

PATRICIA E. SCHMID (#4908)
JUSTIN C. JETTER (#13257)
Assistant Attorney Generals
Counsel for the DIVISION OF PUBLIC UTILITIES
SEAN D. REYES (#7969)
Attorney General of Utah
160 E 300 S, 5th Floor
P.O. Box 140857
Salt Lake City, UT 84114-0857
Telephone (801) 366-0380
pschmid@utah.gov
jjetter@utah.gov

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

**IN THE MATTER OF COMMUNITY
WATER COMPANY, LLC**

DOCKET NO. 16-098-01

**PETITION OF THE UTAH DIVISION
OF PUBLIC UTILITIES FOR AN
INCREASE IN THE RATES AND TARIFF
CHANGES FOR COMMUNITY WATER
COMPANY, LLC**

Pursuant to the Public Service Commission of Utah's (Commission) order issued March 15, 2016, the Utah Division of Public Utilities (Division) hereby files its Petition for an Increase in the Rates and Tariff Changes for Community Water Company, LLC (Company or CWC) (Petition). In support of its Petition, the Division states:

I. JURISDICTION

The Division submits that the Commission has jurisdiction over the Company and is authorized by statute to grant the relief requested by the Division.

The Utah Legislature has empowered the Commission with general jurisdiction over and the power to regulate public utilities in Utah.¹ A water company can be a regulated public utility if it provides public service within this state.² The Company is one such regulated public utility, having received its Commission granted certificate of public convenience and necessity, subject to conditions, in 1985.³

Consistent with its regulatory authority over public utilities, if the Commission finds that the rates charged by the public utility are “unjust,” “unreasonable,” “discriminatory,” “preferential,” or “otherwise in violation of any provision of law,”⁴ the Commission has the authority to investigate the rates being charged, and, after opportunity for hearing, establish new rates.⁵ The Commission has the explicit authority to determine, after hearing, that the rates being charged are insufficient, and the ability to establish new rates that are sufficient.⁶ The Commission also has authority to regulate the tariffs of a public utility.⁷

Various statutes also provide the Division with the authority to seek the relief it requests from the Commission. In pertinent part, by statute, the Division is authorized to “commence original proceedings” before the Commission “consistent with its statutory responsibilities”⁸ and to “investigate or study...upon order of [the Commission], or upon its own initiative, any matter

¹ See Utah Code Ann. Section 54-4-1.

² See generally Utah Code Ann. Section 54-2-1 and, more specifically, Utah Code Ann. Section 54-2-1(16), (29), and (30).

³ See In the Matter of the Application of Community Water Company, Inc. for a Certificate of Convenience and Necessity to Operate as a Public Utility and for Approval of its Proposed Water Rate Schedules and Water Service Regulations, Docket No. 84-098-01 (December 3, 1985), as amended (December 12, 1988).

⁴ Utah Code Ann. Section 54-4-4(1)(i).

⁵ Utah Code Ann. Section 54-4-4(2).

⁶ See Utah Code Ann. Section 54-4-4(1)(ii) and (2).

⁷ See Utah Code Ann. Section 54-4-7.

⁸ Utah Code Ann. Section 54-4a-1(1)(a).

within the jurisdiction of [the Commission].”⁹ The Division’s specific statutory objectives support its request because:

In the performance of its duties, powers, and responsibilities committed to it by law, the Division of Public Utilities shall act in the public interest in order to provide the Public Service Commission with objective and comprehensive information, evidence, and recommendations consistent with the following objectives:

- (1) promote the safe, healthy, economic, efficient, and reliable operation of all public utilities and their services, instrumentalities, equipment, and facilities;
- (2) provide for just, reasonable, and adequate rates, charges, classifications, rules, regulations, practices and services of public utilities;

. . . .¹⁰

Additionally, “for purposes of guiding the activities of the Division of Public Utilities, the phrase ‘just, reasonable, and adequate’ encompasses, but is not limited to the following criteria:”

- (a) maintain the financial integrity of public utilities by assuring a sufficient and fair rate of return;
- (b) promote efficient management and operation of public utilities;
- (c) protect the long-range interest of consumers in obtaining continued quality and adequate levels of service at the lowest cost consistent with the other provisions of Subsection (4).
- (d) provide for fair apportionment of the total cost of service among customer categories and individual customers and prevent undue discrimination in rate relationships;
- (e) promote stability in rate levels for customers and revenue requirements for utilities from year to year; and

⁹ Utah Code Ann. Section 54-4a-1(c).

¹⁰ Utah Code Ann. Section 54-4a-6.

(f) protect against wasteful use of public utility services.¹¹

¹¹ Utah Code Ann. Section 54-4a-6(4).

