

NOTE: THIS ORDER LIFTS THE STAY ON TIME FOR PETITIONS FOR ADMINISTRATIVE REVIEW. SEE THE NOTICE TO PARTIES ON THE LAST PAGE OF THIS ORDER.

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION
COMMISSION

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION,)	DOCKET NO. TC-001846
)	
Complainant,)	FOURTH SUPPLEMENTAL ORDER
)	
v.)	ORDER GRANTING REOPENING;
)	ADMITTING TWO EXHIBITS
BREMERTON-KITSAP AIRPORTER, INC., C-903,)	
)	
Respondent.)	
.....)	

1 **Background:** This case began as an application filed on November 27, 2000, by Bremerton-Kitsap Airporter, Inc. (BKA) seeking an increase in general rates. The matter was converted to a complaint by the regulatory staff of the Commission (Staff) seeking to decrease the Company's rates. The Third Supplemental Order, an Initial Order entered April 15, 2002, proposes to grant the complaint and to require the Company to file new tariffs.

2 BKA provides airporter service between points in Kitsap and Pierce Counties and the Seattle-Tacoma International Airport. Because the rates between the two routes are out of balance, the rate changes would result in a reduction of the Kitsap County rates of \$2.00 per fare, and an increase to the Pierce County rates of \$2.50 per fare.

3 **Petition to Reopen:** On April 23, 2002, BKA filed with the Commission a petition to reopen the record in this proceeding in order to include in the record an update to Exhibit 42. The update would include rate case costs through February 14, 2002. A Notice Expediting Time for Answers, and a Notice Suspending Time for Administrative Review Petitions was entered on April 24, 2002.

4 On May 3, 2002, Staff answered that it did not object to BKA's petition for reopening nor does Staff object to the admission of BKA's updated rate case costs and fees through February 14, 2002, as revised in Exhibit 42. In addition, Staff sought permission to offer into the record the Declaration of Eugene K. Eckhardt detailing the Commission's costs in this proceeding through January 31, 2002. Staff indicates that this will provide a more complete record on the issue of recovery of Staff's investigative costs as addressed in paragraphs 68 and 69 of the Third Supplemental Order.

5 Also on May 3, 2002, BKA filed with the Commission a Supplemental Memorandum in Support of Petition for Reopening to Consider Additional Rate Case Costs, and declaration of Judith A. Endejan. The memorandum argues that the full amount of rate case costs should be allowed to be recovered in customer fares.

6 **Both Exhibits Should Be Admitted Into the Record:** Both Staff and BKA agree to admission of additional factual information into the record. Although these documents were not identified as late-filed exhibits, and admitted while the record in this matter was open, both were discussed. No party will be prejudiced by their admission, and a complete record will benefit the Commission or courts if any portion of this Fourth Supplemental Order is reviewed. Both the Revised Exhibit 42 filed with the petition to reopen on April 23, 2002, and the declarations of David W. Wiley dated April 23, 2002, and Judith A. Endejan dated May 3, 2002 should be admitted as portions of Exhibit 42. The declaration of Eugene K. Eckhardt dated May 6, 2002, should be admitted as Exhibit 47.

7 **Revisions to Third Supplemental Order:** Paragraphs 20 through 24 and Paragraphs 68 and 69 of the Third Supplemental Order should be revised.

Company Rate Case Costs

8 Paragraphs 20 through 24 currently provide:

9 By adjustment C-PA-4, the Company includes \$100,000 in legal and accounting fees paid to outside consultants and attorneys related to this proceeding. The Company proposes that all costs incurred after it sought to dismiss its rate increase filing should be included in this proceeding. On the date of BKA's original testimony filing of November 9, 2001, the Company had incurred a total of \$26,480.86 in fees and costs. Exhibit No. 42 indicates that the Company's actual costs from May 15, 2001, to November 30, 2001, were \$62,804.90. The company represented that it would update Exhibit No. 42, but never moved to include additional evidence in the record. BKA also proposes that if the rate case costs are amortized over a period of time, then a two or three-year amortization period would be appropriate. *Paragraph 20.*

