

0016

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

BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION

---

|                            |               |
|----------------------------|---------------|
| WASHINGTON UTILITIES AND   | )             |
| TRANSPORTATION COMMISSION, | ) UW-040367   |
| Complainant,               | ) Volume II   |
|                            | ) Pages 16-83 |
| v.                         | )             |
| COUGAR RIDGE WATER SYSTEM, | )             |
| Respondent.                | )             |

---

A hearing in the above-entitled matter was held at 9:30 a.m. on Monday, July 19, 2004, at 1300 South Evergreen Park Drive, Southwest, Olympia, Washington, before Administrative Law Judge THEODORA MACE.

The parties present were as follows:

COUGAR RIDGE WATER SYSTEM, by Thomas Brown, Attorney at Law, Brown Lewis Janhunen & Spencer, Bank of America Building, 101 E. Market Street, Suite 501, P.O. Box 1806, Aberdeen, Washington 98520.

COMMISSION STAFF, by Jonathan Thompson, Assistant Attorney General, 1400 S. Evergreen Park Drive, S.W., P.O. Box 40128, Olympia, Washington, 98504.

Barbara L. Nelson, CCR  
Court Reporter

0017

1                   JUDGE MACE:  Let's be on the record in the  
2   matter of Washington Utilities and Transportation  
3   Commission against Cougar Ridge Water System.  This  
4   is Docket Number UW-040367.  Today's date is July  
5   19th, 2004.  My name is Theodora Mace.  I'm the  
6   Administrative Law Judge who's been assigned to hear  
7   this case.  We are holding a hearing at the offices  
8   of the Washington Utilities and Transportation  
9   Commission in Olympia, Washington, in Room 108.

10                   The nature of the hearing today is to hear  
11   argument with regard to the issue of whether  
12   jurisdiction attaches to the Respondent, and also to  
13   address the question of the motion to compel that was  
14   filed by the Respondent.

15                   I'd like to have the oral appearances of  
16   counsel now, in their short form, beginning with the  
17   Respondent.

18                   MR. BROWN:  Yes, my name is Thomas A. Brown.  
19   I'm an attorney from Aberdeen, Washington,  
20   representing the Cougar Ridge Water System.

21                   JUDGE MACE:  Thank you.

22                   MR. THOMPSON:  I'm Jonathan Thompson,  
23   Assistant Attorney General, representing the  
24   Commission Staff.

25                   JUDGE MACE:  Thank you.  Is there anyone on

0018

1 Well, I guess, let's begin. You have filed a motion  
2 for summary determination, and I think I indicated --  
3 and when I say you, I mean Commission Staff. I  
4 indicated in the notice of hearing with regard to  
5 this particular matter that I want to hear your  
6 argument, and in particular, I want to hear what you  
7 have to say about this issue, the definition of  
8 annual, and how it translates into the Commission's  
9 rule regarding calculation of average annual revenue  
10 for purposes of determining jurisdiction. And I'll  
11 hear response from you.

12 I'd like to address that first and then go  
13 ahead with the motion to compel in just a very brief  
14 form. Okay. Go ahead.

15 MR. THOMPSON: Well, the basic issue is  
16 this. The statute that defines water company in the  
17 Commission statutes has a phrase in it that excludes  
18 from the Commission's regulation companies, quote,  
19 where the average annual gross revenue per customer  
20 does not exceed a certain dollar amount per year.

21 And as I understand it, Cougar Ridge's  
22 argument is that the Commission has adopted a rule  
23 that makes that determination, that revenue  
24 determination, turn on a fiscal year, and that this  
25 is inappropriate in light of the statute.

0019

1           Let me just say first that I'm not sure --  
2 I'm not sure what Cougar Ridge means by the term  
3 fiscal year. The word is not used -- the word fiscal  
4 is not used in the Commission's rule, nor have we  
5 argued in this case that any definition of the term  
6 fiscal year ought to be used.

7           What we do have is the statute, and we also  
8 have WAC 480-110-255, which is the Commission's rule  
9 within the water company section that elaborates on  
10 how to determine whether a company is subject to  
11 regulation.

12           What it does is it simply gives an example  
13 of how to make the calculation for a hypothetical  
14 company, for a hypothetical water system, and it says  
15 -- it instructs the reader to select the most recent  
16 12 months, and the example it gives is a period from  
17 February to January.

18           I think the important point to take from  
19 that is that in order to do the calculation, you need  
20 a full year's worth of data. And it's also clear  
21 from that example, because it's not a calendar year,  
22 that the Commission, in adopting that rule, didn't  
23 intend to restrict itself to a calendar year.

24           Cougar Ridge argues that because the  
25 legislature didn't explicitly say 12-month period or

0020

1 fiscal year, that the necessary result is that it  
2 must be that the Commission is restricted to a  
3 calendar year, but that simply just does not follow.

4           And I would submit that this statute is  
5 probably purposely general in regard to the annual  
6 period. There's a good reason for that. Unregulated  
7 water systems are in no way limited to what time of  
8 year they can raise their rates. In fact, Cougar  
9 Ridge raised its rates in July of 2002, and again in  
10 August of 2003. There's nothing that says they have  
11 to wait till January 1, for example, to increase  
12 their rates.

13           Also, there's nothing that dictates what  
14 billing period a water system would use, either. It  
15 doesn't necessarily even have to be a calendar month,  
16 for that matter, or even a month.

17           In light of that, it doesn't really make  
18 sense, it wouldn't make sense for the statute to  
19 restrict the Commission looking only at a calendar  
20 year.

21           As far as just the pure meaning of the  
22 words, dictionary meaning of the words annual and per  
23 year, neither one is restricted to a calendar year.  
24 And if you -- I've -- I have submitted a written  
25 reply brief this morning and if you would just take a

0021

1 look at page five of that, I've included the Black's  
2 Law Dictionary definition at the top of page five,  
3 the first indented block, and I'll just read it.

4           It says -- this is the definition for  
5 annual. It says, Of or pertaining to year, returning  
6 every year, coming and happening yearly, occurring or  
7 recurring once in each year, continuing for a period  
8 of a year -- and this is I think probably the best  
9 definition for our purposes -- accruing within the  
10 space of a year, relating to or covering the events  
11 of a year, and then, finally, it says once a year,  
12 without signifying what time of year.

13           JUDGE MACE: Hold on for a second, Counsel.  
14 I'm sorry. Is there someone on the conference  
15 bridge? Maybe they signed off. Go ahead. I'm  
16 sorry.

17           MR. THOMPSON: In any case, the point I  
18 wanted to make about the definition is that part of  
19 the definition specifically indicates that it's once  
20 a year without signifying what time of the year, and  
21 probably the best definition, I think for our  
22 purposes, is the definition accruing within the space  
23 of a year.

24           And there's support for that definition in  
25 the case law that I cite there. Not to get too much

0022

1 into it, but there are similar definitions for --  
2 there's a definition in Black's for per year, which  
3 equates the word with annually, and the word annually  
4 similarly is defined as not signifying what time of  
5 the year, but simply computed by the year.

