

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND)	DOCKET UW-110054
TRANSPORTATION COMMISSION)	
)	ORDER 05
Complainant,)	
)	FINAL ORDER REJECTING
v.)	TARIFF SHEETS, ACCEPTING IN
)	PART, REJECTING IN PART
RAINIER VIEW WATER)	SETTLEMENT AGREEMENT,
COMPANY, INC.,)	REQUIRING COMPLIANCE
)	FILING
Respondent.)	
)	
.....)	

Synopsis: The Commission rejects tariff sheets filed by Rainier View Water Company, Inc., (Rainier View) on January 4, 2011, revised on January 24, 2011, which would have imposed facilities charges on all future customers in Southwood/Sound water system totaling \$6,480 and on all future customers of other water systems in the amount of \$1,210. The Commission instead accepts that portion of the Settlement Agreement between Rainier View and the Commission’s regulatory staff that authorizes Rainier View to assess a general facilities charge (GFC) on all future customers. The Commission rejects the Lakewood Pipeline Surcharge (LPS) and Lakewood Pipeline Facilities Charge (LPFC), as these fees are proposed in the Settlement Agreement, because the parties did not demonstrate the public need of either the LPS or the LPFC. The Commission directs the parties to respond within ten days of service of the Order as to how they wish to proceed.

SUMMARY

1 **NATURE OF PROCEEDING.** On January 4, 2011, Rainier View Water Company, Inc. (Rainier View or Company) filed with the Washington Utilities and Transportation Commission (Commission) revisions to its currently effective Tariff WN U-2, designated as Original Sheet No. 56. The filing, which adds a facilities charge schedule to the Company’s tariff, was prompted by a request from the Commission. Rainier View typically assessed facilities charges in its Line Extension

Agreements.¹ The proposed tariff assessed a facilities charge on all applicants requesting water service from Rainier View in the amount of \$1,702, with the exception of applicants in the Southwood/Sound water system who would be assessed \$8,640.² The Company explained that the higher rate for new residents in the Southwood/Sound water system was the result of expected growth in that area necessitating the construction of a new water main connecting Rainier View directly to the Lakewood Water District (LWD).³ On January 24, 2011, the Company filed revised tariff sheets modifying the proposed facilities charges so that future customers of the Southwood/Sound water system would pay \$6,480⁴ and future customers of all other water systems would pay \$1,210.

- 2 On April 6, 2012, Rainier View and the Commission's regulatory staff (Commission Staff or Staff)⁵ filed a Settlement Agreement, which is attached to this Order as Appendix A, and whose terms and conditions purport to resolve all of the issues in this matter. The Settlement Agreement proposes three charges: 1) a general facilities charge (GFC) in the amount of \$1,549 for a ¾ inch or smaller meter that would be imposed on all new customers to Rainier View's water systems;⁶ 2) the Lakewood Pipeline Surcharges (LPS), two monthly surcharges that the settling parties designed

¹ *Washington Utilities and Transportation Commission v. Rainier View Water Company, Inc.*, Docket UT-110054, Original Tariff Filing at 1 (January 4, 2011).

² *Id.* at 3. In its initial filing, Rainier View argued that Southwood/Sound water system applicants should pay a higher facilities charge as the expected customer growth in that region has necessitated the new Lakewood water main. *Id.* at 1.

³ *Id.* at 1.

⁴ This amount includes the general facilities charge of \$1,210 and an additional \$5,270 per equivalent residential unit (ERU). Order 01, Complaint and Order Suspending Tariff Revision and Approving Revised Rates on a Temporary Basis, Subject to Refund, ¶ 2.

⁵ 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 the proceeding with the regulatory staff, or any other party, without giving notice and opportunity for all parties to participate. See RCW 34.05.455.

⁶ Settlement Agreement, ¶ 14-15. The GFC would increase uniformly for meters larger than ¾ inch based on factors published by the American Water Works Association (AWWA). See Attachment A, Settlement Agreement. Rainier View typically assessed this charge on all new customers in executed contracts. The GFC is not related to the Lakewood Pipeline project.

to cover costs associated with Phase 1 and Phase 2 of the Lakewood Pipeline project, and would be assessed on all current and future Rainier View customers;⁷ and 3) a Lakewood Pipeline Facilities Charge (LPFC) assessed on all new customers in Rainier View's service territory in the amount of \$5,756 for a ¾ inch or smaller meter.⁸

3 **PARTY REPRESENTATIVES.** Michael Fassio, Assistant Attorney General, Olympia, Washington, represents the Commission Staff. Richard A. Finnigan, Attorney at Law, Olympia, Washington, represents Rainier View.

MEMORANDUM

I. Background and Procedural History

4 On January 4, 2011, Rainier View filed revisions to its currently effective Tariff WN U-2, designated as Original Sheet No. 56.⁹ The Commission suspended operation of the tariff sheets in Order 01, entered on January 31, 2011, and convened a prehearing conference on April 28, 2011, before Administrative Law Judge Marguerite E. Friedlander.

5 On May 2, 2011, the Commission entered Order 02 setting forth the procedural schedule. Thereafter, the parties requested that the Commission hold the procedural schedule in abeyance so they could devote their attention to ongoing settlement negotiations.

6 On April 6, 2012, the parties filed a Settlement Agreement and Narrative Supporting Settlement Agreement.¹⁰ The Company agreed to fully waive any suspension period.¹¹

⁷ The parties request that the Commission set the Phase 1 surcharge at \$2.00 per month. Settlement Agreement, ¶ 27. The Phase 2 surcharge has been tentatively calculated at \$5.40 per month. *Id.*

⁸ *Id.*, ¶¶ 41-42. As with the GFC, the LPFC will increase incrementally for meters larger than ¾ inch based on size factors published by the AWWA.

⁹ Rainier View filed revisions to its tariff filing on January 24, 2011.

¹⁰ Initially, neither Staff nor Rainier View filed testimony in support of the Settlement Agreement.

- 7 On May 30, 2012, the Commission issued eleven bench requests to Rainier View and Commission Staff seeking more information on issues raised within the Settlement Agreement, including, but not limited to, Staff's cost savings analysis of the projected cost of water from the Company's current source of the commodity, Tacoma Water,¹² as compared to the projected cost of water from Rainier View's preferred water source, the LWD. The bench requests also sought information on how the parties calculated the surcharges Rainier View argues would pay for the construction of the Lakewood Pipeline.
- 8 On July 31, 2012, the Commission issued four additional bench requests to Rainier View and Staff. These bench requests sought details of the Company's contribution, if any, to the construction of the Lakewood Pipeline, as well as specifics on the construction loan Rainier View has proposed obtaining in order to finance the cost of the project. The Commission further inquired into the extent to which Rainier View negotiated with Tacoma Water for lower water rates prior to seeking approval of recovery of \$16.5 million in construction costs for the Lakewood Pipeline.
- 9 The Commission convened a settlement hearing on August 14, 2012, to elicit additional information from the parties as to whether the Settlement Agreement is in the public interest. To that end, the Commission orally requested responses from the parties in the form of two additional bench requests.
- 10 On August 22, 2012, the Commission sent correspondence to Tacoma Water in order to ascertain the negotiability of its water rates. On September 10, 2012, Tacoma Water responded, stating that Tacoma ratepayers had invested significantly in source capacity, treatment, and infrastructure.¹³ Tacoma Water stated that it "is currently performing a comprehensive evaluation of [its] approach to wholesale water sales

¹¹ Settlement Agreement, ¶ 9.

