

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Michael and Heather Torquemada,

Complainants,

vs.

Trinity Village Water Company (U19W),

Defendant.

(ECP)
Case 07-08-015
(Filed August 15, 2007)Michael Torquemada and Heather Torquemada,
complainants.Danny Walsh, Trinity Village Water Company,
defendant.**DECISION GRANTING RELIEF FOR DEFENDANT'S REFUSAL TO
PROVIDE RESIDENTIAL CONNECTION AT TARIFF RATE****Introduction and Summary**

This matter was heard in Eureka on November 14, 2007, by Administrative Law Judge Victor D. Ryerson. The hearing concluded, and the matter was submitted, on that date.

Complainants Michael and Heather Torquemada seek to have defendant Trinity Village Water Company (TVWC) connect a 5/8 x 3/4-inch water meter on a lot they purchased in August 2006 in Trinity Village Subdivision. They seek a connection fee of \$250, the rate specified for such a connection under the terms of the Commission-approved tariff in effect until October 6, 2006. Upon purchasing the lot the complainants advised TVWC that they sought to establish

the connection, but did not submit a written application for water service at that time, because TVWC quoted an unacceptable rate and terms for the connection.

TVWC denies that the defendants are entitled to have their water service connected at the \$250 rate, because TVWC had imposed a moratorium on new connections pending an anticipated rate increase, defendants did not submit a timely written application, and defendants did not satisfy certain other pre-conditions that TVWC claims to have been applicable to new connections.

We find that the \$250 tariff rate was still in effect when the complainants sought to establish their connection, that their failure to submit a written application promptly was the result of TVWC's deliberate efforts to discourage the plaintiffs until new rates became effective, and that there were no preconditions for requesting the service under the terms of the tariff. Accordingly, we order that the connection be made at the \$250 rate that was specified by tariff before the new rates became effective.

Discussion

The Torquemadas entered into a contract to purchase a lot in Trinity Village Subdivision, which is served by TVWC, in July, 2006. At Michael's request their real estate agent, Bob Hoops, contacted TVWC by telephone to discuss connecting the water service. He left a telephone message on July 25 for Kay Heath (Heath), the office manager and bookkeeper for the company. She returned Hoops' call on July 28, and informed him that the hookup charge would be approximately \$2,000, but that the exact amount was uncertain because the company was still in "negotiations" with this Commission.

The sale of the property to the Torquemadas closed on August 16, 2006. The precise sequence of events after the closing is somewhat unclear, but it appears that within a few days Michael called Heath about obtaining a water service connection. She referred him to James H. Murray (Murray), who was the company's general manager at the time.

According to a signed statement by Murray dated August 20, 2006, Michael contacted him before August 15 to discuss connection of water service to the lot, but Murray had been instructed by Dan Walsh (Walsh), the company's owner, not to connect any new water services until an undetermined future date. At some point during late August or early September, Murray informed Michael that the connection could be accomplished if the Torquemadas paid a \$4,000 deposit, and that any overpayment would be refunded when the new rates were established.

This was unacceptable to the Torquemadas, and Michael attempted to pursue the matter further with Walsh. Walsh was unwilling to have TVWC connect the service at the \$250 rate, because he said the company had instituted a moratorium on new connections sometime before Michael first approached TVWC. This moratorium had not been approved by the Commission, but was instituted by TVWC because the \$250 tariff rate, which had remained unchanged for decades, was substantially lower than the actual cost of connecting the service.

On September 6 Michael contacted the Consumer Affairs Branch (CAB) of the Commission to file an informal complaint to the effect that TVWC was refusing to provide the connection at the \$250 rate. The matter ultimately was not resolved by CAB, and on October 6, 2006, the Commission adopted new rates for TVWC. (Resolution No. W4618, Advice Letter 12). Schedule F of that tariff provides that the initial fee for connection of a 5/8 x 3/4-inch meter is \$3,500. (*Id.*, Cal. P.U.C. Sheet No. 169-W).

