

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION  
COMMISSION

**ORIGINAL**

MARINE VIEW HEIGHTS )  
HOMEOWNERS ASSOCIATION, )  
 )  
Complainant, )  
 )  
vs. )  
 )  
MARINE VIEW HEIGHTS )  
INCORPORATION, )  
 )  
Respondent. )  
\_\_\_\_\_ )

Docket No.  
UW-940325

VOLUME IV  
(Page 464 - 554)

RECEIVED  
JUN 21 11:05 AM  
OFFICE OF THE CLERK  
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

A hearing in the above matter was held on June 8, 1995, at the hour of 9:30 a.m., at the Department of Social & Health Services, 1620 S. Pioneer Way, Moses Lake, Washington, before LISA ANDERL, Administrative Law Judge.

The parties were present as follows:

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

MARINE VIEW HEIGHTS INCORPORATION, by RON BAKER, 101 W. Broadway, Moses Lake, Washington 98837.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION, by Ann Rendahl, Assistant Attorney General, 1400 S. Evergreen Park Drive SW, Olympia, Washington 98504-0128.

Dina Lindquist, CSR  
Court Reporter


1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

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

	D	X	ReD	ReX	J
For the Judge:					
RON BAKER					467
(By Ms. Rendahl)		477			
(By Ms. Snelson)		487			
For the Commission:					
CRAIG RILEY	496				
(By Mr. Baker)		500			
(By Ms. Snelson)		501			
					508
DIANA OTTO	512		535		
(By Mr. Baker)		527			
(By Ms. Snelson)		529			
FRED OTTAVELLI	538				
(By Ms. Snelson)		540			
For the Homeowners Association:					
EVERETT SANDERS	542				
(By Ms. Baker)		547			
(By Mr. Rendahl)		548			

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

I N D E X        O F        E X H I B I T S

No.:	Identification:	Id.	Adm.
39	Document from Boundary Engineering	478	494
40	Proposed Chlorination System	485	525
41	Billing invoices	485	525 
42	Bacteriological Analysis	488	
43	Modification to Department Order	504	505
44	Water Sample Results	513	514
45	Order Granting Transfer of Ownership	538	539
46	Letter from Mr. Sanders	543	546

1 PROCEEDINGS

2 JUDGE ANDERL: Let's be on the record.  
3 This hearing will come to order. This is an  
4 administrative hearing before the office of  
5 administrative hearings for the utilities and  
6 transportation commission.

7 This matter is captioned Marine View  
8 Homeowners, complainant, versus Marine View Heights,  
9 Incorporated, respondent. Docket No. W94-0325. My name  
10 is Lisa Anderl. We're convened in Moses Lake on June 8,  
11 1995.

12 Let me begin by taking appearances from the  
13 parties, beginning with the respondent. Mr. Baker, would  
14 you give your full name and your business address and  
15 state what capacity you're here in.

16 MR. BAKER: My name is W. Ron Baker.  
17 My address is 101 West Broadway, Moses Lake, Washington,  
18 98337. Mr. Barker, asked me to attend this hearing and  
19 answer whatever questions I could answer. Mr. Barker is  
20 in Arizona, for the record.

21 JUDGE ANDERL: Okay. Thank you. For  
22 the Homeowners Association?

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

1 the Marine View Heights Homeowners Association.

2 JUDGE ANDERL: Thank you. Ms. Rendahl?

3 MS. RENDAHL: Ann Rendahl, Assistant  
4 Attorney General, representing the Washington Utilities  
5 and Transportation Commission. My address is 1300 South  
6 Evergreen Park Drive, S.W., Olympia, Washington, 98504.

7 JUDGE ANDERL: Thank you. Before we  
8 started today, I explained briefly to Mr. Baker why we  
9 were here. I gave him a copy of the Notice of Hearing.

10 We are here because of a commission final  
11 order some two months ago, which required that another  
12 hearing be scheduled in order to determine the  
13 respondent's compliance with the terms of that final  
14 order.

15 I'm going to take testimony from the  
16 respondent first. And, Mr. Baker, if you could come up  
17 and take a seat, please, in the witness chair, I will  
18 place you under oath, and we'll have some questions for  
19 you. Raise your right hand, please.

20

21 RON BAKER

22

23 called as a witness herein, being first duly sworn to  
24 tell the truth, the whole truth and nothing but the  
25 truth, was examined and testified as follows:

EXAMINATION

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

BY JUDGE ANDERL:

Q. Mr. Baker, why don't you give us some back ground first. What is your association with Marine View Heights Incorporation, the water system?

A. Going back a couple of years, I've worked for Mr. Fred Barker on Marine View Heights water system, RV development, and Sportsman Resort, which are all located in the same area. I have worked as an engineer in the design of new systems and retro-designs on some of the older parts of the systems.

Q. Are you specifically familiar with the water system that serves the marine View Heights Homeowners Association?

A. Yes, I am.

Q. What's your familiarity with that?

A. Previously there was a comprehensive water plan prepared by Len Harms, who is an engineer out in the Tri-Cities. This plan was prepared specifically for the Marine View Heights water system.

In the course of my work for Mr. Barker, I have reviewed that plan, and on occasion, I have discussed improvement to the water system with Mr. Barker. Prior to Mr. Barker's involvement on the water

1 system, Metropolitan Mortgage was the owner/operator of  
2 the system. And during that time, I did some review for  
3 them on the water system and the storage reservoir.

4 Q. Okay. The water plan that you referred to  
5 prepared by engineer Harms --

6 A. Yes.

7 Q. -- can you give me some idea of what time  
8 frame we're taking about, when that plan was prepared?

9 A. In the last two years.

10 Q. And you have reviewed it?

11 A. Yes, I have.

12 Q. Do you have any personal knowledge as to  
13 whether or not that plan has been approved by the  
14 Department of Health?

15 A. I was advised by one of my staff yesterday  
16 that the plan has not been approved. And that came from  
17 a phone call to the Department of Health in Spokane.

18 Q. Mr. Baker, have you had a chance to look  
19 over the Notice of Hearing that I just gave you?

20 A. Yes, I have.

21 Q. Okay. Have you seen any other documents in  
22 this case, either the initial order that I prepared or  
23 the final order that the Commission issued on March 22nd?

24 A. I had reviewed a series of complaint items  
25 that was prepared by the Homeowners Association, and I

1 have seen a response that was prepared by Mr. Lease, who  
2 is a stepson of Mr. Barker. And that was probably six  
3 months to a year ago.

4 Q. Okay. So you don't specifically recall  
5 seeing the Commission's final order --

6 A. No, I don't.

7 Q. -- which was issued two months ago?

8 A. No.

9 Q. In looking over the numbered paragraphs in  
10 the Notice of Hearing, 1 through 7, can you tell me  
11 whether you are in a position, from personal knowledge,  
12 to address whether or not the company has complied with  
13 any of those numbered provisions?

14 A. I can a few of them, not all of them.

15 Q. Okay. Let's start at number 1 and talk  
16 about that.

17 A. Okay.

18 Q. Can you tell me whether the company has been  
19 testing the water?

20 A. Okay. I believe they have been. I do not  
21 have firsthand knowledge of all the reports and that. I  
22 haven't actually seen them. But I asked Mr. Barker this  
23 morning if there had been any failed tests, and I asked  
24 him specifically in the last six months, and he said no.  
25 That's all I personally have knowledge of.



1 Q. Do you have any knowledge of whether the  
2 water company or water system has developed and presented  
3 to the Department of Health its plans for a chlorinator?

4 A. Yes, I do.

5 Q. Okay. What's your knowledge of that?

6 A. My firm and my staff and myself developed a  
7 plan for the chlorinator and submitted it to the  
8 Department of Health about one month ago.

9 Q. And can you tell me whether that's been  
10 approved or not?

11 A. It's in review.

12 Q. And the chlorinator that is the subject of  
13 that plan, is that in place?

14 A. There is -- It has an existing chlorinator  
15 in place, but the comprehensive plan suggested that there  
16 be a change to that chlorinator system. And we proposed  
17 an alternative to it. And that's what's on review now.

18 Q. So the chlorinator that is the subject of  
19 your plan is different from what's working there now?

20 A. Yes.

21 Q. Okay. And then if your plan were approved  
22 by the Department of Health, that chlorinator would  
23 replace what's in place?

24 A. Right, right. The difference being that the  
25 existing chlorinator is more or less manually operated

1 and the proposal we made would include an automatic  
2 chlorinator.

3 Q. Mr. Baker, in your dealings with the water  
4 company, do you know where its business office is?

5 A. At what is commonly referred to as the  
6 Mini-mart located just, oh, a quarter of a mile or so  
7 from the water facility itself.

8 Q. Is that at the -- Is that at the O'Sullivan  
9 Resort, or --

10 A. Yes, it is.

11 Q. Do you know, have you visited the business  
12 office within the past two and a half months?

13 A. Yes, I have.

14 Q. Okay. Do you know whether there is a sign  
15 indicating that there is a business office for the water  
16 company there?

17 A. I don't know if there is one or not.

18 Q. That's fine. You're not an employee of the  
19 water company, are you?

20 A. No, I am not.

21 Q. Do you have any knowledge, then, with regard  
22 to the issues raised in paragraph number 4, concerning  
23 the company's responsiveness to customer contacts in  
24 terms of returning telephone calls and responding to  
25 correspondence?

1           A.       I have no personal knowledge of how they  
2 handle that.

3           Q.       Do you have any knowledge about whether the  
4 company has in its employ a certified water operator?

5           A.       I believe they do, but I believe that's also  
6 in jeopardy.

7           Q.       In jeopardy. Can you tell me that person's  
8 name?

9           A.       Jerry Lease. And by "in jeopardy," I mean,  
10 it's my understanding that he'll be leaving the area.

11          Q.       How do you come to that understanding?

12          A.       I met with Mr. Lease yesterday, and he  
13 advised me of that.

14          Q.       But to your knowledge he is still in the  
15 employ of the water company?

16          A.       Yes.

17          Q.       Do you have any personal knowledge with  
18 regard to what the company has done about the issues  
19 raised in paragraph 6, filing papers with the Commission?

20          A.       All I know is that Mr. Sahli wanted that  
21 done, and Mr. Barker was in agreement with that. But I  
22 don't know if it's actually been done or not.

23          Q.       Okay. All right. Under paragraph 7, the  
24 company was required to provide the Commission a customer  
25 billing summary for the six months immediately prior to

1 March 22nd. Do you know if that was done?

2 A. I believe it has been. What I do know is  
3 that I have a summary of the billings for the past few  
4 months.

5 Q. You have a summary?

6 A. I'm sorry. I can get them here within about  
7 ten minutes, but I don't have them with me. But I have  
8 seen summarized billing statements.

9 Q. Okay. But do you know whether --

10 A. I don't know whether they've been submitted  
11 to the UTC or not.

12 Q. Where did you obtain the summaries that you  
13 have?

14 A. Mr. Lease brought them to my office  
15 yesterday.

16 Q. Mr. Baker, is there anything else,  
17 recognizing that you've just had a moment to look this  
18 order over, that you feel that you'd like to add on  
19 behalf of the water company at this time?

20 A. Well, excuse me, about six months ago, Mr.  
21 Barker gave me the authority to sell the system to the  
22 Homeowners Association or a body that would represent  
23 them. Mr. Everett Sanders and I have met on several  
24 occasions to discuss whether the sale would be practical  
25 and how it could be done.

1                   And we have, in the past six months, been  
2 trying to formulate a method of transferring ownership.

