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1 BEFORE THE WASHINGTON UTILITIES AND
 TRANSPORTATION COMMISSION
2 WASHINGTON UTILITIES AND)
TRANSPORTATION COMMISSION,) DOCKET NO. UW-040366
3)
 Complainant,) Volume II
4) Pages 10 to 21
 vs.)
5)
MARBELLO WATER COMPANY,)
6)
 Respondent.)
7 _____)

8 A hearing in the above matter was held on
June 15, 2004, from 9:30 a.m to 10:00 a.m., at 1300
9 South Evergreen Park Drive Southwest, Room 108, Olympia,
Washington, before Administrative Law Judge THEODORA
10 MACE.

 The parties were present as follows:
11 THE COMMISSION, by CHRIS SWANSON, Assistant
Attorney General, 1400 South Evergreen Park Drive
12 Southwest, Post Office Box 40128, Olympia, Washington,
98504, Telephone (360) 664-1220, Fax (360) 586-5522,
13 E-Mail cswanson@wutc.wa.gov.

 MARBELLO WATER COMPANY, by RICHARD A.
14 FINNIGAN, Attorney at Law, 2405 Evergreen Park Drive
Southwest, Suite B-1, Olympia, Washington 98502, (360)
15 956-7001, Fax (360) 753-6862, E-mail rickfinn@ywave.com.

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Joan E. Kinn, CCR, RPR
Court Reporter

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

2 JUDGE MACE: Let's be on the record in
3 Washington Utilities and Transportation Commission
4 against Marbello Water Company. This is Docket Number
5 UW-040366. This is the date that we established early
6 on for a status conference to see what's happening in
7 the case and what further process is required. My name
8 is Theodora Mace, I'm the Administrative Law Judge who
9 has been assigned to hold hearings in this case.

10 I would like to have the appearances of
11 counsel now, and I understand that Staff counsel is new
12 in the case, so if you could give your full appearance,
13 I would appreciate it.

14 MR. SWANSON: Certainly. My name is Chris
15 Swanson, Assistant Attorney General for Commission
16 Staff, and I'm here on behalf of Jonathan Thompson,
17 Assistant Attorney General. My address is 1400 South
18 Evergreen Park Drive Southwest, P.O. Box 40128, Olympia,
19 Washington 98504-0128. My telephone number is (360)
20 664-1220. My fax number is (360) 586-5522, and my
21 E-mail is cswanson@wutc.wa.gov. Thanks.

22 JUDGE MACE: Thank you.

23 And for Marbello.

24 MR. FINNIGAN: Yes, Rick Finnigan appearing
25 on behalf of Marbello Water Company.

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1 JUDGE MACE: Thank you. Well, I'm assuming
2 because I didn't receive a motion to dismiss that the
3 case is not settled. I'm wondering which one of you
4 would fill me in on where we are in the case.

5 MR. FINNIGAN: Sure, I will be happy to. We
6 have presented the Staff with the financial data per the
7 settlement agreement or the partial settlement
8 agreement. I don't think we have any question about
9 whether the rates as filed in the tariff are not
10 producing revenues above what the company would need.
11 There may be some questions on rate design that need to
12 be addressed.

13 JUDGE MACE: So you're saying the tariff
14 rates it's agreed do produce what the company needs?

15 MR. FINNIGAN: No, they produce less than
16 what the company needs.

17 JUDGE MACE: Okay, I couldn't --

18 MR. FINNIGAN: But they're not -- what I was
19 trying to say is there's not a question that those rates
20 are somehow too high and that they're producing too much
21 revenue, which would be the normal issue in a Commission
22 complaint.

23 What I -- in my discussions with Commission
24 Staff, I have indicated that the company intends to file
25 for a rate increase in the near future. We actually

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1 thought we would have it filed by now. I have made a
2 proposal based upon my review of the company's financial
3 information to the company. When I called them
4 yesterday afternoon to find out why they hadn't gotten
5 back to me, they couldn't find it. It was sent by
6 E-mail, and it was one of those things where it
7 disappeared, they had no record of ever having received
8 it. So I sent it again, faxed it to them yesterday. So
9 they were thinking that I was slow, and I was wondering
10 why they hadn't gotten back to me. But in any case, I
11 suspect that we will be able to file that rate case in
12 the next two weeks.

