

**PUBLIC UTILITIES COMMISSION**505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298**FILED**04-23-10
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April 23, 2010

TO PARTIES OF RECORD IN CASE 08-12-007

This proceeding was filed on December 3, 2008, and is assigned to Commissioner John A. Bohn and Administrative Law Judge (ALJ) Maribeth A. Bushey. This is the decision of the Presiding Officer, ALJ Bushey.

Any party to this adjudicatory proceeding may file and serve an Appeal of the Presiding Officer's Decision within 30 days of the date of issuance (i.e., the date of mailing) of this decision. In addition, any Commissioner may request review of the Presiding Officer's Decision by filing and serving a Request for Review within 30 days of the date of issuance.

Appeals and Requests for Review must set forth specifically the grounds on which the appellant or requestor believes the Presiding Officer's Decision to be unlawful or erroneous. The purpose of an Appeal or Request for Review is to alert the Commission to a potential error, so that the error may be corrected expeditiously by the Commission. Vague assertions as to the record or the law, without citation, may be accorded little weight.

Appeals and Requests for Review must be served on all parties and accompanied by a certificate of service. Any party may file and serve a Response to an Appeal or Request for Review no later than 15 days after the date the Appeal or Request for Review was filed. In cases of multiple Appeals or Requests for Review, the Response may be to all such filings and may be filed 15 days after the last such Appeal or Request for Review was filed. Replies to Responses are not permitted. (See, generally, Rule 14.4 of the Commission's Rules of Practice and Procedure at www.cpuc.ca.gov.)

If no Appeal or Request for Review is filed within 30 days of the date of issuance of the Presiding Officer's Decision, the decision shall become the decision of the Commission. In this event, the Commission will designate a decision number and advise the parties by letter that the Presiding Officer's Decision has become the Commission's decision.

/s/ KAREN V. CLOPTON
Karen V. Clopton, Chief
Administrative Law Judge

KVC:hkr

Attachment

PRESIDING OFFICER'S DECISION (Mailed 4/23/2010)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Richard S. Calone,

Complainant,

vs.

Point Arena Water Works, Inc., a public utility
corporation, (U40W),

Defendant.

Case 08-12-007
(Filed December 3, 2008)

Brian Momsen, Attorney at Law, for Richard S.
Calone, complainant.

Thomas J. Macbride, Jr., Attorney at Law, for Point
Arena Water Works, Inc., defendant.

**PRESIDING OFFICER'S DECISION
APPROVING SETTLEMENT AGREEMENT AND
ORDERING PREPARATION OF WATER SUPPLY AUGMENTATION PLAN**

1. Summary

This decision approves a settlement between the parties. The terms of the settlement agreement provide for a service connection for Complainant within 15 days of deposit by Complainant of \$20,000 for the Whiskey Shoals Supplemental Supply Account.

We find the settlement agreement meets all of the Commission's requirements, and should be approved. Further, Point Arena Water Works, Inc.

must take additional steps to determine the demand for additional service connections in its Whiskey Shoals service area and develop a supply augmentation plan to provide these service connections.

2. Background

Complainant Calone alleged that Defendant Point Arena Water Works, Inc., (PAWW) has violated numerous provisions of the Public Utilities Code and PAWW's tariffs in refusing to extend service to Complainant's residence. Calone states that his residence is located in PAWW's Whiskey Shoals service area and that PAWW has refused to even accept an application for service.

On January 6, 2009, the Commission informed PAWW that the complaint had been filed and instructed PAWW to file and serve an answer.

PAWW answered that its water supply for the Whiskey Shoals service area is, and has been for some time, severely constrained. Based on information provided to the Commission's Division of Water and Audits, PAWW provides public utility water service to 4 of the 26 parcels in its Commission-designated Whiskey Shoals service area. These 4 customers initiated water service from PAWW in the 1970's, when the water supply was more plentiful. Since that time, PAWW has not initiated water service to new customers in its Whiskey Shoals service area. Of the remaining 22 unserved parcels, 4 have residences which rely on either their own wells or private storage tanks on the property for water service and 1 vacant parcel has a private well.

