

00248

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 VII  
8 Respondent. ) Pages 248 - 410  
9 -----

9 A hearing in the above matter was held on  
10 January 4, 2001, at 9:16 a.m., at 1300 South Evergreen  
11 Park Drive Southwest, Olympia, Washington, before  
12 Administrative Law Judge LAWRENCE BERG.  
13

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.

20

21

22

23

24

25 Kathryn T. Wilson, CCR  
Court Reporter

00249

1	<hr/>		
2	INDEX OF EXHIBITS		
3	<hr/>		
4	EXHIBIT:	OFFERED:	ADMITTED:
5	119		
6	120	355	355
7	121	355	355
8	122	355	355
9	123	355	355
10	124	355	355
11	125	373	373
12	126	373	373
13	127	363	363
14	128	262	263
15	129	261	262
16			
17			
18			
19			
20			
21			
22			
23			
24			
25			

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

---

INDEX OF WITNESSES

---

WITNESS:	PAGE:
BILL LIECHTY	
Direct Examination by Ms. Tennyson	251
Cross-Examination by Mr. Fox	290
Examination by Judge Berg	319
Redirect Examination by Ms. Tennyson	334
Further Cross-Examination by Mr. Fox	338
JIM WARD	
Direct Examination by Ms. Tennyson	344
Cross-Examination by Mr. Fox	379
Redirect Examination by Ms. Tennyson	396
Further Cross-Examination by Mr. Fox	399

00251

1

P R O C E E D I N G S

2

JUDGE BERG: This is the continued hearing in  
3 Docket No. UW-000405 before the Washington Utilities  
4 and Transportation Commission. The case is Washington  
5 Utilities and Transportation Commission, Complainant,  
6 versus American Water Resources, Inc., Respondent.  
7 American Water Resources, Inc., may be referred to as  
8 AWR in the course of this proceeding. Today's date is  
9 January 4, 2001. I'm Larry Berg, the presiding  
10 officer. Joining me on the Bench is my accounting  
11 adviser, Mr. Maurice Twitchell.

12

At this point in the proceeding,  
13 Ms. Tennyson, will you call your first witness of the  
14 day?

15

MS. TENNYSON: I call Bill Liechty to the  
16 stand.

17

(Witness sworn.)

18

19

DIRECT EXAMINATION

20

BY MS. TENNYSON:

21

Q. Mr. Liechty, would you state your name and  
22 spell your name for the record, please?

23

A. It's Bill Liechty, L-i-e-c-h-t-y.

24

Q. Mr. Liechty, where are you employed?

25

A. With Department of Health, Division of

00252

1 Drinking Water. I manage one of our regional offices.

2 Q. What are your responsibilities in managing  
3 the regional office?

4 A. We oversee and regulate public water systems  
5 for the southwest portion of the state.

6 Q. Does that portion of the state that you  
7 supervise, is American Water Resources within that  
8 area?

9 A. Some of their systems are, yes. They also  
10 have systems outside of the southwest region.

11 Q. Are you generally familiar with American  
12 Water Resources?

13 A. Yes, I am.

14 Q. For how long have you been acquainted with or  
15 aware of American Water Resources or its predecessor  
16 companies?

17 A. I believe I met Mr. Fox in the winter of  
18 1997. At that point, he was considering acquiring  
19 systems and getting into the water business.

20 Q. Do you recall the conversation?

21 A. I do.

22 Q. Could you just tell us what happened and what  
23 it was about?

24 A. Often times, people come into our office to  
25 review records, and I noticed that Mr. Fox -- at that

00253

1 time, I didn't know Mr. Fox -- had been in the office,  
2 spent a lot of time looking at records. I introduced  
3 myself and we had a discussion, and I learned that he  
4 was considering acquiring water systems and becoming an  
5 active water purveyor, and we had a conversation, and  
6 he asked my thoughts and advice.

7 My comments that I recall making were, Well,  
8 it's very important if you are a regulated company to  
9 understand and comply with the requirements of both the  
10 Department of Health and the UTC, and if you can stay  
11 on the right side of both of those agencies, your  
12 business will run a lot more smoothly.

13 Q. Now, Department of Health, you've referenced  
14 the drinking water section, you generally work with  
15 water quality issues; is that correct?

16 A. We have regulatory authority for all aspects  
17 of water utility operations. We have water quality  
18 standards. We have design standards. We have  
19 standards that apply to the way a system is operated.  
20 It's a public health based program, and the objective  
21 is to make sure that public water systems are able to  
22 provide safe and reliable drinking water.

23 Q. So that would include quantity issues as  
24 well?

25 A. Yes, it would.

00254

1 Q. Have you been involved with or consulted on  
2 compliance issues relating to American Water Resources?

3 A. Yes, I have.

4 Q. Could you give us just a general description  
5 of your involvement and contacts?

6 A. My job is to manage the office, and we have  
7 assigned engineers to the counties within the office.  
8 We also have staff who deal with complaints in  
9 compliance matters, and both the compliance staff and  
10 the engineers at times let me know that we had  
11 compliance matters that involved AWR. The ones that  
12 I'm most familiar with involved water quality  
13 violations that we felt threatened public health, and  
14 then some matters pertaining to the satellite  
15 management status that we assigned to the Company.

16 Q. Just because I know in the course of this  
17 morning we will get into some of these terms, I would  
18 like to ask you to give us a few definitions. One of  
19 the terms that I know we may talk about is a D.O. Can  
20 you tell us what a "D.O." is?

21 A. That's our acronym for "departmental order,"  
22 which is a compliance action that's initiated by the  
23 Department, and it prescribes steps that must be taken  
24 to address the regulatory violations that are cited in  
25 the D.O.

00255

1 Q. By "our department," you are referring to  
2 Department of Health?

3 A. Correct.

4 Q. CIP is another term that we bandied about  
5 quite a bit yesterday. Can you refresh us on what that  
6 is?

7 A. That's the acronym that's used in the water  
8 industry for "capital improvement program." It's the  
9 list of physical improvements that pertain to any given  
10 system.

11 Q. Water companies are required to have water  
12 system plans, aren't they?

13 A. Yes, they are.

14 Q. Is part of the water system plan, is the CIP  
15 part of that?

16 A. Yes, it is.

17 Q. Another term that we may be getting into is a  
18 sanitary survey. Can you describe what that is?

19 A. A sanitary survey is an inspection done by a  
20 public health official. It can either be a  
21 comprehensive review of a system from source to tap, or  
22 if we are experiencing a problem, it can be a fairly  
23 focused investigation to look at factors that might be  
24 creating the problem. So it's a public health official  
25 inspecting the system, and generally, a report is



00256

1 prepared to document the findings.

2 Q. There is some other terms that I'd like you  
3 to help us out with here too. Can you tell us what a  
4 "pitless adapter" refers to?

5 A. That's an appliance that's used on wells, and  
6 it's a device that allows a water transport line, the  
7 line that's carrying the water, the pumped water, to be  
8 delivered without that pumped water line coming above  
9 ground. It's a buried connection, either molded or  
10 welded to the well casing, and the purpose is to avoid  
11 freezing problems. So it allows the water to be pumped  
12 into the home or into the distribution system and not  
13 allow those pipes to be above ground where they are  
14 potentially subject to freezing.

15 Q. I'm going to show you a picture from the  
16 American Water Resource's general construction spec  
17 book. This has been admitted in this proceeding as  
18 Exhibit 4, and I'm referring to Page 33 of that. I'll  
19 bring you a copy.

20 I'm referring to Page 33 of this Exhibit 4.  
21 Is this a diagram of a pitless adapter, or is there one  
22 in this picture? Actually, Mr. Fox is shaking his head  
23 no.

24 MR. FOX: We made a mistake.

25 THE WITNESS: This is not a diagram that

00257

1 shows a pitless adapter.

2 Q. (By Ms. Tennyson) Could you refer to the  
3 previous page; is there one on this page, Page 32?

4 A. Yes.

5 Q. On this diagram on Page 32 of Exhibit 4,  
6 there is a line, kind of a heavy black line that says  
7 "grade." Is that referring to ground level?

8 A. Correct.

9 Q. So the pitless adapter would be below ground  
10 to prevent freezing, as you indicated?

11 A. Yes.

12 Q. You don't have the copy of the marked  
13 exhibits.

14 JUDGE BERG: Ms. Tennyson, I believe the  
15 copies of 101 through 115 are still on the witness  
16 table.

17 MS. TENNYSON: I marked them on my list. I'm  
18 not positive we marked them as a group, exhibits that I  
19 had presented in the pile for use with Mr. Liechty  
20 yesterday, 128 and 129.

21 JUDGE BERG: Off the record for a moment.

22 (Discussion off the record.)

23 MS. TENNYSON: Your Honor, on the exhibits  
24 that I distributed copies of yesterday, in between the  
25 exhibits grouped by witness, there will be a colored

00258

1 sheet of paper. The exhibits that were designated for  
2 Mr. Ward we started numbering with 120, and then at the  
3 bottom of that packet would have been two I was  
4 intending to use with Mr. Liechty, and the first of  
5 those is a document entitled "Notice of Intent to  
6 Suspend." It's a Department of Health order, and if  
7 they've not been marked, I would like to have that one  
8 and the chart prepared by Department of Health dated  
9 12/29/2000, and the notebook of backup materials with  
10 Tabs A through Z and double A, I would like to have  
11 those marked as exhibits at this time.

12 JUDGE BERG: What I'm going to do at this  
13 time is I will request that the reporter insert into  
14 the transcript a description of Exhibits 1 through 10  
15 and 101 through 129 as if fully read into the record

16 Exhibit 1, Fox Company Statements on each of  
17 the 13 jobs, showing account balance and paid status  
18 Summary of Jobs. Exhibit 2, AWRI's list of Accounts  
19 Payable showing amount due to Fox Co. and Hatton,  
20 Godat, Pantier. Exhibit 3, December 21 response to  
21 Mary Tennyson's Data Requests 1-8. Exhibit 4, AWRI's  
22 General Construction Spec Book. Exhibit 5, Summary of  
23 bidders and bid documents for each job (all except  
24 actual construction plan.) Exhibit 6, Summary of job  
25 costs. Exhibit 7, VR Fox Construction Resume. Exhibit

00259

1 8, VR Fox Current General Business Resume. Exhibit 9,  
2 11 pages of color photos. Exhibit 10, Preliminary P&L,  
3 AWRI year 2000.  
4 Exhibits for Virgil Fox: Exhibit 101,  
5 Materials related to rate filing, UW-000405, including  
6 company justification, notice to customers, staff memo,  
7 suspension order, Tariff page. Exhibit 102, Order  
8 Approving Tariff Revision (Surcharge), dated April 28,  
9 1999. Exhibit 103, Letter to Virgil Fox from Steven  
10 Hatton Re: Engineering Proposal-Selected Systems, dated  
11 March 10, 1999. Exhibit 104, Multipage document titled  
12 "Exhibit A, Pleasant Valley," containing documents  
13 relating to project. Exhibit 105, Multipage document  
14 titled "Exhibit A, Loma Vista," Containing documents  
15 relating to project. Exhibit 106, Multipage document  
16 titled "Exhibit A, Elk Heights," Containing documents  
17 relating to project. Exhibit 107, Chart prepared by  
18 Rick Finnigan on behalf of AWR, Consisting of six  
19 pages. Exhibit 108, AWR Response to WUTC Data Request  
20 No. 3A, dated Dec. 22, 2000. Exhibit 109, AWR Response  
21 to WUTC Data Request No. 3B, dated Dec. 22, 2000.  
22 Exhibit 110, November 29, 1999 letter from Jim Ward to  
23 Herta Ingram, Operations Manager, AWR and Ms. Ingram's  
24 response, dated March 20, 2000. Exhibit 111, Multipage  
25 document titled Capital Improvement Surcharge Progress

00260

1 Report, with handwritten "An American Water Document,  
2 10/27/99. Exhibit 112, AWR Response to WUTC Data  
3 Request No. 4, dated Dec. 21, 2000, received 12/26/00.  
4 Exhibit 113, Engineering invoices for 2000, submitted  
5 in response to WUTC Data Request No. 4, received  
6 12/26/00. Exhibit 114, AWR's Response to WUTC Data  
7 Request No. 8, dated Dec. 22, 2000, received Dec. 26,  
8 2000. Exhibit 115, Table summarizing VR Fox Co.,  
9 Invoices, including date, invoice number, system name,  
10 amount paid, and check number used to pay invoice.  
11 Exhibit for Katherine Woods: Exhibit 116,  
12 Subpoena Duces Tecum. Exhibits for Steven Hatton:  
13 Exhibit 117, Subpoena Duces Tecum. Exhibit 118, Letter  
14 dated Feb. 22, 1999, to Jim Ward re: AWR, Inc.- Capital  
15 Improvement Program. Exhibit for Kevin O'Neil:  
16 Exhibit 119, Subpoena Duces Tecum.  
17 Exhibits for Jim Ward: Exhibit 120, Table of  
18 project with description, cost, and Handwritten notes.  
19 Exhibit 121, Staff informal Data Request 1, dated March  
20 31, 2000, and Letter in response dated April 6, 2000,  
21 with Exhibit A removed (See Exhibits above for samples  
22 of Exhibit A.) Exhibit 122, Staff informal Data  
23 Request 2, dated April 10, 2000, and Letter in response  
24 dated April 14, 2000. Responses to Items 2 and 3 have  
25 been removed from response. Exhibit 123, Staff

00261

1 informal Data Request 3, dated April 28, 2000, and  
2 response dated May 17, 2000, with attachments. Exhibit  
3 124, Staff informal Data Request 4, dated May 18, 2000,  
4 and response dated June 5, 2000. Exhibit 125, Aquarius  
5 Utilities letter dated September 15, 2000, with  
6 attached materials excerpted from filing, UW-001415.  
7 Exhibit 126, Estimate, 2 pages, Harbor Water, dated 17  
8 Oct 2000 in lower right corner. Exhibit 127, Partial  
9 transcript of Open Meeting of April 26, 2000.

10 Exhibits for Bill Liechty: Exhibit 128,  
11 Notice of Intent to Suspend, Dept. Of Health CO No.  
12 99-08-C-1021DW, 11 pages (two-sided) plus attachments A  
13 and B. Exhibit 129, Chart prepared by DOH, 12/29/00,  
14 titled AWR Surcharge Hearing Research (5 pages.)

15 MS. TENNYSON: What I would propose is that  
16 for the notebook of material with tabs that we refer to  
17 it as Exhibit 129 A, B, C, etcetera, and I'd move its  
18 admission as part of Exhibit 129.

19 JUDGE BERG: I'll note that the document that  
20 had previously been marked and distributed as Exhibit  
21 129 has been supplemented by tabbed materials, Tabs A  
22 through double A, and also in a notebook at the front  
23 of the notebook is a eight-and-a-half-by-fourteen  
24 version of Exhibit 129, and is it correct that you've  
25 received those materials, Mr. Fox?

00262

1 MR. FOX: Yes, Your Honor.  
2 JUDGE BERG: Is there any objection to the  
3 admission of these materials into the record?  
4 MR. FOX: No, Your Honor.  
5 JUDGE BERG: Then Exhibit 129, including tabs  
6 129-A through 129 double-A are admitted.  
7 MS. TENNYSON: Thank you.  
8 Q. (By Ms. Tennyson) Mr. Liechty, could you  
9 refer to the document that's referred to as Exhibit 128  
10 at this point and identify this for me?  
11 A. This is a document prepared by our attorney.  
12 It's a Notice of Intent to Suspend the satellite  
13 management status of the Company.  
14 Q. Going through the body of the order, this  
15 generally has some recitation of the history of some of  
16 the health problems the Department of Health has found  
17 on the systems owned by American Water?  
18 A. That's correct.  
19 MS. TENNYSON: I would move the admission of  
20 Exhibit 128.  
21 JUDGE BERG: Any objection?  
22 MR. FOX: No. I'll have an opportunity to  
23 comment on that or ask questions, I presume, at a more  
24 appropriate time.  
25 JUDGE BERG: You will certainly have an

00263

1 opportunity to cross-examination this witness based on  
2 any statements he makes about the exhibit. Also, at  
3 the conclusion of the case, parties will have an  
4 opportunity to file a written brief at which time you  
5 could make any arguments that you wanted to make that  
6 related to this document.

7 MR. FOX: That's fine. If I may comment on  
8 this A,B,C portion here. I believe there is things in  
9 there that I haven't seen before, but I don't object to  
10 them. That's pretty much immaterial at the moment. In  
11 other words, I don't need to worry about the fact right  
12 now that I haven't seen them.

13 JUDGE BERG: Exhibit 129 has been admitted  
14 into the record. If there are documents here that you  
15 need to ask questions about, you will be able to talk  
16 to Mr. Liechty about that. My understanding is that  
17 the Tabs A through double-A are the backup for the core  
18 document 129.

19 MR. FOX: Yes.

20 JUDGE BERG: Then Exhibit 128 will be  
21 admitted.

22 MS. TENNYSON: Thank you.

23 Q. (By Ms. Tennyson) Mr. Liechty, turning to  
24 Exhibit 129, was this chart prepared under your  
25 supervision?



00264

1 A. Yes, it was.

2 Q. I'd like to walk through the chart so that  
3 you can basically indicate or tell us what this  
4 represents. What was the purpose in preparing the  
5 chart?

6 A. The chart is a compilation of records and  
7 information on file with Department of Health. The  
8 first column entitled "system," lists the water systems  
9 that we were told were relevant to the surcharge. The  
10 second column called "items AWR claims not included in  
11 the original scope of work," are items that we were  
12 told the Company identified as being outside of the  
13 surcharge. So that column was prepared by the Company,  
14 and we simply duplicated it.

15 "Date DOH notified AWR that item was  
16 required" is the title for a column that references a  
17 number of items that we thought were relevant to the  
18 surcharge issue or item and the Company. So what we've  
19 tried to do is research our files, state the date of  
20 the document, and then if there is a letter behind that  
21 document, then the actual document is in the notebook,  
22 so it's something that relates back to that surcharge  
23 item.

24 The next column over, "form of notification,  
25 letters from DOH unless otherwise specified," tells us

00265

1 what any one of those items is. For example, for  
2 Pleasant Valley there is a DO, a departmental order.  
3 There are letters that the departments sent to the  
4 Company --

5 Q. And that would be designated by the word  
6 "letter," a letter from the Department of Health?

7 A. Correct, as opposed to the November 3rd,  
8 1997, D, which would be a letter from the Company's  
9 consolidating engineer. That has "HGA" in parenthesis.  
10 That stands for Howard Godat and Associates. That's  
11 kind of the system that we are using, and then the  
12 final column are notes, and here, we've tried to  
13 explain the significance or comment on some of the  
14 items that were referenced. So this represents  
15 information pulled from files in my office as well as  
16 the Northwest regional office, because they regulate  
17 some of the AWR systems as well.

18 Q. I did note in reviewing this chart that the  
19 Loma Vista system is not represented on this. Was that  
20 an intentional deletion?

21 A. No. That was an oversight.

22 Q. So the Loma Vista system was one which in  
23 Department of Health's view was one that needed work  
24 done on for health reasons?

25 A. Absolutely. If I might, we didn't have a lot

00266

1 of time to pull the chart together. I think we started  
2 working on this between Christmas and New Years. So it  
3 represents a fair amount of work, and there may be  
4 other omissions here. I can't attest this is the total  
5 record. It's our best effort.

6 Q. For example, in putting this together, I did  
7 not ask you to include things like the Department of  
8 Health approval of the projects after they are done;  
9 correct?

10 A. Correct.

11 Q. Those are items the Company should have in  
12 its possession.

13 A. Correct.

14 Q. Let's go through a couple of these. I would  
15 like to refer at this point to Exhibit 129-D, if you  
16 could turn to that. I believe you had identified it in  
17 talking about the chart as a November 3rd, 1997, letter  
18 from the Company's engineer.

19 A. Correct.

20 Q. This does address engineering work that the  
21 engineer is either recommending or indicating that  
22 would be done for several of the systems that were to  
23 be funded by the surcharge; correct?

24 A. Correct.

25 Q. This was in 1997?

00267

1 A. November 3rd, 1997.

2 Q. Referring at this point to the chart itself,  
3 Exhibit 129, for the Crowder Road system, one of the  
4 items that's included in the column, "items AWR claims  
5 not included in original scope of work," I will  
6 represent to the Court and to Mr. Fox that the  
7 description of these items came from the document that  
8 has been admitted into this case as Exhibit 107, the  
9 chart prepared by Mr. Finnigan which we discussed  
10 yesterday. Mr. Fox disagreed with some of the  
11 information, the accuracy of some of that information,  
12 but that was the source of this information.

13 JUDGE BERG: When you say "this information,"  
14 which information are you referring to?

15 MS. TENNYSON: In the column titled, "Items  
16 AWR claims not included in original scope of work,"  
17 that column on Exhibit 129.

18 Q. (By Ms. Tennyson) Then under Crowder Road in  
19 the second row says, "expand pump house for corrosion  
20 control." Can you elaborate for us on what the notes  
21 indicate for that particular item on your chart,  
22 Exhibit 129?

23 A. The note says that a 1996 revision of AWR's  
24 water system plan indicated that a new or expanded pump  
25 house would be required. That relates back to the

00268

1 exhibit we are looking at here.

