

BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

RICHARDSON WATER COMPANY,
L.L.C.,

Petitioner,

v.

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION

Respondent.

DOCKET UW-171068

MOTION FOR ORDER
REMOVING RICHARDSON
WATER L.L.C. FROM
REGULATION

I. INTRODUCTION

1 An investigation by commission staff found that Richardson Water Company L.L.C.
(hereinafter “Richardson Water”) met the statutory definition of a water company subject to
regulation by the Washington Utilities and Transportation Commission (hereinafter “WUTC”).
Richardson Water seeks exemption from regulation.

II. RELIEF REQUESTED

2 The commission staff respectfully requests that the Commission enter an order approving
temporary removal of Richardson Water from WUTC regulation pursuant to RCW
80.04.010(30)(e) based on the public interest considerations outlined below.

III. STATEMENT OF THE ISSUES

A. **Whether Richardson Water is subject to WUTC jurisdiction.**

3

B. **Whether the Commission should remove Richardson Water from regulation.**

4

IV. STATEMENT OF THE FACTS

A. Background of the Case

5 Richardson Water is a family owned and operated business. The company delivers water to two customers: Sun Country Estates Maintenance Association (hereinafter “Maintenance Association”) and Richardson Land and Investment Co. Yakima L.L.C. (hereinafter “Richardson Land”).¹ Maintenance Association is by far the larger customer. Richardson Water charges Maintenance Association \$5,848 per month², and Richardson Land \$260 per month.³ Richardson Land is owned by another company, Quality Transportation Services, Inc.⁴ Michael Richardson is the president of Quality Transportation Services Inc., and Vice President of Richardson Water.⁵ Richardson Land ultimately supplies the water purchased from Richardson Water to a company called Wilson Logistics as part of their lease of Richardson Land property.⁶ Richardson Water has supplied Maintenance Association with water for approximately forty years.⁷ The company has recently completed significant repairs to their water system costing over \$169,000.⁸ After an investigation, commission staff determined that Richardson Water met the jurisdictional

¹ Initial Tariff filed October 17, 2017, at 13. (Filed doc. 1)

² Staff Memo at 2 ¶ 2. This figure was disputed at the open meeting on July 26, 2018 by Arthur Kruger, a resident of Sun County Estates. He claimed the monthly amount Maintenance Association paid was in fact \$5,882. Digital recording at 1:36:18. The initial tariff filed in October 2017 lists a monthly per household charge of \$55 per month. Initial Tariff at 14. That would come to a monthly total of \$9,570 from Maintenance Association. The cause of this discrepancy is unclear, but at the open meeting a figure between \$5,800 and \$5,900 was apparently accepted by all parties.

³ Initial Tariff, at 14.

⁴ Email from Patrick Andreotti, at 2 ¶ 2. (Filed doc. 10) The petition in this case addresses only Richardson Water. However, Richardson Land also appears to meet the statutory definition of a water company subject to WUTC jurisdiction, assuming it passes on the cost of water to Wilson Logistics. Should the Commission find it appropriate to consider the question of Richardson Land, staff would recommend an exemption from regulation for that entity as well.

⁵ *Id.*

⁶ *Id.*

⁷ Water Agreement at 5. (Filed doc. 9)

⁸ Email from Patrick Andreotti at 2. (Filed doc. 10) The attachments to this email include invoices from a construction company and an electrician totaling over \$169,000.

definition of water company under RCW 80.04.010(30)(a) and WAC 480-110-255.⁹ Richardson Water and Maintenance Association recently signed an agreement for service through 2028.¹⁰ On August 29, 2018, the company filed the signed agreement between Richardson Water and the Maintenance Association.¹¹ The agreement set a fixed monthly price for water provided to Maintenance Association from October 1, 2018 to December 31, 2028.¹² In an email Richardson Water's Attorney, Mr. Andreotti, represented to commission staff that Terrace Heights Water System, the Maintenance Association's alternative water supplier, would have provided water to the association at a current rate of \$65 to \$75 per month per household.¹³ He also stated that Terrace Heights Water System provides domestic service only, not irrigation.¹⁴

B. Procedural History

6 On October 17, 2017, Richardson Water filed an initial tariff with the Commission.¹⁵ On December 7, 2017, Richardson Water filed a letter requesting an exemption from regulation, arguing that they did not meet the definition of a public utility.¹⁶ The next day, Richardson Water filed a letter withdrawing the initial tariff documents.¹⁷ The Commission addressed the letter arguing against WUTC jurisdiction at an open meeting on July 26, 2018.¹⁸ The Commission treated the letter as a petition for an exemption from WUTC regulation.¹⁹ Richardson Water

⁹ Staff Memo, at 4 ¶ 1.

