

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

* * *

In the Matter of the Application
of Dammeron Valley Water Works, LLC Docket No. 15-2025-01
for Approval of General Rate Increase
and Expansion of Service Area

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HEARING PROCEEDINGS  
PRESIDING OFFICER JENNY JOHNSON  
~~~~~

TAKEN AT: Public Service Commission
 Hearing Room 451
 160 East 300 South
 Salt Lake City, Utah

DATE: Tuesday, August 11, 2015

TIME: 9:00 a.m.

REPORTED BY: Clark L. Edwards, Utah CSR #109221-7801

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THE HEARING OFFICER: JENNY JOHNSON

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INTERVENOR:
BARBARA HJELLE

ALSO PRESENT:
William Duncan
Mark Long

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1 P R O C E E D I N G S

2 THE HEARING OFFICER: So, we are on the record
3 in the Matter of the Application of Dammeron Valley Water
4 Works, LLC, for Approval of a General Rate Increase and
5 Expansion of Service Area. This is Docket Number
6 15-2025-01. My name is Jenny Johnson. I am a new ALJ
7 with the Public Service Commission and I have been assigned
8 to conduct this hearing.

9 For the record, the application is for an increase
10 in the service connection fee. The fee is currently \$1500
11 and the proposed increase is to \$2,000.

12 In addition, it's for an increase on the rates
13 that apply to usage according to a tiered structure and also
14 taking into account some irrigation shares and some
15 shareholder issues.

16 The last general rate increase was in 2004, and
17 in 2008 the company added a conservation rate which was
18 an opt-in rate. Have I got that pretty much accurate?

19 MR. PACE: It was opt in for those current
20 customers --

21 THE HEARING OFFICER: Right.

22 MR. PACE: -- and mandatory for all future --

23 THE HEARING OFFICER: Right.

24 MR. PACE: -- customers.

25 THE HEARING OFFICER: Thank you for that

1 clarification. All right. Let's put appearances on the
2 record. For the Applicant Dammeron Valley?

3 MR. PACE: Yes.

4 THE HEARING OFFICER: Go ahead and state your
5 name, please.

6 MR. PACE: Brooks Pace.

7 THE HEARING OFFICER: Thank you.

8 And your position with the company?

9 MR. PACE: I'm the managing member of Dammeron
10 Valley Water Works, LLC and the president of the Dammeron
11 Corporation which wholly owns the LLC.

12 THE HEARING OFFICER: Okay. Thank you.

13 And for the Division?

14 MS. SCHMID: Patricia E. Schmid with the
15 Attorney General's Office on behalf of the Division of
16 Public Utilities, and with me as the Division's witnesses
17 are Mr. William Duncan and Mr. Mark Long. Thank you.

18 THE HEARING OFFICER: And the intervenor?

19 MS. HJELLE: Barbara Hjelle on my own behalf.

20 THE HEARING OFFICER: And, Ms. Hjelle, will you
21 spell your last name for the court reporter. It is unusual.

22 MS. HJELLE: H-j-e-l-l-e.

23 THE HEARING OFFICER: All right.

24 Mr. Pace, we'll begin with you.

25 MR. PACE: Would you like me to stand up?

1 THE HEARING OFFICER: You're fine right there.
2 If you would, just pull your microphone towards you and
3 make sure that it's on.

4 DIRECT TESTIMONY OF BROOKS PACE
5 (Sworn in page 24)

6 MR. PACE: The case I need to make -- we made a
7 proposal. The proposal we've made in applying for this rate
8 case was generally a 25 percent increase in the rates in all
9 categories with the exception of irrigation, it was about a
10 28 percent increase. And then we intended to leave the
11 standby fee the same at \$20.

12 This is a 38, 39-year-old rate structure that
13 evolved with the community. A lot of this is going to be
14 redundant. And you can stop me. If you've read everything
15 I submitted and I start boring you and you say, "Well,
16 I already know all of that stuff" because I don't have
17 much to add beyond what I have already submitted.

18 THE HEARING OFFICER: All right.

19 MR. PACE: We stubbornly prefer the rate structure
20 that we've had for all these years. It has evolved.
21 We started developing very large lots, five-acre lots.
22 They got very large tapplings up to 1600 gallons a month
23 at the base rate.

24 Then later we went to smaller lots, one-acre lots,
25 and we went to one and a half, what we called one and a half

1 tapping which was 1200 gallons a day or 36,000 gallons a
2 month, the base rate, and then overages applied.

3 From day one, we always had a progressive rate
4 if they went over their allocated water. That's why these
5 allocations were important and that's why somebody like
6 Barbara is very concerned that that allocation remains
7 intact. I believe that's her position.

8 So, at this point, I think the Division is
9 proposing a total overhaul of our rate structure, a total
10 elimination of the conservation rate that was established
11 and approved by Judge Goodwill in 2008.

12 Ms. Schmid was a part of that hearing, and I think
13 she would corroborate that at that time we were actually
14 applauded for coming up with an innovated incentive to
15 conserve because we had always had the big stick to
16 conserve by fairly severe overage rates.

17 So, it's just confusing to us why the Division
18 in this mere six or seven years has decided to try and do
19 a more or less one-size-fits-all policy regarding I guess
20 all water companies, but little water companies.

21 From day one it's been emphasized that the big
22 fear in these little water companies is they go belly up,
23 the developer runs it for a while, finishes a development,
24 moves on and leaves them a can of worms for the people
25 to deal with and for the Commission to deal with.

1 And I understand that. And they've also been
2 concerned that we haven't had a reserve account and that
3 we've actually, some years, had to subsidize; in fact, many
4 years and it's even been written in the stipulations of past
5 rate hearings that Dammeron Corp has agreed to subsidize.

6 The subsidies have been fairly minor some years if
7 we've had a couple of pumps go out or big repairs or several
8 meters that needed replacing I suppose in a given year,
9 we could have fairly large subsidies.

10 But the biggest subsidy we've had the last few
11 years was paying off a Division of Water Resources loan
12 to the company to put a west side transmission line in.

13 The DPU felt that the west side transmission line
14 wasn't -- was more of a developer expense than a water
15 company expense. So, they took that out.

16 That payment is \$50,000 a year. With that \$50,000
17 a year taken out of the water company, we would definitely
18 be in the black.

19 With this 25 percent increase that we're
20 proposing, we would be in the black and be able to create
21 the reserve account that Mr. Duncan and Mr. Long are
22 concerned that we create. And I don't think that's
23 a bad idea, by the way.

24 With the rate increase that the Division is
25 proposing, it would add about an additional 40,000 of

1 revenue. So, our rate increase would raise the water works
2 revenues about 50,000 a year. They are currently around
3 200,000 a year. With approximately 25 percent across the
4 board, it would raise our revenues about 50,000 to 250,000
5 a year. The Division's proposal would raise our revenues
6 to about 290 to \$295,000 a year. So, you might wonder how
7 stupid I could be to come in here and fight another \$40,000
8 a year coming into the water company.

9 But I would imagine you could understand that the
10 water company and my running a very quality water company
11 and me having very fair rates, we've always tried to tag
12 'the City of St. George's rates and never be above them.

13 It's important; right? I mean, the development
14 company owns the water company. So that we might have to
15 subsidize the water company now and then is not particularly
16 painful because we want people to love our water company.

17 We are selling land which is worthless without
18 water as we all know. So, at the point that we have to
19 replace a pump, build a tank for redundancy, drill another
20 well just in case. We're an isolated community.

21 We're miles from any other community. We aren't
22 connected by water line. If we had a major disaster, we
23 would get by. We have a standby generator in case the power
24 went out for a couple of days. We could pump water for, you
25 know, as long as there were power or --

1 Well, we have a pump. We could even pump water
2 out of a diesel tank in the ground. So, we would get by.

3 But there could be other kinds of disasters,
4 I don't know, an earthquake that destroyed our tanks,
5 you know, our pumping system or something like that.

6 I mean, so, from day one, I've always built
7 redundancy into the system. And the Division felt that that
8 redundancy was really building for future customers. And I
9 think I can understand that they could take that position.

10 But in my mind, the redundancy was required
11 because we were a small system a long ways from anybody.
12 And so, we have got excess storage. We've got three pumps
13 that we can put on line. One of them -- any of two of them
14 can pump all the water we ever need at any one time, and the
15 third one can pump the water we need for culinary only.

16 So, my whole case here, I think the Division has
17 done a very in-depth study. I think I've learned a lot.
18 And I think taking that 50,000 and moving it over to the
19 development company is fine. We did it. We're making
20 the payment this month out of Dammeron Corp.

21 And so, what I would say is that we -- I love our
22 conservation rate. I think it was a very good move in the
23 right direction. It was an incentive for people to
24 conserve. And we're not in the most pecunious of
25 communities but we are -- have got a lot of people that live

1 pretty close to the ground. And a hundred dollars a year
2 savings is actually quite a big deal to them. And that's --

3 They can save a hundred-plus dollars a year if
4 they go on the conservation rate and they agree to conserve
5 and practice conservation. And it's very easy because even
6 the conservation rate allows them 400 gallons a day.

7 The average water usage, not counting the irrigators
8 in the valley, is a little under 500 gallons a day.

9 So, even the big lots, the five-acre lots, if they
10 don't have an irrigation share, they're still coming in at
11 an average of 500 gallons a day.

12 So, the 400 gallons a day isn't highly punitive
13 and the overage rate, the first tier of overage rate, if
14 they used 24,000 gallons a month throughout the summer and
15 then paid their low rate in the winter, they would then just
16 about match the person on the first tier, so they could use
17 24,000 gallons for just six or \$7 over what the person
18 on the first tier would be.

19 But then it becomes very punitive as you'll see
20 our schedule. It goes to two fifty a thousand and
21 eventually three fifty a thousand which is a very punitive
22 rate. So, we would like to keep the irrigation rate.
23 We would like to keep the tiers. And we would like to keep
24 the -- we would like to keep the irrigation rate low.
25 I mean, you're leaving the irrigation rate.

1 The Division's proposal is to raise the irrigation
2 rate by about 80 percent. Our proposal would raise the
3 irrigation rate to around, I think it was 28 percent.
4 I'm going from 25 to 32 cents. The conservation rate,
5 raising it 25 percent, would have only brought it to \$23
6 a month raising the standard rate from 30 to 38, 25 percent,
7 raised it to \$38 a month.

8 So, I have said to the Division in an attempt to
9 compromise and us be able to maybe come into this hearing
10 a little more unified than we are, that I saw compromise
11 being highly possible, another ten or 15 or even 20 percent
12 increase in that conservation rate so they went from 18
13 rather than going to 23 to \$28 a month but still \$10 less
14 than the standard rate would give -- still leave the
15 incentive but make up a lot of the revenue that the
16 Division is concerned about us losing.

17 The irrigation rate, the same thing.
18 I'm proposing it go to 32 cents. Well, that's the one
19 I was talking about. The irrigation rate, we would be
20 willing to go to 35 cents, 38 cents.

21 If we have to go to 45 cents, I can't say that
22 it's a terrible rate, but we have a lot of large irrigation
23 customers. I said in exhibit -- should I break that out?

24 THE HEARING OFFICER: That's fine.

25 MR. PACE: May I get up, Your Honor, and show you

1 this map? The valley is very -- all of this green --

2 THE HEARING OFFICER: I'll tell you what,
3 I'll look on the one that I have. You can show that one
4 to everybody else.

5 MR. PACE: I'll leave it here if anybody wants to
6 look at this up close. All the green on the map is where we
7 have irrigation. The little dots indicate -- the tiny dots
8 indicate a one acre-foot irrigation share. You see those
9 scattered all over the valley. The bigger dot indicates
10 a -- the larger dots indicate a two to three acre-foot
11 irrigation share they may have.

12 And then, the solid areas indicate that there's
13 basically irrigation water allocated for those lots. And as
14 I've said in my testimony, we are trying to become a horse
15 community. We've always been trying to become a horse
16 community, but we're very interested in becoming an
17 agriculture community as well.

18 And we have various -- I don't know whether --
19 since I didn't file these as an exhibit, do I have a right
20 to show you a few pictures?

21 THE HEARING OFFICER: You can move for their entry
22 into the record and we'll see if anybody has an objection.

23 MR. PACE: I'd move for -- these are just pictures
24 of the area; the vineyards, the park and things like that.

25 THE HEARING OFFICER: Would you let Ms. Schmid

1 take a look at those?

2 MS. SCHMID: Thank you.

3 MR. PACE: This is just to give you an idea that
4 we're just not a piece of flat land out in the dessert.
5 It's an incredibly beautiful valley and community surrounded
6 by mountains on all sides.

7 And a lot of agriculture is coming in. These
8 are -- there's now eight acres of vineyards planted, and
9 state lands has agreed to sell this developer, this grower
10 15 more acres. And long term, he wants to have about 35 to
11 40 acres. This is a one-acre organic garden for doing food
12 for two restaurants this fellow owns for farm-to-table
13 organic produce. We're trying to create an agricultural
14 community. I'm showing the judge the aspects of that
15 that are already in operation.

16 This is our community park. This is more of the
17 orchard. And this picture didn't print very well, but I
18 brought it because I want to show you that a lot of people
19 just leave the sage brush. A lot of people live on their
20 four or 500 gallons a day and just, you know, have sage
21 brush and trees because it's heavily sage brush --

22 All the land, if nobody plowed it up, there would
23 be the street-covered land and sage-brush-covered land and
24 you don't really have to do gardening.

25 So, our position is that our rate structure --

1 I guess I need to -- and this is -- if I could just read
2 from yesterday's paper in St. George, the Daily Spectrum:

3 "The recent results of the envisioned Utah survey
4 where 52,000 people participated as it pertains to
5 southwestern Utah, Washington and Iron County rated
6 improving food self sufficiency as the highest
7 priority, maintaining open space provided by
8 farms and ranches were rated second and third.

9 "In order to make this possible, many southwest
10 Utahns are willing to stop the building of homes and
11 businesses on high quality agricultural land."

12 So, St. George has lost its agriculture. I mean,
13 when I was a kid growing up, the Washington fields and
14 Enterprise, they were truck farms serving Las Vegas and
15 Southern California.

16 When the Colorado aqueduct came in and the big
17 damn systems in the mid part of the last century, it wiped
18 out those businesses because the Imperial Valley was closer
19 to the population centers and they were getting essentially
20 free water. So, the truck farm industry and the local
21 produce root farm industry in southern Utah sort of went
22 away.

23 But there's a lot of movement back toward it.
24 There's a lot of encouragement for people like this fellow
25 that's growing it for his own restaurants. He's got a

1 partner that may join in that would like to grow it,
2 serve Las Vegas restaurants that want to be farm to table.

3 So, we're, at build-out, intending to have 40
4 to 42 percent of our water allocated to agriculture whether
5 it's horse pasture, whether it's people growing produce,
6 whether it's people with goats or just orchards, vineyards,
7 whatever it turns out to be.

8 I'm just going to refer to my notes for just a
9 second and see if I've covered about everything.

10 The thing that I say I'd like to emphasize in my
11 thing I sent in on June 30th is that the other reason to
12 have a lot of water and agriculture is that it really does
13 add not only the aesthetics to the community but it adds
14 sustainability to the community and crisis resistance
15 because our tariff gives us the right to turn off irrigators
16 at any time if we have a pump go out and we have to use our
17 small pump, we could turn off our irrigators. If we had a
18 major crisis of some kind, we could turn off the irrigators.

19 So, if half, almost half our water is allocated
20 to irrigation, it actually saves us from ever being in the
21 position of Marin County a few years ago you might remember
22 when they were having to put bricks in their toilet to get
23 by. So, it's a shame that the agricultural water in the
24 St. George and Washington fields and Hurricane fields is
25 all going to culinary.

1 Someday if they decide to grow to three to five
2 to 600,000 people, they will have crises. We won't.
3 We will have redundancy of water, redundancy of storage,
4 redundancy of pumping systems.

5 I've emphasized why I like the conservation rate.
6 The irrigation rate I would emphasize more. I think
7 Ms. Hjelle is going to get into this and probably have more
8 to say on it than I will because she's -- well, she's living
9 it. She has a greenhouse. They grow, I'm assuming, a lot
10 of their own produce. I think they have fruit trees.
11 They're not alone. Many, many people do.

12 And some people have -- and if you see these large
13 things along the highway where the large green strips are,
14 those are the people that got irrigation water given to them
15 with their lot. But the land was restricted. It could only
16 be irrigated on. No barns. No farm buildings. Only fences
17 and irrigated crop. And if they didn't irrigate the crop
18 that needed it and they didn't irrigate it, they needed
19 to nurse it back into sage brush or wild flowers.

20 So, we've got a lot of water tied up along the
21 highway. And the goal was to, so, as you drive through the
22 community, you're not looking at backyards of homes.
23 You're looking at these irrigated pastures.

24 Now, it's only worked so well because a lot of
25 people haven't either -- they bought the land. They weren't

1 really farmers, so they left the sage brush like that one
2 picture I showed you. But some have. Some have goats.

3 Some guy has about 50 goats on his little two
4 or three acres. A lot of people have horses. This great
5 Vinter guy has now got eight acres planted and going
6 to do more.

7 But I'm saying, raising the irrigation rate too
8 much could really be a big disincentive for these people
9 that we're trying to motivate to use those water -- because
10 we deeded those water rights to these people. I can't get
11 them back. If they don't use them, they're subject to being
12 lost. So, keeping a reasonably low irrigation rate I think
13 is very important to us. And I hope it can be more what
14 we're proposing. Some -- 32 cents per thousand gallons
15 which does I believe cover our costs.

16 When we applied for the rate in 1987, we said we
17 were coming up with a revenue-neutral rate. And by that
18 I meant, pay the electricity cost which at that time was
19 about ten cents a thousand gallons -- it's now about
20 15 cents a thousand gallons -- and their share of repair
21 and maintenance of the pumps.

22 So, that was effective. It was a revenue-neutral
23 rate. I know the Division is going to make the case that
24 this is a subsidy of those people with irrigation rates
25 by all those people that don't have them.

1 Our position is, it's not a subsidy. It's a great
2 incentive for everybody. You'll hear this from Ms. Gaufin
3 when I have her stand up to speak.

4 I mean, everybody loves the fact that, oh, there's
5 a pasture with horses. Somebody's doing something with the
6 land. The great thing is that just the first five acres
7 just went in a year ago and the next three just went in the
8 spring. People love it. They drive out of their way to go
9 see it. It's a very big hit.

10 Agriculture, because it's going away I guess is
11 more appreciated than ever is what I'm saying because it's
12 almost totally gone away from the lowlands of Ivins and
13 St. George, Washington, and Hurricane fields. There's very,
14 very little and it's all destined to go into homes as well.

15 A community like ours is one of the rare ones
16 that's really setting aside significant water for
17 agriculture. So, I think that saving that reasonably low
18 irrigation rate is really important to the community as
19 well. And I don't think anybody would say I feel resentful
20 that I'm subsidizing those people that own irrigation rates
21 when I don't have one. I just don't think you would hear
22 that. I don't think you have heard it. I don't think the
23 Division has heard it from anybody that's gotten involved
24 in a study of the case.

25 So, all I can say is, you know, I can hold this up

1 and remind you that we have drought situations that are
2 coming our way. They're on us in southern Utah and
3 they're -- if not for this wet summer, they'd be on you
4 right here and now and they'll be on us all soon enough.

5 And so, basically, getting people to use less
6 water, learn how to use less water and have an incentive
7 to use less water is good for the entire southwestern
8 United States. We happen to be only about half built out.

9 So, we have enough water that we're not so tight
10 that it would really be -- it's not that big a deal for us
11 but it's going to be a big deal for us because things are
12 booming. The state land that we're developing now is going
13 to go fast. The community will be a community of seven or
14 800 homes within ten years, say. And we will be reaching
15 the build-out of our water, et cetera.

16 And at that time, if I had people that really had
17 an incentive -- the Division has made the point that in the
18 seven years since the conservation rate was approved,
19 we haven't done any new subdivisions. It's been this crash
20 time, so we haven't done new subdivisions, so nobody's been
21 forced onto it and only 14 people have converted to it.

22 And that's a shock. And so, at a town hall
23 meeting the other night, I had an opportunity to speak
24 to several different tables of people and I said, one,
25 why didn't you get involved in this rate case?

1 You knew about it. We sent out notice that it's
2 the end of January. Why didn't you go on the website and
3 learn about what the cutoff dates and so forth were?

4 Then the end of April we sent out another thing,
5 don't forget the rate case. Go on the website. Learn about
6 the rate case. Then the 15th of May, 15 days later, we had
7 our annual meeting. I stood up at the meeting to give my
8 developer report and water report.

9 And I said, let me see a show of hands. How many
10 people of you have gone on the website now? This is --

11 Now, you got a notice the end of December.
12 You got another notice 15 days ago on your water bill,
13 a little write-up on the back of the bill of what the
14 rate case was all about and how to go on the website,
15 how to reach Mr. Long and Mr. Duncan.

16 Nobody. Not one person raised their hand.
17 So, last week in these little visioning sessions that the
18 board is holding, I had a chance to talk to five or six
19 tables of people five or six at a time.

20 And I said, why the disinterest in this thing?
21 And their main comment was, the water is so cheap and you've
22 always fought for, you know, doing the right thing.

23 It just -- so, we went -- one guy said, I went on the
24 website and I just couldn't understand all the pages that
25 the Division was presenting. I didn't have time to study

1 it. I just figured you'd take care of me.

2 So, you know, it's the kind of complacency we have
3 in our democracy these days unfortunately. It's a little
4 surprising. I think if they had gotten word that we were
5 going to raise the rates, double the rates or something
6 like that, they may have shown a little more interest.

