

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

WASHINGTON UTILITIES AND)	DOCKET UW-110220
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 recommends a \$15,518 increase in annual revenues from irrigation service. It supports a rate design consisting of an annual outlet fee of \$215 prorated for new customers to reflect the actual number of days of service during the irrigation season and an annual irrigation fee of \$280 per acre, prorated to reflect the actual size of a customer’s lot and, for new customers, the actual number of days of service during the irrigation season.. The new rates and charges will be applicable to irrigation service on a prospective basis beginning January 1, 2012.*

SUMMARY

2 **BACKGROUND AND PROCEDURAL HISTORY.** On January 27, 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 increase annual revenues from irrigation service by \$19,118. The revisions also proposed to replace the current annual flat fee for irrigation service of \$400 per customer with an annual outlet fee of \$250 per customer and an annual \$300 per acre charge. The filing would increase rates and charges for water service by approximately \$19,118 or 33.5 percent.

However, the proposed rates would affect customers differently based on the customer's lot size. While customers with one-half acre lots would have no change in their charges, customers with 2.5 acre lots would have a 250 percent rate increase and customers with 5 acre lots would have a 437 percent rate increase.

- 3 At its regularly scheduled Open Meeting on February 25, 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 January 1, 2012, 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.

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-1101007, *WUTC v. Summit View*. The presiding officer proposed consolidating the evidentiary hearings in this matter as well, but the Commission Staff opposed consolidation.

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, 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. Five customers presented testimony in opposition to an increase in the rates for irrigation service.³

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.⁴

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.

³ 22 customers presented written comments in opposition to the original request to modify the rates for irrigation service. Public Comment exhibit, Exh. No. 2.

⁴ All prefiled testimony and exhibits as well as the Settlement and the Public Comment exhibit were admitted during the hearing.

MEMORANDUM

I. Initial Filing

- 11 On January 27, 2011, Summit View filed revisions to its currently effective tariffs that would increase annual revenues for irrigation service by \$19,118. The revisions also proposed to replace the current flat rate fee of \$400 per customer for irrigation service with an annual outlet fee of \$250 per customer and an annual \$300 per acre charge.
- 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 the Company's annual revenues for irrigation service should be increased \$15,518. Staff proposed a rate design that would replace the current annual flat fee with an annual outlet fee of \$215 plus an annual irrigation fee of \$280 per acre prorated to reflect the actual size of a customer's lot. Staff also recommended that the Commission order the Company to implement employee timekeeping procedures to address deficiencies Staff encountered during its examination of the filing.

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. Revenue Requirement

- 15 The parties agree that the Company's annual revenues from irrigation services should be increased by \$15, 518.

B. Rate Design

16 The parties agree that the current annual flat fee of \$400 for irrigation service should be replaced with:

- an annual outlet fee of \$215 prorated for new customers to reflect the actual number of days of service during the irrigation season; and
- an annual irrigation fee of \$280 per acre prorated to reflect the actual size of a customer's lot and, for new customers, the actual number of days of service during the irrigation season.

C. Tariff Effective Date

17 The parties agree that the new rates and charges for irrigation service should become effective on January 1, 2012.⁵

D. Employee Timekeeping Practices

18 Within 30 days of a Commission order adopting and approving the Settlement, the Company agrees to establish a recordkeeping system that will produce accurate records of employee time related to either its domestic or irrigation operation so that an accurate allocation of costs to each operation can be performed for ratemaking purposes. Prior to establishing a timekeeping system, the Company will advise Staff of the details of the proposed system and will accommodate any reasonable concerns Staff may have with the proposed system.

E. Promissory Note for Asset Transfer

19 Within 10 days of a Commission order adopting and approving the Settlement, the Company agrees that it will execute a promissory note to its affiliates, Tri-City Development Corporation and Candy Mountain LLC, in the amount of \$264,079. This is the amount Staff determined represents assets transferred to the Company by these affiliates in a Purchase and Sale Agreement dated September 23, 2010.

⁵ The irrigation season runs from April 15 to October 15 of each year.

F. Admission of Exhibits

20 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.

G. Waiver of Initial Order

21 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

22 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."

23 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.

24 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.

25 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.

