

1                   BEFORE THE WASHINGTON UTILITIES AND  
2                   TRANSPORTATION COMMISSION

3   DAVID AND JANIS STEVENS, PAUL )  
4   CARRICK, ALAN AND JIM           ) DOCKET NO. UW-011320  
5   WIEMEYER, CHRIS AND CECILY     )  
6   FLAVELL, STAN AND KAY MILLER,   ) Volume III  
7   MICHAEL AND COLLEEN STOVER,     ) Pages 38 to 247  
8   RICHARD AND PAULA RUSSELL,     )  
9   BEN G. MARCIN, RONALD AND       )  
10   VICTORIA MONTGOMERY, CHARLES    )  
11   AND MICHELLE CLARK, PAUL        )  
12   SCHULTE, SUE PERRAULT, and      )  
13   JORG REINHOLT,                    )  
14                                    )  
15                                    ) Petitioners, )  
16                                    )  
17                                    ) vs.            )  
18                                    )  
19   ROSARIO UTILITIES, LLC,         )  
20                                    )  
21                                    ) Respondent, )  
22                                    )  
23   \_\_\_\_\_ )

14                   A hearing in the above matter was held on  
15   July 25, 2002, from 10:10 a.m. to 3:45 p.m., at 900  
16   Fourth Avenue, 24th Floor, Seattle, Washington, before  
17   Administrative Law Judge KAREN CAILLE.

18                   The parties were present as follows:  
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29   Court Reporter

0039

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0047

1 P R O C E E D I N G S

2 JUDGE CAILLE: This is an evidentiary hearing  
3 before the Washington Utilities and Transportation  
4 Commission. It is a complaint brought by David and  
5 Janis Stevens, et al. versus Rosario Utilities. Today  
6 is July 25th, and we are convened in a hearing room in  
7 the Attorney General's Office in Seattle, Washington.

8 May I have the appearances for the record,  
9 please.

10 MR. HANIS: Michael Hanis and Patrick Hanis  
11 for Petitioners with the law firm of Hanis and Olson.

12 MR. PORS: Thomas M. Pors appearing on behalf  
13 of the Respondent, Rosario Utilities.

14 MR. FINNIGAN: Richard A. Finnigan appearing  
15 on behalf of Intervenor Oly Rose.

16 JUDGE CAILLE: Let the record reflect there  
17 are no other appearances.

18 At this time, would you like to call your  
19 first witness.

20 MR. PATRICK HANIS: Ms. Sue Perrault.

21

22 Whereupon,

23 SUE PERRAULT,

24 having been first duly sworn, was called as a witness

25 herein and was examined and testified as follows:

0048

1

2

3

(The following exhibits were identified in  
conjunction with the testimony of SUE PERRAULT.)

4

5

Exhibit T1 is SP-T1: Direct Testimony (March  
12, 2002).

6

7

8

JUDGE CAILLE: Counsel, you may introduce  
your witness.

9

10

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

11

BY MR. PATRICK HANIS:

12

13

Q. Ms. Perrault, would you please state your  
full name for the record.

14

A. My name is Sue Perrault, P-E-R-R-A-U-L-T.

15

Q. And your address?

16

17

A. I just moved, so I have to read it, I'm  
sorry. It's 8242 Northeast 140th Street, Bothell,  
Washington 98011.

19

20

MR. PATRICK HANIS: Your Honor, we have  
submitted Ms. Perrault's written direct testimony.

21

22

JUDGE CAILLE: So what we normally do is you  
would move to have that admitted.

23

24

MR. PATRICK HANIS: Okay, then we would move  
to have --

25

JUDGE CAILLE: Actually, you would ask her if

0049

1 there are any corrections or -- and perhaps --

2 MR. FINNIGAN: If I might make a suggestion.

3 JUDGE CAILLE: Go ahead.

4 MR. FINNIGAN: The normal practice is to have  
5 the witness identify the testimony, ask her if she were  
6 to testify today would the questions and answers be the  
7 same, and ask if there are any corrections, and then at  
8 that time offer the exhibit and tender the witness for  
9 cross-examination.

10 MR. MICHAEL HANIS: We should use the one  
11 that's in the record.

12 MR. PATRICK HANIS: Do we have the official  
13 record?

14 JUDGE CAILLE: No, we don't.

15 MR. FINNIGAN: And again, the normal practice  
16 is for the counsel to provide the witness with a copy of  
17 what they submitted.

18 MS. PERRAULT: I have a copy that you mailed  
19 me this week.

20 BY MR. PATRICK HANIS:

21 Q. Ms. Perrault, I'm showing you what's been  
22 marked as Exhibit T1, if you would identify that.

23 A. Yes, this is mine.

24 Q. And have you had an opportunity to review it?

25 A. Yes, I have.

0050

1 Q. And are the statements contained in this  
2 exhibit, if you were to testify as to the questions  
3 asked, would they be the same answers that you would  
4 give?

5 A. Yes, they would.

6 MR. PATRICK HANIS: I would tender our  
7 witness for cross-examination and move that the written  
8 direct testimony of Sue Perrault be admitted.

9 JUDGE CAILLE: Is there any objection to the  
10 admission of Exhibit T1?

11 MR. PORS: No.

12 MR. FINNIGAN: None, Your Honor.

13 JUDGE CAILLE: All right, this witness is  
14 available for cross-examination. And is the Respondent  
15 going to go first?

16 MR. PORS: Yes.

17 JUDGE CAILLE: All right.

18

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

20 BY MR. PORS:

21 Q. Good morning, Ms. Perrault, my name is Tom  
22 Pors, and I'm representing Rosario Utilities.

23 You testified that you paid \$2,500 to Orcas  
24 Highlands as a water fee.

25 A. Yes.

0051

1 Q. And you testified that someone informed you  
2 that by paying that \$2,500 you were on a priority list.

3 A. Yes.

4 Q. Who told you that?

5 A. Sheila Pringle, the bookkeeper for Orcas  
6 Highlands.

7 Q. She's the bookkeeper for Orcas Highlands?

8 A. Mm-hm.

9 Q. Are you aware that Orcas Highlands is not an  
10 agent of Rosario Utilities but rather a separate water  
11 system?

12 MR. PATRICK HANIS: Your Honor, I'm going to  
13 object. The issue of the status of Orcas Highlands with  
14 Rosario Utilities has previously been determined by this  
15 Commission and is probably not relevant for purpose of  
16 this hearing today.

17 MR. PORS: I believe its relevance is someone  
18 with Orcas Highlands informed her she was on a priority  
19 list. I want to establish that that information did not  
20 come from Rosario Utilities.

21 JUDGE CAILLE: All right, the objection is  
22 overruled. The witness is directed to answer the  
23 question as best you can.

24 A. No, all the information I was ever provided  
25 was that was the proper way to go about getting on the

0052

1 water list.

2 BY MR. PORS:

3 Q. Do you understand that Orcas Highlands has  
4 its own separate water system which is distinct from the  
5 Rosario Utilities water system?

6 A. At this time. At the time that I paid my  
7 water fee and bought the property, no.

8 Q. Did Sheila Pringle or anyone else from the  
9 Orcas Highlands Water Association ever inform you that  
10 they were speaking on behalf of Rosario Utilities when  
11 they said that you were on a priority list?

12 A. I can't recall what -- no, I can't recall. I  
13 was just informed when I originally purchased the  
14 property that there was a fee to pay to be on a water  
15 membership, which I did not do at that time. Then the  
16 moratorium came in effect, and I received a letter from  
17 Orcas Highlands that if I would pay \$2,500 in November  
18 '99 I would get under -- I would be grandfathered in  
19 instead of paying \$5,000 I think six months later and be  
20 on a list to get water.

21 Q. Did you ever speak with anyone with Rosario  
22 Utilities about whether or not you were on a priority  
23 list?

24 A. No, I wasn't able to get any contact with  
25 Rosario Utilities. None of my calls were ever returned.

0053

1 Q. I'm going to ask you and the other witnesses  
2 who are here today to, as a courtesy to the court  
3 reporter and for the record, to please wait until the  
4 question is completely delivered before answering.

5 JUDGE CAILLE: And, Mr. Pors, if you will  
6 just ask me to do that, that's my job.

7 MR. PORS: I'm sorry.

8 JUDGE CAILLE: So I was about to do that.

9 Please wait until he has completed his  
10 question before you begin answering.

11 THE WITNESS: Okay.

12 JUDGE CAILLE: Because what happens is the  
13 words go over each other, and it's difficult for her to  
14 get them down.

15 MR. PORS: Could you re-read her answer,  
16 please.

17 (Record read as requested.)

18 BY MR. PORS:

19 Q. Your property is inside the Orcas Highlands  
20 water system and not Rosario Utilities water system; is  
21 that correct?

22 A. Yes.

23 Q. About a year ago, were you making  
24 arrangements to build a house on your property?

25 A. Yes.



0054

1 Q. This is the lot 4 property?

2 A. Yes.

3 Q. Did you understand that you needed a water  
4 availability certificate in order to get a building  
5 permit for that house?

6 A. Yes.

7 Q. How did you find out about the time and place  
8 of the sale of water certificates?

9 A. I was contacted by my sister, who lives on  
10 Orcas Island. She was informed by other people who  
11 lived in the Highlands and knew that I had property  
12 there and was waiting for water. I never received any  
13 letter or communications from either the Highlands or  
14 Orcas Water.

15 MR. PORS: I would like the witness to review  
16 Exhibit 69, which is a May 23, 2001, notice from Rosario  
17 Utilities regarding the upcoming sale.

18 JUDGE CAILLE: Do you have that to show to  
19 your witness?

20 MR. PATRICK HANIS: The exhibit again?

21 MR. PORS: 69.

22 JUDGE CAILLE: It's the May 23rd letter that  
23 is attached to just about every Complainant's testimony,  
24 actually not just every Complainant's, everyone, every  
25 witness's.

0055

1 BY MR. PORS:

2 Q. Ms. Perrault, let the record reflect you're  
3 reviewing Exhibit 69. Do you recall seeing this  
4 document prior to the June 15, 2001, sale?

5 A. No.

6 Q. Do you recall discussing this document with  
7 your sister?

8 A. Not the document, but the information she had  
9 received verbally from other residents on the island.

10 Q. Prior to the June 15th sale -- strike that.

11 Did you understand that the June 15 sale was  
12 a first come, first serve sale?

13 A. Yes.

14 Q. Did you understand that there was a limited  
15 number of certificates available?

16 A. Yes, but I felt that I was in the priority  
17 list because of a previous membership I paid.

18 Q. Were you aware that this Exhibit 69 notice  
19 provided that those people who paid for a water  
20 connection before the moratorium went into effect and  
21 are on the utilities commission priority list will be  
22 the first to receive water certificates and that during  
23 the next few weeks we will be coordinating with these  
24 future customers?

25 A. No, because I never saw this, and my

0056

1 membership was purchased after the moratorium was in  
2 effect.

3 Q. If you believed you were on a priority list  
4 and yet you understood that this June 15th sale was  
5 first come, first serve, why didn't you make any  
6 additional contacts with Rosario Utilities in order to  
7 determine whether you would have a chance to buy your  
8 certificate before the sale?

9 A. I was never able to get in contact with  
10 Rosario Utilities. I don't live on the island. I  
11 contacted Orcas Highlands and was instructed to send  
12 them \$3,100, and they would reissue a check in their  
13 name for me to present that day.

14 Q. Did you try to have your sister go into the  
15 office of Rosario Utilities to find out about the  
16 priority list?

17 A. I didn't, because I didn't know about the --  
18 I mean no, I did not. I felt that I had gotten accurate  
19 information, unfortunately, from Rosario, from Orcas  
20 Highlands, excuse me.

21 Q. What information did you receive from Rosario  
22 Utilities rather than Orcas Highlands about the --

23 A. Verbally --

24 Q. Excuse me -- about the June 15th sale?

25 A. I received information over the phone that I

0057

1 needed to exchange, send them a check and have a check  
2 issued from them to present that day, that there were a  
3 large number of hookups.

4 MR. PORS: I would move to strike the answer  
5 as nonresponsive. I asked what information the witness  
6 received from Rosario Utilities.

7 THE WITNESS: Oh, excuse me.

8 MR. PORS: Not from Orcas Highlands.

9 A. I received no information from them.

10 BY MR. PORS:

11 Q. Do you know where your sister got her  
12 information regarding the sale?

13 A. Yes.

14 Q. Where did she get her information?

15 A. My sister works at a public building on the  
16 island and is well known. Friends and acquaintances  
17 there knew we were trying to build a home for my mother,  
18 and they just came in and told her.

19 Q. Did your, I'm sorry if I asked this already,  
20 but did your sister ever talk to Chris Vierthaler prior  
21 to the June 15th sale?

22 A. No.

23 Q. Did your sister go directly to the Discovery  
24 House on June 15th, or did she go first to the mansion?

25 A. She told me she went directly to the

0058

1 Discovery House, because she had already heard by word  
2 of mouth that's where it was going to be.

3 MR. PORS: I have got no further questions.

4 JUDGE CAILLE: Mr. Finnigan.

5 MR. FINNIGAN: Thank you.

6

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

8 BY MR. FINNIGAN:

9 Q. Good morning.

10 A. Good morning.

11 Q. Just to clear one thing up, you do probably  
12 want to correct your answer to question number 1, don't  
13 you?

14 A. Oh, yes.

15 JUDGE CAILLE: Where you live.

16 Q. All right. And you have previously given us  
17 your new address?

18 A. Yes.

19 Q. Okay. Could you tell me how long you lived  
20 at the Kenmore, Washington address?

21 A. I lived there for 11 years.

22 Q. And what do you do for a living?

23 A. I work in a retail store.

24 Q. In your testimony for question 8 on page 2,  
25 would you look at that, please, the first sentence says,

0059

1 Rosario Utilities placed a moratorium; do you see that?

2 A. Yes.

3 Q. Do you know when that moratorium went into  
4 place?

5 A. I'm not positive. It was in the early '90's  
6 though, most of the time I have owned the property.

7 Q. And you have previously testified this  
8 morning that you purchased your property after the  
9 moratorium was in effect?

10 A. No, I purchased my property before the  
11 moratorium was in effect. I wasn't able to purchase the  
12 membership, afford to purchase the membership at that  
13 time.

14 Q. Okay.

15 A. Then the moratorium went into effect probably  
16 within two years of purchase.

17 Q. Okay. So you purchased the property and  
18 chose not to purchase a water membership for those two  
19 years?

20 A. Correct.

21 Q. Would you look at page 3 of your testimony,  
22 please, question and answer 14; do you see that?

23 A. Yes.

24 Q. Now as I understand it, you were not present;  
25 is that correct?

0060

1           A.     No.  The information I was provided was if  
2 you do not live on Orcas, you may choose a agent to  
3 attend to wait in line.

4           MR. FINNIGAN:  Your Honor, may I have that  
5 answer stricken as nonresponsive?  The question was  
6 whether she was present, and that was all the question  
7 was.

8           A.     The answer to that is no.

9 BY MR. FINNIGAN:

10          Q.     How did you know if you weren't present that  
11 the last water certificate was given to someone who  
12 lives on Orcas Island and arrived at the Discovery House  
13 just after midnight; how do you know all that?

14          A.     I know that by being told by my sister and  
15 other people who were present.

16          Q.     And so everything in 14 is based on what  
17 other people have told you, not upon your own knowledge;  
18 is that correct?

19          A.     That's correct.

20          MR. FINNIGAN:  All right, I have no further  
21 questions.  Thank you.

22          JUDGE CAILLE:  Any redirect?

23          MR. PATRICK HANIS:  Yes.

24

25

0061

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

2 BY MR. PATRICK HANIS:

3 Q. Who attended the sale for you?

4 A. My sister, Kathy Strieling.

5 JUDGE CAILLE: Could you spell that for the  
6 record.

7 THE WITNESS: Yes, S-T-R-I-E-L-I-N-G.

8 JUDGE CAILLE: Thank you.

9 BY MR. PATRICK HANIS:

10 Q. Over the course of the years since you have  
11 owned your property, have you at any time given your  
12 address to Rosario Utilities?

13 A. I do not know.

14 Q. And your testimony was that you received  
15 information regarding the sale from your sister. Are  
16 you positive that you did not receive information  
17 regarding this sale in any other manner?

18 A. Yes.

19 MR. PATRICK HANIS: I have no further  
20 questions, Your Honor.

21 JUDGE CAILLE: All right.

22 Any recross?

23 Thank you, Ms. Perrault, you are excused.

24 MR. PATRICK HANIS: Your Honor, we call  
25 Gwyneth Burrill by telephone.



0062

1                   MR. FINNIGAN: Before you do, Your Honor, I  
2 need to raise a logistical issue.

3                   JUDGE CAILLE: All right.

4                   MR. FINNIGAN: This witness, I was going to  
5 ask a question concerning one of our cross exhibits. We  
6 reminded Mr. Hanis that he would need to provide the  
7 exhibits yesterday. I contacted Mr. Pors and brought  
8 the issue up. It occurred to me when I was preparing  
9 that this would be a problem and brought the issue up.  
10 Mr. Pors contacted Mr. Hanis. I was out of the office  
11 from about 3:00 on yesterday. Mr. Hanis left a message  
12 on my voice mail asking apparently in response to  
13 Mr. Pors' call if I was going to use any of this  
14 information, any of the cross exhibits with his  
15 witnesses who were not available by telephone.  
16 Unfortunately, I did not get that message until this  
17 morning because I was out of the office, and I do want  
18 to ask a question about some of the cross, at least one  
19 of the cross exhibits of this witness, so I don't know  
20 how we solve that.

21                   MR. PATRICK HANIS: What cross exhibit?

22                   MR. FINNIGAN: It would be Exhibit, which we  
23 need to confirm on the record, we forgot to confirm  
24 that, Exhibit 116, which was before we started  
25 identified and been admitted by stipulation.

0063

1 MR. PATRICK HANIS: Is there a portion of --

2 MR. FINNIGAN: Yeah, in fact, I identified  
3 that to you before we started this morning.

4 MR. PATRICK HANIS: Oh, the map?

5 MR. FINNIGAN: Yes.

6 MR. PATRICK HANIS: Okay. We provided the  
7 stuff Mr. Pors requested. I didn't understand that it  
8 was for both of them. If it's limited to the map, I  
9 believe that each of these witnesses probably have a  
10 good enough knowledge of the resort to at least  
11 understand the buildings that will be at issue.

12 MR. FINNIGAN: Well, my question was probably  
13 broader than that, but if he believes that his witness  
14 can testify about the exhibit without having the exhibit  
15 in front of him, we will give it a shot, or her as the  
16 case may be.

17 MR. PATRICK HANIS: We can describe the  
18 exhibit as best we can.

19 JUDGE CAILLE: All right, I guess that's what  
20 we'll have to do. I'm sure she doesn't have a fax  
21 machine at her disposal.

22 MR. PATRICK HANIS: At her office she does,  
23 but she's at home.

24 JUDGE CAILLE: Okay, then let's get  
25 Ms. Burrill on the phone.

0064

1 (Discussion off the record.)

2 JUDGE CAILLE: Before I swear you in, I just  
3 want you to know that I have a court reporter sitting  
4 right here to my left, and if you could speak slowly and  
5 distinctly and just with the same volume you have spoken  
6 with so far, that will be just perfect. The other thing  
7 is that she can only record one person at a time, so  
8 please, should someone ask you a question, allow them to  
9 complete that question before you begin your answer.

10 Perhaps before I swear her in we should  
11 mention on the record that, Mr. Finnigan, about that  
12 stipulated exhibit.

13 MR. FINNIGAN: Yes, please.

14 JUDGE CAILLE: Prior to going on the record  
15 this morning, the parties have notified me that they  
16 have agreed to stipulate to Exhibit 116, that is the  
17 resort master plan, so that's admitted into the record  
18 by stipulation.

19 All right, Ms. Burrill, will you please raise  
20 your right hand.

21

22 Whereupon,

23 GWYNETH BURRILL,  
24 having been first duly sworn, was called as a witness  
25 herein and was examined and testified as follows:

0065

1

2

3

(The following exhibits were identified in conjunction with the testimony of GWYNETH BURRILL.)

4

5

6

Exhibit T2 is GB-T1: Direct Testimony (March 12, 2002). Exhibit T3 is GB-T2: Rebuttal Testimony (May 22, 2002).

7

8

9

JUDGE CAILLE: Okay, Mr. Hanis, you may introduce your witness.

10

11

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

12

BY MR. PATRICK HANIS:

13

Q. Good morning, Ms. Burrill.

14

A. Good morning.

15

16

Q. Could you please spell your name for the record.

17

18

A. G-W-Y-N-E-T-H, last name B as in boy, U-R-R-I-L-L.

19

Q. Ms. Burrill, what is your current address?

20

21

A. Post Office Box 127, East Sound, Washington 98245.

22

23

Q. Ms. Burrill, do you recall entering written direct testimony in this matter?

24

A. I do.

25

Q. Do you recall entering written rebuttal

0066

1 testimony in this matter?

2 A. I do.

3 Q. Have you had an opportunity to review those  
4 two documents?

5 A. Yes.

6 Q. If I were to ask you the same questions that  
7 those documents contain, would your answers be the same?

8 A. Yes.

9 MR. PATRICK HANIS: Move that exhibit  
10 previously marked as Exhibit T2 and T3 be admitted into  
11 evidence.

12 JUDGE CAILLE: Is there any objection to the  
13 admission of Exhibits T2 and T3?

14 MR. PORS: No.

15 THE WITNESS: No.

16 MR. FINNIGAN: No. I just want to clarify,  
17 with the portions of the testimony that have been  
18 previously stricken, and I assume that we don't have to  
19 repeat that, this just applies across the board to all  
20 the witnesses.

21 JUDGE CAILLE: Yes, it does.

22 MR. FINNIGAN: Okay, thank you.

23 JUDGE CAILLE: Just for the record, as  
24 Mr. Finnigan has stated, there was a previous motion  
25 where some of the exhibits and portions of testimony

0067

1 have been stricken, and those are delineated in that  
2 motion, and they apply. They have been stricken from  
3 the testimony here today.

4 MR. FINNIGAN: No objections.

5 JUDGE CAILLE: Ms. Burrill, just so you know,  
6 when I asked no objection, that was a question for the  
7 attorneys, and I will try to be more clear who I'm  
8 talking to.

9 THE WITNESS: Thank you.

10 JUDGE CAILLE: So Exhibits T2 and T3 are  
11 admitted into the record, and Ms. Burrill is available  
12 for cross-examination.

13 And, Ms. Burrill, Mr. Pors will now ask you  
14 questions.

15 THE WITNESS: Thank you.

16

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

18 BY MR. PORS:

19 Q. Good morning, Ms. Burrill. My name is Tom  
20 Pors, and I'm representing Rosario Utilities. You  
21 testified that you were representing David and Janis  
22 Stevens at the June 15, 2001, sale of water  
23 certificates, correct?

24 A. That's correct.

25 Q. Where is their property located?

0068

1           A.     I'm sorry, I don't have the exact lot right  
2 in front of me. It is located in Rosario, and I'm -- I  
3 did not bring that with me for this phone call as to the  
4 lot number and the estate portion of Rosario.

5           Q.     Ms. Burrill, is their property located within  
6 the Orcas Highlands water service area?

7           A.     It is not. It is in the resort area.

8           Q.     How did you find out about the time and place  
9 of the sale of water certificates by Rosario Utilities?

10          A.     I do not know. Candidly, word on the street  
11 sometime in early June that the moratorium had been  
12 lifted.

13          Q.     Ms. Burrill, have you been provided with a  
14 copy of Exhibit 69, which is a May 23, 2001, notice to  
15 all property owners from Rosario Utilities?

16          A.     I have.

17          Q.     Do you have a copy of that with you now?

18          A.     I do.

19          Q.     Did you ever see this exhibit before the June  
20 15th sale?

21          A.     I did not.

22          Q.     Did you understand that the June 15th sale  
23 was first come, first serve?

24          A.     I did not until I spoke with Ms. Vierthaler.

25          Q.     And when did that conversation take place?

0069

1           A.     Two to three weeks before the sale and again  
2 the day prior to the sale.

3           Q.     Did you understand from those conversations  
4 that there were a limited number of water certificates  
5 available?

6           A.     I did not.

7           Q.     Did you have that understanding from word on  
8 the street, speaking to other people on the island?

9           A.     I did not know it would be limited, merely  
10 that there would be certificates available.

11          Q.     Did you understand that there might not be  
12 enough certificates available to meet the demand for  
13 water certificates in the Rosario service area?

14          A.     I did not.

15          Q.     You testified that you contacted Chris  
16 Vierthaler to find out about when to show up for the  
17 sale; is that correct?

18          A.     That's correct.

19          Q.     And in your testimony, you stated that  
20 Ms. Vierthaler told you there would be no camping out;  
21 is that correct?

22          A.     That's correct.

23          Q.     Did you ask her what camping out meant? In  
24 other words, was that supposed to mean tents and  
25 sleeping bags or campers on the resort property that she



0070

1 was concerned about, or was she -- it's just people  
2 being present or waiting in line before 9:00 a.m. on the  
3 15th?

4 A. Camping out was Ms. Vierthaler's way of  
5 saying it. I had indicated that there was excitement  
6 with water certificates becoming available, and did she  
7 realize there would be people lining up down the road,  
8 and her response was to tell me that there would be no  
9 camping out at all.

10 Q. Did she tell you that there could be no lines  
11 before the 9:00 sale, or she just said no camping out?

12 A. In response to my saying that I thought I  
13 would get there a little early, she told me that they  
14 would be not lining up and they would be not camping  
15 out.

16 Q. And specifically do you recall whether she  
17 said no lining up before 9:00 a.m. on Friday or before  
18 some other time, or was it just no lining up before  
19 Friday?

