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1 P R O C E E D I N G S

2 JUDGE CAILLE: We are here today for the
3 first pre-hearing conference in the proceeding docketed
4 UW-031596, and this matter is encaptioned In The Matter
5 of the Penalty Assessment Against Virgil R. Fox,
6 President American Water Resources, Incorporated, in the
7 amount of \$3,700. This matter concerns an application
8 for mitigation of penalties filed by Mr. Fox, and
9 today's pre-hearing conference was originally scheduled
10 for January 15th but was rescheduled to today to
11 accommodate Mr. Fox's schedule.

12 My name is Karen Caille, and I am the
13 presiding Administrative Law Judge in this proceeding.
14 Today is January the 22nd, 2004, and we are convened in
15 a hearing room at the Commission's offices in Olympia,
16 Washington.

17 I would like to start out this afternoon by
18 taking appearances from the parties. I will ask you to
19 please state your name, who you represent, your street
20 address and mailing address, telephone number, fax
21 number, and if you have one an E-mail address, and let's
22 begin with you, Mr. Fox.

23 MR. FOX: Okay. It's Virgil Fox, I represent
24 American Water. My address is 921 Middle Fork Road,
25 Onalaska, Washington 98570, phone is (360) 978-6178.

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1 JUDGE CAILLE: Fax?

2 MR. FOX: Fax is (360) 978-5225.

3 JUDGE CAILLE: And E-mail.

4 MR. FOX: E-mail is virgfox@tds.net.

5 JUDGE CAILLE: Is it V-I-R-G-F-O-X then?

6 MR. FOX: That's close enough, I-L if you
7 want the whole name.

8 JUDGE CAILLE: No, I mean for the E-mail,
9 V-I-R-G --

10 MR. FOX: Oh, yes, V-I-R-G-F-O-X.

11 JUDGE CAILLE: At?

12 MR. FOX: At tds.net.

13 JUDGE CAILLE: Okay.

14 And for Commission Staff?

15 MS. WATSON: This is Lisa Watson, Assistant
16 Attorney General for Commission Staff. My address is
17 1400 South Evergreen Park Drive Southwest, P.O. Box
18 40128, Olympia, Washington 98504. My telephone number
19 is (360) 664-1186, the fax is (360) 586-5522, and my
20 E-mail is lwatson@wutc.wa.gov.

21 JUDGE CAILLE: Thank you.

22 Let the record reflect there are no other
23 appearances.

24 The first topic I would like to discuss today
25 concerns Mr. Fox's letter filed on January the 9th, and

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1 in this letter Mr. Fox asked that the parties and the
2 Commission consider putting the penalty case on hold
3 until the complaint rate case is resolved.

4 And, Mr. Fox, did you want to comment any
5 further on your proposal?

6 MR. FOX: Well, I just thought that because I
7 believe that there's a number of issues intertwined that
8 it would be most time efficient for all of us to talk
9 about both issues together.

10 JUDGE CAILLE: Okay, then I misunderstood.
11 Did you mean to say that you wanted to consolidate the
12 complaint case with the --

13 MR. FOX: With the rate case.

14 JUDGE CAILLE: The rate case with the penalty
15 case?

16 MR. FOX: Well, if it --

17 JUDGE CAILLE: And consolidate would mean
18 that all the issues would be heard together.

19 MR. FOX: That sounds to me like the right
20 thing.

21 Is that the right way to say it Julia?

22 MS. PARKER: I think that that would be.

23 JUDGE CAILLE: Because the way your letter
24 reads, it sounded like you wanted to first do the rate
25 case and then do the penalty case.

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1 MR. FOX: No.

2 JUDGE CAILLE: Okay.

3 MR. FOX: I believe it would be most
4 efficient to talk about it all together.

5 JUDGE CAILLE: All right. Is that all you
6 have to comment on on that?

7 MR. FOX: I believe so.

8 JUDGE CAILLE: Okay.

9 Go ahead.

10 MS. WATSON: The two dockets, the rate case
11 and the penalty assessment case, they really are two
12 distinct cases, and combining them really wouldn't be
13 appropriate. There's a couple of reasons why. First,
14 the issues are very separate. In this docket, the
15 penalty assessment docket, we're looking at whether, or
16 not whether, but how much of the penalty Mr. Fox should
17 ultimately pay. In the rate case we're determining the
18 appropriate rates for AWR, the company.

