STATE OF CALIFORNIA EDMUND G. BROWN, JR., *Governor*

PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

F I L E D
06-12-12
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June 12, 2012

Agenda ID #11400
Adjudicatory

TO PARTIES OF RECORD IN CASE 12-01-010

This is the proposed decision of Administrative Law Judge (ALJ) Mason. It will not appear on the Commission's agenda sooner than 30 days from the date it is mailed. The Commission may act then, or it may postpone action until later.

When the Commission acts on the proposed decision, it may adopt all or part of it as written, amend or modify it, or set it aside and prepare its own decision. Only when the Commission acts does the decision become binding on the parties.

Parties to the proceeding may file comments on the proposed decision as provided in Article 14 of the Commission's Rules of Practice and Procedure (Rules), accessible on the Commission's website at www.cpuc.ca.gov. Pursuant to Rule 14.3, opening comments shall not exceed 15 pages.

Comments must be filed pursuant to Rule 1.13 either electronically or in hard copy. Comments should be served on parties to this proceeding in accordance with Rules 1.9 and 1.10. Electronic and hard copies of comments should be sent to ALJ Mason at rim@cpuc.ca.gov and the assigned Commissioner. The current service list for this proceeding is available on the Commission's website at www.cpuc.ca.gov.

/s/ KAREN V. CLOPTON
Karen V. Clopton, Chief
Administrative Law Judge

KVC:avs

Attachment

Decision **PROPOSED DECISION OF ALJ MASON** **(Mailed 6/12/2012)**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

BudSco Chemical Enterprises, Inc., Complainant, vs. Robert T. Adcock, Patricia Adcock, Alisal Water Corporation dba Alco Water Service (U206WTB), Defendants.	Case 12-01-010 (Filed January 19, 2012)

DECISION DISMISSING COMPLAINT

1. Summary

On January 19, 2012, BudSco Chemical Enterprises, Inc. (BudSco) filed a complaint against Robert T. Adcock, Patricia Adcock, and Alisal Water Corporation dba Alco Water Service (Alco), alleging that defendants' well ownership and service to the Rosehart Industrial Park Water System customers violate the Commission's Decision (D.) 11-03-005. Rather than allow this complaint to proceed to hearings, we grant Alco's Motion to Dismiss BudSco's complaint. The facts are undisputed that Alco has supplied water to BudSco as authorized by D.11-03-005, and there are no allegations that Alco has billed BudSco at rates not authorized by Alco's approved tariff. Even accepting BudSco's complaint allegations as true, BudSco has failed to allege that Alco violated either California law, the Commission's rules, decisions, or orders, or

Alco's approved tariff. Accordingly, BudSco's complaint must be dismissed. Finally, having decided to dismiss the complaint on the ground that BudSco has failed to state any cause of action that this Commission may adjudicate, we need not address Alco's remaining collateral attack and proper subject matter arguments.

This proceeding is now closed.

2. Procedural Background

This complaint arises from issues decided in a general rate case proceeding, wherein the Commission authorized Alisal Water Corporation dba Alco Water Service (Alco) to include the Rosehart Industrial Park Water System into its certificated service area, to charge Rosehart customers for water service, and to include the Rosehart subdivision properties under Alco's existing tariff rules. (Application (A.) 10-02-006; Decision (D.) 11-03-005.) The facts are undisputed that following the Commission's authorization, Alco filed an Advice Letter 146 on April 12, 2011 that requested approval "to make effective the tariff sheets attached to Advice Letter 146, which included the Rosehart Area Map."[1] On April 27, 2011, the Commission's Water & Sewer Advisory Branch wrote to Alco and advised it had processed the advice letter and the attached revised tariff sheets.[2] Alco has begun to supply and charge Rosehart residents, including BudSco Chemical Enterprises, Inc. (BudSco), for water service and BudSco has not challenged the amount of its water charges.

Nevertheless, on January 19, 2012, BudSco sued Alco, alleging that there is uncertainty as to the manner in which defendants own the well and bill Rosehart

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[1] Alco's Answer to Complaint, at 3, Exhibit 13.

