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1 BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION
2 COMMISSION

3 WASHINGTON UTILITIES AND)
TRANSPORTATION COMMISSION)
4 Complainant,) Hearing No. UW-951483
vs.) Volume IV
5 ROSARIO UTILITIES, LLC,) pages 300 - 550
Respondent,)
6 -----)

7 A hearing in the above matter was held on
8 August 16, 1996 at 8:39 a.m., at 1 School Road,
9 Eastsound, Washington, before Administrative Law Judge
10 C. ROBERT WALLIS.

11 The parties were present as follows:

12 WASHINGTON UTILITIES AND TRANSPORTATION
COMMISSION by JEFFREY D. GOLTZ, Assistant Attorney
13 General, 1400 South Evergreen Park Drive Southwest,
Olympia, Washington, 98504.

14 ROSARIO UTILITIES by DAN DONAHOE, 5141 North
15 40th Street, Suite 200, Phoenix, Airizona, 85018.

16 ORCAS HIGHLANDS ASSOCIATION, VUSARIO
MAINTENANCE ASSOCIATION, ROSARIO HOMEOWNERS ASSOCIATION
17 by ROBERT E. LUNDGAARD, Attorney at Law, 1400 Bristol
Court Southwest, Olympia, Washington, 98502.

18 CASCADE HARBOR INN by DAVID MORRISON, 4100
19 Moorpark Avenue, Suite 201, San Jose, California,
95117.

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25 Margaret Bustos, CSR
Court Reporter

00301

1

I N D E X

2 WITNESS: DIRECT CROSS REDIRECT RECROSS EXAM REBUT

3 DONAHOE 305 308/335 361 364

4 ESCHENBRENNER 373 396/428 435 376

5 JENKINS 441 452/472 474/479 476

6 BACON 480 482 496/512 503/507 512

7 519 516

8 JONES 522 525 523

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10 EXHIBIT MARKED ADMITTED

11 14 304 307

12 15 304 307

13 16 304 307

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15 18 304 308

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18 21 304 311

19 22 304 313

20 23 304 316

21 24 394 317

22 25 304 335

23 26 304 335

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1	I N D E X (conitnued)		
2	EXHIBIT	MARKED	ADMITTED
3	29	371	375
4	30	371	375
5	31	371	375
6	32	371	375
7	33	371	375
8	34	371	375
9	35	371	
10	36	371	
11	37	432	433
12	38	436	439
13	39	440	442
14	40	440	442
15	41	440	442
16	42	440	442
17	43	440	442
18	44	440	446
19	45	440	446
20	46	479	482
21	47	479	482
22	48	479	482
23	49	479	482
24	50	479	482
25	51	520	523

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1 I N D E X (continued)

2 EXHIBIT MARKED ADMITTED

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00304

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

2 (Marked Hearing Exhibits 14, 15, 16, 17,
3 18, 19, 20, 21, 22, 23, 24, 25, 26, 27,
4 and 28.)

5

6 JUDGE WALLIS: Let's be back on the record
7 for our August 16th, 1996 session in the matter of
8 Docket No. UW-951483. This morning we're going to
9 begin with the direct evidence and cross-examination
10 of Mr. Donahoe.

11 And the first thing we'll do is we'll swear
12 Mr. Donahoe in, and then we'll go through the
13 exhibits that are expected to be offered through this
14 witness. And then Mr. Donahoe can proceed.

15 So Mr. Donahoe can you stand for a moment,
16 please.

17 Whereupon,

18 DAN DONAHOE,

19 having been first duly sworn, was called as a witness
20 herein and was examined and testified as follows:

21 JUDGE WALLIS: Exhibit No. 14 for
22 identification is a document identified as DET-1,
23 which was presented as the testimony of Darlene E.
24 Thorson; Exhibit 15 for identification is a document
25 designated DET-2; 16 is a document designated DET-7;

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1 17 is a document designated DET-8; 18 is a document
2 entitled statement of D. J. Donahoe; 19 is an
3 attachment to this document designated RU-1; 20 is a
4 document designated RU-2; 21 is the original tariff;
5 22 is the purchase agreement under cover letter of May
6 31, 1996; 23 is a closing letter under a fax cover
7 dated July 26, 1996; 24 is a real estate excise tax
8 affidavit; 25 is a Commission Staff data request to
9 Mr. Donahoe; 26 is a response to a data request -- to
10 that data request; 27 is a certificate of formation
11 for limited liability corporation; and 28 is a
12 document of two pages designated rate base
13 calculation, which is described as a response to --
14 company response to a data request.

15 So with that, let's proceed.

16 Mr. Donahoe, the balls in your court.

17

18 DIRECT EXAMINATION

19 MR. DONAHOE: I'm the president of Daybreak
20 Investments, Inc. and manager of Rosario Utilities,
21 LLC. Pursuant to the third supplemental order of
22 pre-hearing conference, I will sponsor the pre-file
23 testimony of Darlene E. Thorson, which has been marked
24 as Exhibit DET-1 for identification, as well as the
25 exhibits to Ms. Thorson's testimony, which had been

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1 marked for identification as exhibits DET-2 through 9.
2 And, of course, we have just talked about superseding
3 some of those exhibits.

4 Although Ms. Thorson can't be present at
5 this hearing, she is available by telephone for
6 cross-examination. I am Ms. Thorson's supervisor. I
7 have reviewed her pre-file direct testimony and the
8 exhibits submitted with her pre-filed testimony, and I
9 believe that both pre-filed direct testimony and the
10 exhibits submitted with her direct testimony are
11 correct and accurate.

12 I move for the admission of her direct
13 testimony, DET-1, and the exhibits submitted with her
14 direct testimony, DET-2 through DET-9 as directed by
15 the Court.

16 JUDGE WALLIS: So what you're asking for is
17 the admission of DET-2, 7, and 8, because the other
18 exhibits have previously been admitted; is that
19 correct?

20 MR. DONAHOE: Thank you. Yes.

21 I'm available for cross-examination.

22 JUDGE WALLIS: Is there any objection to
23 receipt of those four documents into evidence?

24 MR. GOLTZ: With the understanding that in
25 the event that it becomes apparent through

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1 cross-examination of Mr. Donahoe that we would have
2 access either today or at some later time by phone at
3 which point Ms. Thorson will be sworn and would stand
4 cross-examination, then I have no objection.

5 JUDGE WALLIS: Mr. Lundgaard?

6 MR. LUNDGAARD: Likewise, I would concur
7 with what Mr. Goltz has indicated.

8 JUDGE WALLIS: Very well. With that
9 understanding, those documents are received in
10 evidence.

11 (Admitted Hearing Exhibits 14, 15, 16,
12 and 17.)

13 JUDGE WALLIS: Mr. Donahoe, we also
14 identified as documents 18, 19, and 20 an original
15 statement of yourself and two attachments. Are those
16 true and correct to the best of your knowledge?

17 MR. DONAHOE: Yes.

18 JUDGE WALLIS: And let me ask if there
19 are any objections to putting those documents in
20 evidence?

21 MR. GOLTZ: That was the remainder of
22 the items?

23 JUDGE WALLIS: No. That's 18, 19, and 20.

24 MR. GOLTZ: Oh, I have no objection.

25 JUDGE WALLIS: Mr. Lundgaard?

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1 MR. LUNDGAARD: No objection.

2 JUDGE WALLIS: And 18, 19, and 20 are
3 received in evidence.

4 (Admitted Hearing Exhibits 18, 19, and
5 20.)

6 JUDGE WALLIS: For cross-examination Mr.
7 Lundgaard is going to go first?

8 MR. LUNDGAARD: Yes.

9 JUDGE WALLIS: Very well. Please proceed.

10 MR. LUNDGAARD: Thank you.

11

12 CROSS-EXAMINATION

13 BY MR. LUNDGAARD:

14 Q. Good morning, Mr. Donahoe. I would like to
15 first ask you some questions regarding the structure
16 of the various organizations that you're associated
17 with that have a tie-in with the resort. Are you the
18 100 percent owner of the stock in Daybreak Investments?

19 A. Yes.

20 Q. And is it the general partner of Rosario
21 Resort Limited Partnership?

22 A. Yes.

23 MR. LUNDGAARD: And if I may, your Honor, I
24 would like to go to the easel and try and chart this.

25 JUDGE WALLIS: Was there an answer to that

00309

1 question?

2 Q. I think you said yes; did you not?

3 A. Yes.

4 Q. So if we start with Daybreak -- and you've
5 just indicated that Daybreak Investments is the
6 general partner of the Rosario Resort Limited
7 Partnership; is that correct?

8 A. Yes.

9 Q. And it in turn owns 99 percent of the
10 Rosario Utilities, LLC; is that correct?

11 A. Yes.

12 Q. And the other one percent is owned by
13 Daybreak Investments; is that correct?

14 A. Yes.

15 Q. Then we have the manager of the resort is
16 Red Rock, Inc.?

17 A. Red Rock Resorts, Inc.

18 Q. And they manage the resort properties?

19 A. Yes.

20 Q. And you are a 50 percent owner of the stock
21 in that corporation; is that correct?

22 A. Yes.

23 Q. And Mr. Powell -- and what is his first
24 name?

25 A. Arthur.

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1 Q. Arthur Powell owns the other 50 percent; is
2 that correct?

3 A. Yes.

4 Q. Is he also the secretary of Daybreak
5 Investments, Inc.?

6 A. Yes.

7 Q. And you're the president of Daybreak
8 Investments, Inc.?

9 A. Yes.

10 Q. Who is the president of Red Rock Resorts?

11 A. I am.

12 Q. And just for illustrative purposes, I've
13 tried to put this on the easel. Is that a fair
14 characterization of the connection between various
15 entities?

16 A. Yes.

17 Q. Showing you first what has been marked --
18 and I believe you have a pre-distributed copy of
19 Exhibit 21?

20 A. Yes.

21 Q. Does that contain the original -- the first
22 filing of the tariff by Geiser Land Company d/b/a
23 Rosario Water System filed December 28th, '94 with the
24 Commission?

25 A. It appears to be.

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1 Q. And that was signed by Sarah Geiser as
2 manager?

3 A. Yes.

4 Q. And attached to it an adoption notice of
5 Rosario Utilities, Inc. adopting and ratifying and
6 making that tariff in every respect its own tariff; is
7 that correct?

8 A. Yes.

9 Q. Now, I notice that you have signed that as
10 Rosario Utilities, Inc. Did you actually form Rosario
11 Utilities, Inc. prior to forming the LLC?

12 A. Yes.

13 MR. LUNDGAARD: I would move for the
14 admission of Exhibit 21.

15 JUDGE WALLIS: Is there objection?

16 MR. GOLTZ: None.

17 JUDGE WALLIS: No objection. Then 21 is
18 received.

19 (Admitted Hearing Exhibit 21.)

20 Q. Now, if you would turn to Exhibit 22. And
21 if you would -- that's a cover letter from Sarah
22 Geiser to me in response to a subpoena that I had sent
23 requesting a copy of the purchase and sale agreement.
24 And she submits the following.

25 One is a copy of the purchase and sale

00312

1 agreement, and two is a schedule of water hook-up
2 charges from Geiser Land Company. Referring you to
3 the purchase and sale agreement, would you look at the
4 back of that and the signature pages?

5 A. (Witness complies.)

6 Q. And is there -- was this signed in
7 counterparts?

8 A. Yes.

9 Q. And you have in front of you -- and you've
10 turned to the page where you have signed on behalf of
11 Daybreak Investments, Inc.; is that correct?

12 A. Yes.

13 Q. And the next page is the notary of your
14 signature?

15 A. Yes.

16 Q. And then the next page is the signature by
17 Robert Crinkley in his capacity as court-appointed
18 conservator of Geiser Land Company?

19 A. Yes.

20 Q. And the page following that is the notary
21 of his signature?

22 A. Yes.

23 Q. And then if you turn to the next set, is
24 that the signature line by Sarah Geiser,
25 vice-president of Geiser Land Company?

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1 A. Yes.

2 Q. And then the notary of her signature
3 follows?

4 A. Yes.

5 Q. And that notary was Christine Vierthaler?

6 A. Yes.

7 MR. LUNDGAARD: I would offer Exhibit 22.

8 MR. GOLTZ: And I gather the exhibit is not
9 just the purchase and sale agreement; it is the cover
10 letter -- it includes the cover letter, which accompanys
11 both the purchase and the schedule agreement and the
12 schedule of water and dump charges?

13 MR. LUNDGAARD: That's correct.

14 MR. GOLTZ: I have no objection -- is there
15 any other documents in this packet? I see something
16 called insurance summary for the Rosario Hotel. Is
17 that a part of the purchase and sale agreement?

18 MR. LUNDGAARD: That is all attached to the
19 sale agreement.

20 MR. GOLTZ: I have no objection.

21 JUDGE WALLIS: The exhibit is received.

22 (Admitted Hearing Exhibit 22.)

23 Q. Now, if you would turn to what is referred
24 to as schedule 3.1 (c) -- I can show you its
25 approximate location.

00314

1 A. All right.

2 Q. And is that schedule captioned Allocation
3 of Purchase Price?

4 A. Yes.

5 MR. GOLTZ: Can we wait a second while the
6 rest of us try and find that.

7 Q. And rather than have you hunt for the same
8 one, I'll show you schedule 3.1, subsection C. And
9 you've indicated that's captioned Allocation of
10 Purchase Price?

11 A. Yes.

12 Q. And on the second page of that, does it
13 show the sewer system land at 33,000 and depreciable
14 equipment or structures at 229,000 for a total of
15 262,800?

16 A. Yeah. Yes.

17 Q. And the water system under depreciable
18 equipment or structures of 65,000?

19 A. Yes.

20 Q. And hydro electronic plant resort land 800
21 and depreciable equipment or structures 19,000 for
22 a total of 19,800?

23 A. Yes.

24 Q. Now, if you would examine Exhibit 23.

25 A. (Witness complies.)

00315

1 Q. You see that that is a letter dated
2 February 10th, 1995 to -- addressed to Judy
3 Fredrickson, the First American Title Insurance
4 Company encaptioned Purchase and Sale of the Rosario
5 Resort and refers to an escrow letter?

6 A. Yes.

7 Q. And that letter is signed in counterparts
8 as well by Paul Mutty, the attorney for the
9 conservator, and a signature by Guy Wilson, attorney
10 for the purchasers; is that correct?

11 A. Yes.

12 Q. And that has attached to it a Geiser Land
13 allocation; is that correct?

14 A. Yes.

15 Q. And the sewer system on this document has
16 an allocation of 33,000 land, 209,800 for structures
17 for a total of 242,800; is that correct?

18 A. Yes.

19 Q. And the water system has the same
20 allocation as previously at \$65,000?

21 A. Yes.

22 Q. And the hydro electric plant has the same
23 allocation of \$800 for the land and 19,000 for the
24 structures for a total of 19,800; is that correct?

25 A. Yes.

00316

1 MR. LUNDGAARD: I would move for the entry
2 of Exhibit 23.

3 JUDGE WALLIS: Objection?

4 MR. GOLTZ: No objection.

5 JUDGE WALLIS: As we go through these
6 objections, Mr. Donahoe, when I ask if anyone has an
7 objection, I want to make it clear that you're
8 included in that.

9 MR. DONAHOE: Thank you. I appreciate
10 that. I'm wearing many hats here. Thank you.

11 JUDGE WALLIS: Exhibit 23 is received.

12 (Admitted Hearing Exhibit 23.)

13 Q. The next document I would like you to refer
14 to is Exhibit 24. Do you have that before you?

15 A. I do.

16 Q. And referring to the -- that is a real
17 estate excise tax affidavit that was filed with San
18 Juan County at the time that the transfer document was
19 recorded; is that correct?

20 A. Yes.

21 Q. And it refers to the type of document as
22 being a quit claim deed, and it indicates that the
23 document was dated February 10th, 1995?

24 A. Yes.

25 Q. And that's the same date as the previous

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1 exhibit that we referred to that had the allocations,
2 being the transmittal letter to the escrow office or
3 the title company; is that correct?

4 A. Yes.

5 Q. And that confirms the gross sale price of
6 5.1 million?

7 A. Yes.

8 MR. LUNDGAARD: I would offer Exhibit 24.

9 JUDGE WALLIS: Is there an objection?

10 MR. GOLTZ: No.

11 JUDGE WALLIS: Twenty-four is received.

12 (Admitted Hearing Exhibit 24.)

13 Q. Mr. Donahoe, have you indicated that the
14 rate base for the company of the utility plant in
15 service was \$346,480, and that's contained in your
16 exhibit RU-2, which is Exhibit 20?

17 A. No.

18 Q. No?

19 A. No.

20 Q. Would you look at Exhibit 20, please.

21 That's exhibit RU-2 to your testimony?

22 A. Yes.

23 Q. And this is an exhibit sponsored by you?

24 A. Yes.

25 Q. And it's entitled Results of Operation for

00318

1 Rate Making Purposes?

2 A. Yes.

3 Q. And would you read what it says under the
4 first column test year per books for utility plant in
5 service?

6 A. You would like me to read all those
7 figures?

8 Q. Just the number that I referred you to,
9 item -- or account No. 101, utility plant in service?

10 A. Yes.

11 Q. And for the test year per the books of the
12 company what does it indicate?

13 A. 346,480.

14 Q. That's \$346,480?

15 A. Yes.

16 Q. Now, I understood you a minute ago to say
17 that that was not the figure that you were using for
18 utility plant in service?

19 A. I'm sorry. I misunderstood you. That was
20 the figure at that time during the test year.

21 Q. When you were asked the question of -- to
22 support the figure of 346,480 as being the allocation,
23 didn't you indicate in a letter to Ms. Ingram that
24 was concluded from an allocation by the seller of
25 the purchase price?

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1 A. What letter would you be referring to?

2 Q. I believe it's a letter of March 14th. I
3 may be --

4 JUDGE WALLIS: Is that a document that has
5 been marked for identification as an exhibit?

6 MR. LUNDGAARD: Yes.

7 Q. I refer you to Exhibit 25, which was a
8 request for information from, then, Herta Fairbanks to
9 you.

10 A. Uh-huh.

11 Q. And the question No. 10 was please provide
12 a copy of the sales agreement and/or purchase
13 agreement for the utility from the Geiser Land and
14 Water Company to Daybreak Investments?

15 A. Uh-huh.

16 Q. And then if you'll refer to Exhibit 26, was
17 this your response to her letter of February 28th?

18 A. Yes.

19 Q. And your response to her question No. 10
20 that I just read was the entire Rosario property and
21 all of its assets were purchased for 5.1 million from
22 Geiser Land and the Meade Rosario Trust. There was no
23 separate water company, and all assets of the seller
24 were combined. The water system assets were given a
25 value for tax purposes of \$346,480 based on the

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1 seller's allocation. Was that your response to her
2 request for a copy of the sales agreement and/or
3 purchase agreement?

4 A. Yes.

5 Q. Did you ever supply her with a copy of the
6 sale agreement or purchase agreement?

7 A. No.

8 Q. And, in fact, those have been admitted in
9 evidence this morning, and they show an allocation of
10 the price for the water system as \$65,000; don't they?

11 A. Yes.

12 Q. The Rosario complex was purchased by
13 Daybreak Investments, Inc.; was it not?

14 A. No. Rosario complex?

15 Q. Okay. I stand corrected. It was -- the
16 purchase was by the general -- by the partnership?

17 A. Yes.

18 Q. Of which Daybreak Investments was the
19 general partner?

20 A. Yes.

21 Q. And that's indicated on the excise tax
22 affidavit I believe.

23 You've indicated that there was a Rosario
24 Utilities, Inc. at the time that you adopted the
25 tariff on February 28th of '95. Did you subsequently

00321

1 -- or did you transfer the Rosario water system to
2 that corporation?

3 A. No.

4 Q. Why are you adopting the tariff in the name
5 of Rosario Utilities, Inc.?

6 A. At the time that was the plan to transfer
7 the assets to a C corporation, but upon reflection and
8 advice of accountants and various other professionals,
9 it was decided to transfer the assets to the LLC,
10 which was formed subsequent to the C Corp.

11 Q. And there was a C Corp. formed, but it was
12 just a shell and not utilized?

13 A. Yes.

14 Q. And so you didn't form the LLC until June
15 21st, 1995; is that correct?

16 A. Yes.

17 Q. And that now holds the assets which are the
18 water system, the sewer system, and the hydro plant?

19 A. Yes.

20 Q. And the irrigation; is that correct?

21 A. Those are divisions. The assets are the
22 three you mentioned.

23 Q. Okay. And did you transfer those assets
24 with a book value of 346,480.

25 A. That was the capital stock that was issued

00322

1 for that amount.

2 Q. And if you would take a look at Exhibit 23,
3 the final allocation of the sale price, and if you
4 take --

5 A. Excuse me. Could you just wait just a
6 second. I'm sorry. I'm in two -- I've got two hats
7 here, and I'll be crossing myself. That didn't sound
8 right. Sorry.

9 JUDGE WALLIS: Redirect.

10 MR. DONAHOE: Redirect. I'll cross myself,
11 too. Thank you. Excuse me.

12 Q. If you add up the allocations of the sewer
13 system, the water system, and the hydro electronic
14 plant that are shown in Exhibit 23 -- and I'll give
15 you those numbers.

16 A. Could you just give me the total, please.

17 Q. 242,800 for the sewer system, 65,000 for
18 the water system, and 19,800 for the hydro electronic
19 plant, that would be a total of 327,600; is that
20 correct?

21 A. Yes.

22 Q. What is your document -- oh, excuse me.
23 If you would refer to Exhibit 28.

24 A. Yes.

25 Q. And I'll show you a -- you had received a

00323

1 data request from me which asked you to provide copies
2 of documents which support utility plant in service of
3 \$346,480 in the results of operation exhibit of
4 Rosario Utilities, LLC. And your response was see
5 Rosario Utilities, LLC rate base calculation 9/30/95
6 schedule, which is two pages.

7 And isn't that the document that is called
8 rate base calculation and -- well, part of it is cut
9 off here -- with the date of 9/30/95?

10 A. Yes.

11 Q. Okay. And that's Exhibit 28. So your
12 response to providing a copy which supports the plant
13 in service of 346,480 is this document, Exhibit 28;
14 isn't that correct?

15 A. Yes.

16 Q. Okay. And that's a document that was --
17 the calculations were prepared by Mr. Drahn, the
18 engineer of MPD?

19 A. Yes.

20 Q. And you'll recall I asked him questions
21 about the asset cost column and particularly under
22 transmission and distribution main. And the first
23 five numbers in that column starting with the number
24 \$499 for the year '59, that those numbers were
25 estimates by him; he had no invoices for those

00324

1 numbers?

2 A. I recall his testimony.

3 Q. Okay. And do you recall also that the
4 figures below the figure of 10,625 came from the
5 calculation by Mr. Al Jones as to the makeup of the
6 plant in service that he was able to verify that had a
7 total of approximately 47,000-some-odd dollars?

8 A. I recall the testimony.

9 Q. Do you recall that?

10 A. Yes.

11 Q. So in fact while Exhibit 28 had a different
12 caption and apparently said depreciation schedule,
13 that was scratched out and in its place rate base
14 calculation written in as a rate base calculation of
15 September 3rd, '95, but that document also bears a
16 date of June 12th, 1996 at the bottom; does it not?

17 A. Yes.

18 Q. And it also incorporates information that
19 hadn't even been prepared by Mr. Jones in September --
20 September 30th of 1995; isn't that correct?

21 A. Mr. Lundgaard, I would call your attention
22 to the deficiencies occasionally of our modern
23 technology. I also recall, as I believe, Mr. Drahn's
24 fax machine reading four or five years before it was
25 ever sent.

00325

1 So I suspect that this data that you're
2 referring to here is misleading because your question
3 is misleading for the simple reason that these are
4 computer-generated documents, and it has to do with
5 dates that are changeable or changed. It is not a
6 time stamp.

7 So as far as I'm concerned his testimony is
8 what we heard. And the dates themselves are clearly
9 as Mr. Drahn said in his own fax machine very
10 suspicious.

11 Q. And the dates that I'm referring to are
12 handwritten dates; are they not?

13 A. The dates that you're referring to are
14 handwritten, that's correct.

15 Q. The two dates in question or 9/30/95 on the
16 rate base calculation at the top and at the bottom
17 6/12/96?

18 A. Wait a minute. This is cut off. Let's see
19 that thing where it was --

20 Q. Here.

21 A. Thank you. That's correct.

22 Q. And that's what you have sponsored as being
23 a response to documents which support plant in service
24 that was in the sale agreement in February 10th of
25 1995 of \$346,480?

00326

1 A. That is correct.

2 Q. Now, if you would refer to Exhibit 19,
3 which is your RU-1?

4 A. Yes.

5 Q. Under unmetered sales there's a figure of
6 \$50,222?

7 A. Yes.

8 Q. And at that time that figure represented
9 the figure of \$965 as being what the utility was
10 representing was paid to the utility by Orcas
11 Highlands. Do you have knowledge of --

12 A. I don't know what the source of that
13 receipt was. All I know is that this was the total
14 amount of money the utility received for the year
15 ending September 30, 1995.

16 Q. My question was a preliminary one. Isn't
17 it true that that figure was actually understated by
18 \$1,998, that in fact the Orcas Highlands had paid to
19 you during that test year \$2,963, but the figure of
20 \$50,222 reflected that the payment was only \$965?

21 A. I don't know the specifics.

22 Q. Okay. I take it you are now sponsoring the
23 testimony of Darlene Thorson and her exhibits?

24 A. Yes.

25 Q. And referring to Exhibit 15, which is

00327

1 DET-2.

2 A. Yes.

3 Q. Do you see under test year per books under
4 revenue unmetered sales, Highlands, test year per
5 books, \$965, which is the figure I just asked you
6 about?

7 A. Yes, I see that figure.

8 Q. Okay. And you're still not acquainted
9 enough with these documents to know that that figure
10 was understated by the \$1,998 that I just mentioned to
11 you?

12 A. No, sir, I did not say that. You were
13 referring to RU-1, and specifically RU-1, which has
14 the solid -- just a simple, straight-forward total
15 number. You're now referring to a different exhibit.
16 We can now answer the question.

17 Q. Both of those exhibits have the same number
18 of 50,222?

19 A. That's right. But RU-1 has a total with no
20 breakout. And I was looking specifically at that
21 exhibit.

22 Q. And if you add up the numbers on DET-2,
23 Exhibit 15, which has Highlands revenue of 965, you
24 get the total of operating revenue of 50,222?

25 A. Yes.

00328

1 Q. And that's the same amount that you have in
2 your first exhibit that we just referred to, Exhibit
3 19, your RU-1?

4 A. The total is the same.

5 Q. Right. And are you trying to say now that
6 the makeup was different?

7 A. I'm not trying to say anything, Mr.
8 Lundgaard. I'm asking you what is your specific
9 question on Exhibit 15? We've already answered your
10 question on Exhibit RU-1.

11 Q. My question to you was: Isn't the revenue
12 derived from Highlands, which you've stated in the
13 test year per books to be 965 an understatement by
14 \$1,998?

15 A. This information came from the company's
16 records, and the company's records showed a receipt of
17 \$965. And speaking for Darlene Thorson, this is the
18 number she received, and that's why it was put in
19 there.

20 Q. But in actuality what the company had
21 received that year from Highlands was \$2,962?

22 A. I do not have any verification of that, and
23 there -- I have no knowledge of that amount.

24 Q. Okay. And again on Exhibit 15 under
25 account No. 101, utility plant in service, continues

00329

1 to show the figure of \$346,480; does it not?

2 A. Yes.

3 Q. And this is an exhibit that has a date of
4 July 29th for the period ending September 30th, 1995?

5 A. Yes.

6 Q. If you would refer to your Exhibit 20,
7 which is your original RU-2.

8 A. (Witness complies.)

9 Q. Referring you to account No. 409, Federal
10 income tax, you have a negative number there of minus
11 \$14,118?

12 A. Yes.

13 Q. You don't -- that isn't really a per books
14 number; is it?

15 A. No. This is following the procedure from
16 the accounting procedure that Darlene Thorson received
17 from the Washington Utilities and Transportation
18 Commission on format and NARUC chart of account
19 numbers, which the machine put in.

20 Q. Per books that number would be zero; would
21 it not?

22 A. In the real world the books would be zero,
23 yes.

24 Q. Doesn't imply that would be getting a tax
25 refund of 14,000?

00330

1 A. I don't think so.

2 Q. Okay. Now, since you're sponsoring both
3 your original testimony and the later-filed testimony
4 of Ms. Thorson, I take it that where there are
5 discrepancies or inconsistencies between your --
6 excuse me. Strike that.

7 In Darlene Thorson's testimony she
8 indicates that she's employed by Daybreak Investments
9 as an accountant. She doesn't indicate she is a CPA.
10 I take it she is not a CPA?

11 A. That is correct.

12 Q. If you would refer to page 5 of her
13 pre-filed testimony. Referring you to lines 24
14 through 26. She refers there to calculated R.E.U.'s,
15 and she's using an R.E.U. for Highlands of 108.

16 In fact the actual number of customers in
17 Highlands including Otter's Lair and two other homes
18 that are outside of the Highlands is a number of 85
19 customers; is it not?

20 A. I don't know exactly how many customers
21 there are at Highlands.

22 Q. Okay. And, likewise, on Vusario, they're
23 using a calculated R.E.U. count of three when in fact
24 there are eight customers?

25 A. Again, I don't know how many customers

00331

1 there are. This particular calculation, as you know
2 from Mr. Drahn's testimony yesterday, was based upon
3 usage to a bulk customer, if I recall his testimony
4 correctly, and the number of residences was not an
5 issue.

6 Q. Referring you to page 8 of her pre-filed
7 testimony and referring to account 271 CIAC plant
8 in service?

9 A. On page 8?

10 Q. Page 8.

11 A. Yes. Thank you.

12 Q. She indicates that the company believes
13 that its plant in service should reflect the 27,500
14 the company collected. And do you know what number
15 that refers to?

16 A. Yes. That's the fees -- the hook-up fees
17 that were received by the company during its existence
18 after formation and receipt of dollars since the
19 ownership of the property.

20 Q. Ownership by your entity?

21 A. Ownership by the utility. The utility was
22 set up from the beginning as a separate entity from a
23 bookkeeping point of view.

24 Q. But the 27,500 comes from hook-ups that
25 were in '94 and '95?

00332

1 A. I don't know the exact dates, but it would
2 have been subsequent to the acquisition of the system,
3 which would be for all intents and purposes the end of
4 August, 1994.

