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BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION

MIKE AND GLENDA BECK,)	
)	
Complainants,)	
)	
vs.)	Docket UW-132268
)	
CRISTALINA, LLC,)	
)	
Respondent.)	

EMERGENCY ADJUDICATION HEARING, VOLUME I
PAGES 1 - 47

ADMINISTRATIVE LAW JUDGE ADAM TOREM

1:30 P.M.
DECEMBER 23, 2013

Washington Utilities and Transportation Commission
1300 South Evergreen Park Drive Southwest
Olympia, Washington 98504-7250

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1 Olympia, Washington December 23, 2013

2 1:30 p.m.

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

5

6 JUDGE TOREM: Good afternoon. This is
7 Administrative Law Judge Adam Torem. We're going to convene
8 the hearing in Docket UW-132268.

9 This is an emergency hearing that was set on
10 short notice for today, December 23, 2013. It's now a
11 little after 1:30.

12 This is a cause filed, a formal complaint by
13 Mike and Glenda Beck against the Cristalina Water Company.

14 I think the issues that we need to decide for
15 sure today involve an alleged disconnection and how that
16 should be resolved. Those are the emergency issues.

17 And what we'll sort out from is there how
18 other issues might be presented in this case and how they
19 should be resolved.

20 First, let me see who's here today.

21 Are Mike and Glenda Beck here?

22 MS. BECK: Yes.

23 MR. BECK: Yes.

24 JUDGE TOREM: I'm going to ask that when you
25 speak, it's one at a time. There is a microphone in front

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1 of you. If the red light is on -- it's a touch sensitive
2 microphone. I want you to make sure that's on so that it
3 will go over our PA system and that the court reporter can
4 hear you.

5 MS. BECK: Here.

6 JUDGE TOREM: Is that Glenda Beck?

7 MS. BECK: Yes.

8 JUDGE TOREM: And are you representing
9 yourselves today, or do you have legal counsel with you
10 today?

11 MS. BECK: Legal counsel.

12 JUDGE TOREM: Could I have legal counsel
13 make an appearance. You can use the microphone

14 MR. KOMBOL: My name is Barry Kombol. If you
15 would like my address for the record?

16 JUDGE TOREM: How do you spell your last
17 name, sir?

18 MR. KOMBOL: K-O-M-B-O-L.

19 JUDGE TOREM: All right. And your business
20 address?

21 MR. KOMBOL: 31615 Third Avenue, Black
22 Diamond, Washington, 98010.

23 JUDGE TOREM: And do you have a contact
24 telephone number, sir?

25 MR. KOMBOL: I sure do.

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1 JUDGE TOREM: Is that a 206 area code out
2 there?

3 MR. KOMBOL: You know, within a mile we've
4 got three area codes. But I'll give you the best one.
5 360-886-2868.

6 I'll give you the next one too.

7 JUDGE TOREM: All right.

8 MR. KOMBOL: 425-432-3380.

9 JUDGE TOREM: And sir, do you have an e-mail
10 address that we could use for a courtesy copy of any
11 orders?

12 MR. KOMBOL: I sure do.

13 JUDGE TOREM: What's that?

14 MR. KOMBOL: Rainierlegal@yahoo.com.

15 JUDGE TOREM: So "Rainierlegal" is all one
16 string?

17 MR. KOMBOL: That's right.

18 JUDGE TOREM: At yahoo.com?

19 MR. KOMBOL: That's right.

20 JUDGE TOREM: For the Cristalina Water
21 Company?

22 MR. GILLETT: Yes, your Honor. Maria
23 Lindberg is here for Cristalina Water Company; and I am Eric
24 Gillett with the firm Preg O'Donnell & Gillett, representing
25 Cristalina.

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1 JUDGE TOREM: And Mr. Gillett, could you do
2 me a favor? I don't know that I have a full appearance on
3 record for you. Could you spell your name and if it's a C
4 or K and all that good business, and give me the firm's
5 address and information?

6 MR. GILLETT: Sure, Eric, E-R-I-C; Gillett,
7 G-I-L-L-E-T-T.

8 And the address is 901 Fifth Avenue, Suite
9 3400, Seattle, Washington, 98164.

10 Phone number is 206-287-1775.

11 E-mail address is Egillett@pregodonnell.com,
12 P-R-E-G-O-D-O-N-N-E-L-L.

13 JUDGE TOREM: P-R-E-G-O-D-O-N-N-E-L-L.com?

14 MR. GILLETT: Two N's, two L's, on the
15 O'Donnell.

16 JUDGE TOREM: Got it. All right.

17 What I have in front of me as filed
18 electronically on December 13 was the formal copy of a
19 petition to reopen a complaint and to consider a new formal
20 complaint.

21 What I'm prepared to do today is consider the
22 new formal complaint with regard to the alleged violation
23 that there's been a disconnection, and then the rest of
24 things can be prepared in a more orderly fashion with more
25 additional briefing and preparation.

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1 But today's issue, as I said, unless I'm
2 persuaded to take up more, is the alleged disconnection of
3 the Beck residence from the Cristalina Water Company.

4 MR. GILLETT: Your Honor?

5 JUDGE TOREM: Yes, Mr. Gillett.

6 MR. GILLETT: You should also have our
7 response, which was electronically filed this morning. And
8 I've put a copy in a binder in front of you as well as
9 multiple copies pursuant to the administrative rule.

10 JUDGE TOREM: Excellent. I was going to ask
11 where all this magically appeared from.

12 So this is the Cristalina Water Company's
13 response to the petition?

14 MR. GILLETT: Yes, your Honor.

15 JUDGE TOREM: All right. Obviously I have
16 not read it yet. I had some other matters pending this
17 morning.

18 What time did it get filed electronically?

19 MR. GILLETT: I think it was around 10:00
20 a.m.

21 JUDGE TOREM: Without having read it, what I
22 want to do is at least create a record today.

23 And I don't know if Mr. Kombol has had a
24 chance to review it yet.

25 MR. KOMBOL: Mr. Gillett has just told me it

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1 was here and handed it to me when I walked in the room.

