

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND	)	
TRANSPORTATION COMMISSION,	)	
	)	DOCKET UW-000253
Complainant,	)	
	)	SECOND SUPPLEMENTAL
v.	)	ORDER; ORDER
	)	APPROVING AND
TALL TIMBER WATER SYSTEMS,	)	ADOPTING SETTLEMENT
LLC	)	AND SUSPENDING
	)	PENALTY
Respondent.	)	
	)	

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1 **Synopsis.** The Commission approves and adopts a Settlement Agreement that resolves a dispute over the purchase by Tall Timber Water Systems, LLC (Tall Timber) of new water systems over the past several years, suspends penalties, approves the rates proposed in the Settlement Agreement, and dismisses a Commission Complaint against Tall Timber.

2 **Proceedings.** On March 10, 2000, the Commission, on its own motion, entered a Complaint and Order Suspending Tariff Revisions, Ordering Temporary Rates and Instituting Investigation. That order suspended certain proposed tariff revisions that were the result of Tall Timber's acquisition of nineteen (19) water systems. The Commission found, among other things, that Tall Timber had not demonstrated that rates and charges it proposed for newly acquired systems were fair, just, reasonable, and sufficient.

3 On August 23, 2000, the Commission issued a Notice of Prehearing Conference and Time for Filing of Respondent's Written Testimony. On September 27, 2000, the Commission granted a continuance to Tall Timber and Commission Staff (Staff) to allow additional time for settlement discussions. On December 12, 2000, Tall Timber and Staff filed the Settlement Agreement. The Commission convened a hearing, on December 27, 2000, to explore the terms and conditions of the Settlement and to determine whether the result of the Settlement is consistent with the public interest.

4 **Parties.** Richard Finnigan, attorney, Olympia, represents Tall Timber Water Systems, LLC. Mary Tennyson, Assistant Attorney General, represents Commission Staff.

**I. DISCUSSION**

5 The issue before the Commission is whether the results proposed by the Settlement Agreement fully and fairly resolve the issues in this dispute and are consistent with the public interest. The Commission favors the voluntary settlement of disputes and will approve the terms of a settlement when it is lawful to do so and the result is consistent with the public interest. *WAC 480-09-466.*

**A. Commission Staff’s Investigation**

6 In the March 10, 2000, Complaint and Order Suspending Tariff Revisions, Ordering Temporary Rates and Instituting Investigation, the Commission suspended certain proposed tariff revisions filed by Tall Timber. That Order provided Staff an opportunity to investigate Tall Timber’s books, accounts, practices and activities, to make an evaluation or appraisal of Tall Timber’s property, and to appraise various aspects of respondent’s operations.

7 Among other things, Staff found that Tall Timber acquired certain service territories in 1997 and 1998, but failed to make required filings with the Commission to reflect these acquisitions until February 2000. Tall Timber charged tariff rates to customers on water systems that were not included in the Company’s tariff. Tall Timber also charged some customers “ready-to-serve” charges<sup>1</sup> that were not contained in the Company’s tariffs or in contracts filed and approved by the Commission.

8 At the settlement hearing, Staff introduced into the record a report on the investigation, dated October 20, 2000. *Ex. 2.* Staff’s report alleges violations of RCW 80.28.080, stating that Tall Timber charged tariffed rates to customers without first adding to its tariff the systems through which those customers obtain service. *Ex. 2, at p. 10.* The report also alleges that Tall Timber violated RCW 80.28.100 and WAC 480-80-335 by entering into numerous contracts, applicable to approximately 227 customers, containing ready-to-serve charges. *Ex. 2, at p. 10-11.*

**B. Settlement Agreement**

9 The Settlement Agreement requires that Tall Timber’s current tariff rates remain in effect for existing customers and be made effective for customers on the recently acquired systems. Staff agrees that the rates should be effective for all Tall Timber customers as fair, just, reasonable, and sufficient rates.

