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BEFORE THE WASHINGTON

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UTILITIES AND TRANSPORTATION COMMISSION

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In the Matter of Determining)
 the Proper Classification)
 of, and Complaint for) DOCKET UW-132281
 Penalties against:)
)
 NEWAUKUM WATER SYSTEM, INC.)
)

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PREHEARING CONFERENCE, VOLUME I

10

Pages 1 - 39

11

ADMINISTRATIVE LAW JUDGE DENNIS MOSS

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9:29 A.M.
MARCH 10, 2014

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1 A P P E A R A N C E S

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14 FOR NEWAUKUM WATER SYSTEM, INC.:

15 KENNETH LINDEBAK
16 P.O. Box 11
17 Auburn, Washington 98071
18 253.939.3985
19 lindebak@wolfenet.com

18

19 ALSO PRESENT: JESTER PURTTEMAN

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OLYMPIA, WASHINGTON; MARCH 10, 2014

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9:29 A.M.

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JUDGE MOSS: Good morning, everyone. My name is

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Dennis Moss, I am an administrative law judge with the

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Washington Utilities and Transportation Commission.

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We are convened this morning in a hearing that has

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been previously noticed in the matter styled, In the

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Matter of Determining the Proper Classification of,

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and Complaint for Penalties against: Newaukum Water

12

System, Inc., that's N-E-W-A-U-K-U-M. Our docket

13

number is UW-132281.

14

Let's take appearances. We will start with the

15

Company. Who will represent the Company today?

16

MR. LINDEBAK: My name is Ken Lindebak.

17

That's L-I-N-D-E-B-A-K. I am president of Newaukum

18

Water System. The mailing address is P.O. Box 11,

19

Auburn, Washington 98071. The phone number is

20

(253) 939-3985. My e-mail address is lindebak, the

21

last name, L-I-N-D-E-B-A-K, @wolfenet.com. Wolfenet

22

is W-O-L-F-E-N-E-T, dot com.

23

JUDGE MOSS: And will you be the sole

24

representative?

25

We have Mr. Purtteman here as well. Are you

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1 going to just appear and give evidence?

2 MR. PURTTEMAN: I will give evidence as
3 necessary.

4 My name is Jester Purttteman. I represent
5 Northwest Water Systems, the consulting engineer for
6 Newaukum Water System. We can be reached at P.O. Box
7 123, Port Orchard, Washington 98366. Our phone number
8 is (360) 876-0958.

9 JUDGE MOSS: All right. Thank you very
10 much. I appreciate that.

11 For Staff?

12 MR. CEDARBAUM: Thank you, Your Honor.
13 Robert Cedarbaum, Assistant Attorney General,
14 representing Commission Staff. My business address is
15 the Heritage Plaza Building, 1400 South Evergreen Park
16 Drive Southwest, Olympia, Washington 98504. My e-mail
17 is bcedarba@utc.wa.gov. My telephone number is area
18 code (360) 664-1188. I should spell my last name.
19 It's C-E-D-A-R-B-A-U-M.

20 JUDGE MOSS: Thank you, Mr. Cedarbaum,
21 we appreciate it.

22 You sound like you may have a little cold
23 today.

24 MR. CEDARBAUM: I do.

25 JUDGE MOSS: I hope you feel better

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1 soon.

2 Well, very well. With that, then, I have two
3 exhibits that Staff has handed up. You will be
4 familiar with these, I'm sure. One is the
5 investigation report that the Staff performed and
6 prepared in connection with this docket. I have
7 marked that for identification as Staff Exhibit No. 1.

8 (Staff Exhibit No. 1 marked.)

9 JUDGE MOSS: And then I have also here
10 the bylaws of Newaukum Water System, which are part of
11 the file, and those I have marked for identification
12 as Staff No. 2.

13 (Staff Exhibit No. 2 marked.)

14 JUDGE MOSS: I am assuming you have no
15 objection to these. You have seen them.

16 MR. LINDEBAK: I have not seen the
17 investigation report. Obviously I have seen the
18 Newaukum Water System bylaws. These were recently
19 adopted by the beneficiaries with a vote of 13
20 approve, zero no, and ten abstained.

21 JUDGE MOSS: Do you have any objection
22 to the introduction of the investigation report?

23 MR. LINDEBAK: No. That's a matter of
24 fact, I'm sure, so no. While I haven't seen it I have
25 no objection.

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1 JUDGE MOSS: All right, very well. We
2 will introduce Exhibits 1 and 2 as marked.

3 MR. LINDEBAK: Thank you.

4 JUDGE MOSS: Then we won't have to worry
5 about proving them up.

6 Unless there is something preliminary we can
7 begin with you, Mr. Cedarbaum. You can lay out the
8 Staff's argument and case and then we will hear from
9 the water company.

