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1 BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION

2 COMMISSION

3 In the Matter of the Penalty )  
Assessment Against )  
4 ) DOCKET NO. TV-072234  
DANIEL J. BUSBY, D/B/A ) Volume I  
5 CAREFUL MOVERS ) Pages 1 - 44  
6 In the Matter of Determining )  
the Proper Carrier )  
7 Classification of ) DOCKET NO. TV-071670  
 ) Volume I  
8 DANIEL JOHN BUSBY d/b/a ) Pages 1 - 44  
CAREFUL MOVERS )  
9 -----

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11 A hearing in the above matter was held on  
12 January 15, 2008, at 1:37 p.m., at 1300 South Evergreen  
13 Park Drive Southwest, Olympia, Washington, before  
14 Administrative Law Judge ADAM TOREM.

15

16 The parties were present as follows:

17 WASHINGTON UTILITIES AND TRANSPORTATION  
COMMISSION, by MICHAEL A. FASSIO, Assistant Attorney  
18 General, 1400 South Evergreen Park Drive Southwest,  
Post Office Box 40128, Olympia, Washington 98504;  
19 telephone, (360) 664-1192.

20 DANIEL J. BUSBY, by KEVIN KEEFE (via bridge),  
Attorney at Law, Post Office Box 20362, Seattle,  
21 Washington 98102; telephone, (206) 325-9390.

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24 Kathryn T. Wilson, CCR

25 Court Reporter

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

2 JUDGE TOREM: Good afternoon. I'm Adam  
3 Torem, the administrative law judge presiding over this  
4 hearing on behalf of the Washington Utilities and  
5 Transportation Commission. Today is Tuesday, January  
6 15th, 2008. This afternoon we are assembled at about  
7 1:30 p.m. I am here in the Commission's offices in  
8 Olympia to begin a hearing in two different dockets.  
9 They are TV-071670. That docket is captioned, In the  
10 Matter of Determining the Proper Carrier Classification  
11 of Daniel John Busby, d/b/a Careful Movers. The second  
12 docket is TV-072234. This is a request for a hearing  
13 on a penalty assessment that was originally set out in  
14 the amount of \$2,000.

15 In accordance with the Revised Code of  
16 Washington, RCW 81.04.510, the focus of the hearing is  
17 whether Careful Movers is operating as a common carrier  
18 engaged in transportation of property for compensation  
19 on the public highways of Washington state, and if they  
20 are, should they be required to apply for and hold a  
21 permit from the Commission as required by Chapter 81.04  
22 RCW.

23 The Commission staff has alleged as much, and  
24 they seek an order from the Commission requiring  
25 Mr. Busby and Careful Movers to cease and desist from

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1 their business of moving household goods. Again,  
2 Commission staff requested imposition of a penalty  
3 first in the amount of \$1,500 for failure to obtain  
4 that required permit, and there is an additional  
5 penalty sought in the amount of \$500 for failure to  
6 list a UTC permit number in the Company's advertising.

7           Originally upon Commission staff's request  
8 back on December 6th, 2007, Administrative Law Judge  
9 Ann Rendahl, the head of the administrative law  
10 division, issued Order 01 in Docket TV-071670. That's  
11 the classification hearing, and that included a  
12 subpoena to Careful Movers requiring Mr. Busby to  
13 appear and produce certain documents, and it gave a  
14 notice of hearing which originally scheduled this  
15 matter for last week, January 8th, 2008, at 1:30 p.m.  
16 However, due to a change in staffing here on December  
17 21st, 2007, the Commission issued a notice rescheduling  
18 the matter for today, January 15th, and they noted a  
19 change of presiding officers.

20           Also on December 21st, 2007, in response to  
21 the request for a hearing on the penalty assessment,  
22 the Commission issued a notice of hearing in Docket  
23 TV-072234, the penalty assessment case, and set that  
24 matter for hearing this afternoon as well but still as  
25 a separate proceeding. Having all that preliminary out

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1 of the way now, for the record, I want to take  
2 appearances from the parties and then address some  
3 other administrative details, including Careful Movers'  
4 appearance by telephone today and a formal  
5 consolidation of these two dockets, and then we can get  
6 into presentation of each party's case.

7 First let me remind Mr. Keefe, you will hear  
8 Mr. Michael Fassio give his appearance for Commission  
9 staff, and he's going to give more than you might  
10 normally do in Superior Court. He's going to give what  
11 we call the full contact information after his name,  
12 which is address, telephone number, fax number, and  
13 e-mail address, so it's sometimes helpful to simply  
14 read your business card into the record and then  
15 indicate which party you represent, so Mr. Fassio if  
16 you will go first.

17 MR. FASSIO: Thank you, Your Honor. Michael  
18 Fassio present on behalf of the Commission staff. My  
19 address is 1400 South Evergreen Park Drive Southwest,  
20 PO Box 40128, Olympia, Washington, 98504. Telephone  
21 number is (360) 664-1192. Fax number is (360)  
22 586-5522. E-mail is mfassio@wutc.wa.gov.

23 MR. KEEFE: Kevin Keefe on behalf of Careful  
24 Movers and/or Daniel Busby. Address, Post Office Box  
25 20362, Seattle, 98102; telephone, (206) 325-9390; fax,

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1 (206) 328-3590.

2 JUDGE TOREM: Sir, do you have an e-mail  
3 address?

4 MR. KEEFFE: I don't do e-mail.

5 JUDGE TOREM: Let me note that earlier this  
6 afternoon, I got a phone call from Mr. Keefe indicating  
7 that due to weather conditions and some snow in the  
8 Seattle area, he was not going to be able to be in  
9 Olympia this afternoon. Mr. Fassio has indicated to me  
10 in a separate telephone call he has no problem with a  
11 telephonic appearance and prior to the hearing today  
12 faxed what appeared to be the rest of the exhibits, and  
13 before we went on the record explained where most of  
14 the exhibits had already been part of a staff  
15 investigation report that was served on Careful Movers,  
16 and I hope provided to Mr. Keefe, that the appearance  
17 by phone, although not directly permitted by the  
18 original subpoena, would be acceptable. Mr. Keefe, you  
19 are comfortable appearing for your client by phone  
20 today?

