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BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION

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WASHINGTON STATE UTILITIES)
AND TRANSPORTATION COMMISSION,)
Complainant,)
v.) Docket No. UW-143181
NEWAUKUM WATER SYSTEM,) (Consolidated)
Respondent.)

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THE MATTER OF THE REQUEST)
OF NEWAUKUM WATER SYSTEM) Docket No. UW-143330
FOR REMOVAL FROM REGULATION.) (Consolidated)

12

PREHEARING CONFERENCE - VOLUME I

13

PAGES 1 - 20

14

ADMINISTRATIVE LAW JUDGE RAYNE PEARSON

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Taken at 1300 South Evergreen Drive Southwest

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Olympia, Washington

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DATE TAKEN: OCTOBER 23, 2014

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REPORTED BY: RYAN ZIEGLER, RPR, CCR 3348

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A P P E A R A N C E S

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3 ADMINISTRATIVE LAW JUDGE:

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FOR NEWAUKUM WATER
SYSTEMS, INC.:

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MAURICE KURTZ
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myktz@yahoo.com

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23 ALSO PRESENT:

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HENRY KELLEY

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1 OLYMPIA, WASHINGTON; OCTOBER 23, 2014

2 1:30 p.m.

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4 JUDGE PEARSON: Good afternoon. Let's be on
5 the record in Docket UW-143181, captioned Washington
6 Utilities and Transportation Commission versus Newaukum
7 Water System, and Docket UW-143330, which is a petition
8 filed by Newaukum Water System to be removed from
9 jurisdiction.

10 Today is Wednesday, October 22nd, 2014 [sic],
11 at 1:30 p.m., and we are here for a prehearing conference
12 to discuss scheduling and other procedural issues. My name
13 is Rayne Pearson, and I am the administrative law judge
14 presiding over this case.

15 Let's get started by taking appearances, and
16 we'll begin with commission staff.

17 MR. SHEARER: Good afternoon, Your Honor.
18 This is Brett Shearer, Assistant Attorney General,
19 representing commission staff.

20 And did you want long form or short form?

21 JUDGE PEARSON: Long form is fine. Then the
22 company, we'll see.

23 MR. SHEARER: My business address is PO box
24 40128, 1400 South Evergreen Park Drive Southwest, Olympia,
25 Washington, 98504. My e-mail is bshearer, B-S-H-E-A-R-E-R,

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1 at UTC.law.gov, and my phone number is (360)664-1187.

2 JUDGE PEARSON: Thank you.

3 And for the company, if you could state your
4 first and last name and spell your last name, and then also
5 give us your address, phone number, and e-mail address.

6 MR. KURTZ: All right. I'm Maurice Kurtz,
7 can -- and I'm the chairman of the board of directors for
8 Newaukum Water Systems, and -- Incorporated. My address at
9 home is 38205 183rd Avenue Southeast, Auburn, Washington.

10 The official address for the water system is
11 post-office box 1287, Enumclaw, Washington, 98022, and my
12 home phone number is (253)939-5739. My e-mail address is
13 M-Y-K-T-Z at yahoo.com.

14 JUDGE PEARSON: Okay. Thank you. And would
15 you prefer to receive service at the PO box rather than
16 your home address?

17 MR. KURTZ: Actually, I'd prefer it at
18 home because I would get it faster, because the post-office
19 box frequently isn't accessed maybe every three or four
20 days.

21 JUDGE PEARSON: Okay. One of the things that
22 we're going to discuss too is electronic service so we can
23 actually provide you with documents by e-mail, if you're
24 okay with that.

25 MR. KURTZ: Yes. The -- Mr. Ward and I have

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1 been back and forth for a long time on e-mail, so --

2 JUDGE PEARSON: Okay.

3 MR. KURTZ: -- that works fine. My e-mail is
4 checked about -- at least once a day, sometimes three times
5 a day.

6 JUDGE PEARSON: Okay. Great.

7 So unless either party has an objection, I
8 think it's appropriate to consolidate these two dockets
9 since they involve a common set of facts. Are both of the
10 parties agreeable to that?

