(text box: 1)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-95-1ORDER NO.  26454 |

On January 24, 1996, Robert L. Young, Sr. (Young) filed a Petition for Reconsideration of final Order No. 26296 issued in this case on January 8, 1996 establishing rates and charges for water service provided by the Packsaddle Estates Water Company  (Packsaddle).  On January 26, 1996, Don Lingle and Susan Patla (Lingle/Patla), also filed a joint Petition for Reconsideration of Order No. 26296.  On February 23, 1996, the Commission issued Order No. 26339 granting both petitions for reconsideration on specific issues outlined in that Order.  On April 18-19, 1996, the Commission conducted a public hearing and technical hearing on the reconsideration issues.  This Order denies in part and grants in part the issues raised by reconsideration and reduces the monthly rate of $43 established by Order No. 26296 to $34.24.

BACKGROUND

In December 1994, Packsaddle notified its customers that water rates were going to be increased in February 1995 from $15 to $28 per month and again in May 1995 to $74 per month.  This notice was the catalyst that led to numerous calls to the Commission and a Petition from customers in January 1995, seeking an investigation into whether Packsaddle is subject to Commission regulation.

Packsaddle provides water service to 27 customers in the Packsaddle Creek Estate Subdivision near Tetonia, Idaho.  Only 27 of the 89 lots in the subdivision have been developed and connected to the water system at this time.  Many of the improved lots are summer or part-time second homes.  In Order No. 26077 issued in this case on June 30, 1995, the Commission found that Packsaddle is a public utility pursuant to Idaho Code §§ 61-125 and 61-129 and, consequently, subject to the Commission’s jurisdiction and the provisions of the Public Utilities Law.

On September 6, 1995, the Commission convened a hearing in Driggs, Idaho, for the purpose of collecting evidence to set rates and charges for water service provided by Packsaddle.  During the hearing, the attorneys for Packsaddle and the Intervenor, Packsaddle Estates Subdivision Water Users Association (Water Users) informed the Commission that the two parties were on the verge of completing an agreement to transfer the water system to the Water Users.  The two parties had not yet executed a written agreement, however, and indicated that there were minor issues to be resolved before execution.   Also at the hearing, Staff’s testimony was put into the record for the purpose of completing the record.  The attorneys for Packsaddle, Mr. Young and the Water Users stipulated on the record to waive the right to cross-examine Staff’s witnesses and to allow the  testimony to be used for rate setting purposes.  No other party offered testimony at the hearing.  In Order No. 26188, the Commission set a deadline of November 3, 1995, for the Water Users and Packsaddle to inform the Commission that the transfer had been completed.

The November 3 deadline passed and no signed agreement was submitted to the Commission.  Attorneys for both parties indicated that communication had broken down between Packsaddle and the Water Users and that they were unable to execute a written agreement.  On November 16, 1995, the Water Users filed a Motion for Hearing seeking to have the Commission rule on the reasonableness of the proposed agreement described at the evidentiary hearing in Driggs.  Packsaddle filed a response opposing the Motion.

On December 14, 1995, Staff filed a Motion to establish and implement rates for Packsaddle based upon the evidence it submitted at the hearing.  The Company filed a response concurring to the Motion.   No response was filed by the Water Users. On January 8, 1996, the Commission issued Order No. 26296, which denied the Water Users’ Motion, issued a Certificate of Public Convenience and Necessity and established rates for Packsaddle.

On January 24, 1996, Young filed a Petition for Reconsideration of Order No. 26296.  On January 26, 1996, Lingle/Patla also filed a joint Petition for Reconsideration of Order No. 26296.  On January 30, 1996, Packsaddle filed a response to Young’s Petition.  Packsaddle did not file a response to the Lingle/Patla Petition.  The Commission subsequently issued Order No. 26339 granting both petitions for reconsideration on specific issues outlined in that Order.  Finally, on April 18-19, 1996, the Commission conducted a public hearing and technical hearing on the reconsideration issues in Driggs, Idaho.

ISSUES ON RECONSIDERATION

Young and Lingle/Patla raise numerous issues asserting that the Commission’s Findings of Fact and Conclusions of Law contained in Order No. 26296 are erroneous and contrary to law.  Essentially, the Lingle/Patla Petition makes general assertions that the rates established for Packsaddle are too high in comparison to other water utilities.  The Young Petition is somewhat more specific in its objection to certain expense and capital investment items that were included in Packsaddle’s rates.  In Order No. 26339, the Commission granted reconsideration on the following issues:

1. Rehabilitation of Well No. 1.

In Order No. 26296, the Commission found that the rehabilitation of Well No. 1, including the new pump used in that well, the replacement of the pressure tank, and the replacement of the pressure pump, are replacement items which constitute capital investment properly included in the Company’s rate base. Order No. 26296 at p. 5.  Young requests reconsideration on this finding alleging that the replacement of this equipment was “incurred when an improperly drilled well collapsed and caused the motors and pumps to burn out.” Young Affidavit at 2.  He contends, therefore, that this item was improperly included in rate base.

