

ALJ/BRS/sid

Mailed 9/3/98

Decision 98-09-023 September 3, 1998

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Donald Clark,

Complainant,

vs.

Hillview Water Company (Hillview),

Respondent.

Case 96-06-056
(Filed June 13, 1996)

Donald H. Clark, appearing in propria person, and
Bernard E. McGoldrich, for complainant.
Roger L. Porrester, for Hillview Water Company,
respondent.
Cleveland W. Lee, for Water Division.

OPINION

Background

Complainant Donald Clark filed this complaint against defendant Hillview Water Company (Hillview) requesting that it modify its practices for discontinuance of water service for nonpayment of bills. Clark had received a notice from Hillview on April 29, 1996, stating that his water would be shut off if he did not pay the past due amount of \$0.04 in person at Hillview's office by 2:00 p.m. on May 1. It further stated that if service is terminated, a reconnection charge and credit deposit would be required. Clark further stated that it was later determined that the \$0.04 amount due was in error and his account had no balance due at the time.

Bernard McGoldrich, another customer who testified in the case, received a similar notice of termination for an amount due of \$0.13.

Hearing

A duly noticed hearing was held in Oakhurst on November 6, 1996 before an administrative law judge (ALJ).

Clark represented himself; McGoldrich testified on Clark's behalf.

Hillview was represented by Roger Forrester, president of Hillview.

Cleveland Lee represented the Commission Office of Ratepayer Advocates Water Division (Water Division), which prepared a report on the matter.

The case was submitted upon receipt of late-filed Exhibit 2, on December 9, 1996.

Positions of Parties

Complainant

Clark asks that the Commission direct Hillview to cease terminating service for nonpayment of bills totaling one dollar or less. Clark finds Hillview's current practice of issuing termination notices when only a few cents are due to be abusive, abrasive and wasteful of resources of Hillview that are paid for by the customers.

Clark's complaint can best be characterized as challenging the reasonableness of Hillview's operating practices pursuant to Public Utilities (PU) Code § 761. The complaint does not challenge the reasonableness of Hillview's tariffs.

The complainant requests that the Commission order different operating practices pursuant to PU Code § 761.

Defendant

In its answer Hillview explains that it sends past due notices to customers whose payment has not been received within 20 days of the billing date. Clark

has paid his bill after the past due date every month since August 1994 except for May 1996.

Hillview's Tariff Rule 11 provides as follows:

"B. Discontinuance of Service by Utility

1. For Nonpayment of Bills

- a. **Past-Due Bills.** When bills are rendered monthly or bimonthly, they will be considered past due if not paid within 19 days from the date of mailing. The utility shall allow every residential customer at least 19 days from the date of mailing its bill for services, postage prepaid, to make payment of the bill. The utility may not discontinue residential service for nonpayment of a delinquent account unless the utility first gives notice of the delinquency and impending discontinuance, at least 10 days prior to the proposed discontinuance, by means of a notice mailed, postage prepaid, to the customer to whom the service is provided if different than to whom the service is billed, not earlier than 19 days from the date of mailing the utility's bill for services. The 10-day discontinuance of service notice shall not commence until five days after the mailing of the notice."

The Tariff Rule 11 provides for no specific minimum amount of underpayment before discontinuance procedures may be initiated.

Although, Hillview operated in compliance with its tariffs in this matter, Hillview does not object to the change in its practices requested by complainant, so long as it is not left open ended. Hillview does not want customers to have the ability to deliberately withhold part of their payment for an extended period.

Water Division

Water Division prepared a report regarding procedures used by similar water companies for disconnecting service. The amount of past due billings that would trigger disconnection varies widely among them. Some would disconnect if the delinquent bill exceeds \$7.50 while others would allow delinquencies as high as \$50 delinquent before taking action.

Staff recommends that in lieu of changing the tariff, which might require all other similar water companies to change their Tariff Rule 11, Hillview set up internal operating procedures in writing, that it will not take action unless a customer's outstanding past due balance is \$7.50 or more.

The Settlement

At the prehearing conference, the ALJ asked the parties if it might be productive for them to attempt to negotiate a settlement in this matter. After discussions, they reached the settlement in concept, subject to putting the terms on paper for approval by all parties.

The parties ask that the Commission waive Rules 51.1, 51.4, and 51.6 since this is an all-party settlement; if the waiver is granted, it would not be necessary to hold a conference to discuss settlement terms (Rule 51.1), give nonsettling parties 30 days to comment on the proposed settlement (Rule 51.4), and schedule a hearing on the contested issues (Rule 51.6).

