

ALJ/RTB/jc

Decision 87 10 037

OCT 28 1987

**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of ) Application 87-04-062  
 Camp Meeker Water System, Inc. for ) (Filed April 30, 1987;  
 a rate increase for water service to ) Petition for Modification of  
 offset costs of importation of water.) Decision 87-07-094 filed  
 ) September 11, 1987)

William E. Geary, Attorney at Law, for  
 Camp Meeker Water System, Inc.,  
 applicant.

Susan Keller, by herself, interested party.

Alberto Guerrero, Attorney at Law, for the  
 Water Utilities Branch.

### THIRD INTERIM OPINION

#### Applicant

Camp Meeker Water System, Inc., (applicant) is a California corporation owned by Mr. & Mrs. William Chenoweth and Mr. & Mrs. Leslie Chenoweth. Applicant provides water service to about 350 residential customers in an unincorporated area of Sonoma County called Camp Meeker, which is near Occidental.

#### Decision (D.) 87-07-094

D.87-07-094 was issued July 29, 1987 and:

1. Denied applicant's request to recoup \$12,005 of water hauling expenses from November and December, 1986, and January, 1987;
2. Authorized applicant to connect the "stock pond" to its system to provide additional water supplies;
3. Granted applicant's request for a rate increase in part to recoup water hauling costs since June 24, 1987, and to defray future water hauling expenses and costs of emergency improvements to the system. The revenue increase granted was \$12,000, collectible by surcharge in 3 installments: \$6000 immediately and \$3000 in 2 months and

4 months, subject to prior staff review and approval; and

4. Required certain other actions by applicant not pertinent here.

Petition for Modification of D.87-07-094

On September 11, 1987, applicant filed its petition for modification of D.87-07-094 seeking (1) reversal of the Commission's order denying rate relief for the past water hauling expenses and (2) an additional revenue increase to cover expenses incurred since the hearings in July, 1987.<sup>1</sup>

We will consider each of these requests in turn.

Water Hauling Expenses from Late 1986 and Early 1987

Applicants do not cite any statutory or case law showing that the Commission's action in denying recovery of past water hauling expenses was erroneous or unlawful. Rather, its argument is based on allegations that show that applicant's vice president delivered to Commissioner Hulett on December 2, 1986, a written notice reflecting water hauling charges through November 28, 1986, of \$5,322. Applicant also cites a January 6, 1987, letter from Commissioner Hulett and a December 11, 1987, staff memorandum that it contends confirms its request for reimbursement of the \$5,322 water hauling expense for November, 1986.

None of this written correspondence is relevant to the issue of recovery of past expenses.

It has been our policy to account for past events in future rates only in certain circumstances. For instance, where we have in one of our orders made rates "subject to refund," we have

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<sup>1</sup> Although the petition was filed September 11, 1987 notice of the filing did not appear in the Daily Calendar until September 21, 1987. Accordingly, under Rule 8.3(b) of our Rules of Practice and Procedure, the last day for filing protests is October 21, 1987.

later reassessed whether the rates we set initially should be revised. In other cases we have established balancing accounts and later revised rates to account for over- or under-collections. This was done in D.87-06-059 in this application when we authorized water hauling expenses to be incurred, subject to later recoupment through rates. Neither of these exceptions applies to applicant's water hauling expenses for late 1986 and early 1987. Therefore, there is no reason to reverse the determination we made on this issue in D.87-07-094. However, we believe it would be appropriate to conclude that this discussion should supercede the discussion of recovery of past expenses in D.87-07-094 under the subheading, "Issue 1." (Mimco. pp. 9-10.) We will so provide in our conclusions of law and in the following order.

Additional Rate Relief

Applicant submits that it has incurred or will incur the following charges for water hauling, temporary transmission lines, and extraordinary accounting costs:

<u>1. Water Hauling</u>	<u>Cost or Estimate</u>
a. June 24 through June 30, 1987	\$ 1,884
b. July 1 through July 31, 1987	12,434
c. August 1 through August 27, 1987	6,975
d. Projection for September, October, and November, 1987	16,875
<u>2. Partial Charges for Stock Pond Connections</u>	358.34
<u>3. Other Miscellaneous Current Charges</u>	
a. Estimated cost of temporary line from Baumert to Gilson Tank	3,100
b. Accountant's billing for mailing of August surcharge	554.60

We will consider each one of these items in order.

