

WUTC v. Cascadia Water, LLC

Docket No. UW-240151 - Vol. I

August 21, 2024



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BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND)
TRANSPORTATION COMMISSION,)
)
Complainant,)
)
vs.) DOCKET NO. UW-240151
)
CASCADIA WATER, LLC,)
)
Respondent.)
) PAGES 1-45

PREHEARING CONFERENCE - VOL. I
August 21, 2024
BEFORE ADMINISTRATIVE LAW JUDGE M. HAYLEY CALLAHAN

Washington Utilities and Transportation Commission
621 Woodland Square Loop SE
Lacey, Washington 98504

TRANSCRIBED BY: ELIZABETH PATTERSON HARVEY, WA CCR 2731

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August 21, 2024

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4 JUDGE CALLAHAN: Good morning. We are here
5 today for a prehearing conference in Docket UW-240151,
6 which is captioned Washington Utilities and
7 Transportation Commission versus Cascadia Water, LLC.

8 My name is Hayley Callahan. I am an
9 administrative law judge with the commission, and I will
10 be presiding in this matter.

11 Let's start by taking appearances and
12 addressing the petition for intervention. Let's begin
13 with Cascadia.

14 ATTORNEY ANDERSON Good morning, Judge
15 Callahan. My name is Pam Anderson. I'm with the law
16 firm of Perkins Coie. I represent the petitioner,
17 Cascade [sic] Water, LLC.

18 With me in this virtual prehearing conference
19 is Byron Starkey, also an attorney with Perkins Coie; and
20 Eric Nelson, inhouse counsel for Cascade Water and NW
21 Natural.

22 We also have a number of Cascadia Water
23 employees joining the prehearing conference. We're not
24 going to add their names to the record, but we did want
25 you to know that there is a group, including the general

1 (Pages 1 to 4)

<p style="text-align: right;">Page 5</p> <p>1 manager, the rates and regulatory manager, the director 2 of accounting and finance, the office manager, and the 3 regional manager for the Pacific Northwest. In addition, 4 the vice president of rates and regulatory affairs for NW 5 Natural, the parent company of Cascadia Water, is joining 6 the prehearing conference. 7 Thank you. 8 JUDGE CALLAHAN: Ms. Anderson, did you say 9 that a representative from NW Natural is also present? 10 ATTORNEY ANDERSON: That's Eric Nelson. He 11 is inhouse counsel for Cascadia Water and NW Natural, 12 which is the parent company of Cascadia Water. 13 JUDGE CALLAHAN: I understand that. I just 14 want to make sure, does he appear to be a representative 15 for the party because he's the parent company's counsel, 16 or does he appear to be just an observer? 17 ATTORNEY NELSON: Your Honor, we have 18 retained outside counsel to represent Cascadia Water in 19 this matter. I am acting as internal counsel on behalf 20 of the utility and its affiliates. 21 JUDGE CALLAHAN: I still am not sure. So are 22 you a representative, or are you an observer, because you 23 retained outside counsel to represent the company, so I 24 understand your role. I just want to clarify, though, 25 what is your role here?</p>	<p style="text-align: right;">Page 7</p> <p>1 Bennett, Kent Hanson, Rick Smith, and Judy Endejan. 2 So I would like to turn the attention to 3 Ms. Endejan. 4 ATTORNEY ENDEJAN: Yes, good morning, your 5 Honor. I had -- 6 JUDGE CALLAHAN: Good morning. Yes, I just 7 want to clarify something with you, if I may. 8 So you previously filed a notice of 9 appearance with the commission on April 16, 2024, as the 10 counsel for this Advocates group. 11 You also indicated in the intervention 12 petition that you have withdrawn from the representation; 13 however, I do not see you filed a motion to withdraw. 14 At this juncture, do you want to orally move 15 for a motion to withdraw your representation as the 16 counsel for Water Consumer Advocates? 17 ATTORNEY ENDEJAN: Good morning, your Honor. 18 Yes, what is our intention is that I will file a notice 19 of withdrawal as a formal representative of the 20 Advocates, and in that place will be Kent Hanson and 21 Steve Todd as stated in the petition for intervention. 22 So I am here at this prehearing conference 23 solely for the purpose of trying to address your 24 question. I don't blame you that you're probably 25 confused about who's on first. So that's what our</p>
<p style="text-align: right;">Page 6</p> <p>1 ATTORNEY NELSON: Yes. So I would say that I 2 am an observer. 3 JUDGE CALLAHAN: Thank you. 4 ATTORNEY NELSON: And it will be outside 5 counsel that will be representing us at this prehearing 6 conference. 7 JUDGE CALLAHAN: Noted. Thank you. 8 ATTORNEY NELSON: Thank you. 9 JUDGE CALLAHAN: All right. Let's go to 10 staff. Ms. Gafken? 11 ATTORNEY GAFKEN: Good morning, Judge 12 Callahan. My name is Lisa Gafken. I'm an assistant 13 attorney general appearing on behalf of commission staff. 14 JUDGE CALLAHAN: Thank you. 15 Let's go to public counsel. Mr. O'Neill? 16 ATTORNEY ONEILL: Good morning, your Honor. 17 Tad Robinson O'Neill. I'm also an assistant attorney 18 general appearing on behalf of public counsel. 19 JUDGE CALLAHAN: Okay. Thank you. 20 So that brings us to the petition for 21 intervention. So on July 9, 2024, Water Consumer 22 Advocates of Washington filed a petition to intervene. 23 The individuals that represent the Water Consumer 24 Advocates of Washington named on the petition were 25 Stephen L. Todd, Vicki Colburn, Dr. Blaine Gilles, Dave</p>	<p style="text-align: right;">Page 8</p> <p>1 intention is. 2 JUDGE CALLAHAN: Noted. So your motion to 3 withdraw is granted. 4 Are there any petitions for intervention 5 other than the one that has been filed in writing? 6 Hearing none, let's proceed. 7 Okay. There is an objection filed by the 8 company's counsels. The intervenor filed a reply to the 9 company's response dated August 20, 2024. That was 10 yesterday. 11 Since the intervenor did not file a motion 12 for leave to reply to that response as required by WAC 13 480-07-3705, the commission will not consider that reply. 14 The commission evaluates petitions to 15 intervene on the standard of whether the intervenor has a 16 substantial interest in the proceeding or whether the 17 intervenor will be in the public interest. 18 I have reviewed the intervenor's petition, 19 and I found that Water Consumer Advocates may provide 20 valuable input towards the completion of the record of 21 this matter. Therefore, the petition to intervene is 22 granted, subject to the condition that Water Consumer 23 Advocates will not expand the issues of this proceeding; 24 i.e., will not attempt to expand the issues beyond those 25 that are identified in the initial filing dated April 19,</p>

