

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

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION,	)	DOCKET NO. UW-010961
	)	
Complainant,	)	ORDER REOPENING DOCKET
	)	
v.	)	DOCKET NO. UW-031284
	)	
AMERICAN WATER RESOURCES, INC.,	)	ORDER NO. 01
Respondent.	)	COMPLAINT AGAINST RATES
.....	)	
.	)	

**I. BACKGROUND**

- 1 On December 18, 2001, the Commission entered an Order Approving Settlement Agreement<sup>1</sup> (Order), which incorporated the terms of a settlement agreement between American Water Resources (AWR) and Commission Staff. The Order approved an increase to AWR’s annual revenue requirement above the test year level by \$89,250.00 (11.27%), or \$3.47 per customer per month. That amount was added to the base rate each customer pays.
  
- 2 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 Commission limited the purposes for which AWR could spend the money deposited into the Docket 010961 Account to those purposes set forth in the Settlement Agreement and the Order.
  
- 3 The increase was granted to allow the Company to hire the additional employees it asserted it needed and to cover the costs associated with increasing its employee base.
  
- 4 To assure that the funds were separated and spent on the intended purposes, Paragraph 19 of the Order set forth the following terms:
  - AWR must set aside \$4.40 from each monthly payment received, starting with the billing period after the rates are in effect.
  
  - AWR must separate and maintain this money in a separate account titled “Docket 010961 Account.”

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<sup>1</sup> *WUTC v. American Water Resources, Inc.*, Docket No. UW-010961, Order Approving Settlement Agreement (Dec. 18, 2001). A copy of the Order is attached to this Complaint as Appendix 1.

- AWR must use the money in the Docket 010961 Account to cover only those expenses for employees hired in addition to existing employee positions, the related benefits, payroll tax, and transportation expense, and outside business consulting that exceed the monthly average spent during the test period. The monthly averages were calculated as \$17,447.00 for Salary, \$2,787.00 for Transportation, \$4,662.00 for Payroll Tax and Benefits, and \$917.00 for Business Consulting.
- AWR was prohibited from using the Docket 010961 Account for expenses due to changes in position of existing employees or expense increases for existing employee positions.
- If AWR obtained vehicles to be used by two additional field employees, the Company was required to obtain those vehicles by lease or purchase from an independent company, one with no ties to either AWR or AWR's owner and president, Mr. Virgil Fox.

5 The Order required that AWR file quarterly reports regarding the funds in the Docket 010961 Account. The reports were to show the amounts required to be deposited, the amounts actually deposited, and budget variance reports. AWR has complied with the quarterly report requirement. Those reports demonstrate that AWR failed to deposit the required amounts into the Docket 010961 Account during August, September, October, and November 2002. The reports show that AWR used the funds for unauthorized purposes, such as paying for employee costs that did not exceed the levels anticipated in the Order and paying taxes on the gain resulting from the sale of a water system.

6 Commission Staff reviewed AWR's books and records for the period of April 2002 to September 2002. Staff's review indicated that AWR used funds from the Docket 010961 Account without meeting the criteria set forth in the Commission's Order. A summary of Staff's findings is contained in the chart below:

Month / 2002	Total Salary Expense	Amount Exceeding \$17,447	Amount Used From Docket 010961 Account
April	\$16,556	None	None
May	\$16,693	None	None
June	\$17,148	None	\$364.45
July	\$18,140	\$693	\$1,849.23
August	\$18,190	\$743	\$2,596.07
September	\$18,366	\$919	\$1,638.57
		\$2,355 Total overage	Total used: \$6,448.32 Excess used from account: \$4,093.32

7 In addition, the quarterly reports indicate that AWR periodically made additional deposits to compensate for the deficit caused by failure to make the required deposits in a timely fashion. Despite the additional deposits, the Docket 010961 Account remains in arrears. As of June 2003, AWR has failed to deposit \$9,290.00 of the required funds into the account.

