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BEFORE THE WASHINGTON UTILITIES AND

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TRANSPORTATION COMMISSION

3

4 In re Penalty Assessment No.) Docket No. UW-990527
UW-990527)

5

) Volume I

6 HARBOR SPRINGS WATER CO., INC.) Pages 1-71

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A hearing in the above matter was

10 held on July 13, 1999, at 9:53 a.m., at 1300

11 Evergreen Park Drive Southwest, Olympia, Washington,

12 before Administrative Law Judge LOIS ELLEN GOLD.

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14

The parties were present as

15 follows:

16

THE COMMISSION, By Mary M.

17 Tennyson, Senior Assistant Attorney General, 1400
Evergreen Park Drive, S.W., P.O. Box 40128, Olympia,
Washington 98504-0128.

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HARBOR SPRINGS WATER COMPANY,

19 INC., by Dennis Lozner.

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22 Barbara L. Spurbeck, CSR

23 Court Reporter

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1 JUDGE GOLD: Good morning. As I mentioned.
2 I'm Lois Ellen Gold, the Administrative Law Judge
3 assigned to this case, and the hearing will now
4 please come to order.

5 On the 22nd of June, the Washington
6 Utilities and Transportation Commission set this
7 docket, Docket Number UW-990527, for hearing on this
8 date, the 13th of July, 1999, at the Commission
9 offices in Olympia, Washington, at 9:30 in the
10 morning. Due and timely notice has been provided and
11 afforded to all interested parties.

12 And this hearing concerns the penalty
13 assessment issued by this Commission on the 19th of
14 April, 1999, against Harbor Springs Water Company,
15 Incorporated, in the amount of \$6,200. The \$6,000
16 was assessed for failure to file past due annual
17 report for the year 1997, which is a violation of RCW
18 80.04.080 and WAC 480-110-031. A penalty of \$200 was
19 assessed for failure to provide the Commission with
20 the company's current telephone number, a violation
21 of WAC 480-110-040.

22 On the 4th of May, Mr. Lozner, President of
23 Harbor Springs Water Company, sent a letter to the
24 Commission requesting mitigation of penalties. In
25 the order of the 22nd of June, the Commission

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1 provided that the petition of Harbor Springs for
2 mitigation of penalty be held in abeyance, and that a
3 brief adjudicative proceeding be set on the
4 Commission's own motion, which is this, pursuant to
5 RCW 34.05.482 and WAC 480-09-500.

6 And the purpose of this proceeding is to
7 consider such testimony and evidence to reach a sound
8 decision on the petition for mitigation of penalties
9 and to receive recommendations as to what actions are
10 necessary for Harbor Springs to cure previous
11 instances of noncompliance with the state law and
12 Commission rules and to maintain future compliance in
13 such a way that these issues don't arise again.

14 So that is a brief overview of why we're
15 here, and I would like at this time to take
16 appearances. What that means, Mr. Lozner, is what I
17 explained off the record. I would like you to state
18 your name, your address, telephone number, fax and
19 e-mail, if you have it, for the record, please.

20 MR. LOZNER: My name is Dennis John Lozner,
21 and I currently reside at 2450 Koa, K-o-a, Honolulu,
22 Hawaii. I do not have a telephone number in my name,
23 but I can be reached here in the Northwest at my
24 brother's house. His name is Dale Lozner, and the
25 telephone number there is 425 area code, 413 --

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1 MS. POTTER: -- 9433.
2 MR. LOZNER: -- 9433.
3 JUDGE GOLD: Do you have a fax or an e-mail
4 address that we can reach you?
5 MR. LOZNER: Yes. The fax number, that can
6 also be used as a fax number, the same number.
7 JUDGE GOLD: The telephone number which you
8 previously stated?
9 MR. LOZNER: The 425 number.
10 JUDGE GOLD: You have no telephone, no fax,
11 and no e-mail in Honolulu?
12 MR. LOZNER: No, I do not.
13 JUDGE GOLD: I'd like to take appearances
14 for Staff, please.
15 MS. TENNYSON: Thank you. My name is Mary
16 M. Tennyson, I am a Senior Assistant Attorney
17 General. My address is 1400 South Evergreen Park
18 Drive, S.W., Post Office Box 40128, Olympia,
19 Washington, 98504-0128. My telephone number is
20 360-664-1220. My fax number is 360-586-5522. My
21 e-mail address is mtennyso@wutc.wa.gov. I'm here
22 representing Commission Staff in this case.
23 JUDGE GOLD: Thank you. For Staff, please.
24 MS. CARUSO: I'm Carolyn A. Caruso, and I
25 work for the Commission. My address is 1300 South

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1 Evergreen Park Drive, S.W., P.O. Box 47250, Olympia,
2 Washington, 98504-7250. My phone number is
3 360-664-1244. And the fax number is 360-586-1150.

4 JUDGE GOLD: Thank you. Please.

5 MR. KERMODE: My name's Dan Kermode,
6 K-e-r-m-o-d-e. I work for the Washington Utilities
7 and Transportation Commission, 1300 South Evergreen
8 Park Drive, S.W., Olympia, Washington. 360-664-1253
9 is my phone number. dkermo@wutc.wa.gov is my e-mail.

10 JUDGE GOLD: Thank you.

11 MR. ECKHARDT: I'm Gene Eckhardt,
12 E-c-k-h-a-r-d-t. I'm the Assistant Director of Water
13 and Transportation for the Washington Utilities and
14 Transportation Commission. Address is 1300 South
15 Evergreen Drive, S.W., Olympia, Washington,
16 98504-7250. My phone number's 360-664-1249. My
17 e-mail address is geckhard@wutc.wa.gov.

18 JUDGE GOLD: Thank you. Now, I would like
19 to, before we proceed, to admit the prefiled
20 exhibits. Are there any preliminary matters that
21 need to be discussed on the record?

22 MS. TENNYSON: The Commission does not have
23 any.

24 JUDGE GOLD: The Commission does not have
25 any. Mr. Lozner?

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1 MR. LOZNER: No.

2 JUDGE GOLD: Then I'm going to go to the
3 matter of the exhibits that were handed to me and
4 marked prior to going on to the record.

5 Mr. Lozner has presented to me a one-page
6 letter to him from a David Mickelson, and that has
7 been marked as an Exhibit A-50. Are there any
8 objections to the admission of this particular
9 document?

10 MS. TENNYSON: No.

11 JUDGE GOLD: Then we will mark that as
12 accepted and we will admit it. On behalf of Staff,
13 Ms. Tennyson has handed me, prior to going onto the
14 record, some 22 documents, marked C-1 through C-22,
15 some of which are multi-paged, and I have given them
16 the numbers of C-1 through C-22. And I'm going to
17 read for the record exactly what each exhibit is.

18 C-1 is a contract review form. Is there
19 any objection to admission of this document?

20 MR. LOZNER: No.

21 JUDGE GOLD: Okay. And the document is
22 admitted. C-2 are notes by Patsy Dutton. Are there
23 any objections to the entry of this?

24 MR. LOZNER: No.

25 JUDGE GOLD: C-2 is admitted. C-3 is a

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1 letter to Denny Lozner from Patsy Dutton, the 8th of
2 May, 1998. Any objection to this document?

3 MR. LOZNER: No.

4 JUDGE GOLD: C-3 is admitted. C-4, e-mail
5 from Pat Dutton to Jim Ward, June 15th, 1998, reply
6 e-mails from Jim Ward to Pat Dutton, 6/15/98 and
7 6/22/98. Are there any objections to admission of
8 these documents?

9 MR. LOZNER: No.

10 JUDGE GOLD: C-4 is admitted. C-5 are
11 printouts from annual report tracking system, four
12 pages. Is there an objection to admission of this
13 document?

14 MR. LOZNER: No.

15 JUDGE GOLD: This document, C-5, is there
16 admitted. Exhibit 6, e-mail correspondence between
17 Pat Dutton and Kim Dobyys, dated June 19, 1998, to
18 June 30th, 1998. Any objection to that Exhibit, C-6?

19 MR. LOZNER: No.

20 JUDGE GOLD: C-6 is admitted. C-7, letter
21 from Patsy Dutton to Denny Lozner, dated 13th of
22 July, 1998. Any objection to the admission of this
23 exhibit?

24 MR. LOZNER: No.

25 JUDGE GOLD: C-8, copy of letter from Patsy

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1 Dutton to Denny Lozner with notations.

2 MR. LOZNER: No.

3 JUDGE GOLD: I hear no objection to the
4 admission of that. C-9, four pages from 1996 annual
5 report form for Harbor Springs Water Company. Any
6 objection to the admission of C-9?

7 MR. LOZNER: No.

8 JUDGE GOLD: C-9 is admitted. C-10, four
9 pages from 1997 annual report form for Harbor Springs
10 Water Company. Any objection to the admission of
11 C-10?

12 MR. LOZNER: No.

13 JUDGE GOLD: C-10 is admitted. C-11,
14 e-mail from Jim Ward to Pat Dutton, forwarded to
15 Carolyn Caruso. Is there an objection to admission
16 of C-11?

