

1 BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION  
2 COMMISSION

3	THE WASHINGTON UTILITIES AND	)	
	TRANSPORTATION COMMISSION,	)	
4	Complainant,	)	DOCKET NOS. UW-961042,
		)	UW-961043, UW-961044,
5	vs.	)	UW-961141 and UW-961546
		)	
6	SOUND WATER COMPANY,	)	Volume 1
	INCORPORATED,	)	Pages 1 - 27
7	Respondent.	)	
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9 A pre-hearing conference in the above matter

10 was held on January 22, 1997 at 1:30 p.m., at 1300

11 South Evergreen Park Drive Southwest, Olympia,

12 Washington, before Administrative Law Judge JOHN

13 PRUSIA.

14

15 The parties were present as follows:

16 SOUND WATER COMPANY, INCORPORATED, by ROBERT E.

17 LUNDGAARD, Attorney at Law, 2400 Bristol Court SW,  
Olympia, Washington 98502.

18 RAINIER VIEW WATER COMPANY, INCORPORATED,

19 by RICHARD A. FINNIGAN, Attorney at Law, 2405  
Evergreen Park Drive SW, Suite B-1, Olympia,  
Washington 98502.

20 THE WASHINGTON UTILITIES AND TRANSPORTATION

21 COMMISSION STAFF, by MARY M. TENNYSON, Senior  
Assistant Attorney General, 1400 South Evergreen Park  
22 Drive SW, Olympia, Washington 98504.

23

24 Cheryl Macdonald, CSR

25 Court Reporter

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

2 JUDGE PRUSIA: Let's be on the record.

3 This is a pre-hearing conference in five consolidated  
4 dockets all involving contracts filed by Sound Water  
5 Company which serves approximately 1500 customers in  
6 the Tacoma area. On August 22, 1996 Sound Water filed  
7 three contracts. Each has a stated effective date of  
8 September 21, 1996. Those are docket Nos. UW-961042,  
9 UW-961043 and UW-961044. On September 11, 1996 Sound  
10 Water filed a fourth contract which was assigned  
11 docket No. UW-961141 and on December 6, 1996 Sound  
12 Water filed a fifth contract for Commission approval.  
13 It was assigned No. UW-961546.

14 By order entered September 11, 1996 the  
15 Commission suspended the operation of the first three,  
16 the UW-961042, 961043 and 961044 pending hearings  
17 concerning their justness and reasonableness. By  
18 order entered October 9, 1996 the Commission suspended  
19 the operation of the 961141 contract pending hearings  
20 concerning its justness and reasonableness. By order  
21 entered December 30, 1996 the Commission suspended the  
22 operation of the 961546 contract pending hearings  
23 concerning its justness and reasonableness, and by  
24 order entered January 2, 1997 the Commission  
25 consolidated the five dockets for hearing and

1 determination.

2           The Commission entered its notice of  
3 pre-hearing conference on January 2, 1997. At the  
4 request of the parties that hearing was continued to  
5 today which is January 22, 1997. My name is John  
6 Prusia. I'm the administrative law judge assigned to  
7 these consolidated proceedings. As is indicated in  
8 the notice of pre-hearing conference, we will be  
9 setting evidentiary hearings, formulating issues and  
10 considering any petitions to intervene today. We will  
11 also be dealing with discovery and other preliminary  
12 matters. I will take appearances at this time. We'll  
13 begin with Sound Water Company, Mr. Lundgaard.

14           MR. LUNDGAARD: Yes. I'm Robert E.  
15 Lundgaard, 2400 Bristol Court Southwest, Olympia,  
16 98502. I represent Sound Water Company.

17           JUDGE PRUSIA: And for Commission staff,  
18 Ms. Tennyson.

19           MS. TENNYSON: Yes. My name is Mary M.  
20 Tennyson. I'm a senior assistant attorney general  
21 representing Commission staff in this case.

22           JUDGE PRUSIA: And I understand there will  
23 be a petition to intervene; is that correct?

24           MR. FINNIGAN: Yes. This is Richard A.  
25 Finnigan. The address is 2405 Evergreen Park Drive

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1 Southwest, B-1, Olympia, Washington 98502 and  
2 appearing on behalf of Rainier View Water Company,  
3 Inc.

4 JUDGE PRUSIA: Thank you. Is there anyone  
5 else present in the room today who intends to file a  
6 petition or make a motion to intervene in this  
7 proceeding? Let the record reflect that there is no  
8 response.

