

PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298



November 17, 1998

TO: PARTIES OF RECORD IN CASE 98-04-057
DECISION 98-11-039, Mailed 11/17/98

On October 16, 1998, a Presiding Officer's Decision in this proceeding was mailed to all parties. Public Utilities Code Section 1701.2 and Rule 8.2 of the Commission's Rules of Practice and Procedures provide that the Presiding Officer's Decision becomes the decision of the Commission 30 days after its mailing unless an appeal to the Commission or a request for review has been filed.

No timely appeals to the Commission or requests for review have been filed. Therefore, the Presiding Officer's Decision is now the decision of the Commission.

The decision number is shown above.

A handwritten signature in cursive script that reads "Lynn T. Carew".

Lynn T. Carew, Chief
Administrative Law Judge

LTC:sld

Attachment

Decision 98-11-039

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Ronald D. Johnson,

Complainant,

vs.

Big Hill Water Company,

Defendant.

Case 98-04-057
(Filed April 26, 1998)

Marjorie M. Still, for Big Hill Water Company, defendant.

O P I N I O N

Statement of Facts

Mr. And Mrs. A. C. Still took over two noncontiguous water systems from the developer in 1962, and have operated them since. As the consequence of a complaint, by Decision 85935 issued June 8, 1976, the corporate entity formed by the Stills known as Big Hill Water Company (Big Hill), was declared to be a public utility within the jurisdiction of this Commission, and the noncontiguous systems are operated as districts of Big Hill. Our concern here is with the larger of the systems which is located 5 to 10 miles north of Sonora, California near the Columbia State Historical Park.

Ronald D. Johnson (complainant) owns a parcel of land within Big Hill's service territory, and has a mobile home on that parcel which he rents out. The mobile unit is served by Big Hill through a meter on the property.

Complainant has had a succession of tenants, some of whom have moved out without notice or payment to Big Hill. Before August 8, 1996, the account

was in complainant's name and the account was current. However commencing August 8, 1996, the situation materially changed.

On August 8, 1996 the meter reader found tenant York in residence, and York thereupon applied for the service in York's name.

On October 16, 1996, after York left without notice to Big Hill, utility personnel went to the property to disconnect the service, and found new tenants, Price and Woody, in residence. Service was not disconnected, and the account was opened for Price and Woody in their name upon their payment of a \$50.00 deposit. Subsequently, Big Hill was able to collect York's delinquent account.

On January 28, 1997, the meter reader discovered that Price and Woody had left, again without notice to Big Hill, and leaving an unpaid balance due (after deduction of the deposit) of \$209.30. Big Hill disconnected service and removed the meter from the vacant premises. Complainant was informed that thereafter pursuant to PU Code § 2714, service would have to be in his name. He resisted, contending that he was being singled out.

At no time had complainant informed Big Hill of York's tenancy, or of the subsequent tenancy of Price and Woody, or of the termination of either of the two tenancies.

On February 3, 1997, the complainant telephoned to obtain reopening of the service. It was then reopened in complainant's name. Initially complainant paid some of the water bills while he was renting the mobile home unit to a tenant named Anderson during the period March to July, 1997.

By August 1, 1997, complainant's account was overdue \$129.44, leading Big Hill to send its initial notice, followed by a second notice of pending disconnection on August 18, 1997.

As there was no response to the notices, Big Hill disconnected the service for nonpayment on August 21, 1997.

On September 8, 1997, Radovan came to Big Hill stating she was moving into the mobile home unit on September 15, 1997. Radovan stated that the water service was functioning, but did not know who had reconnected the service. Big Hill told Radovan that there would be no further service until complainant paid the current balance of \$178.73 (Big Hill having ascertained the amount of the unauthorized service since the August 21, 1997 disconnect, and added it to the previous unpaid balance owed by complainant). Big Hill refused to accept Radovan's application for service in her name, and the account remained in complainant's name.

On September 18, 1997, complainant paid \$129.44 of his \$178.73 balance, leaving \$48.29 unpaid.

On October 25, 1997, complainant's unpaid balance had reached \$149.90.

