

JUL 1 4 1995

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARINE VIEW HEIGHTS	)	
HOMEOWNERS' ASSOCIATION,	)	
	)	DOCKET NO. UW-940325
Complainant,	)	
	)	FINDINGS OF FACT,
v.	)	CONCLUSIONS OF LAW AND
	)	INITIAL ORDER RECOMMENDING
MARINE VIEW HEIGHTS	)	THAT THE COMMISSION REQUEST
INCORPORATION,	)	THE DEPARTMENT OF HEALTH
	)	TO PETITION THE COURT
Respondent.	)	TO PLACE RESPONDENT IN
	)	RECEIVERSHIP
.....	)	

A hearing was held in this matter in Moses Lake on June 8, 1995, before Administrative Law Judge Lisa A. Anderl of the Office of Administrative Hearings. The parties submitted written statements by June 30, 1995.

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  
6897 SR 262 SE  
Othello, Washington 99344  
  
Represented by W. Ron Baker, engineer  
101 West Broadway  
Moses Lake, Washington 98337

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

MEMORANDUM

This is a formal complaint by the Marine View Heights Homeowners' Association (Homeowners), against Marine View Heights Incorporation (company). The complaint went to hearing in 1994 and on March 22, 1995, the Commission entered its final order in this matter. The order found that the company had been in violation of Commission rules and laws regarding water quality and customer service issues.

The final order directed the company 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 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 in 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.

The final order also directed the company to appear at a hearing to be scheduled approximately 60 days after the final order. At that hearing the company "shall demonstrate the extent to which it has complied with the terms of this order." That hearing was scheduled and held in Moses Lake on June 8, 1995.

#### THE HEARING

The company appeared through Ron Baker, an engineer who has done work for the company regarding its chlorinator and its comprehensive water plan. As such, Mr. Baker was able to testify with first hand knowledge about the requirement set forth in paragraph 2, regarding the chlorinator. From his testimony, it is

clear that the company supplied the Department of Health with a proposal for a chlorinator within 30 days of the final order. However, it appears that the plans which were to be submitted under the terms of the final order were the plans for the chlorinator which was already in place and operating. The Department did not have those documents and required them as a part of its own administrative action. Nonetheless, the company did make an effort to comply with this provision by submitting proposed plans in April (Exhibit 40). The requirement that the plans be for the existing chlorinator may not have been clear from the terms of the earlier orders.

Mr. Baker was not able to testify from personal knowledge about the company's compliance with the other requirements of the final order. The absence of Mr. Barker and Mr. Lease, both of whom appeared as representatives of the company and as witnesses during prior hearings, was unexplained except for the mention that Mr. Barker was in Arizona.

Testimony from witnesses for Commission Staff established that the company is thus far in compliance with paragraphs 1 (water testing) and 6 (the petition to transfer ownership) of the requirements listed above. That testimony also established that the Commission Staff has been told by a company employee that the company is in compliance with paragraph 3 (posting a sign). Further, Ms. Otto believes the company to be in compliance with paragraph 4 (responsiveness to customer contacts).

Regarding paragraph 5, the testimony at the hearing indicated that Mr. Lease was still the water operator for the system, but that he was planning on quitting. There was a question about whether he falsified his application for certification, but it cannot be concluded from this record that he did. The final order in this matter recognizes him as the certified water operator for the system. Thus, it appears that this requirement is, as of the date of hearing, being met.

Paragraph 7 required the company to submit a billing summary showing the 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. The Commission Staff verified that a summary had been submitted, but that not all of the required information was provided. Specifically, the summary does not show either the date and amount billed or the date and amount paid on a monthly basis. Staff explained that, according to the company, the computer program would record the rate as \$0 if there was no balance owing.

WRITTEN STATEMENTS

After the hearing, the parties submitted written closing statements. The company, through Mr. Baker, argued that the company was in substantial compliance with all seven requirements. Mr. Baker also noted that the Homeowners' Association is in negotiations to buy the system and that the Commission should take no action in this matter while the negotiations are pending.