¹² The Tacoma Public Utility Board, whose members are appointed by the Tacoma City Council, is the governing body for Tacoma Public Utilities, which consists of Tacoma Water, Tacoma Power, and Tacoma Rail. For simplicity's sake, we will cite to Tacoma Water when referring to the Tacoma municipal water purveyor.

¹³ Letter from Linda A. McCrea, Water Superintendent, Tacoma Water, to David W. Danner, Executive Director and Secretary, Washington Utilities and Transportation Commission, at 1 (September 10, 2012).

with all Wholesale customers.”¹⁴ Wholesale customers, in Tacoma Water’s perception, are underutilizing their capacity and are instead building new capacity development (e.g., new transmission infrastructure).¹⁵ Even so, Tacoma Water asserted that it is willing “to discuss potential opportunities to meet both our own objectives, and optimally, those of our Wholesale customers to determine where and how we might reach mutually beneficial solutions.”¹⁶

- 11 Rainier View responded to Tacoma Water’s correspondence on September 17, 2012. The Company points to Tacoma Water’s acknowledgement that other wholesale customers are also building new infrastructure to circumvent Tacoma Water’s high rates.¹⁷ In addition, Rainier View contends that Tacoma Water’s decision to modify its wholesale rates will be decided on political grounds and that the municipality’s ratepayers, not wholesalers, will be Tacoma Water’s primary concern in setting wholesale rates in the future.¹⁸ The Company even speculates that, by building the Lakewood Pipeline and circumventing Tacoma Water, the two municipalities might begin to compete for Rainier View’s business.¹⁹ Finally, Rainier View asserts that additional capacity would allow the Company to offline some of its shallow wells that are in danger of pollutant exposure.²⁰

¹⁴ *Id.*

¹⁵ *Id.*, at 1-2.

¹⁶ *Id.*, at 2.

¹⁷ Letter from Richard A. Finnigan, attorney, on behalf of Rainier View, to David Danner, Executive Director and Secretary, Washington Utilities and Transportation Commission, at 1 (September 17, 2012).

¹⁸ *Id.*, at 1-2.

¹⁹ *Id.*, at 2

²⁰ *Id.*

II. Discussion and Decisions

A. Introduction

12 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.”

13 Thus, the Commission considers the individual components of the Settlement Agreement under a three-part inquiry. We ask:

- Whether any aspect of the proposal is contrary to law.
- Whether any aspect of the proposal offends public policy.
- Whether the evidence supports the proposed elements of the Settlement Agreement as a reasonable resolution of the issue(s) at hand.

14 The Commission must determine one of three possible results:

- Approve the proposed settlement without condition.
- Approve the proposed settlement subject to condition(s).
- Reject the proposed settlement.

15 Rainier View and Staff filed a Settlement Agreement purporting to resolve all of the outstanding issues in this matter. The parties agreed to add three charges to Rainier View’s tariff: 1) a GFC assessed against all new customers on Rainier View’s water system; 2) two surcharges, known collectively as the LPS, billed monthly to all new and existing customers for costs associated with the Lakewood Pipeline project; and 3) an LPFC assessed against all new customers on Rainier View’s water system to service expenses associated with the Lakewood Pipeline project. We, in turn, address each of these proposed charges below.

B. General Facilities Charge

- 16 The GFC is a fee the Company has assessed numerous times in the past through its Line Extension Agreements.²¹ It is separate and apart from any monies the parties are proposing to collect to fund the Lakewood Pipeline project. Rainier View had previously brought each individual agreement to the Commission for approval, despite the contracts' standardization.²² The Company states that the Commission had requested it file a schedule to incorporate the GFC in its tariff.²³ Rainier View asserts that the funds received from the GFC, like the facilities charge in its previous Line Extension Agreements, are necessary for "additional supporting infrastructure"²⁴ such as "equipment and facilities needed for source, treatment, and transmission on all water systems,"²⁵ and would continue to be assessed on all new customers without expiration.²⁶
- 17 The existing GFC has remained unchanged since first calculated in 1998. At that time, the Company contracted with Apex Engineering, PLLC (Apex) to study the GFC and determine the "components of the infrastructure to be built with the proceeds"²⁷ At that time, Apex calculated a cost of \$1,572 per ERU.²⁸ Rainier View's 30 percent contribution to this cost brought the total GFC down to \$1,210 per ERU.²⁹

²¹ Original Tariff Filing, at 1.

²² *Id.*

²³ *Id.*

²⁴ Staff's Response to Bench Request No. 9, at 2.

²⁵ Original Tariff Filing, at 1. See Narrative Supporting Settlement Agreement, ¶ 5.

²⁶ Narrative, ¶ 11 (citing Settlement Agreement, ¶¶ 14, 20). See Staff's Response to Bench Request No. 9, at 2.

²⁷ Staff's Response to Bench Request No. 1.a.

²⁸ *Id.*

²⁹ *Id.*

- 18 In 2010, Rainier View reexamined the GFC and updated the cost of the infrastructure components that go into the fee.³⁰ Rainier View's proposed tariff provides that the GFC would be assessed at \$1,549 for ¾ inch or smaller meters and increase proportionally for larger meters.³¹ The full infrastructure cost per new residential equivalent connection has been calculated by the Company at \$2,213.³² In support of the proposed increase in GFC, Rainier View has included a spreadsheet listing additional source development, treatment, storage, transmission mains, and booster pumping facility costs the Company expects to incur in the coming years.³³ That said, Rainier View agrees to again invest on average at least 30 percent of the total infrastructure costs for projects involving the use of GFC funds to preserve the Company's investment ratio, which reduces the GFC to \$1,549 per ERU.³⁴
- 19 *Commission Determination.* The Commission has approved numerous contracts executed by Rainier View containing the GFC, albeit in a slightly smaller amount than that proposed by the settling parties. The GFC, as stated in the Settlement Agreement, would be plainly listed in the Company's tariff and thus save the Commission the unnecessary administrative time and effort of approving virtually identical contracts on a regular basis. Even the increase in the total GFC suggested by the settling parties is not out-of-line given the twelve years that have passed since the fee was last examined and the relatively small increase proposed. The GFC is reasonable, supported by substantial evidence, and should be approved.

C. Lakewood Pipeline Surcharge and Lakewood Pipeline Facilities Charge

- 20 The settling parties propose construction of the Lakewood Pipeline in two phases. Phase 1 would involve engineering, design, and procuring construction documents and site acquisitions. Phase 2 would involve the construction of the pipeline as well as testing and in-service placement.³⁵ Rainier View and Staff estimate Phase 1

³⁰ *Id.*

³¹ Narrative, ¶ 11 (citing Settlement Agreement, ¶¶ 14, 20).

³² Staff's Response to Bench Request No. 1.a., at 1.

³³ See Staff's Response to Bench Request No. 1, Attachment 1.a.-2 provided by Rainier View.

³⁴ Settlement Agreement, ¶ 18.

³⁵ Settlement Agreement, ¶ 27.

expenses for the project at \$1,173,907 and Phase 2 construction costs at \$11,949,719, with Phase 2 interest costs projected at \$3,427,043.³⁶ The completed Lakewood Pipeline, then, is projected to cost ratepayers approximately \$16,550,669.

