

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

)
In the Matter of the Application of Hi-)
Country Estates Homeowners Association) DOCKET NO. 13-2195-02
for Approval of its Proposed Water Rate)
Schedules and Water Service Regulations) REPORT AND ORDER DENYING MR.
) UHLIG'S REQUEST FOR REVIEW OR
) REHEARING
)

ISSUED: June 19, 2014

BACKGROUND

1. On July 10, 2013, Hi-Country Estates Homeowners Association (“Company”) filed an application to approve proposed water service schedules and rates in this docket.¹
2. On September 12 and 24, 2013, respectively, the Commission issued a notice of scheduling conference² and scheduling order.³
3. The September 24, 2013, scheduling order set a deadline of December 27, 2013, for parties to request intervention.⁴
4. The Commission granted intervention requests to two parties in this docket.⁵
5. Petitioner Werner Uhlig (“Mr. Uhlig”) did not request intervention and the deadline for doing so has passed.⁶

¹ See Application to Approve Proposed Water Service Schedules and Rates, filed July 10, 2013.

² See Notice of Scheduling Conference, issued September 12, 2013.

³ See Scheduling Order and Notices of Hearings, issued September 24, 2013.

⁴ See *id.* at 1.

⁵ See Order Granting Intervention [to Rodney Dansie], issued August 30, 2013. See also Order Granting Intervention [to William B. and Donna J. Coon], issued September 9, 2013.

⁶ See *supra* n.4. Mr. Uhlig filed comments in this docket. See E-mail Comments from Mr. Uhlig, filed August 27, 2013 (stating, in part, “...I object [to] and protest any standby rate increases...”). He also appeared at the public witness hearing held on March 5, 2014, to provide sworn testimony. See Transcript of Public Witness Hearing held

6. On May 5, 2014, the Commission issued a report and order (“Report and Order”) in this docket.⁷

7. The Report and Order contains the following provision:

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.⁸

8. On June 3, 2014, Mr. Uhlig filed a request for review or hearing regarding the standby fee established in the Report and Order.⁹ Mr. Uhlig contends, in part, as follows: “It is unjust to establish a special fee for the minority of all home owners who rely on their own private wells for water. I am one of those home owners with a private well and I do not think the imposition of a ‘standby fee’ is legally tenable. If there is a need for it, then it should be assessed

on March 5, 2014, at 55-61. At this hearing, the ALJ for the Commission asked Mr. Uhlig if he had reviewed the testimony filed by the Division of Public Utilities (“Division”) in this docket, inasmuch as that testimony might have alleviated some of his concerns. See id. at 60, lines 9-25; 61, lines 1-3. Mr. Uhlig’s response was: “I think I know what you are referring to. Every argument for a standby fee is bogus...” Id. at 61, lines 4-5 (emphasis added).

⁷ See Report and Order, issued May 5, 2014.

⁸ Id. at 23.

⁹ See Request for Review or Rehearing, filed June 3, 2014.

equally on all home owners; there is no justification for charging some homeowners more than others.”¹⁰

9. On June 16, 2014, the Company filed a response to Mr. Uhlig’s request for review or rehearing.¹¹ In part, the Company argues Mr. Uhlig lacks standing and, therefore, his request for review or rehearing should be dismissed.¹² The Company also argues Mr. Uhlig’s request is based on a misunderstanding of the approved rate structure and rationale therefor.¹³

10. On June 17, 2014, the Division filed a response to Mr. Uhlig’s request for review or rehearing.¹⁴ The Division argues Mr. Uhlig’s request should be dismissed for lack of standing.¹⁵

DISCUSSION

I. MR. UHLIG LACKS STANDING TO CONTEST THE REPORT AND ORDER

As noted above, the appeals provision recited in the Report and Order states, in part:

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. . . .¹⁶

Under both Sections 63G-4-301 and 54-7-15 of the Utah Code Ann. referenced above, a person making a request for review or rehearing of a commission action must be a “party” to the

¹⁰ See id. at 1.

¹¹ See Response to Request for Review or Rehearing, filed June 16, 2014.

¹² See id.

¹³ See id.

¹⁴ See Response of Division of Public Utilities, filed June 17, 2014.

¹⁵ Id. at 1-2.

¹⁶ Report and Order at 23, issued May 5, 2014 (emphasis added).

proceeding.¹⁷ As each of these statutes apply here, a “party” is narrowly defined to include intervenors (e.g., the two parties who filed and were granted intervention in this docket) or other persons authorized by statute (i.e, the Division) to participate in the proceeding. Mr. Uhlig neither filed for nor was granted intervention in this docket.¹⁸ Therefore, he lacks standing to challenge the Commission’s May 5, 2014, order in this docket. Accordingly, we dismiss his appeal.¹⁹

II. NOTWITHSTANDING MR. UHLIG’S LACK OF STANDING, WE FURTHER EXPLAIN THE BASIS OF OUR REPORT AND ORDER TO HELP CLARIFY ANY MISUNDERSTANDING REGARDING THE STANDBY FEE

The Division’s testimony filed in this docket states as follows:

Hi-Country has 126 customers of which 91 are water users and 35 are standby customers. The Division is recommending the proposed rates and charges [as noted on pages 9 and 10 of the Report and Order]....²⁰

The Division’s recommendation uses fixed revenue to cover fixed costs, and variable revenue to cover variable costs.²¹