<p style="text-align: right;">Page 9</p> <p>1 2024, and the complaint dated June 28, 2024. 2 Okay. This instruction will be in writing in 3 the prehearing conference order. Because there are some 4 folks I see that they might not be familiar with these 5 proceedings, I just want to let them know the background. 6 Okay? 7 So the next topic -- yes? I hear somebody 8 trying to say something? No? Okay. 9 ATTORNEY GAFKEN: Ms. Anderson, go ahead. 10 JUDGE CALLAHAN: Ms. Gafken, go ahead, 11 please. 12 ATTORNEY GAFKEN: Ms. Anderson came off of 13 mute. I do want to address the petition for intervention 14 as well. But I want to cede first to Ms. Anderson, and 15 then I'll go, if that's okay with you. 16 JUDGE CALLAHAN: Yes. Ms. Anderson? 17 ATTORNEY GAFKEN: Thank you, your Honor. I 18 did understand that you were putting conditions on the 19 intervention by the consumers. 20 I'm not going to reiterate everything that 21 was in our document because I understand that you have 22 read it, but Cascadia Water has a significant concern 23 that it is not clear who the Water Advocates actually 24 represent. They claim that they're a group that -- it's 25 undefined, and it's not clear under what authority the,</p>	<p style="text-align: right;">Page 11</p> <p>1 So let's hear from Ms. Gafken. 2 ATTORNEY GAFKEN: Thank you. And I do 3 understand the ruling. But I did want to state 4 commission staff's thoughts and concerns about the 5 petition for intervention. 6 Staff does not object to the customer's 7 petition for intervention. But we do share many of the 8 concerns articulated in Cascadia's response. 9 Our lack of objection is primarily based on 10 the idea that including more voices and perspectives 11 usually derives better outcomes. 12 And frankly, this group of customers are 13 particularly insistent in its criticism in the 14 commission's process, making it perhaps reasonable that 15 they participate in the process with all of the rights 16 and responsibilities of a party so they witness the 17 evidence-based decision making that occurs here at the 18 commission. 19 Admittedly, this does not necessarily meet 20 the requirements for intervention under WAC 480-07-355, 21 but is rather a more philosophical approach. 22 JUDGE CALLAHAN: Okay. 23 ATTORNEY GAFKEN: I want to get on the 24 record kind of the three areas of staff's concerns. And 25 some of them are raised by the prehearing draft outline</p>
<p style="text-align: right;">Page 10</p> <p>1 quote, executive committee or representatives actually 2 represent this undefined group of customers. 3 And we had asked for some guardrails or some 4 conditions that would require the advocates to identify 5 the customers that they're representing. 6 Typically the commission has allowed certain 7 501(c) organizations who have a unique interest to 8 intervene. That doesn't appear to be the case here. 9 There also appears to be individuals who are 10 not Cascadia Water customers, including the president of 11 a water system that receives wholesale service from 12 Cascadia and has been in negotiations in the past to 13 transfer that system. 14 Your Honor and the parties need to be sure 15 that the individuals representing the group have the 16 necessary authority and legal ability to enter into 17 settlements, handle discovery, and make representations 18 to the commission. 19 Therefore, Cascadia Water would request that 20 in addition to the conditions you just listed, you 21 consider additional conditions so that we at least know 22 who this group is and the authority under which the 23 representatives claim to be representing them. Thank 24 you. 25 JUDGE CALLAHAN: Thank you.</p>	<p style="text-align: right;">Page 12</p> <p>1 that the parties requesting intervention sent on Monday. 2 I won't go over in much detail the first 3 concern, which is we're not exactly certain who is 4 represented by the customer group. I think Ms. Anderson 5 set that out very clearly. And staff does support the 6 requested guardrails and requirements because they do 7 address our concern there. 8 Our second bucket of concerns is about 9 expanding the scope of the proceeding or confusing the 10 issues. I think the requirements that you placed 11 probably address this, but I want to highlight a couple 12 of the areas that were raised in the prehearing draft 13 outline of examples where there might be an expansion or 14 confusion of the issue. 15 One example is the intersection of DOH water 16 system plans and UTC cost recovery. Water system plans 17 are similar, I think, to energy integrated resource 18 planning. While the plan may inform prudence, it doesn't 19 govern prudence. 20 Another example is water quality. The UTC is 21 the economic regulator, while the Department of Health 22 regulates water quality. 23 They also indicate that discovery will be 24 adversarial and may require motions to compel. While 25 discovery disputes are always a possibility in any</p>

