

Decision 01-09-010 September 6, 2001

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Daniels Cablevision, Inc. and the California
Cable Television Association,

Complainants,

vs.

San Diego Gas & Electric Company,

Defendant.

Case 00-09-025
(Filed September 18, 2000)

**ORDER EXTENDING DEADLINE
FOR ADJUDICATION CASE**

Background

The purpose of this order is to comply with California Pub. Util. Code § 1701.2(d)¹ which states, in part: "Adjudication cases shall be resolved within 12 months of initiation unless the commission makes findings why that deadline cannot be met and issues an order extending that deadline." This provision applies in adjudication cases where the Commission has determined that a hearing is necessary.

On September 18, 2000, Daniels Cablevision, Inc. (Daniels) and the California Cable Television Association (CCTA) (jointly "Complainants") filed

¹ All statutory references are the Public Utilities Code unless otherwise noted.

this complaint against San Diego Gas and Electric Company (SDG&E). The complaint is filed pursuant to § 767.5(c) which confers upon the Commission authority to determine pole attachment rates, terms, and conditions when cable operators are unable to reach agreement with investor-owned utilities.

Complainants claim that SDG&E is attempting to impose unreasonable charges for access to SDG&E poles and rights-of-way beyond the annual charges provided for in a 1986 Pole Attachment Agreement between the parties, and in violation of Decision 98-10-058 in which the Commission established various right-of-way rules. A hearing was held in this matter on May 2, 3, and 7, 2001. The case was deemed submitted upon the filing of reply briefs on June 15, 2001.

The 12-month anniversary of this case will occur on September 18, 2001. Because of the nearness of the approaching deadline, and the fact that the case has not yet concluded, this order is issued to provide the findings required by § 1701.2(d). The case cannot be concluded within 12 months of initiation.

Discussion

We find that the case cannot be concluded within 12 months of initiation in view of the shortness of the time remaining before the 12-month deadline expires and the remaining tasks to be concluded.

The progress toward concluding the case was initially slowed by SDG&E's request for an additional five weeks to respond to the complaint. SDG&E's request was granted and the response was filed on November 30, 2000. A prehearing conference was held on December 14, 2000. At the prehearing conference, the assigned Administrative Law Judge (ALJ) set a schedule that called for serving prepared testimony on March 16, 2001. The case then experienced additional delay due to the parties' requests for a two-week extension for serving testimony (until March 30, 2001). The request was granted.

On March 27, 2001, the case was reassigned from ALJ Prestidge to ALJ Duda due to workload concerns. On April 9, 2001, the assigned Commissioner and ALJ Duda issued a scoping memo for the case, set a new date for hearings, and denied a motion by SDG&E to dismiss CCTA as a party to the proceeding. Hearings were held on May 2, 3, and 7, 2001, and concurrent opening and reply briefs were filed on May 25 and June 15, respectively.

Despite efforts to process the case as quickly as possible, the initial delays resulting from SDG&E's request for an extension to respond and the delay in filing testimony resulted in a later than expected hearing date for this case. The Commission anticipates that the presiding officer's decision (POD) shall be issued shortly. Pursuant to Section 1701.2(a), the POD shall become the decision of the Commission if no appeals are filed within 30 days after it is issued. Therefore, even if no appeals are made, this proceeding cannot be resolved before the 12-month deadline expires on September 18, 2001. Additional time is further required to allow the Commission to address any requests for review or appeals of the POD and to permit the Commission to render its final decision.

Accordingly, we find that the 12-month deadline for processing this case pursuant to Pub. Util. Code § 1701.2(d) cannot be met, and that an extension in the schedule will be required to allow for adequate time to review potential appeals or requests for review. An extension through December 31, 2001 should provide a reasonable allowance of time to conclude the proceeding.

We will waive public review and comment regarding today's decision, as provided in Rule 77.7(f)(4) of our Rules of Practice and Procedure.

Findings of Fact

1. The 12-month statutory deadline for resolving this case is September 18, 2001.

2. A hearing was held in this matter on May 2, 3, and 7, 2001 and the case was submitted on June 15, 2001.

3. The case has experienced delay due to SDG&E's request for extension to respond, a request by the parties for an extension to file testimony, and a change in the assigned ALJ.

4. The Commission cannot resolve this case before the 12-month deadline expires on September 18, 2001, because there is not adequate time to issue a presiding officer's decision and allow time for appeals before the 12-month deadline.

5. An extension through December 31, 2001 is necessary to allow the Commission adequate time to consider the presiding officer's decision.

Conclusions of Law

1. California Pub. Util. Code § 1701.2(d) requires that adjudication cases shall be resolved within 12 months of initiation unless the Commission makes findings why that deadline cannot be met and issues an order extending that deadline. This provision applies in adjudication cases where the Commission has determined that a hearing is necessary.

2. The Commission held a hearing in this matter in May 2001.

3. The findings set forth above constitute sufficient basis under Pub. Util. Code § 1701.2(d) to justify why this proceeding cannot be resolved within 12 months of initiation.

4. The order extending this case as set forth below should be adopted, effective immediately.

5. Public review and comment regarding today's decision has been waived, as provided in Rule 77.7(f)(4) of the Commission's Rules of Practice and Procedure.

IT IS ORDERED that the 12-month statutory deadline imposed by Pub. Util. Code § 1701.2(d) is extended until December 31, 2001, to permit conclusion of this proceeding.

This order is effective today.

Dated September 6, 2001, at San Francisco, California.

LORETTA M. LYNCH
President
HENRY M. DUQUE
RICHARD A. BILAS
CARL W. WOOD
GEOFFREY F. BROWN
Commissioners