

1 BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION
2 COMMISSION

3
4 MARINE VIEW HEIGHTS)
HOMEOWNERS ASSOCIATION,)
5)
Complainant,)
6)
vs.)
7)
MARINE VIEW HEIGHTS)
8 INCORPORATION,)
Respondent.)
9 - - - - -

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10 A hearing in the above matter was held
11 on June 15, 1994, at the hour of 9:30 a.m. at the
12 Clubhouse at O'Sullivan's Sportsman's Resort, 6897
13 SR 262 SE, Othello, Washington, before LISA ANDERL,
14 Administrative Law Judge.

15
16 The parties were present as follows:

17
18 MARINE VIEW HEIGHTS HOMEOWNERS
ASSOCIATION, by MARION SNELSON, 8453 Highland Drive
19 SE, Othello, Washington 99344.

20 MARINE VIEW HEIGHTS INCORPORATION, by
GERALD H. LEASE, 6897 State Route 262 SE, Othello,
21 Washington 99344.

22 WASHINGTON UTILITIES AND TRANSPORTATION
COMMISSION, by ANN E. RENDAHL, Assistant Attorney
23 General, 1400 S. Evergreen Park Drive SW, Olympia,
Washington 98504-0128.

24 Connie S. Thome, CSR, RPR

25 Court Reporter

ORIGINAL

1 P R O C E E D I N G S

2 JUDGE ANDERL: Let's be on the
3 record. The Washington Utilities and
4 Transportation Commission has determined that a
5 pre-hearing conference should be held in this
6 matter. This is docket No. UW-940325. It is in
7 the nature of a formal complaint by the Marine View
8 Heights Homeowners Association versus Marine View
9 Heights Incorporation.

10 Today's date is June 15th, 1994.
11 We're convened in Othello, Washington. My name is
12 Lisa Anderl. I'm the Administrative Law Judge who
13 has been assigned to conduct the pre-hearing
14 conference today.

15 I'd like to take appearances so the
16 record is clear on who is present today. Let's
17 begin with the Complainant. The Complaint's
18 representative has introduced herself to me before
19 we went on the record as Marion Snelson. Ms.
20 Snelson, if you would, would you just state for the
21 record your name, your official title and the
22 address you would like us to use for
23 correspondence?

24 MS. SNELSON: My name is Marion
25 Snelson. I am the representative for the

1 Complainants in this formal complaint. My address
2 is 8453 Highland Drive SE, Othello, Zip Code,
3 99344.

4 JUDGE ANDERL: Okay. Thank you.
5 And for the Respondents? Mr. Barker, will you be
6 speaking for the Respondent today?

7 MR. BARKER: No, but I'll assist
8 him, Mr. Lease.

9 JUDGE ANDERL: Okay. Mr. Lease,
10 if you would state your name, your title and the
11 business address that we should use.

12 MR. LEASE: My name is Gerald H.
13 Lease. I'm the assistant manager and water
14 operator. My address is 6897 State Route 262
15 Southeast, Othello, Washington, 99344.

16 JUDGE ANDERL: Okay. Thank you.
17 And then for the Commission?

18 MS. RENDAHL: My name is Ann
19 Rendahl, R-e-n-d-a-h-l. I'm the Assistant Attorney
20 General representing the Washington Utilities and
21 Transportation Commission. My address is 1400
22 South Evergreen Park Drive SW, Olympia, Washington,
23 98406.

24 JUDGE ANDERL: Okay. Thank
25 you. One of the things that we do in a pre-

1 hearing conference is ask if there are any people
2 who want to intervene in the matter whose interests
3 are not yet represented. I don't think that is the
4 case in this procedure. I think everyone who cares
5 is already in as a party. But I will give an
6 opportunity for anyone present, who's not
7 represented to petition, to intervene at this
8 time. I hear no response and I will treat that as
9 no petition to intervene, as we have received
10 nothing in writing either.

11 Before we went on the record, I talked
12 very briefly what we would be doing today. I'd
13 like to state formally that the pre-hearing
14 conference is convened for the purposes of at least
15 discussing and maybe reaching an agreement on the
16 following items: Simplification of the issues,
17 amendments to the pleadings if necessary,
18 stipulations or agreements as to any facts, the
19 procedure that we will follow at the hearing,
20 whether it is necessary to distribute written
21 testimony or exhibits before the hearing, and any
22 other matters which may aid in the settlement or of
23 the resolution of the Complaint.

