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BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND)	
TRANSPORTATION COMMISSION,)	
)	
Complainant,)	
)	
vs.)	NO. UW-040367
)	
COUGAR RIDGE WATER SYSTEM,)	
)	
Respondent.)	

ORIGINAL

DEPOSITION UPON ORAL EXAMINATION OF

EUGENE ECKHARDT

June 15, 2004
Olympia, Washington

Taken Before:

Carman Prante
Certified Court Reporter
of
CAPITOL PACIFIC REPORTING
2401 Bristol Court SW
Olympia, WA 98502
(360) 352-2054

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APPEARANCES

FOR THE COMPLAINANT:

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ASSISTANT ATTORNEY GENERAL
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FOR THE RESPONDENT:

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ALSO PRESENT:

MR. JAMES WARD

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EXAMINATION INDEX

<u>BY:</u>	<u>EXAMINATION</u>	<u>RE-EXAMINATION</u>
MR. BROWN	4	

EXHIBIT INDEX

<u>NO.</u>	<u>DESCRIPTION</u>	<u>MARKED</u>	<u>IDENTIFIED</u>
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(NO EXHIBITS MARKED)

1 BE IT REMEMBERED that on Tuesday, June 15,
2 2004, at 12:17 p.m., at the Washington Utilities &
3 Transportation Commission, 1300 South Evergreen Park Drive
4 SW, Olympia, Washington, appeared the above-named witness
5 before Carman Prante, Court Reporter and Notary Public in
6 and for the State of Washington, residing at Elma.

7 WHEREUPON the following proceedings were had,
8 to-wit:

9
10

11 EUGENE ECKHARDT, Having been first duly sworn
12 by the Notary, testified as
13 follows:

14

EXAMINATION

15
16

BY MR. BROWN:

17 Q Would you state your full name, please.

18 A My name is Eugene, middle initial K, Eckhardt.

19 Q E-c-k-h-a-r-d-t?

20 A Yes.

21 Q And what's your business address?

22 A 130 Southwest Evergreen Drive.

23 Q And is it --

24 A Evergreen Park Drive.

25 Q Is that the office of the Washington State Utilities and

1 Transportation Commission?

2 A Yes.

3 Q And what is your job title?

4 A I'm the assistant director of transportation and water.

5 Q And would you give us just a thumbnail description of what
6 your duties are.

7 A Within the various industries included in the transportation
8 description and the water industry, I'm responsible for
9 managing a professional staff related to the regulatory
10 activities of the commission and - and all aspects of
11 technical and policy review and applications, and in the
12 course of those duties making recommendations to
13 commissioners on various filings and policies.

14 Q And from - just from your title do I understand that your
15 duties fall into two broad categories, one being
16 transportation, the other being water?

17 A Could divide it that way, yes. But industries.

18 Q Okay. And in confining ourselves to water, is - is that
19 water systems only or is there something more than water
20 systems that's involved in regulation of water?

21 A Regulation of water companies pursuant to title 88.04.010,
22 private investor-owned water utilities.

23 Q Okay. And just out of curiosity, who regulates public water
24 companies?

25 A What do you mean by public water companies? I don't

1 understand that.

2 Q Is there no such thing as a public water company in the
3 State of Washington?

4 A I expect there is, but I don't know what you mean by a
5 public water company. The water companies that we regulate
6 are - are public utilities providing water service.

7 Q Okay. Well, the - are there - are there water districts?

8 A Yes.

9 Q Do you - do you regulate those?

10 A No.

11 Q Who regulates those?

12 A For --

13 Q Who does what you do with respect to those?

14 A As far as economic regulation of water districts there is no
15 agencies, state or local government, that I'm aware of that
16 has any economic regulation authority over a water district.

17 Q And how about publicly-owned water systems like cities, do
18 they regulate themselves?

19 A A municipal water system is operated by the municipality
20 and - yes.

21 Q So all the companies you deal with are privately owned?

22 A Private investor-owned water utilities.

23 Q And so the water function of your job we've - we've defined
24 it by - that there's nothing else that's done in the water
25 function of your job except the regulation of those

1 privately owned companies, is that it?

2 A Yes.

3 Q And - and the regulation that you do is what you referred to
4 as economic regulation?

5 A Yes. And expand on that, if I may, when I say economic
6 regulation, I mean setting rates and charges and reg - as
7 they - the company assesses those rates and charges to
8 customers, the commission's authority is very broad as set
9 forth in statute and does include items such as water
10 quality and quantity. The commission has a memorandum of
11 understanding with the Department of Health that Department
12 of Health has the primary jurisdiction in regards to water
13 quality and quantity, and so we at the Utilities and
14 Transportation Commission do not do much in regards to water
15 quality and quantity. We do some, and generally as
16 requested by Department of Health.

