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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

JAMES WARD

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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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 10:00 a.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 JAMES WARD, Having been first duly sworn
12 by the Notary, testified as
13 follows:

14
15

16 EXAMINATION
17

18 BY MR. BROWN:

19 Q Would you tell us your full name, please.

20 A James A. Ward.

21 Q And what's your business address?

22 A 1300 Evergreen Park Drive, Olympia.

23 Q And what - that address is the Washington Utilities and
24 Transportation Commission; is that correct?

25 A Yes, it is.

- 1 Q And you're an employee of that commission?
- 2 A Yes.
- 3 Q And what's your job title?
- 4 A Regulatory analyst.
- 5 Q Can you give me a brief description of what that means.
- 6 A Essentially when companies file for rate changes as part of
- 7 their tariff, I review those rate changes and present that
- 8 information to the commissioners with a recommendation.
- 9 Q In the structure of the commission are you in some division
- 10 or separated part, like water as opposed to telephones or
- 11 something like that?
- 12 A I am part of the regulatory services division. The section
- 13 that I operate, this is the solid waste and water section.
- 14 Q Is that section subdivided in any way?
- 15 A Solid waste and water.
- 16 Q Okay. So are you in the water part of solid waste and
- 17 water?
- 18 A Yes.
- 19 Q And how many employees are in that subdivision, the water
- 20 subdivision?
- 21 A Currently there are two regulatory analysts.
- 22 Q Who is the other one?
- 23 A Danny Kermode, K-e-r-m-o-d-e.
- 24 Q And how are jobs allocated as between you and Danny? Is it
- 25 first come, first serve, you alternate what comes through

1 the door? How does it happen?

2 A Mainly, I leave the filings. Mr. Kermode also works in the
3 solid waste section and does other agency work as I do from
4 time to time.

5 Q Should I interpret that to mean that you handle all
6 regulatory matters that relate to water?

7 A No.

8 Q He does handle some?

9 A Yes.

10 Q And - and what - what would be different about the ones that
11 he handles as opposed to the ones that you handle?

12 A Nothing.

13 Q And how do you divide those? Based on workload?

14 A Typically workload.

15 Q And does the water subdivision have other employees besides
16 two regulatory analysts?

17 A No.

18 Q And your supervisor is Mr. Eckhardt who was here a few
19 minutes ago; is that right?

20 A Yes.

21 Q And Mr. Eckhardt, tell me what his job description is.

22 A He is the assistant director for solid waste and water.

23 Q And he's your immediate supervisor; is that right?

24 A Yes.

25 Q And who is his immediate supervisor?

1 A Currently that is Glenn Blackman. He is the acting
2 regulatory services director.

3 Q And who does Glenn Blackman report to?

4 A All employees are responsible to the secretary of the
5 commission, that would be Carol Washburn, and to the
6 commissioners.

7 Q So a Carol Washburn would be the - like the executive
8 officer that runs things on a day-to-day basis; is that a
9 fair statement?

10 A To the best of my knowledge, yes.

11 Q How many commissioners are there?

12 A Three commissioners.

13 Q Do you know their names?

14 A Yes, I do.

15 Q Can you tell me their names?

16 A Yes, I can. Marilyn Sholwater. She's the chairperson.
17 Patrick Oshie, Richard Hemsted.

18 Q Do you - how long have you worked for the commission?

19 A Almost 15 years.

20 Q In all of those 15 years has your job been related to the
21 regulatory function of the commission?

22 A Yes.

23 Q And has your job changed significantly during those 15
24 years?

25 A No.

1 Q Do you supervise any employees?

2 A No.

3 Q Do you routinely find yourself in contact with the general
4 public as - and I say that as opposed to employees of
5 entities that you regulate. Do you find yourself talking to
6 the general public?

7 A Yes.

8 Q And what are the circumstances of that usually?

9 A Typically questions of inquiry about regulation and water
10 utilities. Also in context of rate cases.

11 Q How does the public get to you? Is there some sort of
12 public help line or something like that that refers public
13 questions to you?

14 A There are two ways. The commission does have publications
15 available on the publications. There's a 1-800 number.
16 They can be routed to me through that number.

17 Q Is - is that manned or is it computer manned?

18 A It is menu driven to a point. The other method is through
19 our publications. My direct phone number is listed in
20 dealing with water companies and regulation.

21 Q Are those publications, publications of the water division?

22 A Some are, some are publications of the utility commission
23 itself.

24 Q Can you tell me what publications the water division has
25 created?

- 1 A Not all of them from memory, no.
- 2 Q How many are there roughly?
- 3 A I assume you're speaking in terms of publication, any
4 single-page type items up to multiple-page briefs?
- 5 Q Yeah.
- 6 A Upwards of two dozen.
- 7 Q Is there a list of those available somewhere?
- 8 A Normally through our web site.
- 9 Q Are all two dozen plus publications mentioned on your web
10 site?
- 11 A No, they're not.
- 12 Q Which ones aren't?
- 13 A I don't know off the top of my head.
- 14 Q Is there a compilation of all of the water division
15 publications somewhere, a list?
- 16 A No, there is not.
- 17 Q If someone wanted to find out what all those publications
18 were, how - how would a person do that? By asking you to
19 compile a list?
- 20 A That would be one way.
- 21 Q Are there any other ways?
- 22 A By going through our records center with a public request
23 for information.
- 24 Q If one went to the records center with a request for
25 information, would - would that request end up on your desk

1 anyway?

2 A For the most part, yes.

3 Q Is there any sort of employee manual for employees of the
4 WUTC?

5 A Yes, there is.

6 Q Do you know the name of it?

7 A I believe it's simply called the policy manual.

8 Q Can you give me some idea of the size of that document? Is
9 that - let - let me make it easy. Is it more or less than
10 100 pages?

11 A Off the top of my head I would not know.

12 Q Have you seen the manual?

13 A Not recently in its entire form. Most of it has been
14 transposed electronically.

15 Q Where does it reside electronically?

16 A In our on-line library database of information.

17 Q Is that - is that accessible by the public?

18 A I don't know.

19 Q And tell me the - give me an idea of - how long has it been
20 since you've seen any part of the manual?

21 A I see pieces of it continually as they're revised and
22 information is put out to the commission employees about
23 those revisions.

24 Q Does the - does the manual have an index?

25 A I believe it would, yes.

1 MR. THOMPSON: Counsel, I am just going to put in
2 an objection here that can just be continuing about the
3 employee manual just on grounds of relevance. But you can
4 go ahead and answer questions.

5 Q (BY MR. BROWN) Is the employee manual - does it concern
6 itself with traditional personnel issues like vacations,
7 holidays, that sort of thing?

8 A Yes.

9 Q Does it have - does it have sections on dealing with the
10 public?

11 A Yes.

12 Q Does it have sections on the mission of the WUTC?

13 A I believe it does.

14 Q Is the index currently in printed form as opposed to
15 electronic?

16 A I don't know.

17 Q Did - at your work station, do you have the manual in some
18 form?

19 A I don't know. I have access electronically to the manual.

20 Q Is the - is your access to the manual at this database of
21 information like - I don't really have the - I don't know
22 what the correct phrase for this - but is it like part of an
23 internal network that all employees of the WUTC can access?
24 Is that what it is?

25 A To the best of my knowledge, yes.

1 Q What is the name of that network? Does it have a name?

2 A I believe this particular document would reside in the
3 on-line library, that is the name of the database that I'm
4 familiar with to access that information.

5 Q When you - when you turn on your computer in the morning,
6 are you looking at like a Windows desktop? Is that what you
7 look at?

8 A Yes.

9 Q And when you - when you start work what is the - what's the
10 first icon that you click on in the morning?

11 A I don't.

12 Q Do you use a computer during the day?

13 A Yes.

14 Q What do you use a computer for?

15 A Mainly word processing, electronic spreadsheets, and e-mail.

16 Q What word processing program do you use?

17 A Currently I believe we use Word.

18 Q And if you were to - if you were to work on a piece of word
19 processing in - let's say in the Cougar Ridge case and you
20 wanted to save it, what would you save it under? Would you
21 give it a name?

22 A Yes.

23 Q What kind - what - would you give it a name that has
24 something to do with the Cougar Ridge case?

25 A Typically, yes.

1 Q And so give me an example of - say the very first document
2 that you worked on, what would it be called?

3 A Unreg question.

4 Q Well, let me - I - I think we mixed up there. But I'm glad
5 you answered it that way.

6 Did you create word processing documents with respect
7 to Cougar Ridge?

8 A Yes, I did.

9 Q And what was that first document that you just mentioned?

10 A A letter addressed to the company requesting information and
11 that a questionnaire be filled out to support the
12 information.

