

1 BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION  
2 COMMISSION

ORIGINAL

3  
4 MARINE VIEW HEIGHTS HOMEOWNERS )  
ASSOCIATION, )  
5 Complainant, ) Docket No.  
6 vs. ) UW-940325  
7 MARINE VIEW HEIGHTS INCORPORATION, ) (Volume III)  
8 Respondent. ) Pages 361-464  
9 ----- )

10 A hearing in the above matter was held on  
11 September 13, 1994, at the hour of 9:00 a.m. at  
12 the Department of Social & Health Services, 1620  
13 S. Pioneer Way, Moses Lake, Washington, before  
14 LISA ANDERL, Administrative Law Judge.  
15

16 The parties were present as follows:  
17

18 MARINE VIEW HEIGHTS HOMEOWNERS ASSOCIATION,  
19 by MARION SNELSON, 8453 Highland Drive SE,  
Othello, Washington 99344.  
20

21 MARINE VIEW HEIGHTS INCORPORATION, by  
22 FREDRICK RAY BARKER, 6897 O'Sullivan Dam,  
Othello, Washington, 99344.

23 WASHINGTON UTILITIES AND TRANSPORTATION  
24 COMMISSION, by ANN E. RENDAHL, Assistant Attorney  
General, 1400 S. Evergreen Park Drive S.W.,  
Olympia, Washington, 98504-0128.

25 Court Reporter: Dina Lindquist

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STATE OF WASHINGTON  
UTILITIES AND TRANSPORTATION  
COMMISSION

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## 1            I N D E X            O F            W I T N E S S E S :

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3            For the Commission:            D            X            ReD            ReX

4            FRED OTTAVELLI            368

5            (By Mrs. Snelson)            394            411

6            (By Mr. Barker)            406

7

8            DIANA OTTO            418

9            (By Mrs. Snelson)            445

10            (By Mr. Barker)            450

11

12            FRED BARKER

13            (By Ms. Snelson)            455

14            (By Ms. Rendahl)            459

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## 1                    I N D E X                    O F                    E X H B I T S:

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3	No:	Identification:	Id.:	Adm:
4	32	Corrected Version of Exhibit 4	366	367
5	33	Stipulation Agreement	366	368
6	34	Results of Operations for Rate- making Purposes	366	377
7	35	Letter from WUTC to Mr. Riley, Dated 5-24-94	366	382
9	36	Table of Typical Residential Use	366	388
10	37	Complaints Filed Against Marine View Heights Water System	366	426
11	38	System Data/Consumer Issues Summary	366	426

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

2 JUDGE ANDERL: This hearing will  
3 please come to order. This hearing is for Docket  
4 No. UW-940325 in the matter of Marine View Heights  
5 Homeowners Association, Complainant, versus Marine  
6 View Heights Corporation, respondent.

7 My name is Lisa Anderl, I'm the  
8 administrative law judge assigned to hear this  
9 case. We are convened in Moses Lake, September 13,  
10 1994, for an additional day of hearing in this  
11 matter. We are here today to hear the presentation  
12 of the Commission staff's Direct testimony and  
13 Cross- examination thereof.

14 As we discussed on the record during  
15 the last hearing, we may also take some documentary  
16 evidence from the respondent, and we'll hear some  
17 Cross of the respondent's witnesses. However, we  
18 are going to wait and do that at the conclusion of  
19 the staff's case.

20 Let's go ahead and take appearances  
21 beginning with the Complainant, the Homeowners  
22 Association. Your name.

23 MRS. SNELSON: My name is Marion  
24 Snelson, S-n-e-l-s-o-n, 8453 Highland Drive S.E.,  
25 Othello, 99344. I'm the representative for the

1 Marine View Heights Homeowners Association.

2 JUDGE ANDERL: Mr. Barker, for  
3 the respondent.

4 MR. BARKER: Fred barker, the owner  
5 of Marine View Heights, Inc.

6 JUDGE ANDERL: And for the  
7 commission staff.

8 MS. RENDAHL: Ann Rendahl,  
9 R-e-n-d-a-h-l, Assistant Attorney General,  
10 representing the Washington Utilities and  
11 Transportation Commission. My address is 1400  
12 South Evergreen Park Drive S.W., Olympia,  
13 Washington, 98504.

14 JUDGE ANDERL: Thank you. Before  
15 we went on the record this morning, we did talk  
16 about the order in which we would proceed. And  
17 Mrs. Snelson indicated that they did have some  
18 Cross for Mr. Barker and Mr. Lease.

19 However, Mr. Lease is not here yet.  
20 And as I said, for that reason, we will wait until  
21 the end of session this morning and see if he has  
22 arrived, and then we'll do all the Cross of the  
23 respondent at that time.

24 We also, before we went on the record,  
25 identified some exhibits. I will identify those

1 now for the record.

2 Exhibit Number 32 is a corrected  
3 version of what was originally filed as Exhibit  
4 Number 4 from Mr. Riley. This has an explanatory  
5 memorandum on the front.

6 Exhibit Number 33 is the stipulation  
7 agreement that was filed in this matter.

8 Exhibit Number 34 is a results of  
9 operations for rate-making purposes.

10 Exhibit Number 35 is a letter from the  
11 WUTC to Mr. Riley dated May 24, 1994.

12 Exhibit Number 36 is a table entitled  
13 typical residential water use.

14 Exhibit Number 37 is a five-page  
15 document entitled complaints filed against Marine  
16 View Heights water system.

17 And Exhibit Number 38 is a single-page  
18 document entitled system data/consumer issues  
19 summary.

20 (Exhibit Number 32 through 38 were  
21 marked for identification).

22 We'll take the admission of those  
23 documents as responded to by the witnesses. Is  
24 there anything else we need to do before we go to  
25 the staff's case?

1 MS. RENDAHL: No. But I would  
2 offer the substitute for Mr. Riley's testimony at  
3 this time.

4 JUDGE ANDERL: Okay. Does anyone  
5 have any objection to that Exhibit Number 32, which  
6 is the corrected coliform sampling history.

7 MRS. SNELSON: No.

8 JUDGE ANDERL: As I understand it,  
9 it just reflects a correction that we had already  
10 discussed on the record.

11 MS. RENDAHL: That's my  
12 understanding.

13 JUDGE ANDERL: All right. There  
14 being no objection to Exhibit Number 32, we'll  
15 admit that as identified.

16 (Exhibit Number 32 was admitted).

17 MS. RENDAHL: I would also like to  
18 offer the stipulation agreement for the record at  
19 this time.

20 JUDGE ANDERL: Okay. And that's  
21 been marked for identification as Exhibit Number  
22 33. I do see signature pages on the back of it,  
23 which appear to have Mr. Barker's and Mrs.  
24 Snelson's signature on them.

25 Does anyone have any objection to

1 this stipulation agreement being made a part of  
2 the record?

3 MRS. SNELSON: No.

4 JUDGE ANDERL: All right. I hear  
5 no objection, and that will also be admitted.

6 (Exhibit Number 33 was admitted).

7 MS. RENDAHL: Okay. At this time  
8 I'd like to call Mr. Fred Ottavelli to the stand.

9 JUDGE ANDERL: Okay.

10

11 FRED OTTAVELLI

12 was thereupon called as a witness in behalf of  
13 the Commission and, after having been first duly  
14 sworn, was examined and testified as follows:

15

16

17 DIRECT EXAMINATION

18

19 BY MS. RENDAHL:

20 Q. Mr. Ottavelli, I believe you testified  
21 briefly in late July, but would you please state  
22 your name and spell your name for the record once  
23 again?

24 A. Excuse me. My name is Fred Ottavelli,  
25 O-t-t-a-v-e-l-l-i.



1 Q. And would you please state your  
2 business address for the record?

3 A. My business address is the Washington  
4 Utilities and Transportation Commission, 1300 South  
5 Evergreen Park Drive S.W., Olympia, 98504-7520.

6 Q. And I believe you testified in July  
7 that you were a consultant to the water section of  
8 the Commission, is that correct?

9 A. Yes, that is correct.

10 Q. What are your responsibilities as a  
11 consultant to the water section?

12 A. As a consultant to the water section,  
13 I'm responsible for overseeing the actions of the  
14 water section and to advise and work with all the  
15 members of the water section, as well as other  
16 commissioners and other commission staff, acting  
17 both in an advisory capacity and in a leadership  
18 capacity.

19 Q. How many years total have you been an  
20 employee of the Commission?

21 A. My employment with the Commission  
22 commenced on August 1, 1961.

23 Q. What other positions have you held at  
24 the Commission during that time?

25 A. I've held a wide variety of positions

1 with the Commission. Initially, most of the  
2 positions were involved in the financial and  
3 economic regulation of all of the public utilities  
4 regulated by the Commission to include water  
5 companies.

6 I also served for approximately five  
7 years as a water program manager, where I was  
8 responsible for the oversight and direction of the  
9 water section.

10 Q. Are you involved in any statewide or  
11 national groups concerning water issues?

12 A. Yes. I'm currently involved in  
13 several. I'm a member of the National Association  
14 of Regulatory Utility Commissioner's staff  
15 committee on water. I am serving on a Department  
16 of Health committee, actually on two Department of  
17 Health committees; one, Task Force 2,000.

18 On that group we are charged with  
19 determining the direction that the regulation of  
20 water by the Department of Health will take in  
21 future years. I also serve on a committee formed  
22 by the Department of Health to prepare a response  
23 to the legislature in terms of how best to  
24 establish conservation rates for water companies.

25 Q. In your position as a consultant to the

1 water section, how did you first become familiar  
2 with the Marine View Heights water system?

3 A. There was a rather long period of time  
4 during which there was concern over the  
5 jurisdiction of the Commission over Marine View  
6 Heights water system, and we were looking at the  
7 system essentially to determine how many customers  
8 were actually served by the system.

9 The regulatory threshold includes,  
10 among other things, 100 customers actually  
11 physically receiving water. And for a rather long  
12 period of time, it seems that according to the  
13 information we were receiving, Marine View Heights  
14 had 99 customers.

15 We wrestled with that for some time.  
16 Then in December of 1992, everybody seemed to  
17 finally agree that there were, in fact, over 100  
18 subscribers, and Marine View Heights filed a tariff  
19 with the Commission.

20 Q. When you say the water system filed a  
21 tariff with the Commission, would you explain what  
22 a tariff is?

23 A. Yes. A tariff sets forth the rates and  
24 conditions of service pursuant to which a water  
25 system regulated by the Commission must operate.

1       There has to be a complete description of how that  
2       service will be provided, as well as what rates  
3       they must charge.

4               Q.       So when did the water system become  
5       subject to the jurisdiction of the Commission?

6               A.       The water system filed a tariff or  
7       issued a tariff, if you will, on December 18, 1992.  
8       The tariff had an effective date of December 30,  
9       1992. As a result, jurisdiction or regulation of  
10      the water company by the Utilities Commission  
11      commenced as of December 30, 1992.

12              Q.       In your testimony in July, you stated  
13      that according to the tariff on file with the  
14      Commission, that Mr. James Sahli is currently the  
15      owner of water system, is that correct?

16              A.       Yes. That is correct.

17              Q.       You also testified in July that the  
18      Commission had not yet received any letter or  
19      document clarifying the ownership of the water  
20      system. Since that time, has the Commission  
21      received any such document from the water system?

22              A.       No. The company has taken no action  
23      with the Commission to clarify ownership of the  
24      water system.

25              Q.       Have you, or has any member of the

1 water section staff at your direction, taken any  
2 steps to clarify the ownership of the water system?

3 A. Yes. As I discussed in my testimony in  
4 July, a member of my staff consulted with the water  
5 system's attorney and discussed what would be  
6 necessary in order to clarify current ownership of  
7 the water system.

8 Following the hearing in July, we have  
9 had discussions with the company regarding the  
10 filing of the information necessary for such  
11 clarification, but to this point, nothing has been  
12 filed.

13 Q. As a consultant to the water section,  
14 what recommendation would you make to the  
15 Commission concerning the ownership of the Marine  
16 View Heights water system?

17 A. Currently the information before the  
18 Commission affirms that the owner is James Sahli.  
19 And for the record, that's spelled S-a-h-l-i.

