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Decision 92-12-005 December 3, 1992

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Darlene Johnson et al.,

Complainants,

vs.

Mutual Water Company of Glen Avon Heights,

Defendant.

Case 92-03-027
(Filed March 12, 1992)

O P I N I O N

Statement of Facts

Mutual Water Company of Glen Avon Heights (Mutual or defendant) was incorporated in 1923 to provide water to its shareholders. Today it serves approximately 900 water connections in Glen Avon Heights in Riverside County.

In December of 1991, a county supervisor, on behalf of some disgruntled customers, asked the Riverside County District Attorney's office to investigate the mutual, alleging withholding of documents from shareholders. No investigation has as yet been initiated. Meanwhile Mutual announced increased water rates shortly to be implemented, and that it would seek bylaw revisions at a forthcoming annual meeting.

On March 12, 1992, Darlene Johnson (Johnson or complainant), as a shareholder in Mutual, on her own behalf and enclosing in exhibit form what were asserted to be petitions from two shareholders requesting Public Utilities Commission intervention, and what appeared to be an address list of about 30 local residents, filed the captioned complaint. The complaint states that Mutual has been serving 29 listed business entities, motels, and schools which were not shareholders in Mutual. The

complaint requested investigation and institution of Commission regulation of the water corporation.¹

Mutual's April 3, 1992 answer asserts that as a mutual it is not subject to regulation by the Commission and asks that the complaint be dismissed. It states that it is and has been delivering water only to its shareholders, the state and its agencies, cities, counties, schools and other public districts, and to land leased in writing by shareholders to nonshareholders. It also states that of the entities listed by Johnson in the complaint as receiving water, four were not and never had received mutual water; two were schools; four were shareholders of the mutual, and the others received water service on land leased under written leases from shareholders.

On May 15, 1992 complainant filed an amendment to the complaint which posed questions regarding assertedly differing versions of 1947 amendments to the mutual's bylaws with regard to assessment authority.

On June 15, 1992 Mutual answered the amendment terming it irrelevant, and again questioned Commission jurisdiction and asked for dismissal.

Late in July, Assemblyman Steve Clute's Riverside office telephoned Administrative Law Judge (ALJ) John B. Weiss, asking about the case. His office was told that while normally a prehearing conference would have been scheduled in Riverside to resolve the issue of Commission jurisdiction, the State's budget impasse and deficit had caused a temporary restriction on all but

¹ As amended the complaint also alleged irregularities in earlier bylaw amendments, shareholder stock issuance and transfers, and a failure on the part of the corporation to be responsive to requests for information. It should be noted that Senior Corporations Counsel Raymond Burg of the State's Department of Corporations, Division of Securities Regulations in San Diego, is investigating this facet of Johnson's complaint.

the most essential travel, and that on its face the complaint could not justify an exception. The ALJ explained that an attempt would be made to resolve the jurisdiction issue without a hearing.

On August 7, 1992, the ALJ wrote Johnson to explain that if the statements in Glen Avon's answer were factual, Glen Avon was a mutual water corporation under provisions of Public Utilities (PU) Code § 2705 and the Commission would have no jurisdiction to consider her complaint--recourse would have to be in the courts. Pointing out our travel restrictions, the ALJ stated his intention to attempt to resolve the threshold issue without a hearing and asked Johnson to furnish the ALJ with a sworn statement from one or more of the proprietors of the questioned entities to the effect that such entity is or had received water from Glen Avon as a customer. Johnson was also asked to attach a copy of a recent water bill. Johnson was told she had until August 28, 1992 to respond.

On August 24, 1992, Assemblyman Clute's office asked on Johnson's behalf that she be given more time--until September 18, 1992, to comply. The request was granted by a letter to Johnson on August 25, 1992.

On September 16, 1992, the Assemblyman's office called again to ask about more time. The ALJ responded that there would be no further extensions; that if Johnson had anything to submit it should be done within a week or the ALJ would process the complaint for dismissal for lack of prosecution on the threshold jurisdiction question.

Nothing further has been received from Johnson.

Discussion

The threshold issue is that of jurisdiction.

As relevant here, PU Code § 2705 states:

"Any corporation or association which is organized for the purposes of delivering water to its stockholders and members at cost, including use of work for conserving, treating, and reclaiming water, and which delivers water

to no one except its stockholders or members, or to the state or any agency or department thereof, to any city, county, school district, or other public district, or to any other mutual water company, at cost, is not a public utility, and is not subject to the jurisdiction, control or regulation of the commission;..."

and, that a mutual:

"(b) May deliver water at cost to any land leased by a stockholder, shareholder or member of such mutual water company to a person not a stockholder, shareholder or member thereof, provided such lease is in writing signed by such stockholder shareholder or member and such lessee of such land and approved by such mutual water company."

The answer filed by Mutual under penalty of perjury denies that water service has been provided to any entity not within those classes providing the mutual exemption from Commission jurisdiction under PU Code § 2705. Defendant specifically avers that with the exception of Miss Kitty's Cage, Glen Avon Pub, Dos Pablos Restaurant, and 7-11 which have never received water from defendant, each of the other named entities of the complaint are either shareholders of the mutual, an agency of the state, city or county, or a school district, or a lessee in writing of a shareholder under a lease approved by defendant.

Johnson, both directly and through the good graces of Assemblyman Clute's office, has been afforded ample opportunity to produce any evidence of even a single service which would take the defendant outside the PU Code § 2705 exemption from Commission jurisdiction. Nothing has been produced. Accordingly, the complaint must be dismissed for lack of prosecution on the threshold jurisdictional issue.

Findings of Fact

1. Complainant avers in her complaint that Mutual is providing water services to nonshareholders (and is therefore a public utility subject to Commission regulation), and lists these alleged customers.

2. PU Code § 2705 as relevant here exempts from Commission regulation any corporation organized to deliver water at cost only to its shareholders, or to state, city, or county agencies, or to schools or public districts, or to lessees of shareholders under leases approved by the corporation providing delivery.

3. By its answer under penalty of perjury, Mutual asserts that, with four exceptions it states have never been customers, all the named entities in the complaint fall within the classes of customers in the PU Code § 2705 exemptions.

4. Given ample opportunity to provide the ALJ with any substantiation that any of the four entities stated by Mutual as never having been served were in fact served, complainant has failed to respond.

Conclusion of Law

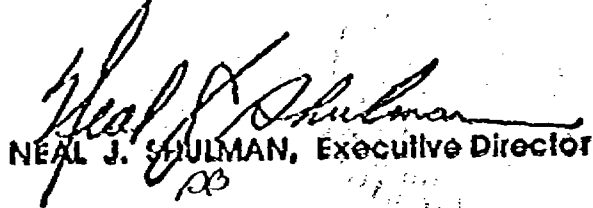
The complaint must be dismissed for lack of prosecution on the threshold jurisdictional issue.

ORDER

IT IS ORDERED that the complaint is dismissed.
This order becomes effective 30 days from today.
Dated December 3, 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