



FILED

02-14-13
10:51 AM

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Fred Coleman, Steven Wallace,
Larry L. Vaughn and Ruth Dargitz,

Complainants,

vs.

Odd Fellows Sierra Recreation Association,

Defendant.

Case 12-03-017
(Filed March 14, 2012)

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

Following the second prehearing conference convened on February 5, 2013, this Scoping Memo and Ruling lifts the stay in this matter, sets forth the issues to be addressed and the schedule of the proceeding, and designates the presiding officer pursuant to Rule 7.3 of the Commission's Rules of Practice and Procedure.¹

¹ Pub. Util. Code § 1701.2(d) provides that adjudicatory cases, such as this one, shall be resolved within 12 months of initiation, unless the Commission makes findings why the deadline cannot be met and issues an order extending that deadline. The Commission is expected to consider an order extending the deadline in this proceeding at its business meeting on February 28, 2013.

Background

Fred Coleman et al. (Complainants) filed this complaint on March 14, 2012. They contended that because Odd Fellows Sierra Recreation Association (Defendant) provides no financial transparency regarding the costs of its water that this Commission should regulate the water provided by Defendant because Defendant is a public utility, pursuant to Pub. Util. Code §§ 2701 and 2702. Based on the assertion that Complainants and Defendant were working to resolve these matters informally, Defendant was allowed to file its answer on June 15, 2012, with a status report due on the same date.

In its answer, Defendant acknowledged that a working agreement had expired on January 10, 2012, but contended that Defendant is not subject to the jurisdiction of the Commission because it is not a public utility and was organized by agreement to supply water to the Homeowners Association for use by its members on a not-for-profit basis. Defendant further stated that the water system owned by the Recreation Association is only available to lot owners in the Park through the Homeowners Association contract with the Recreation Association for that use, and that the fees collected through the annual assessments do not cover the expenses incurred in providing the water. This case has become more complicated, because there is no longer an existing Homeowners Association. Defendant also filed a motion to stay this proceeding, explaining that it is working with the County of Tuolumne to form a Community Services District (CSD), and when that entity is formed, Defendant will transfer its water system to the CSD.

The assigned Administrative Law Judge (ALJ) required Defendant to verify that water was being provided to all lot owners. Defendant duly filed and served the required verification on June 28, 2012. With the ALJ's permission,

Complainants filed a response to the Answer and to the Motion for Stay on June 27, 2012.

In the Response to the Answer, Complainants provided a history of the subdivision and the water system. Defendant has been providing water to the lot owners since 1986, and lot owners agreed that such provision did not constitute public utility service. Complainants asserted that Defendants have been overcharging for water since at least 1988 and that all unjustified costs should be refunded.

On September 24, 2012, the assigned ALJ issued a Ruling granting the June 14, 2012 motion of Defendant for a stay of the proceeding, requiring that parties file and serve status reports on November 9, 2012 and January 11, 2013, and convening a second telephonic prehearing conference on February 5, 2013.

Defendant timely filed and served its status report on November 9, 2012. In that status report, Defendant stated that shareholders had approved the transfer of the water system serving the lot owners of the I.O.O.F. Odd Fellows Sierra Camp Subdivisions 1 and 2 to a CSD. On October 19, 2012, Defendant filed its plan to form a CSD with the Tuolumne County Local Agency Formation Commission (LAFCO). The LAFCO has requested additional information, which Defendant asserted has been provided. In the November status report, Defendant speculated that the LAFCO review and approval process could take approximately six months from October 19, 2012, or until approximately mid-April 2013. Defendant also stated that it planned to terminate water service to those lot owners who had not paid any amount toward the annual assessment.

Based on the ALJ's concern that this proceeding was stayed with the understanding that water would continue to be provided and the water assessment would be paid, she convened a status conference call with the parties on November 30, 2012. While there is certainly a dispute regarding the

reasonable cost of providing water, no matter how the water system is organized and regulated, the jurisdictional issue is the threshold matter that must be resolved. During the conference call, the parties agreed to the following procedures:

1. Defendant filed and served an accounting of its actual cost of water for the 2010/2011, 2011/2012, and 2012/2013 budget years.
2. Complainant filed and served a response to Defendant's accounting of actual water costs.
3. Although Defendant provides other services to the subdivisions in addition to providing water and does issue a bill for bundled services, Defendant issued an invoice for the actual cost of water for the 2012/2013 budget year to the lot owners who have not made full payment for water service. Defendant has agreed to accept quarterly payments (rather than a one-time annual payment), will accept these payments, subject to refund, and will ensure that the funds are available, should refunds be required. Defendant will continue to provide water service.
4. Complainants agreed to pay the full water assessment, subject to refund.
5. Parties agreed to have this Commission determine whether refunds are due for the limited period of the 2012/2013 budget year.

We affirm that these are reasonable approaches, to which the parties have agreed. This agreement will help to ensure that residents receive water, a vital service for public health and fire safety, and that Defendant is fairly compensated. Parties filed and served separate status reports on January 11, 2013 (Defendant) and on January 14, 2013 (Complainant, with the permission of the ALJ). Complainant also filed and served a response to Defendant's status report on January 22, 2013, again with the permission of the ALJ.

