

Informal Complaint Report

Index Number: 4773 Company Name: Hi Country Water Company

CUSTOMER INFORMATION

Customer Name: Dansie, Rod Account Number: 2005960
Other Contact Info: Phone Number: (801) 254-4364
Customer Address: Other Phone:
Customer Address: 7198 W 13090 S Email Address:
City: Herriman State: UT Zip Code: 84096

COMPLAINT INFORMATION

Type of Call: Complaint Complaint Type: Billing Problems
Date Received: 1/8/2013 Date Resolved: 1/16/2013
Complaint Received By: Maria Martinez DPU Analyst Assigned:
Utility Company Analyst:

Company at Fault: Actual Slamming Case: Actual Cramming Case:

Complaint Description:

On the 7th of January, I called Mr. Dansie regarding the correspondence letter and statements he sent to the Division of Public Utilities for clarification of his request/complaint (See attachment). He returned my call and explained that in December of 2012, High Country Estate contracted with the Herriman City to do their billing. He states that he is being charged a standby fee on his two lots (Lot 43 on 7750 Shaggy Mtn. Road and Lot 51 on 13688 S. Shaggy Mtn. Road) and does not agree that he owes the following balance on each lot.

Lot 43 - \$2,623.21

Lot 51 - \$2,614.21

Please respond to this complaint within 5 business days in accordance to Public Service Commission Rules R746-200-8. Thank you.

Note: See correspondence file for attachments.

Complaint Response:

MATTHEW E. JENSEN
mjensen@smithlawonline.com

January 16, 2013

Marialie Martinez Via E-mail [marmartinez@utah.gov]
Utah Division of Public Utilities & Hand Delivery
Heber M. Wells Building
160 East 300 South
Salt Lake City, Utah 84111

Re: Response to Informal Complaint by Rod Dansie Against Hi-Country Estates Homeowners Association (CPCN #2737)

Dear Ms. Martinez:

This latest complaint by J. Rodney Dansie is another in a long line of attempts by Mr. Dansie to receive a subsidy from Hi-Country Estates Homeowners Association ("Hi-Country") customers. Specifically, Mr. Dansie claims that he is not obligated to pay standby fees like every other vacant lot in the Hi-Country service area. Pursuant to Utah Administrative Code section R746-200-8, Hi-Country requests that Mr. Dansie's informal complaint be dismissed because it is without merit. Not only does Utah Code section 54-3-8 prohibit Hi-Country from giving Dansie his desired preference, but there is also no legal basis for Dansie's claimed immunity from the standby fees. Indeed, the PSC ordered in 1986 that the Well Lease and Water Line Extension

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Agreement (the "Well Lease"), the 1977 agreement on which Mr. Dansie relies to dispute the charges, cannot affect customer water rates. Furthermore, the plain language of the Lease does not support Dansie's claimed immunity from standby fees. Finally, Dansie's dispute of the standby fees rings hollow where he benefits from the system, and where he insisted on collection of standby fees when he operated the water system. After a brief background discussion, each of these reasons for dismissal of Mr. Dansie's complaint is discussed below.

BACKGROUND

There is a long history between Mr. Dansie and Hi-Country that cannot be fully explored in this Response. A brief history will, however, assist you in assessing the merit of Mr. Dansie's claims. In 1977, Mr. Bagley, one of the developers of Hi-Country Estates Phase 1 Subdivision, entered into the Well Lease with Jesse Dansie, Rod Dansie's father. (A copy of the Well Lease is attached as Exhibit A.) The Well Lease required Bagley to connect the Hi-Country system with the Dansies' water system and allowed Bagley to use water from Dansie's Well #1 to provide water to the combined system. Until 1985, Bagley operated the water system, but in a series of deeds and assignments between 1975 and June 1985, the water system was conveyed to Hi-Country. Nevertheless, Bagley and Jesse Dansie signed an Amendment to Well Lease and Water Line Extension Agreement in July of 1985.

Although Bagley or his associates had been providing water service to Hi-Country residents since the early 1970s, and although the 1977 Well Lease acknowledged the obligation to receive "permits or approvals" from the PSC, neither Bagley nor his water company, Foothills Water Company, approached the PSC until 1985. In 1986, the PSC determined that the Well Lease "is grossly unreasonable" and that it "is unreasonable to expect [Hi-Country] to support the entire burden of the Well Lease Agreement." The 1986 Order further concluded that that 1985 Amendment to the Well Lease Agreement is "invalid." Thereafter, Foothill's Water Company provided water service to Hi-Country residents without allowing Dansie any preference under the Well Lease.

