

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 IV
7 MICHAEL AND COLLEEN STOVER,) Pages 248 to 397
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,)
)
) Petitioners,)
)
10 vs.)
)
11 ROSARIO UTILITIES, LLC,)
)
12) Respondent,)
)
13 _____)

14 A hearing in the above matter was held on
15 July 26, 2002, from 10:00 a.m. to 1:25 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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 Joan E. Kinn, CCR, RPR
 Court Reporter

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

2 JUDGE CAILLE: We are convened for the
3 continuation of the evidentiary hearing in David and
4 Janis Stevens versus Rosario Utilities, Docket
5 UW-011320, and today is July the 26th, 2002.

6 Before we begin this morning, I would like
7 Mr. Bailey from Mr. Finnigan's office to enter his
8 appearance. And, Mr. Bailey, if you will state your
9 name, whom you represent, your address, telephone, fax,
10 and E-mail if you know them.

11 MR. BAILEY: Yes. Good morning, my name is
12 Seth Bailey. I work for the law office of Richard
13 Finnigan. The address is 2405 Evergreen Park Drive
14 Southwest, Suite B as in box 1, Olympia, Washington
15 98502. My direct telephone number is area code (360)
16 956-7211. The fax number is (360) 753-6268. And my
17 E-mail address is sbailey, S-B-A-I-L-E-Y, @ywave.com. I
18 represent Oly Rose, LLC.

19 JUDGE CAILLE: Thank you. At the close of
20 yesterday's hearing, I inquired of the Complainants and
21 Respondent and Intervenor about whether they would like
22 me to do an initial -- waive the initial order or
23 whether you would like me to do the initial order, and
24 the Complainants have asked that I do the initial order,
25 and then that order you will have an opportunity to

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1 respond to, and then the Commission will issue a final
2 order. Briefs will, opening briefs, these are
3 simultaneous opening briefs, will be due on August the
4 30th, and simultaneous response briefs will be due on
5 September the 17th.

6 MR. PATRICK HANIS: Could I ask, simultaneous
7 opening, are we to go to Olympia and meet, or what do
8 you mean by simultaneous?

9 JUDGE CAILLE: You file, you file your brief.
10 Well, that's the due date, and you both -- you both will
11 be filing -- your due date for filing is the same day,
12 you know, instead of a staggered Complainants file
13 opening response and reply.

14 MR. PATRICK HANIS: Okay, I didn't know if we
15 actually sat down and opened them.

16 JUDGE CAILLE: Oh, no, I see what you mean,
17 opening initial briefs.

18 Let me see, is there anything else before we
19 begin today?

20 MR. MICHAEL HANIS: Petitioners have nothing
21 preliminary.

22 JUDGE CAILLE: All right, well, then,
23 Mr. Russell, if you will please stand and raise your
24 right hand, I will swear you in.

25

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1 Whereupon,

2 RICHARD RUSSELL,

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

4 herein and was examined and testified as follows:

5

6 (The following exhibits were identified in

7 conjunction with the testimony of RICHARD RUSSELL.)

8 Exhibit T60 is RR-T1: Direct Testimony (March
9 12, 2002). Exhibit 61 is RR-1: May 23, 2001 letter to
10 all Property Owners in the Vusario, Orcas Highlands and
11 Rosario Water Systems from Chris Vierthaler, Manager of
12 Rosario Utilities. Exhibit 62 is RR-2: Water
13 Certificates Notice. Exhibit 63 is RR-3: June 20, 2001
14 letter to Ms. Nancy Stanton from Chris Vierthaler,
15 Manager of Rosario Utilities. Exhibit 64 is RR-4: July
16 5, 2001 letter to Richard Russell from Chris Vierthaler,
17 Manager of Rosario Utilities.

18

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

20 BY MR. PATRICK HANIS:

21 Q. Would you please state your name for the
22 record.

23 A. Richard Russell, R-U-S-S-E-L-L.

24 Q. And what is your address?

25 A. P.O. Box 208, East Sound, Washington 98245.

0257

1 Q. Mr. Russell, do you recall giving written
2 direct testimony in this matter?

3 A. Yes.

4 Q. Handing you what's been marked as Exhibit
5 T60, would you review that?

6 A. (Reading.)

7 Q. If I were to ask you the same questions that
8 are contained in Exhibit T60 today, would your answers
9 be the same today?

10 A. Yes, they would.

11 MR. PATRICK HANIS: We move that Exhibit T60
12 and corresponding Exhibits 61, 62, 63, and 64 be
13 admitted to the record.

14 JUDGE CAILLE: Is there any objection?

15 MR. PORS: No objection.

16 MR. BAILEY: No objection, Your Honor.

17 JUDGE CAILLE: Then Exhibits T60, 61, 62, 63,
18 and 64 are admitted into the record, and Mr. Russell is
19 available for cross-examination.

20

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

22 BY MR. PORS:

23 Q. Good morning, Mr. Russell, you have heard me
24 say this several times, my name is Tom Pors, and I'm
25 representing Rosario Utilities. You testified that in

0258

1 April of 2000 you were told by the manager of Rosario
2 Utilities that you were on a waiting list; is that
3 correct?

4 A. I believe it was March 21st of 2000.

5 Q. And did you see or receive a copy of that
6 list?

7 A. No.

8 Q. How did you understand that you were number
9 32 on that list?

10 A. I had a conversation with Ms. Vierthaler, and
11 it was an extensive conversation, because I was in
12 escrow with this property, and I wanted to assure myself
13 that water would be coming as soon as the moratorium was
14 lifted. And I, at the end of the conversation, I felt
15 assured. I asked specifically to be placed on a waiting
16 list, and my recollection is that Ms. Vierthaler put me
17 on the waiting list on the computer, because we had a
18 conversation about that, and I asked her what number I
19 was, and she counted down and told me you're number 32.
20 That was the basis of my belief that I was number 32 on
21 a waiting list.

22 Q. Did she tell you specifically that you had
23 priority for a water connection when the new treatment
24 plant was approved?

25 A. Not priority.

0259

1 Q. She didn't use that word?

2 A. No, that's not a -- no.

3 Q. Did she tell you -- well, strike that.

4 Did you ask her whether or not there was a
5 possibility that there would be a demand for more
6 connections than the available supply when their new
7 plant was approved?

8 A. At that conversation?

9 Q. Yes.

10 A. No, there was a general common assumption
11 that there was going to be plenty of water when the
12 plant was approved, and we had conversations about that.

13 Q. By common assumption, common among whom?

14 A. Oh, probably everybody in Rosario and half
15 the people on the island. It was a major concern.
16 People -- real estate values had changed in Rosario as a
17 function of water, and realtors -- to this day, this is
18 a common statement made by realtors in the area.

19 Q. I'm confused, what was the common statement
20 made by realtors?

21 A. Well, if I can give you an example, last,
22 today is Friday, a week ago yesterday a person,
23 potential client, came into my office, I'm a general
24 contractor, and asked me if I would be available to look
25 at her plans. They were buying a property, considering

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1 buying a property in Rosario, and that she was told by
2 somebody down in the Rosario area that water was
3 available and that they -- the moratorium had been
4 lifted and there was plenty of water available, and this
5 was --

6 Q. You don't know whether or not that assumption
7 has been pursuant to some information put out by the
8 utility, do you?

9 A. The assumption was shattered when we all
10 found a sign on a door saying there were 38 available
11 connections.

12 Q. Did you, let's see, I want to draw your
13 attention to Exhibit 69.

14 A. Which is?

15 JUDGE CAILLE: At this point, I just want to
16 interrupt for just a second to explain something about
17 Exhibit 69. The court reporter actually brought this to
18 my attention, that we were using an exhibit that hadn't
19 been admitted or introduced by anyone. And, in fact,
20 Exhibit 69 is attached to almost every Complainant and
21 many Respondents' testimony. So we are referring to it
22 as Exhibit 69 because that was in the list of cross
23 exhibits. For simplicity, I just left everything in.
24 So just so the record is clear, Exhibit 69 is a May
25 23rd, 2001, letter from Chris Vierthaler to all the

0261

1 property owners in Vusario, Rosario and Orcas, I
2 believe.

3 THE WITNESS: Highlands.

4 JUDGE CAILLE: Highlands, Orcas Highlands.

5 THE WITNESS: Orcas Highlands, then they
6 changed it to just Highlands.

7 JUDGE CAILLE: Okay. So just so that's clear
8 for the record.

9 MR. PATRICK HANIS: Shall we consider that as
10 having been entered into the record then?

11 JUDGE CAILLE: Well, it's been entered in its
12 other -- under its other designations, so yes, we should
13 consider Exhibit 69 as -- I mean maybe Mr. Pors, you
14 want to offer it. At this point, I think at the end
15 when you offer all your whatever cross exhibits you want
16 to offer, we'll include it.

17 MR. PORS: Okay.

18 JUDGE CAILLE: And I'm sorry for the
19 interruption.

20 MR. PORS: No, that's fine, anything to
21 clarify the record is appreciated.

22 BY MR. PORS:

23 Q. Do you recall receiving this document, what
24 has been labeled as Exhibit 69, in the mail prior to the
25 June 15th sale?

0262

1 A. Yes. This notice?

2 Q. Mm-hm.

3 A. Yeah.

4 Q. Okay.

5 A. Yes, I received it on or about June 1st of
6 last year.

7 Q. Okay. I would like to draw your attention to
8 a statement in the first paragraph:

9 As promised, those people who paid for a
10 water connection before the moratorium
11 went into effect and are on the utility
12 commission priority list will be the
13 first to receive water certificates.

14 During the next few weeks, we will be
15 coordinating with these future
16 customers.

17 Did you note that when you received this
18 exhibit in the mail last year?

19 A. Yes, I was unclear about it, but I did, I did
20 note it.

21 Q. Now I would like you to turn to Exhibit 61,
22 which is part of your testimony. It's also listed as
23 Exhibit RR-1 to your testimony.

24 A. Is it this same notice?

25 Q. It appears to be the same notice; would you

0263

1 agree with that?

2 A. Yes.

3 Q. On your copy of this Exhibit 61, the words
4 during the next few weeks we will be coordinating with
5 these future customers is underlined followed by three
6 question marks; is that correct?

7 A. Yes.

8 Q. Does that mean you had a question about
9 whether or not you were on that priority list?

10 A. No, this was put in after the distribution on
11 June 15th, the underlining.

12 Q. Okay.

13 A. The underlining --

14 Q. You have answered my question.

15 A. Right.

16 Q. Let me proceed with that. Did you have a
17 question about whether or not you were on this priority
18 list prior to the June 15th sale?

19 A. I need to make a distinction, because I think
20 there's been a bunch of confusion. There's a number of
21 us who felt we were on a waiting list. I felt I was on
22 a waiting list. A priority list had to do specifically
23 with a list of people who had prepaid for meters before
24 the moratorium was instituted, and they were given
25 priority for obvious fair reasons. So there's a

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1 distinction.

2 Q. And that distinction existed in your mind
3 prior to the June 15th sale?

4 A. Oh, absolutely.

5 Q. So you knew you were not on the priority list
6 that had been part of the Gaskill case?

7 A. That is another element. The Gaskill case is
8 another element that came in the -- I knew of people who
9 were on a priority list who had prepaid. Those became
10 -- and those people on that list became the first group
11 of priority people. Then there was a second group of
12 priority people who were the litigants in the Gaskill
13 case.

14 Q. Right.

15 A. And then there were, as it came out, a tad of
16 a surprise, that there were people on a third part of
17 this priority list.

18 Q. Okay.

19 A. That was distinct from the waiting list.

20 Q. Okay. So did you have a question prior to
21 the June 15th sale after you looked at this May 23rd
22 notice as to whether or not being on a waiting list you
23 would get your connection before the June 15th sale?

24 A. No, I thought it was clear in one respect,
25 that on June 15th I would simply go, pay because I was

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1 number 32, and I had -- I and other people had been told
2 that there were something like 127 to 150 connections,
3 so I thought number 32 certainly fell within that.

4 Q. Could I draw your attention to the second
5 paragraph of this May 25th notice, Exhibit 61.

6 A. Mm-hm.

7 Q. Did you note prior to the sale that this said
8 the sale would be on a first come, first serve basis?

9 A. No, I thought I was number 32. I didn't know
10 -- I would -- I didn't know what first come, first serve
11 meant at all, and to this day I still don't.

12 Q. Your property is in one of the Rosario Plats;
13 is that correct?

14 A. Yes, it is.

15 Q. Okay.

16 A. It's Rosario Estates II.

17 Q. Can I draw your attention in Exhibit 61 to
18 the second outlined box which says Rosario Plats.

19 A. Mm-hm.

20 Q. The fourth sentence there says:

21 Again, certificates will be issued on a
22 first come, first serve basis.

23 Did you note that in this notice prior to the
24 June 15th sale?

25 A. Yes, I did, clearly I did, and I made a phone

0266

1 call to Chris, to Ms. Vierthaler, about this.

2 Q. When did you contact Chris Vierthaler about
3 that?

4 A. Probably the Monday or Tuesday after I got --
5 my recollection is that I got this notice on a Saturday
6 in my mail, and I resolved to speak with Ms. Vierthaler
7 promptly, because I needed to know what -- there was a
8 conflict in my mind between being number 32 on a waiting
9 list and first come, first serve, and I wanted to
10 resolve that.

11 Q. Okay. So what did you ask her about that?

12 A. I asked her specifically, I thought I was
13 number 32. She said, no, it is illegal, the UTC does
14 not allow the compilation of a list and people to
15 receive meters on the basis of being on a list, which I
16 found incredible, because that's how it's done mostly on
17 Orcas. And I was extremely put off by -- referring back
18 to my original conversation when I thought I was put on
19 a waiting list, it was about 15 or 16 months or longer.

20 Q. Okay.

21 A. And I had called Ms. Vierthaler every month
22 after my initial call and sometimes more than every
23 month.

24 Q. Okay, I think you have answered my question.

25 A. Okay.

0267

1 Q. So when you had this conversation in early
2 June of 2001 with Chris Vierthaler and she told you it
3 was illegal to issue the certificates according to the
4 waiting list, did you then have an understanding that
5 you had to get your, if you were to get a certificate,
6 you had to show up for this first come, first serve
7 sale?

8 A. I was unclear, and I asked Ms. Vierthaler to
9 expand on what first come, first serve meant, because
10 there -- to me, that's a principle of organizing, and
11 there's lots of ways to meet it. And I know that in my
12 experience, waiting lists are the standard and I have --
13 waiting lists are the standard.

14 Q. Okay, I didn't ask you about that,
15 Mr. Russell.

16 A. Right.

17 Q. What did she tell you when you asked what
18 first come, first serve meant?

19 A. She said, whoever is in line first to receive
20 meters on the 15th, that's the first come, first serve.

21 Q. Okay.

22 A. I was -- yeah.

23 Q. In the about a year and a half before the
24 June 15th sale, were you kept informed about the
25 progress of the water treatment plant?

0268

1 A. Yes, mostly by monthly phone calls to
2 Ms. Vierthaler's office and occasionally by written
3 information sent out by the utilities.

4 Q. Okay. Did you receive a written
5 communication which has been identified as Exhibit 73,
6 dated November 15, 2000?

7 A. You know, I had read this letter. I can't
8 recall where I got it. A client may have brought it in
9 to me, or I may have received it in the mail, but I did
10 read it.

11 Q. I would like to also show you what's been
12 marked as Exhibit 71, a May 30, 2000, communication from
13 Rosario Utilities addressed to current and future
14 customers. Do you recall receiving this communication
15 from Rosario Utilities?

16 A. I didn't receive this in the mail.

17 Q. You did not?

18 A. No. I have read it since, but I didn't
19 receive this in the mail.

20 Q. You testified that you had monthly phone
21 calls with Chris Vierthaler.

22 A. Mm-hm.

23 Q. Would you have had a call, a phone
24 conversation with Chris Vierthaler, about the time of
25 this May 30, 2000, notice?

0269

1 A. Oh, I'm sure.

2 Q. And did she tell you anything inconsistent
3 with what's set forth in this notice?

4 A. My recollection is not, she didn't. This
5 seems to conform with what Ms. Vierthaler told me.

6 Q. Okay. I would also like to have you look at
7 what's been marked as Exhibit 72, a July 10, 2000,
8 notice from Rosario Utilities to current and future
9 customers. Do you recall receiving this in the mail?

10 A. I can't recall receiving this in the mail,
11 but I did read it.

12 Q. And is the -- did Ms. Vierthaler, about the
13 same time in July of 2000, did she tell you anything
14 inconsistent with what's set forth in this notice?

15 A. No, Ms. Vierthaler in the months prior was
16 very helpful, readily available, returned most of my
17 calls. No, she was very helpful, and this is pretty
18 consistent with my recollection of what she said.

19 Q. Okay. You live on the island, don't you?

20 A. Yes.

21 Q. And you were living on the island in May of
22 last year?

23 A. Oh, yes.

24 Q. Do you get the local paper?

25 A. Yes.

0270

1 Q. Do you recall an article in the local paper
2 in towards the end of May of last year about the Rosario
3 Utilities winning State approval for a new treatment
4 plant and the moratorium being lifted?

5 A. You know, I don't recall at the end of May
6 reading that. Most of us read The Sounder, which is the
7 local newspaper, very selectively. It's mostly used for
8 cat boxes. It's not a reliable -- it's not reliable for
9 information. We read it, you know, for the sort of
10 social, what's going on, activity page. But I don't
11 recall that particular statement, that particular
12 article.

13 Q. About that time in May of 2001, were you
14 getting pretty anxious about getting a water connection?

15 A. All of us were fairly comfortable thinking
16 that we were going to -- there was going to be 120 plus,
17 150 water connections.

