

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of the Application for a)
Certificate of Convenience and)
Necessity to Operate as a Public Utility)
Rendering Service, or for an Exemption)
from PSC Regulation, for WOLF)
CREEK WATER CONSERVANCY)

DOCKET NO. 03-2417-01
REPORT AND ORDER
ADJUSTING INTERIM RATES

ISSUED: September 7, 2004

SYNOPSIS

Petitioner, having submitted additional information concerning its proposed rate structure and conservation plan, the Commission sets interim rates and approves a conservation plan as indicated.

By the Commission:

PROCEDURAL HISTORY

On June 22, 2004, the Commission issued its Order granting Wolf Creek Water Conservancy (Conservancy) a certificate of convenience and necessity to operate as a public utility providing secondary water service to the Wolf Creek Resort area. That Order also established interim rates and, at the request of the Conservancy, left the record open to provide the Conservancy an opportunity to file additional information in support of its proposed rate structure. On June 29, 2004, the Conservancy submitted this additional information and requested that the Commission adjust the interim rates established by the June 22, 2004, Order. The Conservancy also requested approval of a proposed water conservation plan with accompanying penalties. The Division of Public Utilities (Division) submitted its analysis and recommendation on July 16, 2004. Wolf Creek Water Consumers (Customers), a group of interested Wolf Creek area residents, submitted its response on July 30, 2004, as did the Customers' attorney, Edwin Barnes (on September 1, 2004, Mr. Barnes notified the Commission that he had withdrawn as counsel for the Customers).

Notice of Hearing on the proposed interim rates was issued by the Commission on August 10, 2004, and

the hearing held on August 31, 2004, before the Commission's Administrative Law Judge. Attorney Lee Kaposki and Conservancy President Steven Roberts appeared on behalf of the Conservancy. Patricia Schmid, Assistant Attorney General, State of Utah, and Division analyst Bary Golding, appeared on behalf of the Division. Mr. Steven Kingsford appeared by telephone on behalf of the Customers.

DISCUSSION AND FINDINGS

The Conservancy proposes four basic adjustments to the interim rates previously established by the Commission: (1) change in the connection fees paid by residents of the Patio Springs, Eagle Ridge, and Eden Hills subdivisions; (2) change in the stand-by fees charged to customers who had previously signed agreements with the Conservancy setting specific amounts for those fees; (3) change in the rate schedule and connection fee applied to multi-family properties; and (4) approval of a conservation plan that would impose warnings and fines for customers who violate the plan. The Conservancy's proposed changes are as follows:

Single Family Home Fees

	Current/Proposed
Patio Springs and Eden Hills Connection Fee	\$2,500/\$3,000
Eagle Ridge Connection Fee	\$2,500/\$2,000
Annual Irrigation Stand-By Fee	NONE/\$180.00

Multi-Family Unit Rates

Current: Irrigation Water Usage per Irrigated acre	\$15.00 per month flat rate
Proposed: Irrigation Water Usage per Building:	
Moose Hollow (12 units per bldg/ 8 bldgs)	\$15.00 per building
Wolf Creek Village (16 units per bldg/ 6 bldgs)	\$20.00 per building
Wolf Star (38 units total)	\$126.50 Flat Fee
Wolf Lodge (154 units total)	\$166.50 Flat Fee
Fairway Oaks (PRUD - 23 Homes)	\$15.00 per Home (= \$345/mo.)
The Cascades (billed individually)	\$15.00 Flat Rate per home

Trappers Ridge (billed individually)	\$15.00 Flat Rate per home
The Fairways (duplexes billed individually)	\$15.00 Flat Rate per home

Multi-Family Unit Connection Fee

Current: \$1,000 per irrigated acre

Proposed: \$1,000 per building

Conservation Plan and Rates

- (1) Establish an odd/even address watering schedule for single family customers. Condominium and apartment building watering schedules developed separately for each system.
- (2) Prohibit irrigation watering by all residential customers between the hours of 10:00 am and 8:00 pm.

First Offense	Written Warning
Second Offense	\$100.00
Third Offense	\$200.00
Fourth and Subsequent Offenses	\$500.00

The Division generally recommends approval of each proposed change. The Customers, on the other hand, generally oppose these proposals. With respect to the changes to connection fees for the Patio Springs, Eden Hills, and Eagle Ridge areas, the Division states that the Conservancy has now provided sufficient information to support a determination that the differing costs associated with installation of these systems justifies different connection fees for each system. The Division believes that the fees proposed by the Conservancy reasonably reflect these differences. The Customers contend that the Conservancy should be required to “re-open” its original offer made to residents to encourage subscription prior to installation of the irrigation system, that being a one-time connection fee of \$1,500. They also continue to object to the interim connection fees established by the Commission, claiming they have not been demonstrated to be based on cost of service. We concur with the Division and find that the proposed interim connection fees for these subdivisions are reasonably related to the costs incurred by the Conservancy in installing these systems and approve these fees on an interim basis.

