

1 BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION

2 COMMISSION

3	CHEESE BARN, INC.,)	
	Complainant,)	
4	vs.)	Hearing No. UW-940269
	BURTON WATER COMPANY)	VOLUME II
5	Respondent.)	Pages 35 thru 62
6	-----)	

7 A hearing in the above matter was held on
8 July 1, 1994, at 9:30 a.m., at 1300 S. Evergreen Park
9 Drive S.W., Olympia, Washington, before Administrative
10 Law Judge Rosemary Foster.

11 The parties were present as follows:

12 ROBERT E. LUNDGAARD, Attorney at Law, 2400
13 Bristol Court S.W., Olympia, Washington 98502,
14 appearing on behalf of Complainant.

15 JAMES K. GARRISON, 12804 S.W. Ober Beach
16 Road, Vashon, Washington, 98070, representing
17 Respondent.

18 ANN RENDAHL, Assistant Attorney General,
19 1400 S. Evergreen Park Drive S.W., Olympia, Washington
20 98504, appearing on behalf of the Commission.

21 WILLIAM E. JENKINS, Attorney at Law, 9425
22 N.E. 16th, Bellevue, Washington 98004, appearing on
23 behalf of Intervenors.

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Donna M. Davis, CSR CM
Court Reporter

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

2 JUDGE FOSTER: Let's be back on the record
3 in Docket No. UW-940269. This is captioned Cheese
4 Barn, Inc., Complainant, versus Burton Water Company,
5 Respondent.

6 Today's date is July 1, 1994, and we're
7 again convened in the Commission's offices in Olympia,
8 Washington. I'm Rosemary Foster, the Administrative
9 Law Judge presiding.

10 Our first prehearing conference session in
11 this matter was held May 5, 1994. And at that time the
12 parties asked that they be allowed an opportunity to
13 have some continuing discussions about the status of
14 the case. So, that brings us up to today's date.

15 At this time I'll ask the parties to make
16 their appearances beginning with the Cheese Barn.

17 MR. LUNDGAARD: Robert E. Lundgaard,
18 Attorney, 2400 Bristol Court Southwest, Olympia,
19 Washington 98502 representing the complainant Cheese
20 Barn, Inc.

21 JUDGE FOSTER: For the Burton Water Company.

22 MR. GARRISON: James Garrison, 12804
23 Southwest Ober Beach Road, Vashon 98070.

24 JUDGE FOSTER: Thank you.

25 For the Commission.

1 MS. RENDAHL: Ann Rendahl, R-e-n-d-a-h-l,
2 representing the Washington Utilities and
3 Transportation Commission, Assistant Attorney General.
4 Address is 1400 South Evergreen Park Drive Southwest,
5 Olympia, Washington 98504.

6 JUDGE FOSTER: And for the Intervenors, the
7 Burton Water Company customers.

8 MR. JENKINS: William Jenkins, 10020A Main
9 Street, Suite 2009, Bellevue, Washington.

10 JUDGE FOSTER: We had an appearance by the
11 Department of Health by Lilya Lopez. I have since
12 received a letter from her indicating that the
13 Department of Health does not plan to pursue its
14 intervention in this matter or intend to intervene in
15 this matter.

16 Also, since the last session, hearing
17 session, I received a letter dated June 24 from the
18 Company. It was addressed to me with copies to Miss
19 Egeler of the Attorney General's staff, Mr. Jenkins,
20 Mr. Derby, and Mr. Lundgaard. I inadvertently looked
21 at the letter, not realizing that this was going to be
22 a proposed settlement. And because this might be
23 construed as possible ex parte communication, I would
24 ask the parties to waive any objection they might have
25 to my having looked at the letter.

1 To tell you the truth, when I glanced at it,
2 I looked on the second page and noticed there were some
3 terms or offer of settlement. But I can't even tell
4 you today what those specific terms were.

5 But I don't want to have any problems in the
6 future with any possible prejudice or my knowledge of
7 any of the terms of this settlement proposal, and I
8 would ask that anyone who has any objections to my
9 continuing to hear the case state them at this point.

10 The record should indicate that there is no
11 response.

12 So, I will assume, then, that you have
13 waived whatever objections you might have to my looking
14 at this letter from the Burton Water Company.

