

In the Matter of the Petition Filed by Kalama Water, LLC

Docket No. UW-240615 - Vol. I

October 11, 2024



1325 Fourth Avenue, Suite 1840, Seattle, Washington 98101
Bellingham | Everett | Tacoma | Olympia | Yakima | Spokane
Seattle 206.287.9066 Tacoma 253.235.0111 Eastern Washington 509.624.3261

www.buellrealtime.com

email: audio@buellrealtime.com

BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Petition)
 Filed by)
)
 KALAMA WATER LLC,) DOCKET NO. UW-240615
)
)
 Pursuant to RCW 34.05.240 and)
 WAC 480-07-930.) PAGES 1-105

BRIEF ADJUDICATIVE PROCEEDING - VOL I
BEFORE ADMINISTRATIVE LAW JUDGE CONNOR THOMPSON
October 11, 2024

Washington Utilities and Transportation Commission
621 Woodland Square Loop SE
Lacey, Washington 98504

TRANSCRIBED BY: ELIZABETH PATTERSON HARVEY, WA CCR 2731

1 A P P E A R A N C E S

2

3 FOR THE PETITIONER:

4 Michael S. Howard
5 Williams Kastner & Gibbs, PLLC
6 601 Union Street, Suite 4100
7 Seattle, Washington 98101

8

9 FOR THE RESPONDENT:

10 Jeff Lindberg
11 Landerholm, P.S.
12 805 Broadway Street, Suite 1000
13 PO Box 1086
14 Vancouver, Washington 98666

15

16 FOR COMMISSION STAFF:

17 Colin O'Brien
18 Washington Utilities and Transportation Commission
19 Office of the Attorney General
20 PO Box 40128
21 Olympia, Washington 98504

22

23 FOR PUBLIC COUNSEL:

24 Jessica Johanson-Kubin
25 Office of the Attorney General
26 Public Counsel Unit
27 800 Fifth Avenue, Suite 2000
28 Seattle, Washington 98104

29

30 ALSO PRESENT:

31 Deanna Rouse
32 Scott Sevall
33 Vladislav Tretnikov

34

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

2

3	PROCEEDINGS	PAGE
4	Proceedings Commence	4
	Opening Statement by Petitioner	10
5	Opening Statement by Respondent	14
	Opening Statement by Staff	17
6	Closing Statement by Petitioner	87
	Closing Statement by Respondent	92
7	Closing Statement by Staff	95

8

9 E X A M I N A T I O N I N D E X

10

11	WITNESS	PAGE
12	ROBERT TERCEL	
	Direct Examination by Attorney Howard	20
13	Cross-Examination by Attorney Lindberg	46
	Cross-Examination by Attorney O'Brien	54
14	Redirect Examination by Attorney Howard	55
15		
16	DEANNA ROUSE	
	Cross-Examination by Attorney Howard	63
17	Redirect Examination by Attorney Lindberg	72
18		
19	SCOTT SEVALL	
	Direct Examination by Attorney O'Brien	77
20	Crosss-Examination by Attorney Lindberg	85

21

22 E X H I B I T I N D E X

23	NUMBER	PAGE
	(All Prefiled Exhibits Admitted)	9
24	DR-3 E-mail	75

25

1 October 11, 2024

2 -o0o-

3

4 JUDGE THOMPSON: We are now on the record.

5 Good afternoon. Today is Friday, October 11, 2024, and

6 the time is 1:32 p.m. This is a hearing in Docket

7 UW-240615 in the Matter of the Petition of Kalama Water

8 LLC.

9 This matter was initiated upon submission

10 of a petition for declaratory order from Kalama Water on

11 August 12, 2024.

12 On August 26, 2024, commission staff sent

13 notice of the petition.

14 On September 16, 2024, the commission

15 received a response and comments from homeowners served

16 by Kalama.

17 Commission staff has filed a notice, or --

18 my apologies. The commission filed notice on September

19 26, 2024, to all interested parties, setting an

20 evidentiary hearing in the matter for today.

21 My name is Connor Thompson, and I am an

22 administrative law judge presiding over today's brief

23 adjudicative proceeding.

24 Let's go ahead and take appearances on the

25 record from the parties, and then we will go ahead and

1 talk about how we are going to proceed this morning.

2 We'll go ahead and start with the company.

3 ATTORNEY HOWARD: Good afternoon, your
4 Honor. Michael Howard, appearing for Kalama Water LLC.
5 And the company owner, Robert Tershel, is here this
6 afternoon.

7 JUDGE THOMPSON: Thank you.

8 And for the Rouses?

9 ATTORNEY LINDBERG: Good afternoon, your
10 Honor. Jeff Lindberg for Mr. and Mrs. Rouse, and
11 Mrs. Rouse is here with me.

12 JUDGE THOMPSON: Thank you. It's good to
13 have you with us.

14 Commission staff?

15 ATTORNEY O'BRIEN: Good afternoon, your
16 Honor. Colin O'Brien, AAG appearing for commission
17 staff. With me is Scott Sevall from staff.

18 JUDGE THOMPSON: And public counsel?

19 ATTORNEY JOHANSON-KUBIN: Good afternoon.
20 This is Jessica Johanson-Kubin from public counsel.

21 JUDGE THOMPSON: Thank you.

22 And Mr. Tretnikov, would you like to
23 appear and provide any comments during the hearing today,
24 or are you merely appearing to observe the proceedings?

25 MR. TRETNIKOV: Yes. For the most part,

1 we're just to observe the proceedings. But we made our
2 comments on the letter that we sent. I think you all saw
3 that. That's all that matters to us.

4 JUDGE THOMPSON: Okay. Thank you. So we
5 will not take an appearance from you, and I won't come
6 back to you to provide any statement during the hearing.
7 Is that okay? Is that my understanding?

8 MR. TRETNIKOV: That is fine, as long as
9 you guys saw the letter that we sent.

10 JUDGE THOMPSON: We have it.

11 MR. TRETNIKOV: That's all. Thank you.

12 JUDGE THOMPSON: Okay. Thank you.

13 Since we are doing this hearing over Zoom,
14 I am going to ask that the parties be aware of background
15 noise and that you mute your microphone when you are not
16 speaking.

17 If you need to object or raise an issue,
18 please identify yourself when you are speaking.

19 And we should make an effort not to talk
20 over one another. We do not have a court reporter, I
21 believe, with us today. However, this is being recorded
22 and will be transcribed at a later date, and so we want
23 to keep the record as clear as possible. Making sure
24 your microphones are muted when you're not speaking and
25 not speaking over one another will help to ensure we have

1 a clear record.

2 Before we get started with presentation of
3 witnesses, let's just briefly talk about how we're going
4 to proceed today. I sent an e-mail to the parties
5 outlining this, but just to cover those grounds again for
6 all the parties, because this hearing was initiated
7 following a petition from the company, I'm going to ask
8 that the company tender their evidence and witness for
9 examination first.

10 We will then hear from the Rouses and
11 staff.

12 And then public counsel, you may weigh in
13 as well, although I don't have any exhibits from you.
14 But if you would like to offer an opening statement or
15 any closing statement, I'll give you that opportunity as
16 well.

17 We will have representatives for each
18 party conduct direct examination of their witness. And
19 then I will provide an opportunity for cross-examination
20 and redirect.

21 We'll end the hearing by allowing each
22 party a chance to give a closing statement.

23 And after those closing statements, I will
24 also discuss with the parties whether or not everyone
25 feels there is a need for post-hearing briefs and when

1 those might be due, as well as page limitations on those
2 post-hearing briefs.

3 I have received exhibits, an exhibit list
4 from the company, the Rouses, and staff. I did send
5 around an exhibit list for the parties just to try to
6 expedite today's proceedings.

7 Given time estimates for direct and cross, I
8 am expecting that this will go until after 5:00 p.m.
9 However, that may not be the case as we begin the
10 proceeding and start getting through all the witnesses.
11 But I just wanted to put everybody on notice of that at
12 the beginning.

13 I believe that the company and the Rouses
14 have stipulated to admission of all prefiled exhibits,
15 which would include the cross exhibits for the company,
16 which are now available and linked on the UTC website.
17 They previously were not, which is why they're not linked
18 in the exhibit list. Does staff and public counsel
19 stipulate to the admission of the exhibits as well?

20 ATTORNEY O'BRIEN: Staff stipulates to the
21 exhibits, your Honor.

22 ATTORNEY JOHANSON-KUBIN: As does public
23 counsel.

24 JUDGE THOMPSON: Okay. And just to be
25 clear, were there any exhibits which were not stipulated

1 to?

2 I believe the stipulation included all
3 exhibits, but I just want to make sure. Mr. Howard?

4 ATTORNEY HOWARD: That is correct. That
5 is our position and understanding.

6 JUDGE THOMPSON: Okay. Thank you.

7 And Mr. Lindberg?

8 ATTORNEY LINDBERG: Yes, that is correct,
9 your Honor. We stipulate with the other parties to
10 admission of ail the exhibits.

11 JUDGE THOMPSON: Okay. Thank you.

12 (All prefiled exhibits admitted)

13 JUDGE THOMPSON: Are there any questions
14 or housekeeping items before we proceed?

15 ATTORNEY LINDBERG: If I may, your Honor,
16 just on that issue of the exhibits, I take it, then,
17 based on the stipulation, those are all admitted now and
18 there's not a need to -- throughout the proceeding to
19 move to admit?

20 JUDGE THOMPSON: That's correct. They're
21 admitted. And to the extent that they're admitted,
22 there's no need to lay foundation for those either. So
23 if that helps shorten any of the direct, you know, that
24 may get us to the end before 5:00.

25 And so we can go ahead and proceed.

1 Mr. Howard, if you want to go ahead and
2 proceed and call your witness?

3 ATTORNEY HOWARD: Your Honor, would it be
4 permissible for the company to offer a short opening
5 statement first?

6 JUDGE THOMPSON: Oh, my apologies. Yes,
7 absolutely. I jumped over the opening statement. Yes,
8 let's go ahead and proceed with opening statements.

9 ATTORNEY HOWARD: Thank you.

10 JUDGE THOMPSON: Thank you for the
11 reminder.

12

13 OPENING STATEMENT BY PETITIONER

14 ATTORNEY HOWARD: Thank you. And the
15 company will try to keep its case efficient today in
16 terms of time.

17 Your Honor, a water company is not just
18 the pumphouse or the pipes in the ground. It's a
19 combination of personal and real property, tangible and
20 intangible assets. A water company is regulated by the
21 commission -- the Utilities and Transportation
22 Commission, when I refer to "the commission" -- and the
23 Department of Health, and frequently the Department of
24 Ecology.

25 A water company possesses the water rights

1 to draw from the groundwater and has responsibility to
2 ensure that quality potable water is delivered to
3 customers. Clean drinking water is a human right,
4 according to the United Nations recognizing that in 2010.
5 Consequently, Washington State's decision of who to
6 entrust with responsibilities of a water company is an
7 important and weighty decision.

8 In this case Robert Tershel, or Bob
9 Tershel, is the owner and operator of Kalama Water LLC.
10 It is a very small Class B water system, with only a
11 couple of customers right now on Resort Lane in Cowlitz
12 County.

13 Mr. Tershel acquired the system in 2014.
14 And the UTC recognized the transfer of the water system
15 ownership to Mr. Tershel and Kalama Water LLC through a
16 2015 open meeting docket and approved Kalama Water's
17 tariff in that same docket.

18 Rule 9 of the tariff specifically provides
19 that the company can access the property at reasonable
20 business hours to perform its water company tasks.

21 Since acquiring the system in 2014,
22 Mr. Tershel has visited the property himself numerous
23 times to identify and repair issues with the water
24 system; to install shutoff valves; and to repair and
25 locate leaks and to evaluate the Rouses' complaints about

1 air in the lines; hiring the driller, Pitner Drilling, to
2 come out and evaluate that issue.

3 And during this time, Kalama Water has
4 continued to maintain necessary licenses and has passed
5 water quality testing. Kalama Water has never been
6 penalized by the Department of Health. And the company's
7 only penalty from the UTC, as far as the company is aware
8 at this time, is for the failure to file annual reports,
9 which, as the commission is aware, may be simply a
10 first-time paperwork violation for a small business.

11 Kalama Water has been making every
12 reasonable effort to provide clean and potable water for
13 its customers; however, we are here today because of a
14 conflict with a customer on the system.

15 The Rouses purchased 224 Resort Lane in
16 2001. This is the lot where the pumphouse is located.

17 The Rouses paid their connection fee and
18 their water bills until December 2023. But sometime in
19 2024, the Rouses decided to stop paying their water bill,
20 to replace the door on the pumphouse with a less
21 expensive door and a different lock, and to demand 48
22 hours' notice with other specific conditions for notice
23 for Kalama Water to access the pumphouse.

24 The Rouses sent Kalama Water a letter on
25 June 24 of this year arguing that there's no easement for

1 the pumphouse and the other items on their property; and
2 that therefore, Mr. Tershel cannot access the property or
3 charge them for water.

4 This case affects not only Kalama Water,
5 but the public interest more broadly. The company
6 submits at this time that the underlying easement rights
7 may be unclear and require further evaluation, but even
8 assuming for the sake of the argument that the Rouses are
9 correct to some degree, can a homeowner claim water
10 company property when there is no easement, and can this
11 homeowner place a lock on the door and prevent the water
12 company from accessing and controlling its water
13 rights? No. That surely must not be the case.

