

Decision 90 03 023 MAR 14 1990

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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Georgena L. Pasquinelli,  
 Complainant,  
 vs.  
 Citizens Utilities Company of  
 California,  
 Defendant.

(ECP)  
 Case 89-04-054  
 (Filed April 25, 1989)

Georgena L. Pasquinelli, for herself, complainant.  
Joan Zeglarski and James Bentley, for Citizens  
 Utilities Company of California, defendant.

O P I N I O N

Summary of Decision

The request of complainant Georgena L. Pasquinelli for a refund of service charges for water service is denied. Defendant Citizens Utilities Company of California (Citizens) is ordered to pay \$178.74 to Pasquinelli for interest accrued on a deposit of \$100 held by Citizens from September 1973 to April 1989.

Complaint

Pasquinelli seeks a refund of \$202.10 for alleged overcharges for water service at 1501 Sunshine Valley Road, Montara. Pasquinelli also requests an order requiring Citizens to pay \$245 in interest on a deposit she made with Citizens in 1973 to establish service at that address. The total amount of relief sought is \$447.10.

As grounds for the requested relief, Pasquinelli alleges that on December 20, 1988 Citizens billed her \$234.10 in service charges for the billing period September 17, 1987 to December 5,

1988. Since only one bill was presented for service rendered during this period, Pasquinelli believes a service charge of only \$32 should have been assessed. The requested refund of \$202.10 represents the difference between \$234.10 and \$32. (The December 20 bill also shows that Citizens assessed charges totaling \$106.56 for water consumption of 54 CCF; however, these charges are not disputed.)

Pasquinelli states that on September 28, 1973 she deposited \$100 for which a receipt was issued by Citizens.<sup>1</sup> The receipt states that the deposit is made:

"...to secure the payment of charges for service to be used at premises."

The receipt form also states that:

"This deposit less the amount of any unpaid WATER bills will be refunded, together with any interest due, at 5 per cent per annum, upon discontinuance of service, or after the deposit has been held for 12 consecutive months, during which time continuous WATER service has been received and all bills for such service have been paid in accordance with the Rules and Regulations as approved by the Public Utilities Commission of the State of California.

"No interest will be paid if service is discontinued for any cause within less than 12 months from the date of making deposit."

By letter dated April 7, 1989, Citizens informed Pasquinelli that it planned to credit her account by \$100. The letter did not include an offer to pay interest. Pasquinelli claims that since Citizens neither connected nor disconnected

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<sup>1</sup> The complaint shows that the property is at 1501 Sunshine Valley Road in Montara. The receipt refers to the same street address in Moss Beach. Undisputed testimony shows that the communities are adjacent, and that the correct address is Montara.

service until September 17, 1987, compound interest after the first 12 consecutive months should be paid at fair market interest, not the 5½ rate stated in the receipt. Using the stated 5½ rate for 1974 and the annual average auction yield on one-year treasury bills as an indicator of fair market interest for the years 1975 through 1989, Pasquinelli computed interest due in the amount of \$245.

Citizens' Answer

Citizens denies that a service charge of only \$32 should have appeared on the December 20, 1988 bill or that complainant is entitled to a refund of \$202.10. Citizens further denies that service to 1501 Sunshine Valley Road was never connected or that complainant is entitled to interest on the deposit in the amount of \$245.<sup>2</sup>

Citizens alleges that in 1987 it discovered a service connection at 1501 Sunshine Valley Road for which there was no record in the meter book. A new meter was set, and the complainant was advised that billing would begin as of September 17, 1987. However, the account was inadvertently omitted from the billing system for some time. The matter was corrected with the December 20, 1988 bill for service rendered from September 17, 1987 to December 5, 1988.

