# Exhibit A

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December 23, 2011

**-Via Hand Delivery-**

Julie Orchard, Secretary
Utah Public Service Commission
Heber M. Wells Building
160 East 300 South
Salt Lake City, UT 84114

**Re: Hi-Country Estates Homeowners Association's Water System**

Dear Ms. Orchard,

This firm represents Hi-Country Estates Homeowners Association ("Association") which, among other things, serves culinary water to about ninety active customers, most of whom belong to the Association. This letter notifies the Utah Public Service Commission about some recent developments regarding the Association water system so that the Commission can assess whether the Association's exemption from regulation by the Commission should be reevaluated. The Association is desirous of following all applicable court and Commission rulings and orders. A brief recitation of the water service history by the Association is helpful to understanding the recently changed circumstances facing the Association.

The Association consists of more than one hundred roughly five-acre lots in the southwestern portion of the Salt Lake Valley. Up until 1994, the Foothills Water Company ("Foothills") served water to the Association members under Certificate of Convenience and Necessity ("CCN") No. 2151. In 1994, as a result of a ruling in a lawsuit among the Association, Foothills Water Company, and the family of J. Rodney Dansie that quieted title to the water system in the Association, the Commission canceled Foothill's CCN No. 2151 and issued CCN No. 2737 to the Association. (See a copy of the Order attached as **Exhibit A**.)

When Foothills first approached the Commission in 1985, one of the major issues impacting the tariff was whether the ongoing costs of a Well Lease and Water Line Extension Agreement (the "Well Lease") between Foothills' operator Gerald Bagley and Jesse Dansie could be charged to the customers. In a March 17, 1986 Report and Order in Case No. 85-2010-01, the Commission determined after a five-day evidentiary hearing that Foothills' costs of complying with the Well Lease could not be charged to the customers of Foothills but should be the responsibility of Bagley personally. The Report and Order indicated that Foothills was to charge Dansie the "actual cost of any water provided to him, his family or his other connections,

and for Mr. Dansie to seek reimbursement for same from Bagley." (Report and Order at 14.) (A copy of the Order is attached as **Exhibit B.**)

Accordingly, the Association offered to provide water to the Dansies on the terms provided in the 1986 Order attached. The Dansies refused to take water under the terms of the Commission's 1986 Order. The portion of Foothills' water system that was outside of the Association boundaries was thereafter severed from the Association's system. In 1996, after the two systems were separated, the Commission determined that because the Association was a nonprofit company that served only its members and a few others at rates equal to its members, the Association was exempt from regulation by the Commission. (Report and Order, Docket No. 95-2195-03, dated February 5, 1996.) Thus, since 1996, the Association has operated under this exemption.

Although the issue of title to the water system and water rights was determined in the 1990s, the litigation between the Dansies and the Association has continued on issues related to the Well Lease. Earlier this year, the Court of Appeals issued a second amended opinion, and the Supreme Court has decided not to review that decision. As a result of this most recent decision, the Dansies have sent a demand to the Association for water service under the Well Lease. (See attached e-mail from Rodney Dansie as **Exhibit C.**) While there continues to be disagreement about what the Well Lease requires, the Association recognizes that it has certain obligations under the Well Lease to the Dansies. Indeed, the Association has repeatedly indicated a willingness to the Dansies to allow reconnection of the two systems, so long as the proper government approvals are in place before reconnection, and so long as the Dansies pay the costs of reconnection as required by district court.

As should be fairly obvious, if water is provided by the Association under the Well Lease as demanded by Mr. Dansie, rates for other customers will need to be raised to account for that preference. Ultimately, the Association would like to ensure its compliance both with the court rulings in its case with the Dansies and with generally applicable law, including the Public Utilities Code. Specifically, the Association is concerned about Utah Code section 54-3-8's requirement that "a public utility may not: (a) as to rates . . . grant any preference or advantage to any person." Furthermore, the Commission's recent rulings, in other matters, raise a question as to whether the Association should now be regulated as a public utility. Although the Association is a nonprofit corporation that provides water to its members, it also provides water to nonmember connections outside its boundaries who have no say or vote in the rates charged by the Association. These connections currently pay rates equivalent to those paid by members, but they do not have any voting rights within the Association or any representation on the Association Board which sets rates for the culinary water served. The Dansies now seek water service both inside and outside the Association boundaries that would not be charged the same rates as other water customers.

Accordingly, the Association is sending this letter to disclose material changes that could affect its status as an exempt water company. The Association is seeking guidance from the Commission as to whether or not it can serve water to some customers at a preferential rate. The

Association is willing to cooperate with the Commission and the Division of Public Utilities to determine the Commission's jurisdiction under the circumstances outlined in this letter.

If you have any questions, please do not hesitate to contact us.

Sincerely yours,
**SMITH HARTVIGSEN, PLLC**

J. Craig Smith
Matthew E. Jensen

Cc: Hi-Country Legal Committee (via e-mail)
Shauna Benvengnu-Springer (DPU)
Rodney Dansie
Patricia Schmid

# EXHIBIT A

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

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|---|---|
| In the Matter of the Application for a Certificate of Convenience and Necessity of HI-COUNTRY ESTATES HOMEOWNERS ASSOCIATION and Concomitant Decertification of FOOTHILLS WATER COMPANY Applicant | DOCKET NO. 94-2195-01<br>REPORT AND ORDER<br>Certificate No. 2737 |

ISSUED: March 23, 1994

## SYNOPSIS

Applicant possessing adequate assets to serve the area heretofore served by Foothills Water Company, and Foothills Water Company no longer possessing adequate plant to serve said area, and the fitness of Foothills Water Company being otherwise questionable, we grant the application.

Appearances:

| | | |
|---|---|---|
| Larry W. Keller | For | Applicant |
| Laurie Noda, Assistant Assistant Attorney General | " | Division of Public Utilities, Utah Department of Commerce |
| J. Rodney Dansie | " | Foothills Water Company |

By the Commission:

## PROCEDURAL HISTORY

This matter came on regularly for hearing the tenth day of March, 1994, before A. Robert Thurman, Administrative Law Judge, at the Commission Offices, 160 East 300 South, Salt Lake City, Utah. Owing to irregularities in notice, further proceedings were conducted March 17, 1994. Evidence was offered and received, and the Administrative Law Judge, having been fully advised in the premises, now enters the following Report, containing proposed Findings of Fact, Conclusions of Law, and the Order based thereon.



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FINDINGS OF FACT

1. Hi-Country Estates Homeowners Association (hereafter "Applicant") is a nonprofit corporation organized under the laws of Utah and in good standing therewith.

2. Foothills Water Company (hereafter "Foothills") is a water corporation certificated by this Commission.

3. Owing to the present status of certain litigation, Applicant holds title to most of the plant (water rights, storage and distribution lines) formerly owned by Foothills. The only parts of the system not now owned by Applicant are a storage tank (hereafter "the upper tank") and laterals to serve two small contiguous areas, namely Beagley Acres and South Oquirrh.

4. It is feasible to serve the area without the upper tank and the laterals. Applicant stands ready, willing and able to replace those assets if no accommodation can be reached with the owners thereof.

5. Applicant stands ready to serve water users outside the service area at its tariffed rates if such users wish to join the association.

6. Without the plant formerly owned by Foothills, it is not feasible for Foothills to continue to serve the area. Foothills does not have the financial resources to replace its former assets.

7. There are appeals pending from the quiet title order in favor of Applicant; however, any reversal is entirely speculative, and since no stay has been entered, there is



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no legal impediment to the application.

CONCLUSIONS OF LAW

We take administrative notice of the long history of Foothill's violations of our Orders and conflicts with many of its customers, as well as the intractable and ongoing conflict of interest of its ownership. Given this long history, and Foothill's present inability to muster the resources to serve, it is clearly in the public interest to decertify Foothills and transfer the responsibility for service to Applicant.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that:

>> Certificate of Convenience No. 2151 issued to Foothills Water Company, be, and it is, canceled and annulled, effective the date of this Order; said Company may bill for service rendered during March, 1994, to the effective date of this Order.

>> Foothills Water Company's manager, J. Rodney Dansie immediately cease and desist from acting in any manner to operate the system or to interfere with the operation of the system by the certificate holder named hereafter.