13 I also expect that one of the issues that is
14 going to be difficult to deal with is not necessarily
15 the revenue requirement but the rate design, because of
16 the fact that there they're a wholesale customer and
17 don't have their own source of water, so that produces
18 some difficulties in coming up with a rate design that
19 uses an inverted block approach. And I have had some
20 initial discussions with Mr. Kermode, more in the way of
21 hallway discussions at this point, about that just to
22 alert him to one of the issues that I spotted in my
23 preparation work.

24 Bottom line is I think we're in a position
25 where the company will be filing a rate case within the

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1 next two weeks is my expectation.

2 JUDGE MACE: I have two questions about your
3 presentation. One is I have received a complaint from I
4 think 20 some customers of Marbello, and that's been
5 docketed separately, and I'm wondering if you have kind
6 of talked with Staff about the possibility of
7 consolidating that with any proceeding that results from
8 this case. And then the other thing just along the same
9 lines is do you anticipate that then the rate case would
10 be part of this case?

11 MR. FINNIGAN: I do -- I have approached it
12 sort of from a different direction. I think that the
13 rate case would provide a vehicle for those customers to
14 air their concerns, in particular over service quality.
15 Just to -- I have let Commission Staff know my intent,
16 but one of the first steps I intend to take in that
17 complaint case is to move to dismiss it since it relates
18 to items and rates that existed prior to the
19 Commission's jurisdiction attaching. So I don't think
20 -- my position is the Commission doesn't have
21 jurisdiction to address most if not all of the items
22 that are contained in that complaint.

23 The second half of that is what I said in the
24 first part. I recognize that, you know, customers may
25 have some concerns that they want to air concerning

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1 quality issues, and those are certainly part of any rate
2 proceeding, and so that might provide them the vehicle
3 that -- where they can get their concerns heard.

4 JUDGE MACE: Thank you.

5 Mr. Swanson.

6 MR. SWANSON: Yes, Commission Staff at this
7 point is I guess looking just to set a procedural
8 schedule, realizing that it sounds as if a rate case
9 will be filed within the next couple of weeks, but
10 Commission Staff would like to go ahead and get
11 something on the calander for this case.

12 MR. FINNIGAN: I'm surprised to hear that
13 quite frankly based on my conversation with Mr. Thompson
14 yesterday.

15 MR. SWANSON: Okay, well, I'm not sure about
16 what that conversation was, however that's my
17 understanding of what Staff is looking to do at this
18 point. I can certainly confer with my client if that
19 would be appropriate, Judge, and see if there's a
20 different communication that occurred.

21 JUDGE MACE: Well, I want to try to sort this
22 out so that it makes the most sense. What would be
23 different about going ahead with this case as opposed to
24 -- well, what would be different about going ahead with
25 this case separately from a rate case? I mean I don't

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1 see the Commission having two separate dockets examining
2 Marbello's rates. It seems like that would be really
3 counterproductive. Or are you proposing that the filing
4 date for Marbello's rate case come in under this docket?

5 MR. SWANSON: You know, I think Staff isn't
6 necessarily committed at this point to how it would be
7 handled, but I think that the idea of getting a schedule
8 in place is just in a sense to make sure that we have
9 something on the table. And I'm not sure if
10 Mr. Finnigan can commit to a date certain for filing his
11 case or if it's just preliminary or his suspicion at
12 this point. That's what it sounded like to me. But in
13 terms of consolidation, I think that we can certainly
14 explore that issue. Staff's open to it I believe.

15 MR. FINNIGAN: Well, I -- based on -- okay,
16 let me do this. First off Mr. Swanson is correct, I'm
17 stating my expectation as to when things will be filed
18 because of the communication problem between the client
19 and myself. I can't, you know, firmly commit, but I can
20 tell you that given the size of the losses that the
21 company is experiencing, I mean Staff has these figure,
22 I mean the company's revenues don't even equal the bill
23 that it pays for wholesale water, so the company is
24 losing quite a bit of money. So, you know, we might in
25 the final analysis have some minor differences as to

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1 where the final rate would be by looking at the
2 historical expenses, but we're not going to be far off.
3 So really the issue boils down to is one of where we
4 want to go on rate design and what sort of customer
5 issues we need to respond to.

