

Mailed

Decision 91-09-017 September 6, 1991

SEP 9 1991

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Donald F. Williams,

Complainant,

VS.

Tahoe Park Water Company,

Defendant.

ORIGINAL

Case 90-11-002

(Filed November 17, 1991)

Donald F. Williams, for himself, complainant, and David Robertson, for Tahoe Park Water Company, defendant.

OPINION

Tahoe Park Water Company serves about 400 customers in the Tahoe Park area near Tahoe City, California. Of these 400 customers about 30 are metered. Donald F. Williams is one of the metered customers. He bought a home in the company's service area in 1971. At that time the water service to his home was metered.

The company bills twice yearly for the periods January through June and July through December. In recent years Williams' water use during the January - June billing period was:

Year	Cubic Feet (CF)
1987	4,486
1988	3,009
1989	17,519
1990	66,672

The same pattern existed for the July - December billing period, as follows:

30000

<u>Year</u>	<u>Cubic Feet (CF)</u>
1987	12,035
1988	10,947
1989	29,647

This pattern of water consumption was caused by a tree root expanding against a pipe joint on Williams' side of the meter. At first the root merely caused a leak. Finally, the joint parted completely, causing water to percolate to the surface of the ground. When Williams returned to his Lake Tahoe residence in April, 1990, he discovered the problem. He summoned a plumber, who fixed the broken joint.

For the January-June 1990 period, Williams was billed \$548.35 for the quantity of water (66,672 CF) that passed through his meter. He seeks an adjustment of his bill, arguing that it is unfair that, because he is a metered customer, he should pay such a high bill when a flat rate customer in a similar situation would pay merely the standard flat rate, irrespective of the amount of water used or lost. Williams also seeks a change in the rate structure so that all customers are either metered or are all on flat rates.

The company counters that it has applied the lawful tariff rates on file with and approved by the Commission; that it has violated no tariff rule, regulation, or statute in serving or billing Williams; and that its tariff actually prohibits it from charging and collecting at other than the rates set forth in its tariff.<sup>1</sup>

<sup>1</sup> The company cites CPUC Sheet No. 255-W, which provides: "No officer, inspector, solicitor, agent or employee of the utility has the authority to waive, alter or amend these tariff schedules or any part thereof in any respect." (Approved by Resolution W-3447, effective May 26, 1989; cf. PU Code § 453.)

Discussion

Williams alleges that "[d]ue to the efforts of my wife and mine in recent years to conserve water, our water usage at Tahoe has been quite low for the utility's two separate billing periods...." (Complaint, p. 2.) He cites the January-June billing periods for 1987 and 1988 as evidence of his conservation. In those periods he was billed for an average of 3,748 CF of water. For the same period in 1989 his water use jumped to 17,519 CF, an increase of 368% over the average of the previous two periods.

A similar pattern occurred in the July-December billing period. For the years 1987 and 1988 Williams was billed for an average of 11,491 CF of water. For the same period in 1990 his water use jumped to 29,647 CF, an increase of 158% over the average of the previous two periods.

A wary, conservation-oriented customer should have noticed such startling increases in consumption, especially since the consumption for the current billing period and for the same period of the last year are expressly stated on the bill. (See Complaint, p. 4, for a copy of the disputed bill.)

In addition, the tariff of the company requires the customer to:

"Provide a main valve on the piping between the service connection and the point of customer use." (Tariff Rule No. 16 A. 2. a.(2), CPUC Sheet No. 261W.)

This is clearly a wise precaution, given the winter climate at Lake Tahoe, the heavily forested area, and the seasonal use of many homes. Many of the company's customers have such a valve near the meter or the service connection; but Williams does not, even though he does not use his home in the winter. Williams does have a shut off valve at the house; but his lot exceeds one acre, it is heavily forested, and he has an extensive irrigation system. To leave the part of his water system between the meter and his house pressurized while he is away for the winter is not

prudent in these circumstances. Needless to say, the break in his line occurred midway between the meter and his house.

Finally, the tariff of the company provides for a nominal, \$10 charge for voluntary termination and reconnection of service. This is an inexpensive premium for insurance against the kind of accident suffered by Williams.

Even if the facts of this case leaned more favorably in Williams' direction, questions of the fairness of rate levels, rate designs, or rate structures are not justiciable in complaint cases. First, Public Utilities (PU) Code § 1702 provides:

"Complaint may be made...by any...person...setting forth any act or thing done or omitted to be done by any public utility, including any rule or charge heretofore established or fixed by of for any public utility, in violation or claimed to be in violation, of any provision of law or of any order or rule of the commission."

Under this provision the causes of action that are litigable in complaint cases are violations of tariff rules, orders, general orders, and statutes. Williams has neither alleged nor proven that the company has violated any rule, order, or provision of law applicable to it. Thus, the complaint fails to state a cause of action; and it should be dismissed on that basis alone.

