

[Service Date September 23, 2014]

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Joint Application	)	DOCKET UW-141301
of)	
)	
CRISTALINA LLC and	)	ORDER 01
WASHINGTON WATER SERVICE)	
COMPANY,)	
)	
For an Order Approving Transfer of)	
Assets and Removal of Cristalina LLC)	
from Regulation)	
.....)	
In the Matter of the Penalty	)	DOCKET UW-140820
Assessment Against)	
)	
MARIA K. LINDBERG	)	ORDER 01
)	
In the Amount of \$14,600)	
.....)	
WASHINGTON UTILITIES AND	)	DOCKET UW-132013
TRANSPORTATION COMMISSION,)	
)	
Complainant,)	
v.	)	ORDER 02
)	
CRISTALINA LLC,)	
)	
Respondent.)	
.....)	
WASHINGTON UTILITIES AND	)	DOCKET UW-090516
TRANSPORTATION COMMISSION,)	
)	
Complainant,)	
v.	)	ORDER 02
)	
CRISTALINA LLC,)	
)	
Respondent.	)	ORDER ON CONSOLIDATION
	)	APPROVING TRANSFER OF
	)	ASSETS, DISMISSING COMPLAINT,
	)	DENYING MOTIONS & WAIVING
	)	PENALTY WITH CONDITIONS
.....)	

BACKGROUND

- 1 On April 8, 2009, Cristalina LLC (Cristalina or Company) filed a request with the Washington Utilities and Transportation Commission (Commission) to bill and collect a surcharge of \$32 per month from each of the Company's customers. The requested surcharge amount corresponded to the Company's repayment obligations for a State Revolving Fund (SRF) loan for infrastructure improvements. The Commission granted the Company's request subject to a series of conditions outlined in Order 01 in Docket UW-090516 entered on May 28, 2009.
- 2 On May 21, 2014, the Commission issued a complaint in Docket UW-132013 against Cristalina for failure to comply with Order 01 in Docket UW-090516. The Complaint alleges that the Company failed to file quarterly reports for the second and fourth quarter of 2013 as required in that order.
- 3 On May 21, 2014, in Docket UW-140820, the Commission issued a penalty assessment against Maria K. Lindberg in her individual capacity as owner and manager of Cristalina for failure to comply with Order 01 in Docket UW-090516. The penalty alleges that Ms. Lindberg is responsible for failing to file quarterly reports for the second and fourth quarter of 2013 as required in that order.
- 4 On June 17, 2014, Cristalina filed a joint application to allow the transfer of substantially all of its assets to Washington Water Service Company (WWS) according to the terms of an Asset Acquisition Agreement dated June 9, 2014. Cristalina further requests that the Commission remove the Company from regulation.
- 5 On July 2, 2014, the Commission entered Order 01, Prehearing Conference Order, in Docket UW-132013 scheduling a hearing in that docket for August 20, 2014. On July 8, 2014, the Commission issued a Notice of Brief Adjudicative Proceeding setting the time for oral statements in Docket UW-140820 for August 20, 2014, and stating that the brief adjudicative proceeding would be heard at the same time as the Commission's complaint proceeding in Docket UW-132013. The Commission subsequently rescheduled the hearing dates in both dockets to September 9, 2014.
- 6 On August 29, 2014, Commission Staff (Staff) filed a motion with the Commission to consolidate all pending dockets involving Cristalina or its owner, Maria K. Lindberg, and to continue and to suspend the procedural schedules in Docket UW-132013 and UW-140820. The Company did not object to this motion. The Commission

suspended the procedural schedules in the two dockets and scheduled a prehearing conference for September 24, 2014, for all four of the proposed consolidated dockets.

- 7 On September 2, 2014, Staff filed a five-part motion requesting that the Commission enter an Order in the four pending dockets (1) appointing a receiver, (2) terminating the collection of the \$32 monthly surcharge, (3) referring the matter involving the misappropriation of funds collected to the local prosecutor for the filing of criminal charges, (4) inviting the formal appearance and participation of the Department of Health and the Public Works Board, and (5) requiring Maria K. Lindberg's attendance at a deposition to be noted by Staff. On September 8, 2014, Cristalina filed a response to the motion opposing Staff's requested relief.
- 8 These dockets came before the Commission at a recessed open public meeting on September 12, 2014. Maria K. Lindberg and representatives for Staff, Cristalina, WWS, the Department of Health, and the Public Works Board provided oral comments on the issues presented.

