

ORIGINAL

Decision No. 89661 NOV 28 1978

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's
own motion into the rates,
operations, practices, rules,
contracts, tariffs and accounts
of Ridgecrest Heights Land and
Water Company, a California
Corporation, doing business as
Ridgecrest Heights Water Company.

OII No. 17
(Filed May 31, 1978)

Phillip M. Schwabacher, Attorney at Law, for
respondent.
Steven Weissman, Attorney at Law, for the
Commission staff.

O P I N I O N

This is an investigation on the Commission's own motion. The issues specified in the Order Instituting Investigation relate to the matters of whether respondent has collected connection fees in violation of its tariff and whether it has complied with orders of the Commission issued in Decision No. 87224 as modified by Decision No. 87476. Public hearing was held before Administrative Law Judge Thompson on June 26, 1978 at Ridgecrest and the matter was submitted on memoranda of points and authorities due July 17, 1978.

Ridgecrest Heights Land and Water Company (respondent) is a corporation owned by Northern Mojave Lands, Inc., which is engaged in real estate development and is owned by Wilbur H. Stark and his wife Mary R. Stark. Northern Mojave Lands, Inc. also owns Lane Acres Water Co., a public utility water corporation. Wilbur H. Stark is a licensed contractor and he and his wife also own Indian Wells Valley Realty Company, which sells real estate, Desert Pump Sales and Service, and Triangle Mobile Home Sales.

On August 13, 1976 respondent filed Application No. 56687 requesting removal of a restriction imposed by the Commission in 1969 prohibiting it from extending facilities or furnishing any service outside of its service area without further order of the Commission. On September 10, 1976 four of respondent's customers filed a complaint (Case No. 10172) alleging that respondent had extended service outside of its certificated area which resulted in the utility's failing to provide adequate service to its customers within the certificated area. The matters were consolidated for public hearing which was held in Ridgecrest on February 9 and 10, 1977 and culminated in Decision No. 87224. In that decision the Commission found a number of deficiencies in respondent's water system and service and ordered that a number of corrective measures be taken. After petition for rehearing the Commission in Decision No. 87476 modified one of the directives. As a result of receipt of a number of letters of complaint, the Commission staff made an investigation following which it recommended to the Commission that it institute the investigation herein.

The evidence presented shows, and respondent admits, that connection fees were collected in violation of its tariff. Those collections constitute overcharges and respondent is required by law to refund them. The evidence also shows that respondent has failed to comply with a number of directives contained in Decision No. 87224 as modified by Decision No. 87476. Respondent asserted that it has been attempting to correct the deficiencies by methods other than prescribed in the directives.

While the service problems involved are very similar to those which the Commission regularly encounters in connection with inadequate and improperly managed water systems, the causes and effects are quite different. This is not a case of the owner not being interested in the day-to-day operation of the plant, nor is it a case of the owner not expending funds to maintain existing plant and to add new plant. On the contrary, the Starks

expend much time in the operation of the water system, they have invested a large sum of their own money into the system, and they have borrowed money for improvements to the system.^{1/}

From the testimony herein, and from the opinion in Decision No. 87224, it is not difficult to perceive the cause of the service deficiencies. Mr. Stark appears to be a man set in his ways, and his way in making replacements or improvements has been to use materials at hand, or when not available to shop for a "best buy", without due regard as to whether the types or sizes of the materials obtained will provide for optimum efficiency in the operation of the water system as a whole. As a result, the system has the appearance of having been designed by the proverbial Joe McGee. One illustration involves Well No. 7. The testimony shows that Mr. Stark engaged a contractor to drill a well which is all that the contractor did. Mr. Stark installed a pump in the well. The well pumped sand as well as water and the pump was ruined. Mr. Stark installed another pump with the same result. A third pump is on the well at the present time. A customer who testified in this proceeding presented three samples of water he had taken from his tap; one on June 3, one on June 21, and one on June 22. All three were heavily impregnated with sand with the one from June 22 having the most sand. The odds on the third pump do not look favorable.

