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1 BEFORE THE WASHINGTON STATE
2 UTILITIES AND TRANSPORTATION COMMISSION

3	SIL AND CANDY ARATA, HAHN)	DOCKET UW-102014
	AND KIM BAHNG, BRIG AND)	VOLUME I
4	PATTIE BELVIN, DICK AND)	PAGES 1-73
	PATTI BLIDE, JIM AND LYNETTE)	
5	CALDWELL, KRIS AND CAROLYN)	
	CHRISTIANSON, TED AND DELL)	
6	HALLER, BILL AND ALTHEA)	
	HEAGY, VERN HERIOTT AND)	
7	LARRY HUFFMAN, DAVE AND)	
	DOROTHY JOHNSON, SHINWON AND)	
8	JEONKAK KIM, JAN AND ROBIN)	
	KRANE, ROBERT AND DIANA)	
9	NEHLS, PHIL AND CAROLYN)	
	ROBBINS, CHUCK AND DIA)	
10	TADLOCK, BILL AND CAROL)	
	WELCH, RON AND ROXANNE OLSON,)	
11	JERRY AND PHOEBE BENNETT,)	
	AND ALAN AND SUSAN CAMERON,)	
12)	
	Complainants,)	
13)	
	v.)	
14)	
	GREEN MOUNTAIN H2O, LLC,)	
15)	
	Respondent.)	
16)	

17 This is the hearing, volume I, in the above
18 matter held on Thursday, February 3, 2011, at 1300 South
19 Evergreen Park Drive Southwest, Olympia, Washington,
before Administrative Law Judge ADAM TOREM.

20 The parties were present as follows:

21 WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION,
22 by Mr. Michael A. Fassio, Assistant Attorney General,
PO Box 40128, Olympia, Washington 98504-0128;
telephone number is 360.664.1192.

23 Mr. Dan Class, owner of Green Mountain H2O Company,
24 307 NE 85th Street, Vancouver, Washington 98665;
telephone number is 360-909-4321.

25 Mr. Chuck Tadlock, spokesperson for the complainants.

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Mr. John Cupp, lead staff for the complainants.

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Ms. Dorothy Jaffe, Assistant Attorney General,
representing the Department of Health, Office of
Drinking Water.

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Ms. Bonnie Waybright, Assistant Regional Manager.

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Ms. Teresa Walker, Regional Engineer for Office of
Drinking Water at the Department of Health.

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Also Present: Robert and Diana Nehls; Bill Heagy;
Kris Christianson; Ted Haller; Ron Olson; Richard and
Patti Blide; Phil and Carolyn Robbins.

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Reported by: Judith A. Robinson, CCR No. 2171

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3 COLLOQUY

PAGES

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Judge Torem, Mr. Fassio

5

and various speakers 4-70

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E X H I B I T S

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(No exhibits marked or admitted.)

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P R O C E E D I N G S

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ALJ TOREM: Let us be on the record. This is Docket UW-102014.

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This is a formal complaint filed by 19 households and a total of 38 persons labeled as complainants against -- let me get the caption in front of me again. The Green Mountain H2O, LLC as a respondent and Mr. Dan Class.

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My name is Adam Torem. I'm the Administrative Law Judge appointed to preside at this pre-hearing conference today. And we're going to take it up scheduling and other procedural matters through this docket.

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It's Thursday, the 3rd of February 2011. And we're going to take appearances first. I'm going to ask for, more or less, short form appearances today, rather than have the court reporter go down each and every name and address of your -- and e-mail and the rest.

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Mr. Fassio, you can give a short form appearance and just demonstrate how that's done for the rest of the folks here, as the assistant Attorney General representing Commission staff.

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And then I'm gonna go and ask Mr. Class to make

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1 his appearance and if he has counsel, then identify them
2 and then we'll go down the list of the homeowners.

3 I've been provided a roster that shows who's
4 appeared in person here and I might just call out that
5 list once I figure out who exactly is sitting at the
6 table in front of me.

7 And then for those of you on the telephone, I'll
8 call out your names and if you could confirm you're on
9 the telephone line.

10 And then I have a list of signed, written proxies
11 for some of those that couldn't appear today for being
12 out of town or some other reason.

13 So we'll make sure everybody's accounted for and
14 then we'll turn to the business of the complaint and
15 sorting out how the Commission can process that.

16 So, Mr. Fassio?

17 MR. FASSIO: Good morning, Your Honor.
18 Michael Fassio, Assistant Attorney General, representing
19 Washington Utilities and Transportation Commission
20 staff.

21 Just to clarify, you do not need my e-mail
22 address and all that.

23 ALJ TOREM: I know where to find you.

24 MR. FASSIO: Very good.

25 ALJ TOREM: For the rest of you, we do have

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1 a sign-in sheet here today that has an opportunity to
2 put down e-mail addresses or some other telephone
3 contacts.

4 That will make it a little bit easier for sending
5 things out in the future and getting things to you the
6 same day.

7 So if you don't think we have your e-mail address
8 or telephone number, please go ahead and provide that on
9 the sign-in sheet that's on the back table to my right
10 and your left.

11 Mr. Class, if you can state and spell your name
12 and your position for the record?

13 MR. CLASS: Yes. Dan Class, owner of Green
14 Mountain H2O Company at 307 NE 85th Street, Vancouver,
15 Washington.

16 ALJ TOREM: And do we have that record --
17 the address on record?

18 MR. FASSIO: I do not believe we do.

19 ALJ TOREM: Can you give me the zip code
20 then? 307 NE 85th, and what's the zip code?

21 MR. CLASS: 98665.

22 ALJ TOREM: 98665. We'll make sure our
23 record center gets that address for any future service,
24 including the prehearing conference order that will come
25 out.

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1 MR. CLASS: Thank you.

2 ALJ TOREM: All right. So sitting in front
3 of me --

4 MR. FASSIO: Your Honor, if I may interject,
5 the prehearing conference order does not list
6 Mr. Class's phone number. It would be helpful for
7 myself and the record if I could have that?

8 MR. CLASS: The phone number is
9 360-909-4321.

10 MR. FASSIO: Thank you.

11 ALJ TOREM: And I'm not sure if the folks on
12 the line could hear Mr. Class.

13 The microphone system in here for those
14 unfamiliar, and it's probably just me and Mr. Fassio who
15 are familiar with it, requires the little red light to
16 be on. It's a touch-sensitive microphone.

17 So when you're speaking, if you want that to
18 project on the speaker system and hear the folks on the
19 telephone line, let's make sure we have that on when
20 you're speaking.

21 MR. FASSIO: Okay.

22 ALJ TOREM: If you turn it off when you're
23 not, sometimes it helps with interference, but we'll see
24 how it goes this morning.

25 ALJ TOREM: Sir?

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1 MR. TADLOCK: Chuck Tadlock, and I am the
2 spokesperson for the complainant.

3 ALJ TOREM: Okay, Mr. Tadlock. We have your
4 address on Varsity Road. Who -- I'm going to look
5 behind you and ask for the folks that indicated they
6 were coming up in person from the Kalama area today to
7 identify themselves.

8 Alan Cameron and Susan Cameron, are you here?

9 SPEAKER: Yes.

10 ALJ TOREM: Okay, thank you.

11 Kris Christianson?

12 SPEAKER: Here.

13 ALJ TOREM: Thank you, sir. Ted Haller?

14 SPEAKER: Here.

15 ALJ TOREM: Thank you, sir. And Ron Olson?

16 SPEAKER: Present.

17 ALJ TOREM: Okay. Were there others that
18 are complainants that are present in the room?

19 All right. Let me turn to the list of folks who
20 are supposed to be participating by phone.

21 Dick Blide and Patty Blide?

22 SPEAKER: Yes.

23 SPEAKER: Present, Your Honor.

24 ALJ TOREM: Thank you very much. And Mr. --
25 is it -- Bill "Heagy" or "Hagey"?

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1 SPEAKER: I'm telling you, it doesn't --

2 ALJ TOREM: How do I pronounce your name,
3 sir?

4 SPEAKER: "Heagy."

5 ALJ TOREM: "Heagy"? Okay.

6 SPEAKER: Yes.

7 ALJ TOREM: Robert and Diana Nehls.

8 SPEAKER: Yes, Your Honor. We are both
9 here.

10 ALJ TOREM: Thank you. And Phil and Carolyn
11 Robbins?

12 SPEAKER: We are both here.

13 ALJ TOREM: Thank you. Is there anyone else
14 on the bridge line that I haven't called their name?

15 Okay. Now, there are a number of others that
16 have submitted, for lack of a better word, a proxy,
17 indicating that perhaps -- Mr. Tadlock, did you draft up
18 these proxies?

19 MR. TADLOCK: Yes, Your Honor.

20 ALJ TOREM: And I appreciate that.

21 What -- what these say, for the record, is that
22 the folks that filled them out and signed them, have
23 granted proxy rights to be represented at today's
24 prehearing conference.

25 For the matter of the complaint and they grant

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1 Mr. Tadlock the rights to represent their position and
2 support their complaint and understand that Mr. Tadlock
3 will be attending in person and submitting the proxy to
4 the Commission and to myself in support of their
5 participation.

