
Application of Lakeview Water Corporation for Interim Rate Increase and General Rate Increase	<u>DOCKET NO. 22-540-01</u> <u>ORDER APPROVING STIPULATION AND ASSOCIATED TARIFF CHANGES</u>
---	---

ISSUED: September 27, 2023

BACKGROUND

On January 31, 2023, Lakeview Water Corporation (“LW”) filed two applications, supporting testimony, and exhibits seeking: 1) an interim rate increase (the “Interim Rates Application”), and 2) a general rate increase (the “Application”).

On February 14, 2023, the Division of Public Utilities (DPU) filed comments concluding the Application was a “substantially ... complete filing.”¹ DPU filed additional comments on February 22, 2023, recommending the PSC approve LW’s requested Interim Rates Application.

On February 27, 2023, LW submitted a corrected Interim Rates Application. DPU filed additional comments on March 2, 2023, concluding the corrected Interim Rates Application was a substantially complete filing.² DPU recommended the PSC approve the corrected Interim Rates Application. On March 7, 2023, the PSC held a hearing to consider the corrected Interim Rates Application and issued an Order

¹ February 14, 2023, DPU Comments at 2 (*citing* Utah Admin. Code R746-700-50 and R746-700-51).

² See March 2, 2023, DPU Additional Comments (*citing* Utah Code Ann. § 54-7-12(1)(b)(i), Utah Admin. Code R746-700-50, R746-700-51, and R746-1-203(3)).

approving that application on March 16, 2023, effective March 17, 2023 (“Interim Rates”).³ Thus, only LW’s Application remains to be decided.

In response to the Application, on June 29, 2023, DPU filed the direct testimony of Mark Long, along with exhibits. This submission recommended granting LW a rate increase and included calculations and explanations supporting that recommendation.

On August 2, 2023, DPU filed an Unopposed Motion to Vacate the Scheduling Order Except for the Hearing and Public Witness Hearing Date, which was granted on August 3, 2023. Because of that motion, LW did not file written testimony specifically supporting the Application but had previously filed testimony for the purpose of the Interim Rates Application.

On August 14, 2023, DPU filed an Unopposed Motion to Approve Settlement Stipulation and Hold Hearings as Scheduled, which included a contemporaneously filed proposed settlement stipulation (“Settlement”) and proposed tariff sheets for LW’s tariff number 3 (“Tariff No. 3”). On August 24, 2023, the PSC held an evidentiary hearing (“Hearing”) and public witness hearing to consider the Application and the Settlement.

After the Hearing, and because of a series of filings correcting the tariff sheets for Tariff No. 3,⁴ on August 24, 2023, the parties filed a Joint Motion to Substitute Third

³ *Application of Lakeview Water Corporation for Interim Rate Increase and General Rate Increase*, Order Approving Interim Rates, issued March 16, 2023.

⁴ Prior to the Hearing, two sets of corrected attachments containing redlined and clean versions of LW’s Tariff No. 3 were filed: Corrected Attachment A and B, filed August 17, 2023, attached to the *Division of*

Corrected Attachments for the Settlement Stipulation Attachments (“Joint Motion”), which included Third Corrected Attachment A and Third Corrected Attachment B (“Third Corrected Attachments”). The Joint Motion represented that the Third Corrected Attachments “incorporate the changes necessary to rectify the inconsistencies identified ... and reflect the changes the Parties agreed to at [the Hearing,]” and “represent the final version of [LW’s] Tariff No. 3.”⁵ The Joint Motion was granted by order dated August 29, 2023, which provides, among other things, that the Third Corrected Attachments “replace and supersede any proposed tariff sheets previously filed since August 14, 2023, in this docket, and embody what is referenced in paragraph 19 of the Settlement Stipulation.”⁶

I. THE APPLICATION

LW is a water corporation as defined in Utah Code Ann. § 54-2-1(23)(a) and (39), with a Certificate of Public Convenience and Necessity (CPCN) first issued by the PSC on April 28, 1982.⁷ LW is located near Huntsville, Utah and currently serves approximately 291 active residential connections, 103 standby connections, and has

Public Utilities’ Action Request Response; and Second Corrected Attachments A and B, filed on August 22, 2023.

⁵ Joint Motion at 2-3.

⁶ Order Granting Joint Motion to Substitute Third Corrected Attachments for Original Settlement Stipulation Attachments, issued August 29, 2023.

⁷ CPCN No. 2080, Docket No. 81-540-01.

water to serve approximately 26 acres of landscaping. The Application provides a comprehensive comparison of LW's original⁸ rates and its requested final rates.⁹

LW asserts its rates have not increased since 2008, and they are insufficient to meet its "ongoing operation and maintenance expenses, pay outstanding obligations, and establish reserves for future maintenance and capital infrastructure replacement."¹⁰ According to LW, the requested rate increase is needed so that it can "operate at a net gain, meet all current obligations, be self-sustaining, and build capital reserves for future repairs and replacement of capital facilities."¹¹ LW states its proposed final rates are just and reasonable.

