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BEFORE THE WASHINGTON

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UTILITIES AND TRANSPORTATION COMMISSION

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In the Matter of the Penalty) DOCKET UW-140598
Assessment Against) Volume I

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WASHINGTON WATER SUPPLY, INC.)

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In the Amount of \$11,600)

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BRIEF ADJUDICATIVE PROCEEDING - VOLUME I
PAGES 1-115

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BEFORE ADMINISTRATIVE LAW JUDGE

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GREGORY KOPTA

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1:30 p.m. - 5:00 p.m.

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August 18, 2014

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Washington Utilities and Transportation Commission

Richard Hemstad Building

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300 South Evergreen Park Drive Southwest

Olympia, Washington

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DATE TAKEN: August 18, 2014

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1 JUDGE KOPTA: Then let's be on the record in
2 Docket UW-140598, captioned In the Matter of the Penalty
3 Assessment Against Washington Water Supply Inc. in the
4 amount of \$11,600.

5 I'm Gregory J. Kopta, the Administrative Law
6 Judge who will be presiding over this proceeding. And we
7 are here for the brief adjudicative proceeding that the
8 Commission gave notice of in response to Washington Water
9 Supply's request for a hearing and response to penalty
10 assessment.

11 We will begin with appearances, and let's
12 start with the company.

13 MR. ELLERBY: Yes, your Honor. Scott Ellerby,
14 counsel for Washington Water Supply, Inc. and I have with me
15 today John Poppe, the president of Washington Water Supply,
16 Inc.

17 JUDGE KOPTA: And for staff?

18 MS. CAMERON-RULKOWSKI: Here on behalf of
19 Commission staff, Jennifer Cameron-Rulkowski, Assistant
20 Attorney General.

21 JUDGE KOPTA: And since there are no other
22 parties, I'm assuming no other requests for appearances.

23 A couple of things before we start the
24 hearing itself. One is exhibits. While we were off the
25 record, we identified several different exhibits on behalf

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1 of the company.

2 And I will ask that, Mr. Ellerby, you provide
3 an exhibit list much like the one that staff provided that
4 lists all of these exhibits, and provide that shortly as
5 soon as possible after the hearing.

6 But for now, I will just identify them by
7 number which are: Exhibits JW-2, JW-3, JW-4, JW-5, JW-6,
8 JP-1, and JP-2. And the staff has agreed to the admission
9 of those exhibits and they are admitted.

10 Staff provided an exhibit list and copies of
11 exhibits, two of which the company has no objection to,
12 which is DPT-1, which is the staff investigation report
13 regarding Washington Water Supply, Inc.; and DPT-3, which is
14 Tariff No. WNU-2, Washington Water Supply, Inc. And both of
15 those exhibits are admitted.

16 The second thing is the company filed a
17 Motion for Summary Determination, and I have read the motion
18 and staff's response.

19 Commission rules do not allow for an
20 automatic reply to a response. Nevertheless, I will allow
21 that to be filed and I have considered it and I will deny
22 the motion.

23 I think the bottom line here is, while
24 ownership is an important issue, it's not dispositive. I
25 think the issue is whether the company had the authority to

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1 provide water service and whether or not they had a tariff
2 in place, which is required of all water companies providing
3 service in the State of Washington.

4 And whether or not those particular systems
5 were owned by Washington Water Supply is not determinative
6 of whether or not there has been a violation of Commission
7 rules.

8 So I also have a question in terms of
9 ownership because there seems to be information all over the
10 board about what the ownership status is, what the company
11 represented to the Commission and the Department of Health,
12 what the status is. So I am, in my own mind, unclear as to
13 exactly what the status is.

14 So we will proceed with the evidentiary
15 hearing. Right now, my focus in terms of evidence is
16 whether or not the company was operating these two water
17 systems during the 116 days in which the penalty assessment
18 was made and whether there was a tariff on file with the
19 Commission establishing rates, terms and conditions for that
20 service during that time.

21 So I will reserve admission of additional
22 evidence, including testimony, focused on those particular
23 issues, at least in terms of the violation.

24 As I understand it, you're also requesting
25 mitigation as well as contesting the violation itself. And

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1 to that I will be more liberal in terms of allowing evidence
2 in to demonstrate that the penalty amount should be reduced
3 for whatever reasons you believe are appropriate.

4 So any questions, Mr. Ellerby?

5 MR. ELLERBY: Yes, I do, your Honor. We've
6 objected to the admissibility of any testimony or
7 documentary evidence concerning the Whidbey West water
8 system.

9 If you look at the penalty assessment, the
10 document that commenced these proceedings, UW-140598, you
11 will find absolutely no mention of the Whidbey West water
12 system.

13 MS. CAMERON-RULKOWSKI: Your Honor, I'm going
14 to object, or at least I have a question. Is there a
15 motion? I'd like to understand what's going on right now.

16 MR. ELLERBY: This is part of our Motion for
17 Summary Judgment where we objected to the hearing officer's
18 consideration of any testimony or documents regarding the
19 Whidbey West water system. It's not properly part of these
20 proceedings.

21 You will not find the words "Whidbey West"
22 uttered once in the penalty assessment, so it cannot form
23 the basis of the penalty assessment.

24 It also is not part of the document entitled
25 Notices of Brief Adjudicative Proceeding. This focused only

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1 on two systems: The Silent Sky system and Bainbridge 1
2 system.

3 Therefore, the Commission that set the
4 parameters of this hearing would like to not include that
5 water system as part of these charges, part of this case.
6 And therefore, there should be no consideration of that
7 issue, either in argument or in evidence at this hearing.

8 JUDGE KOPTA: Ms. Cameron-Rulkowski?

9 MS. CAMERON-RULKOWSKI: Your Honor, we do
10 have some testimony and argument going directly to the
11 points Mr. Ellerby has just raised.

12 MR. ELLERBY: If I could respond, your Honor.
13 It's a pretty fundamental thing whether or not that issue is
14 properly part of these proceedings, and it seems to me that
15 a party of common intelligence should be able to look at the
16 document under which they were assessed a penalty to
17 understand the basis for that penalty.

18 And if the Whidbey West water system issue
19 was not part of that then it would violate any notions of
20 due process in order to allow the Commission to pursue that
21 when the Commission elected to not make that part of the
22 case.

23 So it's not part of that. It's not part of
24 the notice that established what the issues were for hearing
25 today. And so it doesn't work to just simply say, well,

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1 we'll address that in our testimony. I've moved that that
2 testimony be excluded.

3 JUDGE KOPTA: Well, I understand your point,
4 Mr. Ellerby, and I agree with you insofar as the violations
5 are concerned. I think that penalty assessment was specific
6 to the two other water systems.

7 But to the extent that you're asking for
8 mitigation of the penalty amount, I think one of the factors
9 the Commission considers is past history of the company's
10 compliance with Commission rules. And to that extent, I
11 think that how the company has dealt with other water
12 systems and other issues similar to whether they filed a
13 tariff or not is relevant in terms of determining whether or
14 not mitigation is appropriate.

15 So to that extent, I will consider whatever
16 evidence staff wants to put under that point, and you're
17 certainly welcome to argue that once the time comes.

18 MR. ELLERBY: Okay. Just in the event that
19 it expedites the process here today, your Honor, given your
20 ruling on our Motion for Summary Judgment -- and by this
21 comment, I don't mean to be argumentative. I'm not
22 accepting the correctness of the ruling, but we would be
23 willing, given the ruling, to stipulate that Washington
24 Water Supply operated the two systems at issue and that it
25 had not added those two systems to its tariff. That's a

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1 pretty basic thing and there's no sense in disputing that.

2 Facts are the facts.

3 JUDGE KOPTA: I'm glad that you are willing
4 to concede that, since I didn't see there was any room to do
5 anything else.

6 MR. ELLERBY: Well, I hope that maybe we can
7 avoid unnecessary testimony then.

8 JUDGE KOPTA: I would appreciate that myself.

9 Staff, does that influence your case, Ms.
10 Cameron-Rulkowski?

11 MS. CAMERON-RULKOWSKI: That's certainly
12 helpful. I don't have a whole lot of staff testimony. So
13 that doesn't shorten the testimony, per se.

14 But in terms of staff's case on mitigation,
15 that doesn't really change anything either.

16 JUDGE KOPTA: I understand that. And we're
17 talking about two different things. One is whether or not
18 there was a violation, and two is whether the penalty amount
19 should be reduced from what was in the penalty assessment.
20 So we're here to take testimony on either one.

21 And to my mind, the concession that
22 Washington Water Supply just made pretty much takes care of
23 the violation portion. And so we're really now focused on
24 mitigation.

25 Now, that doesn't mean that if you want to

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1 present evidence on ownership that I won't hear that,
2 because it certainly is relevant to mitigation, and to the
3 extent that you want to create an evidentiary record in case
4 you want to ask for a Commission review of a decision that
5 I've made that you would have the evidence in the record
6 already.

7 So I will not preclude you from presenting
8 testimony on the ownership of those two water systems if
9 that is your inclination.

10 MR. ELLERBY: Thank you.

11 JUDGE KOPTA: All right. Are we ready to
12 proceed?

13 MS. CAMERON-RULKOWSKI: Yes, your Honor.

14 JUDGE KOPTA: All right.

15 Staff, will you begin?

16 MS. CAMERON-RULKOWSKI: I would like to call
17 Mr. Tinnerstet.

18

19 DARREN TINNERSTET, having been first duly sworn on
20 oath, testified as follows:

21

22 DIRECT EXAMINATION

23 BY MS. CAMERON-RULKOWSKI:

24 Q Good afternoon Mr. Tinnerstet. Please state and
25 spell your name.

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1 A Darren, D-A-R-R-E-N, Tinnerstet,
2 T-I-N-N-E-R-S-T-E-T.

3 Q Please state the name of your employer.

4 A The Washington Utilities and Transportation
5 Commission.

6 Q In what position are you employed with the
7 Commission?

8 A I'm a compliance investigator in the Consumer
9 Protection and Communication Division.

10 Q And how long have you been employed in this
11 position?

12 A Approximately six months.

13 Q Please briefly describe your responsibilities as
14 they pertain to this matter.

15 A As a compliance investigator, my responsibilities
16 include investigating privately owned water companies that
17 may be out of compliance with regulations and laws enforced
18 by the Commission.

19 Q Are you familiar with Washington Water Supply,
20 Inc.?

21 A Yes.

22 Q How did you become familiar with Washington Water
23 Supply?

24 A A consumer complaint was filed in July of 2013
25 that referenced Washington Water Supply as the company that

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1 was billing customers for Silent Sky water service.

2 I was assigned to investigate whether the company had
3 violated Commission rules by failing to file a revision to
4 its tariff within 30 days of acquiring a new service area.

5 Q Thank you.

6 And did you then conduct an investigation of
7 Washington Water?

8 A Yes.

9 Q Were any other compliance investigation staff
10 involved in this investigation?

11 A Yes. Initially, a compliance investigator named
12 Lauren McCloy was assigned the case.

13 And then around December of 2013, Ms. McCloy
14 obtained a new position at the Commission and the case was
15 transferred to me in February of 2014.

16 And then I completed the investigation and
17 finalized the report in April of 2014.

18 Q And when you refer to a report, is that -- was
19 that documentation of your investigation?

20 A Yes.

21 Q And that report that you referred to, is that
22 Exhibit DPT-1?

23 A Yes, it is.

24 Q Do you know when a copy of that report was
25 provided to Washington Water Supply?

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1 MR. ELLERBY: Are you referring to DPT-3?

2 I'm sorry. You said DPT-1.

3 MS. CAMERON-RULKOWSKI: DPT-1. That's the
4 staff investigation report.

5 MR. ELLERBY: Thank you. I'm sorry.

6 Q (By Ms. Cameron-Rulkowski) Mr. Tinnerstet, I had
7 asked if you knew when a copy of the investigation report
8 was provided to Washington Water Supply?

9 A Yes. It was April 16, 2014, via e-mail from
10 Commission staff, and then the company also received it via
11 certified mail on April 19 of 2014.

12 Q And now I have a question regarding one of the
13 attachments in the investigation report. This is Attachment
14 G, and this is pages 21 to 26. How did you come into
15 possession of these documents?

16 A I printed these documents from the Department of
17 Health's Office of Drinking Water website.

18 I printed the Silent Sky one on April 8 of 2014.

19 And the Bainbridge 1 document on April 10 of 2014.

20 Q Thank you.

21 And have you checked these records online since
22 you printed them last April?

23 A I have. Just one link.

24 Q And have they changed in any way?

25 A They have not.

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1 Q Now, I'll ask you to please direct your attention
2 to Exhibit No. DPT-2. Please identify Exhibit No. DPT-2.

3 MR. ELLERBY: Your Honor, I'm objecting at
4 this time to any testimony or effort to introduce DPT-2 into
5 the record.

6 This is the first time I've seen this
7 document, your Honor, and my concern is that we, my client,
8 Washington Water Supply, Inc., served a Public Records Act
9 request on the Commission in May, on May 12, wherein we
10 specifically asked for all internal staff memos, notes,
11 e-mails, or other communications of any kind concerning
12 Washington Water Supply.

13 I've brought with me today all of the
14 documents produced by the Commission. And this document
15 concerning Washington Water Supply, which I believe falls
16 well within the scope of the Public Records Act request, was
17 not provided; therefore, should not be admitted now, given
18 its -- the Commission's earlier decision to withhold it.

19 It was also, I would point out, not listed in
20 the privilege log submitted to me by the Commission. So.

21 MS. CAMERON-RULKOWSKI: Your Honor, I think
22 these are two different proceedings. I did not personally
23 work on that public records request. But I suspect that if
24 it wasn't provided and it was not in a privilege log, that
25 it was an oversight. And there was certainly no intent to

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1 withhold it and we're certainly offering it now as open and
2 as public as we can.

3 JUDGE KOPTA: And was this provided to the
4 company prior to today?

5 MS. CAMERON-RULKOWSKI: We were not required
6 to provide exhibits, and so we did not provide the actual
7 exhibits. But we certainly provided a list. And we
8 provided -- we described the exhibit in the same way that
9 it's described on the exhibit list that we all have in front
10 of us from staff.