20 Q. Do you have any further recommendations  
21 to the Commission concerning any resolution of the  
22 ownership of the Marine View Heights water system?

23 A. Yes. I feel it's absolutely mandatory  
24 that the ownership of this water system be  
25 clarified in terms of bringing some consistency

1 between what has been alleged, what other state  
2 agencies look at for ownership, and that matter  
3 should be resolved, and should be resolved rather  
4 quickly, with the Commission.

5 Q. After the tariff was filed in December  
6 of 1992, what was your next involvement with the  
7 water system?

8 A. Concurrently with the filing of the  
9 tariff, the company filed an application for a rate  
10 increase. The company's rates were, at that time  
11 and currently are, \$20 per month, a flat rate of  
12 \$20 per month.

13 On December 30, a filing was submitted  
14 to the Commission requesting an increase to \$30 per  
15 month as a flat rate, and what was termed as a  
16 garden lot rate of \$10 per month.

17 Q. Could you explain what the garden rate  
18 is?

19 A. Only with some difficulty. Part of the  
20 problem that we have with that filing is  
21 determining what was meant by a garden rate and how  
22 that rate would, in fact, be levied.

23 It appears, and this was never  
24 determined with any certainty, but it appears that  
25 the rate was to apply to all unoccupied lots.

1 Q. Did the Commission take any action on  
2 on this request for rate increase?

3 A. Yes, it did. The first action taken by  
4 the Commission was taken on less than four weeks  
5 after the filing of the action. And at that time,  
6 the Commission suspended the filing.

7 And the filing was suspended because at  
8 that point in time, the Commission was not able to  
9 determine if the rates were fair, just, reasonable,  
10 or sufficient. And the intent was to conduct an  
11 audit of the company to make a determination if the  
12 rates were appropriate.

13 Q. Were you involved with reviewing the  
14 rate increase filed by the Marine View Heights  
15 water system?

16 A. Yes. The review was conducted under my  
17 direction.

18 Q. Was an audit completed on the water  
19 system?

20 A. No. The water was -- Excuse me. The  
21 audit was commenced, and as the audit moved  
22 forward, it became obvious to the Commission and to  
23 the company that the company was not in compliance  
24 with the Department of Health regulations. And the  
25 Commission was not going to move forward until

1 compliance -- until the company did get into  
2 compliance with the Department of Health.

3 As a result, the company withdrew the  
4 filing in, I believe, July of 1993.

5 Q. Have you, or has any member of the  
6 water section at your direction, conducted a  
7 financial audit of the company since the rate  
8 increase was filed?

9 A. Yes. An audit was conducted at the  
10 request of the Department of Health in response to  
11 a specific request that the Department made in  
12 conjunction with the complaint filed against the  
13 water company.

14 Q. What is the current status of this  
15 audit?

16 A. The audit has been completed, and the  
17 information has been forwarded to the Department of  
18 Health.

19 Q. Your Honor, well, I guess the documents  
20 have already been marked. Mr. Ottavelli, referring  
21 to what's been marked as Exhibit Number 34, would  
22 you identify this document, please?

23 A. Yes. This is what is characterized as  
24 a results of operations for rate-making purposes.  
25 And it is prepared by the Commission staff in order



1 to inform the Commission of the financial status of  
2 the utility under review.

3 Q. Did you prepare this document, or was  
4 it prepared at your direction?

5 A. It was prepared at my direction.

6 MS. RENDAHL: Your Honor, I'd like  
7 to move for admission of the document.

8 JUDGE ANDERL: Okay. Is there any  
9 objection to Exhibit Number 34?

10 MRS. SNELSON: No. I really  
11 don't see the relevancy of it in this particular  
12 hearing, but I won't object, I guess.

13 MS. ANDERL: All right. I think I  
14 would, none-the-less, find it relevant, since you  
15 did raise that issue.

16 MRS. SNELSON: Okay.

17 JUDGE ANDERL: But I will admit  
18 Exhibit Number 34 as identified.

19 (Exhibit Number 34 was admitted).

20 Q. (BY MS. RENDAHL:) Mr. Ottavelli, could  
21 you please generally explain the calculations in  
22 Exhibit Number 34?

23 A. First, it's important to recognize that  
24 this is a snapshot of the company's financial  
25 situation, and it's for a test year that ended

1 December 31, 1993; that is, it reflects the  
2 operation of the company for, in this case,  
3 calendar year 1993.

4 On the first subheading, labeled  
5 operating revenues, in the first column, the  
6 exhibit reflects the revenues that appeared on the  
7 books and records of the company. In this  
8 particular case, those revenues were restated to  
9 reflect what, in fact, the actual revenue should  
10 have been.

11 And as a result, you see that the total  
12 operating revenues for the company as restated and  
13 adjusted were \$27,360.

14 The next subheading, labeled operating  
15 expenses, again, shows those expenses as they  
16 appeared on the books and records. They were then  
17 adjusted and restated to reflect both mistakes that  
18 may have occurred, or became obvious in the audit  
19 too through the books and records, and also  
20 reflects what we characterize as pro forma  
21 adjustments.

22 And in this particular case, it's  
23 important to note that the books and records did  
24 not reflect the salary allowance, so that  
25 apparently the company was not paying a salary, did

1 not pay a salary in the 12 months ended December  
2 31, 1993.

3 Recognizing that some compensation is  
4 necessary to run any business of any size, an  
5 adjustment was made to reflect a salary that, in  
6 the staff's opinion, would have been appropriate.

7 As a result of those adjustments, the  
8 total operating, or the net operating income, was  
9 found to be 1,769; that is, the total operating  
10 revenues, less the total operating expenses and  
11 taxes.

12 That \$1,769 was then related to what is  
13 characterized in this exhibit as a rate base. The  
14 rate base essentially reflects the investment in  
15 the company by the ownership for rate-making  
16 purposes. In this particular exhibit, the rate  
17 base was found to be \$152,343.

18 If one divides that into the \$1,769, it  
19 will produce 1.16 percent, which reflects the rate  
20 of return to the ownership or the return on  
21 investment, if you will.

22 It is of note to observe that the  
23 Commission normally finds a return in the area of  
24 12 percent as appropriate.

25 Q. So what does a rate of return of 1.16

1 percent tell you about the financial viability of  
2 the company?

3 A. It tells us that the company is not  
4 financially viable, and if this were to be the  
5 results of operations found for rate proceeding,  
6 that some sort of rate adjustment would more than  
7 likely be appropriate.

8 Q. Following the company's request for  
9 rate increase, when did you next become involved  
10 with matters concerning the Marine View Heights  
11 water system?

12 A. It -- First, I have to underline that  
13 it was kind of ongoing. The Department of Health  
14 investigation was moving forward; the Commission  
15 was receiving a number of complaints regarding the  
16 company, a variety of complaints, I might add; and  
17 finally, the customers of the company, and namely  
18 the Homeowners Association, determined that it was  
19 necessary to go forward with the complaint that is  
20 being heard today.

21 Q. What did you do, or what did you direct  
22 the staff of the water section to do, after the  
23 complaint was filed?

24 A. Immediately upon receipt of the  
25 complaint, I directed the staff to write a letter

1 to the Department of Health asking the Department  
2 of Health to immediately conduct a full testing of  
3 the water currently being delivered by Marine View  
4 Heights to determine -- to have a third party, if  
5 you will, or an arms-length determination of the  
6 quality of the water that was being delivered.

7 Q. Mr. Ottavelli, do you have a copy of  
8 Exhibit Number 35 before you?

9 A. I do not, no.

10 JUDGE ANDERL: Ms. Rendahl, he can  
11 use mine.

12 MS. RENDAHL: Okay.

13 Q. Would you please identify this  
14 document?

15 A. Yes. This document is a letter to Mr.  
16 Craig Riley, Department of Health, signed by Steve  
17 McLellan, secretary of the Commission, requesting  
18 that the Department of Health test the water in the  
19 Marine View Heights water system for compliance for  
20 each water quality issue raised by the complaint in  
21 this proceeding.

22 Q. Did you prepare this letter, or was it  
23 prepared at your direction?

24 A. It was prepared at my direction.

25 MS. RENDAHL: Your Honor, I move

1 for admission of Exhibit Number 35.

2 JUDGE ANDERL: Does either of the  
3 other parties have any objection to Exhibit  
4 Number 35?

5 MRS. SNELSON: No.

6 JUDGE ANDERL: Hearing none,  
7 Exhibit Number 35 will be admitted as identified.

8 (Exhibit Number 35 was admitted).

9 Q. (BY MS. RENDAHL:) Mr. Ottavelli, you  
10 were present during Mr. Riley's testimony in July,  
11 weren't you?

12 A. Yes, I was.

13 Q. What is your understanding of the  
14 results of the tests which the Commission requested  
15 in this letter and that were conducted on the water  
16 delivered by the Marine View Heights water system?

17 A. My understanding is that the water  
18 delivered at the time of the test as conducted by  
19 the Department of Health, found that the water is  
20 satisfactory.

21 Q. What is your understanding of the  
22 quality of the water that was delivered to the  
23 customers after the water system became subject to  
24 the Commission's jurisdiction?

25 A. Commencing in January through July of

1 1994, it is my understanding that in nine months of  
2 that period, there were nine unsatisfactory  
3 samples; that is, nine samples that found total  
4 coliform present.

5 Q. Mr. Ottavelli, I'm going to hand you,  
6 just for reference, a copy of RCW 80.94.110. Are  
7 you familiar with the provisions of section 5 of  
8 this statute?

9 A. Yes, I am.

10 Q. To your knowledge, has a complaint ever  
11 been brought before the Commission under this  
12 statute?

13 A. No. There has never -- A complaint has  
14 never been filed with the Commission pursuant to  
15 this statute.

16 Q. If a complaint were brought by the  
17 customers of a water system under this statute, and  
18 the water delivered by the system is determined not  
19 to meet state drinking water standards, what is  
20 your recommendation to the Commission for the  
21 circumstances under which refunds should be ordered  
22 by the Commission?

23 A. All right, as a preamble to answering  
24 that, let me make a couple of observations. The  
25 Department of Health -- Excuse me. Strike that.

1           Samples that are tested may result in  
2 what is characterized as a non-acute violation,  
3 which is defined as meaning, "posing a possible or  
4 less than immediate risk to human health."

5           And the appearance of total coliforms  
6 may result in what is characterized as a  
7 presence/absence test, may result in the presence  
8 of total coliform.

9           It's important to recognize that  
10 coliforms may occur in a variety of forms, however,  
11 many coliforms are harmless and can be found  
12 anywhere in the environment. And as a result, it  
13 is very -- it is fairly frequent that a presence of  
14 total coliforms is determined.

15           The existence of either Fecal coliform  
16 or E.Coli can result in what is characterized as an  
17 acute violation. An acute violation indicates an  
18 immediate risk to human health.

19           As a result, I feel it is important  
20 that the consideration of refund take place only  
21 when an acute violation occurred, and also when the  
22 purveyor does not immediately address the problem.

23           Q.     What is your recommendation in the  
24 present case? Should refunds be ordered to the  
25 customers of Marine View Heights water system?



1           A.       No, it should not. In this case, there  
2 have been several non-acute violations where the  
3 presence of coliform was discovered, but in no  
4 instance is there a record of an acute violation.

5           Q.       You've heard testimony in this case  
6 that over a period of 19 months, the water system  
7 has had, in nine months, nine of these months there  
8 have been unsatisfactory samples showing the  
9 presence of total coliform bacteria. Why is that  
10 not a basis for refund?

11          A.       For a couple of reasons. To start  
12 with, when the presence of total coliform is found,  
13 that is what is characterized as a non-acute  
14 violation, which means it does not pose -- it means  
15 it poses a possible or less than immediate risk to  
16 human health.

17                   And furthermore, the existence of such  
18 a violation does not result in the water being  
19 found to be not suitable for drinking. It's only  
20 in an acute violation that the water may be found  
21 not suitable for drinking.

22          Q.       If the Commission were to order a  
23 refund in the present case, what is your  
24 recommendation to the Commission for how such a  
25 refund should be made?

1           A.       If a refund were to be considered, I  
2 believe that it should be based upon the amount of  
3 water that is, in fact, consumed by the customers  
4 of that water system, keeping in mind that water  
5 delivered to each residence is used for a variety  
6 of purposes, both indoor and outdoor.

