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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

<p>In the Matter of</p> <p>Community Water Company, LLC</p>	<p>DOCKET NO. _____</p> <p>UTAH DIVISION OF PUBLIC UTILITIES' PETITION FOR AN ORDER TO SHOW CAUSE WHY COMMUNITY WATER COMPANY SHOULD NOT BE ORDERED TO FILE FOR A RATE INCREASE OR, IN THE ALTERNATIVE, ORDER THE COMPANY TO SHOW CAUSE WHY THE DIVISION SHOULD NOT BE ORDERED TO FILE SEEKING SUCH A RATE INCREASE</p>
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Pursuant to Utah Code Ann. Sections 54-4-2 and 54-4a-1, the Division of Public Utilities (Division) hereby petitions the Public Service Commission of Utah (Commission), for an Order to Show Cause ordering Community Water Company. LLC (Company) to show cause why it should not be ordered to file for a rate increase, or, in the alternative, ordering the Company to show cause why the Division should not be ordered to file for an increase of the Company's rates.

JURISDICTION

In support of its Petition, the Division submits that the Commission has jurisdiction over the Company and is authorized by statute to grant the relief requested by the Division.

The Utah Legislature has empowered the Commission with general jurisdiction over and the power to regulate public utilities in Utah.¹ A water company can be a regulated public utility if it provides public service within this state.² The Company is one such regulated public utility, having received its Commission granted certificate of public convenience and necessity, subject to conditions, in 1985.³

Consistent with its regulatory authority over public utilities, if the Commission finds that the rates charged by the public utility are “unjust,” “unreasonable,” “discriminatory,” “preferential,” or “otherwise in violation of any provision of law,”⁴ the Commission has the authority to investigate the rates being charged, and, after opportunity for hearing, establish new rates.⁵ The Commission has the explicit authority to determine, after hearing, that the rates being charged are insufficient, and the ability to establish new rates that are sufficient.⁶

Various statutes also provide the Division with the authority to seek the relief it requests from the Commission. In pertinent part, by statute, the Division is authorized to “commence original proceedings” before the Commission “consistent with its statutory

¹ See Utah Code Ann. Section 54-4-1.

² See generally Utah Code Ann. Section 54-2-1 and, more specifically, Utah Code Ann. Section 54-2-1(16), (29), and (30).

³ See In the Matter of the Application of Community Water Company, Inc. for a Certificate of Convenience and Necessity to Operate as a Public Utility and for Approval of its Proposed Water Rate Schedules and Water Service Regulations, Docket No. 84-098-01 (December 3, 1985), as amended (December 12, 1988).

⁴ Utah Code Ann. Section 54-4-4(1)(i)

⁵ Utah Code Ann. Section 54-4-4(2).

⁶ See Utah Code Ann. Section 54-4-4(1)(ii) and (2).

responsibilities”⁷ and to “investigate or study...upon order of [the Commission], or upon its own initiative, any matter within the jurisdiction of [the Commission].”⁸ The

Division’s specific statutory objectives support its request because:

In the performance of its duties, powers, and responsibilities committed to it by law, the Division of Public Utilities shall act in the public interest in order to provide the Public Service Commission with objective and comprehensive information, evidence, and recommendations consistent with the following objectives:

(1) promote the safe, healthy, economic, efficient, and reliable operation of all public utilities and their services, instrumentalities, equipment, and facilities;

(2) provide for just, reasonable, and adequate rates, charges, classifications, rules, regulations, practices and services of public utilities;

. . . .⁹

Additionally, “for purposes of guiding the activities of the Division of Public Utilities, the phrase ‘just, reasonable, and adequate’ encompasses, but is not limited to the following criteria:”

(a) maintain the financial integrity of public utilities by assuring a sufficient and fair rate of return;

(b) promote efficient management and operation of public utilities;

(c) protect the long-range interest of consumers in obtaining continued quality and adequate levels of service at the lowest cost consistent with the other provisions of Subsection (4).

(d) provide for fair apportionment of the total cost of service among customer categories and individual customers and prevent undue discrimination in rate relationships;

⁷ Utah Code Ann. Section 54-4a-1(1)(a).

⁸ Utah Code Ann. Section 54-4a-1(c).

⁹ Utah Code Ann. Section 54-4a-6.

(e) promote stability in rate levels for customers and revenue requirements for utilities from year to year; and

(f) protect against wasteful use of public utility services.¹⁰

BACKGROUND

A brief summary of the Company's recent activities provides the factual basis for the Division's request. On July 23, 2015, the Company filed for a rate increase, seeking to increase rates that had been approved in January 2001.¹¹ For example, the minimum monthly bill, which included 5,000 gallons of water, set in 2001 was \$12 month and in its filing the Company requested a minimum user fee of \$56.00, with an additional charge of \$1.75 per 1,000 gallons used up to and including 5,000 gallons, and increasing tiered usage rates thereafter.¹²

In due course, a scheduling conference was held and deadlines established, with a hearing set for February 2016. Various parties requested and were granted intervention.¹³ The Division issued several data requests to the Company and reviewed its responses, performed an on-site audit, and toured the area served and the infrastructure of the Company. The Division also analyzed the justness, reasonableness, and sufficiency of the Company's existing rates and those proposed by the Company in its application.

On December 17, 2015, the day before the Division was to file its direct testimony pursuant to the Scheduling Order, the Company sent an email to the

¹⁰ Utah Code Ann. Section 54-4a-6(4).

¹¹ Docket No. 15-098-01.

¹² B10 Efforts to Exhibit R – Encourage Conservation, pp. 9-10 (filed with rate application).

