FORMAL UTILITY ORDERS & LETTERS

Date Served: 12/14/94 Docket No: UW-940325

Document: FINDS OF FACT, CONCLUSIONS OF LAW AND INITIAL ORDER GRANTING COMPLAINT IN PART AND DENYING AND DISMISSING COMPLAINT IN PART.

- Utility Mgrs. (7)
- Regulatory Affairs (3)
- Public Affairs
- Merton Lott
- Comm. AAG's (1)
- Policy Planning
- Steve McLellan
- Final Util. Sub. File
- NO Beulah Nelson **(OAH Ltrs ONLY)**

- Pat Dutton
- Admin. Law Judges (5)
- Terry Simmonds
- NO Rachel Porter **(Orders granting competitive classification ONLY)**
- Nancy Stanton
- Susan Mack
- Claire Hosea
- Carol Matias (WATER ONLY)

- Dept./Health (Dan Sanders, Ethan Moseng & B David Clark) **WATER ORDERS ONLY!**

12-27-93

RECIP_ID	NAME	ADDRESS			
64354	Barker, Fred	Marine View Heights Water System; PO Box 1745	Moses Lake	WA	98837
64355	Barker, Fred	Marine View Heights Water System; 6897 SR 262 SE	Othello	WA	99344
26778	MANIFOLD, ROBERT F	OFFICE OF THE ATTORNEY GENERAL; PUBLIC COUNSEL; State Mail Stop TB-14			
2484	SALHI, JAMES	MARINE VIEW HEIGHTS WATER SYSTEM; 6794 CANAL ST; MARINE VIEW HEIGHTS	OTHELLO	WA	99344
55068	SNELSON, MARION	Marine View Heights, Inc.; 8453 HIGHLAND DR SE	OTHELLO	WA	99344

SERVICE DATE
DEC 1 4 1994

NOTE! An important notice to parties about administrative review appears at the end of this order.

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARINE VIEW HEIGHTS HOMEOWNERS' ASSOCIATION, Complainant, v. MARINE VIEW HEIGHTS INCORPORATION, Respondent.	DOCKET NO. UW-940325 FINDINGS OF FACT, CONCLUSIONS OF LAW AND INITIAL ORDER GRANTING COMPLAINT IN PART AND DENYING AND DISMISSING COMPLAINT IN PART

Hearings were held in this matter in Othello on June 15, 1994 and in Moses Lake on July 25, 26, and September 13, 1994, before Administrative Law Judge Lisa A. Anderl of the Office of Administrative Hearings. The parties submitted briefs by November 22, 1994.

The parties appeared and were represented as follows:

COMPLAINANT: Marine View Heights Homeowners' Association
By Marion Snelson, authorized representative
8453 Highland Drive SE
Othello, Washington 99344

RESPONDENT: Marine View Heights Incorporation
By Fred Barker, Jr., owner
6897 SR 262 SE
Othello, Washington 99344

COMMISSION: THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
By Ann Rendahl, assistant attorney general
1400 S. Evergreen Park Drive SW
Olympia, Washington 98504

MEMORANDUM

PROCEEDINGS

This is a formal complaint by the Marine View Heights Homeowners Association (complainant or Homeowners), against Marine View Heights Incorporation (respondent or company).

The complaint was filed on March 7, 1994. The general allegations in the complaint concerned issues of quality and quantity of water provided and issues concerning billing practices, notice to customers, and various other business practices by the respondent alleged to be in violation of the laws or rules.

The complaint alleged that the quantity and quality of the water supplied is insufficient, impure and inadequate and asked that the respondent be ordered to improve its service. In the event of noncompliance with Commission order, complainant requests that the Commission ask the Department of Health (Department) to petition the court to place the respondent in receivership. The complainant specifically requested a pro rata refund of rates pursuant to RCW 80.04.110(5) for substandard water delivered from November 1992 and thereafter. The complainant further requested a ruling from the Commission that the rates charged by respondent are unjust and unreasonable and that the Commission determine just and reasonable rates to be in place until the system complies with State drinking water standards. The complaint also requests such further relief as the Commission may deem appropriate.

Respondent answered on April 8, 1994. Respondent admitted some of the allegations contained in the complaint and denied or offered its own explanation as to others. Respondent contended that most of the issues raised in the complaint were already being dealt with through the Department of Health.

The matter was set for pre-hearing conference on June 15, 1994. The parties were instructed to consult as to whether an agreed statement of facts could be reached and such statement was submitted on July 18, 1994. Those agreed facts are included as findings of fact #3-#15 in the numbered findings of fact in this order. In addition, the complainant, by letter dated July 15, 1994, amended its complaint to eliminate the request for a rate reduction.

