

1 BEFORE THE WASHINGTON UTILITIES AND
2 TRANSPORTATION COMMISSION

3 DAVID AND JANIS STEVENS, PAUL)
4 CARRICK, ALAN AND JIM) DOCKET NO. UW-011320
5 WIEMEYER, CHRIS AND CECILY)
6 FLAVELL, STAN AND KAY MILLER,) Volume V
7 MICHAEL AND COLLEEN STOVER,) Pages 398 to 426
8 RICHARD AND PAULA RUSSELL,)
9 BEN G. MARCIN, RONALD AND)
10 VICTORIA MONTGOMERY, CHARLES)
11 AND MICHELLE CLARK, PAUL)
12 SCHULTE, SUE PERRAULT, and)
13 JORG REINHOLT,)
14)
15) Petitioners,)
16)
17) vs.)
18)
19 ROSARIO UTILITIES, LLC,)
20)
21) Respondent,)
22)
23 _____)
24

15 A hearing in the above matter was held on
16 March 18, 2003, from 10:05 a.m. to 10:55 a.m., at 1300
17 South Evergreen Park Drive Southwest, Room 108, Olympia,
18 Washington, before Administrative Law Judge KAREN
19 CAILLE.

20 The parties were present as follows:

21 STEVENS, Et Al., Petitioners, by PATRICK
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26 Joan E. Kinn, CCR, RPR
27 Court Reporter

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1 ROSARIO UTILITIES, LLC, Respondent, by THOMAS
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5
6 OLY ROSE, LLC, Intervenor, by RICHARD A.
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1 P R O C E E D I N G S

2 JUDGE CAILLE: We are here this morning for a
3 hearing on a settlement agreement in Docket UW-011320.
4 This is a complaint brought by David and Janis Stevens,
5 et al. versus Rosario Utilities. Today is March 18th,
6 and we are convened in a hearing room in the
7 Commission's headquarters. My name is Karen Caille, and
8 I am the presiding Administrative Law Judge in this
9 proceeding.

10 At this point I would ask the parties to
11 please enter your appearances for the record.

12 MR. HANIS: My name is Patrick Hanis, here on
13 behalf of the Complainants.

14 MR. PORS: My name is Tom Pors, I'm here on
15 behalf of the Respondent, Rosario Utilities, LLC.

16 MR. FINNIGAN: Richard Finnigan on behalf of
17 Intervener Oly Rose.

18 JUDGE CAILLE: All right, let the record
19 reflect there are no other appearances.

20 Just to give some background for the record,
21 on February 12th the parties filed a settlement
22 agreement and an agreed order that would create a
23 priority list composed of 13 Complainants in this
24 proceeding who established that they were the next 13
25 customers in line for connections at the June 15th,

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1 2001, sale. This hearing is convened to explore the
2 terms and conditions of the settlement and to determine
3 whether the result of the settlement is consistent with
4 the public interest.

5 I would propose that in the notice that the
6 Commission sent on February the 28th, the Commission
7 outlined five questions that it requested that the
8 parties be prepared to answer at this hearing. And I
9 would propose that we go through these one at a time,
10 and should I think of any questions that your answers
11 might prompt, I will ask those at the end of each one.

12 And I guess I should -- will you each be
13 responding?

14 MR. FINNIGAN: Well, I will probably play a
15 very minor role in this proceeding. As the Intervener,
16 we're not directly involved in the settlement, so.

17 JUDGE CAILLE: Okay.

18 MR. FINNIGAN: I will comment if I think it's
19 appropriate, but otherwise.

20 JUDGE CAILLE: All right.

21 MR. PORS: I will provide comments on each of
22 the questions, and I'm sure Mr. Hanis would also like to
23 provide comments.

24 MR. HANIS: Yes.

25 JUDGE CAILLE: And is Ms. Vierthaler going to

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1 be speaking? Because maybe I should swear her in if so.

2 MR. PORS: Well, Ms. Vierthaler is here on
3 behalf of the utility and primarily to answer any
4 questions that you might have if questions of a factual
5 nature arise during this proceeding.

6 JUDGE CAILLE: Okay, well, how about let's
7 swear you in, Ms. Vierthaler, if you will please stand
8 and raise your right hand.