17 Q Okay. Who's your immediate supervisor?

18 A Glenn Blackman.

19 Q And Glenn's title is?

20 A Director of regulatory services. Excuse me, I think he's an
21 acting director. He's the acting director of regulatory
22 services.

23 Q And just so I kind of get the big picture, once we get
24 beyond transportation and water I assume there's other
25 assistant directors that - like you that are in charge of

1 other things like telephone companies and - and things like
2 that?

3 A Yes.

4 Q And how many assistant directors are there?

5 A Three.

6 Q Three?

7 A Yes.

8 Q In the water function of your job how many employees do you
9 supervise?

10 A Two.

11 Q And that would be Mr. Ward and somebody named Daniel?

12 A Danny Kermode.

13 Q Okay.

14 A And a third person, Randy, a support person, occasionally
15 helps on some water-type issues.

16 Q In the course of supervising the water finances I understood
17 from the deposition that we took before that the style of
18 management basically is to meet on - on some sort of
19 periodic basis and talk about what's going on, and during -
20 during those discussions recommendations are made to you
21 and - and you give guidance. Is that basically your view of
22 how it works?

23 A No.

24 Q Okay. What's your view of how it works?

25 A Okay. As you mentioned, there is a scheduled staff meeting

1 that is at least intended to take place every other week but
2 may or may not depending upon schedules obviously, where
3 there's a broad discussion of the issues that staff is
4 working on related to water for the purpose of keeping
5 everyone informed; and also during those staff meetings we
6 discuss various dockets or - well, could be any issue
7 regarding service or water company to determine if there's
8 a - the method or way to proceed to address issues. I have
9 daily contact with staff on lots of different issues, and I
10 discuss those issues individually or with - with the group
11 including any other persons from the agency that are working
12 on that issue. So it's - there's daily discussion on
13 various issues.

14 Q Have you ever had occasion to calculate what percent of your
15 time is spent on the water versus other things?

16 A I have not calculated that, no.

17 Q What's your best guess?

18 A I'd estimate somewhere between 10 and 15 percent.

19 Q What's the first recollection you have - well, let me first
20 of all, in the course of managing the water system, do you
21 ever create your own little personal files?

22 A I don't manage the water system.

23 Q The - if I said managed the water system, I mean managing
24 the water function here. That's what I'm talking about.

25 A Oh. I do have files on many different issues related to

1 water.

2 Q If - if the two analysts, Daniel or Mr. Ward, were - had a
3 particular case, the X, Y, Z water system that they were
4 working on, would there be any circumstance under which you
5 would have a file of your own at your desk related to the X,
6 Y, Z water system?

7 A Yes.

8 Q And why would such a file exist?

9 A I occasionally track filings that are active, and certainly
10 in a formal case docket I have copies of all of the
11 testimony, exhibits that have been submitted. In a - a re -
12 in re case, there may be some communications in a re case,
13 there may not be some hearings. In a re case that relate to
14 the filing in front of the commission, that I would keep in
15 a file. There are many times when there's a doc created for
16 a re case that I don't retain any - any type of information
17 regarding the filing. Depends on the nature of the filing
18 and the issues involved.

19 Q Did you ever create a file with respect to the Cougar Ridge
20 water system?

21 A I do have a file.

22 Q Where is it?

23 A It's in my office.

24 Q Can you get it?

25 A I expect so.

EUGENE ECKHARDT - by Mr. Brown

1 MR. BROWN: Why - why don't we do that?

2 MR. THOMPSON: Well, alright.

3 THE WITNESS: Okay.

4

5

(Brief recess.)

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MR. BROWN: Okay. There's a manila file on the table here that says - handwritten it says Cougar Ridge. And Counsel tells me he's taken two pieces of paper out of the - or actually two documents out of that. One is an e-mail dated April 29th, 2004 from Mr. Thompson to Mr. Eckhardt. And the other one is an advice memo dated January 26th, 2004 from the attorney general's office to the commissioners apparently requested by Mr. Eckhardt. And those are the only two items that were removed, right?

MR. THOMPSON: Right.

MR. BROWN: So can I take a look at this now?

MR. THOMPSON: Yes.

Q (BY MR. BROWN) Okay. Mr. Eckhardt, this file that was in your office looks to have in it the two items I already mentioned, and then it has a copy of my letter of April 12th, and then a copy of our responses to Mr. Thompson's data requests, and then it looks like a copy of our data request on which you made - somebody made some notes. Is - is that your handwriting --

1 A Yes.

2 Q Okay. -- in green about what was available and what wasn't?
3 And . . . Pardon?

4 A I don't believe that's an accurate character -
5 characterization of what the notes report to say.

6 Q Okay. Well, all right. There's some handwritten green
7 notes here that appear to be someone's effort to provide
8 information to someone about what's available in terms of
9 information. Is that - am I misunderstanding what's there?

