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IN THE MATTER OF
THE PHILADELPHIA WATER DEPARTMENT'S
PROPOSED INCREASE IN RATES
FOR WATER AND WASTEWATER UTILITY SERVICES

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PRE-HEARING CONFERENCE

- - -

August 11, 2008
4:00 p.m.

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The Dispute Resolution Institute
Two Logan Square, Sixth Floor
Philadelphia, PA

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BEFORE: HARRIS T. BOCK, ESQ.
Hearing Officer

- - -

VERITEXT NATIONAL COURT REPORTING COMPANY
KNIPES COHEN
1801 Market Street - Suite 1800
Philadelphia, Pennsylvania 19103

APPEARANCES:

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MARK B. SEGAL, ESQ.
Counsel to Philadelphia Water Department

COMMUNITY LEGAL SERVICES, INC.
BY: PHILIP A. BERTOCCHI, ESQ.
THU TRAN, ESQ.
Counsel to Public Advocate

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BY: SHELBY A. LINTON-KEDDIE, ESQ.
Counsel to Philadelphia Large Users Group

K&L GATES, LLP
BY: DANIEL P. DELANEY, ESQ.
Counsel to Commercial Customer Coalition

FOX ROTHSCHILD, LLP
BY: PHILIP L. HINERMAN, ESQ.
Counsel to Philadelphia Housing Authority

PennFUTURE
BY: BRIAN G. GLASS, ESQ.
Counsel to Next Great City

CITY OF PHILADELPHIA LAW DEPARTMENT
BY: GERALD D. LEATHERMAN, ESQ.
Divisional Deputy City Solicitor

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2 MR. DASENT: Mr. Hearing Officer, we
3 have had a colloquy off the record
4 concerning the scheduling of witnesses.
5 The Department has prepared a proposed
6 order of witnesses and exhibits list for
7 the record, and it will be marked as an
8 exhibit with your permission, Your Honor.

9 The order of witnesses is Tuesday,
10 August 12, Mr. Mierzwa will be presented
11 first because of his limited
12 availability; and on Tuesday, August 12,
13 also will be Mr. Clare from the
14 Philadelphia Water Department and
15 Ms. McCarty; Mr. McKinley; Mr. Bleiweis,
16 the Public Advocate's witness; and
17 Mr. Kalbarczyk, the Commercial Customer
18 Coalition witness, will be available for
19 cross-examination and to present any
20 rebuttal testimony on revenue
21 requirements.

22 It may be ambitious to fit all that
23 in in one day, but that is our goal. If
24 it spills over to Wednesday, so be it.

25 On Wednesday we also have --

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2 THE HEARING OFFICER: Before we move
3 on to Wednesday, on Tuesday there is
4 going to be submission of testimony by
5 the end of the day or an outline of the
6 testimony of?

7 MR. DASENT: Mr. Anthony Griffith,
8 and he is the City's financial advisor
9 and will be putting on rebuttal
10 testimony.

11 On Wednesday, August 13, the plan is
12 to proceed to our cost allocation and
13 rate design, and the witnesses will be
14 Mr. Kalbarczyk, Mr. Spielvogel,
15 Mr. Rossi, Mr. Ruppel, Mr. Palladino from
16 the Water Department, and Mr. McKinley
17 also.

18 We also want to try to accommodate
19 the fact witnesses from the ICE
20 Coalition, St. Joe's, and Trigen
21 Corporation, all Commercial Customer
22 Coalition witnesses.

23 THE HEARING OFFICER: Why don't you
24 state, Mr. Delaney, what your agreement
25 is with regard to the testimony that

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2 we're not going to have oral witnesses
3 on?

4 MR. DELANEY: Yes. The Commercial
5 Customer Coalition filed seven pieces of
6 testimony. The Water Department has
7 agreed that they would only like to
8 cross-examine Mr. Spielvogel, who is the
9 Interfaith Coalition on Energy
10 representative; Mr. Rossi, who is the
11 St. Joseph's University representative;
12 and Floyd Ruppel, who is the Trigen
13 Corporation representative. So we have
14 agreed to present them on August 13.

