

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of the Request of White Hills Water Co. Inc., for Approval of a Rate Increase)	<u>DOCKET NO. 08-2199-01</u>
)	
In the Matter of the Proposed Rate Schedule for New Rate Increase Request)	<u>DOCKET NO. 08-2199-T01</u>
)	
)	<u>REPORT AND ORDER</u>
)	

ISSUED: February 4, 2009

SYNOPSIS

White Hills Water Company (Company) sought an increase of rates and the implementation of three additional rate classifications, in addition to its current residential rate—which is its single rate classification. With this Report and Order, the Commission approves the increase in rates and approves the new rate classifications.

By The Commission:

BACKGROUND

The Company filed its request for an increase in rates (Petition) June 25, 2008. Thereafter, the Division of Public Utilities (Division) commenced its compliance audit of the Company, which it completed September 10, 2008.

The Commission held a duly noticed hearing before the Administrative Law Judge on December 16, 2008. Mr. Kerry Jackson, operations manager, appeared for the Company. Mr. Todd Mcfarlane, of Oquirrh Wood Ranch, LLC (which manages the Company) appeared for the Company as well. Assistant Attorney General Michael Ginsberg represented the Division. Mrs. Shauna Benvegna-Springer, testified on behalf of the Division.

The Commission also allowed public witness testimony at the hearing. Public witnesses were Company ratepayers. Testifying were Gerald McCurdy, Dan Jackman, Calyn Clements, Julie Barnum, and Ron Slocum, who appeared telephonically. The Commission also allowed public witnesses to file written testimony previous to the hearing. Jerry A. Herndon, Calyn Clements, and Julie Barnum all filed written comments.

The Commission held another duly noticed hearing on January 15, 2009. Mr. Kerry Jackson, operations manager, again appeared for the Company. Assistant Attorney General Patricia Schmid represented the Division. Mrs. Shauna Benvegnu-Springer, testified on behalf of the Division. The Commission also allowed public witness testimony at this hearing. Other public witnesses appeared in person and telephonically, but chose not to comment.

REPORT AND ORDER

Company History and Previous Rate Cases

The Company is a privately owned water utility. As of the date of the last hearing, it was not a municipally owned utility, or utility owned by a special improvement or water district, thus subject to Commission jurisdiction. The Company's original rates were approved in August 1994, at the time it first applied for a certificate. At this time the Company was owned by a Mr. Ken White or his company. From the inception of the Company to its second rate increase request in 2003, its operating expenses have exceeded the operating revenue every year. Even with a second rate increase request in 2003, the Division then projected that

the Company would experience a \$25,000 loss in 2004. Some of the same issues raised in the

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2003 rate case, were again raised here. One issue concerned the inclusion of the third tank in the rate base. The Company stated it had installed a third water tank (500,000 gallons)¹ at a cost of \$167,000, to apparently provide for future expansion of the system. In that matter, the Commission received evidence that the tank was not necessary to provide for current service or fire protection needs, and disallowed its inclusion in the Company's rate base. Nonetheless, even with that exclusion, the Commission found that it did not cause an adjustment in rates approved, as the Company would still suffer losses. Also, the Division noted that the Company had immediate need to increase rates to replace 20-year-old steel water mains that "were starting to wear out." The Division estimated replacement costs at \$100,000 over the next few years. Even then, ratepayers brought up issues of leaking—sometimes severe, problems in the system with either out-dated or malfunctioning equipment, or lack of needed equipment. The then-owners accepted the recommended 2003 rates even with the resultant losses, apparently because they planned to subsidize the losses through profits garnered from lot sales in the sister company, White Hills Land.

From 2005 through 2007, the Company operated at a loss, with losses exceeding \$110,000 for those years. In 2007, DAI, Inc, through Cedar Valley Water, Inc., purchased the

¹ The Company installed a 1 million gallon tank in 1987, a 220,000 gallon tank in 1987, and the third water tank—of 500,000 gallons, in 2001.

Company and its sister land company. Oquirrh Wood Ranch, LLC apparently has a contract with DAI, Inc. to manage the water company.

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Division Recommendation

The Division submitted its first Recommendation at the hearing. *See DPU Exhibit 1.1.* It recommended approval of the Company's proposed rate increase. Some key provisions of its recommendation were that the Commission 1) approve an incremental rate increase; 2) approve three additional rate classifications, i.e. commercial, industrial, and agricultural rates (currently, all ratepayers pay the same residential rate); 3) allow increases in connection and stand-by fees, and 4) allow an increase in other miscellaneous charges.

