

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION
COMMISSION

TFL ASSOCIATES, LLC, CALIBER)		
COMPANY, INC., and JACOBSON)		DOCKET NO. UW-010683
CONSTRUCTION & DEVELOPMENT,)		
INC.,)		
Complainants)		
)		
v.)		
)		
RAINIER VIEW WATER COMPANY,)		THIRD SUPPLEMENTAL
INC., and SILVER CREEK)		ORDER APPROVING AND
DEVELOPMENT COMPANY,)		ADOPTING SETTLEMENT
)		AGREEMENT
Respondents.)		
.....))		

I. SYNOPSIS

1 This Order resolves a complaint brought by three developers who have plats for which they seek water service from Rainier View Water Co., Inc. (Rainier View). The parties, other than Commission Staff, submitted a motion asking the Commission to approve a Settlement Agreement reached by the moving parties. The Commission approves and adopts the Settlement Agreement, and dismisses the complaint without prejudice.

II. MEMORANDUM

2 **Parties:** Steven G. Jones, Joseph A. Brogan and Thomas M. Pors, attorneys, Seattle, Washington, represents TFL Associates, LLC (TFL), Caliber Company, Inc.(Caliber), and Jacobson Construction & Development Inc. (Jacobson). Richard A. Finnigan, attorney, Olympia, Washington, represents Rainier View. Kim D. Stephens, attorney, Seattle, Washington, represents Pageantry XIX/E-P LLC (Silver Creek). Jonathan Thompson, Assistant Attorney General, Olympia, Washington represents Staff of the Washington Utilities and Transportation Commission (Commission Staff). Marcia Newlands, attorney, Seattle, Washington, represents Lehman Brothers Holdings Inc., Property Asset Management Inc. and LB Silver Creek LLC (collectively Lehman Brothers).

3 **Procedural History:** On May 4, 2001, TFL, Caliber, and Jacobson filed with the Commission a complaint against Rainier View and Silver Creek. The complaint alleges, inter alia, that Rainier View and Silver Creek entered into a development agreement that constitutes an undue and unreasonable preference, and that Rainier

View's allocation of the entirety of its water supply to Silver Creek constitutes 1) failure to provide reasonable service, 2) failure to furnish service when demanded, and 3) unjust and unreasonable sale of product. Rainier View and Silver Creek each answered the complaint and each denied its allegations. Lehman Brothers petitioned to intervene as an interested party with security interest in Silver Creek property.

4 The Commission convened a prehearing conference on August 20, 2001. Among other things, the Commission granted Lehman Brothers' motion to intervene, established a procedural schedule, invoked the discovery rule (WAC 480-09-480), and entered a Protective Order (August 2, 2001). Evidentiary hearings were scheduled for November 6-7, 2001.

5 On August 31, 2001, the Commission convened another prehearing conference to consider revision of the procedural schedule. Lehman Brothers filed a substitution of parties. The substitution reflects the reorganization within Lehman Brothers as it relates to the Silver Creek Properties. The Commission granted Lehman Brothers' substitution of parties and set a revised procedural schedule with evidentiary hearings to be held on December 13-14, 2001.

6 **Settlement Agreement:** On October 12, 2001, all parties to the proceeding, except Commission Staff, filed a proposed Settlement Agreement and a motion asking the Commission to approve the Settlement Agreement. As part of that motion, the moving parties waived entry of an Initial Order in this matter. Likewise, the moving parties waived oral presentation of the Settlement Agreement and requested expedited treatment of the motion.

7 The proposed Settlement Agreement would resolve all the issues in the proceeding including the priority of water service connection commitments from Rainier View with Silver Creek and Complainants.

III. DISCUSSION AND DECISION

8 The parties to the Settlement Agreement ask that the Commission approve the Settlement Agreement on an expedited basis. At least two of the Complainants face expiration of their preliminary plat approval and potentially substantial increases in costs for the development of their properties. Timely approval of the Settlement Agreement may avoid the expiration of the preliminary plat approvals for those Complainants. All parties to the Settlement Agreement support approval of the Settlement Agreement by the Commission. Commission Staff does not oppose the Settlement Agreement, but expressed some concerns about the Commission's approval of the Agreement in its entirety. The Settlement Agreement is attached to this order as Appendix 1.

