

Decision No. R04-0465-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, VACATING
AND ESTABLISHING PROCEDURAL
SCHEDULE, AND WAIVING RESPONSE TIME**

Mailed Date: May 6, 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. Staff of the Commission (Staff) has intervened.

2. On April 6, 2004, by Decision No. R04-0358-I, the undersigned Administrative Law Judge (ALJ) established a procedural schedule, a prehearing conference date, and hearing dates in this matter.

3. As discussed in Decision No. R04-0358-I, there is an issue in this proceeding with respect to whether Respondent Mill Creek Water Sales & Distribution, LLC is a public utility under Colorado statute. As this is a question of the Commission's subject matter jurisdiction, this issue is to be addressed first.

4. On April 16, 2004, Complainants filed a Motion for Summary Judgment on the jurisdictional issue. Complainants also moved to amend the Complaint to conform to the evidence.

5. On May 5, 2004, Complainant and Respondent filed a Joint Motion to Modify Procedural Schedule (Joint Motion). Complainant and Respondent believe that the jurisdictional issue can be resolved by a decision on one or more motions for summary judgment. Accordingly, the Joint Motion contains a proposed procedural schedule designed to accommodate motions for summary judgment and discovery addressing those motions while maintaining, as necessary, the already-scheduled prehearing conference and hearing dates. This filing also contained a request for waiver of response time.

6. The Joint Motion states good cause. Staff, the only other party, has no objection to the granting of the Joint Motion. Thus, no party will be prejudiced by the granting of the Joint Motion. The Joint Motion will be granted, the filing dates and discovery procedures adopted in Decision No. R04-0358-I will be vacated, and the procedural schedule proposed in the Joint Motion will be adopted.

7. The following procedural schedule will be adopted for the subject-matter jurisdiction phase of this proceeding: (a) on or before May 14, 2004, and based on responses to already-served discovery requests to which Respondent has not yet responded, Complainants

may supplement the Motion for Summary Judgment's documentary support; (b) on or before May 21, 2004, Respondent shall file its response to the Motion for Summary Judgment and its response to the motion to amend the Complaint to conform to the evidence; at Respondent's option, the response may take the form of a cross-motion for summary judgment; (c) if Respondent files a cross-motion for summary judgment, then on or before June 4, 2004, Complainants shall file their response to that cross-motion for summary judgment; (d) if Respondent does not file a cross-motion for summary judgment, then on or before June 4, 2004, Complainants shall file their response to factual material or legal cases or argument in Respondent's response to Complainants' Motion for Summary Judgment; (e) if they are able to reach agreement on stipulated facts, then on or before June 18, 2004, Complainants and Respondent shall file a proposed list of stipulated facts, including record citation(s) to the source(s) of each stipulated fact; and (f) the scheduled prehearing conference and hearing will be retained, pending further order.

8. Except as modified by this Order, the provisions of Rule 4 *Code of Colorado Regulations* (CCR) 723-1-77 govern this proceeding.

9. The cut-off dates for service of discovery pertaining to the motion(s) for summary judgment are: (a) except for good cause shown, and except as stated in this Order, Complainants shall not serve further discovery on Respondent; (b) except for good cause shown, and except as stated in this Order, Respondent shall not serve discovery on Complainants after close of business on May 21, 2004; (c) Complainants' discovery addressed to Respondent's cross-motion for summary judgment or response to Complainants' Motion for Summary Judgment shall be served on or before June 4, 2004; and (d) Respondent's discovery addressed to Complainants' response filing shall be served on or before June 18, 2004.

10. For discovery served between May 3, 2004 and June 18, 2004, the following governs: (a) written objections are due within two business days; (b) responses are due within five calendar days; and (c) hearings on motions to compel response to discovery (the motions may be written or oral) may be held by telephone or in person at the earliest available time, subject to the ALJ's availability.¹

11. Copies of all discovery requests and responses must be served on all counsel. Except in affidavits or testimony or as necessary to support a motion, parties shall not file discovery requests and responses with the Commission and shall not serve discovery requests and responses on the Commission advisors (including Commission counsel) identified by Staff in the Rule 9(d) Notice filed in this docket.

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

13. There is an additional matter discussed in the Joint Motion. Complainants and Respondent affirm and incorporate by reference the stand-still agreement discussed in Decision No. R04-0358-I at ¶¶ 21-22. The ALJ will order continuation of this stand-still agreement. If it should develop that this agreement is changed during the course of the proceeding, then the parties shall inform the ALJ immediately of this fact and shall provide the changed agreement.

14. Rule 4 CCR 723-1-22(d)(3) states: "If a pleading refers to new court cases or other authorities not readily available to the Commission, six copies of each case or other authority shall be filed with the pleading." If a party wishes the ALJ to consider a cited

¹ The ALJ shall be provided with copies of the discovery to which objection is made and of the written objections no later than four hours before the hearing on the motion to compel.

authority, *other than* an opinion of the United States Supreme Court, a reported Colorado state court opinion, or a Commission decision, the party must provide copies of that cited authority.

15. The parties are requested to provide the decision number when referring to a Commission decision.

II. ORDER

A. It Is Ordered That:

1. The Joint Motion to Modify Procedural Schedule is granted.
2. The filing requirements and discovery procedures established in Decision No. R04-0358-I are vacated. Pending further order, the prehearing conference date and the hearing dates set in Decision No. R04-0358-I remain as previously scheduled.
3. The procedural schedule, discovery procedures, and other requirements set out above are adopted.
4. Absent further order, the parties shall comply with the procedural schedule, discovery procedures, and other requirements set out above.
5. The Request for Waiver of Response Time is granted.
6. Response time to the Joint Motion to Modify Procedural Schedule is waived.
7. This Order shall be effective immediately.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Administrative Law Judge