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BEFORE THE WASHINGTON

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UTILITIES AND TRANSPORTATION COMMISSION

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4

In the Matter of the Penalty)

Assessment Against)

5

) Docket UW-120867

PARKLAND WATER SYSTEM, INC.)

6

In the Amount of \$2,100)

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8

BRIEF ADJUDICATIVE PROCEEDING, VOLUME I

9

Pages 1 - 34

10

ADMINISTRATIVE LAW JUDGE DENNIS J. MOSS

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1:31 P.M.

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SEPTEMBER 5, 2012

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Washington Utilities and Transportation Commission

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1 JUDGE MOSS: Good afternoon, everyone.
2 My name is Dennis Moss, I'm an administrative law
3 judge for the Washington Utilities and Transportation
4 Commission. I've been delegated the authority by the
5 Commission to hear this penalty mitigation matter. It
6 was noticed as a brief adjudicative proceeding. While
7 others in the room may be familiar with that type of
8 proceeding, Mr. Burke, I doubt you are.

9 This is a proceeding that's provided for under
10 the State's Administrative Procedures Act, which is
11 RCW 34.05. It's less formal than a formal hearing
12 under Chapter 34.05. We try to be a little more
13 relaxed and informal. We do take statements as sworn
14 statements, but we don't insist on the narrative, back
15 and forth, question and answer form of testimony. We
16 will allow you to just to make your statement.

17 I prefer to conduct it in a more
18 conversational way. I know what I need to find out
19 here today. I will ask a few questions and see if I
20 can find out what I need to know. I will give you an
21 opportunity to make a statement, and I will give Staff
22 an opportunity to make a statement, and Mr. Cedarbaum
23 may ask for some other process, or you may ask for
24 some further process yourself, and I will consider
25 what to do.

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1 Now, just at the beginning -- I'm probably
2 going too fast. I'll slow down, I'm sorry.

3 Staff, as I mentioned off the record a few
4 moments ago, filed, according the procedural schedule
5 in the case, a list of exhibits that they wish to have
6 made part of the record in this proceeding. You
7 should have received a copy of that. I feel
8 comfortable that you did. Staff has apparently
9 provided you with a copy of the documents at least
10 this morning. I just received a copy of the documents
11 myself. Again, I know what I am looking for. I just
12 went through them quickly and found what I was looking
13 for. I am going to ask a couple questions about
14 these. I will make these part of the record. They
15 are all pretty much documents by the Commission, they
16 are official public records and so as such, they are
17 not really objectionable, and they are pertinent to
18 the case and in some ways relevant.

19 There are a couple of things that are not
20 clear in my mind in this case that I want to ask
21 about. I was looking at Exhibit 3, which is the
22 letter dated May 25th, 2012. What I can ascertain
23 from this and other material in the record is that
24 you, Mr. Burke, caused to be filed with the Commission
25 on May 25th, 2012, a check for \$3.57, which was your

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1 calculation of your regulatory fee that was due.
2 Also, apparently, it included an annual report form,
3 but according to this letter at least, that form was
4 not complete. There's a letter from the Commission
5 here, from Amy Andrews, bearing the May 25th date.
6 She asked you to please resubmit your documents when
7 complete data is available.

8 Now, I have myself searched the Commission's
9 electronic records and I find no record of you having
10 resubmitted your annual report; is that correct?

11 MR. BURKE: That's correct.

12 JUDGE MOSS: So sitting here today, we
13 don't have your annual report. Let me ask you with
14 respect to this sentence that I just read, is the data
15 available to you now to complete that form?

16 MR. BURKE: Well, there's a number of --
17 I would like to have an opportunity to go through
18 the -- the insinuations in a lot of this stuff and
19 just go by actually a letter.

20 The -- I filed the report. They came back,
21 and they sent it back. I filed it on the 24th, not
22 the 25th. On the 25th, they responded to it and said
23 that it was incomplete. They didn't say why it was
24 incomplete. I provided approximate information on it,
25 which was, in my opinion, adequate. I signed it. I

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1 wrote a note on it that says, Data to complete this
2 report is not available at this time. And the reason
3 is, as I explained at the hearing before the --
4 requesting to be removed from the Utilities and
5 Transportation list, the -- I filed -- the data on the
6 water rates and the gross amounts of water pumped was
7 already supplied to UTC in a subsequent communication
8 that is absent from all of this, because they have not
9 reported all the communications.