17 MR. LOZNER: No.

18 JUDGE GOLD: C-11 is admitted. C-12,
19 letter from Carole Washburn to Denny Lozner, dated
20 the 11th of March, 1999, three pages.

21 MR. LOZNER: No.

22 JUDGE GOLD: There is no objection to the
23 admission of C-12. C-12 is admitted. C-13, e-mail
24 correspondence between Carolyn Caruso and Reynaldo
25 Dejos, regarding address and phone number for Harbor

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1 Springs Water Company. Is there an objection to the
2 admission of C-13?

3 MR. LOZNER: No.

4 JUDGE GOLD: C-13 is admitted. Letter from
5 Carole Washburn to Denny Lozner, dated the 18th of
6 March, 1999. Is there an objection to the admission
7 of C-14?

8 MR. LOZNER: No.

9 JUDGE GOLD: C-14 is admitted. C-15,
10 routing slip for penalty assessment review. Is there
11 an objection to admission of this exhibit?

12 MR. LOZNER: No.

13 JUDGE GOLD: C-15 is admitted. C-16,
14 memorandum to Gene Eckhardt and Paul Curl from
15 Carolyn Caruso, dated 12/1999. Any objection to
16 admission of C-16?

17 MS. TENNYSON: Could I -- this, I believe,
18 is dated April 2nd, 1999.

19 JUDGE GOLD: Dated April 2nd, 1999. Is
20 there an objection to the entry of C-16?

21 MR. LOZNER: No.

22 JUDGE GOLD: C-16 is admitted. C-17,
23 e-mail from Carolyn Caruso to Melinda Carruth, 2nd of
24 April, 1999, filing entry screen. Is there an
25 objection to admission of C-17?

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1 MR. LOZNER: No.

2 JUDGE GOLD: C-18, memorandum to
3 Commissioners from Paul Curl, dated the 14th of
4 April, 1999, regarding penalty assessment against
5 Harbor Springs Water Company. Is there an objection
6 to admission of C-18?

7 MR. LOZNER: No.

8 JUDGE GOLD: C-18 is admitted. C-19,
9 letter to Carole Washburn from Denny Lozner, dated
10 16th of April, 1999, received by fax April 23rd,
11 1999. Enclosed letter of April 1st, 1999, from
12 Peninsula Light Company to Harbor Springs Water
13 Company. Is there an objection to admission of C-19?

14 MR. LOZNER: I don't have that one. Which
15 one is that, again?

16 JUDGE GOLD: It's a letter to Carole
17 Washburn from Denny Lozner, dated the 16th of April,
18 1999.

19 MS. TENNYSON: Looks like this. That's in
20 your hand right there?

21 MR. LOZNER: That's the 27th. I don't have
22 any.

23 JUDGE GOLD: Well, let me take a look and
24 see what I have. C-19.

25 MS. POTTER: Here it is, here it is.

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1 JUDGE GOLD: I have the correct one.
2 MS. TENNYSON: He has found his.
3 JUDGE GOLD: Have you found yours?
4 MR. LOZNER: Yes.
5 JUDGE GOLD: Okay.
6 MR. LOZNER: No.
7 JUDGE GOLD: No objection?
8 MR. LOZNER: No objection.
9 JUDGE GOLD: Therefore, C-19 is admitted.
10 C-20, notice of penalties incurred to Harbor Springs
11 Water Company, April 19th, 1999, four pages. Is
12 there an objection to --
13 MR. LOZNER: No.
14 JUDGE GOLD: -- admission of C-20? C-20 is
15 admitted. C-21, letter to Carole Washburn from Denny
16 Lozner, dated 27th of April, 1999. Is there an
17 objection to the admission of C-21?
18 MR. LOZNER: No.
19 JUDGE GOLD: C-22, copy of annual report
20 form and instructions. Is there an objection to
21 admission of C-22?
22 MR. LOZNER: Copy of the annual report
23 form?
24 MS. TENNYSON: I haven't -- Mr. Lozner
25 doesn't have that at this point.

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1 JUDGE GOLD: He does not?

2 MS. TENNYSON: He has received it on prior
3 occasions. I didn't provide it in the packet. We've
4 asked Mr. Dejos to get us a couple more copies so we
5 can give one to Mr. Lozner and have it in the file.

6 JUDGE GOLD: All right. I think, in that
7 situation, I need to ask you, Mr. Lozner, since we're
8 having one copied for you to refresh your memory as
9 to whether you've received these previously, I think
10 I would like to bring up the issue of whether C-22 is
11 admitted at the time that he can look at it.

12 MS. TENNYSON: Certainly.

13 JUDGE GOLD: So we'll hold C-22 in abeyance
14 at this time. I think that we are more or less
15 up-to-date. Except for C-22, all prefiled exhibits
16 have been accepted. We're holding in abeyance the
17 issue of C-22 until Mr. Lozner can review an
18 identical document.

19 At this time, again, I'm going to ask if
20 there are any matters that need discussion before we
21 proceed to testimony?

22 MS. TENNYSON: No, I think we'd like to
23 proceed with the testimony first.

24 JUDGE GOLD: Okay. Mr. Lozner, I'm going
25 to ask you to make your presentation, if you would,

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1 any testimony you want to make.

2 MR. LOZNER: All right.

3 JUDGE GOLD: But if you are going to
4 present yourself as a witness, I have to swear you
5 in, sir. Is that your intent?

6 MR. LOZNER: For me to be a witness?

7 JUDGE GOLD: Yes. Are you planning to make
8 a statement or do you have a witness with you to make
9 a statement?

10 MR. LOZNER: No. I mean, I could make a
11 statement. Do I need to be a witness to make a
12 statement?

13 JUDGE GOLD: I think, since we're on the
14 record, you need to be sworn. I just want to know if
15 you had intended to present yourself or anybody else
16 as a witness? I need to have that on the record.

17 MR. LOZNER: No.

18 JUDGE GOLD: All right. Mr. Lozner has
19 stated that, at this time, he has no witness to
20 present and will not make a statement himself as a
21 witness.

22 MS. TENNYSON: Your Honor, insofar as Mr.
23 Lozner may present, in a statement form, factual
24 information, I think it would be appropriate for him
25 to be sworn.

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1 JUDGE GOLD: Yes, I agree. But my
2 understanding was that he didn't want to make any
3 statement.

4 MS. TENNYSON: Okay.

5 MS. POTTER: You do.

6 MR. LOZNER: I do.

7 MS. POTTER: You do.

8 JUDGE GOLD: Mr. Lozner, would you please
9 stand and raise your right hand.

10 Whereupon,

11 DENNIS LOZNER,
12 having been first duly sworn by Judge Gold, was
13 called as a witness herein and was examined and
14 testified as follows:

15 JUDGE GOLD: Please be seated. Go ahead,
16 Mr. Lozner, you say what you would like to say.

17 MR. LOZNER: I'm the President of Harbor
18 Springs Water Company.

19 JUDGE GOLD: Why don't you start, since
20 you're making a statement, again, identify yourself
21 and then what you do and --

22 THE WITNESS: I'm Denny Lozner, also Dennis
23 John Lozner. I am the President and shareholders of
24 Harbor Springs Water Company, Incorporated. It's a
25 small water company on the east side of Gig Harbor,

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1 probably the smallest water company that's tariffed.
2 We have 101 customers. I think when we became
3 tariffed, approximately six, seven years ago, we had
4 94 customers. We haven't had much of a customer
5 increase.

6 The reason for the 1997 annual report not
7 being filed is twofold. One, the complexity of it.
8 I've spent a lot of time with my accountant trying to
9 understand it and I've spent a lot of money with him
10 trying to understand the annual report is also the
11 rate base for the company. It's important to me that
12 I do get it filed. Probably more important to me
13 than the Utilities and Transportation Commission.

14 I spent four sessions with Dan Sherry, the
15 -- I don't know what Dan's position is here with the
16 UTC, but we spent them in the office of Quail and
17 Mickelson. They're a certified public accounting
18 firm in Tacoma. And on these four occasions, I have
19 a lot of computation, as far as the annual report,
20 but I don't have the numbers put on the lines, and
21 Dan was not -- I can say this -- that he was not real
22 helpful. And the accounting firm is -- they kind of
23 bowed out after four times.

24 I came in and met Jim Ward here last year
25 three or four times, and I've gotten so far, but the

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1 complexity of it, and secondly, the money that's
2 involved to pay another accounting firm, I don't have
3 and the company doesn't have. If I had help, I would
4 gladly fill it out, because I need it very badly.

5 I applied for a rate increase last year or
6 the year before. And the amount of money needed --
7 and I've had Jim Ward tell me that it's not -- I
8 really don't need counsel to apply for a rate
9 increase, but I can't even get my accountants to
10 adequately, you know, satisfy the UTC. It's hard for
11 me to fill in the blanks.

12 So at the point with not a whole lot of
13 financing available, I've had, four years in
14 succession, all my pumps go out, and I put about ten,
15 \$15,000 per year into the system, and that's half the
16 gross revenue. And I'm not -- I'm on a catchup basis
17 all the time, trying to catch up. And that's about
18 the story.

