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BEFORE THE WASHINGTON UTILITIES AND

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TRANSPORTATION COMMISSION

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4 WASHINGTON UTILITIES AND ) Docket No. UW-000253

TRANSPORTATION COMMISSION, ) Volume I

5 Complainant, ) Pages 1-18

)

6 v. )

)

7 TALL TIMBER WATER SYSTEMS, LLC, )

Respondent. )

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10 A hearing in the above matter was

11 held on December 27, 2000, at 2:12 p.m. at 1300

12 Evergreen Park Drive Southwest, Olympia, Washington,

13 before Administrative Law Judges WILLIAM HENDRICKS

14 and ANN RENDAHL.

15 The parties were present as

16 follows:

17 TALL TIMBER WATER SYSTEMS, LLC, by

Richard A. Finnigan, Attorney at Law, 2405 Evergreen

18 Park Drive, Southwest, Suite B-3, Olympia, Washington

98502.

19

THE COMMISSION, by Mary M. Tennyson,

20 Senior Assistant Attorney General, 1400 Evergreen

Park Drive, S.W., P.O. Box 40128, Olympia, Washington

21 98504-0128.

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24 Barbara L. Nelson, CSR

Court Reporter

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INDEX TO EXHIBITS

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4 EXHIBIT:                    MARKED:            OFFERED:            ADMITTED:

5 Exhibit 1                    4                    --                    --

6 Exhibit 2                    4                    --                    --

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1           JUDGE HENDRICKS: The hearing will please  
2 come to order. Today is December 27th, 2000, and we  
3 are convened in the hearing room of the Commission's  
4 offices in Olympia, Washington, pursuant to notice to  
5 all parties. My name is Tre Hendricks, and I am  
6 presiding today, instead of Dennis Moss, as  
7 Administrative Law Judge.

8           The purpose of the hearing is to explore  
9 the terms and conditions of a settlement agreement  
10 between the parties and to determine whether the  
11 settlement is consistent with the public interest.  
12 I'll take appearances at this time and we'll start  
13 with Tall Timber Water Systems. Please state for the  
14 record your name, who you represent, your address,  
15 telephone, fax and e-mail, if you use one.

16           MR. FINNIGAN: Richard Finnigan, appearing  
17 on behalf of Tall Timber Water Company. My address  
18 is 2405 Evergreen Park Drive, S.W., Suite B-3,  
19 Olympia, Washington, 98502. Phone number is (360)  
20 956-7001; fax, (360) 753-6862; e-mail address is  
21 rickfinn@ywave.com

22           JUDGE HENDRICKS: Thank you. Commission  
23 Staff.

24           MS. TENNYSON: Thank you. My name is Mary  
25 M. Tennyson, T-e-n-n-y-s-o-n. I'm a Senior

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1 Assistant Attorney General, representing Commission  
2 Staff. My address is 1400 South Evergreen Park  
3 Drive, S.W., Olympia, Washington, 98504-0128. My  
4 telephone number is (360) 664-1220; fax number is  
5 (360) 586-5522; my e-mail is mtennyso@wutc.wa.gov.  
6 With me today in the hearing room are Gene Eckhardt,  
7 the Assistant Director for Water and Transportation,  
8 and Jim Ward, Commission Staff.

9 JUDGE HENDRICKS: Thank you. We're here  
10 today to explore the terms of the settlement  
11 agreement and determine whether or not it is  
12 consistent with the public interest for the  
13 Commission to approve it.

14 What I'd like to do is begin by having the  
15 parties just briefly describe what's led up to the  
16 settlement agreement and then to describe the content  
17 of the settlement agreement and explain why it is  
18 consistent with the public interest for the  
19 Commission to approve it.