Citizens also alleges that complainant has misconstrued the nature of the basic monthly charge by implying that the service charge is a charge for rendering a bill. As its tariff states, the

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<sup>2</sup> Citizens answer was filed as a proposed answer accompanying a motion to accept late filing of the answer. The motion was filed on May 31, 1989. The Administrative Law Judge informed the parties that the Docket Office had served the complaint on the defendant on May 1, 1989, and that the answer was therefore due on May 31, 1989. (Rules of Practice and Procedure, Rules 12 and 13.) The ALJ ruled at the hearing that the answer would be accepted.

service charge, determined by meter size, is a readiness to serve charge applicable to all metered services. Citizens maintains the monthly service charge was computed correctly.

As to the claim for interest, Citizens alleges that the claim is barred by the four-year limitation of §337 of the Code of Civil Procedure. Further, if not so barred, Citizens believes that interest should be calculated at the 5% rate "contracted for" as stated in the receipt.

Pasquinelli's Evidence

Complainant presented testimony and documentary evidence showing the following:

1. The property at 1501 Sunshine Valley Road is a two-acre lot where horses are stabled. There are two portable structures and two stalls, but no permanent dwelling units. Pasquinelli has leased the land from Caltrans since 1973.
2. In 1973 Pasquinelli discussed the possibility of establishing a service connection with Mr. Womack, a Citizens representative. She was advised that permanent service could not be established since there are no permanent structures on the property. However, Pasquinelli was able to make an arrangement with Yvonne Selsor, the owner of a neighboring lot, to provide water.
3. Womack told her there was no need to hook up service in view of the arrangement with Selsor, and service was not established with Citizens at that time. However, at Womack's suggestion, on September 28, 1973 Pasquinelli deposited \$100 with Citizens. Pasquinelli understood that the purpose of the deposit was to protect her right, in the event of a moratorium on new service, to establish service with Citizens at some point in the future if the arrangement with Selsor were to be cancelled.

Citizens issued a receipt for the deposit to Robert Pasquinelli. The receipt (No. 13913) bears the handwritten notation "Temporary Water Rule 13". Pasquinelli did not understand that the purpose of the deposit was to establish temporary service, nor did she question the handwritten notation.

4. The arrangement with Selsor continued until 1978. Pasquinelli then made an arrangement to obtain water from another neighbor, Mr. Torres. The latter arrangement continued until 1987.
5. In 1987 Citizens' personnel became aware of the arrangement with Torres, and determined that a separate service should be established for Pasquinelli. Pasquinelli indicated on cross-examination that she was informed of possible backflow problems due to the nature of her connections with Torres' supply. A meter was set, and after some initial technical problems in July 1987, service was established for Pasquinelli's account on September 17, 1987.
6. In the process of establishing service in 1987, Georgena Pasquinelli discussed the \$100 deposit with Mr. Ingram, a Citizens representative. According to Pasquinelli, Ingram agreed that the deposit should be refunded and informed her that it would be credited to her account. Robert J. Pasquinelli testified that a Citizens' representative, whose name he could not recall, informed him that the deposit plus interest would be applied to the account.
7. Since she had been informed that the deposit would be applied to her account, Pasquinelli did not think there was anything wrong when she did not receive a water bill after September 1987 and throughout most of 1988.
8. In response to Citizens's position that the \$100 was credited to her account as a good faith offer to resolve the dispute and not

as a refund (since company records did not disclose whether the deposit had previously been refunded), Pasquinelli testified that she was in possession of the original receipt. A stub attached to the receipt bears the pre-printed notation "When deposit is refunded this stub must accompany the voucher to the auditing department."

9. Pasquinelli first became aware of Citizens' offer to apply \$100 towards her bill when she received a letter from the Commission's Consumer Affairs Branch describing its review of her informal inquiry. The letter was dated February 9, 1989.

#### Citizens' Evidence

James Bentley, District Manager from Citizens' Felton office, presented a meter record showing that service was established in Pasquinelli's name at "1501 SVR" (Sunshine Valley Road), Account No. 84-3104-0, on September 17, 1987. He testified that the utility failed to issue bimonthly bills for more than a year. Due to an "office error", meter readings were mistakenly billed to Account No. 84-3105-0 and were not read by the billing center as a result. The company learned of the mistake in November 1988. On November 22, 1988, Bentley wrote a letter to Pasquinelli advising her of the error and that on or about December 20 she would receive a bill covering usage from September 17, 1987 to the present. Bentley identified Ingram as a superintendent for Citizens.

