EXHIBIT A

DOCKETED

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of the Application of FOOTHILLS WATER COMPANY, INC. for a Certificate of Convenience and Necessity to Operate as a Public Utility.

CASE NO. 85-2010-01

REPORT AND ORDER

ISSUED: March 17, 1986

Appearances:

Brian W. Burnett — For — Division of Public Utilities
Assistant Attorney General — Department of Business of Utah,

A- 1986 order
B- Crane Testimony at 5, 21, 4
C- Lease
D- Amendment to Lease
E- 1992 order
F- Order on Rehearing (Nov. 1992)

Val R. Antczak — pany,

Stephen R. Rand — Some

By the Commission:

Pursuant t — e on for general rate hearin — , 1986, be'ore Kent Walgren, — h Public Service Commission. — y, Inc. ("Poothills") filed — , 198[illegible]. Hearings were held on July 8, 1985 and July 23, 1985, at which time some evidence was offered and received. On August 6, 1985 the Commission entered its Order granting Applicant a Certificate of Convenience and Necessity and sanctioning interim rates in accordance with a stipulation between the Applicant and the homeowners of Hi-Country Estates. On August 16, 1985 Applicant filed its Amended Application, praying that the Commission

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EXHIBIT 5

approve a basic water rate of $152.00 per month per customer, plus an additional amount for usage over 27,000 gallons per month. On August 28, 1985 additional evidence was offered and received, on the basis of which the Commission (see Second Interim Report and Order issued September 6, 1985) set interim rates (subject to refund) of $27.50 per month for the first 5,000 gallons and $1.50 per 1,000 gallons over 5,000 and a standby fee of $10.00 per month for lot owners unconnected to the water system.

In its September 6, 1985 Report and Order the Commission, having concluded that it may not be able to set just and reasonable rates without asserting jurisdiction over Jesse Dansie, the supplier (pursuant to a lease) of the water to Hi-Country Estates, ordered Mr. Dansie to appear on September 16, 1985 and show cause why he should not be made a party to this proceeding. On account of ever mounting legal fees and representations by counsel that negotiations for the sale of the water company were underway that might remove the Commission's jurisdiction, a final ruling on that issue was deferred. Although a sale of Foothills' shares to Rod Dansie, son of Jesse Dansie, was consummated, Commission Jurisdiction was not affected. On January 21, 1986, just prior to the general rate hearing, the parties, having apparently concluded that the Commission could set just and reasonable rates without asserting personal jurisdiction over Jesse Dansie, moved that the show cause be quashed which motion the Administrative Law Judge took under advisement.

The Administrative Law Judge, having been fully advised in the premises, now makes and enters the following recommended Findings of Fact, Conclusions of Law, and Report and Order based thereon:

FINDINGS OF FACT

1. Applicant is a corporation organized and existing under the laws of the state of Utah; Applicant was incorporated in June, 1985. On August 8, 1985 Applicant was granted Certificate of Convenience and Necessity No. 2151 and interim rates were set by this Commission. The interim rates were modified by the Commission's Second Interim Report and Order issued September 6, 1985.

2. Protestant, Hi-Country Estates Home Owners' Association ("Homeowners") is a Utah non-profit corporation consisting of the homeowners of Hi-Country Estates subdivision, Phase I, located a few miles southwest of Herriman, Salt Lake County, Utah.

3. Applicant is a water corporation, proposing to provide culinary water to a residential area in the southwest corner of Salt Lake County. Applicant's proposed service area (see Exhibit 16) includes all of the Hi-Country Estates subdivision, Phase I, plus three areas (approximately one-sixteenth section each) along the western border of the platted subdivision and referred to as the "Tank 2 area", the "South Oquirrh area"

and the "Beagley area" (see Exhibit 17). The proposed service area differs slightly from that approved by the Commission when Applicant was granted its certificate.

4. Applicant's service area consists of 63 active customers and 54 standby customers. In addition, the well and facilities which supply water to Applicant also supply water to thirteen (13) hook-ups outside the service area to the southeast, referred to hereafter as the "Dansie hook-ups" or "Dansie properties."

5. Applicant's ownership of water company assets is contested by the Homeowners and is the subject of a lawsuit currently pending in the Third Judicial District Court of Salt Lake County (Civil No. C85-6748).

6. Hi-Country Estates subdivision, Phase I ("Subdivision"), was initially developed in about 1970 by a limited partnership consisting of general partners Gerald H. Bagley ("Bagley"), Charles Lewton ("Lewton") and Harold Glazier ("Glazier") and a few additional limited partners. Subdivision Public Report #325, issued by the Real Estate Division of the Utah Department of Business Regulation on June 8, 1970 (Exhibit 69), states that as of that date the plat had not been recorded. The Public Report, which was to be delivered to prospective lot purchasers, also states:

> WATER: Water will be supplied by the Salt Lake County Water Conservancy District... Costs of installation to be borne by subdivider.

The Report further notes that the Salt Lake County Water Conservancy District ("Conservancy District") has not yet annexed the property and that before it does certain facilities will have to be constructed.

7. On August 16, 1970, a limited partnership consisting of Bagley, Lewton and Glazier, entered into an agreement (Exhibit 42) with Jesse Dansie and his wife, Ruth, pursuant to which the Dansies leased to the prtnership a well and water rights (evidenced by Certificate #0217, application #26451) to 1.19 cfs (cubic feet per second). The water was to be used by the partnership to supply water to its "subdivision(s) developed and being developed in the area..." The term of the lease was five (5) years, during which time the partnership was to pay the Dansies $300 per month, or a total of $18,000. In addition, the partnership was to maintain the well, provide the Dansies one (1) connection at actual cost and the Dansies were to be allowed to use the water at any time it was not being used by the developers, for which the Dansies were to pay the costs of pumping. The partnership also had an option to extend the lease an additional five (5) years for $600 per month. The well referred to in this lease can produce approximately 480 gallons per minute and is located a few hundred feet north of the subdivision boundary on property owned by Jesse Dansie. It is referred to hereafter as "Well No. 1".

8. In March, 1971, Bush & Gudgell, registered professional engineers, prepared specifications for the construction of the Hi-Country Estates Water System, Phase I (see Exhibit 66);

the following month the Conservancy District was formally petitioned (but apparently never acted affirmatively) to annex the Subdivision. In or about 1972, the Subdivision plat was approved and recorded and construction began on some homes.

9. On April 1, 1974 (the photocopy of Exhibit 50 appears to read 1971, but the last page of Exhibit "A" of Exhibit 51 gives the date April 1, 1974) a renewable five-year lease was executed between Hi-Country Estates (a corporation and a general partner of the developer partnership) and Roy Glazier, the owner of Lot 51, for the lease of an existing deep well (hereafter "Glazier Well") which would provide water for the Subdivision. The terms were $300 per month for the first five years and $400 per month for the next five years. In addition, Glazier would be permitted to withdraw seven (7) gallons per minute from April 1 to October 1 at no cost, the lessee being required to pay the pumping costs and maintenance. A letter from the Utah State Department of Health to Hi-Country Estates, dated June 3, 1974, approves the Glazier Well for 72 residential connections, "based on a supply of 80 gallons per minute... as certified by Call Engineering, Inc."

10. Although Bagley was involved in the initial development of the Subdivision, sometime about 1972 he withdrew from the limited partnership. Then, in May of 1974 he personally repurchased the development from the developer partnership. The Agreement (Exhibit 51) memorializes the sale of sixteen (16)

unsold lots, the rights in the Glazier Well lease, the obligations under the Dansie well Agreement and "All right, title and interest in and to the water system and equipment serving Bi-Country Estates."

11. On April 7, 1977, Jesse Dansie, as lessor, and Bagley, as lessee entered into a "Well Lease and Water Line Extension Agreement" (hereafter "Well Lease Agreement") for Well No. 1, the same well upon which the 1970 lease had been executed (see paragraph 7, supra). Under this ten-year lease (which expires in April, 1987), in return for the use of the well and water therefrom, Bagley agreed to the following:

a. To pay $5,100 plus $300 per month for the first five years and $600 per month for the next five years.

b. To provide Jesse Dansie with five free residential hook-ups to members of his immediate family, including reasonable amounts of culinary and irrigation water, presumably at no cost. These hook-ups were for Jesse Dansie's children who were building or planning to build homes just east of the Subdivision.

c. To provide Jesse Dansie with fifty (50) free residential hook-ups. These would be charged water fees by Bagley, who would pay 50 percent of any amounts collected to Jesse Dansie.

d. That Jesse Dansie be allowed to use any excess water not being used by Bagley for only the costs of pumping.

e. To indemnify and pay Dansie's court costs and attorney's fees "of any nature whatever" which arise out of the Well Lease Agreement. No comparable provision was made for Bagley's indemnification or the recovery of his legal fees should he prevail.

f. That Jesse Dansie be provided water on these same terms for as long as the Subdivision water system is in existence (even after the expiration or termination of the agreement).

In addition, the Well Lease Agreement provided for the construction of three water line extensions, all to be completed within one year:

Extension No. 1: From Well No. 1 to the lines of the existing Hi-Country Water Company system (along the north Subdivision boundary). Jesse Dansie was to dig the trench and Bagley was to provide pipes and all other materials and easements. Extension No. 1 was to be maintained by Bagley and owned by Jessee Dansie. Dansie would also have the right to take water from any part of the extension to serve his own property.

Extension No. 2: From the most easterly point of the Subdivision to the Dansie water line at approximately 7200 West and 13300 South (all outside of the Subdivision). Dansie was to pay for, maintain and own this extension, but Bagley was to be permitted to run water from the Subdivision system through this line, to property he owned approximately three (3) miles east of the Subdivision, which he hoped to develop to be known as "The Foothills."

Extension No. 3. Dansie was to install, pay for and own an extension from his own water system at 6800 West and 13000 South extending along 6800 West to 13400 South. This extension would terminate at the northwest corner of Section 7 (T4S, R1W), in which Bagley owned the property just referred to. Bagley was to maintain this extension during the term of the Agreement.

Subsequently, on July 3, 1985, the Well Lease Agreement was amended to define the "reasonable" amount of water to be provided at no cost to the five (5) Dansie immediate family hook-ups as 12,000,000 gallons per year, to provide in addition free water to Lot 51 of the Subdivision, apparently now owned by one of the Dansies, and to specify that the pumping fees for any excess water used by the Dansies be restricted to incremental pumping power costs, rather than shared power costs for pumping.

12. In 1980, the Subdivision water company was transferred from Bagley to another limited partnership, Jordan Acres ("Jordan Acres"), of which Bagley was a general partner. On June 7, 1985, the day the initial Application was filed with this Commission, the water company assets were transferred from Jordan Acres to Foothills, in return for all of Foothills' outstanding shares. On October 31, 1985 all of the stock and assets of Foothills were transferred from Bagley to Rod Dansie. Dansie, who had been watermaster of the Subdivision water system for a number of years, took control of Foothills in partial satisfaction of $80,447.43 he claimed from Bagley for unpaid bills for labor and materials furnished to the water system.

13. Between 1970 and 1981, the residents of the Subdivision were charged $100 per year for water. In February, 1981, Bagley summarily raised the yearly water rate to $400. The residents balked, tempers flared, and in 1985 Bagley was finally forced to seek Commission sanction of rates.

14. From about 1972 until August 8, 1985, when Applicant was granted its Certificate of Convenience and Necessity, it acted illegally as an uncertificated public utility. The record is clear that Bagley and his partners knew from the beginning that unless they were annexed by the Conservancy District they would be subject to Commission jurisdiction. In a letter, dated May 27, 1970 (Exhibit 68), from Lewton to the Conservancy District, Lewton notes that "we do not intend to become a water utility company..." In the April 7, 1977 Well Lease Agreement between Bagley and Jesse Dansie, paragraph F.3. states:

> 3. Dansie further agrees that Bagley may apply to the Utah Public Service Commission for such permits or approvals as may be required and Dansie shall cooperate fully in all respects as may be required to obtain such permits or approvals as may be required by the Public Service Commission. Bagley agrees to pay all costs incurred in obtaining such approval, including, but not limited to, legal and engineering fees.

Despite Bagley's awareness that he was subject to Commission jurisdiction, the records of the Commission show no contact by him prior to June of 1985.

WELL LEASE AGREEMENT

15. Of the various problems involved in setting the just and reasonable rates mandated by U.C.A. Section 54-3-1, the Well Lease Agreement described in paragraph 11 above is the most troublesome. The Commission finds that it is unreasonable to expect Foothills to support the entire burden of the Well Lease Agreement. This Agreement, insofar as it relates strictly to benefits received by Foothills (without taking into account the benefits Bagley may have perceived in view of his future development plans) is grossly unreasonable, requiring not only substantial monthly payments, but also showering virtually limitless benefits on Jesse Dansie and the members of his immediate family. There is some evidence on the record to indicate that both Bagley and Jesse Dansie had future development plans in mind (perhaps even in some form of partnership) and that the Well Lease Agreement was entered into on both sides primarily with that in mind and only secondarily to provide water to the residents of the Subdivision. We find that the Division's estimate of the actual value of the Well Lease of $368 per month or $4,416 per year (Exhibit 58), is reasonably accurate.

Yet the benefits which Jesse Dansie stands to receive, in addition to the $600 monthly lease payments, are substantial:

a. 50 free hook-ups. Value: $37,500 ($750 x 50);

b. Five free residential hook-ups. Value: $3,750 ($750 x 5).

c. 12,000,000 gallons of free water per year. (We note that this is nearly as much as the entire projected yearly consumption by the 63 active customers of the Subdivision.) Using Applicant's figures for annual power costs to Foothills customers for the main pump only ($11,497.84 (see Exhibit 53), plus incremental pumping costs for the additional 12,000,000 gallons ($2,540.95 see Exhibit 85, p. 3), the total cost of power is $14,038.79* per year, of which 44 percent (see Exhibit 62--Allocation Factor Based on Usage), or $6,177.07, is attributable to the Dansies. When the chemical costs attributable to the Dansies of $176 are added (see Exhibit 85, p. 3), the total estimated value of the free water is $6,353.06 per year.

Since the Well Lease Agreement purports to require Bagley to provide water on these same terms "for such time beyond the expiration or termination of this Agreement as water is supplied to any of the Hi-Country properties or that the lines and water system referred to in this Agreement are in existence...", if one assumes, for example, that the system installed in 1972 has a 40-year useful life (see Exhibit 24) and that the costs of power and chemicals remain the same, the potential value of the 12,000,000 gallons of free water alone from 1977, the year

* The July 3, 1985 Amendment to the Well Lease Agreement (Exhibit 10) which defines the "reasonable" free water for the Dansies as 12,000,000 gallons and specifies that the power costs for excess water shall be figured incrementally rather than proportionately lacks meaningful consideration and is, to the extent relevant to our inquiry, invalid.

the lease was executed, to the year 2012, is $222,357.36. While no one can blame Mr. Dansie for desiring to provide free water to his children in virtual perpetuity, this Commission would be abrogating its statutory duty were it to impose such a burden on Foothills' present and future customers.

d. Although it is difficult to arrive at precise dollar values for the rights to the excess water and for the indemnification rights and rights to legal fees, it is undeniable that these have some value.

Thus, the total potential liability under the Well Lease Agreement is in excess of $263,607. We find that it would be unjust and unreasonable to expect Foothills' 63 active customers to support the entire burden of the Well Lease Agreement. We further find that payment of the $600 monthly Lease payment by Foothills will adequately cover the value of the benefit Foothills is receiving under the Lease and that the remaining burdens of the Lease should be Bagley's personal obligation. Paragraph F.2. of the Well Lease Agreement makes Bagley personally responsible to fulfill the terms and conditions of the Lease, whether or not a water company is created to which Bagley conveys or assigns the Well Lease Agreement. Under paragraph F.3. of the Lease, Jesse Dansie agrees that Bagley may apply to the Public Service Commission for a certificate and Dansie agrees to "cooperate fully in all respects as may be required to obtain such permits or approvals as may be required by the Public Service Commission." As part of Mr. Dansie's cooperation with the

Commission, it is reasonable to expect him to look to Foothills for the $600 monthly lease payment and to Bagley personally for any remaining obligations under the Well Lease Agreement.

At the hearing, Rod Dansie offered some testimony as to his father's intentions with respect to the Well Lease Agreement in the event the Commission were to require the Dansies to pay for the water obtained from Well No. 1. He indicated that the Dansies own numerous other wells and water rights in the area and that they would likely disconnect themselves from the Foothills system and obtain their water elsewhere.

It is, of course, up to Jesse Dansie where he procures his water. The Commission has no objection to the Dansies continuing to obtain their water from Well No. 1, provided the actual pro-rata (not incremental) costs for power, chlorination and water testing involved in delivering that water are paid for by someone other than the customers in Applicant's service area. We find that it is reasonable for Foothills to bill Jesse Dansie for the actual cost of any water provided to him, his family or his other connections, and for Mr. Dansie to seek reimbursement for same from Bagley.

RATE BASE

16. The amount of rate base to be allowed the Applicant is contested. Applicant (Rev. Exhibit 23) claims a rate base of $142,200.56, the capital expenses for improvements acquired since 1975 that remain used and useful. The Division recommends $7,058.73, the cost of the six-inch meter installed in December,

1985 to measure the amount of water being consumed by the Dansies. The Division claims that since there is a dispute as to the ownership of Foothills assets, no additional rate base should be allowed (see Exhibits 17, 40 and 67). The Homeowners, claiming ownership of all assets of the water system, argue that Applicant's rate base should be zero.

