

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

WASHINGTON UTILITIES AND  
TRANSPORTATION COMMISSION,

Complainant,

v.

COUGAR RIDGE WATER SYSTEM,

Respondent.

DOCKET NO. UW-040367

SECOND DECLARATION OF  
JONATHAN THOMPSON IN  
OPPOSITION TO COUGAR  
RIDGE WATER SYSTEM'S  
MOTION TO COMPEL  
ANSWERS TO DATA  
REQUESTS

JONATHAN THOMPSON declares:

1. I am the attorney of record for the Commission Staff in the above captioned action. I am over the age of 18, am competent to testify to the matters set forth below and I have personal knowledge of those matters.

2. Cougar Ridge served its data requests one through five on Staff on April 29, 2004. Staff responded on May 13 and provided supplemental responses on May 20 and June 25. A true and correct copy of Staff's responses to Cougar Ridge's data requests one through five (excluding the actual documents produced) is attached as an Exhibit to this declaration.

3. Both Mr. Ward and Mr. Eckhardt of Commission Staff had their depositions taken in this case by Mr. Brown, attorney for Cougar Ridge, on June 15, 2004.

4. Staff has expended a great deal of time, effort, and expense in responding to Cougar Ridge's first five data requests in this case, and in providing Mr. Ward and Mr. Eckhardt for deposition.

5. In its Response of June 23, 2004, Cougar Ridge states that:

discovery has disclosed that the Attorney General's office advised the Commission Staff in January of 2004 that the company was under the threshold, and not subject to regulation. This information was disclosed by Staff to the public; but was subsequently withheld from the Respondent during discovery. The Staff and its counsel did not disclose during discovery that such an opinion had been rendered or communicated to the public, and it was only discovered by accident in a copy of an e-mail that was inadvertently released.

This statement is untrue in many respects. First, the Attorney General's Office did not advise the staff in January of 2004, or ever, that the company was not subject to regulation.

Although staff member Jim Ward did state in an e-mail to Gene Eckhardt and me dated 1/8/04 that he had informed a customer of Cougar Ridge "that the AG office had determined that since the company was under the threshold that the company was not regulated," this statement was based on a misunderstanding by Mr. Ward of the advice provided by Mr. Thompson. But, regardless, this information was not withheld from the Respondent during discovery, nor did Staff disclose it inadvertently. Rather, Staff provided the e-mail to Cougar Ridge on May 13, 2004, in response to Cougar Ridge's Data Request No. 2. That is why Mr. Brown was able to refer to it in Mr. Ward's deposition. I had not withheld it as privileged or as work product because, in my view, it fits neither of those definitions and it appeared to be responsive to Cougar Ridge's data request as part of Mr. Ward's file concerning Cougar Ridge.

6. In its Response of June 23, 2004, Cougar Ridge states that Mr. Eckhardt "personally met with and consulted with Commission member Showalter specifically regarding Cougar Ridge Water System." The Response goes on to state that Cougar Ridge requested copies of notes from that meeting and that the request was refused as privileged. The Response goes on to state that the "objection is patently frivolous and without basis,

since no attorney was involved in this meeting.” It is not true that no attorney was involved in this meeting. In fact, in addition to Mr. Eckhardt, I was present, as was Ms. Sally Johnston, Senior Assistant Attorney General, in separate meetings with all three Commissioners. The purpose of the meetings was to present the probable cause information concerning whether to initiate a classification proceeding against Cougar Ridge Water System. The basis for the discussion at those meetings was the legal memorandum that I prepared with input from Staff member Gene Eckhardt that Ms. Johnston and I have withheld as an attorney-client privileged communication (and which I referred to in Staff’s May 13 response to Cougar Ridge’s data request number 2).

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Dated this \_\_\_\_ day of June 2004, at Olympia, Washington.

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JONATHAN THOMPSON