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November 22, 1994

Mr. Steve McLellan, Secretary
Washington Utilities and
Transportation Commission
1300 South Evergreen Park Drive SW
PO Box 47250
Olympia, WA 98504-7250

Re: Marine View Heights Homeowners Association v. Marine View Heights, Inc.
Docket No. UW-940325

Dear Mr. McLellan:

Enclosed please find the original and 19 copies of the Brief of Commission Staff in the above-referenced matter. Please accept the same for filing.

Very truly yours,

Ann E. Rendahl

Ann E. Rendahl
Assistant Attorney General

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Enclosure

cc\enc: Parties of Record

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BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARINE VIEW HEIGHTS HOMEOWNERS ASSOCIATION, Complainant, v. MARINE VIEW HEIGHTS INCORPORATION, Respondent.	)	DOCKET NO. UW-940325 BRIEF OF COMMISSION STAFF

I.
NATURE OF THE CASE

This proceeding involves a complaint filed by the Marine View Heights Homeowners Association ("the Homeowners" or "Homeowners Association") against Marine View Heights, Incorporation ("the company"). The Homeowners are all customers of the Marine View Heights water system ("the water system" or "system"). The company apparently owns and operates the water system. The complaint alleges that the company has violated a number of rules and regulations of the Washington Utilities and Transportation Commission ("the Commission") and the Department of Health ("the Department"). In addition, the Homeowners request refunds be granted for "substandard water" delivered to the customers of the system pursuant to RCW 80.04.110(5), that the Commission order improvements in water quality and service, and that the Commission request the Department to file a petition to place the system in receivership pursuant to RCW 80.28.030 and RCW 80.28.040.

II.
STATEMENT OF FACTS

The Marine View Heights water system is located in Othello, Washington, and currently serves approximately 112 to 114 residential customers. Tr. 287. Testimony by the Homeowners, the Department and Commission Staff indicates that the company is the current owner of the system and that Fred Barker is the majority or sole shareholder. However, the company and Mr. Barker have created confusion and frustration by not providing the Homeowners, the Department, and the Commission with timely notice of ownership changes.

Mr. Barker initially purchased the system in 1983, but quitclaimed the system to the Metropolitan Mortgage Company in 1986 to avoid foreclosure of other property. Tr. 329. In October 1992, James Sahli purchased the water system from the mortgage company. Tr. 311-312. Mr. Barker apparently provided the money for Mr. Sahli to purchase the system and has considered himself to be the owner of the system since that time. Tr. 312; See also Ex. 20. Mr. Sahli filed a tariff with the Commission on December 18, 1992 for the Marine View Heights water system, identifying himself as the owner. Tr. 172, 372.

A December 1993 letter from the manager of the system to a customer describes one version of the ownership history:

> In October 1992 we purchased the system using Jim Sahli as owner because Fred Barker could not buy directly. Jim Sahli transferred his ownership to Marine View Heights, Inc. which at that time he was sole owner of 100 shares. After that Fred Barker, who owns another water company in Benton City, transferred his ownership of Desert Water

> Co. to Marine View Heights, Inc. in exchange for 400 shares of stock. Therefore, at this time Mr. Barker owns majority of Marine View Heights, Inc.

Ex. 20.

In November 1992, the customers received a bill from the mortgage company indicating that Mr. Sahli was the new owner of the system. Tr. 189; Ex. 15. However, the customers of the water system later received a notice dated December 1, 1992 that the water system had been purchased by Marine View Heights, Inc., i.e., the company. Tr. 158; Ex. 13. Mr. Sahli and his wife were apparently the sole stockholders of the company until August 1, 1994 when the stock was transferred to Mr. Barker and his wife. Ex. 26.

