

Agenda Date: April 28, 2022
Item Number: A1

Docket: UW-171034
Company Name: Queen Anne Water Works, LLC

Staff: Mike Young, Assistant Director, Water and Transportation
John Cupp, Consumer Protection

Recommendation:

Dismiss the complaint and order suspending the initial tariff filed by Queen Anne Water Works, LLC, on October 3, 2017, find the Company subject to Commission regulation under WAC 480-110-255, and allow the revised tariff filed on April 19, 2022, to become effective May 1, 2022, by operation of law.

Discussion

On October 3, 2017, Queen Anne Water Works, LLC (Queen Anne Water or Company) filed with the Washington Utilities and Transportation Commission (Commission) its initial Tariff WN U-01 with a stated effective date of November 15, 2017. The Company filed an initial tariff pursuant to WAC 480-110-255, which states the jurisdictional threshold for Commission regulation is \$557 in average annual revenue per customer, or one hundred or more customers. In February 2016 the Company began charging its customers a flat rate of \$47 per month, which meets the jurisdictional threshold for regulation. The Company serves 14 customers on a small water system near Belfair, Washington.

On November 9, 2017, the Commission issued Order 01 in this docket suspending the initial tariff filing by the Company, stating it would conduct an investigation into the Company's books, accounts, practices, and records until it can be determined that the rates proposed by the Company are fair, just, reasonable, and sufficient.¹ At the November 9, 2017, open meeting the Commission learned that several customers had initiated legal action against the rates charged by the Company under a previous agreement that rates would not be changed without arbitration between the customers and the Company. At that time the Commission chose to defer further action until the legal proceedings had been completed.

On August 13, 2018, the Mason County Superior Court issued findings of fact and conclusions of law limiting the rate that the Company could charge for water service based on third party contracts between the Company and its customers. The Superior Court subsequently filed a judgment and order on November 19, 2018, and the Company appealed the case to the Court of Appeals.² On September 1, 2020, the Court of Appeals issued an unpublished opinion reversing the Superior Court, reasoning that the trial court erred by not enforcing an oral settlement in principle between the Company and its customers that was read into the record and signed by the

¹ *Wash. Utils. and Transp. Comm'n v. Queen Anne Water Works, LLC*, Docket UW-171034, Order 01, (November 9, 2017).

² *Hrudkaj v. Queen Anne Water Works, LLC*, 14 Wn. App. 2d 1027 (2020).

Company, but not the customers. At least two of the settlement's terms, as reflected in the Court of Appeal's opinion, concern the rates the Company will charge for water service. The Court of Appeals ultimately remanded the matter to the trial court for enforcement of the settlement in principle that was placed on the record. The customers sought discretionary review of the Court of Appeals' opinion with the Washington State Supreme Court, which denied review on June 7, 2021.³ Based on Commission Staff's (Staff) discussions with the Company, the customers involved in the litigation have not signed the settlement in principle following remand and it does not appear that there has been any further action in the Superior Court.

On February 2, 2022, the Company filed a letter with the Commission outlining the course of the legal action and requesting that the Commission find it jurisdictional and allow its filed tariff to go into effect. Although the terms of the settlement in principle affect the rates that the Company would charge for water service and sets out a process for additional rate increases, the settlement in principle has not been finalized, and Staff has no indication that the settlement will formally be completed and signed. Given that the Court of Appeals reversed the trial court and the settlement in principle has not been finalized and filed, there is no effective court order that affects the rates the Company will charge for water service.

Consistent with Order 01, Staff reviewed the most recent customer billing statements and determined that the Company was in fact billing customers \$47 per month as it had stated. Additionally, the Company began billing a capital surcharge for emergency repairs conducted to fix a broken watermain that occurred in the summer of 2021. The Company provided invoices and the calculations it used to determine the amount of the surcharge, which will expire August 1, 2022. Staff further reviewed the financial operations of the Company through an income statement and balance sheet for calendar year 2021. Staff determined that the majority of the Company's expenses consisted of payments to the Satellite Management Agency for operating the system, including maintenance, meter reading, and customer billings. Staff determined that the expenses and revenues provided by the Company are prudent and necessary to provide water service to its customers. Staff believes the proposed rates contained in the Company's revised tariff are fair, just, reasonable, and sufficient.

The Company did in fact implement a modest surcharge without seeking permission from the Commission, as required by Order 01.⁴ The surcharge, (identified as an assessment in the Company's customer notice), was intended to recover costs of emergency and other repairs which were needed to continue to provide water service. Staff reviewed the surcharge and, had the surcharge been presented for Commission approval, Staff would have recommended that the Commission authorize the surcharge because Staff believes that the surcharge is reasonable. Most of the surcharge has been collected by the Company and, given Staff's conclusion that the surcharge was reasonable and necessary to continue providing service, refunding the collected surcharge and subsequently reauthorizing collection through the revised tariff would be impractical. Although Staff does not recommend that the Commission take further action

³ *Hrudkaj v. Queen Anne Water Works, LLC*, 197 Wn.2d 1011 (2021).

⁴ *Wash. Utils. and Transp. Comm'n v. Queen Anne Water Works, LLC*, Docket UW-171034, Order 01, 3, ¶ 15 (November 9, 2017).

regarding the surcharge, Staff does intend to provide technical assistance to this newly regulated Company regarding compliance with Commission rules and procedures to avoid similar mistakes in future.

Current Rates

Monthly Rates for 3/4" customers	Current Rate
Flat Rate*	\$47.00
Base Rate	\$40.00
0 –267 cu. Ft. per 100 cu. Ft.	\$1.40
268-401 cu. Ft. per 100 cu. Ft.	\$2.00
Over 401 cu. Ft. per 100 cu. Ft.	\$2.50
Capital Surcharge (ending August 1, 2022)	\$107.55

*Currently the Company only charges flat rates but may charge metered rates in future.

Customer Comments

On April 1, 2022, the Company sent a notice to customers that it would become jurisdictional on May 1, 2022, if the Commission accepted and allowed its revised initial tariff. No customers comments have been received.

Recommendations:

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