The Commission's June 22, 2004, Order established no single-family residential stand-by fee, primarily because it is unclear that a residential irrigation water system, unlike its culinary water counterpart, must be designed and built to provide service upon demand. In other words, the necessity for a stand-by fee in order to compensate the utility for construction of a ready-to-serve irrigation system is unclear. The Conservancy points to a copy of the Wolf Creek Water and Sewer Fact Sheet which contains the proposed residential stand-by fee, stating that all Wolf Creek Properties lot buyers must review and approve of these fees when purchasing their residential lot. The Conservancy further states that it has by its actions committed to providing a ready-to-serve system within its service area. The Division recommends that the Commission approve the proposed stand-by fee to be charged only to those customers who have signed agreements obligating them to pay such a fee. The Customers object to any stand-by fee, viewing the Division's recommendation as an attempt to enforce agreements that were entered into prior to the Conservancy becoming a certificated utility. We conclude that it is reasonable to permit the Conservancy to charge and collect such fees on an interim basis. Consistent with the Conservancy's representations and the Division's recommendation, stand-by fees may only be charged to specific individuals who have entered into written, signed agreements obligating them to pay those fees. We further find the proposed stand-by fee of \$180.00 per year (equating to the interim flat residential usage rate of \$15.00 per month) to be reasonable and approve it on an interim basis.

Turning to the proposed multi-family unit rates and connection fees, the Conservancy notes that many of these properties have been Conservancy customers since the 1980s and have therefore historically been charged different rates. The Conservancy originally proposed a tiered rate structure for these properties based on actual usage, but the Commission approved a flat per acre rate during this interim period while the Conservancy completes build-out of a wholly metered system and while the Division waits for the information it requires to perform a complete rate analysis. The Conservancy contends that this flat rate when applied on a per acre basis to multi-family properties forces the Conservancy to ignore long-standing contracts that pre-date Commission regulation. It therefore seeks to use the rates and connection fees that were in effect at the start of the 2003 irrigation season (prior to any increases related to

expansion of the Conservancy's system to serve new customers) in order to maintain continuity for its multi-family customers and to maintain revenues at historical levels. The Division supports this rate structure and notes that its recommendation of April 21, 2004, was predicated upon the basic concept of attempting to maintain rates during an interim period as they had been at the start of the 2003 irrigation season. The Customers contend that continuation of the multi-family rate structure as it existed at the start of the 2003 irrigation season would merely continue the customer biases and selectivity of which it generally has accused the Conservancy throughout these proceedings. Specifically, the Customers point to the fact that Fairway Oaks which contains 23 residences on 10 acres of land pays \$150.00 per month under the current interim rate but would pay \$345.00 per month under the proposed rates, while Moose Hollow which sits on nearly twenty-nine acres currently pays \$435.00 per month but would only pay \$120.00 per month under the proposed rates. What this argument fails to recognize, however, is that, pursuant to prior agreement with the Conservancy, Fairway Oaks and Moose Hollow were previously paying \$345.00 and \$120.00 per month, respectively. Adjusting the interim rates as proposed would merely return the parties to rates they had previously agreed to pay and apparently did pay. We were unable to reach such conclusions in our June 22, 2004, Order because the evidence was not sufficiently before us at that time. Having granted the Conservancy additional time to produce such evidence and the Division time to complete its analysis, we find that the appropriate way forward on an interim basis is to permit the parties to proceed under rates to which they had mutually agreed prior to Commission regulation. The Division recommends approval of the proposed multi-family rates and connection fees based on the historical treatment of these properties and we concur.

With respect to the Conservancy's proposed conservation plan, we note that utilities routinely employ a tiered rate structure, one of the goals of which is to encourage customers to consider the consequences of consuming additional resources. We further note that, due to the continuing drought in Utah, governmental and private entities statewide are working to encourage water conservation. In recognition of these facts, the Commission has previously approved the use of tiered usage rates to promote water conservation. Here, however, while many Conservancy customers currently enjoy metered service, many do not. The Commission has therefore decided to maintain rate equity

among all customers by approving a flat interim usage rate until such time as all Conservancy customers have metered service. For this reason, a tiered rate structure is currently not an option available to meet the Conservancy's conservation goals. Therefore, the Conservancy has proposed an odd/even daily watering schedule based on each customer's service address combined with a complete watering prohibition for all residential customers between the hours of 10:00 a.m. and 8:00 p.m. Those who water on the wrong day or during prohibited periods would be subject to warnings and penalties as indicated above.