2 Q. There is a reference to June 25, 1999, in a  
3 parenthetical "I." Turning to Tab "I" in your  
4 notebook, Exhibit 129-I, can you indicate for us what  
5 this is and the date on that?

6 A. The date is June 25th, 1996. I believe our  
7 chart says 1999.

8 Q. So the description in the column titled "date  
9 DOH notified AWR that items required" the date of June  
10 25th, 1999 should read 1996?

11 A. Correct. The actual document that's in the  
12 notebook is part of the capital improvement program  
13 prepared by the Company.

14 Q. I would like you to refer at this point then  
15 to the document that is behind Tab J in Exhibit 129.  
16 What I'd like to do is flip back and forth between Item  
17 J and Item M. Why don't we start with M.

18 A. Okay.

19 Q. Item M, at least if we have the copies  
20 correctly, is a letter dated February 22nd, 1999, to  
21 Mr. Jim Ward on Howard, Godat, Pantier and Associate  
22 stationary; is that correct?

23 A. Yes.

24 Q. Specifically, I would like you to turn back  
25 to the attachments to the letter. The letter itself

00269

1 consists of three pages, and then there are various  
2 attachments. In particular, I'd like to look at the  
3 last six or seven pages. The heading on the first page  
4 is "American Water Resources, Inc., table" and my hole  
5 punch has knocked out the number, but "capital  
6 improvement program 1/25/99 update"; do you have that?

7 A. Yes, I do.

8 Q. The first system name on this is Pleasant  
9 Valley?

10 A. Yes.

11 Q. Can you indicate for me what your  
12 understanding of this document is?

13 A. I'm reading it to refresh my memory here.  
14 The document supports the letter prepared by the  
15 Company's engineer, and it has to do with recommended  
16 capital improvements. The engineer is summarizing  
17 through the attachments the recommended capital  
18 improvements, and it's broken out by system, start  
19 date, estimated costs, etcetera.

20 Q. Is this a document prepared by the Company?

21 A. The letter is prepared by the consulting  
22 engineer working for the Company.

23 Q. More properly, this is not a Department of  
24 Health created document?

25 A. No. It isn't clear who prepared this. I

00270

1 suspect it was prepared by the engineer working for the  
2 Company.

3 Q. Looking at the first page of this chart with  
4 Pleasant Valley at the top, do you recall discussions  
5 about adding generators to the systems?

6 A. I personally wasn't involved in discussions  
7 with the Company regarding generators. I know that  
8 that was a point of discussion with the Company.

9 Q. Then going down just reviewing the list, I  
10 notice there are many more systems or projects listed  
11 than were actually included in the surcharge. Would  
12 you agree with that?

13 A. Yes.

14 Q. Do you know whether any of these other items  
15 the Department of Health had issued a departmental  
16 order or any other direction to the Company related to  
17 any of these items?

18 A. I haven't studied the table, but I know the  
19 Department had extensive correspondence with the  
20 Company regarding improvements, and I know the required  
21 improvements and recommendations applied to more  
22 systems than were part of the surcharge.

23 Q. If you could turn back two pages earlier in  
24 Exhibit 129-M, there is a document that the subheading  
25 on it is "priority list."

00271

1 A. Yes.

2 Q. Do you have that document now?

3 A. Yes, I do.

4 Q. This indicates there is under order for  
5 chlorination for certain projects and others are on the  
6 list.

7 A. Yes.

8 Q. Do you know whether the priority or the order  
9 that these were put in, was that something that you  
10 participated in or your agency participated in?

11 A. Our agency did participate in this.

12 Q. So this was then a whittling down of the  
13 projects that were to be funded by the surcharge?

14 A. Yeah. That's my understanding that the  
15 spreadsheets that we were looking at earlier would be  
16 the long list prepared by the Company of improvements,  
17 some of which the Department either recommended or  
18 required, and then the table dated February 25th, 1999,  
19 is the list that I believe was prepared by the  
20 Department which said, "Here are the most critical  
21 improvements."

22 Q. We've been looking at a letter from the  
23 Company's engineer dated February 22nd, '99, and if you  
24 could turn back now to the Tab J. Can you identify  
25 this document for us?



00272

1       A.     This is a letter prepared by my office signed  
2 by the planner working in the office, Sean Orr, dated  
3 March 15th, 1999, addressed to Virgil Fox, and it  
4 represents our review of the capital improvement  
5 program that was a part of the water system plan that  
6 was submitted for our review.

7       Q.     Does this letter reiterate the priority list  
8 from the Department of Health's perspective?

9       A.     Yes.

10      Q.     In addition in this letter, are various  
11 elements discussed for each of the systems that are  
12 listed on the priority list?

13      A.     The letter lists 12 systems that are part of  
14 the priority list and then has specific comments that  
15 relate to those systems.

16      Q.     I'd like you to refer to Page 3 of this  
17 letter at the top, the reference to the Loma Vista  
18 system. This indicates, doesn't it, that the water  
19 system plan for Loma Vista has been approved and  
20 doesn't need to be further revised?

21      A.     It says, "The water system plan element is  
22 now considered approved, and the construction documents  
23 for the permanent chlorination system have been  
24 approved. No further revision of the water system plan  
25 is required."

00273

1 Q. So in terms of the Loma Vista system not  
2 being included on this chart, this letter is at least  
3 reflecting that the Department of Health has already  
4 approved any engineering or construction documents for  
5 construction on the Loma Vista system; correct?

6 A. That's correct.

7 Q. I would like you to refer at this point to  
8 the chart, Exhibit 129, on Page 3 of 5, and the  
9 reference is to the Crescent Park system in the middle  
10 of the page. In the second column, the statement is  
11 that chlorine treatment design work required. Can you  
12 walk us through what it is in the Department of Health  
13 letters or your documentation as to when that chlorine  
14 treatment design work was required?

15 A. Yes. It looks like the first piece of  
16 correspondence we cite is in Tab Q.

17 Q. And the date on that?

18 A. The date is May 30th, 1996. This is a  
19 sanitary survey report prepared by Ryan Boye, a public  
20 health adviser in the Northwest regional office. Let  
21 me scan this and find the section that deals with  
22 chlorination. On the third page in under Section VII,  
23 entitled "recommendations and directions," Item 7 says,  
24 "Obtained DOH approval of chlorination disinfection  
25 system. Contact district engineer."

00274

1 Q. Then were there subsequent times when the  
2 Company was also reminded or once again given direction  
3 relating to chlorine treatment design work?

4 A. Yes. If you turn to Tab R, which is dated --  
5 it's a letter from the Department dated March 26th,  
6 1998, and in Item 2 of the letter, it indicates that an  
7 as-built evaluation of the installed disinfection  
8 systems must be provided. "In a summary analysis, the  
9 operation of these systems provided..." It goes on to  
10 talk about complaints from customers regarding chlorine  
11 levels in the Crescent Park water system. It indicates  
12 that the Department had not been able to locate  
13 approved designs for the chlorination facilities, nor  
14 have we received the monthly chlorine residual reports  
15 that the Company is required to provide.

16 Unfortunately, we don't have the second page  
17 of this letter, so I'm not sure who in the Northwest  
18 office signed it, but it's clearly a letter from the  
19 Department to the Company speaking to the need to  
20 obtain approval for disinfection at the Crescent Park  
21 water system.

22 Q. This was obviously before May of 1999;  
23 correct?

24 A. The date is March 26th, 1998, yes.

25 Q. Let's go down to the next row, the Tolmie

00275

1 Park system. I'm referring to the chart, Exhibit 129,  
2 Page 3.

3 A. I might add before we move to Tolmie, there  
4 are other citations for Crescent Park. Tolmie Park, J?

5 Q. My question is, do you know whether this  
6 March 15th, 1999, letter referenced here is the first  
7 time that there was a reference to hydraulic analysis  
8 for Tolmie Park or whether it even contains that  
9 analysis?

10 A. The letter is dated March 15th, 1999. Which  
11 system?

12 Q. Tolmie Park.

13 A. The letter states that the Company's engineer  
14 in conjunction with field staff should review on-site  
15 facility conditions, and it goes on to list a number of  
16 things that must be evaluated, including the  
17 distribution system, and asks that all improvements be  
18 justified by an evaluation. So there are issues that  
19 deal with the design of the water system, including  
20 storage and booster pump facilities and distribution,  
21 which would require that a hydraulic analysis be  
22 prepared.

23 Q. That was what I was looking for. It doesn't  
24 say hydraulic analysis. Is that included within this?

25 A. No. But in my opinion, in order to do a

00276

1 credible job of assessing adequacy of pumping capacity  
2 in the installed booster pumps that there would be need  
3 for some level of hydraulic analysis conducted.

4 Q. Looking still at Page 5 of this Exhibit  
5 129-J, the Tolmie Park, the letter description, the  
6 first sentence states the WSP is approved, but some of  
7 the improvements outlined in the CIP are not listed or  
8 justified by the WSP. What does this mean to you?  
9 What does it mean if the water system plan is approved,  
10 but some of the improvements in the CIP aren't listed  
11 or justified in the water system plan?

12 A. We found that the water system plan  
13 discussion for Tolmie Park was approvable. However,  
14 the capital improvement program laid out improvements  
15 that weren't justified in the discussion or the plan.  
16 Apparently, there was a disconnect between the analysis  
17 and the plan and the capital improvements that were  
18 recommended and approved.

19 Q. So portions of the water system plan might  
20 include the construction improvement plan, but you are  
21 saying in this case for this system, the two didn't  
22 match up.

23 A. Correct.

24 Q. Yesterday, we had some discussion of the  
25 updating of the water system plan. Is that something

00277

1 you directly supervised, or would that be someone else  
2 who handles that?

3 A. There is a number of people that are involved  
4 with the update. It's complicated in this case because  
5 the Company has individual systems that are in two  
6 separate regions. So we've worked directly with the  
7 Northwest region to lay out water system plan  
8 requirements and to review submittals. At times, we  
9 have had independent review letters, and at times we  
10 have had coordinated review letters.

11 The situation has evolved to the point where  
12 my office is taking the lead for water system plan  
13 review matters, so right now, that is under my  
14 supervision.

15 Q. You use the term "the issue has evolved to  
16 the point..." Has there been a lot of interaction  
17 between the Department and AWR on this issue?

18 A. That's the understatement of the day.

19 Q. Could you elaborate?

20 A. A lot has happened between the winter of '97  
21 when I first met Mr. Fox and today. The Company has  
22 acquired a large number of systems. We have been  
23 working with the Company to make sure that they  
24 understood our requirements. Some of the systems that  
25 were acquired had acute public health concerns, and we

00278

1 took special actions to work with the Company to  
2 address those.

3           We've been working on an update of a water  
4 system plan. That's been a difficult endeavor for both  
5 parties. There has been questions regarding what our  
6 planning requirements were. We've not always been  
7 satisfied with the quality of work that the Company has  
8 provided. So all of that has triggered a large amount  
9 of correspondence. We literally have three or four  
10 feet of notebooks that contain water system plan  
11 analyses that the Company has provided. We've had many  
12 discussions. There has been a lot of back and forth.

13           There have been compliance actions that have  
14 been taken, including dealing with acute coliform risk,  
15 while water advisories have been issued. One of the  
16 exhibits cites the SMA revocation or suspension. We've  
17 gotten to know the Company reasonably well.

18       Q.     At this point, is the Company in compliance  
19 with all the Department of Health requirements, or is  
20 this an ongoing issue?

21       A.     Well, I think the Company is doing as good a  
22 job today as they've ever done. I think we've worked  
23 our way through a large number of issues. Some of the  
24 past problems have been put to rest. There are still  
25 matters for the Company to address. They are making

00279

1 progress. We have the water system plan in our office  
2 today. It's under review. We know that the Company  
3 intends to do further upgrades and improvements. Some  
4 of them are public health recommended. It's really  
5 hard to generalize when a company has, I think, over  
6 140 individual systems if everyone is in compliance,  
7 every system, but I think the Company is doing a  
8 reasonably good job right now.

9 Q. If you could refer to Tab N, as in Nancy, of  
10 Exhibit 129, this appears to be a Department of Health  
11 order issued to American Water Resources, or it  
12 references several systems. Can you tell us what this  
13 relates to and what the issues were here?

14 A. Yes. This is an order the Department issued  
15 on February 8th, 1999, and it pertained to three  
16 systems in Thurston County - Crowder Road, Loma Vista,  
17 Prairie Villa. These were not good days. The Company  
18 was not doing well with respect to compliance in  
19 dealing with public health issues. Let me read through  
20 the order and see what the specific problems were.

21 The Company had exceeded maximum contaminant  
22 levels for coliform bacteria, which, in our view,  
23 creates an acute risk to public health. If people  
24 drink that water, they are at risk of becoming ill.  
25 They failed to monitor for lead and copper, which are



00280

1 corrosion by-products. The monitoring data is used to  
2 determine if there is a need for treatment to reduce  
3 the corrosivity of the water. The Company had failed  
4 to monitor for organic chemicals. They had not  
5 maintained adequate source protection at Crowder Road  
6 and Prairie Villa. They failed to monitor and report  
7 chlorine residuals.

8           So because of these concerns, we issued the  
9 order, and the order required that the Company employ a  
10 professional engineer with expertise in design,  
11 operation, and maintenance of water systems, and that  
12 that was to be completed within 20 days of receipt of  
13 the order, and that the Company working through their  
14 engineer should produce reports and construction  
15 documents for each of the water systems. That would  
16 bring the system into compliance with our requirements  
17 and address deficiencies that we had specified in a  
18 previous letter dated February 1, 1999.

19           There is a deadline to do this engineering  
20 work, 60 days from receipt of the order. The  
21 facilities were to be installed within 120 days, and  
22 the specific improvements that we were looking for  
23 included installing disinfection equipment at Loma  
24 Vista, installing disinfection equipment at Valley  
25 Meadows, Crowder Road, and Prairie Villa; to operate

00281

1 and maintain the disinfection equipment; to submit the  
2 corrosion control recommendation report; to monitor for  
3 bacteriological quality; to submit a coliform  
4 monitoring plan, which is the document that shows how  
5 the company will sample for coliform bacteria; to  
6 conduct pathological contamination follow-up; to sample  
7 for lead and copper; to monitor for organic chemicals;  
8 to conduct organic chemical contamination follow-up; to  
9 make sure that they used approved methods for the  
10 chemical analyses; and if required or violations  
11 occurred, to notify the consumers.

12 Q. Was issuance of this order the first step the  
13 Department of Health had taken to attempt to get the  
14 Company in compliance with these health issues?

15 A. No. We almost never issue an order as the  
16 first step to deal with compliance.

17 Q. Could you describe kind of what your normal  
18 process is? How does the Department attempt to work  
19 with companies?

20 A. We work with all water systems in the same  
21 way, whether they are regulated or not, but we are a  
22 public health agency, and our philosophy is that if  
23 purveyors or owners of water systems understand the  
24 public health issues that are at stake, then they will  
25 take the steps necessary to correct the problem. So

00282

1 what we generally do is provide technical assistance  
2 and advice, and in issues like this, that advice, it  
3 was back to what the public health issues are, and we  
4 helped the owner figure out the most pragmatic way to  
5 fix the problems.

6 Q. Is the sanitary survey report one of the  
7 methods the Department uses to provide technical  
8 assistance?

9 A. Absolutely.

10 Q. Has there been ongoing contact between the --  
11 I don't know what the title of the person for DOH is in  
12 the region supervising the Company. Is that an  
13 engineer or others?

14 A. There have been many people in the Department  
15 that have provided advice and direction to the Company.  
16 Would you like me to list or speak to those?

17 Q. Yes, I would please.

18 A. Each of our offices, Northwest and Southwest,  
19 has a staff person who oversees coliform water body  
20 data. So there has been an ongoing dialogue between  
21 those individuals and the Company on issues pertaining  
22 to coliform monitoring. We also have staff to deal  
23 with chemical monitoring, and there has been advice and  
24 direction provided on how and when to sample for  
25 chemicals.

00283

1           There is an engineer assigned to each county,  
2 and that engineer over the years has provided a lot of  
3 technical assistance, inspecting systems, preparing  
4 reports, providing on-site advice and direction,  
5 reviewing engineering documents, working with the  
6 system's consultant. Each of our offices has a  
7 planner, and we've worked at length with the Company  
8 and their consultant to scope and define the content of  
9 the water system plan.

10       Q.     Mr. Liechty, when there is a matter that the  
11 Company has been directed by the Department of Health  
12 to do, such as a departmental order, what's the process  
13 for resolving that closure. Is there an approval  
14 process after work is done, and how does that work?

15       A.     Certainly if the Company or the system is  
16 ordered to construct something, there is a very formal  
17 approval process that's prescribed by our WAC's, our  
18 underlying authority, and that requires our  
19 professional engineer to prepare engineering documents,  
20 submit them to the Department for our review and  
21 approval, and with that approval, the system in this  
22 case, the Company is authorized to go forth and build  
23 the improvements that have been approved.

24       Q.     Then is there a process after the  
25 construction documents are approved? After the

00284

1 construction is done, is there another process?

2 A. Yes, there is. After the construction has  
3 been completed, the Company is required to produce an  
4 estimate of completion, which is a document stamped and  
5 prepared by the professional engineer that certifies  
6 that the improvements were constructed in accordance  
7 with the plans that were approved by the Department.

8 Q. Do you know what the typical time line is  
9 from the time that that is prepared to when the  
10 Department reviews and stamps it or finalizes it?

11 A. The time that it takes to construct a  
12 project; is that the question?

13 Q. I'll need to rephrase the question. From the  
14 time that a project is completed until the Department  
15 of Health releases it or does its final approval, is  
16 there a typical time line? Are we talking 18 months or  
17 two weeks? Assuming the construction is done and the  
18 engineer submitted engineering documents to Department  
19 of Health within a couple of days of that --

20 A. What's the time lag from completion of the  
21 project to certification that it's complete?

22 Q. Yes.

23 A. It varies with the type of project, but I  
24 would think that for routine type construction without  
25 public health issues and concerns, we might see a

00285

1 two-month time lag. If there are improvements that are  
2 critical to solving a public health problem --  
3 installing a disinfection system, putting up a storage  
4 tank that's required -- I'd say the turnaround is  
5 hours. Often times, it requires our receipt of that  
6 certificate of completion in order to release a  
7 well-water advisory and declare the public health issue  
8 has been addressed properly.

9 Q. I would like you to refer at this time to  
10 Exhibit 129-M and the chart that is the fourth page of  
11 that exhibit or the list. There are six items on this  
12 list that say they are under DOH order, I'm  
13 understanding this to mean. Do you know if all of  
14 these projects have been completed and approved at this  
15 time?

16 A. I believe they have. One of these systems,  
17 Clerget, is in the Northwest office, and I would have  
18 to look at some records to make sure that that has been  
19 completed. The systems in my region do have  
20 chlorination facilities installed.

21 MS. TENNYSON: Might I have a moment?

22 Q. Yesterday during the hearing, Mr. Fox  
23 testified on behalf of the Company, and in response to  
24 my question about why the total costs of these  
25 surcharge projects are higher than the estimated costs,

00286

1 one of the reasons he stated was that the Department of  
2 Health was pushing him to get the jobs completed, and I  
3 think the phrased he used was, "DOH was all over me."

4           Based on this Exhibit 129, it appears that  
5 many or all of the projects that we are talking about  
6 have been issues with the Department of Health for some  
7 period of time. Did all of these projects become  
8 critical so the Department of Health pushed the Company  
9 to complete the projects in a short time frame in 1999,  
10 or what's your view of the history here?

11       A.     I think from a public health perspective, we  
12 are more critical than others. We reviewed the  
13 departmental order, which dealt with installation of  
14 disinfection facilities. In our view, those were very  
15 critical. Public health issues were at stake. So I  
16 don't think it's accurate to state that all of these  
17 projects were viewed in the same sense of priority.

18       Q.     Mr. Fox also testified that some of the  
19 projects had temporary chlorination systems in there.  
20 From the Department's view, what's the difference  
21 between a permanent and temporary chlorinator?

22       A.     For chlorine to be effective against the  
23 pathogens that are potentially in drinking water, the  
24 chlorine needs time to react with the water and the  
25 pathogens --

00287

1 Q. So you just can't spray chlorine at water and  
2 have it work?

3 A. No. It takes time to work. When the Company  
4 was asked to install disinfection, in several instances  
5 they installed the chlorinator; however, there wasn't  
6 adequate contact time, which meant that the disinfected  
7 water was served to customers before the water had been  
8 properly disinfected. So even though there was  
9 chlorine in the water, viral pathogens in particular  
10 would still be able to survive. Even though the  
11 chlorinator was present and functioning, the public  
12 health risk, in our view, had not been abated.

13 Q. You had indicated that the Department  
14 normally provides technical assistance to the  
15 companies. Was AWR provided an opportunity to correct  
16 problems after technical assistance before the  
17 Department issued the 1999 order?

18 A. Yes. We spent a lot of time with the Company  
19 trying to get the disinfection facilities installed in  
20 a timely manner.

21 Q. Would you say that you and your staff have  
22 spent more time with this company than other regulated  
23 companies in the level of assistance, higher, lower,  
24 different?

