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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

S.W.R.L. Inc.,

Complainant,

vs.

LaPlata Enterprises, Inc.,

Defendant.

Case 11-11-003
(Filed November 3, 2011)

ASSIGNED COMMISSIONER'S RULING AND SCOPING MEMO

1. Summary

This ruling and scoping memo determines the category of the proceeding, discusses whether there is a need for a hearing, and identifies the issues to be considered in the proceeding, as well as the procedures and timetable for their resolution. It also reports on the parties' decision not to pursue Alternate Dispute Resolution in the proceeding at this time. This ruling is appealable only as to the category of these proceedings under Rule 7.6 of the Commission's rules.¹

¹ Rules of Practice and Procedure, accessible at: <http://www.cpuc.ca.gov>, "Laws, Rules, Procedures."

2. Background

2.1. Overview

The Complainant seeks to have LaPlata Enterprises, Inc. (LaPlata), come within the Commission's jurisdiction for the purpose of setting reasonable water rates. In its Answer LaPlata counters that it is not a public utility and that none of the water service it provides to Complainant S.W.R.L., Inc. (SWRL) comes within the regulatory jurisdiction of the Commission.

2.2. Procedural History

The Complaint was filed on November 3, 2011, and the Answer was filed on December 14, 2011. The assigned Administrative Law Judge (ALJ) issued a Ruling on February 2, 2012, in advance of the Prehearing Conference (PHC) that was held on February 16, 2012, in Hemet, California, where both Parties were in attendance. Among other things the Parties jointly determined at the PHC that their dispute was not ripe for alternate dispute resolution at this time.

3. Categorization, Ex Parte Rules and Designation of Presiding Officer

The Commission preliminarily categorized the proceeding as "adjudicatory" under Rule 1.3(a) and determined that the matter should be set for hearing. No party has opposed the preliminary categorization and I hereby affirm both the preliminary "adjudicatory" categorization and the preliminary determination that there will need to be hearing in the event that the Parties do not reach a stipulation, which they have agreed to explore, concerning jurisdictional facts. Ex parte communications are prohibited in adjudicatory proceedings pursuant to Pub.Util.Code § 1701.2(b) and Rule 8.3(b).

This ruling only as to categorization is appealable under Rule 7.6. As an adjudicatory proceeding, ex parte communications are prohibited under

Rule 8.3(b). I am designating assigned ALJ Weatherford the Presiding Officer in the event evidentiary hearings occur.

4. Scoping Memo

The issue to be resolved in this proceeding is: “Does the water service provided by La Plata to SWRL make LaPlata a public utility subject to regulation by the Commission?”

If the Commission were to resolve this issue in the affirmative, LaPlata would be ordered to apply to the Commission for a certificate of public convenience and necessity.² If the Commission were to resolve this issue in the negative, the Complaint would be dismissed.

² In addressing one of the water customers at the PHC, LaPlata’s counsel stated:

Now, if you don't have a contract because it's been subservient to PUC regulation, then the second part of what I said could come into play. My client may choose not to register as a public utility. And if the contracts are not enforceable because they were subservient to PUC regulation, my client may choose to go out of the water providing business at all.

PHC Transcript, at 14. Once water service has been dedicated to the public, the provider as a de facto public utility may not terminate service without the approval of the Commission. *Beckner v, Otto* (1947) 47 Cal. P.U.C. 480, at 48. Pending the outcome of this proceeding, there is the possibility that LaPlata could be found to be a public utility having an obligation to serve until and unless relieved of that obligation by the Commission. I caution LaPlata against making any statements or taking any action that could be reasonably interpreted by a water customer to mean that pursuit of the instant complaint carries an increased risk of termination of water service.

