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BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION, Complainant, v. AMERICAN WATER RESOURCES, INC., Respondent.	DOCKET NOS. UW-980072, UW-980258, and UW-980265 (consolidated)
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION, Complainant, v. AMERICAN WATER RESOURCES, INC. Respondent.	DOCKET NO. UW-980076 SIXTH SUPPLEMENTAL ORDER: COMMISSION DECISION AND ORDER DENYING PETITIONS FOR REVIEW; CLARIFYING, AFFIRMING, AND ADOPTING INITIAL ORDER; REJECTING TARIFF FILING; AUTHORIZING AND REQUIRING REFILING

NATURE OF PROCEEDING: American Water Resources, Inc. (AWRI) seeks a general rate increase for water service it provides in Washington State (Docket No. UW-980258). American Water Resources, Inc. also proposes to add newly acquired water systems to its tariff and charge the customers of those systems the company's generally applicable rates (Docket Nos. UW-980072 and UW-980265). Docket Nos. UW-980258, UW-980072, and UW-980265 are consolidated. American Water Resources, Inc. also proposes to decrease its "facilities charge" from $3,500 to $2,500 and redefine the customers to whom the facilities charge applies (Docket No. UW-980076).

INITIAL ORDER: Administrative Law Judge Dennis J. Moss entered an Initial Order on November 24, 1998. The Initial Order would reject AWRI's proposed tariff sheets and require AWRI to file for rates, and implement terms and conditions of service in accordance with the Initial Order's findings and conclusions.

ADMINISTRATIVE REVIEW: AWRI and Staff filed petitions for administrative review on December 14, 1998, and responses on December 24, 1998. AWRI and Staff ask the Commission to reverse, modify, or clarify various determinations made in the Initial Order. Both parties request review of, and changes to, the Initial Order's capital structure, rate case expense, and facilities charge determinations. AWRI, in addition, asks the Commission to review and change the Initial Order's determinations of issues related to return on equity, rate base, and revenue requirement (including clarification or adjustment to the Initial Order's expense allocation to unregulated Satellite Management Agency operations), rate design, and addition of new systems. Staff asks the Commission to review and modify, or clarify, the Initial Order's determinations of issues related to SMA allocation, refunds, and treatment of CWIP and AFUDC. Staff also asks the Commission to clarify how rates included in the Initial Order were calculated.

COMMISSION: The Commission denies the petitions for review but clarifies various points, including minor adjustments to certain numbers upon which final rate determinations depend. AWRI has not shown the rates, charges, terms, and conditions of service it proposes through its filings in these dockets produce results that are fair, just, reasonable, and adequate, or in the public interest. The Commission accordingly rejects the proposed tariff sheets. AWRI is authorized and required to file revised tariff sheets consistent with the discussion, findings of fact, and conclusions of law contained in this Order.

APPEARANCES: Richard Finnigan, attorney, Olympia, represents America Water Resources, Inc. Robert E. Beaty, attorney, Seattle, represents intervenor Daniel C. Williams. Mary Tennyson, Senior Assistant Attorney General, Olympia, represents the Commission Staff.

MEMORANDUM

Procedural Background. American Water Resources, Inc. (AWRI) filed on January 16, 1998, a proposed tariff revision designated Original Sheet No. 15.2 to reflect added service areas due to the company's acquisition of nine water systems previously not subject to Commission jurisdiction. The filing would set tariff rates for the newly acquired systems at the same level as AWRI's generally

applicable rates. The Commission entered on February 25, 1998, a Complaint and Order Suspending Tariff Revision, Ordering Temporary Rates and Instituting Investigation. This matter is Docket No. UW-980072.

AWRI filed on February 27, 1998, proposed tariff revisions designated Second Revision of Sheet No. 1 canceling First Revision Sheet No. 1; Fourth Revision of Sheet No. 17 canceling Third Revision Sheet No. 17; Third Revision of Sheet No. 18 canceling Second Revision of Sheet No. 18 and Original Sheet No. 18.6; and First Revision Sheet No. 27 canceling Original Revision Sheet No. 27. These proposed tariff revisions reflect AWRI's request to increase its rates to recover additional annual revenue relative to the revenue amount produced by rates approved and effective as of August 1997. The Commission entered on March 25, 1998, a Complaint and Order Suspending Tariff Revisions, And Instituting Investigation. This matter is Docket No. UW-980258.

AWRI filed on March 2, 1998, tariff revisions designated Second Revision Sheet No. 15 canceling First Revision Sheet No. 15, First Revision Sheet No. 15.1 Canceling Original Sheet No. 15.1; Original Sheet No. 15.3; Original Sheet No. 15.4; Original Sheet No. 15.5; Original Sheet No. 15.6; Original Sheet No. 15.7; Original Sheet No. 15.8; Original Sheet No. 15.9; and Original Sheet No. 15.10. These proposed tariff revisions reflect added service areas due to AWRI's acquisition of approximately 50 water systems and would set tariff rates for those systems at the same level as AWRI's generally applicable rates. The Commission entered on March 25, 1998, a Complaint and Order Suspending Tariff Revision, Ordering Temporary Rates and Instituting Investigation. This matter is Docket No. UW-980265.

AWRI filed on January 20, 1998, a tariff revision designated as Second Revision Sheet No. 25 canceling First Revision Sheet No. 25, to reflect a decrease in Facilities Charges from $3,500 to $2,500. The proposed tariff sheet also would redefine to whom the facilities charge applies. The Commission entered on February 25, 1998, a Complaint and Order Suspending Tariff Revision, Ordering Temporary Rates and Instituting Investigation. This matter is Docket No. UW-980076.

The Commission entered an Order of Consolidation and Notice of Prehearing Conference with respect to Docket Nos. UW-980072, UW-980258, and UW-980265, and a Notice of Prehearing Conference in Docket No. UW-980076, on June 2, 1998. The Commission held a joint prehearing conference on June 17, 1998, at the Commission's offices in Olympia, Washington before Administrative Law Judge

Dennis J. Moss. A procedural schedule established at the prehearing conference set the evidentiary hearing for September 22 and 23, 1998. Subsequently, public comment hearing dates of September 17 and 23, 1998, were set by notice.

Administrative Law Judge Dennis J. Moss heard these proceedings on due and proper notice on September 17, 22, and 23, 1998, in Spanaway and Olympia, Washington. The Commission received sworn public comment from 35 participants including ratepayers and current and former legislative representatives elected from districts which include AWRI customers. During the evidentiary phase, the Commission heard from five witnesses for AWRI and Staff. The record includes 594 transcript pages and 57 exhibits, including 7 sets of prefiled direct and rebuttal testimony cumulating more than 200 pages. Among the exhibits are numerous written public comments received on Public Counsel's motions as illustrative of public concern and sentiment.

AWRI, Staff, and Williams filed briefs on October 13, 1998. ALJ Moss entered his Initial Decision on November 24, 1998. AWRI and Staff filed petitions for administrative review on December 14, 1998, and answered each other's petition on December 24, 1998.

Discussion. This case is nothing less than a comprehensive review of AWRI's operations as of the end of the test year, December 31, 1997, with consideration of restating and pro forma adjustments necessary to establish prospective rates, terms, and conditions of service that are fair, just, reasonable, and sufficient. The Initial Order resolves numerous contested issues and relates with approval the parties' stipulations on many other issues. The Initial Order necessarily is long and highly detailed given the number of complex issues considered. As the caption above suggests, we affirm and adopt the Initial Order. Although we review the entire Initial Order and consider fully the record before us, we limit our discussion here to those specific points in the Initial Order, outlined above, where AWRI, Staff, or both ask us to determine a different result or state more clearly what the result we adopt implies or requires.

I. General Rate Case (Docket No. UW-980258)

Rate of Return: Capital Structure, Debt Cost, and Return On Equity. Capital structure, return on equity, and debt cost are three essential components the Commission must establish to determine AWRI's overall rate of return or cost of capital. We consider the three components together to ensure a fair overall rate of return that balances AWRI's interests as a business entity and the ratepayers' interests as consumers tied to a monopoly provider upon which they depend for a vital commodity.

The Initial Order establishes a 10.45 percent overall rate of return based on a hypothetical capital structure with 80 percent debt and 20 percent equity, return on equity at 12.60 percent, and cost of debt at 9.91 percent. We note first that neither AWRI nor Staff give direct attention to the overall rate of return; they instead focus exclusively on the underlying components. Both AWRI and Staff contest the Initial Order's capital structure determination. AWRI contests the Initial Order's return on equity determination. Neither AWRI nor Staff contests the Initial Order's debt cost determination.

AWRI and Staff both ask us to review the rationale behind the Initial Order's capital structure determination. AWRI supports use of a hypothetical capital structure, but contests the debt to equity ratio the Initial Order would establish, and asks us to use a more idealized 60 percent debt and 40 percent equity. Staff contests use of a hypothetical capital structure at all, and argues we should adopt AWRI's actual capital structure which includes 94 percent debt and 6 percent equity, according to Staff. AWRI says its actual debt is slightly over 92 percent.

Staff's Petition states affirmative support for the Initial Order's determination of a 12.60 percent return on equity even though the result reflects a 150 basis point adjustment to the 11.1 percent equity return Staff advocated at hearing. Staff Petition at 3. AWRI, however, remains unsatisfied and asks us to review the Initial Order's return on equity analysis. AWRI insists a 14 to 15 percent return on equity is supported, and requests a 14 percent return on equity based on the results in certain past cases involving other small water companies.

AWRI thus asks us to establish underlying capital structure and return on equity that would yield an 11.55 percent overall return. Staff's request that we reject the Initial Order's hypothetical capital structure in favor of AWRI's actual capital structure would yield a 10.07 percent overall return.

We note that AWRI asked for a 13.15 percent overall return in its post-hearing brief, based on a 50 percent debt, 50 percent equity hypothetical capital structure, 15 percent equity return, and 11.31 percent debt cost. Staff's post-hearing brief advocated 10.54 percent overall return, based on AWRI's actual capital structure, 11.1 percent equity return, and 10.5 percent debt cost.

The observation is made too frequently to require attribution that determination of the components that underlie overall return, and hence determination of overall return itself, is at least as much art as it is science. The range of suggested capital structures and returns on equity advocated by AWRI and Staff at various points in this proceeding present the familiar palette from which we must blend a picture more representational than abstract. That is, we must be mindful of the final result and must

determine underlying factors that balance the interests of the company against the interests of the consumers. Typically, this means setting the cost of debt based on the company's actual debt costs during a representative period, setting the cost of equity (*i.e.,* return on equity) at a level sufficient to attract investors in an open market, and establishing a capital structure that strikes an appropriate balance between safety and economy. There is much about AWRI, however, that is atypical and the principles that guide us are not easily applied. Accordingly, we must explore and apply relevant principles with an eye to adjustments required given AWRI's particular circumstances.

Having said that, there is at least one point we need not discuss at length: debt cost. The debt cost component is seldom controversial in rate cases, and this case is not exceptional in that way. Exhibit 11, page 4, displays AWRI's actual debt at the end of the test year, including substantial shareholder debt with 12 percent interest imputed. Except for the shareholder debt interest imputation, the debt portion of the exhibit stands uncontested. The Initial Order accepts Staff's argument that interest on shareholder debt should be allowed at 10.5 percent, a 200 basis point premium over the prime lending rate in effect during the relevant time period. Considering all of AWRI's debt obligations at various interest rates the Initial Order finds AWRI's weighted average cost of debt is 9.91 percent. The Initial Order's cost of debt determination is not challenged by the petitions for review. We adopt the Initial Order's debt cost determination.

Return on Equity. AWRI asks the Commission to reverse the Initial Order's determination in Finding of Fact No. 19 that:

> AWRI's return on equity should be 12.60 percent to reflect a one hundred and fifty basis point addition to the level indicated by discounted cash flow analysis to recognize AWRI's inherent risk and to encourage AWRI to reform its capital structure to include significantly more equity and less debt.

AWRI asks the Commission to adopt a substitute finding that:

> AWRI's return on equity should be set at 14 percent which is consistent with prior Commission decisions on the return on equity for small water systems to reflect the inherent riskiness of investment in small water companies.

Staff's Petition states its support for the Initial Order's determination.

