

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

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In the Matter of the Application of Willow )  
Creek Water Company for a General Rate ) DOCKET NO. 13-2506-01  
Increase ) REPORT AND ORDER  
)

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ISSUED: October 4, 2013

SYNOPSIS

The Commission approves the Division's final recommended rates, with the exception of the overage rate, which the Commission sets at \$1.13, based on the evidence presented.

DOCKET NO. 13-2506-01

-2-

**APPEARANCES**

Alton Veibell, *Pro Se*  
Part-Owner  
Willow Creek Water Company  
14015 North 400 West  
Beaver Dam, UT 84306

For Willow Creek Water Company

Steve Taylor, *Pro Se*  
Board Member  
Willow Creek Water Company  
14015 North 400 West  
Beaver Dam, UT 84306

Patricia E. Schmid  
Utah Assistant Attorney General

For The Division of Public Utilities

**I. PROCEDURAL BACKGROUND**

1. On February 14, 2013, Willow Creek Water Company (“Willow Creek” or “Company”) filed an application for interim rate increase, pursuant to Utah Code Ann. § 54-7-12(4)(a).<sup>1</sup> On the same date, Willow Creek also filed an application for general rate increase.<sup>2</sup>

2. On February 20, 2013, the Commission issued an action request to the Division of Public Utilities (“Division”) to examine Willow Creek’s application.

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<sup>1</sup> See Application for Interim Rate Increase, filed February 14, 2013. On April 1, 2013, the Commission approved the following interim rates:

<b>Requested Rates</b>	
<b>Residential:</b> Fixed System Fees: This includes 12,000 gallons per MONTH	\$49.00
<b>Commercial:</b> Fixed System Fees: This includes 12,000 gallons per MONTH	\$49.00
<b>Residential:</b> Usage per 1,000 gallons over 12,000 gallons per MONTH	\$1.50
<b>Commercial:</b> Usage per 1,000 gallons over 12,000 gallons per MONTH	\$1.50
Standby Fee	\$24.40
Connection Fee (1”)	\$5,000.00
Connection Fee (2”)	\$5,000.00
Turn on Fee (with Meter in place)	\$900.00
Turn Off Fee	\$150.00
Transfer of Ownership	\$300.00
Unwarranted Service Call	\$60.00
Fire Hydrant (deposit)	\$100.00
Late Fee	\$15.00

<sup>2</sup> See Application for General Rate Increase, filed February 14, 2013. This Order pertains to the general rate increase application.

DOCKET NO. 13-2506-01

-4-

3. The Division responded to the Commission's action request on March 4, 2013.<sup>3</sup> The Division's memo states: "On February 20, 2013, Willow Creek . . . filed a request for a culinary water rate increase . . . . The Division . . . has reviewed the information filed by Willow Creek . . . in its rate case . . . and has verified that it is a substantially . . . complete filing per [Utah Admin. Code] R746-700-50. The Division requests that the [Commission] hold a scheduling conference in this matter."<sup>4</sup>

4. On March 12, 2013, the Administrative Law Judge for the Commission ("ALJ") held a duly-noticed scheduling conference.<sup>5</sup> Alton Veibell ("Mr. Veibell") appeared on behalf of Willow Creek, along with Willow Creek board member and real estate agent for Mr. Veibell, Steve Taylor ("Mr. Taylor").

5. Based on the discussions at the scheduling conference, the Commission set a schedule and hearing date for this docket.<sup>6</sup>

6. The Scheduling Order set March 20, 2013, for the interim rate hearing, and August 1, 2013, for the general rate increase hearing with a public witness hearing for the same day. The Scheduling Order also set April 26, 2013, as Willow Creek's deadline for filing direct testimony, but Willow Creek filed no testimony.

7. On April 1, 2013, the Commission issued an order granting interim rates in this docket.<sup>7</sup>

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<sup>3</sup> See Division Memo, filed March 4, 2013.

<sup>4</sup> Id. at 1.

<sup>5</sup> See Notice of Scheduling Conference, issued March 5, 2013.

<sup>6</sup> See Scheduling Order and Notices of Hearings, issued March 13, 2013.

<sup>7</sup> See supra n.1.