[2] *Id.*, Exhibit 14.

customers, and that this uncertainty possibly violates the express terms of D.11-03-005. Specifically, BudSco points to a document from the Monterey County Assessor indicating that the Adcocks, rather than Alco, own the well from which the water is derived for Rosehart customers, and that the Adcocks' alleged ownership violates the Commission's ban on commercial/family transactions.

As a result, BudSco asks the Commission to resolve the following four issues: (1) Who are the rightful owners of the well from which BudSco draws water and is charged a fee? (2) Does defendants' well ownership violate the Commission's ban on family/commercial transactions set forth in the D.11-03-005? (3) If defendants discontinue BudSco's water service for nonpayment, must the Commission analyze the applicable California laws to determine the possible increased fire risk at the locations where BudSco warehouses Ag Chemicals?; and (4) Must defendants explain the $14.24 late charge on BudSco's 11/30—12/30/11 water bill? Along with its complaint, BudSco enclosed a check for $1,217.13 for the Commission to hold in order to maintain water service during the pendency of this dispute. Although BudSco requested that its complaint be handled under the Commission's expedited complaint process (ECP), the assigned Administrative Law Judge (ALJ) determined that the complex legal issues mandated that the complaint should be handled under the full adjudicatory process rather than an ECP.[3]

[3] *See* e-mail ruling of ALJ Mason, dated March 15, 2012.

On March 5, 2012, Alco answered the complaint, denying BudSco's allegations and setting forth 13 separate affirmative defenses.[4] Simultaneously with its answer, Alco moved to dismiss BudSco's Complaint for four reasons: (1) the complaint constitutes an improper collateral attack on D.11-03-005 as it raises the very issues advanced by the Division of Ratepayer Advocates (DRA) and resolved by the Commission in Alco's general rate case (A.10-02-006); (2) assuming the complaint is a procedurally proper vehicle, it is vague, ambiguous, and fails to state a claim upon which relief can be granted; (3) the complaint improperly names Robert T. Adcock, who is deceased, and Patricia Adcock as defendants as neither individual fits within the definition of a utility required by Public Utility Code Sections 216 and 1702; and (4) the $14.24 charge has been explained so there is nothing left to litigate.

On March 22, 2012, BudSco responded to Alco's Motion to Dismiss, denying that it was making a collateral attack on D.11-03-005. Instead, BudSco asserts it is seeking Commission assistance in determining whether Alco is conducting its business in accordance with D.11-03-005. BudSco seeks this request as it appears that the water system facilities and well are owned by Adcock family members, an association that possibly runs afoul of the Commission's restriction on transactions between Alco and members of the Adcock family. BudSco points to the Monterey County Assessors Record as of December 21, 2011 which provides that the Adcocks are owners of record. If Alco is in fact the owner, BudSco asks why has Alco waited thirteen years to

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[4] The defenses include, *inter alia*, failure to state a claim or claims, failure to allege that Alco has committed an act in violation of any law, or has acted unreasonably, failure to

Footnote continued on next page

change the record. Finally, BudSco seeks a decision whether the $14.24 charge must be explained and detailed on the customer bills.

On April 6, 2012, Alco replied to BudSco's response.

3. Standard for Ruling on a Motion to Dismiss

Over the years, the Commission has developed two similar standards for ruling on a motion to dismiss and we address and apply each standard in this decision.

3.1. The First Standard: Do the Undisputed Facts Require the Commission to Rule in the Moving Party's Favor as a Matter of Law?

In *Raw Bandwidth Communications, Inc. v. SBC California, Inc. and SBC Advanced Solutions, Inc.*, the Commission stated that a Motion to Dismiss "requires the Commission to determine whether the party bringing the motion prevails based solely on undisputed facts and matters of law. The Commission treats such motions as a court would treat motions for summary judgment in civil practice."[5] A motion for summary judgment is appropriate where the evidence presented indicates there are no triable issues as to any material fact and that, based on the undisputed facts, the moving party is entitled to judgment as a matter of law. (Code of Civil Procedure, § 437c; Weil & Brown, *Civil Procedure Before Trial*, 10:26-27.) While there is no express Commission rule for summary judgment motions, the Commission looks to California Code of Civil

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mitigate BudSco's injury, vagueness, waiver, estoppel, and lack of subject matter or personal jurisdiction over the Adcocks.

