

Decision 90 08 016 AUG 8 1990

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

County of San Mateo,  
 Complainant,  
 vs.  
 Citizens Utilities Company  
 of California,  
 Defendant.

**ORIGINAL**

Case 87-05-034  
(Filed May 21, 1987)

O P I N I O N

The Citizens Utilities Company of California (Cucc) operates a water system in the communities of Montara and Moss Beach, unincorporated, coastside areas of San Mateo County. The complaint of the County of San Mateo asks, among other things, that the Commission petition the Superior Court under Public Utilities Code § 855 to appoint a receiver to assume possession of Cucc's Montara-Moss Beach water system properties and to operate the water system properly.

Cucc filed an answer to the complaint on July 10, 1987, admitting certain allegations and denying others. It requests that the Commission dismiss the complaint.

On March 31, 1988, a prehearing conference (PHC) was held. At the PHC the complainant suggested a November, 1988, time frame for evidentiary hearings. In view of the pendency of Phase 2 of Application (A.) 85-06-010, in which some issues parallel to those in this complaint proceeding were being considered, the parties agreed to hold another PHC after a decision in Phase 2 had been issued. On September 14, 1988, the Commission issued Decision (D.) 88-09-023 in Phase 2 (water supply and ratemaking issues). D.88-09-023 was effective October 14, 1988. On November 14, 1988,

the administrative law judge (ALJ) wrote to the attorney for complainant asking whether, in light of D.88-09-023, the complainant had changed its position about prosecuting its complaint. When the complainant did not respond, the ALJ wrote again to counsel for complainant on February 1, 1989, warning that unless a response was received by February 24, 1989, he would recommend that the complaint be dismissed for lack of prosecution.

Counsel for complainant replied by letter dated February 9, 1989, asking that the complaint "remain in an inactive status while the County's review regarding the acquisition of [CUCC] progresses." The county asked that the case remain inactive for an additional six to eight months.

The ALJ replied by letter dated March 1, 1989, that he would take no action before May 31, 1989; but that, if complainant wished to protect its complaint against an order dismissing it for lack of prosecution, it should advise the ALJ before May 31, 1989, that it was prepared to go to hearing within a reasonable time after that date. No response to that letter has been received.

In the meantime the Commission has issued other orders affecting CUCC's Montara-Moss Beach District:

1. On February 8, 1989, the Commission issued its Order Instituting Investigation (OII or I.) in I.89-02-011. The purpose of the OII is to inquire into the reasonableness of the existing rates and charges of the Montara-Moss Beach District. After hearings also involving other CUCC districts, the Commission issued D.89-11-016. In that decision the Commission found that CUCC's Montara-Moss Beach District is not earning a rate of return in excess of the last authorized rate of return and concluded that the district's rates should not be revised. It also concluded that disputed results of operations issues could be deferred to the district's next general rate case. Finally, it ordered that the OII be closed. (Id. at pp. 38, 43, and 45.)

2. On December 6, 1989, the Commission issued D.89-12-020 in A.85-06-010. In that decision the Commission disposed of the petition of Farallon Vista Associates for an exemption from an order (D.86-05-069) restricting further service connections in the Montara-Moss Beach District.
3. Another order is pending before the Commission in A.85-06-010. That order would close the docket on the ground that the four decisions issued in that docket have disposed of all pending pleadings.

May 31, 1989, the deadline imposed by the ALJ for a response by the complainant, has come and gone with no indication of interest by complainant. The eight months ending December 1, 1989, sought by complainant to complete its review of the acquisition of CUCC's Montara-Moss Beach, has come and gone with no further response from complainant. An additional seven months has transpired since December 1, 1989, and complainant has expressed no interest in the complaint. The last activity shown in the file is the ALJ's letter of March 1, 1989.

The complaint should be dismissed for lack of prosecution. This result will not prejudice the complainant. If it is still interested in asserting its complaint, it may refile when it is ready to go to hearing. The Commission does not charge a filing fee; and, since the Commission performs service of process, no process serving costs need be incurred.

Findings of Fact

1. The complainant is not ready to go to hearing after more than three years have elapsed since the complaint was filed.
2. The complainant has failed to prosecute its complaint.

Conclusion of Law

The complaint should be dismissed for lack of prosecution.

ORDER

IT IS ORDERED that the complaint is dismissed.  
This order becomes effective 30 days from today.  
Dated AUG 8 1990, at San Francisco, California.

G. MITCHELL WILK  
President  
FREDERICK R. DUDA  
STANLEY W. HULETT  
JOHN B. O'HANIAN  
PATRICIA M. ECKERT  
Commissioners

I CERTIFY THAT THIS DECISION  
WAS APPROVED BY THE ABOVE  
COMMISSIONERS TODAY

  
NEIL J. SULLIVAN, Executive Director  
PB