

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

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In the Matter: the)	TRANSCRIPT OF
Application of Eagle's)	PROCEEDINGS
Landing Water Company, LLC)	
for a Certificate of)	Docket No.:
Convenience and Necessity)	07-2477-01
to Operate as a Public)	
Utility Rendering Culinary)	
Water Service, or for an)	
Exemption from Public)	
Service Commission)	
Regulation)	

August 13, 2008 * 9:40 a.m.

Location: Public Service Commission
160 East 300 South
Salt Lake City, Utah

Before: Sandy Mooy,
Administrative Law Judge

1 A P P E A R A N C E S

2 FOR EAGLE'S LANDING WATER COMPANY:

3 J. Craig Smith

Brad Simpson

4 Chris Preston

SMITH HARTVIGSEN, PLLC

5 215 South State Street, Suite 600

Salt Lake City, Utah 84111

6 Telephone: (801) 413-1600

Fax: (801) 413-1620

7

FOR THE DIVISION OF PUBLIC UTILITIES:

8

Patricia E. Schmid

9 OFFICE OF THE ATTORNEY GENERAL

160 East 300 South, #500

10 Salt Lake City, Utah 84114

Telephone: (801) 366-0353

11 Fax: (801) 366-0352

12

ALSO PRESENT:

13

Paul Hicken

14 David Olsen

Jay Spencer

15 Krystal Fishlock - via telephone

Chuck Smart - via telephone

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E X H I B I T S

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No.

Admitted

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DPU 1.0

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1 P R O C E E D I N G S

2 JUDGE MOOY: I'm Sandy Mooy. The
3 Commission has asked me to conduct this proceeding
4 for the Certificate for Eagle's Landing Water
5 Company. Commission Docket 07-2477-01.

6 Let's take appearances, beginning with Ms.
7 Schmid.

8 MS. SCHMID: Thank you.

9 Patricia E. Schmid, with the Attorney
10 General's Office, representing the Division of Public
11 Utilities.

12 MR. HICKEN: Paul Hicken, with the
13 Division of Public Utilities.

14 MR. SMITH: Craig Smith, with the
15 Applicant.

16 And along with me are Brad Simpson from my
17 office. I'm an attorney. And Chris Preston.

18 JUDGE MOOY: And also on the phone, could
19 you identify yourselves.

20 MS. FISHLOCK: Yes. This is Krystal
21 Fishlock, for Eagle's Landing.

22 MR. SMART: And Chuck Smart. I'm a
23 resident of Eagle's Landing.

24 JUDGE MOOY: All right. For the
25 Applicant -- actually between the Division and the
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1 Company, have you reached a resolution of any issues
2 relative to the application in and of itself and
3 granting the Certificate?

4 MS. SCHMID: With regard to the shortfall,
5 I believe that we have, because it's my understanding
6 that the Company is going to make up any shortfall.

7 MR. SMITH: Yeah. That's correct.

8 Right now we only have seven connections
9 to the system. And obviously that's not enough to
10 support a water system of the size and scope of the
11 one that we have here. It's built for a build out of
12 95 connections when it's fully -- that area is fully
13 developed. And so in the interim, we will be -- you
14 know, obviously the developer, who is also the owner
15 of the water company, David Olsen, who is also here,
16 will be supplementing the cost to run the Company so
17 that it can continue to function without -- even
18 though it will not be profitable in the short run
19 until more homes are built, more connections and more
20 revenues available through that.

21 MS. SCHMID: And also, the water company
22 has agreed, I believe, to recover a majority of its
23 system costs through the sale of lots.

24 MR. SMITH: That's right.

25 JUDGE MOOY: Okay. Mr. Smith, you just
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1 want to make a proffer relative to the evidence and
2 take what's been filed with the application, the
3 exhibits attached thereto? Or do you actually want
4 to go through and introduce -- I'm willing to take a
5 proffer?

