

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND	)	
TRANSPORTATION COMMISSION,	)	
	)	DOCKET NO. UW-000405
Complainant,	)	
	)	
v.	)	PETITION OF COMMISSION STAFF
	)	FOR ADMINISTRATIVE REVIEW
AMERICAN WATER	)	AND FOR ORDER DIRECTING
RESOURCES, INC.,	)	COMPANY TO FILE INFORMATION
	)	
Respondent.	)	
.....)	)	

**I. INTRODUCTION AND RELIEF REQUESTED**

Pursuant to WAC 480-09-780, Commission Staff (Staff) files this Petition for Administrative Review of the Initial Order in this case. Staff requests that the Commission review and revise the Initial Order Granting Motion To Dismiss Without Prejudice. Staff does not request that the Commission change its finding that American Water Resources, Inc., (American Water, or Company) failed to meet its burden of proof, but does request that several matters in the Initial Order be modified or clarified. Staff further requests that the Company be directed to file records and justification with the Commission to support the continued collection of the authorized surcharge amount.

## II. BACKGROUND

The surcharge for capital improvements, the extension of which is at issue in this case, was approved by the Commission in Docket No. UW-990518 on the basis of estimated costs prepared by the Company. After approval of the surcharge, the Company requested bids from contractors to perform the work on each of the projects as those projects were defined by the Company. In each instance, V.R. Fox Co., Inc., was selected as the contractor to perform the work on the projects. V. R. Fox Co., Inc., is an affiliated interest of American Water Resources, Inc. From the information received from the Company, V. R. Fox Co., Inc., performed work on each of the contracts for the amount in its bids to American Water. However, V. R. Fox Co., Inc., did not complete all of the work contemplated by the original American Water estimates and description of work to be done at the time the surcharge was approved. In some instances, the scope of work was changed from the scope of work included in the original request for bids, and V. R. Fox Co., Inc., was retained as the contractor for the revised contract.

The cost of the work that was performed on the surcharge projects exceeded the estimated amounts by approximately \$120,000, a portion of which the Company paid with facilities charge funds. The Company has asked that it be allowed to extend the period for which the surcharge is collected to allow it to collect an additional \$102,000 from its customers to pay the costs of the surcharge projects that exceeded the Company's estimates.

As noted in the initial order, in November 1999<sup>1</sup>, Staff requested that the Company provide invoices and time records supporting the charges for the surcharge projects, in order to

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<sup>1</sup> Before the request for extension of the surcharge was filed; see Exhibit 110. The Company filed its request for extension of the surcharge in March of 2000.

audit the expenditures that were charged to the surcharge account. The Company did not respond to this request from Staff until March of 2000 (Exhibit 110). Staff repeated and rephrased its request for documentation, (See Exhibits 121-124; Exhibits 108, 109 and 113 and 114) yet the Company's consistent response was that it did not have the detailed information requested. Staff's past experience with this Company has been one of inadequate records being kept and inconsistent information being provided to Staff. In particular, Staff refers the Commission to its Sixth Supplemental Order in UW-980072 issued on January 21, 1999, at Finding of Fact No. 2, Conclusion of Law No. 5, and the statement at page 30 of that Order, which reads as follows:

We do not perceive the Initial Order's statement to prejudge the propriety of any future rate or surcharge filing AWRI may elect to make. We do read the statement as alerting all concerned that the Commission will take a very close and careful look at AWRI's facilities charges, and the prospects for revenue from such charges, if AWRI files for rates or surcharges to recover facilities improvements costs.

In addition, language at page 13 of the Sixth Supplemental Order, when discussing the issue of the rate case costs that American Water was requesting be included in rates, the Commission detailed some of the difficulties with the nature of the records and information that American Water had provided in that case.

AWRI does not dispute directly that the poor condition of its records prolonged discovery, contributed to inaccurate testimonies and exhibits that threatened to confuse the record absent revisions and clarifications at hearing, and otherwise contributed to higher than usual rate case expenses. AWRI says it is entitled to disagree with Staff on issues and it expects continued disagreements in future cases. . . .

This record of wildly varying estimates and late-filed, unaudited, untested schedules purporting to show actual costs and reasonable estimates does not inspire confidence. We agree with the Initial Order that no part of it, standing alone, should be given dispositive weight. We must be cognizant, too, of

concerns Staff expresses in its Petition and Response regarding the reliability of AWRI's data, including AWRI's post-hearing submission, and the reasons for such extraordinary rate case expense claims in a case where AWRI's own witness acknowledged \$25,000 in total rate case expense 'may seem high' even considering case preparation through the initial testimonies and discovery.

