

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of Determining the Proper)	DOCKET UW-132281
Classification of, and Complaint)	
for Penalties against:)	ORDER 02
)	
)	INITIAL ORDER APPROVING
NEWAUKUM WATER SYSTEM,)	SETTLEMENT; IMPOSING AND
INC.)	SUSPENDING PENALTIES
)	SUBJECT TO CONDITIONS
.....)	

MEMORANDUM

1 **Proceeding.** The Washington Utilities and Transportation Commission (Commission) instituted this special proceeding under RCW 80.04.015 on January 21, 2014, to determine whether Newaukum Water System, Inc. (NWS) is a water company subject to regulation by the Commission under RCW Title 80. In addition, on findings of probable cause by the Commission that NWS is subject to Commission jurisdiction and that the company illegally provided service without having a tariff on file, the Commission’s regulatory staff (Staff)¹ complained that NWS should be subject to monetary penalties. Staff proposed penalties of \$4,400 for the alleged violation. The Commission has jurisdiction over Staff’s Complaint under RCW 80.04.110 and is authorized to impose penalties under RCW 80.04.380 and RCW 80.04.405.

2 On March 10, 2014, the Commission conducted a duly noticed hearing before Administrative Law Judge Dennis J. Moss. The hearing was conducted as required under Part IV of the Administrative Procedure Act (APA), RCW 34.05. As discussed below, NWS and Staff composed their differences during the course of the hearing, were afforded the opportunity to reach an informal agreement, and agreed to terms of settlement that were made part of the record. This Order approves the parties’

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 this proceeding with the regulatory staff, or any other party, without giving notice and opportunity for all parties to participate. *See* RCW 34.05.455.

settlement agreement and memorializes its terms for purposes of enforcement, if any enforcement is required.

3 **Appearances.** Ken Lindebak, *pro se*, Auburn, represents NWS. Robert D. Cedarbaum, Senior Assistant Attorney General, Olympia, represents Staff.

4 **Settlement Agreement.** Mr. Lindebak conceded at hearing that NWS is subject to Commission jurisdiction, despite the company's largely, but not wholly, successful efforts to qualify for exemption. This concession opened the door to a potential informal resolution of both the classification action and Staff's Complaint. The presiding officer recessed the hearing to provide the parties an opportunity to discuss the possibility of settling these matters. They succeeded.

5 Mr. Cedarbaum for Commission Staff described the terms of the settlement, as follows:

- NWS agrees to move forward with preparation of a suitable tariff and to file it within two weeks following the date of hearing (*i.e.*, by March 25, 2014).
- NWS agrees to work with Staff during this two week period to prepare and serve on its customers an appropriate customer notice of the tariff filing.
- Staff agrees to suspend the entire amount of the suggested penalty of \$4,400, subject to NWS meeting its obligations as described in the preceding bullet points. If NWS fails to meet its obligations, the entire amount of the penalty will become due and payable without the need for further action by the Commission.

6 The Commission commends Mr. Lindebak for his cooperation and forthrightness during the hearing. By the time of hearing, through his efforts, NWS already had contracted for an appropriate tariff to be prepared. Indeed, Mr. Lindebak was accompanied at the hearing by Mr. Purtteman, the engineer NWS has hired to assist in preparing a suitable tariff. This should make it possible for NWS to meet the deadlines to which the parties agree.

- 7 Insofar as Staff's Complaint is concerned, it is illegal to engage in business as a water company in Washington without having an appropriate tariff on file with the Commission. Any person, corporation, or company that engages in business as a water company in Washington without the required tariff is subject to a penalty as provided by RCW 80.04.380 and RCW 80.04.405.
- 8 NWS violated RCW 80.28.050 and WAC 480-110-433 by failing to file a tariff with the Commission after the company became subject to jurisdiction in the fall of 2013. Staff, exercising discretion, initially requested that the Commission assess penalties lower than what the Staff considers to be the maximum possible penalty under the circumstances. In total, Staff requests that the Commission assess penalties of \$4,400. Staff acknowledged in its Complaint that it might request the Commission to suspend a portion of any penalty actually imposed for a period of time sufficient to demonstrate NWS's intent to comply with all applicable laws and rules governing water companies subject to Commission jurisdiction. Staff's principal interest in this case is to have NWS come into compliance with the law.
- 9 Staff, too, is commended for its outreach and flexible approach both prior to, and during the course of the hearing in this proceeding. The Commission supports parties' efforts to resolve matters via agreement when doing so is lawful, consistent with the public interest, and subject to Commission approval, as provided in WAC 480-07-700 and 750. Such results depend critically on Staff's diligent efforts and willingness to compromise in appropriate circumstances, as are evident in this case.
- 10 **Evaluation of Settlement.** 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." Thus, the Commission considers the individual components of the settlement agreement asking whether any aspect of the proposal is contrary to law or offends public policy, and whether the evidence supports approval and adoption of the terms of the agreement as reasonable resolutions of the issues presented. The Commission may approve the proposed settlement agreement with or without condition, or reject it.
- 11 **Commission Decision:** The Commission approves the parties' settlement agreement. The settlement terms are not contrary to law or public policy and reasonably resolve all issues in this proceeding. They are based on an appropriate record. There remains no dispute concerning NWS's jurisdictional status and the company agrees to take the

steps necessary to bring itself into compliance with all applicable law. The record supports Commission imposition of a penalty while the circumstances of the case support its suspension subject to the condition that NWS timely meets its obligations under the settlement terms.

- 12 The Commission's primary objective in this case is to obtain compliance with applicable law. The settlement agreement promises to accomplish this goal. It should be approved and adopted by the Commission to resolve the issues in this proceeding.

ORDER

THE COMMISSION ORDERS:

- 13 (1) The parties' settlement agreement, as described in the body of this Order, is approved and adopted by the Commission in full resolution of the issues in this proceeding.
- 14 (2) NWS is subject to a penalty of \$4,400 for violation of RCW 80.28.050 and WAC 480-110-433, as established on the record of this proceeding. This penalty amount is waived in full subject to the condition that NWS satisfy its obligations under the settlement agreement, as described in the body of this Order. If NWS fails to meet its obligations, the full amount of the penalty will become due and payable without the requirement for any further action by the Commission.
- 15 (3) The Commission retains jurisdiction to enforce the terms of this Order.

Dated at Olympia, Washington, and effective March 11, 2014.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

DENNIS J. MOSS
Administrative Law Judge

NOTICE TO PARTIES

This is an Initial Order. The action proposed in this Initial Order is not yet effective. 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. If you agree with this Initial Order, and you would like the Order to become final before the time limits expire, you may send a letter to the Commission, waiving your right to petition for administrative review.

WAC 480-07-825(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. What must be included in any Petition and other requirements for a Petition are stated in WAC 480-07-825(3). WAC 480-07-825(4) states that any party may file an Answer to a Petition for review within ten (10) days after service of the Petition.

WAC 480-07-830 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.

RCW 80.01.060(3) provides that an Initial Order will become final without further Commission action if no party seeks administrative review of the Initial Order and if the Commission fails to exercise administrative review on its own motion.

One copy of any Petition or Answer filed must be served on each party of record with proof of service as required by WAC 480-07-150(8) and (9). An Original and five (5) copies of any Petition or Answer must be filed by mail delivery to:

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Washington Utilities and Transportation Commission
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