- 21 The settling parties propose two ratepayer-funded mechanisms to pay for the project: 1) the LPFC, a facilities charge in the amount of \$5,756 for a ¾ inch or smaller meter³⁷ that would be assessed on all new customers throughout Rainier View's service territory;³⁸ and 2) the LPS, which would be divided into two phases, similar to the parties' proposed construction phases.
- 22 During Phase 1 of the LPS, Rainier View would collect a \$2.00 per month surcharge on all current and future customers.³⁹ This surcharge would continue until Phase 1 planning costs are collected in full.⁴⁰ While the parties anticipate a Phase 2 LPS, and have even calculated the Company will need to collect \$5.40 per month to service the estimated construction and interest costs, Rainier View is not requesting that the Commission approve a Phase 2 surcharge at this time.⁴¹
- 23 Rainier View and Staff argue that the Lakewood Pipeline, (and thus, the two ratepayer-funding mechanisms to pay for the new pipeline), is needed for two reasons: 1) The Company's current source of water, Tacoma Water, is grossly overpriced in comparison to the water rates the LWD has offered Rainier View,⁴² and

³⁶ *Id.*

³⁷ The LPFC increases incrementally with the size of the customer's meter.

³⁸ The LPFC would "expire after future customers representing 2,280 ERUs have paid the LPFC." Narrative, ¶ 20 (citing to Settlement Agreement, ¶ 48-49).

³⁹ Narrative, ¶ 19.

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² Staff cites Tacoma Water's rates for winter months and summer months in 2011 as \$1.707 per hundred cubic feet and \$2.134 per hundred cubic feet, respectively. Staff's Response to Bench Request No. 3, Attachment 3.b.1.-1, at 2. These rates are for wholesale constant use customers. Rainier View's Response to Bench Request No. 3, Attachment 3.d.-2, at 18. For wholesale summer season peaking customers, Tacoma Water's rate for winter and summer months in 2011 is \$3.206. *Id.*

2) the Company expects customer growth in the next ten years to outpace the water capacity supplied by Tacoma Water.⁴³

1. Tacoma Water's rates versus LWD's rates

24 The primary conclusion Commission Staff drew from its analysis of the Company's decision to pursue the Lakewood Pipeline is that wholesale water purchases are significantly more expensive from Tacoma Water than from the LWD.⁴⁴

25 In 2009, the Company signed a long-term wholesale water contract with the LWD.⁴⁵ Later that year and into 2010, Rainier View spent previously collected funds to build a shared pipeline between the LWD and Tacoma Water.⁴⁶ This intertie allows Rainier View to take delivery of additional water from the LWD through a wheeling contract with Tacoma Water.⁴⁷ The water wheeling agreement between the Company and Tacoma Water provides that Rainier View must purchase 100 percent of the previously agreed water from Tacoma Water prior to wheeling any LWD water.⁴⁸ In addition, the Company must pay a wheeling charge to Tacoma Water in the amount of \$0.189 per hundred cubic feet for delivery of the LWD water to the Rainier View water system.⁴⁹ The parties contend that the wheeling charge, combined with the

In comparison, Staff reports the LWD's rates for winter and summer months in 2011 as \$0.61 per hundred cubic feet and \$0.81 per hundred cubic feet, respectively. Staff's Response to Bench Request 3, Attachment 3.b.1.-3, at 1. The LWD's rates do not appear to differentiate between constant and peaking customers. Ms. Amy White, on behalf of Commission Staff, also states that "[t]he primary conclusion Staff drew from the analysis relevant to the decision to fund the Lakewood Pipeline Project is that wholesale water purchases are significantly more expensive from [Tacoma Water] than from the [LWD]." Staff's Response to Bench Request No. 5, Attachment 5.c, at 5.

⁴³ Rainier View appears to have contradicted itself on this subject as will be discussed later in this Order.

⁴⁴ Staff's Response to Bench Request No. 5, Attachment 5.c., Testimony of Amy White, at 5.

⁴⁵ Narrative Supporting Settlement Agreement, ¶ 12.

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*, ¶ 13.

⁴⁹ *Id.* See Rainier View's Response to Bench Request No. 3, Attachment 3.d.-1, ¶ 4.

existing high water rates and the requirement that Rainier View take 100 percent of the previously agreed water make the Tacoma Water commodity very expensive.⁵⁰

26 Commission Staff performed a comparative analysis of the cost of Tacoma Water's commodity, with wheeling charges, and the cost of water from LWD.⁵¹ In preparing its analysis, Staff reviewed each municipality's rates and adjusted those rates going forward based on historical or pre-determined increases.⁵² Commission Staff projects an annual rate increase for Tacoma Water of 12.055 percent through the year 2100 using "an inflation factor developed from looking at [the City of Tacoma] ordinances and ...based on actual changes in [the City of Tacoma's] rates."⁵³ Staff then compared these projected rates to its projections of the LWD rates through the same time period. Based on communication from the LWD, Staff projected an inflationary increase in rates of 7.3 percent every three years.⁵⁴ The parties note that, not only are Tacoma Water rates higher than the rates of the LWD, future increases for Tacoma Water wholesale customers are projected to occur more often and at greater levels.⁵⁵

⁵⁰ *Id.* The parties assert that Tacoma Water's rates are set by ordinance and have consistently increased over the last several years. Rainier View's Response to Bench Request No. 3, Attachment 3.b.1-3 (Rainier View's analysis of the Tacoma Water rates from 2009 to 2012) and Staff's Response to Bench Request No. 3, Attachment 3.a.-1 (Staff's comparative analysis of rates offered by Tacoma Water and LWD from 2010 to 2100). Rainier View notes that Tacoma Water has historically assessed the Company the more favorable constant use wholesale water rate instead of the higher peaking rate but the municipality intends to re-examine Rainier View's rates and may need to "more stringently enforce the categorization of wholesale customers between these two groups in order to incentivize year-round consumption" in the future. Rainier View's Response to Bench Request No. 3, Attachment 3.b.1.-1, at 1-2.

⁵¹ *Id.*, ¶ 14. See Staff's Response to Bench Request No. 3.

⁵² *Id.*

⁵³ Staff's Response to Bench Request No. 5.c., Testimony of Amy White, 3:15-18. Given this vague description, we still have no idea how Staff arrived at this rate of inflation.

⁵⁴ Staff's Response to Bench Request No. 17, Attachment 1, at 1. We are left scratching our heads as to the 7.3 percent increase in rates every third year when the LWD's own correspondence indicated that it assumes an annual increase of 3 percent from 2012 to 2018.