20 A. My question to her was to say that I would be  
21 probably arriving a couple of hours prior to the sale,  
22 and her answer was that they wouldn't be lining up or  
23 camping out.

24 Q. Ms. Burrill, if you were not aware, as you  
25 have previously testified, that there was a limited

0071

1 number of certificates available, why were you intending  
2 to come to the sale a couple of hours early?

3 A. (Laughing.)

4 It was obvious that anyone having anything to  
5 do with real estate in Rosario and the lack of water  
6 certificates that there would be a lot of people there.  
7 I expected that there would be a lot of onlookers, never  
8 mind people going for water certificates. It was a very  
9 big deal on this island to have water become available  
10 and the system to be completed. Everyone was thrilled  
11 the system was completed and water would be available.

12 Q. Well, I'm trying to find a consistent thread  
13 in your testimony here, Ms. Burrill. You said that you  
14 didn't know there was a limited number of certificates  
15 available but that it was a very important deal because  
16 previously there had been a lack of water available.  
17 Were you showing up early at the sale because it was a  
18 big event or because you thought you had to get there  
19 early in order to get a certificate before they ran out?

20 A. I was showing up early so that I could  
21 represent clients, the Stevens, who could not be here at  
22 their request to please make sure that you get there so  
23 that we can get our water certificate.

24 Q. But again, you're testifying that you weren't  
25 aware that there was a limited number of certificates

0072

1 available; is that your testimony?

2 A. I did not know there would be a limited  
3 amount, correct.

4 Q. If you were told by Ms. Vierthaler that there  
5 could be no lining up before 9:00 a.m. when the office  
6 opened, how did you think a first come, first serve  
7 order would be determined if there was already a crowd  
8 of people assembled for the sale?

9 A. Simply like buying rock tickets, that anybody  
10 looking for them was going to get there so that they  
11 could be first come, first serve. That's what that  
12 indicates to me. Whatever you're going for, it's first  
13 come, first serve. You know you need to be there in  
14 advance if you're going to be first come, first served.  
15 I had promised the Stevens I would enable them to get a  
16 certificate if at all possible.

17 Q. In other words, because it was a first come,  
18 first serve sale, you assumed that people would be in  
19 attendance prior to 9:00 a.m.?

20 A. That is correct. That is why I made my  
21 comment to Ms. Vierthaler that people would be, in fact,  
22 lining up down the road.

23 Q. And that's why you arrived at 5:30 a.m. on  
24 June 15th rather than waiting until 9:00 a.m.; is that  
25 correct?

0073

1 A. That is correct.

2 Q. Are you claiming that you relied on  
3 Ms. Vierthaler's instruction not to line up or camp out  
4 before 9:00 a.m.?

5 A. (Laughing.)

6 I was not camping out, and I was not lining  
7 up. I simply arrived to see what was happening.

8 Q. You didn't arrive with the intention to get  
9 in line to purchase a water certificate for the Stevens?

10 A. I arrived to find out what was happening down  
11 at Rosario concerning the giving out of certificates.

12 Q. In your testimony, you noted that the person  
13 who showed up just before you was the last person to get  
14 a certificate; is that correct?

15 A. That is correct.

16 Q. Isn't it true then, Ms. Burrill, that if you  
17 had showed up just 10 or 15 minutes earlier, you would  
18 have gotten a certificate for the Stevens?

19 A. I do not know the answer to that. My  
20 understanding that it was one certificate per person,  
21 counting where I was at in the queuing would not have  
22 told me anything, as others discovered. I had no way of  
23 knowing. Had I showed up at 3:00 in the morning, I do  
24 have no idea where I would have been in that lineup.  
25 None of this was preknown knowledge. It was simply show

0074

1 up and see what's happening.

2 Q. Okay, thank you, Ms. Burrill.

3 Did you have an opportunity before the sale  
4 to review any notices regarding the sale? You  
5 previously testified that you did not see Exhibit 69,  
6 did you see at any time over the previous year and a  
7 half any other notices from Rosario Utilities that  
8 discussed the pending completion of the water treatment  
9 plant and ending of the moratorium?

10 A. I do not know. It is possible that in the  
11 office there may have been notices. I do not recall  
12 having seen them, no.

13 Q. You live on Orcas Island, Ms. Burrill?

14 A. I do.

15 Q. Do you read the local paper?

16 A. I do.

17 Q. Do you recall ever seeing any articles in the  
18 local paper about the ending of the moratorium and the  
19 availability of water certificates for sale?

20 A. I do not. I do remember there was something  
21 about the moratorium ending. I do not remember anything  
22 about certificates becoming available.

23 Q. You testified that you had an understanding  
24 that there was only a single connection or certificate  
25 available for each property in the sale; is that

0075

1 correct?

2 A. That's correct.

3 Q. Where did you develop that understanding; was  
4 it through reading a particular document?

5 A. No, that was from speaking with  
6 Ms. Vierthaler.

7 Q. Was there any word on the street in your  
8 discussions with other realtors or customers that only  
9 one connection would be available per customer?

10 A. I had heard nothing like that at all. I had  
11 heard very little. In fact, it was --

12 Q. You have answered the question.  
13 You testified in your written rebuttal  
14 testimony that you spoke to Ms. Vierthaler the day  
15 before the sale between 4:00 p.m. and 5:00 p.m.

16 A. That's correct.

17 Q. How are you sure about that time?

18 A. I had to return the call to the Stevens to  
19 let them know, one, I had received their Fedex envelope  
20 with their check, and two, that I had spoken with  
21 Ms. Vierthaler, and three, that I would be representing  
22 them the next morning, and that was prior to my leaving  
23 the office that day.

24 Q. Was that a phone conversation, or did you see  
25 Ms. Vierthaler in person?

0076

1 A. That was a phone conversation.

2 Q. And did she tell you at that time that the  
3 sale the next morning would be at the mansion, or did  
4 she specify the Discovery House, or did you just not ask  
5 that question?

6 A. I asked if it would be at the mansion, and it  
7 was, I repeat, the sale will be at 9:00 a.m. at Rosario  
8 Resort. I was given no indication of the exact  
9 location. I asked if it was the mansion and was told  
10 that it would be at 9:00 a.m. at the resort. I'm sorry,  
11 I have to think back on this. No, she specifically said  
12 the mansion. That was why I went to the mansion the  
13 next morning at 5:30.

14 MR. PORIS: I have no further questions at  
15 this time.

16 JUDGE CAILLE: Mr. Finnigan.

17 MR. FINNIGAN: Thank you.

18

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

20 BY MR. FINNIGAN:

21 Q. Ms. Burrill, this is Rick Finnigan speaking.  
22 I represent Oly Rose.

23 A. Yes.

24 Q. You appeared at the sale as agent for the  
25 Stevens; is that correct?

0077

1 A. I'm sorry, I can't hear you very well.

2 Q. You appeared at the sale as the agent for the  
3 Stevens; is that correct?

4 A. That's correct.

5 Q. And you have testified this morning that the  
6 Stevens' lot was within the Rosario service area rather  
7 than the Orcas Highlands service area; is that correct?

8 A. That's correct.

9 Q. Did the Stevens ever tell you that they had  
10 received a letter or letters from Rosario Utilities?

11 A. They had not. They called to ask why.  
12 Because it was family property, his parents had  
13 originally owned it, and their address has been the same  
14 on the tax parcel for some time. They were concerned  
15 because they had not received any notification.

16 Q. That actually wasn't my question, but we'll  
17 let it ride. Please listen to the question and answer  
18 the question that I ask.

19 Do you have your testimony in front of you?

20 A. I do.

21 Q. Do you have other exhibits in front of you as  
22 well?

23 A. I do.

24 Q. What exhibits do you have?

25 A. I have a water systems coordination



0078

1 agreement. I have a priority list that's dated  
2 1-7-2000, a copy of a letter, Rosario Utilities, May  
3 30th, 2000, July 10, 2000, November 15, 2000. Something  
4 that appears that it was going to be a newspaper  
5 release, it was the draft for client approval. I have a  
6 letter saying Rosario Utilities, May 23rd, 2001. And I  
7 have Exhibit 7, water certificate notice.

8 Q. Do you have any other documents before you  
9 today?

10 A. I do not.

11 Q. Would you look at your rebuttal testimony,  
12 please, question and answer number 3.

13 A. I have it.

14 Q. It says you spoke with Ms. Vierthaler, sorry  
15 about that, approximately two or three weeks before the  
16 sale; is that correct?

17 A. That's correct.

18 Q. So that would have put that conversation in  
19 late May?

20 A. Late May or early June. I'm sorry I can't be  
21 closer on that.

22 Q. Well, if it's two weeks, that's got to be May  
23 31st.

24 A. Then it would be around May 31st.

25 Q. So you found out that there was going to be a

0079

1 sale prior to May 31st when you called her; is that  
2 correct?

3 A. I called to inquire --

4 Q. Would you please answer --

5 MR. FINNIGAN: I'm sorry, would you ask the  
6 witness to answer my question.

7 THE WITNESS: Well, repeat it again, please.

8 JUDGE CAILLE: First of all, Ms. Burrill, you  
9 should listen to the question and answer the question.  
10 If there's more that you wish to add, your counsel will  
11 bring that up for you during redirect.

12 THE WITNESS: Thank you.

13 JUDGE CAILLE: So please just listen to the  
14 question, and answer the question.

15 THE WITNESS: All right.

16 BY MR. FINNIGAN:

17 Q. The question was that if you talked to  
18 Ms. Vierthaler on May 31st, then you found out about the  
19 sale prior to May 31st; is that correct?

20 A. That's correct.

21 Q. Would you please look at your direct  
22 testimony, and my question is that you have your  
23 responses to question and answers 5 and 6 and 7, excuse  
24 me, not 6, but 5 and 7, would you look at those for a  
25 moment, please.

0080

1 A. I have them.

2 Q. You have certain information in quotes. Is  
3 that meant to imply that those are direct statements  
4 that you remember word for word?

5 A. That is correct.

6 Q. Okay. Are you familiar with the Rosario  
7 Resort master plan?

8 A. I am not.

9 Q. Are you familiar with the physical boundaries  
10 of the resort territory?

11 A. I am not.

12 MR. FINNIGAN: I'm stopped right here, Your  
13 Honor.

14 JUDGE CAILLE: Before your testimony,  
15 Ms. Burrill, just so you know, we had inquired about  
16 what exhibits you had, because Mr. Finnigan had a  
17 question for you that relates to an exhibit, and  
18 apparently you don't have this exhibit, so that's why he  
19 has stopped his cross-examination.

20 For right now I need to hear from the  
21 attorneys as to how we can handle this and if she can  
22 somehow --

23 MR. PATRICK HANIS: Well, perhaps a more  
24 specific question. What are the resort boundaries is  
25 just pretty broad. Do you want a legal description, or

0081

1 do you want the meets and bounds?

2 MR. FINNIGAN: I would assume that as a real  
3 estate agent she would know the physical extent of the  
4 resort. I'm not asking her for meets and bounds. I'm  
5 not asking her for a legal description.

6 THE WITNESS: I do not.

7 MR. FINNIGAN: And she said she doesn't know  
8 the resort territory. So I was trying to be, you know,  
9 as general as I could be under the circumstances, given  
10 her experience as a real estate agent.

11 MR. PATRICK HANIS: I would suggest then  
12 perhaps a follow up, are you familiar with the location  
13 of buildings at the resort, are you familiar with --  
14 have you been on the resort property, are you familiar  
15 with where the entrance is, are you familiar with where  
16 the yacht club is.

17 THE WITNESS: Yes, I am familiar with the  
18 resort, the marina, the entrance, Discovery House, and  
19 the accommodation up on the hill.

20 BY MR. FINNIGAN:

21 Q. And you're familiar then that all of those  
22 structures are part of the resort?

23 A. I believe they are, but there is one called  
24 Cascade Bay that I do not know whether that building  
25 belongs to the resort or somebody else.

0082

1 Q. Okay. But the buildings that your counsel  
2 identified and you have identified are to your knowledge  
3 part of the resort?

4 A. To my knowledge, yes.

5 MR. FINNIGAN: No further questions.

6 JUDGE CAILLE: Redirect, Mr. Hanis?

7 MR. PATRICK HANIS: Yes, just a couple  
8 questions.

9

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

11 BY MR. PATRICK HANIS.

12 Q. Ms. Burrill.

13 A. Hello.

14 Q. Yes, I will ask you a question in just a  
15 second.

16 On the morning of the sale, where did you  
17 initially go?

18 A. I went down to the mansion, parked, and went  
19 to the front entry doors and walked into the lobby.

20 Q. And what happened after you walked into their  
21 lobby?

22 A. There was nobody present.

23 Q. What did you do then?

24 A. I turned around and went back to my vehicle,  
25 started up the hill, changed my mind, turned around in

0083

1 the driveway, went back down and headed towards  
2 Discovery House.

3 Q. Why did you head towards the Discovery House?

4 A. Because I realized that that is where  
5 functions are often held. If it was not at one place,  
6 perhaps it was at another.

7 Q. Approximately how far is it to the best of  
8 your knowledge from the mansion to the Discovery House?

9 A. Oh, in blocks I would guess walking two  
10 blocks possibly.

11 Q. And how long do you recall in time passed  
12 between your having walked into the mansion to the time  
13 that you walked up to the Discovery House?

14 A. 10 to 15 minutes.

15 Q. So is it possible then that another person  
16 arrived before you, and if that person went straight to  
17 the Discovery House, they would have arrived before you,  
18 had they entered the resort property at the same time  
19 you did?

20 A. That's correct.

21 Q. Ms. Burrill, you testified that you spoke  
22 with Ms. Vierthaler between 4:00 and 5:00 p.m. Where  
23 did that conversation -- where were you when you had  
24 that conversation?

25 A. I was calling from the Coldwell Banker office

0084

1 in East Sound.

2 Q. Is that where you work?

3 A. That's correct.

4 Q. And how was it that you know that it was  
5 between 4:00 and 5:00 p.m.?

6 A. Because I was to call the Stevens to let them  
7 know that I had received their check, that I had spoken  
8 to the resort, and that I was going to be representing  
9 them the next morning. The call was arranged for them  
10 to be waiting for my call prior to my departing the  
11 office that day at 5:00 and before them having to go to  
12 an appointment they were waiting on.

13 Q. As part of your employment, do you keep track  
14 of the time that you arrive or leave your place of  
15 employment?

16 A. I have a daytimer, and I have a notation in  
17 the daytimer to call the Stevens at that time to  
18 finalize and to let them know their check had been  
19 received.

20 MR. PATRICK HANIS: I have no further  
21 questions, Your Honor.

22 JUDGE CAILLE: All right.

23 Any recross?

24 All right, thank you, Ms. Burrill, you are  
25 excused.

0085

1 THE WITNESS: Thank you.

2 MR. FINNIGAN: Your Honor, if I may.

3 JUDGE CAILLE: Um --

4 MR. FINNIGAN: Oh, I'm sorry, go ahead.

5 JUDGE CAILLE: Have you hung up?

6 THE WITNESS: I was just waiting to be  
7 instructed.

8 JUDGE CAILLE: Yes, you can hang up now,  
9 thank you.

10 THE WITNESS: Okay.

11 MR. FINNIGAN: Your Honor, I assume we have a  
12 continuing objection in place to the telephone  
13 testimony?

14 JUDGE CAILLE: Why don't you go ahead and  
15 make that on the record.

16 MR. FINNIGAN: I do want to renew our  
17 objection to the telephonic testimony. My estimation of  
18 this last witness is it would have been very, very  
19 helpful if she had been present in the room to judge her  
20 credibility given the way she answered some of those  
21 questions. It would also certainly have facilitated her  
22 understanding of what the questions were and the  
23 answers. That's much less a problem, but one of  
24 credibility is I think essential. And I got a certain  
25 sense from her testimony, I'm not certain other people



0086

1 got the same sense from her testimony, and it would have  
2 been I think very important for her to have been here in  
3 person.

4 MR. PATRICK HANIS: If I could respond.

5 JUDGE CAILLE: Sure.

6 MR. PATRICK HANIS: At the very first  
7 pre-hearing conference that we had in this matter  
8 several months ago, it was understood that it would be  
9 very difficult for people to attend a hearing in Olympia  
10 or Seattle. We felt Seattle was the best opportunity.  
11 It's very difficult for people to come off the island,  
12 and so the thought and the idea of telephonic testimony  
13 has been contemplated from the very beginning of this  
14 matter.

15 JUDGE CAILLE: All right, anything --

16 MR. PORS: Your Honor, Rosario Utilities  
17 joins in Mr. Finnigan's objection, and that applies to  
18 all of the Complainants testifying by phone.

19 JUDGE CAILLE: All right.

20 Our next witness is Mr. Torbet; is that  
21 right?

22 MR. PATRICK HANIS: Should we first move to  
23 have Mr. Scott Lancaster's testimony admitted into  
24 evidence previously marked as evidence T5, Exhibit 6,  
25 and Exhibit 7. I believe that's been stipulated to

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1 previously by counsel.

2 MR. FINNIGAN: That is correct.

3 MR. PORS: So stipulated.

4

5 (The following exhibits were identified in  
6 conjunction with the testimony of SCOTT LANCASTER.)

7 Exhibit T5 is SL-T1: Rebuttal Testimony (May  
8 22, 2002). Exhibit 6 is SL-1: June 21, 2001 letter to  
9 Scott Lancaster from Chris Vierthaler, Manager of  
10 Rosario Utilities. Exhibit 7 is SL-2: E-mail to  
11 Stephanie Johnson O'Day from Greg Knight, with cc to  
12 Chris Vierthaler.

13

14 JUDGE CAILLE: All right, then Exhibit T5,  
15 Exhibit 6, and Exhibit 7 are admitted into the record,  
16 and those have been previously stipulated.

17 MR. PATRICK HANIS: We would next call  
18 Mr. Walt Torbet by telephone. I will place that call  
19 now.

20 (Discussion off the record.)

21 JUDGE CAILLE: Hello, Mr. Torbet.

22 THE WITNESS: Yes.

23 JUDGE CAILLE: This is Karen Caille. I'm the  
24 Administrative Law Judge for this proceeding.

25 THE WITNESS: Yes.

0088

1                   JUDGE CAILLE:  And before I swear you in, I  
2 just want, your speaking voice is just fine for the  
3 court reporter, if you will speak slowly and distinctly,  
4 listen to the question carefully and answer the question  
5 only.  Also, the court reporter can only record one  
6 person at a time, so please wait until the question is  
7 completely asked before you begin your answer.

8                   THE WITNESS:  All right.

9                   JUDGE CAILLE:  And I think that covers it.

10                  THE WITNESS:  Very good.

11                  JUDGE CAILLE:  So please raise your right  
12 hand.

13

14 Whereupon,

15                                 WALT TORBET,  
16 having been first duly sworn, was called as a witness  
17 herein and was examined and testified as follows:

18

19                   (The following exhibits were identified in  
20 conjunction with the testimony of WALT TORBET.)

21                   Exhibit T8 is WT-T1: Rebuttal Testimony (May  
22 22, 2002).

23

24                  JUDGE CAILLE:  You may proceed, Mr. Hanis.

25                  MR. PATRICK HANIS:  Thank you.

0089

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2

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

3

BY MR. PATRICK HANIS:

4

Q. Good morning, Mr. Torbet.

5

A. Good morning.

6

Q. Would you please state your name for the

7

record.

8

A. Walt Torbet.

9

Q. How do you spell your last name?

10

A. T as in Tango, O, R, B as in bravo, E, T as

11

in Tango.

12

Q. What is your address, Mr. Torbet?

13

A. 424 Cascade Way, East Sound.

14

Q. Mr. Torbet --

15

A. Washington 98245.

16

Q. Mr. Torbet, you previously offered written

17

rebuttal testimony in this matter; do you recall doing

18

that?

19

A. Yes, I do.

20

Q. Have you reviewed that written rebuttal

21

testimony?

22

A. Yes. Shall I get a copy of it in front of me

23

now?

24

Q. If you would like, please.

25

A. All right, give me just a moment.

0090

1 I now have a copy of that testimony in front  
2 of me.

3 Q. Great, thank you. Mr. Torbet, if I were to  
4 ask you those same questions that I asked in that  
5 written testimony, would your answers remain the same  
6 today?

7 A. Yes.

8 MR. PATRICK HANIS: I would offer Exhibit T8  
9 for admission.

10 JUDGE CAILLE: Is there any objection?

11 MR. PORS: No objection.

12 MR. FINNIGAN: No objection.

13 JUDGE CAILLE: Then Exhibit T8 is admitted  
14 into the record.

15 MR. PATRICK HANIS: I tender the witness for  
16 cross-examination.

17

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

19 BY MR. PORS:

20 Q. Good morning, Mr. Torbet. My name is Tom  
21 Pors, and I'm representing Rosario Utilities.

22 A. Good morning.

23 Q. You testified that you arrived for the sale  
24 on June 14th, the day before the sale, and you waited  
25 overnight; is that correct?

0091

1 A. That is correct.

2 Q. And did you get a water certificate on June  
3 15th?

4 A. I did obtain a water certificate for my  
5 daughter's property, yes.

6 Q. Could you tell us please why you arrived  
7 early for the sale?

8 A. It just seemed the prudent thing to do.

9 Q. Did you understand that there were a limited  
10 number of certificates available?

11 A. Yes, I did.

12 Q. And did you understand that if you arrived  
13 late that you might not be able to obtain one of those  
14 certificates?

15 A. That seemed a reasonable possibility.

16 Q. Did anyone from Rosario Utilities tell you  
17 that you should arrive early for the sale?

18 A. No.

19 Q. So you figured it out for yourself then, that  
20 there being a limited supply of certificates, you should  
21 get there early if you didn't want to leave empty  
22 handed; is that correct?

23 A. Correct.

24 Q. When did you originally show up at Rosario  
25 Resort to wait for the sale?

0092

1           A.     It was early on Thursday morning.  I would  
2  imagine about 9:00 or thereabouts.

3           Q.     Were any other people waiting at that time?

4           A.     No.

5           Q.     And where did you go?

6           A.     I sat down outside Chris Vierthaler's office.  
7  At that time, there was no indication as to where the  
8  waiting line would actually be.

9           Q.     At some point that morning, were you  
10 instructed that the sale would be at the Discovery  
11 House?

12          A.     Ms. Vierthaler told me that the waiting line  
13 would be at the Discovery House, yes.

14          Q.     You also testified that Ms. Vierthaler came  
15 by around noon and said there was no point being in line  
16 so early and to come back on Friday; is that correct?

17          A.     That is correct.

18          Q.     Where were you at the time that she allegedly  
19 made that statement?

20          A.     I was on the deck of the Discovery House, the  
21 deck that faces towards Cascade Bay.

22          Q.     Did Ms. Vierthaler specify a time that you  
23 should arrive if you were -- assuming she told you that  
24 you were there too early, did she specify a time that  
25 you should arrive for the sale, or she just said

0093

1 tomorrow or Friday?

2 A. You understand that these are events that  
3 took place over a year ago, don't you?

4 Q. Yes, I do, and I appreciate your pointing  
5 that out Mr. Torbet. I'm just asking for your best  
6 recollection at this time.

7 A. My best recollection is that she said 9:00 on  
8 Friday morning.

9 Q. Did you have a discussion with her about why  
10 you should wait until 9:00?

11 A. I don't remember one.

12 Q. When that conversation happened, were any  
13 other people present?

14 A. No.

15 MR. PORS: I have no other questions.

16 MR. FINNIGAN: No questions.

17 JUDGE CAILLE: Any redirect, Mr. Hanis?

18 MR. PATRICK HANIS: Yes.

19

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

21 BY MR. PATRICK HANIS:

22 Q. Mr. Torbet, after she said that you should  
23 come back, excuse me, after Ms. Vierthaler said that you  
24 should come back the next morning, what did you do?

25 A. I left and went home for luncheon.



0094

1 Q. Did you have any intention to coming back  
2 that day?

3 A. No, I did not.

4 Q. Then why did you come back that day?

5 A. An acquaintance called me up and said that a  
6 line was forming at the Discovery House.

7 Q. And so what did you do?

8 A. Went immediately down to Discovery House and  
9 got in line.

10 MR. PATRICK HANIS: Thank you, no further  
11 questions.

12 JUDGE CAILLE: Any recross, Mr. Pors?

13 MR. PORS: No.

14 JUDGE CAILLE: All right.

15 Thank you, Mr. Torbet, you are excused, and  
16 you may hang up the phone.

17 THE WITNESS: Thank you, it's been a  
18 pleasure.

19 JUDGE CAILLE: Thank you.

20 THE WITNESS: Goodbye.

21

22 (The following exhibits were identified in  
23 conjunction with the testimony of IAN TULL FLAVELL.)

24 Exhibit T9 is ITF-T1: Direct Testimony (March  
25 12, 2002).

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MR. PATRICK HANIS: I believe next would be Mr. Ian Tull Flavell, who we have stipulated testimony, so we would move that Exhibit T9 be entered for admission.

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MR. FINNIGAN: And we have no or I have no objection, Your Honor, subject to the motion that we made at the pre-hearing conference that you overruled but allowed us the opportunity to renew. So the fact that we're stipulating to his testimony doesn't mean that we're waiving our motion as to the ability for Mr. Flavell to offer testimony at all.

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JUDGE CAILLE: All right.

MR. PORS: And one other caveat to the admission of this testimony, we have stipulated that the first sentence of answer number 8 be stricken.

MR. PATRICK HANIS: That is correct.

JUDGE CAILLE: I'm sorry, could you repeat that for me.

MR. PORS: The first sentence of answer number 8 of Mr. Flavell's testimony, we have stipulated with counsel for Complainants that that would be stricken.

JUDGE CAILLE: Okay, the first sentence of question number 8.

