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BEFORE THE WASHINGTON STATE

2 UTILITIES AND TRANSPORTATION COMMISSION

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4 WASHINGTON STATE UTILITIES )

AND TRANSPORTATION COMMISSION, )

5 )

Complainant, )

6 )

v. ) Docket No. UW-143181

7 ) (Consolidated)

NEWAUKUM WATER SYSTEM, )

8 )

Respondent. )

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10 THE MATTER OF THE REQUEST )

OF NEWAUKUM WATER SYSTEM ) Docket No. UW-143330

11 FOR REMOVAL FROM REGULATION. ) (Consolidated)

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13 PREHEARING CONFERENCE - VOLUME I

14 PAGES 1 - 20

15 ADMINISTRATIVE LAW JUDGE RAYNE PEARSON

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18 Taken at 1300 South Evergreen Drive Southwest

19 Olympia, Washington

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24 DATE TAKEN: OCTOBER 23, 2014

25 REPORTED BY: RYAN ZIEGLER, RPR, CCR 3348

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A P P E A R A N C E S

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3 ADMINISTRATIVE LAW JUDGE:

4 RAYNE PEARSON

Utilities and Transportation Commission

5 PO Box 47250

1300 South Evergreen Drive Southwest

6 Olympia, Washington 98504

360.664.1136

7

8 FOR COMMISSION STAFF:

9 BRETT SHEARER

Assistant Attorney General

10 PO Box 40128

1400 South Evergreen Park Drive Southwest

11 Olympia, Washington 98504

360.664.1187

12 bshearer@utc.law.gov

13 JIM WARD

Regulatory Analyst

14 Utilities and Transportation Commission

1300 South Evergreen Drive Southwest

15 Olympia, Washington 98504

360.664.1250

16 jward@wutc.wa.gov

17

FOR NEWAUKUM WATER

18 SYSTEMS, INC.:

19 MAURICE KURTZ

Chairman of the Board

20 38205 183rd Avenue Southeast

Auburn, Washington 98092

21 253.939.5739

myktz@yahoo.com

22

23 ALSO PRESENT:

24 HENRY KELLEY

25

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1 OLYMPIA, WASHINGTON; OCTOBER 23, 2014

2 1:30 p.m.

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4 JUDGE PEARSON: Good afternoon. Let's be on

5 the record in Docket UW-143181, captioned Washington

6 Utilities and Transportation Commission versus Newaukum

7 Water System, and Docket UW-143330, which is a petition

8 filed by Newaukum Water System to be removed from

9 jurisdiction.

10 Today is Wednesday, October 22nd, 2014 [sic],

11 at 1:30 p.m., and we are here for a prehearing conference

12 to discuss scheduling and other procedural issues. My name

13 is Rayne Pearson, and I am the administrative law judge

14 presiding over this case.

15 Let's get started by taking appearances, and

16 we'll begin with commission staff.

17 MR. SHEARER: Good afternoon, Your Honor.

18 This is Brett Shearer, Assistant Attorney General,

19 representing commission staff.

20 And did you want long form or short form?

21 JUDGE PEARSON: Long form is fine. Then the

22 company, we'll see.

23 MR. SHEARER: My business address is PO box

24 40128, 1400 South Evergreen Park Drive Southwest, Olympia,

25 Washington, 98504. My e-mail is bshearer, B-S-H-E-A-R-E-R,

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

2 JUDGE PEARSON: Thank you.

3 And for the company, if you could state your

4 first and last name and spell your last name, and then also

5 give us your address, phone number, and e-mail address.

6 MR. KURTZ: All right. I'm Maurice Kurtz,

7 can -- and I'm the chairman of the board of directors for

8 Newaukum Water Systems, and -- Incorporated. My address at

9 home is 38205 183rd Avenue Southeast, Auburn, Washington.

10 The official address for the water system is

11 post-office box 1287, Enumclaw, Washington, 98022, and my

12 home phone number is (253)939-5739. My e-mail address is

13 M-Y-K-T-Z at yahoo.com.

14 JUDGE PEARSON: Okay. Thank you. And would

15 you prefer to receive service at the PO box rather than

16 your home address?

