

1 BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION

2 COMMISSION

3 CHEESE BARN, INC.)
)
 4 Complainant,) HEARING NO. UW-940269
) Volume 1
 5 vs.) Page 1 - 34
)
 6 BURTON WATER COMPANY,)
)
 7 Respondent.)
 -----)

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9 A hearing in the above matter was held on
 10 May 5, 1994, at 9:38 p.m. at 1300 South Evergreen Park
 11 Drive Southwest, Olympia, Washington, before
 12 Administrative Law Judge Rosemary Foster.

13 The parties were present as follows:

14 CHEESE BARN, INC., by ROBERT LUNDGAARD,
 Attorney at Law, 2400 Bristol Court Southwest, Suite
 15 B, Olympia, Washington 98502.

16 BURTON WATER COMPANY, by CAROL S. ARNOLD,
 Attorney at Law, 5000 Columbia Center, 701 Fifth
 17 Avenue, Seattle, Washington 98104.

18 WASHINGTON UTILITIES AND TRANSPORTATION
 COMMISSION STAFF, by ANNE EGELER, Assistant Attorney
 19 General, 1400 South Evergreen Park Drive Southwest,
 Olympia, Washington 98504.

20

21 DEPARTMENT OF HEALTH, by LILIA LOPEZ,
 Assistant Attorney General, 905 Plum Street, P.O. Box
 40109, Olympia, Washington 98504-0109.

22

23 INTERVENORS BURTON COMPANY CUSTOMERS,
 by WILLIAM G. JENKINS, Attorney at Law, 10020A Main
 Street, Suite 319, Bellevue, Washington 98004.

24

25 Cheryl Macdonald, CSR
 Court Reporter

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

2 JUDGE FOSTER: Let's be on the record. The
3 hearing will please come to order. The Washington
4 Utilities and Transportation Commission has set for
5 pre-hearing conference at this time and place docket
6 No. UW-940269 which is captioned the Cheese Barn, Inc.,
7 complainant, versus Burton Water Company, respondent.
8 Today's date is May 5, 1994. We're convened in room
9 140 in the Commission offices in Olympia, Washington.
10 My name is Rosemary Foster, and I am the administrative
11 law judge presiding. At this time we'll take
12 appearances beginning with the complainant.

13 MR. LUNDGAARD: Robert E. Lundgaard of
14 Lundgaard & Aitken. 2400 Bristol Court Southwest,
15 Olympia, 98502. Representing Cheese Barn, Inc.,
16 complainant.

17 JUDGE FOSTER: Burton Water Company.

18 MS. ARNOLD: Carol Arnold, Preston Gates &
19 Ellis. 5000 Columbia Center, Seattle.

20 JUDGE FOSTER: And I believe there's been a
21 petition to intervene, motion to intervene filed.
22 Mr. Jenkins, do you want to make an appearance on
23 behalf of the petitioner?

24 MR. JENKINS: Yes, I do. William G.
25 Jenkins, 10200A Main Street, Suite 319, Bellevue,

1 Washington 98004.

2 JUDGE FOSTER: This is prehearing
3 conference --

4 MS. EGELER: Your Honor, I would like to
5 make an appearance also. Anne Egeler, assistant
6 attorney general appearing on behalf of staff. 1400
7 Southwest Evergreen Park Drive Southwest, Olympia,
8 Washington.

9 JUDGE FOSTER: Last but not least.

10 MS. LOPEZ: I'm Lilia Lopez, assistant
11 attorney general appearing for the Department of
12 Health.

13 JUDGE FOSTER: How do you spell your first
14 name?

15 MS. LOPEZ: L I L I A.

16 JUDGE FOSTER: Is there anyone else who
17 wants to make an appearance?

18 The record should show there's no response.
19 This pre-hearing conference is being held subject to
20 WAC 480-09-460 and it sets out the subjects that we
21 need to cover in the pre-hearing conference process.
22 There has been --

23 MS. ARNOLD: Your Honor, could I make a
24 short statement before we get into the substantive
25 matter regarding my appearance?

1 JUDGE FOSTER: All right. Go ahead.

2 MS. ARNOLD: I want to disclose on the
3 record at this time that one of the partners at Preston
4 Gates & Ellis is the spouse of Chairman Nelson. That's
5 all.

6 JUDGE FOSTER: Okay. Does that require any
7 indication by the other counsel whether that's a
8 problem or not in this case?

9 MS. ARNOLD: I don't know. I understand
10 that that's Chairman Nelson's decision at that point.

11 MR. LUNDGAARD: For the record, we would
12 object to her sitting in this matter in any capacity in
13 view of counsel's statement. I'm referring to Chairman
14 Nelson not counsel.