Item 1.a

Water hauling expense for June 24 - 30 of \$1,884 is supported by testimony that during that period 23 loads of water were trucked to the system at essentially the same charges as the water that was hauled in 1986 and early 1987. The evidence also shows that in late 1986 and early 1987 applicant received 141 truckloads of water for which it paid \$12,005, or an average of \$85.14 per load. Multiplying \$85.14 times 23 loads yields \$1,958.22, slightly more than what applicant is seeking for the June 24 -30 period.<sup>2</sup> From the correspondence it appears that applicants's vice president erred by one load and that the total supported by the testimony should be \$1,873.08 (22 loads x \$85.15). The difference between the testimony and the correspondence (less than \$9) is not significant. We find that applicant expended \$1,884 for water hauling in the June 24 - 30 period.

Item 1.b

For July, 1987, a copy of an invoice from Leras dated August 1, 1987, shows 173 loads delivered at a billed cost of \$12,434. The invoice is attached to the petition as Exhibit 5.

Item 1.c

For August, 1987, a copy of a typewritten schedule attached to the petition as Exhibit 6 shows 93 loads delivered during August at \$75 per load for a total cost of \$6,975. The schedule is not on, or attached to, the invoice of Leras but is typed on a plain piece of paper. The per load charge of \$75 is apparently estimated, since the average cost per load for July, 1987, was \$71.87. We infer that the August invoice from Leras was

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<sup>2</sup> Correspondence in the file from applicant's vice president dated July 15, 1987, contains a copy of an invoice from Nick Leras Water Trucks for the June 24 - 30 period and shows 22 loads delivered at a cost of \$1,884. A copy of applicant's cancelled check for \$1,884 shows that the invoice was paid July 9, 1987.

not available when the petition was filed.<sup>3</sup> Applicant apparently knew the number of loads through August 27, but not the total bill for the month. The cost for August is supported to the extent of \$71.87 per load for 93 loads or an August total of \$6,683.91, as opposed to applicant's request of \$6,975.

Item 1.d

This item is a projection for the months of September, October, and November, 1987, based upon the following assumptions: (1) 2.5 loads per day, using August 25 - 31 as a base period; (2) 30 days period per month; and, (3) \$75 per load. These assumptions result in \$5,625 per month for 3 months or a total of \$16,875. Applicant states in its petition that water hauling charges for August dropped somewhat due to the hook-up of the stock pond. It further alleges that water hauling is still needed - primarily to Tower, Fern, Acreage, and Hampton tanks - despite the alternative water source; and, that need, it believes, will continue into September, October, and November until the rains begin.

Applicant's assumptions are reasonable, except that its per load cost should be \$71.87, using the most recent recorded data. The projection for the 3-month period is supported to the extent of \$16,170.75.<sup>4</sup>

Item 2 - Partial Charges for Stock Pond Connections

Applicant has attached to its petition copies of invoices and receipts totalling \$358.34 for miscellaneous parts, fittings, and equipment that it asserts were purchased and used to connect the stock pond to the Baumert filter. We find that these expenses were incurred to comply with D.87-07-094.

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<sup>3</sup> The petition for modification was submitted to the Docket Office for filing about September 1, 1987, but filing was delayed until September 11, 1987, due to formal deficiencies.

<sup>4</sup> 2.5 loads per day x \$71.87 per load x 90 days.

Item 3.a - Temporary Line

In the original hearing on July 3, 1987, the Department of Health Services witness testified that a new line was needed between the Baumert filter and the Hampton and Gilson tanks to transport stock pond water after treatment to the tanks needing a new source of supply. In D.87-07-094 we authorized applicant to construct such a line, the costs thereof to be recouped through rates.

In its petition applicant seeks \$3,100 for the cost of constructing that line. There are two problems with this request. First, the estimate is a mere number on a page, without supporting worksheets or explanation of its derivation. Second, applicant has informed us by telephone and by letter that the stock pond is now empty. Thus, there is no additional water to be carried from the stock pond to the Baumert filter and from thence to the Hampton and Gibson tanks. Given these facts we cannot understand why such a line is still necessary. Should the applicant care to justify in detail why the line is necessary in the short run while the stock pond is empty and to explain how its estimate of \$3,100 was derived, we would reconsider its request. In the meantime the water hauling costs are sufficiently onerous; and their magnitude suggests that funding of the line be postponed until its need and cost have been more carefully explained and justified.

