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ORIGINAL

Decision No. 72527

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

CITIZENS OF WEST PARLIER, AND THE WATER COMMITTEE OF THE LA COLONIA CITIZENS' COMMITTEE, Co-Complainants, vs. WHITENER HEIGHTS WATER CO., Defendant.	Case No. 8300 (Filed November 10, 1965)

John C. Martinez, a complainant, in propria persona.
Clifton G. Harris, for defendant.
Frank S. Rodriguez, in propria persona, and Normal Covell, for Fresno County Health Department, interested parties.
Donald M. Grant, Counsel, for the Commission staff.

INTERIM OPINION

At the close of a hearing on the complaint, held February 16, 1967 at Parlier before Examiner Gregory, the parties stipulated that certain questions concerning defendant's tariffs and billing practices would be submitted on briefs for an interim opinion, as a guide to informal resolution of consumers' complaints on those issues. If long-standing confusion on ground rules thus can be cleared up, a final order would issue disposing of those questions and other issues, relating to system improvements, raised by the pleadings and evidence.

The questions presented concern the following disputed matters, summarized from the testimony and the briefs:

1. The proper application of defendant's tariffs to premises with more than one dwelling, or to residential premises on which commercial activities also are conducted.

2. Defendant's claim of a right to collect charges for water service rendered prior to obtaining a certificate in 1963 (Decision No. 65895, August 20, 1963, Case No. 7471, Applications Nos. 44838 and 44024).1/

3. To what extent do present or former schedules apply to service.

Preliminarily, we note that the pleadings, filed late in 1965, raise issues both of fact and of tariff interpretation. The factual issues, to which much of the testimony was directed, concern pump and pipeline efficiency and the maintenance of public health standards for the water supply. Connection of consumers' services to new distribution laterals in some parts of the presently interconnected systems, and the actual uses to which consumers' premises are devoted, together with actual lot dimensions (related to tariff charges for excess areas), also are subjects dealt with in the testimony.

Relatively undisputed matters, such as physical improvements needed for adequate service, can best be disposed of by a final order, after the parties have had an opportunity to agree, first, on the rules that must govern utility-consumer relationships

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1/ Decision No. 65895 was rendered in a consolidated proceeding that involved: (a) applications by Frank Astarinhart (No. 44838) and Aram Atmajian (No. 44024), both claiming title to the utility properties as secured creditors of Manuel and Dolores Madrid, defaulting former owners, for authority to operate the system; (b) a complaint by Astarinhart (No. 7471) against the water company, its former owners and claimants, for injunctive relief against foreclosure by Atmajian and the Madrids. The decision: (a) granted Atmajian's application and ordered interconnection of facilities serving the Whitener Heights and Bise Tracts; (b) revoked the Madrids' certificate and canceled their tariffs; (c) ordered Atmajian to apply for a water supply permit; (d) authorized, nunc pro tunc, a deed of trust and chattel mortgage executed by the Madrids on October 12, 1959 in favor of Atmajian; (e) denied Astarinhart's application for a certificate. The decision also discloses facts leading to the filing of the present complaint.

and, second, the actual dimensions and uses of individual premises that determine the application of rates and rules. We now turn to the tariff and billing issues submitted for interim opinion.[2/]

I. Tariff Schedules of Whitener Heights Water Co.

Defendant Aram Atmajian filed his present tariff, providing flat rate and optional metered service, on October 30, 1963 pursuant to Decision No. 65895. The tariff became effective on November 3, 1963 and superseded the Madrids' tariff canceled by that decision concurrently with revocation of the Madrids' certificate. Only flat rate service has been provided under the present and former tariffs.

Both Atmajian's and the Madrids' flat rate schedules provide for a basic flat rate of $2.50 and for an additional charge of $.03 for each 100 square feet in excess of 6,000 square feet. The canceled Madrid schedule, however, provided for the additional charge to apply to irrigation of lawn, shrubs, gardens, vineyards and orchards. The present schedule makes no reference to such irrigation.

