- 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 REPORT AND ORDER

ISSUED: May 5, 2014

BACKGROUND

1. On June 26, 2013, the Commission issued an order suspending a proposed updated tariff filed by Hi-Country Estates Homeowners Association ("Hi-Country" or "Company") and ordering Hi-Country to file a rate case no later than July 27, 2013.[1]

2. On July 10, 2013, Hi-Country filed an application to approve proposed water service schedules and rates ("Application") in this docket.[2]

3. On July 11, 2013, the Commission issued a notice of filing, a notice of comment period for interested parties to submit comments no later than August 12, 2013,[3] a request for proof of notice of the proposed rate increase from Hi-Country to its affected customers,[4] and a notice of scheduling conference for August 12, 2013.[5]

[1] See Order Suspending Proposed "Updated" Tariff and Order (Docket No. 13-2195-T01), issued June 26, 2013.
[2] See Application to Approve Proposed Water Service Schedules and Rates, filed July 10, 2013.
[3] Comments were received from several customers. See Comments from Thomas and Cynthia Urban, filed July 22, 2013; E-mail Comments from Ernie Grafiada, filed July 29, 2013 (initial comments) and September 9, 2013 (follow-up comments); Comments from Noel Williams and Susan Wrathall, filed August 2, 2013; Comments and Petition to Intervene from William B. and Donna J. Coon, filed August 7, 2013; Comments from Dennis Nelson, filed August 12, 2013; E-mail Comments from Werner Uhlig, filed August 27, 2013; and E-mail Comments from Tom Garrison, filed August 28, 2013. See also Response to Comments from Water Customers, filed August 27, 2013.
[4] The Company filed proof of notice to its customers and the public regarding its rate case filing on July 22, 2013. See Proof of Notice, filed July 22, 2013.
[5] See Notice of Filing, Comment Period, Request for Proof of Notice to Customers, and Notice of Scheduling Conference, issued July 11, 2013.

4. On July 12, 2013, in response to a Commission action request, the Division of Public Utilities ("Division") filed a memorandum recommending the Commission schedule a conference and noting the Division is reviewing the Company's application and intends to comment on its completeness by August 2, 2013.[6]

5. On August 1, 2013, the Division filed a memorandum recommending the Commission not accept the Company's Application as complete until the Company files additional information required by Utah Admin. Code R746-700-50 and R746-700-51.[7]

6. On August 5 and 7, 2013, respectively, Rodney Dansie ("Mr. Dansie") and William B. Coon ("Mr. Coon") filed petitions to intervene,[8] and the Commission granted both requests.[9]

7. In response to the Division's memorandum filed August 1, 2013, the Commission issued an order on August 6, 2013, determining the Application is incomplete and cancelling the scheduling conference noticed for August 12, 2013.[10]

8. On September 9, 2013, the Company amended its Application.[11]

[6] See Division Memorandum, filed July 12, 2013.
[7] See Division Memorandum, filed August 1, 2013.
[8] See Petition by Rodney Dansie to Intervene in the Hi-Country Estate Homeowners Association Rate Case, filed August 5, 2013. See also Comments and Petition to Intervene from William B. and Donna J. Coon, filed August 7, 2013.
[9] See Order Granting Intervention, issued August 30, 2013 (granting intervention to Mr. Dansie). See also Order Granting Intervention, issued September 9, 2013 (granting intervention to Mr. Coon).
[10] See Order Determining Application for Rate Case is Incomplete and Cancelling Scheduling Conference, issued August 6, 2013.
[11] See Rate Case Addendum, filed September 9, 2013. The Company filed an amended cover letter to this filing, correcting the docket number referenced on the filing, on September 12, 2013.

9. On September 12, 2013, the Division filed a recommendation to the Commission to accept the Company's Application as complete based on the Company's September 9, 2013, filing.[12]

10. On September 19, 2013, the Division filed a proposed schedule for the Hi-Country general rate case proceeding, which the parties discussed and amended at the scheduling conference[13] held on September 20, 2013.[14] At the scheduling conference, J. Craig Smith appeared on behalf of the Company; Lara A. Swensen, of Flitton & Swensen, appeared on behalf of Mr. Dansie; and Patricia Schmid, assistant attorney general, along with Shauna Benvegnu-Springer, utility analyst, appeared for the Division.[15]

11. On September 24, 2013, the Commission issued a scheduling order and notices of general rate increase hearing, set for March 4, 2014, at 9:00 a.m., and a public witness hearing, set for March 5, 2014, at 12:00 p.m.[16]

12. On October 17, 2013, the Company filed direct testimony of Krystal Fishlock-McCauley ("Ms. Fishlock-McCauley"), Justun Edwards ("Mr. Edwards"), and Randy Crane ("Mr. Crane").[17]

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[12] See Division Memorandum, filed September 12, 2013.
[13] See Proposed Schedule for Hi-Country General Rate [Case], filed September 19, 2013.
[14] See Notice of Scheduling Conference, issued September 12, 2013.
[15] See Scheduling Order and Notices of Hearings, issued September 24, 2013.
[16] See id.
[17] See Testimony of Krystal Fishlock-McCauley, filed October 17, 2013; Testimony of Justun Edwards, filed October 17, 2013; and Testimony of Randy Crane, filed October 17, 2013. Ms. Fishlock-McCauley is the Company's accounting witness; Mr. Edwards is the Company's witness from the Herriman City, Division of Water Services; and Mr. Crane is the Company's witness from Hi-Country's board of directors.

