

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF DELAWARE**

IN THE MATTER OF THE APPLICATION)
OF UNITED WATER DELAWARE INC., TO)
IMPLEMENT THE WATER CONSERVATION) PSC DOCKET NO. 04-121
RATE STRUCTURE REQUIREMENTS OF 26)
DEL. C. § 1406 (FILED APRIL 1, 2004))

ORDER NO. 6489

AND NOW, this 19th day of October, A.D. 2004;

WHEREAS, the Commission has received and considered the Findings and Recommendations of the Hearing Examiner on the Proposed Settlement, issued September 21, 2004 in the above-captioned docket, which was submitted after duly noticed public hearings; and

WHEREAS, the Hearing Examiner recommends approval of the application as filed, subject to one minor change recommended by Staff for the clarification of the tariff language, and this change is acceptable to all parties; now, therefore,

IT IS ORDERED:

1. That, by and in accordance with the affirmative vote of a majority of the Commissioners, the Commission hereby adopts the September 21, 2004 Findings and Recommendations of the Hearing Examiner, appended to the original hereof as Attachment "A".

2. That United Water Delaware Inc. shall file such tariff sheets as may be needed consistent with this Order.

3. That the Commission reserves the jurisdiction and authority to enter such further Orders in this matter as may be deemed necessary or proper.

BY ORDER OF THE COMMISSION:

/s/ Arnetta McRae
Chair

/s/ Joshua M. Twilley
Vice Chair

/s/ Joann T. Conaway
Commissioner

/s/ Jaymes B. Lester
Commissioner

Commissioner

ATTEST:

/s/ Karen J. Nickerson
Secretary

A T T A C H M E N T "A"

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FINDINGS AND RECOMMENDATIONS OF THE HEARING EXAMINER

DATED: September 21, 2004

ROBERT P. HAYNES
HEARING EXAMINER

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Appendix "A" Draft Order

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FINDINGS AND RECOMMENDATIONS OF THE HEARING EXAMINER

Robert P. Haynes, duly appointed Hearing Examiner in this docket by PSC Order No. 6384, issued April 20, 2004, pursuant to 26 *Del. C. § 502* and 29 *Del. C. ch. 101*, reports to the Public Service Commission of Delaware ("Commission") as follows:

I. APPEARANCES

On behalf of the Applicant, United Water Delaware, Inc. ("Company"):

Walton F. Hill, Esquire
Vice President, Regulatory Business

On behalf of the Staff of the Public Service Commission ("Staff"):

Ashby and Geddes
By: Regina Iorii, Esquire

On behalf of the Division of the Public Advocate ("DPA"):

G. Arthur Padmore, Public Advocate

II. BACKGROUND

1. In July 2003, the Water Supply Self-Sufficiency Act of 2003 was enacted into law. 26 *Del. C. §§ 1401 et seq.* ("Act"). Pursuant to Section 1406 of the Act, United Water Delaware Inc., filed, on

April 1, 2004, its proposed "Water Conservation Rates" with a proposed effective date of January 1, 2005. The Act's proposed conservation rates may reflect either an inclining block rate or a seasonal rate. A filing of water conservation rates must also include a plan for implementation and for informing and educating customers about the new rates. The Act requires that within 180 days of the filing, the PSC take action on the proposed rates.

2. The Company's filing proposes an inclining block rate for residential customers. The Company stated that it based its proposed water conservation rates on the rate design the Commission previously approved for Artesian Water Company, Inc. The proposed change is to replace the existing single block with a three-block inclining rate design. The Company did not propose any change to the existing service charges for the various meter sizes, or for other rate classes. A comparison of the existing and proposed residential consumption rates is as follows:

EXISTING

All Consumption at \$2.638 per 1,000 gallons

PROPOSED

<u>Quarterly Consumption</u>	<u>Rate per 1,000 Gallons</u>
0- 5,000	\$ 2.480
5,001 - 20,000	\$ 2.642
Over 20,000	\$ 3.077

3. The Company's proposed rates were designed to be revenue neutral to the Company, and did not reflect any adjustment to the

billing data or revenue to account for anticipated reductions in consumption from the proposed rate design. In its filing, the Company proposed that the public outreach plan be mutually agreed to by the parties after the water conservation rates are approved.

4. By PSC Order No. 6394 (Apr. 20, 2004), the Commission delegated to this Hearing Examiner the authority to preside over the development of the record, and to prepare a report of findings and recommendations. On April 23, 2004, the Public Advocate filed his statutory Notice of Intervention.

5. The parties agreed on, and the Hearing Examiner approved, a procedural schedule, and the parties subsequently informed the Hearing Examiner that a settlement had been reached before the hearing.

6. On September 2, 2004, a duly noticed public hearing and evening public comment session hearing held at the Carvel State Office Building in Wilmington. No member of the public attended either the hearing or the public comment session. At the public hearing, the parties presented evidence from their witnesses.

7. Since there were no outstanding issues in the case, the parties agreed to waive exceptions to the Hearing Examiner's Report.