19 JUDGE GOLD: Thank you, Mr. Lozner. Ms.
20 Tennyson, do you have any cross for this witness?

21 MS. TENNYSON: I do have several questions
22 for Mr. Lozner.

23 C R O S S - E X A M I N A T I O N

24 BY MS. TENNYSON:

25 Q. Mr. Lozner, when you gave your address on

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1 the record, you gave your address as Honolulu; is
2 that correct?

3 A. Uh-huh.

4 Q. And therefore, you're not currently
5 residing in the state of Washington?

6 A. I do not have a home here, no.

7 Q. Is there any person who is in the
8 management of the company who is in the state of
9 Washington at this time, who resides here?

10 A. No.

11 Q. So you do not have a manager in the state?

12 A. Peninsula Light Company is the satellite
13 management company. Is that what you're referring
14 to, or are you talking about on the board of --

15 Q. I'm talking about on the board, someone who
16 can make financial decisions for the company, who
17 runs the day-to-day business of the company?

18 A. I run the day-to-day business of the
19 company, and I've been able to do so from traveling
20 this last year. I'm looking at settling back here
21 and relocating. That's one of the things I'm doing
22 here when I'm here for this summer, you know, to take
23 care of Harbor Springs business.

24 Q. Do you plan on -- do you have an agent
25 appointed within the state to handle business?

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1 A. Jackie Masters.

2 Q. And if I'm understanding, Jackie Masters is
3 an employee of Peninsula Light Company?

4 A. That's correct.

5 Q. Have you formally appointed Ms. Masters as
6 an agent?

7 A. No, I have not.

8 Q. I would like to refer you to Exhibit 19,
9 which is your letter of April 16th to the Commission.
10 I'll give you a copy of it to look at. Now, in this
11 letter, looking at the first paragraph, you state
12 that you and Ms. Potter have been out of the country
13 since January, and you asked the Commission to allow
14 three to four weeks for return mail?

15 A. That's correct.

16 Q. Now, is this what you're regarding as being
17 able to respond to requests and information managing
18 the company?

19 A. This year, we went to Central America, went
20 to Mexico. I'm looking for a retirement place
21 somewhere warm, and so we were exploring. This is
22 not an all-the-time situation. We're looking at
23 putting a house back here. But for the five-month
24 period we were gone --

25 Q. So for the five-month period, would that be

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1 January through May of 1999?

2 A. Yes.

3 Q. Then you were not -- there was no way for
4 the Commission to contact you, say?

5 A. No, I do not have a telephone. And Jackie
6 Masters handles the day-to-day business, the water
7 availability. Letters. I had -- if there was
8 anything, I had my son pick them up at the mailing
9 address and send them on to me. I would call him
10 once a week.

11 Q. Okay. If, say, there was a break in a
12 water line that occurred, what was your process for
13 handling that?

14 A. I have a contract with Peninsula Light to
15 handle all the maintenance, and I've had -- we had
16 two motors and two pumps go out. I've replaced the
17 wiring and the whole electrical panel in April of
18 this year, and I did it, you know, while I was gone.
19 I have communications all the time with Jackie
20 Masters.

21 Q. So what would be the process if today
22 someone wanted -- one of your customers called to
23 say, The water line out in front of my street broke?

24 A. They'd call Peninsula Light.

25 Q. And what does Peninsula do at that point?

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1 A. They're out there to fix the damage.

2 Q. Do they call you first for authorization?

3 A. No.

4 Q. Referring again to Exhibit C-19, this
5 document appears to have been faxed from Honolulu.
6 Is that the case?

7 A. Yes.

8 Q. So you were in Honolulu at the time that
9 you returned this, sent this?

10 A. Yes.

11 Q. Are you involved in any other business
12 activities in the state besides running Harbor
13 Springs Water Company?

14 A. No.

15 Q. Are you on the board of any other
16 corporations?

17 A. No.

18 Q. Now, you have not actually filed the full
19 annual report for Harbor Springs for the years 1994,
20 1995, 1996, 1997, or 1998 at this point, have you?

21 A. That's correct.

22 Q. And with the payment, my understanding is
23 that you and Ms. Dutton, from the Commission, reached
24 an agreement that with the payment of the regulatory
25 fees, that we would not be requiring you to file the

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1 1994, 1995, and 1996 annual reports?

2 A. That's correct.

3 Q. Okay. Have you ever filed an annual report
4 with this agency for Harbor Springs Water Company?

5 A. No.

6 Q. Have you filed tax returns for the company?

7 A. Yes.

8 Q. And how do you do that? Do you personally
9 prepare them?

10 A. No, Quail and Mickelson does. They have
11 for 15 years.

12 Q. Okay. Isn't it true that much of the
13 information that's required on the annual reports is
14 also required in order to prepare a tax return?

15 A. I'm sure there's a lot of it, yes.

16 Q. Yet you have not filed annual reports?

17 A. That's true.

18 Q. I believe you also said, when you were
19 introducing yourself, you do not have a telephone
20 number in Honolulu?

21 A. No, I do not.

22 Q. In that case, if you live in Honolulu and
23 you don't have a phone, what good does it do the
24 Commission to have a telephone number for your
25 brother-in-law?

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1 A. For my brother.

2 Q. For your brother, I'm sorry.

3 A. I'm staying with my brother right now.

4 Q. But if you're living in Honolulu and you're
5 not here, how can the Commission contact you?

6 A. Well, I usually contact them, my brother or
7 Jackie Masters.

8 MS. POTTER: She said the Commission.

9 THE WITNESS: How can the Commission get
10 ahold of me? Usually through 7702 Cirque Drive is
11 the mailing address. As far as the phone, we've been
12 looking at phones. In all honesty, the water company
13 owes \$350 for the telephone. They don't have the
14 money to reconnect the telephone. I used to have --
15 they used to supply an office. Through the last four
16 years, the amount of money that I've had to finance
17 the remaining amounts of money that I collect monthly
18 just pays the ongoing debt.

19 Q. Okay. You've indicated that the address,
20 the mailing address for the company is 7702 Cirque,
21 C-i-r-q-u-e, Drive West in Tacoma.

22 A. Yes.

23 Q. Yet, in Exhibit C-21, your letter of April
24 27th to the Commission, you indicated that that's a
25 leased office space. Does the company have an office

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1 there?

2 A. We used to two years ago, but I don't have
3 it anymore. I used to own the building. I don't own
4 the building anymore. It's now in a trust. But I
5 still use it for a mailing address for myself
6 personally and for the water company.

7 Q. So is or is not that a correct mailing
8 address for the company?

9 A. That is a good mailing address for both me
10 and the water company.

11 Q. Who in Washington can respond to financial
12 issues and management decisions relating to the water
13 company?

14 A. Peninsula Light.

15 Q. But they're not an officer or --

16 A. They're not an officer, but the contract
17 that I have with them, they fix, repair, whatever's
18 needed.

19 Q. If a customer wanted to enter into a
20 contract with the company or have a line extension
21 put in, how would they do that?

22 A. How would they do that?

23 Q. Right.

24 A. Usually -- over this last five months is
25 probably what you're referring to. Before that, I

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1 was here. Is that what your question is?

2 Q. Yes.

3 A. They would go to Peninsula Light, and if it
4 has to do with a water availability letter or a line
5 extension, I didn't have one this last five months,
6 but she would have them write me at 7702, and the
7 letter would be forwarded to me, and then I would
8 take care of it, send it back.

9 Q. I'm sorry. Was that Ms. Masters would ask
10 them to write to you?

11 A. If there was a question about engineering,
12 water availability or line extensions.

13 Q. You have indicated that you communicate all
14 the time with Jackie Masters. What does all the time
15 mean? I mean, how often?

16 A. Weekly.

17 Q. Do you have a regular time you call her?

18 A. Usually, the best time for me to catch
19 Jackie is about 8:00 Monday morning.

20 Q. Does she ever contact you, other than
21 through mail?

22 A. Not really, no. There's no way to get
23 ahold of me.

24 MS. TENNYSON: Mr. Lozner's exhibit, is it
25 A-1 or A-50?

00027

1 JUDGE GOLD: A-50.

2 Q. In this exhibit is a letter from your
3 accountant and it refers to a balance of \$6,706.45.
4 Can you tell me what work that relates to?

5 A. I asked -- Dave Mickelson has been my
6 accountant for 20 years, and I asked Dave if he could
7 do a rate increase for Harbor Springs, since he's
8 done the Harbor Springs taxes since I've owned the
9 system. And he suggested that we use his partner,
10 Doug Quail, who's more familiar on the commercial end
11 of the business.

12 So I set up a meeting with Dan Sherry and
13 Doug Quail and myself to see if the firm could do the
14 rate increase. So we spent probably four or five
15 months and I've got reams of information on the --
16 just different schedules and things, but he just --
17 neither Doug Quail or Dave Mickelson was able to, I
18 think in their mind, go any further. They said to me
19 in a meeting that they felt it would be better if I
20 had somebody that was a professional in tariff and in
21 the field, rather than their firm.

