

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the matter of:

TFL ASSOCIATES, LLC, a Washington Limited Liability Company; CALIBER COMPANY, INC., a Washington corporation; and JACOBSON CONSTRUCTION & DEVELOPMENT, INC., a Washington corporation,

Petitioners,

v.

RAINIER VIEW WATER COMPANY, INC., a Washington corporation; SILVER CREEK DEVELOPMENT CO., a Washington Limited Partnership,

Respondents.

No. UW - 010683

INITIAL WRITTEN TESTIMONY OF FRANK L. NACCARATO

Frank L. Naccarato testifies as follows:

- 1. I have personal knowledge of the facts set forth in this document and would be competent to testify to them if necessary.
- 2. I am the General Manager of TFL Associates, LLC (“TFL”). TFL is a validly organized Washington Limited Liability Company. TFL is in the business of developing residential real property. The address of TFL is P.O. Box 1407, Graham, Washington 98338.
- 3. TFL is a developer of real property located within Rainier View Water Company, Inc.’s (“Rainier’s”) service area.

INITIAL WRITTEN TESTIMONY OF FRANK L. NACCARATO- 1

FOSTER PEPPER & SHEFELMAN PLLC
1111 THIRD AVENUE, SUITE 3400
SEATTLE, WASHINGTON 98101-3299
206-447-4400

1 4. Rainier is a public service company that owns and operates a water system subject to
2 regulation by the Commission.

3 5. TFL has ownership interests in plats entitled Reed Plat, Reed #2, Pioneer Park,
4 Windwood #2, and Evans Estates. Preliminary plat approval from Pierce County has been received
5 for the Reed Plat.

6 6. As of August 20, 1997, Sound Water Company, Inc., (“Sound Water”) was a public
7 service company owning and operating a water system subject to regulation by the Commission.

8 7. TFL is the holder of certificate of water availability letters for each of its plats that have
9 been signed by either Rainier or Sound Water. Rainier communicated directly to TFL its intention
10 to honor previous water availability letters issued to TFL by Sound Water.

11 8. On August 20, 1997, the Commission approved the sale and transfer of assets of Sound
12 Water to Rainier. Commission Docket UW-961070.

13 9. Exhibit “A” to the Bill of Sale for Rainier’s purchase of all of Sound Water’s assets states
14 that the “[b]uyer assumes and agrees to perform all of the Seller’s rights, duties and obligations
15 under the water rights, certificates and permits.” Further, this same paragraph states that “Seller
16 believes at the time that all water rights have been committed.”

17 10. Silver Creek Development is the developer of real estate known as the Silver Creek
18 Master Planned Community (“Silver Creek”) located within Rainier’s service area.

19 11. Silver Creek Development is the holder of a certificate of water availability letter signed
20 by Sound Water dated January 13, 1997. Silver Creek Development’s water availability letter from
21 Sound Water post-dates the water availability letter(s) issued by Sound Water to TFL.

22 12. Rainier and its Operations Manager, Bob Blackman, repeatedly told TFL that Rainier was
23 diligently pursuing acquisition of additional capacity and approval of hookups and that TFL would
24 receive water hookups from Rainier based on a priority schedule reflecting the date of the filing of
25 TFL’s respective plats and the Pierce County Hearing Examiner’s decisions approving those plats.
26

INITIAL WRITTEN TESTIMONY OF
FRANK L. NACCARATO- 2

FOSTER PEPPER & SHEFELMAN PLLC
1111 THIRD AVENUE, SUITE 3400
SEATTLE, WASHINGTON 98101-3299
206-447-4400

1 13. I met with Bob Blackman and was given a spreadsheet that listed TFL plats as those in
2 line to receive future water service from Rainier. At this meeting, Bob Blackman stated that the
3 priority of hook-ups to Rainier's water system was determined based on averaging the dates listed on
4 the applicant's certificate of water availability letter and the date of preliminary plat approval. Bob
5 Blackman also promised that Rainier would honor those certificates held by TFL and those of the
6 Petitioners that were issued by Sound Water.

