

ORIGINAL

Decision No. 75219

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ALBERT E. ENGEL, MARJORIE L. ENGEL,
ALBERT L. PRYOR, as trustee for
ALBERT OTTO ENGEL, and SUSAN J.
ENGEL, minors, and MARJAL CORPORATION,
a corporation,

Complainants,

vs.

CLYDE HENRY, DBA FRIENDLY ACRES
WATER COMPANY,

Defendant.

Case No. 8840
(Filed September 3, 1968)

Frederick W. Flowers, for complainants.
Russell Green, for defendant.
Herbert R. McDonald, for the Commission
staff.

O P I N I O N

After due notice, public hearing on this complaint was held before Examiner Gillanders in Redwood City and submitted for decision on November 25, 1968.

Complaint Allegations

Complainants, in summary, allege the following:

1. At all times material hereto, complainants were, and now are, owners of that certain parcel of real property known as the "Harbor Village Mobile Homes Court" situated at 3015 Bayshore Highway, Redwood City.

2. Defendant owns and operates a public utility water system for the distribution and sale of domestic water in that geographical area where complainants' property is located.

3. Defendant now serves complainants' said property and the existing water mains and the available water supply are adequate to service all of complainants' property.

4. On or about November 17, 1967, for reasons unknown to complainants and without fault of complainants, there was a break in defendant's water line on complainants' property and water flowed onto complainants' property and onto the adjacent public frontage road. Subsequent thereto, defendant shut off the water supply to said line. Complainants have notified defendant, both orally and in writing, of said break, and have demanded that defendant restore the water system to good working order.

5. Defendant has refused, and continues to refuse, to restore said water system to good working order.

6. In addition to the aforementioned break in the water line, there have been other breaks in the water lines belonging to defendant and located on complainants' property, and on or about the following dates:

February 3, 1964	June 15, 1967
March 11, 1964	July 11, 1967
April 14, 1964	July 19, 1967
April 1, 1966	July 25, 1967
	August 11, 1967

7. There have been other breaks, the dates of which complainants are unaware at this time.

Relief Requested

Complainants request an order from this Commission requiring defendant to:

1. Furnish water to complainants.
2. Repair his water system located on complainants' property.
3. Keep his water system in good operating condition.

Defendant's Answer

As a positive answer to the complaint, defendant alleges that service was discontinued to complainants for failure and refusal to pay regular charges for service and that a balance of \$1,243.00 is due and payable for a period of twenty-nine (29) months preceding May, 1968, when service was disconnected.

As further positive defense, defendant alleges the condition of water line has been the subject of civil litigation instituted by complainants, which litigation has been previously adjudicated.

Defendant requests an order dismissing the complaint and also requiring complainants to pay for prior service rendered as a condition precedent to restoration of service.

Summary of Complainants' Presentation

Complainants own and operate their own water system which supplies all of their needs except water for two swimming pools. The system provides service at 80 pounds pressure. As their well supplies water which is harder than desirable for swimming pool use, they use defendant's supply for filling two pools and as a standby in case of well failure. They have not paid their bill from defendant as the water has been shut off for as long as two or three months at a time. Defendant's service has been provided at about 10 to 20 pounds pressure during peak periods.

On November 17, 1967, there was a break in defendant's water line on their property. This leak has not been repaired. Complainants' witness swore he knew nothing about the taps which defendant swore he found to be the cause of this particular leak. Complainants assert the amount owed, adjusted for periods of no service, is \$828.67.

Summary of Defendant's Presentation

Defendant testified he shut off his water supply to complainants because they have not paid the required standby charges. His distribution line to complainants terminates in a bank of four 2-inch meters. The meters have never registered any consumption.

When called upon to repair the leak described by complainants he discovered the leak was caused by five improperly installed 3/4-inch taps joining his system downstream of his meters to the line of complainants. He had never authorized the taps. He removed the taps when he repaired the leak. He testified that there never was a leak that was not repaired. His line on complainants' property, originally 3-1/2 feet in the ground, had been covered by 4 feet of fill during construction of the trailer court. He testified that upon payment of past charges he would be willing to provide service to complainants by another route which would require a small advance for construction as it was not practicable to maintain a line on private property buried 7-1/2 feet below the surface.

Staff Presentation

The staff engineer requested that the Commission take official notice of defendant's annual reports for the last five years and official notice of his tariff.

Findings of Fact

The Commission finds that:

1. Complainants' and defendant's testimony regarding the actual condition of the pipeline supplying water service is diametrically opposed.
2. The testimony of defendant is of more probative value and is entitled to more weight than the testimony of complainants.
3. Defendant's tariff permits discontinuance of service for nonpayment of bills.

4. In May 1968, defendant discontinued water service to complainants for nonpayment of bills.

5. Defendant claims complainants owe the sum of \$1,243.00.

6. Complainants have not paid their bills amounting to \$1,243.00.

7. Complainants claim the amount owed is \$828.67 and are willing to pay this amount.

Conclusions of Law

The Commission concludes that:

1. Defendant need not restore service until he has received payment for prior service rendered in the amount of \$1,243.00.

2. Upon receipt of payment defendant shall restore service in accordance with his filed tariffs either by means of his existing distribution system or by means of a new extension.

3. If defendant chooses to restore service by means of a new extension, such extension must comply with General Order No. 103. He shall not install such extension under his tariff rule No. 15.

4. If defendant chooses to provide service by means of his existing distribution system he must maintain such service in accordance with General Order No. 103.

5. Complainants are not entitled to any relief in this proceeding.

O R D E R

IT IS ORDERED that complainants are entitled to no relief in this proceeding and the complaint is dismissed.

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

Dated at San Francisco, California, this 21st day of JANUARY, 1969.

William L. Quinn
President
Muzada
Frank P. Monussey
William J.
Commissioners

Commissioner Thomas Moran, being necessarily absent, did not participate in the disposition of this proceeding.