

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of the Request) Docket No.
of Sherwood Water Company) 09-075-01
for Approval of a Rate)
Increase.) Administrative Law
) Judge:
) Ruben Arredondo

TRANSCRIPT OF HEARING PROCEEDINGS

TAKEN AT: Public Service Commission
160 East 300 South
Salt Lake City, Utah

DATE: March 30, 2010

TIME: 10:00 a.m.

REPORTED BY: Kelly L. Wilburn, CSR, RPR

(March 30, 2010 - Sherwood Water - 09-075-01)

1 APPEARANCES

2 For the Division:

3 PATRICIA E. SCHMID, ESQ.
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7 For the Company:

8 Scott Johnson
9 Peggey Bryner

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11 WITNESSES

12 MARK ALAN LONG Page
13 Direct by Ms. Schmid 5

14 -oOo-

15 PUBLIC WITNESSES

16 NAME Page
17 Meriem Robins 30
18 Roy Peterson 39

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EXHIBITS		
No.	Description	Page
3	DPU 1.0	8
4	Memorandum In the Matter of the Request of Sherwood Company for Approval of a Rate Increase, with Exhibits 1.1 through 1.8	

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(The previous exhibits and related testimony were prefiled and are part of the PSC record and filed at the Commission.)

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EXHIBITS, CONTINUED		
No.	Description	Page
11	DPU 1.9	8
12	Customer Impact	

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1 MARCH 30, 2010 10:00 A.M.

2 P R O C E E D I N G S

3 THE COURT: Okay, we're here to -- this is
4 the Hearing in the Matter of The Request of Sherwood
5 Water Company for the -- we're going to start now,
6 ladies and gentlemen, thank you -- Request of Sherwood
7 Water Company For Approval of a Rate Increase. Docket
8 No. 09-05-01 (sic.)

9 Let's go ahead and take appearances,
10 beginning with the Division, please.

11 MS. SCHMID: Good morning. Patricia E.
12 Schmid with the Attorney General's Office on behalf of
13 the Division of Public Utilities.

14 THE COURT: Thank you.

15 MS. SCHMID: And with me is Mr. Mark Long
16 with the Division of Public Utilities.

17 THE COURT: Thank you.

18 And then I assume, sir, you're with the
19 Company; is that correct?

20 MR. JOHNSON: Yes. I'm Scott Johnson. I'm
21 Mark Johnson's son.

22 THE COURT: Okay.

23 MR. JOHNSON: Mark Johnson is -- he was the
24 owner and then he passed away about 15 months ago.

25 THE COURT: Okay. And what's your position

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1 with the Company?

2 MR. JOHNSON: I'm the operator and manager of
3 the water system.

4 THE COURT: Okay, thank you.

5 And ma'am?

6 MS. BRYNER: I'm Peggey Bryner and I'm the
7 secretary/treasurer of the Company.

8 THE COURT REPORTER: What was your last name
9 again?

10 MR. LONG: B-r-y-n-e-r.

11 MS. BRYNER: Peggey Bryner.

12 THE COURT: All right, thank you.

13 Then let's go ahead and begin with the
14 Division first. Mr. Long, if you could raise your
15 right hand for me.

16 (Mr. Long was sworn.)

17 THE COURT: All right, thank you. Go ahead.

18 MARK A. LONG,

19 called as a witness, having been duly sworn,

20 was examined and testified as follows:

21 DIRECT EXAMINATION

22 BY MS. SCHMID:

23 Q. Good morning.

24 A. Morning.

25 Q. Could you please state your name, by whom you

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1 are employed, your position, and your business
2 address?

3 A. Yes. My name is Mark Alan Long, A-l-a-n.
4 I'm employed by the Division of Public Utilities as a
5 utility analyst. And the address is 160 East 300
6 South, Heber M. Wells Building, Salt Lake, 84114.

7 Q. Thank you. Have you been involved in the
8 Sherwood rate case before the Commission?

9 A. Yes, I have.

10 Q. And you've participated on behalf of the
11 Division in this process, correct?

12 A. That's correct.

13 Q. Do you -- is -- did you cause to be filed a
14 memorandum called: In the Re -- "In the Matter of the
15 Request of Sherwood Company for Approval of a Rate
16 Increase," dated February 22, 2010, consisting of nine
17 pages of narrative, with Exhibits through 1.8?

18 A. Yes, I did.

19 Q. Do you have any changes or corrections to
20 that filing that you would like to make?

21 A. Yes.

22 Q. Okay. Can you wait just one moment and I'll
23 pass out a couple of copies.

24 (Pause.)

25 Q. (By Ms. Schmid) Okay Mr. Long, turning to

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1 this filed memorandum, which has been marked
2 Exhibit 1.0 with its attached exhibits, could you
3 please describe the corrections to this?

4 A. Yes. Exhibit 1.9 was added. And it's
5 titled: "Customer Impact."

6 Q. And that consists of one page of narrative,
7 with an associated table?

8 A. That's correct.

9 Q. Okay. Do you have any other changes or
10 additions to the memorandum?

11 A. Yes, I have just a couple quick housekeeping
12 items to take care of. The first one is on
13 Exhibit 1.0, page 4, Item No. 2.

14 Q. What is the title of Item No. 2, please? Is
15 it: "Services - Billing, Accounting, Office"?

16 A. That's correct.

17 Q. Please describe your correction.

18 A. The very last sentence, it says:

19 "Based on the number of hours spent
20 last year in performing the office
21 duties, 30 hours per week is a
22 conservative time estimate."