DOCKET NO. 13-2506-01

-5-

8. On June 14, 2013, the Division filed the Direct Testimony of Mark A. Long, Utility Analyst in the Telecommunications and Water Section of the Division.<sup>8</sup>

9. No party filed rebuttal testimony.

10. On July 19, 2013, the Division filed the Surrebuttal Testimony of Mark A. Long.<sup>9</sup>

11. On August 1, 2013, the ALJ held a duly-noticed hearing in this docket.<sup>10</sup> Mr. Veibell appeared *pro se* on behalf of Willow Creek, and was accompanied by Mr. Taylor and Mr. Hanks, the certified operator for Willow Creek. Patricia Schmid, Utah Assistant Attorney General, appeared on behalf of the Division, and was accompanied by Mark A. Long, Utility Analyst and witness for the Division.

12. On August 1, 2013, the ALJ also held a duly-noticed public witness hearing in this docket.<sup>11</sup> Several Willow Creek customers attended the hearing in person or over the phone. Some of the customers raised concerns that the proposed rate increase would affect their alleged “water shares.”<sup>12</sup>

13. In light of the public witness comments and testimony provided at the August 1, 2013, public witness hearing, the ALJ held a duly-noticed supplemental evidentiary hearing in this docket on August 20, 2013.<sup>13</sup> Pursuant to the notice of supplemental hearing, the Commission requested that both the Division and the Company come prepared to address Tariff No. 1 and whether the general rate increase proposed by the Company will have any bearing on the “shares

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<sup>8</sup> See Direct Testimony of Mark A. Long, filed June 14, 2013.

<sup>9</sup> See Surrebuttal Testimony of Mark A. Long, filed July 19, 2013.

<sup>10</sup> See Scheduling Order and Notices of Hearings at 3, issued March 13, 2013.

<sup>11</sup> See *id.* at 3-4.

<sup>12</sup> See Transcript of Public Witness Day Hearing, August 1, 2013, at 16, lines 4-16 (comment of Richard Croft); 22, lines 9-17 (testimony of Nathan Erickson); 29, lines 14-20 (testimony of Travis Green).

<sup>13</sup> See Notice of Supplemental Hearing in General Rate Case, issued August 9, 2013.

of common stock in the Company” owned by the customers.<sup>14</sup> Additionally, the Commission requested both the Division and the Company address the commitments to fund the water system stated in the original hearing establishing the basis for issuance of the Company’s certificate of public convenience and necessity in Docket No. 09-2506-01.<sup>15</sup>

14. On August 20, 2013, the ALJ held a duly-noticed supplemental hearing. Several Willow Creek customers appeared *pro se* in person and over the telephone to provide comments or testimony. Mr. Veibell appeared *pro se* on behalf of Willow Creek, and was accompanied by Mr. Taylor and Mr. Hanks. Ms. Schmid appeared on behalf of the Division accompanied by Mr. Long.

15. Based on information presented at the supplemental hearing held on August 20, 2013, the Division filed an amended recommendation, changing the Division’s recommended overage rate from \$4.50 to \$2.50 per 1,000 gallons per month for water use over 12,000 gallons per month.<sup>16</sup>

## **II. WILLOW CREEK’S REQUEST FOR A GENERAL RATE INCREASE**

In this docket, Willow Creek seeks a rate increase from the interim rates approved by the Commission on April 1, 2013, to the final rates recommended by the Division in its post-supplemental hearing filing on August 21, 2013.

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<sup>14</sup> Id. at 1.

<sup>15</sup> See id.

<sup>16</sup> See Division’s Memo, filed August 21, 2013.

**A. Position of the Parties**

**1. Willow Creek's Position**

Willow Creek testified its current expenses exceed its current revenues. Also, it needs to increase its rates to fund a larger capital reserve account and pay back the loan for an additional well required by the Division of Drinking Water. Willow Creek defers to the Division as to the type and extent of the proposed increases in rates.

Regarding whether the general rate increase will bear on “shares of common stock in the Company” owned by the customers as stated in Tariff No. 1, Mr. Veibell used the terms “shares” and “rights” interchangeably and stated he does not understand the difference between the two; however, Mr. Taylor testified the Company’s attorney advised the Company that the shares owned by customers represent ownership in the Company, rather than rights to a volume of water.

