



**FILED**

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**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)

**ADMINISTRATIVE LAW JUDGE'S RULING  
DENYING MOTION FOR SUMMARY JUDGMENT**

**Summary**

This ruling denies the complainant's motion for summary judgment and directs the parties to proceed in accord with the procedural schedule adopted in the Scoping Memo.

**Background**

On November 20, 2009, complainant Calone moved for summary judgment contending that the record evidence demonstrated that Point Arena Water Works had sufficient supply to provide service to at least one more customer and that it should be ordered to do so. Complainant explained that the only real issue in this proceeding is whether the well that serves Point Arena Water Works' Whiskey Shoals subsystem produces sufficient water supply to provide public utility water service to an additional customer. On that issues the

defendant has admitted on the record and external experts, as well as the Commission's Division of Water and Audits, had confirmed that the well's reliable output is between 1.25 and 4.0 gallons/minute, which complainant contends is sufficient to allow Point Arena Water Works to provide an additional service connection.

In evidentiary support of these assertions, complainant presented two declarations. The first declaration was from Matisse Knight and included a copy of the March 10, 2009, prehearing conference transcript which showed defendant's admission of the 2.0 gallons/minute flow rate and a print out of an electronic mail message from Commission staff determining that sufficient flow was available from the well. David Zenius provided the second declaration which included a report entitled "Point Arena Water Works Whiskey Shoals Water System, Capacity Assessment and Summary of Existing Conditions."

Complainant concluded that there was no factual dispute within the record, and that the Commission should order Point Arena Water Works to provide public utility water service to the complainant.

In opposition, Point Arena Water Works stated that it was entitled to a hearing before the Commission and an opportunity to present evidence in support of its defenses. Point Arena Water Works 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, and that, even if the well produced 2 gallons/minute, such a flow rate would not necessarily support adding an additional customer. Point Arena Water Works also stated that the motion failed to address numerous issues set forth in the scoping memo, most notably the issue of funding any

additional water supply. The defendant concluded by recommending a negotiated solution involving two wells.

The complainant replied that a full evidentiary hearing is not required and that summary adjudication is appropriate because there are no factual disputes. Complainant also challenged defendant's recent well measurements as not meeting the standards of California Code of Civil Procedure 437c(b)(1) - (3), which requires a separate statement showing a triable factual issue. Complainant argued that the defendant's well measurement "reports" were unverified and unattested copies of facsimiles apparently sent to Point Arena Water Work's owner by Mendocino Coast Plumbing which do not meet the evidentiary standards necessary to create a disputed issue of material fact. Complainant concluded that all the competent evidence supports the relief requested.

### **Discussion**

The Commission has previously described the summary judgment process:

Under the summary judgment procedure, the moving party has the burden of showing that there are no disputed facts by means of "affidavits, declarations, admissions, answers to interrogatories, depositions, and matters of which judicial notice shall or may be taken." The opposition to the motion must state which facts are still in dispute. The motion shall be granted if all the papers show that there is no triable issue as to any material fact and the moving party is entitled to judgment as a matter of

law. If the parties' filings disclose the existence of a disputed issue of material fact, the motion must be denied.<sup>1</sup>

The Commission's process requires that the moving party, here, complainant Calone, demonstrate that there are no disputed issues of material fact and that the moving party is entitled to judgment as a matter of law. Complainant argues that all competent evidence supports finding that the water supply for Point Arena Water Works' Whiskey Shoals subsystem can accommodate an additional service connection. In evidentiary support of this conclusion, complainant has presented properly documented well flow tests showing that the Whiskey Shoals well produces about 2 gallons/minute, which, complainant concludes, is sufficient to support at least one additional water service connection.

Defendant, however, has presented papers suggesting that the water supply has deteriorated and that the current well flow rate is about 0.37 gallons/minute, which defendant concludes is not sufficient to support another service connection. While complainant is correct that defendant's evidentiary presentation is informal, the substance of the presentation, the much lower well flow rate, is in direct contradiction of complainant's asserted well flow rate.

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<sup>1</sup> Qwest Communications Corporation and Qwest Interprise America, Inc. vs. Pacific Bell Telephone Company, dba SBC California, D.06-08-006 (2006 Cal. PUC LEXIS 302) August 24, 2006, citing Westcom Long Distance v. Pac Bell, 54 CPUC2d 244, 249 (D.94-04-082)(1994).

The difference between well flow rates presented by the complainant and the defendant is significant and leads to a different result when evaluating whether the Whiskey Shoals subsystem can accommodate another service connection. The Commission’s Division of Water and Audits analyzed the capability of the two well flow rates to support another connection and determined that while the 2 gallons/minute flow rate would be adequate for another connection, the 0.37 gallons/minute flow rate would not:

	Well flow rate = 2 gallons/minute	Well flow rate = 0.37 gallons/minute
Daily Supply Produced	2880 gallons/day	533 gallons/day
Average Daily <sup>2</sup> Demand	580 gallons/day	580 gallons/day
Maximum Daily Demand <sup>3</sup>	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.

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<sup>2</sup> Average demand per connection based on consumption from existing four connections based on historic average consumption figures since 2004 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 for peak month consumption.

<sup>3</sup> Maximum day demand at existing four connections escalates estimated average demand by 2.25 pursuant to the definition in Section 64554 of Chapter 22 of the California Code of Regulations.

The amount of water supplied by the Whiskey Shoals subsystem well is a material fact in this complaint case. The defendant has presented documents disputing the well flow rate asserted by the complainant. This is a disputed issue of material fact. Therefore, I conclude that complainant was not met the Commission's standard for summary judgment based on this record and that the proceeding should continue to evidentiary hearing for resolution of this and any other factual disputes.<sup>4</sup>

Defendant's well flow rate presentation, however, calls into question whether the existing well is sufficient to provide safe and reliable water service to current Point Arena Water Works customers in the Whiskey Shoals subsystem. The table above shows that the existing well is unable to meet average daily demand, much less maximum daily demand. The capability of the existing system to meet customer demand was included in the scoping memo and the parties should address it in detail in their testimony to be distributed soon.

Therefore, **IT IS RULED** that:

1. Complainant's motion for summary judgment is denied and the proceeding shall continue on the procedural schedule adopted in the November 17, 2009, scoping memo.

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<sup>4</sup> Due to this conclusion, it is not necessary to reach the question of whether complainant is entitled to judgment as a matter of law.

2. The parties are directed to address in testimony whether the existing Whiskey Shoals well has sufficient capacity to meet the needs of current customers in the Whiskey Shoals subsystem and, if not, what plans should be implemented to augment the supply.

Dated January 19, 2010, at San Francisco, California.

/s/ MARIBETH A. BUSHEY  
Maribeth A. Bushey  
Administrative Law Judge

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Dated January 19, 2010, at San Francisco, California.

/s/ LILLIAN LI

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Lillian Li

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