2. Operating Expense.

In Order No. 26296, we included reasonable compensation for labor costs to maintain the system and a reasonable mileage allowance for the use of private vehicles to perform water system business as part of the operating costs in Packsaddle’s  revenue requirement. Order No. 26296at p. 6.  Young and Lingle/Patla maintain that the amount of annual operating expense approved by the Commission is excessive based on the number of customers (27) and the quality of the system.  Young Affidavit at 3.  Lingle/Patla Petition at 2.

3. Rate Design.

The Commission adopted Staff’s rate design of calculating the 27 customers connected to the water system for part-time or seasonal customers.  The 10 seasonal customers were equated to 7.5 full-time customers to equal a full-time equivalent of 24.5 customers in the rate design calculation.  Order No. 26296 at 7.  Young alleges there is an error in the calculation of full-time and seasonal customers in the rate design.  Young Affidavit at 3.

4. Estimated Expense vs. Actual Expense.

In calculating Packsaddle’s operating expense, Order No. 26296 adopted Staff’s estimate of anticipated expenses which did not represent actual expense incurred by Packsaddle. Order No. 26296 at p. 6.  The Order states “The amount seems high to us considering the number of customers and quality of the system.  It is, however, the only information available for our use in this record.”  Id.  Lingle/Patla assert the rates should be based upon actual expense rather than estimated expense and  state that they will submit evidence to supplement the record.  Lingle/Patla Petition at 1.

FINDINGS

In Order No. 26296, we found a rate base of $3,282.12, operating expenses of $12,258.13, and the resulting revenue requirement of $12,761.78 to be fair, just and reasonable.  We further found the rates designed to cover the revenue requirement were fair, just and reasonable. Given the nature of the proceedings and the additional evidence presented during the reconsideration hearing, we hereby make the following findings:

1.  Well No. 1 in Rate Base

When Packsaddle notified its customers that the water rates were going to be increased in February 1995 from $15 to $28 per month and again in May 1995 to $74 per month, the Company stated that the increased rates were needed to recover all back debts incurred against the water system.  Following its investigation, Staff determined that the rates were actually intended to recover the cost of the new Well No. 2, the pump in Well No. 1, the new pressure tank, and the new pressure pump.  In addition, the Company indicated that the rate was designed to provide for $500 per month to pay maintenance labor costs,  $174 per month for electricity, and to provide funds for unforeseen emergencies.

The Commission’s policy regarding a developer-installed water system is to assume that the developer recovers all of the initial investment in the system through the sale of lots.  This policy is based on two premises; either the water system was required by local officials before the subdivision was allowed, which means that the lots were unsalable absent the system, or the system was in place thereby increasing the value of the lots.  Consequently, the developer has no initial investment in the system upon which to earn a return and rates are based upon reasonable operating costs including compensation for the time spent managing and maintaining the system.  When major replacements of facilities are required due to age and failure, the replacement cost is treated as a new investment and a return is allowed.  IDAPA 31.36.01.103 (Rules for Small Water Companies).

We found in Order No. 26296 that Packsaddle’s original supply system and the transmission mains represent the initial investment assumed to have been recovered through the sale of the lots.  We further found that the rehabilitation of Well No. 1 and the new pump in that well, the replacement of the pressure tank and the replacement of the pressure pump, were replacement investments which constitute items included in the rate base.

There was substantial testimony regarding whether the rehabilitation of Well No. 1 should be included in rate base.  Tory Whitehead, an engineer who appeared on behalf of Lingle/Patla, testified that Well No. 1 had been abandoned. Tr. at p. 265.  He explained that the system was improperly designed, as built in 1972, and does not meet current engineering standards.  Rea Fullmer, an employee of Packsaddle,  testified that Well No. 1 was operational and in full use until July 1994 when the larger well, Well No. 2, was completed and the main source of water was switched to the second well.  Tr. at p.442.  She further testified, based on her experience as the operator of  the system, that there has been times when she switches the pumps over from Well No. 1 to Well No. 2 to maintain constant pressure to the customers.   Tr. at p. 442.

