

ALJ/jc/md

Decision 84 11 008

NOV 7 1984

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

KATHY WYRICK,

Complainant,

vs.

CITIZENS UTILITIES COMPANY OF
CALIFORNIA AND SUBSIDIARY
COMPANY GUERNEVILLE WATER
DISTRICT,

Defendants.

Case 84-01-05
(Filed January 11, 1984)

Kathy Wyrick, for herself, complainant.
Cooper, White & Cooper, by E. Garth Black,
Attorney at Law; and John H. Engel,
Attorney at Law, for defendants.

OPINION ON REHEARING

Summary of D.84-02-065

On February 16, 1984, the Commission issued Decision (D.) 84-02-065 in Case 84-01-05, a complaint by Kathy Wyrick of Guerneville Park, Sonoma County, against the Guerneville Water District (GWD) of Citizens Utilities Company of California (CUCC), a wholly owned subsidiary of Citizens Utilities Company (Citizens Delaware), a Delaware corporation, having its headquarters at Stamford, Connecticut.

In her complaint, Wyrick alleged that the annual service charge and the service establishment charge levied by GWD pursuant to CUCC Tariff Schedule GU-1A, Annual Metered Service, was prohibited by this Commission's General Order 103. Wyrick also alleged that the annual service charge, collected in advance when the service is

instituted, is not being returned on a pro rata basis to customers terminating service before the lapse of one year. As relief Wyrick asked that the "readiness to serve charge" and "service establishment charge" be eliminated and that such charges levied in the past be refunded.

The Commission, without hearing, issued D.84-02-065, denying the relief sought by Wyrick, but in so doing the Commission made the following observation:

"We find from our review of the GO and GWD's tariffs, approved by us, that Wyrick's complaint is unfounded. GWD is abiding by its tariff and GO 103.

"We find, however, that GWD's tariff can be revised to mitigate customer confusion. Assessing meter or fixed charges annually and collecting a full year in advance is an antiquated approach. Our trend has been to move away from such annual charges as the magnitude of water rates has increased. Also, the collect-a-year-in-advance rate structure preceded our adopted deposit rule, which is Rule 7 in water utility tariffs. Finally, we are concerned about customers who may terminate within the first year, move away, and overlook applying for a pro-rata refund, during the allowed period, potentially many months later. Accordingly, we will order GWD to simply convert its annual service charge into a monthly charge, in conformance with most water utility tariffs. This will entail no additional expense, as GWD now bills bimonthly. Appendix B shows the rates in monthly increments which we adopt; existing Special Conditions Nos. 1-4 are eliminated. We believe it is preferable to make this minor tariff restructure now, rather than in connection with GWD's next rate proceeding, because the existing rate structure has, from our review of the petition submitted by Wyrick, caused a lot of confusion and animosity."

By its order in D:84-02-065, the Commission directed GWD to file a tariff that replaced the annual service charge with a monthly service charge and also directed GWD to refund unexpended portions of

the annual service charge within 60 days. Finally, GWD was ordered, within 90 days, to file an original and 12 copies of a compliance filing with the Commission's Docket Office. This filing was to show the extent of refunds, compliance with the order, and "...the total refundable amount owing past customers who cannot be located, which is placed GWD's escheat fund..."

Petitions for Rehearing

Both Wyrick and CUCC applied for rehearing. Wyrick raised additional issues and protested that denying her request without a hearing was a violation of due process. CUCC also protested the lack of hearing, contending that the Commission could only establish new rates after a hearing, citing Public Utilities (PU) Code §§ 728 and 729. In addition, CUCC protested lack of prior notice that rate changes would be considered.

CUCC further submitted that the Commission's conclusions that the change would be a "minor tariff restructure" and would "entail no additional expense" were incorrect. To the contrary, CUCC claimed, there would be considerable additional expense, loss of revenue, and substantial adverse impact on CUCC's earned rate of return. Further, according to CUCC, there would be an increase in the overall revenue requirement. The utility asked that the ordering paragraphs changing the nature of the service charge be deleted or else that compensating rate relief be ordered.