2 JUDGE TOREM: Okay. It may be that I need
3 to take a brief recess, review it, and give Mr. Kombol a
4 chance to do that as well.

5 Let me hear from the water company first,
6 though, as to the issues and things that need to be
7 presented and decided today.

8 MR. GILLETT: Yes, your Honor. I agree with
9 your earlier conclusion that the issue for today is whether
10 or not the disconnection was appropriate.

11 As it's laid out in our brief, we believe
12 that Cristalina followed the proper administrative code in
13 disconnecting the Becks.

14 And then upon the Becks breaking locks and
15 reconnecting themselves on repeated occasions, Cristalina
16 permanently disconnected the Becks, and pursuant to the
17 Administrative Code is alleging that that continued
18 behavior, as the Code described it as further fraud, means
19 that Cristalina is not obligated to reconnect the Becks to
20 the system.

21 JUDGE TOREM: Okay. So what you're
22 referencing is the Washington Administrative Code, or WAC,
23 480-110-355 and the procedures. I would have proof in this
24 binder that you complied with Sub (3), Required notice prior
25 to disconnection and all other relative procedures?

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1 MR. GILLETT: Yes, your Honor.

2 JUDGE TOREM: That was going to be one of my
3 questions, so I will have to review that.

4 Mr. Kombol, we'll take a break shortly to
5 review the response so we both have time to look at it and
6 come back.

7 Were there any other issues besides the
8 disconnection you thought needed to be handled today?

9 MR. KOMBOL: Judge Torem, I appreciate the
10 staff having scheduled this at this time, and I think that
11 was the request in terms of asking for a hearing. And the
12 Becks certainly appreciate the hearing on short notice. And
13 I think that would be way too premature to get into issues
14 beyond that.

15 JUDGE TOREM: Okay. All right. Mr. Kombol,
16 then I think what we're going to do is take at least 15
17 minutes for me to stop and review this. It will probably be
18 more likely five minutes after 2:00, 20 minutes from now,
19 when I'm ready to come back on and reopen the hearing.

20 What I'd like is for both parties to review
21 it. If you have any discussion you'd like to have with Mr.
22 Gillett, if there is a proposed resolution that favors both
23 parties, that's fantastic. That makes my job easier.

24 If there's not, then I'll come back ready to
25 hear testimony if necessary in support of the allegations

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1 and then render the decision.

2 Given the hour today and how much time I
3 think it will take, there probably will not be a written
4 order ready to go today. But a verbal order to be acted
5 upon one way or the other and a written order following it
6 up tomorrow is what I think is most logical for everybody
7 concerned.

8 MR. GILLETT: Thank you, your Honor.

9 JUDGE TOREM: I'm going to take this one
10 copy and review it and come back at five after. If I need
11 more time, I'll let you know.

12 We're at recess for twenty minutes.

13 (Whereupon, a recess was taken
14 from 1:45 to 2:17 p.m.)

15 JUDGE TOREM: Back on the record. It's a
16 little bit longer than I promised. It's about 2:17.

17 Mr. Kombol, did you have a chance to review
18 the filing?

19 MR. KOMBOL: It's pretty lengthy. I've
20 looked at the filing.

21 And I think, Judge, you're quite wise to try
22 to limit issues since I know for you, you're just getting
23 hit with this entire case and it's an emergency ruling.

24 And so I would propose -- and I haven't
25 discussed this with Counsel. I would propose that we try to

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1 hit the essential issues today on the essential facts and
2 try to keep them to that so that at a scheduling hearing, we
3 can get into disputed facts, because there are a number of
4 facts being alleged that I don't believe are going to be
5 supported by witnesses.

6 JUDGE TOREM: And I think I have an idea,
7 Mr. Kombol, of what burden each party needs to carry and
8 what's relevant to today.

9 Mr. Gillett, what I see is that your client
10 has a burden to prove to me that the disconnection complied
11 with the law and our Administrative Code provisions; that it
12 was handled with all the I's dotted and all the T's crossed.

13 If there's sufficient evidence you can
14 present today for me to uphold it, then I can enter an order
15 setting over other issues for another day and an order to
16 allow the disconnection to remain in place.

17 If your client is not able to do that today,
18 then I would have no other choice but to order the Becks
19 reconnected until and unless the disconnection rules can be
20 complied with fully and until and unless we have a separate
21 hearing later on a number of other issues that may prove
22 that there's a justification for the disconnection.

23 Does that sound like an appropriate procedure
24 for today?

25 MR. GILLETT: Yes, your Honor.

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1 JUDGE TOREM: All right. So I understand
2 that the Becks are the ones that filed the petition to get
3 this proceeding kicked off and docketed.

4 But the burden is going to fall on the water
5 company to show compliance fully with the WAC. And as we
6 just discussed earlier, that's WAC 480-110-355. There are
7 some other tangentially related WACs within Chapter 480-110
8 that are going to have to be cross referenced.

9 And we have a couple of choices on how to
10 take the evidence. Either you can make an offer of proof or
11 we can swear in Ms. Lindberg to testify in support of it.

12 But unless Mr. Kombol has an objection, sir,
13 unless Mr. Kombol has an objection, I think an offer of
14 proof and walking through the pleadings and the supporting
15 documents should be sufficient to see if we have at least an
16 undisputed offer of all the required elements.

17 If there's a dispute, then I would swear a
18 witness in and allow further examination by either me or Mr.
19 Kombol to flesh out any discrepancies.

20 Is that, Mr. Gillett, satisfactory to the
21 water company?

22 MR. GILLETT: Yes, your Honor.

23 JUDGE TOREM: Mr. Kombol, that's what I
24 propose to do, is to allow Ms. Lindberg's company to make an
25 attempt to prove that what they've done is compliant with

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1 all applicable law and regulation, and if necessary, allow
2 you on behalf of your client to cross-examine any witness
3 testimony or question any documents or call to my attention
4 any discrepancies that I don't have called out by myself or
5 conceded by Mr. Gillett.

