

PROPOSED DECISION

Agenda ID #15925 (Rev. 12)
Adjudicatory
9/14/2017 Item #20

Decision **PROPOSED DECISION OF ALJ MILES (Mailed 8/15/2017)**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

City of Ojai,

Complainant,

vs.

Case 16-06-008

Golden State Water Company (U133W),

Defendant.

DECISION DISMISSING THE COMPLAINT OF CITY OF OJAI

Summary

On June 14, 2016, the City of Ojai filed Case 16-06-008 against Golden State Water Company (U133W), for damage arising from a water main break in downtown Ojai on July 20, 2014. On July 25, 2016, Golden State Water Company (GSWC) filed a Motion to Dismiss Complaint (Motion to Dismiss), on grounds that the City of Ojai lacks standing because it does not own the Ojai Playhouse Building which remains unrepaired; that the Complaint fails to state a legally actionable claim; and that the relief requested overlaps with the playhouse owners' action in Superior Court against GSWC for damages. For the reasons stated herein, we agree that the Complaint fails to state a cause of action for which relief can be granted.

This Decision dismisses the complaint filed by the City of Ojai against GSWC.

Case 16-06-008 is closed.

1. Parties

The City of Ojai (the City or Complainant) is located in Ventura County, northwest of Los Angeles, in a valley bordered by the Topatopa Mountains.

Defendant Golden State Water Company (GSWC) is a public utility under the jurisdiction of the California Public Utilities Commission (Commission), providing water service in portions of Los Angeles, Orange, San Bernardino, Ventura, Lake, San Luis Obispo, Sacramento, Imperial, Contra Costa and Santa Barbara Counties, and electric service in the Big Bear Lake area of San Bernardino County. GSWC was organized as a California corporation on December 31, 1929 and in July 1998, became a wholly-owned subsidiary of American States Water Company.

2. Background of Parties' Dispute; Procedural Summary

The parties filed a "Joint List of Non-Disputed Facts" on April 14, 2017. The undisputed facts establish the following. On July 20, 2014, a GSWC water main broke at the intersection of Ojai Avenue and Signal Street, resulting in flooding and severe damage to the Ojai Playhouse building (Playhouse), as well as the street, curb, gutter and sidewalk in front of the Playhouse.¹ The Playhouse sits at a key intersection in the City, in an area marked by other landmark buildings.² As a result of the damage, the Playhouse was red tagged and

¹ Complaint at 2. According to the City's complaint, the theater building is a historic landmark. In addition to housing the playhouse, it is also home to a restaurant/bar doing business as The Village Jester.

² Ojai's post office tower and portico, located across from the playhouse, are designated as Ventura County and City landmarks.

determined to be unacceptable for occupancy. Contractors working on behalf of GSWC repaired the damaged street, curb, gutter and sidewalk in front of the Playhouse.³ Repairs to the Playhouse continued through December 2014, when repair work was interrupted due to a policy limit dispute between GSWC's primary and excess insurance companies.⁴ The owners⁵ of the Playhouse filed suit against GSWC in Ventura County Superior Court.

2.1. City's Complaint

The City filed this complaint Case (C.) 16-06-008 on June 14, 2016 (Complaint), after citizens staged numerous protests about the eyesore created by two years of disrepair to the Playhouse. In its Complaint, the City alleges: (1) that GSWC is obligated under its franchise agreement and City ordinance No. 382, Section 10(f), to promptly repair any damage that it causes to streets or public improvements;⁶ (2) that GSWC's delay in repairing the Playhouse building is essentially retribution for the community's vote to end GSWC's franchise agreement;⁷ (3) that GSWC did not have an adequate inspection/maintenance program as required under Commission General Order 103-A (GO 103-A), which inadequacy contributed to the water main break; and (4) that GSWC should be ordered to promptly repair the Playhouse to "stop the continuing harm to the

³ See Joint List of Non-Disputed Facts filed April 14, 2017.

⁴ Complaint at 3. GSWC's supplemental insurance company subsequently denied a further claim for repairs.

