

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of the Application of WaterPro)
Inc. for a Culinary Water Rate Case) DOCKET NO. 12-2443-01
) REPORT AND ORDER
) GRANTING RATE INCREASE
)

ISSUED: February 22, 2013

By The Commission:

SYNOPSIS

The Commission approves WaterPro Inc.'s request for a 4 percent culinary water rate increase, and denies the request for a fire service user fee, pending notice and further proceedings in this docket.

APPEARANCES:

Darrin L. Jensen, *Pro Se*
C.E.O./ General Manager
WaterPro Inc.
PO Box 156
Draper, UT 84020

For WaterPro Inc.

Patricia E. Schmid
Assistant Utah Attorney General

For The Division of Public Utilities

I. COMPANY BACKGROUND

WaterPro Inc. (“WaterPro” or “Company”) serves over 9,000 culinary water customers, making it the largest water company regulated by the Utah Public Service Commission (“Commission”).¹ WaterPro was founded by Draper Irrigation Company (“DIC”), a company established in 1888 when its founding members contributed their water flow rights from five mountain streams for the benefit of all members.² DIC was later incorporated under the laws of Utah as a non-profit mutual irrigation company.³ DIC’s service area is located in Draper City, in the southeastern portion of the Salt Lake Valley, Salt Lake County, Utah.⁴ WaterPro was later created to perform the management and operations of DIC as well as the regulated culinary water distribution system that WaterPro refers to as Draper Water Services (“DWS”).⁵ WaterPro is a for-profit entity, whereas DWS is treated as a non-profit.⁶ DWS is the primary supplier of culinary water within Draper City, Utah.⁷

As additional background, the financial arrangement between DIC, WaterPro and DWS is as follows -- WaterPro allocates 77 percent of its expenses to DWS and 23 percent of its expenses to DIC.⁸ The 77/23 split is based on the proportion of annual sales of DWS and DIC, and is verified annually and adjusted as needed by WaterPro’s independent accounting firm.⁹

¹ See Transcript of Hearing, dated January 29, 2013, at 39, lines 15-17 (direct testimony of Mark A. Long).

² See Direct Testimony of Mark A. Long, filed December 4, 2012, at 4, lines 37-39.

³ See *id.* lines 39-40.

⁴ See *id.* at 5, lines 41-42.

⁵ See *id.* lines 42-45.

⁶ See *id.* lines 46-47.

⁷ See *id.* lines 47-48.

⁸ See *id.* lines 51-52.

⁹ See *id.* lines 52-54.

DIC owns the water rights and sells water to DWS at an amount significantly less per acre-foot than current market price.¹⁰

In November 2005, the Commission granted WaterPro a certificate of public convenience and necessity, and approved its proposed rates.¹¹ In February 2006, WaterPro sought a rate increase, which the Commission approved on January 12, 2007, in Docket No. 06-2443-T01.¹² In August 2009, WaterPro sought an additional increase, but later withdrew its application and the matter was dismissed without prejudice.¹³

II. PROCEDURAL BACKGROUND

1. On July 2, 2012, WaterPro filed an application for a culinary water rate increase with the Commission.¹⁴ WaterPro requests a 4 percent increase in rates in all rate classes, which is an increase of approximately \$200,000.¹⁵

2. On July 9, 2012, the Commission issued an action request to the Division of Public Utilities (“Division”) to examine WaterPro’s application.

3. The Division responded to the Commission’s action request on August 1, 2012.¹⁶ The Division’s memo states: “On July [2], 2012 WaterPro filed a request for a culinary water rate increase. The Division . . . has reviewed the information filed by Water[P]ro in its rate case

¹⁰ See id. lines 54-55.

¹¹ See Report and Order, issued November 7, 2005 (Docket No. 04-2443-01).

¹² WaterPro characterizes this application as a “baseline adjustment” rather than a rate “increase.” See Transcript of Hearing, at 17, lines 7-10, and lines 23-24.

¹³ See Order of Dismissal, issued February 22, 2010 (Docket No. 09-2443-01).

¹⁴ See WaterPro Rate Case Application, filed July 2, 2012.

¹⁵ See Direct Testimony of Mark A. Long, at 5, lines 58-60.

¹⁶ See Division Memo, filed August 1, 2012.

application and has verified that it is a complete filing per [Utah Admin. Code] R746-700-50. The Division requests that the [Commission] hold a scheduling conference in this matter.”¹⁷

4. On August 16, 2012, the Administrative Law Judge held a duly-noticed scheduling conference.¹⁸ Darrin L. Jensen (“Mr. Jensen”) appeared on behalf of WaterPro, and the Division also attended.

