

**BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Petition of)	DOCKET UW-081416
)	
AQUARIUS UTILITIES, LLC,)	ORDER 01
)	
Petitioner,)	
)	
For A Surcharge Tariff To Service Four)	ORDER GRANTING SURCHARGE
Drinking Water State Revolving Fund)	TARIFF
Loans)	
.....)	

BACKGROUND

- 1 On July 29, 2008, Aquarius Utilities, LLC, (Aquarius or Company) filed with the Washington Utilities and Transportation Commission (Commission) a revision to its currently effective Tariff WN U-01, designated as Second Revision Sheet No. 2 canceling First Revision Sheet No. 2; Original Sheet No. 27; Original Sheet No. 28. The stated effective date is September 15, 2008.

- 2 Aquarius filed the surcharge tariff to service \$2,056,214 in Drinking Water State Revolving Fund (DWSRF) loans approved by the Public Works Board (PWB). Proceeds from the loans will be used for capital improvement projects on each of the Company’s four water systems. The Company serves 880 customers located in Clallam, Kitsap and Mason counties.

- 3 The loan contracts are low-interest (1.5 percent), 20-year loans approved by the PWB on condition that, prior to September 9, 2008, Aquarius obtains Commission approval of rates to repay the loans. This surcharge filing is intended to satisfy that condition.

- 4 The DWSRF loan program provides low-interest loans to water systems around the state for capital improvements that increase public health protection and compliance with drinking water regulations. The Department of Health (DOH) and the PWB jointly administer the DWSRF program. The DOH staff evaluates all loan applications and, using a scoring method designed to measure the health risk that each project will address, assigns points to each application. The applications are then ranked according to their scores.

- 5 The PWB staff determines the available funding for each annual loan cycle, and the ranked project list shows this funding cutoff. Projects below the funding cutoff line do not receive funding. The Public Works Board approves the final recommended funding list each spring. PWB staff also conducts an underwriting and readiness-to-proceed evaluation of each approved loan project.

- 6 DOH is responsible for evaluating and approving Water System Plans (WSP) or Small Water System Management Programs (SWSMP), which are requirements of both the DOH and DWSRF loan projects. DWSRF loan projects must be included in a WSP or SWSMP. In addition, the DOH evaluates and approves the project reports and construction documents for all DWSRF-funded loan projects.

- 7 In May of 2007, Aquarius applied to the PWB for five separate DWSRF loans. Four applications were to build new storage tanks, one on each of its four water systems, and to improve or upgrade existing storage tanks, including miscellaneous improvements such as booster pump stations, additional water supply, transfer switches and security system upgrades. We refer to these projects as the “storage tank” projects. The fifth application was to replace pipe on the Diamond Point water system. All five projects are included in the Company’s Water System Plan (WSP) that the Department of Health (DOH) approved. The four storage tank projects ranked high enough to receive funding from the PWB.

- 8 Some Diamond Point customers disagree with the Company’s WSP, believe that they did not have sufficient opportunity to participate in the planning process, and believe that the DOH improperly approved the WSP. The DOH has exclusive authority over the WSP process. Staff has consistently advised customers that the Commission plays no role in the WSP planning process or the DOH approval process, and advised customers to work with the DOH on those issues.

- 9 The pipe replacement project qualified for funding, but did not rank high enough to receive funding. The scoring method includes five different health-risk categories. Pipe replacement projects fall in the lowest risk category. The PWB encouraged the Company to refile its application next year, when that project might rank high enough to receive funding. The Company could also seek a commercial loan that would carry a significantly higher interest rate (e.g., 8 percent instead of 1.5 percent) and likely have a shorter repayment term (e.g., 10 years instead of 20 years).