10 MR. CEDARBAUM: Thank you. Speaking for
11 Staff's behalf, our witness is Lauren McCloy. She can
12 be, please, sworn in.

13 JUDGE MOSS: Welcome, Ms. McCloy.

14 And is that M, lower case C, capital C-L-O-Y?

15 THE WITNESS: Yes.

16 JUDGE MOSS: Thank you.

17 Please rise and raise your right hand.

18

19 LAUREN McCLOY, witness herein, having been
20 first duly sworn on oath, was
21 examined and testified as follows:

22

23 JUDGE MOSS: Thank you very much.

24 Go ahead.

25 MR. CEDARBAUM: Thank you.

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E X A M I N A T I O N

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BY MR. CEDARBAUM:

6

Q If you could please state your name and your

7

business address.

8

A My name is Lauren McCloy. My business address

9

is the Richard Hemstad Building, 1300 South Evergreen

10

Park Drive, Olympia, Washington 98504.

11

Q If you could please state your employment and

12

the capacity of your employment.

13

A I am employed by the Washington Utilities and

14

Transportation Commission as a legislative energy

15

policy analyst in the Legislation and Policy Division.

16

Up until December 31st, 2013, I was employed as a

17

compliance investigator in the Consumer Protection and

18

Communication section.

19

Q And are you authorized to present the Staff

20

testimony recommendation on behalf of the Consumer

21

Protection division?

22

A Yes.

23

Q Can you please generally describe the duties

24

of a compliance investigator?

25

A A compliance investigator investigates the

0009

1 business practices of Commission-regulated
2 transportation and utility companies for compliance
3 with applicable Commission laws and regulations.

4 JUDGE MOSS: Ms. McCloy, if you could
5 just slow your pace a little bit.

6 THE WITNESS: Sure.

7 JUDGE MOSS: That would be easier on the
8 court reporter.

9 THE WITNESS: Sorry.

10 JUDGE MOSS: Thank you.

11 A A compliance investigator may make
12 recommendations for Staff regarding enforcement action
13 against regulated companies, including in the context
14 of a hearing such as this case.

15 BY MR. CEDARBAUM:

16 Q And so do the duties of an investigating -- of
17 a compliance investigator include investigating
18 whether persons or corporations are operating as a
19 water company subject to the Commission's
20 jurisdiction?

21 A Yes.

22 Q Can you please explain your understanding of
23 the general circumstances under which a water company
24 is within the Commission's regulatory powers?

25 A A person, company or corporation is a water

0010

1 company subject to Commission jurisdiction when it
2 owns, operates or manages any water system for hire
3 within the state. It either provides service to 100
4 or more customers or receives average annual revenue
5 per customer above \$557.

6 Q Or more than that level of revenue?

7 A Yes, or more.

8 Q Are there situations where a company is
9 operating or owning a water system but is exempt from
10 Commission jurisdiction?

11 A Yes, an exemption arises if a water company
12 both serves less than 100 customers and has annual
13 average revenue per customer of \$557 or less. In
14 addition, water companies are exempt from Commission
15 jurisdiction if they are homeowner associations,
16 co-ops, mutual corporations or similar entities that
17 provide service only to their owners or members. That
18 exemption, however, does not apply to the extent that
19 a nonregulated water company also provides service to
20 100 or more nonmember customers or receives annual
21 average revenue per nonmember customer above \$557.

22 Q During your employment as a compliance
23 investigator for the Commission, were you assigned to
24 investigate the operations of Newaukum Water System,
25 to determine if that company is subject to the

0011

1 Commission's jurisdiction?

2 A Yes.

3 Q Can you please summarize the Staff's
4 conclusion with respect to that issue?

5 A Staff concludes that Newaukum owns and
6 operates a water system for hire in this state subject
7 to Commission regulation. That system is located near
8 Auburn, Washington, and serves 22 customers with
9 annual average revenue per customer of \$660, which
10 exceeds the revenue jurisdictional threshold I
11 discussed earlier. Therefore, the Company should be
12 classified as a water company subject to Commission
13 jurisdiction.

14 Q We will get into more of the details of that,
15 but can you please explain when the Staff
16 investigation began and why?

17 A Staff's investigation began in February 2013,
18 when consumer protection Staff received an inquiry
19 from a customer of Newaukum who thought the Company
20 should be regulated by the Commission.

21 Q Did you prepare a written report of your
22 investigation?

23 A Yes.

24 Q And is Exhibit 1 the report that you
25 identified?

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1 A Yes.

2 JUDGE MOSS: Has that been furnished to
3 Newaukum?

4 MR. CEDARBAUM: Yes, just this morning.

5 JUDGE MOSS: Okay.

6 MR. CEDARBAUM: Your Honor, for the
7 record, Ms. McCloy will refer to various pages in the
8 exhibit. Some of them are labeled as attachments, but
9 we will also -- we have premarked or paginated the
10 exhibit with the page numbers in the upper right-hand
11 corner.