In 1994, the district court issued a Quiet Title Order that confirmed title to the water system and water right in Hi-Country. As a result, the PSC revoked Foothills Water Company's CPCN because it lacked the assets necessary to provide water service, and granted CPCN #2737 to Hi-Country. In 1996, the PSC granted Hi-Country an exemption from rate regulation. In 2011, the Utah Court of Appeals clarified that the Dansies' rights under the Well Lease were subject to the PSC's authority to construe contracts affecting water rates. See Hi-Country IX, 2011 UT App 252, ¶ 14, 262 P.3d 1188. In July 2012, the PSC revoked Hi-Country's Letter of Exemption and reinstated CPCN #2737. Report and Order, PSC Docket No. 11-2195-01, July 12, 2012. Finally, in December 2012, Hi-Country formally transferred collection of service and standby fees going forward to Herriman City. Customers were given notice of this change and were informed that past due amounts would be collected as provided by law by Hi-Country. See Notice attached as Exhibit B. Mr. Dansie returned his notice disputing the charges based on a vague reference to the "File" and Court Order. See Handwritten Dispute from Rod Dansie attached as Exhibit C.

I. The Well Lease Cannot Affect Rates

Mr. Dansie's sole basis for his alleged immunity from standby fees is the Well Lease, but the PSC determined in 1986 that the burdens of the Well Lease cannot fall on Hi-Country rate payers. Furthermore, the Utah Supreme Court confirmed that this ruling was within the power of PSC stating: "Under the plain language of the PSC's [1986] order, the effect of that order was to prohibit the 1977 well lease agreement from affecting the rates paid by Homeowners Association In other words, the PSC's order did not purport to invalidate the 1977 agreement, it merely limited the amount that the Homeowners Association would pay for it, a matter clearly within the PSC's rate-making authority." Hi-Country II, 901 P.2d 1017, 1023 (Utah 1995). If Hi-Country were to allow Mr. Dansie to have reserved connections on lots 43 and 51 without paying standby fees, Hi-Country's revenue would be diminished and rates would ultimately need to be adjusted to cover the expense of running the system. Thus, Mr. Dansie's informal complaint should be dismissed as lacking merit because his claimed immunity from standby fees would adversely affect rates for other customers and, accordingly, is contrary to existing PSC and court rulings.

II. The Well Lease Does Not Immunize Dansie from Standby Fees

Even if the PSC had not already determined that the Well Lease cannot result in a preference for the Dansies, the plain language of the Well Lease would still not immunize Mr. Dansie from standby fees. First, the Well Lease does not ever use the term standby fee and certainly does not provide Dansie any specific exemption from standby fees. To the contrary, Dansie expressly agreed in the Well Lease that the water system operator (i.e., Hi-Country) "is entitled to all such fees and other charges except as otherwise provided in this Agreement." Thus, because there is nothing in the Well Lease specifically exempting Dansie from standby fees, there is no question that Hi-Country is entitled to the standby fees for all vacant lots, including Dansie's lots 43 and 51.

Second, even assuming that the Well Lease could result in a preference to Dansie, and even assuming that the Well Lease provided some immunity from standby fees for the property affected, both assumptions being incorrect as discussed above, Dansie still could not claim immunity from standby fees for lots 43 and 51 because neither lot is part of the benefitted property under the Well Lease. The Well Lease describes the benefitted Dansie property as "property located in Sections 33, 34, and 35, Township 3 South, Range 2 West, Salt Lake Base and Meridian." There is nowhere in the Well Lease that gives the Dansies any rights beyond "the Dansie property." Because lots 43 and 51 are located in Section 4, Township 4 South, Range 2 West, SLBM, Dansie has no claim to any benefits under the Well Lease for those lots.

The alleged Amendment to the Well Lease signed in July 1985 cannot extend the benefits of the Well Lease. As an initial matter, the Amendment references only lot 51, so Dansie has no basis whatsoever to claim any special rights for lot 43. Furthermore, the amendment's attempted expansion of benefits to lot 51 is of no effect. The PSC determined in 1986 that the amendment was "invalid." This conclusion is even clearer today as the courts later determined that Bagley did not own the water system in July 1985. He could not, therefore, bind the water system to additional onerous obligations at that time as he attempted to do by way of the amendment. Thus, Mr. Dansie's informal complaint should be dismissed as lacking merit because his claimed

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immunity from standby fees is contrary to the plain meaning of the Well Lease.