II. TESTIMONY

A. LW Written Testimony.

LW witness William Duncan states LW had modest losses in 2019 and 2021, and only had a gross profit in 2020 because of connection charges for several multi-unit housing projects.¹² Mr. Duncan testifies that because connection charge revenue is unpredictable and not sustainable, LW's proposed rates and rate structure seek realignment so that monthly billed revenue recovers appropriate expenses.¹³ Mr. Duncan also testifies that LW's costs are higher due to, among other things, the hiring

⁸ The original rates were superseded by the Interim Rates.

⁹ See Application, ¶7.

¹⁰ *Id.*, ¶6.

¹¹ *Id.*, ¶7.

¹² See January 31, 2023, written direct testimony of William Duncan at 1-2 ("Duncan Written Direct Test.").

¹³ *Id.* at 1-2.

of new employees, necessary and appropriate pay raises, maintenance of aging infrastructure, increased electricity costs, and equipment upgrades.¹⁴

LW witness Ray Bowden testifies that he has subsidized LW since 2011 and “[over] the last three years, LW has experienced operational losses.”¹⁵ Mr. Bowden also testifies LW has experienced recent cost increases.¹⁶ Mr. Bowden explains that LW’s proposed rates and rate structure will allow sufficient revenue to allow “LW to provide safe, healthy, and reliable drinking water to [its] customers.”¹⁷

Messrs. Duncan and Bowden both testify that LW’s proposed rates are just, reasonable, and in the public interest.¹⁸

B. DPU Written Testimony.

On June 29, 2023, DPU filed the direct testimony of Mark Long, along with exhibits. This submission includes detailed calculations of, and explanations supporting, DPU’s recommended rates.¹⁹ DPU’s recommended rates are different than LW’s requested rates.

¹⁴ See *id.* at 3-4.

¹⁵ January 31, 2023, written direct testimony of Ray Bowden at 1 (“Bowden Written Direct Test.”).

¹⁶ See *id.* at 2.

¹⁷ *Id.*

¹⁸ See Duncan Written Direct Test. at 5; Bowden Written Direct Test. at 3.

¹⁹ DPU’s exhibits provide summaries and calculations of recommended rate schedules, allocation of annual expenses and rates, adjustments to expenses, a summary of revenues and expenses (revenue requirement), capital reserves, depreciation expense and accumulated depreciation reconciliation, contribution in aid of construction and amortization, rate base, return on investment, and projected federal and state income taxes. See June 29, 2023, Direct Testimony of Mark Long (“Long Written Direct Test.”), DPU Exhibits 2.2 through 2.10.

Mr. Long testifies that LW's existing "rates and rate structure no longer cover fixed costs and do not have an effective conservation rate. The rates and rate structure no longer result in just and reasonable rates and are no longer in the public interest."²⁰ Mr. Long further explains the recovery of fixed costs versus variable costs, testifying that "[f]ixed costs are generally recovered through fixed rates[,]” whereas “[v]ariable costs are recovered through consumption or volumetric rates.”²¹ Mr. Long also testifies that “customers have an obligation to reimburse the Company at rates that will cover its costs, fund a capital reserve account, and provide an opportunity to earn a return on its investment in infrastructure.”²²

Mr. Long testifies that DPU's recommended rates and rate structure is designed to promote financial sustainability for LW, which will help ensure reliable service at just and reasonable rates, and encourage water conservation, consistent with Utah water policy.²³ Mr. Long concludes that DPU's recommended rates and rate structure provide LW “the opportunity to cover all fixed costs, fund the reserve account, and have an effective conservation rate structure with reasonably increasing tiered rates[,]” and are thus “just, reasonable, and in the public interest.”²⁴

²⁰ Long Written Direct Test. at 11.

²¹ *Id.* at 5.

²² *Id.* at 3.

²³ *See id.* at 4.

²⁴ *Id.* at 19-20.

Mr. Long's direct testimony also addresses two issues relating to the Interim Rates Order. First, DPU's recommended final rates – relative to the Interim Rates – result in an overcharge for the standby customers and an undercharge of the connected customers during the period of Interim Rates (the “Over/Under Charge Issue”). Second, DPU represents that LW started billing the Interim Rates beginning March 1, 2023, instead of the Interim Rates Order's effective date of March 17, 2023 (the “Interim Rate Billing Error”). To reconcile these two issues, DPU proposes a refund of \$52.78 for standby customers and a surcharge of \$107.05 for connected customers.²⁵

C. Settlement Stipulation.

The Settlement states that DPU and LW engaged in settlement discussions and reached an agreement that led to the Settlement. The Settlement accurately notes that no other party has intervened in this docket. DPU and LW recommend the PSC approve the Settlement and hold the evidentiary and public witness hearings as scheduled.