- 9 Based on our review of the Settlement Agreement and the record developed in this proceeding, we find that the issues are adequately addressed and resolved by the terms of the Settlement Agreement. We find that the Settlement Agreement is consistent with the public interest, and that it should be approved and adopted as a full and final resolution of all the issues pending in Docket No. UW-010683.
- 10 In accepting and adopting this settlement, the Commission finds that the result is consistent with the public interest and that it saves time, effort and expense for the Commission, the company, the complainants, and the Company's ratepayers. Acceptance of the settlement, however, is done without the detailed examination and the close study of partisan arguments on contested issues that produces informed decisions on each litigated issue. The Commission therefore observes, consistent with similar observations in other proceedings, that this Order does not constitute a ruling on any underlying issue that might have been litigated, including the nature and extent of the Commission's jurisdiction over any of the matters in question.
- 11 Accordingly, the Commission grants the Motion and adopts the Settlement Agreement as its resolution of the issues in this proceeding.

IV. FINDINGS OF FACT

- 12 (1) The Washington Utilities and Transportation Commission is an agency of the State of Washington vested by statute with authority to regulate rates, rules, regulations, practices, and accounts of public service companies, including water companies.
- 13 (2) Rainier View Water Co., Inc. is engaged in providing water service for hire to the public within the State of Washington as a public service company subject to the jurisdiction of this Commission.
- 14 (3) TFL Associates, LLC, Caliber Company, Inc., and Jacobson Construction & Development, Inc., filed a complaint with the Commission on May 4, 2001, alleging, among other things, that Rainier View's prioritization of applications for water service for Silver Creek constitutes an undue and unreasonable preference of water service by Rainier View, and that Rainier View has failed to furnish water service to Complainants.
- 15 (4) On October 12, 2001, all parties to the proceeding, with the exception of Commission Staff, filed a proposed Settlement Agreement with the Commission requesting expedited approval of the Agreement.
- 16 (5) The Settlement Agreement adequately addresses and resolves the issues in this proceeding.

V. CONCLUSIONS OF LAW

- 17 (1) The Washington Utilities and Transportation Commission has jurisdiction over the parties and subject matter of this proceeding. *Chapters 80.04 and 80.28 RCW.*
- 18 (2) The Settlement Agreement as contained in Appendix 1 fully and fairly resolves the issues in dispute in this proceeding and is consistent with the public interest.
- 19 (3) The Motion for Acceptance of Settlement Agreement should be granted
- 20 (4) The Commission should retain jurisdiction over the subject matter of and the parties to this proceeding to effectuate the provisions of this Order.
- 21 (5) Nothing in this Order shall be construed to waive or otherwise impair the jurisdiction of the Commission over the rates, services, accounts and practices of Rainier View, nor to constitute a determination of ratebase treatment of any plant involved in this matter, nor shall anything herein be construed as an acquiescence in any estimate or determination of cost or any valuation of property claimed or asserted.

VI. ORDER

22 THE COMMISSION ORDERS That:

- 23 (1) The Motion requesting the Commission’s acceptance of the Settlement Agreement is granted.
- 24 (2) The Settlement Agreement (Appendix 1 to this Order) is approved, adopted and made part of this Order.
- 25 (3) The complaint in this matter is hereby dismissed without prejudice, and this docket is closed.

26 THE COMMISSION FURTHER ORDERS That it retains jurisdiction over the subject matter and the parties to effectuate the provisions of this Order.

Dated at Olympia, Washington and effective this day of October, 2001.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARILYN SHOWALTER, Chairwoman

RICHARD HEMSTAD, Commissioner

PATRICK J. OSHIE, Commissioner

NOTICE OF PARTIES: This is an Interlocutory Order of the Commission. Administrative review may be available through a petition for review, filed within 10 days of the service of this Order pursuant to WAC 480-09-760.