19 The two different cases have different
20 parties. Staff is the same in both of the cases, but in
21 the penalty docket the party is Mr. Fox as an
22 individual, not AWR the company. In the rate case it's
23 AWR the company and not Mr. Fox.

24 The issues in the two cases don't really
25 overlap. Some of the facts overlap to a certain degree

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1 because in both cases we'll discuss the Docket 010961
2 account, but in each of those cases we discuss them in
3 different manners. In this case we're looking at
4 penalties based on the uses of that money or failure to
5 deposit that money. In the rate case we're looking at
6 what we need to do with the money that's sitting in the
7 account and money that was supposed to be deposited.

8 So the issues are different, the parties are
9 different, and so consolidating the two dockets,
10 actually three dockets because the rate case is a
11 consolidated docket, but combining the dockets wouldn't
12 be appropriate.

13 JUDGE CAILLE: Okay. Would you go over again
14 for me, Ms. Watson, the differences in the two cases. I
15 didn't get them all down as you were saying them.

16 MS. WATSON: Sure. One of the primary
17 differences is the parties. In the penalty assessment
18 docket it's Mr. Fox as an individual. In the rate case
19 it's AWR the company.

20 JUDGE CAILLE: Mm-hm.

21 MS. WATSON: Another primary reason that
22 they're different is the issues. In this case we're
23 looking at a very discreet issue. The parties agree
24 that there's a penalty, the parties disagree as to how
25 much of the penalty should be paid. And so the issue in

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1 the penalty assessment case is really how much of that
2 penalty should be paid. In the rate case we're looking
3 at what rates are appropriate for the company to be
4 charging the customers. Very different issues there.

5 JUDGE CAILLE: Okay.

6 MS. WATSON: Do we still have a question as
7 to whether we should postpone the penalty docket as
8 well, I mean in addition to consolidating?

9 JUDGE CAILLE: Yes, let's consider that as
10 well, because based on -- you definitely think they
11 should not be heard together, so would you also address
12 whether you think they should be heard in sequence.

13 MS. WATSON: I don't think that postponing
14 the penalty case would be beneficial either. It should
15 be a fairly quick proceeding, one that we can prepare
16 for pretty quickly I think on both sides because the
17 issue is so discreet. Waiting until after or sometime
18 around the same time as the rate case docket really
19 doesn't save any resources in that sense. In my opinion
20 it would seem like we would expend more resources by
21 postponing it because the case is fresh. To wait until
22 I think the case is set for April we would end up using
23 more resources by gearing up again to prepare for the
24 penalty assessment case.

25 JUDGE CAILLE: Okay.

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1 Mr. Fox, do you have any remarks in response?

2 MR. FOX: Well, I guess I suppose it's a
3 matter of how you folks have to handle your procedures,
4 but from my viewpoint, I don't think there should be a
5 penalty. And I think the reasons why I believe that are
6 a part of what gets discussed in the rate case, and
7 that's why I thought that it made sense to discuss them
8 together. But whether or not that is your procedural
9 way of dealing with it or whatever, you know, I don't
10 know those things. So I think I guess it's a matter of
11 it gets discussed however you feel is the appropriate
12 way, but that's my thinking on it.

13 JUDGE CAILLE: Okay.

14 Ms. Watson, anything further?

15 MS. WATSON: Not really, I think I would end
16 up reiterating what I have already stated.

17 JUDGE CAILLE: Let me just make sure I
18 understand what has happened in the penalty. The
19 penalty has already been assessed, and am I correct that
20 that penalty has to do with the tax situation with the
21 sale of some plant, is that the discreet issue?