9 The first order of business, then, will be  
10 the petition to intervene. Mr. Finnigan, do you have  
11 a written petition with you?

12 MR. FINNIGAN: No, I do not. If Your Honor  
13 --

14 JUDGE PRUSIA: Please then state the basis  
15 for your petition to intervene.

16 MR. FINNIGAN: Like to place before this  
17 hearing the motion of Rainier View Water Company to  
18 intervene in this proceeding. Rainier View Water  
19 Company is a regulated company doing business  
20 primarily in Pierce County. It currently serves  
21 approximately 7,000 customers. The basis for Rainier  
22 View's intervention is that it currently has a  
23 contract to purchase the assets of Sound Water and  
24 that if the obligations that Sound incurs in contracts  
25 with developers that requires performance of duties in

1 the future but collects funds upfront to satisfy those  
2 obligations places Rainier View in a precarious  
3 position under those contracts at the time that it  
4 closes the contract to purchase the assets, and that's  
5 the basis that we objected to the contracts when they  
6 came before the Commission in documents that we filed  
7 at that time, letters that we filed at that time and  
8 that is still our position.

9 JUDGE PRUSIA: I have a few questions to  
10 ask you. What issues are you planning to raise in the  
11 proceeding?

12 MR. FINNIGAN: The issues I am planning to  
13 raise are whether these contracts as presented --  
14 well, first of all, I would take the position that the  
15 contracts having been suspended, there's a burden of  
16 proof on the proponent of the contracts to demonstrate  
17 that those contracts are in the public interest, and  
18 certainly we would be commenting on the evidence that  
19 they produce to justify that those contracts are in  
20 the public interest and should be approved. In  
21 particular, the relationship between those contracts  
22 and the collection of fees upfront for obligations  
23 that are to be performed later and how that affects  
24 the rights and obligations of the beneficiaries of the  
25 contracts, the developers, vis-a-vis what Rainier View

1 would be doing under its purchase of the assets of  
2 Sound I think is an important consideration in  
3 determining whether or not those contracts or portions  
4 of those contracts are in the public interest.

5 JUDGE PRUSIA: And do you intend to submit  
6 written testimony?

7 MR. FINNIGAN: Well, I'm trying to find out  
8 -- I don't know what our procedure is going to be but  
9 presumably if that's the case, yes, we will present  
10 written testimony.

11 JUDGE PRUSIA: Or oral, you intend to  
12 present some sort of testimony.

13 MR. FINNIGAN: Depending on what procedure  
14 the case takes we will follow the procedurally  
15 appropriate mechanism to get our views before the  
16 administrative law judge. You know, I don't know what  
17 we're doing here, if we're going to have rounds of  
18 testimony and then witnesses or we're just going to  
19 have live witnesses. Whatever needs to be done we  
20 will participate.

21 JUDGE PRUSIA: All right. But you do have  
22 testimony of some sort you intend to --

23 MR. FINNIGAN: We intend to but subject to  
24 seeing what the proponent of the contract puts  
25 forward, obviously we're in a position where we need

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1 to -- we have some issues we need to present, but we  
2 need to respond to whatever issues they put forward as  
3 to why the contracts are in the public interest.

4 JUDGE PRUSIA: Is there any way your  
5 interests can be adequately represented by Commission  
6 staff?

7 MR. FINNIGAN: Absolutely. Rainier View is  
8 the contract holder for purchase of the assets. Its  
9 interest is particular to it and the duties and  
10 relationships it will have with developers that are  
11 under the contracts that are currently before the  
12 Commission. To this extent I would assume that staff  
13 is in the position of representing the public in  
14 general. Our interest is specific to Rainier View.

15 JUDGE PRUSIA: Finally, are your interests  
16 ones that might be more appropriately dealt with in  
17 proceedings related to your acquisition of Sound Water  
18 or in your contract proceedings rather than in this  
19 proceeding? I guess my concern is sometimes parties  
20 who are involved in disputes with some company that's  
21 before the Commission attempt to use Commission  
22 processes to gain an advantage.

23 MR. FINNIGAN: I understand. These are  
24 related directly to the contracts themselves and the  
25 relationship is to what happens when Rainier View

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1 succeeds to the assets. Quite frankly -- I will hold  
2 that comment for the moment. But, no, our interests  
3 are specific to these contracts.