⁵ In its Answer at 1, GSWC identifies Khaled A. Al-Awar and Walid A. Al-Awar (the Al-Awars) as the private owners of the Playhouse. The Declaration of Matthew K. Narensky (Narensky Declaration), which is an attachment to GSWC's Motion to Dismiss, includes the Complaint filed in Ventura Superior Court (Case No. 56-2015-00474589-CU-PO-VTA).

⁶ Complaint at 4. The City argues that the Playhouse is public in nature, and that loss of use of the Playhouse presents continuing harm to the public because of the various activities that the public uses the Playhouse for.

⁷ Complaint at 5. The Complaint explains that City voters approved a Mello-Roos bond to finance the acquisition of GSWC's customer service area by a local public agency, Casitas Municipal Water District.

community and mitigate the damage to the public.”⁸ Although the City acknowledges that the Commission does not have the authority to order GSWC to pay monetary damages, it requests that the Commission open “a full investigation into the situation pursuant to California Public Utilities Code Section (Pub. Util. Code §) 315,”⁹ the stated objective of which would be “ordering GSWC to immediately complete repairs to the Ojai Playhouse building.”¹⁰

2.2. GSWC’s Answer and Motion to Dismiss

GSWC answered the Complaint on July 25, 2016 (Answer), and simultaneously filed a Motion to Dismiss Complaint (Motion to Dismiss). In its Answer, GSWC acknowledges that it is responsible for the water main break.¹¹ GSWC states that its primary insurer had been working closely with the private owners¹² of the Playhouse and their contractor to perform restoration work before repairs were halted due to a coverage dispute between GSWC’s insurers.¹³ In its Motion to Dismiss, GSWC asserts that the City lacks standing to pursue a

⁸ Complaint at 6.

⁹ Section 315 states that the commission will investigate the cause of all accidents occurring upon the property of any public utility, which directly or indirectly arises from, or is connected with, its maintenance or operation, and results in injury to property.

¹⁰ Complaint at 10-11. “*The City of Ojai requests that the CPUC investigate and make such orders, including but not limited to, ordering GSWC to immediately complete repairs to the Ojai Playhouse building.*”

¹¹ See Answer at 7 “*Golden State has admitted that it is, generally speaking, responsible for the damage to the Ojai Playhouse building; the question, however, to be determined by the Ventura County Superior Court is the nature and extent of the damage to the Playhouse as well as the proper methodology for the remedy to be applied, i.e., cost of repair or diminution in value.*” The City also admits that GSWC has admitted responsibility for the water main break. (See Complaint at 3).

¹² In its Answer at 1, GSWC identifies the Al-Awars as the private owners of the Playhouse.

¹³ Answer at 3. GSWC identifies its primary insurer to be James River Insurance Company (James River) and its excess insurer to be Starr Indemnity & Liability Company (Starr). The Narensky Declaration attaches the Complaint filed by James River in Ventura Superior Court case No. 56-2015-00474653-CU-IC-VTA against Starr, as well as the Cross Complaint filed by Starr against James River in the same case.

complaint against GSWC before the Commission because: 1) the City is not the real party in interest/owner of the Playhouse and the owners of the Playhouse have chosen to pursue their remedy in Superior Court;¹⁴ 2) the provisions of GSWC's insurance policies are not a basis for a cognizable cause of action before the Commission; 3) the City's allegations about the reasons for the continued disrepair of the Playhouse are not appropriate subject matter for an investigation under Pub. Util. Code § 315, nor a cause of action that can be adjudicated in a complaint proceeding;¹⁵ and 4) the City's claim that GSWC's valve maintenance program violates GO 103-A is procedurally improper because valve maintenance issues were raised and litigated as part of GSWC's 2014 general rate case (GRC) in proceeding Application (A.) 14-07-006.¹⁶

On July 29, 2016, the assigned Administrative Law Judge (ALJ) issued a ruling setting a prehearing conference (PHC), which ordered the parties to meet and confer to develop a list of non-disputed facts. The PHC was held on August

¹⁴ The Narensky Declaration, which is an attachment to GSWC's Motion to Dismiss, includes the Complaint filed by the Al-Awars against GSWC in Ventura Superior Court ☞ (Case No. 56-2015-00474589-CU-PO-VTA).

