

Agenda Date: October 22, 2003
Item Number: C2

REVISED

Docket: UW-031596
Name: Virgil R. Fox, President,
American Water Resources, Inc.

Staff: Jim Ward, Regulatory Analyst

Recommendation:

Issue a Penalty Assessment of \$4,100 against Virgil R. Fox, President, American Water Resources, Inc., in Docket No. UW-031596, pursuant to RCW 80.04.405.

Discussion:

The Staff has information on which it believes that Virgil R. Fox, President, American Water Resources, Inc., (AWR or Company) has committed one or more violations of Washington State law or Commission order. Based on this information, the Commission has authority to assess penalties under the provisions of Title 80, RCW, specifically RCW 80.04.405, and the rules and regulations of the Commission. AWR is located in Onalaska and serves approximately 1,500 customers in Lewis, Thurston, Mason, Kitsap, Pierce, and Grays Harbor Counties.

The Commission first considered this matter at its October 8, 2003, Open Meeting. At that time, a representative of the Company noted that they had not investigated the issues and could not comment on them. The Company requested additional time to review its records. The Commission took no action on Staff's recommendation and deferred this matter until today.

On December 18, 2001, the Commission entered an Order Approving Settlement Agreement (Order) in Docket No. UW-010961. The Order incorporated the terms of a settlement agreement between AWR and Commission Staff. The Order approved an increase to AWR's annual revenue requirement above the test year level by \$89,250.00 (11.27%), or \$3.47 per customer per month. That amount was added to the monthly base rate each customer pays.

The Order also required AWR to deposit \$4.40 per month from each customer payment received into a separate account named the "Docket 010961 Account." The Commission limited the purposes for which AWR could spend the money deposited into the Docket 010961 Account to those purposes set forth in the Settlement Agreement and the Order.

The Order required AWR to file quarterly reports regarding the funds in the Docket 010961 Account. The reports were to show the amounts required to be deposited, the amounts actually deposited, and budget variance reports. AWR has complied with the quarterly report requirement.¹ Those reports demonstrate that AWR failed to deposit the required amounts into the Docket 010961 Account during August, September, October, and November 2002. They also show that AWR used the funds in the Docket 010961 Account for unauthorized purposes,

1 The Company's 3rd quarter 2003 report is not due until November 15, 2003.

such as paying taxes on operations and taxes for the gain resulting from the sale of a water system.

In addition, the quarterly reports show that AWR periodically made additional deposits to compensate for the deficit caused by failure to make the required deposits in a timely fashion. Despite the additional deposits, the Docket 010961 Account remains in arrears. As of June 2003, AWR has failed to deposit \$9,290.00 of the required funds into the account.

RCW 80.04.405 provides for a penalty of up to \$100 per violation to be assessed against every officer of any public service company who procures, aids, or abets in the violation of any order of the Commission for each and every violation of a Commission order. Each and every violation, whether by act of commission or omission, is a distinct and separate offense. In the event of a continuing violation, each day that the violation continues shall be deemed a separate and distinct offense. Because the Commission's order directed AWR to deposit \$4.40 from each payment it received, each day that AWR failed to deposit the \$4.40 for each payment is a separate violation. AWR failed to deposit approximately 1,500 payments each month for several months. Rather than assessing a penalty for each payment and each day, Staff recommends that the Commission calculate the penalty for each month that AWR failed to make deposits, regardless of the number of customer payments received.

Mr. Fox personally caused or allowed the following violations to occur and continue. The Company failed to make required deposits to the Docket 010961 Account for the months of June 2002, July 2002, August 2002, September 2002, October 2002, and November 2002. Additionally the Company spent funds from the Docket 010961 Account for unauthorized purposes for the months of June 2002, July 2002, August 2002, September 2002 and June 2003. Mr. Fox, as President of AWR, is responsible to insure proper deposits are made and monies spent in compliance with the Commission's order. Staff believes the Commission should issue penalties against Mr. Fox for \$4,100.00 pursuant to RCW 80.04.405.

Conclusion:

Regulatory Services Staff has reviewed the information provided by the Company. Staff recommends that the Commission Issue a Penalty Assessment of \$4,100 against Virgil R. Fox, President, American Water Resources, Inc., in Docket No. UW-031596, pursuant to RCW 80.04.405.