13. On January 30, 2014, the Division and Mr. Dansie filed their respective direct testimony.[18]

14. On February 20, 2014, the Division filed rebuttal testimony.[19] Also, on this same date, Hi-Country filed both rebuttal testimony of Mr. Crane[20] and a motion to exclude portions of the direct testimony of Mr. Dansie.[21]

15. On February 25, 2014, the Company filed a motion for summary judgment, requesting a finding from the Commission that the Well Lease and Water Line Extension Agreement ("Well Lease Agreement") is unreasonable, contrary to public policy, and therefore unenforceable against Hi-Country.[22] This motion relates to Mr. Dansie's claims against the Company.

16. On February 27, 2014, Mr. Dansie filed surrebuttal testimony.[23]

17. On March 3, 2014, Mr. Dansie's counsel filed a motion for continuance because Mr. Dansie suffered a fall and was hospitalized.[24] The motion stated Mr. Dansie's prognosis was uncertain, and requested a continuance once Mr. Dansie had recovered from his health situation.[25]

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[18] See Direct Testimony of Shauna Benvegnu-Springer, filed January 30, 2014. See also Direct Testimony of Rodney Dansie, filed January 30, 2014.
[19] See Rebuttal Testimony of Shauna Benvegnu-Springer, filed February 20, 2014.
[20] See Rebuttal Testimony of Randy Crane, filed February 20, 2014.
[21] See Motion to Exclude Inadmissible Portions of Direct Testimony of Rodney Dansie, filed February 20, 2014. See also Memorandum in Support of Motion to Exclude Inadmissible Portions of Direct Testimony of Rodney Dansie, filed February 20, 2014.
[22] See Motion for Summary Judgment, filed February 25, 2014. See also Memorandum in Support of Hi-Country Estates Homeowners Association's Motion for Summary Judgment on the Claims of Intervenor Rodney Dansie, filed February 25, 2014.
[23] See Surrebuttal Testimony of Rodney Dansie, filed February 27, 2014.
[24] See Intervenor Rodney Dansie's Motion for Continuance of Rate Case Hearing, filed March 3, 2014. The motion was filed by John S. Flitton of Flitton, PLLC.
[25] See id. at 1.

18. On March 4, 2014, a hearing convened to discuss the motion for continuance filed by Mr. Dansie's counsel.[26] J. Craig Smith and Adam Long appeared on behalf of the Company; John S. Flitton appeared on behalf of Mr. Dansie; Patricia Schmid, assistant attorney general, appeared for the Division; and Mr. Coon appeared *pro se*.[27] Based on the proposal agreed to by all the parties, the remainder of the hearing scheduled for March 4, 2014, was cancelled and rescheduled for March 11, 2014.[28]

19. On March 5, 2014, the public witness hearing was held,[29] and several customers appeared to give comment or sworn testimony.[30] Robert Hart, an engineer with the Utah Division of Drinking Water, also provided testimony.[31] J. Craig Smith appeared on behalf of the Company; John S. Flitton appeared on behalf of Mr. Dansie; Mr. Coon appeared *pro se*; and Patricia Schmid, assistant attorney general, appeared for the Division.[32]

20. On March 10, 2014, the Company filed an updated tariff.[33]

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[26] See id. See also Scheduling Order and Notices of Hearings, issued September 24, 2013.
[27] See Transcript of Hearing held March 4, 2014, at 3, lines 13-21. See also id. at 4, lines 1-5; and id. at 17, lines 16-23.
[28] See Notice of Rescheduled Hearing, issued March 4, 2014. The public witness hearing, scheduled for March 5, 2014, remained unchanged.
[29] See Scheduling Order and Notices of Hearings at 3-4, issued September 24, 2013.
[30] See Transcript of Hearing held March 5, 2014. Several customers also submitted written comments.
[31] See Id. at 39, lines 9-16. Mr. Hart testified that interconnecting the Dansie water system with the Hi-Country water system would require professional engineering plans to be submitted to the Division of Drinking Water for review and approval, id. at lines 21-25; at 40, line 1, and approval cannot be issued until it has been demonstrated that water source, storage, and distribution capacity are adequate to supply sufficient water and pressure to the present customers of the water system and new customers that line extension would serve. Id. at 40, lines 7-11 (reading from the Division of Drinking Water's August 20, 2008, letter to Randy L. Crane, President, Hi-Country, attached as Division of Drinking Water Exhibit No. 1 to Transcript of Hearing held March 5, 2014). Mr. Hart also testified that a letter was sent at Mr. Dansie's request, which reinforces the earlier letter that a connection of the two water systems would require review by the Division of Drinking Water. See Transcript of Hearing held March 5, 2014, at 44, lines 1-7 (referring to Division of Drinking Water's February 8, 2011, letter to Bradley Barlocker, attached as Division of Drinking Water Exhibit No. 2 to Transcript of Hearing held March 5, 2014).
[32] See Transcript of Hearing held March 5, 2014, at 6, lines 18-20, 23-25. See also id. at 7, lines 1-2, 4.
[33] See Tariff No. 2 for Water Service, filed March 10, 2014. At the hearing held on March 11, 2014, counsel for Hi-Country clarified that this filing should be treated as an updated exhibit to its rate case filing to clarify its service

21. On March 11, 2014, the rate case hearing continued.[34] J. Craig Smith and Adam Long appeared on behalf of the Company, along with its witnesses Mr. Crane from the homeowners association, Ms. Fishlock-McCauley, an accountant with prior utility regulatory experience with the Division, and Mr. Edwards, Director of Water Services for Herriman City. In addition, John S. Flitton appeared on behalf of Mr. Dansie; Patricia Schmid, assistant attorney general, appeared for the Division along with Shauna Benvegnu-Springer, utility analyst; and Mr. Coon appeared *pro se*.[35]

Mr. Flitton made an oral motion to continue the hearing to allow Mr. Dansie to participate after he is released from the hospital,[36] which Mr. Flitton explained could be six weeks[37] or longer.[38] After discussing the motion with the parties[39] and considering the options proposed by each, the Commission denied the motion and offered the parties the opportunity to file post-hearing briefs and responses to any new issues raised in the hearing.[40]

The Commission also ruled to deny Hi-Country's motion to exclude Mr. Dansie's testimony. The Commission stated it would give the testimony the weight it is due.[41]

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area map and to reflect the tariff changes requested. See Transcript of Hearing held March 11, 2014, at 86, lines 6-15, 23-25.