On March 10, 2009, the assigned Administrative Law Judge (ALJ) convened a Prehearing Conference. The parties explained their positions and agreed to meet and confer regarding the potential for a mutually agreeable resolution. A procedural schedule was adopted that called for evidentiary hearings on July 9, 2009.

With the cooperation of PAWW, Complainant engaged the services of water supply engineers and hydrologists to prepare an independent assessment of the capacity of the Whiskey Shoals water system. The Commission's Division of Water and Audits reviewed the assessment.

Prior to the scheduled hearing date, the parties notified the assigned ALJ that they were near an agreement and that the hearing date could be removed from the calendar. Subsequently, the parties revised their assessment and indicated that they were at an impasse and hearings would be necessary after all.

On September 1, 2009, the assigned ALJ conferred with both parties telephonically, and the parties agreed to a revised schedule that called for hearings in February 2010.

On November 11, 2009, the assigned Commissioner issued the scoping memo adopting the schedule for the remainder of the proceeding and designating the assigned ALJ, Maribeth A. Bushey, as the Presiding Officer. On November 20, 2009, Complainant Calone moved for summary judgment contending that the record evidence demonstrated that PAWW had sufficient supply to provide service to at least one more customer and that it should be ordered to do so. In opposition, PAWW challenged Complainant's assertion that there are no disputed issues of material fact and contended that more recent measurements show the well production to be about 0.37 gallons/minute.

On January 19, 2010, the Presiding Officer issued a ruling denying the motion and concluding that, based on Division of Water and Audits' analysis, the existing Whiskey Shoals supply, one well, is unable to meet existing average daily demand, much less maximum daily demand:

	Well flow rate = 2 gallons/minute (Calone's Assertion)	Well flow rate = 0.37 gallons/minute (PAWW's Assertion)
Daily Supply Produced	2880 gallons/day	533 gallons/day
Average Daily ¹ Demand	580 gallons/day	580 gallons/day
Maximum Daily Demand ²	1305 gallons/day	1305 gallons/day
Allow Another Connection?	Yes, average and maximum daily demand well exceeded with current supply.	No, average daily demand deficit of 47 gallons and maximum daily demand deficit of 725 gallons to serve current customers.

On December 3, 2009, the Commission issued Decision (D.) 09-12-013 extending the statutory deadline for resolving this proceeding to December 3, 2010.

Evidentiary hearings were held on February 24, 2010, but the parties then notified the Presiding Officer that they had reached a settlement and no further hearings were held. On March 11, 2010, the parties submitted their joint motion for approval of settlement agreement. The submitted settlement agreement is Attachment A to today's decision.

¹ Average demand per connection is based on consumption from the existing four connections based on historic average consumption figures since 2004, which range between 109 and 210 gallons per day for peak month consumption for the year. The average for 2004 to 2008 is 145 gallons per day per connection for peak month consumption.

² Maximum day demand at the existing four connections escalates estimated average demand by a factor of 2.25 pursuant to the definition in Section 64554 of Chapter 22 of the California Code of Regulations.

3. Description of the Settlement Agreement

The settlement agreement provides that within 15 days of the effective date of a Commission decision approving the settlement agreement, Complainant Calone will pay \$20,000 to PAWW and no more than 15 days thereafter, PAWW will connect the Calone residence to the Whiskey Shoals distribution system. Calone will be responsible for any connection fees and ongoing service as specified in PAWW's Commission-approved tariffs.

Upon connection, Calone will request that the Commission dismiss this complaint with prejudice.

PAWW will hold the funds supplied by Calone as its Whiskey Shoals Supplemental Supply Account (Account) and will use the funds to augment and maintain the Whiskey Shoals system through: (1) rehabilitation of the existing well, (2) construction of a new well, or (3) "other payments to maintain the water supply in the main tank in Whiskey Shoals." Any amount expended from the Account for a new well will be accounted for as a contribution in aid of construction. The settlement agreement provides that PAWW will use its best efforts to bring into production a new well to serve Whiskey Shoals acknowledging that the cost of such a well may exceed the amount in the Account.