[5] D.03-05-023 (September 11, 2003) [Scoping memo and Ruling of Assigned Commissioner on Motion to Dismiss and Preliminary Matters, at 3, citing to *Westcom Long Distance, Inc. v. Pacific Bell et al.*, Decision 94-04-082, 54 CPUC 2d 244, 249].

Procedure § 437(c) for the standards on which to decide a motion for summary judgment. (*Id.)*[6] Section 437(c) provides:

> The motion for summary judgment shall be granted if all the papers submitted show that there is no triable issue as to any material fact and that the moving party is entitled to judgment as a matter of law. In determining whether the papers show that there is no triable issue as to any material fact the court shall consider all of the evidence set forth in the papers . . . and all inferences reasonably deducible from the evidence, except summary judgment shall not be granted by the court based on inferences reasonably deducible from the evidence, if contradicted by other inferences or evidence, which raise a triable issue as to any material fact."

A further beneficial purpose of such a motion is "that it promotes and protects the administration of justice and expedites litigation by the elimination of needless trials." (*Westcom Long Distance, supra,* 54 CPUC2d, 249.) As such, where appropriate, the Commission regularly grants motions for summary judgment or summary adjudication. (*See* D.07-07-040 [granting Chevron judgment against Equilon "as a matter of law"]; D.07-01-004 [granting Cox Telecom judgment against Global NAPs of California]; and D.02-04-051 [granting summary adjudication of a claim by County Sanitation District against SoCal Edison].)

[6] *See Westcom*, *supra*, 54 CPUC 2d, 249-250.

3.2. The Second Standard: Is Defendant Entitled to Prevail Even if the Complaint's Well-Pleaded Allegations are Accepted as True?

In *Re Western Gas Resources-California, Inc.*, D.99-11-023 (November 4, 1999), we articulated another standard for dismissing complaints and applications that is slightly different than what we adopted in *Raw Bandwidth*:

> On a motion to dismiss a complaint, the legal standard against which the sufficiency of the complaint is measured is whether, taking the well-pleaded factual allegations of the complaint as true, the defendant is entitled to prevail as a matter of law. (*E.g.*, *MCI Telecommunications Corp. v. Pacific Bell*, D.95-05-020, 59 Cal. PUC 2d 665, 1995 Cal. PUC LEXIS 458, at *29-*30, citing *Burke v. Yellow Cab Co.* (1973) 76 Cal. PUC 166.) 3 CPUC 3d, 301.

This standard was employed more recently in *Everyday Energy Corporation v. San Diego Gas & Electric Company*, D.12-03-037 (March 29, 2012) wherein the Commission added: "By assuming that the facts as alleged in the complaint are true for the purpose of deciding whether to grant a motion to dismiss, we assume that Complainant will be able to prove everything alleged in its complaint. (Slip Op., 7.)

In determining if the complaint's allegations are "well pleaded," we are guided by the standards set forth in Pub. Util. Code § 1702, which provides that the complainant must allege that a regulated utility has engaged in an act or failed to perform an act in violation of any law or commission order or rule:

> Complaint may be made by the commission of its own motion or by any corporation or person, chamber of commerce, board of trade, labor organization, or any civic, commercial, mercantile, traffic, agricultural, or manufacturing association or organization, or anybody politic or municipal corporation, by written petition or

> complaint, setting forth any act or thing done or omitted to be done by any public utility, including any rule or charge heretofore established or fixed by or for any public utility, in violation or claimed to be in violation, of any provision of law or of any order or rule of the commission.

