- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of the Complaint of DAVID L. BRADSHAW, Complainant vs. WILKINSON WATER COMPANY, Respondent	)))))	DOCKET NO. 00-019-01 REPORT AND ORDER

Issued: January 4, 2001

SYNOPSIS

Complainant having failed to show any violation of Respondent's published tariffs or of the applicable statutes and Commission rules, we dismiss.

Appearances:

David L. Bradshaw		*In Propria Persona*
William White	For	WILKINSON WATER COMPANY

By the Commission:

PROCEDURAL HISTORY

Pursuant to notice duly served, the above-captioned matter came on regularly for hearing the third day of October, 2000, before A. Robert Thurman, Administrative Law Judge, at the Commission Offices, Heber Wells Building, Salt lake City, Utah. 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.

FINDINGS OF FACT

1. Complainant is a real estate developer wishing to market a subdivision located in the certificated area of Respondent, a certificated water corporation. Respondent is owned by the Wilkinson family, which also owns real estate in the area. The family has plans to develop its property, but nothing concrete or imminent.

2. Respondent has indicated willingness to serve Complainant's subdivision, but only on condition that Complainant finance the costs of increased water source and storage capacity, which Respondent alleges is necessary to serve the project.

3. Complainant contends that under Respondent's service extension tariff, he is not obliged to finance Respondent's infrastructure costs.

- At present, Respondent's system, according to Utah Division of Drinking Water (DDW) standards, is at or near capacity for both source and storage resources. In fact, as to storage, the company is in deficit, since part of the existing tank is owned by the Wilkinson family, which purchased an interest from the Respondent. The purchase was made at the urging of the Division of Public Utilities, Utah Department of Commerce (DPU) as a means of reducing rate base to the benefit of ratepayers. The purchase was made on the basis of an erroneous understanding

of DDW requirements. The Wilkinson family has represented it is amenable to a resale of the storage capacity back to Respondent.

- For a previous subdivision in the area (Fox Hollow), the developer financed system improvements to the extent of approximately $100 per lot for enhanced source and $500 per lot for increased storage - a total of approximately $100,000. Respondent estimates it would require a similar amount to upgrade the system to serve Complainant's subdivision.
- Respondent is currently $130,000 in debt, mostly to the Wilkinson family, and has no borrowing capability from outside sources.
- Respondent has, on one occasion, extended service to a small (four or five lot) subdivision without requiring the developer to finance improvements to the system. However, apparently that project did not entail any system improvements by way of source or storage.

DISCUSSION

Complainant's claim to service without the necessity of financial participation in system improvements is based on Respondent's tariff PSC Utah No. 1, Sheet 8, which provides in paragraph 5 that "All costs for providing needed water supply and storage shall be paid by . . . .[Respondent]"

However, the quoted paragraph must be read in conjunction with paragraph 1 which provides:

An extension is any continuation of, or branch from, the nearest available existing line of the Company, including any increase in capacity of an existing line to the *customer's* requirement. (Emphasis added.)

We believe the term "customer" in this context must mean a ratepayer of the utility, as opposed to a developer whose own customer will hook on to the system, but not the developer as such. Read together, then Paragraphs 1 and 5 obligate Respondent to extend service, with no charge for source or storage, to a party wishing to hook onto the system for the immediate delivery of water, not the developer of a speculative subdivision.

A contrary construction would leave the utility at the mercy of a developer of a project of any size, with the concomitant potentiality of either bankrupting Respondent or imposing prohibitive rates on existing ratepayers to finance system improvements. This is clearly an unreasonable result.

The Commission has a longstanding policy, extending back 20 years or more, of requiring that real estate developers pay all costs of privately-owned water systems up front and recover their costs for such improvements in the price of lots. For rate making purposes, the costs of such improvements are allocated to a "Contribution in Aid of Construction" account which is *not* part of the Utility's rate base on which it is allowed to earn.

In the vast majority of cases, the water system is owned by the developer which makes the implementation of the policy simple. The instant case presents a novel feature in that the developer is not the owner. However, in principle we see no reason why we should create an exception. The same hazards exist as to the interests of existing and future ratepayers as well as system integrity and viability. The developer has the same opportunity to set his lot prices so as to recover his costs. And the developer, if the project is viable at all, has better financing resources than the utility. In short, we do not believe existing ratepayers should be made unwilling participants in Complainant's speculation.[(1)]

We believe it is in the public interest that Complainant defray the costs of system improvements necessary to procure the necessary governmental approvals for, and service to, his project.

CONCLUSIONS OF LAW

The Commission has party and subject-matter jurisdiction. Complainant has failed to prove violations of Respondents tariffs, or of Commission rules, or other applicable law. Accordingly, the Complaint should be dismissed.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that:

the complaint of DAVID L. BRADSHAW against WILKINSON WATER COMPANY, be, and the same hereby is, dismissed.

If DAVID L. BRADSHAW wishes to proceed further, DAVID L. BRADSHAW may file a written petition 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 4th day of January, 2001.

/s/ A. Robert Thurman, Administrative Law Judge A. Robert Thurman, Administrative Law Judge

Approved and Confirmed this 4th day of January, 2001, as the Report and Order of the Public Service Commission of Utah.

/s/ Stephen F. Mecham, Chairman

/s/ Constance B. White, Commissioner

/s/ Clark D. Jones, Commissioner

Attest:

/s/ Julie P. Orchard
Commission Secretary

1. Nor do we have jurisdiction to require the owners to increase their investment in the utility.