The matter was set for hearing on July 25, 1994. The parties were instructed to exchange witness lists and copies of proposed exhibits by July 18, 1994. Complainant complied with that instruction, respondent did not. Respondent was nonetheless permitted to offer testimony (through Mr. Barker and Mr. Lease, witnesses who had been expected by all parties to testify in any event) and several exhibits which were responsive to issues raised during testimony of complainant's witnesses. Complainant was allowed to defer cross-examination until the final hearing session on September 13, 1994, at which Commission Staff also presented its testimony and exhibits.

During the hearings, the complainants called sixteen witnesses in its direct case, including Mr. Barker and Mr. Lease of the company and Mr. Ottavelli and Ms. Otto of Commission Staff. Two witnesses (one of whom was also a customer) were realtors who testified about the impact of the water issues on property values and marketability of homes. The other ten witnesses were members of the Homeowners' Association and customers of the system. Commission Staff called Fred Ottavelli, consultant to the water section, Diana Otto, consumer program specialist, and Craig Riley, senior environmental engineer with the Washington State Department of Health, Department of Drinking Water. Respondent's witnesses, as noted above, were Mr. Barker and Mr. Lease, the water operator.

Briefs were due by November 22, 1994. Briefs were filed by complainant and Commission Staff. As an attachment to its brief, the Homeowners included a letter dated October 25, 1994, from the Department of Health to Fred Barker/Marine View Heights Water System. The letter was not offered as evidence during the hearing and was not accompanied by a motion for reopening to admit it as a late-filed exhibit. On December 2, 1994, Staff filed a motion to strike portions of complainant's brief, including the above mentioned letter, arguing that complainant included a number of facts in its brief which were not a part of the record in this proceeding. Staff notes that ordinarily the motion would be to strike the entire brief, but given that complainant is pro se in this matter and may not be aware of the limitations on what may be argued on brief, only those portions of the brief which discuss matters not of record should be stricken. This initial order grants the motion to strike those portions of complainant's brief which are not supported by evidence of record in this matter. Much of what is set forth in Appendix A should be stricken.[1] Those portions of the brief which discuss matters not of record in this proceeding will be disregarded.

FACTUAL SETTING

The Marine View Heights Water System (the water system or the system) is located near Othello, Washington and serves 112 to 114 residential customers. The system has served in excess of 99 customers since December 30, 1992. The water system is owned

[1] However, the undersigned's reading of the record does support some of the statements. For example, the portion of the brief excerpted from page 11 seems to be based on Mr. Barker's testimony on pages 313-314 of the transcript. Other statements in the brief, such as the reference to the fish dying, are not so supported.

by the respondent Marine View Heights, Inc., which in turn is owned by Fred Barker, Jr. as the majority or sole shareholder. Information about the ownership of the system, and changes in that ownership, has not been communicated to the Commission, the Department of Health, or the Homeowners in a timely manner. It is still not totally clear who owns the company, who owns the system, and what the interests are. However, Commission Staff, on brief, did an admirable job of sorting through the ownership issue. A summary of what appears to be the current status of the system is set forth as follows.

Mr. Barker purchased the system in 1983. He quitclaimed the system to Metropolitan Mortgage in 1986. In October 1992, James Sahli purchased the system from the mortgage company. Mr. Barker apparently provided the money for the purchase and has considered himself to be the owner of the system since that time. In November of 1992, the customers were notified that Mr. Sahli was the new owner of the system. In December of 1992, the customers were notified that the system had been purchased by Marine View Heights, Inc. Mr. Sahli and his wife were the sole or majority shareholders of the company at that time. In August of 1994, the stock in Marine View Heights, Inc., was transferred to Fred Barker Jr.

In June of 1994, at the prehearing conference in this matter, the ownership issues were discussed at length. In an effort to resolve and/or clarify those issues, Mr. Barker agreed to provide the complainant, the Commission, and the Department of Health with a letter identifying the board members and shareholders of Marine View Heights, Inc. No such letter was ever provided. No petitions for approval of transfer of ownership have been filed with the Commission as required by RCW 80.12.020. As such, the Commission recognizes Mr. Sahli as the owner of the water system, as this was how the tariff filing in December of 1992 described the situation.[2] The Department of Health recognizes Mr. Barker as the owner of the system, as information regarding transfer of ownership has been provided to the Department as that agency requires.

