

Decision 88 09 072 SEP 28 1988

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ROBERT H. JONES & CURTIS KITCHEN )  
representing 32 household )  
petitioners, )

Complainants, )

vs. )

Owners of the MT. CHARLIE WATER )  
WORKS: TED PIERCE, ET AL., )

Defendants. )

Mailed

SEP 30 1988

Case 87-01-008  
(Filed January 6, 1987)

Randy Danto, Attorney at Law, for Robert H. Jones  
and fellow complainants.

Wester Sweet, Attorney at Law, and Mark Lew, for  
Mt. Charlie Water Works, defendant.

Robert Penny, for the Commission Advisory and  
Compliance Division, Water Utilities Branch.

EMERGENCY INTERIM OPINION

Statement of Facts

Mountain Charlie Water Works (Mt. Charlie) is a small Santa Cruz Mountains water system begun in the 1960 era as a private system, soon expanded to accommodate neighbors, and later associated with real estate sales. Today, it is a California corporation with its stock held by three shareholders: Wester Sweet, Ted Pierce, Jr., and Margaret Pierce. Each assertedly owns 1/3 of the shares. Reportedly, Mt. Charlie has never paid dividends; its expenses eating up all revenues. Today, it encompasses approximately 139 residential customers in a service area of about 2,000 acres. The terrain is heavily wooded and characterized by rugged, steep hillsides threaded through by old logging trails which are surface paved in part. Homes are in the \$300,000 range. Water is obtained from diversions in creeks and

from springs deep in the mountain gulches, chlorinated, and pumped through several series of tanks to 45,000-gallon steel and redwood tanks at higher elevations from whence it is delivered by gravity flow or pressure systems to customers. The system inherently by its nature is extremely vulnerable to the year-round whims of nature. Earthquakes, lightning storms, and winter rains severely damage the system each year.

Problems experienced in recent years which resulted in increasing numbers of outages, some of substantial duration and particularly at the higher elevations, coupled with exasperation at the lack of utility response to telephone complaints, and a feeling that rates were excessive for the service received, led to filing of the present complaint by the higher elevation customers (Case 87-01-008). Following a sparsely attended hearing before Administrative Law Judge (ALJ) John B. Weiss in Los Gatos, Decision 87-09-032 was issued on September 10, 1987. That interim decision found Mt. Charlie to be a public utility and ordered cooperation with the Commission staff in an audit of the utility. The decision further provided that when the staff audit was complete a second phase hearing would be held to review rates and to determine how to finance an engineering study to improve the system.

Unfortunately, about this time the utility shareholders had a falling out and a lawsuit was filed in Santa Cruz County Superior Court for a dissolution of the corporation and an accounting. In the past years connection charges have been levied, as the system grew and the substantial funds collected have apparently disappeared as ownerships of the system changed. The lawsuit apparently continues. Consequently, staff has encountered great difficulty in obtaining meaningful financial records from various certified public accountants working for the respective parties to the lawsuit, and only recently have some useful records been obtained. Staff has increased its efforts in this regard.

This year's drought, following as it did that of last year, has drastically impacted water flows from Mt. Charlie's creek sources. Increasing numbers of upper elevation residents have been hit with longer and longer outages. The earthquake earlier this year badly disrupted the system, breaking water lines, and inflicting severe damage to one of the 45,000-gallon reservoirs and its foundation. An electric storm damaged the utility's power lines. Pumps have been failing, further exacerbating problems. Then in August several primary creek sources went dry and the flow in others is reduced. All this year the utility has had to import water in some degree to keep some reservoirs operating, but in the latter part of August the problem mushroomed, and heavy water hauling had to be started to keep the upper level pressure systems operating at least some of the time. The system has limited transfer capability and could not keep up with demands upon it to balance dwindling supplies so that water trucks must be used to deliver directly to individual reservoir tanks at different locations. The utility has no money to pay for this water importation and the water hauling company refuses to haul unless they are paid.