24 Let me just tell you that the
25 Commission rules have already established

1 procedures for some of these items. For example,
2 we're here to discuss the procedure at the hearing,
3 but the Commission rule establishes a certain
4 procedure that we follow, and I'll tell you what
5 that is. Basically we are here to see if that will
6 meet your needs ultimately and whether or not we'll
7 need to change any of that.

8 In general in this type of hearing, the
9 system that we follow is that the Complainant, who
10 has the burden of proof, presents its case first.
11 This is done through the testimony of witnesses and
12 the presentation of any documents necessary to
13 prove the points the Complainant wants to make.

14 The Respondent does the same with
15 witnesses and documents, followed by Commission
16 Staff. The Complainant then has an opportunity for
17 rebuttal. In each instance the other parties may
18 cross-examine the witnesses presented.

19 After the formal hearing process the
20 parties may file written briefs stating their view
21 of the case, summarizing what they think was
22 established at the hearing and stating what they
23 would like the outcome to be.

24 After that, I prepare a written
25 decision on the Complaint finding in favor of one

1 party or the other in whole or in part. This
2 decision is called an initial order. You will then
3 have 20 days to look it over and decide whether to
4 ask the Commission to change it in any way. If you
5 do, you must follow the Commission's rules about
6 requesting administrative review, including serving
7 a copy of your petition for review on the other
8 parties so that they might have an opportunity to
9 respond.

10 The Commission is under a deadline in
11 this case. I believe, although Ms. Rendahl, you
12 can correct me if I am wrong, the Commission is
13 obligated to act on a Complaint within ten months
14 after it's filed.

15 MS. RENDAHL: That's correct.

16 JUDGE ANDERL: And by my
17 calculation, that would be January 11th, 1995. As
18 you can see, the process may be time consuming and
19 complex and it doesn't provide you with an
20 immediate resolution of the issues. Therefore, I
21 would suggest, as I did when we were off the
22 record, that our time here may be well spent by
23 discussing how to simplify the case and agreeing on
24 certain facts or settling some of the issues before
25 going to hearing.

1 I've read the Complaint and the Answer
2 and it seems that the parties do agree on certain
3 facts. This may be a good starting point for a
4 list of stipulated or agreed facts which may or may
5 not lead to a settlement. If you do decide to
6 start there, the list of facts that you agree on
7 may be presented on or before the hearing and
8 accepted as evidence at the hearing.

9 The facts that are agreed to don't
10 require additional proof at the hearing. However
11 facts that we don't agree upon do require proof at
12 the hearing through testimony or other evidence
13 presented by a witness with personal knowledge.

14 Two other points, then, in discussing
15 settlement or other resolution, a party should keep
16 in mind what you want from the hearing, what
17 ultimate result do you want. The Complaint and the
18 Answer raise a lot of issues. But the relief the
19 Commission can grant is perhaps more limited. So
20 rather than laundry listing or kitchen sinking it,
21 I think you should kind of focus it on what you
22 want the ultimate outcome to be.

23 Ms. Rendahl, I wanted to have you
24 discuss with the Homeowners Association the issue
25 on rates and whether the Commission could accept

1 this Complaint as a request to adjust the rates
2 absent the signatures of 25 persons. And I don't
3 know if you were -- I was hoping we could do that
4 off the record.

5 It is my understanding that a complaint
6 for a rate adjustment has to be signed by 25
7 customers -- and we can check the statute on that
8 off the record -- but that other relief can be
9 requested on a Complaint signed by any number of
10 persons. And so I just want to make sure
11 jurisdictionally we're correct on that, and maybe
12 that's something we can best discuss off the
13 record. And of course if the Commission Staff
14 wishes to take a position on it, that would be
15 something else.

16 Some other things that I thought of
17 when I was reading the Complaint and the Answer,
18 the Complaint brings up the billing question,
19 discriminatory billing. It doesn't necessarily
20 specifically ask for relief in the request for
21 relief section. And I just want the parties to
22 think if this is something that's really important,
23 is it something that has already been resolved, is
24 it something that the parties think the Commission
25 needs to rule on formally, or is it something that

1 the Homeowners Association and the Company can
2 agree upon that the Company will follow certain
3 procedures in the future and that that will make
4 them happy.

5 And then after you're focusing on what
6 it is you want to accomplish from the hearing,
7 think about what it is the Commission may order.
8 In one of the requests for relief you ask that if
9 the Company doesn't comply you ask the Commission
10 to ask the Department of Health to place the
11 Company into receivership. And I just want you to
12 be aware, of course, that that's not going to
13 probably happen as a result of this proceeding.