3           Q.        Would it be fair to say that you're still in  
4 negotiations --

5           A.        Yes.

6           Q.        -- or that you've reached an agreement?

7           A.        Well, we've reached an agreement on price,  
8 however, the Homeowners Association is not the proper  
9 body to administer a water system, as much as a water  
10 district would be. And we have been trying to formulate  
11 a water department.

12                   That requires a vote, an election, and the  
13 county regulations will deny that election until about  
14 February of 1996. So that's where we're at at the  
15 present time. There has been contact made with Farmers  
16 Home Administration for financing.

17                   I talked with Mr. Barker this morning, and I  
18 had him fax me a letter confirming that I was still  
19 authorized to proceed with those negotiations.

20           Q.        All right. Anything else?

21           A.        That's all I have.

22                   JUDGE ANDERL: Okay. Why don't you  
23 just stay there for a minute. The other parties have a  
24 right to Cross-examine you.

25                   Ms. Rendahl, why don't I see if you have any

1 questions first, and then we'll go to the Homeowners  
2 after that.

3

4

5

CROSS-EXAMINATION

6

7 BY MS. RENDAHL:

8 Q. Concerning the paragraph listed number 1,  
9 what is your role with the water system? Are you in  
10 charge of operating the water system?

11 A. No, I am not. I'm an engineer, licensed in  
12 the state of Washington. And basically my involvement  
13 has been as an engineer. However, Mr. Barker has asked  
14 me at various times to represent him as a consultant, but  
15 I'm not employed by the water system.

16 Q. So do you have any knowledge of the test  
17 results in the last two or three months from the water  
18 company?

19 A. No. I have not seen those test results.  
20 All I have is Mr. Barker's statement that he told me this  
21 morning.

22 Q. Concerning paragraph 2, you mentioned that  
23 you had submitted plans to the Department of Health in  
24 the last month?

25 A. Yes.

1 Q. I'm going to show you -- I need to have two  
2 exhibits marked for identification purposes.

3 JUDGE ANDERL: All right. And next --  
4 We're going to start where we left off, and so the next  
5 exhibit in line will be Exhibit 39 for identification.

6 (Exhibit Numbers 39 and 40 were  
7 marked for identification).

8 JUDGE ANDERL: And that's a multi-page  
9 document apparently on Mr. Baker's letterhead.

10 And then number 40 for identification is a  
11 multi-page document entitled proposed chlorination system  
12 for Marine View Heights Water Association.

13 Q. (BY MS. RENDAHL:) Looking at what's been  
14 marked as Exhibit 39 on letterhead "Boundary Engineering,  
15 Inc.," is that a copy of a letter you submitted to the  
16 Department of Health concerning the chlorinator system?

17 A. Yes, it is.

18 Q. Could you describe, without reading the  
19 letter, what the purpose of submitting the letter was?

20 A. The engineering report that was prepared by  
21 Mr. Harms. And it was my understanding up until  
22 yesterday that that report was acceptable to the  
23 Department of Health in concept. One of the concepts in  
24 the report was to install a chlorinator tank at the well  
25 source.

1                   This would provide a little longer contact  
2 time with the chlorine time in the water, and, therefore,  
3 assure that there was such an application to the water,  
4 so that any contaminants would be killed by the  
5 chlorination.

6                   The present system operates without the  
7 tank, the chlorinator tank. And the chlorine is pumped  
8 directly into the water maze. Part of the water that's  
9 pumped goes directly to the demand of the customers, and  
10 part of it goes to a storage reservoir located above the  
11 housing development.

12                   What happens is, the water that is pumped  
13 and chlorinated and goes directly to the customers has a  
14 high residual of chlorine, could result in the smell of  
15 chlorine or the taste of chlorine at the tap. The other  
16 part of it is the water's not in contact with the  
17 chlorine for as long of a period of time as we'd like to  
18 see.

19                   By adding a tank at the pump, it would  
20 provide for a longer chlorine contact time, but would not  
21 necessarily reduce the higher levels of chlorine at the  
22 tap. What we proposed was that the chlorine tank not be  
23 installed at the pump, but a four-inch line go from the  
24 pump directly to the large reservoir.

25                   And so the water pumped out of the well



1 would be chlorinated, but it would go into the large  
2 reservoir and have a longer contact period. And then out  
3 of the reservoir into the distribution system. Two  
4 things would occur with that type of approach.

5 One is longer contact time on the chlorine  
6 and a lower residual of chlorine at the tap for all users  
7 of the water system, and it would be a more uniform level  
8 of chlorine. And it could be adjusted to meet the  
9 demands of the system.

10 Q. Just to clarify, so this letter proposed a  
11 different type of system --

12 A. Like --

13 Q. May I ask my questions? And then you can  
14 answer.

15 A. Sure.

16 Q. This letter proposed a different, an  
17 alternative design than what is stated in the water  
18 system plan, is that correct?

19 A. That's correct.

20 Q. Okay. Was this letter submitted as a result  
21 of the Commission's order in this case?

22 A. Yes, it would be. That's where it  
23 originated at, however, the concept was already in the  
24 water system plan itself. And all we were doing with our  
25 presentation was trying to follow through with that.

1           Q.       As a result of this letter to the Department  
2 of Health, did you receive any response from the  
3 Department of Health, as to whether this was  
4 satisfactory?

5           A.       I haven't seen a response yet.

6           Q.       Did you have any verbal response from --

7           A.       My staff has talked with staff at the  
8 Department of Health on several occasions, and I think  
9 everyone agrees that a line from the well to the large  
10 reservoir would be a much better system.

11          Q.       Does this -- Did this letter sent into the  
12 Department meet the needs of the Department in approving  
13 a chlorinator?

14          A.       Well, it's a two-part proposal. One is we  
15 were requesting that the Department review the concept of  
16 the line directly from the well to the reservoir. And  
17 then if they approved the concept, we would prepare a  
18 formal construction plan, which has not been done.

19          Q.       The second -- Well, let me get back to  
20 that. So are you still seeking approval from the  
21 Department of Health on this proposal?

22          A.       Yes.

23          Q.       You have not received approval from the  
24 Department to go forward with this proposal?

25          A.       I haven't personally seen one, no.

1 Q. Looking now at what has been marked as  
2 Exhibit 40, could you identify this exhibit?

3 A. Yes. It's ours.

4 Q. This was submitted by you to the Department  
5 of Health?

6 A. Yes.

7 Q. And what was the purpose for submitting this  
8 document to the Department of Health?

9 A. The second page of the document shows a  
10 layout from the well to the major reservoir and what we  
11 proposed as a method of getting the water and chlorine to  
12 the large tank.

13 Q. What would -- How would you describe this  
14 document? What is this document that was submitted to  
15 the Department?

16 A. A preliminary engineering concept.

17 Q. Is this the final -- Is this part of  
18 seeking approval for this proposal?

19 A. Yes.

20 Q. Have you received any response from the  
21 Department concerning this document?

22 A. I actually don't know if we have or not.

23 Q. Have you -- Have you contacted the  
24 Department of Health to determine the status of this  
25 report?

1           A.       I have not.  But one of my staff has been in  
2 touch with them.

3           Q.       Are you aware from -- Have you talked to  
4 the staff person about the communication with the  
5 Department?

6           A.       I don't know the status of this.

7           Q.       Okay.  So to describe the status of the --  
8 Is it correct that the company has submitted a proposal  
9 to the Department for a chlorinator system and has not  
10 yet received approval for that system?

11          A.       That would be correct.

12          Q.       If the Department indicates its approval for  
13 this design, for this proposal, what is the next step  
14 that the company --

15          A.       We would prepare a construction plan, which  
16 we would submit to the Department of Health.

17          Q.       And once the construction -- If the  
18 construction plan is approved, what's the next step for  
19 the company?

20          A.       The company is obligated to install it.

21          Q.       Do you have any sense of what the timing is  
22 on this approval from the Department?

23          A.       No, I don't.

24          Q.       Looking now at the order that has the  
25 numbered paragraphs, looking at paragraph 3, concerning

1 the business office, is it true that the -- Isn't it  
2 correct that the business office, the location of the  
3 business office, will be changed because of the sale of  
4 the Mini-mart?

5 A. Yes. That's correct.

6 Q. Does the company know where its new business  
7 location will be?

8 A. I do not know.

9 Q. Do you know when the company will need to  
10 move its business location?

11 A. Probably within about ten days.

12 Q. Has the company notified the customers and  
13 the Commission of the move of the business location?

14 A. I do not know if they have or not.

15 Q. Do you know if the company plans to notify  
16 the Commission and customers of the new business  
17 location?

18 A. No, I don't.

19 Q. Concerning paragraph 5, and Jerry Lease as  
20 the certified water operator, do you know if the company  
21 has plans to hire a new certified water operator to take  
22 over once Mr. Lease is not there?

23 A. I don't know what the plans are.

24 Q. Did you discuss this with Mr. Lease  
25 yesterday?

1           A.       No, I did not. Well, that's not correct.  
2 He advised me that he would be leaving. That was the sum  
3 total of the conversation.

4           Q.       So he did not discuss with you the plans to  
5 hire a new certified operator?

6           A.       No, he didn't.

7                   MS. RENDAHL: Your Honor, I'd like to  
8 have another document marked for identification.

9                   JUDGE ANDERL: Okay. Next exhibit in  
10 line will be Exhibit 41.

11                                   (Exhibit Number 41 was marked  
12 for identification).

13                   JUDGE ANDERL: For the record, Exhibit  
14 41 is a fairly enormous packet of what appears to be  
15 invoices. And they all appear to bear the date of March  
16 31, 1995, but perhaps the witness can give us more  
17 information about that. Go ahead, Ms. Rendahl.

18           Q.       (BY MS. RENDAHL:) Mr. Baker, look at what's  
19 been marked now as Exhibit 41. Can you identify this set  
20 of invoices, or --

21           A.       No, I cannot.

22           Q.       -- document? Is this a copy of -- You  
23 indicated in your Direct testimony that Mr. Lease brought  
24 over to you yesterday a copy of the billing summary?

25           A.       Yes.

1 Q. Is this a copy of what Mr. Lease gave to you  
2 yesterday?

3 A. No, it's not. What I have is a three-ring  
4 notebook with balance sheets showing the billings and the  
5 payments and the balance due for each account.

6 Q. So you are not familiar with this document?

7 A. No, I'm not.

8 Q. Okay. Mr. Baker, are you aware if the  
9 company has paid the Homeowners Association for the cost  
10 of testing that they conducted -- Let me back up.

11 Are you aware that the order directs the  
12 company to pay the homeowners for the cost of testing the  
13 water before their Complaint was filed?

14 A. No, I was not.

15 Q. Okay. So do you have any knowledge of  
16 whether the company has paid --

17 A. No, I do not.

18 Q. Just for future, may I ask you not to talk  
19 while I'm asking the question? It's confusing for the  
20 reporter --

21 A. Sure.

22 Q. -- and it makes it easier. I don't have any  
23 other questions at this time.

24 JUDGE ANDERL: Okay. Mrs. Snelson, do  
25 you have any Cross for this witness?

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

MS. SNELSON: Yes, I do.  
JUDGE ANDERL: Go ahead.

CROSS-EXAMINATION

BY MS. SNELSON:

Q. Mr. Baker, are you aware of the test reports or anything that -- of the water test reports that have been done in the last six months, let's say?

A. No. I am not.

Q. You testified that Mr. Barker told you that all of the test results were satisfactory, is that correct?

A. I asked Mr. Barker this morning if there were any bad water samples. And he said specifically none on the tests that he had taken, and that he was aware of one that was taken by Mr. Sanders, that was bad.

