

0109

BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

SIL AND CANDY ARATA, HAHN AND) DOCKET UW-102014
KIM BAHNG, BRIG AND PATTIE)
BELVIN, DICK AND PATTI BLIDE,)
JIM AND LYNETTE CALDWELL, KRIS) ORDER 02
AND CAROLYN CHRISTIANSON, TED)
AND DELL HALLER, BILL AND)
ALTHEA HEAGY, VERN HERIOTT AND)
LARRY HUFFMAN, DAVE AND DOROTHY)
JOHNSON, SHINWON AND JEONKAK)
KIM, JAN AND ROBIN KRANE,)
ROBERT AND DIANA NEHLS, PHIL)
AND CAROLYN ROBBINS, CHUCK AND)
DIA TADLOCK, BILL AND CAROL)
WELCH, RON AND ROXANNE OLSON,)
JERRY AND PHOEBE BENNETT, AND)
ALAN AND SUSAN CAMERON,)
Complainants,)
v.)
GREEN MOUNTAIN H2O LLC,)
Respondent.)

PREHEARING CONFERENCE PROCEEDING VOLUME 3

10:30 a.m.
June 1, 2011
Washington Utilities and
Transportation Commission
1300 South Evergreen Park Drive Southwest
PO Box 47250
Olympia, Washington 98504-7250

Reported by: Judith A. Robinson, CCR
CCR No. 2171

0110

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Roger G. Flygare & Associates, Inc.
Professional Court Reporters,
Videographers & Legal Transcriptionists
1715 South 324th Place, Suite 250
Federal Way, Washington 98003
(800) 574-0414 - main
www.flygare.com - scheduling
RGFlygare@aol.com - e-mail

0111

1 A P P E A R A N C E S

2
3 ALJ ADAM TOREM
4 WASHINGTON UTILITIES
5 AND TRANSPORTATION COMMISSION
6 1300 South Evergreen Park Drive Southwest
7 PO Box 47250
8 Olympia, Washington 98504-7250
9 Phone 360.664.1160
10 Fax 360.586.1150
11 Email atorem@utc.wa.gov

12
13 FOR THE WASHINGTON UTILITIES
14 AND TRANSPORTATION COMMISSION:

15
16 MICHAEL FASSIO
17 WASHINGTON UTILITIES
18 AND TRANSPORTATION COMMISSION
19 1400 South Evergreen Park Drive Southwest
20 Olympia, Washington 98504
21 Phone 360.664.1192
22 Email mfassio@utc.wa.gov

23 FOR THE HOMEOWNER'S ASSOCIATION:

24
25 CHUCK TADLOCK (Appearing via Telephone)
26 269 Varsity Road
27 Kalama, Washington 98625
28 Phone 360.225.3966
29 Email tadlockc@gmail.com

30 FOR GREEN MOUNTAIN WATER:

31
32 RICK FINNIGAN (Appearing via Telephone)
33 LAW OFFICE OF RICHARD A. FINNIGAN
34 2112 Black Lake Blvd. Southwest
35 Olympia, Washington 98512
36 Phone 360.956.7001
37 Fax 360.753.6862
38 E-mail rickfinn@localaccess.com

39 Also Present: Gene Eckhardt, Assistant Director of Water
40 and Transportation; Jim Ward, WUTC Staff

41
42 Attending via Telephone: Dick Blide; David and Dorothy
43 Johnson; Carol and Bill Welch; Chuck Tadlock; Charles Belvin;
44 Philip and Carolyn Robbins.

45

0112

1

I N D E X

2

COLLOQUY

PAGES

3

4

All Parties

113-158

5

6

7

8

9

10

E X H I B I T S

11

12

13

(No exhibits were marked or admitted.)

14

15

16

17

18

19

20

21

22

23

24

25

0113

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

P R O C E E D I N G S

* * * * *

ALJ TOREM: Let me make the official good morning here at 10:36 a.m. It's a Wednesday morning, June the 1st, 2011. This is docket UW 102014.

Again, this is the case of the complainants, or a number of them listed, against Green Mountain Water, LLC.

This is Judge Torem, and we're having a status conference this morning in response to a motion to continue the hearing date that was filed yesterday.

I'm going to take appearances from the parties, and we have an agenda we've set prior to going on the record.

So first, representing Commission staff?

MR. FASSIO: Michael Fassio, Assistant Attorney General.

ALJ TOREM: Representing the complainants?

MR. TADLOCK: Chuck Tadlock.

ALJ TOREM: All right. Thank you.

And now we have a new notice of appearance yesterday, and so then representing the respondent water company?

MR. FINNIGAN: Richard Finnigan.

ALJ TOREM: All right. Thank you, Mr. Finnigan.

I think the court reporter has the long form of

0114

1 your appearance taken off your stationery from yesterday.

2 MR. FINNIGAN: Okay.

3 ALJ TOREM: So there's no need to enter the
4 full form today.

5 MR. FINNIGAN: Thank you.

6 ALJ TOREM: Our agenda, as we agreed, is going
7 to be to take up the motion that you filed yesterday,
8 Mr. Finnigan.

9 Then once that's decided, one way or the other,
10 take up the matter of any discovery issues that may have
11 cropped up, as well as some contact between the parties that
12 needs to be addressed so we can take a look at the process
13 and procedure on that going forward in this docket.

14 Mr. Finnigan, it's your motion. And I just want to
15 state for the rest of the parties that are listening, and I
16 know there are a variety of other complainants on the line.
17 The administrative code provision under which your motion is
18 decided is WAC 480-07-385.

19 As you noted with your supplemental letter
20 yesterday, the Commission will only grant a continuance to a
21 specified date. And you've offered up some specific time
22 periods in that supplemental letter after corresponding with
23 Mr. Fassio.

24 So that procedural deficiency was taken care of
25 yesterday. I appreciate that.

0115

1 So the standard for granting a continuance is that
2 the requesting party has to demonstrate good cause, and the
3 continuance will not prejudice any party or the Commission.

4 So Mr. Finnigan, with that in mind, if you
5 summarize your motion and the good cause that you believe
6 exists?

7 MR. FINNIGAN: Yes. Thank you, Your Honor.

8 As I noted in my motion, I was contacted by
9 Mr. Class yesterday morning to see if I could represent him
10 in this matter. I know he was looking for an attorney to
11 represent him earlier than that. I can't say how much
12 earlier.

13 I had received a voice mail message on Friday from
14 another attorney in Olympia indicating that he had been
15 contacted by Mr. Class about this matter, but that he didn't
16 feel that it was appropriate for him to handle a matter
17 before the Washington Utilities and Transportation
18 Commission.

19 And it appears that his agency had asked, so he was
20 aware that I had, and I spoke with him Tuesday morning after
21 the holiday, after I picked up the voice mail message, and
22 Mr. Class called me subsequent to that.

23 The reason for the continuance is that I am out of
24 the state in meetings on the 7th and 8th of next week and
25 could not possibly attend the hearing.

