

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND)	DOCKET UW-140595
TRANSPORTATION COMMISSION,)	
)	
Complainant,)	ORDER 02
)	
v.)	
)	INITIAL ORDER APPROVING
EASTWOOD PARK WATER CO., INC.,)	SETTLEMENT AGREEMENT
)	
Respondent.)	
.....)	

BACKGROUND

- 1 On September 8, 2014, the Washington Utilities and Transportation Commission (Commission) issued a complaint (Complaint) against Eastwood Park Water Co., Inc. (Eastwood Park Water or Company) alleging that the Company improperly charged customers in violation of state statutes and Commission rules. The Complaint seeks penalties of \$100 for each of the 15 violations alleged. On October 2, 2014, the Commission conducted a prehearing conference and set a procedural schedule.

- 2 On October 10, 2014, the Commission’s regulatory staff (Staff)¹ notified the Commission that the parties had reached a settlement in principle. On November 21, 2014, Staff filed a settlement agreement on behalf of the parties (Settlement Agreement) and requested that the Commission cancel the scheduled hearing. In the Settlement Agreement, Eastwood Park Water admits that it violated WAC 480-110-355, WAC 480-110-375, RCW 80.28.080, and RCW 80.28.100. Eastwood Park Water also agrees to refund its customers a total of \$2,900 in overcharges resulting from improper turn off/turn on fees, late fees, Nonsufficient Fund (NSF) fees, check

¹ 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.

pick-up fees, and base rates for water usage. The parties agree that the Commission should assess a penalty of \$100 for each violation alleged in the Complaint, for a total penalty of \$1,500, and should suspend the entire amount of the penalty for a period of one year on the condition that Eastwood Park Water incurs no repeat violations of WAC 480-110-355, WAC 480-110-375, RCW 80.28.080, and RCW 80.28.100. Staff will conduct a follow-up investigation within one year and provide a recommendation regarding whether the Commission should waive or impose the suspended portion of the penalty.

- 3 The parties also agree that the Company will make a series of operational changes to ensure future compliance. The compliance measures required by the Settlement Agreement include removing charges for items that do not appear in the Company's tariff from the Company's monthly billing statement, and adding the meter read date and a reference to the applicable rate schedule to the back of its statement. The Company also must file a revision to its tariff, WN-U1, "Rule 14 – Discontinuance of Service," no later than January 30, 2015, to correct outdated language related to service disconnections, and obtain Commission approval prior to implementing any new fees or charges. Finally, Mr. Green must attend a Commission-hosted rule and tariff training class, which will be scheduled for a later date with Commission Staff.
- 4 Michael Fassio, Assistant Attorney General, Olympia, Washington, represents the Staff. Robert Green, Manager and Operator, Spanaway, Washington, represents Eastwood Park Water.

DISCUSSION AND DECISION

- 5 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." Thus, the Commission considers the individual components of the Settlement Agreement under a three-part inquiry, asking:
- 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.

The Commission must determine one of three possible results:

- Approve the proposed settlement without condition.
- Approve the proposed settlement subject to conditions.
- Reject the proposed settlement.

6 We approve the Settlement Agreement without condition. The parties made concessions relative to their respective litigation positions to arrive at end results that are supported by the evidence in the record. Eastwood Park Water admits that its conduct violated WAC 480-110-355, WAC 480-110-375, RCW 80.28.080, and RCW 80.28.100. The Company also agrees to refund all of the customer overcharges that resulted from these violations. The penalty the Company agrees to pay is reasonable, and suspending the penalty on the condition of future compliance is appropriate in light of the terms of the Settlement Agreement. We also find that the compliance measures in the agreement provide reasonable means to ensure that the Company will not violate the applicable statutes and rules in the future.

7 The terms of the Settlement Agreement are not contrary to law or public policy and reasonably resolve all issues in this proceeding. The Settlement Agreement supports the Commission's goal of compliance by requiring the Company to take specific actions to remedy the violations, and permits the Company to pay a reduced penalty that will be suspended, then waived, provided the Company does not incur repeat violations of WAC 480-110-355, WAC 480-110-375, RCW 80.28.080, or RCW 80.28.100, and complies with the terms of the Settlement Agreement. Given these factors, we find the Settlement Agreement is consistent with the public interest and should be approved as filed.

ORDER

THE COMMISSION ORDERS:

- 8 (1) The Settlement Agreement is approved without condition, is attached as Exhibit A to, and incorporated into, this Order, and is adopted as the final resolution of the disputed issues in this docket.
- 9 (2) Eastwood Park Water Co., Inc. must credit all customers who were improperly charged for turn off/turn on fees, late fees, NSF fees, check pick-up fees, and base rates for water usage, as set out in the credit schedule in Attachment A to the Settlement Agreement.
- 10 (3) Eastwood Park Water Co., Inc. must file a revision to its tariff, WN-U1, “Rule 14 – Discontinuance of Service,” no later than January 30, 2015, to correct outdated language related to service disconnections.
- 11 (4) Robert Green must attend a Commission-hosted rule and tariff training class, which will be scheduled with Commission Staff.
- 12 (5) Eastwood Park Water Co., Inc. is assessed a penalty of \$1,500, which is suspended for a period of one year from the effective date of this Order conditioned on Eastwood Park Water Co., Inc. complying with the terms of this Order.
- 13 (6) Within one year from the date of this Order, Commission Staff shall conduct a review of the operations of Eastwood Park Water Co., Inc. to determine its compliance with the terms of this Order. If Eastwood Park Water Co., Inc. has complied, the Commission will waive the penalty. If Eastwood Park Water Co., Inc. has not complied with the terms of this Order, the suspended \$1,500 penalty will become immediately due and payable.
- 14 (7) The Commission retains jurisdiction to effectuate the terms of this Order.

Dated at Olympia, Washington, and effective November 26, 2014.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

RAYNE PEARSON
Administrative Law Judge

NOTICE TO PARTIES

This is an Initial Order. The action proposed in this Initial Order is not yet effective. If you disagree with this Initial Order and want the Commission to consider your comments, you must take specific action within the time limits outlined below. If you agree with this Initial Order, and you would like the Order to become final before the time limits expire, you may send a letter to the Commission, waiving your right to petition for administrative review.

WAC 480-07-825(2) provides that any party to this proceeding has twenty (20) days after the entry of this Initial Order to file a *Petition for Administrative Review*. What must be included in any Petition and other requirements for a Petition are stated in WAC 480-07-825(3). WAC 480-07-825(4) states that any party may file an *Answer* to a Petition for review within ten (10) days after service of the Petition.

WAC 480-07-830 provides that before entry of a Final Order any party may file a Petition to Reopen a contested proceeding to permit receipt of evidence essential to a decision, but unavailable and not reasonably discoverable at the time of hearing, or for other good and sufficient cause. No Answer to a Petition to Reopen will be accepted for filing absent express notice by the Commission calling for such answer.

RCW 80.01.060(3) provides that an Initial Order will become final without further Commission action if no party seeks administrative review of the Initial Order and if the Commission fails to exercise administrative review on its own motion.

One copy of any Petition or Answer filed must be served on each party of record with proof of service as required by WAC 480-07-150(8) and (9). An original and **five (5)** copies of any Petition or Answer must be filed by mail delivery to:

Attn: David W. Danner, Executive Director and Secretary
Washington Utilities and Transportation Commission
P.O. Box 47250
Olympia, Washington 98504-7250

**Exhibit A
Settlement Agreement**