

0001

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

BEFORE THE WASHINGTON

UTILITIES AND TRANSPORTATION COMMISSION

---

WASHINGTON UTILITIES AND	)
TRANSPORTATION COMMISSION,	)Docket UW-041830
Complainant,	)Volume I
	)Pages 1-21
v.	)
	)
ILIAD WATER SERVICES, INC.,	)
Respondent.	)

---

A pre-hearing conference in the above-entitled matter was held at 1:30 p.m. on Monday, May 23, 2005, at 1300 South Evergreen Park Drive, S.W., Olympia, Washington, before Administrative Law Judge DENNIS MOSS.

The parties present were as follows:

COMMISSION STAFF, by Christopher G. Swanson, Assistant Attorney General, 1400 S. Evergreen Park Drive, S.W., P.O. Box 40128, Olympia, Washington, 98504-1028.

ILIAD WATER SERVICES, INC., by Richard A. Finnigan, Attorney at Law, 2112 Black Lake Boulevard, S.W., Olympia, Washington 98512.

Barbara L. Nelson, CCR  
Court Reporter

0002

1                   JUDGE MOSS: Good afternoon, everyone. My  
2 name is Dennis Moss. I'm an Administrative Law Judge  
3 for the Washington Utilities and Transportation  
4 Commission. We are convened this afternoon in the  
5 matter styled WUTC against Iliad Water Services,  
6 Inc., Docket Number UW-041830, and we are convened  
7 for the purpose of our first pre-hearing conference.  
8 Let's begin with the appearances. Mr. Finnigan.

9                   MR. FINNIGAN: Thank you. Appearing on  
10 behalf of the Company, Richard A. Finnigan. The  
11 address is 2112 Black Lake Boulevard, S.W., Olympia,  
12 Washington, 98512. The telephone is 360-956-7001;  
13 the fax is 360-753-6862; and my e-mail is  
14 rickfinn@localaccess.com.

15                  JUDGE MOSS: Has it been a while since I've  
16 seen you, Mr. Finnigan, or have you just moved  
17 offices recently?

18                  MR. FINNIGAN: First of May.

19                  JUDGE MOSS: Allright. Mr. Swanson.

20                  MR. SWANSON: Thank you. Chris Swanson,  
21 Assistant Attorney General, on behalf of the  
22 Commission Staff. My address is 1400 South Evergreen  
23 Park Drive, S.W., P.O. Box 40128, Olympia,  
24 Washington, 98504-0128. Telephone, 360-664-1220; fax  
25 number, 360-586-5522; e-mail address,

0003

1 cswanson@wutc.wa.gov.

2 JUDGE MOSS: Thank you. Mr. Finnigan, was  
3 it localaccess.com?

4 MR. FINNIGAN: Yes, Your Honor. And I  
5 should emphasize that that is a new e-mail address.  
6 I've provided the Commission with notice, but it  
7 still hasn't taken throughout the Commission.

8 JUDGE MOSS: Hasn't filtered through to me,  
9 apparently.

10 MR. FINNIGAN: It hasn't. I seem to be  
11 getting e-mail to my old address just as often.

12 JUDGE MOSS: All right. Well, I have it  
13 down now, and I will let our administrative staff  
14 know if they haven't gotten the word.

15 MR. FINNIGAN: Thank you.

16 JUDGE MOSS: All right. There are -- well,  
17 I should ask if there's anyone on the conference  
18 bridge line. Apparently not. And no one else  
19 present in the room, so I think we may take it as a  
20 safe bet that there are no petitions to intervene.  
21 There are no pending motions that I'm aware of? No.

22 In terms of process, I have read the file in  
23 this case. By the way, I should mention that I'm  
24 sitting in today for Judge Caille, who will be  
25 presiding in this case. She had to be out of town

0004

1 today and indeed all week, and so I've agreed to sit  
2 for purposes of this conference. I have discussed it  
3 with her and we have some ideas, based on our review  
4 of the file.

