

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of the
Application of Hi-Country
Estates Homeowners Association
for Approval of its Proposed
Water Rate Schedules and Water
Service Regulations

Docket No. 13-2195-02

HEARING PROCEEDINGS

TAKEN AT:	Public Service Commission Hearing Room 451 160 East 300 South Salt Lake City, Utah
DATE:	Tuesday, March 11, 2014
TIME:	8:35 a.m.
REPORTED BY:	Nancy A. Fullmer, RMR

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1 Hearing Proceedings

2 March 11, 2014

3 PROCEEDINGS

4 THE HEARING OFFICER: Good morning,
5 everyone. We are on the record. And thank you for joining us
6 for this hearing today involving Docket 13-2195-02 in the matter
7 of the application of Hi-Country Estates Homeowners
8 Association for approval of its proposed water rate schedule and
9 water service regulations.

10 For those who do not know me, I'm Melanie Reif. I
11 serve as the Administrative Law Judge for the Utah Public
12 Service Commission. And this morning--as some of you know,
13 this morning is the continuation of the hearing that started last
14 week and we rescheduled it for this morning at 8:30. And let's
15 start by taking appearances starting with you, Mr. Smith.

16 MR. SMITH: Thank you. Craig Smith and Adam
17 Long on behalf of the applicant Hi-Country Estates Homeowners
18 Association.

19 THE HEARING OFFICER: And, Mr. Smith, do you
20 have with you witnesses today?

21 MR. SMITH: I do. We have Mr. Randy Crane who's
22 an officer in the homeowners association. We have Krystal
23 McCauley who's an expert witness for us. And--

24 MR. LONG: Justun Edwards.

25 MR. SMITH: --Justun Edwards will be coming

1 shortly. He works for Herriman City who we have a contract
2 with to operate the water system.

3 THE HEARING OFFICER: And when do you expect
4 Mr. Edwards?

5 MR. SMITH: I expect him here by about 10:00.

6 THE HEARING OFFICER: Okay. Thank you. Ms.
7 Schmid?

8 MS. SCHMID: Yes. Patricia E. Schmid with the
9 Attorney General's Office on behalf of the Division of Public
10 Utilities. And the Division's witness is here with me today. Her
11 name is Ms. Shauna Benvegna-Springer.

12 THE HEARING OFFICER: Mr. Flitton, welcome this
13 morning.

14 MR. FLITTON: Hi. How are you? I'm here on
15 behalf of Rodney Dansie. Unfortunately, he's not able to be
16 here today. I spoke with his doctor last evening and his blood
17 infection is still being taken care of. What I would really like is
18 to have a continuance of the hearing. I think I know the answer
19 to that question, but--

20 THE HEARING OFFICER: Let me ask you a
21 question, Mr. Flitton. So the last time we met your
22 representation was that we would meet this morning, we would
23 convene at 8:30, and that you would either be present with your
24 client, Mr. Rodney Dansie, or you would have another witness or
25 witnesses present.

1 MR. FLITTON: Yeah. And the position of my client
2 is that he feels like he's the only one that would actually be able
3 to give the testimony. So we've kind of just been scrambling
4 trying to, you know, get here and see how that works. But,
5 unfortunately, he's just not--his health is not good enough to be
6 here.

7 THE HEARING OFFICER: Okay. And is there any
8 estimation as to when he will be out of the hospital?

9 MR. FLITTON: I spoke with the doctor. The
10 doctor--unfortunately, what the doctor said is it's about six
11 weeks.

12 THE HEARING OFFICER: Okay. And do you
13 have--have you talked to Mr. Dansie about the deadline that the
14 Commission is under in this case?

15 MR. FLITTON: I did.

16 THE HEARING OFFICER: And do you have any
17 response to that based on Mr. Dansie's condition?

18 MR. FLITTON: No. I think it puts us right at that
19 really close time frame to--what is it--
20 May 7th is the 240-day deadline?

21 THE HEARING OFFICER: It's in early May, sir.

22 MR. FLITTON: Yes.

23 THE HEARING OFFICER: And--okay. So--

24 MR. FLITTON: I mean, it's kind of an impossible
25 situation. I mean, I don't know how to resolve it either. He

1 clearly, you know--I mean, he's ill and he is unable to come.
2 His doctor said he's unable to come, but--

3 THE HEARING OFFICER: Did you discuss the
4 possibility with him of you participating to the extent you're able
5 and that should you wish to file something post hearing--

6 MR. FLITTON: I did. You know, one of the
7 disadvantages I have is I would like to have him be able to be
8 here to hear the direct testimony so that when we
9 cross-examination witnesses that I have his assistance and I'm
10 able to do that. But we did talk--we did talk about that.

11 THE HEARING OFFICER: Uh-huh.

12 MR. FLITTON: You know, because, I mean, believe
13 it or not, we feel bad that this has happened, and that, you
14 know, we're unable to fully participate. I would like nothing
15 more than just to, you know, hold the hearing, have the
16 testimony go and move forward. But, you know, I did talk to him
17 about, you know, perhaps maybe what we do is file a post
18 hearing brief or do something like that.

19 THE HEARING OFFICER: Is that acceptable to
20 him?

21 MR. FLITTON: Not really. I mean, he doesn't--he
22 would really like to be able to participate.

23 THE HEARING OFFICER: Okay. Does he have the
24 ability to participate by telephone?

25 MR. FLITTON: No. He's sedated and I just don't

1 think it would be, you know, appropriate to do it by telephone at
2 this point.

