

Decision S2 04 112

APR 21 1982

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

WINFIELD G. WAGENER, ET AL., )  
 )  
 Complainants, )  
 )  
 vs. )  
 )  
 CEDAR RIDGE WATER COMPANY, )  
 )  
 Defendant. )

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Case 10991  
(Filed May 29, 1981)

Winfield G. Wagener, for complainants.  
Neil Burckant, for Cedar Ridge Water Company,  
 defendant.  
Wallace F. Schmidt, for himself, intervenor.  
Eugene Lill, for the Commission staff.

O P I N I O N

This is a complaint by Winfield G. Wagener and 48 named persons (complainants) against Cedar Ridge Water Company (defendant). Complainants seek an order requiring defendant to adopt a tariff provision which would require newly connected customers to pay a surcharge to help meet the burden of payments on a Safe Drinking Water Bond Act loan.

A duly noticed public hearing was held in this proceeding before Administrative Law Judge (ALJ) Donald B. Jarvis in Sonora on October 21, 1981. The matter was submitted on that date.

Since the requested relief relates to real property not yet connected to defendant's water system, the presiding ALJ required that notice of the hearing be served on all lot owners in the area authorized to be served by defendant. Such notice was given.

Statement of Facts

The Cedar Ridge area was initially subdivided in 1946. Water was supplied solely from Kaiser Springs. This source of supply is still in use. After the initial subdivision, additional units increased the total lots to 840. Defendant secured an additional water source from the main Tuolumne County ditch of Pacific Gas and Electric Company (PG&E).

The present ownership acquired defendant in 1979. There were serious deficiencies in the water system, and it could no longer satisfy requirements for quantity or quality of the water available to its customers. An application was made to the Department of Water Resources for an improvement loan under the Safe Drinking Water Bond Act.

The Commission, in Decision (D.) 93049 entered May 19, 1981, (Application (A.) 60152), approved the loan application in the amount of \$560,200 and directed repayment over a period of 35 years through surcharges levied upon active connections only. These surcharges range upward from \$9.75 per month per 5/8 x 3/4-inch meter service or flat rate service for each single-family residential unit, plus \$5.70 per month for each additional unit per connection for flat rate service. They were based on 380 customers and designed to meet loan repayments of approximately \$40,758 per year, and reserve accumulation of approximately \$4,229 per year. The reserve is intended to provide an amount equal to two semiannual loan payments, over a 10-year period.

The improvements being made with the proceeds from the loan include treatment facilities for Kaiser Springs water and ditch water, an additional 185,000 gallons of storage, replacement of approximately 17,000 feet of rusted, undersized pipe in the system served from Kaiser Springs with a 6-inch main, new services to customers, installation of fire hydrants, and metering of flat rate services.

Defendant had 380 active service connections as of December 31, 1980, of which 140 were metered. The remaining 460 lots are undeveloped. Service pipes are in place for all lots, requiring only a service connection to the customer's piping.

Contentions of the Parties

A. Complainants' Position

Complainants contend it is grossly unfair to have 377 developed lots, which are 43% of the total lots, pay off the entire loan while owners of undeveloped lots reap benefits and pay nothing. They argue that the undeveloped lots benefit equally with the developed ones in that the value of the lots is increased, water service when connected will be improved, and better fire protection will exist.

Complainants take the position that the surcharge should be applied from time of its inception to undeveloped lots, to accumulate and be paid at the time water service is provided the lot. An adjustment for depreciation is suggested. Complainants propose a maximum surcharge of \$1,000 to avoid the accumulation of an excessive amount to an individual lot owner over a long period of time. Complainants propose that all moneys collected in this way be used to reduce the balance due, and thus reduce the monthly surcharge rate applied to customers, but that no change be made in the period of the loan.

B. Defendant's Position

Defendant generally supports the position of complainants. It questions whether the \$1,000 maximum might be too high, thus preventing development in the area.

C. Position of the Commission Staff (staff)

The staff generally supports the position of complainants. It took the position that any paperwork involved in computing depreciation with respect to a surcharge would be too costly. The

staff raised some questions about the method of applying a surcharge. It indicated that it believed a \$1,000 maximum was desirable.

D. Position of Lot Owners not Receiving Service

All lot owners within defendant's authorized service area were served with notice of the hearing. Very few lot owners who were not receiving service attended the hearing. Two testified and asked questions of other witnesses. Neither directly opposed the relief requested. The main concerns of these lot owners were that:

- (1) There be a maximum on the surcharge.
- (2) The surcharge not be payable until the time of connection.

Material Issues

The material issues presented in this proceeding are:

- (1) Is a surcharge warranted for lots not now connected for water service?
- (2) If a surcharge is appropriate, upon what terms and conditions should it be made?

