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1 OLY ROSE, LLC, Intervenor, by RICHARD A.
2 FINNIGAN, Attorney at Law, 2405 Evergreen Park Drive,
3 SW, Suite B-1, Olympia, Washington, 98502, Telephone,
 (360) 956-7001, Fax, (360) 753-6862, E-mail,
 rickfinn@ywave.com.

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5 ALSO PRESENT: Administrative Law Judge Theodora Mace
6 Richard Russell, Complainant

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JUDGE CAILLE: Good afternoon, everyone. We're here for the -- before we go on the record this morning, I would like to introduce Theo Mace, who is on my left. She is our new Administrative Law Judge. She worked for the Michigan Public Service Commission as an Administrative Law Judge, and most recently she is from the Federal Public Defenders Office in Seattle. So we welcome her.

And to show you what a small world it is, Theo and I probably crossed paths one year at the University of Michigan. So we're very glad to have her with us.

So let's go on the record, and we're here for the first prehearing conference in Docket No. UW 011320. This is a complaint styled David and Janis Stevens et. al., versus Rosario Utilities, LLC. It's a complaint brought by 21 property owners within the service area of Rosario Utilities.

The property owners allege that Rosario Utilities, which is owned by Oly Rose, LLC, has given preferential rights to available water connections to Rosario Resort, also owned by Oly Rose.

I am Karen Caille, and I am the presiding Administrative Law Judge in this proceeding. Today is

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1 January 23rd, 2002, and we're convened in a hearing room
2 at the Commission's offices in Olympia, Washington.

3 Before I go any further, let's go off the
4 record for a moment.

5 (Brief recess.)

6 JUDGE CAILLE: Our basic agenda today will be
7 to take appearances, and then tend to petitions to
8 intervene, any motions that might come up, discussion
9 about a protective order, and the need to invoke
10 discovery -- the discovery rule, if there needs to be a
11 discussion on any of the issues, and then we will talk
12 about process and procedure, and any other business.

13 So at this time I would like to ask the parties
14 to -- let's begin taking appearances, and I will ask you
15 to state your name, spelling your last name, who you
16 represent, your street address and mailing address,
17 telephone number, facsimile number, and if you have one,
18 an e-mail address.

19 And would you also please designate one
20 representative for each party. I don't think that's a
21 problem here, because I think probably we have one for
22 each.

23 So let's begin with the complainant.

24 MR. HANIS: Michael Hanis, H-a-n-i-s, appearing
25 on behalf of the complainants. With me is Richard

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1 Russell, who is a representative of the complainant
2 group, and Patrick M. Hanis, who is an associate in our
3 office, H-a-n-i-s.

4 Our address is 3900 East Valley Highway, Suite
5 203, Renton, 98055. Our phone is (425) 251-9313. Our
6 fax is (425) 251-0546. And for e-mail address, we will
7 use mmhanis@aol.com.

8 JUDGE CAILLE: For respondent.

9 MR. PORS: Good afternoon, Your Honor. My name
10 is Thomas M. Pors, P-o-r-s, law office of Thomas M.
11 Pors. Address is 700 Fifth Avenue, Suite 5600, Seattle,
12 98104. My phone number is (206) 340-4396. My fax
13 number is (206) 340-4397. And my e-mail address is
14 porslaw, p-o-r-s-l-a-w, @qwest.net.

15 Seated to my left is Chris Veer Taylor. She is
16 the manager of Rosario Utilities. She'll not be making
17 a formal appearance today, but she's attending.