8 Since the Commission entered its Order in December 2001, the number of customers served by the Company has decreased from 1,876 to 1,471 due to the sale of one of the Company's water systems. AWR will not likely need additional employees or incur additional expenses at the level anticipated by the Order. Therefore, AWR's rates may be excessive.

## II. FINDINGS

- 9 (1) AWR is a water company in the state of Washington subject to regulation by the Commission.
- 10 (2) 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.
- 11 (3) AWR customers may be paying excessive rates in the amount of the set-aside ordered in the Commission's Order Accepting Settlement. Docket No. UW-010961 should be reopened to determine whether amending the Order Accepting Settlement to place a refund condition on the collection of the set-aside funds is appropriate.
- 12 (4) If the Order Accepting Settlement is amended to include a refund obligation, AWR should be required to refund or credit its customers those funds collected that are required to be deposited into the Docket 010961 Account, but not used for the purpose for which they were collected. If refunds are ordered, the Commission will determine the date from which the refunds will be calculated.
- 13 (5) AWR failed to deposit amounts required into the Docket 010961 Account. In addition, AWR used funds from the Docket 010961 Account for unauthorized expenditures. The purpose for the \$4.40 set-aside amount will likely never be fulfilled due to the decrease in the number of customers served by AWR. Docket No. UW-010961 should be reopened to determine whether the set-aside obligation should be canceled.

## III. ORDER

14 THE COMMISSION ORDERS:

- 15 (1) Docket No. UW-010961 is reopened to determine whether the Commission's Order Accepting Settlement should be amended to impose a refund obligation upon AWR.
- 16 (2) Docket No. UW-010961 is reopened to determine whether the set-aside obligation should be canceled.
- 17 (3) The Commission will issue a Complaint Against Rates to evaluate AWR's rates.

#### **IV. COMPLAINT**

18 The Washington Utilities and Transportation Commission (Commission) on its own  
motion, and through its Staff, alleges as follows:

#### **V. PARTIES**

19 The Commission is an agency of the State of Washington, authorized by state law to  
regulate the rates, practices, accounts, and services of public service companies,  
including water companies, under the provisions of Title 80 RCW.

20 Respondent AWR is a water company subject to regulation by the Commission pursuant  
to RCW 80.01.040(3) and RCW 80.04.010.

#### **VI. JURISDICTION**

21 The Commission has jurisdiction over this matter pursuant to RCW 80.01.040, RCW  
80.04.110, RCW 80.04.210, chapter 80.28 RCW, including but not limited to RCW  
80.28.010, RCW 80.28.020, chapter 34.05 RCW, and chapter 480-09 WAC.

#### **VII. STATEMENT OF FACTS**

22 The Commission, through its Staff, realleges paragraphs 1 to 9 above.

#### **VIII. CAUSE OF ACTION**

23 The Commission, through its Staff, realleges paragraphs 1 to 9 above.

24 RCW 80.04.110 allows the Commission to file a complaint against a water company  
challenging the reasonableness of the schedules of rates or charges.

25 RCW 80.28.020 requires the Commission to set prospective rates that are just,  
reasonable, and sufficient whenever the Commission determines that rates charged are  
unjust, unreasonable, or insufficient.

26 As a result of the decrease in the number of customers served, AWR's current rates may  
be at a level in excess of what the Company currently requires to obtain a sufficient  
return. Thus, AWR's rates may be unjust and unreasonable, in which case the  
Commission should require AWR to make a new tariff filing reducing rates.

27 THEREFORE, the Commission commences an adjudicative proceeding pursuant to  
RCW 80.04.110, Chapter 34.05 RCW, and Chapter 480-09 WAC for the following

purposes:

1. To determine whether AWR's current rates and charges provide the Company with an excessive return.
2. To determine whether AWR should be required to make a new tariff filing reducing rates.
3. To make any other determinations and enter orders as may be just and reasonable.

DATED at Olympia, Washington, and effective this 13<sup>th</sup> day of August, 2003.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARILYN SHOWALTER, Chairwoman

RICHARD HEMSTAD, Commissioner

PATRICK J. OSHIE, Commissioner