>> Certificate of Convenience and Necessity No. 2737 be, and it is, issued to Hi-Country Estates Homeowners Association as follows:

> To operate as water corporation serving the following described service area: Beginning at the Northeast corner of the Southwest quarter of the Southwest quarter of Section 33, Township 3 South, Range 2 West, Salt Lake Base and Meridian (SLBM), and running thence West to the Northwest corner of the Southwest quarter of the Southwest

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quarter of said Section 33; thence South to the Northeast corner of Section 5, Township 4 South, Range 2 West, SLBM; thence West to the Northwest corner of the Northeast quarter of the Northeast quarter of said Section 5; thence South to the Southwest corner of the Northeast quarter of the Northeast quarter of said Section 5; thence West to the Northwest corner of the Southwest quarter of the Northwest quarter of said Section 5; thence South to the Southwest corner of said Section 5; thence East to the Southeast corner of the Southwest quarter of the Southwest quarter of said Section 5; thence North to the Northeast corner of the Northwest quarter of the Southwest quarter of said Section 5; thence East to the center of Section 5; thence South to the Southwest corner of the Northwest quarter of the Southeast quarter of said Section 5; thence East to the Southeast corner of the Northeast quarter of the Southeast quarter of said Section 5; thence South to the Southwest corner of Lot 103, Hi-Country Estates Subdivision; thence Southeasterly to the Southeast corner of said Lot 103; thence Northeasterly along the East property Lines of Lots 103 and 102, Hi-Country Estates Subdivision to the west line of the Southeast quarter of the Southwest quarter of Section 4, Township 4 South, Range 2 West, SLBM; thence South to the Southwest corner of the Southeast quarter of the Southwest quarter of said Section 4; thence East to the Southeast corner of the Southwest quarter of the Southeast quarter of said Section 4; thence North to the Northeast corner of the Southwest quarter of the Southeast quarter of said Section 4; thence West to the Northwest corner of the Southwest quarter of the Southeast quarter of said Section 4; thence North to the North quarter corner of said Section 4; thence East to the Southeast corner of Lot 1A, Hi-Country Estates Subdivision; thence North to the South boundary of Hi-Country Road; thence Easterly along the South boundary of Hi-Country Road to the South boundary of



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Utah State Highway U-111; thence Northwesterly along the South boundary of said highway to the North line of the Southeast quarter of the Southwest quarter of Section 33, Township 3 South, Range 2 West, SLBM; thence West to the point of beginning.

>> The decertification and certification ordered above are subject to further order of the Commission and reversal in the event that title to the assets necessary to operate the system is affected by subsequent action in the courts.

>> To obviate questions relating to fire protection, Hi-Country Estates Homeowners Association will file with the Commission, commencing May 1, 1994, monthly reports of the progress of efforts to bring the system into compliance with requirements of the Salt Lake Fire Marshall.

>> Rates are provisionally set to equal those allowed Foothills Water Company in the Commission's last rate Order; the Division of Public Utilities shall undertake an immediate review of said rates to determine if they are just and reasonable for Hi-Country Estates Homeowners Association, and report to the Commission no later than June 1, 1994.

>> Any person aggrieved by this Order may petition the Commission for review within 20 days of the date of this Order. Failure so to do will forfeit the right to appeal to the Utah Supreme Court.

DATED at Salt Lake City, Utah, this 23rd day of March, 1994.

/s/ A. Robert Thurman
Administrative Law Judge



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# EXHIBIT B

DOCKETED

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

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|---|---|
| In the Matter of the Application of FOOTHILLS WATER COMPANY, INC. for a Certificate of Convenience and Necessity to Operate as a Public Utility. | CASE NO. 85-2010-01<br>REPORT AND ORDER |

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ISSUED: March 17, 1986

Appearances:

| | | |
|---|---|---|
| Brian W. Burnett<br>Assistant Attorney General | For | Division of Public Utilities<br>Department of Business Regulation, State of Utah,<br>Intervenor |
| Val R. Antczak | " | Foothills Water Company, Inc.,<br>Applicant |
| Stephen R. Randle | " | Hi-Country Estates Home Owners' Association,<br>Protestant |

By the Commission:

Pursuant to notice duly served, this matter came on for general rate hearing on January 22, 23, 24, 27 and 28, 1986, before Kent Walgren, Administrative Law Judge for the Utah Public Service Commission. Applicant, Foothills Water Company, Inc. ("Foothills") filed its original Application on June 7, 1985. Hearings were held on July 8, 1985 and July 23, 1985, at which time some evidence was offered and received. On August 6, 1985 the Commission entered its Order granting Applicant a Certificate of Convenience and Necessity and sanctioning interim rates in accordance with a stipulation between the Applicant and the homeowners of Hi-Country Estates. On August 16, 1985 Applicant filed its Amended Application, praying that the Commission

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Exh. 1

PENGAD-Bayonne, N. J.

approve a basic water rate of $152.00 per month per customer, plus an additional amount for usage over 27,000 gallons per month. On August 28, 1985 additional evidence was offered and received, on the basis of which the Commission (see Second Interim Report and Order issued September 6, 1985) set interim rates (subject to refund) of $27.50 per month for the first 5,000 gallons and $1.50 per 1,000 gallons over 5,000 and a standby fee of $10.00 per month for lot owners unconnected to the water system.

In its September 6, 1985 Report and Order the Commission, having concluded that it may not be able to set just and reasonable rates without asserting jurisdiction over Jesse Dansie, the supplier (pursuant to a lease) of the water to Hi-Country Estates, ordered Mr. Dansie to appear on September 16, 1985 and show cause why he should not be made a party to this proceeding. On account of ever mounting legal fees and representations by counsel that negotiations for the sale of the water company were underway that might remove the Commission's jurisdiction, a final ruling on that issue was deferred. Although a sale of Foothills' shares to Rod Dansie, son of Jesse Dansie, was consummated, Commission Jurisdiction was not affected. On January 21, 1986, just prior to the general rate hearing, the parties, having apparently concluded that the Commission could set just and reasonable rates without asserting personal jurisdiction over Jesse Dansie, moved that the show cause be quashed which motion the Administrative Law Judge took under advisement.

The Administrative Law Judge, having been fully advised in the premises, now makes and enters the following recommended Findings of Fact, Conclusions of Law, and Report and Order based thereon:

## FINDINGS OF FACT

1. Applicant is a corporation organized and existing under the laws of the state of Utah; Applicant was incorporated in June, 1985. On August 8, 1985 Applicant was granted Certificate of Convenience and Necessity No. 2151 and interim rates were set by this Commission. The interim rates were modified by the Commission's Second Interim Report and Order issued September 6, 1985.

2. Protestant, Hi-Country Estates Home Owners' Association ("Homeowners") is a Utah non-profit corporation consisting of the homeowners of Hi-Country Estates subdivision, Phase I, located a few miles southwest of Herriman, Salt Lake County, Utah.

3. Applicant is a water corporation, proposing to provide culinary water to a residential area in the southwest corner of Salt Lake County. Applicant's proposed service area (see Exhibit 16) includes all of the Hi-Country Estates subdivision, Phase I, plus three areas (approximately one-sixteenth section each) along the western border of the platted subdivision and referred to as the "Tank 2 area", the "South Oquirrh area"

and the "Beagley area" (see Exhibit 17). The proposed service area differs slightly from that approved by the Commission when Applicant was granted its certificate.

4. Applicant's service area consists of 63 active customers and 54 standby customers. In addition, the well and facilities which supply water to Applicant also supply water to thirteen (13) hook-ups outside the service area to the southeast, referred to hereafter as the "Dansie hook-ups" or "Dansie properties."

5. Applicant's ownership of water company assets is contested by the Homeowners and is the subject of a lawsuit currently pending in the Third Judicial District Court of Salt Lake County (Civil No. C85-6748).

6. Hi-Country Estates subdivision, Phase I ("Subdivision"), was initially developed in about 1970 by a limited partnership consisting of general partners Gerald H. Bagley ("Bagley"), Charles Lewton ("Lewton") and Harold Glazier ("Glazier") and a few additional limited partners. Subdivision Public Report #325, issued by the Real Estate Division of the Utah Department of Business Regulation on June 8, 1970 (Exhibit 69), states that as of that date the plat had not been recorded. The Public Report, which was to be delivered to prospective lot purchasers, also states:

> WATER: Water will be supplied by the Salt Lake County Water Conservancy District... Costs of installation to be borne by subdivider.

The Report further notes that the Salt Lake County Water Conservancy District ("Conservancy District") has not yet annexed the property and that before it does certain facilities will have to be constructed.

7. On August 16, 1970, a limited partnership consisting of Bagley, Lewton and Glazier, entered into an agreement (Exhibit 42) with Jesse Dansie and his wife, Ruth, pursuant to which the Dansies leased to the partnership a well and water rights (evidenced by Certificate #0217, application #26451) to 1.19 cfs (cubic feet per second). The water was to be used by the partnership to supply water to its "subdivision(s) developed and being developed in the area..." The term of the lease was five (5) years, during which time the partnership was to pay the Dansies $300 per month, or a total of $18,000. In addition, the partnership was to maintain the well, provide the Dansies one (1) connection at actual cost and the Dansies were to be allowed to use the water at any time it was not being used by the developers, for which the Dansies were to pay the costs of pumping. The partnership also had an option to extend the lease an additional five (5) years for $600 per month. The well referred to in this lease can produce approximately 480 gallons per minute and is located a few hundred feet north of the subdivision boundary on property owned by Jesse Dansie. It is referred to hereafter as "Well No. 1".

8. In March, 1971, Bush & Gudgell, registered professional engineers, prepared specifications for the construction of the Hi-Country Estates Water System, Phase I (see Exhibit 66);

the following month the Conservancy District was formally petitioned (but apparently never acted affirmatively) to annex the Subdivision. In or about 1972, the Subdivision plat was approved and recorded and construction began on some homes.