12 JUDGE MOSS: Okay.

13 MR. CEDARBAUM: So when she refers to,
14 say, Page 12, those are the numbers that she is
15 mentioning.

16 JUDGE MOSS: Okay.

17 BY MR. CEDARBAUM:

18 Q Can you just generally describe what is
19 contained in Exhibit 1?

20 A The exhibit describes my investigation into
21 Newaukum and includes a number of documents I obtained
22 during my investigation regarding the Company.

23 Q What is your understanding of the business
24 organization of Newaukum?

25 A Newaukum was incorporated on October 14th,

0013

1 2011, as a nonprofit corporation governed by Kenneth
2 Lindebak as president and Caroline Lindebak as
3 secretary. At that time the Lindebaks were the owners
4 of the water system. They then transferred the
5 ownership of the water system to Newaukum by a
6 quitclaim deed on November 16th, 2011, as shown on
7 Page 35 of my investigation report.

8 As can be seen in Attachment A on Pages 8 and
9 9 of my report, Newaukum has an active registration
10 with the Washington Secretary of State and the
11 Washington Department of Revenue. Attachment G, Pages
12 22 through 28 of the investigation report, contains
13 other documents regarding the business organization of
14 Newaukum, including the corporation's certificate of
15 incorporation with the Secretary of State and its
16 articles of incorporation.

17 Q Earlier you indicated that Newaukum owns and
18 operates a water system near Auburn with an annual
19 average per customer revenue of \$660, which meets and
20 exceeds the jurisdictional threshold with regard to
21 revenues for this company. Can you explain what the
22 basis of that conclusion is?

23 A Sure. As can be seen in Amendment B on Pages
24 10 and 11 of my investigation report, the Commission
25 on two occasions sent Newaukum a questionnaire to get

0014

1 factual information about the Company, to aid the
2 Commission in determining if Newaukum is subject to
3 Commission regulation. Attachment C on Pages 12
4 through 13 of my report contains the questionnaire as
5 completed by Newaukum.

6 The Company admits that it owns and operates a
7 water system with annual average revenue per customer
8 of \$660. That's Item 11 on that exhibit. I also
9 include as Attachment E, Pages 15 through 18 of my
10 report, Newaukum's operating and billing guidelines
11 that it uses in its operation of the water system.

12 Q Can you explain, after the Commission received
13 the questionnaire as completed by the Company, what
14 happened next?

15 A On the basis of Newaukum's responses, the
16 Commission sent the Company the letter contained in
17 Attachment D on Page 14 of my report, advising
18 Newaukum that it is subject to the Commission
19 regulation and must meet the service rate and
20 reporting requirements of Commission rules, as well as
21 the need to file a tariff.

22 Q Has Newaukum, to your understanding, submitted
23 the tariff to the Commission?

24 A No.

25 Q And what is the Staff recommendation with

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1 respect to the Company's failure to file a tariff?

2 A Staff is recommending a penalty of \$4,400,
3 which represents a penalty of \$100 per customer over
4 two monthly billing cycles. A much greater penalty is
5 possible given the period of time that Newaukum has
6 been out of compliance, but Staff believes that the
7 recommended \$4,400 is sufficient to move Newaukum to
8 comply. Staff is also open to suspending a portion of
9 the penalty for a period of time sufficient to
10 demonstrate Newaukum's intent to come into compliance.

11 Q Now, you indicated earlier, just generally
12 speaking, that there is an exemption for Commission
13 jurisdiction for water systems, such as co-ops and
14 homeowners associations and other entities that
15 provide service only to their members; is that
16 correct?

17 A Yes.

18 Q Is there an issue in this case regarding that
19 exemption?

20 A Yes.

21 Q Can you please explain that in more detail?

22 A Sure. As can be seen on Attachment H, Page 29
23 of my report, the Lindebaks held a meeting of the
24 Company on June 12th, 2013, in which they indicated a
25 desire to remove themselves from the management of the

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1 water system by making every lot owner served by
2 Newaukum a member of the board of directors with equal
3 right to participate in management of the water
4 system. I point out that only -- according to the
5 records, only Kenneth and Caroline Lindebak attended
6 this meeting and no other water system customers
7 attended.

8 Q Please continue with your explanation of your
9 investigation.

10 A As shown in Attachment F, Pages 19 through 20
11 of my report, Mr. Lindebak later sent a memo to all
12 water users on September 2nd, 2013. His memo
13 indicates in the second-to-last paragraph that he
14 intended to make each lot owner a member of the board
15 of directors with each lot owner having an equal say
16 to control decisions, set rates and make policy of
17 Newaukum. On that same date, the Lindebaks issued
18 bylaws of Newaukum which state that the board of
19 directors is composed of the lot owners served by
20 Newaukum. The bylaws are contained in my report.
21 These bylaws are contained in my report at Pages 36
22 through 40.