0096

1 MR. FINNIGAN: Of the answer to question  
2 number 8.

3 JUDGE CAILLE: Of the answer to question  
4 number 8.

5 All right, with that caveat, is there any  
6 objection to the admission of Exhibit Number T9?

7 MR. PORS: No.

8 MR. FINNIGAN: None.

9 JUDGE CAILLE: Then Exhibit T9 is admitted  
10 into the record as a stipulated exhibit subject to the  
11 testimony that's been stricken in answer of question 8.

12 And Ms. Stover is next.

13 MR. PATRICK HANIS: Ms. Stover by telephone.

14 (Discussion off the record.)

15 JUDGE CAILLE: Hello, Ms. Stover.

16 THE WITNESS: Yes, it is.

17 JUDGE CAILLE: This is Karen Caille. I'm the  
18 Administrative Law Judge, and I'm presiding over this  
19 hearing. And before I swear you in, I just want to go  
20 over a few things for testifying over the telephone. I  
21 have a court reporter seated to my left, and she is  
22 typing what you say, so it's important that you speak  
23 slowly and distinctly, and it sounds like your volume is  
24 just fine. Also, please listen to the question  
25 carefully, and respond to that question only. Also,

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1 please wait until the question is concluded before you  
2 begin your answer, because if two people are talking at  
3 the same time, the court reporter can not get both of  
4 you down.

5 THE WITNESS: Okay.

6 JUDGE CAILLE: So with that, if you will  
7 please raise your right hand, I will swear you in.

8

9 Whereupon,

10 COLLEEN STOVER,  
11 having been first duly sworn, was called as a witness  
12 herein and was examined and testified as follows:

13

14 (The following exhibits were identified in  
15 conjunction with the testimony of COLLEEN STOVER.)

16 Exhibit T10 is CS-T1: Direct Testimony (March  
17 12, 2002). Exhibit 11 is CS-1: May 26, 1998 letter from  
18 Chris Vierthaler, Administrative Manager of Rosario  
19 Utilities. Exhibit 12 is CS-2: July 10, 2000 letter to  
20 Current and Future Customers from Tim Kaiser, Vice  
21 President of Rosario Utilities. Exhibit 13 is CS-3: May  
22 23, 2001 letter to all Property Owners in the Vusario,  
23 Orcas Highlands and Rosario Water Systems from Chris  
24 Vierthaler, manager of Rosario Utilities.

25

0098

1 JUDGE CAILLE: Thank you.

2 Mr. Hanis, you may introduce your witness.

3

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

5 BY MR. PATRICK HANIS:

6 Q. Good morning, Ms. Stover. Would you please  
7 state your name for the record.

8 A. Yes, but I'm having trouble hearing you.

9 Q. I'll try to speak up.

10 A. Colleen Stover.

11 Q. Ms. Stover, what is your current address?

12 A. 7731 Southwest Gilman Road, Powell Butte,  
13 Oregon 98853.

14 Q. Ms. Stover, do you recall having entered  
15 written direct testimony in this matter?

16 A. Yes, I do.

17 Q. Have you reviewed that written direct  
18 testimony?

19 A. Yes, I have.

20 Q. If I were to ask you those same questions  
21 today, would your answers be the same today?

22 A. Only one would be different.

23 Q. Which one would that be?

24 A. Well, it wasn't actually the question, but it  
25 was a statement that we made that my husband called on

0099

1 the afternoon of June 15th, 2001, that my husband called  
2 and talked to Chris Vierthaler, and actually it was me.

3 Q. And to what question are you referring?

4 A. Well, I just -- I'm referring to our  
5 statement, but let me look through the questions. I'm  
6 still looking.

7 JUDGE CAILLE: If I might interrupt.

8 THE WITNESS: Uh-huh.

9 JUDGE CAILLE: Perhaps that was in your  
10 husband's testimony?

11 THE WITNESS: It was in the written testimony  
12 that we both did together, yes.

13 MR. PORS: I don't see it in her testimony.

14 JUDGE CAILLE: Is it in his? I didn't see it  
15 in hers.

16 BY MR. PATRICK HANIS:

17 Q. Ms. Stover, could you briefly review your  
18 testimony.

19 A. Sure, briefly, I'm not normally a brief  
20 person, that basically my husband and I purchased --

21 Q. I'm sorry, Ms. Stover, if you could just read  
22 that over and tell me --

23 A. Oh, I see what you're saying, oh, okay. And  
24 are you talking about the questions, or are you talking  
25 about --

0100

1 Q. The questions and answers, would your answers  
2 be the same as posed in that written direct testimony?

3 A. Yes, my answers would be the same because --  
4 yes.

5 Q. Okay, thank you.

6 MR. PATRICK HANIS: I would move that Exhibit  
7 T10 and the corresponding exhibits to that testimony,  
8 Exhibits 11, 12, and 13, be admitted into the record.

9 JUDGE CAILLE: Is there any objection?

10 MR. FINNIGAN: No objection.

11 JUDGE CAILLE: Then Exhibits T10, 11, 12, and  
12 13 are admitted into the record.

13 Ms. Stover is available for  
14 cross-examination.

15

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

17 BY MR. PORS:

18 Q. Good morning, Ms. Stover. My name is Tom  
19 Pors, and I'm representing Rosario Utilities.

20 A. Good morning.

21 Q. You testified that after you purchased your  
22 property, you contacted Ms. Vierthaler to confirm that  
23 you wanted to be on a list of property owners waiting  
24 for a hookup and that she assured you that you were in  
25 her computer system and would be kept informed of

0101

1 progress of the facility; is that correct?

2 A. Correct.

3 Q. Did Ms. Vierthaler tell you specifically that  
4 you were on a priority list for connections once the  
5 moratorium was lifted?

6 A. No, she did not. What she said to me was  
7 that, I have to think exactly what she said, is that I  
8 asked if I could pay for the connection up front, and  
9 she said, no, you can not. Then she said, but I've got  
10 you in the computer, and she said basically, you're in  
11 the computer, and you're on my list, then I will keep  
12 you informed. She didn't call it a priority list, but  
13 she did mention you're on my list in my computer.

14 Q. Did she call it a mailing list or a contact  
15 list?

16 A. She just called it a list.

17 Q. You didn't prepay for a water connection  
18 prior to 1997, did you?

19 A. No.

20 Q. Do you have in front of you Exhibit 69, which  
21 is a May 23, 2001, notice to all property owners from  
22 Rosario Utilities?

23 A. Yes.

24 Q. And in your testimony, you stated that you  
25 had reviewed and received this notice prior to the sale;



0102

1 is that correct?

2 A. Yes.

3 Q. Did you see anywhere in this notice that the  
4 sale would be made based on a priority list or a waiting  
5 list?

6 A. No, it said first come, first serve.

7 Q. So you did notice that the sale that would be  
8 held on June 15th was first come, first serve; is that  
9 correct?

10 A. Yes.

11 Q. Did you also note from this exhibit that the  
12 number of available connections was limited?

13 A. Yes. But it does not say limited to what, to  
14 how many.

15 Q. Ms. Stover, if you thought that you had a  
16 priority for receiving a water connection, why didn't  
17 you contact Ms. Vierthaler before the June 15th sale to  
18 determine why the sale was first come, first serve  
19 instead of according to a list?

20 A. Naivete.

21 JUDGE CAILLE: Excuse me, we lost the first  
22 part of your answer. Could you please start again.

23 A. Yes, naivete, being naive. I can only go by  
24 my understanding of the conversation with  
25 Ms. Vierthaler, and my understanding was that I was on

0103

1 this list, that I was going to be continuously informed  
2 as to things that were occurring, and that the people  
3 that were being informed are those people that were on  
4 this so-called list in her computer, and that when it  
5 says, you know, we're pleased to announce that the water  
6 moratorium has been lifted, that you need to be first  
7 come, first serve, but if you will also notice it says  
8 in the notice, it says beginning that -- it says it will  
9 be -- will issue certificates on a first come, first  
10 serve basis beginning June 15th.

11 Q. Ms. Stover.

12 A. Now that term right there led me to believe  
13 that, oh. Again, I had no idea that there was a  
14 severely limited amount, none whatsoever.

15 Q. Ms. Stover, I believe you have answered my  
16 question.

17 A. Okay.

18 Q. Thank you.

19 Did you receive notices in the year prior to  
20 the June 15th sale about the progress of the water  
21 treatment plant?

22 A. Yes.

23 Q. How many notices do you recall receiving?

24 A. Oh, I couldn't tell you exactly, but I did  
25 send in three or four, but they were regularly

0104

1 recurring.

2 Q. So you were kept informed about the progress  
3 of the treatment plant and the moratorium; is that  
4 correct?

5 A. Yes.

6 Q. I didn't hear your answer.

7 A. Yes.

8 MR. PORS: I have no further questions.

9 JUDGE CAILLE: Mr. Finnigan.

10 MR. FINNIGAN: Thank you.

11

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

13 BY MR. FINNIGAN:

14 Q. Ms. Stover, my name is Rick Finnigan, and I  
15 represent Oly Rose.

16 A. Yes.

17 Q. I have just a couple of questions for you.

18 A. Okay.

19 Q. Would you get your testimony, please. Do you  
20 have that before you?

21 A. Yes, I do. Are we talking about the  
22 questions and answers or the written statements?

23 Q. Well, what do you have before you?

24 A. I have both.

25 Q. And what do you describe as a written

0105

1 statement?

2 A. The written statement is it's a declaration.

3 Q. And what declaration would that be?

4 A. Well, it's the one that on my question and  
5 answer it refers to the declaration that my husband and  
6 I wrote on February 15th. No, we didn't. Yeah,  
7 February 15th, 2002.

8 Q. Is this something that your counsel asked you  
9 to prepare?

10 A. Yes.

11 Q. But it's not the testimony that you  
12 submitted, it's something different than the testimony  
13 that you submitted?

14 A. Oh, okay, I guess it's a supplement to the  
15 testimony.

16 MR. PATRICK HANIS: If I might clarify.

17 THE WITNESS: Thank you.

18 MR. PATRICK HANIS: Since these people lived  
19 out of state, everybody submitted a recitation of their  
20 facts to assist in preparing the written direct  
21 testimony, and that is what she's referring to.

22 BY MR. FINNIGAN:

23 Q. Do you have anything other than what you have  
24 described as the declaration and your testimony before  
25 you?

0106

1 A. And I have the direct testimony.

2 Q. Whose direct testimony?

3 A. Mine.

4 Q. Okay. And so those are the only two pieces  
5 of paper you have?

6 A. Yes.

7 Q. All right.

8 A. Well.

9 Q. Let --

10 A. I have other exhibits, yes.

11 Q. Were those the exhibits that were faxed to  
12 you by your counsel?

13 A. Yes.

14 Q. Okay. So you have the testimony, the  
15 declaration, and those exhibits, and that constitutes  
16 what you have before you?

17 A. Yes.

18 Q. Okay. Now let's go to your testimony, not  
19 your declaration, but your testimony.

20 A. Okay.

21 Q. Would you go to page 3 of your testimony.

22 A. Okay.

23 Q. The last sentence to answer 11 states:  
24 We were later informed that there were  
25 others who had been misled by the

0107

1 utility and its representatives.

2 Do you mean to state that you were informed  
3 by the Commission Staff of that --

4 A. Okay, I'm having --

5 JUDGE CAILLE: Excuse me, Ms. Stover, please  
6 let counsel finish his question before you begin your  
7 answer.

8 A. Okay, I'm having difficulty understanding  
9 where he is, because on page 3 I have no question 11. I  
10 have a line 11.

11 Q. No, the last -- if you go -- go back to page  
12 2.

13 A. Yes.

14 Q. And at the bottom of page 2 you see an 11 in  
15 the margin and the question, what did you do next. Do  
16 you see that?

17 A. No, so I will have to --

18 JUDGE CAILLE: Mr. Finnigan, maybe if we try  
19 page 3 and the line number. The line numbers don't line  
20 up exactly.

21 MR. FINNIGAN: Right.

22 JUDGE CAILLE: But.

23 MR. FINNIGAN: Okay, we'll try it that way.

24 BY MR. FINNIGAN:

25 Q. Go back now to page 3 of your testimony.

0108

1 A. Uh-huh.

2 Q. And this is your testimony, not your  
3 declaration, okay?

4 A. Okay.

5 Q. All right. Look at about line 3. Do you see  
6 the number 3 in the margin?

7 A. Yes, I do.

8 Q. Okay. If you go over to the right, do you  
9 see the statement, we were later informed?

10 A. I'm afraid we have two, unfortunately, two  
11 different pieces of the declaration. I have --

12 Q. Now remember, I'm asking you to look at the  
13 testimony, not --

14 A. I'm sorry, at the testimony, no, I understand  
15 that. But I think what is happening here is that I have  
16 in front of me my copy of the testimony that I sent in  
17 to the attorney, and I do not have the final draft, the  
18 official draft of that testimony. So I can look for the  
19 specific question. My question number 11 does not match  
20 -- my question -- oh, my question number 11 is on page  
21 1, and it says, as a result of being denied a water  
22 permit, what did you do prior to June 15th.

23 JUDGE CAILLE: Well Mr. Hanis, do you have  
24 both versions, and could you help your witness?

25 MR. PATRICK HANIS: I do not have both

0109

1 versions.

2 MR. FINNIGAN: Your Honor, I do have to now  
3 renew my objection, ask this witness's testimony be  
4 stricken. She has said under oath that certain things  
5 are true and correct, and she doesn't even have before  
6 her what she said is true and correct. And I obviously  
7 can't cross her, so I really do have to renew my motion.

8 MR. PATRICK HANIS: I think counsel could  
9 simply ask her the question.

10 MR. FINNIGAN: I did, and she -- I read the  
11 line to her, and she couldn't find it. I read that  
12 portion of her answer.

13 MR. PATRICK HANIS: I'm sure she has a  
14 recollection of her answer.

15 MR. FINNIGAN: I'm sorry, but that's not  
16 sufficient.

17 MR. PORS: Your Honor, this is Tom Pors. It  
18 seems that the witness has sworn to testimony that is  
19 not the same as the testimony we have in front of us.  
20 They're obviously different versions of her written  
21 direct testimony, so we have to make an objection to the  
22 admission of Exhibit T10, the written direct testimony  
23 for Colleen Stover, because she is obviously not  
24 testifying as to the same document that we have  
25 identified in front of us.



0110

1 JUDGE CAILLE: Anything further, Mr. Hanis?

2 MR. MICHAEL HANIS: Your Honor, if I may, and  
3 I don't mean to get two bites of the apple here, but  
4 perhaps we could call her later and make sure she --  
5 obviously the witness is a bit confused about what the  
6 documents she has been sent are. Maybe we can recall  
7 her later and make sure she gets a copy of the correct  
8 document.

9 MR. FINNIGAN: We can try to do that, but I  
10 would also request that we be provided a copy of what  
11 she has in front of her. Since she seems to be  
12 testifying as to a document that she has in front of  
13 her, I would like to see what she is using.

14 MR. MICHAEL HANIS: I expect what she is  
15 using is the notes she used to prepare her testimony in  
16 the first place, which would be a working document  
17 between attorney and client.

18 JUDGE CAILLE: Well, Mr. Hanis, I think we  
19 need to hear from her what she has in front of her,  
20 because you can't see what she has in front of her  
21 either.

22 So maybe, Ms. Stover, could you describe for  
23 us what you have in front of you that you are using.

24 THE WITNESS: Okay, what I have in front of  
25 me is it says, before the Washington Utilities and

0111

1 Transportation Commission, and then it says under Roman  
2 Numeral Number II, it says direct testimony, and then it  
3 has questions, and this is what I used as a working  
4 document for this testimony.

5 JUDGE CAILLE: So it just has questions, it  
6 does not have --

7 THE WITNESS: It has -- yes, I'm sorry.

8 JUDGE CAILLE: It just has questions, it  
9 doesn't have answers?

10 THE WITNESS: It has questions, and then I  
11 have written on it.

12 JUDGE CAILLE: You have written in your  
13 answers?

14 THE WITNESS: Pardon?

15 JUDGE CAILLE: You have written in your  
16 answers?

17 THE WITNESS: Written in my answers in  
18 shorthand let's say.

19 JUDGE CAILLE: Okay. Do you have a question  
20 number 11?

21 THE WITNESS: I have a question number 11.

22 JUDGE CAILLE: What does your question number  
23 11 read?

24 THE WITNESS: It says:

25 As a result of being denied a water

0112

1           permit, what did you do prior to the  
2           June 15th, 2001, sale in attempts to get  
3           water?

4           MR. PATRICK HANIS:  What that is is  
5   attorney-client work product in an attempt to prepare  
6   this testimony and asking very broad questions to elicit  
7   the testimony, which then through correspondence between  
8   counsel and his client came up with a final draft that  
9   was submitted as the testimony in this matter.

10           MR. FINNIGAN:  Well, it still isn't the  
11   testimony that was submitted, and I can't cross her on  
12   her testimony that was submitted.

13           MR. PATRICK HANIS:  We're offering to send  
14   her that testimony.

15           MR. FINNIGAN:  That's fine.  I'm sorry, Your  
16   Honor, but I do think I am entitled to the document.  
17   She has waived any attorney-client privilege by  
18   describing the document and indicating she is using that  
19   for her testimony here today, so I am entitled to that  
20   document.

21           MR. PATRICK HANIS:  She didn't understand  
22   what testimony was being referred to.  The  
23   attorney-client privilege has not been waived by that.  
24   She believed she was testifying as to -- it was our  
25   intent that she be testifying to the submitted written

0113

1 direct testimony of Ms. Stover.

2 JUDGE CAILLE: Well, Mr. Hanis, why doesn't  
3 your client have her written testimony?

4 MR. PATRICK HANIS: I do not know why. She  
5 should. Whether that was lost in the fax or who knows.

6 JUDGE CAILLE: All right. During the lunch  
7 hour, I would like you to fax this testimony to  
8 Ms. Stover, and I guess we will call her again this  
9 afternoon, and I want to entertain any arguments from  
10 Respondent and Intervenor at that time.

11 MR. PATRICK HANIS: We should probably  
12 withdraw then Exhibit T10, 11, 12, and 13 as having been  
13 admitted into evidence.

14 MR. FINNIGAN: At this stage, that would be  
15 appropriate.

16 JUDGE CAILLE: I think we can just leave it  
17 as it is right now, or you want it withdrawn?

18 MR. FINNIGAN: I think it's appropriate.

19 JUDGE CAILLE: Okay.

20 MR. FINNIGAN: I think counsel's suggestion  
21 is the appropriate one at this time. And then once she  
22 has the proper documents in front of her, we can --

23 JUDGE CAILLE: All right. Exhibit T10, 11,  
24 12, and 13 are no longer admitted at this point.

25 Ms. Stover.

0114

1 THE WITNESS: Mm-hm.

2 JUDGE CAILLE: You have been listening to our  
3 conversation, and what will happen is your attorney will  
4 fax you a copy of the prepared testimony, and I think  
5 that he will be able to -- we will be able to sort of  
6 pinpoint a time for you to -- well, he'll have to call  
7 you again, and we'll do your cross later this afternoon.

8 THE WITNESS: Okay.

9 JUDGE CAILLE: All right.

10 THE WITNESS: Yeah, thank you for the  
11 opportunity --

12 JUDGE CAILLE: Just a moment.

13 MR. FINNIGAN: And, Your Honor, as I said,  
14 she is using a document to refresh her recollection  
15 while she's testifying. I am entitled to that document.  
16 I would ask that she fax that to counsel so it can be  
17 produced for the cross this afternoon.

18 MR. PATRICK HANIS: Her testimony has just  
19 been withdrawn and accepted. There has been no  
20 testimony of Ms. Colleen Stover.

21 MR. FINNIGAN: Well, she has a document --  
22 she has indicated she has a document in front of her  
23 that she is using, and I would like to --

24 MR. MICHAEL HANIS: You can't inadvertently  
25 waive the attorney-client privilege.

0115

1 JUDGE CAILLE: Okay, let's -- I would like to  
2 move on. This sounds to me like it's a data request.

3 MR. FINNIGAN: Well, it's not a data request,  
4 because it's something that she was using to refresh her  
5 recollection while she was testifying, and so that's --  
6 I think I'm entitled to see what she uses to refresh her  
7 recollection while she testifies.

8 MR. PATRICK HANIS: And if she's using it  
9 later on, we will address that then.

10 JUDGE CAILLE: We will take this up when she  
11 testifies.

12 Ms. Stover.

13 THE WITNESS: Yes.

14 JUDGE CAILLE: You're excused for now, and  
15 your attorney will be contacting you, and you can hang  
16 up the phone.

17 THE WITNESS: Okay, thank you.

18 JUDGE CAILLE: Thank you.

19 Mr. Schulte.

20 (Discussion off the record.)

21 JUDGE CAILLE: Mr. Schulte?

22 THE WITNESS: Yes, this is Paul Schulte.

23 JUDGE CAILLE: This is Karen Caille. I am  
24 the Administrative Law Judge in this proceeding.

25 THE WITNESS: Okay.

0116

1                   JUDGE CAILLE:  And before I swear you in, I  
2    want to just go over a few things.  The volume of your  
3    voice sounds just fine.  I have a court reporter to my  
4    left here, and she is recording what you say, so it's  
5    important that you speak slowly and distinctly.

6                   THE WITNESS:  Okay.

7                   JUDGE CAILLE:  Please listen to the question  
8    carefully, and respond to that question only.

9                   THE WITNESS:  Okay.

10                  JUDGE CAILLE:  And please wait until the  
11   question is completely asked before you begin your  
12   answer.

13                  THE WITNESS:  Okay.

14                  JUDGE CAILLE:  Because the court reporter can  
15   not type two people talking at the same time.

16                  THE WITNESS:  She can't?

17                  JUDGE CAILLE:  No, not yet.

18                  THE WITNESS:  Okay.

19                  JUDGE CAILLE:  Anyway, if you will please  
20   raise your right hand, I will now swear you in.

21

22   Whereupon,

23

                  PAUL SCHULTE,

24   having been first duly sworn, was called as a witness

25   herein and was examined and testified as follows:

0117

1

2

(The following exhibits were identified in  
conjunction with the testimony of PAUL SCHULTE.)

3

4

5

Exhibit T14 is PS-T1: Direct Testimony (March  
12, 2002). Exhibit 20 is PS-6: Fax Message to Peggy  
Rodenberger from Chris Vierthaler dated May 29, 2001.

6

7

Exhibit 22 is PS-8: July 5, 2001 letter to Paul Schulte  
from Chris Vierthaler, Manager of Rosario Utilities.

8

9

10

JUDGE CAILLE: Thank you.

11

Mr. Hanis, you may introduce your witness.

12

13

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

14

BY MR. PATRICK HANIS:

15

Q. Mr. Schulte, will you please state your name.

16

A. Paul E. Schulte.

17

Q. How do you spell your last name?

18

A. S-C-H-U-L-T-E.

19

Q. Mr. Schulte, what is your address?

20

A. It's P.O. Box 5606, Sun City West, Arizona,

21

85376.

22

Q. Mr. Schulte, do you recall submitting written

23

direct testimony in this matter?

24

A. Yes, I do.

25

Q. Do you have a copy of that in front of you?



0118

1 A. No, I don't.

2 Q. Do you have it nearby?

3 A. Well, I can get it.

4 Q. Can you obtain that quickly, please.

5 A. I don't have it. It will take me two or  
6 three minutes.

7 Q. Please keep looking, I will ask you a couple  
8 other questions.

9 A. Okay, go ahead.

10 Q. Do you recall giving that testimony?

11 A. Yes.

12 Q. Have you reviewed that testimony recently?

13 A. No.

14 Q. Please obtain that document.

15 A. Pardon?

16 Q. Just let us know when you get that document.

17 A. Okay. I'm sure that if you ask me about it I  
18 will be able to say what needs saying. What questions  
19 do you have about it?

20 Q. Do you have that there now?

21 A. No. It's the questionnaire that you had me  
22 fill out?

23 Q. No, it is your written direct testimony that  
24 you signed, you had submitted in this matter.

25 A. No, I don't have it here. No, I do not have

0119

1 it here.

2 Q. Mr. Schulte, do you recall being asked  
3 questions in this matter?

4 A. Yes.

5 Q. At the time you were asked those questions in  
6 writing, did you answer those questions to the best of  
7 your ability?

8 A. Yes.

9 Q. If those questions were asked today, would  
10 you have the same answers that you had the day you wrote  
11 your answers?

12 A. Yes.

13 MR. PATRICK HANIS: Request that Exhibit T14,  
14 the direct testimony of Mr. Schulte, be admitted into  
15 evidence.

16 MR. PORS: I would object, Your Honor,  
17 because the witness does not have the document in front  
18 of him, and Mr. Hanis asked him if the testimony he gave  
19 when he wrote his answers was the same as it would be  
20 today. We don't have a document with his handwritten  
21 answers on it to know what he wrote. I think the only  
22 way he could verify his testimony is if he is reading  
23 the document that's been filed with the Commission and  
24 is before us and testifies as to that question, those  
25 questions and answers. Otherwise, we don't know what

0120

1 he's verifying here this morning.

2 MR. PATRICK HANIS: If I could ask a  
3 follow-up question.

4 BY MR. PATRICK HANIS:

5 Q. Mr. Schulte.

6 A. Yes.

7 Q. After you submitted that initial response, I  
8 re-sent you a response that had your typewritten  
9 answers; is that correct?

10 A. Well, to the best of my knowledge, yes.

11 Q. And then did you then sign that document and  
12 send it back to me?

13 A. To the best of my knowledge, yes.

14 Q. And when you offered that testimony, did you  
15 do so under oath, under penalty of perjury of law?

16 A. Yes.

17 Q. And was that testimony when you signed that  
18 document true and correct to the best of your knowledge?

19 A. Yes.

20 MR. PATRICK HANIS: Resubmit the testimony.

21 MR. FINNIGAN: Your Honor, I do join in the  
22 objection. It's obvious from his statement that he was  
23 about to respond to questions based upon his -- based  
24 upon the questionnaire that he was sent as opposed to  
25 his testimony, and we would have the same problem that

0121

1 we had with Ms. Stover a second time around. So I  
2 suppose the best thing we can do is to have his  
3 testimony faxed to him and take him up again this  
4 afternoon.

