

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND)	DOCKET UW-101818
TRANSPORTATION COMMISSION,)	
)	
Complainant,)	ORDER 03
)	
v.)	
)	INITIAL ORDER APPROVING
MARIA K. LINDBERG,)	AND ADOPTING SETTLEMENT
)	AGREEMENT
Respondent.)	
)	
.....)	

1 ***Synopsis.** This is an Administrative Law Judge’s Initial Order that is not effective unless approved by the Commission or allowed to become effective pursuant to the notice at the end of this order. If this Initial Order becomes final, the Settlement Agreement entered into between Maria K. Lindberg and the Commission Staff will be approved and adopted. The Settlement provides that Maria K. Lindberg will pay a \$2,000 penalty, due and payable in \$200 increments over 10 months, for admitted violations of Commission statutes and rules. The parties further agree to an \$8,000 suspended penalty that would be waived provided Ms. Lindberg filed a general rate case by September 15, 2011.*

SUMMARY

2 **BACKGROUND AND PROCEDURAL HISTORY.** On April 8, 2011, the Washington Utilities and Transportation Commission (Commission) filed a formal complaint against Maria K. Lindberg, as owner and manager of Cristalina LLC, a water company, alleging 180 violations of the rules and statutes enforced by the Commission. The alleged violations include the form of bills, failure to charge rates according to tariff, rate discrimination, and violation of a Commission order. The total violations, if proved, would result in monetary penalties of \$100 per violation, or

a total of \$18,000. On April 18, 2011, Maria K. Lindberg filed an answer to the complaint.

- 3 By Notice issued on April 29, 2011, the Commission set this matter for hearing and assigned Administrative Law Judge Patricia Clark to serve as presiding officer. The Commission convened a prehearing conference at Olympia, Washington, on May 19, 2011. The Commission accepted the procedural schedule proposed by the Commission Staff¹ and the Company and, given the number of alleged violations, required the parties to submit prefiled testimony and exhibits. On June 23, 2011, the Commission Staff submitted prefiled direct testimony and exhibits. The Company submitted prefiled responsive testimony and exhibits on July 21, 2011.
- 4 On July 29, 2011, the Commission Staff filed a letter informing the Commission that the parties had reached a settlement. On August 10, 2011, the parties filed a Settlement Agreement (Settlement) and Narrative in Support. By Notice issued August 16, 2011, the Commission rescheduled the Settlement hearing.
- 5 The Settlement hearing convened, as scheduled, on August 26, 2011. During the hearing, the parties presented two witnesses in support of the Settlement. The Commission Staff presented the prefiled testimony of Travis Yonkers sponsored by Sharon Wallace and Maria K. Lindberg testified on her own behalf.² On September 22, 2011, the Commission Staff filed a status letter with the Commission notifying the tribunal that Maria K. Lindberg filed a request for general rate relief on September 15, 2011, and was filing monthly reports of well-head and customer usage data.
- 6 **PARTY REPRESENTATIVES.** Jennifer Cameron-Rulkowski, Assistant Attorney General, Olympia, Washington, represents Commission Staff. Richard Finnigan, Attorney at Law, Olympia, Washington, represents Maria K. Lindberg.

¹ In formal proceedings, such as this, the Commission's regulatory staff participates like any other party, while the Commissioners make the decision. To assure fairness, the Commissioners, the presiding administrative law judge, and the Commissioners' policy and accounting advisors do not discuss the merits of the proceeding with the regulatory staff, or any other party, without giving notice and opportunity for all parties to participate. *See* RCW 34.05.455.

² All prefiled testimony and exhibits as well as the Settlement were admitted during the hearing.