18 JUDGE CAILLE: Thank you. Welcome.

19 Mr. Finnigan?

20 MR. FINNIGAN: Richard A. Finnigan, appearing
21 on behalf of Oly Rose. Finnigan, F-i-n-n-i-g-a-n. My
22 address is 2405 Evergreen Park Drive, Southwest, Suite
23 B-1, Olympia, Washington, 98502. My phone number is
24 (360) 956-7001. The fax is (360) 753-6862. And the
25 e-mail is rickfinn, r-i-c-k-f-i-n-n, @ywave, y-w-a-v-e,

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1 JUDGE CAILLE: Thank you. Let the record
2 reflect there are no other appearances.
3 I believe that we have a petition to intervene
4 that was filed by Oly Ross (sic) yesterday?
5 MR. FINNIGAN: Oly "Rose."
6 JUDGE CAILLE: Oly "Rose," thank you.
7 Do you have anything to add to your petition,
8 Mr. Finnigan?
9 MR. FINNIGAN: No, Your Honor. The petition
10 sets forth the basis of our request to intervene.
11 JUDGE CAILLE: Is there any objection to this
12 petition to intervene?
13 MR. HANIS: We have no objection, Your Honor,
14 as limited by the petition, which is to intervene only
15 on behalf of the resort element of the corporation.
16 MR. FINNIGAN: I want to make sure it's
17 understood that it's not just the resort, but also Oly
18 Rose's interest in certain undeveloped properties that
19 it owns as it relates to any -- those are essentially
20 parallel interests, and it has to do with who is
21 entitled to the ERUs, equivalent residential units, or
22 in other words, the water availability. But it relates
23 not just to the resort, but Oly Rose owns certain
24 undeveloped property that is served by the utility.
25 MR. HANIS: We're fine with that. He can

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1 appear for everybody but the utility. That would be our
2 only problem.

3 JUDGE CAILLE: All right. Then I believe that
4 the petition meets the requirements of the Commission's
5 intervention rule, and Oly Rose will be allowed to
6 intervene in this matter.

7 Are there any preliminary motions or any
8 dispositive motions this afternoon before we get to the
9 discovery rule?

10 MR. HANIS: Complainants have none.

11 MR. PORS: Respondent reserves the right to
12 bring dispositive motions, and would like room in the
13 case calendar to reflect that. But we have not yet
14 decided whether to bring a dispositive motion at this
15 time.

16 JUDGE CAILLE: Mr. Pors, I don't know whether
17 you are familiar with our rules and administrative --
18 the RCWs, but there are provisions in there for when you
19 can bring a dispositive motion. And I believe the
20 deadline is within so many days or weeks of the hearing.
21 So that's what I recall, but just so -- you might want
22 to refer to that.

23 MR. PORS: Yes. Thank you, Your Honor.

24 JUDGE CAILLE: The RCWs are -- 3405 RCW is the
25 Administrative Procedure Act. And then our Commission

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1 rules are found at WAC 488.09. And that's for
2 everyone's benefit if you haven't practiced here.

3 Okay. I think the next thing we should look at
4 for discovery, is anyone going to want to invoke the
5 discovery rule?

6 MR. HANIS: Complainants are, Your Honor.

7 JUDGE CAILLE: So I rule that the Commission's
8 discovery rule should be made available in this
9 proceeding, and the discovery process as outlined in WAC
10 480.09.480 will be available to you.

11 If there are any discovery problems in this
12 proceeding, I will be available to consider those on an
13 expedited basis, and over the telephone.

14 Now, we had a problem in a previous hearing I
15 had about discovery, and so I want to make sure that
16 everyone understands the process here at the Commission.

17 We do prefile testimony. So usually there's a
18 discovery process. And you gather information. From
19 that, you form your testimony, and that gets prefiled.
20 And the discovery process is ongoing. And I believe the
21 general rule is -- Mr. Finnigan, if you can tell me, I
22 am sure you know off the top of your head -- it's ten
23 days, isn't it?

24 MR. FINNIGAN: It's ten working days. It's the
25 only exception in the Commission's rules from calendar

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1 days. So it's ten working days.

2 JUDGE CAILLE: So ten working days from when
3 you receive a request for you to file your response to
4 that discovery request.

5 MR. FINNIGAN: And everyone should be aware
6 that there is a shorter period of time for objecting to
7 the discovery requests, but it's all pretty clearly
8 spelled out in 480.09.480.