18 Q. Okay.

19 A. We weren't anxious in May.

20 Q. Do you recall hearing anyone on the island
21 talking about the number of connections available for
22 the first come, first serve potentially being less than
23 50?

24 A. Only after the notice had been sent out, only
25 after the --

0271

1 Q. The May 23rd notice?

2 A. Right. Then because I'm sure the utilities
3 got a slew of telephone calls, and a number of them from
4 me, and we were all very keen to know what first come,
5 first serve meant, and there was -- and the limited,
6 what does that mean.

7 Q. Yes.

8 A. We thought it was much higher.

9 Q. Would you look at Exhibit 61 again, which is
10 your copy of the May 23, 2001, notice.

11 A. Oh, okay.

12 Q. Yes.

13 A. Right.

14 Q. Did you note in the second paragraph there at
15 the second line where it says, the number of connections
16 is limited?

17 A. Yes.

18 Q. Did you ask Chris Vierthaler what that meant?

19 A. I have asked Ms. Vierthaler consistently what
20 that meant in every phone call after having received
21 this.

22 Q. And what did she tell you about the limited
23 number of connections available?

24 A. She said she couldn't say for certain how
25 many there were.

0272

1 Q. Did she explain to you that the priority
2 connections had to be -- priority list connections had
3 to be sold first?

4 A. Yes, my recollection is she did indicate the
5 priority -- that people on this priority list, which I
6 took to mean the people -- the litigants and those who
7 had prepaid.

8 Q. I'm not asking what you took it to mean.
9 What did she tell you is what I asked you. Did she tell
10 you that persons on the priority list --

11 A. She used the term priority list.

12 Q. Did she also explain to you that the number
13 of connections was limited by the Department of Health
14 approval of the treatment plant?

15 A. Yes.

16 Q. So you understood that the Department of
17 Health determined how many connections were available
18 and not Rosario Utilities?

19 A. Oh, yes.

20 Q. Okay.

21 A. And based upon Ms. Vierthaler's suggestion, I
22 called the DOH and got information.

23 Q. Okay. Are you contending that people who
24 arrived earlier than your wife -- your wife attended the
25 sale and not you; is that correct?

0273

1 A. Yes.

2 Q. Are you contending that people who arrived
3 earlier than your wife should not have been given a
4 certificate at the first come, first serve sale?

5 A. Am I contending that people -- I'm contending
6 absolutely, unequivocally that those people who arrived
7 before midnight should not have received connections.

8 Q. Okay. Do you -- let's see, you testified on
9 June -- that on June 14th you spoke four times with
10 Ms. Vierthaler.

11 A. I called four times.

12 Q. You called four times. Did you actually
13 speak with her on any of those occasions?

14 A. I spoke with her twice.

15 Q. About what time during the day were those
16 conversations?

17 A. The first time I spoke with her was probably
18 between 9:00 and 9:30, somewhere around there. I called
19 her two additional times and she wasn't available. She
20 told me that she was going to be in meetings when I
21 first called. And then I called her at 3:15.

22 Q. And did you call her in her office at 3:15?

23 A. I called the utilities number.

24 Q. The utilities number, and she answered the
25 phone?

0274

1 A. Yes, I had a very specific conversation with
2 her.

3 Q. At that time, did you ask her about the
4 possibility of camping out overnight?

5 A. Yes.

6 Q. Were those the words you used, camping out?

7 A. No.

8 Q. What words did you use?

9 A. My recollection is what I said is it sounds
10 like from what you're saying that I need to show up and
11 sleep over and just be prepared to stay overnight, and
12 that's specifically what I said. I was actually
13 inquiring whether that would be good advice.

14 Q. And is that because you suspected that demand
15 for certificates would be greater than the number
16 available?

17 A. I didn't know. Part of it is I had a crush
18 of a schedule those two weeks, and I was just trying to
19 get a water connection and comply with all the sort of
20 requirements, and I had a arbitration I had to be, a
21 judicial arbitration, I had to be at on Friday morning,
22 which means I have to get up at 4:30 in the morning to
23 catch the red eye, and I was just trying to get a
24 connection, and I wanted to know if that would be
25 acceptable.

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1 Q. Okay. And what did Ms. Vierthaler tell you?

2 A. She said absolutely not, that anyone on the
3 property might be arrested for trespassing. And when I
4 said meaning, she said you could be arrested for
5 trespassing. I took that to be an unequivocal statement
6 that don't get here before 9:00 or so.

7 Q. Are you sure that she said don't arrive
8 before 9:00 a.m. or did she --

9 A. Absolutely.

10 Q. Please let me finish my question.

11 Or did she say not to arrive before Friday?

12 A. No.

13 Q. Did she tell you that --

14 A. She told me specifically do not arrive at the
15 office before 9:00.

16 Q. Did she tell you that she had posted a sign
17 regarding the sale when you talked to her at 3:15 in the
18 afternoon on June 14th?

19 A. No.

20 Q. Did she tell you a sign had been posted with
21 the rules for the sale?

22 A. Not that I recall.

23 Q. Did she tell you at that time that the
24 location of the sale had been changed to the Discovery
25 House?

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1 A. No, we had a very specific conversation about
2 that.

3 Q. You asked her where the sale was going to be
4 held?

5 A. I asked her -- I was concerned about this
6 notion of first come, first serve and how it was going
7 to work logistically, when I expected that there would
8 probably be 100 people in Chris's office, and I thought
9 that that probably wasn't going to work out very well
10 and --

11 Q. Did the -- if you expected 100 people to show
12 up for the sale and that no one would be allowed to
13 arrive until 9:00 a.m., what did you think was going to
14 happen?

15 A. Exactly what did happen, and that was my
16 concern.

17 Q. You thought people would show up the day
18 before and stay overnight?

19 A. No, that there would be mass confusion, there
20 would be those trying to cut in line, and I consider
21 those who came before midnight as having line jumped,
22 and they did. And we didn't get meters, those of us who
23 followed the rules didn't get meters. Those who didn't
24 got meters.

25 Q. Did Chris Vierthaler tell you, when you spoke

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1 to her on June 14th or in any earlier conversations, did
2 she specifically tell you it was a rule of the sale not
3 to show up prior to 9:00 a.m. on Friday?

4 A. She told me if I showed up and slept over and
5 stayed over that I could be arrested for trespassing. I
6 assumed that that meant that she was being unequivocal
7 about don't show up before 9:00.

8 Q. Did you ask her what was going to happen at
9 9:00 if there were people crowding?

10 A. Yes.

11 Q. Trying to get in and establish a line?

12 A. Yes, I did.

13 Q. And what did she say?

14 A. We had a fairly reasonable conversation about
15 the possibility of holding the sale elsewhere, maybe at
16 the Discovery House. And I am absolutely clear about
17 this conversation, because I was concerned about people
18 being pushed into this little office. There are some
19 elderly people.

20 Q. Was --

21 A. Go ahead.

22 Q. Was this the conversation at 3:15 on June
23 14th --

24 A. Yes.

25 Q. -- or the one at 9:00 in the morning?

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1 A. No, no, it was 3:15.

2 Q. You took the position in your testimony that
3 those who arrived before midnight should not have
4 received a certificate. What about those who arrived
5 after midnight, do you think that they complied with the
6 rules of the sale?

7 A. May I refer to this?

8 Q. Yes. The witness is referring to what has
9 been marked as Exhibit 55 in previous testimony, the
10 sign that was posted at the sale. Do you recognize this
11 as a sign that was posted at the Discovery House?

12 A. I first saw this sign when I got back on
13 island Friday evening. It was still posted on the door.

14 Q. Is it your understanding that this --

15 A. At the Discovery House.

16 Q. Is it your understanding that this sign was
17 posted at the Discovery House prior to the sale?

18 A. I have heard conflicting -- I don't know
19 that. I have heard conflicting testimony about that.

20 Q. Okay.

21 A. And after I got this sign, part of my
22 confusion was I thought we were, as I told my wife, I'm
23 not going to be able to do this, you need to go down and
24 do this. And because of her schedule, she thought she
25 might be able to get paperwork done before 9:00 or

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1 actually before 8:00 when she had to take my son to
2 school, to the school. School was out, but blah, blah,
3 blah.

4 Q. You were going to say something about this
5 exhibit --

6 A. Right.

7 Q. -- in relationship to showing up before or
8 after midnight.

9 A. Right.

10 Q. What were you going to say?

11 A. My first opinion is I don't think anybody who
12 showed up before regular business hours should have been
13 given, of the now established 38, should have been given
14 meters. I think it was wholly unfair, patently unfair,
15 because everything was printed with business hours.
16 Friday the 15th, when I read this, I thought --

17 Q. Exhibit 55?

18 A. I'm sorry, mine says --

19 MR. PATRICK HANIS: Yeah, Exhibit 55.

20 A. Oh, okay. When I read this, without
21 disparaging anybody in the room now, I thought, oh,
22 isn't that cute, an attorney wrote that. Here you have
23 available beginning Friday, June 15th, at 9:00 a.m., and
24 then isn't it cute when it says, please no queuing or
25 gathering prior to Friday. Now most reasonable people

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1 would assume that that would be 9:00 a.m., most
2 reasonable people.

3 Q. I would now draw your attention again to
4 Exhibit 61, the May 23rd notice.

5 A. Okay, I have several copies of it here, mine
6 which is underlined or --

7 Q. Either one.

8 A. Okay.

9 Q. Your own that's underlined is fine.

10 A. Mm-hm.

11 Q. And I want to draw your attention to the
12 second of the two boxes for Rosario Plats.

13 A. Mm-hm.

14 Q. Where it says:

15 Please come to Rosario Utilities office
16 to apply for a water certificate
17 beginning June 15th. Office hours are
18 9:00 a.m. to 05:00 p.m.

19 Does it say in that notice that people could
20 not arrive at the property before 9:00 a.m.?

21 A. No.

22 Q. Is it inconsistent with the statement in the
23 Exhibit 55, the sign that was posted at the door?

24 A. Is it inconsistent, no. I think it's just
25 misleading, and I think it was conveniently misleading.

0281

1 Q. Okay. I would like to draw your attention to
2 what's been marked as Exhibit 63, and it's an attachment
3 to your own testimony, also marked Exhibit RR-3 to your
4 testimony, a June 20, 2001, letter from Rosario
5 Utilities to the Washington Utilities and Transportation
6 Commission.

7 A. Oh, okay, yes, I have it.

8 Q. I understand that you filed a complaint with
9 the Washington Utilities and Transportation Commission
10 about the sale?

11 A. Absolutely.

12 Q. And this Exhibit 63 appears to be a response
13 to your complaint from Rosario Utilities?

14 A. Yes.

15 Q. Okay. There's some handwriting on the
16 margins of this exhibit; is that your handwriting?

17 A. I don't have handwriting on mine, I'm sorry.

18 Q. Exhibit RR-3 that's attached to your
19 testimony has handwriting on it.

20 A. If I could find it, I don't have -- I have
21 RR-3, and I don't see any handwriting.

22 MR. PORS: I would like to have marked as
23 another exhibit, and I'm going to cross out Exhibit 63,
24 this is my copy of what was marked as Exhibit RR-3 to
25 Mr. Russell's written direct testimony, and this is what

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1 I received with his testimony when that was filed with
2 the Commission.

3 JUDGE CAILLE: I have the same, so in the
4 official record, what we have is the copy that has the
5 written --

6 MR. PORS: It does have the writing on it?

7 JUDGE CAILLE: Yes, it has the writing.

8 MR. PORS: I would like to have a copy of
9 that in front of the witness.

10 MR. PATRICK HANIS: I must not have a copy of
11 that, because he has my copy.

12 JUDGE CAILLE: You know what, we'll just use
13 -- mine has writing on it too, other writing.

14 THE WITNESS: Well, I recall making
15 handwriting on it.

16 MR. PORS: Your Honor, should I then continue
17 to refer to this as Exhibit 63?

18 JUDGE CAILLE: Yes, let's refer to it as 63,
19 because that's what's in the official record. The one
20 without is not.

21 BY MR. PORS:

22 Q. Do you have that exhibit now with the
23 handwritten notes?

24 A. I do have it, and it is my handwriting, my
25 hand printing.

0283

1 Q. It is your hand printing, okay, thank you.

2 A. Mm-hm.

3 Q. At the bottom of the first page, well, let me
4 -- I just want to read into the record and I'm going to
5 ask you a question about this statement beginning with
6 the paragraph starting at the bottom of page 1.

7 A. Mm-hm.

8 Q. And this is Chris Vierthaler's letter to the
9 Commission:

10 I believe Mr. Russell may be confused
11 regarding what he may have heard (by
12 persons unknown) regarding when to line
13 up and utility policy. Rosario
14 Utilities never at any time told an
15 interested party when to line up or come
16 to the office to purchase a water
17 certificate. It was specifically
18 avoided, although the time utility staff
19 would be available was committed.

20 Now on the top of page 2 of this exhibit on
21 the right-hand side is a handwritten statement. Can you
22 read that since it's your writing?

23 A. I'm sorry, could you repeat that part of the
24 question, just that part.

25 Q. On the top of page 2 on the right-hand side,

0284

1 there is a handwritten statement. You have previously
2 testified that this is your hand --

3 A. Printing.

4 Q. Hand printing.

5 A. Mm-hm.

6 Q. Could you read what that says, please.

7 A. Yes, it says, it was specifically stated no
8 queuing prior to Friday, generally meaning business
9 hours.

10 Q. Now the statement generally meaning business
11 hours is in parentheses, isn't it?

12 A. Correct.

13 Q. If you had been told specifically by Chris
14 Vierthaler not to queue prior to Friday at 9:00 a.m.,
15 why didn't you write that specifically in the margins of
16 this exhibit?

17 A. That's what I have written. This was a
18 statement of irony, and I used the term queuing because
19 I was sitting there reading this with this.

20 Q. When --

21 A. And I used the term queuing off of that.

22 Q. The statement, generally meaning business
23 hours is in parentheses, correct?

24 A. Well, part -- oh, yeah, it is, right, yes, it
25 is.

0285

1 Q. Isn't the -- by being in parentheses, is that
2 meant to distinguish it from the statement that you're
3 referring to above? In other words, you said it was
4 specifically stated no queuing prior to Friday, and then
5 you put the rest of it in parentheses. Did you mean to
6 distinguish the statement in the parentheses from the
7 previous statement?

8 A. No, I remember my mind set when I put this --
9 the first statement, it was specifically stated no
10 queuing prior to Friday, was a statement of extreme
11 irony, and then the parentheses was I was just referring
12 to all the references, including in the notice, all the
13 business hour references, all of them.

14 Q. Okay.

15 A. And there were several, and that's what that
16 was referring to.

17 Q. Okay. Mr. Russell, I'm not trying to beat
18 this issue to death.

19 A. No, that's okay.

20 Q. I'm just trying to clarify, because I think
21 this is an important point.

22 A. Me too.

23 Q. In Exhibit 61.

24 A. Okay.

25 Q. The May 23 notice.

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1 A. Oh, okay.

2 Q. It is again at the bottom.

3 A. I'm sorry, I have --

4 MR. PATRICK HANIS: You have it.

5 A. This is it, okay. There are so many numbers
6 on these, and I want to be specific, okay.

7 Q. Again in the box at the bottom regarding
8 Rosario Plats, there is a distinction between the date
9 June 15th and the office hours.

10 A. There is a distinction?

11 Q. Do you notice that? It says:

12 Please come to Rosario Utilities office
13 to apply for a water certificate
14 beginning June 15th, period.

15 A. Mm-hm.

16 Q. And then it says, office hours are 9:00 a.m.
17 to 5:00 p.m.

18 A. Mm-hm.

19 Q. In your handwritten statement on Exhibit 63,
20 again there is a distinction between the date of Friday
21 and the time, which you put in parentheses.

22 A. Yeah, could you tell me where you are
23 referring?

24 Q. On page 2 at the top, the handwritten
25 statement that you read.

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1 A. Uh-huh.

2 Q. There's a distinction there between the date
3 of Friday, between the day and between the hours, which
4 is in parentheses.

5 A. On page 2 of this?

6 Q. This is Exhibit 63, the June 20, 2001, letter
7 to the Washington Utilities and Transportation
8 Commission, your handwritten note at the top of page 2.

9 A. My hand -- it says it was specifically stated
10 no queuing?

11 Q. No queuing prior to Friday.

12 A. Prior to Friday, uh-huh.

13 Q. Okay. But you didn't put down 9:00; is that
14 correct?

15 A. You know, I --

16 Q. Okay, I think I have been over this. I will
17 withdraw that question.

18 A. Yeah, we have a very real difference about --

19 Q. I will withdraw the question, Mr. Russell.

20 A. Okay.

21 Q. I think I have already been over that.

22 A. Yeah.

23 Q. What time did your wife arrive for the sale;
24 do you know?

25 A. She told me between 7:45, 8:00. She tried to

0288

1 get there a tad early because she had to take my son to
2 the school.

3 Q. That was before she dropped him off or after?

4 A. Oh, before, standard thing of doing 13
5 things.

6 Q. Mm-hm.

7 A. Trying to coordinate them.

8 Q. I would like to draw your attention to
9 Exhibit 75, which is the -- it's dated 6-15-01, it's a
10 handwritten list of people who were waiting in line at
11 the sale on June 15th.

12 A. I'm familiar with that list.

13 Q. You are familiar with the list?

14 A. Oh, definitely.

15 Q. Okay. The name Russell, Richard and Paula,
16 is listed as number 9.

17 A. Mm-hm.

18 Q. I'm sorry, I'm going to withdraw that
19 question.

20 Did you actually go to the resort on June
21 15th, the day before the sale?

22 A. June 15th was the -- I'm confused.

23 Q. June 15th was the date of the sale.

24 A. Right.

25 Q. Did you go to the resort on the day before?

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1 A. No.

