DECISION MEMORANDUM

TO:COMMISSIONER NELSON

COMMISSIONER SMITH

COMMISSIONER HANSEN

MYRNA WALTERS

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DAVID SCHUNKE

DON HOWELL

FROM:SUSAN HAMLIN

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ROSE SCHULTE

WORKING FILE

DATE:FEBRUARY 2, 1996

RE:PETITIONS FOR RECONSIDERATION FOR PACKSADDLE            CASE NO. GNR-W-95-1

On January 8, 1996, the Commission granted Packsaddle Development Company (Packsaddle) a Certificate of Public Convenience and Necessity to operate as a public utility and issued Order No. 26296 establishing rates.  On January 24, 1996, Robert L. Young, Sr. (Young), through his attorney of record, Kipp Manwaring, filed a Petition for Reconsideration.  On January 26, 1996, Don Lingle and Susan Patla (Lingle/Patla), representing themselves as full-time customers of Packsaddle, also filed a Petition for Reconsideration of Order No. 26296 and requested a stay of the rates established in that Order.  On January 30, 1996, Packsaddle, through its attorney of record,  filed a response to Young’s Petition.  Packsaddle did not file a response to Lingle/Patla’s Petition.

YOUNG’S PETITION

Young requests reconsideration of Order no. 26296 and Certificate of Public Convenience and Necessity No. 320 by an evidentiary hearing.  The issues alleged in Young’s petition are as follows:

1.Young alleges that the rate base allowance composed of a new pump in well No. 1, a new pressure tank and a new pressure pump should be considered contributed capital investment under Commission Rule 103 (IDAPA 31.36.101) and excluded from rate base.  In support of this position, Young attests that the replacement of this equipment was “incurred when an improperly drilled well collapsed and caused the motors and pumps to burn out.” Young’s Affidavit at p. 2.

2.Young challenges the issuance of the Certificate of Public Convenience and Necessity. He alleges that the Commission did not give proper consideration of the public need of this water utility or for the availability of alternative service, and claims that the water users are prepared to purchase the system.  In support of this petition he offers his own testimony in the attached affidavit.  Young’s Affidavit at p. 2.

3.Young claims that the Commission erred in the calculation of the  number of full-time and seasonal customers on the system.  In support of this allegation, he references his own affidavit. Young’s Affidavit at p. 1.

4.Young challenges the 12% return on equity allowed by the Commission and the operating expenses the Commission used to determine the revenue requirement.  In support of these challenges, he offers his affidavit and an attachment to that affidavit which is an economic profile of Teton County furnished by the University of Wyoming. Young’s Affidavit at p. 2 and attachment.

5.Finally, Young specifically challenges labor rates, hours and travel expense allowances, characterizing them as exorbitant and unrealistic.  In support of these challenges he offers his affidavit. Young’s Affidavit at p. 3.

LINGLE/PATLA’S PETITION

The Lingle/Patla petition for reconsideration they request an evidentiary hearing and a stay of the rates established in Order No. 26296. They specifically ask to have the rates left at $28/month which was set in interim Order No. 26077, for “another 12 months until Packsaddle accumulates for the PUC a year of well-kept records documenting operating costs and maintenance hours for the systems in its presence conditions.” Lingle/Patla petition at p. 1.

Lingle/Patla specific grounds for reconsideration are as follows:

1.Lingle/Patla allege that since Order No. 26296 states that the annual operating expenses are high considering the number of customers and quality of the system, and that the estimated anticipated expense does not represent actual expenses incurred by Packsaddle, these statements do not justify rates that are fair, just and reasonable.  Lingle/Patla want the rates based on actual rates expenses, rather than estimated expenses.

2.Lingle/Patla allege that the monthly water rate of $43 is excessive and much higher than all systems of comparable size in Teton County, especially being that Teton County is one of the lowest per capita income counties in the state of Idaho.

3.Lingle/Patla allege that the monthly water rate of $43 is higher than comparable systems throughout the state of Idaho and exceeds the rates set for systems which are much larger and more complex.

4.Lingle/Patla allege that the time estimated for maintenance labor (12 hours/week) far exceeds what is required for this type of system given the Order’s conclusion that “the system’s water supply is practically new and should serve for a number of years without major expenses.”