15 MS. ARNOLD: I might add that my firm
16 appears on a regular basis before the Commission and
17 that Washington Natural Gas, Puget Sound Power & Light,
18 the Commission staff, U S WEST and other parties have
19 previously consented to this and which relieves
20 Chairman Nelson of having to decide the matter, so I
21 don't think that she's ever actually been forced to
22 decide whether or not she should continue or not. I
23 will state for the record that her husband is not in
24 any way connected to this matter or connected to this
25 client.

1 JUDGE FOSTER: Well, I appreciate your
2 making that disclosure. As far as I know, the matter
3 has been set for hearing before the administrative law
4 judge so that would mean that I would prepare an
5 initial order based on the evidence and testimony
6 that's included as part of the record, so if
7 Chairman Nelson were to be involved, it would be
8 through the appeal process and through the final order.
9 Ms. Egeler, do you have any position on this matter or
10 anything to say?

11 MS. EGELER: I would agree with Ms. Arnold
12 that it's very extraordinary to raise any objection but
13 Mr. Lundgaard does have the right to raise an objection
14 if he sees fit. And as Ms. Arnold indicated, chairman
15 will have to decide whether she wants to excuse herself
16 on this. The Commission is the
17 decision-maker as opposed to the ALJ so the issue is
18 not washed away by the fact that an initial order is
19 issued.

20 JUDGE FOSTER: I understand that. I was
21 just trying to set the context of the Commission's
22 decision a little more clearly in everybody's mind.
23 The initial order is my responsibility, but the final
24 order, of course, is the Commission's, and that's what
25 the parties take exception to. I guess -- well,

1 Mr. Jenkins, do you have any comments about this?

2 MR. JENKINS: No, not really.

3 JUDGE FOSTER: Mr. Lundgaard, what was the
4 basis for your objection?

5 MR. LUNDGAARD: Well, I just feel that my
6 client could be prejudiced by the fact that their firm
7 is directly involved and partners all being in benefit
8 from work performed by other partners in the firm, and
9 I feel that that's a direct conflict for her to be
10 making a decision on a matter that her husband as a
11 partner would be benefitted from.

12 MS. ARNOLD: May I respond to that?

13 JUDGE FOSTER: Yes, Ms. Arnold.

14 MS. ARNOLD: The chairman's husband would
15 not directly benefit one way or the other regardless of
16 how the Commission rules in this matter. It is not
17 like there is a contingency so that if this party were
18 to prevail, we would make more money. We work strictly
19 on an hourly basis and her spouse has no direct
20 pecuniary or any other interest in the outcome of this
21 matter.

22 MR. LUNDGAARD: Are you saying that her
23 husband will not share in the gross income that would
24 be derived from your representation representing this
25 company in this matter?

1 MS. ARNOLD: The law firm obviously benefits
2 from the fact of the legal fees, but the legal fee is
3 in no way dependent upon the outcome of this
4 proceeding.

5 MS. EGELER: Your Honor, I think I should
6 point out at this time that we have a difficult
7 situation in this case in particular because right now
8 one of the commissioners is ill, so if this is going to
9 be pressed further, I would like to take a very short
10 recess and confer with senior assistant attorney
11 general for our division about how to continue on under
12 these circumstances.

13 JUDGE FOSTER: Well, I don't have any
14 problem with you doing that. Perhaps one other way to
15 address this would be for me to take Mr. Lundgaard's
16 objection under advisement and allow the pre-hearing
17 conference to go forward. It may be that if the
18 Department of Health or some other entity has something
19 that they have to do with this case that the matter
20 will be either continued or perhaps rendered moot as a
21 result of the factual circumstances of the case so we
22 may not even get to this problem.

23 MR. LUNDGAARD: That would be my reaction,
24 too, Your Honor. That's a long way down the pike and
25 could be a different commissioner sitting by that time.

1 JUDGE FOSTER: I might ask if it does
2 continue to be a problem the parties may file memoranda
3 on it because I would like to maybe have a little
4 fuller legal articulation of the positions in the
5 record, but for our purposes here today, I think it
6 would be sufficient if I take it under advisement, and
7 that we allow the pre-hearing conference process to go
8 forward. Is that all right with you, Ms. Egeler?

9 MS. EGELER: That's fine. I would suggest
10 perhaps making it more formal as far as other parties'
11 positions, and I would state firmly that the staff does
12 not object to the chairman sitting on this.

13 JUDGE FOSTER: Okay. Anyone else have
14 anything to say on the subject?

15 MR. LUNDGAARD: Well, this is the first we
16 heard about it today and I can tell from counsel's
17 comments this apparently is something that could have
18 been addressed earlier. I could have been advised
19 about that at the time that she appeared in this
20 matter, but the first time I heard about it was just
21 before we convened this morning.