3 THE HEARING OFFICER: Okay. What are you
4 proposing, sir?

5 MR. FLITTON: I don't know. You know, I mean, I
6 respect everybody that's here and everything else. You know, I
7 thought that--as of last week, I thought we would be able to
8 move forward. But at this point, you know, I don't think that
9 we--you know--we have the ability to fully participate in these
10 proceedings and so I would ask that we have a continuance and
11 push it out a ways so that we can have him be able to
12 participate.

13 THE HEARING OFFICER: When we discussed this
14 last week, the concern was that we are up against a deadline.

15 MR. FLITTON: Right. Exactly.

16 THE HEARING OFFICER: And, ultimately, this is
17 the Commission's determination, but a six-week delay with
18 uncertainty about whether and if Mr. Dansie would even be
19 available then is--I don't see how that is even possible.

20 MR. FLITTON: And I understand that. And that's--I
21 mean, that's what his doctor estimates. But you're exactly right.

22 THE HEARING OFFICER: His doctor would be in
23 the best position to assess his condition.

24 MR. FLITTON: Yeah. And I have no idea whether
25 that's even, you know, feasible or what.

1 THE HEARING OFFICER: Okay. Are you prepared
2 to proceed this morning?

3 MR. FLITTON: I am.

4 THE HEARING OFFICER: And is Mr. Dansie
5 prepared that that may, in fact, happen that that is what is
6 scheduled to happen?

7 MR. FLITTON: Yes. I told him that, you know, it
8 very well may be that we--you know, that we're going to move
9 forward.

10 THE HEARING OFFICER: Okay.

11 MR. FLITTON: I just get concerned. I mean, you
12 know, Patricia Schmid raised the question, too. It creates--it
13 creates an issue for an appeal in the fact that he, you know,
14 these are--
15 this is a circumstance that he didn't create. And, you know, I
16 just worry a little bit about that. I don't know where that's going
17 to go. I just--you know, I just think if we could postpone the
18 hearing for some time, you know, and still meet that 240-day
19 deadline, then, you know, we don't have those issues out there.

20 THE HEARING OFFICER: Mr. Flitton, have you
21 discussed this with opposing counsel?

22 MR. FLITTON: No, I haven't. Because I spoke with
23 the doctor very late yesterday afternoon.

24 THE HEARING OFFICER: Is there anything further
25 you wish to say before we take the other appearances and hear

1 from counsel about this issue?

2 MR. FLITTON: No. I just appreciate your
3 attention. Thank you.

4 THE HEARING OFFICER: Thank you.
5 Mr. Coon?

6 MR. COON: Yes. William Coon. I represent
7 myself and I have no witnesses.

8 THE HEARING OFFICER: Thank you, Mr. Coon.
9 Welcome this morning.

10 Mr. Smith, you've heard Mr. Flitton's request again
11 for a continuance in this matter. How do you respond?

12 MR. SMITH: It is regrettable that Mr. Dansie's not
13 able to be here today and I would like to be able to try to
14 accommodate him further, but I think we really need to go
15 forward today. I think when we spoke last week at the originally
16 scheduled date of the hearing, I think we discussed an
17 alternative way that Mr. Dansie and his side could proceed even
18 if he was still in the hospital.

19 I would note that the rights that he claims under are
20 not his personal rights, they're of a family trust. And that he's
21 not the only member of that family trust. There are other family
22 members that are members of that trust. And I think we
23 discussed even at that time, even though it wasn't ideal for
24 anyone, that perhaps if he was unable to come, that one of his
25 siblings who are also members of that same trust and

1 presumably have knowledge of many of the same facts--at least
2 many times I've seen Mr. Dansie at hearings, I've seen other
3 members of his family with him at various meetings and
4 hearings over the years that we've been involved--could come
5 and adopt his testimony and be cross-examined.

6 You know, ironically, I think I'm the one who's most
7 prejudiced on my side as the one who's most prejudiced by this
8 because Mr. Dansie's already had the opportunity to submit his
9 testimony. His testimony is already of record. And what we
10 don't have the opportunity to do is to cross-examine Mr. Dansie
11 because he's not here. And I would love to have the opportunity
12 to cross-examine him because I think there are many points I
13 would like to see brought out more fully through
14 cross-examination.

15 But, again, you know, if it was a few days or a week
16 or two, I would go along with that. But if it's six weeks or more, I
17 just think we're to the point we need to go forward. And, like I
18 say, it's regrettable and disappointing, I think, to the
19 homeowners association that they don't have their opportunity
20 to, you know, be able to put on all the evidence they would like
21 to put on through cross-examination. So that's our--that's our
22 position.

23 THE HEARING OFFICER: How do you feel about
24 the suggestion that was made about proceeding and allowing
25 Mr. Dansie to file something post hearing once Mr. Flitton has

1 an opportunity to confer with him? Of course, there would be a
2 very short time limit on that and there would be most likely the
3 desire for a reply to that submission and with a short time limit
4 on that as well. Or do you see--or do you see this differently?

5 MR. SMITH: No. I would have no problems as long
6 as we have the opportunity to reply to it. You know, since it is
7 our application, I think we're entitled to kind of the last word on
8 this thing and--so as long as we have an opportunity to reply
9 and it was a short period of time for both, I would have no
10 objection to that.

11 THE HEARING OFFICER: Okay. Anything further,
12 Mr. Smith?

13 MR. SMITH: No. Thank you.

14 THE HEARING OFFICER: Ms. Schmid.

15 MS. SCHMID: Thank you.

16 THE HEARING OFFICER: Ms. Schmid, I think your
17 microphone is a little far away.

18 MS. SCHMID: That's because I have too much
19 stuff in front of me.

20 This is a complex and frustrating, in many ways,
21 situation. What I suggest is that because Mr. Dansie's issues
22 raised in his testimony do not address general rates and general
23 concerns, I suggest that we consider bifurcating the hearing,
24 and this morning going forth regarding the general rates and
25 other general issues, while counsel and counsel's clients

1 discuss what to do about Mr. Dansie's opportunity to present
2 testimony, participate, and be cross-examined.

