

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

WASHINGTON UTILITIES AND)	DOCKET UW-110107
TRANSPORTATION COMMISSION,)	
)	
Complainant,)	ORDER 05
)	
v.)	
)	FINAL ORDER APPROVING AND
SUMMIT VIEW WATER WORKS,)	ADOPTING SETTLEMENT
LLC,)	STIPULATION
Respondent.)	
)	
.....)	

1 ***Synopsis.** The Commission approves and adopts a Settlement Stipulation filed by the parties to this tariff revision that accepts a one-time Facilities Charge of \$1,402 for new domestic water service customers, certain accounting and reporting requirements, and waives WAC 480-110-455(3)(a)(i) and (b) which would otherwise prohibit the Facilities Charge from funding 100 percent of the total cost of a new domestic water well. The Facilities Charge will be applicable to new domestic water service customers on a prospective basis beginning December 12, 2011.*

SUMMARY

2 **BACKGROUND AND PROCEDURAL HISTORY.** On January 12, 2011, Summit View Water Works, LLC (Summit View or Company) filed with the Washington Utilities and Transportation Commission (Commission) revisions to its currently effective Tariff WN U-1 that would add a new facilities surcharge of \$11.60 for both existing and new domestic water service customers and a one-time facilities charge of \$1,000 for new domestic water service customers. The proposed revisions would each recover one-half of the total cost, which the Company estimated as \$230,000, to construct a new well for domestic water service. The filing would increase rates and charges for water service by approximately \$11,832 or 12.1

percent. In addition, the Company expects increased revenue related to the surcharge of approximately \$15,000, or 15.4 percent.

- 3 At its regularly scheduled Open Meeting on February 10, 2011, the Commission determined that this tariff revision could injuriously affect the rights and interests of the public and that the Company had not demonstrated that the increases would result in rates that are fair, just, reasonable and sufficient. By Order 01 entered in this docket, the Commission suspended the tariff filing for 10 months concluding on December 12, 2011, and set the docket for hearing.
- 4 The Commission convened a prehearing conference at Olympia, Washington on May 9, 2011, before Administrative Law Judge Patricia Clark. The Commission accepted the procedural schedule proposed by the Commission Staff¹ and the Company and, given the number of consumer comments in opposition to the proposed tariff revision, concluded that a public comment hearing should be conducted in Kennewick, Washington.²
- 5 On July 12, 2011, the Commission Staff filed an agreed-upon motion for extension of the procedural schedule to modify the deadlines for filing responsive and rebuttal testimony because the parties were engaged in settlement negotiations. By Order 04, entered in this proceeding on the same date, the Commission granted the motion for continuance.
- 6 By Notice issued on July 26, 2011, the Commission established the date, time, and location of a public comment hearing in Kennewick, Washington. On August 12,

¹ In formal proceedings, such as this, the Commission's regulatory staff participates like any other party, while the Commissioners make the decision. To assure fairness, the Commissioners, the presiding administrative law judge, and the Commissioners' policy and accounting advisors do not discuss the merits of the proceeding with the regulatory staff, or any other party, without giving notice and opportunity for all parties to participate. *See* RCW 34.05.455.

² The Commission consolidated the public comment hearing on this tariff revision with the tariff revision filed in Docket UW-110220, *WUTC v. Summit View*. The presiding officer proposed consolidating the evidentiary hearings in this matter as well, but the Commission Staff opposed consolidation.

2011, the parties filed a Settlement Agreement (Settlement) which they propose the Commission adopt in resolution of all issues.