Aside from the facts that the pump replacements cost money and that customers were inconvenienced with sand in the water and resulting impairment of appliances, the circumstances had other effects detrimental to the company and to its customers. The sand collected in respondent's pressure tank which necessitated shutting it down, making a hole in the tank, shoveling out the

^{1/} See Decision No. 88151, dated November 29, 1977, in A.57425 in which respondent was authorized to issue a note for \$35,000.

sand, and repairing the hole. That cost money. The sand collected in the mains decreases the effective diameter of the pipe and increases friction resulting in loss of flow and pressure in the system. That can only be corrected by flushing. That use of water and power would not have been necessary had respondent followed proper procedures in bringing in the well. That circumstance gives us concern because respondent, instead of following the directives in Decision No. 87224 regarding measures to improve water pressures, has instead drilled two new wells in the belief that the additional water production will provide the necessary flow and pressure. Whether that will accomplish the desired result is highly conjectural.

A number of customers testified they receive inadequate flow and pressure. Two customers testified that they received excellent water service. One stated that during the periods that the other customers said they had inadequate pressure, the water pressure at his place had actually increased. These circumstances where some customers experience poor water service while neighbors experience good water service are characteristic of a water system that has been improperly designed and engineered. We can understand that the lucky customers who received good water service at a \$7 flat rate per month would not favor respondent's being required to expend funds to improve the water system with resulting increases in water rates; but the fact is that it is sheer luck that those customers happen to be at those points on the system where the main sizes, changes in sizes of mains, and pumps are so located as to provide them with adequate water flow and pressure.

Past experience shows that even though the Starks continue to expend time and money on the system, that Mr. Stark's policies will not provide for an efficient water system. Respondent needs professional engineering assistance. It is apparent from respondent's failure to comply with the requirements of Decision No. 87224 in that regard, and from the testimony of Mr. Stark, that such assistance

will not be utilized by respondent voluntarily other than in a token manner. In Decision No. 87224 respondent was ordered "4. Ridgecrest shall make pressure checks throughout its systems and engineer improvements that will correct any deficiencies". Respondent installed some simple pressure gauges which show the pressure at a particular point at any moment. Unless respondent had a person observe and record the instantaneous changes in pressures shown on the gauges over a continuous period so as to determine typical cycles, it is difficult to see any possible contribution those gauges would have in determining deficiencies in the system, let alone provide data for engineering improvements to correct them.

Public convenience and necessity require that action be taken to prevent waste of funds required for system improvements, waste of energy, and waste of water. It is not the function of the Commission to design, engineer, or operate the water system nor to plan the priorities for the expenditure of funds for improvements. It is a responsibility of the Commission to require that the utility perform those functions reasonably. This proceeding is an investigation regarding compliance by respondent of orders issued in Decision No. 87224 requiring respondent to make studies of the deficiencies in the water system and the causes thereof, to make a plan for improvements, to submit cost estimates of those improvements, and to submit a construction schedule for their implementation. Those things have not been done. It is within the framework of this proceeding for the Commission to modify those previous orders and to enter new orders to prescribe more particularly the manner in which those objectives are to be accomplished. We shall do so.

With respect to the connection fees, the evidence shows that respondent or its affiliate Desert Pump Sales and Service has collected from new customers a fee for furnishing and installing a service connection between respondent's water main and the property line of the customer. Rule 16 of respondent's tariff provides that such service connections shall be made free of charge. The statutory

offense is the charging a different compensation for a service rendered than the charge specified in its tariff in violation of Section 532 of the Public Utilities Code. Respondent concedes that it has no legal right to those charges and they must be refunded. The only remaining issues related thereto are: (1) how far back should the respondent be required to review its records and make the refunds, and (2) should respondent be authorized to make refunds in installments by credits to customers' water bills.

