

Howard and Mary Kosofsky v. Tahoe Park Water Company

Decision 91-07-033

Case 91-02-080

— PUR4th —

40 CPUC 2d 749

California Public Utilities Commission

July 24, 1991

ORDER denying complaint but noting allegations of serious misconduct on the part of the defendant.

Before Eckert, president, Wilk, Ohanian, Fessler, and Shumway, commissioners.

BY THE COMMISSION:

OPINION

This complaint is processed under the Commission's Expedited Complaint Procedure pursuant to Rule 13.2 of the Commission's Rules of Practice and Procedure and Public Utilities Code § 1702.1.

The defendant, Tahoe Park Water Company, has approximately 28 metered connections and 464 flat rate customers, according to its 1990 Annual Report to the Commission. The defendant is slowly converting all flat rate customers to water meters. Defendant is adding meters at a rate of approximately three per year.

Complainants' property has a water meter. Complainants contend that it is unfair for them to be charged at a metered rate when others do not have meters and are paying a flat fee. Complainants claim that they are being billed at a higher rate than those without meters. Complainants ask that the utility be ordered to remove the meter until all customers have meters, lower the rates for metered customers, or cut one particularly large bill in half. We have carefully considered the arguments of both parties. We find the complaint to be without merit. The rates for both metered and unmetered customers are just and reasonable. Due to the manner in which we set the defendant's rates in Resolution 3425 (December 9, 1988), if a metered customer is paying more than the flat rate, it is because that customer is consuming more than an average quantity of water. In this instance, the complainants' property is occupied, the grounds are landscaped and watered, and complainants have experienced burst pipes on at least one occasion. Therefore, we conclude that the rates are reasonable and that the charges to complainants are correct. We will not order the meter to be removed. The defendant is moving toward a goal of converting all customers to meters. While it is moving at a pace which is slower than we would prefer, it is moving in the correct direction. To remove complainants' meter, as they suggest, would represent a step backwards. Nonetheless, we are curious that the

defendant has not specified criteria in its tariffs to govern this conversion program. We will ask our Water Branch to look into the matter.

Nor will we adjust the rates for metered customers. A complaint is not the appropriate method to ask the Commission to modify a rate. Under Rule 9 of the Commission's Rules of Practice and Procedure, no complaint regarding rates will be entertained by the Commission unless it is signed by the mayor or legislative body of a city, or by at least 25 actual or prospective customers. Before the complainants may be heard to complain about their rate as a metered customer, they must obtain the signatures of at least 25 customers. (Emphasis supplied)

While we find the initial complaint to be without merit, we are compelled to comment on one additional issue raised by complainants.

In a letter dated May 1, 1991, complainant Howard Kosofsky alleges that David Robertson, owner of the utility, hired a private investigator to research complainants' property and take pictures of the plumbing. According to Kosofsky, Robertson "claimed that after I lost this case, he would sue me for all of the costs that would be incurred during this hearing; those costs to include his time, the investigator's research time, travel time costs, and possibly other incidental costs." Kosofsky further alleges that Robertson stated "that he is going to turn me in the authorities because my plumbing is not up to code." Kosofsky also recites a subsequent conversation in which Robertson allegedly stated "that he did not threaten me with turning me in to different commissions but says he could if he wanted to."

Defendant does not answer the allegation that Robertson has threatened to sue the complainant for costs incurred in this proceeding. Defendant appears to admit the allegations regarding its actions on complainants' property. Defendant attaches to its second answer copies of photographs taken on defendant's property.

If these allegations are true, defendant has engaged in serious misconduct. The purpose of the expedited complaint procedure is to provide a speedy, informal, and inexpensive forum for customer complaints. Obviously, the advantages of this forum are defeated if a customer who files a complaint must fear a retaliatory lawsuit by the utility if the complaint is not successful.

It is reasonable for a defendant to discuss a case with a complainant. It is not reasonable to threaten civil action if the complaint is denied. If defendant has threatened to sue complainant for the mere act of filing a complaint with the Commission, such a threat is a serious abuse of the Commission's process.

We are also troubled by the allegations that defendant hired a private investigator to inspect complainants' property. Tahoe Park Water Company Tariff Rule No. 16 provides that the customer's system should be open for inspection at all reasonable times to authorized representatives of the company. However, to protect the rights of the customers, such inspections by the utility must be narrowly construed. Inspections under

Tariff Rule 16 may be undertaken solely for purposes related to the installation, operation, maintenance, or removal of service. Obviously, such inspections should not be conducted for the purpose of collecting information to be reported to other government agencies.

In summary, if complainants' allegations are true, defendant's conduct has unnecessarily escalated a simple, informal complaint into a major controversy. Contrary to the defendant's assertion, the complainants did not "attack the utility." They merely filed a complaint regarding a situation which they believed to be unfair. They have a right, under State law, to file such complaints and to have the complaint considered by the Commission. While not all complaints may have merit, that is a matter for the Commission to decide, not the defendant. The Commission will not tolerate acts by a utility which are intended to coerce a customer into dropping a complaint. We advise the defendant that if we receive any future complaints by customers alleging that the defendant has engaged in threatening or coercive tactics, such as reported in this case, we will order a thorough investigation of the defendant's conduct.

ORDER

IT IS ORDERED that the complaint is denied. All amounts placed on deposit with the Commission by the complainants shall be forwarded to the defendant.

This order is effective today.

Dated July 24, 1991, at San Francisco, California.

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