20 And I suppose if we could begin -- and  
21 also, before we begin, we've already marked two  
22 exhibits for the record. The first is the settlement  
23 agreement, and we marked that Exhibit 1, and also is  
24 a report from Commission Staff conducted by Jim Ward  
25 and Bob Johnston, marked as Exhibit 2. Are there any

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1 objections to the admission of the exhibits on the  
2 record?

3 MR. FINNIGAN: There's no objection.

4 MS. TENNYSON: Staff doesn't.

5 JUDGE HENDRICKS: Then, if we could begin  
6 just by discussing or describing the terms of the  
7 agreement, begin with Tall Timbers.

8 MS. TENNYSON: Unless you want me to go  
9 first.

10 MR. FINNIGAN: No, Exhibit 1 is pretty  
11 self-explanatory. I guess I'm a little confused as  
12 to what you're looking for. The settlement agreement  
13 itself lays out in pretty good detail what has been  
14 agreed to by the parties. And I'd be a little  
15 hesitant to discuss what led up to it, because  
16 settlement negotiations are supposed to be  
17 confidential in nature to preserve the parties'  
18 abilities to reach compromise. If you'd like for us  
19 to talk about why we think it's in the public  
20 interest --

21 JUDGE HENDRICKS: Do you agree with that?

22 MS. TENNYSON: Well, I think what I'd like  
23 to do is just to briefly describe -- I think it's  
24 more the public interest side of it. The way that I  
25 would describe it is that initially this tariff

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1 filing was by the company to add water systems to its  
2 tariff that it had purchased over a period of years,  
3 and in the course of the investigation, Staff then  
4 raised some additional issues about rates on the  
5 system and various issues that we had questions  
6 between and differences between the company and Staff  
7 as to whether it was appropriate to resolve them in  
8 this case, in litigation, versus via a settlement  
9 agreement, where it would be appropriate to roll a  
10 bunch of issues in.

11           Therefore, we felt that by settling the  
12 case, we could address more issues. And the  
13 Commission and the Staff's goal was to bring the  
14 company into compliance more than a punishment mode.  
15 We felt there were actions we could have taken that  
16 would have been in a complaint mode or, you know,  
17 asserting penalties against the company, and I think  
18 we felt it would be better to resolve it through  
19 settlement, rather than pursuing numerous different  
20 hearings or different dockets.

21           Because this was just simply an add systems  
22 docket, we felt there was a risk, there was a good  
23 argument we couldn't bring a penalty within that  
24 docket, so we would have had to bring a separate  
25 proceeding, and it would have cost both the

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1 Commission and the company excess use of resources.  
2           So by reaching this agreement, we felt it  
3 was not only consuming fewer resources, but allowing  
4 Staff to reach our goals and the company to reach its  
5 goals of getting on with its business without having  
6 to litigate lots of other issues and raise additional  
7 cases or open additional cases.

8           JUDGE HENDRICKS: Thank you. Mr. Finnigan,  
9 you suggested you had some comments regarding the  
10 public interest?

11           MR. FINNIGAN: Oh, sure. I do agree with  
12 what Ms. Tennyson just said about what this  
13 accomplishes. It goes beyond what could have been  
14 accomplished within the docket as it was framed in  
15 its original filing, and you know, there were a  
16 number of procedural and substantive issues that we  
17 felt could not be addressed unless the company agreed  
18 to do that voluntarily, and Staff and the Company did  
19 agree to voluntarily address a fairly broad number of  
20 issues for this company.

21           JUDGE HENDRICKS: Thank you. I haven't --  
22 we haven't had a chance to review the Staff  
23 investigation report, and it seems somewhat more  
24 substantial, at least in volume, than the settlement  
25 agreement. So I guess I'm wondering just offhand if

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1 the settlement agreement is intended to address all  
2 the violations, as they're set out here in the  
3 report.

4 MS. TENNYSON: It is intended to address it  
5 and it specifically states that. If you refer to the  
6 settlement agreement on the second page, we did not  
7 number the paragraphs, but the last paragraph on the  
8 page, we do address all the violations that were  
9 outlined in that report.