<p style="text-align: right;">Page 13</p> <p>1 litigation, such disputes that rise to the level of 2 motion practice is fairly rare before the commission. 3 And it is concerning to staff that this is the assumption 4 that the customers come in with. 5 The last example that I'll highlight is that 6 they -- I'm sorry; they indicate that they will engage in 7 unusual motions practice, particularly involving 8 confidential documents and staff's role. 9 With respect to confidentiality, I know we 10 haven't talked about standard protective orders yet, but 11 there is a request for that, and staff supports issuance 12 of a standard protective order in this case. And so 13 confidentiality will be addressed through issuance of a 14 standard protective order. 15 Parties do not automatically have access to 16 confidential information when that happens; but rather, 17 parties signing the protective order will have access to 18 confidential information. The Advocates have not clearly 19 indicated whether they would sign such a confidentiality 20 agreement. 21 With respect to staff's role, the consumer 22 seeks some sort of, quote/unquote, agreement from staff 23 regarding its role in this case. This is probably my 24 biggest concern. Staff will have an opportunity to 25 engage in discovery, file testimony, and do all the</p>	<p style="text-align: right;">Page 15</p> <p>1 do so here. But staff does not believe that it should be 2 subjected to the approval of other parties or that it 3 should be required to interact in ways that go beyond 4 normal party interactions. Staff's role, similar to all 5 parties, is to present the best quality evidence to the 6 commission on which it can base its decisions. 7 My third bucket of concerns, or staff's third 8 bucket of concerns, is also about the duplication of 9 public counsel's role. Public counsel is the statutory 10 consumer advocate in Washington for matters before the 11 commission. Public counsel represents customers 12 generally. They don't represent individuals or consumer 13 groups individually in proceedings before the commission. 14 As Ms. Anderson stated, customer groups have 15 generally been required to show more than a general 16 interest in the outcome of the case. And they provided 17 numerous examples in their response that I won't repeat 18 here. 19 But I do want to add one example to that list 20 of examples, and that is CENSE, C-E-N-S-E, which is an 21 acronym for the Coalition of Eastside Neighborhoods for 22 Sensible Energy. That group intervened in Puget Sound 23 Energy's 2022 rate case, which was in Dockets UE-220066 24 and UG-220067. 25 CENSE was interested in a very specific</p>
<p style="text-align: right;">Page 14</p> <p>1 things necessary to build its response case. And staff 2 will present its findings accordingly. 3 To be clear, staff operates as a party in 4 this proceeding separate from the decision-making arm of 5 the commission, which consists of the commissioners, ALJ, 6 and advisory staff. There is an ex parte wall that 7 separates the decision-making arm of the commission from 8 all of the parties, including commission staff. 9 Staff will, as it does, apply its expertise 10 and fulfill its duty in this case. I will note that 11 staff did exactly this during the informal process before 12 the tariff was suspended, and staff will continue to do 13 this by reviewing the company's filing when it submits 14 its direct case and by developing its response case and 15 presenting it through testimony and exhibits during this 16 formal process. 17 Based on the customer's prehearing draft 18 outline, staff is concerned that it will not be afforded 19 the opportunity to develop its case if the customers are 20 dissatisfied in some way with what they perceive to be 21 deficiencies. If granted intervention, they will have 22 the opportunity to respond to staff's case just as other 23 parties will. 24 As a general matter, staff regularly 25 communicates with parties in adjudications, and we will</p>	<p style="text-align: right;">Page 16</p> <p>1 capital investment, and that was a transmission project 2 in Eastern King County. Prudence of the transmission 3 project was at issue in that 2022 rate case because Puget 4 Sound Energy was seeking cost recovery. 5 Prior to the rate case, CENSE had, for eight 6 or more years, participated in various land use 7 proceedings, PSE's integrated resource planning, and 8 other proceedings. That experience, CENSE argued, gave 9 it a degree of expertise and perspective. 10 And CENSE also indicated that it would bring 11 in at least one external expert witness to address the 12 issues. CENSE was a nonprofit organization with legal 13 representation and the ability to participate by offering 14 evidence beyond commentary. 15 Given the specificity of CENSE's interests, 16 they were granted intervention status in that rate case. 17 Here, we have a customer group whose interest 18 really is the general outcome of the case. And if the 19 commission does grant the intervention, I would recommend 20 that the commission make it non-precedential because we 21 urge the commission not to abandon its standard of 22 requiring more than commentary and more than a general 23 interest in the outcome to establish intervention, 24 because we have a public counsel in this state. 25 Staff does recognize, however, that the</p>

<p style="text-align: right;">Page 17</p> <p>1 commission may grant intervention in this case using its 2 discretion. 3 Thank you. 4 JUDGE CALLAHAN: Thank you, Ms. Gafken. 5 Now I'd like to turn to Mr. O'Neill. Would 6 you like to give your comment to the intervention 7 motion? 8 ATTORNEY ONEILL: Yes, your Honor. 9 Public counsel supports the intervention of 10 the Water Advocates in this matter. 11 In the Washington utility case against 12 PacifiCorp, Docket UE-23171, Order 8 at paragraph 327, 13 the commission wrote: Staff, public counsel, and 14 intervening parties all play a crucial role in developing 15 the record and representing various facets of the public 16 interest in commission proceedings. The conflict and 17 competition between the parties sharpens the debate and 18 develops the record on all of the issues. 19 In 1975, before public counsel existed, the 20 commission addressed whether attorney general 21 participation in a matter precluded residents from also 22 participating, and concluded that it did not. And that 23 was in Docket U-74-1, the supplemental order from March 24 31 of 1975. 25 We take from these general principles that</p>	<p style="text-align: right;">Page 19</p> <p>1 to be shipped or trucked to Kitsap County. And residents 2 of the various water systems may have differing interests 3 from each other. 4 And ultimately, public counsel's 5 representation of all consumers means that our 6 representation doesn't necessarily line up with 7 individual groups of consumers. 8 One example of that in this case is the 9 single rate, which public counsel supports. There are -- 10 and that's because we believe that in total, the public 11 will be benefited by sharing rates across multiple water 12 systems. When there are projects in one system that we 13 have to pay for now, there will be projects in another 14 system later. And overall, public counsel supports that 15 approach. This group may well not support that approach. 16 And we have different definitions of what public 17 interests are. 18 And they've articulated their -- we believe 19 that they've articulated their benefit to this process 20 sufficiently to justify intervention. 21 To the extent that there are questions about 22 which group or what group the membership participates, we 23 would welcome further clarification, but we don't know 24 that it's necessary to participate. 25 As we understand from Mr. Todd and</p>
<p style="text-align: right;">Page 18</p> <p>1 the key question is whether this group of advocates will 2 sharpen the debate and help develop the record on all the 3 issues. And we believe, or public counsel believes, that 4 they have articulated a reasonable basis to believe that 5 their participation will sharpen the debate and develop 6 the record. 7 Initially, public counsel notes that in the 8 prior rate case, Cascadia Water case, the same group of 9 advocates represented by Ms. Endejan participated 10 successfully and productively, resulting in three 11 different open meetings and a final resolution. They 12 have done so in this matter as well, and nothing about 13 their conduct has disrupted the process. 14 And I don't -- there isn't a sufficient 15 record to believe that they will not honor this 16 commission's orders or the procedures that are imposed by 17 the Administrative Procedure Act and by the regulations 18 in this matter. 19 There are significant reasons that this is 20 different than a large utility rate case where there are 21 hundreds of thousands of residents and issues involving 22 joint use of resources; the natural gas and electricity 23 is used by all of the customers. 24 Water cases involve intensely local 25 considerations. The water on Whidbey Island is not going</p>	<p style="text-align: right;">Page 20</p> <p>1 Mr. Hanson, they intend to present evidence and to 2 conduct discovery in a unified manner and then present 3 that evidence to the commission for the commission to 4 weigh those issues. Whether that comes from one 5 individual or multiple individuals, the evidence will 6 speak for itself. 7 We note that the Administrative Procedures 8 Act specifically contemplates the aggregation of 9 individuals into a single group. And that's at RCW 10 34-05-443. 11 And whether this is a loose constellation of 12 individuals or an organized group, the commission can 13 require them to participate as an organized group, submit 14 testimony as an organized group, submit to time 15 restrictions as an organized group, and we think that 16 that's probably appropriate here. 17 I am also confident in the ability of the 18 commission and the parties to focus the issues on this 19 rate case. And the example that Ms. Gafken gave, for 20 example, in the Department of Health is a different 21 regulatory body and sets water quality standards is true. 22 But the company has interjected DOH water quality 23 standards into its prudence calculations by defending 24 them, by reference to those. So it's not like all the 25 parties are immune from that kind of bleed between the</p>