0116

1 I have had a chance since yesterday to look at some
2 of the documents that have been filed in the docket,
3 including a cursory look at least at the complainants'
4 exhibit witness list.

5 I don't think this will take a lot of time on my
6 part to become prepared to represent the respondent, but I am
7 just unfortunately out of time on this and out of the state
8 on the 7th and 8th.

9 The times I suggested after talking to Mr. Fassio
10 and I -- and I did put a call in to Mr. -- to the
11 complainants' representative, and we exchanged voice mail
12 messages, but nothing substantive.

13 Just so Your Honor's aware that an effort was made
14 on -- by both parties, both the complainants' representative
15 and ourself, to try and talk about this, but it didn't
16 happen.

17 The week of the 27th of June or the week of
18 July 5th after the 4th holiday are available. If it needs to
19 be earlier than that, I have some time available the week of
20 the 20th. But I'm not available every day that week.

21 And it's just -- in order to allow the respondent
22 to be represented by Counsel, a short continuance would be
23 necessary. It shouldn't prejudice any party because the
24 length of the continuance will not be very long, and we can
25 certainly try and work around everybody's schedule to make

0117

1 sure it is acceptable to all involved.

2 And on that basis, we would request that the
3 hearing be continued.

4 ALJ TOREM: Mr. Fassio?

5 MR. FASSIO: And I do confirm that
6 Mr. Finnigan did contact me yesterday about the proposed
7 continuance dates.

8 The staff is not, as we indicated in our response,
9 not opposed to a continuance for those reasons.

10 We -- we would like the continuance -- we believe
11 the continuance should be reasonable, limited in time, and
12 does not prejudice any of the parties or their ability to put
13 on the witnesses that they'd indicated they would be putting
14 on.

15 As I've stated in my motion, at that time staff did
16 not have any conflicts with the week of June 27th or
17 July 5th. However, I have since very late heard back from
18 the Department of Health witnesses.

19 And they have confirmed with me that one or more
20 witnesses are going to be unavailable from June 20th through
21 July 11th. And I've also -- I have since confirmed other
22 dates that they are available, that would be after those
23 dates.

24 But for the dates that were suggested by Green
25 Mountain Water, those witnesses are unavailable. And as much

0118

1 as the parties involved requested their participation in this
2 hearing, we believe that participation is essential, and a
3 continuance to those days would be prejudicial to the
4 parties.

5 But staff is not opposed to a continuance to allow
6 Mr. Class to be represented by Counsel, and we would be
7 amenable to working out a reasonable extension to do that.

8 Staff also does have some concerns in reviewing
9 what the complainants' case and what has or has not been
10 presented yet by the company as to whether the parties are
11 prepared to proceed to hearing next Tuesday.

12 And if we do proceed to hearing next Tuesday, we
13 believe that there are some issues that need to be addressed
14 to discuss the scope of the hearing and the presentation of
15 exhibits and such.

16 So with that in mind, we do not oppose a reasonable
17 request for continuance.

18 ALJ TOREM: Mr. Fassio, can you elaborate just
19 on when you say there's concerns about the parties being
20 ready to go to hearing?

21 I know yesterday was a deadline for yourself and
22 for the water company to respond to exhibits with their case.

23 MR. FASSIO: I -- in checking with the records
24 center tonight and this morning, it appears that the water
25 company did not file a witness and exhibit list with the

0119

1 records center yesterday.

2 So the staff does not have the company's case
3 before it to be able to prepare for hearing, nor would the
4 complainants at this time have the company's case to prepare
5 for hearing.

6 ALJ TOREM: And did you say there were any
7 deficiencies, in your view, of what the complainants have
8 already put forward to go to hearing?

9 MR. FASSIO: The complainants have filed a
10 complaint on -- in December, and there may be updates to that
11 complaint. However, the complainants have not amended their
12 complaint, and they filed exhibits and witness lists based
13 upon the complaint as filed.

14 So in addition to that, the staff has requested
15 some additional information in the form of a data request
16 from the complainants, since their exhibits were filed to get
17 some additional information about an exhibit.

18 And we have not received a response to that as of
19 this date, and it's unclear to us whether that information
20 will be available in time for hearing on Tuesday.

21 ALJ TOREM: Okay. Thank you for those
22 additional details.

23 Mr. Tadlock, if you'll focus your comments at this
24 point on the motion for continuance and any prejudice you're
25 alleging would come to your group of complainants, we can

0120

1 take up the evidentiary issues that I just inquired of
2 Mr. Fassio on second.

3 But let me hear from you first, focused on the
4 motion to continue the hearing dates itself.

5 MR. TADLOCK: Yes, Your Honor. Thank you.

6 Your Honor, if -- I will state to the continuance
7 request in -- in my -- in my comments right now, as you've
8 just requested.

9 On February 3rd of 2011, at the initial hearing for
10 this complaint, Your Honor asked both the complainants and
11 the respondent if they intended to be represented by Counsel.

12 The complainants' response was that we did not plan
13 to have Counsel for representation. The respondent advised
14 Your Honor that he was planning to have Counsel.

15 At that point, Your Honor advised Mr. Class that he
16 needed to provide the name of his legal Counsel to the courts
17 within two weeks.

18 And you were very clear in stating that you were
19 not going to allow a continuance based on bringing in an
20 attorney or legal representation at a late point and delaying
21 the hearing for the purposes of bringing the legal Counsel up
22 to speed. That there was plenty of time to bring in Counsel
23 and get them prepared.

24 On March 2nd of 2011, we had our second meeting --
25 hearing meeting. And at that meeting, both the complainants

0121

1 and the respondent were once again asked if they were going
2 to have legal representation.

3 The respondent advised the Court that he was
4 planning to have legal representation, and once again, you
5 advised the respondent that it would not be acceptable to
6 bring in legal Counsel at a late point and causing a delay.

7 We feel that there has been adequate notice to both
8 parties of -- that that would not be sufficient purpose for
9 delaying the process and the schedule.

10 There's 36 complainants and three witnesses. We
11 clearly have the largest number of affected people regarding
12 this complaint who would be affected by moving the date.

13 July, August -- June, July, August are vacation
14 periods, the holiday months. Many of the complainants and
15 witnesses, as we just heard from Mr. Fassio, will not be
16 available due to personal commitments during this time frame.

17 The complainants have scheduled around the date
18 that was set by the Court, and changing that date will be a
19 strong imposition on the complainants to readjust their
20 schedules again. As well as many of the complainants will
21 not be available because of other scheduling and commitments
22 they have if this were to be rescheduled.

23 So -- or from the complainants' point of view, we
24 do not feel respondent has just cause when there has been
25 sufficient time.

0122

1 The respondent has had months, literally months, to
2 engage legal Counsel and to get them prepared for -- for this
3 date. The date was actually moved out, which allowed the
4 respondent to have additional time to get Counsel on board
5 and get them up to speed.

6 So requesting it yesterday, as far as the
7 complainants are concerned, is way too late and not
8 justifiable cause.

9 ALJ TOREM: Thank you, Mr. Tadlock.

10 Mr. Finnigan, I haven't been able to locate in the
11 March transcripts the advice I gave to your client about
12 seeking legal Counsel. But at the initial prehearing
13 conference, Mr. Tadlock is absolutely correct.

