

- 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) ERRATA ORDER DENYING MR.
Schedules and Water Service Regulations) DANSIE’S REQUEST FOR REHEARING
) AND RECONSIDERATION
)

ISSUED: June 25, 2014

It has come to the attention of the Commission that its Order Denying Mr. Dansie’s Request for Rehearing and Reconsideration (“Order”) issued in this docket on June 24, 2014, contained a footnote formatting error that affects the footnote numbering on pages 4-7 of the Order and a sentence at the beginning of Section II was mistakenly omitted. This errata order corrects those errors and replaces our Order effective June 24, 2014.

BACKGROUND

On June 4, 2014, Rodney Dansie (“Mr. Dansie”), through his counsel filed a request for rehearing and reconsideration in this docket.¹ Mr. Dansie claims the Commission exceeded its jurisdiction in issuing the May 5, 2014, Report and Order concerning, in part, the Well Lease Agreement with Hi-Country Estates Homeowners Association (“Hi-Country” or the “Company”). He also asserts: (1) the public interest considerations weigh against the Commission exercising its jurisdiction; (2) that rehearing is warranted because Mr. Dansie was unable to participate in the hearing; and (3) Mr. Dansie’s property was improperly excluded from the Company’s service area.

¹ See Request for Rehearing and Reconsideration, filed June 4, 2014.

On June 18, 2014, the Division of Public Utilities (“Division”) filed a response to Mr. Dansie’s request for reconsideration and rehearing.² The Division recommends the Commission deny Mr. Dansie’s request. In summary, the Division argues “[t]here are no persuasive arguments set forth in [Mr. Dansie’s request. Mr. Dansie’s request] should be denied because: (1) the Commission has jurisdiction to determine that the Well Lease Agreement . . . is void and unenforceable as against the public interest and (2) the Commission properly decided that the [Well Lease] Agreement is not in the public interest.”³

On June 19, 2014, the Company filed a response to Mr. Dansie’s request for rehearing and reconsideration.⁴ In part, the Company argues that Mr. Dansie’s request should be denied because “he had plentiful time and numerous opportunities to present any arguments, facts, or testimony that may be relevant to the Commission; indeed, Mr. Dansie did provide written testimony on multiple occasions and was (and continues to be) represented by competent counsel throughout these proceedings.”⁵ The Company also asserts the Commission had jurisdiction to modify the Well Lease Agreement, and that the Commission correctly concluded that the Well Lease Agreement is not in the public interest. The Company further adds that enforcement of the Well Lease Agreement would jeopardize the Company’s financial stability and continued ability to serve its customers because it requires the Company to convey its assets for less than fair market value and imposes a restraint on alienation. The Company argues that enforcement of the Well Lease Agreement against the Company would result in unreasonable

² See Response of the Division of Public Utilities Opposing Mr. Rodney Dansie’s Request for Rehearing and Reconsideration, filed June 18, 2014.

³ Id. at 1-2 (internal quotations omitted).

⁴ See Response to Rodney Dansie’s Request for Rehearing and Reconsideration, filed June 19, 2014.

⁵ Id. at 2.

rates that provide a preference to the Dansies at the expense of the remaining ratepayers. The Company contends that Mr. Dansie's suggestion that further litigation could result if this matter is not reheard does not amount to a compelling reason to act in detriment of the public interest. Further, the Company notes that Mr. Dansie's counsel was present throughout the hearings and availed himself of the opportunity to cross-examine witnesses on behalf of Mr. Dansie. As such, the Company states,

. . . Mr. Dansie had the full benefit of participation in the hearings. Additionally, all parties were given the opportunity to file post-hearing briefs as each felt necessary to address any new issues brought up in the hearing that were not addressed in prefiled testimony. This ability to file pleadings after the hearing was over provided Mr. Dansie with ample opportunity to address any real or perceived disadvantage he may have suffered by having his attorney present at the hearing without Mr. Dansie being there himself. Notably, Mr. Dansie did not take advantage of this opportunity and has instead waited until after the Commission issued its Order.⁶

Lastly, the Company argues that the Commission did not err in not changing the Company's service territory. The boundaries the Commission's order recognizes are the same today as when the Commission issued its order in 1986.

