

Decision No. 82177

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Joseph F. Leahy,

Complainant,

vs.

San Jose Water Works,

Defendant.

Case No. 9544
(Filed April 24, 1973)

Joseph Farrior Leahy, for Joseph F. Leahy,
complainant.

Paul J. Schreiber, for San Jose Water Works,
defendant.

Francis Stanley Ferraro, for the Commission
staff.

O P I N I O N

Preliminary

This is a complaint by Joseph F. Leahy of Saratoga, Santa Clara County, against San Jose Water Works (Water Works). By the complaint Mr. Leahy alleges that the bill rendered for water service to his residence, based on the meter reading made in August 1972, is obviously in error. He asks that this meter reading be adjusted to be compatible with previous readings.

Hearing

A public hearing was held before Examiner Boneysteele at Saratoga on September 4, 1973. Testimony was taken from Mr. Leahy, from Paul J. Schreiber, the manager of Consumer Services of the Water Works, and Francis Stanley Ferraro, an Assistant Utilities Engineer of the Commission's Hydraulic Branch. Three exhibits were received at the hearing, one from Water Works and two prepared by the Examiner. The correspondence file in informal complaint U-22919-H was incorporated by reference.

Background and Leahy's Testimony

There was no dispute over the facts received in evidence, only over their interpretation. From the testimony and correspondence it is clear during 1971 Mr. Leahy's meter recorded a typical pattern of water usage. In the spring of 1972, however, consumption remained low compared to the previous year. Then in August, Mr. Leahy received a bill based on consumption much higher than previously experienced. Mr. Leahy protested to the Water Works; the meter was removed for testing and found to be registering with an accuracy of 99.7 percent. When the Water Works refused to adjust the August bill, Mr. Leahy filed an informal complaint with the Commission staff. By Commission letter of November 8, 1972 Mr. Leahy was told:

"In view of favorable comparison of 1972 usage with that of 1971, verification of reads and the results of the meter test, our staff is of the opinion that the disputed bill reflects charges for water which was delivered and registered on a meter which was found to be operating satisfactorily. We find no basis for adjustment. We are returning your bill and check so that you can pay the utility directly since we understand you have made subsequent payments on your account since we received this check.

"Our staff was pleased to make this review for you."

After further correspondence with the Commission staff Mr. Leahy, on April 20, 1973, formally brought the matter to the Commission by this complaint.

Since the complaint is based on a dispute over interpretation and inferences drawn from the pattern of meter readings, a tabulation of Mr. Leahy's account for the period in question is presented below:

<u>Date of Reading</u>	<u>Meter Reading</u>	<u>Usage in Hundred Cubic Feet</u>	<u>Billing Dollars</u>
1-19-71	037	12	6.15
2-18-71	051	14	6.80
3-19-71	069	18	8.10
4-19-71	096	27	11.03
5-18-71	121	25	10.38
6-7-71	143	22	8.63
7-7-71	183	40	15.26
8-5-71	223	40	15.37
9-3-71	260	37	14.39
10-5-71	288	28	11.43
11-4-71	306	18	8.15
12-7-71	327	21	9.22
1-1-72	336	9	5.32
2-7-72	346	10	5.65
3-8-72	355	9	5.32
4-6-72	365	10	5.65
5-5-72	381	16	7.66
6-6-72	Not Read	0	2.30
6-22-72	469	-	No Bill, Check Read
7-6-72	391	10	5.65
8-4-72	528	137	48.20
8-8-72	532	-	No Bill, Check Read
9-5-72	Not Read	30 (Est.)	12.35
9-7-72	559	-	No Bill, Check Read
9-15-72	567	-	No Bill, Check Read
9-27-72	576	-	No Bill, Meter Changed
9-27-72	114	-	No Bill, Meter Changed
10-4-72	115	11 cr.	1.38 cr.

In his testimony Mr. Leahy compared the consumption of 137 hundred cubic feet (137 ccf) as recorded for August 1972 to the 40 ccf used in August of 1971. In August of 1971 his household consisted of six people; in August of 1972 it was down to three. He felt that reason and logic do not support the August 1972 meter reading. A meter, being a mechanical device, is subject to failure, and he felt that was the case in this instance.

