

Decision 10-07-038 July 29, 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.

**MODIFIED PRESIDING OFFICER'S DECISION
ORDERING PREPARATION OF WATER SUPPLY AUGMENTATION PLAN**

1. Summary

This decision is a companion to Decision 10-06-027 approving a settlement between the parties that provided for a service connection for Complainant.

Today's decision finds that 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

The procedural background of this complaint proceeding is set forth in detail in the companion decision and explains that 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.

Relevant to today's decision, PAWW explained in its answer 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 four of the 26 parcels in its Commission-designated Whiskey Shoals service area. These four customers initiated water service from PAWW in the 1970s, 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, four have residences which rely on either their own wells or private storage tanks on the property for water service and one vacant parcel has a private well.

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.

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.

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 daily 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.

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 which was addressed in a companion Presiding Officer's Decision. On April 23, 2010, the Presiding Officer mailed her Presiding Officer's Decision addressing both the settlement agreement and the further water supply directives for PAWW. The issues were bifurcated and two revised Presiding Officer's Decisions mailed on May 20, 2010, which superseded in its entirety the April 23, 2010, Presiding Officer's Decision and separately addressed the settlement agreement³ and the water supply directives. Today's decision is limited to further water supply directives to PAWW.

3. 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,⁴ and water supply limitations that can potentially be remedied is not justification for failing to consider water supply augmentation and continuing to deny service to new customers. 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

³ The Presiding Officer's Decision addressing the settlement agreement was not appealed, and it became D.10-06-027.

⁴ See D.03-03-037, *mimeo.* at 5.

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 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. Appeal of Presiding Officer's Decision

On June 16, 2010, PAWW appealed the Presiding Officer's Decision directing PAWW to prepare a water supply augmentation plan for its Whiskey Shoals service area. PAWW offered two procedural challenges to the Presiding Officer's Decision, both of which have been cured.⁵

Substantively, PAWW did not dispute that the data it submitted showed that the water supply for its Whiskey Shoals service territory is inadequate, nor did PAWW dispute that augmenting the Whiskey Shoals water supply is feasible.⁶ These data were supplied by PAWW, the owner and operator of the Whiskey Shoals subsystem, and these data provide the factual basis for requiring the water augmentation study. These PAWW-supplied data provide sufficient factual basis for requiring PAWW to study potential remedies for the lack of supply. PAWW cannot reasonably contend that it has "never presented its case" when its own previous presentation on the adequacy of the Whiskey Shoals

⁵ PAWW contended that the single finding of fact in the Presiding Officer's Decision was inadequate; additional Findings of Fact and Conclusions of Law have been added to today's decision. PAWW also observed that the proceeding had not been formally submitted for Commission consideration and this was completed on June 23, 2010, as indicated in the Commission's Daily Calendar for June 24, 2010.

⁶ In fact, augmenting the Whiskey Shoals subsystem supply with a new well is contemplated by the settlement agreement approved in D.10-06-027.

water supply, as reflected in the record of this proceeding, forms the factual basis for today's decision.

PAWW's sole substantive issue is whether the water supply augmentation study should begin now or after its next general rate case.

The general rate case, however, is too late to develop and adopt a water supply augmentation plan. Preparing the plan will require information on prospective customer counts and study of supply options and costs. These data and analyses must be assembled and evaluated well in advance of a general rate case filing, when customers and the Commission will scrutinize PAWW's recommendations and ratemaking impacts thereof. Waiting until a general rate case is filed to begin preparing a plan will prevent reasoned customer comment or Commission action.

PAWW also contends that the Whiskey Shoals water supply augmentation study will impose "costly obligations upon PAWW." The need to determine customer interest in service connections, as well as prepare and evaluate possible water supply augmentation, is an extant responsibility of PAWW as a certificated provider of public utility water service. Any significant new capital or expense proposal can be included in the upcoming general rate case.

Therefore, we find that the procedural issues raised in the appeal of the Presiding Officer's Decision have been cured and that the substantive issues are without merit.

7. 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 water supply data presented by PAWW and analyzed by Staff show that the current Whiskey Shoals supply is inadequate.
2. Augmentation of the water supply for the Whiskey Shoals system should be studied.
3. Ratemaking implications of the water supply augmentation study results should be addressed by PAWW's next general rate case.
4. This matter was submitted for Commission consideration on June 23, 2010, as shown in the Commission's Daily Calendar for June 24, 2010.

Conclusions of Law

1. 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 30 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.
2. 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, the current Whiskey Shoals customers and all owners of unserved parcels in the Whiskey Shoals service area.
3. There are no disputed issues of material fact, and no further hearings are required.
4. The procedural issues raised in the appeal of the presiding officer's decision have been cured.
5. Certificated public utilities have an ongoing obligation to be aware of customer interest in new connections and to prepare and evaluate plans to meet the needs of existing and prospective customers.
6. The substantive issues raised in the appeal of the presiding officer's decision are without merit.
7. The appeal of the presiding officer's decision should be denied.

O R D E R

IT IS ORDERED that:

1. 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

30 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.

2. 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, all current Whiskey Shoals customers, and all owners of unserved parcels in the Whiskey Shoals service area.

3. 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 information-only filing pursuant to General Order 96-B, Section 6.

4. 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.

5. The appeal of the Presiding Officer's Decision is denied.

This order is effective today.

Dated July 29, 2010, at San Francisco, California.

MICHAEL R. PEEVEY

President

DIAN M. GRUENEICH

JOHN A. BOHN

TIMOTHY ALAN SIMON

NANCY E. RYAN

Commissioners