9
10 Whereupon,

11 CHRIS VIERTHALER,
12 having been first duly sworn, was called as a witness
13 herein and was examined and testified as follows:

14

15 JUDGE CAILLE: Thank you.

16 All right, before we begin the questions, are
17 there any concerns or preliminary matters you want to
18 address?

19 MR. PORS: I would like to make a statement
20 at the outset concerning the settlement proposal by the
21 parties here. This case has gone on for quite some
22 time, about 18 months I believe since it was filed, and
23 after receiving your initial order and several different
24 proposals over a period of months from the Petitioners,
25 we thought it would be in the best interest of both the

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1 Petitioners and Respondents and also the Commission to
2 try to find a way to resolve this dispute.

3 Our concern, on behalf of Rosario Utilities,
4 our concern was not to establish any kind of precedent
5 that would lead to additional disputes, and we reviewed
6 this settlement very carefully for that purpose. Our
7 primary goal was to have the complaint found to be
8 dismissed, the order to be dismissed, and to incorporate
9 all of the findings and conclusions in your initial
10 order as part of that order.

11 The way we found most appropriate to resolve
12 the matter that would not impact the June 2001 sale
13 would be to, in reliance upon the prospect of obtaining
14 additional connections from the Department of Health
15 based on the existing capacity of the treatment plant,
16 would be to allocate the next 13 connections to the
17 Petitioners. And we think that that is fair because
18 they were the next 13 people in line at the sale. They
19 had a list that demonstrated that. That was provided in
20 evidence at the hearing. And our objective would be to
21 keep that sale open just for the purpose of completing
22 the sale to those 13 petitioners who were next in line.

23 We thought, and it is still our belief, that
24 that is in the public interest because it doesn't really
25 lead to the prospect for anyone else to challenge this,

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1 because they were not on that list and any other parties
2 did not choose to intervene in this case or to be named
3 as additional Petitioners, and also because we're
4 restricting this availability of 13 connections to the
5 existing capacity of the plant rather than relying on a
6 future expansion. So that was our reasoning behind the
7 settlement.

8 Just one final note, that is that the public
9 policy of this state is in favor of promoting
10 settlements of disputes, and we think that the
11 Commission should look upon this settlement with an eye
12 towards approval as a means of encouraging parties to
13 settle disputes before it. I think that comports with
14 the public policy of the State, and we urge the
15 Commission to approve this settlement.

16 JUDGE CAILLE: All right, thank you.

17 Does anyone else wish to make opening
18 remarks?

19 Just so that we're clear, the Commission does
20 favor settlements, but unlike in civil courts when two
21 parties agree and that's the settlement and the judge
22 puts a stamp on it, we have an added burdon of making
23 sure that the settlement is in the public interest, so
24 that's where we deviate from like normal settlement
25 proceedings which you may be used to in the civil

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1 courts. So that is why the Commission holds a hearing
2 on settlement agreements, and it's important for you
3 folks to create a record that establishes that this
4 settlement is in the public interest, because that is
5 what they will be looking at.

6 So with that, are we ready to begin the
7 questions?

8 MR. HANIS: Yes.

9 JUDGE CAILLE: What I'm going to do is I will
10 read the question into the record, and then I will just
11 ask for answers or responses from the parties.

12 The first question that the Commission has
13 listed is:

14 Does the agreement to sell additional
15 water certificates to the thirteen
16 Complainants on a priority basis violate
17 the terms of the notice of sale? The
18 terms of the notice provided that the
19 sale would occur on June 15, 2001, not
20 at a later time when additional water
21 certificates may become available. How
22 do the parties respond to the concern
23 that this constitutes a change in the
24 terms of the sale?

25 MR. HANIS: I will take the first stab at the

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1 question.

2 JUDGE CAILLE: All right.

3 MR. HANIS: We believe the May 23rd notice
4 that was sent to each person that was interested in
5 purchasing certificates, including the Complainants,
6 that those terms were fairly open. If you read the May
7 23rd notice, it states that new water certificates "will
8 be available beginning June 15th on a first come, first
9 serve basis". If the utility had received say 1,000
10 certificates and only 50 were taken, we would presume
11 that as people came to the utility they would be able to
12 purchase the remaining certificates even after June
13 15th. So we believe that keeping the sale open is
14 consistent with the terms of the May 23rd notice.