Upon receipt of the applications, D.84-02-065 was stayed by D.84-03-115 and, by D.84-05-038, Wyrick's application was denied and rehearing granted to CUCC, limited to the issue of whether CUCC should be ordered to convert the GWD annual service charge to a monthly charge.

Evidentiary Rehearing

An evidentiary rehearing was held before an Administrative Law Judge (ALJ) at a Commission hearing room in San Francisco on July 3, 1984. CUCC of California presented three witnesses, two of whom

were employees of CUCC and one of Citizens Delaware. The three CUCC witnesses gave evidence to support the utility's contention that replacement of the annual service charge by a monthly service charge would result in an increase in CUCC's revenue requirements.

Wyrick cross examined the CUCC witnesses and made an unsworn statement. The ALJ offered to schedule a continued hearing for Wyrick to make a showing in rebuttal to the showing of CUCC but Wyrick declined the offer.

Nature and Administration of Annual Service Charge

The nature and administration of the annual service charge are best illustrated by the tariff itself. Accordingly, the tariff is reproduced as Appendix A of this decision. The form letter that CUCC routinely sends to new customers to explain the operation of the annual service charge is reproduced as Appendix B.

Procedural Foundation for D.84-02-065

From the file in this proceeding, from the file of Commission Agendas, and from Wyrick's statement at the rehearing, the procedural events leading to D.84-02-065 can be deduced.

According to Wyrick, she attended a community meeting which had gathered to protest the situation concerning the water company. It was proposed at that meeting that a petition protesting a number of issues be circulated and Wyrick suggested that the petition be limited to the service charge issue because that issue could be stated simply and concisely. Several sets of petitions were subsequently circulated in the community but Wyrick was not one of the circulators.

The petitions were circulated throughout most of 1983 and on January 11, 1984, Wyrick filed her complaint. Copies of the complaint were sent to CUCC at its Sacramento office and to Citizens Delaware at Stamford, Ct.

The complaint was signed by Wyrick and in the accompanying verification Wyrick indicated she was the complainant. There were no

other signatures to either the complaint and the verification. Attached to the original of the complaint however, were the original petitions, and to each of the 14 copies filed with Commission and to the copies sent to CUCC and Citizens Delaware was appended a computer print-out of the signatures to the petitions, rearranged to be an alphabetical order. This print-out was entitled "Patriots Mailing List * Printed October 21, 1983 *" with the handwritten notation added "As Per Signed Petitions Declaring Service Charge Unfair". There were 23 pages to this print-out totaling 1118 names.

The complaint was accepted for filing by the Commission on January 11, 1984 and CUCC was directed to answer on January 17. The Commission's Agenda No. 2659, which agenda contained an item summarizing the proposed disposition of C.84-01-05, was distributed to the public on February 3, 1984. CUCC answered the Complaint on February 9 and, on February 16, the Commission, concluding that a hearing was not necessary, issued D.84-02-065.

At the rehearing it was discovered that the title block of the original copy of the complaint had been altered, by the addition, in blue ink, of "et al" after Wyrick's name, and by an "s" after the word "Complainant". No changes were made to the other copies nor were CUCC and Citizens Delaware notified that others than Wyrick were now deemed by the Commission to be complainants. The circumstances of the alteration of the original copy of this official document in the custody of the Commission were not discovered at the hearing.

Communications Prior to Rehearing
Concerning Notice to Customers

The Commission's Calendar Clerk notified the parties by telephone on June 8 that the Commission proposed a rehearing on July 3. Wyrick replied by letter on June 11, asking for a continuance and inquiring as to what public notice was being given. The ALJ replied on June 15, supplying Wyrick with a list of the people notified and stating that, since this proceeding was not for

an increase on rates, CUCC was not required to mail a notice to its customers. The ALJ also informed Wyrick that, should the evidence produced by CUCC at the rehearing indicate the need for further consideration of the monthly service charge, the Commission could consider the need for an additional hearing on July 3.

