

ALJ/JBW/f.s

Mailed

Decision 92-07-013 July 1, 1992

(JUL) 11, 1992

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Dan Mulholland,)
)
 Complainant,)
)
 vs.)
)
 California Water Services,)
)
 Defendant.)

Case 91-09-004
(Filed September 4, 1991)

Dan Mulholland, for himself, complainant.
Rudy C. Calica, for California Water Service
 Company, defendant.

O P I N I O N

Statement of Facts

California Water Service Company (Cal Water), a California corporation with its principal offices and place of business in San Jose, provides public utility water service through a number of local districts in California, including, as relevant here, its Stockton District.

In December of 1990, Dan Mulholland who currently resides in Fremont, acquired for investment and rehabilitation purposes, a 112 year old, 4,500 sq. ft., six-unit apartment building located at 145 West Flora in Stockton. Originally constructed in 1879 as a single-family residence and converted in 1900 to apartments, the structure ranks high in the records of the Historical Society. There are three studio apartments on the top floor and one two-bedroom and two one-bedroom apartments on the lower level. In great disrepair and rented to transients, in January, February, and March of 1991, four or five units were rented. In May of 1991, only three units were rented. Water service is delivered through a

single meter. There is considerable outside landscaping tended by a professional gardner under orders to adhere to water rationing standards.

In 1991, Cal Water records show that water was delivered during the first five months through the company's meter to the apartment property as follows:

January 1991	Consumption of 126 Ccf
February 1991	Consumption of 118 Ccf
March 1991	Consumption of 123 Ccf
April 1991	Consumption of 136 Ccf
May 1991	Consumption of 221 Ccf

When Mulholland received his May bill which indicated a 85 Ccf jump from 136 Ccf for April to 221 Ccf for May, he telephoned on May 13, 1991 to Cal Water to question the billing. The next day, May 14, 1991, Cal Water responded by sending a service representative to check the meter. The representative filed an Investigation and Work Order report form which reported that at 2:00 p.m., the meter was checked and found to be operating properly. The report indicates a meter reading that day of 3817. On May 6, 1991, the date of the meter reading upon which the May billing was based, the reading had been 3787. This indicated an increase of 30 Ccf over an eight-day period. The filed report further states that the representative talked to tenants, and had been told that while some leaks had been repaired, the tenants were aware that at least two toilets in apartment units A and B were still leaking. The report also states that the representative had been unable to gain access to other units to check for other leaks.

Shortly thereafter, on May 24, 1992, Mulholland called Cal Water and insisted that the meter be replaced. The company complied. The Investigation and Work Order report for the replacement indicated a final meter reading of 3867 on June 11, 1992. When shop tested, the meter tested at 102.3%, or 3/10 of 1% faster than the maximum deviation permitted under General Order

(GO) 103 standards.¹ The June 1991 billing, under the old meter, was 71 Ccf. The old meter was replaced by a one-inch meter, Number 22497848 set at "0."

Thereafter, the new meter recorded deliveries as follows:

July 1991	Consumption of 46 Ccf
August 1991	Consumption of 152 Ccf
September 1991	Consumption of 188 Ccf
October 1991	Consumption of 102 Ccf
November 1991	Consumption of 38 Ccf
December 1991	Consumption of 33 Ccf
January 1992	Consumption of 28 Ccf
February 1992	Consumption of 30 Ccf
March 1992	Consumption of 35 Ccf

On September 10, 1991, Mulholland was charged \$282 for prior usage in excess of his water rationing allowance under the drought water limitation plan in effect. But then on September 18, 1991, the rationing allocations were modified, and Mulholland's account was credited with \$282 reflecting the allocation modifications and cancelling out the earlier excess usage charge. And, on October 9, 1991, because of a company computer error associated with the replacement meter, Mulholland was additionally, but erroneously, credited with a \$152 credit. The utility does not seek to have this nullified.

1 In June of 1991, an adjustment in the form of a \$9.63 credit based on 18 Ccf of meter overage reading was given to Mulholland to apply retroactively for six months' usage. This adjustment was made to conform to Paragraph VII, Section 3a (Adjustment of Bills for Meter Error - Fast Meters) of General Order 103, which reads:

"When, upon test, a meter is found to be registering more than 2% fast, the utility shall refund to the customer the amount of the overcharge based on corrected meter readings for the period the meter was in use but not to exceed a period of six months."

By the present complaint, Mulholland contests the usage ascribed to his apartment facility in Stockton based on the old meter that was replaced in June 1991, with emphasis on the increase between April and May 1991 billings. A duly noticed evidentiary hearing was held in Los Gatos on March 16, 1991 before Administrative Law Judge (ALJ) John B. Weiss. At that hearing, Mulholland testified regarding the occupancy through May of 1991, stating further that after May an average of four units were occupied. He further testified that in February of 1991, he had placed bricks in all the toilets and had checked for leaks. He stated that he has no automatic sprinkler systems for the landscaping, had removed all the handles on the outside faucets, and relied upon a professional gardener who was well aware of watering limitations under rationing. He disputed the report of Cal Water's representative, stating that he was present when the representative responded to the complaint and that the latter had found only one leaking toilet which Mulholland had repaired immediately.