As of July 1994, the Department recognized the company as the owner of the system and Mr. Sahli as the sole stockholder of the company. Tr. 44; Ex. 26. Despite a request by Administrative Law Judge Anderl in the prehearing conference, neither the Commission, the Department, nor the Homeowners received a letter from Mr. Barker identifying the stockholders and board members of the company. PHC Tr. 12, Tr. 70, 174, 317. Despite efforts by the Commission staff to clarify the ownership of the company and several promises by Mr. Barker to file the necessary petition with the Commission, Mr. Barker has not yet received a filed notice of or a petition to transfer ownership from the water system to the company, and from Mr. Sahli to Mr. Barker. See Tr. 372-373, 408-409.

In the December 1, 1992 notice to the customers that the

company had purchased the system, the company also notified the customers that it would be increasing water rates from a flat rate of $20 a month to $30 a month, adding a rate of $10 a month for unoccupied lots, and raising its road maintenance fee from $5 to $10 per month. Tr. 158; Ex. 13. The customers formed the Homeowners Association after receiving this notice because of their concern over the increased rates for the water and roads, but also to determine the ownership of the company. Tr. 158-165, 194, 197-198, 212-213.

The Homeowners have incurred a variety of expenses, including the cost of a water test, through their efforts to resolve a number of problems with the system, i.e., water quality, compliance with Department regulations, road fees, and ownership of the system and company. Tr. 130-131, 132-136, 141-144, 148-151, 156-159, 167, 193-195; Exs. 11, 12. Of the 112 customers in the water system, 102 are members of the Homeowners Association. Tr. 164.

The Homeowners protested the rate increase at the Commission's January 26, 1993 open meeting. See Ex. 33. The Commission suspended the rate increase for further investigation. After the Commission staff determined that the system was not in compliance with Department regulations, the company withdrew its rate filing in July 1993. Tr. 375-376; Ex. 33.

From November 1992 through December 1993, test samples for ten different months from the water system exceeded the Department's standards for total coliform bacteria. Tr. 20; Exs. 4, 32. According to Department regulations, the system came into

compliance with Department regulations for coliform bacteria in June 1994, although the last occurrence of contamination in the system was in January 1994. Tr. 33.

Water systems must conduct routine bacteriological tests by taking water samples tested every month. Tr. 25. If a sample shows the presence of total coliform, the sample must be tested for the presence of fecal coliform. Tr. 25-26. If a routine sample is unsatisfactory, a water system is required to take repeat samples to determine if the problem has been corrected. Tr. 26. The required number of routine and repeat samples depends on the status of the system, i.e., whether or not it is a significant noncomplier. Tr. 26-27. In addition, the system is required to notify its customers of the presence of total coliform bacteria in the water. Tr. 92; See Exs. 23, 24. The Marine View Heights water system did not take the required number of repeat samples for several months in 1993. Tr. 56-59; Exs. 4, 32, 33 at ¶3. Nor did the system provide customers with notice of each occurrence of total coliform in the water. Tr. 154, 200; Ex. 33 at ¶7.

In April 1993, the Department designated the system as a significant noncomplier, and initiated an enforcement action due to the system's failure to correct the total coliform bacteria contamination of the system. Tr. 12-13, 27-28; Ex. 1. The Department has assessed penalties against the system for its failure to respond to the order. Ex. 2. However, the system has contested the penalties and the penalty proceeding has still not concluded. Tr. 15; Ex. 3. Although the total coliform bacteria

contamination has since been corrected, several issues in the proceeding, such as completion of a water system plan, construction of chlorination facilities and submission of construction documents, have still not been resolved. Tr. 13, 16.

As a result of the Department's enforcement action against the system, the Grant County Building Department placed a moratorium on building permits and septic tank permits issued in the service area of the Marine View Heights water system. Tr. 29-31; Ex. 33. Several individuals were inconvenienced by this moratorium through the inability to connect water to newly purchased mobile homes and to finance the purchase of homes in the service area. Tr. 101-105, 108-113, 252-256; Ex. 24. These problems were resolved and the individuals eventually became Homeowners. To avoid such problems, at least one person purchased a home with cash. Tr. 122-123. Several home sales apparently fell through because of the moratorium. Tr. 261-265. The Department issued a letter to the Grant County Department of Health on July 5, 1994 indicating that the Department does not oppose expansion by the system as the system has demonstrated satisfactory water quality since January 1994. Ex. 5, Ex. 33.