15 There are three other pieces of
16 testimony that Mr. Dasent and the
17 Department have agreed to stipulate the
18 admission into the record of and we will
19 do that on Wednesday morning.

20 THE HEARING OFFICER: I assume that
21 stipulation is agreeable to all other
22 parties to the proceeding as well?

23 MR. BERTOCCI: Yes.

24 THE HEARING OFFICER: Note assent by
25 all.

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2 MR. DASENT: On Wednesday also we
3 will try to fit in Anthony Griffith, and
4 I will inform the Hearing Officer of his
5 availability on Wednesday. I'm hopeful
6 we can work around his schedule as well.

7 On Thursday, August 14, we will have
8 customer service issues with Mr. Colton
9 and Mr. Richardson; and hopefully also
10 Mr. Greene, if we get that far, and we
11 will see once his written testimony is
12 presented.

13 As far as witnesses are concerned,
14 that's really it.

15 THE HEARING OFFICER: Why don't you
16 state your understanding of what we're
17 going to do with the representative from
18 the Housing Authority or what you would
19 like to do?

20 MR. HINERMAN: I am in the process
21 of preparing written testimony which I
22 will try to distribute at the hearing on
23 Wednesday for people to review; and if
24 there are any cross-examination questions
25 that will come up, then we will have a

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2 witness from the Housing Authority we
3 will try to make available as early as
4 possible to answer questions.

5 THE HEARING OFFICER: Thank you.

6 MR. BERTOCCI: Will you have
7 something in there giving sort of the
8 total operating budget of the Housing
9 Authority so that we can put the discount
10 that you're asking for in perspective?

11 MR. HINERMAN: Yes.

12 MR. BERTOCCI: Okay.

13 THE HEARING OFFICER: Any other
14 issues with regard to the witness list
15 and schedule?

16 - - -

17 (No response.)

18 - - -

19 THE HEARING OFFICER: Again, for the
20 record, let the record show that the
21 Hearing Officer is prepared to
22 accommodate the parties as well as the
23 witnesses and everyone should be prepared
24 to stay beyond business hours, if
25 reasonably appropriate, to conclude

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2 testimony on any given day.

3 MR. DASENT: There was one other
4 issue which is related to the witnesses.
5 We would like to give, as I mentioned in
6 the footnote in the memo, testimony
7 updating the record concerning events
8 that have occurred since the preparation
9 of the rate filing and we're hopeful that
10 we can start off there when we get to
11 Mr. Clare's testimony as a way to sort of
12 bring to the present some of the things
13 that we're talking about, because they're
14 not theoretical, they're sort of in
15 realtime, and we're hopeful that we can
16 start there and then move to
17 cross-examination on those points.

18 THE HEARING OFFICER: Well, since
19 some of the witnesses have embraced the
20 idea of realtime, I'm sure their comments
21 will be embraced. Are we going to have
22 that orally tomorrow morning first thing?

23 MR. DASENT: Well, right after
24 Mr. Mierzwa, yes, and it tracks the first
25 tab in the binder I handed out.

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2 THE HEARING OFFICER: Thank you.

3 Mr. Bertocci, you had some comments
4 you wanted to make?

5 MR. BERTOCCI: I did have a couple
6 comments on the exhibits.

7 THE HEARING OFFICER: As I
8 understand now, there has been an
9 agreement with regard to the parties that
10 all discovery exhibits and all documents
11 exchanged shall be made a part of the
12 record to the proceeding?

13 MR. DASENT: Yes. And this is a
14 fluid document also. It's not to lock in
15 anything. For example, if there's
16 something that's missing, we'd add it.
17 Mr. Richardson's testimony or statement
18 isn't listed. I would like to put that
19 in. There are other things that will
20 happen during the course of the hearings
21 which will amplify this. But I thought
22 it would be a good start to try to
23 organize it.

