

Approved as Recommended  
and so Ordered  
By the Commission

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JANET HAND DEIXLER  
Secretary

Issued & Effective October 29, 2001  
STATE OF NEW YORK  
DEPARTMENT OF PUBLIC SERVICE

October 9, 2001

TO: THE COMMISSION

FROM: OFFICE OF GAS AND WATER - WATER RATES SECTION

SUBJECT: CASE 01-W-0108 - New Tariff Schedule P.S.C. No. 2 -  
Water with an Increase to Annual Revenues of About  
\$77,836 or 1,875%, Filed by Whistle Tree Development  
Co., Inc.<sup>1</sup>

SUMMARY OF

RECOMMENDATION: Staff recommends an increase of \$15,848 or 381%  
in annual revenues and other modifications as  
discussed herein.

Background and Summary

Whistle Tree Development Co., Inc. (Whistle Tree)  
provides flat rate water service to 30 customers. The customer  
base includes 26 townhouses - consisting of 16 duplexes and 10  
triplexes<sup>2</sup>, two single-family homes, one two-family home, and a

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<sup>1</sup> According to the New York Department of State, the actual name  
of the company is Whistle Tree Development Corp.

<sup>2</sup> A duplex is a two story single family townhouse and a triplex  
is a two family townhouse, each townhouse constituting one  
customer.

motel in a sub-division known as Scribner Hollow Vacation Town Homes, located in the Village and Town of Hunter, Greene County. No fire protection service is provided. The current annual tariff charge for a duplex townhouse is \$90 and \$150 for a triplex. The company actually charges \$127.08 for a duplex townhouse and \$211.80 for a triplex.

On January 22, 2001, Whistle Tree filed a new tariff schedule, P.S.C. No. 2 - Water, electronically, with a proposed annual revenue increase of about \$77,836 or 1,875%. It also proposed to increase its restoration of service charge from \$10 to a charge reflective of the actual costs incurred by the company to disconnect and reconnect the service. The filing, which bears an effective date of April 1, 2001, was subsequently postponed to November 1, 2001, to allow the company additional time to meet with its customers regarding its proposed filing. Staff has been told by a homeowners association representative that this meeting has not yet taken place. However, Staff has had numerous discussions with homeowners association representatives and recommends that the company's filing be acted on at this time. Details of the filing are contained in Appendix A.

Staff recommends that: (1) the company be allowed to increase revenues by \$15,849 or 381%; (2) tariff rates be charged to the motel and the other homes which have been receiving water service free of charge; (3) the restoration of service charge be established at \$50 during normal business hours and \$75 outside of normal business hours; (4) an escrow account in the amount of \$5,000 be established for repair and plant replacement expenses; (5) an operating cushion incentive be established; (6) the company's owner be directed to absorb the cost of the reservoir roof replacement; (7) in light of the

actions to be taken by the company no penalty action be taken against it at this time; and (8) the company be directed to use its proper name before this agency and all other agencies and companies with whom it does business.

Under Staff's proposal, the annual tariff charge for a duplex townhouse would go from \$90 to \$299.76 plus an initial charge of \$74.94 for the escrow account. These charges will also be applicable to the single family homes. The annual tariff charge for a triplex townhouse would go from \$150 to \$500.64 plus an initial charge of \$125.14 for the escrow account. The annual bill for the two family home would be \$599.52 plus an initial charge of \$74.93 for the escrow account. The motel would be charged \$9,000 per year. The escrow account charge is to be collected over two billing periods and replenished as necessary to keep the account at \$5,000.

#### Details of New Tariff Filing

The tariff schedule filed by the company, with the exception of the company specific proposals, is the standard updated tariff that has previously been approved by the Commission for numerous other small water companies. The details of specific services such as, the returned check charge, restoration of service charges, late payments and the definition of when a bill is considered delinquent, are contained in Appendix A.

#### Discussion

Staff's review of the company's filing found two irregularities. First, the company is charging rates to the 26 townhouses that are approximately 40% in excess of those set forth in the tariff. Staff also determined that the homeowners

association, which consists of the 26 townhouse owners, also made significant contributions to pay for system repairs and improvements to the pumping and storage facilities because the company did not have the funds to finance these repairs.

