

Agenda Date: December 9, 2021
Item Number: A3

Docket: UW-210306
Company Name: Canyon Lakes Water Company, LLC.

Staff: Jim Ward, Regulatory Analyst
John Cupp, Regulatory Analyst

Recommendation

Issue an order granting an exemption from provisions of WAC 480-110-375 relating to billing cycle period and allow the tariff pages filed by Canyon Lakes Water Company, LLC., on May 4, 2021, as revised on November 23, 2021, to become effective January 1, 2022, by operation of law.

Background

This analysis assesses three separate questions: First, does Canyon Lakes Water Company, LLC (Canyon Lakes Water or Company) fall under the jurisdiction of the UTC? Second, under the UTC's jurisdiction, does the Company's initial tariff comply with all relevant requirements? Last, should the commission grant the petition for exemption from certain provisions of WAC 480-110-375, Form of Bills, so that the Company can continue to bill customers on an annual cycle rather than at least once every three months as required by WAC? Only the last question of these three (i.e., that related to billing cycle) requires a specific Commission order.

On September 9, 2021, this matter was presented as a No Action agenda, item F1 under Docket UW-210306. Customers wished to speak to the item, therefore, it was set aside for discussion. After some discussion it was determined that additional time for investigation was needed to determine the correct tariff rates to be applied. Since the effective date of the initial tariff is January 1, 2022, no further action was needed at that time, and it was agreed that the matter would be presented at an Open Meeting in December 2021. Therefore, this matter is before the Commission at this Open Meeting on December 9, 2021.

Jurisdictional Discussion

On May 17, 2020, a customer of the Company filed with the Washington Utilities and Transportation Commission (Commission) an inquiry and complaint with the Consumer Protection section. The customer asked if the company was subject to the Commission's jurisdiction because the water company supplies irrigation water to 378 customers. Additionally, the customer believed that the company was jurisdictional, and complained that a "year before our last assessment (stated as assessment on the bill) was \$150, last year was \$160 and this year it stated the assessment for our property was \$200 which is a 30 percent increase."

In early June 2020, Consumer Protection staff provided the Company a water system jurisdictional questionnaire to complete. On June 8, 2020, the Company returned the completed questionnaire in which the Company noted that it provides service to 378 customers: 38 of these customers are provided maintenance, distribution, and irrigation water for \$425 per year while the remaining 340 customers receive only maintenance and distribution services for \$200 per year. Also noted was a \$40 discount if customers signed a contract prior to the due date.¹

In discussion with the company, it was learned that the original developer did not elect to have KID install facilities to pressurize the irrigation water to deliver it to each property. Instead, the water is provided only to the irrigation canal/ditch and the Company laid facilities to pressurize the water and deliver it to each property. Customer comments indicate the Company billed \$100 per year but recently raised the rate to \$200 per year. Since the Company provides maintenance and distribution if the customer wants the irrigation water provided by KID, customers believe that the private water company should be regulated by the Commission.

As noted above 340 customers are only provided maintenance and distribution service by the Company. The company bills each of these 340 customers for maintenance and distribution, while the Kennewick Irrigation District (KID) separately provides the water they use and separately bills customers for that water. KID bills each of the 340 customers \$300 annually for irrigation water. The remaining 38 customers receive irrigation water from the Company's own well in addition to distribution and maintenance service.

After review of the Company's answers and consideration of WAC 480-110-255, Consumer Protection staff requested, in August of 2020, that the Office of Attorney General review the question of UTC jurisdiction and received an informal Assistant Attorney General staff opinion. The determination was that the Company should be regulated because the number of customers who were provided water service and billed for those services exceeded 100, which is the threshold for regulation.²

¹ Contract was found to be 'Canyon Lakes Water Delivery Agreement' "This agreement is intended to confirm the terms by which Canyon Lakes Water Company, LLC, the "Company" will deliver irrigation Water to the above named "Customer" at the property designated as Tax Parcel Number listed about."

² **WAC 480-110-255 Jurisdiction.**

(1) The commission only regulates investor-owned water companies that:

(a) Own, operate, control, or manage one or more water systems; except that control or management does not include management by a satellite management agency as defined in chapter 70.116 RCW if the satellite management agency is not an owner of the water company.

(b) Meet jurisdictional thresholds of one hundred or more customers or have average revenue of more than five hundred fifty-seven dollars per customer per year.

