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Decision 18-09-023 September 13, 2018

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Robert Bettencourt, Jr., Complainant, vs. Sierra Park Water Company (U440W), Defendant.	(ECP) Case 17-03-014 (Filed October 20, 2017)

ORDER DENYING REHEARING OF DECISION (D.) 17-09-004

I. INTRODUCTION

In this Order, we dispose of the application for rehearing of Decision (D.) 17-09-004 (or "Decision"),[1] filed by Mr. Robert Bettencourt, Jr. ("Mr. Bettencourt.") The Decision denied Mr. Bettencourt's complaint against Sierra Park Water Company ("Sierra Park") for alleged unlawful water service charges to a vacant lot owned by Mr. Bettencourt within Sierra Park's water service territory.

We have carefully considered the arguments raised in the rehearing application, and are of the opinion that good cause has not been established to grant rehearing. Accordingly, the application for rehearing of D.17-09-004 is denied because no legal error has been shown.

[1] All citations to Commission decisions after July 2000 are to the official pdf versions which are available on the Commission's website at: http://docs.cpuc.ca.gov/DecisionsSearchForm.aspx.

II. BACKGROUND

A. Procedural history

On January 28, 2016, the Commission issued D.16-01-047,[2] granting a Certificate of Public Convenience and Necessity to Sierra Park to offer retail water service to a rural community located in Long Barn, California. The Decision ordered Sierra Park to file a Tier 1 Advice Letter, adopting, among other things, yearly per-lot revenue requirements and service charges, i.e., fees, in accordance with the recommendations set forth in a report issued by the Commission's Division of Water and Audits ("DWA Report.")[3] (D.16-01-047 at pp. 37-38.)

The DWA Report recommended Sierra Park's fees and revenue requirements as follows:

> Executive Summary
>
> [T]he Division of Water and Audits Staff (Staff) finds that:
>
> Going forward, [Sierra Park's] water service charge amount for each lot should be reduced to conform to the revenue requirements…. The annual per lot revenue requirement for FY 2014, 2015, and 2016 [are] $524, $655, and $545, respectively.

(DWA Report at pp. 4, 27.)

On April 4, 2016, Sierra Park filed its Tier 1 Advice Letter for Commission approval. In its rates tariff,[4] Sierra Park proposed annual fees to match the recommended annual per-lot revenue requirements in the amount of $655 and $545 for fiscal years 2015 and 2016, respectively.[5] By disposition letter dated June 1, 2016 ("Disposition Letter"),[6]

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[2] *In the Matter of Application of Odd Fellows Sierra Recreation Association, a California Corporation, and Sierra Park Water Company, Inc., a California Corporation, for Certificate of Public Convenience and Necessity to Operate a Public Utility Water System Near Long Barn, Tuolumne County, California and to Establish Rates for Service and for Sierra Park Water Company, Inc. to Issue Stock* [D.16-01-047] (2016).

[3] See D.16-01-047.

[4] Tariff Schedule 2RA, *infra*.

[5] Tariff Schedule 2RA did not include fees for years prior to 2015.

the Commission approved Sierra Park's Advice Letter, finding that its terms complied with the requirements of D.16-01-047.

B. Mr. Bettencourt's complaint

Rehearing applicant, Robert Bettencourt, Jr. ("Mr. Bettencourt") owns two lots within Sierra Park's water service territory. Mr. Bettencourt resides and receives water service on one lot, referred to as lot 14.093. Mr. Bettencourt's second lot, lot 14.094, is vacant and does not receive water service. Sierra Park charges Mr. Bettencourt its annual fee for both lots.

In 2016, Mr. Bettencourt filed an informal complaint with the Commission's Consumer Affairs Branch ("CAB"), disputing Sierra Park's charges to his vacant lot. Mr. Bettencourt complained that Sierra Park's annual fee did not apply to his vacant lot, as the lot did not receive water service, and, for that matter, lacked piping or any other connection to Sierra Park's water distribution system that would allow for potential water usage. Mr. Bettencourt also argued that, even if the lot qualified for the fee, he had requested to discontinue all water service to the lot, and, as a result, subsequent application of the fee was not justified.