Defendant argues that the present rate schedule should apply for service rendered from and after November 3, 1963, and that the Madrids' schedule should apply to service rendered from August 1, 1961 (Atmajian's first billing date after he took possession of the then separate systems as beneficial owner entitled to rents under deeds of trust and a chattel mortgage from the Madrids, but before

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2/ Delay in reaching a hearing resulted chiefly from ineffectual attempts by the parties to settle their differences after the case was at issue. When inquiries addressed to complainants' attorney failed to elicit a reply, the complaint was dismissed for lack of prosecution (Decision No. 71095, dated August 9, 1966). A group of defendant's customers later requested that the proceeding be reopened. Accordingly, Decision No. 71095 was set aside and the proceeding was reopened by an order dated November 1, 1966.

he foreclosed the securities on December 18, 1961 and August 29, 1962, after which dates he has claimed fee title) to November 3, 1963, when the present tariff became effective.

Staff counsel argues that Sections 737 and 738 of the Public Utilities Code control defendant's asserted right to collect for water service prior to his filing a tariff. Section 737 provides, in substance, for filing complaints for collection of "lawful tariff charges" of public utilities in any court of competent jurisdiction within three years from accrual of the cause of action, subject to an extension of six months from the date the customer, after receipt of a written demand from the utility within the three-year period, has given written notice to the utility of refusal to pay the demand. Section 738 provides, in pertinent part, that the cause of action shall accrue upon the performance of the service or the furnishing of the commodity with respect to which the complaint is filed or claim made, and that such remedy is cumulative and in addition to any other remedy provided in Part I of the Code in case of failure of a public utility to obey an order or decision of the Commission.

Staff counsel urges that this Commission lacks jurisdiction to determine either whether defendant has a cause of action against his customers for alleged underpayments of tariff charges, or what the limitation is on bringing such action. On the question of rates applicable to service prior to November 3, 1963 (the effective date of Atmajian's tariff), staff counsel asserts that after Atmajian foreclosed the Madrids' trust deeds in 1961 and 1962, there was no applicable tariff schedule on file that he was authorized to use and that, in consequence, if he had any claim against complainants or other customers for water service during his pre-certificated possession of the utility properties, such cause of action would be

for only the reasonable value of service furnished during the period between foreclosure and the effective date of his own tariff.

Defendant, in his reply brief, agrees with staff counsel that no determination of the actual amount owed by any customer for water service can be made without reference to Sections 737 and 738 of the Code, and that in the event of nonpayment suit would have to be filed under the provisions of those sections. Defendant asks for a specific ruling to the effect that he is entitled to charge and collect for service rendered from and after August 1961 to date, subject to any limitations contained in Sections 737 and 738 of the Code. In addition, however, he asserts that since Section 451 of the Code requires that all charges of a public utility must be "just and reasonable", and that "the existence at any point in time of an approved rate schedule establishes the just nature and the reasonableness of the charges to be made for the service rendered by the utility", to now rule, as suggested by staff counsel, that defendant is entitled to charge the "reasonable value" of water services furnished is to ignore that a standard of reasonableness, i.e., the Madrids' schedule, existed prior to November 3, 1963.

Whether or not defendant may have a cause of action in the courts for collection of "lawful tariff charges", subject to applicable statutes of limitation or other defenses, is not for the Commission to say. We note, however, that when defendant took possession of the utility properties under claims of beneficial and-later - fee title, the Madrids' tariff schedules, then on file and in effect until canceled by Decision No. 65895, were the only lawfully filed schedules of rates and rules that governed the utility's water service until defendant's own tariff became effective on November 3, 1963. Consequently, any person, including defendant,

"owning, controlling, operating, or managing" the utility's properties and providing water service would be bound to observe the Madrids' tariff schedules until they were lawfully superseded, as they were here, by other schedules (Public Utilities Code, Sec. 2701).

We next turn to the issue of application of defendant's tariff to premises containing multiple dwellings or other uses, or to areas in excess of 6,000 square feet.

