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Decision 92-02-048 February 20, 1992

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Earl R. Malone,

Complainant,

vs.

Robert S. Fortino, Del Oro  
Water Company,

Defendants.

**ORIGINAL**

(ECP)

Case 91-10-019  
(Filed October 1, 1991)

Earl R. Malone, for himself, complainant.  
Robert S. Fortino, for himself, and for  
Del Oro Water Company, defendants.

O P I N I O N

With the approval of the Commission, Del Oro Water Company, Inc. (Del Oro) adopted tariffs in 1991 that imposed mandatory rationing on customers in Del Oro's Paradise Pines District. One of those customers is Earl R. Malone, who has a house in Magalia that he purchased in January 1990. Malone makes his home in Cottonwood. The home in Magalia was occupied by his son's family of three from July 1990 until the fall of 1991.

In April 1991, a leak developed in an underground pipe at the house in Magalia, on Malone's side of the meter. Malone theorizes that a pipe froze during the winter and began a progressively rapid leak in the spring. There was no surface evidence of the leak, and Malone's son did not become aware of it until he received a water bill on June 7, 1991, for water use between April 5 and May 5, 1991. The bill showed excess water use over rationing allotment for the property and included a rationing penalty of \$85 for that period.

Malone's son called his father on June 8, 1991. Malone drove to Magalia on June 9, called Del Oro on that day, and had the water turned off at the meter. He began repair work on June 10. Water service to the home was restored on June 13.

On June 11, 1991, Malone delivered a letter to the Del Oro office asking (a) that current and future penalties and water charges attributable to the leak be withdrawn, and (b) that the water rationing allotment for the Magalia home be adjusted to permit additional water use. On June 18, 1991, Del Oro adjusted the rationing allotment for the property from the minimum of 600 cubic feet per month to 1,300 cubic feet per month, a 25% reduction from average use in 1990.<sup>1</sup> Del Oro stated, however, that the leak was the owner's responsibility, and that it would not make an adjustment to the April penalty.

The leak obviously was at its worst for the period May 5 through June 5, 1991. The Del Oro bill for that month showed water consumption of 7,781 cubic feet (compared to 1,641 cubic feet for the month before), and a rationing penalty of \$685 for that period. Water charges were \$56.34. After adjustments, Malone now owed \$810.19.

On July 2, 1991, Malone deposited that amount with the Consumer Affairs Branch of the Commission and filed an informal complaint seeking removal of all penalties. He claimed that the leak was an accident for which he should not be penalized. On July 22, 1991, Del Oro agreed on a one-time basis to reduce the rationing penalty for the May 5-June 5 period from \$685 to \$50, but the utility stated that it would continue to hold Malone responsible for all other penalties and charges resulting from a

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<sup>1</sup> Del Oro's rationing plan required a 25% reduction from the customer's 1990 use during the comparable billing period. Since the Magalia house was unoccupied in June 1990, water allotment for June 1991 had been set at the minimum 600 cubic feet.

leak on the owner's side of the meter.<sup>2</sup> There followed a period of billing adjustments between Malone, Del Oro, and the Consumer Affairs Branch.

On October 1, 1991, Malone filed this complaint seeking a refund of \$135.47 from Del Oro representing rationing penalties that he believes have been imposed for the period April-June 1991. Del Oro filed an answer, amended at hearing, stating that, in fact, it has reduced the penalties to a total of \$90, and that further reduction is not warranted since the water leak was the responsibility of the owner and not the utility.

#### Discussion

Malone argues that no penalties should be assessed because there was no wilful or careless waste of water on his part. As soon as he knew that a leak existed, he acted promptly to shut off the water and repair the broken pipe.

At hearing, however, Malone acknowledged that he was unaware that Del Oro had imposed mandatory rationing and, as a result, had done nothing to assure that water was being conserved at the Magalia residence. He had not made arrangements to receive water company notices, but instead permitted them to be sent only to his son. The utility's notices included instructions on how to read one's water meter to be sure that water use was not exceeding a homeowner's allotment.