15 Can I ask someone here, then, to sort of
16 bring me or bring us up to date on the record about
17 where things stand now as far as resolving the
18 complaint or resolving this proceeding is concerned.

19 Mr. Lundgaard, maybe you have been in on it
20 as long as anybody. Can you tell us where things stand
21 at this time?

22 MR. LUNDGAARD: I probably know less about
23 where we are now because I have not received any
24 communications from the Attorney General's office or
25 the Staff as to the charges that would be made, fees

1 or connection fees and other fees, that would be made
2 for the thirty connections that we're talking about.
3 And I think that's probably the critical item.

4 As far as I know, there has not been any
5 agreement as to who the thirty participants are or the
6 thirty eligible connection people.

7 So, I guess I would have to defer to the
8 Attorney General's office or the water company as to
9 whether there is any agreement on the charges. We have
10 not heard what those charges would be.

11 JUDGE FOSTER: As I recall last time, the
12 company was authorized to provide thirty additional
13 hook-ups. Is that your understanding, Mr. Garrison?

14 MR. GARRISON: Yes.

15 JUDGE FOSTER: And that you were going to go
16 down the list of persons who had at one point or
17 another indicated interest in receiving service and
18 find out who wanted service and who was going to pass?

19 MR. GARRISON: That's correct.

20 JUDGE FOSTER: That was part of the reason
21 for continuing the prehearing conference. Can you tell
22 us if that has been done?

23 MR. GARRISON: That was done. The letter
24 was sent to 42 customers of the 47 on the list, and we
25 have their responses, and a copy of that letter, I

1 believe, was sent to the UTC. It was contained in
2 that packet that we weren't supposed to send you.

3 JUDGE FOSTER: Is the date on the letter
4 June 13?

5 MR. GARRISON: The date on the letter that
6 we sent out to the customers requesting their response?

7 JUDGE FOSTER: Yes.

8 MS. RENDAHL: I have a date of May 25 on
9 that letter.

10 MR. JENKINS: I think she is talking about
11 the June 24 letter.

12 JUDGE FOSTER: I see it. It starts out:
13 "To the applicant for water service No. blank."

14 MR. GARRISON: That's right. May 25.

15 JUDGE FOSTER: So, you sent those out and
16 identified your thirty customers?

17 MR. GARRISON: From the responses we
18 received, we prepared a list that has either an A or P
19 beside it -- that's also in your packet, I believe --
20 of customers who wish to apply for service and those
21 who pass.

22 JUDGE FOSTER: So, the A in front of the
23 waiting list that's dated January 10, 1994, if they
24 have an A in front of it, that means they want to be --

25 MR. GARRISON: -- connected.

1 JUDGE FOSTER: -- connected. And a P would
2 be pass?

3 MR. GARRISON: Right.

4 JUDGE FOSTER: That's how you determined
5 your thirty hook-ups?

6 MR. GARRISON: That's right.

7 JUDGE FOSTER: Do there remain others who
8 want service who haven't been connected at this time?

9 MR. GARRISON: Yes. The thirty connections
10 cover the first thirty-seven people on the list.
11 However, from 38 down to 47 are still outstanding
12 requests for service which we can't meet at this time.

13 JUDGE FOSTER: I guess my question is where
14 things stand now and what the plan is as far as
15 completing the prehearing conference?

16 Miss Rendahl, do you have any suggestions?

17 MR. JENKINS: I didn't hear your question,
18 ma'am.

19 JUDGE FOSTER: I want to know where we stand
20 now, what the issues are that need to be resolved by
21 the parties, and basically what the order of business
22 is going to be at the prehearing conference today.

23 Do you have any comments?

24 MR. JENKINS: I have a comment maybe to see
25 if there is some slight modification to what Jim just

1 said.

2 There may be a couple of questions or
3 corrections to that list in looking specifically at No.
4 19. I don't know how you pronounce that, Wojtynek,
5 but I think that is probably the name of -- I think No.
6 19 on the list which shows Wojtynek, Jan, 85 Newport
7 Beach Block 6, I think that may be in the ownership of
8 a Catherine Calvery.

9 MR. GARRISON: The letter was sent to
10 Calvery. I think he is correct.

11 MR. JENKINS: And also No. 35, instead of
12 being Olive Siem should be in the name of Kristi Caldoro
13 and her brothers. Olive Siem was their mother. She
14 gave it to Kristi and her brother. I don't have her
15 brother's name.