22 JUDGE FOSTER: Well, in any event I will
23 take the objection under advisement and what I would
24 like to do is take the petition to intervene and then I
25 will take a recess and allow the parties to continue

1 their discussions under the pre-hearing conference rule
2 off the record and see what we can accomplish since
3 we're all here together this morning. It may be that
4 considering the problem of the composition of this
5 Commission for decision-making purposes is a little
6 premature at this point.

7 So in any event, I would like to go ahead
8 and hear the motion, and Mr. Jenkins, since you're the
9 moving party, if you want to present the petition to
10 intervene and then we'll take comments from other
11 counsel on it.

12 MR. JENKINS: Yes, thank you very much. I
13 am William Jenkins. As you know, I'm the attorney for
14 the intervenors, or one of them, and also I am an
15 intervenor. We have an interest in the suit. By the
16 way, my wife and I have a piece of property on Vashon
17 for which we're trying to obtain owner rights.

18 I want to point out one thing right off the
19 bat. There are 33 people in our petition. Actually we
20 are only seeking 18 new hookups. The bulk of those
21 people that are in the petition are husband and wife.
22 They are seeking a hookup service for one lot. So
23 we're looking -- the parties who are attempting to come
24 in here would be actually for 18 new hookups.

25 We have filed a petition to intervene. We

1 don't believe there are any new issues. We, as counsel
2 indicated, our intervention petition looks surprising
3 similar to the complaint. I would suggest that that is
4 to be expected in this case since we, as well as the
5 complainant -- when I say we, all of the proposed
6 intervenors -- are people who are on a list of
7 approximately 40 or so people who are seeking water, so
8 anything that Burton Water Company does one way or the
9 another affects all of us. And so we do have -- our
10 petition, except for one article in our petition, it is
11 substantially the same as the complaint so there's no
12 new issues there.

13 We did not include in our complaint article
14 No. 9 -- pardon me. We did not include in our petition
15 article No. 9 which has to do with alleged undue and
16 unreasonable preferences in providing services. We are
17 suspicious that there may be but we didn't simply have
18 the time to look into this matter when this matter came
19 up to determine whether we had enough information to go
20 on and information and belief.

21 I would like to ask the judge to allow us to
22 amend our petition to the extent that if these facts
23 that are brought up here are general preferences which
24 apply to most, if not all, of the people on the list
25 and are not just specifically unreasonable preferences

1 which affect only Cheese Barn that we would be allowed
2 to amend our petition so we can include this as one of
3 the issues that we want to raise. But we don't know
4 that. We don't have sufficient information.

5 So as far as the petition goes, I see
6 absolutely no new issues. The respondent Burton Water
7 Company has objected claiming -- if I understand their
8 argument, their argument is essentially twofold; one,
9 that we're raising some new issues and, two, that this
10 whole thing might be moot depending on what the DOH
11 does with respect to the moratorium that they placed in
12 effect about a year and a half ago.

13 In article 2 or I should say No. 2 of the
14 objections the Cheese Barn -- pardon me -- the
15 respondent says -- strike that. "Determination of
16 which intervenors, if any, have valid claims for service
17 and prior to competing claims will raise multiple new
18 issues." We won't raise any new issues because we
19 submit that Burton Water Company has already
20 acknowledged that those issues are raised by Cheese
21 Barn. In that same article or item 2 it says "Cheese
22 Barn has already requested priority for service over
23 other property owners, many of whom are petitioners."
24 So this issue has been already raised in this
25 proceeding, and we're not raising a new issue. The

1 principal issue that's been raised, as respondent
2 indicates it has been raised, will apply to any
3 discrimination or any of those questions as to validity
4 of claims and/or priority of competing claims that
5 might arise from the intervenors. I will go on if you
6 have any questions.

7 First paragraph No. 3 on page 2 of the
8 objections states that "It is likely that all requests
9 for services will become moot for reasons that Burton
10 -- for reasons beyond Burton's control. Then it goes
11 on to state that the state of Washington DOH -- let's
12 see -- Burton has been under an order from the state of
13 Washington DOH not to add any additional service
14 connections to the system. And they say DOH confirms
15 this on January 5 of this year. I don't know if I have
16 something new or whether Burton Water Company hasn't
17 received it yet, but I talked with Mr. Steve Deem and
18 yesterday, and he said that a letter was going out from
19 DOH to Burton Water Company. They would immediately
20 release -- they were releasing the moratorium as to 30
21 hookups. He said that was going in the mail yesterday
22 and --

23 MS. LOPEZ: That's correct.

24 MR. JENKINS: So the moratorium has been
25 lifted and he said that was effective immediately which

1 he said to me was upon mailing, so assuming they mailed
2 it yesterday, well, then there are 30 additional
3 hookups which now can be allowed by DOH. There was a
4 complete moratorium on hookups. Now DOH has said by
5 this letter, which I haven't seen yet, that they can
6 hook up immediately 30 new hookups. So I suggest that
7 takes care of this item -- first item number.