5 JUDGE CAILLE: I think that will be the best  
6 thing to do.

7 Mr. Schulte.

8 THE WITNESS: Yes.

9 JUDGE CAILLE: We're going to have you  
10 postpone your testimony until this afternoon.

11 THE WITNESS: Okay.

12 JUDGE CAILLE: Your attorney will be --  
13 Let's see, will you be able to fax him?

14 MR. PATRICK HANIS: I will be able to.

15 JUDGE CAILLE: He's going to fax you the  
16 testimony that was sent in, and we will need you to  
17 review that, and he will call you and have you call in  
18 again.

19 THE WITNESS: Okay.

20 JUDGE CAILLE: This afternoon. I'm not sure  
21 what time that will be, but maybe we can pinpoint it a  
22 little bit better after we finish with the next witness.

23 THE WITNESS: Okay, thank you.

24 JUDGE CAILLE: You may hang up now.

25 THE WITNESS: Thank you.

0122

1                   JUDGE CAILLE:  Our next witness is Michelle  
2 Clark, and she is a live witness.

3                   MR. PORS:  Your Honor, before we begin with  
4 Ms. Clark.

5                   JUDGE CAILLE:  Yes.

6                   MR. PORS:  I would like to note the time and  
7 suggest that since our cross-examination of Ms. Clark  
8 might be somewhat longer than a couple of the other  
9 witnesses that we at least talk about the procedure and  
10 time at this point.

11                   JUDGE CAILLE:  Okay, so you mean you would  
12 like to do Ms. Clark later or --

13                   MR. FINNIGAN:  Yeah, and I don't know where,  
14 Your Honor, I don't know where we are on stopping time  
15 this afternoon.  Maybe we better figure out what our  
16 logistics are for the rest of the day.  And I know  
17 counsel for the Complainants are going to have some  
18 tasks to accomplish over the lunch hour, so maybe we  
19 ought to talk about what's the best timing.

20                   JUDGE CAILLE:  All right, shall we do this on  
21 the record or off?

22                   Let's go off the record.

23                   (Discussion off the record.)

24

25 Whereupon,

0123

1 MICHELLE CLARK,  
2 having been first duly sworn, was called as a witness  
3 herein and was examined and testified as follows:

4

5 (The following exhibits were identified in  
6 conjunction with the testimony of MICHELLE CLARK.)

7 Exhibit T23 is MC-T1: Direct Testimony (March  
8 12, 2002). Exhibit T24 is MC-T2: Amended Direct  
9 Testimony (April 15, 2002). Exhibit 25 is MC-1: January  
10 3, 2000 letter from Rosario Utilities re new water plant  
11 in operation. Exhibit 26 is MC-2: April 3, 2000 letter  
12 to all Rosario Water System Users from Chris Vierthaler,  
13 Manager of Rosario Utilities. Exhibit 27 is MC-3: May  
14 30, 2000 letter to Current and Future Customers from  
15 Timothy M. Kaiser of Rosario Utilities. Exhibit 28 is  
16 MC-4: July 10, 2000 letter to Current and Future  
17 Customers from Timothy M. Kaiser, Vice President of  
18 Rosario Utilities. Exhibit 29 is MC-5: November 15,  
19 2000 letter to Current and Future Customers from Tim  
20 Kaiser, Vice President of Rosario Utilities. Exhibit 30  
21 is MC-6: May 23, 2001 letter to all Property Owners in  
22 the Vusario, Orcas Highlands, and Rosario Water Systems  
23 from Chris Vierthaler, Manager of Rosario Utilities.  
24 Exhibit 31 is MC-7: June 7, 2001 letter to  
25 Ms. Vierthaler from Charles and Michelle Clark. Exhibit

0124

1 32 is MC-8: Cashiers check to Rosario Utilities LLC,  
2 dated June 7, 2001.

3

4 JUDGE CAILLE: Thank you.

5 Mr. Hanis, you may proceed.

6

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

8 BY MR. PATRICK HANIS:

9 Q. Good morning, Ms. Clark.

10 A. Good morning.

11 Q. Would you please state your name.

12 A. Michelle Clark.

13 Q. Ms. Clark, what is your current address?

14 A. Post Office Box 1163, Oracle, Arizona.

15 JUDGE CAILLE: Ms. Clark, could you speak up  
16 just a little bit.

17 THE WITNESS: Okay.

18 JUDGE CAILLE: Thank you.

19 BY MR. PATRICK HANIS:

20 Q. Ms. Clark, I'm showing you what has been  
21 previously marked as Exhibit T23, your written direct  
22 testimony. Do you recognize that document?

23 A. I do.

24 Q. Could you just briefly look through that  
25 document.

0125

1 A. (Reading.)

2 Q. Do you recall this document?

3 A. I do.

4 Q. If I were to ask you today the same questions  
5 that were asked in this written direct testimony, would  
6 your answers remain the same?

7 A. They would with one exception.

8 Q. What exception would that be?

9 A. The exception was noted in a written letter  
10 that we were -- I believe it's question number 12 where  
11 it says, were you informed that the location of the sale  
12 had changed, and our agent -- the answer that was  
13 written here was not the answer that we gave. The  
14 answer was -- written here says, our agent was informed  
15 the day before the sale. That is incorrect. Our agent  
16 was not informed the day before the sale. He was  
17 informed the day of the sale when he went to  
18 Ms. Vierthaler's office.

19 Q. Okay. So with that one change, would this  
20 be --

21 A. Yes.

22 Q. -- your testimony?

23 JUDGE CAILLE: Excuse me, that one change is  
24 in Ms. Clark's amended written direct testimony, which  
25 is Exhibit T24.



0126

1 Q. And if I refer you to Exhibit T24, would you  
2 review that document.

3 A. (Reading.)

4 Q. Have you reviewed it?

5 A. Yes.

6 Q. And does that question 12 answer the concern  
7 that you had with your written direct testimony?

8 A. Yes, it does.

9 Q. And if I were to ask you these same questions  
10 on your amended written direct testimony, would your  
11 answers remain the same?

12 A. Yes, they would.

13 MR. PATRICK HANIS: Move that Exhibits T23  
14 and 24 and the corresponding Exhibits 25, 26, 27, 28,  
15 29, 30, 31, and 32 be moved into evidence or admitted  
16 into evidence.

17 JUDGE CAILLE: Is there any objection?

18 MR. PORS: No objection.

19 MR. FINNIGAN: No objection.

20 JUDGE CAILLE: All right, then Exhibits T23,  
21 T24, 25, 26, 27, 28, 29, 30, 31, and 32 are admitted  
22 into the record.

23 And Ms. Clark is available for  
24 cross-examination.

25

0127

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

2 BY MR. PORS:

3 Q. Ms. Clark, my name is Tom Pors, and I'm  
4 representing Rosario Utilities.

5 A. All right.

6 Q. You testified in your written direct  
7 testimony that you were on a waiting list and received  
8 periodic correspondence as a result; is that correct?

9 A. Yes.

10 Q. Did Ms. Vierthaler ever tell you that you had  
11 priority to obtain water service based on that list?

12 A. Ms. Vierthaler did not use the word priority.  
13 She did indicate that we were on a list.

14 Q. Okay. You testified also that you did not  
15 have a number on that list; is that correct?

16 A. No, she -- there was not a numbered list, but  
17 she did state that we were on a list.

18 Q. Okay. Do you have in front of you Exhibit  
19 69, a May 23, 2001, notice from Rosario Utilities to all  
20 property owners?

21 A. I do.

22 Q. Do you recall receiving this notice in the  
23 mail prior to the June 15th sale?

24 A. Yes.

25 Q. Did you notice that this May 23rd notice,

0128

1 Exhibit 69, says:

2           The number of connections is limited,  
3           and those people on the utilities  
4           commission priority list will be the  
5           first to receive water certificates.

6           A.     That I believe is in the first part of the  
7 letter, and the part of the letter that I believed  
8 applied to our particular area was the Rosario plats  
9 area. And we did call Ms. Vierthaler at that time upon  
10 receipt of the letter and inquire about the way that it  
11 was going to be handled.

12          Q.     I understand that you spoke with  
13 Ms. Vierthaler, and you testified that she outlined a  
14 procedure for the sale that was consistent with this  
15 Exhibit 69 notice; is that correct?

16          A.     Under the Rosario plats section.

17          Q.     Okay. If you believed that you had priority  
18 for obtaining water certificates based on being on a  
19 list, did you inquire with Ms. Vierthaler about why you  
20 had to go through a first come, first serve sale?

21          A.     I did not state that I believed that we had  
22 priority. I stated that I believed that we were on a  
23 list.

24          Q.     Okay. You testified that you believed there  
25 was preferential treatment in the sale because the

0129

1 resort was allowed to be at the right place at the right  
2 time to purchase multiple certificates; is that correct?

3 A. That is correct. May I state further about  
4 that?

5 Q. I would just like you to answer the question,  
6 please.

7 Isn't it true, Ms. Clark, that there were  
8 many other individuals who were also allowed to be at  
9 the right place at the right time and also purchase  
10 certificates on June 15th?

11 A. That I do not -- I do not know. I do not  
12 know.

13 Q. Did you attend the sale yourself?

14 A. No, I did not. We contacted Ms. Vierthaler  
15 and asked her, and we live in Arizona, if we should be  
16 up there, which we certainly were prepared to do. She  
17 indicated that we could have an agent be there for us,  
18 and we asked at what time and what place they should be  
19 there. She indicated that at 9:00 at her office  
20 certificates would be issued.

21 Q. You're not answering the question that I  
22 posed to you.

23 MR. PORS: I would ask that the answer be  
24 stricken, please.

25 Could you re-read the question.

0130

1 (Record read as requested.)

2 A. No.

3 JUDGE CAILLE: Let me rule on the rest of  
4 that answer. The previous answer is stricken.

5 MR. PORS: Thank you.

6 BY MR. PORS:

7 Q. Who attended the sale on your behalf?

8 A. Fred Kline, our agent.

9 Q. Do you believe that -- do you understand that  
10 there were individuals aside from Rosario Resort who  
11 purchased water certificates at the June 15th sale?

12 A. Yes, I do. It was my understanding that it  
13 was one per person though.

14 MR. PORS: Again, I will ask that the answer  
15 be stricken as nonresponsive.

16 JUDGE CAILLE: That is stricken.

17 Ms. Clark, if you will just answer the  
18 question.

19 THE WITNESS: Okay.

20 JUDGE CAILLE: It's best to do this with a  
21 yes or no. If you feel you need to say something  
22 further, you can ask, but your attorney can bring this  
23 up on redirect, so.

24 THE WITNESS: Okay.

25 BY MR. PORS:

0131

1 Q. Did you understand that there were other  
2 individuals aside from Rosario Resort who purchased  
3 certificates at the June 15th sale?

4 A. Yes.

5 Q. Do you understand that those individuals  
6 arrived earlier for that sale than your agent,  
7 Mr. Kline?

8 A. Yes, after the fact.

9 Q. Do you believe that those other individuals  
10 who arrived earlier and received certificates also  
11 received preferential treatment because they arrived  
12 before your representative did?

13 A. I would say yes, given what we were told.

14 Q. Do you understand that if your representative  
15 had arrived earlier in the morning, say at 4:00 a.m.,  
16 that you may have gotten a water certificate?

17 A. I do not understand that. I do not know.

18 MR. PORS: I have no further questions.

19 JUDGE CAILLE: Mr. Finnigan.

20 MR. FINNIGAN: Thank you, Your Honor.

21

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

23 BY MR. FINNIGAN.

24 Q. As you know since you're in the audience, I'm  
25 Rick Finnigan, I'm here representing Oly Rose.

0132

1                   If I might have just a minute.

2                   Are you familiar with how the Washington  
3 State Department of Health determines the number of  
4 connections a water company may have?

5           A.     I do not live in Washington, and I would say  
6 probably not.

7           Q.     Do you have an understanding that a company  
8 may believe that it will be able to get 100 additional  
9 connections, but when the Department of Health does its  
10 engineering review, they may only allow a smaller number  
11 of connections?

12                   MR. PATRICK HANIS:  Objection, she has  
13 already testify that she doesn't know, that she lives  
14 out of state and has no knowledge of how the Department  
15 of Health assigns water certificates.

16                   MR. FINNIGAN:  Well, I don't think her answer  
17 was quite definitive on that subject, and I'm just  
18 asking for her understanding.  So if she doesn't have  
19 one, she can state that.

20                   JUDGE CAILLE:  I'll direct the witness to, if  
21 you can answer the question, please do, if you can not,  
22 just state on the record that you don't have an  
23 understanding of it or you can't answer.

24           A.     I don't believe that I do have an  
25 understanding of the procedure.

0133

1 MR. FINNIGAN: Okay, that's all I have.

2 JUDGE CAILLE: Any redirect?

3 MR. PATRICK HANIS: Yes.

4

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

6 BY MR. PATRICK HANIS:

7 Q. You were asked regarding your testimony about  
8 being in the right place at the right time. What makes  
9 you believe that the resort was in the right place at  
10 the right time?

11 A. Because I believe that they had prior  
12 knowledge of the change of the location, and they were  
13 able to be there at much earlier than other people were.

14 Q. And what was your knowledge as to when people  
15 were supposed to be able to arrive at the sale?

16 A. My knowledge was from our phone conversation  
17 with Chris Vierthaler on I believe it was the 7th of  
18 June when she indicated that people were to come to her  
19 office at 9:00 a.m. on June 15th. And she also  
20 indicated that it was possible to request your  
21 certificate by mail, although she did not recommend  
22 that.

23 Q. What is your understanding as to first come,  
24 first serve?

25 A. My understanding was that the first person in



0134

1 line at 9:00 would be the first person that was served.

2 Q. And do you have any thoughts as -- or what  
3 did you believe was the number of certificates that a  
4 person in line could take?

5 A. One per person or household I suppose you  
6 would say.

7 MR. PATRICK HANIS: Thank you, no further  
8 questions.

9 JUDGE CAILLE: Any recross?

10 MR. PORS: Yes.

11

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

13 BY MR. PORS:

14 Q. You just testified that you had an  
15 understanding that each individual in line was  
16 restricted to one certificate per person?

17 A. Yes.

18 Q. Where did you obtain that understanding?

19 A. I do not know specifically where I obtained  
20 that understanding, but it was my understanding. That  
21 was the understanding I was operating under.

22 Q. And that was the understanding you had  
23 immediately prior to the June 15th sale?

24 A. Yes, that was the understanding that I had  
25 about water certificates.

0135

1 MR. PORS: Okay, I have no further questions.

2 MR. FINNIGAN: I do have a couple of  
3 questions.

4 JUDGE CAILLE: All right.

5

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

7 BY MR. FINNIGAN:

8 Q. You said that it's your understanding that  
9 the resort had prior knowledge of the change in  
10 location. What's the basis for that understanding?

11 A. Based on letters that we had received from  
12 our architect that indicated such to be the case.

13 Q. So your architect wrote you letters that  
14 indicated --

15 A. This was our agent that came to the --

16 Q. Right, but your architect wrote letters that  
17 led you to believe that the resort had prior knowledge  
18 of the change in location?

19 A. Yes.

20 Q. You weren't there personally?

21 A. No, we were not.

22 Q. Okay. So you're relying on these letters; is  
23 that correct?

24 A. Yes, sir.

25 Q. And you haven't offered those letters as part

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1 of your testimony; is that correct?

2 A. No, I don't believe that we have.

3 Q. Do you have knowledge about how water sales  
4 are normally handled in the industry for privately owned  
5 water companies?

6 A. I am not familiar with how things are done in  
7 Washington. When we were talking about purchasing our  
8 property, we received a written statement that there was  
9 water available and hookups were available. I  
10 understood that to mean that we would only need to pay a  
11 fee to have a water hookup. That is what I understood  
12 that to mean.

13 MR. FINNIGAN: Your Honor, I regret I'm going  
14 to have to ask that everything after her statement that  
15 she doesn't understand how things operate in Washington  
16 be stricken, because my question was as to her  
17 understanding of how sales are handled by private water  
18 companies.

19 JUDGE CAILLE: At this point, I'm going to  
20 deny that request, Mr. Finnigan. I think it explains  
21 her answer, and I also think that counsel will probably  
22 ask her the same question on redirect. So to just move  
23 things along a little, I'm going to allow that.

24 Go ahead.

25 BY MR. FINNIGAN:

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1 Q. Are you aware that there are water sales by  
2 private water companies in the state of Washington that  
3 treat a first come, first sale as allowing the multiple  
4 purchases of water connections by any one individual?

5 MR. PATRICK HANIS: Objection, there's no  
6 foundation for that question, assumes facts that have  
7 not been entered into evidence regarding the sales of  
8 other water companies in the state of Washington.

9 MR. FINNIGAN: I asked for her understanding  
10 or her awareness.

11 JUDGE CAILLE: I will direct the witness to  
12 please answer the question as to your understanding or  
13 your awareness.

14 A. No.

15 MR. FINNIGAN: Thank you, no further  
16 questions.

17 JUDGE CAILLE: Any further recross?

18 MR. PATRICK HANIS: Yes.

19 JUDGE CAILLE: I mean redirect, excuse me.

20

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

22 BY MR. PATRICK HANIS.

23 Q. What were you prepared to do to get water  
24 under that June 15th sale?

25 A. We were --

0138

1                   MR. PORS: I would object that the question  
2 is beyond the scope of the recross.

3                   JUDGE CAILLE: Can you point to how that is  
4 responsive?

5                   MR. PATRICK HANIS: They have asked some very  
6 specific questions about the efforts of her agent and  
7 his understanding and letters to her regarding his  
8 efforts on her behalf at the sale, and we are asking  
9 about what efforts they were prepared to make.

10                  MR. FINNIGAN: Your Honor, not on recross.  
11 On recross the questions were focused on -- not broadly  
12 on what her -- what she did, and I don't believe that  
13 was covered on recross.

14                  JUDGE CAILLE: I don't believe that it was  
15 covered on recross either. Could you phrase the  
16 question so that it's something that is?

17                  MR. PATRICK HANIS: We have no further  
18 questions.

19                  JUDGE CAILLE: All right, thank you very  
20 much.

21                  Ms. Clark, you're excused.

22                  MR. CLARK: If we can go off the record for a  
23 second, I would just like to say something. I'm  
24 Michelle's husband. I mean we have just driven 1,600  
25 miles to come here and be part of this thing.

0139

1                   MR. FINNIGAN: Your Honor, I'm going to  
2 object to this statement as --

3                   MR. CLARK: You know what, I'm just a dirt  
4 ball from Arizona, and I'm sorry, but it's something  
5 that emotionally has really gotten to us. Because I  
6 mean we worked hard to be at this point where we could  
7 afford to have this piece of property, and we have just  
8 gone through some -- I'm sorry.

9                   JUDGE CAILLE: All right, I think it's a good  
10 time to take a break for lunch. Before we leave, let's  
11 figure out when we're going to come back.

12                   (Discussion off the record.)

13                   (Luncheon recess taken at 12:15 p.m.)

14

15                   A F T E R N O O N   S E S S I O N

16                                   (1:15 p.m.)

17

18                   JUDGE CAILLE: We're back on the record for  
19 our afternoon portion of this hearing.

20

21 Whereupon,

22

JIM WARD,

23 having been first duly sworn, was called as a witness

24 herein and was examined and testified as follows:

25

0140

1                   (The following exhibits were identified in  
2 conjunction with the testimony of JIM WARD.)

3                   Exhibit T33 is JW-T1: Direct Testimony (April  
4 22, 2002). Exhibit 34 is JW-1: Subpoena dated April 16,  
5 2002.

6

7                   JUDGE CAILLE: Thank you.

8

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

10 BY MR. FINNIGAN:

11           Q.     Mr. Ward, do you have before you what's been  
12 marked for identification as Exhibit T33?

13           A.     Yes.

14           Q.     And are you familiar with Exhibit 34, which  
15 is your subpoena?

16           A.     Yes.

17           Q.     And it is true that you're appearing here  
18 today pursuant to subpoena?

19           A.     Yes.

20           Q.     If you were asked the questions that are  
21 contained in Exhibit T33 today, would your answers be  
22 the same as set forth therein?

23           A.     Yes, they would.

24           MR. FINNIGAN: I would move the admission of  
25 Exhibits T33 and 34.

0141

1 MR. MICHAEL HANIS: No objection.

2 JUDGE CAILLE: Then Exhibits T33 and 34 are  
3 admitted into the record, and Mr. Ward is available for  
4 cross-examination.

5

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

7 BY MR. MICHAEL HANIS:

8 Q. Mr. Ward, what is your position with the UTC?

9 A. My title is regulatory analyst with the UTC.

10 Q. And what are the functions of a regulatory  
11 analyst with the UTC?

12 A. Essentially what I do is review the books and  
13 records of public utility companies to determine what  
14 rates would be fair, just, reasonable, and sufficient.

15 Q. Is it a part of your job duties to recommend  
16 procedures to utilities unrelated to the keeping of the  
17 books or the finances?

18 A. No.

19 Q. However, is it true to say that in this  
20 particular instance you found yourself making a  
21 recommendation to Rosario Utilities about how to  
22 distribute water certificates?

23 A. No, I provided alternatives to Rosario  
24 Utilities.

25 Q. When you provided those alternatives, was it



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1 -- what form was that done in?

2 A. Some of it was oral communication by phone.  
3 Some it was in oral communication when I was there for  
4 the last rate case. I believe it was also some of it in  
5 written form via suggestions to the company.

6 Q. Now is providing those kind of alternatives a  
7 part of your normal course of duties?

8 A. Yes, that is.

9 Q. Okay. And do you have in front of you your  
10 testimony?

11 A. Yes.

12 Q. Which is T33. On page 3 of that testimony,  
13 if I could direct your attention to that, lines 19 and  
14 20, it appears there that you actually advised that the  
15 Commission Staff, and I assume that you are a member of  
16 the Commission Staff, preferred that companies use a  
17 first come, first serve basis. Does that remain your  
18 testimony?

19 A. Yes, it does.

20 Q. And what is the nature of that preference;  
21 how has that been determined?

22 A. The nature of that preference essentially  
23 comes from the tariffs that the companies have that  
24 don't state to do it any other way.

25 Q. Do the tariffs state to do it that way, by

0143

1 first come, first serve?

2 A. No, they do not.

3 Q. I guess then I will repeat my question, what  
4 is the source of that preference in the regulations of  
5 the UTC?

6 A. And I will repeat my answer. The source is  
7 in the fact of the tariffs, that that's the way they're  
8 normally written, that's the way companies normally  
9 perform that.

10 Q. And I'm probably not being clear to you. I  
11 understand that's what they normally do, I'm asking what  
12 the basis of the Staff's preference for that method is.  
13 Why do you prefer that method?

14 A. Because it is the normal method.

15 Q. All right.

16 A. It's in accordance with the tariff.

17 Q. It's the way you always do it, so that's your  
18 preferred method?

19 A. Essentially yes.

20 Q. When you made that recommendation or at least  
21 that representation that Staff preferred a first come,  
22 first serve basis, were you making that as a staff  
23 member of the UTC or as Jim Ward, individual?

24 A. I believe I was making it as a staff member  
25 of the UTC.

0144

1 Q. Okay. If I were to -- I'm sorry, strike  
2 that.

3 I'm sure you would agree with me that the  
4 definition of what first come, first serve means could  
5 result in a wide variety of results in a distribution of  
6 water certificates. Would you agree with that?

7 A. Yes, I would agree.

8 Q. Okay. And so that would be an important  
9 issue to folks that need water certificates; would you  
10 agree with that?

11 A. Yes.

12 Q. If I were to want to find out, to go look up  
13 how to conduct a first come, first serve sale of water  
14 certificates, you would agree with me I wouldn't find it  
15 in the statutes or the Washington Administrative Code?

16 A. I don't believe so.

17 Q. Where would I find it, the procedures for  
18 conducting a first come, first serve sale of water  
19 certificates?

20 A. There is no procedure.

21 Q. Would you agree with me that if I had a sale  
22 and, hypothetically, if I had a sale and I said it will  
23 be first come, first serve, one person per certificate,  
24 that that would meet the general definition of first  
25 come, first serve?

0145

1 A. Are you saying that it's the only definition?

2 Q. No, I'm just saying would that meet the  
3 general definition of first come, first serve?

4 A. I believe it would be one of the many  
5 definitions, yes.

6 Q. Okay. So you agree that there are many  
7 flavors of first come, first serve?

8 A. Yes.

9 Q. Okay. When you advised Rosario Utilities  
10 that they could use a first come, first serve, what  
11 flavor did you intend that they use?

12 A. I did not intend any flavor.

13 Q. So other than the general description to them  
14 of first come, first serve, all of the decisions made  
15 that actually determined how these certificates were  
16 distributed were made by the utility then and not by the  
17 WUTC?

18 A. I would agree with that, yes.

19 Q. You're aware that Ms. Chris Vierthaler on  
20 behalf of the utility folks out there actually put it in  
21 writing that the method she was using was the method she  
22 was told to use by the WUTC?

23 A. I believe so, yes.

24 Q. Okay. But other than the general description  
25 of first come, first serve, that's all you told her; is

0146

1 that correct?

2 A. Yes.

3 Q. Did you have any private conversations with  
4 her and suggest how she might want to conduct this  
5 thing?

6 A. No.

7 Q. Okay. There are other methods of  
8 distributing certificates, are there not, besides first  
9 come, first serve? I'm thinking of a lottery.

10 A. There would be, yes.

11 Q. Drawings.

12 A. There could be, yes.

13 Q. Are they used on occasion?

14 A. I have not seen any of those used, no.

15 Q. Okay. When you recommend a method of  
16 distributing, for example, water certificates, what type  
17 of standard are you trying to meet, or what policy would  
18 you want the utility to be meeting with this process?

