

**BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND)	DOCKET UW-090839
TRANSPORTATION COMMISSION,)	
)	
Complainant,)	ORDER 03
)	
v.)	FINAL ORDER APPROVING AND
)	ADOPTING SETTLEMENT
CRISTALINA, LLC,)	AGREEMENT; AUTHORIZING AND
)	REQUIRING COMPLIANCE
Respondent.)	FILINGS
)	
.....)	

1 **SYNOPSIS:** *The Commission approves and adopts the parties' Settlement Agreement resolving the contested issues in this case. In this Order, the Commission finds reasonable the parties' agreed to rate decrease from the flat rate of \$77 per month to \$68.30 per month and directs the Company to file various reports with the Commission relating to water usage in order to establish temporary and permanent metered rates in the future.*

MEMORANDUM

2 **PROCEEDINGS:** This proceeding commenced on June 25, 2009, when the Washington Utilities and Transportation Commission (Commission) initiated a complaint against Cristalina, LLC (Cristalina) in Docket UW-090839. The regulatory staff of the Commission (Commission Staff or Staff)¹ had raised concerns that Cristalina might be generating more revenue than required to satisfy its expenses and to receive a reasonable return.

¹ In formal proceedings, such as this, the Commission's regulatory staff participates like any other party, while the presiding administrative law judge and the Commissioners make the decision. To assure fairness, the Commissioners, the presiding administrative law judge, and the Commissioners' policy and accounting advisors do not discuss the merits of this proceeding with the regulatory staff, or any other party, without giving notice and opportunity for all parties to participate. See, RCW 34.05.455.

3 **APPEARANCES.** Richard A. Finnigan, attorney, Olympia, Washington, represents
Cristalina. Jennifer Cameron-Rulkowski, Assistant Attorney General, Olympia,
Washington, represents Commission Staff.

4 **BACKGROUND AND PROCEDURAL HISTORY.** Cristalina serves 84
customers in Ravensdale, Washington. On April 8, 2009, Cristalina filed a revision to
its Tariff WN U-1, in Docket UW-090516, which proposed to service a \$555,000
Drinking Water State Revolving Fund (DWSRF) loan approved by the Public Works
Board for capital improvement projects.² The capital improvement projects included
metering all connections, installing a new generator, improving system controls, and
increasing water storage.³ While reviewing financial information from the Company
in Docket UW-090516, Staff became concerned that Cristalina might be earning an
excessive return.⁴ Commission Staff discussed the need for a general rate case with
the Company and was told that Cristalina would make a filing prior to the
Commission's May 28, 2009, open meeting.⁵ When the Commission still had not
received the filing by June 25, 2009, the Commission filed a complaint against the
Company.⁶

5 On July 2, 2009, the Commission issued a notice setting a prehearing conference for
July 29, 2009, before Administrative Law Judge Marguerite E. Friedlander. On July
30, 2009, the Commission issued Order 02 which established the procedural
schedule.⁷

² *Washington Utilities and Transportation Commission v. Cristalina, LLC*, Docket UW-090839, Order 01, Complaint Against Rates (June 25, 2009).

³ *Washington Utilities and Transportation Commission v. Cristalina, LLC*, Docket UW-090516, Commission Staff's Memorandum (May 28, 2009).

⁴ *Washington Utilities and Transportation Commission v. Cristalina, LLC*, Docket UW-090839, Order 01, Complaint Against Rates (June 25, 2009).

⁵ *Id.*

⁶ *Id.*

⁷ On July 31, 2009, the Commission issued an Erratum to Order 02 due to the inadvertent omission of the deadline for distribution of cross-examination exhibits, witness lists, and cross-examination time estimates from the schedule attached to Order 02.

6 By letter dated October 26, 2009, Cristalina and Commission Staff, the only parties to the proceeding, requested that the Commission continue the procedural schedule for two weeks to allow the parties to focus on pursuing a settlement of the disputed issues. On October 28, 2009, the Commission granted the continuance request and approved the modified procedural schedule.⁸ The parties filed a letter with the Commission on November 18, 2009, indicating that they had reached a settlement in principle of all of the disputed issues. The following day, the Commission issued a Notice Suspending the Procedural Schedule in anticipation of the parties filing their agreement.

7 On January 29, 2010, the parties jointly filed a Settlement Agreement (Settlement) with the Commission. On the same day, Commission Staff filed the Testimony of Amy White, Regulatory Analyst, and Cristalina filed the Testimony of Maria Lindberg, managing member of the Company, both in support of the Settlement.⁹

8 **SETTLEMENT AGREEMENT.** In the Settlement, Cristalina and Staff resolve all disputed issues related to the complaint. The parties agree to a decrease in the flat rate the Company collects each month, from \$77 per month to \$68.30 per month. The parties also agree that Cristalina will file various reports with the Commission relating to water usage in order to establish temporary and permanent metered rates in the future. The Settlement is attached to this Order and incorporated by reference.