[34] See Notice of Rescheduled Hearing, issued March 4, 2014.

[35] See Transcript of Hearing held March 11, 2014, at 6, lines 16-18. See also id. at 7, lines 8-11, 14-15; and id. at 12, lines 6-7.

[36] See id. at 7, lines 17-18.

[37] See id. at 8, lines 10-11.

[38] See id. at 10, lines 24-25.

[39] Mr. Dansie's counsel did not discuss his motion for continuance with the parties prior to the hearing. See id. at 11, lines 20-22.

[40] See id. lines 22-25 (stating that "…between now and the date that the order is issued, [the Commission] will entertain motions or responses. And, again, . . . kindly keep any filings to issues that have not already been [raised].").

[41] See id. at 24, lines 4-9.

22. On March 12, 2014, the Division filed a response opposing the Company's motion for summary judgment.[42]

23. On March 24, 2014, Hi-Country filed a reply to its motion for summary judgment.[43]

PRELIMINARY ISSUE:

HI-COUNTRY'S MOTION FOR SUMMARY JUDGMENT AS TO MR. DANSIE'S CLAIMS

Hi-Country argues the Commission should find, as a matter of law, the 1977 Well Lease Agreement entered into by predecessors in interest of both Hi-Country and Mr. Dansie is unreasonable, contrary to public policy, and therefore unenforceable against Hi-Country.[44] Hi-Country alleges the Commission's 1986 order supports its motion.[45]

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[42] See Response of the Utah Division of Public Utilities in Opposition to Hi-Country Estates Homeowners Association's Motion for Summary Judgment, filed March 12, 2014. Mr. Dansie filed no response and the time for doing so has elapsed. See Utah Admin. Code R746-100-4(D) ("Response . . . pleadings . . . shall be filed within 15 calendar days . . . of the service date of the pleading . . . to which the response . . . is addressed. Absent a response . . . the Commission may presume that there is no opposition.").

[43] See Reply of Hi-Country Estates Homeowners Association in Support of Hi-Country Estates Homeowners Association's Motion for Summary Judgment, filed March 24, 2014.

[44] See Motion for Summary Judgment at 1, filed February 25, 2014. For clarity, as it pertains to the 1977 Well Lease Agreement and 1986 Commission order, we both take administrative notice of the fact that Foothills Water Company is Hi-Country's predecessor in interest, and that Jesse Dansie is Mr. Dansie's father and predecessor in interest.

[45] See Memorandum in Support of Hi-Country Estates Homeowners Association's Motion for Summary Judgment on the Claims of Intervenor Rodney Dansie, filed February 25, 2014. Specifically, Hi-Country relies on the following statements from the Commission's 1986 order (which for ease of reading the Commission cites the statements as they appear in the 1986 order): (1) "We conclude that the Well Lease Agreement was not proposed in good faith for the economic benefit of Foothills [Water Company, Inc.]" See id. at vi, ¶ 23 (setting forth alleged undisputed fact, relying in part on this statement); (2) "This Agreement . . . is grossly unreasonable . . . but also shower[s] virtually limitless benefits on Jesse Dansie and the members of his immediate family." See id. at ¶ 24 (setting forth alleged undisputed fact, relying in part on this statement); (3) "We find that it would be unjust to expect Foothills' 63 active customers to support the entire burden of the Well Lease Agreement." See id. at ¶ 25 (setting forth alleged undisputed fact, relying in part on this statement); and (4) "While no one can blame [Jesse] 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." See id. at vi-vii, ¶ 25 (setting forth alleged undisputed fact, relying in part on this statement).

Mr. Dansie filed no response to the Company's motion.[46]

The Division argues that the Company's motion for summary judgment should be denied because disputes of material fact exist, thereby precluding summary judgment.[47] To support its position, the Division points to the conflicting pre-filed testimony of the parties -- which includes Mr. Dansie's assertion that he is entitled to free water, and Mr. Crane's assertion that Mr. Dansie is not entitled to free water but must pay the pro-rata costs for water delivery under the Well Lease Agreement.[48] The Division also argues a dispute of material fact exists concerning the cost of delivering water because the Company estimates the cost at $3.85 per gallon. Mr. Dansie asserts the Company is prohibited from charging anything under the Well Lease Agreement, and the Division argues the Company's estimate should be rejected because it is incomplete and unverifiable.[49] Further, the Division posits a dispute of fact exists as to who should pay the costs associated with providing the water under the Well Lease Agreement.[50] The Division does not support the costs being recovered in rates by ratepayers; whereas Mr. Dansie does.[51]

The Utah Rules of Civil Procedure states that "[a] judgment sought shall be rendered if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and

[46] See supra n.42.
[47] See Response of the Utah Division of Public Utilities in Opposition to Hi-Country Estates Homeowners Association's Motion for Summary Judgment, filed March 12, 2014.
[48] See id. at 3.
[49] See id. at 4-5.
[50] See id. at 5-7.
[51] See id.

that the moving party is entitled to a judgment as a matter of law."[52] "[I]t only takes one sworn statement under oath to dispute the averments on the other side of the controversy and create an issue of fact"[53] to preclude summary judgment. "The presence of a dispute as to material facts disallows the granting of a summary judgment."[54] The Division's responsive pleading in opposition to summary judgment along with its witness's sworn testimony at the March 11, 2014, hearing[55] provide ample support to disallow summary judgment in this instance. Therefore, we deny the motion.