II. Application of Defendant's Tariff Schedules As Related to Size or Use of Premises.

Defendant's Schedule No. 2R, Residential Flat Rate Service, reads, in pertinent part, as follows (Original Cal. P.U.C. Sheet No. 4-W, filed October 30, 1963, effective November 3, 1963):

"RATES	Per Service Connection Per Month
For a single-family residential unit, including premises not exceeding 6,000 sq. ft. in area	$2.50
For each 100 sq. ft. or [sic] premises in excess of 6,000 sq. ft.	.03"[3/]

Defendant, in his opening brief, notes three factual situations that require clarification for application of Schedule No. 2R. Those are:

1. The owner of a parcel of land has more than one single-family residential unit upon the parcel, with a separate connection to the utility's water main for each such residence.

2. The owner has more than one single-family residential unit upon a parcel of land served by only one connection to the utility's main. A connection for each unit subsequent to the original dwelling was made by the owner, without an application for service for

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3/ "Or" should be "of". This typographical error on Sheet No. 4-W should be corrected by an advice letter amendment to be filed by the utility.

the subsequent unit, or units, and without notice to or knowledge of the utility. (The record indicates that the later connections, in this type situation, were not from the utility's main but from some point on the original service connection. Defendant asserts that such subsequent connections are violative of defendant's tariff, Rule No. 3 (Application For Service) and Rule No. 19 (Service To Separate Premises And Multiple Units, and Resale Of Water)).

3. The owner has more than one single-family residential unit upon a parcel of land served by only one connection to the utility's main, but later connections (from the original service line to the additional units) were made after application or notice to the utility.

Defendant submits that in each of the three situations above, a flat rate charge of $2.50 per month should be made for each of the single-family dwelling units. If the premises devoted to the use of any one of the single-family dwelling units should exceed 6,000 square feet, "<u>including the dwelling itself</u>" (emphasis supplied) then an additional charge, defendant argues, of $.03 per 100 square feet would apply. Although defendant asserts that there is, at present, no known situation in which the square footage of the "premises", as defined by him above, would exceed 6,000 square feet, the record (Exhibit 5, System Map) shows that lot sizes, improved and unimproved, range from about 5,000 square feet to as much as about 52,000 square feet, with typical sizes of the order of 9,000 or 10,000 square feet.

Staff counsel, in Part I of his brief, maintains that the $2.50 rate is applicable only when three requirements are met: first, there must be a single-family residential unit; second, such unit must be on "premises", as defined by Rule No. 1 of the tariff

(Original Cal. P.U.C. Sheet No. 5-W),[4/] not exceeding 6,000 square feet; and, third, such unit and premises must be served by only one connection from defendant's main.

A. Two or More Units on Premises Each Served by Separate Connections to Utility's Main

Defendant and staff counsel agree that the basic flat rate of $2.50 per service connection per month should apply to each single-family residential unit located on a lot or premises, of 6,000 square feet or less, where each unit is served by a separate connection to the utility's main. Whoever is the "customer" of the utility, in such a case, would pay a monthly basic charge at the rate of $2.50 for each unit, including his own.

Defendant and staff counsel do not agree on the application of the additional charge of $.03 for each 100 square feet of premises in excess of 6,000 square feet. As mentioned above, defendant asserts that "if the premises devoted to the use of any one of the single-family dwelling units should exceed 6,000 square feet, including the dwelling itself, then the additional charge of $.03 per 100 square feet would apply". (Opening Br., p. 3.) Staff counsel concludes that in the case of multiple single-family residential units located on one lot, or premise, having a total area in excess of 6,000 square feet, the total charge should be computed by applying the basic flat rate of $2.50 to each residential unit and adding thereto a single charge, at the rate of $.03 per 100 square feet, for that portion of the total area of the lot, or premise, which exceeds 6,000 square feet.

4/ Rule No. 1 (Definitions) defines "premises" as: "The integral property or area, including improvements thereon, to which water service is, or is to be, provided." Staff counsel asserts that the term "premises" does not relate to the square footage of the residential units themselves, as alluded to by defendant.

