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March 2, 2004

Washington Utilities & Transportation Commission
1300 South Evergreen Park Drive S.W.
P.O. Box 47250
Olympia, WA 98504-7250

Re: Cougar Ridge Water System
Our File 03-346-B

Enclosed please find **OBJECTION TO ORDER AND NOTICE OF PREHEARING CONFERENCE** on behalf of the Respondent, Cougar Ridge Water System, Paul A. Bitar, Owner, for filing in the above matter. Thank you.

Cordially,



THOMAS A. BROWN
TAB/cm
Enclosure

cc: Mr. Jonathan Thompson, w/encl.
Mr. Paul A. Bitar, w/encl.

RECEIVED
RECORDS MANAGEMENT
04 MAR -3 AM 8:01
STATE OF WASH.
UTIL. AND TRANSP.
COMMISSION

RECEIVED
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04 MAR -3 AM 8:02

STATE OF WASH.
UTIL. AND TRANSP.
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**BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND)	
TRANSPORTATION COMMISSION,)	DOCKET NO. UW-040367
)	
Complainant,)	ORDER NO. 01
vs.)	
)	OBJECTION TO ORDER AND
COUGAR RIDGE WATER SYSTEM,)	NOTICE OF PREHEARING
)	CONFERENCE
Respondent.)	
)	

COMES NOW the Respondent, Cougar Ridge Water System, Paul A. Bitar, Owner, by and through its attorney, Thomas A. Brown of the firm Brown Lewis Janhunen & Spencer, pursuant to RCW Title 34; RCW Title 80; and WAC Title 480, and objects to the scheduling of the prehearing conference, as set forth in the Order of the Commission dated March 1, 2004.

RCW 34.05.431 provides that:

“Agencies may hold prehearing or other conferences for the settlement or simplification of issues. Every agency shall by rule describe the conditions under which and the manner in which conferences are to be held.”

Presumably, pursuant to that statutory authorization, the Commission has adopted WAC 480-09-460, which sets forth various conferences that the Commission may request or direct.

1 The rule contemplates that a “prehearing or other conference” shall be convened for the
2 following purposes:

- 3
- 4 ▪ Determining the feasibility of settlement;
 - 5 ▪ Formulating the issues in the proceeding;
 - 6 ▪ Determining other matters to aid in its disposition;
 - 7 ▪ Simplification of the issues;
 - 8 ▪ The necessity or desirability of amendments to the pleadings;
 - 9 ▪ The possibility of obtaining admissions of fact and of documents which will avoid
10 unnecessary proof;
 - 11 ▪ Limitations on the number and consolidation of the examination of witnesses;
 - 12 ▪ The procedure at the hearing;
 - 13 ▪ The need for and timing of distribution of written testimony and exhibits to the
14 parties prior to the hearing;
 - 15 ▪ Any other matters that may aid in the disposition of the proceeding; and
 - 16 ▪ The disposition of petitions for leave to intervene.

17 It is obvious from that list of tasks that the prehearing conference is a conference that is
18 designed to occur after the issues and the parties have been fully engaged.

19

20 In this case, the very first notice of this Commission proceeding is the Order dated
21 March 1, 2004, which was first seen and received by counsel on March 2, 2004.

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24 It amounts to a “pre-emptive strike” to require the Respondent to show up 23 days later,
25 prepared to discuss and reach agreement on the issues described above.

26

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28 Obviously, the rule relating to prehearing conferences contemplates that the parties have
29 been able to engage in the following activities, which will put them in a position to
30 meaningfully and responsively engage in a prehearing conference:

- 1 ▪ Discovery;
- 2 ▪ Production of documents;
- 3 ▪ Depositions;
- 4 ▪ Disclosure of witnesses;
- 5 ▪ Written data requests;
- 6 ▪ Exchange of documents;
- 7 ▪ Streamlining of issues; and
- 8 ▪ Requests for admissions.

9 It certainly seems to make much more sense to have a “discovery conference” pursuant
10 to Section 4 of WAC 480-09-460, before having a prehearing conference.

11 The use of the pre-emptive prehearing conference is eminently unfair to the Respondent,
12 since the Order itself reflects that the staff of the Commission has been investigating and
13 pursuing this matter for many months, enabling the staff to fully and completely “prepare its
14 case” before springing this Order on the Respondent.

15 Fairness and equity dictate that the Respondent should have similar time to marshal its
16 resources, and prepare its case before submitting to a prehearing examination on such short
17 notice.

18 The Respondent respectfully submits that the practice of combining an Order initiating
19 classification proceedings with a complaint against rates and charges and with a Notice of
20 Prehearing Conference is not contemplated by the rules, and constitutes an abusive and unfair
21 imposition on any respondent subjected to this procedure.

22 This Respondent asks that the prehearing conference be stricken, and that the parties
23 cooperate in determining what the discovery rules will be for this proceeding. If the parties are
24 unable to agree on the discovery rules, then the Commission should schedule a discovery
25
26
27

1 conference in accordance with Section 4 of WAC 480-09-460. After the parties have had
2 sufficient time to exercise their discovery rights, and after the issues are properly joined, then
3 the Commission could responsibly schedule a prehearing conference within the letter and spirit
4 of the rules.

5
6 DATED: March 2, 2004.

7
8 Respectfully Submitted,

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10 BROWN LEWIS JANHUNEN & SPENCER
11 Attorneys for Respondent

12
13 By 

14 Thomas A. Brown, WSB #4160
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OBJECTION OF ORDER AND
NOTICE OF PREHEARING
CONFERENCE - 4

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