The Homeowners Association was formed by the customers to oppose a proposed water rate increase and a proposed road maintenance fee increase. The Association has pursued various formal and informal processes, both with the Commission and the Department of Health, as well as contacting other state and local agencies, to resolve problems and concerns with the water company. In addition to many indirect costs of maintaining this

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[2] This order concludes that the Commission acquired jurisdiction at the end of 1992, when the tariff filing was made and it became clear that the system served 100 or more customers.

action, including transportation expenses, long distance phone calls, and copying expenses, the Association did incur an expense of $70.00 for a water quality test on December 7, 1993.

The stipulated findings of fact offer a fairly complete picture of the nature of the problems that the Homeowners have had with the company and the system. The problems may be grouped into three general categories: Department of Health/water quality problems; billing problems; and, company responsiveness problems.

Department of Health/Water Quality Issues

The water company is required by the Department of Health to test the water on a regular basis to monitor for the presence of various contaminants. Coliform bacteria is one contaminant. Coliform bacteria is present in the digestive tract and feces of warm-blooded animals. It may also be found in the soil. It is not always harmful, but it is easy to test for and is considered an indicator of the possible presence of other harmful bacteria. Its presence in the drinking water supply is characterized as a non-acute violation and further testing is then required to determine whether fecal coliform is present. Follow-up testing is also required to determine whether the problem has been corrected. A non-acute violation is defined as "posing a possible or less than immediate risk to human health." An acute violation, e.g., the presence of fecal coliform bacteria, is defined as "posing an immediate risk to human health." WAC 246-290-310(c) and (d). A "boil water" order must be issued for acute violations, but is not required for non-acute violations.

For the calendar year 1993, the system tested positive for total coliform in the months of January, March, April, and July through December. The company did not always perform the required follow-up tests and did not always properly notify customers of the violations. No acute (fecal coliform) violations were ever found in this system. According to Mr. Riley and Mr. Ottavelli, non-acute violations occur fairly frequently in water systems. However, a nine-month period (out of 12) of noncompliance is not at all common.

In April of 1993, the Department of Health designated this water system as a significant noncomplier and initiated an enforcement action against the system for various reasons, including the presence of total coliform. This action resulted in Administrative Order #93-013; appeal of that order and the penalties assessed therein is still pending. During nine months in 1993, the water delivered to the customers of Marine View Heights water system did not meet state drinking water standards.

As a result of the presence of total coliform in the system and the company's failure to correct the problem, the Department classified the company's operating permit as a category red. This information was communicated to the Grant County Building Department which placed a moratorium on building permits in Marine View Heights. As a result, Homeowners were inconvenienced and experienced difficulty buying and selling property served by the water system. The system has been taking water quality tests as required since January of 1994. All of those tests have been negative for total coliform. After six months of tests showing no coliform, the Department of Health upgraded the system to category yellow and building permits are again being issued by Grant County for property served by the system. As pointed out by the Homeowners on brief, the moratorium had no real punitive effect on the system operator, nor did it provide any incentive to correct the problem. The homeowners, however, did suffer negative effects from the moratorium.

In addition to violations of water quality standards, the customers of the system have alleged and established that the system operated without a certified water operator from October of 1992 until November of 1993. During some of this time the present water operator, Jerry Lease, was employed by the company, but he did not become certified until November of 1993. A certified water operator is required by the Department of Health, WAC 246-290-400.

Customer testimony on the water quality issue establishes that the unsatisfactory test results caused some customers great concern about possible illness from drinking the water. Customers have purchased bottled water and have boiled water during and after the period of unsatisfactory water tests. Some have had stomach complaints for which they have sought medical treatment and which they believe to be caused by the water. Several customers have experienced problems with gravel or sand in the system, which clogs their faucets and filters.

The Homeowners also established that the system has been and continues to be operated without an approved chlorinator. In connection with this issue, several customers complained that the smell and taste of chlorine in the system is sometimes very strong. A chlorinator is in place on the system, but has never been approved by the Department of Health as to design and installation. This issue is tied in with the company's continuing failure to have an approved Water System Plan. The plan is to be submitted to and approved by the Department of Health. The most recent plan was submitted by the company in December of 1993. The Department has not yet taken action on this plan to approve it.

Billing Problems

The company issued bills to customers during 1993 and 1994 which were incorrect and/or incomplete. The Commission rule regarding the form and contents of water bills (WAC 480-110-101) requires that the company include a "past due" date on the bill and notice of how a customer may contact the nearest business office of the company. The company billed customers without providing a due date on bills. The company also sent bills which did not include its street address or telephone number. The company has effected a significant and sustained improvement in these practices. No violations are established to have occurred after February of 1994.

