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BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

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| IN THE MATTER OF THE INVESTIGATION  INTO WHETHER PACKSADDLE DEVELOP­MENT CORPORATION IS A PUBLIC UTILITY SUBJECT TO COMMISSION REGULATION. | )  )  )  )  )  ) | CASE NO. GNR-W-95-1  AMENDED NOTICE OF               HEARING  ORDER NO.  26399 |

On March 28, 1996, petitioners Don Lingle and Susan Patla (Lingle/Patla) filed a Motion to Compel Discovery of Packsaddle Development Corporation (Packsaddle; Company) to answer Interrogatory Nos. 2, 4, 5, 6, 10, 11, 12, 14, 15, 17, 18, 19, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, and 31, and Request for Production Nos. 4, 5, 6, and 7.  Simultaneously, with the Motion to Compel, petitioners Lingle/Patla filed a Motion to Continue the Hearing set for April 18, 1996.  On March 29, 1996, Robert Young (Young) filed a Motion to Compel Discovery of Packsaddle to Answer Intervenor’s Second Set of Interrogatory Nos. 1, 3, 4, 5, 6, and 10, and Request for Production Nos. 2 and 4.  On April 3, 1996, Packsaddle filed an objection to both motions to compel stating that they have fully complied with the rules of discovery and object to the motion to continue.  Commission Staff did not take a position on any of the Motions.  On April 4, 1996, the Commission conducted an oral argument on the motions.  On April 5, 1996, Lingle/Patla filed a second Motion to Continue the Hearing one day.

MOTIONS TO COMPEL

Commission Rules of Procedure 221-233, IDAPA 31.01.01.221-233, and the Idaho Civil Rules of Procedure (IRCP) Rules 26 and 37 give the Commission inherent authority to manage cases coming before it.  Commission Procedure Rules 222 and 223 provide that all parties to a proceeding have a right of discovery of all parties.  According to Rule 225 if a party objects to a discovery request, it must object and explain why an answer cannot be provided.  The general rules governing the scope of discovery are found in IRCP Rule 26(b)(1).  It states that parties may obtain discovery regarding any matter that is not privileged and which is relevant to the subject matter involved in the pending action.  The discovery must reasonably be calculated to lead to discovery of admissible evidence at trial.  IRCP Rule 26(c) provides that discovery may not be for annoyance, embarrassment, oppression or undue burden or expense upon a party.

I. Don Lingle and Susan Patla’s Motion to Compel

Lingle/Patla’s Motion to Compel alleges that the Company failed to fully and completely answer the interrogatories and requests for production.  They further allege that they are unable to prepare for the reconsideration hearing without complete responses.  Attached to the Motion to Compel is an affidavit of Tory Whitehead, an engineer retained by Lingle/ Patla, who alleges that this information is necessary to provide an engineering analysis of the Packsaddle water system.

Packsaddle objects to Lingle/Patla Motions to Compel stating that its responses were complete.  The Company explains that it has either answered fully, the information sought is beyond reasonable access and control of the Company, or that the information is beyond the scope of the issues on rehearing.  The Company further alleges that the information sought is simply for vexatious purposes.

We hereby make the following findings of fact and conclusions of law:(footnote: 1)

A.  Interrogatory No. 2:

Provide the date or reasonable estimate of the date when the pump in well No. 1, replaced in 1993, was first installed.  If written test data for this pump is not available as requested under Production Requests No. 2 and No. 3, please provide estimates of the following:

(a) Depth of well

(b) Static water level prior to pumping

(c) Horsepower (HP) of pump motor

(d) Pump capacity in GPM

(e) Pump model and manufacturer

(f) Water level in well after four hours of pumping

(g) Pump discharge pipe size and schedule

(h) Depth of pump

Answer to Interrogatory No. 2:  There have been a number of pumps put in Well No. 1 since it was first installed in approximately 1972.  Any documentation Respondents would have had has long since been discarded or misplaced.  All of the rest of the information sought in Interrogatory No. 2 is best available through the Department of Water Resources and is as available to Petitioner as to Respondents.  The records of the Department of Water Resources are available to the public.

