

-BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH-

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In the Matter of the Investigation of the Operations of )  
Long Valley Estates Water Company as a Public )  
Utility )

DOCKET NO. 98-2265-01  
ORDER TO SHOW CAUSE AND  
NOTICE OF HEARING

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ISSUED: November 18, 2002

By the Commission:

On September 18, 2002, the Division of Public Utilities ("Division") filed a Petition for an Order to Show Cause to require Long Valley Estates Water Company (the "Company") and its principals, Robert Overtree, Rollow "John" Kimball, and Diane Kimball, to explain why they have operated as a public utility without a certificate of public convenience and necessity, and to show cause why the company should not be fined for operating without a certificate, and why the principals should not face criminal sanctions provided by statute. The Petition contains the results of the Division's investigation of the company, and a history of the company's dealings with the Division and the Public Service Commission. Included in the history, and attached to the Division's petition, is an incomplete Application for a certificate, or in the alternative for an exemption from Public Service Commission regulation filed by the Company in 1998. The Division's Petition states that requests from the Division for additional information regarding that application have not been responded to by the Company. Also attached to the Division's Petition were complaints from three customers regarding the terms for water service from the Company. The Division's Petition and customer requests set forth good cause for an inquiry into whether the Company has been operating as a public utility without a certificate of public convenience and necessity, and whether fines and other remedies should be imposed on the Company and its principal officers. A copy of the Division's Petition is attached hereto, and incorporated by this reference. Whereas there appears to be good cause to support said allegations, the Commission enters the following order.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED, that:

1. LONG VALLEY ESTATES WATER COMPANY and its officers, shall appear before the Administrative Law Judge of the Commission on Wednesday, December 18, 2002, at 1:00 p.m., Fourth Floor Hearing Room #451, Heber M. Wells State Office building, 160 East 300 South, Salt Lake City, Utah, to show cause, if any, why they have operated as a public utility without a certificate of public convenience and necessity, and further to show cause why the company should not be fined for operating without a certificate, and other remedies imposed on the Company and its principal officers. The Company and its officers will take notice that they have the right to be represented by legal counsel, and that failure to appear by counsel will constitute a waiver of said right.
2. The Division of Public Utilities shall conduct such further investigation as it deems necessary and provide any additional recommendations at the hearing. The Division is further directed to send a copy of this notice, and a copy of the Petition, without attachments, to each property owner served or potentially to be served by the Company, according to the most current information in the possession of the Division.
3. Long Valley Estates Water Company and its officers are directed to cooperate with the Division and provide information requested by the Division in its investigation of the Company.
4. Long Valley Estates Water Company customers that will not be present for the hearing may participate by telephone. Customers wishing to participate by telephone should notify Julie Orchard, Commission Secretary, at least one day prior to the hearing at 801-530-6716.

In compliance with the Americans with Disabilities Act, individuals needing special accommodations (including auxiliary communicative aids and services) during this hearing should notify Julie Orchard, Commission Secretary, at 160 East 300 South, Salt Lake City, Utah, 84111, (801) 530-6713, at least three working days prior to the hearing.

DATED at Salt Lake City, Utah, this 18<sup>th</sup> day of November, 2002.

/s/ Stephen F. Mecham, Chairman

/s/ Constance B. White, Commissioner

/s/ Richard M. Campbell, Commissioner

Attest:

/s/Julie Orchard  
Commission Secretary

G#31630

-ATTACHMENT-

**BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH**

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<b>In the Matter of the Investigation of the</b>	<b>:</b>	<b>Docket No. 98-2265-01</b>
<b>Operations of Long Valley Estates Water</b>	<b>:</b>	<b>Petition for Order to</b>
<b>Company as a Public Utility</b>	<b>:</b>	<b>Show Cause</b>

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**PETITION FOR AN ORDER TO SHOW CAUSE**

September 18, 2002

Pursuant to Commission Rule R746-100-3, the Division of Public Utilities ("Division") hereby submits its petition for an Order to Show Cause against Long Valley Estates Water Company, its officers: Robert Overtree, Rollow "John" Kimball and Diane Kimball. The Division petitions the Utah Public Service Commission pursuant to UCA § 54-4a-1, to open a docket for the purpose of requiring the named principals of Long Valley Estates Water Company to explain why they have operated a public utility without a certificate of convenience and necessity, and show cause why the Company should not be fined \$2,000 per day for each day that the Utility has not been in compliance with Public Utility Statutes and why the named principals should not face criminal sanctions provided by statute.

In support of the petition, the Division submits:

1. In September, 1998, the Public Service Commission (Commission) received a report regarding the water system being constructed by Long Valley Estates Water Company (Long Valley). (See Attachment # 1) The Division initiated an investigation and requested an application for a Certificate of Convenience and Necessity or in the alternative an Exemption from Commission jurisdiction from Long Valley. On December 16, 1998, the Division staff notified Long Valley that the submitted information was incomplete and requested the additional information necessary for the Division to make a recommendation regarding their application within three weeks (See Attachment # 2). The Division has confirmed with the Utah Division of Corporations that Long Valley is registered as a non-profit corporation, and the registration is currently in good standing (See Attachment # 3).
2. On March 1, 1999, the Division wrote a follow-up letter requesting the same information to Long Valley and sent

