

Mailed

Decision 95-11-012 November 8, 1995

NOV. 8. 1995

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Tom Zimmeroff,

Complainant,

vs.

Wolfback Water Company, Inc.,

Defendant.

Case 95-03-011
(Filed March 17, 1995)

ORIGINAL

Tom Zimmeroff, for himself.
Alan Patterson, for defendant.

O P I N I O N

Complainant, Tom Zimmeroff, alleges that defendant, Wolfback Water Company, Inc., has failed to provide adequate water service, refused to refund \$250 for plumbing repairs, refused to provide complainant a "statement of account for services," and unlawfully terminated his service after the informal Commission complaint was filed. Complainant requests that his service be restored immediately and that defendant provide the requested refund and statements.

On March 25th, defendant restored service as ordered by the assigned Administrative Law Judge pending resolution of the complaint.

A hearing was held on July 11 and September 28, 1995, in San Francisco, California, where the parties presented evidence to support their respective positions. Based upon the evidence presented at the hearing, we conclude that the complaint should be granted in part and denied in part. Defendant is admonished for terminating service without investigating this complaint and ordered to respond to all customer complaints in the future.

Defendant's request to bill complainant for damage to its equipment is denied. Complainant's request for reimbursement is denied.

The Hearing

On March 1991, complainant first complained to defendant about the assessment, interest and quantity charges on his water bill. (Exhibit 1.) He continued to send letters to defendant for several years. (Exhibit 1.) In April 1993, complainant sent a letter to defendant specifying that he wanted an itemized accounting of the amount due and asked whether he was billed during the times the water was contaminated. Complainant indicated that future bills should be sent to George Berndt, owner of the property.

Eventually complainant stopped paying his bill in protest of defendant's nonresponsiveness. Defendant sent numerous termination notices during the following years but did not respond to complainant's inquiries. Defendant contends he never received complainant's letters. However, once mailed, correspondence is presumed received. Therefore, we presume defendant received one or more of the three letters.

In February 1995, Berndt wrote to defendant to indicate he had stopped payment on a check for \$561.36, the amount of the water bill, because Berndt was convinced Zimmeroff had a legitimate grievance and would file a formal complaint. (Exhibit 4.) On an unknown date thereafter, defendant sent complainant a termination notice.

On April 12, 1995, the Sausalito Police Department reported an incident at Zimmeroff's address. Alan Patterson, president of defendant, shut off Zimmeroff's service and Zimmeroff reconnected it. Patterson alleged he disconnected and Zimmeroff reconnected service four more times within the next six days. Zimmeroff does not dispute this point. Patterson understood from information from the Marin District Attorney's office that Zimmeroff was committing unlawful acts by reconnecting his service.

Patterson contends Zimmeroff damaged the pipes when he reconnected service. He cross-complains that Zimmeroff owes the amount of repairs and water loss, or \$2,120. In addition, defendant requests that the current bill, \$1,098.58 be paid and additional funds impounded pending resolution of this complaint.

Complainant argued that the first day of the hearing, defendant's behavior when served with a small claims summons, throwing the summons onto the floor, represents his normal response to customer complaints. We take official notice, as complainant requests, that a default judgement was entered in complainant's favor on August 2, 1995, in the Marin County Judicial District Municipal Court, Case S95-0935. This action alleged malfeasance in operating a public utility, damages for lost rent, plumbing costs and costs for an alternate supply of potable water.

On the second day of hearing, complainant raised the issue of whether he was charged for a leak in the water system. He introduced a notice dated September 21, 1995, which indicates defendant is requesting authority to assess a one-time surcharge of \$376 per customer to repair a water main. (Exhibit 15.) The proper procedure for complainant's objection to this expense or to request a refund of charges pursuant to a leak in this main was to file a protest of the surcharge request with the Commission Advisory and Compliance Division, as indicated in the notice. We approved this request by Resolution W-3946. In addition, this issue involving all customers is not appropriately addressed in an individual complaint proceeding.

Discussion

Defendant is required to respond in a timely manner to all customer inquiries and complaints. This obligation is imposed by the requirement to provide adequate service. The record indicates defendant has never answered complainant's written inquiries in March 1991, November 1992 or April 1993. Therefore, defendant has violated this obligation, was at fault for

terminating complainant's service without investigating his complaint about his bill and was responsible for creating the conflict following the unlawful termination. However, this does not justify complainant's subsequent interference with defendant's facilities by reconnecting service.

