

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

WASHINGTON UTILITIES AND)	DOCKET UW-060662
TRANSPORTATION COMMISSION,)	
)	
Complainant,)	ORDER 07
)	
v.)	
)	INITIAL ORDER APPROVING
FRAGARIA LANDING WATER)	SETTLEMENT AGREEMENT AND
COMPANY, INC.,)	DISMISSING COMPLAINT
)	
Respondent.)	
)	
.....)	

Synopsis: This is an Administrative Law Judge’s Initial Order that is not effective unless approved by the Commission or allowed to become effective pursuant to the notice at the end of this Order.¹ If this Initial Order becomes final, the Settlement Agreement between Fragaria Landing Water Company, Inc., and Commission Staff will be approved as being in the public interest and the complaint will be dismissed.

SUMMARY

1 Nature of Proceeding: On December 29, 2005, Fragaria Landing Water Company, Inc., (Fragaria or Company) filed its initial tariff with the Washington Utilities and Transportation Commission (Commission) to become effective on January 1, 2006. The Commission Staff conducted an informal investigation of Fragaria’s rates. On April 12, 2006, upon Staff’s recommendation, the Commission issued a Complaint Against Rates and Charges challenging the reasonableness of Fragaria’s rates and charges.

¹ At hearing, the parties waived entry of an Initial Order so that the record might be submitted directly to the Commission for entry of a Final Order. The Commission’s preferred process requires an Initial Order in proceedings in which the Commissioners do not personally participate. To expedite finality, parties may file a letter with the Commission stating that they waive their right to seek administrative review. The Commission can then determine quickly whether it will review the Initial Order on its own motion. If not, a notice of finality will be promptly served.

2 **Appearances:** The parties were represented as follows:

Complainant: Commission, by Michael Fassio
 Assistant Attorney General
 1400 S. Evergreen Park Dr. S.W.
 Olympia, WA 98504-0128

Respondent: Fragaria, by Richard A. Finnigan
 2112 Black Lake Blvd. S.W.
 Olympia, WA 98512

3 **Procedural History:** The Commission convened a prehearing conference in this docket at Olympia, Washington, on May 31, 2006, before Administrative Law Judge Karen M. Caillé. The case was later reassigned to Administrative Law Judge Dennis Moss and subsequently to Administrative Law Judge Patricia Clark. In Order 02, Prehearing Conference Order, the Commission established a procedural schedule.

4 The parties filed several joint requests to amend the procedural schedule to enable the parties to devote their efforts to settlement discussions.² Each of these requests was granted. On December 7, 2006, the parties filed a notice of full settlement, in principle, and a request to suspend the procedural schedule. In Order 06, the Commission granted the request for further continuance, suspended the procedural schedule, and established a deadline for filing the settlement agreement and supporting documentation. On January 16, 2007, the parties filed a joint request for extension of the deadline to submit their settlement. By notice, the Commission granted the request. On January 26, 2007, the parties filed the Settlement Agreement and narrative in support. A copy of the Settlement Agreement is attached to this Order as Appendix A and, by this reference, incorporated into the body of this Order. On February 5, 2007, the Commission issued a Notice of Settlement Hearing, Notice of Public Hearing, and Notice of Opportunity for Consumers to Provide Written Comments. The Settlement Hearing and Public Hearing convened, as scheduled, on February 22, 2007. During the hearing, four consumers presented comments on the Settlement. An additional eight consumers submitted written comments.

² The joint requests were filed on July 26, 2006, August 29, 2006, and October 13, 2006. The Commission granted each request. (*See Orders 03, 04, and 05*).

INITIAL ORDER

5 **Background:** Fragaria consists of two water systems; Fragaria Landing and Hunt Community water systems.³ The Hunt Community water system rates are not reflected in Fragaria’s current tariff. Fragaria’s current rate design has a base rate of \$32.85 per month that includes 750 cubic feet of water. All water usage above 750 cubic feet is charged at the rate of \$3.00 per hundred cubic feet. According to the Settlement Agreement, the current rate design would be replaced with an inverted rate design that includes no water usage in the base rate. The new rate design would include three inverted rate tiers for water usage. Assuming the same usage patterns as the test year, the new rate design would provide rates that would allow Fragaria to collect approximately the same total revenue.⁴ The parties also agree that Fragaria’s revenue for the test year was \$45,241.

