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MAIL DATE

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Decision 00-03-023

March 2, 2000

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Strawberry Property Owners Association,

Complainant,

vs.

Conlin-Strawberry Water Company, Inc.

Defendant.

Case 95-01-038  
(Filed January 20, 1995)

**ORDER DENYING REHEARING OF DECISION 99-11-044**

**I. INTRODUCTION**

In Decision (D.) 99-11-044 (the "Decision"), we ordered Conlin-Strawberry Water Company, Inc. ("CSWC") to make all system improvements ordered by this Commission and the Department of Health and Services ("DHS") by April 30, 2000. We also assessed a fine of \$500 per incident for 20 incidents of violating previous Commission and DHS orders. CSWC was ordered to pay the total amount of the fine, \$10,000, in full no later than February 1, 2001. ( See D.99-11-044 at p. 21 [Ordering Paragraph Nos. 1 and 2] (slip op).)

An application for rehearing of D.99-11-044 was timely filed on December 20, 1999 by CSWC. In its application for rehearing, CSWC alleges that Public Utilities Code<sup>1</sup> Section 2107 does not provide the Commission with the authority to fine CSWC in this case. Rather, CSWC argues that the Commission was required, pursuant to Section 2104, to bring an action in superior

<sup>1</sup> All statutory references are to the Public Utilities Code unless otherwise indicated.

court in order to assess the imposed fine. It therefore claims that the Commission acted beyond the authority granted it by the Legislature when it directly assessed the \$10,000 fine against CSWC.

## II. DISCUSSION

CSWC has incorrectly interpreted Section 2104 to preclude us from imposing penalties directly on CSWC. (Application for Rehearing, p. 2.) This statutory provision states:

“Except as provided by Section 2100 and 2107.5, actions to recover penalties under this party shall be brought in the name of the people of the State of California, in the superior court in and for the county, or city and county, in which the cause or some part thereof arose, or in which the corporation complained of has its principal place of business, or in which the person complained of resides. The action shall be commenced and prosecuted to final judgment by the attorney of the Commission. . . .” (Pub. Util. Code, §2104.)

As is clearly stated by the plain language of Section 2104, this statute addresses how the Commission must “recover” penalties, not how we must “impose” penalties. (See Pub. Util. Code, § 2104.) This Commission has interpreted the words “to recover penalties” to mean that we must recover or collect unpaid penalties or fines through a superior court action. This is a reasonable interpretation based on the plain language of Section 2104.

Furthermore, our authority to directly impose penalties is not found in Section 2104. Rather, we possess this authority pursuant to Sections 2107 and 701.<sup>2</sup> Section 2107 provides:

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<sup>2</sup> The California Supreme Court in Consumers Lobby Against Monopolies v. Public Utilities Com. (1979) 25 Cal.3d 891, 905-906, stated that the Commission’s authority under Public Utilities Code Section 701 “has been liberally construed. [Citations omitted.] Additional powers and jurisdiction the [C]ommission exercises, however, ‘must be cognate and germane to the regulation of public utilities. . . .’ [Citations omitted.]” The ability to directly impose fines is cognate and germane to the Commission’s ability to enforce its own decisions when a public utility fails to comply.

“Any public utility which violates or fails to comply with any provision of the Constitution of this state or this part, or which fails or neglects to comply with any part or provision of any order, decision, decree, rule, direction, demand, or requirement of the [C]ommission, in a case in which a penalty has not otherwise been provided, is subject to a penalty . . . .” (Pub. Util. Code, §2107.)

Section 701 provides:

“The [C]ommission may supervise and regulate every public utility in the State and may do all things, whether specifically designated in this part or in addition thereto, which are necessary and convenient in the exercise of such power and jurisdiction. (Pub. Util. Code, §701.)

The legislative history of Section 2107 supports this interpretation.

In fact, the legislative history for Senate Bill No. 485, which is the 1993 amendment of this statutory provision,<sup>3</sup> evidences the Legislature’s understanding that the Commission “has broad authority to levy appropriate fines in the course of its business,” and cites Section 701 for the basis of this authority. It was further noted in Senate Bill No. 485’s legislative history that this broad authority has been “supplemented by additional specific fine authority” of a specified dollar amount, as set forth in Section 2107. (Senate Third Reading of Sen. Bill No. 485 (1993-1994 Reg. Sess.), as amended on April 19, 1993, p. 1.) Further, it was stated in the legislative history that Senate Bill No. 485 “would increase the fines the Public Utilities Commission can levy against public utilities. . . .” (Senate Committee on Energy and Public Utilities, Analysis of Sen. Bill No. 485 (1993-1994 Reg. Sess), as heard on April 20, 1993, p. 1, emphasis added.) Therefore, the legislative history supports our interpretation that we have the authority to directly impose penalties.