Second, the company has been providing service, free of charge, to three other homes and a motel (which contains two swimming pools, a grotto with jacuzzi and a full service restaurant), all of which are owned by the owner of the water company. Nevertheless, Staff concludes that an increase in revenues is warranted.

Staff proposes that the company be allowed annual revenues of \$20,000, operation and maintenance expenses of \$15,205, and an operating cushion of \$2,795. The company's pro forma income statement along with Staff's adjustments and Staff's pro forma income statement is set forth in Appendix B.

Staff's recommendation includes revenue the company would receive if full tariff rates were charged to the motel and the other homes. Based on estimated usage characteristics of the system, Staff recommends that the motel be responsible for 45% of the total system revenues. A comparison of the tariff rates, the unauthorized current rates, Staff's recommended rates, and escrow allocations (discussed below) are contained in Appendix C. Based upon Staff's recommended rates, the annual charge for a duplex will increase from \$127.08 to \$299.76 while the annual charge for a triplex will increase from \$211.80 to \$500.64. The annual charge for the motel would be \$9,000, the rate for the two one-family homes would be \$299.76, and the rate for the two-family home would be \$599.52. These changes would produce additional annual revenues of \$15,849, with the bulk of this amount to be paid by the customers that were not previously billed.

The company requested \$14,000 in base rates for repairs, which included: reimbursement of expenses incurred in previous years, projected costs for a new roof for the reservoir, curb stops for each customer, and an allowance for water main breaks. The reimbursement for prior years expenses is not appropriate. However, Staff recommends that an escrow account for repair expenses and plant additions, with the exception of the roof replacement for the reservoir, be established in lieu of an allowance in base rates. The company has agreed to the implementation of the escrow account with a maximum balance of \$5,000 initially funded through two monthly surcharges. The company's owner has also agreed to absorb the cost of the replacement of the roof for the reservoir as described in its filing and referenced in the New York State Department of Health inspection report dated January 1, 1998. Work on the roof repair is expected to be completed by the end of calendar year 2002. The proposed escrow account contains similar terms and conditions that have previously been approved by the Commission for other water systems. Appendix D sets forth the proposed tariff statement.

To help insure compliance with the intent of its escrow account and the company's future financial viability, Whistle Tree should be directed to file an Operating Cushion Incentive Statement (Appendix E). The criteria in Appendix E are violations that would constitute a major and deliberate act on behalf of the company that may impact its financial integrity and its ability to provide proper service to its customers. The statement requires the company to submit to the Chief, Water Rates Section, within 30 days of the end of each calendar year, a letter documenting its proper operation and management of the system. The company can show proper operation and management by

avoiding the conditions listed in the statement. Staff will review the company's documentation within 30 days from date of its submission. If Staff believes the company has experienced one or more of the substantive criteria detailed in Appendix E, it may recommend to the Commission that the company be found not in compliance. If the Commission determines that Whistle Tree was not in compliance, Whistle Tree's operating cushion will be reduced by one half (50%) for the following year. The company will be required to deposit the reduced portion (50%) of its profit margin into the escrow account. If Staff finds that Whistle Tree has properly managed its escrow account and complied with the agency rules and regulations each year, the annual performance review process described above will be discontinued after the December 2004 calendar year review.

The company's proposed restoration of service charge to recover actual costs incurred to disconnect and reconnect service is unacceptable because the charge to customers would be unknown in advance. Staff's practice, with other small water companies, has been to recommend that these types of charges be set at a predetermined amount, most recently in the \$50 and \$75 range for during and outside of normal business hours, respectively. Staff recommends that these charges be authorized here as well.

Finally, the company has been corresponding with various agencies and businesses, besides the Commission, using different corporate names.<sup>3</sup> The company should be directed to

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<sup>3</sup> Whistle Tree Development Company, Inc.  
Whistle Tree Development Corporation, Inc.  
Whistle Tree Development Corp.  
Whistle Tree Development Co., Inc.

use its name registered with the New York Department of State, Whistle Tree Development Corp.

