

**BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND)	
TRANSPORTATION COMMISSION,)	DOCKET NO. UW-031284 &
)	DOCKET NO. UW-010961
Complainant,)	(consolidated)
)	
v.)	ORDER NO. 05
)	
AMERICAN WATER RESOURCES,)	
INC.,)	ORDER APPROVING AND
)	ADOPTING PARTIAL
Respondent.)	SETTLEMENT AGREEMENT
.....)	

1 **Synopsis:** *The Commission approves and adopts a proposed Partial Settlement between the Company and Commission Staff as a partial resolution of the issues in this complaint, and as a full resolution of the issues raised in Staff's Motion For Order Amending Commission Order Accepting Settlement Agreement Dated December 18, 2001.*

2 **Proceedings:** This is a complaint filed on the Commission's own motion against American Water Resources, Inc. (AWR). The complaint alleges that that AWR failed to comply with the Order Approving Settlement Agreement in Docket No. UW-010961.

3 **Parties:** Richard A. Finnigan, attorney, Olympia, WA, represents American Water Resources, Inc. Lisa Watson, Assistant Attorney General, Olympia, WA, represents the staff of the Washington Utilities and Transportation Commission (Commission Staff).

4 **Partial Settlement Agreement:** On September 26, 2003, Staff and AWR filed a proposed partial settlement agreement (Partial Settlement) that would

discontinue the monthly set-aside amount of \$4.40 collected from customers, and would credit each customer \$7.10 for funds collected and inappropriately used between August 13, 2003 and October 1, 2003.

I. BACKGROUND

- 5 **Procedural History:** On December 18, 2001, the Commission entered an Order Approving Settlement Agreement (Order) in Docket No. UW-010961. In part, the Order required AWR to deposit \$4.40 per month from each customer payment received into a separate account named the “Docket 010961 Account.” The Order limited the purposes for which AWR could use the money in the Docket 010961 Account to expenses for employees hired in addition to existing employee positions, the related benefits, payroll tax, transportation expense, and outside business consulting that exceeds the monthly average spent during the test period.
- 6 The Order prohibited AWR from using the funds from the Docket 010961 Account for expenses due to changes in position of existing employees or expense increases for existing employee positions. In addition, the Order required AWR to file quarterly reports regarding the funds in the Docket 010961 Account.
- 7 Staff’s review of AWR’s quarterly reports and AWR’s books and records indicates that AWR used funds from the Docket 010961 Account without meeting the criteria set forth in the Order.
- 8 On August 13, 2003, the Commission, on its own motion, filed a complaint against AWR, alleging that AWR failed to comply with the Order.
- 9 On September 9, 2003, the Commission convened a prehearing conference before Administrative Law Judge Karen Caillé (ALJ). Among other things, the ALJ

established a procedural schedule, invoked the discovery rule, and granted a request for a protective order. Commission Staff filed and discussed a Motion for Order Amending Commission Order Accepting Settlement Agreement Dated December 18, 2001 (Motion). The Motion requests that the Commission amend its Order to require AWR to refund or credit its customers for funds collected and required to be deposited into the Docket 010961 Account, but not used for the purposes for which they were collected.

- 10 In addition to the written Motion, Commission Staff orally requested that the Order be amended to release AWR from the obligation to file a rate case by December 18, 2003, since Commission Staff will prefile its testimony in this proceeding on December 16, 2003, and this proceeding will review the Company's rates.
- 11 AWR requested an opportunity to resolve the issue raised in Staff's Motion or to respond to the Motion by September 22, 2003. Subsequently, AWR requested and received an extension of the response deadline to September 26, 2003.
- 12 On September 26, 2003, Commission Staff and AWR filed a proposed partial settlement agreement for the Commission's approval as a partial resolution of the issues in the proceeding, and a full resolution of the issues raised in Staff's Motion. In addition, Commission Staff and AWR filed a joint motion for expedited treatment of the proposed partial settlement, agreed to waive an initial order, and to present the matter directly to the Commission for final decision.

II. SETTLEMENT AGREEMENT

- 13 The Partial Settlement filed by Commission Staff and AWR resolves Staff's Motion requesting that the Commission amend the Order to require AWR to credit or refund its customers for funds collected and required to be deposited

into the Docket 010961 Account, but not used for the purposes for which they were collected. The Partial Settlement is attached as Appendix A to this order.

