

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION
COMMISSION

WASHINGTON UTILITIES AND)	
TRANSPORTATION COMMISSION,)	
)	
Complainant,)	
)	DOCKET NO. UW-000405
v.)	
)	FINAL ORDER AFFIRMING
AMERICAN WATER)	INITIAL ORDER;
RESOURCES, INC.,)	DISMISSING TARIFF
)	REVISIONS
Respondent.)	WITHOUT PREJUDICE
.....)	

I. SYNOPSIS

1 In this Order, the Commission affirms the initial order dismissing tariff revisions filed by American Water Resources, Inc. (“American Water”) for failure to meet its burden of proof, without prejudice to the Company’s later refile with sufficient supporting information. The Commission grants in part and denies in part the Commission Staff’s motion for reconsideration and clarification.

II. PROCEDURAL SUMMARY

2 On March 31, 1999, American Water filed for a general rate increase in the form of a surcharge under RCW 80.28.022 in Docket No. UW-990518. American Water serves approximately 1,873 active customers on 146 water systems in six counties. The company requested this surcharge to cover the cost of the Department of Health (“DOH”) critical items. The critical item list consisted of upgrades to 13 water systems as contained in the company’s capital improvement plan.

3 On April 28, 1999, the Commission found that American Water’s tariff for surcharge was reasonable and consistent with the public interest, and the Commission approved the filing subject to conditions, effective May 1, 1999. The surcharge collections are being used to repay a bank loan.

- 4 On March 20, 2000, American Water filed tariff revisions to request an extension of the surcharge to recover additional expenditures. The surcharge was originally established to expire May 1, 2004, or upon recovery of the loan principal (\$380,350), plus interest and taxes, whichever comes first. The Company asks an extension of the surcharge to recover an additional \$102,106. The Commission on April 26, 2000, entered a Complaint and Order Suspending Tariff Revisions and Instituting Investigation.
- 5 On September 12, 2000, American Water consented to an extension of the statutory tariff suspension period to April 3, 2001. The Commission received sworn public comment from two members of the public in hearings on December 5 and 6, 2000, and convened the evidentiary hearing on January 3 and 4, 2001. During the evidentiary phase, the Commission heard evidence from five witnesses.
- 6 The presiding Administrative Law Judge entered an initial order on February 13, 2001, proposing that the Company's surcharge extension request be denied for failure of the Company to provide sufficient support.
- 7 No party contests the result of the order. Commission Staff petitioned for administrative review, asking that the order be clarified or amended regarding the parties' obligations. American Water answered, opposing the requests.
- 8 **Appearances:** American Water appeared in pre- and post-hearing matters by Richard A. Finnigan, attorney, Olympia. During the hearing, American Water President Virgil Fox, represented the Company. Mary Tennyson, Senior Assistant Attorney General, Olympia, represented the Commission Staff.

III. MEMORANDUM

1. The initial order

- 9 No party challenges the result of the initial order – rejection of the proposed surcharge extension, without prejudice to refile, for failure of proof – which the Commission will affirm.

2. Petition for Administrative Review, and Answer

- 10 The Commission Staff petitioned for administrative review of the order, raising three points. Staff asks the Commission to direct the Company to file information in support of its existing surcharge; to clarify language of the initial order relating to responsibilities of the Company and Commission Staff; and to instruct the Company as to Commission requirements regarding affiliated interest transactions.

11 We will first decide the issues raised in the petition and the response, and then conclude with the remainder of the Commission's final order in this docket, incorporating the portions of the Initial Order that we adopt.

3. Request that the Company provide information.

12 Commission Staff asks that the Commission require the Company to provide certain information within sixty days relating to the Company's existing surcharge. The Company responds that the request is outside the purpose of the docket – an increase to the existing surcharge – and that it is inconsistent with dismissal of the petition and closure of the docket.

13 The Commission denies this request. The purpose of this docket is to allow the Company to demonstrate need for its proposed surcharge extension. It appears that the extension is integrally related to the original funding request, and that support for increased expenditures for work by an affiliated interest will require an explanation of underlying costs for all work. But upon dismissal of the proceeding it would not be proper to require the production of cost data.

