

- 1 **PROCEEDINGS:** Docket No. UW-020822 is a general rate increase filing by Frog Pond Waters, Inc., by which the Company seeks a \$34,393, or 25 percent, increase in annual revenue. Docket No. UW-021140 is a Commission Complaint issued on September 11, 2002, in which the Commission alleges that certain operating practices of Frog Pond Waters, Inc., violate RCW 80.28.080.
- 2 **PARTIES:** David Symington, owner of Frog Pond Waters, Inc. (“Frog Pond Waters” or “Company”) represents the Company. Mary M. Tennyson, Senior Assistant Attorney General, Olympia, Washington, represents the Commission’s regulatory staff (“Commission Staff” or “Staff”).
- 3 **SETTLEMENT AGREEMENT:** On December 27, 2002, Staff and Frog Pond Waters (the Parties) filed a Settlement Agreement. The parties propose that the Commission approve and adopt the Settlement Agreement to resolve all issues pending in these two dockets by imposing penalties and conditions, and authorizing a rate increase designed to produce \$25,735 in additional annual revenue to the Company.
- 4 **COMMISSION:** The Commission approves and adopts the Parties’ settlement agreement, as filed, to resolve all pending issues in these proceedings.

MEMORANDUM

I. Background and Procedural History.

- 5 On June 24, 2002, Frog Pond Waters filed with the Commission in Docket No. UW-020822 proposed revisions to its currently effective Tariff WN U-1, designated as:

First Revision of Sheet No. 2 canceling Original Sheet No. 2,
Second Revision of Sheet No. 6 canceling First Revision Sheet No. 6,
Fourth Revision of Sheet No. 7 canceling Third Revision of Sheet No. 7,
Fifth Revision of Sheet No. 21 canceling Fourth Revision Sheet No. 21,
Second Revision of Sheet No. 22 canceling First Revision Sheet No. 22,

Original Sheet No. 23, and Original Sheet No. 30.

6 Frog Pond Waters requests a general rate increase of \$34,393 (25 percent) annual revenue. The Company states that the increase is necessary to permit Frog Pond Waters to recover the costs of certain capital investments and to cover increased operating costs. Frog Pond Waters received its most recent increase in June 1997. Frog Pond Waters serves approximately 493 customers in the Seabeck area of Kitsap County.

7 On July 26, 2002, the Commission entered a Complaint and Order Suspending Tariff Revision pending an investigation to determine whether the proposed revisions include rates, terms, and conditions that are fair, just, reasonable, sufficient, and otherwise in the public interest.

8 Commission Staff conducted an investigation of the Company's operations. In the course of its investigation, Commission Staff noted that the Company had not installed meters as required in its last rate case in 1997, Docket No. UW-970919. The Commission's final order in that proceeding, entered June 6, 1997, included the following language:

Revised rates would generate approximately \$28,000 annually. This revenue increase would be the result of installation of meters and use of a staff proposed metered rate. Staff believes that by using meters, the company would reduce its overall demand for water and help eliminate revenue shortfalls. To encourage the company to install meters, the revised flat rate will expire December 31, 1998, and charges will fall to the base meter rate.

9 Since that time no meters have been installed. The Company continued to charge unmetered customers at the flat rate and not at the base meter rate, from January 1, 1999, to the present.

10 The Company bills its customers for water service every two months, one month in advance and one month in arrears. Since January 1, 1999, there have been 22

billing periods. During each of these billing periods, the Company has charged its customers a rate that is not approved. RCW 80.28.080 prohibits a regulated water company from charging, demanding, collecting, or receiving a greater, less, or different compensation than the applicable rates and charges specified in its filed tariff.

- 11 On September 11, 2002, the Commission issued a Complaint in Docket No. UW-021140. The Commission's Complaint alleges that Frog Pond Waters violated RCW 80.28.080 by collecting charges for water service at the flat rate of \$22.50 per month after its flat rate tariff expired on December 31, 1998.

II. Settlement Agreement.

- 12 Although these matters are quasi-judicial within the meaning of Chapter 42.30 RCW (Open Public Meetings Act), formal adjudicative proceedings have not commenced under Chapter 34.05 RCW (Administrative Procedure Act). RCW 34.05.413(5) provides that

An adjudicative proceeding commences when the agency or a presiding officer notifies a party that a prehearing conference, hearing, or other stage of an adjudicative proceeding will be conducted.

- 13 Prior to notice of any prehearing or hearing proceedings, Frog Pond Waters and Commission Staff conferred and agreed to execute a settlement agreement by which they jointly propose to resolve both the pending rate proceeding and the complaint proceeding without the need for an adjudicative hearing. The parties filed their settlement agreement on December 27, 2002. The settlement agreement is attached to this Order as Appendix A and is incorporated into and made a part of this Order.
- 14 The parties agreed that Frog Pond Waters would file substitute tariff sheets designed to produce \$25,735 in additional revenue based on agreed ratemaking

principles and factors to implement the settlement terms with respect to the Company's general rate filing. Those substitute sheets were filed on December 27, 2002, and are attached to this Order as Appendix B.