11 MR. KURTZ: No, we are not.

12 JUDGE PEARSON: You're not?

13 MR. KURTZ: No. We want to deal with the
14 UW-143330 as a separate issue and prior to the -- the other
15 one. The reason being is that if you rule in favor of us
16 being released from the UTC, which is the 3330
17 document [sic], then the other document is moot. It goes
18 away.

19 JUDGE PEARSON: That's correct, and I
20 understand that, so by consolidating them, we would deal
21 first with the jurisdictional issues, and then if, in fact,
22 it was found that the company was no longer jurisdictional
23 or would be released from jurisdictional, then you're
24 correct, the other issue would --

25 MR. KURTZ: Yeah.

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1 JUDGE PEARSON: -- become moot. But for
2 scheduling purposes, if we could consolidate the schedules
3 rather than setting out two separate courses --

4 MR. KURTZ: Well, I think --

5 JUDGE PEARSON: -- for two separate
6 hearings --

7 MR. KURTZ: -- we need two separate
8 schedules, because your counsel and I have talked about
9 doing the release from UTC first and fairly quickly.

10 JUDGE PEARSON: And Mr. Shearer --

11 MR. KURTZ: And I'm talking, we're going to
12 request sometime in November, early December, if we
13 possibly can. We need to get that issue out of the way.
14 Time is of the essence for travel, cost, and everything
15 else, and we don't want to have to wait until January to
16 get a ruling on the issue of jurisdiction.

17 JUDGE PEARSON: Mr. Shearer?

18 MR. SHEARER: Staff would actually support
19 consolidation based on the common issues of law and fact in
20 this, and we do understand the jurisdictional docket is
21 dispositive -- or could possibly be dispositive, so we
22 would propose to seek a ruling on that issue early in the
23 procedural schedule or as soon as feasible, but we would
24 still prefer consolidation for scheduling purposes.

25 JUDGE PEARSON: Okay. So do we have any

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1 parties here that are seeking intervention, either
2 additional people in the room that --

3 MR. KELLEY: I might be.

4 JUDGE PEARSON: You might be? Do you want to
5 come forward to a microphone?

6 MR. KELLEY: Sure. Which microphone?

7 MR. KURTZ: You can share mine.

8 JUDGE PEARSON: One at the table. If you
9 could just state your first and last name for the record.

10 MR. KELLEY: Henry Kelley.

11 JUDGE PEARSON: And how do you spell your
12 last name?

13 MR. KELLEY: K-E-L-L-E-Y.

14 JUDGE PEARSON: Okay. And who do you
15 represent?

16 MR. KELLEY: Myself, I guess. I'm a rate
17 payer on the system, but I'm not supportive of the current
18 the path the system is taking.

19 JUDGE PEARSON: Okay. So you're a customer?

20 MR. KELLEY: Correct.

21 JUDGE PEARSON: Okay. And you're not
22 supportive of the company being deregulated. Is that what
23 you're saying?

24 MR. KELLEY: Partly, yeah. That is correct,
25 but I mean, there's more to it than that.

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1 JUDGE PEARSON: Okay. You can go ahead and
2 explain it.

3 MR. KELLEY: Well, I didn't come prepared to
4 speak on that, but I mean, I just don't feel that the
5 company's being taken in the right direction. It -- it
6 needs new ownership more than anything.

7 JUDGE PEARSON: Okay. Okay. So have you had
8 an opportunity to speak with Mr. Ward at all?

9 MR. KELLEY: I spoke with him once about a
10 week or two ago.

11 JUDGE PEARSON: Okay. Because I'm fairly
12 confident that -- that staff will do, you know, a good job
13 of representing the rate payers and the customers in this
14 proceeding.

15 MR. KELLEY: Yes. I expect that.

16 JUDGE PEARSON: Okay.

17 MR. KELLEY: But I -- I do have some
18 information and documentation that very well could be
19 relevant that hasn't been brought forward.