6 So, this is essentially a designation of the
7 rights for today's proceeding. And we'll -- once we
8 schedule other proceedings, we'll see what schedules
9 allow folks to appear in person or if it's more
10 efficient, if all of the claims of the 19 households are
11 so similar, it would be unwieldy I think to have each of
12 them having to make the same arguments.

13 So the folks on this list for the record are Sil
14 and Candy Arata.

15 I have a signed slip dated January 24th from
16 them.

17 Hahn Kim Bahng and Hahn Bahng have signed one
18 January 25th.

19 Brig and Pattie Belvin have also provided one and
20 they signed them individually. Mr. Belvin on February
21 1st and Patricia Belvin on January 29th.

22 Jim Caldwell provided a proxy as well. His is
23 signed on January 25th of this year.

24 Carolyn Christianson signed hers on February
25 the 2nd of this year.

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1 Burdell Nelson, signed on January 22nd of this
2 year.

3 Althea Heagy has signed a proxy for January 24th.

4 Vern Hariott and Larry Huffman both signed a
5 proxy on January 23rd.

6 David Johnson signed a proxy dated January 31st.
7 And Dorothy Johnson signed one dated a few days earlier,
8 January 28th.

9 Shinwon Kim and Jeonkak Kim both signed theirs on
10 January 28th.

11 Robin and Johannes Krane, I think I have him
12 listed as Jan Krane, signed theirs on February 2nd.

13 Dia Tadlock signed a proxy on January 31st.

14 Bill Welch signed a proxy on February 1st. And I
15 have a copy of Carol Welch's signed January 30th.

16 Roxanne Olson signed a proxy on January 26th.

17 And Jerry Jerome and Phoebe Bennett signed their
18 proxies on January 30th and 31st, respectively.

19 Mr. Cupp, you had identified to me that perhaps
20 there was one person on the roster that hadn't provided
21 a proxy. But you had accounted for them yesterday
22 afternoon.

23 MR. CUPP: Yes, sir. I couldn't find
24 Lynette Caldwell.

25 MR. TADLOCK: Your Honor, if I could?

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1 ALJ TOREM: Mr. Tadlock, go ahead.

2 MR. TADLOCK: The -- the Caldwell's have
3 separated, and Mr. Caldwell is now representing the
4 residence. And so his wife, Lynette, will not be
5 participating in the complaint.

6 ALJ TOREM: Okay, so Mr. Tadlock, I think --
7 I'm not sure if the folks on the bridge line heard --
8 but then from the Caldwell's -- I have to get to the
9 right page of this binder so I can track with you guys.

10 When the Caldwell's signed on to the complaint
11 when it was filed, they were both residing at 30 Varsity
12 Road; is that correct?

13 MR. TADLOCK: Correct.

14 ALJ TOREM: And at this time the household
15 is just made up of Mr. Caldwell?

16 MR. TADLOCK: Yes, sir.

17 ALJ TOREM: All right. So do you know
18 whether or not Lynette Caldwell has any continuing
19 interest or wishes to continue?

20 MR. TADLOCK: According to her husband, Jim
21 Caldwell, no, the answer would be no.

22 ALJ TOREM: Okay. What I think I will do is
23 put something in the prehearing conference order and
24 hope to have a positive affirmation that she's
25 withdrawing her complaint.

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1 That way we respect her due process rights and
2 ensure that but I will put something in the order as to
3 whether it should be -- hers should be dismissed or not.

4 And maybe give a deadline for which -- if
5 Mr. Caldwell can provide a -- a forwarding address for
6 her? In these situations that's always helpful, if we
7 have a new mailing address for her?

8 So maybe you can provide that by e-mail to -- to
9 me and I can provide it to the records center to update
10 that.

11 MR. TADLOCK: I'd be glad to do that, Your
12 Honor.

13 One other clarification?

14 ALJ TOREM: Yes, sir.

15 MR. TADLOCK: On the -- on the complaint I
16 think -- I believe we had listed Dell Nelson --

17 ALJ TOREM: Is your microphone on, sir?

18 MR. TADLOCK: Yes it is. I'm sorry.

19 ALJ TOREM: Maybe it just needs to be pulled
20 a little closer to you, that'd be helpful.

21 MR. TADLOCK: I -- I believe that we had
22 listed Ted and Dell on -- on the complaint. And Dell
23 Nelson and Dell Haller are the same person.

24 So in the -- in the proxy Dell signed as Burdell
25 Nelson.

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1 ALJ TOREM: Okay, I'm seeing a 573 Varsity
2 Road address that has Ted and Dell Haller?

3 MR. TADLOCK: Yes and Dell Haller is Burdell
4 Nelson in the proxy.

5 ALJ TOREM: I see. Okay.

6 Okay, so he's -- which Haller is in the
7 complaint? He's either Ted or Dell?

8 MR. TADLOCK: Both of them are -- Ted -- Ted
9 is here in the courtroom today and -- and Dell Nelson
10 signed the proxy.

11 ALJ TOREM: Okay, I'm just trying to sort
12 out -- so the -- I've got the proxy for Burdell Nelson.

13 MR. TADLOCK: Correct.

14 ALJ TOREM: In the complaint at the same
15 address is Ted and Dell Haller.

16 So here -- here in the room I have Ted Haller and
17 Dell -- okay, so Ted's here and Burdell Nelson is the
18 same person as Dell Haller.

19 MR. TADLOCK: Yes, sir.

20 ALJ TOREM: Got it. Now -- now I'm with
21 you.

22 MR. TADLOCK: Thank you.

23 ALJ TOREM: Okay, just so there's no
24 confusion. There are enough people and moving parts
25 this morning. Got it.

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1 All right. Well, let me briefly recite what has
2 gone on so far with the Commission's involvement in this
3 case.

4 The formal complaint was filed by these 19
5 households on December the 16th of last year. And I
6 believe the homeowner's association president, Mr. Heagy
7 and it's Vice-President, Mr. Tadlock, who is also the
8 water committee chairman, helped write that complaint
9 and filed it.

10 There was a response filed from Mr. Class on
11 January the 7th and then we served this notice of
12 today's prehearing conference back on the 12th of
13 January.

14 And I apologize for some if that was any
15 inconvenience, we needed to flip it from the afternoon.
16 So on the 19th of January we changed the time to this
17 9:30 a.m.

18 Today we have appearances and we've accounted for
19 everybody, I believe, from the Columbia Crest Estates
20 Homeowners Association that's participating.

21 And one of the immediate issues that comes up for
22 the question of jurisdiction for us, is to sort out, do
23 we have jurisdiction over this water system and where's
24 the county in this case? Cowlitz County.

25 Also, under the statute, Revised Code of

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1 Washington, or RCW 80.04.110, which is our complaints
2 statute.

3 Subparagraph five addresses customers or
4 purchases of service from a water system. And they can
5 file the complaint with this Commission if they believe
6 the water delivered doesn't meet state drinking water
7 standards.

8 And it gives two other statutory references that
9 set those standards. We are charged under the law and
10 we shall investigate the complaint and we have to
11 request that the State Department of Health or the local
12 Health Department and the county test the water for
13 compliance with the state drinking water standards.

14 I understand that Mr. Cupp, on behalf of
15 Commission staff, has already made contact with the
16 Department of Health and I think we may have some
17 representatives here in the room today.

18 So what I'm hoping is I can get those
19 representatives to come up, perhaps on one of those
20 microphones behind the court reporter, and make an
21 appearance.

22 Then we can talk about whether the Department of
23 Health will be wanting to intervene in this case, or may
24 have some other parallel proceedings that would
25 influence any schedule we might set in the Commission's

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1 investigation of the complaint. And how we would go
2 about with the hearing.

3 So, can I ask those Department of Health folks
4 to, at least one of them, to speak on behalf of the
5 department and make an appearance?

6 (Person approaches the microphone.)

7 ALJ TOREM: And again, you'll have to push
8 that button on the microphone to make sure the red light
9 comes on.

10 MS. JAFFE: For the record, I'm Dorothy
11 Jaffe, Assistant Attorney General, that represents the
12 Department of Health, Office of Drinking Water. And the
13 director of Drinking Water, Denise Clifford, has not
14 been able to make it yet. She is stuck on the hill for
15 legislation purposes. But there are two other
16 representatives here from the Department of Health.

17 ALJ TOREM: Okay. And they are?

18 MS. WAYBRIGHT: And I am Bonnie Waybright,
19 and I'm the Assistant Regional Manager.

20 MS. WALKER: I'm Teresa Walker the Regional
21 Engineer for Office of Drinking Water at the Department
22 of Health.

23 ALJ TOREM: Ms. Jaffe, have you had a chance
24 to look at this complaint and the proceeding and
25 determine if your client would have an interest in

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1 making an intervention in the case?

2 MS. JAFFE: I have reviewed it, Your Honor.

3 We have not yet had that discussion whether an
4 intervention is appropriate in this case.

5 We do have a parallel proceeding that is going on
6 before the Adjudication Services Unit with the
7 Department of Health. So it is set to go to hearing, I
8 believe it's March 30th of this year.

9 ALJ TOREM: Okay. And is that one of the
10 judges on Judge Farris' crew?

11 MS. JAFFE: Yes, I believe it's assigned to
12 Health Law Judge Mitchell.

13 ALJ TOREM: Okay. For today's purpose, I
14 think that the key issue that involves the Department of
15 Health is this statutory mandate that we request.