Wyrick replied on June 21, requesting mailed notice to customers. In this letter Wyrick characterized the signers of the petitions as "co-complainants" and requested that they be notified of the July 3 hearing. She also renewed her request for a continuance. To this letter the ALJ replied on June 25, again stating that the law¹ did not require CUCC to notify its customers of complaints seeking to have rates reduced. He also said that the Commission's Information Officer was preparing a press release concerning the rehearing and he again denied the request for a continuance, pending the consideration of the need for additional hearings at the July 3 hearing.

Rehearing - CUCC Showing

At the July 3 rehearing CUCC presented three witnesses, the Vice President Revenue Requirements (VPRR), of Citizens Delaware; the Assistant Vice President, Revenue Requirements, Secretary and Assistant Treasurer of CUCC (AVPRR); and the Assistant Vice President and General Manager (AVP & GM) of CUCC.

Together the witnesses presented testimony and exhibits to support CUCC's contention that the effect of replacing the annual service charge would be to increase the annual revenue requirement of GWD by \$234,700, determined as follows:

Lost revenue	\$149,000
Increased expense	60,500
Effect of decreased working cash	<u>25,200</u>
Total	\$234,700

¹ PU Code § 454(a)

To provide revenues to satisfy this increased requirement would require a rate increase of approximately 30%.

The revenue loss would be caused by seasonal customers discontinuing service when they were away from their second homes. Increased expenses would be associated with disconnecting and reconnecting service, and the decreased working cash would result from CUCC's not having benefit of the advance payment of annual service charges.

The AVP and GM of CUCC testified that the annual service charge has been a feature of GWD's rates for 25 years. The charge is not unique to GWD, he said, but is being used in 70 California public utility water districts, some of which are larger than Guerneville. He explained that the annual service charge is used principally by water utilities that have a significant number of seasonal customers. Its purpose is to remove the economic incentive for seasonal customers to discontinue service when they are not in the area. By requiring all customers who use the utility's service at any time during the year to pay this annual charge, all customers pay their fair share of the fixed costs associated with the utility system, which is always there, ready to serve them, even when they are not in the service area.

In response to a question by the ALJ, the AVPRR responded that unrefunded service charges did not escheat to the state but were retained by CUCC.

Rehearing - Wyrick's Showing

Wyrick did not present evidence but made a statement at the end of the rehearing. She reiterated her protest that the signers of the petitions, whom she described as "co-complainants", and the GWD public at large had not been individually notified of the hearing. She further stated that CUCC was charging more than the service was reasonably worth, the annual service charge was unfair, and that the

Commissioner does not guarantee profit to a utility. She referred to an earlier remark of hers that Citizens Delaware had an AAA bond rating and access to borrowed money at a 4% annual interest rate, and argued that, in view of the low cost of capital to Citizens Delaware, the question of a rate of return on working cash should be opened to further investigation.

As mentioned earlier, the ALJ offered to schedule another hearing for Wyrick to rebut the CUCC showing, but with the understanding that she would be expected to make good use of any additional hearing time. Wyrick declined that offer, stating that she understood that the most recent rate case was being reopened, she would participate in that proceeding instead.

Wyrick noted that while she and the other GWD customers were paying through their water bills for CUCC's representation and also were paying a surcharge on their water bills to support the Commission, there were no representatives of the Commission's Hydraulic Branch at the hearing to provide expertise on behalf of Guerneville's ratepayers.

Discussion of Evidence and Record

Although CUCC's showing was not contested, and well may present the effects of going from an annual to monthly service charge in the worst possible light, upon reconsideration that evidence indicates to the Commission that the abolition of the service charge would affect the annual revenue requirement. That evidence also indicates that the Commission's previously quoted rationale justifying its order in D.84-02-065 is in error.