3 I think that I would like a little bit of time to talk to
4 my client about what to do. I recognize the Commission has a
5 firm deadline and we cannot take that lightly, but just as that we
6 need to make sure that the hearings are conducted the best that
7 they can be.

8 THE HEARING OFFICER: Could you give me a
9 little bit more information on what you mean by bifurcating the
10 issues? Which issues would you bifurcate?

11 MS. SCHMID: So what I would do is out of the
12 collection of all the issues, I would suggest proceeding this
13 morning on everything but the well lease agreement and its
14 specific rate. So we would address general rates. We would
15 address connection fees and things like that this morning.

16 MR. FLITTON: Can I jump in? There is one more
17 issue, too, and that is the service area issue.

18 MS. SCHMID: I would suggest that that be handled
19 in connection with the well lease since it seems to be tied more
20 to that than perhaps to the other issues. And at this point I'm
21 not recommending a bifurcation for decision or a continuance.
22 What I'm requesting is just an opportunity to go forward with
23 what we have that I think are issues Mr. Dansie has not
24 expressed interest in via his testimony.

25 I do recognize that he owns two standby lots and

1 he will be affected by rates pertaining to that. But I do not
2 recall that he presented any testimony considering his two lots
3 within the service area as it is currently defined.

4 THE HEARING OFFICER: Okay.

5 MR. FLITTON: I think that's correct.

6 THE HEARING OFFICER: Mr. Flitton, just one
7 moment, please.

8 Mr. Smith, Ms. Schmid has proposed an option for
9 consideration in how to handle this going forward in part and
10 delaying in part. How do you respond to that proposal?

11 MS. SCHMID: Pardon me. If I may clarify, it was
12 not necessarily delaying for a long time, but allowing us this
13 morning while we are proceeding on the other issues to explore
14 ideas and see what might be appropriate to do with the well
15 lease issues. So I'm not necessarily suggesting at this point a
16 continuance of the hearing, but I am thinking that may or may
17 not be necessary. But we have witnesses here ready to proceed
18 on the main issues.

19 THE HEARING OFFICER: I'm sorry, I may have
20 misunderstood what you were saying. I thought you were saying
21 that bifurcating would mean we would proceed with the rate
22 case this morning and we would come back and revisit the
23 Dansie issues, i.e. the well agreement and the service area
24 issues at a later time when he's able to participate.

25 MS. SCHMID: I was not as clear as I should have

1 been. I suggest we proceed this morning with what I will call
2 the main rate case issues. And before we adjourn for the day or
3 sometime during the pendency of our discussion and hearings
4 on the main issues, we discuss amongst ourselves and with our
5 clients alternatives and then we present our suggestions to you.

6 Perhaps it's just a position that I alone am taking
7 because the other two parties have stated their positions. But I
8 would like to discuss alternatives and procedure with my client
9 before I go on the record.

10 THE HEARING OFFICER: Let me ask you this: So
11 if you were Mr. Flitton and you were here without your client,
12 how is he supposed to have a meaningful involvement in those
13 conversations without his client? And presumably he would
14 have to engage with his client and it doesn't sound like his client
15 is even conscious or may have limited capacity at this point.
16 So--

17 MS. SCHMID: In that regard, perhaps then I am
18 asking for an opportunity just to discuss with my client what we
19 should recommend from the Division's point of view.

20 THE HEARING OFFICER: Okay. Would you like a
21 recess?

22 MS. SCHMID: That would be--

23 THE HEARING OFFICER: Would you like a
24 recess?

25 MR. SMITH: Yeah. That would be helpful.

1 THE HEARING OFFICER: Do you need more than
2 ten minutes?

3 MS. SCHMID: Maybe 15.

4 THE HEARING OFFICER: 15? And we'll
5 reconvene at 9:10. Okay.

6 MR. SMITH: Thank you.

7 THE HEARING OFFICER: Mr. Flitton, was there
8 something else you wanted to say before we go off the record?

9 MR. FLITTON: No. I think the suggestion of
10 Patricia's is very good, actually, just to bifurcate some of those
11 issues because, you know, they are unique. I mean, my client's
12 issues are sort of unique to the rest of these proceedings. And if
13 we could, you know, push those off and, you know, give him an
14 opportunity to participate, I think that would be really helpful. I
15 think there's a lot of work that goes on just doing the rate case
16 itself and then we address those other issues at a later time.

17 THE HEARING OFFICER: Mr. Smith, one final
18 question before we go off the record.

19 MR. SMITH: Yes.

20 THE HEARING OFFICER: Are the Dansie issues
21 inexplicably related to the rate case such that bifurcating would
22 not be possible inasmuch as his issues go to the rates
23 themselves?

24 MR. SMITH: Well, yeah. The connection there
25 is--and I'm not--you know, I have to think a little bit more about

1 how much we could split those up. But the issue is obviously if
2 we have to do what Mr. Dansie believes is our legal obligation,
3 that changes our entire rate structure. Our rates are based on
4 not doing that. We do have a transportation rate to address
5 some day serving him water and the cost it would take to do
6 that, but--

7 THE HEARING OFFICER: Well, let me be clear. I
8 don't intend in any way by my question to imply or indicate
9 any--any direction one way or the other regarding that issue,
10 so--

11 MR. SMITH: But I think there are things we could
12 cover without--you know, I think, for example, for my--from my
13 perspective, the testimony of Krystal McCauley doesn't
14 really--isn't really affected one way or the other by--you know,
15 her testimony we could cover that. I don't see Mr. Dansie having
16 any role or effect in that and also the testimony from Justun
17 Edwards is separate.