24 THE HEARING OFFICER: I think this
25 is a good guide and at the conclusion of

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2 the testimony we can update it to the
3 extent it needs to be updated.

4 But if there are some things that
5 need to be pointed out right now,
6 Mr. Bertocci, you are certainly free to
7 do so for us.

8 MR. BERTOCCI: Well, one comment. I
9 mean, at some point it seems to me there
10 has to be closure, that material that was
11 reasonably available to the parties at
12 the time of the hearings shouldn't be
13 trickling in after the hearings.

14 I mean, it seems to me that at some
15 point there is a point at which the
16 record closes. I don't have a problem
17 updating after the preparation. We know
18 that the preparation of a filing like
19 this is not a small thing. But at a
20 certain point you have hearings, you
21 present the best evidence that you have
22 at the time, and the parties shouldn't
23 then be having to deal, after the
24 hearings, with documents that come in
25 other than transcript requests. I mean,

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2 sometimes there are transcript requests
3 and things like that, but not sort of
4 spontaneous filings by one party or
5 another.

6 THE HEARING OFFICER: My expectation
7 is that when we conclude the hearings on
8 Thursday or Friday, whenever the case may
9 be, that we will have an exhibits list
10 prepared and the record will be closed
11 but for any transcript requests that the
12 parties agree upon.

13 And to the extent you make a
14 transcript request, recognize that you
15 might have a tripling job, but we'll set
16 dates and we'll keep record of those so
17 we know exactly what we have a handle on,
18 because we're all on a very tight
19 schedule here and we have no time to be
20 sidetracked by submission of matters at
21 different times.

22 So I agree with you in that regard.

23 MR. BERTOCCI: Then on just the list
24 of exhibits, we thought there should be,
25 I don't know what you want to call it,

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2 but perhaps a Hearing Officer Exhibit 2
3 which includes correspondence addressed
4 to the Hearing Officer which has been
5 accepted into the record.

6 Under the regulations it says that
7 if people want to write instead of coming
8 to the public input hearings, they can
9 send letters. I know that there have
10 been certain letters that have been sent
11 and have been formally admitted into the
12 record, but I don't think the complete
13 list of letters has been yet made
14 available to the parties, and in some
15 cases I don't think we necessarily know
16 what has come in to you.

17 So it would be useful to have as
18 part of the record an exhibit which are
19 the documents which have come directly to
20 you and which you have accepted. I know
21 that there were some already covered by
22 the orders, but not all of them.

23 THE HEARING OFFICER: Point
24 well-taken. We will have a Hearing
25 Officer Exhibit No. 2, which will be a

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2 list and the attachment of all letters
3 received by the Hearing Officer.

4 - - -

5 (Whereupon the documents were
6 marked, for identification purposes, as
7 Hearing Officer Exhibit 2.)

8 - - -

9 MR. BERTOCCI: Then there is a list
10 of the Public Advocate Statements on the
11 last page that have been presented and it
12 says "Direct Testimony of Michael
13 Bleiweis" and above that it says "Public
14 Advocate Exhibits" and it looks like we
15 don't have any exhibits.

16 But, in fact, there are exhibits or
17 schedules attached to each one of the
18 testimonies. So I was going to suggest
19 that, for Bleiweis and for Mierzwa, it
20 would be testimony and exhibits just
21 identified as PA Statement 1 or 2 or
22 whatever.

23 And for Colton, he uses a little bit
24 different terminology, schedules and
25 attachments, so for him it would be

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2 Colton's direct testimony, schedules, and

3 attachments, and that would cover it.

4 THE HEARING OFFICER: That would

5 seem to be noncontroversial.

6 MR. DELANEY: Andre, can I say the

7 same thing is true with some of the

8 Commercial Customer Coalition witnesses?

9 Two of them have exhibits. Dennis

10 Kalbarczyk has six tables. I can mark

11 this up and give it back to you with all

12 that written on it.