14 On page 27 of that transcript there's a discussion
15 I had with Mr. Class that went for a page and a half of the
16 transcript onto page 29.

17 I think Mr. Tadlock summed it up well where I
18 indicated it would be important that when he finds an
19 attorney, if they can't make the date that's set at that
20 prehearing conference, they immediately let us know so we can
21 reschedule it to something akin to the same time frame. The
22 same week or the same month, at the very least, so there's
23 not any delay to the procedural schedule.

24 And Mr. Class knew on February 3rd that he was
25 planning to seek Counsel.

0123

1 There was a mediation session that was arranged at
2 the March 2nd prehearing conference, the second prehearing
3 conference. And I don't know where in the transcript, if at
4 all, on the record, the seeking of Counsel was discussed.
5 But Judge Moss held a mediation with the parties, without
6 representation.

7 We reset hearing dates from, I think, May 24th and
8 25th, to next week, and everybody agreed on those dates.

9 I'm concerned with the delay in -- it's not your
10 fault, Mr. Finnigan, but that your client took up in seeking
11 you out.

12 Is there anything you can address that maybe he
13 told you as to why he came to you so late in the game?

14 MR. FINNIGAN: Your Honor, I didn't discuss
15 any of the why. Obviously, I was not aware of any of that
16 information that you just provided me.

17 So what my focus was yesterday was getting, you
18 know, documents related to this matter, and getting the
19 notice of appearance filed, and getting the motion for
20 continuance filed.

21 And taking care of those sorts of immediate
22 procedural things that needed to be addressed, because I was
23 not aware of anything concerning what happened at prior
24 sessions regarding obtaining Counsel.

25 There was no -- nothing that came to my mind that

0124

1 would suggest that I needed to discuss that with the
2 respondent. So there was no discussion of that point.

3 As we've indicated, you know, we're willing to
4 address a very short continuance. It sounds, unfortunately,
5 like DOH would mean this needs to go out to July.

6 The week of July 11th, we're available every day
7 that week. I did not hear any specific conflicts raised by
8 the complainants.

9 There was a general statement about, you know, this
10 being the time where people take vacations, and I do
11 understand that. But there was no specific representation
12 that any witness would be unavailable.

13 So I don't see that prejudice has been established,
14 and I would request that the short continuance be granted.

15 ALJ TOREM: Well, it looks like we're not
16 going to have this hearing in two weeks, which was one of
17 your suggested dates, I believe.

18 MR. FINNIGAN: Correct.

19 ALJ TOREM: Or maybe it was three weeks. I
20 can't recall. But we talked on the phone yesterday about
21 looking as soon as the week of June the 20th.

22 So there's a conflict, Mr. Fassio, for
23 DOH witnesses that week?

24 MR. FASSIO: That's correct. I have some
25 notes. Excuse me. Let me make sure that I have them.

0125

1 Yes. Ms. Sandy Brentlinger, who has been
2 identified as a witness, is unavailable from June 20th
3 through July 11th. And that overlaps with another conflict
4 of Ms. Denise Clifford.

5 And I have received specific availability for the
6 months of July and August of DOH witnesses. So I do have a
7 series of dates that I could suggest in July and August for
8 continued dates.

9 ALJ TOREM: What would be the earliest
10 possible dates? We still have a two-day hearing to schedule,
11 and I'm not happy to even have to consider this.

12 But I want to make sure that the prejudice and the
13 degree of delay is known before I can make a decision as to
14 whether there is prejudice and if there's good cause.

15 MR. FASSIO: I'm told that the collective
16 availability of Department of Health in July is July 12th and
17 13th, and July 26th, 27th and 28th.

18 There are some differences between whether one is
19 available in the morning or the afternoon, but those dates I
20 think we could accommodate witnesses.

21 ALJ TOREM: Mr. Finnigan, have you been
22 advised about your own client's availability for alternate
23 dates in July?

24 MR. FINNIGAN: I'm operating on the assumption
25 that any dates that we can work out will be available for

0126

1 him. He did not tell me that there were any conflict dates.

2 ALJ TOREM: And Mr. Tadlock, when we spoke on
3 the phone yesterday, you were general about some of the
4 homeowners that were part of the complainants' group being
5 unavailable in July, but we didn't get into specifics. I
6 thought it would be more appropriate for you to put that on
7 the record today.

8 MR. TADLOCK: Your Honor, with 36
9 complainants, including myself, it's a significant -- you
10 know, it takes more than eight hours to get ahold of them all
11 and have them all review what their schedules are.

12 So at this point, I do know that many of the
13 complainants have trips scheduled. I don't know exactly what
14 the dates are for all of them.

15 And so I'd have to go through all of the
16 complainants to find out what their individual schedules are
17 to determine what the, you know, the best dates would be for
18 the complainants.

19 Some of the complainants are -- you know, obviously
20 it's vital. I personally have some committed dates in the
21 time frames we're talking about.

22 But I would have to, you know, work around or work
23 through, as would many of the complainants that I'm going to
24 be -- they're gonna have to be available for me during the
25 hearing to get information from to respond to the Court.

0127

1 ALJ TOREM: Can you identify -- and your
2 witness list I'm looking at, that was filed a few weeks ago,
3 you identified Ms. Brentlinger, Ms. -- I think it's
4 Ms. Gantz, and Denise Clifford as witnesses from the
5 Department of Health.

6 MR. TADLOCK: Yes, Your Honor.

7 ALJ TOREM: Then there's a separate
8 complainants presenting, and I wasn't sure if there was
9 specific complainants that would be making the presentations
10 that you had anticipated in the way your witness list was
11 constructed.

12 MR. TADLOCK: I will -- Your Honor, I will be
13 representing the complainants, but I was reserving the right
14 to call the complainants up in rebuttal.

15 As Mr. Class has notified us with many, many phone
16 calls, which we'll get into in a little bit from the
17 complainants, that he plans on bringing them up as witnesses.
18 He has called several of the complainants with that -- with
19 that information.

20 And so I will require many of the complainants
21 myself to be here for rebuttal to whatever Mr. Class was
22 thinking of and when he advised us of that.

23 ALJ TOREM: So right now though, your case is
24 mainly being made through the Department of Health witnesses,
25 your case in chief?

0128

1 MR. TADLOCK: Primarily, yes, Your Honor.

2 ALJ TOREM: And then the documentation you've
3 submitted as proposed exhibits?

4 MR. TADLOCK: Yes, Your Honor.

5 ALJ TOREM: Mr. Fassio?

6 MR. FASSIO: I guess I have a question, and it
7 relates to your question, Judge Torem, about complainants
8 presenting.

9 Mr. Tadlock is representing the complainants and
10 so, you know, his availability is obviously vital.

11 However, it's unclear to us looking at the
12 documentation who would be sponsoring those exhibits as
13 testimony.

14 And I believe it's rather incumbent on the
15 complainants to identify what witnesses they would be
16 presenting in their case in chief.