II. BACKGROUND

A. Company's Prior Rate Case

On July 23, 2015, the Company filed for a rate increase, seeking to increase rates that had been approved in January 2001.¹² For example, the minimum monthly bill, which included 5,000 gallons of water, set in 2001 was \$12 month; in its 2015 filing the Company requested a minimum user fee of \$56.00, with an additional charge of \$1.75 per 1,000 gallons used up to and including 5,000 gallons, and increasing tiered usage rates thereafter.¹³

The rate case proceeded, and a hearing was set for February 2016. Various parties requested and were granted intervention.¹⁴ The Division issued several data requests to the Company and reviewed its responses, performed an on-site audit, and toured the area served and the infrastructure of the Company. The Division also analyzed the justness, reasonableness, and sufficiency of the Company's existing rates and those proposed by the Company in its application.

On December 17, 2015, the day before the Division was to file its direct testimony pursuant to the Scheduling Order, the Company sent an email to the Commission indicating the Company's intent to withdraw its rate case and requesting a stay of the proceedings.

On December 18, 2015, the Division filed the direct testimony of its witnesses Mr. William Duncan and Mr. Ronald Slusher. Mr. Duncan discussed regulatory theory and Mr. Slusher provided the Division's analysis of the Company. The Division proposed a "base rate" for connected customers of \$36.05 with an additional charge of \$1.30 per 1,000 gallons up to and

¹² Docket No. 15-098-01.

¹³ B10 Efforts to Exhibit R – Encourage Conservation, pp. 9-10 (filed with rate application).

¹⁴ At the time of the Commission's order of dismissal of the rate case on December 30, 2015, Red Pine HOA's and Hidden Creek HOA's joint petition to intervene was pending. On January 6, 2016, the Commission denied the joint petition as moot due to the order of dismissal.

including 12,000 gallons, then increasing tiered usage rates thereafter.¹⁵ Mr. Slusher’s testimony stated, “The Division’s analysis show [sic] that the current rates and rate structure do not cover fixed costs, are no longer just and reasonable, and are not in the public interest.”¹⁶ In addition, the Division found that the Company’s proposed rates were not just and reasonable and were not in the public interest because the proposed rates “are based on substantial [sic] asset acquisitions that the Division is not recommending at this time, because the amounts are not known and reasonable” and the Company was not correctly accounting for depreciation.¹⁷

The Division’s proposed rates in 2015, including a stand by fee, lowered the monthly user fee from that proposed by the Company; proposed a different usage tier structure and rates; and established a funded capital reserve account. For example, the Division proposed a base rate of \$36.05, which included zero gallons of water. The Division’s proposed rates in Docket No. 15-098-01, including a stand by fee, are shown below:

**Division’s Proposed Rate
Schedule for 2015 Case**

Monthly Rates		Monthly Water Usage Amounts	
Standby Rate	\$16.85		
Base Rate for Connected Customers	\$36.05	0 gals	0 gals
Tier 1 (Per 1,000 Gallons)	\$ 1.30	0 gals	12,000 gals
Tier 2 (Per 1,000 Gallons)	\$1.95	12,001 gals	24,000 gals
Tier 3 (Per 1,000 Gallons)	\$2.96	24,001 gals	36,000 gals
Tier 4 (Per 1,000 Gallons)	\$4.45	36,001 gals	Over

¹⁵ Docket No. 15-098-01, Direct Testimony of Ronald Slusher, Confidential Exhibit 2.2.

¹⁶ Docket No. 15-098-01, Direct Testimony of Ronald Slusher, lines 99-100.

¹⁷ Docket No. 15-098-01, Direct Testimony of Ronald Slusher, lines 120-126.

On December 28, the Company filed its motion to dismiss and memorandum in support thereof (Motion to Dismiss) on December 28, 2015, stating:

The customer meetings, new rate analysis and discussions with other water providers have yielded several ideas, solutions and additional issues to be considered. Given this new information Community Water appears to have alternatives to solve the pending issues, but needs more time to consider which alternative(s) provide the most efficient and cost effective result. If the Rate Case proceeds as scheduled it will continue to create a financial and time burden on Community Water and its customers. In addition, at this stage it is uncertain whether the Rate Case, as proposed, provides a result that is in the best interests of Community Water.¹⁸

That same day, the Division filed its response to the Company's Motion to Dismiss. The Division stated:

The Division does not oppose CWC's [Company] motion to dismiss the current rate case. However, if CWC fails to make adequate progress in the evaluation of other alternatives in a reasonable time period, the Division, pursuant to the Division's authority under Utah Code § 54-4a-1, will initiate a case to ensure CWC has adequate revenues to maintain services to its customers.¹⁹

On December 30, 2015, the Commission issued its report and order of dismissal for the rate case. The order said, "Noting the lack of opposition to the motion and the Division's commitment to maintain oversight of the company's circumstances, the Commission grants Community Water Company's motion and dismisses Docket No. 15-098-01."²⁰

By letter dated December 29, 2015 (Company Letter), appended as Attachment A, the Company informed its customers that:

¹⁸ Docket No. 15-098-01, Motion to Dismiss, p. 3. This was the second rate case abandoned by the Company in the last two years. See Order Requiring Division to File a Petition for a Rate Increase, p. 1.