13 MR. DASENT: Okay.

14 MR. DELANEY: I had a question also.

15 I don't think I have copies of all these

16 exhibits. Are they available from you or

17 what?

18 MR. DASENT: I am trying to think.

19 Actually, I think with the filing came

20 most of these, and then in addition to

21 that there was a supplemental filing that

22 was provided. We have everything on

23 disc. So the answer is yes.

24 MR. DELANEY: I know we have three

25 discs from you.

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2 MR. DASENT: As opposed to three
3 file drawers full -- you'll see them in
4 the hearing room -- of documents, I have
5 everything on disc.

6 MR. DELANEY: Maybe I will talk to
7 you privately about that.

8 MR. BERTOCCI: I thought the Water
9 Department did quite a good job of
10 getting stuff out to us, but at certain
11 times it was a little like a cascade.

12 In regards to PWD-6, Supplemental
13 Documentation, it would be good to know a
14 little bit more about what's in this.

15 MR. DASENT: It is five volumes.
16 No. 6?

17 MR. BERTOCCI: Supplemental
18 Documentation.

19 MR. DASENT: Yes, PWD-6.

20 MR. BERTOCCI: It wasn't binders,
21 though.

22 MR. DASENT: Yes.

23 MR. CLARE: Well, no. We made a CD
24 available and we said the binders were
25 available if anybody wanted them. Nobody

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2 wanted them.

3 MR. BERTOCCI: Yes. Okay.

4 MR. CLARE: They are five real
5 binders.

6 MR. DASENT: And they will be in the
7 hearing room and we can sort of take a
8 look at those if you'd rather have the
9 hard copy. I have an extra set.

10 MR. BERTOCCI: I know I have some
11 CDs and I am trying to figure out what's
12 covered by PWD-6. They were labeled a
13 little bit loosely. Maybe it would be
14 good just to --

15 MR. DASENT: Flesh that out?

16 MR. BERTOCCI: Yes, flesh that out
17 just a tiny bit.

18 THE HEARING OFFICER: So we will,
19 Andre, have the entire record, all
20 discovery, everything, in the hearing
21 room available for reference?

22 MR. DASENT: Yes. And plus we'll
23 have a laptop so we can see it faster
24 hopefully. We'll try both ways.

25 MR. BERTOCCI: Then you had a

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2 supplemental response to PA-MAB-8 that's
3 listed as PWD Exhibit 19.

4 MR. DASENT: Yes.

5 MR. BERTOCCI: And just for
6 consistency, lots of times there were
7 corrected or revised responses to
8 discovery and this was really a
9 supplemental response to something within
10 the PA-MAB series, and I would be happy
11 if that was just included within the
12 PA-MAB series rather than a separate
13 exhibit. I didn't know why you singled
14 that particular one out as a separate
15 exhibit.

16 MR. CLARE: That one was done
17 electronically, too. That's why. The
18 stuff that was never put out on paper we
19 thought it would be good to put
20 separately on the record, I guess, so
21 that if anybody --

22 MR. DASENT: We just wanted to make
23 sure we didn't miss it.

24 MR. CLARE: Right.

25 MR. BERTOCCI: That's fine. I just

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2 wanted to make clear my understanding.

3 It's fine, as far as I'm concerned, if

4 it's left the way it is.

5 THE HEARING OFFICER: Okay. If it's

6 fine left the way it is, it shall be so

7 left and is so ordered.

8 Mr. Dasent, do you have anything

9 else?

10 MR. DASENT: I don't think we have

11 anything else. We have an interesting

12 week ahead.

13 MR. DELANEY: I just remembered

14 another witness question. I discussed it

15 with Andre. I had some questions for

16 Mr. Clare just on his discovery responses

17 and we talked about trying to fit that in

18 at a convenient time.

19 MR. DASENT: Sure.

20 MR. DELANEY: It doesn't have to

21 interfere with the presentation on the

22 revenue requirements issues. It's really

23 just having Joe explain some of his

24 answers as I see it.