¹⁰ Water Agreement. (Filed doc. 9)

¹¹ *Id.*

¹² *Id.* at 1 ¶ 5. The agreement sets the monthly fee at \$7,830 (\$45 per lot) from October through December 2018. From January to June 2019, the price will be increased to \$8,700 (\$50 per lot). Between July 2019 and December 2020, the monthly price will be \$9,570 (\$55 per lot). Beginning in 2021, the monthly price will increase 1.5 per cent annually. This will ultimately result in a monthly charge of \$10,780 (\$61.95 per lot) in 2028. The association currently has 174 lots. Counsel for Richardson Water has represented to the Commission that there is no space for additional lots.

¹³ Email from Patrick Andreotti at 2-3. (Filed doc. 10)

¹⁴ *Id.*

¹⁵ Initial Tariff, October 17, 2017. (Filed doc. 1)

¹⁶ Letter Re: Richardson Water Company, December 7, 2018 at 2 ¶ 4. (Filed doc. 2)

¹⁷ Letter Re: Richardson Water Company, Withdrawal of Tariff Document, December 8, 2017. (Filed doc. 3)

¹⁸ Open Meeting Memo, July 26, 2018. (Filed doc. 7)

¹⁹ *Id.*

appeared and requested that the Commission find that the WUTC did not have jurisdiction over Richardson Water, or in the alternative, find that the company was otherwise exempt.²⁰ The Commission heard from commission staff, the attorney for Richardson Water, Patrick Andreotti, Michael Richardson, and two of the residents of the Sun Country Estates. One resident expressed concern that many members of the association were retirees living on a fixed income, making increased rates a hardship.²¹ The Commission concluded that it did not have sufficient information to determine whether an exemption was in the public interest, and decided to address the issue once the Maintenance Association and Richardson Water had concluded negotiations on their agreement.²²

V. EVIDENCE RELIED UPON

7 Commission staff relies on the record in this docket.

VI. APPLICABLE RULES AND STANDARDS

A. Jurisdictional Definition

8 The Commission is authorized to regulate public service companies.²³ Under RCW 80.04.010(23), a water company is a public service company.²⁴ A water company is defined as a company (or other entities) owning, controlling, operating or managing a water system for hire within the state.²⁵ RCW 80.04.010(30)(b) indicates that companies with less than one hundred customers are not considered a “water company” for the purposes of determining jurisdiction if

²⁰ *Id.*

²¹ Open Meeting, July 26, 2018. Digital recording at 1:37:30.

²² Open Meeting, July 26, 2018. Digital recording at 1:48:20.

²³ See RCW 80.01.040; 80.04.015; 80.04.010(23).

²⁴ RCW 80.04.010 (23): "Public service company" includes every gas company, electrical company, telecommunications company, wastewater company, and water company. Ownership or operation of a cogeneration facility does not, by itself, make a company or person a public service company.

²⁵ RCW 80.04.010(30)(a): "Water company" includes every corporation, company, association, joint stock association, partnership and person, their lessees, 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.

the average annual gross revenue per customer is less than a certain amount set by the commission rule.²⁶ WAC 480-110-255(1)(b) sets the figure at five hundred and fifty seven dollars.²⁷ Therefore, a company with less than one hundred customers is still considered a water company if the average annual gross revenue per customer is more than five hundred and fifty seven dollars.

9 Case law outlines an important exception to the statutory definition of a public service company. The chief case is *Nob Hill*.²⁸ In *Nob Hill*, a homeowner’s association supplied water to its members.²⁹ The court found that the homeowner’s association in *Nob Hill* was supplying water to their own members, and therefore was not a public service company within WUTC jurisdiction.³⁰ A key consideration in the *Nob Hill* decision was that the homeowner’s association was a nonprofit, cooperative organization.³¹ Because the members of the association had a voice in the rates and decisions related to providing water through their membership, they did not need regulatory protections provided by the Commission.³² The court in *Nob Hill* quoted *Inland Empire* to set forth the test to determine whether the exception should be applied:

“The test to be applied is whether or not the corporation holds itself out, expressly or impliedly, to supply its service or product for use either by the public as a class or by that portion of it that can be served by the utility; or whether, on the contrary, it merely offers to serve only particular individuals of its own selection.”³³

²⁶ RCW 80.04.010(30)(b): “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 annually by the commission by rule...”

²⁷ WAC 480-110-255(1): “The commission only regulates investor-owned water companies that: ... (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. “

²⁸ *W. Valley Land Co. v. Nob Hill Water Assoc.*, 107 Wn.2d 359, 729 P.2d 42 (1986)(hereinafter “*Nob Hill*”).

²⁹ *Id.* at 361.

³⁰ *Id.*

³¹ *Id.* at 362.