Q. Okay. Do we have copies of these? May I hand something to the witness?

JUDGE ANDERL: Is it something you're going to want as an exhibit, or just want him to look at it right now? So you do want this as an exhibit?

MS. SNELSON: Yes, please.

JUDGE ANDERL: I've been handed a



1 document. Now, you just handed me four copies, is that  
2 right, of the same document? Okay. I'll give one to Ms.  
3 Rendahl here.

4 What this is, is a two-page document  
5 entitled water bacteriological analysis. The date  
6 collected on it states 11-20-94. I'll mark that for  
7 identification as Exhibit Number 42.

8 (Exhibit Number 42 was marked  
9 for identification).

10 JUDGE ANDERL: Mr. Baker, looking at  
11 what's been marked as Exhibit Number 42, do you recognize  
12 that document?

13 THE WITNESS: Well, I recognize the  
14 form, but not the individual document.

15 JUDGE ANDERL: Okay. Ms. Snelson, do  
16 you have other questions you want to ask?

17 MS. SNELSON: Yes.

18 Q. Would you read the date at the top, the date  
19 collected?

20 A. 11-20-94.

21 Q. Okay. And would you look down below where  
22 we have highlighted the results of the water test?

23 A. And what would you like me to do?

24 Q. Tell us what the results were.

25 A. The first result was satisfactory, the

1 second result was unsatisfactory, the third and fourth  
2 were unsatisfactory.

3 Q. All right.

4 MS. RENDAHL: Your Honor, I'm  
5 wondering, I'm not objecting necessarily to the document  
6 coming in as evidence. I guess my question is whether  
7 Mr. Baker can really testify about this document, whether  
8 he's really qualified to verify that this is what it is.

9 And it may be more appropriate for this to  
10 come in through testimony from the Homeowners  
11 Association. Again, I'm not objecting, per se, to the  
12 document, just whether Mr. Baker can really add anything  
13 through this document.

14 JUDGE ANDERL: I think that's probably  
15 true. Normally when the witness looks at a document and  
16 says, "I know the form, but not the document," we would  
17 stop and say obviously the witness cannot authenticate  
18 this document.

19 Perhaps a witness that you would like to  
20 call could verify these reports.

21 MS. SNELSON: Okay. We can do that.

22 JUDGE ANDERL: I'll leave it marked as  
23 Exhibit 42 for identification, and we'll discuss it at  
24 the proper presentation.

25 MS. SNELSON: For the record, it's just

1 very difficult when we have a witness that's so  
2 unfamiliar with the water system to try to ask questions  
3 and to get our point across.

4 JUDGE ANDERL: Well, I appreciate  
5 that. As I --

6 MS. SNELSON: But we'll go ahead with  
7 it.

8 JUDGE ANDERL: And as I believe I  
9 mentioned, and I don't know if I mentioned it on the  
10 record or off the record before we started, the burden, I  
11 feel, is on the water system to establish compliance with  
12 the terms of the order.

13 And to the extent the witness lacks  
14 firsthand knowledge, then I believe it's more of a  
15 detriment to the water company than it is to the  
16 Homeowners Association.

17 MS. SNELSON: All right. I appreciate  
18 that.

19 Q. You say that on the chlorinator, when the  
20 plan is approved by the Health Department and then you  
21 submit the construction document and those are approved,  
22 then are you prepared to begin construction immediately,  
23 if those are approved?

24 Is the company prepared financially and  
25 otherwise to begin construction immediately?

1           A.       I don't know the answer to that.

2                   MS. SNELSON: I had planned to ask some  
3 questions about the billing summary. Now, is this going  
4 to be a problem, since he's not familiar with the billing  
5 summary? I had quite a few questions that needed to be  
6 asked regarding the billing practices, the completeness  
7 of the billing summary. Is this going to --

8                   JUDGE ANDERL: Well, let me just say,  
9 in looking at the Commission order, paragraph 7 of the  
10 order itself requires the water company to submit within  
11 30 days of that order to the Commission a customer  
12 billing summary covering the six months immediately  
13 prior.

14                   And right now, I don't have any evidence  
15 that that was done. That may come in through a  
16 commission staff witness, as to whether or not it was  
17 done. And if it was done, whether all of the contents of  
18 that required summary were complete. Otherwise, we don't  
19 have any basis on the record to believe that one exists.

20                   So I don't know how you can really ask any  
21 questions about it.

22                   MS. RENDAHL: Your Honor, I believe  
23 Diane Otto of the Commission staff will be testifying and  
24 will have some information to provide. Because she is  
25 not an employee of the water system, she only knows what

1 she has learned through working with the water company.

2 And so just in response to the Homeowners'  
3 concerns, some of those questions may be able to be  
4 answered through Ms. Otto's testimony, although I can't  
5 say that all of them will be answered through her  
6 testimony.

7 JUDGE ANDERL: Mrs. Snelson, you're  
8 free to explore what this witness knows about it, but I  
9 think the testimony already establishes that he's not an  
10 employee of the water company and really doesn't know  
11 that much about the day-to-day operations or the billing  
12 summary that may or may not have been presented to the  
13 Commission.

14 MS. RENDAHL: For the record, I may  
15 also indicate that the letter you mentioned that you've  
16 received from Mr. Barker about asking Mr. Baker to  
17 represent him at this hearing, Mr. Barker called me and  
18 asked me who should represent the company, if he was  
19 unable to be here.

20 And I indicated that he should be here, but  
21 if he could not be here, somebody who had knowledge of  
22 all the issues in the order should be here to testify.  
23 So in that respect, I don't know how much more we can  
24 do.

25 MS. SNELSON: We had understood that

1 Louise Westphalen would be subpoenaed along with the  
2 records, the billing records for the company, which would  
3 have made it very easy, then, to complete this and to ask  
4 our questions and all of that.

5           However, that obviously that wasn't done.

6           JUDGE ANDERL: Not -- I didn't receive  
7 a request to issue a subpoena, and so I did not subpoena  
8 any witnesses.

9           MS. RENDAHL: To clarify, I did contact  
10 Ms. Westphalen and told her that I planned to subpoena  
11 her as a witness. She indicated she had already planned  
12 to be out of state at a family reunion of her husband's,  
13 and in that respect, she was not going to be here. So it  
14 did not make sense to subpoena her.

15           JUDGE ANDERL: She indicated to you  
16 that even if she got a subpoena, she was not planning on  
17 complying with it?

18           MS. RENDAHL: Yeah, exactly.

19           JUDGE ANDERL: There again, Ms.  
20 Snelson, you may want to explore the billing issue. Now,  
21 at this point, I would be prepared to make a finding that  
22 the system did not comply with those issues.

23           It may be that the Commission staff serves  
24 some issue of compliance, and you could explore that  
25 through the Commission's testimony.

1           Q.       (BY MS. SNELSON:) Looking at the packet  
2 that was just given you of the bills, do you show an  
3 account in here for 731? The account numbers are shown  
4 just below the --

5                   MS. RENDAHL: Your Honor, again --

6                   JUDGE ANDERL: Ms. Snelson, let me just  
7 stop you here. Ms. Rendahl, do you want to offer  
8 Exhibits 39 and 40?

9                   MS. RENDAHL: Yes. And I'm withholding  
10 41 until Ms. Otto is on the stand.

11                  JUDGE ANDERL: Okay. I'm going to  
12 assume there's no objection to Exhibits 39 and 40?

13                  MS. SNELSON: I'm going to ask just one  
14 question.

15                  JUDGE ANDERL: Okay, but --

16                  MS. SNELSON: Looking at --

17                  JUDGE ANDERL: I was going to say, Mrs.  
18 Snelson, Exhibit 41 is not admitted yet. I'm assuming  
19 there's no objections to 39 and 40, which are the letter  
20 and plans for the chlorinator, so I'm going to admit  
21 that.

22                               (Exhibits 39 and 40 were admitted).

23                   Exhibit 41 suffers from the same problem  
24 with 42. This witness says he's not familiar with this  
25 document. Ms. Otto will be able to identify them, and

1 Ms. Rendahl tells me she'll offer them when Ms. Otto is  
2 on the stand. After they're admitted, you can ask  
3 questions about it.

4 MS. SNELSON: Okay.

5 JUDGE ANDERL: And then Mr. Baker can  
6 be recalled to the stand, then, once we get all the  
7 evidence in.

8 MS. SNELSON: All right. Then I really  
9 don't have any questions for this witness. There's just  
10 nothing I can ask.

11 JUDGE ANDERL: Okay. Mr. Baker, one  
12 other question, then, regarding your conversations with  
13 Mr. Barker. Does Mr. Barker know Jerry Lease is going to  
14 be quitting his job?

15 THE WITNESS: I have no personal  
16 knowledge of anything between them.

17 JUDGE ANDERL: Mr. Barker hasn't told  
18 you about any plans he has to hire a new operator?

19 THE WITNESS: No. We never discussed  
20 anything.

21 JUDGE ANDERL: Okay. Anything else for  
22 this witness?

23 MS. RENDAHL: I have nothing, Your  
24 Honor.

25 JUDGE ANDERL: Mr. Baker, thank you for



1 your testimony. You may step down. We may need to  
2 recall you. And as the representative, you're required  
3 to stay through the end of the hearing.

4 MR. BAKER: Okay.

5 JUDGE ANDERL: Go ahead and take a seat  
6 there. Ms. Rendahl, how many witnesses do you have?

7 MS. RENDAHL: Two, potentially three.  
8 Craig Riley from the Department of Health and Diane Otto  
9 from the Commission staff, and potentially Fred Ottavelli  
10 on the Commission staff.

11 JUDGE ANDERL: Let's call your first  
12 witness.

13 MS. RENDAHL: I'd like to call Mr.  
14 Riley for testimony.

15 JUDGE ANDERL: Mr. Riley, take a seat.  
16 I'm going to consider you still under oath, since this a  
17 continuation.

18 THE WITNESS: Okay.

19

20

21 DIRECT EXAMINATION

22

23 BY MS. RENDAHL:

24 Q. Mr. Riley, are you familiar with the order,  
25 the final order issued by the Commission in this matter?

1           A.       Somewhat, yes.

2           Q.       Have you read a copy of that order?

3           A.       Yes, I have.

4           Q.       I'm going to hand you just -- not offer as  
5 an exhibit, but just hand you a copy for reference. If  
6 you would look to page 4 of the order and read paragraphs  
7 1 and 2 to yourself, just so you refresh your memory.

8           A.       Okay.

9           Q.       Are you aware of the results of all the  
10 bacteriological water quality tests reported by the  
11 company to the Department, since March 19, 1995, when  
12 this order was issued?

13          A.       Yes, I am.

14          Q.       Are you aware, can you tell us what the  
15 results of those tests are for --

16          A.       Well, analyses have been provided in  
17 compliance with the sampling time -- All samples have  
18 been taken within compliance of the time requirements.  
19 Two of the samples, compliance samples, have come back  
20 showing presence of total coliform.

21          Q.       Have any follow-up -- Have all the necessary  
22 follow-up tests for those routine tests been conducted?

23          A.       Yes, they have.

24          Q.       What are the results of those follow-up  
25 tests?

1           A.       They were all satisfactory.

2           Q.       Given what you've just testified to, have  
3 there been any violations, then, of Department water  
4 rules?

5           A.       No. There have not.

6           Q.       Then in paragraph 1, which discusses  
7 notifying the customers of any contaminant level  
8 violations, are you aware of any notifications of  
9 contaminant level violations?

10          A.       I'm not aware of any notifications, and  
11 there's no need for any.

12          Q.       Looking, then, at paragraph 2, I'm going to  
13 hand you what's been admitted as Exhibits 39 and 40.  
14 Have you seen these documents before today?