11 And I was not asked to provide copies of
12 exhibits by Washington Water.

13 JUDGE KOPTA: And what is your purpose for
14 having this be part of the record in this proceeding?

15 MS. CAMERON-RULKOWSKI: This document, in the
16 investigation report, Mr. Tinnerstet reports how it is that
17 this investigation got started.

18 And this particular complaint is the genesis
19 of the investigation. And it also -- I think the other
20 purpose is one of the questions that we have is: Just how
21 long was Washington Water Supply operating these two water
22 systems?

23 And there's some indication of a period of
24 years in the comments from the customer here but, primarily,
25 this is provided as background to round out the record.

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1 JUDGE KOPTA: Okay. Well, we have Mr.
2 Tinnerstet's testimony that he -- that the Commission
3 investigation was initiated by a customer complaint.

4 My concern is two-fold. While I agree that,
5 as a public records request, it isn't the same as if this
6 document were not provided during discovery. Still, this is
7 a brief adjudicative proceeding and I don't know that it's
8 appropriate to use a document that the company has not seen
9 and could not readily have obtained before today.

10 The other concern I have is, as I look at
11 this, there is far more information here than having to do
12 with when the company began operating these two water
13 systems. And I think as I look at this that the potential
14 prejudice of that information is -- outweighs the probative
15 value of the document.

16 So I will sustain the objection.

17 MS. CAMERON-RULKOWSKI: May I make a brief
18 comment?

19 JUDGE KOPTA: You may.

20 MS. CAMERON-RULKOWSKI: It may be water under
21 the bridge at this point, but had I been asked by Washington
22 Water to provide exhibits, I certainly would have.

23 JUDGE KOPTA: And I appreciate that. I'm not
24 alleging or concluding any wrongdoing by anyone. I'm just
25 talking about where we are today.

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1 MS. CAMERON-RULKOWSKI: Thank you, your
2 Honor.

3 JUDGE KOPTA: All right. Please proceed with
4 your examination of Mr. Tinnerstet.

5 MS. CAMERON-RULKOWSKI: Thank you, your
6 Honor.

7 Q (By Ms. Cameron-Rulkowski) As part of your
8 investigation of Washington Water Supply, did you review the
9 company's tariff on file at the time with the Commission?

10 A Yes.

11 Q And is Exhibit No. DPT-3 a true and correct copy
12 of the Washington Water Supply tariff that was on file with
13 the Commission at the time of your investigation?

14 A Yes.

15 Q Now, I want to ask you about the calculation of
16 the penalty. The penalty that you ultimately recommended in
17 the investigation report and that was assessed is \$11,600.
18 Which rules are at issue in your recommended penalty?

19 A There's two. WAC 480-110-433, which requires
20 water companies to file revisions to its tariff within 30
21 days of acquiring a new service area; and also WAC
22 480-143-120, which requires that the water companies cannot
23 transfer property unless the company first applies for and
24 obtains Commission approval.

25 Q And which water systems are at issue in your

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1 recommended penalty?

2 A There would be three: Silent Sky, Bainbridge 1
3 and Whidbey West.

4 MR. ELLERBY: Your Honor, can I have a
5 continuing objection. I know you've already ruled on the
6 mitigation issue, but could I have a continuing objection
7 with references to Whidbey West?

8 JUDGE KOPTA: Yes.

9 MS. CAMERON-RULKOWSKI: May I respond to the
10 objection?

11 JUDGE KOPTA: It's the same objection that he
12 made before. He's simply reiterating it, and my ruling is
13 the same.

14 MS. CAMERON-RULKOWSKI: Thank you, your
15 Honor.

16 Q (By Ms. Cameron-Rulkowski) How did you determine
17 the amount of the penalty?

18 A Using the enforcement period of September 6, 2013,
19 which was the date the company was put on notice for
20 noncompliance, through December 31 of 2013, a penalty of per
21 day for 116 days comes to 11,600.

22 This represents one violation for each day the
23 company was aware that it was required to update their
24 tariff, to reflect the two newly acquired water systems and
25 also file an application for transfer of property.

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1 Q So does the -- from what you just said, does that
2 mean the penalty encompasses the rule violations associated
3 with all three water systems?

4 A Yes.

5 Q If, since the Commission is not considering the
6 Whidbey West violations to be a basis -- to be an
7 independent basis of the penalty, would your recommendation
8 with regard to the amount of the penalty change?

9 MR. ELLERBY: I object your Honor. That
10 mischaracterizes the witness's testimony.

11 JUDGE KOPTA: Why don't you rephrase that
12 question.

13 Q (By Ms. Cameron-Rulkowski) If the Whidbey West
14 violations are not a basis of the penalty -- well, given
15 that the Whidbey West violations are not a basis of the
16 penalty, based on Judge Kopta's earlier comments, does your
17 recommendation with regard to the amount of the penalty
18 change?

19 A No. The penalty is based on the enforcement
20 period of September 6 through December 31 of 2013, which is
21 116 days.

22 Staff recommended the penalty assessment based on
23 one violation per day per each of the -- for each day of the
24 noncompliance of all three systems. This was opposed to a
25 more severe penalty of three violations per day or one for

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1 each system, which could have pushed it up to 348 violations
2 and a penalty of 34,800, if we would have gone that route.

3 MS. CAMERON-RULKOWSKI: Thank you.

4 I have no further questions for Mr.
5 Tinnerstet at this time.

6 JUDGE KOPTA: Mr. Ellerby?

7

8 CROSS-EXAMINATION

9 BY MR. ELLERBY:

10 Q Mr. Tinnerstet, can you turn to page 7 of your
11 report? I'm looking at the paragraph kind of the middle of
12 page 7 where it starts with "Staff also finds". Do you see
13 that, in the page numbers are at the bottom right corner,
14 page 7, "Staff also finds that the company violated WAC
15 480"?

16 MS. CAMERON-RULKOWSKI: I believe it's
17 page 8.

18 THE WITNESS: Yes, I'm not seeing that on
19 page 7.

20 MR. ELLERBY: Well, your Honor, I guess I
21 have an issue, then, with the exhibit that has been offered
22 that I stipulated, because I thought it was the same one
23 that my client had received, but apparently it's different
24 than the one my client received.

25 Go ahead.

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1 MS. CAMERON-RULKOWSKI: It is the same, and
2 the page numbers have only changed because when we prepared
3 the exhibit, the title page received page 1, received the
4 number page 1, and before that didn't -- I think that didn't
5 have a page number. At any rate, it's the same document.

6 MR. ELLERBY: So other than the title page
7 getting its own page number, everything else is identical.

8 MS. CAMERON-RULKOWSKI: At any rate,
9 everything is identical. It's the same document.

10 MR. ELLERBY: Okay. So if I'm referring to
11 page 7, it's actually page 8, then.

12 Q (By Mr. Ellerby) Okay. So if you look at page 8,
13 middle paragraph that starts "Staff also finds"?

14 A Yes.

15 Q Okay. And if you go down a little more than
16 halfway through that paragraph it says (as read), "On
17 September 5, 2013, the Commission received a letter from Mr.
18 Poppe containing a list of the systems currently owned by
19 Washington Water Supply, Inc. This letter did not
20 constitute a filing". Do you see that?

21 A Yes.

22 Q Were you primarily interested in which water
23 systems were owned by Washington Water Supply?

24 A Yes.

25 Q Okay. So ownership was the criteria that you were

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1 investigating?

2 A I -- no. I don't think that's --

3 Q What other criteria besides ownership --

4 A The focus of the investigation was to figure out,
5 get the tariff correct and all the systems correct as far as
6 -- I don't -- the term "ownership", I'm not --

7 Q Well, if you go down to the next paragraph, it
8 starts, "As of December 31, 2013." Do you see that?

9 A Yes.

10 Q The company continued to own and operate two water
11 systems that do not appear in its tariff?

12 A Mm-hm.

13 Q Okay. So you were distinguishing between
14 ownership and operations in that paragraph, correct?

15 That's a yes-or-no question.

16 A You're going -- can you repeat the question?

17 To distinguish between the two, I don't --

18 Q Well, you used both terms, own and operate?

19 A Mm-hm.

20 Q So there's a difference between those two terms,
21 correct?

22 Otherwise, why use both terms if they're defining
23 the same thing?

24 They were different in your mind when you wrote
25 this report, correct?

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1 A No. They were the same.

2 Q So "own" and "operate" meant the same thing in
3 your mind in April of 2014, when you prepared this report?

4 A Yes.

5 Q Do you typically use redundant terms right after
6 the other when you prepare reports?

7 A No.

8 Q But you did in this case?

9 A No.

10 Q So you're saying that own and operate is not
11 redundant in this case?

12 A It's not redundant. They mean kind of the same
13 thing. So it wasn't a trick to try to slip a word in there.
14 It was just stating a fact.

15 Q So they kind of mean the same thing but not really
16 the same thing, right, because if they meant the same thing,
17 you'd only need to use one term?

18 A I suppose you could use one term, but I didn't.

19 Q You didn't?

20 A Yeah.

21 Q Are you aware of any regulated water companies in
22 this state that have management contracts to operate water
23 systems?

24 A I am not.

25 Q You don't know --

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1 A I don't know.

2 Q Is that legal?

3 A I don't know.

4 Q So you don't know whether, if a regulated water
5 company in Washington State has a contract with the
6 customers or owner of a system to operate it, whether that
7 water company would have to add that system to its tariff?

8 MS. CAMERON-RULKOWSKI: I'm going to object
9 at this time. Washington Water has already stipulated to
10 operating the two systems, and the Judge has already made a
11 ruling concerning ownership. And I'm not sure where this is
12 going.

13 JUDGE KOPTA: Mr. Ellerby?

14 MR. ELLERBY: Yes. Your Honor, I think you
15 already said that the issue, I think, is still on the table
16 for mitigation.

17 I'm allowed to create a record here for
18 future proceedings in this matter, and I think I'm entitled
19 to have the Commission's investigating employee testify
20 about what difference in his mind or in his understanding at
21 the Commission level, what difference there is between
22 ownership and operation.

23 It's my understanding that regulated water
24 companies can have management contracts to operate systems
25 that they don't own and that are not added to their tariff,

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1 and I think I'm just simply trying to explore that to create
2 a record.

3 JUDGE KOPTA: Well, rather than asking his
4 legal opinion, we're straying into -- I recognize that we do
5 that a little bit here, but I think asking for his
6 familiarity, whether he's aware that that is something that
7 the Commission has allowed or otherwise approved is
8 appropriate.

9 But asking him whether that is something that
10 is lawful, I think is crossing the line.

11 So I will allow you to rephrase your question
12 if you still want to go down that road.

13 MR. ELLERBY: Sure.

14 Q (By Mr. Ellerby) Mr. Tinnerstet, are you aware of
15 situations where regulated water companies in this State
16 operate water systems under a management contract that they
17 don't own?

18 A Yes.

19 Q And are those companies -- you've given us the WAC
20 sections that you relied on in finding violations. So
21 you're familiar with the WACs that apply to regulate water
22 companies, correct?

23 A Yeah. In general, yeah.

24 Q So given your understanding of the rules that the
25 Commission wrote, is it unlawful for a regulated water

0028

1 company to operate a system under a management contract and
2 not add that system to its tariff?

3 MS. CAMERON-RULKOWSKI: Your Honor, I am
4 going to object again. I believe he's also asking here for
5 a legal analysis.

6 JUDGE KOPTA: I'm going to sustain that one.
7 That's more or less what I was trying to keep you from doing
8 the first time.

9 Q (By Mr. Ellerby) Well, let me see if I can build a
10 better question here.

11 You concluded in your report, did you not, that
12 Washington Water Supply violated the WACs by not adding
13 either the Bainbridge 1 system or Silent Sky system to its
14 tariff, correct?

15 A Yes.

16 Q And did Washington Water Supply also have a duty
17 to receive Commission approval to own those two systems?

18 A I would have to review the actual WAC for that
19 that you're referring to on that in order to answer your
20 question.

21 Q Well, were you aware that other staff members with
22 the Commission communicated to Mr. Poppe that Washington
23 Water Supply needed to obtain Commission approval to acquire
24 either the Bainbridge 1 or the Silent Sky systems?

25 A Can you rephrase the question, please.

0029

1 Q Are you aware of whether anyone else at the
2 Commission took the position that Washington Water Supply
3 had had an obligation to obtain Commission approval to own
4 the Bainbridge 1 system or the Silent Sky system?

5 A I don't know.

6 Q Let me direct you back, then, again to page 8, and
7 that longest paragraph we were looking at there, the one
8 that starts with "Staff also finds." Are you there?

9 A Yes.

10 Q If you go down again to about the middle of that
11 paragraph, it says (as read), "Mr. Ward provided Mr. Poppe
12 with instructions for filing a tariff revision and applying
13 for a transfer of property."

14 What transfer of property are we talking about, or
15 were you talking about in your report?

16 A That -- I believe that refers to the transfer of
17 the property for Whidbey West.

18 Q Which doesn't have anything to do with Bainbridge
19 1 or Silent Sky systems?

20 A No.

21 Q So it's your testimony, then, that Washington
22 Water Supply did not need to obtain Commission approval to
23 own either of those systems?

24 A No.

25 Q Okay.

0030

1 A I don't understand.

2 Q So it's your view, then, that Washington Water
3 Supply did need to obtain Commission approval to own those
4 two systems? It's either one or the other?

5 A It is. But that I thought we covered this. So
6 can you ask the question again?

7 Q Yes. Did Washington Water Supply need to obtain
8 Commission approval to own either the Bainbridge 1 system or
9 the Silent Sky system?

10 A I'm going to have to answer your question kind of
11 deferring a little bit. There's probably people that are a
12 lot more qualified than me to answer the approval process
13 that goes through on that side. That's really not something
14 as an investigator that is something that on a daily basis
15 -- or even falls under something I would handle. There's
16 other people more qualified that could answer that question.

17 And so I guess that's not a yes-or-no question,
18 but that's the answer that is the honest, best answer I can
19 give you.

20 Q So you don't know?

21 A Okay.

22 Q So you only have to get approval for a transfer if
23 you're selling the system and not acquiring it?

24 A Do you want me to repeat the same answer? I
25 don't --

0031

1 Q I'll accept the same answer as before.

2 A Okay.

3 Q So your testimony today is that when you talked
4 about Washington Water Supply applying for a transfer of
5 property, that only had to do with Whidbey West?

