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ORIGINAL

Decision 92-04-012 April 8, 1992

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Arthur J. Jaffee,

Complainant,

vs.

Southern California Water
Company (U 133 W),

Defendant.

(ECP)
Case 91-12-027
(Filed December 5, 1991)

Arthur J. Jaffee, for himself, complainant.
Kenneth Vader, for Southern California
Water Company, respondent.

O P I N I O N

This expedited complaint proceeding against Southern California Water Company (SoCal Water) was heard before the assigned Administrative Law Judge on March 6, 1992, in Claremont, California, and was submitted at the close of hearing.

The water meter serving complainant's home in Claremont was replaced in July 1988. The following two water bills received in July 1988 and September 1988 (the utility bills on a two-month basis) were within what complainant regards as a normal range of between about \$160 to \$260. However, the water bill on November 30, 1988 (covering a period of 63 days) was \$638.70, which complainant believes is at least triple what it should have been.

Complainant sent the utility \$100 and protested the remainder of the bill.¹

At complainant's request, SoCal Water on January 11, 1989, removed the new meter and sent it for testing in nearby Santa Fe Springs.² The testing was conducted by the manufacturer of the meter. On February 8, 1989, the utility notified complainant that the meter showed an overall accuracy within the range required by Commission-approved tariffs. The utility demanded payment of the balance of the November 1988 water bill.

After unsuccessfully pursuing an informal complaint with the Commission's Consumer Affairs Branch, complainant filed this formal complaint, with a request for expedited treatment. Essentially, he argues as follows:

- o He and his family have lived in the Claremont home since 1968. With their children grown, complainant and his wife have shut off several rooms and closed one bathroom. Their water bills in recent years have consistently averaged about \$100 or \$130 per month. (The residence has six bedrooms, five bathrooms and a pool, and the grounds are equipped with an irrigation system.)
- o During the 63-day period in question, the house was closed for two weeks while complainant and his wife vacationed, then closed for another two weeks while he was hospitalized for surgery. If anything, complainant believes, water use during this period should have been lower than normal.

1 Complainant at the time believed, and his complaint alleges, that the billing represented only one month's water use. Complainant at hearing amended his complaint to acknowledge that the billing was for a 63-day period.

2 A second replacement meter was installed, and complainant states that he has had no difficulty with his water bills since that time.

- o In the absence of evidence of a serious water leak or other heavy water use during the 63-day period, complainant believes that the only explanation for a \$638 water bill is a defect in the newly installed meter. He urges the Commission to disregard the results of the meter test because it was done by the meter manufacturer, and, in his words, "in a consumer complaint, that is like setting the fox to guard the henhouse."

Kenneth Vader, SoCal Water district superintendent for Claremont, testified for the utility, introducing exhibits attesting to the utility's dealings with complainant. Exhibit 2(D) shows water usage and charges for complainant's residence as follows:

<u>Billing Date</u>	<u>Consumption (Ccf)</u>	<u>Amount</u>
07/27/87	204	\$215.71
09/25/87	223	234.13
11/25/87	171	183.73
01/29/88	184	199.24
03/30/88	14	32.55
05/27/88	420	434.73
07/08/88		Meter Changed
07/27/88	252	268.72
09/27/88	175	157.31
11/30/88	626	638.79
01/11/89		Meter Changed
01/31/89	54	71.89
03/30/89	89	106.42

Vader explained that the utility had under-read the meter for March 1988, resulting in a May 1988 bill that essentially covered four months of service. At complainant's request at that time, however, SoCal Water in July 1988 conducted a high bill investigation at the home. The investigation disclosed that three toilets were leaking and a water softener unit was operating in what the utility suggested was an improper manner. The investigation also disclosed a leak at the meter, at a location

that was the utility's responsibility. The meter was replaced, and the utility agreed to a \$34.73 reduction in complainant's May bill.

The replacement meter installed on July 8, 1988, was a new one. Complainant believes that its readings were accurate for July 1988 and September 1988 billings, but that the meter malfunctioned prior to the November 1988 billing. Vader testified that the meter was tested at four flow rates, as required by the utility's tariff Rule 18, and showed overall average accuracy of 99.33%. (Under the tariff, a customer is entitled to a refund if the meter registers more than 2% fast, and a utility is entitled to assess an additional charge if the meter registers more than 25% slow.)