<p style="text-align: right;">Page 21</p> <p>1 issues.</p> <p>2 And I have full confidence in the abilities</p> <p>3 of this -- of the ALJ and of the parties to focus on the</p> <p>4 issues at hand.</p> <p>5 With respect to motions practice, the</p> <p>6 regulations and administrative code provide for</p> <p>7 provisions for how to participate in discovery</p> <p>8 objections. I fully believe that the parties will abide</p> <p>9 by those. And if -- to the extent that they are overly</p> <p>10 burdensome, these a remedy in the response.</p> <p>11 The parties -- nothing about the conduct of</p> <p>12 the advocates to this point has indicated their inability</p> <p>13 to follow the regulations and rulings of the court.</p> <p>14 So in sum, public counsel supports the</p> <p>15 intervention. We believe that the commission should</p> <p>16 rightly narrow the issues to this rate case. And we</p> <p>17 believe that the Water Advocates have indicated their</p> <p>18 ability to participate meaningfully and sharpen the</p> <p>19 debate in this matter for a just resolution.</p> <p>20 So with that, I will pause my comments.</p> <p>21 Thank you.</p> <p>22 JUDGE CALLAHAN: Thank you, Mr. O'Neill.</p> <p>23 Now I would like to turn to the advocate</p> <p>24 group, either Mr. Todd or Mr. Hanson. Either of you can</p> <p>25 speak on behalf of your group.</p>	<p style="text-align: right;">Page 23</p> <p>1 future.</p> <p>2 In terms of our interest in the case, I think</p> <p>3 it's already been noted what those are. They go beyond a</p> <p>4 general interest.</p> <p>5 The ratepayers have been asked to, by way of</p> <p>6 the proposed tariff, to pay rates that are as much as 133</p> <p>7 percent above their current rates, a very large increase,</p> <p>8 as I understand it, compared to what's typical in these</p> <p>9 kinds of proceedings. They have a substantial interest.</p> <p>10 It's direct. It's immediate. It's not general. We're</p> <p>11 not here to try simply to, you know, make some larger</p> <p>12 general point.</p> <p>13 So in that regard, we have identified the</p> <p>14 issues in detail so that the commission knows what we</p> <p>15 think is important. And you can certainly indicate where</p> <p>16 we have gone beyond the scope of the issues.</p> <p>17 But the issues of, you know, reasonableness,</p> <p>18 fairness, justice, sufficiency, prudence, all are -- the</p> <p>19 issues we've raised all fall under the rubric of those</p> <p>20 issues. And we have not gone far afield to try to open</p> <p>21 other issues.</p> <p>22 We did note the possibility of discovery</p> <p>23 disputes. And we did that only because we saw in the</p> <p>24 practice of Cascadia of asserting comprehensive and</p> <p>25 overly broad claims of confidentiality to documents as</p>
<p style="text-align: right;">Page 22</p> <p>1 MR. HANSON: Thank you, your Honor. You</p> <p>2 know, help focus my comments, because there have been a</p> <p>3 number of issues raised. I would be happy to address any</p> <p>4 particular questions that you might have about our</p> <p>5 participation.</p> <p>6 I will say that -- well, I'd also like to</p> <p>7 apologize for filing a reply without having filed a</p> <p>8 motion. And if it would help expedite the development of</p> <p>9 the record, you know, if I could ask permission to have</p> <p>10 that reply permission entered nunc pro tunc to have that</p> <p>11 reply made part of the record, or if I could incorporate</p> <p>12 the comments in that reply as part of my comments here,</p> <p>13 that will, you know, maybe expedite some of the</p> <p>14 proceedings this morning.</p> <p>15 So we -- Mr. Todd and I are experienced</p> <p>16 litigators. We have litigated in many forums. I have</p> <p>17 litigated in the state courts -- not in Washington State,</p> <p>18 but in other state courts -- and in federal courts across</p> <p>19 the country. And I have also litigated a number of cases</p> <p>20 dealing with administrative law, although not with public</p> <p>21 utilities law.</p> <p>22 I know how these proceedings go in general;</p> <p>23 although I will confess, as indicated by the filing of</p> <p>24 our reply without permission, that I missed some of the</p> <p>25 finer detail, and I will work hard not to do that in the</p>	<p style="text-align: right;">Page 24</p> <p>1 everyday as contractor invoices, where we're trying to</p> <p>2 find out whether the costs were justified or prudent and</p> <p>3 they claim invoices are confidential, to us that was a</p> <p>4 flag. It's a flag that Cascadia was seeking to hide from</p> <p>5 us information that was critical to the proceeding. Now</p> <p>6 granted, we have not had party status. But, you know, if</p> <p>7 we -- we saw that as a warning sign, and that's why we</p> <p>8 included it as a possible issue to be addressed in this</p> <p>9 proceeding.</p> <p>10 Let's see. Oh, the -- who we are. In the</p> <p>11 Water Consumer Advocates' filing of public comments, they</p> <p>12 attached an exhibit in June to the comments filed in</p> <p>13 June. And that exhibit contains a list of many people</p> <p>14 who have contacted the Advocates group to say, We agree</p> <p>15 with you. And we -- you know, We support your comments.</p> <p>16 A lot of these people also submitted independent public</p> <p>17 comments, but not everybody. And so that's the</p> <p>18 foundation of our participation.</p> <p>19 And in terms of aggregating those kinds of</p> <p>20 comments so that they can be presented in an efficient</p> <p>21 and concise manner to the commission, you know, Advocates</p> <p>22 is an effective vehicle for that. We communicate with</p> <p>23 those people. We send out emails to those people to let</p> <p>24 them know what is going on. We ask them to respond and</p> <p>25 to give us their input on what they think should happen</p>

