

Agenda Date: August 28, 2014  
Item Number: A3

**Docket:** UW-141301  
Company Name: Cristalina, LLC  
Washington Water Service Company

Staff: Amy White, Regulatory Analyst  
John Cupp, Consumer Program Specialist

### **Recommendation**

Take no action on, and continue consideration of, approving the sale of Cristalina, LLC's assets to Washington Water Service Company.

### **Discussion**

#### **The Parties**

On June 17, 2014, Cristalina, LLC (Cristalina or Company) and Washington Water Service Company (WWSC), filed a joint application to allow the transfer of substantially all of Cristalina's assets to WWSC. Cristalina also filed to be removed from regulation upon completion of the sale and transfer. Cristalina serves 84 customers (connections) near Ravensdale in eastern King County. Its business offices are located in Bellingham in Whatcom County, approximately 115 miles from Cristalina.

Cristalina LLC is owned and operated by Ms. Maria Lindberg. Ms. Lindberg inherited the water system from a parent at some time between August 1998 and May 2000. Cristalina became jurisdictional in 2003 and has had continuous compliance issues related to rates, required reporting, and customer billing during most of the subsequent years. The company has also had repeated water quality and quantity issues.

Washington Water Service Company, or its predecessors, has been engaged in the water business in Washington State for 44 years. It owns and operates approximately 200 water systems throughout western Washington and serves approximately 16,500 customers. Its local offices are located in Gig Harbor, Pierce County, 38 miles from Cristalina. It operates other systems in the Covington and Ravensdale area.

WWSC is an affiliate under a parent company, California Water Service Group (stock ticker: CWT), listed on the New York Stock Exchange. CWT and its affiliates provide water service throughout four western states to nearly two million customers.

#### **Water System Operations**

Public records at the Department of Health show at least eleven periods in which Cristalina's water tested positive for coliform contamination since 1998. Nine of these instances occurred,

with increasing frequency while the system has been under Ms. Lindberg's ownership and control. In late September 2013, Cristalina was placed on a boil water advisory that remained in effect until October 23, 2013. WWSC provided contract services and was instrumental in installing a chlorination pump and performing the water testing necessary to remove the boil water advisory. However, after posting a notice on its website that WWSC would be the system operator, Ms. Lindberg hired another Satellite Management Agency (SMA) to operate the system. Another boil water advisory was in effect in early November 2013.

Cristalina and its owner, Ms. Maria Lindberg, are the subjects of four active commission enforcement dockets that staff believes must be resolved before a sale and transfer is approved. There is an additional active docket regarding a customer complaint regarding billing and a water shutoff that is also being resolved.

### **Drinking Water State Revolving Fund Surcharge**

In Docket UW-090516, Cristalina applied for and received approval to collect a \$32 per customer per month surcharge to service a \$555,500 Drinking Water State Revolving Fund (DWSRF) loan through the Public Works Board (PWB). The DWSRF loan was used to fund water system infrastructure improvements to include installation of meters and shutoff valves to each customer. The Commission approved, subject to conditions, the filing and the company began collecting the surcharge in 2009.

The company has struggled to comply with WAC 480-110-455(4) and with the terms of Order 01 in docket UW-090516, in which the company was ordered to file a surcharge account report forty-five days following the end of each calendar quarter. Briefly, WAC 480-110-455(4) states that:

- companies approved for surcharges must hold funds in a separate account to benefit the customers;
- the funds do not become the property of company owners;
- the funds may not be spent for anything other than the purpose for which they were approved by the commission; and
- the company must report to the commission about the separate account for surcharge funds on a quarterly basis.

Cristalina has maintained a separate surcharge account, as required, since approval of the surcharge collection. The company has had difficulty in collecting the entire monthly amount of \$2,688 (\$32 times 84 connections) in most months. The company made its first payment (interest only) on the DWSRF loan in October 2010 and interest-plus-principal payments in October 2011 and October 2012. The company failed to make its required payment of approximately \$36,000 in October 2013 and, despite having collected surcharge funds from the customers, does not have the funds to make its payment due in October 2014. The loan has a current balance due of approximately \$497,000 without considering late fees and penalties.

In early September 2013, while the company was still delinquent in its surcharge reporting for the second quarter 2013, Ms. Lindberg contacted commission staff alleging her bookkeeper had embezzled funds from several of her companies, which she thought included Cristalina. Ms. Lindberg, a business partner, and two other companies operated by Ms. Lindberg, who also works as a realtor, filed a civil lawsuit against the bookkeeper for recovery of funds allegedly embezzled. However, according to staff's public records search, Cristalina is not a party to the civil suit. Ms. Lindberg has stated that a criminal investigation is pending in Whatcom County and that Cristalina will be a party to that proceeding. Staff has requested from Ms. Lindberg, but not received, police reports or other investigation documents.