Annual charges, far from being "antiquated" are still valid components of rate structure for many utilities serving resort areas. GWD may no longer fall into that category but any such change has not been demonstrated to the Commission with the rigor necessary to support a finding of the type that this Commission is required to make. (California Motor Transport Co. v PUC (1963) 59 C 2d 270). ✓

The bases for the Commission's observations to the effect that "the collect-a-year-in advance rate structure preceded our adopted deposit rule, which is Rule 7 in water utility tariffs", are not readily perceived. The presently effective Rule 7 as contained in CUCC's filed tariff was filed November 30, 1959.² The significance of a sequence of tariff filings a quarter of a century ago to the situation in GWD today remains unexplained to a reader seeking a rationale for the Commissions' action in D.84-02-065. Also unclear is the purpose for any reference to Rule 7, which provides for a deposit to establish credit of \$10 for bimonthly billing, as compared to the \$191 annual service charge for a 5/8 x 3/4-inch meter.

The fact remains, however, that considerable customer dissatisfaction with GWD's annual service charge was forcefully demonstrated by the presentation to the Commission of petitions containing 1118 names. This Commission is under statutory mandate that the charges for utility service in California be just and reasonable (PU Code § 451). The petitions attached to Wyrick's complaint indicate to the Commission that a significant portion of the community served by GWD believes the annual service charge to be unjust and unreasonable.

Wyrick's complaint has the procedural defect that the complaint itself was not actually signed by 25 actual or prospective customers as is required by PU Code § 1702. While it is readily evident the petition signers did share the sentiments expressed in the complaint, they did not actually sign the complaint itself, nor is there any indication that they were informed that they would eventually be characterized as being "co-complainants" in a formal proceeding before this Commission.

² A minor revision raising interest on deposits from 5% to 7% was made in 1976.

The Commission notes that Wyrick, by her complaint, expected to involve the Commission staff in an appraisal of the reasonableness of the annual service charge, not realizing that budgetary limitations now preclude such involvement in many cases. Wyrick as complainant, however, had the burden of contesting Citizens' contentions as to the effect on result of operations of the abolition of the annual charge.

The Commission recognizes the community dissatisfaction with the present GWD rate structure. The Commission also recognizes that in its attempt to respond to this dissatisfaction, the Commission did not afford to CUCC its rights to full due process. Because the requirement for 25 valid signatories to a complaint concerning reasonableness of rates is mandatory (Davis v PT&T (1972) 74 CPUC 260-262), the Commission will dismiss Wyrick's complaint, without prejudice to its being refiled with 25 valid signatures.

In recognition of the substantial community dissatisfaction with the annual service charge, however, and to relieve Wyrick of the necessity of prosecuting with her own resources a complaint on the behalf of the Guerneville community, and because we wish to examine the issue of annual service charges on a statewide basis the Commission will on its own motion issue an Order Instituting Investigation (OII) under PU Code § 729 into the reasonableness, under present circumstances, of the annual service charge of California water utilities and also the administration of any escheat fund. The Commission would then have the information and evidence necessary to determine the effect of changing the annual service charge on revenue requirement and to make the findings required by PU Code § 728 for individual water utilities.

Findings of Fact

1. The subject complaint involves the reasonableness of rates and charges of a water corporation.

2. The complaint has not been signed by the mayor, nor by the president or chairman of the board of trustees, nor by a majority of the council, commission nor other legislative body of the city or city and county within which the alleged violation occurred, nor by not less than 25 actual or prospective consumers or purchasers of such water service.

3. Conversion of the annual service charge of the GWD of CUCC to a monthly service charge would have an undetermined but significant effect on the revenue requirement of GWD.

4. Petitions bearing 1118 names and attached to the complaint, indicate substantial community dissatisfaction with the GWD annual service charge.

