

L/jmc

Decision 92-04-078 April 22, 1992

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Donna Matthews,

Complainant,

vs.

Lakeside Water Company,  
Meadows Management Company,

Defendants.

Case 90-12-035  
(Filed December 14, 1990)

**ORDER DENYING REHEARING  
AND MODIFYING DECISION 91-10-035**

**INTRODUCTION:**

Decision 91-10-035 (the Decision), issued October 23, 1991, denied the complaint of Donna Matthews, Chairman, Tenants Rights Committee (Matthews or Complainant) which was filed on December 14, 1990 (Complaint). The Complaint alleged that Meadows Management Company (Meadows) was operating Lakeside Water Company (Lakeside) as a public utility, and that it should therefore be subject to the jurisdiction of the Commission and required to perform accordingly. An application for rehearing (the Application) was filed by Matthews on November 25, 1991.

An Administrative Law Judge (ALJ) Ruling was filed on December 15, 1991 granting the late filing of the Application. The ALJ Ruling stated that the Commission has authority to consider a late-filed application for rehearing, but Public Utilities Code section 1731<sup>1</sup> would preclude review in the California Supreme

1. All Section references are to the Public Utilities Code.

Court. An Objection and Protest (Protest) to the ALJ's Ruling was filed January 6, 1992 by Matthews, alleging that she had relied on representations from Commission staff regarding the time for filing and that she had complied with that advice. Matthews maintained that she should be granted rehearing.

A response was served by Meadows on January 14, 1992 entitled Opposition to Application for Rehearing (Opposition) along with a Motion to File Late Opposition (Motion) alleging that the Application had not been served upon the defendants and they were not aware of it until they received the ALJ ruling. They maintain that once they became aware they made diligent efforts to respond and therefore their Opposition should be considered.

The Application of Matthews requested rehearing of the Decision based on allegations of errors of fact. (Application for Rehearing, pp. 1-4.) Matthews seeks reversal of the Decision. The Decision found that because the water system was not dedicated to public use, it is not a public utility and therefore the Complaint should be denied. (Decision, p. 9 and Conclusions of Law 2-3, p. 12.)

Section 2705.6 (Added by Stats.1991, c.349, (A.B.290), sec.1, effec. Jan. 1, 1992) expanded the jurisdiction of the Commission to include tenant complaints regarding rates and service of mobilehome park water systems, not otherwise dedicated to public use. It further required, in subsection (d), that Commission staff assist the complainant.

#### DISCUSSION:

##### 1. The ALJ Ruling

Matthews originally submitted her objections to the Decision in a registered letter received on November 7, 1991. This letter was received well within the time for filing an application for rehearing, i.e., thirty days after the Decision was issued. The Public Advisor's Office informed her that she

should resubmit her letter as an application for rehearing to the Docket Office.

According to the ALJ Ruling, Commission staff incorrectly informed her that the application would be accepted if it was postmarked on or before 30 days after the issuance of the Decision. The ALJ Ruling concludes, in light of previous Commission decisions, that the Commission could and should allow the Application to be filed (D.92018, p. 3.), that failure to file within thirty days would preclude judicial review in the California Supreme Court (Section 1731; D.83-04-058, p. 2.), and that the Commission does not have the discretion to waive the statutory deadline. (D.84-09-087, p. 2; D.83-11-021, p. 3.) We concur.

## 2. The Protest

The Protest was filed on January 6, 1992. In it, Matthews asserts that she relied on representations by staff in submitting her Application.

Matthews also objects to the computation of time. Matthews asserts that it was postmarked on November 22 and therefore it should "be accepted as legal." She maintains that when the last day of a filing period falls on a weekend, which she claims in this case is a Saturday, November 23, that Rule 44.2 permits filing on the next business day thereafter. The thirtieth day after October 23, 1991 falls on Friday, November 22, 1991, according to the Commission's Rule 44.2 regarding the calculation of time.

Neither reliance on the mistaken representations of staff nor the argument in the Protest saves Matthews' right to petition the Supreme Court. We deny the Protest in that respect. However, the main purpose of the Protest is to secure a rehearing. The arguments in it have been considered in that context.

### 3. The Motion

Meadows' Motion states that Meadows was not served with the Application, did not learn of its existence until receiving the ALJ's Ruling, did not obtain a copy of the Application until January 4, 1992, nor a copy of the transcript until January 10, 1992. Meadows served its Motion and Opposition on January 14, 1992.

Rule 86.2 permits the filing of a response to an application for rehearing no later than fifteen days after the filing of the application. Since the filing of Matthews' Application was permitted by express ruling of the ALJ, it would be unfair not to permit filing of the Opposition. Meadows acted diligently once it received the Application on January 4 and served its Motion and Opposition ten days later. We grant the Motion and permit filing of the Opposition as if it were timely filed.

### 4. The Application

Matthews alleges first in her Application that the Commission erred in basing its Decision on a finding that "[L]akeside had provided water exclusively to residents of the Park." (Application for Rehearing, p. 1.) Matthews argues that this is factually erroneous insofar as Lakeside was providing water to two businesses, Sav-On Mobilehome Sales and Claraben Mobilehome Sales. (Application, p. 2.) Her November 2 letter to the Commission also refers to water provided to Golden Homes. It is not clear whether this is another sales company.