III. Fairness Requires that Dansie Pay Standby Fees

Finally, the PSC has long recognized the valid purpose and fairness of collecting standby fees. Mr. Dansie receives actual benefits from the water system and his reserved right to connect to that system. For example, the water system provides fire protection to lots 43 and 51. The damage to his property without water for fire protection would be substantial, and his potential liability if a fire were to spread from his property due to lack of water would also be substantial. Furthermore, the value of his property is increased because of the right to connect to the water system. Not only does Mr. Dansie benefit from his reserved connections to the water system, but he always insisted on collecting standby fees when he operated the system through Foothills Water Company. His refusal to pay standby fees in spite of years of collecting them is troubling.

CONCLUSION

Based on (1) the PSC's previous ruling that Dansie could not, based on the Well Lease, receive a preference at the expense of other Hi-Country customers, (2) the lack of any support in the Well Lease for Dansie's claimed immunity from standby fees, and (3) basic principles of fairness, the Division of Public Utilities should dismiss Mr. Dansie's informal complaint under section R746-200-8 as lacking any merit. Please contact my office if you have any additional questions.

Sincerely,

SMITH HARTVIGSEN, PLLC

Matthew E. Jensen

Enclosures

cc: Legal Committee, Hi-Country HOA

CERTIFICATE OF SERVICE

I hereby certify that on the 16th day of November, 2012, I served a true and correct copy of the foregoing Response to Informal Complaint by Rod Dansie dated January 16, 2013 by causing the same to be delivered to the following

Via hand delivery and email to:

Dennis Miller – Legal Assistant
Division of Public Utilities
Heber M. Wells Building 4th Floor
160 E 300 S, Box 146751
Salt Lake City, UT 84114-6751
dpudarcquest@utah.gov
dennismiller@utah.gov

Via U.S. mail and email to:

J. Rodney Dansie
7198 West 13090 South
Herriman, UT 84096
rodddansie@msn.com

Via email to:

Patricia Schmid (pschmid@utah.gov)
Shauna Benvegnu-Springer (sbenvegn@utah.gov)]

NOTE: SEE CORRESPONDENCE FILE FOR OTHER ATTACHMENTS.

Additional Information:

1-28-2013
2nd mail correspondence complaint received with bill statement.

January 29, 2013

Informal Complaint Report

Rod Dansie
7198 W 13090 S
Herriman, UT 84096
801-254-4364
roddansie@msn.com

Dear Mr. Dansie,

This letter is in response to your recent correspondence complaint to the Division of Public Utilities (DPU) received January 28, 2013 regarding your disputed standby fees on your water bill from High Country Water Company.

In January 8, 2013, the Division (DPU) received your first correspondence complaint regarding the same issue mentioned above. This complaint was processed and sent to the company (High Country Water Company) for a response as per R746-200-8 under the Utah Public Service Commission (PSC) Rules.

The company has responded to your complaint as well as sent you a copy via U.S. mail and email to your email address: roddansie@msn.com.

Based on my review of the company's response, the company (High Country Water Company) is not in violation of the company's tariff and the PSC Rules and Regulations. Your Informal Complaint filed January 8, 2013 with the Division (DPU) is now closed.

Should you wish to seek further resolution if not satisfied with the result of the Informal Complaint investigation, a request for Mediation, or filing a Formal Complaint with the Utah Public Service Commission (PSC) are your alternatives. However, should you choose to file a Formal Complaint with the PSC, it is your responsibility to prove the merits of your complaint.

For your convenience, attached is the PSC Formal Complaint Process and Form. Please review them thoroughly and file your Formal Complaint to the PSC accordingly.

Sincerely,

Marialic Martinez
Manager, Customer Service
Division of Public Utilities
801-530-6604
marmartinez@utah.gov

On Tue, Jan 29, 2013 at 9:46 AM, J. Rodney Dansie <roddansie@msn.com> wrote:

Hi Thanks for your not and reply I would appreciate it if you would provide me a copy of the PSC approved Tariff for the water company and instructions for a formal complaint. I would appreciate it if you could provide me with a letter stating that my credit and etc will not be effected and collection action can not be taken until by case is resolved I did send a copy of the court of appeals case and its conclusion (The well lease is a valid and enforceable contract and I would appreciate your help in getting a hearing set up to review the matter. If you need more details or information please advise me. the water billing is deficient since it doesn't provide any information on who to contact if here is a question and if it cannot be resolved then contact the DPU and a phone number. Thanks Rod Dansie 801-25404364

1-29-2013
Mr. Dansie,

The instructions on how to file a Formal Complaint and the form is attached in the email I sent you as well as a paper copy I sent in the mail yesterday. You should also receive those in a couple of days. For your convenience, I will attach the form and instructions to this email again.

