

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

MIKE AND GLENDA BECK,)	DOCKET UW-132268
)	
Complainants,)	ORDER 03
)	
v.)	INITIAL ORDER ESTABLISHING
)	AND REQUIRING PAYMENT OF
CRISTALINA, LLC,)	PAST DUE AMOUNTS OWED BY
)	THE BECKS TO CRISTALINA
Respondent.)	
.....)	

BACKGROUND

- 1 On December 13, 2013, Mike and Glenda Beck (Becks) filed with the Washington Utilities and Transportation Commission (Commission) a formal complaint against Cristalina, LLC (Cristalina or Company). The Becks alleged that Cristalina unlawfully shut off water service to their home on November 26, 2013, due to non-payment of disputed water bills incurred between 2007 and 2010. The Becks asked the Commission to, among other things, order Cristalina to immediately reconnect their water service. Following an emergency hearing convened on December 23, 2013, the Commission found Cristalina’s disconnection improper and ordered Cristalina to reconnect the Becks no later than 3:00 p.m. on December 24, 2013.

- 2 The Commission determined to resolve the underlying billing and accounts receivable issues in a separate evidentiary hearing. After allowing the parties to file a list of proposed issues to be resolved in this proceeding, the Commission conducted a pre-hearing conference on February 10, 2014, and limited the relevant issues to (a) the amount owed by the Becks to Cristalina for provision of water service and (b) the terms for payment of that amount and continued provision of service.¹

- 3 On May 21, 2014, the Commission convened an evidentiary hearing before Administrative Law Judge Adam Torem to take testimony on those issues.² The Becks presented documentary evidence and the testimony of Glenda Beck, Susan

¹ Order 02, *Prehearing Conference Order; Notice of Hearing*, ¶ 7 (February 12, 2014).

² Judge Torem left the Commission on July 31, 2014, and the Commission has appointed Administrative Law Judge Gregory J. Kopta to preside over this proceeding.

Burnett, and Steven Elliott. Cristalina presented documentary evidence and the testimony of Tonya Farmer and Maria Lindberg. The parties filed responsive post-hearing briefs as agreed at the close of hearing: the Becks filed on June 9, 2014, and Cristalina filed on June 20, 2014.

4 Barry Kombol, Rainier Legal Center, Inc., P.S., Black Diamond, represents Complainants. Eric Gillett, Preg O'Donnell & Gillett, Seattle, represents respondent Cristalina. Sally Brown, Senior Assistant Attorney General, Olympia, represents Commission Staff witness Steven Elliott.³

DISCUSSION AND DECISION

5 The parties have a long and contentious history, but the only issues before the Commission in this docket are the past due amount the Becks owe Cristalina for water service they received from the Company and the terms for payment of that amount. The Becks subpoenaed the testimony of Steven Elliott, who worked with the Commission's Consumer Affairs division and handled the informal complaint the Becks lodged against Cristalina that was the precursor to this proceeding. In that role, Mr. Elliott obtained records from the Company and the Becks and prepared a detailed report that was received into evidence in this proceeding as Exhibit SE-1. Mr. Elliott calculated that the total amount in charges and late fees the Becks owed Cristalina as of June 15, 2013, is \$3,423.78.⁴

6 The Commission finds that substantial evidence supports Mr. Elliott's calculations and result.⁵ We therefore order the Becks to pay Cristalina \$3,423.78, plus the monthly late fees authorized under Cristalina's tariff that have accrued since June 15, 2013.

7 Cristalina concedes this is the correct amount the Becks owe if the Commission agrees with Mr. Elliott that the six-year statute of limitations precludes the Company

³ Mr. Elliott testified under subpoena. Commission Staff did not take a position on any of the issues or otherwise participate in this proceeding.

⁴ Exh. SE-1 at 1.