14 Kalama Water is the entity with the water
15 rights and other property rights bound up with providing
16 water to customers for hire.

17 Kalama Water is also the responsible
18 entity charged by the commission and DOH, Department of
19 Health, with maintaining quality water for customers.

20 An easement dispute or a lack of clarity
21 in easements should not result in one homeowner
22 endangering the water supply of their neighbor, and it
23 should not entitle that homeowner to free water for life
24 either.

25 Kalama Water therefore requests that the

1 commission enter a declaratory order stating that the
2 company has the right to access the property during
3 reasonable hours as provided by commission rule WAC
4 480-110-305. Kalama Water must have the right to ensure
5 the other customers on the system have clean water
6 because this is the company's responsibility under the
7 law.

8 The commission should also declare that
9 Kalama has the right to enter the property to disconnect
10 the Rouses for their nonpayment because this is a right
11 as a regulated entity with an approved tariff from the
12 commission.

13 In the alternative, at the very least, we
14 ask that the UTC find that Kalama Water was accessing the
15 property under color of right and that the Rouses have
16 blocked access and have not paid their water bill since
17 December 2023.

18 That concludes the company's opening
19 remarks at this time. Thank you.

20 JUDGE THOMPSON: Thank you.

21 Mr. Lindberg?

22

23 OPENING STATEMENT BY RESPONDENT

24 ATTORNEY LINDBERG: Thank you, your Honor.

25 As counsel indicated, the petition here is

1 actually far narrower than the issues identified in
2 counsel's opening statement. The issue is simply one
3 stating a request for an order allowing access under Rule
4 305.

5 Counsel is correct. The parties are
6 involved in an underlying real property dispute. And as
7 Mr. Howard acknowledged, there are -- it's our position
8 there is no easement in place enabling this access. But
9 of course that's not an issue that can be decided here in
10 this proceeding.

11 But in some ways, even though there is a
12 significant underlying real property dispute here, the
13 petition is almost much ado about nothing. The exhibits
14 on file that have now been admitted show that the Rouses
15 have acknowledged or agreed to allow Kalama Water access
16 to the well and the pumphouse.

17 And in fact, two months after that was
18 stated in a letter from me to Mr. Tershel specifically,
19 he filed this petition. And even after filing the
20 petition, when the Rouses restated their willingness to
21 facilitate access, there was no response to that at all.

22 So again, in Mrs. Rouse's declaration, she
23 stated there that the Rouses remain willing to facilitate
24 this access.

25 So there's really not a situation here

1 where Kalama Water is being denied access. There's not a
2 situation here where there's a threat to quality of
3 drinking water. None of these rather extreme
4 circumstances that counsel outlined in his opening
5 statement, those aren't the facts here.

6 This is a narrow petition seeking an order
7 for access, access to which the Rouses to an extent don't
8 object, but there is an underlying property issue that
9 need to be resolved that, again, can't be resolved here.
10 That has to be resolved at the superior courts.

11 But so in some ways, the issue is pretty
12 focused here today, quite a bit more, I think,
13 understanding from just listening to Mr. Howard's
14 opening.

15 One thing that is absolutely not in front
16 of this tribunal today, your Honor, is the issue of
17 disconnecting Mr. and Mrs. Rouse for nonpayment. There's
18 been no petition, no documentation, no notice that I'm
19 aware of, nothing at all that's been provided as required
20 in order to disconnect service. So that's a little bit
21 over the top in my view, and I would just ask that that
22 not be considered today at all. It's not something
23 that's the subject of the petition.

24 We're here to adjudicate what was asked
25 for in the petition, and that's all, your Honor.

1 JUDGE THOMPSON: Okay. Thank you. And
2 does that conclude your opening?

3 ATTORNEY LINDBERG: Yes, it does.

4 JUDGE THOMPSON: Okay. Thank you.
5 And let's please hear from staff.

6

7 OPENING STATEMENT BY STAFF

8 ATTORNEY O'BRIEN: Good afternoon, your
9 Honor.

10 The issue before the Court is actually
11 relatively simple as far as the law goes. The Rouses
12 have taken affirmative action to restrict access to a
13 regulated water company's property by placing locks on
14 the pumphouse.

15 The (inaudible) -110-305, a water company
16 has the right to enter a customer's property during
17 reasonable hours to access its property.

18 Even in the Rouses' counsel's opening
19 statement, Mr. Lindberg's opening statement, we see a
20 misunderstanding of the law as it's written in the WAC.
21 The Rouses don't have the right to facilitate access.
22 They have the ability under WAC to ask for identification
23 from the company if company personnel are accessing the
24 property, but they don't have the right to refuse access.
25 They don't have the right to be a facilitator. They

1 don't have the right to lock the company out of their
2 property and say you access it when we say or when we
3 approve.

4 As testified to by staff, a wellhouse
5 which is inaccessible to a company presents potential
6 harm to the public health and well-being. And
7 accordingly, this Court should grant the petition by
8 Kalama for the company to be allowed access to the well
9 and to order the locks removed. Thank you, your Honor.

10 JUDGE THOMPSON: Thank you.

11 And would public counsel like to provide
12 an opening statement?

13 ATTORNEY JOHANSON-KUBIN: No, your Honor.
14 Per our letter that we submitted yesterday, public
15 counsel is not taking a position in this matter.

16 JUDGE THOMPSON: Okay. And quickly, let
17 me just look to see if Records has uploaded that letter.

18 It does not look like it's in the docket
19 yet. But I appreciate you letting me know what the
20 contents of that letter say. And so just to -- just so
21 that I am sure that I understand, the letter submitted is
22 just saying that public counsel takes no position, so I
23 assume that means you won't be having any cross or
24 closing today; is that correct?

25 ATTORNEY JOHANSON-KUBIN: That's correct.

1 I'm just here in an observational capacity.

2 JUDGE THOMPSON: Okay. Thank you. That's
3 good for me to know.

4 ATTORNEY JOHANSON-KUBIN: Thank you.

5 JUDGE THOMPSON: Okay. With that, I will
6 now go back to where I previously skipped ahead. And
7 Mr. Howard, if you would please call your witness.

8 ATTORNEY HOWARD: The company would call
9 the company owner, Mr. Tershel.

10 JUDGE THOMPSON: Okay. And Mr. Tershel,
11 if you could unmute yourself.

12 THE WITNESS: (Inaudible).

13 JUDGE THOMPSON: Okay.

14 THE WITNESS: Am I unmuted now? I'm
15 sorry. There's no mute button, mute or unmute on my
16 phone. But then when you said that, a message popped up
17 and I was able to do so. But it's like I don't have
18 control of that. But anyway, okay, let's proceed.

19 JUDGE THOMPSON: Okay. Okay. Thank you.

20 I'm going to ask that you please raise
21 your right hand, and I'll go ahead and swear you in. And
22 since we cannot see you, if you'll let me know when
23 you've raised your right hand.

24 THE WITNESS: It's raised.

25 JUDGE THOMPSON: Okay. Thank you.

1 Do you swear or affirm that the testimony
2 you give today will be the truth, the whole truth, and
3 nothing but the truth?

4 THE WITNESS: I do.

5 JUDGE THOMPSON: Thank you.

6 Mr. Howard, you can go ahead and proceed.

7

8 ROBERT TERCEL, witness herein, having been duly
9 sworn on oath, testified as
10 follows:

11

12 DIRECT EXAMINATION

13 BY ATTORNEY HOWARD:

14 Q Good afternoon, Mr. Tershel. Can you tell me
15 about your relationship to Kalama Water LLC?

16 A Well, just a brief history. The development
17 and the water system was not created by me, but rather a
18 person by the name of Dan Class. He owned the water
19 system under -- I believe it was Green Mountain H2O. The
20 property of the development was originally four lots of
21 approximately eight -- seven acres each, or a total of 28
22 acres. Subsequently for the next two years, he --

23 Q Mr. Tershel, I'm sorry. I may have asked you
24 an overly broad question.

25 A Sorry.

1 Q What is your role at Kalama Water LLC?

2 A I'm the owner and operator.

3 Q All right. Thank you. I apologize for my --.

4 A That's all right.

5 Q -- question.

6 And as the judge noted, the company's exhibits
7 have been admitted into evidence. But could you -- at a
8 high level, could you tell me about that development
9 process and how the company -- can you tell me about --
10 I'm sorry. I'm going to start over.

11 Can you tell me about the process leading to
12 the creation of the predecessor company, Green Mountain
13 H2O?

14 A Okay. I'll try to do quick bullet points. The
15 development was approved in -- sometime in the year 2006.
16 When I say "development," the original four lots, larger
17 four lots, were divided into 12 lots, creating the View
18 development. And when lots are created in at least
19 Cowlitz County, they have to have a water source. So the
20 water system was completed sometime in 2006. And so it's
21 been operating for 18 years.

22 Then the great recession hit. So the first
23 sale of one lot was in 2009. It happened to be 224
24 Resort Lane, the lot in question with the pumphouse and
25 the well.

1 And then in 2012, the purchaser that bought the
2 lot in 2009, Ed Price, completed his house. So that
3 water line went online in 2012.

4 And then I took over the system about two years
5 later, in 2014. In fact, it was ten years ago from today
6 that Mr. Dan Class signed over the bill of sale. It
7 didn't get recorded until October 30, 2014, but it's
8 basically been in my control for ten years.

9 Q Thank you.

10 And if we look at the company's exhibits -- let
11 me see here. The company has submitted exhibits into
12 evidence. So we have our first exhibit, the real estate
13 contract, RT-1; and RT-2, an auditor's indexing form.

14 Are those relevant to the development of that
15 -- to the creation of this development as you just
16 described?

17 A They are. They are. They go way back in
18 history, but that's the origination.

19 Q Okay. Thank you.

20 Do you have our exhibit RT-3 available to you?

21 A It's not right in front of me right now, but
22 I've seen it many times. It's basically the plat map for
23 the development.

24 Q Right. Thank you.

25 And does the plat map speak to the creation of

1 a well in any way?

2 A Yes. And because it's a public well, it's my
3 understanding there's a requirement that it has a
4 hundred-foot buffer around the well of any kind of
5 development for buildings or anything just for sanitary
6 safety issues, if that's what you're referring to.

7 Q Thank you. Yes.

8 So do you know whether the predecessor company,
9 Green Mountain H2O, was regulated by the Utilities and
10 Transportation Commission?

11 A Yes. I'm not sure how long, but they were
12 regulated before it was transferred to my LLC.

13 Q And when ownership was transferred to Kalama
14 Water LLC, was there any proceeding before the Utilities
15 and Transportation Commission related to that?

16 A Well, I made application -- this goes back ten
17 years now. I made application to transfer the LLC from
18 -- I believe it was called Green Mountain H2O to mine,
19 because I was taking it over and I owned it. I have a
20 bill of sale recorded ten years ago, so I did so.

21 Q All right. Thank you.

22 And so let's talk a little bit more
23 specifically about the subdivision and some of the
24 properties on it. So can you tell me which lot in the
25 division the pumphouse is located on?

1 A 224 Resort Lane.

2 Q All right. And when was that -- is that
3 property developed?

4 A That was the one I was referring to. That was
5 the first lot -- well, they were all developed in 2006.
6 I mean, they all had water availability and they were
7 approved. So that's what I meant by Exhibit 3. So
8 anyway, back in 2006.

9 So I'm sorry. What was the rest of the
10 question? (Inaudible).

11 Q You did answer my question.

12 And my next question would actually be do you
13 recall when the house was built at 224 --

14 A Yes, yes, I recall exactly. So the lot was
15 sold in 2009. I think it was February, March.

16 And the house didn't start being built until
17 maybe end of 2011 into 2012. It was completed in 2012,
18 and it went kind of online, where it was physically
19 serviced by the water company, towards the end of 2012.

20 Q All right. Thank you.

21 And did the Rouses own that property at that
22 time?

23 A No. No. That was Ed Price. He bought it. He
24 bought the lot in 2009, built the house and completed it
25 in 2012, and sold it to the Rouses in August of 2012.

1 Q All right. Thank you.

2 When Mr. Price owned the residence at 224
3 Resort Lane for that period of time, did Kalama Water LLC
4 provide water service to that residence?

5 A Yes, it did. And I came and went without any
6 issues to maintain it. And he paid his water bill, and
7 that was that, you know.

8 Q All right. Thank you.

9 So let's talk specifically about the
10 acquisition. We have Company's Exhibit RT-4, which is a
11 bill of sale?

12 A Mm-hm.

13 Q Do you happen to have this in front of you?

14 A I don't have that as well. But I just looked
15 at it just before the hearing. But...

16 Q All right.

17 A It's a recorded document. So I don't know.

18 Q All right. And it's in evidence, and I
19 won't --

20 A The UTC obviously saw that to approve the
21 transfer from Green Mountain to Kalama Water. So
22 anyway...

23 Q All right. Thank you. Because that's in
24 evidence, I won't dwell on that --

25 A (Inaudible).

1 Q -- further right now.

2 So since you acquired Kalama Water LLC, have
3 you been operating that company continuously for the
4 subdivision?

5 A I have, which includes taking annual water
6 tests. At least every year, you have to take a bacteria
7 test; every two years is a nitrate test.