7 But, unfortunately, they really haven't. And
8 fortunately, Joyce Gaufin, she's a member of the Board of
9 Trustees of the Dammeron Valley Land Owners Association.
10 And she has got a lot of experience in --

11 I'll let her explain it, but she has a lot of
12 experience and is going to be incredibly valuable to the
13 board. The board has been -- sometimes been great boards.

14 Barbara's been on the board. She's been president
15 of the board in the past. Sometimes the boards have been
16 dynamic and tried to do things. Sometimes they've tried
17 to do things too aggressively.

18 But quite often they've just not -- been kind of
19 lethargic and haven't been really very proactive. This lady
20 is extremely proactive and she's really stirring things up.
21 She's the one that's creating these visioning groups and
22 things.

23 So, we will be moving toward I think incorporation
24 in a few years. And that's I think -- at the size we are,
25 if we did incorporate, we would -- we're already bigger

1 than most incorporated communities in the state.

2 But at this point do I have an opportunity after
3 the Division to have any kind of further comments or am
4 I through?

5 THE HEARING OFFICER: I think you'll have more
6 opportunity to speak.

7 MR. PACE: Okay.

8 THE HEARING OFFICER: You'll definitely be able to
9 respond to what the Division presents. Let me just pause
10 for a minute. I didn't swear Mr. Pace in because I didn't
11 realize he was going to proffer so extensively.

12 He is representing himself. So, I think it's
13 probably appropriate to allow him to proffer, but if the
14 Division or the intervenor would like him sworn, I'll do
15 that now.

16 MS. SCHMID: I would prefer that he be sworn,
17 please.

18 THE HEARING OFFICER: All right. Mr. Pace, would
19 you stand up and raise your right hand, please?

20 MR. PACE: (Complying).

21 THE HEARING OFFICER: Do you solemn swear that the
22 testimony and evidence that you provide today and that you
23 have provided so far in this proceeding is the truth,
24 the whole truth, and nothing but the truth and that you
25 do so under penalty or perjury?

1 MR. PACE: Yes, I do.

2 THE HEARING OFFICER: Okay. Thank you.

3 Have a seat.

4 MR. PACE: So, at this point, and not that
5 I won't when Joyce finishes, maybe I'll come up with a
6 couple of other brief comments. But I pretty much will wrap
7 mine up and ask Ms. Joyce Gaufin to make her presentation.

8 THE HEARING OFFICER: All right. Why don't you
9 come on up here and we'll let you take the stand I guess.

10 And would you raise your right hand?

11 (Ms. Gaufin complying)

12 THE HEARING OFFICER: Do you solemnly swear that
13 the testimony and evidence you provide today is the truth,
14 the whole truth, and nothing but the truth, and this you
15 do under penalty of perjury?

16 MS. GAUFIN: I do.

17 THE HEARING OFFICER: Thank you. And would you
18 state your full name for the record?

19 MS. GAUFIN: My name is Joyce Gaufin. And that is
20 spelled G-a-u-f-i-n. I have one of those names, too.

21 MS. SCHMID: Pardon me. The Division will have
22 some cross-examination questions for Mr. Pace --

23 THE HEARING OFFICER: All right.

24 MS. SCHMID: -- and perhaps Ms. Gaufin.

25 Would it appropriate to ask those after they have

1 both completed their testimony?

2 THE HEARING OFFICER: If you're comfortable with
3 that, I think that's fine.

4 MS. SCHMID: I'm very comfortable with that.
5 Thank you.

6 THE HEARING OFFICER: All right. Mr. Pace,
7 go ahead with your questions for your witness.

8 JOYCE GAUFIN,
9 having first been duly sworn, was
10 examined and testified as follows:

11 DIRECT EXAMINATION

12 BY MR. PACE:

13 **Q. Please speak.**

14 A. Thank you very much. I was elected to the
15 Dammeron Valley Land Owners Board of Trustees in May of this
16 year. And at that time, I had proposed an opportunity to do
17 some community visioning events which is something very new
18 for our small community.

19 And in going through this process, we've heard
20 comments from many of our landowners in small-group
21 discussions as Mr. Pace indicated earlier.

22 Many people seem unaware of the fact that the
23 water rates are going up. Those that got the notices
24 in their bill at the later meetings said, why is the state
25 asking for such a high water rate tax hike? Well, they see

1 it as a tax hike in our water rates.

2 And they just don't seem to be really aware of
3 this. I was a life-long resident of Salt Lake City, and I
4 bought my property in Dammeron Valley in 1993. We built our
5 home in '97. We have lived there full-time for eight years.
6 So, I have a rather long history in Dammeron Valley.

7 During that time the community has grown, and I
8 have heard very few people complain about our water services
9 in the valley. I have 1.6 acres in the subdivision called
10 Pinion Hills. It's a very forested area.

11 Due to the drought over the last number of years,
12 we've rigged up a system of sprinkling over our hill that we
13 use to help sustain our pinion and juniper trees. And it's
14 been very beneficial.

15 We have only had one interruption in our service
16 in the time that we've been there that was unplanned and
17 I believe one planned interruption in our service.

18 Our water quality is excellent. My background
19 is public health. This is my 42nd year in public health,
20 so I'm very critically aware of the needs for clean and
21 healthy water. During the board meeting, Mr. Pace spoke
22 with our board. And I sent a letter electronically to
23 Mr. Long and to the Public Service Commission. I have
24 a signed copy of the letter from the board. Can we...

25 THE HEARING OFFICER: Any objection?

1 MS. SCHMID: I'd like to take a look at it,
2 please.

3 THE HEARING OFFICER: Sure. That would be
4 appropriate.

5 MS. GAUFIN: Mr. Long acknowledged receipt
6 of the letter electronically. And essentially during that
7 discussion, the board decided that there were four key
8 points that we wanted to make about the rate structure
9 proposals, that we support the conservation rate for
10 Dammeron Valley.

11 The fact that a number of people or a very small
12 number of people are using it is again I believe because the
13 water rates are very, very affordable right now. There are
14 only two of us in our home and we've never exceeded our
15 standard water allotment.

16 The rate structure for the irrigation rates is
17 really important because we have so much green space.
18 Okay. Shall I give this --

19 THE HEARING OFFICER: Do you have an objection,
20 Ms. Schmid?

21 MS. SCHMID: The Division has no objection.

22 THE HEARING OFFICER: And did you look at it,
23 Ms. Hjelle?

24 MS. HJELLE: Yes, I did. No objection.

25 THE HEARING OFFICER: All right. Thank you.

1 MR. PACE: No objection.

2 THE COURT: And, Mr. Pace, do you want this marked
3 as one of your exhibits?

4 MR. PACE: Yes.

5 THE HEARING OFFICER: Have you looked at it as
6 well?

7 MR. PACE: I don't know that I've seen the final
8 draft. Is it going to be read into the record or are you
9 just --

10 THE HEARING OFFICER: Do you want to read it into
11 the record?

12 MS. GAUFIN: I --

13 MR. PACE: I would like it read into the record.

14 MS. GAUFIN: The whole letter?

15 MR. PACE: Yeah.

16 MS. GAUFIN: Okay. Well, then, so, this is in
17 reference to the Dammeron Valley Water Works Rate Case
18 Rebuttal Docket 2025-01 to Mark Long.

19 "Dear Mr. Long: "The Dammeron Valley Landowners
20 Association (DVLA) Board of Directors is in full
21 support of the Dammeron Valley Water Works (DVWW)
22 2015 proposed rate structure. Some of our Board
23 members have lived in the valley since 1993, and during
24 that time, Mr. Brooks Pace, and Dammeron Valley Water
25 Works have provided the highest level of water quality

1 and service delivery to all landowners.

2 "The proposed DVWW structure was developed to meet
3 the specific needs of our unique community. We believe
4 that this rate structure is the best option for
5 property owners for the following reasons:

6 "The rate structure affords property owners an
7 option to choose a conservation rate. We believe that
8 in today's climate, having an opportunity to practice
9 voluntary conservation that includes a financial
10 incentive is a model for the rest of the state.

11 "The rate structure provides low irrigation rates
12 to incentivize landowners with large lots that serve
13 as community 'green space.' All residents benefit from
14 well-maintained lots that provide grass and feed for
15 animals while reducing weeds that may spread to other
16 properties.

17 "The large amount of irrigation water" in" the
18 system has" been "set aside is insurance against
19 a prolonged drought. If it is priced too high,
20 people won't use it.

21 "Landowners have not protested the proposed rate
22 structure to the DVLA. During recent community
23 planning activities, positive comments were presented
24 by landowners.

25 "We understand that the Department of Public

1 Utilities has concerns regarding the establishment of a
2 reserve fund of adequate size to ensure that Dammeron
3 Valley Water Works will be able to address any
4 potential large equipment or structure losses.

5 "We understand that Mr. Pace has agreed to
6 establish such a reserve fund. He believes that this
7 can be done within the proposed rate structure.

8 "One of our members will attend the hearing
9 in Salt Lake City. We request that you support the
10 proposed rate structure to ensure that Dammeron Valley
11 will continue to have one of the finest private water
12 systems in the State of Utah. Thank you for your
13 consideration.

14 "Sincerely" -- the letter is signed by
15 Robert Allan, President of the Dammeron Valley Landowners
16 Association Board of Directors.

17 THE HEARING OFFICER: And, Mr. Pace, do you want
18 this marked as an exhibit?

19 MR. PACE: Yes, please.

20 (Applicant's Exhibit-1, Exhibit-2, and Exhibit-3
21 marked)

22 THE HEARING OFFICER: All right. So, just so
23 everyone knows and the record is clear, I've marked the map
24 as the Applicant's Exhibit-1. I have marked the pictures as
25 one exhibit with multiple pages as Exhibit-2. And we'll

1 mark this as the Applicant's Exhibit-3. Anything else?

2 MS. GAUFIN: Just, again, to add something on the
3 visioning sessions. We're trying -- we have a unique
4 community in Dammeron Valley. Our developer lives
5 and is one of our neighbors in that community.

6 And that makes for a very good community. It is
7 unusual. I'm not sure that there are rules and regulations
8 that cover that. What I have learned by living in this
9 small rural community is that we have many very conservative
10 neighbors. And they are very suspect of government entities
11 in general and especially the ones that seem far removed
12 from our community.

13 I believe that we -- this uniqueness makes us a
14 very special place. However, we do want to ensure a solid
15 future for our water system. We believe that the proposal
16 that Mr. Pace and the company have placed before us today
17 will help us get there in the future.

18 I believe that those are my primary comments
19 unless there are questions.

20 THE HEARING OFFICER: Questions from the Division?

21 MS. SCHMID: No questions for this witness but I
22 do have some for Mr. Pace.

23 THE HEARING OFFICER: Okay. Ms. Hjelle, do you
24 have any questions for this witness?

25 CROSS-EXAMINATION

1 BY MS. HJELLE:

2 Q. Just a couple. When you did the visioning --
3 how many landowners are there in Dammeron Valley?

4 MR. PACE: There are about 395 homes.

5 THE HEARING OFFICER: Mr. Pace, let this witness
6 answer.

7 THE WITNESS: Okay. I think we have 390 homes.
8 They're not all occupied at any given time. So, you could
9 say there are over 600 landowners I believe.

10 BY MS. HJELLE:

11 Q. And of that number, how many spoke to you
12 specifically about the water tariff proposal?

13 A. They weren't speaking to me specifically.
14 They were speaking in groups and they were recording their
15 comments. And I believe we've had 70 people at least that
16 have attended those sessions now, at least 70 people who
17 have commented not just on the water issues but on the
18 vision for Dammeron Valley.

19 Q. And I assume that of those 70, not all commented
20 on the water tariff?

21 A. No, not at all commented on the water
22 specifically, you're right.

23 Q. You posted Mr. Pace's rebuttal letter on the DVLA
24 website; is that correct?

25 A. No. I don't know if -- I -- I didn't post it

1 myself. I'm not sure if it has been posted on the website.

2 **Q. Okay. So, you were not aware of that?**

3 A. Huh-uh (negative).

4 **Q. Have you reviewed any of the Division of Public**
5 **Utilities spreadsheets and mathematical analyses?**

6 A. Not in detail. I did look at some of them and
7 I understand some of the reasoning for that, uh-huh
8 (affirmative).

9 MS. HJELLE: Okay. Thank you.

10 EXAMINATION

11 BY THE HEARING OFFICER:

12 **Q. Will you explain to me just a little bit what the**
13 **DVLA is, whom it represents, and how it operates? I don't**
14 **quite understand what its relationship with the water**
15 **company is or with the residents.**

16 A. When Dammeron Valley was set up and the articles
17 of incorporation and that were set up for Dammeron Valley,
18 Mr. Pace put together a board of trustees for the landowners
19 association.

20 These individuals, it's a board of five members.
21 They are elected by the people who attend the annual
22 meeting. Their people can also send in a vote if they are
23 unable to attend the annual meeting.

24 These five voluntary members receive no
25 compensation for their services and they have the oversight

1 to enforce CC&Rs and to gain community input and to protect
2 community resources with the exception of our fire services
3 district. We have a special services district that
4 encompasses fire services, the firehouse, fire department
5 and so on.

6 Q. Okay. So, in a simplistic view but to help me,
7 the DVLA would be sort of like --

8 A. A homeowners --

9 Q. -- equivalent to an HOA --

10 A. Yes.

11 Q. Just a very big one?

12 A. Yes.

13 Q. So, it operates under -- through -- by contract
14 with the homeowners, basically?

15 A. Yes.

16 Q. When the homeowners buy a plot, they buy it
17 subject to the governance of the DVLA --

18 A. Yes. They --

19 Q. -- under the purchase contract?

20 A. They are automatically made members of the DVLA.

21 THE HEARING OFFICER: Okay. That's very helpful.

22 Any other questions for this witness?

23 (No verbal response)

24 THE HEARING OFFICER: Okay. You're excused.

25 MR. PACE: Thank you, Joyce.

1 THE HEARING OFFICER: Thank you. And would you
2 like to ask Mr. Pace your questions now?

3 MS. SCHMID: I would. Thank you.

4 THE HEARING OFFICER: Okay. Go ahead.

5 BROOKS PACE,

6 having first been duly sworn, was

7 examined and testified further as follows:

8 CROSS-EXAMINATION

9 BY MS. SCHMID:

10 Q. Good morning, Mr. Pace.

11 A. Good morning, Ms. Schmid.

12 Q. I believe that you talked about the Division
13 requiring another entity other than Dammeron Valley Water
14 Works to pay the \$50,000 year payment on a loan.

15 Did I recall correctly?

16 A. Yes. They requested it be paid and I agreed to
17 pay it from the development company to Dammeron Corporation.

18 Q. Is that because the Division believed that the
19 expense was not a proper expense for the water company?

20 A. They believed it was not right. I -- I --
21 I argued with them that at least half of it should be
22 considered that because we were in desperate need for
23 additional source. We have three tanks. Two of them are
24 by the wells and one of them is remote about three miles
25 as the crow flies away on the far west end of the valley.

1 And so, when the water comes out of the wells,
2 of course it wants to go to those tanks first. When they're
3 full, we have a shut-off valve, so it forces it back down
4 into the valley, but it has trouble getting to our west side
5 tank because all the users are in between.

6 So, we built a line that circumvented all the
7 homes and went out to the west side in an attempt to get
8 more -- to balance the system better. And, basically, it's
9 working. So I felt some of that cost. I felt all of the
10 cost until I had my meetings with Mr. Long a couple months
11 ago down south. I felt -- I just --

12 The loan was made to Dammeron Valley Water Works,
13 so I invited the Division of Water Resources and I didn't
14 really have another thought about it. It was the third loan
15 I had taken from the Division to build pumps and tanks and
16 things. And then in '94 I took a loan and in 2004 I took
17 a loan to build water -- deeper wells, bigger wells,
18 new tanks, et cetera.

19 So, but at this point I didn't argue. I was
20 trying -- I didn't mind getting expenses out of the water
21 company because I was trying to get my rate approved.

22 So, taking that 50 -- it's one pocket; right?
23 I mean, Dammeron Corp owns 100 percent of the water company.
24 So, for me to pay that expense out of Dammeron Corp, it
25 saved the \$50,000 subsidy I was giving to the water company,

1 so it was an easy decision to make. I felt some of it
2 should have been left into my rate base but that doesn't
3 matter either.

4 **Q. Mr. Pace, you are aware, though, that Dammeron**
5 **Valley Water Works and Dammeron Valley Corporation are**
6 **separate entities; correct?**

7 A. Yes. Right.

8 **Q. Do they have separate sets of books?**

9 A. Yes. They always have. They were consolidated
10 but they were separate bank accounts, separate set of books
11 from day one. It was just a division of Dammeron Corp
12 until, you might remember, it was Judge Goodwill in 2008
13 who said, I suggest that you a create a separate company
14 for your water company which we did within the year.

15 **Q. Thank you. Speaking of separate things, is it**
16 **true that Dammeron Valley Water Works does not have a**
17 **separate system for its irrigation water?**

18 A. Right.

19 **Q. Could Dammeron Valley Water Works put in a**
20 **separate system for its irrigation water delivery?**

21 A. For several million dollars we could build a new
22 set of wells and a new set of transmission lines for two
23 miles into the valley but it wouldn't be practical.

24 **Q. Did I hear you say that you -- and I'm not sure**
25 **if it's the water company or Dammeron Corp or you personally**

1 **subsidizing the irrigation rates or did I mishear?**

2 A. Well, the Division believes that I'm subsidizing
3 the irrigation rates. I don't believe I'm subsidizing the
4 irrigation rates. And sometimes in the past I've been
5 subsidizing the company, but I don't think the irrigation
6 rates were a part of it. When they were approved in '97 --
7 '87, it was understood they were to be revenue neutral.

8 **Q. Do you or Dammeron Corp have any irrigation shares**
9 **or water rights in Dammeron Valley?**

10 A. Do I personally?

11 **Q. Sorry. I should ask the question separate.**

12 **Do you personally have any irrigation shares?**

13 A. One of our family-owned companies of which I own a
14 very small portion of holds all the water that is not being
15 used. They hold about 500 acre feet for future development.

16 **Q. Thank you. If all the ratepayers chose to convert**
17 **to the conservation rate that you proposed, would revenues**
18 **from that cover all of Dammeron Valley Water Works' fixed**
19 **expenses?**

20 A. If it didn't, I'd be in the next year for another
21 rate increase on the conservation rate.

22 MS. SCHMID: Thank you.

23 THE HEARING OFFICER: But you don't know what the
24 numbers would be?

25 MR. PACE: Well, 14 in the last seven years have

1 converted to it voluntarily. Those in the future would be
2 forced on it if it still exists.

3 So, the system would have about 40 percent of its
4 customers that would be on the conservation rate. All of
5 the new state land that we're developing, 250 lots, would be
6 on it plus 55 more lots we're developing in Pinion Hills.

7 So, there would be about 300 that would be forced
8 on the conservation rate. There would be 500 that would not
9 unless they wanted to voluntarily convert to it.

10 I'm not -- I wish more would convert to it.
11 And I don't think -- I don't think enough will that it'll
12 ever be a big hole in our revenues.

13 But if everybody did or 90 percent did and
14 there was a big hole in the revenues, yes, I would have
15 to subsidize until I could come in and get a rate increase.

16 BY MS. SCHMID:

17 **Q. At this point, though, have you performed a study**
18 **to see if, for example, 90 percent of the ratepayers current**
19 **and future converted to the conservation rate if that would**
20 **cover your fixed costs?**

21 A. I can just tell you off the top of my head if,
22 say, we went to \$28 rather than \$38, it would be \$10 per
23 month. So, \$120 a year per customer.

24 So, if that 350 customers did decide to convert,
25 it would amount to what, \$35,000. Could I handle the

1 \$35,000 shortfall? Yes, because I'm going to now be
2 creating a 50,000 -- I don't remember exactly what the
3 Division's method of determining what my reserve account
4 gets made up of. I think it will be the amount of
5 depreciation expense or maybe it'll be a percent of total
6 revenue, but we will have a reserve account and we would
7 be able to get through a \$35,000 shortfall in a year
8 if 90 percent of them converted.

9 **Q. Is it your understanding, then, that the capital**
10 **reserve account fund that the Division is proposing could be**
11 **used as a filler to make up insufficient revenues?**

12 A. I think it could be used for a filler for any kind
13 of crisis that we faced. I think it's primarily intended
14 for a major repair or something like that, however.

15 MS. SCHMID: I would just like the Commission
16 to take note that the Division has addressed the proper
17 uses of the reserve account in its testimony.

18 THE HEARING OFFICER: Thank you.

19 MS. SCHMID: Those are all my questions.

20 THE HEARING OFFICER: Ms. Hjelle, do you have any
21 questions for Mr. Pace?

22 CROSS-EXAMINATION

23 BY MS. HJELLE:

24 **Q. Just for clarification, Mr. Pace, we've been**
25 **confused about what your proposed tariff is. And I am**

1 looking actually at an exhibit to Mr. Long's testimony.

2 And I want to confirm that this is your proposal.

3 I'll take myself as an example; okay? I think
4 I have an 800-gallon-per-day allocation as one tapping;
5 right? That's what you get as you --

6 A. Right.

7 Q. Okay. And so, it says that you would pay your
8 base rate. Then you would pay tier one at a buck 75 per
9 thousand gallons and then the irrigation rate would kick in?

10 A. No. You would pay your base rate on the 24,000.
11 Then you go to irrigation. Then you go to -- well, look.
12 You haven't converted from your two tap or have you?

13 MS. HJELLE: We are confused about that, too,
14 to be perfectly honest.

