

BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION

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STATE OF WASHINGTON
UTILITIES AND TRANSPORTATION
COMMISSION

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Complainant,

v.

COUGAR RIDGE WATER SYSTEM,

Respondent.

DOCKET NO. UW-040367

COMMISSION STAFF'S REPLY
TO COUGAR RIDGE'S
RESPONSE TO MOTION FOR
SUMMARY DETERMINATION

1 Commission Staff submits the following reply brief in response to the Commission's July 6, 2004, notice of oral argument on motions. Staff did not file a reply on the issue of the calculation of "average annual gross revenues" because the Commission's new procedural rules do not appear to provide for a reply round of briefing on a motion for summary determination. WAC 480-07-380(2). Because a reply appears to be necessary in this case to address the issue of the calculation of "average annual gross revenues" to the Commission's satisfaction, Staff now submits the following reply to Cougar Ridge's June 24, 2004, response to Staff's Motion for Summary Determination.

2 The statute defining “water company” excludes from commission jurisdiction water systems with less than 100 customers “where the average annual gross revenue per customer does not exceed three hundred dollars per year.” RCW 80.04.010.

3 Cougar Ridge says that the Commission has implemented a rule that makes the determination of jurisdiction turn on a fiscal year rather than a calendar year and that this is inconsistent with the statute. It is not clear what Cougar Ridge means by a “fiscal year.” The words are not used in the Commission’s rule on jurisdiction of water companies, WAC 480-110-255, nor has Staff used the term in its motion for summary determination or supporting declarations. Black’s Law Dictionary defines fiscal year as “a corporation’s accounting year” and explains that it is often different than a calendar year. Black’s Law Dictionary Abridged 6th Ed., West Publishing (1991). Elsewhere it has been defined as an accounting period of 12 months ending on the last day of any month other than December. *Power, Inc. v. Huntley*, 39 Wn.2d 191, 197 (1951). Staff would not agree that either definition is appropriate for defining the meaning of “annual” or “per year” in RCW 80.04.010.

4 The Commission’s rule on jurisdiction over water companies provides an example showing how to make the calculation of average annual gross revenue per customer. It states:

(5) The following example shows how to calculate the average annual revenue per customer for two hypothetical customers. The data for each customer are provided at the end of the example:

(a) Select the most recent twelve consecutive months.

Example: February 1999 through January
2000.

What is clear from this example is that the Commission did not mean to restrict the one-year period of revenue data to a calendar year. The example provided is not a calendar year and the example instructs the reader to “select the most recent twelve consecutive months.” The point of the example is that the calculation requires a full year’s revenue data—it could be a calendar year, but it doesn’t have to be.

5 Cougar Ridge argues that because the legislature used the words “annual” and “per year” and did not use the phrase “12-month-period” or “fiscal year” the legislature could only have meant “calendar year.”

6 But even the terms “twelve month period” and “fiscal year,” like “calendar year” are too restricting for the statute’s purpose. They are all terms that fix the beginning and end date for measuring the space of a year. In drafting this statute, the legislature sensibly chose not to fix those dates. Staff submits that the terms are best interpreted as meaning “accruing within the space of one

year” and “computed by the year” without regard to any particular dates. One reasonable stipulation is that the period should correlate with actual billing periods, if possible.

7 A good reason for this is that water systems, and particularly water systems that have not been under regulation, are not restricted in any way to a particular billing period or to when they may choose to increase their rates. They do not have to wait until January 1 to raise rates. Cougar Ridge, for example, increased its rates in July of 2002 and in August of 2003. Staff Motion for S.D. at 3. In light of that fact, insisting on only a calendar year measurement or any definition more specific than the space of one year doesn’t make sense.

8 Insisting on a complete year of revenue data, however (annual gross revenue), does make sense, because, as the Commission is aware, water systems experience seasonal variations in demand, as do many types of utilities. Those variations offset each other over the space of a year (no matter where you place that year on the calendar) but looking only at the revenue data for a single month is not going to give a very complete picture.¹

¹ In rate proceedings, this Commission has never insisted that the historical test period (or “test year”) for purposes of measuring a company’s expenses and revenues be a calendar year—though a calendar year is sometimes selected. There is generally a preference for “the most recent 12-month period for which income statement and balance sheets were available at the time the proceeding began.” *See, e.g., WUTC v. Rainier View Water Co., Inc.*, 2002 WL 31432725, Wash. U.T.C., July 12, 2002, (No. UW-010877, ID 133134).

9 There can be little question that neither the word “annual” nor the phrase “per year” is restricted to a calendar year. Black’s Law Dictionary Abridged 6th Ed., West Publishing (1991) defines annual as follows:

Of or pertaining to year; returning every year; coming and happening yearly. Occurring or recurring once in each year; continuing for a period of a year; accruing within the space of a year; relating to or covering the events of a year. Once a year, without signifying what time in year. See Annually.

See also, Sahlin v. American Casualty Co., 103 Ariz. 57, 436 P.2d 606 (1968).²

10 Black’s defines “per year” as synonymous with the word “annually.” (“In a contract, is equivalent to the word “annually.” See Annual.) Annually is defined as follows:

In annual order of succession; yearly, every year, year by year. At the end of each and every year during a period of time. Imposed once a year, computed by the year. Yearly or once a year, but does not signify what time in year.

The fact that neither “annual” nor “per year” signifies a particular start or end date for the year period is evidenced in other statutes. For example:

- RCW 78.44.085 states “The annual permit fee shall be payable to the department on the first anniversary of the permit date and each year thereafter.”

