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1 BEFORE THE WASHINGTON UTILITIES AND
2 TRANSPORTATION COMMISSION
3 WASHINGTON UTILITIES AND)
4 TRANSPORTATION COMMISSION,) DOCKET NO. UW-040367
)
5 Complainant,) Volume I
) Pages 1 to 15
6 vs.)
)
7 COUGAR RIDGE WATER SYSTEM,)
)
8 Respondent.)
)
9

10 A hearing in the above matter was held on
11 March 25, 2004, from 3:00 p.m to 4:00 p.m., at 1300
12 South Evergreen Park Drive Southwest, Room 206, Olympia,
13 Washington, before Administrative Law Judge THEODORA
14 MACE.

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16 The parties were present as follows:

17 THE COMMISSION, by JONATHAN THOMPSON,
18 Assistant Attorney General, 1400 South Evergreen Park
19 Drive Southwest, Olympia, Washington 98504-0128,
 Telephone (360) 664-1225, Fax (360) 586-5522, E-mail
 jthompso@wutc.wa.gov.

20 COUGAR RIDGE WATER SYSTEM, by THOMAS A.
21 BROWN, Attorney at Law, Brown Leis Janhunnen & Spencer,
22 101 East Market Street, Suite 501, P.O. Box 1806,
 Aberdeen, Washington 98520, Telephone (360) 533-1600,
 Fax (360) 532-4116, E-mail tom.brown@lawbljs.com.

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25 Joan E. Kinn, CCR, RPR
 Court Reporter

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1 PROCEEDINGS

2 JUDGE MACE: Let's be on the record in the
3 matter of Washington Utilities and Transportation
4 Commission versus Cougar Ridge Water System. This is
5 Docket Number UW-040367. This is the date the
6 Commission has established for a pre-hearing conference
7 on this matter. The date is March 25th, 2004, and we
8 are convened at the offices of the Washington Utilities
9 and Transportation Commission at Olympia, Washington.
10 My name is Theodora Mace, and I am the Administrative
11 Law Judge who has been assigned to hold hearings in this
12 case.

13 I would like now to take the appearances of
14 counsel, and I need a long form of the appearance, which
15 means your name and address, phone, fax, and E-mail
16 information, so if you could begin, please.

17 MR. BROWN: My name is Tom Brown, that's
18 Thomas A. Brown. I'm an attorney from Aberdeen. My
19 office address is, well, the mailing address is Post
20 Office Box 1806, we're located at 101 East Market Street
21 in Aberdeen, the zip code on both is 98520. My
22 telephone number is area code (360) 532-1960, fax number
23 is area code (360) 532-4116, and I am representing the
24 Respondent, Cougar Ridge Water System.

25 JUDGE MACE: Do you have an E-mail address?

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1 MR. BROWN: I do.

2 JUDGE MACE: Could you give that?

3 MR. BROWN: Sure, it's tom.brown@lawbljls.com.

4 MR. THOMPSON: And I'm Jonathan Thompson,
5 Assistant Attorney General representing the Commission
6 Staff. My mailing address is, well, my street address
7 is 1400 South Evergreen Park Drive Southwest, P.O. Box
8 40128 in Olympia, 98504. My telephone number is (360)
9 664-1225, fax is 586-5522, and my E-mail is
10 jthompso@wutc.wa.gov.

11 JUDGE MACE: Thank you.

12 At a pre-hearing conference before the
13 Commission there are a number of items of housekeeping
14 that we --

15 MR. BROWN: Are we --

16 JUDGE MACE: I'm sorry?

17 MR. BROWN: Are we going to introduce
18 everyone here or just counsel?

19 JUDGE MACE: We can, I was just taking
20 appearances of counsel at this point.

21 MR. BROWN: Okay.

22 JUDGE MACE: But if Staff members who are
23 here would introduce themselves, that would be fine too.

24 MR. ECKHARDT: My name is Gene Eckhardt, I'm
25 the Assistant Director of Water and Transportation with

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1 the Commission.