21 MR. KEEFFE: Yes, I am.

22 MR. FASSIO: No objection.

23 JUDGE TOREM: The next matter I want to take  
24 up is consolidation. The Commission has a rule under  
25 WAC 480-07-320, and to put it bluntly, it gives wide

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1 discretion to the judge to consolidate on motion from  
2 the parties' or the Bench's own motion any matters that  
3 it thinks are appropriate.

4           In my conversation with Mr. Keefe earlier  
5 today, you indicated that you thought the issues were  
6 rather similar in these cases, if not exactly the same,  
7 so unless there is an objection that I would like to  
8 hear, I want to consolidate these cases not only into  
9 one hearing today but into one order that will come out  
10 under both docket numbers. If I count this correctly,  
11 it will be Order 02 in Docket 071670, and Order 01 in  
12 the penalty assessment Docket 072234, but because the  
13 penalty assessment was not set up as a brief  
14 adjudicative proceeding either in the penalty  
15 assessment itself or in the notice of hearing the same  
16 rules would apply, I don't see any reason we can't do  
17 one administrative hearing and issue one administrative  
18 order handling both the classification matters and the  
19 penalty issues. Mr. Fassio, any comments?

20           MR. FASSIO: No. I would concur.

21           JUDGE TOREM: Mr. Keefe, any problems with  
22 that?

23           MR. KEEFE: No. I would concur as well.

24           JUDGE TOREM: Then we will consolidate the  
25 cases at this point.



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1 I've been handed an exhibit list from  
2 Commission staff. It's labeled with 14 different  
3 exhibits, and Mr. Keefe, you received the exhibit list  
4 as well by fax?

5 MR. KEEFE: Yes, I did.

6 JUDGE TOREM: Let me run down these items,  
7 and I'm not going to go into how many pages each one is  
8 but list what we have.

9 First, the Commission is listing one witness,  
10 Sheri Hoyt; is that correct, Mr. Fassio?

11 MR. FASSIO: Yes.

12 JUDGE TOREM: And Ms. Hoyt is going to  
13 sponsor her staff investigation report, which is  
14 Exhibit 1. She'll sponsor also Exhibit 2, which is the  
15 cancellation order in a separate docket number from  
16 February 9th, 2006, and that was Docket TV-051482.  
17 That's Exhibit 2, and it was previously contained  
18 within Appendix E of that investigation report.

19 Exhibit 3 is a Commission letter to Careful  
20 Movers dated February 21st, 2006. It was previously  
21 contained within Appendix F of the staff investigation  
22 report. Exhibit 4 is a declaration of John Foster in  
23 TV-071670. Exhibit 5 is a declaration also of John  
24 Foster of similar content in TV-072234. Neither  
25 Exhibit 4 nor Exhibit 5 were previously contained in

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1 the staff investigation report.

2 Exhibit 6 was previously contained in the  
3 staff investigation report. It can be found as part of  
4 Appendix D starting at Page 26. It's a final order  
5 approving a settlement agreement and rescinding a cease  
6 and desist order. Is that the date, September 7th,  
7 2007, or is that earlier?

8 MR. FASSIO: I think it should be 2000.

9 JUDGE TOREM: September 7th, 2000?

10 MR. FASSIO: Yes.

11 JUDGE TOREM: So we will make a correction on  
12 the cover sheet for the exhibit list. That final order  
13 approving settlement agreement and rescinding a cease  
14 and desist order is from September 2000, and there is  
15 also a settlement agreement in TV-000418. That  
16 settlement agreement was July 31st, 2000, and again,  
17 that's all Exhibit 6.

18 Exhibit 7 is a consumer affairs complaint  
19 file for Colleen Kelly. Exhibit 7 was previously  
20 contained in the staff investigation report,  
21 Appendix G. Exhibit 8 is a declaration of Ms. Colleen  
22 Kelly. Exhibit 8 was previously contained in the staff  
23 investigation report, Appendix H. Exhibit 9 is a bill  
24 of lading associated with Ms. Kelly's move. Exhibit 9  
25 was previously contained in Appendix G of the

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1 investigation report at Page 47.

2           Exhibit 10 is a payment documentation  
3 associated with Ms. Kelly's move. Exhibit 10 was  
4 previously contained in the investigation report at  
5 Appendix G, pages 50 and 51. Exhibit 11 is refund  
6 documentation associated with Ms. Kelly's move, also  
7 previously indicated in the investigation report.  
8 Exhibit 11 could be found at Appendix G, page 46.

9           Exhibit 12 is a printout of Careful Movers'  
10 Web site. It was printed out on August 14th, 2007. It  
11 was previously contained in the investigation report as  
12 Appendix I. Exhibit 13 is the most recent printout of  
13 the Careful Movers' Web site dated yesterday, January  
14 14th, 2008. It was not previously included in the  
15 investigation report, and the last exhibit are four  
16 online telephone directory listings for Careful Movers  
17 that was printed out on August 14th, 2007, and this  
18 Exhibit 14 was previously included in Appendix J of the  
19 staff investigation report.

20           Mr. Keefe, in an administrative hearing such  
21 as this, it's customary that we may preadmit some of  
22 these exhibits rather than go through the somewhat  
23 laborious process of offering them one at a time during  
24 the course of the hearing. If you have no objection to  
25 that procedure, then I'll ask Mr. Fassio if he wants to

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1 offer these documents for admission at this time.

2 MR. KEEFE: I have no objection to that.

3 JUDGE TOREM: Have you had a chance to review  
4 these individual exhibits and you are ready to indicate  
5 any objection to authenticity or to their content?