10 The Staff opposes BKA recovering any of its legal and expert witness costs related to this proceeding because of the Company's long history of rate applications that were withdrawn midway through the process, including this one. Staff also argues that \$100,000 is shockingly high, noting that there are no intervenors, the issues are few, and BKA required the testimony of only Mr. Richard Asche, its president, and Mr. Weldon Burton, its expert witness on regulatory accounting. Mr. Burton filed only twenty pages of testimony. Staff argues that if some portion of rate case costs is allowed, it should be amortized over a reasonable period, suggesting that five years would be appropriate. Staff also notes that BKA's last fully-litigated rate case was in 1991. *Paragraph 21.*

Discussion and Decision

11 The Staff is correct that the Company's proposed rate case cost recovery of \$100,000 is shockingly high. The latest known and measurable amount on the record of \$62,605 itself strains against the high end of a reasonable range. *Paragraph 22.*

12 At TR 189, the Staff (Mr. Colbo) indicated that the normal treatment given to this item is to amortize the amounts over 3 years, but he would recommend a 5-year amortization period in this case if the Commission decides to allow the expenses for ratemaking. The Company's last litigated rate case was in 1991 and the present case before the Commission is the first time, to our knowledge, that the Commission has ever filed a complaint against BKA. Amortization periods vary depending on the time between rates cases, along with consideration of the magnitude of the cost claimed, and the effect of including it in rates. Thus, at times, certain solid waste companies who were appearing annually before the Commission had no amortization of rate case costs. A certain electricity company that was required to file a rate case every three years had a three-year amortization. Companies whose costs were excessive received no rate case costs, or only a portion of rate case costs. *See, for example, WUTC v. Sno-King Garbage Company, Inc.,* Docket Nos. TG-900657, TG-900658, Fourth and Fifth Supp. Orders, (Dec. 1991) (Commission found no benefit to ratepayers from the amounts spent on expert and attorney fees in the case and denied their recovery in rates as exorbitant and imprudent); *Petition of PSE,* Docket No. UE-920433, Fifteenth Supp. Order (Dec. 15, 1993) (Commission affirmed rejection of portion of PSE's rate case expenses, partly in response to Public Counsel argument that the Company simply spent too much); *see also, WUTC v. Rosario Utilities, LLC,* Docket No. UW-951483, Fourth Supp. Order, pp. 7, 8 (November 25, 1996) (only \$6,000 allowed, \$18,000 sought). One could argue for a ten or eleven-year amortization for BKA, because its last fully litigated rate case was in 1991. *Paragraph 23.*

- 13 Because of the extraordinary magnitude of the rate case costs incurred in this proceeding, this Order recommends that the Commission adopt the Staff's proposal to amortize the amount over 5 years. This Order rejects the Company's proposal to include \$100,000 of rate case costs in this proceeding to measure its prospective revenue requirement. Although the Company may recover a reasonable amount in rates, it is very unlikely that these costs will recur in the near-term future, and certainly not on an annual basis. Including the entire amount in rates in the rate year would embed \$100,000 of operating revenues in rates with no comparable prospective expense. BKA will be allowed to include \$62,805 in rate case costs, to be amortized over five years. *Paragraph 24.*
- 14 The following discussions should be added:
- 15 Exhibit 42 has been supplemented to include rate case costs for the period May 15, 2001 through February 14, 2002; BKA now seeks to recover \$101,756 in rate case costs. This Fourth Supplemental Order will not recommend allowing recovery of this higher amount in rates.
- 16 If one examines BKA's own calculations in its brief, without any adjustment whatsoever, and using a standard target operating ratio of 93.0%, as the Third Supplemental Order recommends, the Company's own numbers show a needed rate reduction of \$2,274. This Company calculation includes rate case costs for this rate case alone of \$100,000. Implicit in this proposed adjustment is the assumption that the Company needs \$100,000 per year to cover rate case costs. The Third Supplemental Order rejected this implicit assertion, and normalized the rate case costs to reflect an on-going level. This is standard ratemaking procedure, since rates are set to cover prospective costs.
- 17 In a normal rate case setting, it can be convincingly argued that the costs of the rate case should not justify the rate increase sought. In this present case, the costs of the rate case should not be used to justify the Company's present rates. If the \$100,000 in rate case costs is removed from the test period, without making any further adjustments to the Company's own calculations, the indicated rate reduction would be \$104,953.
- 18 The Initial Order proposed a rate reduction of \$150,052 and, because of the rounding of rates to the nearest quarter, used an operating ratio after rate adjustments of 92.31%. This rounding is discussed at paragraph 65 of the Third Supplemental Order. Thus, although the Third Supplemental proposes an operating ratio of 93 percent, the actual "rounded" fares recommended provide BKA with a more generous operating ratio of 92.31 percent.