Conclusions of Law

1. The complaint should be dismissed as not meeting the statutory requirements of § 1702 of the Public Utilities Code.

2. An order instituting investigation of the reasonableness of the annual service charges should be issued.

3. Decision 84-02-065 should be rescinded.

O R D E R

IT IS ORDERED that:

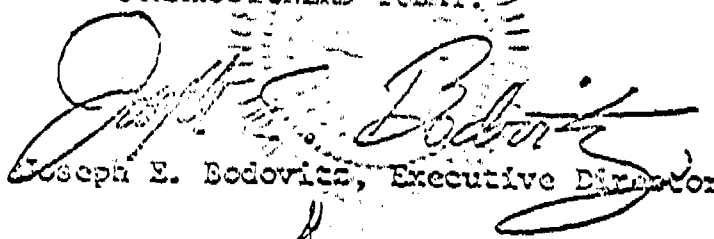
1. The complaint be, and hereby is, dismissed.
2. An order instituting investigation of the annual service charges and operation of any escheat fund of California water utilities generally shall be issued by separate decision.
3. Decision 84-02-065 is rescinded.

This order is effective today.

Dated NOV 7 1984, at San Francisco, California.

VICTOR CALVO
PRISCILLA C. GREW
DONALD VIAL
WILLIAM T. BAGLEY
Commissioners

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


Joseph E. Bodovitz, Executive Director

Schedule No. GU-1A

ANNUAL METERED SERVICE

APPLICABILITY

Applicable to all metered water service.

TERRITORY

Guerneville, Rio Nido, East Guernewood, Guernewood Park, Northwood,
Monte Rio, Vacation Beach, River Meadows and vicinity, Sonoma County.

RATES

Quantity Rates:

	Per Meter Per Month
For the first 300 cu. ft., per 100 cu. ft.	\$ 0.943 (I)
For all over 300 cu. ft., per 100 cu. ft.	1.342 (I)

Annual Service Charges:

	Per Meter Per Year
For 5/8 x 3/4-inch meter	\$ 191.00 (I)
For 3/4-inch meter	289.00
For 1-inch meter	417.00
For 1-1/2-inch meter	767.00
For 2-inch meter	1,213.00
For 3-inch meter	2,392.00
For 4-inch meter	3,434.00 (I)

The Service Charge is applicable to all metered service.
It is a readiness-to-serve charge to which is added the
charge computed at the Quantity Rate for water used
during the billing period.

Service Establishment Charge:

For each establishment or reestablishment of water service	\$ 4.00
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(Continued)

(To be inserted by utility)

DECISION No. 82-03-023
SERVICE LETTER No. 205

ISSUED BY

C. B. Bronagem
Asst. Vice President
Revenue Requirements

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

DATE FILED NOV 18 1982
EFFECTIVE JAN 1 1983
RESOLUTION No.

Schedule No. GU-1A

ANNUAL METERED SERVICE

(Continued)

SPECIAL CONDITIONS

1. The annual service charge applies to service during the 12-month period commencing January 1 and is due in advance. A customer who has received (T) service on a continuous basis for at least 12 months and has not had service discontinued for non-payment during that period may elect, prior to the beginning of the following calendar year, to pay prorated service charges in (T) advance at intervals of less than one year (monthly, bi-monthly or quarterly) in accordance with the utility's established billing periods. Meters will be read and quantity charges billed monthly, bi-monthly or quarterly in accordance with the utility's established billing periods except that meters may be read and quantity charges billed during the winter season at intervals greater than three months.

2. The opening bill for metered service shall be the established annual service charge. Where initial service is established after the first day of any year, the portion of such annual charge applicable to the current year shall be determined by multiplying the annual charge by one three-hundred-sixty-fifth (1/365) of the number of days remaining in the calendar year. The balance of the payment of the initial annual charge shall be credited against the charges for the succeeding annual period. (D)

3. The service establishment charge provided for herein is in addition to the charges calculated in accordance with this schedule and will be made each time an account is opened or reopened for a customer at the time water service is established, restored after discontinuance at customer's request or transferred to a different customer. (D)