THE RATE CASE:

ISSUES AND POSITIONS OF THE PARTIES

A. The Division

The Division's recommended rates are listed below along with the Company's initial proposed rates, which were later amended.

RESIDENTIAL RATE SCHEDULE	Company Proposed Rates	Division Recommendation
System Standby Fee	$ 27.60	$ 31.75
Monthly User Fee (base rate)	$ 69.00	$ 78.00
Water Consumption Rate p/1,000 gal up to 10K	$ 0.00	$ 0.54
Conservation Tier Rate 1 p/1000 gal above 10K to 20K	$ 1.45	$ 0.81
Conservation Tier Rate 2 p/1000 gal above 20K to 30K	$ 1.69	$ 1.22
Conservation Tier Rate 3 p/1000 gal above 30K to 40K	$ 1.96	$ 1.82
Conservation Tier Rate 4 p/1000 gal above 40K to 50K	$ 2.27	$ 2.73
Conservation Tier Rate 5 p/1000 gal above 50K	$ 0.00	$ 4.10
Reserve Fund Charge	$ 20.09	$ 0.00
Service Connection Fee	no change	no change
Temporary Service Suspension Fee	no change	no change
Reconnection Fee (after disconnect)	$ 0.00	$ 250
Account Transfer Fee	no change	no change
Meter Test Fee	no change	no change

[52] Utah R. Civ. P. 56(c).
[53] *Holbrook Company v. Adams et al.*, 542 P.2d 191, 193 (Utah 1975).
[54] *Bill Brown Realty, Inc. v. Abbot*, 562 P.2d 238, 239 (Utah 1977).
[55] See, e.g., Transcript of Hearing held March 11, 2014, at 31, lines 5-9 (Division's witness testifying under oath that she would respond the same as stated in her pre-filed testimony).

Customer Late Fee p/mo	$10 Plus 18% interest	$10 or 18% APR, whichever is greater
Security Deposit	no change	no change
Insufficient Funds Fee	no change	no change
Active Meter Replacement each incident	Cost	$ 300
Emergency Backup Water Rate p/1,000 gal	Proration of Cost	$ 2.33
Outside Service Connection Review Fee	$ 10,000	$ 10,000
Well Lease Fee p/1000 gal	$ 3.85	$ 0.00
BLM RATE SCHEDULE		
Annual Fee	$ 1,950	$ 0
Monthly Use Fee	$ 225	$ 78.00
Water Consumption Rate up to 10K	$ 1.99	$ 0.54
Conservation Tier Rate 1 p/1000 gal above 10K to 20K		$ 0.81
Conservation Tier Rate 2 p/1000 gal above 20K to 30K		$ 1.22
Conservation Tier Rate 3 p/1000 gal above 30K to 40K		$ 1.82
Conservation Tier Rate 4 p/1000 gal above 40K to 50K		$ 2.73
Conservation Tier Rate 5 p/1000 gal above 50K		$ 4.10
Reserve Fund Charge	$ 20.09	$ 0.00
Service Connection Fee	no change	no change
Temporary Service Suspension Fee	no change	no change
Reconnection Fee (after disconnect)	$ 0.00	$ 250
Account Transfer Fee	no change	no change
Meter Test Fee	no change	no change
Customer Late Fee p/mo	$10 Plus 18% interest	$10 or 18% APR, whichever is greater
Security Deposit	no change	no change
Insufficient Funds Fee	no change	no change
Active Meter Replacement each incident	Cost	$ 300
Emergency Backup Water Rate p/1,000 gal	Proration of Cost	$ 2.33
Outside Service Connection Review Fee	$ 10,000	$ 10,000
Well Lease Fee p/1000 gal	$ 3.85	$ 0.00

The Division testified these rates will cover the cost to deliver water,[56] encourage conservation through an increasing five-tier rate structure,[57] and establish a reserve fund.[58] The

[56] See Transcript of Hearing held March 11, 2014, at 34, lines 3-4 (referring to cost of service, including power and chemical costs).
[57] See id. at 34, lines 6-9.
[58] See id. at 34, lines 9-23. The Division's witness testified that the reserve fund will be funded by two sources: First, it would be funded in an amount of $13.55 that is embedded in the standby fee of $31.75 paid by each standby customer. Second, any water used above the cost of service of $.54 per 1,000 gallons would go to the reserve fund. The Division estimates these amounts could generate approximately $272,290 to $363,750 in reserve funds over five years. See id. lines 24-25. Currently, the Company has no reserve fund. See id. lines 9-10.