Findings:  The Company stated that if the records were not available at Idaho Department of Water Resources then they did not exist.  We find that this answer is sufficient.  We further find that line of questions concerning facts preceding the replacement pump are not relevant to the issues on reconsideration.  We deny the Motion to Compel this Answer.

B.  Interrogatory No. 4:

Provide a list showing the manufacturer, model and type, or written description of the equipment for the water system at the time the pump in well No. 1, replaced in 1993, was first installed.  The list should include but not be limited to all pumps, tanks, wells, piping, values, controllers, instruments and electrical equipment.  For the piping, show the number of feet of each pipe size, and pipe size schedule.

Answer to Interrogatory No. 4:  Respondents don’t have the information requested in Interrogatory No. 4.  Some of this information may be available through records on file with the Department of Water Resources.

Findings:   We find that the answer is sufficient and deny the Motion to Compel this Answer.

C.  Interrogatory No. 5:

For the equipment list referred to in Interrogatory No. 4 above, please provide the date or approximate date and the specific circumstance involving:

(a) Change out of the existing equipment

(b) Addition of existing equipment

(c) Failure of existing equipment

(d) Repair of existing equipment

(e) Major maintenance of any piece of equipment in excess of eight man hours.  Please provide enough information to allow tracking of equipment from the original installation to the existing installation.

Answer to Interrogatory No. 5:  This information, if it were available to the Respondents, is irrelevant to any issue currently before the Commission on rehearing.  Until you can make your request more specific, we don’t even know what questions you are asking us to respond to.  Additionally, we have no idea how this could possibly be relevant to the issues currently before the Commission on rehearing.

Findings:   We find that the answer is sufficient and deny the Motion to Compel this Answer.

D.  Interrogatory No. 6:

Provide the following information regarding the power:

(a) The date or approximate date the water supply system was first connected to Utah Power & Light (UP&L)

(b) Was the motor for the well pump replaced in 1993 single or three phase

(c) The original UP&L service rating in terms of amperage and voltage

(d) The date and description of any electrical service upgrades

(e) The number of UP&L power meters connected to the water system

(f) The size of the electrical conductors currently serving each pump motor in the water system

(g) List and describe the power consuming items (i.e. motors, pumps, lights) specific to each meter on the system.

Answer to Interrogatory No. 6:

(a) Early 70's

(b) Single phase

(c) Respondents have no idea

(d) Information is unavailable to Respondents

(e) One meter

(f) Respondents have no idea on the size of electrical conductors

(g) Motors, pumps, lights, heat, power tools (See response Exhibits 1, 2 and 3 provided the Commission in its discovery request for an idea of the electricity consumption)

Findings:  The Company claims that it does not have the technical data requested by Petitioners’ engineer, however, during the Oral Argument Packsaddle agreed to sign Utah Power & Light’s release form to allow Lingle/Patla to get the required data.  We find that by signing the release form this is sufficient to comply with the request for (a) through (e). The Company also offered during the Oral Argument to allow Petitioners engineer to inspect the facilities to obtain the specific technical data. It appears the Petitioners have already had one engineer inspect the facilities and now would like Mr. Whitehead to do the same.  We hereby order that Packsaddle will allow a visual inspection of the facilities to allow Petitioners to obtain the information for (f) and (g).

E.  Interrogatory No. 10:

If submitted expenses for electricity did include the spring pumping system, provide the following information:

(a) Horsepower rating for the spring pump motor

(b) Pump capacity in GPM for the spring pump

(c) Pump model and manufacturer

Answer to Interrogatory No. 10:  See answer to Interrogatory No. 9. (Answer to Interrogatory No. 9:  Respondents believe the Commission has provided Petitioner with the information it obtained from Respondents the Staff used in making its report to the Commission.  You can review Exhibit 2 and 3 provided by the Respondents to the Commission and get a good idea of the ongoing costs of electricity.  Consumers never even paid for the electrical expenses associated with running the well, nor are they being required to pay for any of Packsaddle Development Corporation’s costs associated with providing the spring water as an alternative hookup while the well was being replaced.  The cost of running the water system now is irrelevant to whatever it might have cost to run the spring as an interim and in that regard, this information is irrelevant.)

Findings:  We find that the answer is sufficient and deny the Motion to Compel this Answer.