On February 5, 2013, at a second prehearing conference, both Complainants and Defendant concur that this water system should either be converted to a CSD or taken over by the Tuolumne Utilities District. Both types of districts are public entities that this Commission does not regulate. However, until it can be determined with finality that Defendant will not become a Class D water utility², it is reasonable to lift the stay and to have our Staff from the Division of Water and Audits (DWA) review the books and records of Defendant, assess the water system, and review the reports submitted by Complainants. Staff will meet with Complainants and Defendant in order to prepare a report with its recommendations.

It is also reasonable to schedule an evidentiary hearing, which may be taken off calendar, if this matter is resolved informally. At this point, Complainants and Defendant have pledged to cooperate with each other and to work collaboratively. While we plan for and schedule evidentiary hearings, as indicated below, we fully expect that this matter will be resolved by mutual agreement. We continue to require that, pending a final resolution of this matter, Defendant provide water to the lot owners and that the lot owners pay the water assessments, subject to refund.

Scope of Issues

As noted above, there is a long history here, but the scope of this proceeding is limited to the question of whether or not Defendant is a public utility under Pub. Util. Code §§ 2701 and 2702. If the Defendant is determined to be a public utility, the Commission will direct it to establish rates equivalent to those for a Class D water utility.

² Class D water utilities are those with 500 or fewer service connections.

Schedule

The following schedule is adopted here and may be modified by the ALJ as required to promote the efficient and fair resolution of the application:

Status Report on Settlement Efforts and organization as a CSD or under Tuolumne Utilities District	April 15, 2013
Division of Water and Audits review of books and records	April and May 2013; Report filed and served no later than May 24, 2013
Concurrent Response to DWA Report	June 12, 2013
Evidentiary hearings	June 19, 2013 at a location to be determined.
Concurrent Opening briefs	To be scheduled by the ALJ, as necessary
Concurrent Reply briefs (proceeding submitted)	To be scheduled by the ALJ, as necessary
Presiding Officer's Decision	No later than 60 days after submission of the proceeding
Commission Decision	Presiding officer's decision becomes effective (unless appeal filed within 30 days per Pub. Util. Code § 1701.2(a) and Rule 8.2)

To the extent that the parties stipulate to the facts of the case, or otherwise arrive at a mutually acceptable outcome of this matter, the ALJ may remove the evidentiary hearing from calendar and the parties may move the admission of prepared testimony (if any) by written motion pursuant to Rule 13.8(d). The report from the DWA will be given great weight. If a party disagrees with a recommendation in the report, that party should be prepared to present testimony and evidence clearly demonstrating that its proposed alternative is consistent with the Pub. Util. Code and the Commission's rules and regulations and reflects a superior outcome. A transcript of the evidentiary hearing will be prepared by a court reporter. Witnesses will be required to give testimony under oath, and will be subject to cross-examination by the parties and ALJ.

Documentary evidence may be presented for the record. All documents that have been formally filed with the Commission's Docket Office are part of the evidentiary record. Parties wishing to offer documents into evidence must bring copies for all parties at the hearing, two copies for the ALJ, and one copy for the court reporter.

Category of Proceeding, Need for Hearing, and *Ex Parte* Requirements

This ruling confirms the Commission's preliminary determination that this is an adjudicatory proceeding. This determination is appealable under Rule 7.6. This Scoping Ruling also confirms that hearings are needed. Accordingly, *ex parte* communications are prohibited, pursuant to Pub. Util. Code § 1701.2 and Article 8 of the Commission's Rules of Practice and Procedure.

Filing, Service, and Service List

When serving documents, parties should use the most up-to-date service list on the Commission's website. Documents shall be served in accordance with Rules 1.9 and 19.10.

Electronic service is standard under Rule 1.10. Whenever possible, parties shall serve documents using electronic mail, transmitted no later than 5:00 p.m., on the date scheduled for service to occur. Parties are reminded that, when serving copies of documents, the document format must be consistent with the requirements set forth in Rule 1.10(a). Rules 1.9 and 1.10 govern service of documents but not the filing of documents. Parties can find information about electronic filing of documents at www.cpuc.ca.gov/PUC/efiling. All documents formally filed with the Commission's Docket Office must include the caption approved by the Docket Office.

Parties serving documents shall provide the assigned ALJ with both a hard copy and an electronic copy of the documents. The electronic copy shall be in Microsoft Word and/or Excel formats, to the extent practical.

Assistance with Commission Procedures

Any person interested in participating in this proceeding who is unfamiliar with the Commission’s procedures, including electronic filing, should contact the Commission’s Public Advisor at (866) 849-8390 or (415) 703-2074, or (866) 836-7825 (TTY-toll free), or send an e-mail to public.advisor@cpuc.ca.gov.

Presiding Officer

Pursuant to Pub. Util. Code § 1701.2 and Rule 13.1, ALJ Angela Minkin is designated as the presiding officer in this proceeding.

IT IS RULED that:

1. The stay is lifted on this proceeding.
2. The scope of this proceeding is described above.
3. The schedule of this proceeding is as set forth above.
4. This proceeding is categorized as adjudicatory.
5. Hearings are needed, as described above.
6. The presiding officer is Administrative Law Judge Angela Minkin.
7. Pursuant to Pub. Util. Code § 1701.2 and Rule 8.3, *ex parte* communications are prohibited.

Dated February 14, 2013, at San Francisco, California.

/s/ CATHERINE J.K. SANDOVAL
Catherine J. K. Sandoval
Assigned Commissioner

/s/ ANGELA K. MINKIN
Angela K. Minkin
Administrative Law Judge