AWRI's Petition for Review, initial post-hearing brief, and Ms. Parker's testimony (*i.e.,* Exhibit T-10 at 53 and Exhibit T-15 at 44-45), all ask the Commission simply to adopt here the 14 percent equity return component stipulated by the parties in *WUTC v. Rosario Utilities, LLC,* Docket No. UW-951483, Fourth Supplemental Order (November 27, 1996), and accepted by the Commission as reasonable in that case. Ms. Parker refers also to *WUTC v. Harbor Water Company, Inc.,* Docket No. U-87-1054-T, Third Supplemental Order (May 13, 1988), in which the Commission approved a 10.44 percent overall rate of return including a 13.97 percent equity return. AWRI advocated in its post-hearing brief that it be allowed an additional 1 percent risk premium, pushing its originally proposed return on equity to 15 percent. AWRI asks via its Petition that we "establish a cost of equity in the range of 14% to 15%," arguing that "[t]he Company can do no more than point to recent cases in which the Commission has used a 14% to 15% return on equity to recognize the risks of investing in small water companies[,]" citing *Rosario Utilities, LLC, Id.*

Although it is a matter of small, or no, consequence to our decision, we observe that AWRI, in fact, does not point us to any case in which we approved an equity return greater than 14 percent. More significantly, we observe that to the extent we might be inclined to rely on prior cases to determine what fundamentally is a question of fact, *Rosario Utilities, LLC,* is a completely inappropriate model. *Rosario Utilities, LLC,* presented the Commission with unique facts and circumstances; it truly is a "one of a kind" case, and thus not a case from which we are willing to extract underlying cost of capital factors for general application as AWRI suggests. The cost of capital model the Commission accepted in *Rosario Utilities, LLC,* is a wholly hypothetical construct stipulated by the parties in the total absence of any pertinent financial records. TR. 193 (Parker).

Harbor Water Company, supra, is a more useful reference in the sense that it discloses general principles we continue to follow when analyzing contested cost of capital issues. The Commission's discussion in *Harbor Water Company* focuses on the overall rate of return, 10.44 percent, which Staff and the utility agreed in that case was in the range of reasonable returns. Noting the parties' agreement on the ultimate question, the Commission did not even concern itself in *Harbor Water Company* with Staff's disagreement "with the methodology by which the figure was calculated." *Harbor Water Company, supra*, at 33. Indeed, the Commission's order does not disclose the underlying factors upon which Staff relied to accept 10.44 percent as a reasonable overall cost of capital. Thus, the unanalyzed, underlying equity return in *Harbor Water Company* provides no substantive support for AWRI's proposed equity return in this case. To the extent we indulge AWRI by considering the case at all, our focus necessarily is on the overall rate of return determination, 10.44 percent, which, coincidently, is almost identical to the 10.45 percent overall rate of return the Initial Order would establish in this case.

While we may look to other cases to validate overall rate of return determinations as being within a reasonable range, our main focus when the issue remains disputed is to establish a fair overall rate of return based on individual components grounded in facts, not abstractions from other cases that present dissimilar facts and circumstances. The available facts in this case relative to return on equity include principally those included in Staff's DCF analysis, a familiar and widely accepted means to establish at least the starting point from which we can make a well-reasoned return on equity determination. We also know by virtue of our experience in rate regulation generally that small, closely held water companies such as AWRI inherently carry higher risks than the publicly traded companies upon which DCF analyses necessarily rest. AWRI, however, also is typical in that it is closely held and unlikely to attract any significant outside investment even if open to such investment.

The Initial Order relies on these facts and observes there is no evidence to controvert Staff's DCF result that yields an 11.1% rate of return on equity as a starting point from which to determine the return on equity issue. As AWRI acknowledges in its Petition, and consistent with our knowledge of AWRI's inherent risk, the Initial Order accepts AWRI's arguments that some adjustment to the raw DCF result is appropriate. Specifically, the Initial Order adds 150 basis points to Staff's DCF result and, thus, would allow a 12.60 percent return on equity. The Commission concurs in that result, considering it as part of the overall rate of return picture including the final consideration to which we turn now, capital structure.

Capital Structure. AWRI says "[t]he Initial Order rejects Staff's position that the actual capital structure should be used [and] adopts the principle that a hypothetical capital structure is appropriate." We are concerned that AWRI reads too much into the Initial Order. The Initial Order does not adopt a hypothetical capital structure for AWRI as some abstract "principle" of "appropriate" ratemaking procedure. Instead, the Initial Order adopts a hypothetical capital structure weighted more favorably to AWRI than its actual capital structure warrants as a practical means to achieve two ends. First, as already discussed in part, the 80/20 split coupled with AWRI's actual debt costs and a 12.6 percent equity return yields a fair and reasonable overall return. Second, imputation of 10 to 15 percent more equity than actual is intended to send a positive signal to AWRI that the Commission favors a more balanced actual capital structure than AWRI presently maintains.

We must acknowledge, however, Staff's point that AWRI has ignored previous suggestions that AWRI should reform its capital structure. Staff is correct that there is an inherent incentive in the form of higher available return on equity relative to debt that ought to encourage Mr. Fox--AWRI's principal shareholder, principal creditor, and principal decision maker--to retire debt in favor of equity. Staff also observes correctly, however, that by making loans to AWRI his almost exclusive form of investment in the company, Mr. Fox obligates AWRI to "substantial monthly interest

payments" that provide Mr. Fox "a secured income." Staff Petition at 2. We observe, too, that while AWRI's extraordinarily high debt ratio places the company at high risk of business and financial failure, as principal creditor, Mr. Fox will enjoy a favorable position if bankruptcy ensues. Nevertheless, we adopt for now the incentive approach the Initial Order would emplace. Staff no doubt will reexamine the issue in AWRI's next rate case; if there is no improvement in AWRI's actual capital structure the Commission may be required to take a different approach.

We expressly reject AWRI's argument that we should adopt a hypothetical capital structure such as the 50 percent debt, 50 percent equity structure AWRI advocated at hearing, or the 60 percent debt, 40 percent equity structure suggested by AWRI's Petition. The case AWRI cites to support its argument for an idealized capital structure, *WUTC v. U S West Communications, Inc.,* Docket No. UT-950200, Fifteenth Supplemental Order (April 1996), exemplifies the usual situation when hypothetical capital structures exhibiting such ratios sometimes are adopted to protect consumers from leveraging by an equity rich company. Equity rich companies are inherently safe; imposing on such companies a hypothetical capital structure with equity less than actual promotes economy (*i.e.,* lower capital costs) and produces lower rates for consumers with no sacrifice of safety. If the equity rich company follows the lead suggested by imposition of a more idealized, hypothetical capital structure, the actual increase in the company's debt ratio benefits shareholders by reducing capital costs if, as is typical, debt costs less than equity, and because interest on loans is tax deductible. Actual reformation of capital structure under such circumstances is neutral for customers because they already have the benefit of lower rates under the hypothetical capital structure.

AWRI presents the opposite situation; it is, in fact, equity poor. The usual rationale for adopting a hypothetical capital structure does not apply. As Staff argues via its Response, hypothetical adjustments that understate actual debt do little, if anything, to actually increase safety if the actual debt obligation remains unchanged. Staff Response at 10. Unlike returns on equity, where dividends typically are at the Board of Director's discretion and reinvestment in the company is common, debt obligations must be satisfied on a regular basis and are sunk costs, at least to the extent of interest payments. Unpaid creditors can force debtors into bankruptcy if the debtor fails to meet its loan obligations; shareholders have no similar rights if dividends or other returns on equity investment are not forthcoming, except in the most extreme situations.

Hypothesizing increased equity, then, benefits AWRI's shareholders so long as return on equity exceeds interest on debt but imposes higher rates on AWRI's customers without actually improving AWRI's financial security. We approve the 80 percent hypothetical debt ratio determined under the Initial Order only because it is realistic to believe AWRI can achieve an actual structure at that ratio, or

better, in the short term and improve on the ratio further during the intermediate term, and certainly before AWRI's next rate case when the issue can be reconsidered. Thus, we reward AWRI up front with a modest hypothetical adjustment to promote action by AWRI and its principal shareholder and creditor, Mr. Fox, to steer the company immediately toward a more secure capital structure.

At bottom, then, we adopt the Initial Order's cost of capital determinations as reflected in Table 3 to the Initial Order, attached here as part of Appendix A. The overall result is fair and the individual capital structure components accomplish specific ends, all within the bounds of reasonableness established by the record of facts and circumstances peculiar to AWRI at present.

Rate Base. AWRI asks us to "delete" the Initial Order's Finding of Fact number 8 which says:

> AWRI stand-alone systems (*i.e.,* six-pack systems) with no customers at December 31, 1997, should not be considered used and useful and should be excluded from rate base.

AWRI acknowledges that thirty-six of its water systems, each designed to operate on a stand-alone basis to serve six customer connections, had no customers at the end of the test period or even at the time AWRI filed for new rates. AWRI argues that because "some of the six-packs had customers" by the time of the evidentiary hearing, "most, but perhaps not all . . . had at least one customer" by the time initial briefs were filed, and "[t]oday, all do have at least one customer[,]" the Commission should overturn the Initial Order's determination that this plant should not be considered used and useful in the public service for purposes of establishing rates in this proceeding.

AWRI would have us ignore one of the key facts upon which the Initial Order's used and useful determination rests: the test year for purposes of determining rates in this proceeding ended on December 31, 1997. The test year concept is essential to match rate base to revenues and expenses and otherwise to fix the point in time at which we take a detailed look at the host of factors that go into prospective rate determinations in the context of general rate cases. Our goal is to know as of a date relatively contemporaneous with the filing of a case what plant is required to be in service to meet the needs of the number of customers on the system at that date, and to know what expenses will be incurred to own and operate that plant. Then, we can know the company's revenue requirement and design rates to recover that revenue.

Given the ten month period our governing statutes permit to investigate and determine rates consistent with due process requirements, and the regulatory lag inherent to careful, balanced decision-making processes, pro forma adjustments to actual test period data are allowed to account for known and measurable changes not offset by other factors. Pro forma adjustments, then, are "known and measurable" at the time the case is filed. That, necessarily, is where the line is drawn. When parties suggest the use of ever changing data in rate proceedings the suggestion must be rejected absent compelling reasons. When the occasional exception to the rule is allowed and, for example, a post-test period addition to rate base is recognized, there must be corresponding adjustments to revenue, expense, and customer count or mismatches are inevitable and it soon is impossible to know what rates are fair, just, reasonable, and compensatory.

AWRI presents no reason for us to recognize post-test period additions to rate base. Indeed, it appears AWRI does not disagree conceptually with our analysis above. Although AWRI asks us to "delete" the eighth finding from the Initial Order--and inferentially suggests we restore the disallowed rate base ($15,996) associated with the six-packs by modifying Finding of Fact number 16--AWRI takes no exception to Findings of Fact numbers 9 and 10 which also validate disallowance from rate base of facilities acquired or placed in service after December 31, 1997, as follows:

> 9. Facilities placed in service after December 31, 1997, should be excluded from rate base as plant not used and useful as of the end of the test period.
>
> 10. Post-test-period plant additions and contributions in aid of construction (CIAC) are not valid pro forma adjustments to rate base when there are no adjustments to account for additional customers and no analysis is made of potentially offsetting adjustments to revenue and expenses.

None of the 36 six-pack systems in question had customers on December 31, 1997, or even when AWRI filed its rate case on February 27, 1998. The 36 six-pack systems were not in use, or needed, to provide service to any of the 1,730 customers recognized at the end of the test year for purposes of determining rates. Thus, for purposes of this rate case, it does not matter that some of the six-pack systems in question had customers by the time of the evidentiary hearing, or later, or that they will have customers in the future. What matters is the situation that prevailed at December 31, 1997, and this plant was not then used and useful. We

approve the Initial Order's $15,996 used and useful adjustment to remove this plant from rate base.

AWRI's rate base discussion also touches on the Initial Order's acquisition adjustment analysis, but AWRI does not contest the Initial Order's determination in Finding of Fact number 7, as follows:

> The evidence does not support a finding that AWRI's acquisitions of operating utilities have bestowed on its existing, acquired, or potential customers benefits commensurate with the $200,194 acquisition adjustment amount AWRI proposes to include in rate base. The proposed adjustment to rate base should be disallowed.

Nevertheless, AWRI's petition discusses at length the guidance it professes to draw from the Initial Order's analysis and rejection of AWRI's proposed acquisition account adjustment to rate base. AWRI undoubtedly should be guided by sound principles and careful judgment in all its decision making. To the extent the Initial Order provides useful illumination of acquisition adjustment principles, AWRI certainly may benefit from internalizing those principles. Yet, we discern both from the tone and content of AWRI's discussion that AWRI both misreads the Initial Order and reads into the Initial Order far more than is appropriate.