- 7 The consolidated public comment hearing was held, as scheduled, on August 17, 2011, in Kennewick, Washington, during which approximately 22 consumers appeared. No customers presented testimony in opposition to the Settlement filed in this case.
- 8 The settlement hearing convened, as scheduled, on August 26, 2011. During the settlement hearing, the parties presented two witnesses in support of the Settlement. The Commission Staff presented the testimony of Amy White and Summit View presented the testimony of Kirk Rathbun.³
- 9 **PARTY REPRESENTATIVES.** Robert Cedarbaum, Assistant Attorney General, Olympia, Washington represents Commission Staff. Richard Finnigan, Attorney at Law, Olympia, Washington, represents Summit View.
- 10 **COMMISSION DETERMINATIONS.** The Commission finds on the basis of the evidence presented that Summit View requires rate relief, and determines that the Settlement results in rates that are fair, just, reasonable and sufficient. The Commission accordingly approves and adopts, without condition, the Settlement in full resolution of the issues in this proceeding.

MEMORANDUM

I. Initial Filing

- 11 On January 12, 2011, Summit View filed revisions to its currently effective tariffs that would add a new facilities surcharge of \$11.60 for both existing and new domestic water service customers and a one-time facilities charge for new domestic water service customers. The proposed revisions would each recover one-half of the total cost to construct a new well for domestic water service.

³ All prefiled testimony and exhibits as well as the Settlement and the Public Comment exhibit were admitted during the hearing. The Public Comment exhibit, Exh. No. 2, contains 68 consumer comments in opposition to the original tariff revision.

12 The Company filed direct testimony and exhibits in support of its filing on June 10, 2011. On July 22, 2011, Staff filed its responsive testimony and exhibits. Staff recommended that none of the costs of constructing a new domestic water well be recovered from existing domestic water service customers. Staff recommended a one-time Facilities Charge of \$1,402 to be assessed only against new domestic water service customers. Staff also recommended that:

- the Facilities Charge should expire after 17 years (the expected term of a loan to fund the estimated cost of the new domestic water well) or when the Company has recovered the actual total cost of well construction;
- the Commission should grant an exemption to WAC 480-110-455(3)(a)(i) and (b) which would otherwise prohibit the Facilities Charge from funding 100 percent of the total cost of the new domestic water well;
- the Company should be required to file a report, within three months after the end of construction, consisting of a cost summary with supporting documentation of the actual costs of construction;
- if the actual costs are materially different from the Company's initial estimate, the Company should also be required to file a tariff to increase or decrease the Facilities Charge accordingly and provide refunds, if any, to customers who have made payments in excess of the amount needed to generate actual construction costs; and
- the Company must comply with the existing accounting and reporting requirements of WAC 480-110-455(4).

II. Settlement

13 The parties reached a settlement of all disputed issues. The Settlement incorporates the recommendations presented by Staff and the prefiled responsive testimony and

exhibits of Staff provide the supporting documentation for the Settlement as required by WAC 480-07-740(2).

- 14 We summarize in this section the parties' Settlement, which is attached to, and made a part of, this Order by this reference. If any inconsistency between our summary here and the Settlement is perceived, the express terms of the Settlement control.

A. New Customer Facilities Charge

- 15 The parties agree that none of the costs of constructing a new domestic water well should be recovered from existing customers of domestic water service. Instead, a one-time Facilities Charge of \$1,402 should be assessed only against new domestic water service customers. The funds from the Facilities Charge will be used only for the purpose of constructing a new domestic water well and that Charge should expire at the end of 17 years or when the Company has recovered the full cost of actual construction of the well.

B. Rule Exemption

- 16 The parties agree that the Commission should grant an exemption to WAC 480-110-455(a)(i) and (b) which would otherwise prohibit the Facilities Charge from funding the full cost of the new domestic water well.

C. Accounting and Reporting Requirements

- 17 The parties agree that the Company will comply with all accounting and reporting requirements of WAC 480-110-455(4) although the parties do not recommend, at this time, that the Commission exercise its discretion to require the Company to request permission to disburse funds or to pre-approve individual disbursement of funds generated by the Facilities Charge. The parties agree that the Company should be required to file a report with supporting documentation, within three months after the end of construction of the new well, consisting of a cost summary related to the construction of the new well. If the report shows that the costs are materially different from the Company's initial estimate of \$230,000, the Company will also

concurrently file a tariff revision to increase or decrease the Facilities Charge accordingly, including refunds, if any, for customers who have previously made payments in excess of the amount needed to generate the actual construction costs.