17. We find that all improvements to Foothills prior to 1981 are not includeable in rate base because:

a. Bagley was selling lots at a profit until 1976 (see Exhibit 75).

b. The improvements made between 1977 and 1980 were to have been provided by Bagley as part of the original system. For improvements made from 1981-1985, we find as follows:

1981: The pressure valve by lot #16 and the new air and vacuum valve and check valve on booster station are allowable in rate base (see Rev. Exhibit 23). Total allowed: $2,611.93.

1982: The new controls for tank #2 and new relay on booster station are allowable in rate base (see Rev. Exhibit 23). Total allowed: $1,116.47.

1983: No costs allowable for rate base. The 75 H.P. motor becomes Jesse Dansie's property by the terms of the Well Lease Agreement. Insofar as the replacement of the 600-foot section of main is concerned, we find that Applicant failed to demonstrate that the costs involved in making that repair were

just and reasonable and that there is a valid dispute as to the ownership of the main. In addition, Bagley would have been responsible to assure that the main was in good condition before the system would have been accepted by the Conservancy District.

d. 1984: No improvements.

e. 1985: The replacement of booster pump, starter control panel, new tank overflow control valves, six-inch metering station and 1½-inch metering station are allowable in rate base. The check valve for the deep well is not allowable because it becomes Jesse Dansie's property by the terms of the Well Lease Agreement. Total allowed: $12,606.59.

Thus, Applicant's total allowable rate base is $16,334.99.

RATE OF RETURN

18. The parties stipulated, and the Commission finds, that 12 percent is a reasonable rate of return.

EXPENSES

19. The Commission notes that Bagley's management of Foothills and its predecessors has been less than commendable and finds there is cause for concluding the utility will be more competently managed in the future. Given the expected improvements, and ambiguities in the costs of providing service in the past, the Division's projected test year ending December 31, 1986 seems reasonable. U.C.A. Section 54-4-4(3), however, limits future test periods to 12 months from the date of filing (amended

filing date: August 16, 1985); we will thus have to adopt a test year ending December 31, 1985 (see Rev. Exhibit 20) and make attritional adjustments to reflect future conditions. The Homeowners generally supported the Division's recommendations in this area.

a. Accounting and Administrative: Applicant is requesting $10,200; the Division and Homeowners recommend $3,000. Applicant intends to hire an accountant at $18.00 per hour; the Division contends that a computer accounting service is adequate. Applicant's figure includes the cost of office rental and $150-$200 per month for a secretary. The Division's witness testified that Rod Dansie should run the water company out of his home at no charge to the users. We find that the Division's and Applicant's figure of $3,000 is reasonable, with the following adjustments:

(i) Applicant is entitled to be reimbursed for the reasonable costs of office space (either in Rod Dansie's home or elsewhere) sufficient to hold a desk, file cabinet and telephone. We find that $50 per month ($600 per year) is reasonable.

(ii) The Division assumed that the time required to read meters would be two hours per month; Rod Dansie testified it takes four--five hours. We find that four hours per month for meter reading is reasonable and that $17.20 per hour (the hourly wage paid to Conservancy District employees) is more reasonable than the $20 per hour proposed by Applicant. We thus

adjust the Division's recommended figure upward $34.40 per month or $412.80 per year. Total allowed: $4,012.80.

b. Insurance: The parties agreed, and we find, that $2,500 per year is reasonable.

c. Water lease payment: $7,200 (see paragraph 15, supra).

d. Utilities:

Main Pump. Our allowed expenses in this category are based upon the following assumptions:

(i) The Dansies will obtain their water elsewhere (if they elect to receive it from Well #1, since the water company will collect their pro rata pumping costs, the power costs for the utility will be slightly reduced, given UP&L's rate structure).

(ii) The customers will use a total of 13,000,000 gallons during 1986, of which five percent will be lost to leakage or theft.

(iii) The main pump delivers 260 gallons per minute.

(iv) The kilowatt demand of the pump is 66kW (see Exhibit 31).

(v) For every gallon of water used in the low-use months (January-May, October-December) 4.64 gallons of water are used during the high-use months (June-September) (see Exhibit 53).

(vi) For two of the high use months, because of breaks or fires, the main pump will operate on Schedule 6, rather than Schedule 3.

(vii) Electric Service Schedule 35, the Monthly Energy Charge Adjustment which is incorporated into both Schedules 3 and 6 (of which we take official notice and which will result in a relatively small adjustment upward) imposes an additional charge of $.00406 per kWh.

Thus, an average of 489,458 gallons per month will be pumped during the low-use months and 2,271,084 gallons per month during the high-use months, requiring the pump to operate 31.4 hours during the low-use months and 145.6 hours during the high-use months.

Under UP&L's Schedule No. 3, we calculate the monthly bills as follows:

(i) Low-Use Months: Customer Service Charge ($55.39), plus Demand Charge (66 kW x $3.75 per kW = $247.50), plus Energy Charge (2072 kWh x $.04087 = $84.68) plus Energy Charge Adjustment (2072 kWh x $.00406 = $8.41). Total monthly charge: $395.98.

(ii) High-Use Months:

(a) Schedule 3: Customer Service Charge ($55.39), plus Demand Charge (66 kW x $3.75 per kW = $247.50), plus Energy Charge (9610 kWh x $.04087 = $392.76) plus Energy Charge Adjustment (9610 kWh x $.00406 = $39.02). Total monthly charge: $734.67.

(b) Schedule 6: Customer Service Charge ($28.66), plus Demand Charge ([66 kW minus 5 kW] x $9.18 per kW = $559.98), plus Energy Charge ([500 kWh x .131755 = $65.88] plus [9110 kWh x .058169 = $529.92] = $595.80), plus Energy Charge Adjustment (9610 kWh x $.00406 = $39.02). Total monthly charge: $1,223.46.

Total for eight low-use months: 8 months x $395.98 = $3,167.84; total for two high-use months on Schedule 3: 2 x $734.67 = $1,469.34; total for two high-use months on Schedule 6: 2 x $1,223.46 = $2,446.92.

Total allowed for main pump: $7,084.10.

Booster Pump: Our allowed expenses in this category are based upon the following assumptions:

(i) Kilowatt demand of the booster pump is 23 kW (see Exhibit 41).

(ii) Homeowner demand will drop from 17,000,000 gallons in 1985 to 13,000,000 gallons in 1986 (76.5 percent of 1985).

(iii) Since the booster pump consumed 39,088 kWh in 1985, it will consume approximately 29,126 kWh in 1986.

(iv) For every gallon of water used in the low-use months, 4.64 gallons of water are used during the high-use months; thus, the booster pump will use 1097 kWh per month in low-use months and 5088 kWh per month in high-use months.

(v) For two of the four high-use months, because of fires or other emergencies, two booster pumps will be

required, resulting in a change from small customer to large customer status.

Using UP&L's Schedule No. 6, we calculate the monthly bills as follows:

(i) Low-Use Months: Customer Service Charge ($4.05), plus Demand Charge (18 kW x $6.45 per kW = $116.10), plus Energy Charge ([500 kWh x $.092602 = $46.30] plus [597 kWh x $.040887 = $24.41] = $70.71), plus Energy Charge Adjustment (1097 kWh x $.00406 = $4.45). Total monthly charge: $195.31.

(ii) High-Use Months:

(a) Small customers: Customer Service Charge ($4.05), plus Demand Charge ($116.10), plus Energy Charge ([500 kWh x $.092602 = $46.30] plus [4588 kWh x $.040887 = $187.59] = $233.89) plus Energy Charge Adjustment (5088 kWh x $.00406 = $20.66). Total monthly charge: $374.70.

(b) Large customers: Customer Service Charge ($28.66), plus Demand Charge (18 kW x $9.18 per kW = $165.24), plus Energy Charge ([500 kWh x $.131755 = $65.88] plus [4588 kWh x $.058169 = $266.88] = $332.76), plus Energy Charge Adjustment (5088 kWh x $.00406 = $20.66). Total monthly charge: $547.32.

Total for eight low-use months: 8 months x $195.31 = $1,562.48; total for two high-use small customer months: 2 x $374.70 = $749.40; total for two high use large customer months: 2 x $547.32 = $1,094.64.

Total allowed for booster pump: $3,406.52.

Utilities total for both pumps: $10,490.62.

e. Telephone: $600.00 per year.

f. Directors' Fees: $600.00 per year, of which $300 per year is allocated for directors' insurance.

g. Legal Expenses: $3,000. Although there was some evidence offered indicating that Applicant's legal fees may exceed $10,000, we find that the majority of these fees would not have been incurred if Foothills had been certificated in 1972. We thus accept the Division's recommendation that $3,000 is reasonable (the Homeowners recommended no legal fees be granted). We further find that this amount should be capitalized over three years and thus allow $1,000 for 1986.

h. Repairs and Maintenance: In this category, the Division recommends $21,600 and the Applicant $22,872. The Homeowners sponsored no exhibit in this area. The Division's figure is based on the reasonable cost of repairs and maintenance for other water utilities of approximately the same size; Applicant's figure is based upon Foothills' average cost of repairs and maintenance for the past four years. We find that Applicant's method, which uses past data of the utility under consideration, is mostly likely to yield accurate figures for 1986. We find further that the $22,872 figure should be reduced by the difference between the $20 per hour paid during 1985 for repairs and maintenance and the $17.30 per hour we are allowing for 1986. Since 620 hours were billed for repair and maintenance from December 1, 1984 through November 30, 1985 (see Exhibit 56), the difference between the hourly rates ($2.80 per hour x 620 hours), $1,736, should be deducted. Total allowed: $21,136.

Applicant submitted proposed capital expenditures for 1986 totalling $16,094 (see Exhibits 32, 33, and 34). (These proposed expenditures are accounted for in lines 3, 4, and 8 of (division) Exhibit 57. The Division recommended that Nos. 1, 3, 4, 5 and 6 of Exhibit 57 be allowed, but reduced as follows: No. 1: $7,000; No. 3: $1,900; No. 4: $3,234.71; No. 5: $1,000; No. 6: $1,000. Total: $9,100. Jon Strawn, a Division witness, testified that the total $9,100 could be paid for out of the Division's recommended $21,600 Repair and Maintenance expense.] We note that in order to qualify for the reduced power rates allowed by the Commission, Applicant will incur some costs to set up the deep well pump for Schedule 3 operation. Since some capital costs (labor and perhaps materials also) have apparently been included in the past Repair and Maintenance figures (upon which we have based 1986 allowed expenses in this category), Applicant should be able to set up the deep well pump for Schedule 3 operation without exceeding the amount we have allowed for Repairs and Maintenance. Proposed capital improvements are not Repair and Maintenance expenses. If allowed (the Commission will be disinclined to allow capital expenditures for which Applicant does not obtain competing bids) they are to be included in rate base at some future date.

i. Chemicals: We find that the $400 per year recommended by the Division is reasonable.

j. Water Testing: We find that the $1,200 per year recommended by the Division is reasonable.

k. Uncollectible Accounts: We find that the $4,200 per year recommended by the Division is reasonable. This figure assumes collection of only 50 percent of standby fees.

l. Property Taxes: Title to the real property claimed by the utility is contested. Since the property valuation and tax notices are sent to the Homeowners (see Exhibit 40), who have historically paid these taxes and have agreed to continue paying them, we allow Applicant no expense in this category. At such time as a court of competent jurisdiction may quiet title to the real property in the Applicant, a reasonable expense in this category will be allowed.

m. Depreciation: We find it reasonable to allow depreciation only on assets included in rate base (see paragraph 17, supra). Using Applicant's (Revised Exhibit 24) and the Division's (Exhibit 83) depreciation schedules, we allow the following:

(i) 1981 assets: $2,622.93 x 5% = $131.15.

(ii) 1982 assets: $1,116.47 x 10% = $111.65.

(iii) 1983 assets: none.

(iv) 1984 assets: none.

(v) 1985 assets:

(a) Booster pump: $2,735.35 x 20% = $547.

(b) Starter control panel: $2,128.16 x 10% = $212.82.

(c) New tank overflow control valves, 6-inch metering station and 1½-inch metering station: $7,743.08 x 5% = $387.15. Total depreciation: $1,389.77.

n. Regulatory Fee: The Division recommended, and we find, that $150 per year is reasonable.

Thus, Applicant's total allowed expenses are $54,879.19. [Applicant also claimed an interest expense of $4,680 (see Second Revised Exhibit 22). This is a below-the-line expense and not allowed.]

TAXES

70. The return to which Applicant is entitled is equal to rate base times rate of return, or $16,334.99 x .122 = $1,960. The taxes on this amount are as follows:

a. Utah State Corporate Franchise Tax (five percent or $100 minimum): $100.

b. Federal Income Tax (15 percent): $294.

Total taxes allowed: $394.00

TOTAL AMOUNT TO BE GENERATED BY RATES

71. The total amount needed to be generated by rates: Expenses: $54,879.19; Return: $1,960.20; Taxes: $394.00. Total $57,233.39.

REVENUES

22. Standby Fees: In both the Timber Lakes Water case and the Silver Springs Water case (Nos. 82-076-01 and 85-570-01, respectively), the Commission found that $9.00 per month was a reasonable standby fee. We find that $9.00 per month is also a reasonable standby for Foothills' customers. Since the standby fee was set at $10.00 per month in the Commission's Interim Order, Applicant shall credit $1.00 per month to standby customers who have paid the $10.00 amount during the interim period. The standby charges will thus generate $9.00 per month x 12 months x 54 customers = $5,832.

23. Other Charges: We find that the following charges are reasonable:

a. Connection Fee: $750.00.

b. Turn-On Service: $50.00.

c. Account Transfer Charge: $25.00

d. Reconnection Fee: $50.00.

e. Service Deposit: $100.00 (under the conditions set forth in Exhibit 30). These charges should generate the following income during 1986: Connection Fees: One at $750.00; Reconnection and Turn-on Fees: $200.00. Total revenues: $950.00.

24. Water Sales: According to the best available records, the Homeowners consumed approximately 16,000,000 gallons of water during 1985 (see Exhibit 59). The Division estimates

that the Homeowners will consume the same amount of water in 1986 (see Exhibits 61 and 63). Applicant estimates that the Homeowners will consume 12,358,000 gallons during 1986 (Exhibit 85). Although no price elasticity analysis was performed, the Commission is aware that as the price for a commodity increases the demand for that commodity is likely to fall. We find it probable that the increased costs of water will result in reduced consumption by the Homeowners and find that approximately 13,000,000 gallons will be consumed during 1986. The sale of the 13,000,000 gallons must generate $50,451.39.

RATE STRUCTURE

25. In its Second Interim Order, the Commission established a demand/commodity rate structure in which all customers paid $27.50 for the first 5,000 gallons and $1.50 per 1,000 gallons thereafter. In the rate hearing, the Division recommended that the first block be increased to 10,000 gallons (see Exhibit 63). Norman Sims, President of the Homeowners' Association, however, testified that the 10,000 block was too large and recommended the 5,000 minimum be retained. We find that the 5,000 minimum is reasonable and will tend to encourage conservation. We find also that both the demand and commodity charges will have to be increased over the interim rates in order to generate the required $50,451.39 and find that a rate of $27.50 for the first 5,000 gallons and $1.40 for every 1,000 gallons thereafter is reasonable and will generate $50,460.40.

MISCELLANEOUS

26. Pursuant to the Stipulation (Exhibit 1, as amended on the record), certain monies were collected by Dean Becker, attorney for the Homeowners, and placed in his trust account. To date, the Division has been unable to obtain from Mr. Becker an exact accounting of the amounts collected and disbursed from his trust account. It is reasonable for Mr. Becker to provide the Commission with a detailed accounting of all monies collected and disbursed on behalf of Foothills and its customers.

27. The Commission finds that it is reasonable and necessary for it to review and approve any proposed future lease or sale agreements for the provision of water to Applicant's service area.

28. The Commission finds that the Revenues, Expenses and Rate Structure set forth in Appendix A (made a part thereof by reference) are just and reasonable.

CONCLUSIONS OF LAW

1. In Utah Department of Business Regulation v. Public Service Commission, 614 P.2d 1242 (1980), the Utah Supreme Court stated the general rule as to burden of proof is hearing before the Commission:

> In the regulation of public utilities by governmental authority, a fundamental principle is: the burden rests heavily upon a utility to prove it is entitled to rate relief and not upon the commission, the commission staff, or any interested party or protestant; to prove the contrary. A utility has the burden of proof to demonstrate its proposed increase in rates and charges is just and reasonable. The company must support its application by way of substantial evidence...

And in cases where the weight of the evidence indicates the developer knew it was subject to Commission jurisdiction and neglected or refused to seek Commission sanction of rates, that burden to justify rates by substantial evidence "rests heavily" indeed. An uncertificated public utility which enters into unreasonable contracts, or makes expenditures which the Commission has no opportunity to review, does so at the risk of not being able to recover those expenses in rates. Before allowing the recovery of such expenses, the utility must clearly demonstrate by substantial evidence that the obligations and expenditures are reasonable and justified.

This policy applies whether or not utility company assets have been transferred from one legal entity to another, even in arm's length transactions in which there is no imputation of impropriety, when to do otherwise would penalize utility ratepayers or defeat regulatory policy. See Colorado Interstate Gas Company v. Federal Power Commission, 324 US 581, 58 PUR(NS) 65, 82-83 (1945); Cities Service Gas Company v. Federal Power Commission, 424 F.2d 411, 87 PUR3d 60 (10th Cir. 1969); Tennessee Public Service Commission v. Nashville Gas Co., 551 SW2d 315, 10 PUR4th 66 (Tenn. 1977); Re JWT Utilities, Inc., 53 PUR4th 508 (PSC Nd. 1983); Re Southern California Lumber Transport, 26 PUR3d 291 (Cal PUC 1958); Re John R. Pervatel, et al., dba Northern New Mexico Gas Company, 19 PUR3d 71 (PSCNM 1957).