MEMORANDUM

I. Complaint

7 On April 6, 2011, the Commission issued a complaint against Maria K. Lindberg alleging the following violations:

- Two violations for failure to include on the water company bill the date the bill would become delinquent (WAC 480-110-375(f)) and failure to include on the water company bill the company's business address and telephone number (WAC 480-110-375(g));
- One hundred and seventy violations of failure to charge rates in accordance with the Company's tariff (RCW 80.38.080);
- Seven violations of charging or collecting greater or lesser compensation from one customer than the compensation collected from all other customers. (RCW 80.28.100); and
- One violation of failure to comply with a Commission order. (RCW 80.04.380).

II. Settlement

8 The parties reached a settlement of all disputed issues. Ms. Lindberg admits that she violated Commission statutes and rules and agrees to pay a penalty of \$2,000 payable in \$200 increments over ten months.³ She further agrees to a suspended penalty of \$8,000. The parties agree that the suspended penalty will be waived if Ms. Lindberg files a general rate case by September 15, 2011, in compliance with WAC 480-07-530.⁴ The Settlement is attached to, and made a part of, this Order by this reference.

³ Settlement, Exh. No. 1 at ¶¶ 5 – 6.

⁴ *Id.* at ¶ 5 and 7.

III. Discussion and Decision

A. Criteria for Approval of Settlements

9 WAC 480-07-750(1) states in part: “The commission will approve settlements when doing so is lawful, the settlement terms are supported by an appropriate record, and when the result is consistent with the public interest in light of all the information available to the commission.”

10 Thus, the Commission considers the individual components of the Settlement under a three-part inquiry. The Commission asks:

- Whether any aspect of the proposal is contrary to law.
- Whether any aspect of the proposal offends public policy.
- Whether the evidence supports the proposed elements of the Settlement Agreement as a reasonable resolution of the issue(s) at hand.

11 The Commission must determine one of three possible results:

- Approve the proposed settlement without condition.
- Approve the proposed settlement subject to condition(s).
- Reject the proposed settlement.

B. Settlement

12 The Commission recognizes that the monetary penalties serve at least two purposes. First, they provide repercussions for failing to comply with applicable regulatory standards including statutes, rules, and Commission orders. Second, and equally important, they serve as a deterrent to future noncompliance with applicable regulatory requirements. The Commission considers the Settlement in light of these purposes and in comparison to the original complaint to determine if the evidence

supports the Settlement as a reasonable resolution of the issues raised in the complaint.

- 13 In this case, the Commission evaluates the prefiled testimony and exhibits presented by the parties as well as the evidence adduced during the Settlement hearing. Overall, the evidence presented in this case by both parties raises concerns. For example, while Cristalina is prohibited from charging rates other than those set for in its approved tariffs, the Commission questions whether imposing monetary penalties for undercharging customers, particularly when the Company did so to compensate for a temporary lack of service, is the most effective means of ensuring compliance with Commission rules. Some of the evidence presented in support of the penalties for the violations, moreover, is unclear at best. On the other hand, the testimony of Ms. Lindberg demonstrates that she does not appear to understand the duties and obligations of providing regulated water utility service.
- 14 Despite the foregoing concerns, the Commission is willing to accept the Settlement for two reasons. First, the Commission recognizes that the Settlement represents a compromise of the parties' positions and that they were able to resolve their differences to their mutual satisfaction. The Settlement recognizes the gravity of failing to comply with regulatory requirements without unduly penalizing the utility for many seemingly minor infractions. Second, the Commission is cautiously optimistic that, after hearing, Ms. Lindberg understands the importance of familiarizing herself with regulatory obligations and ensuring that utility operations are in compliance. The Commission concludes that the Settlement is in the public interest.
- 15 Accordingly, Ms. Lindberg is assessed a penalty of \$2,000, payable in \$200 increments over a ten-month period. The first increment of this penalty is due beginning the first of the month following adoption of the Settlement, or by January 1, 2012, and continuing thereafter for a period of ten months. If Ms. Lindberg fails to timely submit payment of any increment of this penalty, the entire amount or remaining balance will become due and payable immediately. That is, if Ms. Lindberg fails to submit \$200 by the first day of any month from January 1, 2012, to October 1, 2012, the full amount of the penalty (\$2,000) or the remaining balance must be paid or the Commission will pursue collection action.