4 JUDGE PRUSIA: Is there any objection to  
5 the participation of Rainier View?

6 MR. LUNDGAARD: Yes. I think you've just  
7 hit on an important point that I think it's more  
8 appropriate in the acquisition hearing that their  
9 matter be discussed. As he's indicated, they're  
10 concerned about the potential of having to perform  
11 work in the future. That would only be true if the  
12 acquisition occurs, and there's some question about  
13 whether that will ever occur. Absent that, they have  
14 no standing in here to contest these contracts, so  
15 unless -- so any work -- and we say there isn't any  
16 work left to be done. All of the work both for supply  
17 and the facilities is complete and we're asking these  
18 contractors to pay us under these contracts. The only  
19 thing that's left is to put the meter in the  
20 connection and that we've already indicated to Rainier  
21 View that we will either install those now or we can  
22 install those or give them the --

23 MR. FINNIGAN: I'm going to object to any  
24 discussion of any disclosure of settlement  
25 discussions. We have made several offers. If you



1 want to make those offers part of this record I would  
2 be happy to, Mr. Lundgaard, but it seems to me that to  
3 describe your unilateral position in a settlement  
4 discussion violates the obligation that both of us  
5 have to keep those discussions among the parties.

6 Now, we can get into a discussion of who offered who  
7 what and which is the more reasonable approach but --

8 MR. LUNDGAARD: I will just go back to my  
9 point that their only standing here would be a matter  
10 of handling this as part of a closing of the sale if  
11 the sale is approved by the Commission. If the sale  
12 is not approved by the Commission there's nothing for  
13 them to be concerned about.

14 JUDGE PRUSIA: Commission staff.

15 MS. TENNYSON: Yes, Your Honor. Basically  
16 it may be -- a little bit of history without getting  
17 into the whole realm of discussions and issues between  
18 those two parties might be helpful. From the  
19 Commission's staff's perspective the issues at this  
20 hearing are the terms of the obligations to provide  
21 service under the contract and do the contracts in  
22 question meet the filing criteria. They were placed  
23 on the consent agenda by the staff at which point  
24 Rainier View raised their issue and the Commission  
25 then suspended the contracts because of that protest;

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1 rather than attempting to resolve it at an open  
2 meeting did set it over for hearing.

3           In terms of where we go from here,  
4 Commission staff does not have an issue at this point  
5 with the terms of the contracts as filed, and the only  
6 reason we are here is because of the protest. Our  
7 concern is with resolving the issue of the contracts,  
8 getting the service into place in an expeditious  
9 manner so that development can go forward, people can  
10 get water to their homes.

11           The issue of who provides that service is a  
12 totally separate matter. There is a transfer  
13 application that is pending, has not been noted by the  
14 Commission for hearing, has not been placed on the  
15 agenda at this point, so from staff's perspective we  
16 have a major concern that we not mix the issues of the  
17 transfer application and the contracts but keep it  
18 clearly to what are the issues involved in these  
19 contracts. In that respect, since they have been  
20 suspended, I would agree with Mr. Finnigan, it is the  
21 burden of the applicant to show they do meet the  
22 criteria and then would be the obligation of Rainier  
23 View if they are allowed to intervene to present  
24 reasons why those -- that has not been shown.

25           I would suggest as a procedure that this

1 might be a matter we could resolve on written  
2 briefing. The matter has been pending in at least  
3 three of the contracts since August. I would presume  
4 the parties are fairly well certain what their  
5 positions are at this point or if they're not they're  
6 not going to be and suggest that there be a filing of  
7 simultaneous briefs with opportunity for rebuttals by  
8 each of the parties.

9 JUDGE PRUSIA: Are there no factual  
10 disputes?

11 MR. FINNIGAN: I think there has to be at  
12 least a written record. I don't think we can go  
13 straight to briefs, but certainly I am not opposing  
14 procedures to expedite the resolution of that. I'm  
15 not trying to draw it out.

16 JUDGE PRUSIA: Unless the parties can  
17 stipulate to all the facts.

18 MS. TENNYSON: I would have to defer to  
19 counsel as to whether they might be able to stipulate  
20 to facts.

21 MR. FINNIGAN: We haven't discussed that  
22 but we can discuss it. If I might --

23 JUDGE PRUSIA: We haven't heard your  
24 response, Mr. Finnigan, to the argument that you don't  
25 have standing to intervene in this proceeding.