Since defendant does not wish to impose the higher charges which would result from the conclusion of staff counsel, and since the defendant does not have in his tariff the usual provision for a lower monthly charge for each additional residential unit, this interim opinion will provide for billing in accordance with the position taken by defendant's counsel.

B. Multiple Units on the Same Premises Served by One Connection

Defendant (Opening Br., p. 3) states that owners of certain premises with more than one unit which are served by only one connection to the utility's main, had the connection for each unit, subsequent to the original, made by the owner, without application to defendant and without his knowledge, in violation of Rules Nos. 3 and 19 of defendant's tariff.

Defendant argues that since two or more dwellings obviously use more water than one, to interpret Schedule No. 2R, where there is only one connection to the utility's main on the parcel, as requiring only one basic charge for both single and multiple unit usage of water, would not only unreasonably burden the single-dwelling owner but would create a preference in favor of the multiple-unit occupants, contrary to the provisions of Section 453 of the Public Utilities Code, relating to undue discrimination, and of Section 451 of the Code, which requires all utility charges to be just and reasonable. Defendant, however, in his closing brief agrees with staff counsel's conclusion that, at least with regard to the basic charge, each single-family residential unit located on a premise, or lot, regardless of total area of the parcel, should bear a separate basic charge for water used by that unit.

Counsel, in their briefs, have discussed, variously, the applicability of some of defendant's pertinent tariff rules.[5/] As both counsel agree that each single-family dwelling on a premise must bear a separate basic flat rate charge, no useful purpose would be served here by extended reference to their respective arguments concerning the rules that led to the agreed conclusions.

We note, however, that staff counsel has pointed to the text and requirements of certain rules: (a) Rule No. 3C., which requires that a customer making any material change in the "size, character or extent" of the equipment or operations for which service is utilized shall immediately notify the utility, in writing, of the extent and nature of the change; (b) Rule No. 19B., which gives customers an option to have premises served by one or more connections where there is more than one unit on the premises; (c) Rule No. 11B.2., which provides that the utility may discontinue service to any customer for violation of tariff rules, after it has given the customer at least five days' written notice of such intention. Where safety of water supply is endangered, service may be discontinued immediately without notice. Staff counsel also notes that the evidence discloses there are no shut-off valves on defendant's system, so that defendant could not discontinue service to customers who had allegedly violated Rules Nos. 3 and 19.

5/ Rule No. 1, Definitions - "Flat Rate Service"; Rule No. 3C., Application for Service - Change in Customer's Equipment or Operations; Rule No. 11B.2., Discontinuance and Restoration of Service - For Noncompliance with Rules; Rule No. 19B., Service to Separate Premises and Multiple Units, and Resale of Water - Service to Multiple Units on Same Premises.

Summary and Interim Conclusions
On Agreed Issues Submitted

There is little doubt, from the record thus far made, that uncertainty concerning the proper rates, rules and charges for water service, compounded by Atmajian's claims of ownership of the system properties after their abandonment by the Madrids and both before and after he received a certificate in 1963, has created a virtual breakdown in understanding between the utility and its approximately 75 present customers. A number of the customers, incidentally, are away from their homes for various periods during the winter months, and see no reason to pay for water they do not use. During the working season, especially in the summer and early fall, water consumption is markedly increased due to the influx of working families and their occupancy of available dwellings in the utility's service area. The customers and others who, though not customers, may use water in dwellings on a customer's premises, are chiefly Spanish-speaking and, though quite willing and able to pay proper charges are not conversant with--nor especially interested in--the technicalities of tariff interpretation.

Accordingly, in an effort to aid the utility and its customers in reaching an informal agreement on the submitted issues, and as a prelude to final disposition of those and other issues raised by the pleadings and evidence, we state the following propositions that, in our opinion, should govern the relations of the utility and its customers on the submitted questions:

1. During the period commencing February 18, 1960 and ending November 2, 1963, the only lawfully filed and effective tariff schedules governing water service by Whitener Heights Water Co. to customers in the Whitener Heights and Bise Tracts, in West Parlier,

were those filed with this Commission on November 26, 1948 by Charles P. Whitener and adopted effective February 18, 1960 by Manuel and Dolores Madrid pursuant to the authority conferred by Decision No. 58950, dated September 1, 1959, in Application No. 41275.

