

0052

1 BEFORE THE WASHINGTON UTILITIES AND
2 TRANSPORTATION COMMISSION
3 WASHINGTON UTILITIES AND)
TRANSPORTATION COMMISSION,)
4) DOCKET NO. UW-031284 &
 Complainant,) DOCKET NO. UW-010961
5) (consolidated)
 v.)
6) VOLUME III
AMERICAN WATER RESOURCES,) Pages 52 to 222
7 INC.,)
)
8) Respondent.
)
9)
In the Matter of the)
10) DOCKET NO. UW-031596
Penalty Assessment Against)
11 Virgil R. Fox, President,)
American Water Resources,)
12 Inc., in the amount of)
\$3,700.00)
13)
)

14

15 A hearing in the above matter was held on
16 April 26, 2004, from 9:35 a.m. to 4:15 p.m., at 1300
17 South Evergreen Park Drive Southwest, Room 206, Olympia,
18 Washington, before Administrative Law Judge KAREN
19 CAILLE.

20 The parties were present as follows:

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24

Joan E. Kinn, CCR, RPR
25 Court Reporter

0053

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

2 JUDGE CAILLE: Good morning, this is the
3 first day of evidentiary hearings in American Water
4 Resources Dockets Numbers UW-031284, UW-010961, and
5 UW-031596. My name is Karen Caille, I am the Presiding
6 Administrative Law Judge. Today is April the 26th, and
7 we are convened in the Commission's main hearing room.

8 The first order of business today I will ask
9 for appearances from counsel, if you will just please
10 state your name and whom you represent since I have a
11 full appearance from you from before, and let's begin
12 with Staff.

13 MS. WATSON: Good morning, my name is Lisa
14 Watson, I represent Staff.

15 MR. FINNIGAN: Rick Finnigan appearing on
16 behalf of American Water Resources, Inc.

17 JUDGE CAILLE: Let the record reflect there
18 are no other appearances.

19 The first witness for this morning is
20 Ms. Lahmann, is it Lahmann?

21 THE WITNESS: Lahmann.

22 JUDGE CAILLE: Lahmann, thank you. And,
23 Ms. Lahmann, if you will please stand and raise your
24 right hand, I will swear you in.

25 (Witness DENISE LAHMANN was sworn.)

0062

1 JUDGE CAILLE: All right, Ms. Watson.

2

3 Whereupon,

4 DENISE LAHMANN,

5 having been first duly sworn, was called as a witness

6 herein and was examined and testified as follows:

7

8 DIRECT EXAMINATION

9 BY MS. WATSON:

10 Q. Good morning. Would you please state your
11 name for the record, spelling your last name.

12 A. My name is Denise Lahmann, L-A-H-M-A-N-N.

13 Q. And who is your employer?

14 A. I work for the State of Washington,
15 Department of Health, in the Office of Drinking Water.

16 Q. And what is your business address?

17 A. My business address is 2411 Pacific Avenue in
18 Olympia.

19 Q. What is your position with the Department of
20 Health?

21 A. I work as Regional Manager supervising the
22 Southwest Regional Office for the Office of Drinking
23 Water.

24 JUDGE CAILLE: Excuse me just a moment, I'm
25 not sure your microphone is on.

0063

1 THE WITNESS: That looks like on.

2 JUDGE CAILLE: Yes.

3 THE WITNESS: Sorry.

4 JUDGE CAILLE: It's counterintuitive.

5 BY MS. WATSON:

6 Q. On whose behalf are you testifying in this
7 proceeding?

8 A. I'm testifying on behalf of Department of
9 Health.

10 Q. Who called you as a witness?

11 A. Oh, Utilities and Transportation Commission.

12 Q. And that's Commission Staff, correct?

13 A. Yes.

14 Q. Is Exhibit 1T your pre-filed direct testimony
15 in this case?

16 A. Yes, it is.

17 Q. And was Exhibit 1T prepared by you or under
18 your direction?

19 A. It was prepared by me.

20 Q. Do you have any changes to Exhibit 1T?

21 A. I do not.

22 Q. Are you sponsoring Exhibits 2 through 24 in
23 conjunction with your testimony?

24 A. Yes.

25 Q. If I asked you the questions contained in

0064

1 your pre-filed testimony, would your answers be the
2 same?

3 A. Yes, they would.

4 Q. And are your answers true and correct to the
5 best of your knowledge?

6 A. Yes, they are.

7 MS. WATSON: At this time, I would like to
8 move for the admission of Exhibits 1T and 2 through 24
9 at this time.

10 MR. FINNIGAN: No objection.

11 JUDGE CAILLE: Exhibits 1T and 2 through 24
12 are admitted into evidence.

13 MS. WATSON: And Ms. Lahmann is now ready for
14 cross-examination.

15 JUDGE CAILLE: Mr. Finnigan.

16 MR. FINNIGAN: Thank you.

17

18 C R O S S - E X A M I N A T I O N

19 BY MR. FINNIGAN:

20 Q. Ms. Lahmann, I introduced myself to you just
21 before the hearing started, but for the record my name
22 is Rick Finnigan, and I'm counsel for American Water
23 Resources.

24 Who asked you to testify here today?

25 A. Ms. Watson.

0065

1 Q. And what is the purpose of your testimony in
2 this proceeding?

3 A. The purpose of my testimony is to clarify
4 Department of Health interest in American Water
5 Resources, planning and financial aspects.

6 Q. Would you agree that over the past five to
7 seven years, running a public water system has become
8 more complex?

9 A. I think it was complex before, and yes, we
10 have added some regulations.

11 Q. All right, so there are more rules today?

12 A. Yes, there are.

13 Q. And there's more testing today; isn't that
14 true?

15 A. Yes, there are more water quality tests
16 required.

17 Q. And a recent additional item that companies
18 now do is called the Consumer Confidence Reports; is
19 that correct?

20 A. Yes, that's a federal regulation the State
21 has also adopted.

22 Q. And there's more reporting today to State
23 agencies than there were five to seven years ago; is
24 that correct?

25 A. I don't know if there's actually more reports

0066

1 due, but the complexity of some of the reports we
2 require has increased.

3 Q. Sure. And there's been recent legislation
4 passed here in this state that looks like it will make
5 those reports even more complex in the coming years; is
6 that correct?

7 A. If you're referring to Municipal Water Law,
8 you're correct, yes.

9 Q. Isn't it the goal of the Department of Health
10 to be sure that water systems are competently managed
11 and operated?

12 A. Yes, so that purveyors are providing safe and
13 reliable water to the customers they serve, yes.

14 Q. And you would agree that to do the testing
15 and the reporting and the operating and the managing,
16 that that takes resources, takes people?

17 A. Yes, it does.

18 Q. American Water has about 130 separate water
19 systems; are you aware of the magnitude of their
20 operations?

21 A. Yes, I am.

22 Q. And a lot of those systems are pretty small;
23 isn't that correct?

24 A. That's my impression, yes.

25 Q. 130 systems implies that there are at least

0067

1 130 separate sources of water; is that correct?

2 A. Yes, it does.

3 Q. And each of those sources needs to be tested
4 from time to time; is that correct?

5 A. That's correct.

6 Q. Can you tell us the types of tests, what
7 sorts of substances have to be tested for?

8 A. For a Group A water system, the requirements
9 include monthly coliform tests, which are
10 bacteriological tests taken in the distribution system.
11 And periodically, which would normally be on a three
12 year schedule, inorganic chemical analyses, which would
13 tend to be heavy metals and some other elements are
14 tested for. Volatile organic chemicals may be required.
15 They also may be waived on payment of a fee and some
16 processing by Department of Health. There are also
17 synthetic organic chemicals, try not to use our
18 acronyms, and things such as asbestos and radionuclides
19 that crop up periodically or when there are concerns
20 about the presence in a region. Most all of our water
21 systems are also required to test for nitrates annually.

22 Q. I'm sorry, were you finished?

23 A. More or less, yes.

24 Q. Okay. They're also testing for arsenic that
25 occurs?

0068

1 A. Arsonic is included in the inorganic
2 chemicals.

3 Q. Okay.

4 A. Yes.

5 Q. Is there radon testing?

6 A. Radon testing is an upcoming requirement. It
7 hasn't been adopted yet by the State. It's a rule we
8 have under consideration.

9 Q. It's one of those that's going to come down
10 the road here?

11 A. Well, we think so.

12 Q. Okay.

13 A. Yes.

14 Q. Are there testing for pesticides?

15 A. The pesticides would be included in the
16 synthetic organic chemicals, and those may actually have
17 been tested once or twice, and then they're now under
18 waiver through the State if there was nothing detected.

19 Q. On some systems there might be testing for
20 iron and manganese as well; isn't that true?

21 A. Iron and manganese are included in the
22 inorganic chemicals, but if there is treatment for those
23 elements in place, then the purveyor does need to test
24 that periodically to make sure treatment is successful.

25 Q. Sure. And that would be true for any type of

0069

1 treatment that's in place, that there needs to be
2 testing to be sure that the system is operating
3 correctly; is that correct?

4 A. That's correct.

5 Q. Of course, if you have the unfortunate
6 experience to have a detectable sample on colliform, you
7 have to do follow-up testing?

8 A. Yes, you do.

9 Q. What testing is required for Group B systems?

10 A. Group B systems typically will do the
11 inorganic chemicals at the time of approval and not be
12 required to do those again. They also have a minimum of
13 one colliform test per year and also are supposed to
14 test for nitrate once a year.

15 Q. As well as the testing, to be a well managed
16 system, wouldn't you agree that each system needs to be
17 visited periodically?

18 A. Absolutely.

19 Q. Do you know, do you have any idea of how
20 often a system should be visited?

21 A. Well, Department of Health does not actually
22 have any standards on that, but I think from time to
23 time we offer advice to water systems. And depending on
24 the size of the system and the complexity, you know,
25 once a week is considered to be a minimum. Many of our

0070

1 systems, larger systems that we regulate, have people
2 out on site daily or more than once a day depending on
3 the security or the risk involved with the facility.

4 Q. And would that be particularly the case if,
5 for example, you were using the chlorine treatment?

6 A. Yes, because we require that daily residuals
7 be recorded, chlorine residuals.

8 Q. If you were treating for corrosivity, if I've
9 got the word right, high PH, does that require daily
10 testing?

11 A. Are you asking about corrosion control?

12 Q. Corrosion control.

13 A. Okay, which is typically a low PH issue.

14 Q. I'm sorry, I got it backwards.

15 A. That's all right. And I failed to mention
16 lead and copper testing as being also a requirement of
17 water systems, and that's where we go into corrosion
18 control so that pipes don't corrode and put heavy metals
19 into the water. I don't believe that's a daily
20 follow-up test, and when we get to the successful
21 conclusion of putting treatment in place, we have
22 indicator tests, and they're not lead and copper, but
23 they're PH for example, that indicate that the treatment
24 continues to function.

25 Q. When you initially install such treatment for

0071

1 corrosion control, shouldn't it be tested fairly
2 vigorously to make sure you're getting to the level that
3 you need to be at?

4 A. I would presume so, and that would be under
5 the direction of the engineer making the improvement and
6 working with the system.

7 Q. Sources of water, sources of supply are
8 supposed to have source meters on them, aren't they?

9 A. Through a Department of Ecology regulation,
10 that's correct, and new source regulation by Department
11 of Health, yes.

12 Q. And you would agree that those are supposed
13 to be read monthly as a minimum?

14 A. They should be read periodically. Monthly is
15 typical during periods of high consumption to establish
16 a peak day usage we recommend maybe daily for a period
17 of a couple of weeks.

18 Q. Now in your experience with the Department of
19 Health, have you run across the fact that there are many
20 different types of entities that are water companies?

21 A. Yes, I have.

22 Q. There are water districts, correct?

23 A. Yes.

24 Q. And there are public utility districts?

25 A. Yes.

0072

1 Q. There are mutuals?

2 A. Yes.

3 Q. And there are companies that are regulated by
4 this Commission?

5 A. Yes.

6 Q. As well as some private companies out there
7 that are small enough that they're not regulated by this
8 Commission?

9 A. Yes.

10 Q. Are you aware that water districts can raise
11 money for capital improvements by the use of taxes or
12 assessments?

13 A. Yes.

14 Q. And you would agree that public utility
15 districts can also raise money for capital improvements
16 by taxes or assessments?

17 A. Yes.

18 Q. And you would agree that mutuals have the
19 authority to assess their members for capital
20 improvements?

21 A. I believe so, yes.

22 Q. Okay. But you would also agree that a
23 company regulated by this Commission doesn't have the
24 authority to levy a tax?

25 A. I believe that's correct.

0073

1 Q. Okay. And would you agree that in order to
2 levy an assessment, the regulated company has to get
3 permission from this Commission to do so?

4 A. That's my understanding.

5 Q. Would you look at your testimony at page 8,
6 please, and at lines 5 through 7.

7 A. Yes.

8 Q. You say that you're waiting for capital
9 improvement and financial viability information; is that
10 true?

11 A. Yes, that's correct.

12 Q. What kind of financial viability information
13 are you looking for, are you waiting for?

14 A. Well, we have spelled out the detail in a
15 settlement agreement, but the financial viability
16 information basically is to assist us in ensuring that
17 there are financial resources available for short-term
18 and long-term improvements to the system as well as the
19 ability to respond to emergencies.

20 Q. And for regulated companies, you look to this
21 Commission to assess whether a company is financially
22 viable?

23 A. Yes, that's correct.

24 Q. In your course of preparing for this hearing,
25 did you discuss with Commission Staff whether Staff's

0074

1 recommendation in this matter will allow American Water
2 to become financially viable?

3 A. No, I don't believe I did.

4 Q. Generally in your testimony at this point
5 going here on page 8 and going over to page 10, you talk
6 about the types of information that you're looking for;
7 is that correct?

8 A. Yes.

9 Q. Would you agree that a lot of that
10 information is material that would have to be prepared
11 by engineers?

12 A. Yes, it is. Department of Health requires
13 for Group A systems that submittals be made by a
14 professional engineer.

15 Q. Do you know if Staff's recommendation in this
16 proceeding includes sufficient funds for engineers to
17 meet the needs that the Department of Health has
18 identified?

19 A. I do not.

20 Q. So you didn't discuss that idea with the
21 Commission Staff?

22 A. No, we have had discussions generally about
23 Department of Health being concerned that there be
24 enough financial resource available to accomplish what
25 Department of Health needs from a water system purveyor.

0075

1 Q. Those have been general discussions?

2 A. I believe that's correct, yeah.

3 Q. On page 11 and 12, you've got a question a
4 little more than halfway down where you start talking
5 about the terms of the settlement agreement.

6 A. Mm-hm.

7 Q. That have yet to be met; is that correct?

8 A. Yes.

9 Q. And that goes over onto page 12?

10 A. Yes.

11 Q. As you testified, for Group A's there has to
12 be an engineer, a licensed engineer, that submits the
13 report; is that correct?

14 A. Yes.

15 Q. Okay. On page 12 you talk about an operation
16 and maintenance plan for systems, and that would require
17 an engineer's involvement in determining how a system --
18 what a system needs for its operation; is that correct?

19 A. Well, oftentimes we see in water system plans
20 that the utility will draft up something, and the
21 engineer reviews that for accuracy, so it could be a
22 cooperative effort.

23 Q. But it takes some engineering involvement in
24 that effort?

25 A. As an oversight.

0076

1 Q. At a minimum?

2 A. At a minimum.

3 Q. I take it your answer would be the same, that
4 you did not discuss with Commission Staff whether their
5 recommendation in this proceeding would provide the
6 money for American Water to hire engineers to accomplish
7 these items?

8 A. I don't think that was a specific discussion.
9 I do know from previous dealings with Commission Staff
10 that they understand that our submittals need to be
11 prepared and submitted under the stamp of a professional
12 engineer.

13 Q. But you didn't have that specific discussion
14 about the recommendation in this case?

15 A. Not that I recall.

16 Q. On page 12 at lines 3 and 4, you are talking
17 about:

18 A revised financial viability portion of
19 its plan which demonstrates its ability
20 to respond to and make improvements to
21 respond to emergencies without obtaining
22 prior funding approval from the
23 Commission.

24 Do you see that passage?

25 A. Yes.

0077

1 Q. Do you have any idea how that would be
2 accomplished?

3 A. I don't personally. I mean we have put the
4 water system on notice in correspondence that that
5 needed to be -- there needed to have the financial
6 resources in order to do that.

7 Q. Are you aware that in the early days of
8 American Water's history when it was actually known as
9 Lewis County Utilities that DOH staff encouraged
10 American Water to acquire small stand-alone systems?

11 A. Yes.

12 Q. Okay. On page 17, why don't you turn to that
13 part of your testimony, and the question that is in the
14 middle of the page and your response, you're talking
15 about the types of things that you view from the
16 Department's perspective as important; is that correct?

17 A. Yes.

18 Q. Okay. Would you go to your Exhibit 7,
19 please.

20 A. Yes.

21 Q. And on pages 1 and 2 of the exhibit, there
22 are items that are listed that need to be done; is that
23 correct?

24 A. Yes, this is a capital improvement plan that
25 was submitted with a water system plan.

0078

1 Q. And you would agree that the vast majority of
2 those items that appear there would fall under the items
3 you identify as important on page 17 of your testimony?

4 A. Well, I was making general observations as to
5 what I saw in there, yes.

6 Q. But of the items, just to be clear, of the
7 items that are listed on Exhibit 7, most of those fall
8 within the important category that you discuss on page
9 17 as --

10 A. As legitimate valued improvements to a water
11 system.

12 Q. Okay. We talked about the fact that American
13 Water serves approximately 130 systems. Are you aware
14 that there are about 1,500 customers on those systems?

15 A. Yes, I believe so.

16 Q. Okay. Would you agree that those systems are
17 spread out over several counties?

18 A. Yes, they are.

19 Q. Would you agree that it's more expensive and
20 difficult to operate a company that serves 1,500
21 customers over 130 systems in several counties compared
22 to serving 1,500 customers on 2 or 3 systems with 6 or 8
23 sources in one county?

24 A. I would presume so.

25 Q. Just sort of makes sense, you've got more

0079

1 sources to test?

2 A. True.

3 Q. Is that correct?

4 A. Yeah.

5 Q. There would be more travel time to visit

6 those systems?

7 A. Yes.

8 Q. All right. Would you turn to page 22,

9 please, of your testimony and at line 16.

10 A. Yes.

11 Q. At that point, you're expressing that DOH has

12 experienced some frustration with American Water; is

13 that correct?

14 A. Yes.

15 Q. Has DOH ever asked American Water or Mr. Fox

16 for an explanation of the items you have listed there?

17 A. I personally have not, but I was under the

18 impression that some of my staff who deal with water

19 facility inventory forms have.

20 Q. Has American Water ever refused to answer a

21 question put to it?

22 A. Not that I have been informed of.

23 Q. I want to talk to you a little bit about

24 United Utilities. You would agree that United Utilities

25 is a separate corporation from American Water Resources?

0080

1 A. As far as I'm aware.

2 Q. Would you agree that the primary reason that
3 DOH has not approved United Utilities as an SMA is that
4 because Mr. Fox owns both United Utilities and American
5 Water?

6 A. I believe that the approval has not been
7 given because it's not clear what the relationship is,
8 and we don't have a clear picture on financial viability
9 with one corporation, and we're concerned that that may
10 be an issue with the other.

11 Q. You would agree that there are different
12 capital requirements involved in being an owner of a
13 system than being a manager of a system?

14 A. In being a manager, you're referring to being
15 a satellite management agency?

16 Q. An SMA.

17 A. As opposed to someone employed as directly --

18 Q. I'm sorry, I wasn't as specific as I should
19 have been.

20 A. Yes, the responsibility tends to fall on the
21 owner of the system.

22 Q. And most SMA management contracts require
23 that the owner of the system be responsible for any
24 capital improvements that might be required; is that
25 correct?

0081

1 A. What I'm familiar with, that's correct.

2 Q. Wouldn't you agree that to be an SMA, the
3 financial concern is more one of sufficient cash flow as
4 opposed to access to capital for capital improvements?

5 A. It's cash flow, and it's staffing to be able
6 to respond.

7 Q. If American Water is having difficulty in
8 accessing capital for capital improvements, what does
9 that have to do with United Utilities' operations?