16 I guess we can't order, but request that you test
17 the water so we would have a baseline to know if the
18 complaint is valid and if there was any other relief
19 that we would be able to grant.

20 Ms. Jaffe, I'm not sure if Ms. Waybright is the
21 right person to address the question to whether a new
22 test should be required or if there is already an
23 existing test that might -- and again, it's a
24 jurisdictional question, if it has to be done after the
25 filing of the complaint, which was back on

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1 December 16th.

2 And maybe that we can have a stipulation from the
3 parties. And I'll get back to Mr. Fassio for his view
4 from Commission staff. If there's already been a test
5 done recently, that would be indicative of the water
6 quality standard.

7 So maybe you can tell us what's out there and
8 what the Department's procedures are when we make such a
9 request.

10 MS. JAFFE: Well we -- we have a requirement
11 for the water to be tested on the regular schedule, and
12 the schedule varies depending on the contaminant in
13 question.

14 I think what shows up quite often in the
15 complaint here is the coliform testing, which is
16 required to be done once per month. And we do have
17 records that show that some of those tests have been
18 missed.

19 I don't have the current list with me to tell you
20 which ones have been missed and which ones we have at
21 the moment, but we can definitely get that information.

22 ALJ TOREM: And when you say "missed," that
23 means a test wasn't performed?

24 MS. JAFFE: Correct.

25 ALJ TOREM: Okay. The other contaminant

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1 that appears other than the coliform is the arsenic
2 levels. And I believe that's the subject matter of your
3 other parallel proceeding; is that correct?

4 MS. JAFFE: Yes. Yes.

5 ALJ TOREM: And how often is the arsenic
6 supposed to be tested?

7 MS. JAFFE: The test is supposed to be done
8 quarterly.

9 ALJ TOREM: Okay, so the --

10 MS. WALKER: The last time it was tested was
11 March in 2010.

12 ALJ TOREM: All right. So, Ms. Walker, you
13 say the last test was March of 2010 for the arsenic?

14 And do you have an idea -- and Ms. Walker, if
15 you're going to answer the question, turn on that
16 microphone or pull it closer. The folks on the bridge
17 line want to hear what you're saying.

18 Do you have an idea what the costs of these test
19 are? Because I understand that the statute requires the
20 water system company to bear the expense of the testing.

21 So I want to be careful of what I burden Mr.
22 Class with, if it's necessary or unnecessary, or if
23 these are tests that are going to be required in any
24 case?

25 MS. WALKER: Well, they are tests that are

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1 required by our WAC 246-290.

2 ALJ TOREM: Okay, so if a monthly coliform
3 test and a quarterly arsenic test are due on a regular
4 basis, and it would sound as though the quarterly test
5 was last done in March of 2010, we're about due for
6 another one.

7 MS. WALKER: Yes.

8 ALJ TOREM: And the coliform test would come
9 due monthly in -- in any case.

10 MS. WALKER: Right.

11 ALJ TOREM: Then our request for one for
12 February of 2011, or the next one due, perhaps March of
13 this year, wouldn't be an additional burden to the water
14 system?

15 Mr. Class, is that your understanding?

16 MR. CLASS: Yes.

17 ALJ TOREM: Okay. So perhaps then, consider
18 this our formal request for the next available test and
19 perhaps any past test that would cover dates in the
20 complaint, if those items can be made part of our
21 record?

22 Is there any reason that this data that you have
23 is not disclosable beyond this case, or is not a public
24 record?

25 MS. WALKER: We -- we have the data in our

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1 database for all the testing that has been done for the
2 water system and that's all public record, it's also
3 accessible by anyone with internet access.

4 ALJ TOREM: Okay. I'm just trying to make
5 sure also that if there is an issue with a protective
6 order, that any data that comes out of here regarding
7 the water system would -- I can issue such a protective
8 order, if there's confidential data.

9 But it doesn't sound as though the test data is
10 in that category.

11 MS. JAFFE: No.

12 ALJ TOREM: Okay. When we get into
13 financial records, quite often that's the case, but I
14 want to make sure that -- I don't know the Department of
15 Health WAC's, and I appreciate the Assistant Attorney
16 General, or your department, coming to help me, keep me
17 straight on those.

18 Mr. Fassio, on the water testing issue, does that
19 sound like a reasonable approach?

20 MR. FASSIO: I think so, Your Honor. I have
21 not had this discussion with Commission staff
22 specifically, but we don't have any objection to that.

23 And I do note that staff -- UTC staff doesn't
24 have the expertise in water system design and water
25 quality issues and does defer to the Department of

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1 Health for those technical questions.

2 So I think it is appropriate to -- for that
3 information.

4 ALJ TOREM: Let me ask one other
5 jurisdictional question that I mentioned earlier.

6 The Department of Health is here monitoring this
7 particular system for Green Mountain H2O.

8 Cowlitz County, apparently, is not.

9 Can you explain to me if this is a State issue,
10 or if we should also be involving the county, some way,
11 in this proceeding?

12 MS. JAFFE: This water system is regulated
13 by the State, and we do work with the county on smaller
14 water systems, that they help us with the oversight, but
15 they do not work with the Columbia Crest estate's water
16 system.

17 ALJ TOREM: Are they aware of both your
18 proceeding regarding the arsenic levels and this
19 proceeding today?

20 MS. JAFFE: They're aware of our proceeding,
21 but I'm not sure about the today's --

22 MS. WALKER: Yes.

23 MS. JAFFE: Are they?

24 MS. WALKER: Yes.

25 MS. JAFFE: Sounds like yes.

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1 ALJ TOREM: And I was made aware this
2 morning, that there was at least a newspaper article or
3 some kind of article that came out regarding today's
4 prehearing conference.

5 MS. JAFFE: I don't know if an article came
6 out, but we were called by a reporter yesterday and we
7 were interviewed, but I haven't seen the article yet.

8 ALJ TOREM: Okay, so I would imagine that
9 this is making some news headlines in Cowlitz County and
10 if the county wants to get involved -- if you hear that,
11 please let them know to contact the Commission.

12 But it doesn't sound as though there is a
13 jurisdictional issue that I need to affirmatively hold
14 up any proceedings and wait for the county.

15 MS. JAFFE: Correct.

16 ALJ TOREM: All right. So, we covered that.

17 So, then, I wanted to turn back to Mr. Tadlock
18 and have him -- give him a chance to summarize for the
19 record, the emphasis and the gist of the complaint.

20 And then give Mr. Class a chance to see if there
21 are any other issues that he thinks are relevant that we
22 need to plan for and any briefing or any presentation of
23 evidence.

24 And then hear from Commission staff based on the
25 formal complaint and responses. And staff has anything

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1 else that they think we need to be covering.

2 So, Mr. Tadlock, if your microphone is on, go
3 ahead.

4 MR. TADLOCK: Thank you, Your Honor. The --
5 the complainants met recently and -- and were asked if
6 they wanted to file this complaint and a long -- and a
7 discussion ensued as to why.

8 And the -- the net is, is that the complainants
9 who are participating in this complaint, all feel that
10 they have been forced to buy bottled water, have water
11 delivered, put in RO symptoms and so forth to get
12 potable water for drinking.

13 ALJ TOREM: When you say RO systems, is that
14 reverse osmosis?

15 MR. TADLOCK: Reverse osmosis. Thank you,
16 Your Honor.

17 In order to get reliable drinking water, and
18 their view is that they're paying a lot of money for
19 this water, at the same time they're paying Mr. Class
20 and Green Mountain H2O for water they feel should be
21 potable.

22 And when I say should be, that is based on the
23 fact that historically, the system has been unreliable
24 from a safety point of view.

25 It has failed multiple tests. The system has

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1 been breached often by non-certified operators.

2 There has been air in the lines. The systems
3 have not been purified. After that was done.

4 And we don't have a certified operator on the
5 system, which means we don't have someone to maintain it
6 who has -- abides by the state health regulations.

7 We've dealt with the Department of Health, have
8 been dealing with them for quite a period of time now,
9 to try to get these addressed.

10 And we've tried to work with Mr. Class to help
11 him understand that -- that the community really wants a
12 reliable, safe, potable water system.

13 We filed this complaint simply because the folks
14 want to make a statement. And they truly don't feel
15 they should have to pay twice for water.

16 ALJ TOREM: All right. And I understand
17 there is, under our administrative code, I believe the
18 Washington Administrative Code provision is 480-110-395
19 that sets up a three-part test where the Commission can
20 order reimbursement of certain expenses. And I know
21 that's been cited in the complaint and requested.

22 So is that the key remedy you're looking for?

23 MR. TADLOCK: Yes, Your Honor.

24 ALJ TOREM: And that reimbursement would be
25 for some of the expenses you've listed.

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1 Like the bottled water and the reverse osmosis
2 systems and anything else that's been incurred?

3 MR. TADLOCK: Yes, Your Honor.

4 ALJ TOREM: And I believe they -- the rule
5 also allows for the refund of fees paid to the water
6 company if that was proven up as well?