8 Second item No. 3 goes to the letter from
9 CH2M Hill with respect to the ability to pump the
10 aquifer as our engineers, Geo engineers have suggested.
11 They're saying it's not safe to pump it down to a six-
12 foot level. I'm saying here they are raising an issue
13 which will be part of what I assume to be an issue in
14 this -- major issue in this as to whether or not Burton
15 Water Company's aquifer has a capacity to serve the
16 additional customers, and this question of safety,
17 which was raised by the letter which is Exhibit C, I
18 believe, to respondent's objections, is addressed
19 directly by the report which Geo engineers prepared
20 which the staff of the UTC has a copy of which Burton
21 Water Company has a copy of and which DOH in Seattle
22 and I believe Olympia has a copy of. We left a copy
23 with the engineer Jones, Al Jones.

24 MS. LOPEZ: That would be with UTC.

25 MR. JENKINS: UTC. I'm sorry. UTC. So

1 everyone has a copy of this report. This is going to
2 be the basis -- this is the reason we're here. Without
3 this we're not here. And this I assume is going to be
4 a major issue in the hearing. And it has been -- it's
5 been brought up in both the complaint and the answer to
6 it.

7 So I suggest that what Burton Water Company
8 here is really arguing going through a basic issue
9 here is not a fact, and I think item No. 4, I believe
10 the DOH letter, which opened up 30 -- which authorized
11 the Burton Water Company to immediately hook up 30
12 customers takes care of item No. 4 the same as it did
13 that first item No. 3. So I submit there are no new
14 issues here. What we're asking for is substantially
15 the same that complainant is asking for and so we
16 request that we be allowed to intervene.

17 JUDGE FOSTER: Just a couple of questions
18 before I allow counsel to respond. What type of
19 intervention do you contemplate? Do you want to
20 participate in cross-examination? Will you be
21 presenting witnesses? Briefing?

22 MR. JENKINS: Yes.

23 JUDGE FOSTER: All of the above?

24 MR. JENKINS: Yes. All of the above.

25 JUDGE FOSTER: Anything else?

1 MR. JENKINS: Is there anything else?

2 JUDGE FOSTER: I don't know. You know what
3 you have in mind.

4 MR. JENKINS: Yeah. Well, I know that we
5 just want to intervene and have complete interventions
6 to the same extent that Mr. Lundgaard is free to make
7 any claims, et cetera, to pursue his cause, so we want
8 complete intervention. I assume that we're coming in
9 under the general intervention and not special.

10 JUDGE FOSTER: Yes. I just want to know
11 what you had in mind by way of participating in the
12 case.

13 MR. JENKINS: Participating fully.

14 JUDGE FOSTER: What would be the effect if
15 your petition is denied?

16 MR. JENKINS: Well, I guess we would have to
17 file 18 different petitions for the same thing.

18 JUDGE FOSTER: Do you have a copy of that
19 DOH letter or is that going to be --

20 MS. LOPEZ: It's not out but if you would
21 like I can talk more about the Department of Health
22 position at this point.

23 JUDGE FOSTER: Talk more about?

24 MS. LOPEZ: More about the Department of
25 Health position.

1 JUDGE FOSTER: Let's try and resolve this
2 intervention here first and then we will be getting to
3 that. Ms. Arnold, do you have a response?

4 MS. ARNOLD: Yes. First, it's difficult to
5 address the DOH letter because we haven't seen it and
6 this is the first time we've heard that about 30 new
7 connections, so I can't really address that side of the
8 issue. That certainly was a problem up until this
9 point. If it no longer is a problem that Burton was
10 under moratorium by the Department of Health not to add
11 new customers, assuming that -- and I guess we're
12 going to hear more about that this morning so that we
13 may be able to shed some light on these issues -- even
14 if the Department of Health feels that Burton Water
15 Company is capable of adding 30 new customers there's
16 still two major issues that need to be resolved in this
17 proceeding. The first is the capacity of the
18 reservoir. CH2M Hill's engineers at this time are of
19 the opinion that the aquifer will not support
20 additional pumping and that issue needs to be resolved
21 before any new connections are added.

22 Secondly, assuming that issue is resolved in
23 favor of adding new connections, it is our
24 understanding that there would have to be either
25 drastic change in the design standards required of the

1 system or major capital involvements undertaken to
2 serve 30 new connections. You should realize that the
3 Burton Water Company at the present time even with its
4 recent rate increase has a total annual budget of about
5 \$73,000. The capital involvements needed to serve a
6 large number of additional connections are going to
7 take some time to design and also an appropriate rate
8 design will have to be approved by the Commission so
9 that the cost of those new facilities are equitably
10 borne by the current customers and the new customers.