10 A. I'm not sure that it does. Concerns about
11 staff may be still pertinent.

12 Q. But that would be examined as the staff
13 available to United Utilities as opposed to staff
14 available to American Water; isn't that correct?

15 A. If they're separate.

16 Q. Back on page 21 on lines 13 through 15, you
17 talk about events in 1997 and 1998; is that correct?

18 A. Yes.

19 Q. Now you weren't personally involved at that
20 time with American Water; is that correct?

21 A. That's correct, and I also don't -- have
22 never worked in the Northwest Regional Office.

23 Q. So it follows that you weren't involved in
24 any meetings with DOH staff and American Water at that
25 time?

0082

1 A. No, I was not.

2 Q. If you turn to page 26 at line 6, there's a
3 sentence that begins, as previously discussed. Do you
4 see that sentence?

5 A. Yes.

6 Q. Okay. You're talking about some financial
7 submittals, and just to be clear, those would be
8 financial submittals from American Water, not United
9 Utilities; is that correct?

10 A. That's correct.

11 Q. I want to talk to you a little bit now about
12 the Birchfield system. Have you ever visited the
13 system?

14 A. I have not.

15 Q. Is it your understanding that it's a common
16 practice that when a system is expanded, it's done so by
17 requiring the land developer, the one that's going to
18 build the houses, to install improvements?

19 A. I don't know whether it's common practice,
20 but I know that that does occur, yes.

21 Q. All right. And you would also agree that
22 when that's done, at the time those improvements are
23 needed by the water company, they're turned over to the
24 water company usually through a bill of sale?

25 A. I believe that's correct, yeah.

0083

1 MR. FINNIGAN: I would like to give the
2 witness the exhibits, if I may.

3 JUDGE CAILLE: You may approach the witness.

4 BY MR. FINNIGAN:

5 Q. I have handed you what have been identified
6 as Exhibits 25, 26, and 27. Turning first to Exhibit
7 25, do you recognize that as a listing of the three
8 wells for the Birchfield Water System?

9 A. Yes.

10 Q. Well number 1 has 17 acre feet as its water
11 right; do you see that?

12 A. Yes.

13 Q. You would agree that it's feasible to serve
14 37 connections with 17 acre feet; that's just to do the
15 math?

16 A. Rule of thumb, that's in the ball park, yes.

17 Q. Okay. Would you take a look at Exhibit 27,
18 and I made the mistake of not doing the cover page, but
19 if you would take a look at that, do you recognize that
20 as a portion of the comprehensive plan for Lewis County
21 Water and Sewer District Number 5?

22 A. Yes, I do.

23 Q. If you look at page 14, and the pages are
24 numbered by my scrawl in the upper right-hand corner.

25 A. Oh.

0084

1 Q. Do you see there, do you see the first table
2 about projected water demand?

3 A. Yes.

4 Q. And that shows that there are ten active
5 connections today?

6 A. Yes, as existing.

7 Q. And it shows that in 6 years they expect to
8 have over 1,000 connections?

9 A. Yes.

10 Q. Would you take a look then also at pages 4
11 and 21. I'm sorry, it may be 4 and 22, it's the two
12 maps. And I'm particularly focusing on page 22.
13 Doesn't that show a very large amount of 8 inch and 12
14 inch mains that appear to be for future connections?

15 A. It does show quite a bit of 8 inch line in
16 the ground, yes, and that would appear to be excessive
17 for 37 connections.

18 Q. 10 active and 37 approved?

19 A. Right, 37 approved, 10 active, yes.

20 Q. And, in fact, if you look at page 5, you will
21 see that there's listed 6,000 feet of 8 inch main and
22 2,300 feet of 12 inch main?

23 A. So these are built but not in service I
24 presume.

25 Q. Okay. And you would agree that you don't

0085

1 need 13 fire hydrant assemblies to serve 37 approved
2 connections?

3 A. No, probably not.

4 Q. One for every three is pretty --

5 A. That's pretty good coverage.

6 Q. Coverage, yeah.

7 Would you take a look at your Exhibit 17 at
8 page 9, and this is from a submittal related to the
9 Birchfield Water System in 2002; is that correct?

10 A. Yes, that's correct.

11 Q. If you compare the list of facilities on page
12 9 of Exhibit 17 with page 5 of Exhibit 27, you would
13 agree that the 8 inch and 12 inch mains do not appear on
14 Exhibit 17, and the fire hydrant assemblies do not
15 appear on Exhibit 17; is that correct?

16 A. That's correct.

17 Q. One last area. You talk in your testimony
18 about -- well, excuse me, let me back up.

19 Do you recognize Exhibit 26 as a letter
20 Mr. Fox sent to you recently?

21 A. Yes, I do.

22 Q. Okay. Do you believe that's a true and
23 correct copy of that letter?

24 A. Yes, I do.

25 Q. Now the last area. In your testimony you

0086

1 talk about the fines DOH assessed American Water for
2 moving too slow on its construction projects; is that
3 correct?

4 A. Yes, I do.

5 Q. Isn't it true that at that time in order to
6 raise capital for those projects, American Water needed
7 to get a surcharge approved from the Commission, from
8 this Commission?

9 A. I believe that's what led to the negotiation
10 of the 13, the so called 13 items.

11 Q. And you would agree that that process took a
12 fair amount of time?

13 A. I'm not in a position to give an opinion on
14 that.

15 Q. Okay. You weren't involved in the
16 discussions yourself?

17 A. I was not.

18 Q. Are you aware that because the Commission
19 process took so long that that contributed to the
20 Department of Health's frustration and resulted in the
21 imposition of the fines?

22 A. I'm not aware of that particular aspect of
23 it. I will speak from experience I have working with
24 compliance that typically we do take into account items
25 beyond our control. If permits have to be issued or

0087

1 we're waiting on State grant loans to help for a process
2 and presumably UTC funding, that we would take that into
3 our timeline account when we set up an order or that we
4 would modify an order to accommodate that.

5 MR. FINNIGAN: Thank you, that's all I have
6 for you this morning.

7 JUDGE CAILLE: Any redirect?

8 MS. WATSON: I think I have just a few
9 questions.

10 MR. FINNIGAN: I will ask that Exhibits 25,
11 26, and 27 be admitted.

12 MS. WATSON: I have no objection with that.

13 JUDGE CAILLE: All right, then Exhibits 25,
14 26, and 27 are admitted into evidence.

15

16 R E D I R E C T E X A M I N A T I O N

17 BY MS. WATSON:

18 Q. Ms. Lahmann, you were asked a few questions
19 about on page 21 of your testimony, lines 13 through 15,
20 where you describe the 1997 and 1998 events, and you
21 were asked questions about whether you were personally
22 involved with those proceedings. Do you remember those
23 questions?

24 A. Yes.

25 Q. Do you remember what agency records you

0088

1 relied upon in forming your testimony?

2 A. I was looking at filed documents, letters
3 that were exchanged back and forth, and some of those
4 have been entered into evidence I guess as exhibits.

5 Q. And is it common for DOH employees to have to
6 rely on those sorts of documents?

7 A. You're asking for a historical perspective?

8 Q. Yes.

9 A. Yes, we look to the file to tell us what's
10 gone on. That's certainly more reliable than people's
11 memories.

12 Q. You were also asked a number of questions
13 about DOH's frustration with AWR. If you will, will you
14 explain what you're talking about in a little bit more
15 detail?

16 MR. FINNIGAN: The questions at that point
17 were related directly to the information concerning
18 American Water and Glacier Utilities and United
19 Utilities I believe.

20 A. Okay. The frustrations in understanding the
21 different ownerships and relationships among the
22 companies and whether they were financial -- using the
23 same employees or same addresses, same resources, to get
24 the job done. And where we have had concern because we
25 haven't seen documentation demonstrating financial

0089

1 viability for American Water Resources, if this was just
2 stretching things farther and perhaps, you know, not
3 putting them all under one title and one company.

4 Q. You were also asked about AWR's surcharge in
5 '99, you were asked whether the process with regard to
6 the surcharge led to any DOH frustration. To the extent
7 that there was, will you explain that?

8 A. Well, my understanding in looking at the
9 filed documentation is that UTC Staff involved
10 Department of Health in trying to define, you know, what
11 and prioritize what was on the capital improvement list
12 and identify public health needs for funding. And it
13 appears from the record that there were several meetings
14 and phone conversations and things that took place in
15 that time period. Initially established 12 systems, and
16 then it somehow changed into 13, and those were
17 identified, and it's my understanding that those were
18 what went forward for surcharge purposes for funding to
19 finance those particular improvements.

20 Q. Was that a source of frustration?

21 A. I don't see the word frustration, you know,
22 showing up in any of the correspondence, and I guess I
23 can't really tell whether there was or was not.

24 MS. WATSON: I have no further questions.

25 JUDGE CAILLE: Anything further?

0090

1 MR. FINNIGAN: No, Your Honor, nothing
2 further.

3 JUDGE CAILLE: Thank you very much,
4 Ms. Lahmann, you're excused.

5 Mr. Eckhardt, are you next?

6 MS. WATSON: Can we take a five minute break?

7 JUDGE CAILLE: Sure.

8 MS. WATSON: Thank you.

9 JUDGE CAILLE: We're off the record for a
10 five minute break.

11 (Recess taken.)

12 JUDGE CAILLE: We are back on the record
13 after a five minute recess, and, Mr. Eckhardt, if you
14 will just remain standing, I will swear you in.

15 (Witness EUGENE K. ECKHARDT was sworn.)

16 JUDGE CAILLE: Thank you.

17 Ms. Watson.

18

19 Whereupon,

20 EUGENE K. ECKHARDT,
21 having been first duly sworn, was called as a witness
22 herein and was examined and testified as follows:

23

24 D I R E C T E X A M I N A T I O N

25 BY MS. WATSON:

0091

1 Q. Good morning, are you ready?

2 A. I'm sorry, can I just have a minute?

3 MR. FINNIGAN: Are you sure you don't want to
4 do this another day?

5 THE WITNESS: I will be fine.

6 MR. FINNIGAN: It's not going to be very
7 long, but you look like you're suffering.

8 THE WITNESS: I'm hoping it sounds worse than
9 it is.

10 BY MS. WATSON:

11 Q. Would you please state your name for the
12 record, spelling your last name.

13 A. My name is Eugene K. Eckhardt,
14 E-C-K-H-A-R-D-T.

15 Q. And who is your employer?

16 A. I'm employed by the Washington Utilities and
17 Transportation Commission as the Assistant Director of
18 Water and Transportation.

19 Q. Are you testifying on behalf of Commission
20 Staff in this proceeding?

21 A. Yes.

22 Q. Is Exhibit 30T your pre-filed rebuttal
23 testimony in this case?

24 A. Yes.

25 Q. Was Exhibit 30T prepared by you or under your

0092

1 direction?

2 A. Yes.

3 Q. Do you have any changes to Exhibit 30T?

4 A. Yes.

5 Q. And what are those changes?

6 A. On page 1, line 18, shows I attended the
7 NARUC Western Utility Rate School in 1992, I believe
8 that should be 1993.

9 If you will turn to page 44, there's a table,
10 and in the left-hand column titled Docket Number
11 UW-991392, on that line under column effective which
12 reads \$34.37, that number should read \$34. And the
13 number immediately below that, \$34.37 should read \$34.

14 Q. Do you have any other changes?

15 A. No.

16 Q. If I asked you the questions contained in
17 your pre-filed testimony, would your answers be the same
18 with those changes?

19 A. Yes.

20 Q. Are you sponsoring Exhibit 31 in conjunction
21 with your rebuttal testimony?

22 A. Yes.

23 Q. Are your answers in your testimony true and
24 correct to the best of your knowledge?

25 A. Yes.

0093

1 MS. WATSON: At this time I would like to
2 move Exhibit 30T and Exhibit 31 into the record.

3 MR. FINNIGAN: No objection.

4 JUDGE CAILLE: Exhibits 30T, 31, and 32 are
5 admitted into evidence.

6 MS. WATSON: I wasn't moving for Exhibit 32
7 at this time. Mr. Finnigan can do that later.

8 JUDGE CAILLE: Oh, I'm sorry, excuse me just
9 strike that 32.

10 MS. WATSON: Mr. Eckhardt is available for
11 cross-examination.

12 JUDGE CAILLE: Mr. Finnigan.

13 MR. FINNIGAN: Thank you.

14

15 C R O S S - E X A M I N A T I O N

16 BY MR. FINNIGAN:

17 Q. Good morning, Mr. Eckhardt.

18 A. Good morning.

19 Q. I think you will find this to be fairly
20 brief, so we'll get you out of here.

21 As I understand the premise of your testimony
22 is that the Commission Staff treats American Water just
23 like any other water company, and that treatment is
24 consistent with regulatory principles. Is that a fair
25 summary of the premise of your testimony?

0094

1 A. Yes.

2 Q. Have you ever, and you being Commission
3 Staff, I don't mean you individually, have you ever
4 proposed a regulatory liability for another water
5 company?

6 A. No.

7 Q. Have you ever negotiated a rate settlement
8 where expenditures had to be tracked by budget category
9 with another water company?

10 A. No, I don't believe so.

11 MR. FINNIGAN: May I approach the witness?

12 JUDGE CAILLE: Yes.

13 BY MR. FINNIGAN:

14 Q. I have handed you what's been marked as
15 Exhibit 32, and you may want to take a look at page 10
16 on your testimony. Are you there?

17 A. Yes.

18 Q. Your summary of complaints was total
19 complaints as opposed to separating out the non-billing
20 complaints; is that correct?

21 A. Yes, it is.

22 Q. And for some reason our numbers vary
23 slightly, but they're pretty close?

24 A. Yes, I agree.

25 Q. Do you have any -- I will tell you that the

0095

1 way Exhibit 32 was prepared was taking all of the
2 informal complaints that were produced, and I forget
3 whether it was a public records request or a data
4 request, and going through that information and tallying
5 them up. Do you have any reason to suspect what might
6 be the cause of the minor differences between your table
7 and our table?

8 A. I will not speculate as to the reason for the
9 difference. I will say the numbers that appear in my
10 testimony were provided to me from Consumer Affairs off
11 a database.

12 Q. So either my staff made a tally error or
13 Consumer Affairs made a data entry error, but they're
14 pretty close?

15 A. Well, I agree, yes, I agree they're close.
16 The largest difference appears to be in the calendar
17 year 2001, the percentage difference is large, but the
18 total difference is in my opinion small.

19 Q. You would agree that 1 service related
20 complaint out of 1,500 customers indicates a pretty good
21 level of service quality; wouldn't you agree?

22 A. Yes, generally I would agree. Having worked
23 in the water industry for many years, it's my experience
24 that not or the number of customer complaints does not
25 always reflect the degree of customer satisfaction in

0096

1 that I frequently talk to customers who are not
2 satisfied with their service but have not filed
3 complaints. But generally I would agree with you that a
4 low number of service complaints is an indicator about
5 good service.

6 Q. And would you agree that a trend that shows
7 the number of complaints on the decline is also an
8 indicator that the company is addressing service issues?

9 A. Yes, again with the caveat that sometimes,
10 you know, based again based on my experience, is that
11 customers become frustrated and in a sense drop out of
12 the process. But I agree generally that a decline in
13 customer complaints is an indication that the quality of
14 service has improved.

15 Q. At pages 7 and 8 of your testimony, you
16 discuss the concept of reserve fund. Do you remember
17 that starting at the bottom, last paragraph on page 7?

18 A. Yes.

19 Q. Are you aware that it's common practice for
20 water districts to have a reserve fund?

21 A. I'm not aware of that, no.

22 Q. Are you aware that it's common practice for
23 public utility districts to have a reserve fund?

24 A. Again no.

25 Q. Are you aware that Department of Health

0097

1 recommends that public water systems maintain a reserve
2 fund?

3 A. Yes.

4 Q. Are you aware that even State agencies are
5 required to have a reserve fund?

6 A. I don't know.

7 Q. The Commission has very broad public interest
8 authority; is that correct?

9 A. Yes, I believe so.

10 Q. But I take it from your testimony you believe
11 that the Commission does not have the authority to allow
12 the establishment of a reserve fund other than the
13 specified instances set forth in that one particular
14 statute?

15 A. Yes.

16 Q. So you're saying that you don't believe the
17 Commission has the authority acting in its public
18 interest to allow a water company to establish a reserve
19 fund?

20 A. Yes, it's my understanding and interpretation
21 of the statutes with the reserve fund being set out
22 specifically in a stand alone statute for water
23 companies only that the reserve fund is treated
24 differently than general public interest. However, I am
25 not an attorney.

0098

1 Q. I was just looking for your interpretation
2 based on your testimony.

3 At page 13 you discuss the Country Water
4 purchase, are you aware that the proceeds from the
5 Country Water sale, I'm sorry, I used the word purchase,
6 from the Country Water sale after the time it was
7 purchased -- I'm going to start that question over
8 again.

9 You're aware that the Country Water System
10 was subsequently sold to Valley Water District?

11 A. Yes.

12 Q. Are you aware that the proceeds from that
13 sale were used for American Water and were not retained
14 by Mr. Fox --

15 A. I am.

16 Q. -- for his personal use?

17 A. I understand that is what Mr. Fox has stated.

18 Q. Do you have any reason to disagree with that
19 statement?

20 A. I don't know.

21 Q. What do you mean you don't know?

22 A. I don't know, I don't know that that is in
23 fact what happened.

24 Q. Do you have any basis to disagree with the
25 statement by Mr. Fox?

0099

1 A. I don't know that he used those funds for a
2 different purpose, no.

3 Q. Do you have any basis to disagree with the
4 statement of Mr. Fox?

5 A. No.

6 Q. Thank you.

7 Now focusing on the purchase of Country
8 Water, which you described as a stock purchase, correct?

9 A. Yes.

10 Q. Are you aware of a Staff member stating to
11 representatives of Mr. Fox or AWRI that, you got us on
12 this one, but we'll get you on the next one?

13 A. No, I am not.

14 Q. At the top of page 14 at line 5, you use the
15 phrase, personal profit. Is there anything wrong with
16 making a profit?

17 A. I'm sorry, would you -- I didn't see --

18 Q. Page 14, line 5.

19 A. The question?

20 Q. Is there anything wrong with making a profit?

21 A. No.

22 Q. All right. At page 15, lines 10 through 13,
23 you talk about the sale of funds being pursuant to a
24 settlement agreement from the Peninsula Light sale. Do
25 you see your testimony?

0100

1 A. Yes.

2 Q. You would agree that the company told
3 Commission Staff that they disagreed with the position
4 of the settlement agreement but had no choice but to
5 settle because they couldn't afford to go to a hearing?

6 A. No, I understood the company did not agree
7 with that settlement. That wasn't -- I didn't
8 understand at the time the second part of your
9 statement, that the company had no choice and that it
10 could not afford to go to a hearing.

11 Q. You don't remember that being conveyed to
12 Commission Staff?

13 A. No.

14 Q. But you do remember the disagreement being
15 conveyed to Staff?

16 A. Yes.

17 Q. At page 24, you're talking about your
18 appearance before the Public Works Board; is that
19 correct?

20 A. Yes.

21 Q. In addition to the material that's set forth
22 on page 24, didn't you also express your concern to the
23 Public Works Board about AWRI's total level of debt and
24 independent from this surcharge or independent from the
25 State Revolving Fund a concern about the company's

0101

1 ability to repay that other debt?

2 A. No, I don't recall making those statements
3 specifically. The presentation I made to the Board was
4 focused on the Commission's process as to how the
5 Commission would treat an application by American Water
6 Resources for a surcharge to make it clear to the Board
7 that the surcharge would be treated separately from
8 general rates and directed to a separate account to
9 ensure that American Water Resources had the funds
10 necessary to pay both the interest and the principal due
11 on that loan from the State Revolving Fund. I don't
12 recall making statements on a general basis in regards
13 to the company and its operation.

14 Q. Do you recall making statements about the
15 company's level of debt to the staff of the Public Works
16 Board?

17 A. No, not specifically. I expect that that
18 issue did come up in discussion with the Public Works
19 staff as a part of their concern in regards to the
20 financial structure of the company and their concern as
21 to whether the Public Works Board could expect that AWR
22 would be able to pay back any loan from the State
23 Revolving Fund.

