

ORIGINALDecision No. 82166

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 tariffs filed under
C. W. BIRD, dba ANOOSH-VAN WATER
SYSTEM, Advice Letter No. 9
extending service into an area
outside the filed area.

Case No. 9562
(Filed May 30, 1973)

William H. Kessler, Attorney at Law, for Anoosh-Van
Water System, respondent.
John E. Loomis, Attorney at Law, for Calwa County
Water District; and Francis H. Ferraro and Harry
Huey, for themselves, interested parties.
P. W. Avery, for the Commission staff.

O P I N I O N

By Advice Letter No. 9 filed with this Commission on May 10, 1973, C. W. Bird, dba Anoosh-Van Water System (Anoosh-Van), filed a revised tariff service area map and table of contents sheet which, if authorized, would have the effect of expanding the utility's service area to include territory approximately seven and one-half acres in size immediately to the east of the present service area.

According to the advice letter, the service area expansion was for the purpose of accomodating a developer, 80 percent of whose project was in Anoosh-Van's service area and the remainder in the adjacent territory. The advice letter stated that the utility had adequate capacity to serve the proposed expansion.

Records of the Commission indicate that Anoosh-Van served, as of December 31, 1972, 36 customers in an area located in unincorporated territory in Fresno County approximately one-half mile south of the boundaries of the city of Fresno.

By a letter received in the Commission's San Francisco office on May 17, 1973 Calwa County Water District (District) protested the proposed expansion. The District stated that Anoosh-Van's water system was located entirely within the boundaries of the District and that the District has facilities from which the property in question could be served. The District further stated that it had a far superior capacity to render service in the area.

The tariff filing was suspended by the Commission on May 30, 1973, and public hearing was held before Examiner Boneysteele at Fresno on August 22, 1973.

At the hearing testimony was taken from the developer, Harry Huey, from the manager of the District, Floyd K. Anderson, and from Francis H. Ferraro, an interested party.

Mr. Huey testified that he is planning a housing project on East Florence Avenue in the northeast portion of Anoosh-Van's service area, and a portion of this development would extend out over Anoosh-Van's eastern boundary for a distance of 254 feet. He preferred the development to be supplied with water from one purveyor, preferably Anoosh-Van, since Anoosh-Van's extension would be the least costly to him.

To accomodate Mr. Huey, Anoosh-Van filed a tariff service area map which proposed to extend its entire eastern boundary to the east by 254 feet. Although the proposed 254-foot strip would run the entire 1,270 feet between East Florence and East Church Avenues, only 440 feet would be required for the development. The entire strip between East Florence and East Church is presently owned by Mr. Huey. The southerly 250 feet is occupied by an existing dwelling, also under Mr. Huey's ownership, which receives water service from the District. Mr. Huey does not, at present, have plans for the remaining 254 by 580-foot parcel lying between the dwelling and the proposed development.

Mr. Huey described his negotiations with Anoosh-Van and District and presented a map, Exhibit 3 in this proceeding, which showed the results of an apparent compromise by which the District would not object to the expansion of Anoosh-Van's service area to include the northerly 1,020 feet of Mr. Huey's property, but excluding the southerly 250 feet occupied by the residence. In exchange Anoosh-Van would relinquish a strip 250 feet deep and 890 feet long along its southern boundary, fronting on East Church Street. For identification the strip to be relinquished by Anoosh-Van was shaded in blue on Exhibit 3 and the area to be added was shaded in green. (Another area, outside of Anoosh-Van's service area, at the corner of South Maple and East Church Avenues, was also shaded in green but is not involved in this proceeding.)

Mr. Anderson, the District's manager, described the rate structure, operations, and capabilities of the District.

Opposition to the compromise was expressed by Francis H. Ferraro, an operator of several water utilities in the Fresno area. Mr. Ferraro testified that he had entered into an agreement to purchase various water systems owned by Mr. Bird, including the Anoosh-Van system. Delivery of the system was never effected; Mr. Ferraro obtained a judgment of specific performance in Superior Court, which judgment was appealed by Mr. Bird and is now in the District Court of Appeals. As the holder of an interest, now in litigation, in the Anoosh-Van system, Mr. Ferraro objected to the relinquishing of any territory.

At the hearing, no protest other than Mr. Ferraro's was made to the compromise. The attorney for the District, in his closing statement, said that the District felt obliged to maintain its territorial integrity so as to protect its bond holders. The District was prepared to extend service to Mr. Huey's property, but was also willing to accept the compromise shown in Exhibit 3.

The attorney for Anoosh-Van specifically agreed that the compromise was acceptable to his client. The staff representative, P. W. Avery, Assistant Utilities Engineer, recommended that only a single agency should serve Mr. Huey's development.