⁵⁵ *Id.*

Year	<i>City of Tacoma</i>				<i>Lakewood Water District</i>	
	< 2.5 Summer times Winter		> 2.5 Summer times Winter		Tri-annual Inc.	7.3%
	Annual Increase	12.055%	Annual Increase	12.055%		
	October -May Winter	June-Sept Summer	October -May Winter	June-Sept Summer	October -May Winter	June-Sept Summer
2010	\$ 1.48	\$ 1.85	\$ 2.77	\$ 2.77	\$ 0.65	\$ 0.81
2011	1.71	2.13	3.21	3.21	0.65	0.81
2012	1.98	2.48	3.73	3.73	0.70	0.87
2013	2.22	2.78	4.18	4.18	0.70	0.87
2014	2.49	3.11	4.68	4.68	0.70	0.87
2015	2.79	3.49	5.24	5.24	0.75	0.93
2016	3.13	3.91	5.87	5.87	0.75	0.93
2017	3.51	4.38	6.58	6.58	0.75	0.93
2018	3.93	4.91	7.38	7.38	0.80	1.00
2019	4.40	5.50	8.27	8.27	0.80	1.00
2020	4.93	6.16	9.26	9.26	0.80	1.00
2021	5.53	6.91	10.38	10.38	0.86	1.07
2022	6.19	7.74	11.63	11.63	0.86	1.07
2023	6.94	8.67	13.03	13.03	0.86	1.07
2024	7.78	9.72	14.60	14.60	0.92	1.15
2025	8.71	10.89	16.36	16.36	0.92	1.15
2026	9.76	12.20	18.33	18.33	0.92	1.15
2027	10.94	13.67	20.55	20.55	0.99	1.24
2028	12.26	15.32	23.02	23.02	0.99	1.24
2029	13.74	17.17	25.80	25.80	0.99	1.24
2030	15.39	19.24	28.91	28.91	1.06	1.33
2031	17.25	21.56	32.39	32.39	1.06	1.33
2032	19.33	24.16	36.30	36.30	1.06	1.33
2033	21.66	27.07	40.67	40.67	1.14	1.42
2034	24.27	30.33	45.58	45.58	1.14	1.42
2035	27.19	33.99	51.07	51.07	1.14	1.42
2036	30.47	38.09	57.23	57.23	1.23	1.53
2037	34.14	42.68	64.12	64.12	1.23	1.53
2038	38.26	47.83	71.85	71.85	1.23	1.53
2039	42.87	53.59	80.52	80.52	1.31	1.64
2040	48.04	60.05	90.22	90.22	1.31	1.64
2041	53.83	67.29	101.10	101.10	1.31	1.64

Table 1- Comparison of cost of wholesale water per 100 cubic feet.
Excerpt from: Staff's Response to Bench Request No. 17, Attachment 1.

27 The settling parties contend that ratepayers will save money if the Company is authorized to build the Lakewood Pipeline and take water directly from the LWD. In fact, at first look, Commission Staff's comparative analysis appears to show that ratepayers will be paid back the cost of the pipeline, estimated at \$11,949,719,⁵⁶ through the cumulative savings of using the LWD water rather than the Tacoma Water's wholesale water as early as 2028,⁵⁷ or as late as 2032.⁵⁸ However, Rainier View and Staff did not include the project's Phase 1 estimated expenses of \$1,173,907 nor the estimated Phase 2 interest costs, projected at \$3,427,043. If included, the total estimated cost of the completed Lakewood Pipeline increases to \$16,550,669.⁵⁹ This more accurate estimate changes the payback period by an additional three years, to 2031 at the earliest,⁶⁰ or as late as 2035.⁶¹

⁵⁶ Settlement Agreement, ¶ 27.

⁵⁷ Staff's Response to Bench Request No. 17, Attachment, at 1. Staff calculates that Rainier View's ratepayers could recoup \$11,297,434 by 2028, eleven years after construction is projected to be completed, if Tacoma Water were to assess Rainier View the higher, peaking rate at the time construction of the Lakewood Pipeline is complete. *Id.* We are unsure how recouping \$11,297,434 would cover \$11,949,719 in construction costs. It would appear that recovery of this portion of the total pipeline cost would actually take place in 2029 at the earliest.

⁵⁸ According to Staff, the Company's ratepayers could cumulatively save \$11,282,953 by 2032 if Tacoma Water were to continue assessing the Company the more favorable constant use rate. Staff's Response to Bench Request No. 5, Attachment 5.c., Testimony of Amy White, at 4. Again, cumulative savings of \$11,282,953 by 2032 doesn't quite pay for the full \$11,949,719 the settling parties estimate will be needed for construction costs. Instead, it would seem these costs would be recouped under the more favorable constant use rate by 2033.

⁵⁹ *Id.*

⁶⁰ *Id.* Commission Staff estimate a cumulative savings of \$17,907,402 would be achieved by building the Lakewood Pipeline and taking LWD if we assume that Tacoma Water will charge Rainier View the more expensive, peaking rate. See Staff's Response to Bench Request No. 17, Attachment, at 1.

⁶¹ If Tacoma Water were to assess the more favorable, constant use rate, then Staff calculates Rainier View ratepayers would see a cumulative savings of \$17,195,612 by 3035.

28

We also note that, in addition to the commodity rates the LWD has contracted to charge Rainier View, the municipality also requires \$66,315 per year in fixed, capacity costs. Staff's comparison spreadsheet does not appear to take this annual cost into account,⁶² nor is it discussed by either party of the settlement.

Year	City of Tacoma		Lakewood		Lakewood savings compared to Tacoma			
	80,058	80,058	80,058		< 2.5 times		> 2.5 times	
	Annual Usage Cost				Annual	Cumulative	Annual	Cumulative
2010								
2011								
2012								
2013								
2014								
2015								
2016								
2017								
2018	\$ 389,483	\$ 675,712	\$ 79,517	\$ 309,966	\$ 309,966	\$ 596,195	\$ 596,195	
2019	383,826	664,123	80,717	303,109	613,075	583,406	1,179,601	
2020	429,805	743,892	81,934	347,871	960,946	661,957	1,841,558	
2021	481,327	833,277	89,242	392,085	1,353,031	744,035	2,585,593	
2022	539,060	933,437	90,588	448,471	1,801,502	842,849	3,428,441	
2023	603,752	1,045,671	91,955	511,797	2,313,299	953,717	4,382,158	
2024	676,243	1,171,436	100,156	576,087	2,889,386	1,071,280	5,453,438	
2025	757,473	1,312,361	101,667	655,806	3,545,192	1,210,694	6,664,132	
2026	848,495	1,470,275	103,201	745,294	4,290,487	1,367,074	8,031,206	
2027	950,490	1,647,226	112,405	838,085	5,128,572	1,534,821	9,566,027	
2028	1,064,781	1,845,508	114,101	950,680	6,079,251	1,731,407	11,297,434	
2029	1,192,849	2,067,692	115,822	1,077,026	7,156,278	1,951,870	13,249,304	
2030	1,336,355	2,316,662	126,152	1,210,203	8,366,481	2,190,509	15,439,813	
2031	1,497,162	2,595,644	128,055	1,369,106	9,735,587	2,467,588	17,907,402	
2032	1,677,353	2,908,258	129,987	1,547,366	11,282,953	2,778,270	20,685,672	
2033	1,879,267	3,258,557	141,581	1,737,687	13,020,640	3,116,976	23,802,648	
2034	2,105,522	3,651,085	143,716	1,961,805	14,982,445	3,507,368	27,310,016	
2035	2,359,051	4,090,932	145,885	2,213,167	17,195,612	3,945,047	31,255,063	
2036	2,643,144	4,583,802	158,896	2,484,248	19,679,860	4,424,907	35,679,970	
2037	2,961,483	5,136,089	161,293	2,800,190	22,480,050	4,974,796	40,654,765	
2038	3,318,199	5,754,953	163,726	3,154,473	25,634,523	5,591,227	46,245,992	
2039	3,717,917	6,448,421	178,329	3,539,588	29,174,111	6,270,093	52,516,085	
2040	4,165,820	7,225,487	181,019	3,984,801	33,158,913	7,044,468	59,560,553	
2041	4,667,719	8,096,228	183,750	4,483,969	37,642,882	7,912,479	67,473,031	

Table 2- Comparison of cost and cumulative savings of wholesale water.
Excerpt from: Staff's Response to Bench Request No. 17, Attachment 1.

