

MEMORANDUM OF LAW

DATE: September 5, 1985

TO: Jerry Alesi, Customer Services Supervisor

FROM: City Attorney

SUBJECT: Notice to Tenants of Pending Water Shutoff

You recently asked for our review of a proposed notice of water shutoff to tenants of multiple living units where the responsible party is delinquent in payment. You indicate that this is not currently being done and water is therefore shut off without notice. Although San Diego Municipal Code section 67.16 currently permits the department to shut off water to any premises at any time without notice, such broad authority is now constitutionally suspect and potentially statutorily infirm.

The United States Supreme Court in *Memphis Light, Gas and Water Division v. Craft*, 436 U.S. 1, 56 L.Ed.2d 30, 98 S.Ct. 1554 (1978) found that procedural due process requires a minimal notice and an opportunity to be heard before the essential

service of water can be terminated.

Under the balancing approach outlined in Mathews, some administrative procedure for entertaining customer complaints prior to termination is required to afford reasonable assurance against erroneous or arbitrary withholding of essential services. The customer's interest is self-evident. Utility service is a necessity of modern life; indeed, the discontinuance of water or heating for even short periods of time may threaten health and safety. And the risk of an erroneous deprivation, given the necessary reliance on computers, is not insubstantial.

The utility's interests are not incompatible with affording the notice and procedure described above. Quite apart from its duty as a public service company a utility--in its own business interests--may be expected to make all reasonable efforts to minimize billing errors and the resulting customer dissatisfaction and possible injury. Cf. Goss v

Lopez, 419 U.S. 565, 583 42 L.Ed.2d 725, 95 S.Ct 729 (1975). Nor should "some kind of hearing" prove burdensome. The opportunity for a meeting with a responsible employee empowered to resolve the dispute could be afforded well in advance of the scheduled date of termination. And petitioners would retain the option to terminate service after affording this opportunity and concluding that the amount billed was justly due.

Memphis Light, Bar and Water Division, supra at 56 L.Ed.2d 30, 44-45 (1978). Emphasis added.

The requirements of adequate notice and a fair hearing were confirmed in California in *Perez v. City of San Bruno*, 27 Cal.3d 875, 893 (1980) where the same due process requirements were applied to curb a termination of water services where all unified charges for component services were not paid.

Because California law does not permit the termination of utility service to a customer without good cause (*Schultz v. Town of Lakeport* (1936) 5 Cal.2d 377, 381-382 54 P.2d 1110, 55 P.2d 485, 108 A.L.R. 1168), the

requirements set forth in the Memphis case are fully applicable here.

Perez v. City of San Bruno 27 Cal.3d 875, 894 (1980).

Without conceding the applicability of the Public Utilities Code to the utility functions of a chartered city (Compare Calif. Const., art. XI, Sec. 9 and County of Inyo v. Public Utilities Commission, 26 Cal.3d 154, 166 (1980)), we note that there is a statutory minimum notice prescribed in the Public Utilities Code.

Sec. 10010. Termination of services:

Procedures

(a) No electrical, gas, heat, or water public utility may terminate its service to a residential dwelling on account of nonpayment of a delinquent account unless the public utility first gives notice of such delinquency and impending termination, at least seven calendar days prior to the proposed termination, by first class mail addressed to the customer to whom the service is billed.

(b) No such public utility shall effect

termination of service to a residential dwelling for nonpayment during the pendency of an investigation by the public utility of a customer dispute or complaint.

(c) Any customer who has initiated a complaint or requested an investigation within five days of receiving the contested bill under subdivision (b) shall be given an opportunity for review of such complaint or investigation by a review manager of the public utility.

The review shall include consideration of whether the customer should be permitted to amortize the unpaid balance of his account over a reasonable period of time. No termination shall be effected for any customer complying with any such amortization agreement, provided the customer also keeps current his account for utility service as charges accrue in each subsequent billing period.

(d) If a customer fails to comply with an amortization agreement, the public utility shall not terminate service without giving

notice to the customer, in accordance with the provisions of subdivision (a), of the conditions the customer must meet to avoid termination, but such notice shall not entitle the customer to further investigation by the public utility.

Public Utilities Code section 10010.

Nor does the fact that the user is a tenant of a multiple unit serviced by one meter alter our opinion. First substantive due process rights belong to the user and are thus independent of real property interests. *Memphis, supra*; *Davis v. Weir*, 497 F.2d 139 (5th Cir. 1974). Secondly but with the same caveat, Public Utilities Code section 10009 extends the notice to the user.

Sec. 10009. Duty to inform actual users of utility services when account in arrears that services will be terminated in certain days:  
Absence of obligation to make services available until actual users agree to terms and conditions of service: Actual users as customers: Deduction of utility charges from periodic payments which include utility costs not separately stated

(a) Where utility service is provided to residential users through a master meter, the public utility shall make every good faith effort to inform the actual users of the utility services when the account is in arrears that service will be terminated in 10 days. The notice shall further inform the actual users that they have the right to become utility customers without being required to pay the amount due on the account.

(b) The public utility shall not be obligated to make service available unless and until each and every actual user of the utility system then residing on the premises shall agree to the terms and conditions of service, and shall meet the requirements of the public utility's rules and tariffs, provided, however, that if (1) one or more actual users are willing and able to assume responsibility for the entire account to the satisfaction of the public utility, or if (2) there is a physical means, legally available to the public utility, of selectively terminating

service to those actual users who have not met the requirements of the public utility's rules and tariffs, the public utility shall make service available to the actual users who have met those requirements.

(c) Where prior service for a period of time is a condition for establishing credit by the serving utility, residency and proof of prompt payment of rent for such period of time shall be a satisfactory equivalent.

(d) Any actual user of utility services who becomes a utility customer pursuant to this section whose periodic payments, such as rental payments, include the costs of utility services, where such costs are not separately stated, may deduct from his payment each payment period all such reasonable charges paid to the utility for utility services during the preceding payment period.

Lastly, we would be remiss if we did not inform you of pending legislation which modifies and expands these notice provisions. Assembly Bill 1774 is attached for your review.



While it has not been enacted, you will note that it proposes new section 10010.1 to the Public Utilities Code that would detail the requirements of shutoff notices.

In light of constitutional requirements and statutory suggestion, we conclude that adequate notice of termination, a specific avenue for pretermination review of a disputed bill with a designated employee empowered to resolved disputed issues and notice that they have the right to become a utility customer without being required to pay the amount due on the existing account is required to be given before termination of services.

Hence we suggest that the notice be modified to include the above-referenced information by adding after the second paragraph:

Termination of service is scheduled for  
----- (Ten days after date of notice.)

Before any termination of service, you have the right to a hearing with the Customer Service Representative (telephone number) to resolve any charges you dispute.

You have the right to become a utility customer without paying the existing amount due.

After a review of these requirements, I would be happy to

meet with you to finalize any remaining questions you have about  
the substance of the notice.

JOHN W. WITT, City Attorney

By

Ted Bromfield

Chief Deputy City Attorney

TB:js:440(x043.2)

Attachment

ML-85-52