

1992

Hi-Country Estates Homeowners Association v. Bagley & Company, Gerald H. Bagley and Foothills Water Company : Unknown

Utah Court of Appeals

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BRIEF

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IN THE UTAH COURT OF APPEALS

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HI-COUNTRY ESTATES HOMEOWNERS, :
ASSOCIATION, a Utah corp., :

Appellant,

vs.

BAGLEY & COMPANY, GERALD H.
BAGLEY, AND FOOTHILLS WATER
COMPANY,

Appellees.

: LETTER SUPPLEMENT TO
: APPELLANT'S AND CROSS-
: APPELLEE'S BRIEFS PURSUANT
: TO RULE 24(j) UTAH RULES
: OF APPELLATE PROCEDURE

: Case No. 920450-CA
:

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Comes now Hi-Country Estates Homeowners Association, Appellant and Cross-Appellee in the above-entitled matter, and notifies this Court of pertinent and significant authority which has come to the attention of Appellant and Cross-Appellee after the briefing schedule has been met by all parties in the above-entitled matter. To the undersigned counsel's knowledge, no date for oral argument has yet been scheduled by the Utah Court of Appeals in this matter.

Attached please find a copy of a document entitled "ORDER ON RE-HEARING" before the Public Service Commission of Utah in Docket No. 91-0210-01 issued November 30, 1992.

The Hi-Country Estates Homeowners Association (hereafter Homeowners) would refer the Court to Point I and Point III of Appellant's Brief dated April 3, 1992, and Point IV of Appellant's Consolidated Reply Brief and Cross-Appellee's Brief dated August 10, 1992, relating to the argument that Public Service Commission Orders regarding the valuation of the water system should have been adopted by the trial court. Regarding this issue, the Public Service Commission in its Order on Re-Hearing stated:

The Commission does not take issue with the Court's first ruling that the Homeowners owned the system; it is entirely consistent with evidentiary findings of this Commission to the effect that the Homeowners paid for a water system with the purchase of lots and, it seems to us, the ruling lies clearly within the Court's jurisdiction.

However, there are three substantial problems with the Court's second ruling. First, it is clearly and unmistakably the Commission's duty to determine the value of utility assets. Second, utilities are "reimbursed" for their capital investments in utility ratebase not by order of a court but, rather, through rates determined by this Commission which include a depreciation expense and a rate of return. In fact, it would appear that the Homeowners informed the Court that the Commission had exclusive valuation authority and had already exercised it, but the Court chose to ignore that fact.

The third problem is that the Court proceeded to evaluate not only the improvements made by Foothills to the system (which again, the Commission had already evaluated and had placed in ratebase for the utility), but the entire system itself and the water right and

required that the Homeowners (ratepayers) pay the court-established value of those assets by a date certain or forfeit their ownership rights entirely to Foothills, the stock of which is held by the Dansie family. When the customers balked at having to pay twice for the same thing, the Court decreed that the utility assets belonged exclusively to Foothills.

To say the least, that ruling has made more complicated and vexing a problem which has already caused this Commission and other state agencies over a period of years to expend time and budget in gross disproportion to the size of Foothills Water Company with its 45 customers. The Commission understands that the matter has been appealed and would presume and hope that the Court of Appeals will deal with it appropriately.

Id. at 7, 8.

Point I A. of Appellant's Brief involves the issue that the Homeowners should not have been required to pay for the water right. The Public Service Commission ruled: "The Commission has determined that Foothills' ratepayers contributed the capital costs of Water Right 59-1608 and the water system through the purchase of lots from the developers. Therefore those assets cannot be included in the Company's ratebase regardless of who holds bare legal title to them . . ." Id. at 9.

The Public Service Commission of Utah also addressed the issue contained in Point V of Appellant's Brief and Point IV of Appellant's Consolidated Reply Brief and Cross-Appellee's Brief where the Homeowners alleged that the trial court erred in finding that

the 1977 Well Lease and Water Transportation Agreement was a valid encumbrance on the water system. The Public Service Commission addressed this issue as follows:

In March 1986, this Commission issued an Order based on five days of evidentiary hearings inquiring into Foothills' Petition for Certification as a public utility. That Order is a part of the record in this proceeding. The Commission there found, among other things, that the Water Lease Agreement dated April 7, 1977, which was a renewal and revision of an earlier agreement between Gerald Bagley as lessee and Jesse Dansie as lessor, and was amended again on July 3, 1985, was "grossly unreasonable" because it provided the Dansie family with an annual lease payment of \$7,200.00, the free production, storage and transmission of a minimum of 12 million gallons of water per annum, and other benefits, when in fact a reasonably accurate estimation of the value of the Lease was \$368.00 per month.

The Commission also found that the lessee, Bagley, who was one of the developers of the residential area served by Foothills, was knowingly in violation of the law requiring regulation of public service entities, that the Lease had not been entered into in good faith for the benefit of utility ratepayers and that the Commission had been denied any opportunity to review the Lease because the developer had operated illegally for some 13 years as a de facto public utility without applying for certification. . .

The Order also specifically required that Foothills bring any subsequent lease to the Commission for approval. Although the subject Lease expired in 1987 and Foothills elected to renew the Lease on a month-to-month basis, it is a matter of record that Foothills has never sought Commission approval of the terms of

that Lease. We note that the month-to-month continuation of the Lease leaves ratepayers in the precarious position of having an uncertain water source, since the lessor Dansie Trust may cancel the Lease at any point.