9. On April 1, 1974 (the photocopy of Exhibit 50 appears to read 1971, but the last page of Exhibit "A" of Exhibit 51 gives the date April 1, 1974) a renewable five-year lease was executed between Hi-Country Estates (a corporation and a general partner of the developer partnership) and Roy Glazier, the owner of Lot 51, for the lease of an existing deep well (hereafter "Glazier Well") which would provide water for the Subdivision. The terms were $300 per month for the first five years and $400 per month for the next five years. In addition, Glazier would be permitted to withdraw seven (7) gallons per minute from April 1 to October 1 at no cost, the lessee being required to pay the pumping costs and maintenance. A letter from the Utah State Department of Health to Hi-Country Estates, dated June 3, 1974, approves the Glazier Well for 72 residential connections, "based on a supply of 80 gallons per minute... as certified by Call Engineering, Inc."

10. Although Bagley was involved in the initial development of the Subdivision, sometime about 1972 he withdrew from the limited partnership. Then, in May of 1974 he personally repurchased the development from the developer partnership. The Agreement (Exhibit 51) memorializes the sale of sixteen (16)

unsold lots, the rights in the Glazier Well lease, the obligations under the Dansie well Agreement and "All right, title and interest in and to the water system and equipment serving Mi-Country Estates."

11. On April 7, 1977, Jesse Dansie, as lessor, and Bagley, as lessee entered into a "Well Lease and Water Line Extension Agreement" (hereafter "Well Lease Agreement") for Well No. 1, the same well upon which the 1970 lease had been executed (see paragraph 7, supra). Under this ten-year lease (which expires in April, 1987), in return for the use of the well and water therefrom, Bagley agreed to the following:

a. To pay $5,100 plus $300 per month for the first five years and $600 per month for the next five years.

b. To provide Jesse Dansie with five free residential hook-ups to members of his immediate family, including reasonable amounts of culinary and irrigation water, presumably at no cost. These hook-ups were for Jesse Dansie's children who were building or planning to build homes just east of the Subdivision.

c. To provide Jesse Dansie with fifty (50) free residential hook-ups. These would be charged water fees by Bagley, who would pay 50 percent of any amounts collected to Jesse Dansie.

d. That Jesse Dansie be allowed to use any excess water not being used by Bagley for only the costs of pumping.

e. To indemnify and pay Dansie's court costs and attorney's fees "of any nature whatever" which arise out of the Well Lease Agreement. No comparable provision was made for Bagley's indemnification or the recovery of his legal fees should he prevail.

f. That Jesse Dansie be provided water on these same terms for as long as the Subdivision water system is in existence (even after the expiration or termination of the agreement).

In addition, the Well Lease Agreement provided for the construction of three water line extensions, all to be completed within one year:

Extension No. 1: From Well No. 1 to the lines of the existing Hi-Country Water Company system (along the north Subdivision boundary). Jesse Dansie was to dig the trench and Bagley was to provide pipes and all other materials and easements. Extension No. 1 was to be maintained by Bagley and owned by Jessee Dansie. Dansie would also have the right to take water from any part of the extension to serve his own property.

Extension No. 2: From the most easterly point of the Subdivision to the Dansie water line at approximately 7200 West and 13300 South (all outside of the Subdivision). Dansie was to pay for, maintain and own this extension, but Bagley was to be permitted to run water from the Subdivision system through this line, to property he owned approximately three (3) miles east of the Subdivision, which he hoped to develop to be known as "The Foothills."

Extension No. 3: Dansie was to install, pay for and own an extension from his own water system at 6800 West and 13000 South extending along 6800 West to 13400 South. This extension would terminate at the northwest corner of Section 7 (T4S, R1W), in which Bagley owned the property just referred to. Bagley was to maintain this extension during the term of the Agreement.

Subsequently, on July 3, 1985, the Well Lease Agreement was amended to define the "reasonable" amount of water to be provided at no cost to the five (5) Dansie immediate family hook-ups as 12,000,000 gallons per year, to provide in addition free water to Lot 51 of the Subdivision, apparently now owned by one of the Dansies, and to specify that the pumping fees for any excess water used by the Dansies be restricted to incremental pumping power costs, rather than shared power costs for pumping.

12. In 1980, the Subdivision water company was transferred from Bagley to another limited partnership, Jordan Acres ("Jordan Acres"), of which Bagley was a general partner. On June 7, 1985, the day the initial Application was filed with this Commission, the water company assets were transferred from Jordan Acres to Foothills, in return for all of Foothills' outstanding shares. On October 31, 1985 all of the stock and assets of Foothills were transferred from Bagley to Rod Dansie. Dansie, who had been watermaster of the Subdivision water system for a number of years, took control of Foothills in partial satisfaction of $80,447.43 he claimed from Bagley for unpaid bills for labor and materials furnished to the water system.

13. Between 1970 and 1981, the residents of the Subdivision were charged $100 per year for water. In February, 1981, Bagley summarily raised the yearly water rate to $400. The residents balked, tempers flared, and in 1985 Bagley was finally forced to seek Commission sanction of rates.

14. From about 1972 until August 8, 1985, when Applicant was granted its Certificate of Convenience and Necessity, it acted illegally as an uncertificated public utility. The record is clear that Bagley and his partners knew from the beginning that unless they were annexed by the Conservancy District they would be subject to Commission jurisdiction. In a letter, dated May 27, 1970 (Exhibit 6R), from Lewton to the Conservancy District, Lewton notes that "we do not intend to become a water utility company..." In the April 7, 1977 Well Lease Agreement between Bagley and Jesse Dansie, paragraph F.3. states:

> 3. Dansie further agrees that Bagley may apply to the Utah Public Service Commission for such permits or approvals as may be required and Dansie shall cooperate fully in all respects as may be required to obtain such permits or approvals as may be required by the Public Service Commission. Bagley agrees to pay all costs incurred in obtaining such approval, including, but not limited to, legal and engineering fees.

Despite Bagley's awareness that he was subject to Commission jurisdiction, the records of the Commission show no contact by him prior to June of 1985.

WELL LEASE AGREEMENT

15. Of the various problems involved in setting the just and reasonable rates mandated by U.C.A. Section 54-3-1, the Well Lease Agreement described in paragraph 11 above is the most troublesome. The Commission finds that it is unreasonable to expect Foothills to support the entire burden of the Well Lease Agreement. This Agreement, insofar as it relates strictly to benefits received by Foothills (without taking into account the benefits Bagley may have perceived in view of his future development plans) is grossly unreasonable, requiring not only substantial monthly payments, but also showering virtually limitless benefits on Jesse Dansie and the members of his immediate family. There is some evidence on the record to indicate that both Bagley and Jesse Dansie had future development plans in mind (perhaps even in some form of partnership) and that the Well Lease Agreement was entered into on both sides primarily with that in mind and only secondarily to provide water to the residents of the Subdivision. We find that the Division's estimate of the actual value of the Well Lease of $368 per month or $4,416 per year (Exhibit 58), is reasonably accurate.

Yet the benefits which Jesse Dansie stands to receive, in addition to the $600 monthly lease payments, are substantial:

a. 50 free hook-ups. Value: $37,500 ($750 x 50).

b. Five free residential hook-ups. Value: $3,750 ($750 x 5).

c. 12,000,000 gallons of free water per year. (We note that this is nearly as much as the entire projected yearly consumption by the 63 active customers of the Subdivision.) Using Applicant's figures for annual power costs to Foothills customers for the main pump only ($11,497.84 (see Exhibit 53), plus incremental pumping costs for the additional 12,000,000 gallons ($2,540.95 see Exhibit 85, p. 3), the total cost of power is $14,038.79* per year, of which 44 percent (see Exhibit 62--Allocation Factor Based on Usage), or $6,177.07, is attributable to the Dansies. When the chemical costs attributable to the Dansies of $176 are added (see Exhibit 85, p. 3), the total estimated value of the free water is $6,353.06 per year.

Since the Well Lease Agreement purports to require Bagley to provide water on these same terms "for such time beyond the expiration or termination of this Agreement as water is supplied to any of the Hi-Country properties or that the lines and water system referred to in this Agreement are in existence...", if one assumes, for example, that the system installed in 1972 has a 40-year useful life (see Exhibit 24) and that the costs of power and chemicals remain the same, the potential value of the 12,000,000 gallons of free water alone from 1977, the year

* The July 3, 1985 Amendment to the Well Lease Agreement (Exhibit 10) which defines the "reasonable" free water for the Dansies as 12,000,000 gallons and specifies that the power costs for excess water shall be figured incrementally rather than proportionately lacks meaningful consideration and is, to the extent relevant to our inquiry, invalid.

the lease was executed, to the year 2012, is $222,357.36. While no one can blame Mr. Dansie for desiring to provide free water to his children in virtual perpetuity, this Commission would be abrogating its statutory duty were it to impose such a burden on Foothills' present and future customers.

d. Although it is difficult to arrive at precise dollar values for the rights to the excess water and for the indemnification rights and rights to legal fees, it is undeniable that these have some value.