5. Based on the discussions at the scheduling conference, the Commission set a schedule and hearing date for this Docket.¹⁹

6. Pursuant to the Scheduling Order, WaterPro filed direct testimony on September 6, 2012. The testimony consisted of the Direct Testimony of Mr. Jensen, C.E.O. and General Manager of WaterPro, and the Direct Testimony of Trevor Andra, Civil Engineer with Epic Engineering, P.C.²⁰

7. On December 4, 2012, the Division filed the Direct Testimony of Mark A. Long, Utility Analyst in the Telecommunications and Water Section of the Division.²¹ Mr. Long states that WaterPro has not received a rate increase since 2007.²² Mr. Long also states that WaterPro’s C.E.O. and General Manager, Mr. Jensen, has been cooperative, available, and timely in responding to the Division’s inquiries during its investigation related to this Docket.²³ In addition, Mr. Long acknowledges Trevor Andra, of Epic Engineering, “who was readily available

¹⁷ See id. at 1.

¹⁸ See Notice of Scheduling Conference, issued August 14, 2012.

¹⁹ See Notice of Scheduling Order and Notice of Hearing, issued August 16, 2012.

²⁰ See Direct Testimony of Darrin L. Jensen, filed September 6, 2012. See also Direct Testimony of Trevor Andra, filed September 6, 2012.

²¹ See Direct Testimony of Mark A. Long.

²² See id. at 5, line 58.

²³ See id. at 6, line 63-65.

and accommodating to the Division regarding the schedules and complex analysis that he prepared in support of the rate increase.”²⁴

8. On December 12, 2012, WaterPro filed a technical memorandum (“Technical Memorandum”).²⁵ The Technical Memorandum was produced by Bowen, Collins & Associates, Inc., which WaterPro retained to evaluate a reasonable user fee structure to charge for private fire service connections to WaterPro’s system, which is a fee not currently charged by WaterPro.²⁶

9. On December 17, 2012, WaterPro filed a supplemental letter to its Technical Memorandum.²⁷ The letter explains that WaterPro intends “this letter as an explanation and formal request to supplement . . . Fire Service User Fees to the existing WaterPro Rate Case and use the [T]echnical [M]emorandum submitted as backup for this request.”²⁸ The letter further explains that WaterPro does not currently charge a Fire User Fee, and proposes the following Fire Service User Fee:

Proposed Fire Service User Fee

Size (in inches)	Annual Administrative Cost	Annual Fire Protection Capacity Cost	Total Annual Fire Service User [Fee]
2	\$23.06	\$3.07	\$26.13
4	\$23.06	\$19.01	\$42.07
6	\$23.06	\$55.09	\$78.15
8	\$23.06	\$117.62	\$140.68
10	\$23.06	\$211.91	\$234.97

²⁴ Id. lines 69-71.

²⁵ See WaterPro’s Technical Memorandum, filed December 12, 2012.

²⁶ See id. at 1.

²⁷ See Letter from Mr. Jensen, WaterPro, to Gary Widerburg, Commission (Dec. 14, 2012), filed December 17, 2012.

²⁸ Id. at 1.

An attachment to the letter also explains the following:²⁹

Private Fire Service User Fee Narrative

WaterPro has 92 Private Service Connections which are connections to WaterPro's system used specifically for fire service. The service is not used often but is critical to the users and it is important that WaterPro's system can manage the services in the event a fire occurs.

Because WaterPro provides fire service[,] it incurs additional costs associated with maintaining the supply, treatment, pumping, storage, and distribution capacity that must be sized larger than would be required for non-firefighting purposes. Due to this[,] [WaterPro is] proposing to charge a fee to each Private Fire Service [User] to offset the additional cost WaterPro incurs. The User Fee will be two parts[,] with an administrative cost and a Fire Protection Capacity Cost.

Administrative Fee

Portions of annual administrative cost[s] are needed to maintain the fire services through periodic checks and routine maintenance. This fee is established on pages 2-3 of the Technical Memorandum[,] previously submitted[,] and amounts to \$23.06 per year per private fire service connection.

Fire Protection Capacity Cost

The cost of this part of the fee is based on the additional system requirements needed for fire protection. This fee is established on pages 3-5 of the Technical Memorandum[,] previously submitted[,] and amounts to \$0.50 per fire service equivalent. Fire service equivalents are based on the AWWA demand factor[,] and can be found on pages 2 and 5 of the Technical Memorandum.