5 Q. You actually took over control or operation
6 in August of '94?

7 A. The end of August of 1994, yes.

8 Q. And there's been some reference to a soft
9 closing; is that -- whatever that terms means.

10 A. Yes, that would have been the soft closing
11 before the subsequent appeals and final confirmation.

12 Q. The final documents are the February 10th
13 documents when the transfer was made of record?

14 A. The hard closing.

15 Q. Right. And then it says that it would be
16 plus \$80,654. Do you know how that figure was arrived
17 at?

18 A. Yes. That figure was arrived at in the
19 searching of prior records after working with staff at
20 the UTC to find out just exactly what amount of money
21 which might have been -- or was presumably, although I
22 have no knowledge of it being collected by the prior
23 owner, was in fact applied to the utility system.

24 And that was based upon the total amount of
25 invoices that we could specifically identify as going

00333

1 to the utility system -- the water system. Excuse me,
2 the water system.

3 And I believe those invoices were sent to
4 you as well as the Utility and Transportation
5 Commission as part of this hearing.

6 Q. Those were not sent to me, so I'm not --
7 that's why I asked the question.

8 A. I'm sorry.

9 Q. In the last page of her pre-filed
10 testimony --

11 A. If I may comment on that last question,
12 please. I recall it was sent to Ann Rendahl prior to
13 counsel taking over. And it was my understanding that
14 in trying to expedite things, that she was going to be
15 distributing certain things, and apparently she didn't.
16 But that was word of mouth.

17 MR. GOLTZ: We do have one document that we
18 would be happy to distribute if that's --

19 THE WITNESS: It is the total of those
20 invoices totalling \$80,000.

21 MS. VIERTHALER: It's an exhibit.

22 MR. DONAHOE: It's an exhibit?

23 JUDGE WALLIS: Let's be off the record.

24 (Discussion off the record.)

25 JUDGE WALLIS: Let's be back on record.

00334

1 It's been determined that the documents
2 referred to just prior to our off-the-record
3 discussion have been received in evidence as Exhibit 3
4 through the testimony of Ms. Vierthaler.

5 Q. Referring you now to page 10, the last
6 statement by there that the company proposes facility
7 charge, that's not in your tariff application; is it?

8 A. My understanding -- and excuse me because
9 I'm not familiar with the Washington Utilities
10 procedure, but I had understood that this was all part
11 of proceeding toward the tariff application, because
12 we're talking about a rate base, and we're talking
13 about a return on investment. And it's up to the
14 Utilities and Transportation Commission to establish
15 the rates. And this is, to my understanding, part of
16 the rate application, this entire procedure we're
17 going through.

18 Q. Didn't apply for a hook-up fee of \$4,100?

19 A. I was told the way that my application --

20 Q. Excuse me. I think the question calls for
21 a yes or no answer.

22 JUDGE WALLIS: Does the witness know
23 whether the answer is yes or no?

24 THE WITNESS: No, I do not know whether the
25 answer is yes or no.

00335

1 Q. The purchase from Geiser was not a purchase
2 of stock; was it?

3 A. No.

4 MR. LUNDGAARD: I have nothing further.

5 JUDGE WALLIS: As a detail here, I don't
6 think Exhibits 25, 26, 27, or 28 have been offered.

7 MR. LUNDGAARD: Thank you. I would offer
8 exhibits 25 through 28 at this time.

9 MR. GOLTZ: No objection.

10 MR. DONAHOE: None.

11 JUDGE WALLIS: Mr. Donahoe?

12 MR. DONAHOE: No.

13 JUDGE WALLIS: Exhibits 25 through 28 are
14 received.

15 (Admitted Hearing Exhibits 25, 26, 27, and
16 28.)

17 JUDGE WALLIS: Do you have anything else,
18 Mr. Lundgaard?

19 MR. LUNDGAARD: No.

20 JUDGE WALLIS: Mr. Goltz?

21

22 CROSS-EXAMINATION

23 BY MR. GOLTZ:

24 Q. Okay. Mr. Donahoe, in the course of your
25 career as manager of Red Rock Resorts or whatever else

00336

1 you do, do you have interest in or are you involved
2 with any other utilities?

3 A. I was involved in the utility business from
4 1976 to 1986 in the state of Arizona, water and sewer
5 company.

6 Q. And in the course of that experience, were
7 you involved with the Arizona public -- I believe it's
8 called the Arizona Public Service?

9 A. Arizona Corporation Commission is the
10 equivalent of Utilities and Transportation Commission.

11 Q. Were you involved with them?

12 A. From the initiation of the company when we
13 formed the company and got into the business, we
14 immediately became -- properly so applied for and
15 became, I think you call it, an investor in the public
16 utility, yes.

17 Q. And so you dealt with the Arizona
18 Corporation Commission. The Arizona Corporation
19 Commission approves or establishes rates, charges,
20 fees to be charged by investor-owned utilities?

21 A. Yes.

22 Q. And in the course of your responsibilities
23 therein, were you the manager or owner of the --

24 A. I was the president of the utility company.

25 Q. And did you have dealings with the Arizona

00337

1 Corporation Commission at that time?

2 A. Yes.

3 Q. And did you have an opportunity or an
4 occasion to file with the Arizona Corporation
5 Commission tariffs?

6 A. Yes.

7 Q. And did you ever -- and I assume that the
8 Arizona Corporation Commission requested back-up data
9 and information for the proposed tariffs?

10 A. When it was called for, they requested
11 that information.

12 Q. And so what information did you supply to
13 the Arizona Corporation Commission?

14 A. Since from the day of the start of the
15 company we were in the loop as it were and they had
16 access to the formation of the company and our assets
17 from day one, there was very little additional
18 information they needed, because each year we
19 submitted the audited financial statement.

20 And any questions that came up, which were
21 occasionally asked, were not needed to -- did not
22 need to be backed up. I think in the ten years that I
23 operated the company, I think there might be one time
24 where additional information was necessary.

25 I think that was the advantage of starting

00338

1 at the beginning and setting it up properly at the
2 beginning to be a regulated company.

3 Q. So you did acquire the company; you formed
4 the company?

5 A. That is correct.

6 Q. So were you ever in a formal proceeding
7 before the Arizona Corporation Commission?

8 A. Yes. For all of our rate increases, that
9 was an automatic procedure where we had to apply for
10 the rate increase and present our case.

11 Q. And you had to present results of
12 operations to them?

13 A. Yes.

14 Q. And did you have to file testimony and
15 present evidence?

16 A. The way the Arizona Corporation Commission
17 operates is with no pre-hearing, I believe you call
18 it, testimony. It's all on the record in front of the
19 public with all exhibits being submitted at that time.
20 In other words, we don't have this business of the
21 question and answer pre-file.

22 Q. And were your rate increases contested?

23 A. Yes, they were contested.

24 Q. And did the Commission ultimately make a
25 decision?

00339

1 A. Yes, they did.

2 Q. And what was the name of that utility?

3 A. Desert Ranch Water Company.

4 Q. Where did it operate?

5 A. It operated out of Scottsdale, Arizona.

6 Q. And did you have occasion to be involved in
7 your career in any other investor-owned utilities?

8 A. No.

9 Q. And are you still involved with that
10 Arizona water company?

11 A. No. The city of Scottsdale purchased that
12 company. And, I'm sorry, I made -- I would like to
13 correct the date. It was from 1976 until 1993, not
14 '86. 1976 until 1993.

15 The property which the water company
16 serviced, the water service was sold in 1986, but
17 the water company was retained by the stockholders and
18 the city of Scottsdale acquired the utility in 1993.
19 So I operated it from 1976 to 1993.

20 Q. The name of the company again was what?

21 A. Desert Ranch Water Company.

22 Q. And were you also involved in some capacity
23 as a manager, owner, or investor in any of the
24 customers of the water company?

25 A. No.

00340

1 Q. Does the water company currently have plans
2 to install meters on individual homes?

3 A. Yes.

4 Q. Can you describe those plans.

5 A. The plan was to install seven meters this
6 year and additional meters this year if it were
7 economically possible to do so. And next year,
8 calendar 1997, the plan is to install additional
9 meters. I don't know exactly how many, but there was
10 a budget set for additional meters in 1997, 1998, and
11 1999.

12 Q. And at the conclusion of 1999, is it your
13 plan to have all of the individual residences metered?

14 A. That is correct, either by the company or
15 by customers who have expressed an interest in putting
16 in their own meters.

17 Q. And at that point -- would it be
18 presumptuous to call that a plan for the company?

19 A. That is our plan.

20 Q. And under that plan, the individual
21 residences be individually metered, but the Vusario
22 and Highlands customers would still be bulk
23 purchasers; is that correct?

24 A. That is correct.

25 Q. And the resort property would be separately

00341

1 metered?

2 A. That is correct.

3 Q. And the Morrison condominiums would be
4 separately metered?

5 A. That is correct.

6 Q. Among those entities which I mentioned,
7 does that exhaust all the customers or planned
8 customers of the utility for the time period through
9 1999?

10 A. At the present time that is the plan. We
11 currently have three categories of customers -- we
12 have really four. Excuse me. I believe it's four.
13 We have the bulk customers. We have the residential
14 customers. We have the commercial customer, which
15 includes two resorts. And we have governmental
16 agencies. We at the current time provide water to
17 Moran State Park. That's our fourth category of
18 customer.

19 Q. I didn't know that.

20 A. I didn't know it either until quite
21 recently.

22 Q. Gosh, I hate to ask this, but do they pay
23 you for the water?

24 A. No, they do not.

25 Q. Is this a quid pro quo?

00342

1 A. No. Those are one of those things that I
2 found. Like I discovered yesterday there are three
3 houses that are on the resort meter. It just was
4 found out.

5 Q. Where is the water piped to the park?

6 A. I don't know that. John Cavalli would have
7 that information. I don't know where the line is. I
8 might add it is not a significant amount because it
9 just services, I believe, two bathrooms --

10 Q. Well, I mean --

11 A. -- because they also have their own water
12 supply, which I also just learned about. And so I'm
13 really not sure who uses what or in what condition it
14 is.

15 Q. Okay. But it is water that you supply
16 them, which is downstream from your treatment plant or
17 upstream from your treatment plant?

18 A. I would presume it's downstream since the
19 treatment plant is up here. The treatment plant
20 is on the up side of the hill and all of the customers
21 are down the hill.

22 Q. Okay. But in any event, there's nothing in
23 your testimony that -- or your rate filing that
24 purports to impose a tariff rate or charge for
25 governmental entities?

00343

1 A. Not in this particular rate filing.

2 Q. And they are not metered?

3 A. No.

4 Q. Can you describe briefly the neighborhood,
5 as it were, the homeowners? Are those permanent
6 homes or vacation homes or what?

7 A. I understand they have both.

8 Q. And is that true for bulk purchase areas
9 as well?

10 MR. LUNDGAARD: Your Honor, I'm going to
11 object to this unless there's a better foundation as to
12 what his knowledge is.

13 Q. Do you have a knowledge of the residential
14 makeup of the bulk purchase areas and the residential
15 -- and the other residential areas that the utility
16 serves?

17 A. No.

18 Q. At the resort -- you have knowledge of the
19 resort, correct?

20 A. Yes.

21 Q. And am I correct that -- are there any
22 condominium units within the resort, or are they all
23 separate guest rooms?

24 A. They are legally condominiums put in the
25 resort, but they are operated as guest rooms of the

00344

1 resort. But legally they are condominiums owned by
2 third party owners.

3 Q. And they all receive water as part of the
4 resort; they're considered part of the resort for
5 utility billing purposes?

6 A. Yes.

7 Q. And when you say they are legally condominiums,
8 what does that mean?

9 A. I just mean their legal structure, their
10 ownership is as a condominium and a condominium
11 association.

12 Q. Do they have kitchens and so forth?

13 A. No.

14 Q. They are just in effect individually-owned
15 guest rooms?

16 A. That's correct. Although there is one unit
17 out of, I believe, 56 units, if my memory is correct,
18 that has a kitchen unit.

19 Q. So out of all the guest facilities at the
20 resort, only one is -- would have a kitchen?

21 A. At Rosario Resort. I don't know the
22 situation with the Cascade Harbor Inn.

23 Q. I understand. They're a separate customer?

24 A. They're a separate customer. As far as
25 Rosario Resort is concerned, all the units are without

00345

1 kitchens except one.

2 Q. Getting back to the question involving the
3 various documents that you presented on the allocation
4 at the time of the sale, you indicated that there was
5 an allocation by your letter of \$65,000 to the water
6 company; is that correct?

7 A. That was in the documents, yes.

8 Q. Okay. And you also indicated that -- I
9 notice that there was an allocation -- you stated in
10 response to your data request that there's an
11 allocation by the seller for tax purposes of
12 considerably more than that. It was 300-and-some
13 thousand; wasn't that correct?

14 A. I believe that's correct, a little
15 under 330,000.

16 Q. And the term for tax purposes is your term,
17 correct?

18 A. Correct.

19 Q. I'm referring now to Exhibit 26, your
20 response to question 10. And that allocation is -- it
21 was \$346,480, correct?

22 A. That is -- at that particular time, that
23 was the number that was given to me. I don't know
24 what the seller has subsequently done. But I know
25 before we closed, there was a reallocation for tax

00346

1 purposes for depreciation between the hydro plant,
2 the sewer, and the water. And we ended up with a
3 number on our books of 347,000.

4 Now, the purchase contract comes up with
5 300 -- roughly 330,000. So there's a slight
6 difference. I don't know the reason for that.

7 Q. Do you know how the number 346,480
8 contained in Exhibit 26, response No. 10, was derived?

9 A. My recollection on that is that was the
10 number that at the time we took over at the soft
11 closing that was allocated to the total utility.

12 Q. To the total utility including sewer,
13 hydro and --

14 A. No. I'm sorry, to the water division. In
15 addition there was money set aside or assets set aside
16 from a numbers point of view of both -- for both the
17 utility -- excuse me, the sewer and the hydro. That
18 number was changing constantly, and the accountants
19 really didn't settle on the final number until
20 February when we closed.

21 Q. Okay. And I guess my question was a little
22 different. My question was: What goes into
23 calculating for tax purposes 346,480?

24 A. That was the water system at that time.

25 Q. Yeah. But how was that determined?

00347

1 A. Well, it was an internal number, which,
2 quite frankly, was simply allocated to the system.
3 There was no need at that time because we had not set
4 up this depreciation schedule knowing that we were
5 going to be going through this hearing. This is a
6 number for the purpose of the owners, the
7 stockholders, that was just allocated to it.

8 Q. I understand. But if I was going to pick a
9 number it would be, 350, 375, 400. And this looks
10 like it was the sum of a bunch of numbers. You just
11 don't sit around the table and think 346,480, how
12 does that sound.

13 A. Well, sometimes we do. Sometimes we do.
14 But specifically I have no knowledge of how that
15 specific number came about because it was a floating
16 number.

17 Q. Okay. Did it include more than -- did it
18 include real property?

19 A. Yes.

20 Q. Like what sort of property?

21 A. The land that the utility -- the hydro
22 plant for instance sits on.

23 Q. Wait a minute. You said the hydro plant
24 was separate from the 346,480?

25 A. That's correct.

00348

1 Q. So the land the hydro plant sits on would
2 not be included in that?

3 A. You're correct.

4 Q. So would it include real property?

5 A. I presume it would include real property,
6 but it was a rather minor amount because some of the
7 pipes do go through land that is on an easement. And
8 at that time, again, there was not much effort being
9 put towards a specific number for land, buildings,
10 and --

11 MR. LUNDGAARD: Your Honor, I'm going to
12 object to this. There's no best evidence here.
13 There's no documentation. This is just -- there's
14 totally unsupported statements. One minute he says it
15 included the real property and the hydro plant. And
16 then counsel says, well, was that included? Oh, no, it
17 wasn't included. He's presuming things. He says he
18 doesn't know. He has no knowledge how it came about.
19 And I would move to strike anything that he's tried to
20 speculate as to what it was. I would move to strike
21 his prior answer.

22 MR. GOLTZ: I don't have strong feelings
23 one way or the other. I'm just going to move from
24 there to how we got to the 60-some thousand, which he
25 should have a better knowledge of since that was his

00349

1 allocation number.

2 JUDGE WALLIS: I'm going to deny the motion
3 to strike. The extent of the witness's knowledge I
4 think is clear on the record.

5 Q. The allocation in the letter is contained
6 in which exhibit; do you recall?

7 A. No.

8 Q. Is that Exhibit 23?

9 A. Yes, it is in Exhibit 23.

10 Q. And could you point out where that
11 allocation amount is?

12 A. It is in the schedule attached to the
13 letter in that exhibit.

14 Q. Okay. Do you have a recollection of how
15 this number was derived?

16 A. To the best of my recollection, it was an
17 arbitrary number arrived at between the seller's CPA
18 and the buyer's CPA.

19 Q. And it indicates here that there is real
20 property with the sewer system and with the hydro
21 electronic plant, but there is none with the water
22 system?

23 A. That is correct.

24 Q. And why is that; do you know?

25 A. I presume again because this was derived

00350

1 at, as I recall, arbitrarily; that nobody really knew
2 exactly where the line was running and whether there
3 were at that time any specific easements or a
4 dedicated amount of land that was assigned to it.

5 And they probably -- I'm assuming now.
6 They probably assumed that there was no land under the
7 various lines that were owned by -- would be owned by
8 the company.

9 Q. So this is an accountant's number?

10 A. That is correct.

11 Q. And it is an accountant's number for tax
12 purposes?

13 A. I don't know on the seller's part. All I
14 know is from our point of view, we simply agreed to
15 the suggested numbers that were, as I say, negotiated
16 over about a five month period.

17 Q. And to your knowledge as a person involved
18 -- in your professional life, you have been involved
19 in a number of real estate transitions?

20 A. Yes.

21 Q. And allocation of assets is something
22 you're familiar with?

23 A. Yes.

24 Q. And there are tax consequences depending on
25 whether -- on how those assets are allocated in the

00351

1 transaction?

2 A. Yes.

3 Q. And there are benefits or detriments to the
4 purchaser or the seller depending on how they're
5 allocated?

6 A. Yes.

7 Q. And are those benefits or disadvantages
8 part of the negotiation process between accountants
9 for the seller and accountants for the buyer in this
10 case?

11 A. Yes.

12 Q. Currently does the water utility own any
13 real property?

14 A. No.

15 Q. Okay. Does that --

16 A. Excuse me. May I expand upon that? There
17 is a utility called Rosario Utilities, which owns
18 property. The water division does not own property.

19 Q. I'm sorry. Okay. Does the real property
20 -- is some of the real property which is owned by the
21 utility, is that real property -- some of that real
22 property in effect used by the water utility?

23 A. Yes.

24 Q. Are there easements for -- I mean,
25 obviously there are easements. Is some of that real

00352

1 property easements?

2 A. No, there are no formal easements in that
3 respect. But I think Mr. Cavalli testified yesterday
4 there is something called the yard.

5 Q. Yes.

6 A. And the yard is the property of the
7 utility. And there is a tremendous amount of storage
8 of water-related equipment and items on the utility's
9 property.

10 Q. He described it as stuff?

11 A. Stuff. There's a lot of stuff up there, as
12 only Mr. Cavalli can define.

13 Q. And is the yard located -- where is the
14 yard located?

15 A. We have the map. I could point it out.
16 Would you like me to point it out here?

17 Q. Certainly. You can describe it.

18 A. Now, let's see here. The infamous yard is
19 this item right here, this appendix type of shape,
20 accessed off this road, whose name I do not know. But
21 it is right next to the fire station. (Indicating.)

22 Q. The fire station is marked on the map?

23 A. It's that spot here. (Indicating.)

24 JUDGE WALLIS: Just above the center at the
25 east side of --

00353

1 THE WITNESS: It's adjacent to the fire
2 station and proceeds southwest to the treatment plant.

3 JUDGE WALLIS: At the east side of the
4 water service territory?

5 THE WITNESS: Well, I'm not sure if I know
6 what you mean by water service territory.

7 JUDGE WALLIS: Defined by the black line.

8 THE WITNESS: Yes. Yes.

9 Q. There's no storage tanks, water pipes in
10 the yard?

11 A. Yes. I believe there are water lines that
12 run under the yard. I don't know how many or what
13 their size is, but I know there is a water line.

14 Q. Referring to Mrs. Thorson's testimony,
15 Exhibit 14, page 19, the question on line 4, what rate
16 of return are you recommending for the company? And
17 the answer, I have calculated the rate of return of
18 11.85 percent on the company's rate base of 264,627.
19 Do you know how that 11.85 percent figure was arrived
20 at?

21 A. Yes. That was arrived at based upon a
22 calculation of a return of the -- a return on the
23 operating income.

24 Q. So my question is: Did you back -- was
25 that a number that is backed into from the income that

00354

1 you in effect are requesting as part of your final
2 rate, or is that a figure that is used to derive the
3 income needed for your company?

4 A. It would be the latter, in order to derive
5 the income necessary to receive a 12 percent or
6 near abouts rate of return.

7 Q. So my question is: How did you come to the
8 11.85 percent if it wasn't backed into? What were the
9 components that lead you to that 11.85, if you know?

10 A. The components were basically the expenses
11 which we have outlined in earlier testimony and above
12 all that are laid out on Exhibit 15. And at the same
13 time backing in, as it were, to a rate spread between
14 the different categories of customers.

15 Q. So on Exhibit 15, the 11.85, which is --
16 appears down at the lower right-hand corner is after
17 -- is used after one assumes -- or one comes to the
18 figures of expenses and revenues and rate base? It
19 falls off from those three figures?

20 A. Including income tax.

21 Q. And including income tax; is that correct?

22 A. Yes.

23 Q. Involved in that, was there any thought on
24 how one achieves any subcomponents, such as return on
25 equity or return on debt, if you know?

00355

1 A. As I continue to learn about the State of
2 Washington's procedure and policy in this matter, it
3 was made fairly clear to me early on by Staff,
4 especially Herta, that the UTC makes its own policy,
5 that its calculation for rate-making purposes is
6 based on specific formulas and specific rate bases and
7 that sort of thing.

8 We've tried to accommodate and conform to
9 that system. And, as I understand it, as I understand
10 the mechanics of working with the accounting chart of
11 accounts that was given to us, it was based upon these
12 allowed items, including how one is to reach the
13 number for the specific rate base, which is a
14 calculation as you can see at the bottom of Exhibit
15 15, which in turn then allows us to calculate up to a
16 12 percent return and back into what revenues the
17 company would need to reach that amount and pay its
18 expenses.

19 Q. Okay. On page 9 of Ms. Thorson's
20 testimony, the question was would you comment on the
21 company's proposed service connection charge, and you
22 then proposed a charge of \$2,500 per hook-up based
23 upon some prior rate filing. And, in fact, you had
24 charged \$4,100 upon occasion to some customers; isn't
25 that correct?

00356

1 A. That is correct. But based upon the
2 Commission's instructions, that rate was backed off to
3 the 2,500 figure.

4 Q. And the customers -- and your company was
5 contacted by the Commission and instructed to give
6 refunds to the customers that were charged more than
7 \$2,500?

8 A. That is correct.

9 Q. And those refunds in fact were paid; isn't
10 that correct?

11 A. Yes.

12 Q. Since incorporation, you've received
13 approximately \$27,500 in hook-up -- in service
14 connection charges; is that true?

15 A. Yes.

16 Q. And you agree that that sum should be
17 subtracted as customer contributions?

18 A. Yes.

19 Q. Now, do you know how those funds for that
20 \$27,500 was -- for what purpose those funds were
21 placed or were used?

22 A. Yes, the operation of the company,
23 day-to-day operation of the company.

24 Q. Okay.

25 A. Which includes the normal payroll and other

00357

1 related expenses, as well as maintenance of the
2 facility.

3 Q. Okay. On page 5 of Ms. Thorson's
4 testimony, on-line 26, you're referring to unmetered
5 sales to Highlands and Vusario. There is a reference
6 to a calculated R.E.U. count. I'm not going to ask
7 you about that.

8 But then the statement started on line
9 26 on page 5, their rate, meaning the Highlands/
10 Vusario bulk rate, has been adjusted down by 25
11 percent to reflect their ownership of the distribution
12 system. Do you know how that 25 percent figure was
13 arrived at?

14 A. It was the company's opinion that that
15 would be a fair allocation of the value of their
16 system being already in place, and the 75 percent
17 would reflect the company's overall expenses.

18 Q. Just based on judgment as opposed to some
19 actual calculation from some number of other factors?

20 A. Correct.

21 Q. Okay. And were you involved in making that
22 decision?

23 A. Yes.

24 Q. Who else was involved in making that
25 decision?

00358

1 A. The other people involved would have been
2 John Cavalli, would have been Darlene Thorson.

3 Q. And did you have any conversations with
4 representatives of the Highlands or Vusario
5 Associations?

6 A. No, the company did not.

7 Q. The -- am I correct that the -- nevermind.
8 I've asked that question. Let me ask you another
9 question. You have opted not to be represented by
10 counsel in this proceeding, yet I know that you've
11 used counsel in preparation for this proceeding; is
12 that correct?

13 A. Not entirely. I used counsel occasionally
14 but not entirely.

15 Q. I understand. But you have used counsel to
16 a certain extent?

17 A. Yes.

18 Q. And does your filing and your request
19 include an amount for rate case attorney's fees?

20 A. I don't believe it does, although I would
21 like it to, because, again, I'm trying real hard to
22 save the company money and thereby the residents. And
23 the bill from the lawyers for the work that was done
24 is already up to \$6,000. And that's the reason I'm
25 here. And I would like to apply for it. I don't know

00359

1 how to do that.

2 Q. Let me ask you this: Given the work --
3 that's your most recent bill is \$6,000?

4 A. A tad under.

5 Q. I'm sorry?

6 A. Just a little bit under \$6,000.

7 Q. And have you had rate-case related
8 attorney's fees or attorney's work done since the date
9 of that billing?

10 A. No, that's the latest billing that I picked
11 up from the attorney on my way up here on Monday.

12 Q. Does that reflect attorney's assistance any
13 -- all of the attorney's assistance for rate case
14 related work?

15 A. Except for time that I met with the
16 attorney for an hour and a half in preparation for
17 this meeting on Monday. I don't have that bill.

18 Q. So that's all that's left?

19 A. Yes.

20 Q. And you met with Mr. Fredricks?

21 A. Yes.

22 Q. And so the 6,000 plus that hour and a half
23 would have been all the attorney's fees that you would
24 have expended to date in this rate proceeding?

25 A. Yes.

00360

1 Q. Do you anticipate any more attorney's fees
2 or expenses as this rate proceeding moves forward to
3 decision, by that I mean assistance with the post
4 hearing brief or any in subsequent hearings which may
5 be held?

6 A. I will try to avoid it if I possibly can.
7 If I feel it's getting clearly beyond my scope, I
8 would have to ask for counsel's advice.

9 Q. You have no estimate as to what that amount
10 might be?

11 A. No.

12 MR. GOLTZ: Thank you. I have no further
13 questions.

14 JUDGE WALLIS: Let's be off the record for
15 a moment.

16 (Discussion off the record.)

17 JUDGE WALLIS: Let's be back on the record.
18 For redirect Mr. Donahoe.

19 MR. DONAHOE: Normally I would be sitting
20 over there talking this way, and I would be answering.
21 Do I do that same thing? How do I handle that?

22 MR. LUNDGAARD: Excuse me, your Honor. I
23 did have more recross, but I didn't know if that was
24 your question or not. I didn't want to waive my right
25 to ask some more questions after counsel.

00361

1 JUDGE WALLIS: Mr. Donahoe, I don't think
2 it's necessary for you to formulate a question and
3 then answer it. Just go ahead and address the
4 subjects that you want to address.

5

6 REDIRECT EXAMINATION

7 MR. DONAHOE: There is just the one
8 subject, and that was the amount of time that we spent
9 talking about the allocation between the seller and
10 the buyer of the utility system and whether it was
11 allocated for tax purposes or whether it was an
12 arbitrary number.

13 However it was arrived at, when I first
14 started working with the Commission in the fall of
15 last year, it was made very clear to me, and I was
16 shown the documents -- I'm sorry that Herta is not
17 here, because I think she's got those in there -- that
18 basically showed that the Commission does not take
19 into account the tax filings, allocations for whatever
20 purposes, for asset value of the system.

21 That, in fact, the UTC does have its own
22 rate making policy and formula, which is quite
23 extensive, and we have tried very hard to follow that.

24 And as a result the earlier allocations and
25 the things that were in -- the items that were in the

00362

1 purchase contract in my opinion are interesting but
2 have no effect to this hearing for the simple reason
3 that the rate base is decided upon by the Commission
4 based upon its own formula and procedures, which we
5 think we have presented here. Thank you.

6 MR. GOLTZ: If I may -- your Honor, if I
7 may add, Ms. Ingram will be available for the
8 cross-examination at a subsequent date.

9 MR. DONAHOE: Thank you.

10 JUDGE WALLIS: I might state for the record
11 that one of the staff members has become ill, and Ms.
12 Ingram is driving that person back to Olympia, and
13 that's why she is not available at the present time.

14

15 EXAMINATION

16 BY JUDGE WALLIS:

17 Q. Mr. Donahoe, could you just briefly
18 describe for me the purpose for which the \$346,000
19 figure was derived. I'm not clear on why there are
20 two different numbers, the 65,000 and the \$346,000.

21 A. I think the evolution came because of the
22 differentiation between a part of the utility which
23 was going to be -- even before we bought the property,
24 we were going to make sure it was publically
25 regulated.

00363

1 So for purposes of trying to allocate what
2 that would be and what the return would be based upon,
3 we, I think, in error, as we got familiar with how the
4 system worked, put a number, in this case whatever
5 that number was, the \$347,000, as our estimate of what
6 the value of the water system should be.

7 I was very amazed to see when months and
8 months later -- six months later when the engineers
9 came up with their own analysis, as Dan Drahn
10 testified yesterday, how close it was based upon
11 original cost when it came back.

12 And I know that sounds rather cynical, as I
13 hear from the area, but I suspect -- I think you saw
14 Mr. Drahn in action, and he does not play games.

15 I think the main issue here is that at the
16 time, based upon my experience in the water business,
17 that seemed like a realistic number to put on the
18 water system itself.

19 I can't explain why it is an odd number,
20 but it was based upon what we felt it was going to be
21 worth, and what we could hopefully justify at the
22 time.

23 And then it subsequently came to a matter
24 of the accountant -- our accountant, our CPA, working
25 with the seller's CPA on what was more comfortable for

00364

1 them for allocation purposes.

