

BEFORE THE WASHINGTON STATE  
UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND	)	DOCKET NO. UW-041384
TRANSPORTATION COMMISSION	)	
	)	ORDER NO. 03
Complainant,	)	
v.	)	
	)	APPROVING AND ADOPTING
RAINIER VIEW WATER COMPANY,	)	SETTLEMENT AGREEMENT;
INC.	)	REJECTING TARIFF SHEETS;
	)	AUTHORIZING AND REQUIRING
Respondent.	)	COMPLIANCE FILING
.....	)	

1 **Synopsis:** *The Commission approves and adopts a settlement agreement that provides for a compliance filing by Rainier View Water Company, Inc., to implement a conservation tariff determined to be in the public interest.*

2 **PROCEEDINGS:** On July 30, 2004, Rainier View Water Company, Inc. (Rainier View or the Company), filed with the Commission a revision to its currently effective Tariff WN U-2, instituting a water conservation tier for all water usage over 3,000 cubic feet per month from May through September. The revised tariff sheets were to become effective on August 30, 2005. The Commission, by prior order, suspended the operation of the tariff revisions pending hearing or hearings concerning the changes. The parties filed a proposed settlement agreement on March 1, 2005, and request Commission approval.

3 **PARTY REPRESENTATIVES:** Richard A. Finnigan, attorney, Olympia, Washington, represents Rainier View. Lisa Watson, Assistant Attorney General,

Olympia, Washington, represents the Commission's regulatory staff (Commission Staff or Staff).<sup>1</sup>

- 4 **COMMISSION DECISION:** The Commission determines that its approval and adoption of the proposed settlement agreement as a reasonable resolution of the issues pending in this proceeding is in the public interest. The end result will be rates, terms, and conditions of service for prospective application that are fair, just, reasonable, and sufficient.

## MEMORANDUM

### **I. Background and Procedural History**

- 5 On July 30, 2004, Rainier View filed a conservation tariff that proposes raising the charge for water usage over 3,000 cubic feet from \$0.85 per 100 cubic feet to \$5.00 per 100 cubic feet. The proposed conservation rate would be in effect each year from May 1 through September 30. As proposed, the conservation rate would apply to all residential customers using over 3,000 cubic feet per month during the effective period.
- 6 The Commission suspended operation of the tariff revision pending hearing to determine whether the proposed revision would result in fair, just and reasonable rates.<sup>2</sup> The Commission conducted a prehearing conference on November 29, 2004, before Administrative Law Judge Dennis J. Moss. The Commission entered Order No. 02: Prehearing Conference on November 30, 2004. Order No. 02 established a procedural schedule for the proceeding.

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<sup>1</sup> In formal proceedings, such as this case, the Commission's regulatory staff functions as an independent party with the same rights, privileges, and responsibilities as any other party to the proceeding. There is an "*ex parte* wall" separating the Commissioners, the presiding ALJ, and the Commissioners' policy and accounting advisors from all parties, including Staff. RCW 34.05.455.

<sup>2</sup> *WUTC v. Rainer View Water Company, Inc.*, Docket No. UW-041384, Complaint and Order Suspending Tariff Revisions (August 25, 2004) (Order No. 01).

7 On March 1, 2005, the parties filed a Settlement Agreement by which they proposed a full resolution of the issues pending in this proceeding. The parties filed a narrative statement in support of the Settlement Agreement. On March 3, 2005, the parties filed a motion asking the Commission to accept the Settlement Agreement and waiving their right to an Initial Order. The motion is supported by sworn declarations from Mr. Douglas Fisher of Rainier View and Mr. Danny Kermodé of Commission Staff.

## II. Settlement Agreement

8 The Settlement Agreement consists of two documents: (1) the Settlement Agreement, which describes the terms of the Parties' agreement, and (2) Attachment A to the Settlement Agreement, which shows the calculations associated with the agreement. These documents are appended to this Order as an Appendix, and are here incorporated by reference as if set forth in full.<sup>3</sup>

9 The Settlement Agreement would establish a conservation tariff under which Rainier View's residential customers would pay \$5.00 per 100 cubic feet used above 3,000 cubic feet from May 1 through September 30 each year.<sup>4</sup> Three thousand cubic feet per month is 101 cubic feet of water used per day per customer. The Settlement Agreement states that this amount is consistent with Rainier View's target peak day demand of 800 gpd/customer, which is equivalent to 107 cubic feet of water used per day per customer and is about twice the

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<sup>3</sup> To the extent of any variation between the brief description of the settlement terms in the body of this Order, and the terms set forth in the Appendices to this Order, the Appendices control.