2 JUDGE MACE: Thank you.

3 MR. WARD: My name is Jim Ward, I'm the
4 regulatory analyst assigned to this case.

5 MR. BROWN: Thank you.

6 JUDGE MACE: As I was saying, there's a
7 number of items that we need to address at a pre-hearing
8 conference, and it's my intention to go through them in
9 order. Just for your information, the order will be I
10 will address petitions to intervene, the question of
11 discovery, whether or not a protective order would be
12 entered, what are the issues before the Commission in
13 this case, what is the prospect for settlement, and what
14 would be a procedural schedule that would apply to this
15 case, and then I end with some housekeeping matters with
16 relation to how many copies of documents need to be
17 filed. So unless there are any questions, I'm going to
18 go ahead through the list of items.

19 The first one is the petitions to intervene,
20 and I want to indicate for the record I have received no
21 written petitions to intervene. I would like to ask if
22 there is anyone on the conference bridge who would seek
23 to intervene in this case?

24 I hear no response.

25 Is there anyone in the hearing room who seeks

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1 to intervene?

2 There is no response.

3 Then I would next like to turn to the
4 question of discovery.

5 MR. BROWN: Excuse me.

6 JUDGE MACE: I'm sorry.

7 MR. BROWN: You're going to have to --
8 there's going to be a few times here where I'm going to
9 limp through not knowing what's going on, but the
10 conference bridge is not a term that's familiar to me.
11 I need to know what that is.

12 JUDGE MACE: We have a phone system that
13 allows people to call in on what we call the conference
14 bridge. And what that means is you can make an
15 appearance by phone over the conference bridge.
16 Ordinarily people sign up for that in advance. In this
17 type of hearing I wouldn't expect anybody to be on the
18 conference bridge, but I'm just asking as a formality.

19 MR. BROWN: I see.

20 JUDGE MACE: Frequently in hearings of the
21 Commission people enter their appearances over the
22 conference bridge rather than coming to the hearing
23 because we have counsel that come from far flung places
24 like Washington D.C. and New York and so on.

25 MR. BROWN: Sure. And do I understand that

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1 not only did no one respond to that, there's nobody at
2 all on the conference bridge today; is that right?

3 JUDGE MACE: Well, let me ask, is there
4 anyone on the conference bridge?

5 No, there's no one on the conference bridge
6 at this point.

7 MR. BROWN: Okay.

8 JUDGE MACE: All right, let's turn next to
9 the question of discovery. Ordinarily at a pre-hearing
10 conference this is the point when we talk about whether
11 or not the parties seek invocation of the Commission's
12 discovery rules. And what that means is that for
13 purposes of this proceeding to the extent discovery is
14 going to take place, it would take place under the
15 Commission's Rules of Practice and Procedure, now
16 Chapter 480-07 WAC, and so I will ask the parties now
17 whether they seek invocation of the Commission's
18 discovery rules.

19 MR. BROWN: Yes.

20 MR. THOMPSON: Yes.

21 JUDGE MACE: All right, that was easy. So it
22 will just indicate in the pre-hearing conference order
23 that those rules are invoked.

24 The next question is the question of a
25 protective order. Sometimes when discovery takes place,

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1 it means that there may be information that's requested
2 under discovery that is of a commercially sensitive
3 nature, and under the those circumstances, the parties
4 would like to have protection for that information so
5 that it's not disseminated in an inappropriate way.
6 Sometimes there is no need for a protective order.
7 Sometimes a protective order can be entered later in the
8 proceeding as discovery progresses because the parties
9 realize that they will need a protective order.

10 Having said that, let me ask now whether the
11 parties would like to have the Commission enter a
12 protective order in this proceeding.

13 MR. BROWN: You know, I'm not sure exactly
14 where we're going to be going, but I will say that the
15 records of this water system are open, and we have no
16 problem with that. But if someone were interested in
17 pursuing the personal information about my client, his
18 assets, his family assets, that sort of thing, I guess I
19 would want a protective order on that. I don't think
20 that would be relevant to the proceedings here today.