In cases (such as the instant one) where a public utility is created by a developer incidental to the subdivision

and sale of land, the Commission has stated its policy with respect to capital expenditures to be included in rate base:

> ...it is the policy of the Commission to allow no return on investment by water companies unless such companies can meet the burden of showing that the investment made was not recovered in the sale of lots or in any other fashion. Dammeron Valley Water Company (Case No. 84-061-01, issued January 17, 1985 at p.7).

It is the generally accepted rule that contributions in aid of construction should be excluded from rate base (see citations at PUR3d, Valuation, Sections 248, 250). Where a developer fails to demonstrate that an investment in a water utility was not recovered in the sale of lots, that investment is deemed to be a contribution in aid of construction and excludable from rate base. In a 1981 case, the Maryland Public Service Commission held:

> In determining the rate base of a water and sewer company that offered service only to a real estate developer and whose stock was solely owned by the real estate developer, the commission found that the real estate developer had recovered through the sale of the development's lots substantially most of his investment in the sewer company; furthermore, to say that the investor had recovered via the sale of lots substantially most of the investment in plant was analogous to finding that customers had made significant contributions in aid of construction, and that such payments were customer-supplied capital. Re Crestview Services, Inc., 72 Md PSC 129, Case No. 7474, Order No. 65118, Feb. 5, 1981.

See also Re Northern Illinois Water Corp. (1959) 26 PUR3d 497; Re Green-Fields Water Co. (1964) 53 PUR3d 670; North Carolina ex rel. Utilities Commission v. Heater Utilities, Inc. (1975) 288 SC

457, 17 PUR4th 548, 729 SE2d 56; Re Princess Anne Utilities Corp. (1969) 81 PUR3d 201; Re Kaanapali Water Corp., 678 P2d 584 (Hawaii, 1984).

If a developer agrees to provide a specified water system, one meeting the standards of the Salt Lake County Water Conservancy District, the Commission may properly exclude from rate base the cost of installing the system promised if the utility does not sustain its burden of demonstrating the cost of the system was not recovered in lot sales.

3. The Commission's authority over contracts entered into between public utilities and other parties derives from four sources:

a. The Commission's General Jurisdiction. U.C.A. Section 54-3-1 mandates that the Commission assure that charges made...by any public utility...for any product...shall be just and reasonable. Section 54-4-1 vests the Commission with:

> power and jurisdiction to supervise and regulate every public utility...to supervise all of the business of every such public utility in this state, and to do all things, whether herein specifically designated or in addition thereto, which are necessary or convenient in the exercise of such power and jurisdiction.

The Utah Supreme Court recently construed the general powers of the Commission in Kearns-Tribune Corporation v. Public Service Commission (No. 19200, filed May 1, 1984):

> ...Any activities of a utility that actually affect its rate structure would necessarily be subject to some degree to the PSC's broad supervisory powers in relation to rates. The question, then, is whether the activity the

> Commission is attempting to regulate is closely connected to its supervision of the utility's rates and whether the manner of the regulation is reasonably related to the legitimate legislative purpose of rate control for the protection of the consumer.

Although the Court in the Kearns-Tribune case held that the Commission did not have the power to regulate utility conduct which was peripheral to the setting of rates (tagline requirements), in the instant case jurisdiction over the Well Lease Agreement is directly related to setting just and reasonable rates.

In Garkane Power Association v. Public Service Commission, 681 P.2d 1207 (1984), the Utah Supreme Court discussed the Commission's jurisdiction over contracts entered into by public utilities:

> There can be no doubt that not every contract entered into by a public utility is subject to the jurisdiction of the PSC. Many contracts for the purchase of supplies and equipment, and other contracts dealing with the ordinary conduct of a business, are contracts that could be litigated only in a district court not before the PSC. However, this dispute is clearly one that involves the validity of electric rates...

In a separate opinion, Justice Durham (concurring and dissenting) went on to state:

> There is no question that the PSC has the authority to investigate, interpret and even alter contracts. That question was settled in an early series of cases brought just after the enactment of Utah's Public Utility Act. In each case, the Public Utility Commission (PUC) found a contract, executed before the institution of the PUC, in

> violation of a subsequently filed rate. This Court upheld the PUC's alteration of the contracts, holding that the regulation of public utility rates was an exercise of the state's police power and was not an unconstitutional impairment of contractual obligations. (See cases cited)

Justice Durham went on to quote with approval from Arkansas Natural Gas Co. v. Arkansas Railroad Commission, 261 U.S. 379 (1923), where the United States Supreme Court stated:

> The power to fix rates...is for the public welfare, to which private contracts must yield...(at 383)

We conclude that the Commission has the authority under Section 54-4-1 to interpret and apply the Well Lease Agreement as set forth in its Findings and that such interpretation and application are reasonable.

b. The Commission's Authority Under U.C.A. Section 54-4-4. This section grants the Commission authority to investigate and modify unjust, unreasonable, discriminatory or preferential rates, fares, rules, regulations, practices or contracts of a public utility. This section is generally understood to apply to contracts (tariffs) between a utility and its customers and we therefore conclude that it is not applicable to our present inquiry.

c. The Commission's Authority Under U.C.A. Section 54-4-26. This section grants the Commission authority to require a public utility to obtain Commission approval before entering into any contract requiring a utility expenditure and withhold approval of the contract if the Commission finds it is not

"proposed in good faith for the economic benefit of such public utility." Although the Commission has in Rule A67-05-95 of the Administrative Rules of the state of Utah (General Order 95) restricted the application of Section 54-5-26 to specific situations, we conclude that since Applicant was a de facto public utility since 1972, it was subject to the Commission's powers under this section. Since the failure of Applicant to become certified made it impossible for the Commission to become aware of the terms of the Well Lease Agreement before it was executed, the Commission concludes it has the power to review that contract and withhold its approval now. We conclude that the Well Lease Agreement was not proposed in good faith for the economic benefit of Foothills and that the Commission is empowered to interpret and apply the Well Lease Agreement as set forth in its Findings and that such interpretation and application are reasonable.

d. The Definition of the Term "Public Utility" Under Section 54-2-1(30)(c). This subsection, as amended in 1985, states:

> (c) If any person or corporation performs any service for or delivers any commodity to any public utility as defined in this section, each person or corporation is considered to be a public utility and is subject to the jurisdiction and regulation of the commission and this title.

Although Jesse Dansie, as the supplier of the water to Foothill's clearly falls within the purview of this subsection, and could be declared a public utility by this Commission (and would have been, were it deemed necessary), we conclude that such a

determination is unnecessary in view of the Commission's jurisdiction over the Well Lease Agreement under sections 54-5-1 and 54-4-76 as set forth above.

4. The Commission does not have the power to settle disputes as to ownership of utility property. It is the general rule that assets not owned by a public utility cannot be included in rate base; where title to utility property is disputed the courts are divided. See, e.g., Re Consumers Co., PUR1923A, 418 (Idaho, 1923); Re Capital City Water Co., PUR1925D, 41 (Mo. 1925); Re Hillcrest Water Co., 5 Ann. Rep. Ohio PUC 57 (Ohio 1917); Frackville Taxpayers' Assoc. v. Frackville Sewage Co., 7 PUR(NS) 515 (Pa., 1934).

5. The $3,000 allowed Applicant for attorney's fees should be capitalized over a period of three years.

6. Applicant is entitled to an increase in its rates and charges in order to collect total revenues in the amount of $57,769. The rates and charges set forth in the Findings of Fact and Appendix A are just and reasonable, do not reflect inflationary expectations, and are the minimum necessary to enable Applicant to render adequate service and meet current and expected demand.

Based upon the foregoing, the Administrative Law Judge now recommends the following:

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that Applicant be, and the same hereby is, authorized to publish its tariff

rporating the rates and charges as set forth in the Findings of Fact and Appendix A, which is attached hereto and incorporated by reference.

IT IS FURTHER ORDERED that Dean H. Becker, Attorney, file with this Commission, within thirty (30) days of the issuance of this Order, an exact accounting of all amounts collected and disbursed from his trust account or any other accounts on behalf of Foothills or its customers.

IT IS FURTHER ORDERED that Foothills obtain approval from this Commission before entering into any future lease or sales agreements for the provision of water to Foothills' service area or any amendment to or assignment of any lease or sales eement that is now in force and effect.

IT IS FURTHER ORDERED that the legal description of Applicant's service area shall be as follows:

BEGINNING at Northeast corner of the Southwest quarter of the Southwest quarter of Section 33, Township 3 South, Range 2 West, Salt Lake Base and Meridian, and running thence:

A. West to the Northwest corner of the Southwest quarter of the Southwest quarter of said Section 33;

B. South to the Northeast corner of Section 5, Township 4 South, Range 2 West, Salt Lake Base and Meridian;

C. West to the Northwest corner of the Northeast quarter of the Northeast quarter of said Section 5;

D. South to the Southwest corner of the Northeast quarter of the Northeast quarter of said Section 5;

E. West to the Northwest corner of the Southwest quarter of the Northwest quarter of said Section 5;

F. South to the Southwest corner of said Section 5;

G. East to the Southeast corner of the Southwest quarter of the Southwest quarter of said Section 5;

H. North to the Northeast corner of the Northwest quarter of the Southwest quarter of said Section 5;

I. East to the center of said Section 5;

J. South to the Southwest corner of the Northwest quarter of the Southeast quarter of said Section 5;

K. East to the Southeast corner of the Northeast quarter of the Southeast quarter of said Section 5;

L. South to the Southwest corner of Lot 103, Hi-Country Estates Subdivision;

M. Southeasterly to the Southeast corner of said Lot 103;

N. Northeasterly along East property line of Lots 103 and 102, Hi-Country Estates Subdivision; to the West line of the Southeast quarter of the Southwest quarter of Section 4, T4S, R2W;

O. South to the Southwest corner of the Southeast quarter of the Southwest quarter of said Section 4;

P. East to the Southeast corner of the Southwest quarter of the Southeast quarter of said Section 4;

Q. North to the Northeast corner of the Southwest quarter of the Southeast quarter of said Section 4;

R. West to the Northwest corner of the Southwest quarter of the Southeast quarter of said Section 4;

S. North to the North quarter corner of said Section 4;

T. East to the Southeast corner of Lot 1A, Hi-Country Estates Subdivision;

U. North to the South boundary of Hi-Country Road;

V. Easterly along the South boundary of Hi-Country Road to the South boundary of Highway U-111;

W. Northwesterly along South boundary of Highway U-111 to the North line of the Southeast quarter of the Southwest quarter of Section 33 T3S, R2W;

X. West to the point of beginning.

IT IS FURTHER ORDERED that Applicant be, and the same hereby is, authorized to publish its new tariff effective on one day's notice to the public and Commission;

IT IS FURTHER ORDERED that this Order be, and the same hereby is, effective on issuance.

DATED at Salt Lake City, Utah, this 17th day of March, 1986.

/s/Kent Walgren
Administrative Law Judge

Approved and confirmed this 17th day of March, 1986, as the Report and Order of the Commission.

/s/ Brent H. Cameron, Chairman

/s/ James M. Byrne, Commissioner

(SEAL) /s/ Brian T. Stewart, Commissioner

Attest:

/s/ Georgia B. Peterson
Executive Secretary

IT IS FURTHER ORDERED that Applicant be, and the same hereby is, authorized to publish its new tariff effective on one day's notice to the public and Commission;

IT IS FURTHER ORDERED that this Order be, and the same hereby is, effective on issuance.

DATED at Salt Lake City, Utah, this 17th day of March, 1986.

Kent Walgren
Administrative Law Judge

Approved and confirmed this 17th day of March, 1986, as the Report and Order of the Commission.

Brent H. Cameron, Chairman

James M. Byrne, Commissioner

Brian T. Stewart, Commissioner

Attest:

Georgia B. Peterson
Executive Secretary

APPENDIX A
FOOTHILLS WATER COMPANY
REVENUES AND EXPENSES

OPERATING REVENUES	
Standby Charges ($9.00/mo. x 12 mo. x 54 standbys)	$ 5,832.00
Demand Charge ($37.50/mo x 12 mo. x 63 customers)	28,350.00
Water Charge (9,220,000 gal. x $2.40/1,000 gal.)	22,128.00
Connection Fees	750.00
Turn-on and Reconnection Fees	200.00
TOTAL INCOME	$57,260.00
OPERATING EXPENSES	
Accounting and Administration	$ 4,017.80
Insurance	2,500.00
Water Lease	7,700.00
Utilities	10,490.62
Telephone	600.00
Directors' Fees	600.00
Legal Expenses	1,000.00
Repairs and Maintenance	21,136.00
Chemicals	400.00
Water Testing	1,200.00
Uncollectable Accounts	4,200.00
Property Taxes	0
Depreciation	1,389.77
Regulatory Fee	150.00
TOTAL EXPENSES	$54,879.19
Utah State Corporate Franchise Tax	$ 100.00
Federal Income Tax	294.00
Return on Rate Base	1,960.20
TOTAL NEEDED TO BE GENERATED	$57,233.39

EXHIBIT B

FILE COPY

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319268

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of the Application of Hi-Country Estates Homeowners Association for Approval of Its Proposed Water Rate Schedules and Water Service Regulations	Docket No. 13-2195-02 **TESTIMONY OF RANDY CRANE**

Hi-Country Estates Homeowners Association ("Hi-Country") hereby submits the Testimony of Randy Crane in this docket.

Dated this 17th day of October, 2013

J. Craig Smith
Megan E. Garrett
SMITH HARTVIGSEN, PLLC
Attorneys for Hi-Country Estates Homeowners Association

4829-0853-5318

TESTIMONY

OF

RANDY CRANE

FOR

HI-COUNTRY ESTATES

HOMEOWNERS

ASSOCIATION

October 17, 2013

Docket No. 13-2195-02

Water Company, and the family of J. Rodney Dansie that quieted title to the water system in the Association, the Commission canceled Foothill's CCN No. 2151 and issued CCN No. 2737 to the Association.

Please describe the initial involvement of the Public Service Commission with Hi-Country in 1994.

Hi-Country was granted CCN No. 2737 on March 23, 1994. On May 14, 1996, based on an order of the Commission in Docket No. 95-2195-03, the Commission issued Letter of Exemption No. 0057 to the Company, thus freeing Hi-Country from PSC oversight as long as that letter was in effect.

And after receiving the exemption from the PSC, how was the water system operated and managed?

From May 14, 1996, until July 12, 2012, Hi-Country operated as an exempt water corporation and water rates and rules and regulations were set by the Association's Water Board and approved by the Board of Directors. As the Letter of Exemption had been granted and was in effect, the PSC was not involved with the water company.

Please describe the circumstances that led Hi-Country to return to PSC jurisdiction.

Hi-Country began serving some customers that were outside of the subdivision and who were likewise not members of the Association, and thus were not entitled to the voting rights and inherent protections that the homeowners within the subdivision have. Accordingly, Hi-Country

felt that the exemption granted by the PSC was no longer appropriate and notified the PSC of such. On July 12, 2012, in Docket No. 11-2195-01, the Commission entered a Report and Order revoking the letter of exemption. Mr. Dansie, throughout this period, continued his demand for free water to serve the areas specified in the well lease agreement. Doing as Mr. Dansie demanded would have meant serving additional areas outside our service area and outside the HOA, which would make it necessary for the PSC to revoke Hi-Country's then-effective letter of exemption and require Hi-Country to submit to PSC oversight.

How many water customers does Hi-Country have?

Hi-Country currently has 90 active residential customers, 35 standby residential customers, and one governmental customer, the U.S. Bureau of Land Management.

Does Hi-Country expect the number of customers to change?

No, we do not expect the number of customers to change in the near future. As noted, we have 35 standby customers and we expect many of those who do not have their own wells to eventually develop their properties and become active customers; however, we are not aware of any standby customers that intend to develop their lots within the next few years. It is possible that any of the lots currently for sale could be purchased and developed immediately by new owners, but I am not aware of any firm plans to do so.

Can you describe the assignments made under the 1977 Well Lease?

Jesse J. Dansie and Bagley entered into the 1977 Well Lease. Jesse J. Dansie died in 1987. The 1977 Well Lease was never assigned to the Association, nor has the Association otherwise succeeded Foothills Water Company as a party to the 1977 Well Lease.

What has the PSC previously ruled with respect to the 1977 Well Lease?

On March 17, 1986, the PSC addressed the 1977 Well Lease in connection with rate proceedings under Foothills Water Company's CCN. The PSC's order, which is Exhibit 5 and is incorporated by reference herein, set forth the PSC's findings of fact and conclusions of law containing several statements regarding the 1977 Well Lease. The PSC found that it is unreasonable to expect Foothills Water Company to support the entire burden of the 1977 Well Lease. The PSC found that the 1977 Well Lease is grossly unreasonable, requiring not only substantial monthly payments, but also showering virtually limitless benefits on Jesse J. Dansie and the members of his immediate family. The PSC concluded that the actual value of the 1977 Well Lease was approximately $4,416 per year. The PSC also concluded that the July 3, 1985 amendment to the 1977 Well Lease lacked meaningful consideration and is, to the extent relevant to the PSC's inquiry, invalid. According to the PSC, it would be unjust and unreasonable to expect Foothills Water Company's 63 active customers (at that time) to support the entire burden of the 1977 Well Lease, but that payment of the $600 monthly lease payment by Foothills Water Company would adequately cover the value of the benefit Foothills Water Company was receiving under the 1977 Well Lease. The PSC stated that the remaining burdens

EXHIBIT C

WELL LEASE AND WATER LINE EXTENSION AGREEMENT

THIS AGREEMENT made and entered into this 7th day of April, 1977, by and between JESSE H. DANSIE, hereinafter referred to as "Dansie", and GERALD H. BAGLEY, hereinafter referred to as "Bagley".

