

ORIGINAL

Decision No. 92060 ' JUL 29 1980

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

EVERETT D. SMITH,
 Complainant,
 vs.
 HAPPY ACRES WATER COMPANY, INC.,
 Defendant.

(ECP)
 Case No. 10843
 (Filed March 25, 1980)

Everett D. Smith, for himself, complainant.
John B. Downey, for Happy Acres Water
 Company, Inc., defendant.

O P I N I O N

Everett D. Smith (complainant) has challenged the lawfulness of a practice under which Happy Acres Water Company, Inc. (defendant) charges him a metered rate for water while other customers similarly situated pay a flat rate.

The complaint alleges that complainant is charged at metered rates while two-thirds of defendant's customers are charged at a flat rate of \$3 per month.

Complainant seeks as a remedy that he be charged only \$3 per month for the months involved in his last billing, and in the future he be charged \$3 per month until all customers on the water system have metered water.

A responsive pleading was belatedly filed on behalf of defendant. The pleading contains the following statement and conclusions:

"I. STATEMENT OF FACTS

"A. The Complainant is charged for water service under Schedule No. 1, General Meter Service. Said Schedule was established by CPUC Decision No. 58503, effective September 3, 1961.

"B. All of the older homes in the Sub-division (constructed prior to 1978) have water meters. Meters have not yet been installed on the newer homes (constructed since 1978) in the Subdivision.

"II. CONCLUSION

"Complainant is charged for service under Schedule No. 1, General Meter Service. As there is no other rate schedule in the Company's Tariff Filing, Complainant must remain on Schedule No. 1, General Meter Service."

Hearing was conducted under the Commission's Expedited Complaint Procedure before Administrative Law Judge Gilman on May 27, 1980. Evidentiary statements were received from complainant and from defendant's manager. It appears that there is no dispute over the facts.

Facts

Defendant has a single meter rate tariff schedule, which at all times prior to the rate increase effective on June 1, 1980 allowed customers to consume 400 cubic feet of water for \$3 per month. There were substantial charges (ranging from \$0.30 to \$0.50 per 100 cu. ft.) for consumption over that level.^{1/} Defendant has 20 customers, the majority of which are metered. It claims to have insufficient funds

^{1/} Under new rates effective June 1, 1980 customers will pay \$4 for the first 300 cubic feet of water. This rate increase was authorized by Resolution No. W-2632 on May 6, 1980.

and therefore has not installed meters for four of the most recently constructed houses. In addition, most of the installed meters are now inoperative and are not read. As a result, only 6 of the 20 customers are effectively metered. These 6 paid water bills ranging up to as much as \$20 per month for water service, depending upon usage. Those customers with broken or no meters paid only \$3 per month for unlimited service.

Defendant's Position

Defendant concedes that it charged most of its customers \$3 per month for unlimited water. It contends, however, that this is not a flat rate but a "minimum rate" since the utility eventually plans to install or replace meters when it has sufficient funds available.

Defendant claims that the staff knew about this practice, and has not criticized it or recommended any changes. Defendant also claims that the Commission was specifically informed of the practice while considering the company's recent advice letter rate increase. It argues that the fact that the Commission did not establish a flat rate constitutes tacit authorization of the practice in question. This contention is confirmed by Resolution No. W-2632, prepared by the Hydraulic Branch of the Utilities Division, and approved by the Commission, which states:

- "6. The utility has been charging all of its customers the minimum rate since it has no flat rate schedule, and only six of its twenty meters are operational. Although the utility has agreed to repair or replace the inoperative meters, lack of complete consumption data to serve as an accurate basis for a service charge type of rate design makes it necessary to retain a minimum charge, but a single rate block is proposed to avoid excessive charges to large users."

The staff, while recognizing that the minimum rate is being charged as a flat rate, proposed only a meter rate schedule, which was adopted in the resolution.

Discussion

As this matter is being handled under the Commission's Expedited Complaint Procedure, the relief granted should apply only to complainant and no precedent may be set that is binding on other customers of defendant who are being charged in a manner similar to complainant.

The facts adduced by complainant indicate that, contrary to the statement in Resolution No. W-2632 quoted above, defendant has not charged all customers at the minimum rate. Complainant has been subject to undue discrimination to the extent that other customers having no meters or inoperable meters have been assessed a monthly minimum charge and have not paid for the amount of water used in excess of 400 cubic feet.

The remedy available to us in this proceeding, in order to remove the discrimination shown in the complaint as a result of the unreasonable difference in charges assessed complainant as compared to other metered and nonmetered customers assessed the minimum charge, is to order defendant to provide water service to complainant at the minimum charge until all other customers are charged at the meter rate or at a flat monthly charge.

The Hydraulic Branch of our Utilities Division has made an informal investigation which shows that defendant has begun replacing or repairing inoperative meters and that such work should be completed within 60 days.

This order is issued with our intention to entertain from defendant an advice letter filing which will establish a flat monthly charge for all customers of the water system that will apply until all customers have serviceable meters. When all customers have meters, defendant may then cancel its flat monthly charge tariff and return to assessing its tariff charges for metered service. Unless the metering of all customers is completed before such date, it is expected that defendant will file an appropriate advice letter filing consistent with this paragraph within 60 days after the effective date of this order.

Relief should be granted as provided in the order.

O R D E R

IT IS ORDERED that:

1. Happy Acres Water Company, Inc. (defendant) shall assess a charge for water service to Everett D. Smith (complainant) based on the minimum fixed monthly charge for metered water service approved by the Commission in Resolution No. W-2632 until all customers of defendant have workable meters and are charged for the quantity of water used, or until all customers are assessed a flat monthly charge.

2. Defendant shall adjust complainant's bill for service referred to in the complaint to the level of the minimum charge in its meter rate schedule applicable at the time the service was performed.

The effective date of this order shall be thirty days after the date hereof **JUL 29 1980**

Dated _____, at San Francisco, California.

John E. Byrne
President
Wesley L. Sturgeon
Richard W. Hooley
Edward J. Jensen
Clare L. Deibel
Commissioners