14 The Company may of course be required to produce the information. Nothing prevents the Commission Staff from pursuing the information under its audit authority or, if appropriate, requesting the filing of a complaint.

15 The Commission encourages the Company to refile promptly – within 90 days – if it still wants the surcharge extension or decides to seek a general rate increase, because the issues are still fresh in the participants' minds and a prompt process might prove to be the most efficient. The Company should include with its filing its portrayal of all surcharge-related expenditures, together with supporting documentation and an explanation linking the records with the work accomplished.

4. Clarification of Initial Order language.

16 The Commission Staff asks the Commission to "clarify" language in the Administrative Law Judge's initial order. The Staff asks that a comment relating to Commission Staff obligations be removed and that the Commission note that Staff cannot become a consultant for water companies given its reduced staffing levels and competing demands for its resources. The Company answers, opposing the request, contending that the services the Company requested do not rise to the level of consultation.

17 The Commission grants Commission Staff's request, in part. We do not think that the discussion of parties' obligations and shortcomings is necessary to the result of the order. We will delete it while we affirm and adopt the result of the order.

18 We reject the Company's surcharge extension request because the Company failed to provide sufficient support for its request. We expect that the future will see increased cooperation between the Company and Commission Staff and that the time and energies required for the resolution of issues can thereby be reduced for the benefit of the Company, the Commission Staff, and the Company's ratepayers.

5. The proper treatment of affiliated interest transactions

19 The Commission Staff asks the Commission to remind the Company about the requirements relating to affiliated interest transactions and the need to require, to keep, and to present sufficient records to permit an audit of the expenditures for regulatory purposes. The Company responds that the requested statement is unnecessary because the Company acted properly in all regards.

20 We deny this request, because it is superfluous to our actions. It is clear from our decision that the Company failed to present, when needed, sufficient records to support for regulatory purposes the validity of the affiliated expenditures. The Company has the burden under law to support its requests with sufficient evidence. It can see this very plainly, and can see that in the future it must provide adequate records in a timely manner to support such transactions or see its request denied. Further instructions appear to be unnecessary.

6. Conclusions

21 We affirm the result of the Initial Order. We note that the Company may refile for the desired financial relief in a separate proceeding, either by again seeking an extension of the surcharge or by seeking an adjustment to its rates. In choosing either avenue, the Company must present sufficient information regarding its affiliated interest transactions to support its request. We encourage the company to proceed within 90 days if it chooses either of those alternatives.

22 We set out in the remainder of this document the Commission's complete decision, revising the Initial Order to conform with these decisions, to provide the reader with a complete decision on all matters presented by the parties. In doing so, we make minor editing changes for purposes of style.

7. Further background for the decision.

23 All of the expenditures for which the Company seeks recovery were payments to its affiliate, the Fox Company, also owned by water company owner Virgil Fox.¹ The

¹ Because of the common ownership, the companies are affiliated interests and are subject to certain scrutiny to protect the interests of ratepayers that would not apply to transactions between unrelated businesses. See, 14th Supp. Order, *In re U S WEST Communications, Inc.*, Docket No. UT-98094 (July 2000).

water company at various times refused to provide transaction information that the Staff needed to evaluate and prepare its own evidence, denied that such information existed, and stated that it could not produce the information because it was in the possession of the contracting company and not the water company. Only during the hearing did it produce information demonstrating that it had, or had access to, the information.