15 Mr. Pors commented on the list demonstrating
16 the Complainants were in line. The best evidence that's
17 available is that those were the only people in line.
18 There have been no other formal or even informal
19 complaints that we are aware of that have been received
20 by the Commission. The parties had a telephone
21 conference last week, and we spoke with Ms. Vierthaler,
22 and we understand that she has not received any formal
23 complaints at the utility either. And so for the
24 purposes of the first question, we believe that the
25 terms of the notice, the May 23rd notice, are consistent

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1 with our proposal that the sale is still open for
2 distributing those 13 certificates.

3 And perhaps, this may be jumping ahead into
4 some of the questions but they all sort of tie together,
5 the preliminary plan from DOH on how many water
6 certificates were available at the sale on June 15th
7 included 17 additional connections. Ms. Vierthaler I
8 understand thought just up to a day or two prior to the
9 sale that she was going to be able to sell those 17
10 connections when she was informed by the Department of
11 Health that they were in need of additional information
12 before those could be distributed. So they weren't
13 taken away, they were just given a stipulation, we need
14 basically an engineer's stamp of approval before they
15 were going to be able to allow those certificates to be
16 issued. And so it's the 13 of those 17 certificates
17 that DOH had given preliminary approval on that we are
18 now seeking.

19 And in order to obtain those 17, we are still
20 even today in the process of having to obtain that
21 engineer certificate, and part of the terms of the
22 settlement include the Complainants assisting
23 financially and otherwise in obtaining and hiring an
24 engineer to approve or give the necessary information to
25 the Department of Health so that it can approve those

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1 certificates beyond a preliminary approval as already
2 given. So we are not creating new certificates, we are
3 operating under existing certificates. And we see that
4 in the public interest as well. It's my understanding
5 that the utility has to be very careful about spending
6 its own money for future customers as that may not be
7 viewed as in the best interest of existing paying
8 customers. The goal is to keep rates to a minimum for
9 the cost of operating such a system, and so that's why
10 the Complainants have agreed to assist in financing the
11 engineering report needed to get those 17 connections,
12 which benefits the existing customers by not having to
13 expend utility money on that endeavor.

14 JUDGE CAILLE: Okay.

15 Ms. Vierthaler, so what Mr. Hanis just said
16 about the 17 certificates that I guess were kind of
17 being held back, those connections will be available
18 without expansion to the utility? The utility doesn't
19 have to do expansion to get --

20 MS. VIERTHALER: It's possible. It's based
21 on increasing of the plant capacity and/or proving the
22 existing customers are using less water than originally
23 thought, because we have just recently metered the whole
24 system, and now we have more data to give the health
25 department to where we're trying to get those

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1 preliminary 17 back.

2 JUDGE CAILLE: So let me make sure I heard
3 you correctly. You still might be able -- still might
4 need to expand, or are these certificates just kind of
5 sitting there; they are within the capacity of what the
6 utility can serve now?

7 MS. VIERTHALER: It's possible. There's not
8 a 100% guarantee though.

9 MR. FINNIGAN: Maybe I could help on this
10 just from general background, not -- I don't have any
11 fact specific information. But when a water system has
12 a certain amount of capacity, the number of connections
13 that DOH will allow out of that capacity will vary
14 depending upon the per customer usage.

15 JUDGE CAILLE: Okay.

16 MR. FINNIGAN: And so they would assume
17 without data that the per customer usage is relatively
18 high, and then if a company can come in and present
19 actual usage data, then the Department says, well, based
20 on that data, then here are the number of connections
21 you can have. Now my understanding in this case is that
22 preliminarily they thought there were going to be
23 whatever they were authorized plus 17, but DOH said,
24 okay, in order to release those 17, we need more data.
25 So that was part of the ongoing sort of review of the

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1 existing capacity to determine. Now when the data is
2 submitted, DOH could say no additional, 10 additional,
3 20 additional, you know, just based upon what the actual
4 consumption shows.

5 JUDGE CAILLE: Let me just ask another
6 follow-up question to that. So assuming that they
7 approve 17, that means we have 4 that are left over.
8 How would you -- how were you thinking of handling that?

9 MR. PORS: Your question is to
10 Ms. Vierthaler?

11 JUDGE CAILLE: Yeah, I think I should --

12 MS. VIERTHALER: My first thought would be
13 notifying the public on a first come, first serve unless
14 we had a better way to go. We would be checking with
15 Commission Staff, checking with the current customers.
16 With so few though, it might end up a lottery.

