

Decision 01-09-029

September 6, 2001

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Terril L. Graham,

Complainant,

vs.

Atascadero Mutual Water Company,

Defendant.

Case No. 99-03-070
(Filed March 31, 1999)

ORDER DENYING REHEARING OF
AND MODIFYING DECISION (D.) 01-06-027
TO CORRECT A TYPOGRAPHICAL ERROR

I. INTRODUCTION

Terril L. Graham (“Graham”) filed his initial complaint in this proceeding on March 31, 1999 against Atascadero Mutual Water Company (“AMWC”), alleging that AMWC was not providing water services to its shareholder members “at cost” and was failing to collect certain fees and surcharges from particular shareholders, thus requiring the remaining shareholders to partially subsidize the service provided to these particular shareholders. AMWC filed a timely answer to Graham’s complaint on May 13, 1999 and on May 18, 1999 filed a motion to dismiss for lack of jurisdiction. A prehearing conference was held on June 10, 1999 to identify the issues presented and to set a procedural schedule. The parties filed a Joint Case Management Statement on July 2, 1999.

On July 12, 1999, Graham filed an amended complaint reiterating the issues discussed above and also alleging that AMWC was operating in violation of Public Utilities Code Section 2725 by charging excessive rates to its shareholders and by providing free services to particular shareholders. AMWC filed its answer to Graham's amended complaint on July 19, 1999 and indicated that it would not move for dismissal of Graham's amended complaint. An evidentiary hearing was held in Atascadero on September 10, 1999, after which the parties filed two rounds of briefs. The proceeding was submitted on December 27, 1999. Due to the parties' request to extend the briefing schedule, D.00-03-008 was issued on March 2, 2000, extending the statutory deadline under Public Utilities Code Section 1701.2(d) for resolution of this proceeding.

A Presiding Officer's Decision ("POD") was issued in this matter on March 2, 2001. The POD found that AMWC was a "mutual water company" within the meaning of the Public Utilities Code, that AMWC had been providing water to its shareholders and members "at cost," and that AMWC was not subject to Commission jurisdiction. Graham filed an appeal of the POD on April 2, 2001, and AMWC filed a response to the appeal on April 13, 2001.

On June 15, 2001, we issued D.01-06-027. The Decision found that AMWC had complied with Public Utilities Code Section 2705 by providing water only to its own shareholders or members "at cost" and that AMWC had not transmuted itself into a public utility by earning a profit on water sales. Graham filed a timely application for rehearing of D.01-06-027 on July 16, 2001. AMWC filed a response to the rehearing application on July 20, 2001.

II. DISCUSSION

In his rehearing application, Graham challenges D.01-06-027 on the following grounds: 1) the Decision's findings of fact and conclusions of law are not supported by substantial evidence in light of the record; 2) the Decision is not supported by the findings of fact and conclusions of law; and 3) the Decision fails to address discrimination between "qualified customers" of AMWC and other customers of

AMWC. However, all of Graham's allegations of legal error can be reduced to a single argument: Because AMWC maintained a significant cash reserve for upgrades and repairs, and at times opted to conduct system improvements and upgrades instead of lowering rates for its shareholders and members, and occasionally waived the payment of certain fees or surcharges for particular AMWC shareholders, AMWC failed to provide water to its shareholders and members "at cost" as required by Public Utilities Code Section 2705.

In his rehearing application, Graham alleges that he provided substantial, credible evidence that AMWC was not providing water to its shareholders "at cost" and that AMWC failed to collect certain fees and surcharges from particular shareholders, thus requiring the remaining shareholders to partially subsidize the service provided to these particular shareholders. Graham refers to this latter issue as "cross-subsidization," meaning that, because certain shareholders were not charged for specific services and fees, the shareholders as a group were thus subsidizing services for this select group of "qualified customers."

