

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

City of Davis, California,

Complainant,

vs.

NewPath Networks, LLC, a New Jersey Limited
Liability Company (U6928C),

Defendant.

Case 10-03-011
(Filed March 23, 2010)

ORDER EXTENDING STATUTORY DEADLINE

Summary

Pub. Util. Code § 1701.2(d) provides that adjudicatory matters such as this Case 10-03-011 shall be resolved within 12 months after they are initiated, unless the California Public Utilities Commission (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 is March 23, 2013.¹ The reasons to extend the deadline for resolving this case pertain to the parties' ongoing effort and coordination of a proposed settlement agreement with the City of Davis Planning Commission and City Council

¹ See Decision 12-03-018.

Meetings. The Davis Planning Commission has approved the proposed settlement between the parties but the Davis City Council has yet to consider the proposed settlement. Because the City Council does not meet each month, more time needs to be allotted to approve any settlement reached by the two parties. Parties have explained that because each proposed site for the distribution antenna system must be individually approved by the City of Davis, it has taken longer than expected to finalize the settlement agreement for presentation to the full City Council.

Due to these circumstances, we have concluded that it is appropriate to extend the 12-month deadline in this case for 12 months, until March 24, 2014.²

Background

The City of Davis (City) filed this complaint alleging NewPath Networks, LLC (NewPath) proposed construction of a distribution antenna system in the City both violated provisions of the California Environmental Quality Act and NewPath's certificate of public convenience and necessity (CPCN). NewPath denied the City's allegations and alleged that the City's actions concerning NewPath's proposed construction violated applicable state and federal law.³ Following a prehearing conference on May 20, 2010, hearings were scheduled and then reset by ruling to September 14 through 20, 2010. During an August 17, 2010 conference call and in an August 24, 2010 e-mail, the parties requested that the schedule be suspended to permit the parties to continue

² March 23, 2013 is a Sunday; Pursuant to Rule 1.15 of the Rules of Practice and Procedure if the last day of an event falls on a Saturday, Sunday, holiday or other day when the Commission offices are closed, the time limit is extended to the first day thereafter. Therefore, filing on March 24, 2014 is appropriate.

³ NewPath Answer to Complaint.

settlement negotiations and to proceed under the City's Wireless Telecommunications Ordinance. The parties understood that the suspension of the schedule might result in the inability to complete the proceeding within the original one-year statutory deadline and agreed to waive that provision should hearings be necessary.

The August 27, 2010 scoping memo stated that a conference call would be scheduled in mid-December to discuss the status of the settlement negotiations, and hearings would be held in late February and early March should the parties fail to reach a settlement agreement. During the December 14, 2010 conference call, the parties reported that they had made progress in their settlement negotiations, but that the Wireless Telecommunications Ordinance process would not conclude until March 2011. Parties initially requested that the schedule be modified and proposed to submit a joint report on the status of their settlement negotiations on March 25, 2011 and report to the assigned Administrative Law Judge (ALJ) on April 1, 2011 whether the matter had been resolved or would proceed to hearings.

On January 27, 2011, the Commission issued Decision (D.) 11-01-044, extending the statutory deadline for resolving this case to March 23, 2012, due to the ongoing settlement negotiations between the parties. The parties have been in close communication regarding the status of settlement negotiations with the ALJ but are limited in how fast they are able to progress because the settlement must be properly considered by the City of Davis. The parties were able to reach a proposed Settlement Agreement. Prior to presenting the proposed settlement to the Davis City Council, the Davis Planning Commission had to consider and approve the proposed settlement agreement. The parties notified the ALJ on February 7, 2012 in a telephonic status conference that the proposed settlement

agreement was approved by the Davis Planning Commission. Parties requested and were granted a second extension of the statutory deadline. D. 12-03-018 extended the statutory deadline through March 23, 2013.

On August 8, 2012, parties informed the assigned ALJ that the City of Davis had approved use permits for the NewPath project so parties could now work to complete the license agreement for approval by the Davis City Council. On November 11, 2012, parties notified the assigned ALJ by e-mail that they had successfully negotiated the license/right-of-way use agreement for approval by the Davis City Council. Parties also stated that they were in the process of preparing a formal settlement agreement to memorialize the terms of their resolution of this dispute for approval by the Davis City Council.⁴ On February 13, 2013, parties indicated that they intended to present the final settlement agreement to the Davis City Council and that they anticipated resolving the instant complaint by March 15, 2013.

Discussion

The parties have attempted to resolve their dispute under a process outside the control of the Commission. A successful resolution of the pending dispute is the desired outcome. Throughout this process, both parties have successfully updated the Commission as to the status of settlement negotiations. Although parties may be able to resolve the matter prior to the expiration of the statutory deadline, they are subject to the administrative process of the Davis City Council. Due to the need for Davis City Council to approve any proposed

⁴ Parties explained that this settlement agreement would result in the resolution of the instant complaint and related actions currently pending in the Eastern District of the United States District Court.

settlement made between City of Davis and NewPath, and the schedule of the city council's meetings, a 12-month extension is appropriate. Finally, should parties ultimately not reach a settlement or the Davis City Council not approve the settlement agreement, a 12-month extension will be necessary to conduct formal proceedings at the Commission.

Under all the circumstances of this case, we believe that a 12-month extension of time, until March 24, 2014, should be sufficient time to draft a Presiding Officer's Decision (POD), provide parties with time to decide whether to file an appeal of the POD, and any concerned Commissioner to decide whether to request review of the POD pursuant to Rule 14.4(b).

Waiver of Comments on Proposed Decision

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

Catherine J. K. Sandoval is the assigned Commissioner and Katherine Kwan MacDonald is the assigned ALJ in this proceeding.

Findings of Fact

1. The complaint in this case was filed on March 23, 2010.
2. An extension of time until March 24, 2014 should allow adequate time for parties to reach a settlement or for the ALJ to draft a POD, provide parties with time to decide whether to file an appeal of the POD pursuant to Rule 14.4(a) of the Rules of Practice and Procedure, and any concerned Commissioner to decide whether to request review of the POD pursuant to Rule 14.4(b).

Conclusions of Law

1. Because of ongoing efforts between the parties to reach a settlement negotiation and coordination with the Davis City Council, it will not be possible to resolve this case within the 12-month period provided for in Pub. Util. Code § 1701.2(d).

2. The 12-month statutory deadline should be extended for 12-months to allow for resolution of this proceeding.

O R D E R

IT IS ORDERED that the 12-month statutory deadline in this proceeding, March 23, 2013, is extended to and including March 24, 2014.

This order is effective today.

Dated, _____ at San Diego, California.