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1 BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION
2 COMMISSION

3 WASHINGTON UTILITIES AND)
4 TRANSPORTATION COMMISSION,)
5 Complainant,)
6 vs.) DOCKET NO. UW-000405
7 AMERICAN WATER RESOURCES, INC.,) Volume VI
8 Respondent.) Pages 180 - 247

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10 A hearing in the above matter was held on
11 January 3, 2001, at 2:23 p.m., at 1300 South Evergreen
12 Park Drive Southwest, Olympia, Washington, before
13 Administrative Law Judge LAWRENCE BERG.

14 The parties were present as follows:

15 AMERICAN WATER RESOURCES, INC., by VIRGIL
16 FOX, President and CEO, 921-B Middle Fork Road,
Onalaska, Washington 98570.

17 THE WASHINGTON UTILITIES AND TRANSPORTATION
18 COMMISSION, by MARY M. TENNYSON, Senior Assistant
19 Attorney General, 1400 South Evergreen Park Drive
Southwest, Post Office Box 40128, Olympia, Washington
98504.

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25 Kathryn T. Wilson, CCR
Court Reporter

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P R O C E E D I N G S

JUDGE BERG: Mr. Fox, I'll just remind you that you are still under oath, and we will now take up the cross-examination of Mr. Fox by Ms. Tennyson.

CROSS-EXAMINATION

BY MS. TENNYSON:

Q. As I said earlier today, I'd hoped I had everything in order but will have to jump around a little bit. Mr. Fox, you have stated in the past that one of the reasons for the costs of the surcharge projects exceeding the estimates used to calculate the surcharge was the pressure to get the work done. Would you agree with that statement?

A. That was one reason.

Q. Weren't the estimates that were used to compute the surcharge prepared in March of 1999?

A. I'm sure that's about right, if not precise.

Q. And the surcharge was approved in April of 1999; correct?

A. Okay.

Q. So the work on these projects was substantially completed by November of 1999; correct?

A. Yes.

Q. So what was it in that time frame that caused

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1 the costs to exceed the estimates by so much?

2 A. There is quite a number of things. One was
3 the pressure and the bidding atmosphere. It's always
4 been true in my experience in better than 40 years of
5 construction, and particularly in the spring and
6 particularly in economic times when things are going
7 huckeldy-buck, it's harder to get people to bid, and
8 they tend to raise their prices, and the stronger that
9 phenomenon is at any particular time, the more the
10 effect is exaggerated, and that particular spring
11 turned out to be even more than anticipated, a
12 particularly busy pressure on contractor time.

13 So we had a hard time getting people just to
14 bid jobs and to try to do it in a timely fashion. We
15 had a hard time getting people to talk about when they
16 could do the job, how soon they could do it. So there
17 was just all kinds of pressures there to make people --
18 if you demand that they do something quick, then they
19 are going to have a tendency to bid higher than if,
20 Okay, we can take our time. All of those kinds of
21 facets entered into it.

22 Q. Let me follow up on that point though. In
23 the advertisement for bids and in the sample contract
24 that's in your construction standards, there was
25 nothing that said, This job has to be completed by July

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1 25th or September 5th. There wasn't any information in
2 any of those documents, was there, that says this has
3 to be a rush job?

4 A. Certainly DOH was very much of the opinion it
5 had to be a rush job, and I'm sure if it wasn't in
6 writing, and I'm not sure whether we put anything in
7 our spec book about time or in the bid document, but we
8 darn sure talked to people about it because it was a
9 major concern to all of us, and most particularly to
10 DOH and to Kevin O'Neil and to other public people.

11 Q. Let's look at some of the systems that you
12 needed work done on. The Loma Vista system, isn't it
13 true there was a boil-water advisory issued on that
14 system in December of 1997?

15 A. I don't remember the exact date, but I would
16 assume you are probably right.

17 Q. This surcharge approval didn't come into
18 effect until May of 1999, so why couldn't the work have
19 been done in 1998, later in 1998? Where did the rush
20 job come in?

21 A. First off, in order to do the surcharge
22 jobs -- to try to get an order, there were several
23 things that came into play. Number one is the issue of
24 the chlorination or getting the bad test, the
25 boil-water, and in each of the systems that that was

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1 the case, and that was the case in several of the most
2 critical or most visible or discussed jobs, those were
3 virtually immediately under DOH's direction put on
4 temporary chlorination, and temporary chlorination is
5 precious little different than permanent chlorination
6 other than the fact that you will get slightly more
7 spikes and valleys in the residual chlorine reading.

8 So I don't think that anyone considered it a
9 crash program, and we didn't consider it a crash
10 program until DOH started feeling that way because they
11 were then getting complaints from customers.

12 Q. Let's stay on the Loma Vista system for a
13 minute. In that case, you did have engineering
14 documents for a permanent design prepared, and the
15 information that I have shows the Department of Health
16 approved the permanent design of that system on October
17 1st, 1998, but again, the work on that system wasn't
18 done until substantially later.

19 A. Okay. I'm sure you are right. Another
20 significant part of the question of when we could do
21 the work was the availability of funds to do it, and it
22 was my understanding that those kinds of projects could
23 be funded by a surcharge, and I guess I did not
24 properly anticipate the amount of time or effort or
25 things that would be necessary to get a surcharge

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1 approved, and because we didn't have the funds
2 available at the moment, I more or less went under the
3 belief that as soon as we got the surcharge approved,
4 and therefore had the funds to do them, that we could
5 then go ahead and proceed and do the job, but it didn't
6 quite work out that way. The pressure from various
7 people to get the jobs done, I believe -- I'm not sure
8 whether we actually started the jobs before the
9 surcharge was approved or not, but it was in the same
10 time frame.

11 Q. You had estimates of the cost on many of the
12 projects that did not exceed the \$20,000 threshold that
13 the Commission had put on for requiring you to do
14 competitive bidding; correct?

15 A. That is true. Some of the jobs were below
16 \$20,000.

17 Q. But you chose to go to bid because you wanted
18 VR Fox Company to be one of the bidders?

19 A. No. Because I thought that would be far more
20 palatable to UTC. UTC, in my belief, wanted us to get
21 bids on everything possible, and the demand or the
22 drop-dead condition was that anything over \$20,000 we
23 had to, but my assumption and belief was that they
24 wanted it on anything.

25 Q. But the order, Exhibit 102, if you estimated

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1 the project to cost less than \$20,000, you were not
2 required to go out for competitive bids; correct?

3 A. I believe you are right. I therefore could
4 have just simply given those jobs to Fox Company, I
5 guess. I don't know.

6 Q. I don't think it goes that way. If Fox
7 Company was involved, there was a different threshold.

8 A. Okay. My objective was to get the best
9 price. Whatever the order said, the objective was get
10 the job done as reasonable as we can.

11 Q. But if you wanted to have the Fox Company
12 involved in doing the work, then the order required if
13 the cost was estimated to exceed \$5,000, then you
14 needed to get a competitive bid; correct?

15 A. Yes, okay.

16 Q. If we could look at Exhibit 107, I'm looking
17 at the column that says "other bids." I know you also
18 have given us some documents today that has copies of
19 other bids that we don't have a chart for.

20 A. Presumably should be the same numbers, we
21 hope.

22 Q. I'm assuming they are. I'm not going to
23 cross-check them at this point. In this case, the
24 contract amount was \$23,118.60; do you see that, for
25 Pleasant Valley?

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1 A. Yes.

2 Q. And VR Fox Company did the work on that
3 project; correct?

4 A. Yes.

5 Q. Going over one of the bids was \$23,733 plus
6 tax.

7 A. Yes.

8 Q. Can you tell me why you didn't take that bid?
9 The Commission didn't require you to take the low bid,
10 did it?

11 A. No, but that's what you do is you take the
12 low bid.

13 Q. That's what who does?

14 A. What people generally do. When you put a job
15 out for bid, if you don't take the low bid, you better
16 have some good reason or you are both setting yourself
17 up for a lawsuit. Plus, you are totally demoralizing
18 the low bidder that's not going to bid for you anymore.

19 Q. In fact, VR Fox was the low bidder on all of
20 these projects, wasn't it?

21 A. Yes. As a matter of fact, on that particular
22 project, I was tempted to do just what you said, and I
23 about got my head bit off by my son and my supervisor
24 and a couple of other people: "How in the world do you
25 expect us to do these jobs if you are going to turn

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1 around and stab us in the back?"

2 Q. Let's look at the Loma Vista, the next line
3 down. The contract amount was \$22,025, and then over
4 on the other bids, the next lowest bid was less than
5 \$400 more, and you've also testified earlier that Fox
6 Company had to scramble to get all the workers and get
7 everybody available to do it. Wouldn't it have made
8 sense to give some of these jobs where they have a
9 close bidder another one of the contracts?

