement here under consideration whereby City agreed to purchase the Napa Junction system for \$260,000, subject to certain adjustments. On May 7, 1963, the electorate of City approved a \$330,000 bond issue which included funds to be used for acquiring the system.

At the time the Benicia-Solano system was sold to the City of Benicia, the California-Pacific employees who operated the entire system became employees of the City of Benicia. At the same time the City of Benicia entered into an agreement with California-Pacific whereby the City of Benicia agreed to take over the operation and normal maintenance of the Napa Junction system. The operation and maintenance contract had a provision which permitted termination by either party upon the giving of appropriate notice. The City of Benicia gave the requisite notice and terminated the agreement as of March 31, 1964. California-Pacific and the City of Napa entered into a similar agreement commencing April 1, 1964. The agreement has a 90-day termination provision. City has indicated that it considers this agreement as an interim measure

pending the outcome of this proceeding. City will terminate the agreement if this application is not granted. In such event, it will become necessary for California-Pacific to hire personnel to operate and maintain the Napa Junction system.

The following entities appeared at the hearing and protested the granting of the application: American Canyon County Water District (hereinafter referred to as American Canyon), County of Napa (hereinafter referred to as County), American Canyon Fire District (hereinafter referred to as Fire District), Southern Napa County Association (hereinafter referred to as Association), Napa County Farm Bureau and California Farm Bureau Federation (hereinafter jointly referred to as Farm Bureau) and the Angwin Chamber of Commerce.

The primary reasons given by the protestants for opposing the application are that, if it be granted, City would be in a position to control the development of southern Napa County, the water rates in the Napa Junction area would be increased, the residents of the Napa Junction area would have no effective means to protect themselves against possible future arbitrary action respecting rates or service by City, American Canyon should be the entity to serve the area and development of a county water plan would be inhibited. In addition to the general position of all the protestants--that the application be denied--County requested that the proceeding be delayed for a period of three years to permit American Canyon, if possible, to acquire the system. American Canyon takes the position that, if the transfer is authorized, the Commission should make certain conditions, alleged to be in the public interest, a prerequisite to such transfer.

Protestants contend that if City acquires the Napa Junction system it would control the development of southern Napa County. It is argued that by exercising such control City could, by withholding water service, thwart developments which would benefit the area or the county as a whole. City asserts that its record over the years demonstrates that it has always cooperated in helping with the development of the Napa Junction area, as indicated by City previously revising its water supply contract with California-Pacific to provide the additional water necessary to enable a new industrial plant to be located in the area. City and California-Pacific contend that, regardless of the question of the City's good-faith interest in the development of the Napa Junction area, this point is not relevant to the proceeding because City would take the system subject to the same public utility obligations presently resting upon California-Pacific. The Commission believes this contention to be correct and determinative of this issue.

If City acquires the Napa Junction system it will hold the system subject to the same public utility duties and obligations now imposed on California-Pacific. (South Pasadena v. Pasadena Land & Water Company, 152 Cal. 579, 593; People ex rel. City of Downey v. Downey County Water District, 202 Cal. App. 2d 786, 796-97; Erwin v. The Gage Canal Co.; 226 Adv. Cal. App. 253.) Among these obligations is one to make reasonable extensions of water service in the area. (Lukrawka v. Spring Valley Water Co., 169 Cal. 318.)

At the hearing various protestants expressed the concern that if City acquired the Napa Junction system it would require prospective future water users to execute agreements not to oppose annexation as a condition for receiving water service. All the

parties agree that at the present time, as a practical matter, it is not possible for City to annex any of the area encompassed in the Napa Junction system. The record discloses that City has by official action delineated an area considered to be annexable; that before water service is extended to anyone in the annexable area he is required to execute an agreement not to oppose annexation; that the Napa Junction system is outside the annexable area, and that no annexation agreement would be required for service and none is ever contemplated. We need not dwell at length upon this point. The evidence shows that the fears of the protestants are not justified. In addition, even if City were to attempt to change its position on this score it could not do so. Under the authorities heretofore cited, City could not impose a more onerous burden for receiving water service than now is required by California-Pacific. (South Pasadena v. Pasadena Land & Water Company, supra; People ex rel. City of Downey v. Downey County Water District, supra; Erwin v. The Gaze Canal Co., supra.)

It is clear from the foregoing that if City acquires the Napa Junction system it will have the same duties and obligations now imposed on California-Pacific, and City could not adversely affect the development of the area by arbitrary manipulation of the water supply.

Association and other protestants contend that the application should not be granted because if it is granted the customers of the Napa Junction system will have their water rates immediately increased. The record indicates that a customer using an average amount of water (approximately 1,200 cubic feet per month) pays \$5.91 per month to California-Pacific for water service. City has

two rate schedules for water service; an "inside" rate which applies to water users whose service connections are within the city limits and an "outside" rate which applies to water users whose service connections are outside of the city limits. The outside rate is higher than the inside rate. City presently has approximately 2,000 customers outside the city limits and the outside rate is uniformly applied to them. City proposes to apply the outside rate to the Napa Junction system. On February 17, 1964 the Napa City council passed a resolution which states that:

"BE IT RESOLVED, by the City Council of the City of Napa, that the City of Napa agrees that in the event of its acquisition of the Napa Junction Water System which is presently owned by California-Pacific Utilities Company, the City will assume and discharge all public utility obligations of California-Pacific Utilities Company relating to water service from said water system and will not unfairly discriminate in the matter of rates or service between consumers served from said water system and other persons receiving water service from the City of Napa."