6 MR. KEEFE: No.

7 JUDGE TOREM: So no objection if I admit  
8 Exhibits 1 through 14?

9 MR. KEEFE: No.

10 JUDGE TOREM: Then those will all be admitted  
11 for the purpose of the hearing.

12 The only other note I have is a clarification  
13 of the scope of the issues, and Mr. Keefe, when I  
14 looked at your initial request, and this may have come  
15 from Mr. Busby as opposed to you, on the penalty  
16 assessment, which was signed on December the 14th by --  
17 maybe it is by you. It says, "Keefe, attorney for  
18 Daniel Busby," in the significant block?

19 MR. KEEFE: Yeah.

20 JUDGE TOREM: I wanted to see if I could  
21 clarify. Nothing was indicated in the Staff's  
22 prehearing conference phone calls to me or prehearing  
23 calls from you as to whether you are contesting the  
24 allegations or conceding them. In the penalty  
25 assessment form, the box under No. 3 is marked, and

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1 No. 3 would an application for mitigation admitting the  
2 violations but believing that the penalty should be  
3 reduced, and below, the reason is, "I ask for a hearing  
4 by an ALJ." Can you clarify the position you are  
5 taking for your client as to conceding any of the  
6 allegations about the operation and advertising without  
7 a permit?

8 MR. KEEFE: He's conceding the admissibility  
9 of the documentation that you've provided, which if  
10 considered by the hearing examiner would be found to  
11 have been violations.

12 JUDGE TOREM: I guess is that an artful way  
13 of saying you are not arguing about the facts. You are  
14 simply allowing that when the documents come in, it's  
15 more likely than not that the hearing examiner or  
16 myself as an administrative law judge would find that  
17 the Commission through these documents carries its  
18 burden of proof that your client was operating without  
19 a permit and was advertising without listing the permit  
20 number?

21 MR. KEEFE: If that's what the documents  
22 show, yeah.

23 JUDGE TOREM: So the purpose of the penalty  
24 assessment request for hearing, was that simply to  
25 argue the amount of the penalty or whether a penalty

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1 should be imposed at all?

2 MR. KEEFFE: If the violations are found,  
3 which I'm assuming they will be, then it would be more  
4 of a mitigation of the amounts.

5 JUDGE TOREM: Well, we've admitted these  
6 documents 1 through 14, which you had no objection to,  
7 so I think maybe at this point I'll ask if there is a  
8 need for opening statements, so that may clarify some  
9 things as to where we need to go. Ms. Hoyt is  
10 available to give witness testimony today and be  
11 subject to any cross-examination.

12 In your telephone call to me earlier agreeing  
13 to appear by telephone today as opposed to request a  
14 continuance due to the weather conditions, you  
15 suggested that this would be mainly legal argument. So  
16 I'll ask maybe for Mr. Fassio to give a brief couple of  
17 sentence position from Staff and then I'll ask for you,  
18 Mr. Keefe, to give me your brief opening statement, and  
19 then we will see if Ms. Hoyt needs to testify and if  
20 so, as to what cross-examination you want to put her  
21 to, and then I'll take closing statements, because that  
22 appears all we need to do in this case. Mr. Keefe, was  
23 there anything else you were looking for in this  
24 procedure today?

25 MR. KEEFFE: No.

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1                   JUDGE TOREM: Mr. Fassio, is there an opening  
2 statement?

3                   MR. FASSIO: Sure. A couple of preliminary  
4 matters as Staff was preparing for this case, Staff  
5 notes that the Company has the burden of establishing  
6 its reasons for mitigation, and under RCW 81.04.510,  
7 the Company has the burden of proof in a show-cause  
8 proceeding. Because these two proceedings share a  
9 common Staff investigation, Staff intends to respond to  
10 both of these proceedings in its testimony. Staff is  
11 prepared to address both the penalty assessment issue  
12 by the Commission as well as the show-cause proceeding  
13 and respond to any arguments put forth by the Company.

14                   I can run through laws and regulations that  
15 provide a framework for Staff's case in each of these  
16 and state what Staff expects to show or prove. WAC  
17 480-15-020 defines household goods carriers as common  
18 carriers. RCW 81.01.010, through adoption of RCW 80.01  
19 authorizes the Commission to regulate motor carriers.  
20 RCW 81.80 defines "motor carrier" to include common  
21 carrier provides the authority for the Commission to  
22 classify and regulate motor carriers and to enforce the  
23 motor carrier laws.

24                   Specifically regarding the penalty assessment  
25 in Docket TV-072234, RCW 81.80.070 provides that no

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1 common carrier shall operate for the transportation of  
2 property for compensation in this state without first  
3 obtaining from the Commission a permit to do so and  
4 provides that a carrier is subject to a penalty of  
5 \$1,500 for operating without first obtaining a permit  
6 from the Commission. RCW 81.83.57 provides that no  
7 person in the business of transporting household goods  
8 shall advertise without first listing the carrier's  
9 permit number in the advertisement and provides that  
10 the carrier may issue a penalty of \$500 for every  
11 violation.

12           Regarding the show-cause proceeding, Docket  
13 TV-071670, RCW 81.80.070 also directly applies, and RCW  
14 81.04.510 authorizes and directs the Commission to  
15 issue a cease and desist order when it finds a person  
16 or corporation subject to Title 81 and is operating  
17 without the required authority from the Commission.  
18 Staff's evidence will show that Careful Movers has  
19 transported household goods within the state of  
20 Washington for compensation which subjects the Company  
21 to Commission regulation.

22           Furthermore, Staff will present evidence that  
23 Careful Movers did not hold a permit for these  
24 operations. Staff's evidence will show that Careful  
25 Movers has advertised its services without listing its



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1 permit number. Staff's evidence will show the basis  
2 for both penalties assessed Careful Movers in the one  
3 docket as well as the basis for the allegations for the  
4 order instituting special proceeding and notice of  
5 hearing against Careful Movers in the other docket.