Mr. Leahy testified that his house was about 1,600 square feet in size on a 1/4 acre lot. About 20 percent of the lot was planted in lawn and was irrigated by impulse ("Rain Bird" type) sprinklers. During August of 1972 Mr. Leahy was away for several

weeks but his house was occupied by his father who, Mr. Leahy assured the Commission, was very conservative and economical in the use of public utility services. Mr. Leahy also testified that there were no leaks that could have caused the large water usage.

Water Works' Testimony

Mr. Schreiber testified that the meter was not read on June 6, 1972 because shrubbery was obstructing the meter. On June 22 the Water Works sent out a serviceman who trimmed back the bushes and recorded a reading of 469 ccf. On July 6, 1972, the regular meter reading date, a meter reading of 391 was recorded. Mr. Schreiber was of the opinion that this was an obvious underread, and that the proper July 6 reading, in light of the June 22 check read, should have been 491, reflecting a usage of 110 ccf for the two months between May 5 and July 6.

In response to a question by the Examiner Mr. Schreiber explained that meter readings were taken on "mark sense" cards which are fed into Water Works' computer. The meter reader would have no knowledge of the check reading of 469 made on June 22.

Staff Engineer's Testimony

At the request of the Examiner, the staff engineer, Mr. Ferraro, testified concerning general patterns of accuracy of water meters. In addition to his staff expertise Mr. Ferraro has had operating experience with water utilities and more particularly, with reading, maintenance, and repair of water meters. He testified that wear in a water meter tended to allow water to escape between the nutating disk and the meter case, resulting in a reading lower than the actual usage. Because of the positive nature of the gear train he could conceive of no way in which a water meter could run fast with age.

Examiner's Exhibits

In the staff's letter to Mr. Leahy of November 8, 1972, the following sentence appears:

"In view of almost identical consumption for the first four months of this year, when according to the reads you used only \$3.35 cents [sic] worth of water at the most, it is possible that the readings were not properly taken previous to June since at that time it was impossible to read the meter."

To test this thesis, the Examiner, prior to the hearing, plotted two charts, one of the recorded monthly meter readings shown above, and one of the recorded monthly consumption. These charts were admitted into evidence as Exhibits 1 and 2, respectively.

According to Exhibit 1, the usage for 1971 generally followed along a straight line, with readings falling below the line in winter and spring and above the line in summer and fall. The recorded monthly usages as shown on Exhibit 2 naturally reflected this pattern. The year 1972, however, on Exhibit 1, all except the June 22 test reading of 469, and the readings subsequent to the August 4 reading of 528, fell considerably below a projection of the 1971 straight line. The June 22 reading (made by the serviceman) fell only slightly below the line, and the readings made on and subsequent to August 4 fell very nearly exactly upon the projected line.

The Examiner asked both Mr. Leahy and Mr. Schreiber whether, in their opinion, this pattern did not indicate that it was probable that "...readings were not properly taken previous to June..." Neither agreed, and, at Mr. Leahy's request, Mr. Schreiber supplied a tabulation of Mr. Leahy's recorded consumption through July 1973, as follows:

1972
 October 5 ccf
 November 10
 December 6

1973
 January 5 ccf
 February 4
 March 7
 April 10
 May 49
 June 42
 July 24

This tabulation was received as Exhibit 3. At Mr. Leahy's request, the Examiner, after submission, plotted these readings on a copy of Exhibit 2 and also used them to extend the curve on Exhibit 1. No objection was expressed to this request and these revisions to Exhibits 1 and 2 are hereby received as late-filed Exhibits 4 and 5, respectively.

A comparison of the recent usage, as shown on Exhibits 4 and 5, shows a lower usage in the wet fall and winter months than in 1971 and 1972 and usage in months of May and June of 1973 higher than any recorded in the two and one-half years in question (except the 137 ccf in dispute). The lower winter consumption would tend to bear out the reduction in winter usage attributable to the reduced size of Mr. Leahy's household. The summer usage, largely irrigation, would of course be much less affected by the number of people living on the premises.

Discussion of the Evidence

Based on the testimony and exhibits, the only logical surmise that we can draw is that the staff's original inference, as stated in its November 8, 1972 letter, that the meter readings were not properly taken prior to June, was correct. The disputed consumption of 137 ccf for the 29-day period ended August 4, 1972, amounts to 0.3145 acre-feet, enough water to cover Mr. Leahy's quarter acre lot fifteen inches deep. It is very unlikely that this much water could have been used on a quarter acre in a single month.

