

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of the Application of)	<u>DOCKET NO. 04-2443-01</u>
WaterPro, Inc., for a Certificate of Public)	
Convenience and Necessity to Operate as a)	
Public Utility Rendering Culinary Water)	<u>REPORT AND ORDER</u>
Service)	<u>CERTIFICATE NO. 2443</u>
)	

ISSUED: November 7, 2005

SYNOPSIS

Applicant, having demonstrated its fitness to serve, and no opposition to the application appearing, the Commission grants the certificate and approves rates as indicated.

By the Commission:

PROCEDURAL HISTORY

On November 12, 2004, Bruce C. Cuppett, Chief Executive Officer of Draper Irrigation Company (“Draper Irrigation”) and its wholly-owned subsidiary WaterPro, Inc. (“WaterPro” or “Applicant”), submitted an Application on behalf of Applicant for a Certificate of Public Convenience and Necessity (“Certificate”) to operate as a public utility providing culinary water service within a designated service territory in Draper, Utah.

On January 13, 2005, the Division of Public Utilities (“Division”) filed a memorandum indicating it was currently working with WaterPro management to obtain financial data for 2004 and stating the Division would provide the Commission its final recommendation

upon receipt of this data. On February 1, 2005, the Division filed a memorandum noting its receipt of the necessary financial data but indicating a need to analyze additional information concerning the Application recently received from a concerned citizen and WaterPro customer.

On March 25, 2005, WaterPro filed a Supplement to Application of November 10, 2004, containing additional and updated information in support of its Application.

On April 28, 2005, the Division filed its analysis of the Application, recommending the Commission issue the requested Certificate and approve Applicant's proposed tariff.

On June 16, 2005, D.J. Investments, LLC ("DJI") and Concerned Citizens of Draper ("Concerned Citizens") (hereinafter collectively referred to as "Intervenors") filed a Petition to Intervene indicating DJI owns property in Applicant's service territory and Concerned Citizens is an unincorporated group of citizens residing in Draper who are currently served by WaterPro. On July 7, 2005, the Commission issued an Order Granting Intervention to both DJI and Concerned Citizens.

On July 18, 2005, Applicants filed Supplement No. 2 to Application of November 10, 2004 and Supplement of March 24, 2005, providing a revised water supply agreement between Draper Irrigation and WaterPro, as well as a revised WaterPro tariff. Also on July 18, 2005, Intervenors filed a Motion to Continue seeking delay of the hearing in this matter previously scheduled to commence on July 19, 2005, due to a conflicting emergency hearing requiring the presence of Intervenors' legal counsel, as well as various discovery-related concerns. This same day, Applicant filed a Memorandum in Response to Intervenors' Motion to

Continue indicating, based on Intervenors' scheduling conflict, no objection to the Motion for Continuance. Also on July 18, 2005, the Commission issued a Notice of Cancellation of Hearing.

On August 9, 2005, Applicant and Intervenors informed the Commission they were engaged in discussions intended to settle disputed issues. On October 7, 2005, these discussions resulted in the parties filing a Stipulation of WaterPro, Inc., DJ Investments, LLC, and Concerned Citizens of Draper in which Intervenors agreed that: (1) WaterPro is not a political subdivision of the State of Utah, (2) Commission issuance of a Certificate to WaterPro will not confer such status on WaterPro nor affect the operation of Utah Code Annotated § 10-7-4 or the rights of municipalities under that section, and (3) Intervenors do not oppose WaterPro's Application for a Certificate.

Hearing on the Application was held before the Administrative Law Judge on November 2, 2005, pursuant to Notice issued on October 25, 2005. James Kruse and Kevin Timken represented Applicant. Bruce Cuppett and Darrin Jensen, Draper Irrigation and WaterPro Chief Financial Officer, testified on behalf of Applicant. Patricia Schmid, Assistant Attorney General, State of Utah, appeared on behalf of the Division with Bruce Moio and Wesley Huntsman testifying for the Division. Intervenors chose not to actively participate at hearing but were represented by Daniel Garriott. Those appearing presented evidence that establishes there is a need for water service to the area to be served by Applicant, that the Applicant is qualified to provide such service, and that granting the requested Certificate is in the

public interest and appropriate under Utah law. No one appeared in opposition to Commission regulation.

BACKGROUND, DISCUSSION, AND CONCLUSIONS

WaterPro currently serves over 6,500 culinary water customers in Draper, Utah, and has done so since its creation as a wholly-owned subsidiary of Draper Irrigation in 1997. Since 1999, Draper Irrigation and WaterPro have operated in an exclusive service territory pursuant to franchise granted by the City of Draper. WaterPro obtains its culinary water supply from Draper Irrigation via a long-term Water Supply Agreement. The officers and directors of WaterPro currently hold identical positions within Draper Irrigation.