21 JUDGE MACE: Okay, let's not confuse
22 protective order with not being able to get the
23 information. If there is a request for information that
24 you objected to under discovery, you can make an
25 objection to that or a motion to deny the discovery

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1 request.

2 The protective order allows information to
3 come into the record or at least to be discovered but
4 under a certain protection, that is it's sealed in a
5 certain way and the Commission can't disseminate it to
6 the public, and its also handled in a very protected way
7 in a proceeding.

8 So I can't envision why your client's
9 personal information would come into a proceeding of
10 this nature, but I think that's something that could be
11 handled as time goes on if that did become an issue.

12 MR. BROWN: Right, I just wanted to mention
13 it so I don't seem to be combative when that comes up,
14 but I just would say ahead of time that I don't think
15 that has anything to do with it. And I would, if that
16 did come up, I would ask that it be excluded, and then
17 if it did come in, come in under a protective order.

18 JUDGE MACE: Sounds like something we can
19 deal with as time goes on.

20 MR. THOMPSON: I think so, and I can't
21 anticipate that Staff would be asking for any
22 information of that nature anyway.

23 JUDGE MACE: All right, we will hold that in
24 abeyance then.

25 All right, let's turn next to the questions

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1 of the issues in this proceeding, and under the
2 Commission's pre-hearing conference notice the two basic
3 issues in this proceeding are the Commission's
4 jurisdiction and rates.

5 I understand, Mr. Brown, that you have also
6 introduced the topic of burden of proof by a motion that
7 you filed, and Staff has responded to that motion. My
8 understanding is that Staff agrees that it would present
9 prima facie information with regard to whether or not
10 the company meets the Commission's jurisdictional
11 requirements, and then at that point things would shift
12 over to you to show why they didn't. And if that
13 comports with both of your understandings of how we
14 would go forward, then we'll just move forward on that
15 basis.

16 MR. BROWN: Are you saying that if they meet
17 their burden of proof, then the burden of proof shifts
18 to me to show reasons why there's either an exception to
19 it or that I don't --

20 JUDGE MACE: In other words that the company
21 does not fall under the Commission's jurisdiction.

22 MR. BROWN: I guess I'm okay with that, but
23 unfortunately I tend to think in terms of lawsuits, and
24 it's clear in lawsuits to me, I don't know if we're
25 talking about exactly the same scenario, but in a

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1 lawsuit one side has the burden of proof, and they
2 either meet it or they do not, and the other side has
3 the burden of proof of proving certain things.
4 Comparative negligence would be an example, something
5 like that that might bear on the outcome of the case.
6 And so if that's what we're talking about, I'm
7 comfortable with that, but I still -- it sounded a
8 little bit like a shifting burden of proof, that if they
9 introduce a certain amount of evidence, then the burden
10 shifts to me, and I don't -- I'm not quite comfortable
11 with that, because I don't think that happens, but.

12 JUDGE MACE: Mr. Thompson.

13 MR. THOMPSON: Yeah, I mean it's a little bit
14 hard to talk about it in the abstract. I mean I think
15 that Staff would have the burden of proving that the
16 company meets the definition of a public service
17 company, which would be generally that it provides a
18 service that's regulated by the Commission and that it
19 offers it to the public for compensation or something
20 roughly like that and then also that the thresholds set
21 out in the definition of a water company are met. And
22 in this instance our position would be that it's the
23 revenue threshold, so we would take it as our burden to
24 show that that threshold was met.

25 There might be something like again using the

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1 analogy of a different kind of a proceeding that there
2 might be some kind of an affirmative defense or
3 something like that that you would say, well, that's all
4 true, but if the Commission looks at these other facts,
5 then it shouldn't assert its jurisdiction even though
6 the threshold is met or something like that that I can
7 anticipate. But again, I think probably the best course
8 is just to not try to spell that out in the order.