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<sup>3</sup> Senate Bill No. 485 amended Public Utilities Code Section 2107 to increase the amount of penalties imposed on public utilities. (See Stats. 1993, ch. 221, §12, p. 1462.)

Moreover, this legislative history also supports our interpretation of Section 2104 that the Commission is only required to go to court to collect, not to impose a fine - - that is, to collect an unpaid fine. As stated in the legislative history, “[t]he [Commission] must go to the Superior Court to collect any fines which are levied.” (Senate Third Reading of Sen. Bill No. 485 (1993-1994 Reg. Sess.), as amended on April 19, 1993, p. 1, emphasis added.) Thus, our interpretation of Section 2104 is correct.

It is noteworthy that upon enacting Section 1759, the Legislature expressly deprived the superior court of any jurisdiction over the Commission in our performance of our regulatory duties except in instances where the Public Utilities Code specifically states otherwise. (See Waters v. Pacific Tel. Co. (1974) 12 Cal.3d 1, at pp. 2, 5 & 9.) As the Court pointed out in Pacific Tel. & Tel. Co. v. Superior Court (SOKOL), (1963) 60 Cal.2d 426, 430, “The mandate of the Legislature, violated by the superior court in the case at bar, is to place the Commission, insofar as the state courts are concerned, in a position where it may not be hampered in the performance of any official act by any court, except to the extent and in the manner specified in the [Public Utilities Code] itself.” (Emphasis added.) The Court specifically singled out Section 2106, which allows superior court actions for damages resulting from violation of law, as one of the exceptions contemplated by the Supreme Court to the overall legislative directive that we not be hampered in the performance of our duties, in particular of regulating the utilities, by any court. (See Waters v. Pacific Tel. Co., *supra*, 12 Cal. 3d at p. 9.)

This Commission has historically interpreted Section 2107 to provide it with authority to directly impose fines against public utilities. (See, e.g., In re Application of Southern California Water Company [ D.91-04-022] (1991) 39 Cal.P.U.C.2d 507; TURN v. Pacific Bell [D.94-04-057] (1994) 54 Cal.P.U.C.2d 122, 124; Re Facilities-Based Cellular Carriers [D.94-11-018] (1994) 57 Cal. P.U.C. 2d 176, 205, & 215; In re Application of Pacific Gas &

Electric Company [D.96-11-014] (1996) \_\_ Cal.P.U.C.2d \_\_; Re Communications TeleSystems International, [D.97-10-063] (1997) \_\_ Cal.P.U.C.2d \_\_; Re City of San Rafael, [D.97-04-037] (1997) \_\_ Cal.P.U.C. 2d \_\_; Re Bidwell Water Company, [D.98-10-025] (1998) \_\_ Cal.P.U.C. 2d \_\_.) That interpretation should not be disturbed unless it fails to bear a reasonable relation to statutory purposes and language. (Greyhound Lines, Inc. v. Public Utilities (1968) 68 Cal.2d 406, 410-411.) CSWC's arguments that our interpretation is in error are not persuasive.<sup>4</sup>

The unreasonableness of CSWC's arguments becomes more evident when one considers this Commission's ability to directly impose numerous other types of sanctions on public utilities, some of which may be more serious than a fine. We have historically applied various methods of imposing sanctions in different situations based on the circumstances of each case. We have ordered utilities to make reparations or provide refunds to complainants where it has found that the utility charged an "unreasonable, excessive or discriminatory amount" in violation of some provision of the Code or Commission rules; we have suspended, cancelled, and revoked operating authority of companies; we have granted injunctive relief pending final issuance of a decision; we have instituted financial monitoring devices to track progress in the compliance of Commission orders, and we have imposed monetary penalties where we believed such sanctions were most appropriate due to the particular circumstances of the case. (See Consumers