On November 15, 2016, CAB denied Mr. Bettencourt's complaint, finding that Sierra Park had not violated any rules or regulations of the Commission, and that it had applied its fee to Mr. Bettencourt's vacant lot in compliance with D.16-01-047. CAB also impounded Mr. Bettencourt's overdue fees in the amount of $1,375, which was to be distributed by subsequent Commission decision.

On March 29, 2017, Mr. Bettencourt filed a formal complaint with the Commission, continuing to dispute the charges to his vacant lot. The Commission heard the matter under its Expedited Complaint Procedure. (Pub. Util. Code, § 1702.1.)[7] On

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(*footnote continued from the previous page*)

[6] The Disposition Letter is available at: http://sierraparkwater.com/wp-content/uploads/2016/06/SPWC-AL-1-Letter-of-disposition.pdf.

[7] Subsequent section references are to the Public Utilities Code unless otherwise indicated.

September 20, 2017, the Commission issued D.17-09-004, denying Mr. Bettencourt's complaint. In its decision, the Commission explained that, because Sierra Park's revenue requirement was calculated on an annual, per-lot basis, it was the intention of D.16-01-047 that all lots within Sierra Park's service territory, including vacant lots, lots not connected to Sierra Park's distribution system, and lots with discontinued service, would be charged a matching annual fee. (D.17-09-004 at p. 5.) As a result, the Commission ordered CAB to surrender the impounded funds to Sierra Park as payment for Mr. Bettencourt's overdue fees. (D.17-09-004 at p. 8.)

On October 20, 2017, Mr. Bettencourt filed a timely application for rehearing of D.17-09-004. Sierra Park filed a response to the rehearing application.

III. DISCUSSION

The essence of this dispute is Mr. Bettencourt's assertion, and Sierra Park's denial, that Sierra Park has engaged in unlawful billing of Mr. Bettencourt's vacant lot. The parties' briefs present markedly different interpretations of the terms of Sierra Park's tariffs that impact the applicability of its fees.

For the reasons that follow, we deny Mr. Bettencourt's rehearing application, because the Commission's determination that Sierra Park's annual fee applies to Mr. Bettencourt's vacant lot does not constitute legal error.

A. The Commission properly determined that Sierra Park's annual fee applies to Mr. Bettencourt's vacant lot.

In his rehearing application, Mr. Bettencourt first argues that the Commission erred in finding that Sierra Park's annual fee applies to vacant lots within its service territory because such lots do not satisfy certain prerequisites to billing established in Sierra Park's rates tariff, which states, in pertinent part:

Schedule No. 2RA
Annual Residential Flat Rate Service

RATES:

Service Charge	**Per Service Connection Per Year**
For a single family residential unit and unimproved vacant lots:	
For Fiscal Year 2015 (June 1, 2015 through May 31, 2016):	$655.00
For Fiscal Year 2016 (June 2016 through May 31, 2016) and beyond:	$545.00
For discontinuing service for merged lots:	$300.00

Based on this language, Mr. Bettencourt argues that Sierra Park's annual fee cannot apply to his vacant lot because he has neither water service nor a "service connection" on the lot. (Rhrg. App. at pp. 5-7 & 11.)

It is not disputed that Mr. Bettencourt does not have water service to his vacant lot. Thus, the dispute surrounding the applicability of Sierra Park's annual fee stems from the "problem term" in Tariff Schedule 2RA, namely, the term "service connection." Mr. Bettencourt argues that a service connection does not exist on a given lot unless a customer connects his or her own materials to Sierra Park's facilities. To support his argument, Mr. Bettencourt cites the definition of "service connection" in Sierra Park's Tariff Rule 1 ("Definitions") as:

> The point of the customer's piping or ditch with the meter, service pipe, or ditch owned by the utility.

(Rhrg. App. at pp. 5-6 & 11.)

Mr. Bettencourt argues that, because his vacant lot has no "piping or ditch," one of the two factors required to establish a valid service connection under Tariff Rule 1 is missing, and that, as a result, the fee, administered "per service connection," does not apply.