10 A Yes.

11 Q All right. What is it? You tell me.

12 A These are - these are handwritten notes that I made, and
13 these were just thoughts I jotted down to prepare to discuss
14 the matter set forth in type. So they're just off the cuff
15 notes.

16 Q Okay. When did you make those notes?

17 A I don't know. The document is dated April 28th. It would
18 be sometime after that date.

19 Q Okay. Were they - were those notes made within the last day
20 or two?

21 A Oh, no. No. It was just . . .

22 Q All right. Okay. Well, good. I'm glad you corrected me,
23 because I assumed - I was assuming that these - that these
24 questions had been provided to you and you were trying to
25 tell somebody what the answers were, but that's not the

1 case?

2 A Yes, that's not the case.

3 Q Okay. Okay. Then there's a copy of my letter of
4 October 29th, 2003. When was this little file created?

5 A I have no idea of the date.

6 Q Would it have been created - in terms of the timeline of
7 what's gone on in this case, the case first appeared on your
8 radar screen here in July of last year, apparently, and
9 there was a flurry of activities between July and October,
10 and then I'll say kind of a dead zone in November and
11 December, and then it came back to life in January. So
12 where in that timeline do you think that that file was
13 possibly created?

14 A I don't know. I generally create a file when I have a
15 document placed into it. I expect I created the file as
16 probably as old as the document in the file. I don't create
17 an empty file to put it in to my file system of active
18 cases.

19 Q The testimony of Mr. Ward is that starting in July of last
20 year there was some activities and there would have been
21 discussions during the staff meetings of this case. Do you
22 remember that? Do you remember that there were discussions
23 in this case?

24 A I certainly remember. There have been discussions over a
25 long period. I do not recall at all what period that time

1 was.

2 Q Okay. What's your first recollection of this case?

3 A As far as a date, specific date?

4 Q Well, I'm - I'm trying to find out what you remember and -
5 and when it happened. And I understand that you're not
6 going to be able to say August 1st at 3 o'clock. But I
7 want - I'm - I'm going to try to see if we can pin it down
8 as to when it happened, but what is the first thing that you
9 remember? What is the first thing that you remember?

10 MR. THOMPSON: Let me just make an objection. I
11 tend to be - kind of a standing objection to the whole line
12 of questions about what Mr. Eckhardt knew, when he knew it,
13 things of that nature. But please go ahead and answer the
14 question.

15 A I don't recall a specific date.

16 Q (BY MR. BROWN) Okay.

17 A The pattern as I mentioned is - that we - we conduct regular
18 staff meetings and we discuss issues. One of the issues we
19 discussed is inquiries that staff has received in regards to
20 companies asking if a company is jurisdictional. So
21 whenever that information came to the - to the commission
22 and the staff, it - we - the staff started to discuss it. I
23 have no idea what the date was.

24 Q Okay. Forget about the dates. What's the first thing that
25 you remember?

1 A I remember that we received an inquiry in regards to rates
2 charged by the Cougar Ridge water system and asking whether
3 the commission had approved those rates or whether the
4 commission regulates the company, the Cougar Ridge water
5 system.

6 Q And you have a clear memory that the question was about
7 their rates?

8 A I didn't take the complaint. I don't know what the customer
9 said specifically. The customer - well, the issue was - one
10 of the issues raised was a rate. But I don't know what the
11 customer specifically said. I didn't recall who took the
12 complaint. It could come in a number of ways.

13 Q And the only record of that would be in the file maintained
14 by the analyst?

15 A There may be a record in consumer affairs if it came into
16 consumer affairs and consumer affairs opened a complaint.

17 Q Anywhere else?

18 A No, not that I can - can think of.

19 Q Is it a policy of the water division or - or - of any part
20 of - in any area under your supervision that phone logs be
21 maintained?

22 A No.

23 Q That's just left to the individual discretion of the person
24 involved?

25 A Yes.

1 Q And is there - is there an employee manual that governs how
2 employees conduct their business here?

3 A There is an employee manual that contains lots of
4 information. The commission has lots of policies regarding
5 how the commission works and how people within the agency
6 work. I - I - I know there's not anything in the employee
7 manual about how the cust - company - or the employees do
8 their work.

9 Q Does it - does it govern things like how they interact with
10 the public?

11 A When you say how they interact, I expect there are - I don't
12 know. There may be a policy to be courteous, helpful.

13 Q That would be a policy of yours even though it isn't a
14 stated - even though it may not be a stated policy of the
15 commission, that would be a policy of yours, right, that
16 they're to be courteous and helpful?

17 A I would say it isn't policy. It's certainly what I expect
18 of employees in communicating with anyone, whether they're
19 in the agency or outside the agency.