F.   Interrogatory No. 11:

Does the Benton Engineering drawing on file at the District Seven Health Department titled “Packsaddle Creek Estates Water System As-Built” (dated 3/95 and stamped by Dale L. Handy) represent the current existing water system?  What are the differences between this drawing and the drawing on file with the IPUC staff titled “Water System As-Built, Proposed Extensions”?  Is the system complete at this time?  If so, give the date of final completion.  If not, describe what is required to complete the water system and approximate completion date.

Answer to Interrogatory No. 11:  We don’t understand what maps you are talking about. Since we don’t know what maps you are talking about, we don’t know what differences you are talking about.  The system is complete but requires ongoing maintenance.  (See response to Commission).

Findings:   Packsaddle stated during the Oral Argument that this information is not in possession of the Packsaddle.  We find that Packsaddle does not have possession of the requested information and deny the Motion to Compel this Answer.

G.  Interrogatory No. 12:

Provide the names of water users for each year beginning with the year the well pump, replaced in 1993, was first installed to the present.  If all names are not known, include the number of total connections for each year.  If other than a calendar year, indicate fiscal year dates.  If new customers were added part way into a year, prorate the customer base accordingly.

Answer to Interrogatory No. 12:  Most of the information you request in Interrogatory No. 12 is not available.  To the extent it may be available through extraordinary effort on the part of the Respondents, it is irrelevant to anything appropriate before the Commission on rehearing.

Between October, 1990 to December, 1995 there were five new hookups.  There are currently 27 water users.  Only five of those have ever requested to be shut off and so we have to assume 22 of them are full-time users, even if they may not live in the house year around.

Findings:   Utility companies do not provide customer lists to the public as this is considered confidential information.  The Public Utilities Commission also does not provide names of customer inquiries as this is generally considered confidential information.  See Commission Rules of Procedure 26, Idaho Code § 9-340(22)  We find that the answer is sufficient and deny the Motion to Compel this Answer.

H.  Interrogatory No.14:

From August 1, 1995 to present, describe each repair requiring four hours or more time (excluding driving time) or any repair requiring a backhoe.  For each repair description, provide the following information:

(a) Location of each dig site and the company or individuals who completed the backhoe work.

(b) The names of all maintenance personnel who performed work.

(c) the tasks each person accomplished and man-hours required.

For the same period, describe each maintenance item requiring two hours or more time (excluding driving time).

Answer to Interrogatory No.  14:  See information contained in Exhibits 1, 2 and 3 provided in response to Commission’s discovery request.

Findings:   We find that the answer is sufficient and deny the Motion to Compel this Answer.

I.  Interrogatory No.  15:

Provide for the new well No. 2 the following minimum data:

(a) Depth of well

(b) Static water level prior to pumping

(c) HP rating of pump motor and whether motor is single or three phase

(d) Pump capacity in GPM

(e) Pump model and manufacturer

(f) Water level in well after six hours of pumping

(g) Pump discharge pipe size and schedule

(h) Depth of pump

 Answer to Interrogatory No.  15:  Bob Smith already has all of this information and Respondents believe you have already obtained that information from the Public Utilities Commission.  It is also probably available, to the extent it is available, through the well driller or the Department of Water Resources.  Denning drilled the well but we wouldn’t be surprised if Denning doesn’t want to provide you with this information and, on top of that, it is irrelevant to any matter before the Commission on rehearing.

Findings:  We find that the line of questions relating to Well No. 2 are not relevant to the issues on reconsideration.  We further note that Petitioners’ affidavits do not discuss the reasons or grounds for asking such question.  We find that the answer is sufficient and deny the Motion to Compel this Answer.

J.  Interrogatory No. 17:

Provide the date or estimated date the pressure tank, replaced in 1994, was first installed.  For the new pressure tank provide the following information:

(a) Gallon capacity

(b) On-off pressures

(c) Draw-down in gallons at the on-off pressures

(e) Model and manufacturer

Answer to Interrogatory No. 17:  We have no idea what the potential relevance of an answer to your question might be but a pressure tank was first installed in 1972 or thereabouts.  The current one is 109 gallons.  The Respondents don’t know what the capacity of previous pressure tanks have been.  None of the rest of the information requested in Interrogatory No. 17 can possibly be relevant to anything before the Commission on rehearing.

