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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 KARL JACOBSON

Karl Jacobson 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 owner of Jacobson Construction & Development, Inc. (“Jacobson”). Jacobson is a validly organized Washington corporation. Jacobson is in the business of developing and constructing residential real property. The address of Jacobson is P.O. Box 73536, Puyallup, Washington 98373.
- 3. Jacobson is a developer of real property located within Rainier View Water Company, Inc.’s (“Rainier’s”) service area.

INITIAL WRITTEN TESTIMONY OF KARL JACOBSON- 1

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

3 5. Jacobson has an ownership interest in the plat entitled Country Rose. Preliminary plat
4 approval has been received for Country Rose.

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

7 7. Jacobson is the holder of a certificate of water availability letter signed by Sound Water
8 dated January 25, 1995.

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

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

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

17 11. Silver Creek Development is the holder of a certificate of water availability letter signed
18 by Sound Water dated January 13, 1997. Silver Creek Development’s water availability letter from
19 Sound Water post-dates the letter issued by Sound Water to Jacobson by 2 years.

20 12. During the intervening period between the issuance of a certificate of water availability
21 letter to Jacobson from Sound Water and Pierce County’s approval of Jacobson’s preliminary plat,
22 Jacobson was assured by Sound Water that water service would be available to it, notwithstanding
23 any subsequent change in ownership of the water company.

24 13. Rainier and its Operations Manager, Bob Blackman, repeatedly told Jacobson that
25 Rainier was diligently pursuing acquisition of additional capacity and approval of hookups and that
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INITIAL WRITTEN TESTIMONY OF
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1 Jacobson would receive water hookups from Rainier based on a priority schedule reflecting the date
2 of the filing of Jacobson's plat and the Pierce County Hearing Examiner's decisions approving that
3 plat.

4 14. I met with Bob Blackman and was given a spreadsheet that listed Country Rose as one of
5 several plats in line to receive future water service from Rainier. At this meeting, Bob Blackman
6 stated that the priority of hook-ups to Rainier's water system was determined based on averaging the
7 dates listed on the applicant's certificate of water availability letter and the date of preliminary plat
8 approval. Bob Blackman also promised that Rainier would honor the certificate held by Jacobson
9 that was issued by Sound Water.

10 15. Jacobson was informed that the spreadsheet that Mr. Blackman distributed constituted a
11 prioritization schedule of those plats that were to receive water from Rainier, as shown on the
12 spreadsheet. Significantly, the plats that were the precursors to Silver Creek are listed on the
13 spreadsheet in a lower priority than the plat being developed by Jacobson.

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

20 17. On October 5, 1998, Bob Blackman sent a letter to Jacobson's agent, Steven Bobman,
21 stating that Rainier was not obligated or contractually bound to honor water availability letters issued
22 by Sound Water, contradicting the multiple representations that Mr. Blackman had made to Jacobson
23 that Rainier would honor the Sound Water availability letters.

1 18. On October 27, 1998, Richard Finnigan, Rainier's attorney, sent a letter to Steven
2 Bobman stating that Rainier had no existing legal obligation to provide water service to Jacobson's
3 plat, once again contradicting Mr. Blackman's prior representations.

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

9 20. As a result of the negotiations between Rainier and Silver Creek Development, on
10 November 19, 1999, Rainier entered into an agreement with Silver Creek Development under which
11 Rainier agreed to provide all available water from Rainier's system to Silver Creek Development.
12 This commitment was made in exchange for Silver Creek Development's agreement to construct the
13 water storage tower referred to above. The agreement provides that Rainier would provide water
14 availability letters to Silver Creek and execute extension agreements on a priority basis over all other
15 requests for service within Rainier's system. This agreement also provided that those water
16 availability letters and extension agreements would be to the exclusion of any and all other
17 customers of Rainier, regardless of when such other requests were received or would be received in
18 the future by Rainier, and irrespective of when they were received in relation to other requests made
19 by Rainier's other customers. The agreement also stated that Rainier agreed to reserve sufficient
20 water rights and system capacity to meet Silver Creek's needs prior to issuing any other water
21 availability letters or signing or submitting to the WUTC any other extension agreements on behalf
22 of any other requests for service.

23 21. The agreement between Rainier and Silver Creek Development had the effect of
24 completely dissipating any further available water that Rainier had or would later acquire, since
25 under the Agreement, Rainier agreed to reserve its complete system capacity for use by Silver Creek
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1 Development at such time as the Silver Creek development needed additional hookups. This
2 commitment by Rainier had the effect of foreclosing any opportunity that Jacobson had to have
3 hookups offered by Rainier.

4 22. Jacobson made offers to Rainier related to development of a water storage facility and
5 offered to prepay for hookups, if such prepayment would facilitate Rainier's ability to make
6 additional hookups available. Notwithstanding these offers, Rainier consistently refused to enter
7 into an agreement with Jacobson to take any steps towards construction of water storage or other
8 facilities similar to the agreement Rainier made with Silver Creek Development.

9 23. Rainier has since refused to provide water service to Jacobson and has prioritized Silver
10 Creek Development's application for service ahead of Jacobson's, thereby repudiating its earlier
11 promises, representations, and obligations.

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

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

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16 _____
Karl Jacobson
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INITIAL WRITTEN TESTIMONY OF
KARL JACOBSON- 5

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