8 I even did voluntarily a -- I just forgot the
9 word -- an arsenic test, which by the way, passed flying
10 colors. And I think several have been done in the
11 history, but I did one at least three or four years ago.
12 So that's not required, but I did that.

13 So I did all annual testing every year since
14 I've owned it. I had an operating permit which that's a
15 necessary component of, and -- anyway, so yes.

16 Q All right. Thank you.

17 Have you ever received a -- excuse me; have you
18 ever received a penalty issued by the Department of
19 Health for Kalama Water --

20 A No.

21 Q -- policy?

22 A No.

23 Q All right. Did you pay the electrical
24 utilities required for operating the pumphouse of Kalama
25 Water LLC?

1 A Since 2013.

2 Q And did you receive payments from your
3 customers on Resort Lane?

4 A Well, yes.

5 Q And tell us how many customers you have on
6 Resort Lane?

7 A Well, okay. So there's the -- there's the View
8 One, which is a separate Class B water system approved
9 for eight hookups, and there's View Two.

10 So do you want me just to direct my comments to
11 the water system we're talking about and not the other?

12 Q Yes.

13 A Okay.

14 Q Thank you.

15 A That's what I thought.

16 So as I kind of alluded to or stated, 224
17 Resort Lane has been the only hookup to this water system
18 for 12 years. Well, 18 years since its inception, but 12
19 years for the hookup where the user's actually using it;
20 i.e., 224 Resort Lane.

21 And just this spring, it was April of 2024,
22 finally, the second user, Ivan and Irena, hooked up, and
23 they're the second user. So it's been a long haul.
24 Anyway...

25 Q Do you recall the last name of those second

1 customers?

2 A You know, they're a party to this. It starts
3 with a T. I'm going to butcher the last name. But it
4 starts with a T.

5 Q All right. Thank you.

6 If I refer to the name Tretnikov, would that --

7 A Yeah, that's it. That's it. (Inaudible)
8 again.

9 Q Thank you.

10 A Okay.

11 Q And as the operator of Kalama Water LLC, since
12 acquiring that company, have you performed repairs to the
13 system?

14 A Many, numerous. It required many numerous
15 repairs, especially in the last year because I finally
16 had the second user.

17 For the first 12 years, 12 years, the
18 distribution lines were in the water. They were all shut
19 off with the main shut-off valve because there were leaks
20 before, and there was no other user for 12 years.

21 So when the second user came on, I had to do a
22 lot of catchup. It required a lot of catchup.
23 Unfortunately, it involved releasing some air into the
24 Rouses' house and the water line; and unfortunately,
25 their house, on top of that, happens to be somewhat above

1 the pumphouse. So it was a combination of, you know,
2 unfortunate circumstances which I tried to ameliorate as
3 best as possible.

4 But I want to say since -- finally, I got it
5 going with four shut-off valves and numerous repairs for
6 the lines since -- it was February 13, I don't think
7 there's been any problem, or I haven't been notified of
8 any problem. So I think I -- anyway.

9 Q All right. Thank you.

10 Do you recall when the Rouses purchased 224
11 Resort Lane?

12 A 8/17 of 2021.

13 Q All right. Thank you.

14 And our -- again, our exhibits are in evidence.
15 Do you recall what Exhibit RT-5 contains?

16 A Refresh my memory.

17 Q A Zillow listing?

18 A Oh, yes, that's right. It's also MLS. So
19 anyway, it's really MLS. Whatever. Do you want me to
20 tell you what the relevance of that is?

21 Q Do you recall whether this listing that we have
22 as Exhibit RT-5 refers to any aspects of the well or
23 water service?

24 A Well, yes. As in most real estate listings,
25 they have a section for utilities. And under Water, it

1 says community well.

2 Q All right. Thank you.

3 A Okay.

4 Q And after that purchase of the house by the
5 Rouses, did they let you come and go as needed to
6 maintain the water system, let's say through the end of
7 2023?

8 A Yes.

9 Q Did you perform any work on the water system
10 after the Rouses purchased their lot in 2021?

11 A Well, I definitely went to the pumphouse.

12 Whether I performed any services, I'd have to think.

13 During either 2021 or '22, I'm sure I performed
14 some.

15 But the majority of it was in the fall of 2023
16 going into a little bit of the winter 2024, when I made
17 19 trips -- I kept track of them -- trying to get the
18 water system going for my new user and trying to get it
19 going anyway.

20 Also in the fall of 2023, the main variable
21 speed pump to the pumphouse for the distribution lines
22 had been making noise. The Rouses pointed that out to
23 me, and I could hear it as well. I asked them a number
24 of questions about how long it had been going on and so
25 on and so forth.

1 And so I was concerned with that. So
2 proactively in late October, beginning of November 2023,
3 I had that replaced plus its associated tank, smaller
4 tank, at considerable cost. But I did that.

5 Q Do you recall the cost for that pump and tank?

6 A It was, with labor and materials, in the
7 neighborhood of \$3,000.

8 Q All right. Thank you.

9 In the fall of 2023, did you have Pitner
10 Drilling visit the site?

11 A Well, numerous times. They were the ones that
12 installed the shut-off valves and did the repairs on the
13 lines.

14 And in the fall, Deanna was getting upset about
15 water entering the lines, which I couldn't really prevent
16 and I was sorry for. So she called the Pitners, and the
17 three of us had a discussion. And as I recall, Brian
18 Pitner kind of told her a shut-off valve wouldn't do much
19 good at the house because you end up releasing water from
20 a faucet anyway inside the house. But I would still do
21 so, but it really wouldn't do much good.

22 As I say, unfortunately, the pumphouse, the
23 pumphouse is somewhat below the house. And when air
24 enters the system, it goes to the highest point in the
25 system, and that's their house, is through the pumphouse.

1 It's just, you know, an unfortunate design. But
2 anyway...

3 Q Thank you.

4 And at the beginning of your answer just now,
5 you indicated that Deanna was complaining about water
6 entering the lines?

7 A No, air.

8 Q Air. Thank you. I just wanted to ensure
9 that she --

10 A I think she wants water in the lines. Yes,
11 air.

12 Q Yes. And when you refer to "Deanna," are you
13 referring to Deanna Rouse?

14 A Correct.

15 Q All right. Thank you.

16 So would it be fair to say, then, it's your
17 understanding that an air pressure relief valve would not
18 provide significant benefit based on your conversations
19 with Pitner Drilling?

20 A Correct.

21 Q Are you willing to install one if needed, even
22 given that understanding?

23 A As I said, nevertheless, I will. I don't think
24 it will do much good, but be happy to do so.

25 Q All right. Thank you.

1 Let's talk about the pumphouse specifically.
2 Can you just describe the pumphouse for us in general
3 terms?

4 A Well, it's one of the nicer pumphouses you'll
5 ever see. I think it's approximately 12 by 20
6 dimensions. I may have that off a little bit. It's got
7 nice thermal pane windows, cultured stone on the outside.
8 It had a re-lited glass entry door, which you normally
9 won't find, fully insulated.

10 The pumphouse has a 2,500-gallon storage tank
11 with, again, the multispeed variable pump that's in
12 there, and various lines from the well coming into the
13 pumphouse, where the water is taken and then stored and
14 pumped out to the distribution lines.

15 It's a significant investment.

16 And anyway, I might want to add one thing. So
17 in their complaint, they complain that I'm not taking
18 proper care to heat it and that it may freeze. I believe
19 there's a wall heater in there, in the wall anyway, just
20 a small little electric heater.

21 But let me just say something. It's a
22 relatively small pumphouse. At least a third or 40
23 percent of it has a storage tank of water that I think
24 the water comes out of the ground about 55, 57 degrees.

25 So that huge tank in that small building keeps

1 the interior naturally insulated by, like, maybe probably
2 a factor of I guess 20 degrees either way. In the
3 summertime, you walk in there on a hot day, and it's
4 cooler than heck, like super air conditioning. And on a
5 cold day, it's warmer.

6 So the probabilities or likelihood that there
7 would be a freeze of water in there is minimal. But
8 maybe on the most cold days it would be good to have a
9 heater in there. And they put a little bitty heater in
10 there, and what's that they did. But it's fully
11 insulated.

12 But I want to point something else out. What's
13 far more likely to freeze is --

14 ATTORNEY LINDBERG: I want to object, your
15 Honor. This is Jeff Lindberg for the Rouses.

16 I understand that -- this is becoming a
17 narrative, for one. We're not really responding to
18 questions anymore.

19 And number two, it's a fairly limited
20 issue before this tribunal at this point, which is the
21 access issue. We're going through a whole lot of history
22 and a lot of details that don't necessarily give us --
23 aren't focused on the access issue. So those are my
24 objections.

25 JUDGE THOMPSON: Do you have any response,

1 Mr. Howard?

2 ATTORNEY HOWARD: I would be happy to pose
3 Mr. Tershel some questions to focus the examination going
4 forward.

5 But in terms of the issues being
6 discussed, there have been very, very specific
7 allegations made that Mr. Tershel has done nothing to
8 maintain the water system -- and that's in the June 24
9 letter -- and that he has refused to install a heater and
10 other necessary tasks. So I think that when the Rouses
11 have raised these various allegations, it's definitely in
12 our prerogative to address them.

13 ATTORNEY LINDBERG: May I respond, your
14 Honor?

15 JUDGE THOMPSON: Please do.

16 ATTORNEY LINDBERG: The only request for
17 relief in front of this tribunal right now is the request
18 to access.

19 We're not litigating the contents of the
20 letter to Mr. Tershel or any other issues.

21 It's a focused issue that's in front of
22 this tribunal right now. And in my view, this evidence
23 is not relevant to that.

24 JUDGE THOMPSON: I'm going to go ahead and
25 ask Mr. Tershel to go ahead and move on.

1 I will note that the letter is submitted
2 in evidence. And certainly I believe that letter is
3 submitted as a cross-examination exhibit by Mr. Lindberg,
4 as well as -- Mr. O'Brien, did staff submit that as
5 well?

6 ATTORNEY O'BRIEN: Yes, your Honor. Staff
7 submitted that as a direct exhibit.

8 JUDGE THOMPSON: That would be SS-3; is
9 that correct?

10 ATTORNEY O'BRIEN: Yes, your Honor. Yeah,
11 SS-3 is correct.

12 JUDGE THOMPSON: Okay. So what I'm going
13 to ask is that we move on from that now. If it does come
14 up during cross, then, Mr. Howard, you'll have the chance
15 to ask additional questions on that subject on redirect.

16 And we may hear from staff as well.

17 Mr. Lindberg, I will just point out that
18 while the issue is narrow, the staff has taken note and
19 submitted that letter as part of this evidence as well.

20 And the commission does regulate not only
21 access to water company property, but also the
22 operations, safety rates, and other matters. And so
23 certainly it could come up again.

24 With that, I'm going to sustain the
25 objection for now and ask that we move on. But I will

1 note that the topic is in evidence, submitted by more
2 than one party, and it may come up again.

3 So Mr. Howard, go ahead and proceed.

4 ATTORNEY HOWARD: Thank you, your Honor.
5 I'll move on from that topic, and I'm going to move to a
6 different topic, which is, I think, quickly going to be
7 tied to the issue of access.

8 Q (By Attorney Howard) So Mr. Tershel, we have
9 talked about the subdivision at issue here.

10 Are there remaining lots in the subdivision
11 that are developed but do not have homes built on them
12 yet that you own?

13 A Yes.

14 Q And would you hope to sell those lots in the
15 future?

16 A Yes.

17 Q Do those lots have another water utility
18 available to them right now?

19 A No.

20 Q Do you have any concerns, as the individual
21 owning and listing these lots, that being locked out of
22 the pumphouse by the Rouses could affect your ability to
23 sell those lots in the future?

24 A Absolutely.

25 Q And are you familiar with the Rouses' June 24,

1 2014 letter to you which Judge Thompson was just
2 discussing?

3 A Very.

4 Q And are they asking for different items of
5 consideration in exchange for providing you access?

6 A Correct.

7 Q Are the Rouses asking you for parcels of land
8 as one of those demands?

9 A Correct.

10 Q Do you recall how many parcels of land they're
11 asking for?

12 A Two specific parcels, but in effect, they're
13 asking for three lots.

14 Q Do you recall the value, the listed value of
15 those lots?

16 A Well, I don't currently have them listed. But
17 I can tell you conservatively, they're easily worth
18 \$200,000 each, so 200,000 times three.

19 Q Thank you. And --

20 A That would be Demand Number 7.

21 Q Thank you.

22 A All right.

23 Q Moving on, when the Rouses connected to the
24 water system, did they pay their hookup fee to your water
25 company?

1 A No, because it already was connected.

2 Q Oh, I see. Did the -- to your knowledge, did
3 the Prices pay the connection fee for that same property?

4 A You know, I don't remember. I would assume so,
5 but I wasn't -- you know, my water system wasn't even in
6 existence back in 2009, 2012, so I don't know.

7 Q So since the Rouses purchased their house in
8 2021 at 224 Resort Lane, have they sent you any letters,
9 to your knowledge, regarding water quality issues?

10 A Not that I remember.

11 Q Did they -- either of the Rouses call you with
12 concerns about water quality issues?

13 A It was mostly when I had to start repairing the
14 system and unfortunately, incurring a little bit of air
15 getting in their system.