20 Q And in terms of - by the way, where is the employee manual
21 kept?

22 A Be human resources, I believe, is the keeper of the employee
23 manuals. What I would term it, employee manual. I don't
24 know if it's - that's the name that the commission has given
25 to it.

1 Q We've heard during Mr. Ward's testimony part of it may be
2 on-line in the on-line library. Is that familiar to you?

3 A Certainly some of it is on-line through policies and
4 procedures, for instance, for travel.

5 Q Would that be available to the general public or only
6 available to employees of the commission?

7 A I don't know.

8 Q Who - who maintains employee files, files on employees? Is
9 that human resources?

10 A I don't understand your question.

11 Q Well, there - you don't understand what part of it? Don't
12 you understand what an employee file is?

13 A Yes.

14 Q Okay. Are there - are there not files for each employee?

15 MR. THOMPSON: I'm going to object on relevance.
16 Please go ahead and answer.

17 A Yes, there - human resources maintains a flier - file on
18 each person employed by the commission. And I maintained a
19 file for each person that I supervise.

20 Q (BY MR. BROWN) And what kind of - in the - the file, by the
21 way, the human resources we're speaking of, is that human
22 resources for the WUTC or for the whole state?

23 A For the WUTC.

24 Q Is that located in this building?

25 A Yes.

1 Q And the file that you maintain for each employee that you
2 supervise, what's in those files?

3 A I keep employee evaluations and information that is used to
4 develop those evaluations.

5 Q If - if an employee had been disciplined for anything, would
6 it - would it appear in that file or in the human resources
7 file or both?

8 A It would appear in the human resource file. Depending on
9 the nature of a disciplinary action, it may appear in my
10 files. There are different degrees of discipline. That's
11 what I would - understand it as discipline - disciplinary or
12 corrective action.

13 Q If there - if a member of the public had complained about -
14 or if anybody had complained about an employee that was
15 under your supervision, would there - would that appear in
16 the human resources file or your file or both?

17 A It could be both.

18 Q Are - have - as to any employees that you supervise, have
19 there ever been either - either of those situations,
20 discipline or complaints, that you're aware of?

21 MR. THOMPSON: Objection on the relevance.

22 A Yes.

23 Q (BY MR. BROWN) And is that true as to Mr. Ward?

24 A Yes.

25 Q And what have there been with respect to Mr. Ward?

1 A I - over - well, I have received a - a complaint from an
2 attorney regarding a conversation between the attorney and
3 Mr. Ward.

4 Q Anything else?

5 A Not that I recall.

6 Q Is there any discipline?

7 A No.

8 Q Has he ever been disciplined?

9 Did you - did you meet with anyone including
10 Mr. Thompson in preparation for today's deposition?

11 A Mr. Thompson and I discussed the deposition.

12 MR. THOMPSON: I just caution the witness not
13 to - well, I would object to the extent that the question
14 asks for privileged information, direct the witness to
15 answer --

16 MR. BROWN: I'm not asking anything yet for
17 anything.

18 A As far as the nature of the deposition, I discussed that
19 with Sally Johnson from the AG's office. Sally Johnston.

20 Q (BY MR. BROWN) That's an attorney?

21 A Attorney general, yeah.

22 Q Okay. Did you meet with anyone that wasn't an attorney or
23 talk to anybody that wasn't an attorney about the
24 deposition?

25 A Well, talked to Mr. Ward. I knew he was coming for a

1 definition - deposition. I knew I was at some point.

2 Didn't know when. I mentioned it to many people, Glenn
3 Blackman, Virginia Deferia, support person.

4 Q Virginia what?

5 A Deferia.

6 Q Who is she?

7 A Support person that sits outside here.

8 Q All right.

9 A I asked her to put the note on the door.

10 Q Okay.

11 A Tell her there was a deposition going on. So I talked to
12 many people and told them that - or there was a deposition,
13 that some people - I even - I suspect mentioned it was
14 involving a water company.

15 Q Did you - when you - when you spoke with Mr. Ward about it,
16 did you two discuss the issues relating to this water
17 company?

18 A No. I have not discussed an issue with anyone regarding the
19 deposition, only the fact that it's taking place.

20 Q Okay. Did you - were you shown anything by anybody,
21 including the attorneys, in preparation for this deposition?

22 A Yes.

23 Q Shown any pieces of paper?

24 A Yes.

25 Q What were you shown?

1 A I was provided a list of guidelines or suggestions for -
2 regarding a deposition, explaining what it is, responses -
3 how to respond, et cetera. About 25 points, I think. It
4 was a written document provided by the attorney general.

5 Q What happened to that document?

6 A What happened? It's sitting on my desk.

7 Q Had - let me ask you this: Are there any - besides that
8 document, are there any other documents that relate in any
9 way no matter how tangentially to this case, to this case in
10 your office?

