

Decision 84 G5 051 MAY 16 1984

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Philip McClain, et al.,
 Complainants,
 vs.
 Twin Valley, Inc.,
 Defendant.

Case 83-10-02
 (Filed October 4, 1983)

Philip McClain, for himself and other
 complainants.
Terrell S. Root, Attorney at Law, for
 defendant.
Alex Chocas, for the Commission staff.

INTERIM OPINION

Complainants are all customers of defendant, which serves 51 connections in a rural area adjacent to Morgan Hill. Their complaint alleges excessive connection fees, nonuniform rates, and poor service including low water pressure, unannounced shutoffs, and unpotable water.

In its answer, defendant denied all material allegations of the complaint, including its status as a public utility.

Hearing was held in Morgan Hill before Administrative Law Judge (ALJ) Meaney in the afternoon and evening of April 30, 1984. At the beginning of the hearing, defendant admitted that it is a public utility under the Commission's jurisdiction.

The extent of the presentation by complainants made it impossible to allow defendant to complete its presentation, or for defendant's witnesses to be fully cross-examined. Also, there was no time for testimony by the staff witness. A further hearing will be set.

However, evidence on service problems and nonuniformity of rates, as well as the testimony of Reginald Knaggs, consulting hydraulics engineer retained by defendant, convinces us that an interim order, effective immediately, is necessary for the sake of immediate improvement in service and to install interim rates on an appropriately tariffed basis. Certain other orders relating to the further hearing are also necessary.

Facts

Defendant is located in an unincorporated portion of Santa Clara. At its closest point it is about 1½ miles from downtown Morgan Hill.

Several complainants, including McClain, testified and presented photographs and a videotape of the system. The evidence demonstrated the following problems:

1. In the past, nonuniform rates, main extension charges based on negotiation, were charged.
2. Recently, metered service rates were based on Morgan Hill out-of-town rates, but defendant has no tariff structure and no filed tariffs.²

¹ Main extension charges should be distinguished from connection fees. A connection fee for service when a water main is already in place is not permitted under current Commission policy. A main extension charge to defray the cost of bringing the company's main to the property line of a prospective customer is permitted, but a water utility must file a main extension tariff setting forth the rules and charges to be applied. (A reconnection charge after disconnection for nonpayment is allowed.)

² One consumer testified that she objected to paying a higher fee for a larger meter. Such a schedule is standard for metered service. It would be unfair to those with the smaller meters to charge the same service charge for meters of any size.

3. In 1983 there were two unannounced service interruptions and other periods of low pressure.
4. As the system presently functions, there is inadequate water storage for fire protection.
5. At times since 1975, defendant's water supply has been unpotable, and defendant has been cited by the County of Santa Clara for furnishing water to users with unacceptable contamination levels.
6. Sediment is excessive.

Roy Havens, president and sole stockholder of Twin Valley, Inc. testified to the history of the company and that based on the work necessary to make main extensions in the area, the negotiated payments charges were reasonable. He stated that with the addition of a booster pump, now being installed, the system would function properly.

Defendant presented an exhibit and testimony of Reginald Knaggs, a consulting hydraulics engineer formerly of the Commission staff. Knaggs's Exhibit 31 describes the system as follows:

"The source of supply for the distribution system is two wells located near the intersection of Sycamore Avenue and Watsonville Road. Each well is equipped with a 15 H.P. submersible electric motor and pump. Pump No. 1 has been tested at 170 gallons per minute when pumping through the 6 inch distribution main in Sycamore Avenue into a 30,000 gallon tank (No. 2) on Sheila Avenue near Hidden Springs Lane. Pump No. 2 was tested under similar conditions and produced 103 gallons per minute. When the 30,000 gallon tank (No. 2) is filled, an altitude valve automatically closes and the pumps continue to pump through a 6 inch distribution main in Sheila Avenue to a 60,000 gallon tank (1-A) located north and west of Lazo Grande Drive at the present termination of Sheila Avenue. When this 60,000 gallon tank (1-A) is filled, automatic controls at the well shut off the well pumps. During the time that the pumps are filling Tank 1-A the distribution lines in the lower elevations of the system are subject to

full hydraulic head necessary to fill Tank 1-A. This undesirable operating condition will be eliminated in 1984 by the installation of two booster pumps at Tank No. 2 for filling Tank No. 1-A from the water in storage in Tank No. 2. This change in operating conditions will make possible the separation of the distribution system in two zones where the maximum pressure will not exceed 98 pounds per square inch at customer premises." (Exhibit 31, pp. 1-2.)