According to surcharge reports filed in October 2013, the bookkeeper had made deposits into the surcharge account up until March 2013, when the balance was approximately \$15,400. This is still the amount held by the company as of June 4, 2014, the date of the last bank printout submitted by the company. The surcharge report for the second quarter 2014, was due on August 15, 2014, but has not been filed.

The following surcharge fund amounts have been collected by or presumed collected and **not deposited into the surcharge account** by the company:

<b>Time Period</b>	<b>Amount Collected</b>	<b>Staff Comment</b>
April 2013- Sept. 2013	\$14,270.18	Amount collected while bookkeeper accused of embezzlement was still on staff at Cristalina; surcharge reports and bank printouts show these amounts were not deposited.
October 2013- March 2014	\$ 32,647.13	The amounts collected were reported in surcharge reports; bank printouts shows these amounts were not deposited.
April 2014- August 2014	\$13,440.00	This is five months' billing; according to a bank printout included with the first quarter 2014 surcharge report, no deposits were made into the surcharge account through June 4, 2014.
<b>Total</b>	<b>\$46,917.31</b>	Surcharge funds collected March 2013 through August 2014, billed, collected or presumed collected, and improperly used.
Each Month Following	\$2,688	Amount of surcharge funds billed and at risk of improper use, every month.

Staff's brief review of the company's bank records indicates that funds collected for making payments on the DWSRF loan have been used for general water company expenses for items such as:

1. Payment of a salary to Ms. Lindberg;

2. Payments to an accountant to compile records related to the alleged embezzlement, a legal cause in which Cristalina still lacks standing after a year's investigation;
3. Payments for parking fees related to the investigation mentioned in item 2 above;
4. Payments to both Windermere Realty and the Lindberg Group, a company run by Ms. Lindberg, noted as rent for Cristalina's office space in the Windermere Realty office in Bellingham even though accounting records for Cristalina were moved to Seattle for the investigation and to keep them away from the former bookkeeper, who had accepted a position in another business operating in the Windermere Realty building, and;
5. A relatively modest amount of funds dedicated to repairs needed to end the October 2013 and November 2013 boil water advisories and for paying the operating expenses related to hiring a satellite management agency.

### **Asset Acquisition Agreement**

Ms. Lindberg and WWSC signed an Asset Acquisition Agreement (Agreement) on June 9, 2014. WWSC agrees to purchase substantially all the assets of Cristalina, but not the company itself. Cristalina, as Seller, agreed in Section 2.2 that "Any advanced payments and surcharges for State Revolving Fund Loan (SRF) received by Seller shall be forwarded to Purchaser at closing together with the customer account for which the credit applies...Purchaser (in this Agreement, WWSC) agrees to assume the SRF loan obligation and 2013 payment and if required will apply for transfer of SRF loan to cover the obligation in lieu of an assignment."

WWSC further seeks in Section 9.4 of the Agreement that "Seller shall cooperate fully with Purchaser in preparing and filing a joint application to the UTC as Purchaser may deem necessary or appropriate to obtain UTC approval of the transactions contemplated by this Agreement to include approval of an acquisition adjustment for Purchaser's capitalization for rate base of all SFR (*sic*) to be made by Purchaser for which Purchaser has not received funds from customers or Seller." WWSC has signed a certification pledging to take on the remaining loan balance and make 15 years of payments to the Public Works Board to service the remaining balance on the SRF loan. The company has access to capital markets as an affiliate of CWT and has the financial resources to ensure the DWSRF loan is repaid.

The Asset Acquisition Agreement, in Section 11, states the following: "The obligations of Purchaser under this Agreement are subject to the satisfaction, at or before the Closing, of all the conditions set out below in this Section 11...Authorization of UTC. UTC authorization for Seller to sell the Assets pursuant to the terms and conditions of this Agreement shall be in full force and effect on the Closing Date. Dismissal or settlement of the pending UTC complaint case against Seller and the penalty assessment against Seller's owner" (emphasis added). Staff wishes to point out that this clause in the Agreement is not binding upon the Commission and resolution of the active dockets remains of concern.

### Effect on Rates

In a separate Certification included with the Agreement, WWSC agrees to assume a DWSRF loan balance of approximately \$468,000 (an amount found in a PWB payoff quote for July 1, 2014, which assumed that the 2013 past due amount was made current) and to apply for transfer of the loan obligation with the Public Works Board. The current DWSRF loan balance is just over \$497,000.