6 Also, not only is the -- do these dictionary  
7 definitions indicate that there's no fixity of dates  
8 for an annual period or a per-year calculation, but  
9 Washington statutes contain numerous examples in  
10 which the word annual and the phrase per year is used  
11 in connection with a period of -- a 365-day period,  
12 which is not necessarily a calendar year.

13 I've provided examples, and there are also  
14 numerous cases in which -- I think this is also  
15 telling -- the word annual and per year is explicitly  
16 connected with the phrase calendar year. And if it  
17 were a given that annual and per year meant calendar  
18 year, then those would all be redundant, so I just  
19 offer that as additional evidence that the  
20 legislature does not equate annual with calendar  
21 year. When it means calendar year, it says calendar  
22 year.

23 Black's doesn't define year, but of course  
24 the regular dictionary does. I've got a Merriam  
25 Webster definition of year there, which indicates in

0023

1 one part that it's a -- can be defined as a period of  
2 time equal to one year, but beginning in a different  
3 time.

4 Mr. Brown cited a case, Power, Inc. versus  
5 Huntley, and he's -- in his pleading, and -- but that  
6 case simply doesn't stand for the proposition for  
7 which it's cited. In fact, it refers to a statute  
8 that was adopted in the year of that case, which that  
9 case actually invalidated on grounds that aren't  
10 particularly relevant, but the statute itself that  
11 was referred to in that case stated the following:

12 It said every bank and corporation shall  
13 annually pay to the state, in addition to annual  
14 license fees, an excise tax according to or measured  
15 by its net income for the preceding calendar year or  
16 fiscal year. And I would just offer up that that's  
17 actually further evidence that the term annual can  
18 mean either calendar year or fiscal year, if not any  
19 other definition that -- of a 365-day period that  
20 might be appropriate. So with that, I'll --

21 JUDGE MACE: Thank you. Go ahead, Mr.  
22 Brown.

23 MR. BROWN: Thank you, Your Honor. Well,  
24 let me begin by responding briefly to a couple of the  
25 points of the Attorney General's office, and then



0024

1 I'll go to my main argument.

2           The question of what a fiscal year means,  
3 I'm not particularly wedded to the concept of fiscal  
4 year versus anything else, but I did find this one  
5 case that defined a fiscal year as being a 12-month  
6 period that ends with a month other than December,  
7 and that was this Power versus Huntley that he was  
8 just talking about, and I thought that was a -- it  
9 was a useful handle for us to get a grip on.

10           We've got a calendar year, and then I think  
11 the opposite of a calendar year would be a fiscal  
12 year. The only reason I cited that case was for that  
13 purpose and to remind us that the State of Washington  
14 has long honored the difference, that they mean two  
15 different things. And I don't think we get anything  
16 more than that out of that case, except maybe the  
17 name fiscal year for everything else other than a  
18 calendar year, and the fact they are two different  
19 things recognized in Washington law.

20           As to any argument based on the WAC, I would  
21 say -- I would ask you to disregard that, because  
22 that's the issue here. It really begs the question,  
23 if we're right, then the WAC is wrong in calculating  
24 this thing based on any 12-month period of time that  
25 they choose, and so that kind of begs the question --

0025

1 and I agree with him that the WAC supports his  
2 position, but, again, that begs the question, so what  
3 we're really talking about is whether the WAC and  
4 their practice is consistent with the statute.

5 Then, on the Black's, I'm glad he mentioned  
6 those and filed these, because I think they support  
7 our position, and I want to come back to that after I  
8 make kind of the argument I had planned.

9 The issue here is really statutory  
10 interpretation. We're asking you to decide what that  
11 statute means, and statutory interpretation in my  
12 experience has always been kind of a tricky business,  
13 because it's easy for the lawyer, the advocate, to  
14 come in and say, Well, I think it means this, because  
15 that's what lawyers always do.

16 But the judge has to do two things. It's a  
17 two-pronged deal, in my view. The judge, first of  
18 all, has to give effect to each and every word in the  
19 statute. That's a common and well-known precept of  
20 statutory interpretation. And when the judge does  
21 that, the judge has to remember that every one of  
22 those words was hashed over and fought over across  
23 town before this thing became law. And they  
24 presumably, and it's not always true, but presumably,  
25 they all mean something, each one of those words mean

0026

1 something.

2           And the second prong is that, in the course  
3 of giving effect to each one of those words, the  
4 judge is charged with also making sure that the thing  
5 means what those people across town intended it to  
6 mean. And sometimes, out of mistake or out of  
7 ignorance or sometimes they'll put a word in that  
8 changes that direction a little bit, and then the  
9 judge, unfortunately, is in the job, in the business  
10 of fixing that, making sure that, even though that  
11 word appears there, that it goes in the direction  
12 that the legislature intended.

13           Now, in the course of doing that, judges are  
14 very much human beings and they tend to focus on the  
15 key. They want to pick out the most important thing,  
16 the wheat, if you will, and leave the chaff behind.

17           And I notice that in your notice today you  
18 said that the issue was annual revenues or average  
19 annual gross revenues, and I agree with you that  
20 that's part of the issue. But I think that in  
21 focusing so hard on that, I think that you didn't  
22 mention, and I'm not saying you overlooked, but I'm  
23 saying you didn't mention that you wanted to examine  
24 all sides of the word annual.

25           But the legislature gave us the key, the

0027

1 backup, the clincher. They didn't just say the  
2 average annual; they said the average annual per  
3 year. So the legislature was saying, if someday  
4 Theodora Mace or some other judge is sitting there  
5 wondering whether, when we said annual, we meant one  
6 of these situations where we're talking about  
7 starting in May and going to -- and going to 12  
8 months and finishing the middle of the next year, if  
9 you're ever wondering about that, Judge, look at our  
10 language. We didn't say annual; we said annual per  
11 year. We couldn't have made it any clearer than  
12 that.

13           And I think it's instructional for us to  
14 realize that the Commission, in adopting the system  
15 that it wants to adopt, has not really bothered to  
16 use any of those words. They don't like those words  
17 because they know that those words don't support what  
18 they're doing, and they use things like a 12-month  
19 period.

20           Well, the legislature didn't say a 12-month  
21 period; they said annual per year. And really, those  
22 are kind of technical arguments, but I think they  
23 make good sense, but the better argument is the one  
24 that brings us back to common sense, and talks about  
25 -- let's take their argument and apply it to other

0028

1 things. How about daily. If somebody said daily,  
2 can we interpret that to mean any 24-hour period that  
3 we choose, and I think the answer is obvious. No, we  
4 can't do that. Or how about monthly. If somebody  
5 says if the legislature tells us to do something on a  
6 monthly basis, can we just start selecting 30-day  
7 periods that cross monthly lines, and the answer, I  
8 think, would be clearly no.

9 JUDGE MACE: Isn't it true, though, that  
10 often billing for utilities is done on a monthly  
11 basis, but it's a month that the utility determines  
12 is the appropriate billing month? Isn't that usually  
13 the case?