³² *Id.* (“Its members do not stand in the relation of members of the public needing the protection of the public service commission in the matter of rates and service supplied by an independent corporation.”).

³³ *Inland Empire Rural Electr. v. Dep’t of Public Serv.*, 199 Wash. 527, 537, 92 P.2d 258 (1939)(hereinafter “*Inland Empire*”).

10 An older case, *Clark v. Olson*, outlines in greater detail what constitutes a company holding itself out for public use.³⁴ The court in *Clark*, gives examples of cases where the utility is found to have impliedly held itself out for public use.³⁵ One example is a case in which the company was formed under an act allowing corporations to exercise the power of eminent domain in order to supply water for public use.³⁶ Although *Clark* was decided well before *Nob Hill*, the court in both *Nob Hill* and *Inland Empire* cite *Clark* with approval.³⁷

B. The Commission’s discretion to remove a Water Company from WUTC regulation.

11 Under RCW 80.04.010(30)(e), a water company may be removed from regulation with the approval of the Commission.³⁸ The Commission also has the authority to maintain regulation of water companies falling below the statutory average annual revenue per customer requirement if it finds continued regulation in the public interest.³⁹ The Commission’s exercise of discretion under RCW 80.04.010(30)(e) does not appear to have any case law interpretation. Therefore, it is subject only to the Commission’s general duty to regulate utilities in the public interest.⁴⁰

VII. ARGUMENT

A. Richardson Water meets the jurisdictional definition of a public service company subject to WUTC jurisdiction.

³⁴ *Clark v. Olson*, 177 Wash. 237, 247-48, 31 P.2d 534, (1934)(hereinafter “*Clark*”).

³⁵ *Id.*

³⁶ *Id.* citing *Traber v. Railroad Com. of California*, 183 Cal. 304, 310, 191 P. 366 (1920).

³⁷ *Nob Hill* at 365; *Inland Empire* at 537.

³⁸ RCW 80.04.010(30)(e): “Water companies exempt from commission regulation are subject to the provisions of chapter 19.86 RCW. A water company cannot be removed from regulation except with the approval of the commission. Water companies subject to regulation may petition the commission for removal from regulation if the number of customers falls below one hundred or the average annual revenue per customer falls below three hundred dollars. The commission is authorized to maintain continued regulation if it finds that the public interest so requires.”

³⁹ *Id.*

⁴⁰ RCW 80.01.040(3)

12 Richardson Water acknowledges that it meets the statutory definition of a public service company, but argues that it falls under the same exception as the homeowners association in *Nob Hill*. *Nob Hill* follows the test outlined in *Inland Empire*. The court in *Inland Empire* makes a distinction between a corporation that expressly or impliedly holds itself out to supply its service to a portion of the public, and a company that “merely offers to serve only particular individuals of its own selection.”⁴¹ The former is a public service company, the latter is not.

13 Richardson Water’s permit from the Department of Ecology describes itself as a permit “To Appropriate Public Waters”.⁴² It describes Richardson Water as a public water system.⁴³ The permit describes one of the types of use allowed as “continuous municipal water supply”.⁴⁴ The permit also outlines the service area in which the water may be used.⁴⁵ Due to the small service area, Richardson Water is limited in its potential customers. Given the limited number of potential clients, the difference between Richardson Water offering to serve only particular individuals of its own selection, and “holding itself out to a portion of the public” is negligible. One would not expect a company with this type of service area restriction to advertise or a search for new customers once they established regular business relationships with their main customers. In this case, those main customers are the Maintenance Association, and (through Richardson Land) Wilson Logistics. The question then becomes the nature of the utility.

14 Richardson Water is a privately owned, for-profit company. While it only offers its services to a small section of the public, it nonetheless serves the public. The Maintenance Association is a separate entity representing 174 households. The Maintenance Association

⁴¹ *Inland Empire* at 539-40.

⁴² Letter Re: Richardson Water Company, December 7, 2018 at 3. (Filed doc. 2)

⁴³ *Id.* at 4.

⁴⁴ *Id.* at 3.

⁴⁵ *Id.*

members do not have any voice in the management of Richardson Water or any financial interest in the company.⁴⁶ The utilities in *Nob Hill* and *Inland Empire* were found to fall outside WUTC jurisdiction because there was no concern that the utility would use its power to charge customers exorbitant rates.⁴⁷ The customers controlled the utility, and would not overcharge themselves. Richardson Water is distinguishable from the utilities in *Nob Hill* and *Inland Empire* in this key respect. Therefore, the public service company definition applies, and Richardson Water is subject to the WUTC jurisdiction.