17 JUDGE CAILLE: Okay.

18 Mr. Pors.

19 MR. PORS: Yes, I support the comments that
20 were made by Mr. Hanis and Mr. Finnigan, and the intent
21 of the settlement is for the 13 connections on a
22 priority list to be made available through the
23 presentation of usage data to Department of Health so
24 that they can approve additional connections based on
25 the existing capacity of the plant. And we think in

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1 that way the connections that become available sort of
2 relate back to the capacity, the number of connections
3 that Rosario could have sold in May of, I'm sorry, in
4 June of 2001. And if there are additional connections
5 beyond the 13 made available by the Department of
6 Health, then the utility would have to provide notice of
7 a new sale to the public.

8 I should point out that the sale that
9 occurred in June of 2001 also had related to it the sale
10 of connections on a priority basis for a priority list
11 that was approved by the Commission in a previous case,
12 Gaskill versus Rosario Utility, so there was previous to
13 this already a priority list approved by the Commission.
14 When connections became available after construction of
15 the treatment plant, those connections were first made
16 available to persons on the priority list, and it was
17 the connections left over that were made available to
18 the public on June 15th. So we're not doing anything
19 that's substantially different from that in this case.

20 JUDGE CAILLE: Okay. Is there anything, any
21 further comments on question number one?

22 All right, let's go to question number 2.

23 Does the agreement to sell water
24 certificates to the thirteen

25 Complainants on a priority basis create

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1 a preference for the Complainants over
2 others who may have wished to buy a
3 water certificate on June 15, 2001, but
4 who did not participate in the
5 complaint? How did Complainants solicit
6 persons to participate in the complaint?
7 Did Complainants provide notice to all
8 of the persons who received notice of
9 the June 15, 2001, sale, or did they
10 only contact those persons who signed
11 the list establishing the order of
12 persons in line on June 15, 2001? Were
13 there other persons who may have arrived
14 at the sale later in the day on June 15,
15 2001, but who never got in a line to buy
16 a certificate, who could be prejudiced
17 by the creation of a priority list?
18 Well, there are several questions here.

19 Mr. Hanis, do you want to start?

20 MR. HANIS: Sure. I have been in contact
21 with each of the Complainants regarding this issue, and
22 I am informed and in our conversation with
23 Ms. Vierthaler the 13 Complainants that signed that list
24 were the only people in line on June 15, 2001, that did
25 not receive a water certificate. And so each of the

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1 persons that were there are Complainants and are before
2 the Commission.

3 There's been a fair amount of testimony that
4 Orcas Island is a fairly small community, and word
5 travels quickly and easily, and this issue has probably
6 been a fairly hot topic on the island. And I think
7 that's informative in the fact that nobody else has
8 appeared, nobody else has brought a complaint either to
9 the utility or to the Commission, either formally or
10 even informally. And as Your Honor knows, the
11 Commission has a process both for formal complaints and
12 for informal complaints, a very simple system. You can
13 do it through a 1-800 number or even on line through the
14 Commission's web site. And the fact that there were no
15 other complaints, the best evidence we have is that
16 those that were aggrieved are here before the Commission
17 and are appearing as my clients.

18 JUDGE CAILLE: So the Complainants, there
19 hasn't been any notice to, you know, the initial notice
20 was a broad notice to everyone about the availability of
21 water certificates at this sale, there hasn't been
22 another notice from the company that other certificates
23 may be available; is that correct?

24 MS. VIERTHALER: Correct.

25 MR. FINNIGAN: Your Honor, a point to

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1 remember is that the original notice did -- was sent out
2 while the -- when the company was contemplating that
3 they would have these 17 available. It was only after
4 that notice went out that DOH indicated that they needed
5 more data before they would release those additional 17.

6 JUDGE CAILLE: Thank you.

7 MR. HANIS: As a side note, as an attorney, I
8 have received many phone calls from people regarding
9 where we were at in the complaint over the last year and
10 a half, and in each case, those were simply people
11 wanting to know what was going on but had no intention
12 of joining or bringing their own complaint, more just
13 people that were curious.