Contrary to what AWRI asserts, the Initial Order does not say "it is appropriate for a company to receive a positive acquisition adjustment when it purchases a water system at a discount." AWRI Petition at 7. Instead, the Initial Order says all acquired plant should be reflected at historic per books value, adjusted for depreciation to the appropriate point in time in each case. The Initial Order says no acquisition adjustment to rate base, positive or negative, is supported by the record in this case. We reiterate this most important point: all the Initial Order says, and all we say here, is that *in this case*, based on the evidence *in this record*, AWRI should not be allowed a positive acquisition adjustment with respect to certain systems it purchased for more than per books values when there is no showing that the acquisitions confer benefits on AWRI's customers commensurate with the premiums paid. We do not, and will not, prejudge any determination the Commission may be called upon to make in a future case with respect to AWRI's future acquisitions or Account 114 (*i.e.,* Acquisition Adjustment) balances.

Rate Case Expense. The Initial Order would allow $36,000 in rate case expense, amortized over three years, with no return on the unamortized balance. Staff finds the amount "excessive," but states no alternative suggestion in its Petition. AWRI both takes exception to the Initial Order's treatment of rate case expense and finds "shocking" Staff's recommendation to reduce the allowed expense to recognize

the limited results AWRI achieved relative to what it sought via its filing. Staff clarifies via its Response that AWRI should be allowed to recover no more than one-half "the requested amount . . .." Staff Response at 5. Staff also focuses on AWRI's poor record keeping practices as a factor that caused excessive rate case expense and believes a portion of AWRI's claimed rate case expense should be disallowed for that fact, too.

AWRI does not dispute directly that the poor condition of its records prolonged discovery, contributed to inaccurate testimonies and exhibits that threatened to confuse the record absent revisions and clarifications at hearing, and otherwise contributed to higher than usual rate case expenses. AWRI says it is entitled to disagree with Staff on issues and it expects continued disagreements in future cases. AWRI also complains Staff "[refused] to discuss settling the case or even some of the issues until just before the Company filed its testimony."

Our focus is to determine a reasonable amount to include in prospective rates for rate case expense based on the evidence presented. Our task is more difficult because rate case expense is an area in this case where the "moving target" problem is particularly acute. Originally, Ms. Parker testified the company estimated total rate case expense incurred in this case at $25,000. Six weeks later, two weeks after Staff filed its testimony, AWRI filed Ms. Parker's rebuttal testimony in which she revised AWRI's rate case expense figure by doubling it to $50,000. After the hearing, AWRI submitted, with Staff's apparent acquiescence, a schedule purporting to show actual rate case expenses incurred through September 30, 1998, totaling $40,230, or about 80 percent of Ms. Parker's earlier estimate. AWRI also said it then anticipated another $9,500 to complete this case through the administrative review process. Now, in its Petition, AWRI revises the last estimate to $2,805, less than 30 percent of its earlier estimate.

This record of wildly varying estimates and late-filed, unaudited, untested schedules purporting to show actual costs and reasonable estimates does not inspire confidence. We agree with the Initial Order that no part of it, standing alone, should be given dispositive weight. We must be cognizant, too, of concerns Staff expresses in its Petition and Response regarding the reliability of AWRI's data, including AWRI's post-hearing submission, and the reasons for such extraordinary rate case expense claims in a case where AWRI's own witness acknowledged $25,000 in total rate case expense "may seem high" even considering case preparation through the initial testimonies and discovery. Exhibit T-10 at 45.

We agree with the Initial Order that the record establishes no more than the fact that AWRI incurred somewhere between $35,000 and $40,000 in actual rate case expense through the evidentiary phase. The $36,000 the Initial Order would allow is reasonable under the circumstances. We think it appropriate to allow costs at the low end of what the evidence arguably supports to reflect that AWRI's records were not adequate to the demands of a rate case and significant extra effort was required on all sides to present an adequate record for our consideration.

Turning to the questions of three year amortization and return disallowance we again find the Initial Order's results reasonable. In setting rates we strive to include what should be typical or usual costs for various categories, including rate case expense. It is not typical or usual for a small water company, or any well run utility for that matter, to file for annual rate increases. We are not convinced that annual rate cases are necessary for AWRI. If future developments such as dramatic growth, changed regulatory requirements, or volatile economic conditions do require more frequent rate adjustments, we will consider shorter amortization and an allowance for carrying costs related to rate case expenses as options for prospective application.

Revenue Requirement and SMA Allocation. AWRI observes correctly that any adjustment we might make to underlying revenue factors (*e.g.,* rate base, rate of return, expenses) determined by the Initial Order also would require adjustment to the overall revenue requirement. In connection with that statement, AWRI also says it is "confused" about the Initial Order's allocation of costs to unregulated Satellite Management Agency (SMA) operations. Although the Initial Order endorses AWRI's approach, AWRI asks us to clarify the Initial Order's treatment of SMA allocations. Staff asks us to reverse the Initial Order and apply Staff's SMA allocation methodology.

Staff doubts AWRI's claim that it allocated SMA costs off books and objects to the Initial Order's acceptance of AWRI's claim because, Staff says, it could not adequately audit and test AWRI's allocation. Although Staff says it could not track what AWRI did, Staff cites quite specific expense costs AWRI allocates to SMA operations and says they are facially unreasonable. Ms. Parker testified in detail regarding AWRI's SMA allocation. Exhibit T-15 at 40-43. The Initial Order found no reason to doubt Ms. Parker's testimony that AWRI allocated expenses to SMA activities and adjusted the "per books" amounts presented in its various ratemaking schedules. Exh. T-15 at 37 (Parker). As explained in the Initial Order:

> AWRI removed SMA costs before it addressed the company's operations via Ms. Parker's testimony. AWRI Brf. at 20. Ms. Parker explained in detail AWRI's two types of SMA activities and the detailed procedure followed to allocate costs to those activities. Exh. T-15 at 37-44. AWRI's methodology includes direct allocations of some expenses (*e.g.,* utilities, chemicals, repair and maintenance), allocation based on percent of employee hours for some expenses (*i.e.,* wages-field, wages-office (partial)), and allocation based on percent of customers for other expenses (*e.g.,* wages-office (partial), rent, insurance). Ms. Parker acknowledged on rebuttal that she failed inadvertently to allocate meetings and seminars

> and depreciation accounts for office equipment and one vehicle.
>
> The controlling principle here is that AWRI's more detailed analysis is preferred over Staff's workable, but less detailed approach. The Commission's interest in allocation methodology when a company's operations include both regulated and unregulated activities is heightened during this period of deregulation in several utility sectors. Generally, there should be a preference for more precise methodologies and measures. Where costs can be directly assigned, that should be done. Where allocation factors must be used, these should relate to the nature of the cost incurrence.

The Initial Order expresses the general principle that when confronted with the need to allocate a company's costs between regulated and unregulated activities, the Commission prefers precise and detailed allocation analyses (including direct allocations based on careful records where possible) over more basic allocations based on a single allocation factor applied to diverse account balances. AWRI purported to take the more detailed approach, but we agree with Staff that AWRI failed to present fully satisfactory supporting data. The data presented in this case relative to AWRI's regulated and unregulated business activities are imprecise and incomplete. Undoubtedly, there are imperfections in allocation factors, base amounts, and results. Still, focusing on the principle favoring a more detailed approach, the Initial Order accepts and applies AWRI's approach to SMA allocation and, where necessary given resolution of a disputed issue in favor of Staff's position, backs out Staff's SMA allocations and applies an allocation based on AWRI's approach. We accept the Initial Order's determinations regarding SMA allocations and clarify below the Initial Order's practical application of the principle we endorse. We also endorse Staff's point that it is important that we be able to audit allocations to nonregulated activities and we do expect better information in AWRI's next rate case.

AWRI says "[t]he Initial Order adopts AWRI's approach [yet,] there is no way to determine from the depiction of the adjustments in the Initial Order whether or not the effect of Staff's adjustment has been reversed." This seems to assume the Initial Order's analyses use Staff's results of operations figures as a starting point. That assumption is wrong. The Initial Order starts with the per books amounts as of December 31, 1997, amounts no longer disputed by the close of the hearing. The per books amounts then are adjusted as reflected in the Initial Order's Table 5 (attached here as part of Appendix A) to establish the results of operations figures approved for purposes of rate determination. Lines 11 through 22 in Table 5 show uncontested adjustments totaling a negative $3,621 (*i.e.,* a net pro forma reduction). Lines 25

through 42 in Table 5 show the Initial Order's determination of contested adjustments a positive $120,132 (*i.e.,* a net pro forma addition). Table 5 notes contested adjustments resolved in favor of Staff's positions are adjusted to reflect SMA redetermination "based on [AWRI] allocation factor." This reversal and redetermination of SMA allocations in connection with the acceptance of Staff's positions on certain expense category adjustments (*i.e.,* rent, insurance, meals/entertainment, meetings/seminars, "other", travel, office, postage, and printing) also is discussed in the Initial Order in connection with the individual adjustments. We emphasize, the Initial Order does not make SMA adjustments to the per books amounts, but only to Staff's restating or pro forma adjustments accepted for discussion.

AWRI's footnote 27 suggests AWRI expects to see $29,547 accounted for in the Initial Order's Tables 1, 2, and 4 to reflect "reversal" of Staff's SMA allocation adjustment. AWRI's focus should be on comparing Table 4 to Table 5, with reference to Exhibit 53 (*i.e.,* Staff's SMA adjustments). Fully $23,447 (*i.e.,* the sum of lines 1, 2 and 36, column j, Exhibit 53) of the $29,547 AWRI is looking for relates to Salaries & Wages, and Payroll Tax/Expense. Because the Initial Order accepts AWRI's position on Salaries & Wages, and Payroll Tax/Expense, and the Initial Order accepts AWRI claim that it accounts for SMA expenses "off books," no SMA allocation adjustment is required with respect to those expense categories. The same is true for all disputed expense categories where AWRI's pro forma levels are accepted. In such expense categories, no SMA adjustment is required consistent with AWRI's adjustment methodology.

Expense categories where the parties stipulated an amount to include in AWRI's revenue requirement account for an additional $2,855 as to which no further SMA allocation adjustment is warranted. It would undercut and invalidate the stipulation to make any SMA adjustment revisions to the expense amounts the parties agree are reasonable and the Initial Order finds adequately supported. We hold the parties to the stipulated amounts.

What remains are expense categories where Staff's restating and/or pro forma adjustments are accepted by the Initial Order: rent, insurance, meals/entertainment, meetings/seminars, "other", travel, office, postage, and printing. In those expense categories, the Initial Order's approach is to back out Staff's SMA allocations from the adjustment amounts and reallocate SMA using AWRI's "percent of customers" allocation factor, consistent with AWRI's approach explained by Ms. Parker (Exhibit T-15 at 40-43) and as noted in Table 5. *See* Appendix A. No other SMA allocation adjustments are required under the Initial Order, or our order here.

Finally, we return to the point AWRI raises that any changes we might make to underlying revenue factors determined by the Initial Order (including changes to that would result from revised SMA allocations) also would require adjustment to the overall revenue requirement and hence to rates. The correlative principle applies with equal force. Since we affirm and adopt the Initial Order's

underlying revenue factors and find no reason to revise SMA allocations, there is no adjustment required to the overall revenue requirement found by the Initial Order and adopted here, as depicted in Table I.

