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BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND)
TRANSPORTATION COMMISSION,)
)
Complainant,)
)
vs.) DOCKET UW-101818
)
MARIA K. LINDBERG,) VOLUME I
) PAGES 1 - 16
Respondent.)
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A prehearing conference in the above matter was held on
Thursday, May 19, 2011, at 10:55 a.m., at 1300 South
Evergreen Park Drive Southwest, Olympia, Washington, before
Administrative Law Judge PATRICIA CLARK.

The parties were present as follows:

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION, by
Jennifer Cameron-Rulkowski, Assistant Attorney General,
OFFICE OF THE ATTORNEY GENERAL, P.O. Box 40128, OLYMPIA,
WASHINGTON 98504; Telephone 360-664-1186

MARIA LINDBERG, CRISTALINA, LLC, by Richard A.
Finnigan, Attorney at Law, 2112 Black Lake Boulevard
Southwest, Olympia, Washington 98512; Telephone 360-956-7001

Tami Lynn Vondran, CCR No. 2157
Court Reporter

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P R O C E E D I N G S

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(On the record at 10:55 a.m.)

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JUDGE CLARK: All right. Good morning. It's approximately 11:00 a.m. on May 19, 2011, in the Commission's hearing room in Olympia, Washington. This is the time and the place set for a prehearing conference in the matter of Washington Utilities and Transportation Commission, complainant, versus Maria K. Lindberg, respondent, given Docket 101818. Patricia Clark, Administrative Law Judge, for the Commission presiding.

This matter came before the Commission on April 8, 2011, when the Commission entered a complaint against Maria K. Lindberg, the owner and manager of Cristalina, LLC, a water company subject to the Commission's jurisdiction alleging 180 violations of the Commission's statutes and rules and one order. The Commission complaint sought penalties in the amount of \$18,000. By notice issued on April 29, 2011, the Commission scheduled a prehearing conference for May 11, 2011.

On May 10, 2011, the parties submitted a joint letter requesting that the prehearing conference be waived and that the Commission make discovery available and enter a standard protective order. By notice issued May 11, 2011, the Commission vacated the prehearing conference scheduled for May 11th and rescheduled the prehearing conference for

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1 this date, time and place.

2 At this time I'll take the appearances on behalf
3 of the parties. Appearing on behalf of the Commission?

4 MS. CAMERON-RULKOWSKI: Jennifer
5 Cameron-Rulkowski, Assistant Attorney General. My address
6 is 1400 South Evergreen Park Drive Southwest, Olympia,
7 Washington 98504-0128. My telephone number is 360-664-1186.
8 And my email is jcameron@utc.wa.gov.

9 JUDGE CLARK: And, Ms. Cameron-Rulkowski, we also
10 include a fax number.

11 MS. CAMERON-RULKOWSKI: And my fax number is
12 360-586-5522.

13 JUDGE CLARK: Thank you. Appearing on behalf of
14 Maria K. Lindberg?

15 MR. FINNIGAN: Thank you. Richard Finnigan. The
16 address is 2112 Black Lake Boulevard Southwest, Olympia,
17 Washington 98512. Phone number is 360-956-7001. Fax is
18 360-587-3852. Email is rickfinn@localaccess.com.

19 JUDGE CLARK: Thank you, Mr. Finnigan.

20 Well, the first thing I would like to do is
21 address the procedural schedule that was submitted by the
22 parties. And in the letter the parties indicated that it
23 would be appropriate to waive the prehearing conference in
24 this matter because there would be no prefiled testimony.
25 However, I do require prefiled testimony in this proceeding.

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1 So I think the first thing that we need to do is
2 perhaps have the parties take a few minutes to confer
3 regarding how much time you need to prepare the prefiled
4 testimony. And I'm happy to help with hearing dates with
5 the Commission's calendar if that would assist that
6 endeavor.

7 MR. FINNIGAN: May I ask why prefiled testimony is
8 required in this matter?

9 JUDGE CLARK: Well, depending on the number of
10 violations that are alleged the Commission has, on a number
11 of occasions, required prefiled testimony. A recent utility
12 complaint case against Qwest, for example, where there was
13 64 violations -- or 67 violations, in UT-091870 the
14 Commission required prefiled testimony and pipeline
15 complaints. On a number of them the Commission has.