24 Q. Would you turn to your testimony at page 27,
25 lines 17 through 19. Are you there?

0102

1 A. Yes.

2 Q. And you're talking about the Commission
3 talking about that American Water's customers were
4 burdened by a capital structure with excessive debt. Do
5 you see that portion of it?

6 A. Yes.

7 Q. Now I take it you're referring to the Sixth
8 Supplemental Order in Docket Numbers UW-980072, et al.?

9 A. I believe it was both the fifth and the
10 sixth.

11 Q. The Fifth Supplemental Order was an initial
12 decision of the Administrative Law Judge; is that
13 correct?

14 A. Yes.

15 Q. Okay. And the Sixth Supplemental Order was
16 the Commission's decision itself; is that correct?

17 A. Yes.

18 Q. In order to save your voice, Mr. Eckhardt,
19 I'm going to read a portion of that order, and then I
20 will hand it to you so you can take a look at it. But
21 at page 8 of the order, the Commission states:

22 We must acknowledge, however, Staff's
23 point that AWRI has ignored previous
24 suggestions that AWRI should reform its
25 capital structure. Staff is correct

0103

1 that there is an inherent incentive in
2 the form of higher available return on
3 equity relative to debt that ought to
4 encourage Mr. Fox, AWRI's principal
5 shareholder, principal creditor, and
6 principal decision maker, to retire debt
7 in favor of equity. Staff also observes
8 correctly, however, that by making loans
9 to AWRI, his almost exclusive form of
10 investment in the company, Mr. Fox
11 obligates AWRI to substantial monthly
12 interest payments that provide Mr. Fox a
13 secured income. Staff position at page
14 2. We observe too that while AWRI's
15 extraordinary high debt ratio places the
16 company at risk of business and
17 financial failure, as principal
18 creditor, Mr. Fox will enjoy a favorable
19 position if bankruptcy ensues.
20 Nevertheless, we will adopt for now the
21 incentive approach the initial order
22 would embrace. Staff no doubt will
23 reexamine the issue in AWRI's next rate
24 case. If there is no improvement in
25 AWRI's actual capital structure, the

0104

1 Commission may be required to take a
2 different approach.

3 MR. FINNIGAN: May I approach the witness?

4 JUDGE CAILLE: Yes.

5 And, Mr. Finnigan, this was on page 8 of the
6 Sixth Supplemental Order?

7 MR. FINNIGAN: Yes, beginning at the bottom
8 of page 8 and carrying over to the top of page 9.

9 BY MR. FINNIGAN:

10 Q. Would you agree that I read what's contained
11 in the order accurately?

12 A. I believe so.

13 Q. Okay. Would you also agree that that
14 language is a very strong message to the company?

15 A. Yes.

16 Q. And, in fact, the company is being told that
17 if it doesn't improve its debt-equity ratio, there may
18 be some consequences down the road?

19 A. In regards to the -- yes, in regards to the
20 treatment of the capital structure and the return of the
21 company.

22 Q. Do you agree that by applying the proceeds
23 from the View Royal sale to reduce debt, the company
24 took steps to address its debt-equity ratio?

25 I mean it improved the debt-equity ratio, did

0105

1 it not?

2 A. Yes, to the extent that the sale exceeded the
3 rate base and the company invested all of the proceeds
4 from that sale, the amount that exceeded the rate base
5 would reduce the debt by a corresponding amount.

6 Q. And that the way the proceeds were used were
7 to remove Mr. Fox as a debtor of the corporation; is
8 that correct, or creditor of the corporation, I'm sorry?

9 A. Yes, I understand that's true.

10 Q. Okay. Would you turn to your testimony at
11 page 37 at lines 10 through 12, 10 and 11. Do you see
12 your testimony there?

13 A. Yes.

14 Q. And you do indicate that American Water made
15 several proposals to the Staff; is that correct?

16 A. Yes.

17 Q. Do you remember meeting with me to discuss
18 one of those proposals, and then on a subsequent
19 occasion I asked what Staff's reaction was to that
20 proposal, and you told me that, I see no reason to
21 discuss it any more, it's not something the Staff will
22 support?

23 A. I don't recall those particular words. I
24 recall discussing several proposals with you, and I
25 recall telling the company in regards to both of their

0106

1 proposals that I did not think the proposals were
2 appropriate.

3 Q. And you understand that companies don't like
4 to do further work on proposals or go to the expense of
5 pursuing them if Staff is not -- if Staff is going to
6 oppose those proposals? I mean sometimes they do, but
7 generally it's a very important factor in the company's
8 evaluation of what to do. Do you agree with that or
9 not?

10 A. Yes, I agree that different companies take
11 different approaches, and different companies choose to
12 pursue different areas even if Staff does not agree, and
13 sometimes further discussion and development changes the
14 available information and changes the results.

15 Q. Would you agree that one of the factors a
16 company has to weigh if the Staff is not supportive of a
17 proposal is the expense that the matter may have to
18 proceed to a hearing?

19 A. Yes, but only after the matter has been
20 presented to the Commission and determined to be set for
21 hearing, and that there is generally a two step process
22 in that the matter is presented to the Commission at an
23 open meeting for consideration, and occasionally the
24 Commission will suspend a filing and set the matter for
25 hearing. And my experience in the water industry is

0107

1 that virtually all of the matters that are suspended are
2 negotiated. As I stated in my testimony, there have
3 been very few hearings in the water industry since 1992.

4 Q. You would agree then that from a company's
5 perspective that the likelihood of something being
6 suspended if Staff is going to recommend it be suspended
7 is pretty high?

8 A. Yes, I agree that if Staff does not have
9 sufficient information to make a decision and on that
10 basis advises the Commission of its recommendation to
11 suspend the filing, the Commission generally will
12 suspend the matter.

13 MR. FINNIGAN: Thank you, Mr. Eckhardt,
14 that's all I have today.

15 And I would offer Exhibit 32, please.

16 JUDGE CAILLE: Any objection?

17 MS. WATSON: I have no objection.

18 JUDGE CAILLE: Exhibit 32 is admitted into
19 evidence.

20 Any redirect?

21 MS. WATSON: I have a few questions.

22

23 R E D I R E C T E X A M I N A T I O N

24 BY MS. WATSON:

25 Q. Earlier you were asked about regulatory

0108

1 liabilities. Are you aware of Commission Staff
2 recommending using a regulatory liability with any other
3 company that's regulated by the Commission, not
4 necessarily a water company?

5 A. Yes, I know that regulatory liabilities are
6 used in I believe the energy industry, but I don't know
7 on what companies or dockets.

8 Q. But a regulatory liability is something that
9 has been used before?

10 A. Yes.

11 Q. You were also asked about the budget tracking
12 mechanisms that AWR is required to use with certain
13 funds; do you remember those questions?

14 A. Yes.

15 Q. Why were those budget tracking mechanisms put
16 into place?

17 A. As I recall, the Commission required the
18 company to file quarterly budget reports tracking
19 expenses by various funds in the hopes that that would
20 help the company manage its revenues and expenses.

21 Q. Mr. Finnigan asked you a few questions about
22 the Peninsula Light settlement agreement; do you
23 remember those questions?

24 A. Yes.

25 Q. Was the company represented during those

0109

1 negotiations?

2 A. I don't understand your question.

3 Q. Did they have an attorney during those
4 negotiations, or were they negotiating by themselves
5 with Staff?

6 A. I believe they were represented by
7 Mr. Finnigan in the signature of settlement, but I'm not
8 certain, and I don't have the settlement agreement.

9 Q. You were asked questions about AWR's
10 debt-equity ratio and the effect of paying down the
11 debt, and Mr. Finnigan read you a portion of the Sixth
12 Supplemental Order; do you remember that?

13 A. Yes.

14 Q. With regards to the high level of debt that
15 AWR had, was Staff's concern that Mr. Fox was the holder
16 of the debt or that there was debt in general?

17 A. Would you repeat that, please.

18 Q. Sure, maybe I will try to state it a little
19 differently.

20 Was Commission Staff concerned that there was
21 a high level of debt or that Mr. Fox was the holder of
22 that debt?

23 A. The concern was with the level of the debt,
24 not the source of the debt.

25 Q. When a matter is suspended by the Commission,

0110

1 does that automatically mean that there will be a
2 hearing?

3 A. No. In fact, as I stated in my testimony,
4 there have been very few hearings at the Commission
5 involving water companies since 1992 when I began
6 working here. Virtually all suspensions are negotiated
7 without going to a formal hearing.

8 Q. And when you say negotiated, do you mean
9 negotiated to a settlement agreement?

10 A. Yes.

11 MS. WATSON: I have no further questions.

12 MR. FINNIGAN: I have one area to follow up
13 on.

14 JUDGE CAILLE: Go ahead.

15 MR. FINNIGAN: I need to approach the witness
16 and get the order back.

17

18 R E C R O S S - E X A M I N A T I O N

19 BY MR. FINNIGAN:

20 Q. Mr. Eckhardt, there's a sentence here on page
21 8 of the Commission's Sixth Supplemental Order that
22 states as follows:

23 Staff also observes correctly, however,
24 that by making loans to AWRI, his almost
25 exclusive form of investment in the

0111

1 company, Mr. Fox obligates AWRI to --

2 And this is a quote that appears within the
3 document:

4 -- "substantial monthly interest
5 payments" that provide Mr. Fox "a
6 secured income".

7 And the Commission is citing the Staff
8 petition at page 2. They also go on, the Commission
9 also goes on to talk about Mr. Fox's placing himself in
10 a favorable position through debt if bankruptcy ensues.
11 Wouldn't it be a fair reading of those sentences that
12 the Commission is criticizing the fact that Mr. Fox is
13 the creditor that holds the debt, having -- describing
14 the debt payments as a secured income, for example?

15 MS. WATSON: Can I just ask that the passage
16 be shown to the witness.

17 MR. FINNIGAN: Sure.

18 MS. WATSON: It's a little hard to process
19 things when they're read. Thank you.

20 MR. FINNIGAN: And if I may, I can point it
21 out to the witness.

22 JUDGE CAILLE: Go ahead.

23 BY MR. FINNIGAN:

24 Q. It starts right here.

25 A. Can you repeat your question, please.

0112

1 Q. Wouldn't a fair reading of that passage be
2 that the Commission is criticizing the fact that Mr. Fox
3 is the holder of the debt?

4 A. Yes, I agree that is a interpretation. I
5 don't agree that it's the only interpretation, and my
6 interpretation is that the holding of or the existence
7 of the debt imposes financial obligations on the company
8 regardless of who owns the debt. The fact that Mr. Fox
9 owns the debt, the result in comparison to equity is a
10 monthly stream of income that is guaranteed versus an
11 equity position, which has no guarantee nor necessarily
12 a monthly stream. And in regards to a position in the
13 event of bankruptcy, that's the nature of the two
14 instruments.

15 Q. Don't you think that it's reasonable for a
16 company to seriously consider what the Commission states
17 in its orders and try to make the best interpretation of
18 what it is the Commission is criticizing from the
19 language the Commission uses?

20 MS. WATSON: Objection, speculation.

21 MR. FINNIGAN: I don't think that's
22 speculation, I think that's what's a reasonable manner
23 of interpreting the Commission's orders.

24 JUDGE CAILLE: The objection is overruled. I
25 think Mr. Eckhardt can state his opinion.

0113

1 A. Yes, I agree that all parties should, in
2 reading the Commission's orders, should interpret them
3 and take actions as they deem appropriate.

4 MR. FINNIGAN: Thank you, I have nothing
5 further.

6 JUDGE CAILLE: Anything further from Staff?

7 MS. WATSON: No, Your Honor.

8 JUDGE CAILLE: All right, thank you.

9 You're excused, Mr. Eckhardt.

10 Shall we take maybe another five minute
11 break, or are you ready to just move on?

12 (Recess taken.)

13 JUDGE CAILLE: We are reconvened after a five
14 minute recess, and Mr. Ward is our next witness. If you
15 will please stand and raise your right hand, I will
16 swear you in.

17 (Witness JAMES A. WARD was sworn.)

18 JUDGE CAILLE: Ms. Watson.

19 MS. WATSON: Thank you.

20

21 Whereupon,

22

JAMES A. WARD,

23 having been first duly sworn, was called as a witness

24 herein and was examined and testified as follows:

25

0114

1 D I R E C T E X A M I N A T I O N

2 BY MS. WATSON:

3 Q. Would you please state your name, spelling
4 your last name.

5 A. James A. Ward, W-A-R-D.

6 Q. And who is your employer?

7 A. The Utilities and Transportation Commission
8 for the State of Washington.

9 Q. What is your position with the Commission?

10 A. I am a regulatory analyst assigned to the
11 water section at this time.

12 Q. Are you testifying on behalf of Commission
13 Staff in this proceeding?

14 A. Yes, I am.

15 Q. Is Exhibit 40T your pre-filed direct
16 testimony in this case?

17 A. Yes, it is.

18 Q. Is Exhibit 41T your pre-filed rebuttal
19 testimony in this case?

20 A. Yes, it is.

21 Q. Were Exhibits 40T and 41T prepared by you or
22 under your direction?

23 A. Yes.

24 Q. Do you have any changes to Exhibit 40T?

25 A. No.

0115

1 Q. Do you have any changes to Exhibit 41T?

2 A. Yes, I do.

3 Q. Would you please explain what those changes
4 are?

5 A. Exhibit 41T, page number 7, line number 7,
6 first correction is the docket number. It reads 980253,
7 it should read 980258.

8 Second correction on that line, it reads
9 November 24th, it should read January 21st.

10 Line 8, first correction, it reads 1998, it
11 should read 1999.

12 Next correction is page 25, line number 6, it
13 reads March, it should read February 27.

14 Q. Do you have any other corrections to make?

15 A. Not that I am aware of at this time.

16 Q. Are you sponsoring Exhibits 42 through 84 in
17 conjunction with your testimonies?

18 A. Yes, I am.

19 Q. Do you have any changes to those exhibits?

20 A. Not that I am aware of at this time.

21 Q. If I were to ask you the questions contained
22 in your pre-filed testimony found in Exhibits 40T and
23 41T, would your answers be the same with the changes
24 that you just made?

25 A. Yes, they would be.

0116

1 Q. Are your answers true and correct to the best
2 of your knowledge?

3 A. Yes, they are.

4 MS. WATSON: At this time I would like to
5 move for admission of Exhibits 40T through 84 into the
6 record.

7 JUDGE CAILLE: Is there any objection?

8 MR. FINNIGAN: No objection.

9 JUDGE CAILLE: Then Exhibits 40T, 41T, and 42
10 through 84 are admitted into evidence.

11 MS. WATSON: And Mr. Ward is available for
12 cross-examination.

13 MR. FINNIGAN: Your Honor, first just a
14 preliminary matter. Ms. Watson E-mailed to me on Friday
15 that Exhibit 85 is the same as Exhibits 72 and 142 in
16 combination, so on that basis we're not going to offer
17 Exhibit 85, and we'll refer to those other exhibits
18 instead.

19 JUDGE CAILLE: Okay, could you go over that
20 one more time for me.

21 MR. FINNIGAN: Sure. Exhibit 85 is identical
22 to Exhibits 72 and 142 when those two exhibits are taken
23 together.

24 JUDGE CAILLE: 72 and 142?

25 MR. FINNIGAN: Correct.

0117

1 JUDGE CAILLE: Okay.

2 MR. FINNIGAN: One is a supplemental response
3 to the same data request, and one is the first response,
4 or actually I think the first supplemental and then I
5 think the second one is the second supplemental.

6 JUDGE CAILLE: So you will not be offering
7 85?

8 MR. FINNIGAN: Correct.

9 And I also found that Exhibit 87 is
10 duplicative of other information, so I'm not going to
11 offer 87 as well.

12 JUDGE CAILLE: Okay, thank you.

13

14 C R O S S - E X A M I N A T I O N

15 BY MR. FINNIGAN:

16 Q. Mr. Ward, if you would look at Exhibit 88,
17 please.

18 I'm sorry, I forgot to introduce myself.
19 Good morning, Mr. Ward. If you would like at Exhibit
20 88.

21 A. I'm sorry, I don't have all of mine labeled
22 that way. Could you ask me again what or describe to me
23 what 88 is?

24 Q. 88 is a two page exhibit. The left-hand
25 corner says American Water Resource, Birchfield Water

0118

1 System, Original Cost.

2 A. I can not find that at this moment.

3 MS. WATSON: It might help to know that
4 that's one of your cross exhibits.

5 THE WITNESS: I still can't find it at this
6 moment.

7 MR. FINNIGAN: Maybe I can help.

8 A. Exhibit number 88, yes, I now have it.

9 BY MR. FINNIGAN:

10 Q. Mr. Ward, you would agree that Exhibit 88
11 sets out the assets owned by American Water Resources in
12 the Birchfield Water System at the time that it owned
13 that system?

14 A. That's what was reported, yes.

15 Q. Do you agree that that's a complete listing
16 of the assets of American Water Resources as reported on
17 its books for the Birchfield Water System?

18 A. As reported on the books of American Water,
19 yes.

20 Q. And you would agree that there were no other
21 assets reported for the Birchfield Water System reported
22 on American Water's books?

23 A. To the best of my memory, no.

24 JUDGE CAILLE: Excuse me, you said did you
25 agree, and he said no, so I just want to make sure that

0119

1 we understand each other.

2 MR. FINNIGAN: I will ask the question again.

3 BY MR. FINNIGAN:

4 Q. Are there any other assets for the Birchfield
5 Water System besides those listed on Exhibit 88
6 contained in the books of American Water Resources?

7 A. There may be more detail than this on the
8 books, but I'm not aware of any other assets.

9 Q. And if you would look at the second page, is
10 that the level of detail you were talking about, the
11 second page of Exhibit 88?

12 A. Yes, this would be more representative of the
13 level of detail I was referring to. The first page
14 appears to be more a summary page.

15 Q. Okay. Have you ever toured the Birchfield
16 Water System?

17 A. No, I have not.

18 Q. You were present this morning when
19 Ms. Lahmann was examined, weren't you?

20 A. Not for the entire part, no.

21 Q. Oh. Were you here when I talked to her about
22 the Birchfield Water System?

23 A. I did catch part of that conversation, yes.

24 Q. Do you happen to have Exhibit 27 with you?
25 That's a cross-examination exhibit for Ms. Lahmann.

0120

1 A. No, I don't believe I do.

2 Yes, I do, excuse me, it's all here, I just
3 have to find it.

4 Q. Would you take a look at page I think it's 22
5 of Exhibit 27.

6 A. I have that.

7 Q. 22 would be up in the upper right-hand
8 corner, there are some pagination numbers, you don't
9 have those do you?

10 A. No, I do not.

11 Q. What I'm asking you to look at is the foldout
12 map of the system. The pagination at the bottom of the
13 exhibit is not the same, because this is an excerpt.

14 JUDGE CAILLE: Do you have --

15 MS. WATSON: I was going to offer to give him
16 this copy, it has the pages. He didn't have this one
17 earlier.

18 MR. FINNIGAN: Sure.

19 A. I now have what appears to be your foldout
20 map, page 22 in the upper right-hand corner.

21 BY MR. FINNIGAN:

22 Q. Are you aware that the Birchfield System has
23 10 active connections and 37 approved connections?

24 A. Yes.

25 Q. And are you aware that those connections are

0121

1 in the very right-hand corner of the map displayed as
2 page 22?

3 A. I'm not aware of that.

4 Q. You would agree that the map shows a fairly
5 extensive distribution system for a fairly large area?

6 A. Yes.

7 Q. Would you turn to page 5 of that exhibit,
8 please.

9 A. Page 5, upper right-hand corner?

10 Q. Yes, please.

11 A. Yes.

12 Q. If you will look at the summary of the
13 facilities; do you see that page?

14 A. Yes.

15 Q. Or that chart, I'm sorry. Do you see that
16 there's 6,000 feet of 8 inch main?

17 A. Yes.

18 Q. The 6,000 feet of 8 inch main were never on
19 the books of American Water Resources; is that correct?

20 A. I don't know that.

21 Q. Well, if you go back and look at Exhibit 88,
22 do you see any 8 inch main listed on Exhibit 88?

23 A. No, that I did not.

24 Q. Okay. So do you agree that the 6,000 feet of
25 8 inch main have never been listed on the books of

0122

1 American Water?

2 A. Yes, I would agree.

3 Q. Would you agree that the 2,300 feet of 12
4 inch main have never been listed on the books of
5 American Water?

6 A. Yes, I would agree.

7 Q. Would you agree that the 13 fire hydrant
8 assemblies have never been listed on the assets, excuse
9 me, on the books of American Water?