6 MR. SMITH: Yeah. I'm happy to offer a
7 proffer, if that's acceptable to you, Mr. Mooy. And
8 let me do that.

9 Let me give a little bit of background
10 about the system as well and where it's at and all of
11 that kind of information.

12 The Eagle's Landing Water Company serves
13 the Eagle's Landing development, which is a
14 subdivision, a rural subdivision that's in extreme
15 southern Utah County along Highway 89. And it's just
16 off of Highway 89 just at the -- very near the Utah
17 County/Sanpete County border. It's a -- the
18 subdivision itself has been approved by Utah County.
19 And it's an existing subdivision. As I previously
20 mentioned, at build out there will be 95 connections.

21 The water company was built to serve that
22 single development. And the water system consists of
23 a well and tank and water lines to all of the lots.

24 The current owner of the water company and
25 the developer is David Olsen. Mr. Olsen is here, if

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1 there is any questions for him today. Along with him
2 is Mr. Jay Spencer, who is the person who operates
3 the system and does the physical operations of the
4 water system. Mr. Olsen purchased this out of a
5 bankruptcy sale. And it was in somewhat of a state
6 of disrepair, both the development itself and the
7 water company. And has since that time spent a lot
8 of time and money trying to bring things up to
9 standards.

10 Some of the information we would like --
11 part of our proffer is that we have sufficient water
12 rights to serve the entire 95 units. We have -- the
13 system has been approved and is in good standing with
14 the Division of Drinking Water, as far as providing
15 drinking -- you know, safe drinking water. We have
16 sufficient source and capacity to serve all 95 units
17 when they are built. As we mentioned earlier, we're
18 currently only serving seven units. There is
19 probably, I think, one or two more that are under
20 construction that will come online shortly. And how
21 fast the rest of the units or the lots will be built
22 on and be connected to the system really just depends
23 on the real estate market.

24 I think Eagle's Landing was originally
25 planned as kind of a second home subdivision.

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1 Because it is out in the mountains. It is in a very
2 rural area. But my understanding is that it is
3 attracting year-round residents. It is close -- like
4 I say, just off Highway 89. So it has good
5 accessibility year round, as does most of the bird's
6 eye area that it's in. So I think it's kind of
7 changing or changing to more of a permanent,
8 year-round residential area.

9 But the system was built for that. The
10 water rights are sufficient for that.

11 Also as part of our proffer we have come
12 to an agreement with the Division of Public Utilities
13 for a rate of \$35 a month as the base rate for
14 service up to 10,000 gallons of water. We have then
15 five tiers above that on a -- from 10,001 to
16 20,000 gallons, we have a rate for that. I won't
17 read the whole rate. I just ask that that be added
18 to the record. We also have connection, stand by,
19 turn on fees, turn off fees and a late payment fee
20 that has been proposed. And it is my understanding
21 the Division is in agreement with those rates.

22 At this time, I'd like to ask Krystal
23 Fishlock, who has been our financial analyst, has
24 helped us with the financial, if she could just take
25 a few minutes and cover that part of the proffer.

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1 JUDGE MOOY: All right. Ms. Fishlock, go
2 ahead.

3 MS. FISHLOCK: Okay. Just briefly -- and
4 if you've looked over the Division's filing, if you
5 have any questions on these specific numbers, I'd be
6 welcome to answer those questions.

7 I thought at this time just to give you a
8 brief overview of my impression of the costs and the
9 rates structure that they have set. The information
10 I gathered was from responses to the Division and
11 some questions I had. We had some conference calls
12 and some other information from the Company was
13 submitted. And looking at the costs that they're
14 going to have, the profitability of the Company being
15 stand alone, you really can't see that until the 95
16 customers have come onto the system. So what I did
17 is looked at what -- what was a reasonable time frame
18 for the construction and the build out and just a
19 little bit based on my understanding of the market,
20 but more so from the Company and what they're seeing
21 in the area in the construction --

22 MS. SCHMID: Pardon me. I'm not really
23 familiar with the proffer of things.

24 Would it be appropriate for Ms. Fishlock
25 to be sworn as she is giving her impressions?

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1 JUDGE MOOY: We could. The aspect of
2 proffer would be almost like the -- what we do with
3 written testimony. If this person were under oath,
4 this is what the person would say.

