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MAIL DATE
9/17/99

Decision 99-09-072 September 16, 1999

BEFORE THE CALIFORINIA PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Donna Matthews, Complainant v. Meadows Management Company, a partnership, James K. Kruger and Rondell B. Hanson, its partners and any Does of interest, all doing business as Plantation On the Lake Mobilehome Park, Defendants.	C.98-08-040 (Filed August 25, 1998)

ORDER GRANTING REHEARING OF DECISION 99-07-008

SUMMARY

Donna Matthews, the complainant in this case, is an owner of a mobilehome for which she leases space at Plantation On The Lake Mobilehome Park (Plantation Park) which is owned by Meadows Management Company (Meadows). Plantation Park is located in City of Calimesa in Riverside County, California

On August 25, 1998, Matthews filed a complaint against Meadows alleging that the 1998 water rates charged tenants at Plantation Park are not just and reasonable. Defendant Meadows filed an answer and motion to dismiss the

complaint on the grounds that the action was barred by the doctrine of res judicata. After a prehearing conference, held in Calimesa on April 8, 1999, the Commission granted the motion of Meadows and without further hearing dismissed the complaint in Decision (D.) 99-07-008.

After careful review of the issues raised by the rehearing application, and the record of this case and that of a prior complaint case implicated by the defendant's res judicata argument, the Commission has concluded that legal error has been shown in D.99-07-008. The dismissal of the complaint shall, therefore, be reversed and an order issued for further proceedings.

BACKGROUND

The present complaint of Matthews is the third filed against Meadows regarding the water rates charged to tenants of Plantation Park. In the initial case, C.90-12-035, the Commission dismissed the complaint in 1991 for want of jurisdiction since Meadows, the partnership providing water service to the tenants of its mobilehome park, is not a public utility. (D.91-10-035)

However, Section 2705.6 of the California Public Utilities Code became effective January 1, 1992. Section 2705.6 mandates that upon receiving a complaint from a mobilehome park tenant, the Commission has jurisdiction to determine the reasonableness of the water rates charged when the water service is provided from water supplies and facilities owned by the mobilehome park.

Relying on Section 2705.6, therefore, Complainant Matthews filed a second complaint (C.93-07-024) on July 28, 1993, alleging that the 1993 water rates charged by Meadows at Plantation Park were unreasonable. In briefing the case, Matthews also referenced the Mobilehome Parks Act (Health and Safety Code §§ 18200 et seq.) and the Mobilehome Residency Law (Civic Code §§ 798 et seq.)

Defendant Meadows' affirmative defense was that its 1993 water

rates were the same as those charged by the neighboring Beaumont/Cherry Valley Water District; therefore, they were reasonable.

In D.97-08-052, the Commission denied the second complaint, finding the 1993 water rates at Plantation Park reasonable. This decision was based on the recommendation of the Commission's Water Division which had applied an "operating ratio method" (ORM) and a standard "rate of return" methodology, used by the Commission for Class D regulated water companies. It was found that the 1993 rates were less than needed to meet the 1994 annual revenue requirement which was calculated from data submitted to the Water Division by Defendant Meadows. (D.97-08-052, mimeo, at 10-11, Finding of Fact 17.) The 1993 water rates were thus deemed reasonable.

Matthews' subsequent application for rehearing of the denial of her complaint in D.97-08-052 was denied (D.97-10-068). Matthews' Petition for Review filed with the California Supreme Court was also denied without opinion March 18, 1998 (Case No. S067063).

On August 25, 1998, Matthews filed the present complaint alleging that the current rates (1998) were unreasonable. This third complaint states that Meadows raised the monthly water service charge by 25%, and the usage charge per ccf by 42.4%. The arguments raised by Matthews in support of the allegation of unreasonable rates are: 1) the rate increase is not in compliance with mobilehome park laws, 2) Meadows did not present true and accurate operating figures, 3) the Mobilehome Parks Act governs the Commission's methodology for determining the reasonableness of the water rates, and 4) the park owners are charging tenants twice for a certain amount of water, once in the rent and then again in the monthly water bills.

The dismissal of this third complaint barred litigation of the principal allegation, that the 1998 water rates were unreasonable, and the related arguments, on the grounds that the cause of action had been previously litigated and decided in

the decision on the 1993 rates. (D.99-07-008, mimeo, at 5.)