DISCUSSION

- 9 Our objective in these dockets, as in all Commission proceedings, is to serve the public interest, and all parties and interested persons agree that the public interest is best served by transferring Cristalina's assets to WWS. Ms. Lindberg has been unable to operate and manage Cristalina successfully since her father left the Company to her several years ago. WWS, in contrast, is an experienced water utility that already serves hundreds of customers in other parts of Washington and is willing to commit the necessary investments and expertise to provide Company customers with acceptable quality water service at fair, just, reasonable, and sufficient rates, terms, and conditions.
- 10 Standing in the way of that transfer, however, is approximately \$44,000 in funds Ms. Lindberg collected through the customer surcharge the Commission approved in Order 01 in Docket UW-090516 that she did not remit to the Public Works Board as payments due on the SRF loan to Cristalina. Ms. Lindberg states that she used these funds for other Company operations, including paying herself a salary. Her actions gave rise to the pending complaint proceedings Staff initiated in Docket UW-132013 and the penalty assessment against her personally in Docket UW-140820. The transfer agreement between Cristalina and WWS requires dismissal of both of these dockets and a Commission order authorizing WWS to capitalize for rate base all SRF loan payments owed by Cristalina to be made by WWS for which it has not received funds from Ms. Lindberg, Cristalina, or its customers.

- 11 We are reluctant, at best, to authorize Ms. Lindberg to walk away from her Company leaving its customers, or those in the broader WWS service territory, effectively to pay twice for \$44,000 in loan payments. Even if well-intentioned, as she claims, Ms. Lindberg's use of these funds for purposes other than repayment of the SRF loan violated a Commission order and the repayment terms of the loan. We want to encourage struggling water systems to take steps to put their financial houses in order, including through transfers to, or consolidations with, other companies, but only if they do so in a lawful manner that does not harm the ratepayers.
- 12 The discussion of these issues at the open meeting resulted in an agreement among the parties and interested persons that mitigates our concerns. The parties agreed on the following terms to modify, supplement, or fulfill the requirements in the Asset Acquisition Agreement between Cristalina and WWS:
- 13 First, WWS will begin billing former Cristalina customers under the WWS tariff, rather than Cristalina's tariff, upon close of the transfer, which will result in a substantial reduction in the rates those customers currently pay. WWS calculates that this rate differential will compensate for the double-collection of the \$44,000 in unremitted loan payments within five years.
- 14 Second, Ms. Lindberg declared that she has segregated all funds she received from collection of the customer surcharge in August. She stated in the open meeting that she will segregate the funds she collects from that surcharge in September and will remit all those funds to the Public Works Board, directly or through WWS, when the next SRF loan payment is due in October 2014.
- 15 Third, Ms. Lindberg will pay WWS \$12,700 – the amount she paid herself in salary out of the diverted customer surcharge funds – over a period of three years in lieu of the \$14,600 penalty assessed in Docket UW-140820. WWS will book those payments as contribution in aid of construction (CIAC) to reduce the capitalized rate base comprised of the funds owed on the SRF loan that were not paid by Ms. Lindberg, Cristalina, or its customers. For its part, the Public Works Board stated that it would waive penalties and late fees on the past due loan payments.
- 16 Fourth, the Commission should dismiss the complaint against Cristalina in Docket UW-132013 and deny Staff's five-part motion.
- 17 The Commission finds the Asset Acquisition Agreement is consistent with the public interest as modified and supplemented by the additional terms to which the parties have agreed with one modification. The \$12,700 that Ms. Lindberg has agreed to pay

WWS serves two purposes: (1) to reduce the amount of diverted customer surcharge funds that WWS will capitalize, and (2) to ensure that Ms. Lindberg repays a significant portion of those funds. Accordingly, we will require (1) WWS to book the \$12,700 as CIAC upon closing of the transfer, and (2) WWS and Ms. Lindberg must file annual certifications, under oath, stating the amount Ms. Lindberg has paid and representing that she is current on her payment obligations to WWS. If Ms. Lindberg does not remain current on her payment obligations and pay the \$12,700 she owes within three years, the entire \$14,600 penalty in Docket UW-140820 will become immediately due and payable. With that addition, we approve the asset transfer and resolve the other issues as described in this Order.

FINDINGS AND CONCLUSIONS

- 18 (1) The 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 and has jurisdiction over the subject matter of, and parties to, this proceeding.
- 19 (2) Dockets UW-141301, UW-140820, UW-132013, and UW-090516 share common issues of fact and law and should be consolidated.
- 20 (3) The Commission should deny Staff's motion for an Order (1) Appointing Receiver, (2) Terminating Collection of Monthly Surcharge, (3) Referring Matter to Local Prosecutor, (4) Inviting Participation of Department of Health and Public Works Board, and (5) Requiring Attendance at Deposition as moot in light of the parties' agreement resolving the four dockets.
- 21 (4) The Asset Acquisition Agreement between Cristalina and WWS dated June 9, 2014, and filed in Docket UW-141301 is consistent with the public interest as modified and supplemented by the additional conditions in this order and should be approved.
- 22 (5) The complaint against Cristalina in Docket UW-132013 should be dismissed as moot in light of the parties' agreement.
- 23 (6) The penalty assessment against Maria K. Lindberg in Docket UW-140820 should be mitigated in its entirety on the following conditions:
 - a. Ms. Lindberg continues to segregate funds collected through the customer surcharges authorized in Order 01 in Docket UW-090516 until the transfer of assets to WWS closes and remits those funds to the