17 MR. TADLOCK: We -- on our witness and
18 exhibits' list, we indicated which complaint -- which witness
19 would be representing which exhibit. That's on what we
20 submitted.

21 ALJ TOREM: And Mr. Tadlock, I think the
22 nature of the question goes to the way the list just says,
23 C-O-M-P, for a complainant.

24 But there's not a specific name identified with
25 some of those exhibits. For instance, Exhibits 1A, 2A and

0129

1 3A, and I think there's an Exhibit 19 and 23F. There may be
2 others, but those are exhibits that are indicated as just
3 complainants'.

4 And Mr. Fassio is asking, and I'm interested as
5 well, who's going to testify to lay a foundation to tell me
6 what those documents might be and be allowed to be
7 cross-examined by the other witness -- or the other
8 attorneys, when it --

9 MR. TADLOCK: I will.

10 ALJ TOREM: So you'll be not only
11 representing, but also be testifying?

12 MR. TADLOCK: Yes.

13 ALJ TOREM: Okay.

14 MR. TADLOCK: I will be representing the
15 complainants for those exhibits.

16 ALJ TOREM: And if I understood you correctly
17 then, you're suggesting that other individual complainants
18 may be available for rebuttal testimony, or may be called by
19 Mr. Class, and now it would be by Mr. Finnigan, if he chooses
20 to do that?

21 MR. TADLOCK: Correct.

22 ALJ TOREM: All right. So let me talk then
23 about directly your availability for the month of July.

24 There were two sets of dates that are proposed now
25 that your Department of Health witnesses would be available,

0130

1 July 12th and 13th.

2 Are you available those days?

3 And if you're not, just state as much. If you have
4 already -- you said you already have a couple of committed
5 dates.

6 MR. TADLOCK: Your Honor, we have -- I've
7 scheduled where my wife and myself are going to visit -- be
8 travelling to visit my son and his family in Missouri.

9 And we were going to be gone for -- we're scheduled
10 to be gone from -- I'm looking at a calendar here, Your
11 Honor. Bear with me for a second. I have to pull it up to
12 see when we're scheduled to leave.

13 We're scheduled to leave on Tuesday, the 28th, and
14 we're not scheduled back until -- the 28th of June -- and
15 we're not scheduled to be back until the 21st of July.

16 MR. FINNIGAN: Your Honor, this is
17 Mr. Finnigan.

18 Would June 13 and 14 work?

19 ALJ TOREM: I'm not sure that we know the
20 information for a one-week delay from the Department of
21 Health folks.

22 Let me just ask then if Mr. Fassio knows of any
23 conflicts on the Commission side for a one-week delay.

24 And while he's looking, Mr. Tadlock, then if you're
25 getting back on July the 21st, would you be available July

0131

1 26th, 27th and 28th, if that date turns out to be --

2 MR. TADLOCK: Yes, Your Honor. I would.

3 ALJ TOREM: All right. Mr. Fassio, as to the
4 one-week delay?

5 MR. FASSIO: We are -- staff is unavailable
6 the 13th, 14th and 15th.

7 ALJ TOREM: So I think then, Mr. Finnigan,
8 we've identified the first available hearing dates for
9 witnesses and representatives, to the extent we have that
10 knowledge this morning, would be July the 26th, 27th and
11 28th. Two of those three days.

12 I have no idea whether the facilities here at the
13 Commission are available on those dates. I will have to take
14 a recess and look into that.

15 We're looking at continuing a hearing from June 7th
16 and 8th. A period of about six or seven weeks, due to
17 Mr. Class bringing you into the case yesterday. And as far
18 as I can tell, for no other reason.

19 There are some issues that I think remain
20 unresolved. And I do wonder whether all of the issues that
21 need to be presented at next week's hearing will be ripe and
22 ready to be presented.

23 At this time I have official filings with the
24 records center, a timely filing from the complainants.

25

0132

1 The substance again, I have not reviewed, as I've
2 told Mr. Class, and I've told Mr. Tadlock on line.

3 And it's clear to Mr. Fassio sitting here that I
4 know what the exhibit list looks like, but I don't know what
5 the substance is.

6 So whether there's a deficiency in their ability to
7 prove their case or carry their burden, I haven't concerned
8 myself with that yet. That would be an issue for hearing.

9 Mr. Fassio's expressed some concerns regarding that
10 and some date of requests or discovery requests that have
11 been sent out to Mr. Tadlock that haven't been responded to
12 yet.

13 Mr. Fassio has submitted some exhibits on behalf of
14 the Commission yesterday.

15 And Mr. Finnigan, all I know is that your client,
16 in discussions with you yesterday, said he would be making an
17 exhibit list filing.

18 He did not do that with the records center. I have
19 an e-mail that's time stamped 11:41 p.m. last night, with a
20 series of Adobe Acrobat PDF pages.

21 I looked -- when I glanced at it quickly this
22 morning before another meeting, upwards of 100 pages, and
23 some of which were, at first glance, staffs' requests for
24 exhibits, so I wasn't sure what he was sending in. And I
25 honestly didn't look at the e-mail address line to determine

0133

1 who else he might have sent that to.

2 There was just a note that said that the hard
3 copies are in the mail. So I don't know if he sent that to
4 you or not. But it's not officially filed yet. And the --

5 MR. FINNIGAN: He did not send it to me. He
6 sent it to Mr. Fassio and Mr. Tadlock. I can't remember if
7 there was a third party on there or not. But Mr. Fassio
8 forwarded it to me this morning and that's when I first saw
9 it.

10 ALJ TOREM: Right. Well, that's the state of
11 the evidence right now.

12 MR. FINNIGAN: Right. I understand.

13 ALJ TOREM: You've indicated you're not sure
14 if there's a demonstration of prejudice.

15 I'm very uncertain whether there's a demonstration
16 of good cause, particularly with the very individual
17 discussion I had with your client on the record in February
18 about delays.

19 I'm simply concerned that I want this hearing to go
20 forward once, and one time only, and a record to be
21 established and not get a remand from the Commissioners
22 because I somehow didn't respect your client's due process
23 rights to hire Counsel.

24 I know off the record, he indicated to me that
25 there was a Ms. Vivian, I believe. I don't remember her last

0134

1 name or if that was her last name he was seeking out.

2 She called the Commission a week ago on Friday, the
3 27th of June, and wanted to know about the seeking of a
4 continuance.

5 Since she was not able to represent Mr. Class, she
6 was busy with other legislative issue items, and I know he
7 had mentioned her name before. Well, I think it was
8 Dawn Vivian.

9 She at least made a good-faith attempt to reach out
10 on Friday, prior to the long weekend. And I know that
11 Mr. Tadlock heard from her as well because she made an
12 inquiry on the same intent as your written motion about
13 seeking a postponement on his behalf. But she did not file a
14 notice of appearance nor a formal motion.

15 So to the best of my knowledge, Mr. Class has been
16 seeking out Ms. Vivian for at least a period of weeks, maybe
17 since the mediation ended.