23 That should read: "30 hours per month."

24 Q. Thank you. Do you have any other changes?

25 A. Yes. On, on Exhibit 1.0, page 8.

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1 Q. And so we're all on the same place --

2 A. Maybe it's page --

3 Q. -- is this the table, is this the table
4 entitled: "Rate changes"?

5 A. Yes. And actually it shows Page 7. Well no,
6 I'm sorry. It is page -- it is on --

7 Q. It's on page 7 and page 8?

8 A. Right. And on page 8, in the chart there it
9 has: "Transfer of ownership fee." I had a typo and
10 put that as 500. That really should be \$50.

11 Q. Thank you. Do you have any other changes or
12 corrections?

13 A. Not at this time.

14 Q. Thank you.

15 MS. SCHMID: So with that the Division
16 requests that DPU Exhibit 1.0, which would be the
17 February 22nd Memorandum, with its addition --
18 additional Exhibit 1.9, be admitted.

19 THE COURT: Okay. We'll admit the Division's
20 recommendation, and also the amended exhibit, which is
21 marked as Exhibit 1.9.

22 (Exhibit Nos. DPU 1.0 through 1.9 were
23 admitted.)

24 THE COURT: Can you also make sure that this
25 Exhibit 1.9 is filed today with the Commission,

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1 please?

2 THE WITNESS: Yes.

3 THE COURT: Thank you.

4 Q. (By Ms. Schmid) What is the purpose of your
5 testimony today?

6 A. Purpose of my testimony today is to provide a
7 brief summary of the Division's analysis and
8 recommendation in response to the request by Sherwood
9 Water for a rate increase in order to cover increased
10 operating expenses and to earn an adequate rate of
11 return to cover their cost of debt.

12 Q. Do you have a brief summary that you would
13 like to present today?

14 A. Yes, I do.

15 Q. Please proceed.

16 A. Okay. First of all I'll give you a little
17 background on Sherwood Water. They're located
18 approximately two and one-half miles west of Delta,
19 Utah, on the Gunnison Bend Reservoir.

20 The subdivision consists of a mixture of
21 permanent structures, trailers, and mobile homes,
22 which include full-time residents as well as seasonal
23 users.

24 On March 31, 1983, the Commission granted
25 Sherwood a Certificate of Convenience and Necessity

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1 and approved its tariff. Sherwood Water was owned and
2 operated by Mrs. Flora Wood until July 1st, '98, at
3 which time Mark Johnson purchased the Company and
4 operated it as its president until he passed away on
5 December 31, 2008.

6 Mark Johnson's wife, Beth Johnson, became the
7 president, with each of their six children becoming
8 vice presidents. One of their six children, Mr. Scott
9 Johnson, is also the operations manager for the water
10 company.

11 In addition to being president of Sherwood
12 Water Beth Johnson is also the president of Mark's
13 Backhoe Service, which is now also ran by Mr. Scott
14 Johnson.

15 Since Mark Johnson purchased Sherwood in '98,
16 Mark's Backhoe Service regularly paid for many of
17 Sherwood's expenses. Additionally, Mark's Backhoe
18 donated many hours of labor annually to Sherwood
19 Water.

20 I'd like to make mention that during the
21 audit the Division worked primarily with Peggey Bryner
22 and Breanne Johnson, who ran the office and the
23 day-to-day business transactions. The Division would
24 like to make mention that they were very helpful
25 during our analysis, and eager to learn more about the

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1 accounting requirements and office management of
2 Sherwood.

3 When we initially started our analysis
4 Sherwood and Mark's Backhoe expenses were
5 intermingled, so in order to obtain an accurate
6 accounting of Sherwood's expenses the Division
7 requested Ms. Peggey Bryner to go back through the
8 records of Sherwood and Mark's Backhoe for 2009 and
9 assign the expenses to the appropriate company.

10 An accurate accounting of the expenses,
11 reviewed by the Division, showed a loss of over
12 \$40,000 for Sherwood Water in 2009. Using the expense
13 figures for 2009, and after many adjustments, the
14 expenses were projected for 2010 to obtain rates that
15 covered Sherwood expenses and their cost of debt.

16 A few of the major expenses and adjustments
17 that we would like to make mention of here are as
18 follows:

19 The first one is on Exhibit 1.2. If you'd
20 like to turn to that. Then it's on line 14.
21 Basically in 2006 a new 136,000-gallon water storage
22 system was built to provide adequate water supply to
23 replace other obsolete tanks.

24 Mark's Backhoe built and financed the new
25 water tank. The documented expenses associated with

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1 the construction came to \$156,354.

2 Division review of the financial transactions
3 regarding the tank revealed that additional
4 significant labor and materials were donated by Mark's
5 Backhoe, although an exact amount could not be
6 determined, and therefore not considered in the rate
7 base in this case.

8 In 2007 Mark's Backhoe financed the amount of
9 136,000 which was still owed by Sherwood for 10 years
10 at 18 percent simple interest. Since it would have
11 been virtually impossible for Sherwood to obtain
12 financing elsewhere, the terms of this loan were
13 considered proper.

14 In going through the expenses with Sherwood,
15 in order to keep the monthly water rates as low as
16 possible for the ratepayers Mark's Backhoe volunteered
17 to refinance Sherwood's remaining loan balance, which
18 at this time now was \$126,197.92, over 20 years at
19 6 percent simple interest.

20 This 18,556 adjustment that you see on this
21 schedule represents the annual savings based on the
22 new terms of this loan.

23 The next item I'd like to make mention of is
24 Services - Billing, Accounting, Office, which is
25 Exhibit 1.2, line 17. Peggey Bryner and Breanne

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1 Johnson are willing to be paid for combined hours --
2 for a combined 30 hours per month at \$10 per hour,
3 with no benefits, in order to perform these office
4 duties.