6 MR. KOMBOL: Very well.

7 JUDGE TOREM: All right. So Mr. Gillett, I'm
8 going to turn it over to you. Let's walk through the
9 regulation. And I'll stop you if I have a question.

10 MR. GILLETT: Thank you, your Honor.

11 In, I believe it was -- I think on exactly
12 October 3 of 2013, the UTC, through Mr. Steven Elliott, I
13 believe, notified both Cristalina and the customer that an
14 accurate amount owed by the customer was \$3423.78. I
15 understand the customer disputes that. But the UTC has made
16 that determination.

17 And based on that determination, Cristalina
18 sent out a first notice of disconnection for failure to pay
19 that delinquent balance. The notice was hand delivered and
20 put on the customer's door on November 5, 2013. That's
21 supported by the declaration of Mr. Jonathan Wiley
22 [phonetic], who testifies that he hung it on their primary
23 door.

24 A second notice -- and no response from the
25 customer at that time. No phone call to Cristalina, no

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1 attempt to pay or make payment arrangements.

2 JUDGE TOREM: So what I'm looking at in your
3 response, that first disconnection notice is Exhibit 2?

4 MR. GILLETT: Yes, your Honor.

5 JUDGE TOREM: And the declaration that you
6 refer to is Exhibit 4?

7 MR. GILLETT: Yes, your Honor, as well as the
8 declaration of Ms. Lindberg, which is Exhibit 11.

9 JUDGE TOREM: Okay.

10 MR. GILLETT: A second notice was sent out by
11 Cristalina after no response from the customer on November
12 15, 2013. That was mailed to the customer.

13 As is stated in the declaration of Jonathan
14 Wiley, the state certified water operator, he contacted
15 Cristalina -- well, actually, let me back up.

16 On November -- and this is in Exhibit 11, the
17 declaration of Ms. Lindberg. On November 25, I believe, Ms.
18 Lindberg called the customer and gave them -- attempted to
19 call the customer and the customer didn't answer. She left
20 a voice mail reminding them that a disconnection would occur
21 the following day in case they wanted to make payment
22 arrangements.

23 No response from the customer.

24 And the following day, Mr. Wiley began the
25 disconnection procedure.

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1 But immediately before that, he actually went
2 to the customer's door and handed a disconnection notice to
3 the customer.

4 MR. KOMBOL: Judge Torem, if I might, there's
5 going to be an objection to hearsay on hearsay.

6 As should be obvious, Mr. Wiley is not here.
7 Any testimony that he's giving or the water company's
8 counsel is trying to give is coming through a declaration
9 from Ms. Lindberg, which basically prevents me from
10 examining Mr. Wiley about anything he did. If he has filed
11 -- I haven't checked in the documents to see if his
12 declaration of service complies with the oath and
13 affirmation statute to make such statements.

14 JUDGE TOREM: Mr. Kombol, let me interrupt
15 you just enough to pull the microphone over to you.

16 MR. KOMBOL: I'm sorry.

17 JUDGE TOREM: We have some people listening
18 in on a telephone line that won't hear what you have to say.
19 So there's enough cord there if you move that.

20 MR. KOMBOL: As I was just summarizing, to my
21 knowledge, Mr. Wiley has no admissible declaration
22 whatsoever in any of these documents.

23 Ms. Lindberg's declaration of what she
24 believes Mr. Wiley did is not admissible in proceedings of
25 this sort.

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1 So I'm going to object to your consideration
2 of what Ms. Lindberg said that she believes Mr. Wiley told
3 her.

4 JUDGE TOREM: And I note your objection.

5 We have provisions here. We're not formally
6 held to the rules of evidence that we would have in superior
7 court.

8 I will let it go to the weight of the
9 evidence. If I thought that Mr. Wiley's declaration was
10 necessary today, then I would give it more serious
11 consideration and analysis and allow Mr. Gillett to respond.
12 But for now, it's just an offer of proof. I'm not worried
13 about sworn testimony particularly from Mr. -- of what Mr.
14 Wiley did or didn't do.

15 Some of the documents, Exhibits 2 and 3, are
16 the ones I'm focused on, the actual notices themselves.

17 So I'll come back to you on this as needed.

18 Thank you, Mr. Kombol.

19 Mr. Gillett, you can continue.

20 MR. GILLETT: I'll try to pick up where I
21 left off as best I can.

22 Mr. Wiley, in his declaration which is marked
23 as Exhibit No. 4, affirms under oath and under penalty of
24 perjury under the laws in the State of Washington, which I
25 believe is the standard, that he contacted the customer,

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1 advised them that a disconnection would take place, and then
2 disconnected them and put a lock on the meter box, his
3 company's lock on the meter box.

4 He then returned the following day and found
5 that his lock was missing and that a -- the service of the
6 customer had been reconnected.

7 He contacted Ms. Lindberg and asked whether
8 there had been payment made.

9 He was advised, and Ms. Lindberg testified,
10 that payment had not been made.

11 He then disconnected again, put another lock;
12 came back a week later, I believe on December 5, and
13 discovered that his lock was once again missing, a second
14 lock, and that the customer service had once again, a second
15 time, been reconnected.

16 He then contacted Ms. Lindberg and also
17 contacted the UTC to determine whether a permanent
18 disconnection could take place by way of removing the meter
19 from the box. He was advised by the UTC that he could do
20 that, and he did so.

21 MR. KOMBOL: Again, I'm going to object.
22 We now have third hearsay, what Mr. Wiley has never
23 testified to, what the attorney is testifying to that the
24 UTC allegedly has said to some unknown person.

25 You know, as someone representing a party, I

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1 have to say who on earth are we talking about? Three times
2 hearsay means I can't even possibly determine whether this
3 is accurate or not.