16 The suspended penalty of \$8,000 is waived. The parties agreed that the suspended penalty would be waived provided Ms. Lindberg filed a request for general rate relief by September 15, 2011, in compliance with WAC 480-07-530. The Commission Staff filed a status letter indicating that Ms. Lindberg complied with this Settlement provision.

FINDINGS OF FACT

17 Having discussed above in detail the evidence received in this proceeding concerning all material matters the Commission now makes and enters the following summary of those facts, incorporating by reference pertinent portions of the preceding detailed findings:

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

19 (2) Maria K. Lindberg owns and manages Cristalina, LLC, a “public service company” and a “water company” as those terms are defined and otherwise are used in Title 80 RCW. Cristalina, LLC, is engaged in Washington State in the business of supplying utility services and commodities to the public for compensation.

20 (3) The parties propose to resolve the issues in this proceeding via the Commission’s approval and adoption of their Settlement Agreement filed on August 10, 2011, which is attached to, and made a part of, this Order.

21 (4) The Commission’s approval and adoption of the Settlement attached to, and discussed in the body of this Order is in the public interest.

CONCLUSIONS OF LAW

22 Having discussed above all matters material to this decision, and having stated its
findings, the Commission now makes the following summary conclusions of law,
incorporating by reference pertinent portions of the preceding detailed conclusions:

- 23 (1) The Washington Utilities and Transportation Commission has jurisdiction over
the subject matter of, and parties to, these proceedings. Title 80 RCW.
- 24 (2) The Settlement attached to this Order as an Appendix and incorporated by
prior reference, should be approved and adopted.
- 25 (3) The Commission should retain jurisdiction over the subject matters and the
parties to this proceeding to effectuate the terms of this Order.

ORDER

THE COMMISSION ORDERS THAT:

- 26 (1) The Settlement attached and incorporated into this Order by prior reference, is
approved and adopted.
- 27 (2) The Commission retains jurisdiction to effectuate the terms of this Order.

Dated at Olympia, Washington, and effective December 5, 2011.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

PATRICIA CLARK
Administrative Law Judge

NOTICE TO THE PARTIES

This is an Initial Order. The action proposed in this Initial Order is not yet effective. If you disagree with this Initial Order and want the Commission to consider your comments, you must take specific action within the time limits outlined below. If you agree with this Initial Order, and you would like the order to become final before the time limits expire, you may send a letter to the Commission, waiving your right to petition for administrative review.

WAC 480-07-825(2) provides that any party to this proceeding has twenty (20) days after the entry of this Initial Order to file a *Petition for Administrative Review*. What must be included in any Petition and other requirements for a Petition are stated in WAC 480-07-825(3). WAC 480-07-825(4) states that any party may file an *Answer* to a Petition for review within (10) days after service of the Petition.

WAC 480-07-830 provides that before entry of a Final Order any party may file a Petition to Reopen a contested proceeding to permit receipt of evidence essential to a decision, but unavailable and not reasonably discoverable at the time of hearing, or for other good and sufficient cause. No Answer to a Petition to Reopen will be accepted for filing absent express notice by the Commission calling for such answer.

RCW 80.01.060(3), as amended in the 2006 legislative session, provides that an Initial Order will become final without further Commission action if no party seeks administrative review of the Initial Order and if the Commission does not exercise administrative review on its own motion. You will be notified if this order becomes final.

One copy of any Petition or Answer filed must be served on each party of record with proof of service as required by WAC 480-07-150(8) and (9). An original and eight copies of any Petition or Answer must be filed by mail delivery to:

Attn: David W. Danner, Executive Director and Secretary
Washington Utilities and Transportation Commission
P.O. Box 47250
Olympia, Washington 98504-7250

Docket UW-101818 Settlement Agreement