2 Q. On June 14th?

3 A. No.

4 Q. You just phoned?

5 A. I phoned.

6 Q. The office, okay. So you didn't attempt to
7 line up at the Discovery Center on the 14th?

8 A. I was told not to, and I was not aware that
9 the Discovery Center was the place to be lined up.

10 MR. PORS: I have no further questions at
11 this time.

12 JUDGE CAILLE: Thank you.

13 Mr. Bailey.

14

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

16 BY MR. BAILEY:

17 Q. I just want to clarify a couple of brief
18 points. You stated that it was your opinion that anyone
19 who lined up before business hours on the 15th should
20 not have been entitled to receive a water certificate;
21 is that correct?

22 A. Yes, that is my -- that is -- was, it isn't
23 now, but it was my principal opinion the month after --
24 the day of the sale and the month after.

25 Q. And you have stated a number of times that

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1 business hours began at 9:00 in the morning; is that
2 correct?

3 A. That's correct.

4 Q. And your wife showed up at 7:45; is that
5 right?

6 A. Yes.

7 MR. BAILEY: That's all I have.

8 JUDGE CAILLE: Okay.

9 Redirect?

10

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

12 BY MR. PATRICK HANIS:

13 Q. Mr. Russell, what is your opinion now about
14 who should or should not keep water certificates?

15 A. I would like to say that those of us who
16 followed the rules should have -- should be getting
17 water meters. I can buy that those who lined up after
18 midnight based upon this carefully sculpted sub notice,
19 that they might be entitled to water meters. I
20 categorically think that anybody who lined up 21 hours
21 before business hours the day before is cheating. I
22 think anybody who lined up at 6:00 in the evening the
23 day before is cheating. And I think anybody who lined
24 up before midnight is cheating. It could be argued that
25 anybody who lined up before 9:00 was cheating or shortly

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1 before, those who came at 7:00 or 6:00. Because island
2 life doesn't start at 9:00. Island life starts about --
3 for me it starts at 4:30 every morning. So my opinion
4 is that perhaps people who lined up after midnight at
5 the -- are entitled to a water connection. Those prior
6 to that, absolutely not. No reasonable person would
7 think that would be fair.

8 Q. Mr. Pors asked you about this first come,
9 first serve process; what do you think a first come,
10 first serve process is?

11 A. If its aim is to achieve some sort of equity
12 at start, I think it's a good idea, aside from there
13 being a bit of a bumper sticker. It doesn't say how
14 you're going to achieve it. Most, and I haven't been
15 able to verify this in the state of Washington, but I
16 can tell you on Orcas Island what first come, first
17 serve means is being put on a waiting list. East Sound
18 Water does it, Doe Bay Water does it, and Deer Harbor, a
19 number of smaller water associations, Deer Harbor,
20 that's how they do it. That's what it's generally
21 understood to mean. That's what a reasonable person on
22 Orcas Island means by it.

23 So a waiting list, while it's not a priority
24 list, because there are people who really do have
25 legitimate priorities, it was a waiting list. And it's

0292

1 a way to achieve -- a list is a way to achieve a line.
2 And so people who have been waiting for water for ten
3 years and have been put on this list, they really ought
4 to be entitled to get water before those who have
5 decided that they want water now and go and take 16. I
6 mean to me that's so obvious.

7 Q. You also testified that you were kept well
8 informed of the progress of the water treatment plant
9 and the utility's efforts to upgrade the water system,
10 even stating that Ms. Vierthaler was very helpful and
11 available during this process. After the May 23rd
12 letter, what was the communication like with the
13 utility?

14 A. I was able to talk with Chris,
15 Ms. Vierthaler, several times. She actually volunteered
16 that she had to go someplace, wouldn't be back until I
17 think June 7th or something. So she was available. I
18 wasn't aware of any policy or location changes or any
19 time changes or what first come, first -- she indicated
20 to me in the -- in one -- a telephone conversation that
21 first come, first serve was a State requirement. I have
22 subsequently found that that's not exactly the case.
23 She said it had the power -- she indicated that it had
24 the power of State law. I subsequently talked with
25 Mr. Ward from UTC because she referred me to him, and he

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1 said that's not true. And there were two other elements
2 that she said were State law which he later said they
3 were not.

4 So I'm trying to put together -- I don't want
5 to ramble. I'm a general contractor. I've been a
6 general contractor for almost 30 years. Part of my job
7 is to get stuff done, to be effective in what it is I
8 do. And when I get information that is reliable, that's
9 what I do, and I'm pretty good at it. When I get
10 information that is confusing, that confuses me, and it
11 -- now I start to get nervous. That was my -- that's
12 why I kept calling Ms. Vierthaler. And for me, she was
13 pretty much available.

14 What she told me was inaccurate and
15 misleading, and what she has told, by the testimony,
16 other people was inaccurate. We would have all been
17 there if we would have all known we could stand in line.
18 I was told I would be arrested. I'm sorry, I was told I
19 could be arrested if I stood in line. And, you know, on
20 the island, we're not like mainland people, you know.
21 We do pretty much -- we go along, that's how we're able
22 to live, that's part of the charm of the island. And it
23 is not a neighborly thing to do to do this, to mislead
24 people, especially those who are interested in building
25 their homes.

0294

1 Q. Please refer to the --

2 A. I'm sorry, I rambled.

3 Q. On Exhibit 55, the water certificate here.

4 A. Oh, okay.

5 Q. Where on that exhibit, on that notice that

6 was posted, does it say that the sale will be at

7 Discovery House?

8 A. It doesn't.

9 Q. What does it say about the location?

10 A. It doesn't say anything. It just says, and

11 one can assume that it would be at the office, because

12 it says starting at 9:00, which is business hours, which

13 is consistent with, if this is the notice, this is -- it

14 says 9:00, business hours at the business office.

15 Q. If --

16 A. So no place, either in this specific notice

17 or in this subsequent, I'm not sure if you call that a

18 notice, does it say anything. The word Discovery House

19 does not come up here.

20 Q. Let the record reflect that Mr. Russell is

21 referring to --

22 A. The original notice.

23 Q. -- the May 23rd notice, which is marked as

24 Exhibit 69.

25 A. And the first --

0295

1 Q. Mr. Russell, let me --

2 A. Sorry.

3 Q. On the water certificate, Exhibit 55, where
4 it says that the sale will be here, could that also
5 refer to the Discovery House if that was posted at the
6 Discovery House?

7 A. Here generally would -- is locative, and it
8 says here. If this is posted on this wall -- it doesn't
9 say it's going to be at the Discovery House. It says
10 it's here.

11 Q. Have you seen any other notice that was
12 posted at the utility that designates the location was
13 changed to the Discovery House?

14 A. None. I would have -- if I had, that's where
15 we would have gone.

16 Q. Mr. Russell, I'm showing you what's been
17 entered as Exhibit 116, the Rosario Resort master plan.
18 I'm showing you a map found within that resort master
19 plan. Could you describe what the map shows and what
20 it's designated as.

21 A. It's designated as existing facilities map,
22 and it looks to be of the Rosario Resort.

23 Q. Where is the utility office located on that
24 map?

25 JUDGE CAILLE: Could you hold on just a

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1 moment until I get mine.

2 MR. PATRICK HANIS: Sure. It's around page
3 22, 24 I think. It doesn't have a page number on it at
4 all.

5 JUDGE CAILLE: And it's called existing
6 facilities, is it figure 1?

7 MR. PORS: Could you state for the record
8 which figure, the designation on the --

9 MR. PATRICK HANIS: Yeah, for the record,
10 it's figure 2.4-2, existing facilities map.

11 BY MR. PATRICK HANIS:

12 Q. Where is the utility office located on
13 Rosario Resort?

14 A. In the mansion, in Miran Mansion, which is on
15 this map numbered number 1, which is in the lower
16 left-hand corner of the lobe.

17 Q. And where is the Discovery House located on
18 the map?

19 A. Oh, in about the center of the cove if you
20 were to go up.

21 Q. Is there a building designation for Discovery
22 House?

23 A. Oh, yes, I'm sorry, it's number 10, it says
24 Discovery House, Center, on this legend.

25 Q. You stated that you are a contractor for a

0297

1 living; are you familiar with measurement in feets?

2 A. Oh, I think so, yes.

3 Q. Have you had an opportunity to determine how
4 many feet it is from the mansion where the utility
5 office is located to the Discovery House where the sale
6 occurred?

7 A. Yes.

8 Q. How many feet is that?

9 A. According to my wheel tape 1,848 feet, more
10 than 6 football fields.

11 Q. Referring to that map, if you were to be
12 standing at the mansion at the main entrance, can you
13 see the Discovery House from that point?

14 A. No, you can't. I have been there a number of
15 times, and you can't.

16 Q. Why can't you see it?

17 A. Because there's a number of buildings that
18 are in the way. There's an elevation difference, that
19 is the Discovery House is lower than the mansion and the
20 adjacent buildings. You're looking over the marina, and
21 there's a -- there are buildings right next to the
22 Discovery House, so you -- it's -- you can't see it.

23 Q. As you're to drive in the main entrance of
24 the resort, are you able to see the Discovery House as
25 you drive into the resort?

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1 A. You might see a ridge line of a roof. That's
2 about it.

3 Q. Would it be possible to see people standing
4 in line inside the Discovery House as you drive into the
5 resort?

6 A. Oh, good Lord no, no way.

7 Q. You had testified you had a conversation with
8 Ms. Vierthaler at 3:15 p.m. on June 14th.

9 A. Yes.

10 Q. And then you discussed that she informed you
11 of the possibility of a change in location to the
12 Discovery House.

13 A. Yes.

14 Q. Did she tell you at the time that the
15 location had changed or that it was just being
16 contemplated?

17 A. That she was considering it at that phone
18 call.

19 Q. Did she inform you when that decision was
20 going to be made?

21 A. No, she said she was considering it.

22 Q. Did you inquire as to when you might be able
23 to find out when the decision would be made?

24 A. No, things were sort of left sort of up in
25 the air. That was one of the things that was left

0299

1 undecided.

2 Q. Mr. Pors asked you several questions
3 regarding notes that you put on the complaint response
4 by Ms. Vierthaler, which is Exhibit Number --

5 A. 63.

6 Q. -- 63.

7 A. I think that's the exhibit number.

8 Q. Yes, it's Exhibit Number 63. When you write
9 notes, do you write down everything that you're
10 thinking?

11 A. No, I frequently speak ironically, and so I
12 will frequently write down notes that mean something to
13 me but that can be confusing to others. But they're for
14 me, they're not for others. I had no idea that this
15 would -- I don't mind that it is, I don't mind
16 explaining what I think. But no, I had -- this was --
17 this was just sort of emoting or ventilating.

18 Q. Showing you what's been marked as Exhibit 46,
19 do you recognize that document?

20 A. Yes, I do.

21 JUDGE CAILLE: Could you hold on just a
22 moment so we all get it, please.

23 Okay.

24 MR. PORS: I'm sorry, I don't have it yet.

25 JUDGE CAILLE: It's the list, Mr. Pors.

0300

1 MR. PORS: Oh, okay, it's another number on
2 my list.

3 BY MR. PATRICK HANIS:

4 Q. What number are you listed on that list?

5 A. Number 9.

6 Q. On that list there are several names of
7 people; do you recognize the names of all of those
8 people?

9 A. I recognize the name of everyone here, yes.

10 Q. How is it you're familiar with the names of
11 those people?

12 A. This was initially a list that was made and
13 given to me by my wife after the group of people that
14 you see listed here had stood in line and were not able
15 to get water meters, and this is the list of people who
16 didn't get water connections.

17 MR. BAILEY: Your Honor, I'm going to object
18 as nonresponsive, because the question was how do you
19 know the people, and I don't think that he answered that
20 question.

21 THE WITNESS: Oh.

22 MR. PATRICK HANIS: I think he answered it
23 very well.

24

25

0301

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

2 BY JUDGE CAILLE:

3 Q. Well, perhaps you could -- I have a question
4 about your answer too. Did you -- I believe you said
5 your wife, this was a list your wife made. Did your
6 wife make this list?

7 A. No, this was a list of names, and I can't
8 attest to it, but I believe that everybody wrote their
9 own name, everyone who was in line wrote their own names
10 down. And then Jorg took the original list, made
11 photocopies, and my wife gave me a photocopy of this
12 list, and this is a photocopy of the photocopy.

13 Q. Okay, I just wanted it clear for the record
14 that your wife didn't make the list.

15 A. No, no. As a matter of fact -- well.

16 Q. It's not important who did. It's just
17 important --

18 A. Oh, no, it is important.

19 Q. Well --

20 A. I mean I think it is.

21 Q. For the purpose of that question, for the
22 purpose of my clarification, it isn't.

23 A. Oh.

24 JUDGE CAILLE: I just wanted to clarify your
25 testimony. Somebody can ask you who made it.

0302

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

5

Q. After you received that list, at some point
did you contact the people on that list?

6

A. You bet you.

7

8

9

Q. And are those people listed or named on that
list people that brought a complaint with you in this
matter?

10

11

A. Yes, except for Scott and Theresa Lancaster,
who are on the second --

12

13

14

15

16

MR. PORS: Your Honor, I'm going to object
that we're going beyond the scope of the
cross-examination really because of time here primarily.
We're running late, and this is going beyond the scope
of cross.

17

18

19

JUDGE CAILLE: And I also need to get back to
Mr. Bailey's objection, because I inserted my question
before I ruled on his objection.

20

21

E X A M I N A T I O N

22

BY JUDGE CAILLE:

23

24

25

Q. If you would please, I think Mr. Hanis asked
you how you knew these people, and you replied that you
knew them just from the list. Is there any other way

0303

1 that you know these people?

2 A. I knew some of them before, but I've gotten
3 to know every one of them after June 15th.

4 Q. And did you know them through business or
5 through just living on the island?

6 A. Living on the island, some business, but
7 mostly living on the island.

8 JUDGE CAILLE: Okay, does that clear that up
9 for you, Mr. Bailey?

10 MR. BAILEY: Yes, thank you, Your Honor.

11 THE WITNESS: Sorry.

12

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

14 BY MR. PATRICK HANIS:

15 Q. On that list, do you see the name of Chris
16 and Cecily Flavell?

17 A. Yes.

18 Q. And in parentheses does it say Sea Ocean,
19 LTD?

20 A. I see the name of Ian Flavell for Chris
21 Flavell in parentheses.

22 MR. PORS: Your Honor, this is going beyond
23 the scope.

24 JUDGE CAILLE: Yes, I'm going to have to stop
25 this, because this is going beyond the scope of the

0304

1 cross.

2 MR. PATRICK HANIS: If I might answer,
3 Mr. Finnigan yesterday asked many of the Complainants
4 about this list, about Mr. Marcin in particular. I
5 believe we have the right to answer that in rebuttal
6 form through the testimony of Mr. Russell to clarify who
7 these people are.

8 JUDGE CAILLE: Well, technically you would
9 call Mr. Russell as a rebuttal witness.

10 MR. PORS: Your Honor, my understanding of
11 the process here and the procedures which we have been
12 compliant with is that the witnesses are presented here
13 for cross-examination and that any redirect examination
14 is limited to the scope of the cross. If there is
15 additional testimony, original testimony that was needed
16 from any particular witness, they should have put that
17 in their original written direct testimony or rebuttal
18 testimony when we would have had a chance to conduct
19 discovery on that. Here at the evidentiary hearing it's
20 too late for that, and I think we should stick to the
21 procedures that were established by the Commission.

22 JUDGE CAILLE: I do recall though asking
23 Mr. Hanis whether there was going to be rebuttal
24 testimony, additional rebuttal testimony, filed by any
25 of Complainants' witnesses. You said there was not

0305

1 going to be any written but you may call a witness in
2 rebuttal or witnesses in rebuttal.

3 Here's the problem. We do have a set
4 procedure. Mr. Pors is correct about that. I'm trying
5 to be somewhat flexible to accommodate the Complainants.
6 How many questions like this do you have? Because it is
7 outside the scope of this cross. We can go through the
8 rest of the witnesses, call him had back as a rebuttal
9 witness, but I'm willing to bend the rules a little bit
10 here too if you don't have too much. But we do have
11 another witness who is quite lengthy.

12 MR. PATRICK HANIS: I will ask no further
13 questions.

14 JUDGE CAILLE: All right, well, do you want
15 him to answer that question about Mr. Marcin?

16 MR. PATRICK HANIS: Yes, I would.

17 JUDGE CAILLE: Okay.

18 MR. PATRICK HANIS: If you would read back
19 the question.

20 JUDGE CAILLE: And are you planning on
21 calling him back?

22 MR. PATRICK HANIS: I suppose we will have to
23 see what the --

24 JUDGE CAILLE: Okay.

25 MR. PATRICK HANIS: Maybe I'm not

0306

1 understanding.

2 JUDGE CAILLE: Okay, here's your options.

3 Option one is to ask, if you have don't have too many

4 questions, whatever other questions you have for

5 Mr. Russell.

6 MR. PATRICK HANIS: I don't have very many.

7 JUDGE CAILLE: Okay. The other option, and

8 that's bending the rules, that's being flexible and

9 allowing your witness to rebut some of the testimony

10 that was made. There's going to be an opportunity for

11 you to cross on that. Or the other option is finish

12 with Mr. Russell right now, as we would normally do,

13 call the remaining witnesses, Mr. Russell would come

14 back as a rebuttal witness.

15 MR. PATRICK HANIS: I just have a couple more

16 questions to ask.

17 JUDGE CAILLE: Okay.

18 MR. PATRICK HANIS: So maybe we'll do it that

19 way.

20 JUDGE CAILLE: That's how we're going to do

21 it.

22 If you would like to register an objection,

23 you may do so for the record.