15 MS. SCHMID: Pardon me. May I ask who "we" is?

16 MS. HJELLE: That's a good question. I should say
17 me. I'll say myself. I'm confused.

18 THE HEARING OFFICER: But let's just make sure
19 that we're all looking at the same thing.

20 Are you looking at Exhibit-3 that's attached to
21 the surrebuttal testimony?

22 MS. HJELLE: Yes.

23 THE HEARING OFFICER: So, Mr. Pace, will you find
24 that and look at it with us?

25 MR. PACE: Hold it up and let me see which sheet

1 you got.

2 THE HEARING OFFICER: And while we're finding it,
3 I'll just express thanks to the Division for preparing this
4 chart. It's extremely helpful.

5 MS. SCHMID: May we go off record for a moment?
6 I might have an extra copy.

7 THE HEARING OFFICER: Okay.

8 MR. PACE: Well, we've got it. It's just that I'm
9 not sure which sheet it is. I'm looking from a distance.

10 THE HEARING OFFICER: Okay.

11 (Discussion off the record)

12 EXAMINATION

13 BY THE HEARING OFFICER:

14 Q. All right. Do we all have this Exhibit-3?

15 Mr. Pace, do you?

16 A. I do, yes.

17 Q. Do you want to look at this?

18 A. Yes.

19 Q. Okay. Hold on. And the Division has it.

20 Ms. Hjelle, you have it and I have it.

21 So, let me just make sure I understand some of
22 these terms. If you look at the very top chart that talks
23 about the current rate schedule that you have, in the second
24 big column that says 800 gallon per day allocation, is the
25 800 gallons per day equivalent with the term one tapping

1 that you've been using?

2 A. Yes.

3 Q. Okay. And the 1200 gallons per day is equivalent
4 with a 1.5 tapping?

5 A. Right.

6 Q. And 1600 gallons is equivalent with a two tapping?

7 A. Yes.

8 Q. Okay. And my question is, how does a homeowner
9 get a tapping or 1.5 tappings or two tappings? What process
10 does the purchaser go through to get that base amount?

11 A. Okay. Like I said, in the beginning, we did two
12 five-acre lot subdivisions.

13 Q. So, wait. Who's "we"?

14 A. Well, Dammeron Corp.

15 Q. So, Dammeron Corp is the developer?

16 A. The developer.

17 Q. And you own that?

18 A. Right.

19 Q. And it owns the water company?

20 A. Right.

21 Q. Okay. Keep going.

22 A. Okay. So, in 1976, 1975 when we bought the land,
23 we -- I was living in Vegas and was not intending to get
24 into an in-depth development. And we started doing
25 five-acre lots.

1 Then we fell in love with the valley, realized
2 we had water to do more, and we went to one-acre lots.
3 But all the five-acre lots were given the two tapping.

4 **Q. Okay. So, that was just part of the purchase**
5 **of a five-acre lot?**

6 A. Right. What they got. In fact, I brought along
7 some of the CC&Rs so you could look at these because water
8 was always spelled out very clearly in the CC&Rs.

9 **Q. Okay.**

10 A. But the early two subdivisions --

11 **Q. Okay. But I just want to make sure that I'm with**
12 **you because I wasn't at the prior hearing. And I did read**
13 **some of it, but, so, if back in the beginning I bought a**
14 **five-acre lot, two tappings came with that but that's not a**
15 **share. It's not the same as purchasing a share?**

16 A. It's not an irrigation share, right?

17 **Q. Okay. And what that means is that I'm allowed to**
18 **use 16,000 gallons per day.**

19 A. Yeah. 1600.

20 **Q. 1600?**

21 A. 1600 per day, 48,000 per month.

22 MR. LONG: Oh. I think I have an extra zero in
23 that.

24 THE HEARING OFFICER: I think you do have an extra
25 zero in there.

1 MR. PACE: Oh, you do. Yeah.

2 BY THE HEARING OFFICER:

3 Q. Okay. 1600 gallons per day at the base rate,
4 whatever the base rate might be because over time it's going
5 to have to be adjusted?

6 A. Right.

7 Q. Okay. Keep going.

8 A. And then, we did about a hundred of those lots,
9 100 large or 80 or 90, of those that got the two tappings.

10 Q. Okay.

11 A. Then the next phase was one to three-acre lots and
12 we gave them one and a half tappings.

13 Q. Okay.

14 A. So, those are the 1200 gallon a day column.

15 Q. One- to three-acre lots.

16 And again, that use right came with the purchase?

17 A. Right.

18 Q. Okay.

19 A. Then, from then on, we went -- and there were
20 about 75 lots in that subdivision.

21 Q. Okay.

22 A. And so, from then on, everything that we developed
23 until we adopted the conservation rate a few years ago --
24 and we haven't done any subdividing since.

25 So, all the new subdivisions then went on

1 800-gallon-per-day allocation.

2 **Q. Okay. So, how large are those lots generally?**

3 A. Generally, there's about 50 of them that are
4 three-quarter acre and all the rest are one to three acre.

5 **Q. So, between three quarter acre to three acres?**

6 A. Right.

7 **Q. And those people get 800 gallons per day at the**
8 **base rate?**

9 A. Right.

10 **Q. Okay.**

11 A. And then the conservation rate. The state
12 requires a .45-acre-foot which is 400 gallons a day.
13 That's what they want to make sure a water company has
14 to serve their customers.

15 So, that's what the conservation rate became is
16 that minimum that the state would allow a lot to be
17 developed with.

18 MS. SCHMID: May I ask a clarifying question?

19 THE HEARING OFFICER: Please do.

20 MS. SCHMID: Mr. Pace, when you say the state
21 requires 400 gallons, do you mean the Division of Public
22 Utilities or the Division of Drinking Water Quality?

23 MR. PACE: DEQ. Drinking water.

24 MS. SCHMID: Thank you.

25 THE HEARING OFFICER: Okay.

1 MR. PACE: I went over this conservation rate with
2 them, with Ken Bousfield and other people at the Division of
3 Drinking Water. We had meetings about it. They felt good
4 about it. They felt we were going in the right direction,
5 too.

6 BY THE HEARING OFFICER:

7 Q. Okay. So, as you look on this exhibit which is
8 the Division's work, not yours --

9 A. Right.

10 Q. -- is this accurate?

11 Do you stipulate that these are accurate numbers
12 and this accurately represents your current and proposed
13 rate structures?

14 A. It -- in -- it's our current, yes. Okay.
15 Proposed here. Okay. Let me see if the proposed
16 is correct. (Reviewing). Yes.

17 THE HEARING OFFICER: Okay. All right.

18 Ms. Hjelle, I think we're all looking at the same
19 thing, and I think I basically understand the numbers.

20 So, go ahead with whatever questions you have.

21 MS. HJELLE: Well, I think that answered --
22 I think that answered my -- the question that you would have
23 a base rate plus a tier and then the irrigation rate would
24 kick in.

25 MR. PACE: Your Honor, one of the things that you

1 maybe didn't understand and I'm wondering if you're
2 confused. You had 48,000 as your allocation per month;
3 right? 96,000 in two months. That would be a two tapping
4 because you have a five-acre lot.

5 But we gave people a right, if they had an
6 irrigation share, to convert back to the one tapping so they
7 didn't have to use 96,000 in a two-month period before they
8 got to the cheap water; right?

9 And I think you converted because Lisa told me
10 that that's how you were being charged. There was a little
11 form you had to sign to say I give up that other tapping.

12 MS. HJELLE: My predecessor in interest may have
13 converted. I do not know. Although, they never built or
14 used the water, so I don't know.

15 MR. PACE: Did they have an irrigation share?

16 MS. HJELLE: Yes. They sold the water right to us
17 along with the lot.

18 MR. PACE: Who was it?

19 MS. HJELLE: Christensen.

20 MR. PACE: That was quite a long time ago.

21 I don't remember, but Lisa claims that she's billing you
22 24,000. Then you go to irrigation and if you go over your
23 two irrigation shares, then you go to your overage.

24 MS. HJELLE: That's what I believe it is.

25 MR. PACE: But there are people with irrigation

1 shares that have not wanted to give up their two tapping
2 allocations for the simple reason in their mind it was like
3 giving up a water right.

4 CROSS-EXAMINATION

5 (Continued)

6 BY MS. HJELLE:

7 **Q. Back to the point, however, Mr. Pace, just so I've**
8 **concluded this question, looking at this chart, I think it's**
9 **self-evident that everybody pays the base rate and one tier**
10 **and then moves into their irrigation rate?**

11 A. Well, some people pay -- yeah. Whatever their
12 tier -- whatever their allocation is. They pay their
13 allocation. If it's -- it's got to be at least 800 gallons
14 a day. If they are on the conservation rate, they have
15 to convert to the 800-gallon-a-day allocation.

16 But there are people on 1200-gallon-a-day
17 allocation that have to use that before they go to
18 irrigation. There are people on 1600 gallon a day
19 allocation that have to use that before they go to the
20 irrigation rate.

21 **Q. This would suggest that there are four rate**
22 **classes in the Dammeron Valley Water Company.**

23 In actuality, aren't there a number of other
24 categories of rate billing categories where people have
25 different tappings or are allowed irrigation water without

1 **owning a share and so forth?**

2 A. Name an example.

3 **Q. Well, I can't. I'm just asking.**

4 A. Well, I mean, the only -- the only person --
5 remember, in the drought years, our tariff gives us the
6 right to do it, we have let everybody -- last year we did it
7 because we thought it was going to be an incredible drought
8 year like we were having in '04 and '05 and '06.

9 And in those years it was so dry and because we
10 had the excess water, we let everybody whether they owned an
11 irrigation share or not have one extra irrigation share for
12 that particular year.

13 So, that we have done four times, last year and in
14 '04, '05, and '06. But that was -- if you had two
15 irrigation shares, then you had three to use that particular
16 year.

17 **Q. I don't think we were billed that way.**

18 A. You absolutely were billed that way. It cost us
19 about \$8,000 last year by doing that.

20 **Q. I think my bills are in an exhibit.**

21 A. Yeah. They are. I've got it right here. Oh.

22 **Q. One other question. Is it your understanding,**
23 **then, that whatever rate structure is approved by the**
24 **Public Service Commission, that would apply to all water**
25 **deliveries through the Dammeron Valley Water Company system?**

1 A. Yes.

2 MS. HJELLE: Thank you.

3 THE HEARING OFFICER: Any follow-up?

4 MS. SCHMID: No follow-up from the Division.

5 THE HEARING OFFICER: Okay. Mr. Pace, anything
6 more that you want to discuss right now before we move on
7 to the Division and its witnesses?

8 MR. PACE: No. I'm ready for them.

9 THE HEARING OFFICER: All right.

10 Ms. Schmid, go ahead.

11 (Discussion off the record)

12 THE HEARING OFFICER: We will take a short break.
13 Go off the record.

14 (Recess taken from 10:07 a.m. to 10:10 a.m.)

15 THE HEARING OFFICER: All right. We're back
16 on the record.

17 Does anybody anticipate needing Ms. Gaufin back?

18 MS. SCHMID: The Division does not.

19 THE HEARING OFFICER: And, Mr. Pace?

20 MR. PACE: I'm fine with releasing her to --

21 THE HEARING OFFICER: All right.

22 MR. PACE: -- go see her granddaughter.

23 THE HEARING OFFICER: Then you're excused.

24 You may leave if you like. Thank you for your help today.

25 Go ahead, Ms. Schmid.

1 MS. SCHMID: Thank you. The Division would like
2 to call -- or, actually, before I begin with the witnesses,
3 I'd like just to make a brief statement if I may.

4 THE HEARING OFFICER: Please. Go right ahead.

5 MS. SCHMID: This case has followed a rather
6 unusual procedural path. Normally in rate cases such as
7 this, testimony is prefiled with exhibits and then at the
8 hearing those exhibits and testimony are admitted and
9 cross-examination takes place on those documents.

10 Here, on Friday afternoon the 7th, pursuant to the
11 procedural schedule which called for a witness list and
12 exhibit list, Ms. Hjelle and Mr. Pace filed witness lists
13 that for both of them included people that had not been
14 previously introduced to this proceeding.

15 Ms. Hjelle's witness and exhibit list also listed
16 some new exhibits which the Division had not -- was not
17 aware until that time that she intended to use at hearing.
18 And the Division would like to note that Ms. Hjelle has
19 filed no prefiled testimony.

20 However, at this time, the Division is making no
21 due process objections or requesting a continuance and the
22 Division supports the Commission having a full and fair
23 record upon which to decide its case.

24 Additionally, yesterday, August 10th, the Division
25 received an e-mail copy of intervenor Hjelle's memorandum

1 of points and authorities.

2 I believe the memorandum addresses what it asserts
3 to be the relationship between the rate-making charge of the
4 Public Service Commission and what I will call traditional
5 Utah water statutes, that found in Title 73 of the
6 Utah code.

7 The Division would like the opportunity to respond
8 to Ms. Hjelle's memorandum of points and authorities and
9 request that it be granted permission to do so and be
10 granted until October (sic) 25th to do so.

11 THE HEARING OFFICER: Any objection from anyone?

12 MR. PACE: I may have one. I mean, to drag this
13 case off for two months, I have an -- yes, I have an
14 objection to prolong this case for two more months
15 without even knowing what her memorandum is asking.

16 MS. SCHMID: Oh. Pardon me. I appear to have
17 said October rather than August. I meant August.

18 MR. PACE: Okay.

19 THE HEARING OFFICER: So, we're talking two weeks.

20 MR. PACE: The judge has a month to make her
21 decision anyway, so that's fine.

22 MS. SCHMID: Thank you. And I apologize for
23 misspeaking. I was perhaps thinking of the fall.

24 THE HEARING OFFICER: Ms. Hjelle, any objection?

25 MS. HJELLE: If there were anything in there that

1 called for a rebuttal, would that be okay?

2 THE HEARING OFFICER: Does the Division have any
3 objection to a rebuttal?

4 MS. SCHMID: The Division would prefer that there
5 be no rebuttal as Ms. Hjelle ostensibly made her case in her
6 Memorandum and Points and Authorities.

7 But the Division believes in having the Commission
8 provided a full and fair record. So, the Division would
9 have no objection as long as her rebuttal was filed in a
10 very timely fashion, perhaps five or seven days.

11 THE HEARING OFFICER: And it would have to be
12 restricted to arguments raised in your memorandum of points
13 and authority. I would not be able to allow you to
14 introduce any new arguments.

15 MS. HJELLE: I understand that, Your Honor.
16 And five to seven days is fine.

17 THE HEARING OFFICER: All right. Well, then,
18 I'm going to go ahead and grant the request for the Division
19 to file a response to the intervenor's memorandum of points
20 and authorities with a deadline of August 25th. I don't
21 have a calendar in front of me. What's a week after that?
22 It takes us over the month. So, I need help.

23 MR. PACE: Your Honor?

24 THE HEARING OFFICER: Yes.

25 MR. PACE: Is it possible I could learn a summary

1 of what Ms. Hjelle --

2 THE HEARING OFFICER: Yes. I'm sure she's going
3 to provide that here.

4 MR. PACE: Okay.

5 MS. SCHMID: Does someone have a calendar?

6 MR. ANDREW PACE: A week from the 25th?

7 THE HEARING OFFICER: Uh-huh (affirmative).

8 MR. ANDREW PACE: Is the first of September.

9 THE HEARING OFFICER: September 1st.

10 And those are both weekdays; right?

11 MR. ANDREW PACE: Uh-huh (affirmative).

12 THE HEARING OFFICER: Okay. So, the deadline for
13 any reply that you want to file would be September 1st.

14 MS. HJELLE: Thank you.

15 THE HEARING OFFICER: Thank you, Ms. Schmid. And
16 thank you for so graciously working with the irregularities
17 and circumstances of this case.

18 MS. SCHMID: We are flexible as is the
19 administrative process.

20 MR. PACE: This is the third time through.

21 MS. SCHMID: With that, the Division would like to
22 call for its witness Mr. William Duncan.

23 Could Mr. William Duncan please be sworn?

24 THE HEARING OFFICER: Yes. Mr. Duncan, please
25 raise your right hand.

1 MR. DUNCAN: (Complying)

2 THE HEARING OFFICER: Do you solemnly swear that
3 the testimony and evidence you provide today is the truth,
4 the whole truth, and nothing but the truth, and this you do
5 under penalty of perjury?

6 MR. DUNCAN: Yes.

7 THE HEARING OFFICER: And where do you want him,
8 Ms. Schmid? Up here or...

9 MS. SCHMID: Right here.

10 THE HEARING OFFICER: Okay. Very good.

11 WILLIAM DUNCAN

12 having first been duly sworn, was
13 examined and testified as follows:

14 EXAMINATION

15 BY MS. SCHMID:

16 Q. Good morning, Mr. Duncan.

17 A. Good morning.

18 Q. Could you please state your full name, business
19 address, employer and employment address for the record?

20 A. Yes. My name is William Duncan and I work for the
21 Division of Public Utilities. I'm manager of the
22 telecommunications and water section. Business address
23 is 160 East 300 South, Salt Lake City.

24 Q. In your role as manager of the telecommunications
25 and water section, have you participated on behalf of the

1 **Division in this docket?**

2 A. Yes, I have.

3 **Q. Could you please briefly describe your**
4 **participation? Very briefly.**

5 A. Yes. I've overseen and managed this case and
6 worked with Mr. Long and others in the Division since the
7 case was filed.

8 **Q. Did you prepare and cause to be filed your direct**
9 **testimony which was filed on June the 19th, 2015?**

10 A. Yes, I did.

11 **Q. And could you please state the name of that**
12 **testimony and its exhibits?**

13 A. It's the direct testimony of William Duncan.
14 There are no exhibits.

15 MS. SCHMID: Thank you. With that, the Division
16 would like to move for the admission of Mr. Duncan's direct
17 testimony identified as DPU Exhibit 1.0.

18 THE HEARING OFFICER: Any objection, Mr. Pace?

19 MR. PACE: No.

20 THE COURT: Any objection?

21 MR. PACE: No.

22 MS. SCHMID: Oh, pardon me. 2.0.

23 THE HEARING OFFICER: 2.0.

24 MS. SCHMID: DPU Exhibit 2.0.

25 THE HEARING OFFICER: All right. So, the version

1 that I'm looking at filed June 19th is marked 1.0. Are we
2 looking at the amended testimony?

3 MS. SCHMID: No. Mr. Long's testimony should be
4 marked DPU Exhibit 1.0 --

5 THE HEARING OFFICER: Oh, okay.

6 MS. SCHMID: -- and Mr. Duncan's 2.0.

7 THE HEARING OFFICER: Okay. Thank you. Sorry.
8 Thank you. I was incorrect.

9 MS. SCHMID: And we move for the admission of 2.0.

10 THE HEARING OFFICER: Okay. It is admitted and
11 marked.

12 (DPU Exhibit-2.0 marked and admitted)

13 BY MS. SCHMID:

14 **Q. Thank you. Mr. Duncan, do you have a summary**
15 **of your testimony to give today?**

16 A. Yes, I do.

17 **Q. Please proceed.**

18 A. "The purpose of my testimony is to present to the
19 Public Service Commission of Utah, the PSC, the
20 Division of Public Utilities' (DPU) policy and
21 objectives in the rate-making process for water
22 utilities. Mark Long will discuss the application
23 of the DPU's policy and objectives in this case.

24 "Prior to 2008, the Division had apparently used"
25 several models, several "various models in setting

1 water company rates. While those models may have
2 served well at the time, events of the past seven to
3 eight years exposed some of the flaws in those models.

4 "Specifically, the nationwide recession that
5 started in 2008 and significantly impacted the housing
6 market had a tremendous impact on Utah water companies
7 regulated by the PSC. Since many of the water
8 companies regulated by the PSC and the DPU are built,
9 owned and managed by developers, the recession's impact
10 rippled through the developers to the water companies
11 and the citizens served by those companies.

12 "Several water companies regulated by the PSC were
13 found to have significant financial problems due to
14 three major and recurring problems: first, rates that
15 were inadequate to cover costs; second, a dependence
16 on developer subsidies to cover costs; and third,
17 little or no capital reserves:

18 "All of these elements contributed to some extent
19 to the financial instability of the various companies
20 and threatened the company's ability to provide
21 reliable water service. Later, due to severe drought
22 conditions across the western United States, the
23 importance of water conservation increased as an
24 important element in rate making.

25 "As the DPU was called upon to investigate and

1 make recommendations to the PSC on these cases, the DPU
2 researched, investigated and analyzed various other
3 rate models. Those rate models came from other states
4 as well as federal agencies, such as the EPA.

5 "As a result of this research, some elements
6 of those models began to be included in DPU
7 recommendations to the PSC. The DPU continues to
8 refine its rate model to encompass all of the important
9 elements that the DPU feels are necessary for the small
10 water companies regulated by the PSC.

11 "The DPU believes the rates recommended in this
12 case will provide financial stability for the
13 water utility and promote water conservation, are just
14 and reasonable, and are in the public interest."

15 MS. SCHMID: Thank you.

16 THE HEARING OFFICER: When you refer to the
17 proposed rates, you're talking about the amended?

18 THE WITNESS: Yes. I'm talking about the amended
19 rates proposed by the DPU.

20 THE HEARING OFFICER: Okay. Thank you.

21 MS. SCHMID: Thank you. Mr. Duncan is available
22 for cross-examination and questions from Your Honor now or
23 whenever Your Honor would prefer.