² “But we think that the word ‘annual’ as used in the application plainly has no significance as to the Date when the premium was to be paid. It only specifies the Basis of the premium. ‘The word ‘annual’ means ‘yearly’ or ‘once in a year.’ But the word ‘annual’ does not signify what time in a year. The words ‘annual premiums,’ as used in the policy, then, has reference to the rate at which the premiums were to be computed, and not to the specific date of the year.” (citing *Rolerson v. Standard Life Ins. Co.*, 244 S.W. 845, 846 (Tex. Civ. App. 1922).

- RCW 15.54.362 states “Upon permission of the department, an annual statement under oath may be filed for the annual reporting period of July 1 through June 30 of any year.”
- In *State ex rel. Sterling Timber Co. v. Jenkins*, 22 Wash. 494 (1900) the court rejected an argument that the period covered by a statutorily imposed “annual license fee” was a calendar year and upheld the Secretary of State’s interpretation that the period covered was “the year beginning on July 1st.”

The same is true of the term “per year.” For example:

- RCW 15.08.150 states “The auditor shall record the order in his office . . . and it shall be a lien against the premises in favor of the county, and shall bear interest at six percent per year from the date of the order.”
- RCW 36.67.250 states “The court may allow in addition to interest on the service charges at a rate not exceeding eight percent per year from date of delinquency, costs and disbursements as provided by statute and such attorneys’ fees as the court may adjudge reasonable.”

The fact that “annual” and “per year” are not synonymous with a calendar year is further evidenced by the fact that the legislature has in many cases, including in the Commission’s own statutes, seen fit to modify both terms with the words “calendar year”:

- RCW 80.24.010 (“Every public service company subject to regulation by the commission shall, on or before the date specified by the commission for filing annual reports under RCW 80.04.080, file with the commission a statement on oath showing its gross operating revenue from intrastate operations for the preceding calendar year or portion thereof.”)
- RCW 18.44.151 (“The license may be renewed by filing an application and paying the annual license fee for the next succeeding calendar year.”)

- RCW 48.44.017 (“five percent annual rate calculated at the end of the calendar year”).
- RCW 70.94.161 (“The department shall allocate among all sources emitting one hundred tons or more per year of a regulated pollutant during calendar year 1992 the costs identified in its program development budget according to a three-tiered model, . . .”
- RCW 84.34.020 (“One hundred dollars or more per acre per year for three of the five calendar years preceding the date of application for classification under this chapter . . .”)

Thus, in the statutes of Washington, consistent with the law dictionary definition, “annual” means accruing within the space of a year and does not signify particular dates for the beginning or ending that period. “Per year” means calculated by the year. Annual can be applied to a calendar year (i.e., January 1 to December 31, inclusive) and when the legislature intends to do so, it expressly specifies as much. But the word “annual,” by itself, is not restricted to a calendar year.

11 Neither does the word “year” necessarily signify a calendar year. The word “year” is not defined in Black’s, but Merriam-Webster Dictionary defines it as follows:

1 a : the period of about 365 1/4 solar days required for one revolution of the earth around the sun **b :** the time required for the apparent sun to return to an arbitrary fixed or moving reference point in the sky **c :** the time in which a planet completes a revolution about the sun <a *year* of Jupiter>

2 a : a cycle in the Gregorian calendar of 365 or 366 days divided into 12 months beginning with January and ending with December **b :** a period of

time equal to one year of the Gregorian calendar but beginning at a different time

3 : a calendar year specified usually by a number <died in the *year* 1900>

4 plural : a time or era having a special significance <their glory *years*>

5 a : 12 months that constitute a measure of age or duration <her 21st *year*>

-- often used in combination <a *year*-old child> **b plural** : **AGE** <an adult in *years* but a child in understanding>; *also* : the final stage of the normal life span

6 : a period of time (as the usually nine-month period in which a school is in session) other than a calendar year

[emphasis added] Merriam Webster OnLine, <http://m-w.com/>.

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The Power, Inc. v. Huntley, 39 Wn.2d 191 (1951), case cited by Cougar

Ridge contains no holding or discussion at all on the proper interpretation of the word “annual” or “per year” in a statute. Rather, it merely states that the tax statute at issue contained a definition of the term “fiscal year” and that it allowed an arbitrary special privilege (a credit) to tax payers accounting on a fiscal year basis as opposed to those accounting on a calendar year basis. *Id.* at 197. The statute that is discussed in the case actually serves as additional evidence of the fact that in statutory usage, the word “annual” or “annually” is not synonymous with a calendar year but admits of any beginning and ending date the legislature or the implementing agency designates. The relevant portion of the statute stated “Every bank and corporation . . . shall annually pay to the state, in addition to annual license fees, an excise tax according to, or measured by, its net

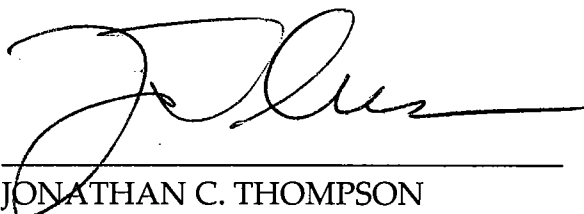
income for the preceding calendar year or fiscal year . . . [emphasis added].”

Laws of 1951, Extraord. Session, chapter 10, sec. 7.

13 For the foregoing reasons, the Commission should reject Cougar Ridge’s argument that the words “annual” and “per year” in the RCW 80.04.010 definition of water company are restricted to a calendar year and grant Staff’s motion for summary determination.

DATED this 19th day of July, 2004.

CHRISTINE O. GREGOIRE
Attorney General



JONATHAN C. THOMPSON
Assistant Attorney General
Washington Utilities and
Transportation Commission
(360) 664-1189