17 MR. KURTZ: Actually, I'd prefer it at

18 home because I would get it faster, because the post-office

19 box frequently isn't accessed maybe every three or four

20 days.

21 JUDGE PEARSON: Okay. One of the things that

22 we're going to discuss too is electronic service so we can

23 actually provide you with documents by e-mail, if you're

24 okay with that.

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

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

2 JUDGE PEARSON: Okay.

3 MR. KURTZ: -- that works fine. My e-mail is

4 checked about -- at least once a day, sometimes three times

5 a day.

6 JUDGE PEARSON: Okay. Great.

7 So unless either party has an objection, I

8 think it's appropriate to consolidate these two dockets

9 since they involve a common set of facts. Are both of the

10 parties agreeable to that?

11 MR. KURTZ: No, we are not.

12 JUDGE PEARSON: You're not?

13 MR. KURTZ: No. We want to deal with the

14 UW-143330 as a separate issue and prior to the -- the other

15 one. The reason being is that if you rule in favor of us

16 being released from the UTC, which is the 3330

17 document [sic], then the other document is moot. It goes

18 away.

19 JUDGE PEARSON: That's correct, and I

20 understand that, so by consolidating them, we would deal

21 first with the jurisdictional issues, and then if, in fact,

22 it was found that the company was no longer jurisdictional

23 or would be released from jurisdictional, then you're

24 correct, the other issue would --

25 MR. KURTZ: Yeah.

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1 JUDGE PEARSON: -- become moot. But for

2 scheduling purposes, if we could consolidate the schedules

3 rather than setting out two separate courses --

4 MR. KURTZ: Well, I think --

5 JUDGE PEARSON: -- for two separate

6 hearings --

7 MR. KURTZ: -- we need two separate

8 schedules, because your counsel and I have talked about

9 doing the release from UTC first and fairly quickly.

10 JUDGE PEARSON: And Mr. Shearer --

11 MR. KURTZ: And I'm talking, we're going to

12 request sometime in November, early December, if we

13 possibly can. We need to get that issue out of the way.

14 Time is of the essence for travel, cost, and everything

15 else, and we don't want to have to wait until January to

16 get a ruling on the issue of jurisdiction.

17 JUDGE PEARSON: Mr. Shearer?

18 MR. SHEARER: Staff would actually support

19 consolidation based on the common issues of law and fact in

20 this, and we do understand the jurisdictional docket is

21 dispositive -- or could possibly be dispositive, so we

22 would propose to seek a ruling on that issue early in the

23 procedural schedule or as soon as feasible, but we would

24 still prefer consolidation for scheduling purposes.

25 JUDGE PEARSON: Okay. So do we have any

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1 parties here that are seeking intervention, either

2 additional people in the room that --

3 MR. KELLEY: I might be.

4 JUDGE PEARSON: You might be? Do you want to

5 come forward to a microphone?

6 MR. KELLEY: Sure. Which microphone?

7 MR. KURTZ: You can share mine.

8 JUDGE PEARSON: One at the table. If you

9 could just state your first and last name for the record.

10 MR. KELLEY: Henry Kelley.

11 JUDGE PEARSON: And how do you spell your

12 last name?

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

14 JUDGE PEARSON: Okay. And who do you

15 represent?

16 MR. KELLEY: Myself, I guess. I'm a rate

17 payer on the system, but I'm not supportive of the current

18 the path the system is taking.

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

20 MR. KELLEY: Correct.

21 JUDGE PEARSON: Okay. And you're not

22 supportive of the company being deregulated. Is that what

23 you're saying?

24 MR. KELLEY: Partly, yeah. That is correct,

25 but I mean, there's more to it than that.

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1 JUDGE PEARSON: Okay. You can go ahead and

2 explain it.

3 MR. KELLEY: Well, I didn't come prepared to

4 speak on that, but I mean, I just don't feel that the

5 company's being taken in the right direction. It -- it

6 needs new ownership more than anything.

7 JUDGE PEARSON: Okay. Okay. So have you had

8 an opportunity to speak with Mr. Ward at all?

9 MR. KELLEY: I spoke with him once about a

10 week or two ago.

11 JUDGE PEARSON: Okay. Because I'm fairly

12 confident that -- that staff will do, you know, a good job

13 of representing the rate payers and the customers in this

14 proceeding.