18 Now, Mr. Crane has some testimony that does go to
19 that issue of the Dansie well lease so that part I don't think
20 should be bifurcated. Also, as far as my understanding that
21 most of the testimony from the Division wouldn't, but there is
22 some testimony from the Division that does go to that lease. So
23 that's kind of how I see the lease as far as presentation of
24 evidence. Not so much as the connection of the issues, but
25 more of the presentation of evidence. Those things being, you

1 know, where there is not much of any connection is for those
2 witnesses and the issues that they're going to discuss.

3 THE HEARING OFFICER: Okay. Before we go off
4 the record and take a recess, I do want to address a couple of
5 other issues that are pending before the Commission related to
6 this case. And I intended to address those right away this
7 morning assuming that we were moving forward. And I think
8 that inasmuch as we are where we are at the moment, I would
9 like to address each of them with all of you.

10 The first is the motion to exclude Dansie's
11 testimony, which was filed by the applicant in this case on
12 February 20th. According to my review of the docket as of early
13 this morning, there has been no response filed to that motion.
14 Under Commission rules, absent a response or reply, the
15 Commission may presume there is no opposition. Mr. Flitton,
16 did you file something?

17 MR. FLITTON: I did.

18 THE HEARING OFFICER: And when did you file it?

19 MR. FLITTON: I filed it--it was probably--what was
20 it--last Wednesday? Last Tuesday?

21 THE HEARING OFFICER: Do you have a copy of
22 what you filed?

23 MR. FLITTON: I don't have it with me.

24 THE HEARING OFFICER: How did you file it?

25 MR. FLITTON: My paralegal was responsible. She

1 should have filed that on Tuesday. I talked to Mr. Smith about it
2 and had an extension.

3 THE HEARING OFFICER: What do you mean you
4 had an extension?

5 MR. FLITTON: I had an extension for a day.

6 THE HEARING OFFICER: There is a rule, sir, that
7 requires you to file within a certain time frame.

8 MR. FLITTON: Right.

9 THE HEARING OFFICER: This isn't like--
10 this isn't like District Court where there may be--

11 MR. FLITTON: Well, then it was filed a day late.

12 THE HEARING OFFICER: Well, if you filed it on
13 Wednesday, not necessarily.

14 MR. FLITTON: No. It would have been--
15 what day was it, Craig? Was it Tuesday?

16 MR. SMITH: Yeah. I think we talked on Monday.

17 MR. FLITTON: On Monday, yes. So it was
18 Tuesday that it was submitted.

19 THE HEARING OFFICER: Okay. We're going to go
20 into recess. During that recess, sir, could you please call your
21 paralegal?

22 MR. FLITTON: Unfortunately, she's in Mexico.

23 THE HEARING OFFICER: Do you have somebody
24 in your office you could talk to about getting a copy of that?

25 MR. FLITTON: She's the only one.

1 THE HEARING OFFICER: Did you serve a copy of
2 the reply?

3 MR. FLITTON: She should have. I gave her the
4 document and asked her to serve.

5 THE HEARING OFFICER: Okay. Sir, do you
6 understand you're ultimately responsible for the filing?

7 MR. FLITTON: I do understand that, yes.

8 THE HEARING OFFICER: Mr. Smith, did you get a
9 copy of the filing?

10 MR. SMITH: I don't recall getting a copy of that
11 filing, no.

12 THE HEARING OFFICER: Ms. Schmid, did you get
13 a copy of the filing?

14 MS. SCHMID: Not that I have seen.

15 THE HEARING OFFICER: And, Mr. Coon, have
16 you?

17 MR. COON: No, I haven't.

18 THE HEARING OFFICER: Okay. We will double
19 check with our office, sir, to see if we have received something
20 and we'll be in recess. Thank you.

21 (Recess taken.)

22 THE HEARING OFFICER: We're back on the
23 record. Thank you everyone for your patience and for that
24 recess opportunity. We are going to move forward today and
25 the Commission recognizes that Mr. Dansie is not here. We

1 also recognize that the hearing was scheduled for last week and
2 the Commission made an accommodation for Mr. Dansie under
3 the circumstances due to his hospitalization for him to either be
4 present today or for another witness or witnesses to be present
5 to testify on his behalf.

6 The Commission also recognizes that there is a
7 motion to exclude his testimony pending, which the Commission
8 has not received a response to and the parties also
9 acknowledge they have not received a response to either. That
10 being said, in the interest of equity in this circumstance
11 recognizing Mr. Dansie's circumstance and what we are going to
12 do is we are going to move forward in this proceeding and we
13 will do so today.

14 We will allow Mr. Dansie the opportunity through
15 the issuance of the order in this case to file any motion or
16 motions that he feels may be necessary to address any issues
17 which have not already been addressed in this case. To the
18 extent that the motion is pending, under normal circumstances,
19 the motion would be granted.

20 However, given the cumulative circumstances and
21 the equitable considerations that we are giving to Mr. Dansie,
22 we are going to deny the motion. But we also make the
23 following notes that we recognize this matter has been going on
24 for a very long time and that there are some very strong feelings
25 on both sides about the--about certain facts in this case. We

1 don't think it would be helpful to deny--excuse me--to grant the
2 motion and deny the testimony under the circumstances and
3 would probably delay the matter further.

4 So what we intend to do is we intend to accept the
5 testimony from Mr. Dansie in this matter and like the testimony
6 that has been filed on behalf of the company, which we believe
7 could be said to have similar problems with the way the
8 testimony is presented, we will give the testimony the weight
9 that it's due. So I hope that that resolves our initial issues.

