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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  NOTICE OF REHEARING  ORDER NO.  26339 |

On January 17, 1995, the Commission received a Petition requesting an investigation to determine whether the Packsaddle Development Company (Packsaddle, Company) is a public utility and, therefore, subject to Commission regulation.(footnote: 1)  In Order No. 26077, issued on June 30, 1995, the Commission concluded that Packsaddle is a public utility pursuant to Title 61 of the Idaho Code.  Following an evidentiary hearing conducted on September 6, 1995, the Commission granted Packsaddle a Certificate of Public Convenience and Necessity No. 320 to operate as a public utility. On January 8, 1996, the Commission issued Order No. 26296, establishing rates for Packsaddle.

On January 24, 1996, Robert L. Young, Sr. (Young), previously an intervenor in this case, filed a Petition for Reconsideration of Order No. 26296.  On January 26, 1996, Don Lingle and Susan Patla (Lingle/Patla), representing themselves as full-time customers of Packsaddle, also filed a joint Petition for Reconsideration of Order No. 26296 and requested a stay of the rates established in that Order.  On January 30, 1996, Packsaddle filed a response to Young’s Petition.  Packsaddle did not file a response to the Lingle/Patla Petition.  This Order grants both Petitions for Reconsideration by rehearing, but denies the request for stay of the established rates.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Idaho Code § 61-626 and Commission Rules 331-340 describe the procedures for Reconsideration of Commission Orders.  They state that any corporation, public utility, or interested person shall have the right to file a petition for reconsideration within 21 days from the date of the Order.  Petitions for Reconsideration must set forth the grounds why the petitioners contend the Order is unreasonable, unlawful, erroneous, or not in conformity with the law.  The petition must give a statement of the nature and quantity of evidence or argument the petitioner will offer if reconsideration is granted.  The petitioner must also state whether reconsideration is requested by evidentiary hearing, written brief, comments or interrogatories.  Rule 332 states that grounds for reconsideration or issues of  reconsideration that are not supported by specific explanation may be dismissed.

Rule 333 and Idaho Code § 61-626 further states that filing a petition does not excuse any person from complying with the original order, nor does it stay the enforcement of the rates.  The Commission may stay the effectiveness of any order by a subsequent order if asked for in the petition for reconsideration.

A. Petitions for Reconsideration

We find that both Young and Lingle/Patla have filed timely petitions for reconsideration.  Packsaddle’s response to Young’s petition was timely filed.  As the rules specify, any interested party may file a petition for reconsideration, we find that as water users of Packsaddle both Young and Lingle/Patla are interested parties and have proper standing for reconsideration.

Although both Petitions are  broadly worded, we find that they adequately describe those portions of Order No. 26296 that the Petitioners believe should be reconsidered and generally indicate the type of evidence that would be offered on rehearing.  We find, consequently, that they satisfy the requirements of Rules 331-340 and hereby grant reconsideration of those issues outlined above.

In its response to Young’s Petition, Packsaddle contends that Young is attempting to supplement the record stipulated to by the parties at the September 6, 1995 hearing and that the issues he raises are without foundation and should not be addressed unless the Commission “allows the record to be reopened.”  Response at p. 1.  Having found that there is good cause to reconsider the issues identified below by rehearing, the parties (including Packsaddle) are authorized to submit new evidence to support their positions according to the schedule adopted on page 6.  Accordingly, Packsaddle’s request to dismiss the petition for reconsideration is denied.

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.  We hereby grant reconsideration on the following issues.  All other issues raised in the two Petitions, either directly or indirectly, are hereby denied reconsideration.

1. Rehabilitation of Well No. 1 in Rate Base.

In Order No.  26296, we found that the rehabilitation of Well No. 1, including the new pump 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.  Id. at 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 the revenue requirement.  Id. at 6.  Young and Lingle/Patla maintain that annual operating expenses are 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 total of 24.5 full-time customers in its 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.  Id.  at 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.

B. Other Issues Raised by Petitioners

1. Rates of Other Utility Companies

Both petitioners raised several issues that will not be considered on rehearing. Both petitions raise the issue of rates for other utility companies to compare them to Packsaddle rates. Surveying what other utility companies charge for rates is not useful in determining rates and rate base for Packsaddle.  A utility’s rates are derived from the unique facts particular to it using established rules and ratemaking procedures.  See e.g., Commission Rules for Small Water Company, IDAPA 31.36.01.  We deny rehearing on this issue.

2. Return on equity

Both Petitioners raised the issue of the appropriate return on equity used in Commission Order No. 26296.  In rate cases involving larger utilities, the cost of capital issue can consume voluminous pages of testimony based on the opinions of experts in this field.  Corporations who trade stock publicly in the financial marketplace lend themselves to detailed analysis using numerous analytical tolls and data bases.  The Commission, in selecting an appropriate rate of return for a utility, must use its expertise to judge the merits of each witness’ analysis and opinion.