If the outside rate is applied, a customer using an average amount of water would pay a monthly bill of \$6.91.

City and California-Pacific contend that the foregoing comparison of rates should not receive any weight because California-Pacific's present rates are unreasonably low. California-Pacific states that if this application is denied, it will immediately apply to the Commission for authority to increase its rates. At the hearing California-Pacific introduced evidence which indicated that it considered a 6.5 percent rate of return reasonable for the Napa Junction system; that in 1963 its rate of return was 3.98 percent; that if the operative and maintenance contract is terminated by City and California-Pacific must itself operate and maintain the system its rate of return would be 2.96 percent and that if its rates were increased to provide for a 6.5 percent rate of return,

the monthly charge to a customer using an average amount of water would be \$7.57.

While the present difference in rates between City's outside rates has some significance, it is not critical. If the application is not approved and City terminates the operating and maintenance contract, California-Pacific would need to employ a staff to operate the Napa Junction system, thereby increasing operating expenses. While we do not pass upon the specific figures proffered by California-Pacific, it appears that if it retains the system some rate adjustment might be warranted. Furthermore, the contract between City and California-Pacific for supplying water to the Napa Junction system expires in 1970. If the contract is renewed the price of water may be increased. If the contract is not renewed, or if there is any question about its being renewed, California-Pacific will be compelled to seek, or develop, another water supply, if any is available. The present City outside rate has not been shown to be unreasonable. The indications are that the differential between it and the present California-Pacific rate will be diminished if not eliminated in the future. If the Napa Junction system is transferred to City the people living in the area will be assured of adequate water service for the foreseeable future. The Commission deems this point more significant than the present difference in rates heretofore discussed.

Protestants next contend that if the Napa Junction system is transferred to City the residents of the area would have no effective means of protecting themselves against possible future arbitrary action by City relating to rates or service. It is argued that the system would be controlled by the Napa City Council,

and that the Napa Junction residents would have no voice in selecting members of the council. As indicated, City would take the system subject to the public utility duties and obligations of California-Pacific, and no action by the city council could alter or change these duties and obligations. It is true that in the first instance matters relating to water service would be passed upon by City. However, these actions are subject to review by the superior court. (Fellows v. City of Los Angeles, 151 Cal. 52; Rutherford v. Oroville-Wyandotte Irr. Dist., 218 Cal. 242; Henderson v. Oroville-Wyandotte Irr. Dist., 207 Cal. 215; Durant v. City of Beverly Hills, 39 Cal. App. 2d 133.)

Association contends that the Napa Junction system should not be transferred because it would prefer regulation by this Commission to review of service and rate matters by the superior court. A mere preference between two adequate modes of protecting the rights of the customers in the Napa Junction area is entitled to little weight, when considered in the light of the entire record developed herein.

American Canyon contends that it is the entity which should eventually provide water service to the area. It was formed in 1961 primarily to provide sanitation facilities. The boundaries of American Canyon are not as extensive as those of the Napa Junction system, but it has authority to render service outside of its boundaries. At the hearing evidence was adduced to indicate that at that time the district had no funds to provide for the engineering or construction of any facilities; that a bond issue to provide for \$345,000 of general obligation bonds to be used only for the construction of sewage facilities had failed to pass in November of

1962; that certain lands had subsequently been eliminated from the district, and that another bond election to provide funds for the construction of sewage facilities was pending before the electorate.

There is conflicting evidence in the record, but it indicates that the tax rate in the American Canyon area is either \$9.69 or \$10.64 per \$100 of assessed valuation. Witnesses on behalf of the district testified that in order to develop a water system American Canyon would attempt to get federal funds to provide for an engineering report and feasibility study to provide water service for the district and that if water service were deemed feasible, American Canyon would attempt to get a loan under the Davis-Grunsky Act from the State Department of Water Resources. American Canyon admits that it would not construct any water distribution facilities initially. It proposes to take over the California-Pacific facilities and then expand the distribution system. There is, however, considerable doubt whether Davis-Grunsky funds, if available, can be used for the purchase of an existing private public utility water system. In addition, the consulting engineer who testified in behalf of American Canyon indicated that no work on a specific water system had been done; that he had no idea of the estimated cost of constructing a water distribution system for the district; that he had not developed any preliminary cost estimates of the capital required for American Canyon to be in a position to render water service; and that he could not make any assumptions respecting prospective rates for water service because there is no certain source of water for the district at the present time. A director of American Canyon also testified that if a Davis-Grunsky loan were obtained, it would be necessary for the district to secure a 10-year

moratorium and pay only the interest until the district became large enough to make payments on the principal.

It is apparent from the foregoing that the probability of American Canyon being able to acquire the Napa Junction system in the next few years is highly speculative and conjectural. The Commission is of the opinion that such a remote possibility should not be permitted to defeat the transfer here under consideration.