5 Based on the number of hours spent in
6 performing the office duties, 30 hours per month is a
7 very conservative time estimate.

8 Going to the next item is Water Master
9 Duties, which I believe is on line 19. This includes
10 all the functions of keeping the water company running
11 smoothly, efficiently, and in accordance with all
12 state and federal regulations.

13 Five thousand four hundred dollars is based
14 on the time Scott Johnson spent last year on the
15 above-mentioned duties at \$20 an hour. As in the
16 past, as well as going forward, Mrs. -- Mr. Johnson is
17 paying for all his own transportation expenses, such
18 as wear and tear on his vehicle, gas, automobile
19 insurance, as well as various field tools and
20 instruments.

21 The Division determined that \$5,400 is
22 reasonable. Although, in order to help keep rates
23 affordable, Scott Johnson has agreed to perform the
24 same duties at the same level of care for a thousand
25 dollars less per year, which the adjustment's shown

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1 there for a total of \$4,400.

2 Another item we'd like to make mention are
3 Repairs, which are on line 25. During 2009, 11,229
4 was spent on repairs and replacements for Sherwood's
5 aging infrastructure. Much of this was paid for
6 through Mark's Backhoe and not charged to Sherwood.

7 Scott Johnson volunteered to charge Sherwood
8 no more than \$7,500 for repairs in the upcoming year.
9 Any additional repair expenses, within reason, will be
10 donated by either Scott Johnson or Mark's Backhoe.

11 Another item of concern was the liability
12 insurance, or lack of liability insurance, on line 28.
13 Sherwood presently has no liability insurance. This
14 \$2,500 adjustment is an estimation of the annual
15 amount needed in purchasing liability insurance, for
16 which Breanne Johnson is currently seeking bids.

17 Going on, the Division is concerned about the
18 water company's lack of financial reserves. Setting
19 aside reserves is critical to developing and
20 maintaining financial stability, and can mean the
21 difference between a system that is self-sustaining
22 and one that may fall victim to disrepair or become
23 financially unstable during even a relatively small
24 emergency.

25 In the past several rate case orders of other

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1 water companies the Commission has approved funding of
2 a reserve account in an amount equal to the annual
3 depreciation expense, plus the annual amortized
4 contribution in aid of construction, using the same
5 service life as if it had been depreciated.

6 Following the same practice in Sherwood's
7 case significantly underest -- understates the amount
8 that would typically be set aside as capital reserves
9 because the water company was purchased for
10 approximately 15 thou -- \$50,000 by Mark Johnson in
11 1999, with no records or an accounting of the value of
12 the original infrastructure.

13 Based on the best information available, the
14 annual depreciation expense of \$4,813 and annual
15 amortized contribution in aid of construction of \$421,
16 for a total of \$5,234, is the amount to be set aside
17 to fund the capital reserve account. This is
18 significantly less than what is likely needed to
19 replace and repair its 30-year-old infrastructure.

20 In a recent rate case of another water
21 company with a similar number of connections and aging
22 infrastructure the Division recommended that 27,496 be
23 set aside annually to fund their capital reserve
24 account.

25 The Division believes that this amount would

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1 be appropriate in this case as well, but calculations
2 show that an additional \$19 per month per connection
3 would be required to fund this.

4 In the interest of keeping water prices
5 affordable for the ratepayers, Mark's Backhoe and
6 Scott Johnson have verbally agreed to donate
7 significant labor and some materials in systematically
8 replacing the old infrastructure over the next several
9 years, as their schedule and funds allow.

10 In light of this the Division, with
11 reservations, agrees to recommend that 5,234 fund the
12 capital reserve account for this rate case.

13 Further, because capital reserves are funded
14 through rates by the water customers, they should be
15 maintained in a protected account and allowed to
16 accumulate or used for qualifying expenses as the need
17 arises.

18 In past cases the reserve amount informally
19 consisted of the amounts recorded to an accumulated
20 depreciation account, with no oversight as to its use.
21 The Division therefore recommends the following
22 guidelines regarding reserves:

23 Capital reserve amounts generated from rates
24 shall be deposited into a restricted account, such as
25 a separate escrow account, within 30 days from the

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1 receipt of these payments. Withdrawals shall be made
2 from the capital reserve account for capital
3 replacements and improvements only.

4 In accordance with Utah Administrative
5 Rule R746-401-3A, expenditures in excess of 5 percent
6 of total utility plant in service, shall require the
7 water company to file a report with the Commission at
8 least 30 days before the purchase or acquisition of
9 the asset or project, and to obtain written Commission
10 approval before transacting such acquisitions.

11 At the present time Sherwood Water shall
12 contact the Commission for expenditures over \$11,934.
13 Sherwood shall provide an annual accounting of the
14 capital reserve account with its annual report and at
15 any such time as the Commission requests.

16 The annual accounting shall be in the form of
17 a bank statement encompassing the entire calendar
18 year, showing a series of deposits made within 30 days
19 from the receipt of rate payments for each billing
20 cycle and withdrawals that meet the requirements of
21 the aforementioned criteria above. The balance of the
22 reserve account shall be clearly identified in the
23 financial statements as a restricted account.

24 In identifying a qualifying expenditure for
25 replacement or improvements that may be made from the

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1 capital reserve account the Company shall consider the
2 following guidelines:

3 Capital improvements are typically high-cost
4 items with long service lives, including for example
5 the distribution pipe main lines, storage reservoirs,
6 wells and surface water intakes, et cetera.