¹⁹ Docket No. 15-098-01, Division's Response, pp. 1-2.

²⁰ Docket No. 15-098-01, Order at p. 2.

given the expressed resistance to the proposed rate increase by you, the Company's customers and consumers TCFC [for our purposes here the same as the Company] has concluded to withdraw its rate increase application. Instead, TCFC intends to begin the process before the Utah Public Service Commission to cease being a regulated utility and close **Community Water Company effective as of July 1, 2016**, or as soon thereafter as it can be accomplished.²¹

The Company Letter sets forth four options for the "water consumers" to pursue:

- (1) "having TCFC "transfer all Company assets to Mountain Regional Water Special Service District;"
- (2) "having TCFC "transfer all Company assets to Summit Water Distribution Company (SWDC).and in some manner merge the customers into SWDC;"
- (3) have the customers create a new, nonprofit mutual water company; and
- (4) have TCFC "attempt to find a buyer."²²

Consequently, various customer groups and the Company entered into discussions regarding available options. The Division also spoke with the Company and various customer groups. Although the Division had hoped that the parties would agree on a plan to go forward, nothing has been filed.

B. 2016 Events

Accordingly, on February 19, 2016, the Division filed with the Commission a petition for an order requiring the Company to show cause why:

- (a) the Company should not be ordered to petition the Commission for a rate increase; or, alternatively,
- (b) the Division should not be ordered to petition the Commission for an increase in the Company's rates.

On February 22, 2016, in response to the Division's petition, the Commission granted the requested order to show cause.²³

²¹ TCFC Letter, p. 1 (emphasis in the original).

²² Letter at p. 2.

²³Docket No. 16-098-01.

On March 10, the Company responded, stating in essence it did need a rate increase and did not oppose the Division filing such a rate case.²⁴

On March 15, 2016, the Commission issued its Order Requiring Division to File a Petition for A Rate Increase.²⁵

In response thereto, the Division files this Petition and simultaneously the direct testimony of Mr. Duncan and Mr. Mark Long.

III. REQUEST FOR A RATE INCREASE AND TARIFF CHANGE

A. Company Information

The Company currently serves 498 customers, all within the Company's certificated service area. Of these customers, in its 2015 Annual Report, the Company listed 492 Metered Residential Customers, six Metered Commercial Customers and three stand-by customers. The Division proposed the same rate schedule for the 492 Metered Residential Customers and the six Metered Commercial Customers. The Division proposes a separate stand-by fee for the three stand-by customers.

B. Proposed Rate Increase for Residential and Commercial Customers

The Company's current rates, in the opinion of the Division and apparently the Company,²⁶ are insufficient, and, in the opinion of the Division are neither just and or reasonable nor in the public interest. The Division's requested rate increase, if granted, will increase the Company's revenue stream, establish a capital reserve account, and produce rates that are just

²⁴ Docket No. 16-098-01, Community Water Company's Response to Order to Show Cause.

²⁵ Docket No. 16-098-01, Order Requiring Division to File a Petition for a Rate Increase.

²⁶ See Docket No. 16-098-01, Community Water Company's Response to Order to Show Cause at p. 2, stating, "The Company's last rate increase was in January 2001.²⁶ This rate of \$12 for 5000 gallons of water is currently insufficient to maintain the Company's ongoing general operations and fund necessary infrastructure upgrades."

and reasonable and in the public interest. The Division requests that the Company's rates be increased as follows:

Rate Schedule

Monthly Rates		Monthly Water Usage Amounts	
Standby Rate	\$17.25		
Base Rate for Connected Customers	\$33.20	0 gals	0 gals
Tier 1 (Per 1,000 Gallons)	\$ 0.30	0 gals	12,000 gals
Tier 2 (Per 1,000 Gallons)	\$0.60	12,001 gals	24,000 gals
Tier 3 (Per 1,000 Gallons)	\$1.20	24,001 gals	36,000 gals
Tier 4 (Per 1,000 Gallons)	\$2.40	36,001 gals	48,000 gals
Tier 5 (Per 1,000 Gallons)	\$4.80	48,001 gals	<i>Over</i>