19 A. Essentially the first policy or procedure  
20 would be to be in compliance with their tariff.  
21 Secondly would be in compliance with rules that the  
22 Commission may have, WAC's, RCW's, things of that  
23 nature. The third one would be a simple fair method.

24 Q. Would you agree that the appropriate standard  
25 as described in the statute is that the method would

0147

1 need to be, and I quote, "fair and reasonable"?

2 A. Yes.

3 Q. Okay. Let me ask you a hypothetical question  
4 of a type of first come, first serve method of  
5 distributing certificates, and I will lay out the  
6 hypothetical, and then I have a couple of questions  
7 about it. Let's assume that in this first come, first  
8 serve method of distribution the location was changed by  
9 a half a mile or somewhere between a quarter mile and a  
10 half a mile within hours before the sale occurred,  
11 however, that other persons were told up to two weeks  
12 prior to the sale that the sale would be held at the  
13 other location. Let's assume that that change was made  
14 too late to give all of the folks that wanted  
15 certificates, and the utility -- and we're assuming the  
16 utility knew that there were a lot of people had them --  
17 the change was made too late to give any of them notice.  
18 Let's assume that the only notice of the change was a  
19 sign posted at the site, and as a result of the delay in  
20 getting to the other location, certain people actually  
21 lost their place or ended up in an inferior place in  
22 line. Let's assume that the rules state that there  
23 would be no queuing or gathering prior to the sale and  
24 that that same notice said the sale will be at 9:00 a.m.  
25 on Friday the 15th. Let's assume that some people who

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1 showed up early were then told that they couldn't camp  
2 out or gather prior to the sale and that, in fact, a  
3 sheriff was called to send them away.

4 MR. PORS: Your Honor, before he completes  
5 this, I'm already, you know, lining up my objection to  
6 this, that this hypothetical is assuming facts that are  
7 not in evidence.

8 MR. MICHAEL HANIS: We're prepared to show  
9 from the record where each of these facts is, Your  
10 Honor, if I get through the question, which there's a  
11 little ways to go.

12 JUDGE CAILLE: Let's complete the question.

13 MR. MICHAEL HANIS: Let's assume that an  
14 affiliate or a related company of the utility was  
15 allowed to get in line on the first come, first serve  
16 basis prior to the day that the sale was to be held in  
17 spite of other people having been sent away. Let's  
18 assume that the sale occurs and that the bulk of the  
19 certificates went to that related co-owned entity, that  
20 they got 16 of the certificates. Let's assume that the  
21 only way that two thirds of the people could possibly  
22 get a certificate was by failing to comply with the  
23 explicit directions of the sale. And let's assume  
24 finally that if people complied with the explicit  
25 directions of the sale, they would not have gotten a

0149

1 certificate. Would in your opinion that meet the  
2 definition of a fair and reasonable method of  
3 distributing certificates?

4 MR. PORS: Object to the question as being --  
5 asking -- setting up a hypothetical that's overly  
6 compound and complex, that assumes facts that are not in  
7 evidence, that is in parts argumentative as to  
8 characterizing what did occur in the record, and I would  
9 ask that, Your Honor, that you instruct the witness not  
10 to answer and have the hypothetical question broken down  
11 into manageable pieces.

12 JUDGE CAILLE: I think that would be a good  
13 idea, and I will tell you why. Because I have read all  
14 of this testimony, and some of the characterizations of  
15 what you're saying -- I mean this is a hypothetical, but  
16 it's not what I would call leading. So if you could  
17 break it up, and if Respondent and Intervenor notice  
18 that it doesn't seem to be lining up with the facts as  
19 they recall them, I would appreciate you bringing it to  
20 my attention, because it's just a little -- just a shade  
21 off for me, so if you will go ahead.

22 MR. MICHAEL HANIS: Well, one of the problems  
23 we have here, Your Honor, if I may respond to the  
24 objection, is that we're taking this witness out of  
25 order, and some of the record is not before us yet.



0150

1 We're not done yet.

2 JUDGE CAILLE: I understand that, but I have  
3 read all of the testimony.

4 MR. MICHAEL HANIS: Okay.

5 JUDGE CAILLE: More than once.

6 MR. MICHAEL HANIS: And the second problem is  
7 that any one of these individual facts may not be  
8 sufficient. It's a different question to ask each one  
9 of these, would that make it an unreasonable sale or a  
10 fair sale. It's the cumulative impact, so the question  
11 almost has to be asked cumulatively to make any sense.  
12 Now maybe we can go through the facts again, and we can  
13 discuss where they are in the record and --

14 MR. PORS: Well, I think you're asking a  
15 hypothetical question about the reasonableness and  
16 fairness of the sale that occurred, using it as a  
17 hypothetical because I believe the reason being that  
18 Mr. Ward was not present and was not aware of all of the  
19 facts concerning the sale itself. But it hasn't been  
20 established as a foundation that Mr. Ward as part of his  
21 job description is to determine whether or not a  
22 particular sale or the handling of that sale is fair and  
23 reasonable, so I don't think it's fair to put a  
24 hypothetical of that nature to him.

25 MR. MICHAEL HANIS: I think that's a fair

0151

1 objection to an extent. I wonder if I might clarify the  
2 question by saying, is that the type of first come,  
3 first serve sale you were recommending to the utility.

4 MR. PORS: I repeat the objections.

5 MR. MICHAEL HANIS: As the preferred method.

6 MR. FINNIGAN: And I will just note that  
7 there are also a number of portions of the sale in this  
8 hypothetical that are not included in the hypothetical,  
9 so it's missing elements to it, but just to note that  
10 for the record too.

11 JUDGE CAILLE: Well, to tell you the truth,  
12 I'm having a problem with this hypothetical, and because  
13 my concern is we're creating a record here, and I want  
14 the record to be accurate, and there are -- but I also  
15 would like to give Mr. Ward an opportunity to answer  
16 this question. I think what we need to do is go through  
17 the statements again, and maybe if I hear one that  
18 bothers me, I will let you know. But I'm going to ask  
19 Mr. Ward to answer the question to the best of his  
20 ability, but I do have a question that I need to ask him  
21 first. I think Mr., I'm not sure which of the  
22 Respondents, Respondent-Intervenor, alluded to this.

23

24

25

0152

1                                    E X A M I N A T I O N

2    BY JUDGE CAILLE:

3            Q.    Is it in your job description to determine  
4    whether a sale is fair, just, and reasonable?  If you  
5    were given certain facts, would you be able to determine  
6    from those facts whether a sale was fair, just, and  
7    reasonable?

8            A.    Are you asking is it within my job  
9    description to determine that?

10          Q.    First within your job description.

11          A.    The answer would typically be no.

12          Q.    And who would normally be making that  
13    decision?

14          A.    Is it within my job scope to do that kind of  
15    review for companies, yes, it would be.

16                    JUDGE CAILLE:  Okay, go ahead.

17                    MR. MICHAEL HANIS:  As a suggestion, should I  
18    go back through them one at a time maybe?

19                    JUDGE CAILLE:  Would you please.

20                    MR. MICHAEL HANIS:  I agree, okay.

21                    JUDGE CAILLE:  I'm sure we have all lost it.

22                    MR. MICHAEL HANIS:  Okay, I wonder which of  
23    this list I asked now, sort it out.

24

25

0153

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

2 BY MR. MICHAEL HANIS:

3 Q. The first element of the hypothetical was  
4 that the location was changed by somewhere between a  
5 quarter and a half a mile, and that change was made the  
6 day before the sale was held. The second element --

7 MR. FINNIGAN: I would just note that the  
8 only witness to date that's testified said it was two  
9 blocks.

10 MR. PORS: And I think there has been  
11 inconsistent testimony concerning when people were  
12 notified about the change in location.

13 MR. MICHAEL HANIS: I think in the admitted  
14 testimony there's actually testimony that it was 1,700  
15 feet; is that correct?

16 JUDGE CAILLE: You know, it may help,  
17 Mr. Hanis, and I don't know if you would agree to this,  
18 but --

19 MR. MICHAEL HANIS: I will take any  
20 suggestions.

21 JUDGE CAILLE: If you characterize this as a  
22 certain set of facts, and if these facts were proven,  
23 you know, then how would you characterize this sale or  
24 whatever. I mean --

25 MR. MICHAEL HANIS: I think what I'm looking

0154

1 for --

2 JUDGE CAILLE: Because your hypothetical is a  
3 little odd for what we do at the UTC.

4 MR. MICHAEL HANIS: Okay.

5 JUDGE CAILLE: And this is a different type  
6 of case, but normally we present a hypothetical to an  
7 expert witness, and usually it's on something pretty  
8 technical, and this is not -- doesn't lend itself to  
9 that, so that's partly what I'm struggling with here.  
10 And I am struggling with just the idea of using a  
11 hypothetical in this situation, because there are all  
12 these facts, and everything is dependent on -- it's very  
13 much a factual case, and there are many different facts  
14 in this testimony. There don't seem to be a consistent  
15 set of facts, so I will let you go ahead, and we'll see  
16 what we get.

17 MR. MICHAEL HANIS: If I may, Your Honor, the  
18 actual question will be, and I think you're correct, we  
19 have not laid a foundation with Mr. Ward being an  
20 expert, although I think he certainly would qualify as  
21 an expert to be asked an opinion question, but my  
22 question will ultimately be, on this set of facts of  
23 what we say is in the record happened, and of course my  
24 hypothetical is not worth anything if we can't prove  
25 those facts, but on that set of facts, is that the

0155

1 method that Staff was recommending to the utility. And  
2 I'm basing that on his very testimony, which was the UTC  
3 prefers this method.

4 JUDGE CAILLE: Okay, you can pose that  
5 question to him, and we'll see what he answers.

6 MR. MICHAEL HANIS: Okay, so back to the  
7 question.

8 BY MR. MICHAEL HANIS:

9 Q. The first element was they moved the sale the  
10 day before the sale happened to another location  
11 somewhere between two blocks, let's say two blocks, two  
12 blocks from the original location or more. Second  
13 element, that change was made too late to give the  
14 written notice that was given about the original sale to  
15 those folks who had been inquiring about this. Third  
16 element, there is a document that indicates that another  
17 person was told approximately two weeks earlier that it  
18 was going to be at the new location. Fourth element,  
19 the only notice given was a sign posted at the site.  
20 Fifth element, the change was made at least in part at  
21 the instance of one of the applicants for water permits  
22 that day. Sixth element, the rules applied to the sale  
23 by the utility were that there could be no queuing or  
24 gathering prior to the sale at 9:00 a.m. on June 15th,  
25 2001, a Friday. Seventh element, those that appeared

0156

1 for the sale were told that they would not be allowed to  
2 camp out, queue up, or line up prior to the sale.

3 MR. PORS: I'm sorry, would you repeat that,  
4 please.

5 MR. MICHAEL HANIS: Yeah, I hope so.

6 BY MR. MICHAEL HANIS:

7 Q. The seventh element was that persons who  
8 attempted to come early or who inquired about coming  
9 early were told they would not be able, not be allowed  
10 to camp out or gather prior to the sale, no queuing or  
11 gathering prior to the sale in the official notice of  
12 the sale before it was moved. Eighth element, a person  
13 was told that he would be arrested for trespassing if he  
14 attempted to camp out or gather earlier than that.  
15 Ninth element, a related company or an affiliate  
16 company, and what I'm talking about here is of course  
17 the resort and the utility are co-owned by the same  
18 parent company, was allowed to sign up on the day before  
19 the sale contrary to the notice, and then that affiliate  
20 acquired 16 of the certificates.

21 MR. FINNIGAN: I'm going to object to that as  
22 not being in anybody's testimony, proposed or admitted  
23 to date.

24 Q. Let me correct it, was able to stand in line  
25 prior to midnight of the day of the sale.

0157

1                   MR. PORS: I would also object to the  
2 standing in line part. There's evidence that there were  
3 persons gathered but not necessarily that they were in  
4 line.

5                   JUDGE CAILLE: If you can point us to --

6                   MR. PORS: And I'm also objecting to the  
7 characterization of signing up on the day prior to.

8                   MR. FINNIGAN: He did change that.

9                   MR. PORS: Okay.

10                  MR. MICHAEL HANIS: Mr. March's testimony.

11                  JUDGE CAILLE: And could you direct me to a  
12 page and line.

13                  MR. PATRICK HANIS: Page 5 of the direct  
14 testimony of Joseph March, the second question down.

15                  JUDGE CAILLE: I'm sorry, what is his exhibit  
16 number?

17                  MR. FINNIGAN: It's near the -- 81.

18                  JUDGE CAILLE: It's Exhibit 81?

19                  MR. PATRICK HANIS: That is correct.

20                  JUDGE CAILLE: Okay. Now I need a page  
21 number.

22                  MR. PATRICK HANIS: Page 5.

23                  MR. MICHAEL HANIS: Oh, I'm sorry.

24                  MR. FINNIGAN: You will note that I didn't  
25 object to that particular part.



0158

1                   MR. MICHAEL HANIS: Mr. March is the employee  
2 of the resort that lined up. At Page 5, lines 13  
3 through 16, he said:

4                   I saw others beginning to line up at  
5 5:00 p.m. on the 14th. I decided that I  
6 better get in line too. I got in line  
7 shortly after work between 5:30 and 6:30  
8 on the 14th.

9                   JUDGE CAILLE: Okay.

10                  MR. MICHAEL HANIS: So we've got the resort  
11 employee lined up, between five and six people, before  
12 the day of the sale.

13                  MR. PORS: With respect to that, I think you  
14 have to also include additional testimony in order to  
15 keep that from being taken out of context, because the  
16 sheriff had been called to the site, and people were  
17 asked to wait in a particular area and not to form a  
18 line. So the testimony would actually be from several  
19 individuals that while they didn't wait in line after  
20 that point that they determined an order among  
21 themselves, so it's not the same thing as a line.

22                  MR. MICHAEL HANIS: I think if counsel wants  
23 to cross-examine his own witness's testimony, but his  
24 words are that he stood in line, he got in line.

25                  MR. FINNIGAN: This is not the utility's

0159

1 testimony, this is the resort's testimony. We do have a  
2 distinct party status, so I do want to make sure that is  
3 clarified on the record.

4 MR. MICHAEL HANIS: Okay, I'm sorry about  
5 that, but the testimony speaks for itself.

6 JUDGE CAILLE: I believe the testimony does  
7 speak for itself.

8 MR. MICHAEL HANIS: Thank you, Your Honor.

9 We're getting close to the end, that was  
10 nine.

11 JUDGE CAILLE: Just so it's clear, Mr. Pors,  
12 your objection is overruled.

13 BY MR. MICHAEL HANIS:

14 Q. Tenth, nearly one half of all of the  
15 certificates that were ultimately passed out that day  
16 were given to that company at whose instance the  
17 location of the sale was changed the day before. And  
18 eleventh, people who called the utility's manager were  
19 told that they should not come before 9:00 and that they  
20 would not be allowed to gather, queue, camp out, or line  
21 up before that time.

22 MR. FINNIGAN: Just as a technical matter,  
23 that repeats an earlier element.

24 MR. MICHAEL HANIS: It does.

25 JUDGE CAILLE: I think it repeats number

0160

1 seven.

2 BY MR. MICHAEL HANIS:

3 Q. People who called and inquired of the manager  
4 while the sale was pending or shortly before the sale  
5 received that advice from the manager as opposed to the  
6 notices, written notices that were given.

7 JUDGE CAILLE: I'm going to let the parties  
8 argue this out in their briefs, but does that complete  
9 your --

10 MR. MICHAEL HANIS: That completes the  
11 factual listing.

12 BY MR. MICHAEL HANIS:

13 Q. And so my question then is, once again, is  
14 that the procedure you were recommending as a first  
15 come, first serve, or not recommending, but that you  
16 were indicating was the preference of WUTC staff for a  
17 first come, first serve sale?

18 MR. FINNIGAN: Your Honor, excuse me, I do  
19 have an objection in that this is so far beyond the  
20 scope of direct that this does not constitute proper  
21 cross examination. Mr. Wards's testimony states, are  
22 you testifying on any other matter in this proceeding  
23 other than what's contained therein, and the answer is  
24 no.

25 MR. MICHAEL HANIS: Mr. Ward's testimony is

0161

1 that they had a preference, that he described the  
2 preference specifically as first come, first serve.  
3 That testimony is meaningless without clarifying what he  
4 meant by that and what he didn't mean, so I think I'm  
5 entitled to inquire what he meant by his testimony.

6 JUDGE CAILLE: The objection is overruled,  
7 and Mr. Ward is directed to please answer.

8 THE WITNESS: Could you please repeat the  
9 last question?

10 MR. MICHAEL HANIS: The last, the tenth  
11 element or the whole thing?

12 THE WITNESS: The last question asked of me.

13 MR. MICHAEL HANIS: Okay, the last question  
14 asked, could I have the court reporter read it.

15 (Record read as requested.)

16 THE WITNESS: I will again ask that the  
17 question be rephrased.

18 BY MR. MICHAEL HANIS:

19 Q. Was that procedure that I just described with  
20 those ten elements, is that what you had in mind when  
21 you said that's the preference of staff?

22 A. I don't have an answer to that.

23 Q. Okay. Do you have an answer as to whether  
24 that would be a procedure that meets what you testified  
25 the requirements were of fairness and reasonableness?

0162

1                   MR. PORS:  Objection to the extent that no  
2 foundation has been laid for his opinion on that  
3 subject.

4                   MR. MICHAEL HANIS:  He testified that that's  
5 what his objective was in reviewing these things.

6                   MR. PORS:  To that extent then --

7                   JUDGE CAILLE:  Just a moment, please.

8                   MR. PORS:  But not on the ultimate question  
9 of the case.  You're not asking him, in other words,  
10 that if he were reviewing that type of a sale, would he  
11 make a determination as to whether that was just, fair,  
12 and reasonable?

13                   MR. MICHAEL HANIS:  Yes, I will agree to  
14 that.

15                   MR. PORS:  Okay.

16                   JUDGE CAILLE:  Did you get that, Mr. Ward?

17                   THE WITNESS:  No, I did not.

18                   JUDGE CAILLE:  Let's try again.

19 BY MR. MICHAEL HANIS:

20           Q.     We're asking if you were to be asked within  
21 the scope of your duties if that was a fair and  
22 reasonable method of distributing certificates, would  
23 you say that that was fair and reasonable?

24           A.     I would like to qualify my answer first of  
25 all, assuming --

0163

1 Q. Could I have you answer it first and then  
2 maybe qualify it?

3 MR. FINNIGAN: Well, if he's asking for an  
4 opinion evidence, the witness is certainly allowed to  
5 state it as an opinion without a yes or no answer. Yes  
6 or no are for factual questions, not when he's asking  
7 for his opinion.

8 JUDGE CAILLE: I would like to hear it with  
9 your qualification, so just give your answer as you were  
10 going to give it, and if that doesn't satisfy the people  
11 here, I will listen to their arguments, but let me hear  
12 it.

13 A. The qualifications being, was that  
14 information, all those elements that you proposed,  
15 somewhat public information or at least known  
16 information?

17 BY MR. MICHAEL HANIS:

18 Q. I'm sorry, that's not my question.

19 A. I would answer your question then that that  
20 may be a fair and reasonable procedure under a first  
21 come, first serve process.

22 Q. And so your qualification is that it would be  
23 if there was notice to all of the people involved?

24 A. If all of your elements were noticed to  
25 people, yes, not necessarily to all people, but to those

0164

1 people that were involved, yes.

2 Q. And if those elements were not noticed to the  
3 people involved, then your answer would be no?

4 A. I would then say my answer would be no.

5 Q. Thank you, Mr. Ward.

6 Would you consider a method that would allow,  
7 a first come, first serve method that would allow the  
8 very first person in line to take every certificate to  
9 be a first come, first serve method?

10 A. Yes.

11 Q. You would.

12 MR. MICHAEL HANIS: That's all I have, thank  
13 you.

14 JUDGE CAILLE: Respondent, will you be done  
15 in five minutes, maybe more?

16

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

18 BY MR. PORS:

19 Q. Mr. Ward, were you, prior to the June 15th  
20 sale of certificates by Rosario Utilities, were you  
21 asked by Chris Vierthaler or anyone else from Rosario  
22 Utilities whether first come, first serve meant that  
23 they could only provide one certificate per person  
24 waiting in line?

25 A. No, I was not.

0165

1 Q. Had you instructed on your own Rosario  
2 Utilities that they could only issue one certificate to  
3 each person in line in a first come, first serve sale?

4 A. No.

5 Q. Prior to the June 15th sale, did you review  
6 any of the public notices sent by Rosario Utilities to  
7 potential customers concerning the rules for the sale?

8 A. I don't believe I did.

9 MR. PORS: I have nothing further.

10 MR. FINNIGAN: Are you ready for me?

11 JUDGE CAILLE: Yes, I am.

12 MR. FINNIGAN: Okay.

13

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

15 BY MR. FINNIGAN:

16 Q. Mr. Ward, are you aware of other instances in  
17 which a first come, first sale, first come, first served  
18 sale has involved customers purchasing more than one  
19 connection at a time?

20 A. Yes, I am.

21 Q. Would you characterize -- how would you  
22 characterize that process in the industry? Would you  
23 characterize it as a normal occurrence or as an unusual  
24 occurrence?

25 A. I would characterize it as a normal, a



0166

1 typical occurrence, yes.

2 Q. Would you agree that while you're conducting  
3 a sale where there are more connections wanted than you  
4 have connections to provide, that is a difficult  
5 situation for a water company?

6 A. Yes.

7 Q. Would it be reasonable for the water company  
8 in that situation to make adjustments in the procedures  
9 as time went forward to try and accommodate events as  
10 they occurred?

11 A. Yes.

12 MR. FINNIGAN: Thank you, Mr. Ward, I have no  
13 further questions.

14 MR. MICHAEL HANIS: Just a couple, Your  
15 Honor.

16 JUDGE CAILLE: All right.

17

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

19 BY MR. MICHAEL HANIS:

20 Q. So that I understand your testimony then in  
21 response to Mr. Pors, the decisions to issue more than  
22 one certificate per person was in no sense your  
23 recommendation or the WUTC's, but that was the utility's  
24 decision; is that correct?

25 A. Yes.

0167

1 Q. And when you describe typical or normal  
2 occurrence, you mean by typical or normal fair and  
3 reasonable, or would typical and normal only be fair and  
4 reasonable depending upon the circumstances?

5 A. I think fair and reasonable or typical would  
6 be fair and reasonable dependent upon the circumstances.

7 Q. Okay. Now you're aware that there was a  
8 prior distribution of certificates by Rosario Utilities?

9 A. Yes.

10 Q. And it was done by a priority list?

11 MR. FINNIGAN: I'm going to object, this is  
12 beyond redirect.

13 MR. MICHAEL HANIS: I will withdraw it, Your  
14 Honor.

15 JUDGE CAILLE: All right.

16 MR. MICHAEL HANIS: And that's all I have.

17 JUDGE CAILLE: Anything further?

18 All right, you're excused, Mr. Ward, thank  
19 you.

20 And, Mr. Blay?

21 MR. PATRICK HANIS: Your Honor, Mr. Blay and  
22 Mr. Corrigan, Exhibits T35 and T36, we would move to be  
23 admitted as stipulated testimonies.

24 JUDGE CAILLE: Is that correct, gentlemen?

25 MR. PORS: That is correct with the

0168

1 understanding that in Mr. Corrigan's testimony, T36,  
2 that certain questions and answers have been stricken  
3 from that testimony.

4 JUDGE CAILLE: Yes, and those were previously  
5 stricken in a previous order.

6 MR. PORS: With that understanding then,  
7 Mr. Hanis is correct that the testimonies of Roy Blay  
8 and Tom Corrigan are stipulated to. I would point out  
9 though that the intent of the stipulation or the scope  
10 of the stipulation is as to their admissibility, not as  
11 to the truth of any particular statements made therein.

12 JUDGE CAILLE: All right.

13 MR. PORS: There's no admission made by  
14 Rosario Utilities of the statements.

15 JUDGE CAILLE: All right. Then Exhibit T35,  
16 with this understanding, Exhibit T35 and T36 are  
17 admitted into the record.

18

19 (The following exhibits were identified in  
20 conjunction with the testimony of ROY BLAY.)

21 Exhibit T35 is RB-T1: Rebuttal Testimony (May  
22 22, 2002).

23

24 (The following exhibits were identified in  
25 conjunction with the testimony of TOM CORRIGAN.)

0169

1                   Exhibit T36 is TC-T1: Rebuttal Testimony (May  
2 22, 2002).

3

4                   JUDGE CAILLE: And Mr. Paul Carrick.

5                   MR. PATRICK HANIS: Mr. Carrick.

6                   MR. FINNIGAN: Just as a -- I'm sorry, not to  
7 interrupt the flow of things, but have we made a  
8 determination as to when this morning's witnesses --

9                   MR. PATRICK HANIS: Yes, I have faxed them, I  
10 believe they all have the exhibits now. We're hoping  
11 maybe we will just, people that are here, we can just  
12 continue with them so that we don't have to bring  
13 anybody back tomorrow, if that's okay.

14                   MR. FINNIGAN: No, that's fine, I just  
15 wondered what the procedure was going to be.

16                   MR. PATRICK HANIS: And then maybe towards  
17 the end of the day, if we have the time, these people  
18 will be available.

19                   MR. FINNIGAN: Okay.

20

21 Whereupon,

22                   PAUL CARRICK,  
23 having been first duly sworn, was called as a witness  
24 herein and was examined and testified as follows:

25

0170

1           (The following exhibits were identified in  
2 conjunction with the testimony of PAUL CARRICK.)

