

RECIP_ID NAME..... ADDRESS.....

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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	OTHELLO	WA 99344
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		

MAR 2 2 1995

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARINE VIEW HEIGHTS)	
HOMEOWNERS' ASSOCIATION,)	DOCKET NO. UW-940325
)	
Complainant,)	ORDER AFFIRMING AND
)	ADOPTING INITIAL ORDER
v.)	GRANTING COMPLAINT IN PART
)	AND DENYING AND DISMISSING
MARINE VIEW HEIGHTS)	COMPLAINT IN PART
INCORPORATION,)	
)	
Respondent.)	
.)	

PROCEEDINGS: On March 7, 1994, a formal complaint was filed against Marine View Heights Incorporation ("respondent" or "company") by the Marine View Heights Homeowners Association ("complainant" or "homeowners association"), alleging that the company was violating Department of Health and Commission laws and regulations with respect to the quality and quantity of water provided and with respect to billing practices, notice to customers, and other specified business practices.

The Commission designated an Administrative Law Judge from the Utilities and Transportation Subdivision of the Office of Administrative Hearings to preside at hearings in the matter. A prehearing conference was held on June 15, 1994. The parties agreed to certain facts.

Hearings were held on June 15, 1994, on July 25 and 26, 1994, and on September 13, 1994, before Administrative Law Judge Lisa A. Anderl. Complainant Marine View Heights Homeowners Association was represented at hearing by Marion Snelson, authorized representative. Marine View Heights Incorporation appeared by Fred Barker, Jr., who identified himself as the owner of the respondent. The Staff of the Commission was represented by Ann Rendahl, Assistant Attorney General. Briefs were due on November 22, 1994. Only the complainant and Commission Staff filed briefs.

On December 14, 1994, Administrative Law Judge Lisa A. Anderl of the Office of Administrative Hearings entered an initial order. The order would grant the complaint in part, and would deny and dismiss the complaint in part. The initial order was served on all parties of record.

No petition for administrative review was filed within the 20 days allowed by rule for filing.

THE COMPLAINT: The complaint alleged violations of numerous Department of Health statutes and regulations relating to water quality, quality monitoring, and quantity. It alleged violations of numerous Commission consumer rules, including WAC 480-110-041, relating to maintaining a business office, a regular telephone number, providing adequate means for contacting the company, and providing customers with a rights and responsibilities guide; WAC 480-110-101, relating to form and content of bills; WAC 480-110-076, relating to service responsibilities; WAC 480-110-096, relating to advising dissatisfied customers of the availability of the Commission for review of complaints or disputes; and WAC 480-110-071, relating to disconnection notices. It alleged that the respondent was engaging in rate discrimination in violation of RCW 80.04.440.

The complainant asked that the respondent be ordered to improve its service. In the event of noncompliance with Commission order, the complainant requested that the Commission ask the Department of Health to petition the court to place the respondent in receivership. The complainant requested that the respondent be ordered to make a pro rata refund of rates pursuant to RCW 80.04.110(5) for substandard water delivered from November 1992 until the water complies with state drinking water standards. The complainant 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 INITIAL ORDER: The initial order would find that the company supplied water that did not meet state drinking water standards during all months of 1993 except February, May, and June. The system tested positive for total coliform bacteria, a non-acute violation, in each of those months, and the company did not always perform required follow-up tests and did not always properly notify customers of the violations. The Department of Health classified the company's operating permit as a category red, which caused Grant County to place a moratorium on building permits in Marine View Heights. Since January 1994 the system has been making water quality tests as required, and the building moratorium has been lifted. The system has been and continues to be operated without an approved chlorinator. The company has failed and continues to fail to have a Water System Plan approved by the Department of Health.

The initial order would find that the company issued bills during 1993 and 1994 which were incorrect and/or incomplete and in violation of WAC 480-110-101. The company has effected a significant improvement in billing practices, and no violations are established after February 1994.

The initial order would find that the company improperly threatened to disconnect customers for nonpayment of bills when the customers were current, disconnected a customer without proper notice, has not disconnected other customers who are seriously delinquent in their payments, and has improperly provided service at no charge to its employees. Most of the billing and collection issues have been resolved and are not ongoing, although questions regarding improper and/or discriminatory billing practices are not fully resolved.