24 THE HEARING OFFICER: Thank you. I read very
25 carefully the Division's testimony and the concerns that are

1 raised. And let me just clarify that the Division agrees
2 that the service connection fee should be increased;
3 correct?

4 MR. LONG: Yes.

5 EXAMINATION

6 BY THE HEARING OFFICER:

7 Q. And can you just briefly address -- or if you
8 want -- if, Mr. Long, if you would prefer to address this,
9 that's fine, but I would like just to put on the record a
10 brief discussion of what you consider full-cost pricing and
11 how you have determined that the rates proposed will achieve
12 full-cost pricing for this company.

13 A. I'll leave that one for Mr. Long.

14 Q. Okay. That's fine. I also noted in the testimony
15 the Division's concern that it's been difficult to
16 understand the books, that there appear to be intercompany
17 transactions and lack of arm's-length transactions.

18 Has that concern been resolved? Mr. Pace
19 testified earlier today that the books are separate.

20 A. Again, Mr. Long can testify to that.

21 Q. Okay. You had also noted in the direct testimony
22 that the water company is not using the correct depreciation
23 rates pursuant to Utah Administrative Code 746-332-1.

24 Does that remain a concern today?4.

25 A. It does. I think Mr. Long addresses that in --

1 Q. Okay.

2 A. -- some of his testimony.

3 Q. All right. And that future expansion by the
4 development company and the infrastructure needed to take
5 water to new lots may not be funded by current taxpayers.

6 Does that remain a concern today?

7 A. Yes. That remains a concern. I think Mr. Long
8 addresses that.

9 Q. Okay. And you had also raised a concern that the
10 water company's desire to have a greenbelt, to have
11 agriculture are not relevant to the inquiry about what rates
12 should be. Are you going to pursue that today?

13 A. Yes. I believe Mr. Long addresses that in his
14 testimony.

15 THE HEARING OFFICER: Okay. All right.

16 I think those are the basic areas that I wanted
17 to discuss with the Division.

18 Then the Commission also had a concern regarding
19 the Division's acquiescence to the idea that people who own
20 water shares may be -- may have a different rate schedule
21 than people who don't have shares and wanted the Division
22 to weigh in on why shareholders qualify as a different class
23 of ratepayers. Is that coming?

24 MR. LONG: That's coming also.

25 THE HEARING OFFICER: Okay. All right.

1 Thank you. Mr. Pace or Ms. Hjelle, do you have any
2 questions for Mr. Duncan?

3 MS. HJELLE: No.

4 MR. PACE: No.

5 THE HEARING OFFICER: Okay. Go ahead, Ms. Schmid.

6 MS. SCHMID: The Division would like to call as
7 its next witness Mr. Mark Long. Could he please be sworn?

8 THE HEARING OFFICER: Yes.

9 Do you solemnly swear that the testimony and
10 evidence you provide today is the truth, the whole truth,
11 and nothing but the truth, and this you do under penalty
12 of perjury?

13 MR. LONG: Yes.

14 THE HEARING OFFICER: Thank you.

15 MARK LONG,
16 having first been duly sworn, was
17 examined and testified as follows:

18 DIRECT EXAMINATION

19 BY MS. SCHMID:

20 Q. Good morning, Mr. Long.

21 A. Good morning.

22 Q. Could you please state for the record your full
23 name, employer, title, and business address?

24 A. Yes. My name is Mark Long. I'm a utility analyst
25 for the Division of Public Utilities. My address is

1 160 East 300 South, Salt Lake City, Utah.

2 **Q. In connection with your employment at the**
3 **Division, have you participated in this docket?**

4 A. Yes, I have.

5 **Q. Could you please briefly describe that**
6 **participation?**

7 A. When this case was first presented to the
8 Commission and referred to the Division, I was assigned
9 to be the point person on this case and have handled it
10 ever since.

11 **Q. And so, you have examined the books and records**
12 **of the water company including its expenses and revenues?**

13 A. Yes, I have. I also went out and did an audit
14 at the location at Mr. Brooks's office manager's residence
15 and looked at all the books and records. All of those were
16 made available to us.

17 **Q. Mr. Duncan referenced the Division using models**
18 **or other applications in its ratemaking process.**

19 **Did you use a model to assist you in your**
20 **evaluation and analysis?**

21 A. Not necessarily a specific model but ideas from
22 probably several different models in this case.

23 **Q. Have you used those ideas in prior rate cases?**

24 A. Yes. Those have been done in the last at least
25 two or three rate cases for the water companies.

1 Q. Thank you. Mr. Long, are you familiar with the
2 second corrected comments from the Division of Public
3 Utilities filed March 3rd, 2015 in this docket?

4 A. Yes.

5 Q. Do you adopt that as your testimony?

6 A. Did you say second or third?

7 Q. Second.

8 A. Yes, I do.

9 MS. SCHMID: The Division will wait and ask to
10 have things moved all at once.

11 THE HEARING OFFICER: Okay.

12 BY MS. SCHMID:

13 Q. And, Mr. Long, did you prepare and cause to be
14 filed your direct testimony previously marked as DPU
15 Exhibit 1.0 with its accompanying exhibits in this docket?

16 A. Yes, I did.

17 Q. Do you have any changes or corrections to that?

18 A. No, I don't.

19 Q. Did you also prepare and cause to be filed
20 DPU Exhibit Number 1.0 SR with its accompanying exhibits?

21 A. Yes.

22 Q. I believe previously we made a correction on
23 Exhibit-3 changing 16,000 gallons to 1600 gallons; is that
24 correct?

25 A. That's correct.

1 **Q. Absent that correction, do you have any other**
2 **corrections that you would like to make to DPU**
3 **Exhibit-1.0 SR and its accompanying exhibits?**

4 A. Not that I'm aware of, no.

5 **Q. With that, the Division would like to move for the**
6 **admission of the second corrected comments filed with the**
7 **Commission on March 3rd, 2015, the direct testimony of**
8 **Mr. Mark Long previously marked as DPU Exhibit 1.0 with its**
9 **accompanying exhibits, and Mr. Long's surrebuttal testimony**
10 **previously marked as DPU-1.0 SR with its exhibits and as**
11 **Exhibit-3 as has been corrected here today.**

12 THE HEARING OFFICER: And just for the record,
13 the direct testimony is dated June 19th and the surrebuttal
14 testimony is dated August 7th.

15 MS. SCHMID: Thank you very much.

16 THE HEARING OFFICER: Any objection, Mr. Pace?

17 MR. PACE: No, ma'am.

18 MS. HJELLE: No.

19 THE HEARING OFFICER: Thank you. All right.
20 Those are accepted and entered as marked. Go ahead.

21 (DPU Exhibit-1.0, DPU Exhibit-1.0 SR,
22 and DPU Exhibit-3 marked and admitted)

23 BY MS. SCHMID:

24 **Q. Thank you. Mr. Long, do you have a summary to**
25 **present today?**

1 A. Yes, I do.

2 **Q. Please proceed.**

3 A. "First let me start out by saying that Brooks Pace
4 has the unenviable job of managing the culinary and
5 irrigation water for nearly 400 customers through a
6 single water system. Over the years, even though
7 the rates did not cover the basic expenses, Mr. Pace
8 subsidized the water company, and the Division has
9 had very few complaints.

10 "Dammeron Water's current and proposed rates are
11 much more complex than other water utilities the
12 Commission regulates. The Division has spent many
13 hours, issued numerous data requests, sent and received
14 dozens of e-mails and had numerous conversations with
15 Dammeron to understand its proposed rates.

16 To help me explain Dammeron's complicated rate
17 structure, I would like to use the analogy of an
18 electric company since most of us are more familiar
19 with that.

20 "Let's call our electric company the ABC Company.
21 ABC wants everybody's electric bills in the community
22 to be about the same amount, regardless of how much
23 electricity they use. To do this, ABC adjusts the
24 rates based on the potential usage of each customer.
25 Those using a lot of electricity are charged lower

1 rates per unit used. Those using less electricity are
2 charged higher rates. That way, large users can use
3 more electricity than smaller users, but still pay
4 about the same amount at the end of the month."

5 "Although Dammeron has never said that it wants
6 all of its customers to pay the same amount, this is
7 essentially how Dammeron's current and proposed rate
8 structure works. Dammeron allows its larger 2-tap
9 customers to use more water at lower rates than its
10 smaller 1-tap customers.

11 "The Division's recommended rate structure does
12 away with the 'tap' system" altogether "and charges all
13 customers the same rate. Those customers who use more
14 water than other customers are charged more in their
15 monthly bill. If you use more, you pay more.
16 It's that simple.

17 "To continue with this example, in the name of
18 conservation, ABC offers a conservation program that
19 customers can choose to join if they want to. Not too
20 many people want to conserve, so less than four percent
21 of the electric customers opted in which is a good
22 thing for ABC that not many of the customers opted in
23 because the conservation rates do not even cover its
24 fixed costs, and ABC would eventually go bankrupt.

25 "That aside, ABC charges its conservation

1 customers a set price that includes, for example,
2 12 units of electricity. ABC charges its conservation
3 customers the same amount whether they use one unit or
4 12 units. Realizing this, these conservation customers
5 keep close track of their usage and splurge on their
6 use at the end of the month because they figure that
7 they may as well use all 12 units because, after all,
8 they've already paid for them. The only conservation
9 part of ABC's conservation rate applies when its
10 conservation customers use more than their 12 units;
11 then their rates rise steeply.

12 "The above scenario is precisely how Dammeron's
13 conservation efforts work. Dammeron's conservation is
14 largely voluntary and charges a set amount regardless
15 of the amount of water used.

16 Dammeron personnel indicated that it is common
17 for its water users to keep close track of their water
18 usage and call the office to confirm how much water
19 they have left in their monthly allotment so they can
20 use it before the end of the month so they don't lose
21 it.

22 "The Division's recommended conservation structure
23 is not voluntary since it is built into the entire rate
24 structure and customers only pay for the water they
25 use.

1 "Still continuing with our example, ABC decides
2 that, rather than promoting conservation, it wants to
3 be the most well-lit community in the valley. ABC
4 promises its customers that if they keep the valley
5 well lit by keeping all their lights on and use as much
6 electricity as they want, ABC will sell them the
7 necessary bulk electricity at its cost.

8 "ABC has also had to over-build the system to
9 handle the extra demand of the high users on its
10 generators and plan. ABC also admits that without the
11 smaller users paying the higher rates, it cannot
12 support its bulk electrical sales.

13 "This bulk rate angers some of the potentially
14 larger users, spoken of earlier, because now with the
15 bulk rate, they are not getting as good a deal as some
16 of the potentially smaller users, so ABC allows them
17 to switch their rate designation if it makes their bill
18 smaller.

19 "This is how Dammeron's irrigation rate works.
20 Dammeron's irrigation must be subsidized either by the
21 culinary users or Mr. Pace. Mr. Pace has repeatedly
22 stated that he wants to enhance the beauty of the
23 valley by providing plentiful and cheap water to
24 keep the valley green, especially by the freeway.

25 "The Division's recommended irrigation rate is set

1 to recover the actual costs of irrigation based on the
2 best information that is available and, therefore,
3 does not have to rely on subsidies" to support it.

4 "One last thing to consider. ABC believes that
5 low rates and a well-lit Valley will attract new
6 customers who will buy land and have a home built
7 in ABC's service area. In order to keep the rates
8 artificially low, ABC's owner must subsidize the
9 Company during times of need which is constant because
10 its conservation and irrigation rates do not cover
11 costs and its practice of cutting special deals for
12 select users.

13 "Since its inception, ABC has never supported
14 itself without help. Subsidies have kept rates
15 artificially low and provided a false sense of
16 security. With plentiful subsidies in the past,
17 ABC has never established any savings or sought
18 financial security because someone is always there
19 to bail it out. Until there isn't.

20 "Dammeron has always relied on subsidies from
21 Mr. Pace. It has never been self-supporting and for
22 this reason its rates have always been artificially
23 low. Continued subsidies from Mr. Pace or his
24 successors is not guaranteed. On the other hand,
25 Dammeron customers' need for a reliable and operable

1 water system is guaranteed.

2 "It is not sound financial or regulatory policy to
3 continue to allow Dammeron to depend on subsidies and
4 charge rates that clearly do not cover the full cost
5 of service.

6 Much has been said in this hearing about how much
7 higher the Division's recommended rates are than the rates
8 recommended by Dammeron. Although they are structured
9 differently, the actual amounts are much the same.

10 In fact, using Dammeron's 1-tap tier, the
11 Division's recommended rate in total billing amount is
12 actually 20 percent lower in the examples that we used than
13 the rates proposed by Dammeron.

14 And you can take a look at that if you would.
15 It's found in Exhibit 4 SR and 5 SR. And in this --
16 I'll wait for everyone to get the exhibits.

17 In Exhibit 4 SR, the Division went through and
18 selected some typical water usage amounts. And so, for
19 example, in the top columns, you'll see 17,500 gallons
20 with zero irrigation shares.

21 THE HEARING OFFICER: That's gallons per what?

22 MR. LONG: Per month.

23 THE HEARING OFFICER: Per month? Okay.

24 MR. LONG: Yes. And then it went through and
25 selected some other gallons. Some of these are from actual

1 customer bills. I think, for example, the 63 gallons with
2 two water shares is actually from Ms. Hjelle's bill this
3 year. Anyway, it went through and it came up with a total
4 monthly billing amount based on the current rates,
5 the rates requested by Dammeron, the rates originally
6 recommended by the Division and then the amended rates
7 recommended by the Division.

8 And this shows a comparison of where they fall
9 into the scope of things. To make that a little bit simpler
10 to understand, I've provided Exhibit 5 SR which is six
11 different graphs that actually show the difference in the
12 monthly bills based on the proposed, the current and the
13 recommended rates.

14 And you can see here the Division rates in green.
15 Or if yours is not in color, the last two columns of every
16 graph are very similar to -- the net effect is very similar
17 to the amounts proposed by Dammeron.

18 MR. PACE: Which are what color?

19 MR. LONG: Well, the ones proposed by Dammeron
20 are the blue and the ones that are currently in effect by
21 Dammeron are the purple.

22 And one thing the Division would like to point
23 out, in the very first graph of 17,500 gallons, the Division
24 has drawn a line there called fixed costs.

25 And its concern is, if you look at the

1 conservation rate, the dark blue there for thirty-six
2 seventy-five, it's not covering the costs of the system,
3 and that's why, if every single customer were to opt in at
4 the conversation rate, the system would be losing money.

5 It wouldn't even be able to cover its fixed costs.
6 So, it wouldn't be able to cover all those salaries and
7 taxes and other items. And that's the big concern about
8 allowing Dammeron what they say is their conservation rate
9 to continue as such.

10 And if you were to look at all of these and add
11 them all together, the Division's rates are actually
12 20 percent lower if you're comparing those to Dammeron's
13 1-tap system which rather seems rather arbitrary whether
14 they -- what tap system they seem to put you in, actually.

15 To continue:

16 "In this docket, the Division is recommending
17 rates that are just and reasonable and in the public
18 interest. The Division's proposed rates are sufficient
19 to give Dammeron the chance to make it self-sustaining
20 while providing a reliable, safe water supply.

21 "The Division's rates do not discriminate against
22 any rate class, are easy to understand and follow
23 and are set at the lowest cost possible.

24 "In conclusion, the Division recommends the
25 following: Number one, the rates and rate structure

1 proposed by Dammeron Valley be rejected because they
2 will not result in just and reasonable rates and are
3 not in the public interest.

4 "Number two, the amended rates and fees set forth
5 proposed by the Division and outlined in Exhibit-2 SR
6 of my surrebuttal testimony be approved as being just
7 and reasonable and in the public interest; that the
8 Service Connection Fee be increased from \$1,500 to
9 \$2,000; and that Dammeron Water be allowed to expand
10 its service area as shown in Exhibit-9 of my direct
11 testimony.

12 "The Division believes that its recommended rates
13 are just and reasonable and in the public interest;
14 therefore, the Division recommends the Commission
15 approve these new rates, fees and expansion of the
16 service area."

17 **Q. Mr. Long, by "these new rates," do you mean the**
18 **Division's revised --**

19 A. Yes, the Division's revised rate, amended rates
20 that are in Exhibit-2 SR of the surrebuttal testimony.

21 **Q. Mr. Long, were you here when Mr. Pace addressed**
22 **the reserve fund?**

23 A. Yes, I was.

24 **Q. I believe that he said that the reserve fund could**
25 **be used to cover a revenue shortfall, for example, if rates**

1 **did not cover the costs one year. Could you please tell us**
2 **more about the capital reserve account?**

3 A. Yes. If you refer to my direct testimony under,
4 I believe it's Exhibit-2.

5 THE HEARING OFFICER: Exhibit-1 for your --

6 MR. LONG: No. It would be Exhibit-2 under my
7 direct testimony.

8 THE HEARING OFFICER: Oh.

9 MR. LONG: I'm sorry.

10 THE HEARING OFFICER: Okay. Got it.

11 MR. LONG: And this talks about the capital
12 reserve accounting requirements. It's put in here so that
13 this can be added verbatim to the tariff and it clearly goes
14 through and talks about how much the capital reserve account
15 should be, what fees should go into it, how they shall be
16 deposited, they should be deposited within 30 days of
17 receiving them, they should be made for capital replacements
18 and improvements only.

19 If Mr. Pace is finding that he's not able to pay
20 the standard bills from the operation and maintenance of the
21 water company, then he probably should come in and get a new
22 rate case. This is merely to reserve the depreciation
23 expense to be used for capital replacement and improvements
24 only.

25 BY MS. SCHMID:

1 **Q. As an example, could you give us an example of a**
2 **capital improvement or a replacement?**

3 A. Typically, those are high-cost items with long
4 service lives, things like distribution pipe, main lines,
5 storage reservoirs, wells, service water intakes, pumps,
6 things of that nature.

7 **Q. Thank you. Do you have anything else you would**
8 **like to add?**

9 A. No. I just wish to emphasize that the Division
10 is trying to set the rates that will cover the costs of the
11 water system and not make the water system dependent on
12 subsidies. Mr. Duncan spoke about that as well. And with
13 that, I'd like to conclude my testimony.

14 MS. SCHMID: Thank you.

15 Mr. Long is now available for cross-examination
16 questions and questions from Your Honor.

17 EXAMINATION

18 BY THE HEARING OFFICER:

19 **Q. Okay. So, I think we're going to be speaking**
20 **probably quite a bit through the remainder of this**
21 **proceeding about the irrigation shares, what those mean and**
22 **how they should be priced?**

23 And the Division's amended recommended rates do
24 acknowledge and respect those shares by having quite a low
25 price that attaches to each thousand gallons used by a

1 person who has a share after paying for the first 12,000
2 gallons at the regular rate. I'm looking at the Division's
3 suggested rates; right?

4 A. Yes.

5 Q. The Division has a base rate of thirty-seven
6 ninety which is just basically for access and the
7 infrastructure and so on. It includes no gallons of water.

8 A. That's correct.

9 Q. And then for the first 12,000 gallons,
10 the Division recommends 30 cents per thousand gallons.

11 A. That's correct.

12 Q. Whatever that multiplies out to. But after using
13 12,000 gallons, then anyone who has irrigation shares starts
14 paying 45 cents per thousand gallons.

15 A. That's correct.

16 Q. Okay. Whereas, somebody who does not have an
17 irrigation share starts paying 60 cents per thousand gallons
18 and then starts going up from there?

19 A. That's correct.

20 Q. Okay.

21 A. And likewise, with the irrigation, once they've
22 used up their irrigation allotment, then they go right into
23 tier two and continue through that as well.

24 Q. Right. I understand.

25 A. Okay.

1 **Q. So, but the Commission's concern, and I'm sure,**
2 **Ms. Hjelle, that you have much you want to say on this issue**
3 **as well, is, why owning an irrigation share should entitle**
4 **you to lower rates than non-shareholders.**

5 **Does the Division have any thoughts on that?**

6 A. Initially, when the irrigation rate was approved
7 and recommended by the Commission, it applied to those
8 people that purchase an irrigation share. Either they
9 purchased it or it was donated to them by actually Mr. Pace
10 or Dammeron Corporation. The money was actually paid to
11 Mr. Pace or Dammeron Corporation, never to the water
12 company, which has been troublesome to the Division.

13 But since it was enacted and approved by the
14 Commission and the Division is going along with recommending
15 that the irrigation rate remain and applied similar to how
16 it's always been, it's really difficult to come up with
17 separate and distinct rates between the irrigation and the
18 culinary because it's all one system.

19 **Q. Okay.**

20 A. If it was a separate system and they had an
21 irrigation ditch, then we probably wouldn't even be
22 regulating that and they could do what they wanted with the
23 unregulated. But we're trying to do the best with what
24 we have and considering it's all through one system.

25 **Q. So, the Division's recommendation for the**

1 relatively low-cost irrigation water is really just an
2 attempt to play nice and respect the tradition and what's
3 been going on in this area over time?

4 A. That's certainly part of it. The customers did
5 pay something for it at the time or a value was assigned to
6 that when it was donated. And that's another reason.

7 Q. Okay.

8 A. One thing the Division has done is it's added an
9 amount to the cost per thousand gallons that will help cover
10 the additional wear and tear on the equipment caused by the
11 irrigation and also the overbuilding of the system that had
12 to be done to accommodate the irrigation customers.
13 But there is...

14 Q. But if the Division does not feel -- and this is
15 something that you might well address in your response brief
16 that you submit. The Division doesn't feel that the
17 Commission is legally bound to give shareholders a better
18 rate than non-shareholders?

19 A. I don't believe they are. I think the Commission
20 could recommend that the irrigation is discontinued and
21 everybody using water goes through the exact same tier rate.