14 JUDGE CAILLE: So you didn't have any calls
15 from anyone who wanted to join?

16 MR. HANIS: No.

17 JUDGE CAILLE: Mr. Pors.

18 MR. PORS: Yes, I would like to point out
19 that the Commission's statutes don't prohibit all
20 preferences, they only prohibit unreasonable
21 preferences. And while the 13 Petitioners were the next
22 13 in line and we are trying to keep that sale open as
23 to those 13, that may not even constitute a preference,
24 but to the extent that it might, I don't think it's an
25 unreasonable one given the fact that they would have

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1 received the next 13 certificates had they been
2 available on June 15th and that we're now making, you
3 know, have a means of making those available. I don't
4 think it works to anyone else's harm for these 13 to go
5 to the next 13 people in line on June 15th. So even if
6 it is a preference, and I'm not sure that it is, it's
7 not an unreasonable one.

8 JUDGE CAILLE: Ms. Vierthaler, just one
9 further question, were you contacted by anyone beyond
10 the 13 who were interested in obtaining a water
11 certificate? This is post June 15th.

12 MS. VIERTHALER: I have had several calls of
13 people asking if and when more connections will be
14 available, and I have told them that we are going
15 through this process with the health department to get
16 some. The amount would be unknown, and if we did get
17 connections, I would send out another notice to
18 everyone.

19 JUDGE CAILLE: Do you know if any of those
20 people who called were people who were attempting to get
21 certificates on June 15th, 2001?

22 MS. VIERTHALER: Two of the callers had sent
23 in their connection fee by Federal Express, which I
24 received later that day. I ended up returning their
25 money.

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1 JUDGE CAILLE: And by later that day, you
2 mean June 15th, 2001?

3 MS. VIERTHALER: Mm-hm.

4 MR. HANIS: I might point out that under the
5 terms of the notice itself, those people that mailed
6 their applications in would be placed at the end of the
7 list, so they would be essentially 14 and 15 behind the
8 Complainants. And I haven't spoken with the utility
9 about this, but the Complainants would have no objection
10 if the utility decided that it was appropriate to
11 address those two applicants as well.

12 JUDGE CAILLE: Could you refresh my
13 recollection, Mr. Hanis, about the terms of the sale,
14 those people who would send in things by mail.

15 MR. HANIS: Let's see if I can find it here.

16 JUDGE CAILLE: I do recall something on the
17 notice about it. I just don't remember exactly what it
18 was.

19 MR. HANIS: It says:
20 Applications may be made by mail.
21 However, these will not be accepted
22 before June 15th. We suggest you
23 designate someone to come to the Rosario
24 Utilities office in your place if you
25 are unable to come yourself.

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1 And I recall I believe it's the testimony of
2 Ms. Vierthaler at the hearing where she had informed
3 people that those that mailed in would not -- the mail
4 wouldn't be opened until later that day. As I
5 understand it, the Federal Express doesn't show up until
6 at least 10:00 a.m. anyways, which was better than an
7 hour or so after the sale had already commenced.

8 JUDGE CAILLE: Is that correct,
9 Ms. Vierthaler?

10 MS. VIERTHALER: That's correct.

11 JUDGE CAILLE: Okay, let's go to question 3.

12 Are there any other comments on question 2?

13 Let's go to question 3.

14 By creating this priority list, is the
15 utility pledging to sell hookups to its
16 system that did not exist at the time of
17 the June 15, 2001, sale? Therefore, is
18 the assertion that the June 15, 2001,
19 sale of water certificates is
20 "considered open" for the purpose of
21 completing the sale of thirteen
22 connections, one to each of the thirteen
23 Complainants, correct, or is it a change
24 in the terms of the sale? Does this
25 comply with the requirements of RCW

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1 80.28.010(3) that all rules and
2 regulations issued by any water company
3 affecting or pertaining to the sale or
4 distribution of water must be just and
5 reasonable?

6 Who would like to go first?

7 MR. HANIS: It seems that we have sort of
8 answered this question previously.

9 JUDGE CAILLE: I agree, but let's answer it
10 again.

11 MR. HANIS: Sure. In that the notice of the
12 sale states that it would begin on June 15th, and had
13 there -- and as we believe there are now 17 or soon to
14 be 17 additional connections, we are just continuing the
15 initial sale since those 17 for all intents and purposes
16 were preliminarily given prior to the -- even the May
17 23rd notice that Mr. Finnigan pointed out. We believe
18 that the settlement proposal is just and reasonable in
19 that the best evidence before the Commission is that the
20 13 Complainants were the next 13 people in line, and
21 we're not skipping anybody else to their detriment.