Division also testified that Herriman City is charging $2.33 per 1,000 gallons for emergency backup water for both domestic and fire suppression, and the Division recommends including this rate in the tariff so the Company can recover this cost from its customers.[59] In addition, the Division testified that Herriman City, which performs the billing service for the Company, charges a reconnection fee of $250, and the Division recommends this amount be listed in the tariff.[60] The Division also recommends listing the active meter replacement fee of $300 per incident in the tariff.[61] Lastly, to be consistent with prior Commission practice, the Division recommends the Customer Late Fee be set at $10.00 or 18% per annum (APR) of the delinquent balance, whichever is greater.[62] The Division asserts its recommended rates are just and reasonable, and in the public interest.[63]

The Division opposes the $3.85 per 1,000 gallons well lease fee proposed by the Company.[64] The Division argues it does not have information as to where the water will be transported or delivered, the cost to transport the water, the necessary infrastructure or where the water rights would be obtained.[65]

B. The Company's Position

The Company originally filed an application for a proposed rate increase (see "Company Proposed Rates" in the table above). However, in its rebuttal testimony it agreed with

[59] See id. at 35, lines 7-18.
[60] See id. at 35, lines 19-25.
[61] See Transcript of Hearing held March 11, 2014, at 36, lines 1-3.
[62] See id. at 37, lines 17-23.
[63] See id. lines 24-25; at 38, line 1.
[64] See id. at 37, lines 8-16.
[65] See Direct Testimony of Shauna Benvegnu-Springer at 29, lines 501-05, filed January 30, 2014. See also Rebuttal Testimony of Shauna Benvegnu-Springer at 2, lines 18-25, filed February 20, 2014.

the Division's recommended rates with the exception of the elimination of the well lease fee of $3.85 per 1,000 gallons.[66] At the March 11, 2014, hearing, the Company clarified the $3.85 well lease fee would be charged to customers receiving water under the Well Lease Agreement if the Company is required to transport water across its system for such users.[67] The Company testified it derived the $3.85 by starting with a base amount of $3.19, from an earlier court proceeding, and inflating it using the Consumer Price Index to reflect an equivalent current amount.[68] The Company asserts it has no obligation to serve Mr. Dansie or other members of the family trust under the Well Lease Agreement;[69] however, it explains that it has included the fee in its proposed rates as a contingency to cover the incremental costs the Company would incur if the Commission finds the Company has such an obligation.[70] The Company urges the Commission to settle the dispute between itself and Mr. Dansie under the Well Lease Agreement, giving finality to this longstanding matter. The Company asserts that the Division's proposed rates are just and reasonable, and in the public interest.[71]

In addition, the Company requests to amend its service area.[72] The Company testified it seeks to amend its service area to reflect its current service area,[73] to remove one of Mr. Dansie's 40-acre parcels (that along with another 40-acre parcel that was never part of the

[66] See Rebuttal Testimony of Randy Crane at 14, lines 291-96, filed February 20, 2014. See also id. at 15, lines 299-320. See also id. at 16, lines 321-323. See also Transcript of Hearing held March 11, 2014, at 104, lines 19-25.
[67] See Transcript of Hearing held March 11, 2014, at 93, lines 19-20.
[68] See id. lines 7-15; id. at 94, lines 5-8.
[69] See Rebuttal Testimony of Randy Crane at 3, lines 43-44, filed February 20, 2014 ("[I]t is the Company's position that the Well Lease Agreement should be totally unenforceable against the Company or the [Homeowners] Association.").
[70] See Transcript of Hearing held March 11, 2014, at 104, lines 19-25.
[71] See id. at 84, lines 22-5; at 85, line 1 (testimony of Mr. Edwards). See also id. at 91, lines 1-3 (testimony of Ms. Fishlock-McCauley), and id. at 147, lines 11-17 (testimony of Mr. Crane).
[72] See Transcript of Hearing held March 11, 2014, at 128, lines 6-25.
[73] See id. at 131, lines 1-8.

Company's original service area makes up Mr. Dansie's "back 80"), and to add three other parcels – two that are directly West of the Dansie 40-acre parcel the Company seeks to remove, and a third parcel that is close-by. The Company testified the infrastructure does not exist to serve Mr. Dansie's back 80 or the other three parcels, and all are undeveloped and are on steep terrain. The Company testified that the owners of the three parcels it seeks to add to its service area are paying homeowners fees for road access to their respective properties through the Hi-Country Subdivision, whereas Mr. Dansie is not. The Company acknowledges these three parcels pose the same general grade challenges as Mr. Dansie's parcel and the owners would have to pay the proposed $10,000 outside service connection review fee if they request water service.[74]

C. Mr. Dansie's Position

Mr. Dansie claims he is entitled to receive 12 million gallons of water annually under the Well Lease Agreement.[75] He also asserts the Company should bear all costs associated with delivering the water to him.[76] Further, he asserts that the Company's proposed amended service area is inconsistent with the Well Lease Agreement, and all of his 80-acres (known as the "back 80") should be included in the Company's service area.[77] Lastly, he requests attorney fees associated with Commission proceedings involving the Well Lease Agreement.[78]

[74] See id. at 82, lines 10-25.
[75] See Direct Testimony of: Rodney Dansie at 2, lines 17-18, filed January 30, 2014.
[76] See id. at 2, lines 13-17.
[77] See id. at 7, 6-8.
[78] See id. at 7, lines 11-12. See also Surrebuttal Testimony of: Rodney Dansie at 4, lines 58-61, filed February 27, 2014 (asserting attorney fees in excess of $7,000).