23 On March 6, 2014, Mr. Lindebak provided Staff
24 a copy of the amended bylaws of Newaukum that became
25 effective on March 5, 2014, and I have included those

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1 new bylaws in Staff's second exhibit.

2 Q Given that history and the new bylaws of
3 Newaukum that Staff received last week, can you
4 explain why Staff still believes that the Company is
5 subject to Commission regulation rather than being
6 exempt from that regulation under the
7 membership-oriented exemption that we have discussed?

8 A Sure. According to the new bylaws, all lot
9 owners served by the Company are called beneficiaries
10 of Newaukum. Beneficiaries can choose to be voting or
11 nonvoting at their discretion at any time. Only
12 voting beneficiaries constitute the membership of the
13 corporation and are allowed to participate on a board
14 of advisors that controls management, policy and rates
15 of Newaukum.

16 Consequently, not all customers of the Company
17 are necessarily members of the corporation and board
18 of advisors and that membership can change over time
19 as customers opt in or opt out of a position as a
20 voting beneficiary. In fact, from communications with
21 Mr. Lindebak, Staff understands that at least two
22 customers have already declined a membership position.
23 Staff therefore cannot conclude that Newaukum serves
24 only its members under the exemption. Likewise, it is
25 clear that Newaukum will serve some customers that are

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1 not members.

2 Staff's recommendation is that Newaukum be
3 required to file a tariff that states expressly that
4 it will apply to lot owners that have elected not to
5 be voting beneficiaries of the corporation. That way,
6 customers who have made that election will be
7 protected by regulation by the Commission.

8 Q Finally, Ms. McCloy, can you summarize the
9 Staff recommendation in this case?

10 A Staff recommends that the Commission issue an
11 order classifying Newaukum as a water company subject
12 to Commission jurisdiction and be ordered to file the
13 tariff I just explained. Staff also recommends that
14 the Commission issue an order imposing a penalty on
15 Newaukum of \$4,400. Staff is amenable to a portion of
16 the penalty being suspended, depending on the
17 Company's commitment to come into compliance with
18 Commission rules and regulations, including filing a
19 tariff.

20 Q Thank you, Ms. McCloy.

21 MR. CEDARBAUM: Your Honor, those are
22 all my questions. Ms. McCloy is available for
23 questions from the bench or Mr. Lindebak as necessary.

24 JUDGE MOSS: Okay. I don't think I have
25 any questions for Ms. McCloy, but I do have a question

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1 for you.

2 On this matter of law, in terms of the
3 criteria that we are looking at here, I understand
4 that for an ordinary corporation, for example, or even
5 a nonprofit corporation, if there are more than 100
6 customers or the average annual revenue exceeds \$557
7 per customer, then that is a jurisdictional company
8 under the law.

9 MR. CEDARBAUM: Correct.

10 JUDGE MOSS: There is an exemption for
11 certain types of organizations, such as, for example,
12 homeowners organizations, but there is a condition
13 under which that exemption does not apply. I want to
14 be sure I am clear on that.

15 My understanding of it sitting here at this
16 moment is that if, for example, a homeowner
17 organization is the owner of the system, owns and
18 operates the system, it would be exempt from
19 Commission jurisdiction unless it also served
20 customers who were not part of the homeowners
21 association organization, and there were more than 100
22 of them, or the average annual revenue of those
23 nonmember customers was more than 557.

24 MR. CEDARBAUM: That is also correct,
25 Your Honor. For example, if a water company that

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1 would otherwise be subject to Commission jurisdiction
2 is a homeowner association and it has 100 members of
3 the association and it served only those members, then
4 it would be exempt from Commission jurisdiction. But
5 if in addition to that it also served another five or
6 ten or fifty customers who were not members of the
7 homeowner association, then it would be subject to the
8 Commission's jurisdiction to that extent.

9 JUDGE MOSS: Okay. Or even if it were
10 fewer than 100 customers, if the nonmember customers
11 exceeded the --

12 MR. CEDARBAUM: Correct, as long as
13 those nonmember customers exceeded the threshold for
14 either the -- number of customer threshold --

15 JUDGE MOSS: Right.

16 MR. CEDARBAUM: -- or the revenue
17 threshold.

18 JUDGE MOSS: So it would seem, then,
19 that the key operative point at this stage of the game
20 may be that there are customers of the system that
21 have elected not to be members of the board of
22 directors or the organization that is operating the
23 Company and that could be just as few as one.

24 MR. CEDARBAUM: That's correct. As
25 Ms. McCloy indicated, through communications with

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1 Mr. Lindebak -- and he can correct us if we are wrong.