6 A I believe it did in this situation, yes.

7 Q Are you aware that, long before the date of your
8 report, April 2014, Mr. Poppe had had numerous conversations
9 with Mr. Ward that Washington Water Supply did not own
10 either the Bainbridge 1 or the Silent Sky systems?

11 A I knew there was some communication between them
12 before. As far as all the substance involved in it, no. I
13 can't verbatim tell what you they discussed.

14 Q But do you know as you sit here today whether
15 Washington Water Supply owned in a legal sense either the
16 Bainbridge 1 or Silent Sky systems?

17 A It was my understanding that -- and there, again,
18 you're asking in a legal sense, I don't -- I can't give you
19 a legal opinion.

20 But in a -- it's my understanding from, as far as
21 records and dealing with either the recorder's office or
22 assessor's office, that, no, they did not.

23 Q And do you know when that information was known by
24 the UTC?

25 A I don't know. I don't want to speculate.

0032

1 Q Did you know that when you issued this report in
2 April?

3 A Can you -- I don't know what that means.

4 Q I think you just testified that Washington Water
5 Supply did not own the two systems. You said that there was
6 nothing of record.

7 So I'm asking: Did you know that when you issued
8 this report in April of 2014?

9 A I believe I did. I don't know. It was -- I did
10 know. Actually, I did know that it was -- I did know that
11 the ownership of it was in question, so to speak.

12 Q Well, it was more than in question, wasn't it?

13 Mr. Poppe clarified that he had never received any
14 bill of sale because the people who owned the systems had no
15 record of their own ownership; is that your understanding?

16 MS. CAMERON-RULKOWSKI: Objection, your
17 Honor. Counsel is testifying.

18 MR. ELLERBY: I'm cross-examining, your
19 Honor.

20 MS. CAMERON-RULKOWSKI: Can you rephrase?

21 MR. ELLERBY: I think that's a fair
22 cross-examination question, whether the witness is aware
23 that that information was known in the UTC long before April
24 of 2014.

25 JUDGE KOPTA: I will allow the question.

0033

1 Q (By Mr. Ellerby) I'm just curious, Mr.
2 Tinnerstet, why, when we have other documents showing that
3 the UTC was well aware that Washington Water Supply had
4 never received title to these systems, that fact isn't
5 mentioned in your report?

6 A It was not intentionally left out of it. The
7 issues at hand with this investigation dealt with the
8 specific period and was dealing with information that Mr.
9 Poppe and the company provided to the Commission.

10 Q But why focus on a period that ended three to four
11 months before your report?

12 Why not include all the information that comes to
13 light before you issue your report?

14 Were you instructed to cut off your evaluation,
15 your investigation as of December 31, and not look at
16 anything that happened after that?

17 A I don't know if I was instructed. That was before
18 my time of employment here at the Commission, that date. So
19 I can't really speak to what happened around the time when I
20 wasn't here. So I don't really know how to answer your
21 question.

22 Q So that would be better answered by -- was it
23 Lauren McCloy?

24 A Yes.

25 Q So you don't know. You started when?

0034

1 A In February 2014.

2 Q Okay. Well, are you aware that, before February
3 of 2014, Mr. Poppe had clarified on numerous occasions that
4 Washington Water Supply did not own those two systems?

5 A I had seen a couple e-mails. I was aware that it
6 was an argument that was being made, but as far as whether
7 it was proven or -- and I also, based on my investigation,
8 was going off the documents that the company and Mr. Poppe
9 provided to us as part of the investigation saying that he
10 did own it.

11 Q You said that you looked into ownership. You
12 looked at like recordings?

13 A I just did some background investigation, digging
14 around, yes, but there was not a lot to find.

15 Q Could you show me where in your report you address
16 what other sources you looked at, the other "digging" you
17 just mentioned?

18 A I don't believe there's any other mention in here
19 because I don't believe it pertained to the investigation
20 and the violations that were found in that time period.

21 Q Did you prepare any notes or other writings prior
22 to your preparation of your April 2014 report? You know,
23 notes, memos, telephone messages, copies of reports that you
24 obtained, that sort of thing?

25 A There's some, yes. But all the pertinent

0035

1 information that the report was based off was included in
2 the report or attached to it.

3 Q But there were things that you collected or looked
4 at that were not attached to the report, correct?

5 A It's possible, yeah. If it didn't -- wouldn't
6 fall under the scope or it just didn't, you know, there was
7 no reason for it to be in the report, then it wouldn't be in
8 there. I have probably some notes.

9 Q Okay. So if you talked to somebody on the
10 telephone, you would keep a contemporaneous record of that?

11 A Yes.

12 Q Were you contacted by anyone with respect to
13 Washington Water Supply's Public Records Act request?

14 A I was not.

15 Q And you have no idea of what information was
16 produced by the Commission in response to the Public Records
17 Act request?

18 A Can you rephrase the question?

19 Q Would it be fair to say that you're not aware of
20 what documents were produced by the Commission in response
21 to Washington Water Supply's Public Records Act request?

22 A No, I wasn't involved in that.

23 Q Do you know, did you look into the Commission's
24 response to the customer complaint that you testified about
25 earlier?

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1 A I did not.

2 Q So you don't know how that issue was resolved?

3 A I do, know.

4 Q You don't know that it was resolved in the
5 company's favor?

6 A Like I said, I didn't know how it turned out, so,
7 no.

8 Q Were you aware of any other water quality or
9 service deficiencies committed by Washington Water Supply?

10 A No.

11 Q You had no basis to believe that Washington Water
12 Supply was not a competent, responsive operator --

13 A No.

14 Q -- when you received this file from Lauren McCloy?

15 A Yes.

16 Q Okay. What did you receive from her when you took
17 over?

18 A Just her working papers, her initial parts of her
19 investigation, a draft of her investigation, or the
20 investigation, and that was pretty much it.

21 Q Do you recall how thick a file it was,
22 approximately how many pages?

23 A I could speculate, but just a regular accordion
24 file similar to -- maybe not even that big. Smaller.

25 Q But it was more pages than what we have now in

0037

1 your April 2014 report?

2 A Yes.

3 Q You testified earlier that Washington Water Supply
4 had a duty to add those two systems to its tariff within 30
5 days of acquiring them?

6 A Yes.

7 Q And what does "acquiring" mean?

8 A Without a dictionary in front of me, I can read
9 the WAC definition or what's --

10 Q What WAC are you referring to?

11 A Actually, it doesn't have a definition. The one I
12 have is 481-10-433.

13 Q And that's the one that the penalty is based on?

14 A Correct.

15 Q (As read) "A water company must file revisions to
16 its filed tariff within 30 days of its acquisition of new
17 service area whether by acquisition of another regulated
18 water company or by acquiring one or more previously
19 unregulated water systems."

20 Did I read that correctly?

21 A Yes.

22 Q In your recommendation that there was a violation
23 of that WAC, did you have any understanding of the meaning
24 of "acquisition" as used in that WAC rule other than kind of
25 a common lay person's understanding of that term?

0038

1 A Yeah. I just used it as kind of as it was
2 written, you know, and based it on the information that was
3 provided by the company and Mr. Poppe.

4 Q Okay. And based on the information that you were
5 aware was provided by Mr. Poppe, he represented that he
6 owned the systems, correct?

7 A Yes.

8 Q Okay. So it was your kind of operating
9 understanding that if he owned the systems, he had acquired
10 them, correct?

11 A Yes.

12 Q Any other meaning of the word "acquisition" to
13 your knowledge?

14 A No.

15 Q And the Commission doesn't have any other
16 definition and usage that you're aware of?

17 A I can't answer that. I don't know.

18 Q And it's not a defined term in the WAC, correct?

19 A Not in this specific WAC.

20 As far as if it's in another WAC or defined
21 somewhere else, I don't know that answer.

22 Q Did you, or to your knowledge Ms. McCloy,
23 communicate with either the Kitsap Public Utility District
24 or the Kitsap County Health Department regarding Washington
25 Water Supply's ownership or operation of the two systems

0039

1 we've been talking about?

2 A As for Ms. McCloy, I can't answer that. I don't
3 know.

4 But I did have a couple conversations or I believe
5 one or two conversation with both of those departments, yes.

6 Q And which one do you recall you talked to? You
7 talked to both?

8 A Yes. Yes.

9 Q And what did they tell you?

10 A Just general -- I just contacted them as part of
11 my investigation to see -- I believe -- and this was where I
12 get -- I don't know exactly which one. I can't remember now
13 exactly which one. I believe it was the Kitsap Public
14 Utility District.

15 I was just doing some background work to see about
16 trying to trace the ownership back to where the chain might
17 have broken somewhere along the line, back. I didn't get
18 any useful, really, information out of them.

19 Q Well, didn't the people at the PUD tell you that
20 it was their understanding that there was no chain of
21 ownership that could then be transferred to Mr. --

22 A That's what I just said, yes.

23 Q -- Poppe?

24 So if there was no chain of ownership, Washington Water
25 Supply couldn't have acquired the two systems, correct?

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1 A Other than he told us that he acquired them.

2 Q Right. But I think we've already established that
3 he corrected that in December and January, December of 2013
4 and January 2014. You weren't aware that he had corrected
5 that?

6 A Corrected what?

7 Q Corrected the fact that he was mistaken when he
8 said that Washington Water Supply owned the two systems?

9 A At that point, if it was after the enforcement
10 period of December 31, 2013, then no, it would have had no
11 bearing on this investigation.

12 Q Okay. So December 31, 2013, is a bright line
13 cutoff. Anything that happened after that date is just not
14 relevant, correct?

15 A I wouldn't say anything is not relevant. That's
16 kind of a generalization, but, no, that was the cutoff date
17 for this investigation, for the enforcement period.

18 Q Did the Kitsap County Health Department tell you
19 that they owned the two systems?

20 MS. CAMERON-RULKOWSKI: Excuse me. What's
21 the foundation for this?

22 MR. ELLERBY: He said that he talked to both
23 the public utility district and the health department, and
24 I'm asking him --

25 Q (By Mr. Ellerby) Did the health department tell

0041

1 you that they owned the two systems? That's a yes or no.

2 A Not to my recollection. No, they did not tell me
3 that they owned them.

4 Q I'm looking at the document entitled Notice of
5 Brief Adjudicative Proceeding. I don't know if you have
6 that in front you, but I'll read it to you.

7 In paragraph 2, it says (as read), "On May 2,
8 2014, Washington Water Supply Water filed with the
9 Commission a request for hearing stating that the two water
10 systems, Silent Sky and Bainbridge 1, are Class B systems
11 that are owned and operated by Kitsap County Health
12 Department."

13 So my question to you is: Do you know where that
14 information came from?

15 A I don't know what document you're referring to.
16 So I can't really.

17 Q I'll just show you my copy, and the Judge and
18 Counsel have their own.

19 Paragraph No. 2 there. Have you ever seen that
20 information anywhere in your investigation of this case?

21 A I didn't write this. So I don't know. In fact,
22 the only conversation -- I have had a conversation with
23 staff about Class B systems in general and that they are --
24 fall under certain things.

25 And there, again, I'm not the expert when it comes

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1 to the regulatory side of things. So there's other more
2 qualified people that can speak to that.

3 But it was my understanding that they dealt with
4 -- the Kitsap County Health Department dealt with water
5 quality issues and those types of things; whereas the
6 Commission regulation fell under rates, services, customer
7 complaints and those types of things.

8 But as far as water quality -- and there was
9 another one and I can't remember what it is off the top of
10 my head. Like I said, that's not an area I typically delve
11 into. That's my understanding of that, but I didn't draft
12 that.

13 Q So you don't know where that came from, that the
14 Health Department owned those two systems?

15 A I don't.

16 Q They didn't tell you that and the PUD didn't tell
17 you that they owned the systems, correct?

18 A Not to my recollection, no.

19 Q And did they indicate that they were interested in
20 acquiring them?

21 A I believe they -- there again, I don't know the
22 exact terminology on it, but I believe we had a brief
23 discussion about that there had been some discussions
24 between them and Mr. Poppe about possibly obtaining it. But
25 I wasn't privy to those conversations and so I never saw or

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1 can't testify to what people said.

2 Q Okay. Did the PUD tell that you any of those
3 conversations occurred before December 31, 2014?

4 A Not to my recollection, no.

5 Q Do you think they happened after that date?

6 A I have no idea.

7 Q So if they had happened before that date, they
8 should have been in your report, correct?

9 A Can you restate the question?

10 Q If the PUD had told you that they had concluded
11 that Mr. Poppe didn't own the systems, that there was a
12 break in the chain of title, as you've testified to, and
13 that they were interested in acquiring them, if that
14 conversation with you took place before -- well, you didn't
15 start --

16 A I didn't start.

17 Q You didn't start until February?

18 A Yeah.

19 Q And they didn't indicate to you that that was
20 their understanding back in December?

21 A No. Not to my recollection, no.

22 Q And you don't remember what time frame that --
23 their discussion occurred in, their evaluation of these two
24 systems, their research on chain of title?

25 A No, because it was more in generalities, just

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1 talking about the systems in general. There wasn't much as
2 far as dates or on such and such dates. There was nothing
3 that substantive.

4 Q But they did tell that you Mr. Poppe didn't own
5 the systems?

6 A Who are we talking about?

7 Q The PUD?

8 A The PUD? Yes. I believe that did come up in the
9 discussion, yes.

10 Q Okay. And we've established that you didn't
11 include that in your report, right?

12 A Yes.

13 Q Thank you.

14 JUDGE KOPTA: Are you finished with your
15 questioning for now?

16 MR. ELLERBY: Yes, I'm all done. Thank you.

17 JUDGE KOPTA: Redirect?

18 MS. CAMERON-RULKOWSKI: No redirect, your
19 Honor.

20 JUDGE KOPTA: Thank you, Mr. Tinnerstet. You
21 may step down.

22 Our next witness?

23 MS. CAMERON-RULKOWSKI: Yes, your Honor.

24 Staff would like to call Jim Ward.

25

0045

1 JIM WARD, having been first duly sworn on oath,
2 testified as follows:

3

4 DIRECT EXAMINATION

5 BY MS. CAMERON-RULKOWSKI:

6 Q Good afternoon, Mr. Ward.

7 A Good afternoon.

8 Q Please state your name for the record.

9 A Jim Ward.

10 Q Please state the name of your employer.

11 A Utilities and Transportation Commission.

12 Q In what section of the Commission do you work?

13 A I work in the solid wastewater section of
14 regulatory services.

15 Q And in what position are you employed by the
16 Commission?

17 A I'm a regulatory analyst.

18 Q How long have you been employed in this
19 Commission?

20 A In total, with different labels and titles, 25
21 years.

22 Q Please briefly describe your responsibilities as
23 they pertain to this matter.

24 A In this matter, I was brought in to start the
25 questioning and the review of was this part of a company's

0046

1 water tariff and, if not, what could be done to make it part
2 of the water company tariff.