7           Q.       What percentage of water should this  
8 refund be based on?

9           A.       Again, if a refund were to be  
10 considered, I believe that 10 percent would reflect  
11 a conservative indicator of the amount of water  
12 consumed by a residential -- by a residential home.  
13 And that's based on national averages.

14                    I believe if one were to start to look  
15 at Eastern Washington, and in particular this  
16 system, substantially less than 10 percent is, in  
17 fact, consumed by the customer.

18           Q.       Mr. Ottavelli, do you have a copy of  
19 what's been marked as Exhibit Number 36 in front of  
20 you? It's a table showing typical residential  
21 water use.

22           A.       Yes, I do.

23           Q.       Did you determine the percentage of  
24 water on which the refund should be based on this  
25 information?

1           A.     Again, the 10 -- If a refund were to be  
2 considered, I would recommend using 10 percent, and  
3 I did derive the 10 percent from this table, yes.

4           Q.     And where did you obtain this table?

5           A.     I obtained this table from the National  
6 Regulatory Research Institute in Ohio.

7           Q.     Could you explain how you determined 10  
8 percent, a 10 percent figure from this table?

9           A.     Yes. I made the assumption that the  
10 water from the faucets was used, was consumed, and  
11 also the water utilized for dishwashing. And if  
12 one relates that to the total residential water use  
13 per capita, per day, taking into consideration both  
14 indoor and outdoor, one derives the number of  
15 approximately 9.6 percent.

16          Q.     Do you consider such a percentage to be  
17 a reasonable allocation for water use for human  
18 consumption in the Marine View Heights water  
19 system?

20          A.     I think it's extremely reasonable.  
21 It's important to notice that the table reflects  
22 national consumption. And if one were to calculate  
23 the consumption per residence, per household,  
24 reflected in this table, it produces about 1300  
25 cubic feet per month.

1           The Marine View Heights system, it's my  
2 understanding, over the last six months has  
3 averaged approximately 5,500 cubic feet per  
4 household, per month. I would suspect that the  
5 indoor use of water reflected in this is  
6 representative of the amount of water used indoor  
7 on the Marine View Heights system.

8           However, the substantial amount in  
9 excess of the 1300, would be used more than likely  
10 for irrigation purposes and purposes of that  
11 nature.

12           Q.       Your Honor, I move for admission of  
13 what's been marked as Exhibit Number 36.

14                    JUDGE ANDERL: Is there any  
15 objection from either other parties? All right.  
16 I hear no objection. Exhibit Number 36 will be  
17 admitted as identified.

18                           (Exhibit Number 36 was admitted).

19           Q.       (BY MS. RENDAHL:) Mr. Ottavelli, how  
20 would you recommend the refund structure, refund to  
21 the customers of Marine View Heights water system?

22           A.       Actually, the Commission would have to  
23 go through several steps to do so. To start with,  
24 I would suggest that the refund would be applicable  
25 to the period of time commencing when the

1 Commission's jurisdiction was effective; that is,  
2 the first of 1993.

3 I would also suggest that the refund be  
4 applied only to those months in which there was an  
5 unsatisfactory test result, and this particular  
6 period, there were nine such months. And so just  
7 to do the math generally, we have -- we would have  
8 nine months in which there were violations.

9 The charge levied against the customers  
10 would be \$20 per month, flat rate, so the nine  
11 times 20 would produce \$180, and then  
12 conservatively 10 percent of that would have been  
13 used for consumption, resulting in an amount of \$18  
14 per customer.

15 Q. If the Commission were to order such a  
16 refund, who in your view would bear the burden of  
17 paying the refund to the customers?

18 A. I think that it is critical that the  
19 burden for any refund not be borne by the water  
20 company, that it be borne by the owner of the water  
21 company.

22 Q. And why do you make that recommen-  
23 dation?

24 A. If the water company were to pay the  
25 refund, it would move it even deeper in the red, if

1 you will, in terms of financial viability.

2 The need for refund, if it were found  
3 required, would have been due to negligence on the  
4 part of the owners of the system. And the  
5 customers should not have to pay that for the  
6 company.

7 Q. And who is the owner of the water  
8 company?

9 A. Again, according to the Commission's  
10 records, Mr. Sahli is the owner of the company.

11 Q. Aside from a refund for the water  
12 delivered to the customers, should the customers of  
13 the Homeowners Association be reimbursed for any  
14 other costs which it may have incurred?

15 A. Yes, they should. Exhibit 12 in this  
16 proceeding reflects a bill incurred by the Marine  
17 View Heights Homeowners Association for water  
18 testing, and that's a bill in the amount of \$70.

19 The Commission should order  
20 reimbursement to the Commission -- I'm sorry, to  
21 the Homeowners Association for that cost.

22 Q. And what is the basis for your  
23 recommendation?

24 A. Referring to RCW 80.94.110, section 5,  
25 the statute states the Commission, and I'm just

1 quoting generally from that statute, that the  
2 Commission shall order reimbursement to the  
3 customer for the cost incurred by the customer, if  
4 any, in obtaining a water quality test.

5 Q. Do you have any further recommendations  
6 to the Commission concerning the Marine View  
7 Heights water system?

8 A. Yes, I do.

9 Q. And what are those recommendations?

10 A. I feel that the Commission in it's  
11 order in this proceeding should specify that if  
12 this company continues to experience unsatisfactory  
13 testing results, that this company should be  
14 referred to the Department of Health with the  
15 recommendation that it be placed in receivership.

16 Q. Do you have any specific recommen-  
17 dations for the Commission's order concerning  
18 ownership?

19 A. Yes. I believe that the Commission  
20 should, again, require in the order that the  
21 company clarify the ownership issue, and I would  
22 suggest, in a no more than two-month period with  
23 the Commission.

24 And, again, failure to clarify that  
25 issue, should result in consideration for

1 recommendation for receivership.

2 MS. RENDAHL: Your Honor, I have no  
3 further questions for this witness.

4 JUDGE ANDERL: Mr. Ottavelli, I  
5 just have a clarifying question on Exhibit Number  
6 36.

7 THE WITNESS: Oh, okay.

8 JUDGE ANDERL: In looking at that  
9 water use table, when I add up the dishwashing and  
10 the faucets, I end up with 15 percent. And I can't  
11 help but notice that it looks like you and I are  
12 looking at different tables.

13 THE WITNESS: It was retyped in  
14 that format.

15 JUDGE ANDERL: Okay.

16 THE WITNESS: The dishwashing  
17 showed a consumption of 1.6 gallons per customer,  
18 per day; the faucets showed a consumption of 10.2  
19 gallons per customer, per day; the total  
20 consumption was 123.3 gallons per minute for  
21 residential water use, and --

22 JUDGE ANDERL: I see how you did  
23 it.

24 THE WITNESS: I divided 11.8 by the  
25 123.3 and obtained .0957, or approximately 10



1 percent.

2 JUDGE ANDERL: Okay. I guess the  
3 columns, the number in the percent columns are just  
4 a percent of the total indoor.

5 THE WITNESS: Yes.

6 JUDGE ANDERL: And you're basing it  
7 on total use, indoor and outdoor?

8 THE WITNESS: Yes. Total water  
9 delivered to the home.

10 JUDGE ANDERL: Okay. All right.  
11 Each of the other parties has a right to  
12 Cross-examine Mr. Ottavelli. Which of you would  
13 like to start? Mrs. Snelson.

14 MRS. SNELSON: Would it be  
15 possible to have just a few minutes to organize  
16 -- a lot of items were covered, and I'd like to  
17 have just a few minutes, if I may.

18 JUDGE ANDERL: I understand.  
19 Let's take a 15 minute recess.

20 (Short recess).

21 JUDGE ANDERL: All right. Let's  
22 be back on the record after a morning recess. Mrs.  
23 Snelson, are you ready to proceed with your Cross  
24 of this witness?

25 MRS. SNELSON: Yes, I am.

1 JUDGE ANDERL: Go ahead.

2

3

4

CROSS-EXAMINATION

5

6 BY MRS. SNELSON:

7 Q. Mr. Ottavelli, you testified that the  
8 Commission took over jurisdiction when they found  
9 out that Marine View Heights Incorporated had over  
10 100 customers, that it had gone on for a period of  
11 time with 99, then it become apparent that they had  
12 over 100.

13 Can you tell me, are you aware of how  
14 you became aware that they had over 100 customers?  
15 What brought that to the WUTC's attention?

16 A. I can't answer that with any precision,  
17 but it's my understanding, and this is totally  
18 understanding unsupported with anything in  
19 particular, but it's my understanding that when the  
20 bank held the system, they were just billing 99  
21 families. And why they were billing that money, I  
22 do not know.

23 But when it was transferred from the  
24 bank to the subsequent ownership, then that  
25 ownership started billing additional customers, and

1 so it became obvious that there were over 99.

2 Q. Okay. You are not aware, then, that  
3 this was brought to the WUTC's attention by some of  
4 the homeowners?

5 A. Oh, absolutely. I'm sorry, yes. As I  
6 mentioned in my testimony, the homeowners were in  
7 contact about, I think specifically Ollie Reynolds,  
8 who works for me, regarding jurisdiction for a long  
9 period of time. And there were many contacts, yes.

10 Q. Okay.

11 A. And the problem, though, was the  
12 reality that they were only billing 99 customers.  
13 And the statute is specific in 100 customers.

14 Q. I guess what I want brought to the  
15 Court's attention is that it was the communication  
16 between the homeowners and the WUTC, and I believe  
17 Dan Sherry was involved in this, that actually  
18 brought about the notification that there were over  
19 100 customers and it needed to be under the  
20 jurisdiction of the WUTC?

21 A. Absolutely. And just to add to the  
22 frustration, if you'll very carefully review this  
23 record, you will note that there are notes in the  
24 documents that reflect the 114 customers, there are  
25 documents that reflect the 112.

1           Mr. Sherry has spent a substantial  
2 amount of time in the neighborhood trying to find  
3 out exactly how many customers there are. We still  
4 don't know. Very frustrating.

5           Q.       Okay. Yes, I know. I understand that.  
6 Kind of along those same lines, when the audit was  
7 conducted, did it, in fact, take into account the  
8 accounts that are not being billed, that are not --  
9 that are being billed, but not being collected?

10           We brought up many of those at the  
11 hearing in July.

12           A.       I should have clarified that. If you  
13 will refer to Exhibit Number 34, you will notice  
14 the restating adjustments that increase the revenue  
15 per books by some \$2,901. That's an adjustment to  
16 reflect what, in fact, should have been charged.

17           Q.       And how did you arrive at the \$2,901  
18 figure?

19           A.       I do not have the details on that.

20           Q.       At the hearing in July, Mr. Lease  
21 brought his books, and I believe during the court  
22 hearing we were able to determine between ourselves  
23 and Mr. Lease that there was some 4,500 to \$5,000  
24 outstanding in just ten known customers who were  
25 not being collected from. This was -- This was

1 part of our testimony during the previous hearing.

2 Those, I stress, are only the known  
3 ones that are receiving water that are either not  
4 being billed, or they're being billed and not being  
5 collected from. And I think we came up with a  
6 figure of somewhere between 4500 and \$5,000.

7 A. Yes. I think you make a good point,  
8 and let me go through a little bit of simple math  
9 here to show you how the revenues were determined.

10 If you'll notice on that line, we are  
11 using 114 customers. And as I mentioned, there's a  
12 frustration in terms of the number of customers.  
13 But if you would take that 114 and multiply it by  
14 20 and then by 12, you would have \$27,360.

15 And so it's relatively easy calculated  
16 with a flat-rated system. You have so many  
17 customers, and you charge 20 bucks a month. That's  
18 what the company should be collecting.

19 Q. Okay. So what you're showing here is  
20 what they should be collecting?

21 A. That is correct. That's why I say  
22 that. For example, as I recall, Mr. Lease was not  
23 paying for his use. That would have been picked up  
24 in the \$2,901 adjustment that you see. What we're  
25 trying to do is replicate what the revenue from

1       this system should be.

2               Q.       All right.

3               A.       And you --

4               Q.       But you do agree that there is still a  
5       lot of confusion on what it should be?

6               A.       The only confusion in terms of what it  
7       should be would center around the number of  
8       customers. And I think we're pretty close on that.  
9       Somewhere between 112 and 114, I can't be certain.