Finally paragraph 4 of the ordering provisions of the Sixth Supplemental Order in Docket UW-980072, details the remedy the Commission chose at that time, to attempt to move American Water closer to compliance with generally accepted accounting principles:

4. American Water Resources, Inc., is required to submit to the Commission quarterly reports to be reviewed for proper accounting procedure, methodology, and timeliness; the reports must include and Income Statement, a Balance Sheet, and a Cash Flow Statement. American Water Resources, Inc., should cooperate with Commission staff to sustain a dialogue regarding the company's budget, customer count, and other information that will assist the company in its ongoing operations and assist the staff in its ongoing regulatory oversight responsibilities.

This history is provided in order to put the current case, and the Company's lack of cooperation in providing records to Staff, into perspective.

### **III. BASIS FOR REVIEW**

#### **A. Request that Commission Direct Company to File Supporting Information**

In the Initial Order, at ¶22, it states that because the surcharge was based on estimated costs, AWRI “must establish that costs incurred are consistent with the scope of work approved.” In addition, at ¶35, the Initial Order states that “Commission approval of the company's capital improvement surcharge does not guaranty American Water that it will be allowed to fully recover its surcharge. The surcharge may be withdrawn by the Commission if American Water does not provide sufficient and reliable records to support its expenditures.”

Commission Staff requests that the Commission order the Company to file the “sufficient and reliable records” to support all of its expenditures, not just those in excess of the original

surcharge amounts. As the initial order notes, the information in Exhibit 6, which responded in part to inquiries Staff had made of the Company more than a year earlier, was not burdensome to produce (TR at 169) yet is not by itself sufficient information to verify the validity of the work performed and the costs incurred. Initial Order, at ¶38. In order for Staff to investigate the propriety of the surcharge as originally approved, Staff requests that the Commission direct the Company to file the supporting documentation no later than sixty (60) days after the entry of the Final Order in this case.

Commission Staff specifically requests that paragraphs 48 and 49 of the Initial Order be revised and combined into a single paragraph, to read as follows:

**The commission should allow American Water to refile its request to extend the surcharge. Alternatively, American Water may seek recovery of any part if its expenses not recovered pursuant to the surcharge as costs for capital improvements in a rate increase filing. Accordingly, the Commission dismisses American Water's proposed tariff revisions without prejudice to the company.**

Staff also requests that an additional Finding and Conclusion be included in the Final Order, to read as follows:

Finding:

**The Commission should order American Water to compile invoices and time records sufficient to demonstrate that its actual costs were prudently incurred and are properly recorded to the surcharge projects, to support continuation of the surcharge.**

Conclusion:

**American Water must demonstrate that its current surcharge is appropriate by compiling records sufficient to demonstrate that its total actual costs were prudently incurred and are properly recorded to the surcharge project costs. American Water must file its justification of the current surcharge costs with the Commission no later than 60 days after the date of this order.**

**B. Request that Language of Initial Order be Clarified, to Avoid Ambiguity**

Staff requests that the sentence in ¶25 which states that “American Water may be due some consideration under the circumstances of this case, but not to the extent that the company believes it is entitled. . . .,” be stricken from the Order. This statement is not only inconsistent with the tenor of the language in ¶27, but Staff does not believe it to be true. From the extensive guidance that Staff has provided to Mr. Fox over the past five years, Staff also believes that Mr. Fox should have known the level of detail that Staff requests when reviewing Company expenditures.

Mr. Fox's company is no different than those whose detailed information is presented in Exhibits 125 and 126, which was presented to the Commission without the company requesting specific guidance from Staff. This is because the standard for supporting information has not changed for many years--Staff has always requested to review original invoices and the supporting receipts and records for those invoices. As noted above in section II, Background, of this Petition, the quality of the records of American Water has been a significant issue between Staff and the Company in the past. In the prior litigated rate case, the Commission's order made it clear to the Company that it needed to remedy its inadequate records.