14 First the Company is going to be given
15 an opportunity to correct whatever is wrong. And
16 it's only further down the road in violation of an
17 order or orders that I think the Commission would
18 take that step. So if that's what you want the
19 result to be, I think that you are perhaps one or
20 more proceedings away from that. Just so that you
21 understand that.

22 And I think that there are some things
23 going on with the Department of Health that I don't
24 know about as a decider that maybe all the rest of
25 you do know about that may work towards settling

1 some of the issues. And it may be that the
2 Commission would find it adequate to order the
3 Company to comply with whatever the Department of
4 Health has ordered it to do. I don't know. I
5 think that the Commission doesn't like to second
6 guess the Department of Health on water quality
7 issues. I know that I would certainly not be very
8 capable of second guessing the Department of Health
9 on water quality issues.

10 And so it may be sufficient for the
11 Commission to do that. But being placed to
12 monitor, whether or not the company complies is
13 kind of a backup or something. Anyway, that
14 probably concludes my opening remarks.

15 Did anybody want to say anything else
16 on the record before I ask that we break and maybe
17 discuss some of these things? All right. Then
18 let's stand in recess for a little while and see
19 what we can get with this.

20 (Recess.)

21 JUDGE ANDERL: Let's be back on
22 the record. We have been off the record in this
23 pre-hearing conference for quite an extended period
24 of time. It's 2:00 in the afternoon now. I have
25 been present during all of the discussions, and the

1 Homeowners Association represented by Ms. Snelson
2 and many of the Board members have been here as is
3 Commission Staff Attorney and Mr. Barker and
4 Mr. Lease.

5 We have had some really general
6 discussions with whether it was going to be
7 necessary to amend the pleadings, and I think the
8 Homeowners Association is aware now that it wants
9 to proceed on the refund and the reduction in rates
10 issue, that it needs to do some minor things with
11 regard to amending the pleadings, completed with
12 providing me with a signature page of 25 or more
13 customers.

14 We did, after some general discussion
15 about the water system, go through the Complaint
16 and try to discuss each of the points raised. One
17 of the big issues was the issue raised in Section
18 3, Paragraph 1, the ownership of the system. Let
19 me see if I can get this correctly.

20 Mr. Riley, with the Department of
21 Health, stated that right now the Department of
22 Health records show Mr. Sahli as 100 percent owner,
23 but in fact Mr. Barker is the one who does hold the
24 majority of the shares.

25 Mr. Barker has agreed to send to the

1 UTC, to the Department of Health and to each of the
2 homeowners in this month's billing, a letter
3 stating the ownership, the shareholders and
4 percentage of the shares and the Board members of
5 Marine View Heights Incorporated. And that, I
6 believe, was agreed would address the concerns of
7 all parties in terms of identifying the owners of
8 the system.

9 The Homeowners Association did state,
10 in terms of prioritizing the relief that it wanted,
11 was that its biggest concern was quality of water
12 and to have the moratorium lifted. But they
13 indicated that they did not wish to abandon their
14 claims for relief, of requesting a refund of rates
15 and a reduction.

16 Mr. Ottavelli summarized what the
17 Commission Staff has done thus far and will do, and
18 that included auditing the company's books and
19 records and participating or cooperating with the
20 Department of Health in some additional testing.

21 The Complaint mentions a Department of
22 Health Administrative Order No. 93-013, and
23 apparently it is that order. And it's the
24 company's not yet having met all the requirements
25 of that order that is causing the moratorium. It

1 was discussed at the hearing that this is the sixth
2 month of acceptable water tests in a row and that
3 that would be one big step if the water passes this
4 month, towards getting the moratorium lifted,
5 although Mr. Riley did indicate there were some
6 other things outstanding. But the quality issue
7 may well be resolved for the Department of Health's
8 purposes.

9 I asked the parties about this
10 Administrative Order. I asked the Homeowners
11 Association if they felt it would address most of
12 their concerns if this order were complied with,
13 and they agreed it probably would.

14 The Department of Health is working on
15 the company's comprehensive water plan, and in
16 addition to the comprehensive plan, felt that there
17 are some other issues with the system, not directly
18 relating to water quality, that are still kind of
19 pending before the plan is approved and the
20 Administrative Order fully complied with.

21 The Company has indicated that they are
22 kind of waiting for the Department of Health to act
23 on the comprehensive plan and that he's willing to
24 take action to improve the system, that he feels
25 he'll need a rate increase to do so, but that he

1 isn't going to require the rate increase before he
2 starts work.