25 A. Definitely on the high end. This has been a



00288

1 unique relationship, and one of the things that made it  
2 unique is the large number of systems and the  
3 extraordinary amount of time we have spent managing and  
4 regulating the Company.

5 Q. In all the time you have been working with  
6 the Company, in your view, why didn't the work get done  
7 in a timely fashion? Were you given reasons by the  
8 Company?

9 A. We were asking those questions of the  
10 Company, and one of the answers that we consistently  
11 heard is, "I'm running at a loss. I'm financially not  
12 able to make the improvements. We need rate  
13 concessions from UTC in order to raise the revenue in  
14 order to make the improvements."

15 Q. At some point in working with the Company,  
16 did you eventually consult with the representatives of  
17 the UTC staff?

18 A. Yes, we did.

19 Q. Could you describe that interaction, why you  
20 started talking with UTC.

21 A. We are certainly not rate experts, but after  
22 hearing from the Company that acute public health risk  
23 problems couldn't be resolved without concessions from  
24 UTC, we felt it would be appropriate to have  
25 representatives from UTC in the room as we were

00289

1 negotiating schedules and steps to address the public  
2 health issues. So we asked that a representative from  
3 UTC do that very thing.

4 Q. Did that occur?

5 A. Yes, it did.

6 Q. What did you discover out of that working  
7 relationship?

8 A. I think that the discussion that I recall  
9 resulted in notes being made on a white board, and  
10 those notes laid out steps, schedules, requirements,  
11 that were acceptable to the Company, that were  
12 reasonable from UTC's point of view, and led to the  
13 deadlines that were part of a compliance order.

14 Q. So the order that you issued in February of  
15 '99 came out of those discussions with the Company and  
16 UTC?

17 A. Correct.

18 Q. Were those deadlines that were included in  
19 that order, were they complied with?

20 A. No, not all of those deadlines.

21 Q. Do you know why that happened?

22 A. I would have to look at each situation.  
23 There were a lot of complicating factors from the  
24 Company's view, including a desire to intertie a couple  
25 of the systems and an inability to obtain easements.

00290

1 Q. There were some issues with water rights and  
2 Department of Ecology also?

3 A. Yes, I believe there were.

4 MS. TENNYSON: I don't have any further  
5 questions for Mr. Liechty at this time.

6 JUDGE BERG: Mr. Fox, why don't you go ahead.

7 MR. FOX: Thank you, Your Honor.

8

9

CROSS-EXAMINATION

10 BY MR. FOX:

11 Q. I guess first maybe let me ask that the  
12 general crux of all of the 13 projects would you say  
13 was pretty much to cure chlorination issues and some  
14 other -- what would I say -- important but lesser  
15 important health issues?

16 A. Several of the systems required  
17 disinfection, and that's clearly a very high priority  
18 for us. I believe there were other improvements that  
19 were also proposed and negotiated and agreed to.

20 Q. I guess a part at least to the point of my  
21 question was relative to such things as repairing the  
22 pump house that was falling apart, the roof was falling  
23 in, the insulation was falling out and rat infested,  
24 different things like that. Those are things you  
25 obviously would say should be fixed if you went out and

00291

1 made a sanitary inspection in most cases relating to  
2 those surcharge projects. That was not your focus at  
3 that time.

4 A. Well, I don't know that I could agree with  
5 that. I can't imagine the Department overlooking a  
6 pump house in the condition you described.

7 Q. Would you tell me then what pump houses were  
8 inspected and found to be in that condition and  
9 comments were made about them?

10 A. I'd have to go through the notebook and  
11 information. I can't from the top of my head answer  
12 that.

13 Q. You said that a part of the problem with the  
14 whole process here was the number of systems that we  
15 have. Do you know how many systems that we have?

16 A. Today?

17 Q. Today or when we were going through all this  
18 process, which is very near the same number.

19 A. I asked Mitch this morning how many systems,  
20 and I think the answer was 146 systems, and I think 26  
21 Group A.

22 Q. During the process, as you pointed out, there  
23 was a great deal of discussion, virtually from day one,  
24 about various problems with the systems, and one of the  
25 concerns that we discussed was with the very large

00292

1 number of systems that we had, and as you related, my  
2 conversations about cost and not having money to do all  
3 the things that should be done. Part of this concern  
4 that I believe was discussed and I asked your help or  
5 input was to help UTC understand that the cost and work  
6 of taking care of 150 systems spread over seven  
7 counties was considerably more work intensive than  
8 taking care of the same number of systems in one spot  
9 or the number of customers in one system. Do you  
10 remember those kind of conversations?

11 A. I remember discussions and have read  
12 correspondence that discussed the fact that there was a  
13 lot of travel involved to service the various systems  
14 that the Company owned and that you had a limited  
15 number of staff that were able to do that, and that  
16 just the sheer logistics of inspecting and maintaining  
17 systems was very difficult.

18 Q. All of that, would you say, relates to the  
19 cost of what it take to operate those systems?

20 A. Absolutely.

21 Q. As far as the condition of the systems, you  
22 said that you are pretty well aware of various systems  
23 around. I imagine through your career, you have been  
24 out and looked at a lot of the systems yourself, not  
25 necessarily ours, but other systems in your region?

00293

1 A. I've inspected several water systems, yes.

2 Q. I'd like you to look at the pictures -- do we  
3 have an extra copy that Mr. Liechty can look at?

4 JUDGE BERG: He can look at one of the Bench  
5 copies.

6 Q. I've presented here a few random pictures.  
7 I'll kind of flip through them and talk about them a  
8 bit and then ask you some questions about them. The  
9 first page is the Crowder Road system, which is one of  
10 the ones that we have been most concerned with and has  
11 been very heavily discussed in these proceedings.  
12 These pictures are the Page 1, Page 2, Page 3, are of  
13 the Crowder system.

14 MS. TENNYSON: Your Honor, if Mr. Fox is  
15 going to refer to these now -- although, we talked  
16 about doing it at a later time -- perhaps it might be  
17 appropriate for him to put on the record at this point  
18 his description of what these pictures represent,  
19 whether they are before or after what systems,  
20 etcetera, and then formally admit it into the record so  
21 we are clear with what we are talking about.

22 MR. FOX: That's fine with me.

23 JUDGE BERG: My only concern is I suppose  
24 there is no objection over his description constituting  
25 testimony --

00294

1 MS. TENNYSON: That's what I'm proposing,  
2 essentially. Although Mr. Liechty is the witness on  
3 the stand that we switch for a moment and put Mr. Fox  
4 as the witness so he can testify to it rather than have  
5 him attempt to ask questions and describing without  
6 really testifying.

7 JUDGE BERG: Are you going to want to cross  
8 him on these photos then before we return to  
9 Mr. Liechty?

10 MS. TENNYSON: I will not ask additional  
11 questions. I would just like to have a description,  
12 unless I feel the need to clarify any information.

13 JUDGE BERG: Let's take a slight segue in the  
14 proceeding. Mr. Fox, at this point, I'll remind you  
15 that you are still subject to the oath you took  
16 earlier. I would like you to just walk everyone  
17 through these 11 pages of photographs, and I know from  
18 looking at the photographs that some of the photographs  
19 have date stamps. Some of them appear to be Polaroids  
20 without date stamps. If you would just go through this  
21 set and as directly as possible, make reference to the  
22 photograph, the position on each page by number, the  
23 date which it was taken, and what it purports to show,  
24 and go photograph by photograph, and also indicate if  
25 you know the person who took each of these photographs.

00295

1           MR. FOX: Thank you, Your Honor. First off,  
2 let me comment about the date and the photograph. A  
3 lot of these photographs were taken with my camera, and  
4 the date in my camera was all messed up, so I would not  
5 count much on those. They may or may not be correct.

6           Page 1, the photograph with the pump house  
7 and the individuals in the picture -- the individuals  
8 being Dave Doern my service man. The other two are  
9 interior pictures of the Crowder pump house. These are  
10 all three taken prior to -- at this point, we had only  
11 done very minor routine repair type work. We hadn't  
12 done any of the work in the surcharge.

13          JUDGE BERG: Approximately what time frame  
14 would that be?

15          MR. FOX: This was very early on in our  
16 ownership of the system, so to give you a real good  
17 date, I would have to look back at our purchase  
18 documents, which I don't have with me, but I'm sure  
19 these were either taken when I was looking at the  
20 system just before we purchased them or shortly  
21 thereafter. In this case, the '96 in the photograph  
22 may very well be right, but I certainly wouldn't  
23 certify that without looking at my records.

24          Page 2 is again interior photos of one of the  
25 Crowder pump houses. If you notice on Page 1, there is



00296

1 two little pump houses that are separated from each  
2 other. You see that better on Page 3. So the top one  
3 is the two pump houses. The bottom two are again  
4 interior shots of those pump houses.

5           Going to Page 4, we have on the left two  
6 exterior photos of the Crowder pump house taken just a  
7 day or two ago, and on the right, two interior photos  
8 of the pump house taken at the same time, yesterday, I  
9 guess.

10           MS. TENNYSON: Mr. Fox, before we go on, is  
11 there now one or two pump houses on the Crowder system?

12           MR. FOX: Yes. In rebuilding the system, we  
13 totally demolished the two deteriorated pump houses and  
14 built one new pump house.

15           MS. TENNYSON: So the two pictures we have on  
16 Page 4 are --

17           MR. FOX: Are different views of the same  
18 pump house, yes.

19           Page 5 is again interior photos of the  
20 Crowder pump house showing the source meter and other  
21 improvements after the reconstruction, and the photo on  
22 the right is showing the chlorine tank and chlorine  
23 feeders and various of the electrical equipment. On  
24 Page 6 is after reconstruction photos of the Loma Vista  
25 pump house, the top left being obviously the exterior

00297

1 view, and others are various interior views showing the  
2 piping, the sand filter, the chlorination equipment and  
3 various equipment.

4           On No. 7, we have pictures of the Valley  
5 Meadow system before any reconstruction. The one on  
6 the right showing the tank is the outside of the pump  
7 house and the pressure tank, which is largely outside  
8 and the one end of it inside. The other two are just  
9 interior photos of various electrical equipment and  
10 piping, and if yours is like mine, one picture is  
11 upside down on the bottom.

12           JUDGE BERG: Would you give me an approximate  
13 time frame when you think these photographs might have  
14 been taken?

15           MR. FOX: These should have been taken in the  
16 same general time frame as the Crowder ones because I  
17 bought the systems in the same general time frame. I  
18 have the impression, however, if the photo date is  
19 right, I notice a couple of these interior ones have  
20 '99, so it's possible these were taken shortly before  
21 we did the reconstruction, but obviously, they were  
22 before the reconstruction.

23           JUDGE BERG: The non Polaroid photographs,  
24 were those taken by you?

25           MR. FOX: Most of the non Polaroid

00298

1 photographs were taken by me. Not in all cases,  
2 however. Dave Doern took some and possibly some other  
3 one of our service people might have taken some, but I  
4 took the bulk of them.

5           On Page 8, we have exterior views of the  
6 Pleasant Valley system prior to any reconstruction. On  
7 Page 9, we have on the top a picture of the new well  
8 head that had been discussed yesterday whether just  
9 what had to be done there, and I commented a totally  
10 new pump house had to be built, which it was. This is  
11 the before, and the one in the center is, again, the  
12 sloppily constructed pre refurbishing and the same at  
13 the bottom.

14           Page 10 is the Forest Creek system. That's  
15 one that we haven't been discussing here, but the  
16 reason I included these pictures was again to show the  
17 general condition of systems in general, obviously, the  
18 exterior of the old cedar storage tank, and the other  
19 two are of the various pumps and piping and disarray on  
20 the interior. Sheet 11 has another page of the same  
21 kind of thing, the hodgepodge interior of Forest Creek  
22 system.

23           MS. TENNYSON: Mr. Fox, if I might inquire  
24 about those last pictures of the Forest Creek system,  
25 you indicated it was not one we've been discussing.

00299

1 Any work on that system was included in the surcharge  
2 funding request, was it?

3 MR. FOX: That is correct.

4 JUDGE BERG: Anything further about these  
5 photographs?

6 MR. FOX: No. I think that pretty well  
7 describes them.

8 JUDGE BERG: In that case, that will close  
9 your portion of additional direct testimony regarding  
10 these photographs, and we'll go back to  
11 cross-examination of Mr. Liechty.

12 MR. FOX: Thank you, Your Honor.

13 Q. (By Mr. Fox) So my question then,  
14 Mr. Liechty, is viewing all these before photographs,  
15 would you say that these systems are either pretty  
16 typical or a little poorer than the general system you  
17 find out in the countryside today?

18 A. Unfortunately, I think they are somewhat  
19 typical of the small Mom and Pop water system.

20 Q. Would you generally agree also that we  
21 usually find the Group B systems -- which you have  
22 overall authority for but don't deal with directly; is  
23 that correct?

24 A. In most counties, that's the case.

25 Q. Would you agree that the B systems are

00300

1 generally found in a little poorer shape yet than the A  
2 systems?

3 A. Probably. When you are dealing with small  
4 water systems that aren't owned and run by water  
5 professionals, there is a lot of variation, and often  
6 times you find old, poorly maintained systems.  
7 Probably age is the most critical factor as opposed to  
8 who owns it or what size.

9 Q. Do you recall our discussions, one of the  
10 many you described, that I pointed out and emphasized  
11 that my objective was to take all these crummy derelict  
12 systems and slowly bring them into a status of a very  
13 good repair and very good management?

14 A. I heard you say it on several occasions that  
15 when you made improvements, you would do it right and  
16 bring them up to an accepted standard.

17 Q. Would you say that when I have made  
18 improvements, I have done that?

19 A. That was the general view of our engineers is  
20 that when the Company decided to make upgrades that  
21 they did a quality job.

22 Q. Early on, when the issue of the surcharge  
23 approach to financing improvements was being discussed,  
24 we started out discussing a list which we've seen here  
25 somewhere which was close to 90 systems that I

00301

1 advocated should have worked under the surcharge  
2 approach. Do you remember that discussion?

3 A. I was aware of those, Mr. Fox, but I wasn't  
4 directly involved in taking the long list and making  
5 the short list. I was generally aware of those  
6 discussions.

7 Q. Do you know of any other small water company  
8 that has a similar amount of systems?

9 A. There is at least one other company now that  
10 has as many systems, and that would be Washington Water  
11 Service Company.

12 Q. I guess I would view them as a smaller  
13 company, but they certainly have a number of systems.  
14 I guess maybe I should define what I call small?

15 A. Okay.

16 Q. I would say owners, companies, who have,  
17 let's say, under eight- or ten-thousand connections?

18 A. Okay. That's a small company.

19 Q. That's what I'm defining as a small company,  
20 which in my mind, Washington Water is --

21 A. Large.

22 Q. -- regional and tremendously bigger.

23 A. Right.

24 Q. My question was, of the other companies I'm  
25 defining as smaller, who do you know of that has a

00302

1 similar amount of systems as we do?

2 A. I know no company comes to mind with as many  
3 individual systems that meet your definition of small.

4 Q. Would you think it fair to characterize then  
5 that we've bit off a pretty big chunk and put a lot of  
6 effort into trying to handle that big chunk?

7 A. I think it's fair to say that the Company  
8 grew very rapidly and went to a large number of systems  
9 in a very short period of time.

10 Q. To your knowledge, is there any test  
11 requirement that we don't have up-to-date today out of  
12 those 150 systems?

13 A. Water quality monitoring testing  
14 requirements?

15 Q. IOC, BOC, bacti (phonetic), lead and copper,  
16 any of the tests, radio nucleoid, whatever?

17 A. You know, I don't know the answer to that  
18 problem. There are no orders issued to address failure  
19 to monitor, but I honestly don't know the status for  
20 each system.

21 Q. Since you supervise the various engineers and  
22 people involved, it would be pretty likely that it  
23 would be brought to your attention if we were out of  
24 compliance, particularly in view of all the discussions  
25 that have been going on. Wouldn't you say that to be

00303

1 true?

2 A. Yes.

3 Q. As far as the discussions about the timing  
4 and the pressure of getting things done, up until the  
5 time that the health issues related primarily to Loma  
6 Vista and Crowder, the ones that needed chlorination,  
7 Prairie Villa, up until those things began to, what  
8 should I say, really become a big issue, would you say  
9 that there was really a very good relationship between  
10 DOH and American Water, LCUC, at that time, Lewis  
11 County Utility?

12 A. I think there were two separate  
13 relationships. One with Southwest, my region, and a  
14 separate one with Northwest. And I think that probably  
15 the working relationship and the Department's overall  
16 assessment of the Company was probably initially a  
17 little better with Southwest than with Northwest. I  
18 think there was some history that Northwest had that I  
19 didn't fully appreciate until I read some of the  
20 information that got compiled.

21 Q. Northwest being primarily Chris McMeen as far  
22 as the district engineer?

23 A. In the -- department, Tacoma Pierce.

24 Q. We had a number of discussions about  
25 generators through the process of dealing with getting



00304

1 the surcharge set up, and do you remember a discussion  
2 that we had that I related to you that it was Chris  
3 McMeen's viewpoint that every system should have a  
4 generator because that addressed the question of  
5 reliability or always having water that the DOH rules  
6 said, and as I recall your comment, you said, "Well,  
7 that's Chris's idea." Do you remember that  
8 conversation?

9 A. I don't specifically remember that  
10 conversation, but I do recall discussions regarding the  
11 Department's reliability standards and how to interpret  
12 them, and I think there are individual differences  
13 amongst the engineers in the offices.

14 Q. One of the things that because primarily of  
15 Chris's advocating the generators had to be there, I  
16 asked for the cost of generators to be a part of the  
17 surcharge process that we were building. Do you  
18 remember that?

19 A. Again, I wasn't directly involved with the  
20 big CIP list and the surcharge, so I heard talk about  
21 generators, but I wasn't directly involved with that.

22 Q. Mary asked a question about was Clerget  
23 system now approved, and you said that because that's  
24 in Chris's area, you didn't know for sure; is that  
25 correct?

00305

1 A. Correct.

2 Q. But it is, again, would you say highly likely  
3 that you would know if it wasn't?

4 A. I think I have some information here that I  
5 might be able to figure out what the current status of  
6 Clerget is.

7 Q. If you choose, that's fine.

8 A. According to our records, the Clerget system  
9 has a red operating permit, which indicates that there  
10 are still unresolved issue and could be viewed as  
11 unapproved or not meeting public health standards.

12 Q. Do you know what that issue is?

13 A. No, I don't.

14 Q. The current WFI or operating permit that we  
15 received indicated Clerget as being red. We inquired  
16 as to why, and the reason we were given was because the  
17 WSP was not yet finalized and approved. Do you believe  
18 that would be an accurate reply from DOH?

19 A. I know that the water system plan is not  
20 approved. That's a fact.

21 Q. Right, and would that be a point that would  
22 keep the permit in the red status?

23 A. It could be.

24 Q. Particularly since it was a part of the  
25 order?

00306

1 A. Correct.

2 Q. That's what we were told, but you don't know.  
3 You can't verify that's what we were told?

4 A. No. I can't verify what you heard from  
5 someone over in the Northwest office.

6 Q. How many of the smaller systems, A's or B's,  
7 in the Pacific Northwest or in your region would you  
8 expect have chlorination on them, percentage wise or  
9 some kind of a way to give us a feeling.

10 A. I'd say somewhere between 15 and 25 percent  
11 of the sources would be disinfected, and most of those  
12 would be chlorination.

13 Q. I recognize that the DOH rules say that you  
14 are to get daily readings on those chlorine residuals.  
15 How many of those systems do you get daily readings?

16 A. In my region, I would say probably 75 percent  
17 of the systems report.

18 Q. I recall at earlier discussions with  
19 particularly Chris McMeen, Jim McCauley about chlorine  
20 daily readings, and I recall the discussion of the cost  
21 involved to sending someone every day to get a chlorine  
22 reading, and I was told that the general policy was  
23 that as long as you are getting enough chlorine  
24 readings here and there, that it felt pretty confident  
25 that things are working right, that that was

00307

1 acceptable. Was that an unwritten policy, or was that  
2 kind of an everyday policy, at least a year or two or  
3 three ago if not today?

4 MS. TENNYSON: Your Honor, I would object. I  
5 was hoping we might come to something relevant so I  
6 didn't object earlier, but Mr. Fox is asking questions  
7 about taking daily chlorine readings, chlorination on  
8 other systems, percentages of systems that have  
9 chlorination. We are talking about a surcharge. Daily  
10 chlorine readings and those sorts of things are not  
11 covered by the surcharge, so unless he can tie it in  
12 somehow to this case, I would object to further  
13 questioning on this.

14 JUDGE BERG: I'm going to overrule the  
15 objection and allow the questions to be asked. When  
16 you ask a question like this, Mr. Fox, you need to  
17 first confirm whether this witness has any personal  
18 knowledge of the matters that you are referring to. As  
19 you are presenting it, it sounds as if you are  
20 testifying. So before you get to the point where you  
21 want to ask this witness whether or not something is  
22 true or not, you need to present it in such a way that  
23 you are confirming whether he's aware of certain  
24 positions or discussions that have occurred.

25 MR. FOX: I will try to pay attention to

00308

1 that, Your Honor. Thank you.