18 And she told me that she had been unavailable due
19 to the legislative activity in Olympia, which was her main
20 focus.

21 I'm going to give your client the benefit of the
22 doubt, and if we have a hearing room available the week of
23 July 26th, we'll hold the hearing that week.

24 What I'm hoping, Mr. Tadlock, is that this is going
25 to give you and the complainants an opportunity to review and

0135

1 supplement your exhibit list, if necessary, and to maybe
2 perhaps take some time before you leave on your trip to visit
3 family to decide whether there are any other complainants who
4 need to testify, so that you have every opportunity of
5 carrying your burden.

6 I would hate for a technicality to end Mr. Class's
7 attempt to put on his case by denying the motion today and
8 denying him representation.

9 But I'm also hearing some potential deficiencies
10 and concerns stated by the Commission as to what you've
11 submitted so far.

12 I would really like to have a full record to decide
13 this and not find a technicality that you didn't present all
14 of the supporting documentation, and perhaps, necessary
15 witness testimony to put on proof of any restitution or
16 remedy you might be entitled to under the RCWs that govern
17 and the State's regulations and our WAC code that we went
18 over at the first prehearing conference.

19 So I am going to grant the continuance on the
20 condition that we find an appropriate hearing room that week.

21 So I'm going to take a brief recess and step out
22 and take a look and see what facilities we have here at the
23 Commission. And if we don't have them here at the
24 Commission, I might take a look and see if there's another
25 State building that's available that would be suitable for

0136

1 our purposes that week.

2 All right. So I'm going to go off the record here
3 at ten minutes after 11:00 o'clock. I'll be back in about
4 five or ten minutes.

5 If you, Mr. Finnigan, want to talk with Mr. Fassio
6 and Mr. Tadlock about anything on the record as far as -- and
7 Mr. Fassio is probably in the best position to address
8 additional documents he thinks might be necessary.

9 I'm not asking him to help the complainants make
10 their case or their burden, but that he thinks he needs to
11 have so that he and Mr. Ward can better evaluate the case and
12 determine whether the Commission is going to come down on
13 this. That would be helpful.

14 I'm going to step out, and I'll let you know when I
15 come back in.

16 MR. TADLOCK: Your Honor?

17 ALJ TOREM: Yes, Mr. Tadlock.

18 MR. TADLOCK: I'd like to make a statement.

19 ALJ TOREM: If you would, go ahead.

20 MR. TADLOCK: Today is the first day we have
21 -- the complainants have heard the question about our witness
22 list and the exhibits regarding who was representing the
23 complainants for the -- and we submitted that over -- well,
24 over two weeks ago, and to hear about it today is a little
25 late.

0137

1 ALJ TOREM: Well, I understand that
2 Mr. Tadlock.

3 What I'm telling you is that you have an
4 opportunity here to review whether there's any deficiencies
5 and cure them, if there are.

6 But there is certainly no other obligation to --
7 for anybody to carry a burden on being a complainant, than
8 you and your fellow complainants.

9 So I don't want you to think there was an
10 obligation that somebody else is sandbagging you at this late
11 date.

12 This is something --

13 MR. TADLOCK: But we also, Your Honor, don't
14 feel that -- that the fact that we did not respond to the --
15 to the -- yet to the staff's request for -- for exhibits is
16 just cause for -- for delaying the hearing as well.

17 ALJ TOREM: Let me restate that. I've already
18 indicated to Mr. Finnigan that I'm not entirely sure that his
19 client's delay is just cause.

20 What I stated is what I know from all the
21 off-the-record conversations between myself and Mr. Class.
22 He has been seeking Counsel for some time, and how diligent
23 he has been. He's not here to be sworn in and asked
24 questions on, but I simply want to give him this one last
25 chance.

1 If there's any failure of him or Mr. Finnigan to be
2 prepared for the dates we set for the new hearing, I can tell
3 you in advance that it probably won't amount to good cause
4 because this is a last-chance extension for him to be
5 represented and for this case to have an adequate record
6 developed.

7 What I'm afraid of is that if I do deny the motion
8 and we go forward next week, one of several things will
9 happen, Mr. Tadlock.

10 One, my -- I'll have a stay request, and my
11 Commissioners will grant it, and we will be nowhere next
12 week.

13 Or two, you'll come to put on your case hearing,
14 and despite the late notice to you today, that there might be
15 some structural and evidentiary deficiencies with your case,
16 and you'll ask for time, and then Mr. Class and Mr. Finnigan
17 would be in a position to argue the same way you have today
18 that they're ready and you are not -- and your case isn't put
19 on.

20 So I -- I understand this is a frustrating process.
21 I'm bending over backwards to try to make it fair to
22 everybody, and admittedly today, the complainants are being
23 delayed, once again, for a period of six or seven weeks.

24 I don't want to tolerate this delay, but I feel
25 that I have no choice because I want to hear this case on the

0139

1 merits and not on procedural technicalities, as it may be.

2 So I -- I apologize for the ruling not going the
3 way you would like it, but that's my ruling out of an
4 abundance of caution that we hear this case in a few weeks
5 when everybody can be ready, as opposed to next week when it
6 appears to me perhaps you might also as well.

7 I wish we could do this sooner, but because of the
8 Department of Health witnesses, which are mainly your
9 witnesses as well, this is -- appears to be the soonest date
10 I can get, and it does accommodate your travel schedule.

11 So we will do it on the 26th, 27th, 28th, again,
12 assuming I can get an appropriate facility.

13 So let me go off the record now. It's about a
14 quarter after.

15 I appreciate your statement, Mr. Tadlock, and let
16 you talk with the other attorneys as to how you're going to
17 respond to the discovery request and whether there's any
18 information that you need from them, including how Mr. Class
19 is going to get with you, Mr. Finnigan, to get that
20 appropriately filed with the records center in an appropriate
21 format.

22 Okay? So we're going off the record. You guys can
23 talk amongst yourselves.

24 (Off the record.)

25 ALJ TOREM: All right. I looked in a couple

0140

1 minutes ago -- we're back on the record -- and was waved off.

2 I understand we're ready to go back, and it's now
3 almost 11:40.

4 I have confirmed that room 206, the original room
5 that we have, is available.

6 There's a little bit of horse trading. But we have
7 the same hearing room facilities available, as well as the
8 conference bridge line, so that the complainants can avoid
9 travel. Those that are not needed to testify in the same way
10 they're doing today.

11 So the continuance, with all of the comments I made
12 earlier, is going to be granted.

13 I'll issue a notice rescheduling the dates for the
14 hearing, and we may be needing to address some other dates
15 now that we have a six or seven-week period for additional
16 supplementing of witnesses and exhibit lists.

17 Like I said, we have a submission from the
18 complainants, and we have a submission from Commission staff,
19 but nothing officially from the water company yet.

