

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

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In the Matter of Hi-Country Estates )  
Homeowners Association’s Updated Tariff to ) DOCKET NO. 14-2195-T01  
Comply with the Commission’s May 5, 2014, ) ORDER SUSPENDING PROPOSED  
Report and Order ) TARIFF, AND NOTICE OF HEARING  
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ISSUED: June 6, 2014

On May 5, 2014, the Commission issued a Report and Order in Docket No. 13-2195-02, approving certain rates for Hi-Country Estates Homeowners Association’s (“Hi-Country” or “Company”) residential and U.S. Bureau of Land Management customers.<sup>1</sup>

On May 15, 2014, Hi-Country filed a tariff purporting to update its tariff previously filed in Docket No. 13-2195-T01.<sup>2</sup> Hi-Country proposes to make these rates effective May 5, 2014, and states the rates have been revised to comply with the Commission’s May 5, 2014, order.

On May 30, 2014, in response to a Commission action request, the Division of Public Utilities (“Division”) filed a memo recommending the Commission reject Hi-Country’s tariff as filed.<sup>3</sup> As a basis for its recommendation, the Division states: “The Company added language to the tariff that was not approved by the Commission.”<sup>4</sup> In addition, the Division states: “The tariff . . . requires additional correction to comply with the Commission’s [May 5, 2014,] Report and Order.”<sup>5</sup> The Division outlines its concerns and recommendations as follows:

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<sup>1</sup> See Report and Order, issued May 5, 2014. The order can be viewed at <http://www.psc.utah.gov/utilities/water/waterindx/documents/25404713219502rao.pdf>.

<sup>2</sup> On June 26, 2013, the Commission issued an order suspending the proposed tariff in Docket No. 13-2195-T01. See Order Suspending Proposed “Updated” Tariff and Order, issued June 26, 2013 (Docket No. 13-2195-T01).

<sup>3</sup> See Division Memorandum, filed May 30, 2014. The Division’s memorandum can be viewed at <http://www.psc.utah.gov/utilities/water/waterindx/142195T01indx.html>.

<sup>4</sup> Id. at 1.

<sup>5</sup> Id.

I. Division's Concerns and Recommendations

LANGUAGE ADDITIONS:

1. On page 3, section B. *Service Rate Schedule*, 1. Applicability the following language was added.

*"All water supplied by the Company shall be supplied pursuant to the applicable rate in this section or, if applicable, pursuant to the terms or a special contract between the Company and a particular customer. The Company will not supply any water at any time to any person without a valid promise from such person to pay the Company for the water supplied, regardless of promises or contracts made by the Company, its owners, or its agents prior to the effective date of this tariff."*

The Division recommends the Commission have the Company remove the language from the tariff because it has not been approved by the Commission.

2. On page 6, section 4, (b) the language was modified to address contamination of the water system only where previously it addressed contamination and *fire suppression surcharge to all active customers of the water system*. Fire suppression was removed. On page 6, section 4, (c) the following language was added: *"If the connection is required due to emergency response to fight a fire, then the additional cost from the second source shall be divided among all customers, both active and standby. The surcharge will be calculated as the total additional costs from the second source divided by the total number of active and standby connections."*

The Division recommends the Commission have the Company restore the original language of the tariff as the additional language was not approved by the Commission.

3. On Page 7, section B, (16) *Active Meter Replacement Fee* definition and (17) *Outside Service Connection Review Deposit* definition were added. The Division agrees with the Active Meter Replacement Fee definition as discussed in the Report and Order. The Company addresses the increase in costs of the review to the customer but did not include a partial refund to the customer if less under section C (3).

The Division recommends that the Commission have the Company further clarify that the Outside Service Connection Review Deposit under the definition, that the fee will be subject to a "true-up" process which could allow for additional funds from the customer if costs are greater than the deposit of \$10,000 AND the process could allow for a partial refund of the deposit, if the costs are less.

4. On page 12, section B(13 a) Regulated Usage, the following language was added: *"..., including connections of those customers receiving water under the Well Lease[.]"*

The Division recommends the Commission have the Company remove the language from the tariff as the Well Lease is void per the Report and Order.

