

Agenda Date: December 31, 2002
Item Number: C1

Docket No.: UW-021140
Company Name: Frog Pond Waters, Inc.

Staff: Danny Kermode, Regulatory Analyst
Jim Ward, Regulatory Analyst
John Cupp, Consumer Affairs Specialist
Penny Hansen, Public Involvement Coordinator

Recommendation:

Accept Settlement and Dismiss the Complaint for Violation of Statute Requiring Company to Charge Rates in Approved and Effective Tariff, to become effective January 1, 2003.

Discussion:

On June 24, 2002, Frog Pond Waters, Inc., (Frog Pond Waters or Company) filed for a general rate increase. In the course of its rate case investigation, Commission Staff noted that the Company had not complied with a term of the order granting its last rate increase, in 1997, Docket No. UW-970919. The Order in that docket required the Company to install meters for each of its customers, and to begin charging metered rates for water service as meters were installed. As an incentive for the Company to complete the meter installation, the tariff page for flat-rate unmetered water service was set to expire on December 31, 1998.

Despite the clear wording of the Order, no meters were installed. The Company continued to charge customers at the flat rate from January 1, 1999, to October 31, 2002, despite the fact that the flat-rate tariff page had expired. Frog Pond Waters bills its customers for water service every two months, one month in advance and one month in arrears. Between January 1, 1999, and the start of the investigation, there were 22 billing periods. For each of these billing periods, the Company charged its customers a non-tariffed rate in violation of RCW 80.28.080 which requires a water company to charge only its published rates.

On September 11, 2002, the Commission issued a *Complaint for Violation of Statute Requiring Company to Charge Rates in Approved and Effective Tariff*. The Order commenced an adjudicative proceeding pursuant to Chapter 34.05 RCW and Chapter 480-09 WAC, to determine whether the Commission should assess monetary penalties and the cost of the investigation against the Company, pursuant to RCW 80.20.020, based on alleged violations of applicable laws, rules and orders of the Commission.

Prior to a prehearing conference being held in this case, the Company and Commission Staff conferred, and agreed to present a settlement agreement to the Commission to attempt to resolve the case without necessity of an adjudicative hearing.

As a result of these discussions, the Company acknowledges that no meters had been installed in Violation of the Commission's prior order. In addition, the Company admits that despite the tariff page expiring, the company continued to charge customers at the expired flat rate since January 1, 1999. However, effective November 1, 2002, the Company began billing its customers at the meter base rate, effectively reducing its current rates from \$22.50 to \$16.50 per month.

Frog Pond Waters has filed new tariffs and agreed to perform several actions in relation to this complaint. The agreement is summarized below.

- (1) Frog Pond Waters did from January 1, 1999, to October 31, 2002, charge a rate that was not approved. Under RCW 80.28.080, only published rates may be charged. Frog Pond Waters agrees to violations of RCW 80.28.080 and agrees to penalties in the amount of \$10,000.
- (2) Frog Pond Waters agrees to the following timeline for meter installation or payment of penalties:
 - Before March 1, 2003, the Company will pay a penalty in the amount of \$2,000.
 - No later than April 1, 2003, the Company will install, begin reading meters, and begin billing 250 customers at the metered rate. As of the completion date of April 1, 2003, the Company must have 250 metered customers.
 - No later than July 1, 2003, the Company will install, begin reading meters, and billing all remaining customers at the metered rate. As of the completion date of July 1, 2003, the Company must have all customers metered.
- (3) If the Company meets the April 1, 2003, target date cited in the Settlement Agreement, the Commission will postpone the remaining \$8,000 penalty, pending meeting the July 1, 2003, deadline. If the Company fails to meet the April 1, 2003,

target date, the Company must immediately pay \$4,000 of the \$8,000 penalty with the remaining \$4,000 postponed pending completion by the July 1, 2003, deadline set forth in the Settlement Agreement. Additionally, those customers scheduled to be metered but not metered will receive a refund for the difference between the meter base rate and flat rate.

- (4) If the Company fails to meet the July 1, 2003, completion requirement, the Company must immediately pay all remaining penalty amounts: \$8,000 if the Company met the April 1, 2003 target date or \$4,000 if the Company failed to meet the requirements of the April 1, 2003, target date set forth in the Settlement Agreement and has already paid \$4,000 in penalty. Additionally, those customers scheduled to be metered but not metered will receive a refund for the difference between the meter base rate and flat rate.
- (5) If the Company meets all completion dates set forth in the Settlement Agreement, the Commission will waive all remaining penalty amounts.
- (6) To ensure the terms discussed in the settlement agreement are met as intended, and to monitor the transition to metered rates, Frog Pond Waters will prepare the following monthly reports and file them with the Commission on a quarterly basis:
 - a. Income Statement
 - b. Balance Sheet
 - c. Accounts Receivable, aging, and customer count
 - d. Customer meter usage data and billing information.

The Company has agreed to the attached Settlement Agreement which requires it to install meters and bill its customers at the approved meter rate. Therefore, Staff recommends that the Commission Accept Settlement and Dismiss the Complaint for Violation of Statute Requiring Company to Charge Rates in Approved and Effective Tariff, in Docket UW-021140, to become effective January 1, 2003.

Attachment (1)

Settlement Agreement