

Decision No. R22-0465-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 22AL-0192W

IN THE MATTER OF THE ADVICE LETTER NO. 8 FILED BY DALLAS CREEK WATER COMPANY TO INCREASE UTILITY RATES AND FEES, TO BECOME EFFECTIVE JUNE 1, 2022.

**INTERIM DECISION OF
ADMINISTRATIVE LAW JUDGE
G. HARRIS ADAMS
GRANTING MOTION, CONSTRUING FILINGS,
AND CONDITIONALLY GRANTING INTERVENTIONS**

Mailed Date: August 4, 2022

I. STATEMENT

A. Background

1. On April 29, 2022, Dallas Creek Water Company (Dallas Creek) filed Advice Letter No. 8.

2. By Decision No. C22-0332, issued May 27, 2022, the Commission suspended the effective date of tariffs, referred this matter to an administrative law judge, and established notice and an intervention period.

3. By Decision No. R22-0407-I, issued July 7, 2022, the undersigned Administrative Law Judge (ALJ) addressed the pending “Memorandum of Intervention” titled “Comment on Colorado PUC Proceeding No. 22AL-0192W” filed on June 24, 2022, and representation requirements. As addressed more thoroughly therein, it was ordered that, no later than 5:00 p.m. on July 27, 2022, Jacob Torrey must make a filing demonstrating a basis of personal interest in this proceeding if he wishes to be a party to the proceeding individually. Further, it was ordered that, to later than 5:00 p.m. on July 27, 2022, Loghill Village Home and Property Owners

Association (Loghill), Fisher Canyon South Property Owners Association (Fisher), Fairway Pines Estate Owners Association(Fairway)(collectively, the Associations), must cause counsel to file an entry of appearance on their behalf, or establish that they are eligible to be represented by a non-attorney under Rule 1201, 4 Code of Colorado Regulations 723-1.

4. By Decision No. R22-0408-I, issued July 7, 2022, the ALJ scheduled a remote prehearing conference, and required parties to confer and Dallas Creek to file a report regarding the conferral.

5. By Decision No. R22-0417-I, issued July 18, 2022, the undersigned ALJ further suspended the effective date of tariff sheets, established procedures, scheduled a hearing, and vacated the prehearing conference.

B. Intervention

6. On June 24, 2022, a “Memorandum of Intervention” titled “Comment on Colorado PUC Proceeding No. 22AL-0192W” was filed. In part, the filing states: “the home, property and estate owners’ associations of Loghill Village, Fisher Canyon South, and Fairway Pines, ... would like to ... register as a party to these proceedings.” The filing was submitted through the Commission’s E-Filing System by Jacob Torrey individually, only indicating a representation capacity as “President, LHVH&POA.” Although technically filed personally, it appears to have intended to be filed by Mr. Torrey on behalf of all the Associations.

7. On July 27, 2022, an Entry of Appearance was filed through the Commission’s E-Filing system by Jacob Torrey. However, upon review of the image of the document filed, it appears to be an attempt to enter an appearance by Christopher G. McAnany, Esq. and Scott D. Goebel, Esq. on behalf of the Associations.

8. On August 3, 2022, a Supplement to Intervention Notice (Supplement) was filed through the Commission's E-Filing system by Jacob Torrey. However, upon review of the image of the document filed, it appears to be an attempt to intervene as the Associations, through Counsel. The Supplement states, in part:

As of this filing no party has filed any objection to the party status of Loghill, Fairway, or Fisher, and the time to do so appears to have expired.¹

¹ Counsel for Dallas Creek informs the undersigned that it will take no position on the proposed intervention.

9. Rule 1401(c) of the Commission's Rules of Practice and Procedure, 4 *Code of Colorado Regulations* 723-1 provides, in pertinent part, regarding permissive intervention:

A motion to permissively intervene shall state the specific grounds relied upon for intervention; the claim or defense within the scope of the Commission's jurisdiction on which the requested intervention is based, including the specific interest that justifies intervention; and why the filer is positioned to represent that interest in a manner that will advance the just resolution of the proceeding. The motion must demonstrate that the subject proceeding may substantially affect the pecuniary or tangible interests of the movant (or those it may represent) and that the movant's interests would not otherwise be adequately represented. ... The Commission will consider these factors in determining whether permissive intervention should be granted. Subjective, policy, or academic interest in a proceeding is not a sufficient basis to intervene. ...

10. The Associations argue they have standing to institute, participate in, or intervene in judicial or administrative proceedings in which its members may have a stake, or which concern the common interest community, citing C.R.S. § 38-33.3-302(1)(d). Although standing is not technically required to participate in Commission proceedings, the Associations cite to *CO2 Committee, Inc. v. Montezuma County*, 491 P.3d 516 ¶ 27 (Colo. App. 2021) and demonstrate that they are acting on behalf of members who could otherwise participate in this proceeding, that their interests are germane to the Associations' purpose; and nothing requires participation of individual homeowners. The Associations are each non-profit home-owners associations comprised of persons owning real property in respective subdivisions, each of which

is located with the service territory of Dallas Creek. Addressed in more detail in the Supplement, the Associations administer protective covenants for their respective subdivisions, and has an interest in preserving and enhancing property values, common elements, and community attributes for its members.