Beginning in January 1993, the Commission's consumer affairs staff began to receive complaints about the quality of water provided by the system, as well as a variety of other issues. Tr. 420. From January 11, 1993 to September 13, 1994, the Commission has received 39 complaints from the customers of the water system. Tr. 420; Ex. 37, 38. While many of the complaints involved

multiple issues, the majority of the complaints--20 out of 39--involved water quality issues. Tr. 183, 422; Ex. 37.

Specifically, the customers complained of problems with incorrect bills from the company, lack of responsiveness and poor service by the system, failure of the system to have a certified water operator as required by Department regulations, poor water quality, strong chlorine taste and smell, failure of the system to provide notice of water quality, lack of water, and a number of other issues. See Testimony of Diana Otto, Tr. 426-442; Ex. 38. While a number of the Homeowners claim to have experienced stomach problems due to drinking the water (Tr. 106, 131, 139-140, 169), not all customers experienced such problems. Tr. 114, 213-214. Some of the Homeowners have boiled their water or bought bottled water. Tr. 106, 119, 132, 140,169-170, 200-201; See Ex. 10. Some homeowners have complained that the taste or smell of chlorine is very strong. Tr. 121, 155, 214; See Ex. 19.

The Homeowners also complained in their testimony of problems with sand or small rocks clogging filters in faucets (Tr. 121-122, 232-233), and of discriminatory billing practices by the system. (Tr. 281-284). The discriminatory billing practices have apparently been corrected. (Tr. 285-287.)

After the Homeowners filed their formal complaint in March 1994, the Commission staff requested the Department to test the system's water for a variety of substances. Tr. 34-35, 380-381; Ex. 35. The Department did not test the water for radionucleides or inorganic compounds as the system conducted the required tests

for these substances in 1993. Tr. 36. The results showed the system to be "well within compliance" for these compounds. Tr. 36. The Department did test the water for volatile organic compounds, as well as coliform bacteria and chlorine residuals. Tr. 35. The results of the tests were satisfactory, indicating no presence of coliform bacteria and showing chlorine residual levels to be within the acceptable range. Tr. 37-42; Exs. 6, 7.

The system has had satisfactory bacteriological tests since January 1994 (Ex. 4, 32), and has apparently corrected its water outage problems. Ex. 33. The testimony shows clearly that Mr. Barker has not been responsive to the complaints of the Homeowners. However, since Jerry Lease was hired as the certified water operator, the water quality of the system has improved and the system has attempted to respond to its customer's concerns. The company has been responsive to the Commission's consumer affairs staff, and has corrected problems brought to the staff's attention. Tr. 183-184, Ex. 37.

III.
STATEMENT OF ISSUES

A. Should refunds be granted to the customers of the Marine View Heights water system pursuant to RCW 80.04.110(5) for substandard water deliver to the customers between December 1992 and January 1993?

B. Should the Homeowners be compensated for expenses incurred in filing their formal complaint against the company?

C. Should the Commission order improvements in the storage, distribution, or supply of water by the water system pursuant to RCW 80.28.030?

D. Should the Commission order improvements to the service of the water system pursuant to RCW 80.28.040?

IV.
ARGUMENT

A. The Commission should not grant refunds to the customers pursuant to RCW 80.04.110(5).

The primary focus of the Homeowners' complaint is the failure of the system to correct the contamination of the water by total coliform bacteria from November 1992 until December 1993. Because of this contamination, the Homeowners have requested, pursuant to RCW 80.04.110(5), that the Commission grant the customers of the system a refund for the water delivered during this period.