Commission Staff argues that the burden was on the company to establish compliance with the final order and that the company failed to do so. Staff points out that its testimony at the hearing was for the purpose of clarifying the record, not carrying the company's burden. Staff notes that the company failed to present a witness with personal knowledge about six of the seven requirements. Staff argues that the company has consistently failed to show an interest in the operations of the water system, and that the failure of the company to provide an informed representative at the hearing is just another example of this disregard of the company's operations. Commission Staff asks that the Commission request the Department of Health to petition the court to place the water company in receivership.

Commission Staff also filed a motion to strike those portions of the company's closing statement which contain information not based on testimony or evidence in the record and those documents attached to the company's closing statement which were not offered or admitted as exhibits in this proceeding.

The Homeowners' Association argues that the company failed to meet its burden of establishing compliance with the terms of the Commission's final order. The Homeowners' Association argued specifically that the billing summary submitted did not comply with the terms of the order and generally that the service and water quality provided by the system are sub-standard. The Homeowners' Association asks the Commission to request the Department of Health to petition the court to place the company in receivership. The Association states that it is ready to act as receiver and operate the system properly.

DISCUSSION

The Staff's motion to strike is well taken and is granted. The company's closing statement contains documents not in this record and statements not based on testimony or evidence in the record. Those documents and statements will not be considered in this matter.

The central issue is whether the company has established compliance with the terms of the Commission's March 22, 1995 final order. From the information set forth above, it is abundantly clear that the company has established almost nothing. The company sent a representative to the hearing who had virtually no first hand knowledge of the day to day operations of the company. He was able to testify from personal knowledge only about the chlorinator, and even on that issue the testimony establishes more of a sincere effort rather than actual compliance. In short, the company has failed to establish compliance with the terms of the order.

The evidence offered by Commission Staff does establish that many of the terms of the order have been met or that some efforts have been made to comply with those terms. However, the undersigned agrees with Staff that they should not be considered to have met the company's burden.

The company's past operating problems are directly linked to the company's unwillingness or inability to bring itself into compliance with Commission rules and laws. The Commission cited uncertainty about the company's willingness or ability to bring its service into full compliance when it adopted the recommendations in the initial order, including the requirement for this additional hearing where the company would (again) be given the opportunity to show that it has turned itself around. Instead, the Commission Staff presented most of the evidence that the company was expected to produce -- an indication that the company requires continued supervision, monitoring, and general oversight far in excess of what should be required for a company willing and able to comply with Commission rules and laws.

In light of this, the recommendations of Commission Staff and the Homeowners' Association will be adopted. This initial order recommends that the Commission request the Department of Health to petition the court to place the company in receivership. As noted by Staff, the customers of the system deserve water that is safe to drink and a water system that is responsive to their needs now, not some time in the future. This order concludes that the company has simply not demonstrated that it is capable of providing either one.

#### 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. The parties appeared at a hearing on June 8, 1995, in order to allow the company an opportunity to establish the extent to which it had complied with the terms of the Commission's March 22, 1995 final order.

4. The testimony and evidence offered by the company establishes that it submitted plans for a proposed chlorinator to the Department of Health in April this year. This may be considered substantial compliance with paragraph 2 of the final order.

5. The company was not able to establish compliance with any of the other requirements of the final order.

6. Testimony and evidence offered by Commission Staff establishes that some of the other requirements of the final order have been met, as discussed in the Memorandum portion of this order. Specifically, the requirements in paragraphs 1 and 6 have been met. The requirements in paragraphs 3, 4, and 5 appear to have been met. The requirement in paragraph 7 is not satisfied by the billing summary offered in evidence as exhibit 41.

#### 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 company has failed to establish compliance with the terms of the Commission's March 22, 1995 final order in this matter.

3. Pursuant to RCW 80.28.040, the Commission may request the Department of Health to petition the court to place a water company into receivership if that company fails to comply with a Commission order. The Commission's March 22, 1995 order stated that "Failure of the company to demonstrate substantial compliance [with the requirements of the order] may result in a request by the Commission to the Department of Health to petition the court to place the company in receivership." Such a remedy is now appropriate in this case.

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.

ORDER

IT IS HEREBY ORDERED That the Commission should request the Department of Health to petition the court to place the company in receivership.

Jurisdiction is retained to effectuate the provisions of this order.

DATED at Olympia, Washington, and effective this 14th day of July, 1995.

OFFICE OF ADMINISTRATIVE HEARINGS



LISA A. ANDERL  
Administrative Law Judge