Decision **DRAFT DECISION OF ALJ THOMAS** **(Mailed 3/7/2006)**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Havasu Lakeshore Investments, LLC., Complainant, vs. Havasu Water Company (U 352-W), Defendant.	Case 05-04-007 (Filed April 5, 2005)

DECISION DISMISSING COMPLAINT WITH PREJUDICE

I. Summary

This decision dismisses the complaint filed by Havasu Lakeshore Investments, LLC (HLI) against Havasu Water Company (HWC) with prejudice. HLI asked for dismissal without prejudice, but because it claims the dispute is moot, we find it appropriate to put a stamp of finality on this controversy by dismissing the complaint with prejudice. HWC does not oppose dismissal.

HLI, the developer of a 320-unit vacation mobile home community called Vista Del Lago near Lake Havasu in San Bernardino County, filed the complaint seeking water service from HWC, a Class D water company with approximately 210 customers. HLI has since found an alternative water source, and no longer seeks Commission intervention in its dispute with HWC.

II. Background

A. Procedural Posture of Case

This case went to hearing on August 30, 2005, and it was submitted upon the filing of Post Hearing Briefs on October 18, 2005. On October 12, 2005,

the assigned Administrative Law Judge (ALJ) denied HLI's motion for interim relief. On December 30, 2005, HLI filed a motion seeking dismissal of the action without prejudice. At the ALJ's request, on January 23, 2006, HLI supplemented its motion to address case law providing that cases may not automatically be dismissed after they have gone to hearing. HWC has not responded to the motion to dismiss or otherwise registered opposition to dismissal.

B. HLI's New Water Source

HLI explains that it has secured an alternate water source from the Chemehuevi Indian Tribe, an independent Native American nation not subject to regulation by the Commission. The Tribe's property and water facilities are located immediately adjacent to Vista Del Lago. Thus, HLI claims, "the matters before the Commission are moot because Complainant has established a relationship with an alterative water purveyor and Complainant has also obtained or is in the process of obtaining all of the necessary approvals for that supply source."[1] HLI is now "proceeding with immediate connection of its Vista Del Lago development to the Tribe's water facilities and sewage treatment plant."

HLI concludes that it "no longer wants or needs utility service from Defendant."

III. Discussion

A. Appropriateness of Dismissal After Case Has Gone to Hearing

The Commission has held that it is not always appropriate to allow dismissal as of right after a case has gone to hearing. Allowing automatic

[1] December 30, 2005 Motion at 2.

dismissal would allow complainants to file cases, go to hearing, and, if they saw that things were not going their way, seek dismissal. Here, the dismissal not only occurs after hearing on the merits, but also after the ALJ denied a HLI's motion for preliminary injunction.[2] Dismissal after the case has proceeded to this degree can waste the Commission's resources as well as those of involved defendants.

Understanding the Commission's need to curtail such action, the ALJ asked HLI to address the issue in a supplement to its motion to dismiss.[3] HLI did so, claiming that the Commission has discretion to dismiss a complaint even after holding an evidentiary hearing as long as a decision on the merits of the complaint has not been issued.[4] HLI states that if dismissal is in the public interest, it should be allowed.

HLI asserts it is appropriate to dismiss the case because it no longer wants or needs utility service from the defendant. Moreover, it claims, dismissal will not prejudice HWC, because HLI's alternative water arrangements will cause no harm to HWC's water system. Finally, HLI claims the public interest does not weigh in favor of the Commission issuing a decision on the merits. "Because of the unique circumstances of the underlying complaint, any

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[2] The motion and accompanying ruling did not address the merits of who should pay to upgrade HWC's system to provide water service to HLI. HLI's motion sought limited water supply for construction purposes only, whereas its case in chief focused on residential water supply. Thus, the ALJ ruling on the motion did not reach the overall merits of the complaint.

[3] The ALJ cited *County of Orange v. AT&T,* D.01-06-079, 2001 Cal. PUC Lexis 606, Decision 05-09-045, and *Re Southern California Gas Company*, 43 CPUC2d 639 (1992) in her request.

[4] HLI cites D.04-05-059, *17-18.

Commission policy enunciated as a result of the parties fully litigating the complaint will be of minimal use to other utilities regulated by the Commission."[5]

We find little reason to devote further time to this proceeding. As became evident during the hearings, the parties have a long history of disputes over water supply. It is probably just as well that HLI has found an alternative water source. Had we reached the merits of the case, it is likely HLI would have been required to expend significant funds to make HWC's system capable of serving the Vista del Lago development.

By the same token, we do not wish to encourage HLI to return to the Commission and expend additional Commission resources on this dispute. For that reason, we dismiss the complaint with prejudice.

IV. Categorization and Need for Hearings

This complaint was categorized as adjudicatory and determined that hearings were necessary.

V. Comments on Draft Decision

The draft decision of the ALJ in this matter was mailed to the parties in accordance with Pub. Util. Code § 311(g)(1) and Rule 77.7 of the Commission's Rules of Practice and Procedure. No comments were received.

VI. Assignment of Proceeding

Dian M. Grueneich is the Assigned Commissioner and Sarah R. Thomas is the assigned Administrative Law Judge in this proceeding.

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[5] *Supplement to Havasu Lakeshore Investments, LLC's Motion to Dismiss the Complaint Without Prejudice,* filed Jan. 23, 2006, at 3.

Findings of Fact

1. HLI no longer wants or needs water service from HWC.

2. The case went to hearing.
3. The ALJ denied HLI's motion for preliminary relief.
4. HWC does not oppose dismissal.

Conclusions of Law

1. The Commission has discretion to dismiss a case even after the case has gone to hearing.

2. Dismissal is appropriate here because a decision on the merits will not establish important precedent.

3. The complaint should be dismissed with prejudice to avoid further expenditure of Commission resources on this dispute.

O R D E R

IT IS ORDERED that:

1. The Complaint on file in this proceeding shall be dismissed with prejudice. Havasu Lakeshore Investments, LLC may not refile its dispute with this Commission.

2. Case 05-04-007 is closed.

This order is effective today.

Dated _____, at San Francisco, California.