24 MR. PORS: For the record, because this was

25 not the procedure established by the Commission and we

0307

1 weren't prepared in any way for this, we would object to
2 having any additional rebuttal testimony of this or
3 other witnesses. But with the intent to proceed, I
4 would prefer that he ask those questions now and not
5 have to recall him later.

6 JUDGE CAILLE: All right.

7 Now we need to read back.

8 Can you just ask him the last question.

9 MR. PATRICK HANIS: I will just strike that
10 last question that I asked, and I will ask another
11 question.

12 JUDGE CAILLE: Okay.

13 BY MR. PATRICK HANIS.

14 Q. Are you aware if Mr. Flavell attended the
15 sale on June 15th?

16 A. Yes, I am aware.

17 Q. Are you aware of who he was attending the
18 sale for on June 15th?

19 A. Yes.

20 Q. And who was that?

21 A. Ian Flavell was attending for his parents on
22 behalf of Sea Ocean Limited.

23 Q. Are you familiar what the relationship of
24 Chris and Cecily Flavell with Sea Ocean Limited?

25 A. Intimately.

0308

1 Q. What is that relationship?

2 A. Each is 50% owner in Sea Ocean Limited, which
3 is a Singapore based corporation. Mr. Flavell is the
4 president, and Mrs. Flavell is the secretary-treasurer.

5 MR. BAILEY: Your Honor, if I might just
6 interject, when you say Mr. Flavell, there are two
7 Mr. Flavells here, are there not?

8 THE WITNESS: Oh, okay.

9 BY MR. PATRICK HANIS:

10 Q. Do you mean Mr. Chris Flavell when you state
11 president?

12 A. Yes.

13 JUDGE CAILLE: Thank you.

14 Q. Did you recognize the name of Mr. Marcin on
15 that list?

16 A. Ben G. Marcin, yes.

17 Q. Do you know Mr. Marcin?

18 A. Yes.

19 Q. Are you aware if Mr. Marcin attended the June
20 15th sale?

21 A. Yes, I am aware.

22 MR. PATRICK HANIS: I have no further
23 questions.

24 MR. PORS: Yes.

25

0309

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

2 BY MR. PORS:

3 Q. Mr. Russell, you testified that you believe a
4 first come, first serve sale is something that is a
5 common practice on the island. Were there first come,
6 first serve sales held by other water systems on the
7 island that you were aware of?

8 A. Oh, yes, absolutely, they're all --

9 Q. You mentioned three water systems that had
10 first come, first serve sales. Could you mention those
11 again, please.

12 A. East Sound Water Users Association, and they
13 do a first come, first serve by compiling a list. Doe
14 Bay Water, which does the same. And I don't know the
15 official name, Deer Harbor. Ted Wicksom is the manager
16 for both East Sound and Doe Bay.

17 Q. Okay.

18 A. So I speak, in the course of my business, I
19 speak with Ted frequently.

20 Q. Are you aware that none of those systems are
21 regulated by the Washington Utilities and Transportation
22 Commission?

23 A. I became aware of that.

24 Q. So if they were to hold a sale, they would
25 not have to consult with the Washington Utilities and

0310

1 Transportation Commission concerning how that would
2 occur; is that your understanding?

3 A. I would assume that.

4 Q. You testified that you didn't see the Exhibit
5 55, the sign that was posted, you testified that you
6 didn't see that at the utility office door.

7 A. Correct.

8 Q. Didn't you also testify that you did not
9 attend the sale, it was your wife that attended the
10 sale?

11 A. Oh, yes.

12 Q. Okay.

13 A. I did, for point of clarification, I did go
14 to the Discovery House when I got back on the island,
15 and I went to the office when I got back on the island.

16 Q. And what time was that?

17 A. I want to say something like 6:00, 6:30.

18 Q. Is that p.m.?

19 A. Yes, I'm sorry.

20 Q. On June 15th?

21 A. Right.

22 Q. So it would have been after the sale had
23 concluded?

24 A. Correct.

25 MR. PORS: Okay, no further questions.

0311

1 JUDGE CAILLE: Anything further, Mr. Bailey?

2 MR. BAILEY: A couple.

3 JUDGE CAILLE: Go ahead.

4

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

6 BY MR. BAILEY:

7 Q. With respect to the three water systems that
8 you have listed that you say did first come, first serve
9 sales, you're not aware of anyone from those three water
10 systems who have not gotten a certificate as a result of
11 the procedure associated with first come, first serve
12 sale, are you?

13 A. Sure, most people -- I mean they have a huge
14 waiting list, and they -- they're first come, first
15 serve, as it is commonly practiced, is that they do a
16 waiting list. And as meters become -- as water
17 connections become available, they're then given to
18 those people who are at the top of the list, while
19 several, several, many tens if not a couple hundred,
20 don't have water connections, so they're waiting their
21 turn. So the first ones are at the head of the line,
22 and those who -- and as water meters become available,
23 they get them.

24 MR. BAILEY: That's all I have, Your Honor.

25 MR. PATRICK HANIS: Nothing further.

0312

1 JUDGE CAILLE: All right, nothing further.

2 Thank you, Mr. Russell, you're excused.

3 THE WITNESS: What do I do with the exhibits?

4 JUDGE CAILLE: Probably your attorney will
5 take care of that.

6 MR. MICHAEL HANIS: Except for one technical
7 matter, we're almost prepared to rest, and that is we
8 would move the substitution as real party in interest of
9 Sea Ocean in place of Flavell to conform to the
10 evidence. There's a pending motion on that matter, and
11 with that, the Petitioners rest.

12 JUDGE CAILLE: Okay, any objection?

13 MR. PORIS: Well, I would object on the basis
14 that the only evidence that has been provided in support
15 of that is from a witness who is not part of Sea Ocean
16 Limited. He is testifying as to his knowledge of
17 individuals who are not present, and I don't think an
18 adequate foundation was established that he is qualified
19 to speak on behalf of Sea Ocean Limited, and that's my
20 objection.

21 JUDGE CAILLE: Okay.

22 MR. MICHAEL HANIS: And we do have the
23 testimony of Mr. Flavell, who stated the same thing in
24 his direct written testimony.

25 JUDGE CAILLE: I think I want to think about

0313

1 this a little bit. I will, before the end of the day, I
2 will make a ruling on that. And, Mr. Hanis, would you
3 remind me just in case I forget. I will put it on my
4 list though.

5 Is there anything else at this point?

6 MR. MICHAEL HANIS: That's it.

7 JUDGE CAILLE: Then should we begin with
8 Ms. Vierthaler?

9 MR. PORS: I would like to so we can
10 conclude.

11 JUDGE CAILLE: Do you want to keep the same
12 order? You would not want to take Mr. March since we
13 have only 15 minutes?

14 MR. PATRICK HANIS: I would suggest that we
15 just do them both.

16 JUDGE CAILLE: Oh, you mean before we break,
17 no break?

18 MR. PATRICK HANIS: There's only two more
19 witnesses, so.

20 JUDGE CAILLE: Okay, that's fine with me.
21 How about though we take a 10 minute, 5 minute break
22 right now, 10.

23 (Recess taken.)

24

25 (The following exhibits were identified in

0314

1 conjunction with Intervenor's Cross Exhibits.)

2 Exhibit 112 is Rosario Utilities water
3 certificate granting 34 connections to Rosario Resort as
4 a result of its placement of the priority list. Exhibit
5 113 is Rosario Utilities Water Certificate granting 16
6 connections to Rosario Resort as a result of the June
7 15, 2001 sale.

8

9 JUDGE CAILLE: We are back from our short
10 recess, and I am inquiring about Respondent and
11 Intervenor moving into evidence the cross exhibits that
12 have been marked for identification. These exhibits
13 would be cross exhibits, Respondents Cross Exhibits 102
14 through 110, and perhaps if you will just make a
15 statement on the record, Mr. Pors, what you told me,
16 that will be easier than me stating it.

17 MR. PORS: Yes. All of the Respondent's
18 cross exhibits have other exhibit numbers already
19 designated, and so it would just be duplicative to add
20 additional exhibit numbers for the same documents.

21 JUDGE CAILLE: So in other words, you're not
22 moving --

23 MR. PORS: Do you want me to list what they
24 are for the record?

25 JUDGE CAILLE: That's unnecessary, just so

0315

1 it's clear that you're not moving these into evidence.

2 MR. PORS: That's correct, because they're
3 already in evidence under other document numbers.

4 JUDGE CAILLE: Okay.

5 Now, Mr. Bailey, Intervenor's Cross Exhibits
6 Number 111 through 115, you weren't here yesterday, but
7 116 was admitted by stipulation.

8 MR. BAILEY: Your Honor, Cross Exhibits
9 Number 112 and 113 are duplicates of exhibits that have
10 been submitted and I believe admitted by the
11 Complainant, and so to admit those would be redundant.
12 The other exhibits we have not attempted to admit, and
13 it does not look like we are going to have an
14 opportunity to have those admitted at this time.

15 JUDGE CAILLE: Okay.

16 MR. PATRICK HANIS: Should we verify which
17 Exhibits 112 and 113 are, where they have been
18 previously admitted?

19 JUDGE CAILLE: Okay.

20 MR. BAILEY: I see it listed under
21 Complainant's cross-examination exhibits at Number 130
22 and Number 127. They have not yet been admitted.

23 JUDGE CAILLE: 112 is 127?

24 MR. BAILEY: Yes.

25 JUDGE CAILLE: And then --

0316

1 MR. PATRICK HANIS: I don't know that we
2 shouldn't -- we're not going to admit them, 112 or 113,
3 unless we admit them, and I don't know that we're going
4 to use them.

5 JUDGE CAILLE: All right, then do you want to
6 move for the admission of those, because it sounds like
7 they're not going to be duplicative.

8 MR. BAILEY: Okay, well, if that's the case,
9 then I will move for the admission of them if there's no
10 objection.

11 JUDGE CAILLE: Okay. And is that 111, 112,
12 113, 114, and 115?

13 MR. BAILEY: I will move for the admission of
14 112 and 113.

15 JUDGE CAILLE: Okay.

16 MR. BAILEY: I will not move for the
17 admission of 114 or 115 or 111.

18 MR. PATRICK HANIS: We have no objection to
19 that.

20 JUDGE CAILLE: All right, then Intervenor's
21 Cross Exhibits 112 and 113 are admitted into the record.
22 The remainder of the exhibits are not offered for
23 admission.

24 MR. PATRICK HANIS: 116 has been admitted
25 already.

0317

1 JUDGE CAILLE: It's been admitted by
2 stipulation.

3 All right, as long as we're taking care of
4 some housekeeping matters, I think I will just go ahead
5 and rule on the Sea Ocean matter. My ruling remains the
6 same as it was on Tuesday, July 23rd. I really don't
7 feel that Mr. Russell's identification of Sea Ocean and
8 the people who own Sea Ocean adds or detracts from my
9 ruling. My ruling really was based on Mr. Flavell's
10 testimony where he states at the very beginning of the
11 testimony that he is appearing on behalf of Sea Ocean
12 Limited. So I'm going to consider Sea Ocean as the
13 party that has the certificate, and Ian Tull Flavell is
14 the person who represented them at the sale and during
15 this complaint proceeding.

16 Now are we ready to proceed with
17 Ms. Vierthaler?

18 THE WITNESS: Mm-hm.

19 JUDGE CAILLE: All right, will you please
20 stand and raise your right hand.

21

22 Whereupon,

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

0318

1

2 (The following exhibits were identified in
3 conjunction with the testimony of CHRIS VIERTHALER.)

4 Exhibit T65 is CV-T1: Direct Testimony (April
5 22, 2002). Exhibit T66 is CV-T2: Rebuttal Testimony
6 (May 31, 2002). Exhibit 67 is CV-1: WUTC Order
7 Accepting Settlement Agreement; Dismissing Complaint
8 Docket No. UW-990071 (July 28, 1999). Exhibit 68 is
9 CV-2: Priority List faxed by Chris Vierthaler to Jim
10 Ward (January 7, 2000). Exhibit 69 is CV-3: May 23,
11 2001 letter to all Property Owners in the Vusario, Orcas
12 Highlands and Rosario Water Systems from Chris
13 Vierthaler, Manager of Rosario Utilities. Exhibit 70 is
14 CV-4: "Rosario Utilities wins state approval for new
15 water treatment plant" (May 18, 2001). Exhibit 71 is
16 CV-5: May 30, 2000 letter to Current and Future
17 Customers from Timothy M. Kaiser, Rosario Utilities.
18 Exhibit 72 is CV-6: July 10, 2000 letter to Current and
19 Future Customers from Tim Kaiser, Vice President,
20 Rosario Utilities. Exhibit 73 is CV-7: November 15,
21 2000 letter to Current and Future Customers from Tim
22 Kaiser, Rosario Utilities. Exhibit 74 is CV-8: May 29,
23 2001 Fax to Petty Rodenberger from Chris Vierthaler with
24 attached May 23, 2001 letter. Exhibit 75 is CV-9: List
25 of people in line for water certificates, June 15, 2001.

0319

1 Exhibit 76 is CV-10: Affiliated interest Report 2000.
2 Exhibit 77 is CV-11: Water System Coordination
3 Agreement. Exhibit 117 is Fax Coversheet from Thomas
4 Pors to Chris Vierthaler, Robert Lundgaard, Ms. Mary
5 Tennyson, and Mr. Jim Ward, with attached "Draft
6 procedure for Developing Priority List for New Water
7 Service" dated April 21, 1999. Exhibit 132 is Priority
8 Water Connections, "Finalized List by Customer".
9 Exhibit 133 is List of "Water Certificates Sold June 15,
10 2001". Exhibit 135 is Fax dated July 4, 2001, attached
11 draft letter dated July 3, 2001, Letter dated July 5,
12 2001, and list of those July 5, 2001 letter sent to on
13 the "Response to 'No list'".

14

15 JUDGE CAILLE: Thank you

16

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

18 BY MR. PORS:

19 Q. Would you please state your name for the
20 record.

21 A. Chris Vierthaler.

22 Q. And can you spell that?

23 A. V like in victory, I-E-R-T-H-A-L-E-R.

24 Q. And your residence?

25 A. My business address is 1400 Rosario Road,

0320

1 East Sound, Washington 98245.

2 Q. What is your position, Ms. Vierthaler, to
3 establish -- well, I'm sorry, that's in your testimony.

4 Ms. Vierthaler, do you have in front of you
5 your written direct testimony dated April 22, 2002?

6 A. Yes.

7 Q. And your written rebuttal testimony dated May
8 31, 2002?

9 A. Yes.

10 Q. Have you had an opportunity to review that
11 testimony prior to appearing here today?

12 A. Yes.

13 Q. And if I asked you the same questions
14 appearing in those documents, would you provide those
15 same answers today?

16 A. I would.

17 MR. PORS: I will move for the admission of
18 Ms. Vierthaler's testimony, T65 and T66, and also for
19 the admission of Exhibits 67 through 77, the exhibits to
20 her testimony.

21 MR. MICHAEL HANIS: No objection.

22 JUDGE CAILLE: Thank you, then the Exhibits
23 T65, T66, and 67 through 77 are admitted into the
24 record, and Ms. Vierthaler is available for
25 cross-examination.

0321

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

2

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

4 BY MR. MICHAEL HANIS:

5 Q. Good morning, Ms. Vierthaler. Could you
6 pronounce your -- you have one of those names like mine,
7 and I think we're up to about four pronunciations of
8 yours now.

9 A. Either Vierthaler or Vierthaler is
10 acceptable. The family uses either way, so.

11 Q. Okay.

12 A. It's fine.

13 Q. Ms. Vierthaler, would you describe your
14 employment background prior to becoming a manager of
15 Rosario Utilities.

16 A. Prior to becoming a manager, I was the
17 administrative manager for about four, four and a half
18 years.

19 Q. And what about other employment experience
20 that you have had besides with Rosario Utilities?

21 A. Prior to the utility itself being
22 established, I worked for the owner of Rosario on
23 utility matters as her executive assistant for many
24 years.

25 Q. I'm sorry, what was that?

0322

1 A. For many years.

2 Q. Are there certifications that you get to be a
3 manager of a utility like Rosario?

4 A. No.

5 Q. And what's your educational background?

6 A. High school, college, arts and sciences,
7 general.

8 Q. And you have been with Rosario Utilities for
9 how long?

10 A. Since 1996.

11 Q. And as manager only?

12 A. Since, oh, I think it was 2000.

13 Q. Who was the manager prior to you?

14 A. There were a couple. The manager previous to
15 me was Christopher French.

16 Q. Does he remain on the island?

17 A. No.

18 Q. In the organizational decision making
19 structure of Rosario Utilities, who makes the decision
20 about hiring and firing a manager, not about you
21 personally, but just in the organizational structure of
22 things?

23 A. I imagine that would be Oly Rose.

24 Q. Is there a person that you answer to who is
25 your boss?

0323

1 A. I answer to the partner and the asset manager
2 of the utility and Oly Rose.

3 Q. They are the partner and asset manager of
4 both the utility and Oly Rose?

5 A. Mm-hm.

6 Q. And who are those two people?

7 A. One is Clark Hanraddy. He is with Olympus
8 Real Estate. He is an officer of Oly Rose. And the
9 other one is an asset management company working for Oly
10 Rose, and that person is Mark Van Hartsvelt.

11 Q. When you make important decisions for the
12 utility, for example like the one here about how to
13 distribute certificates, are those the folks you would
14 meet with to develop a procedure?

15 A. Sometimes, yes.

16 Q. Did that happen in this case?

17 A. It happened to the people who previously had
18 their positions, yes, and our corporate counsel.

19 Q. Okay. The people that previously had the
20 positions, who were they then?

21 A. That was a different partner, that person was
22 Robert Riggs. He's another Oly Rose official. And Tim
23 Kaiser in this case, who was responsible for the capital
24 construction of the new water system.

