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ORIGINAL

Decision No. 89003 JUN 27 1978

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

EUGENE S. WILLIAMS,

Complainant,

vs.

C. WESLEY BIRD, dba
WESMILTON WATER SYSTEM,

Defendant.

Case No. 9994
(Filed October 20, 1975)

Eugene S. Williams, for himself, complainant.
James Squeri, Attorney at Law, and
Eugene Lill, for the Commission staff.

O P I N I O N

Statement of Facts

Complainant Eugene S. Williams (Williams) in July 1973 acquired an approximate one-acre sized residential property located at 9499 South Shaft Avenue, an unincorporated area about one mile north of the city of Selma, California. Williams, his wife, and three children have resided there, with certain exceptions, since the acquisition. The Williams' property is within the dedicated service area of the Wesmilton Water System (Wesmilton), a public utility wholly owned by C. Wesley Bird (Bird) and Jennie C. Bird, who also own other public utility water systems in Fresno County.

Since acquisition of this property, Williams has had continuous difficulties with Bird over the water supply.[1/] Forced by the Superior Court to provide service in late 1973, Bird has steadfastly refused to accept payment tendered each month by Williams,[2/] contending variously that Williams may be the customer of either the Superior Court or the California Public Utilities Commission, but that he is not Wesmilton's customer. Williams alleges numerous harassments, including one occasion when Bird required him to tear down a doughboy swimming pool on the property, and stated that as a consequence of his earlier being deprived of water by Bird he has lost most of 13 fruit trees and 40 English black walnut trees planted on the property.

1/ Commission records disclose that Williams initially was refused any service at all by C. Wesley Bird after acquiring the property in 1973 despite the fact that the previous owners had been supplied water by Wesmilton. Events leading out of this initial refusal resulted in Commission Resolution No. L-145 on September 5, 1973 directing the Commission's General Counsel to institute proceedings in Fresno County Superior Court for appropriate relief. Bird was ordered by that court to provide either metered or flat rate service. (The People of the State of California v C. Wesley Bird, et al. (1973) Superior Court No. 160727.) Bird refused to obey and was found in contempt after which he complied with flat rate service.

2/ At the hearing February 5, 1976 Williams showed a number of certified mail envelopes addressed to "The Westmilton [sic] Water System, C. W. Bird, Owner, 617 Pine Ave., Fresno, Calif." marked "refused" and "return to sender". These envelopes contained Williams' checks tendering payment of the monthly water charges. Bird declines to accept these.

The Williams' property, rectangular in shape, measures approximately 132 feet across at front and rear, and 300 feet in depth. An area approximately 30 feet deep across the rear of the property is encumbered by some form of easement. The rear of the property is adjacent and parallel to the Fowler Switch Canal, a property of Consolidated Irrigation District. Williams asserts his property is within this irrigation district and that he pays district taxes. Leading from this irrigation canal onto the Williams' property easement area, and running south and parallel to the canal, is a 2-foot wide, 2-1/2-foot deep unlined irrigation ditch. This ditch is in considerable disrepair and heavily overgrown with weeds. Water access from the canal into the irrigation ditch is controlled by a now inoperable slide gate valve. According to Williams, the Fowler Switch Canal contains water only three months of the year.

There is a well on the Williams' property; however, both Williams and the Commission staff agree and testified that its water is unfit for human consumption, or for most irrigation purposes, being contaminated as a result of drainage from cesspools in the area. There is no sewage system in the area.

Prior to Williams' acquisition there were two residential structures situated on the property, sited side by side on the easterly or Shaft Avenue front of the property. Each was served by means of a 3/4-inch service out of the Wesmilton water main in Shaft Avenue. The northernmost of these structures was removed before Williams acquired the property in 1973, and its water service was disconnected, although the water pipe, running about 150 feet down the middle of the property, was not removed, and today is still there, terminating at a standpipe with a faucet. The residence now existing on the property, located in the southeastern corner, fronting on Shaft Avenue, is in its turn served by a separate 3/4-inch service entering upon the property at the southeastern corner from the Shaft Avenue main. It is this latter water service which was connected by Bird in December 1973 as a result of the Superior Court order.

The Wesmilton water utility obtains its water for this area by pumping. By use of a hydropneumatic system the water pressure formerly was maintained between 30 and 65 psi. In response to consumer complaints the Commission recently requested the utility to raise the minimum pressure to 35 psi.

Following the court ordered connection in December 1973, Williams determined that he wanted a second connection, and through counsel in September 1974 approached Bird's attorney to have the second service reconnected. After fruitless follow-ups and a statement from Bird in January 1975 that "he was not interested in having Mr. Williams as a client, that Mr. Williams should use his own well," Williams finally in September 1975 submitted a formal application, using Wesmilton's application form, for a "domestic" service. Getting no results Williams filed this complaint. Williams contends that a single 3/4-inch water service is inadequate for his slightly less than an acre property, and that he has insufficient water to maintain his existing plants and fruit trees,[3/] much less enough to provide water for the additional trees he wishes to plant. To irrigate the existing plants and fruit trees he strings together 50-foot combinations of garden hose. He argues that such hose connections reduce the water pressure. By this complaint Williams seeks an order from the Commission that Wesmilton reconnect the second water service to his property.

