

ORIGINAL

Decision No. 53765

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
DICK R. FRIESEN for a Certificate of
Public Convenience and Necessity and
for the Establishment of Rates for
Water Service to Angwin and vicinity
in Napa County.

Application No. 36736

Investigation on the Commission's own
motion into the status, operations,
practices, contracts, rules, charges,
and service of DICK R. FRIESEN and of
J. H. CHAMPION in the furnishing of
water in and near the community of
Angwin, Napa County, California.

Case No. 5683

Lowell Palmer, for Dick R. Friesen.
Athern, Chandler & Hoffman; by Leigh Athern,
for Angwin Chamber of Commerce; Warren C.
Holst, in propria persona; L. F. Noonan,
for L. F. and K. W. Noonan; H. L. Shull,
for Pacific Union College; William C. Hume,
in propria persona and for Doris M. Bovee,
interested parties.
J. H. Champion, in propria persona.
John D. Reader and Cyril M. Saroyan, for the
Commission staff.

O P I N I O N

Nature of Proceeding

Dick R. Friesen, by an application filed February 16, 1955, seeks a certificate of public convenience and necessity for the operation of his water system and the prescription of appropriate rates therefor, said certificate and rates to include only the customers served or who had ever been served in the community of Angwin and its vicinity, in Napa County. Applicant alleges that his water supply is limited and that wells are not feasible. Accordingly, he requests that he not be required to extend his mains or services to additional consumers.

Case No. 5683, an investigation by the Commission on its own motion, was instituted on September 27, 1955, following partial hearings at Angwin on the Friesen application on June 9 and 29, 1955, before Examiner John M. Gregory. During the course of those hearings the evidence disclosed that Friesen, for several years, had supplied water through a meter to one J. H. Champion, who, in turn, had supplied a substantial number of persons with water, for compensation, on land he had previously divided and sold in the vicinity of the Sanitarium "Y", some two miles southwesterly of the southern portion of Friesen's principal water service facilities at Angwin.

The investigatory order contemplates the determination of a number of issues: (1) whether Friesen or his predecessors had dedicated properties to public use as a "water corporation" within the meaning of the Public Utilities Code; if so, what properties have been so dedicated and into what areas has there been a holding out of public utility water service; (2) whether Champion or his predecessors have made similar dedications of properties and service and to what extent; (3) whether shortages of water supply exist in the area, or if either of respondents' systems has reached the limit of its capacity to supply water, so as to warrant imposition of restrictions against service to new or additional consumers or extensions beyond presently served areas; (4) whether the service or facilities of either respondent are adequate and whether either or both should be directed to make repairs or improvements to existing facilities; (5) whether the facilities used by respondents constitute a single water system or are two distinct systems; if the latter, whether the areas served by each should be defined or otherwise limited.

The Commission's investigation was heard on a joint record with Friesen's application on November 1, 1955, at Angwin, when the two matters were submitted for decision.

History and Description of Friesen System

The record, aided by an investigation report and appraisal of the properties prepared by an engineer of the Commission's staff, discloses that the initial works of the system, consisting of springs and a pipeline within and adjacent to the White Cottage Ranch on Howell Mountain, were installed about 1870 by parties named Goetche and Henne, who served water to neighbors until 1906, when the springs failed. In 1911, some of these consumers made arrangements to obtain water from Pacific Union College, located at Angwin, through a pipeline cross-connection at the ranch.

Friesen purchased the White Cottage Ranch in 1930 and continued to distribute water to his neighbors. In 1931 he drilled a well and developed new springs to meet increased demands of new customers. In the years following, he constructed four earth-fill dams to impound run-off water from ranch land and in 1945 he drilled two additional wells. In 1948, pursuant to an agreement with Pacific Union College, dated February 27, 1948, he acquired certain mains, meters and facilities owned by the College and used by it to supply domestic water service to some 70 homes near its campus, occupied principally by persons connected with the institution. The transfer of properties was completed in 1949, when the two water systems were combined by the construction of a new pipeline and two concrete reservoirs.