16 Q And do you feel that you addressed those
17 concerns?

18 A Well, I mean, I tried as best as possible, as I
19 explained. Every time I had to shut the water on and off
20 -- it may have been three, four, five times in the fall,
21 I don't know, that they experienced that -- I tried to
22 release as much air as I could at the pumphouse, but
23 their house is above the pumphouse. So that's how I
24 answer the question.

25 Q All right. Thank you.

1 Moving along, we touched on this issue briefly.
2 Talking about this calendar year, so from January 1,
3 2024, onwards, are the Rouses paying their water bills
4 from Kalama Water?

5 A They have not.

6 Q So have they paid Kalama Water for any of the
7 water that they've received in calendar year 2024?

8 A They have not.

9 ATTORNEY LINDBERG: I'm going to object to
10 this again. Again, the issue of payment and the threat
11 of disconnection is not something that has been properly
12 noted for this hearing. And so I don't know what
13 relevance any of this information -- any of this
14 testimony has with respect to the payment issue.

15 JUDGE THOMPSON: Mr. Howard, do you have a
16 response?

17 ATTORNEY HOWARD: Yes. I would argue that
18 under the Administrative Procedure Act and commission
19 rules like 480-07-930, which are cited in our petition,
20 the commission has authority to enter a declaratory order
21 regarding the rights and obligations of the parties,
22 plural. Nonpayment here for almost an entire -- like ten
23 months of a calendar year is a very material issue that
24 should be addressed.

25 And also, I would like to clarify too that

1 the issue of disconnecting the Rouses for nonpayment --
2 which would be entirely justified at this juncture, by
3 the way -- would obviously be subject to further notice,
4 a notice process as required by commission rule and the
5 company's tariff, which is not laid out yet.

6 So when I refer to disconnecting, I am
7 contemplating that process playing out following this
8 proceeding.

9 JUDGE THOMPSON: And was that issue raised
10 at all in the original petition?

11 ATTORNEY HOWARD: Nonpayment was not
12 specifically raised in the petition itself.

13 The Rouses' response to the petition,
14 however, with Deanna Rouse's declaration, specifically
15 indicates their belief that they are not required to pay
16 for water, and that Mr. Tershel has no legal right to
17 charge them for water. And I think that this is at least
18 to some degree bound up with the issue of access and
19 whether this company is a legitimate water company that
20 has rights in this situation.

21 JUDGE THOMPSON: Staff, do you have
22 anything you'd like to provide regarding this?

23 ATTORNEY O'BRIEN: Yes, your Honor, just
24 briefly. I would argue that the issue of payment or
25 nonpayment actually does go to the issue of access.

1 The Rouses' underlying complaint is based
2 on the idea of ownership and transfer of this water
3 system. And whether the Rouses have been or ever have
4 paid for water from the system under tariff rates
5 actually does go towards whether the water system is a
6 fixture and is -- has been transferred or is owned under
7 -- owned by Kalama or owned by the Rouses.

8 And therefore, I would say that this
9 actually is a -- the payment issue is material to the
10 case at hand.

11 JUDGE THOMPSON: Because of the question
12 of ownership extends from the access issue?

13 ATTORNEY O'BRIEN: Yes. The access issue
14 is based on the ownership issue.

15 JUDGE THOMPSON: Okay. I would tend to
16 agree that the door has been opened. And while the issue
17 in the petition is narrow, the question of ownership,
18 which won't be resolved, necessarily, regarding easements
19 in this proceeding, is at issue from the commission's
20 perspective as to the rights of the parties. And
21 therefore, I'm going to go ahead and overrule.

22 But I will also note that that issue has
23 been brought to my attention, and is part of the Rouses'
24 response. And, you know, I'm not really sure how much
25 more needs to be said, other than what has been already

1 put on the record in regards to payment.

2 So with that, Mr. Howard, please proceed.
3 We have on the record that payment has not been made in
4 the calendar year 2024. And if you have additional
5 questions regarding another topic, let's go ahead and
6 move to that topic at this time.

7 ATTORNEY HOWARD: Certainly, your Honor.
8 Just a few more questions.

9 Q (By Attorney Howard) So Mr. Tershel, do you
10 recall when the water company -- excuse me. Let me back
11 up and rephrase.

12 When do you believe that you lost access to the
13 pumphouse?

14 A Well, I was first notified in the June 24th
15 letter from Mr. Lindberg, which I think is a matter of
16 evidence. So that was my first notice.

17 Q All right. Have the Rouses made any
18 alterations to the pumphouse you described earlier?

19 A They changed -- well, they changed the door and
20 the lock.

21 But in terms of alterations -- and they had
22 verbally asked me -- the summer or two before that, they
23 decided to repaint their house. The pumphouse sits
24 prominently in front of their house. And again, it's a
25 nice-looking pumphouse, culture stone. Anyway, that was

1 painted the same color -- the exterior was painted the
2 same color as their house. Makes sense.

3 And so when they wanted to change or tweak
4 the color of their house, they asked if they could paint
5 the same color, and I agreed. And so they made that
6 change, plus the door and the lock, to my knowledge.

7 Of course, since then, I have no idea
8 because I haven't been able to enter it.

9 Q Thank you.

10 Did you agree to their changing the door?

11 A No.

12 Q Did you -- is the door that the Rouses
13 installed of equal value as far as your knowledge?

14 A Well, I don't think so. I had a re-lite door.
15 But no.

16 Q And by re-lite door, you mean a door --

17 A With a window.

18 Q Can you describe that?

19 A With a window.

20 Q Thank you.

21 A A thermal pane window to allow light in.

22 Q Thank you.

23 Did you give them permission to change the
24 locks on the pumphouse?

25 A No.

1 Q Did you agree after they changed the locks on
2 the pumphouse that they could have done that?

3 A No.

4 Q All right. And my question there was a little
5 weird, so I'd like to ask it a slightly different way. I
6 apologize.

7 Did you -- after you were informed that they
8 changed the locks, did you indicate your approval of
9 that?

10 A Not at all.

11 Q Have they given you any keys to the new lock?

12 A No.

13 Q Have they given you the combination to the new
14 lock, if it has a combination?

15 A It's not a combination, but no.

16 Q All right.

17 A And it is locked. I did check once, once or
18 twice. So anyway...

19 ATTORNEY HOWARD: All right. That is all
20 the questions I have at this time, your Honor.

21 JUDGE THOMPSON: Thank you.

22 Any cross-examination from you,
23 Mr. Lindberg?

24 ATTORNEY LINDBERG: Yes. Let
25

1 me check my notes real quick here. Just one second.

2 CROSS-EXAMINATION

3 BY ATTORNEY LINDBERG:

4 Q Mr. -- is it TER-shel or Ter-SHEL?

5 A It's Ter-SHEL. Thank you.

6 Q Okay. Mr. Tershel. Thank you.

7 Do you have the exhibits that have been filed
8 in this matter in front of you?

9 A I probably have (inaudible) a little bit, not
10 right in front of me. But I've got an outline of what
11 they are. And I know what they are, but I don't know if
12 I have them in front of me. But anyway...

13 Q And you've been asked about my June 24, 2024,
14 letter. And I don't know if you recall that that
15 instructed that you could contact the Rouses to
16 facilitate access to the pumphouse. Do you recall that?

17 A I do.

18 Q And after you received that letter, did you
19 ever contact the Rouses to discuss access?

20 A I did not.

21 Q And I don't know if you recall what has been
22 marked as Exhibit RT-10X?

23 A Why don't you just briefly tell me what that
24 is, and I'll probably know what you're talking about.

25 Q That was an e-mail exchange between you and me

1 that we -- just to summarize, we went back and forth
2 after you had received my June 24 letter; do you recall
3 that?

4 A We had, like, an hour conversation.

5 And then you emailed me once, which I did reply
6 to.

7 Q Correct.

8 A So you're probably referring to that second
9 e-mail, whatever the date was; is that right?

10 Q No. I'm referring to an e-mail exchange dated
11 August 9.

12 ATTORNEY HOWARD: Your Honor, I apologize.
13 I don't believe that there is an Exhibit RT-10. But I
14 think they might be referring to Exhibit RT-3, or what
15 was originally numbered as RT-3 from the Rouses.

16 ATTORNEY LINDBERG: Thank you, counsel.
17 That is correct.

18 Q (By Attorney Lindberg) So if that is what you
19 have in front of you, Mr. Tershel, RT-3 --

20 A I don't have the exhibit in front of me. But
21 if you tell me what it is, I can probably recall it.

22 Q Okay. Well, it's an e-mail dated August 9,
23 2024. And your statement there says: Jeff, I will be
24 responding early next week. Do you recall that?

25 A I do now, yes.

1 Q And again, that was three days before you filed
2 your petition in this matter, correct?

3 A That's correct.

4 Q And in that e-mail, you didn't mention anything
5 about needing access or requesting access, did you?

6 A I did not.

7 Q And I think you mentioned a moment ago a
8 subsequent e-mail that I sent to you in September, which
9 I marked as RT-4, but it is in the record as RT-11X. Do
10 you recall that e-mail?

11 A Just give me a little premise on what it is,
12 and I'll probably say yes, so...

13 Q So it's an e-mail that I sent to you on
14 Thursday, September 5, 2024.

15 A No, no. I won't go by the date. Just what was
16 the gist of the e-mail?

17 Q I acknowledged receipt of your petition and
18 once again stated that Mr. and Mrs. Rouse are willing to
19 provide you access to the pumphouse. Do you recall that
20 one?

21 A That would be the access that I have to contact
22 both of them individually and give them 48 hours'
23 notice?

24 Is that the one you're referring to?

25 Q There is reference to 48 hours' notice in that.

1 Do you recall that?

2 A Yes, I do recall that.

3 Q And at any time after receiving that, did you
4 contact the Rouses to seek access?

5 A I did not.

6 Q And tell us again, when is it that you first
7 discovered that the door to the pumphouse was locked?

8 A June 24 -- your June 24 letter.

9 Q But when was the first time you tried to open
10 the door and found --

11 A I think I was up there -- I believe it was
12 probably July 1.

13 Q And did you attempt to contact the Rouses on
14 that date?

15 A No, but I tried the door and it was locked.

16 I'm sorry. I'm afraid I'm getting muted
17 without knowing it. Okay. We're still here?

18 Q Yes, we're still here. Thank you.

19 A All right.

20 Q And just to clarify a couple things about the
21 View Rural subdivision, Lot 6 is the lot on which the
22 well and pumphouse are situated, correct?

23 A Correct.

24 Q And that's the lot that the Rouses own now,
25 right?

1 A Correct.

2 Q And there's a different well on Lot 10,
3 correct?

4 A That's to the other Class B water system.

5 Q And you were -- at some point, you were
6 involved with Dan Class while he was developing this; is
7 that right?

8 A Well, I'll clarify "involved." I was his
9 private lender. Not partner, not equity partner.
10 Lender.

11 Q Were you familiar with the steps he was taking
12 while you were acting as his lender?

13 A Well, what steps was that?

14 Q With respect to development of the View Rural
15 Subdivision?

16 A Well, no. I didn't lend first money to him
17 until the end of 2008 into 2009. So he had already
18 developed the View Development.

19 Q So of the exhibits that you've submitted here,
20 the first one is RT-1. And that's a real estate contract
21 between Anders Hiebert and on the one hand, Class. Do
22 you recall that one?

23 A Yeah. That's, I believe, is the purchase
24 contract to the property way back in 2004. Again, four
25 parcels, 28 acres?

1 Q Okay. But 2004, that was before there was a
2 water system, correct?

3 A Yeah, of course.

4 Q And before the View plat was recorded, correct?

5 A Which was recorded about two years later, in
6 2006.

7 Q Right. But so that document doesn't -- that
8 document, RT-1, predates both the water system and the
9 creation of the View plat, right?

10 A That's correct.

11 Q Okay. And then your RT-2, you didn't really
12 testify anything about that. Can you tell me what that
13 is?

14 A That was just sort of a -- just did that for a
15 change of title. He had an LLC named Deer, Deer LLC.
16 And he transferred it to Class Development. So kind of
17 an internal transfer. But you know, he spent quite a bit
18 money developing it. So I don't know why he did it for,
19 you know, whatever tax or legal purposes. But just
20 including that for the record.

21 Q And you say that's part of chain of title.
22 In that exhibit, RT-2, can you point us to any
23 reference in that document where it references the water
24 system?

25 A I don't have that document in front of me, so I

1 doubt if it does. But maybe it does. But I don't know.

2 Q So you don't have it in front of you?

3 A I don't. I don't.

4 Q Do you know if the document references any kind
5 of an easement or access right to access across Lot 6 to
6 the well and pumphouse?

7 A I don't.

8 Q And you are, I'm sure, familiar with what's
9 been marked RT-3, which is the plat document itself?

10 A Correct.

11 Q And is there any reference on the face of the
12 plat to an easement onto Lot 6 to access the well and
13 pumphouse?

14 A I don't believe so.

15 Q Is there any reference on the face of the plat
16 that would indicate the well and pumphouse are under
17 different ownership than the balance of Lot 6?

18 A I'm sorry. Would you repeat that question
19 again?

20 Q If you recall, is there any reference on the
21 face of the plat that would indicate the well and
22 pumphouse are owned separately from the rest of Lot 6?

23 A I don't believe so. I mean, I didn't develop
24 this. So in terms of interpreting a plat map fully, I
25 mean, there's kind of a lot of information on that. My

1 answer is I don't believe so, but I'm not totally sure.