20 JUDGE PEARSON: Okay. Could you provide that
21 to Mr. Ward?

22 MR. KELLEY: Yeah. I -- I believe that's the
23 plan.

24 JUDGE PEARSON: Okay.

25 MR. KELLEY: Yeah.

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1 JUDGE PEARSON: So I would prefer to handle
2 it that way, if possible, to have you providing things to
3 Mr. Ward. And we do have -- we can sign you up as an
4 interested person so that you're kept in the loop and you
5 receive all the documents as they're served and --

6 MR. KELLEY: Okay.

7 JUDGE PEARSON: -- things of that nature.

8 MR. KELLEY: That would be fine.

9 JUDGE PEARSON: Okay.

10 MR. KELLEY: Thank you.

11 JUDGE PEARSON: Okay. Thank you. Are there
12 any other parties here today seeking intervention?

13 (No response.)

14 JUDGE PEARSON: Okay. And do the parties --
15 it sounds like from the preliminary schedule, you do want
16 discovery to be available in this case?

17 MR. SHEARER: Yes. And the formal -- invoke
18 the formal discovery rules please, Your Honor.

19 JUDGE PEARSON: Okay. And back to electronic
20 service, if we decide to serve documents electronically,
21 via e-mail, are you amenable to that?

22 MR. KURTZ: Absolutely.

23 JUDGE PEARSON: Okay. And you too,
24 Mr. Shearer?

25 MR. SHEARER: Yes, Your Honor.

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1 JUDGE PEARSON: Okay. And so I understand
2 that you need a brief recess to discuss scheduling matters?

3 MR. SHEARER: Yes, Your Honor.

4 JUDGE PEARSON: Okay. So I will be in my
5 office if you want to just give me a call when you're done.

6 MR. SHEARER: Okay.

7 JUDGE PEARSON: And we'll take a recess and
8 go off the record.

9 MR. KURTZ: Your Honor, I -- I have
10 information I'd like to present to you today in addition to
11 the scheduling, because I understand that a prehearing, we
12 should be able to give information, exchange information
13 that is -- has bearing on the case that has not been
14 received by anybody at this point.

15 JUDGE PEARSON: Okay. Let's take that up
16 after the break.

17 MR. KURTZ: Okay.

18 JUDGE PEARSON: Okay?

19 MR. KURTZ: That's fine. Yes.

20 JUDGE PEARSON: Thank you.

21 (A break was taken from 1:38 p.m. to
22 1:48 p.m.)

23 JUDGE PEARSON: Okay. Let's be back on the
24 record in Docket UW-143181 and Docket UW-143330. During
25 the break, when we were off the record, the parties

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1 discussed a procedural schedule with -- which Mr. Shearer
2 will now read into the record.

3 MR. SHEARER: Yes. The -- the parties
4 propose the following procedural schedule jointly. Staff
5 will file testimony on January 16th, 2015. The company
6 will file rebuttal -- or responsive testimony on
7 February 18th. Staff will then have the opportunity to
8 file rebuttal testimony on March 19th.

9 The discovery cutoff will be April 2nd.
10 Exhibits for cross-examination -- or a list of exhibits for
11 cross due on April 21st. A -- we jointly request a hearing
12 date of May 5th, with briefs due -- simultaneous briefs due
13 on June 2nd and reply briefs due June 23rd, if necessary.

14 JUDGE PEARSON: Thank you.

15 Okay. And I did want to just briefly address
16 Mr. Kelley's petition for intervention, just let you know
17 that if at any point in the future you do feel it's
18 necessary to intervene, you can always file a petition for
19 late intervention in the proceeding.

20 MR. KELLEY: Okay. Thank you.

21 JUDGE PEARSON: Okay?

22 And Mr. Kurtz, you had a couple of matters
23 that you wanted to address?

24 MR. KURTZ: Yes, Your Honor. I have a short
25 presentation that I'd like to give to you, and I would ask

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1 to approach the bench maybe once during the time of the
2 presentation to give you the same information that I'm
3 talking about.

4 JUDGE PEARSON: What is your presentation
5 concerning?

6 MR. KURTZ: It's concerning the
7 UH-143330 [sic], release from UTC control.

8 JUDGE PEARSON: So it has to do with the
9 jurisdictional issue?

10 MR. KURTZ: Yes.

11 JUDGE PEARSON: Okay. Did you also bring
12 copies for staff?

13 MR. KURTZ: I have copies here, yes, for
14 everything that I would -- will present, and the reason I
15 want to do this presentation is because, as I understand
16 it, in the March proceedings that happened, there was not a
17 good understanding of the -- of what a nonprofit
18 corporation really is, and that understanding was not
19 understood, by what I understand, the staff, the attorney
20 that represented the staff, as well as the judge at that
21 time. Okay?

