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1 BEFORE THE WASHINGTON STATE
2 UTILITIES AND TRANSPORTATION COMMISSION
3 WASHINGTON UTILITIES AND)
TRANSPORTATION COMMISSION,) DOCKET NO. UW-042132
4 Complainant,) VOLUME I
) PAGES 1 to 14
5 vs.)
ROCHE HARBOR WATER)
6 SYSTEM,)
) Respondent.
7 _____)
8

9 A hearing in the above matter was held on May 2,
10 2005 from 1:30 p.m. to 2:18 p.m., at 1300 South Evergreen
11 Park Drive Southwest, Room 108, Olympia, Washington,
12 before Administrative Law Judge THEODORA M. MACE.

13
14 The parties were present as follows:
15 THE COMMISSION, by LISA WATSON, Assistant
Attorney General, 1400 South Evergreen Park Drive
16 Southwest, Olympia, Washington, 98504-0128. Telephone
(360) 664-1186. Fax (360) 586-5522. Email
17 LWatson@wutc.wa.gov.

18 ROCHE HARBOR WATER SYSTEM, by RICHARD A.
FINNIGAN, Attorney at Law, 2112 Black Lake Boulevard,
19 Olympia, Washington 98512. Telephone (360) 956-7001.
Email RickFinn@localaccess.com.

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24 Jennifer Cordner, CCR
25 Court Reporter

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

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3 JUDGE MACE: Let's be on the record in Docket No.
4 UW-042132. This is the Washington Utilities and
5 Transportation Commission against the Roche Harbor Water
6 System. We are convened today at the offices of the
7 Commission in Olympia, Washington. The date today is May
8 2, 2005. We are here for a prehearing conference on the
9 complainant's proceeding. My name is Theodora Mace, I'm
10 the Administrative Law Judge who's been assigned to this
11 case.

12 And I'd like to have the full oral appearances of
13 counsel now for the record. And let's begin with the
14 Commission.

15 MS. WATSON: Good afternoon. My name is Lisa
16 Watson. I'm the Assistant Attorney General appearing on
17 behalf of the Commission Staff. My address is PO Box
18 40128, Olympia, Washington 98504-0128. My telephone
19 number is (360) 664-1186. My fax number is (360)
20 586-5522. And Email address is LWatson@wutc.wa.gov.

21 MR. FINNIGAN: Thank you. Richard Finnigan on
22 behalf of the Company -- and pay attention to the address
23 and Email, these are new. The address is 2112 Black Lake
24 Boulevard, Olympia, Washington 98512. Phone is (360)
25 956-7001. Fax is (360) 753-6862. Email address is

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1 RickFinn, all one word, R-I-C-K-F-I-N-N, at
2 localaccess.com.

3 JUDGE MACE: Just so I'm clear, it is 2112 Black
4 Lake Boulevard 98512?

5 MR. FINNIGAN: That's correct.

6 JUDGE MACE: And that's in Olympia?

7 MR. FINNIGAN: That is in Olympia.

8 JUDGE MACE: The phone numbers, are they the same
9 as you --

10 MR. FINNIGAN: Yes, they are. The Email address
11 has changed and the physical address.

12 JUDGE MACE: Are there any appearances from
13 anyone on the conference bridge? I don't hear any
14 response.

15 So there are petitions to intervene that have
16 been filed in this proceeding. Unless I hear otherwise
17 from someone on the conference bridge, I am going to
18 assumed there are no oral petitions to intervene.

19 The first, or the next item on the agenda, is
20 whether or not the parties would seek a protective order
21 in this proceeding.

22 MR. FINNIGAN: We should have one, yes.

23 JUDGE MACE: All right. And discovery?

24 MS. WATSON: Staff would like to have discovery.

25 JUDGE MACE: All right. Discovery rules will be

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1 invoked, and I'll do that in the preconference order.

2 I think I asked off the record, before we
3 commenced today, whether or not the parties have talked
4 about how they want to proceed in this case. It appeared
5 to me that perhaps the facts with regard to the charges in
6 question were not at issue, I mean, as far as the actual
7 level of the charges. I wondered what issues, what
8 factual issues there might be in this case.