2. Aram Atmajian, during the period preceding August 1, 1961 and extending from that date to and including November 2, 1963, did not have on file with this Commission a lawful and effective tariff of rates and rules, nor did he, during said period, possess any authority from this Commission, other than that referred to in paragraph 1, above, governing public utility water service in the Whitener Heights and Bise Tracts, in West Parlier. Any cause of action Atmajian may have against complainants herein or other water users, for payment of charges for water service rendered by Atmajian during said period in said tracts, must be pursued in the appropriate court, subject to applicable statutes of limitations or other defenses.

3. Atmajian is not entitled, by any authority held from this Commission and effective on and after November 3, 1963 pursuant to Decision No. 65895, to apply payments received from customers since November 3, 1963 to water service rendered in the Whitener Heights and Bise Tracts prior to November 3, 1963.

4. Atmajian's water service to customers in the Whitener Heights and Bise Tracts, since November 3, 1963 has been and now is governed by the terms and conditions of the certificate issued to him by Decision No. 65895, by the rates and rules contained in the tariff filed by him with this Commission, pursuant to said decision, on October 30, 1963 and effective on and after November 3, 1963, and by applicable statutes, general orders and decisions enforceable by this Commission or by the courts.

5. In applying the rates contained in Schedule No. 2R (Residential Flat Rate Service) of defendant's tariff, the monthly charges for service rendered from and after November 3, 1963 should be computed as follows:

a. Where one or more single-family residential units are located on premises of 6,000 square feet or less served by one connection to the utility's main, the basic flat rate, presently $2.50 per service connection per month, is to be multiplied by the number of such units on the premises in computing the total charge to the customer, subject to the provisions of Rule No. 19.

b. Where one or more single-family residential units are located on premises exceeding 6,000 square feet served by one connection to the utility's main, the basic flat rate is to be multiplied by the number of such units on the premises, and the additional rate, presently $.03 per 100 square feet of premises in excess of 6,000 square feet, is to be applied to the area of the premises that exceeds 6,000 square feet per residential unit in computing the total charge to the customer, subject to the provisions of Rule No. 19.

c. Where more than one single-family residential unit is located on premises, regardless of total area, and each such unit is served by a separate connection to the utility's main, the basic flat rate is to be applied to each such unit, and the additional rate, if the total area of the premises exceeds 6,000 square feet, is to be applied to the area of the premises that exceeds 6,000 square feet per residential unit in computing the total charge to the customer, subject to the provisions of Rule No. 19.

The foregoing paragraphs, Nos. 1 through 5 constitute the Commission's interim opinion on the questions submitted by counsel. Agreement by the parties with the conclusions set forth above should be evidenced by a written stipulation, to be filed in this proceeding as Exhibit No. 13, next in order. The utility, should the parties agree with the bases for computation of customers' charges set forth above, will be expected to adjust its customers' accounts, since November 3, 1963, to reflect revenues computed as indicated hereinabove, to apply its present tariffs accordingly in the future,

unless and until appropriately amended, and to credit or debit customers' billings, after the effective date of a final order to be issued herein, with the amounts, proportioned to each future billing period for as long as necessary, by which charges have exceeded or fallen short of the charges computed in accordance with the above conclusions.

Unless a further hearing is required, because of failure of the parties to agree on the conclusions hereinabove expressed, a final order will be issued herein after filing and consideration of the stipulation referred to above. Such final order, in addition to appropriate disposition of the agreed issues submitted for interim opinion, will also dispose of other issues raised by the pleadings and evidence of record.

No order is required at this time.

Dated at San Francisco, California, this 31st day of MAY, 1967.

President

Commissioners