⁶² Staff's Response to Bench Request No. 3, Attachment 3.b.2.-1.

- 29 *Commission Determination.* Rainier View and Staff have failed to provide adequate support in the evidentiary record for the LPS and the LPFC. The settling parties claim that the lower LWD rates justify the additional expense ratepayers will bear to build the Lakewood Pipeline, but even Staff admits that ratepayers will not break even on their investment in the pipeline for at least 19 years. If the Commission were to approve the LPS and the LPFC today, in 2012, existing customers would begin paying the \$2.00 per month LPS Phase 1 surcharge immediately, while new customers would also start paying at least \$5,756 per ERU to connect to the system. The best case scenario wouldn't have ratepayers reaching a savings of the full project costs, \$16,550,669, on the LWD rates until 2031.
- 30 Another difficulty with Staff's analysis is the LWD's fixed cost discussed in Attachment 3b.2-1 to Bench Request No. 3. The LWD clearly states that there will be a \$66,315 fixed charge per year. In examining Staff's spreadsheet, there is no indication that the \$66,315 per year capacity charge was factored into the true cost of the LWD rates, yet the Company will be expected to pay this amount to the municipality annually. Certainly, Rainier View would expect to recover this cost from ratepayers as soon as the Company began taking the LWD water in 2018. An increase in the LWD rates to include these fixed costs, however slight, pushes recovery through cumulative savings that much further into the future. Even if the fixed component had been included in the comparison, further discussion would be necessary to calculate the proper inflation factor to apply to the charge going forward.
- 31 Next, we come to the inflationary factors Staff used to project both Tacoma Water and the LWD rates into the next century. Staff assigned a 12.055 percent rate of inflation to Tacoma Water rates, but Staff has not presented a clear explanation as to how it arrived at this number. Furthermore, Staff inexplicably continues this factor, without variance, into the year 2100. The result is a projection that would have Tacoma Water rates in 2025 ranging from \$8.713 per hundred cubic feet at the low end, to as high as \$16.362 per hundred cubic feet. To say these estimates are a bit excessive is an understatement. At the same time Staff estimates Tacoma Water rates increasing yearly at 12.055 percent, it projects the LWD rates will continue on a 7.3 percent inflationary track every three years, despite the LWD only providing a 6 year schedule of rate increases, from 2012 to 2018, where it assumed 3 percent annual inflation. For the same time period Tacoma Water rates are projected above, in 2025, to range from \$8.713 to \$16.362 per hundred cubic feet, Staff projects the LWD rates

will range from \$0.92 to \$1.15 per hundred cubic feet.⁶³ As Staff knows, the further in time an analysis is calculated, the more tenuous and unreliable the findings become. It may have been more useful to assume in the long run both the LWD and Tacoma Water would be under the same inflationary pressures. Both utilities provide water to the same region with essentially the same types of customers. Neither Staff nor Rainier View has provided evidence to support the assumption that the LWD's 3 percent projected inflation will continue after 2018, nor that Tacoma Water will experience inflationary pressures at a rate of 12.055 percent annually, *ad nauseum*.

32 We would like to point to additional analysis performed by Rainier View, but the Company has provided scant support for its own proposal. Simply stating that ratepayers will save money on cheaper LWD water does not reasonably support a \$16.5 million investment by those same ratepayers, particularly since neither Staff nor the Company have produced reliable rate projections that indicate when ratepayers can expect to have recouped their \$16.5 million. While both Staff and Rainier View discuss the high marginal cost of using Tacoma Water, the record fails to provide any discussion of the average cost impact of either proposal.

33 With so much uncertainty remaining in Staff's calculations and lacking adequate supporting evidence from Rainier View, we simply cannot find this portion of the settlement in the public interest and cannot approve the LPS or the LPFC.

2. Tacoma Water capacity and expected growth

34 Rainier View argues that, "[i]n practicality, the available ERUs from the [Tacoma Water] agreement have been exhausted, so there will be no additional ERUs from the use of the [Tacoma Water] contract rights over the next five years."⁶⁴ Rainier View⁶⁵ and Staff⁶⁶ have subsequently backed away from this assertion.

⁶³ To further highlight the Commission's difficulty with the inflation assumption, when 2041 is considered, less than halfway into Staff's analysis, Tacoma Water's rates are expected to range from a low of \$54 to a high of \$101 per hundred cubic feet whereas the LWD's water is projected to cost between \$1.31 to \$1.64 per hundred cubic feet.

⁶⁴ Rainier View's Response to Bench Request No. 10.b.2.

⁶⁵ During the settlement hearing, the Company admitted that all of the new customer growth could be served through the Tacoma Intertie.

The full exchange between Mr. Douglas Fisher, on behalf of Rainier View, and Chairman Goltz is as follows:

35 Tacoma Water and Rainier View have been doing business for almost ten years. On March 12, 2003, the Commission approved Rainier View's requested recovery of costs associated with a proposed intertie to Tacoma Water (Tacoma Intertie).⁶⁷ Rainier View stated that the Tacoma Intertie was necessary to cover additional growth in the Southwood/Sound water system.⁶⁸ The total cost of the pipeline was \$12,603,256, including interest costs, collected from ratepayers over a ten year period.⁶⁹ Rainier View did not contribute any monies to the cost of this project,⁷⁰ and

CHAIRMAN GOLTZ: My question is, how many of those 2,228 [sic] new customers can you serve with water before you hit the peak of your Tacoma Intertie?

MR. FISHER: The—and just the intertie itself Tacoma water, not both the 3.5 – we would be allowed to take 3.5 million gallons through the Tacoma intertie once we – if we were meeting our 100 percent of Tacoma water.

CHAIRMAN GOLTZ: Right. In other words, you could serve all of the –

MR. FISHER: All the new customers would be served through that –

CHAIRMAN GOLTZ: Through the Tacoma intertie?

MR. FISHER: Through that intertie.

Tr. 65:23-66:10.

⁶⁶ Staff's Response to Bench Request No. 17, at 2 ("...it appears on an annual basis that there is sufficient unused water for the additional 2,280 ERUs who are the subject of this filing").

⁶⁷ *In the Matter of the Petition of Rainier View Water Company, Inc., Petitioner, for an Order Approving the Accounting Treatment of Amounts Received and Assets Obtained that Relate to the Contract to Purchase Wholesale Water from the City of Tacoma* (Rainier View's Accounting Petition Request), Docket UW-020827, Order Authorizing Accounting Treatment, ¶ 2 (March 12, 2003).