3 Q Are you familiar with Washington Water Supply,
4 Inc.?

5 A Yes, I am.

6 Q How did you become familiar with Washington Water
7 Supply, Inc.?

8 A In this case, approximately July of last year,
9 2013, I was asked about a water tariff issue, if a company
10 had certain water systems listed in its tariff.

11 Q And are you indicating that you had -- that you
12 had previously been familiar with the company?

13 A Yes. Since approximately about 1993, on and off
14 with Washington Water Supply, Inc. Yes.

15 Q And have you read the staff investigation report
16 which is marked as Exhibit DPT-1?

17 A Yes, I have.

18 Q Are you the same Jim Ward who is referred to in
19 the investigation report?

20 A Yes, I am.

21 Q Pleases direct your attention to what is been
22 marked as Exhibit No. JW-1.

23 A Yes.

24 Q Please identify this exhibit.

25 A This exhibit is a declaration with attachments to

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1 go with that.

2 MR. ELLERBY: Your Honor, before we get into
3 too much detail about this, I'd like to state an objection.

4 Mr. Ward is here testifying as a live
5 witness. I don't think it's necessary or appropriate to
6 essentially give him a list of leading questions or to allow
7 him to testify by declaration in addition to his live
8 testimony. So I'll move to exclude the admission of Exhibit
9 JW-1.

10 JUDGE KOPTA: Mr. Ellerby, at the Commission
11 we have a standard practice of allowing prefiled testimony.
12 And I view this declaration as essentially that same thing.
13 It makes it easier. It expedites the process. I don't see
14 any need to have staff walk through everything he said in
15 his declaration. That's why we do this.

16 So if that's the basis of your objection, it
17 will be overruled.

18 MR. ELLERBY: I will also state for the
19 record that today, five minutes before the hearing began, is
20 the first time I've seen this document. So thank you.

21 Q (By Ms. Cameron-Rulkowski) Is Exhibit No. JW-1 a
22 true and correct copy of the declaration that you just
23 identified?

24 A Yes, it is.

25 Q And I'm turning to the last page of the

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1 declaration before the attachments, and that appears to be
2 your signature. Is, indeed, that your signature?

3 A Yes, it is my signature.

4 Q Has anything in your declaration changed before
5 you signed -- since you signed the declaration?

6 A No, nothing has.

7 MS. CAMERON-RULKOWSKI: I offer for admission
8 Exhibit No. JW-1.

9 MR. ELLERBY: Your Honor, I would also note
10 that there's a fair amount in JW-1 involving testimony
11 concerning the Whidbey West water system. And I don't mean
12 to beat a horse if it's dead, so I'll just simply state that
13 objection for the record.

14 JUDGE KOPTA: Very well. I will consider it
15 as I explained earlier. And if you have no other objection,
16 then that document is admitted.

17 MS. CAMERON-RULKOWSKI: Thank you, your
18 Honor. I have no further questions at this time for
19 Mr. Ward.

20 JUDGE KOPTA: Mr. Ellerby, it's about time
21 for our afternoon break. I will allow you to have some time
22 to take a look at this --

23 MR. ELLERBY: Thank you.

24 JUDGE KOPTA: -- just as if you had heard the
25 testimony live.

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1 I will note that we are here until 5:00, to
2 keep that in mind in terms of your questions and also the
3 witnesses that you would like to have testify.

4 So it's almost 3:00. Let's be back by 3:15
5 by the clock in this room.

6 JUDGE KOPTA: Off the record.

7 (Recess.)

8 JUDGE KOPTA: Let's be back on the record.

9 We're back on the record after our afternoon recess.

10 Mr. Ward has finished his direct testimony.

11 Mr. Ellerby, do you have cross-examination?

12 MR. ELLERBY: Thank you, your Honor.

13

14 CROSS-EXAMINATION

15 BY MR. ELLERBY:

16 Q Mr. Ward, were you involved in any way in the UTC
17 production of records in response to Washington Water
18 Supply's Public Records Act request?

19 A Yes.

20 Q And what was your involvement?

21 A To gather up the records that I had that met the
22 requirements and forward those on to the records center for
23 review.

24 Q And did you do that?

25 A Yes, I did.

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1 Q And in the records that you gathered to send to
2 the records center for production, were there staff notes,
3 memos, telephone memoranda that had been prepared by Ms.
4 McCloy?

5 A Not as part of my records, no.

6 Q Okay. So you were only responsible for reviewing
7 and gathering your own personal records, not the records of
8 other staff employees?

9 A Yes.

10 MS. CAMERON-RULKOWSKI: Your Honor, I am
11 going to object. These are questions that have to do with
12 request for public record and not necessarily with the
13 penalty assessment.

14 JUDGE KOPTA: Well, I will give Mr. Ellerby a
15 little latitude to ask these questions, but not much more.

16 MR. ELLERBY: Well, if I could just explain,
17 your Honor. We've heard testimony from Mr. Tinnerstet that
18 he succeeded Ms. McCloy in her investigation of Washington
19 Water Supply. And he testified that she had working notes
20 and other papers that were not part of his report and I'll
21 represent to the Court were not -- to the Administrative Law
22 Judge were not produced by the UTC. And I think I'm
23 entitled to know what records there may be that might be
24 relevant to these proceedings.

25 JUDGE KOPTA: Well, you're certainly entitled

0051

1 to ask Mr. Ward what information he provided that was in
2 turn passed along to you. I have no problem with that.

3 But as I say, you know, that's -- I believe
4 he just testified that he sent along his own records and not
5 anyone else's.

6 Q (By Mr. Ellerby) And that's correct, right, that's
7 your answer, that you just provided your own records, not
8 anyone else's?

9 A Yes, that's correct.

10 Q But did your own records not have copies of
11 documents that had been produced or generated by other
12 Commission staff?

13 A For the most part, no, it did not.

14 Q You said "for the most part." Were there
15 exceptions?

16 A If there was, they were included in my records
17 that were passed on to the records center.

18 Q Did you ever see any papers, notes, memoranda,
19 documents of any kind that had been generated, produced by
20 Ms. McCloy?

21 A No, I did not.

22 Q Do you know if any of the records you produced
23 were withheld from production, ultimately?

24 A Not to my knowledge.

25 Q Okay. One of the documents withheld, according to

0052

1 the disclosure of the log of documents, --

2 MS. CAMERON-RULKOWSKI: Your Honor, I'm going
3 to object. Again, we're talking about the request for
4 public records and the proceeding here has to do with the
5 penalty assessment.

6 MR. ELLERBY: If I could finish the question,
7 I think the reason for the question will be obvious.

8 Q (By Mr. Ellerby) One of the documents withheld is
9 an e-mail that you sent to Gene Eckhardt with attached notes
10 in the recommendation. Do you know why that was withheld?

11 A No, I don't.

12 Q Do you recall that document? It's an e-mail of
13 October 25, 2013?

14 A No, I don't recall that.

15 Q Did you have any discussions with Gene Eckhardt
16 about this penalty assessment against Washington Water
17 Supply?

18 A Just briefly that an investigative report had been
19 issued and there was a penalty against the company.

20 Q And what was Mr. Eckhardt's reaction to that?

21 A I believe he was more or less shocked.

22 Q And why, to your understanding?

23 A The dollar amount of the assessment.

24 Q Did he explain to you anything more about why he
25 was shocked?

0053

1 A No.

2 Q Did Mr. Eckhardt ever tell you of his prior
3 interactions with Washington Water Supply?

4 MS. CAMERON-RULKOWSKI: Objection. I don't
5 believe this is relevant. This seems to be getting us far
6 afield.

7 MR. ELLERBY: This has to do with mitigation,
8 your Honor.

9 JUDGE KOPTA: I agree it has to do with
10 mitigation. We're talking about the history of the company
11 in terms of its relations with the Commission. I think it's
12 relevant.

13 THE WITNESS: Repeat the question, please.

14 Q (By Mr. Ellerby) Did Mr. Eckhardt ever tell you
15 anything about the history of his relations or dealings with
16 Washington Water Supply?

17 A No, he did not.

18 Q Did you understand that Mr. Eckhardt had over 20
19 years of background dealing with Washington Water Supply as
20 a regulated water company?

21 A Yes.

22 Q Did you know anything in addition to that, any
23 detail about his interactions with Washington Water Supply,
24 whether there had been problems, for instance?

25 A Not to my recollection.

0054

1 Q In your work for the Commission involving
2 Washington Water Supply, were you aware of any other
3 violations or penalties, fines, other than the ones we're
4 here about today?

5 A I believe there might have been an annual report
6 that was past due.

7 But other than that, I was not aware of any.

8 Q And do you know how long Washington Water Supply
9 has been a regulated water company in this State?

10 A I believe since 1993, the early '90s.

11 Q And you're not sure about the annual report?

12 A No.

13 Q Were you aware of the customer complaint involving
14 the Silent Sky water system?

15 A Only in the context that that's what started the
16 investigation into the tariff issues.

17 Q And are you aware that that customer complaint was
18 ultimately resolved in Washington Water Supply's favor?

19 A No, I was not.

20 Q And the whole customer service, customer complaint
21 arena is not part of your job description, correct?

22 A Correct.

23 Q Do you know if John Poppe had ever been shown that
24 customer complaint by the UTC?

25 A No, I don't know.

0055

1 Q Do you know how many customer complaints have been
2 lodged against Washington Water Supply?

3 A No, I don't know.

4 Q Do you know if there have been any other than the
5 one we've talked about?

6 A No, I don't know.

7 Q When did your involvement concerning Washington
8 Water Supply start?

9 A For this case or?

10 Q Let's say for the case that we're here about
11 today, the two water systems plus, maybe, Whidbey West?

12 A Approximately, July of 2013.

13 Q And did you ever talk to John Poppe before that
14 point?

15 A On other matters, other cases, yes.

16 Q And what did those involve, generally?

17 A There was also a discussion back, I believe, in
18 late 2012, about the Whidbey West water system.

19 Q What came of that discussion, if you know?

20 A Nothing.

21 Q You said that Gene Eckhardt was surprised by the
22 size of the fine. I won't take the time to read the whole
23 thing to you, but there's an e-mail to Gene Eckhardt and it
24 looks like you were -- it was from Gene Eckhardt to you and
25 he was responding to the \$11,600 penalty assessment. His

0056

1 only comment was, "Yikes."

2 Is that consistent with your recollection of his
3 reaction?

4 A Yes.

5 Q Mr. Ward, did you read the April 2014, Darren
6 Tinnerstet report?

7 A The investigative staff report, yes.

8 Q Did you make any corrections to this report after
9 you received it?

10 A Not to my knowledge, no.

11 Q And do you recollect that in the report Mr.
12 Tinnerstet concluded that Washington Water Supply owned the
13 two systems, Silent Sky and Bainbridge 1?

14 A That was our understanding, yes.

15 Q And that was your understanding as well?

16 A Yes, it was.

17 Q But Mr. Poppe had informed you numerous times, had
18 he not, in early -- in late 2013 and early 2014, that
19 Washington Water Supply did not own those two systems,
20 correct?

21 A He did at that time, yes.

22 Q And you never received any contrary information,
23 did you?

24 A Prior to that, yes, I did.

25 Q I'm saying after Mr. Poppe informed you multiple

0057

1 times that he did not, his company did not own those two
2 systems, you never received any contrary information, did
3 you?

4 A No, I did not.

5 Q And you knew that long before you got Mr.
6 Tinnerstet's investigative report, correct?

7 A Yes.

8 Q Okay. And you have testified that you didn't make
9 any corrections to the report, right?

10 A Yes.

11 Q Why didn't you or somebody else who knew that
12 Washington Water Supply did not own those two systems
13 correct a report that is issued months after you knew that?

14 A My understanding was it was for a period of time
15 the report was issued for, and during that period of time,
16 Mr. Poppe claimed he owned the water systems.

17 Q Okay. And Mr. Poppe then also explained that he
18 was not stating actual ownership, but rather his intent to
19 own them in the future?

20 A I don't recall that statement being done during
21 that period of time.

22 Q Okay. So it's your understanding that if the
23 facts materially change, it doesn't matter so long as that
24 happens after a specific date?

25 A The investigative report period, yes.

0058

1 Q And it doesn't matter that the investigative
2 report is issued four months after the facts have materially
3 changed?

4 A For that time period, no, they do not.

5 Q Now I'm looking at the report right now, and I
6 think we can share a copy with you if you'd like to see it
7 yourself if you don't have it. Is there anything in the
8 report that states that the report is limited strictly to
9 the period before December 31, and anything that happened
10 after that date that's material would not be included?

11 A Without reading the entire report at this moment,
12 I don't know.

13 Q Okay. Is that typical with Commission reports,
14 investigative reports, that they focus on a specific period
15 of time and if the facts materially change after that date,
16 even if the report is not issued for many months later, none
17 of that matters?

18 A I believe that would depend on the purpose of the
19 report to begin with.

20 Q Okay. Are you familiar with any other instances
21 where the Commission staff issued an investigative report
22 months after the time frame that was under examination where
23 the facts changed but that didn't -- that wasn't noted in
24 the report?

25 A I'm not aware of any, no.

0059

1 Q Washington Water Supply amended its tariff
2 regarding the Whidbey West system, correct?

3 A Yes, it did.

4 Q And that amendment was accepted by the Commission?

5 A Yes, it was.

6 Q And it was originally the position of the
7 Commission that Washington Water Supply was required to
8 amend its tariff for all three systems, correct?