4 JUDGE TOREM: Mr. Kombol, again I'm going to
5 note the hearsay trifecta objection. I appreciate it.

6 But it's not necessary for me to go into what
7 happened after the disconnection was done.

8 There will be some other discussion with Mr.
9 Gillett about whether that's relevant.

10 First I want to see if we can satisfy all the
11 elements of the Washington Administrative Code. As I've
12 read this, if the water company has not strictly complied
13 with the initial disconnection, then everything that flows
14 from that will become irrelevant to the original right to
15 disconnect the customer.

16 If you've complied with everything else, then
17 we can proceed down the road of whether there is a permanent
18 disconnection authorized based on the alleged tampering with
19 the water company's property.

20 MR. GILLETT: Very well.

21 After the meter was removed, the operator
22 then later found that a third lock had been broken. And
23 while there was no reconnection at that time, it was clear
24 and evident to the operator that an attempt had been made to
25 turn on the water because the box was wet.

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1 So based on the Washington Administrative
2 Code 480-110-355, Subsection (c), Subparagraph (ii), Second
3 Offense, "The company may disconnect service immediately and
4 without prior notice when it discovers further fraud," it's
5 our position that this was evidence of further fraud and the
6 company can appropriately refuse to reconnect service to a
7 customer who has been disconnected for further fraud.

8 I believe that Exhibits 2 and 3 are the basis
9 for the -- following the WAC on appropriate notices of
10 disconnection, and believe that the language that is
11 included in those disconnection notices complies with the
12 obligations set forth in the WAC and as implemented by the
13 UTC.

14 JUDGE TOREM: Thank you, Mr. Gillett.

15 Mr. Kombol, I'm going to give you a chance to
16 raise any issues you have, not with, again, Mr. Wiley's
17 actions as alleged, but simply with the process used by
18 Cristalina Water Company to disconnect your clients.

19 You've had a chance to at least review
20 Exhibit 2 and Exhibit 3 and the dates involved and the
21 Washington Administrative Code governing that.

22 So I want to hear from you on any
23 deficiencies you might allege.

24 MR. KOMBOL: So I always like to understand
25 when I've got hearings that I've never been involved in

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1 before and I appear before an administrative law judge that
2 I've never heard a case by, what I hear you saying is you
3 want me to focus on material facts and then possibly make an
4 offer of proof of what I would be prepared to present here,
5 either in testimony by the customers or by the company.

6 Am I correct that that's what you'd like me
7 to focus on?

8 JUDGE TOREM: Essentially, sir.

9 What I want to see is that today, if allowed
10 to present sworn testimony, would there be sufficient
11 testimony and evidence from the water company to uphold all
12 of the required elements of the disconnection in the
13 Administrative Code.

14 If there's not, then my decision is quite
15 easy. I just order the client reconnected and we reconvene
16 on another date to deal with all of the other issues and
17 then may have, rather than today, a suggestion of issues, a
18 deadline by which you'll submit a list of comprehensive
19 issues you think the Commission has jurisdiction over.

20 And then we'll have a follow-on prehearing
21 conference to determine what those issues should be. So
22 we'll see if we get to that stage today.

23 But what I want from you now is, looking at
24 that Administrative Code provision, 355, to tell me what, if
25 anything, you think the company didn't comply with.

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1 MR. KOMBOL: First, I think that with respect
2 to issues following the initial disconnect, those are not
3 before you at this time.

4 And it's been my argument with the water
5 company, and will be something that I would like to point
6 out here, that the water company itself indicated that at
7 the time of the disconnection, there was zero balance owing
8 on a current charge, and the service disconnection requires
9 that someone be delinquent in a service charge.

10 There's been no allegation or proof showing
11 there was any fraud at the time there was the disconnection.

12 And I believe the disconnection occurred on
13 November 23? 26th? 26th.

14 There was, by the company's own notice, no
15 unpaid bills.

16 There was no water use for purpose or
17 properties other than those specified. This customer has
18 water available for domestic purposes and they were using it
19 for domestic purposes.

20 There was no allegation that paragraph (3)
21 occurred, "Willful waste of water through improper or
22 defective piping." There was no piping that didn't meet the
23 company's standards.

24 There was no tampering with the company's
25 property.

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1 had an opportunity to read through the entire document.

2 There is a particular page on there that I
3 would reference and intend to reference as well.

4 So I don't want to waive any objection to
5 anything particularly in there, but in light of the Court's
6 previous admonition about what evidence it's considering
7 here at this hearing, I don't have a problem with it being
8 part of the record here today. But I don't want to waive
9 any objections based on hearsay or relevance or anything
10 like that, just admitting an -- what appears to be a long
11 string of e-mails.

12 JUDGE TOREM: All right. I'll take a look
13 at it for those bases, Mr. Kombol. And just so I'm on the
14 same page with you, do you have a copy you can provide to
15 me?

16 MR. KOMBOL: That's why I'm standing up.
17 And I'll bring this to you. The staff downstairs made
18 copies.

19 And Mr. Gillett is correct that this is a
20 series of e-mails and summaries of conversations.

21 JUDGE TOREM: I've got a copy of Complaint
22 No. 17759 in front of me now. It says it was opened in June
23 6 of this year and closed on October 3, serviced by Mr.
24 Steven Elliott.

25 MR. KOMBOL: And I think for purposes of us

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1 getting to the nut of this, both Mr. Gillett and I have made
2 reference to portions of this.

3 The entire 15 pages is -- has a bearing on
4 whether or not there were violations by the company in its
5 billing practices, whether or not there was bookkeeping that
6 prevented the company from accurately billing or showing
7 amounts due and owing or even getting letters delivered to
8 customers such as these folks.

9 But I'm going to focus upon the entry that's
10 being suggested as -- that was a determination by UTC.

11 And you know, I didn't number these. I'm
12 sorry. It should be three from the end. Three from the end
13 entry. And it starts with the word "Maria" underneath what
14 looks like an e-mail.