⁵ We further commend Mr. Elliott for his diligent efforts to calculate the appropriate past due amount, his thorough analysis of the issues, and his detailed documentation of his interactions, findings, and calculations.

from recovering any amount due prior to October 1, 2007.⁶ Cristalina, however, calculates the past due amount using a “rolling” statute of limitations approach, which applies payments the Becks made since May 2009 to the oldest past due amounts the Becks owed, rather than to the most recently invoiced charges. The Company’s calculations result in a current balance of \$15,671.96.⁷

8 The record does not support using Cristalina’s methodology in this case. The Company produced no evidence that this approach is standard Company accounting practices for all of its customers or that the Becks were aware, or had any reason to know, that their payments were being applied to past due amounts. To the contrary, Cristalina’s accountant testified that her calculations were not part of the Company’s accounting system and that she created the spreadsheet with her calculations for purposes of the hearing to reflect her opinion of what the Beck’s owe Cristalina.⁸ The Becks, moreover, provided testimony and supporting documentation that each of the checks they sent in response to the invoices they received from the Company included a notation that the payment was for the most recently invoiced amounts.⁹

9 Having accepted the checks without disputing the Becks’ clearly manifested intent to apply their payments to the latest invoiced amount, Cristalina may not now impose a different accounting treatment for those payments. The Becks are entitled to rely on their understanding of how their payments were applied to their account, and Mr. Elliott’s calculations properly incorporate that understanding.

10 The Becks raise issues that are equally unavailing. As an initial matter, they do not expressly support or oppose Mr. Elliott’s calculations, despite being responsible for the inclusion of his report in the record. The Becks focus instead on Cristalina’s accounting and other claims of Company wrongdoing. We reject Cristalina’s accounting, rendering moot many of the Becks’ arguments. Their remaining contentions lack merit and do not change our decision to adopt Mr. Elliott’s calculations and conclusion.

⁶ TR 107:3-7.

⁷ Exh. TF-9; TR 274-86 (Farmer).

⁸ TR at 275:15-276:6 (Farmer).

⁹ TR at 115:15-116:10 (Beck); Exh. GB-1.

- 11 The Becks contend that the applicable statute of limitations is three years, not six. The only support they offer for that position is the statement, “Three years is the ‘default’ limitation period under of [*sic*] Chapter 4, Title 16 Revised Code of Washington.”¹⁰ This argument is not even facially plausible. The default statute of limitations under RCW Title 4, Chapter 16, is two years, not three.¹¹ The only basis for using a three year limitation period would be if this were an “action upon a contract or liability, express or implied, which is not in writing, and does not arise out of any written instrument.”¹² The statute expressly provides, however, that limitation period does not apply to actions on accounts receivable,¹³ which is indisputably the type of action here. Actions on accounts receivable have a six year limitation period.¹⁴ Mr. Elliott’s calculations accurately reflect that period.
- 12 The Becks also claim that Cristalina’s billing practices violate Washington’s Usury Act, RCW Chap. 19.52, and Consumer Protection Act, RCW Chap. 19.86. We do not – indeed cannot – address these claims. The Commission lacks jurisdiction to enforce these or any other statutes that the legislature has not expressly authorized the Commission to enforce.¹⁵
- 13 In addition, the Becks contend that the Company’s bills are inconsistent with its tariff. We agree. Exhibit SE-1 supports a finding that Cristalina has repeatedly billed the Becks in violation of the Company’s tariff.¹⁶ The Becks’ remedy for such violations, however, is limited to correcting the amount they owe Cristalina.¹⁷ We do so by

¹⁰ Beck Memorandum and Closing Arguments at 6, line 15.

¹¹ RCW 4.16.130.

¹² RCW 4.16.080(3).

¹³ *Id.*

¹⁴ RCW 4.16.040(2).

¹⁵ The Commission, therefore, has no authority to award damages or attorneys fees as the Becks further request. We also observe that the Consumer Protection Act expressly does not apply to actions or transactions the Commission regulates. RCW 19.86.170.

¹⁶ Exh. SE-1 at 23-24.

¹⁷ The Commission may penalize a company for violations of any Commission order, rule, or requirement, which includes billing for charges or amounts not authorized in the company’s tariff. *E.g.*, RCW 80.04.380. Any such penalties, however, are paid to the state, not to private individuals. RCW 80.04.400.

adopting Mr. Elliott's determination of the past due amounts the Becks currently owe plus additional late fees calculated consistent with the Company's tariff. We do not believe that any further action is warranted at this time.