6 The parties agree that Fragaria’s rate design should be changed to the following:

Base Rate	\$25.00/month
Water Usage	Rate per 100 cubic feet
0 to 750	\$1.40
751 to 4,000	\$2.70
4,001 and over	\$3.20 ⁵

The parties agree that Fragaria should establish a balancing account for a period of 12 months commencing with the first month the new rate design is in effect. Fragaria will calculate the total revenue billed for each month and compare that amount to the historical amount billed during the same month in the test year. The difference will be recorded to the balancing account as either a regulatory asset for under-collection or a regulatory liability for over-collection.

7 At the end of the one-year period for maintaining a balancing account, Fragaria will true-up the account. If the balancing account reflects a regulatory asset balance, Fragaria will

³ Narrative Supporting Settlement Agreement at 1: Paragraph 3.

⁴ Settlement Agreement at 2: Paragraph 2.5.

⁵ Settlement Agreement at 3: Paragraph 3.2.

collect the under-recovered amount over a one-year period by implementing a surcharge to be filed with the Commission. If the balancing account reflects a regulatory liability, Fragaria will refund the over-recovered amount through a *pro rata* bill credit by April 30, 2008. Fragaria will file a report summarizing its actions by April 30, 2008. Failure to file the report will subject Fragaria to a monetary penalty.

- 8 The parties further agree that Fragaria must file a monthly report with the Commission. The month schedule will report the average revenue per customer as well as normalized revenue. The report must be filed before the end of the month following the reporting billing period.
- 9 The parties agree that Fragaria must file a tariff reflecting its Hunt Community water system's flat rate service within 10 days following approval of the Settlement Agreement.
- 10 The consumers of the Company submitted oral and written comments that expressed concern, among other things, with the rates of Fragaria water system in comparison to other water utilities, whether the water system met the water pressure standards of the State Department of Health, and whether the proposed rate design was appropriate for an area zoned for minimum 5-acre lots.
- 11 **Discussion:** According to WAC 480-07-740, the Commission must determine whether a proposed settlement meets all pertinent legal and policy standards. The Commission has the discretion to accept a proposed settlement, impose conditions, or reject a proposed settlement.⁶ In this proceeding, the legal standard is whether the proposed rates and charges are just, fair, reasonable, and sufficient.⁷
- 12 The Settlement Agreement focuses on the rate design phase of the ratemaking process. The rate design would be converted to a three-tier inverted block rate design. Under this rate design, the cost for water service increases with higher water usage. The proposed base rate for water service would be reduced from \$32.85 to \$25.70 per month. However, the base rate would no longer include 750 cubic feet of water. The rate design proposed by the parties will collect revenue from consumers based on their actual level of usage. Assuming the same usage patterns as those in the test year, the proposed rate

⁶ WAC 480-07-750.

⁷ RCW 80.28.010.

design should be revenue neutral to Fragaria. Consumers expressed concern with the rates of Fragaria in comparison to other water utilities in Kitsap County. The Commission does not set rates and charges for water utilities based on the rates of other companies.

- 13 The parties recognize that the new rate design may produce a material change in water revenues that could potentially harm either the Company or its consumers. To avoid any long-term detrimental financial effects of the change in rate design, Fragaria is required to maintain a balancing account to ensure that that it neither over- nor under collects the appropriate level of revenue requirement. Fragaria is required to submit monthly reports to the Commission and to true-up the balancing account at the end of 12 months. If Fragaria has collected too much revenue, it must credit that over-collection back to consumers on a *pro rata* basis. If Fragaria has under collected revenue, it may be authorized to assess a surcharge. A request to implement a surcharge must be filed with the Commission.
- 14 Accordingly, the Settlement Agreement appears to result in just, fair, and reasonable rates. Fragaria must maintain the same level of revenue requirement as the test year and consumers are charged for actual water usage.
- 15 Fragaria must also file a tariff for its Hunt Community water system. That tariff is due within 10 days of approval of the Settlement Agreement.
- 16 Consumers also expressed concern about inadequate water pressure. The evidence demonstrates that the adequacy of water pressure was an issue addressed by the State Department of Health approximately five years ago in 2002. There is no current evidence of water pressure problems.
- 17 It is in the public interest to approve and adopt the Settlement Agreement. Given the fact that the parties were willing to engage in settlement negotiations before significant time and pecuniary resources were expended in the preparation of prefiled testimony and exhibits and administrative review, both company and Commission resources were conserved. Moreover, the proposed Settlement Agreement retains the test year revenue requirement while the new rate design is monitored by the Company and the

Commission. These factors favor the conclusion that it is in the public interest to approve the Settlement Agreement.