22 Q. So, does the Division see any legal distinction
23 between a shareholder and a non-shareholder that would
24 require or justify a lower rate?

25 MS. SCHMID: The Division would be happy to

1 address that question in its reply brief.

2 BY THE HEARING OFFICER:

3 Q. In its reply. Okay. Because that I think is of
4 high concern to the Commission.

5 Mr. Long, do you want to comment on any of the
6 other concerns that were raised in your direct testimony
7 that's on file? I think you've discussed full-cost pricing
8 and the subsidization.

9 Do you want to comment on the books of the various
10 companies? Has that concern been resolved? Are you asking
11 the Commission for a remedy?

12 A. No. I think that's been pretty much resolved.
13 It was mainly referring to Mr. Pace putting a lot of --
14 putting loans and expenses perhaps into the water company
15 that really belonged to the developer. And I think those
16 have been worked out and as well as the depreciation rates.
17 He knows which rates to use now.

18 And unfortunately, that's a really common thing
19 that happens in most of the water rates, and so he may want
20 to notify his accountant of that as well so that he'll make
21 sure and use the rates approved by the Commission and not
22 necessarily the depreciation rates used for taxes or other
23 accounting.

24 Q. Okay. And is the Division now satisfied that
25 Mr. Pace has the knowledge and the willingness to establish

1 and fund a capital reserve account?

2 A. He has the knowledge and hopefully the
3 willingness.

4 Q. Okay. Well, maybe we can get him to talk about
5 that. Do you want to comment at all about motivation, the
6 motivation to encourage agriculture and to keep a greenbelt
7 by the freeway and so on?

8 In your direct testimony you had stated that
9 that's not the purview of the utility, that such are not
10 allowable expenses.

11 A. That's right. They talked a lot about, you know,
12 we want to keep the valley green and beautiful which is
13 nice, but that's really not what the rates for the water
14 company should be set and encouraged to do.

15 Those that want to have the greenery should pay
16 for those, and whether that's, you know, paying the standard
17 culinary rates or whatever the Commission decides.

18 But, you know, that really isn't anything that has
19 a bearing on the rates and making it a reliable and safe and
20 self-sustaining water company.

21 THE HEARING OFFICER: Okay. I think that's all
22 the questions I have for you.

23 Mr. Pace, do you have any questions for Mr. Long?

24 MR. PACE: I absolutely do.

25 THE HEARING OFFICER: Okay.

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CROSS-EXAMINATION

BY MR. PACE:

Q. And some are statements and not questions.

So, I'll try and be as pedantic as I possibly can.

But as Mr. Duncan and Mr. Long pointed out, the nationwide recession of the last eight years has been very tough on developers and it slowed us down.

But we had no problems. We were very capable doing a \$280,000 project building the west side transmission line. I subsidized the water company \$50,000 each year since we built that line in order to make those payments with the rate increase.

And taking that \$50,000 out of the water company now, it's like the water company's now flush even without a rate increase and with the rate increase I'm proposing.

We're just not in the category. You can't lump us in with everybody that had problems. New developers absolutely had problems. They were strung out. They were in debt up to their neck and now they had problems.

We are a 39-year-old company. I've been doing this particular business for 50 years in Las Vegas and primarily in St. George. And we're very well capable of taking care of our problems even through the eight years of not being able to subdivide or hardly sell any lots.

MS. SCHMID: Your Honor, would this sort of

1 statement be more appropriate for Mr. Pace to make at the
2 end of the proceeding and would it be appropriate for him
3 to ask questions only at this point?

4 THE HEARING OFFICER: It would. Do you have --

5 MR. PACE: I thought this was the end.

6 THE HEARING OFFICER: This is not the end, no.
7 I have every expectation that we're going to be together for
8 most of the day, particularly when we start talking about
9 shareholder interests. So, if you have questions for
10 Mr. Long about his recommendation...

11 BY MR. PACE:

12 Q. Well, I would just question lumping me into the
13 category of many of my friends and fellow developers who
14 did go bankrupt or had very severe problems and lost half
15 of their assets, et cetera, et cetera. I would question
16 your lumping us in that category.

17 You refer to our rate structure as complicated.
18 It's been evolving for 39 years. Nobody's confused about it
19 in Dammeron Valley. If you're in tier one and, you know,
20 one and a half tapping, you know exactly what it means.

21 Barbara is -- Ms. Hjelle is a little confused and
22 thinks she's been billing wrong. I think she'll find that
23 she's been billing correctly because the computer does the
24 computation.

25 MR. LONG: Yeah. I'd like to comment on that

1 if I could.

2 THE HEARING OFFICER: Just a moment because I --

3 MR. LONG: I thought it was a question.

4 THE HEARING OFFICER: I don't want to get into a
5 billing dispute here.

6 MR. LONG: Okay.

7 THE HEARING OFFICER: So --

8 MR. PACE: Yeah.

9 THE HEARING OFFICER: -- if there is an issue, you
10 can file a complaint with the Division and we'll deal with
11 it separately but we're not going to get into that today.

12 MR. PACE: But again, I question why they find it
13 so complicated. It is unique but it's not complicated to
14 any of us.

15 MS. SCHMID: Could Mr. Long respond to these
16 questions.

17 THE HEARING OFFICER: Yes. Essentially, the
18 question -- we have two questions I think so far.

19 One is, why would you consider this developer
20 to be similarly situated to others who have been heavily
21 impacted by the recession and the housing market.

22 And then what's the next thing we went to?

23 MR. PACE: The complicated rate structure.

24 I can summarize this in a real question.

25 THE HEARING OFFICER: Okay.

1 BY MR. PACE:

2 Q. Why is the Commission -- or the Division and the
3 Commission possibly also so determined to have a one size
4 fits all? We are a very unique community, mainly a
5 community that has lots from three-quarter acre to 17-acre,
6 105-acre lots, you know, hills, flatlands. Part of the
7 subdivision is on solid rock. I mean, there's very good
8 reasons why this thing evolved the way it did, and it's
9 very logical to those of us that lived it.

10 And I would also look at Bill Duncan and
11 Patricia Schmid and say, you have been a part of this thing
12 for the last two rate hearings. You were definitely '04
13 and possibly, Mr. Duncan, you were even there in the '87
14 one when we did the irrigation. No?

15 But in any case, you've known of this rate
16 structure. I don't know how complicated you think it is.
17 You've worked through it. The conservation rate added
18 another tier so to speak.

19 But I would ask, why such a determination in
20 this -- you know, we are a capitalistic democratic company
21 where uniqueness is important. And I realize the Public
22 Service Commission would like to standardize, have companies
23 be in the black absolutely. But there's many ways of doing
24 that. Not just one deal.

25 THE HEARING OFFICER: Okay.

1 BY MR. PACE:

2 Q. Why the one size fits all so important?

3 THE HEARING OFFICER: Go ahead.

4 MR. LONG: Well, and the Division believes that
5 this is tailored specifically to Dammeron Valley.

6 We went through every single expense and looked
7 at all your billings. And we're trying to recommend
8 something that will cover the costs and not require
9 Dammeron Valley to continue to have subsidizations.

10 MR. PACE: I've already covered that.

11 THE HEARING OFFICER: Please don't interrupt,
12 Mr. Pace. Go ahead.

13 MR. LONG: You and I have talked about this in
14 length. God forbid, what if something happened to you
15 tomorrow, would your successors still be willing or able
16 to subsidize the water company?

17 Right now it has \$200 in the bank and it couldn't
18 make its payroll next month.

19 BY MR. PACE:

20 Q. It's just not true. I -- we don't have \$200
21 in the bank right now. I think we probably have something
22 like 16 or \$18,000 in the bank. It just happened to be into
23 the year that the account was down at \$200? And you're
24 making a big deal out of it but it's really --

25 We're a very flush group of companies. And just

1 take Dammeron Corporation and Dammeron Water. They are
2 incredibly valuable companies and they can sustain
3 themselves. I -- but --

4 MS. SCHMID: May --

5 MR. PACE: And again --

6 MS. SCHMID: May I object to this line of
7 questions?

8 BY MR. PACE:

9 Q. Answer the question. Why one size fits all?

10 THE HEARING OFFICER: Mr. Pace, just a moment,
11 please. Go ahead, Ms. Schmid.

12 MS. SCHMID: I object so far as Mr. Pace is using
13 this as an opportunity for rebuttal rather than an
14 opportunity to question the Division's witnesses.

15 THE HEARING OFFICER: Sustained.

16 MR. PACE: All right.

17 THE HEARING OFFICER: Do you have any other
18 questions?

19 MR. PACE: I'm seeing if I can turn one of these
20 things into a question. I think they're probably all going
21 to be closing statements.

22 THE HEARING OFFICER: Mr. Long, do you want to
23 comment on the question about whether the Division is
24 seeking a one-size-fits-all standard rate?

25 You've mentioned that you feel like this is

1 customized to Dammeron Valley.

2 MR. LONG: Well, we believe it is customized,
3 the recommended rates. The rate structure on the other hand
4 is something that we found has been successful and useful
5 for other water companies and we're trying to adapt this
6 to fit Dammeron Water.

7 MS. SCHMID: Pardon me. When you say, "rate
8 structure," do you mean the Division's proposed rate
9 structure?

10 MR. LONG: Yes. I'm sorry. Yes. Its amended
11 rate structure. One thing that Mr. Pace has questioned
12 earlier is about the complicated rate structure and the
13 different tapping systems. And I believe even Your Honor
14 had some questions about that. It was very frustrating
15 for the Division in trying to understand this rate.

16 In fact, I can't count the number of phone calls
17 that were placed to Dammeron's water office and the
18 different rates that we -- just trying to understand their
19 rates, we were told at least three separate times that,
20 yes, the rates the way you understand them are correct.

21 And then two days later they would come back and
22 say, oh, no, those aren't correct. And it's just been a --
23 it's been really frustrating for the Division.

24 And I can just imagine customers trying to decide,
25 well, what tap system are we on. As we saw earlier, it's

1 not necessarily tied to the size of the lot. It's tied to
2 the size of the lot initially but then the new lots are a
3 different tap system.

4 Then if you want to, if you think you can save
5 some money, then you can go from the one -- from the two tap
6 to the one tap. It's outlived its usefulness if there ever
7 was a usefulness to it.

8 THE HEARING OFFICER: Any other questions,
9 Mr. Pace?

10 BY MR. PACE:

11 Q. And how does the Division feel a person that's
12 currently paying \$18 a month and getting 12,000 gallons of
13 water is going to feel now paying forty-one fifty for the
14 12,000 gallons of water?

15 A. I can't.

16 MS. SCHMID: Objection. Calls for speculation.

17 THE HEARING OFFICER: It does. And I'll sustain
18 your objection unless Mr. Long wants to comment.

19 MR. LONG: I don't know how they would feel,
20 but the reason that rate is set that way is to cover the
21 fixed expenses. If nobody uses any water at all, the rates
22 will cover the fixed expenses.

23 THE HEARING OFFICER: Mr. Pace, anything other
24 questions?

25 MR. PACE: I'll save it all for summary I suppose.

1 THE HEARING OFFICER: Okay.

2 Mr. Hjelle, any questions?

3 MS. HJELLE: No, Your Honor.

4 THE HEARING OFFICER: Okay.

5 MS. SCHMID: I have one redirect question if I
6 may.

7 THE HEARING OFFICER: Please.

8 REDIRECT EXAMINATION

9 BY MS. SCHMID:

10 Q. Mr. Long, are you familiar with the ratemaking
11 principal of gradualism?

12 A. Yes.

13 Q. Is the Division's continuation of some sort of
14 irrigation rate consistent with that ratemaking principle?

15 A. I believe it is. We've tried to continue that but
16 to make sure that it's at least covering the costs
17 associated with that.

18 Q. And so, the principle of gradualism, to put it
19 very simply for me, in particular, is that you move towards
20 things, is that correct, rather than taking a huge step all
21 at once?

22 A. That's correct.

23 MS. SCHMID: Thank you. That's all my redirect
24 questions.

25 THE HEARING OFFICER: Okay. Mr. Hjelle?

1 MS. HJELLE: No further questions.

2 THE HEARING OFFICER: Mr. Pace?

3 MR. PACE: I would comment on what Ms. Schmid just
4 brought up. What is gradualism about going to our rate
5 structure to this? This is about as big a leap away from
6 our rate structure of 39 years as there could possibly be.

7 You pay 38 bucks and you don't get a drop of water
8 and then you start buying water at 30 cents and so forth.
9 It's more -- people are going to react very, very negatively
10 to this.

11 THE HEARING OFFICER: Do you want to respond?

12 MS. SCHMID: I will let the record speak for
13 itself. I understand that the only person who has sought to
14 intervene is Ms. Hjelle and she's been granted intervention.
15 I do not know how many people will speak at the public
16 witness hearing tomorrow. And I believe that will speak
17 for itself.

18 THE HEARING OFFICER: Okay. All right.

19 Ms. Hjelle, it's your turn. And you are going to
20 testify as well. You're going to be proffering sort of your
21 own testimony, basically?

22 MS. HJELLE: Yes, Your Honor.

23 THE HEARING OFFICER: I'll go ahead and swear you
24 in. Would you stand, please?

25 MS. HJELLE: Yes.

1 THE HEARING OFFICER: Do you solemnly swear that
2 the testimony and evidence you provide today is the truth,
3 the whole truth, and nothing but the truth, and this you do
4 under penalty of perjury?

5 DIRECT TESTIMONY OF BARBARA HJELLE

6 MS. HJELLE: I do. The reason that I -- well,
7 first of all, my name is Barbara Hjelle, H-j-e-l-l-e. And I
8 live in the Dammeron valley Meadows subdivision on Lot 34.
9 That lot was purchased by my husband and I in 1990.

10 And when we purchased the lot, we paid \$3,000 for
11 a water right. This is not a water share. This is a water
12 right, bona fide recorded water right with the State of Utah
13 engineer. And the Meadows subdivision is a five-acre hobby
14 farm subdivision.

15 I do have two exhibits related to that that I
16 would offer right now. Exhibit-1 is the warranty deed for
17 our lot showing that a water right 81-2176 one acre-foot
18 portion of that water right was conveyed with title to the
19 lot.

20 Exhibit-2 is a printout from the state engineers's
21 website regarding that same water right you would find --
22 any water right would allow you to have a similar printout.
23 This is part and parcel with every other water right that
24 exists in the state of Utah.

25 I do commend the Division of Public Utilities for

1 its detailed analysis in consideration of the issues raised
2 by me and other customers. I also think that Mr. Pace has
3 raised some important points. I'm not here really to
4 comment on the proffered testimony, on the details of the
5 numbers so much as I am interested in protecting the
6 valuable property right that I have acquired, my husband
7 and I have acquired by purchase.

8 And I do have and would like to submit a legal
9 memorandum that was e-mailed out earlier. And the original
10 I guess plus two need to go to the Commission.

11 Can I submit those in this hearing or do I need to
12 file them separately?

13 THE HEARING OFFICER: I think the Commission has
14 what it needs. Do the parties have the memorandum?

15 MS. SCHMID: The Division has the memorandum.

16 THE HEARING OFFICER: Mr. Pace, do you have the
17 memorandum?

18 MR. PACE: I don't know. I'll take one.

19 MS. HJELLE: If you will pass those down, then.
20 I do have extra copies if you don't need the paper filing
21 that I thought I needed.

22 And the purpose of this memo is really to try to
23 articulate this point that there may have been many ways
24 that Dammeron Valley Water Company could have addressed
25 its desire to have greenbelt and irrigation water.

1 But the way it was selected is to deed water
2 rights. And as my memo discusses, I believe that a
3 principle of law would be that those who acquired those
4 water rights were entitled to rely upon the body of law
5 specifically applicable to water rights.

6 Because I did understand that body of law as it
7 turns out and I was concerned about forfeiture. If you pay
8 for this water right and you don't use it, you have lost the
9 value of what you have bought.

10 Under Utah water law as outlined in the legal
11 memo, you are required to beneficially use a water right,
12 and if you do not put it to full beneficial use, you will
13 lose that portion of the water that you don't use.

14 So, this is fundamental law of the state of Utah.
15 So, I will refer to my husband and I as "me."

16 MS. SCHMID: Pardon me.

17 MS. HJELLE: Yes.

18 MS. SCHMID: This is sort of an awkward question
19 but I feel I must ask it.

20 Under the Commission's rules, an officer or
21 director of a company or an attorney may represent others
22 other than themselves. Are you an attorney?

23 MS. HJELLE: Yes. But I'm representing myself.

24 MS. SCHMID: But you are an attorney?

25 MS. HJELLE: Yes, I am. Uh-huh (affirmative).

1 MS. SCHMID: Okay. Thank you.

2 MR. HJELLE: You bet. Okay. So, anyway, we
3 specifically intended to protect that water right. And in
4 the course of doing that, we have developed a small pasture
5 and have very carefully monitored our usage.

6 Unfortunately, we have never been able to use our
7 entire water right because of the tiered rate structure that
8 imposes a conservation rate before you are able to utilize
9 your full acre-foot of water.

10 And this is one of the concerns that I wanted
11 to bring to the attention of the Commission. You need the
12 water in the hot summer months and you can't use it in the
13 entire eight-month period that you're allocated at 40,000
14 gallons a month because in the early spring the ground is
15 frozen, the plants are dormant, and your water system would
16 likely freeze if you tried to operate it improperly.

17 I would like to proffer a report of the State of
18 Utah Agricultural Extension Service primarily for a table on
19 page six which shows the monthly crop evapotranspiration for
20 the Veyo powerhouse which is close to Dammeron Valley.

21 And this is Table 3 on page six, that you can see
22 readily that your real usage occurs starting in May and then
23 is high in June, July. Really, our high month is often
24 August although that doesn't necessarily reflect here.

25 So, if you can't use your water during the hot

1 summer months, you are basically deprived of its use.

2 And this is one of my concerns about the 40,000 gallon cap
3 in each month that is essentially forcing users, water right
4 holders into a condition of forfeiture.

5 We also did acquire an additional acre-foot of
6 water, certificated water in 2011.

7 And I see some value in the way the Division of
8 Public Utilities has organized the tiers in that the next
9 tier after irrigation, you can use your irrigation water and
10 then you don't have a huge penalty rate immediately which
11 would make it easier to manage a little bit to not go over
12 with your irrigation rate or be penalized heavily if you
13 exceeded your irrigation allotment. But 40,000 gallons a
14 month simply will not allow you to use your full acre-foot.

15 I do not dispute the obligation of users in
16 Dammeron Valley to pay a fair share of costs and not be
17 subsidized. And by "users," I mean irrigation users.

18 Whatever that number is, I am not here to submit
19 that 45 cents or 32 cents or any other number is the proper
20 number other than that I think the principle elucidated
21 by the DPU is reasonable but the history articulated by
22 Mr. Pace is reflected in these water rights.

23 And these water rights do place those irrigation
24 users in a unique position. I would like to proffer an
25 exhibit I did not e-mail out.

1 MS. SCHMID: May we stop --

2 THE HEARING OFFICER: Yes.

3 MS. SCHMID: -- at this point and discuss the
4 exhibits that have been put --

5 THE HEARING OFFICER: Sure.

6 MS. SCHMID: -- forth so far just so I can keep
7 track of things a little better?

8 THE HEARING OFFICER: So, you premarked these as
9 A, B, C. So, I think we'll just go ahead and go with that.

10 MS. HJELLE: I did?

11 THE HEARING OFFICER: At lease the one I have has
12 been marked. I don't know if you did it or if the Division
13 did it.

14 MS. HJELLE: They may have marked it. I labeled
15 them Exhibit 1, 2, 3. And the ones I just handed out, I put
16 Hjelle on it so that it would be clearer. But whatever you
17 would like, Your Honor, I can understand and I can mark
18 them.

19 THE HEARING OFFICER: All right. So, we have
20 a warranty deed dated August 17th, 1990. And this is the
21 warranty deed by which the intervenor acquired the lot
22 on which you live now; correct?

23 MS. HJELLE: That's right.

24 THE HEARING OFFICER: And with it came the right
25 to one acre-foot of water for irrigation purposes.

1 It doesn't say per year but is that your
2 understanding, one acre-foot per year?

3 MS. HJELLE: Yes. If you look at the water right
4 printout, that might elucidate the right that goes with that
5 a little more clearly.

6 THE HEARING OFFICER: Okay. So, does the Division
7 or does the applicant have any objections to this exhibit?

8 MR. PACE: No, Your Honor.

9 MS. SCHMID: The Division has some concerns it
10 would like noted on the record.

11 THE HEARING OFFICER: Please. Go ahead.

12 MS. SCHMID: The Division would like the record
13 to note that the copies provided are not certified.
14 However, the Division has no objection to their entry
15 into evidence under that criteria.

16 THE HEARING OFFICER: Okay. And the Division has
17 no reason, I'm assuming, to dispute that the contents of the
18 warranty deed are accurate and that this is what the Hjelles
19 purchased?

20 MS. SCHMID: Correct. The Division has no reason
21 to dispute the truthfulness of the exhibits presented.

22 THE HEARING OFFICER: Okay. So, this will be
23 marked as Intervenor's Exhibit 1.

24 (Intervenor Exhibit-1 marked)

25 MS. HJELLE: And I would certainly testify that

1 this is a true and accurate copy of our warranty deed
2 leaving side the unofficial copy stamp warranty deed that
3 we received from our predecessors in interest to the water
4 right and this water certificate that we received from the
5 water company.

6 THE HEARING OFFICER: Okay. And the second page
7 behind that is another warranty deed which is not for a lot
8 or another piece of property but it's only for an additional
9 water right; correct?