DISCUSSION

I. THE COMMISSION'S JURISDICTION OVER THE WELL AGREEMENT IS SETTLED LAW IN UTAH

Mr. Dansie's argument that the Commission lacks jurisdiction to issue its order governing the Well Lease Agreement is without merit. In the May 5, 2014, Report and Order, the Commission explained why Mr. Dansie's reliance on the 2008 and 2011 Utah Court of Appeals

⁶ Id. at 8.

decisions was mistaken and why those cases do not prevent the Commission from exercising its jurisdiction over this matter.⁷ Rather than repeating that part of the order here, we simply note the Commission's jurisdiction over this matter is well-settled under Utah law:

...[I]n the fixing of rates for public utility service under the Utah Public Utilities Act the Commission is not limited or controlled by the provisions of antecedent contracts, but is at liberty to disregard such contracts altogether if they come in conflict with what the Commission finds to be a reasonable rate under the conditions existing at the time of making the investigation.⁸

Accordingly, we are not persuaded by Mr. Dansie's argument that the Commission exceeded its jurisdiction when finding the Well Lease Agreement void and unenforceable as against the public interest. Further, Mr. Dansie's attempts to challenge provisions contained in the Commission's earlier orders (e.g., the 1986 Report and Order, finding the Well Lease Agreement is unreasonable, unjust, and not in the public interest; and the 2012 Report and Order, reasserting jurisdiction over the Company) when asserting his jurisdictional argument, are without merit because the appeals processes expired long ago.

II. MR. DANSIE'S REQUEST FOR RECONSIDERATION AND REHEARING ARE DENIED

Mr. Dansie's counsel argues that rehearing is warranted because Mr. Dansie was unable to participate in the hearing held in this matter. Counsel states, in part:

The Commission should allow a rehearing that offers [Mr.] Dansie the opportunity to present additional facts and testimony that explores the accuracy of the Company's presented cost of

⁷ See Report and Order at 16-18, issued May 5, 2014.

⁸ Utah Hotel Co. v. Public Serv. Comm. of Utah, 59 Utah 389, 399-400, 204 P.511, 515 (Utah 1922) (emphasis added). See also Garkane Power Ass'n v. Public Service Comm. of Utah, 681 P.2d 1196, 1208 (Utah 1984) (J. Durham, concurring and dissenting) ("There is no question that the [Commission] 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.").

providing water under the [Well] Agreement. Because of [Mr.] Dansie's unavoidable absence at the March 4 hearing, valuable and important rebuttal and cross examination were not conducted or factored into the Commission's finding....⁹

The Commission denies rehearing for several reasons present in this matter. First, the Commission granted Mr. Dansie's counsel a continuance at the hearing held on March 4, 2014,¹⁰ even though he had failed to file and properly serve a motion seeking continuance. At least one party was unaware of the motion until the hearing,¹¹ and that party opposed the motion.¹² Further, the Commission granted the continuance despite Mr. Dansie's counsel's inability to provide a date on which his client would be available.¹³ Moreover, Mr. Dansie's counsel assured the Commission that either his client or some other family member(s) (i.e., Mr. Dansie's brother, Richard Dansie) would attend on Mr. Dansie's behalf when the hearing reconvened.¹⁴ The Commission granted the continuance to March 11, 2014, based on Mr. Dansie's counsel's request to "postpone . . . for a very short time"¹⁵ and each party agreed to the one week continuance understanding that the Commission is under a 240-day statutory deadline in which to issue an order in this docket.¹⁶

⁹ Request for Rehearing and Reconsideration, filed June 4, 2014.

¹⁰ See generally Transcript of Hearing held on March 4, 2014.

¹¹ See id. at 5, lines 20-25 (ALJ noting concern that the certificate of service may have been incorrect); and id. at 7, lines 4-6 (Mr. Dansie's counsel acknowledging that an intervening party had not been made aware of the pending motion for continuance).