Discussion

The Commission has no jurisdiction over undeveloped lots which are not receiving service from a public utility. (Cal. Const., Art. XII; Public Util. Code; TURN v PT&T (1978) 83 CPUC 318.) Our jurisdiction relates to the terms and conditions of utility service. Thus, having unconnected lots assume a share of the loan surcharge can only be done by requiring a fee at the time service is begun. While the lexicon of the parties talks about a surcharge on unconnected lots, what is meant is a fee at time of connection based upon aggregate surcharge amounts paid by current customers.

In considering the question of the appropriateness of a surcharge, we note that a surcharge can only be ordered on a prospective basis. It cannot relate back to previous payments made on the loan. (Pacific Tel. & Tel. Co. v Public Util. Com. (1965) 62 C 2d 634, 649-56.)

It is clear that the availability of water enhances the value of the lots not yet connected to the system. Furthermore, when these lots are developed they will benefit from the improvements which were made from the proceeds of the loan. The benefits include water quality which meets health standards and better fire protection.

The loan is for a fixed amount and period. An annual repayment of \$40,758 is required. This is constant, as is the amount of \$4,229 needed until the required reserve is accumulated. The average surcharge of \$9.75 is applied in the following manner: \$8.83 toward the loan payment and \$.92 for the reserve.

The effect of the proposed surcharge on undeveloped lots depends on future development. If few of the 460 remaining lots are developed, there will be little impact. If development occurs many years hence, the benefit may not inure to some of the current customers.

The staff presented calculations, based on assumptions, which attempt to forecast the impact of a surcharge applied to unconnected lots on the surcharge paid by current customers. If the staff projections are correct, the average monthly surcharge would decrease from \$9.75 to \$7.81 in five years. It is unnecessary to dwell at length on these calculations. D.93049 establishes the surcharge and a balancing account. The loan and reserve payments must be met. If the requested surcharge is authorized and there is additional development, lowering of the current surcharge can only be based on the actual status of the balancing account.

At one point, complainants suggested that the proceeds from the requested surcharge be used to reduce the balance of the loan and thereby reduce current surcharge payments. This suggestion reflects an optimistic projection of development in the area. The suggestion may be considered at the time it is necessary to adjust the balancing account. Further discussion at this time would be speculation.

In sum, the Commission is of the opinion that a surcharge applied to the undeveloped lots at time of connection of water service is warranted under the circumstances in this case. These lots will benefit from the improvements being made with the proceeds from the Safe Drinking Water Bond Act loan. The Commission also finds that a maximum surcharge of \$1,000 is reasonable. Permitting the surcharge to exceed that amount would deter development in the area and be counterproductive.

No other points require discussion.

Findings of Fact

1. The Cedar Ridge area was initially subdivided in 1946. Water was supplied solely from Kaiser Springs. The source of supply is still in use. After the initial subdivision, additional units increased the total lots to 840. Defendant secured an additional water source from the main Tuolumne County ditch of PG&E.

2. The present ownership acquired defendant in 1979. There were serious deficiencies in the water system, and it could no longer satisfy requirements for quantity or quality of the water available to its customers. An application was made to the Department of Water Resources for an improvement loan under the Safe Drinking Water Bond Act. The Commission, in D.93049 entered May 19, 1981, (A.60152), approved the loan application in the amount of \$560,200 and directed repayment over a period of 35 years through surcharges levied upon active connections only. These surcharges range upward from \$9.75 per month per 5/8 x 3/4-inch meter service or flat rate service for each single-family residential unit, plus \$5.70 per month for each additional unit per connection for flat rate service. They were based on 380 customers and designed to meet loan repayments of approximately \$4,229 per year. The reserve is intended to provide an amount equal to two semiannual loan payments, over a 10-year period.

3. The improvements being made with the proceeds from the loan include treatment facilities for Kaiser Springs water and ditch water, an additional 185,000 gallons of storage, replacement of approximately 17,000 feet of rusted, undersized pipe in the system served from Kaiser Springs with a 6-inch main, new services to customers, installation of fire hydrants, and metering of flat rate services.

4. Defendant had 380 active service connections as of December 31, 1980, of which 140 were metered. The remaining 460 lots are undeveloped. Service pipes are in place for all lots, requiring only a service connection to the customer's piping.

5. The undeveloped lots will benefit from the expenditures being made by defendant from the proceeds of the loan. The benefits include: (1) Increased value because of the availability of water furnished by a public utility which meets health standards. (2) Better fire protection for the lot when it is developed.

6. It is reasonable to establish a service fee, based upon the current surcharge, payable at the time of connection of undeveloped lots.