Joan Zeglarski, Administrative Services Manager with Citizens' General Office, provided testimony and evidence indicating the following:

1. The contested service charge of \$234.10 was computed by applying the tariff rate of \$16 per month, prorated on a daily basis for the period September 17, 1987 to December 5, 1988. The proration was computed in accordance with tariff rules.

2. The \$100 deposit was accepted under Citizens' Tariff Rule 13. Rule 13 states the conditions under which the utility will furnish temporary service. Among other things, an applicant for temporary service must advance "...the estimated net cost of installing and removing the facilities necessary to furnish the service". The \$100 deposit was in fact such an advance. The service was installed and made ready, but temporary service never commenced.

Rule 13 also provides that when a main extension is not involved, the utility will refund the amount advanced in the event a temporary service becomes permanent. According to Zeglarski, there was no main extension involved in this case.

3. Temporary service was never established for Pasquinelli, and permanent service was not established until 1987.
4. Citizens has no records to determine whether the deposit was ever refunded prior to 1989.
5. Citizens' Form 2 is the receipt form given for cash deposits to establish billing account credit. The wording on the form regarding interest pertains to deposits made to establish credit, and no such deposit was involved in this case. The form is not usually used for temporary service deposits.
6. If the Commission awards interest on the deposit, and if it adopts Citizens' position that interest should be the 5% rate stated on the deposit receipt, the amount of interest due complainant would be \$118.29.

### Discussion

#### A. Service Charge

Although there is some confusion regarding a number of events occurring over a period of approximately 14 years prior to

September 17, 1987, it is undisputed that Citizens first began to provide water service on that date. Since Citizens' filed tariff schedule (Schedule M0-1) clearly provides that a service charge of \$16 per meter per month will be assessed, we conclude that it was proper for Citizens to bill Pasquinelli for service charges for all service beginning on September 17, 1987. The service charge is not, as the complaint implies, merely a billing charge; rather it is, as the tariff states, a readiness to serve charge which is to be added to charges which are based on the quantity of water used.

It is true that Citizens' failure to render a bill for more than a year after September 1987 was in violation of its tariff. Rule 9 states that "[b]ills for service will be rendered each customer on a monthly or bimonthly basis at the option of the utility..."<sup>3</sup> However, this failure does not provide a basis for the utility to forgo the charges specified in the tariff. We have previously held that even when a utility has negligently failed to render bills for the correct amount due, it has the right to collect the full charge specified in its rate schedules; such right is a correlative of its obligation to make reparation to a customer of any charge exacted in excess of those authorized by the rate schedules. (In the Matter of San Gabriel Water Company (1948) 48 CPUC 87.) We conclude that the contested service charge of \$234.10 was properly assessed by Citizens, and will therefore deny the request for a refund of \$202.10.

**B. Interest on the Deposit**

To determine whether complainant is entitled to an award of interest on the \$100 deposited with Citizens, and if so what rate of interest is applicable, we must determine which tariff

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<sup>3</sup> It appears that General Order 103 was violated as well. Paragraph VII 2 provides that each water utility shall render a bill to each customer for each billing period.



rules, if any, governed the deposit and the refund. Several tariff provisions, summarized below, are germane to the determination:

1. Preliminary Statement. Paragraph D (Procedure to Obtain Service) provides in part that service will be furnished to any person or corporation within the service area provided, among other requirements, that "a contract is signed in those certain circumstances specified in Rule No. 4, Contracts."
2. Rule No. 4, Contracts. This rule states that "[a] contract, as a condition precedent to receiving service from the utility, will be required only under any of the following circumstances." The listed circumstances include "temporary service supplied under the provisions of Rule No. 13."
3. Rule No. 5, Special Information Required on Forms. Paragraph C (Customer's Deposit Receipt) provides that certain statements will be contained on receipts for cash deposits made to establish credit. Included is a required statement to the effect that the deposit, less any unpaid bills, will be refunded with interest upon discontinuance of service or after the deposit has been held for 12 consecutive months. The stated interest rate has been 7/12 per cent per month (7% annually) since September 16, 1976. From November 23, 1973 to September 15, 1976 the interest rate was 6% per year; prior to that it was 5% per year.  
  