Other complaints about billing concern alleged discriminatory practices in the amount charged for water service and discriminatory or unfair practices in collection attempts. The record establishes that the company threatened to disconnect customers for nonpayment of their water bills when in fact those bills had been paid. Other customers have not been disconnected even though they are significantly delinquent in their payments, have had their accounts referred to a collection agency, and have received notices that they will be disconnected. One customer, Mr. Gauron, had his water shut off in April of 1993, just a few days after reaching an oral agreement with the company to make a payment on his past due account. He was not given proper notice of the shut-off.

Finally on this issue, the company has provided service at no charge to employees of the company, or to others in exchange for services rendered.[3] It also appears that some people may be hooked up to the system without the company's knowledge and without payment. According to Mr. Lease's testimony, several customers just cannot afford to pay and the company carries a zero balance on them. The complainants allege that all of these practices with regard to billing, collection, and notices of shut-off are discriminatory and unfair to ratepayers. Most of these billing and collection issues have been resolved or are not ongoing.[4] However, the respondent should be able to demonstrate to the Commission that it does not engage in discriminatory billing practices, and a recommendation to accomplish that will be described below.

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[3] In accordance with RCW 80.28.080, a company may properly furnish free service to its employees.

[4] In addition, remedies for some of these concerns may be more appropriately implemented in a rate proceeding, where, for example, accounting adjustments could be made to reflect appropriate levels of income and uncollectible debt.

Company Responsiveness Problems

Customers have had problems locating the company's office, as the building does not have a street number on it and the office does not have a sign. In addition, as noted above, bills have not always included a street address for the company. Once located, the customers have discovered that there are no regular office hours for the company and have had difficulty knowing when someone could be reached. Many customers have had difficulty contacting the company by telephone. Telephone numbers provided by the company have sometimes, but not always, had an answering machine on which to leave a message. Messages have not always been returned, promptly or otherwise. Most of these complaints have been resolved and are not recurring since Mr. Lease became the certified water operator for the system.

Many other complaints were raised about specific acts or occurrences by the water company, most of which touch on the quality or quantity of water provided or the level of service provided. This information was useful as background and to provide both a historical setting for the instant complaint and to provide context for the issues raised. However, some of the allegations concern the time period before the company reached the jurisdictional threshold of 100 connections. Others describe events for which no specific relief is sought or authorized in this proceeding, such as the excavation of a customer's property (see exhibits 21 and 22). As such, facts about those events are not detailed further in this order.

ISSUES

The issues in this case are as follows:

I. Was the water supplied by the respondent during the periods at issue substandard within the meaning of RCW 80.04.110? If so, should the Commission order pro rata refunds to the customers for the substandard water delivered?

II. Is it necessary to order the company to make improvements in its service and/or its plant and system in order to provide adequate service?

DISCUSSION

I. Was the water supplied by the respondent during the periods at issue substandard within the meaning of RCW 80.04.110? If so, should the Commission order pro rata refunds to the customers for the substandard water delivered?

The provisions of RCW 80.04.110(5) allow any customer of a water company or system that is subject to Commission

regulation to file a complaint with the Commission, alleging violation of state drinking water standards under Chapter 43.20 RCW. The Commission is required to investigate the complaint and to request water quality tests from the state or local health department. The statute then states as follows:

> 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, and shall order reimbursement to the customer for the cost incurred by the customer, if any, in obtaining a water quality test.

On the basis of this statute, the complainant seeks a refund for all customers for the full amount of the water bill for each of the months that the water system provided substandard water. [$20/month x 113 customers x 9 months = $20,340.00] Complainant also seeks reimbursement for expenses as detailed in exhibits 11 and 12, including the cost of a water quality test and various other expenses of maintaining this action, including attorney's fees, copying expenses, and postage expenses.

Commission Staff agrees that reimbursement for the direct cost of water quality testing should be ordered. However, Staff does not support reimbursement of other expenses, as that would be tantamount to an award for civil damages which is not authorized in this proceeding. Staff also argues against a refund of rates paid for substandard water, taking the position that the Commission should order refunds only if violations are acute and the purveyor does not immediately address the problem. Staff suggests that if the Commission does order refunds, the amount should be 10% of the monthly bill, not 100%. This is based on a calculation that the average household uses 10% of its water for drinking and food preparation.

As Commission Staff notes, the decision to order a refund of rates for substandard water is discretionary with the Commission. Not every instance of a failure to meet state drinking water standards is contemplated to result in a refund, as the statute clearly says that the Commission may, not shall, order a refund. The Commission must thus decide whether the circumstances presented here are ones in which a refund is appropriate.