10 A. I didn't have bidders standing around that I
11 could jump on and say, "Get out there and get that job
12 done tomorrow," other than Fox Company.

13 Q. So you had control over when the work got
14 done by Fox Company and not by other bidders.

15 A. Oh, yes.

16 Q. That was your reason for --

17 A. That's not a sole reason, but that was a very
18 strong factor, yes. Everybody and his brother was on
19 me to get these things done instantly, and the fact
20 that I could get Fox Company to do something instantly
21 was a very significant factor in the decision, yes. It
22 was both the manpower and the experience there.

23 Q. So you trusted the work of VR Fox over some
24 other company; is that what you are saying?

25 A. No. I'm saying I knew Fox Company knew how

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1 to do it. I didn't say somebody else didn't know how
2 to do it, but I did know for sure that Fox Company knew
3 how to do it, and I did know for sure they could do it
4 quick because I was in a position to demand that.

5 Q. Could we look at the Crowder Road system on
6 the same exhibit. I'd like you to describe what the
7 process was. Under "other bids" -- and this may not
8 be accurate information. You and I discussed this off
9 the record -- it says there were no other bids because
10 the time line with DOH resulted in calling contractor
11 just to see who was available, none except VR Fox.
12 Were you in the process of trying to get other bids on
13 this?

14 A. Very definitely.

15 Q. Can you describe what happened?

16 A. First off, let me look -- I presume it says
17 there are no other bids. That's no doubt right. Let
18 me look at the exhibit. That would be my Exhibit 5,
19 and we are talking about Crowder.

20 Yes, that Fox Company was the only bid. I
21 can't remember at the moment how much work we did to
22 get other bids on that job. It's possible that I could
23 find something to help me know that. But Crowder,
24 above all -- in the minds of Kevin O'Neil and the
25 newspaper and other people, Crowder and Loma Vista were

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1 pretty near a standoff, but the two of those were
2 clearly the most visible ones we were getting the most
3 heat about.

4 Q. What was wrong with the Crowder Road system
5 that you needed to correct?

6 A. It was chlorination. I wanted to say
7 something sarcastic, but I didn't.

8 Q. It's usually best not to. As long as we are
9 looking at Exhibit 5, looking at the second page of
10 that exhibit, and it's handwritten information on this
11 page that says, "Crowder bid summary, engineers est."

12 A. Engineers estimate?

13 Q. And it looks like 70,000 --

14 A. \$70,942.20. That was one Steve and I had
15 done a little bit more work on than some of the others
16 to try to estimate what the cost might be, and I don't
17 think that he specifically -- although he may have. He
18 may have written out an estimate after our
19 conversation, or exactly how that number was arrived at
20 I'm not sure, but that was the notation that I had made
21 in the file. That was what our expectation of that job
22 might be.

23 Q. But that is substantially different, isn't
24 it, from the number on Exhibit 107 where the estimate
25 used to prepare the surcharge request was \$27,000?

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1 A. Very different.

2 Q. Can you tell us the reasons for the
3 difference?

4 A. The only reason that I can see is that the
5 Exhibit 107 you are talking about Rick Finnigan put
6 together, and he put this together from information
7 that included way back to what the CIP. This \$27,000
8 may very well have come from the CIP.

9 Q. But weren't, in fact, these estimates the
10 amounts used in the surcharge that the Commission
11 approved in 1999?

12 A. That is true.

13 Q. And those were numbers that you prepared.
14 The Commission didn't knock those done and cut any
15 money off of that, did they?

16 A. No. Those were numbers we prepared, right.

17 Q. Looking at the time frame of when these
18 projects were done, you didn't even sign this contract
19 for the Crowder Road system until September 28th. If
20 this was such a time crunch on this one -- the
21 surcharge was effective in May. You didn't even sign
22 the contract on this one until almost October.

23 A. I would have to look at the date we got DOH
24 approval to proceed on it, but I would guess it was the
25 day before that, but I'm not sure. We were wanting to

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1 get going because of all the pressures on us but
2 couldn't because of the approval.

3 We had to get an easement on that one, and we
4 had to get the DOH approval and the plans, and I can't
5 remember and I'm not sure whether or not I could
6 reconstruct what the cause was that we didn't start it
7 sooner, but I do know that it was started the instant
8 it could be.

9 Q. Now this one, the Crowder Road, there was an
10 E-Coli contamination with an acute problem, and that
11 was in December of 1998, wasn't it?

12 A. I'll take your word for it.

13 Q. I'm referring to an exhibit --

14 A. You are no doubt right. I'm not arguing.
15 The temporary chlorination was on a number of these
16 longer than we would have liked or DOH would have
17 liked, and that was a significant factor in DOH's
18 question of issuing orders or penalties. They thought
19 that these things should have been dealt with quicker.

20 Q. Do you know when the plans for the Crowder
21 Road system were submitted to the Department of Health?

22 A. I'm sure that Steve's information would have
23 that. The plans probably give us a very good idea. If
24 we look at the date on the plans, which you have, it's
25 probably very close to that date. I'm not positive,

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1 but I don't think -- if the question is how long did
2 DOH take to do their stuff, I wouldn't expect that it
3 was an unreasonable time. I'm not criticizing them.

4 Q. Why don't we take a look at the plan just so
5 we can get this cleared up.

6 JUDGE BERG: Off the record.

7 (Discussion off the record.)

8 Q. (By Ms. Tennyson) I do have a plan here, the
9 design drawings that have a date that just says June of
10 2000 on it, so this doesn't help us with that issue, I
11 don't think.

12 A. That must be the corrosion control drawing.

13 Q. That may be the case, but that is what you
14 provided --

15 A. We may have given you the wrong one by
16 mistake, because that's got to be the corrosion control
17 drawing.

18 Q. In fact, the title on it does indicate
19 corrosion control facilities. I think we may have
20 other information in the record. We can look for that
21 at a later time. Unfortunately, the drawings are not
22 helpful.

23 JUDGE BERG: Ms. Tennyson, I know Mr. Ward's
24 busy looking at plans. The only thing I would ask is
25 that Staff would just check and see if at some point if

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1 it's possible that they received both the design plan
2 drawing for the capital improvement as well as the
3 corrosion control project.

4 MS. TENNYSON: I can assure you we did not.
5 These were received by me personally on December 26th
6 of this year in response to my requests, and all the
7 copies of what I have are present in the hearing room
8 right now.

9 JUDGE BERG: Okay.

10 MS. TENNYSON: I did receive from Department
11 of Health today copies of a bunch of documents which I
12 have not had an opportunity to look at and
13 cross-reference, so it may be in those documents. I
14 also do have -- I know Mr. Ward has some documents that
15 may give us that date, and we can check it later and
16 possibly clear it up with him.

17 JUDGE BERG: My only concern is if we only go
18 two days, then we need to present a record requisition
19 to Mr. Fox to go back to the office and look for the
20 right plan. It may be good to do that before the end
21 of the day today, but I'll leave it up to you whether
22 to make that records requisition request.

23 MS. TENNYSON: Okay.

24 THE WITNESS: That was just given to you by
25 mistake. If we don't have a copy of the right one, I'm

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1 sure we can get it from Mr. Hatton.

2 Q. (By Ms. Tennyson) Mr. Ward has located for
3 me what is not plans, but you did provide this in
4 response to the data request that I submitted to you,
5 and this is a text document and not a plan with the
6 date of September 23rd of 1999 titled, "Water System
7 Upgrades Project Report for Crowder Road System."

8 A. That would be the technical part that goes
9 with the plan that Mr. Hatton was describing to you
10 earlier as part of what goes to DOH, so that, no doubt,
11 is the date you are looking for.

12 Q. So that would indicate then you submitted
13 those to the Department of Health on or around
14 September 23rd of '99, and then the contract was signed
15 on September 28th.

16 A. (Witness nods.) Which would indicate that we
17 did move very quickly on it.

18 Q. In that case, you moved very quickly after
19 you got the engineering documents approved, but again,
20 the problem that was to be corrected by this had
21 occurred late in 1998; correct?

22 A. That is true.

23 Q. Isn't it true that for the Pleasant Valley
24 system that Department of Health had issued a
25 requirement that there be a new source for the water as

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1 long ago as 1995 before you purchased the system?

2 A. I believe that's correct. There had been a
3 new well drilled, but it had not yet been approved, and
4 I believe the necessity for that to be approved
5 somewhat related to a number of connections, and I
6 think at the time that we purchased the system that the
7 number of connections was low enough that that wasn't
8 urgent. I'm relating this as well as I remember. It's
9 possible that I'm not 100 percent, but that's the way I
10 remember it.

11 Q. So there might have been additional work
12 required --

13 A. There was additional work.

14 Q. Let me finish my question. There might have
15 been additional work required to obtain the source
16 approval because you were seeking more connections than
17 originally the system was approved for.

