

**ORIGINAL**

Decision No. 65756

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Suspension and )  
Investigation on the Commission's own )  
motion of the proposed tariff service )  
area map, Revised Cal. P.U.C. Sheet )  
No. 63-W, filed by Great Oaks Water )  
Co. )

Case No. 7626  
Filed May 14, 1963

In the Matter of the Application of )  
GREAT OAKS WATER CO., a California )  
corporation, and James A. Arnott, dba )  
PLEASANT VALLEY WATER CO. for (1) )  
Order authorizing acquisition of )  
Property owned by Pleasant Valley )  
Water Co., by the Great Oaks Water )  
Co.; (2) Order authorizing transfer )  
of certificate of public convenience )  
and necessity; and, (3) Authority to )  
enter into a proposed agreement )  
between parties. )

Application No. 45123  
Filed January 21, 1963

Albert J. Ruffo, for James A. Arnott.  
Walter Roeder and L. C. Bean, for Great  
Oaks Water Co.  
W. B. Stradley, for the Commission staff.

OPINION ON REHEARING

The Commission, on petition of James A. Arnott, filed April 1, 1963, ordered a hearing on his application to transfer his certificate (granted by Decision No. 53552, June 8, 1959, Application No. 40899) and certain water facilities to Great Oaks Water Co., in San Jose, after having earlier denied the application without a hearing because of allegations in the pleading suggesting expiration of the certificate for nonexercise (Decision No. 65053, March 12, 1963, Application No. 45123).

On April 15, 1963, Great Oaks Water Co., a public utility serving tracts in the vicinity of Arnott's certificated service area,

filed a revised tariff service area map (Cal. P.U.C. Sheet No. 63-W) depicting a portion of Arnott's service area within the boundaries of the new territory included by Great Oaks as contiguous to its present system. The Commission, on May 14, 1963, suspended operation of the revised map and commenced an investigation into the propriety of its filing (Case No. 7626).

The proceedings were heard and submitted on a consolidated record before Examiner Gregory on June 12, 1963 at San Jose.

The only issue is whether Arnott exercised his certificate prior to June 28, 1960, the date fixed by Decision No. 58552 for its expiration if not exercised; otherwise, the record reveals nothing improper in the proposed transfer.

The evidence shows that Arnott obtained a certificate on June 8, 1959 for the purpose of constructing and operating a water system for his Pleasant Valley development, a subdivided area of about 238 acres lying southwest of the intersection of Downer Avenue and Cottle Road, in San Jose. His plan, as described in the decision which granted the certificate (of which we take official notice), was to serve individual residences, apartment houses, duplex units, a motel and a 50-acre shopping center, comprising a total of about 842 water services. He proposed to develop the tract and water system in four units over a period not exceeding four years. The first unit, scheduled for development during the first year after certification at an estimated cost of about \$82,000, to be paid for by Arnott in cash, was designed for service to about 200 residential lots in the northwest 40 acres of the tract (see map - "Water System of Unit One Pleasant Valley", dated September 29, 1958, Exhibit 1 herein). Two elevated steel reservoirs and a transmission main connecting with the distribution system some 6,900 feet distant were

projected for later construction of Unit 3. The completed system, water for which was to be supplied by three irrigation wells in the area (not located in Unit 1) was estimated to cost about \$400,000.

Arnott first filed his rates, rules and tariff service area map with the Commission on July 27, 1959. The schedules were revised, in some respects, by filings made on or about September 22, 1959. On July 6, 1959 Arnott ordered pipe for the water system, for delivery on August 19, 1959, at a cost of \$12,119.25. On August 5, 1959 he ordered and paid for brass fittings for the system at a cost of \$5,978.40. During the period prior to June 28, 1960 he also incurred surveying costs for location of well sites, completed a well, with a tested production of 3,000 to 3,500 gpm, at the southeast corner of Unit 1 at a cost of approximately \$10,000, and installed a pump base and pressure tank cradle at the site.

During the time Arnott was engaged in constructing the water system the developer with whom he had contracted, one Hayes, became insolvent. Libra Homes, Inc., the present developer, acquired about 185 acres of the tract and one O'Connell, who had been dealing with Hayes, retained the balance of some 50 acres for commercial development. Arnott had been developing Unit 1 as an individual but had learned that the new developer, Libra Homes, Inc., wanted to change the entire original subdivision layout, including lot sizes. In these circumstances, he was willing to provide water for the area, allow Libra Homes, Inc., to take over the system, or sell out to another water company. After negotiations with representatives of Libra Homes, Inc., and Great Oaks Water Co., it was arranged that Great Oaks would acquire his well in Unit 1 for \$10,000 and extend service to the whole development. He resold the brass fittings to the company from which he had purchased them, and proceeded, with

Libra Homes, Inc., as assignee, to enter into certain escrow instructions for transfer of his operating right and well to Great Oaks (Application No. 45123, Exhibit D).

As indicated above, the application for the transfer was denied without a hearing. The opinion in that decision, after noting that the application states that "Arnott is a nonoperating company and unable to furnish service", finds that "the certificate ... heretofore issued has not been exercised by James A. Arnott and that the same has lapsed and is of no effect." Denial of the application, however, was stated to be "without prejudice to the filing of an appropriate application by Great Oaks Water Co. for a certificate ... to serve the area for which the lapsed certificate was originally issued." (Decision No. 65053.)

