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ORIGINAL

Decision No. 75129

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

CITY OF SAN JOSE, a municipal
corporation of the State of
California,

Complainant,

vs.

GREAT OAKS WATER COMPANY, a
private corporation,

Defendant.

Case No. 8784
(Filed April 12, 1968)

Donald C. Atkinson and Richard W. Marston,
for complainant.
Boris Lakusta and David J. Marchant, for
defendants.
Janice E. Kerr, for the Commission staff.

O P I N I O N

On April 12, 1968, the City of San Jose filed the instant complaint against Great Oaks Water Company and requested an order of the Commission requiring defendant water company to fluoridate its system to the extent recommended by the California State Board of Public Health. On May 20, 1968, Great Oaks Water Company filed its answer to said complaint. A petition to intervene filed on November 12, 1968 by Arden D. Zimmerman failed to comply with the Commission's Rules of Procedure in that it was filed only two days prior to the hearing.

Public hearing was held before Examiner Daly at San Jose on November 14, 1968, and the matter was taken under submission.

Defendant is a public utility water company operating pursuant to authority granted by this Commission. Ninety percent of its service area lies within the City of San Jose and ten percent

of its service area lies within the unincorporated area of Santa Clara County. Defendant is presently serving 3,684 customers. The past pattern of development indicates that as the unincorporated area is developed it is shortly thereafter annexed to the City of San Jose.

The City of San Jose relies primarily upon an ordinance of the San Jose City Council adopted June 28, 1965, directing all privately owned public utilities, which supply or furnish any persons or premises in the City with water, to increase the fluoride concentrate to the optimum extent recommended by the State Board of Public Health (Ordinance No. 12752). The ordinance was passed pursuant to an advisory election held on November 3, 1964. Out of a total of 100,399 votes cast 59,324 votes were in favor of fluoridation and 41,575 votes opposed fluoridation.

Defendant has indicated a willingness to fluoridate its system upon the conditions that a majority of its customers desire it and that it be adequately compensated in the form of increased rates to offset the additional costs occasioned by the installation and maintenance of fluoridation equipment. Defendant does not believe that the 1964 election represents the thinking of a majority of its customers because in 1964 it served only 1,133 customers as compared to 3,684 customers in 1963.

In an attempt to determine the wishes of its customers defendant on September 30, 1968 mailed to each of its customers a notice of its intent to conduct a poll. (Exhibit No. 1.) Enclosed with the notice was a postcard upon which the customer could indicate "Yes - we want fluoride added to the water of Great Oaks Water Company" and "No - we do not want fluoride added to the water of Great Oaks Water Company." On November 13, 1968, the ballots were

counted by a representative from the City Clerk's office of the City of San Jose and a representative of Great Oaks Water Company. Out of a total of 2,569 ballots received, 1,096 ballots favored fluoridation and 1,473 ballots were against fluoridation. Fourteen ballots were for or against fluoridation with qualifications or were either unmarked or had both positions marked. (Exhibit No. 3.)

By Decision No. 71802 dated December 30, 1966, in Case No. 3245 (City of San Jose vs. San Jose Water Works) after considering in detail many of the same issues as herein presented the Commission stated as follows:

"The question of fluoridation has been considered by the Commission in other matters (City of Oroville and County of Butte v. Cal. Water Service Co. (1957), 55 Cal. P.U.C. 407; and Clark v. Cal Water Service Co. (1964), 62 Cal. P.U.C. 752). With respect to the purity and safety of drinking water the Commission will not question the findings and recommendations of the California Department of Public Health, which is charged with such responsibility. The Department of Public Health has found that controlled fluoridated water is safe for human consumption.

It does not follow, however, that fluoridation should be ordered for every water utility under the Commission's jurisdiction. The question of primary importance in this proceeding is whether the people to be affected have had an opportunity to express themselves.

Fluoridation, although recommended by various public health agencies, is not required by state law. In the case of publicly owned water systems, fluoridation

usually comes about as a result of an election by the affected users or, at the very least, by action of city, county or district officials elected by the voters of the area involved."

In line with the above it would appear that the customers of Great Oaks Water Company have expressed by majority vote their desire that the water system not be fluoridated. It further appears that because of the tremendous growth of the Great Oaks Water Company within the past four years, that the ballot recently taken by defendant better reflects the thinking of its customers than the 1964 advisory election.

The Commission therefore finds:

1. Great Oaks Water Company is a public utility subject to the jurisdiction of this Commission.
2. The City of San Jose through its City Council has directed all private public utilities serving water to persons or premises within the City to fluoridate their systems to the level recommended by the California Department of Public Health. The action taken by the City Council of San Jose followed as the result of an advisory election held in 1964.
3. At the time of the advisory election defendant served 1,133 customers, but presently serves 3,684 customers.
4. At present only 90 percent of defendant's service area is within the city limits of San Jose.
5. A recent ballot taken by defendant indicates that a majority of those customers who returned the ballots do not desire fluoridation of defendant's water system.

The Commission concludes that the complaint should be dismissed.

O R D E R

IT IS ORDERED that the complaint herein considered is hereby dismissed and the petition to intervene in this proceeding is hereby denied.

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

Dated at San Francisco, California, this 20th day of DECEMBER, 1968.

William J. Synovius, Jr.
President

Fred P. Monussey
Commissioners

Commissioner William M. Bennett, being necessarily absent, did not participate in the disposition of this proceeding.

Commissioner A. W. Gatov, being necessarily absent, did not participate in the disposition of this proceeding.