- 24 The Company was represented by counsel in early phases of this docket. It chose to represent itself at the hearing, however. The Commission convened a prehearing conference on December 28, 2000, to discuss procedural issues raised by American Water's decision to represent itself at the hearing. The presiding Administrative Law Judge addressed hearing procedures with Mr. Fox, American Water's President, and other parties. Discussions included the recognition of the Company's obligation to present sufficient evidence through witnesses and exhibits to support its filed tariff revisions.
- 25 A regulated company that makes a tariff filing exercises considerable control over the proceeding. Relevant information is often within the exclusive control of the regulated entity. Further, the company is able to organize its information prior to filing its request and to choose when to file. However, once a tariff filing is made, statutory requirements control the time during which the Commission must take final action if the tariff filing is suspended.
- 26 In this case, American Water had substantial control over the course of the hearing. Once the Commission suspended the tariff revision to extend the surcharge, only American Water could extend the time for final agency action. At the prehearing conference Mr. Fox was informed that he could request a continuance if he needed more time to prepare for the hearing. Mr. Fox responded that he was not interested in asking for more time. *Tr. 66-67.*
- 27 At the prehearing conference, Commission Staff stated its concern about the schedule because American Water had not provided its list of exhibits (as required in a prior prehearing conference), and because the Company's responses to Staff's discovery requests appeared to be incomplete. Staff stated its view that the Company had not provided sufficient information to support its filing. *Tr. 67.* American Water responded that it had provided all available information in response to data requests. *Tr. 69.* Mr. Fox was informed regarding American Water's burden of proof at hearing.
- 28 American Water called only Mr. Fox to testify during the hearing. Commission Staff subpoenaed and called to the stand Steven Hatton, a professional engineer who performed services for American Water, and Katherine Woods, V. R. Fox Company

office manager.² Commission Staff also presented the testimony of Bill Liechty, Department of Health, Division of Drinking Water, and Mr. Ward, Commission Staff revenue requirement specialist.

29 Commission Staff moved to dismiss American Water's case at the conclusion of testimony by Mr. Fox, Mr. Hatton, and Ms. Woods. *Tr. 239-243*. Staff argued that evidence presented by American Water was insufficient to determine whether its expenditures were prudent and whether those expenditures should be recovered under the surcharge. The presiding officer took the motion under advisement, and Staff presented other evidence. At the conclusion of the hearing, Staff renewed its motion to dismiss. *Tr. 403-408*.

8. Commission Staff's Motion to Dismiss

30 Commission Staff argued that American Water failed to present sufficient information to determine its costs and whether its costs are appropriately charged to the capital improvement surcharge account. Specifically, Staff argued that American Water failed to present time logs and vendor invoices to support its actual time-and-material cost detail even though such documents exist. Staff also argued that American Water has not met its burden because the Company relied on a general accounting of its engineering costs and fails to allocate those costs among the surcharge projects. According to Staff, American Water's failure to timely produce all available information in response to relevant data requests prevented Staff from presenting an effective case of its own.

31 American Water responds that it approached each project on a lump-sum basis – that is, it solicited bids and awarded the surcharge projects based on the lowest total bid price for each project, not on the estimated cost for each element. American Water argues that it is unusual to track expenses according to time and materials when a project is bid on a lump-sum basis. *Tr. 90-91*. According to American Water, there was no reason for the Company to know that such detailed reporting of surcharge project costs was necessary. American Water claims that it would be burdensome and prohibitively expensive to locate and organize that information. The Company states that it did not intend to obscure or withhold information. Mr. Fox testified and represents that it will retain and present expense accounting information in more detail in the future. *Tr. 209*.

32 Commission Staff contends that American Water, as a regulated company, is obligated to maintain expense accounting records that enable the Commission to fulfill its public duty and perform its oversight role. Here, the issue is particularly sensitive because the Company was dealing with an affiliated interest. Staff also contends that American Water was aware of the level of cost reporting detail that is

² Exh. 116 and 117, respectively.

necessary based on the Company's 1998 rate case and other guidance provided by the Commission.

33 Commission Staff suggests that the Commission may allow American Water to refile its request for a surcharge extension after it compiles sufficient backup information. Alternatively, Staff suggests that American Water treat these expenses as part of its capital expenditures and seek recovery as part of its rate base.

34 American Water objected to the motion, arguing that it had fully complied with the requirements of law.

9. Discussion and Decision

35 Commission Staff's motion to dismiss is granted without prejudice on two grounds: 1) American Water failed to present sufficient reliable evidence in support of its labor and material costs; and 2) American Water failed to present sufficient reliable evidence in support of its engineering consulting costs.