10 MS. HJELLE: That's correct, Your Honor.
11 What happened, I just introduced this to clarify that our
12 predecessors in interest specifically purchased a water
13 right as a water right.

14 THE HEARING OFFICER: Okay. So, this is the same
15 water right that was transferred to you under the warranty
16 deed we just looked at?

17 MS. HJELLE: Yes, it is.

18 THE HEARING OFFICER: Okay. So, this was granted
19 to the sellers of the property to you.

20 MS. SCHMID: If I may make one more comment?

21 THE HEARING OFFICER: Uh-huh (affirmative).

22 MS. SCHMID: I believe that the recognition of the
23 usefulness or of what the warranty deeds represent in terms
24 of water rights and usage is beyond the scope of the
25 Commission's jurisdiction. I believe that that would

1 properly be found in district court. However, the Division
2 understands the purpose for which these are offered.

3 THE HEARING OFFICER: Thank you for that comment.
4 I do think we're going to get into that topic as we move
5 along. Both of these warranty deeds, then, if there's no
6 objection, will be included in the Intervenor's Exhibit-1.

7 Everybody okay with that?

8 MS. SCHMID: The Division is fine.

9 THE HEARING OFFICER: Okay. The next page that
10 we have, then, is an irrigation share certificate dated
11 May 5th, 2011. Do you want to explain to us what this is?

12 MS. HJELLE: This is a subsequently purchased
13 irrigation share certificate in the form that apparently
14 is now issued by the water company purchased from another
15 user in Dammeron Valley that cost us \$4,000.

16 THE HEARING OFFICER: Okay. Any objection?

17 MS. SCHMID: Again, the Division would just note
18 that it's not a certified copy but has no objection to its
19 entry as an exhibit and has no reason to doubt its veracity.

20 THE HEARING OFFICER: Thank you.

21 Mr. Pace, any objection to this?

22 MR. PACE: No.

23 THE HEARING OFFICER: Can I just ask you a couple
24 of questions? Would you help me to understand what the
25 difference is between the share that you purchased here

1 and the water right that you got under the warranty deed?

2 MS. HJELLE: Your Honor, if I could just proffer
3 my one more exhibit that's new that hasn't been seen yet,
4 I think I can elucidate some if not all of that question.

5 THE HEARING OFFICER: Okay. Would you let
6 Ms. Schmid and Mr. Pace look at that, please?

7 MS. HJELLE: Yes. And that's the original.
8 I don't know. It's got the green. I don't know if that
9 needs to go to the judge. These are the copies. Let's see.
10 I hope there's enough here.

11 THE HEARING OFFICER: Ms. Schmid, do you have any
12 objection to this additional exhibit?

13 MS. SCHMID: The Division does not. The Division
14 notes that there could possibly be questions regarding the
15 exhibit's foundation but makes no mention of those concerns
16 and waives those concerns.

17 THE HEARING OFFICER: Okay. Thank you.

18 Mr. Pace, any objection to this exhibit?

19 MR. PACE: No, ma'am.

20 MS. HJELLE: The purpose, Your Honor, that I
21 wanted to add this background information is that --
22 and Mr. Pace can elaborate beyond my knowledge base.

23 But fundamentally, water rights were transferred
24 I believe in the similar fashion that is the way we received
25 ours via a bona fide Utah state engineer-recognized water

1 right and then later some of these water rights were
2 transferred back to, whether Dammeron Valley Water Works
3 or the developer, I am not sure, but fundamentally were
4 transferred back to Dammeron and our now held on the books
5 of the company as a certificate.

6 But my point of argument is that these rights that
7 were once water rights, those rights and obligations should
8 follow because of the nature of the transaction by which
9 they were transferred back to the water company for no
10 consideration. So, the people who paid for those water
11 rights paid for this irrigation share as well.

12 And it was represented to be the equivalent of the
13 same one acre-foot as if it were a water right. So,
14 I wanted to make sure that was on the record.

15 THE HEARING OFFICER: Okay. And I'll hold off
16 marking this for a moment. The next exhibit in the packet
17 that you provided just ahead appearing is the printout as
18 you mentioned from the Division of Water Rights from the
19 State of Utah.

20 MS. HJELLE: Yes.

21 THE HEARING OFFICER: Any objection?

22 MS. SCHMID: Again, the Division notes that it's
23 not a certified copy but makes no objection.

24 THE HEARING OFFICER: Okay. Mr. Pace?

25 MR. PACE: No objection.

1 THE HEARING OFFICER: Thank you. This is marked,
2 then, as Intervenor Exhibit-2. It looks like it's about
3 four, five pages long, four pages long.

4 (Intervenor Exhibit-2 marked)

5 THE HEARING OFFICER: Then the next exhibit that
6 you've provided ahead of time is a document from Utah State
7 University titled, Sprinklers, Crop Water Use and Irrigation
8 Time, Washington County. What's the purpose of this?

9 MS. HJELLE: This is to provide some data in
10 reflecting the challenges of being able to protect your
11 water right from forfeiture if you are limited to an equal
12 40,000-gallon per-month allocation over an eight-month
13 period rendering it impossible to protect your water right
14 from forfeiture.

15 THE HEARING OFFICER: Where does it discuss
16 forfeiture?

17 MS. HJELLE: It does not. The sole purpose for
18 introducing this exhibit is page six, table three. And that
19 reflects the evapotranspiration demands of plants in the
20 Veyo area which is just two miles about from Dammeron Valley
21 and shows that there is really a variation in demand for
22 water such that you need your water in June, July, August.

23 And you can't really use it in March and April
24 which are two of the months that you would have to use
25 40,000 gallons you can't use. So, it's merely to get some

1 factual evidence into the record.

2 THE HEARING OFFICER: Any objection?

3 MS. SCHMID: The Division would just like to note
4 that the report is dated 2002 but has no objection.

5 THE HEARING OFFICER: Okay.

6 Mr. Pace, any objection?

7 MR. PACE: Well, Ms. Schmid earlier indicated this
8 was in the purview of this Commission, and so I'm not sure
9 why we're continuing to discuss it but I have no objection
10 to entering the documents.

11 THE HEARING OFFICER: All right. This is marked,
12 then, as Intervenor Exhibit-3.

13 (Intervenor Exhibit-3 marked)

14 THE HEARING OFFICER: The next exhibit that you
15 have provided ahead of time is Mr. Pace's direct testimony
16 of March. I believe that's already in the record; correct?

17 MS. HJELLE: I was not sure procedurally,
18 Your Honor, how you had to deal with things that were
19 already in the record.

20 THE HEARING OFFICER: It hasn't been admitted
21 as an exhibit in this proceeding.

22 Any objection if we go ahead and do that?

23 MS. SCHMID: No objection.

24 THE HEARING OFFICER: Okay.

25 MR. PACE: No objection.

1 THE HEARING OFFICER: All right. We'll go ahead
2 and do that as the Intervenor's Exhibit-4.

3 (Intervenor Exhibit-4 admitted)

4 THE HEARING OFFICER: And then, finally, your
5 water bills.

6 MS. HJELLE: Yes. Proposed Exhibit-5 shows the
7 variation in usage of water, once again submitted for the
8 factual background to show that it is impossible to use an
9 acre-foot of water in an eight-month period with -- given
10 the temperatures and evapotranspiration losses and the
11 dormancy and the demand for water variability so that,
12 in essence, by limiting the amount of water that you can
13 have with a water right, you are placed in jeopardy of
14 forfeiture.

15 THE HEARING OFFICER: Okay. Any objection?

16 MS. SCHMID: The Division would just like to note
17 for the record that these are not certified copies but again
18 has no reason to doubt the veracity of the copies.

19 THE HEARING OFFICER: Mr. Pace, any objection?

20 MR. PACE: Any objection to the document?

21 THE HEARING OFFICER: Correct.

22 MR. PACE: No.

23 THE HEARING OFFICER: Okay. Then, this is marked
24 as Intervenor Exhibit 5.

25 (Intervenor Exhibit-5 marked)

1 THE HEARING OFFICER: And we'll mark the exhibit
2 that was brought today which is the letters from Dammeron
3 Valley Water Works to its customers encouraging them to
4 convert deeded use rights to certificated rights as
5 Intervenor Exhibit-6.

6 (Intervenor Exhibit-6 marked)

7 MS. HJELLE: And, Your Honor, in answer to your
8 earlier question, again, Mr. Pace could probably elucidate
9 this. I believe there may have been other certificates sold
10 that never had a prior water right associated with them
11 but I do not know.

12 THE HEARING OFFICER: Okay. Well, I think,
13 really, what I need help with here is understanding your
14 argument that your having purchased a right to use a certain
15 amount of water equates to your right to have some sort of a
16 guaranteed or restricted -- that it restricts the Commission
17 in setting a rate. That's what I need help with.

18 MS. HJELLE: Okay. And I -- oh. Did I submit my
19 legal memo already? I did; didn't I?

20 THE HEARING OFFICER: Yes.

21 MS. HJELLE: Okay. I'm sorry. Most of that is
22 set forth in the legal memo. And I wasn't sure how you
23 wanted to address legal argument versus factual testimony.

24 But I think this is an issue of law that needs
25 to be addressed. Factually speaking, I think that the

1 things that Mr. Pace desires to do vis-à-vis greenbelt and
2 the like are, my argument, in essence, supports his ability
3 to do that because of the way and nature in which these --
4 this water was deeded and whether subsequently transferred
5 back or not still with the same rights.

6 I don't know how the Utah Public Service
7 Commission could ignore the law applicable to these water
8 rights and say it doesn't matter. These are property
9 rights. They have been bought and paid for. They are
10 documented and recorded, and they have the body of bundle
11 of rights that goes along with the water rights.

12 That's my argument, that I believe the Commission
13 should take into account. I appreciate that the DPU,
14 whether they acknowledge it as a matter of water right
15 or not, at least they adjusted the tier rate to obviate
16 the damage to water rights holders of potentially losing
17 all of that property right.

18 But that's my fundamental argument. There are
19 laws on the books for the Public Service Commission.
20 There are laws on the books pertaining to water rights,
21 and somehow or other, it seems to me, they all must be
22 respected. And people are entitled to rely on that law.

23 THE HEARING OFFICER: Do you want your memorandum
24 marked as an exhibit?

25 MS. HJELLE: I don't know how the Public Service

1 Commission takes legal argument in all honesty. I'm not an
2 expert and I don't do Public Service Commission work.

3 So, I would like the legal argument to be fully considered.

4 THE HEARING OFFICER: Well, as Ms. Schmid has
5 pointed out, this case has proceeded in an unusual manner.
6 So, at the risk of sounding unprofessional, we are sort of
7 making it up as we go along.

8 Ms. Schmid, you seem to be nodding when I
9 suggested marking this as an exhibit.

10 Is that what the Division would prefer?

11 MS. SCHMID: I think that would help clarify
12 the record.

13 THE HEARING OFFICER: All right. Mr. Pace, any
14 objection to this memorandum --

15 MR. PACE: No.

16 THE HEARING OFFICER: -- coming into the record as
17 Intervenor's Exhibit-7?

18 MR. PACE: No, ma'am.

19 THE HEARING OFFICER: Okay. Thank you.

20 (Intervenor Exhibit-7 marked and admitted)

21 MS. HJELLE: So, I am arguing thus, that a
22 conservation rate over and above paying a fair share to --
23 in attempt to diminish the use of a water right is contrary
24 to Utah law and that the DPU, the Division, has properly
25 inserted the water right tier after paying fixed costs and

1 after paying an appropriate residential level of use.

2 At that point, you should be allowed to have your
3 irrigation water delivered at an irrigation water rate,
4 whatever that fair rate may be. And I would note that
5 Mr. Pace's testimony that I submitted as an exhibit states
6 that there is sufficient capacity in the system to deliver
7 all the water necessary for build-out.

8 There are 380 connections to the system now.
9 There would be 1,110 later. It seems that there is no
10 problem with existing capacity already paid for by current
11 users to have more than 40,000 gallons a month delivered
12 and allow them to protect their water rights.

13 And I believe Mr. Long has also testified that
14 there's ample water in the system. And that I believe
15 supports raising that cap.

16 I can understand having to have some monthly cap.
17 The question becomes, what should it be and should it be
18 such that it requires a forfeiture of a water right.

19 I believe there is an argument under Utah water
20 law that these water rights have a completely separate role
21 in the system. And I've articulated that briefly in my
22 legal memo. And I believe that, you know, we have a 5/8ths
23 inch meter on our lot. The line going to our lot is six
24 inches which is smaller than the new requirements of
25 eight inches for fire flow.

1 Q. Okay. And that right now, 40,000 gallons -- per
2 year?

3 A. Per month.

4 Q. -- per month -- sorry -- does not allow you to use
5 your full, even a full acre-foot per year at the irrigation
6 rate?

7 A. That's correct.

8 Q. And, therefore, you're equating the higher charge
9 for what remains of the acre-foot after the 40,000 gallons
10 per month, you're equating the increased charge to a
11 forfeiture?

12 A. I'm equating it to an unreasonable burden on the
13 use of a water right contrary to Utah Code 73-1-9 which I
14 believe should be referenced to govern the charges for
15 delivery of a water right through a shared system.

16 Q. So, 73-1-9, as you've quoted it, talks about
17 expenses being reasonable.

18 A. Uh-huh (affirmative).

19 Q. And your argument is that it is unreasonable to
20 have any portion of a water right subject to a rate higher
21 than what's approved for the irrigation rate?

22 A. I believe the testimony establishes that the
23 additional tiers are designed to discourage the use of water
24 and enhance conservation.

25 So, that in and of itself is inconsistent with the

1 nature and scope of a water right under Utah state law.

2 So, while it is fair to charge irrigation users
3 under these water rights and shares, certificates, such that
4 they are not being subsidized by the other users in the
5 system, anything over and above that for the purposes of
6 discouraging the use of the water, a conservation rate
7 applied to irrigation water is contrary to the entire
8 intent and body of Utah water law in Title 73.

9 **Q. So, it's your contention that Title 73, the intent**
10 **of Title 73 is to be anti-conservation?**

11 A. I believe that under Title 73, you must use your
12 water wisely. I don't think you're allowed to waste it but
13 you must use it.

14 So, if you don't use it, you lose it. I mean,
15 that's just the state of the law.

16 **Q. So, is the intent not to say that you can use it**
17 **or you can not use it and the statute is without a**
18 **preference?**

19 A. I think -- I don't believe the law -- my position
20 is that under particularly the 73-1-9 but the entire body of
21 Utah water law should be respected by the Public Service
22 Commission and a conservation burden should not be placed on
23 delivery of a certificated water right.

24 THE HEARING OFFICER: Okay. So, I need you to
25 reconcile that against the code section here.

1 And, Division, you might have to help me find it.

2 It states that -- charges the Commission with setting rates
3 that discourage waste. I believe that's what it says.

4 Are you finding it, Ms. Schmid?

5 MS. SCHMID: I am not.

6 Can I have just one moment?

7 THE HEARING OFFICER: You may.

8 MR. PACE: Could I possibly intervene and add some
9 clarity to this discussion?

10 THE HEARING OFFICER: In a minute.

11 MS. SCHMID: Are you looking at 54-4-4?

12 THE HEARING OFFICER: I might be. Just a minute.

13 I might have to take a break to find it.

14 Shall we take a break?

15 MS. SCHMID: That would be lovely.

16 MR. PACE: What time will be our lunch break?

17 THE HEARING OFFICER: Would you like to take lunch
18 now?

19 MS. SCHMID: That would be lovely.

20 THE HEARING OFFICER: Okay.

21 How long do you want for lunch?

22 MS. SCHMID: An hour?

23 MR. PACE: Until one o'clock at least.

24 MS. HJELLE: I would sure appreciate the shortest
25 possible time. I do have to drive home tonight.

1 THE HEARING OFFICER: Let's make it until 12:45.

2 And we'll go off the record until then. Thank you.

3 MS. SCHMID: Thank you.

4 (Lunch Recess 11:45 a.m. to 12:50 p.m.)

5 THE HEARING OFFICER: All right. So, we're back
6 on the record in the matter of the Application of Dammeron
7 Valley Water Works, LLC for Approval of General Rate
8 Increase and Expansion of Service area. It's Docket Number
9 15-2025-01.

10 Mr. Pace, before we broke, you wanted to interject
11 and I told you you'd have a chance shortly and then we went
12 to lunch without giving you the chance to discuss.

13 Did you want to weigh in on water rights versus
14 water shares and help us understand that or what were you
15 hoping to discuss?

16 MR. PACE: Well, I wanted to clarify that just so
17 you were absolutely ...

18 THE HEARING OFFICER: Okay.

19 MR. PACE: In the beginning of '87 when we got the
20 irrigation right approved, we simply issued quitclaim deeds.

21 Then a few years later, I think it was probably
22 ten years later, we realized the problem that we were having
23 was quitclaim deeds.

24 If somebody sold their home, moved away, forgot to
25 add the water right to the deed, moved away and we couldn't

1 find or he died or whatever, that water right was lost.
2 And if I couldn't find family members or somebody to attest,
3 that water right was lost.

4 THE HEARING OFFICER: Okay.

5 MR. PACE: And it's happened on one instance.
6 And another instance we were able to run down the person.

7 So, when we realized that, we changed to
8 certificates. And all those letters that you read that
9 Barbara handed out were letters from me encouraging people
10 for their own benefit to not have to worry about it,
11 leave the water right in my name.

12 That way when the state engineer needs an
13 adjudication or an update or anything regarding that water
14 right, I can deal with it myself and they don't need to
15 worry about it; right? The request comes to me.

16 And -- but especially in the case of somebody
17 forgetting to deed a water right on and we can't find the
18 person to clarify. So, that's why we went to certificates.

19 And so, now we have kind of a confused situation.
20 Barbara is an embodiment of it. She has one deeded right
21 and one certificated right.

22 THE HEARING OFFICER: Okay.

23 MR. PACE: That's what I was explaining.

24 THE HEARING OFFICER: But as far as the company
25 is concerned, the holder's rights are the same --

1 MR. PACE: Exactly the same.

2 THE HEARING OFFICER: -- as the use right?

3 MR. PACE: Right.

4 THE HEARING OFFICER: Okay.

5 MR. PACE: And they'll never use their right if
6 it's a certificated right because if they died, didn't deed,
7 didn't -- you know, didn't keep the right active --
8 I'll keep the right active forever for them.

9 THE HEARING OFFICER: Okay.

10 MR. PACE: And if for some reason something
11 happened, that person sold their lot, forgot to transfer
12 the certificate with it, but I knew that that person owned
13 a right and we can't find them to get them to sign the
14 certificate over, I can issue a new certificate. I don't
15 have a state agency involved. So, that was why we went to
16 certificates.

17 THE HEARING OFFICER: Okay.

18 MR. PACE: And the other thing I wanted to point
19 out, and maybe this needs to come later, is that 50,000 that
20 Barbara is requesting is a very minor thing.

21 I farmed Dammeron Valley in the early years for
22 20 years with alfalfa. We irrigated March -- and that's
23 what the state engineer considers irrigation system,
24 March through October. So, I didn't just arbitrarily come
25 up with that eight-month period. She is right. In March

1 and October, you could have a cold spell, especially in
2 October where you actually didn't use the water.

3 But for the long term, right now, yes, we have
4 excess water. Right now, yes, we could let people use more
5 of the share in the summer, but long term, balancing-wise
6 for the system, we just adopted the eight-month period
7 that the state considers the irrigation period.

8 And many times -- and when we were farming,
9 we irrigated sometimes even in the winter if it were really
10 dry. It's healthy to put water in the ground even after
11 the alfalfa or whatever you're growing stops growing.

12 So, I would like to keep it at the 40,000 over
13 eight months. And I don't think it's a big hardship really
14 because the water is -- well, it has been very cheap and
15 I think it will remain reasonably cheap.

16 THE HEARING OFFICER: Okay. Thank you.

17 Ms. Hjelle, I think that I understand the sort of
18 big picture of your argument and I do have some specific
19 questions that I wanted to ask you. I'm sure the Division
20 has some questions as well.

21 But I feel bad that your witness has been on the
22 phone with us all day and is back on the phone with us and
23 has not yet been able to participate.

24 Would you like to go ahead and ask your witness
25 questions --

1 MS. HJELLE: Sure.

2 THE HEARING OFFICER: -- now so that maybe we can
3 release him? Although, he's perfectly welcome to stay on
4 the phone if that's what he wants to do for the remainder
5 of the hearing.

6 MS. HJELLE: Thank you, Your Honor.

7 Mr. Barnum, would you state and spell your name
8 for the record?

9 THE HEARING OFFICER: Okay. Just a moment.
10 Mr. Barnum, I'm going to swear you in.

11 So, would you please raise your right hand and
12 let me know when you are ready?

13 MR. BARNUM: Yes. (Complying).

14 THE HEARING OFFICER: Do you solemnly swear that
15 the evidence and testimony you provide today is the truth,
16 the whole truth, and nothing but the truth, and this
17 you do under penalty of perjury?

18 MR. BARNUM: I do.

19 THE HEARING OFFICER: Thank you. And, Ms. Hjelle,
20 you might need to come up here. I'm not sure that he's
21 going to be able to hear you very well from there.

22 MS. HJELLE: So, I use your microphone?

23 THE HEARING OFFICER: Yes. I'll just scoot over.

24 BARRY BARNUM,
25 having first been duly sworn, was

1 examined and testified as follows:

2 DIRECT EXAMINATION

3 BY MS. HJELLE:

4 Q. Mr. Barnum, can you hear me?

5 A. Yes.

6 Q. Okay. Would you please state and spell your name
7 for the record?