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1 in their best interest in this case.

2 And so we funnel all that information, and we
3 will present it through Mr. Todd and myself as seasoned
4 advocates in order to try to bring the most relevant
5 information to the commission so that it can make the
6 best decision in this case.

7 Thank you.

8 JUDGE CALLAHAN: Mr. Hanson, I have a couple
9 questions for you. So I listened to Ms. Gafken and
10 Ms. Anderson's concerns. I do share similar concerns.

11 So number one, I would like to ask you who --
12 how the Advocates are organized. Do you object to share
13 a member list?

14 MR. HANSON: We do not object to sharing a
15 list of people who have contacted us, since I've
16 indicated we've already filed that in the context of the
17 comments earlier.

18 But I would note that there is -- that the
19 rules allow the intervention of any organization,
20 regardless of how it's constituted. And we will -- I
21 acknowledge we do not have a formal organization. We
22 have not incorporated for the purposes of this proceeding
23 to create a corporation or nonprofit corporation of any
24 kind.

25 We are, however, well organized and

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1 have been involved since the first rate case that
2 Cascadia filed and are very familiar with the individuals
3 who have expressed an interest in us advocating on their
4 behalf. So that executive committee will make the
5 decision.

6 And I'd point out that that doesn't really
7 present a problem, for example, for settlement. If we --
8 if we as an organization, our executive committee
9 approves a settlement, that will be binding on the
10 organization as a party.

11 And if any individual pops up and says, Well,
12 I didn't approve that, well there's an obvious remedy to
13 that. You could have moved yourself to intervene and to
14 participate in settlement negotiations.

15 So this, you know, imaginary concern about
16 these stray people not participating in the settlement or
17 whatever is really not a real issue.

18 JUDGE CALLAHAN: Okay. Thank you.

19 So Mr. Hanson, are you willing to drop
20 some of the issues identified by Ms. Gafken?

21 MR. HANSON: I will -- oh, the issues
22 identified by Ms. Gafken?

23 JUDGE CALLAHAN: Yes. If you don't
24 remember, you don't need to give me the answer right now.
25 I just want to give you, like, a general idea what is

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1 communicating with people. And if you needed to put a
2 label on us, we are in the nature of a joint venture,
3 which is defined as any agreement between two or more
4 persons to pursue a common project. And here we are.

5 So, you know, if, you know, the alternative,
6 you know, to get the comments of all these people into
7 the commission appropriately and to allow them to present
8 evidence, not only their general comments, but more
9 specific expert testimony, including a Ph.D. economist
10 with vast experience in regulatory matters will help us
11 with the analysis, will help us focus on what's relevant
12 to this proceeding, you know. And, you know, a water
13 system operator who knows these issues can help us too.

14 What we're doing is we're taking these
15 diverse -- you know, a couple hundred people at this
16 point, more than a couple hundred people, focusing their
17 comments, and being able to present them to the
18 commission efficiently.

19 JUDGE CALLAHAN: Thank you, Mr. Hanson.

20 So who has the authority in your
21 organization, and how will decisions be made if there is
22 a settlement?

23 MR. HANSON: We have an executive committee
24 that is as we indicated in our petition for intervention.
25 We indicated all of those people. Some of those people

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1 your position.

2 MR. HANSON: Well, you know, my first
3 reaction is I will review the two documents that you said
4 at the outset of this hearing. We'll define the issues
5 in this case. And anything that is outside of those
6 issues, you know, you know, would seem to me to be
7 inappropriate for us to pursue.

8 You know, there might be something that those
9 documents fail to include, in which case I might, you
10 know, ask for leave to raise an issue.

11 But we're not going to willy-nilly just try
12 to, you know, raise a bunch of issues. It's not in our
13 interest, either as, you know, just as parties to this
14 case or in the interests of Mr. Todd or myself, who, you
15 know, are not exactly participating in this with a huge
16 bunch of staff and resources backing us up. We're trying
17 to do a very focused, pointed argument of the issues that
18 are relevant in this case.

19 JUDGE CALLAHAN: Thank you Mr. Hanson. So
20 whether the Advocates will agree to confidential
21 agreement, will your group be agreeing to that?