W I T N E S S E T H :

WHEREAS, Dansie is the owner of property located in Sections 33, 34 and 35, Township 3 South, Range 2 West, Salt Lake Base and Meridian, and is also the owner of water rights evidenced by Certificate No. 8212 Application No. 26451, and the rights to water therefrom and a water distribution system located on such property; and

WHEREAS, Bagley is the owner of property located in Section 33, Township 3 South, Range 2 West, and Sections 1, 2, 4, 5, and 11, Township 4 South, Range 2 West Salt Lake Base and Meridian, and is also the owner of a water distribution system located on part of the property owned by him; and

WHEREAS, Dansie and Bagley desire to connect their water systems and make use of the Dansie well and water for their mutual benefit, upon the terms and conditions provided herein;

NOW, THEREFORE, in consideration of the mutual covenants hereinafter provided, the parties hereto agree as follows:

A. WELL LEASE

1. Dansie hereby leases to Bagley the well located South 758 Feet and East 1350 Feet from the West quarter corner of Section 33, Township 3 South, Range 2 West, Salt Lake Base and Meridian, identified by Certificate No. 26451 issued by the Utah State Engineer's Office, hereinafter referred to as "Dansie Well No. 1", including the equipment for operation of such well and the rights to all of the water therefrom, for a period of ten (10) years from the date of this Agreement.

EXHIBIT 3

2. Bagley shall pay to Dansie Five Thousand One Hundred Dollars ($5,100.00) the receipt of which is hereby acknowledged, and as rental for such lease, Bagley shall pay to Dansie $300.00 each month during the first five years of this lease commencing April 10, 1977, provided the monthly rental shall be increased to $600.00 per month at such time as thirty (30) additional hook-ups are installed on the Hi-Country Water Company Distribution System operated by Bagley. As of the date of this Agreement, there are 28 hook-ups, such Hook-ups being detailed in Exhibit #1.

3. Commencing April 10, 1982, the monthly rental payments shall be increased to $600.00 per month unless they have already been increased to that amount pursuant to Paragraph 2 above.

4. Bagley shall have the right to renew this Well Lease on terms to be agreed to by Bagley and Dansie at the termination of this Lease on April 10, 1987.

5. Bagley agrees to provide and install a seal around the well pipe of Dansie Well No. 1 as required to meet the Utah State Division of Health standards and to install a new pump on the well within the first five (5) years of this lease and shall be responsible for all maintenance of Dansie Well No. 1 during the term of this lease.

6. Bagley agrees to pay all pumping costs, repairs, and maintenance of said well for the period of this Agreement. Bagley agrees to maintain the said well, and electric motor in good operating condition. Any changes or modifications to said well, motor and pumping equipment shall be paid for by Bagley and will become the property of Dansie at the termination of this Agreement.

7. The existing pump, electric motor and transformers will remain the property of Dansie and will be delivered to Dansie if removed from said well. Any new equipment to be installed in said well such as an electric motor, pumps and transformers and

piping shall become the property of Dansie and shall be free and clear of any mortgages, liens or encumbrances at the termination of this Agreement.

8. Bagley agrees for himself, his successors, and assigns to be responsible for and to indemnify Dansie, his successors and assigns, against any and all liability, losses and damages, of any nature whatever, and charges and expenses, including court costs and attorneys' fees that Dansie may sustain or be put to and which arise out of the operations, rights and obligations of Bagley pursuant to this Agreement whether such liability, loss, damage charges or expenses are the result of the actions or ommissions of Bagley, his employees, agents or otherwise.

9. Dansie does not warrant that the water from Dansie Well No. 1 does now or at any time during the term of this Agreement, and any extension thereof, will meet any standards for culinary water as required by the Utah State Division of Health. However, a letter of approval of the water by the Utah State Board of Health is attached (Exhibit #2) and the requirements are set forth in said letter.

B. EXTENSION NO. 1

1. Within one year from the date hereof, Dansie shall with his equipment perform all labor required to excavate for and install a 6-inch P.V.C. Class 200 pipeline connecting the Dansie Well No. 1 to the existing Hi-Country Water Company water system owned by Bagley at a point in Lot #9 as referenced by the map in Exhibit #1. Bagley shall purchase and furnish all permits, pipe, materials and supplies required for this connection and shall obtain an easement across Lot #9 at his expense.

2. Dansie shall own the line upon completion of the work and Bagley shall be able to use said line during the term of this Agreement. Bagley shall have a right to enter the property upon which the pipeline and connection is located for the purpose

of installing, maintaining and using the water line to be installed thereon pursuant to Paragraph B (1) above. Bagley hereby grants and conveys to Dansie an easement and right-of-way over and across property in the Hi-Country Estate Subdivision for the same purpose. Dansie shall have a right to take water from the line at points that may serve the property along the line of Extension No. 1. Dansie shall own and Bagley will be responsible for maintenance of the extension during the life of this Agreement.

C. EXTENSION NO. 2

1. Within one year from the date hereof, Dansie shall, with his equipment and at his expense, perform all labor required to excavate for and install a 6-inch P.V.C. Class 200 pipeline connecting the Hi-Country Estates Water Company water system, from its most Easterly point at approximately 7350 West and 13300 South in Salt Lake County, to the Dansie Water line at approximately 7200 West and 13300 South, including a pressure-reducing valve at the point of connection with the Hi-Country Estates Water Company system at 7350 West 13300 South. Dansie shall purchase and furnish all pipe, materials and supplies required for this connection.

2. Dansie shall obtain and provide all easements and permits and pay all fees required for this connection and extension, except as for such line that may be on property of Hi-Country Homeowners Association or Bagley.

3. Dansie shall own and be responsible for all maintenance of this Extension No. 2.

4. Bagley shall have the right, at all times during the term of this Agreement or any extension thereof, to run water from the Hi-Country Estates Water Company system through the Dansie water system and Extension No. 1 and No. 2 and No. 3 to property owned by Bagley in Sections 1, 2, and 11, Township 4 South, Range 1 West, Salt Lake Base and Meridian.

D. EXTENSION NO. 3

1. Within one year from the date hereof, Dansie shall, with his equipment perform all labor required to excavate for and install a 6-inch P.V.C. Class 200 pipeline connecting to the Dansie water system at 6800 West and 13000 South in Salt Lake County and extending along 6800 West to 13400 South. Bagley shall purchase and furnish all permits, pipe, materials and supplies required for this connection and extension.

2. Dansie shall own and Bagley shall be responsible for all maintenance of this Extension No. 3 during the life of this Agreement.

E. OTHER WELLS AND HOOK-UPS

1. Dansie shall have the right, at his expense, to connect any additional wells owned by him, located in Section 33, 34 and 35, Township 3 South, Range 2 West, Salt Lake Base and Meridian identified by Certificate No. _____ issued by the Utah State Engineers Office, hereinafter referred to as "Dansie Wells" and by change application No. 9-8635 (59-3879) issued by the Utah State Engineers Office, hereinafter referred to as "Dansie Well No. 3," to the water system owned by Dansie, including Extension No. 2, and to commingle the water from these wells with that in the system from other sources so long as the water from such wells at all times meet all standards for culinary water required by the Utah State Division of Health.

2. Dansie shall have the right to receive up to five (5) residential hook-ups onto the water system on the Dansie property for members of his immediate family without any payment of hook-up fees and shall further have the right to receive reasonable amounts of water from the system through these five (5) hook-ups for culinalry and yard irrigation at no cost.

3. Dansie shall further have the right to receive up to fifty (50) residential hook-ups onto the water system on the Dansie property for which no hook-up fees will be charged. Water service

charges shall be charged to the recipients thereof of which Dansie shall receive fifty percent (50%) of the water service billings paid by those recipients in consideration for Dansie's maintenance of his part of the water system.

4. Dansie shall receive not less than $4,000.00 or One Hundred percent (100%) of all of the hook-up fees to the water system on the Leon property located between the Hi-Country Estates property in Sections 33, Township 3 South, Range 2 West, and the Dansie property in Section 34, Township 3 South, Range 2 West, Salt Lake Base and Meridian and shall receive fifty percent (50%) of the revenues from water service charges to such property.

5. Dansie shall have the right to use for any purposes and at no cost, any excess water from the Hi-Country Estates Water Company system Well No. 1, not required or being used by Bagley or customers of the Hi-Country Estates Water Company. Any power or other costs of pumping such excess water shall be paid by Dansie.

F. MISCELLANEOUS

1. It is understood that Bagley intends to use the entire water system formed by the extensions and connections provided for herein, including the present systems owned by Bagley and Dansie, for the purpose of providing water to users in the area covered by this system or which can be reached by extensions and connection to this system, that Bagley intends to charge hook-up and water service fees to water users, that Bagley is entitled to all such fees and other charges except as otherwise provided in this Agreement, and that Bagley is responsible for all costs of other extensions and connections except as otherwise provided in this Agreement.

2. Dansie agrees that Bagley may form a water company, using such entity or form of organization as Bagley desires, and may convey all his rights to the water system referred to in this Agreement and assign his interest in this Agreement to any such

entity or organization. Bagley will be personally responsible for lease terms and conditions if assignee fails to meet the terms and conditions of the lease. No assignment, conveyance or sublease shall release Bagley from liabilities and obligation under this Agreement.

3. Dansie further agrees that Bagley may apply to the Utah Public Service Commission for such permits or approvals as may be required and Dansie shall cooperate fully in all respects as may be required to obtain such permits or approvals as may be required by the Public Service Commission. Bagley agrees to pay all costs incurred in obtaining such approval, including but not limited to, legal and engineering fees.

4. Bagley and Dansie each agree to execute and deliver any additional documents and/or easements which may be necessary to carry out the provisions and intent of this Agreement.

5. Non-payment of any monthly installment will, at the option of Dansie, automatically terminate this Agreement. All remaining lease payments, in the event of termination for non-payment of any monthly installment, shall become immediately due and payable to Dansie. If it becomes necessary for Dansie to sue for the liquidated damages (remaining lease payments), Bagley shall pay attorneys' fees and costs incurred by Dansie.

6. Dansie shall have first right of refusal to purchase the entire Hi-Country water system if it is to be sold or assigned to a third party.

7. Bagley, and his assigns or successors, agree to supply water to the Dansie property as provided for in this Agreement and for such time beyond the expiration or termination of this Agreement as water is supplied to any of the Hi-Country properties or that the lines and water system referred to in this Agreement are in existence and water is being supplied from another source such as Salt Lake County Conservancy District. Such water as is provided subsequent

to the expiration or termination of this Agreement shall be made available upon the same terms, conditions and rates as are set forth in this Agreement.

DATED this 7th day of April, 1977.

JESSIE H. DANSIE

GERALD H. BAGLEY

EXHIBIT D

AMENDMENT TO WELL LEASE AND WATER LINE EXTENSION AGREEMENT

This Amendment made and entered into this 3rd day of July, 1985, by and between Jesse H. Dansie, hereinafter referred to as "Dansie," and Gerald H. Bagley, hereinafter referred to as "Bagley."

W I T N E S S E T H

WHEREAS, Dansie and Bagley, on April 7, 1977, entered into a Well Lease and Water Line Extension Agreement (hereinafter "Well Lease Agreement"); and

WHEREAS, Dansie and Bagley are concerned about possible ambiguities in Paragraph E. 2. of the Well Lease Agreement; and

WHEREAS, the Hi-Country Estates Homeowners Association has filed a lawsuit based in part on interpretation of the Well Lease Agreement; and

WHEREAS, Bagley is delinquent in the payment of his monthly rental payments, but desires to continue the Well Lease Agreement;

NOW, THEREFORE, in consideration of $10.00 (Ten) and other good and valuable consideration, the sufficiency of which is hereby admitted, Dansie and Bagley agree as follows:

1. Paragraph E. 2. of the April 7, 1977 Well Lease Agreement is amended to read as follows:

> 2. Dansie shall have the right to receive up to five (5) residential hook-ups on to the water system on the Dansie property for

members of his immediate family without any payment of hook-up fees and shall further have the right to receive up to 12 million (12,000,000) gallons of water per year from the combined water system at no cost for culinary and yard irrigation use on the Dansie property described herein plus Lot 51 of Hi-Country Estates. Any meters required at any time by any person or entity for metering of Dansie's water shall be purchased and installed by Bagley at no cost to Dansie. Any use of water for the fighting of fires, or losses caused by breaks or line ruptures shall not be charged against the 12,000,000 gallons to which Dansie is otherwise entitled.

2. Paragraph E.5. of the April 7, 1977 Well Lease Agreement is amended to read as follows:

5. Dansie shall have the right to use for any purpose and at no cost, any excess water from the High Country Estates Water Company System Well No. 1, not required or being used by Bagley or customers of the High County Estates Water Company. Dansie shall pay only the incremental pumping power costs associated with producing such excess water.

3. All other provisions of the Well Lease Agreement shall remain in full force and effect.

4. Nothing herein shall relieve Bagley from the obligation to make the monthly payments now delinquent or to become due under the Well Lease Agreement.

4. This Amendment and the Well Lease Agreement as amended herewith, shall be binding upon and inure to the benefit of the respective parties hereto, their successors and assigns.

IN WITNESS WHEREOF, each of the parties has caused this Amendment to be executed the day and year first above written.

JESSIE H. DANSIE

GERALD H. BAGLEY

6985C

EXHIBIT E

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of the Investigation Into the Reasonableness of the Rates and Charges of FOOTHILL WATER COMPANY, Respondent	)	DOCKET NO. 91-2010-01 REPORT AND ORDER

ISSUED: April 9, 1992

SYNOPSIS

On the complaint of unjustly high rates, the Commission reviewed the rates of Respondent, a certificated water corporation. The Commission found that, notwithstanding an order of the Utah Third District Court, the Commission had authority to reform a well lease disadvantageous to the utility and to value the utility's rate base for rate-making purposes. The Commission ordered the utility to cooperate with an intervenor to bring into being an alternative water source, and to contract with the intervenor for the use of that source. The Commission refused to allow projected test year expense adjustments for changes not known and measurable during the test year, and not occurring before entry of the Order. The Commission further disallowed attorney's fees incurred in defending Respondent's claim to ownership of the system, and redounding to the benefit of Respondent's sole shareholder. The Commission sets new rates, affording Respondent a certain amount of rate relief, for the interim before the new water source can be brought on line, and permanent rates thereafter.

Appearances:

Laurie Noda, Assistant Attorney General	For	Division of Public Utilities, Utah Department of Commerce, Complainant
Val R. Antczak	"	Foothill Water Company, Respondent
Larry R. Keller	"	Hi-Country Estates Homeowners Association, Intervenor

By the Commission:

PROCEDURAL HISTORY

Pursuant to notice duly served, the above-captioned matter came on regularly for hearing the thirtieth day of January, 1992,

EXHIBIT 6

before A. Robert Thurman, Administrative Law Judge for the Commission, at the Commission Offices, 160 East 300 South, Salt Lake City, Utah. Evidence was offered and received, and thereafter memoranda of law were submitted. 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.

INTRODUCTION

Foothills Water Company (hereafter "Respondent") is a certificated water corporation operating a system located in the southwest part of Salt Lake County, west of the community of Herriman. At present it serves 52 connected customers, and 72 "standby" customers, i.e., owners of undeveloped lots within the service area. We have party and subject-matter jurisdiction.

For the most part, the issues raised in this matter are mixed legal and factual, not lending themselves readily (at least with any degree of intelligibility) to separate discussion of the factual and legal aspects. Accordingly, this report will be cast in the form of an extended opinion, rather than divided formally into separate Finding and Conclusion sections.

MAJOR ISSUES

The positions of the parties and the rulings of the Commission are based on a 12-month test year extending from January 1 through December 31, 1991. The positions are summarized in Appendices A through C, annexed hereto and incorporated herein by this reference. The summary for the Division of Public Utilities, Utah Department of Commerce (hereafter "Complainant"), is taken from

Hearing Exhibit 1, the prefiled testimony of Kenneth R. Colby, specifically Exhibit DPU/KRC2 thereto. The summary for Respondent is taken from Hearing Exhibit 5, page 5, which, we understand, represents Respondent's final position on all disputed issues.[1] Appendices A through C also contain the Commission's projected revenue requirement findings. In comparing the two positions, some care must be exercised, since there is not always a one-to-one correspondence in account numbers used, and Complainant has combined some of the accounts employed by Respondent, which we have also done in our determinations.

The parties disagree regarding numerous expenses claimed by Respondent as costs of service, as well as the amount of the rate base on which Respondent is entitled to a reasonable return. There also are differences on the appropriate rate design for future rates. The test year income does not appear to be at issue, nor does the appropriate rate of return to be applied.

Many of the expense discrepancies between the parties' filings arise because of a difference as to the appropriate test year. It should be pointed out that both the Complainant and Respondent started with a 10-month historical test year with projections for the last two months predicated on the historical data from the first 10 months. From there, the Respondent proposes to incorporate certain expense increases projected beyond the test year.

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[1] In cases where Respondent does not list an item on the exhibit, we assume no amount is claimed. In cases where Complainant lists no amount (primarily income items) for an amount listed by Respondent, we assume Complainant acquiesces.

whereas Complainant proposes to use only the historical test year, with no adjustments for increases not incurred during the test year.