13 Q Okay. And I want to go back to my question about naming the
14 document. Would - would - when you named the document like
15 unreg question, would you give it a name that identified it
16 as being related to Cougar Ridge?

17 A Not at that point, no.

18 Q At any later point would you have?

19 A I may have if I do separate revisions on that one.

20 Q Okay. So - so in your word processing - well, in your
21 computer to - to - that - the full name of that document
22 would be unreg question, dot, doc; is that right?

23 A Typically, but not always. If you're asking for specific
24 names, I don't remember.

25 Q Okay. When you - I take it that you participated in the

1 production of your file materials with Mr. Thompson here; is
2 that right?

3 A Yes.

4 Q And did - when you did that, did you make a search of all of
5 the documents saved on your computer?

6 A No.

7 Q Okay. So if there are any documents on your computer
8 relating to Cougar Ridge that weren't printed and - and in
9 your file, those weren't disclosed, right?

10 A Could you rephrase the question?

11 Q I'm asking you if every - if you included in the materials
12 that you gave to Mr. Thompson, any documents that were on
13 your computer but not printed?

14 A I believe no was the answer to that.

15 Q Okay. Are you --

16 MR. THOMPSON: Just an objection. I think it
17 might have assumed facts not in evidence. Well, maybe if
18 you could just. . .

19 Q (BY MR. BROWN) Are there such documents?

20 A Rephrase the question again.

21 Q I'm asking you if there are documents relating to Cougar
22 Ridge on your computer that weren't printed?

23 A No.

24 Q And did you make a comparison between the documents on your
25 computer and the printed materials you gave to Mr. Thompson?

1 A No.

2 Q Okay. So it's possible that there may be materials on your
3 computer that weren't disclosed to me?

4 A No.

5 Q Why is that not possible?

6 A Because I keep things in sub directories and file folders
7 and I printed everything from the file folders and sub
8 directories related to Cougar Ridge.

9 Q Did you do that as part of this disclosure process with
10 Mr. Thompson?

11 A Yes.

12 Q Okay. I - I'm a little confused, because I understood a
13 minute ago that you didn't do that. But you did, in fact,
14 go through and find every document and printed it?

15 A Yes.

16 Q And so - and the way you know that you did every document is
17 because you printed everything that was in a particular sub
18 directory?

19 A Yes.

20 Q What's the name of that sub directory?

21 A Cougar Ridge.

22 Q What's the name of the parent directory of that sub
23 directory?

24 A Water companies.

25 Q What's the name of the parent directory of that - of water

1 companies?

2 A That is the H drive, which is part of the commission's - the
3 computer system.

4 Q Okay. Are there any sub directories of Cougar Ridge?

5 A I just said there was one, yes. Oh, sub directories of
6 Cougar Ridge? No, not to my knowledge.

7 Q Were any documents that you created with reference to Cougar
8 Ridge ever deleted?

9 A I don't believe so.

10 Q Do you have a shredding service in your office where
11 documents are shredded?

12 A Yes, we do.

13 Q And do you - in order to shred documents, do you just put
14 them in a bin? Is that what you do?

15 A I do not shred anything.

16 Q If you wanted to shred anything, what would you do?

17 A I would take it to the records center.

18 Q Is that located in this building?

19 A Yes, it is.

20 Q Do they have like a shredding bin?

21 A Yes, they do.

22 Q You've never shredded anything?

23 A No.

24 Q Were any documents relating to Cougar Ridge ever thrown away
25 or otherwise destroyed?

- 1 A Not to my knowledge.
- 2 Q Does anyone else have access to the files other than you?
- 3 A Electronically? Or paper wise?
- 4 Q Well, let's say paper wise to begin with.
- 5 A Yes. They're available in my office.
- 6 Q Okay. Do you share an office with anyone?
- 7 A No, I have a cubicle.
- 8 Q Does anyone access the paper files relating to Cougar Ridge
9 on a regular basis other than you?
- 10 A No.
- 11 Q Now, a second ago you asked - you responded by asking me if
12 I was talking about the electronic files. Are there
13 electronic files relating to Cougar Ridge?
- 14 A Yes.
- 15 Q Okay. And tell me what those are.
- 16 A I believe we discussed those. Mainly the word processing
17 letters, the Excel spreadsheets, and e-mails.
- 18 Q Is there a - is there a - and those reside on your computer
19 exclusively, I would - I would --
- 20 A No, none of those do. They reside on the hard drive of the
21 commission on a sub directory called H sub directory.
- 22 Q So if you do - if you do something with Microsoft Word, you
23 end up storing it on this H drive; is that - is that a
24 correct assumption?
- 25 A Yes.

1 Q Is the same also true of spreadsheets that you create?

2 A Yes.

3 Q And what's your e-mail program?

4 A We use Lotus Notes, I believe is the name of that program.

5 Q And do the copies of e-mails also reside on this H drive?

6 A I have no idea where they reside.

7 Q Other than word processing documents and spreadsheets and
8 e-mail, would any information relating to Cougar Ridge exist
9 anywhere on any WUTC computers?

10 A Not to my knowledge.

11 Q Okay. Now, let's talk about the time line of this case.

12 What was the very first contact you received relating
13 to Cougar Ridge?

14 A As I recall, was an inquiry from a customer about the rates
15 back charged by the company.

16 Q And how did that inquiry come to you?

17 A I don't recall first point of contact, whether it was via
18 e-mail, phone, or internal discussions.

19 Q If we had to know the answer to that question, how would we
20 find that out?

21 A I don't know.

22 Q Would it be reflected in your paper file?

23 A Some would, yes. I don't know if first point of contact
24 would be reflected in there, or the origin of that first
25 point of contact. I don't believe that would be in there.

1 Q Is your - is your paper file maintained in chronological
2 order?

3 A For the most part, yes.

4 Q And so if we went - if we had your paper file here and we
5 went to the part - to the earliest point we would see
6 whatever was generated with respect to an early contact?

7 A Yes.

8 Q But it might - you're saying it might - there might not be a
9 paper record of the very first contact; is that --

10 A Right.

11 Q And if there's no paper record of the very first contact,
12 what would be your understanding of how that got to you if
13 there's no paper record?

14 A That either I requested the information be provided after
15 contacting the customer, or I told someone else that I would
16 need some information if they were contacted by the
17 customer.

18 Q And does that - should I assume from that that we're talking
19 about a phone call?

20 A Most likely, yes.

21 Q If - if you got a phone call and you were respond - and
22 there was no piece of paper in front of you, would you have
23 made notes?

24 A I keep a phone log of when and who, but I don't keep notes.

25 Q Do you still have that phone log?

1 A For what period of time?

2 Q Last year.

3 A I may.

4 Q If you don't have it, what would have happened to it?

5 A I would have thrown it away.

6 Q Okay. And is there - is there any chance that in the next
7 month or so you would be throwing a phone log away?

8 A Typically, no.

9 Q Okay.

10 MR. BROWN: Maybe I could ask Counsel to be sure
11 that nothing gets thrown away in the next month. Okay.

12 Q (BY MR. BROWN) And so if we're talking about a phone contact
13 we would see - we would see this in your phone log, right?

14 A If it was from an external source, yes.

15 Q So you only log external phone calls; is that right?

16 A Yes.

17 Q And if somebody calls you about Cougar Ridge and you're
18 dealing with that, am I understanding correctly that you
19 don't - you - you do that all out of your head? You don't
20 take - make any notes at all?

21 A Typically, no, don't take notes.

22 Q And you said your recollection was - and - and in this case
23 as we sit here today, we don't know whether the first
24 inquiry had a piece of paper connected to it or not; is that
25 right?

- 1 A True.
- 2 Q If you had your file here in front of you, you would be able
3 to tell, right?
- 4 A No.
- 5 Q Why not?
- 6 A I still don't know first point of contact. What I believe
7 had - my file has is the first paper provided to me by a
8 customer showing the charges. What generated that paper
9 coming to me, I don't know that first point of contact, if
10 that was a telephone call, internal or external.
- 11 Q Do you know when it was?
- 12 A Sometime in July of last year, I believe.
- 13 Q What did you do in response to that?
- 14 A When I had the information about the company, I sent a
15 questionnaire to the company.
- 16 Q Your - the attorney has supplied to me a copy of a letter
17 dated July 21st, 2003 addressed to you from somebody named
18 Mark Hohman. And I'll just show you that. It looks like it
19 has a couple of attachments. Does that look familiar to
20 you?
- 21 A (Perusing.) Yes, it does.
- 22 Q Do you believe that came out of your file?
- 23 A Yes, I do.
- 24 Q Do you believe this is the very first contact with respect
25 to Cougar Ridge? Let - let me rephrase the question. Do

1 you believe this is the very first piece of paper in your
2 file relating to Cougar Ridge?