18 A. That was part of what ultimately had to be
19 done, right. I believe at the time that we proceeded
20 with doing these surcharges, the primary thrust was --
21 I'm trying to remember if this one also had to have
22 chlorination, and I think that was not the case. I
23 think this one was one that the source, for whatever
24 reason, it had come to fruition that that had to be
25 approved.

00198

1 Q. Now again, sticking with the Pleasant Valley
2 system for a bit, reviewing the Department of Health
3 records that they received, engineering documents for
4 source approval on this system in November of 1996, is
5 it your recollection that there was additional work
6 that needed to be done before you could begin
7 construction on the source or getting source approval
8 on the Pleasant Valley system after November of '97?

9 A. No, I don't think that there was. You mean
10 additional work beyond what the source approval
11 envisioned?

12 Q. Right.

13 A. I would expect that the only thing that you
14 might put into that category was that in order to use
15 the new source, we had to build a new pump house and
16 things that went with it that was kind of part and
17 parcel to make it usable, but it may not have been
18 delineated in the source approval itself.

19 Q. Wasn't that, in fact, noted in the Company's
20 1996 water system plan that the pump house needed to be
21 expanded and reconstructed?

22 A. I believe so, and I believe that was
23 envisioned in our CIP updates that we periodically did.

24 Q. So then is it your testimony that the
25 Pleasant Valley system exceeded the original cost

00199

1 estimates because the work that was required on that
2 system exceeded your cost estimates because of the time
3 crunch when you had all this information going back
4 several years?

5 A. Well, if you've got information, it doesn't
6 matter how much information you've got. What affects
7 the bids is the time and conditions under which you put
8 the bid out, and costs may have been less in '97 than
9 '99. Yes, that would certainly be a possibility.

10 Q. But the cost estimate that you gave to us was
11 given to the Commission in March of 1999, not in
12 December, or not in 1997, and that was \$12,500, and the
13 cost that the contract was signed for was over \$24,000,
14 nearly twice the cost.

15 A. The only thing I can say about that is that
16 part of the way that the estimate was arrived at was
17 earlier thinking, and it didn't get updated. Part of
18 it was it was no doubt sloppy. We've heard it from
19 Mr. Hatton, and I'm perfectly willing to admit it. As
20 I said before, this whole thing was done on a rush
21 basis, and it was done on a relatively sloppy basis,
22 and it was done on the basis when you are the low
23 bidder, you are the low bidder, and you don't have to
24 go through miles of justification of all of the things
25 that have happened.

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1 It no doubt was sloppy, but it wasn't like we
2 changed the program or tried to deceive anyone. That's
3 just the way it was.

4 Q. I guess the concern that I'm getting at here
5 is we have several of these systems, for example, the
6 Elk Heights project, that the Department of Health had
7 approved it for construction in March of 1998, and yet,
8 you didn't begin construction on that, the contract
9 wasn't even signed until September of 1999. So you've
10 got a year and six months, and you are claiming that
11 the costs are increased because of the time of when you
12 had to do it, and it doesn't seem to make sense is the
13 concern.

14 A. There is some other factors I will get back
15 to, but it seems to me to make perfect sense that the
16 cost one year is higher than the cost another year.
17 That's called inflation. That's what we see all the
18 time with everything. It also makes sense to me that
19 contractors when they are busier demand higher prices,
20 and those are the conditions we were dealing with. We
21 are asking to do the job at a later date. We were
22 asking to do the job under the more stressed bidding
23 conditions, and there are some other conditions
24 involved too, particularly with Elk Heights, that
25 delayed doing that job. One was a building permit

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1 which nobody thought we needed a building permit, and
2 we had to get a landscaping permit, and the people
3 around nor us wanted any landscaping, but those kinds
4 of things delayed the process to get our approval to
5 move ahead with the job. The question of the funding
6 and the surcharge affected our thinking and our process
7 to get on the job and get it done. So there is a whole
8 bunch of factors wound up in the thing.

9 Q. The Elk Heights project was one where there
10 were health concerns on the system; correct?

11 A. I'm not sure of that. The biggest problem,
12 as I recall it, was early on, we had a considerable
13 shortage, I guess the easiest way to say it, of water,
14 some of the people on the system.

15 The Elk Heights system is built on a very
16 high hill, a thousand, 1500-foot elevation, and it's a
17 relatively affluent community. The people at the
18 bottom were watering the heck out of their lawns 24
19 hours a day and robbing all the water, and the people
20 on the top weren't getting any water. So we had people
21 literally out there threatening to shoot each other and
22 shoot each other's dogs and such things. It was a very
23 bad situation, and the reason was the question of
24 storage. The system was designed adequate. It was
25 supposed to produce the amount of water that was needed

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1 by the DOH rules, and we went through the engineering
2 process of determining it did, in fact, produce the
3 amount of water it was supposed to. In other words, we
4 were meeting the requirement we were supposed to meet.
5 However, these people were just using so much water
6 that they were destroying the requirements.

7 What I did was I went in and put a meter in
8 every connection that summer and immediately cured the
9 problem. Now when people have to pay for water, they
10 started using a reasonable amount of water, and the
11 problem was cured, but to satisfy the DOH requirements
12 or demands then at that time about the question of
13 quantity, we went ahead and put in the storage tank to
14 provide the additional capacity that was required to
15 meet the number of connections the system was
16 authorized for rather than the number of connections
17 that were actually being used.

18 Q. And the cost of the storage tank was part of
19 the issue we discussed with Ms. Woods earlier?

20 A. That was part of the surcharge, yes.

21 Q. Okay. Now, with the Elk Heights system, the
22 Department of Health had approved the project in March
23 of 1998. You said you ran into some problems with
24 Pierce County and the landscaping, but those Pierce
25 County requirements weren't passed until sometime after

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1 in 1999; isn't that true?

2 A. I don't know. What do you mean "requirements
3 weren't passed"?

4 Q. The requirements about the landscaping were
5 new requirements imposed. If you had done the
6 construction in 1998 when you got the go-ahead, you
7 wouldn't have had those issues.

8 A. I don't know that that's true, but it could
9 be.

10 Q. I'd like to refer at this time to Exhibit
11 112, which is your response to the Data Request No. 4,
12 so it's also in your materials.

13 A. I have 112.

14 Q. The question asked in this exhibit was to
15 provide a list of the engineering costs that you
16 attributed to the surcharge and some detail. It asked
17 for the amount, the date on which the Company was
18 billed, a description of the work performed, including
19 water system for which it was done, if that was
20 available, and what you provided didn't include that
21 kind of detail, did it?

22 A. Well, what I've provided you was the copies
23 of all the invoices that constituted that cost, and to
24 the extent that they have information, I gave it to
25 you. To the extent that they don't, I couldn't very

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1 well, and that's part of what Mr. Hatton was talking
2 about this morning. He's not sure at this point how to
3 say precisely a particular invoice, what hours were
4 spent on it, or precisely what it was for.

5 I, at this point, have no better answer to
6 that than he does, because again, this was not
7 something that we were accounting for or addressing
8 these things in the manner of a TNM job that would
9 require you to keep those kinds of records.

10 Q. So at this point, we still don't know exactly
11 what engineering work was performed or which water
12 system it was done on that makes up the total billings
13 that you have from Hatton that represents the summary
14 that you got as the first page of Exhibit 112?

15 A. That's right. We know the work was done. We
16 know the bills were presented, but we can't say that so
17 many hours was spent on designing a chlorination system
18 for this and so many hours were spent on analyzing the
19 pump capabilities of this. We can't give that kind of
20 detail. He said that he can't, and certainly, I can't.

21 Q. The work on the surcharge projects, the
22 construction work was completed in 1999, wasn't it?

23 A. Yes.

24 Q. This list, Exhibit 113 as I've split them
25 out, has engineering costs for 2000; correct?

00205

1 A. On what date?

2 Q. You need to refer to Exhibit 113, which is
3 the next exhibit. That includes billings for work
4 performed in 2000; correct?

5 A. Yes.

6 Q. When we got the information from Mr. Finnigan
7 provided us on this spreadsheet, the chart -- I believe
8 it's Exhibit 107, if we can refer to the last page of
9 that.

10 A. Okay.

11 Q. In the column "work not included in
12 estimate," it indicates there were an additional amount
13 of engineering costs incurred in 1998 in order to
14 develop the approved project list. At this point, is
15 AWR alleging that it has costs or engineering work that
16 it incurred in 1998 that should be included in these
17 totals?