15          A.       Yes, I have. Excuse me, yes, I have.

16          Q.       Are you authorized by the Department of  
17 Health to testify concerning plans for chlorination of  
18 the Marine View Heights water system?

19          A.       Yes.

20          Q.       Are you the person who will be approving  
21 these plans?

22          A.       No, I'm not.

23          Q.       Are you aware of whether these documents  
24 satisfy the Department's needs for plans for a  
25 chlorinator system at the Marine View Heights water

1 system?

2 A. They do not.

3 Q. What are you -- Are you aware of what, in  
4 addition to these documents, the Department needs to  
5 satisfy its requirements for a chlorinator plan?

6 A. Following response and/or approval,  
7 whatever's required for the document that's entitled  
8 proposed chlorination plans and specifications will need  
9 to be submitted and approved, construction completed, and  
10 construction plan reports submitted within 30 days of  
11 completion.

12 Q. You were present when Mr. Baker testified  
13 just prior to yourself?

14 A. Yes, ma'am.

15 Q. And would you -- Is it your understanding  
16 that the water system plan for the Marine View Heights  
17 water system has not been approved?

18 A. Are you -- the comprehensive water plan?

19 Q. Correct.

20 A. It has not been approved.

21 MS. RENDAHL: I don't believe I have  
22 any other questions for Mr. Riley at this time.

23 JUDGE ANDERL: Mr. Baker, you have the  
24 right to Cross-examine Mr. Riley concerning the subject  
25 matter that he just testified about. Do you have any

1 questions for him?

2 MR. BAKER: Sure.

3

4

5

CROSS-EXAMINATION

6

7 BY MR. BAKER:

8 Q. Regarding the chlorinator improvements, you  
9 have Boundary's concept for the chlorinator system. When  
10 do you intend to respond, or when does the Department  
11 intend to respond to Boundary as to whether that concept  
12 is approvable or not?

13 A. The best I can give you is relatively soon.  
14 Not being the person in charge of that, and not being the  
15 person who actually makes the response, I am unable to  
16 provide any time frame.

17 Q. Can you tell us why the comprehensive water  
18 plan has not been approved?

19 A. The final plan has not been resubmitted.

20 Q. By --

21 A. The engineering firm. Or, well, actually,  
22 the company. I don't know how, in this situation, I  
23 don't know how that is being handled.

24 Q. Was that the only reason for not approving  
25 the plan? I know you have a copy of the documents.

1           A.       The comprehensive water plan?

2           Q.       Yes.

3           A.       It's not been approved because it's not been  
4 received. The final version has not been received.

5           Q.       Okay. You did respond perhaps about a year  
6 ago to Mr. Harms with items that needed to be addressed  
7 in the comprehensive plan?

8           A.       There has been a response from the  
9 Department, and I couldn't give you any relative time  
10 frame.

11          Q.       If the final version of the plan were  
12 submitted to the Department, how long would it be before  
13 it would be approved?

14          A.       The Department will respond within 60 days  
15 of any resubmittal.

16                   MR. BAKER: Okay. Thank you.

17                   JUDGE ANDERL: Ms. Snelson, do you have  
18 any questions for Mr. Riley?

19                   MS. SNELSON: Yes, I do.

20

21

22                                   CROSS-EXAMINATION

23

24           BY MS. SNELSON:

25           Q.       Mr. Riley, the water tests that were

1 submitted, according to my records, April 28th we had an  
2 unsatisfactory report. And again on June 2nd we had an  
3 unsatisfactory report. Is that to the best of your  
4 recollection?

5 A. That's correct.

6 Q. That's correct. And can you tell me why  
7 there was no need to notify the customers of these  
8 contamination reports?

9 A. With the number of samples that were taken,  
10 including the repeat samples, all proving to be  
11 satisfactory, the violation is not indicated here.  
12 Without a violation, because there's more than 80 percent  
13 of the samples are satisfactory in any given month, then  
14 there's no -- no violation exists. Therefore, there's no  
15 need for notification.

16 Q. Is this something new? Is this a new  
17 procedure, a new rule, a new way of handling things,  
18 since we had our other violations?

19 A. Put it -- new to you.

20 Q. New to us?

21 A. It is a part of an existing rule. It's a  
22 coliform rule that's been in effect since 1990. The  
23 difference is that now with the issuance of the modified  
24 Department order in April, more samples are being taken  
25 by the system.

1                   And once a system reaches five or more  
2 coliform samples in a month, including the repeats, then  
3 the compliance is based on a percentage. 80 percent of  
4 the samples being satisfactory, then that determines  
5 the -- determines whether or not a violation existed.

6                   When it's a system such as Marine View  
7 Heights was taken one sample per month, as they were  
8 previously, or less than five, if any of those samples  
9 are unsatisfactory, they're automatically less than 80  
10 percent, a violation existed.

11                  Q.       That brings us to the reason why the Marine  
12 View Heights is taking more than just the routine one  
13 sample per month. Can you -- Do you want to explain why  
14 the sampling was increased?

15                  A.       I don't -- don't have specific knowledge as  
16 to the reason. I was involved in a discussion in which  
17 it was indicated that there was concern expressed on the  
18 part of the homeowners that there were some samples that  
19 were taken by the homeowners that were non-compliance  
20 samples.

21                         So they're not a part of our record, but  
22 have indicated sufficient concern that my Department's  
23 management exercised part of their responsibilities and  
24 modified the order to require the one sample per week.

25                                 MS. SNELSON: Maybe I better go ahead



1 and introduce this as evidence at this point. I'll give  
2 one to Mr. Riley, so he can read it. It's a Department  
3 of Health order. Here's some extra copies.

4 JUDGE ANDERL: Okay. I'll mark this as  
5 the next exhibit in line, which is 43.

6 (Exhibit Number 43 was marked  
7 for identification).

8 JUDGE ANDERL: And I'll give that back  
9 to Mr. Riley. Ms. Rendahl, did you get one?

10 MS. RENDAHL: I may have a copy  
11 already.

12 JUDGE ANDERL: Ms. Snelson handed me  
13 extras, so -- Mr. Baker?

14 MR. BAKER: Okay.

15 Q. (BY MS. SNELSON:) Would you, Mr. Riley,  
16 just read paragraph 1.12 -- Oh, I'm sorry.

17 JUDGE ANDERL: Let's hang on and find  
18 out what this Exhibit 43 is.

19 Mr. Riley, do you recognize that document?

20 THE WITNESS: Yes, I do.

21 JUDGE ANDERL: And can you tell us --

22 THE WITNESS: It's a modification to  
23 existing Department order docket 93-013 that was issued  
24 by the Department.

25 JUDGE ANDERL: And that was effective

1 when?

2 THE WITNESS: Effective on the date of  
3 signature, which is April 11, 1995.

4 JUDGE ANDERL: Okay. Are there any  
5 objections to Exhibit Number 43, Mr. Baker?

6 MR. BAKER: None.

7 JUDGE ANDERL: Ms. Rendahl?

8 MS. RENDAHL: None, Your Honor.

9 JUDGE ANDERL: Exhibit 43 will be  
10 admitted as identified.

11 (Exhibit 43 was admitted).

12 JUDGE ANDERL: Okay. Ms. Snelson, you  
13 can ask questions about it.

14 Q. (BY MS. SNELSON:) Okay. Would you just  
15 read paragraph number 1 under finding?

16 A. Paragraph 1.12?

17 Q. Yes. "Bacteriological monitoring" --

18 JUDGE ANDERL: Slowly.

19 THE WITNESS: Oh, sorry. "Independent  
20 sampling by qualified personnel have resulted in positive  
21 total coliform samples in the months of November, 1994  
22 and January of 1995. Several complaints about  
23 inconsistent chlorination have also been received during  
24 that time."

25 Q. (BY MS. SNELSON:) Would you also read under

1 paragraph 2, modified order, paragraph 2.2?

2 A. Paragraph 2.2, "Bacteriological monitoring.  
3 In accordance with WAC 246-290-300, the minimum  
4 monitoring requirements for the routine coliform samples  
5 is hereby increased to one sample per week. This  
6 increase sampling shall begin April 16, 1995, and shall  
7 continue until further notice".

8 Q. Okay. Thank you.

9 MS. SNELSON: I have copies of those  
10 bacteriological tests. May I submit them now, through  
11 Mr. Riley? They're the actual tests that were taken to  
12 show that there were unsatisfactory samples.

13 JUDGE ANDERL: Are those tests that are  
14 dated on or after April 16th, or --

15 MS. SNELSON: No. They were not.

16 JUDGE ANDERL: These were tests that  
17 were referenced --

18 MS. SNELSON: That led up to the weekly  
19 testing.

20 MS. ANDERL: Okay. So these are  
21 December, 1994, and January, 1995, tests?

22 MS. SNELSON: They're all January,  
23 1995.

24 JUDGE ANDERL: Well, I don't know that  
25 I would consider those to be relevant.

1 MS. SNELSON: All right.

2 JUDGE ANDERL: Ms. Rendahl, did you  
3 have any comment?

4 MS. RENDAHL: Well, I don't know that  
5 they're relevant to whether the company has complied with  
6 the Commission's order. It may clarify what is in the  
7 Department's modified order.

8 But because it indicates in the modified  
9 order that these samples showed positive, the positive  
10 presence of total coliform, I'm not sure it's necessary  
11 to also put in the actual testing results.

12 MS. SNELSON: That's fine. We really  
13 don't have a need. It's not necessary to put them in.

14 JUDGE ANDERL: Okay. Then we will not  
15 see those.

16 MS. SNELSON: Okay.

17 Q. And so I just want to clarify, so the reason  
18 that the homeowners were not notified of the  
19 bacteriological contamination is because of the increased  
20 amount of samples that were being taken? And it has to  
21 be a certain percentage, is that correct?

22 A. That's correct. The thrust is that because  
23 of the increased monitoring, the greater number of  
24 samples, it kicks in a different standard. It's actually  
25 the same standard, but based on more numbers, higher

1 volume, and that prohibits the violation from occurring.  
2 If there's no violation, there's no need for  
3 notification.

4 MS. SNELSON: Okay. No further  
5 questions.

6 JUDGE ANDERL: Okay. Mr. Riley, I have  
7 one or two questions for you  
8  
9

10 EXAMINATION  
11

12 BY JUDGE ANDERL:

13 Q. The Commission ordered the water company to,  
14 within 30 days of the final order, provide the Department  
15 of Health with the necessary plans for its chlorinator.  
16 Now, in your view, was that something that the company  
17 could have complied with, or is there something about the  
18 process requiring preliminary approvals or something  
19 requiring a longer timeline than 30 days?

20 A. That's a difficult question. It is possible  
21 for it to have been done. It's -- I would admit that it  
22 would be difficult for the whole process to have been  
23 completed, given the commitments of the people preparing  
24 the documents and those kinds of things. I have seen it  
25 done, but it's difficult.

1           Q.       Okay.  Is a document, such as Exhibit Number  
2           40, the proposed chlorination system, is something like  
3           that required before a water system is allowed to submit  
4           final plans?

5           A.       Yes.  Approval of those things are -- The  
6           project report, I think, is identified on actually page  
7           number 1 as the project report for the Marine View  
8           Heights chlorination system.  That's required by WAC  
9           246-291-10 as approved for approval prior to generally,  
10          I'll say, generally prior to the submittal of completion  
11          of plans and specifications.

12                    We do see them come in together.  The plans  
13           and specifications, however, are not approved until the  
14           practical report and the concepts are approved.

