

Decision 11-04-021 April 14, 2011

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Pac-West Telecomm, Inc. (U5266C),

Complainant,

vs.

PNG Telecommunications, Inc. (U6336C),

Defendant.

Case 10-05-011
(Filed May 11, 2010)

PNG Telecommunications, Inc. (U6336C),

Complainant,

vs.

Pac-West Telecomm, Inc. (U5266C),

Defendant.

Case 10-09-003
(Filed September 7, 2010)

ORDER EXTENDING STATUTORY DEADLINE

Summary

Pub. Util. Code § 1701.2(d) provides that adjudicatory matters such as the above-captioned complaint cases 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. On December 22, 2010, the above-captioned cases were consolidated. For one of the

above consolidated cases, Case (C.) 10-05-011, the 12-month deadline for resolving the case is May 11, 2011. The second of the above consolidated cases, C.10-09-003, the 12-month deadline for resolving the case is September 7, 2011.

The parties are presently engaged in an active settlement discussion, which may not conclude prior to May 11, 2011, the earlier of the two statutory deadlines. Thus, it would not be possible to resolve the above consolidated 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 6 months, until November 15, 2011.

Background

On May 11, 2010, Pac-West Telecomm, Inc. (U5266C) (Pac-West) filed the above-entitled complaint, Case (C.) 10-05-011, against PNG Telecommunications, Inc. (U6336C) (PNG). On August 13, 2010, PNG filed an answer¹ in that case. Then on September 7, 2010, PNG filed a related complaint with this Commission (C.10-09-003) against Pac-West. On October 27, 2010, Pac-West filed an answer in that related case, C.10-09-003.

On December 17, 2010, a combined prehearing conference was held in the two proceedings, C.10-05-011 and C.10-09-003 (Proceedings). The parties reported the status of related federal action between the parties and informed the Administrative Law Judge (ALJ) that the federal court action has been stayed pending the Commission's resolution of the Proceedings. The parties confirmed, among other things, that the Proceedings generally arise from a contract dispute

¹ Defendant filed and was subsequently granted a Motion to Extend Time of Defendant PNG Communications, Inc. to Respond to Complaint.

resulting in disputed charges and share common issues of law and fact. Accordingly, to promote efficiency, thereby enabling the Commission to expedite its resolution of both cases, on December 22, 2010, the Proceedings were consolidated (Consolidated Proceeding).

On February 22, 2011, the parties filed a joint updated prehearing conference statement in the Consolidated Proceeding wherein the parties requested, *inter alia*, that they be afforded additional time to negotiate a settlement.

Discussion

The parties are attempting to resolve some, or all, of their disputes giving rise to the Consolidated Proceeding. Depending on the outcome of the current settlement discussion, the parties may withdraw their respective complaints. Alternatively, if only some issues are settled and others remain in dispute, the Commission may still need to determine if the pleadings will need to be amended and/or if a hearing is needed to resolve such outstanding issues. It is unlikely that a final decision in the Consolidated Proceeding can be reached thoughtfully by or before May 11, 2011.

Under all the circumstances of the Consolidated Proceeding, we believe that a 6-month extension of time, until November 15, 2011, 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 Consolidated Proceeding, 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 Kimberly Kim is the assigned ALJ and presiding officer in this Consolidated Proceeding.

Findings of Fact

1. The first of the above consolidated cases, C.10-05-011, was filed on May 11, 2010.
2. The 12-month statutory deadline to resolve C.10-05-011 is May 11, 2011.
3. The second of the above consolidated cases, C.10-09-003, was filed September 7, 2010.
4. The 12-month statutory deadline for resolve C.10-09-003 is September 7, 2011.
5. An extension of time until November 15, 2011 should allow the ALJ adequate time to draft a presiding officer's decision, provide parties with time to decide whether to file an appeal of the presiding officer's decision 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 presiding officer's decision pursuant to Rule 14.4(b).

Conclusions of Law

1. Because of ongoing settlement negotiations, it is not possible to resolve the Consolidated Proceeding within the 12-month period provided for in Pub. Util. Code § 1701.2(d).
2. The 12-month statutory deadline should be extended till November 15, 2011 to allow for resolution of this proceeding.

IT IS ORDERED that the 12-month statutory deadline in this Consolidated Proceeding, May 11, 2011 and September 7, 2011, is extended to and including November 15, 2011.

This order is effective today.

Dated April 14, 2011, at San Francisco, California.

MICHAEL R. PEEVEY
President
TIMOTHY ALAN SIMON
MICHEL PETER FLORIO
CATHERINE J.K. SANDOVAL
MARK FERRON
Commissioners