18 A. I see 1998, but I don't understand where that
19 comes from. I don't know why he put 1998, whether
20 that's correct or incorrect or exactly how he got it.
21 As we did discuss earlier how this whole document was
22 put together, Mr. Finnigan had the information from our
23 original surcharge submittal. He had our CIP
24 information. He had most of the other information that
25 we presented here. He had Steve Hatton's bills, and he

00206

1 discussed various issues with me and with Steve Hatton,
2 and he said in order to satisfy the questions that you
3 were asking, I wasn't doing a very good job of, that he
4 wanted to try to answer the questions the best he could
5 in the kind of format that you expected to see the
6 answer, and I said, That's fine, no problem, and so
7 this is what he put together from those things, and
8 whether he got it all exactly straight, I don't know.
9 I'm not criticizing, but I'm saying I can't vouch for
10 the thought process and the work that he went through
11 to do it.

12 Q. So if we look at Exhibit 112, and let's look
13 at the second page of that, the summary, and this adds
14 up to \$101,313.10. Now, at the time this request that
15 we are here talking about today was submitted to the
16 Commission, you didn't even have the bills that start
17 with April 3rd of 2000 because you submitted this
18 request in March; correct? What I'm trying to get at
19 is what are you asking in engineering costs be included
20 in the extension of the surcharge, and what do you have
21 to document that these costs were incurred on surcharge
22 projects?

23 A. You questioned Mr. Hatton and we discussed
24 earlier where this \$101,000 came from, and the notes
25 that I was making -- he was giving you kind of his

00207

1 explanation of how it broke down, and I was making some
2 notes on how I thought that it broke down, which I
3 attempted to interject at the wrong time.

4 Q. This would be the appropriate time.

5 A. My evaluation of this \$101,000 was that it
6 was about \$40,000 for the system or 40 percent for
7 system design, about 40 percent on the WSP project,
8 which was a part of what was required by the order and
9 was envisioned in the surcharge, and about 15 percent
10 on the corrosion control designs, and about five
11 percent on his critiquing and evaluating for me the
12 spec book work that I had done.

13 So you are right that some of this extra here
14 was not in the original surcharge, but it was the extra
15 related to the surcharge to provide the CIP, the latter
16 part. Most of the latter part is the part that relates
17 to doing the WSP. A lot of these latter bills relate
18 to doing this WSP to satisfy DOH's order.

19 Q. I guess another concern I have is that the
20 first costs that we have presented here for services
21 provided in the month of April, 1999, when you have
22 other information that shows there were engineering
23 documents submitted and approved in 1998, and in
24 February and March of 1999, Mr. Hatton was writing
25 letters to people, which I would assume he billed you

00208

1 for the costs of that work. So what costs for
2 engineering are really included here?

3 A. It is entirely possible that we have missed
4 some of the costs that should have been included here
5 If I did, I didn't mean to, but we may have missed some
6 of the costs that should be included here, but that
7 would only work to our customers' benefit, I would
8 think, not against them.

9 Q. The question that we've been struggling with
10 at the Staff level since at least last March is how
11 much money was spent and what was it spent for, and
12 that's the question we've been trying to answer, and
13 I'm still not hearing that answer here.

14 A. I guess from the explanation I just made and
15 from the questions you just prompt, it appears to me
16 that at least this much and maybe a little bit more was
17 spent.

18 Q. That is assuming that all the amounts billed
19 in 2000 are also appropriately charged to the
20 surcharge.

21 A. And I believe they should be, because the
22 overage on the WSP issue was a part of the order and a
23 part of the surcharge requirement, no matter when it
24 was finally completed.

25 Q. Let's look at the invoice from Howard Godat,

00209

1 Pantier that's dated October 30th, 2000. That's in
2 113. This is the invoice for the amount of \$16,944,
3 and that indicates it's for -- type of work performed
4 is by the survey technician.

5 A. I'm still working on getting the right page
6 here. This is \$16,944?

7 Q. That's correct.

8 A. Your question again then?

9 Q. How do we know that this relates to the
10 surcharge other than the fact that the engineer has
11 coded it as to the surcharge project?

12 A. I guess that he believed because that's what
13 he said, and I trusted that was right because I
14 approved the bill. Beyond that, how do we know that?
15 I guess it would have to be by looking at his time
16 sheets or something, but I don't know how to give you
17 --

18 Q. I believe he testified he doesn't keep time
19 sheets.

20 A. I think that's probably a problem. It's also
21 a problem to me that in the future, I will see that
22 bills are presented in a different manner with more
23 detail and breakdown because I don't want to be here
24 doing this again, but I can't retroactively conjure up
25 that information.

00210

1 Q. At this point, I'd like to refer to a
2 document that is part of exhibits that I had marked for
3 use with Mr. Ward. It would be Exhibit 121. I thought
4 I had another copy of it in here somewhere, but I'm
5 only finding it here.

6 A. I have 121.

7 Q. This document consists of the data requests
8 submitted by Mr. Ward to the Company. On the first
9 page, a letter signed by Herta Ingram dated April 6th,
10 2000, in response to that, and then the next page is
11 titled Exhibit B. Are you familiar with this document;
12 have you seen it before?

13 A. Yes and no. I've seen this list. As far as
14 answering this data request, at the time Herta Ingram
15 was working for us, and I had her do virtually
16 everything relative to the UTC at this time because it
17 was my belief that having worked for several years for
18 the UTC as an auditor, she knew precisely how to answer
19 the questions and the manner that they needed to be
20 answered. I'm not at all sure today that that
21 confidence was justified. However, that was my belief
22 at the time.

23 Q. So basically, am I understanding your
24 response is you didn't prepare this document. You've
25 seen it, but you don't know the details of how it was

00211

1 prepared.

2 A. That is correct.

3 Q. In this document labeled Exhibit B, at the
4 very bottom row across, the first box is blank except
5 for a handwritten 99-116, which Mr. Hatton earlier
6 identified as the engineering company's billing code
7 for the surcharge project.

8 A. That's correct.

9 Q. Now, for this one, it says, Water system plan
10 update and approval of the amount you had estimated was
11 \$20,000?

12 A. That was the original surcharge request, I
13 believe. That was what was anticipated to be spent on
14 water system update approval.

15 Q. Then the engineering for projects and project
16 administration is \$42,500.

17 A. Again, what was anticipated in the beginning,
18 and the total of those two things being \$62,000 turned
19 out to be over \$100,000.

20 Q. Do you know which category the water system
21 plan update and approval or the engineering for the
22 projects and project administration, how much money we
23 should add to each of those categories?

24 A. The best knowledge I would have of that is
25 the speculation I just made a few minutes ago about the

00212

1 percentage of how the \$101,000 breaks down. That's how
2 I believe it should be broke up.

3 Q. I'd like to move at this point to a little
4 bit of discussion about the project costs and actual
5 work that was billed to AWR by VR Fox, and I think
6 we've already established all the construction work on
7 the projects that were funded by the surcharge were
8 performed by VR Fox Company; true?

9 A. That's correct.

10 Q. And VR Fox Company is one that you own?

11 A. Correct.

12 Q. And there is an affiliated interest filing on
13 file with the Commission?

14 A. I believe so.

15 Q. Do you know who prepared the bids that VR Fox
16 Company submitted to AWR?

17 A. By and large, I guess I would say I did
18 because I was the one ultimately responsible for seeing
19 they were right and submitting them. Different people
20 did different work. As Katie mentioned, she helped do
21 typing and maybe she helped take some phone calls or do
22 some parts of things, but she wasn't working for
23 American Water, so she, at that point, didn't do all
24 that much of it.

25 Craig Steepy did some of the collection of

00213

1 that information and a couple of other people. I
2 recall the name of Joe Hall who was working for us did
3 some of that. Some of our superintendents, either my
4 son or another fellow named Ted Tebo made up some
5 receipts, some bid information or whatever, but
6 essentially, I saw to it that that got all collected
7 together, assimilated, and made a bid, which I then
8 give the number to Katie and said, "Type up the bid,
9 and this is the amount I need in it."

10 Q. The bids were either signed by Ms. Woods or
11 by Craig Steepy; is that correct?

12 A. They were signed by whoever happened to be
13 there at the moment. I suppose you could have argued
14 they should have been signed by me, but I have never
15 had a big problem if I'm satisfied that something is
16 right, say, "Go ahead and sign it and send it out," but
17 yes, they were mostly probably signed either by Katie
18 or by Craig Steepy.

19 Q. Then when the contracts were entered into,
20 you signed the contracts on behalf of American Water
21 Resources but not on behalf of VR Fox; correct?

22 A. Correct.

23 Q. So essentially, what I just heard is you
24 estimated the amount needed to do the construction work
25 on each of the surcharge projects, and then you

00214

1 substantially did the bids for VR Fox Company on those,
2 and yet, we have a difference, fairly large monetary
3 difference between the original estimates and the final
4 amount.

5 A. That, in some cases, is true.

6 Q. In several of the cases, the scope of the
7 work was altered to eliminate a large part of the work;
8 wasn't that true?

9 A. That's true.

10 Q. Would it be fair to characterize that as in
11 general when part of the project was to install service
12 meters at each of the connections that that was dropped
13 out?

