

Decision PROPOSED DECISION OF ALJ VIETH (Mailed 4/17/15)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Randy and Laura Kyt, dba Friends of the Valley
Thrift & Gift,

Complainants,

vs.

California Water Service Company (U60W),

Defendant.

(ECP)

Case 14-10-012

(Filed October 16, 2014)

Randy Kyt and Laura Kyt, Complainants
Chris Whitley for California Water Service
Company, Defendant

ORDER DENYING COMPLAINT

Summary

The complaint should be denied, as complainants have not met their burden of proof. On balance, complainants have not established that the anomalous water bill they received for the period April to May 2014 was the result of a faulty meter or erroneous meter reading, or that the meter tests were inaccurate. The most plausible explanation, given all of the evidence, is that the cause of the water loss was an undetected leak in the line that led under asphalt to the garage.

1. Procedural History

Randy and Laura Kyt (the Kyts) filed this complaint on October 16, 2014, under the California Public Utilities Commission's (Commission) Expedited Complaint Procedure (ECP). The Commission's Docket Office filed the Instructions to Answer/Hearing Notice on November 7, 2014, and served that document on both parties by e-mail. The same day, California Water Service Company (CWS) returned a Notice and Acknowledgment of Receipt for filing. Hearing was set for December 3, 2014, at 2:00 p.m. at the Greater Bakersfield Chamber of Commerce in Bakersfield, California. Chris Whitely, Local Manager for CWS, appeared for the water utility but neither Randy nor Laura Kyt appeared. In the next two weeks, each party contacted the assigned Administrative Law Judge (ALJ) by telephone and each made a procedural inquiry by voicemail, CWS on December 11, 2014, and Randy Kyt on December 16, 2014. On December 17, 2014, the ALJ issued an e-mail ruling to address both procedural inquiries.

The CWS voicemail requested leave to correct and then file late, its answer. Though timely tendered for filing, the Commission's Docket Office had rejected the answer because an attorney for CWS had executed it, contrary to Public Utilities Code Section 1702.1 and Rule 4.5 of the Commission Rules of Practice and Procedure (Rules), which provide that under the ECP, no attorney at law may represent any party other than himself/herself. The ALJ's December 17 e-mail ruling authorizes CWS to make the correction and to file no later than December 23, 2014 (CWS filed on December 22).

Randy Kyt's voicemail stated that the Kyts had received no notice of the December 3 hearing and asked how they might reschedule the hearing. The ALJ's December 17 e-mail ruling recounts the circumstances of the

Docket Office's electronic service pursuant to Rule 1.10, but authorizes the Kyts, no later than December 23, 2014, to "send me an e-mail response, and copy defendant to explain why an e-mail sent to [the Kyts' e-mail address] did not provide effective notice." (ALJ e-mail ruling, December 17, 2014.)

Randy Kyt responded by e-mail the same day, stating: (1) he could not find the Commission's hearing notice, and (2) "when our complaint was filed we did not choose the option to receive electronic mail notice." The ALJ's December 18, 2014, e-mail ruling confirms that the Kyts' complaint does not elect e-mail service; the ruling provides:

I have confirmed with the Commission's Docket Office, which processed the complaint, that complainants did not supply an e-mail address in the ECP complaint form at Section I, which is the optional election for e-mail service, but rather, left Section I blank. The Docket Office subsequently obtained an e-mail address for complainants and sent instructions to answer and hearing information, together with other documents, to defendant and complainants. The e-mail did not bounce back. However, because complainants did not actively elect e-mail service, I will reset hearing in this matter for January 2015 at a date and time to be determined. I will conduct the hearing by telephone and the Commission will provide a toll free call in number. (ALJ E-mail Ruling, December 18, 2014.)

The December 18 e-mail ruling also directs the parties to meet and confer to select a common date and time for the telephonic hearing among the alternative dates supplied by the ALJ and requires each party to send any documentary evidence to the ALJ and to the other party, by mail, no later than January 6, 2015. On January 8, 2015, the Commission set a telephonic hearing for January 20, 2015, as the parties had agreed.

2. Statement of Facts

The Kyts' dispute the CWS water bill for service from April 5, 2014 – May 2, 2014, for their small business, Friends of the Valley Thrift and Gift, located in Wofford Heights, California.

