

00028

1

LB SILVER CREEK, LLC, by MARCIA NEULANDS,
Attorney at Law, Heller Ehrman White & McAuliffe, LLP,
701 Fifth Avenue, Suite 6100, Seattle, Washington
98104.

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24 Kathryn T. Wilson, CCR

25 Court Reporter

1

P R O C E E D I N G S

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

JUDGE CAILLE: Let's go on the record. This is a prehearing conference in Docket UW-010683. This complaint is titled, TFL Associates, LLC; Caliber Company, Incorporated; and Jacobson Construction and Development, Incorporated, versus Rainier View Water, Incorporated; and Silver Creek Development Company.

This prehearing conference is to discuss a possible change in schedule due to the failure of Complainants to timely file their discovery responses to Rainier View. We have had an off-record discussion concerning this matter, and from that discussion, it appears that there was a misunderstanding on behalf of the Complainants about a discovery cut-off. I have explained to the Complainants our system, and they understand, and I believe Mr. Jones may have some comments to add.

MR. JONES: Just for the record, Your Honor, and thank you for giving me the opportunity to put some explanation on the record. The misunderstanding, the basis of which occurred, relates to my notes of the initial prehearing conference and the assumption by my colleagues that the final response time for final data requests of August 31st was the sole response time for data requests, and that is an inaccurate

00030

1 representation, and particularly, if one of my
2 colleagues represented that that was the order of the
3 Court, I was to make clear on the record that that was
4 a misunderstanding on his part and apologize to the
5 Court, because those were simply my notes that he was
6 going off of, not anything that the Court put into the
7 order.

8 So that is the basis for that. I'm not
9 making that explanation saying that those notes trump
10 the rules. I'm just offering the explanation as to why
11 the assumption was made that those responses would be
12 timely if they were in by the 31st. So having said
13 that, I think I will defer comments until after
14 Mr. Finnigan has made his statements pursuant -- he's
15 the one that brought the request for this prehearing
16 conference.

17 JUDGE CAILLE: Mr. Finnigan?

18 MR. FINNIGAN: Thank you, Your Honor, and
19 thank you for getting the schedule -- I realize it's
20 inconvenient for everyone here on the Friday before the
21 three-day weekend, but this is an important issue.

22 When we were at the prehearing conference and
23 were trying to come up with a schedule, counsel for all
24 of the Respondents made a very concerted effort to try
25 to accommodate the Petitioners' request for expedited

00031

1 hearings in this matter, and everyone had a number of
2 schedule conflicts, and we tried to work around those
3 and still accommodate that request.

4 One of the representations that was made by
5 counsel for the Petitioners was that they would be
6 very, very prompt in replying to data requests and
7 would meet all the Commission's deadlines. That
8 representation was, I believe, made on the record. So
9 in reliance on that, at least from my schedule, agreed
10 to a particular schedule, which even though I knew the
11 month of September was going to be a very difficult
12 month, I felt I could get a head start and start
13 working on the testimony that would be due October 5th
14 thinking that the Commission's normal rules for
15 responses to discovery would be in play, and that's why
16 I got my discovery requests out very shortly after the
17 prehearing conference and was hoping then to have the
18 responses and spend the time we've had in these last
19 two weeks at least beginning to formulate the testimony
20 that we filed.

21 As of this date, late yesterday, I received
22 an e-mail set of responses, and I don't have any of the
23 exhibits, any of the documents. I think Mr. Jones has
24 brought those with him, but at this time, I don't have
25 the complete responses, and although this is not a

00032

1 prehearing conference to enforce discovery requests and
2 so I won't get into some of the detail, I will indicate
3 that I am concerned that the responses are not fully
4 responsive.

5 A number of the questions ask that the
6 Petitioners provide support for statements of fact that
7 they made in their petition and, quite frankly,
8 repeated in their prefiled testimony, which essentially
9 summarized what they put in their petition, and there
10 are a number of allegations about representations that
11 are made and statements that were made, so discovery
12 requests were made concerning those representations
13 asking them to identify who made them.

14 For example, several responses come back and
15 just say, "Sound Water Company representatives between
16 1994 and 1996." That doesn't give me any basis then to
17 get into the factual allegations that are made and
18 prepare testimony since I can't even do the necessary
19 work to follow up to verify whether those statements
20 were made or not made. So at this stage, all I've got
21 to say is I think we do need to take a look at revising
22 the schedule.

23 JUDGE CAILLE: It sounds like if you aren't
24 getting the complete responses, you are going to have
25 to do follow-up data requests.

00033

1 MR. FINNIGAN: That's correct, or
2 depositions, but follow-up discovery of some nature.

3 JUDGE CAILLE: Do you folks over on the right
4 here want to say anything on this matter?

5 MR. STEPHENS: I'll just briefly state
6 something on the record. We did agree to a very tight
7 schedule, and I, like Mr. Finnigan, was very concerned
8 about that schedule going in. I'm looking at my
9 calendar now, and I realize I'm showing five days in
10 which I'm in my office in September, and it's not
11 September yet, so that's a pretty tight month for me.