16 MR. LUNDGAARD: Could you speak up a little
17 louder? We can't hear you over here.

18 MR. JENKINS: Did you hear the first one --
19 I'll just speak up louder. Sorry about that.

20 (Discussion held off the record.)

21 MR. JENKINS: Backing up, No. 19 now is --
22 should be in the name of Catherine Calvery.
23 C-a-l-v-e-r-y I believe is the correct spelling. And
24 No. 35, instead of being Olive Siem should be in the
25 name of Kristi Caldoro and also her brother, whose name

1 I don't have.

2 And then I would wonder if I would maybe ask
3 Burton Water if they got any additional applications.
4 I see this list just went down through No. 42 on the
5 list. I wonder, since this was sent out on June 24,
6 if they received any additional applications?

7 MR. GARRISON: There was a response from
8 Koblenz which was to apply, No. 46.

9 MR. JENKINS: Were in any others?

10 MR. GARRISON: 47 applied. I think that's
11 all we have is No. 46, Koblenz, who applied.

12 MS. RENDAHL: Your Honor, I would suggest
13 that, since there appear to be some issues that need to
14 be resolved before we can give you a recap of what is
15 the current status, it might be beneficial to go off
16 the record for 15/20 minutes to confer with the parties
17 and get back on the record and give you a recap of what
18 the situation is.

19 JUDGE FOSTER: That sounds like a good
20 proposal. With that let's be off the record.

21 (Recess.)

22 JUDGE FOSTER: Let's be back on the record
23 in Docket No. UW-940269. The record should indicate
24 that we have been off the record for about an hour and
25 a half, and the parties have indicated that they have

1 reached some sort of agreement.

2 I'll ask the Assistant Attorney General to
3 explain that agreement at this time.

4 MS. RENDAHL: Your Honor, I believe the
5 parties have reached agreement in some sort of a
6 settlement, which will have to be written up at some
7 later date. And after I go through the proposed
8 settlement, maybe then we should discuss how that
9 should proceed.

10 JUDGE FOSTER: All right.

11 MS. RENDAHL: But at this point, the parties
12 have agreed that the first thirty persons on the
13 waiting list --

14 MR. JENKINS: Sorry?

15 MS. RENDAHL: -- first thirty applicants
16 on the waiting list, those who indicated that they
17 wished to apply, will be able to seek hook-ups. And
18 how that would proceed is that the Staff and the
19 Company have agreed to work on a facilities charge to
20 go on the Commission's July 21st open meeting and
21 that a less than statutory notice period would be
22 requested so that on August 1 the Company would accept
23 applications from those first thirty applicants.

24 At that time, after August 1, the applicant
25 must pay the connection fee and the facilities charge

1 and file an application. If by October 31 those first
2 thirty -- anyone on that list of first thirty
3 applicants does not apply and pay the connection fee
4 and facilities charge, they will be passed, and the
5 next person on the list will be considered.

6 MR. JENKINS: You're talking about 1994?

7 MS. RENDAHL: I'm talking about 1994.

8 In terms of multiple hook-ups, I think it
9 was resolved that the first person on the list, Mr.
10 Berger, would have one connection for those two lots.
11 And the parties have basically agreed on all other
12 multiple hook-ups. And that can be put in writing.

13 Then after the July 21 open meeting, the
14 Staff and the Company will work together to prepare a
15 letter to the applicants indicating the time period
16 that applications will be accepted by the Company on
17 August 1 and that they have until October 31 to pay or
18 be passed over, including an application.

19 Now, as to the geothermal report, I believe
20 somebody else should address that issue because I don't
21 know that I understand what the agreement was on that.

22 Mr. Lundgaard, do you have an understanding
23 of that?

24 MR. LUNDGAARD: Well, I think the
25 understanding was that the people who have paid for

1 that study will not be reimbursed as part of a charge
2 by the Company.

3 MS. RENDAHL: Correct. A charge that would
4 be on the tariff?

5 MR. LUNDGAARD: On the tariff.

6 MS. RENDAHL: So that the Commission Staff
7 does not recommend that that charge be assessed to all
8 customers through the tariff.