5 My first thought, which Judge Caille shares,  
6 is that this proceeding appears to be one that is  
7 relatively straightforward, and we wondered if it  
8 might be possible to proceed on a paper record,  
9 perhaps supplemented by public hearing in the service  
10 territory. What do people think? Mr. Finnigan, what  
11 do you think?

12 MR. FINNIGAN: Your Honor, that actually  
13 strikes me as a good idea. And obviously I would  
14 need to get client consent, but my initial reaction  
15 is that I think that would work.

16 JUDGE MOSS: This is just one issue; right?  
17 It's some sort of upgrade to the system?

18 MR. FINNIGAN: Yes, the prime -- I think  
19 there will be two primary issues. One will be -- one  
20 would be to the extent to which some of the case --  
21 some of the expenses do or do not properly fall  
22 within a category for a surcharge, and the second  
23 would be the -- sort of the absolute level of the  
24 charge and what that should be.

25 JUDGE MOSS: Okay. But we do have some

0005

1 documentation that would support your client's  
2 position on those issues?

3 MR. FINNIGAN: Yes, Your Honor, and I --  
4 maybe -- could we have a little bit off the record?

5 JUDGE MOSS: Sure. Let's go off record.

6 (Discussion off the record.)

7 JUDGE MOSS: I first want to note that Mr.  
8 Finnigan has informed the Bench off the record that,  
9 due to conflicting travel schedules, he has not been  
10 able to communicate with his client in the last week  
11 or so, and there may be some change in the posture of  
12 the proceeding going forward, but that we will go  
13 ahead -- or should go ahead and proceed today with  
14 our scheduling and so forth.

15 Mr. Swanson wished to comment on the more  
16 immediate question of process. Whereas I had raised  
17 the idea of a paper hearing, he indicated to me that  
18 his client may wish to have some live testimony. Did  
19 I understand that correctly, nothing pre-filed?

20 MR. SWANSON: No, no, I think pre-filed  
21 testimony, as well, but the opportunity to  
22 cross-examine, certainly if need be, which I don't  
23 know if that's real possible on a paper record  
24 situation, unless -- unless I'm misunderstanding what  
25 it is you were raising.

0006

1                   JUDGE MOSS:  Who would be the witnesses you  
2 would wish to examine?

3                   MR. SWANSON:  Potentially Mr. Finnigan's  
4 witnesses or, again, yes, I guess my client would --  
5 may want to call additional witnesses to -- perhaps  
6 adverse witnesses in the proceeding.

7                   JUDGE MOSS:  Well, Mr. Finnigan has  
8 indicated that he can proceed with a paper record, so  
9 I think he would not be contemplating calling any  
10 witnesses, so I'm not sure what to make of your  
11 suggestion.

12                   MR. SWANSON:  Could we go off the record a  
13 minute?

14                   JUDGE MOSS:  Sure, let's be off the record.

15                   (Discussion off the record.)

16                   MR. SWANSON:  My client does indicate that  
17 we would desire the live -- the pre-filed testimony  
18 and the live testimony hearing.

19                   JUDGE MOSS:  Well, I'm not going to force  
20 Mr. Finnigan to put on pre-filed testimony if he  
21 doesn't feel the need on behalf of his client to do  
22 so.  Now, I'm not going to prohibit you from calling  
23 witnesses if you feel that's something you need to  
24 do, but if Mr. Finnigan feels -- it's up to Mr.  
25 Finnigan to control his case, and if he feels he can

0007

1 support his client's case adequately without putting  
2 on testimony, then that's his call.

3 MR. SWANSON: Well, that's fine, as long as  
4 Staff has the opportunity to file its case the way  
5 that it sees fit in terms of witnesses.

6 JUDGE MOSS: Well, what is Staff  
7 contemplating in the way of witnesses?

8 MR. SWANSON: Staff would contemplate at  
9 this point probably just a single witness, but there  
10 could be more witnesses, depending on how the issues  
11 are fleshed out in this proceeding. As I think I  
12 indicated, possibly off the record, but I'll indicate  
13 on the record now, there's been correspondence  
14 between Staff and the water company, and perhaps some  
15 of these issues will be resolved, but Staff wants to  
16 make sure that, before it agrees to limit its case in  
17 one way or another, that it does have the opportunity  
18 to flesh out these issues in litigation if need be.