**2. Willow Creek's Customer's Position**

**a. Overage rate**

No customer or other party presented testimony or other evidence opposing the Division’s recommendation at the initial hearing. During the supplemental hearing, however, a Willow Creek customer who identified herself as a hydrogeologist<sup>17</sup> challenged the Division’s recommended overage rate of \$4.50 per 1,000 gallons based on an analysis of the individual expense categories included in the Division’s testimony on the overage rate calculation. The

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<sup>17</sup> See Transcript of Supplemental Hearing, August 20, 2013, at 66, line 6.

customer estimates the correct coverage amount at \$1.76 per 1,000 gallons.<sup>18</sup> Specifically, the customer challenges \$2,800 in electrical costs;<sup>19</sup> \$1,260 in accounting fees; \$475 in legal fees; \$1,330 in testing and lab fees; \$4,416 in interest-free loan payments; \$1,620 in general liability insurance; \$25 in regulatory Commission expense; and \$340 in office supplies and postage, because these amounts do not increase based on water consumption.<sup>20</sup> Further, the customer asserts the “base rate is already high enough to promote water conservation,” therefore no additional charge beyond \$1.76 is necessary for conservation.<sup>21</sup>

**3. Division’s Position**

**a. Company background<sup>22</sup>**

The Division testified that Willow Creek was incorporated under the laws of the State of Utah as a nonprofit water company on March 2, 1998. On July 2, 2009, the Commission granted Willow Creek a certificate of public convenience and necessity. Accordingly, Willow Creek is a privately-owned, Commission-regulated public utility which provides culinary water to its 43 connected customers within the High Country Estates and Spring Ridge subdivisions in Box Elder, Utah.

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<sup>18</sup> See id. at 98, lines 23-24.

<sup>19</sup> See id. at 72, lines 13-25; 73; line 1. According to the customer, “Willow Creek . . . is on . . . [Rocky Mountain Power] service schedule No. 23. . . . This [service] schedule . . . is a set rate from May through September, and after the first 1500 kilowatt hours, the rate actually goes down. So for increase[d] water usage, we are actually paying less for electricity rather than . . . more as Mr. Long suggests.” Id. at 72, lines 10-11 and 13-18. However, the customer eventually doubles the proposed electricity amount to \$5,600, given other estimated amounts and considering a second well will be installed. See id. at 98, lines 21-23.

<sup>20</sup> See id. at 74, lines 9-15; at 98, lines 4-6 (general liability insurance); lines 14-20 (loan payments). See also Natalie Erickson Exhibit No. 1, at 6 (“Calculation of Natalie Erickson” noted in the red box).

<sup>21</sup> Transcript of Supplemental Hearing at 77, lines 17-18.

<sup>22</sup> See Transcript of Hearing, August 1, 2013, at 71, lines 9-25; at 72, lines 7-25; at 73, lines 1-25. According to the Division, Willow Creek currently services 43 connected customers. See Division Memo, Amended Exhibit 1.2 SR, filed August 21, 2013.



DOCKET NO. 13-2506-01

-9-

Willow Creek's water system was built and paid for completely by its developer, Mr. Veibell. This includes all the pipes, meters, storage tanks, pumps, and everything else associated with the water company; thus, Mr. Veibell generally paid for all of the capital assets of Willow Creek. The only exception to this is the recent inclusion in rates of an interest-free loan from the State of Utah for an additional well required to meet the Division of Drinking Water's standards in regards to lower arsenic levels recently mandated by the Environmental Protection Agency. This well is used to provide safe and compliant culinary water for the Company's present customers.

The Division testifies as the customer base has grown and the infrastructure has expanded, Mr. Veibell, or other developers, have paid all of the costs associated with the expansion of the water company as well. This is typical for developer-owned water companies. It is expected the developer will pay for the infrastructure as well as any expansion. It is also presumed that the value of the original utility plant and assets will be recovered through the sale of lots, according to the Division.

With the water system being paid for as part of the development of the subdivisions, this leaves only the daily operating expenses, and capital reserves to be paid for through the rates and fees charged to Willow Creek's customers. The rates originally approved by the Commission in 2009 and in effect until the Commission approved interim rates in this docket on April 1, 2013, were \$38 per month, with no standby fees, and \$1.00 per thousand gallons in excess of 293,274 gallons per year.