9 A Yes.

10 Q But ultimately the Commission accepted just the
11 amendment for the Whidbey West tariff?

12 A Yes.

13 Q And why did the Commission drop its insistence
14 that Washington Water Supply amend its tariff regarding the
15 two other systems?

16 A Mr. Poppe had provided information that he did not
17 own them.

18 Q Okay. And I think we've established that he
19 provided that information well before April 2014, correct?

20 A Yes, I believe so.

21 Q You were here during Mr. Tinnerstet's testimony
22 regarding the WAC section at issue in this case that
23 requires a regulated water company to amend its tariff
24 within 30 days of acquiring a new service area. Do you
25 recall that?

0060

1 A Yes.

2 Q Do you have familiarity with that WAC section?

3 A Familiar, yes.

4 Q Do you have to apply that section in your job?

5 A Yes.

6 Q Okay. And do you have any other understanding of
7 the term "acquisition" other than what Mr. Tinnerstet
8 testified to?

9 A No.

10 Q So to your understanding, the Commission has never
11 had a working definition of the term "acquisition" different
12 than the way it's used by lay people?

13 A If you're meaning to purchase or to own, no, I
14 have no different recollection.

15 Q So if you were -- let me start over.

16 I guess I'm just kind of puzzled by really a
17 fundamental issue, and forgive me if I'm repeating myself
18 here, but why does the Commission waste time on issuing
19 reports months after the fact when the facts have changed
20 and not make mention of those facts?

21 A I believe that's a policy question that's better
22 directed somewhere other than myself.

23 Q Fair enough.

24 It's your understanding isn't it, that a company
25 such as Washington Water Supply needs to apply for a

0061

1 Commission approval before acquiring a new system, correct?

2 A No, they do not.

3 Q They don't need to apply to transfer a system?

4 A No, they do not.

5 Q Didn't you tell John Poppe that he needed to apply
6 to transfer the two systems?

7 A No, I did not.

8 What I might have said was you need to update the
9 tariff to reflect the acquisition of those two systems.

10 Q Mr. Ward, I apologize because I don't have an
11 extra copy of this, so I'm going to have to show you mine.
12 And this is, by the way, JW-4. It says "page 55" in the
13 upper right-hand corner.

14 This is an e-mail from you to John Poppe on
15 January 8, 2014, correct?

16 A Yes, it is.

17 Q Okay. And you said (as read), "Mr. Poppe, thanks
18 for the quick turnaround and the updates. I think the
19 document is much clearer. I have attached a new one with a
20 few simple suggestions. I noticed in paragraph 6,
21 instrument of transfer, that you put not available. If
22 there was no transfer document or bill of sale or agreement,
23 and if not what gives you the legal right to own and operate
24 and collect money from customers for this water system.
25 This package, along with the notice and tariff pages, should

0062

1 work for the transfer of Silent Sky water system."

2 So weren't you talking to Mr. Poppe about an
3 application package not only for the tariff, but also for
4 the transfer of the Silent Sky?

5 A Yes, recognizing he was acquiring it.

6 Q Okay. But didn't you just testify that he wasn't
7 required to apply to transfer the system?

8 A That's true. He's not.

9 Q So if he's not required to apply for the transfer
10 system, why were you making him go through that process?

11 A This would give the background information we
12 would use to keep records of the system.

13 Q Okay. So he wasn't required to apply for
14 Commission approval to own the Silent Sky or Bainbridge 1
15 systems?

16 A He was not.

17 Q Mr. Ward, are you familiar with RCW 80.12.020 and
18 .040 that both provide that no regulated company shall
19 directly or indirectly purchase, acquire or become the owner
20 of any of the franchises, properties, facilities, capital
21 stocks or bonds of any other public service company unless
22 authorized to do so by the Commission?

23 Is that a statute that you've ever been asked to
24 analyze in your job?

25 A No, I have not.

0063

1 Q What about WAC 480-143-130, which requires
2 Commission approval of the acquisition of any franchise,
3 property facility, capital stock or bonds of another public
4 service company?

5 Is that a WAC section that you've been asked to
6 apply in your job?

7 A At times, yes.

8 Q Okay.

9 MS. CAMERON-RULKOWSKI: Would you repeat that
10 citation, please?

11 MR. ELLERBY: Yes. It's WAC 480-143-130 that
12 governs or concerns Commission approval of the acquisition
13 of any franchise, property, facility, capital stock or bonds
14 of another public service company.

15 Q (By Mr. Ellerby) And you're familiar with that WAC
16 section?

17 A Yes.

18 Q Does that not apply to Washington Water Service
19 [sic]?

20 A I'd have to review that and the situation again.

21 Q So that WAC was not what you had in mind when you
22 were e-mailing John Poppe in the e-mail we were just looking
23 at asking him to submit a transfer package concerning the
24 two systems?

25 A No, that was not.

0064

1 Q So the transfer package wasn't for approval; it
2 was just for background, basically?

3 A It was for background to update the tariff.

4 Q But you were insisting, were you not, that
5 Washington Water Supply provide proof of ownership, correct?

6 A Yes, I was.

7 Q Okay. And you were not satisfied with the
8 documents that Washington Water Supply had or didn't have,
9 correct?

10 I'll strike that. That was confusing.

11 You knew that Washington Water Supply had no
12 paperwork showing they had acquired the two systems?

13 A Mr. Poppe told me that, yes.

14 Q And he submitted written assurance of that fact to
15 you, didn't he?

16 A By e-mail, yes.

17 Q By e-mail?

18 A Yes, he said he did not own them.

19 Q And he also told you that his lawyer said that
20 Washington Water Supply doesn't own the systems?

21 A Yes.

22 Q Did you ever have any contact with the customers
23 of the two water systems?

24 A No, I did not.

25 Q Do you know if anyone else with the Commission had

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1 contact with the customers of those two systems?

2 A Other than the previous complaint that was brought
3 up, no, I'm not aware of any others.

4 Q I'm looking -- this is Exhibit JW-6, and I'll just
5 read it to you. It's an e-mail from you to John Poppe dated
6 January 21, 2014, and you said -- you are responding to an
7 e-mail from John Poppe in which he says (as read) "I will
8 meet with our PUD this week about the transfer of the water
9 systems."

10 And just setting a little background here, John
11 Poppe told you that he was in conversations with the PUD
12 about the PUD buying the two systems, correct?

13 A I don't know if the word "buy" was in the
14 conversation, but about the PUD getting ownership in some
15 fashion, yes.

16 Q Okay. And then you sent him an e-mail in response
17 where you said (as read), "Thank you. Please let us know
18 when the transfer occurs and what water systems. As I
19 recall, our consumer protection section was working on
20 customer concerns on the water systems."

21 You said "customer concerns." Was there more than
22 one that we've already talked about?

23 A Not that I'm aware of.

24 Q Okay. And then you said (as read), "When will you
25 be updating your tariff to reflect the Whidbey West water

0066

1 system?"

2 So that was the only system you were insisting the
3 Washington Water system update at that point, correct, was
4 the Whidbey West?

5 A And what was the date on that?

6 Q January 21.

7 A Then it would have been Whidbey West only, yes.

8 Q Okay. So as of January 21, 2014, the Commission
9 no longer insisted that Washington Water Supply update its
10 tariff on anything other than Whidbey West?

11 A Yes.

12 Q But you knew on January 21, 2014, that Washington
13 Water continued to operate those two systems, correct?

14 A Mr. Poppe indicated that, yes.

15 Q So if Washington Water Supply was continuing to
16 operate those two systems, the Commission now takes the
17 position that "acquisition" means "operation."

18 Why is it, then, that the Commission on January 1
19 -- January 21, 2014, wasn't defining acquisition as
20 operations?

21 A I'm not sure the meaning of your question.

22 Q Well, the position of the Commission today, in
23 opposition to our Motion for Summary Judgment, is that
24 "acquisition" doesn't mean just to buy, to legally own; it
25 also means to operate. Is that your understanding, too?

0067

1 A That could be an understanding.

2 And I won't speak for the Commission. I'll speak
3 for staff at that point.

4 Q Okay. So the Commission's position today -- and
5 Counsel can correct me if I'm wrong -- that operation, if a
6 water -- a regulated water company is operating the system,
7 it has acquired the system and must update its tariff to
8 incorporate the system that it's operating?

9 MS. CAMERON-RULKOWSKI: That's not the
10 position that's taken in the staff response, and I would
11 object to a question to Mr. Ward about that as calling for a
12 legal conclusion.

13 MR. ELLERBY: Well, your Honor, I'm trying to
14 explore why the position -- I mean, apparently there's a
15 difference between staff and the Commission.

16 I think I'm entitled to know the genesis and
17 extent of that division because Mr. Ward has testified that,
18 as of January 21, 2014, three months before this
19 investigative report is issued, Commission staff has taken
20 the position that Washington Water Supply is operating the
21 two systems, but it doesn't have to update its tariff
22 concerning those two systems. That is 180 degrees
23 different.

24 MS. CAMERON-RULKOWSKI: Objection. Counsel
25 is testifying.

0068

1 MR. ELLERBY: Well, I'm responding to an
2 objection.

3 JUDGE KOPTA: He's explaining where he's
4 coming from. Go ahead.

5 Q (By Mr. Ellerby) So Mr. Ward --

6 JUDGE KOPTA: Let me rule on the objection,
7 which is if you want to explore what staff's position is,
8 you can ask Mr. Ward that question.

9 If you want to explore what the Commission's
10 position is in this case, that's not an appropriate line of
11 questions for Mr. Ward.

12 Q (By Mr. Ellerby) Well, unfortunately, Mr. Ward, I
13 don't have anyone here to testify for the Commission other
14 than yourself, so I apologize for putting you in that
15 position.

16 Are you aware of any disagreement or discussion
17 among staff on whether operation should be treated the same
18 as acquisition with respect to that WAC section requiring
19 the amendment of a tariff within 30 days?

20 A I'm not aware.

21 Q Were you aware before testifying today that there
22 is a disagreement, either between some staff and the
23 Commission or between all staff and the Commission, on
24 whether, if a regulated company operates a water facility,
25 it must amend its tariff?

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1 A I'm not aware of any discussions along those
2 lines.

3 Q Are you surprised to hear that it's the position
4 of some on the Commission that a regulated water company
5 such as Washington Water Supply is obligated under the WAC
6 section we're here about to amend its tariff to incorporate
7 systems that it does not own but rather operates?

8 JUDGE KOPTA: That is contrary to my ruling I
9 just made. So I will not allow that question.

10 MR. ELLERBY: All right.

11 Q (By Mr. Ellerby) One more question and then I'll
12 move on.

13 Are you aware of Commission staff at any time ever
14 holding a different view of whether operations is the same
15 thing as acquisition or ownership with respect to an
16 obligation to amend a company's tariff?

17 A You used the word "ever," and I can't answer that
18 question in the infinitive yes or no.

19 Q Okay. To your knowledge, has there ever been a
20 disagreement or issue discussed among staff whether
21 "operations" means the same thing as "ownership" or
22 "acquisition" with respect to the obligation to amend a
23 company's tariff?

24 A No, I'm not aware of it.

25 Q You have never heard that position articulated

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1 before?

2 A No, I'm not aware.

3 MR. ELLERBY: That's all I have. Thank you.

4 JUDGE KOPTA: Before we go into your counsel,
5 Mr. Ward, I have a couple of questions.

6

7 EXAMINATION

8 BY JUDGE KOPTA:

9 Q Are you aware of any other water companies that
10 the Commission regulates that operate but do not own a water
11 system?

12 A I'm aware of other water companies that own and
13 could operate, but they don't operate, yes.

14 Q I'm talking about the reverse, that do not own
15 but operate?

16 A Yes, I'm aware of those.

17 Q And under what terms and conditions do they do
18 that?

19 A Under various terms and conditions as what's
20 considered to be a satellite management agency where they
21 are a contract-for-hire operator.

22 Q Are you aware of any circumstances similar to the
23 ones presented here by Washington Water Supply of operating
24 a water system without having any ownership interest in it?

25 A Operating with no ownership interest, yes.

0071

1 Q And what terms and conditions would that kind
2 of --

3 A Once again, that would be a contract arrangement
4 between the regulated company and nonregulated owner. Once
5 again, that would be what we consider a satellite management
6 agency where they do operate but do not own the system.

7 Q And is that agreement usually something that's
8 filed with the Commission?

9 A No, it is not.

10 Q Is it something that the Commission has notice of
11 from the company?

12 A No, it is not.

13 Q And do you know whether Washington Water Supply
14 has such an arrangement with the owners of Silent Sky and
15 Bainbridge 1 water systems?

16 A You're talking relation to Washington Water
17 Supply?

18 Q Yes.

19 A I asked that question, and there was a response
20 that there was no contract because there was no prior owner
21 to get a contract from.

22 Q And in those circumstances, what rates, terms and
23 conditions apply to the customers that are paying the rates
24 for the water that they receive from that system?

25 A Typically, it is the rates established by the

0072

1 prior owner. And I asked that question of Mr. Poppe in this
2 case, and he said it was the rates that were currently in
3 effect when he started to operate the systems.

4 Q So as far as you know, the tariff that the
5 Commission currently has on file for those water systems is
6 -- are the rates, terms and conditions that Mr. Poppe or his
7 company is charging today?

8 A The only one I'm assured of is the one that Mr.
9 Poppe responded to where he's charging a monthly rate of --
10 I believe it was \$15 a month, and that was set by the prior
11 owner.

12 Q And are those tariffs still on file with the
13 Commission?

14 A Are you talking the tariff of Washington Water
15 Supply, which that is not part of?

16 Q No. I'm referring to the tariffs that are on file
17 for Silent Sky and Bainbridge 1?

18 A There is no tariff on file because they were not
19 previously regulated by this Commission.

20 JUDGE KOPTA: Okay. Thank you.

21 Do you have any redirect?

22 MS. CAMERON-RULKOWSKI: Yes, your Honor.

23

24

25

0073

1 REDIRECT EXAMINATION

2 BY MS. CAMERON-RULKOWSKI:

3 Q Mr. Ward, when did you receive a copy of the
4 investigation, of the staff investigation report in this
5 matter, do you recall?

6 A No, I don't recall.

7 Q Did you receive a copy of the investigation report
8 before you received an e-mail about the penalty assessment
9 that was issued?

