

Decision 12-04-032 April 19, 2012

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

James and Marie Hughes, Kathleen Palmer,
Gregory and Michelle Land, Patrick and
Delores McMillen, Jeffery and Tina Strunc,
and Michael and Robin Beals,

Complainants,

vs.

Big Oak Valley Water District,

Defendant.

Case 11-05-025
(Filed May 25, 2011)

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 May 24, 2012. The case cannot be resolved by that date because of a combination of factors, including the time reasonably taken to resolve jurisdictional issues posed by a parallel lawsuit pending before the Superior Court of Nevada County. Because of those circumstances, we have concluded that it is appropriate to extend the 12-month deadline in this case for six months, until November 24, 2012.

Background and Procedural History

The Complaint, filed on May 25, 2011, seeks a determination that Defendant is a public utility and that, as such, it should update a portion of the Dempsey Ditch, an irrigation ditch, to comply with Commission regulations, issue rules and refund connection charges. The Defendant's Answer, filed July 12, 2011, denies that the Big Oak Valley Water District (District or BOVWD) is a public utility and that Complainants are entitled to the relief sought by the Complaint. The first Prehearing Conference was conducted telephonically on August 10, 2011, during which time there was a discussion of factual and legal issues posed by the pleadings.

The Assigned Commissioner's Ruling and Scoping Memo, issued on September 20, 2011, determined the need for an evidentiary hearing (EH), identified threshold issues as to possibly interested persons not named as parties and the comparative jurisdiction of the Superior Court of Nevada County in Case No. 73754, Hughes et al. v. Big Oak Valley Water District, filed on June 18, 2008. That parallel civil suit included causes of action alleging facts of possible relevance to the instant adjudication, i.e., conversion of connection fees and a related conspiracy; and declarations concerning the public utility status of that District as well as the respective rights of the parties in the irrigation ditch at the center of the dispute.

A first amended complaint was filed in the Superior Court suit on or about July 25, 2011, and demurred to August 22, 2011. The demurrer asserted that three of the causes of action were barred by the exclusive jurisdiction of the Commission. The Superior Court overruled those particular demurrers on September 23, 2011, on the ground that the issue of public utility status is a question to be resolved by the trier of fact.

The parties here were instructed in the Commissioner's Ruling and Scoping Memo to file briefs on the issues of jurisdiction and appropriate parties, which they did in October 2011.

On or about November 3, 2011, the plaintiffs in Case No. 73754 filed a notice of motion and motion for stay of the entire Superior Court proceeding, invoking the doctrine of primary jurisdiction and arguing that the Commission has "special competency to determine several matters at issue in the Superior Court case, including the determination of BOVWD as a public utility...." In light of that motion to stay filed in the Superior Court, Administrative Law Judge (ALJ) Weatherford suspended the schedule in this Commission proceeding on November 10, 2011. On December 9, 2011, the Superior Court granted the motion to stay. In a ruling issued on December 19, 2011, ALJ Weatherford lifted the suspension in this proceeding, set January and February 2012 dates for concurrent and reply testimony, respectively, and scheduled EHs for March 8 and 9, 2012.

A one-day EH was held at the Commission on March 8 in which five witnesses were examined and 123 exhibits, stipulated to as to authenticity and admissibility, were admitted, leaving one unavailable Complainant's witness and several of Defendant's exhibits opposed by Complainants to be addressed variously by written interrogation, declaration and opposition papers by March 15 and an expected ALJ ruling on that proffered evidence by March 25, 2012. Opening concurrent briefs are due on April 12, 2012 and concurrent reply briefs are due on April 27, 2012.

Discussion

Two principal events in this adjudication have stretched the time line for its resolution: first, the pre-hearing briefing concerning the concurrent jurisdiction of the Commission and the Superior Court of Nevada County, and second, pre-trial events in the Superior Court suit (including the amendment of pleadings, the resolution of demurrers and the ruling on the motion to stay) that have had a bearing on the Commission adjudication. The time now remaining before the May 24, 2012, statutory deadline is inadequate for compilation of the evidentiary record, legal briefing, and the Presiding Officer's Decision (POD), with an allowance of time for appeals and requests for review.

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

Mark J. Ferron 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 May 25, 2011.
2. Unless extended, the deadline for resolution of the adjudication is May 24, 2012.
3. An extension of time until November 24, 2012, should allow the ALJ adequate time for compilation of the record, briefing and the preparation of a POD, and 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 allow 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 periods of time that have been reasonably needed to complete prehearing briefing and resolve issues of concurrent jurisdiction arising from the parallel Nevada County Superior Court suit, Case No. 73754, Hughes et al. v. Big Oak Valley Water District, 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 six months to allow for resolution of this proceeding.

IT IS ORDERED that the 12-month statutory deadline in this proceeding, May 24, 2012, is extended to November 24, 2012.

This order is effective today.

Dated April 19, 2012, at San Francisco, California.

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