The Commission understands Mr. J. R. Dansie's desire to benefit himself and the Dansie family based upon promises, express or implied, from one of the developers, Gerald Bagley. Mr. Bagley apparently conveyed Foothills' stock to Mr. Dansie to satisfy the developer's indebtedness to Dansie, despite the fact that Bagley and the other developers full well knew that lot owners had contributed the capital costs of the Company's water system and Water Right 59-1608 through lot purchases and were entitled to those assets. We do not minimize the fact that Bagley, and not Mr. Dansie, is the culprit in this fact. The problem for Mr. Dansie is that the vehicle through which Bagley attempted to repay Mr. Dansie is a public utility with all of the service and trust obligations that go with public utility status.

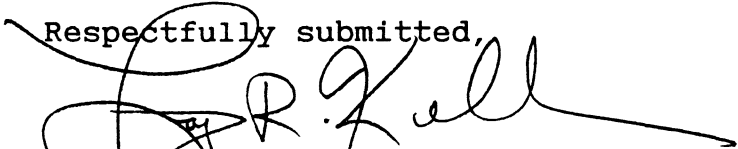
Foothills argues in this case that Orders issued by the Third District Court in Case No 850901464CV, Judge Pat Brian presiding, are binding upon this Commission. We have no quarrel with that argument as it related to ownership and contractual issues. However, where those Orders purport to usurp this Commission's clear and exclusive jurisdiction over utility ratebase and utility asset disposition on valuation, we disagree emphatically.

On October 31, 1990 the District Court concluded that the Well Lease Agreement was a "fully binding encumbrance" on the Foothills' water system. The terms of the Lease require Foothills to deliver annually in perpetuity to the Dansie Trust a minimum of 12 million gallons free of charge. While the Court may be correct that the Lease is binding upon

Foothills' water system (although it would appear to us that the obligation is coterminous with the Lease itself), it is the Commission which must decide whether the financial burden of that Lease may be passed along to ratepayers and we have decided that it may not.

Id. at 4 - 6.

Respectfully submitted,



Larry R. Keller
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Homeowners Association

LRK:vb

cc: Val. R. Antczak
Ralph J. Marsh
Dave Stott
Laurie L. Noda
Board of Directors of
Hi-Country Estates
Homeowners Association

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of the Investigation)
Into the Reasonableness of the)
Rates and Charges of FOOTHILLS)
WATER COMPANY.)

DOCKET NO. 91-2010-01

ORDER ON REHEARING

ISSUED: November 30, 1992

BY THE COMMISSION:

On May 18, 1992, the Commission issued an order granting petitions for reconsideration of the Commission's April 9, 1992 Order filed by the Division of Public Utilities ("Division"), Hi-Country Homeowner's Association ("Homeowners") and Foothills Water Company ("Foothills" or the "Company"). After a preliminary hearing on June 2, 1992, the Commission issued an order on June 4, 1992, setting forth the following issues and instructions for the parties on rehearing:

- 1- Availability of alternative water source. Foothills has raised the issue of whether the Homeowners' well is indeed available to provide water to the utility. Homeowners' counsel has agreed that this is an issue. Foothills' water source is, therefore, uncertain at present. The Commission will require evidence from the record, and in supplement to the record, as to the certainty of the Homeowners' well being available as a

mines that the availability of the Homeowners' well is not reasonably assured, further testimony on water sources and market value of water will be required at a future hearing.

- 2- Delivery of water to the Dansie Trust. Both the Homeowners and the Division have raised the issue of the use of the Foothills system for delivery of water to the Dansie trust, and the appropriate cost recovery for such use. The Commission will require evidence from the record as to the utilization of the Foothills system for storage and transport of Dansie Trust water by Foothills.
- 3- Determination and allocation of the fixed and variable costs of using the water system. The Division and the Homeowners have raised the issue of what are the appropriate fixed and variable costs for Foothills and what portion of these costs should be allocated to storage and transportation customers of Foothills. The Commission will take testimony from the record on these costs and the allocation of costs fixed and variable that should be utilized. In so doing, the Commission will not reopen the record for new test year cost figures, but will only take testimony regarding allocating established costs between Foothills and Dansie Trust customers.
- 4- Costs of regulating water levels. The Division has raised the issue of the time and expenses charged to Foothills related to controlling the water levels in the storage tanks. This issue is also related to

whether telemetry facilities to accomplish this purpose are in place or in rates. The Commission will take testimony from the record on these issues.

- 5- Evidentiary basis for Appendix E. Foothills has raised the issue of whether Appendix E contains numbers with an evidentiary basis. The Commission will consider further argument or testimony on this issue.

In paragraphs 1, 3, and 5 of its petition for review, Foothills has raised issues relative to the Commission's statement of its authority in its April 9, 1992 Order. The Commission will deal with these issues in its Order on rehearing. No further argument on these issues is necessary.