25 MR. DASENT: I think that that will

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2 be fine and he is ready to field any
3 questions. I have to keep him not
4 answering the questions, not the other
5 way around. He will be available.

6 We plan to present testimony on
7 revenue requirements with a panel, with
8 Mr. Clare and Mr. McKinley and
9 Ms. McCarty. Ms. McCarty is our
10 operations person so she explains
11 basically when you deal with programmatic
12 sorts of things.

13 As opposed to having them on
14 separately and having sort of disjointed
15 testimony, it might be better if we have
16 more like a conversation. If you come to
17 this point, that's her issue; if you come
18 to financial issues and most issues,
19 you'll find Joe, because of his ties to
20 the budget, will know the answer; and
21 Mr. McKinley tells you the ratemaking
22 treatment.

23 So there's usually at least two
24 aspects to the question, the budgeting
25 part of it and the ratemaking. But in

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2 addition to that, when you want to know
3 something about operations, Ms. McCarty
4 will be in the room also to tell us
5 what's going on.

6 You can handle it a lot of different
7 ways, but I thought that might be one
8 efficient way to get through the day
9 without sort of the formalities of
10 calling and re-calling witnesses.

11 THE HEARING OFFICER: Subject to
12 objection, it would seem like a
13 reasonable way of handling the situation
14 with regard to it as long as everybody
15 recognizes we're making a record and we
16 have to ensure that that's the goal.

17 But certainly there is some overlap
18 and if we can get the question answered
19 once without having to reanswer the
20 question, that's certainly a more
21 efficient way of doing it.

22 MR. DASENT: The parties and I
23 discussed the idea of just sort of
24 proceeding on one subject area and with
25 the exception of Mr. Mierzwa, it seems

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2 like we've found our way on that. So
3 we'll take revenue requirements from
4 start to finish and that way I think we
5 can sort of keep, even with an oral
6 presentation, our wits about us in terms
7 of following these issues to a conclusion
8 and not getting too bogged down in
9 whether it's rebuttal or redirect or
10 what-have-you.

11 I think that's pretty much it.

12 THE HEARING OFFICER: Anybody else
13 have any comments?

14 MS. LINTON-KEDDIE: I have three
15 quick things. Back to exhibits, I do
16 have the PLUG Joint Statement for
17 Settlement. We just need to get copies
18 of that maybe for everyone.

19 Secondly --

20 THE HEARING OFFICER: Do we have to
21 have a hearing on the settlement? Is
22 this subject to comment by the parties to
23 the proceeding?

24 MR. DASENT: Well, I will be happy
25 to circulate the Statement of Settlement

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2 to show the other parties and the Hearing
3 Officer, most importantly, what
4 agreements we have reached. And then it
5 can be sanctioned in your final order.

6 THE HEARING OFFICER: Or not.

7 MR. DASENT: Or not, either way.

8 THE HEARING OFFICER: Well, I would
9 ask that it be distributed to everybody
10 as soon as possible.

11 MS. LINTON-KEDDIE: Of course.

12 THE HEARING OFFICER: Do you have it
13 here? We can make copies here.

14 MS. LINTON-KEDDIE: I do have it
15 here.

16 THE HEARING OFFICER: We will make
17 copies for everybody.

18 MS. LINTON-KEDDIE: Two more things.
19 We were wondering, since we've reached
20 settlement on certain issues, whether
21 PLUG can be excused from the portion of
22 testimony regarding customer service and
23 PHA's concerns, which would be Thursday.
24 But that would be with your permission.

25 THE HEARING OFFICER: We have an

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2 open door policy, come and go. That's
3 fine.

4 MS. LINTON-KEDDIE: All right.
5 Lastly, can I just confirm what time the
6 hearings will start every day?

7 THE HEARING OFFICER: 10 o'clock.

8 MS. LINTON-KEDDIE: All right.
9 Thank you.

10 MR. DASENT: We have proofs of
11 publication which we will hand up and
12 have them hopefully marked, if Your Honor
13 pleases, Hearing Officer 1. Otherwise,
14 then obviously we can mark them as a
15 Department exhibit. But I thought
16 because it dealt with sort of the core
17 matter and advertising and the
18 jurisdiction for our having these
19 hearings, it would be important for you
20 to have these.

