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ORIGINAL

Decision No. 68404

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

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.

Graham James & Rolph, by Boris H. Lakusta,
for American Canyon County Water District;
William L. Knecht, for Napa County Farm Bureau
and California Farm Bureau Federation, protestants.
James F. Haley, for the Commission staff.

THIRD SUPPLEMENTAL ORDER

Following extensive public hearings, the Commission on
October 13, 1964, issued Decision No. 68010 granting California-
Pacific Utilities Company authority to sell its Napa Junction
System located near the City of Napa to the City. In accordance
with Commission practice, a stipulation by the City that it will
not discriminate against customers outside the City was made a
condition of the transfer. Ordering Paragraph 1 of Decision
No. 68010 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."

Thereafter, before the effective date of the decision, the City by letter requested a revision of the language of the required stipulation to make it clear that all reasonable grounds for rate differentials would be permitted and not merely the ground of municipal tax subsidy which was specifically mentioned in Ordering Paragraph I. The subject of rate differentials was discussed in Decision No. 68010, and it was implicit in that discussion, and the Commission intended, that other reasonable grounds for such differentials (including differences in the cost of delivering water) would be proper. Accordingly, there appeared to be no reason why the language of the required stipulation should not be clarified, and the Commission on October 30, 1964 issued ex parte a First Supplemental Order (Decision No. 68108). The First Supplemental Order was not designed to change the substance of

Ordering Paragraph 1, but, in the interests of clarification, a revised stipulation was authorized. The First Supplemental Order modified Ordering Paragraph 1 of Decision No. 68010 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 First Supplemental Order was made effective on the date it was issued, three days before the effective date of Decision No. 68010.

After the issuance of the First Supplemental Order, the American Canyon County Water District, a protestant in the proceeding, filed a petition to reopen. The petition alleged that the First Supplemental Order was issued without notice and without affording the district an opportunity to be heard. The petition also alleged that, although the district was "disappointed" in Decision No. 68010, it had decided not to seek rehearing of the

decision; that the revised stipulation authorized by the First Supplemental Order was more than a clarification of the original Ordering Paragraph 1; and that the district was deprived of an opportunity to petition for a rehearing of the decision as modified.

As indicated, the Commission did not consider the First Supplemental Order to be a substantive change of Decision No. 68010. However, on consideration of the petition to reopen, the Commission was of the opinion that the district should be afforded an opportunity to present argument on the subject. Therefore, the Commission on December 9, 1964, issued a Second Supplemental Order (Decision No. 68319) which stayed the operative effect of the original decision and First Supplemental Order and provided for a hearing at which the district might present argument on the First Supplemental Order and Ordering Paragraph 1 of Decision No. 68010. The district and applicants agreed to an early hearing on short notice, and a duly noticed public hearing was held before Commissioner Grover and Examiner Jarvis at Napa on December 14, 1964. The matter was submitted on that date.

At the hearing on the motion to reopen, the district requested that the proceeding be reopened for the taking of additional evidence. However, the district was unable to point to any specific item of evidence which it could introduce if the proceeding were reopened. Since it does not know what evidence it would produce, the district cannot, and does not, allege that such evidence was newly discovered and unavailable at the time of the hearing in this matter.

We have considered the arguments made at the hearing of December 14, 1964, in light of the entire record herein, and we are of the view that our original decision, as modified by the

First Supplemental Order, is in the public interest. We so find. No justification has been presented for reversing our original determination that the transfer should be authorized. Moreover, the stipulation provided for in the First Supplemental Order is in the public interest because it looks to "reasonableness" as the proper standard for the City's treatment of customers who reside beyond the City's boundaries. It would be contrary to the public interest to impose upon the transfer a condition that the City extend any unreasonable preference to outside customers.

The district has not shown that Ordering Paragraph 1 of the First Supplemental Order is more than a clarified restatement of Ordering Paragraph 1 of the original decision. The district has failed to show that it has discovered evidence which was unavailable at the time of the main hearing in the matter. The district has failed to indicate any way in which the original decision as modified is unlawful or not in the public interest.

Therefore, good cause appearing,

IT IS ORDERED that:

1. The petition of the American Canyon County Water District to reopen the proceeding is denied.
2. Ordering Paragraph 4 of the Second Supplemental Order (Decision No. 68319) is hereby vacated.

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

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

Frederick B. Hallock
President
Arthur Mitchell
Walter A. [unclear]
George T. Trover
William B. [unclear]
Commissioners