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Decision 84 05 132 JUN 22 1984

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Philip McClain, et al., Complainants, v Twin Valley, Inc., Defendant.	Case 83-10-02 (Filed October 4, 1983)

O P I N I O N

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

SECOND INTERIM OPINION

This case involves a water utility which provides domestic water service to 51 customers in a rural area adjacent to Morgan Hill.

In Decision 84-05-051, issued May 16, 1984 we set interim rates for defendant and ordered certain service improvements.

Evidence at the hearing showed that there have been continual disputes about lawfulness of rates charged by defendant prior to our ordered rates. Some ratepayers had been paying defendant based on Morgan Hill's in-town rate structure which they believed (and still believe) reasonable. The use of Morgan Hill's in-town rate apparently stems from their interpretation of an arbitration award not made under the jurisdiction of this Commission,

and which we have no jurisdiction to enforce. Complainants asked us to set future rates at the level of rates now in effect for Morgan Hill's in-town customers. We commented:

> "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."

We, therefore, examined financial evidence and established interim rates, subject to refund, based on a development by defendant's consultant. We then further stated:

> "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.)
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> "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.

It has now been brought to our attention that because of our comment about retroactive rate adjustments, defendant wishes immediate payment of all arrears, and has informed complainants and other ratepayers owing such sums that service will be suspended within 15 days if payment is not made. Because of the length of the rate dispute prior to our recent decision, some customers apparently owe defendant several hundred dollars.

We restate our position that we cannot reduce rates retroactively; however, the tariff provision for disconnection, now on file as part of defendant's recently accepted tariffs, was not in force prior to the recent filing and the evidence in this proceeding demonstrated that, prior to the filing and to the rates placed into effect by our previous decision, defendant had no tariffs.

Under this circumstance, pending a showing by defendant (if such a showing can be made) that it is reasonable to apply its recently filed shutoff rule to any arrears accrued prior to the effective date of Schedule No. 1 (metered service) ordered into effect by our previous decision, any such shutoff should be enjoined and restrained.

Any shutoff for a lawful and proper reason should comply with Public Utilities (PU) Code §§ 779 and 780, and defendant's own tariffs.

This decision did not appear on the public agenda as required by the Government Code because possible imminent water service shutoffs constitute sufficient emergency under PU Code § 306(b) to necessitate elimination of any delay attendant to placing this matter on an agenda.

SECOND INTERIM ORDER

IT IS ORDERED that defendant Twin Valley, Inc., its owner, Roy Havens, and any agent, servant, or employee of defendant are enjoined and restrained from discontinuing service to any customer because of arrears owed defendant, or a dispute over such arrears,

for service furnished prior to the effective date of presently effective Schedule No. 1 (metered service).

This order is effective today, and this proceeding remains open for further hearing.

Dated JUN 22 1984, at San Francisco, California.

President

Commissioners

Commissioner Leonard M. Grimes, Jr., being necessarily absent, did not participate.

Commissioner Priscilla C. Grew, being necessarily absent, did not participate

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

Joseph E. Bodovitz, Executive Director