

Decision 11-07-043 July 28, 2011

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

LA COLLINA DAL LAGO, L.P.; and BERNAU
DEVELOPMENT CORPORATION,

Complainants,

vs.

PACIFIC BELL TELEPHONE COMPANY,
dba AT&T California (U1001C),

Defendant.

Case 09-08-021
(Filed August 27, 2009)

ORDER EXTENDING STATUTORY DEADLINE

Summary

Pub. Util. Code § 1701.2(d) provides that adjudicatory matters such as this Complaint (C.) 09-08-021 shall be resolved within 12 months after they are initiated, unless the California Public Utilities Commission (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 August 27, 2011. Although it is likely that a Presiding Officer's Decision (POD) will be served on the parties by that date, it is possible that one of the parties will file an appeal of the POD within the 30-day period provided for such appeals in Rule 14.4(a) of the Commission's Rules of Practice and Procedure, or that a Commissioner will file a request for review of the POD within the 30-day period provided for such requests in Rule 14.4(b).

Thus, even if a POD were to be issued by the end of August, 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 six-months, until February 27, 2012.

Background

Complainants initially filed a proposed class action in the Superior Court on March 10, 2009. On July 28, 2009, the Superior Court ordered Complainants to file an administrative complaint before the Commission. On August 27, 2009, La Collina Dal Lago, L.P. and Bernau Development Corporation (Complainants) filed the instant against Pacific Bell Telephone Company (Defendant), alleging that the Defendant violated its Tariff Rule 15.

During the first prehearing conference (PHC) held on November 16, 2009, the assigned Administrative Law Judge (ALJ) required parties to brief the issue of judicial estoppel as applied to certain assertions made by Defendant in its Answer. On December 4, 2009, Complainants moved to exclude contrary assertions under the doctrine of judicial estoppel. Defendant responded on December 18, 2009. Ultimately the parties stipulated to the use of the discovery from *Jensen Enterprises, Inc. v. Oldcastle Precast, Inc., et. al* (Case No. C-06-0247 SI) but reserved their rights to make objections to its use if necessary. On June 24, 2010, the ALJ denied Complainants' motion to exclude contrary assertions under the doctrine of judicial estoppel.

After the second PHC was held on May 27, 2010, a scoping ruling was issued by the Assigned Commissioner. Evidentiary Hearings were held on November 16 and 17, 2010. Concurrent opening briefs were filed on January 21, 2011 and concurrent replay briefs were filed on February 4, 2011.

On March 11, 2011, submission was set aside by the ALJ to allow both parties to brief the issue of the applicability of certain statutes of limitations to the underlying complaint. A stipulation on the issue of the statute of limitations was filed on March 23, 2011. On May 12, 2011, the ALJ ruled that the statute of limitations matter was outside the scope of the proceeding.

Due to time constraints, and the complex issues in this matter, the six-month extension is necessary because of the possibility that one of the parties would file an appeal of the decision within the 30-day period provided for such appeals in Rule 14.4(a) of the Commission's Rules of Practice and Procedure or that a Commissioner will file a request for review of the decision within the 30-day period provided for such requests in Rule 14.4(b). The Commission would require additional time to consider an appeal or request for review. Because of these circumstances, we have concluded that it is appropriate to extend the 12-month deadline in the case for an additional six months, until February 27, 2012.

Discussion

Under all the circumstances of this case, we believe that a six-month extension of time, until February 27, 2012 should be sufficient to allow for the drafting and issuance of a POD, an appeal or request for review, and a decision by the Commission.

Waiver of Comments on Proposed Decision

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 6-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 Katherine MacDonald is the assigned ALJ in this proceeding.

Findings of Fact

1. This proceeding was initiated on August 27, 2009.
2. An extension of time until February 27, 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 Rule of Practice and Procedure, and any concerned Commissioner to decide whether to request review of the POD pursuant to Rule 14.4(b), and provide for time to address the appeal or request for review.

Conclusions of Law

1. Because of the complex issues in this proceeding, and the limited time for issuing a POD, 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.

O R D E R

IT IS ORDERED that the 12-month statutory deadline in this proceeding, August 27, 2011, is extended to and including February 27, 2012.

This order is effective today.

Dated July 28, 2011, at San Francisco, California.

MICHAEL R. PEEVEY

President

TIMOTHY ALAN SIMON

MICHEL PETER FLORIO

CATHERINE J.K. SANDOVAL

MARK J. FERRON

Commissioners