

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

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In the Matter of the Application of Dammeron Valley Water Works, LLC for Approval of General Rate Increase and Expansion of Service Area	<u>DOCKET NO. 15-2025-01</u>  <u>ORDER</u>
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ISSUED: September 11, 2015

**I. Procedural History.**

On February 17, 2015, Dammeron Valley Water Works, LLC (DVWW) filed with the Public Service Commission of Utah (Commission) an application for approval of a general rate increase, including an increase in the service connection fee, and for approval to expand its service area. At all relevant times, DVWW has been operated by Brooks Pace (Mr. Pace).

On March 27, 2015, DVWW filed the direct testimony of Mr. Pace in support of the application.

On June 19, 2015, the Utah Division of Public Utilities (Division) filed the direct testimony of William Duncan and Mark Long. In its direct testimony, the Division objected to DVWW's proposed rate schedule and proposed an alternate rate schedule.

On June 30, 2015, DVWW filed rebuttal testimony of Mr. Pace, objecting to the Division's proposed alternate rate schedule.

On July 20, 2015, Barbara Hjelle (Ms. Hjelle) filed a petition to intervene. The Commission granted Ms. Hjelle's petition on August 4, 2015.

On August 7, 2015, the Division filed the surrebuttal testimony of Mark Long, proposing an amended alternate rate schedule. All parties filed witness and exhibit lists.<sup>1</sup>

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<sup>1</sup> Ms. Hjelle re-filed her witness and exhibit list on August 11, 2015.

On August 10, 2015, Ms. Hjelle filed her exhibits and a memorandum of points and authorities.

On August 11, 2015, the Administrative Law Judge for the Commission conducted a rate hearing. Mr. Pace appeared on behalf of DVWW. The Division was represented by Assistant Attorney General Patricia Schmid. William Duncan and Mark Long testified on behalf of the Division. Ms. Hjelle represented herself. Barry Barnum testified on behalf of Ms. Hjelle. At the hearing, the Division requested, and was granted, leave to file a post-hearing brief in response to Ms. Hjelle's memorandum and arguments.

On August 12, 2015, the Administrative Law Judge conducted a public witness hearing. No public witnesses appeared to provide comments or testimony.

On August 25, 2015, the Division filed its post-hearing response brief, and Ms. Hjelle filed a post-hearing reply brief on September 3, 2015.

## **II. Background.**

The Dammeron Valley is located in the southwestern part of the State of Utah, near the Arizona and Nevada borders. Mr. Pace began developing the area approximately 30 years ago. Mr. Pace's development company is Dammeron Valley Corporation, which wholly owns DVWW.

DVWW's rate schedule has evolved over the 30 years that Mr. Pace has been operating the company and developing lots within the Dammeron Valley. Initially, Mr. Pace sold 5-acre lots, issuing warranty deeds that included water right(s), in acre-feet, dedicated to agriculture and irrigation. Over time, Mr. Pace developed and sold smaller lots without deeded water rights, but still including a right to use a certain amount of water per month at a set monthly base rate,

although the base rate was subject to change over time. Mr. Pace and his customers refer to these monthly allotments as "tappings."

In addition, Mr. Pace has offered and sold water "shares" to some of his customers. Mr. Pace considers a water share to be equivalent to a deeded water right, and has never distinguished the two through course of dealing or otherwise. At some point, Mr. Pace contacted customers who held deeded water rights and asked them to quit claim the rights back to DVWW in exchange for water shares. Not all customers did so.

In 2007, DVWW applied for, and was approved to implement, a conservation rate.<sup>2</sup> Then-current customers could opt into the conservation rate, paying \$18 per month for 12,000 gallons of water per month (gpm), and paying meaningfully higher rates for use beyond 12,000 gpm. Any lots that Mr. Pace sold following approval of the conservation rate were automatically subject to that rate.

### **III. Ms. Hjelle's Position.**

Ms. Hjelle's position is as a property owner who holds both a deeded water right and a water share. She argues that Utah water law, specifically Utah Code Ann. § 73-1-3 and 4, require a person in her position to make beneficial use of the full water right or risk forfeiture. Further, she argues that Section 73-1-9 limits the Commission's rate-making authority in regard to people who own water rights, in effect prohibiting the Commission from setting any rate that exceeds the actual cost of delivering water to the right holders.

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<sup>2</sup> See Docket No. 07-2025-T01.