14 MR. BROWN: Yeah, and actually all people --

15 JUDGE MACE: Not necessarily a calendar  
16 billing month.

17 MR. BROWN: Right, they pick a date for  
18 billing and, yes, I agree with that. But if the  
19 legislature gave us a directive that said to do  
20 something on a monthly basis, I think that we'd have  
21 to have a further directive from them before we  
22 strayed from that and started using 30 or 28 or  
23 31-day intervals for determining something. And you  
24 can go on and on with the examples, but I think the  
25 point is made.

0029

1           As I pointed out, maybe the most telling  
2 thing is is that when we get to the Commission level,  
3 we find that the Commission doesn't use the  
4 legislature's language, but uses the language that  
5 they have created in order to get this into a  
6 manageable forum for the way they want to do it.

7           Another thing that's tricky about  
8 interpretation of what the legislature has done is is  
9 that, when you get to the bottom line, judges always  
10 want to do the thing that's right, and not just right  
11 on paper and precise, but right in the sense that  
12 it's a good idea, it makes good sense, and it's good  
13 policy.

14           I would suggest to you that the record  
15 that's in front of you tells you that the -- that now  
16 we've seen the illustration of why the legislature's  
17 theory here was the best one, doing it on an annual  
18 calendar year basis. That is, if you do it another  
19 way, you run the risk of getting all fouled up, and  
20 that's exactly what happened here, is that the Staff  
21 tried to calculate this thing based on this 12-month  
22 method that they adopted, and they were off by a  
23 year. They were admittedly off by a year, and they  
24 had to go back and correct that. They were off --

25           JUDGE MACE: You know, I just want to

0030

1 interrupt. You mentioned that in your pleadings, and  
2 I guess I don't know, I wasn't able to find any  
3 reference or backup for that. What do you mean by  
4 they were off by a year?

5 MR. BROWN: The --

6 JUDGE MACE: Are you talking about Mr.  
7 Eckhardt's declaration in here?

8 MR. BROWN: No, I'm talking about --

9 JUDGE MACE: That was attached to the  
10 original motion for summary determination. Mr.  
11 Eckhardt filed an affidavit that showed a  
12 calculation. Are you talking about that calculation  
13 or some other?

14 MR. BROWN: I don't even remember whether he  
15 included the original calculation, but what happened  
16 here, and I think, actually, Mr. Thompson will just  
17 agree with me, is that the very first calculation  
18 done by Staff was off by a year. They were in the  
19 year 2002. They said that jurisdiction attached to  
20 year 2002. They later admitted that that was wrong  
21 and said that jurisdiction attached to the year 2003,  
22 but even then they were off by a month in the second  
23 calculation. And the reason for that is because they  
24 were trying to do this artificial system of not just  
25 going by a calendar year, ka-chung, ka-chung,

0031

1 ka-chung.

2 JUDGE MACE: But you don't have any dispute  
3 with the actual calculation that was contained in Mr.  
4 Eckhardt's declaration attached to the motion?

5 MR. BROWN: If that's the final calculation,  
6 the answer's you're correct. I do not have a dispute  
7 with the methodology they used; just the fact that  
8 that's the wrong methodology.

9 JUDGE MACE: It's wrong because you feel it  
10 should be a calendar year basis?

11 MR. BROWN: Exactly, exactly. And staying  
12 on that point, I think the one thing that we have to  
13 say about calendar years is that it's clean, it's  
14 understandable, the public knows what you're talking  
15 about. I think that any member of the public that  
16 read that, read the statute would understand this to  
17 be a calendar year, and when they got into dealings  
18 with the Commission, they'd find themselves in the  
19 same position I found myself in, which is being  
20 pretty much the same as a member of the public, is I  
21 don't know what they were talking about. It was a  
22 foreign and alien concept based on a regulation that  
23 just simply didn't reflect the statute. So what I --  
24 go ahead. I'm sorry.

25 JUDGE MACE: Well, you know, you're



0032

1 mentioning the public and the public's reaction to  
2 the calculation on other than a calendar year basis,  
3 but a concern that I have, and I believe the  
4 Commission generally has about the public and its  
5 reaction to being billed, is that in this situation,  
6 as a whole, Cougar Ridge has had fluctuating rates  
7 over a period of two to three years, and for example,  
8 using the calendar year, had a rate in effect for  
9 part of the year, and then dispensed with the rate.

10           And I mean, I don't know where I am yet with  
11 regard to this motion, but that -- I mean, there's a  
12 concern that the public is -- use of the calendar  
13 year is leading to a situation where suddenly the  
14 public is not being billed.

15           MR. BROWN: Yeah, yeah.

16           JUDGE MACE: And then, how would they  
17 understand that, and why would they -- I mean, that  
18 seems very confusing, as well.

19           MR. BROWN: That's a totally legitimate  
20 concern, and actually, I had a note to mention that  
21 as part of my discussion here. And I was thinking  
22 about that over the weekend, and I was thinking about  
23 what Mr. Thompson might say, and one of the things  
24 that he might have said is this whole thing could be  
25 a sham where the rates go up and down just to avoid

0033

1 regulation. And so I got out my adding machine and  
2 tried to come up with a way that you could use that  
3 as a sham, and I concluded that you couldn't do it,  
4 because if you tried to do it, you will always be --  
5 you'll always be caught by the calendar. The  
6 calendar will always catch you in that you will have  
7 to put more than the threshold amount into some  
8 calendar year.

9           And it's true, it's true that somebody could  
10 use it as a -- as a shifting device to shift the day  
11 the threshold kicks in, but only once. You're only  
12 going to be able to do that once, and from that point  
13 on, it doesn't work.

14           And so I will say that, in the case of  
15 Cougar Ridge, there was only one time that something  
16 like that happened, and that was when they recognized  
17 that the rates they had changed to would precipitate  
18 regulation, and they said, We're going to stay below  
19 the threshold by dispensing with those rates for two  
20 months, and that's the only time that they changed  
21 their rates in anything other than a -- what I'll  
22 call a normal increase.

23           Before that, there were two rate increases  
24 in earlier years, but those were -- I would call  
25 those in the ordinary course of business. So there

0034

1 wasn't something where somebody was going all over  
2 the chart with this, but they did have that one year.  
3 And like I said, any way you calculate this  
4 mathematically, a person could only use that device  
5 one time and then they'd be subject to the rates  
6 thereafter.

7           And so what I think what we have to do is go  
8 back to what the legislature told us. And if the  
9 legislature had said annual, I think we'd be off on  
10 this argument about what does the dictionary say and  
11 what -- you know, what did they mean and all that,  
12 but when the legislature gave us a double jolt and  
13 said annual per year, it's almost as if they knew we  
14 were going to be sitting here today and arguing about  
15 this, and they told us, No, we mean calendar year.  
16 That's exactly what we mean.

17           And that brings us to the quotes that Mr.  
18 Thompson has presented today. And as advocates, we  
19 tend to read things the way we want to read them, but  
20 I read these to say -- particularly the Black's Law  
21 Dictionary --

22           JUDGE MACE: Where are you?

23           MR. BROWN: He's at the top of page five.  
24 They say, Of or pertaining to year, returning every  
25 year, coming and happening yearly, occurring once in

0035

1 each year, continuing for a period of a year,  
2 accruing within the space of a year.