10. American Water Failed to Present Sufficient Reliable Evidence in Support of Its Labor and Material Costs.

36 RCW 80.04.130 (2) states that at any hearing involving any change in any schedule the effect of which is to increase any rate or charge, the burden of proof to show that such increase is just and reasonable shall be upon the public service company seeking the increase. American Water must demonstrate by a preponderance of the evidence that the totality of its capital improvement surcharge is fair, just, reasonable, and sufficient. The Commission's Order approving American Water's request for a rate increase in the form of a surcharge states:

- a. This order shall in no way affect the authority of this Commission over rates, service, or accounts, evaluations, estimates, or determinations of cost or any matters whatsoever that may come before it, nor shall anything herein be construed as an acquiescence in any estimate or determination of cost or any valuation of property claimed or asserted.³

37 American Water's request for a surcharge was based on estimated costs for engineering work plus installation and construction of thirteen critical projects.⁴ The Commission's approval of the Company's request did not constitute a finding that the

³ *In the Matter of the Application of American Water Resources, Inc. for an Order Approving Tariff Revision*, Order Approving Tariff Revision, Docket No. UW-990518 (April 28, 1999); See Ex. 102.

⁴ See Ex. 102, attachment -- Summary List of Projects.

level of the surcharge is just and reasonable.⁵ American Water may only recover such costs under the surcharge that were approved by the Commission. Because a surcharge is approved in advance of expenditures, the Company must establish that costs incurred are consistent with the scope of work approved.

- 38 American Water structured its bid process and awarded these projects for making critical improvements on a lump-sum basis. The Company's request to extend the surcharge recovery period is based on a lump-sum accounting of costs for each project, which have not been verified as prudent or supported by other accounting records. It should have been readily apparent to American Water that the mere lump-sum reporting of its actual payments to an affiliate would be insufficient to demonstrate that its proposed rates were just and reasonable. Unless the Company presents an itemized accounting of the expenditures, with supporting records, the Commission is unable to determine whether the expenditures have been prudently incurred and properly recorded.
- 39 A surcharge provides a company with a source of capital when: 1) it has insufficient funds to replace or upgrade failing infrastructure; and 2) the company cannot obtain financing through traditional capital markets. WAC 480-110-455. American Water did not possess sufficient funds to make the necessary improvements to these water systems. Mr. Fox testified that American Water was required to obtain regulatory approval of a surcharge before it could obtain a bank loan to finance improvements in early 1999. *Tr.* 228-30.
- 40 Mr. Fox argues that the Commission should give some consideration to the fact that American Water did not know that it was supposed to account for project costs in any particular way. In light of the Company's size and experience, and its history of regulatory involvement with the Commission, we are amply satisfied that the Company knew or should have known what its responsibilities were. We are also satisfied that if it had complied in a timely manner with the Commission Staff's prior requests and with the Administrative Law Judge's direction to supply information, sufficient information could have been available at the hearing to permit action on the Company's request.
- 41 The Commission's approval of the surcharge required the Company to seek competitive bids due to Fox Company's status as an affiliated interest. Fox Company, American Water's affiliate, was the lowest bidder on each of the thirteen surcharge projects that were put up for bid.⁶ On three of the thirteen projects Fox Company was the only bidder, and on another three projects the bid award was decided by \$700.00 or less. Mr. Fox credibly testified that American Water's efforts

⁵ See also the Commission's "Complaint and Order Suspending Tariff Revisions, and Instituting Investigation" in this proceeding, dated April 26, 2000.

⁶ Ex. 5.

to solicit bids from other companies were complicated by the need to make immediate repairs.⁷ *Tr. 93-6.* The existence of competitive bids on some of the projects may be some evidence of their reasonableness for regulatory purposes, but it is not conclusive evidence. American Water benefited by the ability of a primary contractor to assign and rotate work crews among the various projects due to the urgent need to make capital improvements.

