

Decision 12-11-005 November 8, 2012

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

James and Marie Hughes, Kathleen Palmer,
Gregory and Michelle Land, Patrick and Delores
McMillen, Jeffery and Tina Strunc, and Michael
and Robin Beals,

Complainant,

vs.

Big Oak Valley Water District,

Defendant.

Case 11-05-025
(Filed May 25, 2011)

ORDER EXTENDING STATUTORY DEADLINE

Summary

Pub. Util. Code § 1701.2(d) provides that adjudicatory matters such as this complaint case shall be resolved within 12 months after they are initiated, unless the Commission makes findings why that deadline cannot be met and issues an order extending the 12-month deadline. In this proceeding, the 12-month deadline for resolving the case was initially May 24, 2012, but the case could not be resolved by that date because of a combination of factors, including the time reasonably taken to resolve jurisdictional issues posed by a parallel lawsuit pending before the Superior Court of Nevada County. Because of those circumstances, we found in Decision 12-04-032 (April 19, 2012) that it was appropriate to extend the 12-month deadline for six months, until

November 24, 2012, which now approaches. A Presiding Officer's Decision in the matter has been prepared and, due to the complexity of the issues involved, is undergoing internal review and will be circulated to the Parties for comment rather than being directly issued. To accommodate such a comment period, in addition to the 30-day allowance for any appeal or request for review, a second extension, for six months until May 24, 2013, is being ordered.

Background and Procedural History

The Complaint, filed on May 25, 2011, seeks a determination that Defendant is a public utility and that, as such, it should update a portion of the Dempsey Ditch, an open earthen irrigation ditch, to comply with Commission regulations, to issue rules, and to refund connection charges. The Defendant's Answer, filed July 12, 2011, denies that the Big Oak Valley Water District is a public utility and that Complainants are entitled to the relief sought by the Complaint.

The first Prehearing Conference was held on August 10, 2011. The Parties here were and continue to be also engaged in the Superior Court of Nevada County in Case No. 73754, Hughes et al. v. Big Oak Valley Water District, filed on June 18, 2008, which partially involves factual allegations of possible relevance to the proceeding here, raising the issue of comparative jurisdiction between the court and the Commission. An amended complaint was filed in the Superior Court suit on or about July 25, 2011, and demurred to August 22, 2011. The parties here were instructed in a September 20, 2011 Assigned Commissioner's Ruling and Scoping Memo to file briefs on the issues of jurisdiction and appropriate parties, which they did in October 2011.

On or about November 3, 2011, the plaintiffs in Case No. 73754 filed a notice of motion and motion for stay of the entire Superior Court proceeding,

invoking the doctrine of primary jurisdiction and arguing that the Commission has “special competency to determine several matters at issue in the Superior Court case, including the determination of BOVWD [Big Oak Valley Water District] as a public utility....” In light of that motion to stay filed in the Superior Court, Administrative Law Judge (ALJ) Weatherford suspended the schedule in this Commission proceeding on November 10, 2011. On December 9, 2011, the Superior Court granted the motion to stay. In a ruling issued on December 19, 2011, ALJ Weatherford lifted the suspension in this proceeding, set January and February 2012 dates for concurrent and reply testimony, respectively, and scheduled evidentiary hearings (EH) for March 8 and 9, 2012.

A one-day EH was held at the Commission on March 8 in which five witnesses were examined and 123 exhibits, stipulated to as to authenticity and admissibility, were admitted, leaving one unavailable Complainant’s witness and several of Defendant’s exhibits opposed by Complainants to be addressed variously by written interrogation, declaration, and opposition papers by March 15. On April 19, 2012, the statutory deadline of May 25, 2012, was extended to November 24, 2012 by Decision (D.) 12-04-032.

Opening concurrent briefs were filed on April 12, 2012 and concurrent reply briefs were filed on April 27, 2012. The matter was submitted on June 15, 2012, but reopened by ALJ ruling on August 10, 2012, to invite Party review and comment on two proposed attachments to the Presiding Officer Decision (POD), one a reproduction of an otherwise illegible document and the other a redrawn map. Party comment on the proposed attachments was completed by August 23, 2012. In light of the complexity of issues presented in the adjudication, the Presiding Officer determined that the proposed POD should be circulated for comment by the Parties before issuance.

Discussion

The need for extending the timeline further in this adjudication arises from the combined factors of the matter's complexity, making advisable the circulation of a proposed POD for Party comment, and the increase in work load of the assigned Administrative Law Judge to whom a major set of highly time-sensitive matters was transferred. The time now remaining before the November 24, 2012, statutory deadline is inadequate for completion of the internal review of the proposed POD, its Party review and comments, and an allowance of time for any appeals and requests for review.

Waiver of Comment Period

Under Rule 14.6(c)(4) of the Rules of Practice and Procedure, the Commission may waive the otherwise applicable 30-day period for public review and comment on a decision that extends the 12-month deadline set forth in Pub. Util. Code § 1701.2(d). Under the circumstances of this case, it is appropriate to waive the 30-day period for public review and comment.

Assignment of Proceeding

Mark J. Ferron is the assigned Commissioner and Gary Weatherford is the assigned ALJ and presiding officer in this proceeding.

Findings of Fact

1. The complaint in this case was filed on May 25, 2011.
2. The deadline of May 25, 2012, was extended to November 24, 2012, by D.12-04-032 on April 19, 2012.
3. Grounds exist for a further extension of time for resolution of this matter.
4. An extension of time until May 24, 2013, should allow the ALJ adequate time for completion of the internal review of the proposed POD, its Party review

and comments, its issuance, and an allowance of time for any appeals and requests for review pursuant to Rule 14.4(b).

Conclusions of Law

1. Because of the lengthy periods of time that have been reasonably needed to complete a proposed Presiding Officer's Decision, circulate it for Party comment, issue it and provide time for any appeals and requests for review, it will not be possible to resolve this case within the 12-month period provided for in Pub. Util. Code § 1701.2(d), as extended in D.12-04-032.

2. The 12-month statutory deadline, previously extended by six months, should be further extended for six months until May 24, 2013, to allow for resolution of this proceeding.

IT IS ORDERED that the 12-month statutory deadline in this proceeding, May 24, 2012, that previously was extended to November 24, 2012, by Decision 12-04-032, is further extended to May 24, 2013.

This order is effective today

Dated November 8, 2012, at San Francisco, California.

MICHAEL R. PEEVEY
President
TIMOTHY ALAN SIMON
MICHEL PETER FLORIO
CATHERINE J.K. SANDOVAL
MARK J. FERRON
Commissioners