

Agenda Date: July 26, 2018
Item Number: A3

Docket: UW-171068
Company Name: Richardson Water Company, LLC
Staff: Jim Ward, Regulatory Analyst

Recommendations

1. Deny the petition filed by Richardson Water Company, LLC, for exemption from commission jurisdiction under WAC 480-110-255, and
2. Order the company to file by August 15, 2018, an appropriate tariff with current rates and charges as the company was applying at the date of jurisdiction (July 12, 2017).

Discussion

On October 17, 2017, Richardson Water Company, LLC (Richardson Water or company) filed a tariff with the Utilities and Transportation Commission (commission), in response to staff's review of the company's revenue and number of customers. Richardson Water currently serves only two customers on a water system located near Yakima in Yakima County.

The current jurisdictional threshold for regulation by the commission (WAC 480-110-255) is:

- 1) serving 100 or more customers; or
- 2) charging more than \$557 average annual revenue per customer.

Richardson Water's annual revenue of \$72,576 and two customers produce an annual average per customer of \$36,288. This amount far exceeds the annual threshold of \$557 per customer.

On December 8, 2017, Richardson filed to withdraw the tariff and in its place filed a petition requesting an exemption from WAC 480-110-255, Jurisdiction. The company argues that pursuant to the provisions of RCW 80.04.010(30)(b) and WAC 480-110-255, the company is precluded from providing service to additional customers and therefore is not, according to the petition, a public utility subject to the commission's jurisdiction.

Background

In 1978, the Richardson family started the development of Sun Country Estates, a planned home development. At that time a ground water permit was obtained from Department of Ecology to provide water for the Sun Country Estates development, a truck line business (owned by the Richardson family) and two single family houses. Since then, the two single family houses have connected to an independent water system and are no longer served by Richardson Water Company.

Sun Country Estates is now fully developed and serves water to 174 residential lots as part of Sun Country Estates Maintenance Association which acts in the same capacity as a Homeowners Association¹ (HOA). The water system is limited (by water rights) to serve only the truck line business and the Sun Country Estates.

Richardson Water charges the Sun Country Estates Maintenance Association \$5,848 monthly, which equates to about \$34.00 per month per lot resident. The truck line business served by the water company, is charged \$200 monthly.² Both customers are charged flat rates and may have meters installed.

In response to staff inquiries, both customers of Richardson Water are aware of the issues. Additionally, both customers are not involved in discussions on rates and bills, water charges, and water system practices. The company is limited by Department of Ecology water rights and cannot serve any more than the two existing customers.

Staff has reviewed the petition and recommends denying Richardson Water's request for exemption from jurisdiction because the company failed to demonstrate that the exemption is in the public interest or otherwise meets the requirements of WAC 480-07-110. Staff recommends the commission direct the company to file its initial tariff by August 15, 2018.

In its Petition, Richardson Water seeks an exemption from regulation on the basis that the company is not a "public utility" subject to commission regulation because it is precluded from providing service to additional customers. The company, however, neither cites any supporting authority nor argues that granting the exemption meets the criteria set out in WAC 480-07-110. Moreover, the company's argument overlooks the fact that all water companies are granted rights by Ecology that control water usage, whether they are limited to serving two, 20, or 200 connections. Rather than being unique to Richardson Water, this is a universal feature of all the water companies the commission regulates.

Staff's review of the petition and recommendation do not include an opinion as to whether the fees, charges, rates, purchase price, or accounting allocations involved with this review are reasonable. The commission staff reserves the right to initiate review of the company in the future should conditions change, or those fees, charges, rates, or accounting allocations change.

After substantial examination, staff has determined that Richardson Water is not exempt from commission jurisdiction. Staff's conclusion is based on four separate considerations discussed immediately below:

First, RCW 80.04.010 Definitions states in part: (30)(a) "Water Company" includes every corporation, company, association, joint stock association, partnership and person, their lessees,

¹ Review of Secretary of State documentation regarding Sun Country Estates Maintenance Association, indicates that the nature of its business is a "Homeowners Association."

² Revenue and expenses have not been audited by Staff. Revenues and customer count have been provided by the company. Water System Questionnaire, July 12, 2017.

trustees, or receivers appointed by any court whatsoever, and every city or town owning, controlling, operating, or managing any water system for hire within this state. Staff interprets “for hire” to mean receiving compensation in return for providing water regardless of the class of customer to whom water is provided (i.e., retail end user or a customer who purchases water in bulk for its eventual sale to end users).