2 And at the time I didn't think it was really
3 very important, because it was their allocation. They
4 had to report it to the IRS and not us. And I was just
5 concerned about how it was going to be on our books,
6 and that's why to this day our books still reflect the
7 higher balance.

8 JUDGE WALLIS: Thank you.

9 Mr. Lundgaard?

10

11 REXCROSS-EXAMINATION

12 BY MR. LUNDGAARD:

13 Q. In actuality that negotiation between the
14 accountants for both the buyer and the seller occurred
15 prior to not subsequent to your coming up with the
16 \$346 480; isn't that true?

17 A. No, it's not true, because there is nothing
18 in the exhibit here, because there is a letter from
19 the seller's CPA dated February, 1995.

20 Q. And that is --

21 A. That is -- clearly that was well after
22 our soft closing.

23 Q. Your adoption of the tariff is dated
24 February 28th, 1995, and it was after the conclusion
25 of five months of negotiation to arrive at what you

00365

1 considered to be an arbitrary figure between your two
2 CPAs, and that figure of 65,000 was there in the
3 original closing document in April of '94, and it's in
4 the final document of February 10th, 1995, and it
5 remained constant; did it not?

6 A. I would like to answer that question
7 because it deserves more than a yes or no.

8 Q. Well, first of all, wasn't the number
9 the same in April of '94 and in February of '95?

10 A. The number?

11 Q. For the water system.

12 A. The purchase contract took on probably five
13 or six different deals. You have a copy of one of
14 them. That happens to be the signed one. It jumped
15 all over the base.

16 And it was based upon -- and I might add
17 your information comes from Sarah Geiser, who was out
18 of the loop. The conservator, Robert Crinkley, was
19 the one who was handling the entire negotiation
20 totally throughout the entire process.

21 And that documentation is based upon Mr.
22 Shannon's's background and Mr. Burn's background, who
23 were in fact communicating back and forth during that
24 entire period, starting in literally the fall --
25 excuse me, the early spring of '94.

00366

1 So it did flop around. And when it finally
2 came into the soft closing, it did, in fact, as we
3 have seen, have a figure of 65,000. But that was an
4 arbitrary figure for the seller.

5 The buyer and the seller continued to
6 negotiate until the final figure was arrived at in
7 February of 1995.

8 Q. And that figure that was finally arrived at
9 in February of '95 was the same figure that was in the
10 purchase agreement in April of '94?

11 A. That is correct.

12 Q. Your reduction of the bulk users rate, the
13 adjustment downward of 25 percent, reflects and
14 recognizes the fact that these bulk users have their
15 own system and maintain them, and your utility does
16 not have to maintain their systems; is that part of
17 the reason for the reduction?

18 A. That's what the testimony says.

19 Q. Okay. Now, you had a matter before the
20 Board of Adjustment this week, Board of Adjustment
21 for San Juan County?

22 A. I had -- would you be more specific?

23 Q. Well, I'm referring to the resort limited
24 partnership.

25 A. I'm not sure if -- I don't know what your

00367

1 question is.

2 Q. Well, you were in attendance at a hearing
3 before the Board of Adjustment where Rosario Resort's
4 limited partnership was seeking approval for the
5 addition of 171 more units?

6 A. No.

7 Q. Not 171?

8 A. Seventy-one.

9 Q. How many?

10 A. Seventy-one.

11 Q. Seventy-one?

12 A. Yes.

13 Q. All right. Whatever the number is, my
14 question is: When you met with your attorney in
15 Seattle on Monday, was part of that discussion with
16 him related to the matter before the Board of
17 Adjustment?

18 A. Unfortunately I have a lot of attorneys.
19 No, I'm represented by -- John Lindey in Friday Harbor
20 is the attorney for that issue.

21 Q. Okay. And the \$27,500 that you received in
22 service connection charges since you've been operating
23 -- and when I say you, I don't mean you individually,
24 but your entity that operated the water system --
25 didn't go into any new plant; did it?

00368

1 A. No.

2 Q. Referring you to your RU-2, which is
3 Exhibit 20, and comparing it with Exhibit 15, which is
4 the later filed testimony of Darlene Thorson as DET-2,
5 maybe even without looking at them, would it be fair
6 to say that you are now sponsoring the later exhibit
7 of these two?

8 A. Yes, the company is sponsoring Exhibit 15.

9 Q. And actually in place of Exhibit 20?

10 A. Yes.

11 Q. Okay. On your Exhibit 15, is your 11.85
12 determined by dividing the 200 -- the 31,345 operating
13 income after FIT by your net rate base?

14 A. I don't have my calculator with me, but it
15 should be that amount.

16 Q. And do you know whether that's an average
17 rate base or an end-of-year rate base?

18 A. No.

19 Q. Are you familiar with how a rate of return
20 is generally arrived at, whether it's generally
21 arrived at on an average?

22 A. No.

23 Q. I believe you indicated that you didn't
24 feel there was any tax consequence in the use of
25 whatever you arrived at as a rate for the plant in

00369

1 service but in actuality there are tax consequences,
2 such as investment tax credit for one?

3 A. Are you referring to the seller or the
4 buyer?

5 Q. For both.

6 A. I have no idea what the seller's tax
7 situation is.

8 Q. And for the buyer you certainly would be?

9 A. I'm more familiar with the tax circumstances,
10 yes.

11 Q. And so there would be investment tax credit
12 consequences?

13 A. It's a possibility. Congress has been
14 changing that ITC now for a while. I'm not sure how
15 it applies to utilities.

16 Q. There are further tax consequences in the
17 event that you expense out your plant in service as
18 opposed to capitalizing it?

19 A. I would have to refer that to my CPA. I'm
20 not qualified to answer that.

21 Q. You don't have a CPA as a witness; do you?

22 A. No, I do not. But our tax accountant does
23 the utility's books. The tax return for the utility
24 is prepared by a CPA.

25 Q. You were the president of a prior water

00370

1 company for a number of years?

2 A. Yes.

3 Q. Were you familiar with whether or not you
4 were expensing your plant in service when you put it
5 in or whether you were capitalizing it?

6 A. Most of our efforts in that area had to do
7 with capitalization under the rules of the Arizona
8 Corporation Commission, which are different than the
9 UTC.

10 MR. LUNDGAARD: I have nothing further.

11 MR. GOLTZ: Nothing.

12 JUDGE WALLIS: Mr. Donahoe, do you have
13 anything to add at this time?

14 MR. DONAHOE: No.

15 JUDGE WALLIS: Very well. It appears that
16 there are no further questions for you. You're
17 excused from the stand at this time.

18 Let's take a 20 minute recess. When we
19 come back, I would like to have -- if there are any
20 documents that haven't been previously discussed that
21 any party wants to introduce through the witnesses
22 that will be coming up from the intervener, I would
23 like to have those on the table here, so we can go
24 through them one by one and describe them for the
25 record and then proceed quickly.

00371

1 (Short recess.)

2 (Marked Hearing Exhibits 29, 30, 31, 32,
3 33, 34, 35, and 36.)

4 JUDGE WALLIS: Let's be back on the record,
5 please.

6 One detail. Let me inquire whether Mr.
7 Donahoe would be returning to the stand momentarily?

8 MR. GOLTZ: Could we do that? Maybe we'll
9 just let him make a statement. During the recess Mr.
10 Donahoe mentioned that he had misstated one small item
11 on his testimony that he wished to correct. And with
12 your permission, could we just let him make that
13 statement from where he's sitting.

14 JUDGE WALLIS: No objection, Mr. Lundgaard?

15 MR. LUNDGAARD: No objection.

16 JUDGE WALLIS: Very well.

17 Mr. Donahoe, I'll just state for the record
18 that you've previously been sworn in this matter, and
19 you have an addendum to your earlier testimony and a
20 correction.

21 MR. DONAHOE: Yes. I testified earlier
22 that Moran State Park was a customer of the water
23 division of the utility company. It is in fact a
24 customer of the utility company, but at this time
25 we only serve the state park with sewer service.

00372

1 JUDGE WALLIS: So there's no water service
2 to the park?

3 MR. DONAHOE: There is no water service to
4 the park at this time.

5 JUDGE WALLIS: Are there any follow-up
6 questions regarding that?

7 MR. LUNDGAARD: Was there a time when the
8 utility was serving -- providing water to the park?

9 MR. DONAHOE: Not during the period of our
10 ownership. I don't know what happened with it.

11 MR. LUNDGAARD: Nothing further.

12 JUDGE WALLIS: Very well. Thank you, very
13 much.

14 Now, the intervener is beginning to present
15 -- the interveners are beginning to present their case
16 beginning with the testimony of Mr. Eschenbrenner.

17

18 Whereupon,

19 GUNTHER ESCHENBRENNER,
20 having been first duly sworn, was called as a witness
21 herein and was examined and testified as follows:

22 JUDGE WALLIS: In conjunction with his
23 testimony, Mr. Eschenbrenner is going to be sponsoring
24 a number of exhibits. And let me identify those for
25 the record at this time. Exhibit 29 for identification

00373

1 is Mr. Eschenbrenner's pre-filed testimony; Exhibit 30 is
2 Exhibit GPE-1, his statement of qualifications; Exhibit
3 31 for identification is GPE-2, an agreement to provide
4 water; Exhibit 32 for identification is GPE-3, a letter
5 dated June 10 from Vusario to Mr. Lundgaard; Exhibit 33
6 has been designated GPE-4, and that also is a letter, a
7 July 6th revision of a June 9th letter from Vusario to
8 Mr. Lundgaard; attachment two, a table entitled Treated
9 Water Consumption is marked as Exhibit 34 for
10 identification; an invoice purporting to be from Mount
11 Baker Silo Company is Exhibit 35 for identification; and
12 a multipage document apparently on letterhead of Down
13 Island Trading Company to Geiser Land Company is marked
14 as Exhibit 36 for identification.

15 MR. LUNDGAARD: Your Honor, in the direct
16 examination, I will be using Exhibits 29 through 34.
17 Exhibits 35 and 36 will be coming in as rebuttal to the
18 testimony of Mr. Drahn. So those will be questions
19 that are not part of the pre-filed testimony.

20 JUDGE WALLIS: Very well.

21

22 DIRECT EXAMINATION

23 BY MR. LUNDGAARD:

24 Q. Please state and spell your name.

25 A. My name is Gunther Eschenbrenner, G U N T H E R,

00374

1 E S C H E N B R E N N E R.

2 Q. And your address?

3 A. My address is Box 935, Eastsound, Washington,
4 98245.

5 Q. Mr. Eschenbrenner, referring you to what
6 has been marked for identification as Exhibit No. 29,
7 is this your direct testimony in this proceeding?

8 A. Yes, it is.

9 Q. Is the contents of Exhibit 29 for
10 identification true and correct to the best of your
11 knowledge and belief?

12 A. Yes, it is.

13 Q. And in the course of your testimony, are
14 you also sponsoring other exhibits which are -- have
15 been identified as Exhibits 30 through 34?

16 A. Yes.

17 Q. And 34, is that what was supposed to have
18 been an attachment to your --

19 A. Thirty-four was attached to my letter by
20 mistake. It didn't end up in the formal testimony.

21 Q. So that was attachment 2 to what has been
22 identified as Exhibit 33?

23 A. Yes.

24 Q. And so we are now including that attachment
25 as Exhibit 34; is that correct?

00375

1 A. That's correct.

2 Q. And other than that correction to your
3 exhibits, are there any other corrections to your
4 exhibits?

5 A. No, there are not.

6 MR. LUNDGAARD: Your Honor, I would at this
7 time offer Exhibits 29 through 34.

8 JUDGE WALLIS: Is there objection?

9 MR. GOLTZ: We have no objection.

10 MR. DONAHOE: No.

11 JUDGE WALLIS: Exhibits 29 through 34 are
12 received.

13 (Admitted Hearing Exhibits 29, 30, 31, 32,
14 33 and 34.

15 MR. LUNDGAARD: I tender the witness for
16 cross.

17 JUDGE WALLIS: Mr. Lundgaard -- let's go off
18 the record for a moment.

19 (Discussion off the record.)

20 JUDGE WALLIS: Let's be back on the record.

21 It's been agreed that Mr. Eschenbrenner's
22 rebuttal will be presented at this time.

23 Please proceed, Mr. Lundgaard.

24

25

1 REBUTTAL EXAMINATION

2 BY MR. LUNDGAARD:

3 Q. Okay. Mr. Eschenbrenner, have you had the
4 opportunity to review the testimony that was filed on
5 behalf of Mr. Drahn that was filed after your pre-filed
6 testimony was submitted?

7 A. Yes, I have.

8 Q. And do you have before you Exhibit 11,
9 which I believe was really DET-3, but it's the
10 depreciation schedule that has asset -- estimated
11 asset costs on it?

12 A. Yes.

13 Q. Have you had an opportunity to try to
14 verify whether those costs are accurate or not in your
15 opinion?

16 A. Yes, I did.

17 Q. And what is your opinion regarding those
18 estimates?

19 A. Can I also at this time refer to the August
20 7th, '96 letter to Mr. Donahoe, which I think has been
21 entered. I don't have the number of the exhibit.
22 It's a letter of August 7th to Donahoe with
23 attachments and calculations, all the capital costs
24 and the assest costs were derived.

25 Q. You're referring to Exhibit 8 I believe?

00377

1 A. Okay. Exhibit 8 I would also like to refer
2 to in my testimony.

3 Q. Yes.

4 A. Mr. Drahn stated here that he used the
5 method to develop the asset cost which then later was
6 incorporated in the spread sheet that was I believe
7 DET-3 or No. 8. He stated a certain hierarchy and
8 receipts and invoices not available; contract bids
9 not available; historical estimates, current estimates
10 of construction. And he used almost entirely current
11 estimates of construction.

12 As a professional engineer, if I'm being
13 asked to come up with data that has to be used in a
14 hearing like this, I would make sure that these are
15 correct. No. 1, what I would do is get on the phone
16 and call people that supply these things, like the
17 tanks, like the pipe, et cetera.

18 When I saw these numbers and saw the
19 ridiculousness of those letters, I did that. I happen
20 to know that the concrete tank was supplied by Mount
21 Baker Silo. First I called them up, and they verified
22 that in 1972 they installed that tank. I then asked
23 to receive an invoice, which is Exhibit No. 35, which
24 states the number as 6,825. Mr. Drahn -- then I asked
25 another question. I said, what will it cost this tank

00378

1 today. The answer was \$26,000.

2 Well, Mr. Drahn starts out with \$50,000
3 today, then used a kind of probably accepted
4 engineering record of inflation number, and comes to a
5 figure of 17,000-and-something. So in actuality the
6 asset cost is almost a third of what Mr. Drahn comes
7 up with both in the base cost by a factor of two and
8 by a factor of three in the asset cost at the time of
9 purchase.

10 Together with Mr. Jim Kidd, we developed
11 the same background, easily obtainable from the
12 manufacturer of the two big steel tanks, lined steel
13 tanks. We obtained the actual cost for these two
14 lined steel tanks in two ways.

15 One way our attorney asked Rosario
16 Utilities to supply data available to substantiate
17 that spread sheet, Exhibit -- in Exhibit No. 8.

18 Q. The spread sheet you're referring to is
19 Exhibit 11.

20 A. Exhibit 11. I'm sorry.

21 In response only a few days ago, out of
22 Rosario Utilities comes the bill submitted to -- under
23 exhibit -- I need some help.

24 Q. Exhibit 8.

25 A. Exhibit 8. -- comes the bill from Rosario

00379

1 Utilities. That bill -- I'm sorry, it's not 8.

2 Q. I think maybe you're referring to the
3 invoices?

4 A. Yes.

5 Q. That's Exhibit 3.

6 A. Exhibit 3. Which included -- written on
7 the 5th of August, and it includes the invoice from
8 the tank manufacturer, Down Island Trading.

9 Both the invoice we obtained, Exhibit No.
10 36, plus the information we received from Rosario
11 Utilities is identical, and the cost without going --
12 if you want me to go into detail -- is one half the
13 asset cost listed in the Exhibit No. 8 I believe.

14 Q. And if you could refer to the chart, being
15 Exhibit 11, where the asset costs are listed --

16 A. I cannot find it.

17 Q. I could --

18 A. Oh, I got it here.

19 Q. If you would --

20 A. And there you specifically see 60,000
21 gallon concrete tank under account No. 304 listed as
22 an asset cost of \$17,940 versus an invoice of, as I
23 just stated, \$6,825, a factor of three.

24 Q. Then would you identify where the steel
25 tank -- the lined steel tanks are on that same chart?

00380

1 A. On the same chart a few lines further are
2 two, 146,000 lined steel tanks installed in 1985 with
3 an asset cost each of 63,787, or roughly \$127,000.
4 Whereby the invoice that we submit states a total
5 cost of 59,653, again a factor of two.

6 Q. Were there other ways that you were able to
7 check on the reliability of the asset cost as it
8 related to the transmission and distribution mains?

9 A. Certainly.

10 Q. And could you explain how you --

11 A. I refer back to Mr. Drahn's calculation on
12 what it cost to put pipes in. And he had two items in
13 his -- I refer to the hardly readable page, his
14 calculations, Rosario Utilities inventory estimate
15 dated 6/9, and I don't think there are page numbers,
16 but item 309 says supply mains.

17 MR. GOLTZ: Which exhibit are we on?

18 THE WITNESS: What?

19 MR. GOLTZ: Which exhibit are we on?

20 THE WITNESS: The one I had before.

21 MR. LUNDGAARD: Exhibit 8.

22 THE WITNESS: Eight.

23 Q. Proceed.

24 A. In this exhibit, Mr. Drahn uses two numbers
25 for cost of the pipe installed. One is the cost of

00381

1 the pipe itself. Secondly, the cost of digging the
2 ditch and installing the pipe.

3 I'm pretty familiar with that because I'm
4 running a water system, too, and we install pipes,
5 too. So I just roughly checked -- let's do the four
6 inch pipe because that's what we are using.

7 And here's a price -- today's price of
8 \$6.70 for the cost of the pipe and \$4.72 for
9 installing the pipe. A total cost -- today's cost of
10 11.42.

11 Q. And where are you finding that number?
12 That's on Exhibit 8?

13 A. Eight. I believe the fifth or sixth page.
14 It's the item on the top -- there are no numbers on
15 it, but 309 supply of mains. It's a tabulation.

16 Q. Okay. And then under the number
17 --identification No. 026678, where it shows four inch
18 equals -- is a cost of 6.70?

19 A. Yes.

20 Q. And then the total including installation
21 is 11.42?

22 A. That's correct.

23 Q. Okay.

24 A. Well, again, rather than guessing, I went
25 to a contractor, local contractor, who just installed

00382

1 my pipe and sat in his office and said, how much does
2 it cost to install the pipe?

3 He gets on the phone. He calls the pipe
4 manufacturer. And he says the four inch pipe C900,
5 which is the better pipe that installed at Rosario,
6 costs \$2.40 per foot against the \$6.70 per foot.

7 I don't have too much qualms with the
8 installation. I accept that. Except we have heard
9 yesterday that all this was installed as part of the
10 development of some of the Rosario subdivisions.

11 Now, if I developed a subdivision, I would
12 put a road in. I would put electronic underground
13 wires. I would put telephone wires underground. I
14 don't put \$4.70 per foot just a single trench for the
15 pipe. It is all rolled into one, which brings up
16 another question which I would like to raise.

17 How come that -- most of this pipe was
18 installed at the time of development where Geiser Land
19 or their predecessor owned the land undeveloped,
20 developed it, spent the money for the pipes, expensed
21 everything out, and sold the land to the land owner at
22 a higher cost, so all this transmission piping most
23 likely was expensed out as part of a development, and
24 should not be part of capital. I'm not an accountant
25 but as a simple engineer that looks to me rational.

00383

1 Coming back to the cost of the pipe. Maybe
2 people won't believe my telephone call. I would like
3 you to refer back to the August 7 letter, which was
4 Exhibit 3 I believe?

5 MR. GOLTZ: Exhibit 3?

6 THE WITNESS: Was it Exhibit 3? It was a
7 letter of August 7th.

8 Q. The invoices from the company?

9 A. Yes.

10 And those invoices include a large number
11 of pipes. Exhibit 3, invoices of pipes. Now, here is
12 one for 1985 and '92. It's surprising Mr. Drahn
13 couldn't get the same data because he said he couldn't
14 get any company data. The same thing applies for some
15 of the tanks, which was available at Rosario. 1985
16 2,200 feet of six inch class 200 PVC pipe.

17 MR. GOLTZ: Excuse me, what page are you
18 on?

19 THE WITNESS: The first line on the page --
20 the quote billing from Pacific Water Works Supply,
21 Incorporated, the first line, 2,200 class -- 6 inch
22 class 200 gasket PVC pipe.

23 At that time the excavator who put this
24 pipe in was billed \$3,960. Divide that by the 2,200,
25 and you come up with less than \$2 -- \$1.80 exactly per

00384

1 linear foot.

2 Well, someone may say, well, Mr. Drahn used
3 not the bare pipe but also the fittings, so I did
4 another calculation. I used the total bill, \$10,000,
5 and divided it by the length of pipe which is
6 2,200 and 1,580, and lo and behold that adds up to
7 maybe \$3 -- close to approximately \$3 a foot.

8 Now, we're going back what cost Mr. Drahn
9 had put in his estimate of today's installation and
10 reduced it back. Let me find -- that his was exhibit
11 -- oh, for the six inch pipe, \$10. Well, in 1985 the
12 billing is for \$2, and now it comes up to \$10.

13 Now, you can say, well, '85 the inflation
14 rate of the PVC was the most of that. But we have
15 another number.

16 Another bill from Pacific Water Works is
17 part of the exhibit, and that bill was dated '92,
18 1992. You have that? And you will see 3/17, 1992,
19 and we have 1860 six inch class 150 C900, which is the
20 better pipe.

21 MR. GOLTZ: Can you refer us to a line.

22 THE WITNESS: It's the first line on the
23 Pacific Water Works bill dated 3/17/92.

24 MR. GOLTZ: 3/17/92?

25 THE WITNESS: Yeah, it's in the same

00385

1 exhibit further.

2 MR. GOLTZ: You mean 3/13/92?

3 JUDGE WALLIS: Off the record for a minute.

4 (Discussion off the record.)

5 THE WITNESS: There is 1860 six inch class
6 150 C900 plastic pipe, PVC pipe. And the billing
7 cost is 4,445. Divide that by 1860. And it comes
8 to \$2.30 for the six inch pipe, which is listed by Mr.
9 Drahn at \$10.

10 MR. DONAHOE: May I interrupt for just a
11 moment. Is there an exhibit on this document that you
12 referred to where you're referring to Drahn's --

13 THE WITNESS: Yes.

14 MR. DONAHOE: What Exhibit number is it,
15 please?

16 THE WITNESS: No. 3.

17 MR. DONAHOE: You know, the one that you're
18 referring to the \$10 figure that you mentioned was Mr.
19 Drahn's figure.

20 THE WITNESS: It's the August 9th letter.
21 Do we have an exhibit?

22 JUDGE WALLIS: Off the record for a minute,
23 please.

24 (Discussion off the record.)

25 JUDGE WALLIS: Let's be back on record.

00386

1 THE WITNESS: So here with a limited time,
2 because some of this data was only available in August
3 and this is for a case that's running since January
4 with data supposed to be supplied between January and
5 I think the first few months, I didn't have a chance
6 to check further data.

7 But the pump cost of 18,000 is in my
8 professional opinion exaggerated. It is a simple
9 thing to find out the cost. I don't believe that
10 Rosario Utilities can't find the billing for a pump
11 that was only installed a few years ago, 1988.

12 It seems to be some data is there. Mr.
13 Jones finds some data. Some data is submitted. Some
14 data Mr. Drahn says I have nothing. I don't know how
15 anyone runs a business, but it's incomprehensible to
16 me.

17 That concludes my questioning of the whole
18 asset cost, which there are no documentation
19 submitted. And I think as interveners we should not
20 accept general statements that are so far off base.

21 I have further comments, if it's
22 appropriate at this time, on the use of E.R.U.'s and
23 the confusion with E.R.U.'s. The E.R.U.'s were
24 introduced by the predecessor, KSM, of MPD in the
25 water systems report, and since then it has confused

00387

1 about everyone.

2 There is no need for that confusion. A
3 very simple basis that we all agree on is the
4 consumption of the resort. We have a common agreement
5 from the water systems plant from the test year to
6 current readings that Rosario and we are tracking.

7 And we are talking about roughly -- I use
8 the number that is in Mr. Drahn's testimony -- of
9 35,600 gallons per day that the resort is measuring
10 using their meters which are right at the resort as
11 Mr. Cavalli stated.

12 I think we have pointed out several times
13 that there are unmeasured quantities that should be
14 added to the resort. These unmeasured quantities --
15 it's not -- that they are unmeasured, it's not the
16 homeowners fault. That is the fault of the utilities
17 that they don't measure quantities.

18 There is employee housing, which came up,
19 and I'm generously saying 2,000 gallons for employee
20 housing based on the number of rooms, the occupancy,
21 et cetera.

22 So we end up with resort consumption of
23 35,600 plus 2,000 for the employee housing of 37,600.
24 Actually this is also part of my testimony confirming
25 it, but I would just like to get this E.R.U. out of

00388

1 the system.

2 We have 236 homes, as stated by Mr. Drahn
3 and others, that are supplied with water. As we heard
4 last night -- and I have spent years on running our
5 water system with admittedly only eight homes. I know
6 exactly how much water we use for the eight homes for
7 over five years, and it averages per home 130 to 150
8 gallons per day.

9 I know I have a simple problem because it's
10 only eight homes. If my tank runs down unusually, I
11 know where I have to go. I know where my leaks are.
12 I find my leaks. And I fix my leaks. And my leaks
13 are minimum.

14 We have further data from seven meters
15 that are being installed. And since April they are
16 averaging, as we heard last night, 150 to 180 gallons
17 a day.

18 We have subdivisions that are metered,
19 which run per home less than 180 gallons per day. So
20 180 gallons per day is all the actual measurements
21 on the home that we can get for about 10 percent of
22 all the 236 homes. That's a pretty good statistical
23 average.

24 MR. DONAHOE: Your Honor, excuse me. I
25 apologize for not knowing this procedure. But Mr.

00389

1 Lundgaard interrupted a bit of a speech not too long
2 ago, and I see a speech coming on here. And I don't
3 mind that because it will help speed things along
4 without a question and answer.

5 But in the case of a situation where we're
6 talking about consumption and whatnot, and I was not
7 allowed or certainly was not encouraged to ask Mr.
8 Drahn to give his opinion on consumption and how it's
9 measured and what happens when there are breaks in the
10 line and that sort of thing, I find this a little
11 bit out of order based on what is seeming to be one
12 person's opinion based upon his own experience, but
13 notwithstanding that, going into an area which our
14 expert was not able to go into other factors that
15 might affect the consumption.

16 And I don't know if that's appropriate or
17 not to continue it along these lines, but I would like
18 to bring it up and object to it.

19 JUDGE WALLIS: Was Mr. Drahn prevented by a
20 ruling from going into those areas?

21 MR. DONAHOE: No, he was not prevented
22 from a ruling commenting on them.

23 JUDGE WALLIS: Comments?

24 MR. LUNDGAARD: Well, the witness is
25 perfectly entitled to explain his -- what -- why he

00390

1 disagrees with Mr. Drahn. Mr. Drahn had every
2 opportunity to include whatever he wanted in his
3 pre-file testimony, so there is no basis for the
4 objection.

5 MR. GOLTZ: I guess I've lot -- I almost
6 would like to ask the court reporter to re-read the
7 question to see if we're responding to that, so in
8 that sense I agree with Mr. Donahoe.

9 Normally we follow a question-and-answer
10 format. I guess I've lost track of the question.
11 Maybe you can answer --

12 THE WITNESS: I can --

13 MR. GOLTZ: Could you restate the question
14 that was asked and see if we're still on track with
15 that question?

16 THE WITNESS: The question was --

17 JUDGE WALLIS: No. No. Excuse me, Mr.
18 Eschenbrenner. Let Mr. Lundgaard respond.

19 THE WITNESS: Please.

20 MR. LUNDGAARD: I would be glad to present
21 another question if that's --

22 MR. GOLTZ: That would be fine.

23 Q. You have read the testimony of Mr. Drahn
24 that was pre-filed?

25 A. Yes, I did.

00391

1 Q. And specifically as it relates to the --
2 his use of E.R.U.'s in his calculations?

3 A. Yes.

4 Q. And you are now and have been expressing
5 your opinion as to what would be the proper way to
6 measure the usage by the residential properties?

7 A. Yes.

8 Q. And would you continue to explain what you
9 think would be a reliable method of determining the
10 amount of -- reasonable amount of usage by the
11 residences?

12 A. Yes.

13 JUDGE WALLIS: At this point let's go back
14 to the objection. And I take it Mr. Donahoe you're
15 still objecting to entering this area?

16 MR. DONAHOE: Yes.

17 JUDGE WALLIS: Okay. I am going to rule
18 that this is an appropriate response to the testimony
19 and the evidence that's been received. And it's
20 within the scope of rebuttal to that, and with the
21 question as it has been phrased, it appears to be
22 proper.

23 MR. DONAHOE: Okay.

24 THE WITNESS: The issue is important
25 because Mr. Drahn's testimony stated that using his

00392

1 E.R.U. method he comes up with a split between the
2 resort and the homeowners of roughly -- and there's
3 several numbers, 30 percent for the resort and 70
4 percent for the homeowners.

5 What I'm saying here is all evidence shows
6 that the average home consumption that we can
7 identify, 10 percent of homes, is 180. There may be
8 homes -- and I have used 250, which I was told -- in
9 my calculation, which I was told by the WUTC is what
10 the state average is, per home consumption in the
11 state of Washington.

12 So using 236 homes and multiply that by
13 250, I come up with a total number for the homes of
14 59,000. That gives them a split of well documented
15 cubic foot -- 1,000 cubic feet of monthly use or 200
16 -- approximately 250 gallons a day for homes.

17 And, as pointed out, the home occupancy is
18 less than two average for the whole homeowners. We
19 have no lawns or anything else -- or practically no
20 lawns. So that ratio comes -- my calculation has
21 roughly 60 percent consumption by homes and 40 percent
22 consumption by the resort.

23 If I use my 180 number, which is almost
24 documented, it comes to -- it comes to 53 percent for
25 the homes and 47 percent for the resort.

00393

1 You can see that with Mr. Drahn's E.R.U.
2 manipulation, the homeowners are being burdened with a
3 much larger share. Now, where is the other water
4 going?

