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1 BEFORE THE WASHINGTON UTILITIES AND
2 TRANSPORTATION COMMISSION
3 WASHINGTON UTILITIES AND)
TRANSPORTATION COMMISSION,) DOCKET NO. UW-031284
4 Complainant,) Volume I
) Pages 1 to 21
5 v.)
)
6 AMERICAN WATER RESOURCES,)
INC.,)
7 Respondent.)
)
8 WASHINGTON UTILITIES AND)
TRANSPORTATION COMMISSION,) DOCKET NO. UW-010961
9 Complainant,)
)
10 v.)
)
11 AMERICAN WATER RESOURCES,)
INC.,)
12 Respondent.)
)

13

14 A pre-hearing conference in the above matter
15 was held on September 9, 2003, from 1:30 p.m to 2:00
16 p.m., at 1300 South Evergreen Park Drive Southwest, Room
17 206, Olympia, Washington, before Administrative Law
18 Judge KAREN CAILLE.

19 The parties were present as follows:

20 THE COMMISSION, by MARY M. TENNYSON, Senior
Assistant Attorney General, 1400 South Evergreen Park
21 Drive Southwest, Post Office Box 40128, Olympia,
Washington, 98504-0128, Telephone (360) 664-1220, Fax
22 (360) 586-5522, E-Mail mtennyso@wutc.wa.gov; and by LISA
WATSON, Assistant Attorney General, 1400 South Evergreen
23 Park Drive Southwest, P.O. Box 40128, Olympia,
Washington 98504-0128, Telephone (360) 664-1186,
24 Facsimile (360) 586-5522, E-Mail lwatson@wutc.wa.gov.
Joan E. Kinn, CCR, RPR
25 Court Reporter

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1 AMERICAN WATER RESOURCES, INC., by RICHARD A.
2 FINNIGAN, Attorney at Law, 2405 Evergreen Park Drive
3 Southwest, Suite B-1, Olympia, Washington 98502, (360)
4 956-7001, Fax (360) 753-6862, E-mail rickfinn@ywave.com.
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1 P R O C E E D I N G S

2 JUDGE CAILLE: I know Mr. Finnigan and Staff
3 are familiar with our procedures here, so I'm not going
4 to admonish you about speaking slowly and clearly for
5 the court reporter, but please do keep it in mind.

6 We are here today for a pre-hearing
7 conference in the proceeding in Docket Number UW-031284
8 that has been consolidated with Docket Number UW-010961,
9 and this is encaptioned Washington Utilities and
10 Transportation Commission versus American Water
11 Resources, Incorporated. This proceeding is a complaint
12 initiated by the Commission to evaluate American Water's
13 rates, to determine whether Docket Number UW-010961
14 should be amended to impose a refund obligation upon
15 American Water, and to determine whether the set aside
16 obligation approved in Docket UW-010961 should be
17 canceled.

18 My name is Karen Caille, and I have, as I
19 said earlier, I have been designated as the
20 Administrative Law Judge to preside over this hearing.
21 Today is September 9th, 2003, and we are convened in a
22 hearing room in Olympia, Washington. Our basic agenda
23 for today will be to take appearances, I will ask if
24 there are petitions to intervene, if there are any other
25 motions, we will discuss whether there is a need for a

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1 protective order or an order, and whether we need to
2 invoke the discovery rule, and then we will proceed to
3 discussing process and a procedural schedule.

4 So let's begin this afternoon by taking
5 appearances. Please spell your last name for the court
6 reporter, and please give me your address, facsimile
7 number, and E-mail address, and let's begin with you,
8 Mr. Finnigan.

9 MR. FINNIGAN: Thank you. Richard A.
10 Finnigan, F-I-N-N-I-G-A-N, appearing on behalf of
11 American Water Resources, Inc. The mailing address is
12 2405 Evergreen Park Drive Southwest, Suite B-1, Olympia,
13 Washington 98502. Phone is (360) 956-7001, Fax is (360)
14 753-6862, E-mail is rickfinn@ywave.com.

15 JUDGE CAILLE: Thank you.
16 Commission Staff.

17 MS. TENNYSON: Thank you. Mary Tennyson and
18 Lisa Watson for Commission Staff. I will start by
19 giving my information and then allow Ms. Watson to
20 continue. My name is Mary M. Tennyson, T-E-N-N-Y-S-O-N,
21 I'm a Senior Assistant Attorney General. My address is
22 1400 South Evergreen Park Drive Southwest, Post Office
23 Box 40128, Olympia, Washington 98504-0128, telephone
24 number is (360) 664-1220, facsimile is (360) 586-5522,
25 E-mail is mtennyso@wutc.wa.gov.