9 MR. LUNDGAARD: Well, I'm wondering if that
10 needs to even be addressed at all in our stipulation.

11 MS. RENDAHL: It may not need to be. I
12 thought I would get all of the issues on the table
13 here.

14 MR. JENKINS: It's my understanding that it
15 is not going to be required. So, I don't see six of
16 one and half a dozen of the other if it's in.

17 MR. LUNDGAARD: I wouldn't want language in
18 there that might be considered by somebody as a basis
19 for not participating if a request goes out outside of
20 the Commission, a request goes out by the intervenors
21 or by the people that paid for that study, for
22 participation. And I wouldn't want something here to
23 imply that you're not supposed to be paying any of
24 that.

25 MS. RENDAHL: That's fine. The settlement

1 itself would just address the actual hook-up issues and
2 the dates.

3 MR. LUNDGAARD: Right.

4 MS. RENDAHL: I believe if that settlement
5 is put into writing and agreed to by all the parties
6 that the complaint would be dismissed? Is that a
7 correct understanding?

8 MR. JENKINS: I wouldn't agree to that. I
9 think we should have the Court continue jurisdiction.
10 Hopefully when the plan is completed they can file at
11 that time. But I think there needs to be jurisdiction.

12 MS. RENDAHL: I understand, if a settlement
13 is filed with the Commission and it is approved by the
14 Commission, there is continued jurisdiction over that
15 settlement so that, if the terms of the settlement are
16 not complied with, the Commission retains jurisdiction.

17 MR. JENKINS: Could you put that as part of
18 the settlement?

19 MS. RENDAHL: Okay.

20 MR. LUNDGAARD: That's agreeable.

21 I would add that the letter that's going to
22 go to the customers was going to be sent by certified
23 mail return receipt requested so that we know they
24 received the letter. I think when you draw up the
25 written stipulation, that ought to be included in it.

1 JUDGE FOSTER: Let me just suggest that we
2 could continue this docket and keep it open
3 indefinitely while you put together the written
4 agreement while some of these things are taking place
5 so that, if for some reason it hits a snag or there is
6 a problem, the parties could possibly request that we
7 reconvene the prehearing conference or somehow address
8 any issues that might come up between now and the time
9 that everyone signed or has been offered service and
10 has either declined or is receiving service.

11 Have you finished your summary?

12 MS. RENDAHL: Yes, I have, unless any other
13 party has -- actually, I have one additional comment:

14 As to the charges, it should also be
15 understood for the applicants that main-line extension
16 charges may also be applicable, depending on the cost
17 to the Company to implement such main-line extensions.
18 And that is in the tariff now.

19 MR. LUNDGAARD: Wasn't there an additional
20 agreement by the Company that they would install the
21 service connection within sixty days of the time that
22 the application and the funds had been paid or all fees
23 have been paid?

24 MS. RENDAHL: I think that's correct. And
25 that will be in the agreement.

1 MR. JENKINS: Are you saying again that this
2 main-line extension, that's going to be the individual
3 applicant's problem and is not going to be in the
4 tariff or anything like that?

5 MS. RENDAHL: That is currently in the
6 tariff. And so that is an issue that each applicant
7 will have to address.

8 MR. JENKINS: If they have an extension?

9 MS. RENDAHL: If their service requires a
10 main-line extension, that will have to be addressed by
11 each applicant.

12 MR. JENKINS: Which will be determined by
13 their distance from the main?

14 MS. RENDAHL: That's correct.

15 JUDGE FOSTER: I had a couple questions
16 about it, if I could pose them to you:

17 You referred to the connection fee and the
18 facility charge. Do those amounts vary with each
19 application for service?

20 MS. RENDAHL: No. The connection charge --
21 Maybe Fred would like to address this.

22 MR. OTTAVELLI: Facility charge and
23 connection charge will be as set forth in the tariff.
24 There may be a line extension charge which will be set
25 forth on the tariff and is dependent upon essentially

1 the cost of the installation of that. If it exceeds a
2 certain amount, there is an additional charge levied
3 against the applicant.

4 JUDGE FOSTER: Will there be any customers
5 or potential customers who will not be able to obtain
6 service? Do we know that?