Until September 16, 1976 Rule 5 C also required the following statement: "No interest will be paid if service is discontinued within 12 months from date of making deposit."
4. Rule No. 6, Establishment and Re-establishment of Credit. This rule provides alternative means of establishing credit, one of which is to make a deposit as prescribed in Rule 7.

5. Rule No. 7, Deposits. This rule states the amount of deposits required to establish or re-establish credit when such a deposit is required by Rule 6. For metered service with a 5/8 by 3/4-inch meter, the required amount is \$10 when bills are rendered bimonthly.

Rule 7 also states the rules governing the return of deposits and the interest rate to be paid. The interest rates have been increased from 5% to 6% then to 7% consistent with the statement of interest rates required by Rule 5.

6. Rule No. 13, Temporary Service. As noted earlier, Rule 13 states the conditions under which the utility will furnish temporary service.
7. Form No. 2, Receipt for Cash Deposit. This sample form appears on Tariff Sheet 174-W, which became effective in 1959. The language on the form is consistent with that required by Rules 5 and 7 as they existed prior to November 1973, including a statement that 5% interest is paid on deposits.

We conclude first that the deposit was not intended by either party as a means for Pasquinelli to establish credit. In addition to the unambiguous testimony on this point, we note that Pasquinelli's deposit was ten times the amount allowed by Rule 7 to establish credit. Thus, the transaction was not governed by Rules 6 and 7. Moreover, the customer deposit receipt form specified in Rule 5 and shown by example as Form 2 was therefore not applicable under the terms of the tariff, despite the fact that the receipt tendered to Pasquinelli was issued on a form which bears the

language required by Rule 5, is in conformance with Form 2, and is clearly a form intended for deposits issued under Rule 7.<sup>4</sup>

We next turn to Citizens' contention that the deposit was an advance to establish temporary service under Rule 13. Here, the evidence is somewhat ambiguous. On the one hand, the handwritten notation on the receipt clearly refers to Rule 13, and apparently some facilities were installed by Citizens. On the other hand, Pasquinelli's evidence shows that at the time of the deposit, she intended, with Citizens' knowledge and consent, to use another customer's water, not to establish temporary or permanent service with Citizens.

The latter version is bolstered by the subsequent unfolding of events. Service was never established for a period of 14 years, and when permanent service finally was established in 1987, the utility did not (at the time) refund the amount advanced in accordance with Rule 13 B.1. (change to permanent status). Further, under the terms of the Preliminary Statement and Rule 4, a signed contract was required to obtain service under Rule 13, but there was no evidence of such a contract being signed.

We find that neither Rule 13 nor any other rule in Citizens' tariff governed the deposit. Rather, the deposit was intended to protect Pasquinelli's right to obtain service in the event that a future moratorium on new service would otherwise prevent her from doing so. Perhaps at the time the deposit was accepted Citizens' personnel believed that Rule 13 was the rule most nearly applicable to the situation. However, not all of the

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<sup>4</sup> We note that Form 2, as it appears in Citizens' tariff, states that 5% interest will be paid despite the fact that higher interest rates have been specified in Rules 5 and 7 since 1973. Also, the form includes a statement that no interest will be paid if service is discontinued within 12 months, despite the removal of that statement from Rule 7 C in 1976.

requirements for applying the rule were met. We conclude that the tariff rules provided no basis for accepting the deposit and, therefore, that it was appropriate for Citizens to refund the deposit with interest upon proof that it was made and not previously refunded. There is no tariff rule proscribing the payment of interest on the deposit and, further, the award of interest is not barred by a statute of limitations as Citizens contends. A cause of action did not arise until the deposit was returned and the payment of interest was refused. (Public Utilities Code § 738.)