22 MR. HANSON: Yes. You know, I think we would
23 ask that the confidentiality agreements be -- you know,
24 that the persons able to enter into those confidentiality
25 agreements include Mr. Todd and myself; the executive

7 (Pages 25 to 28)

<p style="text-align: right;">Page 29</p> <p>1 committee, so that they have the information so that they 2 can make decisions on behalf of the organization, and, 3 you know, decide what's appropriate for the next steps 4 for Mr. Todd and myself to argue in this case; and that 5 we also be able to share it with any expert witnesses. 6 But of course, you know, my expectation is 7 these things, in my experience, normally play out is that 8 each of those individuals will sign a confidentiality 9 agreement themselves, you know, so the parties that will 10 be bound will be specified and known to all the other 11 participants in this case. 12 JUDGE CALLAHAN: Thank you, Mr. Hanson. 13 The last question I have for you is within 14 your group, who will be privy to the confidential 15 information? 16 MR. HANSON: Well, as I said, anybody who 17 signs a confidentiality agreement. And it would be the 18 executive committee -- and Mr. Todd and I play two roles: 19 We're on the executive committee, and we're the 20 designated representatives in this proceeding; and then 21 with experts, so we can share confidential information 22 with our experts so they can formulate the appropriate 23 expert opinion on their relevant issue. 24 JUDGE CALLAHAN: Thank you. 25 So I have listened to all the parties'</p>	<p style="text-align: right;">Page 31</p> <p>1 look again at some of the conditions we suggested. 2 Thank you. 3 JUDGE CALLAHAN: Thank you, Ms. Anderson. 4 I'm going to turn back for Mr. Hanson to 5 respond to Ms. Anderson's comment. Mr. Hanson? 6 MR. HANSON: Yes. The organization had a 7 name change. But even when they filed their comments, 8 the people listed on those comments in the exhibit 9 included residents of Whidbey Island, who had already 10 approached the organization and said, We agree with your 11 concerns. 12 And so we have simply done a name change. 13 You might think of it as a d/b/a, just as NW Natural, 14 Cascadia's holding company, has a d/b/a on Whidbey Island 15 doing business as a satellite management agency. 16 So, you know, the fact that we have a name 17 change does not affect in any way any of the substantive 18 issues around our participation. Again, it's an illusory 19 issue here. 20 JUDGE CALLAHAN: Thank you, Mr. Hanson. 21 I think I have heard enough, each party's 22 comment. 23 I would like to move to my next item. Okay. 24 Let's talk about the effective date. 25 So okay. So company filed a replacement page</p>
<p style="text-align: right;">Page 30</p> <p>1 concerns. I'm going to stand by my ruling to grant 2 intervention. 3 But I will give the company's conditions 4 further consideration and may include some in writing. 5 I will also enter into advisement of 6 Ms. Gafken's concerns. So let's -- 7 ATTORNEY ANDERSON Your Honor? 8 JUDGE CALLAHAN: Yes? 9 ATTORNEY ANDERSON: If I may? 10 JUDGE CALLAHAN: Yes. 11 ATTORNEY ANDERSON I don't mean to interrupt 12 you. I would just like to make one point as relates to 13 the idea of a group. 14 Mr. Hanson spoke about comments that were 15 filed. And the comments were filed by the consumer -- 16 the Water Consumer Advocates of Olympic Peninsula. And 17 the petition was filed on behalf of the Water Consumer 18 Advocates of Washington. 19 And this, as we noted in our opposition, is 20 the third iteration of the group. And that just, I 21 think, sort of puts a finer point on it's not clear who 22 this group is. And I would just like to make that point 23 so that you can understand why we have a concern. 24 And I appreciate that you're going to go 25 back, and we really are appreciative that you're going to</p>	<p style="text-align: right;">Page 32</p> <p>1 for the tariffs, put down the effective date as July 1, 2 2024, where the original tariff filing was June 1. 3 For the sake of clarification, I just wanted 4 to confirm that the effective date was July 1, 2024. Am 5 I right, Ms. Anderson? 6 ATTORNEY ANDERSON: Yes, your Honor. I 7 believe that's correct. 8 JUDGE CALLAHAN: Okay. So thank you. 9 So before the conference call today, the 10 parties provided a proposed procedural schedule. So 11 there appear to be no conflicts with regard to the days 12 in the proposed procedural schedule. 13 Do all the parties agree to the procedural 14 schedule at this point? 15 ATTORNEY GAFKEN: Judge Callahan, this is 16 Lisa Gafken for commission staff. 17 JUDGE CALLAHAN: Yes. 18 ATTORNEY GAFKEN: Staff does agree with the 19 proposed schedule. 20 I would add -- and I did run this by the 21 parties, and I heard from almost everybody. I didn't 22 hear specifically from the Consumer Advocates. But -- or 23 the Customer Advocates. 24 The one change that I would propose is with 25 respect to discovery response times. And my proposal</p>