10 In subsequent communication with the UTC, I
11 have provided a complete record of the -- of the rates
12 that we were charging, as well as -- I believe we
13 have provided -- I provided the income on -- in the
14 water quantities pumped, and I sent a sample of our
15 invoices.

16 JUDGE MOSS: These documents were
17 submitted separately from any annual report form?

18 MR. BURKE: That's correct.

19 JUDGE MOSS: Okay.

20 MR. BURKE: I was -- I was sent an
21 e-mail. I might as well get all of that information
22 if you want to introduce it at this time.

23 JUDGE MOSS: Sure.

24 MR. BURKE: Let me see if I can find all
25 of this.

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1 MR. CEDARBAUM: Your Honor, this is
2 Robert Cedarbaum, Assistant Attorney General
3 representing the Commission Staff. I know we are in
4 an informal setting here. On the other hand, the
5 Commission did by its notice of hearing require all
6 parties to provide a list of documents. Mr. Burke did
7 not do so. Now, he is intending to provide some
8 documents which I have not seen even a list of. I
9 guess I just want to at least register that complaint.

10 JUDGE MOSS: Okay. Well, we will see
11 what they are and take it one step at a time.

12 As you observe, and Mr. Burke, we do extend
13 some latitude to what we call pro se litigants
14 appearing without counsel. If you have something you
15 want to show me, I will take a look at it and we will
16 see.

17 Indeed, in a brief adjudicative proceeding, I
18 can even look outside the record for information to
19 reach a decision. I am a little less concerned about
20 it in that context. I notice that you did couch that
21 in terms of registering a complaint, as opposed to a
22 formal objection.

23 MR. CEDARBAUM: And I would also note
24 for the record that all of these communications,
25 whatever they were, whatever existed, still in any

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1 submission to the Commission of an annual report,
2 whether complete or not, all occurred after May 1st,
3 which is the deadline for filing the report in
4 compliance with the rule.

5 JUDGE MOSS: I have that in mind.

6 MR. CEDARBAUM: I'm not sure to what
7 extent this is all relevant.

8 MR. BURKE: Well, I will hopefully get a
9 chance to respond to all of this.

10 JUDGE MOSS: I will let you respond.
11 Before we go any further, what I want to do, you may
12 be providing some testimony here presently with
13 respect to what you did and did not do.

14 Mr. Perkins, you may -- Perkinson, I'm
15 sorry -- you may also be doing so. To save time and
16 effort, I will swear both of you now. I don't think
17 anybody else will be providing evidence today. If so,
18 I will swear them at the appropriate time.

19 Mr. Perkinson and Mr. Burke, may I ask you
20 both to please rise and raise your right hand.

21

22 DENNIS BURKE and MATHEW PERKINSON, having been first
23 duly sworn on oath testified as follows:

24

25 JUDGE MOSS: Thank you very much.

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1 MR. BURKE: Here is -- and you can
2 probably pass it on to him also -- a copy of some of
3 the correspondence that occurred by e-mail and also by
4 letter --

5 JUDGE MOSS: Okay.

6 MR. BURKE: -- that is not in the
7 record.

8 JUDGE MOSS: Do you have a separate copy
9 of this for Mr. Cedarbaum?

10 MR. BURKE: No.

11 JUDGE MOSS: I will just pass that on to
12 him.

13 MR. BURKE: That's what I have.

14 JUDGE MOSS: Let's see, this is
15 August 3rd.

16 MR. BURKE: You guys should have them in
17 your files.

18 JUDGE MOSS: They are in chronological
19 order here.

20 MR. CEDARBAUM: Your Honor, I would also
21 note that Jim Ward of the Water Staff is also in the
22 record --

23 JUDGE MOSS: Okay.

24 MR. CEDARBAUM: -- in case we need his
25 assistance.

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1 JUDGE MOSS: Mr. Ward, welcome.

2 MR. WARD: Do you need copies?

3 JUDGE MOSS: I was just going to give
4 Mr. Cedarbaum copies so he would have them. I don't
5 know that I'm going to -- let's just hold off on that
6 for a minute.

7 So we have here several letters. One dated
8 May 24th, one dated July 20th, after the penalty
9 assessment, August 3rd, relating the May 25th
10 submission of the report. I will assume May 25th, it
11 says "May." And again asking for an explanation of
12 procedures to be removed from the Commission's
13 authority.

