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Decision 99-07-008 July 8, 1999

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Donna Matthews,

Complainant,

v.

Meadows Management Company, a partnership, James K. Kruger and Rondell B. Hanson, its partners and any does of interest, all doing business as Plantation On The Lake Mobilehome Park,

Defendants.

Case 98-08-040
(Filed August 25, 1998)

ORDER OF DISMISSAL

Background

Complainant Donna M. Matthews (Matthews) is a tenant of Plantation on the Lake Mobilehome Park, which is owned by defendant Meadows Management Company (Meadows). Meadows has its own water system, drawing water from wells for distribution to tenants and common use areas. Matthews' complaint alleges that the water rates charged by Meadows and its predecessors since the park opened in 1984 have not been in compliance with mobilehome laws or our rules and regulations; that Meadows did not furnish "true and accurate" figures and facts in two previous complaint proceedings she filed with this Commission; and that Meadows has now violated our rules and regulations by raising its water rates without requesting our authority and providing any justification. She asks that we establish an unspecified flat rate and excess charge in place of the present rates, and that we impose a penalty on

Meadows, consisting of a six-month grace period during which no water charge would be made.

In the two earlier proceedings, Cases (C.) 90-12-035 and 93-07-024, we addressed both the issue of Meadows' regulatory status and the methodology it is using to set its rates. Decision (D.) 91-10-035 in C.90-12-035 concluded that Meadows is not a public utility, because its property is not dedicated to public use. D.92-04-078 modified our order in that proceeding. In the latter decision, we held that Pub. Util. Code § 2705.6, which gives us authority to award rate relief upon complaint by a tenant that a non-utility mobile home park's rates are not just and reasonable, was the means for Matthews to pursue her complaint.

D.97-08-052 in C.93-07-024 concluded in the absence of express statutory guidance that the operating ratio method (ORM) of calculating rates for Class D water companies is an appropriate methodology for Meadows to set rates, as use of ORM would produce rates that are not excessive. D.97-10-068 in that proceeding denied rehearing of the issue, reinforcing our analogy between a small mobilehome park water system such as Meadows and a Class D Commission-regulated water company, which has less than 500 customers.

Based upon the existence of these previous decisions, which involve the same parties and subject matter, Meadows has filed a motion to dismiss the complaint. As grounds for its motion Meadows argues that the principle of res judicata bars this proceeding in the manner in which it is pleaded. However, should any part of the complaint survive the motion, Meadows asks us to limit any evidentiary hearing strictly to the surviving issue(s).

Matthews, a non-attorney, is representing herself in this proceeding. In order to clarify the issues and ensure that she was not at a disadvantage in presenting her position, the assigned Administrative Law Judge (ALJ) held a prehearing conference (PHC) in Calimesa, the location of the mobilehome park in question. More than two hours of discussion ensued, during which the circumstances of this complaint proceeding and all substantive issues were

thoroughly discussed and clarified. (Transcript (Tr.), pp. 6-55.) This exchange afforded Meadows ample opportunity to explain the legal and factual bases for her complaint.

Discussion

75.1.1

Section 241 of the California Public Utilities Code states that every person owning, controlling, operating, or managing any water system for compensation in California is a "water corporation". A water corporation that delivers water to any portion of the public, for which compensation is received, is considered to be a public utility subject to the jurisdiction of this Commission. (Pub. Util. Code § 216(6).) The Commission has broad power to regulate public utilities within its jurisdiction, including water corporations. (See, e.g., Pub. Util. Code § 701.)

Under Pub. Util. Code § 2705.6(a), a mobilehome park that provides water service solely to its tenants from water supplies and facilities that it owns, such as Meadows, is expressly considered *not* to be a "water corporation" under California's utility regulatory law. Such an entity is *only* subject to our jurisdiction under this statute to the extent that, if a tenant complains about the water rates charged or service provided by the mobilehome park, we will determine whether the rates charged are just and reasonable and whether the service provided is adequate. Our jurisdiction with respect to regulating Meadows' conduct is thus narrowly circumscribed by statute.

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In this proceeding, Meadows' rates, and not its service, are under consideration. Matthews claims that the manner by which the rates were set, and the resultant amounts, are unlawful.

Matthews' first contention is that Meadows' rates have not been in compliance with mobilehome laws. We lack jurisdiction to address any such violations, even if the subject matter is within the ambit of those laws. If the defendants have violated those laws, as Matthews asserts, her recourse is to the administrative agency, if any, that is charged with enforcing those laws, or else to a court of competent jurisdiction. We disagree that Meadows' alleged violation

75.1.2

of mobile home law is one of the facts and circumstances we must consider in reviewing the reasonableness of the rates. The two issues are entirely separate.

As to the allegation that Meadows' rates have not been set in compliance with our own rules and regulations, we have already considered how Meadows could set reasonable rates and identified a methodology that we consider to be appropriate. Meadows has raised its rates, as alleged in Matthews' complaint, to levels within the limits allowed under that methodology. Accordingly, those rates are presumed to be reasonable.

As to Matthews' allegation that Meadows failed to give "true and accurate" facts and figures in the two previous proceedings (which she claims is an issue under our Code of Ethics set forth in Commission Rule of Practice and Procedure 1), at the PHC the ALJ probed this contention. As she explained it, Matthews does not claim that Meadows lied in the previous proceedings, but she does contend that Meadows misrepresented its case. (Tr., p. 11.) When pressed to explain the nature of the misrepresentation, Matthews clarified that what she is really challenging is the accuracy of the accounting methodology used by Meadows to present its financial results in the previous proceedings. (Tr. p. 24, 1.2 - p. 27, 1.14; p. 33, 1.21 - p. 34, 1.27; p. 35, 1.18 - p. 38, 1.13.)