Some eight years prior to the acquisition of these 70 or 80 domestic consumers, Friesen had entered into a written agreement, dated February 21, 1941, to sell 20 acre-feet of irrigation water, annually until 1959, to the College from his earth-fill reservoirs, at a price of \$10 per acre-foot, metered as it enters the pipeline which was to be constructed and owned by the College on a right-of-way granted by Friesen. The contract also provided that Friesen would furnish an additional 16 acre-feet annually, during its term, as the

College's remuneration for its part in the construction of a fifth dam on Friesen's watershed lands. The amount of water to be delivered under the agreement is subject to curtailment during periods of short supply due to lack of rainfall. The record indicates that the College has relinquished its former contractual right to the additional 16 acre-feet of water. The College, with its total enrollment now more than 1,100, receives its supply of water for domestic and other uses from its own springs, which have shown a tendency, in recent years, to decrease in volume. Its plans for expansion, according to the record, hinge very largely on the availability of an adequate supply of water in the future.

As the activities of Pacific Union College figure extensively in the economy of the area here involved, its relationship to the Friesen water system constitutes an important factor in the determination of the extent to which that system may be capable of providing adequate service to present consumers, as well as to those in the area who may desire to develop their properties, concerning which more will be said later.

Friesen obtains his water supply chiefly from impounded seasonal rainfall run-off, amounting normally to about 375 acre-feet, together with water from three low-yield springs and three low-capacity wells, amounting to an additional 10 to 13 acre-feet annually. His reservoirs (six at the time of the hearing) had a total capacity of between 255 and 287 acre-feet below spillway levels. Storage behind dams, with the exception of Orville Lake (used to supply irrigation water to the College) can be individually or collectively diverted by gravity to his filter plant, which has a capacity of about 2,200 gpm. The transmission and distribution system includes five concrete storage reservoirs, with a combined capacity of about 686,000 gallons; booster pumps, and transmission and distribution mains totalling approximately 47,000 feet in length and ranging in

diameter from 1½ to 6 inches. The system appears to be above average regarding construction features, efficiency of performance and capacity to serve present customers. Metered usage in 1954 totalled about 139 acre-feet, including 25 acre-feet to Champion's meter and users below him.

As of November 1, 1955, Friesen served, or considered himself obligated to serve, 500 customers, classified as follows:

1. Metered consumers, including irrigation water to the College, 23 disconnected services and 33 metered customers in the Sanitarium "Y" area who pay Champion for water —	296
2. Potential customers Friesen has promised to serve —	29
3. Multiple services; i.e., additional units receiving service through a single meter, including 20 in Champion's area and possibly 2 more, the latter pursuant to an understanding with Champion —	169
4. Potential connections to six lots of an unrecorded subdivision project of L. F. Noonan, totalling 67½ acres, in a portion of Lot 7 of La Jota Rancho —	6
Total	500

There was some indication in the record that Friesen also distributed about 25 acre-feet of water annually to the St. Helena Sanitarium, located between Angwin and St. Helena. Friesen's testimony, however, was to the effect that water for the Sanitarium is supplied from springs in Bell Canyon watershed, some 1,500 feet below Angwin, through a pipe line owned by that institution. The nature of the arrangements between Friesen and the Sanitarium was not fully developed on the record, although there is some evidence to the effect that the Sanitarium is paying Friesen in the neighborhood of 10 cents per 100 cubic feet for this water. In any event, the water from the Bell Canyon springs does not appear to be presently available for use on Friesen's system in Angwin and its surrounding area. Consequently, that amount of water, estimated at 25 acre-feet, should not be considered as available for system use.

Assets, Revenue and Expense and Rate Data

Friesen has not maintained an accounting procedure which would permit expenses, income and capital investment to be readily

segregated between his ranch and water system operations. Moreover, Friesen, in his application, did not include any of his gathering reservoirs or dams as assets to be capitalized for the rendition of the public utility service for which he seeks a certificate. One of these reservoirs (Whitehead), with a capacity of 65 acre-feet according to Friesen and 80 acre-feet according to the appraisal included in the staff engineer's study, has in the past been used for irrigation on Friesen's ranch, although the volume of water devoted to such use was not disclosed. Orville Lake, as has been stated, is the source of supply for irrigation water for the College. The staff engineer estimated its capacity at 44 acre-feet. Friesen estimated the total capacity of the six reservoirs at 255 acre-feet.