2 Q I'm just asking for your understanding here.

3 A Yeah. That's what I'm giving you.

4 Q RT-4 is the personal property bill of sale that
5 you recorded. Do you recall that one?

6 A I do.

7 Q And that was recorded by you in October 2014,
8 right?

9 A Correct.

10 Q So that's five years after Class sold Lot 6 to
11 the Prices, correct?

12 A Five years. Correct.

13 Q And that is -- is that document, the personal
14 property bill of sale, is that sort of the definitive
15 transaction document for your acquisition of the Green
16 Mountain H2O's assets?

17 A Correct.

18 Q Is that the only document that you recorded
19 with Cowlitz County in connection with your acquisition
20 of Green Mountain H2O's assets?

21 A I believe so.

22 ATTORNEY LINDBERG: No further questions
23 at this time.

24

25

1 JUDGE THOMPSON: Thank you.

2 Mr. O'Brien, do you have any
3 cross-examination for this witness?

4 ATTORNEY O'BRIEN: Just a couple of
5 questions, your Honor.

6

7 CROSS-EXAMINATION

8 BY ATTORNEY O'BRIEN:

9 Q Good afternoon, Mr. Tershel. So you referenced
10 that the Rouses have not paid their water bill in 2024.

11 To your knowledge, have they ever paid for
12 water service?

13 A Yeah, they paid from basically when they moved
14 in in October -- August of 2021 until the end of calendar
15 year 2023.

16 Q All right. And just to confirm, the Rouses
17 were the ones that put the lock on the pumphouse; it
18 wasn't like it was your lock or something initially?

19 A No. No. Correct. And no.

20 Q To your remembrance, was there ever any offer
21 or discussion from the Rouses to buy or acquire the water
22 system or the well -- pumphouse?

23 A None whatsoever.

24

25

1 Q And have the Rouses ever asked you to leave
2 their property or otherwise restricted your access to the
3 pumphouse (inaudible)?

4 A No.

5 Q All right.

6 ATTORNEY O'BRIEN: That's my questions,
7 your Honor.

8 JUDGE THOMPSON: Thank you.

9 Mr. Howard, any redirect?

10 ATTORNEY HOWARD: Yes, your Honor. I
11 believe I just have one question.

12

13 REDIRECT EXAMINATION

14 BY ATTORNEY HOWARD

15 Q Mr. Tershel, when Mr. O'Brien was asking you
16 questions just now, he asked you whether the Rouses ever
17 asked you to leave their property or restricted your
18 access. And you answered no.

19 Does that hold true for the time period after
20 June 2024?

21 A Yeah. I should probably clarify that. I guess
22 I sort of interpreted that question as verbally, onsite,
23 if they had ever denied me access. So the answer is
24 still no.

25 But of course, in effect, they have denied me

1 access because I'm locked out of my pumphouse. So
2 (inaudible).

3 Q All right. And that was just as a result of
4 the letter which we've already discussed, mailed on June
5 24?

6 A It was the result of them changing the lock,
7 and I don't have the key. That's the result.

8 Q Thank you. Thank you. I just wanted to
9 clarify.

10 A Okay.

11 ATTORNEY HOWARD: No further redirect,
12 your Honor, from the company.

13 JUDGE THOMPSON: Thank you.

14 Mr. Tershel, before I excuse you, I just
15 -- for my understanding, the restricted access right now
16 is from the replacement of a door and a lock.

17 Is there any fencing or anything else
18 restricting access to the pumphouse at this time?

19 THE WITNESS: No.

20 JUDGE THOMPSON: Okay. All right. You
21 may be excused. Thank you for your testimony today.

22 Mr. Howard, do you have any other
23 witnesses?

24 ATTORNEY HOWARD: No further witnesses
25 from the company, your Honor.

1 JUDGE THOMPSON: Okay. Thank you.

2 Mr. Lindberg, if you would please call
3 Mrs. Rouse?

4 ATTORNEY LINDBERG: Your Honor, after
5 reviewing the testimony given so far today, I don't
6 intend to call any witnesses.

7 JUDGE THOMPSON: Okay. Please just give
8 me a minute. I'm going to make a note to myself.

9 Okay. Mr. O'Brien, if you could please
10 call your witness.

11 ATTORNEY O'BRIEN: Of course, your Honor.
12 Staff calls Scott Sevall.

13 ATTORNEY HOWARD: Your Honor?

14 JUDGE THOMPSON: Yes.

15 ATTORNEY HOWARD: I do hate to potentially
16 be a stick in the mud, but I would like to raise a
17 concern here that the parties have stipulated to the
18 admission of all the prefiled exhibits, which includes
19 Exhibits from the Rouses. And I can certainly understand
20 the Rouses can decide whether or not to offer a witness
21 today.

22 But I do wonder, and I do feel concern
23 that the company should have an opportunity to ask
24 questions about what they have provided in terms of
25 exhibits submitted through their witness.

1 JUDGE THOMPSON: Mr. O'Brien, do you have
2 anything to add?

3 ATTORNEY O'BRIEN: Staff has no position
4 on that issue, your Honor.

5 JUDGE THOMPSON: Okay. Mr. Lindberg, do
6 you have any response?

7 ATTORNEY LINDBERG: Well, we're not
8 offering any testimony from the witness, your Honor.

9 I know the exhibits have come in. They
10 were stipulated to by the parties. I don't see any need
11 to offer any additional testimony beyond that. And so
12 otherwise, I'm not exactly sure what Mr. Howard is asking
13 for here.

14 JUDGE THOMPSON: Go ahead, Mr. Howard.

15 ATTORNEY HOWARD: Thank you. I would
16 submit the company's position -- excuse me -- would be
17 that the Rouses have made some very specific claims, not
18 just in the June 24 letter, but also in the declaration
19 which is in this docket, Deanna Rouse's declaration. And
20 now we have exhibits from them.

21 And I think not allowing us to cross
22 Deanna Rouse now, I'm concerned that that circumvents our
23 rights as a party, given that now we have in particular
24 the declaration with allegations about water quality and
25 Mr. Tershel not doing certain tasks or inquiring into

1 issues as he should.

2 So I do think at least a short
3 cross-examination could be warranted under those
4 circumstances. That's just the company's concern.

5 JUDGE THOMPSON: Okay. Let's go ahead and
6 take a brief recess. I'm going to consider this matter
7 and just take a second look at commission rules regarding
8 this matter before coming to a decision, as this has not
9 happened in a little bit of time.

10 So let's go ahead and take a brief recess.
11 We've reconvene at 3:00 p.m. And that will give the
12 parties 12 minutes to stretch their legs and get a drink
13 of water if needed. Let's go ahead and be off the record
14 at this time.

15 (Recess.)

16 JUDGE THOMPSON: Okay. Before I go ahead
17 and address the matter, is there anything additional that
18 the parties would like to share in regards to the issue
19 of whether or not Mrs. Rouse should be called for
20 cross-examination?

21 ATTORNEY HOWARD: Your Honor, the company
22 would have a brief observation, or I suppose brief line
23 of argument to offer for you to consider.

24 If your Honor is not inclined to allow the
25 company to briefly cross Ms. Rouse today, the company

1 would request in the alternative that the commission
2 strike paragraph 8 of Rouse's declaration, which is in
3 the record -- and just let me check the date -- September
4 16, 2024, I believe. I do need reading glasses.

5 So we'd ask to strike paragraph 8 as
6 unsupported and unvetted by any cross-examination if we
7 cannot cross the witness today. Thank you for your
8 consideration, though, your Honor.

9 JUDGE THOMPSON: Okay. Thank you.

10 And Mr. Lindberg, do you have any
11 response?

12 ATTORNEY LINDBERG: I don't know if
13 Mr. Howard is suggesting that -- of course we oppose his
14 request to strike any portion of the declaration. It's
15 been stipulated to and admitted into evidence already,
16 and it's unconditional.

17 But I don't know if you say that he wants
18 to cross-examine her with respect to the issues in
19 paragraph 8, but again, in line with my other objections
20 and arguments today, your Honor, the point is to keep
21 things focused on what's actually at issue here and
22 what's been presented by the petitioners.

23 JUDGE THOMPSON: Okay. So common practice
24 at the commission, particularly outside of brief
25 adjudicatory proceedings -- and I'm thinking of rate

1 cases for companies -- is for testimony and evidence to
2 be submitted on direct without direct examination and for
3 witnesses to then be available for cross-examination.

4 Prior to the Administrative Procedure Act
5 being revamped, the old RCW 34-04-100 provided that in
6 contested cases, agencies or their authorized agents may
7 admit and give probative effect to evidence which
8 possesses probative value commonly accepted by reasonably
9 prudent men in the conduct of their affairs. They may
10 exclude incompetent, irrelevant, immaterial, and unduly
11 repetitious evidence, and every party shall have the
12 right of cross-examination of witnesses who testify and
13 shall have the right to submit rebuttal evidence.

14 We don't have testimony from Mrs. Rouse
15 other than the declaration itself, which could be viewed
16 as testimony itself.

17 The more current RCW, particularly -- let
18 me get you a statutory reference -- does provide that the
19 presiding officer shall afford to all parties the
20 opportunity to respond, present evidence and argument,
21 and conduct cross-examination for parties who are parties
22 to the proceeding unless that participation has been
23 restricted by a limited grant of intervention or by the
24 prehearing order.

25 For those reasons, and because I believe

1 it to be required by law, I will ask Ms. Rouse -- Mrs.
2 Rouse, my apologies -- be available for
3 cross-examination.

4 But I do think that cross-examination
5 should be limited to the issues of the prefiled exhibits,
6 with the understanding that we are talking about narrow
7 issues.

8 And I do not want to go into the issues
9 with the ongoing dispute between the related company,
10 parent company, subsidiary, whatever may be the case, of
11 the development company. We're focused here today on the
12 water company itself.

13 And Mr. Lindberg, if you do have any
14 direct, I'll still provide you with that opportunity to
15 conduct a direct, or we can offer up just for limited
16 cross as we do in a number of our other proceedings here
17 at the commission. Okay? And that is how we are going
18 to go ahead and proceed.

19 So Mr. Lindberg, if you want to go ahead
20 and call Mrs. Rouse.

21 ATTORNEY LINDBERG: Yes, call Ms. Deanna
22 Rouse.

23 JUDGE THOMPSON: Okay. Mrs. Rouse, if you
24 could please raise your right hand.

25

1 Do you swear or affirm that the testimony
2 you will give today will be the truth, the whole truth,
3 and nothing but the truth?

4 THE WITNESS: Yes.

5 JUDGE THOMPSON: Okay. Thank you.

6 And before we proceed, I think I said I
7 would give you a statutory reference to the current APA.
8 I don't think I provided that. That is RCW 34.05.449(2).
9 Okay. Thank you.

10 And Mr. Lindberg, do you want to proceed
11 with any direct, or just move to cross?

12 ATTORNEY LINDBERG: I don't have any
13 questions for direct, as long as I can reserve the right
14 to redirect in the event that anything comes up on
15 cross-examination.

16 JUDGE THOMPSON: Absolutely. You will
17 always have that right.

18 Mr. Howard, if you want to proceed.

19
20 DEANNA ROUSE, witness herein, having been duly
21 sworn on oath, testified as
22 follows:

23
24 CROSS-EXAMINATION

25 BY ATTORNEY HOWARD

1 Q Good afternoon, Mrs. Rouse.

2 A Good afternoon.

3 Q I want to ask you a few questions about your
4 September 2024 declaration that's in the docket. Are you
5 familiar with that declaration that I'm referring to?

6 A Yes.

7 Q Thank you.

8 So in the declaration, you refer to Kalama
9 Water failing to install an air release valve; is that
10 correct?

11 A (Inaudible).

12 Q Could you -- perhaps would it be possible for
13 you to sit a little bit closer to the conference room
14 microphone?

15 A I will talk louder.

16 Q Thank you.

17 A Sorry.

18 Q Not a problem. I have the same thing myself.

19 But you do not have experience in well
20 drilling; is that correct?

21 A That's correct.

22 Q You do not have experience in water quality
23 testing, correct?

24 A That's correct. Yes.

25 Q You do not have any professional experience in

1 installing or maintaining water pumps; is that right?

2 A That's correct.

3 Q Mr. Tershel hired Pitner Drilling & Pump
4 Company to evaluate the pumphouse in the fall of 2023; is
5 that right?

6 A That's correct.

7 Q And did you meet with Mr. Tershel and Pitner
8 Drilling in the fall of 2023?

9 A That's correct.

10 Q Did you discuss the issue of the air release
11 valve at one point with Pitner Drilling and Mr. Tershel?

12 A Absolutely not.

13 Q It is -- is it your position that Pitner
14 Drilling did not discuss the issue of an air release
15 valve with you?

16 A He did not.

17 Q Is it your position that Mr. Tershel did not
18 discuss the issue of an air release valve with you?

19 A Bob Tershel did not discuss an air release
20 valve with me. I went to Bob and asked him to put one on
21 the system.

22 I had called the health department because I
23 had been having its issues with Bob on --

24 ATTORNEY HOWARD: Objection. Move to
25 strike as nonresponsive. She's going beyond the scope of

1 my question.

