Decision 24-08-022 August 1, 2024

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Gary Chamberlin, Charles Ramsden, and Susan Wilson, Complainants, vs. Havasu Water Company, Inc. (U352W), Defendant.	Complaint (C.) 23-02-009 (ECP)

ORDER CLARYFYING CERTAIN HOLDINGS OF DECISION 24-03-053 AND DENYING REHEARING OF THE DECISION

I. SUMMARY

This Order addresses the application for rehearing of Decision (D.) 24-03-053 (Decision) filed by Havasu Water Company, Inc. (U352W) (Havasu). In the Decision, we granted, in part, the Complaint filed by Gary Chamberlin, Charles Ramsden, and Susan Wilson (Complainants) against Havasu. Complainants alleged that Havasu failed to provide them with safe and clean water from March 2022 to March 2023. Following evidentiary hearings and testimony, we found that Havasu acted deficiently and indeed failed to provide ratepayers with safe, reliable services for a total of 197 days between March 2022 and 2023 (56% of the billing cycle). Accordingly, we reduced Complainants' outstanding balances by 56% and ordered Havasu to remove all late fees from the Complainants' bills from 2021 onward.

In its application for rehearing, Havasu asserts numerous legal errors. First, Havasu disputes our authority to have considered the Complaint pursuant to our Expedited Complaint Procedures. Second, Havasu asserts that we violated its due process rights to be heard and to present evidence. Third, Havasu disputes the evidence

in the record, particularly its admissibility and whether it supports the 56% reduction in Complainants' water bills. Fourth, Havasu argues that the 56% reduction should not apply to the monthly readiness-to-serve (or service) fee. Fifth, Havasu asserts that its Tariff Rules do not require it to provide potable water to its customers and did not allow us to impound Complainants' funds pending the outcome of the proceeding. Lastly, Havasu argues that we erroneously ordered Havasu to reverse the late fees.

We have carefully considered all the arguments presented by the rehearing applicant and do not find grounds for granting rehearing or oral argument. However, we will clarify a portion of the Decision related to the readiness-to-serve charge. Rehearing of the Decision thereafter is denied.

II. BACKGROUND

The Complaint was filed on February 15, 2023. The Decision was issued on March 25, 2024, following two separate evidentiary hearings. A detailed background and procedural history are set out in the Decision and are adopted herein by reference. (See Decision, pp. 2-6.)

III. DISCUSSION

A. Expedited Complaint Procedures.

Havasu asserts that we acted "in excess" of our jurisdiction pursuant to the Expedited Complaint Procedures (ECP) (Rule 4.2 of the Commission's Rules of Practice and Procedure) and Complainants improperly utilized Rule 4.2 "to complain about the quality of the water delivered by HWC…" (Rehg. App., p. 1.)

Rule 4.2 provides that the expedited procedures may be utilized for any complaints against a public utility "where the amount of money claimed does not exceed the jurisdictional limit of the small claims court," i.e., a maximum of $12,500. (See Pub. Util. Code, § 1702.1; Code Civ. Proc., § 116.221.) Here, the Complaint disputed a total of $3,563.37 in water billing charges. (Complaint, p. 3.) The Decision eventually resolved water billing charges in the total sum of $5,666.86, as evidenced by the funds held in the Commission's impound accounts for the Complainants. (Decision, p. 2.) Both

sums—the initial disputed amount and the amount eventually resolved by the Decision—are below the jurisdictional limit of $12,500.

Moreover, Rule 4.2 does not limit the grounds on which a complaint may be brought. Contrary to Havasu's assertions, Rule 4.2 is applicable to any complaints against relevant companies—in this case, water—and establishes only a monetary limit on jurisdiction. That means the Complaint was not erroneously heard as an ECP simply because it dealt with "the quality of water delivered by HWC…." (Rehg. App., p. 1.)

B. Due process.

Havasu asserts that it is "entitled to the due process and evidentiary rules applicable to a regular hearing before the Commission." (Rehg. App., p. 1.) However, as discussed above, the Decision was properly issued pursuant to ECP since the Complaint disputed only $3,563.37 in water billing charges against Havasu. (Complaint, p. 3; see also Pub. Util. Code, § 1702.1; Code Civ. Proc., § 116.221.) And, although we or the presiding officer may terminate ECP and recalendar the matter for hearing under our regular procedure "when the public interest so requires" (see Rule 4.2(g)), Havasu does not establish in its rehearing application that a recalendaring was appropriate or warranted.