Hearings were held on these issues on June 12, and from September 2 through September 4, 1992. Since the close of the record in this matter, Messrs. Maxfield and Stroh have filed requests for rehearing. Both of these gentlemen are lot owners in the Hi-Country Estates subdivision and earlier filed requests to intervene in the case. Both petitions for intervention were denied as being untimely and meritless and the Commission finds nothing in the requests for rehearing which would be a basis for reconsideration of its earlier disposition. Having considered the testimony presented on rehearing, as well as the record in the original proceeding in this matter, the Commission now deals with these issues on rehearing by issuing the following Findings, Conclusions and Order based thereon.

FINDINGS AND CONCLUSIONS

In this Order the Commission will deal specifically with the foregoing, enumerated issues. However, there are certain related issues which must first be addressed for context. These issues are the water right and water lease agreement and the Company's affiliate dealings.

I. WATER LEASE AGREEMENT AND WATER RIGHT

In March, 1986, this Commission issued an Order based on five days of evidentiary hearings inquiring into Foothills' petition for certification as a public utility. That Order is a part of the record in this proceeding. The Commission there found, among other things, that the water lease agreement dated April 7, 1977, which was a renewal and revision of an earlier agreement between Gerald Bagley as lessee and Jessie Dansie as lessor, and was amended again on July 3, 1985, was "grossly unreasonable" because it provided the Dansie family with an annual lease payment of \$7200, the free production, storage and transmission of a minimum 12,000,000 gallons of water per annum, and other benefits, when in fact a reasonably accurate estimation of the value of the lease was \$368.00 per month.

The Commission also found that the lessee, Bagley, who was one of the developers of the residential area served by Foothills, was knowingly in violation of the law requiring regulation of public service entities, that the lease had not been entered into in good faith for the benefit of utility ratepayers and that the Commission had been denied any opportunity to review the lease because the developer had operated illegally for some thirteen years as a de facto public utility without applying for certification.

The 1986 Order allowed the Company to continue to supply water to the Dansie family conditioned upon payment of the cost of delivery by someone other than the customers in Foothills' service area. The Order also specifically required that Foothills bring any subsequent lease to the Commission for approval. Although the subject lease expired in 1987 and Foothills elected to renew the lease on a month-to-month basis, it is a matter of record that Foothills has never sought Commission approval of the terms of that lease. We note that the month-to-month continuation of the lease leaves ratepayers in the precarious position of having an uncertain water source, since the Lessor Dansie Trust may cancel the lease at any point.

In addition to and in support of the finding in the 1986 Order, testimony on this record is persuasive that the terms of the lease, the \$7200 annual lease payment and the free production, storage and transmission of 12,000,000 gallons of water, which is now closer to 17,000,000 gallons by actual usage, are unjust and unreasonable. That testimony, which is discussed elsewhere in this Order, indicates that Foothills now has available to it a source of water at a proposed lease cost of \$12.00 per year, which it did not have in 1986. Given that alternative, the Commission finds that all costs of the water lease agreement, which exceed the costs of the alternative source, are unreasonable and must be carried by Foothills, if Foothills decides to continue the lease.

The Commission understands Mr. J.R. Dansie's desire to benefit himself and the Dansie family based upon promises, express or implied, from one of the developers, Gerald Bagley. Mr. Bagley

apparently conveyed Foothills' stock to Mr. Dansie to satisfy the developer's indebtedness to Dansie, despite the fact that Bagley and the other developers full well knew that lot owners had contributed the capital costs of the Company's water system and water right 59-1608 through lot purchases and were entitled to those assets. We do not minimize the fact that Bagley, and not Mr. Dansie, is the culprit in this matter. The problem for Mr. Dansie is that the vehicle through which Bagley attempted to repay Mr. Dansie is a public utility with all of the service and trust obligations that go with public utility status.

Foothills argues in this case that Orders issued by the Third District Court in Case No. 850901464 CV, Judge Pat Brian presiding, are binding upon this Commission. We have no quarrel with that argument as it relates to ownership and contractual issues. However, where those Orders purport to usurp this Commission's clear and exclusive jurisdiction over utility ratebase and utility asset disposition and valuation, we disagree emphatically.

On October 31, 1990, the District Court concluded that the well lease agreement was a "fully binding encumbrance" on the Foothills water system. The terms of the lease require Foothills to deliver annually in perpetuity to the Dansie Trust a minimum of 12,000,000 gallons free of charge. While the Court may be correct that the lease is binding upon Foothills' water system (although it would appear to us that the obligation is coterminous with the lease itself), it is the Commission which must decide whether the financial burden of that lease may be passed along to ratepayers and we have decided that it may not.

With regard to ownership, on October 28, 1989, the District Court ruled that the Homeowners were the legal owners "of the disputed water system, which includes the water rights, the water lots, the water tanks, and the water lines" and then ordered and subsequently held an evidentiary hearing to "establish the amount of reimbursement due to Defendants Bagley & Company and/or Foothills Water Company for the reasonable value of improvements made by Defendant Bagley & Company.

Following that evidentiary hearing, however, the Court found on October 31, 1990 that the value of the "entire water system, the improvements made thereon from 1974 to 1985 and the water right" had a combined net value of \$98,500.00 and that the Homeowners would be unjustly enriched unless they reimbursed Foothills that amount. In other words, the Court went from evaluating improvements to evaluating the entire system and imposed payment for the whole system upon the Homeowners.

The Commission does not take issue with the Court's first ruling that the Homeowners owned the system; it is entirely consistent with evidentiary findings of this Commission to the effect that the Homeowners paid for a water system with the purchase of lots and, it seems to us, the ruling lies clearly within the Court's jurisdiction.