3           You know, you can read that to talk about  
4 calendar years as well as fiscal years, and the most  
5 telling is the one that says, Once a year without  
6 signifying what time in year. Well, that tells us  
7 that everybody knows what the year is, but if we're  
8 talking about once a year, when in that calendar  
9 year, it doesn't tell us necessarily. So they're  
10 talking about a calendar year there.

11           But more important are these quotes that  
12 begin on page six, and there's two at the bottom of  
13 the page and three at the top of the next page, and  
14 in each one of those cases, annual meant calendar  
15 year, and the legislature says so and he includes  
16 those for the proposition that otherwise it would be  
17 redundant, I guess was his argument.

18           But to me, what that is is that's a clear  
19 message as to what the legislature means when it says  
20 annual, when you see these comparable situations,  
21 that they're talking about a calendar year.

22           So I think we just have so many indicators  
23 here, the most important being the legislature's  
24 clear indication that they weren't just saying  
25 annual; they were saying annual per year. And like I

0036

1 say, when they give you that, I think that makes the  
2 interpretation of what the legislature was trying to  
3 do a lot easier, and when you take into account that  
4 that interpretation will make this thing simple and  
5 clear to the public and almost foolproof -- there's  
6 nothing that's foolproof, but almost foolproof -- I  
7 think that not only makes it right, but it makes it a  
8 good idea.

9 JUDGE MACE: Anything else, Mr. Thompson?

10 MR. THOMPSON: Yeah, I would just want to  
11 respond to the argument that, because the statute  
12 says both annual and per year, I think the argument  
13 is that -- Mr. Brown's argument is that, you know,  
14 why would they have said per year if they didn't mean  
15 per calendar year, and his argument is -- I believe  
16 he said they couldn't have been clearer.

17 Well, they certainly could have been  
18 clearer. If they had meant calendar year, they could  
19 have said calendar year, and they have done so in  
20 many other instances. I would offer this explanation  
21 of why it says annual per year. I admit to looking  
22 at that at first and thinking, Well, maybe that is  
23 just imprecise drafting, why would they have said it  
24 twice. I think the reason is this. I think it's  
25 actually very precise, and it's -- you'll see what I

0037

1 mean by an analogy. What we have here is not  
2 something just like a speed limit, for example, where  
3 it says, you know, a driver shall not exceed 35 miles  
4 per hour. It's actually more complicated than that,  
5 because it's saying, by analogy, the driver shall not  
6 exceed 35 miles per hour, not only -- well, not just  
7 at a given moment, but measured over an entire hour,  
8 for example.

9           If you just had per year, if it just said  
10 average revenue per customer per year, the argument  
11 would be open that, Well, okay, we can look at it on  
12 one month, then, and at the rate of a year, this  
13 company will -- would have exceeded the limit in the  
14 course of a year, but of course utilities' demand, as  
15 the Commission is aware, varies over the course of a  
16 year, and that's why, in rate cases, the Commission  
17 will always take a test period of 12 months and look  
18 at it so that the variations in demand will cancel  
19 themselves out over a 12-month period with the  
20 different seasons represented in there. That's my  
21 point on that.

22           A calendar year is not inherently easier.  
23 It doesn't make the calculation any easier. Mr.  
24 Brown referred to Staff's supposed misinterpretation.  
25 I'll tell you what that was. There's a question that

0038

1 Staff has had of whether, when a company such as  
2 Cougar Ridge, that has a fixed monthly rate, changes  
3 its rates to a level at which they will eventually  
4 cross the threshold, whether it's appropriate to say  
5 at that point, Okay, you need to file a tariff, or  
6 whether you have to actually wait for the requisite  
7 number of months to go by in order to say, Okay, now  
8 you're jurisdictional, even though you have a monthly  
9 rate that, you know, multiplied by 12 is eventually  
10 going to get you over the top.

11 That's the source of Staff having asserted  
12 an earlier time. And while that has some appeal to  
13 it, I think the statute, in fact, the very language  
14 we're talking about, actually requires that we do  
15 wait until we have, because of the word annual, we  
16 have to wait until we have an actual annual period of  
17 data to go from. And so I'd just make that  
18 clarification.

19 There's none -- as I said, utilities do  
20 typically bill on a monthly basis, and there's  
21 nothing inherently clearer or easier about a calendar  
22 year, particularly in light of the fact that, as I  
23 said earlier, these systems can raise their rates at  
24 any time they wish. They're not limited to January  
25 the 1st. If that were the case, it might make sense

0039

1 to limit it to a calendar year, but it's not the  
2 case.

3           So you know, we have the statutory language,  
4 it says annual, it says per year. Those are general  
5 terms. I've provided numerous examples, including  
6 case law in which courts have said -- in this state  
7 have said annual does not mean calendar year, and  
8 that concludes that.

9           JUDGE MACE: Thank you. I'm not going to  
10 issue a ruling today. I'm going to issue a written  
11 ruling. Having heard the argument, however, I'm  
12 going to give you some indication of the direction  
13 I'm going, because the ruling will come out  
14 relatively quickly, I just want to put it in written  
15 form.

16           I'm not persuaded by your argument. I  
17 looked at the dictionary definitions and I looked at  
18 the statute, and the statute, in my view, it's not as  
19 clear-cut as you argue. I don't see any particular  
20 specific direction the legislature was giving by its  
21 term annual per year. I think those terms are --  
22 could be interpreted to be either calendar or fiscal.  
23 So I'm going in that direction, and that will more  
24 than likely be the -- it will be the direction I take  
25 in the written order. I just wanted to let you know



0040

1 that that's, you know, that's where I'm going with  
2 this.

3 I'd like to turn to the motion to compel and  
4 discuss that, if I could find it. I guess,  
5 preliminarily, I'm a little confused by what I saw in  
6 the pleadings. The company's original response  
7 referred to -- and motion to compel referred to,  
8 let's see here, 12 -- looks like 12 interrogatories,  
9 and then there was another -- apparently another set  
10 of interrogatories, and I guess I need to go through  
11 all of them, because I'm -- you responded, Mr.  
12 Thompson, to -- in a general way, it seemed like to  
13 me, to the original set of interrogatories that was  
14 addressed in the motion to compel, and then you also  
15 talked about these additional ones.

16 So I guess I'm just a little unclear where  
17 we stand with these. So I don't want to have -- I'm  
18 not envisioning prolonged argument with regard to  
19 this, because I have read what you've written, both  
20 of you, but I want to -- I want to make sure we're  
21 still in the same status, if there hasn't been some  
22 initial -- some additional response to these  
23 interrogatories that changes the picture somewhat.

24 So with that in mind, Mr. Brown, I'm looking  
25 at this first set of interrogatories, one through 12.

0041

1           MR. THOMPSON: Just for clarification,  
2 that's actually the second set.

3           JUDGE MACE: That's the second set, okay. I  
4 see it's dated April 20th, 2004. One of you fill me  
5 in on where we are with this.