19 JUDGE MOSS: Well, my goal, Mr. Swanson, is  
20 to keep this -- what appears to me to be a fairly  
21 simple and straightforward case, simple and  
22 straightforward, so I suppose we can schedule a date.  
23 Is there any reason we couldn't do -- just have live  
24 testimony, examine the witness on direct, examine the  
25 witness on cross-examination, to the extent

0008

1 necessary, and do it that way? I mean, this is a  
2 case that -- frankly, a case of this order is not one  
3 that I think justifies the expenditure of a great  
4 deal in the way of resources. That is to say,  
5 extensive discovery, pre-filed testimony and so  
6 forth.

7           Now, I may be mistaken. The case may have  
8 some dimensions that I can't appreciate sitting here  
9 today, but I would like to keep it within reasonable  
10 bounds in terms of the burden that is imposed both on  
11 the water company and on Staff.

12           MR. SWANSON: Yeah, I think live testimony  
13 would be fine and pre-filed exhibits, I would assume,  
14 in that situation; is that correct?

15           JUDGE MOSS: Well, to the extent there are  
16 some relevant documents, I think we can expect those  
17 to be identified in advance of any hearing, and in  
18 fact, I would require that as a normal course of  
19 activity. So yeah, that would be in the course.

20           Mr. Finnigan, in light of what we're hearing  
21 from Staff counsel, does your view remain the same,  
22 that you would want to proceed on paper, or are you  
23 thinking you may want to call your witness?

24           MR. FINNIGAN: Your Honor, I am very  
25 flexible on the procedure. I would just like to do



0009

1 it as efficiently, from an expense standpoint, as  
2 possible.

3 JUDGE MOSS: It seems to me the best way to  
4 go in that regard is, to the extent we need a  
5 witness, let's just do it live.

6 MR. FINNIGAN: I can go that way, Your  
7 Honor.

8 JUDGE MOSS: I think it would be fairly  
9 brief on direct. It is just, you know, usually an  
10 order of magnitude more expensive to go the pre-filed  
11 route.

12 MR. FINNIGAN: Yes, it is.

13 JUDGE MOSS: Okay. The case is just not  
14 that complicated, I think, that we need that. All  
15 right. So let's -- we'll set a date, then, for --  
16 we'll set a date for -- I guess I'm hesitating. Mr.  
17 Finnigan, you don't know at this point whether you  
18 want to call any. Normally, you would file first.

19 MR. FINNIGAN: Your Honor, if we're going to  
20 go to a situation where we have live witnesses, I  
21 would put on a witness.

22 JUDGE MOSS: Okay. So we'll just -- we  
23 could have simultaneous exchange of any paper record,  
24 I guess.

25 MR. FINNIGAN: Yes, Your Honor.

0010

1 JUDGE MOSS: Let's do that.

2 MR. FINNIGAN: I think I would propose a  
3 date, you know, that we exchange witness lists and  
4 then a document -- list of documents that may be  
5 introduced at the hearing.

6 JUDGE MOSS: All right. I think what I'll  
7 do is rely on the parties' ability to work  
8 cooperatively together informally to identify  
9 possible witnesses and that sort of thing. So we  
10 need to set a hearing date. And we can -- actually,  
11 we can set a briefing schedule if we want or we could  
12 wait until the hearing. It may be that we just need  
13 oral argument or something, so I'll probably defer  
14 that.

15 In terms of a hearing date, now, this thing  
16 was filed back in October, as I recall. Do you know  
17 the suspension date off the top of your head, Mr.  
18 Finnigan?