11 A That relate tangentially to this case to - I'm not - I don't
12 understand what you --

13 Q I'm going to rephrase that.

14 A -- what you asked.

15 Q I'm going to rephrase it. I'm asking you if there are any
16 documents of any kind, of any description, that are in your
17 office or in this building that you know about that relate
18 to this case in any way, no matter how tangential that
19 relationship?

20 MR. THOMPSON: I'm going to object to that as
21 extremely broad. Well, there could be a lot of things that
22 relate to it. It's hard to know what --

23 MR. BROWN: And I'm going to object to the
24 speaking objection.

25 MR. THOMPSON: Well, I'm just suggesting that you

1 might want to phrase it differently.

2 Q (BY MR. BROWN) And - do you understand the question? I'm
3 looking for documents that relate to this case. A good
4 example of that would be a document that tells you about
5 what the deposition is going to be like and how to respond
6 to questions. Another one would be notes that you took at
7 any time during your discussions with Mr. Ward. Another one
8 would be a memo from Mr. Ward. Another would be a memo you
9 issued on how we're going to handle the Cougar Ridge water
10 case. And I don't know if the point is getting across here,
11 but my - I'm trying to gather information about what went on
12 in this building, and if something went on in this building
13 about the Cougar Ridge water system, I want to find out
14 about it, and if it generated any pieces of paper, I want to
15 see it. Do you understand the question?

16 A I believe so. And I would say I believe there are many,
17 many documents, perhaps thousands - well, certainly
18 thousands including my calendar which, as an example, when I
19 fill out my calendar today I'll make a note that I spent a
20 certain amount of time on Cougar Ridge and it will just
21 state Cougar Ridge with an arrow showing the - whether it
22 was an hour, hour and a half.

23 Q Okay.

24 A So I make those - that type of note in my calendar. As I
25 mentioned, there's - well, in preparing for staff - staff

1 meetings, we have an agenda that lists water companies
2 that - one of the areas is water companies that staff is
3 reviewing to determine jurisdiction, and the name Cougar
4 Ridge certainly appears on those agendas. There may be
5 notes on those agendas. Every - many of the water cases
6 that the commission has had in the past or meetings may
7 contain some type of information related to the Cougar Ridge
8 water system in that those cases deal with rates and
9 charges, and one of the things we're looking at in Cougar
10 Ridge are rates and charges. So it's - you know, there are
11 many files that relate to some degree.

12 Q Okay.

13 A As to - there are computer files. Everybody has computer
14 files that may relate to Cougar Ridge or water regulation.
15 I can't think of pieces of paper that I have filed in my
16 office specifically related to Cougar Ridge other than
17 perhaps my - obviously my calendar when I write Cougar Ridge
18 on it today. Perhaps the pen notes from staff meeting
19 agendas if . . .

20 Q Okay. Let me pursue what you've said so far. The
21 calendars, do you save those?

22 A I do.

23 Q So you would have --

24 A For a period of time.

25 Q Yeah. Would you have the calendars dating back to July of

1 last year?

2 A Don't know.

3 Q Okay. Would there be any reason that in the next month you
4 would destroy any of those?

5 A Yes.

6 Q Okay. And can I count on you to not do that in the next
7 month or so? And if I can't, I think your attorney will
8 probably instruct you not to.

9 A That's fine. I just got a new calendar, so I'm going to
10 swap it out.

11 Q And I'm going to need you to determine whether or not they
12 do go back to last July at some point. You don't have to do
13 that right now.

14 A Will you provide a written request for - for that or . . .

15 Q Oh, yeah.

16 A Okay.

17 Q Through your attorney.

18 A I don't need to keep notes.

19 Q No. Okay?

20 A Okay.

21 Q How about the agendas for the staff meetings, do you save
22 those?

23 A Not always.

24 Q But some you do?

25 A Some I do.

- 1 Q And what determines whether you save it or not?
- 2 A Whether I made any notes.
- 3 Q Okay. And are those kept like in one place?
- 4 A Yes.
- 5 Q Okay. And so it would be easy for you to see if you kept
- 6 them, all you have to do is go to that one place and look?
- 7 A Yes.
- 8 Q And if you would have some as far back as last July --
- 9 A Again, I don't know. I purge the file on a continuing
- 10 basis.
- 11 Q And again, request we have an understanding that you won't
- 12 do any purging in the next month or so while this case is
- 13 ongoing?
- 14 A Certainly.
- 15 Q Okay. Do you have any files on your computer that relate in
- 16 any way to Cougar Ridge?
- 17 A Yes, many, many files.
- 18 Q All right. And then I'm going to narrow that a little bit.
- 19 Do you have any files that would have been created in the
- 20 last - since last July that relate directly to Cougar Ridge?
- 21 A Yes. I have Cougar Ridge - a Cougar Ridge name on it.
- 22 Q What are those files?
- 23 A E-mails such as the e-mail that was taken out of - of this
- 24 file here.
- 25 Q All right. What else?