Miscellaneous Fees and Charges

Service Connection Fee	\$3,750.00
Turn-On Service for Existing Connection	\$25.00
Turn-Off Service for Non-Payment of Charges or at Owner's Request	\$25.00
Customer Late Fee (plus 18% interest)	\$10.00 per month
Returned Check Fee	\$10.00

The requested rate increase is set forth in detail in the revised Tariff Sheet T3 that is attached to the testimony of Division witness Mr. Mark Long. Details of the financial impact of the proposed rates can be found in Exhibit 2.2 to Mr. Long's direct testimony, under "Billing Range."

/

/

C. Proposed Tariff Changes

The Division updated the Company's filed tariff to make it similar to the tariffs of other regulated water companies. In addition, the Division added a \$10 per month late fee plus 18% interest for overdue payments. Please see p. T-3, proposed tariff.

D. Test Year

The Division used 2015 as the base year for this Petition. Adjustments have been made to reflect appropriate changes annualizing legal and engineering costs. Adjustments have been made based on historical trends, current activities, and predicted future changes to arrive at reasonable and sound projections for future years. The Division's proposed test year is consistent with applicable statutes and Commission rule R746-407 of the concerning annualization of test year data.

E. Supporting Documentation

The Division's Petition is substantially based upon the data provided by the Company in its 2015 Annual Report and modified by the Division's acquisition of additional information in this docket. The Division also considered information from the Company's 2013 and 2014 Annual Reports, as well as information that the Company filed in its previous rate case, Docket No. 15-098-01, and additional information acquired by the Division during the course of the 2015 case.

The Division requests that the Commission take administrative notice of the Company's application and exhibits filed in Docket No. 15-098-01, and enter that application and exhibits into the record in this docket. With that addition, the Division believes that its Petition

substantially complies with the minimum filing requirements established by the Commission in Utah Admin. Code R746-700-10, R746-700-50, and R746-700-51 for a general rate case filing.

This Petition is accompanied by the direct testimony of Mr. Long and Mr. William Duncan on behalf of the Division, with appropriate information and schedules supporting the Division's requested rates and demonstrating that such rates are just and reasonable, and in the public interest. Mr. Duncan addresses regulatory theory and, in particular, the capital reserve account. Mr. Long provides the Division's analysis and proposed rates.

F. Miscellaneous

Please direct correspondence or communications pertaining to this Petition to:

Patricia E. Schmid
Assistant Attorney General
160 East, 300 South, 5th Floor
P.O. Box 140857
Salt Lake City, UT 84114-0857
(801) 366-0380
Pschmid@gmail.com

William Duncan
Manager, Water Section
160 East 300 South, 4th Floor
Salt Lake City, UT 84111-6751
(801) 530-6948
wduncan@utah.gov

Data Request DPU
dpudatarequest@utah.gov

Dennis Miller
dennismiller@utah.gov

WHEREFORE, the Division respectfully requests that the Commission: enter an order implementing the Division's proposed rates as set forth in above.

Respectfully submitted this 13th day of June, 2016.

Patricia E. Schmid
*Assistant Attorney General for the
Division of Public Utilities*

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing PETITION OF THE UTAH DIVISION OF PUBLIC UTILITIES FOR AN INCREASE IN THE RATES AND TARIFF CHANGES FOR COMMUNITY WATER COMPANY, LLC was emailed on the 13th day of June 2016 to the following:

COMMUNITY WATER COMPANY, LLC:

Justin Atwater jatwater@tc-fc.com
Spencer White swhite@replayresorts.com

DIVISION OF PUBLIC UTILITIES:

Patricia Schmid pschmid@utah.gov
Chris Parker chrisparker@utah.gov
William Duncan wduncan@utah.gov
Ron Slusher rslusher@utah.gov
Dennis Miller dennismiller@utah.gov

RED PINE HOMEOWNERS ASSOCIATION

HIDDEN CREEK HOMEOWNERS ASSOCIATION:

Brian Burnett brianburnett@cnmlaw.com
Fran Amendola dolas@comcast.net
Scott Murri smurri@nelsonmurri.com
Terry Lange TLange55@comcast.net
Guy Rawson 808rawson@gmail.com

ADDITIONAL RECIPIENTS

Emily E. Lewis EEL@clydesnow.com
Steven E. Clyde SEC@clydesnow.com
Johnathan R. Schutz jschutz@mwjlaw.com
William Grenney, Ph.D. P.E. wgrenney@gmail.com
Scott Savage ssavage@sywlaw.com