22 Q. So these expenses, this \$6,700, relate to
23 the working on the rate case?

24 A. Exclusively.

25 Q. So it doesn't involve any tax returns?

00028

1 A. Yes, it does. One tax return.

2 Q. And what about preparation of annual
3 reports?

4 A. The preparation of the annual report was
5 never filled in. There was -- I have a lot of
6 schedules on it. But I came in last year, sat down
7 with Jim Ward, and tried to do it myself. And Jim
8 gives me one hour. And to drive down here and spend
9 one hour -- you know. I got a little bit, I'd go
10 back and try to put it back together. I've got too
11 big a bill with the accounting firm now to go back
12 and ask them for any help. But I really need some
13 accounting professional, I think, to help me.

14 Q. How many times have you met with Mr. Ward?

15 A. I believe four.

16 Q. Each for one hour?

17 A. I got more than one hour one time.

18 Q. And can you estimate how many hours Mr.
19 Sherry spent with you and your accountant?

20 A. I'd say probably an hour to two hours at a
21 session.

22 Q. And you said you met with him four times?

23 A. Uh-huh.

24 Q. Did you ever consult a tariff person about
25 filing rates?

00029

1 A. Yes.
2 Q. And who did you talk with?
3 A. An attorney named Rick Finnigan.
4 Q. Did you proceed with filing a rate case
5 after that?
6 A. He wanted \$5,000 up front, and I didn't
7 have the money.
8 Q. So did you actually file a request for
9 rates at some point?
10 A. Yes.
11 Q. And who owns stock in Harbor Water? You
12 indicated --
13 A. Harbor Water?
14 Q. Yes, Harbor Springs Water?
15 A. Oh, Harbor Springs. Myself, my son, and
16 Rebecca.
17 Q. And who are the officers?
18 A. Myself and Rebecca.
19 Q. Okay. Rebecca, her full name is?
20 A. Rebecca A. Potter.
21 Q. Okay. In terms of Peninsula Light acting
22 as your on-site manager, does Peninsula Light Company
23 have the authority to file annual reports on your
24 behalf?
25 A. We've talked about that.

00030

1 Q. Do they have that authority at this time?

2 A. It's not in our contract.

3 Q. Do they have the authority to buy assets
4 for the company?

5 A. Yes.

6 Q. And what kind of assets do they have
7 authority to buy?

8 A. Whatever's needed to maintain the system
9 and keep it operating.

10 Q. Does Peninsula Light have the authority to,
11 say, buy a new water system?

12 A. To purchase a new water system?

13 Q. Yes.

14 A. It's my understanding that they've
15 purchased quite a few lately.

16 Q. Purchase on behalf of Harbor Springs Water,
17 I mean?

18 A. No, not for Harbor Springs.

19 Q. Does Peninsula Light have the authority to
20 sell assets for Harbor Springs Water?

21 A. No.

22 Q. Does Peninsula Light have the authority to
23 file tax returns for Peninsula Light -- I'm sorry,
24 for Harbor Springs Water?

25 A. No.

00031

1 Q. Does Peninsula Light have the authority to
2 sign contracts on behalf of Harbor Springs Water?

3 A. Contracts for the purchase of equipment,
4 yes, they do.

5 Q. Okay. And to authorize -- connect new
6 connections of water service?

7 A. Yes.

8 Q. Peninsula Light does have that authority?

9 A. Uh-huh.

10 Q. Issuing water availability letters? I
11 wasn't clear.

12 A. I do that.

13 Q. So Peninsula Light does not have that
14 authority?

15 A. I basically handle all the new business.
16 They handle existing, ongoing business.

17 Q. Who does the bookkeeping for Harbor Springs
18 Water?

19 A. Day-to-day checkbooks or the tax returns?

20 Q. Keeping the books for the company?

21 A. Myself and Rebecca.

22 Q. With regard to your telephone, the
23 telephone number at Harbor Springs, you indicated
24 that the telephone number that is shown on the most
25 recent company information sheets is 253-840-5555.

00032

1 Is that the current phone number for the company?

2 A. No.

3 Q. So we cannot reach you at that number.

4 Have you provided the Commission with a telephone
5 number that you can be reached at? Have you filed
6 anything?

7 A. Several years ago. And I notice it's in
8 one of your exhibits here, that you acknowledge
9 Peninsula Light has the number, you knew the number.

10 Q. Okay. Which number is that? And can you
11 refer to the exhibit?

12 A. 857-5950, which is Peninsula Light.

13 Q. And in what form did you provide that to
14 the company or to the Commission?

15 A. I gave that to Dan Sherry.

16 Q. Now, Peninsula Light is --

17 JUDGE GOLD: Excuse me. You asked that Mr.
18 Lozner indicate which exhibit had that. I would like
19 to wait for any future questions until he finds that
20 exhibit.

21 MS. TENNYSON: All right.

22 MR. LOZNER: On this exhibit, whichever one
23 it is, it's on Carolyn Caruso's letterhead.

24 MS. TENNYSON: Exhibit 13, C-13.

25 JUDGE GOLD: C-13.

00033

1 THE WITNESS: Yes, I talked to Jackie
2 Masters at Peninsula Light Company. They're the ones
3 who run Harbor Springs Water Company for Denny
4 Lozner. It's dated March 18th of this year.

5 Q. Okay. And so this indicates to me that the
6 Commission had an alternative phone number at
7 Peninsula Light for you, this number?

8 A. Yes.

9 Q. But the number that you had provided to the
10 Commission with the 1997 company information sheet is
11 the same 840-5555 number; is that correct?

12 A. That's correct.

13 Q. So you had not changed that number?

14 A. No.

15 Q. And the Commission had sent a letter to you
16 at the address of 13918 122nd Street East in
17 Puyallup, Washington. Isn't it true you had advised
18 the Commission that that was the proper address to
19 send mail to you?

20 A. No, no, the 7702 Cirque Drive address has
21 been the address for Harbor Springs since 1985. It
22 has always been the same. The 13918 is my personal
23 address in Puyallup. And at one time, if I was
24 talking to, like, Mrs. Washburn or somebody, I said
25 you can send it directly to me at this address.

00034

1 Q. Okay. So if I'm understanding you
2 correctly, your statement is that the telephone
3 number you have provided to the Commission is that of
4 Peninsula Light Company as the contact number?

5 A. Yes.

6 Q. At what point in time, if any, did you
7 direct the Commission to contact you through that
8 number?

9 A. At what time did I direct the Commission?

10 Q. That that was the proper number to contact
11 you at?

12 A. Probably 1996, 1997.

13 Q. And yet, your 1996 and 1997 annual reports
14 do not have that telephone number as a contact number
15 for the company?

16 A. No, they would probably have the 840 number
17 on it.

18 Q. Okay. And how was the Commission then to
19 know in its records what number to contact you at?

20 A. Well, you can see by this exhibit that they
21 know --

22 JUDGE GOLD: Excuse me, which exhibit now?

23 THE WITNESS: This same exhibit here.

24 JUDGE GOLD: Same exhibit. What was that,

25 19?

00035

1 MR. KERMODE: Thirteen, ma'am.

2 JUDGE GOLD: Thirteen.

3 Q. Yet the text of that e-mail also indicates
4 that Ms. Masters, at Peninsula Light Company, had the
5 phone number to contact you, the number that had been
6 disconnected, that that was her contact number for
7 you?

8 A. Who is this exhibit from?

9 Q. This exhibit is written by Reynaldo Dejos.

10 A. To Carolyn Caruso?

11 Q. To Carolyn Caruso. No, I'm sorry. It is
12 from Carolyn Caruso to --

13 MS. CARUSO: I wrote this.

14 Q. Okay.

15 A. I'm sorry, was there a question?

16 Q. That this reflects that Ms. Masters, the
17 only contact number she had for you was the number
18 that was disconnected; isn't that the case?

19 A. Yes. Ms. Masters knew that I was no longer
20 there. I talked to her about when I was leaving and
21 told her my schedule. She knew that I was going to
22 be gone for the spring, she says. Peninsula Light
23 and I, we get along real well. We don't have a
24 problem. I stay in contact with them. She manages
25 43 systems, I think. Most of the people that she

00036

1 manages water systems for don't have any managerial
2 responsibility to the water system. They do just
3 about everything. And she told me, she says, While
4 you're gone, she says, Don't worry about anything.
5 I'll take care of it. If you've got a problem, get
6 ahold of me. We set it up. I said, I'll call you.

7 JUDGE GOLD: Excuse me. Who are you
8 referencing when you use the word she?

9 THE WITNESS: Jackie Masters.

10 JUDGE GOLD: All right. Who is an employee
11 of Peninsula Light, your contact?

12 THE WITNESS: Yes.

13 Q. Do you have a certified water manager for
14 Harbor Springs Water at this time?

15 A. Jackie Masters.

16 Q. And that is, again, through this SMA
17 contract with Peninsula Light?

18 A. That's correct.

19 MS. TENNYSON: I have no further questions
20 of Mr. Lozner.

21 JUDGE GOLD: All right, thank you. Mr.
22 Lozner, you have an opportunity to make any other
23 statements you care to at this time, should you want
24 to say something in addition to what you've said.