16 So the alternative is for the judge to sort
17 through 180 separate violations, because there are 180
18 separate violations in this case, and penalty sought for
19 each one of those. Or to have the parties present that in a
20 more succinct manner that accommodates review of the record.

21 MR. FINNIGAN: I'm not being argumentative, but
22 there are only four essential complaints. And the reason
23 that there's a number of them is they multiply it times the
24 number of months times the number of customers.

25 JUDGE CLARK: Right. And I think that would be

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1 JUDGE CLARK: All right. We're back on the
2 record. Have the parties had an adequate opportunity to
3 confer regarding the procedural schedule?

4 MS. CAMERON-RULKOWSKI: Yes, Your Honor, we have.
5 Unfortunately we have not come to an agreement on the
6 procedural schedule. Basically Staff wants this proceeding
7 to proceed expeditiously so that we can resolve the issues
8 that have been raised in this complaint.

9 JUDGE CLARK: And so do you have a schedule that
10 Staff would propose I consider in this matter?

11 MS. CAMERON-RULKOWSKI: Your Honor, Staff would
12 like to file direct testimony on June 23rd. And then if
13 we -- if Mr. Finnigan is willing to stipulate to an
14 expedited discovery schedule then Staff would need only a
15 week and a half for a reply. And then we're looking for a
16 hearing date in early August.

17 MR. FINNIGAN: What are you proposing that I file?
18 When are you proposing I file? I haven't heard a date.

19 MS. CAMERON-RULKOWSKI: And then we had -- and
20 then we would propose that Ms. Lindberg file responsive
21 testimony on July 13th.

22 MR. FINNIGAN: Your Honor, I would request that we
23 be given the same length of time that Staff has given
24 itself. It's -- from today it's essentially asking for 30
25 days to prepare its testimony. To expect us to respond with

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1 the July 4th weekend in there at that level of time is
2 asking too much.

3 MS. CAMERON-RULKOWSKI: And then if I may jump in.
4 We had agreed to a settlement conference date on June 20th.

5 MR. FINNIGAN: That's correct.

6 MS. CAMERON-RULKOWSKI: Which means that the date
7 that Staff proposed to file its direct would be basically as
8 soon as we could file direct but not before the settlement
9 conference would take place.

10 JUDGE CLARK: All right. So the parties have
11 agreed that it would be appropriate to schedule a settlement
12 conference for June 20th; is that correct?

13 MR. FINNIGAN: Yes, Your Honor.

14 MS. CAMERON-RULKOWSKI: That's correct.

15 JUDGE CLARK: Thank you. Just wanted to make sure
16 I got the date right. All right.

17 Mr. Finnigan, can the Company accommodate
18 expedited -- we haven't gotten really to discovery yet, but
19 assuming we get there, can the Company agree to expedited
20 responses to discovery in order to accommodate rebuttal
21 testimony, reply testimony, a week and a half after
22 responsive?

23 MR. FINNIGAN: We'll make our best efforts, but I
24 have the problem of dealing with inexperienced witnesses who
25 aren't used to the Commission's process and all of that. So

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1 I can commit to best efforts.

2 JUDGE CLARK: All right. Do the parties have
3 anything further that they would like to give me regarding
4 the procedural schedule?

5 MS. CAMERON-RULKOWSKI: Then Staff would be able
6 to file reply testimony on July 25th. And, Your Honor, we
7 would be looking for a hearing date then, as I indicated
8 earlier, in early August.

9 JUDGE CLARK: Right. Okay. So what I have is the
10 parties have agreed to a settlement conference June 20th,
11 that Staff would propose direct testimony be due on
12 June 23rd, and that Company reply testimony be due
13 July 13th, with rebuttal testimony July 25th and a hearing
14 in early August.

15 And the Company agrees to the settlement
16 conference on June 20th and doesn't appear to have an issue
17 with Staff's filing date, but rather the length of time that
18 you need to respond to that, and is requesting a
19 corresponding length of time, commensurate length of time,
20 to respond to that.

21 And I think that the Company's proposal is
22 reasonable given the number of violations that are alleged
23 against what appears to be a rather small water company. So
24 I'm going to adopt a procedural schedule that will have a
25 settlement conference June 20th, prefiled direct testimony

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1 from Staff on June 23rd, prefiled reply testimony from the
2 Company on Friday, July 22nd, and then rebuttal testimony
3 from the Staff on August 1st and looking at a hearing on
4 August 9th.