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1 JUDGE CAILLE: Thank you.

2 Ms. Watson.

3 MS. WATSON: Good afternoon, my name is Lisa
4 Watson, W-A-T-S-O-N. My address is 1400 South Evergreen
5 Park Drive Southwest, P.O. Box 40128, Olympia,
6 Washington 98504-0128, telephone number is (360)
7 664-1186, fax number is (360) 586-5522, and my E-mail
8 address is lwatson@wutc.wa.gov.

9 JUDGE CAILLE: Thank you.

10 Let the record reflect there are no other
11 appearances.

12 All right, at this time is there anyone here
13 who wishes to intervene in this proceeding?

14 So everyone in the audience is here to see
15 what's happening, right?

16 Okay, then are there any motions that the
17 parties have at this time?

18 MS. TENNYSON: Well, as you mentioned, Your
19 Honor, there are two cases that are consolidated, and in
20 the Docket UW-010961 Staff had anticipated when the
21 Commission issued the order that there would also be an
22 order entered by the Commission to amend the order
23 accepting the settlement agreement to impose a refund
24 condition without further action on our part. We would
25 at this point make a motion to have that order amended

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1 to impose a refund obligation upon American Water
2 Resources effective with the date of the service of the
3 complaint, August 13th, 2003. We're making the motion
4 verbally, I briefly alerted Mr. Finnigan to this
5 yesterday, but we have not had an opportunity to discuss
6 it.

7 JUDGE CAILLE: So, excuse me, amend the order
8 to impose a refund and have it --

9 MS. TENNYSON: To go --

10 JUDGE CAILLE: -- go back to at the time of
11 the complaint was --

12 MS. TENNYSON: The time of the complaint was
13 served. What we're looking at is to make the amount
14 that is subject to the set aside subject to refund, not
15 to impose a refund obligation as of this time, but to
16 make it subject to refund.

17 JUDGE CAILLE: Oh, okay, I misunderstood.

18 MS. TENNYSON: I misspoke.

19 MR. FINNIGAN: And we are talking about the
20 set aside amount; is that correct?

21 MS. TENNYSON: Yes, we are.

22 MR. FINNIGAN: We're not talking about other
23 rates?

24 MS. TENNYSON: No, we're not.

25 MR. FINNIGAN: Okay.

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1 JUDGE CAILLE: One more time for me, because
2 I was going down -- I was thinking you were asking to
3 impose a refund now.

4 MS. TENNYSON: It's \$4.40 per customer per
5 month.

6 JUDGE CAILLE: So what you would like, your
7 motion -- tell me your motion again.

8 MS. TENNYSON: We would request that the
9 Commission amend the order accepting the settlement
10 agreement to require American Water Resources to refund
11 or credit its customers for the funds collected and
12 required to be deposited into what under the settlement
13 agreement and order is termed the Docket 010961 Account,
14 but which funds are not used for the purposes as allowed
15 in that order, and that refunds would be calculated from
16 the date of the order we opened the docket. That's the
17 date we would be going back to, the maximum amount of
18 time.

19 JUDGE CAILLE: So in other words, this is
20 going forward from the complaint and that what we will
21 have before us is still under question about whether
22 there should be refunds after that.

23 MS. TENNYSON: Whether or not a refund or
24 credit would actually be ordered would be determined by
25 the proof going forward. Now we did prepare in the

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1 event that you found this confusing, which apparently
2 you do.

3 JUDGE CAILLE: Yes, I do.

4 MS. TENNYSON: We did prepare a motion in a
5 written form that we just got put together today, we
6 could present you with that.

7 JUDGE CAILLE: Let's do that, because I think
8 I just finally now -- the order you're amending is the
9 complaint order, or is it the actual 010?

10 MS. TENNYSON: We're looking at amending the
11 order accepting settlement agreement.

12 JUDGE CAILLE: Yes, I think I will need your
13 written.

14 MS. TENNYSON: Okay.

15 JUDGE CAILLE: And do you have a copy of
16 that, Mr. Finnigan?

17 MS. TENNYSON: No.

18 MR. FINNIGAN: No.

19 MS. TENNYSON: No, he's getting one now.

20 JUDGE CAILLE: You know what I think I would
21 like to do is just why don't we -- if you would like to
22 make some oral comments about that now, you may --

23 MR. FINNIGAN: Well, I would.

24 JUDGE CAILLE: -- or would you like the
25 opportunity to respond in writing?

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1 MR. FINNIGAN: Actually, I'm hoping that
2 there's a middle ground, and what I would like to
3 suggest is that I have the opportunity to discuss this
4 with Staff. Ms. Tennyson did leave me a message late
5 yesterday that indicated that something like this would
6 be presented, although I just understood what it was
7 now. But I think there might be a way that we can get
8 this resolved if I have the opportunity to discuss it
9 with Staff. If we can't, then obviously I would like
10 the opportunity to present a response.