15 JUDGE TOREM: Is there a date for that
16 entry?

17 MR. KOMBOL: No. Oh, I guess there might be
18 because if I come back to the prior page, the -- there's
19 three dots and it says 10/3/2013 at 12:31 p.m. I'm going to
20 guess that if these are in serial order, which I'm going to
21 represent they are, is a continuation -- on that page that I
22 said at the bottom it has 10/3, at the top of it, it starts
23 at 10/2, 4:34; and then it goes 10/3, 11:09 a.m. At the
24 bottom of the page it seems to continue at 2:31. And then
25 we go to the next page that starts "Maria." Are you

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1 following me there?

2 JUDGE TOREM: I'm on that same page. The
3 third page from the end I think would be page 20 by my
4 count.

5 MR. KOMBOL: I'll have to number them.
6 I'll do that next time. I'm sorry.

7 Now I'm going to refer to the third paragraph
8 down. And what is key to me, and what I have suggested in
9 the past in conversation with the provider, there were
10 differences, as the paragraph says, between what the
11 provider thought, what UTC thought, a figure that Mr.
12 Elliott says he came to.

13 There's also a legal issue, a legal issue
14 that has been raised as to what statute of limitations
15 applies to utility accounts.

16 We then have a 2007 allegation that the
17 balance in 2007 was 20,928.14.

18 And then there's a statement. I'm not
19 certain it's a legal conclusion that a UTC investigator can
20 make. But the remark is the balance was accumulated before
21 the statute period. It should be written off. I don't know
22 what is going to be written off. It's not exactly clear.

23 But there's another conclusion or statement
24 that the company may still attempt to collect the money from
25 the customer or send the customer to collections, but this

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1 balance cannot affect the customer's account.

2 Then another really unusual figure: It says
3 all but \$8.95 of the account balance was written off in
4 2011.

5 Now, the company has relied upon this as
6 having resulted in a conclusion that there is a balance that
7 could be collected.

8 And I'm going to submit to you that the
9 second figure on that paragraph, \$3,423.78, seems to match
10 the same figure that is on the first and second notice of
11 disconnect, \$3,423.78.

12 And so by, I guess, implication or -- I
13 surmise that the operator and operator's counsel says that
14 this creates a known determination of a debt that is the
15 basis for disconnection.

16 And yet if we read the whole thing -- and I'm
17 going to ask -- well, I'm going to represent to you that
18 there are dozens of entries of missed bookkeeping. There
19 are 138 violations of the UTC regulations that this examiner
20 found existing.

21 And so if the operator is going to come in
22 and rely upon one paragraph as establishing a debt, then I
23 think that the operator has to deal with and prove to you
24 how that figure could be accurate, how it could be
25 enforceable, and how the -- I'm going to say dozens of

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1 entries of improper books, failure to respond, improper
2 calculations of interest or late charges that are throughout
3 these 20 pages, those would necessarily have to come in to
4 the combined issue of if zero is owing, which the operator
5 says, for current services, how can they meet the burden
6 that \$3,423 is owing? I submit they can't.

7 And I'm prepared to put on testimony that
8 would indicate why that balance is not owing, either from
9 failure of service or failure of accounting or failure of
10 mailing or duplicate billing.

11 And so if they can't establish \$3,423.78, and
12 if they've admitted zero is current charges, then the
13 disconnection can't go on. That's simply what my -- I guess
14 it's both an offer of proof and a legal argument.

15 JUDGE TOREM: All right. Are there any
16 other alleged deficiencies you want to point out?

17 MR. KOMBOL: Those would -- oh, in the
18 notice, alleged deficiencies appear to me -- well, yes. I
19 guess I will make one final offer of proof that after the
20 disconnect, on the 26th of November, there were a number of
21 requests made by the customer for an accounting of how they
22 were delinquent.

23 And then there were a number of requests by
24 the customer for what the -- what a reconnection charge
25 would be.

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1 And then there were -- there was a tender of
2 additional payments that were made by the customer and
3 cashed by the company after the disconnect in an effort to
4 pay any possible disputed balance which under this notice
5 would be an overpayment, but I believe it would be about
6 \$160.

7 Oh, I know what it would be. The customer
8 paid \$160 to the company with a statement that that was
9 double the highest monthly billing for the previous 12
10 months as an offer of a deposit. Now I'm remembering.

11 So that's the post-disconnect efforts made by
12 the customer.

13 JUDGE TOREM: Thank you, Mr. Kombol.

14 Mr. Gillett, did you want to respond to any
15 of the offers made by Mr. Kombol?

16 MR. GILLETT: Yes, your Honor. Thank you
17 very much.

18 I'll get to what I think is the nub of the
19 issue in just a moment. But just in response to the last
20 couple comments, the efforts by the customer to pay money to
21 Cristalina post-disconnect came after the locks had been
22 broken twice. And so it's our position that that came after
23 the further fraud as delineated in the WAC.

24 But let me address what I think the Court has
25 raised as the predicate issue here, and that is the notice.

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1 The notice for a delinquent balance of \$3,423.78 was not
2 something that was pulled out of thin air. It was an amount
3 that was determined by the UTC.

4 And I believe Mr. Elliott is in the courtroom
5 today and if need be, can be questioned by your Honor
6 regarding his determination.

7 But he, by his own words, went through an
8 audit of the Cristalina books and determined that the amount
9 -- delinquent amount owed by the customer was the \$3,423.78.

10 It may be worth noting that on one of the
11 documents submitted by the Becks just moments ago, is a
12 summary from -- what appears to be a summary from Mr.
13 Elliott on October 3, 2013 regarding a phone call he had
14 with the customer. And he says, (as read) I advised her
15 that starting the figures on October 1, 2007, I have come up
16 with a radically different figure than the company did.
17 Instead of around 8,950 figure the company had, I'm
18 instructing them to reduce it to about 3500 -- the 3423, I'm
19 sure. Customer interrupted stating that is too high; she
20 can't afford that and won't pay that. I reiterated that I
21 had gone over the entire account and that is an accurate
22 amount owed based upon a six-year account history with the
23 correct tariff services applied. She insisted it was too
24 high and she just won't pay it.