In response to your email today, the Division's (DPU) legal counsel Patricia Schmid will respond to your issues. However, she is tied up and has two more hearings this week. I anticipate that she will be available next week.

2-6-2013
Dear Mr. Dansie,

This letter responds to questions you previously submitted to the Division of Public Utilities (Division). You raised several issues, and each is addressed in turn.

I spoke with Ms. Shauna Benvegnu-Springer regarding your email dated January 29, 2013. She said there is currently no approved tariff on file for Hi-Country because it is still under Division review. You may however get a copy of what has been filed if you choose to by going to the Utah Public Service Commission's (Commission) website: <http://psc.utah.gov/utilities/water/dockets.html#2012>, Docket # 11-2195-01 and 12-2195-T01.

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In regard to your request for assistance in getting a hearing set up to review your complaint, the instructions and form on how to file a Formal Complaint with the Commission has been provided to you via mail and email. You will note that the information states that it is the complainant's responsibility to request a hearing.

You raised several questions regarding the billing statement. I did find that there is some merit to your claim regarding the deficiency of the billing statement. The bill lacks the notice required by R746-200-4(C)(9) that "If you have questions about this bill, please call the company." The company should correct this deficiency, and may wish to include how to contact the company itself, not just its billing agent Herriman City (Herriman). Note that the Herriman's address, phone number and fax number are printed on the page of the statement should customers have a need to contact it. On the other hand, the Commission Rule R746-200-4(C) does not require the Division's number to be printed on a periodic billing statement.

Also, I cannot provide you a letter stating that your credit will not be affected and/or collection action be taken until your case is resolved because that request does not fall under Commission jurisdiction. Rule R746-200-4(F)(4) states, "While an account holder is proceeding with either informal or formal review of a dispute, no termination of service shall be permitted if amounts not disputed are paid when due." The rule does not include protection to credit or suspension or cessation of collection action pending case resolution.

Sincerely,

Marialie Martinez
Manager, Customer Service
Division of Public Utilities
801-530-6604
marmartinez@utah.gov

6-10-2013

On Mon, Jun 10, 2013 at 10:43 AM, J. Rodney Dansie <roddansie@msn.com> wrote:

Hi Marialie Martinez I have filled out a complaint form and sent to and I am attaching a copy of a summons that was served on me by HI-Country HOA water co. I would like a call from you as I want to file a formal complaint for no approved tariff and no response from the utility and I have sent a number of requests to PSC and DUP to get the matter to be reviewed and a hearing and to no avail. I would like you help in having the summons put on hold until utility tariff and rates and hearings are held and decision on the issue is made by DUP and PSC. Call me for more information and details Thanks Rod Dansie See file at DPU. for full details (shauna springer)

6-10-2013

Mr. Dansie,

I do not have the authority to put your summon on hold. I can no longer assist you in this matter further.

As I have explained in my previous correspondence, your Informal Complaint filed January 8, 2013 with the Division (DPU) is now closed.

Any further request for a resolution may be done by filing a Formal Complaint with the UT Public Service Commission (PSC).

I have previously provided you with the instructions and the form on how to file a Formal Complaint. For your convenience, the form is attach to this email again.

If you have further questions regarding the Formal Complaint process, please contact the Commission. The Commission's contact information is provided in the attach form below.

Sincerely,

Marialie Martinez
Division of Public Utilities
marmartinez@utah.gov

Mr. Dansie filed another Informal Complaint through the DPU website: 6-10-2013

From: <SERVER@dpu.utah.gov>
Date: Mon, Jun 10, 2013 at 10:33 AM
Subject: Online Complaint Submission
To: utilcomp@utah.gov

UTILITY CUSTOMER:
FROM: Rodney Dansie
PHONE: 801-254-4364
EMAIL: roddansie@msn.com
IP: 75.162.239.43

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SERVICE ADDRESS:

lot 43 & 51 Hi-Country Phase 1
Herriman, UT 84096

MAILING ADDRESS:

7198 West 13090 South
Herriman, Utah 84096, ut 84096

UTILITY: Hi-Country HOA water co

ACCOUNT NUMBER: lot 43 & 51

COMPLAINT TYPE: Rate And Tariff

COMPLAINT: billed for standby fees and no approved tariff or rate case has been held. I am being sued for standby fee see file submitted to Dept. of public utilities

SUGGESTED RESOLUTION: Put hold on case until issues has been heard and resolved by Public Service Commission see attached summons and files sent to PSC and DUP.

6-10-2013

thanks for your response and I will file the formal complain in the forms you have provided. Please provide this request to the DUP and PSC regarding 13-2195 docket NO.