As demonstrated by past precedent, the Commission will dismiss a complaint that fails to meet this two-pronged standard. (*See Monkarsh v. Southern California Gas Company,* Decision 09-11-017, at *3 (*November 24, 2009)*; Pacific Continental Textiles, Inc. vs. Southern California Edison Company,* Decision 06-06-011, at 4 (June 15, 2006); *Watkins v. MCI_Metro Access Transmission Services,* Decision 05-03-007, at 4 (March 17, 2005); *Rodriquez v. Pacific Gas and Electric Company,* Decision 04-03-010, at 3-4 (March 16, 2004); *AC Farms Sheerwood. v. So. Cal Edison*, Decision 02-11-003 (November 7, 2002); and *Crain v. Southern California Gas Company*, Decision 00-07-045 (July 20, 2000).)

In addition to the requirements of § 1702, Commission Rules of Practice and Procedure Rule 4.2(a) requires that complaints be drafted with specificity so that the defendant and the Commission know precisely the nature of the wrong that defendant has allegedly committed, the injury, and the relief requested:

> The specific act complained of shall be set forth in ordinary and concise language. The complaint shall be so drawn as to completely advise the defendant and the Commission of the facts constituting the grounds of the complaint, the injury complained of, and the exact relief which is desired.

In sum, while the first and second standards for deciding a Motion to Dismiss differ slightly (one looks at the undisputed facts while the other assumes the well-pleaded facts to be true), both standards require the Commission to examine the factual allegations and to make a legal determination regarding whether judgment should be entered in the moving party's favor. In applying

both standards to BudSco's complaint, we conclude that Alco's Motion must be granted.

4. The Facts are Undisputed that Alco is Supplying and Billing for Water in Conformity With Decision 11-03-005

4.1. The Commission May Take Judicial Notice of the Facts from Alco's Underlying General Rate Case

Before addressing the substantive arguments that the Motion to Dismiss raises, it will be helpful to consider Alco's general rate case and the Commission's decision thereon, as there are factual and legal determinations that are dispositive of the issues raised in BudSco's complaint. As this Commission has made clear in *CPN Pipeline Co. v. Pacific Gas and Electric Company*, D.01-05-086 (May 24, 2001), such an approach is appropriate since, as a matter of law, the Commission may take judicial or official notice of court records as well as the files and records of the Commission's proceedings in ruling on a motion to dismiss. (Slip OP., 14, citing to *Upper Kern Island Water Ass'n v. Kern Delta Water Distric*t, D.91-05-019, 40 Cal. PUC 2d 65, 1991 Cal. PUC LEXIS 244, at *14; and *City of El Monte v. San Gabriel Valley Water Co*., D.87-09-065, 25 Cal. PUC 2d 393, 1987 Cal. PUC LEXIS 238.)

In A.10-02-006, Alco filed an application for an order authorizing it to increase rates for water service and to include the Rosehart Industrial Park Water System into Alco's certificated service area.[7] The Commission approved the Joint Motion to approve the settlement on March 10, 2011.[8] On April 27, 2011, the Commission's Water & Sewer Advisory Branch wrote to Alco and stated, in part,

[7] Settlement Agreement, 30.

that the "Commission has received and filed the utility's Advice Letter 146, to include the Rosehart Industrial park Water System into Alco's certificated area, to charge the rates charged for the Salinas Division, and to withdraw its current tariff Schedule No. 1A, General Metered Service."[9] BudSco is in the Rosehart service area and is receiving water from Alco.[10] Alco has been billing BudSco for water service received in the Rosehart service territory,[11] and there are no allegations that Alco is charging customers in the certificated service area at rates not authorized by the Commission.

As these facts are not in dispute, Alco is conducting its business in the Rosehart service with BudSco in accordance with the terms of the Commission-approved Settlement Agreement. Nevertheless, we review BudSco's complaint to determine if there are any facts contained therein to overcome or dispute the undisputed facts which the Commission may judicially notice.

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[8] D.11-03-005, at 2 and Ordering Paragraph 1.

[9] Motion to Dismiss, Exhibit 9.