Chapter R746-407, Utah Administrative Code (UAC), a Commission rule (hereafter "Annualization Rule"), comports substantially with Complainant's position. In general, we will not incorporate projected expense changes for an historical test year unless the change is known and measurable and occurs prior to the entry of a final rate-setting order.

Of the disputed expense items, many are relatively small, but three are substantial, to wit: the total compensation paid to Respondent's sole shareholder, president, and watermaster, Mr. J. Rodney Dansie (hereafter "J. R. Dansie"); water acquisition and pumping costs; and costs of outside consultants, including legal, accounting, and engineering.

I. WATER ACQUISITION AND PUMPING COSTS

By far the thorniest issue presented in this case is that of the costs of acquiring water for the system and associated production costs, primarily power for pumping. Respondent claims total costs of $14,670, including some projected pumping cost increases. (Lines 17, 19, and 21, Exhibit A annexed hereto and incorporated herein by this reference.)

A. Present Water Source

At present, Respondent's sole source of water is a well (hereafter "the Dansie Well") owned by an entity known as the "Dansie Family Trust" (hereafter "the Trust"), successor in interest to Jesse Dansie, with whom Respondent's predecessor in interest, one Gerald H.

Bagley, entered into a well lease April 7, 1977. J. R. Dansie owns a 30% beneficial interest in the Trust.

Under the terms of the lease, and a subsequent amendment, the lessee was obligated to pay $600 monthly and to allow the lessor to transport through the system annually, at no charge, a maximum of 12,000,000 gallons of water. For a system serving 52 customers, the lease payments themselves, amounting to $7,200 annually, are not trifling. When one adds the pumping costs for 12,000,000 gallons annually, which amount almost to half the lease payments,[2] it is obvious the lease is a major financial burden on the ratepayers.

B. Present Lease Status

By its terms, the lease was for ten years. There was no automatic renewal, but the lessee was given the option of renewing on "terms to be agreed to by [lessee and lessor] at the termination of this lease . . ." (Hearing Exhibit 2, Prefiled Testimony of Jon A. Strawn, Exhibit 2.4) According to the testimony of J. R. Dansie (Transcript, at 200), there has been no formal renewal of the lease, but Respondent and the Trust have been honoring its terms, on a month-to-month basis, for almost five years, since the expiration,

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[2]For the test year, total system usage was 25.6 million gallons. (Hearing Exhibit 6) The customers used 8.7 million gallons. (Id.) The Trust was charged for the costs associated with pumping 4.9 million gallons, the excess over the "free" 12 million gallons. By calculation, in round numbers, the customers used 34% of the water, 47% of system usage went to meet the free transportation obligation, and the trust paid the pumping costs associated with 19% of system usage. Total pumping costs were just under $7,500. (Appendix A, Id.) Allocating the "free" usage to the total pumping costs, the customers were saddled with an additional annual cost of approximately $3,500, rendering lease costs in excess of $10,000. If the lease cost is divided solely among the connected customers, it approximates $16 per month, not a negligible water bill in and of itself.

April 7, 1987. There appears to have been no attempt to negotiate more favorable terms.

In our Order of March 17, 1986, the last rate case involving this utility, we expressed strongly our disapprobation of the terms of the lease and our determination to reform it on terms more favorable to Respondent. (Report and Order, Docket No. 85-2010-01, PSCU 1986, at 12-13) We are empowered to do so. (Arkansas Natural Gas Co. v. Arkansas Railroad Commission, 261 U.S. 379 (1923); Garkane Power Association v. Public Service Commission, 681 P.2d 1207 (Utah 1984))[3] We intended that Respondent's liability under the lease be limited to payment of $600 per month, and that any costs associated with providing surplus water to the Trust be the obligation of the Trust or the original lessee, Gerald Bagley. (Report and Order, supra, at 13)

Unfortunately, none of the ordering paragraphs compelled the reformation in so many words, but we believe our intent was nevertheless clear, since only $7,200 was allowed as expense for the lease.

In any event, we did order explicitly that Respondent seek our approval for any new lease. This Respondent has failed to do, even though it acknowledges having adhered to the same terms the Commission found unreasonable--and this on a precarious, month-to-month basis. Respondent argues we should overlook the failure to obey our Order, since the arrangement has existed since the original lease expired in 1987.

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[3]The legal justification for our reforming the contract was discussed extensively in our 1986 Report and Order, supra, at 31-34 and we do not propose to rehash it here.

The short answer is that the Commission, as a governmental agency, is not subject to the equitable defenses of laches or estoppel. Even if those concepts were applicable, there is no showing that Respondent or the Trust have, in any way, changed their positions in reliance on Commission non-actions; and even if there were such a showing, making the case for the application of the concepts more compelling, we cannot accept that the ratepayers should pay for the Commission's alleged dilatoriness.

Our position is not changed by the entry of an Order by the Utah Third District Court that the obligation to move the 12,000,000 gallons annually through the system, at no cost, is a virtually perpetual "encumbrance" on Respondent. The Court may have felt compelled to enforce the terms of the contract as written, but, as noted above, we do not deem ourselves under any such constraint. For rate-making purposes, we may disallow the associated pumping costs as valid utility expenses, and we most emphatically should do so.

C. Alternative Solutions

To resolve the lease issue, we could order Respondent to negotiate a more favorable new lease with the Trust and to submit the same for our approval. This does not look promising, since J. R. Dansie himself owns a beneficial interest in the Trust and is related to the other beneficiaries. Even if J. R. Dansie were to negotiate a new lease on better terms, the suspicion would no doubt linger among ratepayers that still better terms were achievable. To be blunt, J. R. Dansie, in dealing with the Trust, has an irreconcilable conflict of interest.

We could also compel the Trust to submit itself to our jurisdiction under § 54-2-1(19)(c), UCA 1953, as amended. We could doubtless assure the reasonableness of any new lease if we did so, but the effort would entail more delay and legal expense. Moreover, the Trust could, at this time, evade our jurisdiction simply by refusing to enter into a new lease. The course does not recommend itself unless there is no other option.

There appears to be another option. The Hi-Country Estates Homeowners Association (hereafter "Intervenor") has been developing its own well (hereafter "the Homeowners' Well") and stands ready to lease the same to Respondent for the nominal sum of $12 per year, and to absorb all pumping costs to serve the present customers. (Testimony of Kenneth Norton, Transcript, at 131-143) At a stroke this would reduce Respondent's expenses by almost $10,000 per year.

D. Objections to Use of Homeowners' Well

Before Respondent could avail itself of the Intervenor's offer, certain legal, financial, and technical issues would need resolution.

First, ownership of the water right represented by Application No. 33130 (hereafter "the water right") is now the subject of litigation between Respondent and Intervenor. To use the Homeowners' Well, the point of diversion would need to be changed to the Homeowners' Well. The record indicates that, with both Respondent and Intervenor sponsoring the change application, the change could be effected within a short time.

The change would not affect either claimant's position as to title to the water right. The lease could specifically incorpo-

rate provisions not to jeopardize Respondent's interests, if any, in the water right.

Second, Respondent has cast doubts on the Intervenor's financial capacity to finance and operate the well. We resolve those doubts in favor of the Intervenor. We do not perceive financing as an obstacle.

Finally, the Homeowners' Well needs further completion work in the form of cementing in and installation of a pump and equipment. The Intervenor proposes to use a 15 horsepower pump, rather than the 75 horsepower pump Respondent uses presently.

Respondent's engineering expert expressed doubts that the Homeowner's Well's production and pumping capacity would be sufficient to provide adequate peak service demand and fire protection in the service area. (Testimony of Seth Schick, Transcript, at 102-158) He also noted that there may be some question whether the well could sustain its tested capacity over a long period. (Id.)

Obviously, changing the water source would entail risks. We are satisfied, however, that the capacity designed into the system would meet legal requirements for usage and fire protection. (See Rebuttal Testimony of Jon Strawn, Transcript, at 263-282) The only real risk is the Well's being able to sustain production. That is a risk with any well--even the Dansie Well.

Against the risks we must balance the prospective benefits. Those are substantial. First, as noted above, Respondent's expenses would immediately be reduced almost $10,000. In a system with as few customers as Respondent, that is no small consideration. Second, it would, once and for all, remove the conflict of interest of J. R.

Dansie. Whatever other points of friction might remain between the customers and him, one of the most important would have been removed.

Given the prospective benefits, we think the risks are worth running. If the Homeowners' Well does prove to be an inadequate source, we can then reconsider a new lease with the Trust, or, if the title litigation between Respondent and Intervenor has been resolved, there may be the possibility of joining the Salt Lake Water Conservancy District.

F. Conclusion on Water Source

Respondent should be ordered to join in the point of diversion change application for the water right and to enter into a well lease with Intervenor for an annual rental of $12 as soon as the Homeowners' Well has received necessary approvals and is on line. In the interim, in the absence of evidence as to the reasonable market value of the water provided to Respondent for its customers,[4] payments to the Trust should be limited to $600 per month, and pumping costs for any water transported for the Trust should be billed to the Trust.

II. J. R. DANSIE'S COMPENSATION

Respondent claims as expenses a salary to J. R. Dansie in the amount of $8,400, with associated payroll tax and insurance expense, (Appendix A, Lines 13 and 14) contract repair and maintenance services rendered by J. R. Dansie in the amount of $26,147, (Appendix A, Line 30) and office rental, with J. R. Dansie as

[4]There was such evidence presented in the 1986 case, and the Administrative Law Judge found $368 per month to be a reasonable water charge. For other reasons, he recommended that the monthly charge remain at $600. We cannot, of course, apply his finding in this case.

landlord, in the amount of $8,400. (Appendix A, Line 31) The claim also incorporates a projected increase in the amount of contract repair and maintenance services. All told, claimed expenses benefitting J. R. Dansie directly amount to $36,947.[5]

The Division of Public Utilities, Utah Department of Commerce (hereafter "the Complainant"), proposes to shift the $8,400 salary from the officers' salary account to the Administration and Accounting account. This is consistent with the testimony of J. R. Dansie to the effect that the account was originally established to compensate his wife for performing Respondent's bookkeeping, a function J. R. Dansie has assumed himself. We agree with Complainant.

The Complainant also recommends disallowance of the projected portion of repair and maintenance contract services. In conformance with the Annualization Rule, we agree.

As a further adjustment, the Complainant proposes that $10,057 of the claimed contractual services performed by J. R. Dansie actually fall in the category of administration and accounting. Since $8,400 is already allowed for such services, the $10,057 is a

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[5]Spread among 52 connected customers, these benefits amount to $59.21 per customer per month. Taking administrative notice of the filed tariffs of all certificated water utilities in the state, if we allowed all the claimed expenses, these items alone would render Respondent's rates the highest in the state by a considerable margin.

J. R. Dansie argues that owing to income deficiency, he has never actually received the full compensation claimed. That alters the case at best slightly, since, according to Respondent's accountant, the unpaid amounts are carried as indebtedness on Respondent's books, with all the legal consequences that entails.

duplication and should be disallowed. (Hearing Exhibit 1, Prefiled Testimony, Kenneth R. Colby, p. 7) We agree with Complainant.[5]

The real estate rental account includes rental of a storage tank used by the system, amounting to $1,800 annually (Testimony of Scott Wilkey, Transcript at 61), and office rental in J. R. Dansie's home amounting to $2,400 annually. On the rationale that three other businesses are conducted out of the same office, and, therefore, Respondent should only have to pay 25% of the annual rent, the Complainant recommends an adjustment of $1,800.

J. R. Dansie testified that the businesses in question are dormant and no activity on their behalf has been conducted, or is contemplated, out of the office. In the absence of evidence to the contrary, we must accept J. R. Dansie's testimony and accept the filing of Respondent.

III. LEGAL, ACCOUNTING, AND ENGINEERING EXPENSE

Assessing the legal, accounting, and consulting expenses is complicated by the fact that for the past several years, there has been ongoing litigation between Respondent and the Intervenor over ownership of the water system and the water right. The District Court's order in the matter is considerably less than a model of clarity; apparently, though, ownership was resolved in favor of the Intervenor here, but subject to a claim of unjust enrichment amounting to $98,500.

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[5]This leaves J. R. Dansie's basic compensation package at $21,500 annually, approximating the grade 8 midpoint salary for a comparable position with the Salt Lake County Water Conservancy District (Hearing Exhibit 12), and, at an hourly rate or $17.20 for the contract work, substantially better than water masters employed by other privately-owned water utilities, some considerably larger than Respondent. (See Hearing Exhibit 13.)

Rather than pay the claim, the Intervenor here has taken an appeal, which is now pending. In the absence of the payment, the District Court entered an order quieting title in Respondent.

No small portion of the legal, and possibly the accounting and consulting expense, claimed by Respondent, has been in connection with that litigation. Unfortunately, Respondent has not kept track of legal costs for the litigation. (Testimony of Scott Wilkey, Transcript at 58, 83)

A. Legal Expense

Respondent claims legal expense in the amount of $21,500. (Appendix A, line 27) In assessing the allowability of these expenses, we cannot overlook the fact that Respondent is, for most purposes, the alter ego of J. R. Dansie. As the sole owner of the company, it was his interest being protected in the litigation--certainly not that of the ratepayers who opposed him. The issue was ownership, not a claim by or against Respondent relating to its operations. We believe there is a significant difference.

To allow Respondent to recover in rates the attorney's fees accrued in connection with the title dispute would, in effect, allow its alter ego, J. R. Dansie, to recover his attorney fees in the litigation, something the District Court did not allow.

It follows we can only allow reasonable legal costs incurred in connection with this rate proceeding. In the 1986 order, we allowed legal costs of $1,000 annually, on the basis that $3,000 was a reasonable attorney's fee in connection with that case, to be amortized over three years.

We do not believe the present proceeding required or received as extensive preparation as the 1986 case. Certainly there were fewer hearing days and less extensive discovery. It follows that, even allowing for inflation, we think $3,000 is an adequate fee for this proceeding. Again, to avoid over-recovery, we think the expense should be amortized over three years. Accordingly, we agree with Complainant that legal fees should be allowed in the amount of $1,000 annually.

B. Accounting Costs

Respondent seeks $3,000 for accounting services. That includes, apparently, $1,000 for services rendered in this proceeding and $2,000 for regular accounting services rendered annually in connection with tax and regulatory filings. In its filing, Complainant apparently recommends disallowing all the amount representing rate case preparation; but in his prefiled testimony, Respondent's auditor apparently accepts the $2,000 figure as a fair estimate of the customary accounting expense and recommends amortizing the rate case costs over three years. (Hearing Exhibit 1, Prefiled testimony, Kenneth R. Colby, at 6) If we understand the proposal, that would make the appropriate amount $2,333. That is the figure we adopt.

C. Engineering Costs

Complainant recommends disallowance of all Respondent's claimed engineering expense ($4,000) on the basis no such expense was incurred during the test year. (Hearing Exhibit 1, Prefiled testimony, Kenneth R. Colby, at 5-6) While there have been vague references (at various stages of this proceeding) to contemplated

system renovation and improvements, presumably entailing engineering costs, nothing concrete was entered in the record.

From all that appears, the expense was incurred primarily for preparation of this case in the form of the testimony of Respondent's expert, Mr. Seth Schick. Of the claimed amount, at most $1,550 accrued during the test year. (Hearing Exhibit 5, page 1) On that basis, we believe it should be treated the same as legal and accounting expense. The expense should be amortized over three years in an annual amount of $527.

IV. OTHER EXPENSES

We shall consider the other disputed expenses in the order in which they appear on Appendix A.

A. Payroll Taxes and Insurance

Complainant computes its payroll taxes and insurance amount on J. R. Dansie's $8,400 salary for accounting and administrative work. Respondent wishes to shift J. R. Dansie's status in performing repair and maintenance from that of independent contractor to that of employee, which would entail increased payroll expenses. The stated rationale is that the Federal Internal Revenue Service will likely require the reclassification at some point, and Respondent will then be liable for back taxes and penalties. (Testimony of Scott Wilkey, Transcript, at 20-21) In the absence of more convincing evidence that the reclassification is necessary, we are unwilling to allow the increased expense. We adopt Complainant's figure.

B. Purchase of Water

For the interim between the entry of this Order and the time the Homeowners' Well can be brought on line, rates should be

based on Annual Historical power costs in the amount of $7,479. (Hearing Exhibit 5, Page 1, Account Numbers 6151000 and 6153000 YTD Total)

C. Chemicals

Complainant based its recommendation on historical data including test year usage. Based on this analysis, we believe the amount recommended by Complainant is adequate.

D. Office Materials and Supplies

Complainant recommends a $900 adjustment downward in this account. Since Respondent offered nothing to contradict this adjustment, we adopt the same.

E. Contract Service, Repair and Maintenance

Complainant recommends a $1,492 downward adjustment in outside repair and maintenance on the basis that only expenditures of $1,008 could be verified during the test year. Respondent offered nothing to contradict this, and we adopt Complainant's figure.

F. Equipment Rental

Based on test year data, Complainant recommends $6,000 for this item. No justification for Respondent's higher figure was presented, and we accept Complainant's.

G. Insurance Expense

Complainant's figure of $3,942 for insurance expense is based on test year data. Respondent's claimed amount of $5,000 is based on the intent to increase liability coverage and to buy director's insurance for J. R. Dansie. On the latter proposal, Complainant opines that director's coverage should come out of J. R. Dansie's director's fee. We agree.

No change in this item was known or measurable during the test year. Moreover, in the absence of some vestige of risk analysis to support the need for increased coverage, we are unwilling to increase this expense item. We adopt Complainant's figure.

H. Regulatory Expense

Complainant's figure of $133 is based on test year data; Respondent presented nothing to contradict the figure, and we adopt the same.