2 THE WITNESS: No, it's -- I --

3 ATTORNEY HOWARD: Everything from health
4 department on is nonresponsive.

5 ATTORNEY LINDBERG: Your Honor, she's
6 answered the question. You know, Mr. Howard asked for
7 the opportunity to examine her. I think it's only fair
8 that she be allowed to give a full answer, your Honor.

9 Your Honor is on mute.

10 JUDGE THOMPSON: My apologies.

11 I'm going to go ahead and overrule. I do
12 think that we need to allow Mrs. Rouse to answer the
13 question. Right now we have testimony that a discussion
14 was had and a discussion was not had.

15 And for clarity of the record, Mrs. Rouse,
16 if you could please finish your answer.

17 THE WITNESS: Thank you, your Honor.

18 ATTORNEY O'BRIEN: Your Honor, if I may
19 interject just briefly, I don't believe the witness was
20 sworn in at the start of testimony.

21 JUDGE THOMPSON: I believe we swore in
22 Mrs. Rouse and then I reverted back to give a statutory
23 reference.

24 Because I don't believe we have a court
25 reporter with us, counsel, do you remember me swearing in

1 Mrs. Rouse?

2 ATTORNEY LINDBERG: I do not, your Honor.
3 Maybe you could just swear the witness and have that
4 apply to the testimony given, if that's acceptable.

5 JUDGE THOMPSON: Yes, that is acceptable.

6 I believe I remember seeing you raise your
7 right hand, but if you could please raise your right &
8 again and we will swear you in.

9 Do you swear or affirm that the testimony
10 you will provide today and that you have provided thus
11 far will be the truth, the whole truth, and nothing but
12 the truth?

13 THE WITNESS: Yes.

14 JUDGE THOMPSON: Thank you. And please go
15 ahead and finish your answer regarding Mr. Howard's
16 question on the topic of whether or not a discussion was
17 had regarding an air release valve.

18 THE WITNESS: Thank you, your Honor. I
19 had called the health department to find out about the
20 air in our pipes. And Jesse Smith, who I spoke with, is
21 very familiar with the pumphouse.

22 And Bob Tershel had recommended that an
23 air release valve be placed on there to help facilitate
24 the pressure that our home is receiving. And that's
25 where the information came from. It never came from

1 Pitner Plumbing.

2 I had -- from there, I had gone to Bob
3 Tershel on several occasions, at least three to four, if
4 not five times, mentioning that to him how important it
5 is that one of these valves gets installed so our homes
6 can stop getting the impact of all this pressure and air,
7 which lasts at least a week to a week and a half to two
8 weeks of ongoing pressure to our home.

9 Q (By Attorney Howard) All right. Thank you.

10 I'm going to move on. Your declaration cites
11 problems with the subdivision's gate as an example of
12 numerous issues with the water system.

13 Do you have any knowledge about whether the
14 gate to the subdivision is maintained by Kalama Water LLC
15 or another entity?

16 A It has always been my impression that Bob
17 Tershel maintains that gate.

18 He called me one day because he was out there
19 with somebody else from the other division down below,
20 looking at the gate for, I don't know, 45 minutes,
21 whatever, trying to figure out what's going on with it.
22 I got a phone call from Bob Tershel asking if there was a
23 remote to it because he had called Ed Price, the previous
24 owner. And I don't know what that conversation detailed,
25 but Bob called me and said, Can I get a remote to the

1 gate, which I didn't even know was in my possession at
2 the time.

3 And I said I will look at the stuff that Ed
4 Price gave me, and if it's there, I will put it out in
5 the pumphouse for you.

6 And he goes, Well, if I had this remote, then I
7 could have already had this gate fixed.

8 So that's how that has come about for it being
9 Bob's responsibility for the gate. As far as I've
10 understood, it was Bob's responsibility, yes.

11 Q My question was maybe only making sense to me,
12 I suppose.

13 Do you know whether or not Kalama Water LLC, as
14 a corporate entity, maintains the gate?

15 A I do not, no.

16 Q Okay. Do you have any reason -- do you know
17 whether another entity owned by Bob Tershel may be
18 responsible for the gate?

19 A No.

20 Q All right. Your declaration says that you
21 replaced the door and lock on the pumphouse for the,
22 quote, security, end quote, of the pumphouse; is that
23 right?

24 A It wasn't the security specifically.

25 It was because there was door rot at the door

1 jams. And the door itself is a glass door, which was
2 hung upside down from the original installation. There's
3 gaps in the old door on the top and the bottom that
4 allowed air to come in and out during especially the
5 freezing temperatures.

6 But because of the door rot and the condition,
7 that's why we had it replaced. It was brought to our
8 attention. We had three companies that were professional
9 door installers all look at it, gave us the same
10 information, and we proceeded. We informed Bob and we
11 proceeded to have it done, yes.

12 Q So just now you indicated it was not because of
13 security; it was because of the door rot, right?

14 A And the air, the gaps above and below the door.
15 It was not fitting. It was not the appropriate door. It
16 did not fit correctly when it was installed.

17 Q Do you have your declaration, September 2024
18 declaration in front of you?

19 A Yes.

20 Q Can you look at paragraph 9 of the
21 declaration?

22 And I'll read it to you. Do you have that in
23 front of you right now?

24 A Yes.

25 Q I'll read this, and you tell me if I'm reading

1 it right. Quote, We replaced the door and lock on the
2 purpose house in order to ensure its security and the
3 security of its contents, end quote.

4 Did I read that right?

5 A You did.

6 Q And did you sign this declaration under penalty
7 of perjury on this page?

8 A Yes.

9 Q Thank you.

10 Are you familiar with the fact that you can
11 repair a rotted door jamb without replacing the door's
12 lock?

13 A Yes.

14 Q All right. Thank you.

15 Are you familiar with the fact that Kalama
16 Water can pursue treble damages and attorney fees for
17 tampering with water rights?

18 ATTORNEY LINDBERG: Objection.

19 Argumentative. Relevance.

20 ATTORNEY HOWARD: Withdrawn.

21 That's all the questions I have.

22 JUDGE THOMPSON: Okay. Thank you.

23 Mr. O'Brien, do you have any questions for
24 Mrs. Rouse?

25

1 ATTORNEY O'BRIEN: No questions, your
2 Honor.

3 JUDGE THOMPSON: Okay. Mr. Lindberg, do
4 you have any redirect?

5 ATTORNEY LINDBERG: Yes, thank you, your
6 Honor.

7

8 REDIRECT EXAMINATION

9 BY ATTORNEY LINDBERG:

10 Q Mrs. Rouse, do you recall when it was that you
11 and your husband actually replaced the door to the
12 pumphouse?

13 A It was in April of 2024.

14 Q And before you replaced the door to the
15 pumphouse in April of 2024, did you communicate with
16 Mr. Tershel and advise him that you intended to do that?

17 A Yes.

18 Q And how did you make that communication?

19 A We sent an e-mail.

20 Q And did -- when you communicated your intent to
21 replace the door, did you say anything in your
22 communication about whether or not there would be a lock
23 on the door?

24 ATTORNEY HOWARD: Objection. Best
25 evidence rule. We're asking about a communication.

1 We're not being presented with (inaudible)
2 communications.

3 ATTORNEY LINDBERG: Yeah, and your Honor,
4 I'd be happy to give the e-mail into the record. I can't
5 believe I just learned about it today. But I think it's
6 certainly probative of these issues, and I would just
7 request the opportunity to submit the e-mail as an
8 exhibit and allow the witness to testify.

9 JUDGE THOMPSON: This purported e-mail
10 does sound like it may have some probative value and
11 relevance to the issues before us today.

12 Mr. Howard, would you object to that being
13 filed after today's hearing?

14 ATTORNEY HOWARD: I would object to it
15 being considered without any prior notice until this
16 second, and no opportunity for me to cross-examine or
17 prepare for cross-examination of her on this alleged
18 e-mail. It seems like this would have been a very
19 material thing which would have come up far earlier.
20 They already have two e-mail chains in evidence. I don't
21 see how this is fair.

22 ATTORNEY LINDBERG: Your Honor, if we want
23 to take a brief recess, I'm happy to forward the e-mail
24 to Mr. Howard and Mr. O'Brien and to the Court.

25 Again, you know, the testimony is

1 absolutely relevant. It has to do with the door. It's
2 an issue that Mr. Howard got into here on
3 cross-examination. I believe the witness should be able
4 to testify to the substance of the communication. And
5 again, it will speak for itself. It's an e-mail with
6 bullet points about some of these issues.

7 JUDGE THOMPSON: Before we decide whether
8 or not to continue with the line of questioning and
9 whether or not questioning is appropriate, let's go ahead
10 and get the e-mail sent to the parties. We will take
11 another brief recess.

12 How long do you anticipate needing? Ten
13 minutes, five minutes?

14 ATTORNEY LINDBERG: Five minutes should be
15 more than sufficient, your Honor.

16 And what I'll do, if it's okay, is I will
17 send it to the -- your Honor's most recent e-mail that I
18 believe has all of the parties on it.

19 JUDGE THOMPSON: That would be acceptable.

20 Okay. Let's be off the record. We will
21 reconvene -- let's give it seven minutes at 3:30.

22 (Recess.)

23 JUDGE THOMPSON: We are back on the
24 record. It is 3:32 p.m. And the exhibit in question has
25 been sent to the parties and myself.

1 I will now turn to you, Mr. Howard, to see
2 if you've had a chance to review that exhibit.

3 ATTORNEY HOWARD: Thank you, your Honor.
4 The company did have a chance to review the exhibit. And
5 after reviewing it, the company withdraws its objection
6 to the exhibit and does not seek to cross further on
7 this.

8 JUDGE THOMPSON: Okay. Thank you.

9 And Mr. Lindberg, I'm in receipt of the
10 exhibit. I would just ask that subsequent to this
11 hearing, you go ahead and file that with the commission.

12 I have had a chance to review. Counsel
13 for the company has withdrawn their objection. And I
14 believe you have laid out a quick foundation through the
15 document itself and in your initial questions to the
16 authenticity of the document.

17 And so we will go ahead and admit that as
18 -- let me get my exhibit list. It will be DR-3 once that
19 is filed with the commission.

20 (Exhibit DR-3 admitted)

21 JUDGE THOMPSON: So thank you for sending
22 that around.

23 And Mr. Howard, thank you for your quick
24 review of the document.

25 Mr. Lindberg, you can go ahead and proceed

1 with your line of questions.

2 ATTORNEY LINDBERG: Thank you, your Honor.

3 Q (By Attorney Lindberg) Mrs. Rouse, just
4 getting back to this issue, I think you had testified
5 earlier that you and Mr. Rouse had informed Mr. Tershel
6 of your intent to replace the door, correct?

7 A Yes.

8 Q And we've now admitted this e-mail where that
9 advice was given to Mr. Tershel. And of course the
10 document speaks for itself.

11 But did -- in the course of that, did you offer
12 to provide a key to the door to Mr. Tershel?

13 A Yes.

14 Q Did Mr. Tershel ever contact you and request a
15 key to the door?

16 A No.

17 ATTORNEY LINDBERG: No further questions,
18 your Honor.

19 JUDGE THOMPSON: Okay. Thank you.

20 At this time, Mrs. Rouse, you are excused
21 from being a witness. But I assume you'll remain in the
22 room to continue watching the proceeding. So you are off
23 the virtual stand at this time.

24 Mr. O'Brien, if you would like to call
25 your witness at this time.

1 ATTORNEY O'BRIEN: Yes, your Honor.

2 Commission staff calls Scott Sevall.

3 THE WITNESS: Okay. Here I am.

4 JUDGE THOMPSON: Good afternoon.

5 THE WITNESS: Good afternoon.

6 JUDGE THOMPSON: If you could please raise
7 your right hand, and I'll swear you in.

8 Do you swear or affirm that the testimony
9 you will provide today is the truth, the whole truth, and
10 nothing but the truth?

11 THE WITNESS: I do.

12 JUDGE THOMPSON: Thank you.

13 Mr. O'Brien, you can proceed.

14

15 SCOTT SEVALL, witness herein, having been duly
16 sworn on oath, testified as
17 follows:

18

19 DIRECT EXAMINATION

20 BY ATTORNEY O'BRIEN:

21 Q Good afternoon, Mr. Sevall. Could you please
22 state your name and spell your last name for the record.

23 A Scott Sevall; last name is spelled S-E-V-A-L L.

24 Q And by whom are you employed and in what
25 capacity?

1 A I am employed by the Utilities and
2 Transportation Commission. I am a regulatory analyst.

3 Q And what are your responsibilities in that
4 position?

5 A Well, they're multiple. But primarily, I
6 review tariff filings, other various filings proposed by
7 companies that we regulate, including this petition. I'm
8 the analyst assigned to this petition.

9 Q And how long have you been employed by the
10 commission?

11 A I started with the commission originally in
12 August of 2014.

13 I did just come back this March. I had left in
14 2022 to do some risk analysis at the Washington Office of
15 the Insurance Commissioner because that rolls off the
16 tongue, so.

17 Q And what training or education have you
18 received relating to your role?

19 A Well, there's almost ten years of history, of
20 work history.

21 But I went to school at Washington State
22 University. I hold a bachelors in accounting.

23 I've gone to the Nehru Great School (phonetic).
24 I believe that was in 2015, in spring of 2015, I believe.

25 And I've testified multiple times in front of

1 the commission.

