

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

WASHINGTON UTILITIES AND	)	DOCKET NO. UW-040366
TRANSPORTATION COMMISSION,	)	
	)	ORDER NO. 07
Complainant,	)	
	)	ORDER OF SEVERANCE;
v.	)	DISMISSING CLASSIFICATION
	)	PROCEEDING AND
MARBELLO WATER COMPANY,	)	COMMISSION COMPLAINT
	)	AGAINST INITIAL RATES
Respondent.	)	
.....	)	
	)	
WASHINGTON UTILITIES AND	)	
TRANSPORTATION COMMISSION,	)	DOCKET NO. UW-041181
	)	
Complainant,	)	ORDER NO. 03
	)	
v.	)	ORDER OF SEVERANCE
	)	
MARBELLO WATER COMPANY,	)	
	)	
Respondent.	)	
.....	)	

**Synopsis:** *The Commission dismisses Docket No. UW-040366, the classification proceeding and complaint against Marbello Water Company's initial tariff filing.*

1 **NATURE OF PROCEEDING.** Docket No. UW-040366 is a special proceeding convened by the Washington Utilities and Transportation Commission (Commission) pursuant to RCW 80.04.015 to determine whether Marbello Water

Company (Marbello or Company) is subject to regulation under Chapter 80.28 RCW and is required to act as a regulated company in accord with that Chapter, and to file an initial tariff pursuant to WAC 480-110-295.<sup>1</sup> The complaint also challenged whether Marbello's rates were fair, just, and reasonable.

2 Docket No. UW-041181 is a proceeding to investigate Marbello's requested rate increase, filed on June 28, 2004 and suspended by the Commission at its open meeting on July 28, 2004.

3 **APPEARANCES.** Richard Finnigan, attorney, Olympia, Washington, represents Marbello. Jonathan Thompson, Assistant Attorney General, Olympia, Washington, represents the Commission's regulatory staff ("Commission Staff" or "Staff").<sup>2</sup>

4 **BACKGROUND.** A prehearing conference was convened on September 3, 2004 to allow the parties to present a settlement agreement regarding both Marbello's initial tariffed rates and its subsequently filed request for a rate increase. At that time, the parties stated that they had been unable to reach full settlement. As a partial resolution, Staff agreed to file a motion to withdraw the complaint docket, UW-040366, on grounds that it believes Marbello's to be fair, just, reasonable and sufficient. Staff filed a motion to dismiss the complaint in accord with the

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<sup>1</sup> In Order No. 2, March 30, 2004, the Commission accepted the stipulation of the parties and found that Marbello is subject to Commission jurisdiction. In that order the Commission directed Marbello to file an initial tariff and supporting financial data. Marbello filed its initial tariff on March 31, 2004 and the supporting data on April 21, 2004.

<sup>2</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 Administrative Law Judge, and the Commissioners' policy and accounting advisors from all parties, including Staff. *RCW 34.05.455*.

schedule established at the prehearing conference. Marbello responded, agreeing that the initial rate complaint should be dismissed.

5 **MOTION TO DISMISS COMPLAINT.** Staff filed a motion to dismiss the complaint and a declaration of Commission Staff member Danny P. Kermode in support of the motion. In the motion and declaration, Staff asserted that it had reviewed the company's initial rate filing. Staff stated that the company had filed rates that would produce annual revenues of \$73, 574, with a return on total rate base of \$109, 706 amounting to a rate of return of 10.52%.

6 Mr. Kermode stated that his investigation led him to conclude that a proper level of annual revenue for the company would be \$71, 980, with an appropriate return on rate base of 9.29%. Mr. Kermode concluded, however, that even though Marbello's initial rates were marginally higher (\$1,594 or 2.2%) than what he had calculated, the added costs of litigating a rate case based on that amount would make the difference immaterial. Mr. Kermode recommended the Commission adopt Marbello's initial rates as fair, just, reasonable and sufficient.

7 Mr. Kermode expressed only one caveat about the company's initial rates, related to rate design. The company's current rate design calls for 50% of its rates to be collected from usage fees. Mr. Kermode recommended that, in future, the company collect more of its revenues from base rates so as to avoid severe cash shortages during periods of low seasonal water usage.

8 **DISCUSSION AND DECISION.** Rates and charges of a regulated utility must be fair, just, reasonable and sufficient.<sup>3</sup> No party is now contending that Marbello's rates are unfair, unjust, or unreasonable to the extent that a rate

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<sup>3</sup> RCW 80.28.010.

proceeding is necessary, which makes further litigation of the rates inadvisable. We are concerned that a company such as Marbello be able to charge sufficient rates to enable it to serve its customers safely and efficiently. Dismissing the complaint against Marbello's initial rates, as recommended by Staff, without further costly litigation, will help accomplish that goal.

- 9 The Commission encourages the parties to continue to address the issue of appropriate rate design in Docket No. UW-041181, which remains open.

**ORDER**

- 10 THE COMMISSION dismisses Docket No. UW-040366, the classification proceeding and complaint against the company's initial rates.

DATED at Olympia, Washington and effective this 12<sup>th</sup> day of October, 2004

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARILYN SHOWALTER, Chairwoman

RICHARD HEMSTAD, Commissioner

PATRICK J. OSHIE, Commissioner

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**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 or RCW 81.04200 and WAC 480-07-870.**