On November 16, 1997, Big Hill sent complainant a delinquency notice of the unpaid \$149.90. Since complainant had submitted an informal complaint to the Commission's Consumer Affairs Office on September 18, 1997, it was Big Hill's interpretation of Rule 10 (pertaining to disputed bills) that the utility could not discontinue service for nonpayment so long as the complainant had deposited the contested amount with the Commission pending resolution.

Rule 10 provides that the disputed amount be deposited with the Commission in order to stop service disconnection. Complainant's check deposited with the Commission had been made payable to Big Hill, not to the PUC. Consumer Affairs returned the check for replacement, but complainant did not replace the deposit, nor did complainant deposit additional checks as subsequent monthly bills became due and payable, but were not paid by complainant.¹

¹ Tariff Rule 10 regarding disputed bills, as relevant here, provides:

Footnote continued on next page

On April 26, 1998, complainant, asserting that Consumer Affairs had not responded to his informal complaint, filed the present formal complaint. Johnson asserted that his request for a print-out of his account along with names on the account was not forwarded to him, and stated his belief that the company's records had been altered. He asked that restitution of his payments that were made be ordered: that his account be put in order; and that he be afforded "Equitable Treatment" (sic).

On May 21, 1998, Big Hill filed its answer to the complaint, noting that the Consumer Affairs Office on December 31, 1997 had mailed its decision to Johnson, having concluded that Big Hill was in compliance with the rules and regulations of the Commission. Big Hill countered complainant's assertion in the complaint that he had money on deposit with the Commission, observing that complainant's \$49.29 deposit had been returned to him for redeposit as instructed by the Consumer Affairs Office. Big Hill alleged that the account information complainant stated he requested and did not receive had been sent

Service will not be discontinued for nonpayment of the disputed bill when deposit has been made with the Commission pending the outcome of the Commission's review.

Failure of the customer to make such deposit prior to the expiration of the discontinuance of service notice as given in Rule 10 B.1. will warrant discontinuance of service.

If before completion of the Commission's review, additional bills become due which the customer wishes to dispute, he shall also deposit with the Commission the additional amounts claimed by the utility to be due for such additional bills before they become past due and failure to do so will warrant discontinuance of his service in accordance with Rule 11.

to him on April 22, 1998 by certified mail. A copy of Big Hill's response had been sent to the Consumer Affairs Office.

As of June 26, 1998, the unpaid balance owed by complainant had reached \$733.85, a large sum for this small utility.

The instructions to Big Hill to answer the complaint (a copy of which was also sent to the complainant) assigned the case to Administrative Law Judge (ALJ) John B. Weiss, and categorized the case as "adjudicatory" as that term is defined in Rule 5(b) of the Commission's Rules of Practice and Procedure. The categorization was not appealed.

A Scoping Memo and Ruling of the assigned Commissioner, Commissioner Neeper, designated ALJ Weiss as the presiding officer; affirmed the desirability for hearing; and set that hearing for July 8, 1998. Formal notice of evidentiary hearing was sent to all parties on June 22, 1998, setting the time at 1:00 p.m., July 8, 1998, in the Council Chambers, City Hall in Sonora.

On July 8, 1998, the assigned Commissioner, the ALJ, and a hearing reporter each traveled directly to Sonora and were present for the 1:00 p.m. hearing. At 9:39 a.m., the morning of July 8, 1998, complainant telephoned the Commission Calendar Clerk and stated he would not be attending by reason of an "emergency at work." A similar message was left on the ALJ's telephone monitor although by then the ALJ as well as Commissioner Neeper and the hearing reporter were enroute to Sonora (a three-hour plus trip by auto). A 9:45 a.m. message by telephone to the Town Clerk in the Sonora City Hall providing the same intelligence, was relayed to the ALJ at 12:45 p.m. upon the latter's arrival in Sonora. A telephone call by the ALJ to the claimant's number given to the Town Clerk went unanswered. Defendant's owners, the Stills, arrived before 1:00 p.m. for the hearing.