3 After all of these discussions and
4 discussion of how long things would take and what
5 the options were, the Homeowners Association has
6 told me that they want to maintain their formal
7 Complaint, that they want to maintain the hearing
8 date which has been scheduled for July 25th, but
9 that they don't preclude any discussions taking
10 place between now and then with Mr. Barker and also
11 an engineer, I believe, Mr. Baker.

12 I should also mention that Mr. Barker
13 has indicated that he would like to sell the water
14 system, and it's my understanding that the parties
15 will be either talking about that or talking about
16 talking about it between now and then with Mr.
17 Barker.

18 Given that the parties or that the
19 Homeowners Association still wants to go ahead with
20 its Complaint, we did discuss what would need to be
21 done before the hearing. I had asked the
22 Complainant and the Respondent to exchange copies
23 of proposed exhibits and a witness list seven days
24 prior to the hearing. That means you need to
25 provide copies to each other and to Ms. Rendahl for

1 the Commission Staff, and that is no later than
2 July 18th.

3 In addition, I asked the parties to try
4 to come up with a statement of agreed facts in
5 order to reduce the need for proof at the hearing.
6 Ms. Rendahl has committed to working on the first
7 part of the Complaint, paragraphs 1 through 17, to
8 try to formulate what she feels may be the agreed
9 facts.

10 The Homeowners Association has
11 committed to working on the balance of the
12 allegations to come up with what it thinks are the
13 agreed facts based on the Respondent's answer. And
14 they are going to exchange those things sometime
15 towards the end of June, beginning of July. And
16 Ms. Rendahl, I believe, committed to trying to form
17 it into a whole and then give it to the Company,
18 the Respondent, to see if this is a statement that
19 they could agree on.

20 That is going to be due to me, if you
21 come up with it, by the 13th of July. And
22 hopefully, once you know what those facts are, it
23 will help you in doing the final draft and
24 formulation of what your exhibits are going to be
25 and who your witnesses are going to be.

1 And we also agreed that there would
2 probably be another day of hearing necessary in
3 August for Commission Staff to present its case,
4 because if we go forward with the Complainant's
5 case on the 25th and the Company's case that same
6 day, Commission Staff's case, there probably
7 physically wouldn't be enough time to present it,
8 so we would schedule another day of hearing for
9 that.

10 That's kind of a very, very short
11 statement. I realize I didn't hit on many, many of
12 the points that we discussed during the pre-
13 hearing conference, but hopefully much of what was
14 discussed will turn into what the agreed statement
15 of facts is. And so that doesn't need to be
16 recited on this record right now.

17 MS. RENDAHL: Your Honor, may I
18 suggest that some form of a status letter be
19 distributed on any settlement negotiations as to
20 whether there is no agreement and we will be going
21 forward to hearing or that there is some agreement,
22 just maybe some date closer to the hearing, some
23 sort of a status letter maybe.

24 JUDGE ANDERL: I think that's a
25 good idea. Any suggestions on when we might be

1 able to -- sometime by Wednesday the 20th or even
2 before.

3 MS. RENDAHL: Maybe by Friday the
4 15th, because if the witness list and exhibits are
5 to be distributed on the 18th, seven days before,
6 if there is a sense by the 15th as to whether this
7 is going to hearing or not, that might be
8 beneficial to all. And I would think that by that
9 time there might be some sense of whether there
10 would be a settlement reached or whether it would
11 be going to hearing.

12 JUDGE ANDERL: Okay. Or whether
13 the parties need additional time.

14 MS. SNELSON: What date was that?

15 JUDGE ANDERL: The 15th, Friday
16 the 15th.

17 MR. BARKER: Is this another
18 pre-trial hearing on the 15th?

19 JUDGE ANDERL: No. That is just
20 a due date for a letter. The 25th is the only
21 other hearing we have scheduled.

22 HOMEOWNER: Who would that be
23 from? Would that be from a Homeowners Association
24 or from a unit United Frontier that we agree to
25 disagree and we're going to continue with the --

1 JUDGE ANDERL: It would be best
2 if it were something that all three parties agreed
3 upon. Obviously if you have agreed upon a
4 settlement, you won't have any problem with it but
5 even if you have agreed to disagree, you can all
6 sign it. Or you can just communicate it to
7 Ms. Rendahl and she could send me a letter.

8 MS. RENDAHL: If there is an
9 agreement to disagree and we're going to hearing, I
10 would be more than happy to submit a letter to
11 Judge Anderl to the effect that we're going to
12 hearing. If there is some agreement, I prefer that
13 the agreement be between the Complainant and the
14 Company, because that's where your agreement might
15 be put together in such a letter, and I don't want
16 to be involved in that because that's really
17 between yourselves. But I'm more than happy to
18 indicate that a hearing will go forward. But other
19 than that, I think the burden should be to the
20 Complainant and the Respondent.