Second, RCW 80.040.010(30) (b) states in part: For purposes of commission jurisdiction, “water company” does not include any water system serving less than one hundred customers where the average annual gross revenue per customer does not exceed three hundred dollars per year, which revenue figure may be increased...by the commission by rule. The commission in WAC 480-110-255(1) (b) sets that amount at five hundred fifty-seven dollars per year. It is clear that Richardson only has two customers - Haney Truck Lines, and Sun Country Maintenance Association, but each of those customers pays more than the \$557/year threshold. So staff concludes under WAC 480-110-255(1) (b) that the company falls under commission jurisdiction by rule of law.

The next approach was to look for existing exemptions to apply to Richardson Water Company. First staff looked at whether the customers had any say in the setting of the rates. The company had drafted an agreement (Memorandum of Understanding) with the maintenance association for the process of determining rate increases. However the agreement does not give a voice to the maintenance association board or Haney Truck Lines. Commission rules exempt Homeowners Associations and similar organizations because the members have a voice (through voting or choosing board members) directly or indirectly in the rate charged to them for water service. Although Richardson is not the association, staff felt that the situation was similar enough that the exemption could still apply. The problem with this argument is even if the commission agreed that for practical purposes Richardson could be exempted on the basis of “resembling” an association, the company still serves another customer that was not part of the association (Haney Truck Lines). The commission currently regulates several HOAs that serve customers outside their membership.

The final approach was to look at the restrictions the Department of Ecology included in the water rights agreement. If those restrictions limited the service that could be provided by the company then perhaps the company would not fall under commission jurisdiction. The basis for this approach was a decision by the Washington Supreme Court in 1986 titled *West Valley Land Co. v. Nob Hill Water Ass’n*. In that case the court used a test from another case, *Inland Empire Rural Electrification, Inc. v. Department of Pub. Serv.* (199 Wash. 527, 92 P .2d258(1939). The commission was called the Public Service Commission in 1939. That test was to determine whether a company was a “public service company” and therefore subject to regulation by the commission. To paraphrase, the test is whether or not the company holds itself out to supply water to the general public. It is staff’s belief that the restrictions in the DOE water rights agreement prevents Richardson from holding itself out to the general public as a water company beyond its water right limits or boundaries. This is true for all water companies that have a water rights limits or boundaries associated with their water rights. However, that same case, *Nob Hill*, also addressed the issue of an association providing service to a customer who was not a member of the association, and the court held the company was subject to regulation for the service provided to the non-member.

Staff's final conclusion, as discussed and supported, is that while an exemption could be argued on the basis of the water rights restrictions to the maintenance association, the exemption would not apply to services provided to Haney Truck Lines; and ultimately, the plain reading of the law clearly defines Richardson Water Company as falling under commission jurisdiction.

Customer Comments

The company serves only two customers and both customers are aware of the company's petition and the staff's review. The initial contact with commission staff was May 31, 2017, and was made by an HOA lot resident of Sun Country Estates. On occasion, HOA lot residents of Sun Country Estates have attempted to use the commission to encourage the HOA to change business practices regarding water service, or to install additional utility plant benefiting the HOA lot residents. The lot residents of Sun Country Estates are un-metered and pay a fixed amount. Staff received no comments regarding the proposed determination of jurisdiction from the customers of the water company.

If the commission determines the company to be jurisdictional, the water company will continue to supply only two customers: the truck line business and the home development. HOA lot residents and members of Sun Country Estates, do not meet the definition of customer, instead the water company customer would continue to be the Sun Country Estates maintenance association itself.

Conclusion

After reviewing the petition requesting an exemption filed on December 8, 2017, by Richardson Water Company, LLC, UW-171068, staff believes granting the petition for an exemption from jurisdiction is not in the public interest and should be denied. A determination of jurisdiction and regulation will still allow the company to continue to operate and provide water service to its two customers.

Staff recommends the company file by August 15, 2018, an appropriate tariff with current rates and charges as the company was applying at the date of jurisdiction, July 12, 2017.

Additionally, staff requests the commission order the company to submit adequate financial information with its tariff filing that will allow staff to determine that all rates and charges to customers are fair, just, and reasonable.

Recommendations

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