25 MR. LOZNER: I don't think so.

00037

1 JUDGE GOLD: Okay, thank you. Did you hear
2 that? Do you have any witnesses that you want to
3 present?

4 MS. TENNYSON: I would like to ask a few
5 questions of Ms. Caruso. I would call Carolyn
6 Caruso.
7 Whereupon,

8 CAROLYN CARUSO,
9 having been first duly sworn, was called as a witness
10 herein and was examined and testified as follows:

11 JUDGE GOLD: Please be seated.

12 D I R E C T E X A M I N A T I O N

13 BY MS. TENNYSON:

14 Q. Ms. Caruso, can you tell us what your
15 position is and how you became involved with the
16 matter of Harbor Springs Water and the penalty
17 assessment?

18 A. Okay. When I first became involved with
19 the Harbor Springs, I was with the program
20 development section of our Commission. And we were
21 monitoring all companies, whether they were water,
22 telephone. We wanted to see whether they've
23 submitted their annual reports and paid their
24 regulatory fees.

25 It came to the point where Pat Dutton, who

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1 used to be the assistant director of operations of
2 the Commission -- she's now employed someplace else
3 -- she made the original contact with Denny, or Mr.
4 Lozner. And I -- Pat Dutton was my immediate
5 supervisor, so if she wrote a letter, I had access to
6 editing it and knowing what was going on with the
7 different accounts, and in this particular situation,
8 it ended up that Pat Dutton, or Patsy Dutton, I guess
9 is her official name, on May 6th and 7th, called Mr.
10 Lozner at the 253-840-5555 phone number, and left a
11 message for him to return the call, and which he did
12 on May 7th.

13 Q. Of what year?

14 A. Of 1998.

15 Q. Okay.

16 A. After talking with him, it's my
17 understanding that she told or advised him that she
18 would -- she would send him a letter acknowledging
19 their conversation, which she did on May 8th. And so
20 the essence of the letter was --

21 JUDGE GOLD: Which exhibit is that?

22 Q. If you can pause for a moment. Referring
23 you to what's been admitted as Exhibit C-3, is this
24 the letter that Ms. Dutton prepared?

25 A. Yes.

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1 Q. And the letter, can you just generally
2 summarize what the --

3 A. Yes, the highlights was that -- the
4 original thing was that what was needed was the 1994
5 through 1997 annual reports, and the regulatory fees
6 needed to be submitted. And also during the
7 conversation, in the letter, she confirmed that you
8 had -- you, Mr. Lozner, had indicated that you would
9 comply within 30 days.

10 Also, you were given Jim Ward's phone
11 number to set up an appointment, so that you could
12 have some technical assistance. And the information
13 on the annual reports were supposed to be submitted
14 by June 15th.

15 Q. Of what year?

16 A. 1998.

17 Q. Thank you.

18 A. Jim Ward, I believe he e-mailed Pat Dutton
19 and advised that on the 19th of June, 1998, that he
20 provided you assistance to figure out the fees for
21 1995 through '98, the regulatory fees, and how to
22 fill out the different annual reports.

23 Q. And were the regulatory fees for 1994
24 through 1997 paid?

25 A. Yes, just the regulatory fees?

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1 Q. Yes.

2 A. Yeah. The regulatory fees that were
3 calculated on these calculation sheets that Jim
4 helped you with indicated that 139.20 was due for the
5 four years. However, after the appointment came in,
6 we were notified, I believe it was from the Financial
7 Services Department, that there was some late charges
8 due. So at that point, a letter was written to your
9 office, Mr. Lozner, indicating that there were some
10 interest and late charges that were due, and we
11 indicated that it was for '94, '95, '96 and '97. Do
12 I need to do the individual amounts?

13 Q. No, but I would refer you to Exhibit 7 and
14 Exhibit 8, and ask whether these are the -- this is
15 the letter that you're referring to?

16 A. Yes, correct.

17 Q. Now, Exhibit 7 is the letter. Exhibit 8 is
18 two pages and has some writing on it. Could you
19 identify the writing on, you know, each of the
20 different pieces of writing on it for me?

21 A. There's one here dated 8/18. No year, but
22 this was by Pat Dutton. It said that she talked to
23 Becky and she will do 1997 report and get it sent to
24 us, meaning the Commission, by September 30th, 1998.

25 Q. Okay.

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1 A. And then, down below, when the payment of
2 the late charges was submitted, Becky had indicated,
3 Patsy, thank you. We are working on additional
4 information to submit to you, as well.

5 Q. So it appears that Becky sent the copy of
6 this letter back with the check?

7 A. Correct.

8 Q. Okay. And on the first page of Exhibit 8,
9 there's an additional notation that -- with the
10 initials CAC. What does this relate to?

11 A. That's my initials. Somewhere along the
12 line, I don't know the exact date, I happened to be
13 talking to Jim Ward about -- that you had submitted
14 your annual reports. And he said no, that's not
15 true. So what I did is I went to the Records Center
16 and pulled out these. Sure enough, it's just the
17 calculation. It wasn't the complete report.

18 Q. And by these, are you referring to Exhibits
19 9 and 10?

20 A. Correct.

21 Q. Okay. And referring to Exhibit 9, let's
22 look at the page that doesn't have the Post-it note
23 with the additional notation. Then is this a
24 complete annual report?

25 A. No, it is not. They call it -- consider it

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1 a calculation sheet.

2 Q. So there's two pages, one's titled Company
3 Information, the second is titled Regulatory Fee
4 Calculation?

5 A. Correct.

6 Q. These are the only pages that the
7 Commission received?

8 A. Yes, for all four years.

9 Q. Okay. Did you receive anything for 1994
10 and 1995?

11 A. As?

12 Q. You said all four years.

13 A. Ninety-four -- well, is there a '94 there?

14 Q. I don't have it here, okay.

15 A. Oh, okay.

16 Q. In 1997, let's refer to Exhibit 10.

17 A. Yes.

18 Q. And these are the two pages that you
19 received?

20 A. Correct.

21 Q. Thank you. Please continue.

22 A. Okay. Well, at that point, when I found
23 out that they weren't the actual reports, I went to
24 talk to Pat Dutton, seeing she was my supervisor and
25 we were doing the monitoring. At that point, I

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1 believe that that note that's on there, where it says
2 she talked on August, this one here, Exhibit 8, that
3 she talked to Becky.

4 JUDGE GOLD: Wait a minute. Which exhibit
5 are we going to now?

6 THE WITNESS: Exhibit 8.

7 Q. Exhibit 8 is the letter dated July 13th,
8 and we're referring to the page with the notation --

9 A. That top note up there, where it says
10 August 18th.

11 Q. Yes.

12 A. She indicated -- there again, Becky
13 indicated that she would have the report to us by
14 September 30th.

15 JUDGE GOLD: Okay.

16 THE WITNESS: And I wasn't in on the
17 conversation, but I believe, also, it was at that
18 time Pat talked to Becky and advised that if Harbor
19 Springs would submit the 1997, that would bring them
20 current. The Commission would not request the prior
21 three years.

22 Q. The annual reports?

23 A. The actual annual reports.

24 Q. And at that point, were the reports -- the
25 full reports for 1997 and 1998, were they submitted

00044

1 at that point?

2 A. No, they were not. But I do want to
3 mention something. In the August -- the letter that
4 they were -- she was acknowledging the conversation
5 that she had with Mr. Lozner.

6 JUDGE GOLD: Now, which exhibit is this,
7 please?

8 THE WITNESS: It's the 18th, I believe.
9 The May 8th, 1998.

10 MS. TENNYSON: Oh, yes.

11 THE WITNESS: Copies of all four years of
12 the annual report were sent to him to be filled out.

13 JUDGE GOLD: I would like to know what
14 exhibit this is, please?

15 THE WITNESS: Exhibit 3.

16 JUDGE GOLD: Exhibit 3.

17 Q. So the forms were sent?

18 A. The forms were actually sent at that time
19 with the letter.

20 Q. Please continue.

21 A. Okay. On December 18th, 1998, Jim Ward
22 e-mailed Pat Dutton and advised that he had talked to
23 Becky and that she advised that they were going to
24 have this report to us after the holidays.

25 Q. So then, at that point, you would have

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1 expected the report sometime in January of 1999?

2 A. Correct.

3 Q. Okay.

4 A. Well, around that time, though, that's when
5 Pat Dutton left the Commission, and she turned the
6 record -- the file over to me to handle. She says,
7 If, you know, after the first of the year, check to
8 see that we've received the 1997 annual report, which
9 I waited till, what was it, January 11th, to check.
10 I gave you some leeway there. I checked, and since I
11 hadn't received it, I called and I talked to Becky,
12 and she stated that on February 1st, that we would
13 have the annual report.

14 Well, since it wasn't received on the 1st
15 of 1999, I tried to call Becky again, and those dates
16 were February 22nd, 24th, and 25th, 1999. I tried
17 calling this 253-840-5555 phone number and I got no
18 answer. Then, on the 26th of February and March the
19 1st, I received a recording saying that the messages
20 were filled and that you should try again.