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<sup>1</sup> Ready-to-serve charges reflect that the water company has made capital improvements and has facilities in place to serve the end-use customer, even though the customer has not yet taken service.

- 10 The Settlement Agreement resolves the issue of future ready-to-serve charges by requiring Tall Timber to either file with the Commission a tariff to include those charges or file contracts with the required supporting justification. Tall Timber stated at the settlement hearing that it would, in the future, abide by state law and the Commission's rules that govern acquisitions of water systems.
- 11 To resolve the issue of rate base treatment of the revenues Tall Timber previously received from ready-to-serve charges collected without proper authority, the Settlement Agreement provides that, in lieu of refunds to customers, "Tall Timber will permanently convert all payments it received under contracts not approved by the Commission to Contributions in Aid of Construction on the Company books, with amortization of these amounts to begin on November 30, 2000."
- 12 The Settlement Agreement provides that Tall Timber will "refund \$2.00 per month, for each month during the period March 1, 2000 through November 30, 2000, to all customers on those water systems added to Tall Timber's tariff through this filing." *Settlement Agreement, at p. 2.* The Settlement Agreement also requires that Tall Timber notify affected customers that they will receive a refund or credit as a result of an agreement with the Commission, state the amount of the refund or credit, and identify the period of time over which Tall Timber will issue the refund or credit. *Id.*
- 13 To ensure that Tall Timber remains in compliance with state law and Commission rules, the Settlement provides for a suspended penalty of \$1000. The suspension is contingent on Tall Timber's continued compliance with pertinent statutes and rules. *Settlement Agreement, at pp. 2-3.*

### C. Decision

- 14 There is no dispute in the record that rates proposed in the Settlement Agreement are fair, just, reasonable, and sufficient. The rate base treatment for previously collected ready-to-serve charges resolves that issue appropriately, consistent with the generally accepted regulatory accounting principles. Tall Timber commits to make necessary tariff filings. In addition, Tall Timber commits to abide by state law and Commission rules that govern acquisitions of water systems. The Commission finds that the terms and conditions of the Settlement Agreement are consistent with the public interest and it should approve and adopt the Settlement Agreement as a full and fair resolution of the issues in this proceeding.

## II. FINDINGS OF FACT

15 Having discussed above in detail all matters material to our decision, the Commission  
now makes the following summary findings of fact. Those portions of the preceding  
discussion that state findings pertaining to the ultimate decisions of the Commission  
are incorporated by this reference.

- 16 (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, and practices of public service companies, including water  
companies.
- 17 (2) Tall Timber is engaged in the business of furnishing water services within  
Washington State as a public service company.
- 18 (3) Tall Timber and Staff have resolved their disputes in this proceeding on bases  
that provide for fair, just, reasonable, and sufficient rates and that are  
otherwise in the public interest. No party, entity, or interested party objects to  
the terms and conditions of the Settlement Agreement between the parties.

## III. CONCLUSIONS OF LAW

19 Having discussed above in detail all matters material to our decision, and having  
stated findings and conclusions upon contested issues, the Commission now makes  
the following summary conclusions of law. Those portions of the preceding  
discussion that state conclusions pertaining to the ultimate decisions of the  
Commission are incorporated by this reference.

- 20 (1) The Commission has jurisdiction over the subject matter of and parties to this  
proceeding pursuant to chapters 80.04 and 80.28 RCW.
- 21 (2) The rates proposed in the Settlement Agreement are fair, just, reasonable, and  
sufficient.
- 22 (3) The Settlement Agreement between Tall Timber and Staff is appropriate and  
consistent with the public interest.
- 23 (4) The Commission retains jurisdiction over the subject matter and the parties to  
enforce the provisions of this Order.

**IV. ORDER**

24 THE COMMISSION ORDERS That the Settlement Agreement between Tall Timber Water Systems, LLC, and Commission Staff is approved and adopted. The Settlement Agreement is attached to this Order as Appendix A and is made a part hereof as if set forth fully in the body of this Order.