To support his position for free water under the Well Lease Agreement, he cites *Hi-Country Estates Homeowners Association v. Bagley & Co.*, 2008 UT App 105,[79] in which he argues the court held the Well Lease Agreement to be valid and enforceable. In addition, he relies on *Hi-Country Estates Homeowners Association v. Bagley & Co.*, 2011 UT App 252 (amended memorandum decision),[80] which he asserts affirms his right to receive water under the Well Lease Agreement.[81] Based on these cases, he claims the Commission's prior orders should have no bearing on this docket.[82]

In support of his position to include the back 80 in the Company's service area, Mr. Dansie claims that the Company's predecessor included these parcels in its service area.[83]

D. Mr. Coon's Position

Mr. Coon provided sworn testimony at the March 5, 2014, public witness hearing.[84] He participated in, but did not testify at the March 11, 2014, hearing. Mr. Coon gave several examples of alleged actions by Mr. Dansie, which Mr. Coon concluded imposed costs on the homeowners association.[85]

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[79] See Direct Testimony of: Rodney Dansie at 3, lines 12-16.
[80] See id. at 2, lines 13-18. Mr. Dansie, however, does not address how the following statement from the court affects his claim to free water: ". . .the Dansies are, going forward, entitled to their contractual rights to free water and free hook-ups unless the PSC intervenes and determines otherwise." 2011 UT App 252, ¶ 14 (emphasis added).
[81] See id. at 2, lines 15-18.
[82] See id. at 5, lines 3-14. See also Surrebuttal Testimony of: Rodney Dansie at 1, lines 14-15, filed February 27, 2014.
[83] See Surrebuttal Testimony of: Rodney Dansie at 3, lines 32-33, filed February 27, 2014.
[84] See Transcript of Hearing held March 5, 2014, at 62-65.
[85] See id. at 62-64. Mr. Coon alleged Mr. Dansie had connected sprinklers to his meters and let them run 24-7. Mr. Coon added that the lots Mr. Dansie was watering are unimproved and are covered with juniper trees, sagebrush, and rocks. Mr. Coon also alleged Mr. Dansie filed wrongful liens on 126 lots claiming 12 million gallons of water. To remove the liens, the homeowners association incurred legal fees. Mr. Coon also alleged Mr. Dansie caused flooding to Mr. Coon's home when Mr. Dansie attempted to fill his water tank without a shutoff device. Mr. Coon alleges that Mr. Dansie's use of excessive amounts of water was an attempt to drain the homeowners association's water tank so that it had to pay Herriman City for emergency backup water.

E. Public Witness Hearing

Several customers filed written comments, and several provided oral comments or sworn testimony at the public witness hearing. Some witnesses supported the Division's proposed rates. Some witnesses opposed the standby fee but others supported it. Almost all witnesses opposed paying anything or delivering water under the Well Lease Agreement, and none supported it. In addition, the Division of Drinking Water also provided testimony on the issue of what would be required to interconnect the Dansie water system with the Company's water system.[86]

DISCUSSION, FINDINGS, AND CONCLUSIONS

A. The Well Lease Agreement and the Company's Proposed $3.85 Fee Per 1,000 Gallons to Deliver Water to Mr. Dansie

In 1986, the Commission found that the Well Lease Agreement at issue between the Company and Mr. Dansie "is grossly unreasonable . . . [and] . . . shower[s] virtually limitless benefits on [the] . . . Dansie . . . family."[87] We also found the Commission "would be abrogating its statutory duty were it to impose such a burden on [the Company's] present and future customers."[88] Further, we found "it would be unjust and unreasonable to expect [the Company's] . . . customers to support the entire burden of the Well Lease Agreement."[89] For these reasons and others, we "conclude[d] that the Well Lease Agreement was not proposed in good faith for the economic benefit of [the Company] . . . ."[90]

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[86] See supra n.31.
[87] *In the Matter of the Application of Foothills Water Company, Inc. for a Certificate of Convenience and Necessity to Operate as a Public Utility* (Docket No. 85-2010-01), Report and Order, issued March 17, 1986, at 11, ¶ 15.
[88] Id. at 13, ¶ 15(c).
[89] Id. ¶ 15(d).
[90] Id. at 34.

In this docket, the Division testified that the Well Lease Agreement is not a prudent contract.[91] The Division explained that it determined the Well Lease Agreement is not prudent based on several factors, including the perpetual duration of the contract, and the gross disparity between the benefits and costs associated with the contract, specifically the nearly unlimited nature of the Company's obligation to deliver water.[92] Accordingly, the Division recommends the Commission disallow recovery of the obligation of the Well Lease Agreement through rates because the contract was imprudent and unreasonable when made.[93] Further, the Division adds that "[a]llowing recovery from ratepayers for an obligation of indeterminate cost and duration is not in the public interest. Allowing recovery would create an undue burden requiring the ratepayers to fund the increasing perpetual cost of providing 12 million gallons of water indefinitely. The well lease water of 12 million gallons annually represents [a] 40.4% [increase] over what 91 customers used in 2013. By allowing the cost to be recovered in rates, it would adversely affect the public interest and would not result in just and reasonable rates."[94] We are persuaded by the Division's evidence that no costs associated with the Well Lease Agreement should be recovered through rates.[95]

Additionally, we conclude that Mr. Dansie's reliance on the 2008 and 2011 Utah Court of Appeals decisions is misplaced. In the 2008 decision, the Court of Appeals clarified that it exercised jurisdiction and reviewed the district court's decision involving the Well Lease Agreement because, on February 5, 1996, the Commission revoked the status of the Company as

[91] See Rebuttal Testimony of Shauna Benvegnu-Springer at 6, lines 77-78, filed February 20, 2014.
[92] See id. at lines 78-89.
[93] See id. at lines 92-94.
[94] Id. at line 94; at 7, lines 95-101.
[95] See id. at lines 112-14.

a public utility, thereby vesting jurisdiction from that point in the courts rather than in the Commission.[96] Further, the Court of Appeals restated this explanation in its 2011 decision[97] and specifically recognized that its decision was independent of the Commission exercising jurisdiction over the Company.[98] Thus, consistent with its 2008 decision, the Court held in its 2011 memorandum decision that "the Dansies are, going forward, entitled to their contractual rights to free water and free hook-ups unless the PSC intervenes and determines otherwise."[99] As the parties are aware, the Commission re-exerted its jurisdiction on July 12, 2012, in this matter, when it reinstated the Company as a public utility.[100]

There has been no evidence presented that would persuade us to overturn our prior 1986 order finding that the Well Lease Agreement is unreasonable, unjust, and not in the public interest. Therefore, based on the Commission's earlier order, the lack of contrary evidence, and the Division's evidence and recommendation in this docket, we decline to deviate from our prior precedent. We find the Well Lease Agreement is void and unenforceable as against the public interest. Thus, the Company has no obligation to provide water to Mr. Dansie and, therefore, the Company's proposed fee of $3.85 per 1,000 gallons to deliver water to Mr. Dansie is moot and disallowed from the tariff.