Respondent asserts that inasmuch as the offenses involved are violations of Section 532, the three-year limitation of actions prescribed in Section 736 is applicable and therefore respondent should not be required to refund any service connection fees it had collected prior to May 31, 1975. The staff contends that the provisions of Section 736 apply only in connection with complaints and do not apply to an investigation by the Commission on its own motion. We hold with respondent in this matter of refunding the overcharges. Section 2106 provides that a public utility is liable to the customer for loss or damage resulting from any act which is prohibited or declared to be unlawful. Section 532 declares that charging a different compensation from that provided in the utility's tariff is prohibited. The customer therefore has the right to recover the unlawful charge which has been collected from him; however, if he elects to recover the unlawful charge in a proceeding before the Commission or the courts, he must file his complaint within three years of the cause of action (Section 736). Moreover, since its inception the Commission has held that the statutes of limitations prescribed in the Public Utilities Code may not be waived and not only bar the remedy but also the right to recovery. (James Mills Sacramento Valley Orchard and Citrus Fruit Co. v Southern Pacific Co. et al. (1916) 9 CRC 80.) Therefore, under the law any liability by the utility to a customer for overcharge is extinguished three years after the cause of action accrues. The staff points out that Section 736 refers to complaints for

damages resulting from violation of Sections 494 or 532 filed with the Commission or in the courts. It contends that this provision is not applicable here because the proceeding is an investigation instituted on the Commission's own motion. Although entitled "Order Instituting Investigation", as it pertains to the matter of collecting service connection charges, the order falls squarely within Section 1702 as a complaint made by the Commission of its own motion.^{2/} The order contains the essential components of a complaint by alleging the offense (the charging and collecting of service connection charges in violation of Rule 16 of its tariff) and pleading the remedy (refund to each and every consumer all amounts collected by respondent, etc.). With respect to the other arguments advanced by the staff, we state only that the Commission is empowered under the law to order a utility to refund to a customer only those charges for which the utility is legally liable to the customer. Where the legislature has extinguished that liability, the Commission will not and cannot restore it by some legal legerdemain.

^{2/} "1702. Complaint may be made by the commission of its own motion or by any corporation or person, chamber of commerce, board of trade, labor organization, or any civic, commercial, mercantile, traffic, agricultural, or manufacturing association or organization, or any body politic or municipal corporation, by written petition or complaint, setting forth any act or thing done or omitted to be done by any public utility, including any rule or charge heretofore established or fixed by or for any public utility, in violation or claimed to be in violation, of any provision of law or of any order or rule of the commission. No complaint shall be entertained by the commission, except upon its own motion, as to the reasonableness of any rates or charges of any gas, electrical, water, or telephone corporation, unless it is signed by the mayor or the president or chairman of the board of trustees or a majority of the council, commission, or other legislative body of the city or city and county within which the alleged violation occurred, or by not less than 25 actual or prospective consumers or purchasers of such gas, electricity, water, or telephone service."

The cause of action here is the collection of the connection charges. This action was instituted by the Commission and filed May 31, 1978. Respondent is liable to its customers for the service connection charges it has collected from and after May 31, 1975.

Respondent requests, and staff agrees, that it be permitted to refund those charges by crediting a customer's account and applying one-half of the monthly charge for water service to that customer each month to that credit until the full amount has been refunded. The typical overcharge amounted to \$22.50 which would mean that refund may be accomplished ordinarily within a period of seven months. Because respondent will require use of funds to plan and effect improvements to its water system, its suggested method of refund is reasonable. We will require, however, that respondent eventually refund the full amount of the credit to each customer. Therefore, should water service to a customer be discontinued, then the full amount should be paid at that time. In connection with accounts already discontinued, we will require respondents to make diligent efforts to determine the whereabouts of the prior customers in order to make refund, and after a reasonable period if it has not been successful in that regard to post and to publish in a newspaper of general circulation an appropriate notice to those persons informing them that they may claim the refund from respondent.

Findings

1. Respondent is a water corporation as defined in Section 241 of the Public Utilities Code engaged in the operation of a water system in and around the city of Ridgecrest.

2. On April 1, 1977 the Commission issued Decision No. 87224, effective April 21, 1977, ordering respondent (Ridgecrest) to do certain things as follows:

"IT IS ORDERED that:

- "1. Ridgecrest shall retain a professional engineer to design storage reservoir facilities having as a minimum storage capacity the maximum twenty-four hour domestic demand, plus a minimum reserve for fire

protection purposes, together with adequate booster pumping facilities to bring normal operating water pressures up to that required in General Order No. 103 in Tracts Nos. 1992, 1466, and 2599.