I. Miscellaneous Expense, Telephone

Complainant recommends halving the Respondent's claimed telephone expense. The recommendation is based on audit data showing a considerable number of personal long distance calls being charged to Respondent. Respondent presented nothing to contradict the auditor's conclusion, and we adopt Complainant's figure of $360.

J. Depreciation Expense

The discrepancy in the parties' positions on depreciation is explained by a difference in the claimed rate base. We will discuss that issue in a separate section below. Suffice it to say here that we accept Complainant's depreciation figure.

K. Amortization Expense, Tank Repair

Complainant recommends disallowing this item since the tank is no longer owned by Respondent, the tank having been lost in a Small Business Administration (SBA) lien foreclosure sale. We agree.

L. Utah Franchise Tax

We accept Respondent's figure in regard to the applicable Utah franchise tax.

V. RATE BASE

Respondent has adopted as its claimed rate base the $98,500 figure entered by the Third District Court as the amount owed Respondent by the Intervenor. The Complainant's computation is based on the Rate Base allowed in our 1986 Order as modified by additions and accrued depreciation since.

Jurisdiction to establish the value of rate base for rate-making purposes is within the exclusive jurisdiction of the Commission. (§ 54-7-21, UCA 1953, as amended) We established a base value, at exhaustive length, in the 1986 Order. We see no reason to depart from that valuation, and we adopt the Complainant's figure.

Since Respondent's capital structure is 100% equity, and the parties are agreed that 12% is a reasonable rate of return, we accept Complainant's figure of $2,101 as a just and reasonable return on rate base.

VI. RATE DESIGN

In designing its recommended rates, Complainant includes revenue from customers located outside the service area who have been, up to this time, served by the water taken by the Trust under the Well Lease. Complainant proposes to impose the same demand and commodity charges on those recipients as on the customers in the service area.

We are unable to accede to this proposal. It is one thing to reform the lease so that Respondent is not disadvantaged in providing the water transportation called for in the lease; it is quite another to impose charges over and above variable costs for the movement. That was not the import of our 1986 Order, and we think it

would be clearly unfair at this late date to add to the demand we made them.

Respondent, in its proposed rate design, undertakes to shift a greater portion of the fixed cost burden to the standby customers. There are two problems with that proposal, one theoretical, the other practical.

The theoretical problem is that, historically, standby fees have been imposed to help defray the return on rate base, not fixed costs in general, since it is the capital outlay, in the form of a functioning system, which enhances the value of unconnected lots, which enhancement is the benefit conferred on standby customers. (Rebuttal Testimony of Jon Strawn, Transcript, at 281)

The practical problem is that standby customer resistance to payment is likely to increase with substantial standby fee increases. It could also have a depressing effect on the value of the lots, which could, indirectly, discourage further construction in the service area. On the whole, we believe the present standby fee should not be increased.

We conclude, accordingly, that the rate design should basically stay the same as we ordered in 1986, with the modifications for the revenue deficiency shown in Appendix C, annexed hereto and incorporated by this reference. Rate design is complicated by the fact there will be an interim before the Homeowners' Well can be brought on line, and lease and pumping costs will be incurred during that period. Accordingly, we adopt interim rates, shown in Appendix D, annexed hereto and incorporated herein by this reference,

incorporating those costs,[1] on the understanding that as soon as the Commission is notified that the Homeowners' well is available for service, permanent rates, shown on Appendix B, annexed hereto and incorporated herein by this reference, will go into effect. Respondent should be ordered to cooperate fully and promptly with Intervenor to bring the Homeowners' Well into service with minimum delay.

CONCLUSION

Neither the utility nor the ratepayers are likely to be pleased with the result of this proceeding. We have pared severely the claimed expenses of Respondent, and yet even the permanent rates are substantially more than those of the next highest utility we regulate.

The perceptive reader will have noted that, with the Dansie lease and pumping costs backed out, almost all the remaining costs are fixed--reduction is extremely difficult and in most instances impossible. No small part of the problem is having to support a full-time watermaster. So long as the utility is investor-owned, we see no way to avoid that.

We believe the result of this proceeding should convince all concerned that, with the present customer base, the utility is not viable as an investor-owned enterprise. Respondent lost 12 customers after the last increase, which was nowhere nearly as large as the one which will result from this proceeding. If there is a similar occurrence after this, Respondent may be left in the

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[1]The pumping costs allowed include only the connected customers' pro rata share for the test year.

untenable position of trying to charge more than its customers can pay.

The high rates may well have the further deleterious result of severely lowering the value of the undeveloped lots and discouraging their owners from either building or finding buyers interested in building. That in turn makes finding a buyer for Respondent's system extremely unlikely. A vicious cycle, with severe financial losses for everyone, is entirely possible.

The Commission is strongly of the opinion that, rather than waste more time and money on litigation, the parties should seek an accommodation; J. R. Dansie should remember that the value of property is what a buyer is willing to pay--clearly, so far as the homeowners are concerned, that is not $98,500. By the same token, the homeowners should not expect to acquire the property for nothing.

If the parties continue their present course, there may well be ruin for all.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that:

>> FOOTHILL WATER COMPANY bill for, and collect, variable costs, including power for pumping and treatment costs, associated with transporting water through the system for an entity known as the DANSIE FAMILY TRUST, whether such transportation is furnished under the color of a well lease or otherwise;

FOOTHILL WATER COMPANY forthwith join the HI-COUNTRY ESTATES HOMEOWNERS ASSOCIATION in a joint application for a change in the diversion point for the water right repre-

sented by application no. 33130, said diversion point to be the site of a well already drilled by said homeowners' association;

>> As soon as said change is effected, and the aforesaid well has been fully completed, equipped, and has received all necessary governmental approvals, FOOTHILL WATER COMPANY shall, before the beginning of the next billing cycle and thereafter, enter into a well lease with the HI-COUNTRY ESTATES HOMEOWNERS ASSOCIATION for the sum of $12 per year, with said homeowners' association to defray all pumping costs associated with providing service to the connected customers within the service area; and for purposes of pending litigation, said lease may incorporate provisions to protect each party's ownership claim to the aforesaid water right;

>> Pending the execution of the aforesaid lease, FOOTHILL WATER COMPANY be, and it hereby is, authorized to publish, on one day's notice, its tariff implementing interim rates as set forth in Appendix D to this Report and Order;

>> Upon the execution of the aforesaid lease, the aforesaid interim rates shall no longer be valid, and FOOTHILL WATER COMPANY shall forthwith publish its tariffs implementing permanent rates as set forth in Appendix E to this Report and Order;

>> Any person aggrieved by this Order may petition the Commission 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 9th day of April, 1992.

/s/ A. Robert Thorup
Administrative Law Judge

Approved and Confirmed this 9th day of April, 1992, as the Report and Order of the Public Service Commission of Utah.

/s/ James M. Byrne, Chairman

(SEAL)

/s/ Stephen C. Hewlett, Commissioner Pro Tempore

Attest:

/s/ Julie Orchard
Commission Secretary

Appendix A
FOOTHILLS WATER COMPANY Operating Statements
Test Year and Commission Projected Coming Year

Line No.	Foothills Acct No.	NARUC Acct	Description	Foothills Filing	DPU Filing	Comm'n Test Yr Adopted	Comm'n Adjustm't	Comm'n Pro Forma
			REVENUE					
1.	4611000	461.1	Metered Sales to Customers	$35,189	$35,189	$36,186	$7,962	$44,152
2.	4741000	474.1	Standby Fees	7,875	7,875	7,875		7,875
3.	4742000	474.2	Late Payment Fees	1,140	1,140	1,140		1,140
4.	4743000	474.3	Interest Charges	596	596	596		596
5.	4744000		Turn-on Fees	0	0	0		0
6.	4745000		Reconnect Fees	0	0	0		0
7.	4746000		Customer Account Charge	0	0	0		0
8.	4748000	474.8	Connection Fees	1,500	1,500	1,500		1,500
9.	4749000		Returned Check Fees	0	0	0		0
10.	4750000		Dansie Power Charge	300	300	300		300
11.	4751000		Damage Repair Reimbursement	0	0	0		0
12.			TOTAL REVENUES	$47,500	$47,500	$47,500		$55,563
			OPERATING EXPENSES					
13.	6011000		Officers Salary, A. Dansie	$8,400	0	0		0
14.	6012000		Payroll Taxes & Insurance	4,937	0	0		0
15.		603.0	Administration & Acctg	0	8,400	8,400		8,400
16.		604.0	Payroll Taxes & Ins.	0	1,065	1,065		1,065
17.	6100000	610.0	Purchased H2O, Dansie Lease	7,200	12	12		12
18.		615.0	Purchased Power	0	0	0		0
19.	6151000		Purch Power, Well #1	6,782	0	0		0
20.	6152000		Purch Power, Well #2	0	0	0		0
21	6153000		Purch Power, Booster Pump	729	0	868		868
22	6180000	618.0	Chemicals	1,575	600	500		500
23	6201000	620.1	Mater'l & Supply, H2O Sys	6,000	6,000	6,000		6,000
24	6202000	620.2	Mater'l & Supply, Office	1,900	900	900		900
25.	6301000	630.1	Contract Svc, Engineering	4,000	0	527		527
26.	6302000	630.2	Contract Svc, Accounting	3,000	2,000	2,333		2,333
27	6303000	630.3	Contract Svc, Legal	21,500	1,000	1,000		1,000
28.	6304000	630.4	K Svc, Repair & M'tnce	2,500	1,008	1,008		1,008
29.	6305000	630.5	K Svc, Water Quality	300	300	300		300
30.	6306000	630.6	K Svc R. Dansie	25,147	12,158	12,168		12,168
31.	6401000	640.1	Rental, Bldg., Real Estate	4,200	2,400	4,200		4,200
32.	6402000	640.2	Rental, Equipment	7,340	6,000	6,000		6,000
33.	6500000	650.0	Transportation Expense	1,208	1,200	1,200		1,200
34.	6550000	655.0	Insurance Expense	5,000	2,942	2,942		2,942
35.	6650000	665.0	Regulatory Expense	300	138	138		139
36.	6700000	670.0	Bad Debt Expense	0	0	0		0
37.	6751000	675.2	Misc. Expense, Telephone	720	360	360		360
38.	6752000	675.1	Misc. Exp., Director Fees	600	600	600		600
39.	6753000	675.3	Misc. Expense, Other	150	150	150		150
40.	6754000	675.4	Misc. Expense, Collections	100	100	100		100
41.	4030000	403.0	Depreciation Expense	3,037	1,620	1,520		1,520
42.	4040000	404.0	Amortization Expense, Tank Repair	343	0	0		0
43.	4080000	408.0	Taxes Other Than Income Tax	650	650	850		850
44.			TOTAL OPERATING EXPENSE	$121,998	$49,913	$52,961		$52,961
			OTHER INCOME & DEDUCTIONS					
			Misc. Non-operating Expense	$0	-	-		-
45.	4260000	426.0	Interest Expense	0	0	0		0
46.		427.0	Total Taxable Income	($74,398)	($2,013)	($5,361)		$2,602
			INCOME TAXES					
47.			Utah Franchise Tax	$100	$59	$100	$20	$100
48.	4090000	409	Federal Taxable Income	($74,498)	($2,0[illegible])	$5,4[illegible]		$2,472
49.			Federal Income Tax	$0	$0	$[illegible]	$[illegible]	$37[illegible]
50.		409.2	OPERATING INCOME (LOSS)	($74,456)	($2,0[illegible])	$2,461		$2,1[illegible]

Appendix B
FOOTHILL WATER COMPANY/Return on Rate Base
Test Year and Commission Projected Coming Year

Description	Foothills Filing	DPU Filing	Comm'n Finding
Plant in Service, Year Begin	$98,500	$24,438	$24,438
Plant in Service, Year End	$98,500	$24,438	$24,438
Plant in Service, Average	$98,500	$24,438	$24,438
Accum. Depreciation, Year Begin	$0	$12,872	$12,872
Accum. Depreciation, Year End	$2,264	$14,492	$14,492
Accum. Depreciation, Average	$1,132	$13,682	$13,682
Net Utility Plant, Year Begin	$98,500	$11,566	$11,568
Net Utility Plant, Year End	$96,236	$9,946	$9,946
Net Utility Plant, Average	$97,368	$10,756	$10,756
Cash Working Capital	$0	$6,756	$6,756
Total Rate Base	$97,368	$17,512	$17,512
Rate of Return	12%	12%	12%
Return	$11,684	$2,101	$2,101

Appendix C

FOOTHILLS WATER COMPANY Revenue Deficiency or Excess

Test Year and Commission Projected Coming Year

Description	Foothills Filing	DPU Filing	Comm'n Test Yr Accepted	Comm'n Pro Forma
Total Operating Expense	$121,998	$49,613	$52,361	$52,961
Interest Expense	0	0	0	0
Federal & State Tax Expense	100	58	100	501
Return on Rate Base	11,684	2,101	2,101	2,101
Additional Revenue to cover taxes of return			401	
Total Revenue Requirement	$133,782	$51,772	$55,553	$55,563
Less Total Revenue	$47,600	$47,600	$47,600	$55,563
GROSS DEFICIENCY (EXCESS)	$86,182	$4,172	$7,963	0

Appendix D
FOOTHILL WATER COMPANY
Calculation, Interim Rates

Description	
Total Revenue Requirement (includes Dansie Lease & Pumping Costs)	$65,068.15
Less annual standby fees ($9 per lot)	7,875.00
Connection Fees, 0 @ $750	1,500.00
Late Payment Fees (lower than 5 yr average)	1,140.00
Interest Charges (lower than 5 yr average)	596.00
Net to be met by connected users	$53,957.15
Usage > 5 kgal 5,264 kgal @ 1.40/kgal	$7,369.60
Net to comprise basic demand charge	$46,587.55
Divide by 12 Months	$3,882.30
Divide by 52 users for individual base rate	$74.66

AUTHORIZED INTERIM RATES

Standby Fees per Month Per Lot:	$9.00
Demand Charge Including 5,000 gals/month	$74.66
Overage Charge per 1,000 gals	$1.40
Connection Fee per lot	$750.00
Turn on and reconnect fees	$200.00

52 Customer's Annual Cost In Using Dansie Well	Annual Gal	52 Cust
Dansie Well Meter	25,600,000	
52 Cust. Meters	8,700,000	
Ratio	0.33984	
Well Lease	$7,200	$7,200
Power Cost	$6,782	$2,305
Total 52 Cust Pump Cost		$9,504.62

The BUYPRICE NUMBERS come from Exhibit 6

Appendix E
FOOTHILL WATER COMPANY
Calculation, Permanent Rates

Description	
Total Revenue Requirement (excludes Dansie Lease & Pumping Costs)	$55,563.33
Less annual standby fees ($9 per lot)	7,875.00
Connection Fees, 0 @ $750	1,500.00
Late Payment Fees (lower than 5yr average)	1,140.00
Interest Charges (lower than 5yr average,	596.00
Net to be met by connected users	$44,452.33
Usage > 5 kgal, 5,264 kgal @ $1.40/kgal	7,370
Net to comprise basic demand charge	$37,082.73
Divide by 12 Months	$3,090.23
Divide by 52 users for individual base rate	$59.43

AUTHORIZED PERMANENT RATES

Standby Fees per Month Per Lot:	9.00
Demand Charge including 5,000 gals/month	$59.43
Overage Charge per 1,000 gals	1.40
Connection Fee per lot	750.00
Turn on and reconnect fees	200.00

EXHIBIT F

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of the Investigation Into the Reasonableness of the Rates and Charges of FOOTHILLS WATER COMPANY.	DOCKET NO. 91-2010-01 ORDER ON REHEARING

ISSUED: November 30, 1992

BY THE COMMISSION:

On May 18, 1992, the Commission issued an order granting petitions for reconsideration of the Commission's April 9, 1992 Order filed by the Division of Public Utilities ("Division"), Hi-Country Homeowner's Association ("Homeowners") and Foothills Water Company ("Foothills" or the "Company"). After a preliminary hearing on June 2, 1992, the Commission issued an order on June 4, 1992, setting forth the following issues and instructions for the parties on rehearing:

1- Availability of alternative water source. Foothills has raised the issue of whether the Homeowners' well is indeed available to provide water to the utility. Homeowners' counsel has agreed that this is an issue. Foothills' water source is, therefore, uncertain at present. The Commission will require evidence from the record, and in supplement to the record, as to the certainty of the Homeowners' well being available as a

EXHIBIT 7

water source for Foothills. If the Commission determines that the availability of the Homeowners' well is not reasonably assured, further testimony on water sources and market value of water will be required at a future hearing.

2- Delivery of water to the Dansie Trust. Both the Homeowners and the Division have raised the issue of the use of the Foothills system for delivery of water to the Dansie trust, and the appropriate cost recovery for such use. The Commission will require evidence from the record as to the utilization of the Foothills system for storage and transport of Dansie Trust water by Foothills.

3- Determination and allocation of the fixed and variable costs of using the water system. The Division and the Homeowners have raised the issue of what are the appropriate fixed and variable costs for Foothills and what portion of these costs should be allocated to storage and transportation customers of Foothills. The Commission will take testimony from the record on these costs and the allocation of costs fixed and variable that should be utilized. In so doing, the Commission will not reopen the record for new test year cost figures, but will only take testimony regarding allocating established costs between Foothills and Dansie Trust customers.

4- Costs of regulating water levels. The Division has raised the issue of the time and expenses charged to Foothills related to controlling the water levels in the storage tanks. This issue is also related to

whether telemetry facilities to accomplish this purpose are in place or in rates. The Commission will take testimony from the record on these issues.