Staff recommends that no penalty action be taken against the company for charging rates in excess of those set forth in its current tariff. Even though the customers paid rates in excess of those contained in its tariff and made additional contributions for system repairs, they benefited from these actions. In addition, the owner of the company has agreed to pay for the cost of the reservoir roof replacement. The company has been notified, however, that such unauthorized charges in the future could result in a penalty action and possible fines, as per Public Service Law Section 89-c (10).

#### Customer Notification

On January 23, 2001, Whistle Tree mailed notices regarding its rate request to each customer. In response, Staff received numerous customer complaints about the proposed rate increase. The primary customer concerns were the magnitude of the increase, the motel not being assessed water charges and the amount of repair expenses being sought. Staff discussed these issues with many of the complainants by phone and met with the homeowners association representatives. The homeowners association is in agreement with Staff's recommendations.

Because the company notified customers individually, it requests waiver of the statutory requirement of newspaper publication. Staff believes the company's request should be approved.

This memo has been reviewed by the Office of Consumer Education and Advocacy.

Recommendation

It is recommended that:

1. Whistle Tree Development Co., Inc. (the company) be directed to file, on not less than one day's notice, to become effective November 1, 2001, P.S.C. No. 3 - Water, Leaves Nos. 1 through 12, superseding P.S.C. No. 2 - Water, incorporating the company's proper name; Staff's recommended restoration of service charge contained in Appendix A; Staff's recommended rates contained in Appendix C; Escrow Statement No. 1 which establishes an escrow account as set forth in Appendix D; and Operating Cushion Incentive Statement No. 1 as set forth in Appendix E explaining the operating cushion incentive;
2. no penalty action be taken against the company for charging rates not authorized by the Commission;
3. the company be directed to submit to the Chief, Water Rates Section, no later than December 1, 2001, documentation confirming its legal name, as filed with the New York Department of State and to notify each agency/company it conducts business with as to its proper name with a copy sent to the Chief, Water Rates Section;
4. the company be directed to submit to, the Secretary of the Public Service Commission and a copy to the Chief of the Water Rates Section, within 10 days of receipt of this Order, a written statement indicating whether it accepts the terms of this order; and
5. the requirement of Section 89-c (10) of the Public Service Law and 16 NYCRR 720-8.1, in regard to newspaper publication of the amendments authorized herein, be waived and the company be directed to individually notify its customers, by no later than December 1, 2001,

with a copy to the Chief of the Water Rates  
Section, as to the Commission's determination in  
this matter.

Respectfully submitted,

Rosanne Eretano  
Associate Utility Rates Analyst  
Office of Gas and Water  
Water Rates Section

Reviewed by:

David R. Van Ort  
Assistant Counsel  
Office of General Counsel

Approved by:

Arthur Gordon  
Chief, Water Rates Section  
Office of Gas and Water

Filing By: Whistle Tree Development Co., Inc.

P.S.C. No. 2 - Water

Original Leaves Nos. 1 through 12

Issued: January 22, 2001 Effective: April 1, 2001\*  
\*Postponed to November 1, 2001.

SAPA: 01-W-0108SA1 - State Register: February 7, 2001

Newspaper Publication: Waived. Notification by individual letters dated January 23, 2001.

Number of Customers: 30

Territory Served: Subdivision known as Scribner Hollow Vacation Town Homes, located in Village of Hunter, Town of Hunter, Greene County.

Tariff Charge Changes:

Returned Check Charge:

The company may charge the fee from the bank plus \$5.00, not to exceed the maximum allowed under Section 5-328 of General Obligations Law.

Restoration of Service Charge:

Company Proposed - The customer will be required to pay a restoration charge in the amount of the actual costs incurred by the company to disconnect and reconnect the service.

Staff Proposed - \$50 during normal business hours, Monday through Friday; \$75 outside of normal business hours, Monday through Friday, weekends and public holidays.

Late Payment Charge:

A charge of 1 ½% per month can be applied to all bills not paid within 23 days of mailing.

Terms of Payment:

Bills are due and payable upon receipt. Bills not paid within 23 days of mailing are delinquent and the late payment charge becomes applicable and service may be discontinued after proper notice as required by law.

