

JUL 30 1991

**NOTE! An important notice to parties about administrative relief appears at the end of this order.**

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

ROBERT A. HART,	)	
	)	DOCKET NO. UW-901534
Complainant,	)	
vs.	)	FINDINGS OF FACT,
	)	CONCLUSIONS OF LAW
EVERGREEN LAND AND WATER, INC.	)	AND INITIAL ORDER
	)	
Respondent.	)	
	)	
.....	)	

This matter was heard on June 7, 1991, at Olympia, Washington. The hearing was held before Administrative Law Judge Alice L. Haenle of the Office of Administrative Hearings. All parties received proper notice of the hearing.

The parties were represented as follows:

- COMPLAINANT: ROBERT A. HART, pro se  
P.O. Box 178  
Hoodsport, WA 98548
  
- RESPONDENT: EVERGREEN LAND AND WATER, INC.  
By William T. Petty, president  
P.O. Box 336  
Hoodsport, WA 98548
  
- COMMISSION: WASHINGTON UTILITIES AND  
TRANSPORTATION COMMISSION  
By Anne Egeler, Assistant Attorney General  
1400 South Evergreen Park Drive S.W.  
Olympia, WA 98504

MEMORANDUM

This complaint was filed by Robert Hart against a water company. Mr. Hart was receiving residential service at his home and commercial service at his business. The business is a grocery store, located adjacent to Mr. Hart's residence.

Mr. Hart gave the company written notice in mid-May 1990, asking for termination of service to the market as of June 1. He originally capped the water pipes inside the market. In September 1990, Mr. Hart capped the pipes outside the market at the suggestion of the Commission staff, so that the company could verify the pipes were not connected to the water system.

The company refused to terminate billing the market for several reasons. Primarily, the company considers the market to have "joint use" with Mr. Hart's residence, under the terms of Rule 14 of the company's tariff. Rule 14 provides in pertinent part:

...Each separate housekeeping establishment or business using water, regardless of joint use, with other housekeeping establishments or businesses, will each be considered a customer...

The company contends it is required to continue charging the market as a business customer.

Because a single water line serves the market, Mr. Hart's residence, and the residence of a third party, the company cannot shut off water only to the market. The company is concerned that it cannot verify that the market is not using water. The market is not metered. The company's president William Petty also does not consider believable Mr. Hart's contentions that he is not using any water from the residence at the market.

The company's position is that there is no way to terminate service to the market, unless the customer is willing to install separate water lines. This is not a reasonable condition. These parties have been brought to a stalemate because of the configuration of the company-owned water plant. The single line (and single shut-off valve) is intended to serve all three buildings. The line has no water meter to track consumption. This situation should not be construed to lock a customer into taking water service at a location until the structure is demolished.

Although it must be very rare for a customer to go to the lengths described by Mr. Hart to avoid using water from the system in the market, extensive cross-examination of Mr. Hart leads to the conclusion that his testimony is credible. He stated he purchases bottled water to use for clean-up and hand washing at the market. Market employees use a Sanikan portable restroom. Mr. Hart and his wife do use the bathroom of their residence during business hours. There is no provision for hot water for use in the market or for hand washing.

Although the undersigned has some concern that these arrangements may not meet Health Department regulations regarding food preparation, clean-up or hand washing, the Commission does not have jurisdiction to make this determination. Mr. Hart testified he would install a self-contained water system if

Health Department regulations required running hot water for market uses.

So long as Mr. Hart does not change the consumption patterns described at the hearing, he should not be charged as a business customer for the market. Mr. Hart must leave the outside pipes capped at all times. The company must be allowed reasonable access to the capped pipes to verify that the pipes remain capped. Mr. Hart must continue to purchase bottled water for use in the market. He may not transport water from the residence to the market or fill the bottles at the residence taps.

Under the conditions described in this record, the company's tariff does not require the market be charged for water service. "Joint use" envisions a sharing of water between facilities, which is apparently not the case here.

An important element is the company's ability to verify that the pipes are not connected to the system. Because the pipes were not capped outside the market until mid-September, Mr. Hart should pay for water use at the market through the end of September. The remainder of the outstanding balance should be cancelled. The company should cease billing the market as a business customer. If the conditions described in this record change, the company may bring the matter before the Commission at a later time. None of the penalties requested in the complaint should be levied.

Based on the entire record and the file in this matter, the undersigned administrative law judge makes the following proposed findings of fact and conclusions of law.

#### FINDINGS OF FACT

1. On December 11, 1990, Robert A. Hart filed with the Commission a formal complaint against Evergreen Land and Water, Inc. (hereafter, Evergreen or company). The complaint alleged Evergreen had violated state statutes and the Commission's rules in provision of water service. The complaint requested the Commission find that violations had occurred, assess penalties against Evergreen, and find that complainant's account is current.

2. On December 27, 1990, Evergreen filed a response to the complaint. The response contended that Evergreen's tariff requires the company to bill complainant for water service. The response requested the Commission order complainant to bring his account current.