5 We have heard that there are numerous
6 breaks, interuption. The tank is running down. We
7 have experienced all of us water is being lost. Some
8 of it is being measured lost.

9 I don't see why the homeowners -- according
10 to Mr. Drahn and according to the application, all
11 that loss is being accounted to the homeowners. That
12 system is old. It's complicated. There is no clear
13 demarcation between resort and homes.

14 And, therefore, the losses in that system
15 have to be accounted for as a cost to the utility and
16 then rolled over in the accounting to both parties by
17 a reasonable percentage of what belongs to resort and
18 what belongs to the homeowners.

19 That would give the resort an incentive
20 to --

21 MR. DONAHOE: Is this answering the
22 question?

23 THE WITNESS: I want to make sure --

24 MR. DONAHOE: Could I ask you to read your
25 question back again, because now we're going into

00394

1 I-submits. And again I apologize for not being a
2 lawyer and not knowing the procedure, but he seems to
3 have answered your question.

4 MR. LUNDGAARD: Your Honor, I think he still
5 has not completed his answer, and he's still explaining
6 his response to the question.

7 JUDGE WALLIS: I do believe that this
8 continues to be responsive to the question.

9 THE WITNESS: I would like to finish on
10 that issue.

11 Such a method of assigning the right values
12 and recognizing that there are losses will give an
13 incentive for the utility to be run efficiently,
14 effectively in fixing operational leaks and
15 operational problems, which has not been done.

16 That's all I have to say.

17 Q. Mr. Eschenbrenner, you made reference to
18 running a system, and maybe it's covered in your
19 pre-filed testimony, but what is the name of the
20 system that you operate?

21 A. The Vusario Maintenance Association water
22 system.

23 Q. And is that a metered system?

24 A. It's a metered system by a Rosario meter.
25 Rosario measures our consumption, that's correct.

00395

1 Q. And you have -- you're accepting those
2 meter readings?

3 A. Yes, I do.

4 Q. And you've indicated that you have gone
5 back and made a check over five years as to what the
6 average is?

7 A. Yes.

8 Q. And you indicated that the home occupancy
9 is less than two persons. How did you arrive at that?

10 A. Well, it applies to Vusario for sure.
11 There are eight homes, and I know who lives in these
12 homes permanently. One home was unoccupied for a
13 number of years.

14 It also applies for the whole homeowners in
15 -- the whole homeowners in Vusario as well as the
16 Highlands.

17 Q. Did the committee actually take a survey of
18 the homes?

19 A. Yes, they did.

20 Q. And their occupancy?

21 A. Yes, they did.

22 Q. And the amount of time that those people
23 spend in their homes?

24 A. Yes, they did.

25 MR. LUNDGAARD: That covers the rebuttal

00396

1 portion.

2 JUDGE WALLIS: Very well.

3 For cross-examination, Mr. Goltz, do you
4 wish to go first?

5 MR. GOLTZ: That's fine.

6 JUDGE WALLIS: Mr. Donahoe, is that okay?

7 MR. DONAHOE: That's fine.

8

9 CROSS-EXAMINATION

10 BY MR. GOLTZ:

11 Q. Mr. Eschenbrenner, how long have you lived
12 in Vusario?

13 A. January, 1988.

14 Q. I'm sorry?

15 A. January, 1988.

16 Q. And did you live on Orcas Island prior
17 to January, 1988?

18 A. No, I did not. I was a land owner, but I
19 did not live.

20 Q. And there are eight single family dwellings
21 within the Vusario subdivision?

22 A. That's correct.

23 Q. And are they all single family dwellings?

24 A. Single family dwellings.

25 Q. They're all -- maybe that's what I asked

00397

1 you. They're basically single homes?

2 A. Yes.

3 Q. And are they permanent residences?

4 A. Of the eight, seven are. One is a
5 part-time resident.

6 Q. Okay. But they're designed to be single
7 family residences as opposed to vacation cabins?

8 A. Yes. They're single family residences,
9 correctly.

10 Q. You just mentioned a committee survey of
11 homes. What committee were you referring to?

12 A. Well, I didn't mention it. I didn't talk
13 about the committee.

14 Q. Your attorney asked you a question about
15 it, and you appeared to recognize what he was asking?

16 A. Yeah. Well, when we got the rate request
17 -- rate increase request, we recognized that with 236
18 homes and an equal number of people or more, we could
19 not respond.

20 So we put a few people that are experienced
21 in this field who had time together to go through the
22 data and develop meter readings, analyze meter
23 readings, the water systems report, all the data, and
24 do a survey of the whole 236 homes.

25 Q. So the committee is a committee formed in

00398

1 response to the request of the utility?

2 A. That's correct.

3 Q. And you're a member of this committee?

4 A. I am.

5 Q. And it's an informal group of people?

6 A. It is.

7 Q. And are these the people that are sitting
8 behind counsel table at the present time in essence?

9 A. I see two of them.

10 Q. And basically it's your own little
11 residences' committee of experts to assist counsel in
12 this matter?

13 A. That's correct.

14 Q. Now, in your professional experience, I
15 notice that you work for the Kellogg Corporation?

16 A. M. W. Kellogg Corporation.

17 Q. And what business is that?

18 A. Engineering construction. We are a large
19 engineering construction firm building plants,
20 fertilizer plants, refineries, chemicals plants plus
21 infrastructure throughout the world.

22 Q. And would infrastructure include water
23 systems?

24 A. Yes, it does.

25 Q. You testified that you had heard that there

00399

1 was losses of water?

2 A. No.

3 Q. You didn't testify that way?

4 A. No. I know that there are losses of water.

5 Q. And that's on the basis of personal
6 observation?

7 A. Basis of meter reading. One specific
8 instance between the Rosario meter and the Highlands
9 meter is a measured loss, which is in existence for I
10 believe --

11 Q. So in other words --

12 A. Some of it is measured. Many of them I
13 have not heard but I was specifically shown that here
14 is water leaking. When I pump for my Vusario system,
15 which is a manual system, I'm going over to Rosario
16 and knock on the tank to see if the tank is full,
17 because whenever there is a water leak, the tank draws
18 down, and with a drawn-down tank I ruin my system.
19 So there are instances over the years where for
20 whatever reason the system loses water.

21 Q. So knocking on a tank is a standard
22 engineering practice?

23 A. No. No. I wish there was a better way.

24 Q. So there are actually two meters that
25 measure water heading from the Rosario system to the

00400

1 Vusario system?

2 A. To the Highlands system.

3 Q. I'm sorry, to the Highlands system?

4 A. Yes.

5 Q. And so there's a meter as it exits the
6 Rosario system, and that's a meter which is in the
7 control of the water utility?

8 A. I would like to have the next witness
9 explain that. He's a member -- or actually the
10 chairman of the Highlands, and I think it's part of
11 his testimony.

12 Q. Okay. Okay. You are not -- I didn't -- I
13 want to make sure I understand you correctly. You
14 believe that there are water losses through leaks or
15 whatever, and is it your testimony that you believe
16 those quantities should be allocated to the utility,
17 which then would be allocated out to the utility's
18 customers in effect, or are you saying that that water
19 leakage should be treated the same way as a use of
20 water by the resort?

21 A. I don't know. Mr. Marcin testified last
22 night that there are tremendous losses just between
23 raw water and treated water. I don't know where the
24 water goes. I know it is lost. If it's used in other
25 things, I --

00401

1 Q. No. I'm assuming that whatever happens to
2 it, lost water is lost water. But you aren't saying
3 that that should be treated by the resort as -- or
4 treated by the Commission in this rate proceeding as
5 water used by the resort?

6 A. I have no such information, no.

7 Q. Okay. Let me refer to your Exhibit 33. In
8 the course of your professional life, prior to this
9 rate proceeding, have you dealt with the calculation
10 of residential equivalent units?

11 A. No, I have not. Only since I saw the
12 water systems report.

13 Q. So you haven't had any specialized training
14 in calculating residential equivalent units?

15 A. I don't think you need specialized training
16 for that.

17 Q. Okay. Now, what prompted you to conduct --
18 and what is Exhibit 33; is it an analysis that you
19 undertook of R.E.U.'s?

20 A. Well, Exhibit 33 is the same thing I
21 presented before to come up with a ratio between
22 resort consumption versus homeowner's consumption.
23 And instead of using a simplified approach as I did
24 before, I used --

25 Q. Before meaning when?

00402

1 A. Here today. I mean the simplified approach
2 of just using the quantities of water.

3 Q. That you made in your testimony just
4 several minutes ago?

5 A. Yes.

6 Q. I understand.

7 A. Here I used the approach of the R.E.U.
8 calculations, where I started with the same basis and
9 trying to come up with what is the reasonable number
10 of R.E.U.'s for the resort. And this one turns out to
11 be 143. Same thing.

12 Q. But in both cases, aren't you really trying
13 to establish an allocation?

14 A. Yes.

15 Q. And in both cases you are attempting to
16 establish an allocation based on consumption?

17 A. For the resort on consumption. For the
18 homeowners the consumption is -- under the present
19 system for the homeowners, I cannot use a metered
20 consumption because there are not enough meters to do
21 that. So I have to find another way to come to a
22 homeowner's consumption.

23 Q. Well, but whether you do it by R.E.U.'s or
24 whether you do it by cubic feet per -- by cubic feet
25 or gallons per day, they're both based on consumption?

00403

1 A. That's correct.

2 Q. So R.E.U.'s is basically another in a menu
3 of measurements of consumption?

4 A. That's correct.

5 Q. And it's a fact that all the individual
6 homes at the present time are not metered within
7 the water utility?

8 A. Within the -- seven of them are.

9 Q. Right. Only seven are?

10 A. Yeah. And some others -- a few homes by a
11 meter, like seven homes to one meter, and you can
12 apply that.

13 Q. But it would be impossible today or in the
14 very near future to have a consumption-based rate
15 applied to individual homes within the area served by
16 the utility because individual homes in general do not
17 have meters?

18 A. That's correct.

19 Q. It would be however possible to apply a
20 consumption-based rate to individual homes -- pardon
21 me, to the bulk purchasers?

22 A. Very true.

23 Q. And to the resort?

24 A. Very true.

25 Q. Okay. And isn't it true that in order -- that

00404

1 the R.E.U. analysis is intended -- is basically designed
2 to assume that individual homes which are not metered
3 have -- so they have an unmetered rate, in effect they're
4 assumed to have the same consumption, and then you apply
5 a consumption-based rate to everybody else?

6 A. Yes.

7 Q. And that's what you attempted to do in your
8 analysis?

9 A. Yes.

10 Q. And let me go back to my earlier question.
11 I gather since this is a letter to Mr. Lundgaard, that
12 Mr. Lundgaard asked you to do this analysis?

13 MR. LUNDGAARD: I'll object to that. I
14 think the letter indicates that this is in response to
15 a data request from the Attorney General's office dated
16 June 6th.

17 Q. So you were asked by Mr. Lundgaard and the
18 Attorney General's office?

19 A. No, I wasn't asked. I got the data request
20 and I got the data, and I felt obligated to respond to
21 it, and my response was to our lawyer.

22 Q. So when did you make this analysis? Upon
23 receipt of the data request?

24 A. Yes. I did it in June, '96 and, as you
25 can see, six days after receiving the information.

00405

1 The revision is strictly, to get that off the record,
2 the confusion between E.R.U.'s and R.E.U.'s. I had
3 conflicting -- it's just editorial.

4 Q. So the difference between the June 9
5 version, which is not in the record, and the July 6th
6 version, which is in Exhibit 33, is you uniformly
7 used R.E.U.?

8 A. That's correct.

9 Q. That's the only difference?

10 A. That's the only difference.

11 Q. So the data request from the Attorney
12 General's office, presumably signed by Ms. Rendahl,
13 dated June 6 --

14 A. Yes.

15 Q. -- was transmitted to Mr. Lundgaard, and Mr.
16 Lundgaard that same day transmitted that to you; is
17 that what I gather from paragraph one?

18 A. I would have to go back. I have the files
19 here. On June 6 I received the information on which I
20 responded.

21 Q. And then on June 6 you commenced work on
22 this?

23 A. Yes.

24 Q. And then you completed it on June 9?

25 A. That's correct.

00406

1 Q. So the numbers that you have on the
2 calculations that you made on paragraph 3, the bottom
3 of the first page and continuing over to the second
4 page, were all prepared between June 6 and June 9?

5 A. That's correct.

6 Q. Okay. Now, am I correct that basically
7 that the way you got to your 146 R.E.U.'s number for
8 the resort, which would include condominiums and you
9 state two residential homes -- if you had to make this
10 statement today, would it be three residential homes?

11 A. I only know of two.

12 Q. You only know of two?

13 A. That's correct.

14 Q. The way you got to that was by obtaining a
15 gross figure for use by the resort, the Morrison
16 condominiums, and the two residential homes of 36,000
17 gallons per day?

18 A. That's correct.

19 Q. And then you applied a conversion factor to
20 reach 146,780 cubic feet per month, correct? I'm
21 looking at the second paragraph.

22 A. Yes.

23 Q. And then you divided that by 1,000?

24 A. That's correct.

25 Q. Which 1,000 cubic feet per month equals

00407

1 approximately 250 gallons per day?

2 A. That's correct.

3 Q. Okay. And you arrived at that 1,000 -- at
4 that 250 gallons per day or 1,000 cubic feet per month
5 based on conversations with Staff of the Utilities and
6 Transportation Commission?

7 A. I had in previous analysis used 180.

8 Q. I'm sorry?

9 A. In previous analysis I had used 180 gallons
10 per day per home. But when we meet with the WUTC on
11 June 3rd, they indicated to us that the State in
12 general uses 1,000 cubic feet per month per home. So
13 rather than argue with the Commission, I felt I'll use
14 their number.

15 Q. Is it your understanding that related to a
16 metered rate?

17 A. No. It was a general number of what the
18 State recognizes as the average consumption of homes.

19 Q. Okay. And that was with who?

20 A. Mrs. Ingram -- Mrs. Rendahl, Mrs. Ingram,
21 and the utility people, others. Mr. Jones was there
22 part time. He was too busy. He couldn't attend full
23 time. But, yes, that was discussed. And since I
24 don't want to argue with the WUTC, I used that figure.
25 Although I feel it's very conservative.

00408

1 Q. It's conservative based on your experience
2 of where you are now?

3 A. Yes. Yes.

4 Q. And so that number would fall out to be 146
5 then?

6 A. That's correct.

7 Q. Now, because there is an absence of meters
8 in the individual residential homes -- and you're
9 presenting testimony in this case not just for the
10 Vusario subdivision?

11 A. That's correct.

12 Q. You're here on behalf of all of the
13 interveners?

14 A. That's correct.

15 Q. And would it make sense to you that the
16 rate as it -- as it is set, however it is set, would
17 not vary from month to month, year to year, but it
18 would be a monthly or yearly rate until that is
19 changed?

20 A. Yes.

21 Q. And you heard testimony earlier, I believe
22 from -- I believe it was Mr. Drahn that stated that in
23 his calculation of R.E.U's it was updated from the
24 water system plan which was done in 1994 I believe,
25 which was updated subsequently, and the reason for the

00409

1 change in R.E.U.'s was a combination of increased
2 consumption by residences and decreased consumption
3 by the resort?

4 A. That is --

5 Q. Is that your recollection?

6 A. Yes, I recollect. But that is his
7 interpretation. He does not know homeowners.

8 Q. But you can argue about how much it
9 increased or whatever?

10 A. Yes.

11 Q. But that was his rationale; was it not --

12 A. Yes.

13 Q. -- for a changed number of R.E.U.'s --

14 A. Yes.

15 Q. Let me finish. -- for a changed number of
16 R.E.U.'s for the resort?

17 A. Correct.

18 MR. LUNDGAARD: I would -- excuse me. I
19 would object to this characterization. It was also
20 based on the use of 400 gallons per day as opposed to
21 some other figure as being an average for residential
22 use.

23 MR. GOLTZ: Well, we can --

24 MR. LUNDGAARD: It's not just based on an
25 increased consumption by the residences and a decreased

00410

1 consumption by the resort is all I'm saying.

2 MR. GOLTZ: Yeah. Okay. I recall his
3 testimony, too.

4 Q. But in any event that -- presumably then if
5 you were to make that calculation a year from now,
6 then under his method the R.E.U.'s could easily change
7 again, the relative R.E.U.'s, correct?

8 A. That's correct.

9 Q. Okay. And the result of that would be if
10 one were to have -- in effect a moveable R.E.U. and
11 a revolving R.E.U. number and you apply that to rates,
12 the rates would go up and down depending on occupancy
13 at the resort, depending upon how hot the summer
14 is, how dry the summer is, how much is consumed by the
15 residents; is that correct?

16 A. No. No. Nowhere is it said that R.E.U.
17 are being used as a rate-setting process. R.E.U.'s
18 are strictly used to come up with the consumption of
19 relationship to homes.

20 Q. But isn't that the proposal that R.E.U.'s
21 be used as a rate-setting process?

22 A. I didn't do that.

23 Q. No. I know what you did. I'm saying isn't
24 that a proposal that is being made by the utility and
25 indeed by the Commission Staff to a certain extent,

00411

1 if you know?

2 A. To some extent, yes.

3 THE COURT REPORTER: I need to add paper
4 here.

5 JUDGE WALLIS: Let's be off the record for
6 a second.

7 (Discussion off the record.)

8 JUDGE WALLIS: Let's be in recess until
9 1:30. We'll begin at 1:30 promptly.

10 (Luncheon recess at 12:14 p.m.)

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00412

1

AFTERNOON SESSION

2

(1:33 p.m.)

3

4

JUDGE WALLIS: Let's be back on the record following our noon recess.

6

As a preliminary matter, we have an offer on Exhibit 13 for identification introduced through the testimony of Mr. Kidd last night. Subsequent events I think have mooted this in that he delivered his statement on the record, submitted a written copy of it to also be introduced to the record, and the documents as appended to his exhibit have now been received in evidence in their own right. Consequently I will reject Exhibit 13 for identification.

15

Mr. Goltz, are you ready to resume your examination of Mr. Eschenbrenner?

17

MR. GOLTZ: Yes.

18

JUDGE WALLIS: Please proceed.

19

20

CROSS EXAMINATION (Continued)

21 BY MR. GOLTZ:

22

Q. Mr. Eschenbrenner, you've been in effect operating the Vusario water system since 1988?

24

A. Yes.

25

Q. Since '88?

00413

1 A. 1988.

2 Q. And granted there's eight homeowners within
3 the subdivision, but from time to time you have to
4 make plant repair?

5 A. Yes. Or subcontract such repair.

6 Q. And replace?

7 A. Yes.

8 Q. Okay. And if I were to ask you for
9 invoices for repairs dating back to 1980, could you
10 give me those?

11 A. Yes, I could.

12 Q. Okay. Those are within files maintained
13 by you or your predecessor?

14 A. By the association files. They also appear
15 in our annual financial statements.

16 Q. Let me refer you to page 8 of your
17 testimony.

18 A. Yes.

19 Q. And there I believe you made a statement
20 about -- on line 20 were you referring to salaries?

21 A. Yes.

22 Q. And you said a customary rate of \$18 per
23 hour for the services of a certified operator?

24 A. Yes.

25 Q. Could I ask you to refer to the testimony

00414

1 of Mr. Jenkins, pre-filed testimony. Do you have that
2 before you?

3 A. Yes.

4 Q. On page 3, line 17 through 19.

5 A. Yes.

6 Q. And Mr. Jenkins is associated with -- is
7 testifying as to the operator which is retained by the
8 Orcas Highlands Association?

9 A. Yes.

10 Q. And that rate is -- receives a retainer of
11 \$3,600 for 12 hours per month?

12 A. Yes.

13 Q. That comes out to be 144 hours per year?

14 A. Yes.

15 Q. Would you accept that as over \$25 an hour?

16 A. Yes.

17 Q. And is that person then being paid in
18 excess of the customary rate then?

19 A. I think Mr. Jenkins should answer that. I
20 used a number that -- I used a number that I derived
21 from some of the submissions to the Commission as a
22 reasonable rate, customary rate. I really don't have
23 that knowledge what range. I used one number.

24 Q. So you aren't going to give any evidence or
25 testimony as to whether or not the Highlands is

00415

1 overpaying its operator?

2 A. No.

3 Q. Was it your testimony that the -- that I
4 should be asking Mr. Jenkins about the location of the
5 meters and the pipe between -- for the Highlands
6 Association?

7 A. That's correct.

8 Q. Okay. Now, you testified that you do
9 replace -- you have had leaks within your system in
10 the past?

11 A. That's correct.

12 Q. And when they are discovered, then they are
13 replaced?

14 A. I repair them.

15 Q. Or they are fixed?

16 A. Yes.

17 Q. Those leaks happen often?

18 A. Yes. By often, I don't know what that
19 mean, but let's say at least once a year, something
20 major, or some minor leaks a couple of times a year.

21 Q. So it's not unusual for a water system,
22 even if it's only eight units, to experience leaks?

23 A. Well, it may be eight units, but it is two
24 and a half miles long. And it was put in 1973. It's
25 an old unit. So if we have leaks, what we really do

00416

1 is we maintain them correctly and put new pipe in.

2 It's not a fix. It's to really upgrade the system.

3 Q. So it's fair to say then that when you have
4 a system -- the older the system -- the older the
5 plant, the higher the frequency of leaks?

6 A. That's correct.

7 Q. And the higher the need to repair?

8 A. That's correct. Upgrade, too.

9 Q. Upgrade. And it is -- how can you tell if
10 there is a leak in the system?

11 A. In my case it is simple. I have tank
12 gauges. I know what we normally use during the year,
13 winter, summer. And if I see an unusual consumption,
14 then I first go to the homeowners, check with them,
15 and then by a pressure survey identify that there is a
16 leak. I don't want to go into the technical details
17 but --

18 Q. But you say unusual consumption, you don't
19 have individual meters, so you're talking about
20 unusual consumption in the aggregate?

21 A. In the aggregate.

22 Q. Because you only have eight homes in your
23 system, it's easy to detect the presence somewhere
24 within the system because you only have eight units?

25 A. Well, that's correct. And so Rosario

00417

1 has the same problem, since they do have master
2 meters, and master meters only serve a certain amount
3 of homes not all 148.

4 Q. Sure.

5 A. So they can do the same thing if they're
6 operating it.

7 Q. So if you were to have 80 homes behind your
8 master meter at Vusario, then a leak would be harder
9 to detect from a meter reading?

10 A. That's correct.

11 Q. And refresh my memory, the meter leading to
12 the Vusario is a company -- utility company meter or a
13 Vusario-owned meter?

14 A. Utility company meter.

15 Q. Okay. And where is -- is that meter
16 located on -- within the Vusario subdivision?

17 A. No. Within the Rosario -- within the
18 Rosario Utilities system about half a mile ahead of
19 where it starts to be a Vusario responsibility.

20 Q. When you say a Vusario responsibility, that
21 is --

22 A. The highway.

23 Q. Is it the highway?

24 A. (Nodding head.)

25 Q. And is that indicated on the map, which is

00418

1 exhibit -- the exhibit introduced into evidence?

2 JUDGE WALLIS: Six.

3 Q. Exhibit six.

4 A. Not specifically identified. But the
5 point is on the map, yes.

6 Q. Does it begin at the pump house?

7 A. It is -- my pump house is still -- the
8 Vusario pump house is still about another 500 to 600
9 feet within -- beyond the highway. In other words --
10 I'm sorry. I have to explain. The Rosario properties
11 go beyond the highway, and we --

12 MR. DONAHOE: Excuse me. Maybe it would be
13 appropriate to point it out on the map. That might be
14 easier.

15 THE WITNESS: I'm talking about this being
16 the highway, Horseshoe Highway. The meter for Rosario
17 for the Highlands as well as for us are located here.
18 (Indicating.)

19 Q. And you're referring to --

20 A. Well, after the Rosario --

21 JUDGE WALLIS: Just a minute, please.

22 Let's give some points of reference for persons that
23 might be reading the transcript.

24 When you talk about Horseshoe Highway,
25 you're talking about a road that goes from the

00419

1 northwest to the southeast beginning in the northwest
2 corner and going off the map at about midway on the
3 east side; is that correct?

4 THE WITNESS: That is correct.

5 JUDGE WALLIS: Now, what is the next point
6 of reference that was discussed?

7 THE WITNESS: The Rosario meter is
8 approximately half a mile on the Rosario side of the
9 highway located near another road that leads -- I don't
10 know what the name is.

11 Q. Which meter is it that you're referring to?

12 A. One is the Vusario meter -- the Rosario
13 meter that measures the Vusario consumption.

14 Q. And you're pointing to a point -- a series
15 of three circles with X's in them just to the left of
16 zone 6A?

17 A. Right.

18 MR. LUNDGAARD: May I ask a question, so we
19 don't get confused here?

20 THE WITNESS: I'm incorrect. The two
21 meters meet at this point here. (Indicating.)

22 JUDGE WALLIS: Let's be off the record for
23 just a minute.

24 (Discussion off the record.)

25 JUDGE WALLIS: Let's be back on the record.

00420

1 Q. Would you designate with the letter A the
2 location of the utility's company meter which measures
3 the water flow headed toward the Vusario subdivision.

4 A. (Witness complies.)

5 JUDGE WALLIS: And so the record is clear,
6 the witness is marking on Exhibit 6, which has been
7 admitted; is that correct?

8 Q. Would you mark with the letter B the point
9 at which the water pipe becomes the property and
10 responsibility of the Vusario association.

11 A. (Witness complies.)

12 Q. Now, is the area upstream -- is the land
13 on which B is indicated, is that owned by the Vusario
14 property owners?

15 A. No.

16 Q. Okay. And so it is further north of that
17 that the Vusario subdivision's property is located,
18 the boundary. And would you mark that with the letter
19 C.

20 A. Okay.

21 Q. And so the area -- the distance between B
22 and C, you would estimate is what as the crow flies,
23 so to speak?

24 A. As the crow flies, a little more than half
25 a mile. Close to three quarters of a mile.

00421

1 Q. Are there any meters along that route?

2 A. No.

3 Q. And is the -- who owns that land between B
4 and C?

5 A. I think Mr. Donahoe should answer that. It
6 belongs to Rosario.

7 Q. Okay. It is some -- it's not Vusario. It
8 belongs to either Rosario Utilities or to the resort
9 or some one of the properties?

10 A. Yes.

11 Q. And is the -- but the Vusario homeowners
12 bear the responsibility -- or have the responsibility
13 for maintaining that pipe?

14 A. The developer put it in the road and the
15 utilities, and we maintain the road and all the
16 utilities in that right of way.

17 Q. Okay. So you have an easement over the
18 Rosario property?

19 A. Yes. That's correct.

20 Q. That's all I have on that.

21 Okay. Now, you testified -- you were
22 somewhat critical of Mr. Drahn's -- the process by
23 which Mr. Drahn attempted to calculate the value of
24 plant in service?

25 A. Yes.

00422

1 Q. And you testified, did you not, that as a
2 professional engineer you would attempt to get
3 firsthand information of the value of the plant?

4 A. That's correct.

5 Q. And also that it was very difficult, if
6 not impossible, for you to do a comprehensive study
7 because -- of plant in service because you didn't
8 have complete access to information?

9 A. That is correct.

10 Q. And you had difficulty getting information
11 from the water utility?

12 A. That's correct.

13 Q. Okay. And so you undertook to -- I sense
14 that the purpose of your rebuttal was to point out
15 some flaws in Mr. Drahn's testimony that we heard
16 yesterday?

17 A. That's correct.

18 Q. And so you obtained, although late in the
19 game, necessarily late, you obtained some copies of
20 invoices, one from Mount Baker Silo, which is Exhibit
21 35, one from Down Island Trading Company, which is
22 Exhibit 36?

23 A. I don't know when you mean late in the
24 game. Late in the game was caused by not having some
25 of the spread sheets available earlier. Yes.

00423

1 Q. No. If you were to do what you would
2 view as a professional value of plant in service, it
3 would take some time, and it's not something you throw
4 together a week before the hearing?

5 A. That's correct.

6 Q. And so you recognize that in dealing with
7 -- like, for example, I see the Mount Baker Silo
8 Company was dated 1972. There are some logistic
9 difficulties in obtaining that sort of information?

10 A. I was surprised how easy it was. No
11 logistics. I called them up, and five minutes on the
12 phone he had the record of this tank available. No
13 logistic difficulties.

14 Q. But that's one invoice among many?

15 A. Well, The second one for the large tanks,
16 once Mr. Lundgaard requested from the utility to get
17 backup, he got it sent to him in the mail, the copy of
18 the bills for the large tanks. There was no big
19 logistics.

20 The pipe was a visit of maybe half an hour
21 to a local subcontractor to get some ideas of what
22 pipes cost. And he called up the supplier in my
23 presence over the phone. I don't think there's
24 logistic difficulties.

25 Q. So let's revisit that. The visit you made

00424

1 to a local subcontractor, you physically went to the
2 subcontractor offices?

3 A. Yes.

4 Q. And the purpose was to find out -- you were
5 checking up on some values of pipe that Mr. Drahn had
6 included in one of his exhibits?

7 A. Pipe and its installation.

8 Q. Pipe and its installation?

9 A. That's correct.

10 Q. And so you were saying that the -- and you
11 asked the contractor -- and who was the contractor?

12 A. Orcas Excavating, Inc.

13 Q. Orcas Excavating, Inc.?

14 A. Orcas Excavating, Inc.

15 Q. And you sat down in that contractor's
16 office and asked for the value of a certain size of
17 pipe?

18 A. That's correct.

19 Q. And he then called up the distributor of
20 pipe?

21 A. Yes.

22 Q. And got current value of pipe?

23 A. That's correct.

24 Q. And then reported back to you what the
25 distributor said to him?

00425

1 A. I was sitting next to him. He wasn't
2 reporting back to me.

3 Q. Well, you weren't a party to the conversation?

4 A. I was sitting next to him on the phone.

5 Q. I understand. But you didn't hear the
6 distributor speak?

7 A. Yes, that's correct.

8 Q. And you did not talk to the distributor?

9 A. No, I did not.

10 Q. Okay. And then -- and on the basis of
11 talking to the contractor and his -- and what he
12 reported to you from the distributor, then you reached
13 the conclusion that the cost of pipe which was
14 included in some of Mr. Drahn's calculations was
15 overstated?

16 A. That was limited to four inch pipe. I
17 further stated that based on the billing I received
18 from -- Mr. Lundgaard received two days ago, I found --
19 from the resort -- I'm sorry, from the utility, that
20 there were other pieces of pipe's invoices which
21 confirm the discrepancy.