D. Admission of Exhibits

18 The parties agree to the admission of the prefiled testimony and exhibits in this proceeding. The parties waive cross-examination of each other's witnesses at the Settlement hearing.

E. Waiver of Initial Order

19 The parties agree to waive entry of an initial order and recommend that the Commission enter a final order approving Section IV of the Settlement in its entirety.

III. Discussion and Decision

A. Criteria for Approval of Settlements

20 WAC 480-07-750(1) states in part: "The commission will approve settlements when doing so is lawful, the settlement terms are supported by an appropriate record, and when the result is consistent with the public interest in light of all the information available to the commission."

21 Thus, the Commission considers the individual components of the Settlement Stipulation under a three-part inquiry. We ask:

- Whether any aspect of the proposal is contrary to law.
- Whether any aspect of the proposal offends public policy.
- Whether the evidence supports the proposed elements of the Settlement Agreement as a reasonable resolution of the issue(s) at hand.

22 The Commission must determine one of three possible results:

- Approve the proposed settlement without condition.
- Approve the proposed settlement subject to condition(s).
- Reject the proposed settlement.

23 In general, and as discussed below, we find the Settlement terms proposed by the parties to be consistent with law and policy, and to resolve reasonably the issues in this proceeding. The parties made compromises relative to their respective litigation positions to arrive at end results that are fair, just and within an acceptable range of possible outcomes supported by the evidence in the record.

24 We note that while customers of the Summit View opposed the initial tariff revision that would have imposed rates and charges on existing customers to fund a portion of the construction of the new domestic water well, no customers opposed the Settlement's terms and conditions.

B. New Customer Facilities Charge

25 We turn now to the Settlement terms that govern the recovery of revenue to fund a new domestic water well. Summit View is a water company regulated by the Commission. It provides domestic drinking water service to approximately 108 customers near Kennewick, Washington, in Benton County.⁴ Its existing well has sufficient capacity to serve existing customers.⁵ The primary purpose for constructing a new domestic water well is to serve future customers.⁶ Accordingly, the parties propose that all costs associated with construction of the new well be borne by future

⁴ White, Exh. No. AW-1T at 3:16; Settlement, Exh. No. 1 at ¶ 4; Rathbun, TR. 53.

⁵ According to Staff, the Company's existing water rights would allow the well to serve up to 100 domestic water customers. White, TR. 49; White, Exh. No. AW-1T 3:16-18. According to the Company, the existing well can serve up to 140 domestic water customers based on current average daily customer demand. Rathbun, TR. 49.

⁶ White, Exh. No. AW-1T at 3:8-9.

customers in the form of a one-time \$1,402 Facilities Charge.⁷ The funds from the Facilities Charge may only be used to construct the new well and the tariff approving the Finance Charge would include a sunset provision requiring the charge to expire in 17 years or when the costs of the new well construction have been fully recovered.⁸

- 26 It is reasonable to require future customers to bear the entire cost of the new well construction. The Company's existing well provides sufficient capacity to serve the domestic water service requirements of its 108 customers and the Company's water system has sufficient storage capacity to handle brief outages.⁹ The Company has a 160,000 gallon reservoir.¹⁰ Daily water consumption for all current customers is approximately 23, 976 gallons per day.¹¹ The current storage capacity would allow for uninterrupted water service for several days in order to make emergency repairs on the system. Therefore, absent system expansion, it would be unnecessary to construct a new domestic water service well.
- 27 The Company anticipates adding 252 new customers to its water system.¹² Given the existing well's capacity, it will be necessary for Summit View to construct a new domestic water well to provide service to the additional customers. It is reasonable and consistent with the general principles of regulatory rate design for the "cost causers" to be the "cost payers." In this case, that would mean that the new customers would bear 100 percent of the costs of the infrastructure necessary to provide domestic water service. Accordingly, new customers should be assessed a one-time Facilities Charge of \$1,402.

