

ORIGINAL

Decision No. 68108

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

FIRST SUPPLEMENTAL ORDER

On October 13, 1964, in Decision No. 68010, the Commission authorized California-Pacific Utilities Company to sell to the City of Napa certain public utility property located near but outside the city. Ordering Paragraph 1 of that decision provided:

- "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."

By letter, the City has now requested elimination of the reference to taxes in the language of the required stipulation. Under the doctrine *expressio unius est exclusio alterius*, it is suggested that this specific reference to taxes might be construed to foreclose other reasonable grounds (such as differences in cost of delivering water) for charging higher rates outside the city.

The reference to taxes had no such purpose. In this case, as well as others where a similar stipulation has been required, taxes have been mentioned simply to make sure that they would not be ignored because of the indirect relationship between taxes and utility charges. The City does not disagree with this interpretation but it does seek to remove the possibility of future misunderstanding. In the interests of clarification, a revised stipulation will be authorized.

It bears emphasis: (1) that no change in the consideration to be given any such tax burden is contemplated by the revision of language which is authorized hereby; and (2) that even without this language change, the stipulation in Ordering Paragraph 1 of Decision No. 68010 was not designed to exclude, and did not exclude, consideration of other reasonable grounds for rate differentials.

Good cause appearing, Ordering Paragraph 1 of Decision No. 68010 is hereby amended to read as follows:

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 unfairly or unreasonably discriminate between service rendered outside the city limits of Napa and service rendered within said city limits.

The effective date of this First Supplemental Order shall be the date hereof.

Dated at San Francisco, California, this 30th day of OCTOBER, 1964.

Frederick B. Hallock
President
William W. Bennett
Elliott C. Page
George T. Grover

Commissioners

Commissioner Peter E. Mitchell, being necessarily absent, did not participate in the disposition of this proceeding.