

Decision 02-09-046 September 19, 2002

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

B.H. Properties, LLC,

Complainant,

vs.

Suburban Water Systems,

Defendant.

Case 01-06-009  
(Filed June 7, 2001)

Patrick J. Power, Attorney at Law, for B.H. Properties, LLC,  
complainant.

Robert L. Kelly, Vice President, Regulatory Affairs, for  
Suburban Water Systems, defendant.

**MODIFIED PRESIDING OFFICER'S OPINION  
DENYING COMPLAINT BUT ORDERING  
CONSIDERATION OF NEW "FMCT" TARIFF AND  
SUPPORTING RATE DESIGN IN APPLICATION 02-05-033**

**Summary**

We deny the complaint filed by B.H. Properties, LLC (BH Properties) against Suburban Water Systems (Suburban) because we conclude that Suburban is correctly applying its tariffs, and complying with Pub. Util. Code § 453,<sup>1</sup> in

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<sup>1</sup> Unless otherwise indicated, all subsequent citations to sections refer to the Public Utilities Code.

billing BH Properties the 8” service charge rate for two FMCT meters at the Grand Creek Plaza. However, we recognize that this result leaves two financially costly options for BH Properties. It may either continue to pay a monthly service charge nearly ten times higher than that associated with its usual monthly consumption, or it may incur substantial infrastructure costs to segregate its domestic water and fire protection systems to meet the terms of existing tariffs and thereby become eligible for a lower rate. No evidence has been submitted that the current combined system is unsafe, inadequate, or inefficient. Rather, since it merely appears to fall outside the existing rate design, and because BH Properties is not the only customer with FMCT meters, we will consider establishment of a new FMCT tariff in Suburban’s pending general rate case, Application (A.) 02-05-033. We direct Suburban to submit a draft tariff and the supporting rate design in that proceeding.

**The Parties’ Dispute: Factual Background**

BH Properties owns Grand Creek Plaza, a mixed-use development of shops, offices and restaurants located on approximately five acres in West Covina, California. Suburban is a Class A water utility (i.e., with greater than 10,000 service connections). Suburban’s San Jose Hills District (SJ) service territory includes Grand Creek Plaza and the surrounding properties. Suburban provides water to the Grand Creek Plaza through two separate meters known as FMCT meters, each attached to a 8” water line. Each FMCT meter consists of an 8” meter and a 2” low-flow meter. The 2” meter measures initial water consumption. If water consumption surpasses the flow capacity level of the 2” meter, it trips the 8” meter.

Since May 1, 1999, Suburban has billed BH Properties a monthly service charge of \$525.00 per meter, since that amount is the service charge for an

8” meter under the applicable tariff, SJ-1 (General Metered Service). BH Properties contends that, in light of Grand Creek Plaza’s usual monthly water usage and the configuration of the water lines serving the premises, Suburban should bill BH Properties differently. From the perspective of BH Properties, the monthly bill should include a service charge of \$53.00 per meter, which is the rate for a 2” meter, and an additional assessment of \$70.40 for fire protection under Suburban’s Schedule No. 4 (Private Fire Protection Service).

Suburban has advised BH Properties that, to become eligible for these rates, BH Properties must reconfigure the water lines at Grand Creek Plaza to isolate the fire service from the domestic service. If BH Properties makes these changes, Suburban has offered to pay for the reconfiguration of the meters.

### **Procedural Background**

BH Properties filed this complaint on June 7, 2001. Suburban filed a timely answer on July 10 and both parties appeared at a prehearing conference (PHC) on August 16. On August 23, Commissioner Geoffrey F. Brown, the assigned Commissioner, issued a scoping memo as required by § 1702.1. The scoping memo identified issues for hearing, set a procedural schedule, and designated Administrative Law Judge (ALJ) Vieth the presiding officer for this case. On August 30, as it had agreed to do at the PHC, Suburban filed an erratum to its answer to include an attachment (Attachment A, Suburban’s tariff SJ-1) which it inadvertently had omitted from the original filing.

Evidentiary hearing, reset at the parties’ request, occurred in San Francisco on January 17, 2002. Prior to the close of the hearing, the ALJ directed the parties to prepare and file a joint, late-filed exhibit to address four outstanding factual matters. In addition, an extended briefing schedule was agreed upon to further accommodate the parties’ scheduling conflicts, subject to the filing of a joint

motion for extension of the 12-month case resolution deadline imposed by § 1701.2(d). In Decision (D.) 02-04-040, the Commission granted the parties' motion and extended the statutory deadline to October 7, 2002. The parties filed opening briefs on April 16 and reply briefs on April 30, whereupon, on May 3, 2002, this case was submitted for decision.

