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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 Regulation

Docket No. 13-2195-02

RESPONSE OF THE UTAH DIVISION OF PUBLIC UTILITIES IN OPPOSITION TO HI-COUNTRY ESTATES HOMEOWNERS ASSOCIATION'S MOTION FOR SUMMARY JUDGMENT

Pursuant to Utah Public Service Commission's (Commission) administrative rules R746-100-1.c and R746-100-4.D and Utah Rules of Civil Procedures 7 and 56, the Utah Division of Public Utilities (Division) hereby responds in opposition to Hi-Country Estates Homeowners Association's (Hi-Country or the Company) Motion for Summary Judgment, filed February 25, 2014 (Motion). The Motion asks the Commission to determine that the Well Lease and Water Line Extension Agreement (Well Lease Agreement) is "unreasonable, contrary to public policy, and therefore unenforceable as against Hi-Country."¹

¹ Motion at p. 1.

I. INTRODUCTION

Issues relating to this docket have been litigated for over a quarter of a century, resulting in numerous Commission orders and court decisions. In this docket, the Commission is presented both with facts set forth in the testimonies of Company witnesses, the Division, and Mr. Rodney Dansie, and with the Company's Motion for Summary Judgment.

Summary judgment requires that there be no material disputed facts, and only questions of law remaining. As discussed in more detail below, summary judgment is not appropriate here because there are disputed material facts before the Commission.

II. ARGUMENT

Disputed Material Facts Concerning the Well Lease Agreement Preclude Summary Judgment

The Utah Legislature has empowered the Commission to regulate public utilities² and has mandated that public utilities' rates be just, reasonable, sufficient, nondiscriminatory, non-preferential, or do not otherwise violate the law.³ Prefiled testimony in this docket sets forth disputed material facts concerning the Well Lease Agreement for the Commission to consider when determining just and reasonable rates.

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² Utah Code Ann. § 54-4-1.

³ Utah Code Ann. § 54-4-4.

1. Mr. Dansie's Obligation to Pay for Water

The Company testifies that Mr. Dansie must pay costs to receive water. Mr. Dansie claims that he is entitled to "free water." The Division does not testify concerning whether the Well Lease Agreement entitles Mr. Dansie to "free water," but looked at the agreement for ratemaking purposes.

a. Company

Mr. Randy Crane testified on behalf of the Company that "there is no language in the Well Lease Agreement to support Mr. Dansie's interpretation that he is to receive 12 million gallons of water per year from Hi-Country at no cost regardless of the source."⁴ Mr. Crane stated, "[u]nder the Well Lease Agreement and the Final Judgment, and assuming no action by the Commission, Dansie is obligated to pay the pro-rata costs for water delivery under the Well Lease Agreement."⁵

b. Mr. Dansie

Mr. Dansie testified that "[t]he Well Lease Agreement and amendment . . . give the Dansies the right to receive water on the specified properties at no cost."⁶ He stated that the Company bears the responsibility to provide him with his "free water."⁷

⁴ Testimony of Randy Crane at p. 26, lines 6-10.

⁵ Rebuttal Testimony of Randy Crane at lines 317-319.

⁶ Direct Testimony of Rodney Dansie at p. 3, lines 10-12.

⁷ See Direct Testimony of Rodney Dansie at p. 7, lines 2-4.

c. The Division

The Division did not address the question of whether or not Mr. Dansie is entitled to “free water.” As set forth below, the Division’s analysis for ratemaking purposes determined that ratepayers should not bear any costs associated with providing water under the Well Lease Agreement.

2. Cost of Water under the Well Lease

There is also a factual dispute concerning the cost of any water provided under the Well Lease Agreement.

a. The Company

The Company proposed a \$3.85/1000 gallon rate for delivering water under the Well Lease Agreement.⁸ The Company later stated while that it “underst[ood] the Division’s reasoning” regarding its recommendation “against including that rate,” the Company emphasized that, “if any water is to be delivered to Dansie pursuant to the Well Lease Agreement, the Company would need to have a rate set and approved by the Commission, whether now or in the future.”⁹

b. Mr. Dansie

Mr. Dansie testified that, “I have an agreement --- Well Lease Agreement --- with Hi-Country Estates that prohibits them from charging me the proposed charge of

⁸ See Application at p. 5.

⁹ Rebuttal Testimony of Randy Crane at lines 320-323.