2 JUDGE BERG: I do expect that this is being  
3 tied into the quality of service on AWR systems.

4 MR. FOX: Thank you. I believe that it is.

5 JUDGE BERG: I understand. I know that's why  
6 you are asking the question, but I expect that you will  
7 also ask a question of this witness that will reflect  
8 back on your systems the same way you were asking  
9 questions regarding whether or not there were other  
10 systems like, for example, that compared in size to  
11 AWR.

12 MR. FOX: Thank you, Your Honor.

13 Q. (By Mr. Fox) Mr. Liechty, you commented  
14 about meetings we had at your office and the white  
15 board description that you gave about steps and  
16 deadlines. The most important of the discussion at  
17 this time, was that Crowder?

18 A. I think we had three systems that we were  
19 working with.

20 Q. Maybe I characterized it wrong. I agree with  
21 you. We are talking about Crowder, Loma Vista, and  
22 Prairie Villa, but the reason I said was Crowder the  
23 most important -- let me ask another question first.  
24 Were you getting heat, if we will use the term, from  
25 Kevin O'Neil and other public people about getting that

00309

1 job done quickly?

2 A. First of all, Kevin O'Neil was one of your  
3 consultants.

4 Q. Excuse me. Kevin O'Sullivan, one of the  
5 county commissioners.

6 A. We had inquiries from a number of people.  
7 The concern was, why is the boil-water still in effect,  
8 and when is it going to be lifted.

9 Q. I agree. We then had a meeting at your  
10 office about that, and the white board discussion  
11 followed that you referred to. I remember you putting  
12 dates on that board, and we discussed whether they were  
13 doable or not. We finally arrived at dates that I said  
14 was terribly aggressive but doable; do you remember  
15 that?

16 A. Yes.

17 Q. Do you remember that I did meet that date?

18 A. We had dates for different systems, and it's  
19 complex enough that I can't recall, first of all, what  
20 the schedule was and the outcome. I would have to go  
21 back and do more research. I think some dates were  
22 met, others weren't.

23 Q. Mary asked questions concerning the time for  
24 certification, when a job was completed and the  
25 engineer had given you certification it was complete,

00310

1 and you said that can sometimes be like two months, and  
2 I believe that you said in the case of Loma Vista or  
3 Crowder that it was extremely quick.

4 A. What I recall saying is that if the stakes  
5 were high, for example, if completing the project would  
6 lift a boil-water, that project would be certified as  
7 being complete in a matter of hours.

8 Q. Yes. And on those projects, do you remember  
9 when those projects were completed, the engineer  
10 hand-carried certification to you and that you did  
11 certify it virtually in hours?

12 A. I recall fast-tracking review, approval,  
13 processing of your certification.

14 Q. Just for information, my caption on Page 33  
15 was wrong, the pitless adapter. Page 33 is not a  
16 pitless adapter. It's the other type. The document  
17 was referred to here about suspension of our SMA  
18 status.

19 JUDGE BERG: Excuse me, Mr. Fox. Would you  
20 make specific reference to that document so the record  
21 will reflect exactly what you are speaking to?

22 MR. FOX: Exhibit 128.

23 Q. (By Mr. Fox) While we received this document  
24 about intent to suspend our SMA status, do you recall  
25 that there was subsequent discussions and that our SMA

00311

1 status was not suspended?

2 A. As I recall, you voluntarily offered to  
3 remove yourself from the list of approved SMA's.

4 Q. Thank you. You discussed the difference  
5 between permanent and temporary chlorination. When  
6 there is a hit, we chlorinate. That's the normal  
7 thing; right? And then retest and see if you have  
8 rectified the problem. Is that the normal process?

9 A. Each one is handled case by case, but often  
10 times, there is a need to disinfect, flush the system,  
11 and retest.

12 Q. What that doesn't solve the problem, the next  
13 step is...

14 A. If flushing isn't resolving the problem, then  
15 we move onto trying to find out where the problem is  
16 coming from. It often times is the source itself, or  
17 it may be contamination after the water is in the  
18 pipes. It's honestly unusual that we can pin down the  
19 source of the problem.

20 Q. Is it fair to say that when the problem  
21 cannot be pinned down, the next thing that's done is  
22 temporary chlorination?

23 A. No. If we conclude that there is chronic  
24 contamination and that the system needs to be  
25 disinfected on a permanent basis, then we require that



00312

1 there be a properly designed and constructed  
2 disinfection system. We want the facilities to be  
3 adequate, including contact time.

4 Q. I understand that, but in the interim,  
5 because the permanent chlorination can't be designed or  
6 approved by DOH or installed within a matter of a day  
7 or so, isn't it normal that temporary chlorination is  
8 done?

9 A. I can recall instances where a chlorinator  
10 was put on, which we would call that the temporary  
11 chlorinator. We would leave a boil-water advisory in  
12 effect. That temporary chlorination certainly isn't  
13 hurting the situation, but it doesn't meet all of the  
14 public health standards and isn't used as an adequate  
15 solution.

16 Q. Not viewed as being as good.

17 A. It doesn't assure the water is safe.

18 Q. When temporary chlorination is installed, is  
19 it DOH's rule that the water purveyor who installed the  
20 temporary chlorination needs to get the approval and/or  
21 concurrence of the regional engineer?

22 A. Generally, yes.

23 Q. After that temporary chlorination is  
24 installed, more tests are taken; is that correct?

25 A. Well, sure, more tests are taken.

00313

1 Q. If after taking those additional tests it is  
2 shown that the problem has at least been temporarily  
3 satisfied or cured, as you said, the result then is not  
4 as good as permanent chlorination, but it does, would  
5 you say, greatly alleviate the degree of potential for  
6 problems?

7 A. Let me put it this way: The risk hasn't been  
8 reduced to the point where we feel the water meets our  
9 standards, and if a boil-water advisory were in effect,  
10 it would remain in effect, regardless of what the test  
11 results indicated. That's standard practice in both  
12 offices.

13 Q. Right. But wouldn't you agree that the risk  
14 has been greatly diminished because we are now getting  
15 good tests, whether or not it's been totally satisfied?

16 A. Bear with me. The tests are for bacteria, an  
17 indicator organism. An indicator organism is killed  
18 very effectively by the levels of chlorine that the  
19 temporary chlorinator would introduce. So the  
20 indicator organism would show the water would meet the  
21 public health standard.

22 However, the level of chlorine that a  
23 temporary chlorinator would inject is not sufficient to  
24 address viral contaminants that do cause disease and  
25 which are typically encountered in water. It's not

00314

1 practical to test for the viral contaminants. So in  
2 our view as a public health regulator, there is two  
3 factors to take into account: the performance  
4 standard, the design criteria that are applied to put  
5 the chlorine in the water, contact time in this case,  
6 as well as satisfactory test results, and we've got to  
7 have both before we are confident that the water will  
8 meet the public health standards.

9 Q. What you want to see is a relatively constant  
10 chlorine residual at the user's house; right?

11 A. That's a piece of it. We also want to make  
12 sure that there is adequate contact time, that the  
13 water has had a chance to react with the chlorine for a  
14 certain amount of time before the people drink it.

15 Q. You commented about, I believe, it was in  
16 129-J, Loma Vista, about lead and copper testing.  
17 There was guidelines set out -- I'm not sure whether it  
18 was by the State or by EPA or which agency, but when  
19 lead and copper testing come into being, there was  
20 guidelines set out of when lead and copper testing  
21 needing to be accomplished; is that correct?

22 A. That's correct.

23 Q. To my knowledge, American Water complied with  
24 all of those deadlines. Do you agree or disagree with  
25 that?

00315

1 A. For which system?

2 Q. For every system.

3 A. I can't speak to every system. The ones that  
4 I'm familiar with were the south county, Crowder Road,  
5 Loma Vista, Prairie Villa situations, and there was a  
6 lot of concern about compliance with corrosion  
7 monitoring of treatment, and the Company was performing  
8 within the schedules prescribed by the law. We knew  
9 there was a problem. However, the law allowed a  
10 certain period of time to fix that problem.

11 Q. That's correct. Thank you. One of the  
12 issues involved in the order and the WSP surcharge  
13 process was completion or revision of our WSP; is that  
14 correct?

15 A. Say that again?

16 Q. A part of the order that we were complying  
17 with and a part of the surcharge money was to be used  
18 to update our WSP; is that correct?

19 A. Which order are we speaking of here?

20 Q. The order that your department issued.

21 A. There were several.

22 Q. There was two, one concerning Crowder, Loma  
23 Vista, Pleasant Valley.

24 A. Let's go to the actual order.

25 JUDGE BERG: I believe one order is located

00316

1 at Tab N to Exhibit 129, and I don't recall any  
2 reference to another Department of Health DO, but if  
3 you know of the inclusion of another order into those  
4 tabs, Mr. Liechty, please make reference to it.

5 THE WITNESS: The Order Docket 99007, which  
6 is Tab N, and it applies to Crowder, Loma Vista, and  
7 Prairie Villa. I don't believe it includes the water  
8 system plan.

9 Q. (By Mr. Fox) I apparently don't have a copy  
10 of the other order here. At any rate, I don't want to  
11 spend too much time on that issue, but the updating of  
12 our water system plan, whether it's by the order or  
13 however, is something that you have demanded; right?

14 A. That is correct.

15 Q. We did finish the updating of that water  
16 system plan and submit it to you somewhere between 30  
17 and 45 days ago; is that correct?

18 A. That's correct.

19 Q. With respect to the 13 projects that were on  
20 the list that was to be completed under the surcharge,  
21 you said some of those discussions you were in and some  
22 you weren't. The latter ones that pretty much reached  
23 a conclusion, I think you were pretty much in. Is that  
24 reasonable to say?

25 A. I don't think so. My involvement with

00317

1 delineating the projects on the part of the surcharge  
2 was mostly having other staff in the office let me know  
3 that were trying to short-list the list of capital  
4 improvements and agree on critical projects and that  
5 there will be a surcharge that revolves around those.

6 Q. There was a meeting fairly earlier -- well,  
7 when we are getting close to having the surcharge, what  
8 was and wasn't going to be done boiled out, I remember  
9 a meeting in your office. It was one day I looked up  
10 here, but it was March 29th, '99. Sean Orr was there.  
11 Peter Beaton was there. I think maybe Sandy  
12 Brentlinger. I'm not sure. I questioned whether Gene  
13 might have been there. Were you at that meeting?

14 A. That doesn't ring a bell. No, I don't recall  
15 that meeting.

16 Q. I asked you about the water tests. Do you  
17 know of any deficiencies of any kind that American  
18 Water has today?

19 A. Well, we talked about Clerget being --

20 Q. But the issue there is the water system plan  
21 which has been submitted?

22 MS. TENNYSON: I will object to the form of  
23 the question. Mr. Fox testified in essence that was  
24 the problem, but Mr. Liechty said he was not aware of  
25 the reasons.

00318

1           THE WITNESS: I have a table that shows the  
2 operating permit classification for various systems,  
3 and it looks like several systems are red, which means  
4 that there are deficiencies, and there are several that  
5 are yellow, which means the status is unknown, and I  
6 can't -- I don't know the status of water quality  
7 monitoring for all of the systems.

8       Q.     Your list, I take it, doesn't identify the  
9 reason for the red or the yellow?

10      A.     No, it doesn't.

11      Q.     What other reasons might be there be?

12      A.     To be red, in substantial noncompliance,  
13 there would need to be a documented public health  
14 deficiency; for example, water quality violations, or  
15 failure to comply with an order that had been issued,  
16 and you missed a deadline specified by the order.

17      Q.     I just don't have that other order, but if  
18 the reason for that being red was something other than  
19 administrative, such as the WSP being completed or  
20 whatever, if it was some kind of a coliform or some  
21 kind of health related issue, wouldn't you expect that  
22 your staff would have brought that to your attention,  
23 because we would be long beyond what should have been  
24 done at this point.

25      A.     Are we talking about Clerget?

00319

1 Q. We are talking about Clerget specifically but  
2 any system in general.

3 A. And the question is what?

4 Q. The question is, if there were any health  
5 related or substantive issue other than paperwork that  
6 was not up-to-date and causing a permit to be red,  
7 wouldn't you expect that your staff would have brought  
8 that to your attention?

9 A. Yeah. I think it's reasonable to say that if  
10 there was a public health concern, I would know about  
11 it.

12 Q. Thank you.

13 MR. FOX: I don't believe I have any other  
14 further questions, Your Honor.

15 JUDGE BERG: I have some questions for  
16 Mr. Liechty, but I think we will take just a short  
17 break, and we will be back on the record at 11:30.

18 (Recess.)

19 JUDGE BERG: Back on the record.

20

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

22 BY JUDGE BERG:

23 Q. Mr. Liechty, I have several questions, and  
24 most of my questions are going to focus on the document  
25 at Tab M, which is the priority list with the



00320

1 designation "UTC meeting, 2/25/99" of Exhibit 129, and  
2 then also, I'd like you to have close at hand the cover  
3 document to 129, the AWR surcharge hearing research  
4 insert, and if you can, the document marked as 107.

5           Just to put in context, all of my questions  
6 are going to focus on the priority list of water  
7 systems numbered 1 through 12 and also the South  
8 Prairie water system, which subsequently was included  
9 with the water projects to be covered by the surcharge  
10 approved by the Commission. Would you confirm for me  
11 whether the document at 129-M, the priority list, was  
12 prepared by you or under your direction? I should say  
13 whether it was prepared by you or under your direction.

14         A.     It was not prepared by me, and I'm reasonably  
15 certain that it was prepared by Sean Orr, who was the  
16 planner in our office at that time.

17         Q.     Then there is some handwritten notes on this  
18 version of this document indicating that those projects  
19 1 through 6 under order for chlorination and  
20 miscellaneous improvements are handwritten notation "A  
21 plus" and the project 7 through 12 is "A." Do you  
22 understand what the "A plus" or "A" designations mean?

23         A.     No.

24         Q.     One of the stated purposes of the surcharge  
25 was to provide a cost-covering mechanism for water

00321

1 system improvements that were required by Department of  
2 Health. In looking at this list of 1 through 12, I  
3 think it's easy to understand that improvements related  
4 to 1 through 6 that are the subject of a DO would be  
5 considered requirements. To the extent that other  
6 projects have been approved for surcharge, that being 7  
7 through 12 or other projects that were not subject to a  
8 DO, how would that requirement that improvements be  
9 made be documented or otherwise established?

10 A. Made apparent to the Company?

11 Q. Yes, certainly made apparent to the Company.

12 A. In the most general sense, we've got a set of  
13 regulations and design standards which all companies  
14 and water systems are expected to comply with. So  
15 that's just a general standard that's out there. How  
16 those various requirements apply to any, say, Elk  
17 Heights through Terry Lane, we would have to go back  
18 and take a look at our records, sanitary surveys, and  
19 other information in our files that would note any  
20 issues, problems, concerns. So there is one source,  
21 and we've cited some of that in the notebook.

22 Secondly, when systems are acquired, there is  
23 an assessment done by the perspective owner to just  
24 evaluate the condition of those systems, so that's  
25 standards practice. So I would think the Company, and

00322

1 particularly their consulting engineer or their field  
2 person, would have field notes and documentation  
3 regarding the condition of the systems.

4 Q. So at the time that AWR was acquiring  
5 systems, possibly as early as 1996, and continuing on  
6 through the period of time after you became aware of  
7 Mr. Fox's action plan, these projects -- again, we are  
8 talking about these 13 projects. Are you aware that  
9 these projects had documented problems preexisting  
10 their acquisition, or are those problems that were then  
11 determined at the point of acquisition?

12 A. By the Company? You know, the dates on  
13 acquisition and the dates that go back to surcharge, I  
14 don't know those. What I am --

15 Q. Let me put it another way then. I'm sure I  
16 presented the question in a confusing way. With  
17 regards to these projects, are you aware whether there  
18 were long-term or long-known problems associated with  
19 any of these systems or the systems within your region  
20 prior to acquisition?

21 A. Well, again, I don't know when the system was  
22 acquired, but in the notebook, there is documentation  
23 where we've attempted to notify the Company of issues  
24 and concerns, so that information has a date on it, and  
25 where that sits with respect to acquisition, I'm not

00323

1 sure.

2 Q. The purpose of the question is to determine  
3 whether or not this was a problem that was inherited or  
4 a problem that was created by AWR.

5 A. In my opinion, a large number of the problems  
6 were inherited. Systems with physical deficiencies and  
7 deficiencies that had been noted by the Department to  
8 the owner, the previous owner, were purchased by AWR,  
9 so they bought systems with problems.

10 Q. Turning to the cover document for 129, that  
11 being the document with the heading "AWR surcharge  
12 hearing research," the second column, "items AWR claims  
13 not included in original scope of work," was that  
14 information taken literally from what's marked as  
15 Exhibit 107, or did DOH in any way develop that  
16 information independent from 107?

17 A. We used information that was provided to us  
18 by Commission staff, and that was described as  
19 information that the Company's attorney had provided.

20 Q. How was that presented to you? Were you  
21 given a document, if you know?

22 A. Yes, we were given a document. I didn't  
23 bring all my background information. It may very well  
24 have been Exhibit 107.

25 MS. TENNYSON: If I might interject, there

00324

1 was a document that I had prepared containing  
2 additional information and summary information that I  
3 also gave to Mr. Liechty, so it may have been a  
4 combination of Exhibit 107 and other information that I  
5 had put together. If you would like to have a copy of  
6 it for the record, I do have it, but since it was a  
7 document I prepared and for my own use and tracking  
8 information, I didn't include it as an exhibit.

9 JUDGE BERG: That won't be necessary,  
10 Ms. Tennyson. I appreciate the explanation. To the  
11 extent this was a document prepared by DOH, I just want  
12 him to further investigate whether or not they had  
13 independently developed any of that information, and to  
14 the extent they are relying on other information,  
15 whether there was any source other than 107, but I  
16 don't think it's necessary to go any further than that.

17 THE WITNESS: I can just unequivocally state  
18 the intent was to use information developed by the  
19 Company, and we no in no way assumed or fabricated or  
20 created anything other than what we felt the Company  
21 had created.

22 Q. (By Judge Berg) Based upon the work that  
23 AWR -- by "work," I mean based upon the water system  
24 plan improvements or the capital improvement plan of  
25 AWR that was being required with relation to these 13

00325

1 projects, does DOH have an opinion as to whether or not  
2 any of the work that is listed under that column was,  
3 in fact, necessary or unnecessary to comply with  
4 Department of Health requirements?

5 A. I believe there is. I recall something  
6 relating to landscaping for one of the systems.

7 Q. That's at Elk Heights on Page 3? Let's  
8 approach it this way. Let's just go down the list, and  
9 I understand in some instances you may not be able to  
10 state an agency position with regards to certain items,  
11 but if we could go down the list, and if you just want  
12 to say to the best of your ability whether it would be  
13 related, unrelated, or don't know, I would find that  
14 helpful.

15 A. Starting with Pleasant Valley source  
16 approval, I think there is a clear record that we were  
17 seeking source approval, that that was an expectation  
18 that we had for the Company. Replace not repair the  
19 pump house, I think it was our understanding that that  
20 was the right thing to do, that their engineer had  
21 repaired a CIP that included reconstruction. In my  
22 mind, that's equivalent to replacement.

23 Additional plumbing, that's a real general  
24 term. I don't have an opinion. Crowder Road  
25 blow-off's, that was standard practice for the Company.

00326

1 They had specifications dated '96 that called for  
2 blow-off's, standard practice, the right thing to do.  
3 Expand pump house for corrosion control, there is  
4 documentation from the Department that required the  
5 Company to cover all controls and equipment and that  
6 this was a requirement that wasn't specific to  
7 corrosion control, but it required that there be  
8 improvements to the pump house. Their plan in '96  
9 indicated that a new or expanded pump house would be  
10 done, would be required. Coliform monitoring plan,  
11 that was part of an order. That is a standard  
12 requirement that all systems were expected to have, so  
13 the requirement certainly was created when the order  
14 was issued. We included that in the order because of  
15 problems with coliform monitoring, and we felt that  
16 would improve their ability to monitor for coliform.  
17 Obtain easements and covenants, that's often  
18 times a requirement in order to construct facilities,  
19 run distribution lines. We expect owners to have legal  
20 access to the property they run their facilities and  
21 facilities on. Hydraulic analysis, standard practice  
22 when you are analyzing water systems. It looks like  
23 there was a letter written in March which spoke to  
24 hydraulic analysis for Crowder. Clerget, blow-off's  
25 and valving, again, standard practice for the Company.

00327

1 New and expanded pump house, a 1998 sanitary survey  
2 performed by the Department recommended well house  
3 improvements. We further noted unsanitary conditions  
4 at the pump house in '98.

5 Additional engineering for joining the  
6 systems, we noted that the systems were connected prior  
7 to AWR taking ownership and found a letter from the  
8 consultant that said they would be able to perform the  
9 engineering to verify that there was a proper  
10 connection and see if there were any improvements  
11 required. That service was offered in '97 by the  
12 consultant.

13 Q. Before you go on to Valley Meadows, there is  
14 that one short line on top of Clerget, the addition to  
15 distribution system?

16 A. There is nothing in our files that we were  
17 able to find that said this was an expectation of the  
18 Department, and I don't know what addition to the  
19 district system means.