9 MS. WATSON: Your Honor, my understanding is that
10 the amount of the charge is at issue, so that is one thing
11 that will be an issue at a hearing.

12 JUDGE MACE: But there is no issue about what the
13 proposed charges are.

14 MS. WATSON: Okay.

15 JUDGE MACE: I mean those are -- the Company
16 doesn't dispute that those are the charges that they seek
17 to have imposed, improvement charges; is that correct?

18 MR. FINNIGAN: Correct.

19 JUDGE MACE: So what is at issue here,
20 Ms. Watson?

21 MS. WATSON: I guess the appropriate level of the
22 proposed charge, whether the Company needs that facilities
23 charge, or if they do, what level is appropriate.

24 JUDGE MACE: Okay. Well, I guess it's
25 appropriate at this point to spend some time off the

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1 record and give you two an opportunity to discuss how you
2 want to proceed, and maybe talk more about where the
3 hearing should take place, and come up with a schedule
4 that I can look at.

5 So is there anything else that we need to address
6 before we adjourn today for discussion?

7 MS. WATSON: No, your Honor.

8 JUDGE MACE: We'll adjourn for 15 minutes, you
9 think that will be enough time?

10 MR. FINNIGAN: That's fine.

11 JUDGE MACE: If you need more, I'm just across
12 the way.

13 MS. WATSON: Okay.

14 (Hearing was adjourned from 1:35 to 1:55.)

15 JUDGE MACE: Parties have discussed scheduling
16 with me with the October 6th statutory deadline in mind,
17 but the schedule they have agreed upon calls for a June
18 15th Staff district testimony filing date; a direct filing
19 date for the Company on July 6th; rebuttal August 27th;
20 hearing to take place, more than likely, August 11th to
21 the 12th. And we have to just confirm with Kitty Walker
22 to make sure that those dates are available. On this
23 calendar they appear to be, so it shouldn't be a problem.

24 MS. WATSON: Yes --

25 JUDGE MACE: And I would advise you, if there are

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1 any problems, that you discuss it with them.

2 MS. WATSON: I just want to make a quick note,
3 you said August 27th for the rebuttal, and that was July
4 27th.

5 JUDGE MACE: July 27th, sorry. I have July down
6 here, I don't know why I said August.

7 August 11th and 12th for the evidentiary hearing,
8 and I would ask that exhibit lists be exchanged on August
9 9th, and I will prepare answers in the list with numbers
10 that will be used during the hearing.

11 How many witnesses are we talking about,
12 Mr. Finnigan?

13 MR. FINNIGAN: One or two Company witnesses.

14 JUDGE MACE: Okay. You mentioned other
15 witnesses, correct?

16 MR. FINNIGAN: There would be customers of the
17 Company that are very anxious to testify. I'm assuming
18 that's going to be in the form of public hearing, for
19 their testimonies.

20 JUDGE MACE: And did you discuss a date?

21 MR. FINNIGAN: It's our assumption that it will
22 occur on those dates, the 11th and 12th.

23 JUDGE MACE: Probably August 11th?

24 MR. FINNIGAN: Sounds about right.

25 JUDGE MACE: And Staff?

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1 MS. WATSON: For Staff we're looking at two
2 perhaps three witnesses.

3 JUDGE MACE: If you two are confident that we can
4 accomplish this hearing in two days, I won't ask you for
5 estimated times for cross-examination, but if there is
6 going to be any problem with that, I should probably ask
7 for some estimate, not here, but with the exhibit lists.

8 MR. FINNIGAN: Yes, since I don't know what
9 Staff's going to say, I have no clue at the present time.

10 JUDGE MACE: Well, why don't I include that.
11 With the exhibit lists, I'd like you to have an estimate
12 of your cross.