The unintroduced staff exhibit contains a similar description.

Concerning the condition of the system and necessary improvements, Knaggs testified:

"I have physically inspected this system on four different occasions. Each of these inspections have consisted of going to the well fields, looking at the pumps and their operations, look at the materials and supplies that were at that area where the wells are located, traveling each of the streets where water lines are installed, looking at hydrants and then going to the storage tanks and looking at those storage tanks, looking at the operations of the altitude valve, the exterior condition of each of the two major storage tanks.

"In addition to that, I examined the maps and records which Mr. Havens had copies at his office on Sycamore Avenue."

* * *

"The present operations have some deficiencies principally because at the present time water is pumped from either of the two wells through a line to the lower tank.

"When that tank is filled, then an altitude valve closes and the same pumps continue to pump water on to the upper tanks.

"There is approximately a 400-foot differential between the pumps and the upper tank.

"When the wells are filling the upper tank, there are pressures exerted upon the lower portion of the system which are greater than those recommended by the Commission's General Order No. 103.

"And particularly, at times when the altitude valve opens and closes producing surges in the line associated with the water hamper -- and I have been advised that last year in 1983 there were breaks in that line. And my analysis is those breaks occurred because of the excessive pressures required pumping from the wells to the upper tank.

"My recommended solution is that at least one booster pump be installed at the lower tank so that the pressure on the lower portion of the system will never be greater than that required to raise water from the wells to the lower tank.

"The booster at the lower tank then will boost water from the lower tank to the upper tank, and there will never pressure on that portion of the system greater than the differential in elevation between the lower and upper tank.

"My recommendations to Mr. Havens for any improvements in the immediate future is the maintenance overhaul of the altitude valve and interior inspection of the coating of the lower tank and exterior recoating of the upper tank and the placing in operation of the booster at the lower tank."

On examination conducted by the ALJ, the following additional details were developed.

The booster pump should be capable of pumping to a head of 300 feet and of delivering 100 gallons per minute. Such a pump is in the process of being installed. The witness estimated the total cost as \$5000, and said it would take three to four weeks to complete the job.

The company should have a main-flushing system, and presently it does not. The witness recommended once a month for the existing hydrants. He said, "It depends on the amount of sediment detected at those hydrants; ease back on it or extend out the period between flushing until you are no longer getting dirty water." He estimated the annual cost as \$600.

He also recommended an inspection of the gunite lining of the lower tank, and repairs as necessary.³ He stated that what is required is an epoxy patch repair, which is specialized work, and that it is important to hire a firm which is familiar with it.

On a more long-range basis, exterior coating of the upper tank is necessary, he said, and recommended it be done once every several years.

Discussion

Because of the way that the system has been functioning, and because defendant has no filed tariffs, it is vital that we issue an interim order, effective immediately, pending further hearing.

Complainants wish to set rates equal to those for the in-town portion of Morgan Hill. We cannot assume that defendant can furnish water for 51 customers in a rural area for the same charges that can be made in a more densely populated area. It is easier to spread costs for major plant additions and improvements with more customers to pay for them. Even Morgan Hill has a bifurcated rate structure with higher rates for the more rural areas.

³ The condition of this tank has been a sore point with the complainants, who introduced pictures of it showing leaks.