5. Need for Hearing

The need for an evidentiary hearing was discussed at the PHC and the Parties indicated that they would like to explore among themselves the possibility of reaching a stipulation of jurisdictional facts as an alternative to presenting testimony and participating in an evidentiary hearing. They agreed upon the date of Wednesday, March 27, 2012, as the deadline for completing such an effort and informing the assigned ALJ of the outcome. Pending that outcome I am tentatively setting dates for testimony and an evidentiary hearing as a backup for the foregoing contingency.

6. Schedule

March 27, 2012	End of efforts by Parties to reach a stipulation as to jurisdictional facts and to inform the ALJ of the outcome
April 10, 2012	Date for Ruling by ALJ determining whether evidentiary hearing will be needed, in light of the adequacy or not of the forgoing stipulation or the absence of such a stipulation
May 2012 (day to be determined – “TBD”)	Opening Concurrent Testimony
May 2012 (day TBD)	Reply Testimony
June or July 2012 (date TBD)	Evidentiary Hearing
July or August 2012 (TBD)	Common Outline Opening Briefs, followed by Reply Briefs
October 2012 (day TBD)	Presiding Officer Decision mailed

The date of the final decision in this rulemaking shall not exceed twelve months from the date the Complaint was filed.

7. Filing, Service and Service List

When you serve a document, use the official service list published at the Commission's website as of the date of service. You must comply with Rules 1.9 and 1.10 when you serve a document to be filed with the Commission's Docket Office.

The Commission encourages electronic filing and e-mail service in this Rulemaking. You may find information about electronic filing at <http://www.cpuc.ca.gov/PUC/efiling>. E-mail service is governed by Rule 1.10. If you use e-mail service, you must also provide a paper copy to the assigned Commissioner and assigned ALJ. The electronic copy should be in Microsoft Word or Excel formats to the extent possible. The paper copy should be double-sided. E-mail service of documents must occur no later than 5:00 p.m. on the date that service is scheduled to occur.

If no email address was provided, service should be made by United States mail. In this proceeding, I require concurrent e-mail service to ALL persons on the service list for whom an email address is available, including those listed under "Information Only." Parties are expected to provide paper copies of served documents upon request.

E-mail communication about this proceeding should include, at a minimum, the following information on the subject line of the e-mail: C.11-11-003. In addition, the party sending the e-mail should briefly describe the attached communication; for example, *Reply Comments*. Paper format copies, in addition to electronic copies, shall be served on the assigned Commissioner and the assigned ALJ.

The official service list for this proceeding is available on the Commission's web page. Parties should confirm that their information on the service list is

correct, and serve notice of any errors on the Commission's Process Office, the service list, and the assigned ALJ. Prior to serving any document, each party must ensure that it is using the most up-to-date service list. The list on the Commission's website meets that definition.

Any person interested in participating in this proceeding who is unfamiliar with the Commission's procedures or who has questions about the electronic filing procedures should contact the Commission's Public Advisor (public.advisor@cpuc.ca.gov).

If you have questions about the Commission's filing and service procedures, contact the Docket Office.

IT IS RULED that:

1. The final categorization of this proceeding is adjudicatory and hearings may be required if an adequate all-party stipulation as to jurisdictional facts is not reached. This ruling on category may be appealed, as provided in Rule 7.6 of the Commission's Rules of Practice and Procedure.

2. Ex parte communications are prohibited.

3. The scope of this proceeding is as set forth in Section 4 of this Ruling. While this scoping memo provides guidance regarding the manner in which the identified issue will be considered, the assigned Administrative Law Judge (ALJ) may make any revisions or provide further direction regarding the manner in which the issue is to be addressed, as necessary for a full and complete development of the record.

4. The schedule for this proceeding is as set forth in Section 5 of this Ruling. The assigned ALJ may make revisions to the schedule where circumstances warrant.

5. Parties should serve all filings as set forth in Section 6 of this Ruling.

6. Assigned ALJ Gary Weatherford is designated the Presiding Officer.

Dated March 7, 2012, at San Francisco, California.

/s/ CATHERINE J.K. SANDOVAL

Catherine J.K. Sandoval
Assigned Commissioner