Randy Lobb, engineer for the Commission Staff, testified that a well pump typically has a life of about 20 years. He further opined that it was appropriate for Packsaddle to replace this pump and that the investment should be included in rate base.  Tr. at p. 421.  Lobb further notes that Well No. 1 was drilled in conjunction with Well No. 2 to provide the basic water supply to the system.  Tr. at p. 420.  He testified that the replacement of related plant for Well No. 1 was necessary for the completion of the entire system.  Tr. at p. 421.

Robert Smith, an accountant for the Commission who conducted the visual inspection of the system, testified that it was his understanding that “Well No. 1 is or has been available to be turned on at a moment’s notice as a standby unit in the event there is a failure in Well No. 2.”  Tr. at p. 380.

We decline to determine whether this system was improperly designed at the time it was built.  We previously found that the system, in its current configuration, is sufficient to supply water to the customers.  Accordingly, we issued Certificate of Public Convenience and Necessity No. 320 authorizing Packsaddle to operate as a public utility.  We do find, however, that the rehabilitation of Well No. 1, the new pump, the pressure tank and the pressure pump are replacement items that are useful to the entire system. Based on the evidence presented during the hearing, we find, therefore, that the inclusion of Well No. 1, the new pump in that well, replacement of the pressure tank and replacement of the pressure pump are properly included in rate base.

2.  Operating Expenses and Revenue Requirement

As noted, Packsaddle is entitled to recover, through rates, its reasonable operating costs.  These operating costs include not only material and supplies, but also depreciation expense, water testing expense, taxes (including corporate income taxes), electricity for pumping, reasonable compensation for labor costs to maintain the system, and administrative functions.  Because Packsaddle does not have a corporate vehicle, a reasonable mileage allowance for the use of private vehicles to perform water system business was also provided in Order No. 26296.  We authorized annual operating expenses totaling $12,258.13.  Because of a lack of reliable, historical data, this amount was based on Staff’s estimate of anticipated expenses rather than on actual amounts.

Based on the testimony and other evidence presented during the reconsideration hearing, we make the following findings concerning operating expenses.

a.Operation and Maintenance Expense.   During the hearing, several customers testified that the operation and maintenance expense adopted by the Commission was excessive; particularly when compared to other water systems around the state. See, e.g., Tr at p. 197.

It appears that there were numerous unusual maintenance problems that occurred in the past few years related to the replacement of the well and tanks and the drought condition.   Some of the customers testified that they experienced mud in their water and leaks near their houses.  One customer stated that about a year ago his water heater filled with mud and there was sediment in the water. Tr. at p. 162. Another testified that before the new pump was put into the well there were pressure problems severe enough to prohibit flushing toilets.  Tr. at p. 172.

Witness Tory Whitehead noted that the high level of maintenance expense was necessary given the condition of the system.  He testified that “it’s a poorly designed system that requires very little maintenance but much repair work.” Tr. at p. 290.

Packsaddle witness Fullmer testified that the hours she spends on maintenance vary from year to year.  Tr. at p. 433.   She explained in the past few years “man hours in locating the leaks sometimes have been excessive.”  Tr. at p. 434.  She further explained that she was not aware of the proper procedure for recording her time and documenting the maintenance hours until she began consulting with the Commission Staff. Tr. at p. 458.

Staff accountant Smith confirmed Ms. Fullmer’s characterization of the operation and maintenance expense.  He testified that Staff’s recommendation for this expense item took into account the physical location of the system, discussion with the owners of Packsaddle, and prior experience in evaluating other water systems. Tr. at pp. 394-345.  He further explained that the budget was based on estimates due to a lack of historical data. Tr. at p. 397.

 We find that the operation and maintenance expense adopted in Order No. 26296 was excessive.  After further consideration of  the testimony and evidence presented during the hearing on reconsideration, we find Staff’s estimate to be high and that 10 man hours per week at $10 per hour is adequate to cover the expenses for maintenance of the system.  This produces an annual operating expense of $5,200.00 as described in Attachment 1, attached and incorporated by reference.

b.Administrative Expense.  Young testified during the hearing that our adoption of one hour per customer per month at $8 per hour as a reasonable administrative expense was excessive given the average wage earned by workers in Teton County. Tr. at p. 323.  He also testified that based on the relatively small number of customers served by Packsaddle, it was not necessary to spend one hour per month per customer on administrative duties. Tr. at p. 325.  He further testified that a skilled secretary could earn approximately $6 to $7.50 per hour in the area, although he was unclear whether this included administrative or management responsibilities. Tr. at p. 325.

Staff accountant Smith explained during the hearing that Staff’s recommendation for administrative expense “has to do with mailing of the bills, getting the checks to the bank, making the deposits, going to the bank, paying the bills that are due, everything that is administrative overhead in operating a company.” Tr. at pp. 400-401.  Again he explained that Staff’s recommendation for operation expenses was based on an estimate because there were no historical data on which to base a budget. Tr. at p. 397.