13 MR. FINNIGAN: Sure. I was optimistic we could
14 do it in one day.

15 JUDGE MACE: So there will be exhibits that will
16 be prefiled, and then the exhibits we're talking about for
17 the August 9th exhibit list will be cross-exhibits. And
18 you'll need to provide adequate copies of those at the
19 hearing. I'm sure you both already know that because
20 you've both been involved in these hearings before.

21 MS. WATSON: Yes, your Honor.

22 JUDGE MACE: And then the final date that I
23 didn't mention for the purposes of scheduling would be the
24 filing of simultaneous briefs, which would be September
25 9th. And my goal will be to try to have a Commission

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1 order or initial order September 9th.

2 Perhaps that is an issue we should also discuss.

3 I can get an initial order out, or if you feel you want to
4 waive an initial order, we could go that route. Maybe
5 it's premature to discuss it, but I thought I would bring
6 it up.

7 MR. FINNIGAN: It is premature at this time to
8 discuss it, I've got no authority to deal with the net on
9 that at this point in time.

10 JUDGE MACE: All right. There'll be an initial
11 order granted. My understanding is that you all have
12 discussed resolution of this. Are you going to continue
13 discussing some of it?

14 MS. WATSON: The lines of communication are
15 certainly open. We will continue to have discussions with
16 them.

17 JUDGE MACE: Do you have a date set where you're
18 going to be talking about settlement or not?

19 MS. WATSON: Yes, we don't have one, your Honor.

20 JUDGE MACE: Well, I'd appreciate it if one or
21 the other of you would keep me advised of any dates that
22 you have set for conference or discussion, just so that I
23 can be apprised.

24 MS. WATSON: Absolutely, we can do that.

25 JUDGE MACE: All right. Is there anything else

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1 we need to discuss at this point?

2 MR. FINNIGAN: Did you want to discuss about
3 location of the hearing?

4 JUDGE MACE: Right, yes, thank you. Yes, the
5 hearing location. I understand the parties have divergent
6 ideas about where the evidentiary hearing in this case
7 should take place. So I'd like to hear from each of them
8 where they would like to have the hearing held and why.

9 MR. FINNIGAN: On behalf of the Company, the
10 Company believes that it is very important that this
11 hearing occur in the Roche Harbor area. This is a
12 proposal that has been discussed at length with the
13 customers. There is significant customer support for what
14 the Company is proposing. I think it would appear very
15 odd to the customers if a hearing was held in Olympia on
16 something that has had as much community involvement in it
17 that it has to date. And I think for the benefit of the
18 customers, and their perception of the process of this
19 that's involved in these things, would be much better for
20 a hearing in the Roche Harbor area.

21 JUDGE MACE: And you're saying that even though
22 there's a possibility we would have an evidentiary hearing
23 and a public hearing -- I mean, we could have the
24 evidentiary hearing here, and the public hearing in the
25 Roche Harbor area.

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1 MR. FINNIGAN: We could do that. I think it
2 might just be easier if we're all together. The logistics
3 of getting there for only a public hearing is difficult.
4 The extent to which the customers might be interested in
5 watching the process and hearing the testimony of
6 Commission Staff is a factor.

7 Right now they don't understand -- the customer
8 base doesn't understand why the Commission Staff is not
9 supportive of the filing, and so they want to be able to
10 participate in terms of listening to the evidence. Even
11 though that is as strange as it seems, that has been
12 something that has been expressed.

13 JUDGE MACE: Just for my own benefit, my
14 understanding of the application is that the charge, the
15 improvement charge, would not affect current customers; is
16 that correct?

17 MR. FINNIGAN: That is correct. And the
18 reason --

19 JUDGE MACE: So those customers would be coming
20 in support even though the charge wouldn't affect them?

21 MR. FINNIGAN: Well, the alternative for
22 financing these types of improvements would affect them.
23 You know, the background behind this is that the largest
24 customer of the water company is Roche Harbor Resort
25 itself. There is a lot of dynamic tension between the

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1 resort as a customer and the resort as the owner of the
2 water system. And what happened in the past -- there has
3 been a great deal of distrust by the non-resort customers,
4 the rank and file customers, if you will, that the water
5 company just used its weight to fund -- to funnel money to
6 the resort.

