

Decision 84 CS 039

AUG 1 1984

ORIGINAL

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 tariff filed by Advice)
Letter 114 of Great Oaks Water)
Company.)

(I & S)
Case 84-06-011
(Filed June 6, 1984)

Graham and James, by Boris H. Lakusta, Attorney
at Law, for Great Oaks Water Company,
applicant.

Orrick, Herrington and Sutcliffe, by Richard E. V.
Harris and Laurie Miller, Attorneys at Law,
and Sandra J. Fox, Sr., Deputy City
Attorney, for City of San Jose, protestant.

INTERIM OPINION

Statement of Facts

Under authorization from this Commission granted by
Decision (D.) 59173 dated October 20, 1959 in Application (A.) 41363,
Great Oaks Water Company (Great Oaks), a California corporation,
locally provides and offers public utility water service in the
valley area between the Santa Teresa Hills and Coyote Creek.

The City of San Jose (San Jose) through its Department of
Public Works owns and operates a municipal water system. At present
this system provides water services in the urbanized areas to the
north and west of the Great Oaks system.

On April 6, 1984 Great Oaks by Advice Letter 114 filed
tariff map sheets to affect extensions of its service territory
contiguously to include the following six areas:

1. Second unit of Diawa Homes Tract 647B.
2. Town and Country Mobilehome Park.
3. Clinic Buildings No. Two North and No. One South around Teresa Hospital.
4. IBM expansion of fitness center and tennis courts.
5. IBM expansion (Building 89).
6. IBM Bailey Avenue Plant.

On April 20, 1984 a written protest was received from San Jose strongly objecting to the revisions of the service territory sought by Great Oaks. The Commission's Hydraulic Branch recommended that in view of this protest the Advice Letter be suspended and the matter be set for hearing. The Commission thereupon on June 6, 1984 ordered that the operation and effectiveness of the tariffs be suspended until August 1, 1984, or further order, and instituted this investigation and a hearing to determine whether the tariff sheets are unreasonable or unlawful in any particular.

A duly noticed public hearing was held in San Francisco before Administrative Law Judge (ALJ) John B. Weiss on July 16 and 17, 1984, after which the matter was submitted subject to concurrent briefs to be filed September 17, 1984. At the outset of that hearing, the City's protest, on its face untimely under the provisions of General Order (GO) 96-A, was ruled to be timely in that the notice of its proposed action sent by Great Oaks to San Jose was deficient, not being complete and in the form submitted somewhat misleading.

During the hearing it developed that San Jose had no intention of providing or attempting to provide service to the first five named areas listed above. Four of these are unserved islands

entirely surrounded by Great Oak's present service territory and the fifth is an unserved enclave surrounded on three sides by Great Oak's present service territory. Thus, as to these five areas there really exists no dispute.

The dispute centers on the sixth area, the IBM Bailey Avenue Plant. That dispute involves substantial and broad issues which must be left for consideration after receipt of the scheduled briefing.

Discussion

The urgent need for this interim order arises because unless the Commission acts on or before August 1, 1984, by the terms of our June 6, 1984 Order of Suspension and Investigation, the suspension of the operation and effectiveness of the tariff sheets filed under Advice Letter 114 by Great Oaks automatically ends, and those tariff sheets go into effect as filed. While as to the first five additions this would be in order, as to the last proposed addition, the Bailey Avenue Plant, this would be premature.

This Commission previously in Edwards (1979) 1 CPUC 2d 587 at 591, has stated:

"This Commission has exclusive jurisdiction to determine the extent of a fixed utility's dedication of service, and in making such a determination we will be guided by the rule of reasonableness. When service is extended into a new area the area must not be gerrymandered to exclude potential customers, and should be extended to new boundaries which are logically and naturally defined, avoiding unserved enclaves, peninsulae, or islands (Radisavljevic and Bakun v Cal-Am Water Co., D.90262 dated May 8, 1979 in A.58345 and 58464),"

and, at 592: "To allow such a gerrymandered result and an unserved island would be unconscionable and violative of the rule of

reasonableness (See Parker v Apple Valley Ranchos Water Co., 82 CPUC 623, writ denied)." As we then concluded in Edwards, by extending service area boundaries so as to leave such islands, a utility has impliedly included the islands in its expanded service territory.

