

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of the Application of Grand)
Staircase Water Company, L.L.C., for a) DOCKET NO. 10-2529-01
Certificate of Convenience and Necessity to)
Operate as a Public Utility Rendering) REPORT AND ORDER
Culinary Water Service) APPROVING SETTLEMENT
)

ISSUED: October 4, 2011

SYNOPSIS

The Commission approves an amended settlement stipulation resolving all issues regarding Grand Staircase Water Company's proposed rates and tariff. Tariff No. 1 (Exhibit 1 to the Amended Settlement Stipulation) establishing rates, fees, rules, and regulations governing water utility service is hereby approved.

By The Commission:

This matter is before the Commission on the Amended Settlement Stipulation ("Settlement") of the applicant, Grand Staircase Water Company, L.L.C. ("GSW") and the Utah Division of Public Utilities ("Division") (collectively the "Parties"), the only parties to this proceeding.

PROCEDURAL HISTORY

On September 9, 2010, GSW submitted an application for a certificate of public convenience and necessity ("CPCN") leading to the initiation of this docket. On March 14, 2011, the Commission approved GSW's CPCN application but rejected the accompanying tariff. The Commission directed the Division to attempt to resolve concerns regarding the tariff. In the ensuing months, the Parties expended substantial time and effort examining and resolving the Division's objections to the tariff GSW filed with its initial CPCN application.

On September 6, 2011, GSW filed the Settlement setting forth an agreement reached with the Division as to the terms and conditions of GSW's water service, and a revised tariff ("Tariff No. 1"), attached to the Settlement as Exhibit 1. On September 21, 2011, the Commission's designated presiding officer held a hearing to examine the Settlement and Tariff No. 1. The Parties submitted sworn testimony urging the Commission to approve the Settlement and Tariff No.1 as in the public interest. The Parties testify Tariff No. 1 will produce just and reasonable rates and charges for GSW's water service customers.

POSITION OF THE PARTIES

GSW was incorporated in January, 2005, to serve the Canyon Land Resort located in Kane County. The resort includes 31 villa lots, a 34-room hotel, and supporting infrastructure. According to the Parties, the resort developer, Canyon Land Development, L.L.C., is operating the hotel, and none of the villa lots has been sold. The developer intends to sell each lot with a completed villa for a minimum of \$10 million. Currently, GSW provides culinary water service to the hotel and related buildings. The Parties believe GSW has sufficient water rights to serve the 31 residential connections, the hotel, and the related commercial connections planned for the resort.

Utah Admin. Code R746-330-6 creates a rebuttable presumption that the value of original utility plant is recovered in the sale of lots in a development to be served by a developer-owned water utility. The Parties produced evidence at the hearing showing that the resort developer directly owns only a 5 percent share of GSW, although other GSW owners have indirect interests in the resort developer. The Parties believe the presumption created by Utah

Admin. Code R746-330-6 either does not arise or is rebutted under GSW's ownership structure. Consequently, the Settlement provides for the original utility plant in service to be included in GSW's rate base and not to be treated as a contribution in aid of construction ("CIAC"). The Parties also agree the authorized rate of return on rate base should be 12 percent. They state the agreed upon level is just and reasonable in today's economic climate.

The one-time connection fees presented in Tariff No. 1 include three components: 1) the Hookup Fee, based on the actual connection costs, 2) the Project Cost Recovery Fee set at a level to recover, but not exceed, the cost of original plant in service (upon build-out of the villas), and 3) the Revenue Fee to be reinvested in GSW to assure all ongoing operations and maintenance expenses are paid. The Tariff No. 1 water usage rates include a monthly minimum rate for each class of service as well as increasing rates per 1000 gallons to promote conservation. The Parties assert the fees and rates embodied in Tariff No. 1 are just and reasonable in light of the unique circumstances of GSW's ownership, the remote location of GSW's service area, and the unusual nature of the Canyon Land Resort.

The Parties note that, under the terms of the Settlement and Tariff No. 1, the monthly fee for each customer connection includes a charge called the Capital Reserve Fee. The revenue from this charge will be recorded in the Capital Reserve Account. As provided in Paragraph 22 of the Settlement: "The annual Capital Reserve Account target has been set to approximate GSW's annual depreciation expense or the annual amortization of the CIAC, or a combination of the two." The Settlement provides GSW's payment of the monthly allocation for the Capital Reserve Account for non-connected lots may be delayed until the end of each

calendar year. GSW may fund the Capital Reserve Fees associated with such lots from previously collected Project Cost Recovery Fees (*see* Settlement Paragraph 21). In the event full funding has not been achieved annually through this process, the owners/investors of GSW and the resort developer agree to cover any deficit with non-GSW funds. Similarly, the Settlement provides any annual cash shortfalls shall be subsidized by GSW's investors/owners until rates provide adequate operating revenue (*see* Settlement Paragraph 23).