9 **Revenue Requirement.** The parties agree that Cristalina's annual revenue requirement is \$31,838¹⁰ and that the Company requires an additional \$4,032 annually for a period of 24 months to recover monies spent to repair the water system in 2008 and 2009.¹¹

⁸ The Commission approved the procedural schedule suggested by the parties with one exception. The proposed hearing date was moved from January 25, 2010, to January 26, 2010, to avoid a conflict with a previously scheduled hearing in another matter.

⁹The Commission received revised tariff sheets reflecting the terms of the Settlement on February 25, 2010.

¹⁰This is a decrease of \$10,662 in annual operating revenues. White, Exh. AW-1T, at 5:16.

¹¹ Settlement, ¶ 8. The Settlement also acknowledges that Cristalina requires revenues of \$32,256 to service the DWSRF loan for system improvements, but that this requirement was previously resolved in Docket UW-090516 and is not at issue in the instant case.

- 10 ***Rates and Effective Date of the Rate Decrease.*** Commission Staff and Cristalina agree that the current rates should be decreased from the flat rate of \$77 per month to the flat rate of \$68.30 per month.¹² This total reflects: (1) a flat rate of \$32; (2) a surcharge to fund the pipeline repairs made in 2008 and 2009 in the amount of \$4.30 per month for 24 months; and (3) a surcharge of \$32 per month to service the DWSRF loan.¹³ The parties maintain that the rates contained within the Settlement should go into effect on the first day of the month following the Commission's approval of the Settlement.¹⁴
- 11 ***Rate of Return, Return on Equity, and Capital Structure.*** Staff and Cristalina agree that, if needed for reporting or accounting purposes, Cristalina may employ an overall rate of return of 9.3 percent, which is calculated using a hypothetical capital structure of 40 percent debt, at 8 percent, and 60 percent equity, at 12 percent.¹⁵
- 12 ***Refunds and Repair Surcharge.*** The parties contend that customer refunds reflecting the difference between the rates currently in effect, \$45 per month, and the rates agreed to in the Settlement, \$32 per month, should be calculated from the date the Complaint was issued through the end of January 2010.¹⁶ The total refund amount has been calculated by the parties to be \$7,644.¹⁷ The parties agree that the refund should be used to reduce the amount of system repair expenses from 2008 and 2009.¹⁸ The repair expenses would, therefore, be reduced from \$15,144 to \$7,500.¹⁹ This \$7,500 total, the parties suggest, should be amortized over a two year period and collected from customers using the \$4.30 surcharge.²⁰

¹² *Id.* ¶ 9.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ Settlement, ¶ 11.

¹⁶ *Id.* ¶ 12.

¹⁷ *Id.*

¹⁸ *Id.* ¶ 13

¹⁹ *Id.*

²⁰ *Id.*

- 13 **Conditions.** Staff and Cristalina agree that the Company shall report to the Commission on a monthly basis regarding the construction progress of capital improvements made using the DWSRF loan.²¹ The monthly construction progress reports shall be filed concurrently in this docket and in Docket UW-090516 within 10 days of the end of each preceding month until construction is complete.²² The parties also agree that Cristalina will provide water usage data from the well-head meters monthly to the Commission.²³ These monthly usage reports shall be filed in this docket within 10 days of the end of each preceding month until 12 months of metered usage data exists.²⁴
- 14 Once all customer meters have been installed and are in use, and two months of usage data exists, the parties agree that Cristalina will file for temporary metered rates within 120 days of the meters being installed and placed into use (completion date).²⁵ The parties further agree that the proposed temporary metered rates shall include a base rate and a single usage block and that the temporary rates will be subject to a “true-up” upon implementation of the permanent rates.²⁶
- 15 Once the Company has collected 15 months of metered customer usage data, the parties agree that Cristalina will use the most recent twelve months of data to file for permanent metered rates.²⁷ This rate filing, according to the parties, will be accomplished within 18 months of the completion date, and the Company agrees that it will request a “true-up” of the temporary rates.²⁸ The parties assert that the “true-up” may be accomplished through refunds, a surcharge, or an amount embedded in rates, as appropriate.²⁹ Cristalina agrees that its proposed permanent metered rates

²¹ *Id.* ¶ 15.

²² *Id.*

²³ *Id.* ¶ 16.

²⁴ *Id.*

²⁵ *Id.* ¶ 18.

²⁶ *Id.*

²⁷ *Id.* ¶ 19.

