

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Investigation on the Commission's Own Motion into the Operations and Practices of the Conlin-Strawberry Water Co. Inc. (U-177-W), and its Owner/Operator, Danny T. Conlin; Notice of Opportunity for Hearing; and Order to Show Cause Why the Commission Should Not Petition the Superior Court for a Receiver to Assume Possession and Operation of the Conlin-Strawberry Water Co. Inc. pursuant to the California Public Utilities Code Section 855.

Investigation 03-10-038  
(Filed October 16, 2003)

**ADMINISTRATIVE LAW JUDGE'S RULING  
FOLLOWING FINAL PREHEARING CONFERENCE**

A final Prehearing Conference was held on May 20, 2004, in preparation for the continuation of the evidentiary hearing beginning on Monday, May 24, 2004. Cleveland Lee appeared for the Commission's Water Division. Thomas MacBride, Jr., appeared for the respondents Conlin-Strawberry Water Co. (Water Company).

The following motions and matters were addressed:

**Motion for Order Compelling Responses to  
Data Requests (April 29, 2004)**

**1. Work Papers for Numbered Accounts in  
Utility's Bookkeeping Records**

Respondents are ordered to review their records for the requested documents and, if in their possession, submit them to the Water Division by Friday, May 28, 2004.

**2. Cash Receipts Journals**

Moot

**3. Billing Registers**

Respondents are ordered to review their records for the requested documents (in the form of Exhibit No. 19) and, if in their possession, submit them to the Water Division by Friday, May 28, 2004.

**4. Daily Receipts Allocation**

Respondents are ordered to review their records for the requested documents (in the form of Exhibit No. 20) and, if in their possession, submit them to the Water Division by Friday, May 28, 2004.

**5. Utility Bank Statements**

Moot

**6. Deposit Account Summary**

Moot

**Water Division's Motion in Limine (ALJ Walker's Hearing and Ruling) (May 14, 2004)**

Motion denied; however, ALJ Walker's decision is not to be deemed a final adjudication of the issues raised in that informal proceeding.

**Water Division's Motion for Sanctions (May 18, 2004)**

Taken under submission.

**Water Company's Motion in Limine (May 14, 2004)**

In addressing this motion and other evidentiary issues in this proceeding, I apply the following rules. Hearsay, so long as it is the type of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, is admissible. *In re PG&E*, 42 CPUC 2d 436 (1991). In ruling on evidence in Commission proceedings, the "substantial rights of the parties shall be

preserved.” Rules of Practice and Procedure 64 (2003). The substantial rights of the parties are especially at issue in adjudicatory proceedings such as this. Some documentary evidence, such as a Department of Health Services’ formal report, is admissible on its own merits because the circumstances of its creation afford a high degree of confidence in its veracity. Other hearsay statements require collaboration or support by other credible evidence. *In re PG&E*, 23 CPUC 2d 352 (1986). Other evidentiary rules, *e.g.*, Evid. Code § 1523 (secondary evidence), also effect the admissibility of evidence.

**Specific Rulings on Respondents’ Objections (Referring to Paragraph Numbers in Motion):**

IV(A)(1)(a). Statement inadmissible under Evid. Code § 1523 (oral testimony of content of writing) since DHS report is available.

IV(A)(1)(b). Inadmissible. Insufficient foundation as to identity of speaker and circumstances of statement to establish credibility to statement.

IV(A)(1)(c). Inadmissible. Insufficient foundation as to identity of speaker and circumstances of statement to establish credibility to statement.

IV(A)(1)(d). Admissible to extent statement is collaborated by other credible evidence.

IV(A)(1)(e). Inadmissible. Insufficient foundation as to identity of DHS speaker and circumstances of statement to establish credibility to statement.

IV(A)(1)(f). Statement inadmissible under Evid. Code § 1523 (oral testimony of content of writing) since DHS report is available.

IV(A)(1)(g). Admissible. While apparently drawn from DHS recommendations, recommendations appear to be Water Division’s own. Respondents can examine witness on basis of recommendations.

IV(A)(1)(h). Statement inadmissible under Evid. Code § 1523 (oral testimony of content of writing) since DHS report is available.

IV(A)(1)(i). Inadmissible as irrelevant.

IV(A)(2)(a). Admissible to extent foundation is established and statement is corroborated by other credible evidence.

IV(A)(2)(b). Admissible as business records exception to hearsay rule.

IV(A)(3)(a). Statement inadmissible under Evid. Code § 1523 (oral testimony of content of writing) since DHS report is available.

IV(A)(3)(b). Inadmissible under Evid. Code § 1523 (oral testimony of content of writing) unless Water Division can establish that one of the § 1523 exceptions apply.