Small, closely held water companies do not lend themselves to this type of analysis.  Market data and data bases of comparable companies are not available to perform a detailed analysis. The Commission must exercise its judgment based upon its knowledge of the utility capital markets taking into consideration the relative financial risks associated with the size and nature of the company being considered.  We find that our decision in this case to grant a 12% return on the rate base of $3,282.12 is reasonable.  We deny rehearing on this issue.

3. Certificate of Public Convenience and Necessity

Young also raises the issue of whether the Commission should have issued a Certificate of Public Convenience and Necessity.  Young alleges that the Commission failed to consider other alternatives such as the water users’ desire to purchase the system.  The record  shows that there is no other utility presently serving the Packsaddle subdivision and the mere willingness of an association to purchase a utility does not negate the fact that Packsaddle is operating as a public utility according to Idaho Code § 61-528. We deny rehearing on this issue.

4. Stay of Rates

Lingle/Patla has also requested a stay of the established rates in Order No. 26296.  They urge us to reimpose the interim rates of Order No. 26077.  We deny this request.  Order No.  26296 was based on the stipulated record before us.  The interim rates established in Order No. 26077, issued in July 1995, were temporarily set pending the evidentiary hearing to establish an actual record on which to set rates. There has not yet been substantial, competent evidence formally presented to us on which to base any other rate than that now in effect.  We have granted this rehearing and will allow the parties to submit further evidence.  The current rates shall remain in effect pending rehearing.

NOTICE OF REHEARING

YOU ARE HEREBY NOTIFIED that the Commission shall convene an evidentiary rehearing in this matter to commence at 7:00 P.M. ON APRIL 18, 1996, AT THE TETON WEST MOTOR INN, 476 MAIN STREET, DRIGGS, IDAHO and shall continue as necessary on Friday, April 19, 1996 at 9:00 a.m.   The Commission shall consolidate the hearing on the Petitions for Reconsideration.

YOU ARE FURTHER NOTIFIED that once the Commission grants reconsideration, Idaho Code § 61-626 requires that the rehearing be completed within 13 weeks after the date for filing Petitions for Reconsideration.  Given this requirement, the Commission finds that the schedule set out below is reasonable and allows the Staff and other intervenors to prepare for the rehearing.  Accordingly, parties wishing to participate in the reconsideration shall adhere to the schedule set out below.

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| Date | Activity |
| March 15, 1996 | Deadline for filing interrogatories. |
| March 22, 1996 | Deadline for response to interrogatories. |
| March 29, 1996 | Deadline for Parties to submit prefiled direct testimony. |
| April 5, 1996 | Rebuttal testimony from Parties. |
| April 18, 1996 | Rehearing in Driggs, Idaho. |

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 the dates specified above.  The prepared testimony and exhibits must conform to the requirements of Rules 266 through 267 of the Commission’s Rules of Procedure, IDAPA 31.01.01.266-267.

YOU ARE FURTHER NOTIFIED that all hearings in this matter will be held in facilities meeting the accessibility requirements of the Americans with Disabilities Act.  Persons needing the help of a sign language interpreter or other assistance of the kind that the Commission is obligated to provide under the Americans with Disabilities Act in order to participate in or to understand the testimony and argument at a public hearing may ask the Commission to provide a sign language interpreter or other assistance at the hearing.  The request for assistance must be received at least five (5) working days before the hearing by contacting the Commission Secretary at:

IDAHO PUBLIC UTILITIES COMMISSION

PO BOX 83720

BOISE, IDAHO  83720-0074

(208) 334-0338  (TELEPHONE)

(208) 334-3151  (TEXT TELEPHONE)

(208) 334-3762  (FAX)

YOU ARE FURTHER NOTIFIED that all proceedings in this matter will be conducted pursuant to Commission Rules of Procedures, IDAPA 31.01.01.000 et seq.

YOU ARE FURTHER NOTIFIED that the Commission has jurisdiction over this matter pursuant to Title 61 of the Idaho Code.

O R D E R

IT IS HEREBY ORDERED that Young and Lingle/Patla’s Petitions for Reconsideration are granted in part and denied in part as set forth herein.

IT IS FURTHER ORDERED that Lingle/Patla’s Motion for Stay of the Rates set in Order No. 26296 is denied.

IT IS FURTHER ORDERED that Packsaddle’s request to dismiss Young’s Petition is denied.

IT IS FURTHER ORDERED that Packsaddle, Young, Lingle/Patla and Commission Staff are designated as parties for this rehearing.  The parties participating in this matter must adhere to the schedule outlined in the body of this Order.

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

                                                            RALPH NELSON, PRESIDENT

                                                                                         MARSHA H. SMITH, COMMISSIONER

DENNIS S. HANSEN, COMMISSIONER

ATTEST:

Myrna J. Walters

Commission Secretary

vld/O:GNR-W-95-1.sh2

**FOOTNOTES**

1:

Packsaddle is a small water company that provides service to approximately 30 customers in the Packsaddle Creek Estates Subdivision near Tetonia, Idaho.

**COMMENTS AND ANNOTATIONS**

Text Box 1:

**TEXT BOXES**

Office of the Secretary

Service Date

February 23, 1996