Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Donna Matthews, Complainant, vs. Meadows Management Company, a partnership, James K. Krueger and Rondell B. Hanson, its partners and any does of interest, all doing business as Plantation On The Lake Mobilehome Park, Defendant.	Case 98-08-040 (Filed August 25, 1998)

David Semelsberger, Attorney at Law, for Donna Matthews, complainant.
Richard L. Hamilton, Attorney at Law, for the Meadows Management Company et al., defendants.

O P I N I O N

Summary

The oral motion to dismiss the complaint made by defendants Meadows Management Company, James K. Krueger, and Rondell B. Hanson (collectively Meadows), and taken under submission at the evidentiary hearing (EH), is granted. Complainant Donna Matthews (Matthews) has failed to bear her

burden of proving that water rates for Plantation on the Lake Mobilehome Park are not just and reasonable. Case 98-08-040 is closed.

Procedural Background

This case comes back to us after we granted rehearing of Decision (D.) 99-07-008, which initially dismissed Matthews' complaint. Matthews filed the complaint on August 25, 1998, seeking relief from water rates instituted in 1997 by the defendants. The defendants own Plantation on the Lake, a mobilehome park where Matthews is a tenant. As this is the third complaint filed by Matthews to challenge the legality of the defendants' ratemaking methodology and the reasonableness of the water rates for the park, our decision is the culmination of a long and costly dispute on the subject. A full account of the prior procedural history is provided in D.99-07-008.

Following issuance of D.99-09-072, our order granting rehearing, the administrative law judge (ALJ) held a series of prehearing conferences to establish a discovery schedule, ensure full and timely disclosure of relevant information by both sides, and set the matter for hearing.[1] A ruling issued on November 5, 1999, required the defendants to produce for Matthews' inspection all documents (including, but not limited to, books, accounts, financial statements, records, reports, letters, and workpapers) that were relevant to the rates or explained the methodology used to establish them. The defendants complied with this ruling. A ruling issued December 17 required Matthews to

[1] As a predicate to the ALJ initiating this prehearing procedure, the parties had advised the Water Division that they were unable to reach a settlement of the issues within 21 days after mailing of D.99-09-072, as required by Ordering Paragraph 2 of that decision.

serve her prepared testimony on the defendants, along with all exhibits, by January 18, 2000, and required the defendants to serve responsive testimony two weeks before the EH. Both parties served testimony in accordance with this schedule, and were ready to proceed at the EH. (EH Transcript (Tr.), p.1.)

The one-day hearing was conducted in Calimesa on February 15, 2000. Matthews, who had previously represented herself in this proceeding, was represented by counsel. At the close of Matthews' case Meadows made an oral motion to dismiss on the grounds that Matthews had not satisfied her burden of proof. The ALJ took the motion under submission. (See Tr., pp. 41-46.) The case was submitted on April 20, 2000, after the parties filed two rounds of briefs.

Discussion

Matthews' present complaint contains a long recitation of the history of her previous complaint cases, as well that of her current case. We summarized her complaint in substance in D.99-07-008 (*mimeo.* pp. 1-2). Construing it most favorably to Matthews, we have treated it as one brought under Pub. Util. Code § 2705.6 (a) to determine, "based on all the facts and circumstances, whether the rates charged are just and reasonable."[2] Matthews' attorney confirmed our formulation of the issues in his opening statement. (EH Tr., p. 5.)

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[2] The material portion of § 2705.6 (a) states:

> "A mobilehome park that provides water service only to its tenants from water supplies and facilities it owns, not otherwise dedicated to public service, is not a water corporation. However, that mobilehome park is subject to the jurisdiction of the commission to the extent that, if a tenant complains about the water rates charged … by the mobilehome park, the commission shall determine, based on all the facts and circumstances, whether the rates charged are just and reasonable…."

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D.99-09-072 identified two specific issues to be addressed on rehearing. The first is that of so-called "double dipping," i.e., whether costs included in the water rates are also charged to tenants separately in their rent. The second is whether methodologies other than those utilized in Class D water utility ratemaking should be used to fashion rates for this mobilehome park. These issues are subsumed under the general issue of just and reasonable rates, and are considered as part of our decision.

In summary, Matthews gave the following account in support of her complaint.[3] Matthews and her husband rented a lot in Plantation on the Lake in June 1985, at which time they paid a flat rate of $15.00 per month for water. Service was provided by Lakeside Water Company (Lakeside), a mutual water company serving the park under common ownership with the park. Lakeside served only the park's tenants. All of the water was pumped from wells beneath the property, and no other supplier was available to serve the park's tenants.

The defendants dissolved Lakeside after they bought the park and associated property, and assumed outright ownership of the water system. They installed water meters on tenants' lots, and began charging a $7.50 per month fixed rate for water service, and a commodity rate of $0.50 per hundred cubic feet

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Matthews alleges that this provision was enacted specifically to enable her to bring her dispute with these defendants before us after we declared the Plantation On The Lake water system not to be a utility subject to our jurisdiction. Matthews also argues that Meadows is in violation of various provisions of mobilehome laws as part of all the facts and circumstances we must consider. To the extent that this is an aspect of her argument that Meadows must provide water and/or service free of charge, we have considered these allegations.