In September 1988 these problems were brought to the attention of Commission staff, resulting in the Water Utilities Branch memo to the Commissioners of September 12, 1988 on the emergency water shortage situation. Staff engineers met with the owner Sweet and went over the situation.

On September 26, 1988 after mail notice of one week to all utility customers, ALJ Weiss held an emergency evening hearing in Felton attended by over 100 customers. Fourteen of these customers testified at length, giving graphic descriptive testimony of their problems ranging from a partial to complete lack of water, and exasperation over lack of communication. Many alleged incompetent or inept management, and while not opposing surcharges were concerned that such funds be closely monitored. They want

accountability. A financial examiner of the Audit and Compliance Branch testified that based upon a preliminary examination of unaudited checking account activity of Mt. Charlie for the first 8 months of 1988, and after deleting certain expense elements, it would appear that the utility's cash operating expenses for the first 8 months exceeded its operating income. Thus, the utility has no operating income funds to pay for imported water. Staff is continuing its audit activity. A staff engineer testified of his examination of the utility's physical plant. He noted the unique inherent vulnerability of the system because of its location, and related some of the earthquake damage. He described earlier year shoddy workmanship on the system and contrasted it with present competent work being done. He estimated current available water flow available to the utility to be between 6 and 14 gallons per minute. He was under the impression that some of the conservation measures undertaken have been effective. While it was his opinion that a professional engineering evaluation study would be required to prioritize requirements, it was also his opinion that a basis upon which to build also does exist. And he stated that in some ways the company's efforts have been admirable. Finally, a staff Senior Engineer presented staff's recommendations to alleviate the immediate water shortage situation. First, staff proposes immediate adoption of a Mandatory Conservation Program under Tariff Rule 14.1. This program would allocate each household up to 150 gallons through its meter per day on the basis of 50 gallons per person (if more than 3 persons were resident the customer of record could request an increase in his allotment from the company). This would equate to 620 cu.ft. per month which under the existing Mt. Charlie Rate Schedule would cost as follows:

0 - 500 cu.ft./month	\$35.53
Each 100 cu.ft. in excess	<u>4.66</u>
	\$40.19 per month

Staff also proposed an excess use penalty of an additional \$3 per 100 cu.ft. for use in excess of the applicable allocation during each billing period. Monies collected through penalty charges would be accumulated by the company in a separate reserve account for disposition as directed or authorized by the Commission. Second, staff recommended adoption of a surcharge starting at \$84 the first month in order to pay the cost of hauling water during this emergency period. This surcharge would be placed in a balancing account to be used only for the water hauling costs actually accrued. At close of the hearing it was learned that the water hauling costs accrued at present and unpaid were \$6,000.

Discussion

There is no question but that a water emergency exists for the customers of Mt. Charlie and that until the winter rains restore a flow in the system adequate to meet the needs of the people water must be trucked in to keep the tank reservoir levels high enough to enable the pressure system pumps to provide water at the upper levels. At present some people at the base, thanks to gravity flow and their location, are always supplied with all the water they need. Others, primarily at the upper levels, are frequently, and for varied periods extending at times for days, totally without water.

Public Utility Code § 453(a) provides, as applicable here, that no public utility shall as to service make or grant any preference or advantage to any person. All customers of this public utility are equally entitled to share in whatever water there is in the system or which can be brought in. And all customers must equally share in the cost of such augmentation of the common supply.

Accordingly, this Commission will adopt the staff proposed Water Conservation Plan for Mt. Charlie as set forth in Appendix A to the order which follows. When our staff informs the ALJ that the water supply has returned to levels which can permit

ending this conservation plan, the ALJ will prepare an order for the Commission's consideration terminating the plan.

The costs of importing water by truck are considerable and beyond the expectation in this instance of being borne as part of normal operating expense. Nature's decision is not the result of any imprudence of the utility. Accordingly, we will authorize the imposition of a surcharge above and beyond the tariff rates and any penalty rates imposed under the provision of the Water Conservation Plan. This surcharge will be placed in a balancing account to be used only for the cost of hauling water.