Havasu does not specify exactly how its due process rights were violated but a review of the procedural history in this matter demonstrates that our consideration of the Complaint comported with the Commission's Rules of Practice and Procedure, as well as the Public Utilities Code. Rule 4.6 requires that we set a hearing within 30 days after the answer is filed. The assigned Administrative Law Judge (ALJ) Afary ordered the Answer to be filed on March 27, 2023, and the hearing to be held on May 25, 2023. (*Instruction to Answer* (March 7, 2023), pp. 1-3.)

Havasu failed to timely and properly file and serve its Answer to the Complaint and to appear at the scheduled May 25, 2023, hearing. (*Email Ruling Notice Re Status Conference/Rehearing Set for September 14, 2023 at 1:30pm for Supplemental Information* (Sept. 1, 2023), p. 3.) However, ALJ Afary permitted Havasu to late-file its Answer on July 10, 2023, scheduled two supplemental hearings (one for a related but not

consolidated proceeding), and permitted parties to submit supplemental responses. (See *ibid*.; see also *Email Ruling Notice of Supplemental Hearing(s) Regarding Non-consolidated Expedited Complaint C23-02-008 and C23-02-009 Proceedings Havasu Water* (Oct. 10, 2023), pp. 3-4.)

Havasu does not clarify what it means by "regular hearing" but to the extent Havasu asserts that we did not hold adequate evidentiary hearings where Havasu could present its evidence and cross-examine Complainants, the administrative record demonstrates otherwise. Evidentiary hearings were held on May 25, 2023 (Havasu did not appear) and October 20, 2023 (Havasu did appear).

To the extent that Havasu asserts it was denied due process because the Complaint was subject to ECP, Havasu does not establish how the ECP procedures here (including two separate evidentiary hearings and our acceptance of a late-filed Answer) denied it notice of the Complaint or the opportunity to be heard and to present evidence. (See *Anderson Nat. Bank v. Luckett* (1944) 321 U.S. 233, 240–247 ["Notice and an opportunity to be heard are due process prerequisites for adequate administrative proceedings."].)

C. Record evidence.

The majority of Havasu's rehearing application is based on the argument that the only "admissible evidence before Judge Afary was that [Havasu] provided potable water at all times, other than a few days in March of 2022…." (Rehg. App., p. 1-3.) Havasu argues that a Boil Water Notice (BWN) "is not a finding that the water is not potable" or "that the customers did not have access to water which in fact was delivered during the billing cycles." (Rehg. App., pp. 2-3.) Havasu concludes that during the BWNs, Havasu "had the San Bernardino Emergency Services Dept. provide pallets of drinking water to its service territory for distribution to all customers." (Rehg. App., p. 3.) These arguments are identical to those Havasu presented at the October 20, 2023 hearing. (See Decision, p. 5.)

We concluded that customers were without safe and reliable water for a total of 197 days from March 2022 to March 2023. (Decision, p. 10.) To determine the

number of out of service days, we examined Havasu's record of the BWNs it issued in comparison with the data gathered by the Commission's Consumer Protection and Enforcement Division (CPED). (Decision, pp. 7, 9.) As evidence, Havasu provided nine reports from the San Bernardino Clinical Labs demonstrating that the water quality was acceptable at the time of testing. (Decision, pp. 7-8.) The laboratory reporting documents encompass a total of 44 days between March 2022 and March 2023. (*Ibid*.)

We also examined the State Water Resources Control Board's Division of Drinking Water's (Division of Drinking Water) record of Do Not Drink and Boil Water Notices for Havasu. (Attachment, p. 2.) That record demonstrated that Havasu had a water outage from March 21, 2022 through March 26, 2022, followed by six separate Do Not Drink or Boil Water Notices through March 6, 2023, for a total of 197 days. (*Ibid*.) Notably, Havasu conceded that it was completely non-operational in March 2022 but asserted that it "lasted only for a few days, not exceeding five (5) days total." (Decision, p. 4; Rehg. App., p. 2 ["few days"; "no more than the week"].)

We concluded that the data from the Division of Drinking Water was "more compelling" than the lab reports submitted by Havasu. (Decision, p. 10.) This is because, first, there were numerous discrepancies between the dates of the Boil Water Notices noted by Havasu and by Division of Drinking Water. (See Decision, pp. 7-9.) Havasu's data also did not reflect the Do Not Drink notices or water outages. (*Ibid*.) Moreover, even if the water was safe for consumption at times (as evidence by the lab reports), the system experienced "continued ongoing issues" as evidenced by the notices recorded by the Division of Drinking Water such that it was "reasonable for customers to have been confused and concerned with the safety of the water system." (Decision, p. 10.)