14 This is an e-mail. Apparently, this is from
15 you, Mr. Ward. Yes, June -- yes, June 7th, 2012,
16 Mr. Ward wrote, and so it's an e-mail from Mr. Ward to
17 you, responding to some -- or actually posing some
18 questions.

19 When you are finished reviewing those,
20 Mr. Cedarbaum, let me know.

21 (Pause in the proceedings.)

22 MR. CEDARBAUM: I have some comments on
23 these, if and when you need me to do that.

24 JUDGE MOSS: Thanks very much.

25 Now, Mr. Perkinson, I will put the question to

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1 you, or maybe I should put it to you, Mr. Cedarbaum.
2 As I understand, I read quickly through the
3 declaration here, and the key operative paragraph to
4 me appears to be that Staff is opposed to mitigation.
5 In this instance, the penalty assessed was \$2100.
6 Staff remains opposed to mitigation, however, it would
7 support suspension -- Staff would support suspension
8 of one-half of the penalty under the circumstances
9 described -- it actually says in Paragraph 12, but it
10 meant Paragraph 11, because there is no Paragraph 12.

11 The conditions are laid out in Paragraph 11 of
12 the declaration. The conditions are that Parkland
13 Water admits the violation set forth in the penalty
14 assessment. Parkland Water agrees to pay a penalty of
15 \$1,050 no later than ten days following a final
16 Commission order. Parkland Water agrees to submit a
17 complete 2011 annual report to the Commission within
18 ten days following a final Commission order. Parkland
19 Water agrees to file its 2012 report no later than
20 May 1, 2013. And it provides, as we do in our orders,
21 or I try to in my orders at least, that should
22 Parkland Water fail to comply with the conditions of
23 suspension, then the suspended amount would become
24 due.

25 I don't know who can answer this question, so

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1 I will just throw it out there, either Mr. Ward can
2 answer it or Mr. Perkinson or Mr. Cedarbaum.

3 If the company in fact succeeds in a petition
4 to be removed from the Commission's jurisdiction, will
5 it in fact have to file a 2012 annual report? Can
6 anybody answer that for me?

7 Mr. Ward, do you know?

8 MR. WARD: Yes, he would, because he
9 operated during the time period of 2012.

10 JUDGE MOSS: Okay, all right. I just
11 wasn't sure about that condition. Okay.

12 Mr. Perkinson, tell me, please, if the company
13 had in fact filed its completed annual report on
14 May 25th, 2012, what penalty would have been assessed
15 as a result of the failure to file by May 1st? Would
16 that have been based on \$100 per day or some smaller
17 figure?

18 MR. PERKINSON: No, Your Honor, the
19 penalty would have been reduced from \$100 a business
20 day to \$25 per business day.

21 JUDGE MOSS: Actually, the companies
22 that did not file by May 1st in fact received a letter
23 from the Commission's executive secretary explaining
24 that option to them, that if they remedied their tardy
25 filing by the 25th of May, the penalty would be

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1 reduced to \$25 a day?

2 MR. PERKINSON: Yes, sir.

3 JUDGE MOSS: And is that what you filed
4 in response to --

5 MR. BURKE: I filed --

6 JUDGE MOSS: -- or is it just
7 coincidental that you filed on the 25th?

8 MR. BURKE: No, I happened to -- and I'm
9 not going to go through what I was going through.
10 This is a small water system, eight people. I run the
11 entire show, okay? I read the meters, I make sure
12 it's going. I don't have a staff of people out there
13 that would cause the rates to be over \$100 a month per
14 customer, to do all the accounting, to do all the
15 responses and the rest of it.

16 The only thing that I got, I intended to file
17 it as soon as I could. I happened to be doing a
18 National Science Foundation grant, which I had to get
19 in. I was extremely busy doing that and pleading it.
20 That had to be done by June 1. The only thing -- the
21 original letter came by, I intended to file it, I got
22 caught up doing other things. I got the notice on
23 the -- I don't know why they waited until May 15th or
24 whatever to send it out, but they waited a sufficient
25 amount of time to build up a decent penalty. They

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1 then mailed it out, and I got it. As soon as I got
2 it, I responded. I responded with the information
3 that I had at that time.