- 15 The parties also agreed that Frog Pond Waters is liable for \$10,000 in penalties, \$2,000 of which is to be paid by March 1, 2003. Payment of the balance of the penalty amount is deferred, and may be waived, if the Company meets meter installation and other requirements under the settlement by dates certain, as specified in the Settlement Agreement. The Company will pay costs of investigation in the amount of \$1,355, pursuant to RCW 80.20.020.
- 16 We have reviewed the parties' settlement agreement and find that it is in the public interest to approve and adopt its terms to resolve the issues pending in these proceedings without the necessity for formal adjudicative proceedings.

FINDINGS OF FACT

- 17 (1) The Washington Utilities and Transportation Commission is an agency of the State of Washington, vested by statute with authority to regulate rates, rules, regulations, practices, and accounts of public service companies, including water companies. *RCW 80.01.040; Chapter 80.04 RCW and Chapter 80.28 RCW.*
- 18 (2) Frog Pond Waters provides water service to customers in Washington State. Frog Pond Waters is a "water company" and a "public service company" subject to the Commission's jurisdiction.
- 19 (3) Frog Pond Waters' current rates are not fair, just, reasonable, or sufficient.
- 20 (4) It is consistent with the public interest to authorize Frog Pond Waters to file substitute revised tariff sheets, to lift our suspension of the Company's tariff filing, as modified, and to approve the substitute tariff revisions to the Company's Tariff WN U-1, effective on January 1, 2003. The substitute revised tariff sheets filed by Frog Pond Waters on December 27, 2002,

which are attached to this Order as Appendix B reflect rates that are fair, just, reasonable, and sufficient.

- 21 (5) On September 11, 2002, the Commission issued a Complaint in which it alleged that Frog Pond Waters failed to comply with certain provisions of law that govern the conduct of water companies that provide service to customers in Washington.
- 22 (6) The violations stated in the Commission's Complaint occurred as alleged.
- 23 (7) On December 27, 2002, Staff and Frog Pond Waters filed a Settlement Agreement by which they propose to resolve all known violations of the statutes and rules cited in the Commission's Complaint.
- 24 (8) The proposed settlement agreement promotes the public interest by resolving questions of responsibility without the need for a hearing on contested issues, by holding the respondent responsible for violations in a manner that is consistent with the seriousness of the violations, and by securing the respondent's independently enforceable commitment of compliance with law in the future.

CONCLUSIONS OF LAW

- 25 (1) The Washington Utilities and Transportation Commission has jurisdiction over the subject matter and the parties as provided in Chapter 80.28 RCW.
- 26 (2) Frog Pond Waters' current rates are not fair, just, reasonable and sufficient. The rates set forth in the tariff sheets attached to this Order as Appendix B are fair, just, reasonable and sufficient.
- 27 (3) Frog Pond Waters violated certain provisions of law that govern the conduct of water companies that provide service to customers in Washington, as set forth in RCW 80.28.080.

- 28 (4) The Settlement Agreement, which is attached to this Order as Appendix A and incorporated into this Order by reference, is consistent with the public interest.
- 29 (5) The Settlement Agreement fully and fairly resolves the issues pending in Docket Nos. UW-020822 and UW-021140. The terms of the Settlement Agreement should be approved and adopted as though set out in the body of this order.

ORDER

THE COMMISSION ORDERS That:

- 30 (1) The Settlement Agreement, attached to this order as Appendix A, is approved and adopted in full resolution of the issues in these proceedings.
- 31 (2) Frog Pond Waters, Inc., will pay a penalty of \$2,000 by March 1, 2003, and will otherwise comply fully with the requirements the settlement agreement approved and adopted by this Order.
- 32 (3) Frog Pond Waters, Inc., will pay \$1,355 for costs of the Commission's investigation, pursuant to RCW 80.20.020, within 30 days of the date of this Order.
- 33 (4) The suspension of tariff revisions filed by Frog Pond Waters, Inc., in this docket on July 26, 2002, is lifted.
- 34 (5) The tariff revisions filed in Docket No. UW-020822 by Frog Pond Waters, Inc., on June 24, 2002, as modified by the Company's filing of substitute tariff sheets on December 27, 2002 (Appendix B to this Order), shall become effective, as filed, on January 1, 2003.
- 35 (6) The Commission retains jurisdiction over the parties and the subject matter to effectuate the provisions of this order.

DATED at Olympia, Washington, and effective this 31st day of December 2002.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARILYN SHOWALTER, Chairwoman

RICHARD HEMSTAD, Commissioner

PATRICK J. OSHIE, Commissioner

NOTICE TO PARTIES: This is a final order of the Commission with respect to certain issues resolved. In addition to judicial review, administrative relief may be available through a petition for reconsideration, filed within 10 days of the service of this order pursuant to RCW 34.05.470 and WAC 480-09-810, or a petition for rehearing pursuant to RCW 80.04.200 or RCW 81.04.200 and WAC 480-09-820(1).