Havasu appears to argue that the Division of Drinking Water's data is inadmissible hearsay. (Rehg. App., pp. 1-2.) Havasu does not expand on this argument. Regardless, this argument fails to establish legal error because (1) hearsay evidence is admissible in Commission proceedings and (2) public officials' records (such as the

Division of Drinking Water's records of Do Not Drink/BWNs) are subject to the official records exception to the hearsay rule.

Generally, hearsay evidence is "evidence of a statement that was made other than by a witness while testifying at the hearing and that is offered to prove the truth of the matter stated." (Evid. Code, § 1200.) However, the Do Not Drink/BWNs issued by Division of Drinking Water to customers constitute official records and are subject to the officials records exception to the hearsay rule. (See Evid. Code, § 1280.) The official records exception permits the admissibility of a writing made by a public employee where the writing was (1) made by a public employee within the scope of the employee's official duties, (2) at or near the time of the act, and (3) based on sources of information and method and time of the record preparation "such as to indicate its trustworthiness." (Evid. Code, § 1280.) The Decision includes as attachment an email from the Division of Drinking Water employee which compiled the dates of the water outages, Do Not Drink, and BWNs based on the documents issued by Havasu (also attached to the Decision). These documents fall under the official records exception since they are (1) issued by public employees within the scope of their official duties (2) at or near the time of the incident and (3) based on trustworthy data and methodology obtained by Division of Drinking Water in the scope of its duties. Notably, Havasu does not dispute the accuracy of the Do Not Drink and BWNs or dispute the dates noted by the Division of Drinking Water employee. Therefore, the official records exception applies to these documents.

Moreover, hearsay evidence is admissible in Commission proceedings. Our proceedings are governed by our own Rules of Practice and Procedure, "and in the conduct thereof the technical rules of evidence need not be applied." (*The Utility Reform Network v. Public Utilities Com.* (2014) 223 Cal.App.4th 945, 959–960 [citing Pub. Util. Code, § 1701, subd. (a) and Rule 13.6(a)].) Hearsay evidence is generally admissible in our proceedings. (See, e.g., *Investigation on the Commission's Own Motion Into the Fitness of the Officers, Directors, Owners and Affiliates of Clear World Communications Corporation* (Cal.P.U.C., June 16, 2005) Dec. No. 05–06–033 [2005 WL 1537220, at

pp. *27–28; *Re Landmark Communications, Inc.* (1999) 84 C.P.U.C.2d 698, 701.) "Administrative agencies like the Commission are given more latitude to consider hearsay testimony than are courts [citation], in part because 'factfinders in administrative proceedings are more sophisticated than a lay jury' [citation]." (*The Utility Reform Network v. Public Utilities Com., supra*, 223 Cal.App.4th at 959–960.)

Finally, to the extent that Havasu is arguing that we erred in relying on the Division of Drinking Water's evidence or gave it greater weight than to Havasu's evidence, "the question of the weight of the evidence in determining issues of fact lies with the commission acting within its statutory authority…." (*Southern California Gas Company v. Public Utilities Commission* (2023) 87 Cal.App.5th 324, 340, *as modified on denial of reh'g* (Feb. 3, 2023), *review denied* (Apr. 19, 2023).) It is up to us to determine how much weight to give to the evidence presented by the parties and to draw reasonable conclusions therefrom. (See, e.g., *Toward Utility Rate Normalization v. Public Utilities Com., supra,* 22 Cal.3d 529, 538 ["When conflicting evidence is presented from which conflicting inferences can be drawn, the commission's findings are final'"].) We explained why we found the data presented by Division of Drinking Water "more compelling" (Decision, pp. 7-10) and Havasu fails to present any basis for concluding otherwise in its rehearing application.

D. Fifty-six percent reduction in bills.

Havasu argues that we erroneously reduced the Complainants' water bills by 56% to account for the 197 days that Complainants did not have access to safe and reliable water from March 2022 through March 2023. (Rehg. App., pp. 1-2; Decision, p. 10.) Havasu asserts that "since the Complainants admit that they were accurately charged for water that was delivered," they are only entitled to a reduction for the time Havasu was unable to deliver water in March 2022. (Rehg. App., p. 2.) Moreover, Havasu asserts that there was no evidence the Complainants were without potable water aside from the outage in March 2022. (Rehg. App., pp. 2-3.)