<p style="text-align: right;">Page 33</p> <p>1 follows what is generally done in rate cases. 2 So, you know, until response testimony is filed 3 on November 20, the response time would be the standard 4 ten days, ten business days. 5 On November 20, once -- when parties file 6 their response testimony, discovery responses would 7 reduce in time to seven business days. And that would 8 remain in effect until cross answering and rebuttal 9 testimony is filed on January 10. 10 At that time, discovery responses would be 11 due in five business days. 12 My understanding is that there's general 13 agreement on that. And it's important because the 14 schedule assumes that ratcheting down of discovery 15 response times, and it really comes into play when we 16 look at the discovery cutoff deadline and the due date 17 for the cross exhibits. That really assumes that 18 five-day window. 19 JUDGE CALLAHAN: Okay. So I'm going to have 20 a recess to allow the parties to iron out these 21 procedures. There are two things I want to point out, 22 though: So one thing, there was a typo in the e-mail 23 that one of the parties sent to me that the date was 24 2026. It should be 2025, regarding some of the briefs. 25 And then just for the sake of clarification,</p>	<p style="text-align: right;">Page 35</p> <p>1 out the date. So two public comment hearing dates is not 2 a problem. We can have that, okay? 3 So I'm going to pause and mute myself right 4 now. 5 (Recess.) 6 JUDGE CALLAHAN: Will one of the parties now 7 read the procedural schedule into the record? 8 ATTORNEY GAFKEN: Judge Callahan, I've been 9 tapped to read the schedule into the record, starting 10 with the prehearing conference that's occurred today on 11 August 21, 2024. 12 The company will file its direct case on 13 September 26, 2024. 14 The parties will hold a settlement conference 15 on October 15, 2024. 16 Let me pause for just a second. I know the 17 Advocates had also raised the issue of assigning a 18 mediator. Staff would also like to make that request, 19 but after we talk about schedule. So that date, we've 20 penciled in October 15 for the settlement date. But if 21 we are granted a mediator -- not a celestial body, but a 22 mediator -- that date might change. But for now we've 23 put in October 15 as the date we're all available. 24 Going back to the list here, we have staff, 25 public counsel, and intervenor response testimony due on</p>
<p style="text-align: right;">Page 34</p> <p>1 so the briefing should be post-hearing, but not open 2 briefs or -- I don't remember a reply brief, because it 3 would not make sense to have them due after the hearing 4 day. So when you read into the record, just make sure 5 you're aware of that. 6 So I'm going to have a recess right now to 7 allow the parties to talk about a hearing schedule. 8 ATTORNEY ONEILL: Before you go, this is 9 public counsel. 10 JUDGE CALLAHAN: Yes. 11 ATTORNEY ONEILL: Can I put on the schedule 12 proposed to have two public comment hearings in January 13 of 2025? 14 JUDGE CALLAHAN: Mm-hm. 15 ATTORNEY ONEILL: Given the level of public 16 participation and interest, I don't think one is enough. 17 Are there dates available in January on the 18 commission schedule that you can give us now and we can 19 incorporate into our final request after we return? 20 JUDGE CALLAHAN: I don't have it right now 21 because I have to run by the commissioner's schedules. 22 So I would propose that you guys talk about 23 it during the break. And then I will do my piece and I 24 will find out. 25 And when we reconvene again, then we can iron</p>	<p style="text-align: right;">Page 36</p> <p>1 November 20, 2024. And at this time, discovery responses 2 will be due within seven days. 3 Prior to November 20, discovery response time 4 will be ten business days. 5 After November 20, discovery response times 6 are seven business days. 7 Next we have company rebuttal and all other 8 party cross answering. That will be due on January 10, 9 2025. And at that time, discovery will be due in five 10 business days. 11 We've requested two January public comment 12 hearings if the commission has those available. The 13 parties do agree that virtual would be beneficial, and 14 the parties are okay with having both of those occurring 15 in the evening. 16 The discovery cutoff deadline would be January 17 17, 2025. 18 Cross exhibits -- cross estimates and errata 19 would be due on January 8, 2025. 20 The evidentiary hearing would take place on 21 February 4, 2025. 22 Posthearing briefs would be due on February 23 25, 2025. 24 Reply briefs would be due on March 11, 25 2025.</p>

<p style="text-align: right;">Page 37</p> <p>1 And that is -- the suspension date is the 2 last date, which is July 1, 2025. 3 JUDGE CALLAHAN: Okay. Thank you. 4 So okay. So let's get the public comment 5 hearings TBD for now. The commissioner may not preside 6 at that -- in this proceeding, but I will confirm and 7 then get back to the parties. 8 So now, let's go to my next item. So we 9 talked about discovery, right? The parties agreed to 10 provide all parties with each data request at the time it 11 is propounded, and each data request response at the time 12 it is served on the requester. 13 That is the -- and the data request, the 14 parties are proposing that the data request response time 15 is normal ten business days, and the onset and -- five 16 business day -- okay. So the parties agree to a 17 five-business-day response time for data requests. 18 Any additional comments from the parties? 19 ATTORNEY GAFKEN: This is Lisa from staff. 20 I just wanted to highlight what you just 21 covered in terms of providing all data requests to all 22 parties and then all responses to all parties. That is a 23 unique part of our practice, and I wanted to just 24 highlight that for the intervenors. We used to file me 25 too, the me too, I want all of the discovery.</p>	<p style="text-align: right;">Page 39</p> <p>1 July 1. That means the suspension date will be May 1, 2 2025. 3 ATTORNEY ANDERSON: That's correct. Thank 4 you. May 1, 2025. 5 JUDGE CALLAHAN: So just want to put that in 6 the record. It's May 1 because of the change in the 7 effective date. 8 So now let's see. Okay. 9 So Ms. Anderson, the company has submitted a 10 claim of confidentiality letter dated April 12, 2024. So 11 do the parties request a protective order to be issued? 12 ATTORNEY ANDERSON: Yes, your Honor. We do. 13 And at this time, we -- at least the company 14 and I won't speak for the others, but we believe the 15 standard protective order would be adequate. 16 JUDGE CALLAHAN: Okay. So an order will be 17 issued granting the motion in conjunction with the 18 prehearing conference order for this matter. So I will 19 issue a protective order. 20 And just some issue I just wanted to address 21 is a standard issue regarding electronic filing and 22 electronic service. I just want to read that in the 23 record. 24 The commission requires electronic filing of 25 documents for normal filings.</p>
<p style="text-align: right;">Page 38</p> <p>1 JUDGE CALLAHAN: Right. 2 ATTORNEY GAFKEN: And the judges' discussion 3 there eliminated the necessity to do that me too DR. So 4 we will all file -- not file; we will all serve all of 5 our discovery on everybody, and all of the responses will 6 also be served on everybody. 7 JUDGE CALLAHAN: Thanks. 8 So it looks to me that discovery is agreed 9 upon with the parties. And the parties agree to provide 10 all parties with each data request at the time it is 11 propounded and each data request response at the time it 12 is served on the requester. 13 At this point, any comments from the parties 14 other than Ms. Gafken? 15 ATTORNEY ANDERSON: Your Honor, this is Pam 16 Anderson on behalf of Cascadia. I believe I may have 17 misspoken earlier, which prompted a change in the 18 procedural schedule which Ms. Gafken read into the 19 record. 20 It was my understanding that the parties had 21 agreed that May 1 would be the suspension date. And I 22 think I misunderstood your earlier question. 23 JUDGE CALLAHAN: May 1 suspension date, 24 that's my understanding as well because the original 25 filing date was June 1. And then there was a change to</p>	<p style="text-align: right;">Page 40</p> <p>1 Also, the commission's rules provide for 2 electronic service of documents. The commission will 3 serve the parties electronically, and the parties will 4 serve each other electronically. 5 And I already received an NOA from the Water 6 Advocates. The Water Consumer Advocates of Washington 7 filed a notice of appearance August 18, 2024, designating 8 Steve Todd and Kent Hanson as their representatives. I 9 just want to read that in the record. 10 And the (inaudible) addition of supporting 11 staff, also if anyone would like to add names and e-mail 12 addresses of other representatives or support staff who 13 should receive electronic courtesy copies of all 14 documents filed in this proceeding, please e-mail that to 15 us as well. Okay? 16 So my e-mail address is 17 Hayleycallahan@UTC.wa.gov. You all have my e-mail 18 address. 19 So is there anything else we need to address 20 today? 21 Hearing none -- 22 ATTORNEY GAFKEN: Staff has one -- 23 JUDGE CALLAHAN: Yes, Ms. Gafken. 24 ATTORNEY GAFKEN: Sorry. Staff has one thing 25 that it would like to request.</p>