20 Valley Meadows, coliform monitoring plan, an  
21 item in the departmental order, and again, not a new  
22 requirement, simply one that we emphasize because of  
23 need. Upgrade Well No. 1, we didn't find any  
24 information that we had that related to upgrading Well  
25 1. Refurbish well heads to pitless adapters, the only



00328

1 reference to pitless adapters was found in a February  
2 water system plan review letter. That would be one the  
3 Department wrote. We refuted AWR's claims that such  
4 adapters were present on the Elk Heights system but did  
5 not specifically direct AWR to install them. So that  
6 apparently was a decision the Company made. Refurbish  
7 wiring and plumbing, there is a letter reference to  
8 wiring being up to code. I guess I have to look at  
9 that letter to understand what that means.

10 Q. Exhibit 129, Tab O?

11 A. This letter is prepared by the Department.  
12 Two of our engineers inspected the systems in the  
13 subject line there, including Valley Meadows, and they  
14 recommended that electrical wiring must meet local  
15 electrical codes. So apparently, there were problems  
16 noted with the condition of the wiring.

17 Prairie Villa, expand pump building. We  
18 don't have documentation that directs them to expand  
19 the pump building. We view that as a contingency that  
20 should have been factored into the bid that was  
21 prepared to address Prairie Villa deficiencies.  
22 Likewise, with additional plumbing. I'm not sure what  
23 additional plumbing involves, but in our view, that is  
24 a contingency that should have been accounted for. Elk  
25 Heights landscaping, not a DOH requirement, so we don't

00329

1 prescribe landscaping. Additional site preparation,  
2 again not a DOH requirement. However, their  
3 consultants did advise AWR that a geotechnical report  
4 is required to provide the basis to design a reservoir,  
5 so perhaps that includes additional site preparation.

6           New source meters, no records in our files  
7 that relate specifically back to require source meters  
8 for Elk Heights. It is a requirement that we support.  
9 It isn't standard practice, but we certainly like to  
10 see source meters on all wells. Refurbish well heads  
11 to pitless adapters, we require well-head seal and  
12 don't specifically mandate pitless adapters. It's a  
13 way of properly constructing a well head; however, it  
14 is not a prescribed way of doing it. It's more of an  
15 option that the company may choose to follow.

16           Plumbing, I don't what plumbing means. In  
17 our view, that's a contingency that should have been  
18 factored in. Crescent Park, formerly called the H2O  
19 Water Company, chlorine treatment and design work. We  
20 go back to '96 noting the need to do engineering  
21 analysis for a chlorination system and have a series of  
22 letters that speak to that requirement. Tolmie Park,  
23 hydraulic analysis required, a letter, J, so I presume  
24 in letter J there was a requirement that hydraulic  
25 analysis be conducted. This is one that we previously

00330

1 spoke about, but in order to evaluate such things as  
2 booster pumping facilities, storage capacity, pumping  
3 capacity, a hydraulic analysis would be a standard  
4 practice.

5           Connection research should have been a  
6 contingency factor. Lazy Acres, repair existing wells.  
7 It was identified in a December '98 revision to the  
8 water system plan that we cite, and we cite an excerpt  
9 from the plan. Install source meters, that was  
10 identified by the Company in their December '98  
11 revision to the plan. Same thing for minor  
12 improvements to the pump house, the new water right  
13 application, the record search that was required.

14       Q.     When you make reference to them being  
15 identified in the revision of the WSP, is that  
16 tantamount to a requirement? Is that the same thing as  
17 it being required?

18       A.     That's the Company's conclusion after  
19 comparing existing conditions with our regulatory  
20 requirements. So in the professional opinion of the  
21 engineer that prepared the plan, that would be an  
22 improvement that was necessary.

23       Q.     Does the Department of Health accept that as  
24 complying with their requirement?

25       A.     Well, in this specific case, I would need to

00331

1 go back and determine if that water system plan had  
2 been approved. I don't believe -- I don't want to  
3 speculate. If the plan had been approved and these  
4 were elements that were within the plan, then we would  
5 accept that as an appropriate improvement.

6 Q. So a party is required to comply with an  
7 approved plan?

8 A. It's our expectation, yes. Often times,  
9 plans lay out a number of capital improvements and lay  
10 out the way that those improvements will be financed,  
11 and they are staged over time. If something is very  
12 low on the capital improvement priority list, they may  
13 be deferred for 15 or 20 years. It just depends upon  
14 the criticality of the improvement. Can we go to Terry  
15 Lane?

16 Q. Yes, sir.

17 A. Chlorine treatment design, there is a letter.  
18 We requested as-built drawings and calculations for a  
19 chlorination system. Apparently, there had been a  
20 number of complaints from the customers regarding  
21 chlorine level. New roof on storage tank, nothing that  
22 we could cite that showed that that was a requirement  
23 or expectation. We do expect storage tanks to have  
24 roofs, and if the Company concluded that the existing  
25 roof was in poor condition, I can't imagine us

00332

1 disputing that conclusion. South Prairie/View Royal,  
2 substantial additional engineering work required.  
3 November '97 letter from the consultant offering to  
4 review source storage calculations and fire-flow  
5 capacity, so there apparently was a desire to  
6 understand the design capacity of the system.

7         Then AWR in a January '99 CIP identified  
8 replacement of some eight-inch main, and our note or  
9 comment is, "depending upon factors that required  
10 reengineering, this may be justifiable or should have  
11 been a contingency cost factor in the estimate prepared  
12 by AWR." We did note that a '94 capital improvement  
13 list for this system identified projects with cost  
14 estimates ranging from 43 to 55 thousand. I don't know  
15 if the item listed by the Company is one of those four  
16 main projects or not. Continuing with South Prairie,  
17 water system plan update. The only cost recoverable  
18 from the surcharge must be inked to the 13 critical  
19 projects. Insufficient information provided to  
20 determine if these costs are linked to the appropriate  
21 projects.

22         Q. I notice also that that note applies to  
23 engineering that follows in the next row, and there is  
24 an additional note to engineering or amounts for  
25 engineering for the '98 CIP and WSP work that also have

00333

1 that same note.

2 A. Correct.

3 Q. I may have made your job just a little bit  
4 tougher by limiting you to 129. As you were talking, I  
5 was comparing some of the items in that same column  
6 under discussion with a similar column in 107, and I  
7 just want to take one last look to see if on some of  
8 these items that were too generic, such as plumbing,  
9 whether there is additional information that would be  
10 relevant.

11 There are some other notes that I don't think  
12 are necessary to inquire about. Two last questions:  
13 There were two or three projects where new storage  
14 tanks were installed. Do you have -- if you need more  
15 specific reference, we can provide that, but do you  
16 have any knowledge that those storage tanks were  
17 installed as part of a DOH requirement?

18 A. We'd have to look at the individual system,  
19 and I would have to look at the records.

20 Q. Let me just refer you to the Clerget project.  
21 If you look at Exhibit 107, for example, under the  
22 contract amount, it shows that there is a cost of a  
23 storage tank included in the contract amount, and  
24 then --

25 MS. TENNYSON: Your Honor, if I might

00334

1 suggest, if you wanted to look at the last page of  
2 Exhibit 102, which is attached to the Commission's  
3 order on the surcharge, there is a listing of work that  
4 was contemplated to be done with the surcharge funds.  
5 I believe Exhibit 107 was sort of an expectation or  
6 addition to this work that was originally contemplated.

7 JUDGE BERG: Very good. That satisfies all  
8 my questions on that point.

9 Q. (By Judge Berg) My last question to you,  
10 sir, what is the difference between an "A" system and a  
11 "B" system?

12 A. Size. The "A" system is a system that has 25  
13 or more people being served or 15 or more connections.  
14 It's a federal definition, and we delineate between  
15 those systems and smaller systems; the smaller systems  
16 being B's, so that the A's are subject to the federal  
17 water quality standards. So it's a federally defined  
18 distinction of size, and in this state, we not only  
19 regulate the A's but the B's as well.

20 JUDGE BERG: Thank you very much.  
21 Ms. Tennyson?

22

23

REDIRECT EXAMINATION

24 BY MS. TENNYSON:

25 Q. In addition to the question about A and B

00335

1 systems, there was some discussion of red, green, and  
2 yellow in terms of operating status, and that caused me  
3 to realize we didn't specifically identify one document  
4 that is actually in the notebook of the attachments to  
5 the chart that has been admitted as Exhibit 129, but it  
6 wasn't behind the tab. It was in front of the tab. So  
7 we do have one document in there that is a chart that  
8 is dated 12/21/00, and if you could identify that for  
9 us. What is this chart, if you know? Who prepared it,  
10 and then what does the red, green, and yellow mean?

11 A. This was prepared by my office on December  
12 21st. What we did is look at systems that were under  
13 the ownership of AWR, and we tried to summarize  
14 information that we thought might be relevant, and it  
15 contains the name of the system, the ID number, which  
16 is just the number that we've assigned to that system,  
17 the county in which the system is located, the date  
18 that our records indicate the system was acquired by  
19 AWR, the number of connections that the system is  
20 approved for, and if it changes, we noticed the date  
21 that the change occurred. If we had any past or  
22 current enforcement actions, they were listed, SHO  
23 means "state health order."

24 Q. How about SNV?

25 A. That's a particular type of violation.



00336

1 Q. Or a notice of violation? I don't know what  
2 it stands for.

3 A. Actually it is. It's a "state notice of  
4 violation," and it's issued for certain types -- this  
5 is all information that we could download off the  
6 computer, so we just built this to kind of give us a  
7 snapshot of the Company, and SNV is one thing we can  
8 download, and then the final column is operating permit  
9 history. We administer an operating permit program  
10 that requires that for Group A systems we make a  
11 determination of adequacy, determine whether they are  
12 in compliance with our requirements. So this lists the  
13 operating permit history. This table is only for Group  
14 A systems. It doesn't address B's.

15 So if there is a green permit, that's  
16 equivalent to being in substantial compliance. It  
17 doesn't mean every single item but substantial  
18 compliance. Red would mean substantial noncompliance,  
19 and yellow means we simply don't have enough  
20 information to make a determination. So Group A  
21 systems are issued operating permits annually. Each  
22 permit is assigned a status.

23 Q. What is the effect on the operator of the  
24 system of a red status? Do they have to stop providing  
25 water or stop connecting new people?

00337

1       A.     Yes.  If a system is red, we feel that it  
2 would be inappropriate to expand or grow that system.  
3 So if consulted by local government that issues  
4 permits, we advise them not to grow that system.

5             I need to go back and correct something.  As  
6 I was explaining the colors, I didn't give you the  
7 right definition of a yellow permit.  A yellow permit  
8 means that there is some issue that we are concerned  
9 about.  Generally, it has to do with compliance with  
10 operation certification requirements.  It's kind of a  
11 warning sign.  So it's a flag that there is something  
12 generally operator certification compliance that is not  
13 right with the system.  Blue, that's where we simply  
14 don't have enough information to determine the  
15 compliance status.  I got my colors mixed up.

16       Q.     In answering some of Mr. Fox's questions,  
17 there was reference to a coliform monitoring plan.  
18 What does a coliform monitoring plan consist of?

19       A.     It's a working document that's prepared by  
20 the water system, and it is a guide to assist them in  
21 collecting coliform samples from representative points  
22 in the system.  So it's basically a workbook that steps  
23 the owner through development of a sampling program for  
24 coliform.

25       Q.     So it's a schedule of when and where samples

00338

1 will be taken, essentially?

2 A. Yes. In our opinion, it's a very useful  
3 document that helps one comply with the coliform  
4 monitoring requirements and also helps them to  
5 understand what's required if they have a noncomplying  
6 sample.

7 Q. You also had indicated that the pictures that  
8 are in Exhibit 10 were typical of a Mom and Pop water  
9 system. Would you say they are typical of a water  
10 company with approximately 2,000 customers?

11 A. No.

12 MS. TENNYSON: I have no further questions.  
13 Thank you.

14 JUDGE BERG: Mr. Fox, any other questions of  
15 this witness?

16 MR. FOX: I guess Ms. Tennyson's last  
17 question would prompt a question.

18

19 FURTHER CROSS-EXAMINATION

20 BY MR. FOX:

21 Q. Are most of the systems we took over what you  
22 would consider Mom and pop systems?

23 A. I think the B's -- first of all, I've not  
24 personally inspected any of your facilities --

25 Q. I think she was referring to the pictures.

00339

1 Maybe we can talk about what those pictures would lead  
2 one to believe; is that okay?

3 A. What's the question?

4 Q. What these pictures would lead one to believe  
5 what a system looks like you said was pretty typical of  
6 a Mom and Pop system; right?

7 A. I think "Mom and Pop" is kind of a cavalier  
8 term. Let me define what I mean by Mom and Pop. That  
9 would be something that's owned by someone who is not a  
10 water professional, certainly not owned by a  
11 municipality or a regulated company. It simply would  
12 be a layperson who happens to have the unfortunate  
13 situation of living on a homeowner water association.  
14 There are many, many systems in this state where the  
15 developer built the system, deeded it over to the  
16 property owners. In my vernacular, that's a Mom and  
17 Pop water system.

18 Q. The question Ms. Tennyson asked was you would  
19 expect Mom and Pop systems to look like this, but would  
20 you expect systems owned by -- I don't know whether she  
21 used this specific term, but I would say an experienced  
22 or something water purveyor to look like this, and you  
23 said the small system, Mom and Pop systems. My  
24 question then was would you categorize most of the  
25 systems that I took over when I took them over as Mom

00340

1 and Pop systems as opposed to those that were operated  
2 by a qualified, experienced operator?

3 A. I think you had a mix. I think that you  
4 acquired systems from other regulated companies. I  
5 think you acquired systems from homeowner associations.  
6 I think you had a mixed bag.

7 Q. Some of the systems that I acquired from,  
8 let's say companies, would be View Royal that I  
9 acquired from Dennis Ridgeway, the systems that I  
10 inquired from Satellite, would you say that those  
11 systems were well-managed before I took them over?

12 A. You know, I think both of those were outside  
13 of my region. I don't have direct personal experience  
14 with either of those systems.

15 Q. You testified that, if I understood you  
16 correctly, that one of your primary foundations for  
17 making this list, 129, was from the information  
18 provided to you by UTC; is that correct?

19 A. Which one is 129?

20 Q. 129 is the DOH list surcharge hearing  
21 research.

22 MS. TENNYSON: I would object to the form of  
23 question. I believe he mischaracterized the testimony  
24 as a primary source of information.

25 JUDGE BERG: I think we are focused on that.

00341

1 Let's narrow it down. I understand what you are  
2 getting at. What you are referring to is the one  
3 column that I asked questions about.

4 MR. FOX: Most particularly that column.

5 JUDGE BERG: If you want to inquire the  
6 source of the other information, I don't think that's  
7 been determined on the record at this point.

8 Q. (By Mr. Fox) The column that is titled,  
9 "items AWR claims not included in original scope of  
10 work," the information for that column, if I understood  
11 you correctly, was derived primarily from the  
12 information that was provided, actually done by  
13 Mr. Finnigan, but came to you through the UTC; is that  
14 correct?

15 A. Correct.

16 Q. I guess relative to the red and green and  
17 yellow, the permit status on 129 before A, your date on  
18 that printout says 12/21. Do you believe that that  
19 information provided really has been posted up-to-date  
20 or is really reflective of the 12/21 status, or could  
21 it be from some earlier status that had not yet been  
22 corrected?

23 A. I believe it's the information we downloaded  
24 on the 21st. Whether all of this information was  
25 current, I can't certify or attest to that. It's what

00342

1 our records indicated.

2 Q. I guess I'm not sure how to ask without  
3 sounding like I'm putting words in your mouth, but we  
4 reviewed that status recently, and we are quite sure  
5 that there are only one or two reds, and the reason is  
6 the WSP approval issue. Do you have reason to  
7 disbelieve that I might be right, or how could we get  
8 between the two interpretations?

9 A. I haven't indicated why I thought any of  
10 these systems was red.

11 Q. I understand that, but there is a great many  
12 red or yellow, which we don't believe to be the case,  
13 and I'm trying to find out if you have any information  
14 that would say that we are wrong rather than that is  
15 that the list might be just a little behind and isn't  
16 caught up yet.

17 A. I don't know how to respond.

18 MS. TENNYSON: I believe the question has  
19 been asked and answered.

20 JUDGE BERG: I think you made that point as  
21 well as you did earlier, Mr. Fox.

22 MR. FOX: I don't believe I have any other  
23 questions.

24 JUDGE BERG: I don't have any questions.

25 Ms. Tennyson?

00343

1 MS. TENNYSON: None, thank you.

2 JUDGE BERG: Can this witness be excused?

3 MS. TENNYSON: Yes.

4 JUDGE BERG: I apologize for keeping you here  
5 so long, but I do want you to know that your testimony  
6 here has been very valuable and I think essential to  
7 this case. Thank you, very much. We will be off the  
8 record.

9 (Lunch recess taken at 12:30.)

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25



00344

1                                   AFTERNOON SESSION

2                                   (1:40 p.m.)

3                   JUDGE BERG: Ms. Tennyson, would you call  
4 your next witness?

5                   MS. TENNYSON: I will call Jim Ward to the  
6 stand, please.

7                   (Witness sworn.)

8

9

DIRECT EXAMINATION

10 BY MS. TENNYSON:

11       Q.       Mr. Ward, would you state your name and spell  
12 your name for the record?

13       A.       Jim Ward, W-a-r-d.

14       Q.       Can you tell us your current work status, job  
15 assignment?

16       A.       Currently, I'm assigned to the utility  
17 section of the Commission. I work in the water  
18 division.

19       Q.       How long have you worked for the Commission?

20       A.       Eleven-and-a-half years.

21       Q.       Have you always worked in the water section?

22       A.       No. I've worked in water for about  
23 ten-and-a-half years.

24       Q.       Your current job title?

25       A.       Revenue requirement specialist.

00345

1 Q. Were you the staff assigned to review the  
2 filing that is at issue in this case?

3 A. Yes, I was.

4 Q. Could you describe the filing for us again,  
5 what's the Company asking for?

6 A. In this filing, which is Docket No.  
7 UW-000405, what the Company is asking for is an  
8 extension of a surcharge that was approved last year  
9 for capital improvements. They are asking to extend  
10 it, I believe, by 15 months.

11 Q. Could you describe for us what a surcharge  
12 is, who pays it, what the purpose is?

13 A. A surcharge is essentially an individual item  
14 added on to a customer's bill. It's typically put  
15 there to repay a certain item or to cover a certain  
16 expense. In this case, there was a list of 13 critical  
17 items developed by the Department of Health and the  
18 Company that the surcharge is to cover. The surcharge  
19 rate now is \$4.54 per month per customer. That's to  
20 return for a period, I believe, of five years or until  
21 the sum of money was collected.

22 Q. I would like you to look at some of the  
23 documents that have been previously admitted. I want  
24 you to look at Exhibit 101, the last page. Can you  
25 tell us where this document came from?

00346

1 A. This document was part of the original filing  
2 for the extension of the surcharge.

3 Q. So it was prepared by the Company?

4 A. It was prepared by the Company, yes.

5 Q. What does this reflect? How do we know what  
6 the Company is asking for?

7 A. Essentially, if you look at the upper  
8 right-hand corner of it is where it starts. You are  
9 looking at the initial loan, which was \$380,350. They  
10 did pay some of the improvements done by facility  
11 charge, and they had some overages for the total amount  
12 of the surcharge needed to cover all of these projects.

13 What the Company did here was then to go  
14 through and figure out, based on the overage amount,  
15 how long would they need to run the extra \$4.54 per  
16 month per customer in order to collect that amount, and  
17 it comes out down there at the bottom where they were  
18 trying to get to the time frame for the expiration date  
19 of the surcharge.

20 Q. That's where we see the revised expiration of  
21 8/30/2005?

22 A. Yes.

23 Q. Referring again to the upper right-hand  
24 column, the numbers in the upper right-hand corner of  
25 this document, is it your understanding that the

00347

1 Company is requesting extension of the surcharge to  
2 collect an additional \$113,447.80 plus interest and  
3 taxes?

4 A. Yes.

5 Q. So the Company actually did pay some of the  
6 expenses out of other capital funds it had on hand.

7 A. Yes.

8 Q. Items that are covered by a surcharge, is  
9 there another way a company can pay for those if they  
10 don't go to a surcharge?

11 A. A company can pay for those initially from  
12 funds either through a loan the company may get or  
13 through funds the company itself may invest. That can  
14 be through retained earnings or additional investment  
15 of stockholders.

16 Q. In the collection of facilities charges, what  
17 are those normally used for?

18 A. Facility charges are normally used to  
19 basically pay for new plant that will be coming on line  
20 at some future point.

21 Q. That would be a capital item?

22 A. Yes.

23 Q. You recommended that the Commission suspend  
24 this filing to investigate the request.

25 A. Yes, that was my recommendation.

00348

1 Q. What information did you request from the  
2 Company?

3 A. I essentially requested what they had spent  
4 the money on not only to include the overage but the  
5 original amount of the \$380,000. I requested copies of  
6 vendor invoices, time cards, receipts of that nature to  
7 substantiate the entire amount they were asking for.

8 Q. I'd like you to look at the group of exhibits  
9 that we have marked for presentation through your  
10 testimony starting with Exhibit 120. What is Exhibit  
11 120?