Item 3.b - Accountant's Charges

Applicant did not request that it be allowed to recoup accounting and billing costs resulting from its request for additional revenues. Accordingly, we did not in advance authorize these charges to be incurred or paid. Therefore, we will not allow the accountant's August bill of \$554.60 to be recouped through surcharge revenues or otherwise. However, the cost of future billings incurred after the effective date of this order involving these extraordinary surcharges may be recouped. The additional

surcharge authorized hereafter will provide \$560 (rounded) for the accounting and billing costs connected with it.

Summary of Adopted Values

We have determined that the following extraordinary expenses have been or will be incurred and should be recouped by surcharge:

1. Water Hauling	
a. June 24 - 30	\$ 1,884.00
b. July 1 - 31	12,434.00
c. August 1 - 27	6,663.91
d. Estimate for September 1 - November 30	16,170.75
2. Partial Charges for Stock Pond Connection	358.34
3. Other Miscellaneous Current Charges	
a. Temporary line	-
b. Billing & accounting re future surcharge	560.00
	<u>560.00</u>
	Total \$38,091.00

From the total of \$38,091 we will deduct the \$9,000 that applicant has already billed to its customers for these same expenses, either already incurred or expected. We will therefore allow applicant to make one further billing to collect the net amount of \$29,091.<sup>5</sup>

Surcharge per Customer

Applicant has 354 customers. In order to collect additional required revenue of \$29,091, each customer must pay an additional surcharge of \$82.18. Because of the financial condition of the applicant and the drought condition affecting its watershed, we will not order applicant to collect the \$82.18 surcharge in installments. The emergency in Camp Meeker is too extreme to delay

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<sup>5</sup> Applicant will forego a December 1 billing for \$3,000 of additional revenues authorized by D.87-07-094. That amount will be subsumed within the billing authorized by this order.

rate relief. We will authorize the applicant to bill and collect the entire \$82.18 surcharge immediately.

Notice to Customers

The surcharge authorized today may not be the last. The applicant's projections for September, October, and November were based upon loads of water hauled during the last part of August. August hauling was itself down 50% over July, due to the stock pond hook-up that occurred on August 6. By letter dated October 10 applicant informed the Commission that "the pond water will only last for approximately one more week."

Applicant stated that:

"Some pond water has been lost through a disconnected pipe. We do not know who caused this or how much water was wasted."

Without additional water from the pond, it is likely that water hauling expenses for October and November will be higher than projected.

Other Relief Sought By Applicant

In addition to the relief sought by way of additional surcharges, applicant seeks relief, as follows:

"In order to expedite reimbursement to the Applicant to insure uninterrupted operation of water service by the utility, Applicant requests that an order issue from the Commission authorizing Applicant to [obtain] a \$50,000 institutional loan with interest at the prevailing rate, principal payable one year from date with payments of principal and interest to be made from authorized surcharges collected from customer accounts; that to the extent surcharge revenues are uncollected through no fault of Applicant, Applicant be authorized to petition for further modification of opinion for further surcharges to cover any insufficiency of funds to meet loan payments when due." (Petition, p. 8.)



Applicant alleges that without an alternative source of funds, the utility will not be able to continue water service to its customers. (Petition, p. 8.)

By letter dated October 10 applicant sent to the ALJ a copy of a notice it sent to its customers on October 8. The notice states:

"CONSUMERS OF CAMP MEEKER WATER SYSTEM, INC.

"This Utility wants you to know that the water shortage situation is very critical.

"The Pond water has been a great help for the months of August and September. However, that source is nearly depleted. The regular sources that supply the system are also running dry.

"There is no money to pay for further importation of water."

By further letter of October 14, 1987, applicant's attorney forwarded to the ALJ a schedule showing 12 loans made by L. C. and Jewell Chenoweth to CMWS, Inc. during the first 10 months of 1987. The loans total \$20,909.68 and each loan is alleged to be supported by a note. The attorney also stated that William and Ann Chenoweth had advanced similar amounts.

Applicant also attaches to its petition copies of its bank statements showing balances in its account, as follows:

<u>1987</u>	<u>Balances</u>
April 30	\$7,074.03
May 29	3,962.67
June 30	4,967.76
July 31	4,645.84

It seems clear that applicant needs additional financing. However, it does not need our approval of its financing proposal, if the loan is for less than one year. (Public Utilities Code § 817.)