1 A Could be a - most likely a Word document related to a
2 specific - a letter, a response, a data request. There - I
3 may have received this as an example. I received this data
4 request in an attachment which I opened and saved.

5 Q Okay. So the - and just so I have an understanding of what
6 might be there, on your computer, one thing you would do is
7 that you would send e-mails?

8 A Yes.

9 Q And another thing that you would do is that you would do
10 word processing?

11 A Yes.

12 Q And you would do that in Microsoft Word?

13 A Generally.

14 Q What other option would there be?

15 A I may - I occasionally do - do essentially word processing
16 in Lotus doing - using new futures or edit futures. I
17 think - I thought was - it may be a Word function.

18 Q And what else do you do on your computer?

19 A Oh, spreadsheets, time sheets.

20 Q Would you have any spreadsheets that relate to Cougar Ridge?

21 A Yes.

22 Q What are those about?

23 A Spreadsheet - prepared a spreadsheet to attach to a
24 declaration that I prepared last week regarding calculation
25 of average and all revenue per customer.

- 1 Q And might there be others?
- 2 A There might be. I don't know for certain that that is the
3 only spreadsheet in that - in my - in my file.
- 4 Q You - you used the word "time sheets" --
- 5 A Mm-hmm.
- 6 Q -- what do you prepare time sheets for?
- 7 A Staff reports, records, time that we spend on various
8 industries and dockets and for cost tracking purposes.
- 9 Q Would there be time sheets that relate to this case?
- 10 A Yes. This a case - has a doc number, and I've recorded that
11 docket number on my time sheet and --
- 12 Q Did it have a - did it have a docket number before the
13 pleading was filed? Do you know what I mean?
- 14 A No, there was not a docket - prior to the commission
15 requesting the - or the - there was no docket before the
16 staff prepared and filed a request for the commission to
17 open the jurisdiction proceeding.
- 18 Q And does that - should I conclude from that that there would
19 be no time sheets prior to that?
- 20 A Well, there are time sheets but I don't - doubt time sheets
21 would reflect anything to Cougar Ridge.
- 22 Q Mm-hmm. And so if the --
- 23 A I'm speaking --
- 24 Q I'll represent to you in September of last year Mr. Ward
25 spent quite a bit of time working on this case, some of it

1 interacting with me. And the question is: Would that have
2 generated time sheets with the - with the Cougar Ridge name
3 on it?

4 A My comments were directed to the way I prepare my time
5 sheets, and not specifically to Mr. Ward and the way he
6 prepares his time sheets. I don't know whether he
7 identified the Cougar Ridge as a project and recorded it
8 separately on to his time sheet. Not required.

9 Q What does he do with his time sheets?

10 A He submits them to me for review and I review them and
11 forward the final time - time sheet to the records person to
12 the business office for recording into the cost accounting.

13 Q And so his time sheets were like monthly, weekly? What -
14 how do they come to you?

15 A It's a - on - based on a - on a pay period, 15th of the
16 month, 1st - no, the 15th, 16th through the end of the
17 month.

18 Q And so - just so I'm clear on that, if a time sheet comes in
19 to you, it's not strictly for pay purposes, it's also for
20 administrative purposes so you would know what he's working
21 on; is that right?

22 A Well, could be lots of purposes. What I look at is the work
23 that an individual has done during the pay period and the
24 type - type of dockets and projects that were worked on.

25 Q Okay.

1 A That's what I --

2 Q So it's just not a paid - a pay document, it has other
3 purposes?

4 A I'm not sure it has anything to do specifically with pay.

5 Q Okay.

6 A But I don't know that.

7 Q When you said it went by pay periods, I thought it was some
8 sort of report of hours of work or something like that for
9 pay.

10 A Well, the hours worked are on the time sheet, but I don't
11 know that any of that information is used for pay purpose.

12 Q Okay. I get it.

13 A It's a tracking --

14 Q Yeah, I get it.

15 A -- mechanism.

16 Q Okay. I'm going to - I - I - this - it's going to be clear
17 to me that we're probably going to need to go on with this
18 longer than the allotted time, so I'm going to do the best I
19 can here, but I'm going to jump around and get a couple
20 issues that are important to me. I'm operating under the
21 assumption here or the belief that you are the individual
22 that decided that the staff would ask the commission to
23 assert jurisdiction over this water system. Is that a
24 correct or incorrect belief?

25 A That's correct.

1 Q Okay. And when did you make that decision?

2 A Again, the date, I don't know.

3 Q Well, let me - let me talk about the timeline again.

4 A Okay.

5 Q The - this thing first reared its head in July of last year,
6 and then in September there was a flurry of activity mostly
7 between Mr. Ward and myself, and in October is when I
8 announced that my client - my client was waiving some
9 charges to remain under the jurisdictional threshold, and -
10 and then there was virtually no activity in November and
11 December, and then in January it's kind of started up again.
12 And then I'm not even sure when the - when the document was
13 filed, which strikes me it was like March.