- "2. Ridgecrest shall complete Well No. 7 and have efficiency tests performed on the well after its completion.
- "3. Ridgecrest shall adjust Well No. 3 for maximum output and have an efficiency test performed on the well after such an adjustment.
- "4. Ridgecrest shall make pressure checks throughout its systems and engineer improvements that will correct any deficiencies.
- "5. Within ninety days of the effective date of this order, Ridgecrest shall submit the results of the studies and tests required by Paragraphs 1, 2, 3, and 4 to the Commission staff together with a plan, cost estimates, and construction schedule for implementing the required system improvements.
- "6. Within one hundred eighty days of the effective date of this order, Ridgecrest shall provide plans, estimates, and construction schedules for metering and keeping records of the production output of its active wells and the replacement of deteriorated and/or undersized mains.
- "7. Ridgecrest shall add no new customers until further order of the Commission.
- "8. Ridgecrest shall initiate a water conservation program and shall emphasize to its customers the urgency and importance of conservation during the critical summer months in view of the prospect that drought conditions may be prolonged."

3. After petition for rehearing the Commission issued Decision No. 87476 dated June 21, 1977 denying rehearing and modifying Ordering Paragraph 7 of Decision No. 87224 to read as follows:

"Ridgecrest shall add no new customers outside of its present certificated areas until further order of the Commission. Ridgecrest may serve new customers within its present certificated areas upon approval by the Commission of an advice letter

setting forth the fact (supported by engineering computations) that each new customer will receive service which meets or exceeds General Order No. 103 standards."

4. On November 29, 1977 the Commission issued its Decision No. 88151 granting respondent's application (No. 57425) for authority to issue a note in the principal amount of not exceeding \$35,000, the proceeds of which were to be used for the following purposes:

a. To repay the balance of an existing note issued in connection with capital improvements to Well No. 3.	\$ 826
b. To retire the balance of a previously authorized 8½ percent note issued to Bank of America, which is repayable in monthly installments of \$317.	13,259
c. To reimburse the treasury, in part, for plant expenditures.	13,815
d. To finance the replacement of pipe and installation of metering equipment.	<u>7,100</u>
Total	\$35,000

5. Respondent has not retained a professional engineer to design facilities to bring normal operating water pressures up to that required in General Order No. 103. Normal operating pressures have been less than the 40 p.s.i.g. prescribed in Paragraph II.3.a of General Order No. 103.

6. Respondent's activity in connection with Well No. 7 consisted of having a well drilled, installing a 60 H.P. pump, electrical panel, pressure tank, and other appurtenances at the well and then determining the g.p.m. output with said pump and appurtenances. No tests were conducted prior to the installation of the pump and appurtenances to determine the safe and reliable output of that well which procedures are standard and necessary procedures for the completion of a well and for determining the efficiency thereof.

7. Respondent did adjust Well No. 3 for maximum output and had an efficiency test performed on the well after such adjustment.

8. Respondent installed simple pressure gauges at hydrants at various points on its system. Such gauges are of little or no use for providing data necessary to engineer improvements to correct deficiencies in water pressure. Respondent did not make any pressure checks or surveys with recording pressure gauges capable of recording a 24-hour test in the manner prescribed in Paragraphs II.3.d and II.3.e of General Order No. 103.

9. Respondent did not submit the results of any studies or tests required by Paragraphs 1, 2, 3, and 4 of Decision No. 87224, nor did it submit to the Commission staff a plan, cost estimates, and construction schedules for implementing required system improvements.

10. Respondent has not provided plans, cost estimates, and construction schedules for metering and keeping records of the production output of its active wells and the replacement of deteriorated and/or undersized mains.

11. Respondent has not added any customers to its water system either inside or outside of its certificated area since April 1, 1977.

12. Respondent did not initiate a water conservation program.

13. From at least 1971 respondent has charged and received from its new customers a fee for furnishing and installing a service connection from its water main to the property line of the customer. The service connection fees collected were posted upon the books of respondent or on the books of its affiliate Desert Pump Sales and Service.