3. William T. Petty is president of Evergreen Land & Water, Inc. The company provides water service in Washington state to 230 customers. At all times during this controversy, the commercial flat rate was \$17.40 per month and the residential flat rate was \$16.30 per month. Applicable tariffs are included in the record as Exhibit 1.

4. Robert A. Hart operates a grocery store in Hoodspport under the trade name Hoodspport Market. Hoodspport Market is located next to Mr. Hart's residence. There is approximately one foot between the buildings, which are connected by a breezeway. Water service is not metered. A single water line served the residence, the market, and the beach residence of a third party.

5. In the past, Mr. Hart has taken water service at the market and at his residence. In March or April 1990, Mr. Hart removed the sink from the market and capped the pipes inside the building. Mr. Hart requested in writing termination of service sometime in mid April, to be effective May 1, 1990. At the suggestion of the Commission staff, Mr. Hart capped the two pipes to the market on the outside of the building. Mr. Hart reported to the Commission staff on September 18, 1990 [TR 74], that the pipes had been capped on the outside of the building.

6. Respondent has continued through the date of the hearing to bill Mr. Hart for water service at the market. Mr. Hart has paid the bill for water service at his residence. He has refused to pay the bill for water service at the market. The outstanding balance for water service at the market was \$226.20 as of the date of the hearing [TR 11, 51]. Evergreen had sent notice to Mr. Hart that his residential service would be shut off for nonpayment of the bill for the market, but the service was not shut off. Service to the market could not have been shut off without impacting Mr. Hart's residence and the beach residence

7. Mr. Hart gave credible testimony that water from the residence is not used at the market. Mr. Hart purchases bottled water for all uses at the market, including clean-up and hand washing. Employees use a Sanikan portable restroom. There is no indication that water is carried from the residence to the market.

8. Because the company cannot shut off water to the market at the main service valve, it is important that the company be able to verify the pipes remain capped. The company should be allowed reasonable access to verify that the pipes remain capped outside the market.

9. Under these conditions, the market is no longer a commercial customer of the water company. Mr. Hart's capping of

the pipes outside the market in September is sufficient to terminate service to the market, including the company's ability to verify that the pipes are not connected to the system. Mr. Hart is responsible for the commercial rate of \$17.40 per month for months of May through September, for a total of \$87. The company should cancel its billing for commercial service after September, and should cease billing the market for service.

10. No penalties should be assessed in this matter.

#### CONCLUSIONS OF LAW

1. The Washington Utilities and Transportation Commission has jurisdiction over the subject matter of this complaint and the parties thereto.

2. The company's tariff does not require the market be billed as a commercial customer after the end of September 1990. Mr. Hart should pay \$87 for five months' commercial service before he capped the pipes to the market outside the building in a manner the company can verify. The remainder of the amount in controversy should be cancelled.

3. Mr. Hart should leave the pipes capped outside the market, should allow the company reasonable access to verify the pipes remain capped, and should not use water from his residence for any purpose at the market.

4. No penalties should be assessed.

Based on the above proposed findings of fact and conclusions of law, the undersigned administrative law judge makes the following initial order:

#### ORDER

WHEREFORE, IT IS HEREBY ORDERED That Robert Hart will pay to the company within thirty days of the Commission's order in this matter, \$87 for commercial water service May through September 1990; and

IT IS FURTHER ORDERED That the remainder of the bill for commercial water service at the market is cancelled, and the company will cease billing the market for commercial water service; and

IT IS FURTHER ORDERED That, so long as conditions of water use remain as they are described in the body of this order, and so long as the market does not reconnect to the water system, the market shall not be considered a commercial water customer under the company's tariff; and

IT IS FURTHER ORDERED That the remaining prayers of the complaint and answer are denied.

DATED at Olympia, Washington, and effective this 30th day of July, 1991.

OFFICE OF ADMINISTRATIVE HEARINGS

*Alice L. Haenle*

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ALICE L. HAENLE  
Administrative Law Judge

**NOTICE TO PARTIES:**

This is an initial order only. The action proposed in this order is not effective until a final order of the Utilities and Transportation Commission is entered. If you disagree with this initial order and want the Commission to consider your comments, you must take specific action within a time limit as outlined below.

Any party to this proceeding has twenty (20) days after the service date of this initial order to file a Petition for Administrative Review, under WAC 480-09-780(2). Requirements of a Petition are contained in WAC 480-09-780(4). As provided in WAC 480-09-780(5), any party may file an Answer to a Petition for Administrative Review within ten (10) days after service of the Petition. A Petition for Reopening may be filed by any party after the close of the record and before entry of a final order, under WAC 480-09-820(2). One copy of any Petition or Answer must be served on each party of record and each party's attorney or other authorized representative, with proof of service as required by WAC 480-09-120(2).

In accordance with WAC 480-09-100, all documents to be filed must be addressed to: Office of the Secretary, Washington Utilities and Transportation Commission, 1300 South Evergreen Park Drive S.W., Olympia, Washington, 98504-8002. After reviewing the Petitions for Administrative Review, Answers, briefs, and oral arguments, if any, the Commission will by final order affirm, reverse, or modify this initial order.