¹⁷ See Utah Code Ann. § 63G-4-301(1)(a) (LexisNexis 2011) (“If a statute or the agency’s rules permit parties to any adjudicative proceeding to seek review of an order by the agency or by a superior agency, the aggrieved party may file a written request for review within 30 days after the issuance of the order with the person or entity designated for that purpose by the statute or rule.”); *id.* § 63G-4-103(1)(f) (“‘Party’ means the agency or other person commencing an adjudicative proceeding, all respondents, all persons permitted by the presiding officer to intervene in the proceeding, and all persons authorized by statute or agency rule to participate as parties in an adjudicative proceeding.”); *id.* § -103(1)(i) (“‘Respondent’ means a person against whom an adjudicative proceeding is initiated, whether by an agency or any other person.”). See also Utah Code Ann. § 54-7-15(1) (LexisNexis 2010) (“Before seeking judicial review of the commission’s action, any party, stockholder, bondholder, or other person pecuniarily interested in the public utility who is dissatisfied with an order of the commission shall meet the requirements of this section.”).

¹⁸ See *supra* 1, ¶ 5.

¹⁹ Cf. *Ball v. Public Serv. Comm.* (In re Questar Gas Co.), 2007 UT 79, ¶ 57, 175 P.3d 545 (holding, in part, ratepayers, although aggrieved by a rate increase from a Commission order, had no pecuniary interest in the public utility and therefore did not fall within the classes of persons to whom standing is granted).

²⁰ Direct Testimony of Shauna Benvegna-Springer at 6, lines 72-74, filed January 30, 2014.

²¹ *Id.* at 7, lines 75-76.

...For standby customers the impact is an increase of \$19.34 . . . from the current fee of \$12.41[, totaling a new standby rate of \$31.75 per month per customer].²²

The system standby fee . . . is charged to all residential customers and vacant lot owners eligible for service connections in the service area. . . .The Division recommends the standby fee be changed to a system standby fee of \$31.75 per month per customer. The fee is calculated using the fixed water system costs for having the system in place regardless if it is used by a customer or not. The system fee includes the Herriman administrative costs to manage the system, billing cost, amortized rate case expenses, insurance, regulatory fee, depreciation and property taxes.²³

Further, the Division explained in its testimony and at hearing that \$13.55 of the \$31.75 per month per customer standby rate (as well as \$13.55 of the \$78.00 monthly user fee paid by active customers) would go to establishing a capital reserve fund,²⁴ which currently does not exist and eighty-percent of the Company's infrastructure is depreciated.²⁵ Additionally, the Division testified that these rates are just, reasonable, and in the public interest.²⁶

As we noted in our Report and Order, "[t]he Commission finds that all landowners within the Company service area benefit from having a water system in place"²⁷ We further note that all landowners within the Company service area benefit from fire suppression because fires have a tendency to spread; it is simply not the case, as Mr. Uhlig

²² Id. at 8, lines 80-81.

²³ Id. at 9, lines 113-16; id. at 10, lines 117-21.

²⁴ See id. at 19, lines 298-301; and id. at 21, lines 342-46. See also Transcript of Hearing held March 11, 2014, at 34, lines 16-23. The Division also clarified at hearing that the capital reserve fund would also be funded by any water used above the cost of service of \$.54 per 1,000 gallons. See Report and Order at 10 n.58, issued May 5, 2014.

²⁵ See Transcript of Hearing held March 11, 2014, at 34, lines 9-15.

²⁶ Id. at 37, lines 24-25; and id. at 38, line 1. As noted in the Report and Order, "[s]ome witnesses opposed the standby fee but others supported it." Report and Order at 15, issued May 5, 2014.

²⁷ Report and Order at 18, issued May 5, 2014.

suggests, that landowners benefit only to the extent water is drawn from a fire hydrant located near their home. Indeed other emergency contingencies may arise as well, such as if a customer's well no longer functions or becomes contaminated. Lastly, as the Company notes in its response, and which the Division's testimony supports, the \$31.75 about which Mr. Uhlig complains is also embedded in the \$78.00 monthly user fee that active customers pay (see above);²⁸ thus, Mr. Uhlig's claim that the rates are unjust and discriminatory is not well-founded.

ORDER

Mr. Uhlig lacks standing to challenge the Commission's May 5, 2014, Report and Order, and therefore we deny his request for review or rehearing. Notwithstanding our dismissal, we include the clarification above to help alleviate any misunderstanding regarding the standby fee.

This is a final order.

DATED at Salt Lake City, Utah, this 19th day of June, 2014.

/s/ Ron Allen, Chairman

/s/ David R. Clark, Commissioner

/s/ Thad LeVar, Commissioner

Attest:

/s/ Gary L. Widerburg
Commission Secretary
DW#256994

²⁸ See Transcript of Hearing held March 11, 2014, at 33, lines 21-25; see also id. at 34, lines 1-2.

Notice of Opportunity for Agency Review or Rehearing

Judicial review of the Commission's final agency action may be obtained by filing a Petition for Review with the Utah Supreme Court within 30 days after final agency action. Any Petition for Review must comply with the requirements of Utah Code Ann. §§ 63G-4-401, 63G-4-403, and the Utah Rules of Appellate Procedure.

CERTIFICATE OF SERVICE

I CERTIFY that on the 19th day of June, 2014, a true and correct copy of the foregoing was served upon the following as indicated below:

By U.S. Mail:

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