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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the matter of the Application of
Lakeview Water Corp. for Approval
Of Its Proposed Water Rate Schedules
And Water Service Regulations

Docket No.06-540-T01

HEARING BRIEF OF INTERVENOR

It is impossible for the Intervenor to know the order in which the Applicant (alternately, "Lakeview") will present its evidence, if any, in support of its application for a rate increase. Accordingly, the arguments of the Intervenor against the application will in all likelihood not comport with the order in which the Applicant's case is presented. The Intervenor will, therefore, attempt to caption or title the sections of this its hearing brief in such a way as to allow them easily to be identified and associated with corresponding sections of Applicant's case.

I. The Application Should Be Denied in its Entirety in Light of Its Counsel's Conduct in Discovery

The Application should be summarily denied as the sanction for its counsel's steadfast refusal to provide even the most rudimentary evidence requested in data requests, the effect of which was to prevent thorough analysis of the application, the proper testing of the assertions therein, and the assembly and presentation of effective evidence contra those assertions.

The process of rate increase applications and their opposition should not be a guessing game or a game of hide and seek the truth, and who best hides, wins. The punishment for stonewall tactics in the informal discovery process, as has occurred here, should simply be the denial of the rate increase in its entirety.

II. Applicant's Purchase of Water More Than Seven Times the Amount Necessary to Supply its Customers' Needs is Neither Used Nor Useful, and Raises the Specter of Consumer Fraud

As demonstrated in the hearing, Lakeview Water supplied a total of 72.1 acre feet (a/f) of water to its customers during the year 2005-06. Inexplicably, it purchased under the guise of retaining its water rights *in futuro*, 528 a/f of water from Weber Basin Water Conservancy District. (Ex.2.1 to App's response to 2d set of data requests from DPU) That amounts to the purchase of more than seven times the amount of water it needed to supply all of its current customers' needs currently. Every dollar of that cost has been included in its rate base calculation, some $33,391.00. It is manifest that Lakeview at a

minimum is and has for years been padding its purchases and has charged and intends to continue to charge its customers for that padding, for the sake of preserving its water rights going forward in order to provide for water for planned (and currently underway, *see III, below)* expansion of its customer base, at its current customers' expense.

Even allowing for State law that requires reserves somewhat in excess of that amount of water historically provided, there simply is no justification for *seven times* the amount needed. It cannot possibly be considered used or useful, except as a hedge against future expansion, for which current customers should in no way be required to pay.

Even more disturbing is the unexplained inclusion in that 582 a/f, of 160 a/f of irrigation water contracted for by Ronald Catanzaro, principal owner of Ski Lake Corp., Lakeview's owner, when Lakeview to the best of Intervenor's knowledge supplies none of its residential, multi-family, or commercial customers with irrigation water. Yet, inasmuch as that 160 a/f constitutes a part of the $33,391.00 Lakeview wishes to charge its current customers, those customers appear to be paying for water that may in fact be being sold to others. Not that that isn't bad enough, but if that irrigation water is being paid for by Lakeview customers from Weber Basin, where is the income reflected on the Revenue Requirement Calculation, Exhibit C? Answer: it isn't. If in fact there is income being generated from water being paid for by Lakeview customers, and that income is being siphoned off by Lakeview or its principal, and not shown in any manner on Lakeview's revenue requirement sheet, that constitutes fraud on Lakeview's customers, and indeed on this Commission.

III. The Choice of a 2005 Test Year is Premature, Misleading, and Not Representative of the Income of Lakeview Going Forward, Contrary to the Allegation of Paragraph 5 of the Application

Lakeview admits in its application to having one hundred twenty seven customers, and bases its revenue projections on that number (App., para.1). What it conveniently neglects to mention is that its owner, Ski Lake Corp., is actively expanding Lakeview's captive customer base, right now, by eighty-seven single family homes and one hundred sixty-eight condominium units, an increase in its customer base precisely *double* its number of existing customers. The single family homes are popping up like mushrooms in a field and are reportedly selling briskly at a mere 1.3 million dollars a copy. At the rates currently in effect, that explosive expansion will generate connection fees alone, of $255,000.00. At requested rates, it will generate connection fees of $304,500.00 for the single family dwellings and $336,000.00 for the condo units, for a total of $640,500.00 in connection fees alone. None of these figures are reflected in the data submitted with the application. They will, in and of themselves, erase any deficits in Lakeview's operations and put it well into the black for the foreseeable future.