1                   MR. FINNIGAN: Very briefly a couple of  
2 points, I suppose. First of all, Mr. Lundgaard  
3 indicates that the work has been all done on these  
4 contracts. That's an interesting position to take. I  
5 suppose may be factually true but that's a violation  
6 of the Commission rules. They're supposed to have  
7 these contracts approved before the work is done, not  
8 come in after the fact and ask for a result; to use  
9 that as a justification to now say that Rainier View  
10 does not now have standing is entirely inappropriate.

11                   Secondly, his suggestion that this be  
12 resolved in the hearing on the application, the  
13 problem with that is that once these contracts are  
14 approved and the money is paid there's nothing in the  
15 transfer application proceeding that would provide  
16 relief to Rainier View. It's a done deal at that  
17 point. So this is the appropriate time to address  
18 these contracts. The transfer is the appropriate time  
19 to address the transfer, but to say that any concern  
20 that Rainier View has about these contracts can be  
21 addressed in the transfer is simply to say, Give us  
22 the opportunity to declare victory today and deprive  
23 Rainier View of any chance for its issues regarding  
24 these contracts to be considered.

25                   MR. LUNDGAARD: If I could comment on that.

1 JUDGE PRUSIA: Yes, Mr. Lundgaard.

2 MR. LUNDGAARD: At the time that the  
3 transfer takes place or the sale closes there will be  
4 -- there will have to be an agreement on the price to  
5 be paid and the issues here of whether they are to  
6 provide work in the future for money received is  
7 something that obviously would be germane to the price  
8 that would be paid and could be reflected in that  
9 agreement. So I think -- I don't think he's indicated  
10 any issue other than his statement to the effect that  
11 they're concerned about future work that they would  
12 perform.

13 I don't think they -- I haven't heard him  
14 say that they take issue with the actual contracts  
15 themselves. His issue is with whether or not we are  
16 going to be receiving money in advance for work  
17 they're going to perform and if he can -- if he could  
18 show that there's some work that he's going to perform  
19 and what the reasonable cost of that work is, then  
20 that can be an adjustment in the price at the time of  
21 closing and can be taken care of in the hearing on the  
22 transfer as to what is the reasonable price to be  
23 paid. There's arbitration to be held in that hearing,  
24 as I understand it. I'm not handling the matter.

25 MR. FINNIGAN: That's not related to the

1 issue.

2 MR. LUNDGAARD: So I am not real familiar  
3 with it, but the issues of the amount that's going to  
4 be paid is yet to be resolved, and it's certainly not  
5 an issue that we should be getting into in the  
6 approval of what are routine contracts. Same form has  
7 been approved by the staff numerous times before, so  
8 there's nothing, and as they indicated, they were on  
9 the consent calendar; but for their protest based on  
10 their potential purchase of Sound Water there would be  
11 no reason to have suspended it.

12 JUDGE PRUSIA: Mr. Finnigan.

13 MR. FINNIGAN: Just -- I will follow up in  
14 reverse order of the points that were raised. First  
15 of all, apparently the commissioners felt that there  
16 was sufficient reason stated at the open meetings to  
17 suspend this matter. They could have approved it over  
18 the objection of Rainier View. They didn't. They did  
19 set it for suspension. The idea -- we are not in this  
20 proceeding at all going to discuss or we're not asking  
21 you to discuss or determine what the value is of the  
22 assets that should be transferred. That's outside of  
23 this proceeding. What we are concerned about is about  
24 the contracts.

25 As I did indicate at the beginning of my

1 comments, we do believe that the burden of proof rests  
2 with the proponent of the contracts to show that these  
3 are in the public interest. If they can't show that  
4 they're in the public interest for the reasons that  
5 they advance we will certainly address those. You  
6 asked for what specific issues we have and we do have  
7 specific issues related to their -- as the contracts  
8 as written involve the collection of monies upfront  
9 for duties to be performed at a later date. There's  
10 certainly a question of whether that -- under those  
11 circumstances where there's a transfer pending is in  
12 the public interest and whether that is the  
13 appropriate treatment of the developers in this case.

14 JUDGE PRUSIA: I don't know the setting of  
15 the transfer that's pending, but it just strikes me  
16 that if Rainier View is unhappy with what Sound Water  
17 does that they could simply back out of the purchase  
18 or -- it just seems like that's a setting where your  
19 interests -- where you would protect your interests if  
20 you have a contract with them. It seems like this is  
21 a matter that should be dealt with in the contract  
22 rather than in this particular setting.