A rate and valuation assistant appeared for Cal Water, providing historical use comparisons for the apartment. These showed a high pattern of use for the January-May 1991 period, compared to previous years (except for 1986 where comparable period use was exceptionally high), with a radical break in June and July of 1991 to levels below historical usage. In previous years under different ownership, usage reflected increased consumption during summer months. The Cal Water witness pointed out that this radical break in June and July would be consistent with a vigorous effort by Mulholland to repair leaks and to bring usage down. He stated that in the main, large changes in use are discretionary.

Upon completion of the hearing, the matter was submitted for decision.

Discussion

The initial question that must be answered is whether or not the amount of water for which the customer was billed in May was in fact delivered to the customer's apartment house. In other words, was the meter working correctly? The meter in place in April-May 1991, Meter No. 03241088, a one-inch meter, was removed at the customer's insistence and thoroughly checked. While it was found to be in good working order, with no broken teeth on the pinion wheels or on the change gears register, it tested approximately 3/10 of 1% faster than the limits prescribed as acceptable by the Commission's GO 103. After adjustment for 18 Ccf over a six-month previous period for this fast reading, it is clear that the amount of water for which the customer was billed was essentially the amount which passed through the meter into the customer's apartment house distribution pipes and facilities. An error of 18 Ccf over a six-month period does not materially change the situation.

An increase of 85 Ccf between the April and May 1991 readings represents slightly less than 1-1/2 times the amount of water that would be lost in a month from a leaking toilet (one gallon per minute for a month would result in an approximate 59 Ccf loss). And one leaking toilet was admittedly found by the utility's service representative who responded on May 14, 1991 to the customer's complaint. This would leave approximately 26 Ccf unaccounted for. This relatively small loss could have been lost in any number or combination of ways earlier. A leaking faucet could have been repaired by a tenant before the landlord's visit; the gardner may have used more water; anyone with a hand wrench could have turned on an outside faucet to wash a car. There may have been increased consumption by any of the transient tenants who may well have lacked interest or concern to participate in conservation. Certainly, the history before and after shows an

extremely erratic consumption pattern.² When commenting at the hearing in this regard about a later drastic drop in consumption over the three-month September to November 1991, Mulholland stated "or that the tenants are finally conserving water." He stated that he had sent letters to all of the tenants to conserve water and that possibly "this finally got through to them. I don't know."

As we have initially determined, there is no issue that the water was to any significant degree not correctly and accurately metered. It is the general rule that a customer must be financially responsible for a commodity delivered to him by a public utility (California Water & Tel. Co. (1950) 49 CPUC 331, 334). Mulholland has not shown that the water was not received; he has only shown that he does not know what happened to it after it was delivered. As complainant has the burden of showing that the bills are incorrect, and as there is not evidence in the record to find that he carried the burden, we must find for the defendant.

Findings of Fact

1. Cal Water is a public utility providing water service in many local districts in California, including the Stockton local district.
2. In December of 1990, Mulholland purchased an 112 year old six-unit apartment building in Stockton principally tenanted by transient tenants, leading to frequent turnover.
3. This apartment building receives its water supply through a one-inch Cal Water meter.

² In August and September of 1991, the new meter registered a sharp increase in water delivery before a decline into the winter months of November, December, January, February, and March to an average of approximately 39 Ccf per month. But an erratic consumption has characterized this service over the past five years as shown by the consumption history, Exhibit 3 in the proceeding.

4. Between the April and May 1991 utility meter readings, water delivery through the Cal Water meter increased 85 Ccf, an 62.5% increase, leading Mulholland to question the meter's accuracy.

5. At Mulholland's request, the meter was replaced by Cal Water.

6. The removed meter, subsequently shop tested, tested 102.3% fast; 3/10 of 1% beyond the range of tolerance specified as acceptable by GO 103.

7. As required by the GO, Mulholland was refunded retroactive six months in the amount of \$9.63 for the fast meter readings.

8. When Cal Water's representative made his service call, he was informed by tenants that while some leaks had been repaired, there were still two toilets leaking water.

9. Mulholland concedes that one toilet was leaking at the time of the utility representative's visit, but insists other leaks had been repaired.

10. The quantities of water billed essentially were the quantities delivered through the apartment house meter.

11. Mulholland does not know what happened to the water after it was delivered through the meter to his apartment house.

12. Mulholland has not shown that the bills submitted, after the fast meter adjustment, were excessive or materially incorrect.

13. A customer must be financially responsible for a commodity delivered to him by a public utility (California Water & Tel. Co. (1950) 49 CPUC 331, 334).

Conclusion of Law

The complaint should be denied.

ORDER

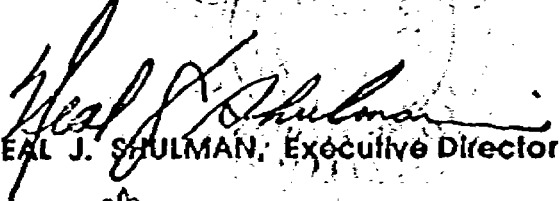
IT IS ORDERED that the complaint is denied and that this case is closed.

This order becomes effective 30 days from today.

Dated July 1, 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