15          Q.       Okay.  I'm just trying to understand whether  
16           my recommendations or the Commission's order, because of  
17           a lack of understanding about how things worked at the  
18           Department of Health, maybe ordered something  
19           unreasonably difficult to comply with.

20          A.       Unreasonably difficult is, I guess,  
21           subjective.

22          Q.       Well, that's probably going to be my  
23           conclusion.  I mean, as to whether it was or not.  I'm  
24           just trying to get factual information from you to help  
25           me try to make that decision.

1           So, in any event, the company could have  
2 submitted these exhibits, say, 39 and 40 along with  
3 proposed plans?

4           A.       That could have been done. It has been done  
5 in some instances. The preferable manner is in the  
6 manner in which they have been submitted.

7           Q.       Okay. Exhibit Number 40 has a date stamp  
8 received on it. Can you tell me, do you have any  
9 personal knowledge as to whether that reflects an  
10 accurate received date by the Department of Health in  
11 Spokane of May 22, 1995?

12          A.       Yes, it does.

13          Q.       And on Exhibit Number 39, the third page of  
14 that document and then also the last page of the  
15 document; taken together, do those pages constitute plans  
16 for a chlorinator or not?

17          A.       The page 3 -- Actually, they represent two  
18 different alternatives for delivery of the chlorine --

19          Q.       Oh, all right.

20          A.       -- and the chlorine contact time. The first  
21 alternative, to my knowledge, is an alternative that was  
22 proposed to the system quite awhile ago, and it was the  
23 system Mr. Baker determined to be not as good as the  
24 proposed system on this, on page 4, which is a proposal  
25 that is better accepted and supportive -- and is

1 supported by the Department wholeheartedly.

2 Q. Does that last page of that document, then,  
3 could it be considered, quote, plans for a chlorinator?

4 A. Preliminary plans. There's some additional  
5 information for a complete construction document, that  
6 would be -- that would be required. Even down to the  
7 terms proposed, we have to have final plans of  
8 specifications before we can approve.

9 JUDGE ANDERL: Okay. Thank you, Mr.  
10 Riley. Let's see if Ms. Rendahl has any Redirect for  
11 you.

12 MS. RENDAHL: I don't have any  
13 additional questions, Your Honor.

14 JUDGE ANDERL: Mr. Baker, any other  
15 questions?

16 MR. BAKER: No.

17 JUDGE ANDERL: Ms. Snelson?

18 MS. SNELSON: No.

19 JUDGE ANDERL: Thank you, Mr. Riley,  
20 for your testimony. You may step down.

21 MS. RENDAHL: I'd like to now call  
22 Diana Otto as a witness.

23 JUDGE ANDERL: Mrs. Otto, I will also  
24 consider you as, because you gave testimony in the  
25 earlier proceedings, you're still under oath in this



1 matter. Go ahead, Ms. Rendahl.

2

3

4

DIRECT EXAMINATION

5

6 BY MS. RENDAHL:

7

8

9

10

Q. Again, Ms. Otto, I'm going to come hand you a copy of the Commission's order for your reference. Ms. Otto, have you received and read a copy of the Commission's order in this case?

11

12

13

14

15

A. Yes.

Q. And turning to page 4 of the order, paragraph number 1, have you received copies of water quality test reports from the company since the order was issued?

16

17

18

19

20

21

22

23

24

25

A. Yes.

MS. RENDAHL: Your Honor, I'd like to have a set of documents marked --

JUDGE ANDERL: All right.

MS. RENDAHL: -- for identification.

JUDGE ANDERL: I'm being handed a multi-page document. Actually, is this one exhibit, Ms. Rendahl?

MS. RENDAHL: I'm sorry?

JUDGE ANDERL: Is this one exhibit?

1 MS. RENDAHL: That is one exhibit.

2 JUDGE ANDERL: All right. I'll mark it  
3 for identification as Exhibit Number 44.

4 (Exhibit Number 44 was marked  
5 for identification).

6 Q. (BY MS. RENDAHL:) Ms. Otto, would you  
7 identify what's been marked as Exhibit 44?

8 A. It's the sample results that the company has  
9 mailed to me since the final order was issued.

10 Q. Looking through each of these sets of  
11 letters, they're addressed to you?

12 A. Yes, they are.

13 Q. And there are date stamps on the upper-right  
14 hand corner. Is that a Commission date stamp?

15 A. Yes. Both the Commission and our section's  
16 date stamp.

17 Q. Indicating when these document were received  
18 by the Commission?

19 A. Yes.

20 MS. RENDAHL: Your Honor, I would ask  
21 that these documents be admitted.

22 JUDGE ANDERL: Okay. Is there any  
23 objection, Mr. Baker?

24 MR. BAKER: No.

25 JUDGE ANDERL: Ms. Snelson?

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

MS. SNELSON: No.

JUDGE ANDERL: Exhibit 44 will be admitted as identified.

(Exhibit Number 44 was admitted).

Q. (BY MS. RENDAHL:) Looking at the first stapled set, the first letter, indicating water tests for March, would you please describe what it is you received from the company?

A. It's my understanding that this is the water bacteriological analysis that is submitted to a water lab. And then the results are submitted back to the company, the Department of Health and water -- the water company and the Department of Health.

And then this was forwarded onto us, the results showing satisfactory for March.

Q. Looking at the next letter, could you describe for us what it is you received from the company?

A. It's the same form, same sample form for April. Taken on April 21, it shows satisfactory.

Q. Looking next at the next letter, could you identify what it is you received from the company?

A. This is water samples taken, let's see, four water samples taken, the first -- Let's see. How do I put this? Pages 2 and 3 of this are water samples taken on 5-3. They are all listed as repeat samples, and they

1 show satisfactory.

2 And page 4 was taken on April 2, which would  
3 be the April sampling, which showed unsatisfactory. So  
4 I'm assuming these are the four follow-up samples to that  
5 unsatisfactory sample.

6 Q. Is that the letter which is date stamped  
7 received May 1, 1995, consumer affairs?

8 A. Yes.

9 Q. The next letter that I have is dated May  
10 23rd, date stamped May 23rd. Is that the next letter in  
11 your stack?

12 A. Yes.

13 Q. Could you identify what this letter is that  
14 you received from the company?

15 A. It's the same form with the date -- date  
16 reflected of 5-12, showing satisfactory.

17 Q. And the last letter that you received, could  
18 you explain when it is you received that from the  
19 company?

20 A. This is dated June the 5th, that we received  
21 it on June the 5th at the Commission. And it is water  
22 tests taken on May the 19th and May the 26th, both  
23 satisfactory.

24 Q. Have you received any June water test  
25 results from the company?

1           A.       No. I wouldn't expect to this early in the  
2 month.

3           Q.       Given what you have received from the  
4 company, and after listening to the testimony of Mr.  
5 Riley this morning, do you believe that the company has  
6 complied with the Commission's requirement in this order  
7 to send copies of all water quality test results to the  
8 Commission --

9           A.       It appears so.

10          Q.       -- to this date?

11          A.       It appears so, yes.

12          Q.       Concerning paragraph 3 of the order,  
13 concerning the water system's business office, are you  
14 aware of whether the water system has posted a sign at  
15 the business office?

16          A.       I was informed by Louise Westphalen,  
17 Westvalley, I'm not sure how to pronounce her last name.

18          Q.       Why don't we -- Could you spell the last  
19 name?

20          A.       W-e-s-t-p-h-a-l-e-n.

21          Q.       And could you describe for the record who  
22 Ms. Westphalen is?

23          A.       She is the -- I'm not sure what her title  
24 is, but she's working in the office of the company now  
25 and seems to have knowledge of the company business.

1           Q.       I'm sorry. I interrupted your response. I  
2 was asking you if you were aware of whether the company  
3 had posted a sign at the business office.

4           A.       Louise told me prior to the final order  
5 being issued, that the sign was posted with the office  
6 hours in a location above the door in the Mini-mart.

7           Q.       Are you aware of the sale of the Mini-mart,  
8 in which the business office is located?

9           A.       Yes.

10          Q.       Are you aware from your communications with  
11 the company whether there is a new business office for  
12 the water system, or will be a new business office for  
13 the water system?

14          A.       Yes. I spoke with Jerry Lease yesterday,  
15 who said that business office would be moving, but it's  
16 not official. They know where they're moving to, but  
17 it's not official yet. They have 30 days to vacate.

18          Q.       Are you aware of whether the company has --  
19 Has the company indicated to you through Mr. Lease or Ms.  
20 Westphalen whether the company plans to notify the  
21 customers and the Commission of this move?

22          A.       Yes. Mr. Lease told me that he planned to  
23 notify both at the time when it became official.

24          Q.       Looking next at paragraph number 4, have you  
25 received any complaints from customers of the Marine View

1 Heights water system concerning responsiveness of the  
2 company returning phone calls or correspondence?

3 A. Have I received any complaints?

4 Q. Complaints concerning responsiveness by the  
5 company.

6 A. There was one informal complaint which was  
7 opened concerning nonresponsive on restoring service  
8 after the customer had accidentally taken out his own  
9 service by breaking a valve.

10 Q. And what was the result of that? How was  
11 that complaint resolved?

12 A. It was resolved. In fact, the service had  
13 been corrected prior to the customer filing the  
14 complaint. He apparently lives out of town, thought that  
15 it wasn't fixed, and indeed it was fixed.

16 Q. Have there been any other complaints  
17 concerning responsiveness by the customers of the water  
18 system, responsiveness by the company to the customers?

19 A. Not concerning responsiveness, no. There  
20 was one inquiry.

21 Q. When you say one inquiry, is that different  
22 from the informal complaint?

23 A. Yes.

24 Q. And what was that inquiry concerning?

25 A. Well, there was an inquiry from a customer

1 about the customer responding, if I -- These aren't  
2 written down, when it's an inquiry. But as I recall,  
3 someone called me about the company not responding too  
4 quickly to shut the water off when there was a leak. But  
5 in reality, they had left a message like a half hour or a  
6 an hour before. And we don't consider that being  
7 nonresponsive.

8 We figure there's a reasonable amount of  
9 time that a company needs to get a message and get  
10 someone out there. And so that did not become a  
11 complaint, it's just that I gave advice.

12 Q. Do you believe from your experience with  
13 this company and with the customers of this company, from  
14 your experience, do you believe that the company has  
15 complied with this requirement of the Commission's order?

16 A. It appears so.

17 Q. And looking at paragraph number 5, are you  
18 aware from the communications from the company whether  
19 Mr. Lease is still the certified water operator of the  
20 water system?

21 A. Yes, he is.

22 Q. Are you aware of whether he plans to cease  
23 his job as the certified water operator with the company?

24 A. Yes. I am aware of that.

25 Q. Are you aware of whether Mr. Lease or the



1 company has taken any steps to retain a new certified  
2 water operator for the company?

3 A. Yes. He has taken steps to -- Well, he's  
4 spoken with, or he's speaking with, the Royal City water  
5 operator, I believe, and is in hopes that that person  
6 would be interested in working with Marine View Heights.

7 And he -- Actually, Mr. Lease told me these  
8 things yesterday, that if that does not work out, then he  
9 is going to go to Moses Lake and attempt to get the water  
10 operator.

11 Q. But to your knowledge, there is not --  
12 there is no one at this point retained --

13 A. No.

14 Q. -- to take over Mr. Lease's position?

15 A. That's my understanding, that he is still in  
16 that capacity.

17 Q. Looking next at paragraph number 7, do you  
18 have a copy of what has previously been marked as Exhibit  
19 Number 41?