19 MR. FINNIGAN: I don't have it with me.

20 JUDGE MOSS: Do you know, Mr. Swanson:

21 MR. SWANSON: I believe it's December 6th of  
22 2004.

23 JUDGE MOSS: All right. That is consistent  
24 with one calculation I made based on, Mr. Finnigan,  
25 early on, you filed a request on behalf of your

0011

1 client to change the effective date, so I think,  
2 based on that, December 6th -- however, due to other  
3 scheduling issues, it would be the Commission's and  
4 specifically Judge Caille's preference to proceed at  
5 an early date, as opposed to a later date. And she  
6 has left with me an indication that she would prefer  
7 to have a hearing -- and I feel confident that a day  
8 will be sufficient -- sometime between July 5th and  
9 July 19th. And I would think that the best way to  
10 handle this would be to have a single day of hearing  
11 scheduled -- your client's in Kitsap County?

12 MR. FINNIGAN: The witnesses are probably  
13 from King County. The public would be from -- I  
14 think it's Kitsap County.

15 JUDGE MOSS: I think that's right. And so  
16 my inclination would be to try to make this  
17 convenient for any customers who might wish to  
18 testify, for example, and so to have the hearing in  
19 the service territory would make some sense. And  
20 King County is not that difficult a commute from  
21 Kitsap County, nor is Olympia, for that matter.

22 MR. SWANSON: Could we go off the record  
23 just for a moment?

24 JUDGE MOSS: Sure. Let's be off the record.

25 (Discussion off the record.)

0012

1           JUDGE MOSS: All right. Let's be back on  
2 the record. Okay. We've had some off-the-record  
3 discussion concerning the precise location of the  
4 water system at issue, and we are not certain,  
5 sitting here today, so what I am proposing  
6 systemically is that we have a single day of hearing  
7 scheduled in a place proximate to the service  
8 territory at issue, which is to be determined. So --  
9 and I have previously indicated some dates. Is there  
10 a particular date in that time frame that would work  
11 well for the parties?

12           MR. FINNIGAN: Your Honor, the dates listed,  
13 any -- the week of the 11th or the 18th are fine.  
14 The week of the 5th is more difficult.

15           JUDGE MOSS: How about Tuesday, the 12th?

16           MR. FINNIGAN: And that's fine by me.

17           JUDGE MOSS: Okay. Mr. Swanson?

18           MR. SWANSON: Yeah, that's fine.

19           JUDGE MOSS: We'll set Tuesday, July 12th,  
20 hearing. I think, sitting here today, this is all we  
21 need to schedule, because Judge Caille can discuss  
22 with you any post-hearing process in terms of briefs  
23 or oral argument or what-have-you at the time of the  
24 hearing, and so we'll leave that open.

25           MR. FINNIGAN: Your Honor, do you want to

0013

1 schedule dates for exchange of possible witnesses and  
2 exchange of documents?

3 JUDGE MOSS: Sure. Why don't we do that.  
4 Could we do that by, say -- let's back up till --  
5 well, last week of June, say?

6 MR. FINNIGAN: And that works under my  
7 schedule, Your Honor.

8 JUDGE MOSS: Does that work for you, Mr.  
9 Swanson?

10 MR. SWANSON: So that's the week starting --

11 JUDGE MOSS: June 27th.

12 MR. SWANSON: June 27th, sure.

13 JUDGE MOSS: Well, let's just push it. I  
14 set that hearing date on a Tuesday, so we'll make it  
15 Tuesday, The 28th, documents and a witness list.  
16 Then the hearing, as indicated.

17 Anything else? Remind me if there are any  
18 other dates I'm missing that we need to do today. I  
19 think that's probably it. Is everything copacetic in  
20 terms of the exchange of information?

21 MR. SWANSON: Staff would just ask the  
22 discovery rule be invoked and, because we are in this  
23 shortened timeline, that it be a five business-day  
24 turnaround for discovery requests. And I believe  
25 there's also been some informal discovery requests,

0014

1 and I would ask that that would be, I guess,  
2 transformed into the formal -- more formal response  
3 in a discovery request format.

