

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of the Petition for and Order)
to Show Cause Regarding Exemption)
from Commission Regulation of)
BOULDER KING RANCH ESTATES)
WATER COMPANY)

DOCKET NO. 02-2254-01
REPORT AND ORDER
AND CERTIFICATE NO. 2254

ISSUED: July 3, 2003

SYNOPSIS

Boulder King Ranch Estates Water Company, having previously found to be subject to the jurisdiction of the Commission, is granted a certificate to serve. A settlement agreement containing rates and terms of service is approved as just and reasonable.

By the Commission:

PROCEDURAL HISTORY

In previous proceedings in this matter, this Commission determined that a letter of exemption from rate regulation previously granted by this Commission to Boulder King Ranch Estates Water Company ("Boulder King") was rescinded and that Boulder King is subject to the regulatory jurisdiction of the Commission. Our previous order also stated that further proceedings were necessary to set the rates and conditions of service of Boulder King. Boulder King was not granted a certificate of public convenience and necessity at that time, but is herein.

At a hearing held on June 10, 2003, Boulder King and the Division of Public Utilities ("DPU") notified the Commission that they had reached a settlement of all issues remaining in this matter. Pursuant to notice, a hearing was held on July 1, 2003, to consider a Motion to Approve Settlement Agreement and Tariff submitted by Boulder King and the DPU. The Settlement Agreement contained agreed upon terms and conditions for all issues remaining in this matter. At that hearing Boulder King and the DPU supported the Settlement Agreement, and Wesley Huntsman of the DPU testified that the rates and terms contained in the Settlement Agreement are just and reasonable and in the public interest. Three customers of the Boulder King, David Heaton, Brad Timothy, and Jackie Clements testified in opposition to the Settlement Agreement.

DISCUSSION AND FINDINGS

The Settlement Agreement addresses all issues outstanding in this matter. As stated below, we approve the Settlement Agreement and only address some of the outstanding issues herein.

The Settlement Agreement, and supporting testimony filed by Mr. Huntsman, contain agreed upon amounts for the system costs for Boulder King and other accounting issues necessary for ratemaking. Based upon the costs of providing service Boulder King and the DPU agree to an unmetered usage rate of \$35.00 per month, and a standby fee of \$13 per month for customers with standby lots that are not yet connected to the system. Pursuant to the settlement, customers who own dry lots will not be assessed a monthly charge.

Exhibits submitted with Mr. Huntsman's testimony also contain a breakdown by lot for connection fees and outstanding water service fees, for each of the 60 lots in the subdivision served by Boulder King. Exhibit DPU 1.6 Settlement, submitted with Mr. Huntsman's testimony (a copy of which is attached hereto), contains a breakdown of outstanding or future connection fees for each lot in the subdivision. The amounts for connection fees contained in that exhibit contain

costs for water rights along with other costs. The Settlement Agreement provides that Boulder King customers may deed water rights to Boulder King in lieu of paying the water right costs. We accept the figures contained in that exhibit.

Customers on six lots are connected to the system but have outstanding connection fees owing to Boulder King. Pursuant to the settlement, the amounts due from those customers will be due within one year of the date of this order. Since those customers have been receiving service without having paid any connection fees, we find one year to be an appropriate time in which the connection fees are to be paid. Other exhibits submitted with Mr. Huntsman's testimony also contain the amounts owing from each lot owner for water service and standby fees. We accept those as an accurate accounting of amounts owed to Boulder King as of the dates referenced in the exhibits.

The financial information contained in the exhibits submitted by Mr. Huntsman contain the details of historical system costs, and the portion of those costs allocated to the developer, Mr. Dale Clarkson. The financial statements show that there is owing from Boulder King to Mr. Clarkson, as of November 30, 2002, the amount of \$16,341. Mr. Clarkson stated during the hearing that since November 30, 2003, that number has likely increased. Mr. Clarkson also owns, or controls a trust that owns, 29 lots in the subdivision. During the hearing it was suggested that this debt be retired through offsets against stand-by fees for the lots owned or controlled by Mr. Clarkson. Mr. Clarkson and his counsel did not object to that approach. Given the financial condition of Boulder King, it is appropriate that the water company not pay that amount in cash, but that the amount owing to Mr. Clarkson be retired through offsets for stand-by fees for the lots owned or controlled by Mr. Clarkson, and we will so order.

Developing the information necessary to set rates for Boulder King has necessitated a great deal of work, and reconstruction of the costs and expenses of Boulder King for many years. At the hearing Mr. Huntsman specifically testified that all costs not appropriately borne by the water company, including those that were the subject of "improvement packages" previously billed to customers in the name of the water company, have been excluded from the costs used for ratemaking. We appreciate the efforts that have been expended, and find that the financial information presented to the Commission is sufficient to set just and reasonable rates. That financial information supports the rates and conditions of service contained in the Settlement Agreement, and we approve them.

Unfortunately, this may not end the disputes between Mr. Clarkson and customers of Boulder King. In filings with the Commission and in their testimony customers have alleged that Mr. Clarkson has committed various wrongs against them. Likewise it has been represented that Mr. Clarkson may bring legal action against some landowners for some of the costs that were included in the "improvement packages" that have been disallowed in this proceeding. Whether any party takes action against another party regarding these matters is entirely up to those parties. This Commission has exercised the jurisdiction it has and has only allowed appropriate costs to be included in the rates of the Boulder King water company. All other claims are beyond our jurisdiction.

CONCLUSIONS OF LAW

The terms and conditions contained in the Settlement Agreement are just and reasonable and should be approved. Boulder King should be given a certificate of public convenience and necessity to serve as a water corporation in the Boulder King Ranch Estates Subdivision in Garfield County, Utah.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED, that:

1. The Settlement Agreement is accepted and approved. Boulder King may implement the new rates and conditions of service effective July 1, 2003. Boulder King must also file a tariff, consistent with the proposed tariff filed with the settlement agreement, within 3 days.
2. Boulder King Ranch Estates Water Company is hereby granted Certificate of Convenience and Necessity No. 2254 as follows:

To operate as a water corporation serving the Boulder King Ranch Estates Subdivision, according to the official plat thereof of record in the County Records of Garfield County, State of Utah.

3. Amounts owing to Mr. Clarkson from Boulder King shall be retired through offsets for stand-by fees for the lots owned by Mr. Clarkson and the Clarkson trust.

4. Any person aggrieved by this Order may petition the Commission for review/rehearing pursuant to the *Utah Administrative Procedures Act, Utah Code Ann. §63-46b-1 et seq.* Failure so to do will preclude judicial review of the grounds not identified for review. *Utah Code Ann. §54-7-15.*

DATED at Salt Lake City, Utah, this 3rd day of July, 2003.

/s/ Douglas C. Tingey
Administrative Law Judge

Approved and Confirmed this 3rd day of July, 2003, as the Report and Order of the Public Service Commission of Utah.

/s/ Ric Campbell, Chairman

/s/ Constance B. White, Commissioner

/s/ Ted Boyer, Commissioner

Attest:

/s/ Julie Orchard
Commission Secretary

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