10 A. Yes, I would agree.

11 Q. Would you agree that insofar as the books of
12 American Water Resources are concerned, there has only
13 been one well listed as being a well for American Water
14 Resources for the Birchfield System?

15 A. I would not know without looking back at the
16 records.

17 Q. If you would look at Exhibit 88, does that
18 tell you one way or the other?

19 A. It appears that the detail page of Exhibit 88
20 does not show any wells.

21 Q. Okay.

22 A. And the summary page for Exhibit 88 does not
23 show any wells.

24 Q. Do you have Exhibit 142?

25 A. Exhibit 142, yes.

0123

1 Q. You would agree that Exhibit 142 was provided
2 to Commission Staff in response to a data request
3 propounded by Staff?

4 A. Yes.

5 Q. And Exhibit 142 shows that V.R. Fox Company
6 expended considerable funds for water mains?

7 A. I would agree that the name on the bills are
8 billed to V.R. Fox, Incorporated, yes.

9 Q. You would agree that there's no evidence that
10 American Water Resources paid any of those bills, is
11 there?

12 A. At this point, I have not seen any.

13 Q. And you would agree that those invoices
14 contain a number of entries for 8 inch and 12 inch
15 mains, water mains, and related equipment?

16 A. Yes, I would agree.

17 Q. And in Exhibit 72, part of Exhibit 72 is a
18 declaration from a Ms. Woods; do you remember that?

19 A. Yes, I do.

20 Q. And that declaration states that no American
21 Water resources were used for the expansion of the
22 Birchfield Water System; is that correct?

23 A. In a quick read of the document, I don't see
24 that.

25 JUDGE CAILLE: At page 2 right above number

0124

1 3, there is a statement.

2 MR. FINNIGAN: Yeah, and I just didn't have
3 it, I was going by my memory of it, so I was -- given
4 our rearrangement of exhibits here, I --

5 JUDGE CAILLE: I understand, I am having a
6 little bit of trouble too.

7 MR. FINNIGAN: Almost there.

8 BY MR. FINNIGAN:

9 Q. As Her Honor stated, if you look at page 2 of
10 Ms. Woods' declaration at line 13 and 14, do you see
11 that line?

12 A. Question, I do see that line.

13 Q. Okay. Do you have any information that would
14 cause you to believe Ms. Woods' statement is incorrect?

15 A. No, I do not.

16 Q. In addition to the invoices that are
17 contained in Exhibit 142 -- well, I will start that
18 question over again.

19 You would agree that the invoices that are
20 contained in Exhibit 142 are for mains and related
21 equipment insofar as they relate to the water system?

22 A. Yes.

23 Q. Okay. When you install 8 inch and 12 inch
24 mains, isn't it required that bedding material be laid
25 down so that the mains are installed in a stable fashion

0125

1 and don't shift?

2 A. I am not an engineer, but yes, in my
3 experience it has been some form of material is
4 required.

5 Q. In addition to that, certain equipment is
6 needed when you're dealing with 8 inch and 12 inch mains
7 in order to dig the trench and lay the pipe?

8 A. Yes.

9 Q. In addition, of course, labor is involved in
10 the project; is that correct?

11 A. Yes.

12 Q. Do you have Exhibit 86?

13 A. Not directly in front of me that I can find,
14 no.

15 MR. FINNIGAN: May I approach the witness?

16 JUDGE CAILLE: Yes.

17 THE WITNESS: Thank you.

18 BY MR. FINNIGAN:

19 Q. Mr. Ward, do you recognize 86 to be the
20 response of the company to Staff Data Request Number 22?

21 A. Yes.

22 Q. And that includes a supplemental response if
23 you look at the second page?

24 A. Yes.

25 Q. At page 34 of your reply testimony, which is

0126

1 41T I guess it is, do you see the testimony at lines 13
2 through 16 concerning three wells?

3 A. Yes.

4 Q. What's the basis for the statement that those
5 wells are included in rate base by the Commission in
6 rate setting proceedings?

7 A. Staff used a number of items to come up with
8 that opinion. One of them was the books and records of
9 American Water Resources which talked about the
10 Birchfield Water System. A second source was the
11 Department of Health records, in particular the water
12 facility inventory forms that talked about the
13 Birchfield Water System having three wells. The
14 third --

15 Q. I'm talking about the statement, Mr. Ward,
16 that those wells were included in rate base by the
17 Commission in rate setting proceedings, what's the basis
18 for that sentence?

19 A. That the Birchfield Water System was included
20 in rate base for rate making purposes.

21 Q. But now examining Exhibit 88, that appears to
22 be an incorrect statement; isn't that correct?

23 A. Exhibit 88?

24 Q. Yeah, that's the one we talked about just a
25 little bit ago that lists the assets that are on the

0127

1 books of American Water as they related to Birchfield at
2 the time the company owned the Birchfield Water Systems.

3 A. I don't believe it's an incorrect assertion.

4 Q. Okay. You agreed with me that all of the
5 assets of the Birchfield Water System that were on the
6 books of American Water Resources were reflected on
7 Exhibit 88.

8 A. As reported by American Water Resources, yes.

9 Q. Okay. And you knew of no other assets
10 related to the Birchfield Water System on the books of
11 American Water?

12 A. Not to my knowledge, no.

13 Q. Okay. And you then stated that in looking at
14 Exhibit 88 it didn't appear that any of the three wells
15 were listed, remember?

16 A. Yes.

17 Q. Okay. So it would then be an incorrect
18 statement that those wells were included in rate base by
19 the Commission in rate setting proceedings if they
20 didn't appear on the books of American Water; isn't that
21 correct?

22 A. In the strict context of the verbiage, yes.

23 Q. They would not be able to be included in rate
24 base for American Water if they're not on the books of
25 American Water; isn't that true?

0128

1 A. No, I would not say that.

2 Q. Can you point me to a single Commission
3 order, a single workpaper, Staff workpaper or company
4 workpaper, that shows those three wells being included
5 in rate base in a Commission rate proceeding?

6 A. No, I can not.

7 Q. Would you turn to your Exhibit 57, please.
8 Now it's my turn to search. Exhibit 7 is the Birchfield
9 sales contract; is that correct?

10 A. Exhibit 57, yes.

11 Q. I'm sorry, did I misspeak, Exhibit 57. And
12 if you will look at Exhibit 57 at pages 16, 17 -- no,
13 excuse me, I'm sorry, let me start over again.

14 Pages 18 through 20, there's a bill of sale;
15 is that correct?

16 A. Yes.

17 Q. And that's the bill of sale from American
18 Water Resources; is that correct?

19 A. Yes.

20 Q. And if you will look -- if you will compare
21 the figures on pages 18 through 20 of that exhibit to
22 the figures -- I will start that question over.

23 If you will compare the figures on page 18 of
24 Exhibit 57 with Exhibit 88, you will see that the
25 figures match; is that correct?

0129

1 A. Yes.

2 Q. And if you will look beginning on page 21,
3 there's another bill of sale; is that correct, a second
4 bill of sale?

5 A. Yes, if we're referring to Exhibit 57.

6 Q. Yes, I'm sorry, Exhibit 57 beginning on page
7 21.

8 A. Yes.

9 Q. And Exhibit 57 at page 24 or page 23, the
10 bill of sale is signed by Mr. and Mrs. Fox; is that
11 correct?

12 A. Yes.

13 Q. And at page 24 of Exhibit 57, those
14 signatures are notarized; is that correct?

15 A. Yes.

16 Q. On Exhibit 27, if you will go back to that
17 exhibit, and at page 5 of Exhibit 27, do you have that?

18 A. Yes.

19 JUDGE CAILLE: I don't have it yet.

20 MR. FINNIGAN: Okay.

21 JUDGE CAILLE: 27, right?

22 MR. FINNIGAN: Yes, that's the exhibit for
23 Ms. Lahmann this morning.

24 JUDGE CAILLE: Okay, that helps.

25 Got it.

0130

1 BY MR. FINNIGAN:

2 Q. In Exhibit 27 at page 5, would you direct
3 your attention to the chart again; do you see that,
4 Mr. Ward?

5 A. Yes, I do.

6 Q. Okay. And let's go back down to the entry
7 about 8 inch pipe. We talked about that there was 6,000
8 feet of 8 inch pipe. The engineering replacement cost
9 for that is listed as \$150,000; is that correct?

10 A. Yes, it is.

11 Q. And for the 12 inch pipe, the replacement
12 cost is listed as \$69,000; is that correct?

13 A. Yes, it is.

14 Q. You would agree that those two items alone
15 constitute well over half of the total cost listed on
16 page 5; is that correct? In other words --

17 A. Yes.

18 Q. -- \$219,000 out of \$343,000?

19 A. Yes.

20 Q. I'm going to switch gears on you now,
21 Mr. Ward. You would agree, do you not, that during the
22 test period, the company's staffing level was reduced
23 due to cash flow problems?

24 A. I would agree that the company's staffing
25 level was reduced, yes. The particulars of why I'm not

0131

1 that familiar with.

2 Q. You would agree that those staffing levels
3 were restored during July of 2003; is that correct?

4 A. When you say restored and reduced, what are
5 you referring to, number of people, number of hours?

6 Q. Number of hours.

7 A. Salary?

8 Q. Number of hours.

9 A. I would agree that the number of hours were
10 restored in I believe it was July of 2003.

11 Q. And the employees have worked at that higher
12 level of hours since that time; is that correct?

13 A. I don't have an hourly report of employees
14 since that time period.

15 Q. Do you have any reason to believe that their
16 number of hours have been reduced from the July 2003
17 level?

18 A. No, I do not.

19 Q. Do I understand correctly that your
20 alternative recommendation as far as number of employees
21 would be to put into rates the six employees at their
22 full production level, in other words the July 2003
23 level?

24 A. Yes.

25 Q. Looking at page 9 of your testimony in

0132

1 Exhibit 41T, your rebuttal testimony, looking at the
2 language at lines 11 through 13, you make a statement
3 that:

4 American Water continued to service its
5 debts while collecting rates that
6 included funds to hire additional
7 employees that AWRI did not hire or
8 maintain.

9 Is your inference that American Water should
10 not pay its debts?

11 A. No.

12 Q. Is that just a passing observation?

13 A. That is an observation, yes.

14 Q. You would agree with me I think that it's not
15 a very good idea or in the customers' interest for a
16 bank to foreclose on a water system?

17 A. I don't know that I can speak to that.

18 Q. But you would agree in the normal course of
19 events a company should pay its debt?

20 A. Yes.

21 Q. Do you agree that if a company is
22 experiencing cash flow problems, it should try and
23 control its costs?

24 A. Yes.

25 Q. Would you also agree that employee expense is

0133

1 one of the major cost elements in a company's cost
2 structure?

3 A. Yes, taking into consideration all things
4 associated with the employees.

5 Q. Taxes and benefits and all of that?

6 A. Right, yes.

7 Q. Would you agree that employing, excuse me,
8 controlling -- I will start over.

9 Would you agree that controlling employee
10 costs is perhaps easier than controlling other costs
11 like purchased power?

12 A. Yes.

13 Q. Would you agree that employee expense is
14 perhaps the biggest variable cost that a -- I'm going to
15 take the perhaps out of there.

16 Would you agree that employee cost is the
17 biggest variable cost that a company has?

18 A. No, in my experience, it's typically a fixed
19 cost the company has, because they have the employees
20 there, so I wouldn't call it a variable cost in that it
21 changes every month or every other month.

22 Q. Okay, then let's use a different term. Would
23 you agree that employee expense is the area where the
24 company can exercise the most control when facing a cash
25 flow problem?

0134

1 A. Yes.

2 Q. As I understand your testimony, you're
3 recommending a salary for Mr. Fox at \$24,000; is that
4 correct?

5 A. Yes.

6 Q. And at page 11 of your testimony, lines 8
7 through 10, let me know when you're there.

8 A. I'm there.

9 Q. You talk about the reason Mr. Fox's salary
10 was set at \$24,000; is that correct?

11 A. Yes, from the order Docket Number UW-991392.

12 Q. And you list three, there are three reasons
13 listed there, poor management, poor customer service,
14 and poor service quality; is that correct?

15 A. Yes.

16 Q. Do you have Exhibit 32, which was a
17 cross-exhibit for Mr. Eckhardt?

18 MS. WATSON: I don't believe he does.

19 MR. FINNIGAN: May I approach the witness?

20 JUDGE CAILLE: Yes.

21 BY MR. FINNIGAN:

22 Q. Mr. Ward, you would agree that Exhibit 32
23 shows that there has been improvement in customer
24 service and service quality?

25 A. I would agree it talks about the number of

0135

1 complaints as being reduced, yes.

2 Q. And you would agree that if service quality
3 has improved, you generally get less service complaints;
4 is that correct?

5 A. I would generally agree to that, yes.

6 Q. And you would agree that generally if you're
7 providing better customer service, the number of service
8 related complaints, excuse me, the number of complaints
9 that are other than service related complaints decrease
10 -- I better start that question over again, I'm so
11 messed up on that one.

12 Mr. Ward, you would agree that to the extent
13 that complaints decrease related to non-service quality
14 items that that's an indicator that the company is
15 taking better care of its customers?

16 A. Yes, it would appear that way.

17 Q. Would you look at Exhibit 64, please. That's
18 your results of operations statement to your rebuttal
19 testimony.

20 A. Yes.

21 Q. Now I would like you to take a look at
22 columns B and F as it relates to line 22. Do you see
23 that?

24 A. Yes.

25 Q. And if you compare those two numbers, the

0136

1 adjusted per books number for this test year is \$359
2 higher than it was in the UM-010961 proceeding; is that
3 correct?

4 A. Subject to check, yes.

5 Q. And if you go down to the next line,
6 contractual legal, and compare those same two columns,
7 there appears to be a fairly substantial decrease; is
8 that correct?

9 A. Yes.

10 Q. Wouldn't that suggest that the company is
11 becoming more efficient in its use of outside
12 consultants?

13 A. In comparison from the last case, column B,
14 to this case, column F, it would appear that way, yes.

15 Q. Would you look at Exhibit 94, please. 94 is
16 the three page exhibit on compensation comparisons. Do
17 you have that?

18 A. Yes, I do.

19 Q. Okay. And I will ask you to accept subject
20 to check that the numbers reported on Exhibit 94
21 accurately reflect the numbers on the results of
22 operation pages and the calculated percentages derived
23 therefrom.

24 A. Yes, I will subject to check.

25 Q. And if you will go to page 2 of Exhibit 94,

0137

1 do you have that?

2 A. Yes, I do.

3 Q. You would agree that if Mr. Fox receives a
4 salary of \$60,000, American Water would still be in the
5 bottom one quarter of those companies on cost per
6 customer?

7 A. Subject to check, yes, I would accept that.

8 Q. And if we go to page 3, would you accept
9 subject to check that if Mr. Fox is paid a salary of
10 \$60,000, American Water would be in the bottom one
11 quarter in terms of salary as a percentage of revenue?

12 A. Yes, subject to check I will accept that.

13 Q. Okay. And, Mr. Ward, on the pro forma
14 number, American Water pro forma number that we're using
15 as revenue, you recognize that as a result of the
16 company's position, the \$800,000?

17 A. I'm not sure where you're referring to at
18 this point.

19 Q. If you look at the entry on page 3 for
20 American Water-pro forma.

21 A. Page 3 of?

22 Q. Exhibit --

23 A. 94?

24 Q. -- 94.

25 A. Yes, I have it.

0138

1 Q. And the base for that calculation is
2 \$800,000; do you see that?

3 A. Yes.

4 Q. And do you recognize that as the company's
5 recommendation in this case approximately?

6 A. Yes, approximately.

7 Q. And your recommendation in this case is
8 revenue at \$518,692; is that correct?

9 A. Yes.

10 Q. Would you accept subject to check that if the
11 only company position that's accepted is that Mr. Fox
12 has his -- gets \$60,000 in salary that that would change
13 your revenue figure to \$554,692, the difference between
14 \$24,000 and \$60,000?

15 A. Yes, subject to check.

16 Q. Okay. And if we use that as the revenue
17 base, I will ask you to accept subject to check that
18 American Water officer salaries percent of revenue would
19 be 10.82%, which would place it still within the bottom
20 one half of the companies?

21 A. Subject to check I will accept that.

22 MR. FINNIGAN: Your Honor, I'm at a very good
23 stopping point, and I think we're going to have probably
24 just an hour or so with Mr. Ward after lunch.

25 JUDGE CAILLE: All right, does anyone object

0139

1 to our taking a lunch recess now?

2 MS. WATSON: No.

3 JUDGE CAILLE: All right, then let's do that,
4 and how about if we come back at 1:15.

5 (Luncheon recess taken at 12:00 p.m.)

6

7 A F T E R N O O N S E S S I O N

8 (1:20 p.m.)

9 JUDGE CAILLE: We have reconvened after our
10 lunch recess, and we're in the process of
11 cross-examination of Mr. Ward.

12 And, Mr. Finnigan, you may proceed.

13 MR. FINNIGAN: Thank you.

14

15 C R O S S - E X A M I N A T I O N

16 BY MR. FINNIGAN:

17 Q. Mr. Ward, I wanted to go very briefly back to
18 a couple points we covered this morning. The first is
19 on employee salaries. Would you agree that employees
20 should receive cost of living increases from year to
21 year?

22 A. Depending upon economic conditions, yes.

23 Q. And by cost of living increases, I mean to
24 match the rate of inflation.

25 A. Yes.

0140

1 Q. If the company were to institute cost of
2 living increases for its existing employees and had
3 those in place prior to this case closing, prior to the
4 briefing in this case being finished, would that be
5 sufficiently known and measurable in your opinion?

6 A. Yes, but it would be outside the test period,
7 so we would have to look at it in more detail.

8 Q. It wouldn't be something you could just
9 accept as a pro forma adjustment?

10 A. I would have to review it.

11 Q. Then turning to Mr. Fox's salary, would you
12 take a look at Exhibit 94, please.

13 A. I have it.

14 Q. Would you look at on page 2 the entry for
15 North Bainbridge; do you see that? It's about the
16 fourth entry down.

17 A. On page 2 it's the second entry down.

18 Q. I'm sorry, I was on page 3, you're correct,
19 my pages were reversed. On page 2 it's the second entry
20 down; do you have that?

21 A. Yes.

22 Q. Are you familiar with the ownership structure
23 of North Bainbridge as it existed at that time in the
24 year 2000?

25 A. I believe I would be from memory.

0141

1 Q. Okay. You are aware that Arlene Butoe was
2 one of the shareholders?

3 A. Yes, I believe so.

4 Q. And that she became an officer of the
5 company?

6 A. I don't recall that.

7 Q. Okay. You would agree that her salary is not
8 reflected in that \$21,795, that was Mr. Rodale?

9 A. I don't know what's reflected in this sheet
10 that you have prepared.

11 Q. Would you accept subject to check that that
12 did not include Ms. Butoe's salary?

13 A. We're referring to the \$21,795 as officer
14 salary only?

15 Q. Correct.

16 A. I will accept that subject to check.

17 Q. Thank you. Going now to a new subject, at
18 pages 13 and 14 of your testimony, and I'm referring to
19 Exhibit 41T, you discuss the Group B inspections.

20 JUDGE CAILLE: I'm sorry, would you give me
21 that reference again.

22 MR. FINNIGAN: Pages 13 and 14 of Exhibit
23 41T.

24 JUDGE CAILLE: Thank you.

25 BY MR. FINNIGAN:

0142

1 Q. At that point, you are discussing the Group B
2 inspections; is that correct?

3 A. Yes.

4 Q. Okay.

5 A. Well, no.

6 Q. No?

7 A. I apologize. It talks about assessments,
8 permitting fees at the top of page 13. Bottom of page
9 13 talks about site assessments.