On June 13, 2001, the Commission issued Letter of Exemption #0082 to Draper Irrigation exempting it from Commission regulation. In early 2004, in response to a request from the Commission, the Division investigated whether Draper Irrigation's culinary water operations continued to meet the Commission's criteria for exemption under Rule 746-331. As a result of its investigation, the Division concluded Draper Irrigation does not meet the required commonality of interest standard due to the differing ownership interests conferred upon Class A shareholders, the irrigation customers of Draper Irrigation, and Class B shareholders, WaterPro's culinary water customers.

The Division recommends granting the Application and issuing a Certificate conditioned upon Draper Irrigation's agreement to make available the books, records, and management personnel of Draper Irrigation and its affiliates for Division and Commission inspection upon request. Applicant notes paragraph 21 of the revised Water Supply Agreement

between Draper Irrigation and WaterPro obligates Draper Irrigation to permit such inspection.

Having determined that Applicant has received all required consent and permits, and that provision of service within its proposed service territory will not adversely affect the operations of any existing certificated public utility, we concur with the Division's recommendations and conclude, as a matter of law, that the Application should be granted and Certificate issued accordingly.

Applicant requests approval of the following rates:

Connection Fees

3/4-Inch Connection Fees

Existing Facility	\$ 700.00
Meter Set Fee	350.00
Construction Water	100.00
Impact Fee	<u>1,813.00</u>
TOTAL	\$2,963.00

3/4-Inch Little Valley Connection Fees

Existing Facility	\$ 700.00
Meter Set Fee	350.00
Construction Water	100.00
Impact Fee	1,813.00
Improvements	<u>4,800.00</u>
TOTAL	\$7,763.00

1-Inch Connection Fees

Existing Facility	\$1,115.00
Meter Set Fee	450.00
Construction Water	100.00
Impact Fee	<u>3,022.00</u>
TOTAL	\$4,687.00

1-Inch Little Valley Connection Fees

Existing Facility	\$1,115.00
Meter Set Fee	450.00
Construction Water	100.00
Impact Fee	3,022.00
Improvements	<u>4,800.00</u>
TOTAL	\$9,487.00

Impact fees for water connections larger than 1-inch in diameter should be set individually based on a formula that considers the expected acreage water use of the improvements and the peak capacity for the desired size must be known or estimated to calculate impact fees. The following formula is recommended to calculate the impact costs:

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Water Impact Fee = \$1,813.00 [(0.478RE) + (0.52*MC/30*(PF/59 – 1/59))]
Where: RE = Residential Equivalent (expected annual average demand in gallons per day divided by the residential average usage of 715 gallons per day)
MC = Maximum Safe Intermittent Meter Capacity (gpm)
PF = Peaking Factor (MC divided by average annual demand in gpm)

Water Rates

Residential

Residential Monthly Fee \$24.00 for the first 5,000 gallons per month
Lifeline Monthly Fee \$16.00 for the first 5,000 gallons per month
Multiplex Monthly Fee \$24.00 first unit (covers 5,000 gallons per month per unit), plus \$17.00 each unit thereafter (covers 2,500 gallons per month per unit)
Apartment Monthly Fee \$24.00 first unit (covers 5,000 gallons per month per unit), plus \$17.00 each unit thereafter (covers 2,500 gallons per month per unit)

Additional Usage Fees:

Base Rate	\$24.00	Up to 5,000 gallons per month, plus
Tier 1	1.30/mg*	5,001 gallons up to 18,000 gallons per month
Tier 2	1.89/mg	18,001 gallons up to 57,000 gallons per month
Tier 3	2.52/mg	57,001 gallons up to 150,000 gallons per month
Tier 4	3.65/mg	Over 150,000 gallons per month

South Mountain (Country Club)

Base Rate	\$24.65	Up to 5,000 gallons per month, plus
Tier 1	1.43/mg	5,001 gallons up to 18,000 gallons per month
Tier 2	2.02/mg	18,001 gallons up to 57,000 gallons per month
Tier 3	2.65/mg	57,001 gallons up to 150,000 gallons per month
Tier 4	3.78/mg	Over 150,000 gallons per month

South Mountain

Base Rate	\$24.40	Up to 5,000 gallons per month, plus
Tier 1	1.38/mg	5,001 gallons and up to 18,000 gallons per month
Tier 2	1.88/mg	18,001 gallons and up to 57,000 gallons per month
Tier 3	2.60/mg	57,001 gallons and up to 150,000 gallons per month
Tier 4	3.73/mg	Over 150,000 gallons per month