Section 5 of RCW 80.04.110 provides as follows:

> Any customer or purchaser of service from a water system or company that is subject to commission regulation may file a complaint with the commission if he or she has reason to believe that the water delivered by the system to the customer does not meet state drinking water standards under chapter 43.20 or 70.116 RCW. The commission shall investigate such complaint, and shall request that the state department of health or local health department of the county in which the system is located test the water for compliance with state drinking water standards, and provide the results of such testing to the commission. . . . If the Commission determines that the water does not meet state drinking water standards, it shall exercise its authority over the system or company as provided in this title, and may, where appropriate, order a refund to the customer on a pro rata basis for the substandard water delivered to the

customer, . . .

(Emphasis added).

Under this section, the Commission is required to investigate the complaint and test the water. However, in exercising its authority over the water system, the Commission has discretion to determine whether it is appropriate to order a refund to customers. After investigating the complaint, requesting the Department to test the water, and evaluating the testimony and evidence presented by the Homeowners, the Staff recommends that the Commission not order a refund to the Homeowners in this proceeding. The Staff's recommendations are described more fully below.

1. The water delivered to the customers of the Marine View Heights water system did not meet state drinking water standards from November 1992 until December 1993.

In reviewing a complaint made under RCW 80.04.010(5), the Commission must determine whether the water delivered to the customers of a water system meets state drinking water standards under chapter 43.20 and 70.116 RCW. Chapter 43.20 provides that the State Board of Health must adopt rules "necessary to assure safe and reliable public drinking water and to protect public health." RCW 43.20.050(2)(a). In particular, the State Board of Health must adopt rules establishing drinking water standards and other requirements such as monitoring, system management, and planning. See RCW 43.20.050(2)(a)(i)-(vii). These rules are set forth in Chapter 246-290 WAC. Chapter 70.116 RCW concerns water delivered by systems in critical water supply service areas.

Chapter 246-290 WAC not only establishes standards for water

quality, but a variety of requirements for testing of water, and the management and operation of water systems. The Homeowners have presented ample evidence that the system has violated several regulations for testing, customer notification, and system management. However, under RCW 80.04.110(5), the Commission is only authorized to determine whether the water does not meet state drinking water standards, not whether the system is out of compliance with state drinking water standards. The language of the statute is clear that the Commission's authority is only to review the quality of the water. In fact, the Department initiated an enforcement action against the company for its noncompliance, and continues to pursue such action. Thus, the Commission should focus its review on the quality of the water in the system.

The standard by which the Department determines water quality is through "maximum contaminant levels" or "MCL's". Tr. 18. Maximum contaminant levels are defined as "the maximum permissible level of a contaminant in water the purveyor delivers to any public water system user." WAC 246-290-010.

Coliform bacteria are a large group of bacteria found in the digestive tracts, and feces, of warm-blooded animals. Tr. 62, 384, 400; Ex. 8. However, many coliform bacteria are harmless and are found in many other places, such as soil. Id. Maximum contaminant levels for coliform bacteria fall into two categories, acute and non-acute. See WAC 246-290-310(3)(c) and (d). "Acute" is defined as "posing an immediate risk to human health," while "non-acute" is defined as "posing a possible or less than immediate risk to human

health." WAC 246-290-010. An acute MCL occurs when the test confirms the presence of fecal coliform bacteria, while a non-acute MCL occurs when the test confirms the presence of only total coliform bacteria. WAC 246-19-310(3)(c) and (d); See also Tr. 19. The system must notify its customers if testing confirms either an acute or non-acute MCL. See WAC 246-290-330. If a system experiences an acute MCL it must issue a notice to its customers to boil the water. Tr. 66-67. The Marine View Heights water system has never experienced an acute MCL, and thus has not directed its customers to boil its water. Tr. 19-20, 66-67.

The testimony of Mr. Riley clearly establishes that the water delivered to the customers of the Marine View Heights water system did not meet state drinking water standards for coliform bacteria. See Tr. 19-20; See also Exs. 4, 32, 33. Thus, the Commission should find that the water delivered to the customers does not meet state drinking water standards.

2. The Commission should only grant refunds pursuant to RCW 80.04.110(5) for the presence of fecal coliform bacteria, not for the presence of total coliform bacteria.