⁷ Settlement, Exh. No. 1 at ¶ 11.

⁸ *Id.* at ¶ 12.

⁹ White, Exh. No. AW-1T at 3:18-19.

¹⁰ Rathbun, TR. 52.

¹¹ *Id.* TR. 53.

¹² White, Exh. No. AW-1T at 8:13-14.

28 The Company intends to finance the well construction with a loan from its affiliate, Candy Mountain LLC.¹³ The parties agreed that the interest rate for this loan will be 5.25 percent (the current prime rate plus 2 percentage points).¹⁴ As noted by the parties, we have previously found this formula reasonable for calculating the cost of debt between affiliated companies.¹⁵ We find no reason in the evidence in this record to conclude that a different debt interest rate should be adopted.

29 The Facilities Charge is scheduled to be in place for a reasonable period of time. The proposed tariff includes a provision that requires the charge to expire either: (1) in 17 years (which is the anticipated time period for financing the well construction); or (2) when the total costs associated with the new well construction have been recovered from customers. This provision ensures that the Facilities Charge will be in effect only for the length of time necessary to recover the revenue for the explicit purpose for which it was enacted.

C. Rule Exemption

30 We turn next to the Settlement terms related to rule exemption. The parties agree that the Commission should authorize an exemption from the provisions of WAC 480-110-455(3)(a)(i) and (b).

31 According to WAC 480-110-455(3)(b), a facilities charge may not fund 100 percent of the total cost of a project. Therefore, in order to approve the Facilities Charge applicable exclusively to new customers in this case, we must provide an exemption to this rule. We conclude that it is reasonable to exempt Summit View's Facilities Charge from the requirements of this rule because it is fair and reasonable for new customers to bear the entire cost burden associated with constructing the new well. New customers will reap the benefits of this construction so they should also bear the burdens. This project is not anticipated to provide significant benefits to existing

¹³ *Id.* at 9:3-5; Rathbun, TR. 50.

¹⁴ White, Exh. No. AW-1T at 9:8-11.

¹⁵ *Id.* at 11-14 citing *WUTC v. American Water Resources, Inc.*, 6th Suppl. Order at 6, Docket Nos. UW-980072, *et. al.* (January 21, 1999).

customers so they should not contribute to the costs associated with constructing a new well.

D. Accounting and Reporting Requirements

- 32 We next consider the Settlement's accounting and reporting requirements. The parties propose that the Company comply with all accounting and reporting requirements of WAC 480-110-455(4). We conclude that these requirements are reasonable except that the Company should not be required to request Commission permission to disburse funds generated by the Facilities Charge (WAC 480-110-455(4)(b)(i)) or obtain Commission pre-approval for individual disbursement of funds generated by the Facilities Charge (WAC 480-110-455(4)(b)(ii)).
- 33 Within three months after the end of construction of the new domestic water well, the Company must file with the Commission a report, with supporting documentation, consisting of a cost summary of the actual cost of construction. If the report shows that the actual costs of construction are materially different from the Company's estimate of \$230,000, the Company will also concurrently file a tariff revision to increase or decrease the Facilities Charge accordingly, including refunds, if any, for customers who have previously made payments in excess of the amount needed to generate actual construction costs. The parties agree to exercise good faith in determining materiality.
- 34 The accounting and reporting requirements are reasonable and should be adopted. The requirements provide: (1) reasonable oversight of the transaction, and (2) a reasonable process for modifying the level of the Facilities Charge should actual construction costs warrant such modification.