With this general policy in mind, and in recognition of the fact that there is no dispute applicable to addition of the first five extensions of the Advice Letter, there is no reason to further suspend or delay the effective date of the tariff sheets relating to them. As to these five areas the suspension will be permitted to lapse August 1, 1984. We require only that new tariff maps be supplied clearly defining these five areas with appropriate color coding, and that all other areas not previously or herewith approved, including proposed area Six, be deleted from being shown as distinctive or otherwise included.

As to the last area proposed, the Bailey Avenue Plant extension, broad issues exist, and these require further consideration after briefing. Accordingly, the suspension applicable to operation and effective date of the tariff sheets as may apply to this last proposed Bailey Avenue extension will be continued until further order of the Commission.

On its face this situation presents an unforeseen emergency requiring immediate action by the Commission, precluding its inclusion in the public notice of the agenda of business to be transacted by the Commission at its August 1, 1984 meeting.

Findings of Fact

1. Great Oaks is a public utility within the jurisdiction of this Commission.

2. On April 6, 1984 Great Oaks, pursuant to provisions of GO 96-A filed Advice Letter 114 applicable to six proposed contiguous service area extensions.

3. On April 20, 1984 San Jose filed its written protest and the Advice Letter filing.

4. On June 6, 1984 the Commission issued its order suspending until August 1, 1984 the operation and effectiveness of the tariffs filed under Advice Letter 114 and ordered an investigation and hearing to determine whether the tariffs were unreasonable or unlawful in any particular manner.

5. Public hearing was held July 16 and 17, 1984 and concurrent final briefs are due September 17, 1984.

6. The ALJ correctly ruled that the protest by San Jose was timely.

7. There is no bona fide dispute relative to proposed additions one through five as set forth in Advice Letter 114.

8. Under application of the rule of reasonableness addressed in Edwards (1979) 1 CPUC 587 the first five areas addressed in Advice Letter 114 are already impliedly included in Great Oak's existing service territory.

9. There exists a broad dispute regarding the sixth area included in Advice Letter 114, the Bailey Avenue Plant extension, and operation and effectiveness of the filing relating to this sixth item should continue to be suspended until further order of the Commission.

10. Concurrent final briefing with submission relative to the Bailey Avenue Plant extension is due September 17, 1984.

11. Because of the urgently impending status of the Advice Letter filing, it is necessary to add this matter to the August 1, 1984 agenda of the Commission.

Conclusion of Law

As to the first five extension items listed in Advice Letter 114, the suspension ordered by the Commission's June 6, 1984 Order of Suspension and Investigation should be allowed to run out August 1, 1984 and the tariffs to become effective; but as to the sixth item, the Bailey Avenue Plant extension, the suspension should be continued until further order by the Commission.

INTERIM ORDER

IT IS ORDERED that:

1. The operation and effectiveness of that part of tariffs filed by Great Oaks Water Company under Advice Letter 114 relative to the sixth item listed therein, the Bailey Avenue Plant extension, are continued suspended until further order of the Commission.

2. As to the first five items listed in Advice Letter 114, they become operational and effective August 1, 1984, and Great Oaks Water Company is directed to file under a new advice letter and sheet numbers, new tariff maps clearly defining these five areas with appropriate coding in color, but deleting all other areas not heretofore approved.

The Executive Director of the Commission is directed to cause a certified copy of this order to be served upon Great Oaks Water Company.

This order is effective today.

Dated AUG 1 1984 , at San Francisco, California.

Commissioner Priscilla C. Grew,
being necessarily absent, did
not participate

Commissioner William T. Bagley
being necessarily absent, did
not participate.

LEONARD M. GRIMES, JR.
President
VICTOR CALVO
DONALD VIAL
Commissioners

I CERTIFY THAT THIS DECISION
WAS APPROVED BY THE ABOVE
COMMISSIONERS.


Joseph S. Boudreau, Executive Director