As discussed above, we relied on the data from Division of Drinking Water to assess how many days a Do Not Drink or BWN was in effect between March 2022 and

March 2023. (See Decision, p. 9.) We also explained that we were unpersuaded by Havasu's citation to the 44-day (or less) outage because Havasu experienced "repeated and multiple water outages and leaks" and Havasu's evidence did "not answer the question of how many days the water company was inoperable, leaking, or inconsistently providing water to the residents." (Decision, pp. 8-9.) We further noted that,

> Even if the system was safe for consumption, the continued ongoing issues combined with the unclear dates that notices have been active (as shown by the differing dates presented in the email from the DDW engineer and in Havasu Water's testing dates) show that it is reasonable for customers to have been confused and concerned with the safety of the water system. (Decision, p. 10.)

Finally, we noted that Havasu failed to comply with Division of Drinking Water's directives to file Corrective Action Plans and Monthly Progress Reports, which further added to the uncertainty of the system. (Decision, p. 10.)

Havasu argues that there is no evidence to conclude that the delivered water was not potable. (Rehg. App., pp. 2-3.) It argues that "[m]any of the BWNs were initiated because customers would complain, without justification, that water pressure was low," which was a result of unreliable electricity from Southern California Edison, and it would take "two weeks" for lab results to return demonstrating that the water was safe. (Rehg. App., p. 3.) During that time, Havasu would have San Bernardino Emergency Services Department provide "pallets of drinking water" to customers for distribution. (*Ibid*.)

But Havasu's lab reports alone do not compel the conclusion that at all times between March 2022 and March 2023 (aside from the conceded outage in March 2022), Havasu delivered potable water to Complainants. The BWNs and Do Not Drink notices state, "Do not drink the water without boiling it first" and "DO NOT DRINK YOUR WATER." (Decision, Attachment, pp. 2-9.) Some of the notices state that "potable water" is available for pick up at other locations, but some do not. (See *ibid*.) Havasu's lab reports demonstrate that lab results were obtained in approximately 1-6 calendar days. (Decision, pp. 7-8.) Based on this evidence, and given the circumstances

of the Do Not Drink and BWNs discussed above, we reasonably concluded that Complainants were without potable water during the time the notices were in effect, i.e., 197 days. (See, e.g., *Toward Utility Rate Normalization v. Public Utilities Com., supra,* 22 Cal.3d at 538 ["When conflicting evidence is presented from which conflicting inferences can be drawn, the commission's findings are final"].)

As a result of the finding that Complainants were without potable water for 197 days, we calculated a 56% reduction in the Complainants' water bills. (See Decision, p. 11, fn. 7.) Havasu does not establish in its rehearing application that our methodology was otherwise incorrect.

E. Havasu Tariff Rules, Rule 2, P.U.C. Sheet No. 76-W (Oct. 14, 1975).

Havasu asserts that it was not required to provide Complainants with potable water and, instead, its obligation is only to "endeavor to provide water that is wholesome, potable, in no way harmful or dangerous to health and, insofar as practicable, free from objectionable odors, taste, color, and turbidity." (Rehg. App., pp. 3-4 [citing Havasu Tariff Rules, Rule 2, P.U.C. Sheet No. 76-W (Oct. 14, 1975)].) However, Havasu's Tariff Sheet does not supersede Commission's General Order (GO) 103-A which mandates that "[a]ny utility serving water for human consumption shall provide water that is not harmful or dangerous to health…." (GO 103-A, p. 9.) Moreover, the Legislature has enacted the Safe Drinking Water Act to "ensure that the water delivered by public water systems of this state shall at all times be pure, wholesome, and potable." (Health & Saf. Code, § 116270, subd. (e).) Thus, Havasu has an obligation to provide safe and reliable water to its customers.

F. Havasu Tariff Rules, Rule 5, P.U.C. Sheet No. 256-W (Oct. 22, 2006).

Havasu argues that we were not permitted to accept Complainants impound deposits because the dispute here was over the quality of the utility's service and not over "the accuracy of the bill." (Rehg. App., p. 4 [citing Havasu Tariff Rules, Rule 5, P.U.C. Sheet No. 256-W (Oct. 22, 2006)].) First, it should be noted that P.U.C. Sheet No. 256-

W was replaced by P.U.C. Sheet No. 300-W. Second, P.U.C. Sheet No. 300-W, Rule 5 and P.U.C. Sheet No. 305-W, Rules 10(B) and (C) all instruct customers to impound funds pending the resolution of a bill dispute. Public Utilities Code section 1702.2 provides that "any funds entrusted to the commission by any person or corporation filing a complaint against a public utility shall be deposited in trust by the commission in the custody of the Treasurer…."