On the one hand, complainant accurately points out that the violations were ongoing for an amount of time almost unheard of by the Department of Health, that the situation caused immeasurable stress to the customers, including concerns about their health, that the company was singularly unresponsive in addressing the water quality issues, and that the time and energy expended to get the company into compliance has been considerable. On the other hand, Staff argues that the Commission has other tools with which to regulate the company and that refunds should be limited to acute violations, i.e. those which present an immediate risk to human health, where corrective action is not taken. Staff points out that non-acute violations are fairly common, although not for the length of time seen here, and that to allow refunds based on non-acute violations would invite an unmanageable number of complaints requesting refunds.

The record demonstrates that the company provided substandard water during January, March, April, July, August, September, October, November and December of 1993. During each of those months the water showed the presence of total coliform which is a non-acute violation and an indication of noncompliance with the state drinking water standards. However, this order finds Staff's analysis and argument on the issue of refunds to be persuasive and will therefore recommend that no refunds be ordered in this case. Substandard water established by proof of non-acute violations should not form a basis for a refund of rates.

This order further concludes that if refunds were to be ordered, Staff's calculation as to the amount of the refund appears to be reasonable. The water was substandard for drinking, but was apparently safe and adequate for many other purposes, including irrigation, car washing, etc. Except for several isolated instances of actual water outages, the customers did have water available to them. Therefore, a refund based on the amount of water generally used for drinking purposes is a fair calculation. The Homeowners did establish an expense for water quality testing of $70.00 which the company (the shareholders) must reimburse. Other, indirect expenses, are not addressed in the statute and cannot be ordered reimbursed.

II. Is it necessary to order the company to make improvements in its service and/or its plant and system?

The Commission is authorized by RCW 80.28.030 and RCW 80.28.040 to order necessary improvements in the storage, distribution or supply of water and in the service of the water system.

Specifically, RCW 80.28.030 provides:

> 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 RCW 43.20.050 (2)(a) . . . 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.

Similarly, RCW 80.28.040 provides:

> 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.

This statute also contains the same provision regarding receivership as RCW 80.28.030.

Complainant and Commission Staff contend that improvements should be ordered to both the water system and the service provided. Their recommendations are generally similar

and include requirements that customers be notified of contaminant level violations, that plans for the system's chlorinator be provided to the Department, that the business office be signed, that the company improve its responsiveness to customers, and that the company keep a certified water operator in its employ at all times. Respondent's position on what improvements, if any, should be ordered to plant and service, is not clear from the record. As noted earlier, respondent did not file a brief.

This initial order finds that the quality of water supplied by the water system has been impure and inadequate and concludes that improvements should be ordered to the system. This order also finds that the services and practices of the company have been improper and inadequate and concludes that improvements should be ordered to the service provided. The recommendations of Staff, set forth below, are reasonable, they are designed to address and prevent recurrence of the problems shown, and, with slight modification, are susceptible of monitoring and enforcement by the Commission. As such, this initial order adopts those recommendations and those of the complainant as follows:

-The respondent shall notify customers of any contaminant level violations, acute or non-acute, as required by Department of Health regulations. The respondent shall send copies of all water quality test reports, whether showing violations or not, to the Commission for a period of one year after the date of the final order.

-The respondent, within 30 days of the final order in this matter, shall provide the Department of Health with the necessary plans for its chlorinator.

-The respondent, within 30 days of the final order in this matter, shall post a sign, easily seen from outside the building, indicating the location of the water system's business office.

-The respondent shall improve responsiveness to customer contacts by returning telephone calls within 24 hours and responding to correspondence within 5 business days of receipt.

-The respondent shall employ a certified water operator at all times and shall immediately notify the Commission of the name of the new operator if Jerry Lease ceases in that function.

In addition to these recommendations, complainant suggests that the company be ordered to comply with all State Board of Health standards as contained in chapter 246-290 WAC,

to take the water tests for the next six months and that the company be ordered to cease any discriminatory or preferential billing and collection practices.

This order will adopt the recommendation with regard to the billing practices. It appears from the record in this matter that legitimate concerns existed about whether the company billed and collected in an evenhanded manner. The company should be ordered to provide information which will allow the Commission to verify that the company remains in compliance with its tariff and applicable law. To that end, the company should provide the Commission with a customer billing summary, showing customer name, the date and amount billed, the date and amount paid, and the action taken on delinquent or past due accounts. The summary should cover the six month period immediately prior to the final order and should be filed within 30 days of the final order.