10 With respect to the bifurcation question, inasmuch
11 as I haven't directly addressed that, we will not be bifurcating
12 the hearing. We will be hearing the hearing like we normally
13 would and we will be ordering an order like we normally will.

14 And Mr. Dansie and Mr. Dansie's counsel, Mr.
15 Flitton, again, Mr. Flitton, you are welcome to as this matter
16 proceeds and as it concludes, if you choose to file a motion, you
17 are free to do so until the order is issued. We would like to
18 note that there are response times so in order to be fair to the
19 other parties if they do choose to respond to such motions,
20 you'll want to do that as soon as possible.

21 MR. FLITTON: Okay. Thank you.

22 THE HEARING OFFICER: So without delaying this
23 any further, are there any questions that you have before we
24 proceed with this matter?

25 MS. SCHMID: I have one suggestion.

1 THE HEARING OFFICER: Yes, Ms. Schmid.

2 MS. SCHMID: The usual practice before the
3 Commission is to e-mail pleadings and e-mail the Commission
4 an electronic copy and submit a signed original. It is--in my
5 experience it has been the practice that we have not used the
6 three-day by mailing rule that other courts such as District Court
7 uses.

8 I believe it would be helpful if the Commission
9 would instruct the parties--Mr. Flitton, I believe, is the one who
10 has not followed our procedure and he is not often before us.
11 But I believe it would be helpful if the Commission would order
12 in this case that the date pleadings are due is the date that they
13 must be served. And they must be served electronically rather
14 than by U.S. mail. I believe that would eliminate some of the
15 confusion and uncertainty as to when things were filed or not
16 and whether service was made properly.

17 THE HEARING OFFICER: So, in essence, the date
18 he files them with the Commission would be the date he serves
19 them, either hand delivers or electronically delivers them to the
20 opposing counsel?

21 MS. SCHMID: Yes. So, for example, with the
22 15-day response time, by the 15th the documents--by--or on the
23 15th, the response would be filed with the Commission, both in
24 original and electronic form, and the parties would be served
25 that same day by electronic mail.

1 THE HEARING OFFICER: I'm looking at Rule
2 746-104, Subsection (d), which allows for 15 days to file a
3 response and ten days to file a reply. How would your proposal
4 be different than what the rule allows?

5 MS. SCHMID: It would clarify that the Utah Rule of
6 Civil procedure that allows a three-day, we'll call it, grace period
7 for mailing of service does not apply in this instance.

8 THE HEARING OFFICER: Okay. I see what you're
9 saying.

10 Mr. Flitton, I think Ms. Schmid is trying to be
11 extraordinarily helpful to you realizing that you probably aren't
12 that familiar with Commission rules and statutes and that sort of
13 thing. But let me draw your attention--and if you have a note
14 pad or something you could make a note of this. Rule 746-104
15 is the filing of service rule that you will be held to.

16 MR. FLITTON: Right.

17 THE HEARING OFFICER: And, as I indicated
18 earlier, our rules do not necessarily mirror the rules of the
19 District Court, the Civil Rules of Procedure--or the Rules of Civil
20 Procedure. So as Ms. Schmid explains, there is no additional
21 time that gets tacked on for mailing. So if that helps you,
22 please do keep that in mind.

23 MR. FLITTON: Okay.

24 THE HEARING OFFICER: Okay? So are there any
25 other questions before we begin? Okay. I assume not.

1 So, Mr. Smith, this being your application, you have
2 the floor if you would like it. And inasmuch as you have made
3 an indication that you--the Company adopts the position of the
4 Division, I think that was your position in the last hearing, was it
5 not?

6 MR. SMITH: Yeah, that's correct. We largely
7 adopt all except for the transportation fee, which is involved
8 with--

9 THE HEARING OFFICER: In that instance,
10 sometimes the Division will go first.

11 MR. SMITH: I think that would make sense to have
12 the Division go first.

13 THE HEARING OFFICER: If that's what you would
14 like and that's what the Division is willing to do, that's fine.

15 MS. SCHMID: Of course.

16 The Division would like to call as its witness Ms.
17 Shauna Benvegna-Springer. May she please be sworn?

18 THE HEARING OFFICER: Ms. Springer, good
19 morning.

20 MS. BENVEGNU-SPRINGER: Good morning.

21 THE HEARING OFFICER: Would you please raise
22 your right hand? And do you swear that the testimony you're
23 about to give is the truth?

24 MS. BENVEGNU-SPRINGER: I do.

25 THE HEARING OFFICER: Thank you.

1 SHAUNA BENVEGNUM-SPRINGER having been first
2 duly sworn, was examined and testified as follows:

3 EXAMINATION

4 BY-MS.SCHMID:

5 Q. Ms. Benvegnum-Springer, could you please state
6 your full name and spell it for the record.

7 A. My name is Shauna Benvegnum-Springer,
8 S-H-A-U-N-A, B-E-N-V-E-G-N-U, dash, S-P-R-I-N-G-E-R.

9 Q. By whom are you employed and in what capacity?

10 A. I'm employed by the Department of Commerce
11 Division of Public Utilities for State of Utah as a utility analyst.

12 Q. In connection with your employment, have you
13 represented and participated on behalf of the Division in this
14 docket?

15 A. I have.

16 Q. Could you please briefly tell what activities you
17 have participated in on behalf of the Division?

18 A. I have reviewed the application of the Company.
19 I've performed research surrounding the numerous dockets of
20 the Company in prior times. The Division, myself, and another
21 have conducted a site visit at the Company's site, and reviewed
22 the infrastructure of the Company. Also, we have analyzed the
23 information that's submitted in the application of the number of
24 exhibits and completed the analysis of revenues and expenses
25 and concluded with a rate design as recommended in my

1 testimony.

