

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of the Request of White Hills)
Water Co. Inc. for Approval of Rate Increase) DOCKET NO. 09-2199-T01
) REPORT AND ORDER
)

ISSUED: September 24, 2009

By The Commission:

This matter is before the Commission on White Hills Water Company's (Company) request for rate increase approval and approval of tariff amendments. The Company proposed six tariff amendments: 1) backflow prevention language; 2) late payment language; 3) decrease of interest rate and deposit amount change; 4) implementation of an institutional rate; 5) implementation of compliance charges; 6) limitation of liability language. After completing an investigation and analysis of the proposed tariff amendments, the Division of Public Utilities (Division) recommended approval of the first four and recommended disapproval of the last two proposed amendments, i.e implementation of compliance charges and limitation of liability language.

The Division stated that under the Utah Safe Drinking Water Act, Utah Code §§ 19-4-101 *et seq*, and the federal Safe Drinking Water Act, 42 U.S.C. 300f *et seq*, each water purveyor must protect its water system from cross-contamination and ensure the system has proper backflow prevention. The Division developed the backflow prevention language to be added to all new or amended tariff's, including the Company's.

The Division recommended approval of the Company's new late payment charge. Pursuant to the amended language, the Company "may charge a minimum late fee of \$10.00 or

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10% of the outstanding unpaid balance whichever is greater. Late fees are incurred 30 days after the date of the current billing cycle, the date the current bills were produced for bi-monthly billing and collection.” The Division stated that the previous late payment policy provided an incentive for a customer to pay late. Therefore, it recommended approval of the new language.

The Company sought approval of a decrease in the interest rate from 6% to 2% APR and increase of the deposit amount from \$60.00 to \$210.00. The Division also recommended approval of the deposit interest rate and deposit amount.

The Company requested approval of an institutional rate. For larger connections, i.e. 3/4" or 1" connections, the Company will implement a minimum charge of \$75 for the first 10,000 gallons for each service connection, and \$1.50 per 1,000 gallons for usage above 10,000 gallons. The Division recommended approval, although the Company has no ratepayers that could qualify as institutional customers. The Division did state that the rate is comparable to other institutional rates in the state.

The Company requested approval of a compliance charge. The charge would be assessed to a customer when access to the meter is unavailable, and when the Company must take corrective measures, including hiring a contractor, to gain access to the meter or improve compliance. The Division had concerns that since no amounts were pre-determined, the proposed language would leave the possibility that the actual costs could vary widely, and possibly impose significant financial burdens on a ratepayer. The Division stated that Commission Rules 746-200-4(B)(2) and (3) and R746-200-7(B)(1)(f) govern situations which

the compliance charge was meant to address. The Division recommended disapproval of the compliance charge.

The Company also sought to limit its liability to the public and ratepayers by inserting the following language:

Insurance Coverage: All water users are strongly encouraged to carry flood insurance for the protection of their personal and real property. Any flooding of personal or real property must be reported in a timely manner. The water user must use their best efforts to keep property damage from occurring. In a case of company gross negligence, the company's liability to each water user is limited to \$50,000 dollars or current insurance policy limits, whichever is greater.

The Division felt that determination of liability limits in a tariff was inappropriate, and was a civil matter, not a regulatory matter and recommended disapproval of the limitation of liability language.

ORDER

The Commission hereby approves the tariff amendments listed above, i.e. those amendments related to: 1) backflow prevention language; 2) late payment language; 3) decrease of interest rate and deposit amount change; and 4) implementation of an institutional rate.

The Commission does not approve the tariff amendment related to implementation of compliance charges. The Commission agrees that the language as proposed by the Company would leave the ratepayer open to the possibility of paying an amount for which there was no predetermined limit. The provisions of Rules 746-200-4(B)(2) and (3) and R746-200-7(B)(1)(f) provide a remedy for the Company to obtain ratepayer compliance in allowing access to the meter.

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Also, the limitation of liability language is not approved. The Commission finds that such a provision in a tariff, would likely be against public policy and Utah law. *See c.f. DCR Incorp. v. Peak Alarm Co.*, 663 P.2d 433 (Utah 1983) (holding that the Supreme Court “has indicated it does not favor contract clauses purporting to limit or negate [liability in tort as well as in contract]” and that such “covenants purporting to relieve a party of his duty of due care are disfavored and sometimes declared invalid as against public policy.”).

Pursuant to Sections 63G-4-301 and 54-7-15 of the Utah Code, an aggrieved party may request agency review or rehearing of this Order by filing a written request with the Commission within 30 days after the issuance of this Order. Responses to a request for agency review or rehearing must be filed within 15 days of the filing of the request for review or rehearing. If the Commission does not grant a request for review or rehearing within 20 days after the filing of the request, it is deemed denied. Judicial review of the Commission’s final agency action may be obtained by filing a petition for review with the Utah Supreme Court within 30 days after final agency action. Any petition for review must comply with the requirements of Sections 63G-4-401 and 63G-4-403 of the Utah Code and the Utah Rules of Appellate Procedure.

DATED at Salt Lake City, Utah this 24th day of September, 2009.

/s/ Ruben H. Arredondo
Administrative Law Judge

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Approved and confirmed this 24th day of September, 2009 as the Report and
Order of the Public Service Commission of Utah.

/s/ Ted Boyer, Chairman

/s/ Ric Campbell, Commissioner

/s/ Ron Allen, Commissioner

Attest:

/s/ Julie Orchard
Commission Secretary
G#63604