¹⁵ See Answer at 16. GSWC argues that the purpose of § 315 is to investigate accidents on public utility property in order to promote and safeguard the health and safety of utility employees, utility customers and the public, citing *Atchison, T. & S.F. Ry. Co. v. Division of Industrial Safety*, 64 Cal. App.3d 188 (1976).

¹⁶ GSWC's 2014 GRC was the subject of proceeding A.14-07-006. In that proceeding, counsel for Ojai filed briefing dated July 17, 2015 alleging (at 12-18) that GSWC's operations were not in compliance with industry standards, and that GSWC failed to inspect and maintain pipeline valves in violation of GO 103-A. In Decision (D.) 16-12-067, the Commission included discussion of GO 103-A (at 49-50) and discussed evidence (at 128-129) that showed GSWC had conducted inspections of valves and fire hydrants in the Ojai customer service area. Although D.16-12-067 includes a Finding of Fact #128 (*see* D.16-12-067 at 145) that "GSWC inspected the City's valves and fire hydrants, but may need to do so more frequently," this Finding of Fact does not specifically address whether GSWC's inspection and maintenance program violated GO 103-A. Furthermore, the water main break at issue in A.14-07-006, was a break that occurred in July 2013, not the July 20, 2014 water main break at issue in this Complaint. Therefore, those findings do not automatically foreclose investigation of whether GSWC failed to comply with GO 103-A or whether the 2014 water main break was somehow related to a failure to comply with GO 103-A.

9, 2016 in Los Angeles. Counsel for the City and GSWC appeared. At the PHC, the parties discussed the non-disputed facts related to the proceeding and their respective positions. Counsel for GSWC and the City discussed reasons why the ALJ should await disposition of the civil suit against GSWC by the Al-Awars which was scheduled for trial in December 2016.¹⁷ The City was given additional time to respond to GSWC's Motion to Dismiss, and GSWC was permitted a brief reply. On February 24, 2017, March 7, 2017, March 10, 2017 and April 13, 2017, the ALJ issued rulings requesting status on the civil trials and ordered the parties to file the list of non-disputed facts that had been discussed at the PHC. The parties filed individual responses on March 9 and GSWC filed the list of non-disputed facts on April 14, 2017.

3. Requirements for a Complaint

To initiate a complaint under Pub. Util. Code § 1702, a complainant must simply set forth "any act or thing done or omitted to be done by any public utility... in violation or claimed to be in violation, of any provision of law, order or rule of the commission."¹⁸ Section 4.2(a) requires the specific act complained of to be set forth in ordinary and concise language. The complaint must be 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.

3.1. Standard for Dismissal

The Commission has stated that the standard for granting a motion to dismiss a complaint is whether, taking the well-pleaded factual allegations of the complaint as true, the moving party (here GSWC) would still be entitled to

¹⁷ On March 9, 2017, counsel for GSWC filed status indicating that the December 2016 Superior Court trial has been rescheduled to May 15, 2017.

¹⁸ Cal. Pub. Util. Code § 1702. See also Commission's Rules of Practice and Procedure (Rules) Section 4.1(a).

judgment as a matter of law.¹⁹ GSWC argues that “the City failed to raise a cognizable claim” upon which relief may be granted. We agree. A complaint that fails to allege that a public utility has violated a specific law, order or rule of the Commission, must be dismissed for failure to state a claim upon which relief may be granted.²⁰

With regards to the damage to the Playhouse, the alleged violations of City ordinances, and the insurance policies, the City’s complaint does not state any legally cognizable claims as discussed herein. The Commission, as a matter of law²¹, lacks jurisdiction to impose monetary damages for injuries to property, as requested by the City, and (as discussed in section 3.2 below) the City lacks standing with respect to the property. The Complaint fails to allege that GSWC’s insurance policies violate any law, Commission order or decision. The Commission cannot grant the relief requested with regards to the Ojai City Ordinance (as discussed in section 3.3 below) because the Commission lacks jurisdiction over municipal ordinances.