With regard to the other recommendations, this order concludes that a general order telling the company to comply with Chapter 246-290 WAC would serve little purpose. The parties have stipulated that the company is currently in compliance and the company is already required by the Department of Health to comply with those provisions. Enforcement and monitoring of such an order would be difficult, possibly requiring additional fact finding procedures to determine specific violations and would likely be duplicative of Department of Health efforts. As to the independent testing, the undersigned has not seen any evidence that the present operator will not perform his testing duties accurately and adequately. While Mr. Lease did not know how to properly test the water at the beginning of his employment, he is now certified and has apparently performed his job properly in the past. Independent testing will not be ordered, although the Commission may again ask the Department of Health to perform water quality tests.

OTHER RELIEF REQUESTED

In addition to the recommendations just discussed, Staff and complainant have several other requests for relief, including that the ownership issue be resolved by requiring the company to file with the Commission a petition or petitions seeking Commission approval of the transfer of ownership from Mr. Sahli to Mr. Barker.

Finally, Staff and complainant suggest that a hearing be convened 60 days after the entry of the final order in this matter to determine compliance with the terms of that order. Unless the company demonstrates at that time that it has substantially complied with the terms of the final order, it is recommended that the Commission ask the Department of Health to petition the court to place the company in receivership.

This order concludes that those requests are reasonable. The company is not now in compliance with the provisions of RCW 80.12.020 requiring Commission approval of transfers of ownership. This order will recommend that the company be given one last chance to comply. The company's failure to do so, especially since it has been on actual notice of this issue since June, should be deemed a significant and substantial violation of the terms of the order.

The history of this company's violations, its unkept promises to correct or improve problems, and the extraordinary effort so far required by the Commission Staff, the Department of Health and the customers, more than warrants a follow-up hearing in this matter. This hearing should be scheduled 60 days after the final order in this matter and should be convened for purposes of establishing compliance with the order, with the burden for doing so on the respondent. Failure to establish substantial compliance should result in a request by the Commission that the Department of Health petition the court to place the company in receivership.

In addition, although this order does not recommend penalties at this juncture, the Commission might consider penalty assessments in connection with the follow-up hearing in the event that substantial compliance is not established. As correctly pointed out by complainant in its argument for a refund, "It is also well known the way to get someone's attention is through their pocketbook." Clearly, someone needs to get Mr. Barker's attention. Perhaps this is or will be accomplished by the Department of Health in its administrative process, perhaps not. Independent of that proceeding however, the Commission may wish to consider penalties if the company fails to establish significant compliance with the terms of the final order in this matter.

CONCLUSION

This initial order finds that the quality of water supplied by the water system has been impure and inadequate that the services and practices of the company have been improper and inadequate and concludes that improvements should be ordered to the system and the service provided. The complaint is denied as to the request for refunds and granted, in part, as follows:

1. The respondent shall notify customers of any contaminant level violations, acute or non-acute, as required by Department of Health regulations. The respondent shall send copies of all water quality test reports, whether showing violations or not, to the Commission for a period of one year after the date of the final order.

2. The respondent shall, within 30 days of the final order in this matter, provide the Department of Health with the necessary plans for its chlorinator.

3. The respondent shall, within 30 days of the final order in this matter, post a sign, easily seen from outside the building, indicating the location of the water system's business office.

4. The respondent shall improve responsiveness to customer contacts by returning telephone calls within 24 hours and responding to correspondence within 5 business days of receipt.

5. The respondent shall employ a certified water operator at all times and shall immediately notify the Commission of the name of the new operator if Jerry Lease ceases in that function.

6. The respondent shall, within 30 days of the date of the final order in this matter, file a petition with the Commission for approval of the transfer of ownership from Mr. Sahli to Mr. Barker, and any other petitions necessary to reflect the true ownership of the Marine View Heights Water System.

7. The respondent shall, within 30 days of the date of the final order in this matter, provide the Commission with a customer billing summary for the six months immediately prior to the date of the final order, showing customer name, date and amount of bill, date and amount of payment received and the action taken, if any, on delinquent accounts.

8. The respondent shall appear at a hearing to be scheduled within 60 days of the final order in this matter and shall be required to establish substantial compliance with the terms of the final order.

FINDINGS OF FACT

Having discussed the evidence and having stated findings and conclusions in the memorandum, the administrative law judge makes the following findings of fact. Those portions of the preceding findings pertaining to the ultimate facts are incorporated by this reference.

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, accounts, securities, and transfers of public service companies, including water companies.

2. Respondent Marine View Heights, Inc., is a public service company engaged in the business of furnishing water service to customers within the state of Washington.