## **Discussion**

Resolution of the parties' dispute requires us to apply Suburban's tariffs to the facts of this case within the mandates of § 453(a), which prohibits a utility from granting one customer a preference over another with respect to rates and charges for service.<sup>2</sup>

Suburban's Schedule SJ-1 (General Metered Service) indisputably lists a service charge of \$53.00 per meter per month for a 2" meter and \$525.00 per month for an 8" meter. The tariff includes the following standard language:

The Service Charge is a readiness-to-serve-charge that is applicable to all metered service and to which is added the charge computed at the Quantity Rates. (Schedule SJ-1.)

Suburban contends that since the 8" flow capacity of FMCT<sup>3</sup> meters enables Grand Creek Plaza to take (or "demand") water at those relatively high

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<sup>2</sup> Section 453(a) provides:

No public utility shall, as to rates, charges, service, facilities, or in any other respect, make or grant any preference or advantage to any corporation or person or subject any corporation or person to any prejudice or disadvantage.

<sup>3</sup> FMCT stands for "Fire Meter Compound Train." Promotional materials provided by one manufacturer explain that such meters "are designed strictly for fire line use or for use in those unusual cases where both high and low flows occur, and where a low loss-of-head is important." (Joint Late Filed Ex. 4-A.)

levels, the service charge for an 8” meter applies, consistent with its tariff and the Commission’s rate design policy for water utilities.<sup>4</sup> Indeed, Suburban’s contention comports with a literal reading of its Schedule SJ-1 (General Metered Service).

Suburban’s Schedule No. 4 (Private Fire Protection Service) applies “to all water service furnished to privately owned fire protection systems.” Because fire protection is a rarely used service, the rate design does not include a service charge or other, separately stated, demand charge component. The quantity rates are based on the diameter of the service connection. Eligibility for the tariff requires compliance with a number of separately stated special conditions listed in it. Special Condition 6 (which actually is a standard condition in such tariffs) provides, in relevant part:

Service hereunder is to private fire protection systems to which no connections for other than fire protection purposes are allowed ...

It is undisputed that Grand Creek Plaza does not have a standalone fire protection line. Accordingly, it does not comply with Special Condition 6 of Schedule No. 4 (Private Fire Protection Service).

The crux of BH Properties’ complaint, however, is that strict application of these tariffs leads to an unfair result under the particular facts of this case, including the specific configuration of Grand Creek Plaza’s existing water lines and the high cost of retrofitting them to sever the domestic water supply and fire

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<sup>4</sup> Decision (D.) 86-05-064 established a statewide goal of setting water utilities’ service charges to recover up to 50% of their fixed costs. Consistent with this policy, D.87-01-059 approved the service charge structure on which Suburban’s tariffs have been based to date.

protection services. Literal application of the tariffs results in a total monthly service charge of \$1,050.00 (\$525.00 per 8" meter). BH Properties' proposal would reduce the service charge to \$106.00 per month (for two 2" meters) and add in a monthly charge for fire protection, for a total of \$176.40.

At the evidentiary hearing, the factual basis for BH Properties' position became clearer. BH Properties' witness Shabbouei (the Property Manager at Grand Creek Plaza) introduced a map that shows the layout of buildings and parking lots at Grand Creek Plaza. (See Ex. 1, Attachment A.) The map illustrates, schematically, how the complex's water lines interconnect with each other and with the two FMCT meters on Suburban's distribution main. Each FMCT meter interconnects with an 8" water line on the customer side of the meter. Each 8" line has one or more 2" domestic water lines running off it into various buildings on the complex. Each 8" line also interconnects with one or more fire hydrants located on the complex and with a separate sprinkler line, of approximately 6", that serves various buildings. Thus, each 8" line has a dual purpose: it provides water for domestic use and for fire protection.