Public Utilities Code Section 1705 provides that Commission decisions shall contain findings of fact and conclusions of law on all issues material to the order or decision. (Pub. Util. Code, §1705; see also Pub. Util. Code §1757, subd. (a)(3).) The California Supreme Court has observed that findings of fact and conclusions of law by the Commission are intended to assist the court in ascertaining the principles relied on by the Commission so that a court may determine whether the Commission acted arbitrarily. (California Manufacturers Ass'n v. Public Utilities Com. (1979) 24 Cal.3d 251, 258-59.) For example, the California Supreme Court has held that the findings of fact and conclusions of law by the Commission were adequate if they disposed of all issues necessary and relevant to the Commission's decision to sanction a company on the grounds that service was used for illegal purposes. (Goldin v. Public Utilities Commission (1979) 23 Cal.3d 638, 670.) Additionally, findings and conclusions are meant to assist the parties in preparing for rehearing or court review. (California Manufacturers Ass'n. v. Public Utilities Com., supra, 24 Cal.3d at pp. 258-259.)

The findings of fact and conclusions of law contained in the Decision are amply supported by the record. It is undisputed that AMWC operated with a substantial cash reserve in order to be able to fund future improvements, upgrades and repairs to the system. It is also undisputed that AMWC at times opted to conduct system upgrades instead of lowering rates for its shareholders and members and that, in individual cases, the Board of Directors of AMWC occasionally waived certain fees and service charges. Finally, it is undisputed that AMWC never paid any dividend or made any cash distribution to its members or shareholders.

While Graham does not contest the factual premises discussed above, he does contest the legal effect of these factual premises. As the party seeking rehearing, Graham has the burden to demonstrate the specific grounds upon which he considers the Decision to be unlawful; vague assertions as to the record or the law, without citation, will be afforded little weight. (See Public Utilities Code Section 1732; see also Rule 86.1; Cal. Code Regs., Tit. 20, Sec. 86.1.)

Graham clearly disagrees with our denial of his complaint. However, his application for rehearing fails to provide a basis for his assertions that the findings of fact and conclusions of law contained in D.01-06-027 are not supported by the record or that the Decision is not supported by the findings of fact and conclusions of law. To the contrary, the only finding of fact and conclusion of law of significance, i.e., whether AMWC provided water to its shareholders “at cost,” is amply supported by the record.

Graham also asserts as a specification of legal error that the Decision fails to address discrimination between “qualified customers” of AMWC and other customers of AMWC. By this averment, Graham appears to refer to the “cross-subsidization” issue. However, Graham cites no case law or administrative decision in support of his position that waiving or postponing payment of such fees and surcharges means that AMWC is earning a profit on water sales. In addition, the Decision expressly mentions, and subsequently rejects, Graham’s claim that AMWC’s occasional waiver of fees and surcharges constitutes a violation of Section 2705’s requirement to provide water to

shareholders “at cost.” Thus, Graham’s claim that the Decision failed to address this issue is without merit.

In sum, the Decision’s conclusion that AMWC complied with Public Utilities Code Section 2705 by providing water to its shareholders and members “at cost” is amply supported by the record and the Decision’s findings of fact and conclusions of law. Graham’s application for rehearing fails to provide a basis for finding that D.01-06-027 contains legal error. Graham simply restates the same arguments that he presented at the evidentiary hearing and in his appeal of the POD, without establishing legal error.

III. CONCLUSION

Rehearing is denied, but the Decision is modified to correct a typographical error.

IT IS THEREFORE ORDERED THAT:

1. Rehearing of D.01-06-027 is denied.
2. D.01-06-027 is modified as follows: On page 5 of D.01-06-027, the Decision cites to Section 2205 of the Public Utilities Code. This should be modified to refer to Section 2705 of the Public Utilities Code.
3. This proceeding is closed.

This order is effective today.

Dated September 6, 2001, at San Francisco, California.

LORETTA M. LYNCH
President
HENRY M. DUQUE
RICHARD A. BILAS
CARL W. WOOD
GEOFFREY F. BROWN
Commissioners