20 A. Yes, I do.

21 Q. Is this document, can you identify this  
22 document?

23 A. This is the billing summary that Louise  
24 Westphalen mailed to the Commission to comply with the  
25 order.

1           Q.       Do you -- Are you aware of when this  
2 document was received by the Commission?

3           A.       Yes. I received it on April the 24th.

4           Q.       Have you reviewed this document?

5           A.       Yes, I have.

6           Q.       Can you, using the first invoice that's on  
7 the cover, explain what each of these invoices shows.

8           A.       Yes. To some extent I'm not sure the first  
9 one is a real good example. But it's -- It shows the  
10 account number, the customer name, the water fee, for  
11 instance, October through March. And that's on -- that  
12 would be on each sheet.

13                   And in some cases, it will show the date  
14 that the water was paid for that usage period, the rate  
15 and the balance. Like I said, this first page is not a  
16 very good example, though, because it shows the rate at  
17 zero and the balance at zero.

18           Q.       Have you discussed these billing summaries  
19 with the company?

20           A.       Yes. I've discussed them with Louise.

21           Q.       From your understanding, when the -- why  
22 does the balance, why does the rate show zero, when the  
23 balance is zero?

24           A.       According to Louise, there's a programming  
25 problem with their computer program. It doesn't allow

1           them to continue to show the rate as \$20. Once the  
2           payment has been made, it goes to zero under the rate  
3           column. And they -- the balance of course shows zero, if  
4           there's nothing owing.

5           Q.       And the situation where there are delinquent  
6           or uncollectible or past due bills, did Ms. Westphalen or  
7           the company indicate what action was being taken on each  
8           of these delinquent accounts?

9           A.       Yes. I reviewed with her the accounts that  
10          were \$60 or more past due.

11          Q.       Can you tell me how many accounts there are  
12          that are more than \$60 past due?

13          A.       At the time we reviewed it, it was 13.

14          Q.       And of those 13 accounts, do you believe  
15          that the company has taken appropriate action on each of  
16          those accounts?

17          A.       I believe the company is working with the  
18          customers to make payment arrangements, which the company  
19          feels suitable, or they have gone forward and are  
20          installing meters on those that were not cooperating with  
21          payment arrangements and forwarding disconnect notices  
22          for nonpayment.

23          Q.       Could you briefly describe what, under the  
24          Commission's rules, what the appropriate process is when  
25          a customer's account is past due?

1           A.       I believe the question was appropriate  
2           action?

3           Q.       Under the Commission's rules, what is the  
4           appropriate action a company should take if a customer's  
5           account is past due?

6           A.       Well, I don't know if the word appropriate  
7           really fits, but they have certain options that they're  
8           allowed. They're allowed to use the disconnect rules and  
9           the deposit rules to enable them to collect bad debt.

10                    Do you want me to go into detail about the  
11           disconnect rules?

12           Q.       Yeah. First with the disconnect rules,  
13           could you explain briefly what the rules are and what is  
14           required for the company to do?

15           A.       Okay. If -- I'll start at the very  
16           beginning at the billing. A bill goes out, and it is due  
17           upon receipt, but delinquent after 15 days. It can't be  
18           delinquent any sooner than 15 days, are the rules.

19                    At that point, if the customer has not paid,  
20           the company has a right to then send out a disconnect  
21           notice, which has a requirement of a due date no less  
22           than eight working days from the date that it's mailed.

23                    At that point, if the customer doesn't pay,  
24           sometime during that eight days, or after that eight  
25           days, the company has options available to them to either

1 contact the company or, pardon me, the customer who has  
2 not paid, either by two telephone attempts, or they can  
3 send them a 24-hour notice that they -- well, they don't  
4 send it. They actually put it on their door, their  
5 primary door.

6 Then if the customer does not pay, they have  
7 the right to disconnect without further notice or  
8 service.

9 Q. Under the deposit rules, how does that  
10 relate to past due bills?

11 A. The company is allowed to collect deposits.  
12 And it's a security deposit, a two-month security deposit  
13 generally. It's based on what your billing cycle is, if  
14 it's two months or three months, but most are two  
15 months. We'll just use that for an average here.

16 And then if you follow the disconnect  
17 procedures that are allowed, a deposit would cover a  
18 two-month period. And that's about the amount of time it  
19 takes to go through a disconnect process through the  
20 notices and so forth, which would then allow the company  
21 to disconnect and apply the deposit, if they've collected  
22 it, to the outstanding balance.

23 So the company would not necessarily need to  
24 get more than two months behind with the customer, if  
25 they followed this to the letter.

1 Q. Turning back to Exhibit 41, what's been  
2 marked -- Your Honor, have I requested this to be  
3 admitted?

4 JUDGE ANDERL: 41?

5 MS. RENDAHL: Yes.

6 JUDGE ANDERL: Not that.

7 MS. RENDAHL: At this time, I would  
8 request to admit Exhibit 41.

9 JUDGE ANDERL: Mr. Baker, any  
10 objection?

11 MR. BAKER: None.

12 JUDGE ANDERL: Ms. Snelson?

13 MS. SNELSON: No.

14 JUDGE ANDERL: Exhibit 41 will be  
15 admitted as identified.

16 (Exhibit Number 41 was admitted).

17 Q. (BY MS. RENDAHL:) Looking at Exhibit 41,  
18 and you've stated that there are 13 accounts that are  
19 past due over \$60, is it your understanding that the  
20 monthly rate is \$20 a month with this water system?

21 A. Yes.

22 Q. So a past due account of \$60 is three months  
23 overdue?

24 A. Yes.

25 Q. You've just described the disconnect rules

1 and the deposit rules. If the company has accounts that  
2 are more than two months past due, does that mean that  
3 the company is in violation of any disconnect or deposit  
4 rules?

5 A. No, it's not. There is no requirement to  
6 disconnect for nonpayment.

7 Q. So these -- In your opinion, is the company  
8 in violation of any Commission rules for how it has  
9 handled these delinquent accounts?

10 A. No.

11 Q. In your opinion, as a consumer affairs  
12 specialist with the Commission, do you have any  
13 recommendations for the company, as to how they should,  
14 for the Commission -- or the company, as to how the  
15 company should handle its delinquent accounts in the  
16 future?

17 A. I believe that they should put into practice  
18 collecting deposits on high risk accounts and follow the  
19 disconnect rules that are allowed. And I think they  
20 wouldn't get, you know, there wouldn't be debt of this  
21 size, hopefully, in the future.

22 MS. RENDAHL: At this time, I have no  
23 further questions.

24 JUDGE ANDERL: Mr. Baker, you have the  
25 right to Cross-examine. Do you have any questions for

1 this witness?

2 MR. BAKER: Thank you. Yes, I do.

3

4

5

CROSS-EXAMINATION

6

7 BY MR. BAKER:

8 Q. Is the company required to bill on a monthly  
9 basis, when the rate is already established?

10 A. I'm not sure what their tariff says. They  
11 would be required to do what's in the tariff.

12 Q. It would be set by the tariff then?

13 A. Set by the tariff. That's my understanding.

14 Q. Is there any circumstances when the company  
15 is required to provide water service when there is a  
16 delinquency on the account?

17 A. Yes. I believe the company has an  
18 obligation to provide service, if it's a customer. I'm  
19 not sure I understand your question, though.

20 Q. Well, my question really has to do with what  
21 the company is required to do when someone's account is  
22 delinquent. Is there a protection for the consumer that  
23 they can be delinquent and still have the right to have  
24 the company furnish them water?

25 A. Yes. Until the company takes action to



1 disconnect the service, I believe the company has an  
2 obligation to continue to provide service.

3 Q. And then the only way to disconnect is if  
4 they follow the procedures that's set forth by the UTC  
5 rules?

6 A. Yes. They have to adhere to that procedure.

7 Q. If the company has gone through the process  
8 of establishing a delinquency and a right to shut off,  
9 and the customer agrees on a monthly payment to bring  
10 their balance current, does the company have to go back  
11 through the delinquency process to then shut them off?  
12 Or if the customer falls behind in their agreed upon  
13 payment scheme, can the company go ahead and shut them  
14 off at that point?

15 A. When the customer has made a payment  
16 arrangement and has agreed to -- both parties agreed to  
17 it, and the customer does not meet that agreement, even  
18 by one day, the company can disconnect without further  
19 notice.

20 MR. BAKER: Okay. Thank you.

21 JUDGE ANDERL: Ms. Snelson, any  
22 questions for Ms. Otto?

23 MS. SNELSON: Yes. Thank you.

24

25

1 CROSS-EXAMINATION

2  
3 BY MS. SNELSON:

4 Q. First of all, the order, the Commission  
5 order, on this number 7 is very specific when it says a  
6 customer billing summary for the six months showing each  
7 customer's name, date, and amount billed, date and amount  
8 paid.

9 Can you show us on, for example, the very  
10 first invoice, the amount billed or the amount paid?

11 A. No. I cannot.

12 Q. Are there similar invoices in this packet?

13 A. Yes, there are.

14 Q. There are. In fact, we'd have to say there  
15 were -- the majority of them looked like this, is that  
16 correct?

17 A. Yes.

18 Q. Do you know if this is a complete list of  
19 all of the customers for the water system?

20 A. I would have to say I do not personally know  
21 that, because I have not audited their books.

22 Q. Okay. I'm not sure how I'm going to show  
23 this. You do -- Do you show an account for account  
24 number 731?

25 JUDGE ANDERL: Ms. Snelson, can you

1 give Ms. Otto any additional help in finding it?

2 MS. SNELSON: The reason I'm leading up  
3 to this is, we could not find it. The address is 7229  
4 Belmont. We have, I don't know how I'm going to prove  
5 this, but we have personal knowledge that this is a  
6 customer of the water system. We could find no account  
7 in here for this customer. I have several accounts like  
8 this.

9 JUDGE ANDERL: Okay. Well, perhaps  
10 when you or someone else from the Homeowners Association  
11 testifies, that will be the way to do that.

12 MS. SNELSON: Okay.

13 THE WITNESS: I would have to go  
14 through page by page.

15 JUDGE ANDERL: Because Diana would have  
16 to page through it page by page, and that may take longer  
17 than we want.

18 MS. SNELSON: Right, okay.

19 Q. Looking at account number 217, and they are  
20 in order, it's about half way through the stack.

21 A. I've got it.

22 Q. What's the balance owing on account number  
23 217?

24 A. \$1,260.

25 Q. Is that a reasonable amount, in your

1 opinion, for a \$20 a month water bill and to have an  
2 outstanding balance of this amount?

3 A. No.

4 Q. It is not?

5 A. (Witness shook head negatively).

6 Q. Okay. Would you look at account number  
7 321? Would you read the outstanding balance on that?

8 A. \$885.

9 Q. Again, do you consider that a reasonable  
10 balance for a \$20 a month water bill?

11 A. No.

12 JUDGE ANDERL: Ms. Otto, while we're on  
13 that page, my copy doesn't show clearly the handwritten  
14 portion on that? Could you read that into the record  
15 from your original?

16 THE WITNESS: "We are going to issue a  
17 shut-off notice to Delmas Church. We have installed a  
18 meter for our convenience," I think that's what that  
19 abbreviation means, "Louise."

20 Q. (BY MS. SNELSON:) What's the purpose of  
21 installing a meter in a case like this?

22 A. So that they will have the ability, the  
23 company will have the ability, to shut this customer off  
24 for nonpayment.

25 Q. Do you know, has there been any follow-up on

1 this?

2 A. Yes, there has.

3 Q. And can you tell us what that's been?

4 A. Yes. On the 1st of June, well, the meter  
5 was installed. I'm not sure of the date, but on the 1st  
6 of June, the company sent a shut-off notice for  
7 nonpayment to the customer with a due date of June the  
8 13th.