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CORRECTIONS:

8. On page 18, section G, Changes and Amendments, the tariff language reads :

*“The right is reserved to amend or add to these rules and regulations as experience may show it to be necessary and as such amendments or additions are approved by the Company.”*

This language was used in the tariff when the Company was operating under the Letter of Exemption issued by the Commission. Since the Commission revoked the Letter of Exemption, the Division recommends the Commission have the Company correct the language to state “Amendments, deletions and additions to these rules and regulations **are proposed by the Company Board of Directors and approved by the Public Service Commission.**”

9. On page 4 of the New Rate Schedule “*Second Source Backup Water from Herriman for fire protection or domestic use*” should be “**Emergency Backup Water Rate**” as identified in the Approved Rate Schedule of the Commission’s Report and Order.

The Division recommends the Commission have the Company correct the Rate Schedule as noted.

10. On page 4 of the New Rate Schedule “*Returned Check Fee*” should be “**Insufficient Funds Fee**” as identified in the Approved Rate Schedule of the Commission’s Report and Order.

The Division recommends the Commission have the Company correct the Rate Schedule as noted.

11. On page 5 of the BLM Rate Schedule “*Returned Check Fee*” should be “**Insufficient Funds Fee**” as identified in the Approved Rate Schedule of the Commission’s Report and Order.

The Division recommends the Commission have the Company correct the Rate Schedule as noted.

12. On page 5, section 4 “*Second Source*” should be identified as **Emergency Backup Water** to correspond with the Emergency Backup Water Rate as identified in the Approved Rate Schedule of the Commission’s Report and Order.

The Division recommends the Commission direct the Company to correct the definition title as noted.

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RESERVE FUND:

The tariff does not include language regarding the reserve fund as addressed in the Division's recommendation. The approved rates fund the capital reserve fund. The Division recommends the Commission approve proposed language contained in the Division's memorandum to be added to the tariff to clarify the capital reserve fund.

CONCLUSION:

The Division recommends the Commission reject the Tariff #2 filing of May 15, 2014, because modifications have not been approved and corrections as noted above are required to comply with the Report and Order of May 5, 2014.

II. Additional Concerns of the Commission

On page 3, A. *Preliminary Statement*, 1., and elsewhere in the Company's proposed tariff,<sup>6</sup> the Company refers to its service area in terms of particular subdivisions such as "Hi-Country Estates Phase I Subdivision, Beagley Acres Subdivision, South Oquirrh Subdivision, and customers under special contract."<sup>7</sup> The Company's service area was described in the Report and Order issued on March 17, 1986, in Docket No. 85-2010-01, and was reinstated in the Report and Order issued on July 12, 2012, in Docket No. 11-2195-01.<sup>8</sup> The Commission took administrative notice of these orders when issuing its May 5, 2014, Report and Order, and did not alter the service area contained therein. Nevertheless, the legal description included in the Company's tariff filing does not match the description set forth in the

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<sup>6</sup> See, e.g., Proposed Tariff at 6, 7. *Monthly Standby Fee* ("The standby fee applies to each lot within Hi-Country Estates Phase I, Beagley Acres, and South Oquirrh subdivisions that is not receiving water from the Company's water system."). See also *id.* at 6, 11. *Account Transfer Fee* ("The account transfer fee shall be charged to all new property owners within Hi-Country Estates Phase I, Beagley Acres, and South Oquirrh subdivisions."). This is not necessarily an exhaustive list.

<sup>7</sup> Proposed Tariff at 3, A. *Preliminary Statement*, 1.

<sup>8</sup> See Report and Order at 20 and n.102, issued May 5, 2014 (Docket No. 13-2195-02).

Commission's earlier orders.<sup>9</sup> Therefore, the description should be revised to conform to the Commission's earlier orders.

The Commission further notes that the reference to "customers under special contract" in the provision on page 3, A. *Preliminary Statement*, 1., referenced above<sup>10</sup> and elsewhere in the Company's proposed tariff<sup>11</sup> could create confusion as a result of the "special contract" reference in the approved rates schedule attached to the Commission's May 5, 2014, Report and Order<sup>12</sup> and the "special contract" that the Company mentions elsewhere to refer to its contract with the U.S. Bureau of Land Management. The Company should resolve this potential confusion in the proposed tariff.