3 A Yes, I believe it is.

4 Q And if we had your file in front of us here now - and I
5 would again make that request that that file be here but
6 it - that request has been rejected. And we looked at the -
7 and we looked at the chronological order of things, do you
8 believe that this is the first piece of paper chronological
9 order?

10 A Yes, I believe it is.

11 Q And there would be no handwritten notes or anything under
12 that showing that they were in prior chronological order?

13 A No.

14 MR. THOMPSON: I'd like to make a clarification
15 at this point just regarding the statement the request for
16 the file was not honored. I have provided that - the
17 portion of our responses to the - to the company's data
18 request that are Mr. Wards' file. We can certainly use
19 that.

20 MR. BROWN: Did you see the file?

21 MR. THOMPSON: Well, I don't know. This is - I -

22 MR. BROWN: Well, you're talking --

23 MR. THOMPSON: It's not my deposition.

24 MR. BROWN: I know. But you started talking.

25 MR. THOMPSON: I just wanted to clarify that we

1 have --

2 MR. BROWN: Have you seen the file?

3 MR. THOMPSON: The file was requested as part of
4 the data request.

5 MR. BROWN: Yeah. I understand. But sometimes -
6 sometimes people make perfectly innocent editing decisions,
7 and I - I've been doing this for over 30 years, and I have
8 people that have told me over and over again that they've
9 produced every piece of paper, and then we get in the
10 deposition and we look at it and we find dozens of pieces of
11 paper they haven't produced. It happens all of the time.

12 I'm not attributing any evil intent. But I'm saying
13 that - that this process of discovery is, indeed, a journey
14 of discovery, and we find things. And what I want to do is
15 make sure that at least another - if I'm not going to get to
16 see it, which you're restricting me from, I want to make
17 sure that at least another set of eyes has looked at it and
18 said, yes, everything has been disclosed. And that's -
19 that's what I'm seeking here. And I think that the easiest
20 way to do that would be to haul the file in here and let's
21 have a look at it, and if there's a piece of paper that you
22 don't want me to look at, tell me you don't want me to look
23 at it and we can fight about that later.

24 MR. THOMPSON: Well, the request was made
25 already. I mean this is a - this is a level removed. When

1 we provided the information through the data request,
2 that's - we've already done that process. It's - I don't
3 want to go through the process and do the process of calling
4 it for privileged and work product while I sit in front of
5 you. I mean that just doesn't - doesn't make sense to me.

6 MR. BROWN: Well, believe me, I understand that
7 you don't want to do that. I - I've got that message
8 totally. It's on board. But my point is, is that the
9 discovery process is designed to get us around some of those
10 little human foibles that do occur, namely that people
11 dismiss things, decide that things aren't important, maybe
12 things like phone logs. We found out here today about phone
13 logs, and you would say - you would say to me, oh, well,
14 that's - I didn't know that that was important, you know, or
15 I didn't know that was relevant. And what we're trying to
16 do here is we're trying to collect information, and that's
17 all I want to do is collect information.

18 MR. THOMPSON: I understand. And . . .

19 MR. BROWN: Okay.

20 MR. THOMPSON: Okay.

21 MR. BROWN: I'm going to - I'm going to formally
22 request that the actual working file, if necessary, be
23 reviewed in camera by the judge to determine what should and
24 should not be redacted. It would be a lot easier to do it
25 here.

1 MR. THOMPSON: Just for clarification, are you
2 suggesting that - in other words, are you - you challenging
3 the things that we've designated as attorney-client or --

4 MR. BROWN: Oh, I'm definitely - I told you I'm
5 challenging those.

6 MR. THOMPSON: Okay. Well --

7 MR. BROWN: But I - I also want to be sure that
8 we've - that - I also want to be sure that all the documents
9 have been accounted for, things like phone logs and other
10 things that we're learning here are important, and there may
11 be - I'm - I'm visualizing maybe handwritten telephone memos
12 in the file that somebody said, well, that's not important,
13 that's not important, that's not important. And that's why
14 I asked if you had seen it. Because somebody may have -
15 somebody may have made those little decisions before you
16 ever saw it. So all I want to do is gather the information
17 that I'm entitled to. That's all I want to do.

18 MR. THOMPSON: We have no intention of preventing
19 you from doing that. In fact, I believe we've already done
20 it . . .

21 MR. BROWN: Well, you concede that the phone logs
22 aren't here, right?

23 MR. THOMPSON: Well, I would have to look at
24 whether - I don't know. We're having this argument on the
25 record in deposition, but --

1 MR. BROWN: To make a record.

2 MR. THOMPSON: Okay. You know, it would require
3 reviewing the - what was requested and - I don't know.

4 MR. BROWN: Okay.

5 Q (BY MR. BROWN) Okay. So in July of 2003 you got some sort
6 of inquiry and it's possible, but not likely, in your view
7 that it could have occurred earlier then; is that a fair
8 statement?

9 A Yes, that is fair.

10 Q Because you don't know when it first occurred; is that
11 right?

12 A No, I don't.

13 Q Okay. And in response to that you - it appears that you
14 asked whoever complained to you for something in writing; is
15 that a fair statement?

16 A Yes.

17 Q Okay. And then you got this letter of July 21st from
18 Mr. Hohman; is that right?

19 A I believe so.

20 Q Okay. Now, would you agree with me that the issue that was
21 brought to your attention was the connection fee?

22 A Yes.

23 Q Okay. No one was complaining about the rates, right?

24 A Not at that point, no.

25 Q Okay. At any point was anyone complaining about the rates?

1 A To the best of my recollection, no.

2 Q Okay. This was all about the connection fee, right?

3 A Yes.

4 Q Okay. And would you agree with me that based on your
5 training and experience, the issue of connection fees was
6 not relevant to jurisdiction?

7 A Yes.

8 Q The - the - and to put it in more lay terms, the question of
9 whether or not the WUTC had jurisdiction had absolutely
10 nothing to do with connection fees, right?

11 A Right.

12 Q Okay.

13 MR. THOMPSON: I'm going to object. That's
14 calling for a legal conclusion.

15 Q (BY MR. BROWN) And so - what did you - would you have -
16 when - when somebody complained about their system, first of
17 all, would you have known just from your own internal data
18 bank that this was a non-regulated system, or did you have
19 to go check?

20 A I had to check.

21 Q Okay. And did you do that?

22 A Yes.

23 Q And how did you do that?

24 A Reviewed the tariffs that we have for the name of Cougar
25 Ridge, then we viewed information from the Department of

1 Health about Cougar Ridge.

2 Q Did you do that on the computer?

3 A The information from Cougar Ridge with the Department of
4 Health, yes.

5 Q And how about the information relating to the tariffs?

6 A No.

7 Q And where - where would you have reviewed that?

8 A From the tariffs themselves that we have on file.

9 Q And would that have been a paper file?

10 A Yes.

11 Q And - and would you have gone to a paper file somewhere and
12 looked in alphabetical order and found there was nothing for
13 Cougar Ridge, is that it?

14 A Yes.

15 Q Or would you have looked at a list?

16 A Paper file.

17 Q Okay. And what - what I'm trying to get to here, is that
18 before - when - when you checked, am I understanding
19 correctly that nowhere in this building would there have
20 been a file for Cougar Ridge?

21 A I cannot say that for certain.

22 Q Okay. But - but in - as far as your world is concerned and
23 as far as you could see, would that have been the case, no
24 file?

25 A That would have been the case.

1 Q Okay. And based on that you - and based on the fact that
2 you saw that there was a system registered with the
3 Department of Health, you concluded that what you had was
4 a - an unregulated water system somewhere in Thurston
5 County?

6 A Yes.

7 Q Okay. And did you receive any other complaints other than
8 Mr. Hohman's? At the beginning I'm talking about.

9 A I don't recall at the beginning of receiving any other
10 complaints.

11 Q Okay. And so you subsequently sent a letter dated July
12 25th, which would have been one day after you got this
13 letter from Mr. Hohman. This - the letter from Mr. Hohman
14 is date stamped that it was received on July 24th, and on
15 July 25th you wrote a letter to Paul Bitar with the
16 questionnaire; is that - sound consistent with what you
17 remember?

18 A Yes.

19 Q Okay. And then I'll show you this letter again. Again, it
20 would be easier if you had your file here, but I'll show you
21 my copy of it - the file - what appears to be the file copy
22 of this letter has some handwriting on the letter. Is that
23 your handwriting?

24 A Yes, it is.

25 Q Okay. And the handwriting shows that on July 30th something

1 happened and the - it - it has the letters "FM." Is that
2 "FM"?