7 Expenditures that qualify as capital
8 expenditures are those which extend the life of the
9 asset and/or enhance its original value with better
10 quality materials or system upgrades.

11 Capital improvements do not include such
12 minor repairs as repair clamps, inventory parts and
13 fittings, spare pieces of pipe kept to facilitate
14 repairs, small tools, maintenance supplies such as
15 paint or grease, service contracts, and other such
16 day-to-day supplies. Expenses for these items are
17 properly classified as operating and maintenance
18 expenses.

19 Additionally, it is not appropriate to use
20 capital replacement funds received from existing
21 customers for system expansion; that is, to extend
22 main lines to serve new areas or customers, or to
23 install new services.

24 Funds for the expansion of the system should
25 come from new development, connection fees,

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1 assessments, or other sources, so that those
2 benefitting from the improvements contribute the funds
3 for its construction.

4 Going on, the Division recommends the
5 following rates and charges: Currently their tariff
6 shows \$15 per month for a minimum up to the first
7 8,000 -- for the first 8,000 gallons used. Sherwood
8 has requested \$35 per month.

9 The Division is recommending that users pay
10 31.25 per month for a system fee, and an additional
11 \$10.50 per month as -- for the usage of the water.

12 Additionally the standbys, the current tariff
13 currently shows \$15 per month. The Division
14 recommends that standby pays the system fees of 31.25
15 per month.

16 For example, a customer connected and using
17 water would pay the system fee of 31.25 plus 10.50,
18 for a total minimum monthly water bill of 41.75.

19 On the other hand, those customers otherwise
20 connected or ready to be connected but not using any
21 water will pay the same system fee amount as is -- as
22 their standby rate of 31.25.

23 Going on, the current tariff currently
24 charges \$0.50 per thousand gallons over 8,000. The
25 Division recommends that this be \$1.75 per thousand

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1 gallons.

2 Water service turnoff. Turn on and turn off
3 charges are currently 25. The Division recommends
4 \$100.

5 Late fees on bills past due by 30 days or
6 more. Currently there are none. The Division
7 recommends 18 percent per year, or 1.5 percent per
8 month.

9 First time connection fee is currently set at
10 \$2,200 for each service for the first time service.
11 The Division recommends \$2,500.

12 Fee for unwarranted service calls. Currently
13 Sherwood is going out and donating a lot of the time
14 and materials needed to do that. The Division
15 recommends that they start charging the actual cost of
16 the materials and labor that they can determine if
17 it's the customer's responsibility.

18 And we talked about this earlier, the
19 transfer of ownership fee. Currently there is none.
20 The Division recommends \$50 for each transfer of
21 ownership fee.

22 The monthly rates recommended by the Division
23 are somewhat higher than those originally requested by
24 Sherwood, because after Division analysis and in
25 consultation with Sherwood it is evident that in order

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1 to cover the remaining expenses Sherwood would have to
2 raise their rates higher than they originally planned.

3 I'm referring now to Exhibit 1.9. The
4 Division is sensitive that a rate increase of this
5 magnitude, when compared to Sherwood's current tariff,
6 will have an impact on ratepayers' bills. This impact
7 is lessened, however, as described as follows:

8 Sherwood first came to the Division's
9 attention on or about August 2009 because they were
10 late in filing their 2008 Annual Report. The Division
11 learned that due to the recent death of the president,
12 Mark Johnson, and the subsequent change of ownership,
13 Sherwood's records were in disrepair and they were
14 unable to complete their annual report.

15 On or about September 2009, as the Division
16 was assisting Sherwood in constructing and
17 reconstructing their accounting records so that
18 Sherwood had the information needed in order to fill
19 out their annual reports, the Division discovered that
20 Sherwood raised their rates, without Commission
21 approval, from \$15 for the first 8,000 gallons to 35,
22 and from \$15 for standby to 25, and from \$0.50 per
23 thousand gallons to a dollar per thousand gallons.

24 This raise took place on or about August of
25 2008. The Division informed Sherwood that they could

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1 only raise rates by an order from the Public Service
2 Commission. And informed them that they may have to
3 refund the amounts collected if they were charging too
4 high of rates.

5 A preliminary review of Sherwood's financial
6 statements by the Division indicated that Sherwood was
7 still operating at a loss, even with the increase in
8 rates. Upon learning of the rate change by Sherwood
9 the Division advised Sherwood that they needed to file
10 a rate case immediately, which they did.

11 The Division had originally anticipated
12 completing Sherwood's request for a rate increase
13 sooner, but could not make an informed recommendation
14 until Sherwood, with the Division's assistance, had
15 completed an overhaul of their books and records so
16 they could file accurate annual reports.

17 And on the following page the Division has
18 shown the increase in annual rates on five of
19 Sherwood's actual customer usage amounts.

20 I don't know. Would you like to go over
21 those, or?

22 THE COURT: No, I can, I can -- I mean,
23 they're here. I can see them.

24 THE WITNESS: Okay.

25 THE COURT: Thank you. Actually, I do have

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1 one question. Do you know where the, I guess the
2 primary amount of users fall in this Customer A, B, C,
3 D, E? What would be kind of the typical annual use?

4 THE WITNESS: I would say around the 107 or
5 153 --

6 THE COURT: Okay.

7 THE WITNESS: -- thousand. They -- Sherwood
8 Water might have a better idea of that.

9 THE COURT: Ms. Bryner, would you know, or
10 Mr. Johnson, would you know what the typical homeowner
11 uses?

12 MS. BRYNER: I really wouldn't.

13 THE COURT: Okay.

14 MS. BRYNER: We haven't kept track of that.
15 Some of them do go over. We don't have as many that
16 go over of that 8,000 gallons per month.