Based on a careful review of the issues raised in the application for rehearing, and the records of the present case and that of the prior case on which the res judicata defense was based, we find that the dismissal of the complaint was in error, and that the elements of res judicata have not been established.[1] Also, the Conclusions of Law in D.99-07-008 supporting the dismissal were based solely on findings regarding disputed material facts which because of the dismissal had not been subject to resolution in an evidentiary hearing. In response to the application for rehearing, therefore, we are reversing the dismissal order. We grant rehearing and direct the Administrative Law Judge Division to establish further proceedings to determine whether the 1998 water rates are just and reasonable.

DISCUSSION

The doctrine of res judicata bars the relitigation of a cause of action previously and finally decided. It is applied to promote judicial and administrative economy, bring finality to adjudicated issues, and prevent wasteful relitigation.[2] The doctrine, however, cannot applied to preclude a new case from going forward unless there is an identity of elements. For res judicata to bar the present complaint of Matthews, there must not only be an identity of parties, which there is, there must also be an identical cause of action.[3] As discussed below, the present complaint does not present the same cause of action as was presented in a prior case, and material issues involved in making a determination on the

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[1] Our decision on the rehearing application, as we discuss herein, is based on a finding that neither res judicata, nor collateral estoppel, the doctrine often used synonymously with res judicata, bars the present complaint.

[2] Kopp v. Fair Political Practices Commission (1995) 11 Cal. 4th 607, 679.)

[3] Citizens for Open Access to Sand and Tide, Inc., v. Seadrift Association (1998) 60 Cal. App.4th 1053, 1065, 1067.)

reasonableness of the 1998 rates were not actually litigated and necessarily or conclusively decided in our earlier decision regarding the 1993 water rates, D.97-08-052.

First, Defendant Meadows acknowledged that the cause of action of this third complaint is not identical with that of the second complaint on the 1993 water rates. (Meadows Motion to Dismiss, filed October 2, 1998 in C.98-08-040, at 4.) Meadows nonetheless argued that a finding in the prior case regarding the 1993 rates justified an automatic determination that the new, increased rates were reasonable. Defendant Meadows referred to the earlier finding that according to one ratemaking methodology, normally used for Class D regulated water companies, it was found that the 1993 rates would have to be increased 177.1% to meet the 1994 revenue requirements data supplied by Meadows, and according to another methodology, the ORM, a 69.2% rate increase would to necessary to meet Meadows' 1994 operating expenses and provide for a fair rate of return. (D.97-08-052, mimeo, at 11.) Because, according to Defendant Meadows, the 1998 rates complained of in the present case represent only a 35% increase over the 1993 rates using the ORM, the 1998 rates must be reasonable.

This argument was relied on in D.99-07-008, and resulted in our dismissal of the present complaint. Upon further review of the record, however, and the issues raised in the application for rehearing, we recognize that we do not have identical causes of action or identical issues conclusively resolved in a prior case to raise the bar of res judicata. The prior proceeding addressed the 1993 water rates whereby Meadows charged each of the park tenants $7.50 per month as a monthly service charge, and $.60 per ccf for usage. The present complaint concerns an increase in the monthly service charge to $10 per month as a service charge, and an increase in the usage charge to $.94 per ccf. Because the 1993 rates were found reasonable, we cannot summarily conclude that the current rates are reasonable without review of the present revenue requirement and other related

current data.

Defendant Meadows' res judicata argument depended on the claim that the new rates were within the percentage of an acceptable rate increase as previously established in D.97-08-052. However, the Commission did not order or conclude in that decision that any and all future complaints regarding the water rates at Plantation Park must be judged automatically or presumptively on the conclusions reached regarding the 1993 rates. Further, if operation and maintenance costs, sales income, a return to the owner, and other revenue requirement data are to be considered in determining the reasonableness of rates, then the 1998 water rates should be evaluated according to current data. The ORM applied to the 1993 water rates, for example, called for a 20% return on operating, maintenance, and depreciation expenses. Present economic conditions may suggest that at least this element of the methodology deserves a new look. In addition, the revenue requirement considered in the past case was based on water sales to the residents as of that time. Current sales may now be different and may impact the calculation of the current monthly service charge and usage charge. Accordingly, we cannot conclusively presume that the 1998 rates are reasonable because they are within the parameters of a rate increase measured according to a revenue requirement, financial conditions, and sales data five to six years old.