7 MR. JENKINS: Probably.

8 MS. RENDAHL: It's possible. The waiting
9 list that we have currently lists 47 individuals on the
10 waiting list. The Department of Health has allowed 30
11 additional hook-ups. Some of the individuals on this
12 list, I believe, have requested to be passed, and
13 others, if they don't choose to pay the amounts, the
14 connection fee and the facilities charge or the line
15 extensions, may also wish to pass. So, at this time we
16 do not know how many people will actually obtain
17 service.

18 JUDGE FOSTER: But by November 1 you should
19 know?

20 MS. RENDAHL: By November 1 we should know.

21 MR. LUNDGAARD: Aren't we in agreement that
22 the first 30 are those that the Company has received
23 responses from and that the first 30 goes through No.
24 37 on the list?

25 MS. RENDAHL: That's my understanding.

1 MR. LUNDGAARD: At least we have settled on
2 that priority so that somebody who has said pass can
3 step back in after August 1 and change the priorities.

4 MR. JENKINS: As of now.

5 MS. RENDAHL: As of now.

6 MR. LUNDGAARD: Okay.

7 JUDGE FOSTER: Will the customers who
8 requested that they be hooked up be receiving a copy of
9 this agreement? Is that even necessary?

10 MS. RENDAHL: I think the letter will
11 suffice after the July 21 open meeting, provided the
12 finance charge tariff is approved, which I don't
13 believe there should be any problem with.

14 But I can't bind the Commission. However,
15 if that goes forward, then I believe the letter would
16 be sufficient.

17 MR. JENKINS: That letter is only going to
18 the first thirty applicants. So, it's not going to
19 those further down the list. Maybe a letter should go
20 to the others to in some way explain that they are not
21 receiving a hook-up but they may in the future.

22 MS. RENDAHL: That may be beneficial for the
23 Company to send a letter to all on the waiting list
24 indicating what the arrangement is.

25 MR. GARRISON: We can send that.

1 JUDGE FOSTER: It might be helpful, too, Mr.
2 Garrison, -- it might be helpful if you're going to do
3 such a letter that you run it by the other parties and
4 counsel before you send it out just to make sure that
5 it's real clear what it is that their status is because
6 they are not really entitled to anything yet but they
7 may be in the future.

8 Is there anything else anyone else wants to
9 add as far as I guess we'll call it an agreement in
10 principle? You're going to have someone reduce it to
11 writing at some point during the next few weeks? Is
12 that what's going to happen?

13 MR. JENKINS: I have a question: In talking
14 about facilities charge and connection charge, we were
15 down here and talked with the UTC a month or six weeks
16 ago. There were some other charges. There was a main
17 enlargement fee. Now, that will be addressed -- that's
18 not included. That's not the facilities charge?

19 MR. OTTAVELLI: That may go into the
20 calculation of the facilities charge, but it would not
21 be separate from the facilities charge.

22 MR. JENKINS: The charge that is going to go
23 at this July 21 hearing is the facilities charge?

24 MR. OTTAVELLI: Correct.

25 MR. JENKINS: That's what I'm getting at:

1 If all these charges we previously talked about are
2 going to be included in the facilities charge like the
3 main enlargement fee, that might go into the facilities
4 charge?

5 MR. OTTAVELLI: Yes, that is included in the
6 calculation.

7 MR. JENKINS: Charge for the water storage
8 tank, how is that going to be handled?

9 MR. OTTAVELLI: That, too, is included in
10 the determination of the facilities charge.

11 Again, to clarify: It appears there will be
12 potentially three charges. First would be their
13 service connection charge of \$485 as currently in
14 place. Second will be the facility charge that is
15 approved by the Commission, we hope, on the 21st. And
16 the third would be where the line extension per their
17 tariff exceeds certain parameters. It could be rather
18 substantial from what I just heard. But that will be
19 what it will be.

20 MR. JENKINS: That's an individual one?

21 MR. OTTAVELLI: Yes.

22 MR. JENKINS: Okay.

23 MR. LUNDGAARD: I have some concern that the
24 facility charge is going to include the storage tank
25 because the storage tank is already required. If I

1 understand it correctly, the facility charge would only
2 be charged to those new customers coming on; whereas a
3 storage tank that's already required for the existing
4 customers would be something that would be built into
5 either a surcharge or something that would apply to all
6 customers, existing as well as future.

7 MR. OTTAVELLI: The extent to which --
8 again, this will depend upon what the Company and the
9 Staff come up with when they address the facility
10 charge -- the current thinking is that there should be
11 a proportionate amount of the tank paid for by the new
12 customer. So, we're talking not total recovery.