Section 2.2 of the Agreement states that “*Any* (emphasis added) advanced payments and surcharges for State Revolving Fund Loan (SRF) received by Seller shall be forwarded to Purchaser at closing together with the customer account for which the credit applies...Purchaser agrees to assume the SRF loan obligation and 2013 payment and if required will apply for transfer of SRF loan to cover the obligation.” Staff interprets the “Any advanced payments” as all surcharge amounts collected by the company since the last payment was made in 2012 (\$46,917.31 as shown in the above analysis plus the \$15,439.89 currently in the account, a total of \$62,357.20). Staff believes that Cristalina interprets this clause in the Agreement to mean the current surcharge bank account balance of \$15,439.89.

The Agreement goes on to say in Section 9.4 that “The Seller shall cooperate fully with Purchaser in preparing and filing a joint application to the UTC as Purchase may deem necessary or appropriate to obtain UTC approval of the transactions contemplated by this Agreement to include approval of an acquisition adjustment for Purchaser’s capitalization for rate base of all SFR (sic) payments to be made by Purchaser for which Purchase has not received funds from customers or Seller.” In effect, WWSC states it will make payment of any missing funds as long as it is allowed to recover those funds from customers as part of rate base.

Regulatory policy and commission staff oppose double recovery of costs; charging customers who have already paid once (monthly surcharge collections) for an asset again through rate base inclusion constitutes double recovery. However, commission staff has modeled the effects of several scenarios in order to facilitate discussion of options.

**Rate Scenarios**

Col. 1	Col. 2		Col. 3	Col. 4		Col. 5		Col. 6
						<b>Average Cristalina Customer</b>		
<b>DWSRF Surcharge</b>			<b>Missing Funds Surcharge</b>			<b>Cost of Water</b>		<b>Total Bill (Col. 2 + 4 + 5)</b>
<b>Who Pays</b>	<b>Surcharge</b>		<b>Who Pays</b>	<b>Surcharge</b>				
84 Cristalina Customers	\$ 32.00		84 Cristalina Customers (4-yr. recovery)	\$ 13.37		\$ 58.98		\$ 104.35
84 Cristalina Customers	\$ 32.00		16,584 Cristalina and WWSC Customers (1-yr. recovery)	\$ 0.27		\$ 58.98		\$ 91.25
16,584 Cristalina and WWSC Customers	\$ 0.16		84 Cristalina Customers (4-yr. recovery)	\$ 13.37		\$ 58.98		\$ 72.51
16,584 Cristalina and WWSC Customers	\$ 0.16		16,584 Cristalina and WWSC Customers (1-yr. recovery)	\$ 0.27		\$ 58.98		\$ 59.41
<b>Current Average Bill for 84 Cristalina Customers</b>	<b>\$ 32.00</b>			\$ -		\$ 58.98		\$ 90.98

**Other Presumed Benefits to Cristalina Customers**

If the commission approves the sale, Cristalina customers are likely to receive the following benefits:

- A competent operator who operates other systems nearby;
- Fewer water quality and quantity issues;

- Economies of scale that will decrease customer charges approximately \$11 per month when Cristalina is eventually incorporated into WWSC's tariff and rate structure, and;
- Access to capital markets to finance additional necessary improvements to the water system infrastructure that Cristalina was unable to gain funding to pursue.

### **Customer Comments**

On June 12, 2014, Cristalina notified its customers by mail of the proposed sale to Washington Water Service Company. The customers were notified that they may access relevant documents about this case on the commission's website, and may contact John Cupp at 1-888-333-9882 or jcupp@utc.wa.gov with questions or concerns. Staff received one comment regarding the proposal, from a customer who is undecided about the sale and transfer.

#### **General Comments**

- One customer commented that she is happy about the possibility of good ownership; however she is concerned about how the sale will affect her rates. Both customers are concerned about how money was spent to upgrade the water system.

#### **Staff Response**

Staff was unable to tell the customer what her rates will be after the transaction is complete, and explained there are several issues to be worked on before a sale and transfer can be completed. Both customers have opened complaints to resolve disputes about the amount the company says they owe on their accounts.

### **Conclusion**

There is no statutory timeline for approval of a sale and transfer. However, staff believes there is urgency in this docket due to Ms. Lindberg's mishandling of surcharge funds (\$2,688 monthly).

Staff believes that the missing surcharge funds and the multiple enforcement dockets open against both Cristalina and Ms. Lindberg must be resolved prior to considering the approval of the sale of the assets from Cristalina, LLC, to Washington Water Service Company, and Cristalina's removal from regulation by the commission. Ms. Lindberg should be held accountable for the missing surcharge funds.

### **Recommendation**

Take no action on, and continue consideration of, approving the sale of Cristalina, LLC's assets to Washington Water Service Company.