26 While we acknowledge the opposition to any rate increase expressed by members of the public through oral and written comments, our decisions must be made in accordance with law, policy, and the factual record before us. Our mission is essentially one of determining an appropriate balance between the needs of the public to have safe and reliable water service at reasonable rates and the financial ability of the utility to provide such service. Thus, the results of our orders in proceedings such as this must be to establish rates that are, in the words of our governing statutes, “fair, just, reasonable, and sufficient.”⁶ This means rates that are “fair” to customers and to the Company’s shareholders; “just” in the sense of being based solely on the record developed following principles of due process of law; “reasonable” in light of the range of possible outcomes supported by the evidence and; “sufficient” to meet the needs of the Company to cover its expenses and attract necessary capital on reasonable terms.

B. Revenue Requirement

27 We turn now to the Settlement terms that govern the recovery of annual revenues for irrigation service. Summit View is a water company regulated by the Commission. It provides irrigation water service near Kennewick, Washington, in Benton County.⁷ The parties agree that the Company’s annual revenues from irrigation service should be increased by \$15, 518.⁸

⁶ RCW 80.28.010(1) and 80.28.020.

⁷ Settlement, Exh. No. 1 at ¶ 4.

⁸ *Id.* at ¶ 10.

28 Staff reviewed the Company's Results of Operations for a test year ended December 31, 2009.⁹ Based on that review, Staff determined that the Company's operations warranted a \$15,518 rate increase using a 5.25 percent overall rate of return.¹⁰ We conclude that Staff has appropriately calculated the revenue deficiency for Summit View's irrigation operations and we believe that a \$15,518 rate increase is warranted to allow the Company to recover the costs of this operation together with a reasonable rate of return.

C. Rate Design

29 We turn next to the Settlement terms related to rate design. The parties agree to an annual outlet fee of \$215 plus an irrigation fee of \$280 per acre, prorated to reflect the actual lot size. We conclude that this is a reasonable rate design. As Staff noted, the current \$400 flat rate for irrigation service does not fairly apportion costs to customers based on the acreage for which they use the service.¹¹ For example, the current rate design results in customers with lots of approximately one-half acre paying the equivalent of \$800 per acre while customers on five-acre lots paying the equivalent of \$80 per acre.¹² The current rate design does not fairly apportion the costs of providing the service.

30 The proposed rate design is reasonable and should be adopted. First, it allows the Company to recover some of the fixed costs of providing the service through an annual outlet fee. Second, it apportions other costs of the irrigation service based on acreage. Thus, customers with larger lot sizes pay a proportionately higher fee for irrigation service. We conclude that the annual outlet fee of \$215 and an annual irrigation fee of \$280 per acre should be adopted.

⁹ White, AW-1T at 3:16-17.

¹⁰ *Id.* at 3:17-18.

¹¹ White, AW-1T at 4:15-21.

¹² *Id.* at 4:21-23.

- 31 We note that several of the customers who testified at the public comment hearing in Kennewick, Washington, stated that their entire acreage was not irrigable land. In some instances, the topography of their lot rendered a certain portion of the lot unsuitable to landscaping. In addition, most property owners had installed impermeable surfaces, such as driveways, that obviously do not require irrigation.
- 32 In its proposed rate design, Staff considered adjusting the acreage of each lot to reflect “non-irrigable” surfaces.¹³ However Staff concluded that it was apparent that the savings to customers was minimal and would likely be outweighed by increased administrative costs and that this method creates potential conflicts between customers and the Company and would require annual adjustment to reflect any actual construction of outbuildings or impermeable surfaces.¹⁴
- 33 We concur with Staff’s assessment. While at first blush it appears reasonable to specifically exclude those portions of a customer’s lot that are not irrigated, we understand that the administration of such an adjustment would be difficult. In order to fairly charge customers exclusively for irrigable land, the Company would need to calculate, with some degree of precision, the amount of land that does not require irrigation. Moreover, the Company would need to monitor these calculations to ensure that they were current and accurately reflected any customer improvements. The costs of such a program are administrative costs that, if reasonable, the Company would be allowed to recover in the rates it charged to its customers. It is apparent from the foregoing, that the administrative costs of such a program are likely to outweigh any benefit.

