

Decision 10-05-020 May 6, 2010

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Lucas D. Hernandez, Mayela Barroso, Maria
Martinez, Trinidad Martinez, Janette Sandoval,
Erika Toledo, Marvi Bonilla, Maria Garcia,
Guadalupe Ramirez, Martha Amezquita, Socorro
Hernandez, Daniel Gonzalez, Hugo Hernandez,
Patricia Hernandez, Maria Razo, Aurora Cabral,
Gabriel Cabrera, Severo Rosa, Mauricio Frias,
Celia Ruiz, Rosa Maria Montellano, Martha
Alvarado, Maria Palma, Ruben Zepeda, Adriana
Ceja, Jose Meza, Samuel Espinoza, Eva
Montellanos, Federico Garcia, Luis Morales,

Complainants,

vs.

Sunbird Mobile Home Park, Hawkeye Asset
Management, James Martin and Betty Martin,

Defendants.

Case 09-11-019
(Filed November 25, 2009)

**DECISION IMPOSING INJUNCTION ON EVICTIONS AND DISCONNECTS,
AND MODIFYING RATES PENDING RESOLUTION OF THIS COMPLAINT**

Summary

This decision imposes two injunctive orders on Sunbird Mobilehome Park (Sunbird). First, Sunbird must stop billing for current Tier 3 and Tier 4 water usage at its current Tier 3 and Tier 4 rates and charge for all water usage above the Tier 2 usage level at Tier 2 rates, pending the resolution of this complaint. In

addition, pending resolution of this complaint, Sunbird may not use non-payment of the tenant's water bill as a basis for eviction or disconnection of water service. This temporary injunctive relief will lower rates for customers whose usage exceeds current Tier 2 limits, ensure that past high water bills do not result in eviction or disconnection of water service, and allow for the parties to engage in anticipated mediation.

To avoid prejudicing Sunbird until the reasonableness of its rates is determined, we also direct Sunbird to maintain records that will allow determination of the revenues that are not billed as a result of the requirement that Sunbird charge Tier 2 rates for all water usage above the current Tier 2 usage limit. If this proceeding determines that Sunbird has collected less than a reasonable level of revenues as a result of the required application of Tier 2 rates to Tier 3 and Tier 4 usage, we will consider possible recovery of the lost revenues.

Background

This complaint, which was filed on November 25, 2009, alleges that Defendants Sunbird Mobilehome Park (Sunbird), Hawkeye Asset Management, James Martin, and Betty Martin are charging unjustly and unconscionably high water rates to Complainant, Lucas D. Hernandez, as well as all other Sunbird residents. The complaint also alleges that the water contains impermissibly high levels of arsenic. The names, addresses, and signatures of 29 "additional actual or prospective consumers" were attached in an exhibit to the complaint.

Sunbird instituted new tiered water rates in June 2006. A monthly table attached to the complaint indicates that, with the new rates, Complainant Hernandez' monthly water charges ranged between \$14.16 and \$595.26.

Complainant asks that the Commission determine that Defendants' tiered water billing system is unjust and results in unaffordable water rates; determine and order just, reasonable, or sufficient rates for water usage; award Complainant restitution of \$2,909.35; and order Defendants to provide healthful water free of arsenic within six months.

Defendants filed an answer to the complaint on January 7, 2010. Attached to the answer is a May 12, 2006 notice to all residents of Sunbird, which noticed the following water billing rate schedule effective with the billing for June 2006:

Sunbird Water Rates Effective June 2006

Customer charge		\$7.36/monthly billing cycle
Tier 1	0 – 10 hundred cubic feet (ccf)	\$0.68 per ccf
Tier 2	The next 1 ccf	\$1.10 per ccf
Tier 3	The next 5 ccf	\$20.00 per ccf
Tier 4	Over Tier 3	\$40.00 per ccf

The answer describes that Tier 1 and Tier 2 rates were set comparable to local utility rates, and that Tier 3 and Tier 4 rates are based upon a percentage of the costs to pump excess effluent from Sunbird's septic tanks. Defendants also describe Sunbird's steps to address the issue of arsenic in the water supply, specifically, that Sunbird has an application pending before the State of California Health and Human Services Agency, California Department of Public Health, which would result in municipal water being supplied, in whole or in part, for Sunbird residents.

The assigned Administrative Law Judge (ALJ) scheduled a prehearing conference for February 11, 2010, in Indio, California, but the prehearing

conference was taken off calendar at the request of parties, who desired to pursue Alternative Dispute Resolution (ADR). On February 1, 2010, a neutral ALJ was assigned to handle the ADR issues.

On February 3, 2010, counsel for Complainant Hernandez sent an e-mail stating that her office, California Rural Legal Assistance, represents only Complainant Hernandez and that the 29 other persons who were signatories on a supporting exhibit of the Complaint, and named as Complainants in the caption of the proceeding and as Parties on the service list, should be removed from the caption and the service list.

