PublicService Commission <psc@utah.gov>

Fwd: Letter to PSC re: Water Shares

1 message

Docket No. 13-2506-01

Nathan Erickson <nwerickson@gmail.com> Tue, Aug 20, 2013 at 2:54 PM
To: psc@utah.gov
Cc: Rich Croft <rich.croft@gmail.com>, Rich Croft <rich@croft.org>

To whom it may concern,

The attached letter is in regards to Docket #13-2506-01. It was provided to me by Mr. Rich croft with the intent that I read it in the hearing. I would like to ensure that this letter from Mr. Rich Croft is entered as an exhibit in the hearing, and is considered by the commission prior to approval of any rate increase.

Sincerely,
Nate Erickson
Home Owner, Willow Creek Water Company customer.

---------- Forwarded message ----------
From: **Rich Croft** <rich.croft@gmail.com>
Date: Tue, Aug 20, 2013 at 12:37 PM
Subject: Fwd: Letter to PSC re: Water Shares
To: Nathan Erickson <nwerickson@gmail.com>, Natalie Erickson <natjoreri@gmail.com>

---------- Forwarded message ----------
From: **Rich Croft**
Date: Tuesday, August 20, 2013
Subject: Letter to PSC re: Water Shares
To: Beau Lewis <beaulewis1@gmail.com>

Here you go!

If you feel inclined not to mention any of them at all then I'll trust you on it.

Let me know what happens. :)

Rich

August 19.docx
21K

August 19, 2013

Public Service Commission of Utah
160 East 300 South
Salt Lake City, Utah 84111

Re: Docket #13-2506-01
Application of Willow Creek Water
Company for a General Rate Increase

Dear Commissioners,

In response to the Notice of Supplemental Hearing (August 20, 2013), I would like to submit comments to the Public Service Commission regarding the rate increase and the "water shares".

Before I proceed, I would first like to recommend that this hearing be postponed for the following reasons.

1. The "current" Articles of Incorporation and Bylaws presented to me at the Registered Office of the Company are missing signatures and other fill-in-the-blank data. I also contacted the secretary of the company to ask about these unsigned documents and was told to contact the Company President and assured that he would have signed documents. I have not yet obtained these signed documents. Without these documents, it is unclear whether or not we should use the previous Articles and Bylaws (approved by the Division of Corporations on January 30, 2007) or the "revised and restated" documents (April 2011) mentioned above.
2. I have requested access to the Share Transfer logs of the Company and have been told that they do not exist. This is a vital piece of evidence in demonstrating "water rights", share ownership as well as who is responsible for the liabilities of owned shares.
3. I have previously drafted a letter requesting "a share certificate evidencing membership" in accordance with Section 4 of Article IV of the January 2007 bylaws. In the letter I had specifically requested certificates for the A and B shares mentioned in the current tariff (Tariff No. 1). Because I would be visiting the Company Registered Office on another matter I took the letter with me with the intent to deliver it myself. It was during that visit that I discovered that there were new Articles and Bylaws. Realizing that a new set of bylaws could mean that my letter was outdated, I chose not to deliver the letter at that time. I did, however, verbally request the certificates at that time. In response I was given a photocopy of a document labeled as a Water Agreement which contained language very similar to the language conveying "water rights" to me in the Warranty Deed of my property. This document is missing several critical features of a certificate. The document was not uniquely numbered, did not state the quantity or the classes of shares owned and did not show my name or the date of issuance. Without these certificates

it is very difficult to know exactly what I own. Without specifically knowing what I own it is difficult to comment on how my "waters shares" are allegedly "affected by the proposed general rate increase". To my knowledge, none of the home owners have certificates in their possession. Some have even commented that their warranty deeds did not convey water shares or rights.

Without any of these documents, it is very difficult to defend any position at all. As expressed in Article IV, section 4 of the 2007 bylaws, "such by-laws shall be considered as and shall be an essential part of the contract between the corporation and the membership holding [share] certificate[s]".

Realizing that notice has already been sent regarding the supplemental hearing and that the hearing may in fact be in progress before this request is received, I will do my best to present my comments in spite of the lack of legal foundation resulting from the missing documents mentioned above.

After spending a significant amount of time studying both the old and new Articles and Bylaws, I have developed a growing list of concerns relating to "water shares" and "shares of common stock in the Company". For simplicity, I will present those concerns under the assumption that a signed version of the "current" Articles of Incorporation does exist and will eventually be evidenced to the Commission.