18 The Commission concludes that the Settlement Agreement should be approved and adopted as a full resolution of the issues pending in this proceeding.

19 Approving the Settlement Agreement resolves all outstanding issues. Accordingly, the complaint against rates and charges should be dismissed.

FINDINGS OF FACT

20 Having discussed in detail the evidence received in this proceeding concerning all material matters, and having stated findings of fact and conclusions upon issues and the reasons therefor, the Commission now makes and enters the following summary of those facts, incorporating by reference pertinent portions of the detailed findings:

21 (1) Fragaria Landing Water Co., Inc., is engaged in the business of furnishing water service within the state of Washington as a public service company.

22 (2) On December 29, 2005, Fragaria Landing Water Co., Inc., filed its initial tariff with the Commission.

23 (3) On January 26, 2007, Fragaria Landing Water Co., Inc., and the Commission's regulatory staff filed a Settlement Agreement resolving all disputed issues in this proceeding.

CONCLUSIONS OF LAW

24 (1) The Washington Utilities and Transportation Commission has jurisdiction over the subject matter of, and parties to, this proceeding.

25 (2) The Settlement Agreement and accompanying documents comply with the requirements of WAC 480-07-740(2).

- 26 (3) The Settlement Agreement meets the standard in WAC 480-07-750; it is lawful, it is supported by an adequate record, and is consistent with the public interest and should be accepted.

ORDER

THE COMMISSION ORDERS THAT:

- 27 (1) The Settlement Agreement filed by Fragaria Landing Water Co., Inc., and the Commission's regulatory staff on January 26, 2007, and attached hereto and incorporated herein as Appendix A is approved and adopted as a full resolution of the issues in this proceeding.
- 28 (2) The Complaint Against Rates and Charges of Fragaria Landing Water Co., Inc., is dismissed.
- 29 (3) Within 10 days of the date of this Order, Fragaria Landing Water Company, Inc., shall file revised tariff sheets for Fragaria Landing water system and initial tariff sheets for Hunt Community water system.

DATED at Olympia, Washington, and effective March 30, 2007.

WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION

PATRICIA CLARK
Administrative Law Judge

NOTICE TO THE PARTIES

This is an Initial Order. The action proposed in this Initial Order is not yet effective. If you disagree with this Initial Order and want the Commission to consider your comments, you must take specific action within the time limits outlined below. If you agree with this Initial Order, and you would like the order to become final before the time limits expire, you may send a letter to the Commission, waiving your right to petition for administrative review.

WAC 480-07-825(2) provides that any party to this proceeding has twenty (20) days after the entry of this Initial Order to file a *Petition for Administrative Review*. What must be included in any Petition and other requirements for a Petition are stated in WAC 480-07-825(3). WAC 480-07-825(4) states that any party may file an *Answer* to a Petition for review within (10) days after service of the Petition.

WAC 480-07-830 provides that before entry of a Final Order any party may file a Petition To Reopen a contested proceeding to permit receipt of evidence essential to a decision, but unavailable and not reasonably discoverable at the time of hearing, or for other good and sufficient cause. No Answer to a Petition To Reopen will be accepted for filing absent express notice by the Commission calling for such answer.

RCW 80.01.060(3), as amended in the 2006 legislative session, provides that an Initial Order will become final without further Commission action if no party seeks administrative review of the Initial Order and if the Commission does not exercise administrative review on its own motion. You will be notified if this order becomes final.

One copy of any Petition or Answer filed must be served on each party of record with proof of service as required by WAC 480-07-150(8) and (9). An original and eight copies of any Petition or Answer must be filed by mail delivery to:

Attn: Carole J. Washburn, Executive Secretary
Washington Utilities and Transportation Commission
P.O. Box 47250
Olympia, Washington 98504-7250

APPENDIX A