11 Now, with that background, the reason that
12 Burton opposed the intervention of the petitioners with
13 the new hookups is that there currently is a waiting
14 list, and I think Mr. Jenkins accurately characterized
15 it as saying there are 40 property owners on that list.
16 Recently Mr. Lundgaard on behalf of the Cheese Barn
17 asked that Cheese Barn's properties be moved up to
18 different positions on the list. Well, clearly if
19 there are 40 property owners in line and even if the
20 capital improvements are financed and even if the
21 reservoir can handle 30 new hookups, there's going to
22 be an obvious dispute as to who is first and who is
23 second.

24 Burton Water Company's resources are
25 extremely limited as far as hiring lawyers and

1 engineers to have this whole matter resolved by the
2 Commission. Would be, it appears, quite costly and
3 quite time consuming for the Commission. I would think
4 that each of these property owners would have the
5 opportunity to set forth their argument for why they're
6 sixth on the list and should be second on the list or
7 whatever their position is, and it looks like it would
8 be a long and protracted proceeding. As it is, the
9 technical issues as to the capacity of the reservoir
10 and the design of the system are already quite
11 complicated, and it seems that adding I guess 18 new
12 property owners who want service in addition to Cheese
13 Barn complicates the proceeding and adds considerably
14 to the expense.

15 Burton Water Company does not want to be
16 unreasonable about adding new connections, and if it
17 were a matter of one or two connections it could
18 perhaps be resolved simply, but Burton Water Company
19 has an obligation to its current customers to provide
20 -- to meet their needs for water, and to keep the rates
21 charged to the current customers reasonable, and Burton
22 Water Company is extremely concerned that either the
23 rates to its current customers will be increased
24 drastically by the demands being put on the system or
25 that the system will simply be unable to supply their

1 needs.

2 So all of these competing interests are
3 before the Commission and it's our position at this
4 time that adding 18 or 30 or however many new
5 intervenors complicates a matter that's already
6 complicated, and it's probably premature to start
7 arguing about who is in what place on the waiting list
8 until it's determined whether or not the system can
9 meet any new connections at all. So for that reason
10 Burton Water Company has objected to the petition to
11 intervene.

12 JUDGE FOSTER: If I could just ask you one
13 question about your objection. I understood that
14 Burton Water Company got a rate increase.

15 MS. ARNOLD: Yes.

16 JUDGE FOSTER: Could you explain that a
17 little more?

18 MS. ARNOLD: Yes. The rate increase was
19 granted about a month ago, and -- well, I should
20 probably let Mr. Garrison address this, but it raised
21 its annual revenues from about 65,000 to --

22 MR. G. GARRISON: About 20,000 increase.

23 MS. ARNOLD: 65,000 to 85,000 annually. So
24 we are not talking about a huge well-funded utility
25 here. That increase, by the way, was granted to pay

1 for additional monitoring and other requirements of the
2 Department of Health. And I don't believe there has
3 been any recovery yet for the utilities' investment in
4 engineering services.

5 JUDGE FOSTER: Did Burton Water file a
6 tariff?

7 MS. ARNOLD: Yes.

8 JUDGE FOSTER: And I assume that that tariff
9 spelled out how any increase would be spread among
10 customers.

11 MR. J. GARRISON: It doesn't ask for any
12 increase to deal with new customers. It's not a
13 request to deal with new customers. It's a request to
14 recoup projected costs and past costs.

15 MS. ARNOLD: I don't think it has a very
16 elaborate rate design. I think the increase is just
17 spread evenly among the existing customers.

18 JUDGE FOSTER: You just take the number of
19 customers and divide it into the amount of money.

20 MS. ARNOLD: Right.

21 MR. J. GARRISON: Basically there's a little
22 weighting towards high use customers.

23 JUDGE FOSTER: There is not?

24 MR. J. GARRISON: There is, I believe.

25 Isn't that right? We upped --

1 MR. G. GARRISON: The meter rate went up and
2 also the flat minimum rate went up about the same
3 percentage. It had nothing to do with any of this
4 business of adding new customers and new facilities.

5 JUDGE FOSTER: Are there comments from
6 Cheese Barn?

7 MR. LUNDGAARD: Yes, Your Honor. I think
8 counsel for the water company's position is typical of
9 the position that the water company has taken over a
10 long number of years when request of service has been
11 made. They have publicly indicated their intention to
12 not add new customers. They are opposed to growth on
13 Vashon Island and they're accomplishing this philosophy
14 by refusing to add new customers, and then when the
15 moratorium was added, of course that gave them further
16 justification and now in spite of the fact that we hear
17 that the moratorium is being lifted they continue to
18 take the same position that they don't want to add more
19 customers.