Once the Commission determines whether the water delivered to customers meets state drinking water standards, the Commission must then determine whether a refund to the customers is appropriate. Staff recommends that the Commission grant refunds to customers only when acute MCL violations occur and the water system purveyor does not immediately address the problem. Tr. 384.

As the system has not experienced an acute MCL violation, and

has not experienced any non-acute MCL violations since December 1993, the Staff recommends that the Commission deny the homeowners' request for refunds. However, given that the system experienced non-acute MCL violations for an extended period of time, the Staff recommends that the Commission monitor the test results of the system for one year following the issuance of an initial order. The Commission should order the system to send copies of its test results to the Commission, in the same manner as it sends copies of its test results to the Department. If a pattern of violations occurs again within that time, the Staff recommends that the Commission request the Department to petition the Superior Court to place the system into receivership. Tr. 403.

Although Mr. Riley stated that the period of non-acute MCL occurrences in the Marine View Heights system was "one of the longest periods of noncompliance for non-acute MCL's" he had seen, both he and Mr. Ottavelli testified that non-acute violations are quite common. Tr. 33, 64, 384. The Staff recommends that the Commission grant refunds only under extreme circumstances involving immediate risk to human health. Tr. 405.

The distinction between an acute and non-acute MCL violation is between an immediate risk and a possible or less than immediate risk to human health. An acute MCL violation requires that the system issue notices to customers to boil their water within 72 hours of the violation. Tr. 66-67; See also WAC 246-290-330(3)(a)(iii). While a system must issue notices of contamination by total coliform bacteria to its customers, such notices are

provided for a less than immediate health risk and may be issued up to 45 days after testing. WAC 246-290-330(3)(a)(ii).

Based upon Mr. Riley's testimony, the Homeowners contend that the water was not potable, and thus not suitable for drinking. Tr. 65-66. The Department defines nonpotable water as not suitable for drinking. Tr. 66. However, the following exchange indicates that the issue of potability of the water in the Marine View Heights water system is less than clear:

> Q. In response to Cross-examination by the Homeowners Association, you mention that , or you testified that, the water company has not been issued a boil water order?
>
> A. That's correct.
>
> . . . .
>
> Q. If a boil order is not issued, does that mean that water is nonpotable?
>
> A. With respect -- Well, no it doesn't. . . .

Tr. 88-89. In response to a cross-examination question of why the Marine View Heights customers were not issued a boil order, Mr. Riley's response is telling:

> A. The response to the health standards at that time was based on the level of risk indicated by the total coliform results and the absence of any Fecal coliform results. . .

Tr. 66-67.

Some Homeowners testified that they or their spouses had experienced stomach problems, however, others did not experience any problems drinking the water. Tr. 114, 213-214. In fact, Mr. Riley testified that he would have drunk the water while tests

indicated the presence of coliform bacteria. Tr. 90. Such testimony indicates that although the non-acute violations occurred over an extended period of time, the risk to human health was not so severe as to require that refunds be granted.

Understandably, the Homeowners posed the question of why non-acute MCL violations would not justify refunds to the customers if such violations did justify imposing a moratorium on building and septic tank permits. Tr. 404. As described above in the Staff's recommendation, the Commission has the means to address problems with the system other than ordering a refund, especially since the system has now come into compliance with the Department's drinking water standards.

In addition, both Department and Commission staff testimony indicates that non-acute MCL violations occur frequently. Were the Commission to order a refund for non-acute MCL violations, the Commission would likely receive a large number of complaints requesting refunds. The current proceeding involved a prehearing conference and three days of hearing. Commission and Department Staff, several assistant attorneys general, an administrative law judge and a court reporter invested a great deal of time attending the hearings, not to mention the time preparing for these hearings. As the Commission has discretion to determine when a refund is appropriate, it should take into consideration the resources necessary to litigate such complaints, as well as the other options available to resolve problems with small water companies.

3. Should the Commission grant a refund to the Marine View Heights Customers, the refund should be based on the percentage of water consumed for drinking water purposes and should be borne by the system owner.