In their motion, the parties request Commission authorization for PAWW to file an advice letter for a customer surcharge to recover any PAWW funds needed to construct the new well or rehabilitate the existing well.

4. The Settlement Is Reasonable in Light of the Whole Record, Consistent With Law, and in the Public Interest

In order for a settlement to be approved by the Commission, the settlement must be: 1) reasonable in light of the whole record; 2) consistent with law; and

3) in the public interest. (See D.04-07-006, *PG&E v. Calpine Corp., et al.*, "Opinion Approving Settlement," *mimeo.*, pp. 10-15.)

The settlement is reasonable in light of the whole record. The parties negotiated for several months and prepared and distributed testimony for evidentiary hearings fully setting forth their positions. The agreement provides Complainant a nearly immediate service connection, thus achieving the overall objective of the complaint, while at the same time, PAWW obtains a source of funding for immediate water supply augmentation. As set forth above, the current Whiskey Shoals water supply is not adequate for existing customers so supply augmentation is essential, particularly with another customer added. The timing of this agreement will allow for well site exploration and construction during the dry summer months, the optimal time of year for such work. We, therefore, conclude that the settlement agreement is reasonable in light of the record.

The settlement agreement is consistent with the law. No term of the settlement agreement contravenes statutory provisions or prior Commission decisions. The parties reached their settlement in accordance with Article 12 of the Commission's Rules of Practice and Procedure.

Approving the settlement agreement is in the public interest because it will bring a prompt service connection to Complainant and improve the overall long-term water supply for Whiskey Shoals. Furthermore, the settlement agreement serves the public interest by expeditiously resolving issues that otherwise would have been litigated. Based on the foregoing evaluation criteria, the settlement agreement meets the applicable legal standards.

In the joint motion, the parties seek Commission authorization for PAWW to file an advice letter to implement a surcharge to obtain any additional funds

necessary to meet the reasonable costs of a new well or well rehabilitation in Whiskey Shoals. The appropriate means for obtaining ratemaking treatment for unanticipated capital expenditures between rate cases is via a rate base offset filing. Such a filing allows the Commission to place capital costs into rate base and adjust tariffed rates accordingly. Therefore, we deny the parties' request for a surcharge and instead authorize PAWW to file a rate base offset advice letter. Specifically, PAWW is authorized to file and serve a Tier 3 advice letter to obtain rate recovery for reasonable Whiskey Shoals well construction or rehabilitation costs that exceed the amount provided in the Account. The advice letter shall include supporting documentation and work papers showing all Whiskey Shoals well construction or rehabilitation costs, the amount funded from the Account, and the remaining amount for which rate base treatment is sought by PAWW. All accounting entries shall be consistent with today's decision and the reasonableness of all costs shall be demonstrated. The advice letter shall comply with all applicable requirements, including General Order 96-B.

We also authorize PAWW to create the Whiskey Shoals Supplemental Supply Account.³ The Account shall be separately stated in PAWW's books of account and PAWW shall record in the Account the \$20,000 payment from Complainant provided for in section 3 of the Settlement Agreement. PAWW is authorized to debit the Account for all reasonable costs of well construction or rehabilitation in PAWW's Whiskey Shoals service area, or other reasonable expenses necessary to maintain the water supply in the Whiskey Shoals main

³ The settlement agreement refers to the Account as a "memorandum account" but that designation is not appropriate because the amounts recorded in this Account are not awaiting subsequent ratemaking treatment by the Commission.

tank. All expenditures for capital items funded by the Account shall be recorded in PAWW's books of account as if funded by contributions in aid of construction. PAWW shall maintain records of all expenditures from the Account and such records shall include sufficient detail to demonstrate the reasonableness of all expenditures.

5. Additional Steps for Augmenting the Water Supply in Whiskey Shoals Service Area

PAWW has an obligation as a public utility to serve all customers within its Whiskey Shoals service area absent justification to the contrary, and its own lack of supply capacity is not justification for denying service to a new customer.⁴ As the table above illustrates, the single working well in the Whiskey Shoals service area does not provide sufficient water supply to meet the needs of the existing four customers, even prior to considering the other 22 unserved lots in the service territory. The well rehabilitation or construction provided for in the settlement agreement will greatly improve the Whiskey Shoals water supply but the needs of prospective customers in the Whiskey Shoals service area should also be addressed.