6           MR. THOMPSON: Well, Staff had responded to,  
7 I believe five previous data requests from the  
8 company, and let me see --

9           MR. BROWN: Do you want me to --

10          MR. THOMPSON: You can go ahead.

11          MR. BROWN: What happened was is we sent a  
12 set of data requests and then there were responses to  
13 those, and then, following the depositions, I learned  
14 about significantly more information and submitted  
15 another set of data requests.

16          JUDGE MACE: I see.

17          MR. BROWN: That's what happened.

18          JUDGE MACE: I didn't pick it up from the  
19 pleadings, and I apologize if I didn't. Okay. So  
20 what we're dealing with now, at this point in time,  
21 is the five that Mr. Thompson refers to in his  
22 response. Is that -- am I right in that?

23          MR. THOMPSON: Well, actually, we had  
24 responded to the first five, and actually, Mr.  
25 Brown's motion to compel concerns the second 12 --

0042

1 JUDGE MACE: Okay.

2 MR. THOMPSON: -- which are attached to his  
3 responsive motion.

4 JUDGE MACE: That's the ones marked April  
5 20th.

6 MR. THOMPSON: Well, the ones I have are --  
7 up in the header, it says June 17th.

8 JUDGE MACE: Let's see here. Okay. I have  
9 some June 18th, June 18th. I see, June 17th. All  
10 right. These are 11 in number. Okay.

11 MR. THOMPSON: Okay.

12 JUDGE MACE: All right. So I see data  
13 requests numbered one through 11, dated June 17th,  
14 and then I see what appear to be responses from Staff  
15 dated June 18th.

16 MR. THOMPSON: Correct.

17 JUDGE MACE: And those are still at issue;  
18 is that --

19 MR. BROWN: Some of them, some of them.

20 JUDGE MACE: Okay. Mr. Brown, why don't you  
21 walk me through these and tell me which ones are  
22 still at issue.

23 MR. BROWN: Okay. And I'm going to have to  
24 say that some of the materials -- that the materials  
25 came to me in bulk, not really identified in some

0043

1 cases, and so I'm not able to determine -- actually,  
2 from looking at some of them, I'm thinking the phone  
3 logs in particular, I can't tell what I've got.

4           But I would say the first -- the most  
5 important -- I'm going to skip number one, because  
6 that's -- we might have to come back to that one.  
7 Number two, the phone logs of Eugene Eckhardt and  
8 James Ward. I do have some phone logs, and they look  
9 to me to be Mr. Ward's, but I can't tell for sure  
10 what I have. They're scribbled, handwritten, they're  
11 not labeled, so yeah, I guess I need help on  
12 determining what I have.

13           MR. THOMPSON: In response to an earlier  
14 data request, as I indicated in my response, we have  
15 provided Mr. Ward's phone logs from the present going  
16 back to the date at which he had his first phone  
17 contact with anyone concerning Cougar Ridge Water  
18 System.

19           And as for Mr. Eckhardt, he doesn't have a  
20 phone log. And Mr. Ward's phone log just consists of  
21 his own handwritten notes and, you know, with dates  
22 or what have you, but we just provided them in the  
23 form that they're kept in the ordinary course of  
24 business.

25           JUDGE MACE: Okay.

0044

1           MR. BROWN: Okay. That solves my problem.  
2 if they're confirming to me that there is no such  
3 thing as phone logs for Mr. Eckhardt, I thought he  
4 said there was during his deposition, but apparently  
5 not. Okay.

6           The next would be the employee manual. Mr.  
7 Ward, during his -- and Mr. Eckhardt both, during  
8 their depositions, told me that this would contain  
9 information about dealing with the public on  
10 questions similar to the one that we're dealing with  
11 here, and how those inquiries should be handled, and  
12 I'd like to take a look at that.

13           MR. THOMPSON: Well, of course our -- we  
14 object to that as being completely irrelevant, but,  
15 as we indicated in the last sentence there, without  
16 waiving our objection, we'll make those available.

17           JUDGE MACE: And when will you provide that?

18           MR. THOMPSON: Oh, I think they're available  
19 on the Commission's intranet, and I suppose we could  
20 just print off the pages and make them available any  
21 time Mr. Brown would like. Again, but, you know, I  
22 --

23           JUDGE MACE: I'm going to require that you  
24 supply the manual. You know, there's -- I have some  
25 doubts about whether it could lead to anything that

0045

1 would be of value in the case, but I don't know that  
2 it's protected in any particular way, and I'm going  
3 to ask that you provide it.

4 MR. THOMPSON: All right. They're -- well  
5 --

6 JUDGE MACE: And within -- by the end of  
7 next week.

8 MR. THOMPSON: Okay.

9 MR. BROWN: Okay. Number four, apparently,  
10 it turned out during his deposition, Mr. Eckhardt  
11 read something prior to the deposition about how to  
12 act during the deposition and how to conduct himself,  
13 and I said I wanted to see a copy of that. That was  
14 rejected.

15 JUDGE MACE: Okay. And I have read your  
16 response, and I am going to indicate he does not --  
17 Mr. Thompson does not need to provide that. I do  
18 believe that falls within privileged information.

19 MR. BROWN: Okay. And number five is Mr.  
20 Eckhardt's calendars. And I don't know if that -- I  
21 don't know if I've been provided anything that  
22 purports to comply with that or not, but --

23 MR. THOMPSON: We haven't provided that.  
24 And you know, again, the objection is it's just --  
25 well, it's not reasonably likely to calculate to lead

0046

1 to discovery of admissible evidence. It's way too  
2 broad in regards to the needs of the case. You know,  
3 there may be attorney-client privileged information  
4 in there, there may be personal matters in his  
5 calendar, you know, doctors' appointments, things of  
6 that nature. To me, it just doesn't make sense to  
7 expand discovery to this kind of thing.

8 MR. BROWN: Well, he testified during his --  
9 I'll look for the exact language, but he used these  
10 as a method of setting up meetings and recording  
11 information -- let me find it here real quick.

12 MR. THOMPSON: I would add that we've  
13 already produced a significant amount of documents in  
14 response to the first five discovery requests in this  
15 case. I mean, literally, you know, six inches of  
16 documents, and including Mr. Ward's complete file  
17 concerning Cougar Ridge with, you know,  
18 attorney-client privileged material redacted, you  
19 know, and the fact of whether Mr. Eckhardt had a  
20 meeting concerning Cougar Ridge, I mean, that  
21 definitely is getting into work product and  
22 attorney-client privileged type of information, as  
23 we're putting our case together. You know, it's just  
24 -- it's beyond the ordinary scope of discovery.

25 JUDGE MACE: Mr. Brown, I have to admit, you

0047

1 know, regardless of what you're going to tell me Mr.  
2 Eckhardt said, I'm not clear what you would hope to  
3 achieve by obtaining information of this type.

4 MR. BROWN: Okay. The next one is Mr.  
5 Eckhardt's agendas for meetings. Now, on these, he  
6 did say that those were substantive and that they  
7 talked about what was to be discussed during the  
8 meetings with his staff relating to various issues  
9 like Cougar Ridge.

10 MR. THOMPSON: Well, and again, it's similar  
11 to the calendars. It's also work product, discussing  
12 with Staff, you know, how to proceed with a case  
13 that's in litigation or headed for litigation.