[10] BudSco complaint, at 2, paragraph F ("BudSco receives its water from a small well system operated by Alisal Water Corp DBA Alco Water [.]"); Letter dated August 26, 2011 from Noland Hamerly Etienne Hoss, attorneys for BudSco, which states in part: "I am writing on behalf of BudSco, Inc. who owns property and operates its business in the Rose Hart Industrial Park south of Salinas." (BudSco complaint attachment.)

[11] *See* Alco Water Service bills addressed to BudSco and attached to BudSco's complaint.

4.2. BudSco's Ownership Issues Do Not Create a Cause of Action for the Commission to Adjudicate

BudSco raises questions about the ownership of the well in an effort to convince the Commission that there is a cause of action to adjudicate. BudSco points to the PROPERTY ASSESSMENT INFORMATION SEARCH VALUE NOTICE from the Monterey County Assessor to show that the ownership of Fee Parcel 137-13015-000 from which the water is derived is allegedly owned by Robert and Patricia Adcock. BudSco's argues that this indication of ownership is potentially violative of the Commission's D.11-03-005, Ordering Paragraph 9, that "Alisal Water Corporation dba Alco Water Service must cease all commercial transactions between the utility and any member of the Adcock family." BudSco questions who are the owners of the well lot and equipment and why does the Monterey County Assessor's record "show different owners than who is benefiting financially from the owners investment?"

Yet taken either individually or collectively, BudSco's questions fail to amount to a cause of action for the following reasons: first, the facts are undisputed that in July of 1998 Alco acquired all Rosehart assets from Robert and Patricia Adcock via an executed bill of sale.[12] BudSco does not suggest or allege that the Bill of Sale is in any way invalid. Second, the Commission authorized Alco to include Rosehart into its certificated territory and to supply and charge the customers for water. BudSco's own water bills document that was in fact done. Third, whatever confusion that the Monterey County Assessor's records may have caused BudSco does not rise to a claim that Alco violated any law or

[12] Motion to Dismiss, Exhibit 2 (Bill of Sale).

Commission rule, order, or statute as required by § 1702. Moreover, by citing to the County records, it appears that BudSco is asking the Commission to determine the rightful ownership of the water well that is supplying the Rosehart customers. This is something that the Commission may not do as the Commission "lacks jurisdiction to adjudicate rights in real property." (*Rodriguez v. Pacific Gas and Electric Company*, D.04-03-010, at 4 (March 17, 2004); *see also Camp Meeker Water System, Inc. v. Public Utilities Commission*, (1990) 51 Cal. 3d 845, 850 ["The commission acknowledges that it does not have jurisdiction equivalent to that of a court, to adjudicate incidents of title[.]")

4.3. Alco's Transactions with the Adcocks Do Not Violate D.11-03-005

BudSco's belief that D.11-03-005 banned Alco from engaging in commercial transactions with the Adcocks is not correct. D.11-03-005 referenced a restriction "on any commercial transactions in the future between Alco and all Adcock family members and family-related persons."[13] As the transaction in question regarding the Rosehart well ownership occurred in July of 1998, the future transaction restriction is inapplicable.

Furthermore, in the Decision Modifying Decision 11-03-005 and Decision 11-09-040 Applying the Affiliate Transaction Rules that we recently approved at the May 10, 2012 voting meeting, the Decision clarified the earlier language regarding Alco's ability to transact business with the Adcocks:

> We note that some language in D.11-09-040 might have been ambiguous as to Alco's ability to conduct commercial transactions with Adcock family members …. Such language might be interpreted to suggest that Alco is

[13] D.11-03-005, at 23.

> prohibited from entering into, negotiating, or even discussing any commercial transaction with an Adcock family member without first filing a Tier 3 Advice Letter. This was not the intent of D.11-09-040. (Slip OP., 3, Fn. 1.)

Instead, the Decision recommended that the Rules for Water and Sewer Utilities Regarding Affiliate transactions and the Use of Regulated Assets for Non-Tariffed Utility Services (Affiliate Transaction Rules) be used instead of the Tier 3 Advice Letter for reviewing the Adcock family transactions. (*Id.*, 9-10.)