10              Q.       All right. You talked about the fact  
11       that the non-acute violations were not justifi-  
12       cation for a refund being given. However, is it  
13       not true that even a non-acute violation is a  
14       possible threat to the health of the consumer?

15              A.       Yes. To be exact, a non-acute  
16       violation is defined as meaning, means, "posing a  
17       possible or less than immediate risk to human  
18       health."

19                      That's a quote from the Department of  
20       Health Administrative Code.

21              Q.       Okay. Exhibit Number 8 in the previous  
22       portion of this hearing also has a paragraph on  
23       coliform bacteria, and if I may read just a portion  
24       of that, or would it be better to have Mr.  
25       Ottavelli read it?

1                   JUDGE ANDERL: Let me take a look  
2 at it. I suspect this is something that's already  
3 been read into the record once, and we have it as  
4 an exhibit, so really it would be quite repetitive,  
5 if the paragraph you were going to read is entitled  
6 the coliform bacteria.

7                   MRS. SNELSON: Right, okay.

8                   JUDGE ANDERL: You could just, if  
9 you have any questions about that, call his  
10 attention to it. But I don't think it's necessary  
11 to have it read aloud.

12                  Q.       (BY MRS. SNELSON:) Okay. The point is  
13 that it is a possible threat to health?

14                  A.       Yes. And I'd like to elaborate just a  
15 little bit, first emphasizing that I'm not an  
16 employee of the Department of Health, I am not a  
17 biologist, and I do not pretend to be an expert in  
18 this area.

19                         But what I am looking at are Department  
20 of Health publications. Unfortunately Exhibit 8  
21 reflects one page from approximately a 35-page  
22 publication by the Department of Health entitled  
23 preparation of a coliform monitoring plan. And if  
24 one reads the entire document, they receive a  
25 little bit different impression.

1           Also, the Department of Health has  
2 published what they call coliform MCL violations.  
3 And what is in that publication is a definition or  
4 a discussion of coliforms in terms of what are they  
5 and what do they indicate. And I think that  
6 publication perhaps gives a more balanced  
7 perspective.

8           It says, "Coliform are a large group of  
9 bacteria which commonly live in the digestive  
10 tracts of humans and animals. For this reason,  
11 coliform bacteria are found in sewage and animal  
12 waste. However, many coliforms are harmless and  
13 can be found in other places, such as soil."

14           Unfortunately the test for coliform  
15 bacteria do not indicate their source, and I would  
16 only like to add that, as Mr. Riley testified, a  
17 total coliform/non-acute violation is very common.

18           Q.     So, if I understand it right, a  
19 non-acute violation is not justification for the  
20 refund, however, it was justification for  
21 moratorium being issued for the entire water  
22 system. To me, that is kind of a --

23           A.     Again, I'm sorry.

24                   MS. RENDAHL:  Objection, Your  
25 Honor.  I request that the question be phrased as a



1 question, rather than a statement --

2 MRS. SNELSON: Okay.

3 MS. RENDAHL: -- to which there's  
4 no question pending to be answered.

5 JUDGE ANDERL: That's correct. If  
6 you could just kind of bear that in mind.

7 MRS. SNELSON: All right. All  
8 right. Thank you.

9 Q. If the non-acute violation does not  
10 justify a refund, then why would it justify the  
11 issuance of a category red, or a moratorium, being  
12 issued against the water system?

13 A. Okay. Again, I have to qualify that I  
14 am not an employee of the Department of Health, and  
15 I don't pretend to be an expert on what they have.

16 However, it is my understanding that  
17 the initial action on the moratorium was taken by  
18 the County Department of Health, and that, in fact,  
19 their letter was issued a month before anything  
20 came out of the Department of Health.

21 I believe that the category red, or the  
22 moratorium, can be triggered by a variety of  
23 circumstances to include the company not having the  
24 capacity to add additional customers for a variety  
25 of reasons.

1                   Now, as to why the county issued the  
2 moratorium, I'm not certain.

3                   Q.     Are you aware that the county issued  
4 the moratorium under the recommendation of Mr.  
5 Riley, who is the state engineer in charge of this  
6 area?

7                   A.     That's my -- I believe that the -- that  
8 the county moratorium has language to that sort in  
9 it, that upon the recommendation of the Department  
10 of Health, we are issuing a moratorium.

11                  Q.     Exactly. Right.

12                  A.     I don't know what Mr. Riley said, so I  
13 don't know why they did that. I just don't know.  
14 I don't know if it's because of the non-acute  
15 violations that were occurring, or if it were for a  
16 variety of reasons. I just don't know.

17                  Q.     So it could have been for a variety of  
18 reasons, but included in those variety of reasons  
19 was the non-acute violations that added to --

20                  A.     Absolutely.

21                  Q.     -- the other violations that were  
22 already in place?

23                  A.     I'm certain it was a consideration.

24                  Q.     All right.

25                  A.     But I might also add that non-acute

1 violations, again, are quite common. And the  
2 non-acute violation by itself does not always  
3 result in a moratorium.

4 Q. I understand that. Did Mr. Riley not  
5 testify that non-acute violations are fairly common  
6 on a month-to-month basis, but not over an extended  
7 period of time?

8 A. Yes. And that is --

9 Q. And that is, what? I'm sorry. Go  
10 ahead.

11 A. Yes. And that is a concern. And that  
12 is why one of my recommendations to the Commission  
13 is that that the Commission consider -- continue to  
14 monitor testing. And if a pattern of violations  
15 begins again, that the Commission consider  
16 receivership.

17 Q. Okay. If, in fact, the moratorium was  
18 not due to the non-acute violations or the water  
19 quality, why then was it changed to category yellow  
20 at the time, based on the water quality tests  
21 coming back good again?

22 MS. RENDAHL: Objection, Your  
23 Honor. I don't believe this witness is qualified  
24 to testify about what the County did with the  
25 moratorium. So I would object to the question for

1       that reason.

2                   JUDGE ANDERL:  I think I should, I  
3       will sustain that objection.  I don't think that  
4       Mr. Ottavelli's answer could be anything more than  
5       speculation, and really wouldn't be useful for us  
6       on this record.

7                   MRS. SNELSON:  The reason for my  
8       question is because he's basing the recommendation  
9       for refund on that particular subject, on the  
10      non-acute violation.

11                  JUDGE ANDERL:  Right.  And I'm sure  
12      his answer -- I know his answer on the record  
13      already was that the violations did play a part of  
14      the recommendation that there be a red on there.

15                  But, as I said, again, even that answer  
16      was pretty much just speculation.  Mrs. Snelson, I  
17      think what you're getting at is, if these  
18      violations were bad enough for a moratorium to be  
19      imposed, why aren't they bad enough to recommend  
20      refunds?

21                  MRS. SNELSON:  I guess that's the  
22      basis of it.

23                  JUDGE ANDERL:  Do you want to ask  
24      him that question?

25                  MRS. SNELSON:  Okay.  Thank you.

1 JUDGE ANDERL: Go ahead, Mr.  
2 Ottavelli.

3 THE WITNESS: A refund is a very,  
4 very dramatic step for the Commission to take. A  
5 refund would be a very dramatic step, and I think  
6 it's a step that the Commission should take only  
7 under extreme circumstances.

8 And those circumstances I would define  
9 as an existence of an acute violation, where the  
10 water is found, in fact, to be dangerous to public  
11 health.

12 And the Commission has other means of  
13 addressing other problems that may exist, and  
14 that's where I'm suggesting the receivership as an  
15 approach that the Commission should be very careful  
16 to specify in it's order what this company must do  
17 to be acceptable as a public utility.

18 And if it fails to do so, that it be  
19 referred to the Department of Health for action  
20 into receivership.

21 Q. (BY MRS. SNELSON:) Just one more  
22 question on that. The RCW that was referred to  
23 earlier, says that if the Commission determines the  
24 water does not meet the state drinking water  
25 standards, a refund can be made. And it doesn't

1 refer to acute and non-acute, if I'm not mistaken,  
2 in that RCW.

3 It refers just to not meeting state  
4 drinking water standards, am I correct?

5 A. Yes, you are correct. The statute, to  
6 be specific, says that the Commission may, where  
7 appropriate, order a refund to the customer on a  
8 pro rata basis for the substandard water delivered  
9 to the customer.

10 And it is my recommendation to the  
11 Commission that substandard be an acute violation,  
12 where the water potentially poses a risk to human  
13 health.

14 MRS. SNELSON: That's all the  
15 questions I have.

16 JUDGE ANDERL: Okay. Thank you.  
17 Mr. Barker, do you have any questions for this  
18 witness?

19 MR. BARKER: Yes. I have a couple.  
20  
21

22 CROSS-EXAMINATION  
23

24 BY MR. BARKER:

25 Q. On Exhibit Number 34, has the

1 Commission gone -- What would the Commission  
2 recommend, according to this, as a rate increase?  
3 If you can tell what they're thinking, what would  
4 be appropriate?

5 A. To start with, I can't suggest what the  
6 Commission may or may not do with a particular  
7 request for rate increase. And I assume what you  
8 want is some kind of a dollar --

9 Q. Could I restate that? Was it --

10 A. May I finish my answer?

11 MRS. SNELSON: May I object?

12 JUDGE ANDERL: Go ahead.

13 MRS. SNELSON: This is not a rate  
14 hearing, and I didn't believe, preliminary to a  
15 rate hearing. The rate issue is not pertinent in  
16 this case, I don't believe.

17 JUDGE ANDERL: Well, all throughout  
18 the hearing we've touched on the financial  
19 viability of the company as an issue. And I think  
20 I'm going to let Mr. Barker go ahead and rephrase  
21 his question, see what it is, and then I'll decide  
22 if that's something that Mr. Ottavelli needs to  
23 answer in the context of this proceeding.

24 Mr. Barker, exactly what is your  
25 question?

1 MR. BARKER: Okay.

2 Q. What rate would make this company be in  
3 the black, as far as operation, according to these  
4 books?

5 A. All right.

6 Q. Just from your own opinion.

7 A. When you characterize what rate would  
8 make this company be in the black, the return of  
9 1.16 percent establishes that the company is, in  
10 fact, in the black. They are earning a return on  
11 the investment, but a very small return.

12 As I testified to earlier, the  
13 Commission normally looks at returns in the area  
14 of 12 percent as being reasonable. But it also  
15 should be emphasized that the Commission is very  
16 much aware and takes into consideration the level  
17 of service that is offered.

18 And in prior cases with water  
19 companies, the Commission has found a return less  
20 than 12 percent as a result of poor service having  
21 been established.

22 Q. Okay. The ownership, I have a question  
23 on that. The Health Department, Lilia Lopez, wrote  
24 a letter saying they recognize the ownership as  
25 Marine View Heights, Inc. Why doesn't the UTC



1 accept that also?

2 A. There is extreme frustration with the  
3 UTC in terms of the ownership. You are correct.  
4 The Department of Health under a letter authored by  
5 Lilia Lopez accepts the ownership as being  
6 yourself. There has been some information  
7 submitted in this proceeding that indicates that  
8 the ownership is other than Mr. Sahli.

9 The reality is that the information  
10 that has been provided to the Commission, in terms  
11 of the tariff that was filed with the Commission,  
12 establishes Mr. Sahli as the owner. And under  
13 Title 80, no action has been taken or no approvals  
14 have been obtained from the Commission changing  
15 that ownership.

16 So legally, as I understand, the owner  
17 still would be as indicated in the tariff.

18 Q. Okay. I'll have Mr. Bergdahl contact  
19 and prepare whatever needs to be done with that,  
20 but I have one more question.

21 You said that in all the samples that  
22 were bad, there wasn't one of them that was acute  
23 or non -- they were all non-acute.

24 Did I say that right? And the water  
25 samples, that there was not one of them that were

1 acute?

2 A. There were no samples taken that  
3 resulted in an acute MCL. As I understand the  
4 process, the samples first are tested for total  
5 coliform. They are then -- If the presence of  
6 total coliform is found, the lab tests the same  
7 sample for the existence of either Fecal coliform  
8 or E.Coli coliform.