3           Exhibit T37 is PC-T1: Direct Testimony (March  
4 12, 2002). Exhibit 38 is PC-1: May 23, 2001, letter to  
5 all Property Owners in the Vusario, Orcas Highlands, and  
6 Rosario Water Systems from Chris Vierthaler, Manager of  
7 Rosario Utilities.

8

9           JUDGE CAILLE: Thank you.

10

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

12 BY MR. PATRICK HANIS:

13           Q.     Good afternoon, Mr. Carrick. Would you  
14 please state your name for the record.

15           A.     Paul Carrick, C-A-R-R-I-C-K.

16           Q.     Mr. Carrick, what is your current address?

17           A.     93 Veneda, V as in Victor, E-N-E-D-A, Trail,  
18 East Sound, Washington 98245.

19           Q.     I'm showing you what has been marked as  
20 Exhibit T37, which is your written direct testimony, if  
21 you will review that.

22           A.     Okay.

23           Q.     Do you recall giving that testimony?

24           A.     Yes, I do.

25           Q.     And if I were to ask you those same questions

0171

1 today, would those be the same answers that you would  
2 give?

3 A. Yes, they would.

4 MR. PATRICK HANIS: Move that Exhibit T37 and  
5 corresponding Exhibit 38 be admitted into evidence.

6 JUDGE CAILLE: Any objection?

7 MR. PORS: None, Your Honor.

8 MR. FINNIGAN: No objection.

9 JUDGE CAILLE: Exhibits T37 and 38 are  
10 admitted into the record, and Mr. Carrick is available  
11 for cross-examination.

12

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

14 BY MR. PORS:

15 Q. Good afternoon, Mr. Carrick. My name is Tom  
16 Pors. I'm representing Rosario Utilities. I understand  
17 that you own three lots in Rosario Estates II; is that  
18 correct?

19 A. Correct.

20 Q. And that's within the service area of Rosario  
21 Utilities?

22 A. Yes.

23 Q. How many of those lots are currently served  
24 with water?

25 A. None.

0172

1 Q. And were you seeking water certificates for  
2 each of those lots at the June 15th sale?

3 A. I was seeking whatever I could get. If I  
4 could get all, that would be fine. If I could get one,  
5 that would be fine.

6 Q. Did you have a check with you in an amount  
7 sufficient to pay for three certificates at that sale?

8 A. Yes.

9 Q. You contacted Ms. Vierthaler on June 13th,  
10 two days before the sale; is that correct?

11 A. Correct.

12 Q. And she informed you at that time that the  
13 certificates would be distributed on a first come, first  
14 serve basis?

15 A. Correct.

16 Q. Did you receive, let's see, do you have a  
17 copy of Exhibit 69 in front of you?

18 A. Not in front of me, no.

19 Now I do.

20 Q. Okay. Is this a May 23, 2001, notice from  
21 Rosario Utilities to all property owners regarding the  
22 sale?

23 A. Yes, it is.

24 Q. Did you receive this document prior to the  
25 sale?

0173

1 A. Yes.

2 Q. Was that by mail or in person?

3 A. Yes, by mail.

4 Q. Did you notice that this document provides  
5 that the number of connections that would be sold on  
6 June 15th is limited?

7 A. Yes, however it didn't state what limit it  
8 was.

9 Q. Did you -- let's strike that.  
10 You testified that Ms. Vierthaler told you  
11 that no one would be allowed to line up before the  
12 office opens on Friday morning.

13 A. Correct.

14 Q. When did she tell you that?

15 A. I spoke with her on the 13th, the afternoon  
16 of the 13th, on the phone.

17 Q. Are you sure she specified a particular time,  
18 or did she say before Friday; could that have been what  
19 she told you?

20 A. No, there was a very specific when the office  
21 opens.

22 Q. When you reviewed Exhibit 69 prior to the  
23 sale, did you notice that any particular time was listed  
24 there when people could begin to arrive?

25 A. It specifies office hours are 9:00 a.m. to



0174

1 5:00 p.m.

2 Q. It doesn't specify that people could not  
3 arrive prior to 9:00 a.m., did it?

4 A. It did not.

5 Q. Okay. Did Ms. Vierthaler tell you that you  
6 would not be allowed on the Rosario Resort property  
7 before 9:00 a.m. on June 15th?

8 A. Yes.

9 Q. Did she tell you what the consequences would  
10 be if you arrived prior to 9:00 a.m. on June 15th?

11 A. I don't recall.

12 Q. Do you recall asking her what the  
13 consequences would be?

14 A. No, I tended to obey. If you tell me not to  
15 come, in general if I believe you're being truthful, I  
16 will obey.

17 Q. On Exhibit 69, did you note that some persons  
18 were on a utilities commission priority list and would  
19 be the first to receive water certificates?

20 A. Yes.

21 Q. You testified that you were unaware whether  
22 you were on that list or not; is that correct?

23 A. Yes, and that would be incorrect, I obviously  
24 am not on the list.

25 Q. Did you confirm that prior to the sale, that

0175

1 you were not on the priority list?

2 A. No, I did not.

3 Q. Did you ask, you didn't attempt to ask  
4 Ms. Vierthaler if you had priority for a certificate?

5 A. No.

6 Q. Did you become concerned prior to the sale  
7 when you weren't contacted to have an opportunity to  
8 purchase from a priority list?

9 A. No, because as I said, I didn't -- I wasn't  
10 sure I was on the list, but I -- I'm sorry, let me  
11 rephrase that. I wasn't sure I was not on the list, but  
12 my belief was that I was not on the list.

13 Q. Okay. You testified that your real estate  
14 agent told you it might be a good idea to camp out prior  
15 to the sale; is that correct?

16 A. Yes.

17 Q. Did you ask Ms. Vierthaler about that?

18 A. Yes, I did, and that prompted the statement  
19 that I should not come before 9:00 a.m. when the office  
20 opened.

21 Q. You actually arrived at the property prior to  
22 9:00 a.m. on June 15th, didn't you?

23 A. Correct.

24 Q. And so you disregarded the statement of  
25 Ms. Vierthaler?

0176

1           A.     Correct.  As I stated before, if I believe  
2     the statements that are being made to me are truthful,  
3     then I will obey them.  At the time, by 4:30, I was not  
4     certain of what the condition was.  I had two  
5     conflicting pieces of information.

6           Q.     Okay.  Did you receive information from  
7     somebody else that other people were at the sale  
8     already?

9           A.     My real estate agent had indicated that the  
10    probability was that people were lining up.

11          Q.     You live on Orcas Island; is that correct?

12          A.     Correct.

13          Q.     Do you get the local paper?

14          A.     Yes, we do receive the paper.

15          Q.     Were you aware of one or more articles or a  
16    press release concerning the June 15th sale in the local  
17    media?

18          A.     I don't know if I read that in the paper or  
19    not.  I don't, as I said, we get the paper, I don't  
20    often read it, my wife reads it more than I.

21          Q.     Did you talk about the upcoming sale with  
22    other people on the island?

23          A.     My real estate agent during that week.

24          Q.     As a result of that conversation, were you  
25    aware that there may be fewer than 50 connections

0177

1 available at the June 15th sale?

2 A. No. In fact, my real estate agent believed  
3 that there would be more than 50.

4 Q. Did you ask Chris Vierthaler prior to the  
5 sale how many certificates were available?

6 A. Yes, I did.

7 Q. What was her response?

8 A. She couldn't reply at the time.

9 Q. Did she explain why she couldn't reply?

10 A. I believe it had to do with the issue of how  
11 many are on the priority list and how many would -- what  
12 the Department of Health would issue.

13 Q. You testified that one other person was in  
14 line before you when the certificates ran out.

15 A. Correct.

16 Q. And if her testimony is that she arrived at  
17 5:30 a.m., could it be true that you arrived after 5:30  
18 a.m. rather than 4:30 a.m. as stated in your testimony?

19 A. It is not my belief that that is the case.  
20 It was prior to sun rise, that was June 15th, so sun  
21 rise, the sun would have been up by 5:30 is my belief.

22 MR. PORS: I have no further questions.

23 JUDGE CAILLE: Mr. Finnigan.

24 MR. FINNIGAN: Thank you, just a couple of  
25 questions.

0178

1

2

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

3

BY MR. FINNIGAN:

4

5

6

7

8

Q. You stated in response to a question from Mr. Pors that the reason you went down and got in line early in the morning of the 15th was because your real estate agent indicated that the probability was people were lining up.

9

10

11

12

A. I had conflicting information. I had two -- one that was telling me you couldn't queue before, one that was telling me people are probably queuing. I decided to see for myself.

13

14

Q. When did your real estate agent tell you that?

15

16

17

A. Around 5:00 in the afternoon on the 14th.

18

19

Q. Did Mr. Gottlieb get in line to represent anybody for the purpose of water?

20

21

A. No, he did not. There were other people from his office there, but he was not there himself.

22

23

Q. So there were other sales agents from that brokerage that did line up?

24

A. Correct.

25

Q. Did any of them get a certificate?

0179

1 A. I do not know.

2 MR. FINNIGAN: That's all the questions I  
3 have, thank you.

4 JUDGE CAILLE: Okay, just a moment.

5 MR. PATRICK HANIS: Not so fast.

6 THE WITNESS: Jumping the gun.

7

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

9 BY MR. PATRICK HANIS:

10 Q. You testified that you asked about the  
11 possibility of camping out to Ms. Vierthaler. Where you  
12 interested in camping out?

13 A. Yes. If I had known that there were others  
14 camping out, I would have gone down.

15 MR. PATRICK HANIS: No further questions.

16 JUDGE CAILLE: Anything further for this  
17 witness?

18 All right, thank you, Mr. Carrick.

19 I believe Mr. Montgomery is next; is that  
20 right? Ah yes, Mr. Montgomery who is testifying instead  
21 of his wife; is that right?

22 THE WITNESS: That's right.

23 JUDGE CAILLE: We had a last minute switch.

24 MR. PATRICK HANIS: Mr. Montgomery, would you  
25 please -- oh, we probably need to swear you in first.

0180

1 JUDGE CAILLE: Yes.

2

3 Whereupon,

4 RONALD MONTGOMERY,

5 having been first duly sworn, was called as a witness

6 herein and was examined and testified as follows:

7

8 (The following exhibits were identified in

9 conjunction with the testimony of RONALD MONTGOMERY.)

10 Exhibit T39 is RM-T1: Direct Testimony (March

11 12, 2002). Exhibit 40 is RM-1: May 23, 2001 letter to

12 all Property Owners in the Vusario, Orcas Highlands, and

13 Rosario Water Systems from Chris Vierthaler, Manager of

14 Rosario Utilities. Exhibit 41 is RM-2: Water

15 Certificates Notice. Exhibit 42 is RM-3: July 5, 2001

16 letter to Ronald Montgomery from Chris Vierthaler,

17 Manager of Rosario Utilities.

18

19 JUDGE CAILLE: Thank you.

20

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

22 BY MR. PATRICK HANIS:

23 Q. Please state your name for the record.

24 A. Ronald I. Montgomery.

25 Q. And your address, Mr. Montgomery?

0181

1           A.     30254 - 25th Avenue Southwest, Federal Way,  
2 Washington 98023.

3           Q.     Mr. Montgomery, do you recall giving written  
4 direct testimony in this matter?

5           A.     Yes, I do.

6           Q.     Showing you what's been marked as Exhibit  
7 T39, will you please review that?

8           A.     Okay.

9           Q.     If I were to ask you the questions contained  
10 in T39, would your answers be the same today?

11          A.     Yes, they would.

12                   MR. PATRICK HANIS: Offer that Exhibit T39  
13 and corresponding Exhibits 40, 41, and 42 be admitted to  
14 the record.

15                   JUDGE CAILLE: Is there any objection?

16                   MR. FINNIGAN: No objection.

17                   JUDGE CAILLE: No objection?

18                   MR. PORS: No.

19                   JUDGE CAILLE: Okay, then Exhibits T39, 40,  
20 41, and 42 are admitted into evidence, and the witness  
21 is available for cross-examination.

22

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

24 BY MR. PORS:

25           Q.     Good afternoon, Mr. Montgomery. My name is



0182

1 Tom Pors, and I'm representing Rosario Utilities. You  
2 testified that in July 1999 you visited Chris Vierthaler  
3 about getting water for your property, and she took your  
4 name so you could be notified when water was available;  
5 is that correct?

6 A. That's correct.

7 Q. Were you told that you would be informed of  
8 the status of the treatment plant construction and  
9 future sales of water connections?

10 A. I don't recall being told that specifically,  
11 but I was told that I would be notified as things  
12 progressed.

13 Q. Did you subsequently receive notices in the  
14 mail about the status of the treatment plant  
15 construction and the moratorium?

16 A. No.

17 Q. You did not receive anything in the mail?

18 A. No.

19 Q. How did you learn about the sale of water  
20 certificates?

21 A. Through the mail, May 23rd mailing from  
22 Rosario Utilities.

23 Q. Do you have Exhibit 9, excuse me, Exhibit 69  
24 in front of you, the May 23, 2001, notice from Rosario  
25 Utilities?

0183

1 A. Yes, I do.

2 Q. You did receive this exhibit before the June  
3 15th sale?

4 A. Correct.

5 Q. When Ms. Vierthaler took your name in July of  
6 1999, were you specifically told that you would have  
7 priority for a new connection when the treatment plant  
8 was approved and water became available?

9 A. No, I was not.

10 Q. When you received the May 23rd notice of the  
11 June 15th sale, did you notice that the sale was first  
12 come, first served?

13 A. I noticed that it indicated that in the  
14 mailing. However, I read it very carefully to try and  
15 get some indication as to whether or not that was going  
16 to -- there was going to be a shortage. I believe --

17 Q. I think you have answered the question. I  
18 will ask you another question about that. Did you  
19 notice from this same document that it stated that there  
20 were a limited number of certificates available on June  
21 15th? If it will refresh your recollection, in the  
22 second paragraph, the second line, there's a statement,  
23 the number of connections is limited.

24 A. Okay.

25 Q. Do you recall seeing that?

0184

1           A.     I read the article, I mean the letter, so  
2     yes, I saw it.

3           Q.     Did you understand when you received this  
4     notice that you were not on the utility commission's  
5     priority list?

6           A.     Yes.

7           Q.     Did you have any understanding prior to the  
8     June 15th sale that there might not be enough  
9     certificates available to supply all of those who wished  
10    to receive certificates on June 15th?

11          A.     On June 14th, I called and talked to Chris  
12    Vierthaler about that, asked her whether there was  
13    enough certificates or not, and she wasn't able to say  
14    one way or the other, so I knew there was a possibility.

15          Q.     Does this Exhibit 69 notice state that you  
16    could not show up or form a line for certificates prior  
17    to 9:00 a.m.?

18          A.     No, it doesn't.  But again, in my  
19    conversation on June 14th--

20          Q.     I think you have answered my question.

21                 Since you were aware that there was a  
22    possibility that the number of certificates would not be  
23    available on the 15th, was potentially not enough to  
24    satisfy the demand, did you understand that if you were  
25    late to the sale, you might not get a certificate?

0185

1           A.     Quite frankly I didn't -- I couldn't -- even  
2     today I can't conceive that the sale of water  
3     certificates is like a rock concert ticket sales, and  
4     the instructions were to report at 9:00, that's what I  
5     did.

6           Q.     Did you have a conversation with anyone else  
7     other than Chris Vierthaler about when you should show  
8     up for that sale?

9           A.     No.

10          Q.     You testified that the people who lined up  
11     prior to Friday morning on June 15th were in violation  
12     of guidelines set forth by Rosario Utilities. Were you  
13     referring to the guidelines in the May 23rd notice or to  
14     statements made by Chris Vierthaler to you?

15          A.     Statements made by Chris Vierthaler.

16          Q.     What in your opinion should have been done  
17     about people who came to the property prior to 9:00  
18     a.m.?

19          A.     I didn't give it a great deal of thought  
20     quite frankly prior to that, because I assumed there  
21     must be some method by which people were going to be  
22     given some kind of equitable priority.

23          Q.     Did you ask Chris Vierthaler on June 14th  
24     what that method would be?

25          A.     No. At that point, I just assumed there was

0186

1 still going to be enough certificates.

2 Q. Did you ask her on the 14th -- strike that.

3 You testified previously that she told you it  
4 was possible that there would not be enough certificates  
5 to satisfy everybody; is that correct?

6 A. She was noncommittal, but it was a  
7 possibility.

8 Q. What time in the day did you speak to Chris  
9 Vierthaler on June 14th?

10 A. I don't recall exactly. I would believe it  
11 would probably have been early afternoon.

12 Q. Afternoon though?

13 A. Early.

14 Q. Early afternoon?

15 A. But I don't know that for sure.

16 Q. In your opinion, would it have been a more  
17 fair and reasonable sale if persons who showed up prior  
18 to 9:00 had been forced to get out of line and line up  
19 after individuals that showed up at 9:00?

20 A. I don't know what would be the most fair  
21 method to have distributed the certificates.

22 Q. You also testified that the sale of multiple  
23 certificates to one person or entity was unfair and  
24 unreasonable. Did any of the notices that you received  
25 regarding the sale restrict sales to one certificate per

0187

1 person?

2 A. No.

3 MR. PORS: I have nothing further, thank you.

4 JUDGE CAILLE: Mr. Finnigan.

5 MR. FINNIGAN: Yes. Your Honor, there's a  
6 document here I want to use to cross Mr. Montgomery  
7 concerning one statement he made, but I only have one  
8 copy of it. Is there a way to get copies so counsel can  
9 have copies?

10 MR. MICHAEL HANIS: Can we just take a look  
11 at it?

12 JUDGE CAILLE: Why don't you share it with  
13 him.

14 MR. PATRICK HANIS: Your Honor, we object  
15 that this testimony has not been given to us until just  
16 now. It's not a part of the cross-examination  
17 documents, nor was it ever given to us in discovery.

18 MR. FINNIGAN: Your Honor, it might be  
19 helpful if I showed you the document as well.

20 JUDGE CAILLE: Yes, may I see it?

21 MR. FINNIGAN: And I would like to at least  
22 lay a basis for it.

23 JUDGE CAILLE: Okay, may I read it before  
24 you --

25 MR. FINNIGAN: Yes, please. Obviously this

0188

1 was not something I anticipated. It was something that  
2 was prompted by Mr. Montgomery's statement here today.

3 MR. PATRICK HANIS: I would also note that  
4 that's about a different sale where I assume maybe that  
5 the rules were a little more clear and they probably  
6 didn't have the problems that we had here.

7 JUDGE CAILLE: I'm not going to allow that,  
8 Mr. Finnigan.

9 MR. FINNIGAN: Okay, but I --

10 JUDGE CAILLE: Would you like to --

11 MR. FINNIGAN: May I make my --

12 JUDGE CAILLE: Yes, you may, go ahead.

13 MR. FINNIGAN: To do this, I need to hand  
14 this to the witness so he can have it in front of him.

15 JUDGE CAILLE: Now wait a minute, what are  
16 you going to do?

17 MR. FINNIGAN: I just wanted to -- I wanted  
18 to lay at least some foundation.

19 JUDGE CAILLE: For --

20 MR. FINNIGAN: Well, maybe it would be easier  
21 on this process, if I can just summarize the exhibit  
22 and --

23 JUDGE CAILLE: All right.

24 MR. FINNIGAN: And do it as an offer of  
25 proof.

0189

1 JUDGE CAILLE: Okay, do that.

2 MR. FINNIGAN: Mr. Montgomery testified that  
3 he didn't believe that a sale of water would be like a  
4 sale for water tickets.

5 MR. PORS: Rock concert.

6 MR. FINNIGAN: Rock concert, I'm sorry. What  
7 I have is an article from the Bremerton Sun concerning a  
8 first come, first serve sale late in 2000, and the  
9 headline is, Long Lineup for Concert Tickets, Try Water  
10 Hookups, and it goes on to describe that several people  
11 were able to obtain multiple sets of --

12 THE WITNESS: That's basically irrelevant,  
13 because I haven't read the Bremerton Sun, I have no  
14 knowledge of that.

15 MR. FINNIGAN: I'm making an offer of proof.

16 THE WITNESS: But the implication is I should  
17 have known better.

18 JUDGE CAILLE: Excuse me, the witness is  
19 instructed to be quiet. This is a formal procedural  
20 matter that he's doing, a process that he's doing. It's  
21 making an offer of proof, and it's just coming into the  
22 record as that, and it's not here for argument right  
23 now.

24 MR. FINNIGAN: Thank you.

25



0190

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

2 BY MR. FINNIGAN:

3 Q. Mr. Montgomery, what's your profession?

4 A. Educator.

5 Q. At what level do you teach, or are you in  
6 administration?

7 A. School administration. I'm retired.

8 Q. In your testimony, you offer the opinion in  
9 question and answer 21 that sale of multiple  
10 certificates to one person or one entity was unfair and  
11 unreasonable. Do you see that?

12 A. Correct.

13 Q. You're offering that opinion in your view as  
14 an educator?

15 A. Yes, on the basis of equity.

16 Q. Are you familiar with how the water industry  
17 conducts first come, first serve sales?

18 A. No.

19 MR. FINNIGAN: No further questions.

20 JUDGE CAILLE: Redirect?

21 MR. PATRICK HANIS: Yes.

22

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

24 BY MR. PATRICK HANIS:

25 Q. What was your understanding of when you could

0191

1 line up?

2 A. Based on my conversation with Chris, it would  
3 be 9:00 on June 15th.

4 Q. Prior to your conversation with  
5 Ms. Vierthaler, what were you prepared to do in order to  
6 get water certificates?

7 A. I knew that Rosario had been trying to create  
8 new water hookups. I guess quite frankly I found it  
9 difficult to imagine that they wouldn't not only create  
10 enough for the current need but perhaps create a few  
11 additional, so I wasn't that concerned. I mean I  
12 assumed there would be water hookups available.

13 Q. Were you prepared to camp out, if necessary,  
14 to get water certificates?

15 A. No.

16 Q. Were you prepared to have somebody there  
17 before the day of the sale?

18 A. No, I was trying to follow what I understood  
19 to be the rules.

20 Q. So the only reason you didn't plan or think  
21 about camping out was because of what you thought the  
22 rules were pursuant to conversations with  
23 Ms. Vierthaler?

24 A. That's correct.

25 MR. PATRICK HANIS: No further questions.

0192

1 JUDGE CAILLE: Anything further for this  
2 witness?

3 MR. PORS: No.

4 JUDGE CAILLE: All right, thank you,  
5 Mr. Montgomery.

6 MR. PORS: Your Honor, may I have five  
7 minutes?

8 JUDGE CAILLE: Sure, why don't we take a  
9 quick restroom break or whatever break.

10 (Recess taken.)

11

12 (The following exhibits were identified in  
13 conjunction with the testimony of JORG REINHOLT.)

14 Exhibit T43 is JR-T1: Direct Testimony (March  
15 12, 2002). Exhibit 44 is JR-1: July 5, 2001 letter to  
16 Jorg Reinholt from Chris Vierthaler, Manager of Rosario  
17 Utilities. Exhibit 45 is JR-2: May 23, 2001 letter to  
18 all Property Owners in the Vusario, Orcas Highlands, and  
19 Rosario Water Systems from Chris Vierthaler, Manager of  
20 Rosario Utilities. Exhibit 46 is JR-3: 2 page list  
21 representing people in line for water certificates on  
22 June 15, 2001.

23

24

25

0193

1 Whereupon,

2 JORG REINHOLT,

3 having been first duly sworn, was called as a witness

4 herein and was examined and testified as follows:

5

6 DIRECT EXAMINATION

7 BY MR. PATRICK HANIS:

8 Q. Good afternoon. Would you please state your  
9 name for the record.

10 A. Jorg Reinholt.

11 Q. Would you spell your name.

12 A. R-E-I-N-H-O-L-T.

13 Q. Mr. Reinholt, do you recall giving written  
14 direct testimony in this matter?

15 A. Yes, I do.

16 Q. I will show you what's been marked as Exhibit  
17 T43, do you recognize this document?

18 A. Yes, I do.

19 Q. Is that the written direct testimony that you  
20 gave in this matter?

21 A. Mm-hm.

22 Q. If I were to ask you the same questions I  
23 asked you in that document, would your answers be the  
24 same?

25 A. Yes.

0194

1                   MR. PATRICK HANIS: Move that Exhibit T43 be  
2 admitted to the record along with the corresponding  
3 Exhibits 44, 45, and 46.

4                   JUDGE CAILLE: Is there any objection?

5                   MR. PORS: None.

6                   MR. FINNIGAN: No objection.

7                   JUDGE CAILLE: Then Exhibits T43, 44, 45, and  
8 46 are admitted into the record, and Mr. Reinholt is  
9 available for cross-examination.

10

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

12 BY MR. PORS:

13           Q.     Good afternoon, Mr. Reinholt. My name is Tom  
14 Pors. I'm representing Rosario Utilities. You own  
15 three parcels in Rosario Utilities' service area; is  
16 that correct?

17           A.     Right.

18           Q.     How many of those parcels have water service  
19 today?

20           A.     One.

21           Q.     And were you seeking two certificates on June  
22 15th of last year?

23           A.     Correct.

24           Q.     If you had the opportunity to purchase two  
25 certificates, you would have done so?

0195

1 A. I would have.

2 Q. Do you have Exhibit 69 in front of you?

3 A. Probably. No, I have nothing in front of me.

4 MR. PORS: Counsel, would you mind.

5 MR. PATRICK HANIS: 69?

6 MR. PORS: Yes.

7 BY MR. PORS:

8 Q. This is the May 23, 2001, notice from Rosario  
9 Utilities. Did you receive this, a copy of this  
10 document, in early June of 2001?

11 A. Yes, I had this one.

12 Q. Did you notice that this document provided  
13 that the June 15th sale was first come, first serve?

14 A. Yes.

15 Q. Did you also notice that there were a limited  
16 number of certificates available?

17 A. Depends on how many showed up. If 1,000  
18 showed up, yes, limited. If 20 showed up, most likely  
19 not limited.