20 Mr. Fassio?

21 MR. FASSIO: Just a few -- you mentioned the
22 week of the 26th.

23 Did you have a specific date in mind?

24 ALJ TOREM: Yes. We'll do the Tuesday and
25 Wednesday.

0141

1 MR. FASSIO: Okay.

2 ALJ TOREM: Thursday, the hearing room is not
3 available due to the Commission's open meeting schedule.

4 So it will be a Tuesday and Wednesday. It's
5 essentially a seven-week delay.

6 Let me turn -- before we come back to the evidence
7 to the other two items we set on the agenda this morning, the
8 discovery issue I hope was part of the discussion that went
9 on today about exchanging information. And then party
10 contacts.

11 Let me take up the last issue first. It will be
12 the easiest one, I think.

13 I -- I know that for the individuals involved,
14 whose water company or homes have been affected allegedly by
15 the issues brought up in the complaint, that this is an
16 emotional issue, and that there has been some personality
17 conflicts along the way. And some of those have been
18 demonstrated to me by telephone calls I've received.

19 And I understand from everybody else that's a
20 representative that they've received. So it's not just one
21 person, but there are a variety of personalities in conflict
22 and clashing.

23 I am hoping, and I talked to Mr. Finnigan about
24 this yesterday, that he will now be the representative. He's
25 a very experienced attorney before this Commission and

0142

1 certainly knows how our processes, procedures and
2 expectations of decorum work.

3 That Mr. Finnigan will be the primary contact, and
4 I would hope without any suggestion from him otherwise, that
5 he might be the only contact now for the water company for
6 purposes of this litigation, until there's a witness called,
7 which would be his client at some point.

8 So I'm asking that Mr. Finnigan, you explain to
9 Mr. Class while you're representing him, what your services
10 entail.

11 And I do hope that they are going to be expansive
12 enough that there won't be direct contact with Mr. Class and
13 the Court.

14 There won't be direct contact by Mr. Class with any
15 of the complainants or their representative, unless you've
16 already approved it.

17 Mr. Finnigan, can you commit to advising your
18 client about that, if not trying to keep him to that?

19 MR. FINNIGAN: I have advised him by an e-mail
20 this morning that I should be the only contact with the
21 parties and with the Administrative Law Judge and have asked
22 him to confirm his understanding of that.

23 And so I will do it a second time to make sure he
24 understands that that includes not contacting any of the
25 individual complainants.

0143

1 ALJ TOREM: Because the indication to me from
2 Mr. Tadlock, and he said it already this morning, was there
3 was a feeling of some intimidation from Mr. Class against
4 some of the homeowner complainants.

5 I can't vouch for what was said there, but if I
6 played you some of the voice mail messages I've retained and
7 then some of the profanity and the attitude that was
8 contained in them, you might agree that you need to control
9 your client and avoid me putting those on the record, by
10 needing to inquire any of his attitude in this matter.

11 So again, if you --

12 MR. FINNIGAN: I will -- I will do what I can.

13 ALJ TOREM: I understand that. I just want it
14 out on the record today that some of the voice mails I
15 received were highly inappropriate.

16 And none of those phone calls were returned, and I
17 had a nice conversation with Mr. Class before he hired you as
18 to the reason that I was not returning those calls.

19 MR. FINNIGAN: Sure.

20 ALJ TOREM: I would appreciate now that he's
21 hired you, that you just have not a voice mail or an e-mail
22 discussion, but verbatim explain to him what the rules are,
23 and I guess what he's risking, at least in losing credibility
24 with the Court if those kind of contacts continue with me, or
25 for that matter, with any of the complainants and Commission

0144

1 staff.

2 You just -- I want --

3 MR. FINNIGAN: I will so inform him.

4 ALJ TOREM: Okay. I just want this to be
5 again, about what's going to be in the evidence and not about
6 personalities.

7 I -- if --

8 MR. FINNIGAN: I agree.

9 ALJ TOREM: Okay. So Mr. Tadlock, were there
10 any other concerns you wanted to raise on that matter?

11 MR. TADLOCK: No, Your Honor. You've
12 addressed it. Thank you.

13 ALJ TOREM: Okay. Mr. Fassio, any concerns
14 from Commission staff in that regard?

15 MR. FASSIO: No.

16 ALJ TOREM: All right. Let's turn back to
17 discovery, and we'll just lump this in with the state of
18 evidence.

19 And because Mr. Fassio is, I think, the only one
20 with a formal data request out there at this time, it may be
21 that the e-mail that was forwarded to you, Mr. Finnigan, was
22 labeled as discovery, if I recall correctly, from your client
23 last night.

24 I don't know if you want to consider that a formal
25 discovery request on your behalf?

0145

1 MR. FINNIGAN: What we've agreed to while you
2 were out of the hearing room is that the complainants will
3 respond to the staff data request by June 8, and they will
4 include me in that response.

5 ALJ TOREM: Okay. And I'm not privy to what
6 that data request is, and I'm not sure I need to be.

7 MR. FINNIGAN: Correct.

8 ALJ TOREM: If that's the case, then I -- I --
9 you're not in a position to know what all is in the documents
10 that were submitted yesterday by your client and will
11 eventually reach the records center?

12 MR. FINNIGAN: You're right, Your Honor. And
13 what -- what -- again, what we discussed while you were out
14 of the room was if I would be able to prepare a formal
15 exhibit and witness list and get that in filed appropriately,
16 and I agreed to do so by June 13th.

17 The complainants agreed that that would give them
18 sufficient time to review that in advance of the rescheduled
19 hearing.

20 ALJ TOREM: Okay. Mr. Tadlock, then if it's
21 in by June 13th, you'll have a chance to review it before you
22 depart on your trip?

23 MR. TADLOCK: Yes, Your Honor.

24 ALJ TOREM: Was there any discussion,
25 Mr. Tadlock or Mr. Fassio? I'm not sure who best can answer

0146

1 this, as to the state of the complainants' exhibits and
2 whether there'll need to be a supplemental filing or a
3 supplement of the witness list?

4 Mr. Fassio?

5 MR. FASSIO: We did address that issue, and we
6 did have some discussion, which we had discussed on the
7 record before, about the concerns that the complainants'
8 complaint, the record of that complaint was perhaps not
9 supported in full by the exhibits and witness list that was
10 provided.

11 And that the complainants may need to supplement
12 their filing with additional exhibits or to -- whether that's
13 amending the complaint as well to focus and -- the issues for
14 hearing.

15 And so we did have some discussion about that. We
16 wanted to key that up as an adjunct issue. We did not
17 discuss which dates that they would supplement their filing.

18 And it's my understanding, and Mr. Tadlock can
19 address this, that they were not prepared to address this
20 issue today.

21 However, we do believe that in order to develop a
22 record in this case, it may be necessary for the complainants
23 to have a supplemental filing to their case.

24 ALJ TOREM: Mr. Tadlock, from where you sit
25 today, what can you tell me about your evaluation of the

0147

1 comments and whether you intend to make a supplemental
2 filing?

3 MR. TADLOCK: Your Honor, I'm not prepared to
4 answer the question today as to whether we're intending to
5 make a supplemental filing.