22 JUDGE CAILLE: Mr. Pors, anything further?

23 MR. PORS: I agree with the statement that
24 the notice of the terms of the sale from May of 2001 did
25 not by itself or its own terms close the sale at the end

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1 of the day on June 15th. It was open ended. And I
2 think asking the Commission to now close that sale after
3 the sale of these 13 additional connections is just and
4 reasonable, because we haven't received any other
5 complaints from anyone else who may have attended but
6 not signed the list or who for whatever reason did not
7 challenge the sale following June 15th.

8 JUDGE CAILLE: Anything further on 3?

9 All right, let's go to question number 4.

10 Does the establishment of the priority
11 list proposed in paragraph 60 of the
12 proposed order create the same problem
13 as the utility's "futures" list used to
14 distribute the first available
15 connections when the moratorium was
16 lifted? Is this an undue preference in
17 favor of Complainants? If approved,
18 would it discriminate against other
19 customers who did not participate in the
20 complaint, or those who may not have
21 signed the list of those present on the
22 date of the sale, for whatever reason?

23 MR. HANIS: I believe we have definitely
24 answered the second half of the question in that we
25 don't believe there was anybody. There was not anybody

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1 else present, and we have not received formally or
2 informally other complaints.

3 To the -- I wouldn't characterize this as a
4 priority list. These were people that were standing in
5 line and would have received these next water
6 certificates had they been completely available and not
7 just preliminarily available. So I don't know that this
8 is truly a futures list. But even if we do characterize
9 it as a futures list, that is not inconsistent with
10 previous Commission practice as Mr. Pors pointed out,
11 the Gaskill matter, which is UW-990071, in which the
12 Commission previously approved a futures list. In fact,
13 that is the very futures list from which the water
14 certificates that were left over on June 15th, that
15 people from the Gaskill matter received their water
16 certificates.

17 MR. PORS: I would also like to state that I
18 don't think that the list referred to here in the first
19 sentence in question number 4 was really a problem for
20 the utility. There were eligibility criteria
21 established in the final order in the Gaskill case that
22 at least was intended to include those who had prepaid
23 for connections. There was no complaint about that list
24 as part of this case or any other case. That list was
25 not challenged, so I don't see that that can be properly

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1 characterized as a problem list. And likewise, we don't
2 believe that creating or approving this settlement with
3 a priority list for 13 connections for these
4 Complainants would be considered a problem.

5 I think we might have a problem with this if
6 we were ordered to open up this list of 13 to other
7 people who might have been present at the sale but
8 didn't sign the list, because then we get into problems
9 with proof and possible conflicts about who might be
10 entitled to be on that list. I think there again our
11 best evidence of who should be on this list is these are
12 the 13 people who were present who signed the list at
13 the sale itself and the only persons to complain about
14 the sale. Anyone else I would presume has waived any
15 right to a complaint about the sale or to claim
16 eligibility.

17 JUDGE CAILLE: Mr. Pors, would you like to
18 address the undue preference again? I know you
19 mentioned it earlier, but since it's --

20 MR. PORS: Well, again, the Commission
21 statute, I'm sorry, I don't have the citation for you in
22 my head.

23 JUDGE CAILLE: I will find it.

24 MR. PORS: But it is not a restriction
25 against any kind of preference. It's only a restriction

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1 against unreasonable or undue preferences. So I think
2 you have to hold up this proposal, settlement proposal,
3 to a standard of unreasonableness. Is it unreasonable
4 under the circumstances of this case to create a
5 priority list for the 13 Complainants and then to close
6 the sale after they have received their certificates.
7 And under the facts of this case as we have already set
8 forth and in your draft findings and initial order, I
9 think that this would not be unreasonable. No one else
10 would stand in between them or in front of them with any
11 claim for priority of water service from the utility.
12 Because had 13 additional connections been available as
13 of the date of the sale, they would have gotten them,
14 not somebody else. So basically in the absence of
15 prejudice to any other person, I don't see that they're,
16 or harm to any other person, I don't see that this
17 preference would be unreasonable.