22 So it is not limited to the one specific
23 pipe of four inches, but it goes into six inches,
24 three inches. It's all in the invoice that is part of
25 the record.

00426

1 Q. Okay. Now, would invoices by themselves be
2 attributable to the various items of the plant? If
3 you were to simply add up the invoices, that would be
4 the physical -- that would be the value of the
5 physical plant?

6 A. That would be the value of the material
7 that went into it. Obviously not the installation.
8 Unless it's an invoice by the contractor himself.

9 Q. I see. So the -- if you had an invoice for
10 a piece of equipment, a piece of pipe for example, in
11 order to convert that into a value of plant in
12 service, you would have to -- for say a pipeline, you
13 would have -- you may have to add to that or find a
14 separate invoice for fittings or other joints in the
15 pipe? I apologize. I'm not an engineer, so I don't
16 know all the terms.

17 A. I'm not a lawyer.

18 Q. And you would have to add to that perhaps
19 the cost of transportation?

20 A. That's included in the invoice, freight
21 and tax included.

22 Q. Is that always the case?

23 A. Most cases, yes.

24 Q. And you would have to include in that then
25 the cost of -- you would also have to include the cost

00427

1 of site preparation?

2 A. No. That's included in installation.

3 Q. Well, okay. Then you would include
4 installation, which includes site preparation?

5 A. Yes.

6 Q. All right. And then whatever other -- I
7 use the term landscaping, which is probably not the
8 appropriate term, but any covering up or returning
9 the property to where it was? Maybe that's part of
10 installation.

11 A. Well, I think I pointed out before that
12 most of that pipe was installed as a development of
13 subdivisions. So roads, utilities, pipes were
14 installed at one time. So it was a combination of
15 installations.

16 And I think under those circumstances, the
17 installation of the pipe is really a smaller part
18 than indicated by Mr. Drahn's testimony.

19 Q. Basically what you're stating is that
20 there's economies and efficiencies of scale when you
21 install phone, water, sewer everything all at once
22 than one at a time?

23 A. That's correct.

24 Q. Would you agree that the terrain in the
25 Orcas area is more difficult to work with than a lot

00428

1 of other terrain around the state of Washington
2 because it tends to be more rocky?

3 A. As I stated before, I accepted Mr. Drahn's
4 installation cost of \$4.20 per foot. It confirms
5 what the local contractor who I specifically asked in
6 Vusario area of how much it cost.

7 And he gave me installed cost of --
8 excluding taxes of \$6.25. So \$2.40 per pipe, plus
9 the 4.80 for installation in a difficult terrain was
10 the total installed cost including all the items
11 you mentioned.

12 MR. GOLTZ: That's all. Thank you, very
13 much.

14 JUDGE WALLIS: Mr. Donahoe?

15 MR. DONAHOE: Just a couple of things,
16 please.

17

18 CROSS-EXAMINATION

19 BY MR. DONAHOE:

20 Q. Mr. Eschenbrenner, under your extensive
21 testimony on the steel tanks, is it your understanding
22 that the invoices that were presented are the total
23 cost of the tanks?

24 A. Yes.

25 Q. Including the installation and the --

00429

1 A. Yes.

2 Q. -- freight, engineering, and all those
3 things?

4 A. (Nodding head.)

5 JUDGE WALLIS: I'm going to ask that the
6 witness wait until the question is concluded and then
7 respond. It's a lot easier for the court reporter.

8 The answer to the question was?

9 THE WITNESS: Can you restate the question?

10 Q. Yes. I believe -- I don't know which
11 exhibit it is.

12 A. 35 and 36.

13 Q. Yes. The Down Island Trading Company, the
14 cost of these tanks were installed, as I -- I'm trying
15 to understand this invoice.

16 A. 36 was the installed cost for the tanks and
17 appurtenances to the tanks.

18 Q. And I believe that Exhibit 35, the Mount
19 Baker Silo invoice, that is also installed?

20 A. It did not include the site preparation.

21 Q. Or freight, getting the tank here?

22 A. It was installed. It was one man who
23 installed it. That includes everything.

24 Q. But the invoice doesn't state whether it's
25 installed or not. It's your feeling that quotation is

00430

1 installed?

2 A. Yes, I -- yes.

3 Q. Although as I read this exhibit, it doesn't
4 state whether it was installed or not?

5 A. We can put in evidence another statement
6 that includes everything except the site preparation.

7 Q. But this does not say that. It simply says
8 a 60,000 gallon water for \$6,500 dollars with a 5
9 percent state tax in the amount of \$325 for a total of
10 \$6,825. And my question is whether or not Mr.

11 Eschenbrenner understands that and believes this was
12 an installed price?

13 A. Yes, it was an installed price with the
14 exception of site preparation.

15 Q. And could I ask you what you base this on
16 if this is the only single invoice that is the
17 exhibit?

18 JUDGE WALLIS: If the witness can describe
19 what he is --

20 THE WITNESS: Here is --

21 JUDGE WALLIS: I am going to again ask the
22 witness, please don't talk when either a lawyer is
23 talking or when I'm talking.

24 THE WITNESS: Sorry.

25 MR. LUNDGAARD: Your Honor, maybe if I could

00431

1 facilitate it by asking one question of the witness, it
2 might satisfy this.

3 JUDGE WALLIS: Sure. Go ahead.

4 MR. LUNDGAARD: Mr. Eschenbrenner, we're
5 talking about the concrete tank; are we not, that was
6 constructed in place?

7 THE WITNESS: That's correct.

8 MR. LUNDGAARD: It wasn't an item that was
9 hauled in on a truck and placed there; is that correct?

10 THE WITNESS: I don't know for sure. I
11 have a letter from Baker Silo, which confirms it
12 appears that we constructed the reservoir only, and
13 the site prep and the piping installation would have
14 been done by others.

15 Q. Is that an exhibit?

16 A. No, it's not an exhibit.

17 Q. And you feel it's relative to this 1972
18 invoice?

19 A. It is the same thing, yes.

20 MR. DONAHOE: Perhaps we should enter it
21 into evidence if it backs up your statement?

22 JUDGE WALLIS: Is there any objection to
23 having that marked as Exhibit 37 for identification?

24 MR. GOLTZ: Can I see it?

25 JUDGE WALLIS: I'm going to ask the witness

00432

1 not to mark on the document, please, but hand that to
2 Mr. Goltz.

3 MR. GOLTZ: No, I have no objection.

4 MR. DONAHOE: If I may see it.

5 I think it probably better be introduced
6 because it clearly clears up a great deal of questions
7 about what the total cost is. And it says here -- it
8 appears this is written in August of 1996. The tank
9 was installed presumably in November, October of 1972,
10 so clearly some 24 years later. It says it appears
11 that we constructed the reservoir. And 22 years
12 later, that's another thing. And that the site prep
13 and the pipe installations would have to be done by
14 others. So there is no cost whatsoever associated
15 with them. So I think it should be submitted into
16 evidence.

17 JUDGE WALLIS: I am marking as Exhibit 37
18 for identification a single-page document designated
19 memo letter, Mount Baker Silo, Inc. bearing a date of
20 August 7, 1996.

21 (Marked Hearing Exhibit 37.)

22 JUDGE WALLIS: Is there any objection to
23 its receipt in evidence?

24 MR. LUNDGAARD: No objection.

25 JUDGE WALLIS: Let the record show there is

00433

1 no objection, and it is received.

2 (Admitted Hearing Exhibit 37.)

3 Q. Were you present in Olympia on June the
4 3rd at a meeting that was held at the UTC office?

5 A. I was.

6 Q. Do you recall at that time the Staff asking
7 the company to prepare a cost breakdown of the
8 company's assets?

9 A. Yes, I recall.

10 Q. Thank you. And that was the date that from
11 that point on that the company did attempt to satisfy
12 the UTC request.

13 A. May I add something to that?

14 Q. Certainly.

15 A. To my recollection at that meeting that
16 it was supposed to be done in conjunction between
17 Staff, Rosario, and the interveners. The interveners
18 were never consulted.

19 Q. Okay. A comment on your question -- a
20 question on your comment about the Rosario records.
21 You do understand that the company, Rosario Utilities,
22 was formed in 1994, '95, and its records are
23 maintained, as you call it, in a business-like basis.
24 I wanted to ask you: Were you familiar with the prior
25 ownership's operation of the -- of what was then

00434

1 just the water system since it wasn't --

2 A. Not entirely.

3 Q. Well, the company -- I certainly don't
4 know, quote, how anybody runs a business like this,
5 unquote, because this is one of our problems, and it
6 was a great effort to find any pieces of paper, let
7 alone a complete set.

8 MR. LUNDGAARD: Your Honor, I'm going to
9 object, unless -- I move to strike that as not being a
10 question but being more testimony by Mr. Donahoe.

11 JUDGE WALLIS: We understand that Mr.
12 Donahoe, not having the burden of a legal education
13 and not having been practiced in this arena, is
14 attempting to pursue the matter.

15 But Mr. Lundgaard does have a good point in
16 that you will have an opportunity to present
17 information in the response, and when you're asking
18 questions is not the time to do that.

19 So if you could phrase it as a question
20 that the witness can answer, then please go ahead.
21 But if you want to offer evidence, please hold that,
22 and you'll have an opportunity to do that at the
23 conclusion.

24 MR. DONAHOE: Thank you, your Honor.

25 I have no further questions.

00435

1 JUDGE WALLIS: Mr. Lundgaard?

2

3 REDIRECT EXAMINATION

4 BY MR. LUNDGAARD:

5 Q. Mr. Eschenbrenner, Mr. Goltz asked you
6 about how to handle the loss or the leakage that we
7 know is in the total system, and he asked you whether
8 that should be treated as a use by Rosario Resort, and
9 I believe you had indicated no, that wasn't your
10 point. By the same token, do you feel that those
11 losses should be allocated to the homeowners?

12 A. No, it should not be allocated to the
13 homeowners.

14 Q. What would be your treatment of that?

15 A. The treatment of this was that the losses
16 are an inefficiency -- those major losses are an
17 inefficiency in the operation which are paid for by
18 power costs, by distribution costs, and should be
19 carried as an expense item by the utility, then the
20 utility would recover that from the users.

21 Q. In actuality the users are paying for
22 those losses now by paying the water bill for the
23 pumps that pump the water that is lost and also paying
24 for the chemicals that treat that water that was
25 lost; is that correct?

00436

1 A. That's correct.

2 Q. In indicating that your analysis of the
3 various meters to homeowners indicated a use of
4 approximately 180 gallons per day, but you had
5 accepted an average of 250 gallons per day, and you
6 referred to that as a conservative figure, in some
7 respects you are being liberal in using that figure
8 and being generous in using a higher figure rather
9 than a lower figure; are you not?

10 A. That's correct.

11 Q. Was it your understanding that the tank was
12 -- the concrete tank, which is -- the cost for which
13 is shown on Exhibit 35, was constructed in place?

14 A. That's correct.

15 MR. LUNDGAARD: May I have this marked for
16 identification.

17 JUDGE WALLIS: I'm marking as Exhibit 38
18 for identification a photograph purporting to be of a
19 concrete tank.

20 (Marked Hearing Exhibit 38.)

21 Q. Showing you a copy of what has been marked
22 for identification as Exhibit 38, is that the concrete
23 tank that is on the system?

24 A. Yes, it is.

25 Q. That's represented by the invoice Exhibit

00437

1 35?

2 A. That is correct.

3 Q. And does that show the general terrain
4 around that tank?

5 A. Yes, it does.

6 Q. What is your opinion about the site
7 preparation that would be needed before that tank
8 could have been constructed in place?

9 A. In consultation with my colleague, a civil
10 engineer, we estimated that to be one day of a backhoe
11 work.

12 Q. Maybe just for identification of the
13 location of point A where the meter is located on
14 Exhibit 6, would another reference be that that is at
15 the crossroads of Tomihi and Otter Lair?

16 A. That's correct. Okay. I'm not sure that
17 it's labeled Otter Lair and Tomihi, but it is an
18 intersection of two roads.

19 MR. LUNDGAARD: I have nothing further.

20 JUDGE WALLIS: Mr. Goltz?

21 MR. LUNDGAARD: Excuse me, your Honor. I do
22 have one more.

23 Q. After all is said and done with regard to
24 R.E.U.'s, what -- I think you had also indicated a use
25 of percentages regardless of numbers of R.E.U.'s.

00438

1 What would be in your opinion a fair allocation of
2 percentages between the Rosario Resort and the
3 homeowners?

4 A. Using the conservative number of 240, the
5 allocation would be 40 percent for the resort and 60
6 percent for the homeowners. And that is a very
7 conservative split.

8 Q. And if you used the actual estimate that
9 you have from your meter readings of the residences
10 that are known and used 180, what would that split
11 be?

12 A. The split would be 53 percent for the homes
13 and 47 percent to the resort.

14 MR. LUNDGAARD: Thank you. I have nothing
15 further.

16 JUDGE WALLIS: Mr. Goltz, Mr. Donahoe?

17 MR. DONAHOE: No.

18 MR. GOLTZ: No questions.

19 MR. LUNDGAARD: Your Honor, did we mark the
20 picture?

21 JUDGE WALLIS: That's exhibit 38.

22 Is there objection to its receipt?

23 (No audible response.)

24 JUDGE WALLIS: Let the record show there is
25 no objection, and Exhibit 38 is received.

00439

1 (Admitted Hearing Exhibit 38.)

2

3 EXAMINATION

4 BY JUDGE WALLIS:

5 Q. Mr. Eschenbrenner, you indicated that the
6 loss from leakage creates costs to the company. You
7 also indicated that repairing leaks would impose
8 expenses and perhaps capitalization to the -- on the
9 company as well.

10 Do you have any feeling for the comparison
11 between whether it's more expensive to let it leak,
12 or whether it's more expensive to repair it just
13 based on your analysis?

14 A. From the consumer's point of view, as we
15 are users, I would prefer to have it repaired and have
16 a functioning system that doesn't shut down. If that
17 costs more money, so be it. But a better system,
18 reliable system is to the benefit of all users.

19 JUDGE WALLIS: Is there anything further of
20 this witness?

21 (No audible response.)

22 JUDGE WALLIS: Let the record show that
23 there is nothing.

24 Mr. Eschenbrenner, thanks for appearing
25 today.

00440

1 Let's be off the record for a moment as we
2 prepare for the next witness.

3 (Discussion off the record.).

4 (Marked Hearing Exhibits 39, 40, 41, 42,
5 43, 44, and 45.)

6 JUDGE WALLIS: Let's be back on the record,
7 please.

8 At this time the interveners will be
9 calling Mr. Jenkins to the stand.

10 Would you please stand to be sworn.

11 Whereupon,

12 GEORGE JENKINS,

13 having been first duly sworn, was called as a witness
14 herein and was examined and testified as follows:

15 JUDGE WALLIS: Please be seated.

16 In conjunction with Mr. Jenkins appearance
17 today, the interveners have presented the following
18 documents: Mr. Jenkins pre-filed testimony is marked
19 for identification as Exhibit 39; the attachments as
20 marked as follows: Attachment GHJ-1 as Exhibit 40 for
21 identification; GHJ-2 as 41 for identification; GHJ-3
22 is marked as 42 for identification; and GHJ-4 is
23 marked as 43 for identification. In addition two
24 photos were marked as follows: The photo of a gray
25 building is marked as 44 for identification, that's

00441

1 been identified as the treatment plant building; and
2 a photo of currently a tank and equipment also showing
3 the reflection of trees in the sky is marked as 45
4 for identification, and this has been identified as
5 the filter facility.

6

7 DIRECT EXAMINATION

8 BY MR. LUNDGAARD:

9 Q. Please state your name and spell your last
10 name.

11 A. George Jenkins, J E N K I N S.

12 Q. Your address?

13 A. 8C1, Box 144, Eastsound.

14 Q. And referring you to what has been
15 identified as Exhibit 39 for identification, is that
16 your direct testimony in this proceeding?

17 A. Yes, it is.

18 Q. I take it you have no additions or
19 corrections to make to that?

20 A. No.

21 Q. Okay. Is the content of Exhibit 39 for
22 identification true and correct to the best of your
23 knowledge and belief?

24 A. Yes.

25 Q. And does that testimony make reference to

00442

1 additional exhibits that you are sponsoring?

2 A. Yes.

3 Q. And those exhibits are Exhibits 40, 41, 42
4 and 43?

5 A. Yes.

6 Q. And in addition, there are two other
7 exhibits that would be in the nature of rebuttal,
8 being Exhibits 44 and 45, the pictures?

9 A. Yes.

10 MR. LUNDGAARD: I would move for the
11 admission of Exhibits 39 through 43.

12 JUDGE WALLIS: Is there objection?

13 MR. DONAHOE: No.

14 JUDGE WALLIS: Let the record show that
15 there is no objection, and those documents are
16 received.

17 (Admitted Hearing Exhibits 39, 40, 41,
18 42, and 43.)

19 Q. Mr. Jenkins, did you have a copy of the
20 exhibit -- that's attached to Mr. Drahn's letter to
21 Mr. Donahoe of August 7th, which I believe is Exhibit
22 8?

23 A. Is that this one? (Indicating.)

24 Q. Do you have that in front of you?

25 A. Yes.

00443

1 Q. Okay. And is there a page there that makes
2 reference to the treatment plant building?

3 A. Yes, there is.

4 Q. And that page at the top it says Rosario
5 Utilities Inventory Estimate 6/9/96, and it's the
6 bottom portion that has an identification number of
7 304, structures and improvements?

8 A. Yes.

9 Q. Does that refer to a treatment plant, 13 by
10 30 concrete block building?

11 A. Yes.

12 Q. Now, you have before you Exhibit 44, that's
13 the picture?

14 A. Yes.

15 Q. Is that a picture that you took?

16 A. Yes.

17 Q. And what does that picture show?

18 A. What it doesn't show is that the building
19 is 12 by 24 approximately instead of 16 by 30.

20 JUDGE WALLIS: I'm going to ask the witness
21 if he could respond to the question and describe what
22 it does show and then go on from there.

23 THE WITNESS: It shows a plywood building
24 painted commonly described as a shack.

25 Q. And what does that house?

00444

1 A. That houses the filter plant.

2 Q. And the filter plant or treatment plant are
3 interchangeable names?

4 A. Yes.

5 Q. And you say that's made of plywood?

6 A. Yes.

7 Q. Rather than a concrete block building?

8 A. Yes.

9 Q. And what is the size of that treatment
10 plant building?

11 A. It's approximately 12 by 24.

12 Q. And do you know when that was built?

13 A. We believe it's 1972.

14 Q. Do you have an opinion as to what it would
15 have cost to build that in '72?

16 A. My guess is \$2,000 or less.

17 Q. How much?

18 A. 2,000 or less.

19 Q. Okay. Referring you now to Exhibit 45,
20 what does that represent?

21 A. That's a picture through the window of the
22 plant showing one of the filter tanks.

23 Q. And in the picture of the building, can you
24 see on the left side of the building a window that is
25 shown in white?

00445

1 A. Well, that's where it is.

2 Q. Is that the only window in the building?

3 A. I couldn't say. I didn't look at the other
4 side.

5 Q. And what is the large object that we see in
6 picture 45 that you see through the window?

7 A. The large object is a tank.

8 Q. Okay. And that is the treatment facility?

9 A. Well, there are I think three tanks, but
10 it's not visible that easily to a camera.

11 Q. Okay.

12 MR. GOLTZ: I would offer Exhibits 44 and
13 45.

14 JUDGE WALLIS: Is there objection?

15 MR. GOLTZ: May I just ask a couple
16 questions?

17 JUDGE WALLIS: Yes.

18 MR. GOLTZ: Exhibit 45, that is taken
19 inside the treatment building?

20 THE WITNESS: This is taken through a
21 window. That's why there is scenery, the trees and
22 things.

23 MR. GOLTZ: Okay. But, anyway, that is
24 taken in through that window?

25 THE WITNESS: Yes.

00446

1 MR. GOLTZ: Okay. And you say there's
2 three tanks?

3 THE WITNESS: I understand there are.

4 MR. GOLTZ: I'm sorry?

5 THE WITNESS: I understand there are. I
6 have not been inside the building.

7 MR. GOLTZ: I have no objection.

8 JUDGE WALLIS: Mr. Donahoe.

9 MR. DONAHOE: None.

10 JUDGE WALLIS: Exhibits 44 and 45 are
11 received.

12 (Admitted Hearing Exhibits 44 and 45.)

13 Q. Does your company have a certified -- or
14 maybe I should first identify the system that you are
15 on?

16 A. It's the Orcas Highlands Association
17 system.

18 Q. And do you have a position with them?

19 A. I'm the president.

20 Q. Okay.

21 A. It's not paid.

22 Q. And does the Highlands have a water company
23 operator?

24 A. Yes.

25 Q. There's been some question here about him

00447

1 being paid \$3,600 a year and that develops into \$25 an
2 hour. Is he actually employed by you, or is he an
3 independent contractor?

4 A. He's an independent contractor.

5 Q. Does he do similar work for others?

6 A. He is a full-time employee of Moran State
7 Park, where he is their water operator and their sewer
8 plant operator.

9 Q. Are you familiar with his involvement in
10 taking samples and providing them to a lab?

11 A. Yes.

12 Q. Is that lab in Mount Vernon?

13 A. Some samples go to Mount Vernon, the VOC
14 chloroform samples go there.

15 Q. How does he get his samples there?

16 A. He mails them.

17 Q. And how does -- just can you describe what
18 the sample is in and how it is sent, what kind of a
19 packaging arrangement.

20 A. Yes. He gets his bottles in a styrofoam
21 pack and sends them back in that kind of a pack.
22 Priority mail, if you get it in the mail before 4:00,
23 It's delivered the next morning in Mount Vernon.

24 Q. Is that sample packed in dry ice?

25 A. Not the bacterial samples.

00448

1 Q. Are there some samples that are?

2 A. Some are packed in an insulated container
3 with blue ice.

4 Q. Okay. Blue ice. Has your company
5 experienced any problem by mailing those to the lab?

6 A. He tells me he has never had a problem.
7 They've never missed.

8 Q. Does he mail in the samples for Moran
9 State Park as well?

10 A. He does.

11 Q. Now, since we've shown the line that runs
12 to Vusario on Exhibit 6, maybe we can have you --

13 MR. LUNDGAARD: Was that done on this?

14 JUDGE WALLIS: Yes.

15 Q. They previously were using identification
16 points A, B, and C. Maybe we can use 1, 2, or. Could
17 you identify -- it's been testified that point A
18 is I believe the meter. The meter for Rosario for
19 the line that runs to Vusario, is that -- do you
20 recognize that as being that location?

21 A. Yes.

22 Q. And where is the meter for the water that
23 you receive for Highlands from the Rosario Utilities?

24 A. That meter is at our pump house.

25 Q. Okay. But where is the company's meter?

00449

1 Is that --

2 A. The company meter is here. (Indicating.)

3 Q. Okay. And you're referring to a point just
4 to the left of what has been previously marked as A;
5 is that correct?

6 A. Yes.

7 Q. Could you mark -- put a line out here to
8 the side and mark that as 1.

9 A. (Witness complies.)

10 Q. Okay. And, now, are there parallel lines
11 then that run in a generally northerly direction?
12 Does your line run generally parallel to the Vusario
13 line?

14 A. Yes.

15 Q. And when it -- there's a bold line
16 indicating the service area. What is the area just
17 -- it looks to be subdivided just outside the service
18 area. What is that next development?

19 A. That's Otter's Lair.

20 Q. And where does -- I don't know if we've
21 identified the road that's in the vicinity of what's
22 previously been marked on this exhibit as B. Do you
23 know, is that Horseshoe Highway?

24 A. That's Horseshoe.

25 Q. And where does the property of Orcas

00450

1 Highlands Association start?

2 A. To my knowledge at the crossing to the
3 road.

4 Q. And the road being Horseshoe Highway?

5 A. Right.

6 Q. And would you put a 2 at that point?

7 A. (Witness complies.)

8 Q. Okay. And then where is -- is your pump
9 and -- where is your meter?

10 A. At our pump house.

11 Q. And would you mark that as 3.

12 A. (Witness complies.)

13 Q. And that is the location of both your meter
14 and your pump?

15 A. Yes.

16 Q. And then the rest of the developed area of
17 Orcas Highlands then would be to the north and off
18 this sheet; is that correct?

19 A. Yes.

20 Q. And I guess we have -- Exhibit 6 has a
21 match sheet. And so the area shown on the sheet 2 of
22 2 of Exhibit 6, does that show the Orcas Highlands --

23 A. Yes.

24 Q. -- subdivision?

25 A. Uh-huh.

00451

1 Q. Was that previously known as Rosario
2 Highlands Association?

3 A. Yes, it was.

4 Q. Okay. And can --

5 JUDGE WALLIS: Excuse me, just a second.
6 Mr. Jenkins, Mr. Lundgaard is right next to you, and so
7 is Mr. Goltz, and it's really easy to talk in a low
8 conversational tone when folks are that close. But I,
9 who is almost that close, am having a little trouble
10 hearing, and I'm sure that the court reporter is having
11 trouble, and I'm positive the people in the back of the
12 room can't hear you, so I'm going to ask you to just
13 belt it out if you would, please.

14 THE WITNESS: Okay.

15 Q. On sheet 1 of 2, you have marked the No. 3
16 where your meter and the pump are located. Can you
17 identify that same spot on sheet 2 of 2?

18 A. Yes.

19 Q. Three?

20 A. What's the number?

21 Q. Three. Thank you. Thank you.

22 What is the approximate distance from the
23 point that the line crosses the highway, being point
24 two, and point three where your meter is located?

25 A. It's somewhere around 500, 800 feet.

00452

1 Q. Okay. And do you know the approximate
2 distance from point one and point two?

3 A. Well, that appears to be close to half a
4 mile when you drive it in a car.

5 Q. Have you recently installed pumps to -- or,
6 excuse me, meters to measure the water that goes to
7 Otter's Lair?

8 A. Yes.

9 Q. How many meters are located there at this
10 time?

11 A. Well, we have two in and two individual
12 meters to put in unless they're in. One is at John
13 Cavalli's house. And I don't know whether it's been
14 installed or not. He says not.

15 Q. And how long have those -- the ones that
16 have been installed, how long have they been there?

17 A. We have readings for 42 days.

18 MR. LUNDGAARD: I'll tender the witness for
19 cross.

20 JUDGE WALLIS: Mr. Goltz?

21

22 CROSS-EXAMINATION

23 BY MR. GOLTZ:

24 Q. Mr. Jenkins, you're president of Orcas
25 Highlands Association?

00453

1 A. Yes.

2 Q. And you've been living in the Orcas

3 Highlands area for how long?

4 A. About two and a half years.

5 Q. And where did you live immediately prior to

6 that?

7 A. Denver, Colorado.

8 Q. So you've been living on Orcas Island for

9 two and a half years?

10 A. Yes.

11 Q. And how long have you been in the Orcas

12 Highlands Association?

13 A. It will be a year in September.

14 Q. Okay. In one of the attachments to your

15 testimony, which is Exhibit 42, is a water service

16 contract; correct?

17 A. Yes.

18 Q. And in paragraph 4 of that document it

19 states that the Highlands or their assigns -- and I

20 gather as an aside that Orcas Highlands is the

21 successor to Rosario Highlands?

22 A. It is.

23 Q. -- agrees to pay to the Geisers, which then

24 were the owners of the resort complex, including the

25 utility, a sum equal to 25 percent of the funds

00454

1 received by Rosario Highlands, Inc. for supplying
2 Rosario Highlands, Inc.'s customers with water; is
3 that correct?

4 A. That's correct.

5 Q. Okay. And there's approximately -- there
6 has been approximately 75 residents of Orcas Highlands
7 in recent years?

8 A. Yes.

9 Q. And I notice that the -- Mr. Lundgaard
10 pointed out that there is a per books assignment of
11 revenue from Orcas Highlands of \$965 during the test
12 year; do you recall that?

13 A. I do.

14 Q. Okay. And if I -- just eyeballing it, that
15 doesn't come out to be nearly 15 percent -- or, pardon
16 me, 25 percent of the funds received by Rosario
17 Highlands or Orcas Highlands from their customers; is
18 that right?

19 A. That's right. It's an incorrect entry.

20 Q. It's an incorrect entry on whose part?

21 A. On the company's.

22 Q. Do you know during its history how much you
23 transmitted to the company?

24 A. Well, it's \$2,962.50.

25 Q. I'm sorry, what was that number?

00455

1 A. 2,962.50.

2 Q. And how is that transmitted?

3 A. By check.

4 Q. Monthly?

5 A. Check with a cover letter.

6 Q. Monthly?

7 A. No. No, it's once a year.

8 Q. Once a year. At what time of the year is
9 that done?

10 A. The contract says it's to be -- I think it
11 does -- paid by January 1st. And we send the check
12 the last week in December. I'm not sure if it says
13 that.

14 Q. I'm sorry, what was that?

15 A. I'm not sure -- I don't know where it says
16 that.

17 Q. I believe it's paragraph 5?

18 A. Paragraph 5. All right.

19 Q. It calls for payments to be made yearly
20 on the first day of January?

21 A. Yeah. Right.

22 Q. And you're saying you make it a few days in
23 advance of January?

24 A. Yes.

25 Q. Now, you indicated that the structure that

00456

1 you photographed, Exhibit 44 -- and there's a
2 gentleman standing in front of that structure?

3 A. Yes.

4 Q. And who is that?

5 A. That's Mr. Kidd.

6 Q. Okay. And you indicated that you thought
7 that would cost about \$6,000 to construct; is that
8 what you testified?

9 A. I just said I thought it would cost about
10 \$2,000 in 1972.

11 Q. To do what? To build?

12 A. To build that shack.

13 Q. To build what you term a shack?

14 A. Yes.

15 Q. You were not referring to the tanks inside
16 the structure?

17 A. No. No.

18 Q. All right. And you haven't expressed any
19 opinions on the cost of those tanks?

20 A. I have in my testimony, because I talked to
21 James Dahl and asked him what the paragraph in this
22 contract meant where it says -- it says Rosario
23 Highlands, which is what this used to be called,
24 has expended certain funds in assistance to the
25 erection of a filtration plant on the land owned by

00457

1 Rosario, Inc. and Gilbert Geiser, et cetera.

2 And I asked Mr. Dahl what exactly was that
3 as he recalled. And he said he believed that we paid
4 50 percent, and that it was \$16,000 from us. Later I
5 think Gunther Eschenbrenner located an entry that
6 shows he was close, that the filter plant cost about,
7 as I remember now, \$28,000.