Since 1988, Grand Creek Plaza's monthly usage has tripped the 8" meter only twice.<sup>5</sup> Shabbouei testified that leaks in water lines on the customer side of

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<sup>5</sup> Testimony at hearing establishes that though BH Properties obtained the complex in 1988, the parties' billing dispute stems only from May 1, 1999, since before that time Suburban erroneously billed BH Properties for a 2" meter. Suburban's witness Kelly (its Vice President - Regulatory Affairs) testified that Suburban replaced the original metering system at Grand Creek Plaza with the FMCT meters sometime in 1988. The original metering system consisted of separate 8" and 2" meters; the self-contained and more reliable FMCT meters had become available, and Suburban made replacements throughout its system. However, following installation of the new meters, Suburban began to bill Grand Creek Plaza based on the service charge for a 2" meter, rather than an 8" meter. Suburban did not discover the error until 1999, eleven years later.

the meter caused the higher usage on each occasion. Thus, From BH Properties' perspective, the larger capacity meters do not register Grand Creek Plaza's demand for domestic water service but provide a stand-by fire protection option, for which it proposes to pay the comparatively lower quantity rates listed in Suburban's Schedule No. 4 (Private Fire Protection Service). For West Covina, the rate is \$10.00 for each inch of diameter of service connection and as already noted, the Grand Creek Plaza service connection is an 8" pipe.

Suburban counters that while the complex's developer (which was not BH Properties) could have built separate water systems, it reduced its construction costs by combining them. This is no doubt accurate; moreover, in the early 1980s, when service to Grand Creek Plaza commenced and prior to the revision of Commission rate design policy in D.86-05-064, Suburban's service charge for an 8" meter was only \$123.92. However, these matters have no direct bearing on BH Properties' claim for rate relief and are not dispositive of this case.

Suburban also points out BH Properties could reconfigure its water lines now and should it do so, Suburban offers to retrofit the associated meters at its own cost. At hearing, Kelley estimated the meter retrofit at approximately \$20,000. Likewise, BH Properties submitted an estimate from a plumbing contractor for the installation of two new 3" domestic water supply lines. The estimate, \$65,500, includes asphalt and concrete repair but does not include permits, wall repair, landscaping repair and necessary meters and pressure regulators. These costs plus other factors, such as loss of business, the cost of management supervision, and an allowance for contingencies, would increase the total cost to BH Properties to approximately \$105,800, Shabbouei testified.

BH Properties is not the only customer being assessed an 8" service charge for a 2"/8" FMCT meter. The record establishes that five additional meters serve

four other customers. Suburban cannot offer BH Properties a special contract with a lower service charge without favoring BH Properties over its other similarly-situated customers, and § 453 prohibits disparate treatment of this kind. Neither can Suburban offer all of these customers a special contract without disturbing the system rate design by which the service charge and other rates for all its customers is calculated.

Therefore, under the facts of this case, BH Properties faces two financially costly options by dint of strict application of the controlling tariffs. It may either continue to pay a monthly service charge nearly ten times higher than that associated with its usual monthly consumption, or it may incur substantial infrastructure costs to segregate its domestic water and fire protection systems to meet the terms of existing tariffs and thereby become eligible for a lower rate. It does not appear, on this record, that the current combined system is unsafe, inadequate, or inefficient.<sup>6</sup> Rather, it merely appears to fall outside existing rate design.

The facts suggest that a fairer and less costly result might be reached under a new tariff specifically designed to apply to systems with FMCT meters, recognizing the dual purpose the systems serve. Such a tariff for a 2”/8” FMCT meter, for example, might have higher service charges at each step to account for the possibility of greater demand (e.g., more than \$53.00 for a 2” meter), might impose a service charge at the rate for the second meter in any month that higher

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<sup>6</sup> Kelly testified that the purpose of Special Condition 6 in Suburban’s Schedule No. 4 (Private Fire Protection) is to prevent contamination of the potable, domestic water supply by stagnant water, which may develop in a little-used fire protection line. There is no evidence that the FMCT configuration at Grand Creek Plaza creates a health concern.

capacity flows trip the second meter, or might include other rate design elements to ensure the tariff reasonably recovers the costs its users impose on the utility's water system.

This record is not adequate to finally determine that such a tariff should be added to Suburban's tariff book, let alone to develop the tariff's components. General rate case proceedings are typically the appropriate proceedings for considering such rate design matters, so we will refer this issue to Suburban's recently filed general rate case, A.02-05-033. We direct Suburban to submit, for consideration in A.02-05-033, a proposed FMCT tariff that addresses the concerns identified in this decision, together with the supporting rate design. Suburban may also submit prepared testimony to support or oppose adoption of the new tariff, and if it does so, shall clearly explain the reasons for its position. In all other respects, BH Properties' complaint should be denied.

### **Appeal**

The Presiding Officer's Decision (POD) in this case was mailed on July 23, 2002 and on August 22, BH Properties filed an appeal. Suburban filed a response on August 30.