3 A Yes.

4 Q What does that mean?

5 A From.

6 Q Does that mean a telephone call?

7 A Yes.

8 Q It says, from Dawn, dash, office, is that --

9 A Yes.

10 Q "Questions on letter. Will complete and return."

11 A Yes.

12 Q Okay. And I'm judging from that that means that you got a
13 call from someone named Dawn from Paul Bitar's office, she
14 had questions about this, and then she said she would
15 complete it and return it to you; is that correct?

16 A Yes.

17 Q Okay. And then - there's - the next one also in your
18 handwriting, I assume, says, "August 20th", it says, "to
19 Doug Bitar." Does that mean - you mean a phone call?

20 A Yes.

21 Q And it says, "question" and "Dawn." What do you interpret
22 that to mean?

23 A That he was not aware of the letter or that he had referred
24 the letter to Dawn.

25 Q All right. And then the next entry looks to be August 20th,

1 and - and then it says, "To Tom Brown." And does that mean
2 somebody gave you my name or . . .

3 A Yes.

4 Q Okay. And then 8/21 it says - I'm not sure what this
5 means - but at some - there's under - under that first phone
6 call, then it's got a telephone number. It says, "Will fill
7 out and send in."

8 A Yes.

9 Q And that - and that - is that based on a telephone
10 conversation with me?

11 A Or whoever I would have talked to at that point, which - who
12 would appear from my handwriting would have been you,
13 Tom Brown, yes.

14 Q Okay. And then there's an entry for September 12th with a -
15 with a - with ditto marks again, probably indicating my
16 name, it says, "working."

17 A Yes.

18 Q And in - you're interpreting that to mean working on the
19 questionnaire?

20 A Yes.

21 Q Okay. And then - then - then 9/15 it says "to" and it - and
22 then there's some ditto marks, and I'm - I'm assuming that
23 means a telephone call to me.

24 A Yes, at that number.

25 Q Yeah. Then what does it say after that? I can't read that.

1 A Status jurisdictional.

2 Q Does it say anything else?

3 A There's a date at the bottom, 7/1/02.

4 Q Okay. What does that mean?

5 A That's when I would believe you would be jurisdictional.

6 Q Okay. So does that mean you told me that on the phone, on
7 September 15th?

8 A I don't recall the conversation exactly if I told you that
9 or not.

10 Q Okay. Well, let me - let me try and decipher this. On
11 September 15th you have an entry that says that you made a
12 phone call to me, right?

13 A Yes.

14 Q And after that you wrote "status jurisdictional June" -
15 "July 1st, '02," right?

16 A Yes.

17 Q And does that mean in your - and I'm asking you to interpret
18 what that means. Does that mean that you discussed that
19 during that telephone conversation?

20 A I discussed jurisdiction during that telephone conversation,
21 yes.

22 Q Okay. And does that mean that you would have said that it -
23 there was jurisdiction status --

24 A I would believe that - I would discuss, you would be
25 jurisdictional at that point, yes.

1 Q And - and the date, 7/1/02, would that be your shorthand for
2 saying that's when you told me it was jurisdictional?

3 A Yes.

4 Q When jurisdiction attached?

5 A Yes.

6 Q Okay. So what I want to do is try and build between us a
7 little timeline here. There - you and I had some exchanges
8 back and forth that included a couple of letters that I
9 wrote in September, and a fax you sent me in September, and
10 a spreadsheet, another letter from me in September, and then
11 I followed with a letter in - at the end of October.

12 Now, between - what - what was going on in - from
13 your point of view at the commission between September and
14 January?

15 A With reference to Cougar Ridge?

16 Q Sure.

17 A I believe I had referred the information to my supervisor
18 and we were waiting before we processed more information
19 about jurisdiction.

20 Q Well, how did you - how did you transfer it to your
21 supervisor?

22 A We routinely have staff meetings where we discuss what work
23 we're doing.

24 Q Are there minutes taken of those meetings?

25 A Not to my knowledge.

1 Q Is any record kept of those meetings?

2 A Not to my knowledge.

3 Q Did - was the Cougar Ridge matter discussed in a staff
4 meeting?

5 A On and off, yes.

6 Q Who attends the staff meetings?

7 A My supervisor, Danny Kermode. We may have other people
8 dependent upon what we're working on at that time.

9 Q Did you - when did you first broach the Cougar Ridge subject
10 with your supervisor?

11 A Specifically, I don't recall.

12 Q Is there any way for us to reconstruct that?

13 MR. THOMPSON: I'm going to object to this and
14 similar questions on the ground that this is way beyond the
15 scope of the relevant issues in this case. Just the whole
16 line of inquiry about who said what to whom and at what
17 point. But go ahead and answer.

18 Q (BY MR. BROWN) Is there any way to reconstruct when it was
19 first broached with Mr. Eckhardt - by the way, was
20 Mr. Eckhardt your supervisor back then, also?

21 A Yes.

22 Q Okay. Is there any way to reconstruct when it was first
23 broached with him?

24 A Not to my knowledge.

25 Q How many times was it discussed with him? Do you have any

1 idea?

2 A No.

3 Q What was your recommendation to him?

4 A I don't believe I had a recommendation. I believe I had a
5 status.

6 Q And what was your status, let's say, in late September of
7 '03?

8 A My status would have been the company is jurisdictional, and
9 it does not want to file a tariff.

10 Q All right. And then did your division or your supervisor
11 take any actions on that status?

12 A I cannot speak for what my supervisor did.

13 Q Do you know what your supervisor did?

14 A No, I do not.

15 Q What did you do?

16 A I continued working on my other cases.

17 Q And what did you think was happening with Cougar Ridge?

18 A Don't know.

19 Q You got a letter from me on October - it was dated
20 October 29th and it was sent to you on - it was received by
21 you on October 30th according to your date stamp. And in
22 that letter I - I told you - among others things I told you
23 that they were going to suspend the monthly charges for the
24 water system for the months of November and December. Do
25 you remember that?

- 1 A Yes.
- 2 Q And did you do anything in response to that letter?
- 3 A Status update to my supervisor.
- 4 Q Okay. And was that orally?
- 5 A I would believe so.
- 6 Q Is there any way for us to determine that? How would we
- 7 determine whether that was oral or in writing?
- 8 A I don't believe there would be a way to determine that.
- 9 Q When you have these status updates with him or staff
- 10 meetings, does he take notes?
- 11 A I don't know. You would have to ask him.
- 12 Q Can you see him during these meetings?
- 13 A Yes.
- 14 Q Can you see whether he's taking notes or not?
- 15 A Sometimes he does, sometimes he doesn't.
- 16 Q What did he tell you that he intended to do about Cougar
- 17 Ridge?
- 18 A He didn't tell me.
- 19 Q What did he say he was going to do?
- 20 A Talk to some more managers about asserting jurisdiction.
- 21 Q Did he say who he was going to talk to?
- 22 A No.
- 23 Q And when he said that he was going to talk to some other
- 24 managers, what was your assumption about who he was talking
- 25 about?

1 A Other assistant directors and possibly the director of the
2 regulatory services.

3 Q Who are the other assistant directors?

4 A Off the top of my head, I don't know. There's been staff
5 changes recently.

6 Q Okay. So you - in your mind he - you thought that meant
7 that he would talk possibly to other assistant directors or
8 possibly to the - who was that - who was the - the other
9 person, the director?

10 A The director.

11 Q And that would be - would that have been Mr. Blackman at the
12 time?

13 A At that time, no.

14 Q Who would it have been?

15 A Dixie Linnenbrink.

16 Q Okay. After - after my letter of October 29th and after you
17 gave Mr. Eckhardt a status report and after he said he was
18 going to talk to other managers, what was the next thing
19 that happened?

20 A As I recall, the next thing would be to talk with the
21 attorney general's office on issuing an order for
22 jurisdiction.

23 Q And who talked to the attorney general's office?

24 MR. THOMPSON: I want to just - I guess probably
25 not at this point, but just caution him about

1 attorney-client privilege. But I think this is an okay
2 question.

3 A I believe it would have been Mr. Eckhardt, to determine who
4 would be our representative from the attorney general's
5 office.

6 Q (BY MR. BROWN) Were you involved in any way in the dealings
7 with the attorney general's office?

8 A Yes.

9 Q Okay. Are - who - who in your office dealt with the
10 attorney general's office besides you and Mr. Eckhardt?

11 A No one else to my knowledge.

12 Q Okay. And did Mr. Eckhardt only make the initial contact
13 and then - and then you did the dealings, is that the way
14 that it was?