- 14 Under the terms of the Partial Settlement, AWR will file tariff revisions to be effective October 1, 2003, which will decrease the monthly rate collected from customers by \$4.40, the set-aside amount. Section 3.1 of the Partial Settlement specifies the reduction in base metered rates and flat rates.
- 15 In addition, the parties agree that the set-aside requirement imposed in Docket No. UW-010961 be cancelled effective October 1, 2003, because AWR will not likely incur the expenses for which the set-aside was required at the levels anticipated by the Order.
- 16 The Partial Settlement also calls for a credit to customers of funds deposited into the Docket 010961 Account, but not used for the purposes for which they were collected for the period August 13, 2003, to October 1, 2003. The refund amounts to \$7.10 per customer, \$2.70 for the 19 days in August, and \$4.40 for the 30 days in September.
- 17 The parties agree that the Partial Settlement does not affect AWR's obligation to deposit funds into the Docket 010961 Account for services rendered during August 2003 and September 2003, and that AWR may use the funds it deposits for services rendered during August 2003 and September 2003 to offset the amount used for the credit.
- 18 The Partial Settlement allows AWR to provide the credit over a period of two months, October 2003 and November 2003, since the credit includes payments for services rendered during two months.
- 19 The parties acknowledge that the Partial Settlement does not resolve all the issues in this proceeding. Issues that remain include whether a further rate

adjustment is required and the treatment of the money required to be in the Docket 010961 Account not subject to the credit obligation.

20 The parties agree that the Partial Settlement resolves Staff's Motion, and Staff agrees to withdraw the Motion pursuant to the Commission's approval of the Partial Settlement.

III. DISCUSSION AND DECISION

21 The matter before us requires the Commission to determine whether the proposed Partial Settlement is consistent with the public interest. We resolve this question by reviewing the Partial Settlement and the pleadings that form the record to date to assess whether the proposal appears fair.

22 The Commission initiated this Complaint proceeding against AWR because Commission Staff's review of AWR's quarterly reports indicates that AWR has failed to comply with our Order Approving Settlement Agreement in Docket No. UW-010961. The Complaint alleges among other things that AWR failed to deposit \$4.40 per month from each customer payment into the Docket 010961 Account, and used those funds for unauthorized purposes. Ultimately, we will have to determine whether AWR's rates are fair, just, reasonable and sufficient, pursuant to RCW 80.28.020.

23 The proposed Partial Settlement would discontinue the set-aside amount with the filing of tariff revisions, and the amendment of the Order in Docket UW-010961, both effective October 1, 2003, and would credit each customer \$7.10 for funds collected but not used for the purposes for which they were collected between August 13, 2003, and October 1, 2003. In this manner, the proposal would reduce rates in the amount of the set-aside beginning October 1, 2003, and provide customers a refund for amounts collected and inappropriately used from the date of the Complaint, August 13, 2003. Thus, AWR would not collect the

set-aside going forward from October 1, 2003, ratepayers receive a refund for the period between the issuance of the Complaint and October 1, 2003, and the parties will litigate the fairness of the rates preceding the filing of the Complaint.

24 Based on the record before us, we find that the issues raised in Staff's Motion are adequately addressed and resolved by the terms of the Partial Settlement. Under the circumstances, we are satisfied that the proposed Partial Settlement is fair and consistent with the public interest, and should be approved and adopted as a partial resolution of the issues pending in Docket Nos. UW-031284 and UW-010961, and a full resolution of the issues raised by Staff's Motion. The Commission determines that it is appropriate that AWR be authorized to file compliance tariffs to be effective on October 1, 2003.

IV. FINDINGS OF FACT

25 Having discussed above all matters material to our decision, and having stated our general findings, the Commission now makes the following summary findings of fact. Those portions of the proceeding discussion that include findings pertaining to the ultimate facts of the Commission are incorporated by this reference.

26 (1) The Washington Utilities and Transportation Commission (Commission) is an agency of the State of Washington vested by statute with the authority to regulate rates, rules, regulations, practices, and accounts of public service companies including water companies.