14 A. Would it be fair to characterize? Yes, that
15 is what happened. That's not the reason it happened,
16 but that is part of what was done, yes.

17 Q. Some of the work that was not done --

18 A. Some of the work was not done; therefore, the
19 scope of the work and the charge was reduced.

20 Q. To go back to our Exhibit 107, let's look at
21 Page 4 of Exhibit 107 referring to the Lazy Acres
22 system. The estimate was nearly \$30,000, yet the
23 contract amount was a little over \$11,000. Is this one
24 where the work that was not done that you dropped out
25 was installation of service meters?

00215

1 A. That's right. I'm not sure that was the only
2 thing, but it was certainly the major thing that was
3 dropped out.

4 Q. If that's the only thing that was dropped
5 out, then that's almost \$18,000 difference?

6 A. Yes. It was also some reconstruction of the
7 pump house, some work that needed to be done on the
8 pump house. I think that there is some pictures of the
9 pump house in here. I'm not sure.

10 Q. On the Terry Lane system, there was an
11 estimate of \$30,000. The contract amount was almost
12 \$12,000.

13 A. Right. The major thing that was dropped out
14 of there was the service meters and some refurbishing
15 to the pump house. The major thing that was done was
16 the roof to the reservoir was in very bad shape, and,
17 in fact, had caved in just prior to us getting to
18 finally fix it. We had to put a temporary fix on it
19 and then replaced the roof and cleaned and refurbished
20 the reservoir, drained it down and so on.

21 Q. While we are on the Terry Lane system, we had
22 discussed this morning while we were off the record
23 this indicates work not included in the estimate,
24 chloride treatment design required, and my recollection
25 is that neither you nor Mr. Hatton believe that that

00216

1 occurred; that there was, in fact, an effective
2 chlorination system on that system when you purchased
3 it; is that correct?

4 A. In addition, it was chlorine, not chloride,
5 as you suggested.

6 Q. So that was an error in this description?

7 A. Right.

8 Q. We talked earlier about how the purchase of
9 the storage tank for the Elk Heights system was done,
10 and I wanted to ask you the same information, if you
11 can find it for us, for the Clerget system.

12 A. I'll try to find the numbers, if you want,
13 but first off, let me explain what happened. Both of
14 those systems required new storage tanks, and it was
15 originally anticipated that Fox Company would buy those
16 storage tanks and provide them as part of the job, and
17 those tanks, in fact, were ordered -- to take care of
18 the time lag in getting the tanks, those tanks were
19 ordered before any award was made or anything was done.
20 Fox Company simply ordered them to see that they were
21 moving on the time line, and then later, it was
22 anticipated that they would be part of the Fox Company
23 job that was done. I believe Fox Company advanced the
24 money to make the down payment on those prior to any
25 contracts or anything.

00217

1 Then as we got further down the line, we
2 recognized that the best answer for American Water was
3 to let American Water simply pay for those tanks
4 direct, and therefore would be no markup or anything
5 involved with Fox Company on those tanks. So that's
6 what was done. To the extent that Fox Company had
7 advanced money for those tanks that American Water
8 simply paid that exact amount back to Fox Company.

9 Q. I'm referring at this point to Exhibit 3, and
10 it's actually the second to last page of Exhibit 3,
11 which is your response to our Data Request No. 8.

12 A. Okay.

13 Q. It's titled "surcharge material-labor."

14 A. Okay.

15 Q. Then below the columns of information, there
16 is an asterisk indicating that the reservoir tanks were
17 paid for by AWRI and are not included in these costs.

18 A. That's correct.

19 Q. That would include then the Clerget/Hubert
20 and the Elk Heights systems.

21 A. That's correct. That's why you see the
22 difference between the contract amount on those two
23 jobs versus the contract amount in whatever the exhibit
24 is that's got the breakdown of the bids. That was my
25 Exhibit 1.

00218

1 Q. However, when the Commission staff had asked
2 for information earlier on copies of invoices, you
3 provided copies of an invoice from VR Fox to AWR for
4 the cost of the tank.

5 A. Okay.

6 Q. So can you see the confusion that comes in
7 here where now you are saying that AWRI paid for it and
8 not VR Fox?

9 A. I can see how confusion has come into just
10 about all of this, but explaining that particular
11 point, we need to look at Exhibit 1. Let's see if I'm
12 in the right place. No, I'm not. Exhibit 5, we should
13 be able to look at those two jobs. Elk Heights, if you
14 notice on the summary page for the Elk Heights bid --

15 Q. About where in Exhibit 5 would we find that?

16 A. Exhibit 5, flip back about the fifth section,
17 which is Elk Heights.

18 JUDGE BERG: I'm at the handwritten note
19 entitled "Elk Heights Bid Summary."

20 THE WITNESS: That's what I'm looking at. It
21 shows the Fox Company bid was \$72,844 including the
22 storage tank, and then there is a note down below,
23 "Tank purchased direct by AWR. Contract reduced by
24 \$20,827." So I think if we go to the other exhibit
25 that shows the contract amounts -- you can probably get

00219

1 me there quicker, Mary.

2 Q. (By Ms. Tennyson) The contract amount is, if
3 we look back to the actual signed contract, is for
4 \$72,844.

5 A. Right. But I've made a note here that the
6 contract was reduced by the \$20,000, and when we look
7 back at my -- let's see, summary of the statements on
8 each of the 13 jobs. Let's look at that. That's not
9 the one I want. Hold on.

10 JUDGE BERG: Are we looking for the summary
11 prepared by Mr. Finnigan?

12 THE WITNESS: No. I'm sorry. I'm somehow
13 lost here, but I will get there.

14 JUDGE BERG: That's all right. If we can
15 help you find it sooner, we will.

16 THE WITNESS: One place that we see it is on
17 Exhibit 3, my response to Mary Tennyson's data request.
18 The second to last page of that package, we see the Elk
19 Heights job, the contract amount is listed as \$52,016
20 not \$72,844.

21 Q. But the copy of the signed contract lists it
22 as the \$72,000.

23 A. Correct; however, that is not the amount that
24 Fox Company charged. The amount that Fox Company
25 charged was reduced by this \$20,872 that the note

00220

1 indicates, and it is shown on the second to last page
2 of Exhibit 8 in that table that shows the contract
3 amount of the various jobs, Elk Heights, \$52,016. Is
4 that clear to everyone?

5 JUDGE BERG: I see the reference, and I
6 understand the explanation.

7 THE WITNESS: The same thing is true of the
8 Clerget/Hubert.

9 Q. (By Ms. Tennyson) For the Elk Heights, what
10 you are saying is that what VR Fox billed AWR under the
11 contract was only the \$52,000. They, in fact, also
12 billed them for the costs of the storage tank, so the
13 amount that AWR paid VR Fox Company for this work was
14 the \$72,000 figure, including the cost of the storage
15 tank.

16 A. That would be true, except the \$20,000 was
17 merely a reimbursement for what Fox Company put out.

18 Q. It was a pass-through?

19 A. It was just a pass-through, right.

20 Q. But it is not correct to say that AWR paid
21 Reliable Steel for the storage tank.

22 A. No. They didn't pay it direct. Fox Company
23 paid it and they repaid Fox Company.

24 Q. Is that the same situation on the Clerget
25 system?

00221

1 A. Yes.

2 Q. Is it also your testimony that on the Clerget
3 system that there was not a markup on the materials
4 costs of the storage tank?

5 A. That is correct. It was done precisely at
6 cost.

7 Q. I'd like to refer at this point to Exhibit
8 108. In this case, this is your response to my Data
9 Request No. 3A, and I'd like to refer specifically to
10 the -- we've already established that Terry Lane had an
11 operational chlorination system, so we don't need to
12 refer to that.

13 You indicate then in the last sentence of the
14 last full paragraph before the who prepared it is a
15 cost breakdown of this work is provided to Staff in
16 Data Request No. 8. We just looked at the response to
17 Data Request No. 8, which was your summary of the costs
18 of the materials and labor charge. Where in here do
19 you provide a cost breakdown other than just a lump sum
20 description of the material and labor charges?

21 A. I need to read the question again here. Just
22 a minute. I guess as to the cost breakdown, we broke
23 it down as to material and labor.

24 Q. But you didn't --

25 A. We didn't break it down as to each board or

00222

1 each nail. We just broke it down to labor and
2 materials.

3 Q. In fact, you didn't break it down to the
4 costs of materials for the roof and the cost of the
5 source meter.

6 A. No, that's correct. We just broke it down to
7 materials and labor.

8 Q. And you didn't provide us with the breakdown
9 of what a detail of what those materials were.

10 A. The best description that could be made of
11 that today would be the information contained in our
12 Exhibit 6.

13 Q. So information that is in Exhibit 6 does give
14 that kind of detail, but you did not provide that in
15 response to my request that was sent to you in early
16 December; correct?