It is calculated by staff that the surcharge should be payable, starting with the October 1 billing by Mt. Charlie as follows:

October 1	\$84
November 1	\$67
December 1	\$54

The 150 gallons for household allocation x 140 households (as determined late in the September 26, 1988 evening hearing) will require 21,000 gallons per day. The stream production locally is on 14,400 gallons per day, leaving a daily deficit of 6,600 gallons, or 198,000 gallons per month. At 4,000 gallons per truckload, 198,000 divided by 4,000 will require 50 truckloads at \$150 per load (averaging holiday and weekend surcharges as well as extra costs in certain deliveries for terrain, etc.) at an estimated cost of \$7,500 monthly. We estimate approximately \$28,500 will be required. The above declining surcharge should produce this amount. If the drought continues, this surcharge may have to be extended, but at least all customers should have their share of water.

We will also join the Santa Cruz health authorities in imposing a moratorium on any additional connections to this system until further order of the Commission.

This matter did not appear on the Commission's public agenda; however, in view of the necessity to haul water to serve their customers, a sufficient emergency exists under Public Utilities Code § 306(b) for us to act today without public notice.

Findings of Fact

1. Mt. Charlie is a public water utility within the jurisdiction of this Commission.
2. Numerous customers are presently out of water for varied but at times extended periods as a consequence of the serious drought which currently exists and which has dried up some Mt. Charlie water sources and lessened the flow in others.
3. Matters are further complicated by reason of earlier extensive earthquake and electric storm damage some of which remains unrepaired to date.
4. To maintain any water flow at numerous locations water must be trucked in at costs which are not reasonably to be considered normal operating expense under the circumstances set forth in the opinion to this order.
5. Mt. Charlie's operating revenues this year for the first eight months are less than operating expenses insofar as has been determined from preliminary audit with additional operating expenses alleged but not considered in this preliminary audit.
6. A Mandatory Water Conservation Plan, as proposed by staff, is urgently required and should be immediately imposed.
7. A surcharge to pay for the costs of importing water to meet the minimum requirements set forth in this order is necessary and reasonable.
8. This order should be made effective immediately.

Conclusions of Law

1. The present water shortage emergency warrant imposition of this Mandatory Water Conservation Plan and its penalties.
2. Imposition of the surcharge as set forth in this decision is reasonable and necessary.

3. The emergency which exists requires making this order effective immediately.

EMERGENCY INTERIM ORDER

IT IS ORDERED that:

1. The Mandatory Water Conservation Plan set forth in Appendix A will be placed into effect October 1, 1988.

2. All Mountain Charlie Water Company customer meters will be read effective October 1, 1988 by company personnel, with follow-up readings the first of each month by company personnel effective the first of November, December, 1988, and January, 1989.

3. The billing for October 1, 1988 reading will contain a surcharge of \$84 per meter customer; the billing for November 1, 1988 reading will contain a surcharge of \$67 per meter customer; and the billing for December 1, 1988 will contain a surcharge of \$54 per meter customer.

4. All surcharge revenues will be placed in a balancing account to be used only to pay water hauling costs as set forth in this decision.

5. All penalty revenue from the Mandatory Conservation Plan will be segregated and kept intact until further order of this Commission.

6. A moratorium on all additional customers is effective immediately and will remain in effect until further order of the Commission.

7. Mountain Charlie Water Company shall notify each of its customers on or before October 1, 1988 that mandatory rationing is being imposed, and shall provide each a copy of the rationing plan set forth in Appendix A.

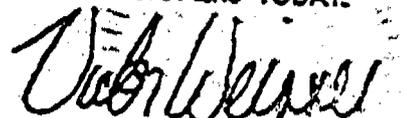
This order is effective today.

Dated SEP 28 1988, 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 Weisser, Executive Director

MT. CHARLIE WATER WORKS  
Water Conservation Plan

A. DEFINITIONS

As used in this water conservation plan, the following words are defined:

1. "Company" means the Mt. Charlie Water Works.
2. "Customer" means any individual, person, firm, partnership, association, corporation, company, organization or governmental entity who uses water supplied by the Company.
3. "Water" means water supplied by the Company.