5- Evidentiary basis for Appendix E. Foothills has raised the issue of whether Appendix E contains numbers with an evidentiary basis. The Commission will consider further argument or testimony on this issue.

In paragraphs 1, 3, and 5 of its petition for review, Foothills has raised issues relative to the Commission's statement of its authority in its April 9, 1992 Order. The Commission will deal with these issues in its Order on rehearing. No further argument on these issues is necessary.

Hearings were held on these issues on June 12, and from September 2 through September 4, 1992. Since the close of the record in this matter, Messrs. Maxfield and Stroh have filed requests for rehearing. Both of these gentlemen are lot owners in the Hi-Country Estates subdivision and earlier filed requests to intervene in the case. Both petitions for intervention were denied as being untimely and meritless and the Commission finds nothing in the requests for rehearing which would be a basis for reconsideration of its earlier disposition. Having considered the testimony presented on rehearing, as well as the record in the original proceeding in this matter, the Commission now deals with these issues on rehearing by issuing the following Findings, Conclusions and Order based thereon.

FINDINGS AND CONCLUSIONS

In this Order the Commission will deal specifically with the foregoing, enumerated issues. However, there are certain related issues which must first be addressed for context. These issues are the water right and water lease agreement and the Company's affiliate dealings.

I. WATER LEASE AGREEMENT AND WATER RIGHT

In March, 1986, this Commission issued an Order based on five days of evidentiary hearings inquiring into Foothills' petition for certification as a public utility. That Order is a part of the record in this proceeding. The Commission there found, among other things, that the water lease agreement dated April 7, 1977, which was a renewal and revision of an earlier agreement between Gerald Bagley as lessee and Jessie Dansie as lessor, and was amended again on July 3, 1985, was "grossly unreasonable" because it provided the Dansie family with an annual lease payment of $7200, the free production, storage and transmission of a minimum 12,000,000 gallons of water per annum, and other benefits, when in fact a reasonably accurate estimation of the value of the lease was $368.00 per month.

The Commission also found that the lessee, Bagley, who was one of the developers of the residential area served by Foothills, was knowingly in violation of the law requiring regulation of public service entities, that the lease had not been entered into in good faith for the benefit of utility ratepayers and that the Commission had been denied any opportunity to review the lease because the developer had operated illegally for some thirteen years as a de facto public utility without applying for certification.

The 1986 Order allowed the Company to continue to supply water to the Dansie family conditioned upon payment of the cost of delivery by someone other than the customers in Foothills' service area. The Order also specifically required that Foothills bring any subsequent lease to the Commission for approval. Although the subject lease expired in 1987 and Foothills elected to renew the lease on a month-to-month basis, it is a matter of record that Foothills has never sought Commission approval of the terms of that lease. We note that the month-to-month continuation of the lease leaves ratepayers in the precarious position of having an uncertain water source, since the Lessor Dansie Trust may cancel the lease at any point.

In addition to and in support of the finding in the 1986 Order, testimony on this record is persuasive that the terms of the lease, the $7200 annual lease payment and the free production, storage and transmission of 12,000,000 gallons of water, which is now closer to 17,000,000 gallons by actual usage, are unjust and unreasonable. That testimony, which is discussed elsewhere in this Order, indicates that Foothills now has available to it a source of water at a proposed lease cost of $12.00 per year, which it did not have in 1986. Given that alternative, the Commission finds that all costs of the water lease agreement, which exceed the costs of the alternative source, are unreasonable and must be carried by Foothills, if Foothills decides to continue the lease.

The Commission understands Mr. J.R. Dansie's desire to benefit himself and the Dansie family based upon promises, express or implied, from one of the developers, Gerald Bagley. Mr. Bagley

apparently conveyed Foothills' stock to Mr. Dansie to satisfy the developer's indebtedness to Dansie, despite the fact that Bagley and the other developers full well knew that lot owners had contributed the capital costs of the Company's water system and water right 59-1608 through lot purchases and were entitled to those assets. We do not minimize the fact that Bagley, and not Mr. Dansie, is the culprit in this matter. The problem for Mr. Dansie is that the vehicle through which Bagley attempted to repay Mr. Dansie is a public utility with all of the service and trust obligations that go with public utility status.

Foothills argues in this case that Orders issued by the Third District Court in Case No. 850901464 CV, Judge Pat Brian presiding, are binding upon this Commission. We have no quarrel with that argument as it relates to ownership and contractual issues. However, where those Orders purport to usurp this Commission's clear and exclusive jurisdiction over utility ratebase and utility asset disposition and valuation, we disagree emphatically.

On October 31, 1990, the District Court concluded that the well lease agreement was a "fully binding encumbrance" on the Foothills water system. The terms of the lease require Foothills to deliver annually in perpetuity to the Dansie Trust a minimum of 12,000,000 gallons free of charge. While the Court may be correct that the lease is binding upon Foothills' water system (although it would appear to us that the obligation is coterminous with the lease itself), it is the Commission which must decide whether the financial burden of that lease may be passed along to ratepayers and we have decided that it may not.

With regard to ownership, on October 28, 1989, the District Court ruled that the Homeowners were the legal owners "of the disputed water system, which includes the water rights, the water lots, the water tanks, and the water lines" and then ordered and subsequently held an evidentiary hearing to "establish the amount of reimbursement due to Defendants Bagley & Company and/or Foothills Water Company for the reasonable value of improvements made by Defendant Bagley & Company.

Following that evidentiary hearing, however, the Court found on October 31, 1990 that the value of the "entire water system, the improvements made thereon from 1974 to 1985 and the water right" had a combined net value of $98,500.00 and that the Homeowners would be unjustly enriched unless they reimbursed Foothills that amount. In other words, the Court went from evaluating improvements to evaluating the entire system and imposed payment for the whole system upon the Homeowners.

The Commission does not take issue with the Court's first ruling that the Homeowners owned the system; it is entirely consistent with evidentiary findings of this Commission to the effect that the Homeowners paid for a water system with the purchase of lots and, it seems to us, the ruling lies clearly within the Court's jurisdiction.

However, there are three substantial problems with the Court's second ruling. First, it is clearly and unmistakably the Commission's duty to determine the value of utility assets. Second, utilities are "reimbursed" for their capital investments in utility ratebase not by order of a court but, rather, through rates deter-

mined by this Commission which include a depreciation expense and a rate of return. In fact it would appear that the Homeowners informed the Court that the Commission had exclusive valuation authority and had already exercised it, but the Court chose to ignore that fact.

The third problem is that the Court proceeded to evaluate not only the improvements made by Foothills to the system (which, again, the Commission had already evaluated and had placed in ratebase for the utility), but the entire system itself and the water right and required that the Homeowners (ratepayers) pay the Court-established value of those assets by a date certain or forfeit their ownership rights entirely to Foothills, the stock of which is held by the Dansie family. When the customers balked at having to pay twice for the same thing, the Court decreed that the utility assets belonged exclusively to Foothills.

To say the least, that ruling has made more complicated and vexing a problem which has already caused this Commission and other state agencies over a period of years to expend time and budget in gross disproportion to the size of Foothills Water Company with its 45 customers. The Commission understands that the matter has been appealed and would presume and hope that the Court of Appeals will deal with it appropriately.

Nonetheless, as between ratepayer and utility, we are not concerned with who holds bare legal title to the water system and the water right. Public utilities generally hold legal title to assets used to provide their customers' utility services, even where there has been a ratepayer contribution to capital costs. However, public utility companies have a special trust relationship with ratepayers

and must operate in a manner calculated to give ratepayers the most favorable rate reasonably possible. The utility may not deal with utility assets to the detriment of ratepayers. To the extent Foothills had paid the capital costs of its assets or made capital improvements, it is entitled to reimbursement of expense and a return on investment. However, the Commission has determined that Foothills' ratepayers contributed the capital costs of water right 59-1608 and the water system through the purchase of lots from the developers. Therefore, those assets cannot be included in the Company's rate base regardless of who holds bare legal title to them. All of the investments made by Foothills in the system which are used and useful in providing utility service are presently in rate base and, therefore, Foothills has been and continues to be lawfully compensated.

A much more troubling aspect of this case is that evidence on this record clearly shows that Foothills has substantially mortgaged water right 59-1608 to family members of its operating officer, Mr. J.R. Dansie, as evidenced by an Application to Segregate a Water Right filed August 25, 1992 with the State Engineer and made a part of the record in this case. Despite the fact that this action could substantially impact the rates of the utility, Foothills never sought Commission approval for a determination of public interest. As was made clear in the Wexpro case (Committee of Consumer Services v. Public Service Commission, 595 P.2d 871, Utah 1979), ratepayers have an equitable interest in utility assets, the capital cost of which they have contributed, and those assets may not be alienated from the utility without approval of the Commission based upon a

showing of public interest and payment of commensurate benefits to ratepayers.

We note, however, that the financial status of Foothills is far different from that of Mountain Fuel Supply Company and any recovery or payment of benefits to the ratepayers of Foothills, in the event a valuable utility asset is lost, may well be theoretical only.

More importantly, we find that the mortgaging of the water right puts ratepayers at risk of the permanent loss of reasonably priced and reliable water service and is, therefore, on its face contrary to the public interest. Pursuant to our authority over the rates, practices and all business of public utilities related to rates, (see e.g. 54-4-4 and 54-4-1), we will direct Foothills to cease and desist from further mortgaging of that asset, to take action forthwith to eliminate all claims against that asset, and return the segregated portion of water rights 59-1608 to the full control of Foothills Water Co. Should Foothills proceed to alienate the water right, we will levy appropriately heavy penalties against the Company and its operating officer and take injunctive action, if necessary, to set aside the transfer.

II. AFFILIATE RELATIONS

For ratemaking purposes, expenses are added to a return on capital to determine a utility's revenue requirement. Any transaction which affects the capital or expenses of a public utility is subject to regulatory scrutiny. Where the utility transacts business with an affiliate, this scrutiny must be even more exacting because of the absence of arms-length bargaining.

Since both the utility and the affiliate are under common ownership or control, the door is open to cross-subsidization. The controlling entity and the affiliate may improperly benefit if their association with the utility unduly increases the revenue requirement of the utility, since the revenue requirement is recovered from the utility's customers.

To protect utility customers from this sort of harm regulators have adopted policies governing affiliation. For example, the regulators may only permit the transfer of assets from the utility to the affiliate at the higher of market price or book value, or the transfer from an affiliate to the utility at the lower of market or book. Where this has not occurred, a rate case adjustment will be made.

In the present Docket, Foothills' business relationships are beset with conflicts of interest. The Company, which is run by Mr. J.R. Dansie, maintains a water lease arrangement (discussed herein-above) with the Dansie Trust, of which Mr. Dansie is a beneficiary. From time to time, Mr. Dansie employs relatives or employees of an affiliate company to perform services for the utility. The Company rents a water storage tank from a relative. The Company rents office space from relatives. The Company rents earthmoving equipment from a relative. A conflict of interest is present in each instance. No competitive bidding process has been employed and there is no evidence that market alternatives were sought. There is no ready valuation standard, compounding the difficulty of judging the cost-of-service implications of these arrangements. The Commission now turns to the ratemaking consequences of these observations.

As has been discussed hereinabove, approval of the water lease agreement has neither been sought nor granted (Strawn testimony, Tr. 539, 540) and the lease is continued month-to-month. Testimony on the record shows that the Dansie Trust can cancel the lease one month to the next, though doing so would deprive the utility of its present water source.

As discussed hereinabove, the terms of this lease unreasonably benefit the Trust, in which Mr. Dansie has a one-fifth interest, (Tr. 602), at the expense of ratepayers. Given this, and Mr. Dansie's failure to secure Commission permission to continue the lease arrangement, if a different water source were available under terms and conditions more favorable to ratepayers, the Commission should be compelled to base rates on its use, i.e., the alternative source would establish water costs for revenue requirement. This would put an end to an obvious conflict of interest.

In the present case an alternative water source does exist as discussed herein. It is the well owned and developed by the Homeowners themselves and offered to the Company. In effect, this well becomes the market test of the appropriate cost of water to the Company. It is a substantially cheaper source of water and one which the Company can rely upon as its principal source of water.

For minor repairs, Mr. Dansie sometimes hires, at an hourly wage or under contract, brothers Boyd and Richard. (Tr. 460) Mr. Dansie indicated he has a contracting company (J.R. Dansie Contracting) and occasionally uses its employees at an hourly rate of $17.20. (Tr. 461) The problem with this and similar arrangements between the Company and Mr. Dansie's relatives is the lack of any incentive to

pay market rates for the labor services acquired. Moreover, the Division is unable to audit such charges (Tr. 624) and lacks a means of determining reasonableness. Thus, what is booked is passed on to customers as recoverable cost, should the Commission permit it. With respect to labor cost, the Company faces no incentive to operate efficiently. One way around this is to require Mr. Dansie to obtain bids from independent sources and to select the one most favorable. On this basis Mr. Dansie might even be able to show that hiring relatives confers some benefit--special expertise, below market rates, more timely delivery of services-- on the utility and its customers. The record shows none of this, however. Thus, in place of an evidentiary basis for evaluating the labor component of cost of service, the record in this Docket merely records the costs that have been booked and leaves unanswered the question of reasonableness.

Mr. Dansie pays $175 per month to Paul Evans, who owns the tank and the property on which it is located. (Tr. 462) Mr. Evans is Mr. Dansie's father-in-law (Tr. 480). The tank lease was negotiated by Mr. Evans and the directors and manager of Foothills Water Company. (Tr. 483) The Commission finds no basis on this record by which an independent determination of a reasonable storage tank rental rate can be reached. There is neither a cost-of-service calculation to be done or a market standard to be employed. However, again the Commission is willing to permit the rental to be recovered in rates based upon Mr. Dansie's testimony.

Mr. Dansie rents the Company office from the Dansie Trust for $150 per month. (Tr. 462) It does not appear that the rental fee

is inappropriate, and the Commission will allow inclusion of the amount in revenue requirement.

Mr. Dansie has rented a back hoe from Richard Dansie as well as from the Dansie Trust. He asserted that the rental rate paid was less than market, by which the record shows he meant the rate he would have had to pay an unidentified Riverton company. (Tr. 463) The Commission will not adjust the amount of this rental because of testimony indicating the equipment was acquired at a below market rate. The Commission finds the back hoe rental reasonable and permits the amount to be recovered in rates for water service.

Directors of Foothills are Boyd, Rodney, and Adrian Dansie, who are each paid $200 per year. (Tr. 464 and 465) Again, this amount does not appear to be unreasonable and will be allowed.

Mr. Antczak (Tr. 608 and 609) admonishes the Commission to be careful not to wring all the incentives for ownership out of this Company, and not to second guess the numerous decisions that daily must be made to keep it running. Indecisiveness, he says, may hurt such a Company and its customers more. These are fair points, and the Commission will consider them. Mr. Dansie has testified that these affiliate costs are reasonable and we have only his testimony on this point. Our option is to discount all amounts for which there is no independent verification of reasonableness. However, the Commission is willing to give Mr. Dansie the benefit of doubt in this case and will allow affiliate costs to be included in rates with a strong suggestion that the Company strive to eliminate the affiliate or conflict of interest problems identified herein, unless sufficient showing of benefit to ratepayers can be made. The Commission further

concludes that the Company should work cooperatively with the Division to propose a timely means of doing so.

III. SPECIFIC ISSUES ON REHEARING

1. Water Source to be incorporated in rates

In our April 9, 1992 Order we determined that the Homeowners' well was the most economical source of water for Foothills Water Company. In the rehearing proceeding, the Homeowners confirmed that they have redrilled their well to 466 feet (DUP RH JAS 2.11 and HO RH 8), had the well flow tested for 24 hours at approximately 95 gallons/minute (HO-RH-8), performed the VOC test, and stand ready to provide water to the customers of Foothills Water Company. In addition the Homeowners have stated that they will provide the pump and power necessary for service and in addition will provide the pressure sensitive equipment necessary to turn the pump off and on as required by the water level in the lower tank and the equipment necessary to chlorinate the water delivered to the system.

As discussed hereinabove, Foothills holds bare legal title to the water right necessary for service from the Homeowners' well and with the cooperation of Foothills and the Homeowners, a new point of diversion for this water right could be obtained at the Homeowners' well (three points of diversion already exist).

The Commission reaffirms its Finding contained in our April 9th order that just and reasonable rates should be based on the cost of the Homeowners' well water source.

2. Dansie Trust use of Foothills System

The Commission has reviewed the record in this case and the Orders of the District Court. We have discussed hereinabove that

the obligation affirmed by the Court to provide, transport, or store water for the Dansie Trust remains solely that of Foothills and not of its customers. We, therefore, reaffirm that the cost and expenses of providing such service will not be included in determining the rates for the customers of Foothills Water Company.

3. Appropriate costs and allocation of these costs

The Commission received additional testimony from Witness Strawn for the Division and Witness Wilkey for Foothills on the issue of the proper allocation of costs between the Foothills' ratepayers and the other user of the system, the Dansie Trust. Allocation of costs is not an exact science and requires judgment as to the appropriate cost versus cost-causation relationships. In the traditional regulatory literature (Bonbright, NARUC Cost Allocation Manual) costs are treated in a three-step process: functionalization, classification, and allocation. Functionalization is the assignment of costs into the functional categories of production, transmission, or distribution. Classification is the assignment of costs by usage, or peak usage. Allocation is the assignment of costs to customer groupings. In this proceeding the Company and the Division utilized a similar process of first classifying costs as utility, customer, commodity, or plant related and then allocating costs to the utility (customers of the Utility) or the Dansie Trust (for its use of the system). Both Witness Strawn and Witness Wilkey indicated that the records of Foothills Water Company were inadequate to determine cost versus cost-causation relationships. Both witnesses indicated that much personal judgment was involved. Mr. Wilkey deferred this judgment to Mr. Dansie.