Ms. Hjelle does not dispute that the Commission has the authority to determine what the actual cost of water delivery is. However, once that cost is determined, she argues that she must be allowed to use her entire right at the rate of delivery. Ms. Hjelle estimates that she would need to use 50,000 gallons of water per month during the summer irrigation season in order to exhaust her yearly use right.

Ms. Hjelle argues that the Commission would engage in an illegal taking if (a) the Commission imposed a rate that caused Ms. Hjelle to reduce her yearly water use; and (b) she ultimately forfeited her right through nonuse.

The Commission is not persuaded regarding Ms. Hjelle's taking argument under Utah water law. The Commission's statutory charge is set forth under Title 54 of the Utah Code and is not limited by Title 73. Under Title 54, the Commission's jurisdiction is specifically stated to include setting rates that are just, reasonable, adequate, in the public interest, and consistent with Title 54. Utah Code § 54-41-6. *See also* Utah Code § 54-4-4.1.

Additionally, Ms. Hjelle cites to Utah Code Ann. § 73-1-9 for the proposition that she may not be required to pay more than the cost of delivery for water she claims under a deeded right or a share. Section 73-1-9 is titled "Contribution between joint owners of ditch or reservoir" and provides:

When two or more persons are associated in the use of any dam, canal, reservoir, ditch, lateral, flume or other means for conserving or conveying water for the irrigation of land or for other purposes, each of them shall be liable to the other for the reasonable expenses of maintaining, operating and controlling the same, in proportion to the share in the use or ownership of the water to which [each person] is entitled.

This section does not address the costs of obtaining water that enters a ditch or other storage/conveyance system. It simply provides that two people who jointly use such a system must jointly pay for its upkeep. However, those people must still acquire water to fill the ditch, and they will have additional costs for the water itself. If the water is acquired from a public utility, then the owners of the ditch must pay the rates set by the Commission. Section 73-1-9 does not limit or restrict the Commission's rate-making authority.

**IV. Findings of Fact.**

1. DVWW and the Division agree that DVWW should be given leave to expand its service area and to increase its service connection fee from \$1,500 to \$2,000.
2. DVWW's current rate structure recognizes eight different rate classes, as follows.
  - a. Customers who are billed on the conservation rate pay \$18 per month for up to 12,000 gpm. Thereafter, they pay \$2 per 1,000 gallons for the next additional 12,000 gallons. For any use over 24,000 gpm, customers pay \$3 per 1,000 gallons.

<b>Conservation rate</b>	
Price	Use
\$18	up to 12,000 gpm
\$2 per 1,000 gallons	additional 12,000 gpm (up to 24,000 gpm)
\$3 per 1,000 gallons	any use beyond 24,000 gpm

- - b. Customers who are billed on the conservation rate, but who also hold one or more water rights/shares pay an irrigation rate after using the first 24,000 gpm. Each right/share is entitled to 40,000 gpm at \$0.25 per 1,000 gallons.

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Any use beyond 24,000 gpm plus the irrigation share(s) is charged at \$3.00 per 1,000 gallons.

<b>Conservation rate with water right/share</b>	
Price	Use
\$18	up to 12,000 gpm
\$2 per 1,000 gallons	additional 12,000 gpm (up to 24,000 gpm)
\$0.25 per 1,000 gallons	up to an additional 40,000 gpm per right/share
\$3 per 1,000 gallons	any use beyond: <ul style="list-style-type: none"><li>• 64,000 gpm for one right/share;</li><li>• 104,000 gpm for two rights/shares;</li><li>• 144,000 gpm for three rights/shares;</li><li>• Etc.</li></ul>

- c. Customers who purchased property including one tapping pay \$30 per month for up to 20,000 gpm. Thereafter, they pay \$1.50 per 1,000 gallons for the next additional 4,000 gallons. For any use over 24,000 gpm, customers pay \$2 per 1,000 gallons.

<b>One tapping rate without water right/share</b>	
Price	Use
\$30	up to 20,000 gpm
\$1.50 per 1,000 gallons	additional 4,000 gpm (up to 24,000 gpm)
\$2 per 1,000 gallons	any use beyond 24,000 gpm

- d. Customers who purchased property including one tapping and who also hold one or more water rights/shares pay the irrigation rate after paying \$30 for the first 20,000 gpm and \$1.50 per 1,000 gallons for the next 4,000 gpm. Any use beyond 24,000 plus the irrigation share(s) is charged at \$2.00 per \$1,000 gallons.