TABLE I
AMERICAN WATER RESOURCES, INC.
Results of Operations for Ratemaking Purposes
Test Year Ended December 31, 1997

	DESCRIPTION	PER BOOKS	RESTATING & PRO-FORMA ADJUSTMENTS	PROFORMA ADJUSTED RESULTS	RATE INCREASE	PROFORMA WITH INCREASE
1	Water Revenue	$375,298	$187,845	$563,143	$47,263	$610,406
2	Fire Flow & Miscellaneous Revenue	17,339	14,748	32,087		32,087
3	Total Operating Revenue	$392,637	$202,593	$595,230	$47,263	$642,493
4	Salaries and Wages	$160,985	$65,111	$226,096		$226,096
5	Employee Health Benefits	1,650		1,650		1,650
6	Purchased Power	33,422	7,900	41,322		41,322
7	Chemicals and Testing	17,496	5,974	23,470		23,470
8	Materials and Suppliess	27,016	(750)	26,266		26,266
9	Repairs and Maintenance	6,552	526	7,078		7,078
10	Engineering	6,354	(3,579)	2,775		2,775
11	Accounting	16,257	(5,615)	10,642		10,642
12	Legal	9,993	(2,007)	7,986		7,986
13	Other	374		374		374
14	Janitorial	350		350		350
15	Rent	6,694	(103)	6,591		6,591
16	Insurance	5,705	1,281	6,986		6,986
17	Bank Charge	252		252		252
18	Education/Dues	388		388		388
19	Meals/Entertainment	1,473	(1,311)	162		162
20	Meetings & Seminars	994	(724)	270		270
21	Other	506	(43)	463		463
22	Travel	1,063	(925)	138		138
23	Office Expense	22,226	(12,580)	9,646		9,646
24	Postage	0	7,480	7,480		7,480
25	Printing	0	1,623	1,623		1,623
26	Telephone	16,467	250	16,717		16,717
27	Transportation - fuel/other	8,961	2,523	11,484		11,484
28	Transportation - R/M	5,703	1,134	6,837		6,837
29	Excise Tax	0	30,633	30,633	2,375	33,008
30	Regulatory Commssion Expense	197	943	1,140	95	1,235
31	Bad Debt Expense	0	595	595	47	642
32	Fees & Licenses	3,810		3,810		3,810
33	Depreciation Expense (net)	33,816	14,179	47,995		47,995
34	Amortization-deferred exp.	1,618	1,028	2,646		2,646
35	Rate Case Expense	0	16,417	16,417		16,417
36	Property Tax	24,917	(16,710)	8,207		8,207
37	Payroll Tax/Expense	17,464	3,261	20,725		20,725
38	Total Operating Expense	$432,702	$116,511	$549,214	$2,516	$551,730
39	Net Operating Income Before FIT	(40,065)	86,082	46,016	44,747	90,764
40	Less: Federal Income Tax Expense	0	0	(3,006)	6,712	3,706
41	Net Operating Income	($40,065)	$86,082	$49,022	$38,035	$87,057
42	Rate Base	$1,053,224	($219,932)	$833,292		$833,292
43	Rate of Return	-3.80%		5.88%		10.45%

Rate Design and Determination. Staff requests clarification regarding rate calculation. Specifically, Staff says it cannot reproduce the Initial Order's revenue requirement, $642,493, using the rates stated in the Initial Order and adjusting for fire flow and miscellaneous revenue. On reply, AWRI says "[t]he Company agrees with Commission Staff about the problems with the ability to calculate the level of rates." AWRI states, however, that it has not even "undertaken to calculate the amount, knowing that it will probably change" in light of the petitions for review. AWRI suggests the need for an order conference, as it did in its Petition.

No order conference is necessary to clarify the single point of confusion Staff relates. The source of Staff's confusion is its use of the wrong number for fire flow and miscellaneous revenue. Staff deducted $14,748, the amount depicted in Exhibit 52 as pro forma adjustments to AWRI's per books fire flow and miscellaneous revenue amounts. The correct reduction for the pro forma period is $32,087. This includes $13,836 for fireflow and $18,087 in miscellaneous revenue, uncontested pro forma amounts as reflected in Staff and AWRI's post-hearing Stipulation and detailed in Exhibits 22 and 52. When $32,087 is deducted from the $642,493 revenue requirement, the net is $610,406. The net is reproduced when the Initial Order's $29.40 rate for an average customer using 1,100 cubic feet is expanded one decimal place to account for rounding (*i.e.,* $29.403) and multiplied by 1,730 customers, the end-of-period customer count stipulated and approved for rate determination.

These calculations are consistent with what AWRI represented at hearing is its practice of billing in 100 cubic foot increments and rounding up to the nearest 100 cubic feet. AWRI discloses for the first time in its Petition that this is not actually the way it bills customers. AWRI now says it measures and bills to the nearest cubic foot. Staff rightly expresses concern that rates be designed and billed on a consistent basis, considering undisputed 1,063.51 cubic feet (per Exhibit 81) average usage per customer with rates calculated to the cubic foot. We agree with Staff and accordingly redetermine rates as reflected in Table II.

TABLE II
AMERICAN WATER RESOURCES, INC.
Revised Rates Schedule

Flat Rate-Unmetered (per month)	$29.40
Monthly Metered Base Charge with zero usage allowance:	
5/8"-3/4" meter	$17.70
1" meter	$29.57
1-1/2" meter	$58.96
2" meter	$94.36
4" meter	$295.13
Usage Charge per cubic foot	$.0110
Facilities Charge	$1,860.00

Table II reflects also our decision to affirm and adopt the Initial Order's rate design including a zero consumption base charge and a flat rate commodity charge for each consumption unit. AWRI contests the Initial Order's rate design. The basis for AWRI's argument is the company's claim that a zero consumption rate design is contrary to Commission policies because "it is highly unusual not to have an initial level of consumption designed to meet basic usage in the initial block[,]" and "a flat usage rate will not forward the policy of encouraging conservation." Staff points out in its Response that it is not "highly unusual" to encounter a zero usage rate design; Staff cites several examples. Staff also points out that AWRI's customers testified a 400 cubic feet "initial level of consumption" in the base charge does not meet "basic usage" requirements. *See e.g.,* TR. 46-50 (Brownell); 62-63 (Walker); 113-14 (Tompson); 532-33 (Witt); 537-38 (Pettit). These testimonies are persuasive and we find absolutely no evidence in the record to support including in the base charge the first 400 cubic feet, or any other specific "basic usage" amount.

A zero consumption base rate and single commodity rate for all consumption promotes conservation by sending clear and accurate signals to customers tying directly what they use to what they pay. We agree in principle with AWRI and Staff that inverted block rates also promote conservation. Inverted block rates, however, do more to promote conservation than a uniform commodity rate only if customers receive detailed information regarding consumption within each block. AWRI does not furnish such information on customer bills. AWRI's bills show only the base charge plus a dollar amount for "water over." Exhibit 6. AWRI's bills also show the previous and current meter readings and total consumption, but fail to state when the meter was read or even disclose whether the customer's meter reads in gallons, cubic feet, or some other measure. Exhibit 6 appears, however, to display consumption in gallons, further complicating matters for any customer interested enough to attempt backing out block usage data when block rates are charged on the basis of cubic feet. In other words, inverted block rates are not presently a useful conservation promoting rate design for AWRI because customers do not receive meaningful information.

The Initial Order also rejects AWRI's and Staff's inverted block rate designs in favor of a single rate applied to all consumption because, as Staff acknowledges in its Response, the record does not include usage data adequate to determine the revenue impact of block rates. On that basis, Staff concludes via its Response, [t]he single usage rate is appropriate until AWRI can demonstrate the revenue impact of any changes." We encourage AWRI to come forward with adequate data in a future rate case so the Commission can consider whether the conservation benefits that flow from zero consumption base rates coupled with per cubic foot billing might be enhanced further by adoption of inverted block rates.

A final word on AWRI's billing practices is required in light of its disclosure after the Initial Order that it actually bills customers on a per cubic foot basis rather than on the per 100 cubic foot basis reflected in its tariff, testified to at hearing, and discussed in the Initial Order. While we do not find it necessary or appropriate to

delete the Initial Order's Finding of Fact number 34, as AWRI requests, we clarify that billing on a per cubic foot basis is appropriate and should continue for the time being. We will reserve for another time, and perhaps an industry-wide forum, consideration of whether tariff rates and customer bills should be stated in terms of gallons, consistent with the way water meters typically measure use, and the way AWRI, at least, reports consumption to its customers. In light of AWRI's own uncertainty at hearing regarding the company's actual billing practices, we also adopt the Initial Order's ordering paragraph number 5 that requires per cubic foot billing even though the paragraph may be surplusage.

CWIP and AFUDC. Staff requests clarification with respect to the Initial Order's discussion of construction work in progress (CWIP) and allowance for funds used during construction (AFUDC). In particular, Staff is confused about the treatment of $258 in capitalized interest accrued through the end of the test period. The Initial Order removes that amount from rate base because instead of being capitalized, return on CWIP is allowed to be recovered as a portion of the net operating income requirement which is calculated on the basis of a rate base that includes the CWIP on a going forward basis. Removal of the accrued AFUDC from test year rate base is a pro forma adjustment necessary to establish prospectively an appropriate relationship between income and rate base. Including CWIP in rate base terminates AFUDC accruals on AWRI's books as of the effective date of the rates that will be placed into effect upon AWRI's compliance with this Order. Once the new rates become effective AWRI will recover the carrying costs attributable to CWIP amounts in the return component of such rates. The Initial Order's treatment of test period CWIP and AFUDC accrual for purposes of prospective rate determination simply is consistent with what actually will occur upon the effective date of AWRI's compliance rates.

In other words, the Initial Order does not disallow the $258 in claimed test year AFUDC accrual or require any changes to AWRI's booking of CWIP or AFUDC through the end of the test period, or even up to the effective date of new rates that comply with our Order in this case. What the Initial Order does--solely for purposes of determining rates for prospective application--is to look at end-of- test-period CWIP and, instead of allowing capitalization of test period AFUDC accrual (*i.e.,* the $258), the Initial Order includes the test period CWIP balance in rate base and allows in rates a return on the CWIP balance. Again, after the effective date of rates filed in compliance with this Order, AWRI is allowed to recover in rates a return on CWIP instead of continuing to accrue and capitalize AFUDC amounts. This is appropriate ratemaking procedure to avoid allowing double recovery of carrying costs associated with CWIP on a prospective basis. Any AFUDC accrued on AWRI's books between the end of the test year and up to the effective date of the company's compliance filing rates can be considered in its next rate case.

II. System Additions (Docket Nos. UW-980072, UW-980265)

These dockets, by which AWRI would add approximately sixty new systems to its tariff, present two issues. First, we find customer testimony in this proceeding demonstrates the need to articulate policy to protect consumers when previously unregulated systems are acquired by a regulated company. The Initial Order would treat all acquired customers the same without regard to whether they previously paid rates to a regulated utility or an unregulated utility. All customers' prior rates would remain in effect at least temporarily after acquisition to afford the Commission an opportunity to review the potential impact the acquisition might have on new and existing customers' rates. AWRI opposes this tariff policy; Staff supports it. We review below the policy direction suggested by the Initial Order. We affirm and adopt the Initial Order. It is appropriate to adopt policy here given AWRI's presently unique program of aggressive acquisition.

Second, we must decide whether refunds are appropriate for customers on the systems AWRI acquired and would bring within the AWRI tariff via the filings in these dockets. In these two dockets, the Commission allowed AWRI to charge all new, previously unregulated customers on the acquired systems AWRI's generally applicable tariff rate, subject to refund, even though that meant an immediate increase in monthly rates for the affected customers. The final rates established under the Initial Order and here are lower for those customers than AWRI's currently effective rates. Nevertheless, the Initial Order would not require refunds. Staff urges us on review to reverse the Initial Order on this issue and require refunds. AWRI's Response says refunds should not be required. We agree with the Initial Order that refunds are not appropriate.

Tariff. The Initial Order discusses the several situations that arise when a utility under our jurisdiction undertakes an aggressive acquisition program such as the one pursued by AWRI during the past two to three years. When an acquiring utility purchases another regulated utility, the acquiring utility must file to adopt the acquired utility's tariff as its own. When an acquiring utility purchases an unregulated utility that serves one or more customers, the acquiring utility must file to charge approved rates to the acquired customer[s]. When the acquiring utility purchases a system with no customers, it must file and obtain approval for service and rates before initiating service to new customers. This case concerns directly the second and third situations. The Initial Order would adopt a policy direction to guide AWRI and any similarly situated utility that wishes to acquire an unregulated water system; the policy is informed directly by what our governing statutes require when a regulated utility is acquired.

When a regulated utility acquires another regulated utility, the acquiring utility must continue service under the acquired utility's tariff and to continue to charge the acquired customers under that tariff's rate schedules unless and until those rates are changed prospectively in a rate proceeding. RCW 80.28.060 and .080. The acquiring utility may adopt as its own the acquired utility's tariff or file for authority to fold

the acquired company into the acquiring company's generally applicable rate structure and to cancel the tariff sheets adopted from the acquired utility. *Id.; and see* WAC 480-80-250, 480-80-260, and 480-80-320. Pending Commission review of any such proposal, however, the acquired customers' rates remain unchanged. Moreover, the Commission may or may not approve the acquiring utility's proposal, or may approve it subject to conditions such as phased-in rates to prevent rate shock.