Fire Service User Fee

Based on the 92 customers[,] and applying the administrative fee and fire service capacity fee[,] the total annual revenue is estimated at \$6,476.46. This will help offset the additional cost that WaterPro incurs due to providing fire service to the customers within their service area.

²⁹ Id. at 2.

10. On December 27, 2012, the Division filed the Rebuttal Testimony of Mark A. Long.³⁰

11. On January 29, 2013, the Administrative Law Judge for the Commission held a duly-noticed hearing in this Docket.³¹ Darrin J. Jensen appeared *pro se* on behalf of WaterPro, and was accompanied by David Gardner, Assistant General Manager with WaterPro, and Trevor Andra, Civil Engineer with Epic Engineering. Patricia E. Schmid, Assistant Utah Attorney General, appeared on behalf of the Division, and was accompanied by Mark A. Long, Utility Analyst and witness for the Division. No one appeared in opposition.

III. WATERPRO'S REQUEST FOR A GENERAL RATE INCREASE

In this Docket, WaterPro seeks a 4 percent increase to its culinary water rate. WaterPro explains that this increase is less than the 5 percent recommended by its independent consulting engineers, Epic Engineering, and represents its Board of Directors' efforts to balance the Company's need for increased revenue against the interests of keeping rates low for its customers. Impact fees are not addressed in this application.³² If approved, the rate increase requested by WaterPro would result in the following rates for its customers:

³⁰ See Rebuttal Testimony of Mark A. Long, filed December 27, 2012.

³¹ See Notice of Scheduling Order and Notice of Hearing, issued August 16, 2012.

³² According to WaterPro's third-party civil engineer, Trevor Andra of Epic Engineering, P.C., "[this rate increase application] is distinct from the imposition of impact fees, which are intended to apportion the cost of constructing facilities required by new development, so that existing customers are not forced to subsidize the construction of new facilities or infrastructure." Direct Testimony of Trevor Andra at 2, lines 27-30.

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Component	Description	Current Rates	Recommended Rates
Main Residents [7,891 Connections]			
Residential Monthly Fee	Each month	\$18.00	\$18.72
Lifeline Monthly Fee	Each month	12.00	12.48
Multi-plex Monthly Fee	Each month for First unit.	18.00	18.72
	Each month for each additional unit.	13.00	13.52
Apartment Monthly Fee	Each month for First unit.	18.00	18.72
	Each month for each additional unit.	13.00	13.52
Additional Usage Fees			
Tier 1	per 1,000 gallons - 0 gpmo To 18,000 gpmo	1.23	1.28
Tier 2	per 1,000 gallons - 18,001 gpmo To 57,000 gpmo	1.89	1.97
Tier 3	per 1,000 gallons - 57,001 gpmo To 150,000 gpmo	2.59	2.69
Tier 4	per 1,000 gallons Above 150,000 gpmo	3.65	3.80
South Mountain (Country Club) [921 Connections]			
Base Rate	Each Month	\$18.00	\$18.72
Tier 1	per 1,000 gallons - 0 gpmo To 18,000 gpmo	1.36	1.41
Tier 2	per 1,000 gallons - 18,001 gpmo To 57,000 gpmo	2.02	2.10
Tier 3	per 1,000 gallons - 57,001 gpmo To 150,000 gpmo	2.72	2.83
Tier 4	per 1,000 gallons Above 150,000 gpmo	3.78	3.93
South Mountain Zone 5 [358 Connections]			
Base Rate	Each Month	\$18.00	\$18.72
Tier 1	per 1,000 gallons - 0 gpmo To 18,000 gpmo	1.31	1.36
Tier 2	per 1,000 gallons - 18,001 gpmo To 57,000 gpmo	1.97	2.05
Tier 3	per 1,000 gallons - 57,001 gpmo To 150,000 gpmo	2.67	2.78
Tier 4	per 1,000 gallons Above 150,000 gpmo	3.73	3.88
Cove of Bear Canyon [107 Connections]			
Base Rate	Each Month	\$18.00	\$18.72
Tier 1	per 1,000 gallons - 0 gpmo To 18,000 gpmo	1.39	1.45
Tier 2	per 1,000 gallons - 18,001 gpmo To 57,000 gpmo	2.05	2.13
Tier 3	per 1,000 gallons - 57,001 gpmo To 150,000 gpmo	2.75	2.86
Tier 4	per 1,000 gallons Above 150,000 gpmo	3.73	3.88
Little Valley on South Mountain [62 Connections]			
Base Rate	Each Month	\$18.00	\$18.72
Tier 1	per 1,000 gallons - 0 gpmo To 18,000 gpmo	1.33	1.38
Tier 2	per 1,000 gallons - 18,001 gpmo To 57,000 gpmo	1.99	2.07
Tier 3	per 1,000 gallons - 57,001 gpmo To 150,000 gpmo	2.69	2.80
Tier 4	per 1,000 gallons Above 150,000 gpmo	3.75	3.90