6 JUDGE TOREM: Thank you, Mr. Fassio.

7 Mr. Keefe?

8 MR. KEEFE: I don't have any opening on this.  
9 Like you say, we are not objecting to the evidence  
10 that's already been provided, which the hearing officer  
11 will be able to make the findings that number one, he  
12 didn't have a permit, and number two, he violated the  
13 listing his permit number in the ads. We don't have  
14 evidence contrary to that to present.

15 JUDGE TOREM: Okay. Let me then swear in  
16 Ms. Hoyt. Understanding the limitations of your case  
17 as I understand it, Mr. Keefe, I'll ask Mr. Fassio to  
18 streamline the examination he may have had planned for  
19 today, and I know he may have done a more thorough  
20 preparation of this witness and anticipate greater  
21 depth in the questions, but if I understand again that  
22 there is no objection to and essentially a concession  
23 that the evidence here will hold up the allegations in  
24 both docket numbers as made by the Commission staff,  
25 and that when I do a complete review of the documents,

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1 I'll be able to make a findings accordingly, then we  
2 will have the focus of Ms. Hoyt's testimony, if  
3 possible, on how this Commission staff came to the  
4 amount of penalty they wish to assess and the remedy  
5 they also would like in the classification hearing. So  
6 we will focus on the remedies that are being sought  
7 once a basic foundation is laid, and if you have  
8 cross-examination within the scope of the documents as  
9 well as anything on direct, I'll allow you to go beyond  
10 the scope of the direct exam because of the concessions  
11 made and the foundation of being asked to take notice  
12 of in the documents; all right?

13 MR. KEEFE: Sure.

14 JUDGE TOREM: Mr, Fassio, let me ask Ms. Hoyt  
15 to raise your hand.

16

17 Whereupon,

18 Sheri Hoyt,  
19 having been first duly sworn, was called as a witness  
20 herein and was examined and testified as follows:

21 JUDGE TOREM: Can you state and spell your  
22 last name for the record?

23 THE WITNESS: Sheri Hoyt, S-h-e-r-i, H-o-y-t.

24 JUDGE TOREM: Mr. Fassio?

25 MR. FASSIO: Thank you, Your Honor.

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1 DIRECT EXAMINATION

2 BY MR. FASSIO:

3 Q. Please state your name.

4 A. Sheri Hoyt.

5 Q. Please state the name of your employer.

6 A. Washington Utilities and Transportation  
7 Commission.

8 Q. In what position are you employed by the  
9 Commission?

10 A. I'm a compliance specialist in the  
11 Commission's safety and consumer protection division,  
12 business practices investigations.

13 Q. Please briefly describe your responsibilities  
14 as they pertain to this matter.

15 A. I conduct investigations on the business  
16 practices of regulated utilities and transportation  
17 companies. As part of those duties, I would  
18 investigate companies that appear to be operating as  
19 transportation company without the necessary  
20 certificate or permit.

21 Q. Did you conduct such an investigation of  
22 Careful Movers?

23 A. I did. The investigation is documented,  
24 Staff investigation, Daniel John Busby, d/b/a Careful  
25 Movers, Docket No. TV-071670. It's dated October 2007.

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1 Q. Can you please turn to what's been marked as  
2 Exhibit 1. Is Exhibit 1 a true and correct copy of  
3 that investigation report?

4 A. It is.

5 Q. And what will your testimony cover this  
6 afternoon?

7 A. The investigation.

8 Q. I would like to turn first to the status of  
9 Careful Movers' operating authority. Does Careful  
10 Movers currently hold Commission authority to transport  
11 household goods in Washington?

12 A. It does not.

13 Q. Did Careful Movers ever have that authority?

14 A. It did.

15 Q. When did the Company lose the authority?

16 A. February 9th, 2006. The permit was canceled  
17 for failure to file the 2004 annual report and pay the  
18 2005 regulatory fees in Docket No. TV-051482.

19 Q. Please turn to what's been marked as  
20 Exhibit 2. Is Exhibit 2 a true and correct copy of the  
21 Commission's final order in that docket?

22 A. It is.

23 Q. Did the Commission follow up this order with  
24 any written communication with the Company?

25 A. It did. A letter was sent under the

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1 executive secretary, Carol Washburn's name, on February  
2 21, and the letter explains to the Company the meaning  
3 of the final order in Docket TV-051482. It provided  
4 information on what steps the Company could take to  
5 resume operations by submitting an application, how he  
6 could obtain such an application, and it provided  
7 information on what would happen if the UTC received  
8 information or proof that Careful Movers continued to  
9 operate without the permit.

10 Q. Please turn to what's been marked and  
11 admitted as Exhibit 3. Is this a true and accurate  
12 copy of the Commission letter sent to Careful Movers on  
13 February 21st, 2006?

14 A. It is.

15 Q. Did the Commission provide any additional  
16 technical assistance to Careful Movers after its permit  
17 was canceled?

18 A. It did. On February 15th, 2006, special  
19 investigator John Foster went to the Company's office  
20 in Everett. He had appeared there to conduct a  
21 previously scheduled safety compliance review, and so  
22 he discussed the status of the Company's permit with  
23 Mr. Busby and the office manager.

24 He determined that because the permit had  
25 been canceled that the CR should be basically stopped

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1 or postponed until Mr. Busby's permit had been  
2 reissued. He discussed the rules relating to filing  
3 the annual reports, payment of regulatory fees, and how  
4 to apply for that permit, and he provided the permit  
5 application, the annual report forms to Mr. Busby and  
6 his office manager.

7 Q. Did you receive declarations from Mr. Foster  
8 in preparation for each of these proceedings today?

9 A. I did.

10 Q. And can you turn to what's been marked and  
11 admitted as Exhibit 4 and Exhibit 5? Are these true  
12 and accurate copies of those declarations?

13 A. They are.

14 Q. To your knowledge, has the Commission  
15 received any communications from Mr. Busby or Careful  
16 Movers since Mr. Foster's visit?