4.4. As BudSco Has Not Alleged that Alco Has Cut Off its Water Service, its Concerns About Fire Suppression are Mere Speculation that Runs Afoul of this Commission's Refusal to Issue Advisory Opinions

In its Complaint, Section (G)(4), BudSco states one of the issues for consideration is "Public Health and Safety/CPUC/LAWS in relation to fire suppression for Ag Chemical products in relation to service disconnection." As we understand the details of the complaint, BudSco maintains Ag Chemicals in a warehouse that receives water from Alco. BudSco asserts that Alco has threatened to discontinue water service, meaning that the lack of water might create a fire hazard that is in violation of Public Health and Safety Code, as well as other laws, relating to fire suppression.

But BudSco does not assert that Alco has discontinued water service. This is mere speculation on BudSco's part as to what Alco might do in the future and BudSco is asking the Commission to opine about future events and potential legal consequences. In D.03-09-027 (September 8, 2003), this Commission reiterated its policy of not issuing advisory opinions:

> Like courts, we have a long-standing policy against issuing advisory opinions in the absence of a case or controversy, unless there are extraordinary circumstances presented. (*See Rulemaking to Establish Rules for Enforcement of the*

> *Standards of Conduct Governing Relationships Between Energy Utilities and Their Affiliates Etc.* [D.00-01-052, at 12-13 (slip op.)] (2000) ___ Cal. PUC 2d ___, 2000 Cal. PUC LEXIS 108, citing *Pacific Legal Foundation v. California Coastal Com.* (1982) 33 Cal. 3d 158, 170; *Re Pacific Gas and Electric Company* [D.00-06-002, at 3-4 (slip op.)] (2000) ___ Cal. PUC 2d ___, 2000 Cal. PUC LEXIS 278.)[14]

Since BudSco is still receiving water, we need not offer an advisory opinion about what would be the legal implications if Alco acts a certain way in the future.

4.5. As Alco Has Already Explained the $14.24 Charge, BudSco's Concern About the Charge Does Not Give Rise to a Cause of Action

BudSco disputes the $14.24 charge on its water bill on the grounds that is an "non-disclosed charge." But since the amount is listed on the bill, the charge cannot be non-disclosed. Instead, we take BudSco's concern to be that it wants an explanation of the charge. A request for clarification, however, does not rise to the level of Pub. Util. Code § 1702's requirement that there be an allegation of either a violation or law or a violation of a Commission rule or order.

Moreover, Alco has already explained the charge. On the bills that BudSco has attached to its complaint, there is language that "A Late Payment charge of 1.5% on unpaid balances or $1.00, whichever is greater, has been added to your total due."[15] In its Motion to Dismiss, Alco performed the calculations as

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[14] *See* also D.12-01-032 (January 12, 2012), at 150-151.

[15] *See* Past Due Notice attached to BudSco's Complaint.

to how the $14.24 was determined taking the unpaid balances for September and October of 2011:

$589.96-$8.27= $581.24
$373.81-$5.52= $368.29
$581.24 + $368.29 = $949.53.
$949.53 * 1.5%= $14.24.

BudSco's Objection to Alco's Motion to Dismiss does not dispute either these calculations or the fact that the past due notice indicates that there will be an additional charge calculated based on the past-due amount. Instead, BudSco "asks the Commission to give it direction as to whether these charges should be explained and detailed on bills to customers."[16] The Commission declines BudSco's request as it is in the form of a request for an advisory opinion which the Commission does not give. Moreover, BudSco does not allege that the manner in which Alco issues its bills or calculates late payments somehow runs afoul of Commission rules, orders, or Alco's tariff. Accordingly, BudSco's clarification request fails to meet the legal standards for setting forth a cause of action against Alco.