21 MS. POTTER: That was already disconnected
22 at that time.

23 JUDGE GOLD: I'm sorry, I couldn't hear
24 you, and I don't know that the reporter could.

25 MS. POTTER: Is it okay if I say something

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1 since I'm not a witness?

2 MS. TENNYSON: No, I don't think it's
3 appropriate.

4 JUDGE GOLD: No, it isn't.

5 MR. LOZNER: Sorry. What happened at this
6 time?

7 THE WITNESS: Those recordings, those two
8 recordings, were that -- like, you couldn't give any
9 more -- take any more messages, it was full, call
10 back. So I waited a day. I called again, and at
11 that time, that's when I got the recorded message
12 saying that it was disconnected.

13 Q. Referring to Exhibit 10, and Ms. Gold, I
14 don't know exactly which pages you have in which
15 order. On mine, in my notebook, it is the first page
16 of Exhibit 10, which has the -- it may be the third
17 page of Exhibit 10. Yes.

18 JUDGE GOLD: My first page has the notation
19 on the top. Is that the one you're referencing?

20 MS. TENNYSON: That's the page I'd like to
21 refer to.

22 Q. So the first page of Exhibit 10, there is
23 some handwriting notation, it looks like it's a
24 Post-it note or a piece of paper over the copy. Is
25 this your handwriting?

00047

1 A. Yes, this is and this is.

2 JUDGE GOLD: Excuse me. Which was, all of
3 it?

4 THE WITNESS: All those notations on there
5 are mine.

6 JUDGE GOLD: Okay, thank you.

7 THE WITNESS: Because they're on sticky
8 notes.

9 Q. And this is your record of the phone calls
10 you made or the dates you made calls and the
11 responses that you received?

12 A. Yes.

13 Q. Okay. Please continue.

14 A. So when I found out that it was
15 disconnected, that was on the 3rd.

16 Q. Third of what month and year?

17 A. March 3rd, 1999.

18 Q. Thank you.

19 A. Then I had to do some checking further with
20 -- I think it was Paul Curl, but anyway, on March
21 11th, it was a letter by Carole Washburn, but I
22 actually wrote the letter, indicating that -- again
23 asking for the annual report.

24 JUDGE GOLD: Are you referencing Exhibit
25 C-12? You mentioned a letter to Mr. Lozner.

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1 MS. TENNYSON: Yes, is this the exhibit --

2 THE WITNESS: Yes, March 11th, Exhibit 12.

3 JUDGE GOLD: Thank you.

4 THE WITNESS: At that time, I asked for the
5 current phone number, and again requested that the
6 annual report be submitted, and it was mailed to your
7 home address, the 13918 22nd Avenue S.E. or Street,
8 rather, East, Puyallup, and as well as I faxed it to
9 the fax number that was on the calculation sheet we
10 had there, 253-564-4142.

11 Q. And did you receive a confirmation that the
12 fax had gone through?

13 A. Yes, I did. It's attached to the Exhibit
14 12.

15 MR. LOZNER: Where did you get that number?

16 THE WITNESS: We got it off this
17 calculation sheet.

18 THE WITNESS: I don't know --

19 JUDGE GOLD: Mr. Lozner, you will have an
20 opportunity to ask what questions you wish when the
21 witness has finished her primary testimony.

22 MR. LOZNER: Okay.

23 THE WITNESS: I would have to go back and
24 check on that.

25 Q. Okay, go ahead. Now, you also sent a

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1 letter on March 18th, which has substantially the
2 same information in it. It is Exhibit C-14. It's
3 almost identical to the Exhibit C-13. Can you
4 explain what happened, why you did this?

5 A. Well, first of all, the reason why I used
6 their home address, that was the address that you had
7 requested Pat to send you information on the annual
8 report, so I used the same one, but it was returned.
9 So what I did is I re-sent it to the 7702 address, on
10 the 7702 Cirque address, because I had talked to
11 Jackie Masters at that time, and she said that if I
12 sent it to that address, that it would be forwarded,
13 because you were out of town.

14 Q. Okay. When you referred to Mr. Lozner,
15 asking about the -- asking the correspondence be sent
16 to the home address, you referred to Exhibit C-1.
17 Let's look back at that exhibit and what information
18 you obtained or why did you send it first to the
19 Puyallup address?

20 A. Because Mr. Lozner had told Pat Dutton
21 that's the number to use. And at that point, I'm
22 sure she asked for the fax number and that's where
23 she got the fax number. It was off this cover sheet,
24 the very first page.

25 Q. So when you sent the fax copy, you referred

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1 to the contact review form for tracking the filing --
2 A. Correct.
3 Q. -- of the reports?
4 A. Yes, that's where I got the fax number.
5 Q. Okay. So you sent the letter on March
6 18th, 1999?
7 A. Yes.
8 Q. This Exhibit 14?
9 A. Okay. Well, since --
10 Q. Did you also fax this one?
11 A. Yes, I did. And it didn't get -- it came
12 back and said it had been -- it had gone through
13 okay.
14 Q. Okay. So your fax machine didn't give you
15 any indication that this wasn't a good number?
16 A. It says there was no error, that it was
17 okay, that it went through.
18 Q. Okay.
19 A. Results okay.
20 Q. Okay. Please go on.
21 A. Okay. So at this point, because I wasn't
22 getting any results, I discussed this with Mr. Paul
23 Curl. And at this point, we decided to issue a
24 penalty assessment, because we hadn't had any
25 response. So at that point, I sat down, and first I

00051

1 sent the routing slip.

2 Q. You're referring to Exhibit C-15?

3 A. Fifteen -- for approval to actually issue
4 the penalty assessment, which was given. So at that
5 time, I also submitted the Exhibit 16, and then the
6 next page. This here was just notifying her that --

7 Q. You're referring to Exhibit 17?

8 A. Yeah, I just was notifying --

9 JUDGE GOLD: Sixteen or 17, please?

10 Q. She's referred to each of them. Exhibit
11 17, what was this?

12 A. This was -- Melinda Carruth usually issues
13 the penalty assessments for the transportation area,
14 and I just was advising her that there was one issued
15 in the case that that mitigation came to her.

16 Q. Okay. Let's go back to Exhibit 16. Now,
17 in this memorandum, you recommend assessing a penalty
18 in the amount total amount of \$6,200?

19 A. Correct.

20 Q. And can you explain how you calculated
21 this?

22 A. Okay. The penalty assessment, we only
23 issued it as of -- using a date of April 2nd, 1999.
24 I could have gone back to May of 1998, May 1 of 1998,
25 and assessed penalties from that point up, and we

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1 were only -- I only assessed it on the one year, not
2 on the four years, which it could have been, since
3 you'd already discussed with Pat Dutton that you
4 would just submit the '97.

5 And the way I figured it is that the amount
6 was figured on \$100 per day, computed since you
7 agreed to submit the 1997 report by February 1st. So
8 Becky --

9 Q. You said you agreed. Who are you referring
10 to?

11 A. I believe that would have been -- I think
12 it was Becky, that you agreed to have the annual
13 report submitted by the 1st of --

14 Q. February?

15 A. -- February, 1999.

16 Q. Okay. So you calculated by \$100 per day
17 from February 1st, 1999, to April 2nd, 1999, the date
18 that you wrote the recommendation?

19 A. Yes.

20 Q. Okay.

21 A. And then I -- an additional \$100 a day from
22 March 31st, 1999, when the current phone number was
23 supposed to have been given to our office. There
24 again, I think we're being very lenient by not going
25 back to May 1st, 1998.

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1 Q. So you only assessed the penalty for the
2 phone number from March 31st to April 2nd; is that --

3 A. Yes, just for two days.

4 Q. And yet you had received the information
5 from the operator that the phone was disconnected on
6 March 3rd, was it?

7 A. There, again, I just calculated everything
8 from the day that I was doing the memorandum to Gene
9 Eckhardt and Paul.

10 Q. So the --

11 A. I had to stop someplace to figure.

12 Q. Assessing the penalties for the 1997 annual
13 report, when was the 1997 annual report actually due
14 to be filed with the Commission? What date should it
15 have been?

16 A. May 1st, 1998.

17 Q. Okay. So penalties could have been
18 calculated on a daily basis from that day forward?

19 A. That's correct.

20 Q. Okay. But you chose not to do that?

21 A. Yes, we just wanted you to comply. We
22 didn't want to make you go bankrupt.

23 Q. Okay. And can you continue with what
24 happened after that?

25 A. Well, at that point, the penalty assessment

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1 was mailed to your 7702 Cirque Drive address, it was
2 certified, and it was returned after -- I think it
3 was two notifications were given to you. But there,
4 again, I had faxed the penalty assessment to you, and
5 according to your letter on April 27th, you had
6 received the faxed copy, but not the mailed copy.

