

ORIGINAL

Decision 93484 September 1, 1981

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Ron Reuther and Cathy Reuther,

Complainants,

vs.

San Jose Water Works,

Defendant.

Case 10963
(Filed March 11, 1981)

Ronald Reuther, for himself and Cathy Reuther,
complainants.
Roy L. Kensill and Fred R. Meyer, for San
Jose Water Works, defendant..

O P I N I O N

Statement of Facts

The Catherine Reuther School of Ballet (the studio) is situated in a one-story storefront studio sandwiched between a laundromat and a pharmacy in a modern, well-maintained neighborhood shopping center complex located in the southern area of San Jose near the corner of Branham Lane and Pearl Avenue.

Regularly open 4 to 8 p.m. on weekdays, and on Saturdays during the fall from 9 a.m. to 2 p.m., the studio primarily provides ballet lessons to children aged four to 12, although some adults also regularly receive instruction. Classes do not exceed 10 children. The studio has been located in this facility since 1975. It is owned by Ronald and Catherine Reuther who lived in the neighborhood until a few years ago when Mr. Reuther's employment was transferred to Ohio. In their absence the studio has been managed by Leslie Fields who, assisted by other teachers, provides the instruction.

Since its opening the studio has received water service from the San Jose Water Works (S.J. Water). With a bathroom consisting of but one toilet and one wash basin, the studio's water consumption for years was relatively nominal at one hundred cubic feet (hcf) each month. The studio's water meter, banked together with meters for adjacent enterprises including the laundromat and the Pearl Pharmacy, is located in the front of the building. Meters are read every second month for billing purposes. In the alternate months an estimated reading is used for billing purposes.

In 1979 problems arose. The meter reader returned readings which purportedly showed an increase from 0047 hcf in January to 0063 hcf in March, but then resumed the customer's customary one hcf-consumption-per-month pace to show 0065 hcf in May and 0067 hcf in July. But then in September 1979 the reading jumped to 0130 hcf, and in November 1979 to 0169 hcf. The Reuthers protested these increases as just not credible. The dispute which ensued was brought to the Consumer Affairs Branch. The utility on December 11, 1979 field-read the meter at 0174 hcf, and then removed it to have it shop-tested. The shop test was 174 and the meter tested at an average accuracy of 98.6%, which is within permissible limits.

But then S.J. Water discovered its error. Its meter reader had been reading the wrong meter. He had been attributing the readings for an adjacent meter providing service to Pearl Pharmacy to complainants. In addition, the pulled meter shop-tested was also the Pearl Pharmacy meter. After discovering its error S.J. Water adjusted the consumption figure back to one hcf per month for the contested months and credited the studio, writing to Mrs. Reuther in part as follows:

"In reviewing your account we have determined the possibility of a meter reading problem. We have, therefore, entered a credit to your account for \$33.11. This, along with our adjustment of November 30, 1979, reduces your billing for September 17, October 16, and November 14, 1979 to \$4.76 for each month."

In December 1979 the utility replaced the studio's 5/8-inch, 4-dial meter No. 24593331 with 1-inch, 4-dial meter No. 28917291, and set the meter at 0000. Thereafter meter readings reportedly were recorded as follows:

January	18, 1980	0001
March	19, 1980	0014
May	16, 1980	0019
July	17, 1980	0040
September	16, 1980	0047
November	14, 1980	0065
January	20, 1981	0068
March	19, 1981	0069

As is evident, this averages at slightly less than five hcf per month.

In August 1980 Mrs. Reuther again wrote S.J. Water concerning her "high" water bills. The utility again investigated, and during a visit to the studio the utility's investigator was told by the studio manager that sometimes the toilet stuck open. The cleaning girl consequently had been instructed to check at night. No leaks were found during the visit. Later on, service was temporarily suspended for nonpayment, but was restored when payment was made. In November, Consumer Affairs advised the Reuthers that it could find no basis for any adjustment, having concluded that consumption was higher than the one hcf asserted by the Reuthers. On March 11, 1981 the matter was docketed as a formal complaint. On March 31, 1981 the utility field-read the 1-inch, 4-dial meter No. 28917291 at 0069, and confirmed that reading when it shop-tested the meter. The meter tested within permissible limits.

A duly noticed public hearing on the complaint was held before Administrative Law Judge (ALJ) John B. Weiss in San Francisco on July 22, 1981. At conclusion of the hearing the matter was submitted. Both complainants and S.J. Water were represented and submitted evidence at the hearing.

Discussion

In a complaint proceeding the burden of proof rests upon the complainant. Here the complainants have failed to meet that burden. Complainant Don Reuther argues that the usage is less than one hcf per month, basing his argument upon three facts:

1. The utility checked for leaks and found none.
2. A dance studio would not normally use more water since it is open about 20 hours a month and the bathroom is used only five times daily. Usage therefore would be five flushes @ four gallons each=20 gallons/day x 20 days=400 gallons + 100 gallons for cleaning=500 gallons/month=66.8 cubic feet.
3. Their usage for five years has been one hcf per month.