2 Q All right. And moving on to the case at hand,
3 are you familiar with the company Kalama Water LLC?

4 A Yes. Being that I'm assigned to this petition,
5 yes.

6 Q All right. And you answered my next question,
7 which was how are you familiar with the company.

8 So just to make sure we're all on the same
9 page, your -- from your understanding, Kalama is the
10 proper owner of the water system on the Rouses' property,
11 per Commission Order UW-150742, correct?

12 A Yes. That was the sale and transfer order from
13 Green Mountain H2O, I believe, which is the official
14 order which transfers all the assets that Green Mountain
15 had originally held to Kalama Water.

16 Furthermore on that, Green Mountain had filed
17 its initial tariff with the commission in 2009. Their
18 initial tariff became effective May 1 of 2009. So those
19 assets have been part of a regulated entity since 2009.

20 Q And when did staff first become aware of the
21 issue with Kalama Water gaining access to their
22 wellhouse?

23 A Prior to the petition, I had received a call
24 from Mr. Tershel. He said that a lock had been changed
25 on his pumphouse, and wondered if there was anything the

1 commission could do.

2 And I told him per our rules that companies are
3 allowed access to their property, but that we can't
4 really do much if there isn't anything for the commission
5 to act on. So I believe that's where the idea of a
6 petition from Kalama Water came from.

7 Q And you're aware of the demand letter sent by
8 the Rouses to Mr. Tershel that is admitted as -- I
9 believe it's SS-3?

10 A I have received a copy of that after the
11 petition was originally filed. I had -- I had asked the
12 company to provide further documentation regarding the
13 situation so I could gain better understanding of it.
14 And that's when I first received a copy of it, I believe.

15 Q All right. And does staff have any concerns
16 regarding the contents of that letter?

17 A Just two, really. A lot of it is civil
18 matters, right, that we don't really hold jurisdiction
19 over.

20 But there were two claims in the letter where I
21 guess staff would have a concern. The assertion that the
22 door is now locked, right, and that the pumphouse is
23 property of the water company per the commission's
24 orders, and where that would be limiting access.

25 And the second is the assertion that the rates

1 that the water company are charging are illegal. There
2 is a legal published tariff on file that's published by
3 the commission. A tariff is legally binding to the
4 company and to the customers. And so those rates are
5 legal.

6 Q And to be clear, that tariff is currently
7 admitted as SS-2?

8 A I believe that's the exhibit number. But yes.
9 I know the tariff is in the exhibits.

10 Q All right. And to be clear, staff doesn't have
11 any position on the contents of that letter or the
12 dispute between the Rouses and Mr. Tershel outside of the
13 water system issues?

14 A No. We do not.

15 It's simply -- I guess my position, if you're
16 asking that, is the current status quo from staff's
17 position is the assets have been separate from the land
18 since 2009.

19 They're -- at this point, the commission has
20 record. And that status quo should be maintained until
21 at some point in the future if a judge decides otherwise,
22 then present that order to the commission and we can
23 transfer assets as has been declared. That would be my
24 position.

25 Q All right. And moving to the petition itself,

1 could you briefly describe your understanding of WAC
2 480-110-305?

3 A Yeah. In fact, actually, I've got it in front
4 of me. So, you know, I'll read it. Authorized personnel
5 of the water company -- so in this case, Mr. Tershel,
6 he's an authorized. I don't think anyone disputes that.
7 They have the right to enter a customer's property during
8 reasonable hours to perform meter reading, maintenance,
9 testing, installation, or removal of the company's
10 property.

11 Given the pumphouse is the property, a lock on
12 there that he doesn't have a key to would restrict that
13 access in the context of this case. That would be my
14 belief. If he had a key to the pumphouse, then I think
15 that remedies that issue.

16 Q And does -- just to be clear, does this WAC
17 require a company to seek access from a landowner to
18 access their property?

19 Is that how the commission --

20 A I do not see that. I do not interpret this
21 rule in that way, no.

22 In the past, other cases, we've had people, you
23 know, put boulders on top of meter boxes and park cars on
24 top of things to stop companies from doing things. And
25 that has all been deemed restricting access to assets.

1 So yeah. I do not think that the company has
2 to seek prior approval or any sort of facilitation to
3 access its assets.

4 Q And you sort of answered this question already
5 earlier. But what is staff's position regarding this
6 petition?

7 A I think I did say it earlier in kind of the --
8 there is a legal record at the commission with ownership
9 of these assets. That status quo should remain in place
10 until determined by, you know, another court if they so
11 determine otherwise.

12 And so that means, I believe, the lock should
13 either be removed or a key granted to the company; and
14 that the tariff rates are legal and in effect, and that
15 both company and customers are bound to that tariff.

16 Q And should the commission deny that petition,
17 would that be concerning to staff?

18 A It would be concerning for the possible public
19 harm, you know, not knowing what could happen in a water
20 system where you would have no access into the pumphouse
21 if something were to go wrong in there.

22 And so as far as, like, public harm, I would
23 see, you know, denying this would open the door for
24 people to possibly claim, Hey, we claim ownership, and in
25 this claim we're going to change locks or restrict access

1 in any sort of way, even though we don't have a court
2 order at this point in time to say that.

3 So that's what I would find concerning if it
4 were denied.

5 Q And expanding on that a little bit, what would
6 your understanding of the implications be if a regulated
7 company's property and private land could be taken over
8 in absence of an explicit easement?

9 A Well, that may -- that would throw a lot of
10 concerns into the regulated utility market. I mean,
11 there's hundreds and thousands of miles and utility
12 assets in the state of Washington. Yes, in an ideal
13 world, everything has explicit easements and there's no
14 issue.

15 But we live in a world, not the ideal world,
16 you know. And while this may not be legally perfect,
17 right, in this situation, it certainly isn't going to be
18 the only time -- I can't believe this would be the only
19 time that a utility's assets are on a piece of property
20 without an explicit easement.

21 And, you know, if I were to find one small
22 piece of Puget Sound Energy's distribution lines going
23 across a property without easement, could I lay a claim
24 of ownership to all of Puget Sound Energy? I just can't
25 see that as being feasible.

1 ATTORNEY O'BRIEN: That's the extent of my
2 questions, your Honor.

3 You're muted, your Honor.

4 JUDGE THOMPSON: My apologies.

5 Mr. Howard, do you have any
6 cross-examination?

7 ATTORNEY HOWARD: No questions from the
8 company at this time, your Honor. Thank you.

9 JUDGE THOMPSON: Mr. Lindberg?

10 ATTORNEY LINDBERG: Thank you, your Honor.

11

12 CROSS-EXAMINATION

13 BY ATTORNEY LINDBERG:

14 Q Mr. Sevall, good afternoon. So you mentioned
15 that -- I believe your testimony, and you correct me if I
16 didn't get this right, that the assets of the water
17 company had been separated from the land since 2009. Did
18 I get that correct?

19 A Yes. So -- and that would have been from --
20 the record, I believe, that we have here at the
21 commission is the initial tariff from Green Mountain,
22 which was owned by Mr. Class, went in effect in May 1 of
23 2009.

24 Q And so -- so my -- that was, I think you
25 anticipated my follow-up question.

1 You said that later in your testimony there was
2 a legal record at the commission that establishes the
3 status of that property. And is that the tariff, then,
4 that you're referring to?

5 A Yeah. When the tariff initially comes in to --
6 is filed, you know, that is going to be a business entity
7 that holds assets for providing that utility service.

8 Q Okay. So your testimony, then, is that the
9 assets have been separated from the land since 2009 by
10 virtue of the initial tariff filed by Green Mountain; is
11 that correct?

12 A I believe so, yeah. That would be my correct
13 statement that I made.

14 Q And I think you also stated that providing a
15 key to Kalama Water would remedy the whole issue. That
16 was your testimony, right?

17 A Yeah, I believe that would remedy the access as
18 far as how I see it, the access issue, yeah.

19 ATTORNEY LINDBERG: No further questions.

20 JUDGE THOMPSON: Okay. Thank you.

21 Mr. O'Brien, do you have any redirect?

22 ATTORNEY O'BRIEN: No redirect, your

23 Honor.

24 JUDGE THOMPSON: Okay. Mr. Sevall, you
25 are excused. I have appreciate the testimony.

1 THE WITNESS: All right. Bye.

2 JUDGE THOMPSON: I believe that concludes
3 our presentation of witnesses.

4 At this time, I will go ahead and allow
5 the parties to make a closing statement. Mr. Howard,
6 would you like to provide a brief closing statement?

7 ATTORNEY HOWARD: Yes, your Honor. Thank
8 you. And I would keep it brief.

9 I would maybe appreciate a little bit of
10 clarification. Is your Honor still considering whether
11 to allow for post-hearing written briefs?

12 JUDGE THOMPSON: Yes. I was going to
13 allow for closing statements and then get to that topic
14 before we adjourn.

15 ATTORNEY HOWARD: All right. I will try
16 to provide a brief closing statement that does include
17 some citations to the law in that case.

18

19 CLOSING STATEMENT BY THE PETITIONER

20 ATTORNEY HOWARD: So your Honor, the
21 company would submit that it has most definitely
22 established the need for a declaratory order in this
23 instance. If you look for when a declaratory order is
24 appropriate under the Administrative Procedure Act, RCW
25 34.05.240, this is uncertainty necessitating resolution,

1 and there is an actual controversy here that is not a
2 mere advisory opinion.

3 And this access issue is important not
4 only to the company, but to other -- to the other
5 customers, the Tretnikovs, who are here today.

6 And the access issue, which we have been
7 discussing some of the laws related to this, kind of
8 touching on them so far in this proceeding today, I just
9 want to give you a brief overview of this.

10 The company would argue that there are at
11 least two independent grounds for the commission to find
12 that the company has a right to access the property.

13 The primary one is WAC 480-110-305, which
14 is the main rule discussed in the petition itself,
15 providing for access by water companies. I'd like to
16 observe that that rule is very consistent with rules for
17 other utility industries, such as WAC 480-100-168, which
18 provides access to electric utilities to customers'
19 properties for meter reading and other necessary tasks.

20 So it is clear that the commission rules
21 recognize, contemplate, and allow employees of electric,
22 gas, or water companies to access the property to perform
23 necessary tasks. And when they include tasks like meter
24 reading and other items on there, plainly the utility
25 employees are not locking the lines of the easement in

1 that case. This is a non-possessory general right to
2 enter the property.

3 And where do these regulations come
4 from? These regulations are authorized, we would argue,
5 by RCW 80.04.160, which broadly provides a commission
6 power to issue rules and regulations concerning the
7 furnishing and transmission of all these services.

8 And this goes with the compelling public
9 policy needs which we have touched on, and which
10 Mr. Sevall touched on in his testimony.

11 The second -- in the company's view, a
12 second independent grounds for providing for the
13 commission declaring that the company has access here is
14 Rule 9 of the company's tariff. And this is because of a
15 general understanding that any tariff approved by the
16 commission is effectively a contract between the company
17 and the customer with enforceable legal effect. And Rule
18 9 of Kalama Water's tariff specifically provides that the
19 company has access during reasonable business hours,
20 which is exactly consistent with the WAC. The reason why
21 this is an independent ground is because this is for
22 Kalama Water's customers accepting service to have
23 entered -- have, by accepting service, have entered into
24 this contract approved and regulated by the UTC, agreeing
25 to the provisions of the contract which had legal effect,

1 which means that Kalama Water's agents are essentially
2 licensees, I believe would be the correct term, entering
3 the property. And that's again a non-possessory right
4 that isn't necessarily tied to the title, which might be
5 determined by a Superior Court.

6 And again, as we've heard from Mr. Sevall
7 and Mr. Tershel, what's really important here is
8 providing that safe drinking water, reliable drinking
9 water, to other customers and not having disputes such as
10 this disrupt that process.

11 So therefore, the company requests that
12 the commission enter a declaratory order that the company
13 has right to access the property as provided by WAC
14 480-110-305.

15 The company also has right to access the
16 property provided by Rule 9 of its tariffs.

17 The commission should order that locks are
18 removed or that a key is granted to the company.

19 The -- fourth, the Rouses are delinquent
20 in paying for water since January 1, 2024.

21 Fifth, that the pumphouse and pipes on the
22 Rouses' property at 224 Resort Lane are used by Kalama
23 Water LLC for the provision of water service.

24 And sixth, it is unlawful for the Rouses
25 to condition the company's access to the pumphouse based

1 on notification requirements and conditions beyond those
2 set forth in commission rules in the company's tariff.

3 As we have heard from our witnesses today,
4 the company -- the Rouses' proposal that Mr. Tershel
5 needs to give them 48 hours' notice in a phone and e-mail
6 call to both of them -- I'm closely paraphrasing, but it
7 was something like that. Trying to force a water company
8 to agree to a set of conditions around notice that one
9 customer has come up with is -- would endanger the
10 company's responsibilities to follow commission rules,
11 which says I can go there and fix problems on a shorter
12 timeline because this is, again, water, which is highly
13 important.

14 In the alternative, if the commission for
15 any reason finds some of the Rouses' arguments persuasive
16 and it weighs against entering the order as we've
17 requested, we ask the commission to declare at the very
18 least that the company has access to the property under
19 color of right as provided by WAC 480-110-305 and Rule 9
20 of its tariff, and that Conditions 3 through 6 as we've
21 proposed just now are also adopted in a declaratory
22 order.