However, there are three substantial problems with the Court's second ruling. First, it is clearly and unmistakably the Commission's duty to determine the value of utility assets. Second, utilities are "reimbursed" for their capital investments in utility ratebase not by order of a court but, rather, through rates deter-

mined by this Commission which include a depreciation expense and a rate of return. In fact it would appear that the Homeowners informed the Court that the Commission had exclusive valuation authority and had already exercised it, but the Court chose to ignore that fact.

The third problem is that the Court proceeded to evaluate not only the improvements made by Foothills to the system (which, again, the Commission had already evaluated and had placed in ratebase for the utility), but the entire system itself and the water right and required that the Homeowners (ratepayers) pay the Court-established value of those assets by a date certain or forfeit their ownership rights entirely to Foothills, the stock of which is held by the Dansie family. When the customers balked at having to pay twice for the same thing, the Court decreed that the utility assets belonged exclusively to Foothills.

To say the least, that ruling has made more complicated and vexing a problem which has already caused this Commission and other state agencies over a period of years to expend time and budget in gross disproportion to the size of Foothills Water Company with its 45 customers. The Commission understands that the matter has been appealed and would presume and hope that the Court of Appeals will deal with it appropriately.

Nonetheless, as between ratepayer and utility, we are not concerned with who holds bare legal title to the water system and the water right. Public utilities generally hold legal title to assets used to provide their customers' utility services, even where there has been a ratepayer contribution to capital costs. However, public utility companies have a special trust relationship with ratepayers

and must operate in a manner calculated to give ratepayers the most favorable rate reasonably possible. The utility may not deal with utility assets to the detriment of ratepayers. To the extent Foothills had paid the capital costs of its assets or made capital improvements, it is entitled to reimbursement of expense and a return on investment. However, the Commission has determined that Foothills' ratepayers contributed the capital costs of water right 59-1608 and the water system through the purchase of lots from the developers. Therefore, those assets cannot be included in the Company's rate base regardless of who holds bare legal title to them. All of the investments made by Foothills in the system which are used and useful in providing utility service are presently in rate base and, therefore, Foothills has been and continues to be lawfully compensated.

A much more troubling aspect of this case is that evidence on this record clearly shows that Foothills has substantially mortgaged water right 59-1608 to family members of its operating officer, Mr. J.R. Dansie, as evidenced by an Application to Segregate a Water Right filed August 25, 1992 with the State Engineer and made a part of the record in this case. Despite the fact that this action could substantially impact the rates of the utility, Foothills never sought Commission approval for a determination of public interest. As was made clear in the Wexpro case (Committee of Consumer Services v. Public Service Commission, 595 P.2d 871, Utah 1979), ratepayers have an equitable interest in utility assets, the capital cost of which they have contributed, and those assets may not be alienated from the utility without approval of the Commission based upon a

showing of public interest and payment of commensurate benefits to ratepayers.

We note, however, that the financial status of Foothills is far different from that of Mountain Fuel Supply Company and any recovery or payment of benefits to the ratepayers of Foothills, in the event a valuable utility asset is lost, may well be theoretical only.

More importantly, we find that the mortgaging of the water right puts ratepayers at risk of the permanent loss of reasonably priced and reliable water service and is, therefore, on its face contrary to the public interest. Pursuant to our authority over the rates, practices and all business of public utilities related to rates, (see e.g. 54-4-4 and 54-4-1), we will direct Foothills to cease and desist from further mortgaging of that asset, to take action forthwith to eliminate all claims against that asset, and return the segregated portion of water rights 59-1608 to the full control of Foothills Water Co. Should Foothills proceed to alienate the water right, we will levy appropriately heavy penalties against the Company and its operating officer and take injunctive action, if necessary, to set aside the transfer.

II. AFFILIATE RELATIONS

For ratemaking purposes, expenses are added to a return on capital to determine a utility's revenue requirement. Any transaction which affects the capital or expenses of a public utility is subject to regulatory scrutiny. Where the utility transacts business with an affiliate, this scrutiny must be even more exacting because of the absence of arms-length bargaining.

Since both the utility and the affiliate are under common ownership or control, the door is open to cross-subsidization. The controlling entity and the affiliate may improperly benefit if their association with the utility unduly increases the revenue requirement of the utility, since the revenue requirement is recovered from the utility's customers.

To protect utility customers from this sort of harm regulators have adopted policies governing affiliation. For example, the regulators may only permit the transfer of assets from the utility to the affiliate at the higher of market price or book value, or the transfer from an affiliate to the utility at the lower of market or book. Where this has not occurred, a rate case adjustment will be made.

In the present Docket, Foothills' business relationships are beset with conflicts of interest. The Company, which is run by Mr. J.R. Dansie, maintains a water lease arrangement (discussed hereinabove) with the Dansie Trust, of which Mr. Dansie is a beneficiary. From time to time, Mr. Dansie employs relatives or employees of an affiliate company to perform services for the utility. The Company rents a water storage tank from a relative. The Company rents office space from relatives. The Company rents earthmoving equipment from a relative. A conflict of interest is present in each instance. No competitive bidding process has been employed and there is no evidence that market alternatives were sought. There is no ready valuation standard, compounding the difficulty of judging the cost-of-service implications of these arrangements. The Commission now turns to the ratemaking consequences of these observations.