A. WaterPro's Position

WaterPro testifies that “[w]ithout an increase in rates, the Company is currently projected to operate at an increasing loss and will be unable to make necessary capital

improvements.”³³ The “capital improvements” will mainly involve “upsiz[ing] or replac[ing] old mains within [WaterPro’s] . . . service area.”³⁴ WaterPro’s capital improvements will also include “rebuild[ing] and replac[ing] . . . infrastructure; purchas[ing] additional land to drill a new well; . . . automat[ing] sections of [WaterPro’s] system . . . ; . . . look[ing] at [the] pump station in South Mountain and do[ing] an upgrade there.”³⁵ WaterPro testifies these improvements are necessary to continue to operate its current system and serve its customers.

Trevor Andra (“Mr. Andra”), Civil Engineer with Epic Engineering, testifies that the increase is justified considering WaterPro’s projected expenses and income from 2012 through 2017. According to Mr. Andra, direct costs and system rental are projected to increase at 3 percent per year, while operating expenses are projected to increase at 4 percent per year. Mr. Andra testifies that even when factoring in a 4 percent increase, WaterPro will continue to operate at a loss until 2014, which will then be followed by consecutive losses in 2015, 2016 and 2017.³⁶ When asked at hearing why the Company was not seeking a higher rate increase to offset these continued losses, the Company responded that it was sensitive to its customers’ perceptions about a rate increase and it was planning to subsidize its budget with capital from property sales of its parent company.³⁷ Mr. Andra also testifies that certain system replacements and improvements are projected to be required between now and 2019, and these sums range from \$409,600, at the

³³ Direct Testimony of Darrin L. Jensen, at 1, lines 20-22.

³⁴ See Transcript of Hearing, at 19, lines 5-13.

³⁵ Id. at 21, lines 4-8.

³⁶ See Direct Testimony of Trevor Andra at 3, lines 48-51.

³⁷ See Transcript of Hearing, at 25, lines 11-17. See also id. at 26, lines 4-13. The Division’s testimony is consistent on this issue. See Direct Testimony of Mark A. Long, at 13, lines 203-208 (stating that “the Division noted that the Company is very reluctant to raise customer rates. To this end, funds from the sales of land belonging to DIC and other business transactions have, and are, being used to build infrastructure, and to a certain extent, supplement the operations for the benefit of DWS. Without the subsidies, DWS would likely be required to charge higher rates.”).

lowest, in 2019 to \$1,475,040, at the highest, in 2016. None of these items are related to new customers or expansion of the existing system. They are all related to maintaining the current system. In addition, Mr. Andra testifies that annual loan payments are due in connection with the loan for reconstruction of the water treatment plant, which range between approximately \$458,000 and \$460,000 from 2012 through 2018, at which time the loan will be paid in full.

At hearing, the Company testified that it had made all ratepayers aware of the pending rate change in this Docket and no one objected. The Company further testified that the requested rate increase is just and reasonable, and in the public interest.

B. Division's Position

The Division performed an examination of every general ledger entry as well as each questioned expense in the check register and recommended several adjustments to the following expenses:

- Advertising/PR;
- Printing;
- Donations; and
- Company Meetings/Functions.

However, the Division ultimately determined these adjustments were immaterial to the Company's overall revenue requirement. In sum the Division testifies, "[t]he Division recommends that the rates requested by the Company be approved. Although the Division made several adjustments, the amount of the adjustments were not significant enough to affect the

overall rates.”³⁸ The Division further concludes, “[t]he effect of this recommended rate increase on individual customer’s bills is minimal. The Division calculates that the average monthly increase per connection is \$1.74.”³⁹ The Division believes these rates are just and reasonable and in the public interest, and therefore recommends the Commission approve these new rates.