Thus, the total potential liability under the Well Lease Agreement is in excess of $263,607. We find that it would be unjust and unreasonable to expect Foothills' 63 active customers to support the entire burden of the Well Lease Agreement. We further find that payment of the $600 monthly Lease payment by Foothills will adequately cover the value of the benefit Foothills is receiving under the Lease and that the remaining burdens of the Lease should be Bagley's personal obligation. Paragraph F.2. of the Well Lease Agreement makes Bagley personally responsible to fulfill the terms and conditions of the Lease, whether or not a water company is created to which Bagley conveys or assigns the Well Lease Agreement. Under paragraph F.3. of the Lease, Jesse Dansie agrees that Bagley may apply to the Public Service Commission for a certificate and Dansie agrees to "cooperate fully in all respects as may be required to obtain such permits or approvals as may be required by the Public Service Commission." As part of Mr. Dansie's cooperation with the

Commission, it is reasonable to expect him to look to Foothills for the $600 monthly lease payment and to Bagley personally for any remaining obligations under the Well Lease Agreement.

At the hearing, Rod Dansie offered some testimony as to his father's intentions with respect to the Well Lease Agreement in the event the Commission were to require the Dansies to pay for the water obtained from Well No. 1. He indicated that the Dansies own numerous other wells and water rights in the area and that they would likely disconnect themselves from the Foothills system and obtain their water elsewhere.

It is, of course, up to Jesse Dansie where he procures his water. The Commission has no objection to the Dansies continuing to obtain their water from Well No. 1, provided the actual pro-rata (not incremental) costs for power, chlorination and water testing involved in delivering that water are paid for by someone other than the customers in Applicant's service area. We find that it is reasonable for Foothills to bill Jesse Dansie for the actual cost of any water provided to him, his family or his other connections, and for Mr. Dansie to seek reimbursement for same from Bagley.

RATE BASE

16. The amount of rate base to be allowed the Applicant is contested. Applicant (Rev. Exhibit 23) claims a rate base of $142,200.56, the capital expenses for improvements acquired since 1975 that remain used and useful. The Division recommends $7,059.73, the cost of the six-inch meter installed in December,

1985 to measure the amount of water being consumed by the Dansies. The Division claims that since there is a dispute as to the ownership of Foothills assets, no additional rate base should be allowed (see Exhibits 17, 40 and 67). The Homeowners, claiming ownership of all assets of the water system, argue that Applicant's rate base should be zero.

17. We find that all improvements to Foothills prior to 1981 are not includeable in rate base because:

a. Bagley was selling lots at a profit until 1976 (see Exhibit 25).

b. The improvements made between 1977 and 1980 were to have been provided by Bagley as part of the original system. For improvements made from 1981-1985, we find as follows:

1981: The pressure valve by lot #16 and the new air and vacuum valve and check valve on booster station are allowable in rate base (see Rev. Exhibit 23). Total allowed: $2,611.93.

1982: The new controls for tank #2 and new relay on booster station are allowable in rate base (see Rev. Exhibit 23). Total allowed: $1,116.47.

1983: No costs allowable for rate base. The 75 H.P. motor becomes Jesse Dansie's property by the terms of the Well Lease Agreement. Insofar as the replacement of the 600-foot section of main is concerned, we find that Applicant failed to demonstrate that the costs involved in making that repair were

just and reasonable and that there is a valid dispute as to the ownership of the main. In addition, Bagley would have been responsible to assure that the main was in good condition before the system would have been accepted by the Conservancy District.

d. 1984: No improvements.

e. 1985: The replacement of booster pump, starter control panel, new tank overflow control valves, six-inch metering station and 1½-inch metering station are allowable in rate base. The check valve for the deep well is not allowable because it becomes Jesse Dansie's property by the terms of the Well Lease Agreement. Total allowed: $12,606.59.

Thus, Applicant's total allowable rate base is $16,334.99.

RATE OF RETURN

18. The parties stipulated, and the Commission finds, that 12 percent is a reasonable rate of return.

EXPENSES

19. The Commission notes that Bagley's management of Foothills and its predecessors has been less than commendable and finds there is cause for concluding the utility will be more competently managed in the future. Given the expected improvements, and ambiguities in the costs of providing service in the past, the Division's projected test year ending December 31, 1986 seems reasonable. U.C.A. Section 54-4-4(3), however, limits future test periods to 12 months from the date of filing (amended

filing date: August 16, 1985); we will thus have to adopt a test year ending December 31, 1985 (see Rev. Exhibit 20) and make attritional adjustments to reflect future conditions. The Homeowners generally supported the Division's recommendations in this area.

a. Accounting and Administrative: Applicant is requesting $10,200; the Division and Homeowners recommend $3,000. Applicant intends to hire an accountant at $18.00 per hour; the Division contends that a computer accounting service is adequate. Applicant's figure includes the cost of office rental and $150-$200 per month for a secretary. The Division's witness testified that Rod Dansie should run the water company out of his home at no charge to the users. We find that the Division's and Applicant's figure of $3,000 is reasonable, with the following adjustments:

(i) Applicant is entitled to be reimbursed for the reasonable costs of office space (either in Rod Dansie's home or elsewhere) sufficient to hold a desk, file cabinet and telephone. We find that $50 per month ($600 per year) is reasonable.

(ii) The Division assumed that the time required to read meters would be two hours per month; Rod Dansie testified it takes four--five hours. We find that four hours per month for meter reading is reasonable and that $17.20 per hour (the hourly wage paid to Conservancy District employees) is more reasonable than the $20 per hour proposed by Applicant. We thus

adjust the Division's recommended figure upward $34.40 per month or $412.80 per year. Total allowed: $4,012.80.

b. Insurance: The parties agreed, and we find, that $2,500 per year is reasonable.

c. Water lease payment: $7,200 (see paragraph 15, supra).

d. Utilities:

Main Pump. Our allowed expenses in this category are based upon the following assumptions:

(i) The Dansies will obtain their water elsewhere (if they elect to receive it from Well #1, since the water company will collect their pro rata pumping costs, the power costs for the utility will be slightly reduced, given UP&L's rate structure).

(ii) The customers will use a total of 13,000,000 gallons during 1986, of which five percent will be lost to leakage or theft.

(iii) The main pump delivers 260 gallons per minute.

(iv) The kilowatt demand of the pump is 66kW (see Exhibit 21).

(v) For every gallon of water used in the low-use months (January-May, October-December) 4.64 gallons of water are used during the high-use months (June-September) (see Exhibit 53).

(vi) For two of the high use months, because of breaks or fires, the main pump will operate on Schedule 6, rather than Schedule 3.

(vii) Electric Service Schedule 35, the Monthly Energy Charge Adjustment which is incorporated into both Schedules 3 and 6 (of which we take official notice and which will result in a relatively small adjustment upward) imposes an additional charge of $.00406 per kWh.

Thus, an average of 489,458 gallons per month will be pumped during the low-use months and 2,271,084 gallons per month during the high-use months, requiring the pump to operate 31.4 hours during the low-use months and 145.6 hours during the high-use months.

Under UP&L's Schedule No. 3, we calculate the monthly bills as follows:

(i) Low-Use Months: Customer Service Charge ($55.39), plus Demand Charge (66 kW x $3.75 per kW = $247.50), plus Energy Charge (2072 kWh x $.04087 = $84.68) plus Energy Charge Adjustment (2072 kWh x $.00406 = $8.41). Total monthly charge: $395.98.

(ii) High-Use Months:

(a) Schedule 3: Customer Service Charge ($55.39), plus Demand Charge (66 kW x $3.75 per kW = $247.50), plus Energy Charge (9610 kWh x $.04087 = $392.76) plus Energy Charge Adjustment (9610 kWh x $.00406 = $39.02). Total monthly charge: $734.67.

(b) Schedule 6: Customer Service Charge ($28.66), plus Demand Charge ([66 kW minus 5 kW] x $9.18 per kW = $559.98), plus Energy Charge ([500 kWh x .131755 = $65.88] plus [9110 kWh x .058169 = $529.92] = $595.80), plus Energy Charge Adjustment (9610 kWh x $.00406 = $39.02). Total monthly charge: $1,223.46.

Total for eight low-use months: 8 months x $395.98 = $3,167.84; total for two high-use months on Schedule 3: 2 x $734.67 = $1,469.34; total for two high-use months on Schedule 6: 2 x $1,223.46 = $2,446.92.

Total allowed for main pump: $7,084.10.

Booster Pump: Our allowed expenses in this category are based upon the following assumptions:

(i) Kilowatt demand of the booster pump is 23 kW (see Exhibit 41).

(ii) Homeowner demand will drop from 17,000,000 gallons in 1985 to 13,000,000 gallons in 1986 (76.5 percent of 1985).

(iii) Since the booster pump consumed 38,088 kWh in 1985, it will consume approximately 29,126 kWh in 1986.