As has been discussed hereinabove, approval of the water lease agreement has neither been sought nor granted (Strawn testimony, Tr. 539, 540) and the lease is continued month-to-month. Testimony on the record shows that the Dansie Trust can cancel the lease one month to the next, though doing so would deprive the utility of its present water source.

As discussed hereinabove, the terms of this lease unreasonably benefit the Trust, in which Mr. Dansie has a one-fifth interest, (Tr. 602), at the expense of ratepayers. Given this, and Mr. Dansie's failure to secure Commission permission to continue the lease arrangement, if a different water source were available under terms and conditions more favorable to ratepayers, the Commission should be compelled to base rates on its use, i.e., the alternative source would establish water costs for revenue requirement. This would put an end to an obvious conflict of interest.

In the present case an alternative water source does exist as discussed herein. It is the well owned and developed by the Homeowners themselves and offered to the Company. In effect, this well becomes the market test of the appropriate cost of water to the Company. It is a substantially cheaper source of water and one which the Company can rely upon as its principal source of water.

For minor repairs, Mr. Dansie sometimes hires, at an hourly wage or under contract, brothers Boyd and Richard. (Tr. 460) Mr. Dansie indicated he has a contracting company (J.R. Dansie Contracting) and occasionally uses its employees at an hourly rate of \$17.20. (Tr. 461) The problem with this and similar arrangements between the Company and Mr. Dansie's relatives is the lack of any incentive to

pay market rates for the labor services acquired. Moreover, the Division is unable to audit such charges (Tr. 624) and lacks a means of determining reasonableness. Thus, what is booked is passed on to customers as recoverable cost, should the Commission permit it. With respect to labor cost, the Company faces no incentive to operate efficiently. One way around this is to require Mr. Dansie to obtain bids from independent sources and to select the one most favorable. On this basis Mr. Dansie might even be able to show that hiring relatives confers some benefit--special expertise, below market rates, more timely delivery of services-- on the utility and its customers. The record shows none of this, however. Thus, in place of an evidentiary basis for evaluating the labor component of cost of service, the record in this Docket merely records the costs that have been booked and leaves unanswered the question of reasonableness.

Mr. Dansie pays \$175 per month to Paul Evans, who owns the tank and the property on which it is located. (Tr. 462) Mr. Evans is Mr. Dansie's father-in-law (Tr. 480). The tank lease was negotiated by Mr. Evans and the directors and manager of Foothills Water Company. (Tr. 483) The Commission finds no basis on this record by which an independent determination of a reasonable storage tank rental rate can be reached. There is neither a cost-of-service calculation to be done or a market standard to be employed. However, again the Commission is willing to permit the rental to be recovered in rates based upon Mr. Dansie's testimony.

Mr. Dansie rents the Company office from the Dansie Trust for \$150 per month. (Tr. 462) It does not appear that the rental fee

is inappropriate, and the Commission will allow inclusion of the amount in revenue requirement.

Mr. Dansie has rented a back hoe from Richard Dansie as well as from the Dansie Trust. He asserted that the rental rate paid was less than market, by which the record shows he meant the rate he would have had to pay an unidentified Riverton company. (Tr. 463) The Commission will not adjust the amount of this rental because of testimony indicating the equipment was acquired at a below market rate. The Commission finds the back hoe rental reasonable and permits the amount to be recovered in rates for water service.

Directors of Foothills are Boyd, Rodney, and Adrian Dansie, who are each paid \$200 per year. (Tr. 464 and 465) Again, this amount does not appear to be unreasonable and will be allowed.

Mr. Antczak (Tr. 608 and 609) admonishes the Commission to be careful not to wring all the incentives for ownership out of this Company, and not to second guess the numerous decisions that daily must be made to keep it running. Indecisiveness, he says, may hurt such a Company and its customers more. These are fair points, and the Commission will consider them. Mr. Dansie has testified that these affiliate costs are reasonable and we have only his testimony on this point. Our option is to discount all amounts for which there is no independent verification of reasonableness. However, the Commission is willing to give Mr. Dansie the benefit of doubt in this case and will allow affiliate costs to be included in rates with a strong suggestion that the Company strive to eliminate the affiliate or conflict of interest problems identified herein, unless sufficient showing of benefit to ratepayers can be made. The Commission further

concludes that the Company should work cooperatively with the Division to propose a timely means of doing so.

III. SPECIFIC ISSUES ON REHEARING

1. Water Source to be incorporated in rates

In our April 9, 1992 Order we determined that the Homeowners' well was the most economical source of water for Foothills Water Company. In the rehearing proceeding, the Homeowners confirmed that they have redrilled their well to 466 feet (DUP RH JAS 2.11 and HO RH 8), had the well flow tested for 24 hours at approximately 95 gallons/minute (HO-RH-8), performed the VOC test, and stand ready to provide water to the customers of Foothills Water Company. In addition the Homeowners have stated that they will provide the pump and power necessary for service and in addition will provide the pressure sensitive equipment necessary to turn the pump off and on as required by the water level in the lower tank and the equipment necessary to chlorinate the water delivered to the system.