Oh, and then there is the ongoing revenue from the new customers. We forgot that, and so, apparently, did Lakeview in its application. Two hundred fifty-five new customers at the current minimum monthly charge of $16.00 will generate an additional $4080.00 per month, or $48,960.00 per year. At the requested rates, the *minimum* additional income

equals $9180.00 per month, or $110,160 each year, well in excess of any perceived revenue deficiencies, not even counting the connection fees.

Note that all the foregoing figures calculate additional revenue at minimum consumption. The real figures are much higher, but due to the short notice of the hearing, the calculations are still in process at this writing, and will be provided to the Commission at the hearing, based upon averages of actual usages from information furnished by Lakeview. The figure may be inserted here:_________________________________.

And that's not all! Lakeview projects (response to Intervenor's First set of Data Requests #19) a total of 450 customers at capacity. Current customers plus the new homes and condos equal 382, so there are 68 more customers (including a planned 70-room condotel) unaccounted for in the revenue projections. Something tells us that Lakeview's bleak financial plight won't remain too bleak for too long. In point of fact, the requested rates will generate profits well beyond anything to which any water utility is entitled. And all because the timing they have chosen, the 2005 year, is not the slightest bit representative of the real facts. The Commission should deny the Application at this juncture, and require Lakeview to accurately account for its actual revenues and expenses at the current rates with the vastly increased numbers of customers going forward, rather than grant the Application prematurely and insure inordinate profit based on out-of-date figures which have no real application to the facts as they exist.

IV. Many Important Components of Expense on Applicant's Revenue Requirement Calculation Were/Are Related to Its Aforementioned Expansion, are Neither Used Nor Useful to Existing Customers, and Should not be included in its Rate Base Calculations

A) Depreciation and other expenses relating to the new 449,000 gallon storage tank, completed in 2004, wholly unnecessary to serve existing customers, but constructed to serve the 255 new ones underway. Amount unknown as not provided in discovery .

B) Meter upgrades, $7881, part of Castle Rock Excavation & Development Invoice 341 dated 7/14/06 and captioned "Ski Lake Chalets Water".(Ex.2.2 to Response to 2d set of data requests from DPU). The 87 single family homes referred to, above, item III, are named Edgewater Chalets at Ski Lake.

Note that many other large expenditures (>$35,000.00) denominated either "repairs" or "engineering" related to water wells remain unexplained due to Applicant's Counsel's refusal to furnish details as to them to the undersigned absent payment for their assembly and copying, although similar information was furnished to DPU free of charge. It is curious that these expenditures occurred at or around the time of the installation of a new well contiguous to the Edgewater Chalets, the new development.

V. The Purported Reason for the 225% Increase in Lakeview's Base Rate is Spurious

At or about the time of the filing of the Application, Lakeview provided a notice to all of its customers which stated, in part:

> The new rate structure is designed to provide ample water for your reasonable needs, but also to encourage conservation by making water use which is well in excess of the State standards for household water consumption more expensive.

Accordingly, the base rate for users from -0- to 12,000 gallons is proposed to be increased from $16.00 per month to $36.00, a 225% increase. That does nothing to encourage conservation as the Applicant represented to its customers. It simply lines the pocket of the Applicant, without saving one drop of water. Disingenuous, at best.