25 Q. And they're both either partners or employees

0324

1 of Oly Rose?

2 A. They are Oly Rose.

3 Q. They are?

4 A. Mm-hm.

5 Q. Do they also have an official status as to

6 the resort corporation, or is there a separate

7 corporation; Oly Rose is the resort?

8 A. Basically.

9 Q. Okay. Just as a point of clarification, it's
10 been pointed out that the other water companies on the
11 island, water utilities, are not UTC regulated; is that
12 your understanding?

13 A. That's correct.

14 Q. It's not your position here today that all of
15 the procedures you used in this sale of water
16 certificates were ordered by some UTC regulation or by a
17 tariff, is it?

18 A. No.

19 Q. Okay. If you would, and I'm referring now
20 specifically to the decision to use a first come, first
21 serve method of distribution, how was that decision
22 made? And by how, I mean who met, and how was it
23 discussed, and then how did it come about?

24 A. I believe it was discussed with the Oly Rose
25 people I mentioned to you. I was requested to go to the

0325

1 Utility Commission for their recommendation, because
2 once it was known there were limited connections, the
3 company wanted to be fair about it. So we thought
4 perhaps a lottery or perhaps first come, first serve,
5 and the Commission recommended first come, first serve.

6 Q. Okay, and we'll talk about that. Were other
7 options considered by the group that met?

8 A. Those were the two main alternatives.

9 Q. During those meetings, was it discussed at
10 all about the effect of the method on Oly Rose's
11 procurement of certificates?

12 A. I'm not sure what you mean.

13 Q. Did anybody talk about, whatever the method
14 was, did anybody talk about how that would affect the
15 number of certificates the resort might get?

16 A. Possibly.

17 Q. Okay. Did they calculate it, how many they
18 would get under either method?

19 A. Not that I'm aware of.

20 Q. What was the nature of the discussion about
21 that subject then?

22 A. I don't really remember other than specifying
23 that any connections that the resort wanted, they would
24 have to take their turn just like everyone else would
25 and buy a connection the same way everyone else would.

0326

1 Q. Did anybody foresee that the resort getting
2 16 connections might upset people?

3 A. It's possible.

4 Q. Did then they consider the possibility of
5 having a certain limit to the number of certificates
6 someone could take?

7 A. That was my decision not to limit the
8 connections.

9 Q. That wasn't exactly -- actually, my question
10 was did they, in these meetings that you attended, did
11 they consider that possibility?

12 A. I don't remember.

13 Q. Okay. Was there anything that prevented you
14 from choosing a method that would have each individual
15 being limited to, you know, one or two or some number of
16 certificates?

17 A. Possibly. My contract with the Highlands
18 Association does not limit them on purchasing
19 connections, because the association represents many
20 home owners. We just tried to keep it simple, first
21 come, first serve. The first person in buys what they
22 need. Next person comes and buys what they need.

23 Q. I'm just asking if there was anything that
24 prevented you from saying -- the Highlands -- I'm sorry,
25 strike that.

0327

1 The Highlands Association is kind of unique
2 in that there's an association, but the people came as
3 individuals and got individual certificates; isn't that
4 correct?

5 A. That is not correct.

6 Q. That's not, how did that work then?

7 A. They represented themselves as agents of the
8 association.

9 Q. But I mean one at a time, one --

10 A. That was their choice.

11 Q. Okay.

12 A. A board member from the association could
13 have come in and bought 30 certificates and distributed
14 them to their customers however they saw fit.

15 Q. Were they told they could do that?

16 A. They knew that.

17 Q. How did they know it if you didn't tell them?

18 A. They had quite a few people waiting for
19 certificates, they had quite a few people who had
20 prepaid for certificates, and for some reason all of
21 those people did not come and ask that they get a water
22 certificate that June 15th.

23 Q. Can we have Exhibit 69.

24 A. Mm-hm.

25 Q. Directing your attention to the first box,

0328

1 item 2.

2 A. Correct.

3 Q. Second sentence, aren't the rules that you
4 set up stated as follows regarding Highlands:

5 Highlands customers may elect to come to
6 the Rosario offices personally, and the
7 Highlands Association will issue a check
8 for this purpose and then will issue on
9 a first come, first person basis.

10 That doesn't seem to talk about a person
11 coming from Highlands and grabbing up all the
12 certificates.

13 A. We included this because the Highlands had
14 already established it as procedure, and in order to
15 keep things simple, we went along with it, and they
16 could all represent the Highlands. If the Highlands --
17 if they had gone to the Highlands, paid their money, the
18 Highlands gave them a check, then it was okay for me to
19 sign that certificate. That was basically the Highlands
20 granting them approval to do so.

21 Q. So you knew in advance of setting up your
22 procedures that the Highlands wasn't going to be a
23 problem of multiple certificates, they already had a
24 procedure; is that correct?

25 A. I wasn't sure of their procedures. I had

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1 heard about them giving people checks, and so I went
2 along with it. A board member still could have come
3 along in addition to the four or five that came to the
4 sale and purchased multiple certificates.

5 Q. My original question was, was there anything
6 that prevented you from doing that, and you said that --
7 your example -- your answer was that Highlands couldn't
8 be limited to a single certificate, although apparently
9 if I understand your testimony, they chose to do that
10 themselves. So ignoring Highlands for the moment, is
11 there anything that prevented you from setting up a
12 limited number of certificates per person for all of the
13 other parties that participated?

14 A. Historically the utility and the resort prior
15 to did not limit certificates. The priority list
16 established by the utility commission granted multiple
17 water certificates to some of the litigants. Department
18 of Health specifies that if a property owner wants to
19 build a guest house, he must buy a second water
20 certificate to do so. And so as far as I was concerned,
21 if the zoning was appropriate or the contract in place,
22 as in the Highlands, it wasn't my business to limit.

23 Q. Okay, but you were --

24 A. My customers. George Reinholt had two
25 properties, was I to deny him if he qualified for water?

0330

1 Q. My question is, so it was your choice not to
2 limit, but there's nothing that you know of in terms of
3 your regulations or the bi-laws say of your company or
4 whatever that would have required -- would have
5 prevented you from limiting the number of certificates,
6 past practice I guess maybe?

7 A. I based my decision on what I just mentioned,
8 yes.

9 Q. Okay. Was there anything that prevented you
10 from disclosing in the notices and the correspondence
11 whether people would be able to take more than one
12 certificate?

13 A. It didn't occur to me to put it in the
14 notice.

15 Q. I thought you, if I misunderstood, correct
16 me, but I thought your testimony earlier was that in the
17 meetings you had with the Oly Rose people that make
18 decisions here, that was considered, the potential for
19 people taking more than one certificate and having a
20 problem; did I misunderstand?

21 A. The whole idea of the sale was a problem
22 because we couldn't make anybody -- everybody happy. So
23 no, I did, I did misunderstand your previous question.
24 It was a problem because the number of connections
25 available were limited, and that's what I was referring

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1 to.

2 Q. Knowing that going into the sale, that the
3 number of connections were limited, once again, is there
4 anything that prevented you from telling people, even
5 though they're limited, everybody is going to get to
6 take as many as they want, first come, first serve?

7 A. I believe I didn't say anything, just like I
8 made a specific point of not telling people exactly when
9 to line up.

10 Q. Now -- okay, I'm sorry, strike that.

11 Was that a strategy of some sort, not to tell
12 people specifically when they could line up?

13 A. It was up to them to decide. We requested,
14 as noticed in the notices that went up on the Discovery
15 House, please no queuing or lining up prior to June
16 15th. I had no way to enforce my request.

17 Q. Is there something unusual about the office
18 hours of the utility? I mean it's 9:00 to 5:00, right?

19 A. Mm-hm.

20 Q. Can you understand --

21 JUDGE CAILLE: Excuse me, you need to say yes
22 for the court reporter.

23 A. Oh, yes.

24 Q. Can you understand that when you tell people
25 in a caption and a headline heading that they can't line

0332

1 up before Friday and you follow that by the hours of the
2 office, which everybody is presumed to know anyway, that
3 that would lead people to believe that they could not
4 line up before 9:00?

5 A. I left that up to them.

6 Q. Is that how you --

7 A. To decide how they were going to interpret
8 that.

9 Q. So my question then is, was there anything
10 that prevented you from interpreting it for them so that
11 they would be forewarned and know what it meant, in your
12 mind?

13 A. No, I specified please do not gather or queue
14 before Friday.

15 Q. And by that you meant midnight; is that
16 correct?

17 A. That was however the individual wanted to
18 interpret it.

19 Q. Well, what did you mean; you wrote it?

20 A. I wrote it so it could be interpreted at
21 midnight should someone want it, it could be interpreted
22 as daylight, it could be interpreted as office hours. I
23 specifically put it that way to avoid a mob, because
24 there were so many rumors on the island of hundreds of
25 people lining up, fighting, camping out, you know,

0333

1 bringing their tents, their sleeping bags, creating
2 total havoc. So I left it up to the individual.

3 Q. So you wrote it intentionally ambiguous; is
4 that correct?

5 A. You might say that.

6 Q. Okay. How many other times in your
7 experience have you conducted distributions of water
8 certificates?

9 A. I have sold water certificates for the resort
10 prior to the utility being formed.

11 Q. Have you ever before this one conducted a
12 distribution of certificates on a first come, first
13 serve basis?

14 A. It was first come, first serve.

15 Q. On the other ones you were talking about when
16 you --

17 A. The ones I sold were first come, first serve.

18 Q. Okay. The bulk of certificates, however,
19 during your experience as the manager were sold by the
20 priority list under the UTC order; isn't that correct?

21 A. Yes.

22 Q. Did anyone that day receive a water
23 certificate who was not represented by someone in the
24 lineup?

25 A. Some people represented themselves, yes.

0334

1 Q. Okay.

2 A. Or they had a representative in line, yes,
3 all of them.

4 Q. There was no one whose attendance was waived
5 for some reason, some personal reason?

6 A. No.

7 Q. Okay. You were present for Mr. Ward's
8 testimony?

9 A. Yes, I was.

10 Q. You have indicated in your testimony that the
11 Washington Utilities and Transportation Commission, and
12 I'm referring you if you want to look at that to page 2,
13 your answer to the last question, first sentence; are
14 you with me?

15 JUDGE CAILLE: I'm sorry, is this --

16 A. Page 2 of my direct testimony?

17 MR. PORS: Direct or rebuttal?

18 Q. Direct, I'm sorry.

19 A. Okay, yes, the first sentence.

20 Q. You have indicated here and elsewhere
21 actually, without pointing that out right now, that the
22 method you used was at the recommendation of Rosario or
23 of the WUTC.

24 A. That's correct.

25 Q. Now you have heard Mr. Ward's testimony that

0335

1 he said that was a preference of staff members of the
2 UTC.

3 A. Yes.

4 Q. Do you see any distinction between that?

5 A. Are you asking did I ask the Utility
6 Commission Staff or the Commissioners directly, no, I
7 did not contact the Commissioners.

8 Q. Okay. And there was no order or letter sent
9 to you or a set of rules sent to you by the UTC on how
10 to conduct this sale, was there?

11 A. No, there wasn't.

12 Q. Okay. Now you have heard Mr. Ward also
13 testify that there are many flavors of first come, first
14 serve.

15 A. Correct.

16 Q. And that based on the flavor chosen, very
17 different results can happen. Do you remember that
18 testimony?

19 A. I do.

20 Q. And do you remember him agreeing that if you
21 had a first come, first serve sale where people were
22 limited to the numbers that they could take, that would
23 still meet what he considered his definition of first
24 come, first serve; do you remember that?

25 A. Yes.

0336

1 Q. Now it's not in any sense your testimony, is
2 it then, that Mr. Ward or the UTC told you that you
3 should allow -- that you could not have a limited number
4 of certificates taken by each applicant, is it?

5 A. They didn't specify I should.

6 Q. Okay.

7 A. They didn't specify either way.

8 Q. Just a general question about the priority
9 list and the number of certificates that were released.
10 There was a priority list that had people on it from the
11 other settlement, the other UTC settlement; is that
12 correct?

13 A. Correct.

14 Q. Okay, and then --

15 JUDGE CAILLE: Could we just be very specific
16 about this, and I'm just saying this because of
17 Mr. Russell's testimony. Can you refer to -- are you
18 referring to the settlement, begins with a G?

19 MR. MICHAEL HANIS: Gaskill.

20 JUDGE CAILLE: If you're referring to that,
21 could we just refer to it as the exhibit so that we are
22 clear.

23 MR. MICHAEL HANIS: Okay.

24 JUDGE CAILLE: It's Exhibit 67.

25 MR. MICHAEL HANIS: Exhibit 67, which is the

0337

1 Gaskill settlement?

2 JUDGE CAILLE: Yes, it's one of
3 Ms. Vierthaler's.

4 MR. MICHAEL HANIS: The order based upon the
5 settlement.

6 JUDGE CAILLE: And then I guess 68 is the --
7 no, I guess that was it, that's complete, that's the
8 order and the settlement.

9 BY MR. MICHAEL HANIS:

10 Q. Were the, and I forget the number, but 30 or
11 40 certificates that Rosario Resort got before they got
12 in line out of this batch of certificates, were they
13 included in the settlement or the order of the UTC in
14 the Gaskill matter?

15 A. They were included in the priority list I
16 filed with the Commission, 34 connections to the resort
17 based on their county development and conditions permit.

18 Q. But that was nothing ordered by the UTC, was
19 it?

20 A. It was in addition to.

21 Q. And who made the choice to make that
22 addition?

23 A. I made that decision.

24 Q. Now there are some other folks that got a
25 priority, got some of those certificates before June

0338

1 15th, that were not a part of the Gaskill order or
2 settlement.

3 A. Correct.

4 Q. How did those people get certificates?

5 A. I put them on the priority list also because
6 they had county permits. In their case, it was a
7 building permit granted by the Health Department.

8 Q. Some of those were just temporary building
9 permits, weren't they?

10 A. They were conditional building permits. They
11 could not connect to water, but it was a commitment for
12 water, and money was paid for it since the Health
13 Department allowed it.

14 Q. So if they could convince the Health
15 Department to give them a building permit --

16 A. I would have honored the --

17 Q. -- you would give them a priority?

18 A. I did, because they were already committed.

19 Q. We referred to Exhibit 69, which is the May
20 23rd letter, and we have also referred to Exhibit 55,
21 which is the thing you posted on the door.

22 A. Yes.

23 Q. Okay. Are those the only rules put in
24 writing about this sale?

25 A. Not all of them are rules. Some of it is

0339

1 information or requests.

2 Q. Okay. But the rules that are in there, are
3 those the only ones written about how the sale was going
4 to be conducted?

5 A. To my knowledge, yes.

6 Q. Then the meetings held with your bosses from
7 Oly Rose, were there minutes made of those meetings?

8 A. No.

9 Q. To the extent there are rules contained in
10 Exhibit 55, the notice posted on the door, is there any
11 way anyone could have gotten those rules ahead of time,
12 or did they have to wait until they went to the
13 Discovery -- found the Discovery House was the new place
14 and see them posted on the wall?

15 A. I did not know for absolutely sure that the
16 location was going to be at the Discovery House until
17 June 14th. I did not know until I believe it was June
18 13th exactly how many water certificates I would be
19 selling. We had people on the priority list coming at
20 me past the deadline. I was getting phone calls from
21 the Highlands Associations that there were checks in
22 transit and would I please honor those priorities, and I
23 did. So it was all last minute.

24 Q. It was all last minute, the rule setting?

25 A. Mm-hm.

0340

1 Q. Referring to your testimony, your direct
2 testimony.

3 A. Mm-hm, yes.

4 Q. Which is T65, page 6, and in the last
5 complete paragraph about midway through that, about a
6 third of the way into that paragraph, there's a sentence
7 that starts, initially I informed potential customers;
8 have you found my spot?

9 A. Yes.

10 Q. And your testimony there was:

11 Initially I informed potential customers
12 that they could have a representative in
13 line for them. This was changed two
14 days prior to the sale when the utility
15 decided that island residents could only
16 represent themselves in line.

17 The utility, does that mean you?

18 A. That means me, and yes, two days before the
19 sale in my mind is last minute.

20 Q. Okay. And was that rule contained anywhere,
21 written anywhere?

22 A. It was on the sign, and if someone called me
23 after that decision was made, that's what I told them.

24 Q. And then in the last sentence of that answer,
25 you said:

0341

1 I believe that this rule resulted in an
2 orderly and fair sale of water
3 connections and eliminated potential
4 dissent.

5 A. Yes.

6 Q. Did you --

7 A. And it eliminated line jumping.

8 Q. Do you still believe that, that it eliminated
9 dissent and made a fair and orderly sale?

10 A. I believe it helped, yes.

11 Q. Okay. Now on the next page, and I think it's
12 just before the reference to an exhibit, you said,
13 nobody objected to this rule to the best of my
14 knowledge. Do you see that testimony?

15 A. Which page?

16 Q. On page 7, it's a continuation of that same
17 answer.

18 A. Okay, yes, to my knowledge, no one objected
19 to the rule.

20 Q. How would anybody object to a rule that they
21 didn't see until they went to the Discovery House and
22 found that sign?

23 A. I didn't hear a thing about it when I sold
24 certificates. The possibility of line jumping could
25 have created a nightmare, because so many people knew

0342

1 each other and could have been making deals.

2 Q. When you carefully picked that language so
3 that it would be ambiguous about when people could
4 arrive, did you believe people would show up at
5 midnight?

6 A. I didn't know when people would show up. I
7 did have people actually volunteering to sit in my
8 office for two or three days straight prior to the sale.