Although this decision does not rely on this point, it should be noted that at the hearing City indicated that the present policy of the City is that at such time as American Canyon or an incorporated city in the Napa Junction area had an adequate separate water source and financial ability to purchase the system, City would favorably consider selling it to such purchaser.

After the matter was submitted, American Canyon filed a "Petition to Set Aside Submission and Re-Open Proceedings for the Taking of Additional Evidence". City and California-Pacific oppose the granting of the petition. The petition avers that if the proceeding is reopened American Canyon could prove that the sewer bond election, which was pending at the time of the hearing, resulted in the electorate authorizing \$275,000 in general obligation bonds for the construction of sewers, that it had filed with this Commission Application No. 46698, which is a petition of the second class setting forth the district's intention to submit to its voters a proposition to acquire the Napa Junction system and requesting the Commission to fix the just compensation under such circumstances; that the Department of Water Resources had determined that American Canyon is a public agency of the type defined in the Davis-Grunsky Act and that the project, insofar as it pertains to the replacement

of old facilities and construction of new works, is an eligible project as defined in the Act.

The Commission has carefully considered the petition to reopen and finds that the evidence which American Canyon seeks to present, if established, would not affect the disposition of this matter.

Finally, protestants contend that the granting of this application would inhibit the development of a County water plan. There is no merit in this contention. It appears that there is a local controversy in Napa County involving City's participation in certain phases of the State Water Plan. County, through the Napa County Flood Control and Water Conservation District, has contracted with the State to take a maximum of 25,000 acre feet per year from the North Bay Aqueduct, which is to be constructed by 1980. County is obligated to make capital increment and transportation payments under the contract. However, the contract is not financially feasible unless City takes 50 percent of the water supplied by the State. City has not agreed to do this, and has indicated it is exploring the possibility of obtaining a different source of supply for future water needs. Also, it appears that County and the Farm Bureau gave support to the passage of the bond issue, enabling City to secure the funds to purchase the Napa Junction system, with the hope that if City acquired the system it would import water from the City of Vallejo and make City water available to other areas in the County.

The Commission is not the proper forum to resolve such disputes between City and County over water development matters. Where appropriate, the Commission will consider and give weight to

the impact of a prospective transfer on the development and use of water resources in the area. This is not such a case. The record discloses that the water needs of the Napa Junction system amount to 450-500 acre feet per year. City presently supplies that amount and is obligated, under contract, to do so until 1970. Denial of this application would have no effect until at least 1970 on the source of the water supply for the Napa Junction system. It would not compel Napa to make its water available elsewhere. Denial of the application would, however, cast doubt about the future source of water for the area. Denial would also cause California-Pacific to employ personnel and perhaps make capital improvements which would not be necessary if the system is transferred to City.

Various conditions precedent requested by American Canyon if a transfer is authorized deal with matters of legal rights heretofore discussed. There is no need for such conditions. Other requested conditions are not warranted. No other points require discussion.

The Commission makes the following findings and conclusions.

Findings of Fact

1. The proposed transfer of the Napa Junction system from California-Pacific to City is not adverse to the public interest.
2. No good reason has been shown to set aside submission and reopen the proceeding.

Conclusions of Law

1. The application should be granted as hereinafter provided.
2. The "Petition to Set Aside Submission and Re-Open Proceedings for the Taking of Additional Evidence" should be denied.

O R D E R

IT IS ORDERED that:

1. Within one year after the effective date of this order, California-Pacific Utilities Company may sell and transfer its Napa Junction Water System to the City of Napa in accordance with the terms and conditions of the "Contract of Purchase" executed by the parties on September 3, 1963, which is attached to the application as Exhibit C, as amended only with respect to termination date. This authority shall not be effective until the City of Napa files with the Commission a stipulation that, as to the service, rules and rates it will apply in the service area of the system herein authorized to be transferred, it will not discriminate between service rendered outside the city limits of Napa and service rendered within said city limits, except insofar as it may adjust such outside rates and charges to offset any reasonable tax burden sustained by water users within the city in providing for the operation of the municipal water system.

2. On or before the actual date of transfer California-Pacific Utilities Company shall refund all customers' deposits which are subject to refund. Within ten days thereafter, California-Pacific Utilities Company shall advise the Commission, in writing, that such refunds have been made.

3. Within ten days of the actual transfer, California-Pacific Utilities Company shall notify the Commission, in writing, of the date upon which the transfer was consummated.

4. Upon completion of the sale and transfer herein authorized and all of the terms and conditions of this order, California-Pacific

Utilities Company shall stand relieved of its public utility obligations and liabilities in connection with the utility system herein authorized to be transferred.

5. The "Petition to Set Aside Submission and Re-Open Proceedings for the Taking of Additional Evidence" filed by the American Canyon County Water District is hereby denied.

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

Dated at San Francisco, California, this 13th day of OCTOBER, 1964.

Frederick B. Holoboff
President
Ed S. Hutchins
George G. Grever
William B. Bennett

Commissioners

Commissioner George G. Grever, being necessarily absent, did not participate in the disposition of this proceeding.