5. Even if BudSco's Complaint Allegations Were Accepted as True, Alco's Motion to Dismiss Must Be Granted

Initially, we note the absence of any well-pleaded allegations to accept as true as BudSco's complaint does not appear to set forth any causes of action in the manner required by Pub. Util. Code § 1702 and Rule 4.2(a). Specifically BudSco does not allege that Alco violated any law or Commission order or rule, nor does it allege an injury. Instead, BudSco raises a serious of questions

[16] BudSco's Objection, at 2.

regarding well ownership and wonders if the ownership is in contravention of "Commission restrictions" of "commercial family transactions."[17] BudSco further claims that it does not "want to issue checks for their water use to anyone other than the owners of this well lot/equipment."[18] BudSco then wonders if there will be fire suppression concerns if its water supply is discontinued. Finally, BudSco wants an explanation about "a $14.24 non-disclosed charge."[19] Taken collectively as true, these allegations are nothing more than a series of questions and speculations. BudSco has failed to alleged that Alco engaged in an act or failed to perform an act in violation of any California law or Commission order or rule as required by Pub. Util. Code § 1702.

6. Comments on Proposed Decision

The proposed final decision of ALJ Mason in this matter was mailed to the parties in accordance with Pub. Util. Code § 311 and comments were allowed pursuant to Rule 14.3 of the Commission's Rules of Practice and Procedure. Opening comments were filed by ___ on _____ and reply comments were filed on ____ by ____.

7. Assignment of Proceeding

Catherine J.K. Sandoval is the assigned Commissioner and Robert M. Mason III is the assigned ALJ in this proceeding.

Findings of Fact

1. On February 1, 2010, Alco filed A.10-02-006, a general rate case and sought authorization to increase rates for water service, include the Rosehart Industrial

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[17] BudSco's Complaint, at 2.

[18] *Id*.

[19] *Id*.

Park Water System into Alco's certificated service area, and charge Commission-authorized rates.

2. On March 16, 2011, the Commission issued D.08-11-035 which granted Alco's request and approved the settlement agreement between Alco, DRA, and the City of Salinas.

3. On April 12, 2011, Alco filed an Advice Letter 146 that requested authorization "to make effective the tariff sheets attached to Advice Letter 146, which included the Rosehart Area Map."

4. On April 27, 2011, the Commission's Water & Sewer Advisory Branch wrote to Alco and stated, in part, that the "Commission has received and filed the utility's Advice Letter 146, to include the Rosehart Industrial park Water System into Alco's certificated area, to charge the rates charged for the Salinas Division, and to withdraw its current tariff Schedule No. 1A, General Metered Service."[20]

5. BudSco is in the Rosehart service area and is receiving water from Alco.[21]

6. Alco has been billing BudSco for water service received in the Rosehart service territory.[22]

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[20] Motion to Dismiss, Exhibit 9.

[21] BudSco complaint, at 2, paragraph F ("BudSco receives its water from a small well system operated by Alisal Water Corp DBA Alco Water [.]"); Letter dated August 26, 2011 from Noland Hamerly Etienne Hoss, attorneys for BudSco, which states in part: "I am writing on behalf of BudSco, Inc. who owns property and operates its business in the Rose Hart Industrial Park south of Salinas." (BudSco complaint attachment.)

[22] *See* Alco Water Service bills addressed to BudSco and attached to BudSco's complaint.

7. There are no allegations that Alco is charging customers in the certificated service area at rates not authorized by the Commission.

Conclusions of Law

1. Alco is providing water service to and billing BudSco in conformity with D.11-03-005.
2. Alco has not violated any law or any rule or order of this Commission in its dealings with BudSco.
3. The complaint should be dismissed because the undisputed facts establish that Alco is entitled to judgment in its favor as a matter of law.
4. The complaint should be dismissed because the alleged facts, assuming they are true, fail to state any cause of action in conformity with Pub. Util. Code § 1702 and Rule 4.2(a).
5. There is no need for hearing in this matter.
6. C.12-01-010 should be closed.

O R D E R

IT IS ORDERED that:

1. BudSco Chemical Enterprises, Inc. complaint is dismissed with prejudice.
2. The need for hearing determination is changed as no hearing is necessary.
3. The funds that BudSco Chemical Enterprises, Inc. deposited with the Commission shall be paid to Alisal Water Corporation dba Alco Water Service within 30 days from the date this order becomes effective.
4. Case 12-01-010 is closed.

This order is effective today.

Dated _____, at San Francisco, California.