

MEMORANDUM

Regulatory Commission of Alaska

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TO: Representative Ralph Samuels **DATE:** August 5, 2003
Chair
Legislative Budget and Audit Committee

FROM: *RN* Rosalie Nizich
RCA Process Coordinator

THROUGH: *Mark K. Johnson*
Mark K. Johnson
Chair

SUBJECT: Quarterly Report for
April 1 - June 30, 2003

As required by AS 42.05.175(g), the Commission reports that during this quarter there was one order issued under AS 42.05.175(f)(2) extending the timeline for a final order. See attached Order U-97-45(8), dated June 27, 2003.

The Commission also reports that parties agreed to stipulate to an extension of the statutory timeline in Docket U-02-22. Upon receipt of the stipulation, the Commission will issue an order. That order and stipulation will be included in the next quarterly report.

STATE OF ALASKA

THE REGULATORY COMMISSION OF ALASKA

Before Commissioners:

Dave Harbour, Chair
Kate Giard
Mark K. Johnson
James S. Strandberg
G. Nanette Thompson

In the Matter of the Investigation into the Quality
of Water Service Provided by DAWN
DEVELOPMENT CORPORATION Under
Certificate of Public Convenience and Necessity
No. 194

U-97-45

ORDER NO. 8

**ORDER AFFIRMING BENCH RULING ESTABLISHING CONDITIONS,
REQUIRING FILINGS, AND EXTENDING TIMELINE**

BY THE COMMISSION:

Summary

We affirm our bench ruling, set filing requirements, and extend the timeline
for issuance of a final order in this docket.

Background

We required Dawn Development Corporation (Dawn) to show cause why
civil penalties held in abeyance by Order U-95-17(4)/U-97-45(2)¹ should not be
imposed. The hearing convened, as scheduled, on June 12, 2003.² Parties present

¹Order Affirming Bench Rulings; Accepting Late-Filed Report; Finding Utility in
Noncompliance; Holding Imposition of Penalties in Abeyance; and Requiring Filings,
dated March 24, 1998.

²Order Scheduling Hearing, Transferring and Subsuming Portions of Record from
Docket U-95-17 into Docket U-97-45, and Closing Docket U-95-17, Order U-95-17(7)/-
U-97-45(7), dated May 16, 2003.

1 included Dawn and the Alaska Department of Environmental Conservation (ADEC).
2 Dawn asserted that it would be able to be in compliance with the requirements of the
3 negotiated work plan agreement between Dawn and ADEC [the May 1997 Compliance
4 Order by Consent (COBC)]³ by the end of the summer.⁴ During the hearing, the
5 Commission issued a bench order continuing the hearing, rather than concluding it, to
6 allow Dawn opportunity to comply. This order affirms that ruling.

7 Discussion

8 At issue in this docket is the utility's continuing failure to comply with the
9 COBC. We determined that, subject to conditions, this hearing should be continued and
10 Dawn allowed opportunity to comply with the COBC. These conditions are:

11 (a) Dawn shall file monthly reports on the progress it is making toward the
12 COBC and resolution of the pumping efficiency issue. The reports should
13 include information about contacts with ADEC and with whom Dawn is
14 working at ADEC. Dawn shall provide copies to ADEC on the same date the
15 filings are made with us.

16 (b) Dawn shall file in its first monthly report its cost estimate for resolving
17 the two problems and tell us how it intends to pay for the suggested
18 remedies. Dawn shall provide any necessary updates in subsequent reports,
19 and it shall provide copies to ADEC on the same date the filings are made
20 with us.

21
22 ³In its status report, ADEC represented that Dawn has not complied with some of
23 the items in the COBC. Dawn has not completed the Groundwater Under the Direct
24 Influence of Surface Water determination, has not submitted a work plan under the
25 stamp of a Professional Engineer outlining steps to bring the existing Class A Public
26 Water System into compliance under regulations, and has not completed the work
necessary to upgrade its system.

⁴Tr. at 267.

1 (c) ADEC shall file brief monthly reports on Dawn's progress toward
2 fulfilling the requirements of the COBC.

3 If Dawn fails to file the monthly reports timely, we will, following notice,
4 require Dawn to appear before us to explain why the report was not filed. If Dawn
5 satisfactorily resolves the remaining items, we will conclude this hearing and close the
6 docket without further hearing.

7 Based on the duration of this proceeding and the overall lack of consistent
8 compliance on behalf of Dawn, it may be in the public interest to require Dawn to place
9 the funds necessary to complete any required system improvements into an escrow
10 account. We will address this issue after receiving reports from Dawn and ADEC
11 concerning any capital improvements necessary to bring the system into compliance
12 with ADEC requirements and the estimated costs of the improvements.

13 This docket involves complaints filed before the enactment of
14 AS 42.05.175. AS 42.05.175(d) requires that we issue a final order not later than twelve
15 months after a complete formal complaint is filed against a utility. For dockets initiated
16 before the timelines in AS 42.05.175 were enacted, July 1, 2002 is considered to be the
17 date of filing. See § 7, ch. 2, TSSLA 2002. We would therefore be required to issue a
18 final order in this docket by June 30, 2003. AS 42.05.175(f) provides that we may
19 extend the timeline if good cause exists. We find that good cause exists to extend this
20 timeline until September 25, 2003.

21 **ORDER**

22 THE COMMISSION FURTHER ORDERS:

23 1. The bench order continuing the June 12, 2003 hearing and
24 establishing conditions is affirmed.
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1 2. By 4:00 p.m., on the fifteenth day of each month, Dawn Development
2 Corporation shall file monthly reports on progress it is making toward the Compliance
3 Order by Consent and resolution of the pumping efficiency issue, as more fully
4 discussed above.

5 3. By 4:00 p.m., on the fifteenth day of each month, Dawn Development
6 Corporation shall file monthly reports on cost information regarding what it must do to
7 resolve these problems and to provide a description of how it intends to pay the costs
8 associated with the suggested remedies, as more fully discussed above.

9 4. By 4:00 p.m., on the twentieth day of each month, the State of
10 Alaska Department of Environmental Conservation shall file brief monthly reports on
11 Dawn's progress toward fulfilling the requirements of the COBC.

12 5. The timeline for a final order to be issued in this docket is extended
13 until September 25, 2003.

14 DATED AND EFFECTIVE at Anchorage, Alaska, this 27th day of June, 2003.

15 BY DIRECTION OF THE COMMISSION
16 (Commissioners Dave Harbour, Chair, and
17 Kate Giard, not participating.)

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