Findings:   We find that the answer to 17(a) is sufficient and deny the Motion to Compel this Answer.  The Company offered during the Oral Argument to allow Petitioners’ engineer to inspect the facilities again to obtain the specific technical data. We hereby order that Packsaddle will allow a visual inspection of the facilities to allow Lingle/Patla to obtain a further response to 17(b), 17(c) and 17(e).

K.  Interrogatory No.18:

Describe the following procedures for the present water system including the valve configuration (i.e. open or close of all valves in the system).  Describe specifically procedures for the following:

(a) Starting the system

(b) Normal operation

(c) Shutting down the entire system

(d) Well No. 1 operation only

(e) Well No. 2 operation only

(f) Both wells operating

(g) Both wells shut down with gravity tank feed only

Answer to Interrogatory No. 18:  Information requested in Interrogatory No. 18 is all beyond the scope of the matters before the Commission on rehearing.  At the current time the system is not for sale.  All of the information you are attempting to discover should not be available to unauthorized personnel.  It is technical data that only the owners should know and in the wrong hands could be used to cause the system enormous damage.

Findings:  We find that this line of questioning is not relevant to the issues on reconsideration.  We find that the answer is sufficient  and deny the Motion to Compel this Answer.

L.  Interrogatory No. 19:

Describe the useable capacity and the level control system for the 7,500 and 80,000 gallon storage tanks.  Are both levels controlled automatically?

Answer to Interrogatory No. 19:  The information requested in Interrogatory No. 19 is irrelevant to any matter before the Commission on rehearing.

Findings:  We find that this line of questioning is not relevant to the issues on reconsideration.  We find that the answer is sufficient and deny the Motion to Compel this Answer.

M.  Interrogatory No. 21:

When the new pump was installed in well No. 1, was the motor replaced or repaired?  Describe the condition of the original pump and motor at the time of replacement and provide the name of the individual who replaced the pump.

Answer to Interrogatory No. 21:  Everything was replaced.  None of the other information you request is available.  To the extent it would be available, it is irrelevant to any matter before the Commission on rehearing.

Findings:   We find that this answer together with further explanation during the Oral argument is sufficient and deny the Motion to Compel this Answer.

N.  Interrogatory No. 22:

When the new pressure pump was installed in 1993, was the motor replaced or repaired? Describe the condition of the original pump and motor at the time of replacement and provide the name of the individual who replaced the pump.

Answer to Interrogatory No. 22:  Replaced.  See answer to Interrogatory No. 21.

Findings:  We find that this answer together with further explanation during the Oral Argument is sufficient and deny the Motion to Compel this Answer.

O.  Interrogatory No. 23:

Describe the reason for replacing the pressure tank in 1994.  If this was due to a component failure be specific as to the failure.  Provide the name of the individual or company who replaced the tank.

Answer to Interrogatory No. 23:  The information requested in Interrogatory No. 23 is irrelevant and beyond the scope of the matters before the Commission on rehearing.  The pressure tank was replaced because the old one had ceased to function because the bladder had broke.  Housleys replaced the tank.

Findings:  The parties stipulated on the record to withdraw the Motion to Compel this question.

P.  Interrogatory No. 24:

Describe which main line will provide water to the following lots.  If the main line for an indicated lot is not finished, indicate which main line will be extended to service said lot.

(a) Block 1 lots 51 through 62 (Division #2)

(b)  Block 1 lots 10-14, lots 15-17, 22-29A, 32-49 (Division #1)

(c)  Block 2 lots 1, 2, 3, 5, 6, 7 (Division 1)

(d)  Block 3 lots 1-12 (Division 1)

Answer to Interrogatory No. 24:  The information requested in Interrogatory No. 24 has nothing to do with the rate which is the subject of the matter before the Commission on rehearing.

Findings:  We find that this line of questioning is not relevant to the issues on reconsideration.  We find that the answer is sufficient and deny the Motion to Compel this Answer.

Q.  Interrogatory No. 25:

Referring to the Packsaddle Development Corporation’s response to the IPUC’s first request for production which included a breakdown of expenses for four separate periods, provide for the years covered the date or approximate date of each incident where a main line had to be dug up and a leak repaired.  Provide a cost breakdown for each such repair incident.  Provide the same information for leaks on a customer’s piping system repaired by the Corporation.  If the company was reimbursed for such expenses, indicate the amount recovered.

