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PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

WATER DIVISION **RESOLUTION NO. W-4553**
September 8, 2005

R E S O L U T I O N

(RES. W-4553), GREAT OAKS WATER COMPANY. ORDER AUTHORIZING AN EXPANSION OF SERVICE AREA.

SUMMARY

By Advice Letter (AL) No. 170, filed on April 29, 2005, Great Oaks Water Company (Great Oaks) requests revision of its service area map to include an area contiguous to its presently certificated service area in Santa Clara County.

Great Oaks has sent 45 will-serve letters to the potential customers in the proposed area. One agricultural customer in the proposed area has been receiving water from Great Oaks since AL No. 170 was filed.

Letters of protest were received from the City of San Jose (City), the County of Santa Clara Environmental Resources Agency Planning Office (County), and the Local Agency Formation Commission (LAFCO) of Santa Clara County. After this resolution was sent out for comment, comments were received from the Santa Clara Valley Water District (the District). The Water Division (Staff) evaluated the concerns in each protest and comment and determined none contained any basis for the Commission to deny Great Oaks's request.

This resolution accepts Great Oaks submission of its service area map.

BACKGROUND

Great Oaks serves approximately 20,166 customers in southeast San Jose, east of Snell Road and south of Hellyer Park, Santa Clara County.

There have been numerous disputes between the City and Great Oaks regarding service territory.

Decision (D.) 91-02-039 dated February 21, 1991, resolved a dispute between the City and Great Oaks regarding an area adjacent to the Coyote Valley. Great Oaks filed AL

No. 123 to extend its service territory to an adjacent undeveloped area bounded by Piercy Road to the north, the Evergreen Hills to the east, Tennant Avenue to the south, and Coyote Creek to the west. The City protested the service area extension on the grounds that the area was within its own planned service area, and that it had already constructed facilities to serve a larger area east of Coyote Creek, including all of the proposed area.

D.91-02-039 concluded that, "neither the existence of an agency-declared service area or the existing of facilities built by the agency necessarily requires that a utility expansion into disputed territory must be rejected", and that although the City had existing facilities in the area, Great Oaks would be able to provide better service. Great Oaks was ordered to serve the area. Ordering Paragraph 3 states that "Great Oaks shall cooperate in good faith to obtain the right to purchase water and share storage capacity from, or to purchase, the City's facilities". The City took no subsequent action to sell its facilities to Great Oaks.

Resolution (Res.) W-4287 dated September 20, 2001, resolved Great Oaks's AL No. 151 and authorized Great Oaks to add an industrial customer to its service territory. Great Oaks had previously filed AL Nos. 149 and 150 to revise its service territory to include the same industrial customer. AL No. 149 was withdrawn, and AL No. 150 was rejected due to missing information and an illegible Water Supply Questionnaire (Questionnaire). Res. W-4287 states the following:

> The Commission's record clearly shows that historically, Great Oaks, [the City], and the Municipal have competed for new service territory. Commission decisions, such as D.85-06-022… and D.91-02-039… show that the Commission previously has debated territorial issues, has expended significant resources and efforts to consider all sides of the issues, and has repeatedly defined the authorizing decision as supported by good public policy. Although this Commission has made it clear that it considered the public interest when making these decisions, the Commission has no jurisdiction over [the City]. We note that, in every previous case, the City and its Municipal have ignored this Commission's determinations. Staff has no reason to believe this resolution will be treated any differently."

Great Oaks filed AL No. 152 on December 5, 2001, to implement the changes in its tariffs authorized by Res. W-4287. AL No. 152 was protested by the City. In a letter to the City, dated February 22, 2002, Izetta Jackson, Interim Director of the Water Division states:

> "The issue of Great Oaks's right to serve, especially in areas protested by the [City of San Jose], has been addressed numerous times in the past by this Commission. The Commission has consistently ruled in Great Oaks's favor. It is not our position to reargue this issue again."

Staff sent a data request to Great Oaks requesting more information in order to further investigate each of the protests received. Great Oaks responded on June 15, 2005. The response stated that 45 will-serve letters have been sent to potential customers in the proposed area. Great Oaks also stated that there is one agricultural customer currently receiving water in the proposed area. This customer had received 53.4 acre feet of water by the end of May. All the potential customers in the proposed area will be metered. Great Oaks does not anticipate any water quality issues in the proposed area.