27 (2) American Water Resources, Inc. is a water company subject to regulation by the Commission pursuant to RCW 80.01.040(3) and RCW 80.04.010.

28 (3) The Commission has the authority to alter or amend any order after notice and opportunity to respond under RCW 80.04.210 and WAC 480-09-815.

- 29 (4) On August 13, 2003, the Commission, on its own motion, filed a complaint against American Water Resources, Inc. alleging that AWR failed to comply with the Order Approving Settlement Agreement (Order) in Docket No. UW-010961.
- 30 (5) On September 9, 2003, Commission Staff filed a Motion for Order Amending Commission Order Accepting Settlement Agreement Dated December 18, 2001 (Motion).
- 31 (6) On September 9, 2003, Commission Staff also requested that the Order be amended to release AWR from the obligation to file a rate case by December 18, 2003.
- 32 (7) On September 26, 2003, Commission Staff and AWR filed a partial settlement agreement as a partial resolution of the issues in the proceeding, and a full resolution of the issues raised in Staff's Motion.

V. CONCLUSIONS OF LAW

- 33 Having discussed above in detail all matters material to this decision, and having stated general findings and conclusions, the Commission now makes the following summary conclusions of law. Those portions of the preceding detailed discussion that state conclusions pertaining to the ultimate decisions of the Commission are incorporated by this reference.
- 34 (1) The Washington Utilities and Transportation Commission has jurisdiction over the subject matter of and the parties to, this proceeding. *RCW 80.01.040, Chapter 80.04 RCW, Chapter 80.28 RCW.*

- 35 (2) American Water Resources, Inc. is a public service company as defined in
RCW 80.04.010.
- 36 (3) The Partial Settlement filed by the parties on September 26, 2003, which is
attached to this order as Appendix A and incorporated by reference as if
set forth in full in the body of this order, fully and fairly resolves the
issues raised in Commission Staff's Motion, is consistent with the public
interest, and should be approved and adopted by the Commission. *RCW*
80.01.040, WAC 480-09-466
- 37 (4) The Commission should amend its Order Approving Settlement
Agreement in Docket No. UW-010961 to effectuate the provisions of this
order. *RCW 80.04.210; WAC 480-09-815.*
- 38 (5) The Commission should amend its Order Approving Settlement
Agreement in Docket No. UW-010961 to release AWR from the obligation
to file a rate case by December 18, 2003. *RCW 80.04.210; WAC 480-09-815.*
- 39 (6) The Commission Secretary should be authorized to accept by letter, with
copies to all parties to this proceeding, a filing that complies with the
requirements of this order. *WAC 480-09-340.*
- 40 (7) The Commission should retain jurisdiction over the subject matter of and
the parties to this proceeding to effectuate the provisions of this Order.
Title 80 RCW.

VI. ORDER

- 41 (1) The Partial Settlement filed by the parties on September 26, 2003, which is
attached to this order as Appendix A and incorporated by reference as if
set forth in full in the body of this order, is approved and adopted.

- 42 (2) The Order Approving Settlement Agreement in Docket No. UW-010961 is amended to cancel the set-aside requirement effective October 1, 2003.
- 43 (3) The Order Approving Settlement Agreement in Docket No. UW-010961 is amended to release AWR from the obligation to file a rate case by December 18, 2003.
- 44 (4) American Water Resources, Inc. is authorized to make appropriate compliance filings to become effective on October 1, 2003, to effectuate the terms of the Partial Settlement and this order.
- 45 (5) The Commission Secretary is authorized to accept by letter, with copies to all parties to this proceeding, a filing that complies with the requirements of this order.
- 46 (6) The Commission retains jurisdiction over the subject matter and the parties to effectuate the provisions of this Order.

DATED at Olympia, Washington, and effective this 1st day of October, 2003.

WASHINGTON UTILITIES AND TRANSPORTATION COMISSION

MARILYN SHOWALTER, Chairwoman

PATRICK J. OSHIE, Commissioner

NOTICE TO PARTIES: This is a final order of the Commission. 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 480-09-810, or a petition for rehearing pursuant to RCW 80.04.200 or RCW 81.04.200 and WAC 480-09-820(1).

Appendix A