17 A. No, other than the request for mitigation  
18 that was received on December 17th, 2007, we've had no  
19 contact from Mr. Busby.

20 Q. Prior to these dockets being initiated, have  
21 there been any other penalty assessments or cease and  
22 desist orders issued by the Commission against Careful  
23 Movers?

24 A. Yes. In February 2000, the Commission issued  
25 a cease and desist order to Careful Movers. It was

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1 actually to Dan Busby, d/b/a Careful Movers, Careful  
2 and Courteous Movers. It was accompanied by a \$3,000  
3 penalty for advertising without a permit to operate and  
4 for operating without the permit. Careful Movers  
5 applied for mitigation, and it was assigned Docket No.  
6 TV-000418.

7 Q. Turning to what's been marked and admitted as  
8 Exhibit 6, is this a true and accurate copy of that  
9 final order and settlement agreement that you just  
10 described?

11 A. It is.

12 Q. I would like you to turn now to Careful  
13 Movers' alleged operation after cancellation. After  
14 this cancellation order was issued in 2006, did Staff  
15 receive information regarding operation by Careful  
16 Movers?

17 A. We did. The Commission received a consumer  
18 complaint on July 5th, 2007, from Ms. Colleen Kelly. A  
19 complaint was opened, and the move was dated December  
20 23rd, 2006.

21 Q. I would like to talk about the Kelly move  
22 now. Turning to what was admitted as Exhibit 7 -- you  
23 may want to have this in front of you for the next few  
24 questions -- is this a true and accurate copy of the  
25 complaint file for the Kelly move?

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1 A. It is.

2 Q. Do you see anywhere in that file where  
3 consumer affairs contacted Careful Movers regarding the  
4 move?

5 A. No, I do not.

6 Q. Is there any explanation in the file as to  
7 why Staff didn't contact the Company in an effort to  
8 resolve the customer's issue?

9 A. There is. On Page 14, the Staff did not  
10 contact the Company because it was determined to be  
11 nonjurisdictional. The Commission does not have  
12 jurisdiction over a customer incurring additional  
13 expenses and then wanting the mover to reimburse them  
14 for those expenses.

15 Q. Did the complaint file indicate any other  
16 results of the complaint?

17 A. The Staff contacted the licensing office at  
18 UTC and determined that the Company did not have a  
19 permit to move.

20 Q. Did you obtain a declaration from Ms. Kelly  
21 about her move?

22 A. I did.

23 Q. Turning to what has been admitted as  
24 Exhibit 8, is that a true and accurate copy of that  
25 declaration?



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1 A. It is.

2 Q. Did Ms. Kelly provide Staff with move  
3 documents?

4 A. She did.

5 Q. Turning to what's been admitted as Exhibit 9,  
6 is this a true and accurate copy of the bill of lading  
7 provided by Ms. Kelly?

8 A. It is.

9 Q. And according to the declaration and the bill  
10 of lading for her move, when did her move take place?

11 A. December 23rd, 2006.

12 Q. Did Ms. Kelly provide you with documentation  
13 that she paid for the move?

14 A. She did. She provided a canceled check drawn  
15 on her bank for \$495.25, and it was endorsed for  
16 deposit by Careful Movers to US Bank.

17 Q. Is this payment documentation contained in  
18 Exhibit 10?

19 A. It is.

20 Q. Did Ms. Kelly provide Staff with  
21 documentation that Careful Movers reimbursed her for  
22 the move?

23 A. She did. She provided a copy of a check  
24 drawn on Careful Movers' account, US Bank, for \$245.00,  
25 dated July 5th, 2007.

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1 Q. And turning to what was admitted as  
2 Exhibit 11, is this a true and accurate copy of the  
3 refund documentation you just described?

4 A. It is.

5 Q. Turning now to your investigation regarding  
6 the advertising of Careful Movers after its permit had  
7 been canceled, during the investigation of Careful  
8 Movers, did Staff determine Careful Movers was  
9 continuing to advertise its services?

10 A. I did. I determined that it's operating a  
11 Web site at [www.carefulmovers.net](http://www.carefulmovers.net).

12 Q. Did you print off a copy of that Web site  
13 during your investigation?

14 A. I did, on August 14th, 2007.

15 Q. Exhibit 12, which has been admitted, is a  
16 copy of the Web site that you printed out?

17 A. It is. The Web site consists of three pages:  
18 the home page; a contact desk page, which is contact  
19 information for the Company, and an online quote form.

20 Q. When was the last time you visited the Web  
21 site?

22 A. Yesterday morning, January 14th.

23 Q. Did you print out a copy of the Web site at  
24 that time as well?

25 A. I did, and it remains the same as it did in

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1 August of 2007.

2 Q. To clarify the record, Exhibit 13 that has  
3 been admitted, is that a copy of the Web site that you  
4 printed yesterday?

5 A. It is. Specifically, I would like to draw  
6 attention on the home page. It states in part, Whether  
7 you are moving a small household or a 100-person  
8 office, Careful Movers is the company for the job.

9 Q. Looking at the Web pages in either exhibit,  
10 do you see anywhere where Careful Movers lists the  
11 permit number on the Web site?

12 A. I did not.

13 Q. Just confirming for the record that the  
14 penalty assessment refers specifically to the Careful  
15 Movers' Web site as the evidence Careful Movers  
16 committed in violation of RCW 81.80.357?

17 A. That is correct.

18 Q. A couple more questions about advertising.  
19 Did Staff determine that Careful Movers was advertising  
20 or offering its services in other ways?

21 A. I found four online directory listings: Dex  
22 Online, AT&T's --, superpages.com, and whitepages.com.

23 Q. Did you print off copies of these directory  
24 listings?

25 A. I did. They are in the investigation report

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1 and dated August 14th, 2007, the date they were  
2 printed.

3 Q. Turning to what has been admitted as Exhibit  
4 14 in this hearing, is this a true and accurate copy of  
5 those directory listings that you printed off?

