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Decision No. 75158

ORIGINAL

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

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 and William C. Bricca, Counsel, for
the Commission staff.

O P I N I O N

The Commission, by an interim opinion issued after hearing and written argument (Decision No. 72527, dated May 31, 1967), set forth five conclusions designed to provide a basis for agreement between complainants and the utility on submitted questions concerning the utility's tariff schedules and billing practices. Issues relating to system improvements were left for determination by a final order to be issued, with or without further hearings, if agreement first were to be reached on the submitted tariff and billing matters, stated in the interim opinion as follows (Decision No. 72527, pp. 1,2):

- "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. 65395, August 20, 1963, Case No. 7471, Applications Nos. 44838 and 44024).... (Footnote 1, briefly describing those proceedings is omitted here.)
- "3. To what extent do present or former schedules apply to service."

The Commission's conclusions, with which the parties recently have indicated general agreement, are set forth in detail in numbered paragraphs 1 through 5 of the interim opinion (pp. 11-13). They may be summarized as follows:

1. From 1960 to and including November 2, 1963 the only effective tariffs governing water service by Whitener Heights Water Company, in West Parlier, were those filed by Whitener in 1943 and adopted, effective February 13, 1960, by Manuel and Dolores Madrid, who later abandoned the water system.

2. Aram Atmajian (the present owner), prior to August 1, 1961 and thereafter to and including November 2, 1963 did not have in his own name, or by adoption, an effective tariff on file with the Commission, or certificated authority from the Commission governing public utility water service to the Whitener Heights and Bise Tracts, in West Parlier. Any claims for water charges prior to November 3, 1963 should be pursued by Atmajian in the courts.

3. Atmajian is not entitled, by any authority held from this Commission and effective on and after November 3, 1963, to apply payments received from customers served 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 in the Whitener Heights and Bise Tracts, since November 3, 1963 has been and now is governed by his certificate (Decision No. 65395, supra) and by his tariff schedules filed October 30, 1963 and effective November 3, 1963.

5. In applying the rates contained in Schedule No. 2R (Residential Flat Rate Service) of defendant's tariff, the monthly charges for service rendered on and after November 3, 1963 should be computed as set forth in detail in subparagraphs "a", "b" and "c" (relating to the number of residential units and the areas of premises).

The interim opinion then follows with the statement that (Decision No. 72527, pp. 13-14)--

"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."

The Commission's staff counsel and the attorney for defendant have stipulated, by an exchange of letters hereby included in this record as Exhibit 13, that the application of defendant's tariff to his water service together with his billing practices and the bases for collection of charges shall be in substantial conformance with the Commission's conclusions set forth in Decision No. 72527.

Counsel also have agreed that a report dated July 26, 1968, of an investigation of the condition of the water system conducted July 17, 18 and 19, 1968 by a staff engineer, shall be included in this record as Exhibit 14. The report, hereby included in this record as Exhibit 14, in substance notes that: (a) defendant now has a water supply permit, issued in April 1967 and that bacteriological and chemical analyses of regular samplings of the water

supply have been satisfactory; (b) the 7-1/2 hp pump (Well No. 2) has been overhauled and its capacity is now estimated at 175-210 gpm, depending on discharge pressure; (c) small service connections on Bulah and Parlier Avenues have been replaced by larger connections of galvanized steel pipes; static pressures taken in that area ranged from 28 to 40 psig, except at one location where the reading was 22 psig; and (d) six customers located east of the canal and previously supplied by the 7-1/2 hp pump are now connected to the portion of the system supplied by the 10 hp pump (Well No. 1).

The report concludes with observations and recommendations as summarized below:

a. The rate of flow available from the two portions of the system appears to be adequate to serve present customers; however, until the 3-inch main serving customers on Bulah and Parlier Avenues is replaced with a larger main, or supplemented, defendant should be restricted from extending service, without prior Commission authority, to or on any lot or parcel of land abutting on Bulah or Parlier Avenues, on which no residential living accommodations presently exist.

b. Fences should be constructed around the sites of Wells Nos. 1 and 2 to discourage access to source of supply facilities by unauthorized persons.

c. The 3-inch main on Bulah Avenue should be flushed at regular intervals.

d. The owners of the Whitener Heights system and the nearby Walker system should be encouraged to connect the two systems for standby or emergency service purposes.

Said report, Exhibit 14 herein, is hereby adopted by the Commission.

This case, the record in which now includes basic agreements on long-disputed issues of tariff application and billing practices, as well as data on completed and recommended system improvements, should now be terminated.

Although none of the parties has requested another hearing prior to issuance of a final order -- and none appears to us to be necessary -- we recognize that, as a result of this decision, defendant or his customers may have questions concerning the practical application of the utility's rates, rules, or billing practices, or in connection with system improvements. The parties are advised, without prejudice to their right to seek reconsideration of this decision or to take other appropriate formal action, to attempt to resolve such questions informally, with the help, if requested, of members of the Commission's staff.

The agreements reached on tariff matters and billing practices, together with system improvements noted in the staff's report as completed or recommended, should result not only in better water service by the Whitener Heights system but also in resolving longstanding controversies between the owner of the utility and his customers.

The Commission, on this record, finds that:

1. On November 10, 1965 certain citizens of West Parlier, Fresno County, filed a complaint with this Commission in which they alleged, in substance, that the water service provided by defendant Aram Atmajian, doing business as Whitener Heights Water Company, was defective and that defendant's practices relating to application of water service rates and rules and collection of charges were inconsistent or otherwise improper. Defendant, on December 6, 1965 filed an answer in which he generally and specifically denied complainants' allegations.