3. On December 1, 1992, the complainants were notified that the Marine View Heights Incorporation (the company) would increase water rates by fifty percent effective January 1, 1993. The complainants contacted the Washington Utilities and Transportation Commission (Commission) to protest the rate increase, and attended the Commission's January 27, 1993, open meeting. At that meeting, the Commission suspended the rate increase for further investigation. On July 14, 1993, the Commission approved the company's request to withdraw their rate increase.

4. The company distributed water exceeding the maximum contaminant level (MCL) for coliform bacteria, in violation of WAC 246-290-310(3), in the following months: December 1992, and January, March, April, and July through December of 1993. The company is currently in compliance with WAC Chapter 246-290.

5. The company failed to take routine and/or repeat coliform samples at the required frequency for the months of October and December 1992, January through March 1993, and July 1993 in violation of WAC 246-290-300(2) and 246-290-480(2). The company is currently in compliance with these rules. It was the responsibility of Grant County to take samples in October of 1992. In July of 1993, United Parcel Service failed to deliver the sample to the laboratory within 24 hours.

6. The company failed to take follow-up action when the water distributed by the system exceeded the maximum contaminant level for coliform bacteria as required by WAC 246-290-320(1). The Department of Health (the Department), through Departmental Order 93-013, has imposed penalties upon the company for these violations.

7. Due to the issuance of Departmental Order No. 93-013, there has been a moratorium on the issuance of septic tank and building permits in the Marine View Heights area since June 30, 1993. By letter dated July 5, 1994, to the Grant County Health District, the Department has changed the status of the company's operating permit from the red to yellow category, and notified the County that the Department has no further objections to the expansion of the water system.

8. The company failed to supply an adequate water quantity during high usage months as required by WAC 246-290-420. The system ran out of water twice in August 1993, and on June 20, June 30, and July 8, 1994. Elements in hot water heaters burned

out due to water tanks draining. The reservoir is designed to hold 300,000 gallons but is only used to approximately one third (1/3) of its capacity. However, the float switch in the tank has been raised in an effort to remedy this problem.

9. The company failed to notify new customers of inadequate water quality before or the time service began as required by WAC 246-290-330(h). The company was not aware of such regulation.

10. The company failed to indicate the date the bill becomes delinquent and notice of means by which a customer can contact the nearest business office of the utility as required by WAC 480-110-101. These violations occurred from November of 1992 through January of 1993, and February of 1994. The company provided handwritten due dates on notices from March through May of 1994. The company had computer problems in 1994, but this problem has now been corrected.

11. The company failed to provide complainants with a guide detailing the rights and responsibilities of a utility customer or with a bill insert, on an annual basis, by which to request a guide by return mail as required by WAC 480-110-041. The company never received a request by an agency and thereby was unaware of this requirement. The company has since instituted a yearly program to do this.

12. The company did not provide the proper written notice of disconnection served on some complainants; notices left on doors did not list a shut off notice date or shut off date; notices mailed did not list eight business days as the shut off date as required by WAC 480-110-071. The company has never shut these complainants off, but only threatens to do so. The company did not provide proper notice of disconnection. The company was not aware of the regulation. The Commission notified the company after it became aware of the improper disconnection notice. The company now provides proper time intervals on its disconnection notices.

13. Dan Marinelli, a member of the Marine View Heights Homeowner's Association, wrote a letter to the company requesting that his water be shut off for the winter. The company does not recollect receiving this letter. There was a dispute over the bill Mr. Marinelli received from the company. Mr. Marinelli did not want to pay his bill. The company verbally threatened to dig up Mr. Marinelli's pipes to disconnect and to charge a $300 service connection fee instead of a $20 reconnection charge as required in the company's Tariff Rule 7. The customer was very upset at this and called Diana Otto at the Commission. Ms. Otto called the company and advised them of their error. This error has since been corrected.

14. The company informed the complainants in a December 1992 Notice to Water System Users that a chlorinator had been installed. However, that chlorinator was inadequate and had to be replaced in January, 1993. The chlorinator did not have sufficient head pressure to overcome the wellhead. The company thought it was a malfunction of the pump and replaced it. The company later found that the particular pump was not sufficient. The company has since replaced it with a chlorine pump that is more than sufficient for the job.

15. The company misrepresented to the complainant's in a November 29, 1993 Notice to Water System Users that the company was chlorinating and flushing the system. On December 3, 1993, the certified water operator was asked if the system had been flushed. When he replied no, he was asked how they were going to flush the system. The operator replies, "I'm not sure, Fred told me to put (write) that on there."