III. SUMMARY OF THE EVIDENCE

8. At the hearing, the parties orally presented their agreement that the proposed rates were revenue neutral and in compliance with the law, and their recommendations that the rates should go into effect as filed. The parties also agreed that they would work together on a proposed plan of public outreach that would include, at a minimum, the publication of a notice in a newspaper of

general circulation and billing inserts that would inform customers of the law, the new rates, and their purpose.

9. The Company introduced as its exhibits the following: (a) its initial filing, together with the proposed tariff leaves as revised to reflect a minor Staff requested change; (b) the affidavits of publication of the public notices of the hearing; and (c) the Company's bill frequency analysis showing the impact on customers' bills at different consumption levels.

10. The Company also presented testimony from Scott D. Fogelsanger, Vice President of AUS Consultants, who testified regarding his role in developing the new rates after consultation with the Company. Mr. Fogelsanger stated that he used a residential bill frequency distribution for the twelve-months ended December 31, 2003, and developed the proposed inclining three-block rate structure based on the currently approved rate design for Artesian Water Company, Inc. The residential water revenue under the proposed rates produced \$12 more than the December 31, 2003 per books billing data; therefore, he concluded that the proposed rates are revenue neutral for the residential class. He did not make any adjustment to the rates to account for potential consumption reductions resulting from the new rates or to account for anticipated changes in consumption due to weather normalization or other factors. The Company also concluded in the record the bill frequency analysis that shows the impact of the proposed rates on different levels of consumption.

11. Staff presented Heidi Wagner, Public Utility Analyst, who testified regarding Staff's review of the proposed rate change, and

the discovery conducted, and indicated that Staff recommended changing the proposed tariff so that it clearly identifies that the rate reflects quarterly, not monthly, consumption. The Company agreed to this change. Ms. Wagner concluded that, after comparing the impact on customer bills at existing and proposed rates, and after several discussions with Company representatives, the proposed rates are just and reasonable.

12. DPA witness Andrea Crane, Vice President of the Columbia Group, Inc. consultants, submitted an affidavit as a stipulated exhibit for the record stating that she had reviewed the Company's filing, together with the responses to the data requests and all supporting documents, and had engaged in several discussions with the Company concerning the support for the proposed rates. After such review and discussion, she concluded that the proposed rates are just and reasonable. Public Advocate Padmore indicated that a customer using 50,000 gallons of water a quarter (twice the average usage) would experience an approximate increase of 8%, while an average customer using 24,600 gallons of water a quarter would receive a slight decrease.

13. The record consists of twenty-five verbatim-transcribed pages of testimony and four exhibits. I have reviewed the record and, based thereon, I present the following report of findings and recommendations.

IV. DISCUSSION

14. The Commission has jurisdiction over this matter, and the Company is subject to the Act as it provides service in a "drought sensitive area" defined as above the Chesapeake & Delaware Canal.

15. For the following reasons, I recommend that the Commission approve the proposed rates as reasonable and in the public interest. The record is uncontested that the proposed rates accurately implement the Act and are revenue neutral to the Company based upon normal, historical consumption data unadjusted by any anticipated conservation. The Company, Staff, and DPA presented evidence by experts to support the record and approval of the rates as filed, and no member of the public opposed the proposed rate change. Staff recommended one minor clarification to the tariff language to better reflect the Company's use of quarterly billing, and the Company and DPA accepted this change.

16. The Act establishes a strong public policy of encouraging water conservation in the State of Delaware. In compliance with that law and its public policy, the Company has submitted proposed inclining block rates that will encourage customers to conserve water or pay higher bills if their consumption exceeds the typical consumption levels. In subsequent proceedings, the Commission may determine that further steps are necessary or appropriate, and approval of the proposed rates does not bind the Commission to future revisions when warranted. For now, the proposed rates represent an important step in encouraging residential water consumption. Moreover,

my review of the record evidence leads me to conclude that the rates as filed comply with the provisions of 26 Del. C. § 1401 et seq.

17. On the Act's requirement of customer outreach and education, the Company's filing, that the other parties have accepted, includes customer outreach and education to be developed after approval of the proposed rates, with the Company to submit a report thirty (30) days following implementation of the plan. The proposed rates are recommended for approval effective for service on and after January 1, 2005. The parties will mutually determine the particular details of informing the Company's customers of the conservation rates and their purpose. I agree that the Act does not require Commission approval of the specifics in the administration so long as the Company understands its responsibility, and, apparently, it does, and the Staff and DPA are satisfied with this approach. The customer notice can include, but is not necessarily limited to, newspaper publication and bill messages or inserts containing language mutually agreeable to the parties. The parties agree, and I so recommend, that the Company file a report within thirty (30) days after completion of the outreach program describing the actions taken and any customer input received as a result.

V. RECOMMENDATIONS

18. In summary, and for the reasons discussed above, I propose and recommend to the Commission the following:

- (a) That the Commission adopt as just, reasonable, and in the public interest, the Revised Tariff Sheets included in the record as Exhibit 2;

- (b) That the Commission direct the Company to file a report within thirty (30) days after the completion of the public outreach plan, detailing the actions taken and any customer response; and
- (c) That the Commission adopt the proposed Order attached hereto as Appendix "A" to implement the foregoing recommendations.

Respectfully submitted,

/s/ Robert P. Haynes
Robert P. Haynes
Hearing Examiner

Dated: September 21, 2004