42 However, American Water either knew or should have known that the award of each and every surcharge project to its affiliate Fox Company would attract regulatory scrutiny. American Water could easily have required Fox Company to maintain and present records of its costs on a time-and-materials basis, even though the contract award was to be compensated on a lump-sum basis.

43 The lump-sum bids and accounting of project costs are no more reliable than the cost estimates that American Water presented as part of its initial request for approval of the surcharge. It is not evident from the record that all of the project work performed should be included in the surcharge recovery. In this context, reliability is measured by the extent to which costs can be audited and verified. The Commission cannot discharge its public duty by determining whether the rates of regulated companies are just and reasonable based merely on affidavits, especially when the transaction is with an affiliate and contemporaneous records are available.

44 Also, American Water received a bid from Complete Pump Company for the Terry Lane project that stated it would be more cost effective for work to be performed on a time-and-material basis. *Ex. 5.* This bid was received prior to the bid award of seven projects and prior to the start of work on eleven projects, and American Water could have revised its cost accounting practices before work was completed.

45 The history of information requests demonstrates many opportunities for American Water to provide supporting information. On November 29, 1999, Commission Staff requested that American Water provide a detailed breakdown of each water system project including copies of all vendor invoices and time logs for all labor. *Ex. 110.* On March 20, 2000, American Water responded that further detail, consisting of a volume of information “an inch to two inches in thickness,” was available for review in American Water’s business office, but it did not comply with the request for the information. American Water filed its request for an extension of the surcharge period on that same date.

46 Subsequently, Staff made successive written requests that American Water provide copies of all supporting records. *Ex. 121, 123, and 124.* At some point during this exchange, American Water changed its position and responded that it did not possess

⁷ Ex. 110 includes a “Timeline of Surcharge Projects.”

any of the requested records because the surcharge projects were awarded on a lump-sum basis. *Ex. 123.*

- 47 Subsequently, Commission Staff requested that American Water make the books and records of Fox Company available for review at its business offices (essentially the proposal that American Water had made to Staff on March 20, 2000). *Ex. 114.* On December 22, 2000, American Water provided a breakdown of total material and labor costs for each project, but further responded that American Water could not afford to pay Fox Company to compile time and material records. *Ex. 114.* Ms. Woods, the Company staff person, produced the Exhibit 114 breakdown of total costs per project from data that she had entered and stored in her computer. *Tr. 169-70.* American Water finds itself in its current predicament in part because it did not instruct Fox Company to retain records in project files, and because Fox Company did not do so. Additional efforts that may now be required to produce those records are necessary.
- 48 Commission Staff issued a Subpoena Duces Tecum to Ms. Woods, Fox Company's office manager, requiring her to produce time and material records for the surcharge projects. *Ex. 116.* Ms. Woods failed to comply fully with the subpoena. She did not bring the subpoenaed time and material records with her, but American Water submitted a 99-page summary of time and material costs for all of the surcharge projects prepared by Ms. Woods. *Ex. 6.* Ms. Woods testified that it took her approximately six hours to print the summary of job costs in Exhibit 6. *Tr. 169.* Invoices and time cards relating to the surcharge projects were coded and entered into Fox Company's computer by Ms. Woods as they were received during the projects. *Tr. 154-59.* Ms. Woods testified that Fox Company retained these records in files according to vendors and employee names, rather than according to project names. *Tr. 154, 167.* Fox Construction normally retains records in project files only when work is performed on a time-and-material basis. *Tr. 173.*
- 49 All records necessary for American Water to report surcharge job costs on a time-and-materials basis, rather than a lump-sum basis, currently exist in Fox Company's files. Additional work is necessary in order to retrieve the records that are summarized in Exhibit 6 from the vendor files and reorganize them by surcharge project name. It should be noted that Exhibit 6 is substantially similar to the exhibits prepared by staff portraying the kind of cost details that should accompany rate increase filings. *Tr. 368-72. See Exhibits 125 and 126.* However, both Exhibit 125 and 126 were accompanied by copies of back-up records.
- 50 American Water's Exhibit 6 does not, by itself, establish that its revised surcharge filing is just and reasonable. American Water must provide the Commission with sufficient supporting information to verify the validity of the work performed and the costs incurred. Some of American Water's project costs may not be appropriate for recovery through a surcharge.