DISCUSSION, FINDINGS, AND CONCLUSIONS

As we have noted in previous orders, settlements of matters before the Commission are, by statute, encouraged at any stage of our proceedings. The Commission may approve a stipulation or settlement after considering the interests of the public and other affected persons, if it finds the stipulation or settlement is just and reasonable in result, and in the public interest.¹

The circumstances of this case are unusual. The Settlement and Tariff No. 1 are presented for our approval while the hotel and all of the villa lots are still owned by the developer. Moreover, the developer and GSW are under different ownership, although several of the same principals are involved in each entity. Neither the developer nor any other entity opposes any term of the Settlement and Tariff No. 1, including use of the connection charge as a vehicle for recovery of GSW's original utility plant in service costs. Potential villa lot purchasers will be able to evaluate ownership knowing the costs of connection and rates for

¹ *See* Utah Code Ann. § 54-7-1. *See also, In the Matter of the Application of Questar Gas Company to Adjust Rates for Natural Gas Service in Utah*, Docket No. 04-057-04 (January 6, 2006) at 26.

monthly water service. Under these circumstances, it is reasonable to set aside our customary approach of presuming recovery of the value of original plant is achieved through the sale of the lots.

As noted above, the Division supports the Settlement, following its careful examination of GSW's financial condition and arrangements, and concludes the rates and fees, and other terms and conditions in the Settlement and Tariff No. 1 are just and reasonable. The method for recovering plant investment reasonably assures GSW the return of its capital. The Capital Reserve Account as explained in the Settlement reasonably assures GSW's financial ability to maintain the system. The rate or return settled upon is appropriate for the current economic conditions.

Based upon examination of the Settlement, Tariff No. 1, and the evidence contained in the record, the Commission concludes the Settlement and Tariff No. 1 to be just and reasonable, and just and reasonable in result. Accordingly, the Commission approves the Settlement and Tariff No. 1. As with other cases resolved by stipulation, Commission approval of the Settlement and Tariff No. 1 is not intended to alter any existing Commission policy or to establish any precedent.

ORDER

1. The Amended Settlement Stipulation is approved.
2. The tariff accompanying the Amended Settlement Stipulation, Exhibit 1, "Grand Staircase Water Company, LLC, Rates and Fees Schedule and Rules and Regulations, Tariff No. 1," is also approved.

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3. As provided in Amended Settlement Stipulation Paragraph 26, Tariff No. 1 shall become effective the first day of the month following the date of this order.

DATED at Salt Lake City, Utah, this 4th day of October, 2011.

/s/ David R. Clark
Presiding Officer

Approved and confirmed this 4th day of October, 2011, as the Report and Order Approving Settlement of the Public Service Commission of Utah.

/s/ Ted Boyer, Chairman

/s/ Ric Campbell, Commissioner

/s/ Ron Allen, Commissioner

Attest:

/s/ Julie Orchard
Commission Secretary
DH#210502

Notice of Opportunity for Agency Review or Rehearing

Pursuant to Utah Code Ann. §§ 63G-4-301 and 54-7-15, a party may seek agency review or rehearing of this order by filing a request for review or rehearing with the Commission within 30 days after the issuance of the order. Responses to a request for agency review or rehearing must be filed within 15 days of the filing of the request for review or rehearing. If the Commission fails to grant a request for review or rehearing within 20 days after the filing of a request for review or rehearing, it is deemed denied. Judicial review of the Commission's final agency action may be obtained by filing a Petition for Review with the Utah Supreme Court within 30 days after final agency action. Any Petition for Review must comply with the requirements of Utah Code Ann. §§ 63G-4-401, 63G-4-403, and the Utah Rules of Appellate Procedure.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 4th day of October, 2011, a true and correct copy of the foregoing Report and Order Approving Settlement was served upon the following as indicated below:

By Hand-Delivery:

Division of Public Utilities
160 East 300 South, 4th Flr.
Salt Lake City, Utah 84114

Office of Consumer Services
160 East 300 South, 2nd Flr.
Salt Lake City, Utah 84114

By U.S. Mail

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