

Decision PROPOSED DECISION OF ALJ HAGA (Mailed 4/26/2016)

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Application of SJW Corp., a California corporation, SJW Group, Inc., a Delaware corporation, and San Jose Water Company, a California public utility (U168W), for approval of the reincorporation of SJW Corp. as SJW Group, Inc.

Application 15-07-027  
(Filed July 30, 2015)

(See Appendix A for List of Parties)

**DECISION AUTHORIZING A UTILITY HOLDING COMPANY TO REINCORPORATE IN THE STATE OF DELAWARE**

**Summary**

This decision grants authority pursuant to Public Utilities Code Section 854(a) for SJW Corp., the parent company of San Jose Water Company, to change its state of incorporation from California to Delaware.

**1. Factual Background**

On July 30, 2015, San Jose Water Company, SJW Corp., and SJW Group, Inc., collectively (the Applicants), filed Application (A.) 15-07-027. The Applicants seek to implement a reincorporation of San Jose Water Company's holding company, SJW Corp., from its present form as a California corporation to a new form as a Delaware corporation, to be known as SJW Group, Inc. (hereinafter reorganization or reorganization transaction). Applicants seek the

Commission's approval for this reorganization under Public Utilities Code Section 854(a).

### **1.1. The Reorganization Plan**

SJW Group, Inc. is a wholly-owned subsidiary of SJW Corp. After Commission approval is received, the reorganization transaction will be accomplished through the merger of SJW Corp. with SJW Group, Inc. SJW Group, Inc., will be the surviving company after the merger. The holding company for San Jose Water Company will change from SJW Corp., a California corporation, to SJW Group, Inc., a Delaware corporation. No change is proposed for San Jose Water Company's assets, liabilities, management, or operations. San Jose Water Company will remain incorporated in California, and no utility property will be transferred.

The end result of the reorganization will change the governance of the holding company's corporate affairs and transactions from the requirements of California law to those of Delaware law. Applicants assert that the certainty and predictability of Delaware corporate law will provide greater confidence to lenders and investors which will in turn help ensure adequate capitalization and efficient operation of the holding company.

The equity interest of each shareholder of SJW Corp. will be converted to an equal interest in SJW Group, Inc., and the proportional indirect interest in San Jose Water Company will not change. SJW Group, Inc., will retain the same principal executive offices and telephone numbers of SJW Corp., and the officers and directors of SJW Corp. will continue to serve in the same capacity for SJW Group, Inc.

**1.2. Procedural Background**

On September 14, 2015, the Office of Ratepayer Advocates (ORA) moved to intervene and protest the application. ORA sought to determine what impacts if any the reorganization may have on ratepayers, and raised a specific concern about the continued applicability of the Commission's affiliate transactions rules after the reorganization transaction was complete.

A prehearing conference was held on September 30, 2015, and the scoping memo for this proceeding was issued on November 3, 2015. Evidentiary hearings were held concurrent with the prehearing conference on September 30, 2015. During the hearing the Applicants agreed to submit supplemental testimony and declarations to address a number of questions from the assigned Administrative Law Judge. Applicants submitted their supplemental testimony on October 30, 2015. ORA submitted its testimony on November 13, 2015, and took into account the various statements presented in Applicants supplemental testimony.

Applicants submitted a motion and accompanying affidavits to move their testimony into evidence on April 14, 2016. Similarly, ORA submitted a motion and an accompanying affidavit to move their testimony into evidence on April 15, 2016. The motions were granted and the matter was submitted on April 18, 2016.

**1.3. Requested Authority**

Applicants submit their Application pursuant to Public Utilities Code Section 854(a)<sup>1</sup> and Article 2 and Rule 3.6 of the Rules of Practice and Procedure of the Commission.

Anytime a public utility authority in California is transferred, the transaction falls within the meaning of Public Utilities Code Section 854(a). In this case, even though the planned transaction will not result in any practical change of control over the utility, § 854(a) applies. To approve the proposed reorganization the Commission must find the proposal meets the public interest standard that the Commission has historically applied under § 854(a). The purpose of § 854(a) is to require the Commission to review and establish necessary conditions on the transfer of a public utility authority in California.