4 JUDGE MOSS: It's interesting. I just had  
5 this conversation internally. I was commenting that  
6 it's always struck me as odd that we talk in terms of  
7 invoking the discovery rule. Discovery is -- and  
8 this is the conventional discussion, of course, but  
9 what strikes me is that discovery is conducted  
10 pursuant to the Commission's procedural rules whether  
11 or not we invoke it, so for all practical purposes it  
12 is in place, and there's really no distinction  
13 between what I think of as informal or formal  
14 discovery.

15 The parties are free to arrange whatever  
16 they want in terms of exchanging information. The  
17 discovery rule is an affirmative power, so that if  
18 one party or the other is resisting the effort, then  
19 those rules can be used to compel the production  
20 consistent with their terms.

21 So not to lard up the record excessively  
22 here, you certainly may proceed with your discovery  
23 consistent with the rules, and I would imagine that  
24 you will continue to work cooperatively in that  
25 endeavor so that we don't have to have any formal

0015

1 discussions about that as we proceed.

2 MR. SWANSON: So I take it, then, that  
3 you're not ruling on a deadline, a five-day deadline,  
4 business-day deadline?

5 JUDGE MOSS: Well, no, it just slipped my  
6 mind. Is that something your client can deal with,  
7 Mr. Finnigan?

8 MR. FINNIGAN: Your Honor, I'm going to say  
9 at this stage I can't agree to it. I can agree to it  
10 as an aspirational goal, but with small water  
11 companies, it's really hard to expect turnarounds in  
12 a week's period of time.

13 JUDGE MOSS: How large is this water company  
14 in terms of employees, if you know?

15 MR. FINNIGAN: As I know it, there are a  
16 total of three, but some of those are based on  
17 contractual operations and they have duties with  
18 other water companies. And so as a full-time  
19 employee, I'm just not sure. It's very small.

20 JUDGE MOSS: Okay. All right. In terms of  
21 your principal discovery effort, Mr. Swanson, you'll  
22 need to go ahead and get that, in terms of data  
23 requests and so forth, go ahead and get that to the  
24 water company promptly. Mr. Finnigan has indicated  
25 the five days is something that he and his client

0016

1 will aspire to. I think if you will go ahead and do  
2 the principal part of your discovery early on, even  
3 if it takes a little longer, you'll still have plenty  
4 of time. If there becomes a problem in that way,  
5 then of course we always have the option of modifying  
6 the procedural schedule, if necessary.

7           Again, this is a single issue case or there  
8 may be a couple of issues surrounding the one  
9 proposed change to the tariff, so it ought not be --  
10 I wouldn't expect extensive discovery would be  
11 required. So why don't we just set the five days as  
12 an aspirational goal, and we'll leave the standard  
13 ten-day rule in place for the time being. You all  
14 bring any problems to my attention -- or to Judge  
15 Caille's attention.

16           MR. FINNIGAN: Just so people understand,  
17 too, that next week I'll be out of the state on  
18 business so -- just for planning purposes, so people  
19 know that.

20           JUDGE MOSS: Okay. So basically, Mr.  
21 Swanson, the message I would take from that would be  
22 it would be a good opportunity to spend some time  
23 working up your discovery and maybe deliver it to Mr.  
24 Finnigan on his return and he might be able to turn  
25 it around as quickly as five days.



0017

1 MR. SWANSON: Okay.

2 JUDGE MOSS: And again, if there's a problem  
3 down the line, you can certainly bring it to our  
4 attention and we will make adjustments, if necessary.  
5 Our goal, as always, will be to have a full and  
6 complete record necessary for a decision, and so  
7 we'll make that happen.

8 MR. SWANSON: And may I ask another  
9 question, Judge?

10 JUDGE MOSS: Sure.

11 MR. SWANSON: I just -- I understood your  
12 helpful analysis of the discovery rules. I wanted to  
13 understand, though, in terms of the informal  
14 discovery, my understanding is that that can be part  
15 of the record or part of an exhibit, that kind of  
16 thing; is that correct?