8 A. It's Barry, B-a-r-r-y, Barnum, B-a-r-n-u-m.

9 Q. Please describe to the people here your
10 professional background, particularly as applies to
11 water issues.

12 A. Okay. I've been a Professional Registered
13 Engineer in the state of Utah for over 30 years. And for
14 15 years I worked for the City of George and was in the
15 capacity of the water services director.

16 I retired about two years ago and since that time
17 have performed some consulting specifically with the
18 Washington County Water Conservancy district on developing
19 a repair and replacement plan which I believe was adopted
20 by the board.

21 Q. In the course of your professional career,
22 did you evaluate rates for water deliveries?

23 A. Yes.

24 Q. And that's for the City of St. George?

25 A. Yes. Uh-huh (affirmative).

1 Q. And did those include systems where other parties
2 water rights were delivered through the system?

3 A. In some cases, yes.

4 Q. And did you also then take into account charges
5 needed for repair and replacement and the fair allocation
6 of charges to the various users?

7 A. Yes, we did. That was always one of our goals
8 was to allocate costs fairly and equitably.

9 Q. Have you reviewed the Division of Public Utilities
10 analysis in this matter?

11 A. Yes.

12 Q. And what is your evaluation of their
13 recommendation, their amended recommendation?

14 A. The amended recommendation, I think it has a very
15 rational basis, that it's easily explainable, that it's
16 defensible, that it meets the needs of all of the users
17 and the needs of the company to stay solvent.

18 And I think by placing the ability of the
19 irrigation users to use their water before they go into the
20 conservation tiers, I believe that it will actually promote
21 conservation where the original rate recommendation would
22 have not promoted conservation among irrigation users.

23 And I think that the amended recommendation will
24 allow owners of irrigation water to use their water before
25 they start to use Dammeron Valley water and will present no

1 financial hardship to the system or the company because the
2 fixed charges are paid in the base fee, the base charge,
3 and the 30 cents per thousand gallons covers the delivery
4 charge and the 15 cents additional on top of that gives them
5 an additional capital recovery fee and, you know, should
6 cover any impact the irrigation users have on the system.

7 **Q. Thank you. You listened to the morning's**
8 **testimony; correct?**

9 A. Yes.

10 **Q. And so, you're aware that there was some**
11 **discussion about the -- and Mr. Pace just testified about**
12 **the amount of water that might be delivered pursuant**
13 **to these water rights.**

14 **In your capacity with the City of St. George,**
15 **have you had experience with those types of situations and,**
16 **in particular, the seasonal requirements for water use?**

17 A. Are you asking about seasonal variation and the
18 amount of water needed?

19 **Q. Yeah.**

20 A. Okay. I did. In my position, I monitored the
21 monthly variation and system demand for the City of
22 St. George and found that the monthly demand was --
23 pretty much took the shape of a normal distribution and
24 during the winter months, of course it was very flat on both
25 ends but during the irrigation months, the middle eight

1 months of the season, it would go from -- the demand
2 would -- the irrigation demand would go from about zero
3 up to a peak that was around the month of July and then
4 it would taper back down to pretty much by November be
5 out of the system, that demand.

6 The ideal situation for one acre-foot in the
7 Dammeron Valley location would be a peak -- this is based
8 on St. George usage -- would be a peak of 120 gallons per
9 month. And all of the months would not use that much.
10 That would be just the highest usage month. And that
11 would be the most ideal situation for the irrigators.

12 Q. Based on your review of the testimony and
13 listening to the testimony and review of the documents
14 on file with the --

15 Have you reviewed the documents on file with the
16 Public Service Commission.

17 A. Yes.

18 Q. Have you reviewed the testimony of Brooks Pace
19 which I introduced I believe as Exhibit-4?

20 A. Yes.

21 Q. And Mr. Long?

22 A. Yes.

23 Q. And given what -- also the proposed, the
24 description in the proposed tariff document regarding
25 the pipe sizes in the system?

1 A. Yes. Uh-huh (affirmative).

2 Q. So, based on what you know of all these factors,
3 what impact do you think -- what do you think the company
4 can handle in terms of delivery to irrigators who hold water
5 rights without harming the system deliveries to all of the
6 users?

7 A. I haven't done a detailed engineering analysis
8 on it, but my opinion is that it would not be a negative
9 impact on the system.

10 In St. George, for example, we have four, six --
11 four-inch, six-inch, and eight-inch water lines and the
12 smallest meter we use is the three-quarter-inch meter.
13 I believe the smallest meter that Dammeron Valley uses is a
14 5/8ths-inch meter.

15 Now, we never found three-quarter inch or one-inch
16 water meters to cause a negative impact on our system. And
17 I think Dammeron Valley's pipes are maybe even a little bit
18 larger than ours in some cases, than St. George's in some
19 cases where they are six, eight, and ten-inch lines.

20 So, I don't think there would be a negative impact
21 on the system of supplying, you know, the one acre-foot over
22 a period of eight months even with a very high cap on it.

23 MS. HJELLE: Thank you, Mr. Barnum.

24 That's all the questions I have.

25 THE HEARING OFFICER: Thank you. Ms. Schmid,

1 do you have any questions for this witness?

2 MS. SCHMID: I do.

3 THE HEARING OFFICER: Okay.

4 MS. SCHMID: Should I come up there as well?

5 THE HEARING OFFICER: I think it might be best.

6 CROSS-EXAMINATION

7 BY MS. SCHMID:

8 Q. Good afternoon, Mr. Barnum. I'm Patricia Schmid,
9 and I'm the assistant attorney general who represents the
10 Division of Public Utilities in this proceeding. I have
11 just a few questions for you.

12 A. Okay.

13 Q. Are there crops whose water demand peaks at
14 different times?

15 A. Almost any crop, if it's seasonal, will demand
16 more water during the hotter months of the season.
17 Irrigation season usually starts in March. It's not really
18 hot in that time period, so it doesn't require a great deal
19 of water.

20 But toward the center part of the growing season
21 during the months of June, July, and August, the
22 evapotranspiration which is a measure of evaporation from
23 the soil and the surface of the land and the transpiration
24 from the plants themselves, the evapotranspiration is very
25 high during the hot season and thus the plants and the

1 ground require larger quantities of irrigation water.

2 Q. Do different plants take different amounts of
3 water to sustain them?

4 A. Yes.

5 Q. Could you, for example, give an example of, say,
6 an alfalfa field and potatoes?

7 A. I don't have those numbers in front of me.

8 Q. Okay. They were referenced in an exhibit that
9 Ms. Hjelle introduced and it was accepted. So -- but I'll
10 move from that. Does alfalfa take a lot of water?

11 A. I don't know. You know, compared to other plants,
12 you know, I don't know if it takes more or less than other
13 crops such as wheat or corn and it probably takes less than,
14 say, a golf course.

15 Q. Okay. Turning now to the Dammeron system,
16 Ms. Hjelle asked you questions about pipe size,
17 deliverability, and the effect of delivering, let's just
18 call it, more water on the Dammeron system.

19 Do you recall that?

20 A. Yes, ma'am.

21 Q. Have you ever physically inspected the Dammeron
22 water system?

23 A. Briefly. About a year ago another engineer and
24 I were hired to look at the Dammeron Valley system. I don't
25 have any of the documents that were produced from that in my

1 possession. I've since retired. And it -- my impression
2 of the system was favorable.

3 **Q. What do you mean by "favorable"?**

4 A. It seemed to have adequate supply. It seemed
5 to have adequate storage. I believe that Mr. Pace is
6 conscientious in his operation of the system and the pipe
7 sizes seemed to be adequate to deliver all of the water
8 necessary for the system including fire flows.

9 **Q. By whom were you employed to do that review and**
10 **analysis?**

11 A. I'm not sure what the organization is called,
12 but it was essentially the -- I believe the -- our main
13 contact was the fire department there.

14 MS. SCHMID: Okay. Thank you very much.
15 Those are all my questions.

16 THE WITNESS: Thank you.

17 THE HEARING OFFICER: Mr. Pace, any questions?

18 CROSS-EXAMINATION

19 BY MR. PACE:

20 **Q. Yes. Can you hear me, Mr. Barnum?**

21 A. Yes.

22 **Q. This is Brooks Pace. Yeah. You know -- you're**
23 **an expert. You know systems well and you know balancing**
24 **of systems and you do I'm sure understand that our system**
25 **is growing from about a third of its build-out size where**

1 we currently are to three times its size.

2 So, the rules that I put in place, this 40,000
3 gallons a month, I don't know whether you heard this
4 discussion a couple of minutes ago I mentioned to the judge,
5 that the -- it's a balancing thing; right?

6 I mean, I can't have somebody just use any amount
7 they want. So, 50,000 we could probably live with, but long
8 term at build-out when all of our water is allocated, it
9 would probably be a hardship, not to mention right now the
10 billing difficulty of letting people use different amounts
11 during different billing periods.

12 Right now the computer program is complicated,
13 but somebody would have to interface with every irrigation
14 user to know when they had used they're full 324,250
15 gallons; right? So, it just --

16 A. Yes.

17 Q. It's such a small issue I think.

18 And generally, as you've said yourself, the state
19 engineer considers the irrigation system an eight-month
20 period from one March to the end of October.

21 And you also stated and I agree that it's true
22 that in the summer, plants do need more water. But I don't
23 know of another way that we could really divvy up --

24 You know, we have about 95 to a hundred irrigation
25 customers. So, about a quarter of our people own various

1 size shares of irrigation water. So, it would mean doing
2 hand bills for those billing periods for those people during
3 the eight-month period. And it would just be hand-produced
4 bills. It would be really complicated. I just don't --

5 I -- I mean, Ms. Hjelle has raised this issue.
6 This is the second hearing now that she has raised this
7 issue and fought this battle at the first hearing in 2008
8 that she was on the phone at and made this case.

9 The judge rejected it as not germane to the
10 hearing of our conservation rate that we were applying for.
11 Earlier in this hearing, you may have heard Ms. Schmid say
12 she didn't think this was an issue for the PSC, it was an
13 issue for the civil courts.

14 So, I'm wondering why we're spending so much time
15 on it. But we are. And thank you for taking your time and
16 thank you for complimenting our system and giving it high
17 reviews. It gives me an opportunity to say that we are
18 always in negative points. I think the last report was
19 that we are a negative 20.

20 If you get as high as 98, I think it is, or 90
21 points above, they shut the system down. So, negative
22 points are good. The more negative points you've got,
23 the better. We've always been a highly rated system as
24 you said. We've always been very conscientious about it.

25 Never stood back and afraid to build another tank

1 if we felt it was needed, drill another well if the
2 redundancy was required. So, we're just pleading for a
3 little bit of uniqueness to our system here.

4 We've always, you may have heard me say earlier,
5 tried to track not the way St. George builds but the rough
6 rates they charge knowing that 25 years ago we were going
7 to lose a lot of money doing that.

8 The Public Service Commission understood we were
9 going to lose a lot of money, but they realized that if
10 I was willing to subsidize it in order to sell land because
11 I couldn't sell land if I were charging \$5 a thousand
12 gallons, they were willing to live with it.

13 Now because of the eight-year crisis developers
14 have been through, I'm being lumped into the bag of many
15 of those that have failed and they're creating a
16 one-size-fits-all.

17 So, I wish you would address the tiered system
18 that we do have since you have studied it and just because
19 we've been doing it that way for 39 years because it has
20 been approved through at least five rate hearings
21 heretofore. And this rate hearing, they're throwing the
22 conservation rate right out the door. There will be no
23 conservation rate.

24 THE HEARING OFFICER: Mr. Pace, do you have a
25 question for this witness because really what you're

1 doing --

2 MR. PACE: I'm asking him to comment on my
3 proposed rate structure.

4 THE HEARING OFFICER: Okay. So, there you go.

5 Do you have any comments about the utility's
6 proposed rate structure?

7 THE WITNESS: Based -- based on -- I haven't
8 examined the books.

9 THE HEARING OFFICER: You're not required to
10 comment on it.

11 (Overlapping voices)

12 THE WITNESS: -- just by the work that he has
13 done. I do believe that the full cost should be recovered
14 for the system and I do believe that a capital reserve fund
15 should be established in order to sort of levelize the cost
16 to the users and if there was a catastrophic event, there
17 would be money there to deal with it.

18 The system, the Dammeron Valley system is small
19 enough that it doesn't have a lot of diversification in
20 pipelines or assets or storage. If one storage tank went
21 down and had to be repaired, that would be a significant
22 financial burden on the system and on the users because
23 they would eventually have to pay for it.

24 So, I -- I -- you know, assuming that Mr. Long's
25 numbers are correct, and I have no reason to doubt it

1 because he's been very thorough, I believe that the rate
2 structure, the amended rate structure proposed by the
3 Division will cover the full cost and adequately fund the
4 system as the Division states is in the best public
5 interest. And I support that completely.

6 THE HEARING OFFICER: All right. Thank you.

7 BY MR. PACE:

8 Q. But is that -- is that then stating that you don't
9 think that my proposed rate structure would cover the cost
10 of the system? You know, the Division is concerned that
11 there's some certain customers, those that are on the
12 conservation rate currently, that are being subsidized by
13 the others. People in the valley don't particularly feel
14 that way.

15 The Division also feels the irrigators are being
16 subsidized by the others with the low irrigation rate.
17 People in the valley don't think that because they see
18 the advantage to the irrigation for all.

19 So, specifically, the question, do you, in looking
20 at our rate structure, don't you believe it will cover the
21 cost of the system, albeit a slightly different way and also
22 leave our conservation rate intact?

23 A. It may cover the cost of the system ultimately.
24 And, you know, part of this is that there's more than one
25 way to do a rate structure. I really -- my preference

1 is to have fixed cost covered in the base rate.

2 That way, if everyone stops using water, then the
3 system is still paid for and the debts are still paid and it
4 doesn't present a financial hardship on the company or its
5 ability to deliver water.

6 The ability to deliver water is different from
7 actually delivering water and being paid for the water you
8 deliver. For example, Irvine Ranch in California has
9 adopted this model and it works very well for them where
10 fixed cost are covered in the base rate.

11 And it's -- in my mind and from the other systems
12 I've looked at in my previous employment, it appears to me
13 that this is a very economically efficient way to set up a
14 rate structure. And that way the water itself doesn't bear
15 the cost, any of the fixed cost.

16 The water itself can be priced such that it will
17 carry the variable cost, the cost of delivery, and also help
18 build up reserve fund and will promote conservation through
19 the tier grade. I don't believe conservation applies to
20 irrigation water that is privately owned because an
21 individual is subject to forfeiture.

22 But conservation for a company, for the customers
23 of the company or a city or a conservancy district should
24 certainly be encouraged to conserve.

25 And I think the amended proposed rate from the

1 Division does exactly that where the rate you have proposed
2 puts the conservation tiers in effect before they're
3 allowed -- before a user is allowed to use their own water
4 will not actually promote conservation for the irrigation
5 users.

6 **Q. I think you're missing the point. Our rate**
7 **structure --**

8 THE HEARING OFFICER: Okay. I don't want you to
9 argue with this witness.

10 MR. PACE: No. I need to clarify. It's something
11 he doesn't understand. I think -- he's a very smart man.
12 It won't take long.

13 THE HEARING OFFICER: If you have a question
14 for him --

15 MR. PACE: I have a question.

16 THE HEARING OFFICER: -- you may ask it.

17 BY MR. PACE:

18 **Q. I have a question. Thank you.**

19 **The question is, in my current rate structure**
20 **and my proposed rate structure and in 2008 -- this was**
21 **approved -- we created a conservation rate that gave**
22 **an individual a financial incentive to conserve.**

23 **Since 1977, we've had a big stick if you don't**
24 **conserve by these very high overage rates. But in 2008**
25 **the Division approved and the Commission approved the**

1 conservation rate. Do you not think that is appropriate?
2 Yes, it is not there -- those conservation people are not
3 covering the base rate. That is a fact. So, they are
4 actually getting a financial incentive to conserve on the
5 backs of those who chose not to go on the conservation rate.

6 But everybody has the right to convert to the
7 conservation rate. So, I don't see it as a subsidy or a --
8 you know, unfair treatment of the standard ratepayers just
9 because some wise families choose to live within 400 gallons
10 of water a day which is not difficult to do. And they can
11 save a hundred to \$150 for doing it.

12 THE HEARING OFFICER: And what is your question
13 for this witness?

14 BY MR. PACE:

15 Q. I'm asking him if he does not -- if he would say
16 that that is really not an appropriate way to sell water
17 since he has been in this business a lot longer than most
18 of us. Do you think that is an unfair --

19 I mean, the Division is -- their problem with it
20 is they're saying, your standard ratepayers are subsidizing
21 the conservation people. And I'm saying, good. Fine.
22 Get on the conservation rate yourself.

23 THE HEARING OFFICER: If you have a comment, you
24 can certainly make it. I'm not quite sure what the question
25 is --

1 MR. PACE: The question is --

2 THE HEARING OFFICER: -- so I'm not --

3 MR. PACE: -- do you think it's inappropriate --

4 THE HEARING OFFICER: Please don't interrupt me,
5 Mr. Pace. So, I'm not going to require you to answer.

6 If you have a comment, you may make it.

7 THE WITNESS: Okay. The only comment that I would
8 like to make is that you have to look at every connection,
9 not just on what water it's choosing but what water it can
10 potentially use.

11 And if, for example, a situation would change
12 for a particular homeowner or water user on the system,
13 even though they may be on a conservation rate, this change
14 of situation or change of ownership may cause a different
15 water usage.

16 So, you have to look at what the system -- what
17 obligation comes with that connection to the system, the
18 obligation to deliver, not the actual amount delivered
19 but what is obligated to be delivered by the company.

20 And I think in order to make the costs fair
21 for everyone including the fixed cost which includes the
22 obligation to deliver, to equally allocate that among all
23 users is a sound and rational way to bill for the system and
24 then let the conservation apply to what they actually use.

25 And, you know, that way no one is subsidizing

1 anyone else, and yet they still get a benefit for
2 conservation. Those who do conserve still get a benefit
3 for conservation and while those who don't conserve still
4 pay their fair share. That's all I have to say.

5 THE HEARING OFFICER: Okay. Thank you.

6 Any follow-up?

7 REDIRECT EXAMINATION

8 BY MS. HJELLE:

9 Q. Mr. Barnum, can you hear me?

10 A. Yes.

11 Q. Have you reviewed Exhibit-5 which is my water
12 bills that shows the standard deviation or the normal
13 distribution curve that you mentioned earlier?

14 A. I'm sorry. You're sort of breaking up there.

15 Q. Do you recall reviewing Exhibit-5 which is my
16 water bills?

17 A. Yes. I looked at it.

18 Q. And that reflects the normal distribution curve
19 that you mentioned earlier?

20 A. In a way it does, yes, uh-huh (affirmative).
21 You know, it's not exact but that's a generalization. It's
22 not -- your water bill is not an uncommon distribution.

23 Q. Do you believe that, say, setting the cap at
24 50,000 gallons is reasonably likely that anybody would be
25 able to use an acre-foot of water over that eight-month

1 period?

2 A. Well, I think you'd have to maybe over irrigate
3 a little bit in the shoulder months, you know, the beginning
4 and ending months of the season, but it would certainly give
5 the irrigator a greater chance of using all of their water
6 and give them more flexibility in using it.

7 MS. HJELLE: Thank you.

8 THE HEARING OFFICER: Ms. Schmid, anything else?

9 MS. SCHMID: Nothing further from the Division.

10 THE HEARING OFFICER: All right.

11 RE-CROSS-EXAMINATION

12 BY MR. PACE:

13 Q. Just, do you have a comment, Mr. Barnum, on the
14 complication to our billing system?

15 A. On what?

16 Q. The complication to our billing system if
17 irrigators have a right to use in varying amounts the
18 320,000 gallons in a single year.

19 Then, how do we bill it? How would we bill it
20 if they use -- in March that she uses 25,000 gallons of her
21 irrigation allotment and then in May, in -- you know, in
22 July and August, she's using, say, 50 or 60,000 gallons a
23 month, I mean, how do we -- do we just hand bill those or --
24 I don't think there's a system that can be so precise.
25 I don't know. Don't you see that as a complication and also

1 **long term a balancing problem for the system?**

2 A. Well, I -- you know, in the City of St. George --
3 and this is the only one I can really speak to.

4 You know, we had similar situations where users,
5 some users were allowed a certain amount of water at a
6 certain rate over the period of a year, and we would just
7 have to monitor it. And when they reached that amount,
8 then the billing rate would change and we would do it.

9 I'm not aware of any software, any billing
10 software that will do that automatically, you know,
11 but it has been done. We did it in St. George.

12 **Q. By hand?**

13 A. You know, it's an accommodation to the users.
14 And, you know, additional bookkeeping for the company.
15 I admit that. But, you know, I don't have a solution
16 for it, no.

17 THE HEARING OFFICER: Okay. Thank you,
18 Mr. Barnum. I believe we can release you as a witness.
19 Your testimony has been very helpful and I appreciate it.
20 And thank you for your patience with us today as well.

21 You're now excused and you may hang up and go
22 about your day if you'd like to. You may also remain on the
23 line if you want to hear the rest of the proceedings today.

24 MR. BARNUM: Okay. Thank you very much.

25 EXAMINATION (Continued)

1 BY THE HEARING OFFICER:

2 Q. Thank you. Okay. Ms. Hjelle, I just want to try
3 to pick up where we left off before we went to the break.
4 And I will just comment that the Commission takes seriously
5 the issues that you've raised. The Commission does not want
6 to be in violation of water law.