23 MR. FINNIGAN: There is a signed contract  
24 that is submitted for approval by the Commission. Mr.  
25 Lundgaard suggested that can be varied. I don't know

1 that it can be varied. The contract itself is before  
2 the Commission if what we're asking for is a review of  
3 these particular contracts. We're not asking for a  
4 review of the contract involved with the transfer of  
5 assets. We're asking for approval of these particular  
6 contracts and whether these contracts are in the  
7 public interest as required by law and whether it is  
8 appropriate under this set of circumstances to be  
9 collecting, as an issue, collecting funds upfront for  
10 duties to be performed at a later date, duties that  
11 would in all probability be performed by someone else.

12 JUDGE PRUSIA: I can appreciate your  
13 concerns, and I understand the issues you are  
14 articulating, but my concern is having you as a  
15 participant in the proceeding. Potentially there  
16 could be a falling out between the two of you. I  
17 don't know exactly what the relationship is now, but  
18 aren't your concerns ones that you could express  
19 through Commission staff?

20 MR. FINNIGAN: No. They're particular to  
21 Rainier View, as I've tried to express. We have  
22 issues that we believe should be considered. We're  
23 not asking that this be unduly delayed. We've stated  
24 all along that we're willing to expedite this  
25 procedure, that we're willing to consolidate all of



1 the dockets, that we're willing to cooperate to the  
2 extent possible, but we do believe that we have the  
3 right to have these issues considered and it seems to  
4 me that it is one of particular concern. This is not  
5 a case, for example, in telecommunications where you  
6 would have parties arguing particular issues in order  
7 to take -- to get a competitive advantage in a field  
8 vis-a-vis other players. This is a concern of whether  
9 or not these particular contracts, as they are  
10 structured in light of the pending transfer, should  
11 include provision to collect sums upfront for duties  
12 to be performed later.

13           Sound's remedy -- we're talking here about  
14 speculative remedies, but one thing that Sound could  
15 easily do under these contracts would be simply to  
16 restructure them, to collect the funds for the actual  
17 construction upfront but collect for the hook-up fees  
18 and the off-site fees as required by the developer  
19 hook them up. That would then structure this in such  
20 a way that they would get their money so long as they  
21 are performing the work and wouldn't have any adverse  
22 effects to the developers of those contracts or place  
23 obligation on Rainier View once the assets are  
24 transferred where Sound has already collected the  
25 money. Seems to me that's a very simple example of an

1 appropriate way to make these contracts in the public  
2 interest and allow them to be approved. I don't know  
3 what else I can add to that but that's essentially  
4 we're coming from.

5 MS. TENNYSON: Your Honor, if I might  
6 address your last question as well. In that respect I  
7 don't believe that the Commission could properly  
8 represent Rainier View's interest. As I indicated  
9 earlier, the Commission staff doesn't have an issue  
10 with these contracts as drafted. It is apparent that  
11 Rainier View has a concern that is different in terms  
12 of the way they are structured. We look at it without  
13 regard to who is providing the service. The contracts  
14 meet the filing requirements and so staff does not  
15 have an issue with them. We cannot represent that  
16 interest of Rainier View in that respect.

17 JUDGE PRUSIA: I guess my concern is,  
18 again, seems like you're trying to protect your  
19 interests in another proceeding by --

20 MR. FINNIGAN: It's a chicken and egg  
21 position. If we're not here to talk about these  
22 contracts and what our interests are in these  
23 contracts, if we don't have a vehicle that I can see,  
24 unless Mr. Lundgaard is willing to stipulate on behalf  
25 of his client that they will make an adjustment to the

1 purchase price -- and I don't know that I've heard  
2 that -- we don't have a remedy. This is the only  
3 place that we can address these contracts. We are not  
4 trying to get any sort of issue on the transfer heard  
5 here. We're simply trying to place these contracts in  
6 context. That's all we're doing.