⁶⁸ *Id.* At least for the Southwood water system, Rainier View had utilized or committed to utilize all of its water rights issued by the Department of Ecology. *Id.*

⁶⁹ Rainier View stated the Tacoma Intertie expenses as such: 1) system upgrades required by Tacoma Water in the amount of \$772,000 (including \$477,000 for the intertie with associated plant and booster station and an additional \$295,000 for system upgrades); and 2) the right to purchase wholesale water from the municipality totaled \$9,083,498 with another \$2,747,758 in interest costs. *In the Matter of the Petition of Rainier View Water Company, Inc., Petitioner, for an Order Approving the Accounting Treatment of Amounts Received and Assets Obtained that Relate to the Contract to Purchase Wholesale Water from the City of Tacoma* (Rainier View's Accounting Petition Request), Docket UW-020827, Order Authorizing Accounting Treatment, ¶ 6 (March 12, 2003). See also, Rainier View's Accounting Petition, Docket UW-020827, at 8.

⁷⁰ See Rainier View's Accounting Petition Request, Docket UW-020827, Order Authorizing Accounting Treatment, ¶ 11 ("*The Company's petition, as amended, proposes that future developer contingency charges be the only rate mechanism to obtain the funds used to both*

instead, the expenses were paid for solely with a developer contingency charge in the amount of \$3,543 per ERU.⁷¹

- 36 When approved in 2003, the Tacoma Intertie was intended to provide 4,200 additional ERUs over a ten to fifteen year period to accommodate moderate growth in the Southwood/Sound water system.⁷² Under the Wholesale Water Agreement between Rainier View and Tacoma Water, the municipality agreed to reserve for delivery to Rainier View: 1,470,000 gallons per day (gpd) for average day use; 3,087,000 gpd for peak day use; and 2,932,650 gpd for four-day average peak use.⁷³
- 37 Now, Rainier View argues that its Southwood/Sound water system is again expected to grow over the next ten years, necessitating an additional water resource. Based on Pierce County growth estimates, Rainier View developed a Department of Health-mandated Comprehensive Water System Plan.⁷⁴ Using Pierce County Ordinance 2008-79s, the Washington State Office of Fiscal Management high, medium, and low projections for growth, and Pierce County's Vision 2040, Rainier View assumes its system will receive requests for 228 new ERUs annually for the next 10 years.⁷⁵
- 38 That said, from the time the original tariff revision was filed in January 2011 until execution of the Settlement Agreement in April 2012, 3 new customers or ERUs were connected to Rainier View's system.⁷⁶ In fact, Mr. Douglas Fisher, on behalf of Rainier View, testified at the August 2012 settlement hearing that, "[w]e've had no

service the related long-term obligation to Tacoma and to pay for building the intertie and Tacoma upgrade costs.)". (Footnote Omitted).

⁷¹ Rainier View's Accounting Petition, Exhibit 3, ¶ 8 (June 24, 2002). These fees did not include the existing Developer's Fee of \$1,210 per ERU under the Water System Extension Agreement. It is presumed that the developer would recoup both of these costs in the sale of the developed property to future Rainier Water ratepayers. See Oshie, Tr. 49:1-3.

⁷² *Id.*, ¶¶ 2, 3. See also Declaration of Jerry Wakefield, Exhibit 1 to the Petition for Accounting Order, Docket UW-020827, ¶ 2.

⁷³ Wholesale Water Agreement, Docket UW-020827, ¶ 8.

⁷⁴ Rainier View's Response to Bench Request No. 11. a.

⁷⁵ *Id.* See Narrative Supporting Settlement Agreement, ¶ 17.

⁷⁶ Narrative Supporting Settlement Agreement, n 9.

new developments in the past six months. I believe we had one or two last year.”⁷⁷ Mr. Fisher also acknowledged that none of the area developers were pushing for the Lakewood Pipeline build-out.

39 Lately, the Company has argued that the additional water source afforded by the Lakewood Pipeline would allow the Company to recharge or “...rest some wells that struggle in late summertime....”⁷⁸ Rainier View states that some of its wells are shallow and at risk of contamination issues, so the additional capacity provides backup water in the event the Company has to take its plant offline permanently.⁷⁹ In addition, Staff contends that there will be instances of peaking demand that may exceed the daily allowance from Tacoma Water, necessitating Tacoma Water wheeling water from the LWD to Rainier View at a significant cost.⁸⁰ Rainier View proposes that it use the lower cost LWD water for capacity and limit Tacoma Water’s product simply to peaking.⁸¹

40 *Commission Determination.* Rainier View’s primary argument in this matter is one of cost savings. Its claim that the Lakewood Pipeline would provide additional, much

⁷⁷ The full exchange between Mr. Fisher and Chairman Goltz is as follows:

CHAIRMAN GOLTZ: And that says on page 5, “Applying the yearly growth rate derived from the 2010-2020 growth rates from Southwood/Sound, above, RVWC” – I guess Rainier View Water Company – “can expect 8.9% growth over the next six years. This equates to approximately 228 ERUs” as residential – ERU stands for equivalent residential use – “per year for a total of approximately 1,365 new ERUs over six years.”

So that was 2010 to 2020, so we’re a little ways into that now. So where is Rainier View as an expansion over the last year? How many new customers do you have in this area?

MR. FISHER: I believe we’ve had – actually looked up in the last six months, we’ve had 22 new – most of it was commercial customers request service. We’ve had no new developments in the past six months. I believe we had one or two last year.

CHAIRMAN GOLTZ: So these that you just mentioned, would those count as part of the 2,228 [sic] new customers?

MR. FISHER: No, not at this point in time.

Tr. 21:7-25.

⁷⁸ Fisher, Tr. 31:3-4.

⁷⁹ Finnigan, Tr. 44:2-5.

⁸⁰ Staff’s Response to Bench Request No. 17, at 2.

⁸¹ Rainier View’s Response to Bench Request No. 3(d).

needed capacity was given less attention by the settling parties. Even when it was discussed, Staff and the Company agreed that the existing Tacoma Intertie could provide enough water for the additional 2,280 ERUs Rainier View expects. While the Company asserts that some of its wells are shallow and risk contamination without the extra LWD capacity, Rainier View has not presented any support for this claim. Furthermore, we expect that, should contamination become a viable threat, the Company will not bring it up in the middle of a rate case.

- 41 It is disappointing that the settling parties would propose that the Tacoma Intertie, including all \$12.6 million of ratepayer investment that was necessary to construct it, should become exclusively a peaking resource under the parties' proposal. This expensive ratepayer asset is now intended to take a backseat to another, even more expensive project that may or may not save the ratepayers money twenty or so years from now. We cannot support such a speculative, ill-supported proposal, and thus reject those portions of the settlement detailing the LPS and LPFC fees.
- 42 As we are rejecting a majority of the settlement, we recognize that the parties have three procedural routes from which to choose.
- 43 First, upon further reflection and analysis, the parties may present new evidence sufficient to demonstrate that the Lakewood Pipeline would be cost-effective over a reasonable period of operation. At the same time, the parties could supplement the existing record to clarify and more fully explain their opinions. In short, the parties would be allowed an opportunity to cure the deficiencies we identify and demonstrate that the settlement is in the public interest. We stress, however, the parties need to do a better job of justifying the economics of the settlement, including a realistic forecast of expected growth sufficient to justify any investment to expand capacity. We will also require more information from Tacoma Water about the availability (or lack of availability) of service over the existing Tacoma Intertie, and a detailed comparison of the Intertie's expected costs when compared with the proposed Lakewood facility.
- 44 Second, should the settling parties disagree with our decision on the settlement, we can proceed to hearing. If the parties wish to contest any portion of this Order, a prehearing conference will be convened in order to establish a hearing and procedural schedule.