9 It's my understanding that in all of  
10 the unsatisfactory tests where total coliform was  
11 found, neither Fecal coliform nor E.Coli was found.

12 Q. Does that mean the water is drinkable?

13 A. The Department of Health, as I  
14 understand, never declared that the water was not  
15 suitable for drinking by the public.

16 MR. BARKER: Thank you. No further  
17 questions.

18 JUDGE ANDERL: No other questions?  
19 Mrs. Snelson, follow-up?

20 MRS. SNELSON: Yes, please.

21

22

23

24

25



1 would probably be based upon consultation of the  
2 consumer affairs and public affairs division of the  
3 Commission.

4 Q. Upon the -- I'm not sure I understood  
5 that. Upon the homeowners or the consumers filing  
6 a rate application?

7 A. No. Upon the owners of the -- Upon the  
8 water company filing for an application, we would  
9 conduct an investigation.

10 Q. I see.

11 A. And only upon completion of the  
12 investigation would we know where we were, and that  
13 has not been done yet.

14 Q. That would be an automatic process upon  
15 the owners filing a rate increase application. Is  
16 that something that's automatically done then --

17 A. Yes.

18 Q. -- that you do assess the level of  
19 service?

20 A. Yes.

21 Q. Okay. All right. Mr. Barker asked you  
22 the question that since the system has never had an  
23 acute violation, that the water has always been  
24 drinkable.

25 Do you recall testimony by Mr. Riley

1 saying that the system did have nonpotable water,  
2 and as a result, nonpotable water by definition is  
3 not suitable for drinking. Do you recall that  
4 testimony?

5 A. No, I do not.

6 MRS. SNELSON: Your Honor, is it  
7 necessary for me to find that testimony to  
8 reiterate that, or is that something that will just  
9 be in the evidence?

10 JUDGE ANDERL: Well, do you want to  
11 ask Mr. Ottavelli if that is, in fact, in the  
12 record? What do you want to do? Just ask him what  
13 his response to that would be?

14 MRS. SNELSON: Yes. Because he  
15 responded to Mr. Barker that our water, that the  
16 Marine View Heights water, has never been  
17 undrinkable.

18 I want to make the point that Mr.  
19 Riley, who is the Department of Health engineer,  
20 did, in fact, state that it was not suitable for  
21 drinking.

22 JUDGE ANDERL: Well, I'm certainly  
23 going to reread the record, but I do make a  
24 decision, and if it comes out that he did say  
25 that --

1 MS. RENDAHL: I believe that's  
2 more appropriate --

3 THE WITNESS: Can I refer to the  
4 testimony on a couple of bases?

5 MS. RENDAHL: I think this is an  
6 issue that's more appropriate for the brief,  
7 pointing out what evidence is in the record, and  
8 what that, in fact, means. So, unless there's a  
9 specific question --

10 JUDGE ANDERL: Yeah. We --

11 MRS. SNELSON: That was a  
12 misunderstanding. I wasn't sure how to handle  
13 that point. If it is more appropriate for the  
14 brief, then that's how we will address that.

15 JUDGE ANDERL: Yes. If you can  
16 find it in the testimony, then you can certainly  
17 point it out in the brief. And as I said, I will  
18 reread the record entirely.

19 MRS. SNELSON: We did find it just  
20 now in the transcript.

21 JUDGE ANDERL: Okay. If you can  
22 refer to the page and line.

23 MRS. SNELSON: Page number 66, line  
24 number -- starting with line number 2, is Craig  
25 Riley's testimony. May I go ahead?

1 JUDGE ANDERL: Let him get the --

2 THE WITNESS: I've got it.

3 JUDGE ANDERL: Okay. Then you  
4 can go ahead.

5 Q. (BY MRS. SNELSON:) Craig Riley's  
6 statement was, "nonpotable would be any water that  
7 is not suitable for drinking."

8 Then the question was asked, "Am I  
9 correct that inadequate is also the same thing as  
10 nonpotable?"

11 Drop down to line 9, "So if Marine View  
12 Heights' water system had inadequate water for 10  
13 months as shown by the test results, 10, in fact,  
14 that they had nonpotable water for 10 months?"

15 Craig Riley's answer, "Yeah. You could  
16 make that extension very easily."

17 "QUESTION: Nonpotable water, did you  
18 say, is not potable. You mean that means not  
19 drinkable?"

20 His answer, "not adequate for drinking  
21 water."

22 That's the testimony that I'm referring  
23 to.

24 A. In answer to that, if you read this  
25 carefully, you will see that Mr. Riley was at no

1 time clear in terms of this water having been  
2 declared nonpotable or nonsuitable for drinking.

3 And if you'll go to page 88 of the  
4 testimony, you will see where it was finally  
5 brought down to the specific question, starting on  
6 line 17, "In response to Cross-examination by the  
7 Homeowners Association, you mention that, or you  
8 testified that, the water company has not been  
9 issued a boil water order, is that correct?

10 "ANSWER: That's correct.

11 "QUESTION: What does nonpotable mean?

12 "ANSWER: Non -- The water is  
13 unsatisfactory for drinking.

14 "QUESTION: If a boil order is not  
15 issued, does that mean that water is nonpotable?

16 "ANSWER: With respect -- Well, no it  
17 doesn't."

18 And then he goes on to some other  
19 items. But I think the critical testimony is on  
20 line 11 through 13. I'm sorry.

21 If you go to page 90 on line 17 to  
22 21, "During the times listed on Exhibit Number 4  
23 when the presence of total coliform was  
24 indicated, would you drink that water?"

25 "ANSWER: Me personally, I would have,



1       yeah."

2                       JUDGE ANDERL:   Ms. Snelson, and I  
3       think you can follow up with one or two questions,  
4       but clearly this is testimony that's going to be  
5       something that the parties will argue on brief,  
6       what the appropriate interpretation of that is.

7                       MRS. SNELSON:   That's fine.   We  
8       will do that.   Thank you.   That's all I have.

9                       JUDGE ANDERL:   Okay.   Mr. Barker,  
10      anything else?

11                      MR. BARKER:   No questions.

12                      JUDGE ANDERL:   Ms. Rendahl,  
13      Redirect?

14                      MS. RENDAHL:   I have no Redirect.

15                      JUDGE ANDERL:   Okay.   Great.   Mr.  
16      Ottavelli, you are through then.   Thank you for  
17      your testimony.   You may step down.   We'll take a  
18      couple minutes off the record, so you can gather  
19      your papers.

20                      (Discussion had off the record).

21                      JUDGE ANDERL:   Okay.   Let's be back  
22      on the record.   Ms. Rendahl, your next witness.

23                      MS. RENDAHL:   Your Honor, I call  
24      Ms. Diana Otto as a witness.

25                      JUDGE ANDERL:   All right.   Ms.

1 Otto, if you would come forward, please.

2

3

DIANA OTTO

4

was thereupon called as a witness in behalf of

5

the Commission and, after having been first duly

6

sworn, was examined and testified as follows:

7

8

9

DIRECT EXAMINATION

10

11 BY MS. RENDAHL:

12

Q. Ms. Otto, I believe you may have gone  
13 through the preliminaries in your testimony in  
14 July, but I'll repeat it here. Would you please  
15 state your name and spell your last name for the  
16 record?

17

A. My name is Diana Otto, O-t-t-o.

18

Q. Would you please state your business  
19 address for the record?

20

A. My business address -- My business  
21 address is Utilities and Transportation Commission,  
22 Post Office Box 47250, Olympia, Washington 98504.

23

Q. Ms. Otto, you testified in July that  
24 you were a consumer program specialist at the  
25 Commission, is that correct?

1           A.     Yes.

2           Q.     And what are your responsibilities in  
3 that capacity?

4           A.     I'm responsible for investigating and  
5 resolving consumer complaints against regulatory  
6 and utility transportation companies. I answer  
7 questions concerning tariffs and to assure that the  
8 companies are operating within the rules set by the  
9 Commission.

10          Q.     How many years have you been employed  
11 by the Commission in this capacity?

12          A.     A little less than five.

13          Q.     And how many years have you been  
14 employed by the Commission total?

15          A.     23.

16          Q.     What other positions have you held with  
17 the Commission during that time?

18          A.     I've previously held four other jobs  
19 within the agency.

20          Q.     After you receive a customer complaint  
21 concerning the service of a public utility company,  
22 what procedure do you follow to resolve that  
23 complaint?

24          A.     Well, once a complaint is received  
25 either in writing or by telephone, I pass the

1 complaint along to the company basically for their  
2 side of the story. And then they respond to me on  
3 what that is.

4 And at that point, I look for  
5 violations in how they've handled the situation and  
6 do any research that's necessary or contact other  
7 agencies, if they're involved. And I hope to  
8 resolve the complaint.

9 Q. In your position as a consumer program  
10 specialist, have you received complaints concerning  
11 water delivered or the service provided by the  
12 Marine View Heights water system?

13 A. Yes, I have.

14 Q. When did you first receive a complaint  
15 concerning the water system?

16 A. January 11, 1993.

17 Q. How many complaints in total has the  
18 Commission staff received concerning the water  
19 system?

20 A. 39.

21 Q. Have you handled all of these  
22 complaints for the Commission?

23 A. I've handled all, but one, I think.

24 Q. In what manner or form have you  
25 received these complaints?

1           A.       Either by written correspondence or by  
2 telephone. And thinking back, I may have taken one  
3 even when the customers came to the open meeting.

4           Q.       When was the last complaint filed  
5 against the water system?

6           A.       In August of '94.

7           Q.       Ms. Otto, do you have the documents  
8 marked as Exhibits 37 and 38 in front of you?

9           A.       Yes.

10          Q.       37 is the chart on eight and a half by  
11 14 paper.

12          A.       Yes, I do.

13          Q.       Would you please identify what's been  
14 marked as Exhibit Number 37, the chart?

15          A.       This is a chart where I've listed all  
16 the complaints filed by the customers of the  
17 company.

18          Q.       Did you prepare this document, or was  
19 it prepared at your direction?

20          A.       Yes, I did. I prepared it.

21          Q.       And what source documents did you use  
22 to prepare the documents?

23          A.       I used the permanent records of the  
24 Commission. Each complaint that is received  
25 becomes a permanent record. It's either my

1 computer file that I've inputted, as I take the  
2 complaint and investigate, or from the documents  
3 that have been from a hard copy, where people have  
4 mailed things in or other agencies have given me  
5 things.

6 Q. Would you explain the column headings  
7 in this document and what they mean?

8 A. Yes. The first column is date filed,  
9 and that's the date that I open the complaint. The  
10 complaint number is, that column refers to the  
11 number we give it in our agency.

12 The next column is the customer's name,  
13 self-explanatory. Problems is a column that  
14 explains the different issues that the customer  
15 complained of. The complaint disposition is --  
16 this column explains the disposition that I gave,  
17 and I probably should explain at this point that  
18 the disposition of the complaint is always the main  
19 -- what I determine to be the main issue of the  
20 complaint.

21 And sometimes, because there's so many  
22 issues, you can't always disposition each issue,  
23 and so you have to do the main issue. We can only  
24 use one disposition.

25 The next column is violation, and that

1 is if I found any violations by the company that  
2 were as a result of this complaint. The violation  
3 disposition is if it was corrected or not, if it  
4 was taken care of.

5 And the last column is the recommen-  
6 dation that I have for the company at the close of  
7 that complaint right now.

8 Q. Under the violation column, when you  
9 state a violation, what -- is that a violation of  
10 statute or regulation?

11 A. Yes, yes. It's -- I'm sorry.

12 Q. And what regulation and statute do you  
13 review?

14 A. These are -- These particular ones are  
15 violations of -- and the only thing that we list on  
16 our complaints are violations of commission rules,  
17 which are WACs.

18 Q. Looking at the heading that's labeled  
19 complaint disposition, and going down and looking  
20 at what's entered in those spaces, what do you mean  
21 by "company upheld"?

22 A. Company upheld means that we found the  
23 company to have done the right thing within the  
24 rules, you know, they handled the situation within  
25 the rules.

1 Q. Underneath that, it states "consumer."  
2 And what do you mean when you state consumer?

3 A. In some way we helped the consumer, and  
4 it could be any number of ways. It could be just  
5 the fact that we got the company to respond and  
6 they handled it or something of that nature.