The Settlement adopts new rates and a standby fee, and new volumetric tier rates,²⁶ among other things. The Settlement seeks an effective date of October 1, 2023.²⁷ Additionally, the Settlement includes reference to updated LW Tariff No. 3,

²⁵ See *id.* at 22.

²⁶ See Settlement at 4, ¶13.

²⁷ See *id.*

stating the tariff sheets reflect several additions and changes that are primarily housekeeping items.²⁸

The rates and fees in the Settlement are consistent with DPU's recommended rates outlined in the June 29, 2023, written direct testimony of Mr. Long. A summary of the rates and fees in the Settlement are:

Water Rates	
Water Usage Amounts	Rates
Base Rate (Minimum Fee)	78.50 No gallons included in Base Rate
Tier 1 1 to 8,000 gallons	\$3.50 per 1,000 gallons
Tier 2 8,001 to 16,000 gallons	\$5.50 per 1,000 gallons
Tier 3 16,001 to 24,000 gallons	\$11.00 per 1,000 gallons
Tier 4 24,001 to 32,000 gallons	\$16.50 per 1,000 gallons
Tier 5 ≥ 32,001 gallons	\$25.00 per 1,000 gallons
Fees and Other Charges	
Connection Fees	Fees
Single Family Dwelling Unit (Developments) ¾ inch	\$1,495
Other Single Family Dwelling Unit ¾ inch	\$1,495
Multiple Family Dwellings (on single connection)	\$1,495
Standby Fee	
Single Connection	\$23.50

The Settlement also addresses the Over/Under Charge Issue and Interim Rate Billing Error, reflecting the parties' agreement on how those issues will be addressed.²⁹ This resolution includes a credit of \$52.78 for each standby customer "in

²⁸ See *id.* at 6, ¶19.

²⁹ See *id.* at 5-6, ¶¶14-18.

the first billing cycle following the effective date of the Commission's order[]” on the Application,³⁰ and billing connected customers \$107.05 which “shall be payable over three months if requested by the customer.”³¹

D. Testimony at Hearing.

LW witness William Duncan testified that DPU's recommended rates were “relatively close to what [LW] requested,” having only minor differences, so LW “decided to adopt [that] recommendation and stipulate ... to [DPU's recommended] rate structure.”³² Mr. Duncan also testified that the rates and rate structure in the Settlement “are just and reasonable.”³³ Mr. Duncan further testified that Tariff No. 3 “is also reasonable,” stating it “is much more extensive than the previous tariff and ... covers all of the things that need to be addressed[.]”³⁴

LW witness Ray Bowden testified about two items that modify the Settlement. First, Mr. Bowden testified about the billing mechanics concerning the Over/Under Charge Issue and the Interim Rate Billing Error. Specifically, Mr. Bowden testified that LW will send a written notice to its connected customers with their monthly bill explaining that the customer can choose to pay the additional charge of \$107.05 as a

³⁰ *Id.* at 5-6, ¶18.

³¹ *Id.* at 5, ¶17.

³² See August 24, 2023, hearing transcript at 8:22-25 and 9:1-2 (“Hr’g Tr.”).

³³ *Id.* at 9:6-9.

³⁴ *Id.* at 9:10-18.

one-time payment or over a three-month period.³⁵ Second, Mr. Bowden testified that the “turn-on and turn-off fees” were inadvertently omitted from paragraph 13 of the Settlement but were correctly included in Tariff No. 3.³⁶

DPU did not cross-examine Mr. Duncan or Mr. Bowden. LW moved for admission of its prefiled written direct testimony that was used in the Interim Rates Application and used for purposes of the Application. That motion was unopposed and was granted.

DPU witness Mark Long offered a summary of his written direct testimony.³⁷ Mr. Long testified about several clarifications and corrections to that testimony. For example, Mr. Long clarified that the column heading noting a 70-30 split of projected expenses between connected and standby customers in Exhibit 2.2 is not reflected in that exhibit's final recommended rates.³⁸ Mr. Long testified that, regardless of how the expenses allocation is expressed, “[a]s part of the settlement stipulation, the proposed rates are ... a compromise and have been agreed to by all parties. Taken as a whole and consistent with Utah Code [Ann. §] 54-7-1, ... the rates [reflected in Exhibit 2.2] and [the Settlement] are just, reasonable, and in the public [interest].”³⁹

³⁵ See *id.* at 15:17-21 and 16:3-14. Mr. Bowden's testimony thus modified on the record a portion of paragraph 17 of the Settlement resulting in customers not having to “request” to pay this additional charge over a three-month period.

