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1                   BEFORE THE WASHINGTON UTILITIES AND  
2                   TRANSPORTATION COMMISSION  
3 WASHINGTON UTILITIES AND            )  
TRANSPORTATION COMMISSION,        ) DOCKET NO. UW-040366  
4                                        )  
                          Complainant,   ) Volume I  
5                                        ) Pages 1 to 9  
                          vs.                )  
6                                        )  
MARBELLO WATER COMPANY,            )  
7                                        )  
                          Respondent.     )  
8 \_\_\_\_\_ )

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10                   A hearing in the above matter was held on  
11 March 25, 2004, from 1:35 p.m to 2:10 p.m., at 1300  
12 South Evergreen Park Drive Southwest, Room 206, Olympia,  
13 Washington, before Administrative Law Judge THEODORA  
14 MACE.

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16                   The parties were present as follows:  
                          THE COMMISSION, by JONATHAN THOMPSON,  
17 Assistant Attorney General, 1400 South Evergreen Park  
Drive Southwest, Olympia, Washington 98504-0128,  
18 Telephone (360) 664-1225, Fax (360) 586-5522, E-mail  
jthompso@wutc.wa.gov.

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                          MARBELLO WATER COMPANY, by MARK NYHUS,  
20 Attorney at Law, 2405 Evergreen Park Drive Southwest,  
Suite B-1, Olympia, Washington 98502, (360) 956-7211,  
21 Fax (360) 753-6862, E-mail mnyhus@ywave.com

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Joan E. Kinn, CCR, RPR  
25 Court Reporter

0002

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

2 JUDGE MACE: Let's be on the record in the  
3 matter of Washington Utilities and Transportation  
4 Commission versus Marbello Water Company. This is  
5 Docket Number UW-040366. This is a pre-hearing  
6 conference in this case which relates to whether or not  
7 the Commission has jurisdiction over Marbello Water  
8 Company and whether or not if it does have jurisdiction  
9 Marbello's rates are reasonable, just, sufficient, fair,  
10 I think I've got all of those criteria there.

11 This pre-hearing conference is being held at  
12 the offices of the Washington Utilities and  
13 Transportation Commission in Olympia, Washington, and  
14 today's date is March 25th, 2004. My name is Theodora  
15 Mace, I'm the Administrative Law Judge who has been  
16 assigned to hold hearings in this case.

17 I would like to have the oral appearances now  
18 of counsel, and I would like a full oral appearance that  
19 would include name, who you represent, your phone, fax,  
20 and E-mail information, and I will begin with Mr. Nyhus.

21 MR. NYHUS: My name is Mark Nyhus, that's  
22 N-Y-H-U-S, I am representing the Respondent, Marbello  
23 Water Company. My address is 2405 Evergreen Park Drive  
24 Southwest, Suite B-1, Olympia, Washington 98502. My  
25 direct telephone number is (360) 956-7211, facsimile is

0003

1 (360) 753-6862, and my E-mail address is  
2 mnyhus@ywave.com.

3 JUDGE MACE: Thank you.

4 MR. THOMPSON: Jonathan Thompson, Assistant  
5 Attorney General representing the Commission Staff. My  
6 address is 1400 South Evergreen Park Drive Southwest,  
7 P.O. Box 40128, Olympia, Washington 98504. My phone  
8 number is 664-1225, and my E-mail is  
9 jthompso@wutc.wa.gov.

10 JUDGE MACE: And do you have a fax?

11 MR. THOMPSON: Oh, yeah, fax number is  
12 586-5522.

13 JUDGE MACE: Thank you.

14 I recognize the parties have a stipulation  
15 that they want to present, but we have a few preliminary  
16 matters to deal with in a pre-hearing conference of this  
17 type, and I would like to go through those first.

18 With regard to petitions to intervene, let  
19 the record show that I have received no petitions to  
20 intervene. And is there anyone here today who wishes to  
21 intervene in this proceeding?

22 I hear no response.

23 Let me ask with regard to discovery whether  
24 the parties wish to invoke the discovery rules.

25 MR. THOMPSON: Well, we hadn't discussed

0004

1 this, but I think it might be wise to do so at this time  
2 even though we wouldn't have any discovery potentially  
3 until the next phase of the proceeding, the rate phase  
4 of the proceeding.

5 JUDGE MACE: You're not obliged to conduct  
6 discovery, but if we invoke the rules, then you can do  
7 it, and the rules will cover it, so I will indicate that  
8 the discovery rules will be invoked.

9 MR. NYHUS: Your Honor, if we're going to  
10 invoke discovery rules, then I would also like to have a  
11 protective order as well, please.

12 JUDGE MACE: Very well, you have just covered  
13 the next item on the list, so I will indicate that a  
14 protective order should be entered.

15 MR. NYHUS: Thank you.

16 JUDGE MACE: In terms of issues, off the  
17 record we have talked about the main issues in the case  
18 being whether or not the Commission has jurisdiction and  
19 then the question of rates that the company would charge  
20 and whether they would be fair, just, reasonable, and  
21 sufficient. I believe that the parties have entered a  
22 stipulation that addresses the question of jurisdiction,  
23 and I would ask you now to present that stipulation, if  
24 you would. Mr. Thompson, do you want to do that?