20 Now, I can only assume that the Department
21 of Health engineers who have lifted or who are
22 apparently lifting the moratorium to add 30 customers
23 are doing so without any risk to the existing customers
24 or they wouldn't be issuing the release of the
25 moratorium. I don't think we can sit here and have the

1 company say, oh, we can't do that because we've got to
2 spend a lot more money, and when counsel was not
3 present at a meeting that I previously alluded to held
4 in this room with representatives of the company, the
5 two principal representatives of the company, members
6 of the staff of the utility commission and the attorney
7 general's office for the utility commission and myself
8 and my client, the company representatives were asked
9 directly if they -- if the moratorium were lifted would
10 they provide service to my client and they said yes we
11 would and then they were asked when and they said
12 -- I don't have my notes with me, it's in another file,
13 but it was either within 24 hours or 48 hours that they
14 would add the service. And I think counsel's comments
15 are inconsistent with the statements that have been
16 made to the Commission staff in response to their
17 question.

18 And I think that her argument doesn't carry
19 any weight when we consider the fact that the
20 Commission -- or the DOH engineers have studied the
21 water system plan and have now concluded that it would
22 be reasonable and safe to add additional customers and
23 that it would not put their service at risk to their
24 existing customers. And in fact we may be -- this case
25 may turn its total direction if it's going to be a

1 question of DOH saying, yes, you can add and the
2 company refusing to add customers on to their existing
3 system, and then I think the statutes that I've
4 referred to in my complaint come into focus, and then
5 we have what I expect we've had all along. We have a
6 company that refuses to have growth. They advised
7 their engineers who were preparing a technical part of
8 the water system plan that they did not intend to add
9 more than five customers over the period of the plan,
10 which is a five-year period. And so the engineers took
11 that assumption when they wrote up their report, and so
12 as far as I'm concerned their report is totally invalid
13 because it assumes a no growth position. So I think
14 counsel's comments about all this additional costs that
15 are going to be involved really doesn't hold merit as
16 far as releasing the moratorium as to 30 new hookups.

17 The issue of -- I don't think we're here in
18 this proceeding to discuss how they finance new
19 improvements that they may want to make or may be
20 required. They can do that by surcharge and a lot of
21 other ways. We're here dealing with one -- I guess
22 just an issue of intervention right now and it seems
23 like it's taken a lot larger picture by counsel
24 bringing up these issues about not being able to even
25 add the 30 until they spend some substantial sums. My

1 client does not have any objection to the intervention
2 by these additional people. They could have just as
3 easily been part of the original complaint. There's
4 certainly nothing to stop them from filing 18 different
5 complaints, which I assume would then be consolidated
6 for one hearing anyway. So it seems to me this is a
7 logical way to resolve the issues without the duplicity
8 of complaints and more time consuming costs and
9 attorneys' fees and engineering fees by duplicating the
10 process 18 or 19 times.

11 JUDGE FOSTER: Just a question about the
12 Cheese Barn, Mr. Lundgaard, what it is. Can you give
13 us a brief description of the business.

14 MR. LUNDGAARD: It's a corporation that's
15 solely owned by Roger Derby and it owns the properties
16 that he is requesting service for and his intention on
17 two of the lots is to build one residence. He's been
18 attempting to build a house on two of the lots for a
19 number of years, but he's been held back because of the
20 inability to get water service, but the corporation
21 used to own a number of Hickory Farm franchises
22 throughout the Northwest and other places. He's
23 maintained that corporation and holds these properties
24 and there are three adjoining lots that he owns. He is
25 No. 2 on the list for two of the lots. They have him

1 on the list as No. 36 for lot 1 in that same
2 subdivision. My request to the company to move up on
3 that lot was based on a letter from the company dated
4 February 2, 1990 or request by Cheese Barn for service
5 at that time, and so I sent a letter to the company
6 requesting that they move him up on the list. I would
7 think that this list has been available to
8 Mr. Jenkins and if any of those people feel they're
9 not in the right spot on the list, that's certainly a
10 matter of documentation, but I don't see any rush for
11 people to try to reposition themselves on the list, but
12 I think that's a relatively minor item.

13 JUDGE FOSTER: I just wanted to know if it
14 was some kind of a business.

15 MR. LUNDGAARD: No.

16 JUDGE FOSTER: And if it was some kind of a
17 customer that had usage patterns that were larger than
18 the average residential lot owner experienced.

19 MR. LUNDGAARD: No. Just be residential
20 property, one hookup for two lots and one hookup for
21 the other lots. Three lots for a total of two hookups.

