

Decision 11-01-044 January 27, 2011

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

City of Davis, California,

Complainant,

vs.

Newpath Networks, LLC, a New Jersey Limited
Liability Company (U6928C),

Defendant.

Case 10-03-011
(Filed March 23, 2010)

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 23, 2011. However, the parties are in ongoing settlement negotiations, which will not conclude prior to March 23, 2011.

Thus, 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 12 months, until March 23, 2012.

Background

The City of Davis (City) filed this complaint alleging Crown Castle's (formerly Newpath Networks, LLC) proposed construction of a distributed antenna system in the City both violated provisions of the California Environmental Quality Act and Crown Castle's certificate of public convenience and necessity. Crown Castle denied the City's allegations and alleged that the City's actions concerning Crown Castle's proposed construction violated applicable state and federal law and state policy objectives for the deployment of telecommunications technologies. Following a prehearing conference on May 20, 2010, hearings were scheduled and then reset by ruling to September 14 through 20, 2010. During an August 17, 2010 conference call and in an August 24, 2010 e-mail, the parties requested that the schedule be suspended to permit the parties to continue settlement negotiations and to proceed under the City's Wireless Telecommunications Ordinance. The parties noted that the suspension of the schedule might result in the inability to complete the proceeding within the one-year statutory deadline and agreed to waive that provision should hearings be necessary.

The August 27, 2010 scoping memo stated that a conference call would be scheduled in mid-December to discuss the status of the settlement negotiations, and hearings would be held in late February and early March should the parties fail to reach a settlement agreement. During the December 14, 2010 conference call, the parties reported that they had made progress in their settlement negotiations, but that the Wireless Telecommunications Ordinance process would not conclude until March 2011. The parties requested that the schedule again be modified. In a January 5, 2011 e-mail, the parties proposed that they submit a joint report on the status of their settlement negotiations on March 25,

2011 and report to the assigned administrative law judge (ALJ) on April 1, 2011 whether the matter had been resolved or would proceed to hearings. The parties requested hearings in July 2011, if necessary, and noted that it might be necessary to amend the complaint and/or other pleadings to incorporate the amendments under consideration in the City's Wireless Telecommunications Ordinance process.

Discussion

The parties are attempting to resolve their dispute under a process outside the control of the Commission. A successful resolution of the dispute is the desired outcome, but no decision authorizing any requested withdrawal of the complaint could occur prior to March 23, 2011. In addition, if the parties are unable to resolve their dispute, the formal process will be delayed in order to amend filed pleadings to include changes to the Crown Castle proposed construction.

Under all the circumstances of this case, we believe that a 12-month extension of time, until March 23, 2012, should be sufficient to allow for the drafting and issuance of a Presiding Officer's Decision and a decision by the Commission and the parties whether to adopt it or to consider an appeal.

Waiver of Comment Period

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

Michael R. Peevey is the assigned Commissioner and Janice L. Grau is the assigned ALJ and presiding officer in this proceeding.

Findings of Fact

1. The complaint in this case was filed on March 23, 2010.
2. An extension of time until March 23, 2012 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 ongoing settlement negotiations and proceeding under the City's Wireless Telecommunications Ordinance, 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 12 months to allow for resolution of this proceeding.

IT IS ORDERED that the 12-month statutory deadline in this proceeding, March 23, 2011, is extended to and including March 23, 2012.

This order is effective today.

Dated January 27, 2011, at San Francisco, California.

MICHAEL R. PEEVEY
President
MICHEL PETER FLORIO
CATHERINE J.K. SANDOVAL
Commissioners

Commissioner Timothy Alan Simon, being necessarily absent, did not participate.