The Commission has broad discretion to determine if it is in the public interest to authorize a transaction under § 854(a). The Commission typically requires an applicant to show that the proposed transaction is “not adverse to the public interest.” In cases, such as this one, where the reorganization transaction will result in a transfer of the holding company out of our jurisdiction, the Commission has also required applicants to show that the proposed transaction is “in the public interest.”

The Commission has looked at a variety of factors in determining when a proposed transaction will be adverse to the public interest (e.g., economic and financial feasibility, purchase price, value of consideration exchanged, efficiencies and operating cost savings, improved financial flexibility). Not every

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<sup>1</sup> All statutory references are to the Public Utilities Code unless otherwise indicated.

factor found in our case history is relevant to every review under § 854(a), and in this review we have considered the applicable factors to this proposed transaction.

## **2. Issues before the Commission**

The Applicants seek a Commission determination that the proposed reorganization of SJW Corp. is in the public interest. In support of this finding, the Applicants have provided sworn testimony that the transaction will maintain or improve the financial condition, quality of service, and management of San Jose Water Company. Applicants have also provided sworn testimony that the transaction will be fair and reasonable to utility employees, will not harm the local communities served, and does not pose any safety concerns or considerations.

The Applicants added that the reorganization will have no adverse effects on San Jose Water Company's customers. San Jose Water Company also claims that the reorganization transaction does not violate the California Environmental Quality Act (CEQA) as the transaction will not constitute an activity that may cause a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment. Applicants have also provided sworn testimony that the proposed transaction will have no impact on the jurisdiction of the Commission and its capacity to effectively regulate and audit public utility operations in California.

## **3. Discussion and Analysis**

We conclude for the following reasons that it is reasonable to grant the Application. First, ORA's concerns regarding the applicability of the Commission's affiliate transaction rules to the newly incorporated Delaware holding company have been adequately addressed and there is now no

opposition to the Application. In its supplemental testimony, the Applicants satisfactorily addressed ORA's concerns regarding the Commission's authority over SJW Group, Inc., as required by the Commission's affiliate transaction rules. Second, Applicants have adequately demonstrated that the public will not be harmed by the transaction, as there will be no change to San Jose Water Company's operations, management, or utility rates and services. Third, the public may benefit from the reincorporation to the extent it enhances San Jose Water Company's ability to raise capital and, in turn, to maintain, improve, and expand its services in California. Finally, California reaps benefits from the services provided by public utilities. Thus, it is in the public interest to foster a business climate in California that is hospitable to utilities. Accordingly, this transaction should be approved absent a compelling reason to the contrary. No such reason has been alleged or shown in this proceeding.

### **3.1. California Environmental Quality Act (CEQA)**

Public Resources Code Section 21080 et seq., known as the California Environmental Quality Act (CEQA), may require environmental review of projects that are subject to the Commission's discretionary approval. A change of ownership will not result in a project subject to CEQA unless a change of ownership or control may result in a physical change to the environment by altering an existing project, resulting in new projects, or changing facility operations. That does not appear to be the case here.

No expansion or alteration of existing physical facilities or water resources will occur, nor will any new facilities be constructed or new water resources employed as a result of the reorganization transaction. Further, no change in the use of San Jose Water Company's facilities or resources is proposed. A proposed "activity [that] will not result in a direct or reasonably foreseeable indirect

physical change in the environment” is exempt from CEQA. Similarly, where “it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA.”

Based on the record before this Commission, the proposed project qualifies for multiple exemptions from CEQA, including CEQA Guideline § 15060(c)(2) as having no direct or indirect physical change in the environment, and § 15061(b)(3) as having no significant impact on the environment. Consequently, there is no need for further environmental review.

#### **4. Conclusion**

The request of San Jose Water Company, SJW Corp., and SJW Group, Inc. for SJW Corp. to merge with SJW Group, Inc., with the resultant change in the holding company for San Jose Water Company to be SJW Group, Inc., is approved. It does not appear that the public will be harmed by the transaction and the public may benefit from the reincorporation.