18 JUDGE CAILLE: Are there any other comments
19 on question 4?

20 Okay, question 5 is:

21 Why shouldn't the utility be required to
22 notify all potential new customers at
23 the time the Department of Health
24 approves additional connections to the
25 water system?

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1 MR. HANIS: I don't know that the utility
2 won't notify all new potential customers when additional
3 connections are approved, but it is important to note
4 that the 17 connections can not be approved and will not
5 be approved but for the Complainants' assistance in
6 hiring and obtaining the necessary engineering approval
7 that the Department of Health is seeking so that those
8 can be granted or completely distributed.

9 There is probably an issue for the utility to
10 address with what to do with the remaining 4 in the
11 event all 17 are -- at least, and as Ms. Vierthaler
12 previously stated, it may be that they do send a notice
13 out or perhaps wait until they have additional so they
14 don't have -- create the problems with multiple people
15 just seeking 4 connections. But I assume that the
16 utility will do what it believes to be just and
17 reasonable and ultimately fair in distributing any
18 excess water certificates.

19 JUDGE CAILLE: Mr. Pors.

20 MR. PORS: Just to comment on the number 17,
21 my understanding is that 17 connections was related to
22 what Rosario believed the capacity of the plant was
23 going to allow after it was completed in 2001. It's not
24 necessarily the number that we're expecting DOH to
25 approve based on water usage. They might approve 10

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1 additional connections, 17, 30, 50. We don't know until
2 the engineering report is done and DOH has reviewed it
3 and made a decision. Because it's based on new data
4 about existing customer usage rather than on the
5 capacity of the plant, that number is unknown as of
6 right now. Rosario Utility, I can confirm that they
7 would provide notice to all potential new customers so
8 long as the number exceeded 13 and there were others
9 available for another sale.

10 JUDGE CAILLE: Okay.

11 Yes, Mr. Finnigan.

12 MR. FINNIGAN: It might be helpful, I thought
13 of an analogous situation that was very recently before
14 the Commission and on the Commission Staff, and that's
15 -- and this goes to this whole question of undue
16 preference type of discussion. There's a fairly large
17 transaction that Rainier Water Company recently brought
18 before the Commission, and part of that transaction was
19 to purchase additional --well, the purpose of the
20 transaction was to purchase additional capacity so that
21 water -- so that a certain amount of water would be
22 available. Well, in that -- in doing that, the
23 mechanism that was set up was that those who wanted
24 connections and joined early and made their commitments
25 early got a significant price break, because in essence

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1 they were making -- they were providing the funds that
2 would allow the transaction to happen. So indeed they
3 were getting a preference, but it was not an
4 unreasonable preference or an undue preference, because
5 it -- there was a logic as to what they were doing and
6 how they were assisting the transaction. Those that
7 want connections but are waiting, they're going to pay a
8 higher price or because it's a limited amount of
9 capacity could even miss out if they wait too long.

10 So under that scenario, the Commission
11 approved a series of transactions that are analogous to
12 what's being suggested here where these 13 are
13 participating in making -- in trying to get those
14 connections available, that they're tentatively
15 available and by participating in the cost of the
16 engineer, they're stepping forward and saying, well,
17 we'll try and help make that a reality. So under those
18 circumstances, looking at it sort of from the steps of
19 the transaction, it would seem that that would not be an
20 undue preference or an unreasonable discrimination.

21 JUDGE CAILLE: All right, thank you, that's
22 helpful.

23 So you don't know how many certificates the
24 Department of Health may approve. What if it's a number
25 less than 13; are we going to have problems there?

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1 MR. PORS: We should not have problems,
2 because there is an order among the 13 according to the
3 time that they showed up at the sale. They prepared
4 this order themselves, so they're all in agreement with
5 it. And it's based on first in time, so it's a
6 reasonable way to distinguish between the Complainants
7 if there are fewer than 13 certificates available.

8 JUDGE CAILLE: Are you in agreement,
9 Mr. Hanis?

10 MR. HANIS: I would agree with that
11 statement.

12 JUDGE CAILLE: Okay, I think that pretty much
13 covers everything. Is there anything additional that
14 any of the parties wish to state?

15 All right, well, then this hearing is
16 concluded. Thank you for coming, I appreciate your
17 participation, and we'll see to this as quickly as we
18 can.

19 (Hearing adjourned at 10:55 a.m.)

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