25 Now I think that it is reasonable for the

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1 water company to rely upon the UTC's determination of what a
2 customer owes. It is perhaps going far beyond the company's
3 authority to make its own determination that would be
4 inconsistent with that.

5 And it is not within the utility company's
6 power to adjust that amount. The amount that the UTC says
7 is owed by the customer is, for lack of a better phrase,
8 almost sacrosanct. The reliance by the utility on the UTC's
9 determination is -- should be prima facie evidence that the
10 amount is owed.

11 If the customer believes that there is
12 something wrong with that determination, that is a problem
13 that the customer has with the UTC, not with the water
14 company.

15 The water company is very restricted in the
16 way that it can enforce its rights to collect monies owed.
17 And it has to follow a very strict process dictated by the
18 Washington Administrative Code and implemented by the fine
19 people at the UTC.

20 To have a customer simply say "I won't pay
21 it" is not a basis for complaining that the notice is
22 delinquent. For the customer to say, "Oh, there are other
23 issues that need to be discussed" is not a basis for the
24 customer to fail to pay its bill.

25 And if the notice was timely and it was for a

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1 delinquent amount and that amount was set forth in the
2 notice, the notice -- both first and second notices advised
3 the customer that the \$3,423 is the account balance, and
4 then said of which zero is current; zero of that amount is
5 current charges. We're not disconnecting you because you
6 have failed to pay current charges. These are the amounts
7 that the UTC -- and the customer knew this.

8 It's evident from the evidence offered today
9 by the customer that they knew that the UTC had determined
10 that there was an account balance for past due amounts for
11 \$3,423.78.

12 They apparently disagree with that and have
13 issues with that. But again, that's an issue that if they
14 have a problem, that's with the UTC, not with the water
15 company, who is simply following the rules and attempting to
16 collect on old amounts.

17 The customer has done nothing to remedy that
18 situation other than to vandalize the water company's
19 system. And it is an appropriate remedy of the water
20 company not to continue to service this customer.

21 MR. KOMBOL: Judge, after you've have time to
22 reflect, I --

23 JUDGE TOREM: Make sure you use the
24 microphone, please, Mr. Kombol.

25 MR. KOMBOL: My kids tell me I'm loud.

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1 JUDGE TOREM: I just want to make sure the
2 folks on the phone line can hear you.

3 MR. KOMBOL: Okay. Counsel has reported not
4 an entire conversation, but a part of a conversation on that
5 prior page.

6 JUDGE TOREM: I'm not too worried about the
7 conversations reported. I'm looking at the elements here --

8 MR. KOMBOL: We're going to focus on the
9 evidence in front of you. The evidence in front of you from
10 my standpoint is the \$3,400 figure, which is the only basis
11 for the decision to disconnect, is not a decision in a court
12 of law.

13 It is not an administrative decision.

14 It's not a decision into which either the
15 company participated or these folks participated.

16 And if someone, a company or anyone else
17 wants to come in and say, I have an absolute right because a
18 worker at the UTC said on a review and audit request that
19 you owe this money, it seems to me that that would be an
20 adjudication of some sort.

21 And if we look at the administrative rules,
22 how on earth could these customers have appealed? If it was
23 a determination, there should have been a notice that you
24 have a period of time to appeal my determination. There
25 should have been an opportunity for input into the review.

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1 And this doesn't say that Mr. Elliott didn't
2 do a big attempt and didn't work hard on this account. I
3 know from looking through this he spent hours and hours and
4 hours.

5 But there again, the UTC can't be an
6 arbitrator, can't be an adjudicator.

7 And a party, a company regulated ought not
8 say, "This is what you owe."

9 JUDGE TOREM: I understand the thrust of the
10 argument.

11 MR. KOMBOL: And I guess I would encourage
12 you -- because we're looking at what was owed. This
13 customer didn't say, did not say, "I just don't want to
14 pay."

15 This customer said that I have -- this
16 customer said it was resolved. She's not a lawyer, but she
17 said, It was resolved. I do have disputes.

18 And she also impliedly, without being a
19 lawyer, she said, I think all my charges from before 2009
20 were gone because they're too stale.

21 Now that's a legal issue. That's a legal
22 issue. And I would submit that an operator can't decide
23 that's not a valid legal issue. I don't think counsel can
24 decide that's not a legal issue. And I don't think Mr.
25 Elliott can say, Well, That's just bogus. I've decided it's

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1 this.

2 And the accounting -- oh, I'll say, and I
3 don't know if you know this, but this account had been
4 current and was current for 48 consecutive months. And I
5 think -- well, I know that the documents I've presented show
6 each one of those bills indicates the period for which
7 payment was being tendered. Each one of those checks was
8 accepted for the payment tendered. And it should come as no
9 surprise to you. My clients did that because I told them
10 to.

11 JUDGE TOREM: All right. Thank you, Mr.
12 Kombol.

13 I have a few questions for Mr. Gillett, and
14 then I think I'm ready to issue a ruling as to the validity
15 of this disconnection.

16 Can you, Mr. Gillett, point to me the bill
17 that was served in advance of the disconnection notice that
18 was not paid?

19 MR. GILLETT: Your Honor, the bills that were
20 served are not included in the documents that we submitted.

21 But they were served on the Becks in prior
22 months in accordance with the earlier billing that --

23 JUDGE TOREM: What I'm seeing in your
24 Exhibit 2 is the disconnection notice. And it has of course
25 that figure of Mr. Elliott's resolution of the complaint,

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1 the \$3,423.78.

2 Was there ever a bill sent in that amount to
3 your knowledge?

4 MR. GILLETT: The bills have totaled that,
5 and the account balance has been that -- let me -- hold on.

6 (Pause in proceedings.)

7 MR. GILLETT: As I said, your Honor, the
8 earlier bills that brought the total ultimately to the 3,000
9 had gone out previously, but they were not included with the
10 first or second notice.