9 Q. And you didn't allow them to do that though,
10 did you?

11 A. Well, I have to close my office when I leave
12 at night. It would have been a problem.

13 Q. Would you have allowed them to sit outside?

14 A. Yes, but I told them I didn't want them
15 there. I had no way to enforce that.

16 Q. You have heard, I believe, and correct me if
17 I am wrong, but several people have testified that you
18 made it clear to them that they should not show up at
19 9:00 a.m.

20 A. They said that, yes.

21 Q. Was this intent to allow people to come at
22 midnight something that you saw in your notices later,
23 or was it your original intent with your notices to say
24 don't come before 9:00?

25 A. I don't remember. I was very clear at not

0343

1 specifying when I thought anyone should come.

2 Q. Regardless of what the notice could be
3 interpreted to mean, would you agree with me that it
4 could not be interpreted to mean that you could line up
5 before midnight?

6 A. It says, please no queuing or gathering.
7 That was my request, yes.

8 Q. Okay. And that was a rule?

9 A. That was my request. As Exhibit 55 says,
10 there are four rules. Please and thank you, is that a
11 rule? That was a request.

12 Q. So I hate to go back over what we have
13 already done, so now what you're telling me is what you
14 earlier called rules are not rules, they're requests?

15 A. I never called them rules that I'm aware of.

16 MR. PORS: What are you referring to, to the
17 no queuing or gathering or to the numbered items on that
18 page?

19 Q. No queuing or gathering prior to Friday, and
20 then let me also refer you to 69 where once again it
21 says first come, first serve with the office hours, are
22 these all requests then now, not rules of the sale?

23 A. I would say it's informational.

24 Q. You have heard testimony of people that said
25 that you told them that if they showed up earlier than

0344

1 midnight, actually not even midnight, earlier than the
2 sale that they could be arrested for trespass.

3 A. They said that. I never said that.

4 Q. You never said that?

5 A. I never said that.

6 Q. Now a sheriff was called to the location
7 where the sale was; is that correct?

8 A. My landlord, the resort, did call the sheriff
9 because there were people blocking the door to Discovery
10 House.

11 Q. And you actually happened to be there at the
12 time, didn't you?

13 A. I was in the Discovery House when that
14 happened.

15 Q. Were you aware this was going on outside?

16 A. I was aware, but that was my landlord's
17 problem to deal with, not mine.

18 Q. Have you had the opportunity to read the
19 testimony of Sheriff Vierthaler?

20 A. Yes.

21 Q. Do you recollect that in his testimony he
22 said that it was orderly?

23 A. Yes, he created order, I understand.

24 Q. Did you see any disorder?

25 A. I heard angry people, and I do know that the

0345

1 manager asked them to leave, later changed his mind.

2 The people stayed in a specific section, and order was
3 established.

4 Q. So you --

5 A. They were not asked -- they were not removed
6 whatsoever.

7 Q. Okay. So you know that people -- you
8 personally know then that people were lined up before
9 midnight; is that correct?

10 A. Yes. I don't know who.

11 Q. And although you made the point several times
12 that before Friday could mean midnight, you knew that
13 people were lining up even before that; is that correct?

14 A. Yes.

15 Q. How was the decision made to allow those who
16 had established their place in line before midnight in
17 violation of your either rule or recommendation, how was
18 the decision made to allow them to establish their
19 priority for a certificate anyway as opposed to those
20 that did comply with your rule and/or recommendation?

21 A. Well, it was first come, first serve. When I
22 arrived at 9:00 a.m. in the morning, first person who
23 came up to me purchased a certificate. They were
24 orderly at that time. And so I took to understand that
25 those people who had been there before 9:00 a.m. had

0346

1 created some kind of an organization for priority within
2 themselves. I was not there all night. I was not there
3 at midnight. I have no idea who came when.

4 Q. Is it your testimony that you are not aware
5 that the representative of the resort was in that line
6 at the Discovery House where you were attending a
7 seminar before midnight?

8 A. I found out later that person was in line
9 before midnight, yes. That person was at the same
10 seminar I was.

11 Q. Okay. And then he went out and got in line
12 about 5:30; do you remember his written testimony?

13 A. I don't remember seeing him in line
14 personally, no.

15 Q. Just out of curiosity, what was the subject
16 of the seminar?

17 A. I believe it was a management training
18 seminar. I believe I had two of them with resort
19 management.

20 Q. So your testimony is now that when you got
21 there at 9:00 in the morning, you saw something that
22 appeared orderly, and therefore you were unaware that
23 any of those folks that you were giving certificates to
24 had got in line before midnight?

25 A. I did not say that. I was aware there were

0347

1 people in line before midnight.

2 Q. And you were aware you were giving some of
3 those people certificates?

4 A. Yes.

5 Q. Okay. In your testimony, you seem to have
6 two different versions of why the location was changed.
7 One is that the resort changed it, because they were
8 concerned about disrupting operations. And the other is
9 that you talk about several people calling you in the
10 days before the sale, and you told them they might
11 change it. And, in fact, you wrote a fax on May 29th to
12 a realtor saying it was changed, that it was Discovery
13 House. How did it get changed?

14 A. The fax was the result of a tentative
15 decision. The fax was premature. Then when it came
16 down to a day or two before the sale, I was basically
17 telling people who did call me that the sale could be at
18 either place. The signs went up at the utility office
19 at about noon on the 14th, and then I immediately went
20 to Discovery House and put the signs on the door there.

21 Q. What signs were put up at the utility, was it
22 Exhibit 15?

23 A. It was a similar sign to this one. It said
24 the sale will be at Discovery House. Anyone going to
25 the utility office on the 14th would have seen the

0348

1 signs.

2 Q. Now we have not seen a sign that says
3 anything other than what Exhibit 55 says. Are you
4 telling us there is another sign that we have not been
5 provided in our request to the utility?

6 A. That's correct. That sign did no longer
7 exist. There was one copy only. Then the same software
8 was made with this sign. I did not keep it to have it.

9 Q. Because that sign says here, which, of
10 course, would not give someone at the utility the
11 notice.

12 A. Right, this was the Discovery House sign.
13 There were two Discovery House signs. One is a larger
14 version. It was also admitted, I believe, in discovery.
15 And this was the one that I made several copies of to be
16 handed out in addition to being posted.

17 Q. Now you have --

18 A. At the door.

19 Q. Now you have heard the testimony of several
20 of the people here, however, who said there was no sign
21 at the utility. Did you hear that?

22 A. Did they go to the utility office? They said
23 they did not see one, but I don't remember anyone saying
24 they went to the office.

25 Q. So you think they said they didn't see a sign

0349

1 at the utility not because one wasn't there but because
2 they didn't go. Do you think that was their intent?

3 A. I do remember testimony saying they went to
4 the resort, they went to the front desk in the lobby. I
5 don't remember them saying they went to the utility
6 office.

7 Q. Ms. Vierthaler, there was a drafted procedure
8 drafted by Mr. Pors of a lottery priority method of
9 distributing certificates.

10 A. Are you referring to one of the exhibits?

11 Q. I'm referring to Exhibit 117.

12 Do you have 117 in front of you?

13 A. Yes, I do.

14 Q. Now that's a fax from Mr. Pors; is that
15 correct?

16 A. Yes, it is.

17 Q. Laying out a draft procedure for developing a
18 priority list for new water service; is that correct?

19 A. That is correct.

20 Q. Now that draft represents a comprehensive,
21 very explicit method for trying to fairly distribute
22 those certificates, doesn't it?

23 A. It represents a complicated method, yes.
24 It's very specific, yes.

25 Q. And very explicit?

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1 A. Yes.

2 Q. It's not confusing, is it, if you work your
3 way through it?

4 A. It's not, but you notice it says draft.

5 Q. Mm-hm.

6 A. Okay.

7 Q. Was that presented to you and to the other
8 decision makers with Oly Rose for consideration?

9 A. I do not remember receiving it. I do not
10 know that it ever got out of the draft version. I don't
11 know that the people it was addressed to ever responded
12 to Mr. Pors.

13 Q. Apparently, however, a decision was made by
14 the utility not to follow this procedure; is that
15 correct?

16 A. I made an assumption that since I did not
17 receive a final version of this, nor did the utility
18 receive any comments from the attorney or the Utility
19 Commission, we called the Utility Commission Staff, Jim
20 Ward, and went on his recommendation when it came time
21 for sale.

22 Q. Was there anything -- oh, I'm sorry, strike
23 that.

24 A. You do notice that the date is 1999?

25 Q. I do.

0351

1 A. Okay.

2 Q. And finally, Ms. Vierthaler, I'm nearly done,
3 if I could refer you to Exhibit 135.

4 A. Okay.

5 MR. PORS: Which is?

6 Q. It's a fax message to Jim Ward. This one has
7 a handwritten notation back from him.

8 MR. PORS: 35 you say?

9 MR. MICHAEL HANIS: Yes.

10 A. Okay.

11 BY MR. MICHAEL HANIS:

12 Q. Now this is apparently a fax that you
13 prepared; is that correct, and then faxed to Jim Ward of
14 the WUTC?

15 A. That is correct.

16 Q. And on the bottom of that is some
17 handwriting.

18 A. Yes.

19 Q. Is that from Mr. -- is Jim Mr. Ward?

20 A. Yes.

21 Q. Now he says there you actually asked for his
22 approval of the notices that we have just been talking
23 about; is that correct?

24 A. I mentioned him by name in this letter to
25 various people, and I wanted him to review it.

0352

1 Q. Well, this fax is dated July 4th. Wasn't the
2 letter sent on May 23rd?

3 A. No, this letter is for the people who came to
4 the sale and presented their names and addresses to me
5 on Exhibit 46, the list.

6 Q. Okay, thank you, I stand corrected.

7 A. Right.

8 Q. He says though, however, that also the UTC
9 has no policy, underlined, of providing service
10 connections. Had he made that clear to you before, that
11 there was no policy about providing service connections?

12 A. I don't remember.

13 MR. MICHAEL HANIS: That's all I have. We
14 would offer 117 and 135.

15 MR. PORS: No objection.

16 MR. BAILEY: No objections, Your Honor.

17 JUDGE CAILLE: Exhibit 117 and 135 are
18 admitted.

19 MR. MICHAEL HANIS: I'm sorry, could I ask
20 one more, one technical question here.

21 JUDGE CAILLE: Yes.

22 BY MR. MICHAEL HANIS:

23 Q. Referring you to Exhibit 133.

24 A. Which is?

25 Q. And that is entitled water certificates sold

0353

1 June 15th, 2001.

2 MR. PORS: I'm sorry, what exhibit?

3 JUDGE CAILLE: 133.

4 MR. MICHAEL HANIS: 133.

5 BY MR. MICHAEL HANIS:

6 Q. You're familiar with this, Ms. Vierthaler?

7 A. Yes, I am.

8 Q. This is something you prepared?

9 A. Yes, I did.

10 Q. Is this numbered 1 through 38, is this the
11 actual order of the certificates that were sold that
12 day?

13 A. Yes.

14 MR. MICHAEL HANIS: Okay, no further
15 questions, and we would also offer 133.

16 MR. PORS: No objection.

17 MR. BAILEY: No objection, Your Honor.

18 JUDGE CAILLE: 133 is admitted as well.

19 Redirect?

20 MR. PORS: Yes.

21

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

23 BY MR. PORS:

24 Q. Ms. Vierthaler, you testified in regard to

25 Exhibit 69 in your cross-examination that the rules set

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1 forth therein were intentionally ambiguous. I think
2 those were words suggested to you by Mr. Hanis. By
3 agreeing to his language in your answer, did you intend
4 to mean that you were intending to deceive anyone who
5 was applying for a water certificate?

6 A. No, I just did not want to tell them
7 specifically when to come.

8 Q. Were you --

9 A. Because I knew I would hear about it later.

10 Q. Were you concerned that if you had told
11 someone that they should arrive at 4:00 in the morning,
12 for example, that if they did arrive at 4:00 in the
13 morning and that was too late to get a certificate that
14 they would then hold you responsible?

15 A. Yes.

16 MR. MICHAEL HANIS: Objection, leading.

17 JUDGE CAILLE: Why don't you rephrase your
18 question.

19 BY MR. PORS:

20 Q. What was your concern with respect to telling
21 an applicant for water a particular time when you
22 thought they should show up?

23 A. Since I didn't know how many people were
24 coming or when they were coming, I wanted to protect
25 myself from future complaints. Even though it's not a

0355

1 water situation, living on an island, just trying to
2 tell people when they need to get in line for the ferry
3 is a nightmare, and they come back on you, and that's
4 simple compared to this situation.

5 Q. Okay. Referring back to your testimony at
6 page 6 regarding the rule whereby island residents could
7 only represent themselves in line, could you be a little
8 more specific in what your concern was about jumping the
9 line?

10 A. I previously stated that there are a lot of
11 people there that know each other, and I was concerned
12 that several people might walk up to one of the first
13 persons in line and just hand them several checks,
14 therefore jumping the line or bypassing people who had
15 been there waiting and should have received a
16 certificate.

17 Q. And if that had happened, do you have an
18 opinion as to whether or not you would have received
19 complaints from other people further back in line who
20 were not able to pass checks up?

21 A. Yes, there was one questionable certificate I
22 received complaints about, and there was an
23 investigation before that sale was finalized.

24 Q. Are you referring to the Scott Lancaster --

25 A. Yes.

0356

1 Q. Okay. But you were also concerned generally
2 that you might get complaints before the Commission from
3 people if other people were passing their checks and
4 applications up the line to their friends?

5 A. Oh, definitely.

6 Q. That was the purpose for that rule?

7 A. Yes.

8 Q. You testified that you were at the Discovery
9 House the afternoon of June 14th attending a seminar.

10 A. I was.

11 Q. About what time did you leave that seminar?

12 A. I think it was right around 5:30.

13 Q. And at that time, did you notice people, were
14 they actually waiting in a line, or were they just sort
15 of gathered in an area around Discovery House?

16 A. There were people in the parking lot.

17 Q. They weren't in front of the door then or on
18 the steps leading up to the Discovery House?

19 A. Not at that time.

20 Q. Okay. In the parking lot, were they in an
21 organized line, or were they gathered in a space in no
22 particular order?

23 A. I did not notice an order. Some were sitting
24 in chairs. Some were talking to each other. Some were
25 wandering around.

0357

1 Q. So you testified earlier that you were aware
2 that people were lined up before midnight, but you
3 didn't actually see them waiting in a line, did you?

4 A. No, I knew they were on the premises.

5 Q. On the premises.

6 A. On the premises.

7 Q. Did you have any knowledge that afternoon of
8 the 14th as to whether or not people were requested to
9 wait in the parking lot but not to be in a line?

10 A. I wasn't personally there, but I understood
11 that the deputy asked them to wait in a certain area.

12 Q. And that area was located away from the door
13 so people could come and go?

14 A. Yes.

15 Q. Do you have any knowledge, I believe you
16 answered this on your cross-examination but I was trying
17 to verify this, do you have any knowledge as to the time
18 that the resort employee either got into a line or
19 joined the group of people waiting in the parking lot on
20 the 14th?

21 A. I do not know when he arrived there. I was
22 told from many people that he was the one that unlocked
23 the door at midnight.

24 Q. You received a number of phone calls and
25 office visits in the weeks prior to the sale of people

0358

1 inquiring about the sale; is that correct?

2 A. Tremendous, yes.

3 Q. And you didn't keep a record of each
4 conversation that you had?

5 A. No, I didn't.

6 Q. Did you ever tell anyone inquiring about the
7 June 15th sale that they could only obtain one
8 certificate per person or one certificate per property?

9 A. I never said that. I don't believe anyone
10 ever asked either.

11 Q. You provided some cross-examination testimony
12 about Orcas Highlands and said that if they had -- a
13 board member had come to the line that they would have
14 been able to purchase as many certificates as they
15 wanted essentially; is that correct?

16 A. That's what first come, first serve meant in
17 this case.

18 Q. Hypothetically then, if an Orcas Highlands
19 board member had become the first person waiting in line
20 for the sale and asked for all 38 certificates, would
21 you have sold them all 38 certificates?

22 A. I would have had to, yes.

23 Q. Provided they had the check for the fee?

24 A. Yes.

25 Q. And just to verify, when you talked to Jim

0359

1 Ward regarding the Staff's recommendation of a first
2 come, first serve sale, he didn't tell you that you
3 could only provide one certificate per person or
4 property, did he?

5 A. He never specified that.

6 Q. Did he tell you in response to your question
7 that first come, first serve was a recommendation, or
8 did he describe it as, you know, you should do this?
9 How did he put that to you?

10 A. Both ways.

11 Q. Regarding the waiting list that you heard
12 some of the witnesses including Mr. Russell testify to,
13 did you ever tell anyone that that list was to establish
14 an order for the sale of connections?

15 A. No, that list was specifically referred to as
16 a mailing list. It was only a mailing list. I don't
17 know how many times I repeated myself. Many people
18 believed what they wanted to, thinking it was a priority
19 list. Mr. Russell thought it was a waiting list. I did
20 tell people it was only an informational mailing list,
21 because I can not commit water under my tariff until I
22 receive money. And when I receive the money under my
23 tariff, I must commit water. And under a moratorium
24 situation, I can do neither.

25 Q. Is that why you rejected checks that were

0360

1 tendered to you by Mr. Reinholt and others who testified
2 they came prior to June 15th and tried to purchase a
3 connection?

4 A. That's correct.

5 Q. Did Rosario Resort ask you if they could get
6 priority for the 16 connections they wanted for resort
7 property when you were setting up the rules for the
8 sale?

9 A. I believe someone within the resort
10 management did.

11 Q. And what did you tell them?

12 A. I told them no, they couldn't have priority,
13 and they had to purchase their certificates first come,
14 first serve just like everybody else.