15 A Typically, no.

16 Q How - well, I mean in this case. I want to know in this
17 case how it happened.

18 A I would say no.

19 Q So both of you dealt with the attorney general's office in
20 presenting the case?

21 A I believe so.

22 Q In the log that I received from Mr. Thompson, there are
23 e-mails between you and the attorney general's office,
24 somebody named Lisa Watson, in late September and early to
25 mid October, a total of three e-mails that are recorded

1 here. I don't know the content of those. Does that square
2 with your memory that there were some e-mails that went back
3 and forth between you and Lisa Watson?

4 A There could be, yes.

5 Q Okay. And without venturing into what was said, and not to
6 say that we won't, because we will, without venturing there
7 now, after this exchange of e-mails was concluded, what was
8 the status of this matter in your office in October?

9 A I believe the status to have been we were waiting for the
10 attorney general's office to assign counsel to proceed with
11 the order on jurisdiction.

12 Q Okay. And then after that you would have gotten my letter
13 of late October saying that we were suspending the payments
14 for those two months, and do you know - did you bring that
15 letter to the attention of the attorney general's office?

16 A I don't know if I brought it to their attention at that
17 point, no.

18 Q Okay. But you did bring it to the attention of
19 Mr. Eckhardt?

20 A I believe I did, yes.

21 Q Okay. And after that letter what did you understand the
22 status to be?

23 A Once again, that we were waiting for the attorney general's
24 office to assign counsel so we could proceed with an order
25 for jurisdiction.

1 Q Okay. And was it your position in - we'll say in November
2 and December of 2003 that there was jurisdiction?

3 A In my opinion there was jurisdiction, yes.

4 Q Okay. Did - did anyone besides me suggest to you that there
5 was not jurisdiction?

6 A At that point, no.

7 Q Okay. At any point did anyone suggest to you that there was
8 not jurisdiction?

9 MR. THOMPSON: I'm going object to that to the
10 extent that it calls for privileged information. But if the
11 witness can answer without delving into communications with
12 counsel, then I would ask you to do so.

13 A No. I cannot answer.

14 Q (BY MR. BROWN) Okay. I want to be sure that I understand
15 what the response was. The response is that you can't
16 answer the question without violating the privilege; is that
17 right?

18 A Right.

19 Q Okay. Did you ever tell anyone, other than the attorney
20 general's office, that there was - that anyone thought that
21 there was no jurisdiction?

22 A Yes.

23 Q Who did you tell?

24 A In conversations I might have told a customer that there
25 might not have been jurisdiction. I might have talked with

1 my supervisor and with Mr. Kermode that there might not have
2 been jurisdiction.

3 Q Okay. Why would you tell a customer that there might not
4 have been jurisdiction?

5 A To the extent of the service connection charge being the
6 driver of what would be jurisdictional and to the extent of
7 the company lowering rates.

8 Q And - and what was that - what was that remark to the
9 customer based on? Was that based on your own opinion?

10 A At that point I would believe it is, yes.

11 Q Okay. Did you believe at that point - and this would have
12 been either in late 2003, because it's after the rates were
13 lowered, right, or early 2004?

14 A I don't recall specifically what time frame.

15 Q Okay. It had to be after October, right?

16 A If that's the date of the letter.

17 Q From me?

18 A Yes, it would have had to have been after that point
19 recognizing . . .

20 Q Okay. So when you spoke with that customer and told them
21 that, did you believe that there was no jurisdiction?

22 A No.

23 Q You still believed that there was jurisdiction, right?

24 A Yes.

25 Q But you told the customer that it was possible that there

1 wasn't?

2 A I might have, yes.

3 Q And when you said - when you said based on the connection
4 fees and based on the lowering of rates, I want to go back
5 to an earlier point.

6 You and I, I believe, agree that the connection fee
7 has nothing to do with jurisdiction; isn't that right?

8 A Right.

9 MR. THOMPSON: I object to that on the grounds it
10 calls for a legal conclusion.

11 MR. BROWN: I'm asking what he believes. He
12 believes that it has nothing to do with jurisdiction.

13 Q (BY MR. BROWN) Is that a correct statement?

14 A Yes.

15 Q Okay. And so when you told a customer that there might not
16 be jurisdiction, in - in your mind that had to be related to
17 the lowering of the fees, right?

18 A Yes.

19 Q Okay. Did anyone else share that belief with you?

20 A No.

21 Q How about Mr. Eckhardt?

22 A I don't believe he shared it.

23 Q Did you ever tell anyone else that anyone - that anyone
24 shared that belief with you?

25 A I don't recall.

1 Q Did anyone in the attorney general's office say anything at
2 any time after October 30th that led you to believe that
3 there was no jurisdiction?

4 MR. THOMPSON: Object on the grounds of privilege
5 and direct the witness not to answer.

6 Q (BY MR. BROWN) Okay. I'm going to then ask you to --

7 MR. THOMPSON: Also object on the grounds of
8 relevance.

9 MR. BROWN: Okay.

10 Q (BY MR. BROWN) Okay. I'm going to show you what's been
11 disclosed to me as part of your file. And I'll represent to
12 you that this appears to be an e-mail from you to
13 Mr. Eckhardt and Mr. Thompson dated January 8th, 2004. Do
14 you recognize that?

15 A (Perusing.) It is as you represent, but I have not read it
16 yet.

17 Q Okay. Why don't you just - first of all, let's get it
18 straight. Is the date of it - what is the date of it?

19 A January 8th.

20 Q 2004?

21 A Yes.

22 Q Is it from you?

23 A Yes.

24 Q Okay. And who is it addressed to?

25 A Gene Eckhardt, Jonathan Thompson.

1 Q Okay. Why don't you just read the text of the message into
2 the record.

3 A "More information. Mr. Lundgren called and asked what
4 happened and I explained that the AG office had
5 determined that since the company was under the threshold,
6 that the company was not regulated. I asked when and how
7 they hooked up and he said they requested service on
8 August 1st, 2003, and their plumber connected the water
9 service line. They were told by the real estate agent and
10 builder that the hookup fee was \$600 and that's what they
11 should pay. They sent in a check and it was returned with
12 note that hookup was \$3,000. Mr. Lundgren has call into
13 Gene and will ask more questions", my name, phone number,
14 e-mail address.

15 Q Okay. Would you agree with me that this e-mail tells the -
16 the recipients here that you told Mr. Lundgren that the AG's
17 office had determined that since the company had determined
18 that the company was under the threshold and not regulated,
19 is --

20 A Yes, I will represent that.

21 Q Okay. Who at the attorney general's office told you that?

22 A I don't recall.

23 Q Okay. Obviously someone at the attorney general's office
24 told you that; is that right?

25 A I believe so, yes.

1 Q Okay. And who were you dealing with during that period of
2 time in January of 2004?

3 A In the attorney general's office?

4 Q Yes.

5 A Different ones.

6 Q Okay. This - this particular e-mail was addressed to
7 Mr. Eckhardt and Jonathan Thompson. Does that suggest to
8 you that you were probably dealing with Mr. Thompson at that
9 time?

10 A No.

11 Q Okay. Who all have you dealt with from the attorney
12 general's office with respect to Cougar Ridge?

13 MR. THOMPSON: Objection. Relevance.

14 Q (BY MR. BROWN) Go ahead.

15 A Off the top of my head, I can't recall all of the people
16 that I would have dealt with.

17 Q Okay. Well, we know that you've dealt with Mr. Thompson,
18 right?

19 A Yes.

20 Q Okay. And Mr. Thompson is the one that prepared the
21 proceedings here, right?

22 A Yes.

23 Q Okay. And we also know that you dealt with Lisa Watson,
24 right?

25 A Yes.

1 Q Okay. And the latest indication we have of you dealing with
2 Lisa Watson, at least in this e-mail log, was October 14th.
3 And I guess the next one on the e-mail log is February 18th,
4 and that's the Mr. Thompson, but it doesn't - doesn't cover
5 this - this e-mail . . .

6 Was there - was there anybody in between that you
7 dealt with with respect to this case, between Lisa and
8 Mr. Thompson?

9 A I don't recall.

10 Q Okay. I want - I want - need to understand what that
11 response means. It means that there may have been other
12 people or you don't think there were any other people?

13 A There may have been other people, but I don't recall who.

14 Q Okay. Do you recall who it was that told you that the
15 company was under the threshold and not regulated?

16 A No.

17 MR. THOMPSON: Objection. Because - well, I'll
18 withdraw my objection.

19 Q (BY MR. BROWN) Okay. So we know that in November and
20 December, according to your testimony, you thought that the
21 company - you thought that Cougar Ridge was jurisdictional,
22 as you call it, in your own mind?

23 A Yes.

24 Q And we know that here in January you - you may have felt
25 differently but you had been told by the attorney general's

1 office that it was not jurisdictional; is that right?