45 Finally, the Company could withdraw its filing, without prejudice to refiling at a later
time. That would enable informal discussions, in compliance with the Open Public
Meetings Act, that may lead to alternate strategies for resolution.

46 We direct the parties to report back to the Commission within 10 days on how they
wish to proceed. This time frame is in keeping with the deadline the parties have for
requesting reconsideration.

FINDINGS OF FACT

47 Having discussed above in detail the evidence received in this proceeding concerning
all material matters the Commission now makes and enters the following summary of
those facts, incorporating by reference pertinent portions of the preceding detailed
findings:

- 48 (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, practices, and accounts of public service companies, including
water companies.
- 49 (2) Rainier View Water Company, Inc., (Rainier View) is a “public service
company” and a “water company” as those terms are defined and otherwise
are used in Title 80 RCW. Rainier View is engaged in Washington State in
the business of supplying utility services and commodities to the public for
compensation.
- 50 (3) The rates proposed by tariff revisions Rainier View filed on January 4, 2011, and
revised on January 24, 2011, which were suspended by prior Commission order,
are not fair, just, reasonable, or sufficient.
- 51 (4) Rainier View’s existing tariff does not contain its general facilities charge
(GFC), nor is the GFC, as currently assessed by contract, sufficient to support
infrastructure, including, but not limited to water system source, treatment,
transmission, pumping, and storage infrastructure.
- 52 (5) Rainier View and the Commission’s regulatory staff filed a Settlement
Agreement on April 6, 2012, which is attached to this Order as Appendix A.

- 53 (6) The Settlement Agreement proposes a GFC, a Lakewood Pipeline Surcharge (LPS), and a Lakewood Pipeline Facilities Charge (LPFC)
- 54 (7) The Commission should retain jurisdiction over the subject matters and the parties to this proceeding to effectuate the terms of this Order.

CONCLUSIONS OF LAW

55 Having discussed above all matters material to this decision, and having stated its findings, the Commission now makes the following summary conclusions of law, incorporating by reference pertinent portions of the preceding detailed conclusions:

- 56 (1) The Washington Utilities and Transportation Commission has jurisdiction over the subject matter of, and parties to, these proceedings. Title 80 RCW.
- 57 (2) The rates proposed by tariff revisions filed by Rainier View on January 4, 2011, revised on January 24, 2011, and suspended by prior Commission order, were not shown to be fair, just, reasonable, or sufficient and should be rejected. RCW 80.28.010.
- 58 (3) Rainier View requires relief with respect to its GFC.
- 59 (4) The GFC, as set in the Settlement Agreement, results in rates that are fair, just, reasonable, and sufficient.
- 60 (5) The Commission should accept that portion of the Settlement Agreement detailing the GFC.
- 61 (6) The evidentiary record does not support the settling parties' LPS and LPFC as presented.
- 62 (7) The Settlement Agreement, absent the LPS and the LPFC, would result in rates that are fair, just, reasonable, and sufficient, and are neither unduly preferential nor discriminatory.
- 63 (8) The Commission should reject that portion of the Settlement Agreement addressing the LPS and the LPFC.

- 64 (9) The rates, terms, and conditions of service that will result from this Order are fair, just, reasonable, and sufficient. RCW 80.28.010; RCW 80.28.020.
- 65 (10) The rates, terms, and conditions of service that will result from this Order are neither unduly preferential nor discriminatory. RCW 80.28.020.
- 66 (11) The Commission should require the settling parties to respond in writing within ten days from the service of this Order stating how they wish to proceed.
- 67 (12) The Commission Secretary should be authorized to accept by letter, with copies to all parties to this proceeding, all filings that comply with the requirements of this Order.
- 68 (13) The Commission should retain jurisdiction over the subject matters and the parties to this proceeding to effectuate the terms of this Order.

ORDER

THE COMMISSION ORDERS THAT:

- 69 (1) The proposed tariff revisions Rainier View, filed on January 4, 2011, revised on January 24, 2011, which were suspended by prior Commission order, are rejected.
- 70 (2) The Settlement Agreement, attached to this Order as Appendix A, is accepted in part, and rejected in part, as more fully described above.
- 71 (3) The settling parties are required to respond within ten days of service of this Order stating how they wish to proceed.
- 72 (4) The Commission Secretary is authorized to accept by letter, with copies to all parties to this proceeding, all filings that comply with the requirements of this Order.

73 (5) The Commission retains jurisdiction to effectuate the terms of this Order.

Dated at Olympia, Washington, and effective October 17, 2012.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

JEFFREY D. GOLTZ, Chairman

PHILIP B. JONES, Commissioner

NOTICE TO PARTIES: This is a Commission Final Order. 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 480-07-850, or a petition for rehearing pursuant to RCW 80.04.200 and WAC 480-07-870.

Commissioner Oshie, Concurring Opinion:

I agree with my colleagues on the outcome and fully support the need for persuasive evidence that the construction of the Lakewood Pipeline would be cost-effective in its construction and operation over a reasonable time period. However, I believe that this case raises significant policy questions as to the financial strength of water companies under regulation and whether and under what circumstances we allow ratepayers to capitalize infrastructure investments.

It is helpful to review our statutory authority to create the funding mechanism proposed by the Company. RCW 80.28.022 provides limited authority for the Commission to create a reserve account and states that such an account shall be used “*exclusively* for the purpose of making capital improvements approved by the department of health as part of a long-range plan, or required by the department to

assure compliance with federal or state drinking water regulations, or to perform construction or maintenance required by the department of ecology to secure safety to life or property under RCW 43.21A.064(2).”⁸² It appears to me that the legislature set forth specific circumstances in which we can create reserve accounts in our regulation of water companies and those circumstances do not exist here.⁸³

There is nothing in the record demonstrating that the Lakewood Pipeline or its intended purpose has been “approved by the department of health,” is needed to comply with “federal and state water regulations,” or “to secure safety to life and property under RCW 43.21A.064(2).”⁸⁴ Without such a finding, we should go no further.⁸⁵ In fact, the pipeline’s purported need is tied to growth and the desire to access an arguably less expensive source of water. As to growth, the record is clear. The Tacoma Intertie is sufficient to serve the area(s) expected to develop and the Lakewood Pipeline is not needed. On the question of cost, both the Company and Staff drew conclusions that did not hold up under examination, particularly when the growth needed to demonstrate cost-effectiveness was compared with reality. Whether based upon the desire for a redundant water supply or for a better deal, neither reason is sufficient to establish a reserve account under the statute.

⁸² (Emphasis Added). RCW 80.28.022 reads in full: “In determining the rates to be charged by each water company subject to its jurisdiction, the commission may provide for the funding of a reserve account exclusively for the purpose of making capital improvements approved by the department of health as a part of a long-range plan, or required by the department to assure compliance with federal or state drinking water regulations, or to perform construction or maintenance required by the department of ecology to secure safety to life and property under RCW [43.21A.064\(2\)](#). Expenditures from the fund shall be subject to prior approval by the commission, and shall be treated for rate-making purposes as customer contributions.

⁸³ If the legislature had intended to give us unfettered control over these mechanisms, it could have expressed such an intent or remained silent on the issue.