10 JUDGE HENDRICKS: Okay.

11 MS. TENNYSON: It was another reason for  
12 reaching it via settlement, rather than pursuing a  
13 compliance or complaint based on the compliance  
14 report, because the compliance report refers to other  
15 companies -- potential violations by other companies  
16 also owned by Mr. Harrington, and again, it would  
17 have required opening a separate docket.

18 MR. FINNIGAN: Right. And I would ask you  
19 that when you read through Exhibit 2, keep in mind  
20 that that is one party's view of the penalties.

21 JUDGE HENDRICKS: I should have said  
22 alleged violations.

23 MS. TENNYSON: Yes.

24 MR. FINNIGAN: Right. Well, just so you  
25 understand that, in reading through it, that's



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1 Staff's view of what violations occurred. The  
2 company had another view of it, and we reached this  
3 compromise.

4 JUDGE HENDRICKS: I understand that.

5 MR. FINNIGAN: Okay. While I'm talking, I  
6 may as well point out to you, too, on the bottom of  
7 page one on the settlement agreement, the company had  
8 agreed to either file a tariff or file each of the  
9 contracts by December 31st, 2000. That filing, in  
10 fact, occurred and was approved on today's agenda.

11 JUDGE HENDRICKS: Okay. I was going to ask  
12 that.

13 MR. FINNIGAN: So the settlement agreement  
14 has actually been performed, in part.

15 JUDGE RENDAHL: Was that, in fact, a tariff  
16 or just the contracts?

17 MR. FINNIGAN: Tariff. It was a tariff  
18 filing.

19 MS. TENNYSON: Each of the contracts, there  
20 were numerous different amounts. Not all of the  
21 contracts had a ready to serve charge, they were all  
22 different amounts, and I believe the tariff was  
23 \$8.52.

24 JUDGE HENDRICKS: What is the ready to  
25 serve charge?

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1 MS. TENNYSON: Perhaps --  
2 JUDGE HENDRICKS: Describe that.  
3 MR. FINNIGAN: It's a charge that is  
4 assessed when the infrastructure for development is  
5 in place, and so a good deal of funds have been  
6 expended to make the system available, but it's still  
7 in the possession of a developer or a builder and  
8 it's not in the possession of the ultimate end-use  
9 customer, so it's meant to reflect the fact that's --  
10 and different companies have slightly different  
11 purposes, too, so I might be misstating it slightly.  
12 But on a generic basis, it's designed to reflect the  
13 fact that the monies have been expended, the system  
14 is there, it's available for use, even though a  
15 residential customer, as such, is not in place.  
16 MS. TENNYSON: I would concur with that.  
17 The water is available to flow, but there's not a  
18 designated customer in residence in the place.  
19 MR. FINNIGAN: And the developers and  
20 builders can use it during -- at times, under some  
21 circumstances, during construction or for landscaping  
22 while they're in the sales process, that sort of  
23 thing. And as Steve points out, in particular, in  
24 the case of Tall Timber, and actually, for most  
25 companies, not all, but for most companies, it also

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1 is assessed against -- let's say an end use customer  
2 buys a lot, but doesn't build on it for a period of  
3 time during the time that, in essence, the lot is  
4 sitting fallow, that it's a reduced charge from what  
5 the normal tariffed rate would be, but that ready to  
6 serve charge would apply, again reflecting  
7 investments there and its ready for use by the  
8 customer if they want to put it to use.

9 JUDGE HENDRICKS: Thank you. I have a few  
10 questions that I'll ask. The first is, I mean, does  
11 the company now -- does it understand what comes  
12 under the Commission's jurisdiction with regard to  
13 acquisitions, transfers of assets and so forth, and  
14 is it prepared to submit future transactions to the  
15 Commission for approval?