17 A. No. Because my understanding of what was
18 being asked for at that time was invoices, and we still
19 haven't ferreted out individual invoices, and it would
20 be extremely difficult to do so, but I did say that I
21 would be willing to swear that the information I give
22 there and the information I give you here are correct.
23 They do agree with each other, and given enough
24 searching and costs, every invoice could be found.

25 Q. Can you read the question that's asked in

00223

1 Data Request 3A?
2 A. "For information provided by Richard Finnigan
3 on December 1st --"
4 Q. I'm just asking you to read it to yourself.
5 You don't need to read it aloud.
6 A. Okay.
7 Q. This didn't request invoices, did it? It
8 asks for a cost breakdown.
9 A. This didn't here, no.
10 Q. You had been asked on previous occasions
11 several times for invoices; correct?
12 A. That is correct.
13 Q. In fact, you were asked about four or five
14 times for invoices, weren't you?
15 A. Two or ten, I'm not sure.
16 Q. But you still have not provided invoices.
17 A. That's correct.
18 Q. But you also did not provide the information
19 contained in Exhibit 6 until today; correct?
20 A. I thought that we did in an adequate enough
21 manner --
22 Q. It was a simple question.
23 A. All right.
24 Q. You did not provide this information in
25 Exhibit 6 until today; correct?

00224

1 A. Apparently not.

2 Q. Did you or did you not?

3 A. I did not to your satisfaction, no.

4 JUDGE BERG: I'll just say the customary
5 manner to respond to additional questions is with a yes
6 or no, but if there is a relevant explanation that you
7 think is necessary in order to provide a full response,
8 once you've made the direct response, yes or no, to the
9 question, we will allow witnesses to provide further
10 explanation.

11 THE WITNESS: Thank you, Your Honor.

12 JUDGE BERG: Certainly up to a reasonable
13 point.

14 Q. (By Ms. Tennyson) Your basic contracting
15 procedure, when you ask a contractor to submit a bid,
16 you would get bids, and then your standard
17 specifications call for there to be a Notice of Award;
18 correct?

19 A. That's correct.

20 Q. In your Exhibit 6, you have provided us with
21 that information today, have you not?

22 A. That is correct.

23 Q. So now, we have --

24 A. I don't think it was 6 though, but I did
25 provide it.

00225

1 Q. It's 5. Exhibit 5 has the copies of the
2 contracts that has copies of all of the bids, has
3 copies of the Notice of Award, and then a Notice to
4 Proceed.

5 A. Yes.

6 Q. Your specifications, or in this case the
7 contracts, generally call for completion of the
8 construction within 60 days of the Notice to Proceed.
9 What would be the reason for a delay between the Notice
10 of Award and the Notice to Proceed?

11 A. Just a matter of mobilization. Often times
12 on jobs, there is a time specified that may be the time
13 -- because you see, as a bidder, you want to know that
14 the job is for sure going to be awarded to you. That
15 is in most cases, particularly the larger the job the
16 more it becomes the case, that you can't then start the
17 job that day. So often times in contract documents, it
18 will specify that a Notice to Proceed will be issued
19 within so many days of Notice of Award or those kinds
20 of things.

21 Q. Referring specifically to the projects in
22 this case, your advertisement for bids did not state a
23 Notice to Proceed will be issued within X days, did it?

24 A. That's right. There wasn't a specific time
25 specified there.

00226

1 Q. The Notice of Award that you've given us
2 today also did not include a day when there would be a
3 Notice to Proceed.

4 A. That is correct.

5 Q. And the bids submitted by VR Fox Company did
6 not include a statement, "This is only good for 10
7 days," or anything like that, did it?

8 A. I don't think so.

9 Q. So it wasn't a restriction that the bidder
10 put on it in this case that determined that time frame.

11 A. That's correct.

12 Q. The contracts I have reviewed in this case
13 generally included a term that the work on the project
14 must be completed within 60 days of the Notice to
15 Proceed.

16 A. Okay.

17 Q. Do you agree with that?

18 A. I'm sure you are right.

19 Q. Do you know if the work on any of the
20 contracts to be funded by the surcharge exceeded the
21 60-day period?

22 A. I'm pretty sure that they didn't, at least
23 not to the point of substantial completion. There
24 could have been little details of the cleanup of some
25 miscellaneous little item that would drag on, but

00227

1 generally, substantial completion is what you are
2 referring to.

3 Q. We did ask the Company, Mr. Ward did ask the
4 Company to provide a chart or to fill in some
5 information, which is actually included in Exhibit 122.
6 I don't want you to have to add and subtract all of
7 these, but just looking at the date from work started
8 to work complete --

9 A. You are looking at 122?

10 Q. Yes, the second to the last page of that. It
11 appears that for the Valley Meadows contract that there
12 were 82 days between the date the work started and the
13 work completed.

14 A. It appears that way here, yes.

15 Q. If your general construction standards allow
16 AWR to deduct up to \$100 per day in liquidated damages
17 from payment to the contract or for days over the
18 completion date that the work was not completed --

19 A. It does give that prerogative.

20 Q. -- did AWR do that for any of the other
21 contracts, or in particular, the Valley Meadows
22 project?

23 A. No.

24 Q. Earlier this afternoon, we talked about
25 several of the projects or at least the first ones on

00228

1 the Department of Health critical item list. There
2 were health related problems, and for many of those,
3 the Company was aware of those health related problems
4 substantially earlier than the construction work was
5 done. Why didn't the Company do the work earlier when
6 you had health related concerns on those systems?

7 A. I guess the two biggest reasons would be,
8 number one, that temporary chlorination had been
9 installed, and I believe that pretty well answers the
10 question of any kind of health related problems. That
11 doesn't eliminate the argument that you have better
12 control with permanent chlorination.

13 As I said earlier, there tends to be a larger
14 fluctuation of the highs and lows with temporary
15 chlorination versus permanent chlorination. That's
16 because of the fact that permanent chlorination is more
17 certain, more exact, is -- I believe DOH would tell
18 you is there reason for wanting to hurry up and get it
19 done. I suppose from their viewpoint, it also cuts
20 down the potential of people complaining. I'm losing
21 sight of exactly what your question was at this point.

22 Q. Why didn't you do the projects when --

23 A. Why didn't we do it quicker?

24 Q. Right.

25 A. The other part was a big factor related to

00229

1 the funding and the surcharge, availability of money,
2 and then there was a various smaller thing that I've
3 explained some earlier relating to permits and
4 easements and different kinds of approvals and issues
5 that would also have to a smaller degree an effect on
6 that.

7 MS. TENNYSON: We have already admitted
8 Exhibits 101 through 115; correct?

9 JUDGE BERG: Yes. The only documents that
10 have been discussed but not offered for admission at
11 this point are 121 and 122.

12 MS. TENNYSON: I will wait to offer those
13 through Mr. Ward. I don't have any further questions
14 of Mr. Fox at this time.

15 JUDGE BERG: Mr. Fox, I have a few questions.
16 I'm going to start at the back and maybe work my way
17 forward.

18

19 EXAMINATION

20 BY JUDGE BERG:

21 Q. You made reference to the funding
22 availability of the surcharge in order to initiate work
23 on those projects, and there were other exhibits that
24 indicate that the surcharge is necessary to repay a
25 loan. Wasn't that a loan generated to make the capital

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1 improvements for these projects?

2 A. Are you talking about the surcharge?

3 Q. Yes.

4 A. Yes, that is true, and that loan, no money
5 would be advanced on that loan until the approval of
6 the surcharge. The bank had made me a commitment that
7 they would loan that, but they would not advance any
8 money on it until they had the official okay from UTC
9 that the surcharge was approved.

10 Q. So that was a condition that was generated by
11 the lender?

12 A. That's correct.

13 Q. With regards to the pass-through for the
14 storage tanks at Clerget and Elk Heights, was that also
15 true of Crescent Park; was there also a storage tank?

16 A. No. Crescent Park was a different situation.
17 It had a storage tank, and it was a square concrete
18 storage tank, and it had a wood frame cover, and that
19 wood frame cover had become deteriorated and ultimately
20 caved in. So we took that off, emptied the storage
21 tank, used our temporary intertie with the water
22 company on Spanaway Water to supply water while we had
23 the reservoir down. We cleaned and refurbished the
24 reservoir and built a new roof on it.

25 Q. Were there any pass-through costs associated

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1 with the Crescent Park project?

2 A. Since you bring it up, I'm sure there was,
3 and I'm not sure how we've accounted for that here.
4 There was initially a thought or a requirement that --
5 let's see now, Crescent Park. I'm confusing the two
6 jobs here.

7 The description I just give you of the
8 reservoir was Terry Lane, not Crescent Park. There was
9 on Crescent Park a requirement that the reservoir
10 capacity be increased or the reservoir be replaced, and
11 the alternative to that was to establish an intertie
12 with Spanaway Water, and I did negotiate that intertie
13 with Spanaway Water, and they did construct that
14 intertie and charged us approximately \$22,000 -- I
15 don't have the exact amount in front of me, but it's
16 very close -- for doing that intertie.

