

Decision 10-03-017 March 11, 2010

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Jurupa Community Services District,

Complainant,

vs.

Empire Water Company, LLP,

Defendant.

Case 09-03-024
(Filed March 23, 2009)

ORDER EXTENDING STATUTORY DEADLINE

Summary

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 is March 22, 2010. Although the Presiding Officer's Decision (POD) may be served on the parties by that date, it is possible that one of the parties will file an appeal of the POD within the 30-day period provided for such appeals in Rule 14.4(a) of the Commission's Rules of Practice and Procedure, or that a Commissioner will file a request for review of the POD within the 30-day period provided for such requests in Rule 14.4(b). Thus, even if a POD were to be issued by March 22, 2010, it would not be possible to resolve

this case within the one-year period provided in Pub. Util. Code § 1701.2(d). Because of these circumstances, we have concluded that it is appropriate to extend the 12-month deadline in this case for eight months, until December 16, 2010.

Background

This complaint case has only two parties and involves water deliveries to only a few customers but arises out of a set of complicated and changing institutional relationships that bear on the question of whether this Commission has jurisdiction over those water deliveries. The Complainant, a community services district, contends that the Defendant, a Nevada corporation that holds majority interest in a mutual water company and also owns assets from a water company that has held a certificate of public convenience and necessity, is subject to Commission jurisdiction as a result of the water deliveries. Defendant, during the course of the proceedings, has completed certain assignments to document its contention that the water deliveries are being made by the mutual water company at cost, exempt from Commission jurisdiction.

Procedural History

Jurupa Community Services District (Jurupa) filed its complaint against Empire Water Company, LLP¹ (Empire) on March 23, 2009, alleging that Empire was operating within Jurupa's service area as a provider of water services in

¹ The intended defendant was and is Empire Water Corporation, a Nevada corporation. In the pleadings and other filings in this proceeding Empire Water Corporation has been erroneously identified variously as a "company", a limited liability partnership ("LLP"), and a limited liability company ("LLC"). See Complainant's Notice served on December 16, 2009, at 1-2, and the Evidentiary Hearing R.T. 31:12-13.

violation of Section 2701 of the California Public Utilities Code. The proceeding was assigned to Commissioner John Bohn and Administrative Law Judge (ALJ) Gary Weatherford on April 21, 2009. Instructions to Empire to answer the complaint were filed on April 21, 2009. On May 26, 2009, Empire served its verified answer that variously denied and admitted contentions of the complaint, asserted that the water services were exempt from the jurisdiction of the California Public Utilities Commission, contended that the complaint failed to state a cause of action, and set forth affirmative defenses to the complaint.

The prehearing conference was held on June 24, 2009, in Fontana, California. The Assigned Commissioner's Scoping Memo and Ruling Adopting Schedule, filed on July 10, 2009 identified two issues for adjudication: first, whether present water deliveries by Empire come within the Commission's jurisdiction and, second, whether prospective water deliveries, after a restructuring of existing contracts, would come within the Commission's jurisdiction. On the basis of representations by the parties of difficulties to be faced in collecting and reviewing historical documents, a lengthy two-staged period for discovery, from July 1 through November 24, 2009, was scheduled.

In response to a motion by Empire, ALJ Weatherford on September 8, 2009, struck portions of Jurupa's complaint that contained speculative allegations about future events and conditions that were not ripe for consideration. The ruling removed the issue of prospective water deliveries from the proceeding except to the extent that during the course of the proceeding water deliveries might come to be made under a contemplated restructuring of existing contracts. In the ruling Empire was asked to provide information concerning whether any transfer of assets of the West Riverside Canal Company (Canal Company) had occurred under §§ 851-854 of the Pub. Util. Code and, if so, whether any

Commission approvals or denials had resulted. Empire responded to that request on October 8, 2009, stating that the Canal Company was not a Commission-regulated public utility as of the time that Empire purchased the assets of the Canal Company and therefore that §§ 851-854 were inapplicable.

Opening legal briefs were filed by Jurupa and Empire on October 23, 2009, respectively and reply briefs were filed on November 6, 2009, respectively. Jurupa and Empire each served prepared testimony on December 4, 2009 and prepared reply testimony on December 23, 2009. Empire's reply testimony focused on the restructuring of existing water delivery contracts and included copies of two assignments, dated December 4, 2009, purporting to place West Riverside 350 Inch Water Company, a mutual water company in which Empire is a majority shareholder, in the role of fulfilling certain preexisting water delivery obligations of the Indian Hills Water Conservation Corporation.

In accordance with a December 30, 2009, ruling by ALJ Weatherford, Jurupa and Empire served a joint stipulation concerning the admissibility and authenticity of documentary evidence, with exhibit lists attached, on January 5, 2010. The evidentiary hearing was held on January 6, 2010, with the record held open for the preparation and possible admission into evidence of an Empire exhibit concerning the shares-only acquisition by Empire of a majority interest in the mutual water company, West Riverside 350 Inch Water Company. Such an exhibit has been submitted and is currently the subject of a comment cycle.

Discussion

Two features of this adjudication have stretched the time line for its resolution. First, accessibility to documents for discovery was delayed by circumstances beyond control of the parties. In late 2007, Defendant became a successor in interest to a water supply and delivery system composed of the assets of several entities. Two of those entities, in which Defendant holds a majority shareholder position, are historic, one founded in the late 1800's and the other in 1916, and Defendant had difficulty in finding and organizing the records of those entities for purposes of discovery. This necessitated an almost five-month discovery period before testimony could be submitted.

Second, during the evidentiary hearing on January 6, 2010, it became apparent that a factual dispute as to whether or not Empire had made a shares-only purchase of the mutual water company, West Riverside 350 Inch Water Company, which it claims is the entity making the water deliveries in question. The record was left open for the later introduction of evidence on that issue.

Under all the circumstances of this case, we believe that an eight-month extension of time, until December 16, 2010, should be sufficient to allow for the closing of the record as well as the drafting and issuance of a Presiding Officer's Decision (POD) and a decision by the Commission and the parties whether to adopt it or to consider an appeal.

Waiver of Comments on Proposed Decision

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

John Bohn is the assigned Commissioner and Gary Weatherford is the assigned ALJ and presiding officer in this proceeding.

Findings of Fact

1. The complaint in this case was filed on March 23, 2009.
2. An extension of time until December 16, 2010 should allow the ALJ adequate time to draft a POD, provide parties with time to decide whether to file an appeal of the POD pursuant to Rule 14.4(a) of the Rules of Practice and Procedure, and any concerned Commissioner to decide whether to request review of the POD pursuant to Rule 14.4(b).

Conclusions of Law

1. Because of the lengthy discovery period and need to supplement the record after the evidentiary hearing, it will not be possible to resolve this case within the 12-month period provided for in Pub. Util. Code § 1701.2(d).
2. The 12-month statutory deadline should be extended for eight months to allow for resolution of this proceeding.

IT IS ORDERED that the 12-month statutory deadline in this proceeding, March 22, 2010, is extended to and including December 16, 2010.

This order is effective today.

Dated March 11, 2010, at San Francisco, California.

MICHAEL R. PEEVEY

President

DIAN M. GRUENEICH

JOHN A. BOHN

TIMOTHY ALAN SIMON

NANCY E. RYAN

Commissioners