Staff has reviewed the history of the jurisdictional questions and considered customer questions and comments. Staff has determined that the Company falls under Commission regulation.

- There is no contract between the Company and KID for the use of Canyon Lakes Water facilities. Instead, Canyon Lakes Water requires that each of its 378 customers sign a *Canyon Lakes Water Delivery Agreement*.
- RCW [80.04.010\(31\)](#) defines water systems that should be regulated by the Commission: (31) “Water system” includes all real estate, easements, fixtures, personal property, dams, dikes, head gates, weirs, canals, reservoirs, flumes or other structures or appliances operated, owned, used or to be used for or in connection with or to facilitate the supply, storage, distribution, sale, furnishing, diversion, carriage, apportionment or measurement of water for power, irrigation, reclamation, manufacturing, municipal, domestic or other beneficial uses for hire.
- The irrigation system meets the Commission’s jurisdictional threshold as defined in WAC [480-110-255](#).

Initial Tariff Review

On October 28, 2020, the Company was reminded by Consumer Protection staff that they must file a tariff.

On December 27, 2020, the Company provided a draft tariff to Consumer Protection staff. The rates filed in the draft tariff incorrectly included a discount given to customers who held a contract with the company. Rather than including a discount in the tariff, the Company was informed that the tariff should reflect the actual rates in place when the Company became jurisdictional on June 9, 2020, as determined by the returned questionnaire mentioned above.

On May 4, 2021, the Company filed its initial tariff which specified an annual charge for each customer (parcel) of \$200 for the customers receiving irrigation water from KID. However, it again included a discount of \$40.00 “... if there is a signed contract on file.” Consumer Protection staff again informed the Company that discounts were not allowed in the tariff.

After the item appeared on the September 9, 2021, open meeting and after further discussions with Regulatory Staff, the Company filed substitute tariff pages on November 23, 2021, which properly reflect the rates in effect when the Company became jurisdictional in June of 2020. The Company’s substituted tariff pages do not reference a discount amount if a contract is signed. The rate specified in the tariff is set at \$160 for maintenance and distribution services on an annual basis.

Annual Rate Comparison

Annual Rate	Current Rate
Maintenance and distribution services	\$160

Other rates and charges are included in the tariff for services offered by the Company. The charges specified include initial connections charges, service visit charges, and other ancillary fees, and are not changed from service rates that were in effect on the date that the Company was found to fall under the commission's jurisdiction.

Exemption Request

Along with its initial tariff the company requested an exemption from WAC 480-110-375 to allow the company to bill its customers annually. The WAC allows companies to bill monthly, bi-monthly, or quarterly depending on the company's chosen billing cycle. It is customary for irrigation providers in eastern Washington to bill on an annual basis because rates are typically a flat amount fixed by acreage, or in this case, the entire amount of water provided by KID during the irrigation season. Annual billing saves administrative costs, which lowers rates, and is more convenient to customers who only pay once annually. These same customers also pay another entity on a monthly basis for potable water. Because of the flat rate charged, cost savings, and because irrigation is seasonal and not metered, Staff finds no reason not to grant the exemption thereby permitting the Company to continue billing on an annual basis.

Customer Comments

On April 15, 2021, which was before the Company filed its substitute pages on November 23, 2021, the Company notified its customers by mail of the tariff submission. Staff received three comments related to this filing.

The three commenters support regulation of the Company; however, they have concerns about the Company and the tariff it filed. They feel the \$40 discount for signing a contract is inappropriate, and the proposed tariff rate is unsupported. They are concerned that their water rates are subsidizing the costs of operating and improving the golf course. They feel the Kennewick Irrigation District provides the same service at more affordable rates.

Staff Response

Staff explained that the tariff rate will be at the previously discounted rate without the requirement to sign a contract. Staff also explained that as a regulated company, the Company will be required to notify all affected customers of any future rate increases, and will have to prove its rates are fair, just, reasonable, and sufficient.

Conclusion

Staff has completed its review of the Company's initial tariff and finds it is in alignment with the jurisdictional questionnaire and reviewed the request for rule exemption and recommends granting the Company's request for exemption from WAC 480-110-375 Form of Bills as reasonable and customary.

Recommendation

Issue an order granting an exemption from provisions of WAC 480-110-375 relating to billing cycle period and allow the tariff pages filed by Canyon Lakes Water Company, LLC., on May 4, 2021, as revised on November 23, 2021, to become effective January 1, 2022, by operation of law.