

[Service Date July 27, 2004]

**BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION**

NANCY BATES, JIM AND MARCY)	
BICHLER, JOEL AND HEATHER)	DOCKET NO. UW-040792
BIRCHMAN, KEN CHISHOLM,)	
KEN AND LINDA COUNTER,)	
RONALD AND MARTHA DE LISLE,)	ORDER NO. 3
ROY AND DENISE DICKMEYER,)	
JIM AND CINDY DUFRAIN,)	FINAL ORDER GRANTING
ARNOLD AND SHARON EBY,)	MOTION AND DISMISSING
STEVE AND LORINDA EDWARDS,)	COMPLAINTS
CHAD EVERITT, GREG AND)	
ELAINE GALLOWAY, RICHARD)	
GROVES, NANCE' HAYDOCK-)	
KECK, RONALD AND SHARON)	
HOLLOWAY, RYAN IRVING AND)	
CATHERINE OSTBYE, MARGARET)	
LACOMBE AND DAVID)	
WILLIAMS, CHARLES AND)	
CATHERINE LEACH, GARTH AND)	
SHANNON LIEN, BARRY AND)	
RACHELLE MEEHAN, MARK AND)	
KAREN MOORE, DAVID AND)	
VIKKI POOLE, CONSTANCE R.)	
REID, ANDRE AND CHRISTINE)	
SINN, AND JIM AND TRACEY)	
SMITH)	
)	
)	
Complainants,)	
)	
v.)	
)	
MARBELLO WATER COMPANY,)	
)	
Respondent.)	
)	
.....)	

1 **Synopsis:** *The Commission grants Complainants' motion for voluntary dismissal and dismisses the complaints without prejudice.*

2 **NATURE OF PROCEEDING.** Docket No. UW-040792 is a formal complaint filed by ratepayers of Marbello Water Company (Marbello) alleging that Marbello's rates are unfair, unreasonable and discriminatory; that the company's service quality and maintenance are poor; that it has provided erroneous information to customers; and that it failed to report the results of testing to ratepayers.

3 **BACKGROUND.** The Commission convened a prehearing conference in this proceeding on June 29, 2004. By notice prior to the prehearing conference, the Commission advised the twenty-five complainants that they were required individually to enter an appearance at the prehearing conference, either by telephone or in person, in order to preserve their status as complainants. At the prehearing conference only fifteen individual complainants entered appearances.¹ In the prehearing conference order, entered on July 2, 2004, the Commission advised those complainants who did not enter appearances that they were required to advise the Commission in writing by July 16, 2004, whether they wished to continue to prosecute their complaints.

4 On July 12, 2004, complainants filed a motion for voluntary dismissal of their complaints, without prejudice, pursuant to WAC 480-07-380(3) and CR 41(a).²

¹ At the prehearing conference, two of the complainants, Mr. Joel Birchman and Mr. Steve Edwards, agreed to act as spokesman for the complainants.

² WAC 480-07-380(3) provides that a party may withdraw from a proceeding only upon permission granted by the commission upon written motion. The rule authorizes the Commission to grant such a motion when the party's withdrawal is in the public interest. CR 41(a) is the court rule governing dismissal of an action pursuant to a voluntary request for dismissal.

The Commission offered an opportunity for any party to object to the granting of the motion. No party objected. Commission Staff filed a letter in support of granting the motion.

5 **APPEARANCES.** The following complainants entered appearances: Joel Birchman, Ken Chisholm, Ken Counter, Ronald DeLisle, Roy Dickmeyer, Arnold Eby, Steve Edwards, Mary Everitt, Greg Galloway, Janine Groves, Ronald Holloway, Margaret Lacombe, Kathryn Ostbye, Constance Reid, Tracey Smith. Richard A. Finnigan represents Marbello Water Company, Inc. (Marbello). Jonathan Thompson represents Commission Staff.

6 **MOTION FOR VOLUNTARY DISMISSAL OF COMPLAINTS.** The motion for voluntary dismissal requests dismissal of these complaints without prejudice, pursuant to WAC 480-07-380(3). The basis for the motion is the complainants' concern that continuing with the complaint would result in attorney fees to Marbello that would ultimately be included in rates to be charged its customers. The complainants reserve the right to file further complaints if Marbello's rates are unfair or discriminatory, or if Marbello provides poor service, provides erroneous information to ratepayers or fails to report results of water quality testing to ratepayers.

7 Neither Marbello nor Commission Staff opposes the motion. Staff indicates that it is currently reviewing Marbello's financial data to determine the appropriateness of Marbello's current rates in Docket No. UW-040366, and the appropriateness of the rate increase filed by Marbello in Docket No. UW-041181. Staff may make recommendations for changes to Marbello's rates in those dockets.

8 **DISCUSSION AND DECISION.** Complainants filed their motion under WAC 480-07-380(3), which addresses motions for withdrawal from a proceeding upon written motion to the Commission and upon a Commission finding that

withdrawal would serve the public interest. The Commission therefore treats the instant motion as if it were a motion for withdrawal of all complainants.

Granting the motion would serve the public interest because: there are already two other dockets open at the Commission for the purpose of examining Marbello's rates;³ elimination of this complaint would promote judicial economy by eliminating yet a third proceeding devoted to the same subject; elimination of the complaint would eliminate the necessity that Marbello incur further legal fees that may have an impact on rates.

ORDER

- 9 THE COMMISSION ORDERS THAT the motion for voluntary dismissal filed by the complainants in this proceeding is granted and the complaints are dismissed without prejudice.

DATED at Olympia, Washington and effective this 27th day of July, 2004

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARILYN SHOWALTER, Chairwoman

RICHARD HEMSTAD, Commissioner

PATRICK J. OSHIE, Commissioner

³ Docket No. UW-040366, investigating Marbello's current rates; Docket No. UW-041181, investigating Marbello's proposed increased rates.

NOTICE TO PARTIES: This is a final order of the Commission. In addition to judicial review, administrative relief may be available through a petition for reconsideration, filed within 10 days of the service of this order pursuant to RCW 34.05.470 and WAC 480-07-850, or a petition for rehearing pursuant to RCW 80.04.200 or RCW 81.04.200 and WAC 480-07-870.