The parties further request the Commission waive the requirement of a proposed decision in this matter, under Public Utilities Code Section 311(f) and Rule 77.1. Since all parties support the settlement, they believe that waiving the proposed decision would cause no harm and conserve resources.

The Settlement Agreement, attached hereto as Appendix A, contains the following basic terms:

- Hillview will establish written internal operating procedures with \$7.50 as the amount in a customer's delinquent account that would trigger notice and collection procedures under Rule 11. These procedures will be available for public inspection at Hillview's main business office.
- Clark will post an announcement or copy of Hillview's internal operating procedures under Rule 11 at the Oakhurst Public Library and other locations in Oakhurst, with the information provided by Hillview.
- Water Division will issue a press release informing local area newspapers of the Commission's action in this matter.

Discussion

The settlement would resolve the problem brought forth by complainant. It makes no sense to send termination notices for amounts owed of a few cents. As complainant points out, the administrative costs far exceed the amounts at issue. Additionally, the Oakhurst area is home to many retired people, some of whom are quite elderly and may find it difficult to go to Hillview's office in person within 48 hours to avoid termination of service.

As pointed out by the parties, the settlement meets the criteria set forth in *Re San Diego Gas and Electric Company* (1992) 46 CPUC2d 538, 550-551. That decision presents the Commission's policy on all-party settlement proposals; such a settlement will be approved if the Commission determines:

- a. that it commands the unanimous sponsorship of all active parties to the proceeding;
- b. that the sponsoring parties are fairly reflective of the affected interests;
- c. that no term of the settlement contravenes statutory provisions or prior Commission decisions; and

- d. that the settlement conveys to the Commission sufficient information to permit it to discharge its future regulatory obligations with respect to the parties and their interests.

In a footnote to c., the decision indicates that the Commission does not wish to preclude new ideas, or changes to existing policy, but parties are requested to identify such areas of the proposed settlement.

Regarding the cited policy:

The parties unanimously sponsor the settlement;

The settlement clearly reflects the interests of Hillview's ratepayers who are affected by the disconnection policy in issue;

No term contravenes any pertinent statute or prior Commission decision;

and

The settlement agreement conveys to the Commission the full terms which enables the Commission to discharge its future regulatory obligations to the parties and their interests.

We find that the settlement satisfies the criteria for an all-party settlement and will adopt it. The Commission appreciates the fruitful negotiations and cooperative spirit of the parties in reaching this settlement.

We will not require a proposed decision in this case. PU Code § 311(f) provides that the ALJ need not prepare, file, and serve a proposed decision in a proceeding involving a customer or subscriber complaint against a water corporation unless the Commission finds that to do so is required in the public interest in a particular case. Here we make no such finding, and indeed the parties have requested that the Commission waive any proposed decision.

This is a complaint not challenging the reasonableness of rates or charges, and so this decision is issued as an "adjudicatory proceeding" as defined in PU Code § 1757.1.

Findings of Fact

1. Hillview's notices of termination of service were in accordance with its tariffs.
2. Notices of termination of service for small amounts due, such as those in issue in this proceeding, are not reasonable.
3. A Settlement Agreement, attached to this order as Appendix A, was reached by all parties.

Conclusions of Law

1. The Settlement Agreement satisfies the Commission's all-party settlement criteria as previously discussed; therefore it is reasonable and should be approved.
2. This is a complaint case not challenging the reasonableness of rates or charges, and so this decision is issued in an "adjudicatory proceeding" as defined in PU Code § 1757.1.
3. The public interest does not require a proposed decision in this case.
4. This proceeding should be closed.

O R D E R

IT IS ORDERED that:

1. The Settlement Agreement between the parties, attached hereto as Appendix A, is adopted.
2. Pursuant to the terms of the settlement adopted herein:
 - A. Hillview shall establish as part of its written internal operating procedures seven dollars and fifty cents (\$7.50) as the amount in a customer's delinquent account that would trigger applying the notice and collection procedures to a customer under Rule 11;

- B. Hillview shall maintain for public inspection at its main business office a copy of that portion of its written internal operating procedures which sets forth Hillview's notice and collection procedures under Rule 11 as agreed to in this Settlement;
 - C. The complainant shall post an announcement or copy of Hillview's internal operating procedures under Rule 11, at the Oakhurst Public Library and other locations in Oakhurst. Hillview will provide the complainant with this information; and
 - D. The Water Division shall issue a press release informing the local area newspapers of the Commission action in this matter.
3. This proceeding is closed.