According to the Division, these initial rates do not adequately cover the Company's daily operating expenses. As a result, Mr. Veibell has been subsidizing the Company by covering the difference since the rates were approved in 2009. The Division asserts, if the Company had employed full-cost funding since its inception, customers would have been paying much higher rates, similar to those recommended by the Division in this docket. In addition, "[t]he Division commends Willow Creek's efforts in limiting and reducing its expenses to keep rates as low as possible. For example, Willow Creek is running its pumps during off-peak hours to reduce its electricity bill. Another example is Willow Creek's interest-free loan from the State of Utah to meet the Division of Drinking Water's standards in regards to lower arsenic levels recently mandated by the [Environmental Protection Agency]."<sup>23</sup>

In the present docket, Willow Creek is requesting a rate increase to maintain the financial integrity of the Company and establish a reserve account so that it can provide adequate levels of service. (See Rate Table on page 12 of this Order.)

**b. Revenue requirement**

The Division introduced evidence of the Company's base revenue requirement associated with providing 12,000 gallons of water per month per customer. The base revenue requirement includes operation and maintenance expenses, property taxes, projected federal and state income taxes, and annual capital reserve account funding.<sup>24</sup> The Division's evidence of the Company's base revenue requirement is uncontested. Similarly, the new rates needed to recover the revenue requirement are not contested.

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<sup>23</sup> Direct Testimony of Mark A. Long, filed June 14, 2013, at 5, lines 53-58.

<sup>24</sup> See id. at Exhibit 1.4.

The Division also introduced evidence of the Company's variable operation and maintenance expenses incurred in providing water in excess of 12,000 gallons per month (overage) per customer. As previously noted, this evidence of was contested by a customer at the supplemental hearing.

**c. Division's recommended rates – as of surrebuttal**

The Division testified in surrebuttal that the following rates and fees would be sufficient to cover both the Company's base revenue requirement and the expenses associated with overage use, and the Company concurred:

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DOCKET NO. 13-2506-01

-12-

Approved Tariff Rates		Currently Approved Interim Rates (Same as Requested by the Company)		Division's Originally Recommended Rates per Direct Testimony on June 14, 2013		Division's Recommended Rates in Surrebuttal
Standby Fee	"No Charge"	Standby Fee	\$24.40	Standby Fee	\$51.30	<b>\$39.85</b>
Fixed System Fees, Maximum of 293,274 gallons per YEAR	\$38.00	<b>Residential:</b> Fixed System Fees: Includes 12,000 gallons per MONTH	\$49.00	Monthly Fees for Residential & Commercial Customers Connected to the Water System	\$106.30	<b>\$71.80</b>
		<b>Commercial:</b> Fixed System Fees: Includes 12,000 gallons per MONTH	\$49.00			
Usage per 1,000 gallons over 293,274 gallons per YEAR	\$1.00	<b>Residential:</b> Usage per 1,000 gallons over 12,000 gallons per MONTH	\$1.50	Overage Fees per 1,000 gallons Used Over 12,000 gallons per MONTH for Residential & Commercial Customers	\$5.50	<b>\$4.50</b>
		<b>Commercial:</b> Usage per 1,000 gallons over 12,000 gallons per MONTH	\$1.50			
Connection Fee (1")	\$5,000.00	Connection Fee (1")	\$5,000.00	Connection Fee (1")	\$5,000.00	<b>\$2,000.00</b>
Connection Fee (2")	None	Connection Fee (2")	\$5,000.00	Connection Fee (2")	\$5,000.00	<b>\$4,000.00</b>
Turn On Fee (with Meter in place)	\$150.00	Turn On Fee (with Meter in place)	\$900.00	Turn On Fee (with Meter in place)	\$900.00	<b>\$150.00</b>
Turn Off Fee	None	Turn Off Fee	\$150.00	Turn Off Fee	\$150.00	<b>\$150.00</b>
Transfer of Ownership	None	Transfer of Ownership	\$300.00	Transfer of Ownership	\$300.00	<b>\$300.00</b>
Unwarranted Service Call	None	Unwarranted Service Call	\$60.00	Unwarranted Service Call	\$60.00	<b>\$60.00</b>
Fire Hydrant (deposit)	None	Fire Hydrant (deposit)	\$100.00	Fire Hydrant (deposit)	\$100.00	<b>\$100.00</b>
Late Fee	None	Late Fee	\$15.00	Late Fee	\$15.00	<b>\$15.00</b>