2 JUDGE MOSS: Sure.

3 MR. CEDARBAUM: It is our understanding
4 that there are at least two customers of the system
5 that have opted out and so -- and those customers are
6 paying more than -- are paying \$660 per year on
7 average. To that extent they are jurisdictional,
8 which is why the Staff recommendation is to have a
9 tariff that would only be triggered for those
10 jurisdictional customers. And it may be just the --
11 our understanding, reading of the bylaws as just
12 amended, would be that that number may change. It
13 might be two today, it might be one tomorrow, it might
14 be five tomorrow. Customers can opt in or opt out.
15 That's the basis for the recommendation.

16 JUDGE MOSS: So if it became zero,
17 however, then the Company would argue successfully
18 that it is no longer subject to the Commission's
19 jurisdiction, question mark.

20 MR. CEDARBAUM: Yes, question mark. I
21 think that if the Company fell within the exemption,
22 the exemption does talk about a similar entity that
23 is -- serves only its members. Here our understanding
24 is Newaukum is incorporated as a nonprofit
25 corporation. If it were to serve only its members and

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1 had no contingency that that might change, then I
2 would think that they would not be subject to the
3 Commission's jurisdiction.

4 JUDGE MOSS: Okay. Well, that's another
5 nuance we need to explore just briefly.

6 So Staff's position is if either there is a
7 customer of the system who is not a member, who has
8 opted out as you put it, and who is paying more than
9 the jurisdictional amount, then that's enough to
10 trigger the Commission's jurisdiction, but it is also
11 enough, standing alone, to trigger the Commission's
12 jurisdiction that a customer of the system has that
13 option. Even though all the customers are members,
14 the existence of the option is sufficient in Staff's
15 view to trigger jurisdiction?

16 MR. CEDARBAUM: I think that the -- yes,
17 because jurisdiction may change over time here as
18 customers opt -- I mean it's an unusual situation I
19 think because customers may voluntarily choose at any
20 time, according to the bylaws, to become members of
21 the board of advisors or remove themselves from the
22 board of advisors. We won't know at any point in
23 time, unless we check every day, whether the Company
24 is coming in regulation or out of regulation.

25 That is the philosophy, I guess, behind the

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1 recommendation, is to have some flexibility for this
2 company. If they are serving only their members and
3 those members have full say in the management and
4 operation and the rate making of the Company, that's
5 not something the Commission needs to regulate. It
6 might be that customers opt out. We know that two
7 have. Those customers need protection for regulation
8 by -- I'm sorry, protection through regulation.

9 I don't know if it is an unusual situation or
10 not. I haven't had many of these cases so I don't
11 know what the Commission's practice has been. That
12 was the creative thinking we have had.

13 JUDGE MOSS: It's unique in my
14 experience. Whether it has arisen before I'm not
15 sure. I just wanted to be sure I understood policy
16 and legal position.

17 MR. CEDARBAUM: The alternative is no
18 tariff, no jurisdiction, but then that doesn't protect
19 the customers who opt out and who already have opted
20 out. I suppose you could have a tariff that didn't
21 have that specific contingency and it would just apply
22 when it would apply.

23 JUDGE MOSS: Would the tariff only apply
24 to the customers who weren't members in this situation
25 as we understand it today?

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1 MR. CEDARBAUM: I think that's the way
2 the Commission's rules work.

3 JUDGE MOSS: Okay, all right.

4 E X A M I N A T I O N

5 BY JUDGE MOSS:

6 Q Let me turn to you, Mr. Lindebak. It may
7 facilitate things. I will let you make any statements
8 you want to make today. There's a couple of points
9 that are the focus of my attention, as you have just
10 heard me go over a little bit with Mr. Cedarbaum, so I
11 understand Staff's position in this. Let me just ask
12 you a couple quick questions.

13 One, I take it there is no dispute that the
14 system has fewer than 100 customers, but that the
15 average annual revenue per customer is \$660?

16 A Yes, we charge a -- we have meters, but we
17 charge a flat \$55 a month.

18 Q Okay.

19 A And that rate started on January 1st of 2013.

20 Q Okay.

21 A Prior to that the rate was \$35 a month and so
22 we fell below.

23 Q I see.

24 A But on January 1st, in order to be a viable
25 entity, the rate was bumped up to 55, which is what it

0025

1 currently is, and that puts us over the UTC baseline.

2 Q Okay. And Mr. Cedarbaum said that Staff's
3 latest available information, is there are -- after
4 this change in the bylaws and so forth, there are a
5 couple of customers of the system who have opted not
6 to be members of the organization that is basically
7 owning and operating the Company.