5 MS. SCHMID: Okay. Thank you for the
6 education.

7 JUDGE MOOY: Ms. Fishlock, if you want to
8 continue.

9 MS. FISHLOCK: Okay. So in speaking with
10 the Company and looking at their information, I was
11 able to help them put it into the format which we all
12 understand as calculating revenue requirements. And
13 then submitted that to the Division.

14 So the Division's -- I do agree with the
15 few changes the Division came up with on -- one was,
16 you know, making sure we had the right tax rate, the
17 Company was using the right tax rate for doing
18 forecasting.

19 And then we also were able to help the
20 Company to put together a proper regulatory
21 depreciation schedule. Their depreciation was tax
22 basis. So we needed to modify that to show what it
23 would be for regulatory basis.

24 So basically I felt that the numbers here
25 are pretty reflective of what you would find in a
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1 small company, their operating type revenues and
2 expenses. And then, of course, the cost of doing
3 your additions each year. I was able to -- I helped
4 the Company understand the procedures for
5 contributions in aid of construction. And we were
6 able to agree with the Division on a break out for
7 that.

8 And it appears that based on the
9 calculations that we came up with, it would be
10 approximately 2014 before all of the -- before 95
11 customers would be able to be obtained. And that
12 would be the first year that the company would
13 finally come into a net profit state.

14 JUDGE MOOY: Thank you.

15 Anything further, Mr. Smith?

16 MR. SMITH: Just that the -- as I think
17 I've mentioned, but I want to make sure is clear, the
18 developer is currently subsidizing the Company. The
19 net loss for the current year is \$19,000. And is
20 committed to continue to do so until we get full
21 build out, which is when we become profitable.

22 And unless the -- Mr. Mooy, unless you
23 have other questions, I think that's my proffer.

24 JUDGE MOOY: All right. Thank you.

25 Ms. Schmid, do you just want to do the
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1 same thing, a short summary of the Commission's --
2 excuse me, the Division's review and the ultimate
3 conclusions regarding the application?

4 You can use Mr. Hicken if you'd like.

5 MS. SCHMID: I would prefer that Mr.
6 Hicken do that.

7 And then as part of that, I'd also like to
8 move for the admission then of DPU Exhibit 1.0, with
9 1.1 through 1.6 attached thereto.

10 So Mr. Hicken does have a summary that he
11 would like to give.

12 JUDGE MOOY: Those exhibits are the
13 comments from the Division, dated the 20th of July,
14 with the attachments?

15 MS. SCHMID: That is correct. And
16 entitled, "In the Matter of the Application of
17 Eagle's Landing Water Company, LLC for a Certificate
18 of Convenience and Necessity to Operate as a Public
19 Utility Rendering Culinary Water Service, Docket
20 Number 07 -- 2477-01."

21 JUDGE MOOY: Thank you.

22 Any objection of the receipt?

23 MR. SMITH: No objection.

24 (DPU EXHIBIT 1.0, WITH ATTACHMENTS 1.1
25 THROUGH 1.6, WAS RECEIVED.)

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1 JUDGE MOOY: Okay. Mr. Hicken?

2 You don't need to be sworn. Just give us
3 -- ultimately what I'm looking for is the conclusion
4 that you think the rate base establishment and the
5 rates that have been proposed are just and
6 reasonable.

7 If I can coach the witness.

8 MR. HICKEN: Mr. Smith and Ms. Fishlock
9 covered the exhibits pretty well. So I won't need to
10 go into those, unless there are any questions.

11 I did make a couple of changes.

12 One being in -- one of the exhibits showed
13 a revenue at \$36 per month. And that was not the
14 rate that was mentioned in the application. So I
15 changed that in the exhibit to \$35 per month, which
16 is what they asked for in the application.