Answer to Interrogatory No. 25:  Respondents have no idea what you are referring to.  Maybe the information in Exhibits 1, 2 and 3 attached to the response to the discovery provided the Commission would be helpful.

Findings:  We find that this answer is not responsive to the question.  The Company indicated that it misunderstood the question and offered to give an immediate response to the questions. We hereby order Packsaddle to immediately provide a response to this interrogatory.

R.  Interrogatory No. 26:

Regarding your response to the IPUC production request referred to in Interrogative #25 above, please provide for the period July 1993 through June 1994 the following information:

(a) The name of all maintenance personnel who performed work included in the 1008 man hours reported.

(b) For each person listed in (a) above, describe the tasks accomplished and the man hours needed for each task that took over four hours time.

Answer to Interrogatory No. 26:  See answer to Interrogatory No. 25.

Findings:  We find that this answer is not responsive to the question.  The Company indicated that it misunderstood the question and offered to given an immediate response to the questions. The Company also indicated that no records were kept on these issues prior to May of 1995. We hereby order Packsaddle to immediately provide a response to this interrogatory.

S.  Interrogatory No. 27:

Provide a list of any modifications made to well No. 1 other than the new pump installation in 1993.

Answer to Interrogatory No. 27:  It burned out and it was replaced.

Findings:  We find that this answer is not responsive to the question.  We hereby order Packsaddle to immediately provide any further information concerning the modifications to Well No. 1 if there is any information besides the pump.

T.  Interrogatory No. 28:

Concerning well No. 1 after rehabilitation, provide the following information:

(a) Depth of well

(b) Static water level prior to pumping

(c) HP rating of pump motor

(d) Pump capacity in GPM

(e) Pump model and manufacturer

(f) Water level in well after four hours of pumping

(g) Pump discharge pipe size and schedule

Answer to Interrogatory No. 28:  The pump was replaced.  This information is irrelevant and beyond the scope of the matters before the Commission on rehearing.

Findings:  We find that this line of questioning is not relevant to the issues on reconsideration.  We find that the answer is sufficient and deny the Motion to Compel this Answer.

U.  Interrogatory No. 29:

Provide the locations and set pressure of each pressure reducing value.

Answer to Interrogatory No. 29:  This information is irrelevant to the matters before the Commission on rehearing.  This information should only be available to persons authorized to maintain the system.  This is very technical information and is not important for the regular water users to have.

Findings:  We find that this line of questioning is not relevant to the issues on reconsideration.  We find that the answer is sufficient and deny the Motion to Compel this Answer.

V.  Interrogatory No. 30:

Provide the locations and set pressures of each relief value.

Answer to Interrogatory No. 30:  See answer to Interrogatory No. 29.

Findings: We find that this line of questioning is not relevant to the issues on reconsideration.  We find that the answer is sufficient and deny the Motion to Compel this Answer.

W.  Interrogatory No. 31:

Referring to the Packsaddle Development Corporation’s response to the IPUC’s first request for production which included a breakdown of expenses for four separate periods showing “General Water Expenses”, the final page of expenses does not show a date on top.  The top line reads “Deposits to Date” $3,101.00.  Provide the following information for this page:

(a) Actual dates these expenses covered

(b) Specific descriptions of the backhoe work completed by Ben Green and the Dirty Diggers including sit locations of each dig.

Answer to Interrogatory No. 31: This information in not relevant to anything before the Commission on rehearing.  However, the information you seek may be available through Exhibits 1, 2, and 3 provided the Commission, a copy of which you have received.

Findings: We find that this answer is not responsive to the question.   The Company indicated that it misunderstood the question and offered to give an immediate response to the questions. We hereby order Packsaddle to immediately provide a response to this interrogatory.

X.  Request for Production No. 4:

Provide a copy of the schematic showing the cross connection of the spring to the Packsaddle water system.

Response to Request for Production No. 4:This information would be irrelevant as it is not part of the system nor is it a subject of the matters for the Commission on rehearing.

Findings: We find that this line of questioning is not relevant to the issues on reconsideration.  We find that the answer is sufficient and deny the Motion to Compel this Answer.