15 Q. Several people have testified that you told
16 them they could not arrive for the sale prior to office
17 hours on Friday the 15th or prior to 9:00 a.m., and you
18 testified in cross-examination that you were very
19 careful to tell people that you requested they not
20 attend prior to Friday but that you didn't specify a
21 time.

22 A. That's correct.

23 Q. Do you believe that you were consistent in
24 responding to questions about when people should arrive
25 at the sale?

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1 A. Absolutely consistent, yes, I was.

2 Q. And are you certain that you did not say to
3 anyone that they could not arrive for the sale until
4 9:00 a.m. on Friday the 15th?

5 A. Absolutely.

6 Q. How long does it take to walk from your
7 office at the mansion to the Discovery House?

8 A. I would say less than five minutes.

9 Q. On June 14th you testified that you attended
10 a seminar at the Discovery House. Approximately what
11 hours were you at the Discovery House in that seminar?

12 A. I was there all afternoon until about 5:30.
13 I can't remember if it started late morning or not, but
14 I know I was there all afternoon.

15 Q. So you could not have been in your office on
16 the afternoon of 6-14 to take calls from Gwyneth Burrill
17 or Richard Russell; is that correct?

18 A. That is correct.

19 MR. PORS: Nothing further.

20 JUDGE CAILLE: Before you do your redirect, I
21 have a question or two, and this is for purposes of
22 clarification of the record.

23

24

25

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

2 BY JUDGE CAILLE:

3 Q. Would you please turn to Exhibit 117. This
4 is the fax transmittal sheet dated April 21, 1999.

5 A. Yes.

6 Q. Can you tell me, if you know, what the
7 purpose of this priority list, the draft procedure was,
8 what the purpose of this draft procedure, why this draft
9 procedure was prepared, if you know?

10 A. I'm not really sure. I can guess it had to
11 do with all of the people out there wanting a water
12 connection and/or those who had prepaid. I was directed
13 by the utility commission to send out a survey to
14 contact the people who had prepaid.

15 Q. The reason why I ask is because within the
16 body of the fax transmittal sheet it talks about a
17 pre-hearing conference and -- well, I guess that's
18 probably all you know.

19 MR. PORS: Would it help if I asked a
20 follow-up question on that subject? May I do that?

21 JUDGE CAILLE: When you do your redirect,
22 that would be --

23 MR. PORS: I was just concluding my redirect,
24 but if it would help.

25 JUDGE CAILLE: Oh, okay, I'm sorry, go ahead.

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1

2

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

3

BY MR. PORS:

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5

6

Q. Ms. Vierthaler, do you recognize from that fax cover sheet that it's been addressed to Robert Lundgaard and Mary Tennyson?

7

8

9

A. And Jim Ward.

Q. And Jim Ward. And the date on that is April 21, 1999?

10

11

12

13

14

A. That is correct.

Q. At about that time, were you involved in a complaint filed by I believe it was the parties' name was Gaskill and others and negotiating a settlement of that case?

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

BY MR. MICHAEL HANIS:

Q. Start near the last. You testified that you

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1 were in that seminar so you could not have talked to
2 Ms. Burrill on the phone that day.

3 A. That afternoon, that's correct.

4 Q. Let me refer you to your testimony, your
5 direct testimony, page 9.

6 JUDGE CAILLE: Excuse me, let us get there.
7 It's exhibit?

8 MR. MICHAEL HANIS: T65.

9 JUDGE CAILLE: T65, and you said which page?

10 MR. MICHAEL HANIS: Page 9.

11 JUDGE CAILLE: Okay.

12 BY MR. MICHAEL HANIS:

13 Q. And I'm referring to your answer to the
14 second question where you were asked, did anyone call
15 you on June 14th to obtain information, and your answer
16 was:

17 Yes, I spent most of the day in a
18 seminar, but I did receive numerous
19 calls on June 14 when I was in the
20 office. I informed all callers that day
21 that the sale would be held at 9:00.

22 So is it possible that Ms. Burrill was one of
23 those callers that you talked to while you were in the
24 office?

25 A. If she called me in the morning, yes. She

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1 specified she called me in the afternoon. I also had
2 many, many voice mail messages where people attempted to
3 call me, but I could not get back to them at the late
4 afternoon.

5 Q. Okay. You know, we're sympathetic to the
6 tough job you have in a situation like this, but I'm
7 required to ask you this anyway. You have agreed that
8 the notices and procedures you set up were intended to
9 be ambiguous, that people would not be able to predict
10 what they should do to get a permit.

11 MR. PORS: Object to his characterization.
12 She said that it was intended not to convey when people
13 should show up, but she didn't specify anything else as
14 to what they should do.

15 MR. MICHAEL HANIS: As I remember, she agreed
16 with my characterization that it was intentionally
17 ambiguous. She accepted that characterization.

18 MR. PORS: And subsequently clarified that.

19 MR. MICHAEL HANIS: Okay, that's --

20 MR. PORS: So if you're going to refer to
21 something specifically.

22 BY MR. MICHAEL HANIS:

23 Q. So as clarified then by your counsel, would
24 it be your understanding that your duty as the manager
25 of a regulated utility in conducting a fair and

0366

1 reasonable distribution would require you to give
2 accurate, reliable, verifiable information to the people
3 that are dependent upon you for something as important
4 as a water certificate?

5 A. I believe I emphasized the fact that the
6 office would be open at 9:00 a.m. I had no way of
7 knowing or enforcing anything specifically for when they
8 could or couldn't come, and that's why it was not
9 specifically clear.

10 Q. Okay, and I understand that. But my question
11 was, do you believe it is a duty that you have as the
12 manager of a regulated utility in conducting a fair and
13 reasonable distribution of water certificates to give
14 accurate, complete, reliable information?

15 A. Yes, I do, and yes, that's what I thought I
16 did in this case.

17 Q. Now you said that you changed the rule, the
18 jumping the line rule I think you called it, changed
19 that rule the day before.

20 A. Mm-hm.

21 Q. But you have also testified that these are
22 people that can get in a fight over the line on the
23 ferry, and you also testified you had a tremendous
24 number of phone calls from the folks who were interested
25 in this, very interested in this. Is it your testimony

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1 still that you could not have predicted more than two
2 days before that you needed to change the rules?

3 A. I did not predict it.

4 Q. Okay. Were you aware that the people in the
5 parking lot at the Discovery House when you came outside
6 from the seminar, that they had taken numbers, that they
7 had actually photographed themselves in line to
8 establish an order in the line?

9 A. I had no idea they were taking photographs.
10 I heard there were numbers. The utility had nothing to
11 do with numbers. I don't know where they came from.

12 Q. Did you feel any obligation at all to let
13 those folks know that their establishing an order for
14 those certificates would not avail them, that that was
15 contrary to your rules for establishing an order for
16 certificates?

17 A. I believe that's what was in the sign. I let
18 them read the sign.

19 Q. But then you chose not to enforce that when
20 you actually distributed the certificates; is that
21 correct?

22 A. The sign says there is no number system to
23 secure your place. I thought that took care of the
24 people who were picking up a number in the parking lot
25 thinking that the utility system put the numbers there

0368

1 for them to use.

2 Q. But they did it, and you knew it, and you
3 still allowed them to get those certificates.

4 A. I didn't take numbers from people when they
5 were coming to buy a certificate.

6 Q. Now you have testified in response to
7 questions by your counsel that say had Orcas Highlands
8 gotten first in line and taken all 38 certificates, you
9 would have, and your words were, would have had to sell
10 those all to Orcas Highlands.

11 A. I did not limit the number of connections,
12 and yes, that was a possibility.

13 Q. Is there any way in writing or otherwise that
14 we could have predicted that, and let me explain the
15 dilemma I have. It seems to me that had you said, well,
16 you're not the one I wanted up front, we're only going
17 to give you one, there would be no way that anybody
18 could disprove that that was your rule, could they? Did
19 that make a bit of sense?

20 MR. PORS: I will --

21 A. I don't understand.

22 MR. PORS: Just wait, I'm trying to put an
23 objection on the record.

24 I don't understand the question, and I would
25 ask that it be rephrased.

0369

1 JUDGE CAILLE: If you could, please.

2 MR. MICHAEL HANIS: Sure.

3 BY MR. MICHAEL HANIS:

4 Q. By virtue of the things that you produced,
5 wrote, and distributed, had you been confronted with the
6 situation your counsel talked about, one person taking
7 all 38 certificates, could you have restricted that one
8 person to one certificate, would there have been any way
9 that anybody could have shown that that violated your
10 rules? I mean you had the option at that point to go
11 either way, didn't you?

12 A. I had not specified a number of connections
13 someone could purchase, and I held to that.

14 Q. And that rule, the only place that was
15 contained was in your head, and it was unexpressed to
16 any person; is that correct?

17 A. I expressed no limitations anywhere. I truly
18 felt that a bulk customer or a home owner who qualified
19 could purchase what they wanted or needed for their
20 property.

21 Q. Okay. When you found out, and I assume you
22 found out fairly quickly, that there had been people
23 lined up before midnight, that they had established an
24 order, and that they had gotten their certificates at
25 the expense of other folks who had not gotten there

0370

1 before midnight as you directed or recommended, did you
2 give any consideration to rescinding that sale as having
3 been unfair and unreasonable?

4 A. I did not.

5 MR. MICHAEL HANIS: Okay, that's all I have.

6 JUDGE CAILLE: Anything further?

7 MR. PORS: I don't have anything.

8 JUDGE CAILLE: Okay. I have a request. Let
9 me see, this is under Complainants' cross exhibits,
10 Exhibit 132, I think it would be helpful if the
11 Commission had this as an exhibit in this proceeding.
12 This is a finalized, this says Rosario Utilities
13 priority water connections finalized list by customer.

14 MR. PORS: I believe this is one of the
15 Exhibits to Ms. Vierthaler's testimony.

16 JUDGE CAILLE: Is it?

17 MR. PORS: I can just check.

18 JUDGE CAILLE: Okay.

19 MR. PATRICK HANIS: I think it's a different
20 list.

21 MR. PORS: Is it a different list? What is
22 the exhibit number?

23 JUDGE CAILLE: It's Exhibit 132.

24 MR. PORS: Okay.

25 JUDGE CAILLE: And I don't know if

0371

1 Ms. Vierthaler is familiar with this exhibit.

2 THE WITNESS: The finalized list by customer?

3 JUDGE CAILLE: Yes.

4 THE WITNESS: I made it.

5 JUDGE CAILLE: Okay, good. Then could you
6 just describe it for me for the record.

7 THE WITNESS: Okay. There was a previous
8 list on file with the utility commission. This list was
9 made shortly before the sale to send to the commission
10 to finalize those who had priority and kept priority,
11 those who declined priority, didn't qualify from the
12 previous list, and it also included those people that
13 the county and the State Health Department allowed to
14 build.

15 JUDGE CAILLE: Okay, I don't know if either
16 of you folks can offer it, I'm going to ask that it be
17 included into the record.

18 MR. MICHAEL HANIS: Could I just voir dire it
19 for a moment?

20 JUDGE CAILLE: Sure, it's one of your cross
21 exhibits.

22 MR. MICHAEL HANIS: Right.

23

24

25

0372

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

2 BY MR. MICHAEL HANIS:

3 Q. This list contains a lot of people that are
4 called having priority for reasons other than the UTC
5 ordered in the Gaskill case; is that correct?

6 A. There are some, yes.

7 MR. MICHAEL HANIS: We would offer it.

8 JUDGE CAILLE: All right, any objection?

9 MR. PORS: No.

10 JUDGE CAILLE: All right, Exhibit 132 is
11 admitted into the record, and are we complete with
12 Ms. Vierthaler?

13 MR. PORS: Yes.

14 JUDGE CAILLE: All right, you are excused.

15 Should we take a five minute break before
16 Mr. March?

17 MR. PORS: Well, I've got two other witnesses
18 whose testimony is coming in by stipulation.

19 JUDGE CAILLE: Okay, let's go ahead and take
20 care of that.

21

22 (The following exhibits were identified in
23 conjunction with the testimony of JACK COE.)

24 Exhibit T78 is JC-T1: Direct Testimony (April
25 22, 2002). Exhibit 79 is JC-1: May 23, 2001 letter to

0373

1 all Property Owners in the Vusario, Orcas Highlands and
2 Rosario Water Systems from Chris Vierthaler, manager of
3 Rosario Utilities.

4

5 (The following exhibits were identified in
6 conjunction with the testimony of SERGEANT STEVE
7 VIERTHALER.)

8 Exhibit T80 is SV-T1: Direct Testimony (April
9 22, 2002).

10

11 MR. PORS: I move for the admission of
12 Exhibit T78 and Exhibit 79, being the direct written
13 testimony of Jack Coe, which is being admitted by
14 stipulation of the parties.

15 JUDGE CAILLE: Since it's being admitted by
16 stipulation, it is now admitted into the record, I mean
17 it's been stipulated to, it's now admitted into the
18 record.

19 MR. PORS: Thank you. I'm also moving for
20 the admission of Exhibit T80, the direct testimony of
21 Sergeant Steve Vierthaler, which has also been
22 stipulated to by the parties.

23 JUDGE CAILLE: Okay, this is admitted into
24 the record as well.

25 All right, then let's take a ten minute

0374

1 break, and then we'll do Mr. March.

2 (Recess taken.)

3 JUDGE CAILLE: We are back on the record
4 after a brief recess, and Mr. March is our next witness,
5 and I will now swear you in. Please raise your right
6 hand.

7

8 Whereupon,

9 JOSEPH MARCH,
10 having been first duly sworn, was called as a witness
11 herein and was examined and testified as follows:

12

13 (The following exhibits were identified in
14 conjunction with the testimony of JOSEPH MARCH.)

15 Exhibit T81 is JM-T1: Direct Testimony (April
16 22, 2002).

17

18 JUDGE CAILLE: Thank you.

19

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

21 BY MR. BAILEY:

22 Q. Mr. March, would you state your name for the
23 record, please.

24 A. Sure, it's Joseph L. March.

25 Q. Do you have your written direct testimony in

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1 front of you?

2 A. I do.

3 Q. Mr. March, if I asked you the same questions
4 in the written direct testimony, would your answers be
5 the same today as they were when you answered them?

6 A. Yes.

7 MR. BAILEY: Your Honor, we move for the
8 admission of Mr. March's direct testimony.

9 JUDGE CAILLE: And that has been identified
10 as Exhibit T81. Is there any objection to the admission
11 of this testimony?

12 MR. PATRICK HANIS: No, Your Honor.

13 MR. PORS: No.

14 JUDGE CAILLE: Exhibit T81 is admitted into
15 the record, and Mr. March is available 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. PATRICK HANIS:

20 Q. Good afternoon, my name is Patrick Hanis.
21 Mr. March, what do you do as a controller for the
22 resort?

23 A. My responsibilities are, for the resort, is
24 to produce financial statements and also manage the
25 budget. I'm responsible for accounts payable, accounts

0376

1 receivable, as well as the cash handling for the resort.

2 Q. And were you also last year in charge of
3 obtaining water certificates for the resort on June
4 15th?

5 A. Yes.

6 Q. And each month Ms. Vierthaler would bring to
7 you the monthly water invoices for the resort?

8 A. That's correct.

9 Q. And updates on the status of the water
10 projects were brought to your office?

11 A. That's correct.

12 Q. And on occasion you would speak with
13 Ms. Vierthaler about the status of the project?

14 A. Yes.

15 Q. And you would speak with her about the
16 upcoming June 15th sale?

17 A. Yes.

18 Q. You heard the testimony of Ms. Vierthaler
19 regarding meetings she had with resort Oly Rose staff
20 regarding the upcoming June 15th water sale; did you
21 attend any of those meetings?

22 A. I may have been involved in some of the after
23 effect of those meetings.

24 Q. Prior to the sale?

25 A. Prior to the sale, yes.

0377

1 Q. Do you recall any discussion regarding the
2 number of permits that the resort was going to receive?

3 A. Yes.

4 Q. And were those conversations in the presence
5 of Ms. Vierthaler?

6 A. I believe so, yes.

7 Q. At any time, did you or other members of Oly
8 Rose or the resort offer advice on how the sale should
9 be conducted?

10 A. I did not.

11 Q. Did other members?

12 A. Of Oly Rose?

13 Q. Or the resort.

14 A. Maybe as far as a location, but as far as the
15 actual, no, not that I recall.

16 Q. Not as to the process?

17 A. No.

18 Q. When is it that you learned that the location
19 of the sale had changed?

20 A. I'm not sure of the exact day. I know that
21 it was either the day before or the day -- a couple of
22 days before that it was decided to move it.

23 Q. But you are aware that it was the resort
24 management that made that change?

25 A. Yes.

0378

1 Q. In your testimony, you testified that the
2 change in the notice of where the sale was going to
3 occur was appropriate. Do you recall making that
4 testimony?

5 A. Yes.

6 Can you say that again, please?

7 Q. Sure.

8 A. Appropriate?

9 Q. In your testimony, you state on page 4 of
10 Exhibit T81 in the last sentence:

11 Management told Chris that the location
12 needed to be changed, and she made the
13 appropriate changes to the notice.

14 You characterized the change in the notice as
15 appropriate; is that correct?

16 A. Yes.

17 MR. PORS: Excuse me, I don't see where this
18 testimony is. You said page 4?

19 MR. PATRICK HANIS: Page 4, second question
20 down, last sentence.

21 MR. PORS: Okay, I'm sorry.

22 A. She made the appropriate changes to the
23 notice, yes.

24 BY MR. PATRICK HANIS:

25 Q. Are you familiar with how the sale of water

0379

1 certificates should occur?

2 A. How the sale?

3 Q. Of water certificates should occur.

4 A. No.

5 Q. Are you familiar with what proper notice is
6 for purposes of selling water certificates?

7 A. No.

8 Q. So you have no basis for your testimony that
9 the notice was an appropriate change?

10 A. That's correct.

11 Q. During those meetings with Ms. Vierthaler
12 prior to the sale, was Oly Rose aware that it was going
13 to be able to take 16 of the water certificates?

