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BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Complainant,

v.

CRISTALINA LLC,

Respondent.

DOCKET NO. UW-090516

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Complainant,

v.

CRISTALINA LLC,

Respondent.

DOCKET NO. UW-132013

In the Matter of the Penalty Assessment
Against

MARIA K. LINDBERG

In the Amount of \$14,600

In the Matter of

CRISTALINA LLC,

Joint Application for an Order Approving Sale
and Transfer of Assets and Removal of Cristalina
LLC from Regulation

DOCKET NO. UW-140820

DOCKET NO. UW-141301

RESPONSE TO COMMISSION STAFF'S MOTIONS

RESPONSE TO COMMISSION STAFF'S
MOTION - 1

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1 This Response to the Commission Staff's motions is filed on behalf of Cristalina LLC and Maria K.
2 Lindberg. Cristalina and Ms. Lindberg will be referred to in this Response as the Defendants. This Response
3 will also address public interest issues.

4 For the most part, Commission Staff's motions are ill founded and should be rejected out of hand.

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6 BACKGROUND

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8 On Friday, August 29, 2014, Commission Staff filed a motion to consolidate the matters pending
9 before the Commission involving the Defendants and to postpone the existing hearing dates that had been set.
10 Commission Staff had the courtesy to discuss this motion with counsel for the Defendants prior to filing.

11 Defendants were asked to provide a statement as to whether or not they would oppose the motion to
12 consolidate and postpone the hearings on September 2, 2014 (the next working day). Not knowing that there
13 were a second set of motions waiting in the wings, Defendants consulted with their attorney and agreed to the
14 motion to consolidate and postpone the existing hearings.

15 After that response was provided, Commission Staff, without warning, filed the current set of
16 motions. Had the Defendants known these motions were coming, they may well have not agreed to postpone
17 the existing hearing dates. Having obtained the Defendants agreement to postpone the hearing dates, without
18 full disclosure of facts,¹ Commission Staff now wants to rely on absence of facts established in hearings and
19 make allegations the basis for the motions, rather than hearings on the merits. That is not appropriate.

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21 Hearings would explain the circumstances surrounding events over the past year or more and present
22 mitigating circumstances.

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26 ¹ Commission Staff has indicated that the timing was not intentional. That assertion is accepted. However, the timing is frustrating at the very least.

1 RESPONSE TO STAFF'S MOTIONS

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3 1. Motion to Appoint a Receiver.

4 Commission Staff cites to RCW 80.28.040(2) as a basis for asking for appointment of a receiver.
5 Commission Staff's motion is not well founded and, in fact, ignores the process that is required by RCW
6 80.28.040.

7 Commission Staff fails to point out that RCW 80.28.040 requires that the Commission act "after
8 hearing." RCW 80.28.040(1). Even then, the Commission must consult with the Department of Health, then
9 issue an order, and only if the order is not complied with may the Commission move to establish a
10 receivership. RCW 80.28.040(2). None of that has happened.

11 In addition, Commission Staff does not point to any specific condition or problem with the water
12 system that would warrant proceeding under RCW 80.28.040. Commission Staff cites to vague allegations of
13 poor service. However, that statement ignores the question and answer at the open meeting where Mr. Ireland
14 was asked if the customers on the Cristalina system were receiving safe service and his response was "Yes."²
15 Finally a review of DOH records show the Cristalina water system has a "Blue" operating permit. Systems in
16 this category are considered adequate for existing uses, but may not add new service connections. There is no
17 factual basis for a proceeding under RCW 80.28.040.

18 Commission Staff's motion must be denied on its face. If the Commission wishes to proceed, it must
19 issue a complaint based on facts and allow the process to be followed so that a hearing can be held. Acting on
20 unfounded "allegations" is not appropriate.

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22 2. Commission Staff Motion to Terminate the Surcharge.

23 Commission Staff's second motion is to terminate the existing surcharge. The surcharge is part of a
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26 ² Please see the Declaration of Mr. Finnigan attached as Exhibit 1.

1 lawfully filed tariff. Commission Staff cites to RCW 80.04.210. However, Commission Staff again fails to
2 point
3 out the exact language of the statute. There has to be notice (presumably a complaint) and then only "after
4 opportunity to be heard as provided in the case of complaints. . ." may the Commission act. None of that has
5 occurred and the Commission Staff motion must be denied.

6 Given that a tariff is involved, it is more likely that RCW 80.28.020 is the applicable statute. That
7 statute requires, again, that there be a hearing.

8 3. Commission Staff Motion to Refer Matter to the Local Prosecutor.

9 This motion by Commission Staff is difficult to understand. No motion is actually needed if the
10 Commission wants to take the action that the motion contemplates. However, the Defendants do appreciate
11 the opportunity to be able to respond.

12 Let us consider how this referral might play out. Imagine a conversation between the Commission
13 and the local Prosecutor that could go along the following lines:

14 Commission: We would like you to bring a case against Ms. Lindberg for her failure to comply with a
15 Commission order. We believe that Ms. Lindberg has inappropriately used surcharge money in violation of a
16 Commission order. We believe this constitutes a misappropriation of funds.

17 Prosecutor: How much money is involved?

18 Commission: We think it is somewhere between \$30,000 and \$40,000. It may be less since many customers
19 have not been paying their bills.

20 Prosecutor: You recognize that I have cases involving stolen cars that are worth more than that and I do not
21 have the staff to prosecute those felonies?