Protest By Staff

On September 21, 1987, Water Utilities Branch (staff) filed its protest to applicant's petition for modification. It first asserts that the petition should be dismissed because it: (1) violates Rule 43 and (2) cannot be considered an application for rehearing under Rule 85.

Rule 43 provides in part that: "Petitions for modification...shall only be filed to make minor changes in a Commission decision or order." Staff points out, correctly, that the changes sought by applicant are not minor. However, for several reasons the petition for modification should not be dismissed. The Commission does not strictly enforce the literal terms of Rule 43 with respect to petitions for modification. Moreover, it has liberally construed or granted deviations from Rule 43 in accordance with its overall philosophy stated in Rule 87.<sup>6</sup> We will, therefore, deny staff's motion to dismiss the petition for modification.

We agree with the staff that applicant's petition cannot be considered an application for rehearing. But, since we have determined that the petition for modification was properly filed, this argument is moot.

Proceeding to the substance of the protest, staff next contends that applicant's request for reversal of the Commission's decision on past water hauling expenses be denied. We have denied applicant's request above.

Staff also contends that applicant's request for reimbursement of current water hauling expenses be denied to the extent that such request exceeds the amount (\$12,000) authorized by

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<sup>6</sup> "These rules shall be liberally construed to secure just, speedy, and inexpensive determination of the issues presented. In special cases and for good cause shown, the Commission may permit deviations from the rules. Rules may be amended at any time by the Commission."

the Second Interim Opinion (D.87-07-094). The staff's arguments in opposition to further rate relief are lengthy and cannot be dealt with in detail here. In summary, they are that applicant has mismanaged the water system and its water supply, which, in turn, has forced water hauling upon the system and its customers. The staff, therefore, requests that: (1) further reimbursement of current water hauling expenses be denied; (2) the request for approval of a loan to cover the cost of water hauling be denied;<sup>7</sup> and (3) hearings be held to consider the request by applicant for further rate relief.

The staff does not offer any solution to the current shortage. It would leave the applicant and its customers to do the best it and they can with existing water supplies, until the rains come. Any long-term solution would, according to staff, depend on the disposition of the property rights issues still pending in A.83-11-54.<sup>8</sup>

The circumstances as they exist today leave us few attractive options. We may deny additional rate relief, asking applicant to swallow water hauling expenses incurred to date, less \$12,000 already authorized; we may adopt the applicant's proposal with the ALJ's reductions, in effect funding past expenses (since June 24, 1987) and projected expenses through November 30, 1987; or we may grant less rate relief than the applicant proposes by, for instance, funding water hauling through the end of October. The cost of these options is as follows:

	<u>Options</u>	<u>Cost</u>	<u>Cost per Customer</u>
1.	Staff position	\$12,000	\$34.00
2.	Applicant's position as amended	29,091	82.18
3.	A compromise position	23,701	. 66.95

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<sup>7</sup> We will deny this request. (See discussion, supra.)

<sup>8</sup> Hearings are set for January 1988.

We will adopt option 2. However, applicant should not expect further increases to be granted without amending its application and subjecting itself to further evidentiary hearings. In the meantime we hope the rains will come, solving the short-term troubles of the system for this year. If they should arrive earlier than expected and if water hauling should cease before November 30, 1987, applicant would be required to account for any collections over and above the actual costs incurred for the water hauling.

Waiver of Rights under PU Code § 311

By letter the ALJ offered to applicant the opportunity to waive its right to comment under PU Code § 311 on the ALJ's proposed opinion. The letter also offered the other parties the opportunity to comment on the proposed procedure. Applicant has by letter waived its right to comment. By letter dated October 21, 1987, the Commission staff stated its opposition to the proposed waiver of rights under PU Code § 311. The staff's opposition is based on the assumption that the ALJ's proposed opinion has not taken into consideration the staff's protest to the petition for modification. The staff therefore requests that the ALJ's proposed opinion be removed from the Commission's agenda for October 28, 1987 meeting, so that the staff's opposition pleading will be considered and to provide all parties with the right to a 30-day comment period.

We have considered the staff's protest and have dealt with the issues raised by it. The staff's letter thus becomes a refusal by the staff to waive its right to a 30-day comment period and an assertion that its right under PU Code § 311 be preserved. No response has been received from the other party to this proceeding.

We believe that the water shortage in Camp Meeker requires immediate action on our part. An immediate rate increase will allow applicant to provide additional water for the system and

its customers in the short run. Staff has offered no other solution to the short run needs of the customers. We will, therefore, deny the staff's request for a 30-day comment period.