When a regulated utility acquires an unregulated utility, our governing statutes require the acquiring utility to file one or more revised or new tariff sheets to reflect the acquisition and put in place filed and effective rates to be charged prospectively. RCW 80.28.050, 060. and 080. The Commission may approve a rate the utility proposes to charge, or it may approve a higher or lower rate found to be just, reasonable, and compensatory; the rate may be approved with or without suspension, and may be made subject to refunds or conditions, or not, as appropriate under the circumstances presented. *Id.* Tariffs providing rates for service not previously rendered and covered by the utility's tariff can become effective with as little as one day's notice. WAC 480-80-240.

The Initial Order observes that in cases where the acquired system has no customers, the acquiring utility should file tariff sheets to apply the utility's generally applicable rates. Since rate shock is not an issue when there are no existing customers, unless the acquisition is of a magnitude to suggest the need for broader or deeper review of the acquiring company's rates, such a tariff filing should be approved routinely and quickly.

In cases where the acquired utility has customers, the Initial Order would have the Commission state a policy favoring identical treatment of acquired customers regardless of whether the acquired utility previously was regulated. Thus, the acquiring utility should file to incorporate the acquired system(s) into the acquiring utility's tariff at whatever rates the acquired customers have been charged by the acquiring utility's predecessor in interest. As the Initial Order suggests:

> AWRI then may request to bring the new customers within its generally applicable tariff upon showing this will not produce excessive revenue over recovery and upon showing the quality of service on the newly acquired system is acceptable, or that AWRI has concrete plans to improve the system through increased oversight and maintenance, plant upgrades or additions, or otherwise as necessary to deliver an acceptable quality of service. If AWRI's rates that would apply, however, exceed by a considerable amount (*e.g.,* more than 50 percent higher than the customers' rates at the time of acquisition), the

> Commission should consider a phase in schedule for the new, higher rates rather than allowing AWRI to implement the substantially higher rates in a single step. An appropriate schedule can be determined in individual cases and may be tied to AWRI's schedule for implementation of any needed quality of service improvements.

AWRI protests on legal and policy grounds. We take up the policy arguments first, then the legal.

AWRI posits scenarios that hypothesize situations where the company might acquire a water system owned and operated by a developer or a homeowner's association that charges customers little or nothing. AWRI asks--rhetorically we suspect--whether those customers should "continue to be served for free." AWRI says such a result "just does not make sense." We agree; it would not be sensible for us to adopt a policy that requires AWRI to continue to charge indefinitely a zero rate, or any rate not shown to be just, reasonable, and compensatory. The Initial Order suggests no such policy. The Initial Order suggests a policy that would provide a smoother transition for customers on systems AWRI acquires where no rates, or rates lower than AWRI's generally applicable rates have been charged. The policy in no way would preclude AWRI from filing to apply its generally applicable rates, or from seeking to implement such rates with less than statutory notice. The policy simply affords the Commission an opportunity to quickly consider appropriate rates for the acquired customers while guarding against rate shock and considering consumer needs generally. This approach should dampen, if not eliminate, contentiousness and create an opportunity for cooperation and a smooth transition as AWRI takes steps to incorporate the acquired system(s) into its overall operation with customer participation and Commission oversight.

AWRI argues this policy approach undermines the concept of system wide rates. AWRI says the Commission should rely on its authority to "issue a 'show cause' complaint' if the company "grow[s] into an over earnings position." AWRI Petition at 18. Finally, in this connection, AWRI argues "it [does not] make any sense . . . to have a rate case every time a water system is added." *Id.*

We find the policy suggested by the Initial Order and adopted here promotes the public interest by creating a necessary safeguard to protect consumers from rate shock that otherwise sometimes occurs under our longstanding practice that favors systemwide rates. In that way, the policy supports our continued approval of systemwide rates by making them more acceptable to consumers.

As to AWRI's other two arguments, we prefer to leave the burden with AWRI to work cooperatively with customers and the Commission when AWRI wishes to integrate an acquired system into AWRI's generally applicable rate structure. An up-front review when AWRI acquires previously unregulated systems need not be burdensome and can be accomplished efficaciously. If, however, AWRI's acquisitions

are of a nature or magnitude that suggest a need for a more general review, or if processes are delayed due to a lack of cooperation by AWRI, the burden of regulatory lag should be placed on the company and not borne by the customers.

AWRI contends "it has no choice under the law but to apply the existing tariff rates to customers who receive service from AWRI when those customers are on previously unregulated systems which are acquired by AWRI." AWRI Petition at 16. AWRI relies on RCW 80.28.050 and 80.28.080. The key, operative distinction between what these statutes actually require and what AWRI contends is the word "existing." It is true that RCW 80.28.050 requires AWRI to file a tariff with one or more rate schedules setting forth all rates and charges for the various services AWRI provides. It also is true that RCW 80.28.080 prohibits AWRI from charging more or less than the amounts in its approved rate schedules, with certain exceptions not pertinent here. There is nothing in our governing statutes, however, that precludes AWRI from filing a new rate schedule in conjunction with a system's acquisition; there is no reason such a rate schedule cannot provide for rates and charges to the acquired customers identical to the rates and charges demanded by AWRI's predecessor in interest. In view of AWRI's strident advocacy to the effect that it is legally precluded from following the policy direction suggested by the Initial Order and adopted here (*i.e.,* "the statutory language is very clear . . . [t]here can be no different result." AWRI Petition at 16), we will be perfectly clear: AWRI is wrong. Contrary to what AWRI contends, our governing statutes do not require the rate charged to the acquired customers be identical to any other rate then in effect for the acquiring utility. AWRI legally can, and should in practice, act in accordance with the policy we adopt here.

We affirm and adopt the policy direction discussed in the Initial Order. Without limiting the Commission's discretion in the event special circumstances warrant different results, we adopt the posture of being predisposed to approve the application of AWRI's generally applicable rates when AWRI takes over an unregulated system that has no customers at the time the system is acquired. When AWRI takes over an unregulated system that does have customers, the Commission's policy--again subject to our discretion if special circumstances warrant--will be to approve expeditiously temporary tariff sheets that continue to charge those customers the rates they have been paying. If AWRI files to supplant such rates with its generally applicable rates and those rates are higher than what the customers have been paying, we will review the question of whether AWRI's generally applicable rates exceed by such a significant amount the customers' rates at the time they are acquired by AWRI that a phase-in period or other condition is required to prevent rate shock. The Initial Order mentions a 50 percent increase as "significant." We find that even a smaller percentage increase (*e.g.,* 10 or 20 percent) might trigger the need for further inquiry; we will continue to consider each case individually. In cases, however, where the acquired system's rates are close to or exceed AWRI's rates, no phase in period should be required and the question whether there should be full integration of the new system into AWRI's tariff should not be contentious.

Our goals in articulating a policy direction here include easing the regulatory process and making that process less expensive to AWRI and its customers. AWRI can cooperate and work with the Commission to implement this policy direction or it can seek in future acquisitions to charge immediately its generally applicable rates. If AWRI elects the cooperative approach, it may expect most tariff filings to be approved quickly and without lengthy process during which rates may be suspended. This reduces or eliminates regulatory lag, promotes rate certainty, reduces AWRI's regulatory expense, and promotes a more positive relationship between AWRI and its customers. If AWRI elects the second course, it may expect each tariff filing to result in suspended rates subject to refund, and the prospect of formal proceedings; AWRI will realize none of the benefits suggested above.

Refunds. Staff's advocates refunds for customers who first became subject to AWRI's generally applicable rates pursuant to the Commission's separate complaints and orders in Docket Nos. UW-980072 and UW-980265, which authorized AWRI to collect the company's then-current rates, subject to refund, pending final rate determination. Staff says approximately 323 of AWRI's customers are affected. Staff would have us order AWRI to refund approximately $11,778, plus interest, from March 1, 1998 (*i.e.,* for systems subject to Docket No. UW-980072), or April 1, 1998 (*i.e.,* for systems subject to Docket No. UW-980265), either by cash payments or credits to affected customers.

The Initial Order provides little analysis or discussion to explain why the Commission should not require refunds. This terse treatment by the Initial Order may explain Staff's extended argument on this issue in its Petition. Although there is some facial appeal to Staff's advocacy, it does not bear up to close analysis. We agree with the result under the Initial Order.

Staff objects specifically to the Initial Order's statement that "[s]ince the rates here depend on a different rate design, they are not easily compared." Staff asserts "[s]imple arithmetic creates a comparison of charges applicable under AWRI's current rates and the charges applicable under the rates set by this order." Simple analyses sometimes mislead; such is the case here. Staff oversimplifies the refund issue by ignoring certain mathematical complexities in the determination of system wide rates where different groups of customers, in fact, pay vastly different rates going into the case. We return to that problem presently, but first must shift focus momentarily to review Staff's second, more fundamental point.

Staff says it "emphatically disagrees" with the Initial Order's statement that "[i]t must be considered that approval of a higher revenue requirement here represents a slight rate increase insofar as the refund question is concerned." We believe this statement in the Initial Order thrusts in the right direction, but fails to capture adequately the concept it means to convey. Indeed, the Initial Order's word choice may have led Staff to misunderstand the relationship between revenue and rates the Initial Order undoubtedly meant to convey.

We return to that point immediately below, but pause briefly first to expressly reject Staff's suggestion that we should not even consider AWRI's revenue requirement in connection with the refund issue. Staff's argument is based on the absence of any reference in our suspension orders to "revenue requirements, rate design, [and] other aspect[s] of rate setting." Staff Petition at 10. These matters are inextricably intertwined and are the very factors upon which rates depend; we need not mention each underlying factor expressly in routine suspension orders to preserve our discretion to consider them in connection with refunds or any other matter that comes before us in a rate case. We order refunds, or not, based on our consideration of the complex relationships among a host of factors. We consider also what is fair to consumers and to the regulated company under the circumstances in each case.

Returning to the heart of the matter, the important point we believe the Initial Order means to make is that a higher revenue requirement in this case *relative to* AWRI's revenue produced under present rates necessarily implies an overall rate increase, other things (*e.g.,* customer count) being equal. That is, there is a revenue deficiency of $47,263 under AWRI's present rates. If AWRI's current rates truly were systemwide (i.e., if all customers paid the same rates), all customers would experience a rate increase to permit AWRI to recover that deficiency amount. To the extent the Initial Order gives the impression that a higher revenue requirement in an absolute sense militates against refunds, that is incorrect. Again, we emphasize, it is the relative relationship or revenue deficiency, not the absolute relationship or simple increased revenue requirement, that drives our analysis.

This brings us to the difficulty of comparing two sets of rates directly when they depend on different rate designs and structures. Three customer classes existed when this case began: (1) AWRI's existing customers; (2) acquired customers on previously unregulated systems; and (3) acquired customers on previously regulated systems. The first class, approximately 1,000 customers, paid AWRI's current, generally applicable rates established in AWRI's last general rate case and no longer subject to refund. We accepted Staff's recommendation to authorize AWRI to charge the second customer class, approximately 325 customers, the company's current, generally applicable rates, subject to refund. This meant an immediate increase for these customers from rates as low as $15.00 per month base charge plus $.95 per 100 cubic feet consumption over 468 cubic feet, to $26.10 per month base charge plus $1.00 per 100 cubic feet consumption over 400 cubic feet and less than 800 cubic feet, $1.15 per 100 cubic feet between 800 and 1,500 cubic feet, and $1.30 per 100 cubic feet over 1,500 per month. The third customer class, approximately 400 customers, continued to pay flat rates, $17.00 per month, under the prior owner's tariffs adopted by AWRI pending the determination in this case.

Juxtaposed against the system wide rates determined under the Initial Order, and here, this non-uniform rate structure means the third customer class paid far too little throughout the pendency of this case while the first and second customer classes paid slightly too much. We can correct this cross-subsidy only

prospectively. We cannot order the third customer class to remit to AWRI the difference between $17.00 per month and the rates determined here. We have no authority to order such retroactive rate relief to AWRI. If we did have such authority and made the appropriate order, it would then be appropriate to order also that AWRI to pay refunds to all customers in class two and, again assuming authority we do not have, order AWRI to pay refunds to all customers in class one.