The nature of complainant's "emergency at work" (complainant is self employed) was not disclosed in any of his telephoned messages, nor has the complainant written to proffer some explanation, although over two months have elapsed since the July 8, 1998 hearing time. Obviously, from his telephone calls made around 9:45 a.m. on July 8, 1998 (well after it was apparent that the ALJ and hearing reporter had to have left for Sonora), almost 3-1/2 hours were available for complainant to have furnished some explanation before the start time of the hearing at 1:00 p.m. Complainant's business is local, and it is difficult to accept that a reasonable person could not have taken the few moments a telephone call following up the earlier call would have entailed to provide a more satisfactory answer to why complainant would not be present. But merely to leave the hearing process in limbo is not acceptable. The hearing resources of the Commission are limited by budgetary constraints, and cannot be so cavalierly treated. The Commissioner, ALJ, and hearing reporter made it their business to journey to Sonora and be there on time. The Stills, owner of Big Hill, made it their business to come in on time and to bring along their records.

The ALJ with the concurrence of the Assigned Commissioner, determined to proceed with the hearing despite the failure of complainant to appear or to have taken more reasonable steps to advise the Commission of the reasons for his absence. Influencing their decision to proceed were the peculiar circumstances giving rise to the complaint in the first instance, and the lack of substance behind them.²

² The case was submitted at the close of hearing, 1:35 p.m., July 8, 1998 (Rule 77 of the Commission's Rules of Practice and Procedure).

Discussion

At the root of complainant's position is his absolute refusal to accept the information provided him both by Big Hill and the Consumer Affairs Office that while a water company may not require an owner or subsequent tenant to pay charges left unpaid by a previous tenant, the water company may require that service to subsequent tenants be furnished on the owner's account. This is the law as set forth by Public Utilities (PU) Code § 2714.³ Dislike of a law is not an adequate reason for noncompliance.

The remaining questions were entirely factual and depended upon the evidence in formal records of the utility pertaining to payments on the various accounts entered for the mobile home unit complainant owns and rents. These original records were produced at the hearing by Mrs. Still, co-owner and secretary of Big Hill, with copies as relevant entered as exhibits during the hearing.

The utility was within its legal rights to require service to complainant's subsequent tenants be furnished to complainant's account after prior default by previous tenant Price-Woody, leaving Big Hill with an uncollectible account. Big Hill has not sought to recover the amount unpaid by that tenant from complainant or subsequent tenants as a condition of further service; it merely

³ PU Code § 2714 states:

"No water corporation furnishing water for residential use to a tenant shall seek to recover any charges or penalties for the furnishing of water to or for the tenant and residential use from any subsequent tenant on account of nonpayment of charges by a previous tenant. The water corporation may, however, require that service to subsequent tenants be furnished on the account of the landlord or property owner."

seeks to make it the responsibility of complainant to pay subsequent accounts himself. It is complainant's responsibility to recover water charges from his tenants.

The record shows that Big Hill on April 22, 1998 sent complainant the account information he requested by certified mail, and that a copy of this correspondence was also furnished to the Consumer Affairs Office. He was not provided copies of the accounts of his two renters as these accounts were not part of his service record and he has not been asked to make up nonpayments incurred under their tenancy. These records are not open to other than the prior renters on the account at that time. Further, Big Hill had no information on Anderson, a renter claimed by complainant but unknown to Big Hill until he complained.

The complainant asked for "equitable treatment." As far as utility records indicate, Pursuant to Section 2711, he has been treated just as any other customer whose tenants skip without payment.

Big Hill has not violated any PU Code section we have been referred to, and has complied with all requests of the Consumer Affairs Office and the Commission prior to and at the hearing on July 8, 1998 in Sonora.

Lastly, complainant failed to comply with the request by Consumer Affairs to resubmit his check for the initial delinquency to avoid discontinuance of service. The instructions to avoid service discontinuance in the instance of disputed bills are on the reverse side of Big Hill's payment notices. In addition, as Tariff Rule 10 C.2 clearly sets forth, if the dispute is not resolved before additional bills covering subsequent billing periods become due, or if disputed, the consumer must deposit subsequent payments with the Commission for each subsequent bill before they become past due, or his service may be discontinued (see footnote 1).

Complainant has received service without disconnection since November 1997 when he submitted his informal complaint to the Commission's Consumer Affairs Office, and apart from the returned \$49.29 has made no payments although his unpaid account now exceeds \$700. This conduct is a gross abuse of the procedure.

Complainant's complaint will be denied, and complainant will be required to immediately arrange a payment schedule to bring his account current within six months, or service will be discontinued.