8 A Yes. The first bylaws made everybody a member
9 of the board of directors. There was no provision for
10 anyone to opt out. We were formed to provide water to
11 the lot owners in the Bill Noah subdivision. That's
12 our water right area and that's the only area that we
13 serve. That's just to provide water to the folks that
14 are in that subdivision. We made them all members of
15 the board.

16 On December -- the third week in December of
17 2013, Randy Scott told me that he didn't want to have
18 anything --

19 JUDGE MOSS: That's all right, I don't
20 need to be reminded to swear the witness, thank you.

21 BY JUDGE MOSS:

22 Q Go ahead.

23 A Mr. Scott informed me that he didn't want to
24 have anything to do with Newaukum Water, he didn't
25 want to vote, he didn't want to be on the board of

0026

1 directors. That meant that we fell within, as I
2 understand it, UTC...

3 Q Yes.

4 A So on January 23rd of 2014, we had a meeting
5 of all the members. Jonathan Wiley, who is an expert
6 in UTC matters, was the principal speaker, to advise
7 us all on what's required in a tariff or dealing with
8 the UTC. In the meeting, Randy Scott was questioned
9 by other folks. He told them that he would not change
10 his -- not to look to him to change his opinion.
11 Therefore, that meant that -- to me that we were going
12 to have to file because we had one member that did not
13 want to participate.

14 Q Sure.

15 A So I immediately contracted with Northwest
16 Water Systems, a recognized expert in filing tariffs,
17 to immediately, you know, do whatever is required to
18 file the tariff. And that's ongoing.

19 Q So your intention is to file a tariff?

20 A Yes.

21 Q Okay. Let me --

22 A Then on January 31st, a water user who had
23 been behind in payments, and I went to collect the
24 payment because I had sent a shutoff notice, she -- in
25 making, she paid up -- informed me that she didn't

0027

1 want to have anything to do with Newaukum Water.

2 Q Okay.

3 A So we have two that have elected to opt out.

4 Now, the original bylaws do not provide for
5 opting out.

6 Q Right.

7 A They did not provide for rates being set by
8 UTC, or any involvement with UTC.

9 Q I understand.

10 A The bylaws were amended to allow people to opt
11 out. In other words, they could vote or they could
12 not, and if they vote they are part of what we call
13 the advisors.

14 Q Sure.

15 A Make all the decisions on everything.

16 The amended laws were sent out and the
17 response was, as I mentioned, 13 yes, zero no, and ten
18 folks didn't respond. So that's how we got to the
19 present day situation.

20 My intent -- initially my -- I had an auto
21 accident in October of '13. Our intent was to turn
22 this over to the water users to manage and take care
23 of. It was formed as a nonprofit corporation so that
24 a disinterested third party didn't come in and dictate
25 to us our water system. That was the original reason

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1 back in 1995 that we purchased it from a vending
2 machine owner in Renton, who acquired the system in a
3 poker game and didn't -- you know, we had problems
4 with our water service. I purchased it in order so we
5 could guarantee good quality water and we had control
6 of our own water system.

7 Now my health is getting to the point where --
8 if something happened to me, nobody has the
9 operating -- you know, and the billing. You know,
10 they wouldn't -- so I needed to -- to pass this on to
11 the water users so it is sustained, so we don't have a
12 third party coming in, so people in our neighborhood
13 could manage the property for the benefit.

14 Q I understand. This is all part of the
15 investigation report that Staff has filed.

16 A That's what we are progressing to.

17 Q Sure.

18 A At the time that I raised the rate -- you
19 know, had I raised the rate to \$46.60, from what I
20 understand now, I would be -- you know, we would be
21 not here today, let's say.

22 Q Right, right.

23 A But in order to be financially viable, it
24 needed to be up there, because at some point we are
25 going to have to off-load the billing, and that's \$500

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1 a month from what Northwest Water has already told me.

2 Q Sure.

3 A We are going to need a licensed operator, and
4 that's going to be another minimum \$300 a month. And
5 then we have some other things that have happened this
6 last year where we -- with an adjoining property
7 owner, where our pump house and our storage tank is
8 partially on his property. He didn't want us going
9 onto his property to get to the pump house,
10 et cetera --

11 Q Right.

12 A -- which we have done for 50 years.

13 Q Right.

14 A So we've got -- we have to buy the land under
15 our pump house, we have to develop a new road, and we
16 have got all kinds of legal expenses that -- because
17 he sued us a quiet title.

18 Q Okay.

19 A Because we believe we had a prescriptive right
20 after 50 years of use to get onto -- like we have
21 crossed his property to get to the pump house for 50
22 years. We didn't know that -- and the former
23 developer of the subdivision made an error in the
24 legal description and conveyed -- he owned the whole
25 thing. When he conveyed Lot 18, he made an error in

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1 the description and sold off the land under part of
2 the pump house and under the storage tank. Plus, we
3 had a mainline water line that went over Lot 18 that
4 was never provided for. Anyway, we've got lots of
5 legal expenses now that were not anticipated.

