

Decision \_\_\_\_\_

**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,

Complainants,

vs.

Big Oak Valley Water District,

Defendant.

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

**ORDER EXTENDING STATUTORY DEADLINE****Summary**

This decision extends the statutory deadline in this proceeding to August 24, 2014.

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, then extended to November 24, 2012 (Decision (D.) 12-04-032), to May 24, 2013 (D.12-11-005), and later extended to February 24, 2014 (D.13-05-003) which now approaches. This decision extends the resolution date further, to August 24, 2014 because the case

cannot be resolved by February 24, 2014 due to the sudden illness and continuing absence of Administrative Law Judge (ALJ) Gary Weatherford and co-assignment of this matter to ALJ Irene Moosen, the time required to complete internal review, to make appropriate revisions in the circulated proposed Presiding Officer Decision, and to allow both 30 days for any appeal or request for review and an appropriate period thereafter for a resolution of the matter.

### **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 (BOVWD) 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, 2012. On April 19, 2012, the statutory deadline of May 25, 2012, was extended to November 24, 2012 by 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. By a Ruling on

October 22, 2012, the proposed POD was mailed to the Parties. Timely comments were received from Complainants. Defendant's comments were submitted late, not accepted for filing and not considered.

### **Discussion**

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 D.12-04-032 (April 19, 2012) that it was appropriate to extend the 12-month deadline for six months, until November 24, 2012. To allow for a proposed POD to be circulated to the Parties for comment, rather than being directly issued, we extended the resolution date further, to May 24, 2013 (D.12-11-005) and again to February 24, 2014 (D.13-05-003).

The need for extending the timeline further in this adjudication arises from the sudden, serious illness experienced by ALJ Weatherford and the co-assignment to ALJ Moosen. The Presiding Officer's Decision will be issued imminently but the time now remaining before the February 24, 2014 statutory deadline will not allow adequate time to complete internal review, to make appropriate revisions in the circulated proposed POD, and to allow both 30 days for any appeal or request for review and an indeterminate period thereafter for a resolution of the matter. Accordingly, we are ordering an extension of the date for resolution to August 24, 2014.

### **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 and Irene Moosen are the assigned ALJs and presiding officers 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; then to May 24, 2012, by D.12-11-005 and further extended to February 24, 2014, by D.13-05-003.
3. The need for extending the timeline further in this adjudication arises from the need to co-assign a new ALJ given the illness and continued absence of ALJ Weatherford, the combined factors of the matter's complexity, the need for further internal review and the case load demands placed on the co-assigned ALJ. Grounds exist for a further extension of time for resolution of this matter.
4. An extension of time until August 24, 2014, should allow the ALJ adequate time for the completion and issuance of the POD, and time for any appeals and requests for review pursuant to Rule 14.4(b).

### **Conclusions of Law**

1. Because of the sudden illness and necessary absence of ALJ Weatherford, the need to co-assign ALJ Moosen, the lengthy periods of time that have been reasonably needed to complete internal review, to make appropriate revisions in the circulated proposed POD, and to allow both 30 days for any appeal or request for review and an indeterminate period thereafter for a resolution of the matter, 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, D.12-11-005 and D.13-05-003.

2. The 12-month statutory deadline, as previously extended in D.12-04-032, D.12-11-005, and D.13-05-003 should be further extended for six months from February 24, 2014 to August 24, 2014 to allow for resolution of this proceeding.

**IT IS ORDERED** that the statutory deadline in this proceeding is extended to August 24, 2014.

This order is effective today

Dated \_\_\_\_\_, at San Francisco, California.