6 A. They are.

7 Q. Did Staff verify the phone numbers for the  
8 listings for Careful Movers?

9 A. Yes. I called each number individually, and  
10 at each number, a male voice answered the phone and  
11 greeted me with, "Careful Movers."

12 Q. Turning to Commission enforcement, can you  
13 briefly summarize what enforcement your investigation  
14 recommended to the Commission?

15 A. Our recommendation was that the Commission  
16 initiate a proceeding against Careful Movers as  
17 provided for by RCW 81.04.510 to show cause why the  
18 Company's operations are not subject to Title 81.

19 Q. Were there any other recommendations  
20 concerning penalty assessment as well?

21 A. We requested that the UTC issue a cease and  
22 desist order for the activities, as well as...

23 JUDGE TOREM: Was there a dollar amount,  
24 Ms. Hoyt?

25 THE WITNESS: \$1,500 in the original

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1 investigation record.

2 JUDGE TOREM: What's the Commission  
3 recommending prior to this hearing?

4 THE WITNESS: We recommended a penalty of  
5 \$2,000.

6 JUDGE TOREM: Can you explain for the record  
7 what the breakdown on that is?

8 THE WITNESS: \$1,500 for operating without a  
9 permit and \$500 for the advertisement, which would be  
10 the Web page that does not have the Company's permit  
11 number.

12 JUDGE TOREM: Are those the maximum imposable  
13 fines in the Commission's laws and regulations for  
14 those alleged violations?

15 THE WITNESS: I believe so.

16 JUDGE TOREM: Mr. Fassio, additional  
17 questions?

18 MR. FASSIO: Just a few.

19 Q. (By Mr. Fassio) The Company has requested  
20 this hearing for mitigation of the penalty which led to  
21 the hearing scheduled today in the docket. Does Staff  
22 at this time support mitigation on the penalty?

23 A. It does not.

24 Q. Can you summarize why not?

25 A. The Company has been down this road before in

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1 2000. They went the same way. We had a \$3,000  
2 proposed penalty. They had a \$1,500 penalty in the  
3 settlement agreement. They paid that. They were  
4 required to get a permit. They did that, and the cease  
5 and desists order was rescinded.

6           When they failed to file the 2004 annual  
7 report, they were issued an order telling them that the  
8 permit was canceled. Staff followed that up with a  
9 letter telling them again that it was canceled and what  
10 that meant to them, how they could rectify that and get  
11 their permit back and what would happen if they  
12 continued to operate without the permit. Staff did an  
13 inperson visit with the Company.

14           There is just no way they didn't know they  
15 were operating in violation of the law. So Staff  
16 believes that they made a conscious decision to not  
17 follow the technical assistance given and continue to  
18 advertise and operate without the necessary permit to  
19 do so legally, so we feel the penalty is warranted.

20           Q.    Just lastly to summarize, although you  
21 probably already stated it, what relief are you asking  
22 for in this proceeding regarding the show-cause docket,  
23 TV-071670?

24           A.    Staff would ask that the Commission issue a  
25 cease and desist order requiring Careful Movers to

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1 cease and desist activity subject to RCW Title 81.

2 MR. FASSIO: Thank you. I have no further  
3 questions for Ms. Hoyt.

4 JUDGE TOREM: Mr. Keefe, did you wish to have  
5 any cross-examination questions?

6 MR. KEEFFE: Yes.

7

8

9 CROSS-EXAMINATION

10 BY MR. KEEFFE:

11 Q. Ms. Hoyt, how many movers are you presently  
12 investigating for complaints similar to those that  
13 Mr. Busby is looking at?

14 A. This is the only one assigned to me as staff  
15 at the level where we have documentation of the move.

16 Q. Do you try to treat each one of these movers  
17 that you investigate in the same way?

18 A. I don't know how else to treat them but in  
19 the same way, so yes.

20 Q. What kind of criteria do you look for in  
21 terms of reducing the penalties?

22 A. That decision would not be mine.

23 Q. Do you take into account the amount of  
24 complaints that have been filed against a particular  
25 mover?

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1           A.     Again, that decision would not be mine as  
2 staff.

3           Q.     Well, with your familiarity with what Staff  
4 does, is that taken into consideration?

5           A.     I'm sorry --

6                    JUDGE TOREM:  Ms. Hoyt, you may not have the  
7 final decision, but if there is any input that you make  
8 or any recommendation you make to a supervisor, why  
9 don't you answer Mr. Keefe's questions from your  
10 position as the investigator and any recommendations  
11 you would make of the chain.

12                   THE WITNESS:  I suppose that consumer  
13 complaints could be taken into account.  That could be  
14 a factor of it, sure.

15           Q.     As far as you know, is the Colleen Kelly  
16 complaint the only complaint we are dealing with on  
17 Careful Movers?

18           A.     To my knowledge.

19                   MR. KEEFE:  I don't have anything further.

20                   JUDGE TOREM:  Any redirect?

21

22

23                                   REDIRECT EXAMINATION

24 BY MR. FASSIO:

25           Q.     Ms. Hoyt, it's your responsibility to



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1 recommend to investigate the company and recommend that  
2 the Commission assess violations or assess penalties  
3 according to Commission rules; is that correct?

4 A. That's correct.

5 Q. And when a penalty is assessed, that penalty  
6 is due unless the Company requests for mitigation; is  
7 that correct?

8 A. That's correct. If a Company submitted a  
9 request for mitigation and they presented in the form  
10 their reasons why Staff would investigate that and  
11 respond accordingly, and we could agree.

12 Q. So you don't have any response to a request  
13 for mitigation if there are no reasons given?

14 A. No, I don't.

15 MR. FASSIO: No further redirect.

16 JUDGE TOREM: Ms. Hoyt, are you aware that  
17 Mr. Busby or Careful Movers since the issuance of the  
18 show-cause order or the penalty assessment have taken  
19 any steps to obtain a permit from the UTC?