2 A Yes.

3 Q And then subsequently this proceeding was initiated at some
4 point in time?

5 A Yes.

6 Q Tell me what happened between January and the initiation of
7 these proceedings?

8 A I don't know.

9 MR. THOMPSON: And I object to the extent - well,
10 it's irrelevant. I won't object.

11 Q (BY MR. BROWN) Okay. Did you participate in any way in the
12 preparation of the proceedings here?

13 MR. THOMPSON: Just to clarify the question, are
14 you talking about the - the order initiating the proceeding?

15 MR. BROWN: Yeah.

16 MR. THOMPSON: Okay.

17 Q (BY MR. BROWN) The very beginning of the formal proceedings.
18 Did you participate in any way in that?

19 A My participation would have been to provide information,
20 name, address, specific information of that nature.

21 Q Well, at some point in time you learned that the commission
22 was going to go ahead and assert jurisdiction over this
23 water system, right?

24 A Yes.

25 Q How did you learn that?

1 MR. THOMPSON: I would object to the form of the
2 earlier question. Because this is an adjudicative
3 proceeding --

4
5 (Clarifying interruption by
6 the court reporter.)
7

8 MR. THOMPSON: This is a proceeding to determine
9 whether the commission will assert jurisdiction over the
10 complaint.

11 MR. BROWN: Okay. I'll rephrase the question.

12 Q (BY MR. BROWN) At some point you learned that a decision had
13 been made to go ahead and ask the commission to assert
14 jurisdiction over this company, right?

15 A Yes.

16 Q How did you learn that?

17 A Don't recall.

18 Q Who did you learn it from?

19 A I probably would have learned it from Mr. Eckhardt.

20 Q And you - and do you have any recollection of the
21 circumstances of learning that? What he said? His
22 explanation for it? Anything?

23 A Recollection, no.

24 Q Okay. I need to explore that answer. You say,
25 "Recollection, no." What does that mean?

1 A I'm trying to think if I do recall any conversations about
2 that.

3 Q Do you recall them?

4 A Specific conversations, no. Generalities, yes.

5 Q Well, tell me the generalities.

6 A The generality being that the company had exceeded the
7 threshold for revenue for a period of one year or more on a
8 per customer basis.

9 Q Were - in - as you remember those generalities, is that
10 something you were arguing to Mr. Eckhardt or that's
11 something that Mr. Eckhardt was telling you?

12 A I would not call it arguing. I would call it maintaining my
13 position in status updates that the company had exceeded the
14 revenue threshold.

15 Q Okay. When you learned that the attorney general's office
16 had rendered an opinion otherwise, were you - what was your
17 reaction to that?

18 MR. THOMPSON: I'm going to object to that as
19 well. I think we have the fact that --

20 MR. BROWN: I'm going to object to a speaking
21 objection here that helps him answer the question.

22 MR. THOMPSON: Okay. Well, I object to the - to
23 the suggestion that there had been an opinion rendered by
24 the attorney general's office.

25 Q (BY MR. BROWN) Well, okay. Well, let's go back to our

1 point. We do know that in January of 2004 the attorney
2 general's office told you that it was not regulated, right?

3 A I believe so, yes.

4 Q Okay. And what was your reaction to that, when you learned
5 that?

6 A Okay.

7 Q Okay. So in following that, there were apparently
8 discussions with Mr. Eckhardt that you're recalling the
9 generalities of right now; is that - am I understanding that
10 correctly?

11 A I don't know if they would have occurred before or after
12 that point.

13 Q Okay. Fair enough. Was it a shock to you to learn that the
14 staff was going to go ahead and ask the commission to assert
15 jurisdiction?

16 A No.

17 Q Did you wonder what had happened to turn - to turn the train
18 around?

19 A I'm sure I did.

20 Q Was that ever explained to you what had happened?

21 A I believe what was explained to me by Mr. Eckhardt or in
22 general conversations was, yes, they had exceeded for a
23 period of more than one year, they had exceeded the
24 threshold.

25 Q Okay. And - and - but the point of my question is that,

1 was it ever explained to you why the opinion of the attorney
2 general's office had been reversed?

3 MR. THOMPSON: Objection. Again, object to the
4 characterization.

5 Q (BY MR. BROWN) Go ahead.

6 A No, I don't believe so, that there was an explanation of
7 that other than they looked at it and reviewed the rules and
8 the laws and said, yes, they did exceed for a period of more
9 than one year. That the current situation where the company
10 would charge nothing for two months to drop below the
11 threshold did not render into that.

12 Q And based on what you understood in January, that would be a
13 reversal of their opinion, right?

14 A It would be a reversal of what I understood, yes.

15 Q Okay. I want to show you another form that came to me by
16 way of discovery that is apparently out of your file. And
17 I'll just - I'll read the title of it here. It's "UTC Rate
18 Filing for System Acquisition Information Request Form."
19 And I'll just - I'll show you that. Is that familiar to
20 you?

21 A Yes, it is.

22 Q Okay. And can you tell us what that is?

23 A It's a document by which the commission communicates with
24 the Department of Health to get information on a water
25 system or water company.

1 Q And that document has certain information filled in. Who
2 would have filled in that information?

3 A Department of Health would have filled in most of the
4 information. I would have put in the basic information.

5 Q Okay. And am I understanding correctly that what we're
6 dealing with here is a form - first of all, is it a WUTC
7 form?

8 A No, it is not.

9 Q Is it a Department of Health form?

10 A Yes, it is.

11 Q Okay. And what you would do is you would take this form and
12 fill in the basic information, send it over to the
13 Department of Health, and they fill in the information that
14 you want?

15 A Yes.

16 Q Is that . . . Okay. And I want to direct your attention to
17 the columns - to column 7. Is that about active
18 enforcement? Do you see that one?

19 A Yes.

20 Q And is that - is that information that's supposed to be
21 filled in by the Department of Health?

22 A Yes.

23 Q And what does the enforcement relate to there?

24 A Typically it relates to if Department of Health has any
25 action against the water system or the water company.

1 Q Okay. And - and that action would be if they did - that
2 action would be related to the quality of the water,
3 something like that, is that your understanding?

4 A Department of Health regulates both quantity and quality of
5 water, so it could be either one of those.

6 Q Okay. Fair enough.

7 A Or administrative items.

8 Q Okay. But it wouldn't have anything to do with regulation
9 in the sense that you speak of regulation here at the WUTC?

10 A Right.

11 Q Or enforcement, it wouldn't have anything to do with you
12 folks, it would only have to do with the Department of
13 Health, right?

14 A Right.

15 Q Okay.

16 MR. THOMPSON: Mr. Brown, could I ask you how
17 much time you expect you have for this witness so I can let
18 Mr. Eckhardt know?

19 MR. BROWN: Yeah. I think it's going to be at
20 least half an hour.

21

22 (Brief recess.)

23

24 Q (BY MR. BROWN) Remind me again who Dixie Linnenbrink was.
25 She was the director of regulatory services; is that right?

1 A Yes.

2 Q And was she promoted to something else?

3 A No. She is currently on medical leave.

4 Q Do you know if your supervisor, Mr. Eckhardt - how long has
5 he been your supervisor, by the way?

6 A Eleven years, 12 years, somewhere along there.

7 Q Do you know if he maintains a file on individual cases?

8 A No, I don't know.

9 Q Did you - in the course of this case or other cases did you
10 ever notice that when you would like have your - I forget
11 what you called them, staff meetings?

12 A Right.

13 Q Would - would he bring a file on a particular case that he
14 was keeping in his own office or would he come totally
15 dependent on your file?

16 A He brought no file and was not dependent on anything I would
17 have brought. These were update status type meetings.

18 Q Okay. So - so you would remind him of the situation and
19 then you would talk about it; is that the way it went?

20 A Essentially, yes.

21 Q Typically did he take notes?

22 A As I said before, some issues, yes; some issues, no.

23 Q Do you have any knowledge of whether the director of
24 regulatory services keeps a personal file on any particular
25 cases?

- 1 A No knowledge.
- 2 Q Who is Mike Sommerville?
- 3 A Mike Sommerville is a records center staff.
- 4 Q On some e-mails Mr. Sommerville's name appears. Is that -
5 is there a particular reason that he would receive copies of
6 materials? Is it just in function as a records keeper?
- 7 A I believe it's in his function as a record keeper.
- 8 Q Okay. Who's Penny Hansen?
- 9 A Penny Hansen was our public involvement coordinator.
- 10 Q Who's Virginia Deferia?
- 11 A She is a support staff for the director of regulatory
12 services.
- 13 Q What does she do?
- 14 A Administrative support work for the director.
- 15 Q Does that mean she's a secretary basically?
- 16 A A common term might be secretary, yes.
- 17 Q And how about Vicki Elliott, who is she?
- 18 A She is the director of consumer affairs.
- 19 Q Does her job - I'm sure it is different. But can you tell
20 me how her job differs from Penny Hansen's job?
- 21 A Penny Hansen typically deals with customers that are
22 involved in a rate proceeding of some kind. Vicki Elliott,
23 as director of consumer affairs, is responsible for all
24 customer contacts, both in a regulatory rate case type
25 setting and a customer complaint or inquiry setting.