16. The Marine View Heights Water System served 100 (or more) customers as of December 30, 1992. At that time, Marine View Heights, Inc. owned the Marine View Heights Water System and James Sahli was the sole or majority shareholder in Marine View Heights, Inc.

17. Jerry Lease is currently employed by the system as the certified water operator. He has been certified since November of 1993. Mr. Lease performed water quality testing incorrectly when he first started performing those duties, prior to his certification. He is currently qualified and able to perform water quality testing for the system.

18. Customers have experienced levels of chlorine in their water that some have found excessive and offensive in taste and smell. The company's chlorinator has not been approved by the Department of Health as to design or installation.

19. The company failed to provide a sign on its business office, making it difficult for customers to contact the company in person. The company has not always provided customers with a telephone number at which the company could be reached and has not always returned messages promptly when customers left messages on an answering machine.

20. The company has in the past provided water at free or reduced rates to employees of the system and to others.

21. Some customers of the system believe that the water has made them ill and they have sought medical treatment as a result. Customers have purchased bottled water for drinking or have boiled water from the system because they did not believe it was otherwise safe to drink.

CONCLUSIONS OF LAW

1. The Washington Utilities and Transportation Commission has jurisdiction over the subject matter of and the parties to this complaint.

2. The respondent has provided substandard water pursuant to RCW 80.04.110. The water was substandard in that there were non-acute violations of the maximum contaminant levels for coliform bacteria during nine months in 1993. These non-acute violations do not form a basis for refund of rates pursuant to RCW 80.04.110(5). The respondent is liable, pursuant to the provisions of that statute, for the cost of a water quality test incurred by the customers in the amount of $70.00.

3. The quality of water supplied by the water system has been impure and inadequate and improvements should be ordered to the system pursuant to RCW 80.28.030. The services and practices of the company have been improper and inadequate and improvements should be ordered to the service provided pursuant to RCW 80.28.040. The improvements ordered and other requirements imposed on respondent are set forth in the numbered paragraphs in the "Conclusion" section of this order.

4. Motions made during the course of this proceeding which are consistent with the above findings and conclusions should be granted, and those inconsistent should be denied.

5. The Commission should retain jurisdiction to effectuate the provisions of its final order.

6. A hearing should be scheduled approximately 60 days after the Commission's final order in this matter to consider the company's compliance with the requirements of the order. Failure of the company to demonstrate substantial compliance should result in a request by the Commission to the Department of Health to petition the court to place the company in receivership.

ORDER

IT IS HEREBY ORDERED That:

1. The complaint is denied as to the request for refunds pursuant to RCW 80.04.110(5).

2. The complaint is granted as to a request for reimbursement of the cost of a water test in the amount of $70.00 and respondent shall pay that amount to the complainant.

3. Respondent shall make such improvements in its service and system and shall take such other action as set forth in the numbered paragraphs in the "Conclusion" section of this order.

4. All motions consistent with this order are granted and those inconsistent with it are denied.

5. Jurisdiction is retained to effectuate the provisions of this order.

6. A hearing will be scheduled approximately 60 days after the Commission's final order in this matter to consider the company's compliance with the requirements of the order. Failure of the company to demonstrate substantial compliance will result in a request by the Commission to the Department of Health to petition the court to place the company in receivership.

DATED at Olympia, Washington, and effective this 14th day of December, 1994.

OFFICE OF ADMINISTRATIVE HEARINGS

LISA A. ANDERL
Administrative Law Judge

NOTICE TO PARTIES:

This is an initial order only. The action proposed in this order is not effective until a final order of the Utilities and Transportation Commission is entered. If you disagree with this initial order and want the Commission to consider your comments, you must take specific action within a time limit as outlined below.

Any party to this proceeding has twenty (20) days after the service date of this initial order to file a Petition for Administrative Review, under WAC 480-09-780(2). Requirements of a Petition are contained in WAC 480-09-780(4). As provided in WAC 480-09-780(5), any party may file an Answer to a Petition for Administrative Review within ten (10) days after service of the Petition. A Petition for Reopening may be filed by any party after the close of the record and before entry of a final order, under WAC 480-09-820(2). One copy of any Petition or Answer must be served on each party of record and each party's attorney or other authorized representative, with proof of service as required by WAC 480-09-120(2).

In accordance with WAC 480-09-100, all documents to be filed must be addressed to: Office of the Secretary, Washington Utilities and Transportation Commission, 1300 South Evergreen Park Drive S.W., PO Box 47250, Olympia, Washington, 98504-7250. After reviewing the Petitions for Administrative Review, Answers, briefs, and oral arguments, if any, the Commission will by final order affirm, reverse, or modify this initial order.