²⁸ *Id.*

²⁹ *Id.*

shall include a base rate and multiple usage blocks.³⁰ The parties have also waived their rights to petition for administrative review of the initial order so that the order may become final when entered.

16 **TESTIMONY IN SUPPORT.** Commission Staff witness Ms. White evaluated the Company's accounting records including its general ledger; customer accounts receivable records; documentation of expenses such as repairs, electricity, and office expenses; information concerning payments made to related parties; and documents concerning the Company's DWSRF loan.³¹ Ms. White evaluated financial statements, annual reports, the Company's tariff on file with the Commission, and Cristalina's responses to 38 Staff data requests.³² After analyzing this data, Ms. White determined that Cristalina's annual operating revenues should be reduced by \$10,662.³³ In addition, Ms. White explains that Cristalina spent \$5,512 in 2008 and \$9,632 in 2009 for repairs to a broken water main in a section of the system that will be abandoned once the DWSRF loan construction is completed in late 2009 or 2010.³⁴ That being said, Ms. White states that the repairs made were necessary and that Cristalina should be allowed to recover the costs through a surcharge so that these extraordinary costs are kept out of regular operating expenses and rates.³⁵ According to Ms. White, a two-year amortization period would spread the recovery of the costs over time and customers would avoid having to make a lump-sum payment.³⁶

17 Ms. White testifies that the compliance reports containing water usage data are necessary for designing metered rates and setting usage blocks for the Company.³⁷ The water system previously was unmetered. Once the meters are installed, the use of

³⁰*Id.*

³¹ White, Exh. AW-1T at 3: 19 – 23.

³²*Id.* at 3:23-4:4.

³³*Id.* at 5:15-16.

³⁴*Id.* at 7:8-10.

³⁵*Id.* at 7:10-13.

³⁶*Id.* at 7:17-19.

³⁷*Id.* at 9:5-6.

a flat rate would be inappropriate and fail to encourage conservation.³⁸ Ms. White indicates that setting an 18-month deadline for the Company to collect reliable data from the meters and prepare a rate case filing is reasonable.³⁹

18 Based on the overall Staff analysis, Ms. White finds the Settlement revenue requirement is reasonable, and results in rates that are fair, just, reasonable, and sufficient.⁴⁰

19 Cristalina witness, Ms. Lindberg, supports the Settlement as a prudent course of action.⁴¹

20 **DISCUSSION AND DECISION:** In considering settlement agreements, the Commission “may accept the proposed settlement, with or without conditions, or may reject it.”⁴² The Commission must “determine whether a proposed settlement meets all pertinent legal and policy standards.”⁴³ The Commission may approve settlements “when doing so is lawful, when the settlement terms are supported by an appropriate record, and when the result is consistent with the public interest in light of all the information available to the commission.”⁴⁴

21 The Settlement results in an early resolution of the parties’ disputes, prior to the filing of testimony and commencement of a hearing, and conserves valuable party and Commission resources that would otherwise be devoted to litigation. The Commission supports parties’ informal efforts to resolve disputes without hearings.⁴⁵

³⁸*Id.* at 9:12-14.

³⁹*Id.* at 9:21-23.

⁴⁰ *Id.* at 10:10-11.

⁴¹Lindberg, Exh. ML-1T at 1:10-15.

⁴² WAC 480-07-750(2).

⁴³ WAC 480-07-740.

⁴⁴ WAC 480-07-750(1).

⁴⁵ WAC 480-07-700.

- 22 While there was no hearing in this proceeding, the parties provided detailed written testimony in support of the Settlement, creating a sufficient record for decision. The testimony demonstrates that the terms of the Settlement are consistent with principles of law, policy, and regulatory accounting. The rate decrease will benefit Cristalina's customers financially in these difficult economic times. In addition, amortization of the pipeline repair expenses, while the total costs were relatively small, will help minimize the impact on customers. Both parties should be commended for having reached such an equitable compromise that provides a reasonable return to the Company and will save customers money.
- 23 Consistent with WAC 480-07-750, the Commission should find that the approval and adoption of the Settlement is in the public interest, that the Settlement is supported by an appropriate record, and that approving the agreement is lawful.
- 24 The Company must file monthly water construction progress reports on the capital improvements funded by the DWSRF loan in this docket and provide monthly water usage data from the well-head meters to the Commission in accordance with the terms and conditions of the Settlement. Within 120 days of all customer meters being install, in use, and following the collection of two months of usage data, Cristalina must file for temporary rates as specified in the Settlement. Following the collection of 15 months of metered customer usage data and within 18 months of the meters being installed and in use, Cristalina must file for permanent rates and request a 'true-up' in accordance with the Settlement.