21 THE HEARING OFFICER: As part of the
22 record, certainly, that's fine.

23 MR. DASENT: So I will hand that up.
24 And I think officially I can make a copy
25 and have it for the record tomorrow

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2 morning.

3 THE HEARING OFFICER: That would be
4 great.

5 - - -

6 (Whereupon the documents were
7 marked, for identification purposes, as
8 Hearing Officer Exhibit 1.)

9 - - -

10 THE HEARING OFFICER: Okay. The
11 Hearing Officer thanks everyone for their
12 efforts and cooperation. Discovery on
13 this has gone very, very well and I
14 appreciate that.

15 Certainly your efforts together will
16 make a very difficult, cumbersome
17 proceeding a little bit easier for
18 everyone to get through. I am optimistic
19 that we can do what we're required to do.

20 MR. DELANEY: Can I just ask two
21 more things?

22 THE HEARING OFFICER: Go ahead.

23 MR. DELANEY: The prior Hearing
24 Officer and Commissioner decisions, are
25 you okay with taking judicial or

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2 administrative notice of those? I will
3 provide copies of them to you tomorrow.

4 THE HEARING OFFICER: Yes.

5 MR. DELANEY: Okay. And I'm just
6 wondering, do you want an opening
7 statement tomorrow at the beginning of
8 the hearing or are you just going to
9 start with the evidentiary aspects?

10 THE HEARING OFFICER: We will give
11 you an opportunity to present whatever
12 you want.

13 MR. DELANEY: You have no
14 preference?

15 THE HEARING OFFICER: No declaratory
16 judgments. It's your case, gentlemen. I
17 will ask my questions. But do your best.

18 MR. DASENT: Well, we've given
19 opening statements five or six times,
20 Phil, Thu, and I, so we are not looking
21 forward to any extended statements, but
22 we might have a few words just to tee it
23 up for the day.

24 MR. DELANEY: I guess voluntarily if
25 you want to do it, okay.

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2 I was just going to ask you one more
3 thing. I know we came into the case late
4 after you had set the schedule and I was
5 going to ask you, in my experiences it's
6 a little unusual to have oral arguments
7 on these kinds of cases because they
8 usually are mixed questions of law and
9 technical issues about how the rates are
10 handled.

11 I know that you have actually
12 scheduled one for late in September,
13 September 18 or something like that, and
14 I was just going to ask you about that.
15 Do you feel it's necessary to do that?

16 THE HEARING OFFICER: At the time I
17 scheduled it, I did. I still feel that
18 way today. If after the briefs I think
19 that it would be irrelevant, then I can
20 always cancel it. But for the moment I
21 think that there are certain nuances and
22 certain items that are helpful to
23 understand.

24 MR. DASENT: We were looking forward
25 to that actually. I thought it was a

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good time to have an exchange. Phil and I really do have good conversations at the close of these records. I'm serious.

THE HEARING OFFICER: The briefs will bring them together, but there are certain issues that I think are difficult issues which I will enjoy asking all of you about.

MR. DASENT: Absolutely.

THE HEARING OFFICER: All right. Good day. Thank you.

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(Whereupon the pre-hearing conference adjourned at 4:50 p.m.)

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Reported By: Susan Marie Migatz, RMR, CRR

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CERTIFICATE

I HEREBY CERTIFY that the proceedings, evidence, and objections are contained fully and accurately in the stenographic notes taken by me on August 11, 2008, and that this is a true and correct transcript of same.

SUSAN MARIE MIGATZ
Registered Professional Reporter
Certified Realtime Reporter
Notary Public

(The foregoing certification of this transcript does not apply to any reproduction of the same by any means unless under the direct control and/or supervision of the certifying reporter.)

