

Decision No. 91565 APR 15 1980**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
 SAN JOSE WATER WORKS, a corporation,
 and THE CAMPBELL WATER COMPANY, a
 corporation, for a hearing on the
 fairness of the terms and conditions
 of an agreement of merger between
 San Jose Water Works and The Campbell
 Water Company and, following such
 hearing, for an order authorizing (1)
 the issuance by San Jose Water Works
 of additional shares of its common
 stock in exchange for outstanding
 shares of common stock of The Campbell
 Water Company, (2) the merger of The
 Campbell Water Company into San Jose
 Water Works, (3) commencement of
 service by San Jose Water Works in
 the Territory now served by The
 Campbell Water Company, and (4) the
 issuance by San Jose Water Works of
 an additional amount of its First
 Mortgage Bonds.

Application No. 59390
 (Filed January 18, 1980)

McCutchen, Doyle, Brown & Emersen, by
A. Crawford Greene and Wayland M.
 Brill, Attorneys at Law, for
 San Jose Water Works, and
 Orrick, Herrington, Rowley & Sutcliffe,
 by Robert T. Sullwold and Walter G. Olson,
 Attorneys at Law, for The Campbell
 Water Company, applicants.

O P I N I O N

By joint application filed January 18, 1980, San Jose
 Water Works (San Jose) and The Campbell Water Company (Campbell),
 request an order from the Commission authorizing, pursuant to
 Sections 818, 822, and 852 of the Public Utilities Code, and

after hearing: (1) the discontinuance of Campbell's obligation to provide public utility water service upon consummation of the proposed merger with San Jose; (2) the merger of Campbell into San Jose and the issuance to each common shareholder of Campbell 3.1 shares of common stock of San Jose for each share of Campbell common stock so held by such shareholder; (3) the commencement of water service by San Jose in the territory now served by Campbell at the respective rates now charged by Campbell and in accordance with the applicable rules of San Jose; and (4) the issuance by San Jose of an additional amount of its First Mortgage Bonds.

Notice of the application was published in the Commission's Daily Calendar of January 23, 1980; and no inquiries or protests were received respecting the application. Further, members of both the Commission's Revenue Requirements Division and the Hydraulic Branch reviewed the subject application and recommended its ex parte approval. However, applicants requested a public hearing on the fairness of the merger in order that the issuance by San Jose of its shares of common stock in exchange for the outstanding shares of Campbell may be exempt from the provisions of the Federal Securities Act of 1933 in accordance with Section 3(a)(10) thereof.

Notice of hearing was provided to applicants, interested parties, and all of the holders of the outstanding shares of common and preferred stock of Campbell. The hearing was held on March 20, 1980, and submitted that same day. Mr. J. W. Weinhardt, President of San Jose, and Mr. Homer Hyde, President of Campbell, appeared, testified, and sponsored exhibits respecting the nature, the terms,

and the mechanics of the proposed merger. No members of the public and no shareholders of either company other than the two principal officers appeared.

Terms of the Merger

San Jose and Campbell have introduced their proposed Agreement of Merger (Exhibit G) by which the parties agree that on the effective date of the merger each outstanding share of Campbell common stock will be converted into 3.1 shares of San Jose common stock and each outstanding share of Campbell preferred stock will be surrendered for cancellation upon payment therefor of a price of \$25 per share.^{1/} Testimony was presented indicating that the 3.1 exchange ratios of San Jose common stock for Campbell common stock was reached in arm's-length negotiations between representatives of the two companies after careful consideration of relative book values, earnings, and other relevant factors.

Upon the merger, San Jose will be subject to all liabilities and obligations of Campbell. All outstanding Campbell mortgage notes are held by Pacific Mutual Life Insurance Company (Pacific Mutual) and total \$921,300. San Jose proposes to issue \$921,300 principal amount of its First Mortgage 8.45 percent Bonds, Series W, under its original indenture to Bank of America National Trust and Savings Association, its twenty-six supplemental indentures, and its proposed Twenty-Seventh Supplemental Indenture (Exhibit E), which will create and prescribe the terms of the Series W Bonds. San Jose proposes to exchange its Series W Bonds for the Campbell mortgage notes held by Pacific Mutual and has presented evidence of a commitment (Exhibit J) from Pacific Mutual approving such an exchange on the basis that the principal amount of the Series W Bonds will

^{1/} Campbell has currently outstanding 11,300 shares of common stock and 2,000 shares of preferred stock.

be 100 percent of the principal amount of the Campbell mortgage notes now outstanding and the interest rate of the Series W Bonds will be 8.45 percent.

Discussion

San Jose's service area completely surrounds that of Campbell. San Jose has approximately 178,400 customers and 250 employees. Campbell has 5,300 customers and 8 employees. Applicants ascertained that the undepreciated book cost of the Campbell properties to be merged into San Jose was \$3,282,666 as of November 30, 1979; the undepreciated book value of San Jose's plant as of November 30, 1979 was \$137,461,396.

Upon the merger, it is anticipated that all Campbell employees will be retained in the employ of San Jose. San Jose has management depth and continuing growth potential, while Campbell because of its location and the development of its service area, has limited growth potential. San Jose expects to achieve some economies as a result of the merger through savings in Campbell's administrative expenses.