15 MR. KELLEY: Yes. I expect that.

16 JUDGE PEARSON: Okay.

17 MR. KELLEY: But I -- I do have some

18 information and documentation that very well could be

19 relevant that hasn't been brought forward.

20 JUDGE PEARSON: Okay. Could you provide that

21 to Mr. Ward?

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

23 plan.

24 JUDGE PEARSON: Okay.

25 MR. KELLEY: Yeah.

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1 JUDGE PEARSON: So I would prefer to handle

2 it that way, if possible, to have you providing things to

3 Mr. Ward. And we do have -- we can sign you up as an

4 interested person so that you're kept in the loop and you

5 receive all the documents as they're served and --

6 MR. KELLEY: Okay.

7 JUDGE PEARSON: -- things of that nature.

8 MR. KELLEY: That would be fine.

9 JUDGE PEARSON: Okay.

10 MR. KELLEY: Thank you.

11 JUDGE PEARSON: Okay. Thank you. Are there

12 any other parties here today seeking intervention?

13 (No response.)

14 JUDGE PEARSON: Okay. And do the parties --

15 it sounds like from the preliminary schedule, you do want

16 discovery to be available in this case?

17 MR. SHEARER: Yes. And the formal -- invoke

18 the formal discovery rules please, Your Honor.

19 JUDGE PEARSON: Okay. And back to electronic

20 service, if we decide to serve documents electronically,

21 via e-mail, are you amenable to that?

22 MR. KURTZ: Absolutely.

23 JUDGE PEARSON: Okay. And you too,

24 Mr. Shearer?

25 MR. SHEARER: Yes, Your Honor.

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1 JUDGE PEARSON: Okay. And so I understand

2 that you need a brief recess to discuss scheduling matters?

3 MR. SHEARER: Yes, Your Honor.

4 JUDGE PEARSON: Okay. So I will be in my

5 office if you want to just give me a call when you're done.

6 MR. SHEARER: Okay.

7 JUDGE PEARSON: And we'll take a recess and

8 go off the record.

9 MR. KURTZ: Your Honor, I -- I have

10 information I'd like to present to you today in addition to

11 the scheduling, because I understand that a prehearing, we

12 should be able to give information, exchange information

13 that is -- has bearing on the case that has not been

14 received by anybody at this point.

15 JUDGE PEARSON: Okay. Let's take that up

16 after the break.

17 MR. KURTZ: Okay.

18 JUDGE PEARSON: Okay?

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

20 JUDGE PEARSON: Thank you.

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

22 1:48 p.m.)

23 JUDGE PEARSON: Okay. Let's be back on the

24 record in Docket UW-143181 and Docket UW-143330. During

25 the break, when we were off the record, the parties

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1 discussed a procedural schedule with -- which Mr. Shearer

2 will now read into the record.

3 MR. SHEARER: Yes. The -- the parties

4 propose the following procedural schedule jointly. Staff

5 will file testimony on January 16th, 2015. The company

6 will file rebuttal -- or responsive testimony on

7 February 18th. Staff will then have the opportunity to

8 file rebuttal testimony on March 19th.

9 The discovery cutoff will be April 2nd.

10 Exhibits for cross-examination -- or a list of exhibits for

11 cross due on April 21st. A -- we jointly request a hearing

12 date of May 5th, with briefs due -- simultaneous briefs due

13 on June 2nd and reply briefs due June 23rd, if necessary.

14 JUDGE PEARSON: Thank you.

15 Okay. And I did want to just briefly address

16 Mr. Kelley's petition for intervention, just let you know

17 that if at any point in the future you do feel it's

18 necessary to intervene, you can always file a petition for

19 late intervention in the proceeding.

20 MR. KELLEY: Okay. Thank you.

21 JUDGE PEARSON: Okay?

22 And Mr. Kurtz, you had a couple of matters

23 that you wanted to address?

24 MR. KURTZ: Yes, Your Honor. I have a short

25 presentation that I'd like to give to you, and I would ask

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1 to approach the bench maybe once during the time of the

2 presentation to give you the same information that I'm

3 talking about.

4 JUDGE PEARSON: What is your presentation

5 concerning?