The following comparison indicates, very roughly, the recent volume of assets, based on historical cost, and of revenues and expenses of Friesen's system, as shown by his application, by the staff engineer's study and by evidence pieced together from other portions of the record. Applicant's figures are for the end of the year 1954, and the staff engineer's estimates are for the year 1955.

<u>Item</u>	<u>1954 Friesen (Est.)</u>	<u>1954 Staff (Est.)</u>	<u>1955 Staff (Est.)</u>
Fixed Capital	\$102,700	\$118,350	\$127,800
Materials and Supplies	-	1,000	1,000
Working Cash Allowance	-	980	980
Subtotal	<u>102,700^b</u>	<u>120,330</u>	<u>129,780</u>
Less Depr. Res. Requirement	13,810	12,930	15,660
Less Contributions	<u>11,902</u>	<u>11,733</u>	<u>11,798</u>
Depreciated Rate Base	76,988	95,667	102,322
Operating Revenues ^a	9,223	12,540	12,540
Operating Expenses, Excluding Taxes and Depreciation	6,462	6,180	6,180
Taxes.	338	1,228	1,218
Depreciation	2,105	2,372	2,406
Uncollectibles	-	60	60
Net Revenue	<u>318</u>	<u>2,700</u>	<u>2,676</u>
Average Depr. Rate Base	76,988	95,667	102,322
Rate of Return	0.4%	2.8%	2.6%

a At present rates for service.

b Does not include source facilities.

In general, the differences between Friesen's and the staff engineer's estimates stem from the fact that the engineer included the source facilities, which Friesen did not.

Friesen's present monthly rates, for a 5/8-inch meter, are set forth in his application as follows:

First 400 cu.ft.	\$1.25 minimum for one dwelling
Next 400 to 2,400 cu.ft.	.25 cents per 100 cu.ft.
Next 2,400 to 4,000 cu.ft.	.20 cents per 100 cu.ft.
Over 4,000 cu.ft.	.18 cents per 100 cu.ft.
For each additional apartment, dwelling, or business served from the same meter	.50 cents per month service charge

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The average customer usage of water during 1954 was estimated by the staff engineer at 1,300 cubic feet per month.

The Champion System

Jack H. Champion, a nurseryman, receives water from Friesen through a meter located, with other meters, on the Silvershoe Ranch, owned by Warren C. Holst, whose residence, located within the general area of Angwin served by Friesen, is supplied with water through a meter located about 300 yards from the ranch house. The other meters on the Holst Ranch, according to the record, are utilized for service to individuals in the Sunset Point area at the southern end of Friesen's system and whose properties lie outside the boundaries of the Silvershoe Ranch.

A 2-inch pipeline, constructed by Champion and Friesen in 1947 or 1948, connects Champion's meter with his property, some 2 miles southwest, in the vicinity of the Sanitarium "Y". Champion has sold off about 15 or 16 acres of his original holdings and serves water to 33 metered customers and 20 multiple units at rates which are the same as Friesen's, except that Friesen does not charge Champion the 50 cent multiple use surcharge while Champion charges

his multiple metered customers with that amount. Champion bills his customers on billheads furnished by Friesen with Friesen's name cut off the tops of the bills.

In 1947 or 1948, Friesen constructed a 100,000-gallon storage tank near Champion's land on property owned by Mrs. Valentine, Champion's sister, in order to provide more adequate service to consumers in Champion's area. Champion estimated the cost of installation of the tank and about 2,000 feet of 2-inch galvanized pipe to the meter on Holst's ranch at about \$16,000 to \$18,000, with the tank itself accounting for about one-third of that sum.