#### **5. Comments on Proposed Decision**

The proposed decision of Administrative Law Judge Robert W. Haga in this matter was mailed to the parties in accordance with Public Utilities Code Section 311, and comments are allowed pursuant to Rule 14.3 of the Commission’s Rules of Practice and Procedure. Comments were filed May 2, 2016.

#### **6. Assignment of Proceeding**

Liane M. Randolph is the assigned Commissioner and Robert W. Haga is the assigned Administrative Law Judge in this proceeding.

**Findings of Fact**

1. San Jose Water Company is a corporation organized and existing under the laws of the state of California providing water service as a public utility in California.
2. SJW Corp. is a California corporation that is the corporate holding company that owns San Jose Water Company.
3. SJW Group, Inc. is a Delaware corporation that is a wholly-owned subsidiary of SJW Corp.
4. San Jose Water Company, SJW Corp., and SJW Group, Inc., collectively (the Applicants) filed A.15-08-027 on July 30, 2015.
5. ORA filed a motion for party status on September 14, 2015, and the motion was granted on September 30, 2015.
6. The Applicants submit their Application pursuant to Public Utilities Code Sections 701 and 854(a).
7. The Applicants seek to implement a reorganization plan resulting in a change to the state of incorporation of the holding company for San Jose Water Company from California to Delaware.
8. The reorganization plan is similar to others previously approved by the Commission.
9. SJW Group, Inc., is a new Delaware corporation created to be the surviving entity after its merger with SJW Corp.
10. SJW Corp. shareholders will have their shares converted to SJW Group, Inc., common stock on a share-for-share basis, and SJW, Group, Inc., will become the sole owner of all San Jose Water Company.

11. The reorganization plan contemplated will not result in San Jose Water Company transferring any of its utility assets or property to SJW Group, Inc., or any other affiliate.

12. The reorganization plan can be accomplished without affecting the rights and preferences of current SJW Corp. shareholders.

13. SJW Corp. shareholders immediately prior to consummation of the reorganization plan will own the same relative percentages of SJW Group, Inc., following consummation of the reorganization plan.

14. All costs associated with securing the necessary approvals for the reorganization plan and implementing the reorganization plan, including any and all costs associated with the formation of SJW Group, Inc., will be borne by SJW Corp. shareholders, and San Jose Water Company will not seek to recover any portion thereof in rates.

15. A valid business purpose exists for the reorganization as it will result in a holding company structure that will offer certainty and predictability for lenders and investors without altering the Commission's ability to effectively regulate San Jose Water Company's utility operations and without any change in the safe, reliable water service San Jose Water Company provides to its customers.

16. The reorganization plan does not involve the sale, lease, assignment, mortgage or other disposition or encumbrance of the utility property of San Jose Water Company.

17. San Jose Water Company has a continuing duty to provide the Commission and all interested parties notice of any material change in the business activities of SJW Group, Inc., that would alter the status of any limited exemptions from Affiliate Transaction Rules.

18. The decision does not authorize any new construction, changes to the operations of San Jose Water Company or other entity, or changes in the use of existing assets and facilities. The decision will not have a significant impact on the environment.

19. The Commission will continue to exercise jurisdiction over San Jose Water Company in the same manner as it does today.

20. There will be no change in San Jose Water Company's day-to-day operations following implementation of the reorganization plan.

21. San Jose Water Company will continue provide safe and reliable water service to its customers in the same manner as before the reorganization plan.

### **Conclusions of Law**

1. San Jose Water Company is subject to the Commission's jurisdiction and after the reorganization will continue to be subject to jurisdiction of the Commission in the same manner as it is today.

2. Public Utilities Code Section 701 provides the Commission the authority to supervise and regulate every public utility in the State, including San Jose Water Company, and provides the Commission authority to exercise regulatory oversight over the reorganization plan submitted by the Applicants.

3. The reorganization plan submitted by the Applicants should be approved.

4. Public Utilities Code Section 854(a) provides that no person or corporation shall merge, acquire, or directly or indirectly control a public utility organized and doing business in California without first securing authorization from the Commission.

5. All proposed transactions seeking Commission approval under Public Utilities Code Section 854(a) must show that the proposed transaction is "not adverse to the public interest."

6. When the Commission considers applications to reorganize that will result in a transfer of the utility holding company out of California, the Commission has adopted a standard of review of “in the public interest.”