5 MR. FINNIGAN: Your Honor, let me check that date.

6 MS. CAMERON-RULKOWSKI: Would it be possible to do
7 the hearing on the 10th?

8 JUDGE CLARK: It would definitely be possible to
9 do the hearing on the 10th. As a matter of fact, all days
10 that week--with the exception of the 11th, which is an open
11 meeting--would be available for a hearing. I just picked
12 one.

13 MR. FINNIGAN: If I get the rebuttal on the 1st
14 and issue data requests--and I'm not anticipating, I just
15 need to build some time in for data requests--on the 2nd, in
16 one day, that means I would get responses on the 9th. So I
17 would -- I guess I would ask that the hearing be the 11th or
18 12th or the first part of the following week.

19 JUDGE CLARK: I can't do it on the 11th, there's
20 an open meeting that day.

21 Ms. Cameron-Rulkowski, are you available on
22 Friday, August 12th?

23 MS. CAMERON-RULKOWSKI: I can be available in the
24 morning of the 12th.

25 JUDGE CLARK: All right. Then I would schedule it

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1 at probably commencing at 9:00 a.m. on Friday, August 12th.

2 All right. I'm thinking at this juncture the
3 parties probably do not feel a need to have post-hearing
4 briefs. I'm not going to unless -- jump in if I'm assuming
5 something wrong. If the case progresses and you feel the
6 need to have post-hearing briefs you can certainly request
7 the opportunity for that. And I'm not going to require
8 prefiling of cross-examination exhibits in this matter.

9 All right. Now I'm going to turn to the issue of
10 discovery. And in the joint letter issued by the parties
11 the--or filed by the parties--they agree that the
12 Commission's discovery rules should be available. And I
13 would just like a little information from Staff regarding
14 why discovery is requested in this case in a matter that is
15 consistent with the Commission's rule, WAC 480-07-400(b).

16 MS. CAMERON-RULKOWSKI: Your Honor, this is an
17 important case from the consumer's perspective. And it does
18 involve a case where Staff's data requests during the
19 investigation were not always fully answered. And Staff has
20 gathered sufficient information to go forward with this
21 enforcement; however, there are certainly some gaps.
22 Perhaps there are always gaps, but Staff certainly would
23 like to have the opportunity to fill in any of those gaps as
24 we prepare our case.

25 JUDGE CLARK: All right. Well, the reason I'm

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1 curious is the rule sets forth the type of cases in which
2 the Commission will make discovery available, and I think at
3 least one of those categories of cases involved in the
4 complaint, but I'm uncertain if all of the issues raised in
5 the complaint are.

6 MS. CAMERON-RULKOWSKI: Your Honor, specifically
7 where discrimination, rate discrimination, is alleged then
8 in those matters discovery should be available under the
9 rules. And so it's for that reason that Staff would request
10 discovery. And then also simply to gather information as I
11 had previously indicated to fill in gaps.

12 JUDGE CLARK: Thank you. That's exactly the
13 information that I needed. And one of the categories of
14 cases is instances where there is potential for rate
15 discrimination that is at least openly alleged in some of
16 the counts, not necessarily all of them. I think the
17 request is reasonable, and I will make discovery available
18 to the parties in this proceeding.

19 The second issue that stems from making discovery
20 available was Staff's request that there be expedited
21 discovery. So at this juncture if you could elaborate a
22 little bit on that request I would appreciate it.

23 MS. CAMERON-RULKOWSKI: Thank you, Your Honor. We
24 haven't had the opportunity to fully develop it with regard
25 to the schedule that we now have. However, if -- Staff

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1 would be interested in expedited settlement that involved
2 having responses due within five business days up until
3 responsive testimony is filed by Ms. Lindberg. And then
4 Staff would request an expedited response time of three
5 business days in between the time that Ms. Lindberg's
6 responsive testimony is due and Staff's rebuttal testimony
7 is due and up until the time for hearing should Ms. Lindberg
8 require any additional discovery after Staff's rebuttal
9 testimony is filed.