13 MR. LUNDGAARD: Okay.

14 MR. JENKINS: Would it be -- off hand I
15 would like maybe notice of that hearing, just being
16 aware of those discussions between the Company and the
17 UTC.

18 MR. OTTAVELLI: As far as the notice, you
19 can put it on your calendar now. We have committed
20 that that will be on the agenda.

21 MR. JENKINS: Not the hearing before the
22 Commission, but you said you're going to get together
23 with the Company.

24 MR. OTTAVELLI: Again, I would hope that Mr.
25 Ward and Mr. Garrison get together this afternoon.

1 Hopefully by the time they leave today they will have
2 filed.

3 Maybe I'm being optimistic because there may
4 be some disagreement.

5 MR. JENKINS: Any problem with someone
6 sitting in on that?

7 MR. OTTAVELLI: I'm sure it's all public.

8 MR. JENKINS: Okay.

9 MR. OTTAVELLI: They will meet in Conference
10 Room 2 at 1:00.

11 MR. GARRISON: Fine.

12 JUDGE FOSTER: I guess what I would suggest
13 is there are some contingencies in this. And I would
14 like to continue this matter while the parties prepare
15 a settlement agreement and probably until at least
16 November 1 so that all of the conditions that you all
17 have discussed this morning will have been fulfilled.

18 If during that time period, there is a
19 problem or difficulty that you can't work out, the
20 parties are free to direct a letter to me, and we can
21 reconvene the prehearing conference. But I would like
22 to just keep the record open for that agreement and for
23 a letter that indicates that the conditions that have
24 been referred to this morning are fulfilled.

25 MR. JENKINS: I wonder if it would be

1 appropriate for the Staff to send out a proposed draft?
2 Would that save us some time?

3 MS. RENDAHL: Are you talking about the
4 settlement agreement?

5 MR. JENKINS: Yes.

6 MS. RENDAHL: I will work with the Staff in
7 developing a draft which will be circulated to all
8 parties, at which time we can negotiate the draft. And
9 then the final settlement agreement can be filed with
10 Judge Foster. And we could always have a telephone
11 conference call to discuss that draft agreement.

12 MR. GARRISON: I would like to make one
13 comment: Once we have an agreement and it's signed by
14 everybody, I don't see any point in continuing the
15 record. If the Commission is going to maintain
16 jurisdiction to see that the agreement is carried out,
17 I think if the complaint is withdrawn we should end the
18 hearing.

19 JUDGE FOSTER: All I want to do is keep the
20 record open so that the contingencies you have talked
21 about this morning take place or don't take place. And
22 it sounds like around November 1 we should know who has
23 gotten service and who hasn't and what the status is at
24 that time.

25 So, what I'm saying is at that time I would

1 certainly be willing to have an agreement that I would
2 propose that the Commission accept, and then the docket
3 be dismissed after that.

4 The parties are free at any point, like the
5 Complainants, the Cheese Barn, they can always file
6 again. But I'm trying to eliminate that as a
7 possibility and resolve as many issues as we can in
8 this docket before it's laid to rest.

9 MR. LUNDGAARD: I concur with your Honor.

10 MR. JENKINS: I concur. I think that
11 November 1 or November 30, whatever you want to set,
12 might be premature.

13 JUDGE FOSTER: It seemed to me from what
14 Miss Rendahl was saying that's the earliest date on
15 which all the parties would know where they stand.
16 Service has been offered to various people. They have
17 either paid the service, paid the connections, paid the
18 various charges, or passed on the list, and then you
19 would know whether there was anybody else on the list
20 who was still aggrieved.

21 MR. JENKINS: I do want to keep that open.
22 I don't want it to be closed on that date.

23 JUDGE FOSTER: Let me just say that I will
24 continue this matter indefinitely, but at least until
25 November 1. And then I will leave it to the parties to

1 put together some kind of a written agreement that
2 summarizes what has basically been described in
3 principle here today.

4 MR. JENKINS: Independent of the draft that
5 Ann is preparing?

6 JUDGE FOSTER: I thought it was the same
7 document.

8 MR. LUNDGAARD: I think that document
9 probably can be signed by the parties prior to that
10 date.

11 MR. JENKINS: I would like that.

12 MR. LUNDGAARD: But I agree with keeping it
13 open beyond that date. And then after November 1 I
14 suppose you would entertain a motion to dismiss or
15 something like that.