IV(A)(3)(c). Admissible as business record exception to hearsay rule. Circumstances of its creation afford a high degree of confidence in its veracity.

IV(A)(3)(d). Inadmissible without additional foundation.

IV(A)(3)(e). First sentence: admissible to extent statement is corroborated by other credible evidence. Second sentence: admissible to extent statement is corroborated by other credible evidence.

IV(A)(3)(f)(1)&(2). Statement inadmissible under Evid. Code § 1523 (oral testimony of content of writing) since DHS report is available.

IV(A)(3)(g)&(h). Table 1-A appears to be an explanatory aid to assist the decisionmaker. The specific statements in the table, however, must come from credible evidence in this proceeding.

IV(A)(4)(a). Inadmissible. Inadequate foundation.

IV(A)(4)(b). Admissible to extent corroborated by other credible evidence. Opinion can be offered if speaker is shown to have special knowledge to make that determination (“no longer fulfilled the requirements of C.96-09-043).

IV(A)(4)(c). Admissible to extent collaborated by other credible evidence.

IV(A)(4)(d). Admissible to extent collaborated by other credible evidence.

IV(A)(4)(e). Inadmissible under Evid. Code § 1523 (oral testimony of content of writing) unless Water Division can establish that one of the § 1523 exceptions apply.

IV(A)(4)(f). Admissible to extent collaborated by other credible evidence.

IV(A)(4)(g). Admissible to extent collaborated by other credible evidence.

IV(A)(4)(h). Admissible to extent collaborated by other credible evidence.

IV(A)(4)(i). Inadmissible. Insufficient foundation as to identity of speaker and circumstances of statement to establish credibility to statement.

IV(A)(4)(j). Admissible to extent collaborated by other credible evidence.

IV(A)(4)(k). Admissible to extent collaborated by other credible evidence.

IV(A)(5). Respondents ordered to provide additional documents and information by May 28, 2004, in response to Second Motion to Compel. Water Division to provide more complete, updated report and prepared testimony by Mr. Chow by June 4, 2004. Respondents to submit rebuttal testimony to Mr. Chow's report and testimony by June 18, 2004.

IV(B)(1)(a), (c), (f), (g), (h), (i), (j), (k), (m), (n). Inadmissible and irrelevant to the extent these statements describe pre-July 1995 conditions.

IV(B)(1)(b), (d), (e). Admissible to extent collaborated by other credible evidence.

IV(B)(1)(l). Statements inadmissible and irrelevant to the extent these statements describe pre-July 1995 conditions. Other statements admissible to extent collaborated by other credible evidence.

IV(B)(2). Certain statements are inadmissible and irrelevant since they describe pre-July 1995 conditions. Other statements admissible to extent collaborated by other credible evidence.

IV(B)(3). Admissible to extent collaborated by other credible evidence.

### **Scope of Issues for Evidentiary Hearing**

The issues stated in the Scoping Memo frame the issued to be addressed during the evidentiary hearing. These include the issues stated by Respondents in their Prehearing Statement except for Issues G and I. Additionally, Respondents' Issue C is reworded to read: "Was Respondent, or is respondent now, unresponsive to the rules or orders of the Commission?" Issue P is reworded to read: "If the Commission's rules and orders have been violated by Respondents, what has been the consequences for ratepayers?"

### **Witnesses and Schedule**

On Monday, May 24, the Water Division will call Kerrie Evans. On Tuesday, May 25, the Water Division will call Ed Lodi, Richard Rutherford, Dennis Kelley (possibly), and Jim Pingree. On Wednesday, May 26, the Water Company will call Danny Conlin. On Thursday, June 24 (and continuing to June 25, if necessary), the Water Division will call Herb Chow. After the conclusion of Chow's testimony, the Water Company may recall Danny Conlin to respond to Chow's testimony. Thereafter, the Water Division may call any witness scheduled and not heard on May 25 and then proceed with any rebuttal testimony from Evans and Chow.

### **Exhibits**

Exhibits were marked off the record.

**IT IS SO RULED.**

Dated May 26, 2004, at San Francisco, California.

/s/ JOHN E. THORSON

John E. Thorson  
Administrative Law Judge

**CERTIFICATE OF SERVICE**

I certify that I have by mail this day served a true copy of the original attached Administrative Law Judge's Ruling Following Final Prehearing Conference on all parties of record in this proceeding or their attorneys of record. In addition, service was also performed by electronic mail.

Dated May 26, 2004, at San Francisco, California.

/s/ FANNIE SID

Fannie Sid

**N O T I C E**

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.