## WHISTLE TREE DEVELOPMENT CORP.

	Company Pro-Forma (a)	Adj. #	Staff Adjustments (b)	Staff Pro-Forma (c = a+b)
<b>Operating Revenue</b>				
Water Revenues	\$82,000	(1)	(\$62,000)	\$20,000
Other Income	<u>\$0</u>		<u>\$0</u>	<u>\$0</u>
Total Operating Revenues	\$82,000		(\$62,000)	\$20,000
<b>Operating Revenue Deductions</b>				
<b>Operation &amp; Maintenance (O&amp;M)</b>				
Officer Salaries	\$0		\$0	\$0
Supervision & Labor	\$21,875	(2a)	(\$12,875)	\$9,000
Materials & Supplies	\$0	(3)	\$500	\$500
Office Expense	\$2,400		\$0	\$2,400
Rent	\$3,600	(2b)	(\$3,600)	\$0
Purchased Power	\$2,105		\$0	\$2,105
Purification	\$0		\$0	\$0
Snowplowing	\$2,500	(4)	(\$2,500)	\$0
Billing/Meter Reading	\$0		\$0	\$0
Insurance	\$3,465	(5)	(\$3,465)	\$0
Repairs	\$14,000	(2c)	(\$14,000)	\$0
Accounting	\$4,650	(2d)	(\$4,150)	\$500
Professional Fees	\$5,000	(6)	(\$5,000)	\$0
Water Testing	\$2,250	(2e)	(\$1,750)	\$500
Rate Case	\$4,000	(7)	(\$4,000)	\$0
Miscellaneous	<u>\$750</u>	(2f)	<u>(\$550)</u>	<u>\$200</u>
Subtotal O & M Expenses	\$66,595		(\$51,390)	\$15,205
Depreciation & Amortization	\$6,000	(8)	(\$6,000)	\$0
<b>Operating Taxes</b>				
Property Taxes	\$1,600		\$0	\$1,600
Revenue Taxes			\$400	\$400
Other Taxes	<u>\$0</u>		<u>\$0</u>	<u>\$0</u>
Subtotal Operating Taxes	\$1,600		\$400	\$2,000
Total Oper. Revenue Deductions	\$74,195		(\$56,990)	\$17,205
Operating Cushion	(\$74,195)		\$76,990	\$2,795

## Whistle Tree Development Corp.

## Explanation of Staff Adjustments

1. Adjustment to Operating Revenue to reflect Staff's recommended rates as applied to the actual number of customers served.	\$ (67,000)
2. Adjustment of various operating expenses to reflect staff's estimate of a reasonable level of expense for a company of this size:	
a) Supervision & Labor	\$ (12,875)
b) Rent	\$ (3,600)
c) Repairs	\$ (14,000)
d) Accounting	\$ (4,150)
e) Water Testing	\$ (1,750)
f) Miscellaneous	\$ (550)
3. Reflect staffs use of actual test year expense for Materials and Supplies.	\$ 500
4. Elimination of snowplowing expense as snowplowing is not required for this company.	\$ (2,500)
5. Elimination of Insurance expense to reflect:	
a) Automobile insurance as company does not own a vehicle.	\$ (1,229)
b) Property insurance premium which over five years exceeds the value of property insured.	\$ <u>(2,236)</u>
	\$ (3,465)
6. Eliminate Professional fees for annual legal expenses.	\$ (5,000)
7. Elimination of rate case expenses unnecessarily received for this size company.	\$ (4,000)
8. Elimination of depreciation expense to reflect no rate base.	\$ (6,000)
9. To reflect proper level of revenue taxes based upon Staff's Pro Forma revenues.	\$ 400

## Whistle Tree Development Corp.

## Monthly Rates

	<u>Per Tariff*</u>	<u>Current Charge</u>	<u>Company Proposal</u>	<u>Staff Recommended Water Rates</u>	<u>Staff Recommended Escrow Rates**</u>
Duplex	\$ 7.50	\$ 10.59	\$209.15	\$ 24.98	\$ 37.47
Triplex	\$12.50	\$ 17.65	\$348.59	\$ 41.72	\$ 62.57
Motel	\$ 0	\$ 0	\$ 0	\$750.00	\$ 1,125.00
1 Family Home	\$ 0	\$ 0	\$ 0	\$ 24.98	\$ 37.47
2 Family Home	\$ 0	\$ 0	\$ 0	\$ 49.96	\$ 74.93

\*Because Staff's recommended rates are computed on a monthly basis, as requested by the company, the actual tariff rate and the current charges were converted to monthly rates for clarity.