⁸⁴“Insofar as may be necessary to assure safety to life or property, the director shall inspect the construction of all dams, canals, ditches, irrigation systems, hydraulic power plants, and all other works, systems, and plants pertaining to the use of water, and may require such necessary changes in the construction or maintenance of said works, to be made from time to time, as will reasonably secure safety to life and property.” RCW 43.21A.064(2).

⁸⁵ It is not clear to me that the Tacoma Intertie enjoyed the approval of the department of health. However, looking back to that decision, as flawed as it may have been, does not resolve the problem at hand.

Even if we were to take a broader view of legislative intent, we should look to the statute for direction. Reading the statute's plain language, I would limit reserve accounts to projects that provide necessary water supply when other options are unavailable or significantly more expensive than alternatives or when required to remedy problems identified by state or federal authorities.⁸⁶ We should not create such accounts to acquire marginally cheaper water supplies or to relieve owners from the responsibility to capitalize their businesses. However, we need to cure an inequity associated with customer supplied capital before doing so here or in the future.

I am concerned that we have become too complacent in our willingness to approve customer-funded investments by water companies. This case is an excellent example of how good intentions can result in untenable practices. Not long ago, Rainier View requested, and we approved, that ratepayers pay the costs to construct its intertie with Tacoma Water.⁸⁷ As noted by the majority, Rainier View justified its request by associating the intertie's need to additional growth in the Southwood/Sound water system, but did not contribute any monies to the cost of this project.⁸⁸ Rather, the intertie's entire cost (\$12,603,256) was paid for solely by ratepayers. We now find the Company asking ratepayers to capitalize further system development. Having been exposed to the circumstances here, I believe we need to reassess our willingness to accept customer-supplied capital as regulatory model for water companies.

Economic regulation is based upon a model wherein regulated business owners capitalize their businesses under the protection of the regulator and provide service according to particular terms and conditions. Once capital has been invested, the owners earn a return on such capital at a rate established by the regulator. The

⁸⁶ Here, I would look to municipal and Public Utility District providers when examining the availability and cost of water supply.

⁸⁷ *In the Matter of the Petition of Rainier View Water Company, Inc., Petitioner, for an Order Approving the Accounting Treatment of Amounts Received and Assets Obtained that Relate to the Contract to Purchase Wholesale Water from the City of Tacoma* (Rainier View's Accounting Petition Request), Docket UW-020827, Order Authorizing Accounting Treatment, ¶ 2 (March 12, 2003). See Majority Opinion, paragraph 35.

⁸⁸ See Rainier View's Accounting Petition Request, Docket UW-020827, Order Authorizing Accounting Treatment, ¶ 11 ("The Company's petition, as amended, proposes that future developer contingency charges be the only rate mechanism to obtain the funds used to both service the related long-term obligation to Tacoma and to pay for building the intertie and Tacoma upgrade costs."). Footnote omitted.

practice of looking to ratepayers to capitalize investment turns the regulatory model on its head.

In this divergent regulatory paradigm, company owners ask the ratepayers to fund investment through facility charges (or some other charge with similar characteristics) with the owners taking little or no share of the investment responsibility. Ratepayers stand in the shoes of owners, bear the company's risk as if they were shareholders, but do not share in the company's reward. Rather, the assets purchased by the ratepayers become assets of the owner, and if the company is sold, the ratepayers do not recover their investment. Instead, it is retained by the owners, as if they had provided that capital. In my opinion, there are at least two significant problems with this topsy-turvy regulatory model.

The regulatory model set forth in statute and adopted in practice by this Commission requires and expects owners to demonstrate economic discipline when investing their capital. The rigor with which this discipline is exercised must be reasonably related to the size of the investment and capital structure of the organization. In other words, how much risk are owners willing to accept given the size of the company? In a very simple example, if Puget Sound Energy were to buy a box of pencils, I would not expect it to file economic studies demonstrating that the box purchased was necessary and prudently priced. On the other hand, if an investment were to represent a material percentage of the company's capital base, then I would expect it to have rigorously studied the investment and its alternatives before selecting it. In either instance the investment would have to be cost-effective, but the threshold for demonstration of such is much higher in the latter example. Without the assurance that such economic discipline is expressed in a company's investment decisions, we lose a fundamental component of the regulatory compact – the belief that owners are expected to be careful and prudent with their capital. It is risk of loss (or disallowance) that drives competent and well-thought out investment decisions. Clearly, an owner with no stake in an investment outcome must find a substitute for the economic discipline exercised by owners that risk their own capital. If an effective substitute does exist, we were not exposed to it in this case. Perhaps it cannot exist except in the most altruistic sense.

Another characteristic of the regulatory structure is the relationship between owners and ratepayers upon the sale of company assets. In a typical regulatory environment, the owners build a business that has a value which can be expressed as both a regulatory value and an actual market value. When ratepayers are asked to substitute

their investment capital for that of the owners, we treat the investment as the owners' property whether it is represented by cash or an acquired facility. However, as a regulated asset, the owners are not allowed to earn a return on the investment. This seems fair as risk follows reward, and no risk should equal no reward. This is not always true at the time of sale. If the sale is to a regulated entity, steps are taken to consider the investment made by ratepayers. However, a sale to a non-jurisdictional entity yields a different result. Here, the ratepayers' invested capital is treated as if it were contributed by the owners, who are enriched by its value. There is a fundamental lack of fairness when owners are unjustly enriched when disposing of assets acquired with ratepayer provided capital. I believe we should address this inequitable and unreasonable result before approving new reserve accounts, even under circumstances set forth in RCW 80.28.022. To further make the point, I turn now to the circumstance at hand.

We have allowed Rainier View to operate as a regulated utility without requiring it to demonstrate the ability to internally capitalize and finance their infrastructure needs.⁸⁹ While I should not be surprised by the filing made in this case, I cannot help but be.

After ratepayers funded the Tacoma Intertie nearly ten years ago, the owners are now back before us with a proposal that essentially "strands" the ratepayers' earlier capital investment. As before, the owners want no stake in this proposed "investment" and turn again to its ratepayers to meet the project's capital needs.

In my opinion, either the first or second pipeline addition would not have been considered had the Company actually capitalized the improvements. I would argue that the owners would need a compelling reason to walk away from a multi-million dollar investment. If they had such a reason, the evidence presented by the Company did not show it. One must consider the following: if the investment in the Lakewood system is such a good deal, then wouldn't the real test be whether the owner is willing to invest its own capital in the intertie? From the paucity of the evidence presented by the Company to defend its decision, I cannot help but think that its analysis reflected its investment in the facility and would have been much sharper if its own capital were in play.

⁸⁹ To be fair, Rainier View is not alone. There are many companies under regulation that would have difficulty surviving without such support.

In conclusion, I believe we should examine the circumstances under which we allow reserve accounts to be created and to what degree we allow owners to under-capitalize their businesses while turning to ratepayers for such investment capital. If owners are unable to capitalize their business, we should question why they are allowed to operate a public utility.⁹⁰ Further, we should explore mechanisms that would protect the ratepayers from unjustly enriching an owner that sells to a non-jurisdictional entity. Until these issues are addressed, we should require a compelling showing before allowing reserve accounts to be established.

PATRICK J. OSHIE, Commissioner

⁹⁰ I recognize that small water companies may, because of size, represent a circumstance that could compel variance from our traditional regulatory structure.

Appendix A
Settlement Agreement