C. Commission’s Findings

The Division supports the Company’s application for a rate change, and no one has objected. The Company’s testimony also supports that it has met its statutory burden to provide notice to its customers of the proposed increase.⁴⁰ Based on the testimony filed and provided at hearing in this Docket, the Commission finds the Company’s proposed 4 percent culinary water rate increase is just and reasonable and in the public interest.

IV. WATERPRO’S SUPPLEMENTAL REQUEST FOR A FIRE SERVICE USER FEE

A. WaterPro’s Position

Currently, WaterPro does not charge a fire service user fee. WaterPro now seeks to add this fee. If approved, this fee would be charged to 92 WaterPro customers who have connections to WaterPro’s system used specifically for fire service. Providing this service requires additional planning and infrastructure which adds to system costs. This proposed fire service user fee is meant to cover these increases to system costs.

At hearing, WaterPro testified that customers who are proposed to be affected by the pending application are not aware of the pending fee. WaterPro further testified it intends to

³⁸ Direct Testimony of Mark A. Long, at 13, lines 198-200 (emphasis added).

³⁹ Id. at 13, lines 209-211.

⁴⁰ See Utah Code Ann. § 54-3-3 (2010).

notify customers and acknowledged it was an oversight on its part that customers had not yet been notified.

B. Division's Position

The Division believes the fire service user fee rates are just and reasonable, and in the public interest. The Division recommends the Commission approve the fire service user fee effective June 1, 2013, which will allow WaterPro ample time to notify customers and to explain what purpose the fire service user fee will serve.

C. Commission's Findings

Section 54-3-3 of the Utah Code Ann. states:

Unless the commission otherwise orders, no change shall be made by any public utility in any rate . . . charge or classification . . . , except after 30 days' notice to the commission and to the public as herein provided. Such notice shall be given by filing with the commission, and keeping open for public inspection, new schedules stating plainly the change or changes to be made in the schedule or schedules then in force, and the time when the change or changes will go into effect. . . .

Utah Code Ann. § 54-3-3 (2010) (emphasis added). WaterPro acknowledges it has not yet provided notice to its customers to be affected by the proposed fire service user fee rates. We believe that notice is essential before considering WaterPro's proposed change, and this practice is consistent with how we treat other proposed rate increase requests. Therefore, we decline to approve the Company's supplemental request for a fire service user fee in this order, but allow WaterPro 90 days in which to supplement this Docket with proof of notice to its customers of the proposed change. Afterwards, the Commission will hold a public hearing on the limited issue of

whether the fire service user fee should be approved, and anyone wishing to provide input will be given an opportunity to do so.

V. ORDER

Wherefore, pursuant to our discussion, findings, conclusions, and direction herein, we order:

1. WaterPro's 4 percent culinary water rate increase is approved as of the date of this order.
2. WaterPro's proposed fire service user fee is denied for lack of customer notice.
3. Within 90 days of the date of this order, WaterPro may file proof of notice of the pending fire service user fee to its customers. Notice must comply with U.C.A. § 54-3-3 and shall be filed in this Docket. Upon receiving proof of notice, the Commission will schedule a hearing on this matter wherein WaterPro, the Division, and any other interested parties will have an opportunity to provide input on whether the proposed fee is just and reasonable, and in the public interest.

DATED at Salt Lake City, Utah, this 22nd day of February, 2013.

/s/ Melanie A. Reif
Administrative Law Judge

Approved and confirmed this 22nd day of February, 2013, as the Report and Order Granting Rate Increase of the Public Service Commission of Utah.

/s/ Ron Allen, Chairman

/s/ David R. Clark, Commissioner

/s/ Thad LeVar, Commissioner

Attest:

/s/ Gary L. Widerburg
Commission Secretary
D#242009

Notice of Opportunity for Agency Review or Rehearing

Pursuant to Utah Code Ann. §§ 63G-4-301 and 54-7-15, a party may seek agency review or rehearing of this order by filing a request for review or rehearing with the Commission within 30 days after the issuance of the order. Responses to a request for agency review or rehearing must be filed within 15 days of the filing of the request for review or rehearing. If the Commission fails to grant a request for review or rehearing within 20 days after the filing of a request for review or rehearing, it is deemed denied. Judicial review of the Commission's final agency action may be obtained by filing a Petition for Review with the Utah Supreme Court within 30 days after final agency action. Any Petition for Review must comply with the requirements of Utah Code Ann. §§ 63G-4-401, 63G-4-403, and the Utah Rules of Appellate Procedure.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 22nd day of February, 2013, a true and correct copy of the foregoing was served upon the following as indicated below:

By Electronic-Mail:

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