

DW 03-161

CENTRAL WATER COMPANY, INC.

Order Approving Settlement Agreement

O R D E R N O. 24,297

March 19, 2004

Appearances: Raymond H. Seeley for Central Water Company, Inc., and Marcia A. B. Thunberg, Esq. on behalf of the Staff of the New Hampshire Public Utilities Commission.

I. PROCEDURAL HISTORY AND BACKGROUND

According to Staff testimony at hearing, Central Water Company, Inc. (Central) imposed a meter pit requirement without prior notification to the New Hampshire Public Utilities Commission (Commission) during the summer of 2003. Hearing Transcript of February 10, 2004 (2/10/04 Tr.) at 6 lines 8-14. Staff investigated the matter and, on July 31, 2003, recommended that Central file the appropriate tariff changes with the Commission.

On August 25, 2003, Integrated Water Systems, Inc., on behalf of its subsidiary, Central, filed revised tariff pages with the Commission. The proposed tariff changes require meter pits for all new water service; impose a one time charge of \$767.00 for each meter pit constructed; and increase the per foot cost for the installation of 2, 4 and 6 inch pipe. According to the filing, these latter costs would be applied to all main extensions.

On September 24, 2003, the Commission issued Order No. 24,210 and suspended the proposed tariff pages. The Commission also ordered a prehearing conference and technical session be held on October 29, 2003.

On October 17, 2003, Joanne Heger, Administrator of Locke Lake Colony Association (Locke Lake), an association comprised of the customers served by Central, submitted a letter expressing concern that meter pits may be required for existing homes, that criteria for requiring meter pits needed to be fully defined, and that meter pits interfered with customers' ability to read their own meters.

On October 29, 2003, the Commission held a prehearing conference, at which Central and Staff presented their positions. Locke Lake did not appear. There were no other intervenors. Staff and Central then met in a technical session and developed a proposed procedural schedule. The Commission approved the procedural schedule on November 4, 2003.

Staff and Central conducted discovery and filed a Settlement Agreement on December 30, 2003. The Commission heard the matter on February 10, 2004. At hearing, Staff and Central explained local contractors were installing substandard service lines for the customer-owned portion of the service from the curb-stop to the home. Central indicated that these substandard

service lines were causing leaks and lost water. 2/10/04 Tr. at 6 lines 15-22 and at 27 lines 16-24. Central did not want existing customers to have to pay for the leak problems and Central believed the burden should be placed on the new customers. *Id.* Central thus sought to remedy the leak problems by requiring meter pits for new customers. This would allow Central to meter water consumption at a point prior to the substandard service line and would place the lost water burden, if any, on the customer.

Staff expressed their concern that the initial meter pit requirement imposed unreasonable costs on customers as well as interfered with a customer's ability to read meters, monitor for leaks and assess the reasonableness of estimated bills, concerns which were resolved in the Settlement Agreement. Staff and Central, therefore, testified in support of the Settlement Agreement.

On March 12, 2004, Staff forwarded to the Commission information from Central wherein Central reported on customer responses to Central's offer to move the meter pits. The report was in satisfaction of a February 27, 2004 report requirement contained in the Settlement Agreement.

II. SUMMARY OF THE SETTLEMENT

Staff and Central recommended certain revisions to

Central's tariff to address the problem of substandard installations. The proposed tariff revisions were submitted as an attachment to the Settlement Agreement. The proposed tariff language states that if a customer installs a service line that does not meet Central's Technical Specifications, service will be denied until the service line is brought up to standards. Exh. 2 at 5-7. The proposed language also requires service line trenches to be left open for inspection by Central. Failure to allow Central to inspect the service line will also result in denial of service. *Id.* Staff testified that it believes the denial of service provision gives Central the leverage it needs to deter parties from repeatedly violating Central's service line construction requirements.

Other specific provisions of the Settlement Agreement are as follows:

1. Beginning in spring of 2004, the Company agrees to send correspondence to local builders and contractors explaining Central's construction requirements for customer service lines. Staff and Central attached a sample letter to the Settlement Agreement. Exh. 2 at 9-10. Central testified at hearing that the technical specifications are not filed with the tariff but are available from Central. 2/10/04 Tr. at 26 lines 3-10.

Central testified that it distributes copies of the Technical Specifications with each application for service. *Id.* at 10-14.

2. By January 30, 2004, Central agrees to offer customers whom Central had required to install meter pits the option of having the pits removed and meters placed in the customers' homes, at Central's expense. Central agrees to report customer responses to the Commission by February 27, 2004. Central further agrees to perform all requested meter pit removals by June 30, 2004. At hearing, Central testified that the three affected customers had been contacted and that Central would relocate one customer's meter on February 11, 2004. Central did not know the relocation schedule for the other two customers. 2/10/04 Tr. at 25 lines 4-11. Central informed Staff subsequent to the hearing that the one relocation had been completed and that the remaining two customers each opted to leave their meters in the pit.
3. Central agrees to refund customers for the cost of the newly required meter pits. The Settlement Agreement did not prescribe a deadline for this action since, at the time of the Settlement Agreement, Central had

reimbursed all affected customers. Central reaffirmed this at hearing and testified that all customers had been made whole. 2/10/04 Tr. at 25 lines 1-4.