7 Q. Underneath that it states, "information  
8 provided." What do you mean when you put down  
9 information provided in that column?

10 A. Information provided was used on many  
11 of these dispositions. And it means that, in this  
12 case, it means that we were unable to assist the  
13 consumer in any way here, other than to provide  
14 them information on how to go forward from that  
15 point.

16 Q. Underneath that, it states,  
17 "corrected." And it may be self-explanatory, but  
18 could you explain what that means?

19 A. Corrected means that the company  
20 actually took care of the problem, and the  
21 complaint was resolved.

22 Q. All the way at the bottom it states  
23 non-jurisdictional. What do you mean by non-  
24 jurisdictional?

25 A. Non-jurisdictional means that it was



1 outside of the Commission's authority.

2 Q. And the last item on page 2, the third  
3 row down, it states "non-substantiated." What do  
4 you mean by that?

5 A. Non-substantiated means that whatever  
6 the consumer's complaint was, it could not be  
7 substantiated as fact or a real problem.

8 Q. Okay. Looking next at the one page  
9 list of consumer issues, which has been marked as  
10 Exhibit 38, could you please identify what this  
11 document is?

12 A. This is a document that I prepared  
13 showing the different topics in the complaints,  
14 that were found in the complaints, and the number  
15 of complainants that had that same issue.

16 Q. In your testimony in July, you gave a  
17 list of the types of complaints that the Commission  
18 had received concerning the water system. Is the  
19 list in this document a summary of those types of  
20 complaints?

21 A. Yes, it is.

22 MS. RENDAHL: Your Honor, I'd like  
23 to -- I request that these two documents be  
24 admitted into the record.

25 JUDGE ANDERL: Is there any

1 objection to Exhibits 37 and 38? All right, I hear  
2 no objection. Those documents will be admitted as  
3 identified.

4 (Exhibit Numbers 37 & 38  
5 were admitted).

6 Q. (BY MS. RENDAHL:) Ms. Otto, looking at  
7 Exhibit 38, the one page list, the first type of  
8 complaint listed concerns of billing issues. And  
9 the first billing issue concerns not itemizing.  
10 Could you explain that complaint?

11 A. Yes. These complaints concern the fact  
12 that the company wasn't itemizing the types of  
13 service they had on their bill; for instance, the  
14 difference between road maintenance and water  
15 service charges.

16 Q. The next issue down states, "no due  
17 date." Could you explain that complaint?

18 A. Yeah. The company is required by WAC  
19 to have a, what we call, a due date, or the bill is  
20 delinquent date -- or is delinquent by a certain  
21 date. And that's to be on the bill. And they did  
22 not have that on their bills.

23 Q. The third one down and the fourth one  
24 down concern no telephone number and no business  
25 address. Could you explain those two complaints?

1           A.       Yes. This, again, is basically the  
2 same type of complaint, where it is required by  
3 rule and was not included on the billing.

4           Q.       The next issue down is a complaint  
5 concerning charging garden rates not in tariff.  
6 Could you explain that?

7           A.       Yes. This complaint was from a  
8 consumer who was actually being charged the  
9 proposed garden rate, which had not yet been  
10 approved in the tariff.

11          Q.       And then the next issue down is the  
12 company collecting from Metropolitan Mortgage.  
13 Could you explain that complaint?

14          A.       Yes. This complaint was filed by a  
15 customer who owed Metropolitan Mortgage money and  
16 did not believe that Marine View Heights had the  
17 right to collect on that bill.

18          Q.       And the last billing issue is a  
19 disconnection notice. Could you complain that  
20 complaint?

21          A.       Yes. This customer had been given a  
22 disconnection notice and didn't think the company  
23 had the right to disconnect.

24                    But in reality, what happened here was  
25 that the company put out their disconnection notice

1 slightly erroneously and had not actually  
2 disconnected the customer and renotified the  
3 customer of a proper disconnection notice. And  
4 then the complaint was closed.

5 Q. Can you explain what the disposition  
6 was of these complaints, since you've done so for  
7 the last one, for the other billing issues, other  
8 billing complaints?

9 A. Yes. All of these were corrected by  
10 the company and the complaints are closed as such.

11 Q. Do you have any further recommendation  
12 to the Commission concerning resolution of these  
13 complaints?

14 A. No, I don't.

15 Q. If you look next at the service issues  
16 listed below billing issues, the first issue  
17 concerns the failure to disconnect upon request.  
18 Could you explain that request, please?

19 A. Yes. This is sort of unusual to get a  
20 complaint such as this nature. The company was not  
21 able -- This customer had asked for her service to  
22 be disconnected, and as -- because she didn't want  
23 to use the service any longer.

24 And the company was unable to do so,  
25 because they did not have a proper valve, shut-off

1 valve, and so had denied the request for  
2 disconnect.

3 And I talked with the company and  
4 advised them that per rule, they must disconnect  
5 upon request. And so they apparently installed the  
6 proper shut-off valve and disconnected the  
7 customer.

8 Q. So this complaint was corrected?

9 A. Yes, it was.

10 Q. Do you have any further recommendation  
11 to the Commission concerning any resolution of this  
12 complaint?

13 A. No, I do not.

14 Q. The second service issue is concerning  
15 the lack of a certified water operator. And would  
16 you please explain what the nature of this  
17 complaint was?

18 A. Yes. These complaints were filed by  
19 concerned customers that the company was not being  
20 properly run because it did not have a certified  
21 water operator, which is my understanding is  
22 required by Department of Health.

23 Q. What was the disposition of these  
24 complaints?

25 A. They were corrected when Jerry Lease

1 was hired and received his certified water operator  
2 license.

3 Q. Do you have any further recommendation  
4 to the Commission concerning resolving the issue of  
5 the certified water operator?

6 A. As it lies to this complaint, no. But  
7 I think it should be recommended that the  
8 Commission should require the company to keep a  
9 certified water operator employed at all times.

10 Q. The third service issue concerns a  
11 damage claim. Would you explain this claim?

12 A. Yeah. This was a damage claim filed by  
13 a customer who had a leak that had occurred near  
14 their home. And when the company went out to  
15 correct the leak, they hit their fence with a  
16 backhoe, and wanted damages for that.

17 And I explained to this customer that  
18 damage claims are outside of the authority of our  
19 agency. We do not have the statutory authority to  
20 award damages.

21 Q. So what's the disposition of this  
22 complaint.

23 A. Non-jurisdiction.

24 Q. Do you have any further recommendation  
25 to the Commission concerning this complaint?

1           A.     No.

2           Q.     The next two service issues on the list  
3 concern fire hydrants being installed and  
4 opposition to those -- opposition to fire hydrants,  
5 and also wanting fire hydrants. Could you explain  
6 these complaints?

7           A.     Yes. The first two complaints shown  
8 here were opposing the fire hydrants. Consumers  
9 wrote in that it wasn't necessary, that they had a  
10 volunteer fire department there.

11                   And the third one shown here, someone  
12 wrote in and wanted a hydrant and believed that it  
13 would lower their insurance costs.

14                   And these complaints would, if they  
15 were a separate issue and not involved with any  
16 other issues in this, would have been found to be  
17 non-jurisdictional. Because that's up to the fire  
18 marshal to determine whether fire hydrants are  
19 necessary or not. And in this particular area,  
20 fire hydrants are not required.

21           Q.     What was the disposition of these  
22 complaints then?

23           A.     It would have been non-jurisdictional,  
24 had they only involved that issue.

25           Q.     Do you have any further recommendation

1 to the Commission concerning resolving these  
2 complaints?

3 A. No.

4 Q. The next service issues concerns  
5 opposition to a garden rate. You discussed a  
6 garden rate previously under billing issues, but  
7 would you explain this complaint?

8 A. Yes. This complainant wrote in in  
9 opposition to the proposed rate increase that the  
10 company had filed for and it included a garden  
11 rate. And this customer simply didn't believe that  
12 it should be approved.

13 Q. So how was this resolved, or how was  
14 this dispositioned?

15 A. This was actually -- Pardon me. This  
16 was a complaint that was involved in other issues  
17 as well, and the way this actually came out on this  
18 garden rate was that the company withdrew the rate.

19 But that's not the disposition that was  
20 used on this complaint, because other items were  
21 involved.

22 Q. The next issue down concerns the  
23 company not responding to correspondence. Could  
24 you explain that complaint?

25 A. Yes. One consumer complained that the



1 company did not respond to correspondence when  
2 written. And I contacted the company and advised  
3 them that it was a violation of commission rules to  
4 not respond.

5 And the company responded, and the  
6 complaint was closed.

7 Q. So what was the disposition of that  
8 complaint?

9 A. The disposition of this complaint is  
10 that it was corrected.

11 Q. Do you have any further recommendation  
12 to the Commission concerning this complaint?

13 A. Yes. I believe that the Commission  
14 should recommend that the company continue to be  
15 responsive to their customers in all matters.

16 Q. The last service issue concerns not  
17 returning phone calls or answering the phone.  
18 Could you please explain that complaint or these  
19 complaints?

20 A. Yes. These complaints were exactly  
21 what it says, a consumer called the company and  
22 left a message for whatever reason and had an  
23 inquiry, and the second part of this is that not  
24 answering the phone. A customer called the company  
25 and got no answer whatsoever.

1                   And these complaints, the first part of  
2                   it, returning the phone call, this complaint was  
3                   resolved in that when I contacted the company, I  
4                   requested them to get in touch with that customer,  
5                   and they did so.

6                   And the second part, where the company  
7                   did not answer the phone, they had actually  
8                   included the wrong phone number on the bill. So  
9                   the customer was calling the wrong number.

10                  Q.       So what was the disposition of these  
11                  complaints?

12                  A.       They were corrected.

13                  Q.       And do you have any further  
14                  recommendation to the Commission concerning those  
15                  complaints?

16                  A.       No, I don't.

17                  Q.       The next set of issues concern water  
18                  quality issues. And the first quality issue  
19                  includes a chlorine smell and a chlorinator not  
20                  approved. Could you explain these complaints?

21                  A.       Yes. These complaints concerned  
22                  customers that are sensitive to the odor of  
23                  chlorine in the water. And I kind of grouped it  
24                  together with the chlorinator not being approved,  
25                  because in many cases it all came as one.



1 chlorinating without notice to the customers.

2 Could you explain that complaint?

3 A. Yes. The customers were concerned that  
4 they were not being notified prior to chlorination  
5 of the system, and my findings revealed that  
6 there's no notice requirement.

7 Q. So what was or is the disposition of  
8 these complaints?

9 A. Non-substantiated.

10 Q. Do you have any recommendation to the  
11 Commission concerning further resolution of those  
12 complaints?

13 A. No, I do not.

14 Q. The next quality issue on the list  
15 concerns bacteria or poor water quality. Could  
16 you explain those complaints?

17 A. Yes. I had many complaints filed, as  
18 you can see, 16 filed on this, from customers. And  
19 they felt that the -- basically what they were  
20 referring to was the total coliform issue.

21 Many of the complaints merely said poor  
22 water quality or they were uncomfortable with the  
23 care, quality, and were actually not very specific.  
24 But it was understood what they were referring to.

25 Q. What was or is the disposition of these

1 complaints?

2 A. These complaints were all closed and  
3 dispositioned as information provided. This,  
4 again, was done as the expectation was that the  
5 Department of Health was following up on it, and  
6 the homeowners were filing a formal complaint to  
7 address the issue.

8 Q. Do you have any recommendations or  
9 further recommendations to the Commission  
10 concerning these complaints?

11 A. No, I do not.

12 Q. And why do you have no further  
13 recommendation to the Commission?

14 A. Because at this time, the water quality  
15 has been corrected, and they've had several months  
16 where there has been no total coliform in the water  
17 and the tests have been satisfactory.

18 Q. The next quality issue on the list is  
19 coliform notice issue. Would you please explain  
20 those complaints?

21 A. Yes. The complainants were concerned  
22 that they were not getting proper notice from the  
23 company when total coliform was found in the water.

24 Q. What was or is the disposition of these  
25 complaints?

1           A.       Again, one of those was closed as part  
2 of the, you know, as many issues, as information  
3 provided of what the requirements were for  
4 notification.