14 JUDGE MACE: I'm in agreement with the Staff  
15 about this, as well.

16 MR. BROWN: Okay. Let me -- not by way of  
17 arguing, but I just want to make a record that he  
18 indicated during his deposition that this was his  
19 primary way of interacting with his staff, by use of  
20 these agendas.

21 Okay. Computer files is pretty much the  
22 same thing. They both indicated that they do have  
23 computer files of different varying kinds relating to  
24 this Cougar Ridge thing. In a normal civil action,  
25 they would just be required to produce those.



0048

1           MR. THOMPSON: Well, this request, as it's  
2 worded here, it says, Please produce a copy of any  
3 and all computer files of Mr. Ward or Mr. Eckhardt  
4 relating to Cougar Ridge Water System.

5           There was already a data request for, you  
6 know, essentially all Staff records related to Cougar  
7 Ridge Water System. We responded to that, we  
8 redacted things that were privileged or --

9           JUDGE MACE: And did that include computer  
10 information?

11           MR. THOMPSON: Yeah, most definitely, it  
12 did. It included e-mails, and most documents are --  
13 do reside on the computer.

14           JUDGE MACE: So in effect --

15           MR. THOMPSON: We've responded to it.

16           JUDGE MACE: You've responded to it.

17           MR. BROWN: Well, it was clear to me during  
18 the deposition that they didn't -- that each of those  
19 people were not asked to prepare an index of  
20 everything on their computers that related to Cougar  
21 Ridge, and then it was decided, on an item-by-item  
22 basis, whether it would be revealed or not. That  
23 didn't happen.

24           JUDGE MACE: Okay. But he says that you  
25 asked for the files on Cougar Ridge and he responded

0049

1 with the files on Cougar Ridge to the extent that he  
2 could, and that includes computer files. And I'm  
3 going to -- I'm ruling that it's been answered.

4 MR. BROWN: He didn't say to the extent he  
5 could. He didn't say that.

6 JUDGE MACE: I'm ruling that it's been  
7 answered.

8 MR. BROWN: Number eight, they both spoke of  
9 time sheets during their deposition.

10 JUDGE MACE: Yeah, definitely, I'm not going  
11 to allow that to be produced. That's -- I agree with  
12 Staff with regard to that response.

13 MR. BROWN: Okay. Now, number nine is a  
14 memorandum that was apparently prepared by the  
15 Attorney General's office for the Commissioners. As  
16 I understand it, the objection to that is that it's  
17 an attorney-client privileged matter. That would be  
18 the same as somebody having come to your office and  
19 dropped it off and now claiming that it's privileged.  
20 The ultimate decision-making body here is the  
21 Commissioners, and they've seen an argument or a  
22 memorandum or fax or something prepared by the  
23 Attorney General's office, and I haven't seen it, and  
24 I think I have an absolute right to see it under  
25 these circumstances.

0050

1           JUDGE MACE: Mr. Thompson, I think you  
2 addressed this in your written filing.

3           MR. THOMPSON: Yes, I did. There's a  
4 provision in the -- well, it gets into all sorts of  
5 issues with ex parte contacts, when the ex parte wall  
6 goes up, so to speak, and the fact that investigative  
7 and adjudicative functions are combined in  
8 administrative agencies, it's a fact, and the courts  
9 have dealt with it in the past and they have  
10 concluded that it is not a violation of due process  
11 for the ultimate decision-maker to have had prior  
12 knowledge of facts, prior to the adjudication, and --  
13 well, primarily I would rely on the provision in the  
14 APA that says the decision-maker basically can't be  
15 removed from bias because they've been involved in a  
16 probable cause determination in that case.

17           And what that implies is that, and it's  
18 absolutely necessary to the administration of the  
19 Commission statutes, is that there be an opportunity  
20 for the decision-makers to have -- to decide whether  
21 to initiate proceeding in the first case, probable  
22 cause determination.

23           Now, the question that flows from that is,  
24 you know, is that a -- are the contents of that  
25 communication privileged, and we argue that they are.

0051

1 There very definitely was in that communication legal  
2 advice about the Commission's options with regard to  
3 initiating this proceeding. There also is factual  
4 information in there, but it's -- again, it's kind of  
5 interwoven with the legal advice.

6 And as I said, the privilege is the  
7 Commission's privilege; it's not Staff's privilege.  
8 If the Commission wishes to waive that privilege, it  
9 certainly could, but we believe it is entitled to the  
10 protections of the attorney-client privilege.

11 JUDGE MACE: Okay.

12 MR. BROWN: Well, he argued that it was --  
13 didn't violate due process, and I guess maybe I'd  
14 have to agree to that, and he argued that Commission  
15 members don't necessarily have to disqualify  
16 themselves if they've seen something. I guess maybe  
17 I agree with that. But that's not the point. The  
18 point is is that if he shows -- if something is shown  
19 to the Commission, is delivered to them, given to  
20 them, and they're going to sit in judgment ultimately  
21 as a adjudicative body, are they entitled to have a  
22 secret cache of things that they've seen that I  
23 haven't seen, and I don't think any adversary system  
24 in the world can tolerate that.

25 JUDGE MACE: Well, I guess the thing -- the

0052

1 distinction I would draw is that, in the proceeding,  
2 the Commission will consider evidence, and they will  
3 make their decision based on that evidence,  
4 regardless of what went before where individual  
5 commissioners were met with and advised. In the  
6 proceeding itself, they deal with the evidence, and  
7 the courts review on the basis of the evidence they  
8 consider. So you know, I see a distinction there,  
9 and I do agree with Mr. Thompson that that memo was  
10 privileged, and it did come in at a time prior to the  
11 institution of the case. So I'm not going to require  
12 that it be produced.

13 MR. BROWN: All right. I'd like to make  
14 another argument independent of the ones already made  
15 relating to that.

16 JUDGE MACE: Okay.

17 MR. BROWN: Possibly relating to that memo,  
18 I don't know. There are two occasions here where I  
19 learned that the Staff revealed to the public and  
20 discussed among themselves an opinion held by the  
21 Attorney General's office that the threshold had not  
22 been met here, that there was no meeting of the  
23 threshold and that there was no jurisdiction.

24 JUDGE MACE: Right, I know, and Mr. Thompson  
25 cited a case that addressed that. Did you happen to

0053

1 take a look at that case?

2 MR. BROWN: I did. I didn't see the  
3 relevance, but, yeah, I saw that. The point is, the  
4 point is is that the privilege -- there was one  
5 e-mail that was inside the Staff, and maybe the  
6 argument could be made there, but the opinion of the  
7 Attorney General was touted to the public as having  
8 said that there is no jurisdiction. And so I do  
9 think that -- I understand that, under the umbrella  
10 of privilege, people can discuss different scenarios,  
11 but that's not what we're talking about. We're  
12 talking about a position that was reached, and I  
13 don't know if it's discussed in this memorandum that  
14 we're talking about or not.

15 But, again, I think, with all due respect to  
16 your decision that I can't see it just on basic  
17 grounds of fairness, I think I'm entitled to find out  
18 why the Attorney General's office said there was no  
19 jurisdiction.