7 MR. TADLOCK: That's primarily what we're
8 looking for, Your Honor.

9 ALJ TOREM: All right.

10 Mr. Class, I've read your response to the
11 complaint. And I understand this is an upsetting thing
12 to have to come in and deal with and be battling at
13 multiple ends.

14 So my goal today is really just to hear from you
15 as to issues that you want to -- whether you're going to
16 -- first I want to know if you're going to represent
17 yourself throughout this proceeding or if you intend to
18 seek counsel?

19 MR. CLASS: I intend to seek Counsel.

20 ALJ TOREM: Do -- have you had an
21 opportunity to do that in the Department of Health
22 proceeding, or is this a decision you are making today?

23 MR. CLASS: No, I've just been making it the
24 last few days.

25 ALJ TOREM: Okay, and I know you have some

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1 friends or support with you in the audience today and --

2 MR. CLASS: Yes.

3 ALJ TOREM: I want to make sure that if your
4 counsel is going to participate, that we get notice of
5 that sooner rather than later.

6 MR. CLASS: Okay.

7 ALJ TOREM: What I've found in cases where
8 counsel joins late, is everybody else is ready to go but
9 the attorney -- the new attorney's not --

10 MR. CLASS: Yes.

11 ALJ TOREM: And they need time to get
12 familiar with the case and that causes delays and the
13 Commission schedule sometimes can accommodate them, but
14 it does cause sometimes undue expense to others.

15 So if you can look for Counsel in the next couple
16 of weeks that would be helpful.

17 MR. CLASS: I will.

18 ALJ TOREM: I'll be setting some -- a next
19 hearing or a next scheduling matter today and that
20 Counsel should make themselves available for that date.

21 So, it's important that when you find an
22 attorney, that if they can't make that date that's set
23 today, they immediately let us know so we can reschedule
24 it to something akin to the same time frame, the same
25 week or the same month, at the very least, so there's

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1 not any delay to the procedural schedule.

2 MR. CLASS: I will do that.

3 ALJ TOREM: Let's go ahead then and have you
4 talk, you know, a little bit about how you're responding
5 to the complaints.

6 If there's any issues that, you know, you want to
7 just come out -- you don't need to today if you're going
8 to get Counsel, admit or deny anything formally, but if
9 there's just a general response you want to put on the
10 record today, go ahead.

11 MR. CLASS: I guess the general response is
12 that there is -- chlorination has been added to the
13 system and I believe that all bacteria tests are
14 satisfactory at this time.

15 The -- I'm -- I'm -- we'll have tests done right
16 away. I'm not sure what the last arsenic test -- but I
17 know that they've been doing bacteria tests, or CJ Bruno
18 has, and I'm quite certain that those are all clean now.

19 In regard to the arsenic, and that's the -- the
20 main situation that happened here and I --

21 SPEAKER: We can't hear.

22 ALJ TOREM: I'm sorry, Mr. Class --

23 MR. CLASS: I'm sorry --

24 ALJ TOREM: Let me summarize. He stated,
25 for those on the line, that chlorination added to the

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1 system seems to have resolved the coliform issue and he
2 believes the bacteria test should be showing okay. And
3 he'll be getting new tests shortly.

4 From there go ahead, sir, on the arsenic.

5 MR. CLASS: Okay, I will forward the arsenic
6 test, whatever's been done, and the bacteria tests, if
7 the state doesn't have them, I will get them to those
8 and I will forward those to Mr. Tadlock in regard to
9 that.

10 The -- in regard to the arsenic treatment system,
11 that is something that has taken three years of my life
12 to do, to try and do that.

13 And across the United States, every state is
14 having trouble with arsenic. I have a notebook I'm
15 going to drop off, with just exhibits on everything,
16 that I have gone way beyond the call of duty to try and
17 get the best possible drinking water through this
18 arsenic treatment of ion -- known as ion exchange.

19 In many other states, now they are using point of
20 use, point of entry. And the federal guidelines support
21 that.

22 And most of the states are doing that. The State
23 of Washington is not.

24 This is something -- and in these exhibits I'm
25 dropping you off, there's one from the EPA that just

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1 explains, that this is not an isolated case.

2 Everybody is just -- they're needing state money.

3 Everybody is needing help in this arsenic thing. I have

4 done this all myself. And I've been trying to do it.

5 And I have all these exhibits. It is something I don't

6 think anybody should have to go up against.

7 And I have, at times, just got beaten up so bad

8 on this. But this has been my attempt, and the notebook

9 speaks for itself.

10 These are not my writings. These are everybody

11 else's. These are the exhibits. And I just want to

12 drop that off and have everybody look at that.

13 And ask themselves, what I could have done beyond

14 what I did. My engineer was paid in full. This was

15 between Teresa Walker and my engineer. I'm not an

16 engineer.

17 I paid for ion exchange, which is number 2 on the

18 list of approved systems.

19 This has got -- you can see clearly she has over

20 a year past when I turned this in, paid in full, she is

21 still saying no, ion change is not the right system.

22 So, in any case, I'm still working trying to get

23 through this arsenic treatment.

24 ALJ TOREM: So it sounds to me, Mr. Class,

25 that the -- part of the -- part of the difficulty, if I

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1 understand it correctly, there was a change in the water
2 quality standard for arsenic some years ago and there
3 have been new treatments that are required, and you've
4 chosen one that the Department of Health is disagreeing
5 with?

6 MR. CLASS: Yes, I got very lucky and when I
7 did my due diligence, ion exchange was the right
8 treatment for our water chemistry.

9 Over the last two years, it has proven itself,
10 that there's no question, it is the right treatment
11 system.

12 ALJ TOREM: Let's -- we'll bring that if it
13 becomes an issue for me in this case.

14 MR. CLASS: All right.

15 ALJ TOREM: Part of what I want to figure
16 out is, these cases are rare at the Commission.

17 MR. CLASS: Yes.

18 ALJ TOREM: So, we want to make sure we're
19 getting the right issues litigated.

20 MR. CLASS: Okay.

21 ALJ TOREM: For us it may simply be a
22 question of, does -- does the water meet the state water
23 quality standards?

24 So when the test results are part of the record,
25 we can discuss those and, quite often those tests are

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1 numeric. And we can say it's a yes or no. And there
2 may be a yes but, or a no but, that we can talk about
3 and have sworn testimony and those exhibits you're
4 talking about.

5 MR. CLASS: Okay, to condense what I had
6 said, on the bacteria? Those are going to come through
7 that as clean.

8 On my arsenic levels, it's about 25 parts per
9 billion. On the Class A systems, they went from 50
10 parts per billion to 10 parts per billion. So I am
11 15 points above that.

12 So I have to have arsenic treatment for that.
13 And that's what I have been trying to do.

14 ALJ TOREM: Okay.

15 MR. CLASS: Once you cannot complete your
16 engineering, you have to sign a contract with the state
17 to be in compliance.

18 So, I could not be in compliance with the state.
19 Therefore, I could not -- no operator can take the
20 liability of having a water system that is not in
21 compliance.

22 So I cannot get an operator until I get my
23 arsenic system approved, which I can't get approved
24 until the State accepts my ion exchange.

25 ALJ TOREM: Okay, and that again will be an

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1 issue with the Department of Health, and not -- I can't
2 approve any treatment systems clearly from here.

3 All right. So it sounds to me like you're
4 anticipating the coliform issues will show you are in
5 compliance and that the arsenic will be what it is with
6 the Department of Health.

7 And that litigation that's set for next month,
8 before another DOH judge will resolve that matter, I
9 think, and will probably bind the utilities commission
10 as to whether you are or are not able to meet standards
11 with the choice of treatment system you're wanting to go
12 with.

13 That, I think, is outside my jurisdiction. So,
14 I'll leave that to the wisdom of the Department of
15 Health, whether you agree with their outcome or not.

16 Let me turn to Commission staff, quickly, and see
17 if -- based on what you've heard, Mr. Fassio, this
18 morning and any research you may have done, what issues
19 we need to take up and what sequence, and perhaps what
20 pace also you might recommend, given the March hearing
21 at Department of Health on this arsenic issue.

22 MR. FASSIO: Thank you, Your Honor. And
23 staff does have a number of observations. We're not the
24 respondents, so we did not have an opportunity to
25 formally answer the complaint.

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1 So I did have some observations to bring up. You
2 started addressing some of the things that I was going
3 to discuss.

4 And I -- I did want to also mention, when the
5 Commission staff participates in a formal complaint such
6 as this, we're here to assist the Commission in
7 developing a record. We're not here as an advocate for
8 either parties -- for either of the parties at this
9 point.

10 The Commission staff may take a position, but
11 we're here to assist the Commission in developing the
12 record.

13 And I think with respect to some of the
14 jurisdictional issues with the Department of Health, I
15 think you've touched on some of those. That it is
16 perhaps not the Commission's role in this proceeding to
17 enforce the Department of Health's rules and statutes as
18 it's -- as perhaps the issues have been placed in the
19 complaint. The Department of Health has the
20 jurisdiction over those.

21 The Commission has jurisdiction under RCW 80.28
22 over the rates, terms, and conditions of service, but
23 again, does not have the expertise in issues of water
24 quality, design systems, design and maintenance and does
25 defer to the Department of Health.