The Commission has general knowledge and understanding of the Foothills' system and its operation, but has no way of independently determining a method of classification and allocation.

Mr. Strawn classified several cost categories related to maintenance activities as 1/2 plant and 1/2 commodity and others as 1/4 plant and 3/4 commodity and then allocated them to the utility or Dansie Trust according to his utilization assessment (plant) or volumetric usage (commodity). Mr. Wilkey classified these categories as .9 plant and .1 commodity and then allocated plant costs .9 to the utility and commodity costs on a volumetric basis like Mr. Strawn.

The Commission finds that the classification and allocation provided by Mr. Strawn is the most reasonable and corresponds most closely with its understanding of the system and therefore adopts it for determining rates. Appendix B to this order incorporates the method and format of Mr. Strawn for classifying and allocating costs.

4. Water Level Control Costs

As previously indicated, the Homeowners have stated that they will provide the telemetry and chlorination equipment and supplies. The Division testified that this will reduce the required supplies, time, and transportation expense necessary to operate the system. The Commission therefore finds that chemical expenses should be eliminated and contract services and transportation should be reduced as recommended by the Division.

5. Appendix E Numbers (April 9, 1992 Order)

The Commission has reviewed the record and has not been able to find sufficient basis for the connection fees, late payment fees, and interest charges utilized in Appendix E of our April 9, 1992

Order. We therefore find that these items should be reduced to zero in calculating the rates for Foothills Water Company.

6. Other Issues

a. In paragraph 1 of its Petition for Review, Foothills raised the issue of management prerogative in its choice of water supply. The Commission has determined in this order that just and reasonable rates ought to be based on the least expensive source of water available to the utility. If the utility wishes to use another more expensive source, it may do so. However rates will be based on the least expensive source.

b. In paragraph 3 of its Petition for Review Foothills indicated that the Commission exceeded its authority when it ordered the utility to bill and collect variable costs from the Dansie Trust. The Commission has dealt with this issue in item 2 above.

c. In paragraph 5 of its Petition for Review, Foothills asserts that the Commission's Order is arbitrary and capricious and beyond the Commissions' jurisdiction where it contains statements about the "alter ego" relationship of Foothills Water Company with Mr. J.R. Dansie. The Commission will hereby strike such references from its April 9, 1992 Order. The Commission meant only to indicate that economic benefits to Foothills are benefits to Mr. Dansie.

IV. RATES ON REHEARING

Based on the results of this rehearing Order, the Commission has calculated the rates provided in Appendix C. These rates will be placed in effect for the next month following notification of the

Commission by the Homeowners that all culinary water tests have been approved and their well is ready for connection to the Foothills system.

This rehearing Order also sets rates for the period from June 15, 1992 (when rehearing interim rates went into effect), until such time as the Homeowners well is ready for connection to the system. These rates are provided in Appendix D.

For the period from June 15, 1992 until the November bills, Foothills is entitled to recover from ratepayers the difference between the June 15, 1992 rates, $37.50, and the Appendix D rates, $45.97. This totals $38.11 per customer and may be collected as a surcharge on rates of $12.70 per month, for a three month period, November 1992 to January 1993.

Based on the foregoing Discussion and Findings of Fact the Commission hereby issues the following

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED, that:

1. FOOTHILLS WATER COMPANY take action to eliminate claims against Water Right No 59-1608 which it has previously pledged or given to family members.

2. FOOTHILLS WATER COMPANY file tariffs with the Commission implementing rates based on Appendix D of this Order until the Homeowners well is ready for connection at which time the Company shall file tariffs consistent with Appendix C.

3. Any person aggrieved by this Order shall request reconsideration within 30 days of its issuance. A failure to seek reconsideration will terminate rights of appeal.

DATED at Salt Lake City, Utah, this 30th day of November, 1992.

/s/ James M. Byrne, Commissioner

(SEAL)

/s/ Stephen C. Hewlett, Commissioner

Attest:

/s/ Julie Orchard
Commission Secretary

APPENDIX A

FOOTHILLS WATER COMPANY/OPERATING STATEMENTS

DOCKET NO. 91-2010-01

Commission April Proforma, PSC Adjustments & Rehearing Findings

Ln	FERC		Commission's April Pro Forma	Commission Adjustments	Commission Rehearing Order
		Operating Revenue			
1.	461.1	Metered Sales to Res Customers	$44,152	(19,033)	$25,119
2.	474.1	Standby Fees Collected	7,875	657	38,532
3.	474.2	Late Payment Fees	1,140	(1,140)	30
4.	474.3	Interest Charges	556	(556)	30
5.	474.4	Turn-on Fees	0	0	30
6.	474.5	Reconnect Fees	0	0	30
7.	474.8	Customer Account Charges	0	0	30
8.	474.8	Connection Fees	1,500	(1,500)	30
9.	474.9	Returned Check Fees	0	0	30
10.	476.0	Dansie Power Charge	300	(300)	30
11.	475.1	Damage Repair Reimbursement	0	0	30
		Total Operating Revenue	$55,563	($21,912)	$33,681
		Operating Expenses			
12.	601.1	Officer's Salary	0	0	$0
13.	603.0	Administration & Accounting	8,400	0	38,400
14.	604.0	Payroll Taxes & Insurance	1,065	0	$1,065
15.	610.0	Water Lease	12	0	$12
16.	615.0	Purchased Power	0	0	$0
17.	615.3	Purchased Power, Booster Pump	686	0	$686
18.	618.0	Chemicals	800	(800)	$0
19.	620.1	Material & Supplies - Water System	8,000	0	18,000
20.	620.2	Office Supplies, Postage	300	0	$300
21.	630.1	Contractual Services - Engineering	527	0	$527
22.	630.2	Contractual Services - Accounting	2,333	0	$2,333
23.	630.3	Legal Expense	1,000	0	$1,000
24.	630.4	Contractual Services - R & M, General	1,008	0	$1,008
25.	630.5	Contractual Services - Water Quality	300	0	$300
26.	630.6	Contractual Services - R & M, R. Dansie	12,188	(8,084)	$4,084
27.	640.1	Rental of Bldg. & Real Property	4,200	0	$4,200
28.	640.2	Equipment Rental	6,000	0	$6,000
29.	650.0	Transportation Expense	1,200	(400)	$800
30.	655.0	Insurance Expense	2,542	0	$2,542
31.	665.0	Regulatory Commission Expense	138	0	$138
32.	670.0	Bad Debt Expense	0	0	$0
33.	675.1	Miscellaneous Expenses - Directors Fees	600	0	$600
34.	675.2	Miscellaneous Expenses - Telephone	360	0	$360
35.	675.3	Miscellaneous Expenses - Other	150	0	$150
36.	675.4	Miscellaneous Expenses - Collections	100	0	$100
37.	403.0	Depreciation Expense	1620	0	$1,620
38.	408.0	Taxes Other Than Income Tax	650	0	$650
		Total Operating Expenses	$53,081	($7,084)	$46,877
	427.0	Total Taxable Income	$2,502		
		Income Taxes			
		Utah Franchise Tax	$130		
	409.1	Federal Taxable Income	$2,472		
		Federal Income Tax	$371		
		Total Tax Expense	$501		
	408.2	Operating Income/Loss	$2,101		

APPENDIX B
FOOTHILLS WATER COMPANY
COST ALLOCATION

DOCKET NO. 01-2018-01

Line No	FERC Account		Const'n Retaining Other		Customer Costs (N) UTILITY (U) 46/48 X	Customer Costs (N) DANSIE TRUS 1/48 X	Water Plant Related Costs (P) UTILITY (.5+.333x.51)X	Water Plant Related Costs (P) DANSIE TRUS (.667x.5) X	Commodity Rel'd Costs (C) UTILITY 1/3 X	Commodity Rel'd Costs (C) DAN E TRUST 2/3 X	UTILITY EXP. TOTAL
		OPERATING EXPENSES									0
		Officers Salary, A. Dansie	0								0
13.		Payroll Taxes & Insurance	0								6,317
14.		Administration and Accng	6,402	N	5,217	165					1,042
15.	603.0	Payroll taxes and Insurance	1,065	N	1,042	23					12
16.	604.0	Purchased H2O, Homeowners	12	U	12						0
17.	610.0	Purchased Power	0								0
18.	615.0	Purch Power, Well #1	0								0
19.		Purch Power, Well #2	0								666
20		Purch Power, Booster Pump	666	U	666						0
21.		Chemicals	0								2,000
22.	618.0	Maint & Supply, H2O Sys	2,000	1/2P,1/2C			2,000	1,000	1,000	2,000	666
23.	620.1	Maint & Supply, Office	666	N	666	20					351
24.	620.2	Contract Svc, Engineering	527	P			351	176			2,282
25.	630.1	Contract Svc, Accounting	2,333	N	2,282	51					676
26.	630.2	Contract Svc, Legal	1,000	N	676	25					504
27.	630.3	K Svc, Repair & M'ten'ce	1,000	1/3P,1/3C			336	168	168	336	200
28.	630.4	K Svc, Water Quality	200	P			200	100			2,535
29.	630.5	K Svc, R. Dansie	5,664	1/4P,3/4C			1,314	657	1,521	3,042	3,164
30.	630.6	Rental, Bldg., Real Estate	4,200	1/2N,1/2P	2,054	46	1,402	700			2,500
31.	640.1	Rental, Equipment	6,000	1/4P,3/4C			1,000	500	1,500	2,000	333
32.	640.2	Transportation Expense	600	1/4P,3/4C			133	67	200	400	1,941
33.	650.0	Insurance Expense	2,942	P			1,961	981			156
34.	653.0	Regulatory Expense	156	U	156						0
35.	655.0	Bad Debt Expense	0								382
36.	670.0	Misc. Expense, Telephone	390	N	332	5					650
37.	675.2	Misc. Exp., Director Fees	600	U	600						150
38.	675.1	Misc. Expense, Other	150	U	150						100
39.	675.3	Misc. expense, Collections	100	U	100						1,000
40.	675.4	Depreciation Expense	1,000	P			1,000	500			0
41.	403.0	Amortization Expense, Tank Rope	0								433
42.	404.0	Taxes Other Than Income Taxes	866	P			433	217			
43.	408.0	TOTAL OPERATING EXPENSE	346,877		17,494	351	9,969	4,985	4,389	8,778	331,793
44.		OTHER INCOME & DEDUCTIONS									0
		Misc. Non-operating Expense	0		0	0	0	0	0	0	0
		Interest Expense	0		0	0	0	0	0	0	
46.	428.0	TOTAL EXPENSE	346,877		17,494	351	9,969	4,985	4,389	8,778	331,793
	427.9	Total Taxable Income	2662								
		INCOME TAXES									87
		Utah Franchise Tax	196	P			87	43			371
	409.1	Federal Taxable Income	2472								1,401
		Federal Income Tax	371	U	371						
		Return	6,101	P			1,403	700			
		TOTALS	347,378		17,865	351	11,337	5,728	4,389	8,778	333,651
		TOTAL REVENUE REQUIREMENT									

▸ CLASSIFICATION CODES:

U: [U]tility-specific costs (none allocated to Dansie Trust).
N: Costs which vary according to the [N]umber of customers.
C: Cost assc'ed with day-to-day [C]ommodity (water) produc'n, & allocated in proportion to usage.
P: Costs associated with [P]lant assets, with "sub-assignment" allocated in proportion to usage.
1/2P,1/2C: Half the costs are class'ed as Plant, half as Commod.

1. TELEMETRY & CLORINATION SYS. INSTAL'D BY HOMTWN INST'D OF FOOTHILLS.
2. DEPREC'N EXPENSE (LINE 41), TAXES(LINE 43), & RETURN REMAIN THE SAME AS IN THE APPL. 9TH ORDER.
3. LINE 17 AND LINE 18 ARE REDUCED TO REFLECT USAGE OF HOMEOWNER'S WELL.
4. LINE 36 AND LINE 39 IS RED'D TO REFLECT RED'D COM'F TELEMETRY SYSTEM IS INSTALLED.
5. 46 CUSTOMERS INSTEAD OF 52 ARE USED UPON WHICH TO BASE RATES.

APPENDIX C
FOOTHILLS WATER COMPANY
CALCULATION OF RATES

DOCKET NO. 91-2010-01

TOTAL REVENUE REQUIREMENT	$33,651
LESS ANNUAL STANDBY FEES($9 PER LOT & 79 CUST)	($8,532)
NET TO BE MET BY CONNECTED CUSTOMERS	$25,119
LESS USAGE > 5 KGAL, 5,264 KGAL @ $1.40/KGAL	($7,370)
NET TO COMPRISE BASIC DEMAND CHARGE	$17,750
DIVIDED BY 12 MONTHS	$1,479
DIVIDED BY 45 USERS FOR INDIVIDUAL BASE RATES	$32.87

AUTHORIZED PERMANENT RATES	
STANDBY FEES PER MONTH PER LOT	$9
DEMAND CHARGE INCLUDING 5,000 GALS/MONTH	$32.87
OVERAGE CHARGE PER 1,000 GALS	$1.40
CONNECTION FEE PER LOT	$750
TURN ON AND RECONNECT FEES	$200

APPENDIX D
FOOTHILLS WATER COMPANY
CALCULATION OF INTERIM RATES

DOCKET NO. 91-2010-01

PROJECTED INTERIM EXPENSES	Comm'n Rehearing Order		Customer Costs(N) UTIL'(U) 45/46 X	DAN'TRU 1/46 X	Plant Costs(P) UTILITY 0	DAN'TRU 0	Commodity Costs(C) UTILITY 1/3 X	DAN' TRUS 2/3 X	TOTAL	
Officers Salary, A. Dansie	0									
Payroll Taxes & Insurance	0									
Administration and Acctg	8400	N	6,217	183					8,217	8400
Payroll taxes and insurance	1065	N	1,045	22					1,042	1065
Purchased H2O, Dansie Lease	7200	U	7,200						7,200	7200
Purchased Power									0	0
Purch Power, Well #1	6,782	C					2,261	4,521	2,961	9702
Purch Power, Well #2	0								0	0
Purch Power, Booster Pump	886	N	873	15					873	686
Chemicals	300	C					200	406	200	600
Mat'l & Supply, H2O Sys	6,000	1/2P,1/2C			2,000	1,000	1,000	2,000	3,000	6,050
Mat'l & Supply, Office	300	N	580	29					680	600
Contract Svc, Engineering	527	P			381	178			381	327
Contract Svc, Accounting	2,333	N	2,282	51					2,282	2233
Contract Svc, Legal	1,000	N	575	22					673	1060
K Svc, Repair & M'nt'ce	1,000	1/2P,1/2C			339	168	150	339	594	1006
K Svc, Water Quality	300	P			300	100			300	300
K Svc, R. Dansie	12,108	1/4P,3/4C			2,028	1,014	3,042	6,084	5,075	12108
Rental, Bldg., Real Estate	4,200	1/3N,1/2P	2,054	48	1,400	700			3,404	4800
Rental, Equipment	6,000	1/4P,3/4C			1,000	500	1,500	3,088	2,500	6060
Transportation Expense	1200	1/4P,3/4C			300	100	300	600	500	1200
Insurance Expense	2,842	P			1,381	501			1,681	2842
Regulatory Expense	136	U	136						136	136
Bad Debt Expense	0								0	0
Misc. Expense, Telephone	380	N	352	8					352	380
Misc. Exp., Director Fees	600	U	600						600	600
Misc. Expense, Other	150	U	150						150	150
Misc. expense, Collections	100	U	100						100	100
Depreciation Expense	1,020	P			1,050	540			1,080	1020
Amortization Expense, Tank Repair	0								0	0
Taxes Other Than Income Taxes	650	P			433	217			433	650
TOTAL OPERATING EXPENSE	366,631		24,658	388	10,866	5,488	8,471	16,941	$44,138	366,631
OTHER INCOME & DEDUCTIONS										
Misc. Non-operating Expense										
Interest Expense										
TOTAL EXPENSE	366,631		24,658	388	10,866	5,488	8,471	16,941	$44,138	366,631
Total Taxable Income	3602									
INCOME TAXES										
Utah Francise Tax	$130	P			87	43			87	$130
Federal Taxable Income	$2,472								371	$371
Federal Income Tax	$371	U	371							
TOTAL TAX	$501									
OPERATING INCOME/(LOSS)	$2,101	P			1,461	700			1,601	$2,161
TOTAL REVENUE REQUIREMENT	$8,333		25,335	388	12,477	6,228	8,471	16,941	$45,967	368,833

TOTAL REVENUE REQUIREMENT	$45,967
LESS ANNUAL STANDBY FEES(28 PER LOT & 78 CUST)	($8,532)
NET TO BE MET BY CONNECTED CUSTOMERS	$37,435
LESS USAGE > 5 KGAL, 5,284 KGAL @ $2.40/KGAL	($12,684)
NET TO COMPRISE BASIC DEMAND CHARGE	$24,827
DIVIDED BY 12 MONTHS	$2,068
DIVIDED BY 45 USERS FOR INDIVIDUAL BASE RATES	$45.97

AUTHORIZED INTERIM RATES	
STANDBY FEES PER MONTH PER LOT	$9
DEMAND CHARGE INCLUDING 5,000 GALS/M	$45.97
OVERAGE CHARGE PER 1,000 GALS	$2.40
CONNECTION FEE PER LOT	$750
TURN ON AND RECONNECT FEES	$200