[3] We have also used certain noncontroversial facts from the defendants' testimony to fill in the interstices of Matthews' account, and thereby clarify it.

(ccf) for the water used by each tenant. These rates matched those of the neighboring Beaumont/Cherry Valley Water District, a public district that furnishes water to residents in the immediate vicinity of the park. Since 1989 the water rates have been increased twice more to the current level of $10.00 per month fixed water service charge and $0.94 per ccf commodity charge. Matthews filed the present complaint in response to the latest rate increase.

Several documents are attached to Matthews' prepared testimony, but these are of little value to us in evaluating whether defendants' current rates are just and reasonable. Only the page titled "Exhibit VII" explains the basis for the present level of rates and rate design. (See Exhibit 1 at referenced page.) This is a September 27, 1999, FAX transmission from defendant Krueger to Richard Hairston, the defendants' expert. It explains that Meadows developed the present rates by starting with the operating ratio method (ORM) revenue requirement developed by our staff in March 1995, which we approved in D.97-08-052. From this the cost of purchased power was reduced by $8,851 to reflect lower than forecast power cost, the consequence of purchasing power from Southern California Edison Company at more favorable rates. Deducting actual 1997 water revenue from this adjusted revenue requirement produces a shortfall of $20,422 for the year, or $6.07 per month for each of the 290 connections (i.e., tenants of the park) served by the system.

In setting its current rates Meadows addressed this shortfall in two ways. First, it increased the service fee by $ 2.00 per month, from $8.00 to $10.00, reducing the shortfall to $4.07 per month per connection. Second, this net shortfall was divided by the average 1997 usage of 14.64 ccf per month to arrive at a deficit incurred of $ 0.278 per ccf. This was added to the previous commodity charge of $ 0.660 per ccf, resulting in the new rate of $ 0.94.

Another attachment to Matthews' testimony, coupled with additional exhibits offered on her behalf, suggests that as much as 64% of the total annual production of the system may be used by Meadows for maintenance of common amenities in the park, rather than by individual tenants. These amenities include a lake, 75 acres of greenbelt with more than 1000 trees, a 500-tree fruit orchard, a swimming pool, and a Jacuzzi. (See Exhibit 2.)[4] Although she appears to claim that Meadows is charging tenants twice both for the cost of this water and for amortization of the system, Matthews offers no evidence that either the cost of this water, or Meadows' investment in the plant or the return thereon, are incorporated into the tenants' rents. Consequently, we have no evidence upon which to make a finding that tenants are charged twice for these items.[5]

None of the testimony offered by Matthews proposes any methodology as an alternative to the ORM method for Class D water companies used to set rates for the park. We have already approved this methodology for setting these rates, analogizing it to ratemaking for a privately owned water utility of equivalent size. The evidence shows that the current rates rely upon 1993 costs that our staff found to be reasonable in 1995, and that we approved in 1997. The revenue requirement was actually reduced by $8,851 for purposes of developing the current rate schedule, in recognition of the lower energy costs that resulted from

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[4] The defendants' testimony points out that the system also provides water for fire protection throughout the park, so the plant benefits all of the tenants in this regard. There is no indication how much water is used in maintaining this fire protection.

[5] It is conceivable that Meadows' return on investment in the plant is built into the tenants' rent as well as their water rates. This information should be available to Matthews, as the rents are subject to regulation under the City of Calimesa's rent control ordinance, and the underlying information is available through that public process. No such evidence was presented here.

obtaining more favorable electric rates. It is reasonable to infer that other costs have either remained the same or risen since 1993 in view of long-term inflationary trends, and we have no basis in the record for finding otherwise.

Matthews also offers no evidence that the ratepayer-tenants are not receiving the full benefit of the water devoted to common amenities and fire protection, and that inclusion of the associated costs in their water rates is not fair and reasonable. In effect, allocating this portion of water costs to tenants is like charging a monthly fee to condominium owners, who must similarly defray the maintenance and depreciation expenses for common areas of their condominium property. Plantation on the Lake's tenants have elected to live there in part because of the existence of the common facilities, which are showcased in Meadows' informational brochure. (See Exhibit 2.) We perceive no reason why such charges should be regarded as unjust or unreasonable.

It is possible that, because a third phase of the park is being completed and new lots are being leased, future sales of water will be higher and the unit cost of water production may be lower. Although we encourage Meadows to disclose its cost and revenue figures for the system to its tenants periodically, we cannot speculate whether these factors will affect the reasonableness of rates in the future.

