

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)

**SCOPING MEMO AND RULING OF ASSIGNED COMMISSIONER
AND ADMINISTRATIVE LAW JUDGE**

In this proceeding, the Commission has issued an Order Instituting Investigation, Notice of Opportunity for Hearing, and Order to Show Cause directed to Conlin-Strawberry Water Co. and Danny T. Conlin, its owner and operator, both referred to as the "Water Company," respondents. The proceeding requires respondents to provide certain information to the Commission, show cause why the Commission should not petition the Tuolumne County Superior Court for the appointment of a receivership to assume possession of the Water Company and its water system, and demonstrate why fines, penalties, and other remedies should not be imposed on respondents.

A Prehearing Conference (PHC) was held at 10:00 a.m., Thursday, December 18, 2003, in the Commission Courtroom, State Office Building, 505 Van Ness Avenue, San Francisco, California 94102. This ruling determines

the scope, schedule, necessity of a hearing, and other matters in accordance with Rules 6(a) and 6.3 of the Commission's Rules of Practice and Procedure (April 2000) (Rules).¹ This ruling has been delayed following the prehearing conference pending the parties' filing of additional pleadings concerning the scope of issues to be addressed.²

1. Parties

The parties to these proceedings are the Water Division of the Commission, petitioner, Conlin-Strawberry Water Co., Inc., respondent, and Danny T. Conlin, respondent. William R. Rugg, President of the Strawberry Property Owners' Ass'n, also appears as an interested party in this proceeding.

The attorney for the respondents has represented that Danny T. Conlin is the sole shareholder of the Water Company and holds this interest as his sole and separate property.

The following persons employed by the Water Division have been designated by the Division as staff for this proceeding: Kerrie Evans, Herbert Chow, Stan Puck, and Cleveland Lee. These persons, in addition to all parties and counsel to this proceeding, are bound by the *ex parte* rule discussed in paragraph 4, below. If any additional persons are added to the staff of this proceeding, the Water Division shall file and serve a notice identifying those persons and confirming that they have been admonished about the *ex parte* prohibition.

¹ The Commission's Rules are available on the Commission's website: www.cpuc.ca.gov/PUBLISHED/RULES_PRAC_PROC/8508.htm.

² See discussion at note 3, *infra*.

2. Assigned Commissioner; Principal Hearing Officer

Geoffrey F. Brown is the Assigned Commissioner. Pursuant to Pub. Util. Code § 1701.3, Administrative Law Judge (ALJ) John E. Thorson is designated as the principal hearing officer in this proceeding.

3. Categorization and Need for Hearing

This ruling confirms the Commission's preliminary categorization in Resolution ALJ 176-3121 (Oct. 16, 2003) of this proceeding as adjudicatory. This ruling also confirms that evidentiary hearings are necessary as factual issues are in dispute. This ruling, only as to categorization, is appealable under the provisions of Rule 6.4 of the Commission's Rules.

4. *Ex Parte* Communications

Since this is an adjudicatory proceeding, *ex parte* communications with the Assigned Commissioner, other Commissioners, and the ALJ are prohibited.

5. Scope of the Proceeding

In its Order Instituting Investigation (OII), filed October 16, 2003, the Commission ordered that an evidentiary hearing be held, pursuant to Pub. Util. Code § 855, to determine whether: (a) respondents are unable or unwilling to adequately serve their ratepayers and have actually or effectively abandoned the water system; (b) the Commission should petition superior court for the appointment of a receiver to assume possession and operation of the Water Company and its water system; and (c) any fine or penalties should be imposed on respondents for failing to comply with prior Commission orders and directions. The OII recites four incidents in support of these allegations.

Respondents are not required to file, and they have not filed, a response to the OII. At the PHC, however, respondents indicated that they will contest the allegations set forth in the OII.