After reviewing all of the testimony and evidence presented in this proceeding, should the Commission determine it is appropriate to order refunds to the Homeowners, the Staff recommends that refunds be calculated using the following method.

First, any refund granted should be based on the amount of water consumed by the customers for drinking water purposes. Based on studies of typical residential water use, the Staff has identified that ten percent of water consumed both for indoor and outdoor use is a reasonable estimate of water consumption for drinking water purposes. Tr. 386-387; Ex. 36. The staff also that 10 percent is a very reasonable estimation of use for the Marine View Heights water system, as customers of the system use, on average, more water than the national average. Tr. 387-388. The majority of water used in the system is for outdoor use or irrigation. Id.

Second, any refund granted should apply only to the period of time in which the Commission had jurisdiction over the water system. Tr. 388-389. In the case of the Marine View Heights water system, the Staff has determined that the Commission gained jurisdiction over the system after the tariff filed with the Commission became effective on December 31, 1992. Id.

Third, any refund granted should apply only to those months in which there was an unsatisfactory test result. Tr. 389. The

Marine View Heights water system experienced nine months of unsatisfactory tests after the Commission gained jurisdiction over the system. Tr. 389: See also Exs. 4, 32.

The system charges its customers a flat rate of $20 per month for water. The Staff recommends that the refund be calculated by multiplying the flat rate ($20) by the number of months of unsatisfactory tests (9), and then taking ten percent of the amount. This calculation yields a refund of $18 per customer. Tr. 389.

The Staff also recommends that any refund ordered by the Commission be borne by the system owner, rather than the company. Testimony and evidence presented at the hearing indicate that the company is not financially viable, as it is operating at a 1.16 percent return on investment. Tr. 180-181, 379; Ex. 34. If the refund were to be borne by the company, the company would eventually recoup this amount from the customers through rates. However, as Fred Ottavelli cogently stated in his testimony, "[t]he need for refund, if it were found required, would have been due to negligence on the part of the owners of the system. And the customers should not have to pay that for the company." Tr. 390.

B. Pursuant to RCW 80.04.110, the homeowners should only be compensated for the expense of testing the water.

As described above, Section 5 of RCW 80.04.110 gives the Commission discretion to determine if refunds should be granted to customers of a water system. This provision does not, however, authorize the Commission to reimburse customers for any other

expenses than the cost of water quality tests. RCW 80.04.110(5) specifically provides that the Commission "shall order reimbursement to the customer for the cost incurred by the customer, if any, in obtaining a water quality test." The Commission does not have jurisdiction to award money damages. See Sharad M. Bhatnagar v. US WEST Communications, Second Supplemental Order, Docket No. UT-900603 (June 1991), at 5.

The Homeowners testified that they incurred expenses for forming the homeowners association, and for postage, copying, telephone calls, attorney's fees, and visits to the Commission and various courthouses. However, many of the expenses, such as those due to forming the Homeowners Association, and consultation with attorneys for forming the Homeowners Association cannot, be considered as due to the water quality issue alone.

James Gregg, the first President of the Homeowners Association, was quite clear in his response to Judge Anderl that the Homeowners were concerned with other issues in addition to the water quality issues:

> JUDGE ANDERL: Has the Homeowners Association, since it was formed, acted on any other issues, other than the water system?
>
> MR. GREGG: Oh, big time.

Tr. 159-160. In particular, Mr. Gregg identified that, although the Homeowners Association was formed due to proposed increases in water and road maintenance fees, the real reason the Association was formed was because of the road fees. Tr. 162-163. In fact, Irvin Helgeland, a member of the Homeowners Association, testified

that approximately 20 percent of his expenses were due to water quality issues, while 20 percent were due to billing issues, and the remaining 60 percent were due to gathering information and other issues. Tr. 135-137.

Although the Homeowners Association should be commended for their efforts in resolving a variety of issues with the company and the water system, the Commission may not award damages to the homeowners to compensate them for their expenses. The only expense which the Commission may order reimbursed under the statute is Mr. Helgeland's cost of testing the water. See Ex. 12.