6 I will advise you, Your Honor, that the
7 complainants have a meeting scheduled for this Friday. This
8 will be discussed at the meeting, and the complainants will
9 make the decision at that meeting.

10 And then we will advise the staff and Mr. Finnigan
11 of that on Monday of next week as to how we're intending to
12 proceed.

13 ALJ TOREM: All right. What's coming to mind
14 as options for me is either to set a deadline for a
15 supplemental filing, and if it comes and goes without one,
16 then I guess I'll know the answer.

17 Or we can set up an additional status conference
18 after, it would seem to me more productive, after you've
19 received the Green Mountain exhibit list the week of the
20 13th.

21 MR. TADLOCK: Correct.

22 ALJ TOREM: So I can either say June 24th or
23 June 27th as the Friday or Monday before your trip as a
24 deadline that I hope would work for you and accommodate your
25 travel as well without prejudice for you to make a

0148

1 supplemental filing.

2 If there were additional data requests for
3 discovery necessary in your absence for the next three weeks
4 that came up because of that supplemental filing, I guess I
5 would be more comfortable if you could appoint a deputy, if
6 you will, amongst the complainants, to respond to any other
7 inquiries that might come up from Mr. Fassio or Mr. Finnigan
8 in the course of preparing for the hearing, while you're
9 travelling.

10 MR. TADLOCK: I can do that, Your Honor.

11 ALJ TOREM: Would you --

12 MR. TADLOCK: I will do that.

13 ALJ TOREM: Let me ask the other parties if
14 they see any other ideas. I don't want to waste people's
15 time with a status conference unnecessarily and tie people
16 down.

17 Again, we'd run into a scheduling issue of all --
18 we'd have to check and see if this phone booth's available.
19 But I could simply set something for that Friday before your
20 trip. I'd rather not do it on the Monday before because you
21 should be attending to other details that day.

22 Would Friday, the 24th, be a good enough deadline
23 for you to make a supplemental filing, if you're going to
24 make one?

25 MR. TADLOCK: Yes, Your Honor.

0149

1 ALJ TOREM: Mr. Finnigan, would that be
2 agreeable to you?

3 MR. FINNIGAN: Yes, Your Honor.

4 ALJ TOREM: Mr. Fassio?

5 MR. FASSIO: That would be agreeable, and
6 staff does support an opportunity for the complainants to
7 supplement their filing in -- either supplement their filing
8 in correspondence with their complaint, or to amend their
9 complaint to conform with their filing supplementation.

10 We support the complainants' opportunity to do
11 that.

12 ALJ TOREM: And I think then, Mr. Fassio, what
13 you're suggesting is a motion to amend the complaint could be
14 made at that time.

15 I know it would be a little bit late, but if it's
16 not a dramatic amendment, perhaps then the responses to that
17 could come in in the next little bit, and we could take that
18 up because of Mr. Tadlock's being gone until the 21st.

19 And if the way in which the motion to continue the
20 hearing dates have been granted, we could take that up when
21 he gets back and know what we're going forward with on the
22 26th of July.

23 MR. FASSIO: Yes. And I do think that the
24 company and the staff should have an opportunity to respond
25 to any motion that's filed or an opportunity to supplement,

0150

1 as needed, their exhibits, and that's to reflect any
2 supplemental filing.

3 I think it's important for due process that we have
4 an opportunity to respond.

5 In light of that, the earlier the better in this
6 six weeks that we've now allowed to enable everyone to
7 prepare their case.

8 ALJ TOREM: Mr. Finnigan, I'm sure you would
9 agree that an extra opportunity to respond, if there is any
10 supplementation, would be warranted?

11 MR. FINNIGAN: I do.

12 ALJ TOREM: Would two weeks, perhaps July the
13 9th, be sufficient?

14 MR. FINNIGAN: That'd be -- yes. That's
15 acceptable.

16 MR. FASSIO: Yes.

17 ALJ TOREM: Okay. So it would be July 8th,
18 but it would be the Friday.

19 Is Friday the 8th?

20 MR. FASSIO: Yes.

21 ALJ TOREM: All right. Thank you.

22 Then what I'll do is issue a notice with these
23 dates.

24 And Mr. Tadlock, when you meet with your homeowners
25 group and the complainants group this week on Friday, I hope

0151

1 you'll explain to them this unexpected procedural delay.

2 That it's not at all the complainants' fault or
3 request. In fact, you did well speaking to oppose it.

4 The new hearing dates will hopefully fit their
5 calendars to at least call in.

6 This phone line will be available, and that you'll
7 be making a decision based on your response to staff's
8 discovery requests, and based on anything that Mr. Finnigan
9 and Mr. Class file on the 13th of June, as to whether you'll
10 be making a supplemental filing on the 24th.

11 If you do that, then there -- it will also trigger
12 an ability for Mr. Fassio and Mr. Finnigan to file their own
13 supplemental filing on July the 8th.

14 And when you get back on the 21st, I would hope
15 that you would check in with Mr. Fassio and check in with
16 Mr. Finnigan as to whether or not that there has been a
17 motion to amend the complaint, or any such thing.

18 There can be agreements and stipulations brought on
19 those, if there's a need to be had prior to the hearing on
20 Tuesday the 26th.

21 I know there's not a lot of time from when you get
22 back on the 21st of July. I'm trying to look at that date.
23 It's a Tuesday. I'm looking in the wrong month. I'm sorry.
24 It's a Thursday.

25 MR. TADLOCK: Uh-huh.

0152

1 ALJ TOREM: So there's really only two
2 business days, once you return, for us to take up any
3 prehearing items.

4 And I'm not sure that that would afford us
5 anything. We may just have to take them up at the beginning
6 of the hearing on the morning of the 26th, if there are any
7 such issues.

8 MR. TADLOCK: Correct. Yes, Your Honor.

9 ALJ TOREM: Mr. Finnigan, did that track,
10 other than my looking at the wrong dates on the calendar,
11 with you?

12 MR. FINNIGAN: Yes, it does.

13 ALJ TOREM: Mr. Fassio any other --

14 MR. FASSIO: Yes, I tracked.

15 ALJ TOREM: Okay. So I think we've addressed
16 that other item on the agenda, as to what the status of the
17 evidence is and any discovery issues.

18 Were there any other items that we needed to
19 address on the record today?

20 MR. FASSIO: Not that I'm aware of, Your
21 Honor.

22 ALJ TOREM: Mr. Finnigan?

23 MR. FINNIGAN: Not that I'm aware of either.

24 ALJ TOREM: All right. And, Mr. Tadlock?

25 MR. TADLOCK: Nothing additional, Your Honor.

0153

1 ALJ TOREM: All right. Well, I thank you all
2 for --

3 MR. ROBBINS: Your -- Your Honor?

4 ALJ TOREM: Yes?

5 MR. ROBBINS: This is Philip Robbins on the
6 bridge line.

7 ALJ TOREM: Yes, Mr. Robbins?

8 MR. ROBBINS: Not to impinge Mr. -- the
9 authority that Mr. Tadlock's been given, but I'm totally
10 confused here.

11 It sounds from all the discussion that's gone on
12 today, that there's actually two cases going on here. And I
13 don't -- I don't understand it.