10 A I believe, yes, I would have.

11 Q And are you involved in any way in preparing --
12 were you involved in any way in preparing the investigation
13 report?

14 A Only to forward on some information that I had
15 discovered.

16 Q In terms of actually drafting the investigation
17 report, were you involved in any way?

18 A No, I was not.

19 Q Were you asked to review the investigation report?

20 A No, I was not.

21 Q Mr. Ward, did you ever tell Mr. Poppe, either
22 orally or in writing, that he didn't need to file a tariff
23 revision for the Silent Sky or the Bainbridge 1 water
24 systems?

25 MR. ELLERBY: Objection. Asked and answered,

0074

1 your Honor. That was precisely my question probably at
2 least two or three times in response to the e-mail that he
3 referred to.

4 MS. CAMERON-RULKOWSKI: I don't believe that
5 particular question was asked.

6 JUDGE KOPTA: I'll allow it.

7 THE WITNESS: Can you repeat the question,
8 please?

9 Q (By Ms. Cameron-Rulkowski) Yes, Mr. Ward. Did you
10 ever tell Mr. Poppe, either orally or in writing, that he
11 didn't need to file a tariff revision for the Silent Sky or
12 Bainbridge 1 water systems?

13 A I don't recall.

14 Q What was your understanding of the reasons that
15 Mr. Poppe did not file a tariff revision for Silent Sky or
16 Bainbridge 1?

17 A Initially, I don't think he thought he had to file
18 one for those two systems.

19 And then after he admitted that he did not own the
20 systems, he did not have to file those.

21 Q In your declaration, in the attachments to your
22 declaration, are you aware of any e-mail communications in
23 there telling Mr. Poppe that he didn't need to file a tariff
24 revision for Silent Sky or Bainbridge 1?

25 A After it was discovered that he did not own them,

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1 I don't think there is anything.

2 Prior to that, there should have been
3 communication that he needed to update his tariff for those
4 two systems.

5 Q But is there -- is there any e-mail in there from
6 you to Mr. Poppe saying you don't need to file a tariff
7 revision for those two systems?

8 A I don't believe there is.

9 MS. CAMERON-RULKOWSKI: Thank you.

10 I have no further questions of Mr. Ward.

11

12 RE-CROSS-EXAMINATION

13 BY MR. ELLERBY:

14 Q Mr. Ward, we were just looking at your e-mail to
15 John Poppe. This is JW-6. We had established that Mr.
16 Poppe had explained to you to your satisfaction that
17 Washington Water Supply did not own the two systems,
18 correct?

19 A Yes.

20 Q And then you had an exchange of e-mails with him.
21 He sent an e-mail to you on January 20, saying (as read),
22 "Good morning, Jim, I will meet with our PUD this week about
23 the transfer of the water systems."

24 And then you responded the next day saying, "Thank
25 you. Please let us know when the transfer occurs and what

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1 water systems. As I recall, our consumer protection section
2 was working on customer concerns on the water systems. When
3 will you be updating your tariff to reflect the Whidbey West
4 system," correct?

5 So you were only asking him to update his tariff
6 to reflect the Whidbey West system, correct?

7 A On that date, yes.

8 Q And you never, after January 21, 2014, told him
9 that he needed to amend his tariff regarding the other two
10 systems, did you?

11 A I don't believe so.

12 Q And you would not have, correct, because it's your
13 testimony that if he didn't own those systems, he had no
14 legal obligation to amend his tariff, correct?

15 A Yes.

16 MR. ELLERBY: Your Honor, at this point I
17 move to dismiss.

18 You've heard my questions to Mr. Ward.

19 You've heard your own -- responses to your
20 own questions to Mr. Ward, that Washington Water Supply did
21 not own the two systems; that, under the staff's application
22 of the WAC at issue in this case, if Washington Water Supply
23 did not own those two systems, it had no legal obligation to
24 amend its tariff.

25 This new position by the UTC redefining the

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1 term "acquisition," which has a very common understanding in
2 common parlance, has no different definition in either the
3 RCW or the WAC; that "acquisition" means just what it says.

4 This case has no merit from the very
5 beginning, despite the Commission investigative report three
6 to four months after the material facts had changed.

7 I think the record at this point not only
8 supports but requires a dismissal on the merits.

9 JUDGE KOPTA: I disagree. It's divided. I
10 still have not heard from Mr. Poppe as to what legal
11 authority he had to operate those systems. And until I hear
12 that, I believe we're going to proceed.

13 So unless you have anything further, I
14 believe it's up to staff if they have any other witnesses.

15 MS. CAMERON-RULKOWSKI: Staff has no further
16 witnesses, your Honor, but at this point I would like to
17 proceed with the remainder of staff's statement.

18 JUDGE KOPTA: Well, given that it's 4:00, I
19 want to hear testimony. I'd rather hear that than oral
20 argument at this point. If we have time at the end, I will
21 allow it.

22 But for now, Mr. Ellerby?

23 MR. ELLERBY: I'd like to call Mr. Poppe to
24 the stand at this point.

25

0078

1 JOHN POPPE, having been duly sworn on oath,
2 testified as follows:

3

4 DIRECT EXAMINATION

5 BY MR. ELLERBY:

6 Q Mr. Poppe, can you please describe what your
7 current position is with Washington Water Supply, Inc.?

8 A I'm the president and owner of Washington Water
9 Supply, Inc.

10 Q And how long have you been in that position?

11 A Twenty-five years.

12 Q Okay. And how long have you owned or operated
13 public water companies -- or water systems, excuse me?

14 A Twenty-five years. Actually, it's closer to 30.

15 Q All right. And what's your background?

16 What have you done in your employment?

17 A I was the -- worked for an engineering company.

18 I worked for public utilities.

19 I worked for the City of Bremerton where I was the
20 operations manager for water supply and distribution, and
21 contract administrator for wastewater and various other
22 municipal operations and cities.

23 Q So is it fair to say that you're a wastewater and
24 drinking water supply expert?

25 A Yes.

0079

1 Q And are you generally familiar with the
2 regulations enforced by the Utilities and Transportation
3 Commission on water companies?

4 A Yes.

5 Q Is it -- what's your understanding of what class
6 -- the two systems that we've been talking about, Silent Sky
7 and Bainbridge 1, what class of systems are they?

8 A Class B.

9 Q What's the difference between Class B and Class A?

10 A Size of the system. Class A is a larger system.
11 Class B are the smaller systems.

12 Q Do you know what the break, the cutoff point is?

13 A It's around nine customers, is the difference.

14 Q Okay. So these two systems both have nine or
15 fewer customers?

16 A Right.

17 Q And does a Class B system need to be operated by a
18 certified operator?

19 A Not -- no.

20 Q Are you a certified operator?

21 A Yes.

22 Q And what -- who has asked to you operate these two
23 systems?

24 A The people of the system, the previous persons
25 that were operating the system were ready to walk away from

0080

1 it. They heard about Washington Water Supply from the
2 Health Department that they would help in these types of
3 situations. So I agreed to take them over and operate the
4 systems.

5 Q Okay. All right.

6 And did you ever investigate whether the people
7 who walked away from these systems had any documentation
8 proving that they owned the systems?

9 A I looked at some of the stuff they had, but there
10 was no conclusive paperwork that showed that they owned the
11 systems.

12 Q And did you then conclude that they were unable to
13 transfer title to Washington Water?

14 A Well, not at first. It took me a while to figure
15 that out. So when Mr. Ward, when Jim came and said, You
16 need to get them on your tariff, I said, I guess it's about
17 time to figure it out and get it all worked out.

18 And that's when I started looking at the files and
19 information and realized there was no clear title or
20 transfer.

21 Q Did you ever get a legal opinion on whether you
22 could get clear title to these water systems?

23 A I did. In fact, I checked with Kitsap PUD. And
24 they said even that was a marginal guess if you could. The
25 thing is it's a matter of whether the existing customers are

0081

1 willing to turn it over to you, basically, and let you
2 become the owner.

3 Q Well, so is Washington Water Supply the legal
4 owner of either of the two systems today?

5 A No.

6 Q And after you learned that there was no one who
7 could convey legal title, who has asked you to continue any
8 involvement with these systems?

9 A The only persons that have approached me to
10 continue involvement is the Silent Sky water system.

11 Q And when you say "the Silent Sky water system" are
12 we talking about the customers, the prior owners, who?

13 Who asked to you continue?

14 A The existing customers asked me to operate their
15 system for them.

16 Q Okay. And if you're not willing to operate that
17 system or both systems, who will?

18 A There are plenty of contract operators out there,
19 people who have a license to manage the system for them.
20 And the customers themselves can choose to not have a
21 licensed distribution manager on their system, if that's
22 their choice.

23 Q Okay. Was it your understanding that if you had
24 not obtained legal title to the properties or acquired them,
25 whether you had a duty to amend your company's tariff?

0082

1 A No.

2 Q Can you explain?

3 So it was your understanding you did not need to
4 amend your tariffs?

5 A Well, the thing is, you have to own the systems to
6 amend your tariff so they can come under the UTC umbrella,
7 which is a good umbrella to be under.

8 But if I couldn't show a transfer of title -- and
9 I even went to the PUD also, and came in right behind the
10 UTC staff. And they said it was very clear that there was
11 no clear transfer, ownership, bill of sale or anything with
12 these systems.

13 Q Were you asked by UTC staff to apply to the
14 Commission for approval to transfer those systems to
15 Washington Water Supply?

16 A What was the question?

17 Q Were you asked by Commission staff to apply to the
18 Commission for approval to transfer those two systems to
19 Washington Water Supply?

20 A Yes.

21 Q And did you?

22 A I started the process in '13, in the fall of '13,
23 and started really looking into it.

24 And then I told Mr. Ward that I was not going to
25 move ahead with the process.

0083

1 Q Okay. Did Jim Ward tell you after you informed
2 him that you did not own the systems that you nevertheless
3 had to apply to amend your tariff to add those systems?

4 A Yes.

5 Q Let me -- okay. I don't think you understood my
6 question.

7 After you told Mr. Ward that you did not own the
8 systems --

9 A In January of '14, yes.

10 Q In January of '14, what did he tell you about
11 whether you needed to amend your tariff?

12 A He didn't. In fact, he said let us know when the
13 transfer is complete to the PUD. He did not.

14 Q Okay. So you were having discussions with
15 Mr. Ward about those two water systems being transferred to
16 the PUD for ownership?

17 A When you say "transferred," it's transfer of
18 operation maintenance. One of the things that I'm pretty
19 sincere in is not to throw these people to the wolves, just
20 basically throw them out the door and say I'm no longer
21 doing your system.

22 I wanted a systematic transfer of operations from
23 someone like Washington Water Supply to another responsible
24 entity.

25 Q When was the last time you billed any of the

0084

1 customers of either of those two systems for water fees?

2 A March of 2014.

3 Q And have you continued to provide any services to
4 the systems?

5 A I have. I haven't collected anything, but I've
6 gone out and helped them respond to leaks. I've helped them
7 respond to pressure problems. And in fact, this weekend I
8 was out twice helping the Silent Sky people with their water
9 problems and I never charged.

10 Q Are you aware of other regulated water companies
11 in Washington State operating water systems and not owning
12 those systems?

13 A Yes. One of them that I talked to in looking
14 around and asking questions was Washington Water Service
15 because they're close. They're in Gig Harbor.

16 And they say it's extremely common to operate
17 those systems as long as you don't own them. It's just
18 you've got to be able to show the difference that their fees
19 or costs aren't affecting or impacting the regulated
20 customers. So it's a common practice.

21 And also, too, satellite system management, as
22 Mr. Ward says, is true. It's an option that a company is
23 recognized as a satellite system manager, and Washington
24 Water is a recognized satellite system manager.

25 And Belinda Pero from Clallam County Health

0085

1 Department asked Washington Water at the last sanitary
2 survey to be listed as a satellite system manager.

3 Q So Washington Water Service, your company --

4 A Mine is Supply.

5 Q Excuse me; Washington Water Supply is currently
6 recognized as a satellite system operating?

7 A Yes.

8 Q Okay. Do you think it's helpful to the public to
9 have regulated operators such as your company operate
10 systems under contract or informally before formal
11 acquisition of the system?

12 A Absolutely. That's one of the things that I
13 talked about with Kitsap PUD this last winter, was they
14 don't like taking over systems that have pending disasters,
15 wells that are bad, supply problems, water quality.

16 It's a good idea to operate them for a while and
17 see if you can pull the skeletons out of the closet and see
18 where the problems are. In most cases, the customers don't
19 know where the problems are.

20 Q Mr. Poppe, were you on notice that the Whidbey
21 West system would be part of the case that we're here about
22 today?

23 A Well, I was surprised it wasn't in the documents
24 that came in in April, but I wasn't aware that it was going
25 to be talked about today.

0086

1 Q So you've never increased the water rates of the
2 two systems from the time you started operating them until
3 today?

4 A Well, I couldn't. I didn't have the authority to
5 increase their rates.

6 Also, too, is I didn't have the authority for
7 customers shutting them off. There's one person on the
8 Silent Sky system that owes over \$750, and if you divide
9 that by \$15 a month, it's quite a few years that this person
10 hasn't paid. And I have no authority to shut them off.

11 Q And why don't you have any authority?

12 A Because it's the customers own the system.

13 Q If anyone owns the system?

14 A If anyone, the customers basically own the system.

15 Q Has anyone at the UTC ever told you formally or
16 informally that Washington Water could not operate water
17 systems that it didn't formally own?

18 A No.

19 Q Did anyone at the UTC ever inform you formally or
20 informally that Washington Water was legally obligated to
21 amend its tariff to add systems that it did not own?

22 A That's a tough question. All I'm going is that
23 they wanted those two systems on my tariff when they knew
24 that I didn't own them. So I guess I could understand is
25 they wanted it on there, but I don't own the systems.

0087

1 Q But you heard my questions to Jim Ward asking
2 about the January e-mail exchange between the two of you
3 after you informed him that Washington Water did not own
4 those two systems. He responded telling you to amend your
5 tariff to add Whidbey West, or to take Whidbey West off,
6 correct, and not the other two systems?