12 A. Exhibit 120 was originally prepared by the  
13 water company as part of the filing for the initial  
14 surcharge back in 1999. All of the handwritten items  
15 on here are my notes that were put on there.

16 Q. Looking at the Pleasant Valley row, the first  
17 row on this document, there is a number 15 written in  
18 the first column to the left. What does that  
19 represent?

20 A. That would represent the number of customers  
21 on that system.

22 Q. And these are numbers that you have added to  
23 the document?

24 A. Yes.

25 Q. Reading across on the Pleasant Valley row,

00349

1 there is a number in the far right-hand column,  
2 \$24,968. What does this represent?

3 A. That represents the final cost that was  
4 proposed by the water company.

5 Q. Similarly, if we went down the rest of the  
6 numbers, those are numbers that you added to this  
7 document?

8 A. Yes, they are.

9 Q. If you could turn to Exhibit 121 --

10 MS. TENNYSON: I will note for the record  
11 that the description of the document that this  
12 represents is on the list of exhibits that I provided,  
13 and I have described it as it is compiled, which is,  
14 "Staff informal Data Request 1, dated March 31st, 2000,  
15 and a letter in response dated April 6th, 2000, with  
16 Exhibit A removed." It has on this form, "see exhibits  
17 blank." That would be 104 through 106 for samples of  
18 Exhibit A. Rather than put all of this information in  
19 the record, it is also in the record in Mr. Fox's  
20 Exhibit 5 as copies of the contracts for the various  
21 projects.

22 JUDGE BERG: Point me where that reference is  
23 again in 121.

24 MS. TENNYSON: It is on the copy of the  
25 exhibit list I've prepared. If we go to the actual

00350

1 first page of Exhibit 121, the first request is,  
2 "Please provide a complete copy of bids, contracts,  
3 cost sheets, invoices, or receipts for each of the 13  
4 water systems showing all work done on each project."

5           The second page is in response from the  
6 Company, which refers to Item 1, a complete copy of all  
7 bids, etcetera, for each of the 13 water systems as  
8 attached as Exhibit A, and those documents, the exhibit  
9 A documents, they prepared a separate Exhibit A for  
10 each project. Those are not included as part of this  
11 exhibit because they are duplicated elsewhere in the  
12 record, not representing that this was the Company's  
13 complete response.

14       Q.     (By Ms. Tennyson) With those qualifications,  
15 Mr. Ward, can you tell us what is included in Exhibit  
16 121?

17       A.     Exhibit 121 is essentially my data request of  
18 the Company dated March 31, 2000. This was the first  
19 data request asking for additional information.  
20 Attached to that would be the Company's response and  
21 some of the information they provided along with that  
22 response.

23       Q.     Turning to the Company's response then, there  
24 is a document that's labeled Exhibit B in the upper  
25 right-hand corner. It's similar to Exhibit 120.

00351

1 A. Yes.

2 Q. But all of the information on this was  
3 prepared by the Company; correct?

4 A. Yes.

5 Q. Turning then to the next document, Exhibit C,  
6 this was also presented to you by the Company.

7 A. Yes.

8 Q. Exhibit D, titled "invoice history"?

9 A. This was prepared by the Company also, and  
10 the handwriting on it is the Company's.

11 Q. And the final page of that exhibit?

12 A. Was prepared by the Company, and all the  
13 handwriting is the Company's.

14 Q. This is a letter or invoice -- it's hard to  
15 determine -- that looks like it was Robert, but the R  
16 is cut off. It's o-b-e-r-t, W. Droll, Landscape  
17 Architect; correct?

18 A. Yes. This is an invoice. It says invoice  
19 No. 1.

20 Q. Could we look to Exhibit 122 and identify  
21 that?

22 A. Exhibit 122 is Staff data request dated April  
23 10th, 2000. Attached to that is the Company's answer  
24 along with a schedule the Company prepared, two  
25 schedules the Company prepared.



00352

1 Q. Your questions 2 and 3 in this case asked for  
2 Department of Health approval of the projects and the  
3 criteria used to award contracts for construction.  
4 That is not included in this exhibit, is it?

5 A. I don't believe so.

6 Q. You did receive, however, letters relating to  
7 the Department of Health approval of the projects?

8 A. At a very late date, yes.

9 Q. The criteria used to award contracts?

10 A. I did not receive that.

11 Q. Did you at some point receive a copy of  
12 AWRI's general construction standards dated June of  
13 1999?

14 A. Not as part of this filing. I had received  
15 that earlier.

16 Q. If we look then to the second to last page of  
17 Exhibit 122, what does that represent?

18 A. This essentially represents a time line of  
19 the surcharge projects, wanting to know when things  
20 occurred, such as the bid announcement, the bid dead  
21 line, the bid extension, when a bid was awarded, when a  
22 contract was signed, when did the work start, when was  
23 the work completed, and when was the DOH review  
24 completed.

25 Q. So you asked for the information from the

00353

1 Company in this form?

2 A. Yes, I prepared the blank of this form.

3 Q. Do you know whose handwriting this is filling  
4 in the dates on the form?

5 A. I believe it was Herta Ingram.

6 Q. She was an employee of the Company at that  
7 time?

8 A. Yes, she was.

9 Q. The final page of this exhibit...

10 A. Is a summary table provided by the Company of  
11 essentially from the start of when this surcharge  
12 started, what work was necessary, what was the original  
13 estimate, some dates along with that, also who the  
14 parties were that bid, what bid amounts they offered,  
15 what was the final award amount.

16 Q. There is some summary information then?

17 A. Yes.

18 Q. Turning to what's been admitted as Exhibit 5,  
19 do you have a copy of that?

20 A. No. I have a copy of Exhibit 5 now.

21 Q. Looking at Exhibits 5, can you indicate for  
22 us what information in this -- I don't want you to go  
23 through every sheet, but the type of information that's  
24 included here that you saw for the first time upon  
25 viewing Exhibit 5?

00354

1       A.     The new information that I seen when I  
2 reviewed this was the summary cover for each one of the  
3 items, also a notice to proceed, which was with each  
4 item. There was a notice of award with each item.  
5 Those were the new documents I had not seen before.

6       Q.     So you had previously been provided, if I'm  
7 understanding you correctly, with a copy of the bid  
8 from VR Fox Company and the contract award for the  
9 actual signed contract?

10      A.     Yes, I did receive those earlier.

11      Q.     Had you seen copies of bids from any other  
12 bidders?

13      A.     No, I had not.

14      Q.     Those are included in this packet?

15      A.     Yes.

16      Q.     You did have the summary information provided  
17 in Exhibit 122.

18      A.     Yes.

19      Q.     Turning to Exhibit 123, can you describe what  
20 this is for us?

21      A.     This is my Data Request No. 3, dated April  
22 28th, year 2000, and attached to it is a letter from  
23 the Company along with DOH approval for the  
24 construction projects for some of the items and some  
25 other information in support.

00355

1 Q. Exhibit 124?

2 A. Exhibit 124 is my Data Request No. 4, dated  
3 May 18th, 2000. Attached to it is the Company's  
4 response with no attachments.

5 MS. TENNYSON: I would move the admission of  
6 Exhibits 120 through 124.

7 JUDGE BERG: Any objection, Mr. Fox?

8 MR. FOX: No.

9 JUDGE BERG: Exhibits 120 through 124 are  
10 admitted.

11 Q. (By Ms. Tennyson) At this point, I would  
12 like you to refer back to documents which should be in  
13 the pile on your table, in particular, Exhibit 110.

14 A. I have a copy.

15 Q. This is a letter from you to Herta Ingram of  
16 AWR, and can you tell us what the purpose of your  
17 letter was?

18 A. Yes. This is a letter here, acknowledge and  
19 receipt of one of their quarterly reports for the  
20 capital improvement surcharge along with some questions  
21 I had for that quarterly report.

22 Q. Did you ask the Company to provide any  
23 documentation relating to the surcharge project at that  
24 time?

25 A. Yes, I did. Down in Paragraph No. 3, Line 2,

00356

1 "Please provide a detailed breakdown of each water  
2 system project including copies of all vendor invoices  
3 and time logs for all labor."

4 Q. Were you provided those documents or that  
5 information in response to this request?

6 A. No, I was not.

7 Q. Did the Company indicate that they would  
8 provide that information to you?

9 A. Yes, they did. In their response, which was  
10 Page 2 of this attachment, it talks on Line 2 at the  
11 end, "A detailed breakdown of all costs and invoices is  
12 being submitted as part of capital improvement  
13 surcharge extension requested filed on March 20th,  
14 2000."

15 Q. Did you receive that information that is  
16 indicated in that letter would be provided with the  
17 surcharge extension request?

18 A. I did not receive the information.

19 Q. Looking again then at Exhibit 121, in the  
20 first item, it appears you've asked for the same  
21 information again for the water system's showing the  
22 work done.

23 A. Yes, I did, Item No. 1.

24 Q. In Exhibit 123, Item No. 4.

25 A. Yes. Once again, the same vendor invoices.

00357

1 Q. Looking at Exhibit 124, Item No. 2.  
2 A. Yes. Once again, Item No. 2 and also Item  
3 No. 3.  
4 Q. Why did you keep asking for this information?  
5 A. Because up to this point, I had not received  
6 it.  
7 Q. Did you receive that information prior to  
8 starting the hearing in this case?  
9 A. No, I did not.  
10 Q. At this point, we have admitted in this case  
11 the copies of the invoices from the engineer; correct?  
12 A. Yes.  
13 Q. Before seeing those documents in response to  
14 the data request, had you received copies of those?  
15 A. No, I had not.  
16 Q. When, approximately, did you see those  
17 documents?  
18 A. When they were presented yesterday.  
19 Q. Could it have been the week prior in response  
20 to the data request?  
21 A. It might have been, yes.  
22 Q. At some point, did the Company tell you they  
23 didn't have the information you were asking for, that  
24 it wasn't available, didn't exist?  
25 A. Yes. In both forms, I was told they didn't

00358

1 have it available, and I was told that it didn't exist  
2 in some cases.

3 Q. Looking at what's been admitted in this case  
4 as Exhibit 6, had you ever seen this information prior  
5 to yesterday at the start of the hearing?

6 A. No, I had not.

7 Q. Were you surprised to see this sort of  
8 detailed information?

9 A. Yes, I was.

10 Q. If you had received this information in  
11 response to your data request in either November of '99  
12 or March of 2000, what would you have done at that  
13 point?

14 A. I would have been able to start the process  
15 of analyzing what costs were attributed to what  
16 projects under this surcharge.

17 Q. Would you have accepted just this item cost  
18 detail as proof of this information?

19 A. No. As I pointed out in my data request, I  
20 was looking for original vendor invoices.

21 Q. So what might you have done to follow up on  
22 this sort of information?

23 A. Recognizing this information and the amount  
24 of information that it does, in fact, contain, what I  
25 would have done is ask for some form of sampling to go

00359

1 through one of the projects to see how it was recorded  
2 on the books and records, what format they used to  
3 separate out the information, and how it was all coded.

4 Q. So why would do you that kind of follow-up?

5 A. It would be a sampling to have some validity  
6 to this information that there was backup documentation  
7 available in the form of original vendor invoices.

8 Q. Is that the sort of work you normally do in  
9 your job as a revenue requirement specialist?

10 A. Yes, it is.

11 Q. You have worked with American Water Resources  
12 on filings they've made in the past; correct?

13 A. Yes.

14 Q. Did your work on previous cases cause you to  
15 have some concerns about the form of information or  
16 accuracy of information provided?

17 A. Both form and accuracy in that in previous  
18 cases, some of that information was totally missing or  
19 it was miscoded in the accounting records.

20 Q. So would you say that you have more or less  
21 confidence in records presented to you by American  
22 Water than some other companies?

23 A. With the history I've had with this company,  
24 I would have less confidence.

25 Q. That is again because of...



00360

1           A.     Because of the history I have seen in the  
2 filings that have been done before that information was  
3 missing or miscoded.

4           Q.     In the experience you've had in working with  
5 this company, I'd like to take you back to 1998. Did  
6 the Company file a request for a general rate increase  
7 in 1998?

8           A.     Yes, I believe it was.

9           Q.     There were several other filings as well?

10          A.     Yes. I believe there was an adjustment to  
11 their facility charge. They were adding water systems  
12 to their tariff, and I think there was one other one at  
13 the time.

14          Q.     Did those matters go to a hearing?

15          A.     Yes, they did.

16          Q.     Do you recall what some of Staff's issues in  
17 that hearing were?

18          A.     Essentially lack of information or miscoding  
19 of the information that we did find.

20          Q.     So the detail and the accuracy of the  
21 information?

22          A.     Right, was not there.

23          Q.     Are you aware of when the Company first  
24 planned to do some of the work that has now been funded  
25 by the surcharge request?

00361

1 A. Yes. There was an original time line put out  
2 by the water company when they filed for the surcharge  
3 back in '99.

4 Q. So the schedule in 1999 for the surcharge  
5 filing was approved in --

6 A. -- 1999.

7 Q. So the Company at that point had a schedule  
8 for the work?

9 A. Yes, they did.

10 Q. Was that schedule in general complied with?

11 A. Not to my knowledge, no.

12 Q. Had the Company previously asked for some of  
13 the work on these projects to be included in its rate  
14 base in the 1998 rate request?

15 A. Yes. Part of that request included what was  
16 looked at earlier, which was a list of, I believe, 88  
17 items in their capital improvement plan. They wanted  
18 to include all of that in the rate base as a pro forma  
19 adjustment in that 1998 rate case.

20 Q. Had that work been performed at that time?

21 A. No, it had not.

22 Q. Was that work or the money represented by it  
23 included in rate base in the course of the case?

24 A. No, it was not.

25 Q. Why was that?

00362

1       A.     It was felt inappropriate at that time since  
2 the Company had no firm estimates of cost and they had  
3 no schedule to do any of that work.

4       Q.     Was the work used and useful or the  
5 construction used and useful at that time?

6       A.     No, it was not.

7       Q.     I would like to skip ahead at this point to  
8 what's marked as Exhibits 127.

9       A.     Yes.

10      Q.     Can you identify for us what this is?

11      A.     This is a copy of a transcript of the open  
12 meeting, April 26th, the year 2000, in which the  
13 extension for surcharge was asked for.

14      Q.     You were present at that meeting?

15      A.     Yes, I was.

16      Q.     Did the Company have a representative  
17 present?

18      A.     Yes, they did.

19      Q.     At that meeting, did the Company present  
20 information or statements as to why they were unable to  
21 complete the work for the amounts estimated in the  
22 estimates used to compute the original surcharge?

23      A.     Yes, they did.

24      Q.     What were those?

25      A.     Without reading the exact line, as I recall,

00363

1 it was essentially that they had some cost overruns  
2 based on unknown work that had to be done and also the  
3 time crunch that they were under to get the work done.

4 MS. TENNYSON: Before I ask him to go  
5 further, I would like to move the admission of what's  
6 marked as Exhibit 127.

7 MR. FOX: That's fine.

8 JUDGE BERG: Exhibit 127 is admitted.

9 Q. (By Ms. Tennyson) Was one of the reasons  
10 provided by the Company representative at that time  
11 that there was landscaping costs that created  
12 additional costs for the Company?

13 A. That was one of the items they mentioned as  
14 being unknown when they originally started, yes.

15 Q. Did you then ask for copies of invoices  
16 relating to landscaping costs?

17 A. Yes, I did.

18 Q. What did you receive?

19 A. We did receive that one. It was in one of my  
20 earlier exhibits. That was a Robert W. Droll Landscape  
21 Architects. I believe the amount on that invoice was  
22 for \$450.

23 Q. Were there any other landscaping invoices  
24 you were presented with?

25 A. No.

00364

1 Q. One of the other reasons that I believe you  
2 stated was that there was a time crunch or timing  
3 issues. What information do you have or what view do  
4 you have of the time crunch issue?

5 A. That was one of the questions I kept asking.  
6 One of my earlier exhibits had that table with all the  
7 time outlines in it. That was why I requested that  
8 information was trying to establish what was there  
9 about these projects that did require a time crunch.

10 Q. Did you also receive information about when  
11 the Company first knew about a need to conduct some of  
12 the work?

13 A. I did through Department of Health  
14 information, yes, that some of the work was required  
15 earlier, and also, the Company was aware of that  
16 earlier when they actually did the surcharge filing  
17 that some of the information was already there.

18 Q. Do you believe it was necessary for the  
19 Company to have this surcharge approved before  
20 beginning work on any of the projects?

21 A. I don't know if it was necessary. It's one  
22 of the forms that we allow. The Company at that time  
23 claimed they had no money to do the projects, and this  
24 was one method to provide funding for that. What the  
25 Company had proposed at the original surcharge filing

00365

1 was to get a loan from a bank, and the surcharge would  
2 essentially make the payments on that loan, and there  
3 was a condition by the bank that they would not loan  
4 the money until the Commission had approved a surcharge  
5 filing for repayment.

6 Q. So in that sense, it may have been required.

7 A. Yes.

8 Q. In Mr. Fox's testimony earlier -- you have  
9 been present throughout the hearing; correct?

10 A. Yes.

11 Q. -- he also stated or suggested that the  
12 Company did not have money to do any of these projects  
13 before receiving the surcharge funding. Have you  
14 reviewed any documents or records that might indicate  
15 otherwise?

16 A. Yes. Some of these items were known back in  
17 1998. As I said earlier, back in 1998 in the original  
18 rate request in 1998, the Company had this capital  
19 improvement schedule. Some of these items were listed  
20 in that capital improvement schedule as being required.  
21 So during that process of that rate hearing, we did do  
22 a review of all the expenses and the revenue of the  
23 Company. I also performed a cash flow analysis of the  
24 Company.

25 Q. So you did a cash flow analysis of the

00366

1 Company back in 1998. What did you find at that time?

2 A. What we found at that time were there were  
3 several loans outstanding to the Company stockholders  
4 at that time. There was also a bank note or two, and  
5 the Company did, in fact, receive an additional loan --  
6 I think it was in the middle of '98 -- to refinance  
7 some of the stock loans.

8 Q. Those stockholder loans, were the payments on  
9 those interest only, or were there payments of  
10 principle at that time?

11 A. I believe there was both, some interest only  
12 and some interest and principle, so I believe there was  
13 four notes at the time. They were later consolidated  
14 into three.

15 Q. Did the Company then make any payments on  
16 those loans that you found unusual?

17 A. Yes. What happened at some point was some of  
18 these loans that had no mandatory payoff were, in fact,  
19 paid off early eliminating any kind of monthly item.  
20 In fact, in one case, there was a bank loan secured,  
21 which part of this surcharge funding came under that  
22 bank loan, and also the Company used the remainder of  
23 that bank loan to pay off stockholder loans.

24 Q. In terms of paying off the stockholder loans  
25 that you referenced, was that payment required at that

00367

1 time under the terms of the note?

2 A. No, they were not required at that time.

3 Q. Mr. Fox has also provided us as an exhibit in  
4 this case an American Water Resources' profit and loss  
5 year-to-date comparison for the year 2000. Does that  
6 provide you with any information that is helpful to you  
7 in analyzing the issues in this case?

8 A. No, it does not.

9 Q. Why is that?

10 A. The issues in this case are the costs  
11 associated with these 13 projects, both engineering,  
12 material, and labor. I don't see that reflected in the  
13 year 2000 income statement.

14 Q. Do you have any experience in reviewing  
15 unaudited income statements for American Water  
16 Resources?

17 A. Yes.

18 Q. Would that experience cause you to have any  
19 concerns about using this document for any purpose?

20 A. I see no purpose in this document for items  
21 that were completed in the year 1999.

22 Q. Do you accept AWR's income statement as  
23 accurate?

24 A. As represented by the Company, yes.

25 Q. But that's their representation.



00368

1 A. That's their representation. It has not been  
2 audited by anyone.

3 Q. In your past experience in working with this  
4 company, has the auditing of the statement changed the  
5 information on it or caused it to be changed?

6 A. Typically, yes. In the past, we have found  
7 miscodings with regard to the Company's records.

8 Q. I'd like to go to what's been marked as  
9 Exhibits 125 and 126.

10 A. Yes.

11 Q. Can you identify 125 for us?

12 A. Item 125 is part of a filing that was done by  
13 Aquarius Utilities, LLC. This filing was what we call  
14 a single item general rate case where the Company had  
15 done capital improvements. What this filing represents  
16 or the portion I have here is some of the level of the  
17 detail work the Company has prepared in making their  
18 filing. Also, it shows copies of some of the original  
19 vendor invoices that the Company used to support their  
20 filing.

21 Q. Is this documentation that was provided to  
22 you by the Company, or had you asked for it to be  
23 provided after the filing?

24 A. In this case, the Company provided it at the  
25 time of the filing.

00369

1 Q. Just to give us an idea of the volume or  
2 amount of information they provided, it was one-inch  
3 thick, two-inches thick?

4 A. Almost two-inches thick.

5 Q. In this case, there was a project done. Did  
6 they have contractors do work on the project?

7 A. Yes, they did.

8 Q. Did you receive invoices or receipts,  
9 information relating to the work by the contractor?

10 A. Yes, I did.

11 Q. If you might kind of direct us to where that  
12 might be in this. I won't swear it's in here since I  
13 excerpted this from the full filing.