Regulatory lag, coupled with the filed rate doctrine, sometimes produces results that are unfair to utilities and to customers. Such is the circumstance here and the problem is exacerbated by AWRI's rapid growth during the past year or more. Temporary unfairness to some, or all, is an almost unavoidable consequence given the need for careful, in depth review and analysis when we must resolve contentious cases via adjudicatory processes that demand scrupulous attention to due process requirements. It is one of the reasons we encourage parties to make every effort to compose their differences and settle cases at the earliest possible moment.

The best the Commission can do here, given legal and other constraints, is establish parity among all customers on a going forward basis. This we do by establishing uniform, system wide rates for prospective application to all similarly situated customers. To grant refunds to approximately one-fourth of the more than 1,300 customers who hindsight informs us paid rates slightly too high during the pendency of the case, while leaving another 400 customers to enjoy the windfall they enjoyed during the past ten or so months as they paid rates far lower than those justified by AWRI's revenue requirements, does not seem to us to restore balance to the temporary cross-subsidies that existed pending resolution of this complicated case. We stress that these inequities cannot be laid at AWRI's, its customers', or the Commission's door, but rather are unintended artifacts of circumstances not entirely within anyone's ability to control.

Some customers paid too much, some paid too little during the pendency of this case. It is unfair to 300 customers who paid rates slightly too high during the past ten months and to whom we have the legal authority to order refunds that we do not do so; it is unfair to another 1,000 customers who also paid rates slightly too high that we do not have the legal authority to order refunds; and it is unfair to AWRI that we do not have the legal authority to require 400 customers who paid rates significantly lower than the generally applicable rates that could have been charged in an ideal world. The degrees of unfairness may or may not balance; it is impossible to know and, in any event, too subjective a measure to consider.

What we can measure objectively is the $47,263 revenue deficiency the record shows AWRI should be allowed to recover. That fact must be considered against our policy favoring uniform, system wide rates. Applied to uniform rates as a starting point, a revenue deficiency results in higher prospective rates for all customers. Applied to nonuniform rates--the starting point in this case--a revenue deficiency means higher rates to some customers and lower rates to others, again on a

prospective basis. Focusing on what is fair to *all* customers, and to AWRI, we deny Staff's request that we reverse the Initial Order's determination that refunds are not warranted in this case.

III. Facilities Charge. The parties' petitions and responses discuss three aspects of the Initial Order with respect to the facilities charge issue. First, there is the amount of the charge. AWRI advocated $2,500; Staff advocated $804. The Initial Order found the amount of $1,860 best supported by the evidence. Neither AWRI nor Staff challenge this determination and we affirm and adopt the Initial Order's analysis, findings, and conclusions.

Second, AWRI tacitly accepts that there will be refunds given a facilities charge less than the $2,500 it has collected from new customers subject to refund during the suspension period. AWRI, however, says "[t]he Company is not in a financial position to be able to accomplish refunds within [the 30 day] period of time" the Initial Order would require. AWRI estimates the refund requirement at $11,476 and requests eleven months to make refunds via payments or credits.

Staff's Response states it cannot challenge AWRI's assertion that funds are unavailable without auditing the company's books. Staff, however, raises several points in this connection that command our attention and lead us to conclude AWRI should be required to account in detail for facilities charges received since our February 25, 1998, suspension order.

Staff notes our suspension order put AWRI on notice that any facilities charges collected during the suspension period were subject to refund. A typical, prudent response under such circumstances is for at least a portion of any funds collected to be put in a reserve account. Ms. Parker and Ms. Ingram acknowledged in their testimonies Staff's concerns regarding AWRI's use of, and accounting for, facilities charge revenues and both testified AWRI established a separate account for facilities charge revenues at least by July 1998. Exhibit T-10 at 5; Exhibit T-30 at 12-13. Ms. Ingram also testified "the Company hesitates to use any of the funds it has collected since the suspension period to assist in the financing of capital improvements due to the uncertainty of the amount of refunds the Commission may require." Exhibit T-30 at 12-13. Ms. Ingram's and Ms. Parker's testimonies at these pages show AWRI is aware that the only approved use of facilities charge revenues is for capital improvements. Juxtaposed against this, we have Ms. Ingram's testimony and other evidence that AWRI "placed on hold" all capital improvement projects and, indeed, by May 1998 had ceased all facilities related activities short of maintenance essential to "keep the water flowing." Exhibit 1 at 24. Thus, we, like Staff, are left to wonder "where did the money go . . . why is it not there at this time?" Staff Response at 11.

AWRI estimates its refund liability for facilities charges collected during the suspension period so far to be approximately $11,476. Considering that AWRI collected $2,500 per customer subject to refund and is required to refund $640 to each customer, AWRI's total facilities charge collections from the date of our suspension

order, February 25, 1998, through mid-December 1998, must be approximately $44,828. The Commission finds in light of these facts and circumstances that AWRI must provide a detailed accounting with respect to the collection and expenditure of these funds and any additional facilities charges collected through the date of its compliance filing required by this Order. We require AWRI to furnish that accounting within 20 days from the date of this Order and will make such further order with respect to the timing and mechanism for facilities charge refunds as we then deem appropriate in light of the accounting. This proceeding will remain open for that purpose, among others. Staff should file an appropriate motion within 15 days after AWRI submits the required accounting. AWRI will have 5 days after Staff's motion to respond.

The third point raised both by AWRI and Staff in their respective petitions for review is these parties' objection to a suggestion in the Initial Order that facilities charge revenues may obviate the need for further rate increases or surcharges to finance needed capital improvements projects. More broadly, the parties' petitions ask us to review and at least clarify our policies and requirements related to the use of, and accounting for, facilities charges.

AWRI and Staff specifically object to a statement near the end of the Initial Order's five page analysis and discussion that observes:

> There should be no need for rate increases or surcharges to finance the necessary capital improvements ; . . ..

We read the statement in context and find it a reasonable observation under the facts available on the present record. The statement's logic is as inescapable as the simple math upon which it is based. The record shows that AWRI faces 17 critical projects with an estimated total cost of $340,800. The Initial Order would require AWRI to expend revenues from facilities charges to fund those projects, a directive we approve and adopt. The record also shows AWRI has significant unused plant; the Initial Order identifies, for example, 36 six-pack systems owned by AWRI that had no customers at December 31, 1997. There is an implicit assumption that AWRI would not build or acquire such plant without the prospect of putting it to use within a reasonable time. The facilities charge revenue potential from these systems alone is more than $400,000 (*i.e.,* 36 systems multiplied by 6 customers per system = 216 new customers; 216 customers multiplied by $1860 per customer facilities charge = $401,760). Since we adopt the Initial Order's result that would apply the facilities charge to all new residential customers who apply for service to property not served currently by AWRI, additional facilities charge revenues also will become available as AWRI continues to add customers on other systems.

We recognize the Initial Order's simple logic yields only a useful observation. The logic and the statement itself is correct so far as it goes, but its simplicity reduces to simplism if too much is read into it. Certainly, there are complexities, particularly timing complexities, that may make facilities charges standing

alone an inadequate mechanism to fund AWRI's immediate capital improvement needs, as both AWRI and Staff argue. We do not perceive the Initial Order's statement to prejudge the propriety of any future rate or surcharge filing AWRI may elect to make. We do read the statement as alerting all concerned that the Commission will take a very close and careful look at AWRI's facilities charges, and the prospects for revenue from such charges, if AWRI files for rates or surcharges to recover facilities improvements costs.

The final aspect of the facilities charge issue raised by Staff's Petition and addressed by AWRI's Response is the question of "controls on the accounting for, and use of, facilities charge funds . . .." Staff Petition at 13. Staff requests us to impose specific controls "similar to what is now set forth in the proposed revisions to the Commission's rules governing water companies." Although we expect to apply consistent policy direction in the two matters, we are not inclined to tie what we do here directly to our separate, ongoing project to revise our rules governing water companies. Independent of the rulemaking process, however, the Initial Order would require AWRI to account separately for facilities charge collections and to report quarterly the company's progress toward, and planned completion of, improvement projects included in its Water Plan on file with the Washington State Department of Health as that plan is revised from time to time.

Staff would have us expand on the Initial Order's requirements by requiring AWRI to "maintain the collected funds in a separate account . . .; [to] obtain approval of the Commission Secretary to expend funds in the account; [to limit] expenditures . . . to those referenced in the Company's approved water system plan and required by the WDOH; and . . . [to] prepare and submit quarterly reports to the Commission on the collection and disbursement of facilities charge funds."

AWRI generally does not disagree with the Initial Order or Staff on the question of use and accounting controls. AWRI argues, however, that separate accounting without maintenance of a separate bank account should meet the Commission's oversight needs and will save money. AWRI also says expenditures should be allowed for items included in AWRI's WDOH-approved water plan, or otherwise required by WDOH. Finally, AWRI says "it would also be helpful if [facilities charge funds] could be used for construction of source and storage to accommodate growth." This last suggestion is ambiguous, but AWRI distinguishes source and storage projects from "item[s] to accomodate growth." in the comprehensive plan (which deals with existing systems)" Source and storage, then, appears to relate to construction or acquisition of new or additional systems.

Ordinarily we would agree with the Initial Order and AWRI that it is sufficient to require AWRI to account separately for facilities charge collections without requiring a separate bank account for the funds. We are not convinced on the present record, however, that AWRI collects, spends, and accounts properly for these funds. Thus, we must reserve judgment. Separately, we discuss the need for, and require, a detailed accounting from AWRI with respect to facilities charges collected during the

pendency of this case. Once we have that report, we will decide whether to require AWRI to establish a separate bank account to maintain and manage facilities charge funds in a more transparent way. The motion we require from Staff should address this issue.

We affirm and adopt the Initial Order's requirement of a quarterly report to detail the company's progress toward, and planned completion of, improvement projects included in its Water Plan on file with the Washington State Department of Health as that plan is revised from time to time. We also adopt Staff's proposed expansion of the quarterly report to provide detail on the collection and disbursement of facilities charge funds. We also adopt AWRI's suggestion that expenditures be allowed for items included in AWRI's WDOH-approved water plan, or as otherwise required by WDOH. We reject AWRI's proposal that we allow expenditure of facilities charge funds for construction of source and storage to the extent such projects relate to construction or acquisition of new or additional systems.

We will not yet require AWRI to obtain the Commission Secretary's approval before AWRI expends facilities charge funds. AWRI's quarterly reports should provide the Commission timely and sufficient insight to evaluate AWRI's compliance with our Order in making expenditures on an ongoing basis.

A final word is required on the policy rationale expressed by the Initial Order and affirmed here. AWRI's Petition says "the assertions [in the Initial Order] that facilities charges should be used to pay for past improvements because of use of debt financing [are not] a logical extension of the use of facilities charges." We find nothing in the Initial Order to suggest facilities charges should be used to pay for "past improvements." We also do not regard the Initial Order's discussion of facilities charges principles to involve any "extension" of cost incurrence concepts beyond the central principle that those who cause costs to be incurred should bear those costs. AWRI's statement concerns us, then, because it reflects an apparent misunderstanding of fundamental principles that should guide its decision making.

The relationship between AWRI's debt financing and use of facilities charges to fund needed improvements to existing systems is a matter of balancing revenues and expenses consistent with the cost causation principles upon which the facilities charge concept rests. During the past two to three years, since AWRI's inception, the company has grown significantly. This growth largely has been through an aggressive program of systems acquisitions, not internal growth via customer additions to existing systems accompanied by expansion and improvement of those systems. Many of the systems AWRI has acquired suffer various infrastructure problems, as reflected in AWRI's DOH approved water plan which, among other things, identifies numerous "critical" projects needed to provide adequate quality of service to AWRI customers. AWRI has not undertaken or completed these projects, yet has borrowed excessively from its principal shareholder, Mr. Fox, to continue its aggressive growth.

AWRI's customers bear the cost of the company's excessive debt in rates. Yet, as related above, many customers who pay these rates do not receive adequate service from AWRI; these customers' systems are left to languish in various states of disrepair while AWRI acquires yet additional systems, some of which are models of good design and construction, some of which are in terrible condition.

This situation violates the cost causation principle upon which facilities charges rest. That principle is that the beneficiaries of system growth should bear a significant part of the costs of that growth. The other side of this coin is that customers on existing systems should not suffer higher rates to finance growth costs.