7 14. I was informed that the spreadsheet that Mr. Blackman distributed constituted a
8 prioritization schedule of those plats that were to receive water from Rainier, as shown on the
9 spreadsheet. Significantly, the plats that were the precursors to Silver Creek (identify specifically)
10 are listed on the spreadsheet in a lower priority than the plats being developed by TFL.

11 15. During 1997 and 1998, TFL was told by Bob Blackman that its plats were in line to
12 receive water from Rainier, based on a priority list prepared by Mr. Blackman and distributed to me
13 by Mr. Blackman. For more than a year, TFL received repeated assurances from Mr. Blackman that
14 necessary improvements to Rainier's water system that would allow Rainier to make hookups
15 available to TFL were in the design stage, would be submitted for approval shortly, and would
16 provide the necessary water for the plats.

17 16. In November of 1999, TFL learned that Rainier had entered into negotiations with the
18 developers of the Silver Creek plat for the construction of a new water storage tank by Silver Creek
19 Development for the benefit of Rainier, at Silver Creek's expense. Based on representations
20 subsequently made by Bob Blackman to TFL, the cost of the water storage facility ultimately
21 constructed by Silver Creek Development for Rainier exceeded \$1.5 million.

22 17. As a result of the negotiations between Rainier and Silver Creek Development, on
23 November 19, 1999, Rainier entered into an agreement with Silver Creek Development under which
24 Rainier agreed to provide all available water from Rainier's system to Silver Creek Development.
25 This commitment was made in exchange for Silver Creek Development's agreement to construct the
26

1 water storage tower referred to above. The agreement provides that Rainier would provide water
2 availability letters to Silver Creek and execute extension agreements on a priority basis over all other
3 requests for service within Rainier's system. This agreement also provided that those water
4 availability letters and extension agreements would be to the exclusion of any and all other
5 customers of Rainier, regardless of when such other requests were received or would be received in
6 the future by Rainier, and irrespective of when they were received in relation to other requests made
7 by Rainier's other customers. The agreement also stated that Rainier agreed to reserve sufficient
8 water rights and system capacity to meet Silver Creek's needs prior to issuing any other water
9 availability letters or signing or submitting to the WUTC any other extension agreements on behalf
10 of any other requests for service.

11 18. The agreement between Rainier and Silver Creek Development had the effect of
12 completely dissipating any further available water that Rainier had or would later acquire, since
13 under the Agreement, Rainier agreed to reserve its complete system capacity for use by Silver Creek
14 Development at such time as the Silver Creek development needed additional hookups. This
15 commitment by Rainier had the effect of foreclosing any opportunity that TFL had to have hook-ups
16 offered by Rainier.

17 19. TFL had repeatedly offered to construct a water storage facility for Rainier at TFL's
18 expense, if such action would enable Rainier to supply water hookups to TFL. These offers were
19 consistently refused by Rainier. Notwithstanding this offer by TFL, Rainier consistently refused to
20 enter into an agreement with TFL to take any steps towards construction of water storage or other
21 facilities similar to the agreement Rainier made with Silver Creek Development.

22 20. Despite refusing TFL's offer to construct water storage facilities, Rainier did inform TFL
23 that if it would acquire its own water rights and contribute those to Rainier, such a contribution
24 would result in Rainier's provision of hookups for TFL sufficient to allow TFL to go forward with
25 development of its plats. In reliance on these representations, TFL purchased a 25-acre planned unit
26

INITIAL WRITTEN TESTIMONY OF
FRANK L. NACCARATO- 4

FOSTER PEPPER & SHEFELMAN PLLC
1111 THIRD AVENUE, SUITE 3400
SEATTLE, WASHINGTON 98101-3299
206-447-4400

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

development that had already preliminary approval and that had a water right for 70 acre-feet of water. TFL paid \$1.2 million for the property and water rights. However, after this purchase, the City of Orting informed TFL that the City would contest the transfer of water rights that went with this property to Rainier. Based on the City's opposition, TFL has not yet been able to transfer any of the water rights associated with this purchase to Rainier.

21. Rainier has refused to provide water service to TFL and has prioritized Silver Creek Development's application for service ahead of TFL's, thereby repudiating its earlier promises, representations, and obligations.

I declare under penalty of perjury that the foregoing is true and correct.

Executed at _____, Washington this ____ day of August 2001.

Frank L. Naccarato