B. PROHIBITION OF NONESSENTIAL OR UNAUTHORIZED WATER USE

No customer shall use water for nonessential or unauthorized uses as defined below, except as noted:

- a. Use of water through any meter when the company has notified the customer in writing to repair a broken or defective plumbing, sprinkler, watering or irrigation system and the customer has failed to make such repairs within 1 day after receipt of such notice.
- b. Use of water which results in flooding or run-off in gutters, waterways, patios, driveways, or streets.
- c. Use of water for washing cars, buses, boats, vans, trailers or other vehicles.
- d. Use of water through a hose for washing buildings, structures, sidewalks, walkways, driveways, patios, parking lots, tennis courts, or other hard-surfaced areas.
- e. Use of water for construction purposes, such as consolidation of backfill.
- f. Use of water for landscaping in connection with any new construction.
- g. Use of water for outside plants and turf areas.
- h. Use of water for decorative fountains or the filling or topping off of decorative lakes or ponds.

- i. Use of water for the filling or refilling of swimming pools.

### C. ALLOCATION OF WATER USE

Each household shall be allotted 150 gallons per day based upon a three (3) person household. The customer of record may request an increase in this basic allotment as provided in Section D below.

Water consumed in excess of the basic allotment will be subject to the higher charges per unit set forth in Section E.

### D. EXCEPTIONS

Exceptions to increase the amount of water which may be used without exceeding the basic allotment may be granted upon written request for the following reasons:

1. Substantiated medical requirements.
2. More than 3 residents per household - 50 gallons per day per additional resident.
3. Incorrect customer classification based on predominant use.

### E. EXCESS USAGE CHARGES

In the event that a customer uses more than the allotted amount, the following excess usage penalties apply in addition to the tariff charges:

<u>Amount in Excess</u>	<u>Charge</u>
up to 10% over allotment	1.0 times unit rate
10% - 100% over allotment	2.0 times unit rate
100%- 200% over allotment	3.0 times unit rate
greater than 200%	5.0 times unit rate

2. Any monies collected by the Company through penalty charges shall not be accounted for as income, but shall be accumulated by the Company in a separate reserve account for disposition as directed or authorized from time to time by the California Public Utilities Commission.

### F. ENFORCEMENT

1. The company may, after one written warning, install a flow-restricting device on the service line of any customer observed by company personnel to be using water for any nonessential or unauthorized use as defined in Section B above.

The restricting device may be removed only by the company, only after a three-day period has elapsed, and only upon payment of the appropriate removal charge as set forth below. After the removal of such restricting device, if any nonessential or unauthorized use of water shall continue, the company may install another flow-restricting device. This device shall remain in place until drought conditions cease and until the appropriate charge for removal has been paid to the company. However, if despite installation of such flow-restricting device pursuant to the provisions of the previous sentence, any such nonessential or unauthorized use of water shall continue, then the company may discontinue water service to such customer. In such latter event, a charge as provided in Rule No. 11 shall be paid to the company as a condition to restoration of service.

2. The charge for removal of a flow-restricting device shall be:

<u>Meter or Service Connection Size</u>	<u>Removal Charges</u>
5/8" to 1"	\$25.00
1-1/2" to 2"	50.00
3" and larger	Actual Cost

#### G. APPEAL PROCEDURE

Any customer who seeks a variance from any of the provisions of this water conservation plan shall notify the company in writing, explaining in detail the reasons for such a variation. The company shall respond to each such request. Any customer not satisfied with the company's response may file an appeal with the staff of the Commission. The customer and the company will be notified of the disposition of such appeal by letter from the Executive Director of the Commission. If the customer disagrees with such disposition, he shall have the right to file a formal complaint with the Commission. Except as set forth in this Section, G, no person shall have any right or claim in law or in equity, against the company because of, or as a result of, any matter or thing done or threatened to be done pursuant to the provisions of this water conservation plan.