12 I'll also be frank with the Court that I
13 really haven't had an opportunity to really review
14 these discovery requests carefully. They came in by
15 e-mail. I've had several hearings scheduled this week.
16 I've heard the general sense from my co-counsel is they
17 are going to require depositions and follow-up. That's
18 going to be difficult to do on this time frame with the
19 schedule I have.

20 MS. NEWLANDS: Well, I too have some concerns
21 because the way the schedule currently is written, our
22 reply testimony is due the day before I leave for three
23 weeks, and the rebuttal testimony is due the day I get
24 back, so I'm already jammed up with trying to meet the
25 existing schedule, but I was all right with that, but

00034

1 if we do have to do additional discovery in the form of
2 depositions or additional data requests, that will
3 affect my schedule as well, not probably to the extent
4 of Silver Creek and Rainier View, but I do wish to be
5 present if depositions are taken.

6 JUDGE CAILLE: I feel that we should try to
7 remedy this, and I'm pretty open to whatever
8 Mr. Finnigan wants to offer as a change in schedule.
9 It would be wonderful if everyone would agree, but I
10 will be glad to stick around to make sure we get this
11 done.

12 MR. FINNIGAN: Because we need to look at
13 everyone's schedule, if we could go off the record for
14 a short period of time.

15 JUDGE CAILLE: Let's do that.
16 (Discussion off the record.)

17 JUDGE CAILLE: There has been an off-record
18 discussion among the parties, and they have agreed to a
19 new schedule, and Mr. Finnigan, would you please read
20 that into the record for us?

21 MR. FINNIGAN: Thank you, Your Honor. The
22 schedule that counsel have agreed upon is that
23 responsive testimony will now be due November 5th. The
24 cutoff for alternative dispute resolution is November
25 19th. Rebuttal testimony is due for the Petitioners on

00035

1 November 21st. There will be a discovery cutoff of
2 November 30th, which is a cutoff for submitting data
3 requests for holding depositions.

4 There will be a response date to data
5 requests of no later than December 12th for those that
6 were filed on November 30th, or otherwise need some
7 adjustment to the normal 10-day rule. The prehearing
8 conference will be December 7th. Your Honor suggested
9 the hearing dates of December 13th and 14th. Opening
10 briefs will be due January 14th, and reply briefs
11 January 28th.

12 JUDGE CAILLE: I will add to that that I
13 asked Mr. Jones to select a date certain for filing his
14 motion to dismiss the claims in Paragraphs 5.5 and 5.6
15 of the Complaint, and he indicates that he will have
16 that filed on September the 7th.

17 I've also brought up with the parties the
18 option of waiving an initial order, which would save
19 time with getting a final resolution to this matter,
20 and Mr. Jones, I know that you have indicated that you
21 would like that. I have not heard from the other
22 parties, but did you want to add anything else?

23 MR. JONES: For the record, Complainants
24 would be willing to waive the initial order, Your
25 Honor.

00036

1 MR. FINNIGAN: I've had an initial discussion
2 of that concept with my clients, but I have not pushed
3 them for a response yet.

4 MR. STEPHENS: I've had an initial
5 conversation as well. My clients are not inclined to
6 go that way.

7 MS. NEWLANDS: I apologize, but I have not
8 even had an initial discussion. I completely forgot
9 that issue. I will take that up immediately as well
10 with my clients.

11 JUDGE CAILLE: We can even decide this at the
12 hearing date. I just don't want to lose track of it.

13 MR. FINNIGAN: Although, Your Honor, if one
14 party objects --

15 JUDGE CAILLE: Yes. Then it's not going to
16 happen. I think that takes care of everything that we
17 needed to cover today. I thank you all for coming
18 here, and was there anything more to be discussed?

19 MR. JONES: Ms. Newlands, did you want to
20 raise --

21 JUDGE CAILLE: -- your petition to
22 intervene. Let's take care of that.

23 MS. NEWLANDS: I on this day have filed and
24 have served on all parties a petition to intervene by
25 -- it would actually replace -- I'm currently here

00037

1 representing Lehman Brothers Holding, Inc., and Lehman
2 Brothers Holding, Inc., has transferred all of its
3 interest in the Silver Creek Development to LB Silver
4 Creek LLC, and so I have filed a petition to intervene
5 or replace, essentially, Lehman Brothers Holding, Inc.
6 with LB Silver Creek LLC.

7 JUDGE CAILLE: Are there any objections?

8 MR. JONES: None from Complaints, Your Honor.

9 MR. FINNIGAN: No, Your Honor.

10 MR. STEPHENS: No, Your Honor.

11 JUDGE CAILLE: Then that petition is granted,
12 and you will file that with the records department?

13 MS. NEWLANDS: Yes, we will.

14 JUDGE CAILLE: Anything more to come before
15 the Commission today? Thank you everyone.

16

17 (Prehearing conference concluded at 2:25 p.m.)

18

19

20

21

22

23

24

25