11 JUDGE TOREM: So was there a bill with this
12 number on it that you can produce?

13 MR. GILLETT: No.

14 JUDGE TOREM: Okay.

15 Secondly, I wanted to take a look at the
16 dates on the notices. Exhibit 2 apparently was posted
17 November 5; is that correct, on a Tuesday, if I looked at my
18 calendar during the break correctly?

19 MR. GILLETT: Yes, your Honor.

20 JUDGE TOREM: So the Administrative Code
21 requires eight business days to elapse. And it looks like
22 the date that was given to pay by or respond by was November
23 20. Is that correct also?

24 MR. GILLETT: That's correct also.

25 JUDGE TOREM: And my calculations are that

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1 that would have been ten business days later because there
2 were intervening weekends and the November 11 Veterans Day
3 holiday. So November 20 appears to be a compliant date.

4 MR. GILLETT: Yes.

5 JUDGE TOREM: The problem I have in running
6 the numbers came with that second notice. And the second
7 notice says it has to go out -- looking at WAC 480-110-355,
8 (3)(b), it says in addition to Sub (a) of it, which refers
9 to all the things we just talked about, the first notice, a
10 second notice must be provided by one of the two options
11 listed, either delivered or mailed.

12 In this case, your second notice, Exhibit 3,
13 went out by mail; is that correct?

14 MR. GILLETT: Yes.

15 JUDGE TOREM: And the date I saw on that was
16 November 15, which was prior to the expiration date of the
17 first notice. We had November 20 was the expiration date
18 for them to respond, and then the second notice went out in
19 advance.

20 MR. GILLETT: Oh, your Honor, the -- perhaps
21 I misstated. The earlier -- the 11/20 was the proposed
22 termination date, disconnect date.

23 JUDGE TOREM: Understood.

24 MR. GILLETT: Yes.

25 JUDGE TOREM: But even if I counted eight

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1 business days, it would have been Monday, November the 18th.
2 And this went out in the mail the previous Friday.

3 So I'm trying to understand what the
4 company's logic was in sending a second notice while the
5 first notice was -- I'll call it active, for lack of a
6 better term.

7 And I'll concede to you that there's not a
8 sequence indicated per se. It doesn't say the second notice
9 must go out only after the date given or eight business
10 days.

11 In my reading of this, I've looked at it,
12 what does it literally say and what does it logically imply.
13 Taking it to its most absurd, you could send the first
14 notice and the second notice the same day or within 24
15 hours. And I'm not sure that that would comport with what
16 the statute's or the WAC's intention is.

17 MR. GILLETT: I think you have to interpret
18 it reasonably, your Honor, I mean, because the WAC is not
19 specific, I think a reasonable interpretation is one that
20 must be given.

21 JUDGE TOREM: And I tried to give this the
22 most reasonable interpretation I could. The second notice,
23 if we count three business days, would be effective also on
24 that November 20 date. And it may be that that was the
25 logic, to get both notices out with a target date of

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1 November 20 for disconnection.

2 So I'll interpret it that way and think that
3 if that were allowed, and again, maybe that's our fault as
4 the Commission for not writing the rules saying you have to
5 specify it in any certain way, it would appear that that
6 most beneficial to the company interpretation, that could be
7 complied with.

8 Even if I were to make that finding, I still
9 see that the requirement back at the beginning of
10 discontinuation, sub (1)(b), it says, "After properly
11 notifying the customer" --

12 MR. GILLETT: I'm sorry. Where are you
13 referring to?

14 JUDGE TOREM: I'm back at WAC
15 480-110-355(1)(b).

16 MR. GILLETT: Just a moment. I lost that
17 page in this stack of pages here.

18 JUDGE TOREM: I'll read to you the relevant
19 portion. It talks about "After properly notifying the
20 customer, as explained" in the subsection we just walked
21 through together --

22 MR. GILLETT: Yes.

23 JUDGE TOREM: -- you may discontinue service
24 for -- and as I think Mr. Kombol appropriately printed out,
25 there's Sub (i) through Sub (ix). The only applicable one

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1 here on these dates was Sub (i), "Unpaid bills, as provided
2 for" and there's another WAC reference, 480-110-375.

3 As much as I can see that Ms. Lindberg tried
4 her best to comply with the intent of the Administrative
5 Code, you've conceded already there was no bill sent out in
6 this prescribed form.

7 And I sympathize that there was a dispute. A
8 complaint was filed to resolve the amount owed on this
9 account. And Mr. Elliott, on behalf of the Commission,
10 resolved that dispute as between the customer and the
11 company.

12 But even if that was a final amount that both
13 could agree to, even without the deficiencies of abilities
14 to appeal and argue the amount and have it adjudicated,
15 assuming Mr. Elliott is 100 percent right, the company never
16 sent a bill. And I can't put the UTC or Mr. Elliott in the
17 position to bill a customer. That remains at issue here.

18 And without a bill to support a delinquency,
19 we have an issue as to the sufficiency of the notice being
20 supported by a bill.

21 Let me go further and say that even if this
22 bill were to be interpreted as a bill, I have to go back to
23 another Administrative Code provision that deals with
24 something called a prior obligation. In WAC 480-110-345 Sub
25 (2), the statute or WAC here says a water company cannot

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1 permanently deny service to an applicant because of a prior
2 obligation of the company. It defines that term as the
3 dollar amount that has been billed to a customer but left
4 unpaid at the time of disconnection of service for
5 nonpayment. Does that term directly apply here? Perhaps
6 not.

7 But what's going on here are, as alleged in
8 their complaint and the lack of a bill here, are issues with
9 past payments that were delinquent.

10 It's obvious to me that the Becks and Ms.
11 Lindberg, on behalf of the water company, have an issue of
12 how much money has been owed for a long period of time. I
13 would like to see it finally resolved. And I would like to
14 see the Becks, if they're going to stay on the system, have
15 a system of making a payment to become current in past
16 obligations and any current bills.