Comparative rates do not appear to be an issue. The District's system is metered whereas Anoosh-Van is largely flat rate, but both systems' rates are low compared to the general level of water rates in California. The District levies no ad valorem tax but if it did, since all of Anoosh-Van's service area is within the boundaries of the District, Anoosh-Van's customers would be subject to the tax.

On August 31, 1973, the Commission received the following letter from Anoosh-Van's attorney:

"28 August 1973

Examiner P. L. Boneysteele
California Public Utilities Commission
State Building, Civic Center
San Francisco, California 94102

Re: Anoosh-Van Water System, Case No. 9562

Dear Mr. Examiner:

The respondent in the above-referenced case requests permission to file a late exhibit. The exhibit will show the location of water mains now installed in the area along East Church Avenue shown in blue crayon on Exhibit No. 3. These are Anoosh mains in an area that Anoosh is now certificated to serve.

Dr. C. W. Bird is not willing to trade any territory that is presently within his certificated areas as set forth on maps and schedules now on file with the Commission.

Thank you for your courtesy and co-operation in this matter.

Yours very truly,

WILLIAM H. KESSLER

WHK:dmk

cc: John E. Loomis, Esquire
Alfred Thomas, Esquire
Dr. C. W. Bird
Mr. Harry Huey
Mr. Paul Avery
Mr. Francis H. Ferraro"

By letter from the Commission's Secretary dated September 5, 1973 Anoosh-Van's attorney was informed:

"In order to receive the exhibit that you propose, and to note the apparent change of position expressed, a petition to set aside submission is required by Rule 84 of the Commission's Rules of Procedure."

No such petition has been received and, on October 2, 1973 by Decision No. 81956 the Commission extended the suspended tariff filing until six months after the date such tariff would have become effective.

Since no petition to set aside submission has been received, we will assume that Mr. Bird has had second thoughts about repudiating the compromise agreed to by his attorney at the hearing. The compromise appears to us to be a reasonable solution in the best interests of all parties (including Mr. Ferraro, should he gain possession of the system). We note that the eastern three-quarters of Anoosh-Van's certificated area, as granted by Decision No. 50253 dated July 6, 1954 in Application No. 35346 are still undeveloped. It could be that events transpiring in the 19 years since we certificated Anoosh-Van to serve an area still undeveloped are such that public convenience and necessity could require water service being provided to the undeveloped area by a purveyor other than Anoosh-Van.

In the order that follows we will authorize the filing of a tariff service area map implementing the compromise and the withdrawal of service from the area relinquished to Calwa County Water District. The alternative to a reasonable compromise could be a complaint asking for decertification of the undeveloped area.

Findings

1. Public convenience and necessity require that the project being developed by Harry Huey on the south side of East Florence Avenue should be served by a single water purveyor.

2. Both Anoosh-Van and District are capable of serving the project.

3. Anoosh-Van is the preferable purveyor to supply the project with water.

4. The compromise illustrated by Exhibit 3 is a reasonable and logical solution to the problem of enabling provision of water service by a single agency to the proposed project.

5. Public convenience and necessity require the extension of service by Anoosh-Van to the area, 1,020 feet by 254 feet, lying immediately to the east of Anoosh-Van's certificated area as shown shaded in green on Exhibit 3.

6. In order to permit construction of the housing project without further delay, the effective date of this order should be the date hereof.

Conclusions

1. C. W. Bird, dba Anoosh-Van Water System, should:
 - (a) Be relieved of the obligation to provide public utility water service to the area along East Church Avenue shown in solid blue shading on Exhibit 3 in this proceeding, and,
 - (b) Be authorized to extend service to the area to the east of the present certificated area shown in solid green shading on Exhibit 3.
2. Case No. 9562 should be discontinued.

O R D E R

IT IS ORDERED that:

1. The suspension of Advice Letter No. 9 of C. W. Bird, dba Anoosh-Van Water System, and the accompanying tariff sheets Nos. 125-W and 126-W, by Commission order dated May 30, 1973 is hereby made permanent.
2. C. W. Bird, dba Anoosh-Van Water System, may, after the effective date hereof, and before December 31, 1973, file an advice letter and tariff service map implementing the compromise described in the opinion section of this decision.

3. Case No. 9562 is discontinued.

The effective date of this order is the date hereof.

Dated at San Francisco, California, this 27th
day of NOVEMBER, 1973.

Vernon L. Sturgeon
President
William J. Symons Jr.
William J. Symons Jr.
William J. Symons Jr.
William J. Symons Jr.
Commissioners