

**BEFORE THE WASHINGTON STATE  
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND  
TRANSPORTATION COMMISSION,

Complainant,

v.

COUGAR RIDGE WATER SYSTEM,

Respondent.

DOCKET NO. UW-040367

COMMISSION STAFF'S  
RESPONSE COUGAR RIDGE'S  
MOTION TO ESTABLISH  
BURDEN OF PROOF

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UTIL. AND TRANSP.  
COMMISSION

1           The Commission's advocacy staff (Staff) submits the following response to Cougar Ridge Water System's March 3, 2004, Motion To Establish Burden of Proof. In an adjudicative proceeding on the Commission's own motion, Staff, represented by the Attorney General, appears as a party to prosecute the case. The Commissioners, through their designated administrative law judge, preside over the case in a quasi-judicial role. Although the Commission issues the order and/or complaint initiating the proceeding, it does so at its Staff's request in a role analogous

to a court's determination of probable cause. See RCW 34.05.458 (separation of functions).

2 Cougar Ridge objects to the Commission's inclusion, in paragraph 26 of its March 1, 2004, Order and Complaint, of an ordering clause providing that "Cougar Ridge Water System shall bear the burden of proving that the alleged operations are not subject to the provisions of RCW 80.04.010."

3 Staff concedes that Staff should bear the burden of going forward with a *prima facie* case that Cougar Ridge Water System is subject to the Commission's jurisdiction. Unless a statute or rule provides otherwise, the proponent of an order in an administrative proceeding generally has the burden of going forward with a *prima facie* case.<sup>1</sup> In this proceeding, Staff is the proponent of an order, under RCW 80.04.015, declaring that Cougar Ridge's activities are subject to the provisions of Title 80 RCW.<sup>2</sup> As such, Staff concedes that it has the burden of producing evidence that Cougar Ridge has met the criteria for jurisdiction set out in WAC 480-110-255.

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<sup>1</sup> Although the Washington Administrative Procedure Act, RCW 34.05 RCW, does not appear to address burden of proof, the federal Administrative Procedure Act at 5 U.S.C. § 556(d) provides: "Except as otherwise provided by statute, the proponent of a rule or order has the burden of proof." The Committee reports explained the provision: "That the proponent of a rule or order has the burden of proof means not only that the party initiating the proceeding has the general burden of coming forward with a *prima facie* case but that other parties, who are proponents of a different result, also for that purpose have a burden to maintain." Sen. Doc. No. 248, 79<sup>th</sup> Cong., 2d Sess. 208, 270 (1948).

<sup>2</sup> RCW 80.04.015 states that "Until July 1, 1994, in any proceeding instituted under this section to determine whether a person or corporation owning, controlling, operating, or managing a water

4 Staff intends to use the subpoena power provided in RCW 34.05.446 and/or the discovery mechanisms set out in WAC 480-07-400 through 415<sup>3</sup> to obtain information from Cougar Ridge necessary to determine whether the company has met the criteria for regulation as a public service company. Staff is also open to the possibility of placing the question of jurisdiction before the Commission on stipulated facts. WAC 480-07-480.

5 After conducting discovery, and depending on whether Staff believes material facts remain in dispute, Staff may file a motion for summary determination under WAC 480-07-380 that Cougar Ridge is subject to regulation. It is likely that Staff would recommend, as part of such a motion, that the Commission order the company to file a tariff setting forth its existing rates together with supporting financial data justifying those rates. *See* RCW 80.04.015 (“the commission shall issue such orders as may be necessary to require all parties involved in the activities to comply with this title.”); RCW 80.28.050 (requiring every water company to file schedules showing rates and charges); WAC 480-07-530 (describing filing

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system is subject to commission regulation, and where the person or corporation has failed or refused to provide sufficient information or documentation to enable the commission to make such a determination, the burden shall be on such person or corporation to prove that the person's or corporation's operations or acts are not subject to commission regulation.” The implication is that, after 1994, or when the condition for shifting the burden is not met, the burden is on the Staff and not on the person or corporation.

requirements for general rate proceedings for water companies); WAC 480-110-295(3) (setting out requirements for filing initial tariffs when a water company becomes jurisdictional).

6           Following the filing of its tariff, if Staff is not satisfied that the company has justified its rates, Staff likely will go forward with evidence that a different level of rates and charges should be established by the Commission. Staff would have the burden of proving that any alternative rates it would propose for the company are just, reasonable, and sufficient. RCW 80.28.020; *State ex rel. Model Water & Light Co. v. Department of Pub. Serv. of Washington*, 199 Wash. 24, 90 P.2d 243 (1939) (burden of proving effective rates to be unreasonable ordinarily rests on the party attacking them).

DATED this 17<sup>th</sup> day of March, 2004.

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<sup>3</sup> Staff will request, at the March 25, 2004, prehearing conference that the Commission authorize the use of the Commission's discovery methods pursuant to WAC 480-07-400(2)(b) on the grounds that the needs of the case require the methods of discovery specified in the rule.