1. The changes from the previous Articles and Bylaws to the current documents are surprisingly numerous. For example, the Articles, previously a four page document, are suddenly 18 pages long. I know of home owners who obtained their shares prior to April 2011 who had no idea that the Articles had been "revised and restated".

   There are also a few items that did not make it into the new Bylaws. For example, Article V, Section 3 states the following:

   > "In all cases, 85% of the income obtained under these by-laws shall be used to pay for losses and expenses of the Corporation and any excess over this limit must be refunded in equal amounts on each share to the shareholders."

2. The current tariff (Tariff No. 1) states that customers own 1 A share and 1 B share of stock. This fact has been restated repeatedly verbally and in writing. For example, the Application for Convenience and Necessity shows class A and B shares, "[Culinary] and Garden", as service rendered "at the present time". Even within the past year I have heard multiple members of the Board of Directors say this same thing. A survey of current home owners would easily show a majority who believe that they own 1 A share and 1 B share.

   Unfortunately, under the new Articles, their A shares suddenly became B shares, and their B shares became C shares. There was no notice of this change to existing shareholders. I did not know about this myself until a few days ago.

3. There seems to be a misunderstanding as to who actually owns the company. As recent as last week it was explained to me that the developers own all of the Class A shares (still). I have heard repeatedly the numbers of 40 and 60 percent when explaining which developer owns what. However, under both the old and new Articles and Bylaws, it appears that shares, one lot at a time, are eventually transferred away from the developers and into the hands of the home owners. Thus the homeowners will eventually own all or a majority of the Company. In the Article VI, Section A, Item 1, in the current Bylaws reads, "Class A (Development) Shares must be surrendered and converted into Class B, C, and D Shares to obtain water delivery and to obtain an interest in the Company's water distribution works." Section 2 adds to this, "Class B (Culinary) Shares shall only be issued upon a resolution by the Board of Directors duly approving the conversion of Class A (Development) Shares..."

   This misconception adds to the confusion surrounding the recent question by many home owners of "What exactly do I own?"

   This also begs the following questions.

   a. Do the developers really own 40 and 60 percent today? If the above is correct, then the answer to this question must be "no". This supports the idea that the homeowners have more of a say in what is going on in the Company than they are led to believe.
   b. When 60% of the Company was sold in 2011, were existing shares owned by homeowners in the Spring Ridge Estates subdivision inadvertently sold as part of that 60%? If so, who actually owns those shares today?

4. According to the current Bylaws, Article VIII, Section B, the initial terms for the Board of Directors should be staggered, "such that one member will be subject to election each year". Assuming their terms began in April 2011, we should have held elections for board members in April 2012 and 2013. These elections never happened.

   This also calls into question whether or not elections were occurring correctly prior to April of 2011. No home owner that I have spoken with has participated in an election of a member of the Board.

   The current Bylaws, Article VI, Section A, Item 1, state, "Class A (Development) Shares shall be nonvoting." This concept is mentioned repeatedly throughout the Bylaws. If the developers hold all the Class A shares, and the homeowners hold Class B shares (voting), when an election is held, should the existing members of the board, who are all the developers, be allowed to vote? From what the governing documents state, it does not appear so.

5. The new Bylaws state in Article VI that, "Class A (Development) Shares shall be non-assessable, with the exception of (1) those holding costs incurred to maintain the contributed water right in good standing or such other needed or requested work". If the Arsenic discovered in the water could lead to loss of "good standing" could the "Arsenic Project" mentioned in the DPU spreadsheet for Tariff

No. 2 be categorized under "other needed or requested work"?

6. The Bylaws hold that "Class A (Development) Shares may be issued upon transfer to the Company of a source site, a storage site, and approved water rights sufficient to increase the Company's capacity by 1.562 acre-feet of water per year", and the State of Utah shows that the Company owns 100% of the water right (No. 29-4265), so it can be deduced that at 77 acre-feet water contributed, the developers should have at least 497 Class A Shares. Since the Share Transfer Books currently show no conversions of Class A shares into Class B shares and the Bylaws Article VI, Section B, Item 7, indicate that "the owner of shares as recorded on the Company's books remains legally responsible to the Company for payment of all obligations owed to the Company" it becomes clear how sticky our current situation is from a legal standpoint.