20 Q. While I think your answer was nonresponsive,  
21 I won't move to strike, I just want to ask my question  
22 again.

23 Did you notice that in this May 23rd, 2001,  
24 notice that it stated that the number of certificates  
25 available would be limited?

0196

1 A. Correct, yes.

2 Q. Okay. Did you have an understanding from  
3 reading this that there might not be enough certificates  
4 available to supply all potential applicants?

5 A. No.

6 Q. If you didn't know that, did you have a  
7 question about how many certificates would be available,  
8 if there were enough to go around?

9 A. It was said that the moratorium had been  
10 lifted, and as such, it was to be expected that in the  
11 first round there would be enough certificates to go  
12 around.

13 Q. Did anybody from Rosario Utilities tell you  
14 that there were enough certificates to go around?

15 A. No.

16 Q. You just assumed that because the moratorium  
17 had been lifted?

18 A. I will say yes, and I had no information to  
19 the contrary.

20 Q. Do you live on Orcas Island?

21 A. Yes.

22 Q. Do you get the local paper?

23 A. Yes.

24 Q. Did you read any articles about the upcoming  
25 sale and the lifting of the moratorium?

0197

1 A. Yes.

2 Q. Do you recall that the article in the  
3 newspaper said that fewer than 50 certificates would be  
4 available on June 15th?

5 MR. PATRICK HANIS: Objection, maybe we  
6 should have that exhibit entered into --

7 MR. PORS: Would you let the witness look at  
8 Exhibit 70, please.

9 MR. PATRICK HANIS: (Complies.)

10 BY MR. PORS:

11 Q. Mr. Reinholt, are you looking at Exhibit 70,  
12 a May 18, 2001, press release?

13 A. Yes.

14 Q. Approximately two paragraphs from the bottom  
15 of page 1, there's a quote from a Mr. Kaiser that  
16 states:

17 Beyond the number of prepaid connection  
18 fees and other prior commitments,  
19 Rosario Utilities projects fewer than 50  
20 new connections will be available based  
21 on the capacity of the new plant.

22 Do you recall after I have read that to you  
23 that the newspaper article would have stated that?

24 A. I may not have read that newspaper article  
25 that thoroughly, so I can not really recollect that



0198

1 number of 50.

2 Q. Okay. You testified that you contacted the  
3 front desk at Rosario Resort about the sale.

4 A. Correct.

5 Q. When did that happen?

6 A. It was after 5:00, so --

7 Q. On what day?

8 A. 14th.

9 Q. Did the, now looking at Exhibit 69, did that  
10 notice direct you to contact Rosario Resort or to  
11 contact Rosario Utilities?

12 A. Well, there was no one in the office, and I  
13 was late for calling the office.

14 Q. Did you go to the Rosario Utilities office  
15 first?

16 A. Tried first.

17 Q. And it was closed?

18 A. No one there.

19 Q. That was after 5:00 p.m. on June 14th?

20 A. After 5:00 p.m., yeah.

21 MR. PORS: Your Honor, could you please  
22 instruct him to wait for my questions to be complete.

23 JUDGE CAILLE: Mr. Reinholt, if you will just  
24 let the attorney complete his question before you  
25 answer.

0199

1 THE WITNESS: Okay.

2 JUDGE CAILLE: That's mostly for the benefit  
3 of the court reporter.

4 MR. PORS: Thank you.

5 BY MR. PORS:

6 Q. And what were you told at the front desk at  
7 Rosario Resort on June 14th about the sale?

8 A. That the sale would be the following day and  
9 no lining up.

10 Q. Did they tell you the location of the sale?

11 A. No.

12 Q. Did you see any notices or did you look  
13 around the property for any notices about the sale?

14 A. No, I was at home at that time.

15 Q. No, I'm talking about when you were at the  
16 main desk at the Rosario Resort at the mansion.

17 A. No.

18 Q. Did you call Chris Vierthaler on June 14th,  
19 the day before the sale?

20 A. Tried to call her.

21 Q. And did she return your phone call?

22 A. No, she wasn't there. It was after 5:00.

23 Q. After 5:00 that you called. You also  
24 testified that you arrived at 6:00 a.m. on June 15th for  
25 the sale; is that right?

0200

1 A. Yeah, slightly before.

2 Q. Was that because you wanted to get there  
3 early enough in case there was a line to get  
4 certificates?

5 A. Well, I wasn't too happy about the way it had  
6 started out.

7 Q. Excuse me, the way what started out?

8 A. The so-called distribution of certificates.

9 Q. You weren't happy?

10 A. I started to get a little bit nervous about  
11 how many could there be, how many certificates would be  
12 issued. I had no idea, so I tried to be there early  
13 time to 9:00.

14 Q. Did you believe that if you got there early  
15 enough that you would be in line in time to get a  
16 certificate?

17 A. That was my belief, yeah.

18 Q. Did anyone at Rosario Utilities tell you when  
19 you should or should not line up for the sale?

20 A. Not really, no.

21 MR. PORS: I have no further questions.

22 MR. FINNIGAN: I have nothing for this  
23 witness.

24 JUDGE CAILLE: All right.

25 Redirect?

0201

1

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

3 BY MR. PATRICK HANIS:

4 Q. After you went to the office of the utility  
5 at the mansion on the 14th, as you were leaving the  
6 mansion, did you see a line or anything going on at the  
7 Discovery House?

8 A. No, that's too far away.

9 Q. How far away is the mansion and the Discovery  
10 House from each other?

11 A. Somewhere between 300 yards and 400 yards.

12 Q. Are there any bushes or other impediments  
13 that might block the view?

14 A. All kinds.

15 Q. What kind of impediments?

16 A. Bushes, fences, building.

17 Q. When you went back to the resort that next  
18 morning, where did you initially go?

19 A. To the front desk.

20 Q. You went back to the mansion?

21 A. Mm-hm.

22 Q. And what were you -- what happened after you  
23 arrived at the mansion that next morning?

24 A. I was told that I should go down to the  
25 Discovery House.

0202

1 MR. PATRICK HANIS: Okay, no further  
2 questions.

3 MR. PORS: I have a question on redirect.  
4

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

6 BY MR. PORS:

7 Q. I'm confused about your contact of the front  
8 desk at Rosario Resort on the 14th. Was that by a phone  
9 call, or did you go there in person?

10 A. I actually was down at the bar down there.

11 Q. On June 14th?

12 A. Yeah, and I stopped by on the way out, so a  
13 bit late.

14 MR. PORS: Okay, nothing further.

15 MR. PATRICK HANIS: Nothing further.

16 JUDGE CAILLE: All right, you're excused,  
17 Mr. Reinholt.

18 Ms. Miller.  
19

20 Whereupon,

21 KAY MILLER,

22 having been first duly sworn, was called as a witness  
23 herein and was examined and testified as follows:  
24  
25

0203

1                   (The following exhibits were identified in  
2 conjunction with the testimony of KAY MILLER.)

3                   Exhibit T47 is KM-T1: Direct Testimony (March  
4 12, 2002). Exhibit T48 is KM-T2: Amended Direct  
5 Testimony (April 15, 2002). Exhibit 52 is KM-4: May 23,  
6 2001 letter to all Property Owners in the Vusario, Orcas  
7 Highlands, and Rosario Water Systems from Chris  
8 Vierthaler, Manager of Rosario Utilities. Exhibit 55 is  
9 KM-7: Water Certificates Notice. Exhibit 57 is KM-9:  
10 July 5, 2001 letter to Mr. and Mrs. Miller from Chris  
11 Vierthaler, Manager of Rosario Utilities.

12

13                   JUDGE CAILLE: Thank you.

14                   All right, Mr. Hanis.

15

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

17 BY MR. PATRICK HANIS:

18           Q.     Ms. Miller, would you please state your name  
19 for the record.

20           A.     Kay Miller.

21           Q.     And what is your address?

22           A.     My mailing address is P.O. Box 1983, East  
23 Sound, Washington 98245.

24           Q.     Ms. Miller, do you recall giving written  
25 direct testimony and amended written direct testimony in

0204

1 this matter?

2 A. Yes.

3 Q. Showing you what's been marked as Exhibit  
4 T47, your written direct testimony, and T48, your  
5 amended direct testimony, have you had an opportunity to  
6 review those documents?

7 A. Yes.

8 Q. And if I were to ask you the same questions  
9 that those documents asked, would your answers be the  
10 same?

11 A. Well, I guess my answers would be different,  
12 because an awful lot of my documents were dismissed. I  
13 would say that line 34 is incorrect.

14 Q. Line 34 of?

15 A. Question 34.

16 Q. Of the written direct testimony?

17 A. Uh-huh, that whole --

18 Q. Question number 34?

19 A. Yes.

20 Q. The first sentence to question 34?

21 A. It says, since the date of the sale, had we  
22 received any notices of when water might be available in  
23 the future for you to purchase. And I said we received  
24 a letter from Orcas Highlands Association dated July  
25 1st, 2001, and it doesn't say that this is from the

0205

1 Highlands. So because it was from the Highlands, it  
2 would probably be struck anyway.

3 Q. Okay, so we should strike the first sentence  
4 of question 34, because that is dealing with the Orcas  
5 Highlands?

6 A. Mm-hm. And it misinterprets what I said  
7 there anyway. I didn't say that. It looks like I  
8 didn't read.

9 Q. And Exhibit KM-8?

10 A. Okay, that one was a letter from  
11 Ms. Vierthaler dated July 5th, 2001.

12 MR. PORS: Excuse me.

13 Q. That would be Exhibit 56, which should  
14 therefore be stricken from the record.

15 JUDGE CAILLE: Just a moment.

16 MR. PORS: Just a minute, we're mixing up  
17 exhibits here.

18 MR. FINNIGAN: She just identified KM-9 and  
19 you're talking about KM-8.

20 THE WITNESS: KM-9 was not stricken.

21 MR. PORS: KM-8 should be stricken.

22 THE WITNESS: Yeah, KM-8 is stricken. KM-9  
23 is a letter from Rosario Utilities stating --

24 MR. PATRICK HANIS: That's good, we have that  
25 in the record.



0206

1 THE WITNESS: Okay.

2 BY MR. PATRICK HANIS:

3 Q. So if we were to take your answer to question  
4 number 34 and have it remaining, we also received a  
5 letter from Ms. Vierthaler dated July 5th, 2001, which  
6 is attached as Exhibit KM-9.

7 A. That's correct.

8 Q. Would that be your correct answer to question  
9 34?

10 A. Yes.

11 JUDGE CAILLE: Okay, and just so I'm clear  
12 and the record is clear, you are striking the first two  
13 sentences of that answer; is that right?

14 MR. PATRICK HANIS: That's correct.

15 MR. PORS: As well as the last sentence.

16 JUDGE CAILLE: As well as the last sentence  
17 has already been stricken, right?

18 MR. PORS: And striking --

19 JUDGE CAILLE: And Exhibit KM-8, had that  
20 been previously --

21 THE WITNESS: It had not been previously  
22 stricken, but because it's from the Orcas Highlands and  
23 everything else having to do with the Highlands was  
24 stricken, I assume this also should be.

25 MR. PATRICK HANIS: So Exhibit 56 would be

0207

1 stricken.

2 JUDGE CAILLE: Yes.

3 THE WITNESS: And that's too bad, because  
4 that's where I got my understanding that I was on a  
5 priority list was from the Highlands. I was never on a  
6 priority list with Rosario, but I was --

7 MR. PATRICK HANIS: We move that Exhibits  
8 T47, T48, and corresponding Exhibits 52, 55, and 57 be  
9 admitted to the record.

10 MR. PORS: No objection.

11 MR. FINNIGAN: No objection.

12 JUDGE CAILLE: All right, those exhibits are  
13 admitted to the record, and Ms. Miller is available for  
14 cross.

15

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

17 BY MR. PORS:

18 Q. Good afternoon, Ms. Miller. My name is Tom  
19 Pors. I'm representing Rosario Utilities. Do you have  
20 in front of you Exhibit 69, a May 23, 2001, notice from  
21 Rosario Utilities?

22 A. Yes, I have it here. It's the May 23rd one  
23 right there. It's my Exhibit KM-4.

24 MR. PATRICK HANIS: Why don't you use ours.

25 Q. It looks like those are the same documents,

0208

1 but if you would use the Exhibit 69 that counsel has  
2 provided you with.

3 A. Mm-hm.

4 Q. Did you receive this exhibit prior to the  
5 June 15th sale?

6 A. Yes.

7 Q. And did you note that this notice provided  
8 that the number of water connections was limited?

9 A. Yes.

10 Q. Did you note that it provides the  
11 certificates will be issued on a first come, first  
12 served basis?

13 A. Yes.

14 Q. Are you contending in this case that people  
15 who arrived earlier than you should not have been issued  
16 certificates?

17 A. No.

18 Q. Were you aware that this Exhibit 69 notice  
19 provided as promised that people who paid for a water  
20 connection before the moratorium went into effect and  
21 are on the utilities commission priority list will be  
22 the first to receive water certificates?

23 A. It says that on here somewhere?

24 Q. In the first paragraph.

25 A. Yes.

0209

1 Q. Does this notice indicate anywhere that  
2 property owners could only receive one certificate per  
3 property?

4 A. No.

5 Q. So you weren't relying on any rule in this  
6 notice about limiting the sale to a certain number of  
7 certificates per property owner, were you?

8 A. No.

9 Q. You contacted Ms. Vierthaler on June 13th,  
10 two days before the sale; is that correct?

11 A. Yes.

12 Q. And she informed you at that time that the  
13 sale would be at the Discovery Center?

14 A. Yes, she did.

15 Q. Did she also inform you that approximately 50  
16 certificates would be available?

17 A. Yes, she did.

18 Q. Did she indicate that that number might  
19 change depending on the number of priority list  
20 purchases were made?

21 A. No, I thought all the priorities had already  
22 been taken care of.

23 Q. Did you believe prior to the June 15th sale  
24 that you were on a priority list for obtaining a water  
25 certificate?

0210

1           A.     I believed I was on a priority list, but not  
2     Rosario's priority list.

3           Q.     Did that understanding that you were on some  
4     sort of a priority list come from Orcas Highlands Water  
5     Association?

6           A.     Yes.

7           Q.     But you were never told that by Chris  
8     Vierthaler?

9           A.     No.

10          Q.     Okay.  And you never received any document  
11     from Rosario Utilities indicating that you were on a  
12     priority list?

13          A.     No.

14          Q.     You testified that you arrived at the sale on  
15     June 15th at 7:00 a.m. at the Discovery Center; is that  
16     correct?

17          A.     Yes.

18          Q.     So you didn't wait until the office opened at  
19     9:00 a.m. before you came, correct?

20          A.     That wasn't the office.  The office was in  
21     the Rosario mansion.

22          Q.     I understand, but the May 23rd notice  
23     provided that the office hours are 9:00 a.m. to 5:00  
24     p.m.

25          A.     Mm-hm.

0211

1 Q. And you didn't wait until 9:00 a.m. to come  
2 to the resort property for the sale?

3 A. No.

4 Q. Was that because you thought there could be a  
5 line of people waiting to buy certificates?

6 A. I didn't know. I thought there was going to  
7 be a very fair way of distributing the available  
8 certificates.

9 Q. I think you have answered the question. I  
10 asked whether you thought there would be a line of  
11 people waiting.

12 MR. PATRICK HANIS: If I might interject, if  
13 he's going to ask what her thoughts are, I think she  
14 should have an opportunity to express all of those  
15 thoughts.

16 MR. PORS: Well, you have an opportunity to  
17 ask questions on redirect, counsel. I'm just trying to  
18 have the witness answer the question posed.

19 JUDGE CAILLE: I'm sorry, would you please  
20 read back the last question posed.

21 (Record read as requested.)

22 MR. PORS: I will rephrase the question just  
23 to avoid any confusion here.

24 JUDGE CAILLE: All right.

25 BY MR. PORS:

0212

1 Q. Did you show up at the resort two hours  
2 before the sale was to occur in order to be there early  
3 enough to get a certificate?

4 A. Yes.

5 MR. PORS: Thank you, I have no further  
6 questions.

7 MR. FINNIGAN: I have nothing for this  
8 witness.

9 JUDGE CAILLE: Redirect, Mr. Hanis?

10 MR. PATRICK HANIS: Yes.

11

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

13 BY MR. PATRICK HANIS:

14 Q. Please refer to Exhibit 69 again, the March  
15 23rd letter, or excuse me, the May 23rd letter. Does  
16 the first come, first served sentence state that the  
17 first person in line could take every available water  
18 certificate?

19 A. It doesn't say, but if I have one parcel of  
20 property, why would I want five certificates?

21 Q. What were your thoughts as you arrived at the  
22 sale on the morning of June 15th?

23 A. Well, first, it was drizzling, and I thought  
24 how nice the resort has allowed people in, and then I  
25 saw the sign about queuing, and it said 38, and I

0213

1 thought, oh, my goodness, there's only 38 now. And then  
2 I walked down, walked in the hall and down, and people  
3 in the line, there was no line, of course, but people  
4 were in line, and one man said, you may as well go home,  
5 they have all been given out, and he was a real estate  
6 man, and he was standing in for three, and he got them,  
7 and he was from that office that you asked earlier  
8 about.

9 Q. Why did you go to this sale at 7:00 a.m.?

10 A. I have to be at work at 10:00, and I thought  
11 if there was any paperwork to take care of, I could do  
12 it and be out of there. I did not really expect not to  
13 get water.

14 MR. PATRICK HANIS: Thank you, no further  
15 questions.

16 THE WITNESS: Can I say the one other thing  
17 that hasn't been brought up? I'm not allowed?

18 MR. PATRICK HANIS: We'll have to hold off on  
19 that.

20 THE WITNESS: Okay.

21 JUDGE CAILLE: Anything further for this  
22 witness?

23 MR. PORS: Nothing further, Your Honor.

24 JUDGE CAILLE: Thank you, Ms. Miller, you're  
25 excused.



0214

1 Mr. Wiemeyer.

2

3 Whereupon,

4 ALAN WIEMEYER,

5 having been first duly sworn, was called as a witness

6 herein and was examined and testified as follows:

7

8 (The following exhibits were identified in

9 conjunction with the testimony of ALAN WIEMEYER.)

10 Exhibit T59 is AW-T1: Direct Testimony (March

11 12, 2002).

12

13 JUDGE CAILLE: Thank you.

14

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

16 BY MR. PATRICK HANIS:

17 Q. Good afternoon, Mr. Wiemeyer. Would you

18 please state your name and spell your last name.

19 A. Alan Wiemeyer, W-I-E-M-E-Y-E-R.

20 Q. And what is your current address?

21 A. P.O. Box 1587, East Sound, 98245.

22 Q. Mr. Wiemeyer, do you recall giving written

23 direct testimony in this matter?

24 A. Yeah.

25 Q. Showing you what has been marked as Exhibit

0215

1 T59, do you recall this exhibit?

2 A. Mm-hm.

3 Q. If I were to ask the same questions that have  
4 been asked in that exhibit, would your answers remain  
5 the same today?

6 A. Yes.

7 MR. PATRICK HANIS: Move that Exhibit T59 be  
8 moved into the record.

9 MR. PORS: No objection.

10 MR. FINNIGAN: No objection.

11 JUDGE CAILLE: Exhibit T59 is admitted into  
12 evidence, and Mr. Wiemeyer is available for  
13 cross-examination.

14

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

16 BY MR. PORS:

17 Q. Good afternoon, Mr. Wiemeyer, my name is Tom  
18 Pors, and I'm representing Rosario Utilities. I  
19 understand that you were representing the lot belonging  
20 to a family trust at the sale.

21 A. Yes.

22 Q. Is that correct?

23 A. Yes.

24 Q. And are you a trustee or beneficiary of that  
25 trust?

0216

1 A. Yes.

2 Q. Or both?

3 A. It's a revokable trust belonging to my  
4 mother, and all of us kids are beneficiaries.

5 Q. You did not attend the sale, did you?

6 A. Yes.

7 Q. You did attend the sale? Oh, I see, with  
8 your brother?

9 A. Yeah.

10 Q. Prior to the June 15th sale, did you receive  
11 a notice in the mail, Exhibit 69, a May 23, 2001, notice  
12 from Rosario Utilities?

13 A. I think I did.

14 MR. PATRICK HANIS: It's right there.

15 A. Yes.

16 Q. Did you notice that this notice indicates the  
17 number of connections is limited?

18 A. Yes.

19 Q. And did you notice that it provides that  
20 certificates will be issued on a first come, first serve  
21 basis?

22 A. Yes.

23 Q. Are you contending in this case that people  
24 who arrived earlier than you should not have been issued  
25 certificates or who arrived earlier than your brother?

0217

1 A. No.

2 Q. Did you notice that this May 23rd notice  
3 provides in the first paragraph:

4 As promised, the people who paid for a  
5 water connection before the moratorium  
6 went into effect and are on the  
7 utilities commission priority list will  
8 be the first to receive water  
9 certificates.

10 A. I don't remember that.

11 Q. Does this notice indicate anywhere that  
12 property owners could only receive one certificate per  
13 property?

14 A. No.

15 Q. So you weren't relying on any rule in this  
16 notice about limiting the sale to a certain number of  
17 certificates per property owner?

18 A. No.

19 Q. Did you contact Ms. Vierthaler on June 12th,  
20 approximately three days before the sale?

21 A. Yes, I think it was June 12th.

22 Q. Was that on the phone or in person?

23 A. In person.

24 Q. And did she inform you at that time that the  
25 sale would be at the Discovery House?

0218

1           A.     You know, I don't remember that exactly. It  
2 may have been at that time, or I may have learned that  
3 it was the Discovery House later.

4           Q.     On June 12th, did you ask Ms. Vierthaler if  
5 there would be a line of people waiting when the sale  
6 opened at 9:00 a.m.?

7           A.     I asked her if there would be a line, hm, I  
8 don't remember if I asked her if there would be a line.

9           Q.     In answer 9 of your written direct testimony,  
10 you state that on June 7th you went to Ms. Vierthaler's  
11 office and she told you that nothing could be done to  
12 obtain memberships until 9:00 a.m. on June 15, 2001; is  
13 that correct?

14          A.     I can't -- on approximately June 7th. I  
15 don't know if it was actually June 7th. It was in -- it  
16 was the week before the sales, one of those days. I  
17 think it was June 7th.

18          Q.     But the substance of what she told you you  
19 think is approximately correct?

20          A.     Yes.

21          Q.     From your testimony, it doesn't sound like  
22 she said you couldn't arrive at the property earlier  
23 than 9:00 a.m. and wait, does it?

24          A.     No.

25          Q.     Did Ms. Vierthaler tell you that you could

0219

1 not arrive at the property until 9:00 a.m.?

2 A. She did -- no.

3 Q. Your brother Jim actually arrived at the sale  
4 at 6:45 a.m.

5 A. Yes.

6 Q. According to your testimony.

7 A. Yes.

8 Q. Is that because you or he expected there to  
9 be other people waiting in line?

10 A. I decided the night before that there might  
11 be other people, and so I suggested -- I couldn't get  
12 there until 9:00, so I asked him to go by earlier.

13 MR. PORIS: Okay, that's all I have, thank  
14 you.

15 JUDGE CAILLE: Mr. Finnigan.

16 MR. FINNIGAN: Thank you, just a couple of  
17 questions. Counsel, could you give him a copy of  
18 Exhibit 46, please, and/or any other exhibit. It's the  
19 list that people signed at the sale.

20 MR. PATRICK HANIS: Here it is.

21

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

23 BY MR. FINNIGAN:

24 Q. Do you remember signing a list at the sale to  
25 indicate that you had been there and where you were when

0220

1 the sale of connections stopped?

2 A. No.

3 Q. Can you explain how your name got on this  
4 exhibit?

5 A. That's my brother's writing.

6 Q. Oh, okay, so you think your brother put your  
7 name there?

8 A. Yeah.

9 Q. All right. Would you go down the list a  
10 little further, do you see where item 10 is and  
11 Mr. Marcin?

12 A. Mm-hm.

13 Q. And we for the record, we need a yes or a no.

14 A. Yes.

15 Q. Thank you. Mr. Marcin is one of the  
16 Complainants in this case?

17 A. Are you asking me if he is?

18 Q. Yeah, do you know if he is?

19 A. I don't.

20 Q. Okay. Were you aware that Mr. Marcin was  
21 seeking 26 hookups?

22 A. I recall reading that at the time. I didn't  
23 know it at the time, but I recall reading it later.

24 Q. Okay, you read it later?

25 A. Yeah.

0221

1 Q. But not at the time?

2 A. Right.

3 MR. FINNIGAN: That's all I have.

4

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

6 BY MR. PATRICK HANIS:

7 Q. Does the Exhibit 69, the May 23rd letter,  
8 state anywhere that the first person in line or any  
9 person could take all 38 of the water certificates?

10 A. No.

11 Q. You testified, in a question you were asked  
12 if it would be appropriate or fair if water certificates  
13 should be taken away from those that arrived earlier  
14 than you, and you answered no. What would be your  
15 testimony about those who received a water certificate  
16 in violation of the rules and received water  
17 certificates?

18 MR. PORS: Object to the question as asking  
19 based on a characterization that you're asking him if  
20 people received something in violation of the rules  
21 without explaining what that meant or asking if he knows  
22 what's in violation of the rules.

23 MR. PATRICK HANIS: I will rephrase.

24 JUDGE CAILLE: Please rephrase your question.

25 BY MR. PATRICK HANIS:



0222

1 Q. If persons received water certificates at the  
2 sale in violation of the rules as you understood them,  
3 do you think it would be appropriate for them to be able  
4 to keep their water certificates?

