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May 24, 2005

Carole J. Washburn, Secretary
Washington Utilities and Transportation Commission
1300 S. Evergreen Park Dr. SW
P. O. Box 47250
Olympia, Washington 98504-7250

Re: *Roche Harbor Water Suspended Tariff Filing*
Docket No. UW-042132

Dear Ms. Washburn:

Enclosed for filing in the above-referenced docket are the original and 12 copies of Staff's Response to Petition for Review, and Certificate of Service.

Very truly yours,

JONATHAN C. THOMPSON
Assistant Attorney General

JCT:tmw
Enclosures
cc: Parties



BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Complainant,

v.

ROCHE HARBOR WATER SYSTEM,

Respondent.

DOCKET NO. UW-042132

RESPONSE TO ROCHE
HARBOR WATER SYSTEM'S
PETITION FOR COMMISSION
REVIEW

1 Commission Staff submits this response to Roche Harbor Water System's
May 16, 2005, "Petition for Commission Review of That Portion of the Order of the
Administrative Law Judge Establishing the Hearing Location or In The Alternative
Motion for Reconsideration."

Background

2 Roche Harbor Water System proposes to adopt charges that would apply
only to new customers that connect to the water system.

3 It is permissible for a water company to require new customers to pay a
facilities charge as a contribution toward system improvements (e.g., an additional
well or storage tank) that would not have been necessary but for the addition of
new customers to the system.¹

4 In Staff's view, it is not permissible, however, for a water company to either:
(1) make new customers shoulder the entire burden of improvements that would
have been necessary regardless of the addition of new customers to the system, or
(2) make customers pay, as a facilities charge, so much of the cost of the plant
required to serve that customer that the company has only negligible investment
(equity) in the system.² In Staff's view, the charges that Roche Harbor proposes are
facilities charges that fail on both of these counts.

5 The proposal also fails to meet the requirements of WAC 480-110-455(3)(a)(i),
regarding facilities charges, because the Department of Health has not verified that
the improvements are necessary from an engineering standpoint. The Commission
lacks the engineering expertise to determine whether a company-proposed facility
is necessary and therefore relies on the expertise of DOH.

6 The company views the hearing process (both the evidentiary phase and the
public comment phase) as an opportunity to demonstrate existing customers'

¹ WAC 480-110-455(3).

² WAC 480-110-455(3)(b).

solidarity with the company on the company's proposal to charge only future customers for improvements to the system.

7 In Staff's view, the company's proposal would place on new customers a burden that existing customers should share. The case thus concerns equity between existing customers and prospective customers. The Commission is unlikely to hear from prospective customers.

1. Convenience of observers has never been a basis for holding evidentiary hearings outside of Olympia.

8 The company proposes holding the evidentiary hearing in Roche Harbor because "[c]ustomers have indicated to Roche Harbor that they desire to observe the evidentiary phase of this case. Quite frankly, the customer base is hard pressed to understand why the Commission is even taking this matter to hearing. This is a proposal from Roche Harbor that the customers of Roche Harbor strongly support."

9 There is no precedent for moving the Commission's *evidentiary hearings* to a distant location for the convenience of customers wanting to observe evidentiary hearings in any industry, let alone the chronically under-funded water program. As just one of a number of possible examples of this point, the Commission has held several evidentiary hearings over the last few years concerning rate increases and accounting issues for Avista Utilities, which serves customers in and around

Spokane. Those evidentiary hearings have always been held in Olympia despite the fact that the outcome has sometimes been higher utility bills for customers who reside in the Spokane area.

10 As any observer of evidentiary hearings before the Commission is aware, such hearings are difficult for the casual observer to even understand, given that all that occurs is cross-examination based on pre-filed written direct testimony. Even closing arguments are reserved for written briefs. In any event, pre-filed direct testimony will be available on the Commission's website and customers who wish to listen in on the cross-examination hearing will be able to do so over the Commission's telephone bridge line.

11 The only reason the Commission occasionally holds evidentiary hearings outside of Olympia (for example in railroad cases) is for the convenience of lay witnesses. But the company's argument that the evidentiary hearings should be moved for the convenience of the company's witnesses also is unconvincing.

12 First, the company's attorney has his offices in Olympia, and it is unlikely that he would donate his travel time or travel expenses. Mr. Finnigan's travel expenses would therefore appear to negate the cost savings of *at least* one company witness traveling from San Juan Island to Olympia for the evidentiary hearings. Second, it would be very unusual for a case like this to require the testimony of

more than two or three witnesses a side. The company claims it does not know whether it will have more than two witnesses because it does not know how many witnesses it will need to present until it sees Staff's testimony. This explanation cannot be squared with the fact that it is the company's burden to file its direct testimony first.

13 The Commission should deny Roche Harbor's request to hold the evidentiary hearing on San Juan Island.

2. Staff recommends that, if the Burlington location will not work for the public comment hearing, the public comment hearing should be conducted telephonically between a location convenient to customers and the Commission's offices in Olympia.

14 The company objects to holding the public comment hearing in Burlington. It states that a round trip ticket from Friday Harbor to Anacortes is \$50 and that driving from Anacortes to Burlington would be an additional inconvenience for customers. The company suggests, that "[h]olding the public [comment] hearing in Burlington is the same thing as saying to the customers that the Commission does not wish the customers to attend the public hearing."

15 It is hard to see the benefit of a public comment hearing at all in this case. The company is not even proposing a rate increase for existing customers. It is readily apparent that existing customers' interests are aligned with the company on

its proposal, because the proposal is to make prospective customers bear all expenses. The Commission is unlikely to hear from those prospective customers.

16 The cost of sending an Administrative Law Judge, a court reporter, a staff member, and an Assistant Attorney General from Olympia to Friday Harbor, and then on to Roche Harbor by car would be high not only in terms of travel expense (transportation, lodging, per diem) but also in terms of time that could be spent on other matters. Staff's inquiries show that chartering a San Juan Airlines six passenger plane from Olympia to Friday Harbor would cost \$1,600. Lodging costs average about \$190 per person in Friday Harbor. The Commission is aware of court reporter costs and the cost of the ALJ's, and AAG's time, which would have to be charged to the water program.

17 In view of the cost of holding a public comment hearing in Roche Harbor, Staff recommends that the Commission consider taking public comment testimony by telephone. The company could select a location at which customers could gather with a speaker phone. Customers could be sworn in over the telephone and the court reporter could take down their statements from the Commission's end of the call.

Conclusion

18

For the foregoing reasons, the Commission should deny Roche Harbor's request to move the evidentiary hearings to Roche Harbor. The Commission should also consider taking public comments telephonically at Olympia, instead of in Burlington.

DATED this 24th day of May, 2005.

ROB MCKENNA

Attorney General



JONATHAN C. THOMPSON

Assistant Attorney General

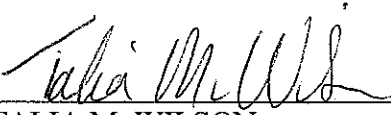
Counsel for Washington Utilities
and Transportation Commission

Staff

Docket No. UW-042132
CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon the persons and entities listed on the Service List below by depositing a copy of said document in the United States mail, addressed as shown on said Service List, with first class postage prepaid.

DATED at Olympia, Washington this 24th day of May, 2005.



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