4 Now, you have to realize that this annual
5 report is more than just an annual report. In other
6 words, it's more than just reporting how much your
7 income was or how much your water rates were, which
8 can be excess -- it's a balance sheet that you have to
9 have, and it has to be done in accordance with the
10 accounting regulations specified by the UTC.

11 JUDGE MOSS: I'm familiar with that.

12 MR. BURKE: So what I do is I turn a lot
13 of this stuff over to my accountant and he comes back.
14 But I hadn't this year turned over all of my IRS
15 records. I mean, I hadn't filed my tax return. He
16 got an extension for me. Where I failed in this
17 particular case is not going and pleading for an
18 extension here, because I thought I would be able to
19 have time to get it in. That's the only error that I
20 am really going to admit, not asking for an extension.

21 My accountant eventually finished up the
22 information, and I can file the report. But the
23 interim -- intervening time, when I did file the final
24 report, I was so disgusted with the \$2100 penalty,
25 which is over 50 percent of the income of the water

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1 company. You know, it's draconian, it's psychotic,
2 it's lack of any kind of empathy or understanding by
3 anybody to try to file -- try to get that kind of
4 penalty out of a water company.

5 So I immediately responded to the UTC. I said
6 I no longer want to have anything to do with the UTC
7 period. I am eligible for that effective June 6th. I
8 will be out from underneath the UTC's control after
9 June 6th, which is tomorrow [sic]. You will get an
10 official letter from me requesting again to be
11 removed, because my rates do not exceed what is
12 currently allowed to be independent of the UTC.

13 JUDGE MOSS: That's the date on which
14 the threshold changes?

15 MR. BURKE: That's the date on which the
16 threshold changes.

17 JUDGE MOSS: I was present at the
18 meeting the other day when you --

19 MR. BURKE: So on June the 6th I am
20 sending a letter in. If they have to have another
21 hearing, fine. If I have to go out and get another
22 attorney, I will go out and get another attorney, but
23 I will no longer have to deal with this kind of
24 draconian nonsense.

25 You know, the fact of the matter is, what I

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1 will admit to is attempting to file the report on
2 time, and taking what they said as to being true, that
3 if I filed the report that -- in a timely -- within
4 that deadline, that I would no longer be subject to
5 that penalty, so I did that.

6 JUDGE MOSS: Let me stop you right
7 there, Mr. Burke, because we need to be clear here.
8 The report was due on May 1.

9 MR. BURKE: Correct.

10 JUDGE MOSS: So you did not file it on
11 May 1.

12 MR. BURKE: Correct.

13 JUDGE MOSS: May 25th, you apparently
14 filed in response to a letter from the Commission, or
15 a notice from the Commission that said you are late,
16 you are subject to a penalty.

17 MR. BURKE: That's correct.

18 JUDGE MOSS: If you submit this by the
19 25th of May, your penalty will be \$25 per business
20 day.

21 MR. BURKE: I don't know if it says
22 that.

23 JUDGE MOSS: That's what it says. I've
24 read the letter.

25 MR. BURKE: Okay.

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1 JUDGE MOSS: I've probably read it two
2 dozen times, because we have a lot of these cases that
3 come before us every year.

4 MR. BURKE: Right.

5 JUDGE MOSS: So you did file a tardy
6 report, but you did file it by May 25th --

7 MR. BURKE: Correct.

8 JUDGE MOSS: -- and in response to the
9 Commission's notice. It was not timely, but it was in
10 response to the Commission's notice of leniency, if
11 you will. The Commission said, We are willing to be
12 lenient with those who go ahead and cure their failure
13 to file on time by the 25th. So you attempted to do
14 that. I think the evidence shows that, I don't think
15 Staff disputes that, and there's a letter in here from
16 the Staff talking about the fact that you filed that,
17 but it was incomplete. Technically, you were still in
18 violation after the 25th.

19 MR. BURKE: What made it incomplete?

20 JUDGE MOSS: Well, that I don't know.

21 Is it in here?

22 MR. BURKE: Let's not take it for a
23 fact.

24 MR. CEDARBAUM: Mr. Perkinson has
25 knowledge of that.

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1 MR. PERKINSON: In my conversations with
2 financial services, is that the report was slashed,
3 had like a slash mark on it. I didn't actually see
4 the report myself, the incomplete report. I
5 don't process the completeness of the reports.