The initial order would find that the record supports the complaint's allegations concerning the company's office, hours, and responsiveness to customer complaints, but that most of the complaints have been resolved and are not recurring.

The initial order would find that the company is not in compliance with the provisions of RCW 80.12.020 requiring Commission approval of transfers of ownership.

The initial order would conclude that the history of this company's violations, its unkept promises to correct or improve problems, and the extraordinary effort required by Commission Staff, the Department of Health, and others, warrant a follow-up hearing in this matter at which the company should be required to establish that it has complied with the Commission's order. It would conclude that the company's 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.

The initial order would order specified improvements to respondent's system, and would order specified improvements in respondent's services and practices.

The initial order would not order refunds to customers for rates paid during the period that substandard water was delivered; it would conclude that substandard water established by proof of non-acute violations should not form a basis for a refund of rates. The initial order would order the respondent to pay for the cost incurred by the complainant for a water quality test in the amount of \$70.00. The initial order does not recommend any penalties at this juncture, but does recommend that the Commission consider penalties in connection with the follow-up hearing in this matter if the company fails to demonstrate substantial compliance with this order.

COMMISSION: The initial order's findings are supported by the evidence of record. The relief it proposes is appropriate, given the extraordinary record of service failures and violations of law and regulation, the improvements the company has made in water quality and service since the complaint was filed, and the uncertainty regarding the company's ability or willingness to bring its service into full compliance with law and Commission rules. In accordance with RCW 34.05.464 and WAC 480-09-780(6), the Commission accepts the findings of fact and conclusions of law, and adopts the Initial Order for purposes of this proceeding.

The Commission has not considered whether there might be circumstances when it would be appropriate to base an order for the refund of rates pursuant to RCW 80.04.110(5) on non-acute violations of the allowable maximum contaminant levels of coliform bacteria, and its adoption of the initial order is not an expression of its view on the question.

O R D E R

THE COMMISSION ORDERS That the Initial Order is affirmed and adopted for purposes of this proceeding. In so doing,

THE COMMISSION FURTHER ORDERS That the respondent, Marine View Heights Incorporation, shall make the following improvements in its service and system and take the following action:

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 this order.

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

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

4. The respondent shall improve responsiveness to customer contacts by returning telephone calls from customers within 24 hours and by responding to correspondence from customers 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 to perform that function.

6. The respondent shall, within 30 days of the date of this order, 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 this order, provide the Commission with a customer billing summary covering the six month period immediately prior to the date of this order, showing customer name, the date and amount billed, the date and amount of payment received, and the action taken, if any, on each delinquent or past due account.

8. The respondent shall appear at a hearing that will be scheduled in this matter approximately 60 days after this order, and shall demonstrate the extent to which it has complied with the terms of this order.

THE COMMISSION FURTHER ORDERS That the complaint in Docket No. UW-940325 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.

THE COMMISSION FURTHER ORDERS That the complaint in Docket No. UW-940325 is denied as to the request for refunds pursuant to RCW 80.04.110(5).

THE COMMISSION FURTHER ORDERS That jurisdiction is retained to effectuate the provisions of this order.

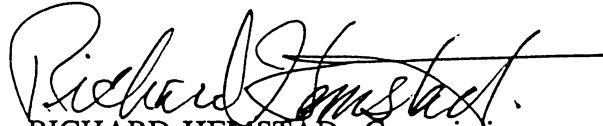
THE COMMISSION FURTHER ORDERS That a hearing shall be held in this matter approximately 60 days after this order to consider the company's compliance with the requirements of this order. Failure of the company to demonstrate substantial compliance may result in a request by the Commission to the Department of Health to petition the court to place the company in receivership.

DATED at Olympia, Washington, and effective this *22nd*
day of March 1995.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION



SHARON L. NELSON, Chairman



RICHARD HEMSTAD, Commissioner



WILLIAM R. GILLIS, Commissioner

NOTICE TO PARTIES:

This is a final order of the Commission. 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 480-09-810, or a petition for rehearing pursuant to RCW 80.04.200 or RCW 81.04.200 and WAC 480-09-820(1).