FINDINGS OF FACT

- 35 Having discussed above in detail the evidence received in this proceeding concerning all material matters the Commission now makes and enters the following summary of those facts, incorporating by reference pertinent portions of the preceding detailed findings:

- 36 (1) The Washington Utilities and Transportation Commission is an agency of the State of Washington, vested by statute with authority to regulate rates, rules, regulations, practices, and accounts of public service companies, including water companies.
- 37 (2) Summit View Water Works, LLC is a “public service company” and a “water company” as those terms are defined and otherwise are used in Title 80 RCW. Summit View Water Works, LLC, is engaged in Washington State in the business of supplying utility services and commodities to the public for compensation.
- 38 (3) The parties propose to resolve the issues in this proceeding via the Commission’s approval and adoption of their Settlement Agreement filed on August 12, 2011, which is attached to, and made a part of, this Order.
- 39 (4) The existing rates for water service provided in Washington by Summit View Water Works, LLC, are insufficient to yield reasonable compensation for the services rendered. Summit View Water Works, LLC, requires prospective relief with respect to the rates it charges for water service provided in Washington.
- 40 (5) The rates, terms, and conditions of service that result from adoption of the Settlement that is attached to this Order results in rates for Summit View Water Works, LLC, that are fair, just, reasonable, and sufficient.
- 41 (6) The rates, terms, and conditions of service that result from adoption of the Settlement Stipulation are neither unduly preferential nor discriminatory.
- 42 (7) The Commission’s approval and adoption of the Settlement attached to, and discussed in, the body of this Order are in the public interest.

CONCLUSIONS OF LAW

43 Having discussed above all matters material to this decision, and having stated its findings, the Commission now makes the following summary conclusions of law, incorporating by reference pertinent portions of the preceding detailed conclusions:

- 44 (1) The Washington Utilities and Transportation Commission has jurisdiction over the subject matter of, and parties to, these proceedings. Title 80 RCW.
- 45 (2) The rates proposed by tariff revisions filed by Summit View Water Works LLC on January 12, 2011, and suspended by prior Commission order, were not shown to be fair, just or reasonable and should be rejected. RCW 80.28.010.
- 46 (3) Summit View Water Works, LLC, requires relief with respect to the rates it charges for water service provided in Washington. RCW 80.01.040; RCW 80.28.060.
- 47 (4) The Commission determines that the rates resulting from adoption of the Settlement filed by the parties to this proceeding are fair, just, reasonable, and sufficient rates that are to be observed and in force under Summit View Water Work's tariffs prospectively from an effective date of December 12, 2011, for water service the Company provides to customers in Washington. RCW 80.28.020.
- 48 (5) The Settlement attached to this Order as Appendix A and incorporated by prior reference, should be approved and adopted.
- 49 (6) The rates, terms, and conditions of service that will result from this Order are neither unduly preferential nor discriminatory. RCW 80.28.020.
- 50 (7) The rates, terms, and conditions of service that will result from this Order are fair, just, reasonable, and sufficient. RCW 80.28.010; RCW 80.28.020.

- 51 (8) The Commission Secretary should be authorized to accept by letter, with copies to all parties to this proceeding, the revised tariff sheets attached to the Settlement.
- 52 (9) The Commission should retain jurisdiction over the subject matters and the parties to this proceeding to effectuate the terms of this Order.

ORDER

THE COMMISSION ORDERS THAT:

- 53 (1) The proposed tariff revisions Summit View Water Works, LLC, filed on January 12, 2011, which were suspended by prior Commission order, are rejected.
- 54 (2) The Settlement attached and incorporated into this Order by prior reference, is approved and adopted.
- 55 (3) The Commission Secretary is authorized to accept by letter, with copies to all parties to this proceeding, the revised tariff sheets attached to the Settlement.
- 56 (4) The Commission retains jurisdiction to effectuate the terms of this Order.

Dated at Olympia, Washington, and effective November 14, 2011.

WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION

JEFFREY D. GOLTZ, Chairman

PATRICK J. OSHIE, Commissioner

PHILIP B. JONES, Commissioner

NOTICE TO PARTIES: This is a Commission Final Order. In addition to judicial review, administrative relief may be available through a petition for reconsideration, filed within 10 days of the service of this order pursuant to RCW 34.05.470 and WAC 480-07-850, or a petition for rehearing pursuant to RCW 80.04.200 and WAC 480-07-870.

Docket UW-110107 Settlement Agreement