<b>One tapping rate with water right/share</b>	
Price	Use
\$30	up to 20,000 gpm
\$1.50 per 1,000 gallons	additional 4,000 gpm (up to 24,000 gpm)
\$0.25 per 1,000 gallons	up to an additional 40,000 gpm per right/share
\$2 per 1,000 gallons	any use beyond: <ul style="list-style-type: none"> <li>• 64,000 gpm for one right/share;</li> <li>• 104,000 gpm for two rights/shares;</li> <li>• 144,000 gpm for three rights/shares;</li> <li>• Etc.</li> </ul>

- e. Customers who purchased property including 1.5 tappings pay \$30 per month for up to 20,000 gpm. Thereafter, they pay \$1.50 per 1,000 gallons for the next additional 16,000 gallons. For any use over 36,000 gpm, customers pay \$2 per 1,000 gallons.

<b>1.5 tappings rate without water right/share</b>	
Price	Use
\$30	up to 20,000 gpm
\$1.50 per 1,000 gallons	additional 16,000 gpm (up to 36,000 gpm total)
\$2 per 1,000 gallons	any use beyond 36,000 gpm

- f. Customers who purchased property including 1.5 tappings and who also hold one or more water rights/shares pay the irrigation rate paying \$30 for the first 20,000 gpm and \$1.50 per 1,000 gallons for the next 16,000 gpm. Any use beyond 36,000 gpm plus the irrigation share(s) is charged at \$2 per 1,000 gallons.

<b>1.5 tappings rate with water right/share</b>	
Price	Use
\$30	up to 20,000 gpm
\$1.50 per 1,000 gallons	additional 16,000 gpm (up to 36,000 total)
\$0.25 per 1,000 gallons	up to an additional 40,000 gpm per right/share

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\$2 per 1,000 gallons	any use beyond: <ul style="list-style-type: none"><li>• 76,000 gpm for one right/share;</li><li>• 116,000 gpm for two rights/shares;</li><li>• 156,000 gpm for three rights/shares;</li><li>• Etc.</li></ul>
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- g. Customers who purchased property including two tappings pay \$30 per month for up to 20,000 gpm. Thereafter, they pay \$1.50 per 1,000 gallons for the next additional 28,000 gallons. For any use over 48,000 gpm, customers pay \$2 per 1,000 gallons.

<b>2 tappings rate without water right/share</b>	
Price	Use
\$30	up to 20,000 gpm
\$1.50 per 1,000 gallons	additional 28,000 gpm (up to 48,000 gpm)
\$2 per 1,000 gallons	any use beyond 48,000 gpm

- h. Customers who purchased property including two tappings and who also hold one or more water rights/shares pay an irrigation rate after paying \$30 for the first 20,000 gpm and \$1.50 per 1,000 gallons for the next 28,000 gpm. Any use beyond 48,000 gpm plus the irrigation share(s) is charged at \$2 per \$1,000 gallons.

<b>2 tappings rate with water right/share</b>	
Price	Use
\$30	up to 20,000 gpm
\$1.50 per 1,000 gallons	additional 28,000 gpm (up to 48,000 gpm)
\$0.25 per 1,000 gallons	up to 40,000 gpm per right/share



\$2 per 1,000 gallons	any use beyond: <ul style="list-style-type: none"><li>• 88,000 gpm for one right/share;</li><li>• 128,000 gpm for two rights/shares;</li><li>• 168,000 gpm for three rights/shares;</li><li>• Etc.</li></ul>
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3. DVWW's proposed rate schedule would retain all eight rate classes, increasing the current rates as follows:

a. Conservation rate class:

- Base rate increases \$5.00 to \$23.00 for the first 12,000 gpm.
- The next 12,000 gpm charged at \$2.50 per 1,000 gallons (up from \$2.00).
- Any use beyond 24,000 gpm charged at \$3.50 (up from \$3.00) per 1,000 gallons.

b. Conservation plus irrigation rate class:

- Base rate increases \$5.00 to \$23.00 for the first 12,000 gpm.
- The next 12,000 gpm charged at \$2.50 per 1,000 gallons (up from \$2.00).
- Additional 40,000 gpm per share charged at \$0.32 (up from \$0.25) per 1,000 gallons.
- Any use beyond 24,000 gpm plus irrigation share(s) charged at \$3.50 (up from \$3.00) per 1,000 gallons.

c. 1 tapping rate class:

- Base rate increases \$8.00 to \$38.00 for the first 20,000 gpm.
- The next 4,000 gpm charged at \$1.75 per 1,000 gallons (up from \$1.50).
- The next 24,000 gallons charged at \$2.50 per 1,000 gallons (up from \$2.00).
- Any use beyond 48,000 gpm charged at \$3.50 (new rate) per 1,000 gallons.