14. At all times since 1971, Rule 16 of respondent's tariff has provided:

"A. Installation.

"1. Service Connection.

The utility will, at its own expense, furnish and install a service connection of suitable

capacity, from its water main to the curb line or property line of the premises abutting upon a street, other thoroughfare, utility right-of-way or easement."

15. The Commission has not by rule or order established any exceptions to respondent from the prohibitions of charging or receiving any charge or fee for the furnishing and installing of a service connection other than as provided for in its tariff.

Conclusions

1. Respondent has violated Section 702 of the Public Utilities Code by failing to obey and comply with Ordering Paragraphs 1, 2, 4, 5, 6, and 8 of Decision No. 87224, as modified by Decision No. 87476.

2. Respondent has violated Section 532 of the Public Utilities Code by charging and receiving a compensation for furnishing and installing a service connection different from that specified in its schedules on file and in effect at the time.

3. Although entitled "Order Instituting Investigation", as it pertains to the matter of respondent charging and collecting a service connection fee other than as prescribed in its tariff, the order is a complaint made by the Commission of its own motion setting forth the act or thing done by the public utility in violation of the provisions of the Public Utilities Code.

4. With respect to the refunding of fees or charges received by respondent in violation of Section 532 of the Public Utilities Code, the provisions of Section 736 are applicable to the case at bar.

5. Respondent should be ordered to cease and desist charging and receiving a compensation for furnishing and installing service connections other than as specified in its schedules on file and in effect at the time.

6. Respondent should be ordered to review its records and the records of its affiliate Desert Pump Sales and Service and to submit to the Commission a report listing the names and addresses

of customers from whom it has received from and after May 31, 1975 charges for service connections, together with the amount collected from each customer, and thereafter make refund of said charge.

7. Respondent should be authorized to effect the refunds as follows:

- a. To a person or entity currently being provided water service by respondent by crediting the amount to be refunded to the customer's account and applying a portion of that credit each month to one-half of customer's water bill until the full amount of the credit has been utilized; provided, however, that if service is disconnected the remaining credit shall be applied to the full amount of the closing bill and any remaining credit shall be refunded in cash.
- b. To a person or entity not currently being provided water service by respondent, by payment in full of the amount to be refunded. Respondent should be required to make diligent search for those customers in order to effect refund and if unsuccessful in connection therewith, after sixty days after the effective date of the order herein, should be required to post and to publish in a newspaper of general circulation the names and last addresses known to respondent of those customers entitled to refund, and the amount of the refund, together with a notice that the customer should make claim for the amount of the refund with respondent.

8. Ordering Paragraphs 1, 2, 4, 5, and 6 of Decision No. 87224 should be modified and amended to require respondent to engage the services of a registered professional engineer, and to require respondent to prepare studies and surveys of its water system and to submit to the Commission reports countersigned by the engineer relating to the current status of the water system and of respondent's practices and procedures, the deficiencies of the system, practices and procedures, the plans for correction of those deficiencies, an estimated timetable for the correction of each deficiency item, and the cost of the correction of each item, with respect to the following subjects:

- a. Maintenance of records and preparation of reports required by General Order No. 103.
- b. Water pressures and tests required by General Order No. 103, Paragraph II.3.

- c. Water supply measurement as required by General Order No. 103, Paragraph II.4.
- d. Design of the water system in relation to the standards prescribed in General Order No. 103, part III.
- e. Replacement of mains.
- f. Procedures for bringing in a well, including tests for its production, stability, and efficiency; and procedures for designing and installing pumps and appurtenances for optimum production of the well.

9. Except for emergency replacements or emergency repairs, respondent should be ordered to desist from any construction or improvements to its system other than as provided for in the plans and procedures adopted and countersigned by the engineer in the report to the Commission referred to in Conclusion 8 unless otherwise authorized by the Commission.

10. Ordering Paragraph 7 of Decision No. 87224, as amended by Decision No. 87476, should be restated herein.

Respondent is hereby placed on notice that in the event it fails to comply with the ordering paragraphs set forth below, it and its officers may be adjudged to be in contempt of the Commission; and for each such contempt a fine may be imposed not exceeding five hundred dollars (\$500), or the officers adjudged to be in contempt may be imprisoned not exceeding five days, or both.