22 Now, there was a lot of conversation,
23 evidently, about it, but there was no agreement as to what
24 a nonprofit corporation is, so I'd like to start, and if --
25 this is only going to take about 15 or 20 minutes. Okay?

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1 JUDGE PEARSON: Okay. I can give you about
2 five.

3 MR. KURTZ: Well, I'm going to need a little
4 bit more than five, please, sir -- or ma'am.

5 JUDGE PEARSON: The -- the thing is is that
6 the prehearing conference, the purpose is to set a
7 procedural schedule --

8 MR. KURTZ: Okay.

9 JUDGE PEARSON: -- and deal with procedural
10 issues, and I understand that this -- the jurisdictional
11 issue is -- is a threshold matter here --

12 MR. KURTZ: Yes.

13 JUDGE PEARSON: -- and so I can give you a
14 couple of minutes to speak about it, but what you need to
15 understand is whatever you present, staff needs to receive
16 copies of it, they're going to be given a opportunity to
17 respond to it, because up until today, they did not know
18 that you were going to be arriving with documents and
19 presenting information.

20 So in fairness, they'll have to have an
21 opportunity to respond in writing, and I'll give them at
22 least seven days to do that.

23 MR. KURTZ: Okay. Part of the information
24 was given to Brett on Monday of this past week or this
25 week, and so that part, which I can cover right now, is

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1 that there are three common reasons for possibly having a
2 nonprofit corporation: One being a public benefit, a
3 mutual benefit of -- of a group of people, or a corporation
4 for religious groups.

5 But -- that is not inclusive, but that is the
6 three basic categories. We, as Newaukum Water System, are
7 a benefit for owners of property in the subdivision, and we
8 are a nonprofit corporation recognized by the IRS.

9 And the points that I want to make are, there
10 is no ownership associated with a nonprofit corporation. A
11 nonprofit corporation is in -- is a contract between its
12 members and our beneficiaries and the Secretary of State.
13 Nonprofit has no investors. Nonprofit cannot issue stock.

14 A nonprofit cannot issue dividends or
15 disperse excess funds to its members. All funds collected
16 or donated must be used for the purpose or for the support
17 of the corporation's purpose.

18 A nonprofit must file an IRS 990, which is
19 not a normal corporation filing. A nonprofit can
20 accumulate funds for future use in maintaining its
21 facilities or future expenses and the funds are not
22 taxable, and I'd be happy to give you a copy of that.

23 JUDGE PEARSON: That's okay. I don't need a
24 copy of that.

25 Mr. Shearer, did you have something you

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1 wanted to say?

2 MR. SHEARER: Your Honor, I just want to
3 clarify. I don't -- I don't think Mr. -- I want to clarify
4 whether or not Mr. Kurtz is asking you to do anything or
5 find anything here. If not, then we may be better served
6 by conducting this in -- in discovery or in another
7 procedural setting.

8 JUDGE PEARSON: Yeah. I agree with you.
9 Were you --

10 MR. KURTZ: Okay.

11 JUDGE PEARSON: -- hoping for me to make a
12 ruling on this today?

13 MR. KURTZ: I didn't expect you to make a
14 ruling, no.

15 JUDGE PEARSON: Okay.

16 MR. KURTZ: But I have many -- I have about
17 three or four more points that need to be made before you
18 could even possibly make a ruling, so if you wanted me to
19 mention those points, and then we can -- we can set times
20 and dates for a later --

21 JUDGE PEARSON: Well, that's what we're doing
22 here today is setting a later date and time to have an
23 evidentiary hearing where you can introduce evidence such
24 as this and make your arguments about why Newaukum Water
25 System should not be jurisdictional to the UTC.

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1 MR. KURTZ: Okay. All right.