¹³ *Id.* at 26:5-8.

¹⁴ *Id.* at 26:8-15.

D. Tariff Effective Date

34 We next consider the Settlement's proposed effective date. The parties agree that the rates and charges for irrigation service should become effective on January 1, 2012. We conclude that this is a reasonable date; the tariff effective date is the same as the suspension date in this proceeding.

E. Employee Timekeeping Practices

35 Within 30 days of a Commission order adopting and approving the Settlement, the Company agrees to establish a recordkeeping system that will produce accurate records of employee time related to either its domestic or irrigation water service operations in order to accurately allocate the costs associated with each operation for ratemaking purposes. As Staff noted, its analysis was severely complicated by deficient plant asset accounting and employee timekeeping practices of the Company.¹⁵

36 We conclude that it is reasonable for Summit View to establish a recordkeeping system that will accurately reflect the amount of time employees spend on the Company's operations. For ratemaking purposes, we strive to establish rates that allow a company to recover the reasonable costs of its operation plus a reasonable rate of return. However, if it is unclear where an employee is expending time, it is difficult to accurately allocate those costs. Irrigation water service customers should bear the costs, including employee time, of providing irrigation service. Likewise, domestic water service customers should be allocated the costs associated with those operations. We approve the Settlement provision that requires the Company to establish a recordkeeping system that produces accurate records of employee time.

F. Promissory Note for Asset Transfer

37 The Company agrees to execute, within 10 days of a Commission order adopting and approving the Settlement, a promissory note to its affiliates, Tri-City Development

¹⁵ *Id.* at 5:4-5.

Corporation and Candy Mountain LLC, in the amount of \$264,079.¹⁶ This amount reflects the actual value of the allowed assets.¹⁷ As Staff noted, this issue is important because Summit View seeks to place \$1,577,785 in plant assets onto its balance sheet while Staff has been able to substantiate only \$328,103 in assets.¹⁸ Staff allocated \$190,021 of the assets to the Company's irrigation operations and \$158,062 to its domestic water operations.¹⁹ One hundred percent of these assets will be financed through debt owed to its affiliates.²⁰ Accordingly, we conclude that it is reasonable to require Summit View to account for the debt to its affiliates in the form proposed by Staff and agreed to by the Company. The Company entered into a Purchase and Sale Agreement with its affiliates on September 23, 2010.²¹ A promissory note in the amount of \$264,079 reflects the value of assets transferred to the Company by its affiliates.

FINDINGS OF FACT

- 38 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:
- 39 (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.

¹⁶ Settlement, Exh. No. 1 at ¶ 15.

¹⁷ White, AW-1T at 24:22-23.

¹⁸ *Id.* at 27:15-17.

¹⁹ *Id.* at 27:17-19.

²⁰ *Id.* at 19-21.

²¹ Settlement, Exh. No. 1 at ¶ 15.

- 40 (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.
- 41 (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.
- 42 (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.
- 43 (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.
- 44 (6) The rates, terms, and conditions of service that result from adoption of the Settlement are neither unduly preferential nor discriminatory.
- 45 (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

46 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:

- 47 (1) The Washington Utilities and Transportation Commission has jurisdiction over the subject matter of, and parties to, these proceedings. Title 80 RCW.

- 48 (2) The rates proposed by tariff revisions filed by Summit View Water Works LLC, on January 27, 2011, and suspended by prior Commission order, were not shown to be fair, just or reasonable and should be rejected. RCW 80.28.010.
- 49 (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.
- 50 (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 January 1, 2012, for water service the Company provides to customers in Washington. RCW 80.28.020.
- 51 (5) The Settlement attached to this Order as Appendix A and incorporated by prior reference, should be approved and adopted.
- 52 (6) The rates, terms, and conditions of service that will result from this Order are neither unduly preferential nor discriminatory. RCW 80.28.020.
- 53 (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.
- 54 (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.
- 55 (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:

- 56 (1) The proposed tariff revisions Summit View Water Works, LLC, filed on
January 27, 2011, which were suspended by prior Commission order, are
rejected.
- 57 (2) The Settlement attached and incorporated into this Order by prior reference, is
approved and adopted.
- 58 (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.
- 59 (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-110220 Settlement Agreement