1 Q Is there a similar person that deals with the business
2 involved?

3 A I'm not sure of the question that you're asking.

4 Q Well, I get the impression that Penny Hansen is kind of a
5 public - public - or a contact person for the customers
6 that - for - when there's a rate proceeding or any kind of
7 proceeding going on.

8 A Typically, yes.

9 Q And I'm wondering if there is a comparable person in your
10 structure for the entity that's over - which you have or
11 claimed jurisdiction that deals with their contacts?

12 A If you're referring to the company itself, typically the
13 company deals with the regulatory analyst.

14 Q But the customers could do that, too, right?

15 A Yes.

16 Q So why is there a special person for the customers as
17 opposed to the company?

18 A Just to provide a centralized point of contact.

19 Q Now, you signed an affidavit or a declaration, and it gives
20 your history here and your duties, and then it goes on at
21 length, and I'll say three paragraphs, and about three pages
22 about connection charges. Do you recall signing that
23 declaration?

24 A Yes.

25 Q Why - why did you prepare a dec - prepare and sign a

1 declaration that has to do with connection charges?

2 MR. THOMPSON: Object to the extent that it calls
3 for work product or attorney-client privileged information.
4 But if you can answer without doing that, please go ahead.

5 A That was the initial information received by me was on the
6 connection charge. That is a question the company brought
7 up in its request for information of us, connection charges,
8 and I addressed it in that respect to answer those
9 questions.

10 Q (BY MR. BROWN) Have you changed your mind so that you now
11 believe that connection charges have something to do with
12 whether there's jurisdiction?

13 MR. THOMPSON: Calls for a legal conclusion. You
14 can answer.

15 A No, I have not changed my mind.

16 Q (BY MR. BROWN) Okay. So you still believe that connection
17 charges have nothing to do with jurisdiction?

18 A Right.

19 Q Okay. And the only - the only time you become concerned
20 with connection charges is once jurisdiction has been
21 established, then you have power to regulate them at that
22 point in time; is that right?

23 A In the context of the question, yes.

24 Q Okay. Is there some other context that I should know about
25 here?

1 A Well, you say "power to regulate." I believe it - as in the
2 ability to determine the appropriate cost and make a
3 recommendation to the commissioners as to what that cost
4 should be, I don't have the power to regulate. The
5 commissioners have that power.

6 Q Okay. Fair enough. So just - just so we have a clean
7 record here. Your belief, having stated the fact that your
8 belief is that it has nothing to do with the assertion of
9 jurisdiction, once jurisdiction is established then you
10 believe the commission does have the power to concern itself
11 with connection charges?

12 A Yes.

13 Q Okay. And in the analysis of whether or not jurisdiction
14 should be assessed or should be extended to the Cougar Ridge
15 water system, you believe that the question of the
16 connection charges should be ignored?

17 A Yes, to the extent of jurisdiction.

18 Q Yes. Now, would you agree with me that when - when you and
19 I first talked, you believed that jurisdiction had attached
20 sometime in the year 2002?

21 A Yes.

22 Q And that was wrong, right?

23 A I don't know if wrong would be the correct answer.

24 Q Do you still contend that jurisdiction attached in the year
25 2002?

1 A I think it started in 2002, yes.

2 Q Well, okay. Let's - let's cast it in terms I think you
3 used. You - I've heard you use the term on several
4 occasions about a company becoming jurisdictional. Is that
5 term familiar to you?

6 A Yes.

7 Q And I understand when you say "becoming jurisdictional", I
8 understand you to mean that's the point at which the
9 commission has the power to assert - assert jurisdiction and
10 regulate the company, right?

11 MR. THOMPSON: Object that it calls for a legal
12 conclusion.

13 MR. BROWN: I'm just asking what he believes.

14 MR. THOMPSON: Okay.

15 A I believe that's correct, yes.

16 Q (BY MR. BROWN) Okay. And at some point in time, you
17 believed that Cougar Ridge water system became
18 jurisdictional in the year 2002, right?

19 A I believe it fully met jurisdiction in 2003. It started
20 that process in 2002.

21 Q Okay. I - I - I understand where you're headed here, but I
22 want to be clear on this. At some point you believed that
23 it had become fully jurisdictional in the year 2002, right?

24 A Yes.

25 Q Okay. And you don't believe that any longer, right?

1 A Yes.

2 Q Okay. And your belief now is that it became jurisdictional
3 sometime in the year 2003; is that right?

4 A Yes.

5 Q And actually in between those things - in between those two,
6 I want to make this precise here, so I'll . . . When do you
7 believe in the year 2003 the system became fully
8 jurisdictional?

9 A To the best of my recollection, February of 2003.

10 Q Do you recall sending me a spreadsheet of some kind in
11 September of 2003?

12 A I believe I did, yes.

13 Q Okay. Again, you don't have your file here, do you?

14 A Nope.

15 MR. BROWN: I would ask your attorney to show you
16 that portion of the produced documents. It's a letter of
17 September 17th.

18 A I am not familiar with this arrangement.

19 Q (BY MR. BROWN) I - and I apologize for this. I just assumed
20 your file would be here for this deposition.

21 MR. THOMPSON: I pulled this off a paralegal's
22 shelf, and I'm not frankly able to locate the . . .

23 A Date of your letter, sir?

24 Q (BY MR. BROWN) It's your letter of September 17th.

25 A I have a letter in front of me, yes, September 17th, 2003,

1 addressed to you.

2 Q Okay. Is there an attachment to that letter?

3 A Yes, there is.

4 Q And it looks to be some columns, and maybe you could explain
5 this to me. What is this - what does this attachment show
6 us?

7 A Column 1 shows the year. Column 2 shows the month. Column
8 3 shows the rate attached to that month and year. Column 3
9 is a running total column for case Number 1. What's
10 column 4? Column 5 is a running total for case Number 2.

11 Q Okay. What's - what's case Number 1 and case Number 2. Can
12 you tell us what those are?

13 A Case Number 1 is if you use a running total of when the
14 company exceeded \$430 or the revenue threshold of \$429,
15 working backwards. Case Number 2 is if you use a running
16 total from the date that the company changed its rates to
17 exceed the monthly average, which would generate in excess
18 of the revenue threshold.

19 Q Okay. And which of these cases do you think is the correct
20 way of calculating when it became jurisdictional?

21 A Case Number 1.

22 Q Okay. And so why did you include case Number 2?

23 A As a reference in discussions with you as to the company
24 would not exceed the revenue based on a calendar year or had
25 not exceeded it yet.

1 Q Okay. What does case Number 2 have to do with a calendar
2 year?

3 A Nothing. It had to do with when the rate was raised, that
4 would have exceeded the revenue threshold. If - look only
5 at a monthly basis.

6 Q Okay. And I - again, and I'm going to - I know I'm being a
7 little dense, but I don't understand the relevance of case 2
8 in your mind.

9 A None.

10 Q So why is it here?

11 A Illustrative purpose.

12 Q What does it illustrate for us?

13 A That the company would have exceeded the revenue threshold
14 in June of 2003 had we used only the point in time when the
15 company raised its rates, so what would be considered above
16 the monthly averages, that would have exceeded the monthly
17 threshold.

18 Q So it - it illustrates when jurisdiction would have attached
19 depending upon a different start date?

20 A Yes.

21 Q And in - in case - case Number 1, the start date is March of
22 2002 and - and how did you calculate that start date?

23 A Working backwards with the company's revenue.

24 Q And backwards from what?

25 A When they would have exceeded it based on the monthly amount

1 that the company did receive.

2 Q How - okay. So you take - what - what's the threshold? How
3 much is the threshold?

4 A Four hundred twenty-nine dollars average annual.

5 Q Okay. And so you took 49 - \$429 and round it off to \$430
6 and counted backwards, right?

7 A Essentially, yes.

8 Q Okay. And why did you count backwards from February of
9 2003?

10 A I counted backwards from many months, but that was the one
11 that fit given the history of the company rates.

12 Q What - what did it fit?

13 A Recognizing the rates were \$32.50 in part of calendar year
14 2002, and that the rates were raised to \$37.50 for part of
15 2002, February, counting backwards is when it would have
16 exceeded the \$429.