- 10 Some Diamond Point customers believe that the pipe replacement project is more important than the storage tank projects and disagree with the scoring and ranking process. As stated above, the DOH and the PWB have jurisdiction over those issues, not the Commission. Staff has consistently advised customers to work with the DOH and the PWB on these issues.
- 11 On May 23, 2008, Aquarius filed a general rate increase with the Commission in Docket UW-080926 that would generate \$106,055 (24.6 percent) in additional revenue per year. Although the filing did not include any debt or expenses related to the DWSRF loans, the PWB staff concluded that, if the Commission approved the proposed rates, the Company would have sufficient revenue to repay the DWSRF loans. Staff's review of the Company's operations and financial records indicated that the Company's proposed rates were excessive. Staff and the Company agreed to a revised revenue requirement of \$31,584 (7.3 percent) in additional revenue per year and to revised rates. At its July 10, 2008, open meeting, the Commission approved the revised rates to become effective July 14, 2008, on a temporary basis, subject to refund. No costs related to the DWSRF loans were included in that rate increase.
- 12 Staff advised the PWB staff that the Commission had approved lower rates on a temporary basis, subject to refund, and provided the PWB staff with the revised financial information related to the 7.3 percent revenue increase. The PWB staff reviewed the revised financial information and concluded the rates would not generate sufficient funds to allow the Company to repay the DWSRF loans. Staff and the PWB staff worked with the Company to file the proposed surcharge in this docket, which was filed on July 29, 2008.
- 13 On July 29, 2008, Aquarius notified its customers of the surcharge by mail. The Commission has received 51 customer comments on this filing. Six customers support the surcharge. Forty-five customers are opposed to the surcharge. Some customers believe the surcharge request is voluntary and requires a vote of approval by the water customers. Some customers believe the requested surcharge is excessive because the Company just had a rate increase, and unjust to retired citizens living on limited and fixed incomes. Customers reported that the Company promised and stated in its Water System Plan meeting with customers that the surcharge would be for pipe replacement, not storage tanks.

- 14 Staff responded to these and other customer comments in its August 28, 2008, memorandum. Staff respectfully disagreed with the customers' opinion that the surcharge is voluntary and requires a vote of approval by the water customers. Customers must vote to approve proposed surcharges that will be used to pay for projects they desire, but which are not required by the DOH or to meet Safe Drinking Water Act requirements. The proposed surcharge here will service loans for capital improvement projects set forth in the Company's approved WSP and therefore are required by the DOH.
- 15 Some customers object to the Single Tariff Pricing method of setting uniform rates for all customers on all water systems. They correctly point out that that method does not treat all customers equally in all circumstances. Single Tariff Pricing distributes costs incurred on one system to all customers on all systems. All systems will require additional investment over time. The distribution of costs and benefits will vary from project to project, but over time most customers are net beneficiaries. For example, under Single Tariff Pricing, customers on the other three systems would help pay for the pipe replacement project on the Diamond Point system, although they will receive no direct benefit from that project. Staff remains convinced that Single Tariff Pricing results in fair, just, reasonable and sufficient rates over the long term.
- 16 The Commission's role in this matter is limited to setting rates. The relevant questions are:
- Are the proposed projects prudent investments?
 - Is the proposed surcharge fair, just, reasonable and sufficient?
- 17 Staff believes all five projects that Aquarius filed for DWSRF loans are prudent investments. The DOH has primary jurisdiction regarding water quality and quantity issues, including water system design, construction and maintenance, and it concluded that the proposed projects are necessary for the Company to meet water quality and quantity standards. Staff finds no basis to conclude otherwise.
- 18 Staff believes that the priority of an investment is a different question from the prudence of an investment. The DOH and the PWB review process determines the priorities for investments using DWSRF loans. The Commission's role is not to second-guess that prioritization, but to determine whether the proposed investment is prudent. Disagreement over the project priorities does not change the prudence of the investment,

especially here, where the PWB loans are tied directly to the storage tank projects and cannot be diverted to the pipe replacement project.

19 Staff has reviewed the Company's supporting financial documents, books and records, including the cost estimates for the proposed projects and the terms and conditions of the DWSRF loans. Staff believes the low-interest, long-term DWSRF loans are excellent funding options for both the customers and the Company, and that the proposed surcharge is fair, just, reasonable and sufficient.

FINDINGS AND CONCLUSIONS

- 20 (1) The Washington Utilities and Transportation Commission is an agency of the State of Washington vested by statute with the authority to regulate the rates, rules, regulations, practices, accounts, securities, transfers of property and affiliated interests of public service companies, including water companies. RCW 80.01.040, RCW 80.04, RCW 80.08, RCW 80.12, RCW 80.16 and RCW 80.28.
- 21 (2) Aquarius is a water company and a public service company subject to Commission jurisdiction.
- 22 (3) This matter came before the Commission at its regularly scheduled meeting on August 28, 2008.
- 23 (4) WAC 480-110-455 allows companies to file surcharge tariffs including that for which Aquarius seeks approval.
- 24 (5) Staff has reviewed the tariff revisions Aquarius filed in Docket UW-081416 including related work papers.
- 25 (6) The priorities for investment of DWSRF loan funds are determined by the Department of Health and the Public Works Board and are entitled to deference by the Commission.
- 26 (7) The surcharge tariff in this docket is to fund capital projects required by the Department of Health as part of an approved Water System Plan. It is therefore mandatory and not subject to customer approval.