³⁶ See *id.* at 17:18-25 and 18:1-23. Mr. Bowden's testimony thus modified on the record a portion of paragraph 13 of the Settlement, relying instead on the actual filed Tariff No. 3.

³⁷ See *id.* at 43:11-25 through 48:18.

³⁸ See *id.* at 21:18-25.

³⁹ *Id.* at 22:4-9. Mr. Long offered additional clarifications and corrections. See generally, *id.* at 21:9 through 29:23. LW had no objections to any of Mr. Long's clarifications and corrections.

LW did not cross-examine Mr. Long. DPU moved, subject to Mr. Long's clarifications and corrections on the record at the Hearing, for the admission of Mr. Long's June 29, 2023, written direct testimony and exhibits 2.1 through 2.10. That motion was unopposed and was granted. DPU also moved for admission of the Settlement, which was also unopposed and granted.

A public witness hearing was noticed for August 24, 2023, beginning at 5:30 PM, allowing individuals present before 6:00 PM to address the Application and Settlement. This hearing occurred as noticed and no members of the public appeared.

DISCUSSION, FINDINGS OF FACT, AND CONCLUSIONS OF LAW

Under the Settlement, the parties agreed that effective October 1, 2023, and subject to the PSC's approval, LW's rates and terms of service would be those provided in the Settlement and the Third Corrected Attachments. Utah Code Ann. § 54-7-1 encourages settlements of matters before the PSC at any stage of the proceedings. Under Utah Code Ann. § 54-7-1(2)(a), the PSC may approve a settlement proposal if it finds that proposal to be in the public interest. In addition, the PSC may adopt a settlement stipulation if the PSC finds, based on the evidence of record, that the proposal is just and reasonable in result.⁴⁰

The evidence supports a finding that LW's existing rates and rate structure are inadequate. The evidence further supports findings that the Settlement's proposed

⁴⁰ See Utah Code Ann. § 54-7-1(3)(d)(i)(A)-(B).

rates, rate structure, and fees are necessary for LW to recover its prudently incurred operating costs, including administrative expenses, infrastructure maintenance and upgrades, and to establish a capital reserve.

Based on the Application, the supporting written testimony of LW and DPU, DPU's recommendations, the testimony at the Hearing, and given no party opposes, we conclude that LW has provided adequate evidence to support our approval of a rate increase using the rates and rate structure as stated in the Settlement with the Third Corrected Attachments. We further conclude that those rates and the rate structure are in the public interest and are just and reasonable in result.

ORDER

For the foregoing reasons, we approve the Settlement, filed August 14, 2023, as modified on the record at the Hearing, and the Third Corrected Attachments filed August 24, 2023. We thus approve the proposed rate increase as reflected in the Settlement and the Third Corrected Attachments, effective October 1, 2023.

DATED at Salt Lake City, Utah, September 27, 2023.

/s/ John E. Delaney
Administrative Law Judge

Approved and confirmed September 27, 2023 as the Order of the Public Service
Commission of Utah.

/s/ Thad LeVar, Chair

/s/ David R. Clark, Commissioner

/s/ John S. Harvey, Ph.D., Commissioner

Attest:

/s/ Gary L. Widerburg
PSC Secretary
DW#330007

Notice of Opportunity for Agency Review or Rehearing

Pursuant to Utah Code Ann. §§ 63G-4-301 and 54-7-15, a party may seek agency review or rehearing of this order by filing a request for review or rehearing with the PSC within 30 days after the issuance of the order. Responses to a request for agency review or rehearing must be filed within 15 days of the filing of the request for review or rehearing. If the PSC fails to grant a request for review or rehearing within 30 days after the filing of a request for review or rehearing, it is deemed denied. Judicial review of the PSC's final agency action may be obtained by filing a Petition for Review with the Utah Supreme Court within 30 days after final agency action. Any Petition for Review must comply with the requirements of Utah Code Ann. §§ 63G-4-401, 63G-4-403, and the Utah Rules of Appellate Procedure.

CERTIFICATE OF SERVICE

I CERTIFY that on September 27, 2023, a true and correct copy of the foregoing was served upon the following as indicated below:

By Email:

Jennifer Bowen-Crockett (jbcrockett@shutah.law)
J. Craig Smith (jcsmith@shutah.law)
SMITH HARTVIGSEN, PLLC
Attorneys for Lakeview Water Corporation

Patricia Schmid (pschmid@agutah.gov)
Patrick Grecu (pgrecu@agutah.gov)
Assistant Utah Attorneys General

Madison Galt (mgalt@utah.gov)
Division of Public Utilities

Administrative Assistant