5                   And the other one -- They were both  
6 closed as information provided.

7           Q.       Do you have any further recommendation  
8 to the Commission concerning these complaints?

9           A.       Yes. I think they should require that  
10 the company notify their customers per EPA rules  
11 whenever there's an acute or non-acute violation.

12          Q.       The last quality issue on the list is  
13 sick from water. Would you please explain these  
14 complaints?

15          A.       Yes. These complaints were received  
16 from customers who believed that they were, or  
17 believed it was possible that they were, ill from  
18 the water quality. They indicated in one manner or  
19 another that they believed that was the case.

20          Q.       What was or is the disposition of these  
21 complaints?

22          A.       These complaints were, again,  
23 dispositioned as information provided. We cannot  
24 make a determination as to whether that was  
25 actually the case or not.



1 affected the customer high up on the hill.

2 I would like to note here, though, that  
3 these outages were all -- There were no outage  
4 complaints that were filed prior to the formal  
5 complaint. These all came after that point, just  
6 recently this summer.

7 Q. What was or is the disposition of these  
8 complaints?

9 A. These were all corrected, and the  
10 service was back in order.

11 Q. Do you have any further recommendation  
12 to the Commission concerning these complaints?

13 A. No.

14 Q. Looking, then, at the last category  
15 titled "other," the first issue concerns  
16 refinancing problems or moratorium. Could you  
17 explain these complaints?

18 A. Yes. These people complained of not  
19 being able to -- One could not refinance as a  
20 result of the moratorium, and the other did get a  
21 home loan, but it was at a higher rate due to the  
22 moratorium.

23 Q. What was the disposition of these  
24 complaints?

25 A. Non-jurisdictional.



1 Q. And do you have any further recommen-  
2 dation to the Commission?

3 A. No.

4 Q. The last issue concerns ownership.  
5 Could you explain the nature of these complaints?

6 A. Yes. These complaints concern what the  
7 customers believed to be an illegal sale to Marine  
8 View Heights, and it was prior to Commission  
9 authority jurisdiction.

10 Q. What was or is the disposition of those  
11 complaints?

12 A. These were dispositioned non-  
13 jurisdictional, and the reason for that was at the  
14 Commission's open meeting where they heard, where  
15 the rate increase was on the agenda, the chairman  
16 indicated to the homeowners at that time that it  
17 was a property dispute outside of our authority,  
18 and that they should seek civil suit, if they  
19 thought they needed to.

20 Q. Now, is this ownership a different one  
21 from the one Mr. Ottavelli testified to this  
22 morning?

23 A. Yes, it is. It's completely different.

24 Q. Do you have any further recommendation  
25 to the Commission concerning those complaints?

1           A.     No.

2           Q.     Are there any other consumer complaints  
3 concerning the water system that you haven't  
4 testified about this morning?

5           A.     Yes. I have one complaint that's not  
6 listed on here, that is still in the process of  
7 being investigated. And the customer has requested  
8 the company to put a shut-off valve on her  
9 property.

10          Q.     Has that complaint been resolved?

11          A.     Not yet.

12          Q.     Are there any other issues concerning  
13 service or water quality of the water system that  
14 you are aware?

15          A.     Yes. There was one that has been  
16 brought up during this proceeding in that the  
17 company does not have its business location so  
18 noted that the customers can find where to go and  
19 inquire or make payment at their office.

20          Q.     Do have you any recommendation  
21 concerning that issue?

22          A.     Yes. The company is required by rule  
23 to sign their office, and I would recommend that  
24 the Commission order the company to do so within 30  
25 days from the date of the final order.

1           Q.       Would you please summarize your  
2 recommendations to the Commission concerning  
3 improvement of the service or water quality of this  
4 water system?

5           A.       Yes. I would recommend that the  
6 Commission order the company to get their  
7 chlorinator approved within a reasonable time,  
8 which they can only do so if they get the design  
9 work into them. And as I stated earlier -- "into  
10 them," I mean into the Department of Health.

11                   And as I stated earlier, I believe that  
12 has been done. But if they haven't, they should do  
13 so within 30 days from the date of the Commission  
14 order.

15           Q.       I believe you mentioned in your  
16 testimony certified water operator, what is your  
17 further recommendation concerning certified water  
18 operator?

19           A.       That the company be ordered to have a  
20 certified water operator employed at all times.  
21 And I have a concern that Jerry Lease may not stay  
22 with the company, as he's indicated a couple of  
23 different times, that he does not plan on being  
24 there forever, and he does plan on going on a  
25 mission.

1                   And I think the company should have  
2 someone employed that is a certified water  
3 operator.

4                   Q.       I believe you also mentioned  
5 responsiveness to the consumers. How would you  
6 structure that recommendation to the Commission?

7                   A.       That the company continue to be  
8 responsive to its customers' complaints and  
9 inquiries on a continuing basis system. I think  
10 that the company, if we find that they were not  
11 responsive repeatedly, that they should be -- it  
12 should be recommended to the Department of Health  
13 that they be put in receivership.

14                   Q.       Would you agree with Mr. Ottavelli's  
15 recommendation that if there are continuing  
16 unsatisfactory test results that the company be --  
17 that the Commission recommend to the Department of  
18 Health that the company be placed into receiver-  
19 ship?

20                   A.       Yes. I would agree with that. And I  
21 would agree with that with all of my recommen-  
22 dations, that if the company doesn't follow  
23 through, that the Commission order -- in fact, I  
24 think the Commission should order some type of  
25 follow-up within, say, three months from the time

1 that the final order comes out to determine whether  
2 the company is following through on our order, the  
3 Commission's orders.

4 MS. RENDAHL: Your Honor, I have no  
5 further questions.

6 JUDGE ANDERL: Okay. Thank you.  
7 Mrs. Snelson, do you have any Cross for this  
8 witness?

9 MRS. SNELSON: Yes, I do.

10

11

12

CROSS-EXAMINATION

13

14 BY MRS. SNELSON:

15 Q. You stated that these are all of the  
16 complaints that you've received, both by mail and  
17 by telephone, is that correct?

18 A. The 38 that are shown on this, plus the  
19 one that is not shown, yes.

20 Q. I just have one question. Do you  
21 recall a complainant by the name of Dan Marinelli,  
22 who complained that he was being charged a \$20  
23 reconnect -- a \$300 connection fee, rather than a  
24 \$20 reconnect fee?

25 A. I took note of that at the hearing in

1 July when that was brought up, but that was not a  
2 complaint on file with the Commission.

3 Q. That was not on file with the  
4 Commission?

5 A. Huh-uh. And I don't recall ever  
6 talking to him. And it would have been on a  
7 permanent record.

8 Q. Okay. Do you have any statistics  
9 showing a ratio of how many complaints were  
10 actually found and then per the ratio of how many  
11 customers probably had the same problem, but just  
12 didn't call in?

13 I know there are statistics to that  
14 effect. Are you aware of anything?

15 A. No. The only record that we keep is  
16 the customers that call in. And as I noted on this  
17 one document where I talk about the topics, the one  
18 page I noted 112 customers in relationship to the  
19 number of customers that complained to me or to the  
20 Commission.

21 And I use that 112 customers as the  
22 amount that was agreed upon during the July  
23 hearing.

24 Q. Okay. I understand. That's fine.

25 A. May I back up and say one more thing in

1 regard to that Mr. Marinelli, I believe you said  
2 his name was? There is one -- There's one way that  
3 I could have spoken with him or someone in our  
4 agency could have spoken with him, and it would not  
5 have been recorded.

6 When a customer calls in and tells us  
7 of a problem, and we answer that customer right  
8 then without any investigation, in other words,  
9 it's not necessary for us to call the company.  
10 Perhaps, you know, he just gave him advice on how  
11 to proceed or possibly he hadn't talked to the  
12 company, and said, "Well, gee, you need to talk to  
13 the company first."

14 Those are not recorded. Only  
15 complaints where we have to contact the company and  
16 investigate.

17 Q. So perhaps there were some problems,  
18 then, where you have given the advice, "Talk to the  
19 company first, and then if you can't resolve it,  
20 call me back"?

21 A. Yes, yes.

22 Q. Okay. And those would not be recorded?

23 A. Yes. Those are considered inquiries,  
24 as opposed to complaints.

25 Q. What type of follow-up do you do to

1 make sure the complaint has been corrected? How do  
2 you know it's been corrected?

3 A. That's an easy one. The customers call  
4 if it isn't corrected. But in most cases, we can  
5 tell by, you know, the company would forward a copy  
6 of their bill to us, if it was a billing deal,  
7 where they said the telephone number wasn't on it.

8 But generally speaking, the customer is  
9 the final say on whether it's been corrected or  
10 not, because it effected them.

11 Q. So if you don't hear back from the  
12 customer, you assume that it's been corrected?

13 A. Unless it is something that we can  
14 visually see, you know. Have you got a for  
15 instance?

16 Q. Yes. On Exhibit Number 37, for  
17 example, the very first complaint, Mr. James Rose,  
18 his complaint, the one that you would be dealing  
19 with, is the failure to itemize billing. And your  
20 violation disposition is corrected, that it was a  
21 computer problem.

22 So what you're doing is you're  
23 accepting the company's reasoning that it was a  
24 computer problem?

25 A. Uh-huh.



1 Q. And you're assuming that they corrected  
2 it, because you did not hear back from the  
3 customer?

4 A. No. I actually heard from the  
5 customer.

6 Q. Oh, you did?

7 A. You know, the customer, if my memory  
8 serves me right, we held that open until the next  
9 billing. And then the customer advised me if it  
10 was corrected or not.

11 Q. Okay. Because that's -- My point is,  
12 that you do something to do some follow-up --

13 A. Absolutely.

14 Q. -- on whether or not the complaint has  
15 actually been corrected?

16 A. Yes.

17 Q. Okay. In that instance, the customer  
18 who was being charged for the garden rates and it  
19 was not appropriate, was that money returned to the  
20 customer?

21 A. The customer never paid the bill.

22 Q. Oh, I see.

23 A. So there was no need to return the  
24 money.

25 Q. All right. Are you aware that

1 according to the Department of Health that a water  
2 outage or low pressure also constitutes a water  
3 quality problem, as well as a quantity? It's  
4 listed under the water quality issue?

5 A. I'm not aware of that, but I could see  
6 where it could cause a water quality problem after  
7 an outage, because many times after an outage, it  
8 breaks sediment loose in the pipes.

9 Q. Okay. Thank you. Is there a certified  
10 water operator in place now at the present time --

11 A. It is --

12 Q. -- for Marine View Heights  
13 Incorporated?

14 A. It is my understanding that there is.

15 MRS. SNELSON: Okay. That's all  
16 the questions I have.

17 JUDGE ANDERL: Okay. Thank you.  
18 Mr. Barker, do you have any questions?

19 MR. BARKER: I have one.

20

21

22 CROSS-EXAMINATION

23

24 BY MR. BARKER:

25 Q. Where a customer buys a lot after the

1 water's been installed there for ten years, does  
2 the water company, because they request a new line  
3 or new something changed on it, is the company  
4 required to just jump up and do it, since they  
5 bought it as is, and it's been there for years?

6 A. I know what you're referring to, and  
7 Mr. Barker is referring to the complaint that is  
8 not yet closed or resolved. And I think that is an  
9 answer that has yet to be determined.

10 Q. I just wanted to know what the UTC's  
11 thoughts or suggestions were to do on that?

12 A. The UTC, the Commission, does not have  
13 authority over that issue. It's my understanding  
14 that's the Department of Health. And I am in  
15 contact with the Department of Health about that.

16 MR. BARKER: Okay.

17 JUDGE ANDERL: Anything else?

18 MR. BARKER: Nope.

19 JUDGE ANDERL: Anything on

20 Redirect?

21 MS. RENDAHL: No, Your Honor.

22 JUDGE ANDERL: Okay. Thank you,  
23 Ms. Otto, for your testimony. You may step down.

24 Does the Commission staff have any  
25 other witnesses?

1 MS. RENDAHL: No. That's it, Your  
2 Honor.

3 JUDGE ANDERL: Okay. The only  
4 things, then, that we have left to do would be any  
5 further Cross of the company that the Homeowners  
6 Association might have and Commission staff.