10 MR. FINNIGAN: Your Honor?

11 JUDGE CLARK: Mr. Finnigan.

12 MR. FINNIGAN: Thank you. I think the better
13 course of action would be to set a more -- a schedule with
14 longer periods of time between testimony. There's no way I
15 can commit to a three-day turnaround. I have a witness
16 in -- you know, the Company's -- the Company offices are in
17 Bellingham. I'm in Olympia. And while email works it
18 requires people to be there to receive emails and for me to
19 be available on a particular day. I just think in the
20 interest of justice and doing this thing right we ought to
21 have longer periods of time, and let's do discovery under
22 the Commission's rules.

23 JUDGE CLARK: So you would propose extending the
24 procedural schedule rather than having expedited discovery?

25 MR. FINNIGAN: When I hear a three-day proposal

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1 request -- the proposed three-day turnaround proposed, yes,
2 Your Honor, I would do that.

3 JUDGE CLARK: All right. Well, I am going to
4 grant Staff's request for expedited discovery in this case.
5 I think that reviewing the complaint I'm hopeful that the
6 parties will be able to narrow the issues and not have
7 extensive discovery on each of these 180 violations that are
8 alleged in this case.

9 If, however, it does prove to be burdensome to the
10 Company in order to accommodate this I would expect that the
11 Company would file an appropriate motion requesting that the
12 Commission vacate the procedural schedule that we have
13 adopted and resetting that if this does turn out to be a
14 burden. But I'm hopeful that that will not be the case.

15 MR. FINNIGAN: Thank you for that opportunity. I
16 do want to be on record as with initial objection but
17 your --

18 JUDGE CLARK: And I do understand that, but I
19 would hope that we would try to get this resolved. I would
20 imagine that Ms. Lindberg is probably as anxious as Staff is
21 to have this sort of behind all the parties. So we'll kind
22 of shoot for that goal, but if this does present a burden
23 please bring that to my attention.

24 MR. FINNIGAN: I will.

25 JUDGE CLARK: The second thing the parties agreed

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1 to in the joint letter was the request of the Company to
2 issue a standard protective order in this matter. And in
3 that regard I would like to hear from Mr. Finnigan regarding
4 the type of information that you feel that will be disclosed
5 during this hearing or this proceeding that would qualify
6 for the use of a protective order.

7 MR. FINNIGAN: The -- and I don't -- I can't
8 anticipate what Staff will ask for. But if they're asking
9 for financial information related to Ms. Lindberg or we
10 have -- feel a need to present financial information related
11 to Ms. Lindberg then certainly that should be treated as
12 confidential.

13 JUDGE CLARK: All right. You wish to be heard on
14 this, Ms. Cameron-Rulkowski?

15 MS. CAMERON-RULKOWSKI: Your Honor, Staff really
16 doesn't know exactly what information may come to light that
17 would require a protective order. However, we did -- Staff
18 did agree to that given that the Company generally has a
19 better idea of what information it has that may be
20 proprietary.

21 JUDGE CLARK: All right. I'm going to grant the
22 request for a standard protective order, and the standard
23 protective order will be issued by subsequent order after
24 the prehearing conference order. Usually those are issued
25 at exactly the same time, as the parties are probably aware

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1 is the Commission's practice.

2 The only other thing I have on my agenda is to
3 advise you that in this proceeding the Commission will
4 require the filing of an original and nine copies of all
5 documents and pleadings.

6 Is there any other business that we should be
7 conducting this morning?

8 MR. FINNIGAN: Not that I'm aware of, Your Honor.

9 MS. CAMERON-RULKOWSKI: Not from Staff, Your
10 Honor.

11 JUDGE CLARK: All right. Thank you both. And we
12 are adjourned.

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14 (Off the record at 11:52 a.m.)

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C E R T I F I C A T E

I, TAMI LYNN VONDRAN, a Certified Court Reporter,
do hereby certify that I reported in machine shorthand the
foregoing proceedings in the above-entitled cause; that the
foregoing transcript was prepared under my personal
supervision and constitutes a true record of the testimony
of the said witness.

I further certify that I am not an attorney or
counsel of any parties, nor a relative or employee of any
attorney or counsel connected with the action, nor
financially interested in the action.

DATED at Edgewood, Washington this 2nd day of
June, 2011.

Tami Lynn Vondran, CCR
Certified Court Reporter
License No. 2157