We find, on the basis of the record developed at the hearing in this proceeding, that Arnott did exercise his certificate within the time limitations of the grant. It may be conceded that he did not complete the construction of the system as originally planned and that there were no customers served in the tract during the year following his acquisition of a certificate, but the record shows without contradiction that the circumstances, related above, which precluded completion of his project were not within his control. Moreover, the record reveals that Arnott reported to the Commission, commencing early in 1960 and regularly thereafter until February 15, 1963 (more than three weeks after the instant application was filed), the circumstances causing the delay in commencing his water operations. The Commission staff, in addition to advising him, from time to time, that formal annual reports for 1960 through 1962 would not be required, also advised

him, on January 20, 1961, in response to his inquiry of January 9, 1961 concerning the status of his certificate, as follows:

"In the opinion of the Commission staff the filing by you of the rates authorized, together with rules and tariff service area map on September 22, 1959, constitutes at least partial exercise of the authority granted by the above-mentioned decision /Decision No. 53552/ and you not only have the right but an obligation to furnish public utility water service to the public in the area certified unless relieved of this responsibility by formal order of this Commission." (Petition for Rehearing, Exhibit C.)

The record further reveals that the instant application was prepared by the attorney for Great Oaks Water Co. and was handed to Arnott for execution on or about December 21, 1962 as he was at the station taking a train for an eastern trip; that he executed the application without reading it and that he would not have executed it in its present form had he known that it contained the language, referred to above, which indicated that Pleasant Valley Water Co. was a nonoperating company and unable to furnish the present needs of the subdivision.

The escrow instructions entered into by the parties, although referring to transfer of Arnott's certificate, the well site, a lot of land 100 by 200 feet and various easements, recite that the sum of \$10,000 is to be paid in consideration of the transfer of the certificate alone. The evidence, however, reveals that it is the intention of the parties that the sum mentioned is actually being paid in consideration of the transfer by Arnott of the well, the well site, the pump base and other installations placed by him at the site.

The evidence reveals that Great Oaks Water Co., if authorized to acquire Arnott's Pleasant Valley system, proposes to extend service to the tract under its main extension rule and that such extension will represent about 15 percent of the total present

operations of that utility. The evidence further discloses that Great Oaks is prepared to extend to the Pleasant Valley development even if the instant application is finally denied and that it would apply its present rates, which are identical with those filed by Arnott, to service from such extension.

We find that:

1. James A. Arnott exercised the certificate of public convenience and necessity granted by Decision No. 58552 in Application No. 40899, prior to the expiration of said certificate as provided by the terms of the order in said decision.

2. The transfer of said certificate and of the properties described in the escrow instructions referred to above (Exhibit D of Application No. 45123) is not adverse to the public interest.

3. The filing on April 15, 1963 by Great Oaks Water Company of a revised tariff service area map (Cal. P.U.C. Sheet No. 63-W) is not proper and reasonable because it includes the territory certificated to Arnott.

We conclude, therefore, that:

1. Decision No. 65053, rendered March 12, 1963 in Application No. 45123 should be vacated and said application should be granted, subject, however, to the terms of the order which follows.

2. Suspension of the operation of said revised tariff map of Great Oaks Water Company, filed April 15, 1963, should be made permanent.

The authorization herein granted shall not be construed as a finding of the value of the rights and properties herein authorized to be transferred.

The parties have urged that if the Commission grants the requested authority it should be done expeditiously in the interest of prompt development of the Pleasant Valley project.

ORDER ON REHEARING

IT IS ORDERED that:

1. Decision No. 65053, rendered March 12, 1963, is vacated.
2. James A. Arnott, after the effective date of this order and on or before December 31, 1963, may sell and transfer to Great Oaks Water Co., a corporation, the certificate of public convenience and necessity granted to him by Decision No. 58552, issued June 8, 1959, in Application No. 40899, together with the properties described in the escrow instructions annexed as Exhibit D to the Application No. 45123 herein, substantially in accordance with the terms and conditions set forth in said escrow instructions.
3. Within thirty days after the date of actual transfer, Great Oaks Water Co. shall file a revised tariff service area map to provide for the application of its presently effective tariff schedules to the areas covered by the certificate herein authorized to be transferred. Such filing shall be in conformity with General Order No. 96-A, and the revised map, if acceptable to this Commission, shall become effective on the fourth day after the date of filing.
4. James A. Arnott, within ten days after the date of actual transfer of said certificate and properties, shall notify this Commission, in writing, of the date of transfer and the date upon which Great Oaks Water Co. shall have assumed operation of the water facilities herein authorized to be transferred, and shall attach to such notice a copy of the instrument, or instruments, of transfer.
5. James A. Arnott, upon compliance with the above requirements of this order, shall stand relieved of any public utility obligations in the area authorized to be served by the transferred certificate and properties.

6. Suspension of the revised tariff service area map  
(Cal.P.U.C. Sheet No. 63-W) filed April 15, 1963 by Great Oaks  
Water Co. is made permanent.

The effective date of this order shall be the date hereof.

Dated at San Francisco, California, this 23<sup>rd</sup>  
day of July, 1963.

William W. Bennett  
President

John E. Hatchell  
Walter W. Sage

George G. Trover

Fredrick B. Haloloff  
Commissioners