6 That's kind of an aside, but -- anyway, it's
7 been a progression to get the neighborhood to take on
8 more and more responsibility for managing the entire
9 system.

10 I have sent out ballots going back to the
11 first one which had to do with enforcement. You know,
12 we have our guidelines that are in there. Before I
13 turn anybody's water off, I wanted the membership to
14 reaffirm that this is what they wanted before I send a
15 notice that I was shutting their water off. And you
16 know, I got responses on that, to that valid issue.

17 Then we had the property owner that said
18 through his attorney that come January 1st of 2014, he
19 was going to blockade our access into the pump house.
20 I went to the membership and I said, We need to --
21 this is what the situation is: We need to file an
22 injunction to stop him from that, otherwise we can't
23 operate the system. You know, they voted
24 overwhelmingly on that to file an injunction, and
25 that's the legal costs involved in that too.

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1 And then when Mr. Kelly, the owner of Lot 18,
2 found out that we had the votes to file an injunction,
3 he said, Okay, I'm not going to blockade. Three days
4 later, he filed a quiet title action which says
5 that -- Newaukum Water needed to respond within 20
6 days or he won by default. I sent out a ballot to the
7 folks and they overwhelmingly supported our responding
8 to the lawsuit, including the legal costs involved in
9 doing that.

10 Fortunately we were able to reach a settlement
11 agreement, which is in process, and that will go to
12 the judge, whereby he is allowing us -- he set aside a
13 strip 2 feet by 20 feet for the storage tank and a
14 parcel that's 15 by 50 feet east of the pump house.
15 That will allow us to get in there and continue to
16 operate. We have to blaze in a new road and we have
17 to put in fencing, those are additional costs that
18 will be coming to us, but we resolved the matter.

19 Both attorneys said that had we proceeded to
20 court -- and I had one member of the group who did not
21 approve of our settlement because they felt we had a
22 right, we shouldn't have to pay anything for that, and
23 we should take it the full nine yards to court. Both
24 attorneys advised Mr. Kelly and myself that that would
25 cost \$20,000 to litigate, it was in our interest to

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1 settle, even though we believe we have a prescriptive
2 right. When you consider all the dollars and
3 everything involved, it is better to settle. We have
4 settled. We are in that process right now.

5 The point I want to make is that every issue
6 now that -- it goes to the full -- you know, whether
7 they opt in or they have opted out, they get
8 everything that everybody else gets, and they have an
9 opportunity to vote on how the -- you know, how we
10 manage and operate our system. That will continue
11 even if we are under the UTC, that part is not going
12 to change.

13 What changes is that the UTC then will, pardon
14 me, dictate, if you will, what we are able to charge
15 and, you know, what we are able to do. That's another
16 reason why we had to amend bylaws, because it didn't
17 provide for UTC involvement in the management and
18 operation of the system.

19 As to the matter of -- in June we were advised
20 that we needed to file a tariff. It was our belief
21 that we were exempt because we are a neighborhood
22 group and therefore we are exempt on the basis that we
23 didn't have -- we weren't providing water to any
24 nonmembers at that time.

25 And then in December, we had one member who

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1 made it clear that they didn't want to be, so that
2 then made us, in my mind, under UTC. And so then we
3 had a meeting. Immediately contacted -- for more
4 advice. We had a meeting. He wasn't going to change
5 his mind so I immediately contracted for the tariff.

6 As far as the penalty, you know, that --
7 that -- well, some might say that we are -- that
8 that's justified. I don't think it is. As far as the
9 rate, the \$55, I would ask Jester to give us his --
10 because he has looked at it as a third party. If you
11 could give a --

12 Q Let me interrupt and say that that is not
13 really necessary today because a tariff is not before
14 us, so I don't have to consider anything having to do
15 with the propriety of the rate today.

16 A Okay.

17 Q I have understood what you have told me. The
18 reason I was unconcerned about swearing you as a
19 witness is the facts are really undisputed. The facts
20 as laid out by Staff in Ms. McCloy's testimony,
21 Mr. Cedarbaum's questions, is essentially -- and it is
22 undisputed that you do have a couple of people in the
23 neighborhood who are getting service who are
24 nonmembers, and you don't dispute that that brings
25 the -- within the technical requirements of the law

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1 that makes the Company jurisdictional to that extent
2 and requires a tariff, which you apparently have
3 contracted for the preparation of such a tariff.

4 Let me ask you this question: When was the
5 last time you had any direct face-to-face or
6 telephonic communication with Staff about the status
7 of things and the fact that you have filed a tariff
8 and so forth? Was Staff aware of that before today?