Knaggs developed the following tabulations for operating expenses:

Operation & Maintenance Expenses

<u>Item</u>	<u>Estimated 1984</u>
Payroll for pump and system operation	\$ 3,600
Office expense - meter reading, billing, collection, postage, and office supplies	1,000
Legal, accounting, and engineering expenses	2,000
Electric power, for wells and new boosters	4,500
Materials - operating and maintenance	900
Water sample tests	400
Vehicle expense	1,200
Office space	700
License and permits	100
Subtotal	<u>\$14,400</u>
Property taxes	\$ 2,400
Depreciation expenses	5,340
State Corporation Franchise (minimum)	<u>200</u>
Total estimated expenses for 1984	\$22,340
Estimated net income for 1984	\$ 1,460

His Exhibit 31 develops the average depreciated rate base for 1984 as follows:

Estimated Average Depreciated Rate Base

<u>Item</u>	<u>Amount</u>
Estimated average utility plant	\$459,700
Estimated materials and supplies	2,300
Estimated working cash	<u>2,000</u>
Subtotal	\$464,000
Less:	
Customer contributions (depreciated)	\$179,000
Depreciation reserve requirement	<u>80,700</u>
Rate base deductions	\$259,700
1984 Estimated average depreciation rate base	\$204,300
Estimated net revenue	1,460
Rate of return on investment	0.7%

Time did not permit cross-examination on this part of his exhibit, but we note no remarkable differences between it and the unadmitted staff exhibit and accept the development for interim purposes.⁴

Defendant is admonished that it may not add and collect additional fees and charges, including main extension or reconnection charges, unless they are tariffed. We will order defendant to make use of its expert to develop a complete tariff structure, including main extension charges, and to be ready to present them at the next hearing. This should be a major step in preventing future misunderstandings.

We will also order system improvements as set forth in the order.

Complainants should understand that we are setting rates producing only a fraction over a "zero" return because of the current performance of the company. At least if defendant improves its service, it is entitled to some return (i. e. profit) as a matter of law. The U. S. Supreme Court has said so. (Bluefield Water Works v West Virginia Pub. Serv. Comm. [1923] 262 US 679; Federal Power Comm. v Hope Natural Gas Co. [1949] 320 US 591.)

Further, complainants must bear in mind that we cannot institute these rates retroactively, and they (and other users) cannot interpret this order as absolving them from payment of past-due sums.

⁴ Because the cross-examination was not finished and the staff witness did not testify, rates will be set subject to refund.

Findings of Fact

1. Defendant is a public utility water corporation under the jurisdiction of this Commission. Its dedicated service territory is as shown on page 6 of Exhibit 31.
2. Defendant has no tariffs of its own, either filed or unfiled. In the past, rates have sometimes been charged on a contract basis, and main extension charges have been determined by negotiations between individual lot owners and Roy Havens, defendant's president and chief stockholder. Recent metered service has been based upon rates charged by Morgan Hill for its out-of-town service.
3. At times since 1975, defendant's water supply has been unpotable, and defendant has been cited by the County of Santa Clara for furnishing water to users with unacceptable contamination levels.
4. During 1984 there were two unscheduled service interruptions and other periods of low pressure.
5. Sediment is excessive.
6. No main-flushing program is in force.
7. The full existing rate structure is undeterminable.
8. For interim purposes, the development of operating revenues and expenses, and of rate base, provided by defendant's consultant is reasonable, and the consultant's metered rate structure, attached as Appendix A, is reasonable.

Conclusions of Law

1. Service improvements should be ordered as set forth in the order.
2. Tariff and other information should be provided as set forth in the order, for consideration at a further hearing.
3. Interim rates, subject to refund, should be established based upon the development of the defendant's consultant. Defendant should be ordered to cease and desist from charging any other rates, including main extension charges, without filing such rates in proper tariff form, and should be ordered to prepare any such tariffs it intends to file for the hearing to be set.

INTERIM ORDER

IT IS ORDERED that:

1. Defendant shall abide by applicable sections of the Public Utilities Code, the Rules of this Commission, and the orders of any decisions pertaining to it, in conducting its public service obligations.