51 Even though Exhibit 6 was admitted without objection, it is not alone sufficient to demonstrate the reasonableness of the proposed surcharge. Both the relevance and the accuracy of the information in the exhibit are subject to inquiry. American Water failed to provide the information in the exhibit pursuant to the Commission Staff requests and it failed to produce the exhibit in a timely manner, as required by the Second Supplemental Order.⁸ Parties must exchange exhibits prior to the hearing in order to ensure that relevant documents can be tested for their reliability as part of the hearing process. American Water deprived Commission Staff of an adequate opportunity to review the Company's summary of job costs and supporting material, and thus to prepare for the hearing. Consequently, Staff was unable to make full inquiry regarding the exhibit's reliability.

52 American Water also failed to meet its burden of proof because it did not submit any evidence to demonstrate that the labor rates charged by Fox Construction complied with the terms of an affiliated interests statement filed with the Commission.

11. American Water Failed to Present Sufficient and Reliable Evidence in Support of Its Engineering Costs.

53 American Water retained Steven Hatton, a civil engineer with the firm of Howard Godat Pantier & Associates ("Howard Godat"). Mr. Hatton provided engineering and consulting services for the surcharge projects. Mr. Hatton also worked with American Water to develop the Company's mandatory Water System Plan.⁹ *Tr. 106.* Howard Godat also performed other engineering services for American Water during the same time period that it worked on the surcharge projects. Unlike Fox Construction, Howard Godat did not separately retain expense records for the numerous surcharge projects. Instead, it recorded all engineering expenses in a single account, designated as Project No. 99-116. *Tr. 117.*

54 Both American Water and Commission Staff submitted for the record copies of monthly invoices from Howard Godat to American Water, including a summary of billing to American Water's surcharge account for 1999 through 2000. *Ex. 8, 112, and 113.* These charges totaled \$101,313.10. According to Mr. Hatton, these accounting records verify the completion of projects but do not provide detail of hours worked per project. Mr. Hatton stated that he probably had invoices from his firm to American Water for other engineering work that was not coded to the surcharge account, but that it would take a considerable amount of effort to provide them. *Tr. 131.*

⁸ The Second Supplemental Order, paragraph 20, states in relevant part: "The parties must . . . exchange exhibits and exhibit lists on or before December 22, 2000."

⁹ Howard Godat Pantier & Associates is now known as Hatton Godat Pantier.

- 55 Mr. Fox testified that the engineering costs should be allocated approximately 40% for system designs, 40% for the Water System Plan, 15% for corrosion control designs, and about 5% for evaluation of American Water's specification book. *Tr.* 207. American water did not provide any study or other supporting information to support these allocations. These estimates are not reliable for purposes of verifying costs to be recovered by the surcharge.
- 56 Other anomalies in the invoices cannot be explained. For example, an engineering invoice dated October 30, 2000, for surcharge project services during the month of September on the surcharge projects contains several inaccuracies. The invoice indicates that a survey technician performed 353 hours of service at \$110.00 per hour for a total invoice amount of \$16,944.00. *Ex.* 113. However, Mr. Fox testified that no surveying was done on any of the surcharge projects. *Tr.* 234-35. The Commission also notes that the total invoice amount does not match the reported hours and hourly rate.
- 57 Mr. Fox testified that he believed these hours were performed during the month of September to update the Water System Plan. However, another engineering invoice dated October 7, 2000, reports 128.50 hours of professional services to prepare documents and design water systems during the same time period. *Ex.* 113.
- 58 The Commission is unable to verify that the reported engineering expenses were prudently incurred on the surcharge projects. American Water's failure to produce records of its actual engineering costs for each project, or to reasonably reconstruct how those costs were incurred from other records, is insufficient for the Commission to determine whether the Company's reported engineering costs should be recovered from surcharge funds.