¹³ At the time of the Commission's order of dismissal of the rate case on December 30, 2015, Red Pine HOA's and Hidden Creek HOA's joint petition to intervene was pending. On January 6, 2016, the Commission denied the joint petition as moot due to the order of dismissal.

Commission indicating the Company's intent to withdraw its rate case and requesting a stay of the proceedings.

On December 18, 2015, the Division filed the direct testimony of its witnesses Mr. William Duncan and Mr. Ronald Slusher. Mr. Duncan discussed regulatory theory and Mr. Slusher provided the Division's analysis of the Company. The Division proposed a "base rate" for connected customers of \$36.05 with an additional charge of \$1.30 per 1,000 gallons up to and including 12,000 gallons, then increasing tiered usage rates thereafter.¹⁴ Mr. Slusher's testimony stated, "The Division's analysis show [sic] that the current rates and rate structure do not cover fixed costs, are no longer just and reasonable, and are not in the public interest."¹⁵ In addition, the Division found that the Company's proposed rates were not just and reasonable and were not in the public interest because the proposed rates "are based on substantial [sic] asset acquisitions that the Division is not recommending at this time, because the amounts are not known and reasonable" and the Company was not correctly accounting for depreciation.¹⁶

The Division's proposed rates, including a stand by fee, lowered the monthly user fee from that proposed by the Company; proposed a different usage tier structure and rates; and established a funded capital reserve account.

On December 28, the Company filed its motion to dismiss and memorandum in support thereof (Motion to Dismiss) on December 28, 2015, stating:

The customer meetings, new rate analysis and discussions with other water providers have yielded several ideas, solutions and additional issues to be considered. Given this new information Community Water appears to have alternatives to solve the pending issues, but needs more

¹⁴ Direct Testimony of Ronald Slusher, Confidential Exhibit 2.2.

¹⁵ Direct Testimony of Ronald Slusher, lines 99-100.

¹⁶ Direct Testimony of Ronald Slusher, lines 120-126.

time to consider which alternative(s) provide the most efficient and cost effective result. If the Rate Case proceeds as scheduled it will continue to create a financial and time burden on Community Water and its customers. In addition, at this stage it is uncertain whether the Rate Case, as proposed, provides a result that is in the best interests of Community Water.¹⁷

That same day, the Division filed its response to the Company's Motion to Dismiss. The

Division stated:

The Division does not oppose CWC's [Company] motion to dismiss the current rate case. However, if CWC fails to make adequate progress in the evaluation of other alternatives in a reasonable time period, the Division, pursuant to the Division's authority under Utah Code § 54-4a-1, will initiate a case to ensure CWC has adequate revenues to maintain services to its customers.¹⁸

On December 30, 2015, the Commission issued its report and order of dismissal for the rate case. The order said, "Noting the lack of opposition to the motion and the Division's commitment to maintain oversight of the company's circumstances, the Commission grants Community Water Company's motion and dismisses Docket No. 15-098-01."¹⁹

By letter dated December 29, 2015 (Company Letter), appended as Attachment A, the Company informed its customers that:

given the expressed resistance to the proposed rate increase by you, the Company's customers and consumers TCFC [for our purposes here the same as the Company] has concluded to withdraw its rate increase application. Instead, TCFC intends to begin the process before the Utah Public Service Commission to cease being a regulated

¹⁷ Motion to Dismiss, p. 3.

¹⁸ Division's Response, pp. 1-2.

¹⁹ Order at p. 2.

utility and close **Community Water Company effective as of July 1, 2016**, or as soon thereafter as it can be accomplished.²⁰

The Company Letter sets forth four options for the “water consumers” to pursue:

(1) “having TCSC “transfer all Company assets to Mountain Regional Water Special Service District;” (2) “having TCSC “transfer all Company assets to Summit Water Distribution Company (SWDC).and in some manner merge the customers into SWDC;” (3) have the customers create a new, nonprofit mutual water company; and (4) have TCSC “attempt to find a buyer.”²¹

The Company Letter further stated:

Regardless of which option you choose to pursue, be seriously advised that the existing water system is in need of significant repair and replacement of facilities in order to bring the system into compliance with State standards. The costs to make these needed system upgrades must come from the consumers who benefit from the improvements; and that will, of necessity, realistically result in your paying significantly higher rates, no matter which of the above options is pursued. The system cannot be maintained, let alone improved, under the current manner of operations.²²

In conclusion, the Company Letter stated, “Our intention in giving you this notice now is to allow you ample time to put in place an appropriate successor entity prior to the Company terminating its operations.”²³

Consequently, various customer groups and the Company entered into discussions regarding available options. The Division also spoke with the Company and various

²⁰ TCFC Letter, p. 1 (emphasis in the original).

²¹ Letter at p. 2.

²² Letter at pp. 2-3.

²³ Letter at p. 4.

customer groups. Although the Division had hoped that the parties would agree on a plan to go forward, nothing has been filed.

ARGUMENT

The Division is concerned that the Company's under recovery jeopardizes its ability to provide service consistent with its obligation as a regulated utility.

Furthermore, the Company has identified several areas in its opinion where the infrastructure currently requires or soon will require substantial improvements. This increases the Division's concerns. The Division has served a copy of its Petition upon the Company, individuals or organizations that were granted or requested intervention in the rate case previously filed by the Company, and upon known counsel representing the above.

Wherefore, the Division respectfully requests that the Commission order the Company to show cause why it should not be ordered to file a rate increase or, in the alternative, that the Commission order the Company to show cause why the Division should not be ordered to file for an increase of the Company's rates.

RESPECTFULLY submitted this ____ day of February 2016.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Petition for an Order to Show Cause filed by the Division of Public Utilities was emailed on the ____ day of February 2016 to the following:

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