Second, PU Code § 1702 also provides:

"No complaint shall be entertained by the commission...as to the reasonableness of any rates or charges of any...water... corporation, unless it is signed by the mayor or the president or chairman of the board of trustees, or a majority of the council, commission, or other legislative body of the city or city and county within which the alleged violation occurred, or by not less than 25 actual or prospective customers or purchasers of such...water...service."

Under this provision an individual does not have standing to complain about the reasonableness of either the water corporation's rates or the charges billed, if they are correctly computed; and the commission does not have the authority to entertain such a complaint. Williams has challenged both the reasonableness of the metered rates under which he receives water service and the reasonableness of the charges billed to him under those rates. He does not allege, prove, or argue that his charges are incorrectly computed. Accordingly, Williams does not have standing under § 1702 to challenge either the company's metered rates or the charges billed to him under those rates; and the commission lacks authority to adjudicate such a complaint. The complaint should be dismissed on that basis alone.

Third, there is now pending before the Commission a general rate increase application, submitted by the company by advice letter, pursuant to General Order 96. The advice letter seeks \$26,092 in additional revenues, an increase of 34.63% over revenues at present rates. A public meeting was held in Tahoe City on July 25, 1991. At the hearing on July 12, 1991, in the instant case, Williams testified that he knew about the meeting and intended to participate and to bring his rate and rate structure concerns to the attention of the Commission in that forum. This is the appropriate forum for disposing of the issues of rate levels, rate designs, and rate structures that Williams has attempted to raise by complaint. In a general rate proceeding the interests of the various classes of customers can be balanced; the effect of metering can be evaluated in the context of the company's operations as a whole; and a basis for the findings required by PU Code § 781 can be elicited.

Fourth, the company's tariff Rule No. 16 A. 5. a. provides that:

"The utility will not be responsible for any loss or damage caused by any negligence or wrongful act of a customer...in installing, maintaining, operating or using any or all appliances, facilities or equipment for which service is supplied."

Under this rule, and under general principles of public utilities law, the water corporation owns, and is responsible for installing, maintaining, and repairing, storage, transmission, and distribution plant up to and including the meter or service connection. The pipes, valves, and appliances beyond the meter or service connection, on the other hand, are the property of the owner; and the owner is responsible for their installation, maintenance, operation, and repair. The utility has no duty to maintain or repair the owner's facilities; and any loss or property damage occasioned by their failure is the responsibility of the owner. The utility company does not act as an insurer of the safe or proper operation of the owner's pipes, valves, or appliances on his or her property. That is the owner's duty; and he or she may either self-insure or insure through a homeowner's insurance carrier, at his or her option. Under Rule No. 16 A. 5. a. the customer may not shift the burden or risk of loss due to the failure of his facilities to the utility company.

Fifth, PU Code § 1709 provides that:

"In all collateral actions or proceedings, the orders and decisions of the commission which have become final shall be conclusive."

The company's rates were revised by Resolution W-3425, dated December 9, 1988, in an advice letter general rate proceeding, pursuant to General Order 96-A and PU Code § 454. These rates were further revised by Resolution W-3447, dated May 26, 1989, to offset an increase in liability insurance expense. Resolutions W-3425 and W-3447 are now final orders of the Commission. In a collateral action or proceeding, such as a complaint case, final orders of the commission are, by virtue of § 1709, conclusive; that is, they may

not be attacked or modified. In this proceeding Williams seeks to modify or set aside the metered rates of the company, which rates were set by Resolutions W-3425 and W-3447. Since those resolutions are final orders of the commission, they are conclusive. As far as this individual complainant is concerned, the company's rates, rate levels, rate designs, and rate structures are, by operation of law, not subject to attack or modification.

Consistent with the above discussion, we conclude that the complaint should be dismissed.

ORDER

IT IS ORDERED that:

1. The complaint is dismissed.
2. Complainant's deposit of \$676.00, and any other deposits made by complainant in connection with this complaint, shall be disbursed to Tahoe Park Water Company on the effective date of this order.

This order becomes effective 30 days from today.

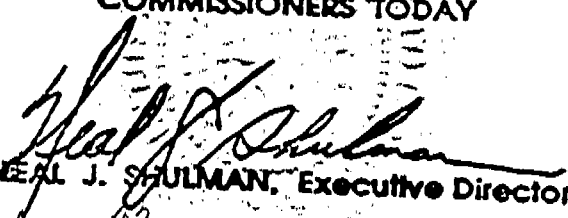
Dated September 6, 1991, at San Francisco, California.

PATRICIA M. ECKERT  
President  
JOHN B. OHANIAN  
DANIEL Wm. FESSLER  
NORMAN D. SHUMWAY  
Commissioners

I abstain.

/s/ G. MITCHELL WILK  
Commissioner

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

  
NEAL J. SHULMAN, Executive Director