20 JUDGE MACE: Well, again, I'm going to go  
21 back -- I mentioned, and feel free to jump in, Mr.  
22 Thompson, but I'm referring to your response where  
23 you talk about a case --

24 MR. THOMPSON: That's right. I --

25 JUDGE MACE: -- where -- it's called Seattle

0054

1 Northwest Securities, which really addresses this --  
2 appears to be the same situation as we're talking  
3 about here, where a conclusion from attorney advice  
4 was disseminated, but the advice itself, the  
5 reasoning, et cetera, was not, and the court found  
6 that that did not -- was not -- that did not waive  
7 the privilege.

8           Go ahead, Mr. Thompson, if you have anything  
9 else.

10           MR. THOMPSON: Yeah, well -- and I think  
11 it's a pretty logical rule when you think about it,  
12 because, well, as what I supplied there says, people,  
13 you know, in arguing the merits of their case, are  
14 always giving the ultimate conclusion of their legal  
15 analysis. If that were enough to waive the privilege  
16 of all the analysis that goes into the ultimate  
17 opinion, then there'd be no privilege.

18           Also, I'd add that the fact of the matter is  
19 there was never an opinion given from the Attorney  
20 General's office that this company was not subject to  
21 the Commission's jurisdiction. I'd just make that  
22 clarification.

23           JUDGE MACE: Anything else, Mr. Brown?

24           MR. BROWN: Yeah, actually, he brought up  
25 the point I was just going to make, that there's also

0055

1 a dispute about whether the Attorney General's office  
2 ever said that. And what we have is we have two  
3 different scenarios under which that was revealed.  
4 One was to the public and then there's another one  
5 where there's a e-mail from Jim Ward to Gene  
6 Eckhardt, with a copy to Jonathan Thompson, and it  
7 says, Mr. Lundgren called and asked what happened. I  
8 explained that the AG office had determined that,  
9 since the company was under the threshold, that the  
10 company was not regulated.

11 And the response to that by Mr. Eckhardt was  
12 apparently that, Okay, I spoke with Mr. Lundgren, and  
13 please refer all future calls to me.

14 So I guess the implication that any person  
15 would draw from that is is that one member of Staff  
16 told another member of Staff, with a copy to the  
17 attorney, that the attorney's office had advised that  
18 there was no jurisdiction, and nobody said, Whoa,  
19 wait a minute. Nobody said, That's wrong, we didn't  
20 say that. And it was just -- it was so matter of  
21 fact that I guess any person who'd been put on  
22 reasonable inquiry about this issue would say, Well,  
23 obviously it was known among the Staff and  
24 communicated to the attorney that somewhere, somehow,  
25 there was a memo saying that the jurisdictional



0056

1 threshold had not been reached, and I just want to  
2 see it.

3 JUDGE MACE: Yeah, and I don't see that your  
4 argument, and even citing to that e-mail, takes this  
5 situation outside the scope of this case that Mr.  
6 Thompson cited. I'm not going to require that it be  
7 produced.

8 MR. BROWN: Okay. Number 10 is my request  
9 for information regarding a meeting with Commissioner  
10 Showalter, and number 11 is my request for e-mails  
11 that have not been supplied.

12 JUDGE MACE: Well, I'm assuming, with regard  
13 to number 11, that the fact that the Staff has  
14 provided you with the complete file, files on Cougar  
15 Ridge, it would have included any e-mails appropriate  
16 to be given to you that were not privileged. Would  
17 that -- I'm looking at number 11 now.

18 MR. THOMPSON: Well, let me just --

19 JUDGE MACE: Any and all e-mails to and from  
20 the Attorney General's office previously withheld.

21 MR. BROWN: And I'm, just for the record,  
22 I'm going to say that nobody has ever told me that  
23 I've been given the complete files. Nobody's ever  
24 told me that.

25 MR. THOMPSON: Well, a request was made -- I

0057

1 don't have it before me, but in one of the five prior  
2 data requests for the Commission's file with respect  
3 to Cougar Ridge, or words to that effect, and it  
4 indicated it should include the file of Mr. Ward.

5           We responded to that as best that we could,  
6 as required by the discovery rules, with the proviso  
7 that there are many, many people throughout the  
8 agency that might have a scrap of paper that says  
9 something about Cougar Ridge on it, including -- I  
10 mean, this is interesting, the -- as requested in  
11 number 10, it's certainly possible that the  
12 Chairwoman might have taken notes in the course of  
13 the probable cause hearing, but I wouldn't interpret  
14 any data request that we ordinarily receive at this  
15 Commission in the course of a litigated matter as  
16 asking for the notes of the decision-maker.

17           And again, it's required by the -- it's  
18 covered in the same argument that we've been having  
19 over the disclosure of that -- the memorandum that  
20 served as the basis for that meeting, anyway.

21           Well, and as for any e-mails to and from the  
22 Attorney General's office previously withheld, that's  
23 an extremely nonspecific question. Previously  
24 withheld with regard to what? I don't know. I have  
25 to assume it's with regard to the request for all

0058

1 materials related to Cougar Ridge, although their  
2 requests were broader than that, also. They wanted  
3 all materials related to any water company in the  
4 last five years where there's been a dispute related  
5 to jurisdiction, and that was quite a voluminous  
6 production, from which we also produced a privilege  
7 log.

8           And I certainly tried to be diligent and  
9 I've done my best to document every communication  
10 between our office and Commission Staff that I  
11 withheld on the basis of privilege or work product,  
12 and so you're correct, we have responded to this, and  
13 even though it's hard to know what even the scope of  
14 the question is.

15           JUDGE MACE: Anything else, Mr. Brown?

16           MR. BROWN: Well, I do want to -- he  
17 wandered off there into number 10, and I assume that  
18 his -- I don't know what the -- I don't understand  
19 what he's talking about in number 10, because even  
20 under his argument, the ex parte communication wall  
21 would have gone up before they walked in the room on  
22 that one, because that was going to be a -- clearly  
23 going to be a contested matter. That's what Mr.  
24 Eckhardt went in to talk to her about. And so I  
25 don't know whether that was his -- I don't know what

0059

1 happened there in his argument, but he dismissed the  
2 number 10 as impossible because of something, but I'm  
3 saying --

4 JUDGE MACE: I'm not sure, then, when did  
5 this meeting take place? I'm not even certain what  
6 you're talking about. I thought this was in  
7 conjunction with a meeting that took place with  
8 regard to determining probable cause. Am I mistaken  
9 in that?

10 MR. THOMPSON: You are correct. There was a  
11 memorandum prepared, which we've talked about  
12 already, the Attorney General's memorandum for the  
13 probable cause meeting, which I presume is the  
14 meeting referred to in this data request, and so we  
15 object to the production of any notes from that  
16 meeting on the same basis that we would object to  
17 producing the memorandum itself that was the basis  
18 for the meeting.

19 JUDGE MACE: Mr. Brown, do you have anything  
20 that would indicate that this meeting that you're  
21 referring to in request number 10 is other than the  
22 meeting related to determining probable cause?