As discussed hereinabove, Foothills holds bare legal title to the water right necessary for service from the Homeowners' well and with the cooperation of Foothills and the Homeowners, a new point of diversion for this water right could be obtained at the Homeowners' well (three points of diversion already exist).

The Commission reaffirms its Finding contained in our April 9th order that just and reasonable rates should be based on the cost of the Homeowners' well water source.

2. Dansie Trust use of Foothills System

The Commission has reviewed the record in this case and the Orders of the District Court. We have discussed hereinabove that

the obligation affirmed by the Court to provide, transport, or store water for the Dansie Trust remains solely that of Foothills and not of its customers. We, therefore, reaffirm that the cost and expenses of providing such service will not be included in determining the rates for the customers of Foothills Water Company.

3. Appropriate costs and allocation of these costs

The Commission received additional testimony from Witness Strawn for the Division and Witness Wilkey for Foothills on the issue of the proper allocation of costs between the Foothills' ratepayers and the other user of the system, the Dansie Trust. Allocation of costs is not an exact science and requires judgment as to the appropriate cost versus cost-causation relationships. In the traditional regulatory literature (Bonbright, NARUC Cost Allocation Manual) costs are treated in a three-step process: functionalization, classification, and allocation. Functionalization is the assignment of costs into the functional categories of production, transmission, or distribution. Classification is the assignment of costs by usage, or peak usage. Allocation is the assignment of costs to customer groupings. In this proceeding the Company and the Division utilized a similar process of first classifying costs as utility, customer, commodity, or plant related and then allocating costs to the utility (customers of the Utility) or the Dansie Trust (for its use of the system). Both Witness Strawn and Witness Wilkey indicated that the records of Foothills Water Company were inadequate to determine cost versus cost-causation relationships. Both witnesses indicated that much personal judgment was involved. Mr. Wilkey deferred this judgment to Mr. Dansie.

The Commission has general knowledge and understanding of the Foothills' system and its operation, but has no way of independently determining a method of classification and allocation.

Mr. Strawn classified several cost categories related to maintenance activities as 1/2 plant and 1/2 commodity and others as 1/4 plant and 3/4 commodity and then allocated them to the utility or Dansie Trust according to his utilization assessment (plant) or volumetric usage (commodity). Mr. Wilkey classified these categories as .9 plant and .1 commodity and then allocated plant costs .9 to the utility and commodity costs on a volumetric basis like Mr. Strawn.

The Commission finds that the classification and allocation provided by Mr. Strawn is the most reasonable and corresponds most closely with its understanding of the system and therefore adopts it for determining rates. Appendix B to this order incorporates the method and format of Mr. Strawn for classifying and allocating costs.

4. Water Level Control Costs

As previously indicated, the Homeowners have stated that they will provide the telemetry and chlorination equipment and supplies. The Division testified that this will reduce the required supplies, time, and transportation expense necessary to operate the system. The Commission therefore finds that chemical expenses should be eliminated and contract services and transportation should be reduced as recommended by the Division.

5. Appendix E Numbers (April 9, 1992 Order)

The Commission has reviewed the record and has not been able to find sufficient basis for the connection fees, late payment fees, and interest charges utilized in Appendix E of our April 9, 1992

Order. We therefore find that these items should be reduced to zero in calculating the rates for Foothills Water Company.

6. Other Issues

a. In paragraph 1 of its Petition for Review, Foothills raised the issue of management prerogative in its choice of water supply. The Commission has determined in this order that just and reasonable rates ought to be based on the least expensive source of water available to the utility. If the utility wishes to use another more expensive source, it may do so. However rates will be based on the least expensive source.

b. In paragraph 3 of its Petition for Review Foothills indicated that the Commission exceeded its authority when it ordered the utility to bill and collect variable costs from the Dansie Trust. The Commission has dealt with this issue in item 2 above.

c. In paragraph 5 of its Petition for Review, Foothills asserts that the Commission's Order is arbitrary and capricious and beyond the Commissions' jurisdiction where it contains statements about the "alter ego" relationship of Foothills Water Company with Mr. J.R. Dansie. The Commission will hereby strike such references from its April 9, 1992 Order. The Commission meant only to indicate that economic benefits to Foothills are benefits to Mr. Dansie.

IV. RATES ON REHEARING

Based on the results of this rehearing Order, the Commission has calculated the rates provided in Appendix C. These rates will be placed in effect for the next month following notification of the

Commission by the Homeowners that all culinary water tests have been approved and their well is ready for connection to the Foothills system.

This rehearing Order also sets rates for the period from June 15, 1992 (when rehearing interim rates went into effect), until such time as the Homeowners well is ready for connection to the system. These rates are provided in Appendix D.

For the period from June 15, 1992 until the November bills, Foothills is entitled to recover from ratepayers the difference between the June 15, 1992 rates, \$37.50, and the Appendix D rates, \$45.97. This totals \$38.11 per customer and may be collected as a surcharge on rates of \$12.70 per month, for a three month period, November 1992 to January 1993.

Based on the foregoing Discussion and Findings of Fact the Commission hereby issues the following

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED, that:

1. Foothills Water Company take action to eliminate claims against Water Right No 59-1608 which it has previously pledged or given to family members.

2. Foothills Water Company file tariffs with the Commission implementing rates based on Appendix D of this Order until the Homeowners well is ready for connection at which time the Company shall file tariffs consistent with Appendix C.