14 A. You did, and this is mainly the calculations  
15 that the Company used and also the summary information  
16 that the Company used. I don't see any original vendor  
17 invoices in this set of information.

18 Q. Did you receive those from the Company with  
19 this filing?

20 A. Yes. In this case of this filing, yes, I  
21 did.

22 Q. There is reference to supplies and materials.  
23 Did you receive copies of receipts or invoices  
24 detailing that information?

25 A. Yes, I did. In fact, there were receipts all

00370

1 the way down to just several dollars worth, copies of  
2 those receipts that were added into this.

3 Q. Did you prepare any of this information? Are  
4 any of these adding machine tapes, are those yours or  
5 provided by the Company?

6 A. These were all Company generated.

7 Q. I apologize for not numbering these pages,  
8 but the fourth and fifth pages from the back of the  
9 document --

10 A. What are they titled?

11 Q. The first one I'm looking at has a received  
12 stamp with handwritten "7/11/00, pay request  
13 itemization - final pay request."

14 A. Yes, I have that. Sheet No. 11-A of 19 in  
15 the upper right-hand corner.

16 Q. I'm actually looking at the previous page to  
17 that. This appears to be a listing of expenses and  
18 requests for payment from a contractor to the water  
19 company?

20 A. Yes, it does. So this might be, in fact, an  
21 original vendor type invoice.

22 Q. This is a fair amount of detail on it;  
23 correct?

24 A. Yes, it is. Listing out the items, the  
25 quantity of items, the cost.

00371

1 Q. Is this the type of documentation you  
2 normally expect to see from the Company?

3 A. Yes.

4 Q. If you didn't receive it, you would request  
5 it?

6 A. Yes.

7 Q. You testified that this is the type of  
8 information you would require. Are you familiar with  
9 the practices of other members of Commission staff?

10 A. Yes.

11 Q. Would other staff have different methods, or  
12 would they also require this kind of documentation?

13 A. To my knowledge, they would require the same  
14 level of information.

15 Q. Can we refer then to Exhibit 126.

16 A. Yes.

17 Q. Can you identify this for us?

18 A. This is part of a contract filed by Stroh's  
19 Water Company in which this is part of the cost that  
20 they are proposing in the contract to the customer.  
21 This is outside work being done by a third party.

22 Q. So this is, in essence, a bid?

23 A. It's a bid and/or an invoice.

24 Q. Does this include detail of number of units  
25 of things that are to be used in the project or were

00372

1 used in the project?

2 A. Yes. It provides a description, the amount  
3 of, a total amount. It also goes onto Page 2. There  
4 is a labor breakout on that amount, and back onto Page  
5 1, there is a total with tax added to come up with a  
6 final total. That's the handwritten information.

7 Q. Referring to both Exhibits 125 and 126, do  
8 you know if either of these projects were performed by  
9 a construction company that was affiliated with the  
10 water company?

11 A. In the case of Aquarius Utilities, there was  
12 no affiliation with the water company there. In the  
13 case of Stroh's water, there was no affiliation with  
14 the Company there.

15 Q. Do you have a greater concern with obtaining  
16 documentation for work done for water company when  
17 there is an affiliated company doing the work?

18 A. Yes, I do.

19 Q. Why is that?

20 A. Because typically what I have found in my  
21 experience is the recordkeeping gets somewhat lax when  
22 it's the same person or the same company doing the  
23 work.

24 Q. Are you aware of whether American Water  
25 Resources has an affiliated interest filing on file

00373

1 with the Commission?

2 A. Yes, they do.

3 Q. Do you know if it specifies labor rates for  
4 work that the affiliated interest company will perform?

5 A. Yes. That was part of the original filing  
6 for the affiliated interest.

7 Q. In this case, the affiliated interest company  
8 is VR Fox Company; correct?

9 A. Yes.

10 MS. TENNYSON: I would move the admission of  
11 Exhibits 125 and 126.

12 MR. FOX: No objection.

13 JUDGE BERG: Exhibits 125 and 126 are  
14 admitted.

15 Q. (By Ms. Tennyson) Mr. Ward, we've already  
16 established that the Company's original surcharge  
17 request was approved in 1999. Do you remember what  
18 month?

19 A. It would have been, I believe, April 29th,  
20 effective May 1st of the year 1999.

21 Q. You were the staff person who reviewed that?

22 A. Yes.

23 Q. Did you calculate any estimates of work  
24 costs, or where did the numbers in this filing come  
25 from?

00374

1           A.     That was provided in my Exhibit 120, which is  
2 a redraft that I did the information on. The Company  
3 provided all information as to the cost.

4           Q.     Did you question or scrutinize those costs  
5 and tell them they were too high?

6           A.     No, we did not.

7           Q.     You didn't reduce them in any way.

8           A.     No.

9           Q.     Are you aware of any change in the work that  
10 was done in the course of the projects that are under  
11 question here that is to be funded by the surcharges?

12          A.     Yes, I am aware of changes that were done.

13          Q.     Could you tell us what those are?

14          A.     Not all of them. That's one of the questions  
15 I have. I'm aware that in one of the water systems  
16 there was an intertie performed in the City of  
17 Spanaway. I believe that's the Terry Lane system or  
18 possibly the Crescent Park. I'm nor sure which system  
19 it was, but there was an intertie done there. There  
20 was some other projects that I'm aware of they reduced  
21 the scope of. They did not install service meters.

22          Q.     I'm trying to find a listing of -- Exhibit  
23 120 might be one we could refer to. If we could refer  
24 to Exhibit 120 and just review that and indicate for us  
25 what work you are aware of that wasn't done.

00375

1           A.     Down under the Crescent Park, you will notice  
2 there are some checkmarks next to the items in Column B  
3 called, "project, rebuild pump house, new reservoir,  
4 service meters." As I said, there was an intertie done  
5 on that system, and I was not aware they rebuilt the  
6 pump house. I believe they were able to refurbish it  
7 or somehow repair it. Service meters they did not  
8 install at all.

9           Lazy Acres, there is a checkmark next to  
10 service meters. Once again, they did not install that.  
11 Terry Lane, service meters once again on that one. I  
12 know there was other items, but I don't know exactly  
13 which items for which water systems. That was part of  
14 the information I was requesting.

15          Q.     Referring to the Crescent Park system in the  
16 second column, the writing "intertie," that's your  
17 handwriting; correct?

18          A.     Yes, it is.

19          Q.     You have a checkmark by "new reservoir." Am  
20 I understanding correctly that because of the intertie  
21 that a new reservoir or new storage tank was not  
22 required to be purchased or installed?

23          A.     That's what I was told, yes.

24          Q.     At this point, has the Company provided an  
25 explanation to your satisfaction for the difference in



00376

1 the amount spent on the surcharge projects?

2 A. No, they have not.

3 Q. The service meters, not installing those,  
4 would have been a reduction in costs?

5 A. Yes.

6 Q. Yet the total amount is greater at this  
7 point; correct?

8 A. The total amount of all 13 projects is  
9 greater, yes.

10 Q. So some of the projects because of the  
11 reduced scope of work was actually a lesser amount than  
12 the original estimate?

13 A. Yes.

14 Q. Before the hearing, did you receive adequate  
15 information to establish the costs of the projects that  
16 the Company is asking to have funded by the surcharge?

17 A. No, I did not receive adequate documentation.

18 Q. At this point, what you have seen as evidence  
19 introduced in this proceeding and what you've been able  
20 to review of that, do you have adequate documentation,  
21 in your mind, at this point?

22 A. No, I do not.

23 Q. Have you received all the data that you asked  
24 for?

25 A. No, I have not.

00377

1 Q. Has some of the information that the Company  
2 submitted as exhibits that you've looked at raised  
3 further questions in your mind?

4 A. Yes, it has.

5 Q. Why is that?

6 A. For instance, the information provided  
7 yesterday on the engineering cost, that has raised more  
8 questions in my mind than it has answered in my mind,  
9 since the Company is attempting to include the year  
10 2000 engineering costs for projects that were performed  
11 in 1999.

12 Q. Have you found any inconsistencies in the  
13 data?

14 A. I haven't had enough time to analyze  
15 everything at this point, but yes, I have found some  
16 inconsistencies in what the Company has, even in its  
17 own exhibits. Some of the information they provided  
18 does not correlate with their own information.

19 Also, yesterday we did review the engineering  
20 documents. That one page was an invoice, I believe,  
21 from the engineer for 16 thousand and some odd dollars.  
22 That number didn't even tie back to the calculation you  
23 could make on that page based on the number of hours  
24 and cost for hour worked.

25 Q. We referred to the affiliated interest filing

00378

1 and the fact that it sets out labor rates. Do you know  
2 what labor rates AWR was charged for labor rates used  
3 in preparing the estimates of work that was done by VR  
4 Fox Company?

5 A. In the original estimates, no.

6 Q. Do you know if VR Fox actually used the labor  
7 rates set forth in the approved affiliated interest  
8 filing?

9 A. No, I do not.

10 Q. Did you request information from the Company  
11 on labor costs?

12 A. Yes. I believe I did in those different data  
13 requests that I covered earlier.

14 Q. I think we did cover that, and you hadn't  
15 seen any of that documentation or even the detail until  
16 seeing the exhibits yesterday; correct?

17 A. Right.

18 Q. In Exhibit 6 that is breakdown of costs by  
19 project, are there labor rates shown in that  
20 information?

21 A. No, there is not.

22 Q. You had indicated that earlier in your trying  
23 to get information from the Company back last spring in  
24 March and April that the Company had told you some of  
25 the information was not available. At any point, has

00379

1 the Company offered to allow you -- has VR Fox offered  
2 to allow you to come and look at the information in  
3 their records?

4 A. Yes. I believe there was an offer made  
5 December 28th, I believe, the date was. It was a  
6 Thursday. It was the prehearing conference date.  
7 After that, we had a meeting with Mr. Fox, and at that  
8 point, he offered us to allow us to the look at the  
9 records.

10 Q. So that was last week?

11 A. That would have been last week, yes.

12 Q. Did Mr. Fox indicate at that point why he  
13 hadn't provided the information to you earlier?

14 A. Yes. Essentially, he said they didn't keep  
15 it in the form that we would want, and that the form  
16 they kept it in would be too confusing for me to  
17 review.

18 MS. TENNYSON: Thank you. I have no further  
19 questions at this time.

20 JUDGE BERG: Mr. Fox?

21

22 CROSS-EXAMINATION

23 BY MR. FOX:

24 Q. The question Ms. Tennyson asked about, I  
25 believe you said some records didn't exist. Did I say

00380

1 the record didn't exist, or did I say that they didn't  
2 exist in a format that was findable or findable without  
3 a great deal of work and was confusing?

4 A. As I recall on the December 28th, your latter  
5 that you just said; that it was in a form confusing.

6 Q. With reference to the, I believe it's Exhibit  
7 125, which I think of as the how-to-do-it exhibit, this  
8 is a piece of what was an inch-and-a-half or more  
9 thick, the whole package; right?

10 A. Yes. I have the entire package over at my  
11 table.

12 Q. That's the package that over the last few  
13 days Gene waved in my face several times and said,  
14 "This is how we want it done"; right?

15 A. I don't know that.

16 Q. Was that package or something similar given  
17 to me at any earlier date than -- I believe Gene  
18 originally gave that package to Rick Finnigan to relate  
19 to me, something in the general vicinity of two,  
20 possibly as much as three weeks ago?

21 A. Yes. It would have been the first part of  
22 December.

23 Q. Was that package or anything similar ever  
24 given to me prior to that?

25 A. Not that I'm aware of.

00381

1 Q. Back when we first started discussing and  
2 trying to figure out what the surcharge was supposed to  
3 look like, at that time, did you or anyone that you  
4 know of give me any similar information that would  
5 indicate that you expected this kind of detail?

6 A. No.

7 Q. In the last two or three years, how many  
8 water surcharge projects would you guesstimate UTC has  
9 approved or dealt with?

10 A. Probably half a dozen in the last two or  
11 three years.

12 Q. Not very many then.

13 A. No.

14 Q. It's not an everyday thing.

15 A. No.

16 Q. The information such as the computations that  
17 you are doing and the things that you showed me here,  
18 this is all public record type information once it's  
19 presented and in the record; is that right?

20 A. Yes.

21 Q. So if I'm to go back and look at every one of  
22 those surcharges that have been dealt with, are you  
23 telling me that I will find that degree of detail in  
24 every one of these surcharges?

25 A. You may not find that degree of detail in

00382

1 every one of these surcharges, but you may find some  
2 degree. We have a difference of degree level right  
3 here in the two I've presented today. Each surcharge  
4 is different. Each company is different.

5 Q. Of these surcharge submissions that have been  
6 processed, how many of them would you say have been  
7 done, let's say, in-house versus by an outside  
8 contractor?

9 A. Most surcharge requests are typically done by  
10 an outside contractor. If they were done in-house, the  
11 company would simply use that as investment. It's  
12 typically for that larger item that the company doesn't  
13 have the ability or the money to do at that time.

14 Q. It was rather unclear to me. Looking at 125,  
15 it seems to address two projects, the Lynchco project  
16 and the Diamond Point project.

17 A. Yes.

18 Q. Are those both projects that were put out to  
19 public bid?

20 A. I don't know.

21 Q. But you have characterized this information  
22 as what you do receive and expect to receive on bid  
23 projects. So how do you --

24 A. I didn't say on bid projects. I said on  
25 surcharge or capital improvement type projects I expect

00383

1 this level of detail.

2 Q. So these may well have been done in-house?

3 A. No, they were not done in-house.

4 Q. So they were put out to bid?

5 A. I don't know if they were put out to bid.

6 Q. Is there another option?

7 A. I don't know the process by which the Company  
8 picked the vendor they did use.

9 Q. In other words, the option would be that they  
10 had them do it on a cost-plus basis. They had them do  
11 it on some other kind of a basis than a lump-sum bid;  
12 is that what you are saying?

13 A. I don't know that. I know in the case of  
14 Aquarius Water, this is the information they provided  
15 with a third-party vendor doing the work. In the case  
16 of Stroh's Water, this is the information they've  
17 provided with a third party doing the work. How they  
18 picked that third party, I don't know.

19 Q. Isn't it general practice in the construction  
20 industry that projects are done either on a lump-sum  
21 basis, on a cost-plus basis, or on a TNM basis or a  
22 unit-price basis. They are done on some kind of a  
23 basis that the parties know what they are dealing with?

24 A. I believe so, but I'm not in the construction  
25 business, and I don't know what is the industry



00384

1 standard.

2 Q. It puzzles me that if you don't know under  
3 what conditions this job was done how you relate this  
4 degree of information as being the example that I  
5 should follow. I'm lost on that.

6 A. I didn't say it was the example to follow.  
7 What I provided here was two examples of what other  
8 companies have filed to support their request for  
9 increased rates.

10 Q. In other words, from what you are telling me,  
11 this example could be totally irrelevant to me?

12 A. I think it's relevant in the fact that it  
13 shows the level of detail that I'm seeking in your case  
14 as by example in the level of detail I received from  
15 other cases.

16 Q. I recognize that that's the level of detail  
17 you are asking for. However, this has been offered, as  
18 far as I understand, as the example of how I'm supposed  
19 to have done things.

20 MS. TENNYSON: I would object to Mr. Fox's  
21 characterization of the document. We have offered the  
22 exhibit precisely as Mr. Ward has indicated,  
23 information he receives from other companies and type  
24 of information he would expect to be available for  
25 audit when there is a surcharge request.

00385

1 JUDGE BERG: And I would sustain that.

2 Mr. Fox, I would indicate that you have made clear the  
3 point regarding the method that you used and your lack  
4 of awareness of a preferred form.

5 MR. FOX: Okay. Then I guess maybe I need to  
6 say nothing more about this. I don't know.

7 JUDGE BERG: I'm not suggesting that you cut  
8 off questions that you think are important to ask. I  
9 just want you to know that I understand that that  
10 particular point that you are making about the  
11 difference between, for example, when this information  
12 came to you, the first time you saw Exhibit 125, 126,  
13 in relationship to your business practices.

14 MR. FOX: Thank you. I guess my most  
15 important question is how am I supposed -- other than  
16 this is the information you would like to see, how am I  
17 supposed to relate this example to me. Is that what  
18 you are saying, Judge, is understood?

19 JUDGE BERG: The question I hear you saying  
20 now is how would you know to use that level of detail  
21 without receiving direction from the Commission.

22 MR. FOX: Yes, that certainly is my question.

23 JUDGE BERG: Mr. Ward, if you can.

24 THE WITNESS: Could I have you reask the  
25 question?

00386

1 Q. (By Mr. Fox) How would I know that this is  
2 the level of information that you expected to see if I  
3 had not received this example or some explanation  
4 similar to this example prior to me having the need to  
5 compile the information?

6 A. In the same way that this company, Aquarius  
7 Utility, received that information, and that is they  
8 asked me what was necessary, and I said all copies of  
9 vendor invoices, time cards, materials necessary to do  
10 the job. That's how they created this document.

11 Q. So it's your testimony that prior to us doing  
12 the surcharge jobs that you told me that those things,  
13 all time cards, all invoices, would be required?

14 A. It has always been my position that any time  
15 a company asked for an increase in rates the company be  
16 able to substantiate the increase in rates by providing  
17 original copies of vendor invoices, time sheets, things  
18 of that nature. I believe that is also part of the RCW  
19 and the WAC's that the company be responsible to  
20 support the filing they have.

21 Q. You did know that we were doing these jobs or  
22 putting them out on a lump-sum bid basis.

23 A. I knew you were bidding these items.

24 Q. And you informed me of these requirements,  
25 required to go with those bids.

00387

1           A.     No.  The order required that when you did  
2 certain projects over certain dollar amounts that a bid  
3 process be done.

4           Q.     Are you saying then that you didn't brief me  
5 with this kind of information that would be required on  
6 those bid jobs?  Did you or did you not?

7           A.     In the specific instance of that conversation  
8 or whatever it is you are referring to, did I  
9 specifically say you would need this level of detail?  
10 No, I don't believe it was done in that manner, but  
11 I've always maintained that when a company needs to  
12 file for rates, they need to be able to support those  
13 rates.

14          Q.     You are, I believe, quite familiar with Herta  
15 Ingram and her capabilities, whatever they might be in  
16 your mind; would that be true?

17          A.     Yes.

18          Q.     What do you believe my purpose was in hiring  
19 her?

20          A.     I don't know.

21          Q.     Would you suppose that my purpose might have  
22 been to try to do a better job of supplying the  
23 information that UTC was asking of me at various times?

24          A.     It might be, yes.

25          Q.     You have commented on a number of the data

00388

1 requests that she prepared for me. Do you think that  
2 that purpose was accomplished, being that that was my  
3 purpose?

4 MS. TENNYSON: I would object to this  
5 questioning on a continuing supposition or asking the  
6 witness to speculate as to what your purpose was in  
7 hiring a particular person and to whether your purposes  
8 were accomplished in how she did her work.

9 JUDGE BERG: I'll sustain the objection.  
10 Mr. Fox, I do recall you testifying that one of the  
11 reasons why Ms. Ingram was hired was because of her  
12 familiarity with the practices at the Commission.

13 MR. FOX: Thank you.

14 Q. (By Mr. Fox) You mentioned -- I'm not sure  
15 the precise context, but the '98 schedule provided for  
16 improvements. You were talking about some of the  
17 surcharge improvements are earlier CIP, and you said  
18 that our earlier rate case provided for funding of  
19 those projects?

20 A. In the 1998 general rate case that went to  
21 hearing, you had proposed to include the entire capital  
22 improvement project as a pro forma adjustment, yes.

23 Q. The funding for some of those projects was  
24 provided for then, you said?

25 A. Not of the general rate case, no.

00389

1 Q. I misunderstood you then. Our 2000 in-house  
2 Exhibit 10, P&L, was discussed here earlier. I stated  
3 when I introduced this that this was done in-house and  
4 it was preliminary and hadn't been reviewed or  
5 corrected, if you will, by an accountant, but viewing  
6 it as it is, does it give you some concept of where we  
7 are financially at the moment?

8 A. It gives me a concept of where you are in the  
9 year 2000, yes.

10 Q. Earlier, we looked at Exhibit 2, which shows  
11 our accounts payable age and summary and shows that we  
12 have about \$143,000 past due. From these exhibits,  
13 would you conclude that paying for these debts relating  
14 to the surcharge is virtually impossible without an  
15 extension?

16 A. No, I would not conclude that.

17 Q. Can you give me something about how it would  
18 be paid then?

19 A. I don't know. I don't have any further  
20 analysis.

21 Q. You mentioned in response to one of Mary's  
22 questions that there was a schedule that I didn't  
23 comply with. Do you recall what schedule you were  
24 referring to?

25 A. It was originally with the original filing

00390

1 back in 1999. It's not part of the exhibits here. It  
2 was a schedule, I believe, prepared by the Company at  
3 that time outlining when they were going to start and  
4 complete projects. It was a very simple schedule, one  
5 page.

6 Q. But we don't have that schedule here to look  
7 at or to discuss.

8 A. It's in my backup work papers in  
9 documentation that I have, but it's not part of the  
10 exhibits, I don't believe, and it was a schedule  
11 prepared by the Company.