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1 So to address your question about timing, I think
2 that, to the extent the Department of Health may be
3 dealing with issues that are in common with some of the
4 issues that have been raised here, and may be resolving
5 those issues in a separate proceeding, through a
6 separate enforcement action, and may come out with a
7 ruling -- determinations of law, those -- that ruling
8 may assist the commission in resolving some of the
9 issues that are before the commission.

10 And so I think it is appropriate perhaps to have
11 a hearing on this matter at the conclusion of the
12 Department of Health's determinations.

13 That's one observation I have.

14 I did want to also address the -- the remedy --
15 the relief that's been sought under WAC 480-110-395,
16 staff does believe that -- that this is -- this is a
17 relief that would be brought before the Commission. It
18 does touch on issues of water quality standards.

19 There can be a formal proceeding and the
20 Commission may be required -- may be required to refund
21 water charges, you know, upon certain conditions when
22 there are violations of the water quality standards and
23 under the -- the DOH WAC, and that the company does not
24 take follow up steps outlined in WAC 246-290-320, and
25 that -- that amount of refund can be determined in this

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1 proceeding.

2 So I think that that issue as to the extent of
3 the complaint, addresses those specifically. I think
4 that is properly before the Commission as an issue.

5 I do want to point out though, that there may be
6 relief -- there may be limits to the relief that can be
7 granted under that.

8 The complainants do ask for relief going back to
9 2003.

10 The water charges contemplated by the rule are
11 set out in the Commission's tariff. The company's
12 tariff that is filed with the Commission.

13 The respondent has been regulated by the
14 Commission since filing their initial tariff, with the
15 Commission, in April of 2009.

16 Just for the record, that docket was UW-090503,
17 and it was approved on April 30th, with rates effective
18 May 1st, 2009.

19 So it may be that the Commission only has the
20 authority to grant refunds of water charges dating back
21 to the date that the Commission first had jurisdiction
22 over this company. And not going back to 2003.

23 ALJ TOREM: I appreciate you raising that
24 issue because, I think I have read something in the
25 filing about how -- when Green Mountain H2O came to the

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1 Commission, but I also looked at the 2003 date as
2 something that's eight years ago and most statutes of
3 limitation don't extend quite that far.

4 I don't know that there's a statute of
5 limitations that would apply administratively to us, but
6 it would be definitely an issue we'll need to resolve if
7 there are going to be any refunds ordered. What the
8 limits are.

9 So we will definitely be looking at that, as --
10 if we get to that part of the proceeding.

11 MR. FASSIO: That's correct. I did look at
12 statute of limitations issues as well. And it doesn't
13 appear in the statutes that there is a specific one set
14 out.

15 There is commission precedent for the issue --
16 for the situation where the statute of limitations has
17 come up. And there hasn't been one set out.

18 And in that case, there is a -- a -- an RCW
19 4.16.130, that sets out statutes of limitations where
20 one is not separately set -- set out. And I believe
21 that is two years.

22 So that may or may not be an issue that's more --
23 two years is further out than the Commission's
24 jurisdiction over the company. So --

25 I did want to also mention that the request for

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1 relief does not -- not ask the Commission specifically
2 to find violations of Commission rules and statutes.

3 It's not clear to Commission staff whether the
4 complainants are seeking to actually prove particular
5 violations.

6 I would note that to the extent that the
7 commission does not have jurisdiction over enforcement
8 of DOH rules and statutes, it has jurisdiction over the
9 -- certain -- basically RCW 80 and 81 and rules enforced
10 by the Commission.

11 So that is an issue I think we need to determine
12 whether -- whether the complainants are seeking a
13 declaratory order on certain violations of Commission
14 rules.

15 Also another observation, the complaint request
16 penalties under RCW 80.04.405.

17 A couple of observations in this regard. First,
18 in order for the Commission to actually impose
19 penalties, it has to first find the violation -- make a
20 finding of violations. Penalties are for violations of
21 Commission rules. So that is a prerequisite.

22 In addition, I do want to mention that the
23 Commission is held, on several occasions, the penalties
24 under -- the penalty statutes are not an available
25 remedy for private complainants seeking before the

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1 Commission.

2 And I do have a couple of citations, which I can
3 mention for you that deal with that.

4 One is Waste Connections versus -- or Washington
5 versus Enviro-Con & Trucking. Docket TG-071194, Order
6 07, and referring specifically to paragraphs 18 to 21.

7 That order cited an earlier case before the
8 Commission. Glick versus Verizon Northwest, Docket
9 UT-040535, and in particular, that cited Paragraphs 53
10 through 63 of that order.

11 Basically setting out that -- a private litigants
12 before the Commission -- they're not entitled to seek
13 penalties on behalf of the state. And the reasoning for
14 that.

15 So, I did want to mention those statutes because
16 they were specifically raised in the request for relief.

17 ALJ TOREM: As I recall, those cases that
18 you've cited, the remedy recommended to a private
19 complainant, was simply to go to Superior Court for
20 damages and seek those damages in that jurisdiction.

21 One of the statutes that's relevant is 80.04.440.
22 And this is a -- a statute that makes companies liable
23 for any damages they might do.

24 And it's specific, and the last sentence of that
25 statute says, "an action to recover for such loss,

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1 damage, or injury may be brought in any court of
2 competent jurisdiction by any person or corporation."

3 And when it says any court, it doesn't mean any
4 agency, such as the Commission, so I think that
5 dovetails well with what Mr. Fassio is putting on the
6 record as to the limitations on relief that may be
7 available here.

8 MR. FASSIO: I concur with that, Your Honor.
9 That was going to be my next point, as a matter of fact.

10 And so we -- staff did observe in reading the --
11 the relief, that the -- the complainants did cite to
12 that statute in their request for relief on page seven.

13 They also requested compensation for bottled
14 water. That may also qualify as damages under the
15 statute because they may not be specifically water
16 charges as the statute defines.

17 So yes to the extent that damages may not be
18 available -- are probably not available to the
19 Commission -- to complainants before the Commission, the
20 statute that they did cite allows them to seek that in
21 court.

22 And one more observation I did want to make. It
23 specifically relates to Paragraph 3.16 of the complaint.
24 And that says that per that RCW, the complainant's
25 request the water company be placed in receivership.

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1 ALJ TOREM: Right, and this is RCW
2 80.28.040.

3 MR. FASSIO: Yes, Your Honor. And I did
4 want to observe for the record that the -- that that
5 statute does not give the Commission the authority to
6 place water companies in receivership.

7 ALJ TOREM: All right, the language I have
8 in both that statute and 80.28.030, is that the
9 Commission may request that the department either
10 petition the court to place the company in receivership
11 and in the previous statute .030, it's requesting that
12 the Department petition the court to place the company
13 in receivership.

14 Both of those refer to the Department of Health,
15 I believe.

16 MR. FASSIO: Yes. That is -- that is
17 correct.

18 And in order for -- in order for the Commission
19 under -- I guess I'm looking at .040.2 -- first make
20 that request, it says that in the event that a water
21 company fails to comply with an order from the
22 Commission within a deadline.

23 So, presumably we would need the order from the
24 Commission first, and then something would happen --
25 happen after that to trigger -- to trigger the

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1 Commission's role in that statute as to that piece.

2 So, this issue may be, at the very least, not
3 ripe for -- for determination in this case.

4 ALJ TOREM: So that may be a post hearing
5 remedy, if and when we get to such a thing.

6 MR. FASSIO: Possibly. But I -- but at this
7 point, I don't know that the Commission has the ability
8 to -- to petition the Department of Health on the basis
9 of -- of facts cited in the case -- in the complaint.

10 ALJ TOREM: So it sounds like when we set
11 this matter for hearing, that the real questions, if I'm
12 hearing you correctly are:

13 What are the results of the tests we're going to
14 get back from Department of Health, which will tell us
15 if this water system is in compliance or not?

16 And then if, for some reason, we find it's not in
17 compliance, what refunds and relief are available under
18 our administrative code? And we would litigate those to
19 find out an amount, and then we'd have to sort out the
20 jurisdiction.

21 Beyond that, you've told me today, the
22 Commission's initial read on other remedies that may be
23 available in another forum, whether in court for damages
24 or for failure to comply with any order we might issue
25 from the Commission, with a recommendation be made to

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1 the Department of Health regarding receivership.

2 Those would come in sequence after, and not
3 necessarily be litigated during the hearing on the
4 merits.

5 MR. FASSIO: I think that fairly summarizes
6 that, Your Honor, yes.

7 ALJ TOREM: Okay. There's one other
8 statute, I don't know if you had a chance to look at.
9 And -- and this may be something where the Department of
10 Health can help us out as well today. RCW 80.28.275,
11 this talks about assumption of a substandard water
12 system.

13 And I don't know from the facts before us, when
14 this water system first came into existence or if it's
15 an issue.

16 It's a short statute, so I'll just read it
17 verbatim. It says "that a water company assuming
18 responsibility for a water system that's not in
19 compliance with state or federal requirements of public
20 drinking water systems, and agent and employees are
21 immune from lawsuits or causes of action based on
22 noncompliance with the state or federal requirements for
23 better public water systems that predate the date of
24 assuming responsibility, and continue after the date of
25 resuming responsibility, provided that the water company

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1 has submitted and is complying with the plan and
2 schedule of improvements provided by the Department of
3 Health."