On pages 4 and 5 of the New Rate Schedule, the "Customer Late Fee" is expressed as the "Greater of \$10.00 per month or 18% APR of the delinquent balance, whichever is greater." There is a redundant "greater of" reference at the beginning of this provision that is not included in the approved rate schedule contained in the Commission's May 5, 2014, Report and Order.<sup>13</sup> The Company should resolve this redundancy.

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<sup>9</sup> The Division states that it "...is the same description as issued in the Commission's Report and Order, Docket No. 85-2010-01...." Division Memorandum at 3, filed May 30, 2014. However, when the Commission reviews the proposed service area legal description alongside the service area legal description set forth in Docket No. 85-2010-01, the two do not match. In addition, there is no mention of Section 32 in the legal description in Docket No. 85-2010-01, whereas a portion of Section 32 is included in the legal description in the Company's proposed service area filed in this docket.

<sup>10</sup> See, Proposed Tariff at 3, B. *Service Rate Schedule*, 1. *Applicability* ("The special contract rates for the U.S. Bureau of Land Management . . . are set forth in paragraph B.3.")

<sup>11</sup> See, e.g., Proposed Tariff at 13, C. *Conditions of Service*, 17. *Fire Protection* ("The Company shall supply water for fire protection to only those customers within the Company's service area and to other customers under special contract with the Company to supply water for fire protection."). This is not necessarily an exhaustive list.

<sup>12</sup> See Report and Order at 24, issued May 5, 2014 (Docket No. 13-2195-02).

<sup>13</sup> See id.

On page 6, B. Service Rate Schedule, 5. *Base Rate*, and elsewhere in the Company's proposed tariff filing,<sup>14</sup> there is a reference to "the Company's water system" when simply referring to the "Company" would be appropriate. The Company should correct this issue.

On page 7, C. Conditions of Service, 2. *Standard Service Connection*, the Company proposes the following language not approved by the May 5, 2014, Report and Order:<sup>15</sup>

2. *Standard Service Connection.* As [sic] standard service connection is one where a standby customer seeks a single connection to a Company-owned, active water line within a road or right of way adjacent to the parcel where the service connection is sought. Nonstandard service connections are any other connections sought to the Company's system, including multiple connections and connections outside the Company service area. Any person desiring a standard service connection shall submit the following to the Company: (1) a written, signed application; (2) a Water Service Agreement; (3) all fees due related to the parcel to be served, including unpaid standby fees; (4) a Service Connection Fee (if not previously paid); (5) proof that a dwelling or structure or a building permit to construct a dwelling or structure exists for the parcel to be served; and (6) a detailed description or plans of the water pipelines, valves, and other water infrastructure on the parcel to be served (the "Private Water Facilities"). Upon receipt of all the required materials, the Company shall approve the application unless it has a reasonable belief that the parcel's planned or existing Private Water Facilities pose a risk to the health and safety of the other customers on the system or to the system itself. The Company shall provide the applicant a written explanation of the reasons for rejection of the application. If the applicant corrects the deficiencies in its system and resubmits its application within one year after rejection, no new service connection fee shall be required. In the event a dispute cannot be resolved by negotiation the matter will be forwarded to the Company's legal counsel. All legal fees will be the responsibility of the water user requesting connection to the Company water system. Upon approval of an application for standard service connection, the Company will excavate and install the water line from the Company's water main to and including the meter and meter box. The Company retains sole authority and discretion to determine the location of the meter and meter

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<sup>14</sup> See, e.g., Proposed Tariff, at 6, B. Service Rate Schedule, 6. *Water Consumption Rates* ("The water consumption rates apply to all customers receiving water from the Company's water system. When the customer uses water, the usage shall be charged at the applicable water consumption rate."). This is not necessarily an exhaustive list.

<sup>15</sup> The Commission further notes that the legal fees provision contained in this paragraph is ambiguous, and no legal fees were approved as part of the May 5, 2014, Report and Order. See id.

box on the parcel to be served. All materials furnished and installed by the Company shall remain the sole property thereof.

The Commission would like the Company to explain why this provision is necessary.

