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Decision 92-03-083 - March 31, 1992

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Harry C. Gleason, Harold
J. Radcliff, and David J. Sarvary,

Complainants,

vs.

Del Oro Water Company,

Defendant.

ORIGINAL

Case 91-11-043
(Filed November 12, 1991)

O P I N I O N

Complainants, all residents of Magalia, filed this complaint alleging unfairness in the Commission-approved water rationing program that was in effect from April to October, 1991, in the Paradise Pines District of Del Oro Water Company (Del Oro). They also complain that the utility is not doing enough to seek new sources of water.

In a verified answer, Del Oro denies any wrongdoing in its water conservation and rationing program. The program restricted most residences to 75% of the water used in the same period in 1990, with economic penalties for excess use. Del Oro states that it worked closely with ratepayers to adjust allotments for those who required more water for health or other valid reasons. The utility also represents that it is seeking new water sources and that it intends to file with the Commission for authority to finance new equipment that would permit access to an additional water supply.

The Water Utilities Branch (Branch) of the Commission Advisory and Compliance Division has submitted an informal advice of participation memorandum. Branch states that it has been working with Del Oro on the intended filing for new facilities, and

that Del Oro also has before the Commission a request to purchase a contiguous water system. (Application 91-06-037.) Branch suggests that, since this complaint and the two other matters all deal with water supply, the complaint and applications should be consolidated in a single action. Branch, however, has not sought to intervene in this case (see Rule 53 of the Rules of Practice and Procedure), nor has it filed a motion for consolidation under Rule 55.

Del Oro in its answer has asked that this complaint be dismissed because it fails to conform with jurisdictional requirements and because it fails to state a cause of action for which relief can be granted by this Commission. We agree with Del Oro.

Discussion

Complainants present no case or controversy for resolution. Del Oro's economic rationing program ended in October 1991, a month before the complaint was filed. General objections about the manner in which the program was conducted are now moot. In any event, questions of the fairness of rate levels, rate designs, or rate structures are not justiciable in complaint cases. Public Utilities (PU) Code § 1702 provides:

"Complaint may be made...by any...person...setting forth any act or thing done or omitted to be done by any public utility, including any rule or charge heretofore established or fixed by or for any public utility, in violation or claimed to be in violation, of any provision of law or of any order or rule of the commission."

Under this provision, the causes of action that are litigable in complaint cases are violations of tariff rules, orders, general orders, and statutes. Complainants do not allege that the company has violated any rule, order, or provision of law applicable to it. Thus, the complaint fails to state a cause of action.

Moreover, PU Code § 1702 also provides:

"No complaint shall be entertained by the commission...as to the reasonableness of any rates or charges of any...water...corporation, unless it is signed by the mayor or the president or chairman of the board of trustees or a majority of the council, commission, or other legislative body of the city or city and county within which the alleged violation occurred, or by not less than 25 actual or prospective customers or purchasers of such...water...service."

Under this provision, an individual does not have standing to complain about the reasonableness of either the water corporation's rates or the charges billed, if they are correctly computed, and the Commission does not have the authority to entertain such a complaint. Complainants here challenge the rules applicable to water rationing, but they do not allege that rates were incorrectly computed.

Finally, PU Code § 1709 provides that:

"In all collateral actions or proceedings, the orders and decisions of the commission which have become final shall be conclusive."

The company was authorized to place in its tariffs a mandatory water conservation and rationing program. The Commission action authorizing this was Resolution No. W-3556, dated April 10, 1991. Resolution No. W-3556 is now a final order of the Commission. In a collateral action or proceeding, such as a complaint case, final orders of the Commission are, by virtue of Section 1709, conclusive. That is, they may not be attacked or modified in a collateral proceeding. (See, e.g., William v. Tahoe Park Water Company, Decision 91-09-017 (September 6, 1991).)

Del Oro in its answer states that it intends to file an application for Commission approval of financing to add additional plant that would permit the utility to tap another source of water. The utility will be required to notify ratepayers when that application is made. Complainants here may seek to intervene in

that proceeding. Alternatively, complainants may file a protest and request hearing if Del Oro seeks authority to impose another mandatory water conservation and rationing program in 1992.

Consistent with this discussion, we conclude that the complaint fails to state a cause of action and should be dismissed.

Findings of Fact

1. This complaint against Del Oro was filed on November 12, 1991, by three ratepayers who reside in Magalia.

2. The complaint alleges that a just-concluded water rationing program caused hardship for the elderly and for those in poor health. The complaint also alleges that the rationing program was not fairly administered. The complaint also alleges that Del Oro is not making a sufficient effort to seek new sources of water supply.

3. In a verified answer filed on January 7, 1992, Del Oro generally denies the allegations of the complaint and sets forth actions it is taking to seek new sources of water supply.

4. Del Oro's mandatory water conservation and rationing program was in effect for ratepayers in Magalia from April 1991 through October 1991, at which time economic rationing was cancelled.

5. Del Oro's rationing program was approved by the Commission in Resolution No. W-3556, dated April 10, 1991.

Conclusions of Law

1. A hearing is not required.

2. The complaint fails to state a cause of action under PU Code § 1702 and should be dismissed.

3. To the extent the complaint seeks to collaterally modify a final order of the Commission, it is barred by PU Code § 1709 and should be dismissed.

O R D E R

IT IS ORDERED that the complaint is dismissed and
Case 91-11-043 is closed.

This order becomes effective 30 days from today.

Dated March 31, 1992, at San Francisco, California.

DANIEL Wm. FESSLER
President

JOHN B. OHANIAN

PATRICIA M. ECKERT

NORMAN D. SHUMWAY

Commissioners

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


NEAL J. SHULMAN, Executive Director