BH Properties alleges that the POD is unlawful because it: authorizes an unreasonable rate, in violation of § 451; fails to find that BH Properties' current water line configuration qualifies for a 2" meter charge and for standalone fire protection under Suburban's existing tariffs; improperly concludes that creating a new tariff for BH Properties on this record would have a discriminatory impact on other customers; and offers an inadequate remedy (e.g. directing Suburban to propose a new FMCT tariff in its pending GRC, together with a supporting rate design). Suburban's response supports adoption of the POD.

We decline to revise the POD to reach a different result. BH Properties essentially reiterates the legal arguments and restates the factual conclusions advanced in its briefs and fails to establish error in the POD. Most critically, BH Properties ignores the clearly established fact that both its domestic water supply system and its fire protection sprinkler system run off its 8” water lines. Each FMCT meter is attached to one of these 8” water lines at the site of Suburban’s distribution main and thus, the domestic water supply and fire protection systems are not truly separate systems. The GRC is the appropriate forum to consider whether Suburban should develop a new tariff.

**Findings of Fact**

1. The 8” flow capacity of the 2”/8” FMCT meters enables Grand Creek Plaza to take (or “demand”) water at 8” flow levels at any time because water consumption that surpasses the flow capacity of the 2” meter trips the 8” meter.
2. It is undisputed that Grand Creek Plaza does not have a standalone fire protection line.
3. Each of the 8” water lines that interconnects with a 2”/8” FMCT meter at Suburban’s distribution main has a dual purpose: it provides water for domestic use and for fire protection at Grand Creek Plaza.
4. It is undisputed that since 1988, Grand Creek Plaza’s monthly usage has tripped the 8” meter only twice.
5. BH Properties is not the only customer being assessed an 8” service charge for a 2”/8” FMCT meter; the record establishes that five additional meters serve four other customers.
6. Suburban cannot offer BH Properties a special contract with a lower service charge without favoring BH Properties over its other similarly-situated customers.

7. Suburban cannot offer BH Properties and other customers with 2”/8” FMCT meters a special contract without disturbing the system rate design by which the service charge and other rates for all customers are calculated.

8. BH Properties faces two financially costly options by dint of strict application of the controlling tariffs. It may either continue to pay a monthly service charge (\$1,050) nearly ten times higher than that associated with its usual monthly consumption (\$106), or it may incur substantial infrastructure costs (estimated at \$105,800) to segregate its domestic water and fire protection systems.

9. The record contains no evidence that Grand Creek Plaza’s current combined water system is unsafe, inadequate, or inefficient. Rather, the water line configuration merely falls outside existing rate design.

10. Suburban should submit, for consideration in A.02-05-033, a proposed FMCT tariff that addresses the concerns identified in this decision, together with the supporting rate design. If Suburban submits prepared testimony to support or oppose adoption of the new tariff, it should clearly explain the reasons for its position.

### **Conclusions of Law**

1. Suburban is complying with Schedule SJ-1 (General Metered Service) in charging BH Properties \$525.00 per month for each 2”/8” FMCT meter at Grand Creek Plaza.

2. Because Grand Creek Plaza does not have a standalone fire protection line, it does not comply with Special Condition 6 of Schedule No. 4 (Private Fire Protection Service).

3. Suburban would violate §453 if it were to favor BH Properties over its other similarly-situated customers with respect to the rates and terms of service.

4. BH Properties' complaint should be denied.
5. BH Properties' Appeal should be denied and the POD, as modified herein, should be adopted.
6. In order to provide certainty to the parties regarding the charges for water service to BH Properties, this decision should be effective immediately.

**O R D E R**

**IT IS ORDERED** that:

1. Suburban Water Systems (Suburban) shall submit, for consideration in Application 02-05-033, a proposed FMCT tariff that addresses the concerns identified in this decision, together with the supporting rate design. Suburban may also submit prepared testimony to support or oppose adoption of the new tariff, and if it does so, shall clearly explain the reasons for its position.
2. The complaint of BH Properties, LLC (BH Properties) is denied.
3. BH Properties' Appeal of the Presiding Officer's Decision is denied.
4. This proceeding is closed.

This order is effective today.

Dated September 19, 2002, at San Francisco, California.

LORETTA M. LYNCH  
President  
HENRY M. DUQUE  
CARL W. WOOD  
GEOFFREY F. BROWN  
MICHAEL R. PEEVEY  
Commissioners