This order is effective 30 days from today.

Dated September 3, 1998, at San Francisco, California.

RICHARD A. BILAS
President
P. GREGORY CONLON
JESSIE J. KNIGHT, JR.
HENRY M. DUQUE
JOSIAH L. NEEPER
Commissioners

Donald Clark v. Hillview Water Co., Inc.
Case No. C.96-06-056

SETTLEMENT AGREEMENT

I. SCOPE OF THE AGREEMENT

The undersigned parties (Parties) are as follows: (1) Donald Clark, the Complainant; (2) Hillview Water Co., Inc. (Hillview), the Respondent; (3) and the Water Division (WD). The Parties agree to settle all claims attendant to or arising out of C.96-096-056 (Complaint).

II. BASIS OF AGREEMENT

This Agreement is based on the understanding that Hillview will conform its notice and collection procedures for delinquent accounts according to the industry practice, as set forth below. In consideration thereof, the Complainant agrees to withdraw his Complaint upon adoption by the Commission of this Agreement. All the Parties support this Agreement as reasonable and consistent with the law.

III. BACKGROUND

A. *The Complaint*

On June 13, 1996, Mr. Clark brought this Complaint. Prior to such filing, Hillview had notified Mr. Clark that his water service would be discontinued

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unless he paid his delinquent account of four cents by the time required in the notice.¹ The Complainant timely paid his delinquent bill and his service was uninterrupted. The Complaint seeks to change Hillview's Rule 11 tariff, so that no customer's service is terminated for any nonpayment of a delinquent account that amounts to one dollar or less.² In response, Hillview claims that its warning notice to the Complainant was authorized under its Rule 11 tariff.

B. Rule 11 Tariff

The Commission requires all regulated water utilities to adopt as part of their tariff, uniform industry-wide procedures for discontinuing service. These procedures, which are generally designated as Rule 11 of a water utility's tariff and entitled "Discontinuance and Restoration of Service," require notifying a customer in writing of an impending service cut-off. Customers must have at least 19 days to pay the amount due, starting with the date that a customer's bill is mailed.⁴ At least 10 days before stopping service, the utility must again notify the customer in writing of the payment delinquency and impending shut-off. The 10-day notice begins five days after it is mailed to the customer. At least 24

¹ On April 29, 1996, Hillview notified Mr. Clark that his service would be discontinued by May 1, unless he paid his delinquent account of four cents within the time required by the notice.

² On April 15, Hillview also notified another customer, Bernard E. McGoldrich that his water service would be discontinued due to his past due account of 13 cents.

³ Hillview, is a regulated, Class C public water utility, located in Oakhurst, California serving approximately 1,100 residential and commercial customers in Oakhurst and other areas of Madera County. Its president and general manager is Roger Forrester.

⁴ The dates are adjusted to account for weekends and holidays, when the utility is closed for business

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hours before the scheduled discontinuance, the utility must make a reasonable attempt to contact in person or by telephone an adult individual at the customer's premises. If this effort is unsuccessful, the utility must post a notice at the service address at least 48 hours prior to disconnection. Other conditions apply if the customer is elderly or handicapped; lives in a mobile-home park; makes payment arrangements with the utility; or disputes the bill by filing a complaint with the Commission.⁵

C. *WD Survey of Industry Practice*

On or about August through September 1996, WD surveyed approximately ten regulated water utility companies. Although WD found that Hillview's warning notice in this case complied with Rule 11, Hillview's action was atypical of the industry. Most, if not all, utilities specified as part of their written internal operating procedures, an specific delinquency amount that would initiate Rule 11 procedures against a customer. The lowest amount of nonpayment for which a utility would send a warning notice was \$7.50. Other utilities wait until a customer's unpaid bills amounted to as much as \$50.00.

D. *The Prehearing Conference of November 5, 1996*

A Prehearing Conference was held on November 5. During a recess, Roger Forrester, Hillview's president and CEO, acknowledged that sending a

⁵ A copy of Hillview's Rule 11 is attached as an appendix to Exhibit 1 in this proceeding.

warning notice for four cents was an error. He promised that no customer's service would be disconnected for a delinquent amount of \$1.00 or less. He further adopted \$7.50 as the lowest amount of delinquency for which Hillview would issue a warning notice of an impending service cut-off.