11 JUDGE CAILLE: Are you going to want to do
12 that right away? I mean, you know, I can take a recess
13 or at the end of this hearing, or do you want to do this
14 after the hearing?

15 MR. FINNIGAN: I would prefer after the
16 hearing just given the schedule I've got for the
17 remainder of this week.

18 JUDGE CAILLE: All right.

19 MS. TENNYSON: Mr. Finnigan did call me this
20 morning to try to discuss this with me, I was not able
21 -- I have been out of the office, so I haven't been able
22 to get back to him to return his call.

23 JUDGE CAILLE: Okay, so do --

24 MR. FINNIGAN: Here's what I -- may I offer
25 this, if -- my schedule for this week is a disaster, but

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1 what I would suggest is the first part of the week I
2 could get together with Ms. Tennyson. If we're not able
3 to resolve it, then if I could file a response by the
4 close of business on the 19th. Do you think that would
5 work?

6 JUDGE CAILLE: Is that reasonable to Staff?

7 MS. TENNYSON: It is given I will be out of
8 the office until the 17th, so we may not have an
9 opportunity to discuss it until then.

10 MR. FINNIGAN: In that case, could I ask for
11 the 22nd.

12 JUDGE CAILLE: All right.

13 MS. TENNYSON: Ms. Watson will be available.

14 JUDGE CAILLE: Okay.

15 MS. TENNYSON: So I mean that would be the
16 alternative, so.

17 JUDGE CAILLE: So you will still be getting
18 together at the beginning of next week. Does that work
19 with your schedule Ms. Tennyson or Ms. Watson?

20 MS. WATSON: I'm in hearing next week, so.

21 MS. TENNYSON: Let's go with the 22nd for
22 Mr. Finnigan's response if we don't get back to you
23 sooner.

24 JUDGE CAILLE: Okay, but you are getting
25 together before then?

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1 MR. FINNIGAN: One way or the other, either
2 with Ms. Tennyson or Ms. Watson, I will get together by
3 the close of the 17th.

4 JUDGE CAILLE: All right.

5 So let me just ask one more question. Will
6 Staff be filing this particular motion, because you have
7 just given it to me, and you know how we have to do
8 filing with the records center?

9 MS. TENNYSON: You do have the original, but
10 we can take that back and file it.

11 JUDGE CAILLE: Okay, I will give you the
12 original back.

13 MS. TENNYSON: And we do have extra copies.

14 JUDGE CAILLE: Okay.

15 All right, thank you.

16 Okay, any other motions?

17 Is there anything else before we go on to
18 discussing discovery rule and protective order?

19 MS. TENNYSON: Oh, yes, we did have another
20 matter. Because in the order in 010961 there was a
21 requirement that American Water Resources file a rate
22 case by December 18th, 2003. Because Staff has
23 initiated this complaint and we will be essentially
24 plowing most of that same ground, we would like to,
25 whether it has to be by -- I believe we would need an

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1 order amending the order in that respect as well to
2 relieve the company of that obligation. Because rather
3 than have them -- our proposed schedule that we're
4 working on would be Staff would file its direct
5 testimony on December 15th or 16th I believe, and for
6 them to file a rate case on the 18th would be somewhat
7 counterproductive I think.

8 JUDGE CAILLE: Sounds reasonable to me. I do
9 think we do probably need an order amending 010961. I
10 will take this under advisement and just find out
11 exactly what procedure we will need for that.

12 MS. TENNYSON: I have one point of
13 clarification. Because we have consolidated these
14 dockets, but rather than -- I mean often I know the
15 Commission uses the convention of using the earliest
16 docket number as the identifier. I think it might be
17 less confusing if we use the more recent one, the 03
18 number, for this case.

19 JUDGE CAILLE: All right. I think that, I'm
20 not sure, but I thought the latest convention was that
21 we were using the most recent.

22 MS. TENNYSON: Okay.

23 JUDGE CAILLE: I know in records center
24 that's how it's being docketed, it's being docketed
25 under the 03 number instead of the 01.