17 But a disconnect of this nature required a
18 bill, and it wasn't given. So I can't uphold the
19 disconnection.

20 I also can't give any endorsement to what
21 I've heard about the self help that the Becks have done to
22 reconnect on their own. But that's not within my
23 jurisdiction to handle today or in the future.

24 I think, Mr. Gillett, you're probably
25 familiar with the Revised Code of Washington 80.28.240. And

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1 the prescription there by law, not by Administrative Code
2 that this Commission has enacted, but by law, is that the
3 remedy is for a water company to take a civil action. And
4 in that civil action, the Becks should be aware that not
5 only could the past due monies be addressed, but also could
6 be addressed any damages as alleged or proven to the water
7 system, as well as attorney's fees involved for having to
8 bring such a civil action.

9 So it's a serious matter, but it's to be held
10 in civil Superior Court, not before the Commission.

11 Whether this matter goes further or not, I'm
12 going to allow the parties 30 days to submit a statement of
13 issues that need to still be resolved by this Commission.

14 So today is December 23. I'm going to order
15 that by January 23 -- if someone could tell me if that's a
16 weekday or not in 2014 it would be helpful. I think that's
17 going to prove to be a Thursday, if I'm not mistaken, in
18 January -- that the parties submit a list of issues
19 remaining to be resolved.

20 So I think -- am I getting a nod that this is
21 a Thursday?

22 All right. Thursday, January 23, 2014, that
23 issues list will be due to be filed.

24 And if the parties want to work on it
25 together, that's acceptable. If they want to submit

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1 independent issues lists, that will be fine.

2 Shortly after that, the Commission will
3 schedule a prehearing conference on any issues remaining.

4 At this time, though, I am ordering the Becks
5 reconnected at no fee, and that reconnection is to be
6 accomplished within 24 hours, so no later than 3:00 p.m.
7 tomorrow, Christmas Eve, December 24, 2013.

8 If the Becks are not reconnected by 3:00
9 tomorrow afternoon, the company will be in violation of a
10 Commission order.

11 I will reduce that to writing and hope to
12 have it out by lunchtime tomorrow. An electronic copy will
13 be sent to all the e-mail addresses I have, and then the
14 hard copy will go out in the mail tomorrow on Tuesday.

15 Mr. Gillett, do you have any questions?

16 You may not agree with the ruling. But do
17 you have any questions about what I've ordered?

18 MR. GILLETT: Can I just have a moment with
19 my client? Just another moment.

20 So the record is clear, your Honor, the water
21 company did send out a bill in October that reflected an
22 amount of approximately 8,000 past due.

23 And then pursuant to Mr. Elliott's
24 determination, a revised bill was sent out at the beginning
25 of November in the regular billing cycle. But that would

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1 have been after the first notice of disconnect went out for
2 that amount. But the credit itself was given in October.

3 JUDGE TOREM: I understand the water
4 company's position.

5 It doesn't change my ruling.

6 I don't have a bill today that shows they
7 were delinquent in that amount.

8 I am worried about the application of what I
9 would call the prior obligation. That's something that we
10 can adjudicate next year.

11 Again, I'm not satisfied that either party is
12 fully in the right here.

13 There's been apparently mistakes that have
14 been resolved by Mr. Elliott to Staff's satisfaction, maybe
15 not to either of the parties, as to how bills were done, how
16 they were calculated. So again, the water company had some
17 issues; valid or not I don't know, because I haven't looked
18 at them yet.

19 As to the payment history that's been
20 alleged, it doesn't look like it would be something, if I
21 were sitting in Ms. Lindberg's shoes, I would be happy with.

22 But what I have to do is hold the company
23 strictly to compliance with these WAC's. It's a serious
24 obligation to take on cutting someone's power off,
25 electricity, natural gas. For heat, we have things where it

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1 can't be done during the winter. For water, there's no such
2 statute. Even so, I have to require a strict adherence.

3 And since there's no bill before me that
4 shows it was not complied with and there's no bill before me
5 to show that was the amount billed and not paid, I can't
6 uphold the subsequent notices.

7 So without that bill in the form of WAC
8 480-110-375, I simply can't allow the water company to do
9 this today.

10 Now can it be done later? Perhaps.

11 I would encourage the parties to come back if
12 there are issues that the Commission can resolve and have
13 them done once and for all here in January/February time
14 frame. Let's do that. Submit those issues to me on
15 Thursday, January 23, and we'll set up a prehearing
16 conference early in February and get the matter scheduled
17 for hopefully a quick resolution within 30 to 60 days, I
18 would hope.

19 And then by early in 2014 you'll either have
20 a customer that's on a payment plan that is subject to
21 enforcement by this Commission or subject to a disconnection
22 order that we would endorse, or you'll have paying customers
23 going forward that hopefully under threat of the Commission
24 enforcement you won't have to worry yourself about again,
25 Ms. Lindberg.

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1 So I know you're not satisfied with this ruling
2 today. But hopefully we'll get to a place where both sides
3 will understand their obligations under the law and to each
4 other, and to the company to make sure that current payment
5 is done for services rendered.

6 There's no obligation for the water company to
7 supply water without a paid bill. That should be
8 understood.

9 But there are certainly obligations by law that
10 I'm enforcing today that haven't been fully complied with.
11 And I'm giving the benefit of the doubt to the consumer
12 today.

13 MR. GILLETT: Thank you, your Honor.

14 JUDGE TOREM: Any questions from the other
15 side, Mr. Kombol?

16 MR. KOMBOL: No, your Honor. I appreciate
17 your clarity and Counsel's information.

18 JUDGE TOREM: I'll reduce this to writing
19 this afternoon/tomorrow morning and have the written order
20 out.

21 But I do hope that the water company can
22 comply by tomorrow and have the Becks reconnected through
23 the holiday season and into early next year.

24 We'll take this up again and all the other
25 issues in late January.

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Thank you.

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Everything will go out in writing tomorrow.

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We are adjourned.

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(Whereupon, the proceedings were

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concluded at 3:13 p.m.)

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3 STATE OF WASHINGTON)

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4 COUNTY OF KING)

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