17 MR. JOHNSON: I mean, between 4,000 and
18 12,000 gallons.

19 THE COURT: A month?

20 MR. JOHNSON: Just depending on, well.

21 MS. BRYNER: The season and.

22 MR. JOHNSON: That's, that's per reading.

23 MS. BRYNER: Yeah.

24 MR. JOHNSON: And we read every two months.

25 THE COURT: Okay.

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1 All right. Go ahead, Mr. Long. Sorry to
2 interrupt you.

3 THE WITNESS: Okay. Oh, no, you're fine.
4 Just one more item I wanted to bring to the attention
5 of the Commission as well as the customers. Typically
6 a developer of a subdivision would retain ownership of
7 the water company and subsidize the water system until
8 all the lots are sold and the water system is fully
9 developed.

10 After the subdivision is fully developed, the
11 developer generally either sells the water company or
12 turns it over to the water users. At which time the
13 rates would be set to cover the expenses of producing
14 and delivering the water, along with a reserve for
15 future repair and replacements.

16 Sherwood's situation is unique, because after
17 Mr. Johnson purchased the water company in '98 he
18 continued to subsidize the expenses both through
19 personal and business contributions, making the rates
20 artificially low for many years.

21 To obtain an accurate financial picture of
22 Sherwood's operation, as previously mentioned before,
23 all of Sherwood's expenses were accounted for and
24 recorded to determine what rates were necessary to
25 fund these expenses. And this also takes into account

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1 the intermediate rates that Sherwood did that, that
2 weren't authorized.

3 Prior to any adjustments these rates were
4 approximately double the rates recommended in this
5 analysis. Upon Sherwood's insistence, the Division
6 and Sherwood spent many painstaking hours adjusting,
7 trimming, and shifting expenses in order to keep the
8 rates as low as possible for the ratepayers.

9 Although not required to, Mark's Backhoe and
10 Scott Johnson assumed some responsibility for future
11 contributions in the form of both labor and supplies.
12 Additionally -- and certainly not required to --
13 Mark's Backhoe -- Mark's Backhoe's willingness to
14 refinance their loan to Sherwood Water at a much lower
15 interest rate and over more years significantly
16 lowered the rates as well.

17 While the Division commends Mark's Backhoe
18 and Mr. Johnson for their support of Sherwood and
19 Sherwood ratepayers, the Division is concerned about
20 the day that the subsidies stop or the water company
21 is sold and the actual expenses must be covered by
22 the -- by rates paid by the ratepayers.

23 Also of concern is a pending project
24 regarding the reduction of arsenic in order to comply
25 with the Division of Drinking Water's requirements.

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1 This has the potential of being very expensive and
2 must be covered by the ratepayers, which would likely
3 require another rate increase or a special assessment.

4 In conclusion, the Division believes that the
5 recommended rates and charges represent an appropriate
6 balancing of ratepayers' interests and the interests
7 of Sherwood.

8 The Division asserts that the rates and
9 charges set forth in Table 1 are just and reasonable
10 and consistent with the public interest, and therefore
11 the Division recommends that the Commission approve
12 these new rates, charges, and other elements presented
13 in this proceeding, as well as Exhibits 1.1 through
14 1.9.

15 Q. (By Ms. Schmid) Mr. Long, I have just a
16 couple of questions to clarify things. Earlier today
17 we changed the Division's recommendation from 30 hours
18 a week in the last sentence on page 4 to 30 hours a
19 month. Does that change have any effect upon the
20 recommended rates?

21 A. No, it doesn't. That was just a typo. But
22 the correct amounts were put into the, the rate
23 calculations prior to that.

24 Q. Similarly, on page 8 a figure of \$500 was
25 changed to \$50, also the result of an inadvertent

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1 typographical error. Does this change have any -- to
2 \$50 have any change or effect on the recommended rate?

3 A. No, it doesn't. That's just a per-occurrence
4 fee, and is just set up to cover the cost of, of doing
5 that.

6 Q. And so the \$50, or as originally typed \$500,
7 does not go into the calculation of the daily -- of
8 the monthly rates, does it?

9 A. No, it doesn't.

10 Q. Thank you.

11 MS. SCHMID: Those are all the statements
12 from the Division at this point. Mr. Long is
13 available for questions.

14 THE COURT: All right, thank you.

15 Mr. Johnson and Ms. Bryner, do you have any
16 questions for Mr. Long? No?

17 MS. BRYNER: No.

18 THE COURT: Okay, thank you.

19 And thank you, Mr. Long.

20 Then Mr. Johnson and Ms. Bryner, would you
21 like to make any comment on what the Division stated
22 today, or add anything? If so, I just need to swear
23 you in.

24 (A private discussion was held between

25 Mr. Johnson and Ms. Bryner.)

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1 THE COURT: Let me swear you in real quick,
2 Mr. Johnson. Raise your right hand for me. And in
3 fact, Ms. Bryner, if you would do the same.

4 (Mr. Johnson and Ms. Bryner were sworn.)

5 THE COURT: Mr. Johnson, do you have some
6 comments?

7 MR. JOHNSON: My dad -- my father I should
8 say, I'm sorry -- he raised the rates to \$35. Excuse
9 me, I didn't prepare for this. I'm --

10 THE COURT: That's fine, don't worry about
11 it.

12 MR. JOHNSON: -- just going off my memory. I
13 guess all I want to do is just apologize for the rate
14 increase of what happened and how my dad did things.
15 My dad was a very smart man, but he, he did things
16 differently.