14 MR. BROWN: When - when?

15 MR. THOMPSON: I don't have access to the file.

16 Q (BY MR. BROWN) Okay. So having said all of that, do you
17 remember when in that timeline would you have made the
18 decision for the staff to go ahead with its request to the
19 commission?

20 A I don't. Again, I don't recall the date. But taking -
21 assuming what you have said, if the commission staff
22 requested the commission to issue a - a jurisdictional
23 proceeding in March 2004, I assume --

24 Q Yeah. Maybe I can be more precise about that.

25 A -- the decision to ask the commission to do that was made

1 immediately prior to that.

2 Q Okay.

3 A I can't say whether it was a day or a week, or again, give
4 you a date. It was immediately prior to that.

5 Q Well, the first - the first - the order issued by the
6 commission was March 1st. So sometime prior to March 1st
7 something would have happened?

8 A Yes.

9 Q And --

10 A And my - my response is it's relatively near March 1st.

11 Q All right. And tell me - tell me what you remember about
12 the making of that decision. What was presented to you?

13 A The information that the company provided to staff, some of
14 which is in this file but not all of it. And as far as
15 presented is the discussion of the application of the
16 commission's rule, water rules regarding calculation of the
17 average annual revenue per customer, and discussions with my
18 supervisor at the time, Dixie Linnenbrink, or the director
19 of regulatory services, discussed issues with my AG and
20 discussed the issue with the commissioners individually as
21 to the nature of the issue and the staff recommendation to
22 issue a jurisdictional proceeding and a complaint against
23 the - so there was broad - broad discussion with Mr. Ward,
24 Mr. Kermode, my supervisor, attorney, commissioners. Well
25 said . . .

1 I'm sorry. Your question was that led up to the
2 decision. The decision was made to - to request
3 commissioners to issue a jurisdictional proceeding and a
4 complaint prior to talking to the commissioners.

5 Q Okay. Were you aware that at one point in time Mr. Ward
6 believed that the attorney general's office had issued a
7 decision that the - or had communicated a - an opinion that
8 the jurisdictional threshold had not been met?

9 A Was I aware at one - at what time?

10 Q Well, the exact time would be early January this year.

11 A Well, you know - I don't recall.

12 Q I don't want to get bogged down in dates here.

13 A Okay.

14 Q I'm - let's say ever. Did you ever discuss the fact that
15 the attorney general's office had said no jurisdiction?

16 A Yes. Just today when I walked down to get this file
17 Mr. Thompson mentioned that that was a question that was
18 asked.

19 Q Okay. And were you aware of that before today?

20 A I don't recall specifically that I was aware of that before
21 today.

22 Q Okay. When - when you discussed this with Dixie, what did
23 you - what did you and Dixie discuss? Did you go in and say
24 this thing is a slam dunk? Did you say this - there's no
25 question about it, there's a big fight about it? What did

1 you say to her or him? I don't even know, is that a her,
2 Dixie?

3 A Dixie Linnenbrink is a woman.

4 Q Tell me about that discussion.

5 A As - as - as I recall the discussion was very neutral and
6 fact based. Here are the facts. By staff's calculation the
7 company exceeded jurisdiction. Subsequent to the point at
8 which staff believes the company exceeded the threshold for
9 jurisdiction the company changed its rates, both its service
10 rates on a monthly basis and the connection charges; that we
11 had received several complaints from customers specifically
12 regarding the connection charges; that the company had
13 rolled back its rates - and I don't remember the exact
14 nature - but had not billed customers for several months
15 towards the end of - I believe it was 2003, in an effort to
16 lower the average rate charged customers during the 2003
17 calendar period. I think that was - pretty well summarizes
18 it.

19 Q Did you make a recommendation to her?

20 A Yes. I told her that in my opinion the company had exceeded
21 the average annual revenue per customer threshold as
22 calculated in the commission' rules 48110, and that the
23 company was jurisdictional prior to raising a connection
24 charge and prior to raising monthly service rates customers.

25 Q Prior to raising the monthly service rates?

1 A Yes.

2 Q Tell me what - what you mean by that. I don't understand
3 that.

4 A Subsequent to the date in which staff calculates the company
5 became jurisdictional, the company raised the monthly
6 service rates of customers.

7 Q Did you - when you talked to Dixie, did you tell her that
8 there was a down side to this or a competing view? Did you
9 say here's - you gave her the pros, did you give her cons?

10 A I explained that the company interpreted the rule as
11 applying on a calendar year basis, not on a fiscal year
12 basis as set forth in the rule.