16 JUDGE FOSTER: Right. If I have a letter
17 from the parties then saying that the agreement has
18 been carried out and that there is no one among the
19 various customers or the complainant or whoever who has
20 a continuing dispute as far as the issues are concerned
21 here and you are all concurring in recommending that
22 the docket be dismissed.

23 MR. LUNDGAARD: Right.

24 MR. JENKINS: I'm hoping the agreement that
25 Ann is going to draft will be probably within a couple

1 weeks.

2 When would you anticipate?

3 MS. RENDAHL: I would anticipate that at
4 least by the 15th I would have a draft. And it depends
5 also on Ms. Zeigler, who is not here. Why don't I
6 commit by the 15th to get a draft to all parties? And
7 if it's earlier then it's earlier.

8 MR. JENKINS: Fine.

9 JUDGE FOSTER: Is there anything else that
10 we need to address?

11 MR. GARRISON: I just have one small point
12 then: As long as the record is open, can anybody then
13 involve themselves in this discussion? Can other
14 people come forth and make issues?

15 JUDGE FOSTER: Who are you thinking about?

16 MR. GARRISON: I'm thinking about No. 44.
17 I'm thinking about people who maybe have fallen between
18 the cracks. I'm thinking about anybody that concerns
19 this issue. Potentially here we have -- as long as the
20 record is open and you're accepting arguments from
21 people, we have a potential here for this thing to
22 become blown all out of --

23 JUDGE FOSTER: Mr. Jenkins represents the
24 customers. So, whoever came forward I assume would
25 have to go through him because he is their counsel.

1 Is that correct?

2 MR. JENKINS: Let me put it this way: We
3 have contacted all the people.

4 MR. GARRISON: There may be people not on
5 the list. There may be people who discover the
6 situation, out-of-town property owners. Is it your
7 intention to entertain those requests for intervention
8 as long as the record is open?

9 JUDGE FOSTER: I can't address that. But
10 one of the things Mr. Lundgaard mentioned, where you
11 have out-of-town property owners, registered mail and
12 return receipt requested is important to make a record
13 that you tried to reach them in case something comes
14 up. Get as many addresses of out-of-town people as
15 you can to address the problem that we're talking
16 about, somebody surfacing later on.

17 MR. GARRISON: I'm suspicious that those
18 people may already exist, not that they are going to
19 exist in the future, but they may be out there already.
20 And as long as the record is open, they may be coming
21 forth.

22 JUDGE FOSTER: I can't predict the future,
23 and I can't say what would happen if somebody like that
24 materialized. All I'm saying is all you can do is make
25 your best efforts to get in contact with responsible

1 individuals connected with the various parcels that
2 you're supposed to be --

3 MR. GARRISON: If we receive inquiries,
4 should we direct them to the Staff?

5 JUDGE FOSTER: Inquiries about --

6 MR. GARRISON: Service, mistreatment,
7 unacknowledged conditions, anything.

8 MS. RENDAHL: Yes.

9 MR. GARRISON: Customers that may have --
10 their house may have burned down and they left.
11 Somehow they deserved a connection because the house
12 burned down, you know. You can think of all kinds of
13 things.

14 MS. RENDAHL: You should first try to
15 resolve those issues yourself. If they are not
16 resolved, refer them to the Staff.

17 MR. GARRISON: Okay.

18 JUDGE FOSTER: Anything else?

19 All right then. This matter will be
20 continued until at least November 1, 1994, and we'll
21 also continue the prehearing conference, and I will
22 look forward to seeing the written, signed agreement by
23 the parties at some point in the next few months, and
24 also, if there happen to be copies of letters going out
25 to customers, you might want to attach those items.

1 But I will not do anything about
2 recommending any settlement or dismissing the docket
3 until I receive a letter signed by all the parties
4 indicating that the conditions that have been discussed
5 here this morning have, in fact, been fulfilled and all
6 the issues have been laid to rest as far as any of you
7 are aware.

8 There being nothing further to come before
9 us this morning, we'll stand adjourned. We're off the
10 record.

11 (At 11:35 p.m. the above hearing was
12 recessed sine die)

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