Disputing these allegations, Sierra Park argues that a customer's decision not to connect to its facilities is not a determining factor in the existence or nonexistence

of a billable service connection. Sierra Park contends that the rule governing the creation of a service connection is provided in Tariff Rule 16, which states, in relevant part:

> **Rule No. 16 – Service Connections, Meters, and Customer's Facilities**
>
> **A. General**
>
> **1. Utility's responsibility**
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> a. [T]he utility will furnish and install the service pipe, curb stop, meter, and meter box at its own expense for the purpose of connecting its distribution system to the customer's piping ... [t]he *service connection*, *curb stop*, meter, and meter box will be installed at a convenient place between the property line and the curb, or inside the customer's property line where necessary….
>
> b. The *service connection* will determine the point of delivery of water service to the customer.

(Emphasis added.)

Based on this language, Sierra Park argues that the establishment of a service connection is focused on the utility's conduct, not the property owner's. According to Sierra Park, as long as it has completed all necessary actions under Tariff Rule 16(A)(1)(a)-(b), a service connection exists, and a customer's failure to act, i.e., connect to its system,[8] does not prevent billing under Tariff Schedule 2RA. (Response at pp. 2-3.) In this case, Sierra Park argues that, after installing a curb stop on Mr. Bettencourt's vacant lot, it had performed all actions necessary under Tariff Rule 16

[8] Under Tariff Rule 16(A)(2), the customer must furnish and connect the following materials establish water service:

> **2. Customer's Responsibility**
>
> a. Condition Precedent to Receiving Service: The customer as a condition precedent to receiving service shall:
>
> (1) Furnish and lay the necessary piping to make the connection from the service connection to the place of consumption…
>
> (2) Provide a main valve on the piping between the service connection and the point of customer use.

to complete the service connection. Mr. Bettencourt, disagreeing with this statement, instead argues that "a curb stop is simply a point for a present or future service connection to be made." (Rhrg. App. at p. 10.)

In D.17-09-004, the Commission rejected Mr. Bettencourt's argument that he did not have a billable service connection because he had not connected to Sierra Park's facilities. The Commission explained that, "D.16-01-047 mandates that Sierra Park charge a flat yearly fee for each lot within the service territory," and that "[n]othing in D.16-01-047…mandates that Mr. Bettencourt put down pipes and/or a valve before he can be charged for service." (D.17-09-004 at p. 7.) The Commission also rejected Mr. Bettencourt's argument that a curb stop did not represent a valid service connection on his vacant lot, finding that "Tariff Rule No. 16 among other things, mandates that Sierra Park must in this case install a curb stop…and pursuant to the requirements set forth in D.16-01-047, each lot that has a curb stop will be charged a flat fee per year." (D.17-09-004 at p. 7.)

Upon review, we did not err by rejecting Mr. Bettencourt's various interpretations of what constitutes a billable "service connection" under Sierra Park's tariffs, and in finding that a billable service connection exists on his vacant lot.

We believe that Mr. Bettencourt's interpretation is incorrect because it is limited to an isolated reading of the term as set forth in Sierra Park's Tariff Rule 1. However, it is a commonly recognized principle that the terms of a tariff should be read in context with other pertinent provisions thereof. (*Forecast Group, L.P., Forecast Homes of California, Inc., K. Hovnanian Forecast Homes Northern California, Inc., K. Hovnanian Homes Northern California, Inc., and K. Hovnanian Communities, Inc. v. Pacific Gas and Electric Company* [D.15-06-045] (2015) at p. 24 (slip op.) ["different [tariff] provisions relating to the same subject matter must be harmonized to the extent possible."].) Here, a reading of Tariff Rule 1 in context with the more complete description of Sierra Park's responsibilities under Tariff Rule 16(A)(1) reasonably supports a finding that the responsibility to establish a service connection is vested solely with the utility, and does not require any action, i.e., connection, on the part of the

customer.[9] As a result, we were correct in rejecting Mr. Bettencourt's argument that the existence of a billable service connection is predicated on a customer's decision to connect to Sierra Park's distribution system. (D.17-09-004 at p. 7.)

Furthermore, contrary to Mr. Bettencourt's position, we did not incorrectly read into Tariff Rule 16 that each lot with a curb stop will be billed as a service connection. As just noted, it is the utility's responsibility to install a service connection by completing all necessary actions under Tariff Rule 16(A)(1). It is not disputed that Sierra Park has installed a curb stop on Mr. Bettencourt's vacant lot. Mr. Bettencourt does not explain what additional actions Sierra Park was required to take on his lot to satisfy its responsibilities under Tariff Rule 16. As a result, we correctly found that the curb stop represents the billable service connection on Mr. Bettencourt's vacant lot.[10] Based on the foregoing, rehearing on these issues is denied.