As described in a February 17, 2010 ruling by the assigned ALJ, it appears that there may have been an intention to file the complaint under Pub. Util. Code § 1702, which allows a complaint to be entertained regarding the reasonableness of “any rates or charges of any gas, electrical, water, or telephone corporation” if it is signed “by not less than 25 actual or prospective consumers or purchasers of such gas, electricity, water, or telephone service.” Based on the receipt of additional information from counsel, the February 17, 2010 ALJ ruling established that this adjudication will proceed instead under Pub. Util. Code § 2705.6(a).

Pub. Util. Code § 2705.6 provides, in pertinent part, that:

- (a) A mobilehome park that provides water service only to its tenants from water supplies and facilities that it owns, not otherwise dedicated to public service, is not a water corporation. However, that mobilehome park is subject to the jurisdiction of the [C]ommission to the extent that, if a tenant complains about the water rates charged or service provided by the mobilehome park, the [C]ommission shall determine, based on all the facts and circumstances, whether the rates charged are just and

reasonable and whether the service provided is adequate.

...

- (c) The [C]ommission may afford rate relief or may order the mobilehome park to improve its water supply, facilities, and services on those terms that it finds just and reasonable, or both.

The February 17, 2010 ALJ ruling requested that counsel for Complainant contact each of the 29 signatories to the exhibit of the Complaint, and to report which individuals desire to be a party, or be on the "Information Only" portion of the service list, or be omitted from the service list. The ruling also directed that the Commission's Division of Water and Audits (DWA) prepare a staff report "to provide a factual platform for ADR efforts and any subsequent stage of the adjudication," and postponed the planned mediation pending receipt of the staff report. The DWA staff report was filed on May 3, 2010.

Staff Report and Legislative Hearings

The staff report describes that staff visited Sunbird on March 17, 2010 to inspect the water system, meet with California Department of Environmental Health (CDEH), the Sunbird operators, and Sunbird residents. The staff report describes that the levels of arsenic in the water supplied to Sunbird residents exceed the permissible levels of safe drinking water required by the Safe Drinking Water Act, and that Sunbird is taking various steps to test the water on a monthly basis; inform residents about the arsenic levels; and alleviate the arsenic problem, including the possibility of connecting its water supply with the Coachella Valley Water District. Staff reports that the water quality situation at Sunbird is not considered an emergency by CDEH.

Staff's meeting with Sunbird residents was attended by about forty-five persons. The following concerns were raised:

- High water bills.
- Frustration with not having water that meets safe drinking water requirements for a number of years, and related concerns over health effects.
- Contamination from leaking sewage lines on the property.

Sunbird residents also testified at the Assembly Budget Subcommittee No. 3, Natural Resources and Environmental Protection, on April 28, 2010 and at Senate Budget and Fiscal Review, Subcommittee No. 2, on April 29, 2010. At these hearings, Sunbird residents said that there were instances where residents were evicted from Sunbird because of their inability to pay water charges. They stated that bills can exceed \$500 per month in some instances and that the water is not suitable for drinking. Sunbird claims that it has not evicted any tenant for non-payment of water bills.

Staff found that Tier 1 usage accounted for 94% of volumetric revenues, followed by 2% for Tier 2, 3% for Tier 3, and less than 1% for Tier 4. So while very few Sunbird residents reach the Tier 3 and 4 rates, the few who do face extremely high water bills. The staff report describes that, in contrast, the neighboring Coachella Valley Water District charges a monthly service charge of \$7.00 and a quantity charge of between \$1.03 and \$1.60 per ccf.

With 87 metered connections reported by staff, Sunbird is the size of a Class D water utility. Because Sunbird is a mobile home park, the Commission's ratemaking authority arises when a complaint is filed under § 2705.6 and thus we have never reviewed the reasonableness of Sunbird's rates. To prepare its report, Staff performed a cost of service analysis for Sunbird, and reported a 2009 Rate of Margin (ROM) of 38.7%, compared to a recommended ROM for Class D water

utilities of 23.03%. Staff found that Sunbird's average monthly bill was \$18.28 in 2009, and recommends rate changes such that the average monthly bill would be \$13.73 in 2010 to achieve the staff-recommended ROM.

In addition to the recommended rate adjustments, the staff report contains recommendations for improving water quality, maintenance of the sewer system, meter testing, and leak detection. Staff recommends that Sunbird refrain from evicting Sunbird residents for non-payment of water bills.