9 JUDGE CAILLE: Does anyone have any questions
10 about discovery?

11 (No response.)

12 JUDGE CAILLE: Then do the parties believe that
13 we will need a Protective Order in this proceeding?

14 MR. FINNIGAN: If the discovery rule is
15 invoked, I think we need a protective order.

16 JUDGE CAILLE: All right. Then I assume -- Mr.
17 Finnigan, have you moved for a Protective Order?

18 MR. FINNIGAN: Yes, Your Honor.

19 JUDGE CAILLE: Is there any objection from any
20 of the parties?

21 MR. HANIS: No objection.

22 MR. PORS: No, Your Honor. The utility will
23 also move for a Protective Order.

24 JUDGE CAILLE: We have a standard Protective
25 Order, and I will have the Commission issue that. And

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1 we will get that out as quickly as possible.

2 All right. Do the parties feel there's a need
3 to discuss any issues today? It's pretty -- it seems
4 that they are pretty well laid out in the complaint, and
5 I don't have any questions. But I do like to offer the
6 parties an opportunity, if you want, to discuss
7 anything.

8 MR. HANIS: The only thing I would inquire is
9 if the intervener will be filing a formal answer, or
10 intervening on the answer that has been filed.

11 MR. FINNIGAN: I don't know. I will raise that
12 with the client. At this stage, I had not planned to
13 file an answer. Interveners normally don't file
14 answers, and just leave it at that.

15 I will take that back and check with the
16 client, but at this stage I don't have an answer.

17 JUDGE CAILLE: Okay. I think what we will do
18 is I am going to -- I think we will go off the record,
19 and I will give the parties an opportunity to discuss
20 schedules. I don't know if you have or have not had an
21 opportunity to get together, or have had any
22 discussions. But generally I like to let the parties
23 work this out amongst themselves.

24 If you have difficulty, of course, I will help
25 you. And one of the things you should consider is that

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1 this hearing will take place -- I guess it would be
2 someplace on Orcas Island. So I don't know if that
3 is -- and the other thing that I am not sure about is
4 whether we should have a public meeting.

5 MR. FINNIGAN: If I can offer my two cents, it
6 would seem to me that this is a matter between the
7 complainants and the utility and, of course, Oly Rose as
8 an intervener. It's not a great case of general
9 interest to other rate payers of the utility.

10 I will leave that to them, but my two cents is
11 normally you wouldn't have just a normal general public
12 hearing, because these are specific issues of fact as
13 opposed to a general view of whether or not service is
14 appropriate, or the rate level is appropriate. So
15 that's what I would offer.

16 MR. HANIS: The complainant would concur in
17 that Mr. Russell just whispered in my ear that there's a
18 lot of strong feeling on the island. And if we had an
19 open hearing on the island, it would easily become
20 chaos, and it's not necessary, we don't believe either,
21 for the issues here.

22 JUDGE CAILLE: In that case, let's go off the
23 record and I will give the parties about half an hour to
24 discuss scheduling, and then I will come back in.

25 When you are thinking of a schedule, please

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1 include a briefing schedule in your thoughts, as well.
2 Let's go off the record.

3 (Brief recess.)

4 JUDGE CAILLE: Let's go on the record. I am
5 going to read this schedule into the record and check
6 back with the parties to see if my recitation is right.

7 Complainant's testimony is due on March 11th.
8 The utility and intervener's testimony will be due April
9 22nd. Rebuttal testimony, May 20th. The deadline for
10 requesting a DR, May 23rd. And then the week of June
11 17th we will find four days for a hearing.

12 I am going to leave that kind of open right
13 now, just to make sure we can get a place. And that
14 will give me a little more flexibility. Opening briefs
15 will be July 12th.