7 Mr. Barker, do you have any additional  
8 information on whether Mr. Lease might be here  
9 today?

10 MR. BARKER: No, I don't, Your  
11 Honor.

12 JUDGE ANDERL: Okay. Would you  
13 please --

14 MR. BARKER: All he did was told me  
15 he'd come.

16 JUDGE ANDERL: Would you please  
17 take the witness stand, then.

18

19

FRED BARKER

20 was thereupon called as a witness in behalf of  
21 the Complainant and, after having been first duly  
22 sworn, was examined and testified as follows:

23

24

JUDGE ANDERL: Before we go forward  
25 with the Cross, I do -- I can't remember if I did

1 this on the record or not, but before we started  
2 the hearing, I pointed out to you, Mr. Barker, that  
3 I had given you an opportunity to submit additional  
4 documentation today, if you had that, with regard  
5 to the water notices that might have been issued  
6 for each month that there was coliform present.

7 And I think you indicated to me that if  
8 you were going to present those notices, it was  
9 going to be through Mr. Lease, is that correct?

10 THE WITNESS: Yes, Your Honor.

11 JUDGE ANDERL: Okay. And you don't  
12 have anything with you right now?

13 THE WITNESS: No.

14 MS. RENDAHL: May I make a request  
15 that those be late-filed exhibits, that those be  
16 submitted after the hearing?

17 JUDGE ANDERL: Well, I have  
18 testimony from the Homeowners Association that they  
19 weren't all mailed, and I was just giving him an  
20 opportunity through documentation to show that  
21 there was a notice for each of the 10 months.

22 It's the homeowners position that there  
23 weren't notices for each of those 10 months, and I  
24 felt it was fair to give him the opportunity to  
25 present them today.

1 I wasn't going to ask that they be  
2 late-filed exhibits. Why? Do you think that  
3 might be something we'd need?

4 MS. RENDAHL: If the homeowners  
5 are still interested in requesting that, then  
6 that was my reason for allowing them as late-  
7 filed exhibits, but I just proposed it as an  
8 option.

9 JUDGE ANDERL: Okay. I thought you  
10 were requesting it specifically.

11 MRS. SNELSON: No. I believe ample  
12 time has been given for him to submit those, and if  
13 they were to be submitted late, we would need an  
14 opportunity to look at those to compare them with  
15 our notices that we have in hand.

16 Therefore, I think that in the -- To  
17 save time, I just really believe that the issue  
18 should stand as it is.

19 JUDGE ANDERL: Okay. If Mr. Lease  
20 appears with them later while we'll still in  
21 session, otherwise, I'm not going to identify them  
22 at this time as late-filed exhibits. You can go  
23 ahead with your Cross, Mrs. Snelson.

24 MRS. SNELSON: All right.

25

1

2

## EXAMINATION

3

4

BY MRS. SNELSON:

5

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8

9

Q. Mr. Barker, you stated that exhibits 28, 29, 30, and 31, were all prepared by Jerry Lease, and it was his duty, part of his duties, to prepare the financial statements for the company, is that correct?

10

A. Yes.

11

12

13

14

Q. What is Jerry's position with the company now? He was preparing the financial statements at the time these were prepared. What is his position with the company now?

15

A. In what way?

16

17

18

Q. What are his duties? What is Mr. Lease doing for and with Marine View Heights Incorporated at this -- at the present time; today, in fact?

19

A. He is still the certified operator.

20

21

Q. What duties is he performing as a certified water operator at this time?

22

23

A. The duties that a certified operator should do.

24

25

Q. If we were to need assistance at this time, who would we call to provide that assistance

1 to us?

2 A. Like what?

3 Q. If we had a water problem, if we had a  
4 leak, if our pipes -- if we had anything that a  
5 certified water operator is supposed to do --

6 A. Well, if --

7 Q. -- who would we call today?

8 A. You'd call the office, and either Jerry  
9 or I would come up and assist you.

10 Q. Is Jerry, in fact, still the assistant  
11 manager at this time?

12 A. He is still the certified operator.

13 JUDGE ANDERL: Mr. Barker, you kind  
14 of need to be a little more responsive to her  
15 question, which is, is he system manager?

16 That's pretty much a yes or no.

17 THE WITNESS: No.

18 Q. (BY MRS. SNELSON:) He is not. Can  
19 you tell me why he is not the system manager at  
20 this time?

21 A. Well, he's having a few mental problems  
22 with the homeowners up there, as far as with all  
23 the homeowners that he says giving him problems,  
24 but he is still the certified operator at this  
25 time.



1           Q.       But is he performing his duties as a  
2 certified water operator?

3           A.       I would say yes.

4           Q.       Why is Jerry not here today? Why is  
5 Mr. Lease not here today?

6           A.       He had a court date. He had another  
7 court date for a traffic violation.

8           Q.       That was going to take the entire  
9 morning?

10          A.       I have no idea.

11                   MRS. SNELSON: Okay. We are not  
12 going to do any Cross-examining at this time on,  
13 I'll say it's 27, 28, 29, and 30, because we  
14 don't feel that they are pertinent enough to our  
15 hearing.

16                   Also, we choose not to Cross-examine on  
17 Exhibit 31 at this time, because we feel it's based  
18 on hearsay and personal opinion or has already been  
19 covered by the presentation of our case.

20                   I have a little problem I need some  
21 advice on right now.

22                   JUDGE ANDERL: Okay.

23                   MRS. SNELSON: I believe I have  
24 finished my questions for Mr. Barker, but is it  
25 possible to recall one of my previous witnesses to

1 the stand to clarify something that we've just been  
2 talking about about our certified water operator?

3 JUDGE ANDERL: Sure, I think  
4 you'd be allowed a brief rebuttal witness. Would  
5 there be any objection to that?

6 MR. BARKER: No.

7 MS. RENDAHL: No, Your Honor.

8 JUDGE ANDERL: We can do that when  
9 Mr. Barker is off the stand.

10 Q. (BY MRS. SNELSON:) Okay. Referring to  
11 Exhibit Number 33, the stipulation agreement that  
12 was just submitted today, item number 6 is a  
13 stipulation between the homeowners and the company.  
14 "The float switch in the tank has been raised in an  
15 effort to remedy this problem."

16 It was raised, oh, it doesn't have a  
17 date there.

18 Mr. Barker, are you aware that on  
19 August 7th, customers also, again, ran out of  
20 water?

21 A. Yes I am.

22 Q. You are aware of that?

23 A. (Witness nodded head affirmatively).

24 MRS. SNELSON: All right, that's  
25 fine. I have no further questions, then, for Mr.

1 Barker.

2 JUDGE ANDERL: Okay. Ms. Rendahl?

3 MS. RENDAHL: I have a couple of  
4 questions concerning Exhibit 31.

5

6

7

CROSS-EXAMINATION

8

9 BY MS. RENDAHL:

10 Q. Do you have that exhibit in front of  
11 you?

12 A. No, I don't.

13 JUDGE ANDERL: I'll let him use  
14 my copy.

15 Q. (BY MS. RENDAHL:) At the bottom of the  
16 first paragraph, you stated that "Mr. Fred Barker  
17 has purchased the water system in an effort to make  
18 a profit. However, since the beginning, it has  
19 created hardship for both the homeowners and the  
20 owner. Mr. Barker has offered the sale to the  
21 homeowners."

22 Have you made an offer to the  
23 homeowners?

24 A. The homeowners? I hired engineer Ron  
25 Baker to work with them, and my understanding is

1 that they're progressing, there was an offer made.

2 Q. Can you tell me what that offer is, or  
3 is that --

4 A. I think Ron told me they offered  
5 180,000 for it.

6 Q. Do you know if there's a response yet  
7 to that offer?

8 A. I haven't talked to him in the last few  
9 days, and I'm not sure where it's at. Ev Sanders  
10 could answer that question, if you wanted an  
11 answer.

12 Q. Well, at this point, I just think  
13 that's sufficient.

14 MS. RENDAHL: I have no other  
15 questions.

16 JUDGE ANDERL: Okay. Well, just  
17 for clarification, Mr. Barker, it's your  
18 understanding that the homeowners offered 180,000  
19 for the system?

20 THE WITNESS: Yes. Ron Baker told  
21 me that they had submitted an offer for 180,000.

22 JUDGE ANDERL: Okay. Well, who  
23 would be the person who would respond to that  
24 offer?

25 THE WITNESS: Ron Baker. As far as

1 the homeowners, or --

2 JUDGE ANDERL: Well, who has the  
3 authority to accept that offer for the purchase of  
4 the system?

5 THE WITNESS: Ron Baker.

6 JUDGE ANDERL: You've delegated or  
7 authorized him to accept or reject that offer?

8 THE WITNESS: Yes, I did.

9 JUDGE ANDERL: Do you know when  
10 he's going to make up his mind?

11 THE WITNESS: No, I don't. I think  
12 he's -- I told him to accept it. We talked about  
13 it, and I think he's waiting for the homeowners to  
14 do something. I don't know.

15 JUDGE ANDERL: Okay. You're right,  
16 I probably don't want to know anymore about that.

17 Mrs. Snelson, anything further for this  
18 witness?

19 MRS. SNELSON: No.

20 JUDGE ANDERL: Okay. Thank you,  
21 Mr. Barker, for your testimony. You may step down.

22 JUDGE ANDERL: All right. Is there  
23 anything further to come before us, other than a  
24 rebuttal witness for the Homeowners Association?

25 MRS. SNELSON: Your Honor, we have

1 changed our mind in the meantime. I'm sorry. We  
2 will not have a rebuttal witness.

3 JUDGE ANDERL: Okay. Is there  
4 anything further to come before us, then? All  
5 right. I hear nothing. Let's take a brief recess  
6 and talk about a schedule for filing briefs. We're  
7 off the record.

8 (Discussion had off the record).

9 JUDGE ANDERL: Let's be back on the  
10 record. While we were off the record, we discussed  
11 the briefing schedule, and we also had a real  
12 general discussion in terms of the format and  
13 structure of the briefs.

14 The parties are allowed to file  
15 simultaneous briefs in this matter. They are due  
16 at the Commission no later than October 28, 1994.  
17 They must also be served on the other parties by  
18 that date.

19 And we talked about the fact that  
20 service is adequate by mail, as long as it's  
21 post-marked, but that the official copy must be  
22 received at the Commission no later than the close  
23 of business, which is 5 p.m. on the 28th of  
24 October.

25 And I committed to writing an order and

1 sending it to the parties no later than November  
2 30th, as long as that's not a Saturday or Sunday.  
3 I think that's a weekday, so -- Is there anything  
4 else we need to talk about? Mr. Barker?

5 MR. BARKER: You actually file  
6 three of them, one to the homeowners, one to the  
7 UTC, and one to you? Is that on the brief?

8 JUDGE ANDERL: Actually, you need  
9 to file a copy with the Commission, that's the  
10 official copy. And I can make sure that you get  
11 the Commission's address to file.

12 You need to mail a copy to Mrs.  
13 Snelson, or hand it to her in person, and also Ms.  
14 Rendahl at the Assistant Attorney General's Office.

15 Filing with the Commission is not the  
16 same as filing with Ms. Rendahl. You need to do  
17 both things.

18 MR. BARKER: Okay.

19 JUDGE ANDERL: Anything else?  
20 Thank you all for attending today. We'll stand  
21 adjourned.

22

23

(11:45 p.m.)

24

25

\* \* \*

1 STATE OF WASHINGTON )  
2 County of Benton ) ss.  
3

4 I, DINA LINDQUIST, do hereby  
5 certify that at the time and place heretofore  
6 mentioned in the caption of the foregoing matter,  
7 I was a Professional Shorthand Reporter and  
8 Notary Public for Washington; that at said time  
9 and place I reported in stenotype all testimony  
10 adduced and proceedings had in the foregoing  
11 matter; that thereafter my notes were reduced to  
12 typewriting and that the foregoing transcript  
13 consisting of 103 typewritten pages is a true and  
14 correct transcript of all such testimony adduced  
15 and proceedings had and of the whole thereof.

16 WITNESS my hand at Kennewick,  
17 Washington, on this 23<sup>rd</sup> day of September, 1994.  
18

19  
20 *Dina Lindquist*  
21 DINA LINDQUIST  
22 Notary Public for Washington  
23 My Commission Expires: 12-9-97  
24  
25