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[96] See *Hi-Country Estates Homeowners Association v. Bagley & Company, 2008 UT App 105, ¶ 12, n.2.*
[97] See *Hi-Country Estates Homeowners Association v. Bagley & Company, 2011 UT App 252 (amended memorandum decision), ¶ 3* (explaining that the 2008 Court of Appeals decision was predicated upon "the PSC no longer exercis[ing] jurisdiction over the Association").
[98] See id. at ¶ 10 ("The [2008] opinion did establish that, so long as the PSC does not exercise jurisdiction over the water system, the rights of the parties are as set forth by the plain language of the Well Lease [Agreement]. …[O]ur opinion wisely hazarded no guess as to whether the PSC could or would exert jurisdiction in the future, and thus made no effort to adjudicate the rights of the parties or the enforceability of the Well Lease [Agreement] going forward.").
[99] See also id. at ¶ 14 (emphasis added).
[100] See Report and Order, issued July 12, 2012 (reinstating Hi-Country Estates Homeowners Association's certificate of public convenience and necessity).

Our decision is consistent with *Logan City v. Public Utilities Commission of Utah*, 72 Utah 536, 562, 271 P. 961, 970 (Utah 1928), wherein the Utah Supreme Court stated the following: "…[N]o contract made by or with a public utility with respect to rates and charges . . . is . . . of any binding effect, if in the judgment of the commission the rate or charge so fixed by contract [is unjust, unreasonable, discriminatory, preferential, or otherwise in violation of law], . . . and that hence the commission may and should disregard such contracts . . . ." Similarly, our decision is consistent with Utah Code Ann. § 54-4-4, which permits the Commission to set aside a contract for any of the reasons noted above.[101]

B. The Division's Proposed Rates

Regarding the remaining rates proposed by the Division, the Company testified it agreed with the overall rate structure and rate levels. Both the Division and the Company testified the proposed rates are just and reasonable, and in the public interest. The public witness hearing produced some opposition to the standby fee. The Commission finds that all landowners within the Company service area benefit from having a water system in place; therefore, we find that it is reasonable to require all landowners to pay a portion of the system's cost. There being no other opposition to the Division's proposed rates, the Commission finds the rates just and reasonable, and in the public interest. Additionally, we find the Customer Late Fee per month should be clarified by indicating that the annual percentage rate applies to the delinquent balance.

[101] See Utah Code Ann. § 54-4-4(1)(b) (LexisNexis 2010) (stating: "If the commission makes a finding [that a contract affecting rates is unjust, unreasonable, discriminatory, preferential, or otherwise in violation of law] the commission shall . . . determine . . . contracts to be thereafter observed and in force . . . .").

C. Other Issues

1. The Company's request to add parcels to its service area

We note that only the Company provided testimony on this point.

The Company's request to amend its service area is based on a faulty premise that payment of homeowner association dues creates an obligation for the Company to provide water service. If the Company were not a regulated public utility, the homeowners association and the water company could decide if they wanted to have coextensive boundaries. That is not the case here. Because the Company is regulated, the Commission must determine how changes in its service area affect existing customers.

As a public utility, the Company offers water service to anyone under the terms of its approved tariff within its approved service area. Given the testimony that serving the area the Company seeks to add would be more expensive than serving its existing customers because of the steep grade involved, the Commission directs the Company to wait to add these lots to its service area until such time as a written request to serve is made with the Company. At such time, the Company can provide cost data that may allow the Commission to expand the service area and set the rates for the new customers to cover the actual costs of serving the proposed parcel(s). We note the rates that are approved in this docket do not include the costs of serving these parcels.

In the event a written request to serve is made with the Company, a special contract (or a separate rate class) for expansion of the Company's service area will be required as stated in the "Outside Service Connection Review Deposit" in the Approved Rate Schedule attached to this order. The Commission finds that the potential special contract customers should

bear the full costs of the review, and the resulting contract must cover the full costs of whatever service is involved. The Outside Service Connection Review Deposit will be subject to true-up based on the final cost of the review. Additionally, the Commission requires the following tariff provision: *All special contracts will be addressed on a case-by-case basis, must cover the full costs involved in providing the contracted service, and must be approved by the Commission before taking effect.*

2. The Company's request to remove Mr. Dansie's western-most 40-acre parcel from its service area

We note that the Division did not address this issue. Mr. Dansie asserts his back 80, which consists of two 40-acre parcels, was included in the original service area of the Company, and he objects to the proposed removal of his back 80 from the Company's service area. The Company asserts only one of Mr. Dansie's 40-acre parcels (i.e., the western-most parcel) is currently included.