6. Specific Issues to B Addressed

The specific factual and legal issues to be decided in this proceeding are as follows:

Alleged Violations of PUC Section 855:

1. Have the respondents, after notice and hearing, shown cause why the Commission should not petition the Tuolumne County Superior Court for appointment of a receiver to assume possession and operation of the Conlin-Strawberry Water Co., Inc., and its water system?
 - a. Are the respondents unable or unwilling to adequately serve the utility's ratepayers?
 - i. As an example, the OII alleges that respondents disregarded a Commission order to install an answering machine or provide an answering service for ratepayer use.
 - b. Has the operator/owner, Danny T. Conlin, actually or effectively abandoned the utility?
 - i. For example, the OII alleges that respondents misappropriated Safe Drinking Water Bond Law (SDWBL) loan monies for personal or other unallowed purposes other than system improvements.
 - ii. For example, the OII alleges that respondents failed to deposit surcharges into the SDWBL Trust Account for repayment of the SDWBL loans.
 - c. Are respondents unresponsive to the rules or orders of the Commission when they failed to timely comply by September 30, 2000, or any time thereafter with all Commission orders as directed by Resolution W-4207?
2. Legislative intent
 - a. Did the California Legislature, in enacting Pub. Util. Code § 855, intend that a receiver be appointed

under the facts before the Commission in this manner?

- b. Does the action proposed in the OII, the appointment of a receiver, comport with the legislative history of Pub. Util. Code § 855?
- 3. Does the action proposed in the OII, the appointment of a receiver, comport with past Commission precedent?
- 4. How will ratepayers be affected financially if a receiver is appointed?

Alleged Violations of Other Legal Requirements:

- 5. If proven, do the allegations set forth in the OII, section III(D), titled “Audit issues from 1983 to 2003,” paragraph nos. (1) through (9), constitute additional violations of pertinent State statutes and Commission orders, resolutions, or other rules and regulations? The specific allegations are:
 - a. Missing deposits to the SDWBL trust account.
 - b. Unauthorized and excessive management salary.
 - c. Denial of Commission staff access to utility books and records.
 - d. Improper accounting methods.
 - e. False accounting entries for water pumps.
 - f. Untariffed exemptions and claiming personal expenses as business operating expenses.
 - g. Unaccounted for labor costs.
 - h. Undocumented contract work.
 - i. Inaccurate claims for asset purchases.
- 6. If sustained at hearing, do any of the violations alleged in the OII, or Exhibits 1 or 2 thereto, warrant fines, penalties, or other appropriate remedies?

Defenses/Mitigation:

7. Do the allegations in the staff report, set forth in Exhibits 1 and 2 to the OII, reflect current conditions?
8. To what extent is the financial condition of the Colin-Strawberry Company due to the failure to receive timely rate relief from the Commission?³

As to Issue No. 2, above, the Water Division may file a timely prehearing motion seeking to exclude evidence concerning this issue on the grounds that Pub. Util. Code § 855 is not ambiguous and, therefore, extraneous evidence of legislative intent should not be admitted.

³ The Water Division opposed the inclusion of this issue in the proceeding. At the PHC, the ALJ requested the parties to submit declarations by December 31, 2003 (extended to January 5, 2004), concerning the Water Company's apparently unsuccessful efforts to secure ratemaking from the Commission. The Water Division filed the declaration of Kerrie Evans on January 5, 2004; the Water Company filed no declaration. Nevertheless, this issue has been included to allow the Water Company to further develop this purported defense. The Water Division is not precluded from filing an appropriate motion concerning the sufficiency of the defense once discovery is completed and prepared testimony has been filed.

7. Schedule

The Water Division requested a delay in the schedule because weather conditions in the mountainous areas near Strawberry are likely to interfere with audits and discovery of Water Company documents.

The schedule for this proceeding follows:

Event	Date
Water Division serves proposed direct testimony	March 5, 2004
End of discovery	March 24, 2004
Respondents serve proposed rebuttal testimony	March 26, 2004
Water Division serves proposed reply testimony	April 2, 2004
Deadline for filing any prehearing motions (motions <i>in limine</i>)	April 9, 2004
Responses to any prehearing motions (motions <i>in limine</i>)	April 14, 2004
Final prehearing conference; marking of exhibits	April 16, 2004 10:00 a.m. to noon
Evidentiary hearing	April 19-23, 2004 9:00 a.m. to noon; 1:30-3:00 p.m. each day
Opening briefs	May 14, 2004
Reply briefs	May 28, 2004
Submission of proceeding	May 28, 2004
Presiding Officer's decision	July 27, 2004
Deadline for appeal of Presiding Officer's decision	August 26, 2004
Probable Commission consideration of any appeal	September 2, 2004

Unless otherwise indicated, all hearings and conferences will be held in Commission hearing rooms, 505 Van Ness Ave., San Francisco, CA 94102