4 And the immunity, it goes on to say, "expires on
5 the earlier of the date that planned improvements are
6 completed or four years from the date of assuming
7 responsibility."

8 It doesn't apply to -- the immunity doesn't apply
9 to intentional injuries, fraud, or bad faith.

10 So, when I read this part of the statute, it
11 would be a question of fact as to when Mr. Class started
12 with the system and whether or not it was in compliance
13 previously.

14 And I don't know if the Department of Health has
15 looked at this, as to whether or not there's any
16 immunity that can be asserted or if Mr. Class intends to
17 seek any protection or immunity for a period of time
18 under the statute.

19 Let me direct the question first to you, Mr.
20 Class, if you are aware of this statute and whether or
21 not you think it applies whatsoever.

22 MR. CLASS: I'm not aware of it and I don't
23 fully understand it.

24 ALJ TOREM: And since you are seeking
25 Counsel, what I would recommend is you jot down this

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1 citation, which is 80.28.275.

2 It appears to be a factually narrow ability for a
3 water system to seek immunity. I don't know what the
4 facts will be in this case and I don't need to establish
5 them today.

6 But if you wish to raise that issue, it's
7 something, it seems like, that should come up very early
8 on so we can determine if an immunity, for any period of
9 time, applies and see if the Department of Health, if
10 they are going to intervene in this case, wants to
11 challenge or say that that immunity shouldn't be
12 granted.

13 So I don't know if the Department of Health has
14 an initial view on this right now, if they think it's
15 correct for us to look at it.

16 MS. JAFFE: I am familiar with the
17 provision, Your Honor, and it is my understanding that
18 Mr. Class has been the owner of the Columbia Crest water
19 system since it was originally approved by the
20 Department of Health. We believe that it would not be
21 applicable in this situation.

22 ALJ TOREM: All right, so if -- if Mr. Class
23 chooses to assert this, he would have to show some prior
24 ownership that he took it over and it wasn't in
25 compliance?

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1 MS. JAFFE: That's my understanding, yes.

2 ALJ TOREM: All right. Thanks for that
3 clarification.

4 Mr. Tadlock, you heard the issues we were
5 discussing as you've been around, not only those raised
6 by the complaint, but now the legal discussions of how
7 they might be funneled to be heard before the
8 Commission.

9 Speaking on behalf of the group, I guess you've
10 been designated the spokesperson, that there are others
11 here.

12 I'll turn the bridge line microphones back on, if
13 they need to chime in.

14 Do you have any response or what you think the
15 process should be from your perspective?

16 MR. TADLOCK: Tough question, Your Honor.
17 I've been listening because I'm not clear on all of the
18 WACs and citations and so forth that were cited.

19 But I do know that the tariff agreement that Mr.
20 Class has with the UTC has -- has in nine different
21 places, stated that the water system must be in
22 compliance with the State Department of Health
23 guidelines for quality.

24 And we do know it has not done that. It has not
25 been operating that way for a long time.

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1 That it has not met the quality standards set
2 forth and that's right in the tariff that also
3 establishes and allows him to charge the users.

4 And that's why we filed the complaint.

5 ALJ TOREM: Now, you're aware of the arsenic
6 litigation going on before the Department of Health as
7 well; is that correct?

8 MR. TADLOCK: Correct.

9 ALJ TOREM: And are you interested parties
10 in that case or are you participating in any form?

11 MR. TADLOCK: It's -- it's clearly one of
12 the quality issues we have with the system.

13 This has been ongoing. It's our understanding
14 that Mr. Class presented a plan to mitigate the arsenic,
15 but it was not submitted by a certified engineer.

16 He was advised that he needed to do that a long
17 time ago. He has been advised by both the UTC and the
18 Health Department that whatever methodology for
19 mitigating the arsenic he chooses, will require a pilot
20 and the pilot has to be designed and submitted by a
21 certified engineer.

22 None of that to our knowledge has been done.

23 ALJ TOREM: So it sounds to me that you've
24 got a pretty good handle on what's going on at the
25 Department of Health. They've indicated this morning

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1 that there will be a hearing held next month.

2 Do you think it's wise of us here at the
3 Commission to process your complaint ahead of that? Or
4 are you comfortable, on behalf of the homeowners, maybe
5 you could look around the room for some nods or not,
6 waiting until that hearing is held and perhaps getting
7 some of the exhibits or some of the findings transferred
8 to this Commission to adopt, or at least have a good
9 chance to determine if it's set on some of those issues
10 that require us to get tests from the Department of
11 Health.

12 MR. TADLOCK: The -- the current test
13 results really are -- are -- are -- our complaint is
14 based on the historical quality of the system and the
15 way it's been managed.

16 So -- so current testing, even -- now that he has
17 installed the chlorination system, we don't have an
18 arsenic mitigation in yet.

19 But if it passed coliform test today, that's
20 goodness. It has passed occasionally in the past, and
21 it has failed quite often in the past. Or no testing
22 was done when it should have been done.

23 That really is the crux of this -- of this
24 complaint, is the historical performance of the system
25 and the -- the lack of quality and reliability that we

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1 can depend on.

2 That's what this case is about for us is -- is
3 financial remuneration for those -- for that period of
4 time. And not just today.

5 ALJ TOREM: And I understand there may be a
6 look back period. But you've asked to go back until
7 2003 in the complaint and we might not be able to go
8 back that far.

9 And I'm not making that determination today.

10 MR. TADLOCK: I understand that, Your Honor.

11 ALJ TOREM: But if you are going to go back
12 to 2003, we're going to need the documentation that
13 shows when the system was or was not in compliance.

14 And that would be the burden on the complainant.
15 Certainly staff is here to establish a record, and as
16 much as Mr. Fassio can't be your attorney, he can't
17 represent you, he can certainly be conferred with to
18 determine if he has the power to help get exhibits that
19 for some reason are beyond your means.

20 If they're available at other State agencies. He
21 may be comfortable helping you. But that's again, you
22 can ask, he'll tell you if he thinks that's within his
23 lane to help on this or not.

24 But his job is to make sure that the record
25 before me, and eventually if it's appealed before the

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1 commissioners, is solid enough to hold up to whatever
2 decision we come out with.

3 MR. TADLOCK: Your Honor, one of the things
4 we're concerned about is exactly the question you asked
5 between the proceedings that are going on in the Health
6 Department and the proceedings here.

7 Which one is right to get in front of other? How
8 do we -- we don't want to end up with the cart in front
9 of the horse, so to speak. But I --

10 ALJ TOREM: From my view, from what I've
11 heard today, the main question for me is going to be
12 dictated by those tests.

13 Does the system meet or not meet standards? And
14 I'll need to make findings of fact and eventually a
15 conclusion of law on that question.

16 I would think, we're going to need those tests
17 from the Department of Health and if there's anything to
18 call into question in the arsenic result, based on the
19 change in standard described in the pleadings and by
20 Mr. Class this morning, that might be worth waiting for.

21 So that if -- if the Department of Health grants
22 some sort of exception or the Department of Health does
23 something, I don't know what's in their purview. I've
24 never been a Department of Health law judge.

25 If they were to somehow say that there's an

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1 exception for this particular system and the treatment
2 that he's got is approved by the judge, despite the
3 disputes between Ms. Walker and himself, as to what the
4 appropriate treatment standard is.

5 If they resolve that next month and its not undue
6 delay, I think that would be relevant to our findings
7 here and as Mr. Fassio pointed out is well beyond the
8 expertise of Commission staff of dealing with water
9 quality issues.

10 So I would think it would be appropriate to wait
11 until April to have that occur.

12 One format that I would suggest, that might be
13 applicable once we have more facts and perhaps even a
14 decision from the Department of Health, is to have your
15 group consider, and if Mr. Class gets representation
16 with his Counsel, whether or not mediation at that point
17 is worthwhile.

18 I can certainly go ahead and have the case come
19 to litigation. My order may be, who knows, quantified
20 by if there was any refunds granted. Something that can
21 or cannot be paid.

22 It may or may not be the ultimate relief you're
23 seeking, because part of what you stated this morning,
24 is you're asking to make a statement, and I think you
25 have the attention of two state agencies now, very

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1 focused. We're here to uphold the Commission rules and
2 the law.

3 Sometimes that doesn't always provide the
4 ultimate relief that the community wants.

5 Mediation's more flexible. It may be in this
6 case once the facts are established outside the
7 courtroom, that a resolution can be reached that can be
8 a win-win for everybody. And collectible as well, if
9 there's monetary damages to be exchanged.

10 That doesn't always happen if it comes from
11 someone like me.

12 So if you wish to avail yourself, the Commission
13 does have settlement judges and mediation judges that
14 could be worked into a schedule.

15 Sometimes that works and sometimes that just
16 flushes out issues that change the posture of the case a
17 little bit and gives people a change to talk in a less
18 threatening environment. It's not binding in mediation.
19 Everybody has to agree.

20 That may be something that you should be aware of
21 and Mr. Class might be willing to participate in
22 initially, if the time is right.

23 Commission staff may or may not participate in
24 that type of an issue to resolve a formal complaint.
25 And the Department of Health may get involved as well,

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1 just depends how unwieldy it is.