17 Now we are wanting to try and operate this
18 water system as true and right as possible. And going
19 through this with Mark Long, this is what's come
20 about.

21 We know that this isn't what the ratepayers
22 want to pay, and I apologize for that. But as you can
23 see, in order to keep it going by itself we need to
24 have these rates.

25 THE COURT: All right, thank you. Anything

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1 else you'd like to add, Mr. Johnson? How many, how
2 many connections -- maybe I'm missing it. How many
3 connections are there? Do you know?

4 MR. JOHNSON: Approximately 96 right now.

5 THE COURT: All right, thank you.

6 Ms. Bryner, anything you'd like to add?

7 MS. BRYNER: I would like to just add that
8 Mark, when he ran the business he was very honest in
9 his dealings. He wasn't trying to do anything
10 dishonest. He just, like Scott said, was very smart.
11 He kept a lot of things in his head.

12 And because he worked the excavation he could
13 tell how much water was being used in the pipes. I
14 mean, he just knew things that we didn't know. So
15 when he passed away we, you know, weren't ready to
16 fill out all these papers and reports that were
17 requested and we didn't know where to find the
18 numbers.

19 And so that's why we contacted the Division
20 and asked them for help, because we really didn't know
21 what we were doing. And so this last year that's --
22 basically I just feel like they've helped us in
23 learning how to run the business, and stay in
24 compliance, and do what we're supposed to be doing.

25 THE COURT: Thank you. Anything else you'd

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1 like to add, Ms. Bryner?

2 MS. BRYNER: I don't think so, no.

3 THE COURT: All right, thank you.

4 Any questions for either Mr. Johnson or

5 Ms. Bryner?

6 Ms. Schmid?

7 MS. SCHMID: No questions.

8 THE COURT: Okay. Then with that, we'll go

9 ahead and end the case in chief.

10 And we do have -- are there public witnesses?

11 Any -- anybody in the, in the public that would like

12 to comment on the proposed rate increase?

13 Sir. Anybody else? No?

14 Sir, if you could do me a favor. If you

15 could please come up to one of these chairs here and

16 make sure that -- maybe Mark can make sure that that

17 microphone is on for you.

18 And I'll swear you in. And if you could

19 start by giving us your name and address, please.

20 What's your name, sir?

21 MR. ROBINS: My name is Meriem Robins. Can

22 you hear me? It doesn't sound like it's on.

23 Okay, that's better.

24 THE COURT: Okay. Mr. Robins, if you could

25 raise --

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1 MR. ROBINS: My name is Meriem Robins. And I
2 knew Mark, and I know Scott personally. And I'm --

3 THE COURT: Let me have you raise your right
4 hand before you testify, Mr. Robins --

5 MR. ROBINS: Okay.

6 THE COURT: -- please. All right, thank you.

7 (Mr. Robins was sworn.)

8 THE COURT: Thank you. Go ahead.

9 MR. ROBINS: And I know that they've had the
10 problems, and I know that they've worked hard to get
11 them corrected. There is -- and I can understand,
12 after hearing the -- and reading, I can understand the
13 need for some increase in rate.

14 I wonder how, how riding it over a period of
15 time -- I think I heard six years, I don't know
16 whether that's correct or not -- but it seems to me
17 that, that maybe a longer period would be better and
18 be able to reduce the rates.

19 I know there's a lot of people that are
20 retired out there, and a number of people that it
21 would be -- and it is going to be a little hardship.
22 But if they plan on it I'm sure they can make it if,
23 if, if you deem that this is proper.

24 One thing that I found that wasn't considered
25 is that in my case, I live in Orem. And I go down

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1 there and spend most of the summer down there, but not
2 in the winter. And so I -- this is the first time,
3 reading this, that I knew that there was a standby
4 rate wherein there was no use of water.

5 We turn it off in October, and we don't turn
6 it on again until about April. So I don't think this
7 standby has been known. I didn't know about it. And
8 I have a question from -- for Scott as to do we notify
9 you, or do you read the meter and see that there's
10 been no usage?

11 I'm -- this is a big question I had and one
12 reason I wanted to be here today is to know how we go
13 about getting the non-usage rate.

14 THE COURT: Mr. Johnson, do you want to speak
15 to that, please?

16 MR. JOHNSON: Yes. How we will go about that
17 is you would contact us at Sherwood Water Company and
18 let us know. And then I would come out and read the
19 meter and turn it off. And, and then when you came
20 back in April you would call us and we would go back
21 and turn it on.

22 MR. ROBINS: Okay. And then you would put a
23 lock on it so that you'd know it would be off during
24 those months?

25 MR. JOHNSON: Right.

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1 MR. ROBINS: Okay.

2 THE COURT: Ms. Bryner?

3 MS. BRYNER: I'd like to make the comment. I
4 worked for Mark for about a year and-a-half before he
5 passed away, and he was trying to teach me how to do
6 things. And from what I gathered from his
7 understanding of the standby was the standby rate was
8 only for customers who never use their water, ever.

9 It wasn't for the customers who came during
10 the summer and then didn't use it for the winter, it
11 was just for the ones who never used it. They had a
12 connection, they had land, but they never came and
13 used it.

14 And so, you know, I -- learning all of this
15 stuff, we've learned in the tariff that we need to
16 define actually what a standby is. And, you know,
17 possibly change that so it does mean that if they
18 don't use it per month instead of per year or per, you
19 know --

20 THE COURT: Now, is that --

21 MS. BRYNER: -- account.

22 THE COURT: Let me -- I'm gonna ask the
23 Division. Mr. Long, is that correct, the standby fee?
24 I thought -- my understanding was that it was
25 typically for somebody that hadn't put the water to

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1 beneficial use yet; is that correct?