Public Works Board, or to WWS to be submitted to the Public Works Board, by the October 2014 installment due date for payment toward the outstanding balance owed on the SRF loan;

- b. Ms. Lindberg pays \$12,700 to WWS within three years from the date of this Order;
- c. WWS and Maria K. Lindberg must file a certification, under oath, with the Commission by October 1 each year for the next three years stating the amount Ms. Lindberg has paid and that she is current on her payment obligations; and
- d. If Ms. Lindberg does not remain current on her payment obligation to WWS or does not pay the entirety of the \$12,700 by October 1, 2017, the entire \$14,600 penalty will be immediately due and payable.

- 24 (7) Upon closing of the transfer, WWS should be required to book the entirety of the \$12,700 Maria K. Lindberg must pay as CIAC to reduce the amount of the capitalized SRF loan payments owed by Cristalina to be made by WWS for which it has not received funds from Ms. Lindberg, Cristalina, or its customers.
- 25 (8) Upon closing of the transfer, WWS should be required to begin providing water service to former Cristalina customers under the rates, terms, and conditions in WWS's tariff.
- 26 (9) Upon closing of the transfer, WWS should be authorized to continue to collect from former Cristalina customers the surcharge the Commission authorized in Order 01 in Docket UW-090516 under the terms and conditions specified in that Order.

ORDER

THE COMMISSION ORDERS that

- 27 (1) Dockets UW-141301, UW-140820, UW-132013, and UW-090516 are consolidated;
- 28 (2) The Commission denies the motion of Commission Staff dated September 2, 2014, for an Order (1) Appointing Receiver, (2) Terminating Collection of Monthly Surcharge, (3) Referring Matter to Local Prosecutor, (4) Inviting

Participation of Department of Health and Public Works Board, and (5)
Requiring Attendance at Deposition;

- 29 (3) The Commission approves the transfer of assets of Cristalina LLC to
Washington Water Service Company under the terms and conditions set forth
in the Asset Acquisition Agreement dated June 9, 2014, and filed with the
Commission in Docket UW-141301, with the additional conditions the
Commission adopts in this Order;
- 30 (4) The Commission approves an acquisition adjustment for Washington Water
Service Company to capitalize for rate base all State Revolving Fund Loan
payments owed by Cristalina LLC to be made by Washington Water Service
Company for which Washington Water Service Company has not received
funds from Maria K. Lindberg, Cristalina LLC, or its customers;
- 31 (5) The complaint in Docket UW-132013 is dismissed;
- 32 (6) The penalty assessment against Maria K. Lindberg in Docket UW-140820 is
mitigated in its entirety on the following conditions:
- a. Maria K. Lindberg continues to segregate funds collected through the
customer surcharges authorized in Order 01 in Docket UW-090516
until the transfer of assets to Washington Water Service Company
closes and remits those funds to the Public Works Board, or to
Washington Water Service Company to be submitted to the Public
Works Board, by the October 2014 installment due date for payment
toward the outstanding balance owed on the State Revolving Fund
Loan;
 - b. Maria K. Lindberg pays \$12,700 to Washington Water Service
Company within three years from the date of this Order;
 - c. Washington Water Service Company and Maria K. Lindberg must file
a certification, under oath, with the Commission by October 1 each
year for the next three years stating the amount Ms. Lindberg has paid
and that she is current on her payment obligations; and
 - d. If Maria K. Lindberg does not remain current on her payment
obligation to Washington Water Service Company or does not pay the
entirety of the \$12,700 by October 1, 2017, the entire \$14,600 penalty
will be immediately due and payable;

- 33 (7) Upon closing of the transfer of assets from Cristalina LLC, Washington Water Service Company shall book the entirety of the \$12,700 Maria K. Lindberg must pay as contribution in aid of construction to reduce the amount of the capitalized State Revolving Fund Loan payments owed by Cristalina LLC to be made by Washington Water Service Company for which Washington Water Service Company has not received funds from Maria K. Lindberg, Cristalina LLC, or its customers;
- 34 (8) Upon closing of the transfer of assets from Cristalina LLC, Washington Water Service Company shall begin providing water service to former Cristalina LLC customers under the rates, terms, and conditions in Washington Water Service Company's tariff;
- 35 (9) Upon closing of the transfer of assets from Cristalina LLC, Washington Water Service Company is authorized to continue to collect from former Cristalina LLC customers the surcharge the Commission authorized in Order 01 in Docket UW-090516 under the terms and conditions specified in that Order; and
- 36 (10) The Commission retains jurisdiction to enforce the terms of this Order.

Dated at Olympia, Washington, September 23, 2014.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

DAVID W. DANNER, Chairman

PHILIP B. JONES, Commissioner

JEFFREY D. GOLTZ, Commissioner

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 and WAC 480-07-870.