The record suggests that Friesen made the water available to Champion in 1947 after L. F. Noonan's project for a subdivision on Lot 7 of La Jota Rancho failed to materialize, with the result that there was a possibility of Friesen losing the right to that amount of water for failure to apply it to beneficial use. In any event, the record shows that Champion and his "customers" used about 25 acre-feet of water from Friesen's system in 1954, for which he paid Friesen the sum of \$1,814.02. From January through October, 1955, Champion paid Friesen \$1,318.01 for water and collected from customers he himself billed, the sum of \$1,746.66 during the same 10-month period.

Unquestionably, Champion has been engaged in the business of supplying water to the general public for compensation and is, therefore, a public utility with respect to such service and we hereby so find. He should be ordered to cease and desist from such operations unless and until he has secured appropriate authority therefor, or unless he is able to make suitable arrangements with Friesen for the latter to take over his operations as part of the main system.

Land Development in Friesen System Area

Angwin, Pacific Union College, Holst's Silvershoe Ranch (formerly the Norton Ranch), Noonan's property and that of other landholders in the area, as well as most of the consumers of Friesen's

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Revised*

system, except those in Champion's area, are located within or adjacent to the western portion of Rancho La Jota, on the westerly slopes of Howell Mountain. Champion's area lies between the Sanitarium and the southwesterly corner of Rancho La Jota. Conn Creek, which flows southerly through Friesen's White Cottage Ranch and Angwin and empties into Lake Hennessey (behind Conn Dam), is fed by waters from Friesen's 600-odd acres of watershed property, north of Angwin. There are several prior claims asserted to the waters of this creek and its tributaries and, as has been stated, Friesen claims only the right to store 255 (or 252½) acre-feet of the available water. Well development appears to be expensive and unsatisfactory except, perhaps, for individual domestic use in certain portions of the area. Major water storage projects, such as Monticello Dam and Berryessa Reservoir and others still in planning stage, do not appear, at least on this record, to offer prospects of an additional supply to that now available from Friesen's storage and from local springs and wells.

From the record, it appears that though an adequate supply of water is available for Friesen's system, in normal years and under existing conditions, even that supply tends to become deficient in the summer or fall until it is replenished by seasonal rains. Hence, large-scale developments such as those contemplated by L. F. Noonan or others near the College, including substantial expansion of the College itself, which would necessarily be chiefly dependent on the impounded waters of Conn Creek aided by whatever additional supply might be developed from wells, appear to be inhibited by the stark physical fact that there is, at present, insufficient water to support them.

Summary and Conclusions

Based upon the evidence we hereby find that applicant has been operating as a public utility water corporation and is, therefore, a public utility and that public convenience and necessity require the continuation of such operation as hereinafter authorized.

It will be necessary, in our opinion, in granting a certificate to Friesen, to place some limitation, for the time being,

Handwritten:
D. J. [unclear]
B. [unclear]

on the amount of additional water service that may be rendered by him from his present facilities. In doing so, however, it should be understood that the Commission is not thereby attempting, nor could it lawfully attempt, to exert control over land development in the Angwin area or to place obstacles in the path of plans of Pacific Union College for expansion of its facilities and enrollment. Those obstacles are inherent in the physical facts surrounding the supply and storage of water in the area as they now appear to exist.

Friesen will be directed to apply rates somewhat different from his existing rates but designed to produce the same revenue as heretofore experienced for service throughout his entire system, including Champion and those persons now served through meters downstream from Champion's connection on the Silvershoe Ranch, in spite of any agreement, written or oral, now existing between Champion and Friesen. We hold that agreement to be void, since it has not heretofore been authorized by the Commission.

With respect to Noonan's request for six individual connections to his development on Lot 7 of La Jota Rancho, we are of the opinion and find that Friesen has enough water, at the present time, to enable him to supply at least that number of connections without injuriously affecting existing consumers.

On February 20, 1947, Noonan and Friesen executed written contracts for extension of service to his development. The photostatic copies, in evidence, of what purports to be an agreement with respect to the larger parcel, comprising 55 acres, contain conflicting provisions. The evidence, also, is conflicting as to whether Noonan agreed to a handwritten modification concerning termination of the agreement which appears on one of the photostatic copies. The Commission will not attempt to ascertain the legal rights and obligations of the parties to this purported agreement since that is a matter for the courts. Should Noonan establish the validity of that agreement, and also of other agreements in evidence with respect to his project, he may then, with Friesen, present them to the Commission for approval by appropriate proceedings.