5.Lingle/Patla allege that during the earlier stages of Commission Staff’s investigation, Staff gave a guess of what the rates might be. Lingle/Patla claim that rates that were actually recommended by Staff and granted by Order No. 26296 were 54% higher then the originally estimated by Staff. They claim they want an opportunity to investigate the higher recommended rate, especially since this estimate did not represent actual expenses incurred by Packsaddle.

6.Lingle/Patla allege that the 12% return on rate base appears to exceed what is normal for a system of this size. They allege that utility companies cited as examples in the Order serve a much larger customer base and have higher relative risk considering total capital expenditures and equipment.

Lingle/Patla indicate that they will provide evidence for the points enumerated above based on research they have done in Teton County, Idaho and are currently collecting evidence from PUC Staff and Mr. Manwaring, their former attorney as the Water Users Association, to substantiate each point.

PACKSADDLE’S RESPONSE TO YOUNG’S PETITION

Packsaddle filed a response to Young’s Petition for Reconsideration.   Packsaddle claims that Young is trying to supplement the record which was already stipulated to by Young’s attorney at the September 6, 1995, hearing.  Packsaddle also claims that Young’s allegations are altogether without foundation.  Packsaddle assures the Commission that if the record were to be reopened, that additional evidence would only support the record as already established.  Packsaddle did not file a response to Lingle/Patla’s petition. It is unclear from Lingle/Patla’s petition whether Packsaddle received a copy as there was no certificate of service.

RULES OF LAW

Idaho Code § 61-626 and Commission Rules No. 331-340, IDAPA 31.01.01.331-340, describes the procedure for Reconsideration of Commission Orders.  It states 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 they request reconsideration 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.

Within 28 days after the filing of  the petition the Commission must issue an Order determining whether to grant the petition. If reconsideration is granted, the matter must be reheard, or written briefs, comments, or interrogatories must be filed within 13 weeks after the date of the filing of the petition.  The Commission may grant reconsideration upon petitions of any interested party.  Reconsideration by rehearing is conducted in accordance with the procedures at other hearings, except that parties whose petitions are granted are treated as complainants or petitioners.

Rule 333 and Idaho Code § 61-626 state 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.

STAFF’S RECOMMENDATION

Based on Commission rules and the Idaho Code, 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, as water users of Packsaddle both Young and Lingle/Patla are interested parties and have proper standing for reconsideration.

Young’s petition lays out specific grounds for reconsideration and cites Young’s affidavit and the Study by the University of Wyoming for support of the allegations. Although the quantity of evidence is small, it is Staff’s opinion that this satisfied the requirements of Commission rules and the Idaho Code of specifically giving the nature of the argument  and evidence to support the allegation for the petition for  reconsideration.

Lingle/Patla also lays out the specific grounds for reconsideration. They state they will offer evidence of research they have done in Tetonia County and are currently collecting evidence from the PUC and their previous attorney.  They have satisfied part of the requirement of Rule 331 by specifically listing the grounds for reconsideration.  However, it is questionable if they have met the requirement of a “statement of the nature and quantity of evidence or argument” they will offer.  As Lingle/Patla have listed no specific evidence it could be viewed that they have not given a statement of the nature and quantity of evidence. On the other hand, it could also be argued that they have given a “statement of ... [the] argument” they will offer and that this is sufficient for the rules.

Packsaddle response to Young’s petition claims that they are attempting to supplement the record stipulated to by the parties at the September 6, 1995 hearing.

It is Staff’s opinion that Order No. 26296 was accurately based on the record before the Commission. Staff  notes all parties had adequate opportunity to review the record, cross examine the witnesses and submit testimony in support of their position prior to issuance of Order No. 26296.   Nevertheless, Staff stands ready to go forward with a rehearing should the Commission grant reconsideration.

COMMISSION DECISION

1.Does the Commission wish to grant the Petition for Reconsideration of Order No. 26296 and Certificate No. 320 filed by Young?

2.Does the Commission wish to grant the Petition for Reconsideration of Order No. 26296 filed by Lingle/Patla?  The request for stay of rates?

3.Does the Commission wish to set this matter for rehearing? Boise, Driggs, or Elsewhere?

4.Does the Commission wish to deny all requests for reconsideration?

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Susan Hamlin

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