3. Any person aggrieved by this Order shall request reconsideration within 30 days of its issuance. A failure to seek reconsideration will terminate rights of appeal.

DATED at Salt Lake City, Utah, this 30th day of
November, 1992.

/s/ James M. Byrne, Commissioner

(SEAL)

/s/ Stephen C. Hewlett, Commissioner

Attest:

/s/ Julie Orchard
Commission Secretary

APPENDIX A

FOOTHILLS WATER COMPANY/OPERATING STATEMENTS

DOCKET NO. 91-2010-01

Commission April Proforma, PSC Adjustments & Rereading Findings

Ln	FERC	Commission 3 April Pro Forma	Commission Adjustments	Commission Rereading Order	
Operating Revenue					
1.	461.1	Metered Sales to Res Customers	\$44,152	(19,033)	\$25,119
2.	474.1	Standby Fees Collected	7,375	657	\$8,032
3.	474.2	Late Payment Fees	1,140	(1,140)	\$0
4.	474.3	Interest Charges	596	(596)	\$0
5.	474.4	Turn-on Fees	0	0	\$0
6.	474.5	Reconnect Fees	0	0	\$0
7.	474.6	Customer Account Charges	0	0	\$0
8.	474.8	Connection Fees	1,500	(1,500)	\$0
9.	474.9	Returned Check Fees	0	0	\$0
10.	475.0	Dansie Power Charge	300	(300)	\$0
11.	475.1	Damage Repair Reimbursement	0	0	\$0
Total Operating Revenue		\$55,563	(\$21,912)	\$33,651	
Operating Expenses					
12.	601.1	Officer's Salary	0	0	\$0
13.	603.0	Administration & Accounting	8,400	0	\$8,400
14.	604.0	Payroll Taxes & Insurance	1,085	0	\$1,085
15.	610.0	Water Lease	12	0	\$12
16.	615.0	Purchased Power	0	0	\$0
17.	615.3	Purchased Power, Booster Pump	688	0	\$688
18.	618.0	Chemicals	600	(600)	\$0
19.	620.1	Material & Supplies - Water System	6,000	0	\$6,000
20.	620.2	Office Supplies, Postage	900	0	\$900
21.	630.1	Contractual Services - Engineering	527	0	\$527
22.	630.2	Contractual Services - Accounting	2,333	0	\$2,333
23.	630.3	Legal Expense	1,000	0	\$1,000
24.	630.4	Contractual Services - R & M, General	1,008	0	\$1,008
25.	630.5	Contractual Services - Water Quality	300	0	\$300
26.	630.6	Contractual Services - R & M, R. Dansie	12,168	(6,084)	\$6,084
27.	640.1	Rental of Bldg. & Real Property	4,200	0	\$4,200
28.	640.2	Equipment Rental	6,000	0	\$6,000
29.	650.0	Transportation Expense	1,200	(400)	\$800
30.	655.0	Insurance Expense	2,942	0	\$2,942
31.	665.0	Regulatory Commission Expense	138	0	\$138
32.	670.0	Bad Debt Expense	0	0	\$0
33.	675.1	Miscellaneous Expenses - Directors Fees	600	0	\$600
34.	675.2	Miscellaneous Expenses - Telephone	360	0	\$360
35.	675.3	Miscellaneous Expenses - Other	150	0	\$150
36.	675.4	Miscellaneous Expenses - Collections	100	0	\$100
37.	403.0	Depreciation Expense	1,620	0	\$1,620
38.	408.0	Taxes Other Than Income Tax	650	0	\$650
Total Operating Expenses		\$52,561	(\$7,084)	\$45,477	
427.0	Total Taxable Income		\$2,602		
Income Taxes					
Utah Franchise Tax		\$130			
409.1	Federal Taxable Income		\$2,472		
Federal Income Tax		\$371			
Total Tax Expense		\$501			
409.2	Operating Income/Loss		\$2,101		

• CLASSIFICATION CODES.

- U. Utility-specific costs (none allocated to users).
- N. Costs which vary according to the (N)umber of customers.
- C. Cost assoc. with day-to-day (C)ommodity (water) produc. n. & allocated in proportion to usage.
- P. Costs associated with (P)lant access, with "sub-assignment" allocated in proportion to usage.

1/2P 1/2C. Half the costs are class ed as Plant, half as Commod.

1. TELEMETRY & CLORINATION SYS. INSTAL'D BY HOME'NERS INST'D CF FOOTHILLS.
2. DEPREC'N EXPENSE (LINE 41), TAXES (LINE 43), & RETURN REMAIN THE SAME AS IN THE APRIL 9TH ORDER.
3. LINE 17 AND LINE 18 ARE REDUCED TO REFLECT USAGE OF HOMEOWNER'S WELL
4. LINE 20 AND LINE 33 IS RED'D TO REFLECT RED'D Q&M IF TELEMETRY SYSTEM IS INSTALLED.
5. 45 CUSTOMERS INSTEAD OF 52 ARE USED UPON WHICH TO BASE RATES.