VI. The Current Operating "Loss" Condition of Lakeview Water is Not Due to the Inadequacy of the Current Rates, But Rather to the Poor Planning and the Ineptitude of its Owner, Ski Lake Corporation

Although for some bizarre reason Counsel for the Applicant has steadfastly refused to divulge the date of acquisition of Lakeview Water by Ski Lake Corp., (*see* response to Intervenor's Data Request #2), it is on information and belief alleged to be somewhere in the early 1980's. At or about the same time, Ski Lake Corp began its development efforts, such as they were. At the time of the acquisition, Lakeview states (*see* response to Intervenor's Data Request #5), that Lakeview had twenty-five residential customers. Using the date 1983 as the guesstimated date of acquisition of those 25 residential customers (the kind of customer that is Lakeview's bread and butter), it would be reasonable to expect that Lakeview's owner Ski Lake Corp., the developer, would follow the practice of every successful developer that preceded it, anywhere, and get in, do the work, get it built, get it sold, and get out. Such a scheme would have made Ski Lake Corp millions, years ago, and would have generated scores, even hundreds, of customers for the Applicant, Lakeview. That in turn would have generated reasonable profit for Lakeview.

Instead, in the 23 years that intervened between the assumed date of acquisition and the filing of the instant Application, Lakeview acquired a grand total of 25 more residential customers, for a total of 50, as reflected on Applicant's Revenue Calculation, attached as an exhibit to its Application—about one new customer per year based on its parent corporation's development efforts. No developer, and no water company, can survive adding one new home /customer per year. *That* is the reason Lakeview finds itself in a deficit position; not because the current rate structure is inadequate.

It is noted that Lakeview did add some 76 new customers in the form of the condos at Lakeside Village in the 2004-06 time frame, but that was as a result of Ski Lake's sale of the project to another developer who did what all good developers do, as stated above.

Accordingly, it is respectfully submitted that the "losses" depicted on Applicant's Revenue Requirement Calculation do not serve as any justification whatsoever for a rate increase.

VII. Applicant has Failed to Rebut the Presumption of Rule 746-330-6 of the Utah Administrative Code; for That and for Other Reasons, No Expenses Claimed Relating to Depreciation of Capital Expenditures Should Constitute a Part of the Rate Base

Rule 746-330-6 of the Utah Administrative Code states: "There is a rebuttable presumption that the value of original utility plant and assets has been recovered in the sale of lots in a development to be served by a developer-owned water or sewer utility."

The rule certainly applies to the Applicant and its developer-owner, Ski Lake Corp. Although for some reason Counsel for Applicant is loath to admit that this rule might have some application to his client, and is steadfast in his refusal to provide any information concerning evidence to be presented to rebut the presumption, it is the guess and speculation of the Intervenor that there will have been NO credible evidence presented at the hearing to rebut it.

Nor can there be, when Ski Lake Corp. is advertising lots which it owns in the so-called Summit at Ski Lake for $525,000.00 and $650,000.00, and lots in the Chalets at Edgewater for $400,000.00 and $450,000.00. Why, if Ski Lake Corp. merely sold the five lots it has advertised in the July 1, 2007 issue of *The Ogden Valley News* for the prices mentioned therein, it would realize the princely sum of $2,550,000.00—enough to *completely* pay for *all* the capital costs of Lakeview Water Co., *ever*, many times over. If Applicant states with a straight face that the costs of none of Lakeview-related assets were recovered from the proceeds of the sale of Ski Lake lots, it is either simply not entitled to belief, or is describing some accounting legerdemain that should on its face speak volumes about your Applicant and all of its submissions to this Commission.

As other reasons why Applicant should not be entitled to depreciate its assets, without belaboring them, it was impossible to get Applicant to admit whether it has depreciated its assets or not, and if so from when, and in what amounts, from what starting values. *See* the attachments to the Motion to compel on these subjects, attached. If it has already depreciated the assets, end of discussion. If it has not taken depreciation thus far, it has lost it: end of discussion. Which is the case is unknown, apparently a deep, dark secret.

VIII. Conclusion

For all the reasons above stated and any others which may have surfaced at the hearing of this matter, it is respectfully submitted that the Application for Rate Increase should be denied in its entirety.

Respectfully submitted this 7th Day of August, 2007

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Frank J. Cumberland
Intervenor

Certificate of Service

A copy of this Hearing Brief of Intervenor was hand delivered to J. Craig Smith this 7th day of August, 2007.

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Frank J. Cumberland
Intervenor