7 A Yes.

8 Q Okay. And did Jim Ward or anyone else at the UTC
9 after January 2014, tell you that Washington Water needed to
10 amend its tariff to add the Silent Sky and Bainbridge 1
11 systems after January of 2014?

12 A No.

13 Q Have there ever been any issues with water quality
14 or quantity with either of those two systems?

15 A Water quality, no.

16 Water quantity would be the one person that would
17 be Debbie Hylett (phonetic.) She says that she has low
18 water pressure.

19 Q That's the complaint that we've heard testimony
20 about?

21 A Yes.

22 Q How was that complaint resolved?

23 A I went out several times, put pressure meters on
24 her faucet, and checked because the UTC staff asked me. I
25 checked the well house, the booster station, and operated

0088

1 normally within range. And the characteristics that Debbie
2 had was not typical of low water pressure.

3 Q And did you discover what her problem was?

4 A She stated here a couple weeks ago there was a
5 tree root that had restricted her water line going to her
6 house.

7 Q And is that the problem of the system or the
8 problem of the homeowner?

9 A That would be a homeowner issue.

10 Q Have there been any other customer complaints
11 arising from either of those two systems, other what we just
12 talked about?

13 A No.

14 Q What are your relations like with the Washington
15 State Department of Health?

16 A Very good.

17 Q How about the Kitsap County Department of Health?

18 A Very good.

19 Q Have any of them ever taken any enforcement action
20 against Washington Water?

21 A I don't recall, no.

22 Q On the Whidbey West, why did it take you as long
23 as it did to file your tariff revision to take that system
24 off your tariff?

25 A My understanding was is that the UTC staff wanted

0089

1 the two water systems and Whidbey West updated at the same
2 time on the tariff. And since I didn't own the two systems,
3 it was not the right time to do that.

4 Q Okay. And when did you learn that the Commission
5 staff was changing its position on the need to deal with all
6 three systems at the same time?

7 A I just took a chance and said I'm just going to
8 try the Whidbey West system. So I contacted Jim and said,
9 What do I need to do?

10 He said, This is what you need to do.

11 This was in June of this year. And I was having
12 trouble finding, figuring out what was supposed to happen
13 and how the tariff was supposed to look, the wording, the
14 information on the right-hand corner and the left-hand
15 corner.

16 So I just grabbed everything, showed up one day
17 unannounced, and I interrupted a meeting they had and said,
18 What do I need to do?

19 Q Here in Olympia you showed up?

20 A Yes. And Jim outlined it for me, and I went back
21 as I understood it and revised the tariff, made the changes,
22 sent them to him a couple of times.

23 He had some other changes to make.

24 Then I filed the tariff in July, towards the
25 middle of the July. And so then I found out it had been

0090

1 approved or accepted.

2 MR. ELLERBY: Your Honor, I'm going to refer
3 the witness to Exhibit JP-1.

4 Q (By Mr. Ellerby) Mr. Poppe, this is an e-mail from
5 you to Jim Ward dated January 8, 2014, where you're
6 addressing transfer of property problems. Is that e-mail --
7 does that pertain to the topic you were just discussing
8 where you were uncertain about whether you could apply to
9 change just the tariff on the one system and not all three?

10 A Right.

11 Q Okay. You asked in the fourth paragraph of that
12 e-mail, you said (as read), "Based on what's in the best
13 interest of the water system and its customers, it would be
14 best to turn them over to the local PUD? What do you
15 think?"

16 Do you recall Mr. Ward responding to that?

17 A Yes.

18 Q What did he say?

19 A He thanked me and he said that he can't give me
20 advice as to which way to go, what to do.

21 (Interruption in proceedings.)

22 MR. ELLERBY: A brief musical interlude.

23 JUDGE KOPTA: Yes, we have problems with
24 that.

25 Q (By Mr. Ellerby) Bear with me. I think I'm about

0091

1 done.

2 Mr. Poppe, did Darren Tinnerstet contact you prior
3 to April of 2014?

4 A No.

5 Q You had absolutely no contact with Mr. Tinnerstet
6 at any time before his report was issued in April of 2014?

7 A No.

8 Q Did anyone with the Commission inform you that Mr.
9 Tinnerstet or Ms. McCloy were commissioned with issuing an
10 investigative report regarding Washington Water?

11 A No.

12 MR. ELLERBY: That's all I have. Thank you.

13 JUDGE KOPTA: Ms. Cameron-Rulkowski?

14 MS. CAMERON-RULKOWSKI: Thank you, your
15 Honor.

16

17 CROSS-EXAMINATION

18 BY MS. CAMERON-RULKOWSKI:

19 Q Good afternoon, Mr. Poppe. When did Washington
20 Water begin providing service to the Silent Sky system?

21 A It's been a long time. More than 15 years ago.

22 Q And when did Washington Water begin providing
23 service to the Bainbridge 1 system customers?

24 A Honestly, it's been more than ten years. I don't
25 know for sure.

0092

1 Q And what rate or rates was Washington Water
2 charging customers to those two systems?

3 A Rates were the same as when we took over, \$15 a
4 month per customer flat rate.

5 Q And so you collected these rates for more than ten
6 years with regard to Bainbridge 1 and more than 15 years
7 with regard to Silent Sky; is that correct?

8 A Yes.

9 Q I have a question for you regarding the Department
10 of Health records that are attached to the investigation
11 report. Do you have a copy of that report?

12 A I will. Which page are you at?

13 Q This is page 2 I'm looking at, and then also page
14 25, the water facilities inventory form?

15 A Right.

16 Q And in Field 6 and 7, it states that you or
17 Washington Water Supply, Inc. are the owner?

18 A Yes.

19 Q So since you're now claiming not to own Silent Sky
20 or Bainbridge 1, why does your name appear as the owner?

21 MR. ELLERBY: Objection. Vague as to time.

22 MS. CAMERON-RULKOWSKI: Your Honor, it's not
23 vague as to time because these -- there's a printout date on
24 these particular documents; and also I had asked Mr.
25 Tinnerstet if anything on these documents had changed, and

0093

1 he had testified no.

2 MR. ELLERBY: Well, your Honor, maybe it
3 would be fair to the witness to point out when the document
4 was updated and when it was printed. It says "updated
5 2002."

6 So I mean, the question implies that this was
7 some kind of recent information that Mr. Poppe supplied.
8 And that's an unfair question.

9 Q (By Ms. Cameron-Rulkowski) So Mr. Poppe, these
10 forms have not been updated; is that correct?

11 A By looking at them, no.

12 Q So to Department of Health, you're still holding
13 yourself out or Washington Water as the owner of those two
14 systems, correct?

15 A What it is is they want to know if there were an
16 owner of the system.

17 I wanted, at the time, to become the owner, but I
18 didn't have the documentation. And I figured at some point
19 in time we would nail that down and work it out with the
20 existing customers.

21 Q So there is evidence in the record that there were
22 discussions with -- that you had had discussions with the
23 Kitsap Public Utility Department. So are you not planning
24 to turn the water systems over to KPUD?

25 A No. At this time, they won't take them because

0094

1 there's no clear ownership of the system. They said that
2 the records are very clear that we've managed the system,
3 but we're definitely not the owner.

4 And that was discussed with the UTC person that
5 talked to them, is that I have now turned the systems over
6 to the owners, to the homeowners of the two systems, and I
7 will help them find a better alternative than ourselves or
8 whoever they want. I suggested they use Kitsap Public
9 Utility District because that's what they do.

10 Q So when you say that you've turned the systems
11 over to the customers, do you have anything in -- do you
12 have anything in writing that now shows that the -- that
13 someone other than Washington Water owns the systems?

14 A I have a document from the Silent Sky customers
15 wanting Washington Water Supply to be the operator of the
16 company. They have voted an increase of rates from \$15 a
17 month to a little over \$21 a month with an increase planned
18 at the end of '14. This is a document they have.

19 Q And are you still operating the Silent Sky system?

20 A My operation with them -- agreement, if I move
21 ahead, because I haven't signed anything -- begins September
22 1 of '14.

23 Q And what type of agreement is this?

24 A To periodically go out and check the system, bill
25 their customers, and let them know who's not paying. And

0095

1 then they'll go out and shut the water off to that customer.

2 Q And when you previously billed customers on these
3 two water systems, were they billed under the name of
4 Washington Water Supply?

5 A We billed them with Washington Water Supply
6 billing infor -- the billing card statement, the invoice was
7 done with the Washington Water Supply invoice.

8 Q And so you have no agreement in writing of any
9 kind with the customers of Bainbridge 1?

10 A No.

11 Q And you are still operating -- and Washington
12 Water is still operating the Bainbridge 1 water system,
13 correct?

14 A No.

15 MR. ELLERBY: Objection. Asked and answered.

16 JUDGE KOPTA: Go ahead and answer.

17 THE WITNESS: Go ahead?

18 JUDGE KOPTA: Yes.

19 THE WITNESS: No.

20 Q (By Ms. Cameron-Rulkowski) Who is operating the
21 Bainbridge 1 system?

22 A I don't know at this time. We haven't billed
23 since March of this year.

24 Q Now you testified earlier that the customers
25 basically own the system. I believe you were referring to

0096

1 the Silent Sky water system at that time, but correct me if
2 I'm wrong.

3 A You're wrong.

4 Q Is that the Bainbridge 1 system?

5 A It's both systems. PUD had a very thick file that
6 they went through with UTC staff. And they looked at the
7 history from day one, from water quality to quantity to
8 ownership. And it was very clear that they told UTC staff
9 there is no clear ownership of the system and that
10 Washington Water does not own it, either system.

11 Q So you're saying that the customers don't have any
12 documentation of their ownership either, correct?

13 A Well, they do, because in order for them to get a
14 building permit they have to state, "This is the water
15 system I'm going to be connected to." It identifies the
16 service address of the system. And that's in the
17 documentation that the PUD has from the -- from Kitsap
18 County Health Department.

19 Q But that doesn't sound like documentation of
20 ownership of the water system; is that right?

21 A Well, yes, it does, because PUD agrees that the
22 system is owned by the customers. I asked the question of
23 PUD, who owns the system, and they said it's the customers.

24 Now, if there was a clear ownership, they would
25 have found it. But there's nothing in the file to show.

0097

1 And I said, Well, who owns it? It's the
2 customers.

3 Q Would it be accurate to say that up until roughly
4 the end of last year, that you didn't operate -- that
5 Washington Water didn't operate under a contract with these
6 two systems because you considered Washington Water to be
7 the de facto owner?

8 A We didn't operate with a written contract.

9 It was a verbal agreement that we would just take
10 the system and operate it.

11 Q And this was a verbal agreement between whom?

12 A The previous operators of the system.

13 Q And who on the other side?

14 A On the other side? What does that mean?

15 Q Well, I'm talking about a contract that would be
16 between Washington Water and someone else, presumably. So
17 are you saying there was a contract between Washington Water
18 and the prior owner of the system?

19 A I won't say owner. I would say operator of the
20 system.

21 Q And who was the prior operator of the system?

22 A The lady's name for Bainbridge Island was Betty
23 Watham (phonetic).

24 Q Is this the same owner who apparently walked away?

25 A Yes. No, wasn't it wasn't the owner. She was the

0098

1 operator. Her husband had built the system and she had been
2 trying to operate it. She was very elderly and had health
3 issues and just couldn't operate the system anymore.

4 So Kitsap County Health Department gave them our
5 name as an entity that might be interested in taking the
6 system over.

7 Q So you've just been talking about Bainbridge 1.
8 But does this also apply to Silent Sky?

9 A Yes.

10 Q In some of the e-mail or some of the forms that
11 you had e-mailed to Mr. Ward and that appear in his
12 declaration -- and I can find them if we need to -- there's
13 reference to the MPVK water system?

14 A Mm-hm.

15 Q Is that a system that's separate from Bainbridge 1
16 and Silent Sky?

17 A Yes.

18 Q Now I'm looking at the copy of the tariff, and I
19 see the MPVK is on that tariff. And perhaps you can just
20 clear up something. Why -- can you explain why you had used
21 MPVK on the forms that you had been sending to Mr. Ward for
22 review?

23 A I'm not sure which forms you're talking
24 about. I'm not trying to be evasive. I just want to be
25 able to answer your question.

0099

1 Q So this would be Attachment J to Mr. Ward's
2 declaration.

3 JUDGE KOPTA: Ms. Cameron-Rulkowski, I'm
4 puzzled as to where this line of questioning is going. I'm
5 unclear what MPVK has to do with what we're talking about
6 here.

7 MS. CAMERON-RULKOWSKI: I'm trying to figure
8 that out, too, why MPVK is in these forms?

9 JUDGE KOPTA: Which forms?

10 MS. CAMERON-RULKOWSKI: So on page 97 of the
11 declaration, there's a draft application for transfer there.
12 And Silent Sky and MPVK is there. And so what I was trying
13 to figure out was whether that was a typo or --

14 JUDGE KOPTA: I think we're getting a little
15 far afield and we're running out of time. So I'm going to
16 cut that off, and say if you have more questions why don't
17 you move on to those.

18 MS. CAMERON-RULKOWSKI: Yes, your Honor.

19 Q (By Ms. Cameron-Rulkowski) The Whidbey West
20 transfer, the actual transfer occurred in 2012, correct?

21 A The purchase and sale was September 1, 2012.

22 Q And are you aware that companies are required to
23 comply with the law and with regulations such as filing for
24 transfer, even if staff does not explicitly tell them that
25 they must act?

0100

1 A Okay. Repeat the question, please.

2 Q Certainly. Are you aware that companies are
3 required to comply with the law and with regulations even if
4 staff does not explicitly tell them to act?

5 A I'm aware that we've complied with the law and
6 regulations.

7 And I have difficulty understanding that if staff
8 knows that something has occurred -- I didn't know that we
9 were supposed to do it right away. Because if it's
10 insignificant to the customer, doesn't harm them one way or
11 the other, then I thought we'll just do that on the next
12 tariff update, rate change, or whatever the case was.

13 Q And so it was acceptable in your mind to wait
14 almost a year to make that filing that was required to have
15 been done before the actual transfer was completed?

16 A Well, it was because in the middle of September of
17 2012, I sent an e-mail to the UTC saying, okay, the transfer
18 has occurred. What do I do?