 After further consideration, we find that the administrative expense adopted in Order No. 26296 is excessive.  Although there are no records to support what the Company’s actual expenses are, we recognize that the wages are slightly lower in Teton Valley compared to the average throughout the state.  See Young Exhibit 2. Based on the evidence presented at the hearing, therefore, we hereby reduce Packsaddle’s administrative expense to one-half hour per customer per month at $7 per hour for an operating expense annually of $1,134, as described in Attachment 1.  .

c.Vehicle Allowance.  During the hearing, customers testified that the inclusion of vehicle operating expense in the Company’s revenue requirement was unjustified. Witness Whitehead testified the vehicle allowance should be deleted from operation expenses altogether.  Tr. at pp. 299-300.  Young testified that the mileage allowance for the vehicle is excessive.  Tr. at p. 323.

We  reject the contention that no vehicle allowance is necessary. Many employees are provided a vehicle allowance when required to leave the work site with their own vehicle.  Given our decision to reduce Packsaddle’s maintenance expense to ten hours per week, however, we find that the allowance of three round-trips per week is excessive.  Accordingly, we hereby reduce the vehicle allowance to two round-trips per week at 20 miles per trip between Tetonia, the primary  place of business, and the service area at 26¢ per mile for a total of $540.80.

We also include one trip every two months to Rexburg to deliver water samples and to obtain supplies for Packsaddle that are not available in Tetonia.  Staff recommended deducting half of the costs of the trips to Rexburg on the assumption that the individuals derive some personal benefits from the trips. It is approximately 80 miles, round-trip, from Tetonia to Rexburg.  We find, therefore, that an allowance of 240 miles at 26¢ per mile, or $62.40 be provided.  The total mileage allowance, therefore, should be $603.20, as shown in Attachment 1, is fair, just and reasonable.

3.   Rate Design

Certain customers testified that there were more seasonal customers connected to the Packsaddle system than originally found in Commission Order No. 26296.  Young contends that there are actually more seasonal customers than were factored into the rate design.  Tr. at p. 222.  The Commission found in Order No. 26296 that there are currently 27 customers connected to the water system with a maximum potential of 89 customers.  Of the 27 current customers, 10 were estimated to be part-time or seasonal.  Staff computed these seasonal customers to be equivalent to 7.5 full-time customers and, therefore, based its rate design calculations on a total of 24.5 equivalent full-time customers.

Adopting Mr. Young’s contentions that there are more seasonal customers than we originally factored into the rate design, would cause an upward pressure on rates.  We do agree that there are probably more customers that are seasonal than originally recognized, however, we decline to make this adjustment because no better evidence of an alternative number was offered.  We find, therefore, that a rate design calculated using the above findings and spread over 24.5 equivalent full-time customers,  yielding an annual rate of $410 ($34/month) per year per customer, is fair, just and reasonable.

ULTIMATE FINDINGS OF FACT AND CONCLUSIONS OF LAW

Idaho Code §§ 61-301 and -307 require that the Commission establish just and reasonable rates for each utility.  We find, based upon the evidence presented at hearing, that a rate base of $3,282.12, an operating expense of $9,563.33, and the resulting revenue requirement of $10,066.98, with a flat monthly rate of $34.24 are fair, just and reasonable.  We further find the rates as set forth above are designed to recover the revenue requirement established and are fair, just, reasonable and nondiscriminatory and that the rates previously established by Order No. 26296 are hereby rendered null and void.

O R D E R

IT IS HEREBY ORDERED that Packsaddle file revised tariffs of rates and charges in compliance with the terms of this Order no later than thirty (30) days from the service date of this Order.  These rates are effective for service commencing three working days after the new tariffs are received by the Commission.

IT IS FURTHER ORDERED that Packsaddle file revised tariffs that incorporate the Commission rules and requirements as required by law in compliance with this Order.

THIS IS A FINAL ORDER ON RECONSIDERATION.  Any party aggrieved by this Order or other final or interlocutory Orders previously issued in this Case No. GNR-W-95-1 may appeal to the Supreme Court of Idaho pursuant to the Public Utilities Law and the Idaho Appellate Rules.  See Idaho Code § 61-627.

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

                                                             RALPH NELSON, PRESIDENT

                                                                                          MARSHA H. SMITH, COMMISSIONER

DENNIS S. HANSEN, COMMISSIONER

ATTEST:

Myrna J. Walters

Commission Secretary

V.D./O:GNR-W-95-1.sh7

**COMMENTS AND ANNOTATIONS**

Text Box 1:

**TEXT BOXES**

Office of the Secretary

Service Date

May 17, 1996