22 Commission: We understand, but she did not comply with our order.

23 Prosecutor: What was the money used for?

24 Commission: We think it was used mostly, if not all, for operating expenses for service to the customers.

25 Prosecutor: So, the customers received the benefit of the money, but just not in the way that you wanted?

26 Commission: Yes. But, she did not comply with our order.

1 The Commission is free to take what action it feels is appropriate. However, it would appear to be
2 beneficial to wait until all of the facts are known and whether there are mitigating circumstances instead of
3 jumping the gun.

4 4. Invitation to Department of Health and Public Works.

5 No motion is needed to invite those agencies to participate. The Defendants have no objection to their
6 participation if they so choose.

7 5. Motion for Deposition.

8 Again it is baffling as to why such a motion was filed. No phone call was made requesting a
9 deposition. No effort was made to set a date that would work for the parties. It appears like one hand does not
10 know what the other is doing. It makes no sense for Staff to ask to postpone hearings, which would serve the
11 same purpose as the deposition, and turn around the next business day and want to schedule a deposition.

12 Defendants do note that the Commission has complicated the idea of a deposition by threatening
13 criminal charges. That aside, it would seem that Commission Staff would try to cooperatively schedule a
14 deposition before asking for a subpoena not even knowing what dates are or are not available.

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16 PUBLIC INTEREST CONSIDERATIONS

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18 Defendants are baffled how the motions filed by Commission Staff advance the public interest. The
19 public interest would be best served by approving the transfer of the water system assets to Washington
20 Water.

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22 First some background - things that would have been presented at a hearing - to understand the
23 context that we find ourselves in today.³ Cristalina ended up in Ms. Lindberg's hands as a result of the death
24 of her father.

25 _____
26 ³ The following facts are set out in Ms. Lindberg's Declaration attached as Exhibit 2.

1 The system had not been tended to and Ms. Lindberg tried as best she could to change that and address the
2 system issues. In hind sight, Ms. Lindberg realizes that her effort was not a successful effort. However, it
3 was an honest effort.

4 Because of the mess that was created in the system in 2013 through embezzlement and other poor
5 activities of the bookkeeper, Ms. Lindberg took action to rectify the situation. Ms. Lindberg took a leave of
6 absence from her real estate selling activities in September of 2013 to devote herself to solving the
7 bookkeeping and back payment issues that were plaguing the system. In addition, she pledged to attempt to
8 find a buyer for the system. Righting the books and dealing with customer non-payment issues took a great
9 deal of time, but were finally addressed.

10 Ms. Lindberg did not understand the import of the Commission's order on the surcharge. She thought
11 that the money was water system revenue that could be used for water system purposes. Ms. Lindberg
12 understands that her view was an unfortunate view. She now understand the dedicated use of the funds and
13 has made the August deposit of SRF funds into the appropriate account.

14 The money in past months was used to address water testing issues, system repairs and to pay other
15 operating expenses, including a salary to Ms. Lindberg. Since Ms. Lindberg was devoting herself full time to
16 getting the system in shape to sell, she thought it would be appropriate to have a modest salary during that
17 period of time.

18 On the sale of the system, Ms. Lindberg discussed the sale of the system with three prospective
19 buyers. However, it soon became apparent that Washington Water would be the ultimate purchaser of the
20 water system assets. It took some time to get an agreement in place since there were substantial steps that had
21 to be taken in developing the agreement and obtaining internal approval from not only Washington Water but
22 from its parent company California Water. The agreement was finally put in place and filed with the
23 Commission in June of this year.

24 It is important to consider that Washington Water could have paid Ms. Lindberg a sum, for example
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1 \$40,000, for the water system assets. Ms. Lindberg then could have used those funds to make the SRF loan
2 payment and bring the balance current. That would leave Washington Water with some rate base from the
3 transaction and the SRF loan would be current.

4 As an alternative, which becomes the chosen alternative, Washington Water could agree to take the
5 assets for no value and then bring the SRF loan current itself. Then, if the amount used to bring the SRF loan
6 current is capitalized, the customers are in the same position as if Washington Water paid \$40,000 for the
7 assets. It is a wash.

8 To make the matter even more beneficial to the Cristalina customers, Washington Water is willing to
9 move the Cristalina customers to its tariff immediately upon approval of the sale. Normally what happens
10 under the Commission process is that the customers of a newly acquired system stay at their old rates until a
11 new rate case brings them into the single tariff. Rather than waiting for this to occur, Washington Water has
12 offered to move the customers to its existing tariff. This will save the Cristalina customers a substantial sum
13 of money. An analysis prepared by Mr. Ireland is attached to Exhibit 1.

14 Rather than dealing with motions, consolidated hearing and substantial further delay, it would appear
15 to be in the public interest for the Commission to approve the transfer of the assets, allow Washington Water
16 to capitalize that portion of the SRF payments to bring matter current, and dismiss all of the other matters
17 pending so this can come to an end. While the Commission is understandably upset with Ms. Lindberg, she
18 thought she was acting appropriately. She was not trying to cover up anything. She got the company's books
19 in better condition than they were and found a buyer for the system assets. The Commission should recognize
20 the public interest benefits of getting the system into the hands of Washington Water.
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1 CONCLUSION

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3 For the foregoing reasons, Commission Staff's motions related to receiver and terminating the
4 surcharge must be denied. The other matters do not really require a motion and certainly do not need a
5 Commission order at this stage.

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7 Dated this 8th day of September, 2014.

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11 RICHARD A. FINNIGAN, WSB #6443