2 Q. Did you prepare or cause to be prepared under your
3 direction what has been prefiled as Shauna Benvegnu-Springer
4 Direct, DPU Exhibit No. 1.0 DIR, including DPU Exhibit No. 1.1
5 through 1.9 DR--pardon--and also table one, which is a rate
6 summary?

7 A. I did.

8 Q. Did you prepare and cause to be filed rebuttal
9 testimony premarked as DPU Exhibit No. 2.0 rebuttal?

10 A. I did.

11 Q. Do you have any changes or corrections to that
12 prefiled testimony?

13 A. I do.

14 Q. Could you please walk us through those?

15 A. Yes. There are some minor typographical changes.
16 On page seven of the direct testimony, line 77, the word "of"
17 should be inserted between user fee and \$78 per month. So it
18 should read a monthly user fee of \$78 per month.

19 On page eight, line 87, the monthly use fee should
20 be \$78 instead of \$31.50 per month.

21 On page 11, lines 144 and 145, the words "to up"
22 should be reversed. It should be "up to."

23 On lines 152, the word "for" should be replaced
24 with "to" and the word "produced" should be "produce." So it
25 should read the anticipated cost to produce the 2013-calendar

1 year.

2 Q. If I may, did you submit corrected exhibits showing
3 these corrections or did the corrected exhibits you submitted
4 pertain only to the exhibits, not the written testimony?

5 A. That's correct. The corrected exhibits were only
6 submitted and not the corrected testimony.

7 Q. Please continue with regard to the corrections in
8 the testimony portion.

9 A. Okay. On page 14, line 202, "current base rate"
10 should be replaced with "monthly use fee."

11 THE HEARING OFFICER: Ms. Springer, could you
12 repeat that, please?

13 MS. BENVENU-SPRINGER: Sure. On page 14 of
14 the direct testimony, line 202, "current base rate" should be
15 replaced with "monthly use fee."

16 On page 25, line 429, the amount should read
17 22,958 instead of 22,956.

18 Those are all the corrections for the direct
19 testimony. On the rebuttal testimony, on the table on page
20 three, the line six, Hi-Country water consumption rate should be
21 \$0.54 instead of \$0.53. That is all the corrections that I have.

22 BY MS. SCHMID:

23 Q. In addition to those corrections that cover the body
24 of the testimony, did you prepare and cause to be filed DPU
25 Exhibit No. 1.2 DR on February 3, 2014 that is a corrected

1 exhibit concerning the HOA income statement analysis and DPU
2 Exhibit No. 1.7 direct also on that same date that is a corrected
3 HOA--pardon me--corrected exhibit showing HOA rate design?

4 A. I did.

5 Q. With these corrections, if I were to ask you the
6 same questions today as those asked in your direct testimony
7 and rebuttal testimony, would your testimony, including exhibits,
8 be the same today as when filed and corrected?

9 A. Correct. They would be.

10 Q. Do you have a summary to give today?

11 A. I do.

12 Q. Please proceed.

13 MS. SCHMID: Pardon me, before I go there, I
14 would like to move the admission of DPU Exhibit Nos. 1.0 DR
15 through 1.9 DR filed on January 30th of 2014, corrected Exhibit
16 Nos. 1.2 DR and 1.7 DR filed on February 3, 2014, and Ms.
17 Springer--Benvegna-Springer's rebuttal testimony, Exhibit No.
18 2.0 REB filed on February 20, 2014 teen.

19 MR. SMITH: We have no objection.

20 THE HEARING OFFICER: Any objection?

21 MR. FLITTON: No.

22 THE HEARING OFFICER: Ms. Schmid, just for
23 clarification, on the corrected Exhibits 1.2 and 1.7, mine are
24 noted as Exhibit 1.2 and 1.7 respectively. There's no DR after.

25 MS. SCHMID: Thank you. I will--

1 THE HEARING OFFICER: And mine are--
2 let's see, well, at least the 1.2 is date stamped February 4th.
3 I'm assuming that's the exhibit you're referring to.

4 MS. SCHMID: Thank you. I will make corrections
5 to future exhibit lists.

6 THE HEARING OFFICER: Okay.

7 MS. SCHMID: As you have with this one.

8 THE HEARING OFFICER: Okay. I just want to
9 make sure I got the right copy.

10 MS. SCHMID: Okay. Thank you.

11 THE HEARING OFFICER: Thank you. Your
12 exhibits are admitted and your testimony.

13 MS. SCHMID: Thank you.

14 BY MS. SCHMID:

15 Q. Please proceed with your summary.

16 A. My first testimony addresses 11 items in the
17 application; namely, the service area modification, residential
18 rates and fees, authorizing and requiring a reserve fund,
19 emergency water fees for domestic supply, and emergency
20 water fees for fire suppression, maintaining a connection fee,
21 and active meter replacement fee, addressing an outside service
22 connection review fee, addressing the BLM rates, addressing
23 the well lease rates, and, last, addressing the interest and late
24 fee on delinquent balances.

25 With regard to those service area modification, the

1 applicant has requested that the service area be updated to the
2 current customers that are being served, which includes 35
3 vacant lots, 90 residential customers, and one government
4 customer, which is the BLM, for a total of 126. Within the
5 service area that was originally filed with the Commission many
6 years ago, there was also a parcel in the southwest corner that
7 was included in that service area. And they are requesting that
8 that parcel be removed since it does not have any infrastructure
9 to that parcel, nor has water been delivered to that area.