Res judicata cannot be invoked, therefore, to dismiss the present complaint regarding the most recent water rate increase. The cause of action and the related issues are not identical with those considered in D.97-08-052.

In addition, in defining the issues at the prehearing conference on the present complaint, the complainant argued that only 35% of the mobilehome park's water costs should have been included in the calculation of the water service rates for the individual mobilehomes, and that approximately 64% of the costs should have been eliminated because they are attributable to water expenses for business operations in running the park. (D.97-08-052, mimeo, at 8-9, and

Transcript Prehearing Conference of April 8, 1999 in the present proceeding, R.T. 7/13-27.) Furthermore, according to the complainant, the water costs attributable to the running of the park are being collected separately in rent fees. (D.97-08-052, mimeo, at 8-9; PHC, April 8, 1999, R.T. 7/28 – 8/1-6.) Complainant argues, therefore, that the results of the prior case should not be automatically applied in the present case because certain costs should have been excluded from the revenue requirement which was used to evaluate the 1993 water rates at Plantation Park, and should be excluded in deciding the present case.

The issue of "double dipping," as alleged by the complainant, raises a material factual dispute which should be considered in the context of the 1998 rates. Our decision concerning the 1993 rates does not contain specific findings of fact or conclusions of law as to whether there were or were not duplicative costs included in both the water rates and in separately charged rent fees. The matter was deferred as a rent issue outside the jurisdiction of the Commission. (D.97-08-052, mimeo, at 8-9.) There is, therefore, no prior, conclusive determination that can be applied in the present case to preclude litigation of the issue as to whether the 1998 water service revenue requirement includes costs being recovered in rent fees at Plantation Park.

It is within our jurisdiction in implementing Section 2705.6 to determine and approve costs which are recoverable in water rates. If we find that certain costs in the water service revenue requirement are also being collected in rents, then the Commission can decide to eliminate them from the revenue requirement in calculating the water rates. This issue, therefore, is one that should be addressed on rehearing in considering the reasonableness of the 1998 water rates at Plantation Park.

Second, Complainant Matthews has argued that it is not appropriate to apply standard Class D water company methodologies in deciding the reasonableness of the water rates at Plantation Park. That is, since Plantation Park

is in the business of operating a mobilehome park, and supplies water to the individual homes as an adjunct of that primary business, its financial data should not be reviewed, according to the complainant, as if it were a water company solely in the business of providing a water utility service. The accounting of a mobilehome park with respect to income, expenses, tax liabilities, depreciation, etc., does not necessarily conform to that of a regulated water company.

Complainant Matthews is correct that the Commission's Water Division report on the 1993 water rates was based on Class D water company rate analyses. However, our decision in that case did not conclude or order that the ratemaking methodologies employed at that time established permanent parameters or an immutable precedent to be forever applied in determining the reasonableness of Plantation Park's water rates, or those of any other mobilehome park subject to our jurisdiction under Section 2705.6. Further, the law does not mandate that once a ratemaking methodology is used, it must always be used. It is the impact of a rate order, not the ratemaking theory which the courts consider in determining whether the Commission has duly pursued its authority. (Duquesne Light v. Barasch (1989) 488 U.S. 299, 302, 314.) In granting rehearing, therefore, the Commission will not precondition review of the 1998 water rates by ordering the exact same Class D methodologies be used. Just as the results of the ORM or other Class D methodologies applied to the 1993 water rates and to the financial data of that time do not bar the present issues from being litigated, the fact that those methodologies were used does not necessarily restrict how we will best resolve the present complaint.

IT IS THEREFORE ORDERED that:

1. The application for rehearing is granted, and the order of dismissal in D.99-07-008 is reversed.

2. Within 21 days of the mailing of this decision, if a settlement of the issues is not reached, the parties shall individually or jointly submit in writing a statement as to the efforts that were made to reach a settlement. The written statement shall be sent to the Director of the Commission's Water Division, 505 Van Ness Avenue, San Francisco, California 94102.

3. The Administrative Law Judge Division shall notify the parties of further proceedings on rehearing in this case.

This decision is effective today.

Dated September 16, 1999, at San Francisco, California.

RICHARD A. BILAS
PRESIDENT
HENRY M. DUQUE
JOSIAH L. NEEPER
JOEL Z. HYATT
CARL W. WOOD
COMMISSIONERS