21 JUDGE ANDERL: Anything else from
22 the Commission Staff that you felt we might have
23 talked about that's important to have on this
24 record at this time?

25 MS. RENDAHL: Not at this time,

1 no.

2 JUDGE ANDERL: From the
3 Homeowners Association?

4 HOMEOWNER: Did you have in the
5 record that we're going to proceed with the water
6 testing?

7 JUDGE ANDERL: I mentioned that
8 Mr. Ottavelli in the Department of Health are going
9 to proceed with some additional testing. Anything
10 else from any of the Homeowners? What about your
11 company? Mr. Barker's shaking his head. All
12 right. Thank you.

13 Before we close, then, let me just kind
14 of close with my view on the subject. And that is
15 that I think you folks may be closer than you
16 realize to being able to resolve it. I really
17 think that a resolution of this case is going to
18 hinge on Health Department compliance, particularly
19 with that Administrative Order 93-013.

20 And I would encourage you in pursuing
21 settlement negotiations to kind of focus on that,
22 focus on what the Department of Health is going to
23 need, maybe through Mr. Riley or some other contact
24 with the Department of Health. I would encourage
25 the Homeowners Association to maybe be specific

1 with Mr. Barker about what types of actions they
2 feel would be acceptable, to get them to believe
3 that something is happening.

4 And I would encourage you,
5 Mr. Barker, to push the Department of Health and
6 push the Homeowners Association. Push the
7 Department of Health by giving them everything they
8 need and not giving them any reason to hold things
9 up. Push the Homeowners Association by starting to
10 take some steps and not giving them any reason to
11 say you're not doing anything. And I think that
12 you may well be able to come to some resolution.
13 And if not, we'll be back here on July 25th.

14 HOMEOWNER: I do believe that
15 it's more that just the need for Department of
16 Health items, because I truly believe that there is
17 a rate discrimination, and to me that needs to be
18 done away with, period.

19 JUDGE ANDERL: Okay. And I'm not
20 saying that's the only thing. But I think that
21 once -- if the Department of Health issues were
22 resolved, issues such as rate discrimination are
23 very susceptible to settlement, an agreement by the
24 company to do certain things from this day forward
25 or something else resolves that. But I don't

1 discount that there are other issues in this
2 Complaint. All right. Ms. Snelson?

3 MS. SNELSON: Just one
4 clarification. When you talked about the ownership
5 issue, you said that Mr. Barker had agreed to write
6 letters to the Health Department and to each
7 individual homeowner explaining who the owner was
8 and shareholders and all of this. But we need to
9 clarify that. I think the fact that that does not
10 in itself eliminate that portion of the order,
11 because it has to be approved by the Health
12 Department before it means anything, okay? I just
13 wanted to clarify that.

14 JUDGE ANDERL: Okay. And I don't
15 have the Health Department rule in front of me. I
16 don't know what it says. But I think that we got
17 Mr. Barker to agree to do as much as he could do
18 right today, and wanted that to be clear on the
19 record.

20 Okay. If there's nothing further, then
21 thank you all very much for attending, and we'll be
22 in touch. We'll stand adjourned.

23 (Adjourned at 2:30 p.m.)

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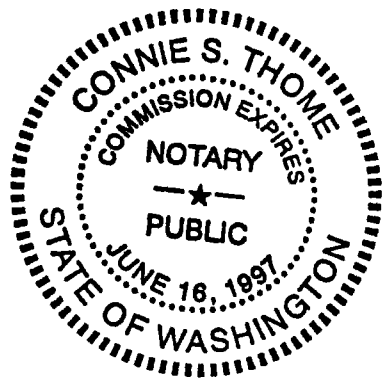
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STATE OF WASHINGTON)
County of Spokane) ss.

I, CONNIE S. THOME, do hereby certify that at the time and place heretofore mentioned in the caption of the foregoing matter, I was a Registered Professional Reporter and Notary Public for Washington; that at said time and place I reported in stenotype all testimony adduced and proceedings had in the foregoing matter; that thereafter my notes were reduced to typewriting and that the foregoing transcript consisting of 21 typewritten pages is a true and correct transcript of all such testimony adduced and proceedings had and of the whole thereof.

WITNESS my hand at Spokane, Washington on this 30th day of June 1994.



Connie S. Thome

CONNIE S. THOME
Notary Public for Washington
My Commission Expires: 6-16-97