9 Q. Have shut-off notices been issued to this  
10 customer before, disconnect notices, shut-off notices?

11 A. I can't answer that question. I'm just  
12 familiar with recently. I know that the company and I  
13 have talked about shut-off notices in the past, but they  
14 didn't have the ability to shut off. But I do believe  
15 other customers have been sent shut-off notices.

16 Q. Do you know if the previous account, the  
17 \$1,260 one, has there been any follow-up on that one?

18 A. Yes. This has -- There's a payment  
19 arrangement of \$60 per month, as of June 2nd.

20 Q. Okay. Just a couple more. 142 and 141.

21 A. 142?

22 Q. Uh-huh.

23 A. Okay.

24 Q. And 141.

25 A. Okay. Which one do you want first?

1 Q. Let's take 142.

2 A. Okay.

3 Q. Payment arrangements were made. Do you know  
4 if those are being met?

5 A. Yes.

6 Q. They are being met?

7 A. Yes.

8 Q. Okay. Same question on 141, payment  
9 arrangements were made?

10 A. I believe. I'm trying to find my notes  
11 here, just a moment, on that one. Excuse me. If you can  
12 bear with me, I'll get my notes. I've got it. Yes. 141  
13 has kept the arrangement also.

14 Q. Just a question about the statement at the  
15 bottom. These two accounts, 141 and 142, are identical  
16 accounts in payment schedule, payment arrangements,  
17 everything about them are identical. However, one was  
18 told that a shut-off will be issued, the other one just  
19 says, "We'll be glad to work with you."

20 I just -- Is this common to issue a  
21 shut-off notice to one and not to another, when they're  
22 identical accounts?

23 A. Absolutely.

24 Q. It is?

25 A. It's very common.

1           Q.       Very common.  And what would be the reason  
2 for that?

3           A.       Well, I'm not going to try to second guess  
4 exactly what the reasoning was here, but a company has  
5 the opportunity to speak with customers and determine  
6 what their needs are, and what their payment -- How  
7 should I put this?  What a customer can reasonably do.

8                   And a company has the opportunity to make a  
9 judgment call on whether a customer is doing all they can  
10 do in making payment.  It's a judgment call, and it's not  
11 unusual in the industry.

12          Q.       You wouldn't call that discrimination or  
13 anything like that?  You would call that a judgment call,  
14 is that correct?

15          A.       I would.  And I would not call it  
16 discrimination.

17                   MS. SNELSON:  I have -- Just a second.

18          Q.       Did you receive this packet, with all of the  
19 invoices, did you receive that within the 30 days that  
20 was required of the company?

21          A.       The 30 days fell on a Saturday, and I did  
22 receive it on Monday.

23          Q.       Okay.  All right.

24                   MS. SNELSON:  I do not have any further  
25 questions.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

JUDGE ANDERL: Okay. Redirect, Ms.

Rendahl.

MS. RENDAHL: Just one question.

REDIRECT EXAMINATION

BY MS. RENDAHL:

Q. Based on your review of the billing summary and your communication with the company concerning the delinquent or past due accounts, do you believe that the company has substantially complied with the requirement in paragraph number 7?

A. Yes.

Q. Do you believe that they have substantially complied, even though the invoices do not state the date and amount billed and the date and amount of payment received?

A. Yes.

Q. Could you explain your answer?

A. The reason I give that answer is because after a discussion with Louise, and previously some time ago with Jerry Lease, on the ability of this program to work in the manner that I felt would be clearer, you know, I understand what's going on on the account from



1 discussions with them. So it's clear to me. Does that  
2 answer your question?

3 Q. Yes.

4 MS. RENDAHL: I have no further  
5 questions.

6 JUDGE ANDERL: Mr. Baker, anything else  
7 for this witness?

8 MR. BAKER: No.

9 JUDGE ANDERL: Ms. Snelson?

10 MS. SNELSON: No.

11 JUDGE ANDERL: Thank you for your  
12 questions.

13 MS. RENDAHL: I just have one more  
14 witness. I don't know if we want to take a break at this  
15 time or keep going.

16 JUDGE ANDERL: Do you think we would be  
17 done with him by noon, or --

18 MS. RENDAHL: I would hope so, yes.

19 JUDGE ANDERL: Ms. Snelson, could you  
20 tell me how many witnesses the Homeowners Association are  
21 going to present and kind of an approximate time  
22 estimate.

23 MS. SNELSON: If I could have about ten  
24 minutes, I could -- I mean, we -- because we didn't  
25 know who was going to be here to answer the questions and

1 everything. We need to kind of reevaluate our --

2 JUDGE ANDERL: Well, how about if we  
3 take Mr. Ottavelli's testimony and then break for lunch.  
4 Would that --

5 MS. RENDAHL: Would it be possible to  
6 have Mr. Lease available after lunch for testimony from  
7 the company?

8 JUDGE ANDERL: Mr. Baker, can you  
9 address that question?

10 MR. BAKER: I don't believe that he  
11 intended to be available for today, but --

12 JUDGE ANDERL: During the lunch hour,  
13 would it be possible for you to contact him and see if he  
14 could be available? That's about all we can ask for on  
15 such short notice.

16 You can go ahead and call your next witness.

17 MS. RENDAHL: I'd like to call Mr. Fred  
18 Ottavelli to the stand.

19 JUDGE ANDERL: Mr. Ottavelli, as with  
20 previous witnesses, since you testified in the earlier  
21 part of this proceeding, you're still under oath.

22 Ms. Rendahl, go ahead.

23 MS. RENDAHL: First, I'd like to have a  
24 document marked for identification.

25 JUDGE ANDERL: Okay.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

(Exhibit Number 45 was marked  
for identification).

JUDGE ANDERL: I've been handed a  
document entitled document granting application of UW  
95-0403. I'll mark it for identification as Exhibit  
Number 45.

DIRECT EXAMINATION

BY MS. RENDAHL:

Q. Mr. Ottavelli, do you have a copy of the  
Commission's final order in this matter?

A. Yes, I do.

Q. Could you please turn to page 4 of that  
order?

A. (Witness complied).

Q. Looking at paragraph 6 of the order, are you  
aware of whether the company filed a petition with the  
Commission seeking approval of the transfer of ownership  
from Mr. Sahli to Mr. Barker within 30 days of the order?

A. Yes, they did. They filed on April 3  
requesting approval to transfer.

Q. Okay. I've asked for Exhibit 45 to be  
identified. Can you identify that document for us?

1           A.       Yes.   The exhibit is an order granting  
2           application, and docket UW 95-0403, specifically the  
3           order granting the transfer from James and Marilyn Sahli,  
4           d/b/a Marine View Heights Water Company, to Marine View  
5           Heights, Inc.

6                    MS. RENDAHL:   Your Honor, I ask that  
7           the document be admitted, not on the basis of Mr.  
8           Ottavelli's identification necessarily, but on the basis  
9           of it being an official Commission order.  I ask that it  
10          be admitted as evidence.

11                   JUDGE ANDERL:   Okay.  Mr. Baker, any  
12          objection to this document?

13                   MR. BAKER:   No.  Not at all.

14                   JUDGE ANDERL:   Ms. Snelson?

15                   MS. SNELSON:   No.

16                   JUDGE ANDERL:   Exhibit 45 will be  
17          admitted as identified.

18   (Exhibit 45 was admitted).

19                   MS. RENDAHL:   That's all the testimony,  
20          that's all the questions I have for Mr. Ottavelli.  
21          Actually, I have one more question for Mr. Ottavelli.

22                   Q.       Do you believe that the company has complied  
23          with the Commission's request in paragraph 6 of the final  
24          order?

25                   A.       Yes, they have.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

MS. RENDAHL: I have no further questions.

JUDGE ANDERL: Mr. Baker, any Cross for this witness.

MR. BAKER: No.

JUDGE ANDERL: Mrs. Snelson, any questions for Mr. Ottavelli?

MS. SNELSON: Just a second. I might have one, just one question.

CROSS-EXAMINATION

BY MS. SNELSON:

Q. Is it appropriate, or within the rules, to transfer title on a company that is not viable, that is not financially viable? Is that normally done?

A. The only test under the transfer of property constitute that the Commission must determine is if the transfer is in the public interest. And the Commission, in this particular instance, found it in the public interest to approve the transfer from the prior ownership, Marine View Heights Water Company, to the corporation.

Q. Just a comment. How can it be in the public

1 interest, if it is out of compliance with the Department  
2 of Health?

3 JUDGE ANDERL: Well, I think that that  
4 really, as a question, would go toward the analysis that  
5 the Commission made in its final order. And they're  
6 really not here to answer this question. And Mr.  
7 Ottavelli can't really speak for them.

8 I don't know if there's any way you can  
9 address whatever underlying question is there.

10 THE WITNESS: As is often the case in  
11 transfers of property, what we -- the Commission was  
12 faced with an unusual situation, very unclear as to who  
13 is responsible for the operation of the system.

14 And a situation where the owner did not want  
15 to be the owner of the system, did not want to operate  
16 the system, an individual who owned the corporation, was  
17 at least willing to accept responsibility for operating  
18 the system, it is clearly in the public interest to  
19 clarify the situation. And that's what was done.

20 MS. SNELSON: All right. I have no  
21 further questions.

22 JUDGE ANDERL: Anything else for Mr.  
23 Ottavelli?

24 MS. RENDAHL: No, Your Honor.

25 MR. BAKER: No.

1 JUDGE ANDERL: Thank you, Mr.  
2 Ottavelli, for your testimony. Will that conclude the  
3 Commission staff presentation?

4 MS. RENDAHL: That does.

5 JUDGE ANDERL: Thank you. We'll take a  
6 lunch recess. We'll be back here at one o'clock.

7 (Lunch recess).

8 JUDGE ANDERL: Let's be back on the  
9 record after our lunch recess. The Homeowners  
10 Association just told me that they're ready to call their  
11 witnesses. Go ahead, Ms. Snelson.

12 MS. SNELSON: Okay. I'd like to call  
13 Everett Sanders to the stand, please.

14 JUDGE ANDERL: Mr. Sanders, go ahead  
15 and take a seat. You too testified in the other  
16 proceedings.

17 THE WITNESS: Yes.

18 JUDGE ANDERL: So you're also under  
19 oath from that. And, Ms. Snelson, go ahead.

20

21

22

DIRECT EXAMINATION

23

24 BY MS. SNELSON:

25 Q. Mr. Sanders, this is regarding the

1           responsiveness of the company to correspondence that they  
2           receive. Let me give you a letter, and I'd like to --  
3           Here's a copy for the judge and for Ms. Rendahl.

4                               JUDGE ANDERL: And has Mr. Baker had a  
5           chance to see this too? I've been handed a single-page  
6           document dated at the top November 8, 1994. We'll mark  
7           it for identification as Exhibit Number 46.

8   (Exhibit Number 46 was marked  
9   for identification).

10                              JUDGE ANDERL: Mr. Sanders, if you'll  
11           take a look at my copy.

12                              Q.           (BY MS. SNELSON:) Is this a letter that was  
13           signed by you?

14                              A.           Yes, it is.

15                              Q.           Okay. And could you tell us what exactly  
16           this letter is about?

17                              A.           Yes, I can. My wife and I purchased another  
18           piece of property on the hill up there where we live in  
19           Marine View Heights. And we were in the process of  
20           leaving for the winter to go south on vacation, and the  
21           deal hadn't completely closed.

22    So I went down to the water company and gave  
23           them this letter, hand carried it down there, gave them  
24           this letter, and she stamped it and dated it as to when  
25           she received it. And we discussed the fact that I wanted



1 my water turned off.