4. Upon request any unused portion of the Annual Service Charge (prorated on a monthly, bi-monthly or quarterly basis) which has been prepaid by a customer is refundable if that customer terminates water service within ten months after first receiving service, provided another customer is subsequently served at the same location and continues service for the remainder of the initial customer's annual service charge period. (N)

Applicants for water service will be advised that they may submit a request for such refunds within 60 days after the initial annual service charge period. (N)

(To be inserted by utility)

Issued by

(To be approved by Cal. P.U.C.)
MAR 23 1983

Advice Letter No. 209

W. B. Stradley

Date Filed

Decision No. _____

Name

Effective

General Manager

Title

Resolution No. _____

Rule No. 7

DEPOSITS

A. Amount to Establish Credit

1. Metered Service

- a. To establish credit by deposit, the amount for residential service requiring not more than one 5/8 x 3/4-inch meter will be \$5 when bills are rendered monthly or \$10 when bills are rendered bimonthly.
- b. To establish credit by deposit, the amount for all other service will be twice the estimated average periodic bill when bills are rendered monthly or bimonthly, but in any event not more than twice the estimated bimonthly bill nor less than the amounts set forth above.

2. Flat Rate Service

No deposit will be required, except as prescribed for temporary service in Rule No. 13.

Amount to Re-establish Credit

1. Former Customers

To re-establish credit for an applicant who previously has been a customer of the utility and during the last 12 months of that prior service has had service discontinued for nonpayment of bills, the amount will be twice the estimated average monthly or bimonthly bill to be rendered for the service requested.

2. Present Customers

To re-establish credit for a customer whose service has been discontinued for nonpayment of bills, the amount will be twice the average monthly or bimonthly bill to be rendered for that service.

C. Applicability to Unpaid Accounts

Deposits made under this rule will be applied to unpaid bills for service when such service has been discontinued.

(To be inserted by utility)

Advice Letter No. 63

Division No. _____

Issued by

Ted Chenault

Name

General Manager, Water

Title

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

Date Filed NOV 30 1959

Effective DEC 30 1959

Resolution No. W-682

(END OF APPENDIX A)

CITIZENS



UTILITIES

DISTRICT OFFICE
16355 Main Street
Guerneville, California

MAILING ADDRESS
P. O. Box 345
Guerneville, CA 95446

COMPANY
OF CALIFORNIA

TELEPHONE NUMBER
(707) 869-2545

Dear Customer:

Citizens Utilities Company of California is pleased to provide water service to you within our Russian River service area, which extends from Rio Nido to Riens Beach west of Monte Rio on both sides of the river.

Our business office address, mailing address, and telephone number are listed below. Normal business office hours are Monday through Friday 8:00 AM to 5:00 PM (October through May) and 7:30 AM to 4:00 PM (June through September). You may contact a company representative anytime of the day or night at the number listed below.

16355 Main Street
P.O. Box 345
Guerneville, CA 95446
(707) 869-2545

With the establishment of your new account, you have paid the first twelve months service charge in advance. You will receive a water bill on a bi-monthly basis for actual water use. With your first billing next year, you will be billed the unpaid portion of the service charge for that calendar year. The first 12 month annual service charge is refundable only under certain circumstances as set forth in our rate schedule. A copy of our currently effective schedule is enclosed herewith.

All bills are due and payable upon presentation. If not paid promptly, service may be discontinued (see tariffs for details). Once water service is discontinued, a reconnection fee in addition to the delinquent balance must be collected before service is restored.

Near the end of each calendar year we mail a letter to customers who have received service on a continuous basis for at least 12 months and has not had service discontinued for non-payment during that period. This letter informs these customers that they may choose to pay any future annual service charge in equal bi-monthly increments. Establishment of this bi-monthly payment procedure requires a written customer response.

If we can be of further assistance or if you have any questions please contact our office.

Very truly yours,

J. Matthew Mullan
District Manager

(END OF APPENDIX B)

JMM/km
Enclosure