¹² See id. at 18, lines 3-8.

¹³ See id. at 8, lines 1-3.

¹⁴ See id. at 30, lines 4-7 (Mr. Dansie's counsel stating after a recess during which he spoke with Mr. Dansie's brother, "...I think Mr. Dansie would be available on the 11th. And if not, then . . . his brother Richard would . . . be willing to testify in his place). See also id. lines 17-19 (Mr. Dansie's counsel recounting his agreement with the Division during the recess that he would "waive any appeal rights" if Mr. Dansie's brother testified instead).

¹⁵ Id. at 27, line 12.

¹⁶ See id. at 9, lines 9-25; and id. lines 1-6.

Second, Mr. Dansie's counsel appeared at the rescheduled hearing on March 11, 2014, without Mr. Dansie or a Dansie family member even though he had represented to the Commission at the March 4, 2014, hearing that if Mr. Dansie was unable to attend other family member(s), namely, Richard Dansie, would be present.¹⁷ Mr. Dansie's counsel made an oral motion to continue the hearing, giving neither the parties nor the Commission advance notice of Mr. Dansie's continuing unavailability,¹⁸ and acknowledged that Mr. Dansie was expected to be unavailable for at least an additional six weeks, which, as he explained, "puts us right at that really close time frame . . . the 240-day deadline[,]"¹⁹ and creates "an impossible situation."²⁰ The Commission denied the motion to continue based in part on the uncertainty of Mr. Dansie's future availability and due to the Commission's aforementioned statutory obligation to issue an order in this docket within 240 days.

Third, Mr. Dansie's counsel requested his client have the opportunity to file a post-hearing brief if the hearing went forward,²¹ and the Commission granted the request to the extent issues were not already raised.²² Mr. Dansie's counsel, however, never filed a post-hearing brief.

Finally, Mr. Dansie's motion for rehearing fails to state whether Mr. Dansie is in fact now available or whether he might be in the future. Also, the motion fails to state what Mr.

¹⁷ See Transcript of Hearing held March 11, 2014, at 7, lines 12-25; and id. at 8, line 1.

¹⁸ See id. at 11, lines 20-22.

¹⁹ Id. at 8, lines 18-20.

²⁰ Id. lines 24-25.

²¹ See id. at 9, lines 17-18. Indeed, at the close of the hearing, Mr. Dansie's counsel stated: "I think we'll file a post hearing brief probably within the next week or so." Id. at 168, lines 4-5.

²² See id. at 23, lines 14-17. See also id. at 24, lines 15-17; and id. at 168, lines 7-8 (ALJ stating, "the Commission is amenable to post hearing motions on issues that have not already been addressed.").

Dansie's testimony would add or change from what has already been filed, such that rehearing would be warranted in this circumstance. In other words, Mr. Dansie's motion fails to present any new facts or testimony that would justify rehearing this matter. Thus, for the reasons stated above, Mr. Dansie's motion for rehearing is denied.

III. THE MAY 5, 2014, REPORT AND ORDER DID NOT CHANGE THE COMPANY'S SERVICE AREA

Mr. Dansie is mistaken in asserting that the Commission's May 5, 2014, Report and Order changed the Company's service area. The service area today is the same as it was in 1986.²³ As noted in the Report and Order, the service area includes Mr. Dansie's western-most 40-acre parcel. Further, the Report and Order explains what will need to occur if any of the property owners, including Mr. Dansie, want to request service from the Company in the future. Mr. Dansie has presented no basis in law or in fact for altering this part of the order and, therefore, his request to include all of his property (i.e., his eastern-most 40-acre parcel) in the Company's service area is denied.

ORDER

For the foregoing reasons, Mr. Dansie's request for rehearing and reconsideration is denied.

This is a final order.

²³ See Report and Order at 20-21, issued May 5, 2014.

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DATED at Salt Lake City, Utah, this 25th 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#257379

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 25th day of June, 2014, a true and correct copy of the foregoing was served upon the following as indicated below:

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