Our direction that facilities charges collected by AWRI be used to finance infrastructure improvements needed to improve the quality of service AWRI provides to existing customers implements a policy that seeks to restore balance where AWRI's practices otherwise might continue to violate cost incurrence principles. Existing customers who continue to bear the cost of AWRI's debt under our Order, including significant debt used to finance AWRI's growth, should benefit directly, and exclusively, from facilities charge revenues collected from the new customers served by that growth. We note this is not inconsistent with AWRI's position that it ought to be free to use facilities charge revenues for capital improvements to existing plant. We narrow the point by requiring facilities charge collections to be used exclusively for that purpose, at least until an appropriate balance is achieved between rates and quality of service for all customers, but we accept the principle for now. Later, when existing customers have received benefits commensurate with the costs they bear in rates, we may reconsider Staff's position that facilities charges must be used exclusively to finance growth outside the company's service territory, a position we reject here for the reasons discussed above and in the Initial Order.

FINDINGS OF FACT

Based on the foregoing discussion and the Initial Order's analyses, discussion, and citation, adopted here as if set forth in full, we find the following facts supported by substantial competent evidence of record:

1. AWRI's quality of service is inadequate to meet the legitimate needs of its customers.

2. AWRI's accounting and records practices are inadequate to meet the Commission's needs in performing its regulatory oversight functions on an ongoing basis.

3. The twelve month period ending December 31, 1997, is an appropriate test year to examine for ratemaking purposes in these proceedings.

4. The parties' stipulation to remove from AWRI's proposed rate base $340,800 ($335,931 net of proposed depreciation) attributed to plant improvement projects is supported by evidence that shows the projects either were not initiated or were not completed during the test year. The stipulation should be approved.

5. Agreed accounting adjustments to include $17,245 in deferred debit accounts and $6,165 as net capitalized cost attributed to a previously unaccounted for vehicle are supported adequately by undisputed evidence and should be accepted as adjustments to rate base.

6. The parties' joint proposal to use end of test period rate base and customer count will more closely match rate base, expenses, and revenues; and will produce more reasonable rates for the immediate future period during which rates established here will be effective. The end of test period method should be used establish rates in this proceeding.

7. The evidence does not support a finding that AWRI's acquisitions of operating utilities have bestowed on its existing, acquired, or potential customers benefits commensurate with the $200,194 acquisition adjustment amount AWRI proposes to include in rate base. The proposed adjustment to rate base should be disallowed.

8. AWRI stand-alone systems (*i.e.,* six-pack systems) with no customers at December 31, 1997, should not be considered used and useful and should be excluded from rate base.

9. Facilities placed in service after December 31, 1997, should be excluded from rate base as plant not used and useful as of the end of the test period.

10. Post-test-period plant additions and contributions in aid of construction (CIAC) are not valid pro forma adjustments to rate base when there are no adjustments to account for additional customers and no analysis is made of potentially offsetting adjustments to revenue and expenses.

11. The parties agreed inclusion in rate base of $11,903 to account for construction work in progress (CWIP) is in the public interest; it is inappropriate therefore for any allowance for funds used during construction (AFUDC) to accrue on CWIP balances and be capitalized after the effective date of AWRI's compliance filing in this proceeding.

12. Repair costs to a vehicle not owned by AWRI cannot properly be capitalized and AWRI's proposal to include such costs in rate base should be rejected.

13. AWRI failed to support through appropriate records claimed expense reimbursements for company use of AWRI's principal shareholder's personal vehicle and the expense amounts should be disallowed.

14. AWRI's proposed reclassification and inclusion in rate base of plant previously expensed violates the prohibition against retroactive ratemaking and should be rejected.

15. Alleged contributions by shareholders and others of time and effort to AWRI's past operations were not adequately documented; to include such costs incurred during past periods would constitute retroactive ratemaking and should be rejected.

16. AWRI's rate base supported by this record is $833,292.

17. AWRI's actual capital structure includes more than 90 percent debt, largely in the form of shareholder loans. A hypothetical capital structure reflecting 80 percent debt and 20 percent equity should be adopted to encourage AWRI to reform its actual capital structure to a more balanced debt to equity ratio such as 50 percent debt, 50 percent equity.

18. Interest on shareholder loans should be imputed at 10.50 percent (two hundred basis points above the prevailing prime interest rate during the relevant period) to provide for reasonable interest and to encourage AWRI to reform its capital structure to include significantly more equity and less debt.

19. AWRI's return on equity should be 12.60 percent to reflect a one hundred and fifty basis point addition to the level indicated by discounted cash flow analysis to recognize AWRI's inherent risk and to encourage AWRI to reform its capital structure to include significantly more equity and less debt.

20. AWRI's rate of return on rate base supported by this record is 10.45 percent.

21. An allowance of $226,096 for wages and salaries provides for optimal staffing of AWRI's operations to provide adequate quality of service for AWRI's customers.

22. AWRI's analysis of costs that should be allocated to the company's unregulated Satellite Management Agency operations reflects sound methodology.

23. AWRI's rate case expense in the amount of $36,000 is adequately supported by the record and should be allowed; the amount should be amortized over three years with no rate base inclusion for the unamortized balance.

24. AWRI's proposed adjustment to purchased power expense to reflect alleged but inadequately substantiated seasonal variations should be rejected.

25. There is not evidence to support an adjustment to AWRI's proposed outside accounting expense at the test year level of $10,642.

26. AWRI should be allowed $600 per month rent to reflect its use of offices and ancillary facilities at the home of its principal shareholder.

27. Meals and entertainment, meetings and seminars, transportation and travel expense, and "other" expense should be allowed only to the extent supported adequately by appropriate records; the amounts are $162, $270, $138, and $463, respectively.

28. AWRI's proposed office expense, $12,727, should be reduced by $2,600 to reflect proper treatment of wage expense for part-time secretarial support.

29. AWRI should recover excise taxes on facilities charges and service connection charges as an expense component in generally applicable rates.

30. Depreciation based on individual lives of particular assets is preferable to a composite depreciation rate approach when, as here, adequate data are presented to support the more detailed approach.

31. Capitalized legal and accounting expenses attributed to facilities acquisitions should be amortized over the life of the associated plant.

32. A deficiency exists in AWRI's adjusted test period gross annual revenues at present rates. The amount is $47,263. AWRI's revenue requirement supported by the record is $642,493.

33. A zero-base-volume rate design promotes conservation, allows customers to control a more significant part of their monthly water costs, and most closely matches rates to revenues; data presently available do not support more elaborate rate designs, such as inverted block rates.

34. AWRI should be required to bill customers in increments that reflect the smallest units that can be read from customer's meters to more closely match actual consumption to billed amounts. Customer bills for metered customers accordingly should be calculated to the nearest cubic foot of consumption. AWRI should be required to read meters on a month-to-month cycle to coincide with monthly billing.

35. Customers on systems AWRI acquires in the future all should be treated the same regardless of whether they previously paid Commission-approved rates or unregulated rates; rates in effect at the time a system is acquired should remain in effect, via special tariff filing in appropriate circumstances, pending

Commission review in each case to consider whether AWRI's generally applicable rates are fair, just, reasonable, and adequate for the acquired customers and whether such rates should be phased in to avoid rate shock.

36. AWRI has incurred substantial debt to finance its growth via systems' acquisitions; existing customers are burdened by higher rates that result from AWRI's extraordinary debt incurred to acquire new customers.

37. Facilities charges to new customers will provide substantial capital to AWRI that can be used to benefit existing customers who have borne, and continue to bear, the costs of AWRI's explosive growth over the past two and one-half years.

38. Using facilities charges AWRI collects prospectively to make needed improvements to existing facilities will help restore a degree of balance to the inequitable cost/benefit situation that has resulted from AWRI's excessive debt financing of aggressive plant acquisition during the past two and one-half years.

39. All customers who request a new connection to AWRI facilities should pay a facilities charge; this is consistent with a facilities charge concept grounded in cost incurrence principles that require new customers to bear the costs of AWRI's expansion rather than continuing to burden existing customers with those costs.

40. AWRI's facilities charge should reflect the average cost of facilities required to serve one new connection, adjusted to require 30 percent investment by AWRI; the amount supported by the record is $1,860.

41. AWRI's rate schedule 10, Fire Flow Rate, should apply to "commercial customers," and not to "all customers."

CONCLUSIONS OF LAW

1. The Washington Utilities and Transportation Commission has jurisdiction over the parties to, and the subject matter of, this proceeding. RCW 80.01.040; Chapter 80.04 RCW; Chapter 80.28 RCW.

2. The rates and charges included in, or made effective by, AWRI's tariff WN U-1, First Revision Sheet No. 1, First Revision Sheet No. 15, Original Sheet No. 15.1; Original Sheet No. 15.3; Original Sheet No. 15.4; Original Sheet No. 15.5; Original Sheet No. 15.6; Original Sheet No. 15.7; Original Sheet No. 15.8; Original Sheet No. 15.9; and Original Sheet No. 15.10, Third Revision Sheet No. 17, Second Revision of Sheet No. 18, Original Sheet No. 18.6, First Revision Sheet No. 25, and Original Sheet No. 27, are unjust, unreasonable, unjustly discriminatory, or

unduly preferential, and fail to yield reasonable compensation for the services rendered.

3. AWRI's proposed tariff sheets filed in Docket Nos. UW-980072, UW-980076, UW-980258, and UW-980265, including Second Revision of Sheet No. 1 canceling First Revision Sheet No. 1; Second Revision Sheet No. 15 canceling First Revision Sheet No. 15; First Revision Sheet No. 15.1 Canceling Original Sheet No. 15.1; Original Sheet No. 15.3; Original Sheet No. 15.4; Original Sheet No. 15.5; Original Sheet No. 15.6; Original Sheet No. 15.7; Original Sheet No. 15.8; Original Sheet No. 15.9; and Original Sheet No. 15.10; Fourth Revision of Sheet No. 17 canceling Third Revision Sheet No. 17; Third Revision of Sheet No. 18 canceling Second Revision of Sheet No. 18 and Original Sheet No. 18.6; Second Revision Sheet No. 25 canceling First Revision Sheet No. 25; and First Revision Sheet No. 27 canceling Original Revision Sheet No. 27, have not been shown to be just, reasonable, or sufficient, or otherwise to conform fully to the requirements of law.

4. Rates, terms, and practices determined in accordance with the findings and conclusions in this Order, including separately stated Findings of Fact and Conclusions of Law, and the foregoing analysis and discussion of the record, support Commission determined rates, charges, and practices that should be fixed by order as the just, reasonable, and sufficient rates, charges, and practices that AWRI should observe and put in force in accordance with the terms of this Order.

5. AWRI's accounting and records practices are inadequate to meet the Commission's requirements for information necessary to the Commission's regulatory oversight function. AWRI accordingly is required to conform its practices to ensure the Commission receives adequate and accurate information on a regular basis as provided generally in our statutes and regulations and specifically in the third and fourth ordering paragraphs below. RCW 80.04.090.

ORDER

IT IS ORDERED That:

1. The proposed tariff revisions filed by American Water Resources, Inc., on January 16, 1998, in Docket No. UW-980072; January 20, 1998, in Docket No. UW-980076; February 27, 1998, in Docket No. UW-980258; and March 2, 1998, in Docket No. UW-980265, now suspended by Commission orders, are rejected.

2. American Water Resources, Inc. is authorized and required to file revised tariff sheets to its Tariff WN U-1, to conform to the requirements of this Order. The authorized and required tariff sheets must bear an appropriate effective date to allow the Commission at least five (5) business days after filing to review the tariff sheets and determine whether they conform in all respects to the requirements of this

Order. Each tariff sheet filed must bear a notation that states: "By Authority of Order of the Washington Utilities and Transportation Commission, Docket No. *[insert docket number UW-980072, UW-980076, UW-980258, or UW-980265, as appropriate]*.

3. American Water Resources, Inc. is required to account separately for all revenues collected via Facilities Charges; the proceeds generated by such charges are required to be used by American Water Resources, Inc., to effect upgrades and improvements to its facilities to provide enhanced service quality to customers. American Water Resources, Inc., is required to report quarterly to the Commission, in writing, its progress in completing and projected completion date for each project listed in Appendix B to this Order, and other such projects as may be reflected in the company's Water Plan as filed with the Washington State Department of Health and as revised from time to time, or as otherwise required by the Washington State Department of Health.

4. American Water Resources, Inc. is required to submit to the Commission quarterly reports to be reviewed for proper accounting procedure, methodology, and timeliness; the reports must include an Income Statement, a Balance Sheet, and a Cash Flow Statement. American Water Resources, Inc., should cooperate with Commission staff to sustain a dialogue regarding the company's budget, customer count, and other information that will assist the company in its ongoing operations and assist the staff in its ongoing regulatory oversight responsibilities.