7 Q. And referring to Mr. Lozner's letter of
8 April 27th, is that Exhibit C-21?

9 A. Yes, and the first paragraph said, This
10 morning in my forwarded mail, I received a copy of
11 the faxed transmission you sent to Oak Ridge Homes,
12 which is -- that's 7702 Cirque Drive, isn't it?
13 That's their address.

14 Q. No, he can't answer you at this point.

15 A. Oh, okay.

16 Q. That's his statement here in the letter.
17 That speaks for itself.

18 A. But he does say that in there.

19 Q. Okay. And that indicates that he did
20 receive the notification of the penalty assessment?

21 A. Correct.

22 Q. Okay. Go ahead.

23 A. I was just going to say, at this point,
24 once the letter was received from the -- that last
25 letter --

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1 Q. The April 27th letter from Mr. Lozner?

2 A. Yes. That would have been submitted to
3 Paul Curl, and at that point, I was out of it. Then
4 he went forward with the process.

5 MS. TENNYSON: Okay, thank you. I have
6 nothing further.

7 JUDGE GOLD: Thank you. At this point,
8 since you don't have an attorney, Mr. Lozner, I think
9 it's appropriate that I provide you a little
10 guidance. If you had an attorney, he would be
11 entitled to question this witness on the testimony
12 which she has given.

13 Ms. Caruso has gone through essentially a
14 schedule of her involvement with this matter. And
15 you can now ask her, since you don't have an
16 attorney, questions that you may have thought of
17 relative to things that she has just said. So that's
18 the process. And when I ask you now if you have any
19 questions you would like to ask Ms. Caruso, that's
20 what I mean. They will have to relate to what she
21 has said --

22 MR. LOZNER: Yes, I understand.

23 JUDGE GOLD: -- specifically.

24 C R O S S - E X A M I N A T I O N

25 BY MR. LOZNER:

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1 Q. Is it Mrs. Caruso?

2 A. Yes.

3 Q. The letter that I sent to Mrs. Washburn
4 here on April 27th, do you acknowledge that the fax
5 transmission that you were sending --

6 JUDGE GOLD: Can you tell me what exhibit
7 this is? Is that C-21?

8 MR. LOZNER: The April 27th letter.

9 MS. POTTER: C-21.

10 MR. LOZNER: C-21.

11 JUDGE GOLD: C-21, April 27th?

12 MR. LOZNER: Yes.

13 JUDGE GOLD: Thank you.

14 Q. I referred in the letter that you were
15 sending the fax transmissions to a company, Oak Ridge
16 Homes, a building company. And had you sent previous
17 transmissions to this last one? Did you send more
18 than one?

19 A. Yes, I believe there was two letters and
20 the penalty assessment.

21 Q. Okay. I asked the company -- I went in
22 once I got back -- if they had been receiving them.
23 They said they have received some, but they were
24 discarding them, and finally, when they got one that
25 they said sounded kind of important, they put it in

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1 my box to be forwarded. I hadn't been getting them,
2 just like if you would have -- I think you must have
3 picked this up off of their fax machine that I faxed
4 one time to the UTC a letter. Just like when I was
5 in Hawaii, I would use Kinko's. If you returned to a
6 Kinko fax number, I wouldn't get it.

7 And I think that there is some
8 miscommunicating within the Utilities and
9 Transportation Commission. I started out dealing
10 with a Mrs. Reynolds in the very beginning. I don't
11 believe she's any longer here.

12 A. That's been ten years ago.

13 MS. TENNYSON: Your Honor, at this point --
14 I mean, Mr. Lozner, if he wants to make a rebuttal
15 statement or testify, I think it's appropriate, but
16 this is not cross-examination of the witness.

17 JUDGE GOLD: You have to -- any questions
18 you have must pertain, as I said, to those things
19 which Mrs. Caruso has testified.

20 MR. LOZNER: I understand. I will not say
21 any more.

22 JUDGE GOLD: Do you have any other
23 questions pertaining to what she has testified on the
24 record?

25 MR. LOZNER: No.

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1 JUDGE GOLD: Okay, thank you. Do you have
2 any further witnesses?

3 MS. TENNYSON: I do, but I think this might
4 be an appropriate time to -- if we could take a
5 break, I would like to ask Mr. Danny Kermode a few
6 questions.

7 JUDGE GOLD: Certainly. We'll go off
8 record and we'll take -- how long of a break do you
9 need?

10 MS. TENNYSON: Ten minutes.

11 JUDGE GOLD: We'll take a 10-minute break.
12 My watch is always fast, so I'm never late. We'll be
13 back here in ten minutes, which, by that clock, will
14 be 11:20.

15 (Recess taken.)

16 JUDGE GOLD: We'll go back on the record.
17 It will be noted the Judge was two minutes late. Ms.
18 Tennyson, have you any other witnesses that you would
19 like to present?

20 MS. TENNYSON: Yes, I would like to call
21 Danny Kermode at this point.

22 Whereupon,

23 DANNY KERMODE,
24 having been first duly sworn by Judge Gold, was
25 called as a witness herein and was examined and

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1 testified as follows:

2 JUDGE GOLD: Please be seated.

3 D I R E C T E X A M I N A T I O N

4 BY MS. TENNYSON:

5 Q. Can you state your name and spell your last
6 name for the court reporter?

7 A. My name name's Danny Kermode,
8 K-e-r-m-o-d-e.

9 Q. And you are employed by the Utilities and
10 Transportation Commission?

11 A. Yes, I am.

12 Q. And what's your position?

13 A. I'm a certified public accountant. My
14 title is Revenue Requirements Specialist. I work in
15 the Water Division specifically.

16 Q. And what are your responsibilities in your
17 current position?

18 A. I work with water company rate cases,
19 financings, general overview of water companies.

20 Q. Are you familiar with the Commission's
21 annual report required for water companies?

22 A. Yes, I am.

23 Q. And in your opinion, does this report
24 require a certified public accountant to complete?

25 A. No, it doesn't.

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1 Q. If a company maintains books and records as
2 they should be maintaining them, as required by the
3 Commission's rules, would the books and records
4 provide the information needed to prepare the annual
5 report?

6 A. Yes, in fact, that's how it was basically
7 designed, was to try to maintain a one-to-one
8 relationship between the standard accounts that are
9 required by regulatory accounting and the annual
10 report. So if the books and records are up-to-date,
11 the owner is basically able to transfer that
12 information directly to the annual report.

13 Q. If the Commission does not have the annual
14 report information from the company, what's the
15 difficulty for the Commission?

16 A. We watch the annual reports to make sure
17 that the companies are, of course, not overearning,
18 but also we want to make sure that they're not
19 underearning and their financial viability is being
20 threatened. It's a lot easier to help a company
21 earlier in any type of financial problems versus
22 later, so we use those reports to review that.

23 Q. Mr. Lozner stated that the annual report
24 sets rate base. Do you agree with that statement?

25 A. No, no. We use the annual report obviously

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1 as a reporting device, which we review things, but we
2 don't use that as the definitive measure of rate
3 base. We do a standard audit or review of the
4 financials and, through that, through the audit and
5 analysis, is where we set rate base.

6 MS. TENNYSON: Your Honor, at this point I
7 would like to refer to what's been marked as Exhibit
8 C-22, and I have provided Mr. Lozner with a copy.

9 JUDGE GOLD: Have you had a chance to look
10 at this copy, Mr. Lozner?

11 MR. LOZNER: I just got it.

12 JUDGE GOLD: Yes, but are you familiar with
13 it?

14 MR. LOZNER: Yeah, somewhat.

15 JUDGE GOLD: Do you have an objection to
16 the admission of this document as Exhibit C-22?

17 MR. LOZNER: No.

18 JUDGE GOLD: C-22, then, which is a copy of
19 an annual report and instructions, which we have
20 received in a sealed envelope and Mr. Lozner has had
21 an opportunity to review, is to be admitted as C-22.

22 Q. Mr. Kermode, handing you what's been
23 admitted as Exhibit C-22, and opening the envelope to
24 refer to the contents, can you identify this for me?

25 A. Yes, we've got three items in the envelope.

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1 First is a cover letter identifying the due dates,
2 general instructions on how to approach the report.
3 The next page is an order approving water annual
4 report form revisions. That's dated March 24th,
5 1999. And then there's a multi-page document labeled
6 Water Utilities Annual Report with a blue cover. It
7 has, For the Year Ended December 31st, 1998. And
8 that's the actual annual report.

9 Q. And this exhibit, is it a report filed by a
10 company, or what is it?

11 A. Yes, a company would receive this and fill
12 out the first eight pages. The remaining pages, the
13 remaining 14 pages, are the instructions to it. So a
14 company would fill out all the first eight pages.

15 Q. And this exhibit is a blank form?

16 A. Yes, ma'am.

17 Q. Okay. And referring to Exhibit C-9, I'll
18 hand you a copy of that. This is two pages from the
19 -- stamped 1996 for Harbor Springs Water Company.
20 Are these two pages contained within the blank forms,
21 are these pages contained within the annual report
22 format that is within C-22?

23 A. Yes, the first page is the first page of
24 the annual report. And then the second page of
25 Exhibit 9 is the seventh page of the annual report.

