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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

<p>IN THE MATTER OF COMMUNITY WATER COMPANY, LLC</p>	<p>DOCKET NO. 16-098-01</p> <p>DIVISION OF PUBLIC UTILITIES' RESPONSE TO COMMUNITY WATER COMPANY, LLC'S REQUEST FOR CLARIFICATION ON ORDER GRANTING INTERIM RATE INCREASE APPLICATION</p>
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On September 22, 2016, Community Water Company, LLC (Company) filed its Request for Clarification on Order Granting Interim Rate Increase Application (Request). The Division of Public Utilities responds as follows to that Request.

On August 25, 2016, the Company filed its Request for Interim Rate Increase (Interim Rate Request) and the hearing was held on September 13, 2016. The Company; the Division; and intervenors Mr. E. Scott Savage, Mr. Francis Amendola, Mr. William Grenney, Mr. Van J. Martin, and Mr. Terry Lang participated at the hearing appearing either in person or telephonically. The Division's proposed rate, rate design, and rate spread and proposals by others were discussed at the hearing. On September 15, 2016, the Commission issued an order

granting the requested interim rate (Interim Rate Order). Subsequently, the Company filed this Request.

The Company raised two issues in its Request. The first sought clarification concerning what the Commission meant when it used the term “metered connection” in the Order. The second sought clarification regarding implementation of the approved interim rates.¹

The Division will address the first issue by highlighting how it calculated its proposed rates. Because of the many different circumstances regarding customer connections to the water system, (e.g., individual meters, shared culinary meters, and shared landscaping meters) the Division’s recommendation was based on the number of customers and not on the number or type of meter.² The Division intended for each of the 498 connected customers (now 502) to pay a base rate and for each to receive their full 12,000-gallon water allotment at the applicable rate for that tier of water, billed in units of 1,000 gallons of water.

The Division agrees that the direct testimony of Company witness Ms. Stacy Wilson correctly explains how the Division formulated its proposed rates. Ms. Wilson states, “From my reading of the Division’s Petition, it does not appear the base rates were calculated based on the number or kind of meter, but were calculated solely on splitting the Company’s fixed costs amongst its customers currently using the Company system.”³ Also, Ms. Wilson’s explanation of how the Company intends to apply the Division’s proposed rate structure results in making the number and type of meters serving the customers a moot point since the rate structure considered only the number of connected customers and not the number or type of meters used. This is also consistent with the Division’s proposal.

¹ Request at pp. 2-3.

² See Direct Testimony of Mark Long, Exhibit 2.2. Mr. Long does not mention meters in his direct testimony.

³ Direct Testimony of Stacy Wilson, p. 7, lines 112-115.

With regard to the second issue, in its Request the Company stated it would like to continue its practice of billing in arrears and “apply the interim rate to September usage on October 1.”⁴ The Division asserts that the interim rate should be applied prospectively only, with the newly approved interim volumetric component applying to water usage beginning on October 1, 2016, and the base rate applying per customer beginning on October 1, 2016, as well.

Prospective application of rates is supported by Utah statutes.⁵ Utah Code Ann. Section 54-4-4(1) requires the Commission, after a finding that rates are “unjust, unreasonable, discriminatory, preferential or otherwise in violation of any provisions of the law . . . or insufficient,” to “determine the just, reasonable, or sufficient rates . . . to be thereafter observed and in force.”⁶ Utah Code Ann. Section 54-4-4(2) specifies that the rates the Commission sets in response to its inquiry above are “new rates.” This construction was memorialized in the Utah Supreme Court case Department of Business Regulation vs. Public Service Commission, wherein the Court concisely explained the prospective nature of the Commission’s ratemaking powers stating:

Following lengthy hearings, utility rates are fixed prospectively by the PSC. In determining an appropriate rate, the PSC considers the utility’s historical income and cost data, as well as predictions of future costs and revenues, and arrives at a rate which is projected as being adequate to cover costs and give the utility’s shareholders a fair return on equity. To provide utilities with some incentive to operate efficiently, they are generally not permitted to adjust their rates retroactively to compensate for unanticipated costs or unrealized revenues. This process places both the utility and

⁴ Request at p. 3.

⁵ Sometimes retroactive rates may be permitted by statute or case law. See, e.g., Utah Code Ann. Section 54-7-13.5 which permits energy balancing accounts and *MCI Telecommunications Corporation v. Public Service Commission*, 840 P.2d 765 (Utah 1992) which discusses allowing retroactive rates due to “unforeseeable and extraordinary increases...[and] unforeseeable and extraordinary decreases in expenses” and due to “utility misconduct.” *MCI* at pp. 771-772 and 774-775. No exceptions to the prohibition against retroactive ratemaking are applicable here.

⁶ Emphasis added.

the consumers at risk that the ratemaking procedures have not accurately predicted costs and revenues. Overestimates and underestimates are then taken into account at the next general rate proceeding in an attempt to arrive at a just and reasonable future rate.⁷

Therefore, the Division requests that the Commission clarify its Interim Rate Order such that interim rates are to be applied on a per customer basis as discussed above and to require that the approved interim rates be applied on a prospective basis only, beginning October 1, 2016.

Respectfully submitted this ____ day of September 2016.

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

⁷ Utah Department of Business Regulation v. Public Service Commission of Utah, 720 P.2d 420 (Utah 1986), rehearing denied. Internal citations omitted.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **DIVISION'S RESPONSE TO COMMUNITY WATER COMPANY, LLC'S REQUEST FOR CLARIFICATION ON ORDER GRANTING INTERIM RATE INCREASE APPLICATION** in Docket No. 16-098-01 was emailed on the ____ day of September 2016 to the following:

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