7 And in order to delay that suspicion, the Company
8 went out and talked to the customers about several
9 alternatives, ways of doing this. One of which is for the
10 resort to make an investment, put the money in an
11 investment, which means it goes into rate base, which
12 means that the water company is entitled to a return on
13 that rate base, which means that the customer's rates go
14 up.

15 On the other hand, the resort also has the
16 majority of the new connections that are needed for
17 expansion of the resort. So what that would mean under a
18 traditional rate approach is that the water company, as
19 itself, would have this investment that it has a return
20 on, and the improvements that are made through that
21 investment benefit the owner of the water company.

22 And so that presents a situation where the
23 customers are very interested in what happens, in what the
24 final approach is for these investments, and what the
25 resort will do as a result of that and for the resort, and

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1 for the rest of the community.

2 So it's a big issue from a political sense, from
3 a social sense, as well as potentially affecting the rates
4 the customers pay. For that reason, the community
5 interest is very high, and they would like to be part of
6 the process.

7 MS. WATSON: Staff has two concerns about holding
8 a hearing at Roche Harbor, and it's not that Staff wants
9 to preclude customers from having a say on a matter that a
10 customer should have a say on.

11 In this case though, we're looking at a
12 facilities charge. And as you noted, facility charges are
13 applied to the future customers. So at a very basic
14 level, it doesn't apply to the current customers. It very
15 well may be that there are some political issues that are
16 going on up there. However, if there are certain things
17 that the Company needs to invest in to benefit the current
18 customers, the current customers need to pay for those
19 charges, not the future customers. So that's sort of
20 where some of the attention in this case is, how much
21 should that facilities charge be, what does it apply to.

22 But a facilities charge by itself applies to
23 future customers for future improvements that will benefit
24 those future customers. So in a very basic sense, it
25 doesn't apply, it doesn't affect current customers.

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1 The other concern Staff has is that, I guess, at
2 the height of the tourist season, it is fairly spendy to
3 move both the ALD division up there, Staff resources -- so
4 that's just a consideration, that there are certain
5 economic considerations. However, Staff would do whatever
6 the Commission decides in terms of where the hearing is
7 held.

8 MR. FINNIGAN: Can I just --

9 JUDGE MACE: Certainly.

10 MR. FINNIGAN: There are a significant number of
11 the current customers that -- because it's an island
12 community -- hold otherwise. That they're, you know,
13 holding to as investment reasons. So we have -- and I
14 don't want to overstate this, but a fair number of
15 existing customers are also future customers. And
16 obviously they're concerned about which way it goes.

17 The reason I know of that is because I've gotten
18 calls from two of those customers who are inquiring about
19 the status, and what's going on, and how it will affect
20 the other lots that they're holding. So you have both,
21 you have people who are in the position of being both
22 current and future customers, as far as who it is applying
23 to.

24 JUDGE MACE: Well, this is an issue that I need
25 to talk to Judge Wallis about, and "indicogitate" on

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1 myself. So you'll get a decision in the prehearing
2 conference order about it. And I'm not sure in the
3 prehearing -- if it ends up that it's in the Roche Harbor
4 area, I may not have for you a specific location on that
5 because we'll need to do some research on that. But I'll
6 keep you posted, naturally.

7 Okay. Anything else?

8 MS. WATSON: No.

9 MR. FINNIGAN: Nothing, your Honor.

10 JUDGE MACE: And I do have the entire schedule
11 taken down, so I think we're all set with that. In the
12 prehearing conference order, you will get some instruction
13 about filing requirements for documents that you'll need
14 to file testimony, et cetera, in this case. And it will
15 include the number of copies that you will need to file
16 for internal distribution purposes, and some other
17 information about the possibility of electronic filing,
18 which may or may not be applicable as time goes on.

19 If you have any questions as time goes along,
20 feel free to contact me, otherwise, we're adjourned.

21 MR. FINNIGAN: Thank you.

22 (Hearing adjourned at 2:18 p.m.)

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