4. Staff and Central agree that the proposed main installation costs of \$36, \$38 and \$40 per foot for 2-inch, 4-inch and 6-inch main, respectively, are reasonable. At hearing, Staff testified that Central had also provided documentation from a respected engineering firm in support of those costs. 2/10/04 Tr. at 18 line 3.
5. Central agrees to file a compliance tariff incorporating the proposed tariff language found in Exhibit 2, Attachment 1 and the updated water main installation costs within 20 days of issuance of a final order in this docket.

III. COMMISSION ANALYSIS

Charges imposed by public utilities for service rendered are governed by a series of statutes. RSA 378:1 requires every public utility to file with the Commission "schedules showing the rates, fares, charges and prices for any service rendered or to be rendered...." RSA 378:3 further states that no utility shall charge any rate, fare, charge or price, which is not on file with the Commission and which has

not had 30-days prior notice to the Commission. RSA 374:2 requires all charges made or demanded by any public utility to be just and reasonable; unjust and unreasonable charges are prohibited.

At hearing, Staff testified that Central had required new customers to either install meter pits or pay for Central to install them. 2/10/04 Tr. at 6 lines 8-14. Central's meter pit requirement was not on file with the Commission, was not previously noticed to the Commission pursuant to RSA 378:3 and had not been deemed just and reasonable by the Commission. Central's actions thus ran afoul of the statutory requirements.

We are pleased that Staff brought the non-compliance issue to Central's attention and that Central has cooperated with Staff in remedying the situation. According to the testimony in support of the Settlement Agreement, Central has already performed the majority of terms of the Settlement Agreement. Notwithstanding this compliance, we stress that the statutory requirements cannot be circumvented, no matter how noble the intent. Central's meter pit requirement adversely affected three customers. These customers were charged fees or made to incur expenses not in accordance with Central's filed tariff. We have previously ordered utilities to reimburse customers for charges made not in accordance with filed tariffs.

See Arbour v. Southern New Hampshire Water Company, Inc., 78 NH PUC 426 (1993) (reimbursement, without interest, in the absence of a properly filed tariff); *David Burke v. Hampstead Area Water Company*, 77 NH PUC 108 (1992) (reimbursement, with interest, in the absence of a properly filed tariff). In this case, Central testified that it had already reimbursed customers for the charges and we see this timely reimbursement as eliminating any need for interest. We find the customer reimbursement terms contained in the Settlement Agreement reasonable and we will approve them.

We caution Central to follow the statutory requirements and properly file rates, fares, or charges with the Commission in the future before imposing them upon customers. If Central fails to comply with the statutory requirements in the future, we will consider penalties.

In addition to remedying the unauthorized meter pit charges, the Settlement Agreement accomplishes two other objectives: 1) it alerts builders to the necessity of adhering to Central's Technical Specifications; and 2) sets Central's main installation rates at reasonable levels.

Staff and Central testified that builders have been installing substandard service lines and that Central has incurred expenses in attempting to find and fix leaks. Leaks

from substandard lines strain the system. Expenses associated with additional pumping and leak detection efforts are included in customer rates which, in effect, means all customers pay for deficiencies caused by only a few customers. Central testified it would rather place the burden of ensuring that service lines are constructed in compliance with Central's standards on the individual, responsible customers and Staff agreed. To promote awareness of this responsibility, Central proposes providing copies of its Technical Specifications to customers and builders at the time of application for service and sending summary letters to area builders each spring.

A regulated utility must provide safe and adequate service pursuant to RSA 374:1 and customer compliance with these policies and specifications enhances a utility's ability to meet this obligation. We find Central's plan for informing builders of technical specifications reasonable. We will therefore approve this aspect of the Settlement Agreement.

We next turn to main installation charges. The Settlement Agreement recommends approval of Central's tariff filing which increases the main installation costs to \$36, \$38 and \$40 per foot, respectively, for 2-inch, 4-inch and 6-inch main. Central presently charges \$12, \$16, and \$18 for its 2-inch, 4-inch and 6-inch main installations. Staff's water

engineer, Douglas Brogan, testified that he considered the current Central main charges extremely low. 2/10/04 Tr. at 17 lines 9-10. Mr. Brogan stated that the revised costs were reasonable and that they had been corroborated by a reputable engineering firm. Mr. Brogan emphasized that these charges only apply to main extensions and that main extensions are a pretty rare event in the Central water system. 2/10/04 Tr. 17 at 7. We will accept Mr. Brogan's recommendation and find the proposed main installation costs of \$36, \$38 and \$40 per foot for 2-inch, 4-inch and 6-inch mains to be reasonable.

After reviewing the record and testimony in this matter, we find the terms of the Settlement Agreement are reasonable and fair. We find the main extension charges to be just and reasonable and in the public interest. We will, therefore, approve the Settlement Agreement.

Based upon the foregoing, it is hereby

ORDERED, that the Settlement Agreement reached between Staff and Central Water Company, Inc. identified above is hereby APPROVED; and it is

FURTHER ORDERED, that Central Water Company Inc. shall submit reports to the Commission as identified in the Settlement Agreement as specified above; and it is

FURTHER ORDERED, that Central Water Company Inc. shall submit a revised tariff, in conformance with this Order and N.H. Code Admin. R. Puc 1603.02(b), to the Commission within twenty days of the date of this Order.

By Order of the Public Utilities Commission of New Hampshire this nineteenth day of March, 2004.

Thomas B. Getz
Chairman

Susan S. Geiger
Commissioner

Graham Morrison
Commissioner

Attested by:

Debra A. Howland
Executive Director & Secretary