22 JUDGE FOSTER: Ms. Egeler, do you have any
23 comment?

24 MS. EGELER: Yes, Your Honor. The staff
25 strongly supports the intervention. There is a tariff

1 on file for this company which includes a service
2 territory and these customers are within that service
3 territory. The company obviously has an obligation to
4 provide service. There seems to be absolutely no point
5 in wasting the Commission's time with 18 separate
6 hearings. In addition to being an issue of judicial
7 economy, Your Honor, I think that this is analogous to
8 the Ashbacker doctrine which is applied in
9 transportation cases where you may have potentially,
10 depending upon the Commission's ruling, a situation
11 where a limited number of people will be given service.
12 It would be inappropriate to restrict people from
13 coming into this hearing and then grant the first
14 applicant in time the sole spot. So there's a core
15 issue of fairness which may extend to an issue of law.

16 Furthermore, Your Honor, I would like to
17 address very, very briefly the financial issues raised
18 by the company. The Commission staff has extended a
19 willingness to discuss with the company how extensions
20 are typically financed and to work with the company on
21 how that would be done, be it through hookup fees or
22 new customers or whether there would be some sort of
23 rate increase for existing customers. That is not at
24 issue in this case, but the staff would like to repeat
25 that it remains available for those types of

1 discussions. So that should in no way be a hindrance
2 to adding the intervenors to this case.

3 JUDGE FOSTER: Are there comments from the
4 Department of Health?

5 MS. LOPEZ: Yes, Your Honor. I think it
6 would be helpful if I clarified where the department
7 stands with this right now. The background on this,
8 it's my understanding that it was originally directed
9 not to add any additional service connections because
10 the Department of Health had no overall system design.
11 They had not reviewed and approved that and had no way
12 of determining the true storage for the source needs in
13 relation to the system demands and the source levels,
14 but since that time the company has submitted a water
15 system plan. They've also submitted system facility
16 analysis and that has helped the department to
17 determine the storage and source needs. So at this
18 time, based on the information that was submitted,
19 there was a lot of information submitted from the
20 Garrisons, from the Geo engineers, from CH2M, and some
21 of the information was a bit inconsistent, but there
22 was sufficient data to allow a general determination of
23 the system capacity and that's what the engineer did.

24 At this time he has sent out a letter about
25 this indicating that the department is authorizing up

1 to 30 additional service connections. It's my
2 understanding that the water system plan is being
3 reviewed by the department planner. At this time there
4 are system improvements that need to be made, certain
5 things such as sanitary control area measures need to
6 be taken right away. However, that does not mean that
7 the connections cannot go forward at this point.

8 JUDGE FOSTER: Do you have a formal position
9 on the petition to intervene?

10 MS. LOPEZ: Not at this point, Your Honor.

11 JUDGE FOSTER: Anybody else have anything
12 else they want to say about it?

13 MS. ARNOLD: May I add one thing?

14 JUDGE FOSTER: Yes.

15 MS. ARNOLD: One other problem in providing
16 30 new hookups is that the company currently has a
17 pending application for a water right which would be
18 sufficient to serve the existing number of customers
19 but not new customers. That water right application
20 has been pending for a long time. It was based on a
21 prior claim that had been in place for a number of
22 years and my understanding is that it would be very
23 difficult at this point to -- they would have to either
24 submit a new application for a water right or amend the
25 existing application and that that whole process is

1 fairly lengthy so I should have mentioned that earlier.

2 JUDGE FOSTER: Can you explain a little bit
3 more what you mean by water right?

4 MS. ARNOLD: Yes. The Burton Water Company
5 has submitted an application for a water right for
6 208 --

7 MR. J. GARRISON: Well, we have an existing
8 water claim for 50 gallons a minute and we've asked for
9 an additional 100 gallons a minute from the Department
10 of Ecology.

11 MS. ARNOLD: Which is to serve existing
12 customers.

13 MR. J. GARRISON: To serve the existing
14 customers. But again -- can I direct a few questions
15 to the health department just to clear up some things?

16 JUDGE FOSTER: Well, let me rule on the
17 petition to intervene and we'll go off the record and I
18 will encourage all these discussions that you need to
19 be having. Anyway, I asked about the water right and I
20 believe you answered the question.

21 MS. ARNOLD: Basically Burton doesn't have
22 the right to take any more water than that application
23 provides for.

24 JUDGE FOSTER: Anybody else with any
25 comments on the petition to intervene?

1 MR. JENKINS: With respect to that last
2 water right, they are pumping apparently three times
3 what they have a right to pump.

4 MS. ARNOLD: Well, not three times what
5 the application provides for.

6 MR. JENKINS: Well, they're pumping 50 now
7 and they are asking for an additional 150?

8 MS. ARNOLD: Yes.

9 MR. JENKINS: The point is they're pumping
10 now and have been apparently for quite some time a bit
11 more than they had the right to do. We're only -- if
12 all 30 of these people are hooked up we're asking for
13 about 6 percent increase or -- 370 customers now?
14 Additional 30 is about 8 percent. So we're only asking
15 to increase their pumping capacity by 8 percent. So
16 it's not a big deal.