2 Or is it that basically they turn it off in
3 the winter and turn it back on in the summer?

4 MR. LONG: In this case the standby fee had a
5 slightly different definition than some of the prior
6 cases.

7 THE COURT: Okay.

8 MR. LONG: And she's correct in that.

9 THE COURT: And, and what's the correct
10 understanding of what the standby fee is?

11 MR. LONG: It's my understanding that if
12 there's a connection there and they're not using the
13 water, then they're paying the standby fee.

14 THE COURT: Okay. All right.

15 MS. SCHMID: I'm --

16 MR. ROBINS: Okay. Well then, then I'll,
17 I'll notify Scott and we can -- because usually it's
18 about six months that -- during the winter. Because
19 if we -- the reason being is if we turn the water on,
20 it freezes in these manufactured homes.

21 The pipes -- the plastic pipe go up and down
22 and up and down, and if we don't blow it out then we
23 have it freezing and breaking the pipes. So we blow
24 it out in, in Oct -- first of October. And then we
25 put -- turn the water back on in April/May. So --

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1 usually it's in April.

2 So this would help reduce the fee when we're
3 not using the water. And I'm glad to understand now
4 that there, there is the non-usage fee for -- because
5 there's a number -- I know a number of people that do
6 that same thing as I do.

7 THE COURT: All right.

8 Ms. Schmid?

9 MS. SCHMID: At some point may the Division
10 have a few moments to conference and discuss this
11 issue? I think there is some confusion.

12 THE COURT: Yeah, that's fine. We can do
13 that now, in fact. Let's go ahead and take, what do
14 you need, about 5, 10 minutes?

15 MS. SCHMID: Please. Thank you.

16 THE COURT: We'll come back in ten minutes.

17 (A recess was taken from 10:42 to 10:57 a.m.)

18 THE COURT: Did you have time to discuss what
19 you needed.

20 MS. SCHMID: We did, and we have some
21 clarifications that we believe need to be made. There
22 was a bit of confusion about the standby rates, and to
23 whom they apply, and what purpose they serve.

24 And I believe that Mr. Long is ready,
25 willing, and able to address that issue and provide

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1 the needed clarification.

2 THE COURT: All right.

3 Go ahead, Mr. Long.

4 MR. LONG: Yes. I'm sorry for any confusion
5 previously. The way the rates were calculated is
6 there's 101 total connections. Seventy-nine of those
7 are people that are connected and have, at one time,
8 used the water.

9 Every single one of those people are being
10 charged the standby, the system fee, plus the minimum
11 water usage. So their bill is 41.75.

12 THE COURT: So each of them is charged --
13 tell me again. The standby fee?

14 MS. SCHMID: No. The system charge, which is
15 the same as the standby fee.

16 MR. LONG: Okay, they're -- the sys -- I'm
17 sorry, the system charge and the minimum water usage
18 of 10.50, for a total of 41.75.

19 THE COURT: Okay.

20 MR. LONG: Only those lots that have water
21 available but have never been connected, never have
22 used any water, are the ones that are paying the
23 system fee only -- the standby fee, if you will -- and
24 there's 22 of those.

25 MS. SCHMID: So if I wanted to close my water

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1 off for the winter I could have it locked out, but I
2 would still have to pay the --

3 MR. ROBINS: Connect fee.

4 MS. SCHMID: -- the 41.75 a month; is that
5 correct?

6 MR. LONG: That's correct.

7 THE COURT: You'd pay the system charge and
8 the monthly connection?

9 MR. LONG: Plus the --

10 MS. SCHMID: Yeah.

11 MR. LONG: Correct.

12 MS. SCHMID: Plus the lockout, so that
13 probably wouldn't be an economical thing to do.

14 MR. ROBINS: Yeah.

15 MR. LONG: You could have it disconnected,
16 but that would be a \$100 disconnect fee and then
17 another \$100 to reconnect it.

18 MR. ROBINS: That's right.

19 MR. LONG: Which would be more expensive
20 than, you know, just for a seasonal turnoff/turn on.

21 THE COURT: Okay.

22 MS. SCHMID: And just for emphasis, sir, the
23 rates that are presented and recommended by the
24 Division -- and that the Company I believe has agreed
25 to being just, reasonable, and in the public

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1 interest -- those were calculated upon this -- was it
2 79?

3 MR. LONG: That's correct.

4 MS. SCHMID: Seventy-nine lots that are using
5 water using it at 41.75 as a base rate, and then
6 possibly more if they use water over the 8,000
7 gallons?

8 MR. LONG: Correct.

9 MS. SCHMID: And is that consistent at --
10 with your understanding?

11 MR. JOHNSON: Yes.

12 MS. BRYNER: Yes.

13 MS. SCHMID: Okay. That --

14 THE COURT: Okay.

15 MS. SCHMID: That's the only clarification I
16 have.

17 THE COURT: Thank you. Thank you.

18 Mr. Robins, any other comments?

19 MR. ROBINS: No. I just wanted to give my
20 address so it would be on the record.

21 THE COURT: You need to do that, please.

22 MR. ROBINS: My address down at Sherwood
23 Shores is 97 Sherwood Drive. My address in Orem is
24 487 West 650 South, Orem, Utah 84058.

25 THE COURT: Thank you.

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1 MR. ROBINS: And I now understand this.

2 (A private discussion was held.)

3 MR. ROBINS: My wife says it would be nice
4 to -- if we could suggest that they bill each month,
5 like we get billed in Orem, so -- because otherwise we
6 end up with a \$500 bill. We have two connections.
7 But that's, you know, that's something they'll have to
8 discuss and.