2 And I was afraid that over the winter that  
3 the house might possibly freeze up. And what we did --  
4 It is the house that belonged to Jerry Lease, and Jerry  
5 sold it to my wife and I. And the garage door was off of  
6 it. And I left Jerry a large note in the house that  
7 said, "Jerry, please turn the heat down to 55 and make  
8 sure that the company turns the water off."

9 So after we went south, I had an opportunity  
10 to talk to another resident that I had checking my  
11 house. And he said he walked in and the water was still  
12 on. So I said, "Okay, Dick, just keep an eye on it, make  
13 sure that if something freezes up that, you know, just  
14 check it for me."

15 So he and another homeowner there checked  
16 the house until Sandra and I came back. When we came  
17 back, we started working on the house, and I just  
18 basically went down to the water company and talked to  
19 Louise about this. This is Louise Westphalen. And  
20 Louise's words were, "We turned it off, Everett, and  
21 there must be Gremlins on the hill that turned it back  
22 on."

23 And so to go on from that, since this letter  
24 was given to her, I have never received any kind of  
25 notification that I am on their billing, if you will.

1 The house is -- If you look at the billing summary that  
2 was given to the WUTC, the house is still in Jerry  
3 Lease's name.

4 There is nothing to show them that I have  
5 another piece of property there that's hooked up to the  
6 water.

7 On other occasions where people have turned  
8 off their water, they've turned it off themselves.  
9 They've wrote the company a letter. The company said,  
10 "Fine, thank you. Let us know when you're ready to turn  
11 it back on."

12 I've never received anything like that.

13 Q. In other words, you've never received any  
14 communication from the company about the purchase of the  
15 home or about turning your water off?

16 A. No, I have not.

17 JUDGE ANDERL: Ms. Snelson, do want to  
18 offer that letter as evidence in this matter? Offer  
19 Exhibit 46?

20 MS. SNELSON: Yes, please.

21 JUDGE ANDERL: Any objection?

22 MR. BAKER: No.

23 MS. RENDAHL: No.

24 JUDGE ANDERL: Exhibit 46 will be  
25 admitted as identified.

1 (Exhibit 46 was admitted).

2 Q. (BY MS. SNELSON:) The other question for  
3 you, Mr. Sanders, is, did you have occasion to, I  
4 believe, get a letter regarding Mr. Jerry Lease's  
5 certification as a certified water operator?

6 A. I had an occasion to write to the certified  
7 water operator program, Cheryl Bergner. And in the  
8 letter I asked Cheryl if she could tell me how Jerry  
9 Lease obtained a level 2 certification for a certified  
10 water operator, what experience did he have, and anything  
11 else that she could help me with.

12 She returned a letter stating that on  
13 Jerry's application, that some of the information was  
14 classified, but she did give me some dates. And it was  
15 from March of 1983, that his experience ran, until they  
16 lost the water company in bankruptcy, which was in, if I  
17 recall, 1985, January.

18 I then did some more research with respect  
19 to that, and I found that Jerry Lease would have been 11  
20 or 12 years old at the time. And I documented that  
21 information and I returned it to Cheryl Bergner.

22 And she had since written me back and said  
23 that they have asked for complete, I guess, you want --  
24 the complete history of Jerry's work experience with  
25 respect to being a certified water operator. And I asked

1 her, "Did he fall through the cracks or did he falsify  
2 evidence, or what?"

3 And she said that was under investigation  
4 and that's where it stands today, as far as I know. I  
5 have not received anything back.

6 MS. SNELSON: That's it. I have no  
7 further questions.

8 JUDGE ANDERL: Okay. Mr. Baker, do you  
9 have any questions for Mr. Sanders on the things that  
10 he's testified about?

11

12

13 CROSS-EXAMINATION

14

15 BY MR. BAKER:

16 Q. Are you being billed for that account, that  
17 house that you purchased?

18 A. No, sir. I'm not. I don't even --

19 Q. Have you paid any towards the water bill?

20 A. No. I've never received a bill. Not that I  
21 should, because I asked it to be disconnected. But there  
22 have been people that have received the same thing, okay,  
23 you're disconnected, your water bill is zero, so to  
24 speak.

25 Q. You have not received a turn-on since you

1 purchased the house?

2 A. No, sir. I haven't.

3 MR. BAKER: I have no further  
4 questions. Thank you.

5 JUDGE ANDERL: Ms. Rendahl, any  
6 questions for Mr. Sanders?

7 MS. RENDAHL: Just one question.

8

9

10 CROSS-EXAMINATION

11

12 BY MS. RENDAHL:

13 Q. Are you aware whether the company has paid  
14 the Homeowners Association for the water tests that were  
15 conducted?

16 A. Yes, I am.

17 Q. Okay.

18 A. They have been paid.

19 MS. RENDAHL: I have no further  
20 questions.

21 JUDGE ANDERL: Okay. Mrs. Snelson, any  
22 Redirect?

23 MS. SNELSON: No.

24 JUDGE ANDERL: Thank you, Mr. Sanders.  
25 Does the Homeowners Association have any more witnesses

1 they wish to call?

2 MS. SNELSON: I don't have any  
3 witnesses, but I would like to reserve my right to make  
4 just a short closing statement before we're done.

5 JUDGE ANDERL: Okay. That's what I was  
6 going to discuss in just a minute. Mr. Baker,  
7 technically you would have the right to testify in  
8 rebuttal to the Homeowners and to the Commission staff's  
9 case.

10 You don't have to exercise that right to  
11 present rebuttal testimony or evidence. A lot of parties  
12 don't, some parties do. I just want to let you know that  
13 you have that opportunity. And then after that, we'll be  
14 done with the substantive part of this hearing. We will  
15 not take anymore testimony in evidence.

16 I will then be talking to the parties about  
17 whether they want to make written statements or oral  
18 statements, either or both. And then after that, we will  
19 be done for the day.

20 MR. BAKER: I have a question to the  
21 examiner here. Are we only addressing the seven or eight  
22 items on the order?

23 JUDGE ANDERL: On the notice of  
24 hearing, yeah. But the subjects that we're covering at  
25 today's hearing are limited by the notice of hearing.

1 Now, there are seven specific items, but then eight and  
2 nine are very general, and so --

3 MR. BAKER: Well, it was the last two  
4 that I really had a concern about, as to whether there is  
5 an agenda for those items, or if it's just a broad  
6 statement of --

7 JUDGE ANDERL: It was a broad statement  
8 to enable parties to bring up things that may have been  
9 covered during the hearings in this matter and in the  
10 final order, but which may not have been specifically  
11 addressed in the otherwise numbered paragraphs.

12 It didn't mean to be covering another  
13 subject you didn't know about, but I believe it was a  
14 catch-all.

15 MR. BAKER: So your decision will  
16 discuss the first seven items, is that pretty much it?

17 JUDGE ANDERL: Yes.

18 MR. BAKER: Fine. Thank you. I don't  
19 wish to --

20 JUDGE ANDERL: No rebuttal then?

21 MR. BAKER: No rebuttal.

22 JUDGE ANDERL: Okay. Let's go off the  
23 record.

24 (Discussion had off the record).

25 JUDGE ANDERL: Let's be back on the

1 record. While we were off the record, we discussed the  
2 filing of post-hearing closing statements or brief  
3 briefs.

4 The parties agreed that they would file and  
5 serve written closing statements by June 30th. And the  
6 parties understand that means received at the Commission  
7 by June 30th and delivered or sent to each of the other  
8 parties no later than June 30th.

9 In terms of closing statements, Mr. Baker  
10 wanted to reserve the right to maybe respond to what the  
11 Commission staff and Homeowners had to say. And so we're  
12 therefore going to take Ms. Rendahl first in a brief  
13 closing statement.

14 MS. RENDAHL: Your Honor, I'd first  
15 like to state that the Commission staff's presence here  
16 today is to clarify whether the company has done what the  
17 Commission has ordered the company to do. However, our  
18 testimony here today and any evidence that's been  
19 presented is not intended to bear the burden for the  
20 company.

21 Under the Commission's order, paragraph  
22 number 8, the Commission ordered the company to  
23 demonstrate its compliance with the order, not that the  
24 staff should demonstrate the compliance with the order.  
25 Again, testimony and evidence presented today was to



1 clarify for the record what has and has not been done,  
2 but not to demonstrate compliance with the order.

3 In fact, it appears that although the  
4 company has submitted some plans for the chlorinator with  
5 the Department of Health, that that issue has still not  
6 been resolved and that there is some question as to  
7 whether a certified water operator has been employed at  
8 all times and, in fact, whether Jerry Lease intends to  
9 continue that function.

10 In addition, there's some question, given  
11 the evidence, that the company has complied with  
12 providing billing summaries for all customers. And the  
13 fact -- Finally, the fact that the company, through Mr.  
14 Baker, has not -- by having a representative here at  
15 this hearing who is not able to testify as to whether the  
16 company has complied with the Commission's requirements,  
17 indicates a lack of caring about this water system, the  
18 lack of its good faith in complying with Commission  
19 direction.

20 And for that reason, the staff, at this  
21 point, believes it may be appropriate for the Commission  
22 to request the Department of Health to place the company  
23 in receivership.

24 JUDGE ANDERL: Okay. Is that it?

25 MS. RENDAHL: That is it.

1 JUDGE ANDERL: Thank you. Ms.  
2 Snelson?

3 MS. SNELSON: Okay. My comments right  
4 along the same line, the company has failed to have a  
5 representative who is knowledgeable of the company's  
6 day-to-day operation here at the hearing.

7 The company handled this hearing the same  
8 way they handled the water system, the lack of concern,  
9 disregard for requirements, rules, regulations. The  
10 burden of proof was on the company, and they did nothing  
11 to prepare that proof.

12 The Commission did a fine job of presenting  
13 the company's case, but we're in the same situation we  
14 were in when we filed this complaint. Our quality of  
15 water, our quality of service is still the same, because  
16 of an owner that has a careless attitude.

17 We strongly recommend that the company be  
18 put into receivership.

19 JUDGE ANDERL: Okay. Thank you. Mr.  
20 Baker?

21 MR. BAKER: Well, I think, for the  
22 record, I'd point out that out of the seven items, all  
23 seven are in substantial compliance, whether the proof of  
24 that came from the individual company or whether it came  
25 from outside agencies really isn't an issue here.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

The point is that the order had certain requirements and, for the most part, those requirements are being met, so --

JUDGE ANDERL: Is that it?

MR. BAKER: Yes. Thank you.

JUDGE ANDERL: Okay. Well, I think that concludes our hearing today, so we will stand adjourned. Thank you all for attending.

(1:30 p.m.)

\* \* \*

1 STATE OF WASHINGTON )  
2 ) ss.  
3 County of Benton )  
4  
5

6 I, Dina Lindquist, do hereby certify  
7 that at the time and place heretofore mentioned in the  
8 caption of the foregoing matter, I was a Certified  
9 Shorthand Reporter and Notary Public for Washington; that  
10 at said time and place I reported in stenotype all  
11 testimony adduced and proceedings had in the foregoing  
12 matter; that thereafter my notes were reduced to  
13 typewriting and that the foregoing transcript consisting  
14 of 91 typewritten pages is a true and correct transcript  
15 of all such testimony adduced and proceedings had and of  
16 the whole thereof.

17 Witness my hand at Kennewick, Washington, on  
18 this 13~~th~~ day of June, 1995.

19  
20  
21  
22  
23  
24  
25

Dina Lindquist  
Dina Lindquist  
Certified Shorthand Reporter  
Notary Public for Washington  
My commission expires: 12-9-97