17 MS. ARNOLD: Well, but you're talking about
18 your 30 and there's 45 on the list.

19 MR. JENKINS: That's right, but they've got
20 the moratorium to shield them from --

21 MS. ARNOLD: Not anymore. That's the point
22 I'm trying to raise is that the intervention
23 complicates things because not everybody is here and
24 there are more claimants for service than just your
25 clients.

1 MR. JENKINS: Well, my answer to that is we
2 contacted everybody on that list except people who
3 didn't have an address for no way to contact. I think
4 we got all but two or three people that we knew who had
5 told us no, we don't want to or we're not interested in
6 hooking up. I think the number of people that are out
7 there in addition to the people on the list is not
8 significant and the chance they're going to cause a
9 problem is deeply insignificant. Can rule it out.

10 JUDGE FOSTER: Maybe if we get a hearing on
11 the merits I might ask you to document the efforts that
12 were made to contact those other customers because I
13 think that is a legitimate concern.

14 MR. JENKINS: Let me see if I have anything
15 else. I think that's fine.

16 JUDGE FOSTER: The Commission's rule that
17 governs intervention is WAC 480-09-030 and it requires
18 that the petitioner disclose a substantial interest in
19 the subject matter of the hearing or participation be
20 in the public interest. I'm going to grant the
21 petition to intervene. I believe that both of those
22 criteria have been met in this case. If the petition
23 to intervene were to be denied, there's a likelihood
24 that all Mr. Jenkins' clients would do is file separate
25 complaints that would have to be consolidated and I

1 would note Ms. Egeler's comment about economy. I think
2 that it's probably the most effective use of all of our
3 resources to devote our time and attention to one
4 proceeding and resolve as much as possible all of
5 the customers' interests and concerns in this case.

6 I would like to also make a comment about
7 Ms. Arnold's concerns about keeping costs down for the
8 company. I share those concerns. Obviously, a small
9 water company needs to direct its resources towards
10 providing service and having equipment and manpower to
11 do that and not to paying legal fees. And let me just
12 say to you that this pre-hearing conference today is a
13 perfect opportunity for people to get together and come
14 to as much of a meeting of minds as possible that would
15 hopefully avoid protracted litigation and any kind of
16 hearing on the issues that could be solved here in this
17 room. That would mean that if there are still hearing
18 issues to be addressed that the company and the other
19 parties can devote their time and attention to those
20 issues and not something that could have been resolved
21 along the way if the parties had communicated better.

22 So I'm going to ask all the parties to
23 really work hard this morning off the record to see
24 what you can do by way of stipulations and trying to
25 resolve as many of these issues as possible because

1 frankly it's not in anybody's interests with limited
2 resources to spend a lot of time and energy litigating
3 something if it can be worked out by better
4 communication between the parties in private.

5 So with that I will go off the record and
6 let me again direct your attention to the pre-hearing
7 conference rule that talks about the things you're
8 supposed to be doing here today and including
9 simplification of the issues, the necessity or
10 desirability of amendment to the pleadings, possibility
11 of obtaining admissions of fact or documents which will
12 avoid unnecessary proof, limitations on the number and
13 consolidation of the examination of witnesses, any kind
14 of procedure to be followed at the hearing and that
15 also encourage you to talk about scheduling.

16 Ms. Egeler, you may have a schedule in mind
17 that the parties can talk about. You will need at some
18 point to come up with a filing and discovery schedule
19 of some sort, and what I would suggest is that you go
20 ahead and talk about some of these things off the
21 record and I will come back along with the reporter in
22 about half an hour and see how you're doing. I just
23 really do want to encourage you to use this time here
24 today because this may save the company and everybody a
25 lot of expense and wear and tear if you can resolve it

1 off the record here rather than have it go to hearing
2 on issues that really don't need to be litigated.
3 We're off the record.

4 (Recess.)

5 JUDGE FOSTER: Let's be back on the record
6 then. While we were off the record the parties had an
7 opportunity to conduct close to an hour's discussion on
8 the issues in this case. The agreement that was
9 reached off the record was that this pre-hearing
10 conference should be continued to June 20, 1994, and I
11 will send the parties a letter to advise you as to the
12 location and the time, but it would probably be a
13 starting time of 9:30, and then in the meantime Ms.
14 Egeler has volunteered to keep me informed as to the
15 progress of discussions between the parties in terms of
16 settlement and whether any remaining issues need to be
17 resolved. Does anyone have anything they want to add
18 as far as that being an adequate summary of what's
19 taken place off the record?

20 All right. Then the record should indicate
21 that this pre-hearing conference will be continued to
22 June 20. There being nothing further to come before us
23 this morning, we'll stand in recess until that time.
24 We're off the record.

25 (Hearing adjourned at 11:15 a.m.)