6 MR. BURKE: The report had a slash like
7 over the credit card, not applicable, because it
8 wasn't applicable, and I included a check with it.
9 The report also had the certification filled out. The
10 report had what information I had, and this was the
11 company information, and I said same as last year.
12 Isn't that good?

13 JUDGE MOSS: That's not very responsive,
14 Mr. Burke.

15 MR. BURKE: It's the same as last year.

16 JUDGE MOSS: Is that the report there?

17 MR. BURKE: It hasn't changed.

18 This is it.

19 JUDGE MOSS: Why don't you just let me
20 see it and I will let it speak for itself.

21 MR. BURKE: (Complies.)

22 JUDGE MOSS: What you say here on the
23 second page is, The data to complete this report is
24 not available at this time.

25 MR. BURKE: That's the --

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1 JUDGE MOSS: That's your certification.

2 MR. BURKE: It says -- there's a star on
3 it.

4 JUDGE MOSS: I am just reading
5 apparently what you wrote.

6 Same as last year, on Page 11-1, which is
7 simply asking for the company information. That's all
8 it is asking for, is the name of the utility, its
9 mailing address, and so on and so forth.

10 The income statement also says, Approximately
11 the same as last year. The customer account summary
12 says, Same as last year. The comparative balance
13 sheet says, Approximately the same as last year. The
14 CIAC, Contributions in Aid of Construction page, says
15 None. That might actually be considered to be
16 responsive.

17 Taking an objective look at this, I cannot
18 other than conclude or find that it is woefully
19 incomplete, Mr. Burke. It did not ask you for
20 anything that would have been onerous to provide.
21 Perhaps some of the data was unavailable, as you
22 indicate here. You certainly had the option to
23 request an extension of time to provide that data if
24 you wanted to. There's definitely a violation here,
25 in terms of you not provide an adequate annual

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1 statement.

2 You have been in business for a while. I know
3 back in 2007, I believe it was, you failed to file on
4 time and were penalized by \$100. I was involved in
5 that matter at some stage of the game. But during
6 other years, 2008, 2009, 2010, and so forth, you
7 apparently have managed to comply with this without
8 undue difficulty, because nobody has penalized you
9 during all of those periods.

10 What we try to do as a commission is get
11 everybody to comply with our requirements. If
12 somebody comes to us and says, well, I don't have the
13 data or whatnot, we can offer extensions of time, I
14 know that's done, and this sort of thing.

15 You choose to be a water company. If you meet
16 the jurisdictional threshold, we have no choice but to
17 regulate you. We don't just reach out and say we want
18 to regulate you, it's what the statute -- legislature
19 told us. If a water company has X revenues, you
20 must -- you, UTC, must regulate them. We apply the
21 same rules and regulations to everybody. Part of
22 that, and it's an important part, is this annual
23 report.

24 I think there is clearly a violation here, and
25 I don't think it does you any good to claim otherwise.

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1 MR. BURKE: I'm only claiming the facts,
2 and if I had had an opportunity to talk during this
3 hearing, I would.

4 JUDGE MOSS: Well, you have had an
5 opportunity, but I will give you further opportunity.
6 What more do you want to say?

7 MR. BURKE: Yes, please do.

8 The letter to -- okay, let's just go over the
9 statements made in this thing here, if I can find it.
10 This is the letter that I am going by, because this is
11 the only one I received ahead of time. This is the
12 August 29th letter from Mr. Cedarbaum.

13 MR. CEDARBAUM: Mr. Burke, you have
14 every document that is listed in that letter you now
15 have.

16 MR. BURKE: This?

17 MR. CEDARBAUM: Yes.

18 MR. BURKE: Did I say anything different
19 than that? I said I am going by this letter because
20 this is what I received before I showed up in this
21 room, okay? These happen to be here.

22 The first thing, it said I'm aware of the law,
23 the RCWs and have gone through them. It does say that
24 I should file an annual report. It has a penalty in
25 there which is very -- a relatively small penalty

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1 based on the income. But it also has a thing that
2 says that they can increase the penalty up to \$100 a
3 day for the violation.