2 JUDGE PEARSON: So --

3 MR. KURTZ: But that will not be in January,
4 that would be sometime fairly soon, correct?

5 JUDGE PEARSON: Well, it sounds like the
6 hearing is set for May 5th of 2015 at --

7 MR. KURTZ: You know, that's --

8 JUDGE PEARSON: -- this point in time, and
9 I -- I haven't made a determination about whether or not
10 the dockets will be consolidated, and I'm not going to
11 decide that today.

12 MR. KURTZ: Okay. But you're -- be aware
13 that we are not in agreement at this point, and I --
14 we've --

15 JUDGE PEARSON: I am aware of that.

16 MR. KURTZ: You have to -- you have to -- we
17 have to abide by your decision, but we are -- do not really
18 want the documents combined from -- to the point where we
19 cannot deal with the jurisdictional issue earlier.

20 JUDGE PEARSON: I understand, yes.

21 MR. KURTZ: Yeah.

22 JUDGE PEARSON: And I understand your
23 position on that.

24 MR. KURTZ: Okay.

25 JUDGE PEARSON: And I will take that under

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1 advisement.

2 MR. KURTZ: Okay. All right.

3 JUDGE PEARSON: Okay?

4 MR. KURTZ: Very good.

5 JUDGE PEARSON: Okay. So I think the points
6 that you're making today are -- are best reserved for
7 your -- your prefiled testimony and -- and then for the
8 evidentiary hearing in May if, in fact, the dockets are
9 consolidated and we hear both things at that time.

10 MR. KURTZ: I think there's a need to have
11 the one -- the jurisdictional issue resolved one way or
12 another long before we have January through June schedule,
13 is our personal desire.

14 JUDGE PEARSON: Okay. And Mr. Shearer, I
15 just noticed when you read off the procedure schedule that
16 there were no settlement conferences built into that
17 schedule. Is there a reason for that?

18 MR. SHEARER: We were just going to set those
19 up informally based on we have so many individuals that
20 would want to take part between the company and staff,
21 it --

22 JUDGE PEARSON: Okay.

23 MR. SHEARER: -- it's difficult to come up
24 with a specific day this far ahead of time.

25 JUDGE PEARSON: Okay. But you do intend to

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1 engage in settlement negotiations.

2 MR. SHEARER: Yes. We do --

3 JUDGE PEARSON: Okay.

4 MR. SHEARER: -- intend to engage in
5 settlement negotiations, and...

6 JUDGE PEARSON: Okay. Thank you.

7 Do you have anything else, Mr. Kurtz?

8 MR. KURTZ: No, I don't believe -- no. Not
9 at this point.

10 JUDGE PEARSON: Okay. Is there anything else
11 that we need to address while we're here today?

12 MR. SHEARER: Not from staff's perspective.

13 I -- I just want to be clear if Mr. Kurtz is
14 asking Your Honor to make a decision on the consolidation
15 or not consolidate or to de-consolidate or whatever the --
16 the term is, staff would oppose that based on the common
17 issues of law and fact.

18 And there's nothing in the procedural rules
19 or nothing in the -- I think to prevent the company or
20 staff from asking Your Honor or the commission to make a
21 determination on the jurisdictional issue or that is --
22 that we all acknowledge is -- could be dispositive sooner
23 than that, or in another procedural mechanism, a motion or
24 something like that.

25 JUDGE PEARSON: Okay. Well, I will issue an

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1 order today -- not today, I'm sorry -- reflecting what we
2 discussed here today, including the issue of whether or not
3 the dockets will be consolidated, and that will be within
4 ten days. Okay?

5 If that's all we have, then we can go off the
6 record and be adjourned. Thank you.

7 (Proceedings concluded at 1:57 p.m.)

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3 STATE OF WASHINGTON

4 COUNTY OF KING

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6 I, Ryan Ziegler, a Certified Shorthand Reporter in
7 and for the State of Washington, do hereby certify that the
8 foregoing transcript of the prehearing conference in the
9 above-captioned matter on October 23, 2014, is true and
10 accurate to the best of my knowledge, skill, and ability.

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IN WITNESS WHEREOF, I have hereunto set my hand
and seal this October 30, 2014.

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RYAN ZIEGLER, RPR, CCR

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