12. Conclusion

- 59 This Order does not change the present status of the capital improvement surcharge that the Commission approved for American Water. The surcharge will expire May 1, 2004, or upon recovery of the bank loan principal, plus interest and taxes, whichever comes first, subject to further Commission order. The testimony of Mr. Liechty, Department of Health, Division of Drinking Water, is that American Water did a job of satisfactory quality on its system upgrades. *Tr.* 300. Mr. Liechty also testified that many past problems have been put to rest, and that while there are still matters for the Company to address, American Water is doing a reasonably good job of managing its systems. *Tr.* 278-79.
- 60 The Commission dismisses American Water's proposed tariff revisions, without prejudice to refileing.

61 Accordingly, American Water is free to refile its request to extend the surcharge. If it
does so, the Company must compile and present records sufficient to demonstrate that
its actual costs were prudently incurred and are properly recorded to the surcharge
projects.

62 Alternatively, American Water may seek recovery of any part of its reasonable and
necessary capital expenditures that are not recovered pursuant to the surcharge
through a general rate increase filing.

63 If the Company pursues either of these avenues, we encourage the Company to make
its filing within 90 days so the matter remains fresh in the minds of those involved.

64 Independent of the Company's decision to pursue a surcharge extension or a rate
case, the Commission Staff is free to pursue verification of expenditures that were
estimated to calculate the size and length of the existing surcharge. It can do this by
use of its audit powers or, if necessary, through filing a complaint.

IV. FINDINGS OF FACT

65 Having discussed above in detail the testimony and the documentary evidence
concerning all material matters, and having stated findings of fact and conclusions of
law in the text of the Order, the Commission now makes the following summary of
those determinations. Those portions of the preceding detailed findings and
conclusions in this matter are incorporated by this reference.

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

67 (2) American Water Resources, Inc., is an investor-owned water company that owns,
operates, controls, and manages one or more water systems, and serves 100 or
more customers in the state of Washington.

68 (3) The Commission authorized American Water to begin collecting a surcharge by
order dated April 28, 1999, based on estimates of the costs to accomplish thirteen
needed capital improvement projects.

69 (4) American Water awarded contracts for the completion of all thirteen projects to
the Fox Company, a contractor. The Fox Company is owned and managed by the
owner of American Water, Virgil Fox.

70 (5) American Water's request to extend the recovery period of an existing surcharge
is based on a lump-sum accounting of expenditures for each surcharge project that

does not disclose the underlying time and material costs. American Water's lump-sum accounting of surcharge project costs are no more reliable than the original cost estimates on which the surcharge was based. A lump-sum accounting of actual costs alone is insufficient to demonstrate that resulting rates are just and reasonable.

- 71 (6) American Water failed to present sufficient and reliable evidence on which to determine whether its labor and material costs support the extension of the Company's authorized surcharge.
- 72 (7) American Water failed to submit any evidence to demonstrate that the labor rates charged by Fox Construction complied with the terms of an affiliated interests statement filed with the Commission.
- 73 (8) American Water failed to present sufficient reliable evidence from which to determine whether the engineering costs related to surcharge projects should be recovered from an extension of the existing surcharge.

V. CONCLUSIONS OF LAW

- 74 (1) The Washington Utilities and Transportation Commission has jurisdiction over the subject matter of and all parties to this proceeding.
- 75 (2) The Fox Company is affiliated with American Water Resources, Inc.
- 76 (3) The Commission should dismiss American Water's tariff revision filing because the company failed to demonstrate that an extension of the surcharge, as requested, would result in rates that are fair, just and reasonable.

VI. ORDER

THE COMMISSION ORDERS:

- 77 The proposed tariff revisions filed by American Water Resources, Inc., on March 20, 2000, are dismissed.
- 78 American Water may seek to recover through rates the expenditures that are the subject of this docket either through refileing a request to extend the surcharge or in the context of a general rate case. In either event, the Company must present adequate records in support of its request.

DATED at Olympia, Washington and effective this day of March, 2001.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARILYN SHOWALTER, Chairwoman

RICHARD HEMSTAD, 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).