6 MR. KURTZ: It's concerning the

7 UH-143330 [sic], release from UTC control.

8 JUDGE PEARSON: So it has to do with the

9 jurisdictional issue?

10 MR. KURTZ: Yes.

11 JUDGE PEARSON: Okay. Did you also bring

12 copies for staff?

13 MR. KURTZ: I have copies here, yes, for

14 everything that I would -- will present, and the reason I

15 want to do this presentation is because, as I understand

16 it, in the March proceedings that happened, there was not a

17 good understanding of the -- of what a nonprofit

18 corporation really is, and that understanding was not

19 understood, by what I understand, the staff, the attorney

20 that represented the staff, as well as the judge at that

21 time. Okay?

22 Now, there was a lot of conversation,

23 evidently, about it, but there was no agreement as to what

24 a nonprofit corporation is, so I'd like to start, and if --

25 this is only going to take about 15 or 20 minutes. Okay?

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1 JUDGE PEARSON: Okay. I can give you about

2 five.

3 MR. KURTZ: Well, I'm going to need a little

4 bit more than five, please, sir -- or ma'am.

5 JUDGE PEARSON: The -- the thing is is that

6 the prehearing conference, the purpose is to set a

7 procedural schedule --

8 MR. KURTZ: Okay.

9 JUDGE PEARSON: -- and deal with procedural

10 issues, and I understand that this -- the jurisdictional

11 issue is -- is a threshold matter here --

12 MR. KURTZ: Yes.

13 JUDGE PEARSON: -- and so I can give you a

14 couple of minutes to speak about it, but what you need to

15 understand is whatever you present, staff needs to receive

16 copies of it, they're going to be given a opportunity to

17 respond to it, because up until today, they did not know

18 that you were going to be arriving with documents and

19 presenting information.

20 So in fairness, they'll have to have an

21 opportunity to respond in writing, and I'll give them at

22 least seven days to do that.

23 MR. KURTZ: Okay. Part of the information

24 was given to Brett on Monday of this past week or this

25 week, and so that part, which I can cover right now, is

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1 that there are three common reasons for possibly having a

2 nonprofit corporation: One being a public benefit, a

3 mutual benefit of -- of a group of people, or a corporation

4 for religious groups.

5 But -- that is not inclusive, but that is the

6 three basic categories. We, as Newaukum Water System, are

7 a benefit for owners of property in the subdivision, and we

8 are a nonprofit corporation recognized by the IRS.

9 And the points that I want to make are, there

10 is no ownership associated with a nonprofit corporation. A

11 nonprofit corporation is in -- is a contract between its

12 members and our beneficiaries and the Secretary of State.

13 Nonprofit has no investors. Nonprofit cannot issue stock.

14 A nonprofit cannot issue dividends or

15 disperse excess funds to its members. All funds collected

16 or donated must be used for the purpose or for the support

17 of the corporation's purpose.

18 A nonprofit must file an IRS 990, which is

19 not a normal corporation filing. A nonprofit can

20 accumulate funds for future use in maintaining its

21 facilities or future expenses and the funds are not

22 taxable, and I'd be happy to give you a copy of that.

23 JUDGE PEARSON: That's okay. I don't need a

24 copy of that.

25 Mr. Shearer, did you have something you

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1 wanted to say?

2 MR. SHEARER: Your Honor, I just want to

3 clarify. I don't -- I don't think Mr. -- I want to clarify

4 whether or not Mr. Kurtz is asking you to do anything or

5 find anything here. If not, then we may be better served

6 by conducting this in -- in discovery or in another

7 procedural setting.

8 JUDGE PEARSON: Yeah. I agree with you.

9 Were you --

10 MR. KURTZ: Okay.

11 JUDGE PEARSON: -- hoping for me to make a

12 ruling on this today?

13 MR. KURTZ: I didn't expect you to make a

14 ruling, no.

15 JUDGE PEARSON: Okay.

16 MR. KURTZ: But I have many -- I have about

17 three or four more points that need to be made before you

18 could even possibly make a ruling, so if you wanted me to

19 mention those points, and then we can -- we can set times

20 and dates for a later --

21 JUDGE PEARSON: Well, that's what we're doing

22 here today is setting a later date and time to have an

23 evidentiary hearing where you can introduce evidence such

24 as this and make your arguments about why Newaukum Water

25 System should not be jurisdictional to the UTC.

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1 MR. KURTZ: Okay. All right.