7. Homeowners who own Irrigation and Stockwatering shares should be allowed access to their rightfully owned water for the cost of delivery. Additional fees on water already owned by these individuals interfere with existing State laws regarding water rights. Note the wording in Section A, Item 3 of Bylaws Article VI, "Class C (Irrigation) Shares shall represent an actual and proportionate ownership in the water rights or facilities of the Company". The same is stated for Class B and D shares.

   This idea that overage charges should not apply until the share maximums have been exceeded was more obvious in past PSC hearings. In the April 13, 2009 hearing regarding the application for Public Convenience and Necessity, Patricia Schmid stated the following, "And so I believe that there would need to be a clarification to the tariff. So the tariff would read ... anything over [156,000] gallons would be an additional dollar per thousand gallons. So that tariff change would need to be made to reflect that." The Court follows with, "And did you understand that ... you'll have to make that change in your tariff before it is approved."

8. The requirement in the Bylaws (Article VI, Section A, Item 3) the "No person may use water from the Company's water system for irrigation, which is defined as any outdoor watering of plants, without owning at least one half Class C share for each 0.125 acres of irrigation" is a new requirement introduced in the current Bylaws. As mentioned before, this requirement is likely not known by anyone, including developers and I'm confident that there is significant testimony available that it has never been spoken of in any context since its creation in 2009. This means that homeowners with more than 0.25 acres of irrigation could potentially be refused water based on their lot size and landscaping rather than their "guaranteed" .9 acre-feet of water that "runs with the land". In addition to excessive fees, this is another obstruction to water users receiving their rightful share of available water.

9. In the Notice of Supplemental Hearing mentioned above the Commission refers to the Company's "commitments to fund the water system stated in the original hearing establishing the basis for issuance of the Company's certificate of convenience and public necessity" and then quotes the following, "The Company stated that its rates will not recoup capital costs of the water system, but

were only meant to recoup operational expenses. The Company stated that the capital costs will be recovered through the sale of lots in the Subdivisions. The Company also stated that the costs have been completely paid for and there is no debt associated with the construction of the water system."

Should the Arsenic issue have been considered as an outstanding liability of the company? Minutes from the March 12, 2009 Directors Meeting read, "The Arsenic issue: We will wait until more users are on the system."

Later that year the Company "submitted plans and specifications to the Division [of Drinking Water] to install a central treatment facility to remove arsenic" (see Notice of Water Quality dated November 6, 2009).

This "treatment facility" solution was thereafter replaced with the "second well" solution. The loan payments for this solution are now showing up under the variable expenses column in the DPU Excel document used to recommend the new tariff rates. These loan payments account for over 26% of the variable costs and are 50% higher than the amount spent on electricity (which is normally the top cost in a water company).

The "blending source waters" solution will fix the Arsenic issue. However, the question remains if this large expense should be included on the Operational Expenses of the Company.

In addition, the additional water will be used to support customers not currently on the system. In this respect this should be viewed as an expansion of infrastructure and again calls into question whether or not existing shareholders should be bearing this burden.

If not, then, as quoted above, "capital costs [should] be recovered through the sale of lots".

In the Bylaws, Article XIII, titled Expansion of the Water System, asserts that "new members must bear the cost of any additions or changes to the Company's facilities needed to provide the additional service."

10. As mentioned before, it has recently been stated that homeowners no longer own 1 A and 1 B share but that they now own 1 B and 1 C share. Per Bylaws Article VI, Section A, Item 3, "Class C (Irrigation) Shares may only be issued in the ratio of one Share per 1 acre-feet of water per year..." If homeowners own a C Share in addition to the Culinary B Share, then this statement would imply that each of us owns 1.45 acre-feet based on the promised 1 C Share mentioned above.

There are additional points which I have to make but I'm afraid I've run out of time to document them all appropriately. Hopefully these items above will be enough to spark some healthy discussions and possible reforms.

Please know that I mean no disrespect in any way for the developers whose business efforts have yielded so much for all of us. Thanks to them for pushing ahead in spite of the challenges that often present themselves with projects of this magnitude.

Thanks also to you at the Commission who have taken time to review my concerns. I hope that the information contained herein may be of some small use in resolving these general rate increase issues.

Sincerely,

Richard B. Croft