17 JUDGE MOOY: Okay.

18 MR. HICKEN: There was a change on the
19 depreciation rate for the additions, which is in
20 Exhibit 1.6. And after I discussed what those
21 additions might be, determined that they were
22 primarily meters and distribution lines, the proper
23 depreciation life was 35 years. And in the Company's
24 exhibit, it was 25. So I made that change.

25 Other than that, the Division feels that
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1 the rates proposed are appropriate and needed for the
2 Company to compensate the water service provided.
3 The Division finds these proposed rates to be
4 reasonable and just. And the Division is also
5 satisfied that the water users' rights and interests
6 will be protected. And certification is in the
7 public interest.

8 Therefore, the Division recommends the
9 Commission approve Eagle's Landing Water Company's
10 proposed rate schedule and application for a
11 Certificate of Public Convenience and Necessity.

12 JUDGE MOOY: Thank you.

13 Is there anyone else present, either in
14 the hearing room or on the phone, who wishes to
15 address the application either for or against?

16 MR. SMART: This is Chuck Smart. I just
17 have one question.

18 On the notice that was posted, it states
19 there is -- "In the Matter of Eagle's Landing," blah,
20 blah, blah, "Certificate to Operate a Public Utility
21 Rendering." But then it also says "An exemption from
22 Public Service Commission Regulation."

23 JUDGE MOOY: Correct.

24 MR. SMART: So they will be exempt from
25 Public Service regulation or --

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1 JUDGE MOOY: At this time, they will not.
2 They will receive a certificate. They will be
3 subject to regulation by the Commission.

4 The exemption was an alternative requested
5 by the Company. I suppose sometime in the future if
6 all the lots are purchased, then there is a
7 homeowners association wants to take over and revive
8 the request for exemption, they could do so at that
9 time. But my understanding is the Company wishes to
10 go forward as a certificated company subject to
11 regulation by the Commission.

12 MR. SMART: Okay. Thanks.

13 MR. SMITH: Yes. That's our request.

14 MR. SMART: Thank you very much.

15 MR. SMITH: And I think the comments you
16 stated are exactly right. Mr. Olsen can probably
17 tell this, but he is not in the water business
18 because he wants to be in the water business. He is
19 in the water business to support his development that
20 he's doing. Once that development is fully
21 developed, then there will probably be a transition
22 to a HOA or some other way to handle the water
23 service. And then at that time, if they want to
24 become exempt and -- because they'll be owned by the
25 users -- then that's likely -- the likely scenario.

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1 JUDGE MOOY: That's my understanding.

2 Anything further?

3 MS. SCHMID: Nothing further from the

4 Division.

5 JUDGE MOOY: Anyone else?

6 (No verbal response.)

7 JUDGE MOOY: Thank you very much. The
8 Commission will take that under advisement. The
9 Commission will probably just issue the order on its
10 own, as opposed to asking one of you two to draft it
11 up.

12 Thank you very much.

13 MS. SCHMID: Thank you.

14 MR. SMITH: Thank you.

15 MR. SMART: Thanks.

16 (Hearing concluded at 9:56 a.m.)

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REPORTER'S HEARING CERTIFICATE

STATE OF UTAH)
) ss.
COUNTY OF SALT LAKE)

I, Kelly Fine-Jensen, Registered Professional Reporter and Notary Public in and for the State of Utah, do hereby certify:

That said proceeding was taken down by me in stenotype on August 13, 2008, at the place therein named, and was thereafter transcribed, and that a true and correct transcription of said testimony is set forth in the preceding pages;

I further certify that I am not kin or otherwise associated with any of the parties to said cause of action and that I am not interested in the outcome thereof.

WITNESS MY HAND AND OFFICIAL SEAL this 21st day of August, 2008.

Kelly Fine-Jensen, RPR
Notary Public
Residing in Salt Lake County