3/ Williams testified he now has 4 peach trees and 2 nectarine trees planted and wants to add more to replace the 53 trees which earlier died for lack of water.

On the other hand, Bird's contention - derived from his correspondence in answer to the complaint - is that the Williams' property is already adequately served, and the Williams wastes tremendous quantities of water. He asserts that Williams is now getting precisely what the Wesmilton tariff obligates the utility to furnish - one residential service. He contends that Williams abuses this service by stretching lengths of garden hose throughout his property and lets the water run day and night. Bird argues that Williams is using "residential" service to irrigate an orchard, and in reality is running a farm. He asserts that Williams should use his well and water obtainable from the irrigation district if he wants to irrigate and farm, as do other farmers in this agricultural area. He points out that it is Wesmilton practice to furnish one residential flat rate service per residence, irrespective of the size of the property.

By Commission Resolution No. W-1832, effective December 1, 1975 after Advice Letter proceedings, Wesmilton was granted an 80 percent increase - its first since 1961.[4/] This tariff change resulted in an increase to $8.10 from $4.50 for residential flat rate service.

A public hearing on the complaint was held in Fresno on February 5, 1976 before Examiner John B. Weiss, after which the case was submitted. Despite notice and strong suggestions by the Examiner and the Commission President that he attend, Bird did not do so.

4/ In addition to the flat rate increase and certain other changes, a surcharge, graduated as to each 100 square feet of premises in excess of 8,500, was erroneously included in the tariff revision. Effective March 26, 1976 this surcharge was eliminated by further advice letter proceedings (Advice Letter No. 17).

Discussion

It is axiomatic that where a public utility has voluntarily embraced a service area, has entered upon that service and has water available, it must upon demand deliver that water to any customer in the service area at its established rates (Sonoma Water & Irrigation Co. (1927) 29 CRC 815, 818, and San Gorgonio Water Co. (1913) 2 CRC 706, 711). Furthermore, a public service utility cannot choose its own customers, but must serve all who comply with its reasonable rules and regulations (Citizens Utility Co. v Superior Court (1963) 59 C 2d 805, 811). As Wesmilton is admittedly a public utility water company serving the area embracing the Williams property, Williams is a customer of Wesmilton and entitled to demand and receive all the water he reasonably needs to enjoy his property so long as he complies with the utility's reasonable rules and regulations.

Williams now enjoys one residential flat rate service.[5/] He uses water from that residential service for household and lawn purposes, and also to irrigate a half dozen young fruit trees and to water some plants in a garden. Bird contends that this latter use is not "residential" or domestic, but rather is irrigation and thus farming in nature, and that it exceeds tariff provisions. With these contentions we cannot agree.

5/ The Wesmilton monthly charge for residential flat rate service on December 1, 1975 was increased to $8.10. However, Williams has never paid for water under this service in that since the service was initially connected in 1973 Bird has refused to accept payment tendered by Williams and returns all mail unopened.

The word "residential" directs attention solely to a use or mode of occupancy to which a property may be put. It is a contradistinction to "business". Thus a "residential" property is one in which people dwell or reside, or in which they make their homes, as distinguished from one which is used for commercial or business purposes; and a water utility "residential" flat rate service is one to be used essentially for domestic or "residential" purposes. However, it is certainly long settled that a domestic or "residential" purpose, as used in a tariff fixing water rates, includes all uses of water which contribute to the health, comfort, and convenience of the family in the enjoyment of its dwelling as a home (Crosby v City Council of Montgomery (1895) 18 S 723, 726 and Mitchell v Tulsa Water Light Heat & Power Co. (1908) 95 P 961, 966). A public water utility rendering such domestic or "residential" service is obligated to deliver water not only for uses within the home, such as for drinking, bathing, cooking, and laundry, but also for reasonable uses in connection with the upkeep of grounds and gardens (Inverness Improvement Assoc. v Inverness Water Works (1930) 34 CRC 678, 680-681). In our opinion the present uses to which Williams is putting the water obtained from Wesmilton come within the normally accepted scope of domestic or "residential" service.

In making this last statement we recognize that at some point expansion of the number of fruit trees planted, and/or addition of a number of nut trees, could serve to convert usage of this property from domestic or "residential" to commercial or business with a corresponding change to the requisite class of water service. If such

event occurs, Williams must anticipate meeting the special conditions and rates for Wesmilton's Measured Irrigation Service[6/] if he wants irrigation water from Wesmilton. It must be noted that he is eligible for this Wesmilton service if he wants it regardless of his qualification or lack of qualification for water from the Fowler Irrigation Canal (Sonoma Water & Irrigation Co. (1927) 29 CRC 815).