17 JUDGE MOSS: Sure. Another perhaps  
18 generally held thought is that documents produced  
19 through discovery have some special status in the  
20 hearing room, but that, in fact, is not the case. A  
21 document, no matter how obtained, can be offered into  
22 evidence, and it may or may not be objected to, and  
23 it certainly will be ruled on one way or the other.  
24 So anything that you've obtained to date that you  
25 wish to proffer, you may do so. Mr. Finnigan will

0018

1 have his full rights, of course, to object, and vice  
2 versa. So that's -- you don't need to be concerned  
3 about that.

4 MR. SWANSON: Thank you, Judge Moss.

5 JUDGE MOSS: Sure.

6 MR. SWANSON: One more issue, and I guess  
7 this is more putting the Company on notice. I think  
8 Mr. Finnigan mentioned the issue of there may be a  
9 question about whether or not the filing is within  
10 the scope of the rule, or at least Staff has some  
11 issue with that. And Staff, at a later date or  
12 perhaps at the hearing, will be -- may be asking to  
13 exclude any litigation cost that's outside the scope  
14 of the rule, if that's the ultimate determination of  
15 the Commission or of Your Honor, and so I wanted to  
16 put Mr. Finnigan on notice about that, because that  
17 may be an issue later. We just don't want it to be  
18 an unfair surprise kind of issue if it comes up.

19 JUDGE MOSS: He may wish to inquire of you  
20 about that as we go through the process here and  
21 learn more about your idea.

22 MR. SWANSON: Thank you.

23 JUDGE MOSS: Any prospect of settlement  
24 negotiations doing any good in this proceeding? It's  
25 been around for quite some time now. Mr. Finnigan,

0019

1 any thoughts in that direction?

2 MR. FINNIGAN: We're always hopeful.

3 JUDGE MOSS: Okay. I suppose the -- we can  
4 simply rely on the informal process without setting  
5 specific dates and you can see if we can -- again,  
6 it's a two-party case. I think we won't go beyond  
7 that, beyond mentioning it, I should say, in terms of  
8 any formalities.

9 What about an initial decision, Mr.  
10 Finnigan? Would your client be interested in having  
11 the initial decision waived and having this matter go  
12 directly to the Commission or would you prefer to  
13 have an initial order?

14 MR. FINNIGAN: Your Honor, because of the  
15 schedules, I just have not been able to discuss that.

16 JUDGE MOSS: Okay. Well, we'll have an  
17 opportunity to take that up at a later point in time.  
18 And you can probably take it up at hearing, for that  
19 matter, and decide about that. But it is an idea, a  
20 seed I want to plant that sometimes can promote  
21 efficiency if there is no particular need to have the  
22 initial order from the presiding judge.

23 MR. FINNIGAN: And Your Honor, we would ask,  
24 just out of an abundance of caution, that a  
25 protective order be issued in this matter. I don't

0020

1 know that it's going to be needed, but just as a  
2 matter of caution.

3 JUDGE MOSS: Well, all right. If you think  
4 that will promote the discovery process. Given the  
5 tight schedule, all right, I'll go ahead with that.  
6 I will put that in the works. Off the record,  
7 please.

8 (Discussion off the record.)

9 JUDGE MOSS: Let's be back on the record. I  
10 was simply disclosing to the parties my own schedule  
11 and that of Judge Caille, indicating that we will try  
12 to get the protective order out sometime this week.

13 Oh, in terms of internal distribution needs,  
14 to the extent there are documents filed in this  
15 proceeding, we will need the original and eight  
16 copies.

17 Is there any other business we need to take  
18 up today?

19 MR. FINNIGAN: I can't think of anything,  
20 Your Honor.

21 MR. SWANSON: No, Your Honor.

22 JUDGE MOSS: All right. Well, I thank you  
23 very much for being here today and I think we have  
24 what we need to go forward. I'm sure that I can  
25 speak for Judge Caille and say the Commission looks

0021

1 forward to processing this matter in due course.

2 MR. FINNIGAN: Thank you.

3 JUDGE MOSS: Off the record.

4 (Proceedings adjourned at 1:59 p.m.)

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25