25 MR. THOMPSON: Okay, would you like me to

0005

1 just generally describe it?

2 JUDGE MACE: Yes, please.

3 MR. THOMPSON: Okay. Well, the concept is  
4 that the parties agree, well, would stipulate to the  
5 entry of an order by the Commission requiring the  
6 company to file a tariff on or before April 1st. And  
7 the rules actually require that for the initial tariff  
8 filing of a water company, that should be accompanied by  
9 supporting financial data, but we have agreed that the  
10 company should have until April the 30th to file that  
11 accompanying information. And that the Commission order  
12 requiring the company to make these filings would be  
13 enforceable through penalties as for any public service  
14 company.

15 And then that after the company has filed the  
16 tariff and the supporting information, that Staff would  
17 have the ability to either dismiss or to go forward with  
18 a case attempting to show that the rates filed by the  
19 company are other than fair, just, reasonable, and  
20 sufficient. And that could also -- and that the Staff  
21 could also go forward in the event that the company  
22 doesn't meet its obligations under the stipulation with  
23 a I guess complaint for penalties. And I think there's  
24 another provision that the stipulation as to when,  
25 there's no stipulation basically as to when the company

0006

1 actually met the jurisdictional revenue threshold that  
2 would be binding in other proceedings.

3 JUDGE MACE: Very well, and I see that the  
4 stipulation is signed by you and by Mr. Finnigan for  
5 Marbello.

6 You know, I don't have an appearance from  
7 Mr. Finnigan in the file, I have your appearance,  
8 Mr. Nyhus. Can I add Mr. Finnigan's name to the list?

9 MR. NYHUS: You may, he's the one that signs  
10 my checks, it's okay.

11 JUDGE MACE: I will accept the stipulation of  
12 the parties at this time and reserve ruling on how the  
13 Commission will end up implementing this stipulation  
14 from its end. I'm going to project that what will  
15 happen is that with the pre-hearing conference order  
16 there will be an order requiring the company to file the  
17 tariff, but I need to counsel with both Judge Wallis and  
18 the Commissioners to make sure that that's what they  
19 want to do here.

20 I think off the record I indicated that I  
21 would like to see a schedule set just in the event that  
22 we need to go forward with an evidentiary hearing just  
23 so that we can preserve dates on the Commission's  
24 calendar, and it would be helpful to have a date by  
25 which the Commission Staff would file a motion to

0007

1 dismiss if they were going to do that. So do you need  
2 some time to talk about that? I can give you some  
3 additional time if you like, ten minutes maybe.

4 MR. THOMPSON: Or less.

5 JUDGE MACE: Or less, okay. Well, I will  
6 just go downstairs, have a glass of water, and come back  
7 up. By that time maybe you will have resolved it.

8 We're adjourned for a few minutes.

9 (Recess taken.)

10 JUDGE MACE: Let's be back on the record in  
11 Docket Number UW-040366. We have spent some time  
12 discussing scheduling in the context of the nature of  
13 the case, and after conferring with the company and  
14 Staff, it appears that the better course would be not to  
15 flesh out a full schedule of proceedings at this point.  
16 Rather the company will file its tariff and supporting  
17 documentation in accord with the order mentioned in the  
18 stipulation, and then Commission Staff will have an  
19 opportunity to file a motion to dismiss based on their  
20 review of that tariff filing.

21 But by the same token, we will set up a  
22 hearing date which will be a status conference if  
23 Staff's review shows that different rates may need to be  
24 put into effect, and that status conference date may  
25 also be a settlement hearing date depending on what

0008

1 process is involved in terms of the rates that are  
2 determined to be appropriate for the company. And so  
3 the status conference will be on one of four dates that  
4 we talked about, June 10th, 11th, 15th, or 16th. And  
5 three days before whatever date is determined according  
6 to the Commission's calendar, that will be when Staff  
7 will file its motion to dismiss if that's what it's  
8 going to do in this case.

9 I need to consult with the Commission's  
10 calendar in order to determine which of the four dates I  
11 mentioned would be the date for the status conference,  
12 and that date will appear in the pre-hearing conference  
13 order in this matter. I will also indicate in the  
14 pre-hearing conference order some information about what  
15 might be expected on the part of Staff and/or the  
16 company if there is a settlement with regard to the  
17 company's rates.

18 Let me just indicate in addition to what I  
19 have just said that with the pre-hearing conference  
20 order the parties will receive instructions with regard  
21 to documents and the filing of documents with regard to  
22 this case, and that pre-hearing conference order will  
23 indicate that nine copies of filings need to be made.  
24 That will be set forth in the pre-hearing conference  
25 order but just to give you a heads up ahead of time.



0009

1 All right, is there anything else that we  
2 need to address with regard to this matter at this time?

3 If not, then we're adjourned, thank you very  
4 much.

5 (Hearing adjourned at 2:10 p.m.)

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