- 14 The Commission, therefore, finds that the Becks owe Cristalina \$3,423.78 plus a two percent late fee compounded monthly for each month the past due balance remains unpaid after June 15, 2013. Neither party proposed any terms or conditions under which the Becks should pay the amount the Commission determines is due. Accordingly, we require Cristalina to calculate the additional late fees the Becks have incurred on the \$3,423.78 they have owed since June 15, 2013, consistent with the provisions of the Company's tariff, and notify the Becks and the Commission of the total amount the Becks owe in past due charges and late fees as of the date of that notice. The Becks must pay that amount within 30 days after that date.

FINDINGS AND CONCLUSIONS

- 15 (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, and practices of public service companies, including water companies, and has jurisdiction over the parties and subject matter of this proceeding.
- 16 (2) Cristalina is a water company subject to Commission regulation.
- 17 (3) Mike and Glenda Beck obtain water service from Cristalina and have received such service since at least October 1, 2007.
- 18 (4) The Becks owe Cristalina \$3,423.78 in past due amounts for the water service they received from October 1, 2007, until June 15, 2013, including late fees authorized under the Company's tariff.
- 19 (5) Pursuant to the provisions of its tariff, Cristalina is entitled to late fees of two percent per month, compounded monthly, on the \$3,423.78 the Becks owed from June 15, 2013, until the Becks pay the full amount that is due.
- 20 (6) The Commission should require Cristalina to compute the late fees on the unpaid balance of \$3,423.78 since June 15, 2013, and notify the Becks and the Commission of that total.

- 21 (7) The Becks should be required to pay Cristalina \$3,423.78, plus accumulated late fees since June 15, 2013, calculated consistent with the Company's tariff, within 30 days after Cristalina notifies the Becks and the Commission of the total amount due as of the date of that notice.

ORDER

THE COMMISSION ORDERS that

- 22 (1) Mike and Glenda Beck owe Cristalina, LLC, \$3,423.78 in past due amounts and late payment fees for the water service the Becks received since October 1, 2007, plus a two percent late fee compounded monthly for each month the past due balance remains unpaid after June 15, 2013.
- 23 (2) Cristalina, LLC, must compute the late fees on the unpaid balance of \$3,423.78 that have accrued pursuant to the provisions of the Company's tariff since June 15, 2013, and must notify the Becks and the Commission of that total within 30 days after the effective date of this Order.
- 24 (3) Mike and Glenda Beck must pay Cristalina, LLC, \$3,423.78, plus accumulated late fees since June 15, 2013, calculated consistent with the provisions of the Company's tariff, within 30 days after Cristalina, LLC, notifies the Becks and the Commission of the total amount of past due charges and late fees that are due as of the date of that notice.
- 25 (4) The Commission retains jurisdiction over this matter to enforce the terms of this Order.

DATED at Olympia, Washington, and effective August 4, 2014.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

Gregory J. Kopta
Administrative Law Judge

NOTICE TO PARTIES

This is an Initial Order. The action proposed in this Initial Order is not yet effective. If you disagree with this Initial Order and want the Commission to consider your comments, you must take specific action within the time limits outlined below. If you agree with this Initial Order, and you would like the Order to become final before the time limits expire, you may send a letter to the Commission, waiving your right to petition for administrative review.

WAC 480-07-825(2) provides that any party to this proceeding has twenty (20) days after the entry of this Initial Order to file a *Petition for Administrative Review*. What must be included in any Petition and other requirements for a Petition are stated in WAC 480-07-825(3). WAC 480-07-825(4) states that any party may file an *Answer* to a Petition for review within ten (10) days after service of the Petition.

WAC 480-07-830 provides that before entry of a Final Order any party may file a Petition to Reopen a contested proceeding to permit receipt of evidence essential to a decision, but unavailable and not reasonably discoverable at the time of hearing, or for other good and sufficient cause. No Answer to a Petition to Reopen will be accepted for filing absent express notice by the Commission calling for such answer.

RCW 80.01.060(3) provides that an Initial Order will become final without further Commission action if no party seeks administrative review of the Initial Order and if the Commission fails to exercise administrative review on its own motion.

One copy of any Petition or Answer filed must be served on each party of record with proof of service as required by WAC 480-07-150(8) and (9). An Original and **five (5)** copies of any Petition or Answer must be filed by mail delivery to:

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Washington Utilities and Transportation Commission
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