Defendant did not terminate complainant's service until after it received Berndt's letter indicating complainant would complain to the Commission. Under these circumstances, the motive for the termination appears to be retaliation against complainant. This action is a violation of defendant's obligation not to retaliate against a customer for filing a complaint. It is irrelevant that the termination itself occurs after the complaint is filed with the Commission. The point is defendant knew complainant's intent and the timing of the termination indicates retaliation rather than termination for nonpayment. Defendant did not terminate service for nonpayment for over a year and chose to terminate only after receiving information that complainant would complain to the Commission.

Complainant is not a submeter customer. Therefore, Public Utilities (PU) Code § 777.1(e)3 does not apply as contended by complainant.

Once complainant's service was terminated, he admitted he reconnected service. Thus, he does not have clean hands in this chain of events. Complainant has no right to tamper with defendant's facilities. Both complainant and defendant erred in their handling of this dispute. Complainant should pay his plumbing costs and defendant should pay to repair the company facilities.

As to the gravamen of complainant's complaint, whether the rates and assessments are correct, we addressed these issues in three other expedited complaints against defendant, Case (C.) 91-10-010, C.91-10-014 and C.95-02-007, resulting in Decision (D.) 92-09-031, D.93-10-025 and D.95-07-005. In those proceedings,

we concluded that the assessments should be allowed. We are not persuaded in this proceeding that our previous conclusion should be changed. Furthermore, an individual complaint proceeding like this one is not a proceeding in which we must entertain complaints as to the reasonableness of the rates. (PU Code § 1702.)

During the course of this proceeding, complainant brought to the Commission's attention that defendant has agreed to turn-over the water utility to Marin Municipal Water District as settlement for its debt which is the subject of a lawsuit. We remind defendant that it must file an application with this Commission for authority to exchange public utility assets for this debt. (PU Code § 851.)

Findings of Fact

1. In March 1991, November 1992 and April 1993, complainant sent letters to defendant requesting an explanation of his bills. Defendant did not respond to these letters, has never investigated these inquiries and denies receiving any of complainant's letters.

2. In protest, complainant ceased to send payments to defendant in 1993 and indicated future bills should be sent to his landlord, George Berndt.

3. In February 1995, Berndt wrote to defendant to indicate he had stopped payment on a check for the amount of complainant's water bill because complainant would soon file a formal complaint.

4. On April 12, 1995, after an appropriate termination notice, defendant terminated complainant's service. In the next six days, defendant terminated and complainant admitted he restored service four times.

5. Since defendant waited over 12 months to terminate complainant's service and did not do so until complainant indicated he would file a complaint with the Commission, defendant's termination was retaliation and not good faith termination for nonpayment.

6. Complainant testified that his plumbing costs to reconnect service were \$250; defendant testifies that reconnection caused additional costs, damage to its facilities and water loss. Defendant requests \$2,120 to pay these costs.

7. We recently addressed defendant's special assessment and related issues in a similar complaint, (ECP) C.95-02-007, resulting in Decision 95-07-005. In that decision we concluded that the assessments should be allowed. There are no facts in this proceeding to show that our previous conclusion should be changed.

8. On the last day of hearing, complainant introduced a current notice of defendant's request to impose a one-time rate surcharge of \$376 to compensate for repairs to a water main. Complainant raised the issue of whether defendant charged for service during the period when this leak occurred. The notice provided the procedure to protest this proposed surcharge, which we approved by Resolution W-3946.

Conclusions of Law

1. A letter placed in the mail is deemed received in the ordinary course of business unless this presumption is rebutted.

2. Defendant has violated its obligation to timely investigate customer complaints.

3. Complainant has no legal interest which allows interference with a public utility's private property, facilities or equipment.

4. Defendant has violated its obligation not to retaliate against a customer who files a complaint with the Commission.

5. PU Code § 777.1(e)3 does not apply because complainant is not a submeter customer.

O R D E R

IT IS ORDERED that:

1. Defendant shall immediately cease any and all harassment of complainant and shall promptly respond to his customer complaints in the future.

2. Defendant shall remove from complainant's bill all charges related to service terminations in 1995, including water losses, totalling \$2,120.

3. The amount of complainant's impound at the Commission, \$562.00, is released to defendant.

This order is effective today.

Dated November 8, 1995, at San Francisco, California.

DANIEL Wm. FESSLER
President
P. GREGORY CONLON
JESSIE J. KNIGHT, JR.
HENRY M. DUQUE
JOSIAH L. NEPPER
Commissioners