With regard to Holst's Silvershoe Ranch, which lies on both sides of White Cottage Road and on and through which are located facilities used by Friesen in rendering his present service, we are of the opinion that Friesen's service area, in that vicinity, should extend so as to include Holst's residential service and such additional services as may be presently connected to facilities, including meters, located on the Silvershoe Ranch. This will include, also, the services and meters in the Champion area, the water for which is metered on the Silvershoe Ranch. Arrangements for additional individual connections on the Silvershoe Ranch properties must await, and be in accordance with, the rules and regulations which Friesen will be directed to file and must also conform with applicable general orders of this Commission, including General Orders Nos. 96 and 103. The same conclusions apply to the 29 applicants to whom Friesen has promised service and to any others whose requests for service have been rejected.

Friesen's arrangements with Pacific Union College, which have not heretofore been submitted to the Commission for authorization, are necessarily void. Friesen may include in his tariff a special schedule for such service, or he may, with the acquiescence of the College authorities, enter into a new agreement which should be submitted to the Commission for authorization prior to its becoming effective.

The level of Friesen's present rates is, for the time being, found to be reasonable. Appendix A sets forth a schedule of meter rates designed to produce the same revenue as the rates presently charged but eliminates the present additional charge of fifty cents for each additional apartment, dwelling or business served from the same meter. These rates will be continued in effect until further order of the Commission issued in an appropriate proceeding.

Applicant did not submit an appraisal of his public utility properties. The record discloses that the estimated historical cost of \$111,377.18 shown in the application did not include any source of supply facilities such as the reservoirs and springs. We are of the opinion, however, that the springs and enough reservoir capacity should be included in the public utility assets of this system to enable it to render the service herein authorized. The estimated original cost of \$128,518 and the depreciation reserve of \$14,308.57, as of April 30, 1955 as shown in Table 6-A of Exhibit No. 12, the staff report in these proceedings, are found to be reasonable. The order which follows will direct that the detailed plant property costs and depreciation reserve as of April 30, 1955, appearing in Table 6-A of said Exhibit No. 12, be set up on the books of this utility.

We find that the limitations upon Friesen's right to appropriate water, to the extent indicated by permits issued to him by the Division of Water Resources of the State Department of Public Works, are such as to require that the Commission impose a restriction in this proceeding against service in the future to other than individual applicants for domestic or commercial service in the area hereinafter authorized to be served. If additional sources of water supply become available later, the Commission, upon a proper showing, will reconsider its action in imposing such restriction.

The certificate of public convenience and necessity granted herein is subject to the following provision of law:

That the Commission shall have no power to authorize the capitalization of this certificate of public convenience and necessity or the right to own, operate or enjoy such certificate of public convenience and necessity for any amount of money in excess of the amount (exclusive of any tax or annual charge) actually paid to the State as consideration for the issuance of such certificate of public convenience and necessity or right.

O R D E R

Public hearing having been held in the above-entitled and numbered consolidated proceeding, the matter having been submitted for decision, the Commission now being fully advised and basing its order on the findings and conclusions contained in the foregoing opinion,

IT IS HEREBY ORDERED that:

1. A certificate of public convenience and necessity be and it is hereby granted to Dick R. Friesen to construct and operate a public utility system for the distribution and sale of water within the territory shown and described on a map, marked Exhibit 16 in this proceeding, together with an additional area of approximately 16 acres, formerly owned by J. H. Champion and situated near the intersection of Deer Park Road and Sanitarium Road in Section 13 of Township 8 North, Range 6 West, Mt. Diablo Base and Meridian, in Napa County.

2. J. H. Champion, a respondent in Case No. 5683 herein, at the expiration of 90 days after the effective date of this order, shall cease and desist and thereafter refrain from furnishing water service, or extending additional facilities for water service, in the area near the intersection of Deer Park Road and Sanitarium Road, described in paragraph 1 above, unless, prior to the expiration of said 90-day period, he and Dick R. Friesen shall have joined in filing with the Commission an appropriate request for authority permitting said Champion to continue said operation; or, unless, within said 90-day period, said Champion shall have otherwise concluded arrangements with said Friesen for the latter to assume responsibility for said operation, as herein directed, and shall so advise the Commission in writing.