5 A. No.

6 MR. PATRICK HANIS: Thank you, no further  
7 questions.

8 JUDGE CAILLE: Anything further?

9 MR. PORS: No.

10 JUDGE CAILLE: All right, thank you, you're  
11 excused.

12 JUDGE CAILLE: And Mr. Russell.

13 MR. PATRICK HANIS: Your Honor, we're moving  
14 much faster than we thought, we want to save  
15 Mr. Russell. Would it be appropriate to try and do the  
16 telephonic testimonies and get that out of the way?

17 JUDGE CAILLE: We anticipate that Mr. Russell  
18 is going to take 40 minutes?

19 MR. MICHAEL HANIS: Mr. Russell is going to  
20 be here tomorrow regardless, so we felt if we get  
21 everybody done and the telephone stuff done today, then  
22 no one would be inconvenienced.

23 JUDGE CAILLE: The problem with that is that  
24 then we're going to leave earlier than 4:00; is that  
25 what we're thinking?

0223

1                   MR. MICHAEL HANIS: Well, I would expect to  
2 get Ms. Stover and Mr. Schulte done.

3                   JUDGE CAILLE: Okay.

4                   MR. PORS: Are we off the record?

5                   JUDGE CAILLE: Let's go off the record.

6                   (Discussion off the record.)

7                   JUDGE CAILLE: Ms. Stover.

8                   THE WITNESS: Yes.

9                   JUDGE CAILLE: Everything applies that I said  
10 earlier, and you are still considered to be under oath.

11                   THE WITNESS: Okay.

12                   JUDGE CAILLE: So I will let your attorney  
13 again introduce the exhibits.

14                   THE WITNESS: Okay.

15

16 Whereupon,

17                                   COLLEEN STOVER,

18 having been previously duly sworn, was called as a  
19 witness herein and was examined and testified as  
20 follows:

21

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

23 BY MR. PATRICK HANIS:

24           Q.     Ms. Stover, perhaps to be clear, please state  
25 your name.

0224

1 A. Colleen Ann Stover.

2 Q. Ms. Stover, do you recall giving written  
3 direct testimony in this matter?

4 A. Yes, I do.

5 Q. And you have received a copy of that  
6 testimony this afternoon?

7 A. Yes, it is.

8 Q. Have you had an opportunity to review that  
9 testimony?

10 A. Yes, I have.

11 Q. And if I were to ask you those questions  
12 today, would your answers remain the same?

13 A. Yes, they would.

14 MR. PATRICK HANIS: Request that Exhibit T10  
15 and corresponding Exhibits 11, 12, and 13 be offered  
16 into the record.

17 JUDGE CAILLE: Is there any objection to the  
18 admission of those exhibits?

19 MR. PORS: No.

20 MR. FINNIGAN: No.

21 JUDGE CAILLE: Then Exhibits T10, 11, 12, and  
22 13 are admitted, and Ms. Stover is available for  
23 cross-examination.

24

25

0225

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

2 BY MR. PORS:

3 Q. Good afternoon now, Ms. Stover.

4 A. Good afternoon.

5 Q. Here we go again.

6 A. Yes.

7 Q. Your testimony is that after you purchased  
8 your property, you contacted Ms. Vierthaler to confirm  
9 that you wanted to be on a list of property owners  
10 waiting for a hookup.

11 A. Correct.

12 Q. And she told you that you were in her  
13 computer system and would be kept informed of progress  
14 on the facility, correct?

15 A. Correct.

16 Q. But my understanding is that she did not tell  
17 you that you were on a priority list for connections?

18 A. I was not on a priority list for connections.

19 Q. Is that correct?

20 A. I was on a list for people waiting for  
21 connections.

22 Q. Okay. Do you have a copy of Exhibit 69,  
23 which is a May 23, 2001, notice from Rosario Utilities?

24 A. Yes, I do.

25 Q. I believe it's also marked as Exhibit CS-3 to

0226

1 your written direct testimony.

2 A. Okay, I'm just grabbing it right now. On May  
3 23rd, you said?

4 Q. Yes, May 23, 2001, to all property owners.

5 A. Yes.

6 Q. Okay. Now you received this prior to the  
7 June 15th sale; is that correct?

8 A. Correct.

9 Q. And when you received this notice, did you  
10 see anywhere in it that the sale would be made based on  
11 a priority list or a waiting list?

12 A. No.

13 Q. Did you note from this exhibit that the sale  
14 would be a first come, first served sale?

15 A. Yes, I did.

16 Q. Did you also note that the number of  
17 available connections was limited?

18 A. It states that the number of available  
19 certificates is limited. However, it doesn't say  
20 limited to what number. So again, I was totally acting  
21 under the assumption that it was for -- that this notice  
22 was going to go only to those people who were on this  
23 list of people waiting for connections, and if we were  
24 waiting for connections, there was a limited number, and  
25 we needed to apply for that beginning June 15th. The

0227

1 term beginning June 15th implies to me that or I infer  
2 from that that it's starting and it can continue beyond  
3 June 15th.

4 Q. Did you contact anyone at Rosario Utilities  
5 to find out if there were enough certificates available  
6 for people who were on a list?

7 A. I called Chris Vierthaler the day that I  
8 received the letter and asked her specifically, what is  
9 it that I should do, and what, you know, how she thought  
10 it was going to go. I asked should I be there earlier,  
11 would it be better if I put it in -- if I sent it. And  
12 she explained to me, no, that would not be better, but  
13 if I couldn't be here, to have a representative there,  
14 the office opens and 9:00, and she -- I was under the  
15 impression from what she said that there shouldn't be a  
16 problem.

17 Q. Did she tell you that there were enough  
18 certificates to go around and you shouldn't worry about  
19 getting one?

20 A. She did not tell me that there were enough to  
21 go around, but she said there are a limited number, but  
22 again, I was left with the impression, as long as you're  
23 here, if you've got a representative here on the 15th,  
24 you shouldn't have a problem. Now those are not her  
25 exact words, but that is the impression that I left --

0228

1 that I hung up with.

2 Q. Okay.

3 A. I felt very, very confident, very confident  
4 after talking with her.

5 Q. You felt confident that there were enough  
6 available?

7 A. No, I felt confident that I would be getting  
8 a certificate. I wasn't thinking enough available.  
9 That I would be getting a certificate. As long as I did  
10 what the letter said to do, that I had someone there  
11 when the office opened at 9:00 a.m. at the office as the  
12 letter states at 9:00 a.m. on June 15th with a check,  
13 and that's what she said to me, make sure you're got the  
14 check, we can't issue anything if you don't have a  
15 check, and who it had to be made out to, and those  
16 details were very, very specific. And she said as long  
17 as you, you know, you're there, you've got the lead in,  
18 there shouldn't be a problem.

19 Q. Ms. Stover, the questions I'm going to ask  
20 you, I would like you to listen to the question and  
21 answer what I'm asking you rather than telling a story.  
22 Would you do that for me, please?

23 A. Okay.

24 Q. Okay. Did you specifically ask Chris  
25 Vierthaler when you spoke with her whether there were

0229

1 enough water availability certificates to supply  
2 everybody that showed up for the sale?

3 A. No, I did not.

4 MR. PORIS: Okay, I have no further questions.

5 JUDGE CAILLE: Mr. Finnigan.

6 MR. FINNIGAN: Thank you.

7

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

9 BY MR. FINNIGAN:

10 Q. Ms. Stover, this is Rick Finnigan. We were  
11 talking this morning when all of our problems occurred.  
12 One of the questions I think I asked you was who was  
13 your representative.

14 A. First of all, I need you to speak up. You're  
15 probably on a speaker phone, and I'm sorry, I'm having a  
16 little difficulty hearing you.

17 Q. Who was your representative on the 15th?

18 JUDGE CAILLE: Did you hear that, Ms. Stover?

19 THE WITNESS: No, I didn't.

20 BY MR. FINNIGAN:

21 Q. Okay, we'll try it one more time. Who was  
22 your representative on June 15th?

23 A. Our representative was Rusty Post. He's our  
24 realtor.

25 Q. When we were talking this morning, I was



0230

1 pointing you to the last sentence of question 11.

2 A. Correct.

3 Q. Now do you have that before you today, this  
4 afternoon?

5 A. I'm sorry, I just heard this afternoon,  
6 that's all I heard.

7 Q. Do you have that before you this afternoon?

8 A. Yes, I do.

9 Q. My question is, when you say we were later  
10 informed that there were others who had been misled by  
11 the utility and its representatives, who informed you?

12 A. I'm sorry, I didn't hear an actual question.

13 JUDGE CAILLE: Hang on, Ms. Stover, we're  
14 going to rearrange seating here so that Mr. Finnigan is  
15 closer to the microphone or to the phone.

16 THE WITNESS: Thank you, I'm sorry.

17 BY MR. FINNIGAN:

18 Q. My question to you is, when you make the  
19 statement, we were later informed that there were others  
20 who have been misled by the utility and its  
21 representatives, who informed you?

22 A. Rusty Post, our representative.

23 Q. So you're not trying to imply that it was a  
24 Commission Staff member that informed you?

25 A. Correct, I'm not implying that at all.

0231

1 Q. Now you understand why I might have that  
2 impression given the fact that the earlier sentences  
3 refer to the Commission?

4 A. Yes, I do.

5 Q. Now this morning we had a bit of a problem in  
6 matching up what I was asking with what you had in front  
7 of you, and I think you called it your declaration?

8 A. Yes.

9 Q. Is all of the information you provided in  
10 your declaration contained in your testimony?

11 A. Yes, it is, and I just read through this  
12 testimony, and yes, it is.

13 Q. So in response to this question, what did you  
14 do next, you stated, we were later informed that there  
15 were others who had been misled by the utility and its  
16 representatives?

17 A. Well, that's not entirely what I said. My  
18 complete answer was that I then called Ms. Vierthaler in  
19 order to get an explanation and, you know, that, you  
20 know, and reminded her that I had talked to her on the  
21 phone, and she had indicated, at least I had inferred,  
22 that there wouldn't be a problem. I was very, very  
23 surprised. And then she told us that we needed to get  
24 in touch with the Washington Utilities Commission and  
25 take it up with them. I thanked her.

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1 Q. Well, that's going -- I'm sorry, but that  
2 seems to be going beyond what's in your answer as  
3 contained here. Is that what you said in your  
4 declaration?

5 A. No, that's what I have in my answer to number  
6 11. I have we spoke with Ms. Vierthaler to get an  
7 explanation of what happened, that we didn't have the  
8 water hookup we were promised. She told me that I would  
9 have to call the Washington Utilities Commission and  
10 take it up with them. We then contacted the W --

11 Q. What you had earlier said in response to the  
12 question was that you then thanked her, but that doesn't  
13 appear in your answer.

14 A. Right, I added that, sorry.

15 Q. So you're telling me that the only answer you  
16 have to question 11 is what is contained here in your  
17 testimony?

18 A. Yes.

19 Q. And there was nothing in addition in your  
20 declaration?

21 A. Correct.

22 MR. FINNIGAN: I am going to renew my request  
23 that the declaration be provided to us.

24 MR. PATRICK HANIS: We will again renew our  
25 response that it's protected by the attorney-client

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1 privilege, and that declaration was produced solely for  
2 the purposes of preparing our witnesses for this matter  
3 and corresponding with our clients in preparing  
4 testimony for this matter and is not discoverable.

5 JUDGE CAILLE: The request is denied.

6 BY MR. FINNIGAN:

7 Q. Have you ever been provided with a copy of  
8 the list with people's names and the order in which they  
9 were in line at the time the sale closed on the 15th?

10 A. I received that only yesterday. I believe it  
11 was yesterday that that was faxed over to me with the  
12 other exhibits. That's the first time that I have seen  
13 that list.

14 Q. Okay.

15 A. I knew of its existence, but I had not seen  
16 it.

17 Q. Could you look at that list, please.

18 A. Okay.

19 JUDGE CAILLE: Could you give us a reference.

20 Q. This would be Exhibit 46, for example. It's  
21 there in multiple forms.

22 A. I'm sorry, I had to leave and go to my  
23 office, and I don't have that exhibit with me, but it  
24 was fairly short, so maybe I can remember, recall, what  
25 your question might be.

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1 Q. Okay, we'll give it a try.

2 A. Okay.

3 Q. Who put your name on that list?

4 A. Rusty Post.

5 Q. But he didn't send you a copy of the list?

6 A. No, he did not.

7 Q. Are you familiar with Mr. Marcin who appears  
8 on the list?

9 A. No, I'm not.

10 Q. Were you aware that he had requested 26  
11 hookups?

12 A. No, I'm not or was not and am not.

13 Q. Are you aware that Mr. Marcin is a  
14 Complainant in this case?

15 A. Well, I'm sure his name is listed on the  
16 front of all the paperwork that I get, but I don't -- I  
17 have not read through all the names.

18 MR. FINNIGAN: Okay, that's fine, no further  
19 questions.

20 JUDGE CAILLE: Redirect?

21

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

23 BY MR. PATRICK HANIS:

24 Q. This is Pat Hanis.

25 Can you hear me, Ms. Stover?

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1 A. No, not really.

2 Q. I will be louder. You have testified  
3 regarding a list, computer list that you became a part  
4 of when you spoke with Ms. Vierthaler. Do you remember  
5 that testimony?

6 A. Yes.

7 Q. What was your understanding that that list  
8 would do for you?

9 A. That I would be put on a list of people who  
10 were awaiting a water hookup and that this list of  
11 people would be notified when the water was going to  
12 become available. It was my understanding that the  
13 people on the list would be notified. My impression was  
14 that just the people on that list would be notified. In  
15 other words, we were the ones that were waiting for the  
16 water certificates, we were the ones that were waiting  
17 for the plant to be completed. I was told previously in  
18 a previous letter that we would have -- we were entitled  
19 to water as soon as the plant was done, in her exact  
20 words.

21 Q. What is it you instructed your agent to do in  
22 order to get you water?

23 A. He had a copy of -- we sent him a copy of the  
24 letter that we were sent with the instructions. I told  
25 him about our conversation -- my conversation with

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1 Ms. Vierthaler. He himself called Ms. Vierthaler to  
2 confirm things, and he said that he or his wife would be  
3 there prior to 9:00 at the office in order to get the  
4 water certificate. And then he had my check that I sent  
5 to him, overnighted it as a matter of fact, and said  
6 that he had that check in his hand.

7 Q. Did you at any time instruct your agent to  
8 arrive at the sale the day before the sale on June 14th?

9 A. No.

10 Q. Why not?

11 A. Because it said beginning June 15th, and when  
12 I spoke to Ms. Vierthaler, she told me that the  
13 application process will begin at 9:00 on June 15th at  
14 the office.

15 MR. PATRICK HANIS: Thank you, no further  
16 questions.

17 JUDGE CAILLE: Any recross?  
18

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

20 BY MR. PORS:

21 Q. Ms. Stover, this is Tom Pors again.

22 A. Uh-huh.

23 Q. When you spoke with Ms. Vierthaler and she  
24 said the application process would begin at 9:00 a.m. on  
25 Friday, June 15th, did she tell you that you or your

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1 agent could not be on the property before that time?

2 A. She told me the office opens at 9:00, you  
3 need to be here when the office opens.

4 Q. Okay. But she didn't tell you that you  
5 couldn't arrive at the property before that time, did  
6 she?

7 A. No, she told me the office opens at 9:00, I  
8 need to be there at 9:00 a.m. when the office opens.

9 MR. PORS: Okay, I have nothing further.

10 MR. FINNIGAN: I have nothing.

11 MR. PATRICK HANIS: Nothing.

12 JUDGE CAILLE: All right, thank you,  
13 Ms. Stover, again.

14 THE WITNESS: Thank you.

15 JUDGE CAILLE: You can hang up now, and we're  
16 going to call one more witness.

17 THE WITNESS: Thank you.

18 (Discussion off the record.)

19 JUDGE CAILLE: I just want to remind you that  
20 you are still under oath.

21 THE WITNESS: Right.

22 JUDGE CAILLE: And Mr. Hanis will now  
23 introduce you.

24 THE WITNESS: Okay, thank you.

25



0238

1 Whereupon,

2 PAUL SCHULTE,

3 having been previously duly sworn, was called as a

4 witness herein and was examined and testified as

5 follows:

6

7 DIRECT EXAMINATION

8 BY MR. PATRICK HANIS:

9 Q. Mr. Schulte, will you state your name?

10 A. Yes, Paul E. Schulte.

11 Q. Mr. Schulte, do you recall giving written

12 direct testimony in this matter?

13 A. Yes.

14 Q. And this afternoon I faxed you a copy of your

15 written direct testimony?

16 A. Yes.

17 Q. Have you had an opportunity to review it?

18 A. Yes, I have.

19 Q. If I were to ask you those questions that I

20 have asked you there, would your answers remain the same

21 today?

22 A. Yes.

23 MR. PATRICK HANIS: Request that Exhibit T14

24 and corresponding Exhibits 20 and 22 be admitted to the

25 record.

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1 JUDGE CAILLE: Is there any objection?

2 MR. FINNIGAN: No objection.

3 MR. PORS: No objection.

4 JUDGE CAILLE: All right, then Exhibit T14  
5 and Exhibits 20 and 22 are admitted into the record, and  
6 Mr. Schulte is available for cross-examination.

7

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

9 BY MR. PORS:

10 Q. Good afternoon, Mr. Schulte, my name is Tom  
11 Pors.

12 A. Yes.

13 Q. And I am representing Rosario Utilities. Can  
14 you hear me okay?

15 A. Yeah, I hear noise in the background or  
16 something.

17 JUDGE CAILLE: It might be me moving the  
18 telephone.

19 Q. Mr. Schulte, do you have a piece of paper  
20 which is a Rosario Utilities notice to all property  
21 owners dated May 23, 2001?

22 A. Let me look just a second. May 23rd, 2001,  
23 yes, I do.

24 Q. And it says to all property owners in the  
25 Vusario, Orcas Highlands, and Rosario Water Systems?

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1 A. Yes, I do.

2 Q. Okay. Do you recall receiving that exhibit  
3 prior to the June 15, 2001, sale?

4 A. Yes, I do.

5 Q. And when you received this, did you note that  
6 the June 15 sale was first come, first serve?

7 A. Yes.

8 Q. Did you also note that there was a limited  
9 number of certificates available?

10 A. Yes.

11 Q. Did you have any belief at the time that you  
12 were on a priority list for obtaining a water connection  
13 from Rosario Utilities?

14 A. No.

15 Q. Did you have any conversation with your  
16 representative at the sale, Mike Butler, about when and  
17 where he should arrive for the sale?

18 A. Yes, I did.

19 Q. And what did you talk about?

20 A. I actually talked to Ken Speck, the realtor  
21 who he worked for, and that I wanted him there and that  
22 I was to pay him for being there and that he would be  
23 there as soon as he could possibly be there and was  
24 allowed to be there.

25 Q. Did you have any understanding about when he

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1 should be there for the sale?

2 A. As soon as he could be there, that he would  
3 be allowed to be there.

4 Q. Okay. Did you have any conversations with  
5 Chris Vierthaler about when to show up for the sale?

6 A. Yes, she said, and I spoke to her several  
7 times in May and in June, and she said that, in fact, I  
8 have a copy of an exhibit which you have there which  
9 says that on Friday, June 15th, 9:00 a.m., no queuing or  
10 gathering prior to Friday.

11 Q. What document are you referring to?

12 A. It says here Exhibit KM-7.

13 Q. Just a moment please.

14 MR. PATRICK HANIS: That would be the water  
15 certificate notice, which we have down as Exhibit 55,  
16 which has been admitted.

17 Q. Exhibit 55. Mr. Schulte, you're looking at a  
18 page that has in very large letters at the top water  
19 certificates?

20 A. Yes.

21 Q. And will be available here beginning Friday,  
22 6-15, at 9:00 a.m.?

23 A. Yes.

24 Q. When did you receive a copy of this document?

25 A. I don't know exactly when.

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1 Q. Did you have this document in hand before the  
2 June 15 sale?

3 A. I don't know.

4 Q. So in your reference to this document, you  
5 don't know if you saw it before or after the sale for  
6 the first time?

7 A. I know that Mike Butler saw it before the  
8 sale.

9 Q. Did he talk to you?

10 A. He told me he did, yeah.

11 Q. Did Mike Butler talk to you about this notice  
12 before the sale?

13 A. No, not before the sale.

14 Q. Okay.

15 A. These are the exact wordings that Chris  
16 Vierthaler had told me.

17 Q. So what Chris Vierthaler told you about the  
18 sale is consistent with what appears in this Exhibit 55?

19 A. Yes.

20 MR. PORS: Okay, I have no further questions.

21 MR. FINNIGAN: Just a moment, Your Honor.

22 I have nothing.

23 JUDGE CAILLE: Any redirect?

24

25

0243

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

2 BY MR. PATRICK HANIS:

3 Q. Prior to today, this is Pat Hanis, I'm sorry,  
4 prior to the sale, what is it you were prepared to do in  
5 order to get water on June 15th?

6 A. I was prepared to do everything that Chris  
7 Vierthaler had said that we should do. I had -- and I  
8 had gone up there in January and spoken with Chris  
9 Vierthaler of that year, and she had nothing to offer us  
10 to the procedure yet. We were then advised in the  
11 spring, I don't know exactly what date, that we would  
12 need to get a check for \$3,100 from our association  
13 payable to Rosario Utility, which I did. I did  
14 everything in a timely manner just as soon as it was  
15 said I should, and you have exhibits of that check there  
16 I'm sure. And I took that check up to Chris Vierthaler  
17 in May and offered it to her, and she said that they  
18 didn't have a procedure for doing it yet and that she  
19 couldn't accept it. And I asked her if she wouldn't  
20 please do it and stick it in her safe or anything,  
21 because I trusted her with it. She said there was no  
22 procedure for it yet.

23 So I came back home to California where I'm  
24 living, and I wanted to be sure that there would be a  
25 record that I, in fact, did send her a check for \$3,100

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1 from the association to her. I sent her the check  
2 registered return receipt, and she received it, and I  
3 got the return receipt, and then she returned it. And  
4 that's when I then got this notice as to how it was to  
5 be handled, which is the Rosario from May 23rd, 2001, to  
6 all property owners. And on it, item number 2 in the  
7 middle there tells exactly how it was to be handled, and  
8 I did that exactly as it was said.

9 I then sent that check back up to Ken Speck,  
10 the realtor, and asked -- because Chris said that I  
11 could have -- being -- living off island, I could have a  
12 personal representative there, and so I asked him to do  
13 that. And so he had Mike Butler who worked for him do  
14 that. So I was prepared to pay -- I have been prepared  
15 to do everything in a timely manner that has been asked  
16 of me.

17 Q. Why didn't you instruct your agent to go to  
18 the sale on June 14th?

19 A. Because he called and told me, Ken Speck did,  
20 and said that there was a notice on the door of  
21 Vierthaler's office saying that exactly this one that we  
22 just said was Exhibit KM-7 or whatever, water  
23 certificates will be available here beginning Friday the  
24 15th, 9:00 a.m., no queuing or gathering prior to  
25 Friday.

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1                   MR. PATRICK HANIS: Thank you, no further  
2 questions.

3

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

5 BY MR. PORS:

6           Q.     Mr. Schulte, this is Tom Pors again. That  
7 notice that was on the door that you have in your hand  
8 now.

9           A.     Yes.

10          Q.     Where that says please no queuing or  
11 gathering prior to Friday, it doesn't say a particular  
12 time on Friday, does it?

13          A.     Yes, it does, it says in big black print  
14 across the top, water certificate. The first line below  
15 that says, we will be available here beginning, and it  
16 says Friday, the next line below that, June 15th at 9:00  
17 a.m.

18          Q.     I understand, but the next sentence says,  
19 please no queuing or gathering prior to Friday.

20          A.     That's right.

21          Q.     Thank you. And with respect to queuing or  
22 gathering, it doesn't say prior to Friday at 9:00 a.m.,  
23 does it?

24          A.     No, it doesn't say that. But I understand  
25 from Mike Butler that he went there prior to that, and



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1 when he arrived there, he was advised that the  
2 certificates had all been given out much prior to that.  
3 In fact, midnight the night before --

4 MR. PORS: Your Honor, request that the  
5 testimony --

6 A. -- they were given out at another location  
7 that wasn't even the same location.

8 MR. PORS: I would move to strike the  
9 remainder of this testimony as nonresponsive after he  
10 answered my question.

11 JUDGE CAILLE: Okay, I'm going to have to  
12 know, could you read back his answer, please. Well,  
13 first let's have the question and then the answer.  
14 Could you also read Mr. Pors' question and then the  
15 answer.

16 (Record read as requested.)

17 JUDGE CAILLE: Okay, I will strike the  
18 portion after, no, it doesn't.

19 MR. PORS: Thank you. I have no further  
20 questions.

21 MR. FINNIGAN: I have just one question.

22 JUDGE CAILLE: Okay.

23

24

25

0247

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

2 BY MR. FINNIGAN:

3 Q. Could you tell us who, what real estate  
4 brokerage Mr. Butler works for, please?

5 A. Yes, Ken speck, that's Sheree Lynn Home  
6 Realty. He is the owner broker.

7 MR. FINNIGAN: Thank you.

8 JUDGE CAILLE: Anything further?

9 MR. PATRICK HANIS: Nothing further.

10 JUDGE CAILLE: All right, then thank you,  
11 Mr. Schulte, you're excused, and you may hang up.

12 THE WITNESS: Will I have to be called again  
13 today or not?

14 JUDGE CAILLE: No, you're all done.

15 THE WITNESS: Okay, thank you very much.

16 JUDGE CAILLE: Thank you.

17 Okay, I don't propose that we begin  
18 Mr. Russell until tomorrow, so that means will we begin  
19 with Mr. Russell tomorrow?

20 MR. MICHAEL HANIS: Yes.

21 JUDGE CAILLE: We can go off the record, I  
22 think. Let's go off the record for today.

23 (Hearing adjourned at 3:45 p.m.)

24

25