Cove of Bear Canyon

Base Rate	\$24.80	Up to 5,000 gallons per month, plus
Tier 1	1.46/mg	5,001 gallons and up to 18,000 gallons per month
Tier 2	1.96/mg	18,001 gallons and up to 57,000 gallons per month
Tier 3	2.68/mg	57,001 gallons and up to 150,000 gallons per month
Tier 4	3.81/mg	Over 150,000 gallons per month

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Little Valley on South Mountain

Base Rate	\$25.15	Up to 5,000 gallons per month, plus
Tier 1	1.53/mg	5,001 gallons and up to 18,000 gallons per month
Tier 2	2.12/mg	18,001 gallons and up to 57,000 gallons per month
Tier 3	2.75/mg	57,001 gallons and up to 150,000 gallons per month
Tier 4	3.88/mg	Over 150,000 gallons per month

* "/mg" means "per thousand gallons."

Miscellaneous Fees and Penalties

Late Fee	1.5% monthly on delinquent accounts 30 days past due
Specification Books	\$ 15.00
Application Process Fees	\$ 25.00 Residential 75.00 Rental 150.00 Commercial/Business 300.00 Restaurants
Delinquency Shut-off Fee	\$ 15.00
Culinary Turn-On Fee	\$ 15.00
Culinary Turn-On Fee after Hours	\$ 50.00
Return Check Fee	\$ 25.00
Meter Reconnection Fee	\$ 75.00
Tampering/Theft of Water Fee	\$ 500.00 per meter connection
Unauthorized Damage Fee	\$ 500.00
Water Theft from a Fire Hydrant	\$ 1,000.00
Water Construction Fee	\$ 100.00 collected w/impact fees
Relocation of a Water Meter Box	\$ 200.00 400.00 without inspection
Water Meter Flow Test Fee	\$ 50.00
Authorized Jumper Purchase	\$ 100.00
Fire Hydrant Meter Deposit	\$ 1,000.00
Fire Hydrant Meter Usage Fee 3" Meter	\$ 10.00 rental per day (excluding weekends and holidays) \$ 1.89 per 1,000 gallons used \$ 50.00 minimum water usage

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Hot Tap	\$	50.00
Fire Lines	\$	50.00
Pressure Test	\$	100.00 per test
Commercial Property Fire Flow Impact Fee	\$	500.00 per acre for impact fee on fire flows
Engineering Plan Review and Service Availability Letter	\$	515.00
Engineering Fee	\$	3.00 plus \$0.30/foot over 1,200 feet of water lines for Company staff and Company Engineer project and plan review. This fee includes facilities design review.
Return Meter Set Fee	\$	50.00
Relocation of Water Meter Box	\$	200.00 with inspection
	\$	400.00 without inspection
Meter Flow Test Fee:	\$	50.00

Having reviewed Applicant's financial data, the Division notes the proposed rates, provide \$64,433 more than the calculated revenue requirement using a 10% return on equity in rate base assets. However, the Division also notes the proposed rates are identical to those already being charged to WaterPro customers so that certification of WaterPro will not result in a rate increase to those customers. The Division believes the proposed rates are just and reasonable and recommends Commission approval of the same.

We concur with the Division's recommendation and find the proposed rates to be just and reasonable.

Wherefore, based upon the foregoing information, and for good cause appearing, the Administrative Law Judge enters the following proposed

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED, that:

- WATERPRO, INC., is hereby granted Certificate of Public Convenience and Necessity No. 2443 to operate as a water corporation providing culinary water within the Draper, Utah service territory more particularly described in its Application. Said Certificate is conditioned upon DRAPER IRRIGATION COMPANY'S continued cooperation making available for reasonable inspection and questioning by the Division and the Commission all books, records, and management personnel of DRAPER IRRIGATION COMPANY and its affiliates.

- Applicant shall comply with all requirements of the Utah Division of Drinking Water.

- Applicant's rates are approved as set forth *supra*. Applicant shall file a tariff consistent with this Report and Order within 30 days of the date of this Order. The Division of Public Utilities shall review the revised tariff sheets for compliance with this Report and Order.

Pursuant to *Utah Code Annotated* §§ 63-46b-12 and 54-7-15, agency review or rehearing of this order may be obtained 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

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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 Annotated* §§ 63-46b-14, 63-46b-16 and the Utah Rules of Appellate Procedure.

DATED at Salt Lake City, Utah, this 7th day of November, 2005.

/s/ Steven F. Goodwill
Administrative Law Judge

Approved and Confirmed this 7th day of November, 2005, as the Report and Order of the Public Service Commission of Utah.

/s/ Ric Campbell, Chairman

/s/ Ted Boyer, Commissioner

/s/ Ron Allen, Commissioner

Attest:

/s/ Julie Orchard
Commission Secretary
G#46422