In summary, we have no evidence that the current rates are not just and reasonable, nor does the record suggest a fairer way to design water rates for the park.[6] Maintaining water rates separately from rents is the owner's prerogative,

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[6] In addition to the arguments already noted, Matthews claims that the water at Plantation on the Lake is "free" to Meadows because it is pumped from wells under the property, and that water service must be "provided" (i.e., free of charge) to tenants under mobilehome laws. These arguments border upon frivolous, and totally overlook

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and we find nothing unjust or unreasonable about the former from the record before us.

Matthews argues that the defendants, rather than the complainant, should bear the burden of proving that the rates are just and reasonable. This is simply incorrect. Pub. Util. Code § 2705.6(b) states that a complaint such as Matthews' is "subject to the provisions of [the Pub. Util. Code] and to the Rules of Practice and Procedure of the commission governing complaints and commission investigations." Those provisions and rules place the burden squarely on the complaining party to produce evidence of a defendant's misconduct. Matthews has totally failed to satisfy that burden, and Meadows is not obliged to do it for her.

This proceeding is not like a general rate case, in which the company has the burden of justifying its proposed rates. Section 2705.6 clearly distinguishes a mobilehome park from a utility, and avoids placing the former under the same restrictions as a utility if a totally self-contained water system serves a park's tenants and no one else. Unlike a utility, Meadows need not apply to us for authority to increase its rates, and does not bear the associated burden of proof. Section 2705.6 is plainly a mobilehome tenants' rights statute that grants limited jurisdiction to this Commission to correct an asserted abuse. Only when a tenant complains that the rates are not "just and reasonable" must we review them. It follows that the tenant must not only plead, but must also prove, that the abuse has occurred.

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the costs incurred by Meadows to pump, store, treat, and distribute the water. One way or the other, the tenants must bear these costs.

Matthews' case consists for the most part of bare assertions. She has failed to show by substantial evidence on the record that Meadows' rates are not fair and reasonable. She has had the assistance of the Commission's Public Advisor at her disposal,[7] and ample opportunity to prepare her case on two occasions. There is no reason why we should perpetuate this long-running dispute. Matthews has not proven her case. We will grant the defendants' motion and deny the complaint.

One fact that has emerged from the evidence is that Matthews' effort to lower Meadows' water rates has proven very costly. Attachments to her own testimony demonstrate that in 1997 alone the defendants spent more than $17,000, or nearly $60.00 per connection, for defense costs in the previous complaint litigation. We believe that litigating the current complaint will prove to be comparably costly. Meadows has indicated that it must recover this expense from the tenants, and apparently did so in setting its current water rates. We therefore caution those inclined to file a complaint challenging the rates for a small system such as Meadows' that they should be prepared to make an adequate evidentiary showing, in fairness to other tenants.

Appeal and Request for Review

Matthews tendered an appeal of the presiding officer's decision (POD), but it was untimely and cannot be filed. We will not consider this appeal.

The assigned Commissioner filed a timely request for review of the POD, which seeks review of the propriety of including the cost of water devoted to amenities in Meadows' water rates. Meadows has filed a response explaining

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[7] See Pub. Util. Code § 2705.6(d).

that the majority of Meadows' tenants are on long-term leases of either five or ten years, with rent increases keyed to a cost of living indicator only. These leases were signed in the expectation that all water charges would continue to be paid separately during the lease term. If we disallow inclusion of the water cost for common areas in the current rates, Meadows would not be compensated for the cost of this water at all. As the tenants essentially receive all of the benefit of this water use, denying Meadows reimbursement would not be just and reasonable.

In the circumstances of this proceeding, inclusion of this common cost for the water in the rates is currently not unjust or unreasonable, and we will allow it. However, we do so with the admonition that this water cost should be included in the rental price in the future, as it is a variable cost over which the tenants have no direct control. Consequently, this issue will be subject to reexamination in the future at such time as the terms of a significant number of the current long-term leases expire.

Assignment of Proceeding

Commissioner Loretta M. Lynch is the Assigned Commissioner and Victor D. Ryerson is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. Matthews has not shown that any costs relating to the water system at Plantation on the Lake are assessed to tenants in both their water rates and their rents, resulting in "double dipping."

2. Matthews has not shown that it is unjust or unreasonable to include the cost of plant and water serving common areas and fire protection requirements in tenants' rates.

3. Matthews has not shown that use of the ORM revenue requirement as a basis for setting water rates for tenants at Plantation on the Lake is unjust or unreasonable.

4. Matthews has not shown that any cost, or the return on investment, utilized by Meadows to establish the ORM revenue requirement is unjust or unreasonable.

Conclusions of Law

1. Meadows' motion to dismiss should be granted.
2. Case 98-08-040 should be dismissed, effective immediately.

O R D E R

IT IS ORDERED that:

1. The motion of defendants, Meadows Management Company, James K. Krueger, and Rondell B. Hanson, to dismiss the complaint is granted.
2. The complaint is dismissed.
3. Case 98-08-040 is closed.

This order is effective today.

Dated _____, at San Francisco, California.