2.1. Undisputed Facts

The pleadings set out the following undisputed facts. CWS billed the Kyts \$1,357.55 for metered usage of 174 hundred cubic feet (Ccf) of water at their business address during the period April 5, 2014 – May 2, 2014. This quantity is approximately 130,000 gallons of water. The Kyts' complaint includes copies of their CWS bills for the month prior to this period and for several months afterward. Like the disputed bill, these bills all include a service charge for a 5/8" meter. However, these bills show much lower metered usage of 0 to 2 Ccf per month; the highest bill among them is for \$49.87. CWS read the Kyts' meter again onsite before replacing it and, on May 22, 2014, sent the original meter (a multi-jet) to San Jose Water Company's labs for testing. The meter test results reported a composite accuracy of 101.72%. CWS provided the meter test results to the Kyts. The Kyts continued to dispute the bill, contending that they did not use – and could not have used -- the quantity of water for which they were billed for the April to May 2014 period.

CWS' answer concedes the disputed bill was unusually high but states: "174 Ccf amounts to a water loss of just 3 gallons per minute for 30 days, and a 5/8" by 3/4" meter can flow up to 18 to 20 gallons per minute. Even a slow drip from a water faucet can waste as much as 450 gallons per month." (Answer at 2.) When a customer has an unusually high water bill attributable to an unexplained water loss, however, CWS typically provides a courtesy credit, and on August 21, 2014, CWS applied a \$645.59 credit to the Kyts' account. CWS also

offered the Kyts a payment plan of \$25/month to clear the balance, which they have been following.

2.2. Hearing Testimony

At the hearing, both Randy and Laura Kyt testified on behalf of themselves. Chris Whitely (Whitely) testified on behalf of CWS, as did Geoff Hawkins (Hawkins), a CWS meter reader.

The Kyts' oral testimony largely reiterated the contentions set forth in their complaint and relied on three letters/statements they submitted prior to hearing in accordance with the ALJ's directions. In summary, the Kyts testified that the 174 Ccf was an anomaly they could not explain. They stated that during the April to May 2014 period they had yet to open Friends of the Valley Thrift and Gift for business. They had other jobs and were only at the business premises when they had time to prepare the site for the opening they planned during the late 2014 holiday period. While at the site, they used little water, which the other bills attached to the complaint demonstrate.

The Kyts described the following water infrastructure at the site at the time of the leak. An above ground PVC irrigation system connected to a timer watered three trees at the front of the property once a week and there were two external faucets, one at the back of the building and one in a storage area. They stated they had seen no sign of a leak or septic system overflow and, in response to a question from the ALJ, stated water theft of the quantity in dispute would have required human activity onsite that would not have gone unnoticed. They questioned whether the meter was faulty, whether the meter tests were accurate and whether human error in reading the meter could be at fault.

In support of their testimony, the Kyts offered the following as documentary evidences:

- A letter dated January 6, 2015, addressed to the ALJ and executed by both of the Kyts. This letter restates the basic contentions of the complaint and observes that the water loss is larger than the 10,000 gallons required to fill the swimming pool at their home. The letter also raises a separate billing issue (usage of 8 Ccf during the period December 6, 2013 to January 8, 2014), which is not raised in the complaint and is not at issue here. We identify the letter and receive it in evidence as Complainants' Exhibit (Ex.) 1.
- A letter dated January 5, 2015, executed by OJ Atchison, the landlord of the Kyts' business property. This letter states that there have been no plumbing problems on the site and that no water connections onsite would permit transfer over a three-week period of the amount of water at issue. The letter opines that some kind of meter issue likely was responsible. We identify the letter and receive it in evidence as Complainants' Ex. 2.
- A written statement on General Plumbing letterhead, undated and unexecuted but bearing the name John Stivers (in print). The statement reports that on December 31, 2014, General Plumbing performed a leak inspection and found no signs of running water or previous water damage from leakage. We identify the letter and receive it in evidence as Complainants' Ex. 3.
- The Kyts' CWS bill for \$94.29 for 8 Ccf of water during the service period 12/5/13 - 1/8/2014. This is the separate billing issue referred to in the January 6, 2014, letter (above). We identify the letter and receive it in evidence as Complainants' Ex. 4.

CWS' witness Hawkins testified that on May 1, 2014, he read the Kyts' meter for the April to May 2014 period, immediately recognized the high reading likely represented an active leak, and called the CWS office. Hawkins stated that

he shut off the water and met the customer on the premises. In response to the ALJ's questions, Hawkins explained that he observed an additional water line that led from the main building to a long garage located at a somewhat lower elevation on the site. This water line passed under asphalt. With the water on and the separate valve to this line closed, the meter registered normally; with the valve open, the meter showed a continuing high flow. Hawkins also testified that a leak at a lower elevation – and under asphalt -- could quickly drain a large quantity of water, particularly through gopher holes or other subterranean crevices.