10 The Division is in agreement and recommends that
11 the Commission adopt the modification as presented. The
12 residential water fees and rates include a standby fee, a
13 monthly user fee, a water consumption fee, and conservation
14 tiers. The Division recommends the a new standby fee of
15 \$31.75 from \$12.41. It recommends the monthly user fee to go.
16 The standby fee--let me back up a minute. The standby fee is
17 paid only by those individuals that are not connected to the
18 system, meaning vacant lots or individuals that have been
19 disconnected because maybe they own their own well or have
20 opted not to use the water system.

21 The monthly user fee is a fee that would be
22 charged or is charged to all users connected to the water
23 system to the residential users of the water system. Currently,
24 the fee is \$42.19. Based on our analysis, the fee should go to
25 \$78. That fee is calculated based on the fixed user costs and

1 the system standby fee. So it includes the \$31.75 embedded in
2 the \$78 fee. We are recommending a water consumption fee of
3 \$0.54 per thousand. That is the cost of service to deliver water,
4 which includes the cost for power and chemicals.

5 And then from there we are recommending
6 conservation tiers be implemented. Five conservation tiers
7 would be--are being recommended as tier one, two, three, four,
8 and five with the respective rates of \$0.81 up to \$4.10 per
9 thousand as itemized in the testimony. Because currently the
10 company does not have a reserve fund and most of its
11 infrastructure--80 percent of its infrastructure has depreciated,
12 funds have not been set aside for replacement of the
13 infrastructure and so the Division is requesting the Commission
14 authorize the Company to establish a reserve fund under the
15 requirements or the outline as listed in my testimony.

16 Within the reserve fund would be funded primarily
17 from two sources. One would be from \$13.55 that is embedded
18 in the standby fee of \$31.75 and in the monthly user fee of \$78.
19 And then any water that is used, above the cost of service of
20 \$0.54 per thousand on the conservation tiers, that revenue
21 above the \$0.54 would then--
22 we're recommending would go to the reserve fund and fund the
23 reserve fund.

24 Based upon that, we estimate that this could
25 generate anywhere from \$272,290 to \$363,750 over a five-year

1 period versus \$151,653 proposed by the Company.

2 Currently, in the monthly user fee there is a
3 \$10,000 water minimum that's included, which we are
4 recommending would be removed. And that way individuals
5 would be only paying for water that they use, not necessarily up
6 to \$10,000, if or when they use it.

7 The emergency water fees are based upon a
8 connection that the water system has with Herriman City.
9 Currently, Herriman City is charging \$2.33 per thousand gallons
10 of water used. And we are recommending that that rate be
11 placed into their tariff so when emergency water must be
12 purchased from Herriman City for those high demands, that is
13 passed on to the customers at the same cost that Herriman City
14 charges to the customers.

15 So we're recommending that both the emergency
16 water for domestic supply and the emergency water for fire
17 suppression both be set at \$2.33 per thousand, which is the
18 cost for Herriman.

19 In the agreement with Herriman City, because
20 Herriman City is maintaining and doing all the bill collecting for
21 the water company, there is a reconnection fee of \$250 in the
22 contract that is charged to customers. The Company removed
23 that from their tariff. I think it might have been an error. And
24 we are recommending that that be maintained in the tariff so
25 that that can be charged per the contract to the customers.

1 There is an active meter replacement fee of \$300
2 per incident that we're recommending should remain also in the
3 tariff. The Company has requested an outside service
4 connection review fee of \$10,000 per incident. This is if
5 someone on the outside--outside of the service area would like
6 to have service provided to them by the water company, this
7 would be a fee of what it would take in order to obtain water
8 rights, build necessary infrastructure, identify any water quality
9 issues, have necessary testing done of any additional water
10 source that may be provided, et cetera. And we are supporting
11 that the \$10,000 rate be approved.

12 The BLM rates annual fee we're recommending
13 would be \$558 with a monthly fee of \$78, which is similar to or
14 what the residential rate is. They would also be subject to the
15 \$54 of water consumption rate with anything above that \$54
16 water use being charged at the conservation rates. Currently,
17 the BLM--

18 THE HEARING OFFICER: Ms. Springer, I'm going
19 to interrupt you for just one second. When you said \$54 use,
20 did you mean--

21 MS. BENVEGNU-SPRINGER: \$0.54.

22 THE HEARING OFFICER: Okay. Thank you.

23 MS. BENVEGNU-SPRINGER: Currently, the BLM
24 operates a burro ranch near Butterfield Canyon on property that
25 is leased to them by Kennecott Copper Mine. And the burro

1 ranch has been under a lot of scrutiny and allegations and as
2 such they have pretty much shut that operation down and
3 they're using it mainly as a minimal resting station for which
4 they're transferring animals back and forth. So they are using it
5 on a very limited basis and their water usage has dropped
6 significantly from what they have used in 2012 to what they
7 used in 2013 as addressed in my testimony.

8 The Company requested that a well lease rate of
9 \$3.85 per thousand be approved. The Division is recommending
10 that that well lease rate not be approved on the basis that it is
11 not prudent to pass those costs on to ratepayers. The well
12 lease agreement provides that 12 million gallons of water would
13 be provided at no cost to Dansie properties. The Division
14 believes that the contract that was entered into was imprudent
15 at the time that it was executed and that this cost should not be
16 borne by any rates of the ratepayers currently being served.

17 And, lastly, that the Company has asked for
18 interest and a late fee on the delinquent balance of \$10 plus
19 \$0.18 per annum. Prior practice of the Commission has allowed
20 one or the other, not both, on a delinquent balance so the
21 Division has recommended that the language that should be
22 adopted should be that a late fee or interest, whichever is
23 greater, may be applied to a delinquent balance.

24 The Division believes that the rates as outlined in
25 my testimony are just and reasonable, that they are in the public

1 interest and does serve the public well.