Vader testified that the utility contracts with and sends all of its meters for testing to the Neptune Meter Company in Santa Fe Springs, and that Neptune tests all brands of meters, including its own. Neptune has been testing meters for SoCal Water for years, he said, and in his experience it has reported slow readings, fast readings and other malfunctions without regard to the make or model of the meter, including meters that it has manufactured.

Vader also testified, and complainant acknowledges, that complainant was invited to observe or send a representative to the meter testing, which was conducted some 30 miles from Claremont, but that complainant was not interested in doing so. (Complainant, however, was not advised that testing would be done by the meter manufacturer.) Vader summed up the utility's position as follows:

"While I don't dispute that the volume of water that passed through the meter [during the period billed in November 1988] was unusual and extremely high, I don't believe that we, as a utility, have the ability or responsibility to be there 24 hours a day and monitor where the water went. We did have a meter that did test to be an accurate meter....We did act prudently and made an effort to verify that things were done in an accurate fashion."

Vader testified that while the utility has no responsibility to determine the cause of a consumer's high use of water, it often counsels customers and is able to help them remember some unusual water use that took place during a billing period. It has not been successful in that effort with complainant. Vader added that, in his experience, the large water use in question could have been caused by any number of factors, including a stuck toilet, particularly if the house was not occupied for a lengthy period of time.

Complainant testified that his plumber had repaired all toilet leaks prior to the November 1988 billing, and that neither his plumber nor the utility in its inspections could find any serious leak that would account for the highwater use. He testified that, during the periods of his vacation and hospitalization when the house was unoccupied, one or more of his children "may have stayed there briefly," and that he recalls that someone came in to collect the mail and water plants. He presented no evidence, and apparently had made no inquiry, as to whether unusual water use had occurred during the times that these visitors were in his home.

Discussion

Complainant has not sustained the burden of proof necessary to demonstrate that he could not have used the quantity of water for which he was billed. We require complainants to show that they could not have used the amount of water in dispute, or that other error occurred. (Scalf v Southern California Water Co. (1988) Decision 88-01-019.) If a meter is tested and shown to be accurate within acceptable limits, a presumption exists that the customer, in one way or another, used the water shown on the meter.

Complainant asks that we draw an inference that excessive water could not have been used because the home was unoccupied for two-week periods during the disputed billing period. On the record before us, however, a contrary inference can as easily be drawn

that one of the visitors to the home during those periods inadvertently caused excess water to flow during a time when the owners were not there to monitor water use.

By the same token, we have not found nor have we been directed to any authority that suggests that a utility may not have a meter tested by the company that manufactured it. While that may not be a desirable practice from a customer's point of view, the suggestion that a meter manufacturer would risk its reputation with a utility by falsifying test data in order to avoid liability in a consumer complaint case is supported by nothing more than complainant's speculation. The utility's evidence that it has used this test facility for years, and that it has received reports of meter error for meters manufactured by the tester and by others, rebuts the inference that complainant would have us drawn. Complainant was given the opportunity to have the meter testing monitored. He declined to do so.

For these reasons, we find that complainant has not met the burden of proof necessary to show that he was improperly billed for water service registered in the period between September 27, 1988, and November 30, 1988. Since this is an expedited complaint proceeding, no separate findings of fact or conclusions of law will be made. The complaint should be denied.

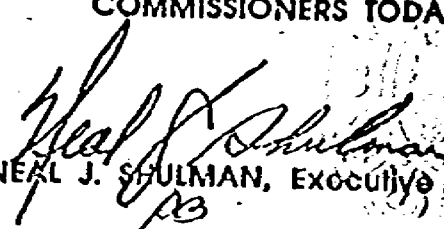
ORDER

IT IS ORDERED that the complaint in Case 91-12-027 is denied.

This order becomes effective 30 days from today.
Dated April 8, 1992, at San Francisco, California.

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

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


NEAL J. SHULMAN, Executive Director