- a copy to Robert Overtree (See Attachment # 4). At that time, the Division advised Mr. Overtree and the Company that failure to provide the requested information could result in the Division filing a request for the Commission to issue an order for them to appear and show cause why they should not be fined for operating a public utility without proper certification by the Commission.
3. In early 1999, the Division received three informal complaints from individuals who had purchased lots in Long Valley Estates, about the manner in which Mr. Overtree & Mr. Kimball was charging new owners for electric and water utilities. (See Attachment # 5)
  4. The Division has learned that on January 5, 1995, The Utah Division of Real Estate issued an Order to Cease and Desist to Long Valley Estates in Case No. RE94-08-07 instructing them that no additional lots could be sold until the requirements of the Utah Uniform Land Sales Practices Act were met. (See Attachment # 6) The Division staff has verified with Division of Real Estate representatives that the Cease and Desist Order is still in effect against Long Valley Estates at this time.
  5. On December 4, 2001, the Division advised Robert Overtree that the Utah Department of Environmental Quality, Division of Water Rights had indicated that there were a few connections to the water system and that the water system was operating without Commission certification in violation of state statutes. Once again, Mr. Overtree was advised that failure to respond within three weeks could result in the Division pursuing fines by the Commission. (See Attachment # 7)
  6. In January, 2002, an attorney representing Long Valley and Mr. Overtree met with the Division staff and discussed the problems that they had encountered with the real estate development. On January 31, 2002, the Division notified Mr. Overtree that his attorney, Edward Robbins had contacted the Division regarding the Division's December 4, 2001 memorandum. Once again, the Division staff requested the necessary additional information to evaluate the Company and make recommendations to the Commission. The memo extended the deadline for a response for an additional three weeks. (See Attachment # 8)
  7. Following several telephone attempts to obtain the requested response to the January 31, 2002 memorandum, the Division staff requested that the Utah Attorney General's office become involved in the case. On August 2, 2002, the Attorney General's office, on behalf of the Division, sent Robert Overtree a notice of the Division's intention to file a petition for an Order to Show Cause for failure to respond to the Division's requests for information by certified mail. The notice indicated that Long Valley and Mr. Overtree's failure to respond to the Division's request for information on or before August 30, 2002 would result in the Division filing for Commission action and sanctions without further notice. (See Attachment # 9)
  8. Prior to August 30, 2002, the Division staff was contacted by Diane Kimball who stated that she and her husband were Robert Overtree's partner in the Long Valley Estates development. She indicated she had recently become aware of the Attorney General's August 2, 2002 letter to Mr. Overtree and would file the requested information with the Division if additional time would be allowed to allow it to be assembled. Additionally, the Division staff was contacted by Edward Robbins, representing Mr. Overtree, who also indicated that he would attempt to respond to the Division's request by September 13, 2002. He sent a letter dated August 30, 2002 documenting the conversation with the Division staff and the commitment he had made (See Attachment # 10). The Division staff advised both Ms. Kimball and Mr. Robbins that any formal action on the case would be delayed until September 13, 2002 in an attempt to allow them the time to respond to the information request. On September 12, 2002, Ms. Kimball again contacted the Division staff requesting clarification of the additional information the Division had requested to facilitate its investigation and recommendations to the Commission. That day, the Division staff responded with a detailed description of the information necessary for the Division and conclude its investigation and allow the Commission to conclude this certification ordeal (See Attachment # 11). In addition, the Division notified Ms. Kimball that no further delays were warranted and that the Division was moving ahead with this Petition.
  9. Pursuant to UCA § 54-4-1, the Commission is empowered to supervise and regulate public utilities providing service within Utah. Under UCA § 54-4a-1 (c), the Division is empowered to, "investigate or study, upon complaint, upon order of the Public Service Commission, or upon its own initiative, any matter within the jurisdiction of the commission."
  10. UCA § 54-4-25, provides that: "A . . . water corporation, or sewerage corporation may not establish, or begin construction or operation of a line, route, plant, or system or any extension of a line, route, plant, or system, without having first obtained from the commission a certificate that present or future public convenience and necessity does or will require the construction ."
  11. Administrative Rule R746-331-1 provides that "Upon the Commission's own motion, complaint of a person, or

request of an entity desiring a finding of exemption, the Commission may undertake an inquiry to determine whether an entity organized as a mutual, non-profit corporation, furnishing culinary water, is outside the Commission's jurisdiction."

12. Pursuant to UCA § 54-7-25, any public utility that fails to comply with the statute, any rule or order issued by the Commission is subject to a penalty of not less than \$500 nor more than \$2,000 for each offense. The statute also states that in circumstances where violations are of a continuing nature, each day's continuance of the violation shall be a separate and distinct offense.
13. Pursuant to UCA § 54-7-26 and 28, any officer or agent of Long Valley, or other individual who either individually, or acting as an officer agent or employee of a corporation other than the public utility, violates any provision of the statute is guilty of a class A misdemeanor.

Wherefore, the Division respectfully requests that the Commission open a docket for the purpose of requiring Long Valley, its officers and its agents to appear and show cause why the water company and the named individuals should not be sanctioned for failing to comply with applicable statutes. The Division recommends that failing an adequate cause showing, the Commission should impose the maximum fine of \$2,000 per incident and find the individuals guilty of numerous violations.

Based upon the foregoing facts and circumstances, the Division petitions the Commission to open a docket and request that Long Valley Estates Water Company, Robert Overtree, Rollow "John" Kimball and Diane Kimball appear before the Commission and show cause why fines should not be imposed upon the Company for failure to comply with the referenced Statutes.

Dated this 18<sup>th</sup> day of September, 2002.

Michael Ginsberg  
Assistant Attorney General  
Division of Public Utilities