2. Defendant shall immediately place into effect "Schedule No. 1, Metered Service", attached to this decision as Appendix A. From this date, defendant shall not demand or collect any other rates and charges without first filing tariffs under General Order 96. This order includes, but is not limited to, late charges, service charges, and main extension charges. "Late charges" do not include overdue bills, but only penalty payments, interest charges, or other sums in addition to the overdue principal sums, and complainants are not, by this order, absolved from any past sums due defendant.

3. Defendant shall familiarize itself with General Order 103 and shall abide by its standards for all future design, construction, and water pressure requirements.

4. Defendant, with the assistance of its consultant, shall prepare a complete set of proposed tariffs, including connection charges, within 30 days of the date of this decision, and shall serve a copy of them upon the ALJ, complainant McClain, and the Commission staff.

5. Defendant shall institute a main-flushing program in accordance with the testimony of its consultant. The first flushing shall take place within 30 days of the date of this order.

6. Defendant shall obey all orders and regulations of the County of Santa Clara and the State Department of Health Services concerning water quality.

7. A booster pump capable of pumping to a head of 300 feet and of delivering 100 gallons per minute shall be installed at the lower tank as recommended by the defendant's consultant, and shall be maintained in operable condition.

8. Within three months of the effective date of this decision, defendant shall retain experienced persons to inspect and repair the lining in the lower tank. Any necessary repairs shall be completed within six months of this decision.

9. Within 60 days of the date of this decision, the altitude valve shall be overhauled, and thereafter properly maintained.

10. Defendant shall otherwise manage and conduct its public utility operations in a reasonably prudent manner.

11. The complaint is granted in part and public utility status acknowledged. This proceeding remains open for further hearings.

This order is effective today.

Dated MAY 16 1984, at San Francisco, California.

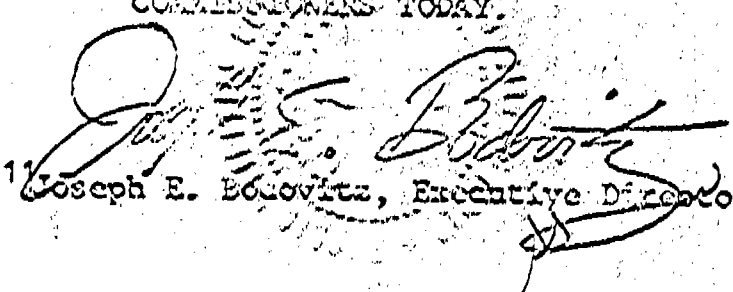
LEONARD M. GRIMES, JR.
President

VICTOR CALVO
PRISCILLA C. GREW
DONALD VIAL

Commissioners

Commissioner William T. Bagley
being necessarily absent, did
not participate.

I CERTIFY THAT THIS DECISION
WAS APPROVED BY THE ABOVE
COMMISSIONERS TODAY.

- 11 
Joseph E. Bobovitz, Executive Director

APPENDIX A

Original _____ Cal. P.U.C. Sheet No. 1-W
Canceling _____ Cal. P.U.C. Sheet No. _____

Schedule No.1
METERED SERVICE

APPLICABILITY

Applicable to all metered service

TERRITORY

The unincorporated area in Santa Clara County west of the City of Morgan Hill as delineated on Attachment 'B' to this report.

RATES

Service Charge

Per Meter Per Month

For 5/8x3/4 inch meter	\$ 5.00
For 1 inch meter	7.50
For 1 1/2 inch meter	10.00
For 2 inch meter	13.50

Quantity Rate:

For all water delivered per 100 cu. ft.	1.20
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The Service Charge is a readiness-to-serve charge which is applicable to all metered service and to which is to be added the monthly charge computed at the Quantity Rate.

Attachment 'C'

(To be issued by utility)

Issued by _____

(To be issued by Cal. P.U.C.)

Advice Letter No. _____

Date Filed _____

Decision No. _____

(Name)

Effective _____

(Title)

Resolution No. _____