22 MS. WATSON: That's part of the issue. What
23 happened in the penalty assessment, there was a failure
24 to deposit the money, and so there were certain
25 penalties assessed for that. And then there was an

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1 expenditure made from that account. The money was being
2 set aside for specific purposes. There was an
3 expenditure that was made. It was somewhere in the
4 neighborhood of \$66,000, I don't remember the exact
5 number off the top of my head, but there was that
6 expenditure, and that was for certain taxes, and one of
7 those taxes was a sale of a water system.

8 JUDGE CAILLE: Okay, so in the rate case are
9 we still dealing with the issue of failure to deposit
10 money?

11 MS. WATSON: No. In the rate case we're
12 dealing with cost of operations, what the company needs
13 in terms of rates in order to operate at a fair, just,
14 reasonable, sufficient level.

15 JUDGE CAILLE: Because, and maybe my
16 recollection, I may have to go back, but it was a
17 complaint and I thought that one of the issues was the
18 inappropriate use of funds from that docket account. I
19 can't remember the docket, docket account, I will just
20 call it the docket account.

21 MS. WATSON: Right.

22 JUDGE CAILLE: And then also failure to
23 deposit.

24 MS. WATSON: So certain facts that are
25 probably brought up in the case -- and I think what

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1 you're thinking about is there's certain discussions
2 about I think there were two different sales, Birch
3 Field and View Royal, and so we're trying to deal with
4 how to treat the gain on those sales.

5 JUDGE CAILLE: In the rate case we're doing
6 that?

7 MS. WATSON: Right.

8 JUDGE CAILLE: Okay.

9 MS. WATSON: And how to treat the money
10 that's in the docket account and the money that should
11 have been deposited but wasn't deposited.

12 JUDGE CAILLE: Okay.

13 MS. WATSON: So it's the treatment of those
14 moneys, and so that's where the facts overlap.

15 JUDGE CAILLE: Okay.

16 MS. WATSON: Here we're dealing with the
17 activity in the account, and in the other case we're
18 dealing with how to treat that money on a going forward
19 basis.

20 JUDGE CAILLE: All right. Based on my
21 understanding now after talking with the parties, first
22 I thought it would be a good idea actually to
23 consolidate these. I didn't see any benefit to doing
24 them one behind the other.

25 Did you want to say something more, Mr. Fox?

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1 MR. FOX: Well, I think it kind of seems to
2 me that maybe you had the better idea in the beginning
3 interpreting my letter, that it should be considered
4 after. Because I believe that there's a lot of things
5 to be discussed in the rate case that have a bearing, a
6 very direct bearing on what I did or didn't do that
7 precipitated the penalty, and I don't believe that the
8 decision on the penalty or the amount of the penalty
9 should reasonably be made without reviewing those other
10 issues, so maybe after is the better answer.

11 JUDGE CAILLE: Okay, I am going to give this
12 just a little bit of thought. I would like to take
13 about a ten minute recess. During that time maybe the
14 parties, just so you aren't sitting here doing nothing,
15 let's assume that we're going to go forward with this
16 separately and immediately, so could you maybe think
17 about a schedule or the process for this while I'm
18 reading this over and thinking about it.

19 MS. WATSON: Sure.

20 May I add just one thing?

21 JUDGE CAILLE: Mm-hm.

22 MS. WATSON: One thing that I forgot to state
23 earlier was that the parties' positions have already
24 been outlined in the pleadings that we have already
25 submitted, and the way that I see this proceeding is the

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1 positions have already been established, and so the
2 proceeding would be a chance to question both of the
3 parties on those positions, so I think we already have
4 the facts in this docket that we need.

5 JUDGE CAILLE: And so what we would need is a
6 hearing just for cross-examination or presentation?

7 MS. WATSON: I believe so.

8 JUDGE CAILLE: All right, thank you.

9 I will be back at 2 minutes to 2:00.

10 (Recess taken.)