NOTICE AND PROTESTS

A copy of the advice letter was sent to the City, San Jose Water Company, the Local Agency Formation Commission (LAFCO) of Santa Clara County, and Espana Mutual Water Company in accordance with General Order 96-A. The City, LAFCO, and the County filed protests to the advice letter. The County and the City filed their protests on May 17 and 19, 2005. LAFCO filed its protest 5 days late, on May 24, 2005. The late filed protest is accepted for filing.

Great Oaks replied to the City's protest on May 24, 2005 via mail. Great Oaks responded to the County's protest on May 23, 2005 via email and mail. Great Oaks responded to LAFCO's protest on May 25, 2005 via email and mail.

The issues of the City, LAFCO, and the County are explained and resolved below in context of sections 1001 and 1505 of the PU Code.

City of San Jose:

The City's first concern is that "a portion of the area covered by Advice Letter No. 170 can be served by existing San Jose Municipal Water system facilities, and the entire area lies within the City's Coyote Valley service area." The City believes that the proposed expansion would permit the duplication of facilities in defiance of PU Code Section 1505. According to the City's protest, these facilities are "in Santa Teresa Boulevard to Bailey Avenue and in Bailey Avenue". These facilities are mostly along the northern border of the proposed area.

The City also claims that "the San Jose Municipal Water System Coyote Valley service area covers the entire area proposed for expansion by Great Oaks." In addition, the City claims that it has existing facilities such as water mains, a well field, and a 3.6-million gallon storage tank, within approximately 2 miles from the proposed service

area extension. However, Great Oaks responds that the City does not have any existing facilities to serve the proposed extension area and Great Oaks has facilities, services installed, and customers. Great Oaks indicates that it began providing water the day after the AL was filed.

The protest by the City states that "Great Oaks has failed to demonstrate that it will be able to meet the projected water demands for this area."

The City's protest states:

> "As a part of the development of the [Coyote Valley Specific Plan (CVSP)], the City has worked closely with the Santa Clara Valley Water District to determine the water supply needs for the specific plan area. The total projected demand for the CVSP area (including the existing and proposed new development) is estimated to be 16,000 to 20,000 AF / YR or 14.2 to 17.8 mgd, which is based on average daily demands. A combination of water supply program components, including new groundwater recharge opportunities, use of recycled water and appropriately treated recycled water, local transfers between groundwater basins, water conservation and some direct import, is expected to be used to provide the needed water. The CVSP would also identify the need for new wells, pump stations and a water distribution network to serve the Coyote Valley."

This statement is based on speculation that the area will be developed in the future, and does not affect the current situation. Furthermore, the City does not have these facilities in place and thus they are not justified in claiming that service duplication would occur where Great Oaks is allowed to serve the area. Staff sees no violation of PU Code Section 1505 with Great Oaks' proposed territory expansion.

Staff analyzed the Questionnaire submitted as part of AL No. 170. The Questionnaire shows that Great Oaks does have the ability to provide water to the customers in the area. The City also claims to be concerned that customers in the area will be confused if Great Oaks is allowed to serve the proposed area. The City did not explain how customers would be confused, and Staff does not believe this to be relevant to the proposed expansion of Great Oaks's service territory.

Finally, the City's protest discusses potential growth in the proposed area. They claim that the "Council Vision for Coyote Valley envisions a pedestrian and transit-oriented community for a minimum of 25,000 new residential units and 50,000 new jobs." There is no specific time-frame given, and the City indicates that the timing of these plans has been uncertain for decades. Staff does not think that speculative plans for the proposed

area constitute a justification for denying water service to current residents ready to be served in the area.

County of Santa Clara:

The County's protest claims that "extension of piped water to this area outside San Jose's urban service area, is in direct contradiction of fundamental county, cities and LAFCO policy prohibiting urban types and levels of services outside cities' urban service areas. Urban service areas are areas designated for urban growth and to which urban level of services would be provided, upon annexation by the city. The urban service area is a tool to manage urban growth, contain urban sprawl and efficiently provide urban services."