13 Q And - and your - your opinion is that the rule is based on a
14 fiscal year?

15 A Yes.

16 Q And a fiscal year is defined how?

17 A The most recent 12-month period.

18 Q And did you talk to Dixie about policy?

19 A Yes.

20 Q Okay. And what was that discussion?

21 A A discussion with staff that had attempted to work with the
22 company to file an initial tariff as required by the rules
23 to become jurisdictional, that the - the company disagreed
24 and there was nothing more that staff could do, and staff
25 felt that the only way for the - the way that the commission

1 would assert jurisdictional is through a jurisdictional
2 proceeding.

3 Q When you made - when you were in the process of making this
4 decision, were you aware that the staff had advanced an
5 incorrect date for the commencement of jurisdiction?

6 A I don't recall. I don't recall what - what the various
7 dates were or what the calculations were.

8 Q Okay. Were you - were you aware that - were you aware that
9 your staff had alleged that the jurisdiction arose - at one
10 point had alleged the jurisdiction arose in the year 2002?

11 MR. THOMPSON: I'll object to that. Assumes
12 facts not in evidence.

13 A I don't recall what the - what the - what the communication
14 were over that time frame and what was identified at what
15 time.

16 Q And . . .

17 MR. BROWN: Yeah. Sure. Go ahead.

18

19 (Brief pause in proceedings.)

20

21 Q (BY MR. BROWN) Did you ever discuss with anybody the wisdom
22 or the utility of not seeking jurisdiction over this company
23 because they had gone back under the jurisdictional
24 threshold?

25 A Yes.

1 Q And who did you discuss that with?

2 A Again, it would have been, I'm sure Danny or Jim Ward,
3 Danny Kermode, Dixie Linnenbrink, my attorney. I believe I
4 just - I also - that issue was discussed with Chairwoman
5 Sholwater, but I don't recall specifically with other
6 commissioners.

7 Q Is it - is it common practice in a contested matter for you
8 folks to go talk to the commissioners about the case?

9 A In a situation such as this, yes. It - the discussions were
10 held prior - prior to the commission - or the staff that
11 commission issue an order commencing that jurisdictional
12 proceeding as far as providing the basis and the - the
13 background of - of the issues to demonstrate that there's -
14 there's cause to issue a jurisdictional proceeding or a
15 proceeding to determine whether jurisdiction has been met.

16 Q So you just go down to her office and schmoozed about it, is
17 that what happens?

18 A No, I don't recall that I've ever schmoozed with anyone here
19 at the commission. But the process was that we - in
20 conversation with my attorney I asked for the - advice on
21 both proper application of the statutes, that information
22 was provided to the commissioners, and a memorandum, I
23 think, the facts of the case and the interpretation of the -
24 of the statutes as background to commissioners, and then I
25 met with each of the commissioners individually along with

1 Mr. Thompson, and Dixie Linnenbrink was present in those
2 discussions.

3 Q Was any record - was any record kept of that, notes,
4 anything?

5 A I don't know whether Mr. Thompson, Chairwoman Sholwater,
6 other commissioners or Dixie Linnenbrink kept notes. I
7 don't recall if I - that I did not take notes --

8 Q All right.

9 A -- or take notes during the discussions.

10 MR. BROWN: Okay. Well, we're out of time right
11 now, so I'm going to - we'll continue this fun at another
12 time. Thank you.

13

14 (Concluded at 1:30 p.m.)

15 (Signature reserved.)

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C E R T I F I C A T E

I, CARMAN PRANTE, a duly authorized Notary Public in and for the State of Washington, residing at Elma, do hereby certify:

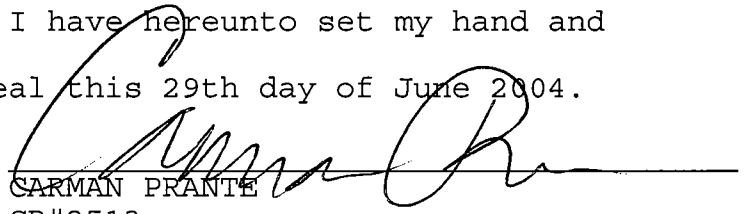
That the foregoing deposition of EUGENE ECKHARDT was taken before me on the 15th day of June, 2004, and thereafter transcribed by me by means of computer-aided transcription; that the deposition is a full, true and complete transcript of the testimony of said witness;

That the witness, before examination was by me duly sworn to testify the truth, the whole truth and nothing but the truth, and that the witness reserved signature;

That I am not a relative, employee, attorney or counsel of any party to this action or relative or employee of any such attorney or counsel, and I am not financially interested in the said action or the outcome thereof;

That I shall herewith securely seal the deposition of EUGENE ECKHARDT and promptly serve the same upon Mr. Thomas Brown, counsel for the defendant.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal this 29th day of June 2004.


CARMAN PRANTE
CR#2513