Although this complaint proceeding only resolves water service to the Calone residence, PAWW's obligations as a public utility require that it develop and implement a plan to assess and meet the needs of all current and prospective public utility water customers in its Whiskey Shoals service territory. Specifically, PAWW must undertake a Whiskey Shoals water supply augmentation study that includes: (1) assessing interest in public utility water

⁴ See D.03-03-037, *mimeo.*, p. 5.

service by the owners of the other unserved parcels located in the Whiskey Shoals service territory, (2) determining what improvements would be necessary to serve any prospective customers, (3) preparing cost estimates and projected rate impacts, and (4) obtaining any required Commission authorization.

Therefore, we order PAWW to prepare a Whiskey Shoals water supply augmentation study. Such a study must include notice to all existing customers and the owners of all unserved parcels in the Whiskey Shoals service territory, and solicit interest in obtaining public utility water service from PAWW. The notice will be subject to review and approval by the Commission's Public Advisor, and shall be issued no later than 60 days after the effective date of this decision. PAWW shall keep its current customers and any interested new customers informed of its supply augmentation efforts, with no less than quarterly written updates.

The study must include a thorough technical analysis of the supply options and evaluation of the costs and benefits of each option. Rate impacts should also be studied. The Commission's Division of Water and Audits shall provide assistance and direction to PAWW. The study must also include an implementation plan and timetable for placing any needed facilities into service and offering new service connections, as well as making any required rate filings with the Commission.

PAWW shall submit its Whiskey Shoals water supply augmentation study to the Commission no later than the earlier of its next general rate case or one year from the effective date of this decision.

6. Assignment of Proceeding

John A. Bohn is the assigned Commissioner and Maribeth A. Bushey is the assigned ALJ in this proceeding.

Findings of Fact

1. The settlement agreement provides for a service connection to PAWW Whiskey Shoals water distribution system for Calone.
2. The settlement agreement gives PAWW a source of funds for augmenting the water supply available to its Whiskey Shoals system.
3. The settlement agreement resolves all issues in the complaint.
4. All parties support the settlement.
5. Hearings are not necessary.
6. The appropriate means for obtaining ratemaking treatment for unanticipated capital expenditures between rate cases is via a Tier 3 rate base offset advice letter filing.
7. The water supply for the Whiskey Shoals system should be augmented.

Conclusions of Law

1. The settlement is reasonable in light of the whole record.
2. The settlement is consistent with the law.
3. The settlement agreement is in the public interest.
4. The settlement agreement should be approved.
5. PAWW should undertake a Whiskey Shoals water supply augmentation study that includes the following:
 - a. Notice to Unserved Parcels. All current customers and owners of unserved parcels located in the Whiskey Shoals service area must receive written notice of the study and solicitation of interest in obtaining public utility water service from PAWW. The notice must be reviewed and approved by the Commission's Public Advisor, and must be issued no later than 60 days after the effective date of this decision. PAWW must mail written updates to all interested new customers no less than once each calendar quarter.

- b. Technical Evaluation of Supply Options. The study must include a thorough technical analysis of the supply options and evaluation of the costs and benefits of each option which might be necessary to serve existing or new customers.
- c. Financial and Ratemaking Assessment. Costs and rate impacts of any proposed facilities must be included in the study.
- d. Implementation Plan. Timetables for significant events, including rate changes, necessary to place the augmentation plan into service must be included in the plan.
- e. Any other matter necessary for a high quality study of water supply options.

6. No later than the earlier of its next general rate case or one calendar year from the effective date of this decision, PAWW should file and serve its Whiskey Shoals water supply augmentation study on all parties to its last general rate case, this proceeding, and all customers and owners of unserved parcels in the Whiskey Shoals service area.

O R D E R

IT IS ORDERED that:

1. The settlement agreement, attached as Attachment A to this decision, is approved.
2. The parties must comply with the provisions of settlement agreement which include the following requirements:
 - a. Payment of \$20,000 by Complainant to Point Arena Water Works, Inc.
 - b. Connection of Complainant's residence to Point Arena Water Works Whiskey Shoals public utility water supply system, subject to otherwise applicable tariff charges and provided that Complainant install a backflow protection device.