Y.  Request for Production No. 5:

Provide a map of the water system indicating which items have been completed and which items are proposed extensions.

Response to Request for Production No. 5:You are welcome to send a representative to come look at a map but Respondents are not giving out any more maps.  The information you request has probably already been provided you by the Commission.

Findings: We find that this line of questioning is not relevant to the issues on reconsideration.  We find that the answer is sufficient and deny the Motion to Compel this Answer.

Z.  Request for Production No. 6:

Provide a piping schematic of both wells with all pumps and tanks up to the main line connection.

Response to Request for Production No. 6: This information is not only irrelevant but it is beyond Respondents ability to produce.  Intervenors’ engineer will be looking through the pump house and may have relevant information after that inspection.

Findings: We find that this line of questioning is not relevant to the issues on reconsideration.  We find that the answer is sufficient and deny the Motion to Compel this Answer

AA.  Request for Production No. 7:

Provide all engineering plans, drawings, specifications, reports, analysis or other written documents associated with the Packsaddle water supply system well No. 2 addition, rehabilitation of well No. 1, and the water system as-built drawing dated 3/95 by Benton Engineering.

Response to Request for Production No. 7: Respondents don’t understand what you are requesting to the extent it may be available.  Based upon your request, it is apparent you have a Benton Engineering drawing that Respondents don’t have.  To the extent the information you request is relevant to matters before the Commission, please be more specific setting out those requests.

Findings: The Company indicated that it did not have the information requested.  We find that this answer together with further explanation during the Oral Argument is sufficient and deny the Motion to Compel this Answer.

II. Robert Young’s Motion to Compel

Young also seeks to compel discovery requests of Packsaddle.  Young claims that Packsaddle did not give complete answers to the request and that these answers are necessary to prepare for the reconsideration hearing.  Packsaddle also objects to Young’s Motion stating that its answers were complete.

We hereby make the following findings of fact and conclusions of law:(footnote: 2)

A.  Request for Production No. 2:

Produce a copy of Packsaddle Development Corporation’s federal tax returns prepared or filed for each year from 1992 through 1995.

Response to Request for Production No. 2: Packsaddle Development Corporation’s tax returns are irrelevant to any matter before the Commission on rehearing or reasonably likely to even produce information that might be relevant to the Commission on the issues of rehearing.  Packsaddle Development Corporation involved a lot more than the cost and maintenance associated with the well and system.  The system has now been transferred to a water corporation by the name of Packsaddle Estates Water Corporation.  There have been no tax returns filed on that corporation.  The only information that is available is that information set forth in Exhibits 1, 2 and 3 in producing a response to the production requests filed by the Commission.

Findings: Tax records are generally considered to be confidential information by utility companies.  Commission Staff indicated on the record that normally utility companies only allow parties to review the tax records and do not give out copies of tax records.  Packsaddle offered during the Oral Argument to allow the parties to review the tax records in the office of the Company’s accountant. We find this to be reasonable and in conformance with general practice.  We hereby order Packsaddle to make tax records available for immediate review in Packsaddle’s accountant’s office or in another location that is convenient to the parties.

B.  Interrogatory No. 1:

Identify each and every employee of Packsaddle Development Corporation, and for each employee identified describe the nature of the job performed, salary, inclusive dates of employment, and all for the period of time from January 1, 1992 to present.

Answer to Interrogatory No.1: Packsaddle Development Corporation never had employees.  Even though Rea has kept time logs and is claiming that she is owed, there has never been any money available to pay her for her wages.  She calculates her rate at $10.00 an hour.  Packsaddle Water Corporation employees her as general manager and administrator.  It is expected that she will be compensated for her time at the rate of $10.00 an hour.  Again, she has never been paid to date because of the want of revenue.  All available information you seek is set forth in Exhibits 1, 2 and 3 attached to the response to the Commission’s production request.

Findings: The Company indicated only the records and logs that were kept on these issues were disclosed in the Exhibits 1, 2 and 3.  We find that this answer together with further explanation during the Oral Argument is sufficient and deny the Motion to Compel this Answer.

C.  Interrogatory No. 3:

Identify all current customers of the water system in Packsaddle Creek Estates Subdivision and for each customer separately identify them by name, address, date of connection, and whether they are part time or full time water customers.