IV. TERMS OF THE AGREEMENT

- A. Hillview will establish as part of its written internal operating procedures seven dollars and fifty cents (\$7.50) as the amount in a customer's delinquent account that would trigger applying the notice and collection procedures to a customer under Rule 11;
- B. Hillview will maintain for public inspection at its main business office a copy of that portion of its written internal operating procedures which sets forth Hillview's notice and collection procedures under Rule 11 as agreed to in this Settlement;
- C. The Complainant will post an announcement or copy of Hillview's internal operating procedures under Rule 11, at the Oakhurst Public Library and other locations in Oakhurst. Hillview will provide the Complainant with this information; and,
- D. The Water Division will issue a press release of the Commission action in this matter, to the local area newspapers.

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V. GENERAL PROVISIONS

A. *No Implied or Other Admissions*

This Agreement constitutes the Parties' compromise of all issues related to the Complaint in this proceeding, C.96-06-056. The Parties acknowledge that by executing this Agreement below, no imprudence, wrong-doing, or liability is admitted or implied. This Agreement represents the Parties' mutual desire to resolve this dispute in a cost-effective, amicable, and fair manner and in the general public's interest.

B. *No Precedent*

Pursuant to Rule 51.8, the Commission's adoption of this proposed Agreement is binding on all Parties. Unless expressly provided otherwise, Commission adoption of this Agreement constitutes no approval of, or precedent regarding, any principle or issue in this proceeding or in any future proceeding.

C. *Inadmissibility*

Pursuant to Rule 51.9, no discussion, admission, concession or offer to stipulate or settle, whether oral or written, made during any negotiation or settlement of this controversy, shall be subject to discovery, or admissible in any evidentiary hearing against any participant who objects to its admission. Parties

and their representatives will hold confidential such discussions, admissions, concessions, and offers to stipulate or settle and shall not disclose them outside the negotiations without the consent of the Parties participating in the negotiations.

D. Release

The Complainant agrees that upon final Commission adoption of this Agreement, the Complaint will be either dismissed or withdrawn, whichever is most expedient. Provided that Hillview implements the terms of this Agreement, the Parties agree that none of them will pursue any claim, demand, cause of action, damage, or liability of any nature whatsoever concerning the issues settled by this Agreement.

E. Obligations Imposed by Commission

Unless specifically set forth in this Agreement, none of the Parties will or intend to alter or change its obligations imposed by any rule or regulation of the Commission.

F. Further Documents

The Parties agree to execute, prepare, copy, or distribute such other or additional documents and to take such other action as may be necessary to implement the terms of this Agreement.

G. Entire Agreement

This writing constitute the entire agreement among the Parties. No modification or waiver of this Agreement shall be valid unless in writing and approved by the Commission. None of the Parties shall be bound by any representation, promise, statement or information, that is not specifically set forth in this Agreement.

H. Interpretation

The laws of the State of California that are in effect at the time this Agreement is adopted by the Commission, shall exclusively govern the interpretation and enforcement of this Agreement. Because this Agreement is deemed jointly prepared by all Parties, any uncertainty or ambiguity existing in this Agreement may not be interpreted against any Party.

I. Commission Jurisdiction

The Parties agree that the Commission shall have exclusive jurisdiction over any issues related to this Agreement. No other court, regulatory agency, or other governing body shall have jurisdiction over any issue related to interpretation and/or enforcement of this Agreement, or over the rights of the Parties to the Agreement, except as otherwise provided by California statute. The Parties further agree that no signatory to this Agreement, nor any member of the staff of the Commission, assumes any personal liability as a result of this

Agreement. The Parties agree that no legal action may be brought in any state or federal court, or in any other forum, against any individual signatory, Party representative, or staff member participating in this action.

J. Execution

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which, together shall constitute one and the same instrument.

K. Adoption by Commission

This Agreement shall be effective upon its adoption by the Commission.

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IN WITNESS WHEREOF, the Parties have executed this Agreement on
the dates set forth next to their respective signatures as indicated below.

 12/9/96
Cleveland W. Lee Dated

Attorney for Water Division

Donald Clark Dated

Complainant

Roger Forrester Dated

President - Hillview Water Co., Inc.

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Cleveland W. Lee
Attorney for

Dated

Water Division

Donald Clark
Complainant

Dated

Donald Clark

12-9-96

Roger Forrester
President, Hillview Water Co., Inc.

Dated

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12/09/96

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Attorney for Water Division

Donald Clark Dated

Complainant

Roger L. Forrester 12/19/96
Roger Forrester Dated

President - Hillview Water Co., Inc.