17 Q Okay. And I want - I want to know why you chose February to
18 count backwards from.

19 A That's the one that fit going back to the rates that were
20 being charged for part of 2002 at the \$37.50, and part at
21 the \$32.50.

22 Q And - and - I understand the word - I understand you're
23 using the word "fit", but I don't understand what it fit.
24 What did it fit?

25 A It fit the point where the company exceeded \$429 given the

1 fact that it charged \$32.50 for a while and then raised the
2 rate to \$37.50.

3 Q Couldn't you do the same thing with March? Couldn't you
4 make exactly the same calculation?

5 A That calculation is made, in fact, and it's \$467.50, which
6 definitely exceeded the \$429. I was looking for the point
7 at which it first exceeded \$429, which was February.

8 Q Okay. If you started - if you started with April of 2002
9 rather than March of 2002, then it would have been - then it
10 would have occurred a month later, right?

11 A I don't know. I would have to go back and recalculate.

12 Q Well, it doesn't require recalculation. Just say that
13 instead of starting with March of 2002 you start with April
14 of 2002. That would make it March - it would become
15 jurisdictional in March 2003, then, right?

16 A I don't know without recalculating.

17 Q Well, there's nothing to recalculate, if you just move to -
18 down one month, if you move everything down a month, the
19 whole column, it's going to change the month, right?

20 A It would, but that's not what - I was looking at what the
21 company was charging for its monthly rates.

22 Q Right, \$32.50?

23 A For a portion of the time. Then \$37.50 for a portion of the
24 time.

25 Q Okay. If you - let's say with case 1, if you moved that up,

1 if you moved the whole thing up one month to begin in
2 February of 2002, the company would become jurisdictional in
3 January of 2003, right?

4 A I don't know that without recalculating.

5 Q Let me ask you this: Is there anything magical about March
6 of 2002 or February of 2003 in determining when this company
7 became jurisdictional?

8 A If you consider anything being magical, it would be that the
9 company changed its rates in July of 2002 to a point that
10 exceeded what might be considered the monthly threshold to
11 exceed the annual threshold, and that they changed it by an
12 amount of roughly \$2 some odd cents higher than the monthly
13 average jurisdictional threshold, if we were to count one
14 that would exceed the annual revenue threshold.

15 Q So why wouldn't you start the calculation in July of 2002?

16 A That's what case 2 was pointing out.

17 Q Okay. And case - if you - if you did that, your - the
18 case - the case that you're making for jurisdiction would be
19 that it happened in June of 2003, right, instead of
20 February?

21 A The case I am making for jurisdiction is that it occurred in
22 February of 2003, that is when the company received 12
23 months of revenue that would have exceeded the revenue
24 threshold of \$429.

25 Q Okay. And case 2, which you don't necessarily accept, but

1 if - if that were - if that were the guiding principal, that
2 would change the jurisdictional date to June of 2003; is
3 that right?

4 A Yes, because you changed the starting date.

5 Q Okay. And if you used the - if you used calendar year,
6 would you agree with me that the corporation - the company
7 never became jurisdictional?

8 A I don't know. I would have to recalculate. I didn't do
9 that on this spreadsheet.

10 Q Okay. Based on the knowledge that you have regarding what's
11 happened here, would you agree with me that if a calendar
12 year was used, that this company never became
13 jurisdictional?

14 A Recognizing the company waived two months of service fees,
15 yes.

16 Q And would you also recognize that they not only waived two
17 months of service fees but also reduced their fees for
18 subsequent months?

19 A I've been informed of that, yes.

20 Q Okay. And there's no reason for you to question that, is
21 there? You think that that's the case?

22 A I think that's the case, yes.

23 Q Okay. And under that scenario, if it continued as it
24 presently exists, would you agree with me that if you -
25 again, if you use the calendar year basis, that this company

1 would not be - would not be jurisdictional in the year 2004?

2 A Assuming the company continued to charge \$35 only per month,
3 it would not extend the revenue threshold, no.

4 Q And there would be no other basis for asserting jurisdiction
5 other than the one we're discussing right now?

6 A No.

7 MR. THOMPSON: Objection. Calls for a legal
8 conclusion.

9 Q (BY MR. BROWN) Okay. And I guess I need to - I need to
10 clarify this because we had an objection in the middle.
11 Other - other than what we're discussing about jurisdiction
12 being based on the annual per customer income and
13 recognizing that you said that if things continue as they
14 are in 2004 there wouldn't be - there would be no
15 jurisdiction, there's no other - there's no other basis for
16 asserting jurisdiction over this company, is there?

17 A Yes.

18 Q What - what's the other basis?

19 A If they exceed 100 customers.

20 Q Okay. But you - you also understand that, do you not, that
21 this company isn't even close to that?

22 A Last I knew it was not.

23 Q And the last you knew it had way less than half of that
24 number?

25 A Yes.

1 Q Okay. And you would not expect that to be significantly
2 different now, would you?

3 A I don't know.

4 Q Let me ask you this: You don't have any reason to believe
5 that it has changed significantly in the number of cases, do
6 you?

7 A I don't know.

8 Q Has anyone given you any information that suggests the
9 number of customers has increased significantly?

10 A No, they have not at this point.

11 Q And - and the last you knew it was about the - the customer
12 count was in the 30's, right?

13 A No.

14 Q Not so. What did you think it was?

15 A Last count I was aware of was 43 customers.

16 Q Okay. Frankly, I didn't know it was that many. But again,
17 it's well under half of the threshold amount for the number
18 of customers?

19 A Last I knew, 43 was under half, yes.

20 Q Okay. When this first came to you by way of an object - or
21 complaint about the connection fees, tell me why the matter
22 went any further than just telling the customer that you
23 didn't have jurisdiction over this company.

24 A Because the information provided to me was the company was
25 charging over the monthly average. If you use that, it

1 would have exceeded the annual \$429 revenue threshold.

2 MR. THOMPSON: Mr. Brown, can I go and check to
3 see if Mr. Eckhardt is available?

4 MR. BROWN: Yeah.

5
6 (Brief recess.)

7
8 Q (BY MR. BROWN) Okay. Before we had a little break there I
9 asked you why you went ahead with the - I don't know -
10 investigation based on the first complaint when you knew it
11 was an unregulated company, and you said that you knew that
12 their rates were in excess of the threshold amount. Is
13 that - did I restate that correctly?

14 A Yes.

15 Q And I'm going to call your attention, again, to the first
16 letter you received from this individual named Mark Hohman
17 on July - dated July 21st, received by you on the 24th. And
18 does that - what does that say about the rates?

19 A It doesn't say anything about the rates.

20 Q Well, read the last sentence.

21 A "I spoke with the homeowners association president, Frank
22 Bates, 357-6814, and he said the monthly rate has not
23 changed for several years."

24 Q Okay.

25 MR. BROWN: Okay. I think that's all I have.

1 I'm going to - since I'm on the record, I'm going to renew
2 my request for the e-mails. And I think - I think we have
3 pretty clear indication that the - even if you're correct
4 about the attorney-client privilege, that that was waived.
5 So I just - I don't expect you to even respond to that
6 necessarily or argue it here. But I just want to be sure
7 that it's - you know, that I consider that a really critical
8 part of our case, and I do want to see those.

9 MR. THOMPSON: Understood.

10 MR. BROWN: And I would also ask that you
11 actually lay your eyes on the file and review it again for
12 discovery purpose. I just have that - and I - and I do want
13 the phone log and anything else that may have been
14 overlooked at the first - during the first trip through.

15 MR. THOMPSON: Okay. I did review the file. But
16 I'll do it again.

17 MR. BROWN: Okay. That's all I have.

18 MR. THOMPSON: Okay.

19
20 (Concluded at 12:08 p.m.)

21 (Signature reserved.)
22
23
24
25

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:

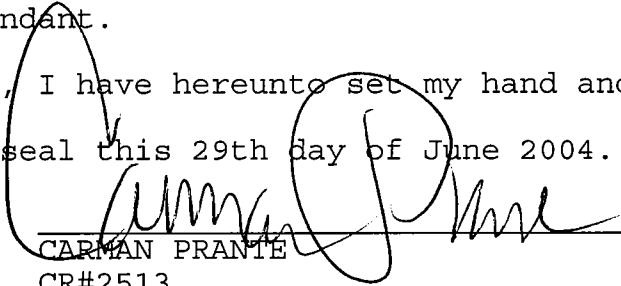
That the foregoing deposition of JIM WARD was taken before me on the 15th day of June, 2004, and thereafter transcribed by me by means of computer-aided transcription; that the deposition is a full, true and complete transcript of the testimony of said witness;

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 JIM WARD 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