6 I don't think we need two proceedings. I
7 don't think we need this proceeding. I can understand
8 some concern if, for example, if by the time we have the
9 pre-hearing conference in the consumer complaint in two
10 weeks, if we haven't filed by then, there might be some,
11 you know, certainly some question about, you know, what
12 the Commission would want to do with that complaint.
13 But I just don't see the gain of keeping this docket
14 going under the circumstances. I think the company's,
15 you know, is -- Staff -- let me back up for a second.

16 Staff does have some financial information
17 that they requested from the company, just sort of
18 supporting documents, and we would certainly commit to
19 responding to those and getting the Staff that
20 information. We wouldn't be trying to do a procedural
21 move by saying we don't need to do this so we won't
22 respond to those data requests. I want to remove that
23 from the table, that response will be coming forth soon.
24 I have talked -- that was one of the items I talked with
25 them about yesterday, and they're gathering the

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1 information, should be available soon. So we will
2 respond to the data request, but I really don't see
3 under these circumstances any need for this case to stay
4 on the books.

5 MR. SWANSON: May I ask a question?

6 JUDGE MACE: Yes.

7 MR. SWANSON: I'm asked by my client whether
8 or not the 2003 test year would be the same test year in
9 both cases.

10 MR. FINNIGAN: Mm-hm.

11 JUDGE MACE: Well, I'm wondering if you could
12 give me the benefit of your input, because what I'm
13 thinking, the cleanest solution would be actually to
14 leave this case open and to have you make your rate case
15 filing and Staff respond to it and consolidate the
16 complaint case with this case and just move ahead. But
17 I have not, frankly, have not reviewed the statutory
18 rule provisions with regard to whether that's
19 appropriate, and so I would like to have your input on
20 that.

21 MR. FINNIGAN: Well, my only concern is since
22 we expect the rates to be higher than what our current
23 tariff level is and if the -- and if the only complaint
24 that's filed is against those -- the current tariff
25 level, if -- I don't want to be in a position where the

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1 company is foreclosed from putting in, you know, higher
2 rates than its current level just because of some
3 procedural issue. Because I, you know, I think it's
4 inevitable that the rates are going to be higher than
5 the tariff that's filed, so.

6 MR. SWANSON: Staff would like to see this
7 filing remain open, and Staff could certainly respond to
8 the rate case when and if it comes in.

9 JUDGE MACE: Well, I have no vehicle right
10 now to use to close this case, and so what I would like
11 to do at this point is set a schedule for this case, and
12 you can make your rate case filing, and you can make any
13 filing you want to, or either party can make a filing
14 with regard to the instant case, and if it appears that
15 it's not appropriate to continue the instant case, we
16 can do that. I can't close this case right now based on
17 what I have in front of me.

18 MR. FINNIGAN: The problem is that, you know,
19 as a procedural issue under the complaint case Staff has
20 to go first, so I mean it's -- I don't quite know how
21 we're going to do this, but, you know, obviously you're
22 correct that there is no vehicle to close it at the
23 moment.

24 JUDGE MACE: So having said that, I would
25 like to ask you to develop a schedule. I prefer not to

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1 have to go through that if it ends up that this case
2 doesn't materialize or is dismissed or whatever, but I
3 don't see much of an end result other than that right
4 now, because I have to set a schedule. I can't just let
5 things float, that's not something we can do in this
6 office. So we could set a schedule and then let the
7 chips fall where they may in terms of your rate case
8 filing and the complaint, et cetera, the citizens'
9 complaint or rate payer complaint.

10 MR. SWANSON: Your Honor, Staff is --

11 JUDGE MACE: So let's be off the record, we
12 can discuss scheduling off the record.

13 (Discussion off the record.)

14 JUDGE MACE: The parties have discussed a
15 schedule and have come up with the following. Staff
16 will file direct testimony July 30th. The company will
17 file responsive testimony August 27th. Staff will file
18 rebuttal testimony September 10th. There will be a
19 hearing September 29th and 30th. Simultaneous briefs
20 will be due October 29th, and a target date for the
21 initial order will be November 30th, and Mr. Finnigan
22 indicates he is going to check with his client to see
23 about waiver of an initial order.

24 And we'll just see what happens in terms of
25 your rate case filing and the complaint case and move

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1 ahead.

2 Is there anything else we need to address at
3 this point?

4 MR. FINNIGAN: Not at this point.

5 MR. SWANSON: I don't believe so.

6 JUDGE MACE: Okay, thank you very much.

7 (Hearing adjourned at 10:00 a.m.)

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