25 THE COMMISSION ORDERS FURTHER That penalties in the amount of \$1000 are suspended subject to the conditions in the Settlement Agreement.



26 THE COMMISSION ORDERS FURTHER That Tall Timber make any compliance filing necessary to effect the settlement.

27 THE COMMISSION ORDERS FURTHER That it retains jurisdiction to enforce the terms of this Order and to take any other lawful measures necessary to ensure that Tall Timber Water System, LLC, remains in compliance with state law and Commission rules and orders.

28 THE COMMISSION ORDERS FURTHER That its Complaint in this proceeding is dismissed.

DATED at Olympia, Washington, and effective this 2nd day of January, 2001.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

  
MARILYN SHOWALTER, Chairwoman  
  
RICHARD HEMSTAD, Commissioner

**NOTICE TO PARTIES: This is a final Order of the Commission. 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 480-09-810, or a petition for rehearing pursuant to RCW 80.04.200 or RCW 81.04.200 and WAC 480-09-820(1).**

**APPENDIX A**  
**SETTLEMENT AGREEMENT**

WASHINGTON UTILITIES AND )  
TRANSPORTATION COMMISSION, ) DOCKET NO. UW-000253  
) )  
Complainant, ) )  
) )  
v. ) SETTLEMENT AGREEMENT  
) )  
TALL TIMBER WATER SYSTEMS, LLC, ) )  
) )  
Respondent. ) )  
..... )

On February 16, 2000, Tall Timber Water Systems, LLC (Tall Timber) filed with the Washington Utilities and Transportation Commission (Commission) certain tariff revisions designed to reflect the purchase of new water systems over the past several years. The filing proposed to add numerous water systems to the tariff. The new systems being added to the current tariff are listed below.

- |                           |                              |                          |
|---------------------------|------------------------------|--------------------------|
| Apricot Park 1, 2         | Bordeaux Farms A, B, C, D    | Country Homes            |
| Fairhaven I, II           | Foron Waterworks             | Grant Waterworks         |
| Guava Waterworks          | Hosch Estates I, II, III, IV | James Road A, B, C, D    |
| Mallory C #1              | Margaret Meadows             | Mound Water System       |
| Rolling Hills             | Sandra Avenue Water System   | Scatter Creek Waterworks |
| Silver Fox                | Singh Water                  | Tahoma Meadows           |
| Violet Meadows A, B, C, D |                              |                          |

The tariff revisions reflect added service areas acquired by Tall Timber and sets tariff rates for those systems at the same level as other Tall Timber systems. Commission rules in effect before and after December 31, 1999, required that a company notify the Commission within 30 days of its acquisition of new service areas. The Commission rules in effect since December 31, 1999, require that when a regulated water company acquires a nonregulated water company or system, that the acquiring company file a separate tariff page indicating the name of the acquired company or system, with the rates and charges in effect before the acquisitions. Although Tall Timber acquired some of these service areas in 1997 and 1998, no filings were made until February, 2000. Therefore, Tall Timber charged tariff rates to customers on water systems that were not part of the Company's tariff, and charged some customers ready-to-serve charges that were not contained in the Company's tariffed rates, nor in contracts that were filed with and approved by the Commission.

To address the issue of these contracts, the Company agrees that on or before December 31, 2000, it will either (a) file a tariff to include any ready-to serve charges in the Company's tariff, or (b) file each of the contracts with the Commission with supporting justification as required by WAC 480-80-335.

In order to resolve the issue of rate base treatment of these ready-to-serve revenues, and in lieu of a refund of these revenues to customer, Tall Timber agrees to permanently convert all payments received by the Company under contracts not approved by the Commission to Contributions in Aid of Construction (CIAC) on the Company books, with amortization of these amounts to begin on November 30, 2000. The Company and Staff will work together to calculate the amounts to be so converted. The Company shall file accounting entries to reflect the conversion on its books.