B. The Commission should find it in the public interest to remove Richardson Water from regulation at this time.

15 The Commission heard from members of the community at the open meeting on July 26, 2018. The concerns they expressed should be considered in the public interest analysis, as the Commission made clear at the open meeting. The association members were worried that their rates would increase if the Maintenance Association entered an agreement with Richardson Water. Many members of the association were reported to be retirees living on a fixed income.⁴⁸ The Maintenance Association leadership was in favor of the agreement, and signed on August 23, 2018.⁴⁹

16 While the concerns of community members are valid, WUTC regulation may not provide a solution to the issue. A regulated utility's rates take into account the cost of repairing or replacing facilities, and allow for a just and reasonable return on capital.⁵⁰ Richardson Water has

⁴⁶ Open Meeting, July 26 2018. Digital recording at 1:23:02.

⁴⁷ *Inland Empire* at 539-40. In this respect, Richardson Water would likely not be subject to the WUTC jurisdiction if Richardson Land were their only customer. Michael Richardson is both vice president of Richardson Water and, through Quality Transportation Services Inc., the owner of Richardson Land. Commission staff and counsel have not analyzed or formed any opinion regarding the propriety of the relationships between the various Richardson family enterprises under corporate law.

⁴⁸ Open Meeting, July 26, 2018. Digital recording at 1:37:30.

⁴⁹ Commission staff and counsel give no opinion regarding the enforceability of the signed agreement. No opinion or guarantee of any kind should be inferred from this motion.

⁵⁰ See RCW 80.28.020; 80.28.022.

recently completed significant repairs to their water system costing over \$169,000 in total.⁵¹

While the Commission may take into consideration needs of low income senior customers in a general rate case, this technique would be not be effective where the discounts could not be recovered in rates charged to other customers.⁵²

17 Furthermore, under the agreement with Richardson Water association members are receiving the benefit of set prices over the next decade. A regulated utility's prices may vary over time based on many factors the Commission takes into consideration.⁵³ Under the agreement, the association members living on a fixed income know exactly what their future costs will be, and can plan accordingly. The agreement also gives Maintenance Association the option of purchasing the Richardson Water in the future.

18 While it is true that the agreement raises prices, the increases outlined are reasonable. The only alternate water source available to the Maintenance Association is the Terrace Heights Water System. The Maintenance Association learned from Terrace Heights that their service would currently cost between \$65 and \$75 per household per month.⁵⁴ In contrast, the highest monthly charge under the agreement with Richardson Water will be about \$62 per household in 2028.⁵⁵ Additionally, Terrace Heights only provides water for domestic use, while Richardson Water provides for domestic use and irrigation.⁵⁶ It does not appear that the Maintenance Association has a cheaper option available to it, or that service from Richardson Water would be significantly cheaper if the Commission were to regulate them.

⁵¹ Email from Patrick Andreotti at 2. (Filed doc. 10)

⁵² RCW 80.28.068: "Upon request by an electrical or gas company, or other party to a general rate case hearing, the commission may approve rates, charges, services, and/or physical facilities at a discount for low-income senior customers and low-income customers. Expenses and lost revenues as a result of these discounts shall be included in the company's cost of service and recovered in rates to other customers."

⁵³ RCW 80.28.020

⁵⁴ Email from Patrick Andreotti at 3 ¶ 1.

⁵⁵ See Water Agreement at 1.

⁵⁶ Email from Patrick Andreotti at 2-3.

19 Finally, the Commission should weigh the costs of regulating Richardson Water against the potential benefits. Time spent by commission staff and the company in regulating this small utility is likely to outweigh the benefits the consumers would receive from its regulation. Indeed, it's unclear whether the home association residents would receive a benefit at all. Where prices set by agreement for the next decade appear just and reasonable, the Commission should decline to regulate a small utility in order to conserve state resources.

20 Undoubtedly, the cost of regulation outweighing public benefit should not be the sole determinant of the public interest analysis. That would have the effect of skewing regulatory enforcement away from addressing the needs of small or otherwise vulnerable groups of consumers. But where the evidence demonstrates that the consumer's interests are adequately protected by other means, the Commission should consider the cost of regulation. The association members are protected by the requirements of Richardson Water's ground water permit issued by the Department of Ecology, RCW 19.86, and their long term agreement.⁵⁷ Should the situation change, nothing prevents the Commission from reconsidering the exercise of its authority in the future.⁵⁸

VIII. CONCLUSION

21 Richardson Water is a small utility that serves a small section of the public. It meets the definition of public service company, and is therefore subject to WUTC jurisdiction. However, the Commission should decline to exercise its authority to regulate Richardson Water based on the public interest considerations outlined above. At this time, the consumers are adequately protected by other means, and the costs of regulation are likely to outweigh any benefits.

DATED this _____ day of _____ 2018.

⁵⁷ RCW 80.04.010(30)(e)

⁵⁸ RCW 80.04.110

Respectfully submitted,

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