Great Oaks responded by stating that they do not "see any complaint by the County about the presence of PG&E's electrical service and SBC's telephone service throughout the area, obviously keys to any future growth." Great Oaks also states that "The Agency does not explain how greater density and growth will occur from just the availability of water too." Great Oaks claims that the potential customers wish to have Great Oaks serve them because of increased costs related to Department of Health Services regulations for wells, and to provide additional fire flow to the proposed area.

Staff believes that water service should not be considered an urban type service as indicated by the County. The potential customers in the proposed area should not be denied water service because they are not within the city limits.

LAFCO:

LAFCO begins by saying that the Advice Letter "does not provide specific information on the types and locations of proposed connections." They also say that "it is not clear about the need for extending water to the area at this time" and that it would be premature to extend water service to the area.

The protest sent by LAFCO refers to the County's limits on "urban types and levels of services outside cities' urban service areas." The LAFCO protest also states that "with the extension of water service to the area, there is potential for development of a type and density that is greater than which can be accommodated by current individual wells."

Staff believes that it is not premature to extend water service to an area with existing potential customers. Furthermore, it is not up to LAFCO to determine whether or not the information provided is adequate for Staff's analysis of the Questionnaire.

Staff believes that if a water company is willing to provide service to an area and has the capacity to do so without adversely affecting the rest of its customers it should be allowed to, no matter how few customers are in the area.

DISCUSSION

Great Oaks' request to provide service in a contiguous area is governed by PU Code Section 1001. While the first paragraph of that Section requires a regulated utility to get Commission certification to provide service to a new territory, the second paragraph states:

> "This article shall not be construed to require any such corporation to secure such certificate for an extension within any city or city and county within which it has theretofore lawfully commenced operation, or for an extension into territory either within or without a city or city and county contiguous to its street railroad, or line plant or system and not theretofore served by a public utility of like character."

Based upon this language, Great Oaks does not require Commission permission to extend its line, plant or system into contiguous territory, as Great Oaks is seeking to do here. Thus this resolution does not need to address the issue of approval of the extended service territory as the legislature has already addressed that issue and found the extension to be proper.

Although it does not need Commission approval to provide utility service in this new area, Great Oaks still has to follow Commission procedures in order to properly modify its tariff sheets. General Order 96-A requires the utility to file a service area map and Standard Practice U-14-W requires that at least 30 days prior to providing service the utility must file a new service area map by advice letter and that the utility must serve a copy of the advice letter on all entities on the service list, and all affected landowners in the territory being acquired, the affected county Local Agency Formation Commission, the local fire protection agency and the local subdivision permitting agency. Great Oaks has done this. With that proviso, the Commission has no responsibilities other than to recognize the service area extension.

And finally, we address the issue of long-term provision of service in the service territory. Although Great Oaks will be providing service in this area, the City of San Jose still has the power, if it chooses to use it, of condemning the facilities of Great Oaks' at any time, and, if it prevails, providing service in this part of the Coyote Valley. Therefore, we do not determine by this resolution who will provide eventual service in this area, just that Great Oaks is capable of doing so now and that it is in the public interest that Great Oaks provide service as requested by this advice letter.

CONCLUSION

There are people in the proposed area that want water service, and Great Oaks is capable of serving them. It is reasonable to approve Advice Letter No. 170.

COMMENTS

Public Utilities Code §311(g)(1) provides that this resolution must be served on all parties and subject to at least 30 days public review and comment prior to a vote of the Commission. Code §311(g)(2) provides that this 30-day period may be waived or reduced upon stipulation of all parties in the proceeding.

The 30-day comment period for the draft resolution was neither waived nor reduced. Accordingly, this draft resolution was mailed to parties for comments, and will be placed on the Commission's agenda no earlier than 30 days from the date of mailing of this resolution to the parties.