FINDINGS OF FACT

- 25 Having discussed above in detail the evidence received in this proceeding concerning all material matters, and having stated findings and conclusions upon issues in dispute among the parties and the reasons therefore, the Commission now makes and enters the following summary of those facts, incorporating by reference pertinent portions of the preceding detailed findings:
- 26 (1) The Washington Utilities and Transportation Commission is an agency of the State of Washington, vested by statute with authority to regulate the rates, rules, regulations, practices, and accounts of public service companies, including water companies.

- 27 (2) Cristalina, LLC, is a “public service company” and a “water company,” as those terms are defined in RCW 80.04.010 and used in Title 80 RCW. Cristalina, LLC, is engaged in Washington in the business of supplying water services to the public for compensation.
- 28 (3) On June 25, 2009, the Commission initiated a complaint against Cristalina, LLC, alleging that the Company might be earning an excessive return.
- 29 (4) On January 29, 2010, the parties filed a Settlement Agreement that, if approved, would resolve all pending issues in the proceeding, together with the testimony of Staff witness Amy White and Company witness Maria Lindberg.
- 30 (5) The existing rates for water service Cristalina provides are greater than the Company needs to pay reasonable operating expenses and earn a reasonable return.

CONCLUSIONS OF LAW

31 Having discussed above all matters material to this decision, and having stated detailed findings, conclusions, and the reasons therefore, the Commission now makes the following summary conclusions of law, incorporating by reference pertinent portions of the preceding detailed conclusions:

- 32 (1) The Washington Utilities and Transportation Commission has jurisdiction over the subject matter of, and parties to, these proceedings.
- 33 (2) The rates currently charged by Cristalina, LLC, are not fair, just, reasonable, or sufficient.
- 34 (3) The Commission determines that the rates resulting from adoption of the Settlement Agreement filed by the parties to this proceeding are fair, just, reasonable, and sufficient.
- 35 (4) The Commission concludes that the rates proposed in the Settlement Agreement are to be observed and in force under Cristalina, LLC’s tariff, Tariff WN U-1, prospectively from an effective date of March 1, 2010, for water service the Company provides to customers in Washington.

- 36 (5) Approval and adoption of the Settlement is lawful, supported by an appropriate record, and in the public interest.
- 37 (6) Cristalina, LLC, should be authorized and required to file monthly construction reports with the Commission within 10 days of the end of each month concerning the progress of capital improvements funded by the Drinking Water State Revolving Fund loan.
- 38 (7) Cristalina, LLC, should be authorized and required to file monthly water usage data from the well-head meters with the Commission within 10 days of the end of each preceding month until 12 months of data exists.
- 39 (8) Cristalina, LLC, should be authorized and required to file for temporary metered rates within 120 days of the customer meters having been installed, in use, and following the accumulation of two months of usage data.
- 40 (9) Cristalina, LLC, should be authorized and required to file for permanent metered rates within 18 months of the meters having been installed and in use. The Company will use the most recent twelve months of usage data and will request a “true up” of the temporary rates then in effect. The Company’s proposed permanent metered rates shall include a base rate and multiple usage blocks.
- 41 (10) The Commission Secretary should be authorized to accept by letter, with copies to all parties to this proceeding, filings that comply with the requirements of this Order. *WAC 480-07-170; WAC 480-07-880.*
- 42 (11) The Commission should retain jurisdiction over the subject matter and the parties to this proceeding to effectuate the terms of this Order. *RCW Title 80.*

ORDER

THE COMMISSION ORDERS:

- 43 (1) The Settlement Agreement filed by the parties in this proceeding, which is included as an attachment to this Order and incorporated by reference as if set forth in full here, is approved and adopted in full resolution of the issues in this proceeding.

- 44 (2) Cristalina, LLC, is authorized and required to make such compliance filings including monthly construction progress reports, water usage data, and rate case filings as are necessary to implement the requirements of this Order.
- 45 (3) The Commission Secretary is authorized to accept by letter, with copies to all parties to this proceeding, filings that comply with the requirements of this Order.
- 46 (4) The Commission retains jurisdiction to effectuate the terms of this Order.

DATED at Olympia, Washington and effective February 26, 2010.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

JEFFREY D. GOLTZ, Chairman

PATRICK J. OSHIE, Commissioner

PHILIP B. JONES, Commissioner

NOTICE TO PARTIES: This is a Commission Final Order. In addition to judicial review, administrative relief may be available through a petition for reconsideration, filed within 10 days of the service of this order pursuant to RCW 34.05.470 and WAC 480-07-850, or a petition for rehearing pursuant to RCW 80.04.200 and WAC 480-07-870.