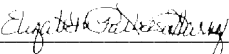
<p style="text-align: right;">Page 41</p> <p>1 JUDGE CALLAHAN: Please.</p> <p>2 ATTORNEY GAFKEN: Staff would like to request</p> <p>3 mediation.</p> <p>4 At the June 27, 2024, open meeting,</p> <p>5 Commissioner Rendahl mentioned a mediation as a</p> <p>6 possibility to resolving this case. WAC 480-07-710</p> <p>7 addresses mediation in commission dockets.</p> <p>8 The parties have engaged in three informal</p> <p>9 settlement conferences since June 27. And prior to that,</p> <p>10 staff held three informal informational sessions with</p> <p>11 customers, including members of the intervenors, to</p> <p>12 discuss this case.</p> <p>13 These interactions have indicated that a</p> <p>14 mediator could be useful; and in particular, staff,</p> <p>15 public counsel, and Cascadia have provided substantial</p> <p>16 information, but at times it feels like we are talking</p> <p>17 past each other in many respects. I don't assign any</p> <p>18 particular value to that. It's just I think as a group,</p> <p>19 we could use some assistance. In my experience, a</p> <p>20 mediator can break through some of the logjams that may</p> <p>21 exist among the parties.</p> <p>22 Staff requests that the commission assign a</p> <p>23 qualified employee to serve as the mediator pursuant to</p> <p>24 WAC 480-07-710(3). This would be preferable to hiring an</p> <p>25 outside mediator to serve as a mediator, which would</p>	<p style="text-align: right;">Page 43</p> <p>1 participation of a judicial officer is very helpful. And</p> <p>2 that's what I would request in this case.</p> <p>3 JUDGE CALLAHAN: Okay. So thank you,</p> <p>4 Mr. Hanson.</p> <p>5 I did not hear from Ms. Anderson, because</p> <p>6 multiple parties were talking. Do you have any</p> <p>7 objection, Ms. Anderson?</p> <p>8 ATTORNEY ANDERSON: Your Honor, Cascadia</p> <p>9 Water does not object to Ms. Gafken's recommendation.</p> <p>10 JUDGE CALLAHAN: Okay. So is there any</p> <p>11 objection to assigning a UTC employee to mediate, not</p> <p>12 necessarily an ALJ, just a UTC employee to mediate?</p> <p>13 Is there any objection right now?</p> <p>14 ATTORNEY ONEILL: None from public counsel.</p> <p>15 JUDGE CALLAHAN: Hearing none. No objections</p> <p>16 -- okay. I'm sorry?</p> <p>17 MR. HANSON: No. No objection.</p> <p>18 JUDGE CALLAHAN: Okay. All right. So we</p> <p>19 don't know. It will likely be an ALJ. But we will go</p> <p>20 ahead and assign a mediator. Okay?</p> <p>21 So let's see. All right. So is there</p> <p>22 anything else before we adjourn? Now is the time to</p> <p>23 speak. Hearing none?</p> <p>24 ATTORNEY GAFKEN: Nothing further from staff.</p> <p>25 JUDGE CALLAHAN: So we will issue an order</p>
<p style="text-align: right;">Page 42</p> <p>1 increase the cost, right?</p> <p>2 So if we have an outside mediator, they would</p> <p>3 request a mediator fee, as they should. But staff is</p> <p>4 mindful that reasonable ratemaking expenses are included</p> <p>5 in rates, and staff believes that would include mediation</p> <p>6 expenses.</p> <p>7 While we see mediation as a very useful and</p> <p>8 beneficial tool here, we also want to deploy that tool in</p> <p>9 the most cost-effective way. And as a result, staff</p> <p>10 requests that a UTC employee, perhaps an administrative</p> <p>11 law judge, be assigned to mediate this matter for us or</p> <p>12 with us.</p> <p>13 JUDGE CALLAHAN: Thank you Ms. Gafken.</p> <p>14 So I would like to ask at this point if</p> <p>15 there's any objection to Ms. Gafken's comment.</p> <p>16 ATTORNEY ONEILL: Public counsel has no</p> <p>17 objection.</p> <p>18 JUDGE CALLAHAN: Ms. Anderson?</p> <p>19 ATTORNEY ANDERSON: Cascadia Water has no --</p> <p>20 we do not object.</p> <p>21 MR. HANSON: And Advocates do not object.</p> <p>22 We would request serious consideration of the</p> <p>23 mediator being an ALJ in this case. In my experience,</p> <p>24 generally, with dealing with people who have mediation</p> <p>25 experience versus one of the judicial officers, the</p>	<p style="text-align: right;">Page 44</p> <p>1 shortly containing the procedural schedule and the other</p> <p>2 guidelines for disposition of this case, as I said early</p> <p>3 on.</p> <p>4 The motion for intervention is granted</p> <p>5 subject to the conditions that are set forth at this</p> <p>6 hearing. And the concerns that were raised by Ms. Gafken</p> <p>7 and Ms. Anderson, we'll take into consideration. I might</p> <p>8 incorporate some of that into the writing in my order.</p> <p>9 We are adjourned. Thank you.</p> <p>10 (Hearing concluded at 10:37 a.m.)</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

C E R T I F I C A T E

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) ss
COUNTY OF KING)

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IN WITNESS WHEREOF, I have hereunto set my
hand this September 6, 2024.


Elizabeth Patterson Harvey, CCR 2731



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