7 The Commission is not convinced that rate setting
8 and water law necessarily have a nexus but is giving you the
9 opportunity to explain what you consider to be the nexus and
10 that's why we're giving this some time, Mr. Pace, to answer
11 your question.

12 So, in Chapter 73, is beneficial use defined?

13 A. Yes.

14 Q. Where is that?

15 A. Okay. Give me one second, Your Honor. I do have
16 the statute with me I think. Well, I may be -- it's 73-1-3.
17 It says beneficial use is the basis of the right to use.

18 And I can explain to you, there are uses that are
19 acknowledged as beneficial uses primarily I believe through
20 the case law.

21 Q. Through case law? Okay.

22 A. And there are uses that are not accepted as
23 beneficial uses.

24 Q. Okay. So, let me just ask you, then, do you
25 consider it possible for a person who has a water right or a

1 water share to make use of the water in a way that would be
2 considered wasteful rather than beneficial?

3 A. Yes. I think that if you were using the water in
4 such a way that it was exceeding the demand of your crop and
5 basically running off your property and doing nothing,
6 that would be a waste.

7 Q. All right. So, now I'm going to direct your
8 attention to the Utah public utilities statute to Section
9 54-4a-6 which discusses the objectives that must be kept in
10 mind by the Commission, by the Division setting rates.

11 And if you look down to subsection four, it says:

12 "For purposes of guiding the activities of the
13 Division, the phrase just, reasonable, and adequate,"
14 meaning rates, "encompasses but is not limited to the
15 following criteria."

16 And it talks about fair apportionment and it talks
17 about the lowest cost that is reasonable and so on.

18 But if you look down to subsection f, lower case
19 f, it says that rates are set with the intent to protect
20 against wasteful use of public utility services.

21 So, I need you to reconcile that language with
22 your argument that it is -- essentially, it is illegal for
23 there to be an intent to encourage or require conservation
24 because the Commission is given an intent right here
25 to prevent against waste.

1 A. I think that the water delivered under the
2 company's water rights is fully covered by that section of
3 the code and that there is no limitation on other than the
4 reasonableness factor and so forth, the Commission's
5 treatment of those water rights that belong
6 to the company. But I think that water rights that belong
7 to individuals, that have been deeded out to individuals,
8 have a different standing.

9 It may very well be that -- you know, it
10 complicates things because it's in the same system and
11 that's why I believe that 73-1-9 should govern the tariff
12 for bona fide water rights and this section should govern
13 the tariff for Dammeron Valley Water Company water rights.
14 They are not in the same legal position.

15 **Q. And yet the Public Service Commission sets rates**
16 **for both, and the certificate that you've provided says that**
17 **your right to use is subject to the rates that are in the**
18 **tariff.**

19 A. But my water does not. My water right has no such
20 limitation and I believe that such a limitation would be
21 inconsistent with Utah law.

22 **Q. Does your water right state that it includes a**
23 **fixed rate or that it includes a right for you to be charged**
24 **what you wish to be charged?**

25 A. My water right encompasses Utah Code 73-1-9 as the

1 parameter on which I believe the Public Service Commission
2 should determine a proper irrigation delivery tariff.

3 **Q. Okay. So, if you decide that you can't afford to**
4 **use all of the water that you have a right to use, how is it**
5 **that it's forfeited and to whom is it forfeited?**

6 A. Well, that's complicated; okay? It is as a matter
7 of law forfeited. Whether or not the forfeiture is declared
8 is a subject of a number of possible considerations.

9 Any wise owner of a water right works hard to
10 avoid being in that situation. That's a simple fact.

11 MS. SCHMID: If I may just make one what I think
12 is an important correction?

13 THE HEARING OFFICER: Uh-huh (affirmative).

14 MS. SCHMID: And I apologize for interrupting.
15 There are specific ways in which a water right is forfeited.
16 And it is a long, lengthy process. Currently, it requires a
17 period of seven years. A judicial action is required and
18 things like that. So, it doesn't just happen automatically.

19 And I'd just like to refer the Court at this
20 moment to Section 73-1-4 which talks about reversion to the
21 public for abandonment or forfeiture.

22 THE HEARING OFFICER: Okay.

23 MS. HJELLE: It does revert to the public, and,
24 in fact, I believe the case law says that if you have not
25 used your water for a period of seven years, as a matter

1 of law, it is deemed forfeited.

2 But if there is no judicial declaration, then
3 you're just at risk unless and until something were to occur
4 that would trigger such a declaration.

5 In the Virgin River basin right now, they're going
6 through a general adjudication of water rights.

7 Who knows what kind of risks might be posed in the course
8 of that? The state engineer doesn't usually proceed
9 precipitously with those things.

10 So, there's just a series of potential scenarios
11 that could occur. And it would be difficult for me to
12 speculate about, you know, all of them.

13 BY THE HEARING OFFICER:

14 **Q. All right. So, if you decide to pay and use your**
15 **entire allocation, you would have no risk of forfeiture;**
16 **correct?**

17 A. If I use my entire water right, I should be
18 protected from forfeiture.

19 **Q. And if your neighbor decides not to use and not**
20 **to pay for the entire water right, then your neighbor would**
21 **be subject to forfeiture?**

22 A. Potentially, yes.

23 **Q. Okay. So, my question is, are you suggesting that**
24 **the Commission is somehow required to set rates individually**
25 **user by user according to what the user is willing and able**

1 to pay?

2 A. No. I think that the -- let me do it this way if
3 I may.

4 "Parties are liable to the other for the
5 reasonable expenses of maintaining, operating, and
6 controlling the same in proportion to the share and the
7 use or ownership of the water to which he is entitled."

8 That sets the basis for which water rights should
9 be delivered through the Dammeron Valley water system.
10 And I have fundamentally stipulated that I do not dispute
11 the DPU's determination that 45 cents a thousand arguably
12 meets the standard.

13 Q. Right.

14 A. Now, if I -- you know, I just haven't chosen
15 to try to get into that level of quibbling.

16 Q. But your argument is that that rate has to apply
17 to the total acre-foot amount --

18 A. Yes.

19 Q. -- that any water right holder --

20 A. Yes.

21 Q. -- is entitled to use?

22 A. All water rights holders per acre-foot for that
23 entire acre-foot.

24 THE HEARING OFFICER: Yes. Okay. I understand.

25 Ms. Schmid, do you have questions for Ms. Hjelle?

1 MS. SCHMID: I do. May I have just a moment?

2 THE HEARING OFFICER: You may.

3 MR. PACE: Could I raise an issue while she's
4 looking?

5 THE HEARING OFFICER: You may.

6 MR. PACE: I'd like to read you from the
7 protective covenants or the contract between me and
8 landowners in subdivisions that came later.

9 Unfortunately, when Ms. Hjelle's lot was
10 subdivided, we didn't have irrigation water. It was
11 subdivided in 1977 and the irrigation rate was approved
12 in 1987. But in the subdivisions that got irrigation water
13 after that, there was this wording.

14 "These water rights cannot be transferred away
15 from the lot. The land owner with irrigation rights
16 receives a special rate up to 40,000 gallons per month
17 per acre-foot after he has used his total culinary
18 allotment at the culinary rate."

19 This is a contract between me and the owners
20 of all these subdivisions. So, it's a contract that you
21 couldn't really probably get involved in or -- and a court
22 of law would probably back me because I have a contractual
23 agreement.

24 But with Ms. Hjelle, it wouldn't apply because her
25 subdivision didn't have this wording because we didn't have

1 irrigation rights at the time.

2 But that was always the intent, and so most of the
3 people, most of the people that have irrigation rights,
4 probably of the 200 and -- what did I say, 280 -- Mark, do
5 you remember? 280 acre feet of irrigation rights that are
6 out there, well over 200 have this clause written into it.

7 So, it would only be the few subdivisions, hers
8 and the homesteads, about three or four subdivisions, maybe
9 150 lots. If you said you got a letter to use up the 50,000
10 in those months, it would only apply to those.

11 THE HEARING OFFICER: Okay.

12 MR. PACE: Do you want to see this document or ...

13 THE HEARING OFFICER: No. I think I understand.

14 MS. SCHMID: If I make just one more statement
15 this time concerning what Mr. Pace said.

16 The Public Service Commission's jurisdiction
17 is specifically limited by law and does not include
18 jurisdiction over all contracts. That's an established
19 point of law. The Public Service Commission's jurisdiction
20 applies to rates and services provided by public utilities.

21 Contracts between an individual and another
22 individual are handled and the meaning of those contracts
23 are handled in district court.

24 THE HEARING OFFICER: Okay. Thank you.

25 CROSS-EXAMINATION

1 BY MS. SCHMID:

2 Q. Ms. Hjelle, how are you?

3 A. Good.

4 Q. The issues that you have raised blend in some ways
5 legal issues and factual issues. So, I'm going to try and
6 stay away from the legal issues because the Division will
7 address those in its reply brief.

8 Do you agree with Mr. Pace's description that
9 a water right is the same as a water share --

10 A. In this --

11 Q. -- in this context?

12 A. In this context, I would put it the opposite.
13 I would say that a water share has the same bundle of rights
14 that a water right clearly has.

15 Q. When -- we'll use you as an example.

16 When you have used your 12,000 gallons and then
17 you have used your 40,000 gallons at the irrigation rate,
18 then is your water shut off?

19 A. No. I just have to pay what I would consider a
20 penalty rate as for irrigation water, although I will say
21 again as I did earlier that the way the DPU is doing it this
22 time, the next tier up is a more reasonable tier because
23 it's not -- it's a conservation rate but it's I believe 60
24 cents a thousand which is much more reasonable than 350 a
25 thousand, for example.

1 So, it provides some cautionary disincentive to
2 the irrigation right holder and going over, if it has to be
3 40,000 gallons, for example, that amount, but it gives --
4 nevertheless, you could still use that additional 12,000
5 gallons I guess it would at what, 60,000.

6 **Q. So, just to make clear, so, if my water right**
7 **entitled me to -- and I'm just going to pick this number**
8 **out of the air -- 75,000 gallons of water a month when we**
9 **did this little water right thing, would I be prohibited**
10 **from getting those 75,000 or would I just have to pay the**
11 **Public Service Commission approved rate to receive delivery**
12 **of that quantity of water?**

13 A. I would have to pay the Public Service Commission
14 approved rate as applied to my water right.

15 **Q. Thank you. Moving on to your Exhibit-1 which is a**
16 **copy of the warranty deed.**

17 A. Yes.

18 **Q. Can you read the last two paragraphs, the one that**
19 **starts "together with one" and then "water rights" into the**
20 **record, please?**

21 A. "Together with one acre-foot of water from water
22 users claim number 81-2167 certificate number 12318 to
23 be used for irrigation purposes in Dammeron Valley
24 Meadows Lot 34."

25 **Q. And then the next paragraph also, please.**

1 A. "Water rights conveyed by this deed are restricted
2 to use for irrigation purposes only and may not be sold
3 or transferred outside of the Dammeron Valley
4 subdivision in Washington County, Utah."

5 Q. Do you see the words "delivery" in those two
6 paragraphs?

7 A. No, I don't believe I do.

8 Q. Do you see the word "delivered" in those two
9 paragraphs?

10 A. It's not there. I don't see it.

11 Q. So, what you got in addition to the real estate,
12 Lot 34, was the one acre-foot water; is that correct?

13 A. Yes, along with all of the legal rights and
14 accoutrements that go with a water right.

15 Q. Turning to the next page which is the warranty
16 deed -- let's see. Or, actually, let's turn to the last
17 page where it's the Dammeron Valley Water Works irrigation
18 share certificate.

19 A. Yes.

20 Q. Could you please take a look at that?

21 A. Yes.

22 Q. Do you see the words "delivered" there?

23 A. No.

24 Q. So, it is true that what you are getting is the
25 one share of irrigation water, the 320 gallons per year per

1 **share at the rates and consumption levels specified by the**
2 **tariff; is that correct?**

3 A. I don't believe that.

4 MS. SCHMID: I'll address that in my legal brief.
5 And those are all my questions.

6 THE HEARING OFFICER: Mr. Pace, any questions for
7 Ms. Hjelle?

8 MR. PACE: Not at this time.

9 THE HEARING OFFICER: All right. Ms. Hjelle,
10 is there anything you'd like to add before we -- we're going
11 to go to closing statements next I think.

12 Is that where we're at?

13 MS. HJELLE: I don't have any more testimony.

14 THE HEARING OFFICER: All right. Let's see.
15 The applicant -- this is the first I've done, the first
16 I've done with a Public Service Commission.

17 So, in the hearings I've done for other divisions,
18 the person with the burden of proof goes first and last and
19 it would generally be the applicant.

20 Does that mesh with what you're expecting?

21 MS. SCHMID: That meshes with my experience before
22 the Public Service Commission if closing statements are
23 given.

24 THE HEARING OFFICER: Okay. Very good.

25 Mr. Pace, this is your closing statement, your

1 opportunity to put into the record anything more that you
2 want the Commission to understand and any response that you
3 want to make to what else has been put into the record
4 today. Go ahead.

5 MR. PACE: Well, some of the things that I brought
6 up -- some of the items that I couldn't bring up because
7 I couldn't turn them into questions I'll now raise.

8 We are a stable, stably financial company.
9 My son and my other two sons and my daughter are all trained
10 operators of the system.

11 One of them is the actual operator of the system.
12 They grew up with this company, with this development. And
13 I can assure you, they will carry on my method of operating
14 it even to the extent of subsidizing it if necessary.

15 The Division claims that our rate is complicated.
16 It's not complicated. It's been around 39 years. We're all
17 very used to it. It may be complicated to somebody new to
18 it. And we regret -- I won't say resent, but I do regret
19 that the Division is so determined to do a one-size-fits-all
20 sort of approach to our rate and not let us continue on with
21 our current odd-tiered rate structure.

22 Our rates have been progressive from the
23 beginning. The conservation rate just gives an incentive
24 to conserve. And probably of all the things I would like to
25 see preserved is that.

1 If in any way the Division or you or now the
2 Commission can wrap their minds around giving some break
3 to some individual who will try to live within the
4 400-gallon-a-day allocation and thereby get some kind
5 of a financial reward for that, that is probably the most
6 important thing to me. That and having a reasonably low
7 irrigation rate.

8 I was kind of hoping that Ms. Hjelle would get
9 on my side on that and argue for it to maybe compromise a
10 little bit between the 32 cents I'm recommending and the
11 45 cents the Division is. I would hope you could maybe
12 settle in at around 38 cents or 35 cents on the irrigation
13 rate. I often cannot read my own writing. Oh.

14 Somebody -- I think it was probably during
15 Mr. Long's testimony -- called our tap tiers arbitrary.
16 They weren't arbitrary. They grew with the size of the lots
17 growing down. The tap rates got smaller as the lots got
18 smaller. So, it wasn't an arbitrary thing at all,
19 and I don't know why it appears arbitrary.

20 But in any case, we realize we are in a situation
21 where we will accept the decision of the Commission.

22 And we just hope you will take the consideration
23 of us being a private company, a unique company, a very
24 unique development and really a very, very, very small part
25 of the state of Utah and maybe allow us to be a little bit

1 unique. Thank you.

2 THE HEARING OFFICER: Ms. Schmid.

3 MS. SCHMID: Thank you. The Utah State
4 Legislature has delegated to the Public Service Commission
5 an important role. This role encompasses setting rates,
6 charges, and conditions of service for public utilities.

7 To guide the Public Service Commission, the
8 legislature lists things that the Public Service Commission
9 should consider when setting rates. That's found in 54-4-4.

10 The rates should not be unjust, unreasonable,
11 discriminatory, preferential, or otherwise in violation
12 of law. And then it goes on from there.

13 To assist the Commission in fulfilling its duties,
14 the Division of Public Utilities has been granted certain
15 responsibilities. Those are found at 54-4a-6.

16 And it is the obligation of the Division to
17 provide the Commission with information to promote the safe,
18 healthy, economic, efficient, and reliable operation of
19 public utilities -- then I'll skip -- to provide for just,
20 reasonable, and adequate rates.

21 And then I'll skip down to "d" which is:

22 "Provide for a fair apportionment of the total
23 cost of service among customer categories and
24 individual customers and prevent undue discrimination
25 in rate categories."

1 Furthering or following the statute down a little
2 bit, "The Division is also charged with providing the
3 Public Service Commission with information to protect
4 against wasteful use of public utilities."

5 The Division has undertaken an extensive analysis
6 in this case. The Division has looked at the expenses
7 of the company, the revenues of the company, and in the
8 Division's experience, the Division has found that fixed
9 rates, fixed costs should be covered in the base rate
10 and that there should be a capital reserve account.

11 The Division's rates have both of these needs met.
12 The Division's rates are just, reasonable, and in the public
13 interest, and the Division requests that they be approved.

14 The Division's amended rates are just, reasonable,
15 and in the public interest and request the Commission
16 approve those proposed rates.

17 Insofar as the interplay between Title 37 which
18 addresses water and irrigation statutes and Title 54 which
19 addresses public utilities and public services statutes,
20 that interplay will be explored in detail in my reply brief.
21 And the brief will contain sections including but not
22 limited to jurisdiction and other pertinent matters.

23 Thank you.

24 THE HEARING OFFICER: Thank you. Ms. Hjelle?

25 MS. HJELLE: I recognize the difficulty of the

1 nexus or interrelationship between these two titles in the
2 Utah code. I believe that the water rights law puts the
3 water rights that belong to individuals into a unique
4 category. And whether or not it is subject directly to a
5 tariff proceeding, it really has to be addressed in a
6 tariff proceeding because it's the same system.

7 And for that reason, I believe that the Public
8 Service Commission should set that rate for the irrigation
9 deliveries more or less consistently with Section 73-1-9.

10 I believe that the accommodation to water rights
11 holders to allow them to use their full right is not unduly
12 burdensome and should be made.

13 I don't believe that the developer's future system
14 capacity needs to be a basis upon which existing water
15 rights holders should be deprived of the ability to use
16 their full water right, and I do not dispute Mr. Pace's
17 suggestion that 35 to 38 cents might be a more fair
18 irrigation rate. I don't know.

19 THE HEARING OFFICER: Mr. Pace. You get the final
20 word.

21 MR. PACE: Jeez. I didn't know I had another one
22 or I would have --

23 THE HEARING OFFICER: You don't have to.
24 If you're done, you can be done.

25 MR. PACE: I had something in mind. So, thank

1 you. Now I got to remember what it was. I think it was
2 something Ms. Schmid was saying. It may have slipped
3 my mind. I think we've said enough.

4 THE HEARING OFFICER: Well, with that, then,
5 we will close the hearing. The Commission of course will
6 hold any order until after briefing is completed.

7 Ms. Hjelle, I would ask you, if you read the
8 Division's brief and determine that you're not going to file
9 a reply, would you please let me know so that we don't delay
10 any longer than is necessary?

11 MS. HJELLE: Yes.

12 THE HEARING OFFICER: All right. Any other
13 housekeeping issues that we need to take care of before
14 we close this hearing?

15 (No verbal response)

16 THE HEARING OFFICER: Thank you all very much. I
17 appreciate your time. And the testimony and the discussion
18 has been very, very helpful today. So, thank you very much.

19 MR. PACE: Your Honor?

20 THE HEARING OFFICER: Yes.

21 MR. PACE: Is there going to be a public hearing
22 tomorrow at noon?

23 THE HEARING OFFICER: There is a public hearing
24 tomorrow at noon. Are people coming?

25 MR. PACE: I -- I -- I doubt it.

1 THE HEARING OFFICER: As far as I know, nobody's
2 requested to appear telephonically. I would imagine that
3 most of your customers would want to rather than to drive
4 up for that.

5 MR. PACE: I think Ms. Gaufin was the only one
6 that was intending to drive up. I think --

7 Wasn't this being streamed today?

8 THE HEARING OFFICER: Yes.

9 MR. PACE: So, I know there are people listening
10 in that may want -- I guess we need to come at noon because
11 we don't know. Is that what you're saying?

12 THE HEARING OFFICER: I'll be here at noon.
13 And we'll be taking comments from anybody else who is here
14 at noon.

15 MR. PACE: Or calls in?

16 THE HEARING OFFICER: We don't have a plan to set
17 up the phone because nobody's requested to call in.

18 MR. PACE: Okay. So, if we all show up at noon
19 and no one is here by 12:15, we're done?

20 THE HEARING OFFICER: We'll close it.

21 MS. HJELLE: And for the purposes of those who may
22 be listening, people can still file written comments by
23 sometime tomorrow? Is there a deadline by which they would
24 have to send their comments?

25 THE HEARING OFFICER: I don't believe that a

1 deadline has been established. If they want to submit an
2 unsworn comment by writing, I will accept it, but it can't
3 be sworn if it comes in that way because any sworn
4 testimony -- in order to be considered sworn, it has to be
5 subject to cross-examination; okay?

6 All right. And with that, we'll close the
7 hearing. Thank you all very much.

8 MR. PACE: Thank you.

9 MS. SCHMID: Thank you.

10 (Proceedings concluded at or about 1:55 p.m.)

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CERTIFICATE

This is to certify that the foregoing proceedings were taken before me, CLARK L. EDWARDS, a Certified Shorthand Reporter and Notary Republic in and for the State of Utah, residing at West Jordan, Utah;

That the proceedings were reported by me in stenotype and thereafter caused by me to be transcribed into typewriting, and that a full, true, and correct transcription of said proceedings so taken and transcribed is set forth in the foregoing pages, inclusive.

I further certify that I am not of kin or otherwise associated with any of the parties to said cause of action, and that I am not interested in the event thereof.



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