Staff also requests that the language of ¶34 of the Initial Order be revised or deleted from the Order. Staff appreciates the language in ¶36 of the Initial Order, which acknowledges that Staff does not have a unilateral duty to provide American Water, or any regulated company for that matter, with additional guidance on the surcharge project accounting. However, in ¶34, the Initial Order appears to chastise Staff for not providing more assistance to the Company in response to its request for help in preparation of a bid document. Staff sees a distinct difference

between providing regulatory guidance, which it sees as fully within its proper role, versus providing consulting services to a company, to assist with drafting the language for a request for bids as was requested by American Water in the instance discussed in ¶34 of the Initial Order. Further, as the actual language of the request was not made part of the record, but only referenced in a question posed to Mr. Ward on cross-examination, any reference to this request in the Final Order seems inappropriate and likely to lead other companies to believe it may be appropriate to call on Commission Staff for "consulting" assistance.

The Commission has taken significant steps to lower the deficit between water regulatory fees paid, and the costs of regulating the industry. In 1995, the Commission reduced the water Staff by 40 percent. Staff's 1997 Analysis of the Water Industry recommended that the Commission decrease Staff's role as consultants to the water companies. Virtually every discussion regarding water regulation touches on the funding deficit and the need for Staff to focus resources on regulatory issues. While trying to be responsive to company requests for regulatory assistance, Staff consciously declines company requests to provide consulting services on management and operations. Staff believes its actions reflect the direction of the Commission and we request the Commission to review the language in the order that chastises Staff for not providing enough assistance to American Water. We ask that the Commission clarify the intent of the order regarding Staff providing assistance to companies for management and operations.

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**C. The Commission Should Take This Opportunity to Advise Mr. Fox Once Again of the Need to Maintain the Proper Role When Working with Affiliated Companies**

Staff requests that the Commission make it clear to Mr. Fox that he must act as the manager of the regulated company in the manner consistent with the best interests of the company's ratepayers. Staff agrees that, in an abstract sense, it is possible for Mr. Fox to wear several "hats," acting in a different capacity when conducting water company business vs. the business of his construction company, or the winery in which he has an interest. However, at this point, Staff believes that it may no longer be acceptable, given the decisions Mr. Fox has made relating to the water company, for him to wear those different hats. Mr. Fox needs to make decisions on behalf of the water company while wearing the appropriate hat, acting solely in his role as manager of the water company, without an eye to his personal investment interests or the interests of his other business enterprises. The Initial Order, at ¶27, acknowledges this point: "However, American Water should have foreseen that the award of each and every surcharge project to Fox Company would attract regulatory scrutiny." When Mr. Fox is accepting bids from construction companies as the manager of American Water, the regulated water Company, he needs to act in that capacity, and not with an eye to his role as the owner of V.R. Fox Co., Inc. At the hearing, Mr. Fox stated that he discussed the bids received from the various bidders for work to be done for American Water with the staff of V.R. Fox Co., Inc., prior to accepting the bids. TR at 188-189. This is clearly inappropriate behavior in a competitive bidding situation if the results are to be unbiased.

Mr. Fox also testified that he prepared the bids for V.R. Fox Co., Inc., to submit to American Water, for work on the surcharge projects, yet had other people sign the bids and the



contracts. TR at 212-213. Mr. Fox also testified that he had prepared the original estimates which were used to support the original surcharge filing (TR at 213) and that the entire process was "done on a relatively sloppy basis". TR at 199, lines 18, 21. At best, these actions convey an appearance of impropriety. At worst, they are detrimental to customers served by the regulated water company. Staff feels it is important for the Commission to send a message to Mr. Fox that the Commission will hold Mr. Fox accountable for actions he takes that do not reflect the best interests of the ratepayers of the regulated company.

#### **IV. CONCLUSION**

Commission Staff requests the Commission review the Initial Order, and modify the Finding, Conclusions, and the language of the Initial Order as indicated above. Staff also requests that the Commission direct the Company to file supporting documentation for the surcharge expenditures, to justify continued collection of the surcharge, and that the Commission clarify for Mr. Fox the need to maintain the proper role, when acting as manager of the water utility.

The possibility of assessing the costs of this case was included in the Complaint and Order Suspending Tariff Revisions in Item 5 of the Order Section. At hearing, Staff noted that, after receiving the Final Order in this case, that it intends to seek recovery of the Commission's costs from the Company as authorized by RCW 80.20.020. As noted in ¶15 of the Initial Order, Staff twice moved for dismissal of the filing, before the full proceedings, in order to reduce the costs of the proceeding. If the Company had responded in November, 1999 with appropriate documentation of its costs, or if it had presented such information with the filing of this case in March, 2000, the time and expense necessary to review the filing would have been substantially

reduced. The Company's refusal to provide the requested information increased the costs that the Commission has incurred in reviewing this case, and the costs of the hearing.

DATED this \_\_\_\_\_ day of February, 2001.

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