8 Q. Right.

9 A. So it wasn't a bad estimate.

10 Q. And do I find that entry somewhere? That's
11 not a part of the water service contract, the source
12 of that information?

13 A. That's correct.

14 Q. And who is Mr. James Dahl?

15 A. He and the Geisers were the developers of
16 many of these properties.

17 Q. Okay. So basically you talked to Mr. Dahl
18 who had had a recollection?

19 A. Yes. No paper.

20 Q. Okay. And that this all took place in
21 1972?

22 A. Yes.

23 Q. Okay. So there's no -- in the books and
24 records of the Highlands Association you don't have a
25 -- any record of a \$16,000 payment?

00458

1 A. No, I don't. I may have it in the boxes of
2 files, but I haven't found it.

3 Q. But you looked for it?

4 A. No.

5 Q. No, you haven't looked for it, so you
6 don't know if it's there or not?

7 A. No, I don't.

8 Q. Well, tell me about your records. Are
9 those pretty complete?

10 A. I can't tell you.

11 Q. And you inherited -- obviously you didn't
12 create those documents, and your predecessor -- one of
13 your predecessors did, who was president?

14 A. Yes, the records have been inherited for 24
15 years it would be, and I have not gone back and read
16 them all.

17 Q. And how big of a box of records do you
18 have?

19 A. Well, it's a couple book boxes full or
20 file cases.

21 Q. And those then contain various billing
22 records of your association?

23 A. They could be in there.

24 Q. Yeah. And maybe invoices for pipe
25 replacements?

00459

1 A. I haven't found any, but we do pay a
2 bookkeeper who now does -- who keeps track of such
3 things now.

4 Q. So if I wanted to find out from you a value
5 of pipe that you put in the ground of your association
6 in the 1970s, you couldn't assure me that you could
7 document that for me?

8 A. I could not. In fact, it was probably put
9 in by the development company.

10 Q. But replacement to that in the 1980s,
11 can you assure me that I can find out the value of
12 those from your records?

13 A. I could not assure you that.

14 Q. So the basis of your testimony on that
15 payment was based on the best information you had
16 available to you?

17 A. Yes.

18 Q. Which was talking to somebody else?

19 A. Yes.

20 Q. That's the legitimate way of finding out
21 that information in your view?

22 A. Well, you have to give it some credibility
23 but --

24 Q. Okay.

25 A. Keep your salt shaker handy.

00460

1 Q. I'm not very good at metaphors.

2 Let me ask you: You marked on the map the
3 point of demarcation -- I believe it was point No. 2
4 -- where the ownership of the pipe transitions from
5 the Rosario Water Utility to the Highlands
6 Association?

7 A. Yes.

8 Q. All right. Now, how do you know that's the
9 point?

10 A. Well, the contract states -- let's see if
11 we can find it -- that they will supply all future
12 residents on any of the lands formally owned by
13 Rosario Highlands, Inc. That's paragraph 2. And
14 paragraph 1 essentially says the same thing; that
15 they will deliver water upon demand to the land owned
16 by Rosario Highlands, Inc.

17 Q. Okay. Now, does that tell me anything
18 about who owns the pipes, or is that the basis for
19 your understanding of where the ownership of the pipe
20 changes?

21 A. Yes.

22 Q. And so it would be your view then that the
23 repairs -- any repairs or maintenance to that pipe
24 north of what you've indicated as point No. 2 would be
25 the responsibility of the homeowners association?

00461

1 A. Yes.

2 Q. And any repairs or maintenance on the pipe
3 out of that would be the responsibility of the Rosario
4 Water Utility?

5 A. Yes.

6 Q. Okay. Now, have there been any leakages --
7 has there been a discrepancy between the meter that is
8 on the water utility's property and the meter which is
9 on your property? And I guess before you answer that,
10 the meter that is -- the meter that you control is
11 marked No. 3?

12 A. Yes.

13 Q. And the meter that is under the water
14 utility's control is at point No. 1?

15 A. Yes.

16 Q. Okay. And there have been discrepancies in
17 the readings between those meters?

18 A. Rather large.

19 Q. And that's large readings. When did you
20 start making those -- what time period have you
21 observed the discrepancies?

22 A. Well, that's a good question. We hired a
23 water manager in the winter, and he was on board in
24 January.

25 Q. Of which year?

00462

1 A. Of this year.

2 Q. 1996?

3 A. 1996. And I asked him to start reading
4 meters after we got into this affair, to read the
5 master meter at the company's master meter and our
6 meter in as close to the same time as practical, which
7 is what he does. So it's 15 minutes, 20 minutes
8 apart.

9 Q. And then he records those?

10 A. Yes.

11 Q. And then, say, he were to do that --
12 it would have been done yesterday afternoon at 3:00
13 p.m.. One of them at 3:00 and one of them at 3:15.
14 He might repeat the same thing today?

15 A. He does this weekly.

16 Q. Just weekly?

17 A. Yes.

18 Q. And then you noticed that the volumes on a
19 weekly basis are different?

20 A. Yes.

21 Q. Okay. And you said large. How large?

22 A. Well, up to about 40 percent initially.

23 Q. What would be the gallonage?

24 A. Lost?

25 Q. Well, the difference between the readings.

00463

1 A. Oh, around 20,000 gallons a day.

2 Q. 40,000 per day?

3 A. 20,000.

4 Q. So that would be about 140,000 gallons
5 per week?

6 A. Yes.

7 Q. So if you read quickly, it would show a
8 difference of 140,000 gallons?

9 A. Approximately, yes.

10 Q. Are there any differences in the two
11 meters? Are they the same type of meter?

12 A. I can't tell you that. The company meter
13 is in a pit, so you look at it from the top. But I
14 assume they're both reasonably accurate.

15 Q. Have there been any -- do you have any
16 personal knowledge -- other than this meter
17 discrepancy, do you have any personal knowledge of any
18 leaks between the two meters?

19 A. Yes.

20 Q. Okay. Can you describe that?

21 A. We had a major pipe failure between the
22 road and our meter, which we fixed on July 2nd. And
23 incidentally that reduced this difference to about 15
24 percent that we couldn't account for.

25 MR. DONAHOE: Your Honor, could I ask what

00464

1 year that was. July of what year?

2 THE WITNESS: July of this year.

3 MR. DONAHOE: Thank you.

4 Q. And so there was a leak on the pipe in the
5 control of the Highlands?

6 A. Yes.

7 Q. Okay. And that was discovered on July 2nd?

8 A. That was fixed on July 2nd.

9 Q. Fixed on July 2nd.

10 A. Took two days to fix it because it
11 produced quite a swamp.

12 Q. And how long had that leak -- how long had
13 that swamp been there?

14 A. Not very long.

15 Q. Okay.

16 A. And I can't tell you how long. Our water
17 manager found it.

18 Q. Okay. So that reduced the discrepancies
19 between the two meters to how much?

20 A. I need to add that we installed two meters
21 on the two water mains that supply the Otter's Lair
22 area. Then we assigned to Mr. Cavalli's house and the
23 other house that is just tapped off that line 240
24 gallons a day. And from the two meters and the 240
25 gallons a day for two people, we could finally extract

00465

1 what water are we not accounting for, and that's about
2 15 percent now.

3 Q. And it was 40 percent?

4 A. Yes, approximately.

5 Q. And so the 40 percent after fixing the leak
6 became 15 percent?

7 A. Yes.

8 Q. So the 20,000 dollar -- 20 gallon per day
9 discrepancy was more than cut in half?

10 A. Yes, or close.

11 Q. Or almost cut by two-thirds?

12 A. Because this percentage is related to the
13 total delivered.

14 Q. Okay. And I can have figured that out if I
15 would just have had a little patience I'm sure.

16 So then since July 4, there has been less
17 of a discrepancy?

18 A. Yes.

19 Q. And do you have any personal knowledge of
20 any leaks between the two meters other than the one
21 you just described?

22 A. I don't.

23 Q. Okay.

24 A. I'm sure they exist, but finding them is
25 an interesting problem.

00466

1 Q. And you paid for the repair -- you -- your
2 association paid for the leak repair?

3 A. Yes, it was on our property.

4 Q. Okay. But you don't know how long that
5 leak had been going on?

6 A. I would guess that it started as a little
7 leak that we couldn't find and got bigger and bigger
8 until eventually it got to be very serious, and the
9 water came to the surface.

10 Q. Did your meter readings since January when
11 they -- the meter readings began in January?

12 A. Yes, we started doing that.

13 Q. Did the discrepancy remain relatively
14 constant between January and July?

15 A. Yes, pretty much.

16 Q. And then after the leak was fixed, the
17 discrepancies dropped suddenly?

18 A. They seem to have diminished.

19 Q. But they diminished suddenly, meaning
20 within a day?

21 A. Yes.

22 Q. Okay. And do you have concrete and storage
23 tanks that are part of your water supply system?

24 A. We do.

25 Q. And what size are the tanks?

00467

1 A. We have one 100,000 gallon tank, and two I
2 believe are 20,000.

3 Q. And when were they built; do you know?

4 A. No, I don't know.

5 Q. And do you have an estimate?

6 A. I assume they were built by 1972 when this
7 subdivision was opened up.

8 Q. Okay. And do you know how much they cost?

9 A. No.

10 Q. Okay. Would you have that record?

11 A. I doubt it.

12 Q. Do you know how much it costs to -- your
13 operating expenses for your internal distribution
14 system?

15 A. Yes.

16 Q. And that's in your testimony on page 8?

17 A. It is.

18 Q. Is that correct?

19 A. Yes. It's in the testimony on page 3. And
20 last year it was 12,000, \$12,079 I believe, if you
21 want to be exact.

22 Q. And that includes the payment to the water
23 system operator of \$3,600 per year?

24 A. At that time we did not have this operator.

25 Q. So who operated the system?

00468

1 A. We had a man named Shifsky. And we paid
2 him less than we paid this man, our present man.

3 Q. Okay. But his salary or expense charges
4 were included in the 12,079?

5 A. Yeah. Those are primarily parts and
6 electrical bills and routine maintenance plus 175
7 hours a month for the previous employee.

8 Q. Right. Is that the only paid employee for
9 your system?

10 A. For the system, yes. For the Highlands,
11 no. We employ a bookkeeper.

12 Q. And who has some part-time responsibilities
13 for the water system?

14 A. Only the billing.

15 Q. And that's not reflected in the 12,079?

16 A. No.

17 Q. Okay. And so when did your new water
18 system operator come on the scene? Was that in
19 January also?

20 A. Yes.

21 Q. Okay. Prior to 1996 -- did you have any
22 other leaks within your system in 1996?

23 A. Yes. Our system is far from perfect, and
24 we use too much water within our system related to the
25 number of houses, so we know that there are leaks in

00469

1 our pipes. We have found one or two so far.

2 Q. And what would be the -- and how many
3 homes are there within your subdivision?

4 A. In the subdivision there are 75.

5 Q. And so how many customers do you -- water
6 customers do you have?

7 A. We have a total of 85. We have two from
8 lots that adjoin the Highlands that for some reason
9 in years past were hooked up to our water system. And
10 we have eight houses in Otter's Lair that for reasons
11 mysterious are also part of our water system. And we
12 bill all of those people the water fee.

13 Q. The same as you bill internally?

14 A. Yes. We do not bill the external ones
15 for association dues, which pay for roads and
16 miscellaneous expenses, insurance and so on.

17 Q. So you have a total of 85 hook-ups to your
18 system?

19 A. Yes.

20 Q. And the residents in Otter's Lair also
21 receive -- the internal distribution system to Otter's
22 Lair is also maintained by the association water
23 system?

24 A. Yes, supposed to be.

25 Q. It's supposed to be meaning what?

00470

1 A. Well, so far we haven't done any
2 maintaining that I know of. We haven't had any
3 problems in my tenure, which is very short.

4 Q. I understand. Now, you have, I understand,
5 placed a master meter at Otter's Lair to measure their
6 consumption?

7 A. Two of them.

8 Q. And why two?

9 A. Well, there are two, two inch lines that
10 come off the water main, and so we had to put in two
11 to pick up the usage.

12 Q. Did you ascertain the usage for the
13 residents at Otter's Lair?

14 A. Yes.

15 Q. And what is their usage?

16 A. Yes. They're averaging 264 gallons a day,
17 so we suspect they've got some leaks, too. Not as
18 bad.

19 Q. Now, are those all single family dwellings
20 in Otter's Lair?

21 A. To my knowledge.

22 Q. That's the same within your association?

23 A. Yes.

24 Q. And they are permanent residents or
25 part-time residents or both?

00471

1 MR. LUNDGAARD: Are you referring to Otter's
2 Lair.

3 Q. Let's go Otter's Lair first and then the
4 association.

5 A. As far as I know they are.

6 Q. They are what?

7 A. Permanent. Mr. Cavalli can really answer.

8 Q. And your association is permanent
9 residents?

10 A. Most of them are, but there are some houses
11 that are vacated in the winter. We had one witness
12 last night who leaves for ten months. Most of them
13 don't leave for that long.

14 Q. Now, do you have any plans to individually
15 meter your customers?

16 A. I would like to.

17 Q. So you would like to?

18 A. Right now there's no incentive to do it.
19 But once this rate business gets settled, I would hope
20 that we all ultimately have an incentive to put in
21 meters.

22 It's not cheap to do that. And, to give a
23 wild figure \$250 a house, that has to come from
24 somewhere. And the government doesn't do those for
25 us.

00472

1 But the effect of the meters would be to
2 push the leakage off in our case on operation of
3 the system, in the company's case on the utility
4 company.

5 Q. Okay.

6 A. So there's some incentive for them to get
7 the pipes upgraded.

8 MR. GOLTZ: I have no further questions.

9 JUDGE WALLIS: Mr. Donahoe?

10

11 CROSS-EXAMINATION

12 BY MR. DONAHOE:

13 Q. Mr. Jenkins, did you say earlier when we
14 were all standing around exhibit whatever number the
15 map is there --

16 JUDGE WALLIS: Exhibit 6.

17 Q. Exhibit 6, thank you. -- that the Orcas
18 Highlands water line ownership began at your No. 2,
19 you identified at point at No. 2?

20 A. That is my understanding.

21 Q. Okay. And did you also just testify that
22 the Otter's Lair, the eight homes, were within the
23 Orcas Highlands service area that you do serve?

24 A. Oh, we serve them, yes.

25 Q. And you bill for those services?

00473

1 A. Yes.

2 Q. The same as you bill association customers;
3 there's no difference in the billings between your
4 Orcas Highlands homeowners or the Otter's Lair
5 homeowners; it's the same charge --

6 A. There is --

7 Q. -- for the water charge?

8 A. There is a difference. Otter's Lair gets
9 the same bill as the Highlands for water, but the
10 Highlands people pay another \$60 per lot per year for
11 road maintenance and miscellaneous expenses, which we
12 are not able to assess in Otter's Lair.

13 Q. But for water consumption, water service,
14 it's the same price; Otter's Lair pays the same price
15 as the Highlands?

16 A. Yes.

17 Q. Do you know how long that has been going
18 on?

19 A. I don't really.

20 MR. DONAHOE: Thank you. That's all I
21 have.

22 JUDGE WALLIS: Mr. Lundgaard?

23

24

25

REDIRECT EXAMINATION

00474

1 BY MR. LUNDGAARD:

2 Q. Mr. Jenkins, your water system is not
3 regulated by the Washington Utilities and
4 Transportation Commission; is it?

5 A. It is not.

6 Q. And the subdivision that is now called
7 Orcas Highlands, was that put in Geiser Land Company?

8 A. Yes, under a different title.

9 Q. Okay. And it was called?

10 A. Rosario Highlands.

11 Q. Rosario Highlands, okay, at the time that
12 the development was first put together?

13 A. Yes.

14 Q. So the cost of that development would be in
15 the records of Geiser Land or their successor then?

16 A. I presume so.

17 Q. Have you -- I believe you've testified --
18 in your pre-file testimony you indicated that you had
19 replaced your master meter?

20 A. We did. We did that at Al Jones recommendation.
21 He pointed out that the meter was too small for the
22 water flow, and when he did that, I agreed with him, so
23 we took it out and put in a new one that could handle
24 the flow.

25 Q. And when you referred to the drop in the

00475

1 discrepancies, that was not a result solely of the
2 failure and repair of the pipe but also is represented
3 by your tracking of the usage in Otter's Lair as
4 reflected in the two meters that you placed there; is
5 that correct?

6 A. I think that would be correct, yes.

7 MR. LUNDGAARD: I have nothing further.

8 Well, just one other question.

9 Q. You say you have found other leaks. Is
10 your operator constantly looking for evidence of any
11 leaks?

12 A. Well, I wish it were constant, but we only
13 pay him for 12 hours a month. So when he can, we have
14 him do that.

15 Q. You have your own storage and your own
16 distribution system and your own pumps. Is there
17 quite an elevation change in your system?

18 A. There is. We pump water from 500 feet
19 up to 880 -- and, in fact, to 900. And that -- the
20 pump pressure on our pump is about 195. So it's one
21 reason we have leakage problems. And, of course, for
22 -- even the company's system goes up and down the hill
23 considerably, so it's not too surprising.

24 Q. And you say your operator does the testing?

25 A. The Department of Health testing, yes, sir.

00476

1 Q. And you pay him for -- how many hours a
2 month does he work for you?

3 A. He works 12 plus emergencies.

4 Q. So that would be approximately three hours
5 a week?

6 A. Yes.

7 Q. And you take the same type of tests, the
8 VOC?

9 A. Yes. The chloroform tests. And we have to
10 do the volatile organics and the synthetic organic
11 tests. And I can't remember the schedule. I think
12 it's once a year. Once a quarter.

13 MR. LUNDGAARD: Thank you. I have nothing
14 further.

15 JUDGE WALLIS: Mr. Goltz?

16

17 RE-CROSS-EXAMINATION

18 BY MR. GOLTZ:

19 Q. I'm confused, Mr. Jenkins. The discrepancy
20 that you testified to between -- and let's say before
21 fixing the leak --

22 A. Uh-huh.

23 Q. -- where you testified there's a discrepancy
24 of 20,000 gallons a day --

25 A. Approximately.

00477

1 Q. Approximately.

2 A. I can get the figure, but I don't have it
3 here.

4 Q. Sure. That's fine. -- and that in between
5 the two meters there was a diversion to Otter's Lair?

6 A. Yes.

7 Q. Is that correct?

8 A. (Nodding head.)

9 Q. So does the 20,000 gallons per day include
10 taking into account the diversion: Is that just a raw
11 number? In other words, is the Otter's Lair
12 consumption to be subtracted from the 20,000 to
13 determine the loss?

14 A. When I do the arithmetic in a water
15 balance, it is.

16 Q. And so --

17 A. And I can't tell you in that number whether
18 I did it or not.

19 Q. So you don't know if it was -- if the loss
20 of 20 -- or the discrepancy of 20,000 gallons per day
21 was a 20,000 gallon per day loss, or if it was -- or
22 if the total loss was 20,000 minus Otter's Lair
23 consumption?

24 A. Yes, which would be about 2,000 a day.

25 Q. So it's --

00478

1 A. Not terribly significant.

2 Q. So it's either 18,000 or 20,000 gallons
3 per day that you say is attributable to loss or
4 leakage?

5 A. Apparently it is -- was.

6 Q. And then when did you install the meters at
7 Otter's Lair?

8 A. Well, it's now gotten to be almost two
9 months ago.

10 Q. So that was prediscovery of the leak?

11 A. Yes.

12 Q. Okay. And then subsequent to the fixing of
13 the leak, you were still referring to the discrepancy
14 between the two meters -- that's how -- when you
15 describe the 15 percent figure, that was the
16 discrepancy between the two meters?

17 A. That's the discrepancy between the two
18 meters after Otter's Lair has been deducted or
19 accounted for.

20 MR. GOLTZ: Okay. Thank you. That
21 clarifies it.

22 JUDGE WALLIS: Is there anything further?

23

24

25

REDIRECT EXAMINATION

00479

1 BY MR. LUNDGAARD:

2 Q. Do you have an approximate amount of
3 consumption that you show on your meter on a monthly
4 basis for Orcas Highlands?

5 A. If you don't mind my memory, our average
6 consumption is around 340, 50 gallons per day measured
7 by the meter and divided by the number of homes on
8 that meter.

9 Q. And when you did the figure, the dividing,
10 it would be by the 77?

11 A. By 75.

12 Q. By 75?

13 A. It should be by 77 if I may correct that.

14 Q. Okay. And that would indicate to you that
15 there may be some more leaks on your system?

16 A. Yes.

17 MR. LUNDGAARD: I have nothing further.

18 JUDGE WALLIS: Mr. Jenkins, thank you for
19 appearing today. You're excused from the stand.

20 At this time let's be off the record for a
21 scheduling session.

22 (Discussion off the record.)

23 (Short recess.)

24 (Marked Hearing Exhibits 46, 47, 48, 49,
25 and 50.)

00480

1 JUDGE WALLIS: The interveners next witness
2 will be James D. Bacon.

3 Whereupon,

4 JAMES BACON,
5 having been first duly sworn, was called as a witness
6 herein and was examined and testified as follows:

7 JUDGE WALLIS: In conjunction with Mr.
8 Bacon's appearance, the interveners have pre-filed
9 several documents. I'm marking these for
10 identification as follows: His direct pre-file
11 testimony as Exhibit 46 for identification; his
12 qualifications, a single page, as 47 for
13 identification; his exhibit on Results of Operations
14 designated JDB-2 as Exhibit 48 for identification;
15 I'm marking a single page document, JDB-3, Conversion
16 Factor, as Exhibit 49 for identification; and as 50
17 for identification I am marking a document consisting
18 of two pages designated JDB-4, Rate Design and Bulk
19 Sales Rate Calculation.

20

21 DIRECT EXAMINATION

22 BY MR. LUNDGAARD:

23 Q. Would you please state your name and spell
24 your name, please.

25 A. My name is James D. Bacon. My last name is

00481

1 spelled B A C O N.

2 Q. And your address?

3 A. My address is 2920 Harrison Avenue, Suite
4 C, Olympia, Washington, 98502.

5 Q. Referring you to what has been marked as
6 Exhibit 46 for identification, is this your direct
7 testimony?

8 A. Yes.

9 Q. And are the contents of that true and
10 correct to the best of your knowledge and belief?

11 A. Yes.

12 Q. And included with your testimony, have you
13 presented and sponsored Exhibits 47 through 50?

14 A. Yes.

15 Q. And are those correct to the best of your
16 knowledge and belief?

17 A. Yes.

18 MR. LUNDGAARD: I would move for the
19 admission of Exhibits 46 through 50.

20 JUDGE WALLIS: Is there any objection?

21 (No audible response.)

22 JUDGE WALLIS: Let the record show that
23 there is no objection, and Exhibits 46 through 50 are
24 received.

25 (Admitted Hearing Exhibits 46, 47, 48,

00482

1 49, and 50.

2 MR. LUNDGAARD: I tender the witness for
3 cross.

4 JUDGE WALLIS: Mr. Goltz?

5

6 CROSS-EXAMINATION

7 BY MR. GOLTZ:

8 Q. Mr. Bacon, I apologize. I am not an
9 accountant. I see from your Exhibit No. 47, which is
10 your qualifications and experience, that you've dealt
11 with rate cases a number of times in your professional
12 career?

13 A. Yes.

14 Q. Both with the -- when you worked for the
15 Utilities and Transportation Commission and since you
16 have been in private accounting practice?

17 A. Yes.

18 Q. Included in that was the Alderton-McMillin
19 water rate case; is that correct?

20 A. Yes.

21 Q. You filed testimony in that case?

22 A. I did.

23 Q. Mr. Bacon, in the course of your testimony
24 which you pre-filed, you made a number of references
25 to a pre-hearing conference. The first of these I

00483

1 believe appears on page 3, line 8. You know the
2 difference between a pre-hearing conference and a
3 settlement conference; do you not -- or a settlement
4 meeting -- let me put it that way -- the difference
5 between a pre-hearing conference and a settlement
6 meeting?

7 A. Yes, and this was described to me to be a
8 pre-hearing conference.

9 Q. Was there an Administrative Law Judge
10 present at that meeting that you described on page 3,
11 line 8?

12 A. No.

13 Q. Was there a court reporter present?

14 A. No.

15 Q. There were discussions between Company,
16 Staff, and homeowners?

17 A. I beg your pardon?

18 Q. There were discussions between the Company,
19 Commission Staff, and the interveners to try to reach
20 some agreements prior to this hearing?

21 A. That's exactly -- yes that's exactly what
22 was -- what happened.

23 Q. And a chance perhaps to avoid the hearing?

24 A. Yes.

25 Q. And there were no agreements reached on --

00484

1 obviously the various parties did not come to any
2 agreement; isn't that true?

3 A. No. There were several -- there were
4 several points of agreement that were reached.

5 Q. Okay. On page 6 of your pre-filed
6 testimony, on line 3 you agree with the Commission
7 Staff's salary levels as filed in the testimony of
8 Ms. Ingram?

9 A. We did based on her official filing. I
10 don't think we do anymore. I think there is some
11 excessive salaries at this point in time.

12 Q. What initial filing?

13 A. Well, she sent a letter out with the
14 Results of Operations saying what the Staff's position
15 was and -- for this -- for this conference. And we
16 had taken and analyzed that Results of Operations,
17 and came to the determination we agreed with --

18 Q. But that was not a filing; was it? That
19 was not filed in this case; was it?

20 A. No it was not.

21 Q. So --

22 A. That did catch us by surprise.

23 Q. So you don't agree with the filed testimony
24 of the Commission Staff on that issue?

25 A. No.

00485

1 Q. Okay.

2 A. We agree with what they had initially
3 proposed.

4 Q. Okay. For whatever purpose it was
5 proposed?

6 A. Well, it was proposed to set rates.

7 Q. I understand. You've been in a number
8 of rate proceedings before?

9 A. Yes.

10 Q. And do you understand that sometimes in
11 an attempt to settle cases there is give and take?

12 A. Yes.

13 Q. And that those attempts to settle cases,
14 the give and take, may or may not be the best that
15 -- the position which the various parties would take
16 should the case go to a hearing?

17 A. It's always been my experience -- I have
18 never, ever filed an exhibit in a conference like that
19 showing that position -- on a settlement -- at a
20 settlement conference or a pre-hearing conference so
21 as to lead people to think that that would be the
22 position that we were going to take.

23 That was a Results of Operations statement
24 that was well laid out with justification for each one
25 of the adjustments, and we agreed to accept those

00486

1 figures in part of the give and take that you're
2 talking about. And we thought we had reached an
3 agreement to do that. And then we were very, very
4 surprised to receive something else.

5 Q. Now, when you say -- use the verb filed,
6 you don't mean that was filed with the Utilities and
7 Transportation --

8 A. Well, it --

9 Q. You don't mean that that was filed with the
10 Utilities and Transportation Commission as a formal
11 matter in this rate case; do you?

12 A. No. I mean, it was presented to us in
13 letter form.

14 Q. Referring to page 7 of your testimony,
15 between line 5 and line 8, you refer to a truck?

16 A. Yes.

17 Q. Okay. And that is the truck which is owned
18 by the company?

19 A. Yes. Or leased by the company, excuse
20 me.

21 Q. You're saying it is being leased. It is
22 not owned?

23 A. That's my understanding.

24 Q. And are you saying that the company ought
25 to be allowed an expense of 28 cents per mile in

00487

1 addition to whatever lease payments they may be
2 paying; is that the gist of what I see here on line
3 28?

4 A. No. The 28 cents a mile for the mileage
5 alone was put in as an expense, and the lease payments
6 were not included.

7 Q. I'm sorry.

8 A. The lease payments were not included.

9 Q. So your 28 cents is in effect also to serve
10 as a proxy for the lease payments?

11 A. Yes. 28 cents is a government rate and
12 includes an element of depreciation and -- which would
13 equate to the lease payment.

14 Q. So if in fact the company owns the truck,
15 then that would not be an appropriate expense item;
16 would it?

17 A. Well, I didn't put -- it would be in my
18 instance, because I didn't put the truck into rate
19 base.

20 Q. If the truck goes into rate base, then
21 it would not be an appropriate expense item?

22 A. That's correct.

23 Q. And the mileage figure, 1,063 miles, was
24 the number of miles; wasn't that correct? Do you
25 recall that?

00488

1 A. That sounds familiar.

2 Q. And how did you derive that?

3 A. That came from a company letter.

4 Q. And you have just accepted that?

5 A. And we accepted that as a reasonable amount
6 of mileage.

7 Q. And that was just because it seemed
8 reasonable?

9 A. Yes.

10 Q. Okay.

11 A. The company does need a truck.

12 Q. Okay. I understand. Page 7, lines 14
13 through 15, referring to -- restating adjustment 10,
14 how did you get -- I guess we have to go over to your
15 exhibit. How did you get to that figure?

16 A. That's the annual filing fee.

17 Q. Okay. So that is not the regulatory fee?

18 A. Yes, that is the regulatory fee.

19 Q. And that is taken -- and how did you get to
20 that number is my question? Isn't that based on
21 percentage of revenue?

22 A. That's a percentage of revenue.

23 Q. So what revenue did you multiply the filing
24 fee rate by?

25 A. \$50,222 if I recall.

00489

1 Q. Okay. What was it?

2 A. I beg your pardon. It would be times the
3 restated revenue. Should be times 41,362.

4 Q. Where do I find the restated revenue total?

5 A. Exhibit 48, line 1, column D.

6 Q. Okay. Referring to page 7, lines 22 to 24.

7 A. Yes.

8 Q. Amortization of contributions in aid of
9 construction is multiplied by -- 2.26 percent times
10 27,500?

11 A. Excuse me. Would you repeat that again?

12 Q. On page 7, lines 22, 23 --

13 A. Yes.

14 Q. Is that a correct calculation 2.26 times
15 27,500 is 687? Is that the formula that you used?

16 A. That's what I thought I used. It doesn't
17 add up to that at this moment. Let me check that work
18 page.

19 Q. Anyway, that was an erroneous calculation.
20 You can do it this way -- let me do it this way:
21 Would you accept subject to check that your figure is
22 an erroneous calculation?

23 A. No, I would like to trace this through for
24 just a moment.

25 On my Exhibit 48, for the amortization of

00490

1 CIAC, it should have been 719, and I put the wrong --

2 Q. I'm sorry.

3 A. The \$687 should have been \$719.

4 Q. Where do I see that on Exhibit 48?

5 A. On Exhibit 48, on line 30, the amortization
6 contributions in aid of construction.

7 MR. LUNDGAARD: What page on Exhibit 48?

8 THE WITNESS: Page 1.

9 Q. 20,250 should have been what? I mean,
10 21,250 should have been what? You're on line 29?

11 A. Line 29, contributions in aid of
12 construction. That's -- the average contribution in
13 aid of construction is \$21,250. The amortization on
14 line 30 is \$719.