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[9] This interpretation of "service connection" is consistent with prior Commission interpretations thereof. (*Fisch v. Garrapata Water Company, Inc.* ("*Garrapata*") [D.01-04-013] (2001).) In *Garrapata*, the Commission addressed an identically-worded Tariff Rule 16, and found that, under subdivision 16(A)(1), it was the utility's responsibility to install service connections, whereas under subdivision 16(A)(2), it was the customer's responsibility to connect his or her piping to the service connection. (*Id*. at pp. 11 & 14, emphasis added ["Garrapata's Tariff Rule 16…governs the *respective responsibilities* of the utility and customer for installation and maintenance of portions of the water system….Tariff Rule 16.A.1[] governs utility responsibilities with respect to establishment of a service connection, and 16.A.2.a. and 16.A.2.b. govern customer responsibilities."]; see also *Wyrick v. Citizens Utilities Company of California and Subsidiary Company Guerneville Water District* [D.84-02-065] (1984) at p. 4 (slip op.), 14 Cal.P.U.C.2d 373 [full decision not published.] [Under Commission General Order 103, a "service connection fee" concerned charges for installation of a utility's distribution facilities, as opposed to "charges for water itself or establishing service."].)

[10] Mr. Bettencourt's interpretation, e.g., to exempt vacant lots containing utility-installed service connections from Sierra Park's annual fee, could impose serious risks to Sierra Park's financial integrity and to customers. Out of the 364 lots currently within Sierra Park's service territory, over 50 are vacant and/or without water service. (DWA Report at p. 25.) To interpret the term in a manner that would exempt such a significant number of lots from Sierra Park's annual fee could deprive Sierra Park of sufficient capital to cover not only the costs of installing its service connections, but also to maintain readiness to serve. (See Pub. Util. Code, § 701.10, subd. (a) ["rates and charges established by the commission for water service provided by water corporations shall…provide revenues and earnings sufficient to afford the utility an opportunity to earn a reasonable return…and to ensure the financial integrity of the utility."].) As a result, our interpretation of the term "service connection" is a reasonable one that ensures Sierra Park's successful operation, a benefit that extends to all lots within Sierra Park's service territory, including Mr. Bettencourt's.

B. The Commission properly rejected Mr. Bettencourt's argument that his request to discontinue water service to his vacant lot barred application of Sierra Park's annual fee.

In his rehearing application, Mr. Bettencourt also argues that, even if a billable service connection existed on his vacant lot, his request to discontinue water service to the lot barred subsequent application of the fee, pursuant to the terms of Sierra Park's Tariff Rule 11. (Rhrg. App. at p. 11.) Sierra Park's Tariff Rule 11 states, in pertinent part:

> A customer may have service discontinued by giving not less than two days' advance notice thereof to the utility. Charges for service may be required to be paid until the requested date of discontinuance or such later date as will provide not less than the required two days' advance notice.

(Tariff Rule 11, subd. (A)(1).)

In D.17-09-004, we rejected Mr. Bettencourt's argument, finding that "[n]othing in Tariff Rule No. 11 gives Mr. Bettencourt the ability to simply request a service disconnection and therefore avoid the yearly billing." (D.17-09-004 at p. 7.) The Commission explained that, under Sierra Park's current rates tariff, Tariff Schedule 2RA, the only way for Mr. Bettencourt to avoid the annual fee on his vacant lot was to merge the lot with his residential lot, which, pursuant to Tariff Schedule 2RA, would cost Mr. Bettencourt a one-time fee of $300. (D.17-09-004 at pp. 6-7; Tariff Schedule 2RA, *supra*.)