4 Basically, it's a criminal violation. You can
5 read what the intent was of the legislature when they
6 passed that. It makes certain proceedings involving
7 alleged violations and transportation tariffs, blah,
8 blah, blah. But UTC has interpreted that to mean that
9 they can charge \$100 fine, or a penalty, as you might
10 call it. The \$100, you have control over the \$100.
11 That could be \$100 or it could be reduced by the UTC.
12 It is not absolutely a mandatory amount that you --
13 you -- indeed your letter says, well, we'll go ahead
14 and we will reduce it if you get it in.

15 I don't know what the reason or what the
16 emergency was to be able to have this report
17 immediately filed, why you had to have it by May 1, I
18 don't know that. I presumed it was a matter of
19 income, that you needed to support your staff. But
20 whatever the reason, the -- the -- I did not file it
21 by May 1 and so would be subject to that fine. But I
22 would look on the fact that UTC can reduce that fine,
23 alter that fine, and has control of that fine in full
24 recognition of the fact of what our income was, that
25 they wouldn't fine you 30 percent or 50 percent of

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1 what your annual income is, unless the UTC wanted to
2 shut down and bankrupt the water company, in which
3 case they could haul water to all the customers. So
4 they would have to be somewhat reasonable in that.
5 And they might even hark back to the original RCW that
6 basically lays out what the fine is as a percentage of
7 your annual income, but they didn't do that. They
8 supplied a 30 -- a 50 -- over 50 percent, almost a
9 60 percent fine.

10 The letter that I received on -- let's see, in
11 his letter he states that --

12 JUDGE MOSS: When you say "his letter,"
13 you need to identify the letter a little more
14 specifically.

15 MR. BURKE: Okay. Robert Cedarbaum's
16 letter.

17 JUDGE MOSS: Dated?

18 MR. BURKE: Dated August 29th.

19 JUDGE MOSS: Okay.

20 MR. BURKE: He says, The report -- the
21 report was incomplete and remained overdue. It
22 doesn't say that on the letter that I received from
23 Utilities and Transportation. What the letter states
24 is, it says, However, your report remains incomplete.
25 It doesn't explain why it remains incomplete. It

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1 says, Please resubmit your documents when complete
2 data is available. Again, there is no specified time.
3 It says when you get the complete data available, then
4 you can resubmit it. I interpreted that to be
5 primarily the data relative to what the accountant
6 provided me. It does not say that it was overdue.
7 You know, it's again a distortion of the facts.

8 So I made every attempt to respond and to file
9 a report based on what I had available. I don't
10 know -- I didn't have the slightest idea of what the
11 UTC thought I was doing purposely not a filing a
12 report, sitting around watching TV or doing something
13 else. If I could have filed it on time, I would have
14 filed it on time. It is my full intent to do so. I
15 didn't have the accounting records, and that's what I
16 needed to do.

17 The -- I don't know. You know, you may say
18 that this form is easy to fill out, but it has a
19 comparative balance sheet that has to be filled out in
20 accordance with the accounting requirements. I don't
21 know if you have -- any of you have looked at the
22 accounting requirements of a water system. I have the
23 table of contents here. It's a 120-page document that
24 you have to meet. I would just as soon have my
25 accountant do it, rather than I.

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1 So the second part of it is that the -- when
2 they asked me to refile it, I did not get any
3 additional forms, so I wrote a letter requesting the
4 forms, which I did receive in the mail from UTC
5 recently, and I intend to file that report.

6 JUDGE MOSS: Does that complete your
7 statement?

8 MR. BURKE: That completes it.

9 JUDGE MOSS: Mr. Cedarbaum, do you have
10 anything?

11 MR. CEDARBAUM: Just a couple points,
12 Your Honor.

13 First of all, with respect to the letter from
14 the Commission not specifically stating that the
15 report was overdue. The letter did state that it was
16 incomplete. It had to have been overdue if it was
17 incomplete. It's one and the same thing.

18 Second of all, with respect to the
19 Commission's authority to issue penalty assessments,
20 the law is clear under 80.04.405. The Commission can
21 issue a penalty assessment of \$100. Not up to \$100,
22 but up to \$100 for each violation of the rule. Every
23 day of the continuing violation is a separate
24 violation. Also, under 80.04.380 the Commission could
25 have issued a penalty of up to \$1,000 per violation.

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1 The Commission chose not to do that and go under the
2 \$100 penalty, and then offered Mr. Burke the
3 opportunity to have his penalty reduced by 75 percent,
4 from \$100 to \$25 per day. I don't think there is any
5 question that the Commission was lenient here.