Although Complainants raised issues about the quality of the water provided, Complainants also disputed the accuracy of their water bills. (See Complaint, p. 2 ["The utility should remove all late charges and the remainder of the bill should be cut in half (reduced by 50%) to equal the amount of service we have been receiving."].) After filing the Complaint, Complainants submitted impounded funds and the funds were accepted pursuant to Public Utilities Code section 1702.2(a). (July 17, 2023 *Notice of Impounded Funds*.) We then considered whether Complainants' water bills were accurate given the lack of reliable water service. Thus, although we necessarily considered the quality of the water delivered to Complainants during March 2022 through March 2023, the water quality issues are directly related to the accuracy of the bills and thus the disputed funds were properly impounded.

G. Late fees.

Havasu argues that "late fees should not be credited [to Complainants] during the time the Commission held the funds improperly deposited with the Commission…." (Rehg. App., p. 5.) However, we noted that Havasu had decided "to remove all late fees associated with Complainants submitting payments to CPUC impounds" on October 23, 2023. (Decision, pp. 10-11; Attachment, pp. 9-15.) We then ordered Havasu to remove all late fees from 2021 forward in acknowledgement of Havasu's actions. (Decision, p. 14, Ordering Paragraph 1.)

Havasu does not explain on what grounds it objects to the removal of late fees particularly in light of Havasu's own decision to remove the late fees as memorialized in the Decision. As discussed above, it was not improper for us to impound the disputed fees and, in fact, doing so was consistent with the Commission's

rules. Moreover, "under Commission case law, the decision whether to award interest or late fees on unpaid tariff charges is a matter within the Commission's discretion…." (D.08-12-002, *Pac-W. Telecomm, Inc. (U5266c)* (Dec. 4, 2008) 2008 WL 5201995, at *4.) Given the outcome of the proceeding and the time that the proceeding took to conclude (delayed predominantly by Havasu's own inactions), we reasonably ordered that Havasu was not entitled to charge Complainants late fees on the disputed water bills.

H. Readiness-to-charge (service) fee.

Havasu disputes the application of the 56% reduction to the monthly readiness-to-serve charge because it is not part of the "metered service." (Rehg. App., p. 3.) Havasu asserts that the readiness-to-serve charge does not "pay for the operating expenses to maintain water quality, but rather spread[s] the capital expenses for maintaining the water company's piping and infrastructure, which was not affected by the issuance of the Boil Water Notices." (Rehg. App., pp. 4-5.) In support, Havasu cites its Tariff Book, P.U.C. Sheet No. 293-W (June 29, 2020) and P.U.C. Sheet No. 115-W (Aug. 5, 1983).

P.U.C. Sheet No. 293-W explains that general metered service consists of the charge of the quantity of water furnished and a service charge, which is "a readiness-to-serve charge, which is applicable to all metered services, and to [sic] which is to be added to the monthly charged computed at the Quantity [sic][.]" P.U.C. Sheet No. 115-W does not address service charges or readiness-to-serve charges but defines metered service as "[s]ervice for which the charges are computed on the basis of measured quantities of water."

As evidenced by the statements included with the Complaint, each monthly bill includes a flat service fee of $86.78. (See Complaint, pp. 14, 18, 22; see also Answer, pp. 4-9.) The service fee does not vary based on the amount of metered service. As a result, we clarify that our reduction of Complainants' water bills by 56% only

applies to the metered charges and charges that are predicted on the metered rates, and not to the readiness-to-serve fee.[1]

IV. CONCLUSION

For the reasons stated above, good cause has not been demonstrated to grant rehearing of D.24-03-053 or oral argument. We have clarified that the 56% reduction to Complainants' water bills is not applicable to the readiness-to-serve fee in this case. Rehearing of D.24-03-053 is otherwise denied.

THEREFORE, IT IS ORDERED that:

1. The 56% reduction in Complainants' water bills does not apply to the readiness-to-serve fee.
2. Rehearing of Decision 24-03-053 is otherwise denied.
3. This proceeding is closed.

This order is effective today.

Dated August 1, 2024, at San Francisco, California.

ALICE REYNOLDS
President
DARCIE L. HOUCK
JOHN REYNOLDS
KAREN DOUGLAS
MATTHEW BAKER
Commissioners

[1] Our determination regarding the readiness-to-serve fee is applicable only to this proceeding.