9 JUDGE MACE: I think it's premature at this
10 point. I think in a sense the burden would shift to
11 you, but I think that there would be ample opportunity
12 for you to object as time went on to any part of the
13 procedure that you felt was problematic. So at this
14 point, we're in the situation where Staff is going to be
15 showing that you meet the jurisdictional requirements,
16 and there will be a schedule that will be set out that
17 you two will agree on in terms of how this procedure
18 will take place. And in the course of that time, if you
19 need to you can file a motion to settle any issue that
20 you feel needs to get settled.

21 MR. BROWN: Sure.

22 JUDGE MACE: Having said that, maybe the next
23 thing would be to actually have you try to work out some
24 kind of schedule that you think would be appropriate for
25 this proceeding. I also would encourage you to try to

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1 settle your differences. The Commission does encourage
2 settlements and stipulations, and in a situation where
3 there isn't a lot of money at stake and counsel's clock
4 is ticking in terms of billings, it's often a good idea
5 to try to approach this from a point of view of settling
6 the case. So I just want to make sure that you know
7 that, and there is also assistance available in terms of
8 dispute resolution that you can request from the
9 Commission, and I want to make you aware of that. You
10 will get further information about that in the
11 pre-hearing conference order, but I want to make sure
12 you know about that now.

13 MR. BROWN: We want to explore that totally,
14 and I have already spoken briefly with Mr. Thompson
15 about that. Yeah, we want to -- we have modified our
16 fees, we want to walk away from this if that's at all
17 possible.

18 JUDGE MACE: Okay, well --

19 MR. BROWN: And we'll explore that in any way
20 we can.

21 JUDGE MACE: Excellent. Well, I will let you
22 talk about scheduling now, because we don't know what's
23 going to happen with regard to settlement discussions,
24 and it would be probably beneficial to have a schedule
25 that we could rely on if we need to. So I will give you

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1 10 or 15 minutes, and I will come back at that point.
2 And if you should be done in 5 minutes, just come on
3 down to my office and bring me back to the Bench and we
4 can resume at that point. So we're adjourned.

5 (Recess taken.)

6 (Discussion off the record.)

7 JUDGE MACE: We have had a substantial
8 discussion about scheduling, or the parties have, and
9 what we have come up with is that there will be one day
10 of hearing to deal with the question of the Commission's
11 jurisdiction over Cougar Ridge. There will be no
12 pre-filed testimony, but there will be witnesses who
13 will appear on that day. We have not set a specific
14 date for that hearing because there's disagreement about
15 when that should be scheduled. Staff has suggested a
16 hearing date sometime within the period May 17th to June
17 11th, and the company has suggested the week of July
18 19th would work best for the company. Failing us
19 setting a schedule for the hearing in the week of July
20 19th, Mr. Brown has indicated that it might be possible
21 for a hearing to take place sometime May 24th through
22 the 27th. We will not set any further schedule in this
23 proceeding until the jurisdictional issue is addressed
24 and disposed of, so that will be the date we will meet
25 next.

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1 And then I advised the parties that they will
2 be receiving instructions about the number of copies
3 they are required to file of documents to be filed with
4 the Commission, and that number is nine, and further
5 instructions will be given to the parties in the
6 pre-hearing conference order.

7 Is there anything else we need to address?

8 MR. BROWN: I just wanted to say that I don't
9 think I was clear when we were talking about the dates I
10 was available. The July 19th date, I think I was asked
11 given my schedule what is the first available date, and
12 I said the week of July 19th was the first available
13 date for me under my schedule as it exists now that made
14 sense. And then I also indicated that the months of
15 July and August were good after that in terms of
16 scheduling. And then I thought that the question about
17 the week of May 24th was the way it was posed to me was
18 if it were going to be scheduled in the dates that Staff
19 wants, what would be the only ones that I could live
20 with, and I said the first four days of that week were
21 the only ones, and those were -- it's not that they're
22 available, it's just that those are the least painful as
23 my calendar looks right now, and they're subject to
24 competition from two superior court cases that are
25 pending.

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1 JUDGE MACE: All right, anything else?

2 MR. BROWN: No.

3 JUDGE MACE: Okay, thanks very much, we're
4 adjourned.

5 (Hearing adjourned at 4:00 p.m.)

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