2. Thereafter, following unsuccessful efforts by the parties and their counsel to resolve the controversy (complainants having obtained the services of an attorney after the case was at issue), and equally unsuccessful efforts by the Commission staff to communicate with complainants' counsel regarding setting of the case for hearing, the Commission dismissed the complaint herein for lack of prosecution (Decision No. 71095, dated August 9, 1966). A group of defendant's customers thereafter secured an order from the Commission, issued and dated November 1, 1966, setting aside Decision No. 71095 and reopening the proceeding.

3. A public hearing in the reopened proceeding was held at Parlier on February 16, 1967 before Examiner Gregory, at which one of the complainants appeared in his own behalf and the other complainants were informally represented by Frank S. Rodriguez, a minister and resident who also acted as interpreter; defendant Atmajian appeared by his attorney and was also personally present; appearances were also entered by representatives of the Fresno County Health Department and the Commission's staff, who participated in the hearing.

4. Following receipt of evidence, both oral and documentary, the case was submitted on briefs, subject to the filing of certain exhibits (since filed - Exhibits 5 through 12), for the limited purpose of obtaining an interim opinion that would tentatively set forth the Commission's views on submitted questions relative to defendant's tariff and billing practices, to be followed -- should the parties agree with such conclusions -- by a stipulation to be filed and designated Exhibit 13 herein. Said interim opinion (Decision No. 72527, dated May 31, 1967) was thereafter duly issued and served, and the Commission's conclusions therein, as summarized hereinabove, have been generally accepted by the parties as evidenced by their stipulation filed herein as Exhibit 13.

5. On July 17, 18 and 19, 1968, a Commission staff engineer made a field investigation of the Whitener Heights water system; said engineer's report, dated July 26, 1968, contains data and recommendations concerning completed and recommended improvements to said water system, summarized hereinabove; said report has been adopted by the Commission and has been included in this record as Exhibit 14.

6. Agreements and stipulations by the parties, evidenced by Exhibits 13 and 14 herein, on controverted issues concerning: (a) application of defendant's Schedule No. 2R, Residential Flat Rate Service, to premises containing single or multiple dwellings, or other structures requiring multiple service connections; (b) defendant's billing and collection practices prior to and since November 3, 1963, and (c) the scope of and need for additional improvements to defendant's water system, render unnecessary the making of specific findings of fact herein on such issues, other than that:

a. The Commission's conclusions, hereinabove referred to, set forth in numbered paragraphs 1 through 5 of Decision No. 72527 herein, are reasonable and proper.

b. The system improvements recommended in lettered paragraphs "a" through "d" of the staff report, Exhibit 14 herein, are reasonable.

The Commission, therefore, now concludes that:

1. The record herein now contains sufficient facts and argument for submission for final decision and order, without further prior hearing, of the issues raised by the complaint and answer.

2. The Commission's conclusions on the questions submitted for an interim opinion, together with the agreement therewith evidenced by Exhibit 13 herein, and the recommendations of the staff engineer's investigation report, Exhibit 14 herein, will afford the utility and its customers a reasonable basis for adequate water service and improved relations between the utility and its customers.

The following order will provide for implementation of agreements on tariff and billing practices and for a program of system improvements as recommended by the staff engineer.

O R D E R

IT IS ORDERED that:

1. This proceeding is hereby submitted for final decision and order.

2. Defendant, Aram Atmajian, after the effective date of this order and until further order of the Commission, shall apply the rates, rules and conditions of service of his Schedule No. 2R, Residential Flat Rate Service, and his billing and collection practices relating to said water service, substantially in accordance with the provisions of numbered paragraphs 1 through 5 of Decision No. 72527 herein, which provisions are hereby specifically referred to and each such provision is hereby specifically incorporated in this order as though fully set forth herein.

3. Defendant, forthwith after the effective date of this order, shall adjust his customers' accounts for water service rendered on and after November 3, 1963, to reflect revenues computed as indicated in numbered paragraph 5 of said Decision No. 72527, and shall apply his Schedule No. 2R accordingly in the

future, unless and until said schedule is appropriately revised; defendant also, commencing with the first billing period after the effective date of this order, shall credit or debit customers' billings with the amounts, proportioned to each billing period for as long as necessary, by which charges have exceeded or fallen short of the charges computed in accordance with the provisions of said numbered paragraph 5 of said Decision No. 72527.

4. Defendant, within ninety days after the effective date of this decision, shall transmit to the Commission a written report containing a plan for improving his water system in West Parlier substantially in accordance with the recommendations set forth in lettered paragraphs "a" through "d" of the staff's report, Exhibit 14 herein. Said report shall contain estimated costs for the procurement and installation of the physical facilities required, and estimated times for the completion and placing in service of such facilities, and shall also include the result of any discussions with Mrs. Hazel S. Walker concerning the feasibility, estimated cost and estimated time of completion of a connection of defendant's water system with the Walker system, located west of Mendocino Avenue in West Parlier, for emergency or standby service on either system.

5. Defendant, unless and until prior Commission authority therefor has first been obtained, is hereby restricted from extending his facilities or providing water service to or on any lot or parcel of land abutting on Bulah or Parlier Avenues in his

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presently authorized service area on which no residential living accommodations presently exist, pending replacement or supplementation of the existing 3-inch main serving customers on Bulah and Parlier Avenues with a larger main.

The effective date of this order shall be twenty days after the date hereof.

Dated at San Francisco, California, this 27th day of DECEMBER, 1968.

William Synovace Jr.
President
Ed E. Mitchell
William G. Bennett
Fred P. Morosini
Commissioners

Commissioner A. W. Gatov, being necessarily absent, did not participate in the disposition of this proceeding.