TVWC concedes that it had provided two connections at the rate in effect in June 2006, for Rick Paul (Paul), a developer of two lots in Trinity Village Subdivision. Welsh contends that Murray had approved those connections without his authority during the moratorium. He also contends that Paul had

requested the connections by submitting a completed Connection Fee Data Form, which distinguishes his situation from that of the complainants.

Finally, TVWC contends that the complainants in any event were not entitled to obtain the connection until November 13, 2007, the day before the matter was heard, because they did not have a county building permit to build on the lot, and therefore must pay the \$3,500 connection fee specified in the current tariff.

On November 6, 2006, Heather Torquemada called Heath to request an application for the connection and a copy of the new tariff. Heath responded by sending these items to her on November 24. Michael agrees that he did not have an application form until that date. The complainants have not yet established water service to the lot because of the dispute concerning the amount they must pay for the connection.

We determine under the facts of this case that the complainants are entitled to have their water service established at the \$250 tariff rate that was in effect until October 6, 2006. First, TVWC had no authority to depart from its filed tariff and impose a moratorium on new connections pending adoption of new rates in the absence of authority from the Commission. By its own admission, TVWC's rates had been in effect for more than four decades until the new tariffs were recently adopted. Relative to the length of time the old rates were in effect, TVWC sought rate relief only recently. TVWC claims that the old rates were not compensatory, but for decades TVWC neglected to update its rates to keep pace with the cost of additions and improvements by seeking rate relief from the Commission, and had no basis for delaying new connections or imposing a moratorium.

Second, it is clear from the communications regarding this matter between July and September of 2006 that the company was forestalling the complainants' attempt to obtain water service to the lot by asserting that there was a

moratorium in effect, and ultimately by demanding a \$4,000 partially refundable deposit in order for TVWC to accept the application. These actions, which were not authorized by tariff or Commission order, were completely contrary to regulatory principles governing investor-owned water companies under our jurisdiction. We also cannot justify different treatment for the complainants differently than that for Paul, who obtained two connections at the \$250 rate shortly before the complainants attempted to establish service. Although TVWC claims that this situation resulted from Murray's *ultra vires* actions and was a "mistake," the company did absolutely nothing to reverse or alter its inconsistent treatment of Paul. The complainants are justified in arguing that they should receive equal treatment.

Although TVWC claims that the complainants needed an approved building permit, and perhaps other local approvals, before they could submit an application for the connection, it has not pointed to any tariff provision that imposes such a requirement. We assume that there are none, and that tendering the connection fee was all that was required of the complainants.

We find that the complainants were prepared to submit their application, pay the fee, and obtain the connection after their property purchase closed, and the evidence indicates that they were eager to do so quickly. TVWC effectively thwarted their efforts by communicating prices and conditions to Hoops and to Michael that were totally inconsistent with existing tariffs. The company had not obtained approval for the moratorium pending adoption of new rates nor sought rate relief long before, but we cannot compensate for the company's inaction by now imposing the recently adopted connection fee on the complainants. To do so would constitute retroactive ratemaking, and that is prohibited under well-settled principles of regulatory law.

We recognize that our decision may work a temporary hardship on TVWC, but fortunately it appears that this case is unique, and that the rates

approved in October 2006 will address the company's need to recover the full cost of system improvements in the future. Up to the point at which those rates were adopted, the company was obligated to provide service in accordance with the tariffs on file with the Commission.

O R D E R

IT IS THEREFORE ORDERED that:

1. Defendant Trinity Village Water Company (TVWC) is obligated to furnish a 5/8 x 3/4-inch water meter on the lot purchased by complainants Michael and Heather Torquemada on August 16, 2006, in the Trinity Village Subdivision at the tariff rate of \$250.
2. Defendant may require complainants to submit a written application for the service, but only to the extent that the contents of the application are consistent with TVWC tariff requirements that were in effect before October 6, 2006.
3. Defendant shall not delay the provision of service, and shall diligently establish the service connection as soon as it has received the application and the connection fee.
4. Case 07-08-015 is closed.

This order is effective today.

Dated _____, San Francisco, California