Hearing Testimony and Other Evidence

At the December 2008 hearing, and in the written comments previous to that hearing, ratepayers and Company concerns revolved around a few items. Some issues concerned matters outside of the scope of these proceedings, i.e. issues related to annexation of Cedar Valley by adjoining municipalities, future development, criticism of some managerial decisions, customer service issues, water pressure, loss in land value, etc. Those were of less relevance to the Commission than other more relevant issues in reaching its decision.

Of more pressing concern were issues related to leaks, which issues were also

raised in the 2003 proceedings, and the need for funds to repair the system. Specifically, the Company and ratepayers complained of persistent leaks in the system, some of them major and some minor. In its Petition, the Company stated it needed to increase rates to be able to replace several linear feet of steel pipe throughout the system, to prevent additional leaks. Mr. Calyn Clements, a ratepayer, in his written testimony, states that the Company “has had several major

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leaks which have been leaking for years.” He estimated that there “have been at least five leaks repaired recently during the month of November 2008, and two of these were major leaks between 1-2.5" inches in diameter each.” All the parties discussed a major January 2008 leak, where a line broke and caused severe damage to a residence. Mr. Jackson, in the Company’s Petition, commented on that line break and stated that “there may have been a faulty collar connection but [it] will be hard to prove any liability on anyone’s part because the failure did not occur for over ten years after the installation of the service.” Apparently this leak caused enough flooding to fill the street for several hours.

At the hearing, almost all the ratepayers commented on the number of leaks and their effects on the system’s efficiency. Mr. Jackman commented on the leaks that have plagued the system for some time. He stated that the system had been losing “thousands and thousands of gallons These leaks go on time after time . . . without repairs being made to them and . . . that requires a lot of extra expense . . . because they didn’t fix it in a timely manner.” Mr. Clements also commented on the system leaks: “[T]hey’ve talked about several leaks that

they've had . . .and it's been years they've had leaks. The water that has been flowing out has been flowing [near a plot of farmland] has been flowing . . .[for] years. It's been such that there's been water flowing long enough out there that there are reeds growing down there." He also mentioned that some homeowners would not be able to see evidence of leaks, but that the only indication "would be the pressure." He also stated that the aging lead pipes needed to be replaced: "[They] need to be replaced in a timely fashion, not wait for years and weeks and months where the precious water has been lost, and they are only accumulating expense."

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There were some other concerns raised by the ratepayers. Probably most voiced was the concern over the amount of the proposed rate increase and different factors that would affect the increase. Some expressed concern over the Company's past purchase of a water tank not needed to service the Cedar Valley residents. In the 2003 rate case the Commission disallowed the inclusion of this third tank in the rate base. In her written comments, Mrs. Barnum essentially argued that it again should be disallowed, as it was still not used and useful. Ratepayers also expressed concern that the rate increase was an improper way for the Company to spread the burden ultimately intended for 400 or so ratepayers. Currently, there are about 120 ratepayers. Ratepayers testified that making the 120 ratepayers pay the expenses, without having the Company bear most of the expenses would not be just and reasonable. Finally, the ratepayers generally complained that the rates proposed were simply too high and should not be approved. Ultimately, all of the commenting ratepayers did complain that the proposed increase was too

high. Most of them, however, agreed that there needed to be some rate increase to allow the Company to make much-needed repairs.

Both Messrs. Jackson and Mcfarlane, representing the Company, essentially agreed with the ratepayers that the system was in major need of repair. Mr. Jackson worked in the same capacity for the previous owner, Mr. White. Mr. Jackson agreed that the leaks were a major problem with the system and described how the problems have worsened over the years. He commented that over the years the Company “made no profit. To stop leaks they’ve been Band-Aiding this problem for five or six years. The expenses to keep Band-Aiding this line has

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now exceeded the cost of replacement of this line, and those are direct costs to the customers . . . because of the Company not being in a profitable [] position, it has caused them to make bad decisions on line replacements, replacing equipment, etc. . . . we need the capital to . . . make these changes. . . . We can’t be in a poor financial position and then be expected to run the system right without any money to replace that line. That line should have been replaced years and years ago.” Additionally, Mr. Jackson noted that the previous owners did not want to replace pipes because it cost “money which they never had.” He summarized his testimony by stating: “It’s not our desire to ‘take it to the residents.’ But to run the system properly we either need to add more [ratepayers] or we need to have the money to . . .take care of the obligations that we have [been] mandated by the state and federal government to provide drinking water . . .”