Discussion

The staff report filed on May 3, 2010 identified several concerns over Sunbird's service, especially as they relate to the rates charged to customers for Tier 3 and Tier 4 consumption. Just prior to the release of the staff report, the Commission participated in legislative subcommittee hearing where tenants at Sunbird asserted that one or more current or former tenants were subject to eviction for non-payment of water bills. These assertions have not yet been tested through the evidentiary hearing process but, coupled with the staff report, raise significant concerns that prompt us to take immediate action pending resolution of the merits of the complaint.

Sunbird water customers who remain within the Tier 1 and Tier 2 usage levels receive bills of less than \$20 per month, which are generally consistent with the rates charged by the neighboring Coachella Valley Water District. It is only because of the very significant differential in rates between Tiers 1 and 2, on the one hand, and Tiers 3 and 4 that Sunbird customers may receive high water bills, sometimes far in excess of their monthly rent bill. Coachella Valley Water District has only one tier for its water rates. (See generally, http://www.cvwd.org/service/rates/Domestic_Water_Service_Rates_070109.pdf.)

Because the parties to this proceeding have agreed to mediation, we have not yet developed a complete record to determine whether the current rate differentials or volumes for each tier are reasonable. The staff report does indicate concerns over the upper tier rates and proposes that all usage over the current Tier 2 usage limit be charged Tier 2 rates.

The staff report indicates that Sunbird claims that it has taken no action to evict tenants for non-payment of water bills. The residents who testified before the Assembly and Senate Budget Subcommittees claim otherwise. There is currently no evidence in the record to allow us to conclude which claim is correct.

This decision takes steps to ensure that the information gathering process inherent in mediation and a formal proceeding can move forward to allow us to make an informed decision on the facts without harming customers who are subject to Sunbird's current Tier 3 and Tier 4 rates, if those rates are later found to be unreasonable. Because we are concerned that the current upper tier rates may be excessive given the staff recommendation, we order Sunbird to stop billing for current Tier 3 and Tier 4 water usage at its current Tier 3 and Tier 4 rates and to instead charge for all water usage above the current Tier 2 usage level at current Tier 2 rates, pending the resolution of this complaint. Based on the staff report, only 4% of the revenue collected by Sunbird derives from Tier 3 and Tier 4 charges, so the non-collection of this amount, pending resolution of this proceeding, should not present a hardship to Sunbird.

At the same time, we do not wish to prejudice Sunbird, in the event that this proceeding determines that the revenues derived from its current rates are reasonable. To preserve the opportunity for Sunbird to seek recovery of the revenues not billed as a result of the requirement that Sunbird charge Tier 2 rates

for all water usage above the current Tier 2 usage limit, Sunbird should maintain records of all usage above the current Tier 2 usage limit (11 ccf), the resulting revenues for that excess usage at Tier 2 rates, and the charges that would have been billed if current Tier 3 and Tier 4 rates had remained in effect. If this proceeding determines that Sunbird has collected less than a reasonable level of revenues as a result of the required application of Tier 2 rates to Tier 3 and Tier 4 usage, we will consider the extent to which, and in what manner, the lost revenues may be recovered. Without prejudging this issue in any way, in such a situation we may consider means such as rebilling for service already rendered or amortization of the undercollection through a surcharge on future rates.

Our other concern is that tenants whose water bills have been very high as a result of the current rate structure may fall behind on their payments and be subject to eviction or disconnection of water service, before the reasonableness of Sunbird's rates has been determined in this proceeding. In order to ensure that no tenant is evicted as a result of inability to pay charges owed Sunbird due to prior water bills that exceeded the amount allowed by this order, we will impose the following requirement: For purposes of determining whether any tenant is in arrears in the payment of water charges, as opposed to other charges owing to Sunbird, any charges previously paid for water in Tier 3 and Tier 4 shall be recalculated at the current Tier 2 rate, and any payments in excess of that recalculated charge shall be considered to have been paid, first, for any non-water charges owed to Sunbird.

We also impose an injunction on Sunbird preventing it from using non-payment of a water bill as a basis for eviction or disconnection of water service. Since Sunbird claims it has not taken steps to evict tenants for non-payment of water bills, Sunbird will not be harmed by imposition of an

injunction against evictions for non-payment of water bills. Because we have not determined the reasonableness of any of Sunbird's water rates, we find it reasonable to similarly prohibit disconnection of water service for non-payment of water bills, pending the outcome of this proceeding. This injunction against evictions and disconnection of water service for non-payment of water bills is issued in aid of our jurisdiction over Sunbird's water rates.

Late Addition to the Agenda

On February 17, 2010, Administrative Law Judge Weatherford issued a ruling directing the Division of Water and Audits to prepare a report to evaluate the reasonableness of rates and adequacy of service of Sunbird Mobilehome Park. That report was filed on May 3, 2010. On April 28 and 29, 2010, Commission staff attended legislative hearings at which residents of Sunbird spoke and raised concerns over evictions for non-payment of water bills. The agenda for the May 6, 2010 Commission meeting was published on April 26, 2010. In order to ensure that no steps to evict or disconnect water service are taken against water customers whose bills may be adjusted based on the outcome of this complaint, the Commission should take immediate action.