2 But truly it's the complaint from your
3 homeowner's association and Mr. Class, we can make that
4 information available and if you want to file a request,
5 talk to Mr. Class or his attorney first, see if they're
6 open to it and when it might be an appropriate time.

7 I just want to make that on the record today that
8 that might be appropriate. Then again, you may have had
9 these discussions and it may not be at all.

10 MR. TADLOCK: Your Honor, I'll bring that
11 suggestion up to the participants, to the claimants and
12 ask them if they'd like to pursue that route.

13 ALJ TOREM: Let me ask if the Department of
14 Health has any suggestions on how we might proceed and
15 the timing for decisions or determinations from your
16 agency that might be coming.

17 MS. JAFFE: I think the only thing I'd like
18 to make sure is clear is that while the hearing is set
19 for March 30th, the health law judge has approximately
20 up to 90 days to issue an order.

21 Typically, it's done a little bit quicker, maybe
22 within 60 days, but they have up to 90 and sometimes
23 they do use that.

24 So, it could be well until June until an actual
25 final order is issued on that hearing. So the issues

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1 would not be resolved until quite a few months after the
2 hearing. So I do think that is something you should be
3 aware of.

4 The other concern, not necessarily concern, but
5 the other issue we'd like to point out is that our civil
6 penalty proceeding is in relation to the arsenic issue
7 as well as the operator issue.

8 It is not dealing with coliform or other
9 contaminants in the water system. So as -- if that is
10 an issue for -- for yourself to decide then waiting for
11 the Department of Health hearing probably would not be
12 beneficial.

13 ALJ TOREM: All right. I -- I think that's,
14 Ms. Jaffe, that's good advice for us and under the
15 administrative procedure act, we would have the same
16 basis once a hearing is held.

17 We would have that same 90-day limit, unless
18 there's good cause shown to extend that.

19 So, I think it may be helpful for Mr. Class not
20 to have to fight two battles at once and to be able to
21 focus on getting ready for that hearing before we were
22 to conduct another proceeding here.

23 It would also give the homeowner's association
24 this month of February to sort out how they wish to
25 proceed.

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1 It may be wise for us to have another status
2 conference in about a month and then set up a formal
3 schedule. That way mediation could be requested in that
4 time.

5 Certain exhibits might be formulated. Was it
6 Mr. Class who stated you might be dropping off exhibits.

7 That may be premature yet until we set a deadline
8 and a specific date to exchange witness lists and
9 exhibits for a formal adjudicative proceeding.

10 But I think if there's documents you want to
11 exchange, in the legal procedure, it can be formal or
12 informal discovery.

13 Those documents you might -- if you have them and
14 you think the homeowner's association hasn't seen them,
15 that would benefit them, that's great.

16 I won't need them until I'm ready to start making
17 a decision on the case. And when they're appropriate,
18 if they're relevant, they'll certainly be admitted.

19 But we'll have a formal process on which we
20 identify those documents and offer them for my
21 observation and consideration.

22 Okay, so hold onto them, don't drop anything off
23 yet. The record center won't know quite what to do with
24 you when you show up with a box of documents and --

25 MR. CLASS: Can I at least show you one that

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1 --

2 ALJ TOREM: You can call my attention to it.

3 MR. CLASS: This is Devito's Engineering
4 packet, which was turned into the state over two years
5 ago. They were paid in full on March 17th, 2009.

6 In 2010, Teresa Walker is still telling my
7 engineer that ion exchange, they strongly recommend not
8 using ion exchange. In other words, don't use ion
9 exchange.

10 ALJ TOREM: All right. And this is what --

11 MR. CLASS: And this was paid in full and I
12 have, in my exhibits -- this is not me talking -- this
13 is in my exhibits, through an accountant, through proof,
14 all of this stuff is down and -- even the guy that has
15 done -- Paul Garrison has done more arsenic systems --

16 ALJ TOREM: Mr. Class, let me stop you for a
17 minute.

18 MR. CLASS: Okay.

19 ALJ TOREM: I -- I -- I've seen in your
20 response where you've cited Jeff Tasopo or Tasapo of
21 Devito Engineering and exactly the documents you're
22 holding up there.

23 Again, if those become relevant, we'll know. And
24 I think I do want to defer having any adjudication, per
25 se, until at least after the proceeding for the

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1 Department of Health.

2 MR. CLASS: Okay.

3 ALJ TOREM: From there, at least you folks
4 will have participated in that and maybe the Department
5 of Health will be able to tell me what issues are before
6 the judge.

7 And if the judge has a recommendation -- a date
8 by which those issues will be decided on the arsenic
9 treatment issue.

10 That, again, is an issue before me, but on the
11 coliform tests, we can certainly have those submitted
12 and made part of the record sooner rather than later.

13 And I -- I think it would be -- I think, at this
14 time, wise of us to, Mr. Fassio, I'd like your input on
15 this, focus that request to the Department of Health for
16 which collection of tests that they can provide to us
17 going back to at least that two-year period that we've
18 regulated Green Mountain H2O.

19 So we know, since they came to us, what the
20 coliform tests have shown, when they were done each
21 month and which ones were missed, and the quarterly
22 arsenic tests.

23 If Ms. Waybright or Ms. Walker can send those to
24 you with maybe just a proposed document that we can put
25 into the record, it might later become a formal exhibit,

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1 but at least it would be available under our UTC records
2 management system and accessible on our website, so that
3 homeowners that are participating would see that, and at
4 our next status conference we might talk about that and
5 what the suggestion -- I don't know the right Latin
6 terms for what the let's speak for itself -- what those
7 numbers show.

8 Is it a pro-forma finding that would have to be
9 made or is it something that would suggest, these are
10 the standards he did or did not meet according to the
11 Department of Health.

12 Certainly a hearing would require sworn testimony
13 to explain the results, but it would at least give all
14 the players that are here today, a baseline of where are
15 we going with this initial question on the coliform and
16 with the arsenic tests.

17 What the disputes might be for the ion exchange
18 versus the points of use treatments that are being
19 recommended by the Department of Health, apparently.

20 MR. FASSIO: Umm.

21 ALJ TOREM: There was a question in there
22 somewhere.

23 I think the real question, Mr. Fassio, is do --
24 do you think that that's a good initial request to make
25 to get some documents exchanged by discovery and maybe

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1 filed with the RMS or should they just be exchanged and
2 not put into the system at this point until we formally
3 get exhibits.

4 MR. FASSIO: It may be appropriate to
5 exchange those in discovery. I'm not sure. I've never
6 dealt with -- I've never been faced with this particular
7 scenario before.

8 So, I just -- I think in terms of information
9 that the Commission would need, I'm just looking back at
10 the water quality refund statute.

11 It does refer to water quality standards in
12 246-290-310, which maximum contaminant levels and
13 maximum residual disinfectant levels and the follow up
14 steps provided in -320, I think any information that the
15 Department of Health has regarding those two statutes
16 are -- are particularly key in that finding.

17 I'm not sure if you're requesting just a current
18 or a historical record from the Department of Health? I
19 think I need some clarification on that.

20 ALJ TOREM: I think we're going to need at
21 least the current ones, but I think eventually we're
22 going to need, for an ultimate resolution of the
23 complaint, as clarified today by Mr. Tadlock, to go back
24 as far as our jurisdiction allows.

25 I would guess that we'll have jurisdiction to go

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1 back as far as the April 2009 initiation of regulation.
2 It may be more extensive.

3 But that's going to be up to the homeowner's to
4 make an argument as to why our jurisdiction could go
5 back as far as to 2003, as they alleged might be
6 appropriate.

7 MR. FASSIO: I think that's appropriate.
8 Also bearing in mind that the complainants have the
9 burden of proof in providing evidence before the --
10 before the Commission. So I guess to the extent --

11 ALJ TOREM: When I read the statute that
12 said we shall request these tests from the Department of
13 Health, it appears that that's a way to get it from an
14 unbiased source so that there's not competing test
15 results.

16 There is a provision in the law that allows for
17 individual, private testing to be requested on a certain
18 expense. Those options are certainly available to both
19 the complainants and the -- the respondent here.

20 But I think that we are directed to ask the
21 Department of Health for these results.

22 MR. FASSIO: Yeah, I don't have a particular
23 recommendation as to whether that needs to be filed
24 formally or informally to the parties.

25 I think that all parties should have access to

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1 it, at any rate.

2 ALJ TOREM: I think what I want to do,
3 Mr. Fassio, is our formal request is required by
4 statute. Make it today and ask for anything going back
5 it April 2009 on this water system.

6 If we need to expand that request later because
7 we believe, or there's been arguments made, that I could
8 decide refunds could be issued going farther back than
9 when the UTC assumed it's regulation of the system, as
10 opposed to perhaps, jurisdiction for other purposes like
11 ordering refunds, we'll get back to you.

12 But I would appreciate if the Department of
13 Health could file under this docket number with our
14 records management system, an exhibit that shows the
15 test results for these relevant contaminants.

16 And in -- in a format that would be an indication
17 as to the system did or did not meet standards with each
18 test.

19 Again, what weight that evidence will be given in
20 the proceeding is something we'll have to sort out
21 later, but at least that would be filed and served
22 electronically by our records system to everybody who's
23 e-mail address we have on the external service list, and
24 circulated.

