

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION
COMMISSION

TFL ASSOCIATES, LLC, CALIBER)	
COMPANY, INC., and JACOBSON)	
CONSTRUCTION & DEVELOPMENT,)	DOCKET NO. UW-010683
INC.,)	
Complainants)	
)	
)	
v.)	
)	
)	
)	FIRST SUPPLEMENTAL
RAINIER VIEW WATER COMPANY,)	ORDER
INC., and SILVER CREEK)	
DEVELOPMENT COMPANY,)	PREHEARING CONFERENCE
)	ORDER
Respondents.)	
.....)	

1 **BACKGROUND:** On May 4, 2001, TFL Associates, LLC, Caliber Company, Inc., and Jacobson Construction & Development, Inc. (Complainants) filed with the Commission a complaint against Rainier View Water Company, Inc. (Rainier View) and Silver Creek Development Company (Silver Creek). Complainants allege that Rainier View’s predecessor in interest, Sound Water Company, Inc., committed to providing water service for each of the Complainants’ respective developments based on a priority schedule that favored the Complainants over Silver Creek, but that Rainier View subsequently dishonored these commitments by giving preferential rights to available water on Rainier View’s system to Silver Creek.

2 **PREHEARING CONFERENCE:** The Commission convened a prehearing conference in this matter on July 27, 2001, in Olympia, Washington, before Administrative Law Judge (ALJ) Karen M. Caillé.

3 **PARTIES:** Steven G. Jones, Foster, Pepper & Shefelman PPLC, Seattle, Washington, represents Complainants. Richard A. Finnigan, Olympia, Washington, represents Rainier View Water Company, Inc. Kim D. Stephens, Tousley Brian Stephens, PLLC, Seattle, Washington, represents Silver Creek Development Company. Marcia Newlands, Heller, Ehrman, White & McAuliff LLP, Seattle, Washington, represents Lehman Brothers Holdings Inc. (LBHI) and Property Asset Management Inc. (PAMI). Jonathan Thompson, Assistant Attorney General,

Olympia, Washington, represents Staff of the Washington Utilities and Transportation Commission (Staff).

4 **PETITIONS TO INTERVENE:** Lehman Brothers Holdings Inc. (LBHI) and Property Asset Management Inc. (PAMI) filed a joint petition to intervene. The petition demonstrates that LBHI and PAMI have a substantial interest in the outcome of this proceeding and that their participation will be in the public interest. The petition is unopposed by any party. The petition is granted.

5 **PRELIMINARY MOTIONS:** Counsel for Complainants represented that Complainants would file a motion to dismiss the claims in the Complaint found in paragraphs 5.5 “Equitable Estoppel” and 5.6 “Promissory Estoppel.” Complainants acknowledge that the Commission would not have jurisdiction over those claims.

6 **SCHEDULE:** The parties agreed to the following procedural schedule:

August 10, 2001	Complainants prefile direct testimony.
October 5, 2001	Respondents, Staff, and Intervenors prefile response testimony.
October 19, 2001	Deadline to reach settlement via ADR.
October 26, 2001	Complainants prefile rebuttal testimony.
October 30, 2001	Cut-off for discovery requests.
November 1, 2001	Deadline for responses to discovery requests.
November 2, 2001	Prehearing conference for marking exhibits and cross-exhibits.
November 6-7, 2001	Evidentiary hearings.
November 16, 2001	Simultaneous opening briefs due.
November 30, 2001	Simultaneous reply briefs due.

7 The parties also agreed that the rebuttal testimony and briefs would be provided electronically (facsimile or email) to all parties on the receipt date to be followed by hard copies. The ALJ approved filing with the Commission by facsimile, with hard copy to follow by overnight delivery, including a disk.

8 Complainants indicated that they would be willing to waive the initial order and have this matter go directly to the Commission for decision. The remaining parties

indicated that they would discuss the waiver of an initial order with their respective clients, and notify the Commission of their position.

9 Additional procedural dates may be established by subsequent notice or order.

10 **DISCOVERY:** This proceeding is the type described in WAC 480-09-480(2) and the parties request the opportunity for discovery. The discovery rule, WAC 480-09-480, is invoked. Formal discovery may commence immediately. Parties are required to limit discovery to that necessary to their respective cases, and parties should cooperate to facilitate discovery and resolve informally any disputes. Any discovery dispute referred to the Commission by motion must state what steps the parties have taken to resolve the dispute. Parties are encouraged to use electronic media to the extent feasible to expedite the exchange of discovery materials. The parties agreed to the discovery and response cut-off set forth in the above schedule.

11 **PROTECTIVE ORDER:** The Commission anticipates that certain confidential information may be requested during the discovery process. Accordingly, discovery may be facilitated by a protective order. The Commission entered a protective order on August 2, 2001, to protect the parties' interests in insulating confidential information from public disclosure.

12 **WITNESS AND EXHIBITS LISTS:** Each party must provide the presiding Administrative Law Judge and each other party a list of witnesses in the order they will appear along with a list of exhibits sponsored by each witness. Parties also must identify exhibits expected to be used in cross-examination, linked to the appropriate witness, and provide copies to other parties and the Bench (3 copies). Prefiled exhibits provided to the Commission and the parties, including cross-examination exhibits, need not be provided to parties again at hearing. The parties' attention is directed to **Appendix A** which describes exhibit formatting and filing requirements.