6 MR. BURKE: RCW 81.04.405 states, "The
7 commission may, upon written application therefor,
8 received within fifteen days, remit or mitigate any
9 penalty provided for in this section or discontinue
10 any prosecution to recover the same upon such terms as
11 it in its discretion shall deem proper and shall have
12 authority to ascertain the facts upon" -- blah, blah,
13 blah.

14 JUDGE MOSS: And that's what we are here
15 for, Mr. Burke.

16 MR. CEDARBAUM: That's what is happening
17 today.

18 MR. BURKE: This is a negotiation?

19 MR. CEDARBAUM: No. No, it's not.

20 MR. BURKE: I will admit that I failed
21 in getting an extension and consequently missed the
22 deadline on May the 1st. I don't believe that that
23 failing, that failing due to extenuating
24 circumstances, deserves a penalty anywhere near what
25 the Utilities and Tran -- I view this -- I view this

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1 as bureaucracy run amok in the greatest extent
2 possibly. It is -- it is almost criminal behavior.

3 Somebody makes a mistake, somebody fails and
4 you destroy the company. That is what it's all about.
5 You can have all the RCWs and -- obviously, Utilities
6 and Transportation went to the state legislature and
7 said we need this to control our environment or
8 control the utilities under our control. You talked
9 to the state legislature into passing it. You can do
10 that continuously. Because you have that in your
11 power doesn't make it right. Because you can charge
12 \$100 a day doesn't make it right. To even threaten
13 that doesn't make it right.

14 Now, if you are dealing with a big company,
15 maybe \$100 a day is nothing, but to a small company
16 that has an income of \$3,000 a year, it's a lot. So
17 you do what you want to do. I'm here because I want
18 to point out exactly how I feel about this behavior.
19 I will continue to do so as a citizen of this country,
20 and I will oppose bureaucracy acting in this manner.

21 JUDGE MOSS: All right, Mr. Burke, if
22 that completes your statement, I will just say to you
23 that while you are certainly entitled to your opinion,
24 I am equally certain that there is no one in this room
25 who agrees with what you have said.

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1 The Commission has, up until this point in
2 time, I think made an effort to work with you and give
3 you the assistance that you need to conduct your
4 business and to avoid the consequences of the maximum
5 penalty that could be assessed against you. And you
6 heard what Mr. Cedarbaum read there, he quoted from
7 the statute. The statute doesn't really -- the \$100
8 penalty statute doesn't provide us discretion, the
9 \$1,000 penalty statute does.

10 Even so, I must note for this record that the
11 Commission's staff, in conducting this process this
12 year, did not assess the maximum penalty, potential
13 maximum penalty against anybody, including you. The
14 maximum penalty in my reading of the law is \$100 per
15 day. It doesn't say business day, it says calendar
16 day. You are subject to penalties quite a bit higher
17 than what you have been assessed. Indeed, since you
18 still have not filed your report to this day, you
19 remain subject to penalties of \$100 a day. I don't
20 know what the outside number would be, but it probably
21 exceeds by three or four times the annual income of
22 your company.

23 MR. BURKE: That's not what the letter
24 says.

25 JUDGE MOSS: Mr. Burke, please.

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1 MR. BURKE: Okay.

2 JUDGE MOSS: Now, what I'm prepared to
3 do is this, considering all the facts that I have
4 heard and seen in this record, and I am particularly
5 influenced by the letter of May 25th from Ms. Andrews
6 that asked you to resubmit your documents when
7 complete data is available. That is a bit vague and
8 seems to allow you a fair amount of latitude in terms
9 of timing. I would not venture to suggest that the
10 Commission should reopen this matter and assess some
11 huge penalty against you.

12 I also am focused on the point that you did
13 respond to the notice of May 15th, that was sent by
14 the executive secretary to all companies who were
15 untimely in their filing, informing them that if they
16 filed by the 25th, the Commission would
17 administratively mitigate the penalty to \$25 a day for
18 whatever the subject number of days was. Memory
19 serves, there were 21 business days in that time
20 frame.