2 JUDGE PEARSON: So --

3 MR. KURTZ: But that will not be in January,

4 that would be sometime fairly soon, correct?

5 JUDGE PEARSON: Well, it sounds like the

6 hearing is set for May 5th of 2015 at --

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

8 JUDGE PEARSON: -- this point in time, and

9 I -- I haven't made a determination about whether or not

10 the dockets will be consolidated, and I'm not going to

11 decide that today.

12 MR. KURTZ: Okay. But you're -- be aware

13 that we are not in agreement at this point, and I --

14 we've --

15 JUDGE PEARSON: I am aware of that.

16 MR. KURTZ: You have to -- you have to -- we

17 have to abide by your decision, but we are -- do not really

18 want the documents combined from -- to the point where we

19 cannot deal with the jurisdictional issue earlier.

20 JUDGE PEARSON: I understand, yes.

21 MR. KURTZ: Yeah.

22 JUDGE PEARSON: And I understand your

23 position on that.

24 MR. KURTZ: Okay.

25 JUDGE PEARSON: And I will take that under

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1 advisement.

2 MR. KURTZ: Okay. All right.

3 JUDGE PEARSON: Okay?

4 MR. KURTZ: Very good.

5 JUDGE PEARSON: Okay. So I think the points

6 that you're making today are -- are best reserved for

7 your -- your prefiled testimony and -- and then for the

8 evidentiary hearing in May if, in fact, the dockets are

9 consolidated and we hear both things at that time.

10 MR. KURTZ: I think there's a need to have

11 the one -- the jurisdictional issue resolved one way or

12 another long before we have January through June schedule,

13 is our personal desire.

14 JUDGE PEARSON: Okay. And Mr. Shearer, I

15 just noticed when you read off the procedure schedule that

16 there were no settlement conferences built into that

17 schedule. Is there a reason for that?

18 MR. SHEARER: We were just going to set those

19 up informally based on we have so many individuals that

20 would want to take part between the company and staff,

21 it --

22 JUDGE PEARSON: Okay.

23 MR. SHEARER: -- it's difficult to come up

24 with a specific day this far ahead of time.

25 JUDGE PEARSON: Okay. But you do intend to

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1 engage in settlement negotiations.

2 MR. SHEARER: Yes. We do --

3 JUDGE PEARSON: Okay.

4 MR. SHEARER: -- intend to engage in

5 settlement negotiations, and...

6 JUDGE PEARSON: Okay. Thank you.

7 Do you have anything else, Mr. Kurtz?

8 MR. KURTZ: No, I don't believe -- no. Not

9 at this point.

10 JUDGE PEARSON: Okay. Is there anything else

11 that we need to address while we're here today?

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

13 I -- I just want to be clear if Mr. Kurtz is

14 asking Your Honor to make a decision on the consolidation

15 or not consolidate or to de-consolidate or whatever the --

16 the term is, staff would oppose that based on the common

17 issues of law and fact.

18 And there's nothing in the procedural rules

19 or nothing in the -- I think to prevent the company or

20 staff from asking Your Honor or the commission to make a

21 determination on the jurisdictional issue or that is --

22 that we all acknowledge is -- could be dispositive sooner

23 than that, or in another procedural mechanism, a motion or

24 something like that.

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

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1 order today -- not today, I'm sorry -- reflecting what we

2 discussed here today, including the issue of whether or not

3 the dockets will be consolidated, and that will be within

4 ten days. Okay?

5 If that's all we have, then we can go off the

6 record and be adjourned. Thank you.

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

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3 STATE OF WASHINGTON

4 COUNTY OF KING

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6 I, Ryan Ziegler, a Certified Shorthand Reporter in

7 and for the State of Washington, do hereby certify that the

8 foregoing transcript of the prehearing conference in the

9 above-captioned matter on October 23, 2014, is true and

10 accurate to the best of my knowledge, skill, and ability.

11 IN WITNESS WHEREOF, I have hereunto set my hand

12 and seal this October 30, 2014.

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RYAN ZIEGLER, RPR, CCR

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