C. The Commission should grant improvements in the distribution and supply of water by the water system.

RCW 80.04.110(5) provides that the Commission "shall exercise its authority over the system or company as provided in this title." Under the provisions of RCW 80.28.030, the Commission may order improvements in the storage, distribution, or supply of water. Specifically, this statute provides as follows:

> Whenever the commission shall find, after such hearing, that . . . the purity, quality, volume, and pressure of water, supplied by any . . . water company, . . . is insufficient, impure, inadequate or inefficient, it shall order such improvement in . . . the storage, distribution or supply of water, . . . as will in its judgment be efficient, adequate, just and reasonable. Failure of a water company to comply with state board of health standards adopted under chapter 43.20.050(2)(a) or department standards adopted under chapter 70.116 RCW for purity, volume, and pressure shall be prima facie evidence that the water supplied is insufficient, impure, inadequate, or inefficient.
> . . . In the event that a water company fails to comply with an order of the commission in a

> timely fashion, the commission may request that the department petition the court to place the company in receivership.

RCW 80.28.030.

The Commission has, in the recent past, issued a detailed order pursuant to this statute requiring improvements in water quality, storage, distribution and supply, as well as the level of service. See Washington Utilities and Transportation Commission v. Alderton-McMillin Water System, Inc., Docket No. UW-911041, Third Supplemental Order (August 1992). In this order, the Commission indicated it would hold a later "compliance" hearing to determine whether to request the Department to petition the court to place the system in receivership. Id. at 25-26. After that hearing, the Commission decided against requesting placement of the system into receivership. In Re Alderton-McMillin Water System, Inc., Docket No. UW-930155, First Supplemental Order (August 1993) at 14.

The Homeowners have lodged a number of complaints concerning quality and quantity of water with the Commission's Consumer Affairs staff. See Exs. 37, 38. Specifically, the Homeowners have complained of poor water quality due to the presence of coliform bacteria, failure to notify the customers of coliform bacteria in the water, the strong smell and taste of chlorine in the water, the failure of the system to have its chlorinator approved by the Department, and of water outages. See Ex. 38.

Although the water quality has improved since December 1993, the Staff recommends that the Commission continue to monitor the water quality of the Marine View Heights water system, as described

above in Section A.3. In addition, the Commission should order the system to notify customers of acute or non-acute MCL violations as required by Department regulations. Tr. 438.

As to the Homeowners complaints concerning the strong taste and smell of chlorine, and approval of a chlorinator, the Staff recommends the Commission order the system, within 30 days of the final order, to provide the necessary plans for its chlorinator to the Department, if it has not already done so. Tr. 435. Although the Homeowners testified that the chlorine levels were high just prior to tests by the system, the tests conducted in June by the Department at the Commission's request indicate that the chlorine residual levels are within the normal range. Tr. 41.

The Commission Staff did not receive any complaints concerning water outages until after the Homeowners filed their formal complaint. Tr. 440. The Homeowners complained that on several occasions the water ran out, causing water heater elements to burn out. It appears that the system has corrected the problem with water outages by raising the water level in its storage tank. Tr. 440; Ex. 33. Thus, the Staff has no specific recommendation to the Commission to improve water quantity in the system. Tr. 440.

The Staff recommends that the Commission order a hearing be held within 60 days after issuance of the final order to determine the system's compliance with the final order. Tr. 444-445. Should the system not demonstrate substantial compliance with the requirements of the final order, the Staff recommends that the Commission request the Department to petition the court to place

the system into receivership, pursuant to RCW 80.28.030. Tr. 391-392, 444.