O R D E R

IT IS ORDERED that:

1. Ridgecrest Heights Land and Water Company (Ridgecrest), a corporation, shall cease and desist charging and receiving a compensation different from that provided in its schedule of rates and charges filed with the Commission and in effect at the time for furnishing and installing a service connection between its water main and the property line of the customer.

2. Ridgecrest shall submit to the Commission within thirty days after the effective date of this order a written report of the service connection charges it has received from customers from and after May 31, 1975, listing the names of the customers, the

addresses at which the service connection was made, the date the charge was received, and the amount of the charge received.

3. Ridgecrest shall within thirty days after the effective date of this order refund the amount of connection charge received from a customer currently being provided water service by it by crediting that amount to the customer's account and applying that credit each month to one-half of the customer's water bill for that month until the full amount of the credit has been depleted; provided, however, if service is disconnected the remaining credit shall be applied to the closing bill and the balance shall be refunded in cash.

4. Ridgecrest shall make diligent effort to determine the whereabouts of former customers from whom it has collected a connection charge and upon determining such whereabouts shall make refund to that former customer forthwith. On the first of the month following sixty days after the effective date of this order, Ridgecrest shall transmit to the Commission a report setting forth the names of the former customers to whom refund has not been accomplished, the addresses at which the service connection was made, and the amount of refund due to each of those customers. Concurrently therewith Ridgecrest shall post in its office for a period of not less than thirty consecutive days and shall cause to be published in a newspaper of general circulation in Ridgecrest for five consecutive days, a notice listing the names of those persons to whom refund is due, the amount of the refund due, and the place at which the service connection had been made.

5. Ridgecrest shall within thirty days after the effective date of this order engage the services of a professional engineer registered with the State of California.

6. Within sixty days after the effective date of this order Ridgecrest shall submit to the Commission a report, countersigned by the registered professional engineer, of the water system and the practices and procedures of Ridgecrest with respect to the following subjects:

- a. Maintenance of records and preparation of reports required by General Order No. 103.
- b. Water pressures and tests required by General Order No. 103.
- c. Water supply measurement required by General Order No. 103.
- d. Design of water system in relation to standards prescribed in General Order No. 103.
- e. Replacement of mains.
- f. Procedures for bringing in a well, including tests for its production, stability, and efficiency; and procedures for designing and installing pumps and appurtenances for optimum production of the well.

7. Within ninety days after the effective date of this order Ridgecrest shall submit to the Commission a report, countersigned by the registered professional engineer, setting forth with respect to each item listed in Ordering Paragraph 6 its plans for modification of its practices, procedures, and water system to meet the requirements and standards of General Order No. 103 and other accepted engineering standards. The report shall itemize each such modification, and estimated cost thereof, and the estimated time within which the modification will be accomplished. Any subsequent changes in the practices, procedures, and water system modifications set forth in the report may be made only after approval by the Commission upon written request countersigned by the professional engineer.

8. Ridgecrest shall implement the modifications in practices, procedures, and water system set forth in its report, and it shall not undertake any modifications or additional construction other than as set forth in the report except as may be necessary for emergency repairs to the water system without the prior approval by the Commission.

9. Ridgecrest shall add no new customers outside of its present certificated areas until further order of the Commission.

Ridgecrest may serve new customers within its certificated areas upon approval of an advice letter setting forth the fact (supported by engineering computations) that each new customer will receive service which meets or exceeds General Order No. 103 standards.

10. Except as modified herein, the requirements set forth in Decision No. 87224, as modified by Decision No. 87476, are rescinded.

The Executive Director shall cause a copy of this order to be served upon Ridgecrest and the effective date of this order shall be thirty days after completion of such service.

Dated at San Francisco, California, this 28th day of NOVEMBER, 1978.

I abstain
William J. Lyons Jr.

Robert Bateman
President

Richard D. Howell
Clair T. DeWick
Commissioners

Commissioner Vernon L. Sturgeon, being necessarily absent, did not participate in the disposition of this proceeding.