10 Q. Okay.

11 A. Are we only referring to the bottom portion?

12 Q. Yes, we're referring to the material that
13 starts at essentially the middle of page 13 and carries
14 over to page 14.

15 A. Yes, I'm talking about the site assessments,
16 Group B.

17 Q. Okay. You would agree that this is a new
18 requirement?

19 A. To my knowledge, yes.

20 Q. Okay. And you understand that Ms. Parker has
21 changed her recommendation in this matter based on
22 Ms. Lahmann's testimony?

23 A. No, I'm not aware of that.

24 Q. Have you had a chance to review the response
25 to the Bench request that the company submitted?

0143

1 A. No, I did not.

2 Q. Okay. Ms. Lahmann testified that these
3 inspections should take one to two hours per system plus
4 driving time; do you remember that?

5 A. Yes.

6 Q. Just mathematically, that means it's about
7 1.5, 1 1/2 hours on average plus driving time?

8 A. If we're assuming a single system site
9 assessment, yes.

10 Q. If the company were to recommend a 2 hour
11 proposal, that would leave it essentially 15 minutes
12 driving time to the system and 15 minutes driving time
13 from the system on average.

14 A. Okay.

15 Q. Do you agree with that?

16 A. Yes.

17 Q. Okay. And you would agree that for many of
18 the company's systems, they can't be reached in a 15
19 minute driving time; is that correct? For example, it's
20 not feasible to get from the company's offices in
21 Southern Lewis County to systems in Pierce County in 15
22 minutes?

23 A. Once again, assuming you are visiting only
24 one system at a time, yes.

25 Q. And it wouldn't even be feasible to get from

0144

1 the company's offices to systems in Thurston County in
2 15 minutes; is that correct?

3 A. Once again, assuming only one visit, one site
4 assessment, yes.

5 Q. And for some of the systems that are
6 together, are joined together or near one another, you
7 could combine some of that time, your visits, so you
8 only had to drive once instead of twice, correct?

9 A. Yes.

10 Q. Would you agree that on average then, a two
11 hour per system taking into account some systems will
12 take longer to get to but sometimes you can do two or
13 three systems at a time, that a two hour per system
14 estimate seems reasonable?

15 A. Subject to check, yes, as to location of all
16 and how many there are that are actually combined,
17 subject to check I would accept that.

18 Q. Okay. At pages 15 and 16 of Exhibit 41T,
19 you're talking about the rate case costs, correct?

20 A. Yes.

21 Q. And would you take a look at Exhibits 91, 92,
22 and 96. And to help you out, that's my declaration,
23 Ms. Parker's declaration, and the invoice from V.R. Fox
24 Company.

25 A. It was 91, 92, and 96?

0145

1 Q. Correct.

2 A. Yes, I have those three.

3 Q. Okay. And on Exhibit 91, the estimate for
4 legal fees is approximately \$33,000; is that correct, if
5 you look at page 2 of that exhibit?

6 A. Subject to check of the math, yes.

7 Q. Approximately \$33,000?

8 A. Yes.

9 Q. Okay. And if you look at page 2 of Exhibit
10 92, the estimate for accounting fees is just under
11 \$16,000; is that correct?

12 A. Yes.

13 Q. And then the amount of the invoice on Exhibit
14 96 is \$936; is that correct?

15 A. Yes.

16 Q. Taken together, that comes to a rate case
17 cost of approximately \$50,000?

18 A. Yes.

19 MR. FINNIGAN: Your Honor, I would like to
20 ask the Commission to take official notice of the
21 Rainier View rate case, UW-010877, the Sixth
22 Supplemental Order at Paragraph 64. And what happened
23 in that case is the company was allowed to provide a
24 more current estimate of its rate case cost in
25 recognition that those are hard to predict in advance

0146

1 and that the further you are in the case, the more
2 accurate your numbers can become. And we would ask you
3 to take notice of the Commission's treatment of rate
4 case expenses as it occurred in that case.

5 JUDGE CAILLE: I will take official notice of
6 that.

7 BY MR. FINNIGAN:

8 Q. Mr. Ward, now turning to page 26 of your
9 testimony, which is Exhibit 41T. If there are any
10 doubts, I don't have any questions for you for your
11 initial testimony, so. The question and answer that is
12 set forth in the middle of the page, I believe that sets
13 forth your recommendation as to how the proceeds from
14 the gain on the View Royal sale should be handled?

15 A. This is one approach, yes.

16 Q. And you've got a couple of other alternatives
17 in your testimony, don't you?

18 A. I believe so, yes.

19 Q. If you go to page 28 of your testimony.

20 A. Yes.

21 Q. And in the question and answer that appears
22 in the middle of the page, you report that the rate base
23 for View Royal at the time it was purchased by American
24 Water was \$10,192; is that correct?

25 A. Yes.

0147

1 Q. And that the rate base when it was sold was
2 \$164,450; is that correct?

3 A. Yes.

4 Q. And do you agree that American Water owned
5 that system for approximately five years?

6 A. I believe so, yes.

7 Q. So the change in rate base reflects some
8 improvements that American Water made to the system
9 during that five year period of time?

10 A. Yes.

11 Q. There are also some improvements to the View
12 Royal system during that period that were funded through
13 the surcharge amount; is that correct?

14 A. Yes.

15 Q. But those would have been classified as
16 contribution in aid of construction and not part of the
17 rate base; is that correct?

18 A. Yes.

19 Q. Would you agree that American Water paid more
20 than \$164,450 for the View Royal system?

21 A. At what point are you talking that they paid
22 this amount of money?

23 Q. When they purchased the system.

24 A. Yes, I believe they did purchase it for more
25 than \$164,450.

0148

1 Q. Do you know the amount of the purchase price?

2 A. I believe it was around \$175,000.

3 Q. Would you turn to page 40 of your testimony,
4 please.

5 A. Yes.

6 Q. At line 6 you state that it is likely that
7 American Water does not owe tax for the docket account
8 funds; do you see that sentence?

9 A. Yes.

10 Q. If the company were to file an amended return
11 to get a refund of the tax amounts paid for those docket
12 account funds and if the IRS disagrees with that
13 amendment and conducts an audit and assesses taxes and
14 interest and penalties, would it be Commission Staff's
15 recommendation that those amounts are legitimate costs
16 of operation of the company to be recovered from rate
17 payers?

18 A. I would like to refer back to my testimony on
19 page 26 where I offer one alternative on proceeds of
20 sale starting on line 5 through line 11.

21 Q. I don't see -- oh, go ahead, finish your
22 answer.

23 A. Would they be a responsibility of the rate
24 payer I believe was your question, or would you like to
25 restate the question?

0149

1 Q. I'm talking about the docket account, not
2 View Royal.

3 A. Oh, excuse me.

4 Q. On page 40 you're discussing the docket
5 account. My question is, you have stated a probability
6 that it's likely that the company doesn't owe tax
7 related to the docket account. So my question to you
8 is, if the company files an amended return to recover
9 the amounts of tax paid in association with the docket
10 account, would Commission Staff recommend that should
11 the IRS conduct an audit and assess taxes and penalties
12 and interest related to the docket account funds, that
13 those items would be legitimate operating expenses of
14 the company to be paid by the customers of the company?

15 A. I don't know.

16 Q. If you don't know, doesn't that place the
17 company in a fairly awkward position?

18 A. I don't know the answer to that one either.
19 I'm not a tax accountant.

20 Q. Do you agree that the amount of the funds --
21 I will start that question over again.

22 Would you agree that the per customer amount
23 that is to be deposited in the docket account is not
24 separately stated in the tariff but is instead part of
25 the general rate?

0150

1 A. Yes.

2 Q. Do you agree that there is a difference of
3 opinion among Commission -- I'm having trouble, it's the
4 lunch hour I guess.

5 Starting over, would you agree that there is
6 a difference of opinion within the Commission Staff as
7 to how to handle net operating loss carry forward?

8 A. Not that I'm aware of in the water section,
9 no.

10 Q. Okay. At page 49 of your testimony, you have
11 a recommendation related to the docket account; do you
12 see that beginning in the middle of the page?

13 A. Yes.

14 Q. And as I understand your recommendation, that
15 one half of the total of \$125,113 is to be used each
16 year for two years to offset employee expense; is that
17 correct?

18 A. Essentially, yes.

19 Q. Do you agree that physically there is \$51,762
20 in the docket account today?

21 A. Yes.

22 Q. And that mathematically if this is disbursed
23 over two years the amount is \$25,881 per year?

24 A. Of actual cash?

25 Q. Yes.

0151

1 A. Yes.

2 Q. And what you're proposing is to credit
3 against employee expense \$62,557 per year; is that
4 correct?

5 A. Yes.

6 Q. Would you agree that that creates, that
7 difference creates a cash flow issue of \$36,676 per
8 year?

9 A. If there is no source for that cash, yes.

10 Q. Would you take a look at Exhibit 93, please.

11 A. Yes.

12 Q. Would you agree that for the first quarter of
13 2004, American Water was not able to cover its expenses
14 with its revenues?

15 A. According to this information provided, yes.

16 Q. Do you have any reason to suspect that this
17 information is incorrect?

18 A. Not at this time, no.

19 MR. FINNIGAN: Your Honor, we have another
20 instance in which we have identical exhibits, and those
21 are 90 and 138, and since 138 is paginated, we have
22 agreed to use that exhibit.

23 JUDGE CAILLE: All right, thank you.

24 BY MR. FINNIGAN:

25 Q. Mr. Ward, could you look at Exhibit 138,

0152

1 please.

2 A. Yes, I have that.

3 Q. And do you recognize that as the company's
4 response to Staff Data Request Number 27?

5 A. Yes.

6 Q. And the substance of the exhibit is
7 correspondence from First Community Bank, now Venture
8 Bank, concerning the debt obligations of American Water
9 Resources; is that correct?

10 A. Yes.

11 Q. And it also includes a brief description of
12 the verbal conversations on the first page of Exhibit
13 90; is that correct?

14 A. Yes.

15 MR. FINNIGAN: If I may have a moment.

16 Now the hard part, I've got to remember what
17 these exhibit numbers are. I will offer Exhibit 86, no,
18 that's wrong, I got it wrong to start with.

19 JUDGE CAILLE: 86 I think is right.

20 MR. FINNIGAN: No, 86 is one of those
21 duplicate ones.

22 JUDGE CAILLE: I thought 83 is the duplicate.

23 MR. FINNIGAN: Oh, I'm sorry, yes, so I will
24 offer Exhibit 86, Exhibit 88, Exhibit 94, Exhibit 142,
25 Exhibit 91, 92, 96, and Exhibit 138, and if I didn't say

0153

1 it --

2 JUDGE CAILLE: You did not mention 89 or 95.

3 MR. FINNIGAN: Pardon, I'm sorry?

4 JUDGE CAILLE: 89 or 95.

5 MR. FINNIGAN: 95 is a duplicate exhibit,
6 it's the same as Exhibit 52, which is already in the
7 record.

8 And the other one?

9 JUDGE CAILLE: The other one was 89.

10 MR. FINNIGAN: And that is an exhibit to
11 Mr. Ward's testimony, so that would be duplicative
12 again.

13 JUDGE CAILLE: Do you happen to know which --

14 MR. FINNIGAN: I'm trying to remember. This
15 is the, Mr. Ward maybe could help, this is the figures
16 for the acquisition adjustment, I believe you included
17 some of that material as --

18 JUDGE CAILLE: I have it described as AWR
19 response to Staff Data Request Number 23.

20 MR. FINNIGAN: Correct.

21 MS. WATSON: It looks like that one is
22 Exhibit 67.

23 MR. FINNIGAN: I believe I saw it in there,
24 yes, it is, it's listed in the exhibit list as the same
25 document.

0154

1 JUDGE CAILLE: 138 and 142 are under Mr. Fox,
2 right?

3 MR. FINNIGAN: Correct, 138 and 142 would be
4 cross-exhibits for Mr. Fox.

5 JUDGE CAILLE: Is there any objection?

6 MS. WATSON: No, objection.

7 JUDGE CAILLE: All right, then let me just
8 make sure I've got this right. Exhibits 86, 88, 91, 92,
9 93, 94, I don't remember, was 96, 96 was offered too,
10 138 and 142 are admitted into the record.

11 MR. FINNIGAN: Thank you, Your Honor.

12 And that completes my cross of Mr. Ward.

13 JUDGE CAILLE: Okay I have a few questions,
14 Mr. Ward.

15 Let's go off the record just a moment.

16 (Discussion off the record.)

17 JUDGE CAILLE: I am going to mark as an
18 exhibit Staff's Response to a Bench Request dated April
19 19th, 2004, as Exhibit 200. I'm just going to mark the
20 entire thing, it's the eight questions, as one exhibit,
21 and I will be referring to that in my questions.

22 MR. FINNIGAN: Your Honor, maybe I was naive,
23 I assumed since they were Bench Requests that both
24 Staff's response and the company's response became part
25 of the record too.

0155

1 JUDGE CAILLE: Sometimes they do, and
2 sometimes they don't. It depends on whether we actually
3 -- sometimes this happens after we look at the case. In
4 this case we're looking at it earlier, so I am also
5 going to mark the company's as 201, and we will have
6 that admitted as well.

7 MR. FINNIGAN: Thank you.

8

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

10 BY JUDGE CAILLE:

11 Q. All right, let me explain that my accounting
12 advisor and myself are having some troubles with some of
13 the math and hope that you will be able to enlighten us,
14 Mr. Ward. And please bear with me, because Mr. Damon
15 may be whispering in my ear so that I get these
16 questions correct.

17 So Bench Request Number 1 asked:

18 To the extent that Exhibit Number 64
19 does not provide a presentation that
20 foot and crossfoot, please provide
21 exhibits in that format.

22 Staff did not really respond to that as the
23 company did. I just want to ask, do you, Mr. Ward,
24 state that your response to the Bench request does -- do
25 your exhibits now comply with that?

0156

1 A. To the best of my knowledge, yes.

2 Q. Okay. Would you look at your Attachment A on
3 the first page, and column E.

4 A. Yes.

5 Q. Now as indicated on line 42, operating
6 expenses, is the sum of lines 15 -- so that's the sum of
7 lines 15 through 41; is that correct?

8 A. It should be, yes.

9 Q. Okay. In column E between lines 15 and 41,
10 four numbers appear, and they're all negative amounts.
11 On line 22 a negative \$3,826, on line 23 a negative
12 \$2,902, on line 29 a negative \$2,597, and finally on
13 line 41 the figure of a negative \$37,364 appears. Did
14 you follow that?

15 A. Yes, I did.

16 Q. Okay. Your Attachment A indicates that these
17 four numbers add to the amount on line 42, operating
18 expenses, for a total of a negative \$9,325. Now the
19 question is, if one of the four numbers is a negative
20 \$37,364 and all the other three numbers are negative
21 amounts, how can that sum to negative \$9,325?

22 A. I don't know, it shouldn't. The amount in
23 column E, line 42, is wrong.

24 Q. Okay. We are encountering a similar problem
25 with column H, lines 15 through 41. Now if you would

0157

1 look at the same page, line 55, just so my inflection is
2 correct, we are encountering the same problem with
3 column H in lines 15 through 41, so we would like to
4 draw your attention to that as well.

5 Now if you would look at the same page, line
6 55, the acquisition adjustment net, for the test period
7 we start out with a negative amount of \$174,427 in
8 column C; is that correct?

9 A. Yes.

10 Q. Then in column H Staff makes adjustment RB1,
11 which is a negative \$2,547, which gives us an amount in
12 the final right-hand column, that's column I, of a
13 negative \$176,974; is that correct?

14 A. According to the spreadsheet, yes.

15 Q. Okay. Now if you turn to the next page and
16 look again at line 55, there are no adjustments shown
17 until column Q, which is a Staff adjustment R11, which
18 is a positive \$176,974, correct?

19 A. Yes.

20 Q. Okay. So if we add the negative \$176,974
21 from the first page in column I to the positive amount
22 on page 2, column Q, which is a positive \$176,974, isn't
23 the result zero?

24 A. Yes, it would be, according to the math.

25 Q. I guess can you explain?

0158

1 A. The math or the rationale?

2 Q. Well, I guess both so that we can understand.

3 Do you still agree with this exhibit and how it --

4 A. Yes.

5 Q. Okay, then we need to understand.

6 A. Line 55 discusses the acquisition adjustment.
7 Historically and it was Staff's original position that
8 the acquisition adjustment remain as it was, which was a
9 negative amount to rate base. In Staff's rebuttal, we
10 have changed that to include the acquisition as a
11 positive amount to rate base. R11 makes that adjustment
12 without consideration of what came prior to that.

13 Q. Okay, now I have another set of questions.
14 Let's see, if you will look at your responses to Bench
15 Request Number 1, again Attachment A, page 1, and my
16 interest is in the rate base column C, line 58, and the
17 figure is \$841,448. This is AWR's rate base before
18 consideration of any of your adjustments; is that
19 correct?

20 A. According to the information from the test
21 period, yes.

22 Q. Now if you look at Attachment B, page 1, you
23 show total restating adjustments of a negative \$190,526,
24 correct?

25 A. Column B, line 57?

0159

1 Q. Yes.

2 A. Yes.

3 Q. Now go to page 2 of Attachment B, there you
4 show no pro forma adjustments to rate base, correct?

5 A. Correct.

6 Q. Now go to page 3 of Attachment B, and here
7 you propose what you characterize as rate base
8 adjustments or RB adjustments; is that correct?

9 A. Yes, and Staff's adjustment.

10 Q. And you show total rate base adjustments of a
11 negative \$549,042, correct?

12 A. Yes.

13 Q. Line 57?

14 A. Yes, column B, line 57.

15 Q. So if we take the starting figure of \$841,448
16 on Attachment A and we add negative restating
17 adjustments of \$190,526 and add the negative \$549,042,
18 subject to check, the adjusted rate base becomes
19 \$101,881?

20 A. I will have to accept that subject to check
21 with those numbers.

22 Q. However, on Attachment A, page 2, line 58,
23 rate base, in column R, you show a different amount of
24 \$546,514; is that correct?

25 A. Yes.

0160

1 JUDGE CAILLE: I'm going to show you another
2 exhibit, Mr. Ward. This is some tax rates for 2003, and
3 I am marking this as Exhibit 202.

4 BY JUDGE CAILLE:

5 Q. Mr. Ward, are the rates that are represented
6 in Exhibit 202 the tax rates for 2003?

7 A. It would appear so, yes.

8 Q. And are these the rates that you used, you
9 assumed in this case?

10 A. No, they are not.

11 Q. Could you tell us what you did assume?

12 A. To begin with, this test period is a split
13 test period where we had some income in the 2002 time
14 frame and some in the 2003. This test period also tried
15 to incorporate the docket account gain on sale. Staff
16 attempted to come up with a single tax rate.

17 JUDGE CAILLE: You know, Mr. Ward, can we get
18 that calculation as a Bench request?

19 THE WITNESS: Yes.

20 JUDGE CAILLE: Okay, and we will identify
21 that as Exhibit 203.

22 At this time, I'm going to distribute two
23 more Bench Requests, 9 and 10, and I'm going to call
24 those together as Exhibit 204, and we'll have to find
25 them. This is in an effort so that when we write the

0161

1 order, hopefully we will not have to be bothering you
2 with Bench requests if we can not figure out the
3 numbers, so.

4 All right, I have completed my questions, and
5 do you want to take a five minute break or a ten minute
6 break before you do -- are you going to do redirect?

7 MS. WATSON: I do have a few questions.
8 Considering the warmth of the room, maybe a break would
9 be nice.

10 JUDGE CAILLE: Okay, let's take about a ten
11 minute break.

12 MS. WATSON: I did have a question about the
13 Bench request though that you posed to Staff.

14 JUDGE CAILLE: Do we want to call it Bench
15 Request 11 or just by Exhibit Number 203, or how do you
16 want us to designate that?

17 JUDGE CAILLE: You know, we should probably
18 call that Bench Request 11, that was number 203.

19 MS. WATSON: And for clarification's sake,
20 that was Staff's calculation of the tax rate?

21 JUDGE CAILLE: Right.

22 MS. WATSON: Okay.

23 JUDGE CAILLE: Okay, let's take a ten minute
24 break.

25 (Recess taken.)

