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June 28, 1995

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

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

Dear Mr. McLellan:

Enclosed please find the original and 19 copies of the Closing Statement of Commission Staff and Motion to Strike in the above-referenced matter. Please accept the same for filing.

Very truly yours,

Ann E. Rendahl
Assistant Attorney General

dc

Enclosure

cc\enc: Parties of Record

95 JUN 28 10:07

BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARINE VIEW HEIGHTS)
HOMEOWNERS ASSOCIATION,)
)
Complainant,)
)
v.)
)
MARINE VIEW HEIGHTS)
INCORPORATION,)
)
Respondent.)
_____)

DOCKET NO. UW-940325

CLOSING STATEMENT OF
COMMISSION STAFF AND
MOTION TO STRIKE

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I. CLOSING STATEMENT

The Washington Utilities and Transportation Commission ("Commission") held a hearing in the above matter on June 8, 1995, in Moses Lake, Washington, to determine if Marine View Heights Incorporation ("the Company") was in compliance with the Commission's Order of March 22, 1995. The March 22, 1995, Order arose from a complaint filed by the Marine View Heights Homeowner's Association ("the Homeowners") asserting that the Company was not in compliance with Department of Health ("Department") and Commission rules concerning water quality and service issues.

In its March 22, 1995, Order, the Commission directed the Company to do the following seven things: 1) Notify customers of contaminant level violations, and send copies of all water quality test reports to the Commission for a one year period; 2) Provide the Department with the "necessary plans for its chlorinator" within 30 days of the date of the Order; 3) Post a sign

indicating the water system's business office within 30 days of the date of the Order; 4) Improve responsiveness to consumer contacts; 5) Employ a certified water operator at all times and notify the Commission of the name of any new operator; 6) File a petition with the Commission within 30 days of the date of the Order for approval of the transfer of ownership from Mr. Sahli to Mr. Barker; and 7) Provide the Commission within 30 days of the date of the Order with a billing summary covering the six month period prior to the service date of the Commission's Order. In addition, the Commission ordered the Company to appear at a hearing and demonstrate its compliance with the Order.

The Company appeared at the hearing through Mr. Ron Baker. Despite the Commission's directive in the Order, Mr. Baker was only able to testify to the Company's actions in supplying the Department with information about the proposed chlorinator. Tr. 471-475. Mr. Baker did not know whether the Company had complied with any other requirement.

Testimony from Commission Staff witnesses Diana Otto and Fred Ottavelli clarified that the Company had forwarded to the Commission water quality test results taken since the order was issued, in response to the Commission's first directive. Tr. 513-516; Ex. 44. Department witness Craig Riley testified that there have been no violations of Department water quality rules requiring notification of customers. Tr. 497-498, 501-503. In addition, testimony from Ms. Otto, Mr. Ottavelli, and Mr. Riley indicates that the Company appears to have substantially complied with the other specific requirements in the March 22, 1995, Order. See Tr. 498-499, 508-510, 517, 519, 520, 535, 538; Exs. 39, 40, 41, 45.

However, the Commission Staff provided testimony at the hearing to clarify the record, not to bear the Company's burden to establish its compliance with the March 22, 1995, Order.

The March 22, 1995, Order clearly states that the Company must demonstrate its compliance with the Order. The Administrative Law Judge presiding over the hearing stated on the record that ". . . the burden, I feel, is on the water system to establish compliance with the terms of the order." Tr. 490.

By failing to provide an informed representative at the hearing, the Company has not met its burden under the Commission's Order. Throughout the hearings in this matter, the Company has consistently failed to show an interest in the operations of the Company during hearings in this matter. In addition, it appears from the testimony at the hearing, that the Company's certified water operator may have falsified his application. Tr. 546.

Under RCW 80.28.040, the Commission may request the Department to petition the court to place a water company into receivership where a water company fails to comply with a Commission order within the required time period. Thus, in view of the Company's failure to meet its burden at the hearing as required in the Order and the Company's apparent carelessness toward the water system and its customers, the Commission Staff recommends the Commission request that the Department petition the court to place the water company into receivership pursuant to RCW 80.28.040.

II. MOTION TO STRIKE

The Company attached to its closing statement a copy of a June 21, 1995 earnest money agreement signed only by Mr. Barker, a copy of the Commission's March 22, 1995, Order with handwritten notations, and a copy of a June 21, 1995 letter from Harms & Associates to the Department. None of these documents were offered or entered into the record during the hearing as exhibits. It would be inappropriate for the Commission to consider these documents in

reaching a decision in this matter. Therefore, Staff moves to strike the documents attached to the Company's closing statement.

In addition, Staff moves to strike certain portions of the Company's closing statement as not based on testimony and evidence in the record. Specifically, Staff moves to strike the last paragraph on page one of the letter which reads "The respondent wishes to note that the final Comprehensive Water Plan will be submitted to the Department of Health prior to September 1, 1995." The issue of the Company's comprehensive water plan arose during the hearing. Tr. 472, 480, 499-500. The Company had an opportunity to present this information during the hearing and did not. Thus, the information should be stricken from the Company's closing statement.

Staff also moves to strike the following sentence appearing in the first paragraph of the second page of the letter: "Mr. Barker, Owner/Operator is making arrangements for a replacement." Again, the Company had an opportunity to present such information during the hearing and did not do so.

Finally, Staff moves to strike the second paragraph on the second page concerning the Earnest Money Agreement and arrangements by the Homeowner's to purchase the water system. Some information concerning the purchase of the water system by the Homeowners was provided during the hearing. See Tr. 475-476. However, the majority of the information in the second paragraph is not in the record and should be stricken.

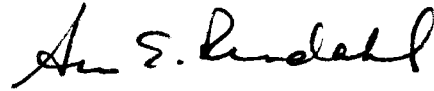
The Company has included the above mentioned documents and information as a part of its request that the Commission "dismiss or place this order in abeyance" while the proposed sale to the Homeowners proceeds. The proposed sale will occur at some time in the future, yet the Homeowners and other customers require water that is safe to drink and a water system that is

responsive to their needs now, not at some time in the future. The Staff requests that the Commission act now to request the Department to petition the court to place the water system into receivership to resolve the problems of the water system now, rather than at some point in the future.

DATED This 28th day of June, 1995.

Respectfully submitted,

CHRISTINE O. GREGOIRE
Attorney General



ANN E. RENDAHL
Assistant Attorney General

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a true copy of the foregoing document upon the Marine View Heights Homeowners Association, c/o Marion Snelson, 8453 Highland Drive, SE, Othello, WA 99344, James B. Gregg, President, Marine View Heights Homeowner's Association, P.O. Box 1158, Moses Lake, WA 98837, Marine View Heights, Incorporation, c/o W. Ron Baker, Boundary Engineering Inc., P.O. Drawer "O", 101 W. Broadway, Moses Lake, WA 98837, and Fred Barker, Jr., Marine View Heights, Inc., 6897 SR 262 SE, Othello, WA 99344 by depositing a copy of the Closing Statement of Commission Staff and Motion to Strike in the United States mail, with first class postage prepaid.

Dated This 28th day of June, 1995.


ANN E. RENDAHL