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1 MS. TENNYSON: Good, I think that would be
2 the least confusing way to go.

3 JUDGE CAILLE: And I will admit that I think
4 some of my confusion is connected with the other case.

5 All right, now let's look at discovery. Do
6 the parties believe that we need to invoke the discovery
7 rule?

8 MS. TENNYSON: I don't think there's any harm
9 in doing so, and I would prefer to do so.

10 JUDGE CAILLE: Okay, the discovery rule,
11 which is 480-09-480, will be available to you, it is
12 invoked.

13 What about a protective order?

14 MR. FINNIGAN: I think that if we're going to
15 have financial discovery, we need a protective order.

16 JUDGE CAILLE: Okay, I will see that one of
17 our protective orders is presented to the commissioners
18 for their signature. I was just checking their schedule
19 to make sure we have enough commissioners, I think we
20 do.

21 MS. TENNYSON: I don't anticipate we will be
22 doing any discovery in the next week or so.

23 JUDGE CAILLE: That's good, because it might
24 take about -- I think they're in various places this
25 week.

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1 All right, the next topic I would like to
2 discuss briefly is the area of issues, and I think the
3 allegations in the complaint set forth the issues to be
4 addressed in this proceeding, but does anyone wish to
5 comment on any of those at this time or anything else?

6 MR. FINNIGAN: We have nothing, Your Honor.

7 JUDGE CAILLE: All right, that brings us to
8 schedule, and before we talk about schedule, I was
9 wondering if this is a proper proceeding for a public
10 hearing. I have attempted to find Ms. Hansen to see if
11 she had that in mind. So I'm sort of thinking maybe
12 what we'll do is just kind of put that on the back
13 burner for right now, and I will have an opportunity to
14 talk with her and see if that's something that she had
15 envisioned in this proceeding.

16 So have the parties had an opportunity to
17 discuss a schedule?

18 MS. TENNYSON: We have, Your Honor. The
19 schedule that Staff has recommended is that, because
20 Staff is pursuing this complaint we have the burden of
21 proof, and Staff would propose to file its direct case
22 on December 16th.

23 JUDGE CAILLE: All right.

24 MS. TENNYSON: Due to scheduling and holidays
25 and other issues, we would be looking at a little over

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1 eight weeks in this case for the company to respond with
2 its response date of February 17th.

3 JUDGE CAILLE: All right.

4 MS. TENNYSON: And then Staff's rebuttal case
5 would be filed on March 30th. We did not discuss
6 particular hearing dates after that.

7 MR. FINNIGAN: We would need to leave a
8 sufficient amount of time for a round of discovery on
9 the rebuttal testimony.

10 JUDGE CAILLE: Okay.

11 MR. FINNIGAN: But other than that, I have no
12 thoughts of particular dates.

13 JUDGE CAILLE: What do you consider
14 sufficient, Mr. Finnigan, for discovery response?

15 MR. FINNIGAN: Let me look at the calendar.

16 JUDGE CAILLE: Do you need a 2004 calendar?

17 MR. FINNIGAN: I've got one here.

18 MS. TENNYSON: We do have hearings in the
19 Verizon terms and conditions case right now is set for
20 to begin April 19th. The last conference call I sat in
21 on with the parties in that case, they were probably
22 going to ask for a continuance of those dates, but I
23 haven't seen that motion come in at this point.

24 MR. FINNIGAN: If Staff files their testimony
25 on the 30th, my view is I, you know, under reasonable

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1 conditions would get any discovery out by the 5th. That
2 means their response is due on the 19th, so hearings
3 after that.

4 MS. TENNYSON: Any time.

5 JUDGE CAILLE: After April 19th?

6 MR. FINNIGAN: Yes.

7 JUDGE CAILLE: Okay.

8 MS. TENNYSON: Olympia School District spring
9 break --

10 JUDGE CAILLE: Thank you, that's what I
11 needed.

12 MS. TENNYSON: -- is the 12th through the
13 16th.

14 JUDGE CAILLE: Thank you very much.

15 All right, so that's the Verizon SGAT, is
16 that what --

17 MS. TENNYSON: On Staff we call it the
18 Verizon terms and conditions, because they're not
19 required technically to file an SGAT.

20 JUDGE CAILLE: Okay.

21 MS. TENNYSON: Verizon is calling it an SGAT
22 at this point, but we aren't.

23 JUDGE CAILLE: That must be shorthand for the
24 calendar purposes here. It looks like that runs, the
25 way that's set up, it's going to run for a week and a

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1 half.