- c. Complainant requesting that the Commission dismiss this complaint, with prejudice.
- d. Point Arena Water Works to use its best efforts to bring into production a new well to serve Whiskey Shoals, with a qualified geologist hired to explore possible sites during August and September 2010.
- e. Point Arena Water Works to supply written reports on its well construction efforts to the Commission's Division of Water and Audits every three months commencing on September 1, 2010, with copies to the Complainants and their counsel.

3. Point Arena Water Works is authorized to create the Whiskey Shoals Supplemental Supply Account in its books of account and shall record in the Whiskey Shoals Supplemental Supply Account the \$20,000 payment from Complainant provided for in section 3 of the Settlement Agreement. Point Arena Water Works is authorized to debit the Whiskey Shoals Supplemental Supply Account for all reasonable costs of public utility well construction or rehabilitation in the Whiskey Shoals service area, or other reasonable expenses necessary to maintain the water supply in the Whiskey Shoals main tank. All expenditures for capital items funded by the Whiskey Shoals Supplemental Supply Account shall be recorded in the books of account as if funded by contributions in aid of construction. Point Arena Water Works must maintain records of all expenditures debited to the Whiskey Shoals Supplemental Supply Account in sufficient detail to demonstrate the reasonableness of all expenditures, and all such records shall be subject to inspection and audit by the Commission's Division of Water and Audits.

4. Point Arena Water Works is authorized to file and serve a Tier 3 advice letter to obtain rate recovery for reasonable Whiskey Shoals well construction or rehabilitation costs that exceed the amount provided in the Whiskey Shoals

Supplemental Supply Account. The advice letter shall include supporting documentation and work papers showing all Whiskey Shoals well construction or rehabilitation costs, the amount funded from the Whiskey Shoals Supplemental Supply Account, and the remaining amount for which rate base treatment is requested. All accounting entries shall be consistent with today's decision and the reasonableness of all costs shall be demonstrated. The advice letter shall comply with applicable requirements, including General Order 96-B.

5. Point Arena Water Works, Inc. must undertake a Whiskey Shoals water supply augmentation study that includes the following:

- a. Notice to Unserved Parcels. All customers and owners of unserved parcels located in the Whiskey Shoals service area must receive written notice of the study and solicitation of interest in obtaining public utility water service from Point Arena Water Works, Inc. The notice must be reviewed and approved by the Commission's Public Advisor, and must be issued no later than 60 days after the effective date of this decision. Point Arena Water Works, Inc. must mail written updates to all owners of unserved parcels interested in becoming new customers no less than once each calendar quarter.
- b. Technical Evaluation of Supply Options. The study must include a thorough technical analysis of the supply options and evaluation of the costs and benefits of each option which might be necessary to serve existing or new customers.
- c. Financial and Ratemaking Assessment. Costs and rate impacts of any proposed facilities must be included in the study.
- d. Implementation Plan. Timetables for significant events, including rate changes, necessary to place the augmentation plan into service must be included in the plan.
- e. Any other matter necessary for a high quality study of water supply options.

6. No later than the earlier of its next general rate case or one calendar year from the effective date of this decision, Point Arena Water Works, Inc. must serve its Whiskey Shoals water supply augmentation study on all parties to its last general rate case, this proceeding, and all customers and owners of unserved parcels in the Whiskey Shoals service area.

7. No later than the earlier of its next general rate case or one calendar year from the effective date of this decision, Point Arena Water Works, Inc. must file its Whiskey Shoals water supply augmentation study with the Division of Water and Audits as an informational advice letter pursuant to General Order 96-B, section 6.

8. Case 08-12-007 shall remain open pending the filing of a request for dismissal by Complainant Richard S. Calone when the service connection is complete as provided in the settlement agreement.

This order is effective today.

Dated _____, at San Francisco, California.

***** SERVICE LIST *****
Last Updated on 23-APR-2010 by: RC4
C0812007 LIST

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