25 MR. FASSIO: Can I address the issue of

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1 discovery, Your Honor?

2 ALJ TOREM: Yes, please.

3 MR. FASSIO: You did -- Mr. Class did raise
4 the fact that he has some -- some exhibits, some
5 documentation he would be willing to share with Mr.
6 Tadlock and perhaps Mr. Tadlock has his documents as
7 well.

8 Any documents that are shared, should be shared
9 with all the parties. That includes Commission staff.
10 So that would be to me directly.

11 And it may be -- I don't know if it is
12 appropriate at this point to invoke discovery rules or
13 not or if you intended to address that formally at some
14 point here, but I think we should discuss that.

15 ALJ TOREM: Yeah, it's on my list of
16 procedural items at the end here.

17 For those that are not as fluent with this
18 process, let me just say, the discovery rules are the
19 way that we formally exchange information in a courtroom
20 setting or even in this Commission administrative
21 adjudication setting.

22 The rules are found in Washington Administrative
23 Code 480-07, I think it's 400 is the actual rule. Let
24 me look and make sure I'm giving you the right citation.

25 Yeah, so the -- the 400 series of our rules talks

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1 about formal discovery versus informal discovery and the
2 use of subpoenas, the use of interrogatories, the use of
3 depositions, which gets expensive.

4 If you need to do that, you need to do that. But
5 I would suggest that if you review our rules, it's
6 480-07-400, 405, 410 and there's a few more in sequence
7 thereafter. But we will invoke those rules.

8 I -- I would hope that we can exchange
9 information mainly to keep expenses down under the
10 informal discovery.

11 Where if you -- for documentation purposes, if
12 you want to send an e-mail to make sure it's accounted
13 for or a written letter requesting certain documents,
14 that's helpful.

15 If you do exchange documents, then all the
16 parties should be getting a copy. If there's anything
17 in these documents that's confidential, then I have the
18 ability to enter a protective order.

19 So, again, if we start getting into the finances
20 of the water system, Mr. Class, or his attorney, may
21 wish to request a protective order be entered and there
22 are terms to do that under the series of administrative
23 code provisions I just cited.

24 Mr. Fassio, do you think it's appropriate to
25 enter one today?

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1 MR. FASSIO: Staff's not requesting one. I
2 guess that would be up to the preference of the -- the
3 parties. If they feel that there's a need for that
4 today --

5 ALJ TOREM: Okay.

6 MR. FASSIO: Otherwise, I'm sure it could be
7 addressed later.

8 ALJ TOREM: There's precedented earlier
9 water cases where a protective order has been entered,
10 but that's, again, would be substituted judgment here
11 for the facts of this case, but it's possible that we
12 may have another talk at a status conference and to go
13 from there.

14 From what you've heard today, Ms. Jaffe, do you
15 think the Department of Health wants to intervene in
16 this proceeding or simply stay out, providing the test
17 results or perhaps make that decision down the road?

18 MS. JAFFE: I think that's something we're
19 going to have to decide later. I'm not sure that I'm --
20 I'm authorized at this point to make that determination
21 without speaking to the director at this time.

22 If we could have a deadline by which to make that
23 decision, that would be helpful?

24 ALJ TOREM: Okay, and we may just have
25 another status conference to -- to determine that. Once

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1 we get the initial test results in and the parties have
2 had a chance to do some informal exchange of
3 information.

4 Mr. Tadlock, I know that we're trying to figure
5 out where the cart and the horses are in this case.

6 My recommendation is that we come back in about a
7 month and -- what was the date, Ms. Jaffe, of the
8 hearing at the Department of Health?

9 MS. JAFFE: It's March 30th.

10 ALJ TOREM: Okay. I'd rather not wait until
11 the end of March. We could.

12 But it may help to get back together, even if
13 it's just a teleconference, where you don't have to make
14 the trip all the way up here, or we set one that's at a
15 mutually convenient time later in the morning, for a
16 short hour of discussion at where things are and refine
17 the issues once people have had a chance to exchange and
18 Mr. Class has had an opportunity to seek Counsel.

19 And then from there, sort out if mediation is the
20 way ahead while they're waiting for their results from
21 the Department of Health, March 30th hearing, which
22 could come as late as late June, is worthwhile and what
23 else we need to do.

24 Does that seem like a good approach today?

25 MR. TADLOCK: Very reasonable, Your Honor.

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1 Thank you.

2 ALJ TOREM: The calendar that I have would
3 allow for something -- well, three weeks from today
4 would be February 24th.

5 A month from now would be the first full week --
6 well, not quite the first full week in March. Perhaps
7 March 1st or March 2nd.

8 Mr. Fassio, does that present any conflicts for
9 you?

10 MR. FASSIO: What day of the week is that?

11 ALJ TOREM: There's -- Tuesday or Wednesday
12 are March 1st and 2nd.

13 MR. FASSIO: I believe I don't have any
14 conflicts on those days, subject to check, but I believe
15 that would be fine.

16 ALJ TOREM: I don't see any other
17 proceedings for the Commission right now that might
18 conflict.

19 Mr. Class, are you available?

20 MR. CLASS: I'm available. Either day, I'm
21 fine.

22 ALJ TOREM: Okay. And Mr. Tadlock, I know
23 you can't speak for everybody that's out there.

24 But would March 1st or 2nd work for you? Do you
25 have any preference on a Tuesday or a Wednesday?

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1 complexities today than we might at the next status
2 conference.

3 So I'm hoping it would be an hour or less of
4 time. But 10:30 might be more convenient for the
5 traffic issues if people want to come in person.

6 The latest is 11:00 o'clock or perhaps even in an
7 afternoon.

8 (Off the record.)

9 MR. TADLOCK: Okay.

10 ALJ TOREM: So what I want to do then is
11 really take no determinative issues today. I'll issue a
12 preconference hearing order that sets the date for
13 interventions to be filed in writing on the date of the
14 next status conference.

15 And we'll take up any petitions for intervention
16 at that time.

17 We'll invoke the discovery rules, and we'll make
18 the mediation option available and ask anybody that
19 wants to take advantage of it, to let us know on or
20 before that date, so we can appoint a settlement judge
21 or a mediation judge.

22 We'll hope to have, by that time, the proposed
23 exhibit, or the facts, if you will, from the Department
24 of Health on the testing results that are available
25 going back from April 2009 to present on both the

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1 coliform and the arsenic.

2 And I think that's about it.

3 As far as the other jurisdictional issues, and
4 the announce of reimbursement, those will be matters
5 that will be refined, I hope, and set for hearing at the
6 status conference in early March.

7 Mr. Fassio, can you think of anything else we
8 need to pick up today?

9 MR. FASSIO: No, Your Honor.

10 ALJ TOREM: Mr. Tadlock, is there anything
11 that you or the homeowner's think that we needed to
12 cover today?

13 MR. TADLOCK: No, Your Honor.

14 ALJ TOREM: Mr. Class?

15 MR. CLASS: No, Your Honor.

16 ALJ TOREM: Ms. Jaffe?

17 MS. JAFFE: No.

18 ALJ TOREM: Well, thank you all. It is
19 about ten minutes to 11, and so we'll be adjourned.

20 If folks here do want to sign in on the e-mail
21 list, to make sure the Commission has that?

22 And folks on the bridge line or those that have
23 given a proxy, Mr. Tadlock, if you could provide
24 Mr. Cupp with a listing of e-mail addresses, that will
25 help us facilitate communication with them as this case

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1 moves forward.

2 MR. TADLOCK: I will do that, Your Honor.

3 ALJ TOREM: Thank you, we are adjourned.

4 (The prehearing conference was concluded at

5 10:54 a.m.)

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C E R T I F I C A T E

STATE OF WASHINGTON)
COUNTY OF KING)

I, the undersigned Washington Certified Court Reporter, pursuant to RCW 5.28.010 authorized to administer oaths and affirmations in and for the State of Washington, do hereby certify:

That the annexed and foregoing hearing containing Pages 1 through 71 of each witness named herein was taken stenographically before me and reduced to typewriting under my direction.

I further certify that each said witness examined, read and signed his/her hearing after the same was transcribed unless indicated in the record that the parties and each witness waived the signing.

I further certify that all objections made at the time of said examination to my qualifications or the manner of taking each hearing, or to the conduct of any party have been noted by me upon each hearing. I further certify that I am not a relative or an employee or attorney or counsel of any of the parties to said action, or a relative or employee of any such attorney or counsel, and that I am not financially interested in the said action or the outcome thereof.

I further certify that each witness before examination was by me duly sworn to testify the truth, the whole truth and nothing but the truth.

I further certify that the hearing, as transcribed is a full, true and correct transcript of the testimony, including questions and answers, and all objections, motions and exceptions of counsel made and taken at the time of the foregoing examination and was prepared pursuant to Washington Administrative Code 308-14-135, the transcript preparation format guideline.

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1 I further certify that I am sealing the hearing in an
2 envelope with the title of the above-referenced cause
3 thereon and marked "Hearing" with the name of each
4 witness and promptly delivering the same to the
5 appropriate party or parties.

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7 IN WITNESS WHEREOF, I have hereunto set my hand
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9 of _____, 2011.

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