APPENDIX C

FOOTHILLS WATER COMPANY
CALCULATION OF RATES

DOCKET NO. 91-2010-01

TOTAL REVENUE REQUIREMENT	\$33,651
LESS ANNUAL STANDBY FEES(\$9 PER LOT & 79 CUST)	<u>(\$8,532)</u>
NET TO BE MET BY CONNECTED CUSTOMERS	\$25,119
LESS USAGE > 5 KGAL, 5,264 KGAL @ \$1.40/KGAL	<u>(\$7,370)</u>
NET TO COMPRISE BASIC DEMAND CHARGE	\$17,750
DIVIDED BY 12 MONTHS	\$1,479
DIVIDED BY 45 USERS FOR INDIVIDUAL BASE RATES	<u><u>\$32.87</u></u>

<u>AUTHORIZED PERMANENT RATES</u>	
STANDBY FEES PER MONTH PER LOT	\$9
DEMAND CHARGE INCLUDING 5,000 GALS/MONTH	\$32.87
OVERAGE CHARGE PER 1,000 GALS	\$1.40
CONNECTION FEE PER LOT	\$750
TURN ON AND RECONNECT FEES	\$200

APPENDIX D
FOOTHILLS WATER COMPANY
CALCULATION OF INTERIM RATES

DOCKET NO. 91-2010-01

PROJECTED INTERIM EXPENSES	Comm'n Rehearing Order		Customer Costs(N)		Plant Costs(P)		Commodity Costs(C)		TOTAL	
			UTIL'(U) 45/46 X	DAN'TFU 1/46 X	UTILITY 0	DAN'TRU 0	UTILITY 1/3 X	DAN'TRUS 2/3 X		
Officers Salary, A. Danse	0									
Payroll Taxes & Insurance	0									
Administration and Acctg	8400	N	8,217	183					8,217	8400
Payroll taxes and Insurance	1065	N	1,042	23					1,042	1065
Purchased H2O, Danse Lease	7200	U	7,200						7,200	7200
Purchased Power									0	0
Purch Power, Well #1	6,782	C					2,281	4,521	2,281	6782
Purch Power, Well #2	0								0	0
Purch Power, Booster Pump	668	N	673	15					673	668
Chemicals	600	C					200	400	200	600
Material & Supply, H2O Sys	8,000	1/2P,1/2C			2,000	1,000	1,000	2,000	3,000	8,000
Material & Supply, Office	900	N	880	20					880	900
Contract Svc, Engineering	527	P			351	178			351	527
Contract Svc, Accounting	2,333	N	2,282	51					2,282	2333
Contract Svc, Legal	1,000	N	978	22					978	1000
K Svc, Repair & M'n'ce	1,008	1/2P,1/2C			336	168	168	336	504	1008
K Svc, Water Quality	300	P			200	100			200	300
K Svc, R. Danse	12,168	1/4P,3/4C			2,028	1,014	3,042	6,084	5,070	12168
Rental, Bldg., Real Estate	4,200	1/2N,1/2P	2,054	46	1,400	700			3,454	4200
Rental, Equipment	8,000	1/4P,3/4C			1,000	500	1,500	3,000	2,500	8000
Transportation Expense	1200	1/4P,3/4C			200	100	300	600	500	1200
Insurance Expense	2,942	P			1,981	981			1,981	2942
Regulatory Expense	138	U	138						138	138
Bad Debt Expense	0								0	0
Misc. Expense, Telephone	360	N	352	8					352	360
Misc. Exp., Director Fees	600	U	600						600	600
Misc. Expense, Other	150	U	150						150	150
Misc. expense, Collections	100	U	100						100	100
Depreciation Expense	1,620	P			1,080	540			1,080	1620
Amortization Expense, Tank Repair	0								0	0
Taxes Other Than Income Taxes	550	P			433	217			433	550
TOTAL OPERATING EXPENSE	566,931		24,668	366	10,990	5,495	8,471	16,941	\$44,128	566,931
OTHER INCOME & DEDUCTIONS										
Misc. Non-operating Expense										
Interest Expense										
TOTAL EXPENSE	566,931		24,668	366	10,990	5,495	8,471	16,941	\$44,128	566,931
Total Taxable Income	2802									
INCOME TAXES										
Utah Franchise Tax	\$130	P			87	43			87	\$130
Federal Taxable Income	\$2,472									
Federal Income Tax	\$371	U	371						371	\$371
TOTAL TAX	\$501									
OPERATING INCOME/(LOSS)	\$2,101	P			1,401	700			1,401	\$2,101
TOTAL REVENUE REQUIREMENT	69,533		25,039	366	12,477	6,239	8,471	16,941	\$45,987	69,533

TOTAL REVENUE REQUIREMENT \$45,987
LESS ANNUAL STANDBY FEES(\$9 PER LOT & 79 CUST) (58,532)
NET TO BE MET BY CONNECTED CUSTOMERS \$37,455

LESS USAGE > 5 KGAL 5,284 KGAL @ \$2.40/KGAL (\$12,634)
NET TO COMPRISE BASIC DEMAND CHARGE \$24,821

DIVIDED BY 12 MONTHS \$2,068

DIVIDED BY 45 USERS FOR INDIVIDUAL BASE RATES \$45.97

AUTHORIZED INTERIM RATES	
STANDBY FEES PER MONTH PER LOT	\$9
DEMAND CHARGE INCLUDING 3,000 GALS/M	\$45.97
OVERAGE CHARGE PER 1,000 GALS	\$2.40
CONNECTION FEE PER LOT	\$750
TURN ON AND RECONNECT FEES	\$200