7 JUDGE PRUSIA: Did the parties not foresee  
8 some issue at the time they entered the transfer  
9 contract?

10 MR. FINNIGAN: No. What we've had -- it's  
11 a fairly long history. There was a transfer of assets  
12 that was originally struck between a set of  
13 shareholders, a set of owners of Sound. There was a  
14 contest over whether or not that contract was valid or  
15 not. It was ultimately upheld as valid by the  
16 Court of Appeals. During the interim they struck  
17 another deal and brought in another person as a  
18 shareholder, as a primary shareholder, and so there  
19 has been a shift of interests among the stockholders  
20 of Sound so that it is a fairly complicated -- without  
21 going through all the details -- fairly complicated  
22 transaction at this point from what was originally  
23 contemplated to be a fairly simple situation, and it's  
24 a result of that complexity that these contracts need  
25 to be placed in that proper context.

1                   MR. LUNDGAARD: Your Honor, I think it's  
2 clear that the staff is saying that the public  
3 interest has been satisfied in this case and if it  
4 were not for the private and personal interests of  
5 Rainier View Water Company there would be no reason to  
6 not have the Commission approve these contracts.

7                   JUDGE PRUSIA: Well, I haven't actually  
8 heard Commission staff say that in those words.

9                   MR. LUNDGAARD: Rainier View's concern is  
10 strictly this one of whether there's going to be work  
11 to be done later or not and I keep saying there isn't  
12 an approved contract with a specific price, as I  
13 understand it. That's still a matter to be  
14 determined, so to say that there's a contract on file  
15 signed by the parties that says the exact purchase I  
16 don't believe to be accurate.

17                   MR. FINNIGAN: That is accurate, Mr.  
18 Lundgaard. Mr. Lundgaard, are you willing to  
19 stipulate on this record on behalf of Sound Water  
20 Company that if all of the -- that if the transfer  
21 goes through the off-site funds will be transferred to  
22 Rainier View and that those meters that are not placed  
23 the funds related to the collection of those meters  
24 will be transferred to Rainier View?

25                   MR. LUNDGAARD: No. The facilities are in.

1 It begs the point. The facilities are in.

2 MR. FINNIGAN: The meters are not in.

3 That's a question of fact.

4 MR. LUNDGAARD: He said we'll stipulate and  
5 we indicated that we will stipulate to turn over the  
6 meters to them. At the time that the sale goes  
7 through any meters that aren't installed will be  
8 turned over at the time of the sale, part of closing,  
9 and there may be other projects. Let's say, for  
10 example, that it's ten months from now that ultimately  
11 the transfer goes through. There are going to be  
12 other projects coming in that may be in an unfinished  
13 condition where all of the facilities are not in the  
14 ground and in those cases, yes, there would need to be  
15 adjustments made. What we're talking about are  
16 historical contracts where the work has been performed  
17 and the developments -- the developers want to start  
18 selling the lots, and until we can get the contract  
19 approved we're setting here sometime immediate and we  
20 have five contracts here. There may be more coming in  
21 in the future and maybe at some point there would be a  
22 legitimate concern by Rainier View that the 20 percent  
23 of the pipes in the ground and it's to be finished by  
24 them, and that would be an appropriate one to have  
25 some adjustment made. But counsel is asking us to

1 turn over the funds in this case for facilities that  
2 we've already installed for which we're entitled to be  
3 paid by the developer under the contract.

4 MR. FINNIGAN: Well, we disagree with that.  
5 That's part of the factual dispute. The meters are  
6 not installed. We disagree with the concept that they  
7 have been -- that the work has been done. Certainly  
8 the mains are in the ground and, as I pointed out  
9 earlier, in violation of Commission rule because the  
10 work is not supposed to be done until the contract is  
11 approved first so now they're asking the Commission to  
12 bail them out by approving contracts that should have  
13 been submitted -- in fact one was submitted and then  
14 withdrawn back in early summer and they went ahead and  
15 did the work when they -- we're starting to talk facts  
16 here and since Mr. Lundgaard has gone ahead and  
17 indicated what their position was in settlement we are  
18 simply willing to say, Put those funds in escrow and  
19 go ahead and collect the rest of the funds for the  
20 work that's done. I mean, we're trying to be very  
21 reasonable here and reach an accommodation as to those  
22 contracts, and now starting to debate the merits of  
23 the factual issues but that's where we are.

24 JUDGE PRUSIA: If Rainier View is not  
25 permitted to intervene whose interests would be

1 damaged other than Rainier View's?