On page 8, C. Conditions of Service, 3. *Nonstandard Service Connection*, the Company proposes the following new language not approved by the May 5, 2014, Report and Order:<sup>16</sup>

3. *Nonstandard Service Connection.* Any person desiring a nonstandard service connection shall submit the following to the Company: (1) a written, signed application; (2) a Water Service Agreement for each parcel to be served wherein applicant agrees to pay all fees as required by this tariff; (3) any fees due related to any parcel to be served, including unpaid standby fees, if any; (4) a service connection fee for each connection; (5) proof that a dwelling or structure or a building permit to construct a dwelling or structure exists for the parcel to be served; and (6) a detailed drawing by a professional engineer or registered land surveyor showing, in detail, the existing water system and the proposed build-out on the parcels to be served; (7) a demonstration of ability to provide necessary storage, infrastructure, chemical treatment facilities, and water sources to support the proposed build-out; (8) proof that the Applicant and any existing water system is in compliance with regulations of the State of Utah Division of Drinking Water, state and county health departments, the Utah Plumbing Code, and the Utah PSC, and that all permits required by the above entities have been obtained; (9) proof of sufficient water rights to support the desired connections; and (10) an outside service connection review deposit. The applicant is responsible for all costs associated with the Company's review of the application and, where necessary, seeking PSC approval for the connections. These costs shall include legal and engineering fees expended in such review and application before the PSC. If these costs do not exceed the outside service connection review deposit, no additional payment shall be required. If review costs exceed the deposit amount, however, the applicant shall reimburse the Company for such excess costs.

- a. Upon receipt of all the required materials, the Company may only approve the application if it believes that the proposed connection will not pose a risk to the health and safety of the other customers on the system or to the system itself. The Company shall provide the applicant a written explanation of the reasons for rejection of the

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<sup>16</sup> The Commission further notes that the legal fees provision contained in this paragraph is ambiguous, and no legal fees were approved as part of the May 5, 2014, Report and Order. See id.

application. If the applicant corrects deficiencies and resubmits its application within one year after rejection, no new deposit shall be required, but the applicant shall reimburse the Company for any costs beyond the deposit amount. In the event any dispute cannot be resolved by negotiation the matter will be forwarded to the Company's legal counsel. All legal fees will be the responsibility of the water user asking for connection to the Company water system.

- b. Upon approval of an application for a nonstandard service connection, the Company's engineer shall prepare detailed plans and bid documents for the necessary construction to implement the approved connections, and shall solicit bids for such construction. Applicant shall reimburse the Company's costs to the extent they exceed the deposit amount. Applicant shall place in an escrow account acceptable to, and accessible by the Company, sufficient funds to pay the successful bid amount. Upon payment of the bid amount, the Company will construct the connections. Applicant shall be responsible for all costs associated with such construction, including any costs beyond the escrowed amounts. All materials furnished and installed by the Company shall remain the sole property thereof.

The Commission would like the Company to explain why this provision is necessary.

On page 11, C. Conditions of Service, 8. *Reconnection*,<sup>17</sup> and elsewhere in the Company's proposed tariff,<sup>18</sup> the Company proposes language making "legal fees" the responsibility of the customer under certain circumstances. Neither the May 5, 2014, Report and Order, nor other order in this docket granted the Company attorney fees. Further, these provisions lack clarity inasmuch as they fail to establish whose legal fees (i.e., the customer's

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<sup>17</sup> See, Proposed Tariff at 11, C. Conditions of Service, 8. *Reconnection* (" . . . All legal fees will be the responsibility of the water user requesting the reconnection to the Company[']s water system. . . .").

<sup>18</sup> Id. at 14, D. Billing, 3(d). *Delinquent Accounts* ("If a dispute cannot be resolved by negotiation, the matter will be forwarded to the Company's legal counsel. All legal fees will be the responsibility of the customer."). See also id. at 15, F. Termination, 1(b)(iv). *Prohibited Grounds for Termination* ("Failure to pay an amount in bona fide dispute before the Company, which has been referred to the Company's legal counsel, and for which the customer has paid all legal fees pertaining to the dispute incurred to that date."). This is not necessarily an exhaustive list.



own legal fees, the Company's legal fees, or both) the customer would be responsible for. Thus, to avoid ambiguity explained above, the Company should clarify whose legal fee(s) the Company is proposing the customer be responsible for.