17 Q. Was that a pass-through cost?

18 A. That was paid for direct by American Water.
19 Fox Company was never involved in that.

20 Q. With regards to the bidding process as you've
21 discussed with regards to the 13 separate projects, was
22 the bid process the same for all projects?

23 A. My initial thought is yes, but let me think
24 about it. What would be construed as a difference? I
25 believe it was the same except that in the end result,

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1 some of them were negotiated down to a lesser job, but
2 I think the bid process was the same in all cases.

3 Q. Did VR Fox submit its bid after reviewing
4 other bids?

5 A. No.

6 Q. For those projects where multiple bids were
7 received, was the bid by VR Fox, was that bid prepared
8 independent from the other bids, or was it prepared
9 after those other bids were received?

10 A. It was independent.

11 Q. My understanding is that the estimates that
12 were a project cost that were submitted to the
13 Commission in support of the original request for
14 surcharge in March 1999 that those estimates were based
15 on capital improvement plan estimates that had
16 previously been done, but I wanted to try and get more
17 firm in my mind whether or not those CIP estimates were
18 performed contemporaneous with the request for
19 surcharge or whether they had been performed at some
20 earlier time and then relied upon in March 1999.

21 A. Yes, they were pretty much done earlier, and
22 then because a part of the WSP is to have a CIP plan,
23 so there had been earlier CIP lists done that I believe
24 originally listed -- I don't know -- 70 or 80 jobs that
25 needed some amount of work, and part of my discussion

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1 and argument, if you will, with DOH in determining what
2 jobs were going to be done in this surcharge process, I
3 advocated that all of the things that really ought to
4 be done should be included in one package and get it
5 done for several reasons.

6 One is that it didn't seem very fair to me
7 that the customers of 150 systems should pay for the
8 cost of repairing 13 systems, and then we at some time
9 later asked the customers of 150 systems to pay for a
10 different 15 or 20 or who knows systems. It just
11 didn't seem to me an appropriate way to do things.

12 So I asked for the surcharge to be done that
13 we could deal with all of our capital improvement
14 program, which is the objective of what that's in the
15 WSP for, and I believe DOH's rule is if it's identified
16 in the CIP, then it is eligible to be funded as a
17 surcharge project, as far as they are concerned, at
18 least, whether or not UTC chooses to see it that way,
19 and a lot of argument went on about this issue, and it
20 was ultimately decided -- I don't know whether it was
21 by DOH or UTC or by conversations between the two --
22 that only the 13 most pressing projects would be
23 addressed.

24 Q. For those CIP estimates that were not
25 originally prepared contemporaneous with their

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1 submission in March of 1999, did you consult with
2 Mr. Hatton to update or revise those estimates?

3 A. I believe we tried to see that we had done
4 that. But I also believe at this point that we didn't
5 do a very good job of it.

6 Q. The last question I have relates to Exhibit
7 113 where there was some discussion regarding the
8 \$16,944 for survey tech, and I believe that is the --

9 A. Yes. I'm glad you brought that up again
10 because Mary said something about survey, and I never
11 picked up where she answered that question. Help me
12 out there, will you?

13 Q. This is on Exhibit 113. It's approximately
14 five pages from the back.

15 A. This is the bill for \$16,944?

16 Q. Yes, the invoice dated October 30, 2000.
17 When I look at this invoice, at the same time at the
18 top, the invoice states "professional services for the
19 period 9/1 to 9/30." It also states the type of work
20 performed. It shows, "survey technician, 353 hours."

21 A. Frankly, I can't tell you what that means.
22 Survey technician, I would tend to think that that
23 would be a surveyor, someone who goes out and does some
24 surveying. There was no surveying done on any of these
25 jobs, so whether that's a misnomer in their description

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1 of a person, or how the word "survey" gets in there, I
2 haven't the foggiest idea. I can only tell you there
3 was no surveying done.

4 Q. Just dealing with the 353 hours, do you
5 believe that there were 353 cumulative hours of work
6 performed in the period 9/1 to 9/30, or is this an
7 invoice that reflects services rendered over a longer
8 period of time?

9 A. I believe that those hours were performed
10 within that time frame, and they were done, if not
11 entirely, almost entirely on the work on updating the
12 WSP.

13 JUDGE BERG: Those are all my questions.

14 MS. TENNYSON: I would like to follow up a
15 little bit on that.

16

17 FURTHER CROSS-EXAMINATION

18 BY MS. TENNYSON:

19 Q. Just doing the math on that, if we take 353
20 hours at \$110, that's \$38,830, which obviously doesn't
21 comport to anything that's on this invoice.

22 A. I'm afraid you're right. I guess what that
23 points out is maybe I didn't review my bills good
24 enough, but that doesn't calculate. But I do know that
25 the \$16,900 was what he billed for that month, and I do

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1 know that he did an awful lot of work on the WSP in
2 that month, so I didn't go the step beyond that that I
3 probably should have to give him as much criticism as
4 you are giving me to find the exact explanation.

5 JUDGE BERG: Do you recall a billing rate for
6 Mr. Hatton's time?

7 THE WITNESS: I've had them previously
8 written down on different things, but I'm not sure what
9 his billing rate is today. If this 110 is his billing
10 rate, I can't say it is or isn't.

11 JUDGE BERG: With reference to the
12 description of type of work performed under this
13 invoice, it does show water system planning, the WSP
14 related work. Do you also believe that if, in fact,
15 there were construction administration and construction
16 specifications related tasks performed?

17 THE WITNESS: As part of the \$16,000?

18 JUDGE BERG: Correct.

19 THE WITNESS: I certainly don't know a
20 breakdown. What I was looking back to try to find out
21 is whether that kind of a general heading he used on
22 previous invoices and carried it forward, or whether it
23 was intended to be specific to this invoice. I don't
24 know the answer to that, but my guess would be that any
25 work relative to construction administration or

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1 specifications would be far outshadowed by the amount
2 of work done on the water system plan.

3 JUDGE BERG: To the best of your knowledge,
4 would any construction administration or construction
5 specifications work performed during that time period
6 be properly allocated to the surcharge account?

7 THE WITNESS: Construction administration, if
8 construction administration was done during that time,
9 I would think that it would not because the
10 construction projects of the surcharge were long since
11 completed. As far as construction specifications, my
12 guess would be if there was anything in this billing
13 that related to construction specifications, it would
14 be related for the corrosion control.

15 JUDGE BERG: That's all my question.
16 Ms. Tennyson are there other follow-up questions?

17 MS. TENNYSON: I have a couple of brief ones.

18 Q. (By Ms. Tennyson) Judge Berg asked you some
19 questions about the water system plan and the
20 construction improvement plan. Do those normally
21 include dollar costs or estimated costs when you
22 include projects in that?

23 A. Yes.

24 Q. Isn't it true that some construction projects
25 that might be included in a CIP are done with regular

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1 capital funds, such as facilities charged, moneys
2 collected? You don't always do that through
3 surcharges; correct?

4 A. They can be done either way at any time, as
5 far as I know.

6 MS. TENNYSON: I don't have anything further
7 at this time.

8 JUDGE BERG: That concludes cross-examination
9 based on your direct testimony, Mr. Fox. Ms. Tennyson,
10 just let me ask, do you still reserve the opportunity
11 to call Mr. Fox as a direct witness?

12 MS. TENNYSON: I do. I think it's unlikely,
13 but if so, I would let you know soon, but I don't
14 believe we will be.

15 JUDGE BERG: It's not a matter of whether or
16 not I'm going to release you, Mr. Fox, because you are
17 here for the duration as a party representative, but I
18 just wanted to make that inquiry so we could plan
19 ahead. So at this time, your testimony is completed.
20 It may be that Ms. Tennyson wishes to call you later
21 when putting on her presentation to provide additional
22 information.

23 THE WITNESS: That's fine.

24 JUDGE BERG: Mr. Fox, does that conclude all
25 of the testimony or witnesses you wish to present in

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1 this case?

2 THE WITNESS: I believe so, Your Honor.

3 JUDGE BERG: Is there anything that we need
4 to address at this point in time in the way of motions,
5 Ms. Tennyson?

6 MS. TENNYSON: I think that at this point, I
7 would like to make a motion to dismiss before
8 presenting any further evidence. I believe that we
9 have for the last nearly 10 months been attempting to
10 get information about what actually was spent, whether
11 it was appropriately charged to the surcharge account,
12 and in this case, Mr. Fox is asking for additional
13 moneys to be funded by the surcharge to be paid, as I
14 indicated earlier, by the customers on top of the
15 amount they pay for water service. Particularly with
16 regard to the engineering costs, we have very little
17 detailed information about whether these costs are
18 appropriately charged to the surcharge account as
19 opposed to other engineering costs that should be borne
20 by the Company in its regular course of business.