3.2. Standing to Pursue Damages

~~Despite the language of the statute and Rule,~~ GSWC further argues that the City lacks standing to bring a complaint before the Commission for damages to the Playhouse. ~~This~~We agree that this is true for two reasons. First, the Commission does not award damages, and this claim for repair of the Playhouse

¹⁹ See, *Re Western Gas Resources-California, Inc.* (1999) D.99-11-023 citing MCI Telecommunications Corp. v Pacific Bell, D.95-05-020, 59 CPUC2d 665 and *Burke v. Yellow Cab Co.* (1973), 76 CPUC 166.

²⁰ See, e.g., *AC Farms Sherwood v. So. Cal. Edison Co.*, D.02-11-003 (Nov. 7, 2002); *City of Santa Cruz v. MHC Acquisition One LLC, et al.*, D.01-07-024 (July 12, 2001); *Crain v. So. Cal. Gas Co., et al.*, D.00-07-045 (Jul. 20, 2000).¹

²¹ Pub. Util. Code § 2106. Also D.04-12-032, citing *Crystal River Oil and Gas v. Pacific Gas & Electric Co.*, D.00-10-005; and *Hempy v. Public Utilities Commission* (1961) 56 Cal.2d 214.

is essentially a damages claim. Such claims are properly made in civil court. Additionally, the City is not the owner of the Playhouse, and it is well established under California law that actions must be prosecuted in the name of a real party in interest, i.e., the person who has the right to sue under the substantive law. In other words, the real party in interest is the person or entity who has “an actual and substantial interest in the subject matter of the action,” such as the person who owns or holds title to the claim or property involved, rather than one who is merely curious about or incidentally may benefit from the litigation.²⁰²² A real party in interest is actually “benefited” by a judgment in the action.²¹²³ By limiting “standing” to the real party in interest, a defendant against whom a judgment may be obtained, need not be subjected to harassment or vexation by multiple claimants to the same demand.²²²⁴

In the Gantman and Adelman cases , the courts determined that condominium homeowners (condo owners) lacked standing to bring claims against insurers who failed to promptly make repairs affecting properties at their housing developments, because the insurance policy had been purchased by and issued to the homeowners association (HOA) rather than the individual homeowners. (The Gantman and Adelman courts also opined that delays due to

²⁰²² Code Civ. Proc., § 367. Also see Gantman v. United Pac. Ins. Co. (1991) 232 Cal.App.3d 1560, 1566 and Adelman v. Associated Int’l Ins. Co. (2001) 90 Cal.App.4th 352, 360.

²¹²³ See Friendly Village Community Assn., Inc. v. Silva & Hill Co. (1973) 31 Cal. App. 3d 220, 225 [107 Cal. Rptr. 123].)

²²²⁴ Giselman v. Starr (1895) 106 Cal. 651, 657, also Cloud v. Northrop Grumman Corp., (1998) 67 Cal.App.4th 995, at 1003.

legitimate assertion of coverage and claim defenses – such as occurred with respect to the repair of the Playhouse - were not unreasonable.)²³²⁵

The City's complaint does not demonstrate any actual injury to city property. Indeed, by the time that the City filed the complaint, its streets and curbs had already been repaired. Although the City claims that the Playhouse is public in nature, because it is enjoyed by members of the public and it is beneficial to the local economy,²⁴²⁶ this does not overcome the fact that the property is privately owned. Because the City cannot demonstrate any "injury" to itself, we are persuaded that the City is not a real party in interest with standing to proceed with a complaint for damages against GSWC for repair of the Playhouse. Even if the City had standing, this would not be the appropriate forum to pursue such damages.