2 BY MS. SCHMID:

3 Q. Ms. Benvegna-Springer, recently in the course of
4 your examination and based in part upon testimony provided at
5 last week's public witness hearing by the Division of Drinking
6 Water witness, do you have any comments on the sufficiency of
7 water rights to serve connected and standby customers?

8 A. Yes. Within the last week we received an updated
9 report from the Division of Drinking Water, which illustrates that
10 the Company does have sufficient capacity for storage for the
11 126 connections that have been authorized by the Commission.
12 They also have sufficient water rights for the 126 water
13 connections, but they do not have sufficient water source
14 capacity.

15 Currently, the well that the water company uses to
16 produce the water produces water at 100 gallons per minute.
17 They also have a Herriman connection that provides 50 gallons
18 per minute. Between the two connections, that provides--if they
19 were running simultaneously, it would provide 150 gallons per
20 minute with--
21 assuming that all 126 connections would need source capacity
22 at any point in time should they fail and need to be served.
23 There is not sufficient water source to meet that demand.

24 Q. At the moment, though, there are only about 90
25 connected lots; is that correct?

1 A. That is correct. 91 connections with the
2 government.

3 Q. And so it seems that the Company might have some
4 time to rectify the source capacity issue with respect to the
5 unconnected lots?

6 A. That is correct. They do have a plan in place that
7 they are working on in order to rectify the situation, but it has
8 not been resolved as of yet.

9 MS. SCHMID: Thank you very much. Ms.
10 Benvegna-Springer is now available for cross-examination and
11 questions from the Commission.

12 THE HEARING OFFICER: Mr. Smith?

13 MR. SMITH: Yeah, I do have some questions.

14 EXAMINATION

15 BY-MR.SMITH:

16 Q. Ms. Benvegna-Springer, if I could have you go to
17 page three of your rebuttal testimony, that's where you had
18 table one, between lines 34 and 35, I have some questions
19 about table one.

20 A. Okay.

21 Q. Do you have that in front of you?

22 A. I do.

23 Q. Thank you. Couple questions. You provide two
24 scenarios, scenario one and scenario two. In scenario one, can
25 you explain, just so I make sure everybody understands, the

1 difference between scenario one and scenario two? Can you
2 take a minute and explain that?

3 A. Sure. Scenario one uses the proposed rate that
4 the company applied for which was \$3.85. And it makes an
5 assumption that the cost for using that rate would be \$46,000 to
6 \$46,200. And if those were the costs, the well lease cost per
7 month would be \$30.56. Residents--in other words, this would
8 be an additional cost that would be borne by a ratepayer in
9 addition to their \$78 monthly rate. And if they were using a
10 minimum amount of water in this example it was \$62 or
11 700--7,000--I'm sorry. It would be 7,543 gallons for an average
12 household. They would be paying about \$4 in water
13 consumption rate so their total bill would be \$112.55 if they
14 were to provide the cost of the well lease.

15 Taking that amount of 7,543 gallons of water
16 dividing it by the total cost, essentially, they would be paying
17 nearly \$15 per thousand gallons for water. In this instance, it
18 would be \$14.92.

19 In scenario two, what this assumes is that
20 additional water would be purchased from Herriman City at the
21 cost of \$2.33, plus they would have to cover the water
22 consumption rate of \$0.54 to deliver the 12 million gallons. So
23 the cost would be 34,320 plus the fixed costs. We did estimate
24 some legal fees that were the case so the total cost would be
25 \$45,256. And then taking those costs and dividing it by the 126

1 users--I'm sorry--by the 90 users, they would be paying \$78 plus
2 their \$4 for their water use and their actual bill would be \$11.93.
3 So it would be again close to the \$15 per thousand gallons they
4 would be paying for water.

5 Q. And under scenario two, that would be spread
6 throughout the entire ratepayers of Hi-Country; is that correct?

7 A. Actually, this would only be charged to users of--I'm
8 sorry--that is correct. This \$30.56 or the \$29.93 would be
9 applied to all 126.

10 Q. Okay.

11 A. But in this illustration, it just applied it to the
12 current water users that are receiving water to show the impact
13 of those water users.

14 Q. Right. And also you're assuming that under the
15 transportation or the proposed well lease rate, that would also
16 be applied under your scenario to all of the--

17 A. Standby.

18 Q. --users of Hi-Country; is that correct?

19 A. So it would be applied to standby users and the
20 water user.

21 Q. Have you considered whether the well lease rate
22 could be applied just to those, if any, who were obtaining water
23 under the--we'll call it the Dansie well lease? Have you looked
24 at the 3.85 under that scenario?

25 A. And applying it just solely to the 91 users?

1 Q. Yes.

2 A. I did not.

3 Q. No. No. Yeah. Applying it--yeah, applying it--let
4 me back up. Applying it only to new users who would be using
5 part of that 12 million gallons per year.

6 A. No, I did not.

7 Q. Okay.

8 A. I did not know how many users there would be that
9 would be using the 12 million gallons.

10 Q. Right. Okay.

11 A. There's discussion that would be possibly five
12 connections. In the well lease agreement, it talks there would
13 be five connections for the Dansies' immediate family. There's
14 also discussion that there would be an additional 50 connections
15 somewhere down the line. Because we don't know how that
16 water would be used, where it would be used, where it would be
17 transported to, we don't have a plan on how that would be
18 implemented or where it would be going. It's hard to discern
19 what the true cost of it would be.

20 Q. Thank you. Now, the Division's aware that the
21 Commission has previously ruled that this well lease agreement
22 with the Dansies and the amendment to it should have been
23 something that was approved by the Commission. Are you
24 aware of that prior ruling?

25 MS. SCHMID: Object to the fact insofar--the