15 Q. And so that was -- carrying forward that
16 number into your testimony, that was a typographical
17 error of some sort or --

18 A. It wasn't carried over properly.

19 Q. Okay. Getting over to page 12 of your
20 testimony, how do we get to the rate of return figure
21 of 11.59 percent?

22 A. At the meeting of June 3rd, that question
23 was specifically asked of the company, what rate of
24 the return -- if they were going to put on a rate of
25 return witness, the answer was no; that the -- not the

00491

1 company but the Staff. And we asked what rate of
2 return the Staff was going to use, and they said
3 11.59. We agreed that that was a reasonable rate.
4 We've accepted that.

5 Q. And over on Exhibit 50 -- and this --
6 forgive my confusion. I'm sure if Ms. Ingram were
7 here, I'm sure she would tell me this. But could you
8 explain to me the line 2 -- how you get to expenses to
9 bulk service on line 6?

10 A. I included certain operating and
11 maintenance expenses that would be shared by all
12 customers, whether they were a bulk customer or
13 commercial customer or residential customers, and
14 added those up and allocated them to -- and then took
15 a percentage, a percentage allocation factor, to come
16 up with that. And I included chemicals and testing,
17 power treatment -- or power and water treatment, and
18 property taxes.

19 Q. And your total -- so you found that those
20 would be termed expenses that are common to bulk
21 customers and the residential customers and -- well, I
22 mean, let me do it this way. You found expenses that
23 would benefit both the bulk sales customers and other
24 customers?

25 A. Yes. Or just bulk customers. I tried to

00492

1 pick out the bulk -- the expenses that related to
2 providing bulk service.

3 Q. And then you allocated that?

4 A. Well, I wanted to get those expenses -- I
5 picked the expenses because they weren't just bulk
6 service customer expenses.

7 Q. My question is: Were these expenses that
8 the total of which would have been allocable to a bulk
9 sales customer, or were they expenses which themselves
10 somehow had to be allocated and then a portion of
11 which would be given to the -- assigned to the bulk
12 sales customers? Do you see my distinction?

13 A. Not very well. Let me try to explain what
14 I did.

15 Q. Okay.

16 A. I took the chemical and testing because
17 the chemicals and the testing are required by the bulk
18 sales users as well as everybody else.

19 Q. Right.

20 A. And I said that's a common expense. The
21 bulk sales, commercial, everybody needs those expenses.

22 Q. And then you allocated those?

23 A. Yes.

24 Q. On the basis of volume or your allocation
25 factor?

00493

1 A. An allocation factor.

2 Q. Okay. And --

3 A. And I did the same thing for the power for
4 the treatment and the three-phase power and the
5 property taxes.

6 Q. Okay. And where do you -- is that list,
7 that's in your work papers?

8 A. Yes.

9 Q. And those are the only three common expense
10 of all the expense items?

11 A. There's four.

12 Q. Could you just read those.

13 A. Chemical and testing was \$2,032. The power
14 for the treatment was 1,691. And the three-phase
15 power was \$4,826, property tax was \$321.

16 Q. And those were all the employee expenses --
17 excuse me, all the company expenses that then went
18 into which figure? Is that line 6 on page 2?

19 A. Yes.

20 Q. So if I were to add up those figures for
21 those four or five or six items you read, that figure
22 would total 3,000 --

23 A. That figure should total \$8,870. And then
24 I used 37.77 percent to allocate that percentage of --
25 to the bulk sales users based on their use.

00494

1 Q. Okay. So you didn't include any of the
2 other expenses of the company, such as salaries and
3 wages?

4 A. No. The bulk service users provide their
5 own maintenance.

6 Q. Okay. So none of Ms. -- I may have the
7 pronunciation wrong -- Ms. Vierthaler's time would be
8 allocable to the bulk sales customers?

9 A. I wouldn't think so. They would be
10 handling their own utility corporations. If the -- I
11 don't even know -- no, there is no monthly billing.

12 Q. And so what about the time spent by Mr.
13 Cavalli in maintaining the pipes or the pipes within
14 the utility distribution system that run from the --
15 or downstream from the treatment plant but upstream
16 from the various master meters, you allocate none of
17 that?

18 A. That would be very minimal, if anything.
19 Nothing -- after discussions with them, there just
20 wasn't anything there. There is very minimal
21 maintenance to that, if any.

22 Q. Same with transportation expenses?

23 A. That's correct.

24 Q. So all those items would be allocable to
25 the other residential customers that are not bulk

00495

1 sales customers and then to the resort?

2 A. Yes.

3 Q. And the Morrison condominiums?

4 A. Yes.

5 Q. On-line 14 -- I'm sorry page 14, line 11,
6 you say meter rate to generate 15.86 a month. Our
7 accountant recalculated that, and she suggests it
8 might be 14.86. Could you just check your computation
9 on that. And I would be happy to accept a
10 subject-to-check answer to that one.

11 A. What do you have?

12 Q. 14.86 not 15.86.

13 A. Yes.

14 Q. It should be 14.86?

15 A. It should be 15.86. 15.86 is the
16 appropriate level.

17 Q. Okay. I'll get back to her on that. On
18 page 14, lines 20 through 24, you simply accepted 350
19 in service connection fee without doing a cost study
20 and doing any analysis on your own?

21 A. Correct.

22 MR. GOLTZ: I have no further questions.

23 JUDGE WALLIS: Mr. Donahoe?

24 MR. DONAHOE: No questions.

25 JUDGE WALLIS: Mr. Lundgaard?

00496

1

2

REDIRECT EXAMINATION

3 BY MR. LUNDGAARD:

4 Q. Mr. Bacon, on the last issue there on your
5 metered rate, if you were -- would it be appropriate
6 to use the figure of \$13.36 for the first 500 cubic
7 feet in order to generate \$15.86?

8 A. Yes.

9 Q. And that would be your testimony then?

10 A. Yes.

11 MR. GOLTZ: I'm sorry, you said 13.36?

12 Q. Yes, for the first 500 cubic feet, instead
13 of 12.36. The 500 cubic feet beyond the first 500
14 would be at 50 cents per 100, which would develop
15 \$2.50, correct?

16 A. That's correct.

17 MR. GOLTZ: To use -- may I follow up on
18 that?

19 JUDGE WALLIS: Yes.

20 MR. GOLTZ: If you were to use 12.36 for
21 the first 500 cubic feet, then it comes out to be
22 14.86?

23 THE WITNESS: Yes.

24 MR. GOLTZ: All right. That explains it.
25 Thank you.

00497

1 Q. You were -- do you recall that subsequent
2 to the June meeting that you referred to as a
3 pre-hearing meeting --

4 A. Yes.

5 Q. -- that there was scheduled specifically a
6 settlement conference as such?

7 A. Yes.

8 Q. And do you recall that that meeting was
9 cancelled?

10 A. That's right. Yes, there was one.

11 Q. Do you recall that there was a submittal by
12 Staff that was marked for settlement purposes only and
13 not for discussion?

14 A. Yes.

15 Q. And that is not what you're referring to
16 when you refer to a submittal by Ms. Ingram to Mr.
17 Donahoe of May 28?

18 A. No. There was a letter that was -- that
19 presented the Staff's position, and there was nothing
20 on it that said confidential order or for negotiation
21 purposes. This letter we were lead to believe were
22 the Results of Operation that the Staff was going to
23 use.

24 Q. You were asked whether or not you testified
25 in the Alderton-McMillin case.

00498

1 MR. LUNDGAARD: And I'm not sure of the
2 logistics of the Staff going on last, I would like to
3 ask Mr. Bacon about -- to have him comment on the
4 testimony of Ms. Ingram.

5 JUDGE WALLIS: Yes. That's pre-filed
6 testimony.

7 MR. GOLTZ: That's fine.

8 Q. Why do you feel it's appropriate to use the
9 \$65,000 for the allocation of the water system that
10 was in the purchase price as opposed to using a plant
11 in service figure of \$346,480 to develop rate base?

12 A. Well, based on responses from Mr. Donahoe,
13 we've determined that the actual purchase price of
14 this plant is \$65,000, and that this was not a stock
15 purchase but rather a purchase of the assets of this
16 company.

17 And we have been able to make an
18 appropriate allocation -- or they have been able to
19 make an appropriate allocation of what those costs
20 were. And we can identify the \$65,000 as the cost of
21 the utility plant in service that Mr. Donahoe has
22 purchased from the Geisers.

23 And that is the investment that he has in
24 the -- in this particular plant, in this water system.
25 He should be able to earn a fair rate of return on his

00499

1 investment in this water system, and that's \$65,000.

2 And to allow him to earn on some estimated
3 rate base, which we found no foundation for, would be
4 to allow him to earn an excessive rate of return.

5 Q. And what is the distinction between the
6 Alderton-McMillin factual situation and the purchase
7 in this case?

8 A. Well, I think the Alderton-McMillin rate
9 case, what they're referring to in this particular
10 case, is Alderton-McMillin made a stock purchase of a
11 small utility company, and at some later date they
12 made that -- let's back up.

13 They made a stock purchase of a small water
14 utilities company with the Commission's approval. And
15 with the Commission's approval at some later date they
16 consolidated that water system into their operation,
17 and they did that using net book value, because when
18 they purchased that small system, they purchased the
19 stock for that system.

20 And that's a significant distinguishing
21 characteristic, because not only -- when they
22 purchased that stock, they purchased all the receipt
23 of that stock, all the intrinsic value of that system,
24 which is both the good and the bad.

25 There may have been liabilities -- or

00500

1 hidden liabilities or responsibilities in that stock
2 purchase that he wouldn't have had if he had made an
3 asset purchase.

4 And so by purchasing the stock -- and
5 the Commission's stand at that particular time was you
6 purchase the stock at less than net book value, and
7 he shouldn't earn on that. But they didn't take into
8 consideration the excessive liabilities and other
9 intrinsic things associated with that.

10 And we said this was a stock transaction
11 and not an asset purchase. The distinguishing
12 characteristic here is this was not a stock purchase.

13 Q. In the stock purchase situation, if the day
14 before the stock is purchased the rate base is X and
15 the day after the purchase of the stock, has the
16 rate base changed?

17 A. The rate base hasn't changed one iota.
18 It's just like if we go out and purchase some shares
19 of Puget Sound Power and Light, we have not affected
20 the rate base.

21 Q. If a buyer were to pay more for the
22 purchase -- pay more for the stock than the net book
23 value, what would be appropriate for rate base
24 purposes in a regulated company?

25 A. It would still be the net book value

00501

1 because the stock price doesn't affect -- or the
2 buying and selling of the stock doesn't affect the
3 rate base.

4 Q. Referring you to Ms. Ingram's exhibit
5 HMI-2, which is her Results of Operation for Rate
6 Making Purposes, do you agree with her use of a minus
7 \$14,118 for Federal income tax?

8 A. Under the Results of Operations, no.

9 Q. Why not?

10 A. Well, excuse me. That was the per-book
11 figure, and there's no per-book -- as Mr. Donahoe has
12 pointed out, no per-book amount listed in the books
13 and records of the company for a negative income tax
14 figure.

15 Q. So would that figure appropriately be
16 zero?

17 A. Yes. There should be nothing in that
18 figure -- in that column.

19 MR. GOLTZ: I'm sorry. Which column are
20 you referring to?

21 THE WITNESS: The test year per books.

22 MR. GOLTZ: Right.

23 THE WITNESS: Line No. 409, Federal income
24 tax. There's a negative \$14,118.

25 MR. DONAHOE: Excuse me. So you're saying

00502

1 that that figure should be eliminated?

2 THE WITNESS: Yes. That wasn't on your
3 books, and you --

4 MR. DONAHOE: So therefore in the \$14,000
5 income tax figure -- negative income tax figure was
6 eliminated, the companies operating loss would be
7 \$108,000, not 94,000?

8 THE WITNESS: No, that's not -- not on
9 this.

10 MR. GOLTZ: It would be 94 --

11 THE COURT REPORTER: I'm sorry. We have
12 too many people speaking at the same time.

13 MR. LUNDGAARD: I think I still have the
14 witness on direct.

15 MR. DONAHOE: Excuse me. I'm sorry.

16 Q. Do you know whether or not Ms. Ingram used
17 an end of year -- can you tell from her exhibit HMI-2
18 whether that's an average or end-of-year book value?

19 A. When I traced this through, it appears to
20 be an end-of-period rate base.

21 Q. Rate base?

22 A. Yes.

23 Q. And in your opinion is that appropriate?

24 A. No. It should be -- she should be using an
25 average rate base.

00503

1 Q. If you used an average rate base, what
2 would be the impact?

3 A. The rate base would be a little bit
4 smaller, and the revenue requirement wouldn't be quite
5 so high, but it would be a proper matching of revenues
6 generated with the plant in service.

7 MR. LUNDGAARD: I have nothing further.

8 JUDGE WALLIS: Mr. Goltz?

9

10 RE CROSS-EXAMINATION

11 BY MR. GOLTZ:

12 Q. Mr. Bacon, so basically regarding the
13 allocation of the purchase price by the company,
14 you're stating that the plant in service -- to try to
15 simplify this. That if an allocated purchase price is
16 less than the plant in service, one should accept the
17 allocation?

18 A. Clearly that's not investment that the
19 investor has in the utility.

20 Q. Okay. And even if the -- even if the
21 investor made a good deal, then that would -- and so
22 affect the rate base -- if it hadn't been sold, it
23 would have been valued at, say, \$100,000 the day
24 before the sale -- I'm assuming a hypothetical here.
25 The day before the sale, you do an audit of the

00504

1 company, determine rate base to be at \$100,000. Okay?

2 It's a hypothetical.

3 A. Yes.

4 Q. The next day that company sold, and there
5 is an allocation -- the document on which you're
6 basing this says there's been allocation for tax
7 purposes of \$65,000. You're saying that overnight the
8 rate base has diminished by \$35,000?

9 A. Actually, no. The tax base allocation
10 is done by both parties. And taxes aren't really what
11 is supposed to determine it. It's supposed to be fair
12 market value of the plant. And the fair market value
13 is an arm's length transaction that they're selling
14 the plant for.

15 And now they have gone through, spent -- in
16 this particular instance, they've spent five months
17 negotiating what this arm's length transaction is
18 going to be, and they have come up with 65,000 for the
19 plant. They did -- they had 65,000 for the plant
20 in a number -- we pointed it out in a number of
21 instances.

22 Q. Okay.

23 A. Well, we've pointed out in the plan. We've
24 pointed it out in the water plan, where the company
25 is the seller -- where the company is the seller and

00505

1 has wanted \$65,000.

2 We have seen the initial negotiations
3 between the buyer and the seller where they have
4 determined that the value of the water division or the
5 water system is 65,000. And we've seen the final
6 determination or the final -- the closing paper where
7 the 65,000 was the final agreed-upon negotiated fair
8 market value of the plant in service.

9 Q. Okay. Let's strike my hypothetical portion
10 of that that relates for tax purposes.

11 The day before the sale you do an audit of
12 the company and determine a rate base of \$100,000.
13 And the next day the company is sold, and the parties
14 agree that among this larger entity the value of plant
15 in service for the utility is \$65,000.

16 A. Then I would have to go back and reevaluate
17 what I had done to determine the \$100,000, because if
18 the parties in an arm's length negotiation have
19 determined that it's 65, then more likely it's 65,000.

20 Q. Let's do the flip then.

21 A. Okay.

22 Q. And one day you do an evaluation and
23 determine that's it's \$100,000 in rate base?

24 A. Uh-huh.

25 Q. The next day that company is sold, and they

00506

1 value an arm's length transaction at \$165,000. Then
2 what do you do?

3 A. Now, there's a serious problem because
4 we've got statutory requirements that hold that plant
5 in service when it initially went into service at
6 \$100,000, and so the rate payer still has to pay for
7 that plant in service and no more.

8 And that has come about because of
9 companies doing just that very thing on a continuing
10 basis. And not only did they get it to 165, but
11 pretty soon it's 565,000, 1,065,000, and the rate
12 payer is saddled with a fictitious plant in service
13 that did go astronomically high at one time.

14 Q. So basically if the purchase agreement
15 allocates \$1 to the utility, then that's the value
16 that you would assign, assuming that the --

17 A. We have to be reasonable. \$1 for a utility
18 plant? I mean, we're trying to cut the salami. Where
19 are you going to stop cutting the salami. We have
20 something where we're not dealing with a hypothetical.
21 We're dealing with an actual. We have \$65,000.

22 Q. So your testimony is based not just on the
23 \$65,000 allocation, but it is -- as I understood what
24 you said in response to Mr. Lundgaard, it is also based
25 on the difficult -- or the lack of proof of the plant

00507

1 in service by the company?

2 A. Yes. Yeah. We have raised serious doubts
3 in our mind about what the company claims as their
4 plant in service.

5 Q. I guess what I'm saying is that --

6 A. We don't believe it.

7 Q. I understand. -- that your position is not
8 based just on one or the other but on a combination of
9 the two factors?

10 A. Yes.

11 MR. GOLTZ: I have nothing else.

12 JUDGE WALLIS: Mr. Donahoe?

13 MR. DONAHOE: Yes, I do.

14

15 RE-CROSS-EXAMINATION

16 BY MR. DONAHOE:

17 Q. Two questions. Do you believe that this
18 entire facility, and you know the assets I believe
19 fairly accurate, is worth \$65,000, and that's all?

20 A. I don't know that it's worth \$65,000.

21 Q. Okay. Well, you use the word cutting the
22 salami. I would like to follow up on that point then.

23 And using the hypothetical instance where
24 we're dealing with an owner who is selling a great
25 deal of assets, one of which includes a water

00508

1 facility, and as part of the negotiation, arm's length
2 negotiation, in order to benefit the seller,
3 accommodations were made to put a higher value on some
4 other asset that had nothing to do with the regulated
5 water facility, and in exchange for doing that
6 accommodation, to put a higher value for tax purposes
7 or other purpose on this, there was an agreement on
8 the part of the owner to put a value much less than
9 the water company might have been worth, do you feel
10 in your opinion that if that would -- if that figure,
11 even though it was arrived at arm's length, but it was
12 clearly a part of negotiations, it was a tradeoff,
13 cutting the salami as it were, that allowed the seller
14 to get a higher value for some other part of the
15 assets that he was selling had nothing to do with
16 regulatory agency in return for a much lower value on
17 the other side, my question is, would that then be
18 still your position that the lower value which was
19 arrived at clearly at arm's length but with a
20 negotiation well before that be appropriate for a
21 rate making purpose?

22 A. When I took a look at the utility plant on
23 an overall basis -- and we've looked at it very, very
24 closely -- we feel that \$65,000 is a fairly accurate
25 price. And we didn't look at the other items in the

00509

1 buying and selling agreement.

2 But when we took a look at the plant, when
3 we took a look at what we thought were the real
4 costs of the plant, when we identified them, we came
5 up to something that was very, very close to \$65,000.
6 Close enough that we felt comfortable accepting the
7 65,000 as a negotiated price.

8 That, I might point out, is one of
9 the things that didn't change from the beginning of
10 the negotiations. But in your hypothetical, I'd have
11 to go back, and you would have to look at all the
12 parts, and you'd have to look at the actual utility
13 company.

14 Q. Thank you. You worked for the Washington
15 Utilities and Transportation Commission for four years
16 approximately?

17 A. I worked for them for eight years.

18 Q. Eight years. And are you stating that the
19 UTC does not use historical cost to calculate the
20 value of a utility plant?

21 A. No. I'm saying that they absolutely -- if
22 they can get historical costs, they will use
23 historical costs. And that's what we've been doing.
24 We've been going out and gathering up the receipts
25 to the best of our ability and putting together the

00510

1 historical costs.

2 Q. All right. Thank you. Then is it your
3 position that on that basis, the only way to arrive at
4 the historical cost, the only way, is to have a
5 receipt for every single item as far as the UTC is
6 concerned, or has the UTC used other methods in the
7 past?

8 A. That would be the most accurate way.

9 Q. Yes. But has the UTC used other manners to
10 arrive at that in the past with your experience?

11 A. I don't recall them using other methods
12 in the past. We have always attempted to get -- use
13 the historical cost. I have tried other methods in
14 the past, and I have not been successful.

15 Q. Well, one way that you just mentioned was
16 something having to do with stock sale and that sort
17 of thing. The stock sale has nothing to do with the
18 invoices or receipts on the plant; does it?

19 A. That's absolutely correct.

20 Q. So there are other ways in addition to just
21 receipts for -- or tracing the costs back to receipts?

22 A. Well, the stock sale, like I said earlier,
23 did not change the rate base of the utility plant.
24 That was recognized on books and records from the
25 historic documents that it had accumulated and put

00511

1 onto their ledgers.

2 Q. I'm sorry I'm being obtuse about this, but
3 I just want to make sure I understand. In your eight
4 years of experience not in one instance, that you were
5 personally aware, of course, in your personal
6 experience, has the Commission ever allowed anything
7 having to do with rate base that wasn't backed up by a
8 piece of paper backing every single cost item in a
9 utility?

10 A. I don't think that -- it's been my
11 experience that when the Staff has gone out and
12 audited large and small utility companies, they have
13 gone in and scrutinized the books and records, traced
14 the amounts that were recorded in the ledgers back
15 down to invoices on a test basis to ensure themselves
16 more than reasonably that 100 percent of the plant
17 would be -- that is recorded on the company's books
18 and records is backed up by receipts and documents.

19 I can't -- I can recall myself trying to
20 put in estimated rate bases and not being successful
21 at doing that at all, because at -- somewhere it is
22 we've always found out somebody has copies of
23 receipts, invoices, and some sort of documentation
24 that we've been able to put together a rate base based
25 on historical documents.

00512

1 I can't think of one time where it's been
2 otherwise.

3 MR. DONAHOE: Thank you.

4

5 REDIRECT EXAMINATION

6 BY MR. LUNDGAARD:

7 Q. Mr. Bacon, in your question and answers
8 with Mr. Goltz where you were talking about these
9 different hypotheticals on the figures of the plant
10 and sale price, were you assuming in those discussions
11 that you were talking about a sale of assets as
12 opposed to a sale of stock?

13 A. Yes.

14 MR. LUNDGAARD: Nothing further.

15 JUDGE WALLIS: Mr. Goltz?

16 MR. GOLTZ: No.

17 JUDGE WALLIS: I want to ask a question or
18 two about that.

19

20 EXAMINATION

21 BY JUDGE WALLIS:

22 Q. I would like to explore how you would react
23 to two hypothetical situations. In one you have
24 audited a company and demonstrated a rate base of a
25 \$100,000, valuation of a company of \$100,000. And

00513

1 that's true at 11:59 a.m. And at noon, a purchaser,
2 willing purchaser, pays to a willing seller \$65,000
3 for all the stock in that company. What is the
4 valuation of the company at 12:01?

5 A. He did not purchase the assets, he
6 purchased the stock? Then I would go back to what
7 comes with the stock. And if the books and records
8 come with the stock, he would have \$100,000 in his
9 rate base.

10 Q. Okay. Now, imagine, if you will, a
11 comparable situation in which an ongoing business of a
12 water company is purchased and sold in toto, not being
13 a corporation, it's a sole proprietorship, and the
14 same valuation, the same purchase price. What is the
15 result of that transaction?

16 A. Then you have to look very closely --
17 I would pick the rate base of \$65,000. The
18 distinguishing characteristic on this is one was a
19 stock sales versus one was an asset sale.

20 When they bought the stock for \$65,000,
21 they purchased just the stock. The books, including
22 all the liabilities associated with that company, the
23 hidden liabilities, the contingent liabilities, the
24 things you can't see, the things you can see, came
25 along with that sale.

00514

1 And at that point in time, it was worth it
2 to the owners of the stock, who may have made a profit
3 on that stock, you don't know, but it was worth at
4 that time for them to sell it for \$65,000, and the
5 corporation is continuing on in business, and nothing
6 has changed. They may elect a new president.

7 Q. In the second hypothetical that I posed, is
8 it not exactly the same except the form of the
9 business entity, and if not, why not?

10 A. No, the form is not the same. One they're
11 purchasing just the assets. There's no liabilities
12 associated with this. There's no -- they are picking
13 up the assets, and they are starting anew. They
14 start with a new depreciation rate. They've started
15 completely over. And this is a new company. The old
16 company does not continue in operation. There's no
17 liabilities, no hidden contingencies that relate to
18 that particular company.

19 Q. Is it not the purchase of an ongoing
20 operation as opposed to merely the purchase of the
21 physical plant?

22 A. Not if they purchase the assets.

23 Q. In my hypothetical, it was not merely a
24 sale of the assets, but it was a sale of the ongoing
25 business. In other words, it was not a liquidation of

00515

1 the assets.

2 A. I'm inclined to think that it would still
3 be the \$65,000, because there is something in the
4 sale or the transaction, in the negotiation that
5 they're coming up with a price that leaves that value
6 at \$65,000. There is something that doesn't make
7 sense. If they're buying an ongoing business at
8 \$65,000, I would have to think that that was the
9 appropriate price.

10 Q. Is there --

11 A. But --

12 Q. -- an accounting principle -- a Financial
13 Acting Standards Board standard or some other
14 principle or standard that applies in this situation?

15 A. Yes. And that's -- they go with the
16 historic cost and/or with the purchase price.

17 And when you buy the stock, you aren't
18 affecting the books and records of the company. The
19 books and records of the company and the company is
20 continuing. When you make a sale of the assets of an
21 ongoing business, you are setting up a new base, and
22 that new base is \$65,000.

23 Q. Could you or perhaps counsel provide a
24 citation to that, and in the brief would be
25 sufficient, if it's an Accounting Standards Board

00516

1 standard?

2 A. It's just one of the basic tenants of
3 accounting. That's just a -- that's one of the basic
4 tenants of accounting, but we can pull that up and
5 include it.

6 JUDGE WALLIS: I too am unencumbered by
7 formal training in accounting.

8 Is there anything further of the witness?

9 MR. GOLTZ: Yeah. Can I follow-up on Mr.
10 Wallis's hypotheticals?

11 JUDGE WALLIS: Sure.

12

13 RE-CROSS-EXAMINATION

14 BY MR. GOLTZ:

15 Q. In his second where it was a sole
16 proprietorship seller to a sole proprietorship buyer --
17 is that your understanding of his hypothetical?

18 A. Yes.

19 Q. And you said the distinction was that the
20 seller would retain some liabilities; didn't you say
21 that, with the stock?

22 A. I'm backing up to the -- go ahead and say
23 it again.

24 Q. You said the distinguishing characteristic
25 was either the transfer or non-transfer of liabilities

00517

1 with that sale?

2 A. And other intrinsic --

3 Q. I'm sorry?

4 A. And other intrinsic things with the
5 business. The good will of the business.

6 Q. The good will gets transferred in either
7 case?

8 A. In terms of the sale of the ongoing -- the
9 ongoing company, there may not be any good will.
10 That's the reason they're paying -- there may be ill
11 will, and that's the reason why they're paying 65,000.

12 Q. Sure. I understand. But isn't that true
13 with the stock sale, too, the good will and/or ill
14 will carries forward --

15 A. Not --

16 Q. -- in the sale of the --

17 A. Not necessarily. At that moment in time on
18 a stock sale -- if we go up to the stock market today,
19 and we catch it because they declared a war someplace,
20 and the stock market is way down or up as the case may
21 be because of something that really has nothing to do
22 with your business, and you can buy stock on the
23 market at a much lower price, you have just -- you've
24 made a killing, and it has nothing to do with the
25 valuation of the assets.

00518

1 Q. Okay. Tell me what -- I'm just going to
2 focus in on the transfer of liabilities. You said in
3 the stock sale -- what did you say about the transfer
4 of liabilities in a stock sale that distinguishes it
5 from an asset sale?

6 A. When you buy the stock, you buy -- you're
7 -- you buy the whole company, the whole thing.

8 Q. Liabilities?

9 A. Liabilities, retained earnings, the owner's
10 equity. You buy -- you may get the cash that is in
11 the bank if there's any left in there. You're going
12 to get the accounts receivable.

13 Q. All those are assets. Those go in an asset
14 sale, too?

15 A. Sure. Not necessarily. You may not have
16 sold those particular assets.

17 Q. I'm talking about a complete asset sale.

18 A. Let's just say a complete asset sale. You
19 don't buy the retained earnings of the company when
20 you have an asset sale or any of the liabilities.

21 Q. Okay. So those are two items that in an
22 asset sale are not transferred?

23 A. Sure.

24 Q. Now, in an asset sale, it's also possible
25 for the purchaser to hold the seller harmless for

00519

1 liabilities, in other words to assume the liabilities,
2 correct?

3 A. Sure, that could happen.

4 MR. GOLTZ: I don't have any other
5 questions.

6 JUDGE WALLIS: Is there anything further?

7

8 REDIRECT EXAMINATION

9 BY MR. LUNDGAARD:

10 Q. Well, I don't want to open up this issue
11 too much more, but if we had the hypothetical
12 of the book value being \$100,000 -- and we're assuming
13 this is a regulated company in these hypotheticals I
14 take it, or does it matter?

15 A. It really shouldn't matter.

16 Q. But assuming a regulated company, and the
17 book value of the company is \$100,000, and the stock
18 -- the owner of that company finds somebody who is
19 willing to pay him \$150,000 for that stock, would it
20 be appropriate then for that new owner to change the
21 book value of \$150,000 and ask the rate payers to pay
22 them a return on \$150,000?

23 A. No. The books haven't changed at all.
24 That's just the stock value that is purchased.

25 Q. So the seller has made a profit presumably

00520

1 of \$50,000, and the new buyer has paid \$150,000 for
2 assets that have a book value of \$100,000?

3 A. He's purchased stock. He feels his stock
4 is worth \$150,000.

5 Q. And all the return he's entitled to is
6 a return on the book value, which didn't change, which
7 would be the \$100,000?

8 A. Absolutely. That's correct.

9 MR. LUNDGAARD: Nothing further. I have
10 nothing further.

11 JUDGE WALLIS: Is there anything further?

12 MR. GOLTZ: No.

13 JUDGE WALLIS: Let the record show there is
14 nothing further.

15 Mr. Bacon, thank you for appearing today,
16 and you're excused from the stand at this time.

17 Let's be off the record to prepare for the
18 next witness.

19 (Discussion off the record.)

20 (Short recess.)

21 (Marked Hearing Exhibits 51, 52, 53, and
22 54.)