21 In any event, what I am prepared to do today
22 is this: I will suspend your penalty, except to the
23 extent of a \$25 per day penalty for the number of
24 business days from May 1 to May 25th. I don't know
25 what that number is off the top of my head. I suspect

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1 it's a few hundred dollars. Maybe somebody can tell
2 me that number, so we can tell Mr. Burke what he is
3 going to face. However, I am not going to mitigate
4 the penalty. I am going to suspend the balance of the
5 penalty. I am going to suspend it subject to the
6 conditions that Staff has asked you to acknowledge in
7 Mr. Perkinson's declaration.

8 It's clear that you are in violation, and I
9 heard you acknowledge that several times. You couch
10 your words fairly closely. Nevertheless, it's clear
11 that you were late. I will condition the suspension
12 on you paying the penalty included in the order that I
13 am going to write within ten days following the final
14 Commission orders. The final Commission order is not
15 my order, I write what's called an initial order. You
16 may file a petition to have that order reviewed by the
17 full Commission and then they will issue an order.
18 Staff may not like what I do here today. They could
19 file a petition for review and ask the Commission to
20 make some different -- to reach some different result
21 in this matter. Or nobody may file anything, nobody
22 may request review, and after a passage of a certain
23 period of time, which escapes me at the moment, my
24 order will become final by operation of law.

25 When that occurs, you will need to pay the

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1 penalty within ten days and the remainder will be
2 suspended, as I indicated. If you -- you also will
3 need to file your completed annual report.

4 Can you do that, or do you have the
5 information now?

6 MR. BURKE: I have the information.

7 JUDGE MOSS: All right.

8 MR. BURKE: My accountant has the
9 information. I can get the comparative balance sheet
10 information now.

11 JUDGE MOSS: Great. So you, working
12 with your accountant, can get that annual report to us
13 in ten days, ten business days?

14 MR. BURKE: Yes.

15 JUDGE MOSS: Okay, fine. We will
16 require that as a condition of the suspension. Of
17 course, you remain under your obligation, as Mr. Ward
18 let us know. I asked him the question, and he
19 answered that you will be required to file a report in
20 2013 for the period during 2012, when you operated as
21 a regulated utility. Even if you are removed from
22 regulation, you will have that obligation. You will
23 need to file that annual report on time.

24 MR. BURKE: I will file that annual
25 report within ten days of the UTC, and I will change

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1 the 2011, 2012, and I will use those forms.

2 JUDGE MOSS: Okay, great. So those will
3 be the conditions that I will impose on the
4 suspension. You need to understand that if you fail
5 to meet any of these conditions, then that penalty,
6 the full amount of that \$2100 penalty, will become due
7 and payable with no further action by anybody. If you
8 will, that's sort of the ax hanging out there, you
9 know, to get compliance.

10 We have two goals in these penalty assessment
11 matters. The primary goal, the dominant goal is to
12 gain compliance. That's what we are trying to do. We
13 want people to do what the law says they have to do.
14 We regulate in the public interest, what the
15 legislature defines as the being in the public
16 interest. That's our main goal. That's why I am
17 willing to suspend most of your penalty and leave a
18 small part there to satisfy the second purpose of
19 penalty assessments, which is to punish those who do
20 not obey the law.

21 You know, this happens in life. Sometimes we
22 forget to get our tabs renewed on time and the police
23 officer stops us and we get a ticket and we get a big
24 fine. I have personally had that experience this
25 year. These things happen, they are regrettable, but

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1 there you go. We have to obey the law, even if we are
2 well intended and we somehow fail because we were
3 inattentive, as I was for example, we still end up
4 having to pay a fine.

5 That's what I am prepared to do. I will write
6 an order to that effect.

7 Did anybody do that calculation, by the way?

8 (Discussion off the record.)

9 JUDGE MOSS: So your penalty will be
10 \$400. That's what you will have to pay, okay?

11 MR. BURKE: Uh-huh.

12 JUDGE MOSS: All right. Anything
13 further?

14 MR. CEDARBAUM: No.

15 JUDGE MOSS: Thank you all very much. I
16 appreciate you being here today. We will be off the
17 record.

18 (Proceeding concluded 2:11 p.m.)

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3 STATE OF WASHINGTON

4 COUNTY OF KING

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I, Sherrilyn Smith, a Certified

7 Shorthand Reporter in and for the State of Washington,

8 do hereby certify that the foregoing transcript of the

9 Brief Adjudicative Proceeding, is true and accurate to

10 the best of my knowledge, skill and ability.

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SHERRILYN SMITH

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