D. The Commission should grant improvements to the service of the water system.

Similar to its jurisdiction under RCW 80.28.030, the Commission has the authority under RCW 80.28.040 to order improvements in the service of a water system. This statute provides as follows:

> Whenever the commission shall find, after hearing, that any rules, regulations, measurements or the standard thereof, practices, acts or services of any such . . . water company are unjust, unreasonable, improper, insufficient, inefficient, or inadequate, or that any service which may be reasonably demanded is not furnished, the commission shall fix the reasonable rules, regulations, measurements or the standard thereof, practices, acts or service to be thereafter furnished, imposed, observed and followed, and shall fix the same by order or rule.
>
> In ordering improvements to the service of any water company, the commission shall consult and coordinate with the department. In the event that a water company fails to comply with an order of the commission within the deadline specified in the order, the commission may request that the department petition the court to place the company in receivership.

RCW 80.28.040.

Many of the Homeowners' complaints have concerned the level of service provided by the system, and the system's compliance with Department regulations. For example, the Homeowners complained that the system sent bills to its customers in violation of Commission regulations, that the system owner and certified water

operator were not responsive to the customers' correspondence or telephone calls, that the system lacked a certified water operator, and a variety of other issues, some of which were not within the Commission's jurisdiction. See Exs. 37, 38.

Through the intervention of the Commission's Consumer Affairs Staff, the systems problems with billing have been resolved. Tr. 428. However, the Staff recommends that the Commission order the system to put up a sign, easily seen by customers of the system, indicating the location of the system's business office if the system has not already done so. Tr. 442. The Staff also recommends that the system improve its responsiveness to its customers by promptly responding to customer correspondence and phone calls. Tr. 433.

The Homeowners also complained that the system did not have a certified water operator as required by Department of Health regulations. Tr. 191-192; Exs. 33, 37. 38. Prior to Jerry Lease becoming certified as the current certified water operator in December 1993, the system apparently operated without such an operator in violation of Department regulations. Tr. 429-430. As there has been rumor that Mr. Lease may leave the system, the Staff recommends that the Commission order the system to have a certified water operator at all times. Tr. 430, 443. If, or when, the current certified water operator leaves the system, the system should immediately report this occurrence to the Commission and identify a replacement with no interruption between operators.

In addition to these recommendations, the Staff recommends

that the Commission order the system, within 30 days of the final order, to file a petition with the Commission formally seeking approval of the transfer of ownership from Mr. Sahli to Mr. Barker which has apparently occurred without Commission approval. Tr. 373-374, 391. Pursuant to RCW 80.12.030, the Commission cannot recognize a transfer of ownership which it has not formally approved.

As described above, the Staff recommends that the Commission order a hearing be held within 60 days after issuance of the final order to determine the system's compliance with the final order. Should the system not demonstrate substantial compliance with the requirements of the final order, the Staff recommends that the Commission request the Department to petition the court to place the system into receivership, pursuant to RCW 80.28.030.

V.
CONCLUSION

For the reasons discussed above, the Commission should order the system to reimburse the Homeowner's for the cost of testing the water, but deny the Homeowners' request for refunds pursuant to RCW 80.04.110(5). The Commission should order the company, within 30 days after issuance of the final order, to make the following water quality and service improvements:

1. File a petition seeking Commission approval of the transfer of ownership from Mr. Sahli to Mr. Barker;

2. Notify customers of acute or non-acute MCL violations as required by Department regulations;

3. Provide the necessary plans for its chlorinator to the Department;

4. Post a sign, easily seen by customers of the system, indicating the location of the system's business office;

5. Improve its responsiveness to its customers by promptly responding to customer correspondence and phone calls; and

6. Ensure that the system employs a certified water operator at all times.

In addition, the Commission should order the system to send copies of its test results to the Commission for one year after issuance of the final order.

The Commission should also order that a hearing be held within 60 days after issuance of the final order to determine compliance with the final order. Should the company fail to demonstrate that it has complied substantially with the final order, the Commission should request the Department to petition the Superior Court to place the system into receivership.

DATED This 22nd day of November, 1994.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have this date served a true copy of the foregoing document upon the persons and entities listed on the Service List below by depositing a copy of said Brief of Commission Staff in the United States mail, addressed as shown on said Service List, with first class postage prepaid.

Dated this 22nd day of November, 1994.

Ann E. Rendahl

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