Answer to Interrogatory No. 3: Respondents have been threatened by customers to not be giving their names and addresses out.  There are currently 27 customers hooked onto the water system.  Only five of those have requested to be shut off seasonally so we have to characterize the remaining 22 as full time water customers.  The names and addresses of each of the parties receiving water are known to the Public Utilities Commission.  We believe your group sent a letter to all of the homeowners requesting the approval of amended Restrictive Covenants.  You must have the names and addresses of the lot owners.  We have to assume you are making this request for its punitive effect, rather than out of any justifiable interest in receiving the information.  See Exhibits 1, 2 and 3 attached to the response to the Commission.

Findings: We find that the answer is sufficient and deny the Motion to Compel this Answer.

D.  Interrogatory No. 4:

State each item of maintenance performed by Packsaddle Development Corporation to the water system in Packsaddle Creek Estates Subdivision for each year from 1992 to the present, and for each item of maintenance separately identify the date performed, type of maintenance performed, number of hours required, and the location.

Answer to Interrogatory No. 4:  Information that predates that provided in Exhibits 1, 2 and 3 attached to the response to the Commission is either unavailable or irrelevant.  You should be aware, if you are not already, that the Commission has not allowed the capitalization of any of these old cost items.  In other words, it has nothing to do with the potential rate and is, therefore, irrelevant to matters before the Commission.

Findings: We find that the answer is sufficient and deny the Motion to Compel this Answer.

E.  Interrogatory No. 5:

Describe in detail each item of monthly administrative labor required to be performed by Packsaddle Development Corporation in relation to providing water service to customers in Packsaddle Creek Estates Subdivision, and for each item of administrative labor described identify the person or entity performing the labor, the purpose of each item, and the specific amount of time required for each item.

Answer to Interrogatory No. 5: Respondents don’t even know the answer to that request.  The system will have to be checked on routinely and anything that fails to function will have to be repaired.  By way of example, you can review the check register, the time logs and the invoices which are Exhibits 1, 2 and 3 attached to the response to the Commission’s discovery.  That will give you a good idea of the kinds of things that are tended to on a day to day basis.

Findings: We find that the answer is sufficient and deny the Motion to Compel this Answer.

F.  Interrogatory No. 6:

Identify the persons or entity which performed any and all drilling for well number 1.

Answer to Interrogatory No. 6: That information is no more available to Respondents than it would be to Intervenors by requesting it from the Department of Water Resources.  To the best of Respondents’ memory, the well was drilled by a person by the name of Hopkins.  We think it was drilled in about 1972.  Records that would refresh our memory are discarded or misplaced, but in any case, not available to Respondents.  If there is any documentation that would lend light on the subject, it would be as indicated above--obtained through the Department of Water Resources.

Findings:  We find that the answer is sufficient and deny the Motion to Compel this Answer.

G.  Interrogatory No. 10:

Describe any and all assets and liabilities transferred between Packsaddle Development Corporation and Packsaddle Estates Water Corporation, and for each asset or liability set forth its value and date of transfer.

Answer to Interrogatory No. 10: The wells, the lot they are drilled on and all facilities that make up the water system.  Respondents don’t know how to place a value on it.  Respondents had agreed to sell it at one time for $22,500.00.  If you had to replace it, it would cost much more than that.

Findings:  We find that this answer is not responsive to the question.  We hereby order that Packsaddle immediately provide any further information concerning the date of transfer and a list of assets that have been transferred to the new corporation.

H.  Request for Production No. 4:

Produce copies of all resolutions of the Board of Directors of Packsaddle Development Corporation relating in any manner to your responses described or identified in Interrogatory Numbers 8, 9 and 10.

 Response to Request for Production No. 4: See answer to Interrogatory No. 10.

Findings: We find that this answer is not responsive to the question. Packsaddle indicated during the Oral Argument that there were no resolutions of the Board of Directors, however, there may be minutes of meetings.  We hereby order that Packsaddle immediately provide any further information concerning minutes that were kept by the Board of Directors .

MOTION TO CONTINUE HEARING

Lingle/Patla allege that because Packsaddle has not fully and adequately answered Lingle/Patla’s discovery requests it is impossible for them to adequately prepare for the hearing on April 18, 1996.