<sup>4</sup> The Settlement Agreement states that certain non-residential customers also use more than 3,000 cubic feet per month. Although those customers use more than one equivalent residential unit (ERU), Rainier View currently classifies them as one customer and one ERU. Because Rainier View is currently working with its non-residential customers to reconfigure their ERU allocation to more accurately reflect their usage, the settlement, by its terms, would not apply the conservation tariff on non-residential customers at this time.

average day demand. The Parties agree that \$5.00 per 100 cubic feet used in excess of 3,000 cubic is reasonable and in line with the provisions of similar tariffs in effect in this region.<sup>5</sup>

10 While the goal of the conservation tariff is to reduce usage, the parties recognize in their agreement the possibility that the Company may recover revenue that exceeds the amount Rainier View would collect were the conservation tariff not in effect. The Parties agree that any excess revenue created by the conservation tariff should be set aside and used for the benefit of the ratepayers by supporting new water conservation programs and water sustainability goals. Examples cited in the Settlement Agreement of ways in which Rainier View could use the excess revenue include:

- Funding a comprehensive engineering review to determine whether Rainier View has system characteristics that encourage excess water use and to identify new programs or improvements consistent with conservation and sustainability
- Constructing improvements in mains to improve hydraulic continuity for the delivery of service to customers
- Retaining leak detection firms to search for wasted water
- Distributing usage control devices to customers on a “free” or reduced-cost basis
- Bringing in consultants to speak with customer groups on efficient irrigation techniques and other conservation measures.

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<sup>5</sup> According to the Settlement Agreement, Seattle charges \$8.55 per 100 cubic feet used in excess of 1,800 cubic feet, Duvall charges \$5.16 per 100 cubic feet used in excess of 800 cubic feet, and Bothell charges \$5.15 per 100 cubic feet used in excess of 2,500 cubic feet. *See also*, Declaration of Danny P. Kermode, Staff Regulatory Analyst, at 2, ¶ 71; Declaration of Douglas R. Fisher, Controller, Rainier View Water Company, at 2, ¶ 5.

The Settlement Agreement provides that Rainier View will not use any excess revenue to fund ongoing conservation efforts, conservation efforts that Rainier View has undertaken in the past, or the Company's daily operations.

- 11 The parties also recognize in their Settlement Agreement the possibility that Rainier View will experience an underrecovery of costs due to decreased customer usage. The Settlement Agreement provides for a revenue floor to protect Rainier View from decreased customer usage. If the amount of operating revenue generated from the proposed conservation rate is less than the revenue floor during some periods, Rainier View may recover the difference from excess revenue collected during other periods, to the extent funds are available.

### **III. Discussion and Decision**

- 12 High-volume residential customers using over 3,000 cubic feet of water a month have caused Rainier View's peak day demand to increase from 800 gallons per day per customer (gpd/customer) in 1996, to 1,000 gpd/customer during 2000 and subsequent years. During peak demand, this high usage can adversely affect the entire system's water pressure.<sup>6</sup>

- 13 The intent behind the proposed conservation tariff is to reduce customers' peak usage. Over the last two summers, the Company's customers have used more than Rainier View's current ERU allotment determined by the Washington Department of Health (DOH).<sup>7</sup> If the Company does not take steps to manage the customer usage within its current allotment, DOH will adjust the Company's allotment, resulting in Rainier View having fewer connections available to persons seeking water service. The Company believes that the proposed conservation rate, in addition to customer education, will cause customers to reduce the amount of water they use to an appropriate level.

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<sup>6</sup> Declaration of Danny P. Kermode, Staff Regulatory Analyst, at 2, ¶ 4.

<sup>7</sup> Declaration of Douglas R. Fisher, Controller, Rainier View Water Company, at 2, ¶ 3.

- 14 In its narrative submitted in support of the Settlement Agreement, Rainier View states that the Company has been actively pursuing conservation efforts for the past several years. These conservation efforts have included customer education as well as curtailment of use in certain instances. Rainier View states that it has found those efforts to be unsuccessful in reducing overall usage to a satisfactory level.<sup>8</sup> Rainier View proposed a conservation tariff to provide a financial incentive to customers to reduce their water consumption.
- 15 Rainier View states that the Company intends to engage in an extensive customer education program about the conservation tariff. This will include a notice to customers explaining what the charges would have been to the customer in 2004 had the conservation rate been in place. Rainier View says it would like to begin an advertising campaign prior to the end of March 2005.
- 16 Staff states its belief that the Settlement Agreement filed in this docket is a fair resolution of the issues presented. Staff says the Settlement Agreement appropriately recognizes the need to reduce water usage to a reasonable level<sup>9</sup> and provides benefits to ratepayers. Staff views the settlement as a balanced approach because:

The settlement provides a mechanism to prevent Rainier View from receiving a windfall from the proposed conservation rate. Rainier View is required to use excess revenue produced by the proposed conservation rate to the benefit of its ratepayers by supporting new water conservation programs and water sustainability goals. In addition to requiring Rainier View to use the excess revenue for

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<sup>8</sup> *Id.* at 2-3, ¶ 6.