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d. 1 tapping plus irrigation rate class:

- Base rate increases \$8.00 to \$38.00 for the first 20,000 gpm.
- The next 4,000 gpm charged at \$1.75 per 1,000 gallons (up from \$1.50).
- Additional 40,000 gpm per share charged at \$0.32 (up from \$0.25) per 1,000 gallons.
- Next 24,000 beyond irrigation share(s) charged at \$2.50 (up \$0.50) per 1,000 gallons.
- Any use beyond 48,000 gpm plus irrigation share(s) charged at \$3.50 (new rate) per 1,000 gallons.

e. 1.5 tappings rate class:

- Base rate increases \$8.00 to \$38.00 for the first 20,000 gpm.
- The next 16,000 gpm charged at \$1.75 per 1,000 gallons (up from \$1.50).
- The next 36,000 gallons charged at \$2.50 per 1,000 gallons (up from \$2.00).
- Any use beyond 72,000 gpm charged at \$3.50 (new rate) per 1,000 gallons.

f. 1.5 tappings plus irrigation rate class:

- Base rate increases \$8.00 to \$38.00 for the first 20,000 gpm.
- The next 16,000 gpm charged at \$1.75 per 1,000 gallons (up from \$1.50).
- Additional 40,000 gpm per share charged at \$0.32 (up from \$0.25) per 1,000 gallons.
- The next 36,000 gallons charged at \$2.50 per 1,000 gallons (up from \$2.00).
- Any use beyond 72,000 gpm plus irrigation share(s) charged at \$3.50 (new rate) per 1,000 gallons.

g. 2 tappings rate class:

- Base rate increases \$8.00 to \$38.00 for the first 20,000 gpm.
- The next 28,000 gpm charged at \$1.75 per 1,000 gallons (up from \$1.50).
- The next 48,000 gallons charged at \$2.50 per 1,000 gallons (up from \$2.00).

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- Any use beyond 96,000 gpm charged at \$3.50 (new rate) per 1,000 gallons.
- h. 2 tapplings plus irrigation rate class:
- Base rate increases \$8.00 to \$38.00 for the first 20,000 gpm.
  - The next 28,000 gpm charged at \$1.75 per 1,000 gallons (up from \$1.50).
  - Additional 40,000 gpm per share charged at \$0.32 (up from \$0.25) per 1,000 gallons.
  - The next 48,000 gallons charged at \$2.50 per 1,000 gallons (up from \$2.00).
  - Any use beyond 96,000 gpm plus irrigation share(s) charged at \$3.50 (new rate) per 1,000 gallons.
4. Mr. Pace has been subsidizing DVWW throughout its existence. Neither DVWW's current rates nor its proposed rates are sustainable without subsidization. The conservation rate, in particular, must be significantly subsidized.
5. DVWW has no reserve account. DVWW is financially unable to independently cover the costs of routine maintenance and unforeseen repairs. If, for any reason, it became necessary for the utility to operate without subsidization, significant rate increases would be required.
6. Under DVWW's current rate schedule, with various water allotments at the base rate, customers have little incentive to conserve. For example, most customers pay a \$30 base rate for up to 20,000 gpm. Using less than 20,000 gpm does not result in lower costs, so there is no incentive to use anything less than the full allotment.
7. Given DVWW's historical need for subsidization, its foreseeable need for continued subsidization under its proposed rates, its lack of a reserve account, and its lack of incentives to conserve, the Division recommends that DVWW's proposed rate

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schedule be rejected in favor of full-cost pricing. Under the Division's proposed rate schedule, DVWW would recognize two rate classes, as follows:

a. Customers without irrigation rights/shares:

- \$37.90 base rate, which includes no water.
- First 12,000 gpm charged at \$0.30 per 1,000 gallons.
- Next 12,000 gpm charged at \$0.60 per 1,000 gallons.
- Next 12,000 gpm charged at \$1.20 per 1,000 gallons.
- Next 12,000 gpm charged at \$1.80 per 1,000 gallons.
- Any use over 48,000 gpm charged at \$2.70 per 1,000 gallons.