16 MR. FINNIGAN: You mean future developer  
17 line extensions?

18 JUDGE HENDRICKS: Yes, those --

19 MR. FINNIGAN: The answer is, of the same  
20 type of contract that is involved here, yes.

21 JUDGE HENDRICKS: Yes.

22 MR. FINNIGAN: Okay. I mean, you've got a  
23 wide -- you can't just say that we'll submit all  
24 contracts, because there are clearly some contracts  
25 the Commission has jurisdiction and some it doesn't.

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1 MS. TENNYSON: The purchase of systems.

2 JUDGE HENDRICKS: Only those which --

3 MR. FINNIGAN: Purchase of systems, that's  
4 fine, yes.

5 JUDGE HENDRICKS: And is the penalty  
6 suspension here, is that contingent on -- and I don't  
7 know that I saw this in the settlement itself, but is  
8 that also contingent on compliance with 80.24 RCW,  
9 which I think is the payment of regulatory fees? Is  
10 that -- was that an issue in this?

11 MS. TENNYSON: No, that was not an issue in  
12 this case, and what we -- we did list out the  
13 particular sections that we were concerned with  
14 compliance, and I think the continued payment of  
15 regulatory fees, it was assumed that that would  
16 occur.

17 JUDGE HENDRICKS: Yeah.

18 MS. TENNYSON: But we did not make it  
19 specifically contingent upon that.

20 JUDGE HENDRICKS: Okay. So that is the  
21 more general question, just to clarify, that the  
22 issues that are resolved by the settlement agreement  
23 are only those that occurred with regard to these  
24 statutory provisions. There's no others that might  
25 have been included and weren't?

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1 MS. TENNYSON: In terms of triggering  
2 payment of the penalty only, these are the ones we're  
3 looking at.

4 JUDGE HENDRICKS: Okay.

5 JUDGE RENDAHL: Just to clarify, on the  
6 bottom of page two, the second to last sentence, the  
7 parties further agree that the payment of the penalty  
8 will be suspended contingent on the company's  
9 compliance with WUTC statutes and rules.

10 And at first reading, it appeared to me all  
11 statutes and rules, but looking further, it appears  
12 that the suspension and contingency is only on those  
13 two statutes and five WACs that are listed. Is that  
14 the parties' intention, that if there is some other  
15 violation of some other rule by the company, it  
16 wouldn't necessarily trigger the end of the  
17 suspension of payment of the fees. There may be  
18 other --

19 MS. TENNYSON: There would be other  
20 remedies.

21 JUDGE RENDAHL: -- actions that would be  
22 taken by Staff.

23 MR. FINNIGAN: Yes.

24 MS. TENNYSON: That's correct.

25 JUDGE RENDAHL: So only violations of these

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1 two statutes and these five WACs are intended to  
2 trigger a change in the suspension to make penalties  
3 due and payable?

4 MS. TENNYSON: That is correct.

5 MR. FINNIGAN: That is correct.

6 MS. RENDAHL: Thank you.

7 JUDGE HENDRICKS: Also, with regard to the  
8 second to last paragraph on page two, in the last two  
9 sentences, it provides that -- it says the company  
10 must provide the Commission Staff with a list of  
11 names, addresses of customers to whom the letter is  
12 sent, and it also discusses providing Staff with the  
13 summary of the refunds and credits. And I'm  
14 wondering, did the parties mean, rather, that those  
15 will be submitted to the Commission itself?

16 MS. TENNYSON: Well, submissions to the  
17 Commission are done to the attention of Carole  
18 Washburn. What we were looking at is, so that the  
19 Water Division Staff could look -- could, if they  
20 chose, contact individuals to make sure they got the  
21 letter and that they could then review the  
22 information provided after the refunds were made.

23 MR. FINNIGAN: In essence, the concept was  
24 that the follow up on this item would be delegated to  
25 Commission Staff, and so the reports would be

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1 submitted to the Commission Staff and they would work  
2 directly with the company without having necessarily  
3 to go to any sort of formal process through a  
4 continuation of this docket.