Taken in context, we believe it reasonable to conclude that the June 22 reading of 469, as recorded by the serviceman, was correct, and that the previous 381 and following 391 readings were erroneous.

Accepting the June 22 reading of 469 as correct, the usage for the six-week period between June 22 and August 4 would be 59 ccf, a figure quite compatible with the 40 ccf used by Mr. Leahy in June and July of 1971.

The Water Works, as part of its tariffs, has on file with the Commission Rule 17, Meter Tests and Adjustment of Bills for Meter Error. Section B, dealing with meter error, reads as follows:

"B. Adjustment of Bills for Meter Error

"1. Fast Meters

When, upon test, the average meter error is found to be more than 2% fast, the Utility will refund to the customer the amount of the overcharge based on corrected meter readings for the period the meter was in use but not exceeding six months.

"2. Slow Meters

- a. When, upon test, a meter used for commercial (residential and business) service is found to be registering more than 25% slow, the Utility may bill the customer for the amount of the undercharge based upon corrected meter readings for the period the meter was in service but not exceeding three months.
- b. When, upon test, a meter used for other than commercial service, is found to be registering more than 5% slow, the Utility may bill the customer for the amount of the undercharge based upon corrected meter readings for the period the meter was in service but not exceeding three months.

"3. Nonregistering Meters

The Utility may bill the customer for water consumed while the meter was nonregistering but for a period not exceeding three months at the minimum monthly meter rate, or upon an estimate of the consumption based upon the customer's prior use during the same season of the year if conditions were unchanged, or upon an estimate based upon a reasonable comparison with the use of other customers during the same period, receiving the same class of service under similar circumstances and conditions.

(continued)

"4. General

When it is found that the error in a meter is due to some cause, the date of which can be fixed, the overcharge or the undercharge will be computed back to but not beyond such date."

We note that the rule applies only to meter error, not to errors in reading the meter. We also note that none of the provisions would be applicable to this situation, even should the rule apply to errors in reading. The section that comes nearest is B.3., although in this case, instead of a nonregistering meter, we have one that was underread. It would not seem fair to apply Section B.4. when B.3. provides for a limit of three months or for the "same season". Also we cannot determine precisely when the underreads began.

An equitable solution in the spirit of the rule appears to us to be to bill for the three months ended August 4, 1972, on the basis of the same period in 1971. This will involve some pro-
ration since the reading date was changed between May 18 and June 7, 1971. We will find that Mr. Leahy's bills for the three-month period, ended August 4, 1972, should be recomputed on the basis of the following usages:

<u>Date of Reading</u>	<u>Usage ccf</u>
6-6-72	34
7-6-72	40
8-6-72	40

This represents a billed usage of 114 ccf instead of the recorded 147. We recognize the contention of Mr. Leahy that his household was smaller in 1972 but also note from Exhibit 3 that usages for May and June 1973 were higher than the corresponding 1971 period, even with the smaller household. In the late spring and in the summer months, irrigation is the major factor influencing water usage.

Findings

1. The recorded usage of 137 ccf by Joseph F. Leahy for the month ended August 4, 1972 is erroneous.
2. The bill of \$48.20 rendered to Mr. Leahy for the month ended August 4, 1972 is unreasonable.
3. A reasonable consumption by Mr. Leahy for the three months ended August 4, 1972 is 114 ccf, as derived in the above opinion.

Conclusion

The billings rendered to Mr. Leahy for the three months ended August 4, 1972 should be recomputed on the basis of 114 ccf, broken down into monthly increments as derived in the above opinion.

O R D E R

IT IS ORDERED that:

1. San Jose Water Works shall recompute the bills rendered for service to Joseph F. Leahy for the three months ended August 4, 1972, on the basis of 114 ccf, broken down into monthly increments as derived in the above opinion.

2. San Jose Water Works shall report in writing its compliance with ordering paragraph 1 above.

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

Dated at San Francisco, California, this 27th day of NOVEMBER, 1973.

Vernon L. Sturgeon
President
William J. ...
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Commissioners