Findings of Fact

1. Big Hill is a water public utility subject to the jurisdiction, control, and regulation of this Commission.
2. Complainant owns and rents out a residential unit on his property in Big Hill's service area, and that unit receives water service from Big Hill.
3. Prior to August 8, 1996 service to this unit was in complainant's account.
4. Renter York took service as of August 8, 1996 in his name, and left owing payment which was subsequently recovered by Big Hill.
5. Somewhere around October 16, 1996, renters Price-Woody took service in their names, and later left owing Big Hill a net of \$209.30 which was not recovered.
6. Big Hill elected pursuant to PU Code § 2714 as of February 3, 1997 to require that future service to subsequent renters be furnished on complainant's account.
7. Thereafter, complainant's account was paid for part of the time renters were in residence but subsequently became overdue.
8. Applicant Radovan was not accepted for the account on September 8, 1997 and the account was continued in complainant's name, pursuant to PU Code § 2714.

9. Complainant disputed imposition of the PU Code § 2714 status, alleging it is not legal to single him out, and failed to make numerous payments thereafter.

10. Complainant in his disputed bill payment to defer disconnection did not follow the requirement that his check be payable to the Commission.

11. As of June 26, 1998 complainant's account was delinquent in the amount of \$740.22, which amount is now due and payable.

12. An evidentiary hearing to be held in Sonora at 1:00 p.m. on July 8, 1998 was duly noticed on June 22, 1998.

13. Complainant telephoned the Commission after 9:30 a.m. on July 8, 1998, informing the Calendar Clerk that he would not be present at the hearing because of an unspecified "emergency at work." A telephone message containing the same information was left for the ALJ.

14. By the time complainant telephoned, the assigned Commissioner, ALJ, and hearing reporter were enroute to Sonora for the hearing.

15. The defendant was represented and present at 1:00 p.m. for the hearing.

16. The issues to be heard at the hearing were either rooted in complainant's refusal to accept the provisions of PU Code § 2714 or challenged the records of the utility, and were resolvable either as a matter of law or by reference to the actual records of the utility.

17. The ALJ, with the concurrence of the Assigned Commissioner, proceeded with the hearing despite absence of the complainant, entering utility records into the hearing record to dispose of the case.

Conclusions of Law

1. Complainant's presence was not essential to resolution of the issues presented by his complaint.

2. Big Hill acted pursuant to provisions of PU Code § 2714 and its filed tariff in its relations and actions concerning complainant, and violated no law, order, or rule of the Commission in its requirement that the water account be entered and maintained in complainant's name and account as landlord after prior tenants left without notice or payment.

3. Complainant was furnished all account information he was entitled to; and these account records appeared to be in perfect order when inspected at the hearing.

4. The original records of the utility as to water passed through the Company's meter to complainant's rental unit after the account was reinstated in complainant's name, and as to the payments made by complainant show that complainant through the June 26, 1998 billing period, is delinquent in the amount of \$740.22.

5. Complainant should be afforded a limited opportunity to pay the delinquent account, provided he arranges with the utility a payment schedule as set forth in the order that follows, adheres to that schedule, and maintains a current account for subsequent billing periods.

6. Should complainant fail to pay the delinquent account, the utility should discontinue service and proceed in Small Claims Court to obtain payment.

7. Because continuation of the existing nonpayment situation costs this small utility revenues it cannot afford to lose, the order that follows should be made effective the date of issuance.

O R D E R

IT IS ORDERED that:

1. Within 15 days of the effective date of this order Ronald D. Johnson shall arrange with Big Hill a payment schedule for approximate equal monthly payments to be made to liquidate his \$740.22 delinquent account over six month's period to commence on the effective date of this order. Failure to do so, or to make payments after the arrangement is made, or to maintain a current account for billing periods following the June 26, 1998 period, shall permit Big Hill Water Company to immediately discontinue service with no further notice; remove the meter and cap the lateral, continuing that status until all past and present accounts are fully current. Mr. Johnson will be responsible for any reconnection costs.

2. The complaint in Case 98-04-057 is denied.

3. This proceeding is closed.

This order is effective today.

Dated November 17, 1998, at San Francisco, California.