7. San Jose Water Company has established a valid business purpose for its holding company to transfer its state of incorporation from California to Delaware.

8. The reorganization plan may be completed and future operations conducted with the assurance that the public interest will continue to be adequately protected.

9. Authorization from the Commission under Public Utilities Code Section 851 is not required because the reorganization plan does not involve the sale, lease, assignment, mortgage or other disposition or encumbrance of utility property.

10. The Commission’s Affiliate Transaction Rules apply to San Jose Water Company and its transactions with affiliates.

11. Upon completion of the reorganization, SJW Group, Inc., will become the parent company for San Jose Water Company and all relevant Affiliate Transaction Rules will be applicable to the parent and utility.

12. The Application qualifies for an exemption from CEQA and there is no need for further environmental review.

## **O R D E R**

### **IT IS ORDERED** that:

1. Application 15-08-027 for authority to complete the reincorporation of SJW Corp. as SJW Group, Inc., is granted.

2. All costs associated with securing the necessary approvals to reincorporate San Jose Water Company's holding company, including any and all implementation costs and any and all costs associated with the formation of the new holding company, and merger of SJW Corp. with SJW Group, Inc., will be borne by San Jose Water Company shareholders, and San Jose Water Company will not seek to recover any portion thereof in rates.

3. Upon consummation of reincorporation transaction and merger, San Jose Water Company must (1) immediately notify the Commission's Division of Water and Audits of the new corporate structure and any new affiliate(s), and (2) post notice of the reincorporation transaction and merger on its electronic bulletin board.

4. Within 60 days of consummation of the reincorporation transaction and merger, San Jose Water Company must file with the Commission's Division of Water and Audits a Tier 2 advice letter reflecting the new corporate structure and demonstrating how the utility will continue to comply with the Affiliate Transaction Rules.

5. San Jose Water Company must comply with its continuing duty to provide the Commission and all interested parties notice of any material change in the business activities of the holding company and/or any intermediate holding company that would alter the status of any limited exemptions from Affiliate Transaction Rules adopted in Decision (D.) 10-10-019, as modified by D.11-10-034.

6. The authority granted by this decision shall expire if not exercised within one year from the effective date of this decision.

7. Application 15-07-027 is closed.

This order is effective today.

Dated \_\_\_\_\_, at San Francisco, California.

**APPENDIX A**  
**Service List**

\*\*\*\*\* SERVICE LIST A1507027\*\*\*\*\*

Last Updated on 25-APR-2016 by: AMT

\*\*\*\*\* PARTIES \*\*\*\*\*

Martin Mattes  
NOSSAMAN LLP  
50 CALIFORNIA STREET, STE. 3400  
SAN FRANCISCO CA 94111-4799  
(415) 438-7273  
mmattes@nossaman.com  
For: San Jose Water Company

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Kerriann Sheppard  
Legal Division  
505 Van Ness Avenue, RM. 4107  
San Francisco CA 94102 3298  
(415) 703-3942  
sk6@cpuc.ca.gov  
For: ORA

\*\*\*\*\* STATE EMPLOYEE \*\*\*\*\*

Mehboob Aslam  
Office of Ratepayer Advocates  
320 West 4th Street, Suite 500  
Los Angeles CA 90013  
(213) 576-7781  
amx@cpuc.ca.gov

Robert Haga  
Administrative Law Judge Division  
505 Van Ness Avenue, RM. 5018  
San Francisco CA 94102 3298  
(415) 703-2538  
rwh@cpuc.ca.gov

Hani Moussa  
Office of Ratepayer Advocates  
320 West 4th Street, Suite 500  
Los Angeles CA 90013  
(213) 576-7033  
hsm@cpuc.ca.gov

\*\*\*\*\* INFORMATION ONLY \*\*\*\*\*

Palle Jensen, Svp - Regulatory Affairs  
SAN JOSE WATER COMPANY (U168 W)  
110 WEST TAYLOR STREET  
SAN JOSE CA 95110-9903  
(408) 279-7970  
palle\_jensen@sjwater.com  
For: Reincorporation of San Jose Water Corp. as SJW Group, Inc.

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(End of Service List)