Packsaddle objects to granting any continuance because it is beyond the statutory time limit allowed for rehearing.  Packsaddle alleges that Petitioners have had a year to get prepared for this case and it is unreasonable for them to ask for a continuance three weeks before the hearing.

Idaho Code § 61-626 outlines the procedures for reconsideration stating “the matter must  be reheard or written briefs, comments or interrogatories must be filed within thirteen weeks after the date for filing the petitions for reconsideration.  If reconsideration is ordered, the Commission must issue its Order upon reconsideration within 28 days after the matter is finally submitted for reconsideration.”  Idaho Code § 61-626(2) (emphasis added).

Young’s Petition for Reconsideration was the first filed with the Commission on January 24, 1996.  Therefore the matter must be reheard on or before April 24, 1996 pursuant to the statutory guidelines.  Idaho Code § 61-626 does not specifically provide for extensions beyond the statutory time frame. The intent of the statute is to ensure due process through a relatively speedy resolution of matters coming before the Commission.

We find that the movants have not demonstrated adequate reasons to waive the statutory requirements. We therefore deny the Motion to Continue.

A. Motion to Continue Hearing One Day

On April 5, 1996, Lingle/Patla filed a second motion to continue the hearing. Lingle/Patla’s attorney, Marvin Smith alleges that he has a conflict with the hearing date of April 18 and seeks to have the hearing begin on Friday, April 19.  As the Commission is concerned that it may be impossible to complete the hearing in one day, we will conduct the public hearing in the evening and begin the technical hearing the next morning.  We will make the following adjustments to the hearing schedule.  The public hearing will begin at 7:00 p.m on April 18.  The technical hearing will start at 8:00 a.m. on April 19, 1996.

AMENDED NOTICE OF HEARING

YOU ARE HEREBY NOTIFIED that a public hearing will begin at 7:00 P.M. ON APRIL 18, 1996, AT THE TETON WEST MOTOR INN, 476 MAIN STREET, DRIGGS, IDAHO.  We invite all interested person of the public to appear at this time to make statements on the record concerning the issues of reconsideration.  The technical hearing shall convene on FRIDAY, APRIL 19, 1996, AT 8:00 A.M. AT THE TETON WEST MOTOR INN, 476 MAIN STREET, DRIGGS, IDAHO.  The parties are reminded that the scope of this hearing is limited to those issues outlined in Order No. 26339 granting reconsideration.

YOU ARE FURTHER NOTIFIED that prepared testimony and exhibits of all parties must be served upon the Commission and all parties of record to be received in-hand no later than April 15, 1996.  The prepared testimony and exhibits must conform to the requirement of the Commission’s Rules of Procedure, IDAPA 31.01.01.  Rebuttal testimony may be presented orally during the technical hearing

O R D E R

IT IS HEREBY ORDERED that Lingle/Patla and Young’s Motions to Compel discovery are granted in part and denied in part as set forth herein.  Packsaddle is to comply immediately and in good faith to the discovery requests granted herein.

IT IS FURTHER ORDERED that Lingle/Patla’s Motion to continue the hearing is denied.

IT IS FURTHER ORDERED that all other deadlines and notices as described in previous Orders shall remain in full force and effect.

DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this                  day of April 1996.

                                                                                                                                      RALPH NELSON, PRESIDENT

                                                                                           MARSHA H. SMITH, COMMISSIONER

DENNIS S. HANSEN, COMMISSIONER

ATTEST:

Myrna J. Walters

Commission Secretary

vld/O:GNR-W-95-1.sh4

**FOOTNOTES**

1:

The following discovery requests and answers were listed in Packsaddle’s “Response to Petitioner’s [Don Lingle and Susan Patla’s] First Set of Interrogatories and Request for Production to Packsaddle Development Corporation” dated March 22, 1996.

2:

The following discovery requests and answers were listed in Packsaddle’s Response to Intervenor’s [Robert Young] Interrogatories and Request for Production to Packsaddle Development Corporation dated March 22, 1996.

**COMMENTS AND ANNOTATIONS**

Text Box 1:

**TEXT BOXES**

Office of the Secretary

Service Date

April 10, 1996