Findings of Fact

1. Applicant expended \$1,884 for water hauling in the June 24 - 30, 1987, period.
2. Applicant expended \$12,434 for water hauling in July, 1987.
3. Applicant expended \$6,683.91 for water hauling in August, 1987.
4. It is probable that applicant will expend \$16,170.75 for water hauling during September, October, and November, 1987.
5. Applicant expended \$358.34 for miscellaneous parts, fittings, and equipment used to connect the stock pond to the Baumert filter.
6. The stock pond waters have been exhausted.
7. A temporary line from the Baumert filter to the Hampton and Gilson tanks is not necessary at this time.
8. Applicant did not seek advance authority to incur expenses for billing and accounting costs for the surcharge billings.
9. Billing and accounting charges connected with the surcharge ordered below will be about \$560.
10. Applicant has billed its customers for \$9,000 of the water hauling costs incurred since June 24, 1987.
11. Applicant requires additional revenue of \$29,091 in order to maintain service.

Conclusions of Law

1. The discussion of recovery of past expenses in this opinion should supercede the discussion under Issue 1 in D.87-07-094.

2. Applicant's request to recover \$554.60 in accounting fees and \$3,100 for the estimated cost of a temporary line should be denied.

3. Applicant's request for additional revenue should be granted to the extent of \$29,091.

4. Applicant should be authorized to collect the additional revenue by a surcharge of \$82.18 per customer, billable immediately.

5. Applicant does not require our authority to borrow funds if the term of the loan is less than one year.

6. Applicant has waived its right to comment on the ALJ's proposed opinion under PU Code § 311. The staff has not waived its § 311 rights.

7. Applicant should account for any revenue collected over and above actual water hauling expenses incurred through November 30, 1987.

8. The following order should be effective today, because of the applicant's urgent need for rate relief to continue water service to its customers.

THIRD INTERIM ORDER

**IT IS ORDERED that:**

1. Camp Meeker Water Service, Inc., (applicant) may increase rates by surcharge to recover a maximum of \$29,091 in revenue at this time. Applicant may bill its customers immediately for \$82.18 per customer.

2. The discussion of recovery of past expenses in this opinion shall supersede the discussion under Issue 1 in D.87-07-094.

3. Applicant shall record any revenue collected pursuant to this order in a balancing account and shall also record actual water hauling expenses incurred in this account. Revenues

collected in excess of expenses for the period June - November 1987 shall be subject to refund. Applicant may not recover expenses in excess of the amount authorized by this decision without further order of the Commission.

4. Applicant's petition for modification of D.87-07-094 is granted to the extent set forth in Ordering Paragraph 1 and is in all other respects denied.

This order is effective today.

Dated October 28, 1987, at San Francisco, California.

STANLEY W. HULETT  
President  
DONALD VIAL  
FREDERICK R. DUDA  
G. MITCHELL WILK  
JOHN B. OHANIAN  
Commissioners

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

  
Victor Weisner, Executive Director

2. Applicant's request to recover \$554.60 in accounting fees and \$3,100 for the estimated cost of a temporary line should be denied.

3. Applicant's request for additional revenue should be granted to the extent of \$29,091.

4. Applicant should be authorized to collect the additional revenue by a surcharge of \$82.18 per customer, billable immediately.

5. Applicant does not require our authority to borrow funds if the term of the loan is less than one year.

6. Applicant has waived its right to comment on the ALJ's proposed opinion under PU Code § 311. The staff has not waived its § 311 rights.

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THIRD INTERIM ORDER

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1. Camp Meeker Water Service, Inc., (applicant) may increase rates by surcharge to recover a maximum of \$29,091 in revenue at this time. Applicant may bill its customers immediately for \$82.18 per customer.

2. The discussion of recovery of past expenses in this opinion shall supercede the discussion under Issue 1 in D.87-07-094.

3. Applicant shall account for any revenue collected over and above actual water hauling expenses incurred.



4. Applicant's petition for modification of D.87-07-094 is granted to the extent set forth in Ordering Paragraph 1 and is in all other respects denied.

This order is effective today.

Dated OCT 28 1987, at San Francisco, California.

STANLEY W. HULETT  
President  
DONALD VIAL  
FREDERICK R. DUDA  
G. MITCHELL WILK  
JOHN B. OHANIAN  
Commissioners