19 If rate case costs are increased from \$62,805 to \$101,756, with all other adjustments approved in the Third Supplemental Order held consistent, the proposed fares to be charged by BKA would be identical to those proposed by the Third Supplemental Order.

Recovery of Staff Investigation Costs

20 Paragraphs 68 and 69 of the Third Supplemental Order provide:

21 Staff also asks the Commission to assess BKA the Commission's costs in this proceeding, pursuant to RCW 81.10.020. The Order Allowing Withdrawal of Rate Filing; Converting Proceeding to Complaint by Commission; Establishing Schedule in this proceeding previously indicated that Staff could pursue recovery of these costs. In support of this request, Staff again notes that BKA has a long history of unsupported rate applications, and that the Staff has not sought nor received its costs in any of the previous filings. Staff seeks recovery of \$16,634, which is one percent of the Company's gross revenues in the year 2000. *See*, chapter 81.20 RCW, particularly 81.20.020 and .060. This amount was reported to the Commission by BKA in its 2000 Annual Report; this Order will take judicial notice of that official filing.

Discussion and Decision

22 BKA should be required to pay the recoverable portion of the Commission's cost of investigation of \$16,634. When the Commission decides it is necessary "to investigate the books, accounts, practices and activities" of a public service company "and the cost thereof to the commission exceeds in amount the ordinary regulatory fees paid by such public service company during the preceding calendar year," RCW 81.20.020 directs the public service company to pay the expenses that are reasonably attributable to the investigation.

23 The following discussion should be added:

24 Exhibit 47 should be included in the record as a late-filed exhibit. This exhibit demonstrates the Commission's direct costs in this matter through January, 2002.

FINDINGS OF FACT

- 25 The following two findings of fact should be appended to the Third Supplemental Order.
- 26 (18) Exhibit 42 should be supplemented by including the revised Exhibit 42 filed with the Commission on April 23, 2002, and the declarations of David W. Wiley dated April 23, 2002, and Judith A. Endejan dated May 3, 2002.
- (19) The declaration of Eugene K. Eckhardt dated May 6, 2002, should be admitted as Exhibit 47.

ORDER

IT IS ORDERED That

- 27 (1) Exhibit 42 is supplemented by including the revised Exhibit 42 filed with the Commission on April 23, 2002, and the declarations of David W. Wiley dated April 23, 2002, and Judith A. Endejan dated May 3, 2002.
- 28 (2) The declaration of Eugene K. Eckhardt dated May 6, 2002, is admitted as Exhibit 47.

DATED at Olympia, Washington, and effective this _____ day of May, 2002.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARJORIE R. SCHAER
Administrative Law Judge

NOTICE TO THE PARTIES

This is a supplemental portion of the Initial Order in this matter. The actions proposed in the Third and Fourth Supplemental Orders are not effective until entry of a final order by the Utilities and Transportation Commission. If you disagree with this Initial Order and want the Commission to consider your comments, you must take specific action within the time limits outlined below.

WAC 480-09-780(2) provides that any party to this proceeding has twenty (20) days after the entry of this Initial Order to file a *Petition for Administrative Review*. *A notice entered on April 24, 2002 stayed this twenty (20) day deadline. That stay is lifted, and the timelines outlined here will begin to run with the entry of this Fourth Supplemental Order.* What must be included in any Petition and other requirements for a Petition are stated in WAC 480-09-780(3). WAC 480-09-780(4) states that any *Answer* to any Petition for review may be filed by any party within (10) days after service of the Petition.

WAC 480-09-820(2) provides that before entry of a Final Order any party may file a *Petition to Reopen* a contested proceeding to permit receipt of evidence essential to a decision, but unavailable and not reasonably discoverable at the time of hearing, or for other good and sufficient cause. No Answer to a Petition to Reopen will be accepted for filing absent express notice by the Commission calling for such answer.

One copy of any Petition or Answer filed must be served on each party of record, with proof of service as required by WAC 480-09-120(2). An Original and nineteen copies of any Petition or Answer must be filed by mail delivery to:

Attn: Carole J. Washburn, Secretary
Washington Utilities and Transportation Commission
P.O. Box 47250
Olympia Washington 98504-7250