0162

1 MR. FINNIGAN: During the break, Ms. Parker
2 told me she had found an error in our response to the
3 Bench Request 1 through 8 in that the interest
4 synchronization page did not reflect the new interest
5 rates for the debt, and so she is going to provide a
6 replacement page.

7 JUDGE CAILLE: Thank you.

8 All right, any redirect?

9 MS. WATSON: Yes, Your Honor.

10

11 R E D I R E C T E X A M I N A T I O N

12 BY MS. WATSON:

13 Q. Mr. Ward, you were asked a number of
14 questions about the Birchfield Water System, and in that
15 line of questioning you were asked to refer to Exhibit
16 Number 88. Do you have that in front of you?

17 A. Yes.

18 Q. Do you see the date that appears on that
19 exhibit?

20 A. There is one date, upper right-hand corner,
21 above accumulated depreciation that says 12-31-2002.

22 Q. Do you know if the items listed on that page
23 were consistent during other time periods as well?

24 A. I would have to go back and look at that; I
25 don't know.

0163

1 Q. There's been a number of questions regarding
2 what Birchfield consists of, and there's been a little
3 uncertainty with regard to what Birchfield is. Would
4 you explain that uncertainty from Staff's point of view?

5 A. From Staff's point of view, when Mr. Fox
6 created the Lewis County Utility Company, there were
7 some systems in existence at that time. One of the
8 water systems in existence was Birchfield. I believe
9 it's company number 207. As we have gone forward, that
10 water system has remained with the company until it was
11 sold last -- or that water system remained with the
12 company until it was sold last year.

13 During this time, we have had conversations
14 with Department of Health, we have looked at Department
15 of Health records, we have also looked at Department of
16 Ecology records that always referred to Birchfield as
17 being one water system. That water system had customers
18 on it since 1996 when Lewis County Utility Corp. was
19 formed, and it had customers when the water system was
20 sold. In order to supply water to those customers, you
21 do need infrastructure such as wells, pumps, piping,
22 storage. Staff is under the impression that it was
23 always one water system.

24 Q. You mentioned a number 207, what is that
25 number?

0164

1 A. That was a company identifier assigned to
2 that particular system. That was their way of tracking
3 these things.

4 Q. And you listed information from Department of
5 Ecology and Department of Health. Were there Commission
6 records that you were able to review?

7 A. Yes. I don't have the exhibit number off the
8 top of my head, but there was one where we did have an
9 asset listing or depreciation schedule and also another
10 listing of water systems assigned to Lewis County.

11 Q. Are you referring to Exhibit 76 at least for
12 one of those?

13 A. Yes, Exhibit 76.

14 MR. FINNIGAN: Could you hold on for a second
15 until I find Exhibit 76, please.

16 Okay, thank you.

17 Q. Would you explain what is contained in
18 Exhibit 76?

19 A. Exhibit 76 has after the cover page a
20 schedule showing the water systems in Lewis County and
21 some other information that the company had gathered on
22 those water systems. It talks about the water systems,
23 location, the source, whether they were filtered,
24 unfiltered, some of the information they had on testing.

25 On line 7 of the schedule, it talks about

0165

1 water system number 207, Birchfield, and it talks about
2 on that it is Birchfield VS01, Birchfield GS02,
3 Birchfield WS03. Staff's understanding that the SO
4 number represents the source number. From this
5 schedule, Staff would conclude that there are three
6 wells associated with the Birchfield Water System.
7 Lower left-hand corner of this spreadsheet, the date
8 that this was prepared was June 3rd, 1998.

9 Q. And from where did Staff obtain this
10 document?

11 A. I believe it was provided in the rate case in
12 1998 along with asset listing and depreciation schedule,
13 which is the rest of this exhibit, which provides more
14 detail of some of the assets the company does have.

15 Q. With regard to the detail that's shown in the
16 rest of Exhibit 76, would you explain what can and can't
17 be derived from those pages?

18 A. What can be derived is the assets that they
19 have listed, the account numbers that they assigned them
20 to, when the item went into service, and what
21 depreciation rates or schedules or amounts the company
22 used each year going forward. You can derive that from
23 here. I don't believe you can derive that this is a
24 complete listing of every single asset owned by the
25 company.

0166

1 Q. Why is that?

2 A. Because some of the assets are actually
3 combined where it talks about wells or structures or
4 improvements. It doesn't list that, for instance, one
5 of those improvements might have been a new pump house
6 with a new floor with a new roof. It might simply list
7 pump house.

8 Q. You spoke a little earlier about documents
9 that you had received from Department of Health and
10 Department of Ecology. With regard to the Department of
11 Ecology documents, what did you receive? If it's
12 helpful, that's Exhibit 77.

13 A. That is helpful, that was right in front of
14 me. What we received here is a review and a printout of
15 one of the files that the Department of Ecology had on
16 the Birchfield wells. Department of Ecology is
17 interested in wells, Department of Health is interested
18 in water systems. So the Department of Ecology records
19 would show three wells. Each of those wells started off
20 being owned by Mr. Fox, were transferred to Lewis County
21 Utility Corporation, subsequently transferred to
22 American Water Resources.

23 Q. And how many wells were identified with
24 Birchfield?

25 A. Staff was able to find three wells were

0167

1 identified with the Birchfield Water System.

2 Q. You were asked questions about Exhibit 142.

3 Do you remember those, that line of questions?

4 A. Yes, this is in response to Staff Data or
5 subsequent to Staff Data Request I believe it was 21.

6 Q. Did you have a chance to review the
7 supplemental data submitted by AWR in response to that
8 data request?

9 A. Yes, I did. I looked at each of the invoices
10 that was provided and put them on a spreadsheet to
11 determine what were some of the sums and totals of the
12 information that we had.

13 Q. And that spreadsheet has been marked as a
14 cross-exhibit for Mr. Fox, Number 143; do you have that
15 handy?

16 A. Yes, I do.

17 Q. Which invoices did you total?

18 A. This spreadsheet totalled the invoices that
19 had either the name of Birchfield or if it had any
20 number associated with it that had been at some point
21 associated with Birchfield. I took this information out
22 of the purchase order number description column or place
23 on each of these invoices.

24 Q. I think that was the second step, I was
25 starting with the first step, the total number of

0168

1 invoices. There's a number of pages in Exhibit 142, and
2 maybe we should just go straight to there. The first
3 number of pages look like balance sheets, that kind of
4 thing; is that correct?

5 A. Yes.

6 Q. And then the second portion it looks like
7 there's invoices from 1999; is that correct?

8 MR. FINNIGAN: Just to correct, it's a
9 register, it's not a balance sheet.

10 MS. WATSON: Thank you, searching for the
11 right word on that one.

12 A. Yes.

13 BY MS. WATSON:

14 Q. And there's another set of invoices towards
15 the back, for example, page 164, in that area, and those
16 are invoices from '98; is that correct?

17 A. Yes.

18 Q. Did you total all of the invoices from 1999
19 and 1998?

20 A. Yes.

21 Q. And what was that total number?

22 A. I believe it was \$151,223.

23 Q. You were describing earlier that there were
24 some invoices that said Birchfield or said Birchfield
25 and a customer order number, correct?

0169

1 A. Or purchase order number, some order number,
2 yes.

3 Q. Did all of the invoices have that sort of
4 identification?

5 A. No.

6 Q. Turn to page 120 of Exhibit 142, please.
7 Are you there?

8 A. Yes.

9 Q. Is that an example of an invoice that's not
10 identified in any way?

11 A. Right.

12 Q. Of the invoices that did mention Birchfield
13 or had a customer order number that was related to
14 Birchfield, what was the total of those invoices?

15 A. Of everything related to Birchfield it was
16 \$141,240 approximately.

17 Q. Please turn to page 45 of Exhibit 142.

18 MR. FINNIGAN: Page what?

19 MS. WATSON: 45.

20 A. Yes.

21 BY MS. WATSON:

22 Q. Is that an example of an invoice that
23 identifies Birchfield?

24 A. Yes, it has it in the customer purchase order
25 number block.

0170

1 Q. Did Birchfield also appear in the customer
2 job description block on some of the invoices?

3 A. Yes, it did.

4 Q. Please turn to page 79 of Exhibit 142. I'm
5 sorry, stay on page 45 for a second. The items listed
6 on that invoice, are those items that are related to the
7 construction of a water system?

8 A. Staff does not believe so.

9 Q. Why?

10 A. Staff had called Family Northwest and talked
11 to them as to what these type of items were normally
12 used for and was told they're normally used for
13 electrical wiring under ground.

14 Q. Now please turn to page 79.

15 A. Yes.

16 Q. Are the items that are listed on that invoice
17 related to the construction of a water system?

18 A. Most of these items would appear to relate to
19 a water system, yes.

20 Q. The C-900 water pipe is an example of that?

21 A. Yes, that is a classification for a type of
22 water pipe.

23 Q. Did you total the amount of invoices that
24 seemed to relate to the construction of a water system?

25 A. No, I took a different approach. I totalled

0171

1 up the items that had the name Birchfield or related
2 number that I didn't believe belonged to Birchfield
3 Water System, and I broke that into two categories.
4 Category number one was electrical type components,
5 category number two was sewer or storm water type
6 components. I then took those totals from the total
7 amount that was registered or said Birchfield to come up
8 with the amount related to Birchfield for water system
9 items.

10 Q. What was the amount that you came up with for
11 invoices related to Birchfield sewer construction?

12 MR. FINNIGAN: I'm going to object at this
13 time. I mean the response provided by the company to
14 the data request clearly said on its face that we're
15 providing you with these invoices, many of them that do
16 not relate to a water system. I mean we disclosed it up
17 front.

18 MS. WATSON: And Staff acknowledges that.
19 Staff was able to do an analysis of the invoices to try
20 to quantify that amount. I'm not really sure what the
21 objection is that I'm responding to.

22 MR. FINNIGAN: Well, I guess the objection is
23 based on relevance. The documents were provided to show
24 in part that American Water had nothing to do with
25 paying for the expansion of the Birchfield system, and

0172

1 the amount is quite frankly irrelevant, and we're
2 wasting time is I guess what I'm mostly complaining
3 about.

4 MS. WATSON: Well, from Staff's point of
5 view, it's not irrelevant because there has been a
6 certain degree of confusion as to exactly what
7 Birchfield consists of. And Staff has made a
8 recommendation based on what appears to be a gain on
9 sale, and we have been able to uncover, we haven't
10 gotten to the number yet, but about \$78,000 worth of
11 construction that appears to have been done outside of
12 AWR. That number will alter Staff's recommendation
13 potentially. This was a data request that we had asked
14 during the course of discovery. We didn't get a
15 response, well, the supplemental response with the
16 invoices until after rebuttal testimony was filed. I
17 don't think that it's unreasonable to believe that Staff
18 would conduct an analysis to the extent that they can.
19 Staff has conducted that analysis, and the numbers are
20 relevant.

21 JUDGE CAILLE: All right, the objection is
22 overruled.

23 BY MS. WATSON:

24 Q. Mr. Ward, I'm not sure exactly where I left
25 off, so this might be a little bit of overlap of area

0173

1 that we have already covered. Would you please tell us
2 what the invoices -- I'm sorry, let me back up a little
3 bit.

4 You totalled the number of invoices that
5 seemed to be related to sewer construction for
6 Birchfield, correct?

7 A. Yes, I did.

8 Q. What was that total?

9 A. \$141,240.

10 Q. I'm sorry, the sewer construction.

11 A. Oh, sewer only. Sewer only was for the two
12 years of '98 and '99 was \$30,597.

13 Q. And what was the total for the Birchfield
14 electrical construction?

15 A. For the two years of 1998 and 1999 it was
16 \$32,214.

17 Q. And you testified earlier that you subtracted
18 the amount for the electrical construction and sewer
19 construction from the total amount that appeared to be
20 related to Birchfield; is that correct?

21 A. Yes.

22 Q. And what was the number that you came up
23 with?

24 A. Remaining for the Birchfield Water System
25 \$78,428.

0174

1 Q. You were asked some questions about the cash
2 flow of the company and whether revenues covered certain
3 expenses during certain months. Do you remember that
4 line of questioning?

5 A. Yes, I do.

6 Q. I believe you referred to Exhibit 93; do you
7 have that in front of you?

8 A. Yes.

9 Q. Is the revenue that a water company receives
10 throughout the year constant, or is it cyclical?

11 A. It's cyclical.

12 Q. Please explain that.

13 A. Typically a water company receives revenue
14 from several sources. Most water companies today have
15 meters. The meters have a base charge which is the same
16 each month. They also have a usage charge which varies
17 according to the usage of the customers. Typical
18 patterns are customers use less water in the wintertime,
19 more water in the summertime. Thus revenues in the
20 wintertime would be lower, revenues in the summertime
21 would be higher if customers were using more water.

22 Q. And in Exhibit 93, is the time period shown
23 there a high water use or a low water use time period?

24 A. Exhibit 93 shows January through March of
25 2004. Staff considers that typically a low use period.

0175

1 Q. How does a water company cover its expenses
2 during a low use period?

3 A. Typically water companies will take some of
4 the excess revenues generated in the summertime and bank
5 those for wintertime.

6 Q. You were asked questions about a cost of
7 living adjustment; do you remember that line of
8 questioning?

9 A. Yes.

10 Q. To your knowledge, do all water companies
11 increase employee salaries every year?

12 A. No, they do not.

13 Q. Please explain.

14 A. Some water companies remain on a fixed budget
15 for things of that nature. They don't give pay raises
16 each year simply based on cost of inflation or some
17 other factor they may use.

18 Q. You were asked a few questions about the tax
19 liability on the docket account funds. Do you remember
20 that line of questioning?

21 A. Yes.

22 Q. And on page 39 of your testimony, lines 14
23 through 16, you testified that the shareholders should
24 bear the liability, and I believe you're talking there
25 about the tax liability; is that correct?

0176

1 A. Yes.

2 Q. If AWR files an amended tax return, does that
3 change your recommendation as to who should bear any
4 liabilities resulting?

5 A. No, it does not.

6 MS. WATSON: If I can just have a moment, I
7 think I'm done, but I want to check real fast.

8 I have nothing further, thank you.

9 JUDGE CAILLE: All right, anything further,
10 Mr. Finnigan?

11 MR. FINNIGAN: Yes, just a bit.

12 JUDGE CAILLE: Okay.

13

14 R E C R O S S - E X A M I N A T I O N

15 BY MR. FINNIGAN:

16 Q. Mr. Ward, would you go back to Exhibit 76,
17 please.

18 Do you have it?

19 A. Yes.

20 Q. Is there any entry on this depreciation
21 schedule for wells for the Birchfield system that show a
22 cost?

23 A. Not in the first couple of pages, which would
24 be typically where you would find things of that asset
25 and nature.

0177

1 Q. And I will let you do that subject to check,
2 that there are no other entries for wells for the
3 Birchfield system on the remaining pages?

4 A. Subject to check, yes.

5 Q. And there's no entry there for 8 inch main or
6 12 inch main, is there, for the Birchfield system?
7 Sorry, covers more than one system?

8 A. In the places I would expect to find it, no,
9 there are not under that asset type listing.

10 Q. Would you look at page 18 of Exhibit 142.

11 A. Yes.

12 Q. And if you will look at it, it has reference
13 number 6874 for August 18th; do you see that?

14 A. About halfway down the page?

15 Q. Yes.

16 A. Yes.

17 Q. It has the name of a Mr. Mendez.

18 A. Yes.

19 Q. And the entry below that is an entry for a
20 person by the name of Sanchez Gil?

21 A. Yes.

22 Q. And two entries below that is an entry for
23 Craig Stepe?

24 A. Yes.

25 Q. And there is another entry there for Craig

0178

1 Skaggs, S-K-A-G-G-S?

2 A. Yes.

3 Q. If you go down approximately two weeks later
4 to the entries for 9-1; do you see those?

5 A. Yes.

6 Q. And there are amounts entered again for
7 Mendez, Sanchez Gil, Stepe, and Skaggs; is that correct?

8 A. Yes.

9 Q. Would it be a fair inference that those are
10 amounts paid for work done during that time period?

11 A. I don't know, they could be vendors too.

12 Q. If you saw those same names appearing
13 approximately every two weeks throughout the exhibit,
14 then the inference would probably be wages; is that
15 correct?

16 A. Yes, it would be.

17 Q. Okay. And you agree that labor is needed to
18 install mains of 8 inch and 12 inch size?

19 A. Yes.

20 MR. FINNIGAN: Okay, thank you, Mr. Ward,
21 that completes my recross.

22 JUDGE CAILLE: Anything further from Staff?

23 MS. WATSON: I only have one question.

24 JUDGE CAILLE: All right.

25 MS. WATSON: Hopefully it will be quick.

0179

1

2

R E D I R E C T E X A M I N A T I O N

3

BY MS. WATSON:

4

Q. Mr. Ward, please turn back to Exhibit 76.

5

A. Yes.

6

7

Q. Can you conclusively say that wells are not listed in there or that they don't exist in the depreciation schedule?

8

9

A. Say that again, please.

10

11

Q. Can you conclusively say that wells were not included in the depreciation schedule?

12

A. No.

13

MS. WATSON: I have nothing further.

14

15

R E C R O S S - E X A M I N A T I O N

16

BY MR. FINNIGAN:

17

18

19

20

21

Q. Again, just to make sure that the question gets answered, on a subject to check basis, you're agreeing that there are no entries for wells for the Birchfield system in this depreciation schedule; is that correct?

22

23

MS. WATSON: I will object as asked and answered.

24

25

MR. FINNIGAN: That's fine, in light of your question, I just wanted to make sure I knew where we

0180

1 stood.

2 JUDGE CAILLE: Yeah, I think I need to know
3 where we stand as well, because from the way I have
4 taken his response to your question, Ms. Watson, is a
5 response that there are no wells at all in there, or
6 perhaps he couldn't figure out if there would be wells
7 there.

8 MS. WATSON: I guess a better question would
9 be whether Mr. Ward can conclusively say whether there
10 were wells related to the Birchfield Water System that
11 were owned by AWR.

12 JUDGE CAILLE: From that exhibit, from
13 perusing that exhibit?

14 MS. WATSON: Yes.

15 A. From reading this exhibit, there's no
16 conclusive entry for a well for Birchfield.

17 JUDGE CAILLE: Mr. Finnigan, does that work
18 for you?

19 MR. FINNIGAN: That's fine.

20 JUDGE CAILLE: Okay, anything further for
21 this witness?

22 MS. WATSON: I have a set of questions, but I
23 don't quite understand them, but if I can, I think three
24 questions will get me there.

25 MR. FINNIGAN: Now we're on reredirect?

0181

1 JUDGE CAILLE: Right.

2 MR. FINNIGAN: And the only issue I asked on
3 recross was two questions on Exhibit 142, so just as
4 long as we're within the scope.

5 JUDGE CAILLE: Are we within the scope?

6 MS. WATSON: Well, that's what we were just
7 talking about, the wells.

8 JUDGE CAILLE: Oh, okay.

9 MS. WATSON: I mean if there's an objection
10 -- because I think there's probably enough in the
11 record.

12 JUDGE CAILLE: Okay.

13 MR. FINNIGAN: I would object.

14 JUDGE CAILLE: All right.

15 MS. WATSON: I will just drop it.

16 JUDGE CAILLE: All right.

17 MS. WATSON: I think we're going down a mine
18 hole here, so.

19 JUDGE CAILLE: Thank you, Mr. Ward, you're
20 excused.

21 Ms. Parker, you're up next.

22

23 Whereupon,

24 JULIA M. PARKER,

25 having been first duly sworn, was called as a witness

0182

1 herein and was examined and testified as follows:

2

3

D I R E C T E X A M I N A T I O N

4 BY MR. FINNIGAN:

5 Q. Ms. Parker, would you please state your name

6 and give us your business address.

7 A. My name is Julia M. Parker, it's P-A-R-K-E-R.

8 My business address is 627 South Market Boulevard,

9 Chehalis, Washington 98532.

10 Q. And do you have your testimony which is

11 marked as Exhibit 100T and the accompanying Exhibits 101

12 through 111?