9 THE COURT: Thank you. That's something I
10 think you can take up with the Company.

11 MR. ROBINS: Okay.

12 THE COURT: That's not really before us
13 today, Mr. Robins.

14 MR. ROBINS: All right.

15 THE COURT: Thank you.

16 Anything else that -- any other public
17 witness, any other comments from the public?

18 Sir, if you could step up to the microphone
19 as well, please?

20 And if you could raise your right hand for me
21 and just let me swear you in.

22 (Mr. Peterson was sworn.)

23 THE COURT: Could you give your name and
24 address, please?

25 MR. PETERSON: Roy Peterson, 3420 South

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1 7615 West, Magna, Utah.

2 THE COURT: Thank you, Mr. Peterson. Go
3 ahead.

4 MR. PETERSON: Well, I along with the
5 gentleman before me here, I come in here with the idea
6 that what's written on this paper we received states
7 applies to customers where water is available but no
8 water is used for this standby rate. And which is
9 what Scott said.

10 I -- it seems like we got a shift in policy
11 here in a hurry. I don't understand it.

12 MR. JOHNSON: I'm, I'm sorry, Roy. I
13 apologize for, for saying that. I'm not up to date
14 with the books, and I thought that's how it was going
15 to be.

16 My wife, and Peggey, and Mark Long are the
17 ones who've been working on this, and so I haven't
18 been up to date. And so I, I apologize, I'm the one
19 who fouled that up.

20 MS. BRYNER: Well, but as it states in here
21 for the standby rate -- I actually wrote what's on
22 this that we sent to you.

23 MR. PETERSON: Uh-huh.

24 MS. BRYNER: And maybe there's confusion with
25 it, I don't know. It says:

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1 "Applies to customers where water is
2 available but no water is used, or where
3 service -- water service has been
4 disconnected by Sherwood Water."

5 Which means if someone's not paying their
6 bill and we deem it necessary -- we've contacted them,
7 we've tried to get payment, and we just deem it
8 necessary -- then we go and disconnect it.

9 Or if the customer wants us to disconnect it.
10 In other words, they don't want to have any water
11 available to them at all. They want to take away the,
12 the papers that you sign at first for a connection,
13 they want to just take away that right. And they want
14 to just eliminate it.

15 And so then we send them another paper that
16 they fill out and says that they give up their rights
17 to their connection. And so that's, you know. I, I
18 guess the way I wrote it I understood how it -- I was
19 saying it, and I didn't mean for it to be confused.

20 Because I knew how Mark felt about the
21 standby -- I mean Mark Johnson -- only because, you
22 know, I had had questions, because when I started
23 working for him I had no idea. You know, and I had to
24 have things explained to me.

25 So I apologize for that also. But that's,

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1 you know, what I thought Mark meant, and really still
2 feel he meant, was that if -- there were very few
3 connections available at that time before the new tank
4 was made. And people knew that.

5 And so they would be willing to say, Okay, I
6 want to pay a standby fee. Which means in five years
7 if I want a connection, you know, I will put that in.
8 I want to be paying a standby fee so I can have that
9 connection. And so that's what that was for in, in
10 that essence.

11 The other was if they already had a
12 connection, then -- and, and say -- we've got quite a
13 few -- 22 was stated, okay? And, and what that is is
14 there's a connection on their land. They can have
15 water. If somebody goes on their land and they want
16 to have a party or whatever, they can turn the water
17 on and use it.

18 But these are the people who never do that.
19 They live in Las Vegas, or they live in California,
20 or, you know, they've gotten older in their ages and
21 they just don't come back anymore. And so we have
22 given them that standby fee.

23 And that's all I know. I, you know, I guess
24 we could change it in the future if there's a need or,
25 you know, a necessity, we could try and decide how

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1 that would best fit for everybody. Not just for, you
2 know, so we can make money, but just best for
3 everybody.

4 We can, we can discuss that, and I think
5 we're willing to do that. It's just that, you know,
6 we'd need to know how to go about it. And make it
7 legal and still be in compliance.

8 MR. PETERSON: You know, I want you to make
9 money down there. I don't -- I'm not trying to take
10 money away from you. I just read that as a statement
11 and it seemed very plain to me what it said.

12 And maybe it's written wrong or maybe I
13 understood it wrong, I won't say for sure. But that
14 was my only comment.

15 THE COURT: All right. Thank you,
16 Mr. Peterson.

17 Anyone else that would like to make any quick
18 comments?

19 No? All right then. With that, we'll go
20 ahead and conclude these hearings.

21 And if the Division could file that
22 Exhibit 1.9 today, I appreciate that.

23 And we'll go ahead and take this matter under
24 advisement and issue an order shortly. Thank you.

25 (The hearing was concluded at 11:06 a.m.)

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C E R T I F I C A T E

STATE OF UTAH)
) ss.
COUNTY OF SALT LAKE)

This is to certify that the foregoing proceedings were taken before me, KELLY L. WILBURN, a Certified Shorthand Reporter and Registered Professional Reporter in and for the State of Utah.

That the proceedings were reported by me in stenotype and thereafter caused by me to be transcribed into typewriting. And that a full, true, and correct transcription of said proceedings so taken and transcribed is set forth in the foregoing pages, numbered 1 through 43, inclusive.

I further certify that I am not of kin or otherwise associated with any of the parties to said cause of action, and that I am not interested in the event thereof.

SIGNED ON THIS 31st DAY OF March, 2010.

Kelly L. Wilburn, CSR, RPR
Utah CSR No. 109582-7801

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