On page 12, C. Conditions of Service, *11. Reading of Meters*, the Company proposes the following provision not approved by the May 5, 2014, Report and Order:

“...In any months that the meters are not read, customers shall be billed at the minimum rate and shall be billed for the accrued actual usage at the next month during which the meter is read.”

The foregoing provision could be read to grant the Company the ability to bill indefinitely at the minimum rate – a problem that could lead to the Company not fully collecting the rates to which it is entitled. This paragraph is aimed at addressing the winter months only – e.g., November through February when snow conditions might inhibit the reading of meters. Accordingly, the Company should explain why this provision should not be restricted to only winter months.

On page 14, D. Billing. *3(e). Delinquent Accounts*, the Company proposes the following provision:

“As an additional means for collecting delinquent accounts, the Company may file a lien on the parcel of property serviced in the amount of the delinquency plus interest and collection costs.”

The Division recommends approving this language. The Division states “[t]his is an allowed and encouraged practice to recover delinquent amounts from the current customer of the property.” However, the proposed provision does not mention that a judgment must first be obtained before a lien can be recorded against a given customer's property. Thus, the Commission would like the Company to either explain whether it foresees that it would first obtain a judgment before placing a lien on a given property, or whether the Company has a

different process in mind. Further, the Commission would like the Company to address whether it foresees this proposed provision would apply where a property is leased to a tenant and the tenant becomes delinquent.

On page 15, F. Termination. *1(b)(iv). Prohibited Grounds for Termination*, the Company proposes the following new underlined language:

*“Failure to pay an amount in bona fide dispute before the Company, which has been referred to the Company’s legal counsel, and for which the customer has paid all legal fees pertaining to the dispute incurred to that date.” (Emphasis added).*

It is not clear what the Company’s added language – “*incurred to that date*” – means. Thus, the Commission would like the Company to explain the underlined language or leave the provision in its current form.

Commission rules state: “Utility tariffs may not increase rates, charges or conditions, change classifications which result in increases in rates and charges or make changes which result in lesser service or more restrictive conditions at the same rate or charge, unless a showing has been made before and a finding has been made by the Commission that the increases or changes are justified. ....” Utah Admin. Code R746-405-2(E)(1).

We have reviewed Hi-Country’s proposed updated tariff changes and the Division’s recommendations, and we note further review is needed given the concerns noted. Accordingly, consistent with Utah Code Ann. § 54-7-12(5)(b), we suspend the proposed tariff changes pending further proceedings in this docket.

ORDER

Hi-Country’s proposed tariff changes are suspended pending further proceedings and final order of the Commission.

NOTICE OF HEARING

A hearing in this matter is scheduled for **Friday, June 27, 2014, beginning at 9:00 a.m., Fourth Floor Hearing Room 451, Heber M. Wells Building, 160 East 300 South, Salt Lake City, Utah.** The hearing will be conducted by the Administrative Law Judge for the Public Service Commission. Parties should come prepared to provide testimony, clarification, and/or additional information requested in the attached order on whether Hi-Country's proposed tariff, filed May 15, 2014, in this docket, should be approved by the Commission.

Individuals wishing to participate in the hearing by telephone should contact the Public Service Commission two days in advance by calling (801) 530-6716 or (toll-free) 1-866-PSC-UTAH (1-866-772-8824). Participants attending by telephone should then call the Public Service Commission at one of the numbers posted above five minutes prior to the hearing to ensure participation.

In accordance with the Americans with Disabilities Act, individuals needing special accommodations (including auxiliary communicative aids and services) during this hearing should notify the Commission at 160 East 300 South, 4th Floor, Salt Lake City, UT 84111, (801) 530-6716, at least three working days before the hearing.

DATED at Salt Lake City, Utah, this 6<sup>th</sup> 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#256071

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.

CERTIFICATE OF SERVICE

I CERTIFY that on the 6<sup>th</sup> day of June, 2014, a true and correct copy of the foregoing was delivered upon the following as indicated below:

By Electronic-Mail:

J. Craig Smith ([jcsmith@smithlawonline.com](mailto:jcsmith@smithlawonline.com))  
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Administrative Assistant