23 JUDGE WALLIS: Let's be back on the record,
24 please, following a brief recess.

25 My understanding at this point is that the

00521

1 interveners have completed their presentation; is
2 that correct?

3 MR. LUNDGAARD: That's correct, your Honor.

4 JUDGE WALLIS: The Commission Staff has
5 asked Mr. Jones to come forward.

6 Mr. Jones, would you please stand and be
7 sworn, please.

8 Whereupon,

9 AL JONES,

10 having been first duly sworn, was called as a witness
11 herein and was examined and testified as follows:

12 JUDGE WALLIS: In conjunction with Mr.
13 Jones' appearance today, several documents have been
14 presented to be marked for identification. First of
15 these is Mr. Jones' pre-filed testimony, which is
16 marked as Exhibit 51 for identification; the attached
17 AAJ-2 Capital Expenditure is marked as Exhibit 52 for
18 identification; attachment AAJ-4, WUTC Salary Analysis
19 dated July 11, 1996 is marked as Exhibit 53 for
20 identification; and a document provided by Mr.
21 Lundgaard designated WUTC Salary Analysis dated June
22 20, 1996 is marked as 54 for identification.

23 To explain for the record, the document
24 that was initially presented as AAJ-3 is already in
25 the record as Exhibit 28.

00522

1 JUDGE WALLIS: Mr. Goltz?

2

3 DIRECT EXAMINATION

4 BY MR. GOLTZ:

5 Q. Could you state your name for the record,
6 please.

7 A. Albert A. Jones, J O N E S.

8 Q. And do you have before you what has been
9 marked as Exhibits 51 through 53?

10 A. Yes.

11 Q. And is 51 testimony that you prepared in
12 preparation for this hearing and pre-filed?

13 A. Yes.

14 Q. And were Exhibits 52 and 53 exhibits to
15 that testimony prepared by you or under your
16 supervision?

17 A. Yes.

18 Q. And in addition you also pre-filed what
19 has already been admitted as Exhibit 28; is that
20 correct?

21 A. 28 or 38?

22 Q. 28, which is the same as AAJ-3.

23 A. Yes.

24 Q. Okay. And if you were to prepare that
25 testimony and those exhibits today, would they -- if

00523

1 you were to prepare that testimony today, would it be
2 the same as it appears?

3 A. Yes.

4 Q. And are these true and correct to the best
5 of your knowledge?

6 A. Yes, they are.

7 MR. GOLTZ: Your Honor, I would offer
8 Exhibits 51, 52, and 53.

9 JUDGE WALLIS: Is there any objection?

10 MR. LUNDGAARD: No objection.

11 JUDGE WALLIS: There being no objection,
12 Exhibits 51, 52, 53 are received in evidence.

13 (Admitted Hearing Exhibits 51, 52 and 53.)

14 MR. GOLTZ: Your Honor, with your
15 permission, and I believe this has been the process,
16 I would have one quick question which in effect would
17 be the in the nature of a rebuttal. Should I ask that
18 now?

19 JUDGE WALLIS: Proceed.

20

21 REBUTTAL EXAMINATION

22 BY MR. GOLTZ:

23 Q. Referring to Exhibit 36, and I'm going
24 to have to scramble to find my copy of that. Do you
25 have a copy of that, Mr. Jones.

00524

1 JUDGE WALLIS: Let's be off the record.

2 (Discussion off the record.)

3 JUDGE WALLIS: Back on the record. The
4 witness now has that document before him; is that
5 correct?

6 THE WITNESS: Yes.

7 Q. Okay. And that tank that's referred to in
8 that exhibit is reflected in Exhibit 28, which is
9 your AAJ-3, at some place; is it not?

10 A. Yes, it is.

11 Q. Can you point out where that is.

12 A. Exhibit 36 identifies a Scafco liquid
13 storage tank of a capacity of 146,000 gallons. Then
14 in Exhibit 28, it's identified under account No. 304.
15 It's the last two items because there are two
16 identical tanks on site.

17 Q. And have you done any -- what is the value
18 Mr. Drahn has assigned to that?

19 A. The asset cost has been assigned \$63,787
20 each.

21 Q. And have you done any -- since the filing
22 of the pre-file testimony, have you done any research
23 to compare that tank to -- or to validate that
24 valuation?

25 A. Yes, I have. I want to also call your

00525

1 attention to Exhibit 28. In order for a storage tank
2 to be useful, it has to be plumbed to the distribution
3 system. There are no distribution mains identified in
4 that year.

5 And the tank cost is -- the cost off of the
6 shelf is one value. You need to add to that the
7 preparation of the site. And that would include the
8 foundation for the site, excavation at the site, and
9 it also would include overhead such as engineering and
10 permits.

11 Q. Okay. Does that conclude your statement
12 on that?

13 A. Yes.

14 MR. GOLTZ: I tender the witness for
15 cross-examination.

16 JUDGE WALLIS: Mr. Lundgaard?

17

18 CROSS-EXAMINATION

19 BY MR. LUNDGAARD:

20 Q. If you would refer to Exhibit 36, second
21 page of that exhibit, that's the Down Island Trading
22 letter. Second page, doesn't it indicate that the
23 price on the two water storage tanks is installed
24 including concrete base and plumbing fittings plumbed
25 to the outside of the concrete base?

00526

1 A. Where are reading this? This is the first
2 time I've seen this document.

3 JUDGE WALLIS: Let's be off the record.

4 (Discussion off the record.)

5 JUDGE WALLIS: Back on the record.

6 Q. Referring to your Exhibit 36 that you
7 have in front of you, do you see the -- I think it's
8 a sheet that has a number, handwritten number, of 13
9 at the bottom?

10 A. Yes.

11 Q. And you see there where it says price on
12 two No. 4204 water storage tanks installed including
13 concrete bases and six inch plumbing fittings plumbed
14 to outside concrete base?

15 A. Yes.

16 Q. So doesn't that cover quite a bit of what
17 you were saying is needed to be included?

18 A. As I said, this is the first time I've had
19 an opportunity to review these, and I notice that the
20 numbers at the bottom of the page have been
21 handwritten. And it appears from what you've just
22 said, it allows the tanks to be plumbed just outside
23 the tank but not into the distribution system.

24 Q. Are you saying that you -- that you still
25 are relying on the figure of \$63,787 for each tank as

00527

1 being a reliable asset cost in 1985?

2 A. This Exhibit No. 36 raises some questions
3 and concerns given this is at the last minute. Based
4 on my professional experience, I determined the cost
5 at the time that I made that evaluation, and I stand
6 by my figure. I think it's unfair to ask me then to
7 go back and readjust that.

8 Q. Well --

9 A. It's unfair at this late notice to hand
10 this to me, and I do not have -- this is not a
11 receipt. This is not signed.

12 JUDGE WALLIS: Excuse me, Mr. Jones. I'm
13 going to interject here, and I'm going to ask you to
14 focus on the questions that are asked and rely on Mr.
15 Goltz to deal with matters as to whether those are
16 proper questions to be asked and just do your best
17 to respond to the questions if you would.

18 THE WITNESS: Okay.

19 MR. GOLTZ: You better restate the
20 question.

21 Q. Okay. In view of Exhibit 36, are you still
22 willing to rely on the asset -- well, let's strike
23 that. Let's go back to Exhibit 28. Does that exhibit
24 contain under account No. 331 under the asset cost
25 column and starting with the 1985 transmission and

00528

1 distribution mains figure \$10,625.60 down for the
2 remainder of the items identified as transmission and
3 distribution mains through 1995, are those figures the
4 figures that you developed?

5 A. Yes.

6 Q. In your -- help me. Which exhibit is
7 that? You have an exhibit that -- that's Exhibit 52;
8 is that correct?

9 A. Yes.

10 Q. And were you able to find invoices for
11 everything you have listed on Exhibit 52?

12 A. Yes.

13 Q. Have you had an opportunity to review the
14 Exhibit 3, which was, I believe, the list of invoices
15 that were produced by the company in response to a
16 data request?

17 A. I'm not sure. What data request are you
18 referring to?

19 Q. Exhibit 3, which is a fax message from
20 Chris Vierthaler to Ann Rendahl of August 5th of '96.

21 A. Could you show those to me, please.

22 Q. I have mine. I was hoping maybe you had
23 one.

24 Q. Have you had an opportunity to see that
25 document before?

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1 A. Yes, I have.

2 Q. Okay. And are there any invoices in there
3 that reflect any of the figures you have used in your
4 Exhibit 52? I'm not trying to --

5 A. I know. I recognize that, sir. Exhibit
6 52, yes, the first one identified is the 10,625.
7 And I believe there's others that are included in that
8 Exhibit 52. I do not believe this is the total number
9 of receipts that make up Exhibit 52. That's only part
10 of them.

11 Q. Right. That was my point, that the Exhibit
12 3 that was provided by the company does not include
13 all of the invoices that you found?

14 A. Yes.

15 Q. My statement was a correct statement; was
16 it?

17 A. I do not know what the intent of that data
18 request was.

19 Q. The letter indicates that, please find
20 invoices for completed projects for Rosario Water
21 System?

22 A. And what date was that?

23 Q. August 5th of '96 from Chris Vierthaler to
24 Ann Rendahl.

25 A. And I obtained receipts from the company in

00530

1 January of '96.

2 Q. Okay. And Exhibit 3 has a copy of your
3 item on page 2 of 2, the 1985 pipe, having a total of
4 -- and fittings having a total of 10,625?

5 MR. GOLTZ: I'm sorry. Which exhibit, Mr.
6 Lundgaard?

7 MR. LUNDGAARD: His Exhibit 52.

8 THE WITNESS: Would you repeat the
9 question, please?

10 Q. Okay. Exhibit 3 contains the invoices for
11 the 1985 figure and description of the pipe fittings
12 for 1985 in the amount of \$10,625.60?

13 A. Yes.

14 Q. And does it also contain the 1992 service
15 connection supplies on the first page of your Exhibit
16 52?

17 A. Would you repeat that? You're now looking
18 at Exhibit 52?

19 Q. Looking at both 52 and Exhibit 3, and on
20 Exhibit 52, page 1 of 1, the bottom of it, there's a
21 reference to 1992 service connection supplies?

22 A. Yes.

23 Q. And does Exhibit 3 contain a portion of
24 those?

25 A. They should. If I may continue, in '92,

00531

1 page 1 of 2, continues to page 2 of 2, there's a
2 column entitled total cost per year. And in the year
3 of '92, the total amount is \$18,113.60. And if you go
4 over to Exhibit 28, that amount shows up on account
5 331 under the year of 1992 for that amount of
6 \$18,113.60

7 Q. But Exhibit 3 only includes invoices for a
8 small portion of that, only for those invoices of
9 March 13th of '92; isn't that correct?

10 A. I believe the Exhibit 2 that you showed me,
11 I only identified the first page with the \$10,000
12 amount. The other pages I have not studied.

13 Q. Okay. I'll refer you to the back pages of
14 Exhibit 3 and the ones referring to 1992, if you just
15 want to look at those. There's three pages of
16 invoices there that are marked March 13th of '92.

17 A. Okay.

18 Q. So Exhibit 3 does not contain all of the
19 invoices that you used to arrive at your figure of
20 \$18,113.60?

21 A. Again, subject to check, I would have to --
22 you have three pages of widgets. I'd have to see if
23 that amount is included in these numbers. I had
24 approximately 100 receipts. You're showing me less
25 than a half a dozen.

00532

1 MR. GOLTZ: Your Honor, can I interject.
2 The date on Exhibit 3 is March 17, 1992, and the
3 document on page -- on Exhibit 52 includes all of
4 1992 and not just, you know, March and before.

5 MR. LUNDGAARD: That's my point.

6 MR. GOLTZ: Is that your point?

7 MR. LUNDGAARD: That's my point. That all
8 that is included in Exhibit 3 are the March, 1972
9 invoices, nothing after that for the year '92.

10 MR. GOLTZ: Okay.

11 Q. Other than the invoices that you have
12 assembled for the years '85 through '95 in Exhibit 52,
13 were you able -- did you find any other invoices?

14 A. Yes. Excuse me. Exhibit 52? No actual
15 invoices. These were all of them.

16 Q. So for the rest of the asset costs in
17 Exhibit 28, which you've sponsored also as your AAJ-3,
18 you've relied on what the company has provided to you
19 as asset costs?

20 A. The company has provided a breakdown. I
21 have reviewed it in my best engineering judgment
22 and experience and have included it in my testimony.

23 Q. And referring to your testimony, Exhibit
24 51, on page 4, line 7, you indicate that you have
25 determined a total value of 550,744 --

00533

1 A. Yes.

2 Q. -- for existing plant in service?

3 A. Yes.

4 Q. And that figure starts off with the
5 \$346,480 that the company used as plant in service
6 in the per books?

7 A. You'd have to check with Mrs. Ingram on
8 that.

9 Q. Well, you have -- what has -- your Exhibit
10 AAJ-3, Exhibit 28, has a total of \$530,424.12 as
11 asset cost; does it not?

12 A. Where is that located?

13 Q. On your Exhibit 28, your schedule one of
14 AAJ-3 in the -- under the asset costs column. And the
15 difference between your figure of 530,424 and Ms.
16 Ingram's figure of 550,000 is the capitalization of
17 the automobile; isn't it?

18 A. I believe so.

19 Q. So you have relied on the information
20 provided by Mr. Drahn for the estimated cost of plant
21 in service other than the isolated ones that you have
22 told us about from 1985 to '95 that you had invoices
23 for?

24 A. Yes.

25 Q. And you have been present here during the

00534

1 testimony of Gunther Eschenbrenner?

2 A. Yes.

3 Q. And you've had an opportunity to see the
4 invoices for the concrete tank of \$6,825 and the other
5 invoices that he presented?

6 A. Yes.

7 Q. Would you agree that the estimates of
8 Mr. Drahn's engineering firm that you relied on, that
9 those are flawed and overstate the cost of those
10 items?

11 A. No.

12 Q. You do not? You still accept --

13 A. Would you repeat your question?

14 Q. Yes. After you've heard the testimony of
15 Gunther Eschenbrenner and the invoices that were
16 presented through his testimony on what the actual
17 costs were of those items, are you still willing to
18 accept the estimated historical costs that were
19 arrived at by Mr. Drahn in the asset cost column for
20 those same items?

21 A. Yes.

22 Q. What is more reliable, the invoice for the
23 actual item at the time that it was purchased and
24 installed or the use of a current cost and then track
25 it backwards by a discount table?

00535

1 A. I'm concerned why the receipts were given
2 to us at the last minute.

3 Q. Well, whether they were given to you in the
4 last minute or not, I'm asking you a general question
5 of what is more reliable, an invoice that occurred at
6 the time that the particular item was
7 installed, or somebody who uses an estimate that
8 starts off with new construction today and then trends
9 backwards to, in some cases, a period of over 20
10 years?

11 A. I'm concerned about the invoices, and let
12 me explain. The value that the invoices reflected
13 were an exceptional bargain.

14 Q. So you're going to disregard -- you're
15 willing to disregard the actual invoice because you
16 think that that was a bargain in 1972. What is -- do
17 you have some other comparable invoices in 1972 that
18 you're relying on to make a comment that that was a
19 bargain?

20 A. I don't think the entire plant to serve the
21 customers is reflected in this one receipt or invoice.

22 Q. But doesn't it indicate to you that there
23 is some unreliability in the estimate method that was
24 used by Mr. Drahn when you compare an estimate with an
25 actual invoice?

00536

1 A. I don't know when you give me a receipt,
2 and I'm not able to compare that with what my initial
3 evaluation when I reviewed the numbers that were
4 in this exhibit.

5 Q. Well, you did not find an invoice for the
6 concrete tank, for example, that's the 60,000 gallon
7 concrete tank installed in 1973, that Mr. Drahn has
8 listed as having an asset cost of \$17,940; did you?

9 A. No. And -- no.

10 Q. And if it happened to be that the developer
11 at that time got a good deal on the concrete tank,
12 would you disregard it just because they got a good
13 price?

14 A. No.

15 Q. That would be -- if you got a good price
16 and that was the actual cost, then that would be a
17 reliable figure; wouldn't it?

18 A. Yes.

19 Q. Would it not?

20 A. Yes.

21 Q. Have you used an approach of arriving at
22 new cost today and then trend it back by an ENR manual
23 to arrive at what the actual cost was 20 years prior
24 to that time?

25 A. Yes, I have, but not as far as 20 years,

00537

1 and I have not used that manual that you referred to.

2 Q. Okay. Did you hear the testimony of Mr.
3 Eschenbrenner as it related to sizes of pipe and the
4 comparison of the invoices that were in Exhibit 3 of
5 pipe that relate back to the time that the pipe was
6 installed?

7 A. Yes.

8 Q. And don't you think that the prices that
9 are listed in Exhibit 28 are overstated?

10 A. No.

11 Q. Why not?

12 A. If I can refer you to the second page of
13 Exhibit 28, it's expanded, detailed information of
14 the items that are on the first page. And in my
15 review of this exhibit, I set up a matrix of the year
16 that the materials were installed by size.

17 And, for example, in 1959, it indicated
18 three different distribution lines installed. The
19 average price for that year was 17 cents per linear
20 foot. In '72 the average price was \$3.46 per linear
21 foot. These are all in place. And in '74, \$3.71 per
22 foot. '78, \$5.02 per foot. And the last one is in
23 '84, the average cost is \$10.87 per linear foot. All
24 of those appeared to me to be exceptionally good
25 prices regardless for what receipts for the item in

00538

1 hand off the shelf may cost.

2 Q. And all of those prices that you've just
3 mentioned are based strictly on an estimate, and they
4 are not based on any invoices; isn't that correct?

5 A. Yes.

6 Q. And those are based on the same method of
7 trending of taking what Mr. Drahn said was the
8 original cost today and then trending it back to those
9 various years?

10 A. Well, that's one method he may have used,
11 yes.

12 Q. And if you would again refer to Exhibit 3,
13 and first referring you to the invoice, Civic Water
14 Works invoice, dated January 8th, 1985.

15 A. There's three pages with that date.

16 Q. And I'm referring to the first page where
17 it refers to 2,200 lineal feet of six inch PVC pipe
18 and a price?

19 A. Yes.

20 Q. And isn't it true that that develops a
21 lineal foot price of about \$1.80 a lineal foot?

22 A. Yes.

23 Q. And yet you're willing to rely on a figure
24 of \$10.87 for six inch PVC pipe in 1984?

25 A. Well, the price of \$10.87 per linear foot

00539

1 is in the ground. This is on the shelf.

2 Q. You're saying then that you think that it
3 costs about \$9 a lineal foot to put that in the
4 ground?

5 A. At Rosario it could well be with the
6 conditions of the rock and the necessary bedding.

7 Q. Do you know --

8 A. Also this price of \$10.87 reflects all the
9 fittings that the 1.80 does not reflect.

10 Q. But the fittings would be rather incidental
11 in the overall figure. If you were to double the
12 figure of \$1.80, it would certainly more than cover
13 the fittings; would it not?

14 A. Well, if you look at some of the fittings,
15 they're not cheap.

16 Q. We're talking about fittings to PVC pipe;
17 aren't we?

18 A. Absolutely.

19 Q. And do you know if in 1985 this was not a
20 new expansion into a new area, but presumably this was
21 purchased for repairing or replacing older pipe that
22 had worn out?

23 A. For this receipt dated January 8 of '85,
24 I'm not sure where the location is and the purpose of
25 it.

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1 Q. Do you recall the exhibit that showed the
2 estimated cost of installation was -- as testified to
3 by Mr. Eschenbrenner was \$4.72 a lineal foot?

4 A. My understanding is he did not take
5 exception to Mr. Drahn's cost of installation.

6 Q. But you apparently are, if you're accepting
7 that the installation costs are double that \$4.72 by
8 saying that it would be \$9?

9 A. It very well may be. And again I don't
10 know where the location of this line extension and
11 where this material is placed at.

12 Q. Aren't these installation costs -- really
13 we're talking about average installation costs rather
14 than a specific item?

15 A. The ones that are listed in Exhibit 28 is
16 the estimated original cost.

17 Q. And weren't those all done with an
18 installation cost of \$4.72?

19 A. I don't know.

20 JUDGE WALLIS: I'm going to interject here
21 and state by means of explanation for the record as
22 well as information of those present that our landlord
23 came in and told us that we were hold-over tenants,
24 that our contract of rental expired at five o'clock,
25 about an hour and 15 minutes ago. And he said that if

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1 we got out by 6:30, all they would do is bill us for
2 the extra time.

3 So we have probably about another ten
4 minutes of examination remaining. Without cutting
5 anyone off, I would certainly dearly love to finish in
6 that time and will turn matters back to counsel and
7 hope that we can expedite this to the conclusion of
8 Mr. Jones' testimony.

9 Q. Mr. Jones, did you calculate -- I think we
10 have that exhibit marked -- calculate the hours for
11 the employee that's your Exhibit --

12 A. I prepared Exhibit 53, and it has a date of
13 July 11th, '96.

14 Q. Did you also prepare an earlier exhibit
15 that's been -- is that the one that is marked Exhibit
16 55?

17 A. 54.

18 JUDGE WALLIS: 54.

19 Q. Didn't you on June 20th, 1996 provide the
20 same duties and responsibilities and indicate that the
21 -- on your salary analysis of the facility manager
22 and certified operator that the total hours would be
23 565 for the year or 1.8 hours per day?

24 A. Exhibit 53 was generated to a number of
25 reiterations. I believe that was one of the earlier

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1 ones.

2 Q. Yes. And my question to you was whether or
3 not as late as June 20th of '96 you calculated the
4 total hours for the year at 565 or 1.81 hours per day?

5 A. Yes. Again, I repeat that's one of our
6 rough drafts of our earlier ones.

7 Q. And was it -- I take it that was done based
8 on your experience and having analyzed other small
9 water companies?

10 A. And having spent three days on site with
11 Mr. Cavalli.

12 Q. Okay. And that was back in January of '96?

13 A. Yes.

14 Q. Okay. So you had the information from the
15 meeting with Mr. Cavalli and your discussions with him
16 over a three day period, and you arrived at the
17 figures that are shown on that exhibit?

18 A. Again, it's a preliminary. It was used for
19 discussion. And it was in preparation for what is
20 presented here as Exhibit 53.

21 Q. Well, I take it at that point in time, you
22 were presenting it as your good faith estimate of what
23 the cost would be?

24 MR. GOLTZ: Objection. It assumes a fact
25 not in evidence. He assumes that this was being,

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1 quote, presented, unquote, and Mr. Jones has already
2 testified that he didn't present this. The exhibit --
3 the document that he presented has been admitted into
4 evidence as AAJ-4, which is Exhibit 53, and he hasn't
5 testified this has been presented to any -- to the UTC
6 in any way?

7 THE WITNESS: Could you rephrase the
8 question?

9 Q. Did you not present Exhibit 54 to the
10 interveners and to the company indicating in your
11 opinion at that point, June 20th of '96, that your
12 estimation for the hours would be 1.8 per day or a
13 total for the year of 565?

14 A. No, I did not present this to the
15 interveners.

16 Q. What did you do with this? Was this just
17 an exercise for the fun of it?

18 MR. GOLTZ: Your Honor, I'm going to object
19 to the manner of questioning. Mr. Jones has testified
20 that -- which is not an unremarkable reality, that any
21 professional is going to go through certain iterations
22 or drafts.

23 I'm sure Mr. Lundgaard doesn't produce a
24 brief in a case the first time as a final, and he makes
25 substantial revisions as he goes along, and no court is

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1 going to hold Mr. Lundgaard's rough draft of a legal
2 brief as his statement of laws in the given case.

3 And I think it's inappropriate for him to
4 attempt to attribute a rough draft of an analysis to
5 Mr. Jones for admission in a rate proceeding.

6 Q. Is there anything on Exhibit 54 that
7 indicates that's a draft?

8 A. No. I can only say you got it out of my
9 waste paper basket. If I had given it to the
10 interveners, it would have been marked as a draft at
11 this early date.

12 Q. Well, I'm sorry. I can assure you I have
13 not been searching through your waste paper baskets,
14 and this matter came into our hands in the normal --
15 through the normal channels through your counsel
16 and --

17 JUDGE WALLIS: I'm going to step in here
18 and say that no aspersions will be cast in terms of
19 how the document reached the interveners, and I would
20 like counsel and the witness both to look beyond how
21 it got where it is and whether it was good faith or
22 not at the time and proceed to other areas of inquiry
23 that may provide more substantive evidence for the
24 record.

25 MR. LUNDGAARD: I would offer Exhibit 54.

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1 JUDGE WALLIS: Is there objection?

2 MR. GOLTZ: Yes. It's not relevant to the
3 proceeding any more than early drafts of Mr. Bacon's
4 testimony or Mr. Eschenbrenner's testimony are
5 relevant to this proceeding -- or would be relevant
6 had they been given in either settlement negotiations
7 or in the normal course of business.

8 MR. DONAHOE: Your Honor, I would adhere to
9 that objection. And I can add further that I have
10 never seen this document before.

11 MR. LUNDGAARD: Your Honor, the witness has
12 indicated that this is something that he prepared. It
13 has a point of time. He indicated that prior to the
14 preparation of this, he had spent three days in January
15 -- he has from January to June 20th when this was
16 prepared.

17 I think it goes to the weight to be given
18 the document, not the admissibility of the document.
19 There's no question that it's something that he
20 prepared, and he prepared it at a point in time that
21 was six months after his initial investigation.

22 JUDGE WALLIS: I'm going to sustain the
23 objection and reject the document on the basis that
24 the witness has presented the July 11th document as
25 his testimony. He's supported that. He's indicated

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1 that 54 for identification is an earlier draft and had
2 not been offered or admitted by him for reliance. And
3 consequently based on the evidence that we have of
4 record, it appears that it is not relevant to the
5 proceeding.

6 Q. Was your Exhibit AAJ-4, Exhibit 53, was
7 that prepared after you had met with Mr. Donahoe
8 and gone over -- well, and discussed with him the
9 various activities of the certified operator?

10 A. I met with Mr. Donahoe in January of '96.
11 This was prepared after that date.

12 Q. Did you discuss this document with Mr.
13 Donahoe after June 20th of 1996?

14 A. I don't know. I don't recall.

15 Q. Did you talk with Mr. Cavalli after you
16 -- regarding this document after you were up here
17 January 17th through the 19th?

18 A. Yes.

19 Q. Do you recall whether you had further
20 conversations regarding his -- were those discussions
21 as to his duties in '96, or were they with regard to
22 his duties in the test year?

23 A. In the test year.

24 Q. And does Exhibit 53 reflect what you
25 consider to be the typical hours that would be worked

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1 in the test year?

2 A. Yes.

3 Q. And did you have any logs or time cards or
4 anything to assist you in the preparation of this
5 document?

6 A. No.

7 Q. In the -- I take it --

8 A. Can I add something to my last statement
9 when I said no? No, there was no time cards. In
10 small companies it's typical you don't see them. The
11 company is required to keep a log of the times that
12 they visit the treatment plant and the work that they
13 performed there, and that was reviewed, so you might
14 call that a log.

15 Q. And you had reviewed that in January of
16 -- that time period that you were at the facilities in
17 January?

18 A. Yes.

19 Q. Are you a licensed professional engineer?

20 A. No.

21 Q. And are you currently acting in the same
22 capacity with the department as you were in January of
23 '96?

24 A. No.

25 Q. Your Exhibit 52, referring to 1985 and the

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1 last item there, there's a reference to the project
2 being a fire main to Rosario Resort from the
3 reservoir? That's your original AAJ-2.

4 A. Would you repeat your question?

5 Q. If you would refer to page 2 of Exhibit 52,
6 the last item, January of 1985, 2,200 lineal feet of
7 six inch PVC pipe. And I think you've identified that
8 project as being a fire main to the Rosario Resort
9 from the reservoir?

10 A. Yes.

11 Q. And that is a flume for water treatment and
12 is not part of the water system?

13 A. It states that's from the reservoir.

14 Q. So that would be --

15 A. My understanding is the fire mains are
16 non-potable water. This reflects that it's potable
17 water.

18 Q. Where does it reflect that it's potable
19 water?

20 A. Okay. Let me correct my statement. This
21 information was obtained in January. I would not have
22 included this item if it's from the dam, and the use
23 of reservoir would be implied by the storage tank.

24 Q. Well, isn't that what you've identified
25 as coming from the reservoir, and isn't that a flume

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1 of raw water for fire treatment purposes and is not
2 part of the water system of potable water?

3 A. Okay. At the time that I identified this
4 as an appropriate cost to the water system, it was a
5 line extension from the company's storage tank
6 reservoirs to the fire main at the resort.

7 Q. You referenced a reservoir. Doesn't that
8 indicate that it came from the lake as opposed to
9 coming from the --

10 A. Yes, I could see how that can be construed
11 as that would be, and I need to check, because that
12 could very well be from the reservoir from where the
13 dam is placed at the lake, at Cascade Lake.

14 JUDGE WALLIS: I'm going to interrupt now
15 and say that our lease has definitely expired, and I
16 don't want to carry on any longer. I'm afraid that
17 we'll have the court reporter expire as well.

18 So I'm going to cut us off now and leave it
19 to counsel to determine the time and place for the
20 continued session, and you can decide among yourselves
21 whether you want Mr. Jones back, or whether the record
22 can stand on the basis of his testimony to this point.

23 My preference would be to resume Monday
24 or Tuesday of next week. We have a tight schedule.
25 We're probably going to have to extend the briefing

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1 date. I talked to the reporter about getting a
2 transcript by next Thursday if at all possible, and
3 that's including the examination of Mrs. Ingram.

4 So at the of resuming this hearing, we will
5 take a look at our schedule, not just for the
6 submission of briefs but for the timing of various
7 other stages.

8 I don't recall whether I asked the parties
9 if they would waive an initial order and submit this
10 directly to the Commission based on the record that we
11 have, but I would like you to consider that, and let
12 me know at the time of the ensuing hearing.

13 Is there anything else of a procedural
14 nature that we need to deal with tonight?

15 MR. GOLTZ: Your Honor, we will need to
16 consult with Ms. Ingram to work that out, so should we
17 consult by ourselves on Monday and then designate
18 among us one -- one of us to give you a call?

19 JUDGE WALLIS: Yes, please.

20 MR. LUNDGAARD: That would be fine.

21 JUDGE WALLIS: I am unavailable on Monday
22 afternoon, but other than that I don't have any other
23 conflicts. Let's be off the record, and we're in
24 recess until another time to be determined.

25 (Hearing adjourned at 6:33 p.m.)