14 What's WUTC's role? Is it different from
15 Mr. Class's, or is it one and the same?

16 ALJ TOREM: Well, Mr. Robbins, let me just
17 clarify what's going on here.

18 There may have been two cases, or maybe even three,
19 involving Mr. Class's water system.

20 There are two State agencies that I'm aware of, and
21 perhaps one County agency that might be involved in the
22 regulation of that water system. One of which is the
23 Department of Health, which that's standard in the State's
24 Drinking Water Act.

25 There may be some Cowlitz County or -- I'm not sure

0154

1 if this -- I'm getting the county wrong -- involvement, but I
2 believe Department of Health has 100% jurisdiction.

3 There was a Superior Court order, putting the water
4 company into receivership some time ago.

5 That occurred between the hearings that we had in
6 February and March, if my recollection is correct.

7 That was one of the remedies sought originally
8 before this Commission, which is again, a separate State
9 agency.

10 What's going on in this case is different than what
11 the Department of Health was looking at.

12 But if you review the complaint that you signed
13 onto, this case is the one in which you're seeking financial
14 remuneration of some sort and/or the receivership of the
15 company.

16 Again, that's been done by Department of Health and
17 was withdrawn as an issue before me.

18 So that's --

19 MR. ROBBINS: I'm in total understanding of
20 that, Your Honor.

21 But what it appears, from discussions today, that
22 there's two parallel cases going on here between the
23 complainants and WUTC, and the complainants and Dan Class or
24 Green Mountain H2O.

25 ALJ TOREM: Let me clarify the role here.

0155

1 There are three parties to this case.

2 The Commission is actually represented on its
3 regulatory staff by Mr. Fassio. He is taking an active role
4 in this case to determine what the Commission's interests
5 are, so he can make recommendations to the decision
6 authorities.

7 Whether it be me at this level, or if there's an
8 appeal to the Commissioners that were appointed by the
9 governor to run this agency.

10 So he is representing the regulatory staff's
11 interests. He's their attorney. Mr. Ward, his client, and
12 Mr. Eckhardt, the division chief there, are sitting in the
13 room today. They have interest in regulating all water
14 companies, not just Green Mountain.

15 And so they're making sure that the regulations,
16 from their perspective and the law, are being adequately
17 represented here before me.

18 So that a group of complainants and/or a water
19 company doesn't come in, perhaps not as familiar with those
20 laws and regulations, and miss something.

21 So Mr. Fassio will be making sure that he's arguing
22 a case, it may against the homeowners at some points. It may
23 be with the homeowners on others. But it's simply how he
24 sees the law and the regulation.

25 The dog he has in the fight is what he sees as the

0156

1 law is.

2 You folks have financial interests on the line on
3 both sides. In many ways, he could be looked at as much more
4 neutral. At least less emotionally charged as far as what
5 his interests in this case are.

6 But it's strictly governmental agency interest, so
7 it's not a parallel case. He's representing a different
8 interest than either you, through Mr. Tadlock, or Mr. Class,
9 now through Mr. Finnigan.

10 Does that help, Mr. Robbins, to understand this?

11 MR. ROBBINS: Yes, it does, Your Honor. Thank
12 you.

13 ALJ TOREM: He may seem adversarial at some
14 times to your interests, and he may also seem adversarial to
15 Mr. Class at other times, which simply means he's doing his
16 job.

17 MR. ROBBINS: Thank you.

18 ALJ TOREM: Mr. Finnigan, you've practiced
19 before this Commission longer than I've been associated with
20 it.

21 Did -- anything else you want to add to clarify the
22 process?

23 MR. FINNIGAN: No, Your Honor. I think you
24 did a good job.

25 ALJ TOREM: All right. I'll check that off

0157

1 for today.

2 Mr. Tadlock, Mr. Robbins, any other questions on
3 behalf of the complainants?

4 MR. TADLOCK: Not today, Your Honor.

5 ALJ TOREM: All right.

6 MR. ROBBINS: Not for me. Thank you.

7 ALJ TOREM: I hope that that did clear it up,
8 Mr. Robbins.

9 And I know this procedural issue can seem like a
10 bit of a hornet's nest, but the rules are there so that when
11 we get all the evidence in, as I've said a couple times
12 today, I can judge whether you've carried your burden on
13 behalf of the all the complainants, and give an opportunity
14 for Mr. Class to put on testimony as well. And then hear
15 anything advisory from the Commission staff before making a
16 decision.

17 It will take a while, but I'll be fully informed.
18 I promise. And I hope that I'll have a decision that's
19 understandable to everybody, whatever that might be in the
20 end.

21 MR. TADLOCK: Thank you.

22 ALJ TOREM: All right. Then's it about 12:00
23 o'clock, noon.

24 We'll adjourn for today, and I will issue another
25 notice with these dates that we've agreed to shortly. It may

0158

1 even go out this afternoon.

2 Thank you. We're adjourned.

3 (The prehearing conference was concluded at

4 12:02 p.m.)

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

C E R T I F I C A T E

STATE OF WASHINGTON)
COUNTY OF KING)

I, the undersigned Washington Certified Court Reporter, pursuant to RCW 5.28.010 authorized to administer oaths and affirmations in and for the State of Washington, do hereby certify:

That the annexed and foregoing prehearing conference containing Page 109 through 161 of each witness named herein was taken stenographically before me and reduced to typewriting under my direction.

I further certify that each said witness examined, read and signed his/her prehearing conference after the same was transcribed unless indicated in the record that the parties and each witness waived the signing.

I further certify that all objections made at the time of said examination to my qualifications or the manner of taking each prehearing conference, or to the conduct of any party have been noted by me upon each prehearing conference.

I further certify that I am not a relative or an employee or attorney or Counsel of any of the parties to said action, or a relative or employee of any such attorney or Counsel, and that I am not financially interested in the said action or the outcome thereof.

I further certify that each witness before examination was by me duly sworn to testify the truth, the whole truth and nothing but the truth.

I further certify that the prehearing conference, as transcribed is a full, true and correct transcript of the testimony, including questions and answers, and all objections, motions and exceptions of Counsel made and taken at the time of the foregoing examination and was prepared pursuant to Washington Administrative Code 308-14-135, the transcript preparation format guideline.

0160

1 I further certify that I am sealing the prehearing conference
2 in an envelope with the title of the above-referenced cause
3 thereon and marked "Prehearing Conference" with the name of
4 each witness and promptly delivering the same to the
5 appropriate party or parties.

4

5 IN WITNESS WHEREOF, I have hereunto set my hand
6 and affixed my Washington State CCR Seal this _____ day of
7 _____, 2011.

7

8

9

10 _____
11 Washington State Certified Court Reporter
12 WA CCR No. 2171
13 License effective until: 11/4/12.
14 Residing at Federal Way, Washington

12

13

14

15

16

17

18

19

20

21

22

23

24

25