The Commission takes administrative notice of the Report and Order issued on March 17, 1986, in Case No. 85-2010-01, in which the service area is described.[102] Further, the Commission takes administrative notice of the Report and Order issued on July 12, 2012, in Docket No. 11-2195-01, in which the Company's Certificate of Public Convenience and Necessity No. 2737 is reinstated.[103] Thus, as of the July 12, 2012, Report and Order, the service area identified in the March 17, 1986, Report and Order also was reinstated. The service area

[102] See Report and Order, Issued on March 17, 1986, at 36-37. The Commission further notes the Company included a copy of this order as an exhibit to its application in Docket No. 11-2195-01.
[103] See Report and Order, Issued on July 12, 2012, at 7.

description set forth in the March 17, 1986, Report and Order only includes Mr. Dansie's western-most 40-acre parcel.[104]

Mr. Dansie's western-most 40-acre parcel already is part of the service area, and he protested its removal. There appears to be no compelling reason to remove the parcel. Thus, the Commission denies the Company's request to remove the parcel from its service area.

Further, we note there is no infrastructure presently in place to serve Mr. Dansie's western-most parcel. The cost information the Commission used in this docket to set rates applies only to those portions of the service area with existing infrastructure by which adequate water service can be provided. Thus, the rates set in this docket do not apply to those portions of the Company's service area without current such infrastructure in place. If and when the Company receives a written request to serve Mr. Dansie's western-most 40-acre parcel, it shall then complete and file with the Commission a cost study upon which compensatory rates can be determined by the Commission.

3. Mr. Dansie's request for attorney fees

The Commission lacks jurisdiction to award attorney fees; therefore, Mr. Dansie's request is denied.

ORDER

Pursuant to our discussion, findings, and conclusions, we order:

1. The Company's motion for summary judgment is denied.

[104] See supra n.102

2. The Well Lease Agreement is void and unenforceable as against the public interest.

3. The Company's proposed fee of $3.85 per 1,000 gallons to deliver water to Mr. Dansie is moot and, therefore, is disallowed from the tariff.

4. The Service Connection Review Fee is subject to true-up.

5. The rates as contained in the Approved Rate Schedule below are approved for the portion of the Company's service area with existing infrastructure as of the date of this order.

6. At this time, the Company may not add the parcels referenced above to its service area.

7. The Company's request to remove Mr. Dansie's western-most 40-acre parcel from the Company's service area is denied.

8. Mr. Dansie's request for attorney fees is denied.

DATED at Salt Lake City, Utah, this 5th day of May, 2014.

/s/ Ron Allen, Chairman

/s/ David R. Clark, Commissioner

/s/ Thad LeVar, Commissioner

Attest:

/s/ Gary L. Widerburg
Commission Secretary
DW#254047

Notice of Opportunity for Agency Review or Rehearing

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

Approved Rate Schedule

RESIDENTIAL RATE SCHEDULE	Division Recommendation
System Standby Fee	$ 31.75
Monthly User Fee (base rate)	$ 78.00
Water Consumption Rate per/1,000 gal up to 10K	$ 0.54
Conservation Tier Rate 1 per/1000 gal above 10K to 20K	$ 0.81
Conservation Tier Rate 2 per/1000 gal above 20K to 30K	$ 1.22
Conservation Tier Rate 3 per/1000 gal above 30K to 40K	$ 1.82
Conservation Tier Rate 4 per/1000 gal above 40K to 50K	$ 2.73
Conservation Tier Rate 5 per/1000 gal above 50K	$ 4.10
Reserve Fund Charge	$ 0.00
Service Connection Fee	no change
Temporary Service Suspension Fee	no change
Reconnection Fee (after disconnect)	$ 250
Account Transfer Fee	no change
Meter Test Fee	no change
Customer Late Fee per/month	$10 or 18% APR of the delinquent balance, whichever is greater
Security Deposit	no change
Insufficient Funds Fee	no change
Active Meter Replacement each incident	$ 300
Emergency Backup Water Rate per/1,000 gal	$ 2.33
Outside Service Connection Review Deposit, subject to true-up	$ 10,000
All special contracts will be addressed on a case-by-case basis, must cover the full costs involved in providing the contracted service, and must be approved by the Commission before taking effect.	
BLM RATE SCHEDULE	
Annual Fee	$ 0
Monthly Use Fee	$ 78.00
Water Consumption Rate up to 10K	$ 0.54
Conservation Tier Rate 1 per/1000 gal above 10K to 20K	$ 0.81
Conservation Tier Rate 2 per/1000 gal above 20K to 30K	$ 1.22
Conservation Tier Rate 3 per/1000 gal above 30K to 40K	$ 1.82
Conservation Tier Rate 4 per/1000 gal above 40K to 50K	$ 2.73
Conservation Tier Rate 5 per/1000 gal above 50K	$ 4.10
Reserve Fund Charge	$ 0.00
Service Connection Fee	no change
Temporary Service Suspension Fee	no change
Reconnection Fee (after disconnect)	$ 250
Account Transfer Fee	no change
Meter Test Fee	no change
Customer Late Fee per/month	$10 or 18% APR of the delinquent balance, whichever is greater
Security Deposit	no change
Insufficient Funds Fee	no change
Active Meter Replacement each incident	$ 300
Emergency Backup Water Rate p/1,000 gal	$ 2.33
Outside Service Connection Review Deposit, subject to true-up	$ 10,000
All special contracts will be addressed on a case-by-case basis, must cover the full costs involved in providing the contracted service, and must be approved by the Commission before taking effect.	

CERTIFICATE OF SERVICE

I CERTIFY that on the 5th day of May, 2014, a true and correct copy of the foregoing was served upon the following as indicated below:

By U.S. Mail:

William B. and Donna J. Coon
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By E-Mail:

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Hand-Delivery:

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_____
Administrative Assistant