20 THE WITNESS: I checked with our licensing  
21 office on Friday of last week, and my understanding is  
22 that no one there has been contacted to request an  
23 application or with assistance for filling one out.

24 JUDGE TOREM: To the best of your knowledge,  
25 has there been any contact, other than from Mr. Keefe

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1 in regard to appearing and representing his client in  
2 the course of these proceedings, hearings, has there  
3 been any contact from Mr. Busby or Careful Movers with  
4 Commission staff?

5 THE WITNESS: Not that I'm aware of.

6 JUDGE TOREM: Mr. Fassio, does that raise  
7 additional questions for you?

8 MR. FASSIO: No.

9 JUDGE TOREM: Any other questions, Mr. Keefe?

10

11

12

FURTHER CROSS-EXAMINATION

13 BY MR. KEEFE:

14 Q. You said that Mr. Busby hasn't provided any  
15 mitigating circumstances, but you also testified that  
16 you would take into consideration your recommendation  
17 the amount of complaints that have been brought against  
18 him. In this case, I'm assuming that the minimum  
19 amount of complaints that you could have would be one,  
20 isn't that correct, in terms of going after one of  
21 these people for being unlicensed?

22 JUDGE TOREM: Ms. Hoyt, did you understand  
23 the question?

24 THE WITNESS: I'm not real sure. They seem  
25 to be two different questions to me.

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1           MR. FASSIO: Can I ask counsel to clarify?  
2 Are you referring now to the penalty assessment for the  
3 single violation of the move, or are you referring to  
4 the general investigation that led to the show-cause  
5 proceeding?

6           Q.     (By Mr. Keefe) In her previous testimony, she  
7 said she only knew of the Colleen Kelly complaint.  
8 Now, if there was ten complaints that you were  
9 investigating in a move, would that be more egregious  
10 in terms of your recommendation of the type of fine  
11 than a single complaint?

12          A.     I don't believe so. I believe the rule is  
13 \$1,500 penalty for continuing to operate. I don't  
14 believe that Staff would recommend a \$1,500 penalty for  
15 each documented case of a move.

16          Q.     Well, apparently a few years ago, there was  
17 an agreement reached with Careful Movers in terms of  
18 reducing the penalties that the Commission had asked or  
19 the staff had asked for. What were the mitigating  
20 factors there?

21          A.     I'm sorry; I'm not familiar with that. I  
22 would need to read the settlement agreement to  
23 determine that information.

24          Q.     And you haven't read the settlement  
25 agreement?

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1 A. Not to that extent.

2 MR. KEEFE: I have nothing further.

3 JUDGE TOREM: Are there any other questions  
4 for this witness?

5 MR. KEEFE: I have none.

6 JUDGE TOREM: Mr. Fassio?

7

8

9 RE-REDIRECT EXAMINATION

10 BY MR. FASSIO:

11 Q. Ms. Hoyt, do you see any information in the  
12 record that would lead you to change your  
13 recommendation that Staff not mitigate this penalty?

14 A. I do not. We have documentation of a move.  
15 We have copies of his Web site, which he's continuing  
16 to operate even today.

17 MR. FASSIO: Thank you. I have no further  
18 questions.

19 JUDGE TOREM: Mr. Fassio, you've had a  
20 witness presented and the 14 exhibits offered and  
21 admitted. Was there any other evidence that Commission  
22 staff wanted to present this afternoon?

23 MR. FASSIO: No.

24 JUDGE TOREM: Mr. Keefe, did you have any  
25 evidentiary items that you wished considered in the

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1 case, or do we simply need to hear an argument as to  
2 the mitigation and what you believe might be an  
3 appropriate penalty on your client?

4 MR. KEEFE: Just argument.

5 JUDGE TOREM: Did you want to go first,  
6 Mr. Keefe?

7 MR. KEEFE: However you guys do it.

8 JUDGE TOREM: I haven't heard much from you,  
9 so I'm interested to have rather than more of a tennis  
10 match here of arguments, then I'll hear from you first.

11 MR. KEEFE: That's fine. This case was just  
12 turned over to me probably the day that I sent in the  
13 recommendation on this case. I've known Mr. Busby for  
14 a long time, and I know that he's been trying to get  
15 the money up, get the company running right so that he  
16 can get right with the state in terms of these permits.

17 From the history of the material I have,  
18 apparently he has talked to people with the Department  
19 to try to get the license back. It goes back,  
20 apparently, to 2004 and getting his annual reports in.  
21 He was relying a lot for the permitting process on his  
22 office manager who basically hasn't been overly  
23 competent in doing this.

24 In speaking with Mr. Fassio about this,  
25 Mr. Fassio referred me to people with the Department

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1 that can help people work their way through this  
2 process. This is something that Mr. Busby wants to do.  
3 He wants to get up and running properly. If he had the  
4 application in at the time of the hearing, it would  
5 probably help him in terms of possibly mitigation of  
6 the finds or dating of any order that might be  
7 forthcoming.

8 He hasn't done that because he has met with a  
9 business consultant that I referred him to, and I spoke  
10 with him today and he is working with Mr. Busby to try  
11 to figure out how to get this all put together, get the  
12 money raised, get the application in and the insurance  
13 filed. At this point, it's basically a financial issue  
14 in terms of trying to get it up and running and getting  
15 the application with the State. Any amounts of money  
16 that are going to be levied to him will certainly slow  
17 down that process. He has a lot of trucks and  
18 employees, apparently, and wants to get right with the  
19 State on this.

20 I would ask that, number one, that any cease  
21 and desist order that comes out at least have maybe a  
22 window of a week or so prior to the issuance of that  
23 order as well as a reduction on these fines so he can  
24 get his application in. Like I say, he's consulting a  
25 person I know and trust to get him to do this right so

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1 he's not coming back and forth doing it improperly, so  
2 that's basically our position on this.