<sup>9</sup> Kermode Declaration at ¶ 6 (The 3,000 cubic feet of water per day is appropriate because it is consistent with Rainier View's target peak day demand. Peak day demand is approximately twice the average day demand).

prescribed purposes, the Company is protected from an unnecessary reduction in revenue caused by the proposed conservation rate. The Settlement Agreement protects Rainier View through the revenue floor.<sup>10</sup>

- 17 Finally, Staff's view is that the Settlement Agreement advances the public interest by resolving this docket without the added expense and uncertainty associated with litigation.
- 18 The facts asserted by the parties via their Settlement Agreement, their respective narrative statements in support of the settlement, and the sworn declarations of their witnesses are not disputed. We take them as verities for purposes of considering whether it is appropriate to approve and adopt the Settlement Agreement, which provides for the implementation of a conservation tariff, as described above.
- 19 The evidence shows that Rainier View's efforts to promote conservation by its customers through education and curtailment have not been successful. Indeed, customer usage has increased in recent years so that customers are using more than Rainier View's current ERU allotment determined by the Washington Department of Health (DOH). Commission approval of the conservation tariff proposed under the parties' settlement will promote the public interest by providing Rainier View's customers with a financial incentive to conserve.
- 20 It is further in the public interest that any excess revenues collected under the conservation tariff will be used to support additional conservation efforts, or, if the tariff becomes so successful that Rainier View experiences a revenue shortfall, to maintain the Company's financial health.

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<sup>10</sup> Staff narrative filed in support of Settlement Agreement at 7; ¶¶17-18.

21 In sum, we determine that Commission approval and adoption of the proposed  
settlement agreement to resolve the issues pending in this proceeding is in the  
public interest. The end result will be rates, terms, and conditions of service for  
prospective application that are fair, just, reasonable, and sufficient.

### FINDINGS OF FACT

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

23 (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.

24 (2) Rainier View Water Company, Inc., is a public service company and a  
water company subject to the Commission's jurisdiction.

25 (3) In light of Rainier View's lack of success in encouraging conservation by  
high usage residential customers through customer education efforts and  
curtailments, it is appropriate that the Company be authorized to  
implement a conservation tariff that will bolster these continuing efforts  
by providing customers a financial incentive to conserve.

26 (4) A conservation tariff that establishes a rate of \$5.00 per 100 cubic feet used  
in excess of 3,000 cubic is reasonable.



- 27 (5) It is appropriate that any excess revenue created by the conservation tariff should be set aside and used for the benefit of the ratepayers by supporting new water conservation programs and water sustainability goals.
- 28 (6) The terms of the proposed Settlement Agreement, including but not limited to its accounting provisions and reporting requirements, are fair and reasonable, and strike a balance that is in the public interest.

#### CONCLUSIONS OF LAW

- 29 Having discussed above in detail all matters material to our 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.
- 30 (1) Rainier View Water Company, Inc., is a “public service company” and a “water company” as those terms are defined in RCW 80.04.010, and as those terms otherwise may be used in Title 80 RCW. Rainier View is engaged in Washington State in the business of supplying utility services and commodities to the public for compensation. The Washington Utilities and Transportation Commission has jurisdiction over the subject matter of, and parties to, these proceedings under Title 80 RCW.
- 31 (2) The Settlement Agreement filed by the parties to this proceeding on March 1, 2005, represents a full and fair resolution of the pending issues and it should be approved and adopted as being in the public interest. *RCW 80.01.040; WAC 480-07-740.*

- 32 (3) The rates, terms, and conditions of service that result from this Order are fair, just, reasonable, and sufficient. *RCW 80.28.010; RCW 80.28.020.*
- 33 (4) The rates, terms, and conditions of service that result from this Order are neither unduly preferential nor discriminatory. *RCW 80.28.020; RCW 80.28.090; RCW 80.28.100.*
- 34 (5) 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 480-07-880 and 883*
- 35 (6) The Commission should retain jurisdiction to effectuate the terms of this Order. *Title 80 RCW.*

### ORDER

#### THE COMMISSION ORDERS THAT:

- 36 (1) The proposed tariff revisions Rainier View filed on July 30, 2004, which were suspended by prior Commission order, are rejected.
- 37 (2) The Settlement Stipulation filed by the parties on March 1, 2005, which is appended to this Order and incorporated by reference as if set forth in full in the body of this Order, is approved and adopted as a full and final resolution of the issues in this proceeding.
- 38 (3) Rainier View is authorized and required to file tariff sheets following the effective date of this Order that are necessary and sufficient to effectuate its terms. The required tariff sheets must be filed by March 16, 2005, and shall bear an effective date of March 21, 2005.

39 (4) The Commission retains jurisdiction to enforce the terms of this Order.

DATED at Olympia, Washington, and effective this 10th day of March 2005.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

PATRICK J. OSHIE, Commissioner

PHILIP B. JONES, 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 480-07-850, or a petition for rehearing pursuant to RCW 80.04.200 and WAC 480-07-870.**

**APPENDIX**