11. No response was filed to any motion referenced above.

12. Finally, on August 2, 2022, the Unopposed Motion for Clarification and Waiver of Response Time was filed by Trial Staff of the Colorado Public Utilities Commission (Staff). In light of the lack of ruling on pending matters, Staff seeks to clarify the parties to the proceeding. Staff's request being unopposed, a waiver of response time is requested.

C. Discussion

13. All pending filings will be construed and addressed. However, an opportunity will be provided for Staff, the Associations and their counsel, and Mr. Torrey reject the interpretation thereof which will result in vacating the relief otherwise granted herein.

14. Only Mr. Torrey has registered in the Commission's E-Filing System and made filings. He does not intend to personally intervene as a party to the proceeding.

15. Scott D. Goebel, Esq. recently registered in the Commission's E-Filing System, but has made no filings in this proceeding.

16. The Associations intend to intervene as parties to this proceeding.

17. Christopher G. McAnany, Esq. and Scott D. Goebel, Esq. intend to enter an appearance in this proceeding on behalf of the Associations.

18. Christopher G. McAnany, Esq., Scott D. Goebel, Esq., and each of the Associations each authorized Mr. Torrey to make filings with attachments including the images

of Counsel's signature and request that such images be accepted by the Commission as filings on behalf of the Associations.

19. Christopher G. McAnany, Esq., Scott D. Goebel, Esq., and each of the Associations each authorized Mr. Torrey to accept service of process for past filings in this Proceeding through the Commission's E-Filing System.

20. Prospectively, service may be had through the Commission's E-Filing System in this proceeding for all parties. Scott D. Goebel, Esq., is designated, and has agreed, to accept service on behalf of Christopher G. McAnany, Esq., Loghill, Fairway, and Fisher.

21. Mr. Torrey is designated, and has agreed, to accept service on behalf of Christopher G. McAnany, Esq., Scott D. Goebel, Esq., and each of the Associations in this proceeding for all past filings in this proceeding and this Decision.

22. Based upon, and conditioned upon, the construed filings, the Commission's Rules of Practice and Procedure, 4 CCR 723-1, will be modified to the extent necessary to accept past and future filings and service for this proceeding only in the manner service has been provided to date and for Scott D. Goebel, Esq. to file future filings in the manner that Mr. Torrey previously filed the Entry of Appearance on July 27, 2022 and the Supplement filed on August 3, 2022 (i.e. future filings will appear in the Commission's E-Filing System as having been filed on behalf of Mr. Goebel personally; however, they will be filed on behalf of the Associations pursuant to this Decision).

23. Based upon good cause shown for the unopposed requests, it is found that a sufficient showing has been demonstrated that this proceeding may substantially affect the pecuniary or tangible interests of those requesting intervention that would not otherwise be adequately represented. The requests for permissive intervention by the Associations will be

granted. The Associations are represented by Christopher G. McAnany, Esq. and Scott D. Goebel, Esq.

24. Should Staff, the Associations, Mr. Torrey, Mr. McAnany or Mr. Goebel disagree with such construction and interpretation, an objection should be filed within seven days of the date of this Interim Decision.¹

II. ORDER

A. It Is Ordered That:

1. Response time to the Unopposed Motion for Clarification and Waiver of Response Time filed by Trial Staff of the Colorado Public Utilities Commission (Staff) on August 2, 2022, is waived and the request is granted consistent with the discussion above.

2. Loghill Village Home and Property Owners Association (Loghill), Fairway Pines Estate Owners Association, Inc. (Fairway), and Fisher Canyon South Property Owners Association (Fisher)(collectively, the Associations) are granted intervenor status in this proceeding.

3. Christopher G. McAnany, Esq. and Scott D. Goebel, Esq. are counsel of record for the Associations.

4. Christopher G. McAnany, Esq. and Scott D. Goebel, Esq. are ordered to forthwith provide a copy of this Decision to the respective presidents of Loghill, Fairway, and Fisher.

5. Filings may be made in this proceeding by the Associations and their counsel consistent with the discussion above for purposes of this proceeding only.

¹ Consent to such construction and interpretation does not prohibit any of them from properly implementing prospective changes affecting such construction and interpretation.

6. Service upon the Associations and their counsel may be made consistent with the discussion above for purposes of this proceeding only or by other permissible means afforded by Commission rules.

7. The Commission's Rules of Practice and Procedure are waived to the extent necessary to accept past filings and to permit filings and service in this proceeding only, consistent with the discussion above.

8. Staff, Loghill, Fairway, Fisher, Jacob Torrey, Christopher G. McAnany, Esq. or Scott D. Goebel, Esq. may file an objection to the construction and interpretation in Paragraphs 14 through 21 above within seven days of the date of this Decision. If such an objection is filed, matters construed will be reconsidered and further orders will be issued based thereupon.

9. This Decision is effective immediately.

(S E A L)



ATTEST: A TRUE COPY

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

G. HARRIS ADAMS

Administrative Law Judge