The tariff revisions were suspended by order of the Commission pending hearing or hearings concerning whether the Company's current tariff charges were appropriate, given the current number of customers being served by Tall Timber. For purposes of resolving this case, Staff agrees that the current tariff rates may remain in effect.

For purposes of resolving this case without hearing, the Company and Staff agree to use the Company's 1999 test year rate base, as calculated by Staff at \$421,688. This calculation does not include in rate base any systems operated by Tall Timber that had no customers connected to the system as of December 31, 1999. For purposes of the settlement in this case, the salary expense for Stephen Harrington, spread across the five water companies operated by Harrington, will be calculated at \$80,000, and the salary for Elyse Harrington is calculated at \$20,000. Dividing the overall salary into the proportionate number of customers served by Tall Timber and the other four water companies, the compensation for Stephen Harrington used in resolution of this case is \$21,400, and for Elyse Harrington is \$5,035. The Company and Staff agree to use a customer count of 539 for purposes of this case.

The Company agrees to refund \$2.00 per month, for each month during the period March 1, 2000 through November 30, 2000, to all customers on those water systems added to Tall Timber's tariff through this filing. The refund may be in cash, or by bill credit to the affected customers, spread over nine months. If a customer was only a customer for a portion of a month, the refund can be prorated for any such month.

In order to insure that each of the affected customers and the Commission is aware of how the Company chooses to make the refunds, the Company shall notify each affected customer in writing that they will be receiving a refund or credit, due to an agreement reached with the Commission, the amount of the refund or credit, and the period of time over which the refund or credit will be made. The Company must provide Commission Staff with a list of the names and addresses of the customers to whom the letter is sent. At the conclusion of the period of refund or credit, the Company shall provide Staff with a summary of the total refunds or credits made, by system.

The Company and Staff agree that a penalty of \$1,000 will be imposed on the Company for all the violations reported in the compliance review conducted by Robert Johnston and Jim Ward, dated October 20, 2000. This penalty amount will resolve all violations noted in that review, for all companies. The parties further agree that the payment of the penalty will be suspended, contingent on the Company's compliance with WUTC statutes and rules for a period of two years. The relevant statutes and rules are as follows:

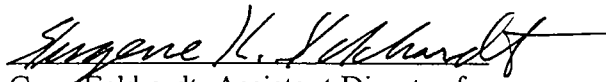


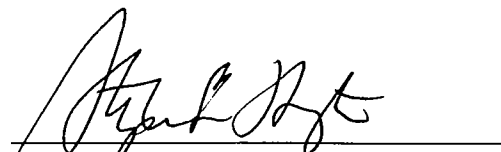
RCW 80.28.080 Published rates to be charged  
RCW 80.28.100 Rate discrimination prohibited  
WAC 480-80-335 Special contracts for electric, water and natural gas utilities  
WAC 480-110-295 Adopted tariffs, acquisition of service area  
WAC 480-110-355 Discontinuance of Service  
WAC 480-110-375 Form of Bills (time frame for delinquent payments)  
WAC 480-110-385 Company responsibility for complaints and disputes.

Any material violation of any of the above statutes or rules will result in the penalty being due and payable within 15 days of notification of the violation, and may result in further penalties based on the violation.

Commission Staff and Tall Timber Water Systems, LLC., request that the Commission accept this settlement agreement in resolution of the complaint in Docket No. UW-000253, and issue an order incorporating the provisions of this agreement, dismissing the Complaint and Order of suspension, and allowing the tariff pages to become effective on December 1, 2000, on a permanent basis, as filed.

DATED and EFFECTIVE THIS 30<sup>th</sup> day of November, 2000.

  
Gene Eckhardt, Assistant Director for  
Water and Transportation, for  
Commission Staff

  
Stephen Harrington, for  
Tall Timber Water Systems, LLC