5 JUDGE RENDAHL: I think the concern was  
6 just that the Staff -- and that sometimes information  
7 is provided directly to Staff, as opposed to through  
8 the Commission's secretary, so that clarifies that.

9 MR. FINNIGAN: Yeah.

10 MS. TENNYSON: I might add it was not our  
11 intention that it be presented or approved or  
12 anything by the Commission, was the point.

13 MR. FINNIGAN: That's correct.

14 JUDGE RENDAHL: So it's not in the nature  
15 of any sort of compliance filing; it's just  
16 information to be provided to the Commission.

17 MS. TENNYSON: That's correct.

18 JUDGE HENDRICKS: For the Staff.

19 MS. TENNYSON: That's correct.

20 JUDGE HENDRICKS: Are there any other  
21 comments?

22 MS. TENNYSON: I don't believe we have any.

23 JUDGE HENDRICKS: Ann, do you have  
24 anything?

25 JUDGE RENDAHL: I have one other question,

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1 and it has to do with the paragraph about the refund.  
2 I was not clear, in reading the settlement agreement,  
3 the exact purpose for providing the refund. Did that  
4 relate to the ready to serve charge or did that  
5 relate to just part of the settlement that was  
6 reached in resolving the -- resolving whether the  
7 tariff rates that -- or that the rates that the  
8 company's charging for the systems that are coming  
9 into Tall Timbers, that that resolves the parties'  
10 issues on that issue?

11 MS. TENNYSON: It is both of those. I  
12 mean, it was both resolving any and all issues  
13 relating to whether or not the systems were added at  
14 an appropriate time and whether the customers on  
15 those were appropriately charged a tariff rate or not  
16 a tariff rate and ready to serve charges that were  
17 contained in documents not filed or approved by the  
18 Commission.

19 JUDGE RENDAHL: So it doesn't apply  
20 specifically to ready to serve; it's a part of the  
21 global settlement that was reached between the  
22 parties?

23 MS. TENNYSON: Yes.

24 MR. FINNIGAN: That's how I view it.

25 JUDGE HENDRICKS: The next matter is



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1 whether the parties wish to waive the initial order  
2 in this and go straight to a Commission decision. On  
3 the record.

4 MR. FINNIGAN: The company's willing to  
5 waive an initial order.

6 MS. TENNYSON: Yes, Staff is, as well.

7 JUDGE HENDRICKS: Okay.

8 JUDGE RENDAHL: I have one or two further  
9 questions. Has this settlement agreement or have the  
10 customers been notified of the settlement agreement  
11 by either the company or any other means?

12 MS. TENNYSON: I don't believe they have.

13 MR. FINNIGAN: No, other than those  
14 customers that were on the interested party list, I  
15 assume, got notice of this proceeding.

16 JUDGE RENDAHL: Okay.

17 MR. FINNIGAN: So through the normal notice  
18 process that's established. If they chose to notify  
19 the Commission that they wanted to hear about things,  
20 they would have received notice from the Commission  
21 that this hearing was taking place.

22 JUDGE RENDAHL: Okay. I think that's all I  
23 have.

24 MS. TENNYSON: Just for your information,  
25 we did not have any interested parties who have

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1 contacted us about wanting to be -- I don't know  
2 whether there is an official list in the Records  
3 Center, but we are not aware of any parties  
4 interested in attending the hearing or anything.

5 JUDGE RENDAHL: There wasn't any active  
6 customer base involved in the process?

7 MS. TENNYSON: No.

8 JUDGE HENDRICKS: Okay. Then is there  
9 anything else to come before the Commission today?

10 MR. FINNIGAN: No.

11 MS. TENNYSON: Staff has nothing.

12 JUDGE HENDRICKS: Thank you for attending.  
13 The hearing is adjourned.

14 (Proceedings adjourned at 2:34 p.m.)

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