A difference of opinion over an accounting methodology does not constitute a basis for pursuing a proceeding under Rule 1. That rule compels persons who appear before us never to mislead the Commission or its staff by an "artifice or false statement of fact or law." Matthews admits that she does not contend Meadows either presented false information or engaged in any act of deception. What she contends is that Meadows' financial statements, as presented in the previous proceedings, misstate the financial picture of the company, because some charges for common-use facility costs are assessed to tenants as part of both rental charges and water rates. This aspect of Meadows' accounting was not concealed from the Commission in the previous proceedings, and the issue of common-use facility costs was expressly considered when we

49.1

reviewed the Commission Advisory and Compliance Division recommendation and concluded that the Class D ratemaking methodology was appropriate for setting just and reasonable rates. If Matthews contends that these charges should not be included in rental rates, she must pursue her claim in a competent forum.

As to Matthews' final allegation, that Meadows has violated Commission rules and regulations by "arbitrarily" raising water rates without "filing with the Commission and giving any figures justifying this raise", the simple answer is that Meadows does not have to seek our approval for the adoption of new rates. As we have already stated, our only jurisdiction is to determine, after the fact and only on the basis of a tenant's complaint, whether a mobilehome park's rates are just and reasonable. We found previously that use of the ORM for Class D water utilities is appropriate for setting for Meadows' rates. *See* D.97-08-052. As the rate increase instituted by Meadows does not even approach the upper limit allowed by that methodology, we will not entertain Matthews' complaint.

What Matthews is contesting is the method used by Meadows to set its rates, and not the reasonableness of the result. That issue was already litigated in C.93-07-024, and is indeed res judicata with respect to the rates at this mobilehome park. Matthews has not advanced a basis for reopening our examination of these rates under Section 2705.6, and we will not do so. No other issue raised by Matthews' complaint can survive Meadows' motion to dismiss. Accordingly, dismissal is appropriate and we will grant the motion.

Comments on Draft Decision

The draft decision of ALJ in this matter was mailed to the parties in accordance with Pub. Util. Code § 311(g) and Rule 77.1 of the Rules of Practice and Procedure. Timely comments were filed by both parties.* No reply comments were filed. Complainant's comments reflect her continuing

* Comments were also offered by Golden State Mobilehome Owners League, Inc., a nonparty, but can not be considered as part of our record.

misunderstanding of the extent of our jurisdiction, and we have not changed our decision in response. We have made a number of nonsubstantive editorial changes to clarify this decision.

Finding of Facts

1. Matthews is a tenant of Plantation on the Lake Mobilehome Park, which is owned by defendant Meadows, a partnership owned by James K. Kruger and Rondell B. Hanson. Plantation on the Lake has its own water system, serving only the tenants and common use areas from its own wells.

2. Matthews has brought this complaint against the previously identified partnership and its individual partners, alleging that the water rates they have charged since 1984 have not been in compliance with mobilehome laws or our rules and regulations; that the defendants did not furnish "true and accurate" figures and facts in two previous complaint proceedings the complainant brought before the Commission; and that the defendants have violated our regulations by raising the park's water rates by 25%, and the cost per cubic foot of water by 42.4%, without requesting authority from this Commission and giving any figures justifying this raise.

3. Matthews has not identified any rules and regulations of this Commission with which the water rates charged by Meadows or its predecessors fail to comply.

4. The allegation in the complaint that Meadows failed to give true and accurate facts and figures in two previous Commission proceedings is actually an allegation that she disagrees with the accounting methodology utilized by Meadows to prepare its evidence in those proceedings, because in her opinion that methodology misstates the financial structure of Meadows.

5. The current rates charged to Matthews and other tenants of Plantation on the Lake Mobilehome Park, as set forth in the complaint, are below the upper limit of the rates which may be charged in accordance with the operating ratio

method of calculating rates for Class D water companies, which was found to be appropriate for Meadows' ratesetting in D.97-08-052.

Conclusions of Law

1. This Commission has no jurisdiction to decide whether the water rates charged to tenants by Meadows are or were in compliance with mobilehome laws.

2. The Commission's methodology for calculating the reasonableness of a mobilehome park's water rates is not prescribed by the Mobilehome Parks Act, the Mobilehome Residency Law, or any other California mobilehome law.

3. Matthews' contention that the accounting methodology Meadows utilized in previous proceedings misstates its financial structure is not actionable under Rule 1 as conduct misleading the Commission or its staff by artifice or false statement.

4. Matthews' allegation that Meadows has violated Commission rules and regulations by raising water rates without filing with the Commission and giving figures justifying this raise does not constitute a proper basis for maintaining a complaint before this Commission under Pub. Util. Code § 1702, because neither statute nor Commission rules and regulations require prior Commission approval of the new rates.

5. Meadows' motion to dismiss should be granted, and C.98-08-040 should be dismissed.

IT IS ORDERED that:

1. The Motion of the defendants, Meadows Management Company, a partnership, James M. Krueger, and Rondell B. Hanson, its partners, for dismissal of the complaint in this proceeding is granted.

C.98-08-040 ALJ/VDR/epg*

2. Case 98-08-040 is dismissed.

This order is effective today.

Dated July 8, 1999, at San Francisco, California.

RICHARD A. BILAS
President
HENRY M. DUQUE
JOSIAH L. NEEPER
JOEL Z. HYATT
CARL W. WOOD
Commissioners