This item was added to the agenda on less than 10 days notice by a two-thirds vote of the Commission under the provisions of Government Code Section 11125.3(a)(2). This code section allows an item to be added to the agenda when two thirds of the members agree that there exists a need to take immediate action that came to the attention of the state body after the agenda was already published.

Waiver of Comment Period

This is an order adopting injunctive relief. Accordingly, pursuant to Section 311(g)(2) of the Public Utilities Code and Rule 14.6(c)(1) of the

Commission's Rules of Practice and Procedure, the otherwise applicable 30-day period for public review and comment is waived.

Assignment of Proceeding

Dian M. Grueneich is the assigned Commissioner and Gary Weatherford is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. Sunbird, a mobile home park located in Thermal, California, modified its water rates in June 2006 to increase rates substantially for water usage above the Tier 2 usage limit.

2. Sunbird charges \$20.00 per ccf for monthly water consumption in Tier 3 (between 12 ccf and 16 ccf).

3. Sunbird charges \$40 per ccf for monthly water consumption in Tier 4 (in excess of 16 ccf).

4. The neighboring water supplier, the Coachella Valley Water District, has only one tier in its water rate design.

5. Water consumption at Tier 3 and, particularly, Tier 4 levels can result in very high bills, for example, monthly consumption of 20 ccf results in a water bill of \$275.26.

6. The Commission has not previously reviewed the reasonableness of the water rates charged by Sunbird.

7. Residents of Sunbird testified at the Assembly Budget Subcommittee No. 3, Natural Resources and Environmental Protection, on April 28, 2010 and at the Senate Budget and Fiscal Review, Subcommittee No. 2, on April 29, 2010, and stated that there were instances where residents were evicted from Sunbird because of their inability to pay water charges.

8. Water Division filed its staff report on May 3, 2010.

Conclusions of Law

1. Sunbird is subject to Commission jurisdiction under Pub. Util. Code § 2507.6.
2. In order to ensure that no steps to evict or disconnect water service are taken against water customers whose bills may be adjusted based on the outcome of this complaint, the Commission should take immediate action.
3. An injunction against evictions and disconnection of water service for non-payment of the tenant's water bill should be issued in aid of our jurisdiction over Sunbird's water rates.
4. Because the current upper tier rates may be excessive given the staff recommendation, the Commission should take immediate action to order Sunbird to stop billing for current Tier 3 and Tier 4 water usage at its current Tier 3 and Tier 4 rates and to instead charge for all water usage above the current Tier 2 usage level at current Tier 2 rates, pending the resolution of this complaint.
5. Sunbird should maintain records of all water usage above the current Tier 2 usage limit for which Tier 2 rates are charged pursuant to this decision, the resulting revenues for that excess usage at Tier 2 rates, and the charges that would have been billed if current Tier 3 and Tier 4 levels had remained in effect.
6. The need to take immediate action exists and came to the attention of the Commission after the agenda for the May 6, 2010 Commission meeting was already published.

O R D E R

IT IS ORDERED that:

1. During the pendency of Case 09-11-019, Sunbird Mobilehome Park must charge its water customers whose usage exceeds current Tier 2 consumption levels the current Tier 2 rate for that usage in excess of current Tier 2 volumes.
2. Sunbird Mobilehome Park must notify its water customers within 5 days of this decision that it will charge the current Tier 2 rates for consumption above Tier 2 volumes until Case 09-11-019 is resolved, but that service already rendered may be rebilled after the Commission determines the reasonableness of the billed rates in this proceeding.
3. Sunbird Mobilehome Park may not use non-payment of water charges as the basis for eviction or disconnection of water service, pending the outcome of Case 09-11-019.
4. To determine if a water customer is in arrears in the payment of charges, Sunbird Mobilehome Park shall recalculate any charges previously paid for water usage in Tier 3 and Tier 4 as if the current Tier 2 rate were in effect for that usage, and any payments in excess of that recalculated charge shall be considered to have been paid, first, for any non-water charges owed to Sunbird Mobilehome Park.

5. Sunbird Mobilehome Park shall maintain records of all water usage above the current Tier 2 usage limit for which Tier 2 rates are charged pursuant to this decision, the resulting revenues for that excess usage at Tier 2 rates, and the charges that would have been billed if current Tier 3 and Tier 4 rates had remained in effect.

This order is effective today.

Dated May 6, 2010, at San Francisco, California.

MICHAEL R. PEEVEY

President

DIAN M. GRUENEICH

JOHN A. BOHN

TIMOTHY ALAN SIMON

NANCY E. RYAN

Commissioners