16 Does that look correct, July 12? That is four
17 weeks, July 12.

18 MR. FINNIGAN: I am sorry, yes. It would be
19 the 19th.

20 JUDGE CAILLE: Oh, the 19th. Okay, July 19.
21 And then replies due on August 2nd.

22 There's one more matter that I should probably
23 bring up. Generally when it's an ALJ only case where I
24 hear the evidence, I would write an initial order and I
25 would enter -- well, we would issue that order and there

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1 would be an opportunity for the parties to, you know,
2 respond to that order. And then there is a final order
3 that the Commissioners are involved in.

4 There is a way to cut things a little shorter
5 by a couple of weeks if you just wanted this to be an
6 order, skip the initial order part of it, and go
7 directly to a final order.

8 And in the interest of time, that might be
9 something that you might want to consider. And it
10 doesn't -- the decision doesn't have to be made today.
11 So if you -- does anyone want to weigh in on that now,
12 or would you rather consider?

13 MR. FINNIGAN: Your Honor, since I haven't
14 discussed that with my client, I am not ready to discuss
15 that here today.

16 JUDGE CAILLE: All right. So I will just
17 mention that in the order as well, just to keep you --
18 keep that in your mind. All right.

19 I have a few housekeeping matters. First of
20 all, is there any other business to discuss?

21 (No response.)

22 JUDGE CAILLE: For filing, we need an original
23 plus ten copies for internal distribution at the
24 Commission. And please remember all filings must be
25 made through the Commission's secretary, either by mail

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1 to the secretary at WUTC, PO Box 47250, 1300 South
2 Evergreen Park Drive, Southwest, Olympia, Washington,
3 98504-7520, or by other means of delivery to the
4 Commission's offices at the street address I just
5 mentioned.

6 We require that filings of substance -- and
7 that would be testimony, briefs, motions, answers --
8 that you include an electronic copy on a 3.5 IBM
9 formatted high-density disk, in PBF, Adobe, or Acrobat
10 format, reflecting the pagination of your originals.
11 Also send us the text in your choice of Word 97 or
12 later, or WordPerfect 6.0 or later. And service on all
13 parties must be simultaneous with your filing.

14 Ordinarily, the Commission does not accept
15 filings by facsimile, so do not rely on that without
16 prior approval from your ALJ.

17 The Commission will be entering -- I will be
18 memorializing this prehearing conference in a prehearing
19 conference order. I will also have the Protective Order
20 prepared for the Commissioners' signature. The hearing
21 order will include requirements for witness exhibits --
22 and that reminded me of something -- witness lists, and
23 exhibit lists. And we have already talked about
24 alternative dispute resolution.

25 The thing that came to mind is that we have a

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1 prehearing conference usually a week before the hearing
2 to mark exhibits. What I would like to do is go ahead
3 and pencil in that date. We may not need it. If there
4 are not a lot of exhibits, I may be able to do this
5 without you. But normally -- is there any cross
6 exhibits that would need to come in on that date? That
7 way, going into hearing we have all the exhibits pretty
8 much in order.

9 So if we were -- would people be available on
10 June 12, say, for an afternoon prehearing conference?

11 MR. FINNIGAN: That would be in Olympia?

12 JUDGE CAILLE: Yes.

13 MR. HANIS: That works for us.

14 JUDGE CAILLE: We will add that.

15 Does that work for you, Mr. Finnigan?

16 MR. FINNIGAN: (Nods head.)

17 JUDGE CAILLE: Mr. Pors?

18 MR. PORS: Yes, it does.

19 JUDGE CAILLE: And as I said, depending on how
20 things go, we may not need that. But I would like to
21 have it scheduled just in case we need it.

22 Is there anything else to come before the
23 Commission today?

24 MR. FINNIGAN: Just a matter of clarification.

25 On a witness list you would be looking for the order of

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1 appearance?

2 JUDGE CAILLE: Yes. Yes.

3 Thank you all for coming today. And this
4 meeting is adjourned.

5 (Hearing adjourned at 4:20 p.m.)

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