This new evidence might affect the outcome of the case. The Decision was based on Fowler v. Ceres West, (26 CPUC2d 49; D.87-11-020 as modified by 27 CPUC2d 591; D.88-03-082.) Ceres West found that where a mobilehome park owner supplies water to its tenants, and the service is incidental to the primary business of the park, there is no dedication of the water system

to public use without persuasive evidence to the contrary. (Decision p. 4, Finding of Fact 15, p. 11, Conclusion of Law 2, p. 12.) This conclusion might have been different if providing water to these other business entities satisfied the test of dedication to public use, i.e., engaging in the business of supplying water to the public as a class. (S. Edwards Assoc. v. Railroad Comm., 196 C. 62, 70 (1925); Yucaipa Water Co. No. 1 v. Publ. Util. Comm., 54 C.2d 823, 827 (1960).)

However, none of these allegations is supported by the record. They are contradicted by Matthews' own testimony (R.T. p. 10, 1. 22) and testimony on behalf of Meadows. (R.T. p. 32, 1. 23.)

Matthews challenges Finding of Fact 5 that Meadows continued Lakeside's practice of charging a flat rate of \$15 per month following its purchase of the property. Matthews offers statements which do not directly contradict this finding. Matthews maintains that the billing was done by and the payments were made to Lakeside. Even if true, since Meadows owned Lakeside, this would not alter this finding.

Matthews also challenges Finding of Fact 8 that the Beaumont/Cherry Valley Water District raised its rates to a \$15 per month fixed charge. She points out that the fixed charge was for a two month period and did not represent an increase.

Matthews raises several other questions of fact and issues of law in her Application. They do not address the central issue which is the basis of the Decision. In and of themselves, they do not amount to error on the part of the Commission.

##### 5. The Opposition

Meadows argues in its Opposition that nothing in the Application justifies rehearing. It points out that Finding of Fact 5 is supported by testimony. (R.T. p. 12, 11. 16-19; p. 32, 1. 26- p. 33, 1. 4.)

Meadows concedes that Finding of Fact 8 is incorrect. Meadows argues that even as corrected, the fixed charges at Beaumont/Cherry Valley and those charged by Meadows are the same, \$7.50 per month. As a result, the import of this finding would not change.

Meadows also admits that Sav-On and Claraben have been selling mobilehomes in the park and may have used and paid for water. They argue that no water was sold to them for use off the property or outside the park.

6. Public Utilities Code section 2705.6

Effective January 1, 1992 the Legislature has altered our jurisdiction. We have been assigned by Section 2705.6 with the responsibility of hearing complaints regarding water rates and service to tenants in mobilehome parks, where the park provides service from water supplies and facilities it owns, not otherwise dedicated to public service, even though the park is not a water corporation. Subsection (d) requires us to provide staff assistance to the complainant.

The Complaint brought by Matthews and dismissed for lack of jurisdiction could now be heard if she filed a new complaint. The Legislature has not altered the Ceres West decision, but it has given us clear direction that our powers should be used to afford rate relief or service improvements on terms that the Commission "finds just and reasonable..." (Section 2705.6(c))

The Decision focuses on the issue of jurisdiction and concludes that Meadows is not operating a public utility. Matthews' attack on this conclusion is based on allegations which are not supported in the record. None of the other issues raised by Matthews alters facts which are material to this conclusion, nor raises a legal error which warrants reversal.

Matthews' allegations that the Commission erroneously relied on mistakes of fact do not stand up to scrutiny, with one minor exception. Meadows admits that Finding of Fact 8 should be

corrected. The Decision should be modified so that the last sentence in Finding of Fact 8 is corrected to read "In or about February, 1991, Beaumont/Cherry Valley increased its rates to 60 cents per Ccf of water."

Matthews clearly does not understand the difference between off-the record statements and proving a fact on the record. The issue of water provided to other business entities does not require reversal, since it was raised after the submission of the case. If Matthews files a new complaint, these allegations may be more fully explored and their significance elaborated.

The Legislature has just extended our jurisdiction in Section 2705.6. This case presents a good opportunity to implement the new statute. It also affords the opportunity to examine the boundary between Section 2705.6 cases and water company cases and a chance for staff to obtain experience in dealing with this new type of case.

We deny rehearing and suggest that the Complainant file a new case under Section 2705.6. We are mindful that the Legislature intends for us to do more than hear these cases. Subsection (d) mandates that we provide assistance to the complainant and we will direct staff to do so if a new complaint is filed.

Section 2705.6 is not retroactive prior to January 1, 1992. Matthews will have to file a new complaint, reintroduce her case and present new evidence. The Public Advisor and staff of the Water Branch will be directed to assist her in accordance with Section 2705.6(d). She may elect to incorporate the record in this case in her new complaint.

**CONCLUSION:**

The Application of Matthews has failed to allege any facts or raise any legal issues which require rehearing. Matthews' application for rehearing consists in part of reargument of the position that she placed before us in her

original complaint and in part offers new evidence. Having reviewed the arguments presented in the Application and the Opposition, and considering the clear direction of the Legislature in Section 2705.6, there is nothing that requires reversal of the previous Decision. Therefore,

IT IS ORDERED that:

1. The Protest by Applicant is denied.
2. The Motion of Defendant is granted and the Opposition is deemed to have been filed as of its date of receipt.
3. The Application for Rehearing of D.91-10-035 is denied.
4. The Decision is modified so that the last sentence of Finding of Fact 8 in D.91-10-035 is corrected to read:

"In or about February, 1991, Beaumont/Cherry Valley increased its rates to 60 cents per Ccf of water."

5. Staff of the Public Advisor and Water Branch are directed to assist Complainant in the presentation of a new case, if she elects to file one.

This order is effective today.

Dated April 22, 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  
PB