

Decision 87 11 045

NOV 25 1987

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Petition of the City of San Jose)
for the determination of just)
compensation for acquisition of a)
portion of the certificated service)
area of the Great Oaks Water Company.)

Application 83-07-28
(Filed July 15, 1983;
amended August 30, 1983)

William B. Mayfield, Attorney at Law, San Jose
City Attorney's Office, for City of San Jose,
petitioner.

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

OPINION DISMISSING PETITION

Statement of Facts

Great Oaks Water Company (Great Oaks), pursuant to authorization granted by this Commission in Decision (D.) 59173, dated October 20, 1959, in Application 4363, provides public utility water service in a service area in and adjacent to the southeast portion of the City of San Jose (City). A portion of Great Oaks' service area extends over a small part of an area known as Edenvale. While Great Oaks has no facilities in place in its Edenvale sub-area, it does have the right and obligation to serve any and all customers in that sub-area who may require service. Moreover, Great Oaks has an operating system, including underground pipes, retaining tanks and wells, as the infrastructure upon which it will build any expansion of its system into the Edenvale sub-area.

In 1981 the City's Redevelopment Agency adopted an Expanded Edenvale Redevelopment Area Plan in anticipation of industrial development of the area largely between Coyote Creek and U.S. Highway 101. This plan detailed provision of utility services

including street and highway improvements and storm, sanitary, and water systems. Earlier, on March 25, 1980, the agency had adopted an Environmental Impact Report (EIR) prepared in September 1979 which contemplated Great Oaks as the water purveyor for the area.

In early 1983, the City entered into negotiations with developers regarding industrial development in the area at issue, and in a June 6, 1983 agreement committed itself to provide all necessary water services for the area by November 1, 1983. Thereafter, the City notified Great Oaks its planned adoption on June 28, 1983, of a Resolution of Necessity authorizing the filing of eminent domain proceedings to acquire Great Oaks' interest in its Commission certified service area affected. On June 23, 1983, the City made a written offer to purchase that interest for \$2,000, but provided no summary of the basis for such amount. At the June 28, 1983, City Council meeting Great Oaks argued vainly against adoption of a resolution, pointing out that the 1979 EIR contemplated Great Oaks as the water supplier, whereas the City now intended and had contracted to substitute itself, an environmental impact not considered in the EIR adopted in 1980. The City Council nonetheless adopted the Resolution of Necessity on June 28, 1983, and on July 14, 1983, filed its complaint in eminent domain in Superior Court.

On July 15, 1983, the City filed a petition of the first class¹ asking the Commission to determine the just compensation to be paid Great Oaks "for its property in the nature of its facilities rendered inoperative, reduced in value, or rendered useless to it for providing water services to a portion of this

¹ City's initial petition purported to be filed pursuant to PU Code § 1504, an error corrected by amendment filed August 30, 1983, reflecting intent to file under PU Code §§ 1401 et seq. On September 8, 1983, Great Oaks filed a Motion to Dismiss, citing the procedural error. The Administrative Law Judge (ALJ) ruled the motion moot. We affirm this ruling.

Expanded Edenvale Redevelopment Area in which Great Oaks Water Company is certificated by the Public Utilities Commission to provide water service."

On September 7, 1983, the Commission issued D.83-09-017, its Order to Show Cause setting a prehearing conference on September 29, 1983. Prehearing conferences were held in San Francisco on September 29, 1983 and November 29, 1983, before ALJ John B. Weiss during which parameters of the subject service area, supportive infrastructure claimed, and certain industrial site properties were explored, and maps were furnished. However, in view of expanded contentions and concurrent other developments, an additional conference set for February 24, 1984 was reset for March 27, 1984, and then cancelled as the matter was taken off calendar.

Concurrently, the City's Complaint in Eminent Domain in Superior Court had floundered. After oral argument, the trial court on April 4, 1984, entered an order granting Great Oaks summary judgment on the grounds that, by failing to provide a written summary of the basis for determination of the value of the subject property prior to adoption of the Resolution of Necessity, the City had failed to comply with Government Code § 7267.2, and that the EIR was defective because it did not consider the effect of the City's control of the water supply and possible risks in connection therewith. The trial court unconditionally dismissed the complaint and ordered that Great Oaks recover its costs and litigation expenses. The City appealed.

On June 17, 1987, the First Appellate District, Division Three, of the Court of Appeals affirmed the trial court's dismissal on all issues (City of San Jose v. Great Oaks Water Company, A.027584 and A.031079). The deadline, July 17, 1987, has passed without further appeal by City.

In the intervening time, there has been no further pursuit of its petition by the City.

Discussion

It is concluded that the City's petition for a determination of just compensation should be dismissed without prejudice for lack of prosecution.

Findings of Fact

1. On July 14, 1983, City filed a complaint in Superior Court to acquire Great Oaks' sub-area portion of the Edenvale area of San Jose.

2. On July 15, 1983, City filed this petition, amended August 30, 1983, for the Commission to determine the first compensation it should pay Great Oaks for that sub-area service territory and Great Oaks' rights to serve.

3. City's Complaint in Eminent Domain in Superior Court was contested in Superior Court by Great Oaks on various grounds, leading to a request that the Commission proceeding be taken off calendar pending decision in Superior Court.

4. City's Complaint in Eminent Domain in Superior Court was unconditionally dismissed on April 4, 1984, when Superior Court granted summary judgment to Great Oaks.

5. City's appeal to the Court of Appeal was denied and the decision of Superior Court affirmed.

6. There has been no further pursuit of its petition by City.

Conclusion of Law

City's petition should be dismissed without prejudice.

O R D E R

IT IS ORDERED that the petition by the City of San Jose for the Commission to determine just compensation for acquisition of a portion of the certificated service area of the Great Oaks Water Company is dismissed without prejudice.

This order becomes effective 30 days from today.

Dated NOV 25 1987, at San Francisco, California.

STANLEY W. HULETT
President

DONALD VIAL
FREDERICK R. DUDA
G. MITCHELL WILK
JOHN B. OHANIAN
Commissioners

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


Victor Weissor, Executive Director

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