13 A. Yes, I do.

14 Q. And were those exhibits prepared by you or

15 under your supervision and direction?

16 A. Yes, they were.

17 Q. Do you have any corrections to make to your

18 exhibits and testimony?

19 A. I do. On page 16, line 4, in updating for

20 the error made on the cost of debt, we adjusted this

21 adjustment. The first number, interest expense, would

22 be adjusted by the number should be \$9,837.

23 Q. What page are you on?

24 A. Page 16.

25 Q. Line 4?

0183

1 A. Line 4.

2 Q. In my exhibit that talks about Pierce County
3 permit costs.

4 JUDGE CAILLE: That's what it says in mine
5 too.

6 A. Mine obviously didn't print the way yours
7 did.

8 MS. WATSON: I think I have an extra copy
9 that was filed.

10 JUDGE CAILLE: That would be helpful.

11 MR. FINNIGAN: That would be helpful.

12 Off the record.

13 JUDGE CAILLE: Let's go off the record for a
14 moment.

15 (Discussion off the record.)

16 BY MR. FINNIGAN:

17 Q. So where are we now?

18 A. That first one is page 14, line 21, should
19 read interest expense be adjusted by \$9,837 to
20 synchronize the interest expense of, that number is also
21 wrong, it should be \$21,632.

22 And then on line 22 continuing to rate base,
23 that rate base number is a previous draft all together,
24 it should read \$813,247.

25 MS. WATSON: I'm sorry, on line 21 what was

0184

1 that \$9,000 number again?

2 THE WITNESS: \$9,837.

3 A. My next change is on page 16, line 23, as
4 changed in the Bench request that we have sent in, the
5 number at the end of that line should read \$5,712
6 instead of \$22,848.

7 And on page 17, line 2, the \$2,530 should be
8 changed to \$632.

9 And then my final change is page 36, line 3,
10 the weighted cost of debt should read 7.53%. And line
11 11, the average weighted cost of capital should be
12 10.41%. And those were also referenced in the Bench
13 request submitted on Friday.

14 JUDGE CAILLE: Excuse me, Mr. Finnigan.

15 Ms. Parker, would you be able to provide us
16 with a revised exhibit with those changes incorporated,
17 or has it already been provided in the Bench request?

18 THE WITNESS: The Bench request has the
19 workpapers which have those revisions in it. It's just
20 my testimony that had not been changed.

21 JUDGE CAILLE: Okay.

22 THE WITNESS: The only change was the
23 interest synchronization adjustment which I noted this
24 morning was incorrect, and we can provide that first
25 thing tomorrow.

0185

1 JUDGE CAILLE: All right, thank you.

2 BY MR. FINNIGAN:

3 Q. Just to be clear, Ms. Parker, those changes
4 were incorporated in the results of operations sheet
5 that you attached to the Bench request?

6 A. Yes, they have been.

7 Q. Okay, thank you. With those corrections, if
8 you were asked the questions contained there today,
9 would your answers be the same?

10 A. Yes, they would be.

11 MR. FINNIGAN: Ms. Parker is available for
12 cross-examination.

13 JUDGE CAILLE: Were you going to move for
14 admission --

15 MR. FINNIGAN: I will, thank you, and I will
16 offer Exhibits 100T through I believe it's 111.

17 JUDGE CAILLE: Is there any objection to the
18 admission of Exhibits 100T through 111?

19 MS. WATSON: No.

20 JUDGE CAILLE: Then they are admitted into
21 the record.

22 And Ms. Parker is available for
23 cross-examination.

24 MS. WATSON: Thank you.

25

0186

1 C R O S S - E X A M I N A T I O N

2 BY MS. WATSON:

3 Q. Good afternoon.

4 A. Good afternoon.

5 Q. Have you reviewed Staff's rebuttal testimony
6 which was filed on April 1st, 2004?

7 A. Yes, I have.

8 Q. And did you have a chance to review the
9 material submitted by Staff on April 23rd, 2004, in
10 response to the Bench request?

11 A. Just earlier today. I don't have a copy of
12 that in front of me.

13 Q. Okay, I wasn't going to ask any questions on
14 that, I just wanted to see what you reviewed.

15 Exhibit 100T is your testimony, please turn
16 to page 8. I would like you to go to lines 1 through 8.
17 With regard to revenues, Staff and AWR agree on
18 restating adjustment R1 which deals with income from
19 AWR's SMA operations; is that correct?

20 A. Yes.

21 Q. And staying on the same page, lines 9 through
22 17, Staff and AWR agree on pro forma adjustment P-1
23 which deals with the overstatement of accounts
24 receivable; is that correct?

25 A. Yes, I believe Staff changed its adjustment

0187

1 to what I proposed.

2 Q. And please turn to page 10, lines 1 through
3 9. With regard to expenses, Staff and AWR agree with
4 restating adjustment R2 which removes certain tax
5 penalties from AWR's expenses for rate making purposes,
6 correct?

7 A. Yes, I believe that adjustment is correct for
8 rate making purposes.

9 Q. And on page 10 starting at line 10 and going
10 on to the next page, line 17, Staff and AWR agree on
11 restating adjustment R3, which removes certain
12 accounting costs from AWR's expenses for rate making
13 purposes, correct?

14 A. Actually, I think Staff has a slightly
15 different number on what was provided in response to the
16 Bench request.

17 Q. I think you're right. Have you had a chance
18 to review that number?

19 A. No, I hadn't had a chance to review the
20 number.

21 Q. The theory behind the adjustment though,
22 Staff and AWR agree, it's just a matter of the exact
23 number at this point?

24 A. The theory I believe we're in agreement on,
25 it's just the number, and I believe we're very close.

0188

1 It's not a major difference, so.

2 Q. Please turn to page 11, lines 18 through 23,
3 you discuss adjustment R4; is that correct?

4 A. Yes.

5 Q. And Staff and AWR agree on adjustment R4,
6 correct?

7 A. Yes.

8 Q. Staff and AWR also agree on restating
9 adjustment R5, which is found at page 12, lines 1
10 through 6; is that correct?

11 A. Yes.

12 Q. Please turn to page 16, lines 1 through 10,
13 Staff and AWR agree on pro forma adjustment P-7,
14 correct?

15 A. Yes, I believe that's correct.

16 Q. Please turn back to page 12, line 7, starting
17 there and going on until page 14 you discuss pro forma
18 adjustment P-3, correct?

19 A. Yes, that's correct.

20 Q. And Staff and AWR do not agree with
21 adjustment P-3, correct?

22 A. That's correct, we don't agree on this
23 adjustment.

24 Q. The main difference between the Staff number
25 and the AWR number is the number of field employees; is

0189

1 that correct?

2 A. There's two differences in the pro forma
3 adjustment. One is the number of field employees, and
4 the other is the level of hours worked because of the
5 decrease in hours during the test period for all
6 employees to make it through the winter months.

7 Q. At the bottom of page 12 you seem to say that
8 AWR needs seven employees total including the manager;
9 is that a fair read of the testimony there?

10 A. Yes, that's what my testimony states.

11 Q. Please turn to page 31. At the bottom of
12 that page, line 22, your testimony states that AWR needs
13 seven employees in addition to the manager. How many
14 employees does AWR need?

15 A. I'm sorry, that was a mistake on line 22 of
16 page 31. My position is seven employees including the
17 manager.

18 Q. So that should be six employees in addition
19 to?

20 A. Yes.

21 Q. Please turn to Exhibit 104. 8 employees are
22 listed on Exhibit 104. Which employee isn't needed?

23 A. During the test period the company hired a
24 field assistant during the summer months to accompany
25 field staff and assist with certain repairs, and that is

0190

1 a partial employee. We didn't include him in the
2 projection as a full-time employee.

3 Q. Did you include that position as a partial
4 employee?

5 A. It is in the pro forma numbers as a partial
6 employee.

7 Q. Is it your understanding that Staff's
8 proposal provides for three field employees?

9 A. Yes, I believe Staff provides for three.

10 Q. AWR began operating with three field
11 employees in January of 2002; is that correct? I may
12 have the year wrong, I'm not sure if it was --

13 A. I believe it was January of 2003. I recall a
14 conflict in December of 2002 with an employee, and he
15 had to be terminated.

16 Q. And AWR continues to operate with three field
17 employees today; is that correct?

18 A. Yes. I have advised the company that there
19 just simply aren't enough funds on a month-to-month
20 basis to pay an additional employee, so I do not advise
21 hiring that additional employee at this time.

22 Q. Did AWR recruit for that additional employee?

23 A. They have not issued an actual recruitment
24 announcement in the newspaper or anything like that, but
25 they have approached me at least three times in the last

0191

1 two years saying they had the perfect person for the
2 position. And again, I have told them that if there is
3 no money to pay all of their bills as it is, it's not
4 wise to hire that position.

5 Q. Do you know where they found that person?

6 A. It's usually an associate of one of the
7 employees.

8 Q. Do you know if those people approached AWR or
9 if AWR approached that person?

10 A. I don't know that for sure.

11 Q. Please turn to page 13, lines 6 through 8,
12 you may have mentioned this person a few moments ago,
13 this was the field employee who was terminated?

14 A. Yes.

15 Q. When did this occur?

16 A. It occurred at the end of December of 2002.

17 Q. Do you know why that field employee was
18 terminated?

19 A. Not the specific issues, but insubordination
20 I believe was a major cause of the termination.

21 Q. At that time, was AWR planning on reducing
22 the number of employees as a cost saving mechanism?

23 A. At that time, AWRI was considering reducing
24 the hours of all employees as a cost cutting measure.

25 Q. But they weren't planning on reducing the

0192

1 number of employees?

2 A. No, they weren't planning on reducing the
3 number of employees as a cost cutting measure, it just
4 happened that this person needed to be terminated at the
5 same time.

6 Q. Turning back to page 13, on line 16 you
7 discuss that AWR's revenue after the sale of View Royal
8 would be reduced by \$280,000; do you see that?

9 A. Yes.

10 Q. You testified that revenue would be reduced
11 by approximately \$15,000 a month, correct?

12 A. Yes.

13 Q. Annually that would result in a decrease of
14 \$180,000, correct?

15 A. I may have made a typo here.

16 Q. Oh, that's exactly what I was going to ask
17 you next, should the number be \$180,000?

18 A. I would accept that subject to check, yes.

19 Q. But there's not an additional \$100,000
20 hanging out there somewhere?

21 A. No, I'm not aware of that. It should be
22 \$15,000 times 12.

23 Q. Okay. And also on page 13, lines 17 through
24 21, you discuss a proposal regarding the docket account
25 that AWR brought to Staff; is that correct?

0193

1 A. Which page, I'm sorry?

2 Q. Page 13.

3 A. Uh-huh.

4 Q. Lines 17 through 21.

5 A. Yes.

6 Q. In November of 2002 you submitted a letter on
7 behalf of AWR to the Commission asking the Commission to
8 reevaluate that proposal, correct?

9 A. Yes.

10 Q. I have identified Exhibit Number 140 as a
11 cross-exhibit for Mr. Fox, but I had also listed it as
12 one that I might speak with you about. Do you have a
13 copy of that exhibit?

14 A. I do not have a copy of that exhibit.

15 MS. WATSON: Mr. Finnigan, do you have one
16 that you can provide?

17 MR. FINNIGAN: I don't think so.

18 MS. WATSON: I may have one.

19 MR. FINNIGAN: I don't think I have a second
20 exhibit.

21 MS. WATSON: I actually have one other one
22 that I identified for Mr. Fox that also was one that I
23 may speak with Ms. Parker about, that one is Exhibit
24 141. May I approach the witness with these two?

25 JUDGE CAILLE: Yes, you may.

0194

1 BY MS. WATSON:

2 Q. Okay, I have just handed you what's been
3 marked as Exhibit 140. Is that a copy of the letter you
4 submitted on behalf of AWR?

5 A. Yes, it is.

6 Q. And in January of 2003, AWR withdrew that
7 request, correct?

8 A. Yes.

9 Q. And Exhibit 141 is a copy of that letter; is
10 that correct?

11 A. Yes, that's what it is.

12 Q. Are you aware that Mr. Finnigan spoke with
13 Staff's attorney in early January 2003 regarding the
14 request to modify the Commission's order?

15 A. I believe that we had a discussion about
16 that, yes.

17 Q. Are you aware that Staff's position with
18 regard to the request was that a rate case was needed
19 due to the changes to AWR's operations?

20 A. No, I was not aware of that.

21 Q. Are you aware that Staff's attorney was told
22 that AWR would withdraw its request to modify if a rate
23 case was required?

24 A. No, I was not aware of that.

25 Q. Do you understand that the Commissioners

0195

1 ultimately decide how regulatory requirements are
2 applied to companies regulated by the Commission?

3 A. Yes.

4 Q. Please turn to page 15 of your testimony. At
5 line 5 you begin talking about pro forma adjustment P-6,
6 correct?

7 A. Yes.

8 Q. And at lines 13 through 15, you testify that
9 cost associated with an operations manager was removed
10 from AWR's expenses, correct?

11 A. Yes.

12 Q. Are you referring to AWR's last rate case,
13 which was Docket Number UW-010961?

14 A. Yes, I am.

15 Q. Mr. Fox's salary remained as an expense
16 included in rates, correct?

17 A. Yes, it did at the rate of \$24,000.

18 Q. And the cost associated with an operations
19 manager who was a separate individual from Mr. Fox was
20 removed because AWR no longer employed an additional
21 operations manager; is that correct?

22 A. The operations manager had been laid off
23 after the test period that was used in the last case,
24 and as a negotiated item, yes, the employee level,
25 staffing level was reduced by that amount because the

0196

1 employee was no longer there.

2 Q. Mr. Fox assumed the role of the operations
3 manager, correct?

4 A. Yes, as the owner, he stepped in and took
5 over that role.

6 Q. And Mr. Fox made decisions for AWR in his
7 capacity as the operations manager, correct?

8 A. Yes, by default he did, yes.

9 Q. Those decisions included operating with six
10 employees since January 2003?

11 A. Actually, he relied on my advice to operate
12 with six employees since that period of time. I think I
13 stated before I had been asked several times since the
14 layoff if they could hire another employee, and if there
15 is no money to pay other bills, you can not hire an
16 employee was always my response.

17 Q. Mr. Fox's decisions included the sale of View
18 Royal, correct?

19 A. Yes.

20 Q. Mr. Fox's decisions included using all the
21 proceeds from the sale of the View Royal Water System to
22 pay down debt, correct?

23 A. Yes, that was his decision based on the
24 information that he had, yes.

25 Q. Did he consult you before making the decision

0197

1 to pay down the debt using the proceeds from View Royal?

2 A. We had several discussions about that time.
3 We discussed the last major hearing that American Water
4 went through where Mr. Fox was chastised, if you will,
5 for having so much money lent to the company in his own
6 personal name. And so it was stated in both the initial
7 order and in the final order of the Commission that he
8 should do something to convert some of that into equity.
9 And based on that, he decided that that's what he would
10 do, he would pay off the debt that was owed to him by
11 American Water and convert that into equity.

12 Q. Did you advise Mr. Fox on whether he should
13 apply the proceeds from the sale of View Royal to the
14 debt to pay it down?

15 A. I advised Mr. Fox that if it was his choice
16 to sell View Royal, which was a major portion of his
17 system, that he had to pay down some if not all of the
18 debt attributable to the View Royal sale. There was no
19 way that the remaining customers could continue to pay
20 on that debt without the support of the View Royal
21 customers.

22 Q. Mr. Fox's decisions included selling the
23 Birchfield Water System, correct?

24 A. Yes.

25 Q. Did Mr. Fox consult with you before making

0198

1 the decision to sell?

2 A. Yes, he did.

3 Q. And did you advise Mr. Fox regarding the
4 transfer?

5 A. Yes, I did.

6 Q. What was your advice that you provided to
7 him?

8 A. Well, Mr. Fox approached me in regard to the
9 sale stating that it was a culmination of a long-term
10 plan to eventually transfer all the assets of the
11 Birchfield Water System to Lewis County Water and Sewer
12 District Number 5. That was necessary in order to get
13 the master plan community approvals needed to fund this
14 development that he's planning just south of Chehalis.
15 And his questions to me were more in terms of what were
16 the rate base of Birchfield and what did the water and
17 sewer district need to pay American Water for the amount
18 of plant that American Water had invested in Birchfield
19 Water System.

20 Q. Did you look at the assets that make up
21 Birchfield Water System?

22 A. I looked at the assets that were on the books
23 of American Water for the Birchfield Water System.

24 Q. What advice did you provide to Mr. Fox with
25 regard to the sale of Birchfield?

0199

1 A. Well, I told Mr. Fox that given his other
2 sales, he needed to sell this system to the water and
3 sewer district for nothing less than rate base. My
4 advice was to sell it for whatever rate base was at that
5 point in time. If we could come up with a closing date
6 and a date close to when he could get approval for that
7 sale, because it had to be approved by the Lewis County
8 Commissioners before the water and sewer district could
9 purchase the system, then that would be best. And we
10 worked on it for quite a period of time to make sure
11 that we had the exact rate base figure for that
12 transfer.

13 Q. Do you remember when Birchfield was sold?

14 A. The operation of Birchfield was transferred
15 to the Lewis County Water and Sewer District Number 5 as
16 of January of 2003. Unfortunately, the approval did not
17 happen for that until some time later. That is why if
18 you look at the documents everything is dated the first
19 of the year regardless of approval, because they had to
20 have some termination date to turn over operations to
21 the water and sewer district. I do know that it took
22 several meetings with the county commissioners to
23 explain the transaction and to make sure that the
24 transaction was put together in such a way that the
25 ownership met their needs as well.

0200

1 Q. So the operation of Birchfield was
2 transferred before title was?

3 A. Yes.

4 Q. Mr. Fox's decisions as the operations manager
5 included not funding the docket account as required; is
6 that correct?

7 A. I don't know that.

8 Q. Are you aware that certain deposits were not
9 made?

10 A. I am aware that certain deposits were not
11 made.

12 Q. Did Mr. Fox consult you with regard to
13 whether he should make the deposits into the docket
14 account?

15 A. I don't know if I was ever directly
16 consulted. Whenever I noticed that the docket account
17 deposit had not been made, I called the company and
18 insisted that they make every effort to make that
19 deposit.

20 Q. Please turn to page 18 of your testimony, and
21 I would like you to go to lines 1 and -- I'm sorry, hold
22 on.

23 I apparently have a bad cite, I wanted to ask
24 you about adjustment R8, and that adds to rate base the
25 unamortized balance of AWR's miscellaneous deferred

0201

1 debit account 186.3 regulatory assets. Are you familiar
2 with that adjustment?

3 A. Yes.

4 Q. Staff and AWR agree on adjustment R8; is that
5 correct?

6 A. I believe that's R7 that relates to the
7 deferred debit account 186.3, and I believe from reading
8 Mr. Ward's testimony that is another uncontested
9 adjustment.

10 Q. And I have the cite now, it's page 18, lines
11 1 through 15, I'm sorry, 9 through 16, no, wait, wait,
12 wait, 16 to the end of the page. I'm sorry, let me
13 start that over again.

14 I think I made the point, but just for the
15 clarity of the record, it's adjustment R7, correct?

16 A. Yes, it is.

17 Q. Page 18 in the middle of the page?

18 A. Yes.

19 Q. Sorry about that.

20 And staying on page 18, beginning at lines 16
21 and going on to page 19, line 7, Staff and AWR also
22 agree on adjustment R8, which adds to rate base the
23 average balance of AWR's dedicated checking account
24 facilities charges, correct?

25 A. Yes, I believe that's also uncontested.

0202

1 Q. And on page 19, line 8, through page 20, line
2 11, Staff and AWR agree on adjustment R9, which adjusts
3 AWR's contribution in aid of construction of the
4 expenditures from the reserve account; is that correct?