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<sup>4</sup>CSWC's claim that the issue of whether we have the authority to fine public utilities directly has never been before the courts is incorrect. The Court recognized that authority in Assembly v. Public Utilities Commission (1995) 12 Cal.4<sup>th</sup> 87, 103, fn 10. Furthermore, Commission decisions appealed in part based on challenges to our authority to directly impose fines have become final subsequent to the California Supreme Court's denial. (See Re Communications TeleSystems International [ D.97-10-063] (1997) \_\_ Cal.P.U.C.2d \_\_, review denied December 24, 1997, (S065955); Bidwell Water Co. v. Pub. Util. Com. [D.98-10-025] (1999) \_\_ Cal.P.U.C.2d \_\_ review denied May 19, 1999 (S078644).) While we acknowledge that those appeals to the Supreme Court were summarily denied and therefore not precedential (Consumers Lobby Against Monopolies v. Public Utilities Commission (1979) 25 Cal.3d 891), they nonetheless demonstrate that, contrary to CSWC's claim, that issue has been presented and decided by the Supreme Court on the merits. (See Communications Telesystems Intern. v. Cal.P.U.C. (9<sup>th</sup> Cir. 1999) 196 F.3d 1011, 1018-1019.)

Lobby against Monopolies v. Public Utilities Commission, *supra*, 25 Cal.3d 891 at p. 907.)

Clearly, if suit in superior court were required for imposition of fines or other sanctions that a utility may claim we have no authority to directly impose, the result would be a tremendous administrative burden on the courts, which would have to hear every case in which we have determined that sanctions were necessary in order to achieve compliance of our orders and the law. It is doubtful that the Legislature intended to impose such a burden on the courts when it authorized the Commission to hear complaint proceedings and institute investigations regarding allegations of wrongdoing by a utility. On the contrary, as the courts have recently emphasized, the Commission is not an ordinary administrative agency but has broad legislative and judicial powers. (See, e.g., Wise v. Pacific Gas & Electric Co., 77 Cal.App.4<sup>th</sup> 287; San Diego Gas & Electric Co. v. Superior Court (1996) 13 Cal. 4<sup>th</sup> 893, 914-915.) Those powers include the ability to directly levy sanctions, including fines in order to enforce the Commission's orders. That is the only reasonable interpretation of Sections 2104 and 2107. As the courts have held, statutes must be given a reasonable and common sense construction in accordance with the apparent purpose and intention of the lawmakers - one that is practical rather than technical, and will lead to a wise policy rather than to mischief or absurdity. (People v. Aston (1985) 39 Cal. 3d 481, 492.)

Having to file suit in court to impose any fines would also unreasonably interfere with our constitutional duties to regulate public utilities under our jurisdiction. Effective deterrence is necessary to maintain the integrity of our regulatory policies. Our authority to avail ourselves of all sanctioning methods, including fining a utility directly, is critical to regulating all public utilities and protecting the public interest. If we are unable to penalize utilities for

violating our rules and orders, utilities will have little or no incentive to comply with them.

In sum, Section 2107 provides us with authority to directly impose penalties against public utilities, and we interpret Section 2104 as only applying in situations where utilities refuse to pay Commission-imposed fines.<sup>5</sup> Thus, having found that CSWC violated our orders as well as DHS's, we lawfully imposed a \$10,000 fine on CSWC pursuant to Section 2107.

### III. CONCLUSION

For the reasons discussed above, we conclude that sufficient grounds for rehearing have not been shown. Therefore, CSWC's application for rehearing is hereby denied.

**THEREFORE, IT IS ORDERED** that rehearing of D.99-11-044 is hereby denied.

This order is effective today.

Dated March 2, 2000, at San Francisco, California.

RICHARD A. BILAS  
President  
HENRY M. DUQUE  
JOSIAH L. NEEPER  
CARL W. WOOD  
LORETTA M. LYNCH  
Commissioners

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<sup>5</sup> CSWC cites Dimaggio v. Pacific Bell (1992) 43 CPUC 2d 392, 395, in support of its argument that the Commission has held that Section 2104 requires the Commission to go to superior court to impose fines. As D.99-06-055 notes, that decision's holding was specifically overruled in Re Communications TeleSystems is International, [D.97-10-063, fn. 7.] (1997) \_\_ Cal. P.U.C.2d \_\_.