13 Lists and exhibits must be provided in hand to the Presiding Judge and all parties at least five (5) days before the first hearing day (i.e., by noon, November 1, 2001). These requirements facilitate case management and expedite the hearing. Lists and cross-examination exhibits may be served by facsimile or other electronic transmission; the presiding Administrative Law Judges' facsimile number is (360) 664-2654. Copies may instead be furnished by mail or hand-delivery with the ALJ's courtesy copies addressed to her directly.

14 Parties will be responsible for marking their own exhibits at the prehearing conference on November 2, 2001. The Bench will mark all originals and Bench copies.

15 **FILING; COPIES OF MATERIALS:** Filing can be accomplished by mail delivery to the Commission Secretary, 1300 S. Evergreen Park Drive, S.W., P.O. Box 47250,

Olympia, Washington 98504-7250, or by hand delivery to the Commission Secretary via the Commission's records center at the Washington Utilities and Transportation Commission, 1300 S. Evergreen Park Drive, S.W., Olympia, Washington, 98504-7250. **Both the post office box and street address are required to expedite deliveries by U. S. Postal Service.**

- 16 An original plus **9 copies** of all pleadings, motions, briefs, and other prefiled materials must be filed with the Commission. Parties must furnish separately a 3.5 inch IBM formatted high-density diskette including the filed document(s) in .pdf Adobe Acrobat format, reflecting the pagination of your original. Also send us the text in your choice of MS Word 97 (or later), or WordPerfect 6.0 (or later) format. Parties may supplement their filing by sending an electronic copy via e-mail attachment to: records@wutc.wa.gov.
- 17 Electronic filing may be allowed on request by a party or required by the Bench, if necessary to expedite a particular process. When electronic filing and service is allowed or required, please use the Commission's e-mail at: records@wutc.wa.gov, or facsimile number: (360) 586-1150.
- 18 **ALTERNATIVE DISPUTE RESOLUTION; SETTLEMENT:** The Commission urges all parties to formal adjudications to consider alternative methods to bring resolution to contested issues. The Commission applauds the parties' commitment to include an alternative dispute resolution process in this proceeding. The Commission will provide a mediator upon request. Please advise the Commission of any progress you make.
- 19 **NOTICE TO PARTIES:** Any objection to the provisions of this Order must be filed within ten (10) days after the date of mailing of this statement pursuant to WAC 480-09-460(2). Absent such objections, this Prehearing Conference Order will control further proceedings in this matter, subject to Commission review.

Dated at Olympia, Washington, and effective this day of August, 2001.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

KAREN M. CAILLÉ
Administrative Law Judge

**DOCKET UW-010683
PARTIES' REPRESENTATIVES**

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Appendix A

I. Requirements for ALL paper copies of testimony, exhibits, and briefs

The following requirements are restated from and clarify the Commission's rules relating to adjudications.

A. All paper copies of briefs, prefiled testimony, and original text in exhibits must be

- On 8-1/2x11 paper, punched for insertion in a 3-ring binder,
- Punched with **OVERSIZED HOLES** to allow easy handling.
- Double-spaced
- 12-point or larger text and footnotes, Times New Roman or equivalent serif font.
- Minimum one-inch margins from all edges.

Other exhibit materials need not be double-spaced or 12-point type, but must be printed or copied for optimum legibility.

B. All electronic and paper copies must be

- **SEQUENTIALLY NUMBERED** (all pages). **THIS INCLUDES EXHIBITS**. It is not reasonable to expect other counsel or the bench to keep track of where we are among several hundred (or sometimes even just several) unnumbered pages.
- **DATED ON THE FIRST PAGE OF EACH ITEM** and on the label of every diskette. If the item is a revision of a document previously submitted, it must be clearly labeled "REVISED," with the same title, and with the date it is filed clearly shown. Electronic files must be designated R for revision, when applicable, with an ordinal number showing the revision number.

II. Identifying exhibit numbers; Exhibits on cross examination.

- A. **Identifying exhibits.** It is essential to mark documents so you, opposing counsel, and the Commission can find them. We ask you to comply with this clarification of prior practice, based on recent experience:

- **Use the witness's initials and add an ordinal number for each exhibit.** Identify testimony with a T and confidential exhibits with a C. Example: Witness Jane Quintessentia Public. Her original testimony would be JQP-1T or JQP-1TC, her first attached exhibit would be JQP-2, etc. NEVER identify the attachments merely with a single ordinal number, as that will provide the maximum confusion to everyone, including your witness.

B. Prepare a list of your exhibits with their title and AJQP@ designation in digital form and in a format specified by the Commission. Send it to the presiding officer before the appropriate prehearing conference. That will simplify identification and ease administrative burdens.

NOTE: Be prepared to submit all of your possible exhibits on cross examination several days prior to the hearing. We will attempt to schedule a prehearing conference to deal with the exhibits as close as possible to the hearing itself, but we have administrative needs that require prefilng.