In support of its proposal, the Conservancy points to a December 23, 2002, letter from the Utah Division of Water Resources conditioning approval of financing for the Conservancy's irrigation system expansion project on, among other things, the Conservancy's adoption "of a rule prohibiting Wolf Creek Water Conservancy's users from irrigating residential landscapes between the hours of 10:00 a.m. and 6:00 p.m." Conservancy President Stevens acknowledged at hearing that the Conservancy's proposal to extend the watering prohibition from 6:00 p.m. to 8:00 p.m. is based on nothing more than the Conservancy's own judgment and assumption that restricting daily watering by two additional hours would result in greater conservation. The Division supports the Conservancy's conservation plan, but the Customers—while supporting conservation generally—oppose the plan for several reasons. First, they believe that a comprehensive educational effort by the Conservancy would better assist customers in learning ways to conserve. They also believe that the plan is susceptible to selective enforcement by the Conservancy—something which they claim has occurred in their past dealings with the Conservancy. Finally, they are concerned that the proposed plan reserves to the Conservancy the "right to shut off secondary water to any customer who repeatedly violates the conservation watering schedule or is clearly using an excessive amount." Their concern with this language centers on the meaning of the word "excessive" and whether the Conservancy would be free to define and enforce this provision as it sees fit.

We find the proposed odd/even address daily watering schedule and the concept of a time-of-day prohibition on all residential watering to be reasonable. However, there is no evidence to support the Conservancy's decision to expand beyond the 10:00 a.m. to 6:00 p.m. restrictions required by the Division of Water Resources. Indeed, one member of the public raised concerns that imposing such restrictions until 8:00 p.m. would cause hardship to

residents, particularly elderly residents, who do not yet have automated sprinkler systems and who might therefore be forced to go out after dark to turn their sprinkler lines off and on. We find that the narrower 10:00 a.m. to 6:00 p.m. prohibition period reasonably satisfies both the desire to conserve and the needs of customers.

While the rules pertaining to the proposed conservation policy generally appear reasonable, the same cannot be said of the proposed penalties to be charged for violation of these rules. Simply put, the fines proposed for repeated violations appear to be excessive. We note that the proposed \$100.00 fine for only a second violation is more than six times the interim monthly flat residential usage rate. A third violation would result in a fine greater than an entire year's worth of water usage, while fines for fourth and subsequent violations would only be slightly less than three times a residential customer's annual secondary water bill. The Customers, on the other hand, are concerned that repeated violation could result in termination of their secondary water service, but we believe that termination as the ultimate sanction for repeated violation is reasonable, at least during this interim period when equitable conservation measures employing metered use cost multipliers and limits are not available. We also note that termination of the secondary water supply would not entail the same potentially devastating lifestyle impacts that may occur when a customer is threatened with termination of other regulated utilities such as electricity or culinary water.

We concur with the Division's general recommendation that some escalating scale of consequences for continuing violations is reasonable and find accordingly. However, the exact nature of such a scheme—whether it should include fines and how much any fines should be—must await determination of final rates. While we are satisfied that, on the record developed to date, the Conservancy's proposed fines appear excessive, we are unwilling in the absence of additional evidence and analysis to establish an alternative amount. Instead, we conclude and order that the Conservancy's conservation goals can be reasonably achieved on an interim basis by providing written notice of a first violation and written notice of a second violation with the third notice of violation resulting in shut-off of the customer's irrigation water until such time as the Conservancy is convinced of the customer's willingness to abide by conservation rules in the future. This framework provides no leeway for the Conservancy to determine on its own what usage it

considers “excessive” or to act upon such a determination. We specifically reject the Conservancy’s proposed language reserving to itself the right to determine what constitutes excessive water use. Once all connections have been metered, a different conservation plan, if proposed, may well be appropriate. However, during this interim period, warnings and termination of secondary water service may only be predicated upon findings that the customer has watered in contravention of the plan’s daily and time-of-day prohibitions.

The Administrative Law Judge, having been fully advised in the premises, now recommends and the Commission enters the following Order:

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED, that:

- The proposed interim rates and conservation plan set forth in this Report and Order are approved as modified above, effective the date of this Order.
- Wolf Creek Water Conservancy shall submit revised tariff sheets reflecting the modified interim rates and conservation plan. The Division of Public Utilities shall review the revised tariff sheets for compliance with this Report and Order.
- Any person aggrieved by this Order may petition the Commission for review/rehearing pursuant to the *Utah Administrative Procedures Act, Utah Code Ann. §63-46b-1 et seq.* Failure so to do will preclude judicial review of the grounds not identified for review. *Utah Code Ann. §54-7-15.*

DATED at Salt Lake City, Utah, this 7th day of September, 2004.

/s/ Steven F. Goodwill
Administrative Law Judge

Approved and Confirmed this 7th day of September, 2004, as the Report and Order of the Public Service Commission of Utah.

/s/ Ric Campbell, Chairman

/s/ Constance B. White, Commissioner

/s/ Ted Boyer, Commissioner

Attest:

/s/ Julie Orchard
Commission Secretary

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