Mr. Mcfarlane also commented on the source of the system’s problems. He

reiterated that, prior to the change in ownership, Mr. White “subsidized [the Company’s expenses] for a substantial period of time.” Mr. White would apparently deduct losses from profits made through his land company. With the new owners, that practice no longer continues. Also, both Mr. Mcfarlane and Shauna Benvegna-Springer commented that the previous owners did not completely report the true costs of operating the system. Apparently, during the eighteen months the new owners have owned the Company, Mr. Mcfarlane states they have been “sizing it up” to accurately determine the true costs of maintenance, subsidizing the Company for the eighteen months they have managed it, and been making temporary fixes on portions of the system. He agreed that there were “ a number of issues that need to be addressed just like Mr. Jackman mentioned. These leaks need to be addressed. We intend to replace some water lines.

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It’s going to cost a significant amount of money to do that.” He further stated, “what we are seeking now is to actually to be allowed to be put in a position to operate at less of a loss than has been the case for a substantial period of time. . . . [this] will benefit everybody in the long-term.” Regarding the previous owners, Mcfarlane stated that “we have no intention of attempting to defend the way the water company was operated and managed prior to our acquisition of the Company.” He also commented on the current state of the Company stating that “it’s been subsidized substantially in the past, and we’ve all subsidized it for the past 18 months. Yes . . . there have been leaks [since we’ve owned it]. We have addressed those leaks. At this point we’re not aware of any additional leaks.” He also stated that Oquirrh Wood Ranch along with

the Company's parent companies, together with the proceeds from the insurance funds, paid all the claims related to the January 2008 pipe burst. Mcfarlane stated those damages "ended up being quite a bit more money than [the \$133,000 that] has been stated today," and that the damages were paid "at no additional expense to [the Company] or to its customers." In sum, he testified that the Company has tried to avoid placing further expense on ratepayers, but that the Company can no longer afford to subsidize the expenses to the level the Whites did.

The Division's Modified Recommendation

The Division submitted its modified recommendation, issued in response to several public comments raised at the December 2008 hearing. In the interim between the December 2008 and January 2009 hearing, the Division consulted with the Division of Drinking Water's Section Engineering Manager, Ying Ying Macauley who provided a report concerning

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the required capacity for the Company's ratepayers. Based upon their Capacity Calculations, Ms. Macauley stated: "This water system's current storage and source capacities both exceed the demand of their existing connections significantly." Based on this conclusion, the Division recalculated the rate base, deducting the amount of \$168,000 for the large water storage reservoir of 1 million gallons. This decreased the Company's revenue requirement to \$173,100 annually, versus the previously stated \$193,307. Additionally, the Division modified its recommendation on the residential rate. It proposed a minimum \$38 rate for the first 10,000 gallons per month. The next 10,000 gallon tier would be charged at \$1.25 per 1,000 gallons, the following 10,000

tier charged at \$2.00 per 1,000 gallons, the next at \$4.40 per 1,000 gallons. The Division recommended that the modified residential rate increase be effective as of January 1, 2009, and not be implemented in steps as previously requested by the Company and recommended by the Division. The Division kept all previous recommendations the same.

ANALYSIS

The Company maintains that it requires this rate increase in order to keep providing safe, clean, culinary water not only in the short-term, but long-term as well. Since its inception in 1994, the Company has requested two additional increases in its 15-year history, this being the second. Many ratepayers expressed serious concern at having their rate raised again. The Commission appreciates their concerns about the increased expenses a rate increase would incur. Given the testimony presented, however, by both Company representatives and ratepayers, it is obvious that absent any such rate increase, the Company faces a very real crisis in being able

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to maintain its ability to provide safe, clean water. Even as far back as the 2003 rate case, the Division noted that the Company would need to seriously invest in improvements to rehabilitate or replace the then-twenty year-old-pipe. Even with its second rate increase, however, it was projected that the Company would operate at a \$25,000 loss the following year, and it appears that the annual losses have only increased each year. The previous owners' failure to properly disclose the true costs of operations and maintenance has only hampered the new owner's ability to maintain and repair the system, and adequately prepare for the future. Because of its

significant losses, and inability to build reserves for future capital improvements, the prior ownership did not have the funds to make capital improvements needed. From the testimony presented, it appears unless there is a rate increase, the new ownership is headed for the same predicament.