8. Discovery

On or before January 30, 2004, the Water Division and the Water Company shall prepare, file, and serve the following joint comparison exhibits: (a) an accounting of the Water Company's Safe Drinking Water Bond Law collections and deposits from April 1984 to the most recent period (prepared in a format similar to that used by the Water Division in Attachment 1 to Exhibit 2 of the OII); and (2) an accounting of the Water Company's authorized, reported, and booked management salaries from 1983 to the most recent period (prepared in a format similar to that used by the Water Division in Attachment 2 to Exhibit 2 of the OII). The parties shall cooperate in the preparation of these exhibits. In particular, the Water Company shall instruct its current and former accountants to provide information necessary to complete these exhibits.

Pending receipt of these joint comparison exhibits, a hearing on the Water Division's motion for contempt is stayed.

If the parties have discovery disputes they are unable to resolve by meeting and conferring, they shall raise these disputes under the Commission's Law and Motion procedure. *See* Resolution ALJ-164 (Sept. 16, 1992).

9. CEQA Issues

A possible issue is whether the California Environmental Quality Act (CEQA) applies to the relief sought in this proceeding. The Water Division shall consult with the Commission's CEQA staff and, on or before January 16, 2004, file and serve a pleading reporting staff's opinion or, in the alternative, moving under Rule 17.2 of the Rules for a determination of CEQA's applicability. The Water Company may respond to any pleading filed by the Water Division or may file its own motion.

10. Service Lists/Filing and Service of Documents

The official service list for this proceeding is attached to this ruling. The parties shall notify the Commission's Process Office of any address, telephone or electronic mail (email) change to the service list. The updated service list is available on the Commission's web page maintained for this proceeding: www.cpuc.ca.gov/published/proceedings/I0310038.htm.

The parties agreed to distribute all pleadings and testimony in electronic form to the ALJ (jet@cpuc.ca.gov) and those parties who have provided an email address to the Process Office. This stipulation does not vacate the Commissioner's rules regarding filing of paper copies, Rule 2.5; the need to serve paper copies on any party without an electronic mail address; and the need to serve paper copies of any document that cannot be electronically distributed. Paper copies of pleadings and testimony that can be electronically distributed do not have to be sent directly to the ALJ.

IT IS RULED that:

1. The parties, scope of proceedings, specific issues to be addressed, and service list are set forth in paragraphs 5, 6, and 9, above.
2. The Commission's Water Division will file and serve notice of any additional person joining the staff prosecuting this proceeding for the Water Division. Counsel for the Water Division will admonish that person about the *ex parte* prohibition imposed in the proceeding, and the notice will confirm the admonition. The notice will be filed and served within five days of the addition of the person to the staff assigned to this proceeding.
3. Administrative Law Judge John E. Thorson is the presiding officer.

4. The Commission's preliminary categorization of this proceeding as adjudicatory, in Resolution ALJ 176-3121 (Oct. 16, 2003), is confirmed. An evidentiary hearing is required.

5. The *ex parte* prohibition of Pub. Util. Code § 1701.3(c) applies to this proceeding.

6. The schedule for the proceeding is set forth in paragraph 7.

7. Discovery disputes will be resolved pursuant to paragraph 8.

8. The parties shall file and serve their joint comparison exhibit, as described in paragraph 8, on or before January 30, 2004. The parties shall provide full cooperation in the preparation of these exhibits, and the Water Company shall instruct its current and former accountants to provide all information necessary to complete the exhibits.

9. A hearing on the Water Division's motion for contempt is stayed pending the filing of the joint comparison exhibits.

Dated January 9, 2004, at San Francisco, California.

/s/ Geoffrey F. Brown
Geoffrey F. Brown
Assigned Commissioner

/s/ John E. Thorson
John E. Thorson
Administrative Law Judge

Service Lists

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CERTIFICATE OF SERVICE

I certify that I have by mail and by electronic mail to the parties to which an electronic mail address has been provided, this day served a true copy of the original attached Scoping Memo and Ruling of Assigned Commissioner and Administrative Law Judge's Ruling on all parties of record in this proceeding or their attorneys of record.

Dated January 9, 2004, at San Francisco, California.

/s/ Antonina V. Swansen
Antonina V. Swansen

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.

The Commission's policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, *e.g.*, sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074, TTY 1-866-836-7825 or (415) 703-5282 at least three working days in advance of the event.