2 MS. TENNYSON: Something like that. I do
3 anticipate --

4 JUDGE CAILLE: Are you involved in that?

5 MS. TENNYSON: I am involved in that case,
6 although sort of tangentially.

7 JUDGE CAILLE: And you think it's going to be
8 moved out?

9 MS. TENNYSON: I believe it's going to be
10 pushed out further only because -- the question is
11 whether the hearing schedule gets put out further.
12 Right now the parties in that case are supposed to file
13 a matrix of disputed issues December 16th, testimony
14 January 23rd, Staff on February 6th, they have two
15 different, oh, yeah, testimony is February 6th, Staff
16 testimony February 27th, response on March 19th,
17 followed by the hearings starting the 19th. But the
18 parties are having difficulty finding time to discuss
19 all of the issues in order to file their matrix of
20 disputed issues by the 19th or the 16th, whatever date
21 it was, in December. So I was told they were going to
22 do a stipulated motion for continuance, but I have not
23 seen it come in yet.

24 JUDGE CAILLE: I would like to do this sooner
25 than later. That's why I'm inquiring into whether that

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1 is going to be moved. How about the week of the 26th.
2 That overlaps Verizon, those three days, but if you
3 say --

4 MS. TENNYSON: It's likely to be continued,
5 and I think it's quite possible that the hearings will
6 not go that long.

7 JUDGE CAILLE: Okay. So how does that look
8 for you, Mr. Finnigan?

9 MR. FINNIGAN: I think that's fine.

10 JUDGE CAILLE: Okay. How many days are we
11 going to need here?

12 MR. FINNIGAN: I would suggest two.

13 MS. TENNYSON: I would say two.

14 JUDGE CAILLE: We should schedule what we
15 need, and we can always cut back.

16 MS. TENNYSON: I think two should be
17 adequate.

18 JUDGE CAILLE: Okay, so April 26 and 27, yes,
19 because we have an open meeting on the 28th.

20 How about briefs?

21 MR. FINNIGAN: Is that something we could
22 decide on at the hearing?

23 JUDGE CAILLE: Well, yes, except that the
24 Commission really likes to know if we're going to have a
25 briefing schedule. So if we're going to brief it, I

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1 would like to put in some dates.

2 MR. FINNIGAN: At this stage, I couldn't
3 offer any, because I don't know -- I mean this is --
4 that's -- I just don't know what the ultimate issues are
5 going to be and how much time is going to be needed.

6 MS. TENNYSON: If we set a briefing date at
7 this point, I think we would want to set it for say a
8 month after the hearing.

9 JUDGE CAILLE: How about if I do that. Do
10 you want it to be simultaneous briefs?

11 MS. TENNYSON: Yes.

12 JUDGE CAILLE: Let's do that.

13 MR. FINNIGAN: Well, let's see here, that may
14 pose a problem.

15 JUDGE CAILLE: That puts it pretty close to
16 Memorial Day, but it is after the WITA conference.

17 Are you involved in the new generic
18 proceeding?

19 MR. FINNIGAN: The what?

20 JUDGE CAILLE: The new generic proceeding.

21 MR. FINNIGAN: I hope not.

22 JUDGE CAILLE: Because I see that is
23 scheduled for May 24th through the 28th.

24 MS. TENNYSON: That's true. That's actually
25 set for the 24th through June 4th.

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1 JUDGE CAILLE: Well, maybe it goes even
2 further, yes, through the 4th.

3 MS. TENNYSON: For us, that won't be as big
4 an issue, because there's the two of us involved in it,
5 so.

6 JUDGE CAILLE: Right now we will put down on
7 the report that it will be determined. This is so far
8 out there that things are likely to change. And who
9 knows, maybe this will just get all taken care of and
10 settled.

11 MR. FINNIGAN: There's always that
12 possibility.

13 JUDGE CAILLE: Is there anything that I have
14 not covered?

15 As you know, I will be issuing a pre-hearing
16 conference order, and I will see that the Commission
17 issues a protective order as well. And in that
18 pre-hearing conference order I will describe the filing
19 requirements. And just so you know, at this point we
20 need ten copies, oh, ten plus an original of anything we
21 file. That's what our distribution list looks like
22 right now.

23 If there isn't anything else from the
24 parties, I have nothing further.

25 MR. FINNIGAN: I have nothing further.

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1 MS. TENNYSON: We have nothing further.

2 JUDGE CAILLE: All right, thank you very

3 much.

4 (Hearing adjourned at 2:00 p.m.)

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