The Division recommended that the rate increase, as modified by its January 13, 2009 recommendation, be approved to allow the new ownership of the Company to raise enough funds to make repairs or upgrades as needed. The Commission agrees that the rate increase is needed to allow the Company to provide safe and clean water to its ratepayers.

A common thread through the testimony—from both Company representatives and ratepayers, was the commentary on the system's history of leaks, the degree of leaks, pipe breaks, etc., and the need to repair them. Without the money to make such repairs, however, the problems will only worsen. With the rate increase the Company will be able to provide adequate services at a rate reflective of the true costs of providing such water service. Additionally, while

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earning a reasonable rate of return, the Company should be able to have reserves to make additional repairs or upgrades in the future. As Mr. Jackson testified, however, there can be no repairs or upgrades without the increase.

With the funds generated through a rate increase, the Company will be better able to deal with issues raised in this docket, but which were outside its scope. For example, some testimony raised the issues some ratepayers have had with poor water pressure. This was also an

issue raised in the previous rate case. The rate increase will allow the Company to make needed repairs and improvements to the system and utility plant, e.g. replacing aged pipe instead of temporarily patching it, automating tanks, installing new pumps and pressure regulators, installing radio meters and radio readers, and other changes that will allow the Company to serve ratepayers more efficiently. With these changes, it might make a future rate increase less likely or its occurrence more in the distant future.

Additionally, the new customer rate classes will be better adapted to different customer's usage. Where previously, the Company only had one residential rate increase for all rate payers, the new rate classification allows for commercial, agricultural, industrial, and residential users. This will allow the Company to more appropriately charge ratepayers for their different types and amounts of usage.

The Commission finds that the Division did deal appropriately with two concerns raised by ratepayers in the first hearing. One was the concern with the third tank, and its allowance in this rate increase, despite the fact that it had previously been disallowed as “not

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necessary to provide for current service or fire protection needs.” The Division initially included the tank in the rate base in its first recommendation, but subsequently modified its recommendation to disallow it here. Additionally, the Division, after the first hearing and after being able to listen to ratepayers' testimony, and after further review of the adjustments to the rate base and operating expenses, recommended a modified residential rate. That

recommendation is detailed above. Based on the evidence presented in this matter, as detailed above, and based on the Company's Petition and the Division's recommendation, the Commission finds as follows:

1. The Company is a certificated water company subject to Commission jurisdiction;
2. The Company's current rates are insufficient to provide adequate revenues to meet the Company's reasonable operating expenses;
3. The recommended residential rates as detailed in the Division's modified recommendation are just and reasonable and in the public interest;
4. The recommended increases in connection fees, stand-by fees, and additional charges, as detailed in the Division's first recommendation are just and reasonable;
5. The implementation of the customer rate classes, and the definition of those classes as detailed in the Division's first recommendation is just and reasonable and in the public interest;

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6. Implementing the new rate schedules with effectiveness as of January 1, 2009 is just and reasonable and in the public interest.
7. The Company's practice of billing on a bi-monthly basis is just and reasonable.

THEREFORE, the Commission Orders as follows:

1. The residential rates as recommended by the Division in its January 13, 2009 modified recommendation are approved;
2. The implementation of the commercial, industrial, and agricultural customer rate classes, and the definition of those classes as detailed in the Division's first recommendation are approved;
3. The commercial, industrial, and agricultural rates as recommended by the Division in its first recommendation are approved;
4. The increases in connection fees, stand-by fees, and additional charges, as detailed in the Division's first recommendation are approved;
5. The rate increases and classifications shall be effective as of January 1, 2009;
6. Pursuant to Utah Code § 63G-4-301 and 54-7-15, an aggrieved party may request agency review or rehearing of this Order by filing a written 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 shall be filed within 15 days of the filing of the request for review or rehearing. If the Commission does

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not 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 shall comply with the requirements of Utah Code §§ 63G-4-401, 63G-4-403, and the Utah Rules of Appellate Procedure.

DATED at Salt Lake City, Utah, this 4th day of February, 2009.

/s/ Ruben H. Arredondo
Administrative Law Judge

Approved and confirmed this 4th day of February, 2009, as the Report and Order of the Public Service Commission of Utah.

/s/ Ted Boyer, Chairman

/s/ Ric Campbell, Commissioner

/s/ Ron Allen, Commissioner

Attest:

/s/ Julie Orchard
Commission Secretary

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G#60592 Docket No. 08-2199-T01