However, this does not entirely dispose of the instant Complaint. Two issues remain. Whether GSWC has violated Ojai City Ordinance No. 382 and whether Pub. Util Code § 315 requires the Commission to initiate an investigation

²³²⁵ In the Adelman case, the HOA had purchased a policy which was in effect on January 17, 1994 when a Northridge CA earthquake occurred, causing substantial structural damage to common areas of the development. Following the quake, the HOA made a timely and properly documented claim for repairs, but AIIC did not tender funds and delayed making structural repairs, as provided under the policy. The HOA sued the insurer in Superior Court. The condo owners also brought separate suit against the insurer, claiming that the damage to the common areas was intertwined with the repair of their individual units and that the insurer's delay in completing repairs to the common areas directly affected them because they could not make individual repairs until structural damage to the common area was completed. AIIC argued that the condo owners had no standing (as noninsureds) to prosecute a claim which belonged solely to the HOA. Both the trial and appeals courts agreed.

²⁴²⁶ Complaint at 4.

to determine whether GSWC violated provisions of the Commission's GO 103-A.²⁵²⁷

3.3. Ojai City Ordinance No. 382, Section 10(f)

The City's Complaint argues that its ordinance No. 382, Section 10(f), requires GSWC to promptly repair any damage that it causes to streets or public improvements.²⁶²⁸ The parties agree that GSWC promptly repaired the City property (i.e., the street, curb, gutter and sidewalk in front of the Playhouse) damaged as a result of the July 20, 2014 water main break.²⁷²⁹

The City attaches two letters from a Ventura County supervisor to its Complaint,²⁸³⁰ in which the Supervisor urges the Commission "to do everything within your power to convince Golden State Water Company to immediately complete the repairs that will allow the Ojai playhouse building to reopen for business."²⁹³¹ However, as previously noted, on the facts presented in the City's complaint, the Playhouse is not a public property and there are no facts alleged to indicate that the Playhouse is a "public improvement" (such as might be the case, e.g., if redevelopment funds had been allocated toward it).

Additionally, the parties agree that GSWC's contractors commenced repairs on the Playhouse, but that the repairs stopped in December 2014.³⁰³² Repair delays are due to a coverage dispute between GSWC's two insurers -

²⁵²⁷ GSWC argues that the Commission should also address issues raised by the City concerning the adequacy of GSWC's insurance coverage. However, this complaint case is not the appropriate forum for discussion of issues pertaining to adequacy of insurance coverage. In any event, footnote 13 explains that the delays in repair of the Playhouse have been occasioned by disputes between insurers rather than inadequacy of coverage by GSWC.

²⁶²⁸ In its Motion to Dismiss, GSWC explains that the ordinance sets forth the franchise agreement that GSWC entered into with the City, which granted GSWC the right to place its facilities within the City's public right of ways. See Motion to Dismiss at 11.

²⁷²⁹ See #9 and #10 on Parties' List of Non-Disputed Facts filed April 14, 2017.

²⁸³⁰ See Complaint at 10, Exhibits I and J.

²⁹³¹ *Id.*, Exhibit J.

³⁰³² See #10 on Parties' List of Non-Disputed Facts filed April 14, 2017.

James River and Starr Indemnity, which has led to litigation between the insurers in Ventura Superior Court.³¹³³

The Commission has no jurisdiction to enforce City ordinances, therefore, no relief can be granted by the Commission for this claim, which is essentially the result of an ongoing coverage dispute between two insurers (issues which are already properly before the Superior Court).

Section 315 Investigation of GSWC's Compliance with Commission GO 103-A

The City urges the Commission to initiate an investigation under Pub. Util. Code § 315, alleging that GSWC did not have an adequate inspection and maintenance program as required under Commission GO 103-A,³²³⁴ and that GSWC's failure to adequately inspect and maintain pipeline valves contributed to the water main break which occurred July 20, 2014.³³³⁵ GSWC responds that, valve maintenance issues were raised and litigated as part of GSWC's 2014 GRC in proceeding A.14-07-006, and that the Commission found (in D.16-12-067) that

³¹³³ *Id.*, #13 and #14.