2           MR. FINNIGAN: The position we're going to  
3 take, and I believe we will be in a Sound position to  
4 take that, no pun intended, is that once we acquire  
5 the assets the developers will have to pay a new hook-  
6 up fee to Rainier View, a second hook-up fee. If they  
7 pay one now to Sound that's to Sound as a legal  
8 entity. We're not acquiring the stock of Sound.  
9 We're acquiring the assets, and we will take the  
10 position that they will have to pay a second hook-up  
11 fee to us at Rainier View's tariffed rates in effect  
12 at the time that they ask for the hook-up, so there is  
13 the potential, very serious potential, of the  
14 developers having to pay twice, and we will ask -- we  
15 will tell them that their remedy is to return to Sound  
16 for a refund, that they paid Sound Water as a separate  
17 legal entity at their peril. We're trying to avoid  
18 that situation by going through this proceeding, but  
19 if that's the situation we're forced into that's the  
20 position we will take.

21           JUDGE PRUSIA: Is there any other comment  
22 before I rule on the motion?

23           MR. LUNDGAARD: I would just comment that  
24 the money we collect will be reflected in the sale  
25 price at the time that that price is finally

1 determined and approved by the Commission, so I think  
2 that's just another red herring.

3 MR. FINNIGAN: I asked Mr. Lundgaard if he  
4 would stipulate to the reduction and he said he  
5 wouldn't so I don't know what he's talking about now.

6 JUDGE PRUSIA: Anything further?

7 MS. TENNYSON: No.

8 JUDGE PRUSIA: I'm going to deny the  
9 petition to intervene. I believe that Rainier View is  
10 -- we're opening this up, I believe, to issues beyond  
11 the immediate proceeding. I understand that Rainier  
12 View has concerns that they want to protect, but I  
13 believe that they have other forums in which they can  
14 do that which are more appropriate.

15 MR. FINNIGAN: Those being?

16 JUDGE PRUSIA: Either in their contract  
17 proceeding or whatever is involved in that or if  
18 you've been given the shaft, perhaps you can get  
19 damages or you can get out of your contract or  
20 something of that sort. The other parties to these  
21 contracts apparently are not objecting to them, which  
22 is the developers. I just see Rainier View here  
23 pursuing a private interest in what I believe is not  
24 the appropriate forum to do it. Therefore I am  
25 denying the petition.



1           MR. FINNIGAN: Will you be issuing a  
2 written order?

3           JUDGE PRUSIA: I will.

4           MR. FINNIGAN: We will ask for review of  
5 that order.

6           JUDGE PRUSIA: You may do that. Does  
7 either of the parties wish to invoke the Commission's  
8 discovery rule, which is WAC 480-09-480, rule relating  
9 to methods for obtaining data in adjudicative  
10 proceedings?

11           MS. TENNYSON: The Commission staff does  
12 not.

13           MR. LUNDGAARD: No.

14           JUDGE PRUSIA: Very well. I will not  
15 invoke that rule. Will there be any need for a  
16 protective order in this proceeding?

17           MS. TENNYSON: I do not believe so.

18           MR. LUNDGAARD: No.

19           JUDGE PRUSIA: Very well. We will not  
20 enter a protective order at this time either. Let's  
21 go off the record to discuss scheduling.

22           (Recess.)

23           JUDGE PRUSIA: Let's be back on the record.  
24 While we were off the record we were discussing a  
25 hearing schedule and it was agreed that a hearing

1 would be scheduled for Tuesday, March 11, 1997. If  
2 the Commission should reverse my ruling that Rainier  
3 View is not allowed to intervene then as soon as the  
4 Commission's ruling comes down I would schedule a  
5 second pre-hearing conference, perhaps by telephone if  
6 we can't get everyone together personally, and we  
7 could work out issues concerning discovery and whether  
8 briefs would be necessary following the hearing. At  
9 this point, then, we've simply set the date for the  
10 hearing.

11                   Is there anything further that -- I might  
12 add that generally I try to have -- generally I try to  
13 have my initial order out within 30 days after a  
14 hearing. If the issues are not complex then it may  
15 not take that long. The Commission is usually asking  
16 for 90 days after that to review an initial order and  
17 then make their final order. They may not take that  
18 long but they ask for at least 90 days.

19                   Is there anything else that we need to  
20 cover this afternoon?

21                   MR. LUNDGAARD: None that I can think of.

22                   MS. TENNYSON: None as far as the  
23 Commission is concerned.

24                   JUDGE PRUSIA: We'll be adjourned. Thank  
25 you for attending.

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(Hearing adjourned at 2:20 p.m.)

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