14 A. Well, we -- you're saying were we aware that
15 we were going to be able to get 16 water certificates?

16 Q. Correct.

17 A. No, we were not aware.

18 Q. Was it planned that Oly Rose or the resort
19 was going to take 16?

20 A. That was our objective was to take 16 water
21 connections, yes.

22 Q. You stated in your testimony that you knew
23 that it was important for the resort to get water
24 connections; isn't that correct?

25 A. To the ownership of the resort, yes.

0380

1 Q. In fact, the resort had plans to expand, but
2 it couldn't do so without those water certificates,
3 could it?

4 A. Not to the extent that they wanted to, that's
5 correct.

6 Q. You also testified that the resort management
7 sought to strike a fair balance between the positions of
8 how many water certificates the resort was going to take
9 and how many Oly Rose was going to take; isn't that
10 correct? If I could refer you to page 11 of your direct
11 testimony, second question down.

12 MR. BAILEY: If possible, if you could just
13 refer him to the page in the question, that would help
14 us follow your question.

15 JUDGE CAILLE: Page 11?

16 MR. PATRICK HANIS: Second question down.

17 JUDGE CAILLE: Second question.

18 THE WITNESS: And it's the one that says, was
19 the master plan calls for four of the additional? I
20 probably have a different -- my page numbers may be
21 different.

22 MR. PATRICK HANIS: It appears so, perhaps
23 your counsel would offer you --

24 MR. BAILEY: Where are you, Mr. Hanis?

25 MR. PATRICK HANIS: I'm on page 11 of Exhibit

0381

1 T81.

2 BY MR. PATRICK HANIS:

3 Q. The question is:

4 Why did the resort refrain from
5 purchasing all the water service
6 connections it could have purchased
7 under the master plan.

8 Are you with me?

9 A. Yeah.

10 Q. The last sentence, I'll just read the whole
11 answer.

12 The resort management decided that
13 development of the resort was important,
14 but the outside development on Orcas
15 Island was also important. It was and
16 is in the best interests of the resort
17 to have the island developed by both the
18 resort and by the property owners. The
19 resort management sought to strike a
20 fair balance between these positions.

21 Is that your testimony?

22 A. That's correct.

23 Q. Does that remain your testimony today?

24 A. Yes.

25 Q. So the resort management was attempting to

0382

1 strike a fair balance between how many water connections
2 people outside the resort could get and how many the
3 resort was going to get?

4 MR. BAILEY: Objection, asked and answered.

5 MR. PATRICK HANIS: He has not answered that
6 question.

7 JUDGE CAILLE: I don't know if he has
8 answered it or not.

9 Just would you answer that again.

10 THE WITNESS: Sure.

11 JUDGE CAILLE: If you have already answered
12 it.

13 THE WITNESS: Can I ask with another question
14 to clarify?

15 JUDGE CAILLE: Yes, go ahead, yes. Don't
16 answer a question unless you understand it, please.

17 THE WITNESS: Right.

18 A. I think where you're leading is to how we
19 came up with 16 water connections or where we're --

20 BY MR. PATRICK HANIS:

21 Q. I'm asking you about the resort management's
22 decision to strike a fair balance between how many it
23 was going to get and how many other customers were going
24 to get.

25 A. Okay, and you're asking why?

0383

1 Q. I'm not asking why. I'm asking if it was
2 your testimony that it was the resort management that
3 was deciding how to strike a fair balance between the
4 positions?

5 A. Okay, you're asking who? I'm confused.

6 Q. Is that your testimony, that the resort
7 management was making that decision?

8 I will try and be a little more broad.

9 A. Okay.

10 Q. Who was the resort management that was
11 striking the fair balance?

12 A. That would have been -- it could have -- let
13 me think. It was asset manager of Olympus Real Estate.

14 Q. Okay.

15 A. With Oly Rose as well as the partner of
16 Olympus Real Estate and probably -- and Sam Shore, the
17 general manager at the time.

18 Q. And in the meetings to determine how to
19 strike a fair balance between the positions as you
20 testified, would Ms. Vierthaler have been present?

21 A. She may have been, yes.

22 Q. How was it you became informed of the change
23 in the sale location?

24 A. I didn't receive written notice. It was told
25 to me.

0384

1 Q. Who told you?

2 A. I can't remember if it was the general
3 manager or Chris, but it was one of the two.

4 Q. Do you recall how far in advance of the sale
5 you received that information?

6 A. Maybe two days.

7 Q. You testified that you arrived at the sale
8 between 5:30 and 6:30 p.m. on June 14th?

9 A. That's correct.

10 Q. And you had been attending a meeting of some
11 sort at Discovery House?

12 A. That's correct.

13 Q. Did you go immediately from the Discovery
14 House to get in line at the sale?

15 A. I believe I may have went up to my office in
16 the mansion and then came back down.

17 Q. When you arrived back at the Discovery House,
18 did you notice the sign that's been referred to as
19 Exhibit 55?

20 A. Yes.

21 Q. Do you need a copy of that sign?

22 Do you recall seeing that sign when you
23 arrived on Thursday?

24 A. Yes.

25 Q. Did you read that sign?

0385

1 A. Yes.

2 Q. Did you read the statement that there was to
3 be no queuing or gathering prior to Friday?

4 A. Yes.

5 Q. Did you remain in line despite that?

6 A. Yes.

7 Q. You testified on page 6 of your testimony,
8 and the question asked, where were you first in line
9 that you, Jack Coe, and Fred Munger, quote, in the last
10 sentence, seemed to all agree on how things were going
11 to operate that night while we waited.

12 A. Okay.

13 MR. BAILEY: Object to the characterization
14 of his testimony, I don't think that's what it says.

15 JUDGE CAILLE: Which line are you referring
16 to?

17 MR. PATRICK HANIS: The last sentence of --
18 it would be on lines 11 and 12, the last sentence.

19 MR. BAILEY: I can clarify my objection.

20 JUDGE CAILLE: Would you, please.

21 MR. BAILEY: His question seems to imply that
22 there were three people who were agreeing as to how
23 things would operate. Those three people would be Jack
24 Coe, Mr. March, and Fred Munger. I don't believe that's
25 what his testimony states. It looks to me as though his

0386

1 testimony states that everyone in line agreed in a
2 congenial manner as to how things would operate. And so
3 I object to the characterization of his testimony.

4 JUDGE CAILLE: Your objection is sustained,
5 and you may ask a different question or rephrase your
6 question.

7 BY MR. PATRICK HANIS:

8 Q. Who was making the decisions in line that
9 night?

10 A. There was not one person making the decisions
11 on the line, in the line. It was a -- it was a --
12 basically it was a consensus.

13 Q. Okay. As far as you're aware, had all the
14 people in line that night before midnight read this
15 certificate, Exhibit 55, water certificate notice that
16 had been displayed on the door of Discovery House?

17 MR. BAILEY: Objection, Your Honor, calls for
18 speculation.

19 MR. PATRICK HANIS: I have asked him if he is
20 aware.

21 MR. BAILEY: Asking him to speculate.

22 JUDGE CAILLE: You can answer the question.
23 It does seem to be speculative to me.

24 A. It was --

25 JUDGE CAILLE: Wait.

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1 THE WITNESS: Okay.

2 JUDGE CAILLE: I'm not finished.

3 MR. PATRICK HANIS: I can rephrase the
4 question.

5 JUDGE CAILLE: Why don't you do that.

6 BY MR. PATRICK HANIS:

7 Q. Was there any discussion about the water
8 certificate sign posted?

9 A. Yes.

10 Q. On page 7 of your testimony, lines 3 through
11 10, you answer to a question, the question being, what
12 was the mood of those around you waiting. You speak
13 about a numbering system that had been placed before you
14 arrived but that:

15 We felt it would be unfair for a person
16 to take a number, leave, and then to
17 show up on time for the sale without
18 having waited in line all night with the
19 rest of us.

20 Do you recall giving that testimony?

21 A. Yes, I do.

22 Q. You characterized it as unfair; would you
23 still characterize that as unfair?

24 A. Yes.

25 Q. Okay. Would you agree with me then that it

0388

1 would be unfair if a person was told that they couldn't
2 line up the day before the sale while others were
3 allowed to line up the day before the sale?

4 A. Yes.

5 Q. Would you agree with me that it would be
6 unfair if a person had arrived at the resort, two people
7 had arrived at the resort at the same time, one person
8 knowing the location of the sale to be at the Discovery
9 House, and the other person knowing that the location
10 was still or believing that the location was still at
11 the utility office, and those persons had gone there at
12 the same time that the person who went and had the
13 previous notice straight to the Discovery House would
14 have an unfair advantage over the person who went to the
15 utility first, getting their place in line?

16 MR. BAILEY: Your Honor, I object to the
17 hypothetical. It's not based on fact, it's not based on
18 reality, and it doesn't correspond to his testimony.

19 JUDGE CAILLE: Is this a hypothetical?

20 MR. PATRICK HANIS: I'm asking about the
21 fairness that he has testified in the sale to be
22 determined.

23 MR. PORS: I will also object on the basis
24 that it goes beyond the scope of his testimony.

25 JUDGE CAILLE: If this is --

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1 MR. PATRICK HANIS: I will withdraw the
2 question.

3 JUDGE CAILLE: Okay.

4 BY MR. PATRICK HANIS:

5 Q. Are you familiar with what the status is with
6 all the water certificates that the resort received June
7 12th and June 15th?

8 A. I'm familiar with the status of them.

9 Q. And what they're being used for?

10 A. Yes.

11 Q. What are they being used for?

12 A. They're being held for future development of
13 the resort.

14 Q. Are any of those water certificates being
15 sold with other land owned by the resort or Oly Rose?

16 A. Not at this time.

17 JUDGE CAILLE: Excuse me, could you back up
18 two questions.

19 (Record read as requested.)

20 MR. PORS: I'm going to object to that
21 question as being beyond the scope of the direct
22 testimony, and I think counsel is trying to take this
23 beyond, you know, the scope of this witness's testimony.

24 JUDGE CAILLE: Well, my concern -- I'm going
25 to have a question for this witness to clear up what my

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1 concern is, and hopefully I will gain understanding from
2 what -- from the mention of June 12th, so I'm going to
3 overrule your objection.

4 MR. PORS: Okay.

5 JUDGE CAILLE: Because I want to know for
6 myself and for the record.

7 BY MR. PATRICK HANIS:

8 Q. Are you aware if Rosario received connections
9 on June 12th?

10 A. Yes.

11 Q. Explain how the resort received those
12 connections.

13 A. Those were part of the priority list based on
14 the, what is it, Gas --

15 JUDGE CAILLE: Gaskill.

16 A. Well, the same -- the CUP. We had a permit
17 for expansion of the hotel.

18 Q. I'm close to being done. On page 2 of your
19 testimony on line 21, you testify that Rosario received
20 -- Rosario Resort received the same treatment that other
21 customers received on June 14th and 15th, 2001. Was
22 Rosario Resort ever told to leave and come back on
23 Friday by Ms. Vierthaler?

24 MR. PORS: I will object that there's no
25 testimony in this case that anyone was told to leave and

0391

1 come back.

2 MR. PATRICK HANIS: We have the stipulated
3 testimony of Mr. Walt Torbet, who testifies to that very
4 fact.

5 MR. PORS: He's not a Complainant in this
6 case.

7 JUDGE CAILLE: The stipulated testimony is
8 admitted by stipulation. The facts that are whatever is
9 in that testimony doesn't -- it isn't that everything in
10 there is true. I recall that was your --

11 MR. PATRICK HANIS: And we admit that, but we
12 have offered those as being true facts, and so to the
13 extent we would seek to rely on them.

14 JUDGE CAILLE: Okay, I see what you're
15 saying. So you're saying as long as there is that
16 testimony in the record and it is -- well, I don't know
17 if it's disputed or undisputed at this point.

18 MR. PATRICK HANIS: That's I'm sure for your
19 decision.

20 MR. BAILEY: Well, it is disputed, but beyond
21 that, that's pretty far outside the scope of his direct
22 testimony, and we have continued to go outside the scope
23 of his direct testimony. We would simply object to this
24 particular line of questions.

25 MR. PATRICK HANIS: I believe his testimony

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1 is very clear, that he has testified that they received
2 the same treatment as other customers received on June
3 14th and 15th. I am asking very specific questions
4 about the treatment the resort received at the sale.

5 JUDGE CAILLE: I'm going to permit him to
6 respond to that, because he does talk -- say that -- he
7 does mention that about the same treatment. Can you
8 tell me how many of these questions you have?

9 MR. PATRICK HANIS: I have about four or five
10 questions, and I'm done.

11 JUDGE CAILLE: All right, go ahead.

12 BY MR. PATRICK HANIS:

13 Q. Do you recall the question?

14 A. No.

15 Q. I will rephrase the question.

16 Was Rosario Resort ever told by
17 Ms. Vierthaler to leave and come back on Friday?

18 A. No.

19 Q. Were other potential customers allowed, like
20 the resort, to decide where the location of the sale was
21 going to occur?

22 MR. BAILEY: Objection, Your Honor, just I
23 don't understand the question.

24 Q. Let me rephrase it.

25 Were other potential customers, not related

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1 in any way to the resort or Oly Rose, allowed to assist
2 Oly Rose or the resort and Ms. Vierthaler in its
3 decision to change the location of the sale?

4 MR. PORS: I object to the form of the
5 question to the extent that it implies that the resort
6 was allowed to assist Ms. Vierthaler in setting up the
7 sale.

8 JUDGE CAILLE: Can you rephrase your
9 question. I agree with counsel.

10 BY MR. PATRICK HANIS:

11 Q. Were other customers allowed to assist in the
12 decision of where to hold the sale like Oly Rose or
13 Rosario Resort was allowed to do?

14 A. Not that I'm aware of.

15 Q. Was the resort told that they could not camp
16 out the day before the sale?

17 A. No.

18 MR. PATRICK HANIS: No further questions.

19 JUDGE CAILLE: Redirect?

20 MR. BAILEY: I do have a couple of redirect
21 questions, Your Honor, but I don't know if Mr. Pors has
22 any cross.

23 JUDGE CAILLE: Oh, did you have some?

24 MR. PORS: No, I don't.

25 JUDGE CAILLE: Okay.

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1 MR. BAILEY: I have a few questions to try
2 and clarify some of your answers.

3 MR. PORS: I'm sorry, I do have a question I
4 just remembered.

5

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

7 BY MR. PORS:

8 Q. Mr. March, you testified that you were at the
9 Discovery Center attending a conference the afternoon of
10 June 14th.

11 A. That's correct.

12 Q. Did you see Ms. Vierthaler at the same
13 conference?

14 A. Yes, I did.

15 Q. And as far as you know, was she in attendance
16 at that conference the entire afternoon of the 14th?

17 A. I believe so, yes.

18 Q. When did that conference end up; I mean when
19 did it end or terminate?

20 A. Between 5:00, 5:30.

21 MR. PORS: Okay, thank you.

22 JUDGE CAILLE: All right, Mr. Bailey.

23 MR. BAILEY: Thank you, Your Honor.

24

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0395

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

2 BY MR. BAILEY:

3 Q. Mr. March, would you please turn to page 4 of
4 your written direct testimony. The second question and
5 answer, you were asked about a particular word in the
6 last sentence of your answer, namely the word
7 appropriate. And if you would read that last sentence,
8 does your sentence there mean to imply that the rules or
9 regulations established were appropriate or whether or
10 not the change was appropriate in line with what had
11 been decided by resort management?

12 A. I believe that the change -- it's referring
13 to the change being correct or appropriate.

14 Q. You were not making a comment about the rules
15 and regulations of the sale itself?

16 MR. PATRICK HANIS: Objection, leading.

17 A. No, I was not.

18 JUDGE CAILLE: Technically he's correct, that
19 was leading. Do you want to rephrase your question.

20 MR. BAILEY: I think he has answered in such
21 a way that I don't need to.

22 BY MR. BAILEY:

23 Q. Now if you would please turn to page 11 of
24 your written direct testimony. I believe again we're
25 talking about the second question and answer. Again

0396

1 it's the last sentence that states, the resort
2 management sought to strike a fair balance between these
3 positions. Did you mean to imply that the resort
4 controlled how the sale was to take place?

5 A. No, I meant to -- what I'm saying there is
6 that we -- the management at the resort knew that it
7 could -- had the possibility to be able to buy as many
8 connections up to I believe 23, 24 connections, and we
9 didn't want to scoop up as many as we could. It was --
10 we were looking for a balance in order to have, of the
11 remaining 38, to try to be fair as to be able to leave
12 some of those connections out there to be sold to
13 property owners.

14 Q. Was the balance that you're talking about
15 there, does it have anything to do with how the rules of
16 the sale were set up?

17 A. No.

18 Q. Did you have anything to do with establishing
19 how the rules of the sale were set up?

20 A. No, I didn't.

21 MR. BAILEY: That's all that I have, Your
22 Honor.

23 MR. PATRICK HANIS: Nothing further.

24 JUDGE CAILLE: All right, thank you, you're
25 excused, Mr. March.

0397

1 All right, thank you everyone. You know what
2 the briefing schedule is, and if you should notice
3 anything in the exhibit list -- oh, I do have one
4 question. Just for purposes of to make the record
5 clear, as far as the remainder of Complainants' cross
6 exhibits that were identified but not offered, I can
7 assume that those are not offered, and I can strike them
8 from the exhibit list?

9 MR. MICHAEL HANIS: Correct.

10 JUDGE CAILLE: Okay, thank you.

11 Thank you everyone.

12 (Hearing adjourned at 1:25 p.m.)

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