³²³⁴ GO 103-A sets forth various minimum standards for operation, maintenance, design and construction of regulated water companies.⁰ Section VII.B of GO 103-A includes several subsections describing what should be included in the O&M plan with respect to water mains, hydrants and valves, such as: (4) the schedule and procedure for flushing dead-end mains; (6) the schedule and procedures for inspecting, repairing and replacing water mains; (10) the schedule and procedures for routine maintenance of water main valves, combination air vacuum release valves, fire hydrants and valves, and (11) the schedule and program for maintenance and calibration of source flow meters. Section VII.C of GO 103-A requires the utility to file the O&M plan with the Commission's Division of Water & Audits, and requires the utility to file updated summaries at least every five years, or when substantial changes occur to the plan. Compliance with the requirements of GO 103-A is subject to active oversight and enforcement by the Commission. The City alleges that GSWC did not maintain records as required by Section VII.B.11 (which requires each water utility to have an Operations and Maintenance plan (O&M plan) which describes the schedule and program for maintenance and calibration of source flow meters) and Appendix C, Item 18e (which requires maintenance records and job orders to be retained for six years).

³³³⁵ In support of its contention, the City points to GSWC's Answer (at 8) in which GSWC states that "it does not have any records of pipeline valve maintenance in the Ojai service district from 2009 until February 2015."

GSWC conducted inspections on valves and fire hydrants. Therefore, in its response to the application and in its filed comments, GSWC contends that there should be no further investigation of these already litigated issues.

In D.16-12-067, the Commission found that GSWC conducted inspections on valves and fire hydrants, while noting that GSWC may need to conduct more frequent or more timely inspections going forward.³⁴³⁶ Besides this, there was little discussion in D.16-12-067 about whether GSWC had or had not properly complied with the numerous other GO 103-A requirements.³⁵³⁷ For instance, there was no explicit finding in D.16-12-067, about whether GSWC had an O&M plan on file with the Commission, or whether it had periodically updated the O&M plan as required under GO 103-A. However, the absence of such discussion in a GRC decision is not necessarily significant because, as we would expect in a GRC, the primary focus was whether or not the proposed rates requested by GSWC were just and reasonable.

Pub. Util. Code § 315 requires the Commission to investigate “the cause of” all accidents occurring upon the property of any public utility, or arising from or connected with its maintenance or operation, however, that section expressly states that whether such investigations are required is left to “the judgment of the Commission.” This means that, notwithstanding the City’s request for an investigation, it is within the Commission’s sole judgment to determine whether further investigation of the July 20, 2014 water main break is necessary. It is reasonable to infer that regular inspections, and compliance with the Commission’s maintenance, safety inspection and reporting requirements, including GO 103-A, would reduce the likelihood that events such as the July 20,

³⁴³⁶ See D.16-12-067 Finding of Fact 128 at page 145.

³⁵³⁷ This is noteworthy because allegations about GSWC’s lack of compliance with GO 103-A were raised and addressed extensively in briefing filed by the City’s counsel, Mr. Blatz, in the GRC proceeding.

2014 water main break would occur. In D.16-12-067, GSWC conceded its failure to maintain adequate records prior to June 2014 as required under GO 103-A,³⁶³⁸ however, the judge expressly noted that the required inspections were performed³⁷³⁹ and did not find it appropriate to fine GSWC for its failure to report inspections that were made.

While we do not intend to revisit the GRC judge's determination here, we emphasize that, as a regulatory body, the focus of this Commission is on preventing harm through the development and enforcement of regulations. Accordingly, the Commission may at any time, consistent with the authority granted by § 315, initiate an investigation or make such orders or recommendations which, "in its judgment seems just and reasonable," with respect to GSWC's compliance with GO 103-A or any other Commission order.