We reject Citizens' assertion that its 1989 decision to credit Pasquinelli's account by \$100 was merely a good faith action made because it could not determine whether it had previously refunded that amount. Since Pasquinelli was in possession of the receipt stub which is to be tendered to the utility at the time of refund, and the utility was not in possession of any records to the contrary, there is no reason to find that it was previously refunded. In an early case involving customer deposits, where a customer produced positive evidence of having made a deposit, the Commission ordered that the deposit be returned with interest, irrespective of the fact that the utility's books failed to show that the deposit had been made. (Beerman vs. Pacific Gas and Electric Company (1917) 12 CRC 637.)

The only remaining question is the rate of interest to be used in computing the amount of interest awarded. We will not limit the award to the 5% rate stated on the deposit receipt, since, as noted previously, the receipt form used by the utility was not intended for the transaction. On the other hand, we will not base the award on returns on investments in treasury instruments, since such returns are not directly comparable in terms of their purpose or the risk involved. Citizens' tariff does specify the rate of interest paid on customer deposits made to establish credit, and we find it reasonable to compute the award by

using the same rate as if it were applicable to Pasquinelli's deposit. The computation of the amount of interest due complainant, \$178.74, is shown in detail in Appendix A.

O R D E R

IT IS ORDERED that:

1. The request of complainant Georganà L. Pasquinelli for a refund of \$202.10 in service charges for water service is denied.

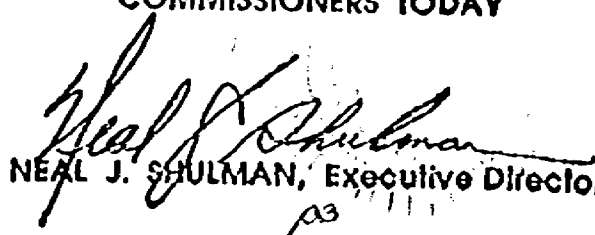
2. Defendant Citizens Utilities Company of California shall pay \$178.74 interest to complainant Pasquinelli. To the extent not granted herein, complainant's request for an award of \$245 in interest is denied.

This order becomes effective 30 days from today.

Dated MAR 14 1990, at San Francisco, California.

G. MITCHELL WILK  
President  
FREDERICK R. DUDA  
STANLEY W. HULETT  
JOHN B. OHANIAN  
PATRICIA M. ECKERT  
Commissioners

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

  
NEAL J. SHULMAN, Executive Director

## APPENDIX A

## Interest on \$100 Deposited on September 28, 1973

<u>Period</u>	<u>Interest Rate</u>	<u>Cumulative Interest</u>
Sept. 1973 - Sept. 1974	5.83*	5.83
Sept. 1974 - Sept. 1975	6.00	12.18
Sept. 1975 - Sept. 1976	6.00	18.91
Sept. 1976 - Sept. 1977	7.00	27.23
Sept. 1977 - Sept. 1978	7.00	36.14
Sept. 1978 - Sept. 1979	7.00	45.67
Sept. 1979 - Sept. 1980	7.00	55.87
Sept. 1980 - Sept. 1981	7.00	66.78
Sept. 1981 - Sept. 1982	7.00	78.45
Sept. 1982 - Sept. 1983	7.00	90.94
Sept. 1983 - Sept. 1984	7.00	104.31
Sept. 1984 - Sept. 1985	7.00	118.61
Sept. 1985 - Sept. 1986	7.00	133.92
Sept. 1986 - Sept. 1987	7.00	150.29
Sept. 1987 - Sept. 1988	7.00	167.81
Sept. 1988 - Apr. 1989	7.00	178.74

\*Weighted Rate based on tariff rate of 5% from September 1973 to November 1973 and 6% beginning November 1973.

(END OF APPENDIX A)