\*\*To be collected through two consecutive monthly bills.

P.S.C. NO. 2 WATER

STATEMENT TYPE: ESCROW  
STATEMENT NO. 1COMPANY: Whistle Tree Development Corp.  
INITIAL EFFECTIVE DATE:11/01/01

Repairs and Plant Replacement  
Escrow Account

Whistle Tree Development Corp. will establish an escrow account with a maximum balance of \$5,000 not including account interest, for the purpose of making repairs and/or plant replacements. The account will be subject to the following conditions:

1. These funds will be kept in a separate account established in a local bank. The account will be under the company's control.
2. The company will surcharge each customer its appropriate share<sup>1</sup>. Initially the shares will be billed over two consecutive billing cycles each consisting of: (duplexes and single family homes \$37.47; triplexes \$62.57; motel \$1,125.00; and two-family homes \$74.93) and deposit the money collected into the escrow account. When the amount of money collected reaches \$5,000, Whistle Tree will stop billing each customer. As money is used from the escrow account for repairs and plant replacements, Whistle Tree will be permitted to replenish the escrow account to the \$5,000 level. This will be accomplished by billing each customer an appropriate share of the money required to replenish the escrow account to the \$5,000 level.
3. This account shall bear interest and such interest shall remain in the account and be used to cover expenses or reduce replenishment amounts. In addition, the company will have access to the funds in this account solely for the purposes noted above and any associated revenue taxes.
4. The company will submit to the Chief, Water Rates Section within 30 days after the end of each calendar year, copies of all escrow account bank statements with a complete accounting of all deposits and withdrawals. A complete explanation of what all withdrawals were used for including copies of bills will also be required with this submission.

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<sup>1</sup> (Duplexes and single-family homes - 1.5%, Triplexes - 2.5%, Motel - 45%, two-family homes - 3%).

P.S.C. NO. 2 WATER

STATEMENT TYPE: RORI

STATEMENT NO. 1

COMPANY: Whistle Tree Development Corp.

INITIAL EFFECTIVE DATE: 11/01/01

OPERATING CUSHION INCENTIVE

The water company will demonstrate annually that it is properly managing and operating its system by submitting documentation by January 31 of each year that the company has not experienced any of the following criteria:

1. Being under a "boil water" notice for 30 or more consecutive days.
2. Failure to meet state disinfection requirements for 5 or more days in any one month or have a waiver from the disinfection requirements.
3. Failure to provide water service to all of its customers for 2 or more consecutive days, except for power failures.
4. Being listed by the New York State Department of Health as a "Significant Non-Complier".
5. Failure to adhere to the provisions in the company's tariff schedule pertaining to escrow accounts.
6. Failure to have a licensed operator for 10 or more days per year.
7. Failure to adhere to the provisions in the company's tariff schedule pertaining to adequate levels of pressure.
8. Failure to maintain separate and distinct water company records that can be readily audited.
9. Failure to pay electric utility charges resulting in arrears and threatened termination of service by the electric company.
10. Any violations that require the Public Service Commission or any local or state Department of Health or Boards of Health to initiate a proceeding or issue a formal order relating to either service or operational problems.

Staff will complete its review within 30 days of the company's submission. If Staff believes that the company has experienced one or more of the above criteria, it may recommend to the Commission that the company be found to be not in compliance with properly managing and operating its system. If the Commission determines that the company is not in compliance, the company will be required to deposit in the Repairs and Plant Replacement Escrow Account one-half of its operating cushion for a year following the year of non-compliance. Deposits will be made quarterly. This formal review process will be discontinued after the year ended December 31, 2004, providing the company has shown that it has properly managed and operated its system by not experiencing any of the above criteria.