b. Customers with irrigation rights/shares:

- \$37.90 base rate, which includes no water.
- First 12,000 gpm charged at \$0.30 per 1,000 gallons.
- Next 40,000 gpm per irrigation share charged at \$0.45 per 1,000 gallons.
- Next 12,000 gpm—after full use of 12,000 gpm + irrigation share(s)—charged at \$0.60 per 1,000 gallons.
- Next 12,000 gpm—after full use of 24,000 gpm + irrigation share(s)—charged at \$1.20 per 1,000 gallons.
- Next 12,000 gpm—after full use of 36,000 gpm + irrigation share(s)—charged at \$1.80 per 1,000 gallons.
- Any use beyond 48,000 gpm + irrigation share(s)—charged at \$2.70 per 1,000 gallons.

8. The Division's rate schedule would establish a base rate separate from water costs.

Such a system should allow DVWW to create a reserve account and maintain its infrastructure without subsidization. In addition, it would incentivize conservation because every 1,000 gallons used per month would increase the monthly bill.

9. Overall, the Division's rate schedule would result in meaningful rate increases for DVWW's customers:

- a. At one end of the spectrum, a customer on the conservation rate who has been paying \$18 for 12,000 gpm would pay \$41.50 for the same amount of water—an increase of \$23.50 over the current rates, and \$18.50 more than what DVWW has proposed.
  - b. At the other end of the spectrum, a customer with two tappings and one irrigation share who has been paying \$82 for 88,000 gpm would pay \$102.70—an increase of \$20.70 over the current rates, and \$2.90 more than what DVWW has proposed.
10. Applying the Division's irrigation rate to 50,000 gpm rather than 40,000 gpm would result in the customer with two tappings and one irrigation share paying a total of \$89.20 for 88,000 gpm—a more gradual increase of \$7.20 over the current rates, and \$10.60 less than what DVWW has proposed.

**V. Conclusions of Law**

1. Pursuant to Utah Code § 54-1-10, the Commission is required to "facilitate the well-planned development and conservation of utility resources."
2. Utah Code § 54-3-1 provides that charges made by a public utility "shall be just and reasonable." The Section further provides that just and reasonable rates include "the cost of providing service to each category of customer ... and means of encouraging conservation of resources and energy."
3. Under this statutory language, the Commission concludes that DVWW's proposed rate schedule, which incentivizes full use of a base allotment and requires high-use irrigators to subsidize the cost of service to conservation rate customers, is

inappropriate. In contrast, the Division's rate schedule requires all customers to pay their cost of service. In addition, it covers the actual ongoing costs of DVWW's operations, provides for a reserve account, and incentivizes conservation. Therefore, the Division's rate schedule is the more appropriate of the two options presented at hearing.

4. However, the Commission considers it prudent, just, and reasonable to depart from the Division's rate schedule in order to establish a more gradual increase in the total rate charged to high-use customers holding irrigation rights/shares, which customers have historically paid rates more closely aligned with the cost of service.

#### ORDER

Given the foregoing, the Commission approves DVWW's application to expand its service area. The Commission approves DVWW's application to increase its service connection fee from \$1,500 to \$2,000. Finally, the Commission approves and adopts the Division's proposed rate schedule with one modification. Customers holding water rights/shares shall be entitled to 50,000 gpm per right/share at the irrigation rate of \$0.45 per 1,000 gallons.

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DATED at Salt Lake City, Utah, this 11<sup>th</sup> day of September, 2015.

/s/ Thad LeVar, Commissioner

/s/ David R. Clark, Commissioner

/s/ Jordan A. White, Commissioner

Attest:

/s/ Gary L. Widerburg  
Commission Secretary  
DW#269174

CERTIFICATE OF SERVICE

I CERTIFY that on the 11<sup>th</sup> day of September, 2015, a true and correct copy of the foregoing was served upon the following as indicated below:

By E-Mail:

Brooks Pace ([brooks@dammeronvalley.com](mailto:brooks@dammeronvalley.com))  
President  
Dammeron Valley Water Works, LLC

Barbara G. Hjelle ([bghjelle@q.com](mailto:bghjelle@q.com))

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Administrative Assistant