(iv) For every gallon of water used in the low-use months, 4.64 gallons of water are used during the high-use months; thus, the booster pump will use 1097 kWh per month in low-use months and 5088 kWh per month in high-use months.

(v) For two of the four high-use months, because of fires or other emergencies, two booster pumps will be

required, resulting in a change from small customer to large customer status.

Using UP&L's Schedule No. 6, we calculate the monthly bills as follows:

(i) Low-Use Months: Customer Service Charge ($4.05), plus Demand Charge (18 kW x $6.45 per kW = $116.10), plus Energy Charge ([500 kWh x $.092602 = $46.30] plus [597 kWh x $.040887 = $24.41] = $70.71), plus Energy Charge Adjustment (1097 kWh x $.00406 = $4.45). Total monthly charge: $195.31.

(ii) High-Use Months:

(a) Small customers: Customer Service Charge ($4.05), plus Demand Charge (116.10), plus Energy Charge ([500 kWh x $.092602 = $46.30] plus [4588 kWh x $.040887 = $187.59] = $233.89) plus Energy Charge Adjustment (5088 kWh x $.00406 = $20.66). Total monthly charge: $374.70.

(b) Large customers: Customer Service Charge ($28.66), plus Demand Charge (18 kW x $9.18 per kW = $165.24), plus Energy Charge ([500 kWh x $.131755 = $65.88] plus [4588 kWh x $.058169 = $266.88] = $332.76), plus Energy Charge Adjustment (5088 kWh x $.00406 = $20.66). Total monthly charge: $547.32.

Total for eight low-use months: 8 months x $195.31 = $1,562.48; total for two high-use small customer months: 2 x $374.70 = $749.40; total for two high use large customer months: 2 x $547.32 = $1,094.64.

Total allowed for booster pump: $3,406.52.

Utilities total for both pumps: $10,490.62.

e. Telephone: $600.00 per year.

f. Directors' Fees: $600.00 per year, of which $300 per year is allocated for directors' insurance.

g. Legal Expenses: $3,000. Although there was some evidence offered indicating that Applicant's legal fees may exceed $10,000, we find that the majority of these fees would not have been incurred if Foothills had been certificated in 1972. We thus accept the Division's recommendation that $3,000 is reasonable (the Homeowners recommended no legal fees be granted). We further find that this amount should be capitalized over three years and thus allow $1,000 for 1986.

h. Repairs and Maintenance: In this category, the Division recommends $21,600 and the Applicant $22,872. The Homeowners sponsored no exhibit in this area. The Division's figure is based on the reasonable cost of repairs and maintenance for other water utilities of approximately the same size; Applicant's figure is based upon Foothills' average cost of repairs and maintenance for the past four years. We find that Applicant's method, which uses past data of the utility under consideration, is mostly likely to yield accurate figures for 1986. We find further that the $22,872 figure should be reduced by the difference between the $20 per hour paid during 1985 for repairs and maintenance and the $17.20 per hour we are allowing for 1986. Since 620 hours were billed for repair and maintenance from December 1, 1984 through November 30, 1985 (see Exhibit 56), the difference between the hourly rates ($2.80 per hour x 620 hours), $1,736, should be deducted. Total allowed: $21,136.

Applicant submitted proposed capital expenditures for 1986 totalling $16,094 (see Exhibits 32, 33, and 34). (These proposed expenditures are accounted for in lines 3, 4, and 8 of (division) Exhibit 57. The Division recommended that Nos. 1, 3, 4, 5 and 6 of Exhibit 57 be allowed, but reduced as follows: No. 1: $7,000; No. 3: $1,900; No. 4: $3,234.71; No. 5: $1,000; No. 6: $1,000. Total: $9,100. Jon Strawn, a Division witness, testified that the total $9,100 could be paid for out of the Division's recommended $21,600 Repair and Maintenance expense.] We note that in order to qualify for the reduced power rates allowed by the Commission, Applicant will incur some costs to set up the deep well pump for Schedule 3 operation. Since some capital costs (labor and perhaps materials also) have apparently been included in the past Repair and Maintenance figures (upon which we have based 1986 allowed expenses in this category), Applicant should be able to set up the deep well pump for Schedule 3 operation without exceeding the amount we have allowed for Repairs and Maintenance. Proposed capital improvements are not Repair and Maintenance expenses. If allowed (the Commission will be disinclined to allow capital expenditures for which Applicant does not obtain competing bids) they are to be included in rate base at some future date.

i. Chemicals: We find that the $400 per year recommended by the Division is reasonable.

j. Water Testing: We find that the $1,200 per year recommended by the Division is reasonable.

k. Uncollectible Accounts: We find that the $4,200 per year recommended by the Division is reasonable. This figure assumes collection of only 50 percent of standby fees.

l. Property Taxes: Title to the real property claimed by the utility is contested. Since the property valuation and tax notices are sent to the Homeowners (see Exhibit 40), who have historically paid these taxes and have agreed to continue paying them, we allow Applicant no expense in this category. At such time as a court of competent jurisdiction may quiet title to the real property in the Applicant, a reasonable expense in this category will be allowed.

m. Depreciation: We find it reasonable to allow depreciation only on assets included in rate base (see paragraph 17, supra). Using Applicant's (Revised Exhibit 24) and the Division's (Exhibit 83) depreciation schedules, we allow the following:

(i) 1981 assets: $2,622.93 x 5% = $131.15.

(ii) 1982 assets: $1,116.47 x 10% = $111.65.

(iii) 1983 assets: none.

(iv) 1984 assets: none.

(v) 1985 assets:

(a) Booster pump: $2,735.35 x 20% = $547.

(b) Starter control panel: $3,128.16 x 10% = $312.82.

(c) New tank overflow control valves, 6-inch metering station and 11-inch metering station: $7,743.08 x 5% = $387.15. Total depreciation: $1,389.77.

n. Regulatory Fee: The Division recommended, and we find, that $150 per year is reasonable.

Thus, Applicant's total allowed expenses are $54,879.19. [Applicant also claimed an interest expense of $4,680 (see Second Revised Exhibit 32). This is a below-the-line expense and not allowed.]

TAXES

30. The return to which Applicant is entitled is equal to rate base times rate of return, or $16,334.99 x .12 = $1,960. The taxes on this amount are as follows:

a. Utah State Corporate Franchise Tax (five percent or $100 minimum): $100.

b. Federal Income Tax (15 percent): $294.

Total taxes allowed: $394.00

TOTAL AMOUNT TO BE GENERATED BY RATES

31. The total amount needed to be generated by rates: Expenses: $54,879.19; Return: $1,960.20; Taxes: $394.00. Total $57,233.39.

REVENUES

22. Standby Fees: In both the Timber Lakes Water case and the Silver Springs Water case (Nos. 87-076-01 and 85-570-01, respectively), the Commission found that $9.00 per month was a reasonable standby fee. We find that $9.00 per month is also a reasonable standby for Foothills' customers. Since the standby fee was set at $10.00 per month in the Commission's Interim Order, Applicart shall credit $1.00 per month to standby customers who have paid the $10.00 amount during the interim period. The standby charges will thus generate $9.00 per month x 12 months x 54 customers = $5,832.

23. Other Charges: We find that the following charges are reasonable:

a. Connection Fee: $750.00.

b. Turn-On Service: $50.00.

c. Account Transfer Charge: $25.00

d. Reconnection Fee: $50.00.

e. Service Deposit: $100.00 (under the conditions set forth in Exhibit 30). These charges should generate the following income during 1986: Connection Fees: One at $750.00; Reconnection and Turn-on Fees: $200.00. Total revenues: $950.00.

24. Water Sales: According to the best available records, the Homeowners consumed approximately 16,000,000 gallons of water during 1985 (see Exhibit 59). The Division estimates

that the Homeowners will consume the same amount of water in 1986 (see Exhibits 61 and 63). Applicant estimates that the Homeowners will consume 12,358,000 gallons during 1986 (Exhibit 85). Although no price elasticity analysis was performed, the Commission is aware that as the price for a commodity increases the demand for that commodity is likely to fall. We find it probable that the increased costs of water will result in reduced consumption by the Homeowners and find that approximately 13,000,000 gallons will be consumed during 1986. The sale of the 13,000,000 gallons must generate $50,451.39.

RATE STRUCTURE

25. In its Second Interim Order, the Commission established a demand/commodity rate structure in which all customers paid $27.50 for the first 5,000 gallons and $1.50 per 1,000 gallons thereafter. In the rate hearing, the Division recommended that the first block be increased to 10,000 gallons (see Exhibit 63). Norman Sims, President of the Homeowners' Association, however, testified that the 10,000 block was too large and recommended the 5,000 minimum be retained. We find that the 5,000 minimum is reasonable and will tend to encourage conservation. We find also that both the demand and commodity charges will have to be increased over the interim rates in order to generate the required $50,451.39 and find that a rate of $27.50 for the first 5,000 gallons and $1.40 for every 1,000 gallons thereafter is reasonable and will generate $50,400.40.