19 MS. CAMERON-RULKOWSKI: No further questions.

20 MR. ELLERBY: I'll try to be very brief, your
21 Honor.

22

23 REDIRECT EXAMINATION

24 BY MR. ELLERBY:

25 Q Mr. Poppe, you were referred to this water

0101

1 facilities inventory form issued -- you've got it -- by the
2 Department of Health. And I didn't see your signature
3 anywhere here on this form, do you?

4 A No.

5 Q So you didn't somehow ratify the information that
6 the Department of Health has on this form showing that you
7 either individually -- because it says "owner" after your
8 name -- are the primary contact for the Silent Sky water
9 system?

10 A Well, one of the things is that if you read that
11 closely, it talks about the primary contact and then it has
12 the mailing address right next to it.

13 I just filled them in both just to make it clear
14 they could use me as the contact for that system.

15 Q Okay. So who else besides you would be the right
16 person to contact if the Department of Health wanted to ask
17 questions about the system?

18 A There is -- there are no other persons.

19 Q Has Washington Water operated any other systems
20 that it didn't own?

21 A No, but we provide a lot of technical assistance
22 at no cost.

23 Q And you said that you send out form invoices to
24 the two system customers, Silent Sky and Bainbridge 1?

25 A We did at one time, yes.

0102

1 Q Okay. Before March of this year?

2 A Yes.

3 Q And do you have some other form of invoice you use
4 with non-owned systems?

5 A No. It's the same one because they're entered
6 into the computer software and it just prints them out.

7 Q Okay. You just testified that in mid-September
8 2012, you told UTC staff that the transfer of the Whidbey
9 West system to the customers of the system had been
10 completed?

11 A It was the Whidbey West Water Association,
12 something like that.

13 Q The customers formed their own association and
14 acquired Whidbey West from Washington Water?

15 A Yes.

16 Q And you told staff that had been completed in
17 mid-September of 2012?

18 A Well, I told them it had been completed September
19 1, but I sent the e-mail to UTC staff saying it had been
20 done, now what do I do next?

21 Q And how did they respond to that?

22 A I don't recall the exact wording, but I don't
23 believe I ever got contacted by the UTC staff until the
24 summer of '13 on the issue.

25 Q And then when it was brought up, was there the

0103

1 issue of the three systems and the need to change the tariff
2 as to all three?

3 A Yes.

4 Q Okay. And you couldn't really go forward with
5 that because the ownership of the other two small systems
6 was uncertain?

7 A Well, I hadn't done my complete investigation. I
8 was just operating the systems. And I needed a chance to
9 check the other systems out to see if I really did have the
10 opportunity to own them.

11 MR. ELLERBY: Okay. No further questions.

12 Thank you.

13 JUDGE KOPTA: All right. Thank you, Mr.

14 Poppe. Appreciate your testimony.

15 On my own motion, I'm going to recall
16 Mr. Ward for a question that I have. You can stay there if
17 you want. It's not going to take long.

18

19 CONTINUING EXAMINATION

20 BY JUDGE KOPTA:

21 Q In your opinion, was Washington Water Supply
22 acting consistent with Commission rules from the time in
23 January when you were convinced that they didn't own the
24 system but continued to operate it until they stopped that
25 operation in March of this year?

0104

1 A Are you talking January of this year to March of
2 this year, were they in compliance?

3 Q Yes.

4 A In reference to the Whidbey West, no, they were
5 not.

6 Q In reference to the Silent Sky, Bainbridge 1, were
7 they?

8 A They were in compliance there because they did not
9 own those water systems.

10 Q And it's the Commission staff's view that merely
11 operating those systems without being an owner does not
12 obligate them in any way to file a tariff, their own tariff
13 for those systems?

14 A Agreed, yes.

15 JUDGE KOPTA: Okay. Thank you. Those are
16 all my questions.

17 All right. Ms. Cameron-Rulkowski, I know you
18 wanted to make a statement.

19 Mr. Ellerby, did you also want to make a
20 statement?

21 MR. ELLERBY: The statement would just be a
22 closing statement, yes.

23 JUDGE KOPTA: Yes. And we have 18 minutes,
24 so if each of you would like to make a brief statement, then
25 you may do so.

0105

1 MS. CAMERON-RULKOWSKI: Thank you, your
2 Honor.

3 This case has been about motivating
4 Washington Water and its president, Mr. Poppe, to get the
5 company's regulatory house in order.

6 Commission staff contacted Mr. Poppe a little
7 over a year ago, and it soon became clear that the tariff
8 was not up to date. At that time, Mr. Poppe told staff that
9 he owned the two water systems, Silent Sky and Bainbridge 1,
10 and that he had sold one water system that still was listed
11 in the tariff, Whidbey West.

12 What followed then was multiple rounds of
13 technical assistance from Mr. Ward.

14 And I would remark at this time that staff is
15 not required to do the company's due diligence and work for
16 it. The company does need to get its affairs in order and
17 make the appropriate filings.

18 What is evident from the communications
19 between Mr. Poppe and Mr. Ward is that, despite very prompt
20 and copious technical assistance from Mr. Ward, the company
21 continued to delay and delay and delay getting the records
22 in order.

23 And now the penalty assessment has issued and
24 we do finally see that there has, from Mr. Poppe's
25 testimony, that there has been some forward movement in

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1 getting the company's affairs in order with regard to these
2 two systems.

3 Now, after the technical assistance from
4 Mr. Ward, when Washington Water realized that it couldn't
5 claim ownership to the systems, then the company began to
6 claim that it did not own the systems and therefore was not
7 -- it did not have regulatory obligations that had been
8 discussed previously.

9 The company has claimed, with no citation to
10 any authority, that a water company is allowed to test drive
11 a water system without acquiring it. I don't think a test
12 drive covers over ten years with regard to Bainbridge 1
13 water system or over 15 years with regard to the Silent Sky
14 system.

15 Basically, currently, -- although Mr. Poppe
16 has testified that he now has an agreement with the Silent
17 Sky customers and that the Bainbridge 1 customers own their
18 own system at this point, we still have -- we have no
19 documentation of that. So what we have is, again,
20 representations made without any documentation.

21 So while there's been progress, we're not
22 there yet. At this point in time, without the
23 documentation, what we have is Washington Water still the de
24 facto owner of Silent Sky and Bainbridge 1.

25 And any analysis of property law, such as

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1 whether the water system was a gift from one party to
2 another and then maybe gifted again, that's beyond the scope
3 of this proceeding.

4 But it's enough for the purposes of this
5 proceeding, which are to provide some recourse to utility
6 customers that during the investigation period -- so this is
7 the period that staff looked at, September through December
8 2013 -- Washington Water was holding itself out as the owner
9 of Silent Sky and Bainbridge 1.

10 And while Mr. Poppe has testified to these
11 other arrangements that have been made, again, we have no
12 documentation and it appears that Washington Water may
13 continue to exercise control over both systems. With
14 Bainbridge 1 it's not entirely clear, but with Silent Sky
15 certainly, Washington Water continues to exercise control
16 over the systems. And we don't have a contract. Apparently
17 there is an agreement, but we don't have evidence of this
18 contract to operate the systems.

19 The system has not been transferred to Kitsap
20 Public Utility District. We've heard about that, and I do
21 have some concern as well that, regardless of what these
22 arrangements are, there's been no effort made to update the
23 forms with Department of Health. And again, there's just
24 another -- there's just another gap in the documentation of
25 the story that we've heard today.

0108

1 I would ask the Commission to consider the
2 delay in filing for approval of the Whidbey West transfer to
3 -- as evidence going to the amount of the penalty. It took
4 the company a very, very long time to get this done. And it
5 should be considered within the framework of the
6 Commission's policy factors, the Commission's enforcement
7 policy factors which Mr. Tinnerstet sets forth in the
8 investigation report at pages 9 to 10.

9 Washington Water did have time to sort out
10 its affairs, and it's only following this enforcement action
11 that potentially some progress is being made. Given this,
12 the penalty is warranted.

13 Thank you, your Honor. That concludes
14 staff's closing statement.

15 MR. ELLERBY: Your Honor, I think that you
16 got to the bottom of this case in your questions to Mr.
17 Eckhardt.

18 JUDGE KOPTA: Mr. Ward.

19 MR. ELLERBY: Excuse me, Mr. Ward.

20 Then I think your reaction should be the same
21 as Mr. Eckhardt's. You recall in the e-mail, his response
22 was a single word, "Yikes." That word more than adequately
23 describes this entire case.

24 I think that the case is just preposterous,
25 your Honor. It's like whack-a-mole, you know. You knock

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1 down one theory, and up springs another. We're going to
2 redefine acquisition because now we've just discovered that
3 all of the facts that we were relying on in our
4 investigative report aren't true.

5 The investigative report selects a cutoff
6 date of December 31, 2013, that has no basis in law.
7 There's no reason to select that cutoff date. The only
8 thing that I think you can gather from that is that that's
9 the most convenient cutoff date for the UTC because they
10 don't like the facts that came out after that.

11 I think it's just remarkable that their own
12 staff have testified that they got all these new, pertinent
13 material facts that aren't even mentioned in the report
14 that's issued months after they had them.

15 You know, granted, there were unusual
16 circumstances with regard to these two systems. The record
17 keeping, not Mr. Poppe's fault, was not a model of
18 precision. The fact that he couldn't document his
19 ownership, I think is a very unusual fact situation. And to
20 try to hammer these facts, which are a square peg, through
21 the round hole of Commission regulations just doesn't work.

22 The Whidbey West thing is not part of this
23 case. It's not in the Notice of Violation. It's not in the
24 Notice of Brief Adjudicative Proceeding. Again, it's the
25 old whack-a-mole issue. They know that they need it now, so

0110

1 they're relying on it. It's not part of the case.

2 And you've already ruled that the only way
3 that it would be part of the case is on mitigation. We
4 don't even get the mitigation here, your Honor, because
5 there's been no violation of the UTC's regulation that it
6 wrote. If it wanted to define acquisition to encompass
7 ownership, they had an opportunity to clarify. They didn't.

8 Washington law is pretty clear that the
9 Commission has the ability to issue rules that define
10 imprecise, vague terms in the statute. They elected not to
11 do that here. You've heard their own witnesses testify that
12 they understood "acquire" to mean the same thing that lay
13 people understand.

14 And if they didn't, if their understanding
15 was that it would encompass control or operation, then that
16 would be a regulation that's unconstitutionally vague and
17 cannot be enforced, because it's vague if a person of common
18 understanding wouldn't understand that their conduct was in
19 jeopardy of creating a violation.

20 There's no evidence here that there was any
21 notice by Mr. Poppe that his company was in jeopardy of
22 violating a rule. You've seen the e-mail traffic. Mr. Ward
23 tells Mr. Poppe, after he's assured that there's no
24 ownership, that Washington Water doesn't need to amend its
25 tariff.

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1 Now the position is: You had to amend your
2 tariff back in 2013. Well, show me the law that says he had
3 to do it back in 2013. You didn't own it then. You don't
4 own it in 2014. There's no obligation to amend the tariff,
5 and that couldn't be clearer.

6 You've also heard an admission that you can
7 be a satellite manager, which they are. You can manage
8 systems without owning them, which they did.

9 There's a complaint now that there's been no
10 formal contract that's been produced. Well, my response to
11 that is UTC had an opportunity to investigate that issue,
12 and instead they focused on facts that are stale by having
13 this December 31, 2013, cutoff date.

14 They could have investigated what kind of
15 contracts Washington Water had or relationships it had with
16 the customers of the two systems. They didn't. And now
17 they're trying to erect some legal requirement of some
18 formal contracting regime that doesn't exist.

19 They've provided no citation to authority.
20 They're claiming that there's some de facto ownership
21 principle. Show me the citation to authority for that.
22 There is none.

23 I think that the case here has crumbled, and
24 these late efforts to resurrect it fall short.

25 Washington Water, you've heard the testimony,

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1 has an informal contract with the owner, the customers of
2 the Silent Sky system. They can operate as an operator of
3 the system on that basis. There's no requirement for some
4 written contract.

5 There's been testimony or there was a
6 statement in oral argument, closing argument, that
7 Washington Water, you know, was under technical assistance,
8 but nevertheless had a duty to follow the law on its own.
9 Well, that may be true. There may be a duty to follow the
10 law, but if the law is that unclear -- and apparently it is
11 in their minds because they haven't decided amongst staff on
12 what the law is -- it's pretty hard to expect Mr. Poppe to
13 comply with the law.

14 He was asking for advice and assistance in
15 complying. There was a delay in getting a response from the
16 Commission.

17 When the ownership issue was resolved, then
18 the Commission confirmed that he didn't need to amend his
19 tariff on the two small systems. He couldn't move forward
20 with his tariff amendment on the three systems with that
21 open issue.

22 So your Honor, you've heard testimony that
23 Washington Water is a company in good standing. It's had,
24 until this incident, which should not have been an incident,
25 it had good relations with and was in compliance with the

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1 UTC.

2 It has good compliance and a good
3 relationship with the State Department of Health, the local
4 Department of Health.

5 In the contention that this 2002 Department
6 of Health water survey form has Washington Water as the
7 contact person or the owner is misleading. You know,
8 there's no foundation laid that there was some legal
9 obligation to update that form on some periodic basis.

10 So without knowing that information, you're
11 unable to reach any conclusions as to whether Washington
12 Water was somehow acting deceptively. It wasn't. It was
13 not hiding anything from anyone. It disclosed its
14 operations of these two systems. It wasn't trying to hide
15 that.

16 So for all of these reasons, your Honor, I
17 renew my Motion to Dismiss. And if the Court doesn't grant
18 the Motion to Dismiss, I think the case should be dismissed
19 on the merits.

20 And at a minimum, there should be an order
21 finding that no penalty is due given these facts and the
22 inconsistent application of the regulation that at issue in
23 this case.

24 Thank you.

25 JUDGE KOPTA: All right. I will take all of

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1 this under advisement, and that's all I'm going to say at
2 this point.

3 I will be issuing an order within ten days, I
4 believe, is our requirement.

5 Is there anything further that anyone has
6 before we come off the record?

7 All right. Thank you all. Appreciate it.
8 We're off the record.

9 (Whereupon, the proceedings were
10 concluded at 5:00 p.m.)

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4 STATE OF WASHINGTON)

) ss

5 COUNTY OF KING)

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