23 And much as Mr. Sevall has noted in his
24 testimony, declining to enter any declaratory order at
25 this point will harm the parties, it can harm present

1 customers like the Tretnikovs, and future customers on
2 the system.

3 Thank you for your consideration.

4 JUDGE THOMPSON: Thank you.

5 Mr. Lindberg?

6

7 CLOSING STATEMENT BY RESPONDENT

8 ATTORNEY LINDBERG: Thank you, your Honor.

9 Yes, just briefly, again, as I stated in
10 the beginning of our hearing today, this really is much
11 ado about nothing.

12 And Mr. Sevall stated in his testimony
13 that the provision of the key to this door is a full
14 remedy. And the key was offered, and for whatever
15 reason, Mr. Tershel never responded and never moved
16 forward with that, instead filing this petition
17 notwithstanding multiple communications regarding
18 provision of access.

19 So in addition to that, you know, I think
20 a lot of testimony and some of the commentary by counsel
21 and by staff is kind of a parade of horrors, but
22 there's absolutely no testimony in this record that any
23 of that is taking place at all. There's no testimony
24 whatsoever about anybody being deprived of anything.

25 And, you know, fundamentally the issues

1 that are arising here I think can be attributed to two
2 things, one of which is not disputed.

3 There's no easement in this record at all.
4 Mr. Tershel has not provided one single document to
5 demonstrate that Kalama Water or its predecessor ever had
6 a legal right to enter Lot 6 in order to access the well
7 and pumphouse. There's no real property record.

8 And the notion that this access can
9 somehow be perfected by the enactment of an
10 administrative rule is contrary to basic real property
11 rights. And again, just first principles here, the right
12 to exclude others is one of the six in the bundle,
13 right?

14 And I think as we all know, as Mr. Sevall
15 knows, Mr. Howard knows, I certainly know from my
16 experience working with developers, getting the easements
17 in place to address those kinds of issues is pretty
18 basic.

19 The subdivision, as your Honor is aware
20 from just reviewing any of these documents that have been
21 submitted, was done in a somewhat sloppy -- not somewhat,
22 quite sloppy manner.

23 And obviously, Mr. Class cut corners. For
24 whatever reason, Mr. Tershel stepped into Mr. Class's
25 position, and he doesn't have legal rights that he should

1 have. And his failure to do due diligence in this
2 respect has led to this situation.

3 So just in conclusion, the real property
4 right has not been identified by Mr. Tershel or any other
5 party here. So I think that the -- your Honor can safely
6 conclude that it simply doesn't exist.

7 And just finally, on this delinquent pay
8 issue, I think with so many other issues that Mr. Tershel
9 spent his time testifying about and focusing on, it
10 really has nothing to do with the core issue here, and
11 that's the right of access.

12 And again, our position is that this
13 delinquent pay and the shutting off of the service, et
14 cetera, that has not been presented as an issue that was
15 to be litigated here today. And so I would just ask your
16 Honor to disregard that altogether and simply issue an
17 order addressing the issue that has been presented by
18 Mr. Tershel's petition, and that's the issue of access.

19 And just in conclusion, the Rouses do
20 request the opportunity to provide written briefing as
21 your Honor had suggested. Thank you, your Honor.

22 JUDGE THOMPSON: Thank you.

23 Mr. O'Brien?

24

25

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

CLOSING STATEMENT BY STAFF

ATTORNEY O'BRIEN: So this case, as I stated (inaudible) core is fairly simple. The Rouses have locked -- have introduced a lock to this pumphouse, to this wellhouse, and the company does not have a key. The Rouses claim that they are willing to provide a key. If they do so, as staff has stated, this case is resolved.

However, the actions that the Rouses have taken don't actually demonstrate a willingness to give a key. If you look at the timeline, the Rouses, through this e-mail that they've introduced today, in March installed a new door with a lock.

The Rouses then in June send a demand letter to the company and to Mr. Tershel stating, among a lot of other things, that they believe they own the water system.

The next communication that we have from the Rouses between the Rouses and the company is not a discussion over getting the key. It's a discussion of responding to and settling this dispute.

Quite simply, nothing that we have in evidence demonstrates an actual willingness for the Rouses to give this key, to actually give access to the

1 water system back to the company.

2 The company, per WAC 480-10-555, has
3 ownership of this property until a commission order
4 states otherwise, until a sale and transfer goes through.
5 By every precedent set by the commission that I know of,
6 at least, the property belongs to the company, not to the
7 Rouses.

8 As stated and testified to by Scott
9 Sevall, you can't -- the entire system kind of falls
10 apart if a property owner can come in and say, We own
11 this property, this water system property, or this
12 utility property if there is not an explicit easement
13 designating it. There's always going to be recording and
14 paperwork issues like that.

15 But the Rouses can see through all of the
16 various plattings that every party has submitted that
17 there is a well on their property, and they can see since
18 they paid their utility tariffs from 2021 to 2023, they
19 know that this is a regulated utility or a public
20 utility.

21 So everything demonstrates that up until
22 2024, the Rouses know that this is utility property.

23 The public interest is also on the side of
24 Kalama here. The water system has to be able to access
25 its property because any number of things can go wrong.

1 As Mr. Tershel testified, there's constant
2 maintenance that has to be done on water systems. And
3 the idea that the Rouses being out of town can somehow
4 prevent Mr. Tershel from responding to an emergent issue
5 with the water system, or even doing standard maintenance
6 and standard testing, really defeats the purpose of a
7 regulated water utility's owning of their property.

8 The WAC doesn't -- the WAC doesn't
9 contemplate the idea that the Rouses can dictate when
10 Mr. Tershel is able to access water system property or
11 when a company representative is able to access a
12 utility's property. And that's for the sheer purpose of
13 public health.

14 The public health is protected by a
15 company being able to access their property when they
16 need to do so in order to uphold the public health goals
17 of the commission.

18 I would analogize this sort of like buying
19 an exit row seat on an airplane. They've consented to
20 the requirements of company operations by purchasing a
21 lot upon which the company property was located. That is
22 the extent of the consent needed because the WAC 305 does
23 not allow them to deny access. It allows them to check
24 ID. It doesn't allow them to deny access.

25 And just to conclude as such, the water

1 company's petition should be granted. Kalama Water's
2 petition should be granted, the lock should be removed or
3 a key given to Mr. Tershel, and full access should be
4 restored.

5 And to go to the issue of post-hearing
6 briefs, I would oppose post-hearing briefs in this
7 matter. I think that the issue itself is narrow, and I
8 think that all of the information that the company -- or
9 that the Court needs to decide this issue is already in
10 the docket and has been presented today.

11 Thank you, your Honor.

12 JUDGE THOMPSON: Thank you.

13 Okay. Let's -- before we conclude, let's
14 turn to the issue of post-hearing briefs.

15 Staff opposes post-hearing briefs.

16 The company -- I apologize. The Rouses
17 would like an opportunity to file a post-hearing brief.

18 How does the company feel about
19 post-hearing briefs?

20 ATTORNEY HOWARD: The company would prefer
21 to simply rely on the oral closing statements today.

22 But if your Honor directs that it would be
23 helpful, then we will seek to provide one.

24 JUDGE THOMPSON: Mr. Lindberg, what issues
25 do you foresee needing to be addressed via post-hearing

1 brief?

2 ATTORNEY LINDBERG: I think it would just
3 be the interplay between the regulations that the staff
4 has referred to and that Mr. Tershel is relying on, and
5 the underlying real property issue. I mean, I'm happy to
6 have it limited to a certain -- I don't want to write a
7 treatise for your Honor, but it would be helpful to have
8 an opportunity to address that.

9 JUDGE THOMPSON: If I allow post-hearing
10 briefs on that issue, are we then opening the door to the
11 question of whether or not there's an easement, and do
12 the parties want to go there?

13 That's my question to pose to the parties.
14 It sounds like post-hearing briefs would perhaps open up
15 a realm of issues which the parties have asserted that
16 the commission does not have jurisdiction to decide.

17 And so I'll ask you first, Mr. Lindberg,
18 what's your response to that question?

19 ATTORNEY LINDBERG: I think if your Honor
20 is clear that that is not going to be an issue, that the
21 commission will be deciding within the scope of this
22 petition, then there wouldn't be a need for us to brief
23 that. I would concur with your Honor on that, if that's
24 outside the scope of the contemplated order here.

25 JUDGE THOMPSON: Mr. O'Brien, do you think

1 that we can issue an order without getting to the issue
2 of who owns the property in question and whether or not
3 there's access via easement to the property or access via
4 covenant or prescriptive easement, whatever the case may
5 be?

6 ATTORNEY O'BRIEN: I think we can, your
7 Honor.

8 I don't think anyone is disputing, as far
9 as I understand, at least, that per the commission's
10 current record, the sale and transfer went to Kalama
11 Water, and there has not been any subsequent order. So
12 per the commission's record, there's -- the ownership is
13 with Kalama.

14 So I think the actual issue of access
15 under 305 is perfectly decidable without having to go
16 down the route of easements and covenants and all of the
17 property law issues.

18 The parties can seek a Superior Court
19 order contradicting the actual ownership issue. But
20 until we get something to the contrary, I don't think
21 that there's any real issue of fact as far as the actual
22 ownership itself per commission rules.

23 JUDGE THOMPSON: Mr. Howard, do you have
24 anything to add on the issue based on the questioning and
25 the responses from Mr. O'Brien and Mr. Lindberg?

1 ATTORNEY HOWARD: Yes, your Honor. And I
2 have thought about this at some length.

3 I can see why that topic is relevant. The
4 interaction between regulations and real property rights
5 might be addressed by a Superior Court.

6 But I think that the parties providing
7 briefing on that is unavoidably going to be asking the
8 commission to rule on a number of issues like easements
9 or real property rights that aren't within its
10 jurisdiction.

11 And I think that as a state agency, the
12 commission should presume to uphold and enforce its RCW's
13 and its WAC's as issued without declining to enter an
14 order because there could be some other jurisdictional
15 issue down the road in a different -- for a different
16 issue before a different court.

17 The commission is acting in this matter
18 pursuant to Title 80 RCW. I think the issue is what is
19 the issue -- it's what are the parties' rights under
20 Title 80 RCW and the company's tariff as I noted, and not
21 Superior Court issues.

22 And I would like to finally add that
23 although these issues are complex to some degree, and
24 affect property rights that -- you know, it could be
25 complex to tease some of these things out, courts and

1 agencies aren't, I think, in the habit of spelling out
2 all the exceptions to their jurisdiction. They make
3 their findings within the realm of their jurisdiction
4 without adding a series of qualifiers about what they're
5 not allowed to reach, necessarily.

6 JUDGE THOMPSON: Mr. Lindberg, do you have
7 any further thoughts before we decide on the issue of
8 post-hearing briefs?

9 ATTORNEY LINDBERG: No, your Honor, just
10 that it sounds like the parties are -- I understand
11 Mr. Howard and Mr. O'Brien to be stating that the real
12 property issues are not something that are to be decided
13 by this commission, which I agree that's beyond the
14 competence of the commission.

15 And so to the extent those are not going
16 to be addressed in the order, then I see no need to do
17 any post-hearing briefing on something that your Honor is
18 not going to address in the order.

19 JUDGE THOMPSON: Okay. So we will go
20 ahead and forego simultaneous post-hearing briefs.

21 I do want to thank you all for your
22 appearances and for presenting your cases today and for
23 your professionalism today.

24 I will take all of this under advisement
25 and hope to issue an order soon, certainly before the

1 deadline I set for issuing an order in this case.

2 I will note for the parties' benefit that
3 receipt of transcripts, because these proceedings are
4 transcribed at a later date, can take a little bit of
5 time. And to the extent that I will need to rely on what
6 was said here today and get that transcript, it can take
7 seven to ten days. It has taken longer in the past.

8 If we do run into a circumstance where the
9 transcript is not received, you know, with enough time to
10 include it in the order, then I've taken extensive notes
11 of what was said today, I'll have the recording with me,
12 and I will refer to what was said today, but may not have
13 the benefit of citing to the actual transcript.

14 And I do anticipate getting the order out
15 regardless of when I get the transcript before that -- I
16 believe it was a November 11 deadline.

17 Does any party have anything further to
18 address before we adjourn?

19 ATTORNEY HOWARD: Nothing from the
20 company, your Honor.

21 ATTORNEY O'BRIEN: Nothing from staff,
22 your Honor.

23 ATTORNEY LINDBERG: And nothing from the
24 Rouses, your Honor.

25 JUDGE THOMPSON: Okay. Thank you.

1 With that, we will go ahead and be off the
2 record and adjourn.

3 (Proceedings concluded at 4:15 p.m.)

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

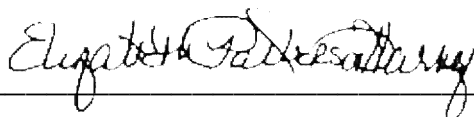

C E R T I F I C A T E

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

STATE OF WASHINGTON)
) ss
COUNTY OF KING)

I, Elizabeth Patterson Harvey, a Certified Court Reporter and Registered Professional Reporter within and for the State of Washington, do hereby certify under penalty of perjury that the foregoing legal recordings were transcribed under my direction; that I received the electronic recording in the proprietary format; that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially interested in its outcome.

IN WITNESS WHEREOF, I have hereunto set my hand this 28th day of October, 2024.

Elizabeth Patterson Harvey, CCR 2731