San Jose's sources of supply are from the underground, surface run-off, and purchases from the Santa Clara Valley Water District. Campbell's sources are from the underground and purchases from the District. Physical integration of the two systems can be achieved relatively easily and inexpensively. Both systems are physically in good condition and historically have a record of providing good service to their customers. Following the merger, San Jose will retain the Campbell rates in effect for service furnished in the former Campbell service area. At such time as San Jose files its next general rate increase application with the Commission, it intends to request authority to make its rates applicable throughout its entire service area, including the former Campbell service area.

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After careful review of the record in the proceeding and based upon the foregoing, the Commission concludes that the merger between San Jose and Campbell is sound and reasonable economically and operationally and that it will be in the public interest. Therefore, the Commission will grant all authorizations sought by San Jose and Campbell in Application No. 59390.

Findings of Fact

1. The terms and conditions of the proposed Plan and Agreement of Reorganization between between San Jose and Campbell, set forth in Exhibit G attached to the application, are fair.

2. The terms and conditions of the proposed Agreement of Merger between San Jose and Campbell, set forth in Exhibit G attached to the application, are fair.

3. Issuance by San Jose, upon the merger, of 3.1 shares of its common stock in exchange for each of 11,300 shares of common stock of Campbell is fair.

4. Payment by San Jose of cash in lieu of issuance of fractional shares of its common stock pursuant to the terms of the Agreement of Merger is fair.

5. Payment by San Jose of \$25 per share in cancellation of 2,000 outstanding shares of Campbell preferred stock is fair.

6. The proposed transactions will not be adverse to the public interest.

7. The proposed Twenty-Seventh Supplemental Indenture of San Jose, Exhibit H to the application, will not be adverse to the public interest.

8. The sinking fund and redemption provisions of the proposed Twenty-Seventh Supplemental Indenture are reasonable.

9. The proposed issuance by San Jose of its First Mortgage 8.45 percent Bonds, Series W, will be for proper purposes.

10. There is no known opposition and there is no reason to delay granting the authority requested.

11. The money, property, or labor to be procured or paid for by the issue of the common stock and bonds herein authorized is reasonably required for the purposes specified herein, which purposes are not, in whole or in part, reasonably chargeable to operating expenses or to income.

Conclusion of Law

The application should be granted to the extent set forth in the order which follows.

The authorization herein granted is for the purpose of this proceeding only, and is not to be construed as indicative of amounts to be included in proceedings for the determination of just and reasonable rates.

O R D E R

IT IS ORDERED that:

1. The Commission approves the terms and conditions of the Plan and Agreement of Reorganization and the Agreement of Merger between San Jose Water Works (San Jose) and The Campbell Water Company (Campbell), set forth at Exhibit G to the application, and Campbell may merge into San Jose in accordance with the provisions of said Agreements.

2. San Jose may issue to each common shareholder of Campbell 3.1 shares of common stock of San Jose for each share of common stock of Campbell so held by such shareholder and may pay cash in lieu of issuance of fractional shares, all in accordance with the provisions of said Agreement of Merger.

3. San Jose may pay the holder of each outstanding share of Campbell preferred stock \$25 per share upon surrender of such shares for cancellation.

4. San Jose may execute and deliver a Supplemental Mortgage of Chattels and Trust Indenture (Twenty-Seventh Supplemental Indenture) in substantially the same form as Exhibit H attached to the application.

5. San Jose, for the purposes specified in the application, may issue \$921,300 principal amount of its First Mortgage 8.45 percent Bonds, Series W.

6. San Jose shall file with the Commission the report required by General Order No. 24-B, which order, insofar as applicable, is hereby made a part of this order.

7. Within thirty days after consummating the merger herein authorized, San Jose shall notify the Commission, in writing, of that fact.

8. On the date of actual merger, San Jose shall file with the Commission, by advice letter, a notice of adoption of the tariff schedules then in effect of Campbell. The effective date of the notice of adoption shall be the date of actual merger.

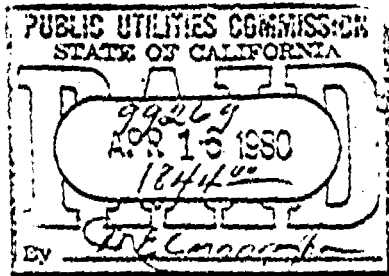
9. Within sixty days after the effective date of the merger herein authorized and in accordance with the requirements of General Order No. 96-A, San Jose, as part of its tariffs, shall refile the tariff maps and rate schedules applicable to the area served by Campbell, and the rules and standard forms of the companies to be merged may be standardized to the extent that they do not result in increases in rates or more restrictive conditions than those then in effect.

10. San Jose shall fulfill the public utility obligations of Campbell and may integrate the water system of Campbell into that of San Jose.

11. Upon compliance with all the conditions of this order, Campbell shall stand relieved of all further public utility obligations pertaining to the operations of the public utility water system herein authorized to be merged.

12. This order shall become effective when San Jose has paid the fee prescribed by Section 1904(b) of the Public Utilities Code, which fee is \$1,844. Unless exercised, any authority herein granted will expire on July 31, 1980.

Dated APR 15 1980, at San Francisco, California.



President
Veran L. Stevenson

Hubert W. Horvath

Clayton J. Pedrial

James M. Quinn
Commissioners

Commissioner John E. Bryson,
being necessarily absent, did
not participate.