Malone states that, even had he received the notices, he, like most homeowners, would not have bothered to read his meter. While that may or may not be so, the point is that the utility had fulfilled its responsibility in alerting Malone to the rationing

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<sup>2</sup> Del Oro cites no authority for its reduction in tariffed penalties. We assume, however, that the reduction was made in recognition of the nonbeneficial use of excess water caused by an undetected leak. (See, e.g., Scalf v. Southern California Water Co., Decision (D.) 88-01-019.)

tariffs and the penalties that would be imposed for excess use. It provided meter-reading instructions that, had they been followed, could have permitted early detection of the leak. At that point, the responsibility for monitoring water use rested upon the homeowner.

Section 16(A)(5)(a) of Del Oro's tariffs provides:

"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." (Emphasis added.)

Under this rule, and under general principles of public utilities law, the water corporation owns and is responsible for installing, maintaining and repairing the 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. The owner is responsible for their installation, maintenance, operation, and repair. As we stated recently in Williams v. Tahoe Park Water Company, D.91-09-017:

"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." (D.91-09-017, at p. 6.)

While the Williams case involved excess water charges, and while Malone's complaint relates to rationing penalties, the principles are the same. The excess water use penalty is as much a

part of Del Oro's tariffs as is the rate schedule. Both are approved by the Commission. Both have been the subject of notice to ratepayers and opportunity to be heard. Questions of the fairness of these tariff provisions may legitimately be raised at the time they are considered. After they have gone into effect, however, such rate provisions are not justiciable in complaint cases. Public Utilities 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 or 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. Malone 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 with respect to the utility's application of its rationing tariffs.

With that said, however, Malone does state a justiciable issue in alleging that Del Oro has charged him \$50 more on his July billing--after the company's adjustments for payments and reduction of penalties--than is supported by the utility's records. Malone's June bill showed a prior balance of \$810.19 and additional June charges of \$26.89. (Exhibit 2.) The utility subsequently applied part of Malone's payment to the Commission to satisfy the \$810.19 balance and, following its reduction in penalties and other adjustments, showed a credit of \$559.32, which it refunded to Malone. The July bill, however, showed a prior balance of \$76.89 instead of \$26.89.

Del Oro elected not to bring its accountant to hearing, and its witness was unable to explain the \$50 discrepancy. The utility was permitted to file a late exhibit explaining the entry,

and Malone was permitted to file a late rebuttal to that explanation. (Exhibits 6 and 7.) Del Oro's late submission is not persuasive.

We acknowledge that Malone's account is a confusing one. The water bill was two months delinquent in April 1991 (the delinquency was paid by Malone in May). Release of funds by the Commission's Consumer Affairs Branch initially was inaccurate. Del Oro reduced the penalty total on at least two occasions. (At hearing, Del Oro corrected its pleadings to show total penalties of \$90 rather than the \$135 alleged in the complaint.) Despite the understandable confusion in accurately tracking Malone's account through a maze of adjustments, credits, and payments, Del Oro still has the burden of justifying the \$50 discrepancy once the ratepayer has presented it as a colorable claim. Del Oro failed to meet this burden at hearing or in its late-filed exhibit.

Consistent with this discussion, the relief sought by complainant with respect to a \$50 discrepancy in his billing should be granted. In all other respects, the complaint should be dismissed.

ORDER

IT IS ORDERED that:

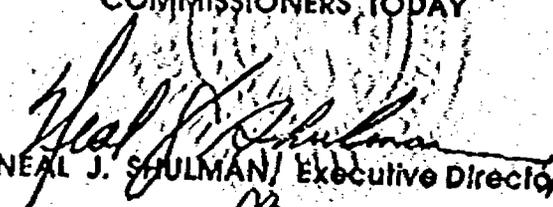
1. Complainant's claim for a \$50.00 adjustment to correct a billing discrepancy is granted.
2. Del Oro Water Company, Inc. is directed to credit the account of Earl R. Malone in the amount of \$50.00:

3. In all other respects, the complaint is dismissed.  
This order becomes effective 30 days from today,  
Dated February 20, 1992, at San Francisco, California.

DANIEL Wm. FESSLER  
President  
JOHN B. O'HANIAN  
NORMAN D. SHUMWAY  
Commissioners

Commissioner Patricia M. Eckert,  
being necessarily absent, did  
not participate.

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

  
NEAL J. SHULMAN, Executive Director  
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