By this decision we put GSWC and any party that fails to comply with the Commission's safety orders or regulations on notice that Section 2107 permits the Commission to impose fines for any failure to comply with Commission reporting orders and rules, whether or not there are negative consequences or damages which correlate with, or result from, the failure to comply. We do not recommend a penalty at this time. However, there is no explicit limitation upon the Commission's discretion to impose a § 2107 penalty. For this reason, we point out that the Commission's Water Division may in its discretion, decide to further investigate the July 20, 2014 water main break, or GSWC's record of compliance since July 20, 2014, should it deem investigation appropriate.

³⁶³⁸ See Answer at 8.

³⁷³⁹ See D.16-12-067, Finding of Fact 128 at 145.

4. Categorization and Need for Hearing

This decision confirms the categorization of C.16-06-008 as adjudicatory, as defined in Rule 1.3(a). The evidentiary determination is that no evidentiary hearings involving the City of Ojai are necessary.

5. Comments on Proposed Decision

The proposed decision of ALJ Miles in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3. GSWC filed comments on September 5, 2017.

GSWC comments that it agrees with the ALJ's dismissal of the complaint, however, GSWC contends that the ALJ's analysis is incomplete and requests that the judge expressly discuss: 1) that the City lacks standing to pursue this complaint; 2) that GSWC has not violated Ojai City Ordinance No. 382, and 3) that GSWC's insurance coverages do not violate any Commission order or decision. GSWC further contends that the ALJ erred in concluding that the Commission may pursue investigation of GSWC's compliance with GO 103-A. GSWC also requests certain typographical corrections.

No reply comments were filed. To address GSWC's comments, we have revised section 3 of the PD to add a paragraph "3.2 - Standing to Pursue Damages" and have revised the discussions previously under sections 4.1 and 4.2, now sections 3.3 and 3.4, in light of the comments.

6. Assignment of Proceeding

Clifford Rechtschaffen is the assigned Commissioner and Patricia B. Miles is the assigned ALJ in this proceeding.

Findings of Fact

1. Defendant GSWC acknowledges that it was responsible for the water main break that occurred on July 20, 2014, causing flooding at the intersection of Ojai Avenue and Signal Street in Ojai, CA.

2. The flooding damaged Complainant City's property, consisting of the street, curb, gutter and sidewalk, as well as the privately-owned Playhouse.

3. Damage to Complainant's City property was repaired; however, the Playhouse repairs were not completed before this Complaint was filed.

4. The City has no standing to seek damages because it has no ownership interest in the Playhouse, which is privately owned by the Al-Awars.

5. The Al-Awars have initiated civil proceedings in the Superior Court of California related to damage to the Playhouse.

6. GSWC implemented an O&M plan in June 2014, which continues in effect.

7. The Commission has ~~complete~~absolute discretion to initiate an investigation under § 315.

8. The Division of Water and Audits may, should it deem investigation appropriate, investigate whether it is appropriate to impose a § 2107 penalty on GSWC for its pre-2014 noncompliance with GO 103-A.

9. The Division of Water and Audits may, investigate whether GSWC has been complying with GO 103-A since June 2014, and may, should it deem appropriate, impose a § 2107 penalty on GSWC for noncompliance with GO 103-A.

Conclusions of Law

1. The City's complaint does not state any cause of action for which relief can be granted, and in any event, the City lacks standing to bring this complaint

requesting that the Commission order repair of the Playhouse, which is essentially a request for monetary damages.

2. The Commission has no jurisdiction to enforce City of Ojai ordinance No. 382, Section 10(f), the Franchise Agreement between the City and GSWC.

3. The determination of whether to initiate an investigation with respect to GSWC's compliance with GO 103-A is within the sole discretion of the Commission.

4. Evidentiary hearings are not necessary in this Complaint proceeding.

O R D E R

IT IS ORDERED that:

1. The City of Ojai's requests for relief against Golden State Water Company are denied.

2. Golden State Water Company's Motion to dismiss this Complaint is granted.

3. The hearing determination in this Complaint proceeding is changed to "no hearings are necessary."

4. Case 16-06-008 is closed.

This order is effective today.

Dated _____, at San Francisco, California.

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