5. American Water Resources, Inc., is required to file with the Commission within 20 days of the date of this Order a detailed accounting of facilities charge collections and disbursements for the period February 25, 1998, through the date of this Order. AWRI is directed to work cooperatively with Commission staff to determine the form and content necessary to ensure data adequate to effect the Commission's purposes for requiring this accounting as expressed in the body of this Order. The Commission will determine by further order the mechanism and timing for facilities charge refunds as provided in the body of this Order.

6. American Water Resources, Inc., is required to provide an explanatory notice to customers via a form of notice preapproved by the Commission to be included in customer bills in the first billing period rates that conform to the requirements of this order are effective.

7. The Commission retains jurisdiction to effectuate this Orders's terms and requirements.

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).

DATED at Olympia, Washington and effective this 21st day of January 1999.

ANNE LEVINSON,
Chair

RICHARD HEMSTAD,
Commissioner

WILLIAM R. GILLIS,
Commissioner

APPENDIX A

TABLE 1
AMERICAN WATER RESOURCES, INC.
Rate Base-Per Stipulation
Comparison of Company and Staff Positions
12 Months Ended December 31, 1997

Description	Company	Staff	Difference
Per Books	$ 1,053,224	$ 1,053,224	0
Uncontested Adjustments:			
RA-12 Deferred Debit Accounts-Capitalized	17,245	17,245	0
PA-18 Capitalized Truck - Net	6,165	6,165	0
PA-19 Proforma 1998 CIAC 6/30/98	(35,479)	(35,479)	0
PA-22 Proforma 1998 Plant 6/30/98	43,780	43,780	0
Sub-Total	**31,711**	**31,711**	**0**
Contested Adjustments:			
JMP RA-3 1996 Reclassification	5,110	0	5,110
JMP RA-8 Contributed Operating Cost	11,555	0	11,555
RA-13 Capitalized Auto Repairs	0	(2,708)	2,708
PA-20 Net Acquisition Adjustment	0	(200,194)	200,194
Sub-Total	**16,665**	**(202,902)**	**219,567**
Total Adjustments	**48,376**	**(171,191)**	**219,567**
Pro Forma Rate Base	**$1,101,600**	**$882,033**	**$219,567**

TABLE 2
AMERICAN WATER RESOURCES, INC.
Rate Base Summary
12 Months Ended December 31, 1997

Description	Amount
Per Books	$1,053,224
Adjustments:	
RA-12 Deferred Debit Accounts - Capitalized	17,245
PA-18 Capitalized Truck - Net	6,165
RA-13 Capitalized Auto Repairs	(2,708)
PA-20 Net Acquisition Adjustments	(200,194)
Remove CWIP Interest	(258)
Remove plant not in test year service	(25,104)
Depreciation/Amortization Reserve Adj.	(13,494)
Allocated Common Plant (Office Furniture & Equipment)	(1,583)
Total Adjustments	**(219,932)**
Pro Forma Rate Base	**$833,292**

TABLE 3
AMERICAN WATER RESOURCES, INC.
Rate of Return Summary

Description	Ratio	Cost Rate	Weighted Cost
Debt	80.00%	9.91%	7.93%
Equity	20.00%	12.60%	2.52%
TOTAL	**100.00%**		**10.45%**

TABLE 4
AMERICAN WATER RESOURCES, INC.
Comparison of Company and Staff Positions
Operating Revenues, Expenses and Income for the 12 months Ended December 31, 1997

Line No.	Description	Amount	Staff	Difference	
1					
2	Per Books Operating Revenues:		$392,637	$392,637	0
3	Uncontested Adjustments (Proforma less Per Books):				
4	PA-1 Annualize revenue at current rates		187,845	187,845	0
5	PA-2 Annualize fireflow & misc. Revenue		14,748	14,748	0
6	**Total Adjustments**		**202,593**	**202,593**	0
7	**Total Pro Forma Revenue at Present Rates**		**595,230**	**595,230**	0
8					
9	Per Books Operating Expenses before FIT (Bench Req. 3):		432,703	432,703	0
10	Uncontested Adjustments (Proforma less Per books):				
11	Chemicals & Testing		5,974	5,974	0
12	Materials & Supplies		(750)	(750)	0
13	Repairs & Maintenance		526	526	0
14	Engineering		(3,579)	(3,579)	0
15	Legal		(2,007)	(2,007)	0
16	Postage		7,480	7,480	0
17	Telephone		250	250	0
18	Transportation-fuel/other		2,523	2,523	0
19	Transportation-RM		1,134	1,134	0
20	Regulatory Commission Expense		943	943	0
21	Bad Debt Expense		595	595	0
22	Property Tax		(16,710)	(16,710)	0
23	**Sub-Total Uncontested Adjustments:**		**(3,621)**	**(3,621)**	0
24	Contested Adjustments (Proforma less Per Books):				
25	Salaries & Wages		65,111	46,994	18,117
26	Purchased Power		9,772	7,900	1,872
27	Accounting		(5,615)	(11,615)	6,000
28	Janitorial			(24)	24
29	Rent		1,595	(181)	1,776
30	Insurance		1,498	1,366	132
31	Education/Dues			(37)	37
32	Meals/Entertainment			(1,313)	1,313
33	Meetings & Seminars		(84)	(727)	643
34	Other		(43)	(48)	5
35	Travel			(927)	927
36	Office Expense		(9,499)	(12,694)	3,195
37	Printing		1,767	1,630	137
38	Excise Tax		30,633	29,934	699
39	Depreciation Expense		23,868	12,951	10,917
40	Amortization-Def. Exp.		1,582	1,028	554
41	Rate Case Expense		54,417	7,417	47,000
42	Payroll Tax		3,261	1,830	1,431
43	**Sub-Total Contested Adjustments**		**178,263**	**83,484**	94,779
44	**Total Adjustments**		**174,642**	**79,863**	94,779
45	**Pro Forma Operating Expenses Before FIT**		**607,345**	**512,566**	**94,779**
46	**Pro Forma Operating Income Before FIT**		**(12,115)**	**82,664**	(94,779)
47	Less: Federal Income Tax Expense		(6,303)	694	(6,997)
48	**Pro Forma Net Operating Income**		**($5,812)**	**$81,970**	($87,782)

TABLE 5
AMERICAN WATER RESOURCES, INC.
Results of Operations Summary for the 12 months Ended December 31, 1997

Line No.	Description	Amount
1		
2	Per Books Operating Revenues:	$392,637
3	Uncontested Adjustments:	
4	PA-1 Annualize revenue at current rates	187,845
5	PA-2 Annualize fireflow & misc. Revenue	14,748
6	Total Adjustments	202,593
7	Total Pro Forma Revenue at Present Rates	595,230
8		
9	Per Books Operating Expenses before FIT (Bench Req. 3):	432,703
10	Uncontested Adjustments:	
11	Chemicals & Testing	5,974
12	Materials & Supplies	(750)
13	Repairs & Maintenance	526
14	Engineering	(3,579)
15	Legal	(2,007)
16	Postage	7,480
17	Telephone	250
18	Transportation-fuel/other	2,523
19	Transportation-RM	1,134
20	Regulatory Commission Expense	943
21	Bad Debt Expense	595
22	Property Tax	(16,710)
23	**Sub-Total Uncontested Adjustments:**	**(3,621)**
24	Contested Adjustments:	
25	Salaries & Wages	65,111
26	Purchased Power	7,900
27	Accounting	(5,615)
28	Janitorial	0
29	Rent*	(103)
30	Insurance*	1,281
31	Education/Dues	0
32	Meals/Entertainment*	(1,311)
33	Meetings & Seminars*	(724)
34	Other*	(43)
35	Travel*	(925)
36	Office Expense*	(12,580)
37	Printing*	1,623
38	Excise Tax	30,633
39	Depreciation Expense	14,179
40	Amortization-Def. Exp.	1,028
41	Rate Case Expense	16,417
42	Payroll Tax	3,261
43	**Sub-Total Contested Adjustments**	**120,132**
44	**Total Adjustments**	**116,511**
45	Pro Forma Operating Expenses Before FIT	549,214
46	Pro Forma Operating Income Before FIT	46,016
47	Less: Federal Income Tax Expense**	(3,006)
48	**Pro Forma Net Operating Income**	**$49,022**

*SMA portion based on Company allocation factor

** Federal Income tax calculated based on income before FIT less pro forma interest from authorized weighted cost of debt applied to allowed rate base.

TABLE 6
AMERICAN WATER RESOURCES, INC.
Revenue Requirement Calculation

Pro Forma Rate Base	$833,292
Authorized Rate of Return	10.45%
Net Operating Income Requirement	87,057
Pro Forma Net Operating Income	49,022
Net Operating Income Deficiency	$38,035
Conversion Factor*	0.80475
Revenue Requirement Deficiency	**$47,263**
*Conversion Factor Calculation:	
Revenue	1.00000
Expenses:	
WUTC Fee	0.00200
Uncollectibles	0.00100
Public Utility Tax @5.029% of Rev. Less Uncollectibles	0.05024
Sub-Total Expenses	**0.05324**
Revenue Less Expenses	0.94676
Federal Income Tax @ 15%	0.14201
Conversion Factor	**0.80475**

TABLE 7
AMERICAN WATER RESOURCES, INC.
Revised Rates Schedule

Flat Rate-Unmetered (per month)	$29,40
Monthly Metered Base Charge with zero usage allowance:	
5/8"-3/4" meter	$17.30
1" meter	$28.90
1-1/2" meter	$57.62
2" meter	$92.23
4" meter	$288.44
Usage Charge per 100cf	$1.10
Facilities Charge	$1,860.00

APPENDIX B

2/1/98 Status	System #	DESCRIPTION	Life M	Asset Cost	Monthly Depr.	% Useful Allo.	Annual Depreciation	Depr.	Accumulated Depr.	First Year Remaining Rate Base
in process	307	Pleasant Valley approval, new well, etc.	35	18,000.00	42.86	100.00%	514.32	514.32	514.32	17,485.68
in process	308	Evergreen Vista approval, tanks, pumps, etc.	35	18,300.00	43.57	100.00%	522.84	522.84	522.84	17,777.16
in process	253	Clerget-Hubert join sys, storage, etc.	35	20,500.00	48.81	100.00%	585.72	585.72	585.72	19,914.28
in process	222	Jenni storage, boosters, etc.	35	12,500.00	29.76	100.00%	357.12	357.12	357.12	12,142.88
in process	242	Mucks treatment system	35	110,000.00	261.90	100.00%	3,142.80	3,142.80	3,142.80	106,857.20
in process	225	Lew's 81st generator	35	27,000.00	64.29	100.00%	771.48	771.48	771.48	26,228.52
in process	333	Moore Oak tanks, repairs, insulate	35	2,100.00	5.00	100.00%	60.00	60.00	60.00	2,040.00
in process	247	Elk Heights storage, filters, pump, etc.	35	50,000.00	119.05	100.00%	1,428.60	1,428.60	1,428.60	48,571.40
in process	324	Zimmerman tanks, pressure switch	35	1,500.00	3.57	100.00%	42.84	42.84	42.84	1,457.16
in process	344	Eastridge West source meter, repairs	35	1,000.00	2.38	100.00%	28.56	28.56	28.56	971.44
l/b compl.	328	Pit pressure tanks, pumphs, etc.	35	12,000.00	28.57	100.00%	342.84	342.84	342.84	11,657.16
l/b compl.	332	Cozy Lane pressure tanks, switch, etc.	35	2,000.00	4.76	100.00%	57.12	57.12	57.12	1,942.88
l/b compl.	351	Lazy Acres meters, generator	35	34,900.00	83.10	100.00%	997.20	997.20	997.20	33,902.80
l/b compl.	220	Harmon Road storage, repairs, tanks	35	8,500.00	20.24	100.00%	242.88	242.88	242.88	8,257.12
l/b compl.	250	Bald Hills water softner	35	8,500.00	20.24	100.00%	242.88	242.88	242.88	8,257.12
l/b compl.	306	Key Ridge pressure tank, generator, etc.	35	12,000.00	28.57	100.00%	342.84	342.84	342.84	11,657.16
l/b compl.	215	Deschutes Glen booster pump, source mtr, etc.	35	2,000.00	4.76	100.00%	57.12	57.12	57.12	1,942.88
				340,800.00				9,737.16	9,737.16	331,062.84

BEOY Average 335,931.42

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