In passing, we would also note that the mere existence of a well on Williams' property has no bearing upon his fundamental right as a customer of the public utility water company to demand and receive water. In this instance moreover, the existence of the well has no relevance to the issues of this case in that the water from it is contaminated and unfit for human consumption or for irrigation of fruit and nut trees.[7/] As to the second extraneous water source involved, as a property owner in the district, Williams is entitled to water from the Consolidated Irrigation District canal upon application and payment of an $8.00 fee. However, before he could receive such water - limited to three months a year - he would also have to pay a nominal amount to repair or replace the broken slide gate valve, and would have to clean out weeds and repair the delivery ditch running parallel to the rear of his property.

6/ Wesmilton offers a measured irrigation service at a rate of $18.00 per acre-foot in this service area. Application for service must be made on or before the first day of the first month of the season or calendar year in which service is desired.

7/ Williams testified that the County Health Department had advised him of contamination of the well on his property; thus he does not use it. Interestingly enough, the Wesmilton well, pump, and pressure tank, which supply some of the water to Williams, is located about 350 feet east of the Williams' property on Springfield Avenue (a nondedicated street).

At this point, having settled that Williams has a right to demand and receive Wesmilton water, we must also recognize that this right of demand and supply is not unfettered nor open-ended. Merely because a residential flat rate service does not specify quantity does not mean that a customer can draw any amount he chooses. Always his demand must be proportionate to reasonable requirements, and the determination as to requirements must be the product of general experience and sound judgment. It is obvious that flat rate service encourages high and extravagant water consumption. All customers on such service pay the same regardless of actual consumption and there is no incentive to limit usage to fair requirements. The Commission has long been of the opinion that a measured service is the only proper one. (Mountain Water Co. (1921) 20 CRC 558, 559.) By this means charges are equitably distributed among the consumers according to usage, extravagance in use is reduced to a minimum, and water is conserved. But we must also recognize that meters and meter maintenance cost money, and many small public utility water companies just cannot reasonably afford that extra investment, and must continue offering flat rate service.

The Commission staff has recommended that a second connection be installed at Williams' expense. We will adopt that recommendation as our own. While this utility has maintained a practice of limiting its residential flat rate service to one per residence, we note that the Williams' property before consolidation had been served by two connections, and that these two connections permitted watering of the entire area without need for investment by the owners in expensive installed piped distribution systems and sprinklers. While as a general rule we support the utility practice of limiting flat rate service pending installation of metered service, in this instance and under these circumstances we conclude that Williams should be permitted to reactivate the second service formerly serving the property area by reconnecting the second connection already installed and available.

Findings

1. The Williams' property at one time prior to 1973 supported two residences, each with its own residential flat rate water service.

2. The property has a well and on the rear border adjoins an irrigation district canal which carries water three months of each year. The well water reportedly is contaminated. For a fee the property could draw irrigation water from the canal.

3. At the time in 1973 when Williams acquired the property one residence remained and both water services had been disconnected.

4. Bird refused Williams any water service at all after Williams acquired the property. The Commission thereupon intervened, entering Superior Court in Fresno to force connection of a residential flat rate service to Williams' home in December 1973.

5. Effective December 1, 1975 the Commission approved an increase from $4.50 to $8.10 per month in the residential flat rate service.

6. Since connection of service each month Williams by certified mail has tendered payment only to have Bird refuse to accept payment, refusing the certified mail.

7. The relationship between Williams and Bird is one of active virulent hostility on both sides.

8. Williams has six small fruit trees and garden plants on the property, primarily located in the northwest quarter of the 132 x 300-foot property. His residence and the water service connection are located in the southeast corner of the property.

9. Williams waters the plants and irrigates the trees by using coupled lengths of garden hose stretched from his home. Williams asserts he has insufficient water to adequately accomplish the watering.

10. Williams intends planting additional fruit trees and asserts he requires additional water to nurture these new trees.

11. Wesmilton has a practice of limiting residential flat rate service to one service for each residence on a property.

12. Reconnection of the existing second water service to the Williams' property would save Williams' expense in that he would not

have to install an extensive piped distribution system with sprinklers to meet his water needs.

Conclusion

Williams has demonstrated a reasonable basis and substantial need for reconnection of the existing second water supply to his property. In view of the age of this proceeding and the need for relief, this order should be made effective the date hereof.

O R D E R

IT IS ORDERED that:

1. Upon application, the existing second water connection to the Eugene S. Williams' (Williams) property will be reconnected within fifteen days after receipt of the application.

2. The reasonable cost of reconnection under the Wesmilton tariff will be paid by Williams.

3. After the second service connection is reestablished, Williams will pay the current flat rate service charge of $8.10 per month for each service connection to his property in accord with the Residential Flat Rate Service Tariff on file for this utility.

The effective date of this order is the date hereof.

Dated at San Francisco, California, this 27th day of JUNE, 1978.

President

Commissioners

Commissioner Robert Batinovich, being necessarily absent, did not participate in the disposition of this proceeding.