\$3.85/1000 gallons”¹⁰ and argued that he has “the right to receive water from the Company under the terms of the Well Lease Agreement.”¹¹ He further stated that he is “not subject to the proposed rate increase.”¹² He also noted that that “[t]he cost estimates contained in both the direct testimony of Hi-Country Estates and rebuttal from DPU ignore the other options that are readily available to the water company” such as drilling a new well or obtaining water from Herriman City.¹³

c. The Division

Ms. Benvegna-Springer rejected the Company’s estimate because it was incomplete and unverifiable¹⁴ and provided her own estimates.¹⁵

3. Recovery of Expenses if Mr. Dansie is to Receive “Free Water”

The Division and Mr. Dansie present conflicting testimony concerning who should pay costs associated with providing water under Well Lease Agreement if Mr. Dansie does not bear responsibility for those costs.

a. Division

¹⁰ Direct Testimony of Rodney Dansie at p. 2, lines 13-15.

¹¹ Direct Testimony of Rodney Dansie at p. 2, lines 17-18.

¹² Direct Testimony of Rodney Dansie at p. 2, lines 17-18.

¹³ Surrebuttal Testimony of Rodney Dansie at lines 46-50.

¹⁴ Direct Testimony of Shauna Benvegna-Springer at lines 502-505.

¹⁵ Rebuttal Testimony of Shauna Benvegna-Springer at lines 27-52.

The Division argued that expenses, if any, associated with providing water to Mr. Dansie pursuant to the Well Lease Agreement should not be recoverable in rates because entering into the Well Lease Agreement was not prudent for the following reasons:

- 1) the perpetual duration of the contract;
- 2) the benefits do not commensurate with the cost of providing the well demonstrating a gross disparity;
- 3) originally the 1977 well lease agreement had no limitation on the volume of water to be delivered, but was arguable[ly] limited by a standard of reasonableness; and,
- 4) the 1985 amendment which added the amount of 12,000,000 gallons per year to be delivered approximately equaled the total water system use in 1985.¹⁶

According to statute, “The commission may find an expense fully or partially prudent, up to the level that a reasonable utility would reasonably have incurred.”¹⁷ Only prudently incurred expenses can be recovered in rates.

In addition, the Division estimated costs associated with providing water under the Well Lease Agreement and determined that, using those estimates, “the resulting rates would be unjust and unreasonable, and not in the public interest.”¹⁸ It is conceivable that a similar agreement with different terms and more reasonable limits

¹⁶ Rebuttal Testimony of Shauna Benvegna-Springer at lines 81-89. Additionally, the Motion appears to ask for a declaration that exceeds the Commission’s jurisdiction. While the Commission could justifiably determine the Well Lease Agreement is imprudent and not in the public interest, its determination and order would be limited to the ratemaking aspects of the agreement. Whether the Well Lease Agreement remained civilly enforceable would be beyond the Commission’s jurisdiction to determine.

¹⁷ Utah Code Ann. § 54-4-4(4)(b).

¹⁸ Rebuttal Testimony of Shauna Benvegna-Springer at lines 105-109.

could be in the public interest, prudent, and have associated costs recoverable in rates.

b. Mr. Dansie

Mr. Dansie maintains that the Well Lease Agreement should be implemented by the Company and suggests costs, if any, should be paid by the ratepayers.¹⁹

III. CONCLUSION

Material disputed facts concerning the Well Lease Agreement and its effect upon just and reasonable rates preclude summary judgment. There is a material factual dispute about responsibility for payment associated with providing such water. There is a material factual dispute about the cost for delivering water under the Well Lease Agreement. There is a material factual dispute about whether such costs should be recoverable in rates. Therefore, the Division respectfully requests that the Motion be denied.

DATED this 12th day of March, 2014.

_____/s/_____
Patricia E. Schmid
Attorney for Utah Division of
Public Utilities

¹⁹ Surrebuttal Testimony of Rodney Dansie at lines 50-52.

CERTIFICATE OF SERVICE

I hereby certify that on the 12th day of March, 2014, I served a true and correct copy of the foregoing RESPONSE OF THE UTAH DIVISION OF PUBLIC UTILITIES IN OPPOSITION TO HI-COUNTRY ESTATES HOMEOWNERS ASSOCIATION'S MOTION FOR SUMMARY JUDGMENT to the following parties:

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