MISCELLANEOUS

26. Pursuant to the Stipulation (Exhibit 1, as amended on the record), certain monies were collected by Dean Becker, attorney for the Homeowners, and placed in his trust account. To date, the Division has been unable to obtain from Mr. Becker an exact accounting of the amounts collected and disbursed from his trust account. It is reasonable for Mr. Becker to provide the Commission with a detailed accounting of all monies collected and disbursed on behalf of Foothills and its customers.

27. The Commission finds that it is reasonable and necessary for it to review and approve any proposed future lease or sale agreements for the provision of water to Applicant's service area.

28. The Commission finds that the Revenues, Expenses and Rate Structure set forth in Appendix A (made a part thereof by reference) are just and reasonable.

CONCLUSIONS OF LAW

1. In Utah Department of Business Regulation v. Public Service Commission, 614 P.2d 1242 (1980), the Utah Supreme Court stated the general rule as to burden of proof is hearing before the Commission:

> In the regulation of public utilities by governmental authority, a fundamental principle is: the burden rests heavily upon a utility to prove it is entitled to rate relief and not upon the commission, the commission staff, or any interested party or protestant; to prove the contrary. A utility has the burden of proof to demonstrate its proposed increase in rates and charges is just and reasonable. The company must support its application by way of substantial evidence...

And in cases where the weight of the evidence indicates the developer knew it was subject to Commission jurisdiction and neglected or refused to seek Commission sanction of rates, that burden to justify rates by substantial evidence "rests heavily" indeed. An uncertificated public utility which enters into unreasonable contracts, or makes expenditures which the Commission has no opportunity to review, does so at the risk of not being able to recover those expenses in rates. Before allowing the recovery of such expenses, the utility must clearly demonstrate by substantial evidence that the obligations and expenditures are reasonable and justified.

This policy applies whether or not utility company assets have been transferred from one legal entity to another, even in arm's length transactions in which there is no imputation of impropriety, when to do otherwise would penalize utility ratepayers or defeat regulatory policy. See Colorado Interstate Gas Company v. Federal Power Commission, 324 US 581, 58 PUR(NS) 65, 82-83 (1945); Cities Service Gas Company v. Federal Power Commission, 424 F.2d 411, 87 PUR3d 60 (10th Cir. 1969); Tennessee Public Service Commission v. Nashville Gas Co., 551 SW2d 315, 10 PUR4th 66 (Tenn. 1977); Re EWT Utilities, Inc., 53 PUR4th 508 (PSC Ind. 1983); Re Southern California Lumber Transport, 26 PUR3d 291 (Cal PUC 1958); Re John R. Pervatel, et al., dba Northern New Mexico Gas Company, 19 PUR3d 71 (PSCNM 1957).

In cases (such as the instant one) where a public utility is created by a developer incidental to the subdivision

and sale of land, the Commission has stated its policy with respect to capital expenditures to be included in rate base:

> ...it is the policy of the Commission to allow no return on investment by water companies unless such companies can meet the burden of showing that the investment made was not recovered in the sale of lots or in any other fashion. Dammeron Valley Water Company (Case No. 84-061-01, issued January 17, 1985 at p.7).

It is the generally accepted rule that contributions in aid of construction should be excluded from rate base (see citations at PUR3d, Valuation, Sections 248, 250). Where a developer fails to demonstrate that an investment in a water utility was not recovered in the sale of lots, that investment is deemed to be a contribution in aid of construction and excludable from rate base. In a 1981 case, the Maryland Public Service Commission held:

> In determining the rate base of a water and sewer company that offered service only to a real estate developer and whose stock was solely owned by the real estate developer, the commission found that the real estate developer had recovered through the sale of the development's lots substantially most of his investment in the sewer company; furthermore, to say that the investor had recovered via the sale of lots substantially most of the investment in plant was analogous to finding that customers had made significant contributions in aid of construction, and that such payments were customer-supplied capital. Re Crestview Services, Inc., 72 Md PSC 129, Case No. 7474, Order No. 65118, Feb. 5, 1981.

See also Re Northern Illinois Water Corp. (1959) 26 PUR3d 497; Re Green-Fields Water Co. (1964) 53 PUR3d 670; North Carolina ex rel. Utilities Commission v. Heater Utilities, Inc. (1975) 288 NC

457, 17 PUR4th 548, 719 SE2d 54; Re Princess Anne Utilities Corp. (1969) 81 PUR3d 201; Re Kaanapali Water Corp., 678 P2d 584 (Hawaii, 1984).

If a developer agrees to provide a specified water system, one meeting the standards of the Salt Lake County Water Conservancy District, the Commission may properly exclude from rate base the cost of installing the system promised if the utility does not sustain its burden of demonstrating the cost of the system was not recovered in lot sales.

3. The Commission's authority over contracts entered into between public utilities and other parties derives from four sources:

a. The Commission's General Jurisdiction. U.C.A. Section 54-3-1 mandates that the Commission assure that charges made...by any public utility...for any product...shall be just and reasonable. Section 54-4-1 vests the Commission with:

> power and jurisdiction to supervise and regulate every public utility...to supervise all of the business of every such public utility in this state, and to do all things, whether herein specifically designated or in addition thereto, which are necessary or convenient in the exercise of such power and jurisdiction.

The Utah Supreme Court recently construed the general powers of the Commission in Kearns-Tribune Corporation v. Public Service Commission (No. 19200, filed May 1, 1984):

> ...Any activities of a utility that actually affect its rate structure would necessarily be subject to some degree to the PSC's broad supervisory powers in relation to rates. The question, then, is whether the activity the

> Commission is attempting to regulate is closely connected to its supervision of the utility's rates and whether the manner of the regulation is reasonably related to the legitimate legislative purpose of rate control for the protection of the consumer.

Although the Court in the Kearns-Tribune case held that the Commission did not have the power to regulate utility conduct which was peripheral to the setting of rates (tagline requirements), in the instant case jurisdiction over the Well Lease Agreement is directly related to setting just and reasonable rates.

In Garkane Power Association v. Public Service Commission, 681 P.2d 1207 (1984), the Utah Supreme Court discussed the Commission's jurisdiction over contracts entered into by public utilities:

> There can be no doubt that not every contract entered into by a public utility is subject to the jurisdiction of the PSC. Many contracts for the purchase of supplies and equipment, and other contracts dealing with the ordinary conduct of a business, are contracts that could be litigated only in a district court not before the PSC. However, this dispute is clearly one that involves the validity of electric rates...

In a separate opinion, Justice Durham (concurring and dissenting) went on to state:

> There is no question that the PSC has the authority to investigate, interpret and even alter contracts. That question was settled in an early series of cases brought just after the enactment of Utah's Public Utility Act. In each case, the Public Utility Commission (PUC) found a contract, executed before the institution of the PUC, in

> violation of a subsequently filed rate. This Court upheld the PUC's alteration of the contracts, holding that the regulation of public utility rates was an exercise of the state's police power and was not an unconstitutional impairment of contractual obligations. (See cases cited)

Justice Durham went on to quote with approval from Arkansas Natural Gas Co. v. Arkansas Railroad Commission, 261 U.S. 379 (1923), where the United States Supreme Court stated:

> The power to fix rates...is for the public welfare, to which private contracts must yield...(at 383)

We conclude that the Commission has the authority under Section 54-4-1 to interpret and apply the Well Lease Agreement as set forth in its Findings and that such interpretation and application are reasonable.

b. The Commission's Authority Under U.C.A. Section 54-4-4. This section grants the Commission authority to investigate and modify unjust, unreasonable, discriminatory or preferential rates, fares, rules, regulations, practices or contracts of a public utility. This section is generally understood to apply to contracts (tariffs) between a utility and its customers and we therefore conclude that it is not applicable to our present inquiry.

c. The Commission's Authority Under U.C.A. Section 54-4-26. This section grants the Commission authority to require a public utility to obtain Commission approval before entering into any contract requiring a utility expenditure and withhold approval of the contract if the Commission finds it is not

"proposed in good faith for the economic benefit of such public utility." Although the Commission has in Rule A67-05-95 of the Administrative Rules of the state of Utah (General Order 95) restricted the application of Section 54-5-26 to specific situations, we conclude that since Applicant was a de facto public utility since 1972, it was subject to the Commission's powers under this section. Since the failure of Applicant to become certified made it impossible for the Commission to become aware of the terms of the Well Lease Agreement before it was executed, the Commission concludes it has the power to review that contract and withhold its approval now. We conclude that the Well Lease Agreement was not proposed in good faith for the economic benefit of Foothills and that the Commission is empowered to interpret and apply the Well Lease Agreement as set forth in its Findings and that such interpretation and application are reasonable.

d. The Definition of the Term "Public Utility" Under Section 54-2-1(30)(c). This subsection, as amended in 1985, states:

> (c) If any person or corporation performs any service for or delivers any commodity to any public utility as defined in this section, each person or corporation is considered to be a public utility and is subject to the jurisdiction and regulation of the commission and this title.