3 JUDGE TOREM: Mr. Fassio?

4 MR. FASSIO: The evidence shows and Careful  
5 Movers has admitted or conceded through its counsel  
6 that it is conducting moves for compensation in the  
7 state of Washington, which is an activity regulated by  
8 the Commission, and the Company has engaged in this  
9 activity without the required permit. The evidence  
10 shows their permit has been canceled, and they never  
11 have applied for or been granted a new permit. The  
12 fact that Careful Movers advertises its moving services  
13 on the internet shows that they are continuing to offer  
14 to transport household goods and that their Web site  
15 still does not list a Commission permit number because  
16 they do not have one.

17 The evidence presented shows that they have  
18 received considerable technical assistance from the  
19 Commission on these issues going as far as back as  
20 February of 2006; that they have been previously  
21 assessed penalties and a cease and desist order. They  
22 are well aware of the Commission orders; therefore, the  
23 process for paying and permit, consequences of their  
24 actions for not doing so, the fact that they've taken  
25 none of these steps and made no further contact with

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1 Staff to comply, particularly even in the interim since  
2 the notice of hearing in this docket was issued, that  
3 they continue to operate shows a conscious decision to  
4 operate without a permit in violation of Commission  
5 rules.

6 Staff has made their prima facie case, and  
7 the Company has not appeared itself to provide  
8 testimony or otherwise rebut Staff's allegations with  
9 regard to the show-cause proceeding. If Careful Movers  
10 intends to conduct operations subject to Title 81,  
11 Staff certainly supports the effort to Careful Movers  
12 to come into compliance with the Commission rules and  
13 operate legally by successfully obtaining a household  
14 goods permit, but as of this juncture, they have not  
15 been granted a permit, so Staff would ask the  
16 Commission first that they not mitigate the penalty  
17 assessed to Careful Movers in Docket TV-072234; that  
18 the Commission find Careful Movers has not met its  
19 burden in Docket TV-071670, and that the Commission  
20 issue a cease and desist order so that it can stop this  
21 carrier from operating so long as it does not have a  
22 valid permit before the Commission, and if at such time  
23 the carrier is successfully granted a permit, the  
24 Commission may at that point consider revoking the  
25 cease and desist order, but in the meantime, Staff



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1 recommends that this company cease and desist from  
2 operating. Thank you.

3 JUDGE TOREM: Mr. Keefe, is there anything  
4 else I need to hear on the case?

5 MR. KEEFE: If the Commission is interested  
6 in having Mr. Busby operate with a permit by reducing  
7 the fine would certainly help facilitate an early  
8 application after his final consultation with the  
9 business consultant I put him in touch with, which is  
10 probably the intent of everyone is to get him licensed,  
11 properly permitted, and to put an extra burden in his  
12 way in terms of getting the application in I don't  
13 think is appropriate.

14 Depending on what the fine is, if there would  
15 be at least a payment program that wouldn't hold him up  
16 in terms of applying. If there is an outstanding fine,  
17 possibly holding up his application, and that's all I  
18 have.

19 JUDGE TOREM: Thank you, sir.

20 MR. FASSIO: May I address that? Thank you.  
21 If I understand correctly, the Company would propose  
22 perhaps a payment arrangement or something to make the  
23 penalty assessment less of an up-front burden, and  
24 Staff would support payment arrangements of the penalty  
25 assessment in full, not to exceed 12 monthly payments,

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1 if that's amenable to the Commission and Careful  
2 Movers.

3 MR. KEEFFE: It's more amenable than paying it  
4 all up front, yes. If you do find there is the full  
5 fine, a payment program of that type would probably  
6 help everything move forward.

7 JUDGE TOREM: All right. Thank you,  
8 Mr. Fassio. Thank you, Mr. Keefe. My plan then is to  
9 reduce this to an order consolidated of these two  
10 dockets. The order will contain findings of fact and  
11 conclusions of law. It will be preceded by a  
12 memorandum opinion which lays out and surveys the  
13 evidence in this case needed to meet the prima facie  
14 burden of the Commission on its allegation. That will  
15 be relatively short based on the concessions made. It  
16 will address the burden of the applicant for the  
17 hearing to rebut any of that evidence, and again, based  
18 on how facts went today, that should be relatively  
19 short as well.

20 I will spend some time looking at the record  
21 and any basis for the requested mitigation of the  
22 penalty and the cease and desist order being requested  
23 as well and then address as needed a payment plan as  
24 part of the opinion. It may be that there is no direct  
25 administrative code provision that grants me as a judge

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1 the ability to set up that payment plan, but it would  
2 be something that Commission staff having agreed to  
3 hear can set up for whatever the payment will be of the  
4 entire penalty. Having not issued an order with that  
5 particular language before, I will look into it.

6 I think I will be able to get this out by the  
7 end of the month at the latest, so plan on by the 31st  
8 of January or the 1st of February to see the  
9 consolidated initial order come out. Mr. Keefe, this  
10 is an initial order, as I'm an administrative law  
11 judge. There are some provisions for making appeal for  
12 a final order if there is disagreement with any of the  
13 findings or conclusions or the order itself, and that  
14 goes to the full Commission, which are three appointed  
15 UTC commissioners. That will be explained in the  
16 notice attached at the back of the hearing. Any  
17 questions about the process from here; Mr. Keefe?

18 MR. KEEFE: No.

19 JUDGE TOREM: Mr. Fassio?

20 MR. FASSIO: No.

21 JUDGE TOREM: Is there anything else we need  
22 to do on the record today?

23 MR. KEEFE: I don't believe so.

24 JUDGE TOREM: Then again, I have the witness  
25 testimony and the Commission's 14 exhibits. Mr. Keefe,

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1 you weren't submitting any evidence, just the argument,  
2 so I think that completes our record. Any other  
3 questions?

4 MR. KEEFE: No.

5 MR. FASSIO: No.

6 JUDGE TOREM: We are adjourned.

7 (Hearing adjourned at 2:34 p.m.)

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