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1 So there's six pages missing.

2 Q. Mr. Lozner stated that Harbor Springs Water
3 serves 101 customers, and he indicated he thought it
4 was one of the smallest companies regulated by the
5 Commission. To your knowledge, does the Commission
6 regulate water companies that are smaller than Harbor
7 Springs?

8 A. Yes. I believe we have some that goes down
9 to nine or 14 customers. And that's basically
10 because the Commission's threshold for regulation is
11 not only on a customer count, but also on the average
12 annual revenues. So for the high-cost areas, islands
13 and stuff like that, smaller companies can fall into
14 our regulation.

15 Q. Do you know at this point what the Harbor
16 Springs Water Company rates are for an individual
17 customer? Is there a set flat rate, monthly rate or
18 a metered rate, or how is it set?

19 A. Off the top of my head, I can't remember.

20 MS. TENNYSON: Okay. I have nothing
21 further for this witness.

22 JUDGE GOLD: Mr. Lozner, you now have an
23 opportunity to ask this witness any questions that
24 relate to anything that he has said. Do you have any
25 questions for Mr. Kermode?

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1 MR. LOZNER: No, I don't.

2 JUDGE GOLD: Thank you.

3 MS. TENNYSON: I have no further witnesses.

4 JUDGE GOLD: At this time, Mr. Lozner, I
5 think it's appropriate, if you have something further
6 that you want to say in rebuttal, it's called a
7 rebuttal statement, that you want to supplement
8 anything that you've said before -- you had started
9 to go into some history of your relations with the
10 Commission when you were questioning Ms. Caruso.
11 This would be the appropriate place for you to make
12 any additional remarks that you have. And please
13 consider yourself still under oath. But this is the
14 proper place where you will be able to do so.

15 MR. LOZNER: Well, first of all, I was
16 under the impression this was an informal hearing,
17 and it seems like it is not an informal hearing, and
18 I should have been represented by an attorney at this
19 point.

20 The Harbor Springs Water System is --
21 whether it's the smallest or not the smallest that is
22 governed by the UTC, the difficulty that the water
23 company has is a monetary one. I'm sure that's the
24 predominant problem of all small water systems. If
25 you have enough revenue, you can cure many ills. If

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1 we had a revenue that was sufficient to hire an
2 accountant, and I know -- sorry, I lost your last
3 name.

4 The accounting firm that I hired, if you've
5 read the letter, they had a very hard time trying to
6 understand the rate base and everything else that
7 goes with the Utilities and Transportation
8 Commission. If you are employed here, you work here,
9 I would imagine it's very easy, because you do it on
10 a daily basis. But you take somebody from the
11 outside, even a certified public accountant who has a
12 degree in accounting and he sits and he does a lot of
13 different type of accounting, he doesn't understand
14 this particular type.

15 And I spent -- I have a bill for a lot of
16 money, and we couldn't understand what Dan Sherry was
17 trying to get across to us. I've spent a lot of
18 time. I want this annual report done more than you
19 do. This is costing me considerably, because I can
20 hardly afford to go month-to-month just to pay the
21 interest carried.

22 I've brought my books in and I've showed
23 them to Jim Ward and I said, Here is my checkbook,
24 let's go through it. One hour goes by so fast, it
25 isn't enough to cover, you know, what I need -- I

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1 need more than one hour. And I'm willing to sit down
2 and go through this and bring '97-'98 up if I had
3 some help.

4 I don't receive a salary. I have close to
5 \$200,000 I've put into this company. I don't get a
6 return on my investment. I have a liability that's
7 huge for the whole east side of the city of Gig
8 Harbor, in case there's a water shortage. I don't
9 get paid for that. I mean, I could use some help. I
10 don't have anything more to say, but --

11 JUDGE GOLD: Thank you, Mr. Lozner. And I
12 have made note of what you said about an attorney,
13 which certainly was your right, but I do want you to
14 be aware that I am very aware you have not had an
15 attorney, and I have tried to afford you what
16 guidance is appropriate for me to provide.

17 MR. LOZNER: I appreciate that.

18 JUDGE GOLD: And I would like that noted in
19 the record. Do you have any statements in addition?

20 MS. TENNYSON: Not at this time. What I
21 would ask, Your Honor, is that we go off the record
22 and that Staff and I be allowed to have some
23 discussions with Mr. Lozner without you present. We
24 have some ideas we would like to discuss with him
25 that may result in a resolution that we could present

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1 to you as an agreed solution.

2 JUDGE GOLD: I would encourage that. How
3 much time does everybody think they need?

4 MS. TENNYSON: I would think half an hour
5 would be sufficient.

6 JUDGE GOLD: I will be back here. I'll
7 check in at -- I'll say five after 12:00, which will
8 be ten after 12:00 on my clock. I have to remind
9 myself. And we'll go off the record now.

10 (Recess taken.)

11 JUDGE GOLD: We'll go back on the record at
12 12:26. The parties have been discussing off record
13 privately among themselves the possibility of some
14 resolution to which they could all agree. So now I'm
15 going to go -- Mr. Lozner, have you a statement for
16 the record?

17 MR. LOZNER: We've reached a resolution.

18 JUDGE GOLD: All right. That's good news
19 to me.

20 MS. TENNYSON: Okay. I would like to put
21 on the record what we've agreed to, and Mr. Lozner,
22 if I've misstated, a chance to correct it.

23 The Commission sought a penalty of \$6,200
24 against the company, which we do believe is a
25 justifiable amount. We recognize, given the

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1 company's financial situation, that it doesn't really
2 serve the best interests of the public or the
3 Commission to require payment of that amount.

4 We have agreed that the company will pay a
5 penalty of \$600, and the payment will be due by
6 September 1st, 1999, and just for our own internal
7 accounting purposes, the Commission is designating
8 that \$200 of the penalty was for not maintaining a
9 phone number and \$400 for not filing the annual
10 report.

11 The company will file the 1997 annual
12 report by September 1st and the 1998 annual report by
13 October 1st, and the company will seek to file the
14 1999 annual report in a timely manner and maintain a
15 phone number for the company for management business
16 decisions that the Commission can reach them at.

17 What we would like to do, essentially, is
18 have the \$6,200 penalty imposed, but if these
19 conditions are met in a timely fashion, that the
20 remainder of the penalty above the \$600 will be
21 forgiven, will be dismissed.

22 JUDGE GOLD: Is that your understanding,
23 Mr. Lozner?

24 MR. LOZNER: Yes.

25 JUDGE GOLD: The terms of the agreement?

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1 Is there anything other than what you've put on the
2 record?

3 MS. TENNYSON: In addition, Staff has
4 discussed with Mr. Lozner how he will go about
5 filing, getting the reports filed, and has -- the
6 Staff is willing to provide technical assistance to
7 the company in filling out the reports, but will not
8 act as a consultant or prepare the books and
9 schedules for the company. The contact designated by
10 the Commission for the company is Danny Kermode, and
11 the Company has agreed it can contact him by e-mail
12 or voice mail or phone or in person. And I believe
13 that's it.

14 JUDGE GOLD: Is there anything in addition?

15 MS. TENNYSON: There is not.

16 JUDGE GOLD: And you're in agreement to it?

17 MR. LOZNER: Yes.

18 JUDGE GOLD: I will ask Staff to put that
19 in a proposed order form --

20 MS. TENNYSON: Okay.

21 JUDGE GOLD: -- for me to consider. And as
22 long as all the parties are comfortable with that
23 resolution, I have absolutely no objection to it, at
24 least at first blush. I thank you all for being able
25 to reach a resolution. You probably liked what you

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1 reached much better than anything I would have
2 imposed. Is there anything else?

3 MS. TENNYSON: Mr. Eckhardt has raised a
4 question of a date by which the company will provide
5 us a phone number for Mr. Lozner?

6 MR. ECKHARDT: For the management.

7 MS. TENNYSON: For management decisions?

8 The card you've given us has Peninsula Light
9 Company's phone number?

10 MR. ECKHARDT: Has a number --

11 MS. POTTER: That's their water decision.

12 MR. ECKHARDT: The card that I was handed
13 has the phone number for Peninsula Light, and I
14 understood, from the previous questions, that
15 Peninsula Light does not have the authority to make
16 the types of decisions that we need to discuss.

17 JUDGE GOLD: You did note that Mr. Gene
18 Eckhardt made a comment on the record about the issue
19 of a management phone number for the Commission, by
20 which there could be some direct contact with the
21 company.

22 MS. TENNYSON: And Mr. Lozner has, at this
23 point, provided me with a business card, which he has
24 written the phone number of area code 425-413-9433.

25 JUDGE GOLD: Is that a number at which you

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1 can be reached?

2 MR. LOZNER: Yes.

3 JUDGE GOLD: Are you satisfied?

4 MS. TENNYSON: Yes, I believe so.

5 MR. ECKHARDT: Yes.

6 JUDGE GOLD: All right. Is there anything
7 further? Hearing no further business and having no
8 further statements, we will at this time adjourn this
9 hearing. Thank you all.

10 (Proceedings adjourned at 12:32 p.m.)

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