9 A I believe they were, yes. I think that I
10 informed Staff after the meeting on the 23rd that we
11 were -- that we had contracted for preparation of the
12 tariff.

13 Q The reason I am asking that question is, as I
14 hear what you have to say today, much of which I have
15 taken in the realm of advocacy, it seems to me that
16 there is a rather prime opportunity here to resolve
17 this matter informally as between you and the Staff,
18 which would obviate the necessity for a ruling from me
19 and perhaps make all of our lives a little easier.

20 I want to offer the opportunity at least, if
21 you and Staff are willing, to take a break here this
22 morning and see if there is not some common ground.
23 If you are planning to file the tariff anyway, have
24 that actually underway, it would seem to me that there
25 is some opportunity at least to resolve this matter of

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1 the penalty as well. Staff has indicated a
2 willingness to at least suspend part of the penalty.
3 I'm not sure how much they mean by that.

4 Our goal as a Commission is to gain
5 compliance. It sounds to me as if you are on that
6 path. What I would like to do is propose that we do
7 that, if you are agreeable.

8 A Yes.

9 JUDGE MOSS: Is Staff agreeable?

10 MR. CEDARBAUM: Yes.

11 JUDGE MOSS: All right, very well.

12 Let's take a break. I won't set a definite time limit
13 on it, although if you go past about 30 minutes I will
14 probably check in with you. I would hope you could
15 resolve it fairly quickly.

16 Mr. Cedarbaum knows where to find me. I will
17 absent myself from the room and let you all have this
18 room to talk, and then someone can come let me know at
19 the appropriate time. We will go back on the record
20 at that point and see where we stand.

21 Is that all right? Okay, let's do that, then.
22 I will just go off the record for the time being. We
23 will be in recess.

24 (A brief recess.)

25 JUDGE MOSS: Back on the record. I see

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1 smiling faces, or at least some smiling faces.

2 Mr. Cedarbaum, would you report, please?

3 MR. CEDARBAUM: Yes, Your Honor.

4 Thank you, and thanks also to the Company for being
5 cooperative with us.

6 We did reach agreements with Newaukum, with
7 Mr. Lindebak. The components are that the Company
8 agrees that it will file a tariff for the service that
9 it renders and that that tariff will be filed within
10 two weeks, so by March 24th the tariff will be filed.

11 JUDGE MOSS: Okay.

12 MR. CEDARBAUM: Also, the Company agrees
13 to provide customer notice within that same two-week
14 period of time. Staff and the Company will work
15 together on the form of that. They have already had
16 some discussion, so it sounds like it shouldn't be too
17 onerous.

18 JUDGE MOSS: Okay.

19 MR. CEDARBAUM: And then the third
20 component is that, with respect to the penalty, Staff
21 agrees, and the Company was happy to hear, that Staff
22 is willing to suspend the entire amount of the penalty
23 subject to the Company complying with the two-week
24 turnaround time for the tariff and the notice. If
25 that two-week turnaround time is not complied with,

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1 then the entire penalty will become due and payable
2 immediately.

3 JUDGE MOSS: Okay.

4 MR. CEDARBAUM: Those are the three
5 components of the agreement.

6 I think it would be preferable to have an
7 order issued memorializing and accepting the
8 settlement by the Commission, or your initial order,
9 so that if the Company does not comply with our
10 agreement, that there is an order that they are in
11 violation of, rather than just an informal agreement.

12 Those are the components of the agreement and
13 the process by which I think it is best to proceed.

14 JUDGE MOSS: All right. And I will keep
15 my attention on you for a moment and say I appreciate
16 Staff's willingness to work cooperatively with
17 Mr. Lindebak and Mr. Purtteman, who is going to
18 prepare the tariff I gather, and get this thing
19 resolved on an informal -- well, it will be a formal
20 basis. You have asked for an order, and I think it is
21 appropriate that there be one. I won't have any
22 difficulty in getting that out in short order.

23 Mr. Lindebak, I would like to commend you for
24 your cooperative behavior and also for your
25 forthrightness in today's hearing. It is refreshing

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1 to have someone come in and be so reasonable and
2 straightforward with us. We really appreciate that
3 very much.

4 MR. LINDEBAK: I want to thank you and
5 the Staff as well.

6 JUDGE MOSS: This is a good result all
7 around, I think.

8 Unless there is something further?

9 MR. CEDARBAUM: Not here.

10 JUDGE MOSS: All right. We will be
11 adjourned. Thank you very much.

12 (Prehearing conference concluded 10:37 a.m.)

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STATE OF WASHINGTON

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COUNTY OF KING

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I, Sherrilyn Smith, a Certified

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Shorthand Reporter in and for the State of Washington,

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do hereby certify that the foregoing transcript is

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true and accurate to the best of my knowledge, skill

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and ability.

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