Comments were received from Great Oaks on August 16, 2005. Great Oaks objects to Ordering Paragraph 2 and 3 in the draft resolution. Great Oaks argues that it can provide service contiguously without filing a service area map. The only risk it runs by not having the new area on its map is that another Commission regulated utility could also provide service in that area. It also states that any service provided contiguous to its existing territory should be fully billable. Great Oaks cites D.04-02-043 (Jeffrey Young v. California Water Service Company). Staff has removed ordering paragraphs 2 and 3 and adjusted other language in this resolution as requested by Great Oaks.

Comments were received from the City of San Jose on August 18, 2005. The only comments germane to this resolution are that the service area is not adjacent to Great Oaks existing service area. Contiguous does not always mean adjacent. Contiguous can also mean nearby. For years the Commission's Office of Ratepayer Advocates has agreed with the water utilities that a new service area within 2,000 feet of existing service territory can be considered contiguous since service areas that close together or closer are reasonably likely to be interconnected in the future. Replies were received from Great Oaks by e-mail on August 19, 2005. Great Oaks complained that the response by the city was not totally factual.

The District provided comments on August 30, 2005. None of the comments relate to the extension. The District expressed concern that it was not served with the original Advice Letter. Per General Order 96 any entity including the District must be added to the Advice Letter service list simply by informing the utility of its desire be added. As this is Advice Letter No. 170, Great Oaks has filed many advice letters over the years. The District has had ample opportunity to be added to the service list if it had chosen to do so. Nevertheless, we shall order Great Oaks to serve the District in the future. There was some discussion of Great Oaks' Urban Water Management Plan (UWMP). This

document is required by the California Department of Water Resources, not the Commission, although the Commission requires the filing of a Water Management Program with each Class A GRC, and this document is based on the UWMP. There was no discussion in the Comments that related the UWMP to the service area extension or this resolution. The only indication of concern with the service area extension was the paragraph that states in part: "This action is in opposition to good public policy, ratepayer interests, sound water management, and state law." Staff cannot find any basis to support these allegations. If the extension is not in accordance with state law, then the District clearly can pursue its concerns in court. There is nothing in the Comments from the District that justify Commission action that would serve to deny the service area extension, which, as described above, the Commission cannot legally do anyway.

The District attached a copy of a document called "Water Supply Availability Analysis for the Coyote Valley Specific Plan". This document clearly showed that water management is required in the Coyote Valley because the aquifer is small and subject to local variations in water supply and that demand will exceed supply in the future requiring conjunctive use (a combination of surface and groundwater supplies) and groundwater recharge will be necessary. There was no mention in the document of the necessity that the water not be supplied by Great Oaks, however.

In its reply to the District's comments, dated September 1, 2005, Great Oaks pointed out that District Staff was well aware of the advice letter filing, having personally discussed it with Great Oaks' Chief Operating Officer, Alan Gardner, in May of 2005. The reply also asserted that the District has no regulatory authority over Great Oaks.

FINDINGS

1. The service area extension as filed in AL No. 170 is unserved by a public utility of like character and is contiguous to Great Oak's existing service territory.

2. Great Oaks is ready, willing and able to serve the areas included in the service area extension in AL No. 170.

3. Great Oaks properly, at least 30 days prior to providing service, filed an advice letter delineating the new service territory and served the advice letter on the service list, all affected landowners in the territory being acquired, the affected county Local Agency Formation Commission, the local fire protection agency and the local subdivision permitting agency.

4. The City of San Jose, the County of Santa Clara, the Santa Clara Local Agency Formation Commission and the Santa Clara Valley Water District provided Protests

or Comments on the Advice Letter or this Resolution. None of the Protests or Comments justify Commission action with respect to this service area extension.

THEREFORE IT IS ORDERED THAT:

1. Great Oaks Water Company's Advice Letter No. 170 is approved.

2. Great Oaks shall add the Santa Clara Valley Water District to its Advice Letter service list.

3. Because it is serving a public need, the effective date of Great Oaks Water Company's revised service area map shall be today.

This Resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed, and adopted at a conference of the Public Utilities Commission of the State of California held on September 8, 2005; the following Commissioners voting favorably thereon:

STEVE LARSON
Executive Director

MICHAEL R. PEEVEY
President
GEOFFREY F. BROWN
SUSAN P. KENNEDY
DIAN M. GRUENEICH
JOHN A. BOHN
Commissioners