In his rehearing application, Mr. Bettencourt simply reiterates his previous position, and asks us to reconsider the issue to reach a different conclusion. (Rhrg. App. at p. 8.) However, the purpose of a rehearing application is to alert the Commission to legal error, not to relitigate issues already determined by the Commission. (Pub. Util. Code, § 1732; Cal. Code Regs., tit. 20, § 16.1, subd. (c).) Mr. Bettencourt may disagree with the Commission's interpretation of Tariff Rule 11, however, disagreement does not establish legal error. (*ARCO Products Company, Mobil Oil Corporation and Texaco Refining and Marketing, Inc. v. Santa Fe Pacific Pipeline, L.P. -- Order Granting*

Limited Rehearing and Modifying Decision (D.) 11-05-045, and Denying Rehearing As To All Other Issues, As Modified [D.12-03-026] (2012) at p. 8 (slip op.) ["disagreement does not constitute legal error on the part of the Commission."]; *Melkonian v. Pacific Gas and Electric Company* [D.97-07-068] (1997) at p. 2 (slip op.) ["[r]earguing the allegations of the complaint…does not articulate any legal error in our decision as required by Section 1732…"].)

Additionally, it is not legal error for the Commission to adopt an interpretation of a tariff that differs from an interpretation proposed by a party. We have authority to do so unless the interpretation "fails to bear a reasonable relation to [the] purpose and language" of the tariff. (See, e.g., *Order Instituting Rulemaking to Integrate Procurement Policies and Consider Long-Term Procurement Plans -- Order Modifying Decision (D.) 06-07-029 and Denying Rehearing of Decision as Modified* [D.07-11-051] (2007) at p. 15.)

Here, the Decision's interpretation of Tariff Rule 11 bears a reasonable relation to the overall purpose of Sierra Park's tariffs. It is true that, under Tariff Rule 11, a customer may request to discontinue water service to his or her lot. However, to provide the "out" from Sierra Park's fees that Mr. Bettencourt seeks through Tariff Rule 11 could result in a drastic loss in revenue for Sierra Park, rendering it unable to provide safe and reliable water service to the Long Barn community. We have long preferred measured, i.e., metered, water service to flat rate service;[11] however, when dealing with a rural, resort-type water utility such as Sierra Park, a flat rate tariff may be necessary for the utility to earn a fair return and to ensure that the product is readily available when the tap is turned on. (See D.16-01-047 at p. 15, quoting Pub. Util. Code, § 701.10.)[12] As noted above, at this time, Sierra Park has only 364 lots within its service

[11] See, e.g., *Schultz v. Cuyamaca Water Company* [D.86163] (1975) at p. 6 (slip op.), 80 Cal.P.U.C.2d 239, 243 ["The Commission has long been of the opinion that a measured service is the only proper one. By this means charges are equitably distributed among customers according to usage, extravagance in use is reduced to a minimum and water is conserved." (Citation omitted.).]

[12] Section 701.10 states, in pertinent part:

(*footnote continued on the next page*)

territory, over 50 of which are vacant and/or without water service. (DWA Report at p. 25.) Under these circumstances, the flat fee is currently the simplest way for Sierra Park to achieve financial stability to operate as a viable water utility.[13]

Based on the foregoing, the Commission's decision to reject Mr. Bettencourt's interpretation of Tariff Rule 11 does not constitute legal error. Therefore, rehearing on this issue is denied.

IV. CONCLUSION

For the reasons stated above, good cause does not exist for the granting of rehearing. Accordingly, rehearing of D.17-09-004 is denied.

THEREFORE, IT IS ORDERED that:

1. Rehearing of D.17-09-004 is denied.

2. Case (C.) 17-03-014 is closed.

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(*footnote continued from the previous page*)

> The policy of the State of California is that rates and charges established by the commission for water service provided by water corporations shall do all of the following:
>
> (a) Provide revenues and earnings sufficient to afford the utility an opportunity to earn a reasonable return on its used and useful investment, to attract capital for investment on reasonable terms and to ensure the financial integrity of the utility.

[13] In D.16-01-047, the Commission ordered Sierra Park to develop a schedule for converting its unmetered service connections to metered connections. (D.16-01-047 at p. 37; DWA Report at p. 4.) While Sierra Park's flat fee would then give way to a quantity charge, Sierra Park might still be required to charge a basic, per-lot fee to cover constant costs, such as the cost of standby readiness to serve.

This order is effective today.

Dated September 13, 2018, at San Francisco, California.

MICHAEL PICKER
President
CARLA J. PETERMAN
LIANE M. RANDOLPH
MARTHA GUZMAN ACEVES
CLIFFORD RECHTSCHAFFEN
Commissioners