Although Jesse Dansie, as the supplier of the water to Foothills clearly falls within the purview of this subsection, and could be declared a public utility by this Commission (and would have been, were it deemed necessary), we conclude that such a

determination is unnecessary in view of the Commission's jurisdiction over the Well Lease Agreement under sections 54-5-1 and 54-4-26 as set forth above.

4. The Commission does not have the power to settle disputes as to ownership of utility property. It is the general rule that assets not owned by a public utility cannot be included in rate base; where title to utility property is disputed the courts are divided. See, e.g., Re Consumers Co., PUR1923A, 418 (Idaho, 1923); Re Capital City Water Co., PUR1925D, 41 (Mo. 1925); Re Hillcrest Water Co., 5 Ann. Rep. Ohio PUC 57 (Ohio 1917; Frackville Taxpayers' Assoc. v. Frackville Sewage Co., 7 PUR(NS) 515 (Pa., 1934).

5. The $3,000 allowed Applicant for attorney's fees should be capitalized over a period of three years.

6. Applicant is entitled to an increase in its rates and charges in order to collect total revenues in the amount of $57,769. The rates and charges set forth in the Findings of Fact and Appendix A are just and reasonable, do not reflect inflationary expectations, and are the minimum necessary to enable Applicant to render adequate service and meet current and expected demand.

Based upon the foregoing, the Administrative Law Judge now recommends the following:

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that Applicant be, and the same hereby is, authorized to publish its tariff

rporating the rates and charges as set forth in the Findings of Fact and Appendix A, which is attached hereto and incorporated by reference.

IT IS FURTHER ORDERED that Dean H. Becker, Attorney, file with this Commission, within thirty (30) days of the issuance of this Order, an exact accounting of all amounts collected and disbursed from his trust account or any other accounts on behalf of Foothills or its customers.

IT IS FURTHER ORDERED that Foothills obtain approval from this Commission before entering into any future lease or sales agreements for the provision of water to Foothills' service area or any amendment to or assignment of any lease or sales eement that is now in force and effect.

IT IS FURTHER ORDERED that the legal description of Applicant's service area shall be as follows:

BEGINNING at Northeast corner of the Southwest quarter of the Southwest quarter of Section 33, Township 3 South, Range 2 West, Salt Lake Base and Meridian, and running thence:

A. West to the Northwest corner of the Southwest quarter of the Southwest quarter of said Section 33;

B. South to the Northeast corner of Section 5, Township 4 South, Range 2 West, Salt Lake Base and Meridian;

C. West to the Northwest corner of the Northeast quarter of the Northeast quarter of said Section 5;

D. South to the Southwest corner of the Northeast quarter of the Northeast quarter of said Section 5;

E. West to the Northwest corner of the Southwest quarter of the Northwest quarter of said Section 5;

F. South to the Southwest corner of said Section 5;

G. East to the Southeast corner of the Southwest quarter of the Southwest quarter of said Section 5;

H. North to the Northeast corner of the Northwest quarter of the Southwest quarter of said Section 5;

I. East to the center of said Section 5;

J. South to the Southwest corner of the Northwest quarter of the Southeast quarter of said Section 5;

K. East to the Southeast corner of the Northeast quarter of the Southeast quarter of said Section 5;

L. South to the Southwest corner of Lot 103, Hi-Country Estates Subdivision;

M. Southeasterly to the Southeast corner of said Lot 103;

N. Northeasterly along East property line of Lots 103 and 102, Hi-Country Estates Subdivision; to the West line of the Southeast quarter of the Southwest quarter of Section 4, T4S, R2W;

O. South to the Southwest corner of the Southeast quarter of the Southwest quarter of said Section 4;

P. East to the Southeast corner of the Southwest quarter of the Southeast quarter of said Section 4;

Q. North to the Northeast corner of the Southwest quarter of the Southeast quarter of said Section 4;

R. West to the Northwest corner of the Southwest quarter of the Southeast quarter of said Section 4;

S. North to the North quarter corner of said Section 4;

T. East to the Southeast corner of Lot 1A, Hi-Country Estates Subdivision;

U. North to the South boundary of Hi-Country Road;

V. Easterly along the South boundary of Hi-Country Road to the South boundary of Highway U-111;

W. Northwesterly along South boundary of Highway U-111 to the North line of the Southeast quarter of the Southwest quarter of Section 33 T3S, R2W;

X. West to the point of beginning.

IT IS FURTHER ORDERED that Applicant be, and the same hereby is, authorized to publish its new tariff effective on one day's notice to the public and Commission;

IT IS FURTHER ORDERED that this Order be, and the same hereby is, effective on issuance.

DATED at Salt Lake City, Utah, this 17th day of March, 1986.

/s/Kent Walgren
Administrative Law Judge

Approved and confirmed this 17th day of March, 1986, as the Report and Order of the Commission.

/s/ Brent H. Cameron, Chairman

/s/ James M. Byrne, Commissioner

(SEAL) /s/ Brian T. Stewart, Commissioner

Attest:

/s/ Georgia B. Peterson
Executive Secretary

IT IS FURTHER ORDERED that Applicant be, and the same hereby is, authorized to publish its new tariff effective on one day's notice to the public and Commission;

IT IS FURTHER ORDERED that this Order be, and the same hereby is, effective on issuance.

DATED at Salt Lake City, Utah, this 17th day of March, 1986.

Kent Walgren
Administrative Law Judge

Approved and confirmed this 17th day of March, 1986, as the Report and Order of the Commission.

Brent H. Cameron, Chairman

James M. Byrne, Commissioner

Brian T. Stewart, Commissioner

Attest:

Georgia R. Peterson
Executive Secretary

APPENDIX A
FOOTHILLS WATER COMPANY
REVENUES AND EXPENSES

| | |
|---|---|
| **OPERATING REVENUES** | |
| Standby Charges ($9.00/mo. x 12 mo. x 54 standbys) | $ 5,832.00 |
| Demand Charge ($37.50/mo x 12 mo. x 63 customers) | 28,350.00 |
| Water Charge (9,220,000 gal. x $2.40/1,000 gal.) | 22,128.00 |
| Connection Fees | 750.00 |
| Turn-on and Reconnection Fees | 200.00 |
| TOTAL INCOME | $57,260.00 |
| **OPERATING EXPENSES** | |
| Accounting and Administration | $ 4,012.80 |
| Insurance | 2,500.00 |
| Water Lease | 7,200.00 |
| Utilities | 10,490.62 |
| Telephone | 600.00 |
| Directors' Fees | 600.00 |
| Legal Expenses | 1,000.00 |
| Repairs and Maintenance | 21,136.00 |
| Chemicals | 400.00 |
| Water Testing | 1,200.00 |
| Uncollectable Accounts | 4,200.00 |
| Property Taxes | 0 |
| Depreciation | 1,389.77 |
| Regulatory Fee | 150.00 |
| TOTAL EXPENSES | $54,879.19 |
| Utah State Corporate Franchise Tax | $ 100.00 |
| Federal Income Tax | 294.00 |
| Return on Rate Base | 1,960.20 |
| TOTAL NEEDED TO BE GENERATED | $57,233.39 |

# EXHIBIT C

## Carrie Vanous

**From:** RODNEY DANSIE <roddansie@msn.com>
**Sent:** Monday, December 19, 2011 4:04 PM
**To:** J. Craig Smith
**Subject:** case # 20090433-ca Hi-Country and notice of decision in case # 20110777-SC Petition - denied

12/19/2011

Hi Mr. Smith

AT the request of MR. Noel Williams of Hic-Hoa President I am contacting you regarding this matter. We (Dansies) are requesting that Hic-Hoa begin providing the obligations under the 1977 well lease and the 1985 ammendment to the lease as ordered by the Court of Appeals decision dated issued July 29, 2011. The Supreme Court denied the petitioners request for Writ of Certiorari on November 28, 2011 and the case has been remitted to the West Jordan office of the District Court.

It our understanding that the July 29, 2011 decision of the court is final on this matter and spells out the obligations of Hic-Hoa under the plain language of the well lease. We have contacted the P. S. C.of Utah and they have no records of any requests from Hi-Country Estates for a petition for certificate of convience to provide water service ( as they are exempt ).

We believe that water to lot 51 and 42 should immediately be re-connected since those conncections have been approved by the Division Drinking Water as per letter I sent to you some time ago.

I am requesting you cooperation in getting the water (owed to Dansies ) under the well lease flowing. I am willing to meet with you and work out any other arrangements that may be necessary to carry out the obligations of the well lease agreement ( according to its plain language ) as per order of the court.

We believe it is the obligation of Hic-Hoa to make all necessary arrangements and actions to get the lines connected and approvals to provide the water to the Dansies as per the well lease agreement and orders of the court of appeals decision dated July 29, 2011.

Please consider this commuication a request and formal demand to provide the water and obligations under the well lease agreement and court decision dated July 29, 2011. Should yoyu have any questions regarding this request please contact me at 801-254-4364 or by e-mail at the above e-mail address.