The Kyts then clarified that they did not use the garage for their business and that another individual used it for vehicle storage. They confirmed, however, that they have the only water service account on the property and have no agreement with the garage tenant or the landlord to share the water bill. Randy Kyt also testified that he did not recall ever turning off the valve to the line that runs toward the garage and stated that he thought the valve was open at present, though he was not sure.

Whitely testified to questions from the ALJ, about the meter tests. He explained the meter report attached to the complaint shows the results of four tests. These tests measured accuracy at four different flows – 15 gallons per minute (gpm), 1 gpm, 0.25 gpm and 0.50 gpm. The tests compare the actual rate of flow (in Ccf) of a known volume of water against the measured rate of flow; the composite accuracy of the tests indicates the average accuracy of the meter. CWS calculated the composite accuracy at 101.72%, which Whitely contended, is within the 2% deviation the Commission allows.

CWS submitted no documentary evidence.

3. Discussion

Complainants bear the burden of proof in an ECP, as in any adjudicatory proceeding and the standard of proof is the preponderance of the evidence. (See Decision 07-01-027, *Bee Sweet Citrus, Inc. v. Southern California Edison Company*, 2007 Cal. PUC LEXIS 73, *14, quoting *Sargent Fletcher Inc. v. Able Corp.* (2003) 110 CA 4th 1658, 1667 and other authority.) The Kyts have not met that burden here. Though the Kyts credibly testified that they had not actually used 174 Ccf of water during the April to May 2014 period and found no signs of leaks or septic system overflow, etc., their hypotheses that the meter was faulty, the meter test were inaccurate or, the meter reading erroneous, are unpersuasive given the evidence put forward by CWS, which the Kyts did not rebut.

First, CWS performed multiple meter tests. The Commission's General Order (GO) 103-A, entitled Rules Governing Water Service, Including Minimum Standards for Operation, Maintenance, Design and Construction, governs such meter tests. The GO's Section IV.3, Accuracy Requirement of Water Meters, endorses the nationally-recognized specifications set out in another document, the American Water Works Association Manual M6.¹ The composite test result for the Kyts' meter, 101.72%, is a weighted average of the four tests performed.

Second, CWS read the meter a second time before removing it for testing and the second reading confirmed the first reading by CWS' witness Hawkins on

¹ See Water Meters-Selection, Installation, Testing, and Maintenance, Manual of Water Supply Practices, M6, fourth edition, AWWA, 1999. M6 reports: "Meters have an inherent variation of 2 to 3 % in registration over the entire range of flows, except very low flows just above those the meter will not register." (M6 at 48.) Test flow accuracy for multi-jet (and other identified) meters typically "is the algebraic sum of 15% of the low flow results, 70% of the intermediate flow results, and 15% of the maximum flow results." (*Id.*) Table 5-1 lists the accuracy limits for multi-jet meters and others; the normal test flow rates for a multi-jet meter are 96-102%; the minimum test flow rates for a multi-jet meter are 80-102%. (*Id.* at 49.)

May 1, 2014. Moreover, the Kyts failed to rebut Hawkins credible testimony that the meter stopped measuring water flow when he turned off the valve to the external water line that ran under the asphalt to the garage. We agree that 174 Ccf is a considerable quantity of water, but as CWS' answer points out, such a quantity could easily be lost from the Kyts' service connection. Moreover, a significant water loss from a broken pipe under asphalt and on a downward slope could be undetected, depending upon the terrain; the Kyts have not shown otherwise. While we have no reason to question the veracity of the statement from General Plumbing, an inspection six months after the service period in dispute carries little weight. The most plausible explanation for the water loss, given all of the evidence, is a leak in the line that ran under the asphalt toward the garage.

The complaint should be denied.

4. Comment Period

The proposed decision in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under rule 14.3 of the Rules. No comments were filed.

5. Assignment of Proceeding

Carla J. Peterman is the assigned Commissioner and Jean Vieth is the assigned ALJ in this proceeding.

O R D E R

IT IS ORDERED that:

1. The Complaint is denied.
2. Randy Kyt and Laura Kyt must pay the balance due on the bill from California Water Service Company (CWS) for the period April 5, 2014 - May 2, 2014, as adjusted by the CWS credit of \$645.59 and in accordance with the CWS payment plan of \$25 per month.
3. Randy Kyt and Laura Kyt's Exhibits 1 through 4, inclusive, are received in evidence.
4. Case 14-10-012 is closed.

This order is effective today.

Dated _____, at San Francisco, California.