5 A. Yes, that's correct.

6 Q. On page 20, line 12, to page 21, line 6, you
7 discuss AWR's adjustment R10, correct?

8 A. Yes.

9 Q. And that adjustment is the same as Staff's
10 adjustment RB2; is that correct?

11 A. Yes, that's correct.

12 Q. And that adjustment deals with AWR's capital
13 surcharge amount, correct?

14 A. Yes.

15 Q. And Staff and AWR agree on AWR's capital
16 surcharge amount; is that true?

17 A. I'm sorry, I don't understand the question.

18 Q. Staff and AWR agree on the adjustment with
19 regard to Staff's capital surcharge amount, correct,
20 which is --

21 A. R10?

22 Q. Yes.

23 A. Okay. Yes, the amount is in agreement.

24 Q. Please turn to pages 21 and 22. There you
25 discuss adjustment R11, which deals with the acquisition

0203

1 adjustment, correct?

2 A. Yes.

3 Q. Is it AWR's position that the consolidated
4 1998 dockets which are referenced at page 21, lines 9
5 through 10, resulted in an absolute right to recover
6 historical cost in rate base as opposed to the price
7 actually paid?

8 A. Not at all, but that is what the premise of
9 Staff's arguments were throughout that case, that had
10 the company purchased systems at a discount, they would
11 include that in rate base. I recognized that wasn't an
12 absolute assurance, but it was used as a carrot, if you
13 will, for the company to make some of these discount
14 purchases instead of making premium purchases, and
15 that's exactly what the company did.

16 Q. Please turn to page 24, and I would like you
17 to go to lines 10 to 13. You discuss the methods of
18 decreasing the amount of a company's debt, correct?

19 A. Yes.

20 Q. And you state that there are two methods
21 besides equity infusion to reduce the debt. The first
22 being increasing revenue, and the second being selling
23 assets and using the proceeds to pay down the debt,
24 correct?

25 A. Correct.

0204

1 Q. When the debt is held by a shareholder, the
2 shareholder can convert the debt to equity; is that
3 true?

4 A. I would say that was an option in most cases,
5 it's a possibility, yes. But in this case, no, it could
6 not be converted to equity. Mr. Fox's loans to the
7 company were backed by loans he took out himself, and so
8 he needed the revenue produced by those loans to make
9 the payments for the debt that he borrowed. He used his
10 own personal ability to borrow funds at a better rate
11 than the company could borrow funds in order to make
12 those loans. And also Mr. Fox has invested equity of --
13 I would have to look at a balance sheet, but he has also
14 -- he has already invested quite a large amount of his
15 own money in equity capital into this company.

16 Q. In a situation where a shareholder is
17 converting debt to equity, that can happen without cash
18 changing hands; is that true? It could be a record, I'm
19 sorry?

20 A. It can be done through accounting entries,
21 yes, it can be.

22 Q. Please turn to page 26, and I'm looking at
23 line 1. You testified that Mr. Fox received common
24 stock in a note payable in exchange for Birchfield when
25 he transferred Birchfield to AWR. Do you remember how

0205

1 much the note payable was?

2 A. I don't remember. I do know that this was
3 basically accounting documents that were drawn up after
4 we determined the amount of investment in plant that he
5 had and determined the appropriate split between common
6 stock and note at that time.

7 Q. Are those documents available?

8 A. I would have to dig through my records. I
9 have been searching for them. I can see them, but I
10 can't lay my hands on them. So I don't know to what
11 extent they are in my records.

12 MS. WATSON: I guess I would like to make a
13 records requisition to the extent that Ms. Parker can
14 produce those records. I know that you have been
15 searching for them, but I would like to make that
16 request.

17 JUDGE CAILLE: Okay, let's mark that request
18 will be designated Records Request 1.

19 MR. FINNIGAN: And can you state the request
20 so I can get it down?

21 MS. WATSON: Sure. The accounting documents
22 with regard to the exchange, I'm sorry, the accounting
23 documents with regard to the transfer of Birchfield from
24 Mr. Fox to AWR. And apparently there's a note payable,
25 and there was an exchange of common stock.

0206

1 MR. FINNIGAN: Thank you.

2 JUDGE CAILLE: Can we take how about a ten
3 minute break.

4 (Recess taken.)

5 JUDGE CAILLE: We have returned from a ten
6 minute recess and we're continuing with
7 cross-examination of Ms. Parker.

8 MS. WATSON: Actually, I realized that I
9 hadn't moved for admission of an exhibit earlier, and I
10 wanted to do that before I forgot.

11 JUDGE CAILLE: All right.

12 MS. WATSON: Exhibit Number 143, we discussed
13 that with Mr. Ward.

14 MR. FINNIGAN: No objection other than the
15 objection I stated on the record.

16 JUDGE CAILLE: All right, then Exhibit 143 is
17 admitted.

18 MS. WATSON: Thank you.

19 BY MS. WATSON:

20 Q. Ms. Parker, would you please turn to pages 29
21 to 30 of your testimony. At lines 8 through 10, you
22 testify that Mr. Fox called you around January 16th of
23 2002 with news that he had sold the View Royal Water
24 System, correct?

25 A. That's correct.

0207

1 Q. When Mr. Fox contacted you about the sale of
2 View Royal, did you calculate the gain on sale at that
3 time?

4 A. No, I did not.

5 Q. And at the bottom of page 29 to the top of
6 page 30, you testify that you were not aware that
7 discussions had progressed to the point of an agreed
8 upon price, correct?

9 A. Could you restate that, I'm not sure I
10 understand.

11 Q. Sure. At the bottom of page 29 and then
12 going on to the next page, page 30, you testify that you
13 were not aware that discussions had progressed to the
14 point of an agreed upon price, correct?

15 A. Not prior to that phone call, no, I had no
16 idea.

17 Q. Mr. Fox consulted you prior to selling View
18 Royal, correct?

19 A. Yes, he did.

20 Q. And Mr. Fox asked you about the tax
21 consequences of selling View Royal for \$500,000?

22 A. Yes, that was sometime in the summer of 2001
23 I believe.

24 Q. Please turn to Exhibit 112. You prepared the
25 response to this data request, correct?

0208

1 A. Yes, I did.

2 Q. And you described calculating the net
3 operating loss that AWR had at the time it sold View
4 Royal; is that correct?

5 A. Yes, that's correct.

6 Q. One thing you did to calculate AWR's net
7 operating loss was you looked at AWR's 2000 tax return,
8 correct?

9 A. Yes.

10 Q. In October of 2002 you prepared an amended
11 2000 tax return for AWR, correct?

12 A. Yes.

13 Q. Did Moss Adams prepare the original 2002 tax
14 return?

15 A. Yes, they did.

16 Q. Why did you have to prepare an amended tax
17 return for 2000?

18 A. An amended tax return was necessary because
19 the company used facility charged money to install two
20 assets I believe. Those two assets were on the
21 depreciation schedule for federal income tax purposes,
22 and in order to make contribution in aid of
23 construction, moneys received by a water company, a
24 nontaxable transaction, you can not include in tax
25 depreciation the asset that those funds provided.

0209

1 Q. The amended 2000 tax return reduced the net
2 operating loss to be carried forward, correct?

3 A. Yes, it did.

4 Q. After you prepared the amended 2000 tax
5 return, did you advise Mr. Fox that AWR would have a tax
6 liability for the gain on the View Royal sale?

7 A. The amended 2000 return was prepared at the
8 same time as preparing the 2001 taxes, and it did not
9 even occur to me at that time to advise Mr. Fox of that.

10 Q. When did you calculate the gain on sale for
11 View Royal?

12 A. It was an ongoing process. We spent the
13 summer of 2002 trying to pull most of the assets out of
14 both the depreciation schedule and the depreciation
15 schedule. There was quite a bit of effort involved
16 there, because if you look at the depreciation schedule,
17 it's rather detailed. And I can't state exactly when I
18 calculated the gain on the sale. It may seem
19 straightforward on looking at the depreciation schedule
20 for book purposes, because they're all identified by
21 system. But when it got to the tax return, there were
22 several times where especially the year that Moss Adams
23 prepared the assets were combined on the tax return, and
24 so we had to go back to source documents to figure out
25 where those assets came -- where the assets appeared on

0210

1 the tax depreciation schedule. It was quite a chore to
2 determine the tax gain and the book gain from that sale.
3 I would imagine I actually came up with an actual number
4 about the time that the tax return was signed.

5 Q. Please turn to page 30, lines 18 to 19. You
6 testify that although AWR received a rate increase in
7 the last case that AWR's cash flow was not helped,
8 correct?

9 A. That's correct.

10 Q. In the last rate case AWR received an
11 increase of \$3.47, correct?

12 A. Yes.

13 Q. But they were also required to set aside
14 \$4.40 for new employees, correct?

15 A. Correct.

16 Q. Is it fair to say that the net effect was a
17 rate decrease of 93 cents?

18 A. Yes.

19 Q. And the sale of View Royal resulted in a
20 substantial decrease in AWR's revenue, correct?

21 A. Yes, the fewer customers definitely resulted
22 in a lower revenue each month.

23 Q. And the decrease in related expenses did not
24 compensate for the loss of revenue; is that correct?

25 A. No, the View Royal system was 400 customers

0211

1 on one system. It's kind of hard to -- it didn't
2 compare at all to the rest of the American Water
3 systems. And so no, it was subsidizing many of the
4 other systems.

5 Q. Did you advise Mr. Fox on whether AWR should
6 sell View Royal?

7 A. I don't believe I ever advised that selling
8 AWRI or selling View Royal was going to be good for
9 operations, no. However, given the other implications
10 that Mr. Fox was looking at, including the criticism
11 received in the Fifth and Sixth Supplemental Orders in
12 the case in '98, Mr. Fox was really -- he really
13 believed that selling the system would help him pay down
14 the debt and strengthen the company in the long run.

15 Q. But you didn't advise Mr. Fox that it would
16 be a good decision for the company to sell View Royal?

17 A. My advice -- look, I made him aware that cash
18 flow would be hurt by the sale of View Royal. I gave
19 him information, but I can't say that my advice was to
20 sell the View Royal System. That was his decision.

21 Q. After Mr. Fox sold View Royal on behalf of
22 AWRI, did you advise him to request a modification to
23 the Commission's order requiring him to set aside?

24 A. I knew after the sale that there's no way the
25 company could continue paying for the seven employees

0212

1 required by that order in order to spend more money on
2 employees. And so yes, we spoke with the company
3 counsel and determined that a filing would have to be
4 made with the Commission to change the requirements of
5 that order so that the additional money could be spent
6 on other purposes.

7 Q. Did you advise Mr. Fox to consider filing a
8 new rate case with the Commission?

9 A. We talked about a new rate case, but again,
10 the records had not been closed, the ledgers had not
11 been closed for year end, and it looked like a lot of
12 work. You have to remember we had just come out of
13 another rate case that cost the company \$22,000 just to
14 settle, and I personally was reluctant to put a lot of
15 work into another rate case not knowing what the outcome
16 of that would be. If rates were again decreased, I
17 didn't, you know, I had a personal stake in this as
18 well.

19 So did I advise Mr. Fox to file another rate
20 case? I advised him to file the petition to see if we
21 could get the terms of the rate case changed since it
22 was shortly after the last rate case. The change in
23 position of the company, given the magnitude of the
24 change in the lower 400 customers, the ability of the
25 company to project what its expenses would be was very

0213

1 limited. Time is the only thing that really could
2 accurately project the expenses of the company, and
3 knowing that time was the only thing that could do that,
4 a rate case wasn't appropriate at that time.

5 Q. You spoke of a personal stake, and I just
6 wanted to clarify. You don't mean a personal stake in
7 the company, but rather your fees?

8 A. No, I don't have a personal stake in the
9 company. I have a personal stake in my fees.

10 Q. Please turn to page 33 of your testimony, and
11 I'm looking at lines 1 and 2. \$5,290 is the amount that
12 AWR has not deposited into the docket account, correct?

13 A. I believe that's correct.

14 Q. Has AWR deposited that amount into the docket
15 account since you prepared your testimony?

16 A. No.

17 Q. Staying on page 33, lines 8 through 10, you
18 testify about the tax liability resulting from the set
19 aside requirement, correct?

20 A. Yes.

21 Q. AWR also paid the tax resulting from the View
22 Royal sale from the docket account, correct?

23 A. Yes.

24 Q. When calculating a company's tax liability, a
25 company may deduct employee expenses, correct?

0214

1 A. Expenses paid on behalf of the company for
2 the operation of the business are deductible expenses,
3 and that would include employee costs.

4 Q. Please turn to Exhibit 111.

5 A. My exhibits are not pre-numbered, which
6 exhibit is it?

7 Q. It's JMP-12.

8 A. Okay.

9 Q. About halfway down the page, the number of
10 systems affected is listed as 112 systems, correct?

11 A. Correct.

12 Q. In response to the Bench request, AWR
13 submitted a revised Exhibit 111, correct?

14 A. Yes.

15 Q. And that exhibit also listed 112 as the
16 number of systems affected, correct?

17 A. Yes.

18 Q. Is 112 the total number of Group B water
19 systems AWR operates?

20 A. That was the number provided to me as the
21 number of Group B systems that AWRI operates.

22 Q. Do you know how many of those systems have
23 three to four connections?

24 A. No, I don't.

25 Q. Would your answer be the same with regard to

0215

1 how many systems have less than three connections?

2 A. Yes, it would be the same, I do not know.

3 Q. And would it be the same for the number of
4 systems that have more than four connections?

5 A. Yes, I do not know the answer to those
6 questions.

7 MS. WATSON: I think that's all I have.

8 JUDGE CAILLE: All right.

9 MS. WATSON: Thank you.

10 JUDGE CAILLE: Mr. Finnigan, any redirect?

11 MR. FINNIGAN: Very brief, Your Honor, but a
12 couple.

13

14 R E D I R E C T E X A M I N A T I O N

15 BY MR. FINNIGAN:

16 Q. Ms. Parker, I just want to understand, you
17 were asked questions concerning the level of employees
18 and that the company has been operating at six
19 employees; is that correct?

20 A. Yes.

21 Q. Did I understand that your testimony is that
22 Mr. Fox approached you on at least three occasions
23 wanting to increase that number of employees?

24 A. Yes, he has.

25 Q. And it was based on your advice that cash

0216

1 flow wouldn't support an additional employee that one
2 wasn't hired?

3 A. The cash flow, the company could not support
4 that seventh employee enabling the company to use the
5 440 set aside funds, and that's been my position all
6 along. If they can't afford to hire the seventh
7 employee, how can they hire employee number eight and
8 nine that were dedicated or that funds were dedicated by
9 the set aside money in Docket 010961. If they can not
10 hire the seventh employee, there's no money.

11 Q. According to the terms of the order that
12 established the docket account, the company has to hire
13 an eighth employee before it can access those funds; is
14 that correct?

15 A. Yes, it has to hire an eighth employee, and
16 the other seven has to cost the company \$17,000 a month,
17 and the company can not or had not consistently met
18 those requirements in order to hire the eighth employee.
19 And it turned out cash flow was a major contributor in
20 keeping seven employees and a level of \$17,000 in
21 employee salaries each and every month.

22 Q. On that score, you were asked questions about
23 petitioning the Commission to make changes to the docket
24 account. Do remember those questions?

25 A. Yes.

0217

1 Q. Was the company trying to find a way to do
2 that that Commission Staff would support?

3 A. Yes, we were basically looking for any ideas
4 that the Commission Staff would support in enabling the
5 company to continue its operations with use of those
6 funds. It's quite costly for the company to file for
7 another rate increase, and so we were hoping to
8 stimulate conversations with the Staff to be able to
9 come to some sort of negotiated settlement.

10 Q. Is it true that the company made at least two
11 separate proposals to the Commission Staff?

12 A. Yes.

13 Q. Did the Commission Staff ever come up with an
14 alternative saying we don't like your approach, but
15 here's something we might be willing to support?

16 A. I did not hear of any alternatives proposed
17 by Staff.

18 Q. You were asked a question concerning your
19 testimony at page 33, at the top of 33, concerning the
20 \$5,290 that remains to be deposited. You were asked
21 whether the company had made any deposits since your
22 testimony, and I believe your answer was no. Did the
23 company have the money available to it to make any such
24 makeup deposit?

25 A. No, the company has had no extra cash flow at

0218

1 all to make any makeup deposits. There was hope that in
2 November, October-November when the refund money was
3 made to the customers and we were able to take money out
4 of the docket account to do that refund that some of
5 that could have remained in the docket account to make
6 up the extra \$5,290. But the operating costs of the
7 company were such that it needed to use every dollar
8 just to pay employees and pay power and pay testing,
9 that's basically it. The cash flow simply did not allow
10 the makeup deposit to be made.

11 Q. You were asked questions about the company's
12 debt. Do you know if Mr. Fox is required to guarantee
13 the company's debt with his personal guarantee?

14 A. Yes, Mr. Fox, as all companies, small
15 companies like his, is required to provide a personal
16 guarantee for all of his -- all of the debt that
17 American Water takes out.

18 MR. FINNIGAN: May I approach the witness?

19 JUDGE CAILLE: Yes.

20 BY MR. FINNIGAN:

21 Q. I'm handing you what has been marked as
22 Exhibit 88, and you were asked a question concerning the
23 Birchfield System. Do you remember those questions?

24 A. Yes.

25 Q. Do the numbers that are reflected on Exhibit

0219

1 88 reflect all of the investment in the Birchfield
2 System held by American Water?

3 A. The numbers on 88 reflect all of the
4 investment that was transferred to American Water for
5 the Birchfield System.

6 Q. And that's all, that's 100% of its investment
7 in the Birchfield System?

8 A. That's all that American Water has invested
9 in the Birchfield System.

10 Q. You were asked questions about Exhibits 140
11 and 141.

12 A. Yes.

13 Q. Do you know why the company made the decision
14 to withdraw its petition?

15 A. It was my understanding the company made the
16 decision to withdraw its petitions because Staff
17 indicated that they would not support the position and
18 wouldn't negotiate whatsoever.

19 MR. FINNIGAN: Thank you, that completes my
20 redirect.

21 JUDGE CAILLE: I have just a clarifying
22 question.

23

24 E X A M I N A T I O N

25 BY JUDGE CAILLE:

0220

1 Q. Referring to Exhibit 88 again, Ms. Parker, do
2 you see where it says promissory note, and is that the
3 note, that's not the note that Staff was asking about
4 earlier?

5 A. No, that's not the note that Staff's asking
6 about. There's a promissory note that shows on the
7 balance sheet of American Water Resources. It's a note
8 receivable on the balance sheet of American Water
9 Resources.

10 JUDGE CAILLE: Okay, thank you.

11 Ms. Watson, go ahead.

12 MS. WATSON: I just have one area.

13

14 R E C R O S S - E X A M I N A T I O N

15 BY MS. WATSON:

16 Q. Mr. Finnigan asked you about a personal
17 guarantee from Mr. Fox for third party loans. All small
18 companies are required to provide some sort of personal
19 guarantee for the loans that a bank gives to the
20 company; is that correct?

21 A. Most small companies are required to provide
22 -- the shareholder or directors are required to provide
23 a personal guarantee.

24 Q. So this isn't a requirement that's special
25 for AWR?

0221

1 A. No, it's not.

2 MS. WATSON: Nothing further, thank you.

3 JUDGE CAILLE: Anything else?

4 All right, thank you.

5 Oh, I'm sorry, I have one.

6

7 E X A M I N A T I O N

8 BY JUDGE CAILLE:

9 Q. Exhibit 202, that was the -- if you will look
10 at that, Ms. Parker, and tell me if those are the rates
11 you used in figuring the tax?

12 A. Yes, these are the rates I used to calculate
13 the federal income tax liability.

14 JUDGE CAILLE: All right, thank you.

15 MS. WATSON: I actually have one more thing,
16 Your Honor.

17 JUDGE CAILLE: Okay.

18 MS. WATSON: Not in terms of questions. I
19 wanted to move for admission of Exhibits 112 and 140 and
20 141, but not 113 or 114. I didn't refer to 113 and 114.

21 JUDGE CAILLE: So 112, and what were the
22 other two?

23 MS. WATSON: 140 and 141.

24 JUDGE CAILLE: Is there any objection?

25 MR. FINNIGAN: No objection.

0222

1 JUDGE CAILLE: And those are admitted.

2 And thank you, Ms. Parker, you're excused.

3 Great job, everyone.

4 (Hearing adjourned at 4:15 p.m.)

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