21 With regard to the actual cost detail, which
22 has been presented today by the VR Fox Company
23 accounting detail, this information was first requested
24 by Mr. Ward from the Company in November of 1999. We
25 still do not have, as he had requested at that point --

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1 in terms of that request, I would refer you to Exhibit
2 110. Mr. Ward requested at that point, since the
3 surcharge funding at that point had been -- the amounts
4 were spent. The construction projects were completed,
5 requested a detail of the vendor invoices, materials
6 costs, etcetera, to show how the money had been spent.
7 In Exhibit 110, Ms. Ingram's response was, which was
8 not dated until March 20th of 2000, was, "We will give
9 that to you when we file for our extension of the
10 surcharge."

11 That information was not provided with the
12 Company's filing of the surcharge. The materials that
13 the Company did provide are contained in Exhibit 101.
14 Mr. Ward made numerous requests for the documents, and
15 we did not receive any detail until today. Had that
16 information been provided, Staff could have at least
17 sought to look at the information that Ms. Wood
18 testified is available in the VR Fox Company files that
19 could have been a sampling, could have gone in to look
20 to see if the vendor invoices are in the Hardel file or
21 other vendor files and could have verified that the
22 information exists.

23 In the data request that was submitted to the
24 Company on December 7th, Data Request No. 8, one of the
25 questions was, "Could Mr. Ward come and look at the

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1 documents, come and look at the VR Fox Company records,
2 if it's necessary to make arrangements to do that. We
3 are willing to do that. We didn't ask the Company to
4 provide all the data and get us reams of stuff,
5 whatever. We specifically allowed for Mr. Ward to go
6 visit the Company. The response was dated December
7 21st and received in my office on December 26th of 2000
8 and consisted simply of the response to Data Request
9 No. 8 that we've discussed today, which is two pages of
10 summary information prepared by Mr. Fox. The Company
11 has still not provided the kind of detail necessary to
12 support the case.

13 Another example might be the dollar amounts
14 that are presented for the -- I was just reviewing the
15 documents for the Crescent Park system, and the
16 information contained in the response to Data Request
17 No. 8 is that there were \$1,357 in material costs and
18 \$9,463 in labor charges. If you look at the
19 information relating to Crescent Park that's contained
20 in Exhibit 6, the labor charges add up to no more than
21 \$2,000. Those charges have not been borne out. Maybe
22 this is one of the projects that Mr. Fox has referred
23 to that VR Fox Company made a profit on whereas others
24 may have made a loss, but we don't have a documentation
25 that there was work performed to justify the charges

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1 that have been presented to us.

2 What we have is a lot of inconsistencies in
3 the information provided. An example that we spent a
4 lot of time on today is the whole issue of the storage
5 tanks. The information that the Company provided to
6 Staff in response to Mr. Ward's request included
7 invoices from VR Fox to AWR for the cost of the storage
8 tank, and then the information provided in response to
9 the formal Data Request No. 8 says that AWR paid for
10 the tank directly. In fact, they paid VR Fox for the
11 tank. There may not have been a markup on the cost of
12 the tank, but the information we were able to -- until
13 today, we didn't know what happened. So we don't
14 believe that the case has been proven at this point and
15 would move that we dismiss the proceeding before
16 proceeding further.

17 JUDGE BERG: Mr. Fox, would you like to
18 respond?

19 MR. FOX: I think there is a number of things
20 to be said. One is if we didn't receive information
21 until today, we did still receive it. It is in front
22 of us. Another thing that is I think I tried to do the
23 best I know how to present what information I could,
24 and I do admit that I was reluctant, and I still cannot
25 comprehend why in a bid situation one should be

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1 expected after the fact, when they were never told in
2 the beginning, to supply information like you would on
3 a time of material job.

4 As I said before, I have bid thousands of
5 jobs. I have never been asked such a thing, nor do I
6 know of anyone else ever been asked such a thing. Now,
7 I've learned in the last little bit that's the way UTC
8 wants to do it, and you can well bet that the next job
9 we bid, I will have that information in that format the
10 way they want to see it, but I had no reason to believe
11 that, and I think that even though that's the way they
12 want to see it, if that's the UTC rules, I think that
13 they are wrong and should be changed, but nevertheless,
14 if that's what they are, they are. But I want you to
15 understand why I did what I did and that I tried to do
16 the best I could in both the context of the information
17 that was available and also in what I believe to be
18 right and reasonable, I guess you would say.

19 I readily recognize the whole issue is in
20 your hands. You have to decide whether you think I'm
21 all screwed up or not. I've tried to explain what I
22 did and why. What more can I do?

23 JUDGE BERG: I'm going to take this matter
24 under advisement. What that means, Mr. Fox, is the
25 case will go forward. Staff will make its presentation

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1 as part of this hearing, but afterwards, in looking at
2 all of the evidence that's in the record, it is
3 possible that the case may be disposed of based on a
4 conclusion that AWR did not meet its burden of proof.
5 This is not intended to signal that I would rule one
6 way or the other, but the motion has been raised. You
7 have responded, and it's an option that I'll have after
8 more time to reflect on the presentation you've made
9 and the evidence that's in the record.

10 In the meantime, I will just say that while
11 this case continues to go forward, I see no reason why
12 you should not continue to communicate with Staff to
13 see if there isn't some other information that you can
14 present to Staff that would assist Staff in assessing
15 whether or not, in fact, any extension of the surcharge
16 would be just and reasonable.

17 So I encourage you, Mr. Fox, to continue to
18 talk with Staff to see if there is anything else that
19 can be done to satisfy their requirements that has not
20 been done to date. It may be possible that the
21 documentation or the level of detail that Staff would
22 need just simply doesn't exist, but I encourage you to
23 communicate with the Staff on that point.

24 With that, Ms. Tennyson, would you like to
25 begin direct examination of your witnesses this

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1 afternoon, or would you prefer to take a break at this
2 point?

3 MS. TENNYSON: I think I would prefer to take
4 a break at this point. I just think with the bizarre
5 schedule we've had, I'm a little bit tired, and I think
6 probably the witnesses are as well.

7 JUDGE BERG: Based on what we've accomplished
8 here today, if we were to begin tomorrow morning at
9 nine o'clock and get approximately three hours of
10 testimony completed in the morning and another four
11 hours in the afternoon, do you envision that Staff
12 could complete its presentation during tomorrow's
13 session.

14 MS. TENNYSON: There is no question of that.
15 I think it's likely we will be able to conclude in the
16 morning.

17 JUDGE BERG: Then on that basis, we are going
18 to adjourn for the day. We will be back here at nine
19 o'clock tomorrow morning. My expectation is that we
20 will begin as close to nine o'clock as possible. At
21 that point, Mr. Fox, I would like you to have copies of
22 those exhibits as we've discussed to distribute.

23 MR. FOX: I'll do that, Your Honor.

24 JUDGE BERG: Do you have any questions about
25 where we are at in the proceeding at this point in

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1 time, Mr. Fox?

2 MR. FOX: I don't think, except you mentioned
3 a minute ago and Mary mentioned about Mr. Hatton's
4 records and the records concerning the various
5 engineering invoices and so on. I think from what he
6 explained and from what he's given me, I can't
7 understand how we are ever going to get the degree of
8 detail that she's asking for. So I guess I don't know
9 your process, to what degree you need pieces of paper
10 and to what degree you go on what you believe out of
11 everything that happens, but I guess my point is that
12 if we are going to spend another half a day and then we
13 are going to say, "Well, we are going to throw this
14 thing out because we didn't get enough engineering
15 paper," we might as well say it now.

16 JUDGE BERG: I can't make that decision now.
17 There is a great deal of detail that has been
18 presented, and myself and Mr. Twitchell, like the
19 parties, are committed to making the best decision
20 possible here. While I understand the motion that
21 Staff has made, it's going to require at the minimum
22 more review of the evidence that's been presented
23 before I could make that decision.

24 In the meantime, I don't feel that we can
25 delay any further proceedings in order for

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1 Mr. Twitchell and I to do our due diligence, so to
2 speak, and on that basis, I'm requiring that Staff go
3 forward and make its presentation. I understand that
4 there is always the possibility that, in fact, I will
5 rule favorably on Staff's motion to dismiss, and it may
6 appear that this extra process is unnecessary, but at
7 this point in time, I can't rule that out, and so we do
8 need to go forward.

9 MR. FOX: Fine. I'm certainly willing to do
10 anything else I can to try to help the cause.

11 JUDGE BERG: I appreciate that, and I do
12 encourage you to continue to communicate with Staff to
13 see if there is anything else that can be done. With
14 that, let's be off the record and adjourned.

15 (Hearing recessed at 4:20 p.m.)

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