12 Q. Virtually all of the discussion here, I  
13 believe, and the data requests and various information  
14 that's been bandied about make me wonder, is your  
15 primary concern with information relative to Fox  
16 Company work and/or interaction and/or invoices?

17 A. My understanding of the information requested  
18 is to the list of 13 water systems and the cost of the  
19 capital improvements, whoever did those capital  
20 improvements. In this case, you've alluded to VR Fox  
21 Company. They are the ones that did the entire 13  
22 projects. So yes, I'm asking for information from VR  
23 Fox Company to substantiate the cost.

24 Q. I guess said differently, my question would  
25 be, except for the Fox Company relationship and

00391

1 information, are you pretty satisfied that we have  
2 given what we should have?

3 A. No, I am not.

4 Q. What other information then outside of that  
5 would you feel we haven't given?

6 A. As I stated earlier, the information for  
7 engineering, I now have less confidence in that  
8 information now that it's been presented, and we have  
9 found numerous errors in that information.

10 Q. You discussed the affiliated company  
11 agreement and the rates involved in that. Do you  
12 recall or have information readily available to tell us  
13 what those rates are?

14 A. No, I do not. That's in our work paper files  
15 downstairs.

16 Q. Is the rates contained in that primarily an  
17 hourly type rate that you charge as if you were going  
18 to do a TNM job, like a plumber would charge you \$60 or  
19 whatever an hour, but as opposed to the actual labor  
20 costs paid to the individual?

21 A. As I recall, the affiliated interest has  
22 various types of work that will be performed at various  
23 levels per hour of compensation.

24 Q. Which would be similar to what I'm referring  
25 to as the plumber's rate. They would be the marked-up



00392

1 rate for that hour of that kind of work?

2 A. I don't know what those are based on. I  
3 don't know if they are marked-up rate or what. All I  
4 know is that in the affiliated interest, there was an  
5 established per hour rate for various work.

6 Q. Would it be reasonable then on these bid jobs  
7 that the labor should all be paid for according to  
8 those rates?

9 A. I don't know what you mean by "these bid  
10 jobs."

11 Q. The 13 jobs, the surcharge jobs that were bid  
12 out.

13 A. That's what you had said in the affiliated  
14 interest was work done by the affiliated interest would  
15 be billed at these rates. That's what you've proposed.

16 Q. So you think the other bidders and/or Fox  
17 Company bid all labor at those rates.

18 A. I have no idea what they bid at those rates  
19 because I didn't receive --

20 Q. Your expectation would be that they should  
21 have?

22 A. My expectation would be yes, that VR Fox  
23 would do the work at those established rates per the  
24 affiliated interests that they submitted that they  
25 would do them.

00393

1 Q. I offered yesterday Exhibits 8 and 9.

2 A. I don't have those.

3 Q. I'll let you borrow mine if that's  
4 appropriate.

5 A. What exhibit is the photos?

6 Q. Excuse me, 7 and 8.

7 JUDGE BERG: Exhibit 7 and 8, I believe, are  
8 the two sets of resumes; is that correct?

9 MR. FOX: That's correct, Your Honor.

10 THE WITNESS: I have copies of 7 and 8. They  
11 are listed here as 7-A and B.

12 Q. (By Mr. Fox) Have you reviewed what those  
13 are at all?

14 A. Essentially, yes, I looked at them yesterday.

15 Q. Would those give you any indication as to my  
16 experience or credibility in terms of bidding  
17 construction jobs and doing construction jobs?

18 A. Not knowing the construction industry, I  
19 can't say.

20 Q. A great amount of that information does not  
21 necessarily relate to the construction industry. Can  
22 you comment on the general characterization of those?

23 MS. TENNYSON: I would object to further  
24 questions along this line. Whether or not Mr. Ward  
25 feels Mr. Fox has credibility in the construction

00394

1 industry really doesn't relate to Mr. Ward's job with  
2 auditing information that's provided.

3 MR. FOX: That's fine.

4 JUDGE BERG: Thank you, Mr. Fox.

5 Q. (By Mr. Fox) With regard to the surcharge  
6 projects, I kind of think about that as Phase 1, the  
7 original thing that was approved and done as opposed to  
8 what we are now discussing, the extension. Can we kind  
9 of think about things that way for a moment? In other  
10 words, what I'm saying, there was an original surcharge  
11 approved. The surcharge was done. UTC approved the  
12 payments. The payments were made from the bank to the  
13 Fox Company from the surcharge loan. That part was  
14 done and closed out; is that correct?

15 A. Not to my knowledge, no. Not to my  
16 understanding, no.

17 Q. What part of that --

18 A. The cost has not been substantiated for the  
19 original amount. Yes, a loan was approved. Yes the  
20 surcharge was approved. Yes, the loan was disbursed.  
21 Yes, work was accomplished, but I have not seen any  
22 documentation to support the original \$380,000.

23 Q. But you did approve the payout of the  
24 original \$380,000?

25 A. Yes, we did.

00395

1 Q. Is it unreasonable for me to believe that  
2 since you authorized the payment of that amount that  
3 you were at least reasonably satisfied with things at  
4 that point?

5 A. No.

6 Q. Why did you approve that if you were not?

7 A. How would you have accomplished the work and  
8 gotten the receipts if the money had not been approved  
9 to be released by the bank?

10 Q. What happens when we apply that same thinking  
11 to the second part?

12 A. What do you mean by "that same thinking"?

13 Q. The second part, the work has all been done,  
14 not just the first part. The first part and the second  
15 part, the work has all been done. The engineering has  
16 all been done, so how do you segregate that \$380,000 or  
17 whatever the exact number is should be paid and the  
18 other part shouldn't be paid?

19 A. By the way that the surcharge was proposed as  
20 a funding mechanism up front before the work was done,  
21 and that now that the work is completed, you should  
22 have the documentation to support not only the  
23 extension request but the original request.

24 MR. FOX: I don't think I have any further  
25 questions.

00396

1 JUDGE BERG: We are going to take a 10-minute  
2 break, and there will be some questions from the Bench.

3 (Recess.)

4 JUDGE BERG: Back on the record. I don't  
5 have any additional questions for Mr. Ward.  
6 Ms. Tennyson?

7 MS. TENNYSON: I just have a couple  
8 follow-ups, thank you.

9

10 REDIRECT EXAMINATION

11 BY MS. TENNYSON:

12 Q. You had testified that you had previously had  
13 requested on several occasions the detail of the  
14 invoices for labor and materials from the Company, and  
15 they were not provided; correct?

16 A. Yes.

17 Q. Were you told that they weren't available in  
18 the form that you asked for or that they just weren't  
19 available?

20 A. I was told they were not available.

21 Q. It was only recently last week that you were  
22 told they weren't available in the form you were  
23 looking for; correct?

24 A. Right.

25 Q. In the information that you've seen in

00397

1 Exhibit 6 in the testimony that Ms. Woods gave  
2 yesterday, does it appear that that level of detail you  
3 were asking for may be available?

4 A. Yes, it does appear that.

5 Q. And for the information and labor, you still  
6 haven't seen the cost information on that, have you?

7 A. No, I have not seen that.

8 Q. In Ms. Ingram's response -- I believe it is  
9 in Exhibit 110 -- you had asked for detailed breakdown  
10 of each water system project including copies of vendor  
11 invoices and time logs for all labor, and then  
12 Ms. Ingram had responded that you would be receiving  
13 some detailed breakdown?

14 A. Yes. That would be part of the surcharge  
15 extension filing that they would file on March 20th,  
16 2000.

17 Q. That kind of detail is the kind of  
18 information you would have expected to receive?

19 A. Yes. At this point, all the work would have  
20 been done and the receipts would be available.

21 Q. So we wouldn't be relying on estimates  
22 anymore but actual documents.

23 A. Right.

24 Q. So basically what I'm gathering is you  
25 consistently asked for the detail and were told it's

00398

1 not available, and you found out as of yesterday that  
2 it may well be available.

3 A. Yes, that's true.

4 Q. So even though Mr. Fox in his questioning of  
5 you implied how is he to know to keep the records the  
6 level of the detail that VR Fox may well have kept the  
7 records to that same level of detail as represented in  
8 the exhibits relating to the information you received  
9 from Aquarius and Stroh Water.

10 A. Yes, it may exist.

11 Q. You haven't directed AWR or VR Fox Company to  
12 keep their records, have you?

13 A. No.

14 Q. If you are asked for information from  
15 companies on what kind of information you are going to  
16 expect, do you provide that?

17 A. Yes.

18 Q. In fact, is it your testimony that Aquarius  
19 did ask you for that information?

20 A. Yes, they did.

21 Q. Do you know when they asked that before  
22 beginning the work or at what point?

23 A. I would believe it was before the work was  
24 performed.

25 Q. So they anticipated there might be a need to

00399

1 document what was done.

2 A. Yes, and they have been through general rate  
3 cases also where that level of detail was expected in a  
4 general rate case.

5 Q. Likewise, has AWR been through a general rate  
6 case where similar level of detail was demanded?

7 A. Yes, several times.

8 MS. TENNYSON: I don't have anything further  
9 at this time, thank you.

10 JUDGE BERG: Any additional questions, Mr.  
11 Fox?

12 MR. FOX: May I talk to my associate for a  
13 second?

14 JUDGE BERG: Certainly.

15 MR. FOX: I'm sorry, Your Honor.

16

17 FURTHER CROSS-EXAMINATION

18 BY MR. FOX:

19 Q. Mr. Ward, you said that if people ask you for  
20 advice about how records should be kept, you would  
21 offer information to help them; is that correct?

22 A. Yes.

23 Q. Do you recall a week or two ago that Mitch  
24 from our office called you and asked your input as to  
25 how a bid document might be put together?



00400

1 A. Yes.

2 Q. Do you recall what your response was?

3 A. Yes.

4 Q. That was what?

5 A. That I would not help him in that case on how  
6 to put a bid document together.

7 Q. Is that different than -- that's how records  
8 are to be kept, right? Isn't that part of the record?

9 A. I see it as two different things. The bid  
10 document is something that goes out to people, and what  
11 I'm after is the actual invoices from the original  
12 vendors when work is completed.

13 Q. Isn't it reasonable to think we are going to  
14 get better information if we ask for the right  
15 information in the beginning?

16 A. Yes.

17 Q. Wouldn't you suppose that was his purpose in  
18 asking you?

19 A. I don't know what his purpose in asking me  
20 was.

21 MR. FOX: Thank you, Your Honor. That's the  
22 only questions I have.

23 JUDGE BERG: Off the record.

24 (Discussion off the record.)

25 JUDGE BERG: One question, Mr. Ward, just so

00401

1 that I understand Staff's opposition to the requested  
2 surcharge extension. I know we've focused quite a bit  
3 on the level of supporting detail that has been  
4 provided, but it seemed to me that Staff also had  
5 concerns about the bid process that was followed in  
6 light of the affiliated relationship; is that correct?

7 THE WITNESS: No, I don't believe it is. I  
8 don't believe in my testimony I've talked about the bid  
9 process as being a problem.

10 MS. TENNYSON: Your Honor, are you finished?  
11 I would follow-up on that, just a similar point.

12 Mr. Ward, the order approving the surcharge that did  
13 include a requirement of dollar amounts for situations  
14 in which a competitive bid would be required, that did  
15 not specify or direct the Company how to conduct that  
16 bid process or whether they should be seeking lump-sum  
17 bids or time and materials or other basis, did it?

18 THE WITNESS: No, it did not.

19 MS. TENNYSON: Nothing further.

20 JUDGE BERG: Anything else, Mr. Fox?

21 MR. FOX: I guess that question prompts one  
22 more. In your opinion, was the fact that we sought to  
23 do these jobs on a lump-sum basis a wrong or bad  
24 decision?

25 THE WITNESS: I don't know.

00402

1 JUDGE BERG: No further questions here.

2 MS. TENNYSON: This witness may be excused.

3 JUDGE BERG: You are excused. Thank you very  
4 much for testifying here today. Any other witnesses  
5 you would like to call, Ms. Tennyson?

6 MS. TENNYSON: No, we don't have any  
7 additional witnesses.

8 JUDGE BERG: With that, it appears that both  
9 parties have completed their presentation of evidence  
10 in this case. Is there any disagreement or difference  
11 of opinion on that point?

12 MR. FOX: Not in my mind.

13 JUDGE BERG: Are there any other matters that  
14 the parties believe need to be addressed on the record  
15 other than some of the follow-up briefing details?

16 MS. TENNYSON: We do have follow-up briefing  
17 details. I did want to raise a point. The initial  
18 order of suspension does have a provision that the  
19 Company may be required to pay the costs of Staff's  
20 investigation to the extent allowed under statute, and  
21 that is something we would be seeking in this case, but  
22 I don't know whether it's something you would like  
23 addressed in briefing or after a decision or at what  
24 point we should raise that issue.

25 JUDGE BERG: I'd like to see that occur as

00403

1 sort of a separate follow-up proceeding. There may be  
2 some purpose for conducting additional hearings in the  
3 case there is some question as to the reasonableness of  
4 the costs incurred in the investigation as part of the  
5 overall process, so I think that would be sort of an  
6 independent petition that would be filed in the case  
7 upon which the Commission could then schedule and  
8 notice follow-up proceedings.

9 MS. TENNYSON: That would be my view as well.  
10 It's similar to a civil rights case if there is a  
11 request for attorneys' fees, a follow-up discussion can  
12 be had, but I just wanted to clarify that we had the  
13 same view that it wasn't something we would need to  
14 include as briefing in this case.

15 JUDGE BERG: I think that does put all  
16 parties on notice that that's Staff's intent. Let's go  
17 off the record for a moment.

18 (Discussion off the record.)

19 JUDGE BERG: Ms. Tennyson, I understand there  
20 is a motion you wish to bring at this time.

21 MS. TENNYSON: Yes, Your Honor. Although we  
22 had made it yesterday after hearing Mr. Fox's  
23 testimony, I would like to renew Staff's motion to  
24 dismiss the request for the surcharge at this point.  
25 Despite Staff's numerous efforts, as Mr. Ward has

00404

1 testified and the exhibits do reveal dating back to  
2 November of '99 and the Company's various stories about  
3 whether the information existed or they would or would  
4 not provide it, we still today do not have sufficient  
5 information as to what costs were incurred by the  
6 Company in the course of completing the surcharge  
7 projects, and there is a lot of questions about that  
8 information that has been submitted. We do have data  
9 submitted in exhibit form and on cross-examination,  
10 which shows that the information was received as  
11 inconsistent and incomplete, in some cases inconsistent  
12 and contradictory. I guess they are synonyms. We  
13 still do not have the detailed data on whether or not  
14 the labor costs, how they were calculated, whether or  
15 not the affiliated interest agreement was complied with  
16 in that respect.

17           We found out as of yesterday with the  
18 submission of exhibits in Ms. Woods' testimony that  
19 information Staff had previously been told did not  
20 exist does, in fact, exist, and despite the request in  
21 the data requests, the formal data requests submitted  
22 to the Company in early December for information and  
23 offering to have Mr. Ward review the information at the  
24 Company's offices, that information wasn't presented,  
25 and as Mr. Ward testified, no explicit offer to allow

00405

1 him to review the data in VR Fox Company's offices was  
2 made until December 28th.

3           If there is a dismissal, it need not be with  
4 prejudice. The Company could refile at any time it has  
5 compiled sufficient backup data to support the filing,  
6 but at this point, it is our view that the Company has  
7 failed to carry its burden of proof. There is no basis  
8 for the Commission to make a decision on what costs  
9 were actually incurred for what projects, what work was  
10 done with the surcharge money. A surcharge isn't just  
11 a blank check. There does need to be follow-up and  
12 justification of how the money was spent, and in this  
13 case, when they are asking for an additional extension  
14 of that surcharge, then we feel it is very important to  
15 adequately document that the money was spent in a  
16 prudent fashion.

17           Because of the Company's actions and a  
18 failure to provide information, Staff feels also it has  
19 been prevented from really presenting an effective case  
20 on its own in this case, has contributed substantially  
21 to costs incurred by the Staff in attempting to  
22 determine what AWR spent for what and why it was spent.  
23 As I stated earlier, we don't believe it would be  
24 possible to determine whether customers should pay  
25 additional money to the Company based on records we

00406

1 have today.

2           If the Company can demonstrate that it has  
3 the backup documentation and can present that to Staff,  
4 it would be free to refile, or it could recover this  
5 through including the expenses and the rate base  
6 depreciation and the return on that. Rate base  
7 treatment here would be more preferable for this  
8 company because of the difficulties we've had in the  
9 past with its capital structure. I would ask that and  
10 we will include references in any briefing if our  
11 motion is not granted, but to the rate case orders in  
12 the 1998 rate case as terms of the Company's capital  
13 structure and the coaching, if you will, they have been  
14 provided in the past by the Commission and by the Staff  
15 on recordkeeping detail the kind of information this  
16 agency requires in order to approve expenses to be  
17 passed on to customers. It is a regulated company, and  
18 a primary reason for the regulation is the oversight  
19 that this agency provides. So we would ask that the  
20 matter be dismissed prior to requiring any briefing and  
21 final decision. Thank you.

22           JUDGE BERG: Mr. Fox, anything you want to  
23 add to the statements and positions you took in  
24 opposition at the half time?

25           MR. FOX: Only that I very strongly disagree

00407

1 that I never said that the information wasn't  
2 available. I said that the information was very  
3 difficult to sort out because of the fact that it  
4 wasn't kept in a manner that could make it readily  
5 available because we didn't know that there was such a  
6 need. I did say in the data request to Ms. Tennyson  
7 that I was perfectly willing to swear that the  
8 information was accurate, and I did say in that letter  
9 that if I knew where to find sufficient funds for an  
10 independent auditor or anyone else to perform an audit  
11 to ferret through all of that that I would be proven to  
12 be 100-percent accurate, so that particular statement,  
13 I believe, is 100 percent wrong.

14 I do recognize that we haven't supplied the  
15 degree of information that was requested. I have tried  
16 to explain the reasons for why we haven't done that.  
17 Probably the most important one being that it was my  
18 understanding all along that we were dealing on a  
19 lump-sum bid basis, and I had never had an expectation,  
20 as Mr. Ward said, that it wasn't somehow explained to  
21 me that that kind of information should be supplied on  
22 a lump-sum bid basis.

23 So no question about it. I can see at this  
24 point that I haven't supplied all the information they  
25 would have liked, but there was certainly no intent to



00408

1 withhold information or to change information or --  
2 I've tried to supply the information that would allow  
3 you to believe that I'm trying to be fair and honest  
4 and present what I can. So I think that I can only say  
5 that, as I said yesterday, that I clearly recognize  
6 that the matter is in your hands. You are the one with  
7 the job of making a decision, I guess. I don't know  
8 what more I can say.

9 JUDGE BERG: I can understand why a decision  
10 on the motion would be helpful to the parties before  
11 they would begin briefing on issues. My initial  
12 reaction is that my understanding of the case is that  
13 Staff's briefing on a case in chief would probably be  
14 substantially the same as its briefing on a motion to  
15 dismiss. But that's just my first perception, and the  
16 situation hasn't changed much from yesterday in that  
17 there is still a lot of information here. At this  
18 point, I would again take the manner under advisement,  
19 but what I will do is try and come up with a somewhat  
20 expedited decision as to whether or not further  
21 briefing is still required. If briefing is required,  
22 I'll indicate to the parties that I would look for the  
23 parties to brief their positions on the motion to  
24 dismiss as well as the case in chief as that might be  
25 perceived.

00409

1           What that means, Mr. Fox, this goes back to  
2 one of the comments I made early on before we started  
3 that part of the process is first, you tell the judge  
4 what you are going to tell him. Then you tell him.  
5 Then you tell him what you told him. The briefing part  
6 is essentially the what-we-told-him phase, and it's an  
7 opportunity for the parties to gather all the  
8 information that has been presented during the course  
9 of a hearing and organize it in a written document that  
10 restates their position with the support. My decision  
11 now is that I'll report back to the parties -- let's be  
12 off the record for a moment.

13           (Discussion off the record.)

14           JUDGE BERG: I'll let the parties know  
15 whether briefing is required on the motion to dismiss  
16 on or before Tuesday, January the 9th, and I'll just  
17 make it clear that if it is my decision that briefing  
18 should occur that is not to be taken as any indication  
19 of whether or not I will rule one way or the other. It  
20 only means that I feel whatever decision I make will be  
21 a better decision as the result of reviewing the  
22 briefs, but I understand that there is a time and  
23 expense associated that the parties are seeking to  
24 responsibly manage. Let's be off the record again.

25           (Discussion off the record.)

00410

1                   JUDGE BERG: There has been a revision to the  
2 previously scheduled briefing schedule. Pending  
3 notification, and I will notify the parties one way or  
4 the other before the end of Tuesday, January the 9th,  
5 and I will do that notification by facsimile  
6 transmission followed up with an a mailed copy of the  
7 notice, but tentatively, the briefs would be due on  
8 January the 25th, Thursday, January the 25th, on or  
9 before the end of the day. Let's be off the record.

10                   (Discussion off the record.)

11                   JUDGE BERG: It appears that there is no  
12 other substantive procedural matters to address. The  
13 hearing will be adjourned.

14  
15                   (Hearing adjourned at 3:50 p.m.)

16  
17  
18  
19  
20  
21  
22  
23  
24  
25