To back up Reuther's assertions, his manager, Mrs. Fields, testified that their students, usually aged 4 to 12, are strongly urged "to go at home" before coming to class, so that classtime will not be used in the bathroom, noting the school's desire to avoid a chain reaction inimical to maximum use of instruction time.

Reuther also wanted defendant to obtain comparisons to other studios' usage. But usage of other studios is not at issue here. The issue is consumption by this studio. It is not up to S.J. Water to explain or show how, where, or why water is being used. The meter records the water passed through it in the quantities indicated to complainants' studio. The meter has been checked and the test showed it to be accurate. What happens to the water once it is delivered is the responsibility of the customer. Meter readings through 1980 into 1981 clearly show that the studio is using slightly less than five hcf per month. For whatever reason, consumption has increased since the 1975-1979 period. There is no problem of switched meter readings here as there was in 1979.

As the utility's office manager pointed out at the hearing, a float-ball and arm set too high, or a stopper ball not seating properly, can waste considerable quantities of water. While it is complainants' asserted belief that the studio is open only from 4 to 8 p.m., these hours may not be strictly observed. As the ALJ observed at the hearing, the evening he visited the site, lessons were in progress at 8:45 p.m. Perhaps now that complainants are returning to California from Ohio, and will live in the neighborhood again, directly managing their business, they may be better able to exercise control and bring consumption down again. But for the period at issue, the meter readings must be accepted as accurately reflecting the quantities of water delivered, and the customer will be required to pay for such quantities.

But the matter does not rest there. Until December 1979 the studio had a 5/8-inch, 4-dial meter in service. In December 1979 without explanation, this meter was replaced by a 1-inch, 4-dial meter, although, according to the utility, the previous meter was performing accurately. There was no customer need to put a larger-sized meter into service and the customer should not have to pay the larger monthly service charge for meter capacity he does not need. The previous 5/8-inch meter was quite adequate to serve this facility which has only one toilet and a wash basin. Nothing in General Order 103 is contra-indicative, and S.J. Water's Rule No. 17: STANDARD FOR MEASUREMENT OF SERVICE, defers to the General Order. The General Order, as relevant here, merely requires that the plant shall be designed and operated to provide reasonably adequate and safe service to its customers.

There is no reason why this customer should be charged the higher monthly service charge for the larger meter and the utility will therefore be directed to refund the difference in service charge between a 5/8-inch and a 1-inch meter for each month since April 1981 when it corrected its records to reflect the larger meter installed.

Of course, at its option, the utility may retain the 1-inch meter or restore a 5/8-inch meter. But the customer should not be billed for more capacity than it reasonably needs.

Findings of Fact

1. Since 1975 complainants' ballet studio has received water service at this location from S.J. Water.

2. For years the studio, with bathroom facilities consisting of one toilet and one wash basin drawing water through a 5/8-inch meter, consumed minimal water, rarely exceeding one hcf per month.

3. The 5/8-inch water meter was reasonably adequate under General Order 103 standards to provide service to the studio.

4. In 1979, through meter-reading errors by the utility involving adjacently located meters which purportedly reported much higher consumption, the studio was substantially overcharged. Subsequently, after recourse was made to the Consumer Affairs Branch, adjustment was made.

5. In December 1979, of its own volition, the utility elected to replace the studio's 5/8-inch meter with a 1-inch meter.

6. In recent years, the studio owners, as a consequence of a past employment transfer unrelated to the studio, have lived in Ohio, and have been forced to depend upon a local manager to operate the studio for them.

7. In 1980, and into early 1981, water consumption, as measured by the new 1-inch meter, increased to average slightly less than five hcf per month. This resulted in higher billings to the studio.

8. Complainants, asserting continued minimal usage by the studio, protest these increased billings.

9. Complainants cannot show that they have not received the quantities of water for which they have been billed.

10. The new 1-inch water meter has been tested and its performance is well within permissible limits.

11. The monthly service charge for a 1-inch meter is \$1.90 more per month than the monthly service charge for a 5/8-inch meter.

Conclusions of Law

1. Complainants have received since December 1979 the quantities of water indicated by the meter readings.

2. Complainants are entitled to no adjustment related to the quantities of water for which they have been billed.

3. Complainants are entitled to an adjustment of their monthly service charges since April 1981 for the oversized meter installed at the utility's option.

4. Complainants are entitled to no other relief.

O R D E R

IT IS ORDERED that:

1. Complainants, Ron Reuther and Cathy Reuther, are entitled to no relief other than an adjustment in monthly charges since April 1981 for the difference in monthly service charges between the 5/8-inch and the 1-inch meters. San Jose Water Works shall adjust complainants' bills since April 1981 and refund or credit such differences to complainants.

2. For the future, unless facilities change, a 5/8-inch meter is adequate for complainants' requirements, and they shall not be charged for larger meter capacity.

This order becomes effective 30 days from today.

Dated SEP 1 1981, at San Francisco, California.

John S. Byrne
President
William D. Kneefe
James J. ...
Arthur ...
Lawrence C. ...
Commissioners