7. A maximum of \$1,000 for the service fee is reasonable. Any higher amount would discourage development in the area and be counterproductive.

8. It is reasonable to require that when collected, the service fee should be placed in the balancing account provided for in D.93049 and be subject to the terms and conditions of that decision.

#### Conclusions of Law

1. The Commission has no jurisdiction over undeveloped lots which are not receiving service from a public utility.

2. The Commission has jurisdiction to permit a utility to establish a service fee based on amounts required to repay a Safe Drinking Water Bond Act loan. Such fee can only be established on a prospective basis.

3. Defendant should be ordered to adopt the tariff provision set forth in Appendix A which authorizes a fee for undeveloped lots based upon prospective, aggregate current surcharge payments, with a maximum of \$1,000.

O R D E R

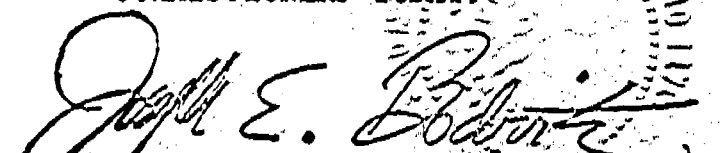
IT IS ORDERED that within 30 days after the effective date of this order, Cedar Ridge Water Company shall file the revised rate schedule attached as Appendix A.

This order becomes effective 30 days from today.

Dated April 21, 1982, at San Francisco, California.

JOHN E. BRYSON  
President  
RICHARD D. GRAVELLE  
LEONARD M. GRIMES, JR.  
VICTOR CALVO  
PRISCILLA C. GREW  
Commissioners

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

  
Joseph E. Bodovitz, Executive Director



APPENDIX A

Schedule No. 3-A

State Bond Act Loan Fee for Undeveloped Lots

Applicability

Applicable to undeveloped lots within the service area of Cedar Ridge Water Company as of the effective date of Decision 82-04-112.

Territory

Cedar Ridge and vicinity, 5½ miles Northwest of Twain Harte, Tuolumne County.

Rates

A service fee to provide for reduction of the SDWBA loan surcharges is chargeable to customers requesting service to undeveloped lots within the service area as it existed as of May 21, 1982 per Decision 82-04-112.

The service fee shall be the accumulated total of the monthly surcharge provided for in Schedules 1A and 2A, as applied to the property being furnished water service from May 21, 1982 to the date of connection. The maximum service fee shall be \$1,000. The service fee shall be due and payable upon connection of water service to the lot. The surcharges authorized by the Commission, as contained in the utility's filed tariffs, will apply thereafter.

The monthly surcharge established by the Public Utilities Commission in Decision 93049 is subject to periodic adjustment. The calculation of the accumulated surcharges shall take into account such periodic adjustments.

2. The Commission has jurisdiction to permit a utility to establish a service connection fee based on amounts required to repay a Safe Drinking Water Bond Act loan. Such fee can only be established on a prospective basis.

3. Defendant should be ordered to adopt the tariff provision set forth in Appendix A which authorizes a fee for undeveloped lots based upon prospective, aggregate current surcharge payments, with a maximum of \$1,000.

O R D E R

IT IS ORDERED that within 30 days after the effective date of this order, Cedar Ridge Water Company shall file the revised rate schedule attached as Appendix A.

This order becomes effective 30 days from today.

Dated APR 21 1982, at San Francisco, California.

JOHN E. BRYSON  
President  
RICHARD D. GRAVELLE  
LEONARD M. GRIMES, JR.  
VICTOR CALVO  
PRISCILLA C. CREW  
Commissioners

APPENDIX A

Schedule No. 3-A

State Bond Act Loan Fee for Undeveloped Lots

Applicability

Applicable to undeveloped lots within the service area of Cedar Ridge Water Company as of the effective date of Decision \_\_\_\_\_.

Territory

Cedar Ridge and vicinity, 5½ miles Northwest of Twain Harte, Tuolumne County.

Rates

A service ~~connection~~ fee to provide for reduction of the SDWBA loan surcharges is chargeable to customers requesting service to undeveloped lots within the service area as it existed as of \_\_\_\_\_ per Decision \_\_\_\_\_.

The service ~~connection~~ fee shall be the accumulated total of the monthly surcharge provided for in Schedules 1A and 2A, as applied to the property being furnished water service to the date of connection. The maximum service ~~connection fee~~ shall be \$1,000. The service ~~connection~~ fee shall be due and payable upon connection of water service to the lot. The surcharges authorized by the Commission, as contained in the utility's filed tariffs, will apply thereafter.

The monthly surcharge established by the Public Utilities Commission in Decision 93049 is subject to periodic adjustment. The calculation of the accumulated surcharges shall take into account such periodic adjustments.