**d. Overage rate**

Except for the overage rate, the rate increases proposed in the foregoing table are uncontested. The Division notes the State's policy of developing rate structures that promote water conservation and cites that policy to justify its recommended overage rate, even though the proposed rate is higher than the supporting costs. In its direct testimony, the Division recommended an overage rate of \$5.50 per 1,000 gallons per month per customer,<sup>25</sup> which was reduced to \$4.50 in surrebuttal.<sup>26</sup> In response to testimony provided at the supplemental hearing by a customer regarding the overage rate, the Division amended its position for the second time, concurring with the customer's methodology and revising its recommended overage rate to \$2.50 per 1,000 gallons. According to the Division, this rate is set to both recover \$1.13 per 1,000 gallons in actual variable costs and collect \$1.37 as a conservation incentive.<sup>27</sup> The Division further asserts the overage rate it recommends is just and reasonable, and "is consistent with other water companies of comparable size in Utah whose overage rates after base gallons, are set in a range of \$2.00 [per] 8,000 gals, \$2.75 [per] 12,000 gals, \$3.25 [per] 12,000 gals and \$5.00 [per] . . . 7,500 gals."<sup>28</sup> Accordingly, the Division's final amended recommended rates are those shown in the Rate Table on page 12, with the exception of the overage rate, which is reduced to \$2.50.

**B. Discussion and Findings**

There are two objectives which in this case seem to be at odds with respect to the overage rate the Division recommends. The two objectives are 1) cost recovery, and 2) a State

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<sup>25</sup> See id. at 12, line 186.

<sup>26</sup> See Surrebuttal Testimony of Mark A. Long at 12, line 160.

<sup>27</sup> See Division Memo, filed August 21, 2013.

<sup>28</sup> Id. at 1.

DOCKET NO. 13-2506-01

-14-

policy to promote water conservation. The Division's rates meet the first objective because the revenue requirement analysis shows that an overage rate set at \$1.13 per 1,000 gallons fully recovers both current and reasonable future variable costs and all applicable fixed costs are already being properly recovered through the base rates. However, in meeting the second objective (water conservation), the Division has proposed a rate level that will result in over recovery of the revenue requirement. The Division testifies the cost of providing overage water (i.e., amounts in excess of 12,000 gallons per customer per month) equals \$1.13 per 1,000 gallons per customer per month, but it recommends an overage rate of \$2.50 per 1,000 gallons per customer per month. So the Company will over recover its costs by \$1.37 (\$2.50 - \$1.13) on every 1,000 gallons of overage use per customer per month. This over recovery could be avoided by a corresponding reduction in the base rates, but we lack an evidentiary record on which to fashion an appropriate reduction. Consequently, we must reject the overage rate the Division proposes.

Based on the testimony presented, we approve the rates proposed in the Division's final recommended rates (see the Rate Table on page 12 of this Order) as just and reasonable except for the overage rate. As noted above, the Division testified that \$1.13 is the cost per 1,000 gallons of providing overage water. On that basis, we order the rate to be \$1.13 per 1,000 gallons in excess of 12,000 gallons per month for both residential and commercial customers.

**III. ORDER**

Pursuant to our discussion, findings, and conclusions:

We approve the rates set forth in the Rate Table at page 12 of this Order as just and reasonable with one exception – the rate for usage in excess of 12,000 gallons per month, i.e., the overage rate, is set at \$1.13 per 1,000 gallons for both residential and commercial customers.

DATED at Salt Lake City, Utah, this 4<sup>th</sup> day of October, 2013.

/s/ Melanie A. Reif  
Administrative Law Judge

Approved and confirmed this 4<sup>th</sup> day of October, 2013, as the Report and Order 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  
DW#247644

DOCKET NO. 13-2506-01

-16-

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.



DOCKET NO. 13-2506-01

-17-

CERTIFICATE OF SERVICE

I CERTIFY that on the 4<sup>th</sup> day of October, 2013, a true and correct copy of the foregoing REPORT AND ORDER was served upon the following as indicated below:

By U.S. Mail:

Willow Creek Water Company  
14015 North 400 West  
Beaver Dam, UT 84306

By Electronic Mail:

Alton Veibell ([alton.veibell@gmail.com](mailto:alton.veibell@gmail.com))  
Steve Taylor ([stevencraigtaylor@gmail.com](mailto:stevencraigtaylor@gmail.com))  
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Utah Assistant Attorneys General

By Hand-Delivery:

Division of Public Utilities  
160 East 300 South, 4th Flr.  
Salt Lake City, Utah 84111

Office of Consumer Services  
160 East 300 South, 2nd Flr.  
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Administrative Assistant