11 JUDGE CAILLE: I am going to take this under
12 advisement and reserve ruling at this point. Just so
13 you know, another option that I thought might work is
14 somewhat of a middle ground that we would go ahead with
15 the hearing, and then after the hearing Mr. Fox could
16 file a motion to supplement with the material from the
17 rate case that you think is relevant to this hearing, or
18 we could maybe even do that up front if it's already
19 been filed and you know what it is. I'm pretty sure
20 that -- oh, wait, Staff filed testimony, the company
21 will be filing in February.

22 Okay, well, I'm still thinking about that,
23 but in any event let's go ahead and come up with
24 alternative schedules so that when I make a decision on
25 how we should handle this I will have a schedule ready

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1 to put in place in the pre-hearing conference order. So
2 why don't we look at going with the hearing first on the
3 penalty assessment.

4 MS. WATSON: We're looking at the first week
5 in March. The company's case in the rate case docket is
6 due on February 17th, and then they're tied up in
7 billing at the end of the month, and so the first week
8 in March works well for both the company and Staff. And
9 we're talking about March 1st, which is that Monday.

10 JUDGE CAILLE: Oh, could we please not do it
11 on March 1st, that's my birthday.

12 MS. WATSON: Well, any day that week really.

13 JUDGE CAILLE: I'm going to get my calendar.

14 Any other day that week I think. Hold on,
15 just let me check the calendar. Well, the big hearing
16 room isn't available, but I don't have a problem with
17 that. We can do it in this room.

18 Were you thinking of one day?

19 MS. WATSON: Yes.

20 JUDGE CAILLE: Like an afternoon?

21 MS. WATSON: Probably less than a day.

22 JUDGE CAILLE: Which would you prefer, a
23 morning start or an afternoon?

24 MR. FOX: That far away it doesn't matter to
25 me, I can accommodate anything.

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1 MS. WATSON: We would probably prefer to
2 start in the morning just in case it goes a little
3 longer.

4 JUDGE CAILLE: All right, so I'm going to
5 have to just verify. Which day would you prefer, 2nd,
6 3rd, 4th?

7 MS. WATSON: Staff doesn't have a preference.

8 JUDGE CAILLE: How about the 3rd?

9 MS. WATSON: That's good.

10 JUDGE CAILLE: Okay.

11 MR. FOX: The 3rd?

12 JUDGE CAILLE: Yes, March 3rd. Now this is
13 subject to my checking with my assistant to make sure
14 that room 108 is available, so if the 3rd isn't okay,
15 will the 4th or the 2nd work as well?

16 MS. WATSON: Yes.

17 JUDGE CAILLE: Okay. And I will be checking.
18 Actually I can probably check after we go through. So
19 you envision this just a one day hearing, and then were
20 you thinking of doing a brief, because Mr. Fox is
21 representing himself?

22 MS. WATSON: I don't know that in this case
23 briefs are necessary. If you wanted them, I think we
24 would be more than happy to prepare one, well, each
25 party preparing their own briefs. But I'm not sure that

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1 this is really a docket that needs briefing.

2 JUDGE CAILLE: Well, then all we need is the
3 hearing date, and we've got that, and I will check that
4 in just a minute.

5 Is there any reason to invoke the discovery
6 rule?

7 MS. WATSON: I don't believe so.

8 JUDGE CAILLE: We wouldn't need a protective
9 order either then.

10 Okay, I think that's it, let me just quickly
11 check with my assistant to see if that is available and
12 we'll have that.

13 (Recess taken.)

14 JUDGE CAILLE: Well, unfortunately, no one is
15 there right now, they must all be in a different
16 meeting. So I will get my pre-hearing conference order
17 out, which will define the process and maybe adopt this
18 date for hearing hopefully early next week, so then
19 everyone will be aware of what the process is.

20 Is there anything else that needs to be
21 discussed today?

22 Oh, I have one additional thing. For all
23 your filings in this docket we will need an original
24 plus nine, and I will put that in the order as well, but
25 that's just for you to know now.

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1 Anything else?

2 MS. WATSON: Staff has nothing further.

3 JUDGE CAILLE: All right, thank you very

4 much.

5 (Hearing adjourned at 2:05 p.m.)

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