

Decision No. R04-0125-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 03F-470W

CASCADE VILLAGE CONDOMINIUM ASSOCIATION, INC., AND MORE
THAN 25 INDIVIDUAL UTILITY CUSTOMERS OF MILL CREEK WATER
SALES & DISTRIBUTION, LLC,

COMPLAINANTS,

V.

MILL CREEK WATER SALES & DISTRIBUTION, LLC,

RESPONDENT.

**INTERIM ORDER OF
ADMINISTRATIVE LAW JUDGE
MANA L. JENNINGS-FADER
GRANTING JOINT MOTION, HOLDING
CASE IN ABEYANCE, ORDERING STATUS
REPORT, AND WAIVING RESPONSE TIME**

Mailed Date: February 2, 2004

I. STATEMENT

1. On October 27, 2003, Cascade Village Condominium Association, Inc., and more than 25 individual customers of Mill Creek Water Sales & Distribution, LLC (Complainants), filed the Complaint which commenced this docket.

2. On December 2, 2003, by Decision No. R03-1347-I, the Administrative Law Judge (ALJ) granted the petition of Staff of the Commission for leave to intervene.

3. On December 2, 2003, pursuant to Decision No. R03-1294-I, Respondent Mill Creek Water Sales & Distribution, LLC (Respondent), filed its Answer and Motion to Dismiss. Complainants have filed their response to this motion.

4. By Decision No. R03-1432-I, the undersigned ALJ granted a Joint Motion to Hold Proceedings in Abeyance, which motion was filed by the parties on December 17, 2003 (December Joint Motion). This filing contained provisions concerning notification to the Commission in the event of a failure of the settlement discussions; procedures for reinstatement of the proceeding and for determination of new hearing dates and of a new procedural schedule, should that become necessary; and procedures in the event a partial settlement is reached. See December Joint Motion at ¶¶ 5 through 7. In addition, Complainants and Respondent reaffirmed their agreement concerning continued water and sewer service pending resolution of the question of whether Respondent is a public utility. (See Decision No. 03R-1379-I at ¶ 19, setting out the parties' agreement.) The parties stated that the agreement will continue "for any period during which the proceedings are held in abeyance and any subsequent reinstated procedural and hearing schedule, should settlement efforts fail." December Joint Motion at ¶ 8.

5. On January 30, 2004, the parties filed a Joint Motion to Continue to Hold Proceedings in Abeyance and Request for Waiver of Response Time (January Joint Motion). The parties state that they have been negotiating in an attempt to settle this matter and request additional time, to and including March 18, 2004, for the purpose of continuing those negotiations. Importantly, the parties agree to continue in effect both the stand-still agreement (see Decision No. R03-1379-I at ¶ 19) and the provisions of the December Joint Motion at ¶¶ 5 through 7.

6. As a matter of policy, the Commission encourages settlement. The January Joint Motion, which seeks additional time for the parties to explore settlement, states good cause. In addition, as all parties join in this motion, granting the January Joint Motion will not prejudice any party. Further, § 40-6-108(4), C.R.S., pertaining to the time within which a decision in a

complaint case should issue, does not prevent granting the January Joint Motion. That statute provides that the time within which a Commission decision should issue is calculated from the date on which the complainant files its testimony and exhibits. Complainants have not filed their testimony and exhibits and will not do so for so long as this proceeding is held in abeyance. Finally, Complainants are protected by continuation of the stand-still agreement. For these reasons, the January Joint Motion will be granted, subject to the conditions contained in the Joint Motion and those contained in this Order.

7. This proceeding will be held in abeyance to and including March 18, 2004.

8. The parties will be ordered to file, no later than March 18, 2004, either a stipulation or a report on the status of the settlement discussions.

9. In the event of failure of the settlement discussions, the parties will be ordered to comply with the procedures set out in the December Joint Motion at ¶¶ 5 and 6. In the event the parties reach a partial settlement, they will be ordered to comply with the procedures set out in the December Joint Motion at ¶ 7.

10. The January Joint Motion at ¶ 5 contains a reaffirmation of the existing stand-still agreement. If it should develop that this agreement is changed during the course of the proceeding, the parties will be ordered immediately to inform the ALJ of this fact and to provide the changed agreement.

11. The January Joint Motion is unopposed and contains a request for waiver of response time. That request will be granted, and response time to the January Joint Motion will be waived.

II. ORDER

A. It Is Ordered That:

1. The Joint Motion to Continue to Hold Proceedings in Abeyance is granted.
2. Absent further Order, this proceeding is in abeyance to and including March 18, 2004.
3. The parties shall file, no later than March 18, 2004, either a stipulation or a report on the status of the settlement discussions.
4. The parties shall comply with the requirements discussed in this Order.
5. The request for waiver of response time is granted.
6. Response time to the Joint Motion to Continue to Hold Proceedings in Abeyance is waived.
7. This Order shall be effective immediately.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Administrative Law Judge