- 27 (8) The Company's DWSRF loan repayment proposal relies on three revenue sources: monthly surcharges paid by current and future customers, facilities charges paid by future customers and future equity investment by the owner. To ensure that the Company has sufficient revenue to service the four DWSRF loans, and because the revenue streams from the unknown future customers and future owner investment are not certain, Staff recommends that Commission approval of the surcharge should be subject to the following conditions:
- a) The surcharge applies to all water customers served by the Company. The surcharge expires on December 31, 2028, or upon recovery of \$2,056,214 in principal, whichever occurs first.
 - b) Funds received from the surcharge, including interest earned on the funds while held in a reserve account, will be treated as contributions in aid of construction.
 - c) All future funds received through the Company's facilities charge (current tariff and contracts), including any interest earned on the funds while held in a reserve account, will be used to pay the four DWSRF loans until the surcharge expires.
 - d) Surcharge funds and facilities charge funds collected and interest earned upon such funds must be held in a separate DWSRF loan reserve bank account by the Company for the benefit of customers. Such funds do not become the property of the Company or Company owners and may not be disbursed, alienated, attached, or otherwise encumbered by the Company or its owners. In the event of a sale or transfer of the Company, the trust obligations established in WAC 480-110 regarding any unspent surcharge or facilities charge funds will be transferred to the new owner of the Company.
 - e) The owner will invest a minimum of \$10,000 annually by July 1 of each year, beginning in 2009, and every year thereafter, until the surcharge expires. These funds will be held in the same DWSRF loan reserve bank account specified in condition (d) above. Additional owner's equity investment may be required to make the annual DWSRF loan payment, if revenue from the surcharge and the facilities charges is inadequate.
 - f) The Company must report the following DWSRF loan reserve bank account information to the Commission within 45 days of the end of the calendar quarter:

- i. Beginning balance;
 - ii. Amounts received, detailed by source;
 - iii. Amounts spent, detailed by project or expense;
 - iv. Ending balance;
 - v. Reconciliation of bank balance to general ledger.
 - g) The Company will immediately deposit one-time payments in the same DWSRF loan reserve bank account specified in condition (d) above.
 - h) After 2014, excess funds held in the DWSRF loan reserve bank account will be remitted annually, at the time of the annual loan payment, to be applied to the principal of the DWSRF loans. "Excess funds" means money accumulated in the reserve account in excess of 10 percent of the DWSRF loan payment for the following year.
- 28 (9) After reviewing Aquarius's tariff revisions filed in Docket UW-081416 on July 29, 2008, and giving due consideration to all relevant matters and for good cause shown, the Commission finds that the proposed surcharge should be granted for the following reasons:
- a. The Department of Health WAC 246-290-420 requires that water service be maintained at all times to prevent health and safety risks to customers. These four projects funded by the DWSRF loans will help ensure adequate water supply.
 - b. The PWB provides government-funded, low-interest loans and requires an assurance of repayment. This surcharge, subject to the recommended conditions, would satisfy that condition.
 - c. The DWSRF loan is necessary to allow the Company to pay for the storage tank projects. The proposed surcharge will allow the Company to repay the loan by recovering the cost of the storage tank projects from its customers.

O R D E R

THE COMMISSION ORDERS:

- 29 (1) Aquarius Utilities, LLC's request for a surcharge tariff to service \$2,056,214 in Drinking Water State Revolving Fund loans approved by the Public Works Board, is granted.

- 30 (2) This authorization is subject to conditions (a) through (h) set forth in paragraph 27
of this Order.
- 31 (3) This Order shall not affect the Commission's authority over rates, services,
accounts, valuations, estimates, or determination of costs, on any matters that may
come before it. Nor shall this Order granting a surcharge tariff be construed as an
agreement to any estimate or determination of costs, or any valuation of property
claimed or asserted.
- 32 (4) The Commission retains jurisdiction over the subject matter and Aquarius
Utilities, LLC, to effectuate the provisions of this Order.

DATED at Olympia, Washington, and effective August 28, 2008.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARK H. SIDRAN, Chairman

PATRICK J. OSHIE, Commissioner

PHILIP B. JONES, Commissioner