Thank you for any cooperation you may be able to provide in this matter. Sincerely, J. Rodney Dansie

# Exhibit B

OK
Gibson

FILED

1984 JAN 12 AM 10:08

CLERK OF THE CIRCUIT COURT
SALT LAKE DEPARTMENT

JOHN SPENCER SNOW
SNOW & HALLIDAY
Attorneys for Defendants
261 East 400 South
Salt Lake City, Utah 84111
Telephone: (801) 364-4940

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CIRCUIT COURT, STATE OF UTAH

SALT LAKE COUNTY, SALT LAKE DEPARTMENT

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| | |
|---|---|
| HI-COUNTRY ESTATES HOMEOWNERS ASSOCIATION, INC.,<br><br>Plaintiff,<br><br>vs.<br><br>LARRY BEAGLEY, ESTHER BEAGLEY, JOHN BEAGLEY, and SADIE BEAGLEY,<br><br>Defendants. | ORDER<br><br>Civil No. 83-CV-4600 |

The above-entitled matter came on for trial before the Honorable Robert Gibson, Judge presiding, in his Courtroom located in the Courts Building, 451 South 200 East, Salt Lake City, Utah, on Wednesday, the 7th day of September, 1983 at the hour of 9:30 a.m. Representatives from the Plaintiff and their respective attorney, CON KOSTOPULOS, were present and in person. The Defendants were present and in person and represented by their respective attorney, JOHN SPENCER SNOW. The parties, by and through their respective attorneys of record, presented a stipulation to the Court, relative to

all of the issues in the above-entitled action. The above-entitled Court, having heard the stipulation of the parties, and the same being accepted, and good cause appearing therein,

IT IS HEREBY ORDERED as follows:

1. Defendants be and the same are hereby ordered to pay to the Plaintiff the sum of $1,746.30 on or before December 31, 1983 for all past due assessments due and owing by the said Defendants to Plaintiff in this action.

2. In the event Defendants, and each of them, fail to pay the sum of $1,746.30 to the Plaintiff by December 31, 1983, Plaintiff be and the same hereby is awarded judgment against the Defendants, jointly and severally, in the sum of $1,746.30, with interest accruing thereon at the rate of 12% per annum from and after January 1, 1984.

3. No further assessments, including road and garbage assessments, are due and owing by Defendants to Plaintiff for any services provided to Defendants from the Plaintiff.

4. Defendants be and the same are hereby ordered to refrain from any further use of the garbage collection services provided by the Plaintiff.

5. Defendants have no further membership with the Plaintiff, and are hereby ordered to refrain from the

exercise of any future voting rights, either in person or by proxy, at any future meetings of, or conducted by, Plaintiff.

6. The right-of-way granted to Defendants by Plaintiff by the 1978 agreement or any other agreements heretofore entered into by and between the parties be and the same is hereby terminated effective January 1, 1984.

7. Defendants be and the same are hereby enjoined from the use of the Plaintiff's road to gain access to their property effective December 31, 1983, unless a further agreement is entered into by and between the parties.

8. Any and all information relative to the alleged voting rights of the Defendants at any prior meetings of the Plaintiff be and the same are in no way effected by this order and both Plaintiff and Defendants be and the same are hereby granted full access to the use of such information, as evidence in a pending action in the Third Judicial District Court in and for Salt Lake County, State of Utah entitled Richard L. James, et. al., vs. John W. Davies, et. al. (Civil Number C-81-8560).

9. Defendants be and the same are hereby ordered to refrain from the use of the right-of-way granted by Plaintiff in the event the said Defendants fail to pay the sum of $1,746.30 by December 31, 1983.

10. No other claims, demands, or causes of action exist between Plaintiff and Defendants, except those

claims set forth in the District Court action referred to above.

11. Each party be, and the same is hereby ordered to pay for his or its own attorney fees and costs of Court incurred in this action.

12. The above-entitled action be and the same hereby is dismissed with prejudice upon compliance by Defendants with the orders of this Court, including the payment of $1,746.30 to Plaintiff by December 31, 1983.

DATED this 11 day of Jan, 1984.

BY THE COURT:

ROBERT C. GIBSON
Circuit Court Judge

APPROVED AS TO FORM:

CON KOSTOPULOS
Attorney for Plaintiff

STATE OF UTAH )
County of Salt Lake ) ss.
I, [illegible] Clerk of the Circuit Court, State of Utah, in and for [illegible] County, Salt Lake Department, do hereby certify that the foregoing is a true and correct copy of [illegible] and appearing on the records and docketing in my office as such Court. This 20 day of Jan 19 84
[illegible] Clerk
By [illegible] Deputy
STATE OF UTAH CIRCUIT COURT

# Exhibit C

AGREEMENT

This agreement made this 13 day of July, 1984, by and between HI-COUNTRY ESTATES HOMEOWNERS ASSOCIATION and LARRY and ESTHER BEAGLEY, husband and wife, and JOHN and SADIE BEAGLEY, husband and wife, and HELMUT and CORAL OLSCHEWSKI, husband and wife.

WHEREAS, BEAGLEYS and OLSCHEWSKIS desire access to their property, which property is adjacent to property known as Hi-Country Estates, which property is comprised of approximately forty (40) acres and which property is different from the fifteen (15) acre parcel southeast of the forty acre parcel; and

WHEREAS, BEAGLEYS and OLSCHEWSKIS desire access over Hi-Country Estates to their subject premises mentioned above; and

WHEREAS, Hi-Country Estates desires to provide such access on a temporary basis pending the ultimate acquisition by BEAGLEYS and OLSCHEWSKIS of independant access to their subject premises without need of traversing Hi-Country Estates; and

WHEREAS, the parties do not desire to violate the intent or spirit of that certain Order in the case of Hi-Country Estates Homeowners Association, Inc. as Plaintiff, vs. Larry Beagley, Esther Beagley, John Beagley and Sadie Beagley, as Defendants, filed in the Circuit Court, State of Utah, Salt Lake County, Salt Lake Department, Civil no. 83-CV-4600;

NOW THEREFORE, the parties hereby agree and stipulate as follows:

1. That Hi-Country Estates Homeowners Association shall provide to BEAGLEYS and OLSCHEWSKIS access over Hi-Country Estates to the forty (40) acre parcel mentioned above.

2. In consideration for said access, BEAGLEYS and OLSCHEWSKIS shall pay an amount equal to that sum paid by members of Hi-Country Estates representing such members' annual assessment due. However, BEAGLEYS and OLSCHEWSKIS acknowledge and affirm that payment of such sums to Hi-Country Estates entitles BEAGLEYS and OLSCHEWSKIS to nothing more than right of access over the roads of Hi-Country Estates. Further, BEAGLEYS and OLSCHEWSKIS each acknowledge and affirm that they acquire no additional rights in the Homeowners Association or in any other entity at Hi-Country Estates by virtue of the payment of said sum, including, but not necessarily limited to, voting or any other priviledges.

3. Payment of the aforementioned annual amount due shall be assessed BEAGLEYS and OLSCHEWSKIS on an occupied residence basis. In other words, and by way of example, if BEAGLEYS and OLSCHEWSKIS occupy three separate residences in any given year at the time the aforementioned assessment comes due, BEAGLEYS and OLSCHEWSKIS shall pay three times the then assessed annual amount due from members of Hi-Country Estates. Further, BEAGLEYS and OLSCHEWSKIS hereby represent that at the time of they execution of this agreement, the occupy three such residences.

4. BEAGLEYS and OLSCHEWSKIS agree to abide by whatever road rules apply to members of Hi-Country Estates Homeowners Association for such time as they exercise the priviledge herein granted. Hi-Country Estates Homeowners Association, on a timely basis, shall keep BEAGLEYS and OLSCHEWSKIS advised of combination changes to the lock at the entry to Hi-Country Estates for the duration of this agreement. BEAGLEYS and OLSCHEWSKIS shall be invoiced annually by Hi-Country Estates Homeowners Association as and when Hi-Country Estates Homeowners Association assesses members of Hi-Country Estates at the residences of BEAGLEYS and OLSCHEWSKIS.

5. It is expressly agreed and understood that it is the responsibility of the BEAGLEYS and OLSCHEWSKIS to advise Hi-Country Estates Homeowners Association of any change in status regarding number of occupied residences to be assessed.

6. This agreement is personal to the BEAGLEYS and OLSCHEWSKIS as said families are identified below and is not transferrable.

7. This agreement is entered into with the intention that it comport with the Order mentioned above and that this agreement modifies only paragraph 7 thereof.

SUBSCRIBED by the parties hereto on the date first above written.

HI-COUNTRY ESTATES HOMEOWNERS ASSOCIATION

BY: _____
DIRECTOR

BY: _____
DIRECTOR

BY: _____
DIRECTOR

_____
LARRY BEAGLEY

_____
ESTHER BEAGLEY

_____
JOHN BEAGLEY

_____
SADIE BEAGLEY

_____
HELMUT OLSCHEWSKI

_____
CORAL OLSCHEWSKI