3. Dick R. Friesen shall limit the service of water in the future, in the area for which this certificate is granted, to individual applicants for service, pursuant to applications made in the normal course of business in accordance with his applicable rules and regulations. No new or additional subdivisions, or multiple unit connections, may be served without a showing, satisfactory to the

Commission, that there is available an adequate supply of water for all consumers then being served as well as for the additional connections requested, and the Commission, upon such showing, shall first have modified this order.

4. (a) Dick R. Friesen is authorized and directed to file in quadruplicate with this Commission after the effective date of this order, in conformity with General Order No. 96, the schedule of rates shown in Appendix A attached hereto and, upon not less than five days' notice to the Commission and to the public, to make said rates effective for service rendered on and after November 1, 1956.

(b) Dick R. Friesen is authorized and directed to file in quadruplicate with this Commission after the effective date of this order, in conformity with General Order No. 96, the rate schedule shown in Appendix B attached hereto and, upon not less than five days' notice to the Commission and to the public, to make said rate schedule effective for service rendered on and after November 1, 1956; or, in lieu of such filing, Dick R. Friesen may negotiate a new agreement with Pacific Union College for irrigation service and by formal application filed in accordance with the Commission's Rules of Procedure on or before November 1, 1956, seek authorization of this Commission to carry out the terms thereof.

(c) Dick R. Friesen shall file in quadruplicate with this Commission after the effective date of this order, in conformity with General Order No. 96, rules and tariff service area map acceptable to this Commission and, upon not less than five days' notice to the Commission and to the public, to make said rules and tariff service area map effective for service rendered on and after November 1, 1956.

5. Dick R. Friesen shall file, within ninety days after the effective date hereof, four copies of a comprehensive map, drawn on an indicated scale not smaller than 400 feet to the inch, delineating by appropriate markings the various tracts of land and territories served, as herein authorized, the principal water production, storage and distribution facilities, and the location of his various properties

6. Dick R. Friesen shall set up on his books the plant accounts and depreciation reserve as of April 30, 1955, substantially as shown in Table 6-A of Exhibit No. 12, and shall file with this Commission, within ninety days after the effective date of this order, a copy of the journal entries used to record said plant accounts and depreciation reserve on his books of account.

7. The Commission's investigation herein, Case No. 5683, is discontinued.

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

Dated at San Francisco, California,
this 15th day of September, 1956.

[Signature] President
Justin F. Caswell
Ronald J. [unclear]
[Signature]
[Signature]
Commissioners

File

APPENDIX A

Schedule No. 1

GENERAL METERED SERVICE

APPLICABILITY

Applicable to all metered water service.

TERRITORY

The unincorporated community of Angwin and vicinity,
Napa County.

RATES

	<u>Per Meter per Month</u>
Quantity Rates:	
First 500 cu.ft. or less	\$ 1.50
Next 1,500 cu.ft., per 100 cu.ft.25
Next 2,000 cu.ft., per 100 cu.ft.20
Over 4,000 cu.ft., per 100 cu.ft.18
Minimum Charge:	
For 5/8 x 3/4-inch meter	\$ 1.50
For 3/4-inch meter	2.00
For 1-inch meter	3.00
For 1 1/2-inch meter	5.00
For 2-inch meter	10.00

The Minimum Charge will entitle the customer to the quantity of water which that minimum charge will purchase at the Quantity Rates.

APPENDIX B

Schedule No. 3L

LIMITED IRRIGATION SERVICE

APPLICABILITY

Applicable to measured irrigation service to Pacific Union College.

TERRITORY

The unincorporated community of Angwin, Napa County.

RATE

	<u>Per Acre-Foot</u>
For all water delivered	\$10.00

SPECIAL CONDITION

Service under this schedule is limited to 20 acre-feet of water per year.

Added