23 MR. BROWN: Well, let me find the exact  
24 language and we'll just deal with that. Okay, here  
25 it is. Did you ever discuss with anybody the wisdom

0060

1 or the utility of not seeking jurisdiction over this  
2 company because they had gone back under the  
3 jurisdictional threshold? Answer: Yes. Question:  
4 And who did you discuss that with? Answer: Again,  
5 it would have been, I'm sure, Danny or Jim Ward,  
6 Danny Kermode, Dixie Linnenbrink, my attorney,  
7 period. I believe I just -- I also -- that issue was  
8 discussed with Chairwoman Showalter, but I don't  
9 recall specifically with other Commissioners.

10 Question: Is it common practice in a  
11 contested matter for you folks to go talk to the  
12 Commissioners about the case? Answer: In a  
13 situation such as this, yes. It -- the discussions  
14 were held prior to the Commission or the Staff that  
15 Commission issue an order commencing that  
16 jurisdictional proceeding as far as providing the  
17 basis and the -- the background of the issues to  
18 demonstrate that there's cause to issue a  
19 jurisdictional proceeding or a proceeding to  
20 determine whether jurisdiction has been met.

21 Question: So you just go down to her office  
22 and schmoozed about it; is that what happens?

23 Answer: No, I don't recall that I've ever schmoozed  
24 with anyone here at the Commission, but the process  
25 was that we, in conversation with my attorney, I

0061

1 asked for the advice on both proper application of  
2 the statutes, that information was provided to the  
3 Commissioners, and a memorandum, I think, the facts  
4 of the case and the interpretation of the statutes as  
5 background to the Commissioners, and then I met with  
6 each of the Commissioners individually, along with  
7 Mr. Thompson, and Dixie Linnenbrink was present in  
8 those discussions. Question: Was any record -- was  
9 any record kept of that, notes, anything? Answer: I  
10 don't know whether Mr. Thompson, Chairwoman  
11 Showalter, other Commissioners, or Dixie Linnenbrink  
12 kept notes. I don't recall if I -- that I did not  
13 take notes.

14 JUDGE MACE: Okay. Again, I did read that,  
15 I have copies of the depositions, and as I read that  
16 or listen to it again, it refers to the individual  
17 meetings with the Commissioners that Staff has,  
18 frankly, on a routine basis about items that come up  
19 for Commission business. And they meet individually  
20 with the Commissioners. These are not considered ex  
21 parte. I believe there's a statutory provision, if  
22 not a rule provision about that, that allows the  
23 Commissioners to be informed about matters so that  
24 they can make these preliminary decisions. And  
25 those, I regard those conferences and notes, et

0062

1 cetera, as privileged, and I'm not -- those are not  
2 going to be produced. So that disposes of number 10.

3           And then, with number 11, you know, I -- it  
4 is a pretty broad request that you're making here,  
5 and when I hear Mr. Thompson, it sounds to me as if  
6 all appropriate documents that, pursuant to requests  
7 that you have made that have been appropriate to this  
8 particular proceeding, have been produced. I'm not  
9 sure what else you might want with regard to  
10 information from number 11.

11           MR. BROWN: And of course, that's the  
12 problem. I don't know what's there, and so I can't  
13 know what I need or want until I have some clear  
14 indication of what's there. So that's what  
15 discovery's, in my view, is all about. I get where  
16 you're headed on that. I'm not agreeing, but I'm  
17 done arguing about it.

18           JUDGE MACE: Okay. You know, the problem  
19 with discovery is the Commission, you know, has  
20 certain limitations with regard to discovery, and  
21 it's not -- you know, it's an administrative agency,  
22 and in terms of this proceeding, I think we have to  
23 view what are the issues, and you know, what's  
24 permissible as far as discovery is concerned.

25           I realize that my rulings have basically

0063

1 turned down your requests, and I just -- you know, I  
2 just want the case to flow, in terms of the issues  
3 that are present before us. And right now, of  
4 course, the issue's jurisdiction. I think I  
5 indicated to you that I disagreed with your argument  
6 with regard to the interpretation of the statute. So  
7 you know, we're going to go forward on the basis that  
8 the Commission has jurisdiction, and so we need to --  
9 and it sounds like you have received -- certainly you  
10 have received some discovery materials. The  
11 Commission has to look at these materials in the  
12 context of the contested case or materials that are  
13 relevant, you know, that are brought in as exhibits  
14 and make its judgment from that.

15 I guess I would say if anything came into  
16 the record that showed that Staff had, for some  
17 reason, not provided you some piece of material that  
18 was relevant and you needed it for your case, at that  
19 point we could consider it, but based on what I see  
20 before me right now, I think that the decisions I've  
21 made are appropriate.

22 MR. BROWN: Without quibbling, I mean, I  
23 guess we're all making a record here. And I'm not  
24 quibbling here and I'm not asking you to change your  
25 decision necessarily. Of course --



0064

1                   JUDGE MACE:  You'd like me to.

2                   MR. BROWN:  Yeah, when a lawyer learns that  
3 there is, (A), a memorandum that has passed among  
4 people regarding the case, and (B), that there is at  
5 least information that has passed among people  
6 suggesting that their position, the position they've  
7 taken, is 180 degrees of what was discussed at  
8 another point in time, when a lawyer learns those  
9 things, all of his instincts push him towards getting  
10 those materials.

11                   And I'll just say, with all due respect to  
12 your decisions here, I am intent on seeing those, and  
13 I think I'm entitled to them.  And I understand where  
14 we're going here, but -- and I also understand what  
15 your ruling is on the yearly issue.

16                   So having said all that, what I'd like to do  
17 is I'd like to be realistic about this and recognize  
18 that if you're going to rule the way you are on the  
19 annual issue, that there's not much doubt in my mind  
20 where this is headed.

21                   So my goal right now is to get this thing  
22 from Point A to Point B, which is in superior court,  
23 as quickly as possible and as expeditiously as  
24 possible.  So I'll cooperate in any way to do that,  
25 and if that involves, like, making a stipulated

0065

1 finding that, under your ruling, X would be the  
2 outcome, I'll do that, but let's -- I just want to  
3 get this thing in front of a judge.

4 JUDGE MACE: Well, as I indicated, I'll be  
5 making a written ruling with regard to the question  
6 of statutory interpretation and with regard to the  
7 motion for summary judgment.

8 To the extent you are interested in some  
9 sort of appeal about the question of the memorandum,  
10 I can include in my written ruling something that  
11 would state what my ruling has been here today, and  
12 that should be out within the next two days. So to  
13 the extent that you want to take something further, I  
14 don't know -- well, I'll leave you to your --

15 MR. BROWN: Yeah. I'm just stating, so that  
16 you'll know and so that Mr. Thompson knows, is that  
17 I'm willing to streamline this procedure from here on  
18 out to make it as unbulky and as quick as possible,  
19 because I -- under your ruling, there's no question  
20 in my mind what the ultimate ruling of the  
21 Commission's going to be.

22 JUDGE MACE: Well, you know, you -- I can't  
23 tell you what you want to -- you'd have to defend  
24 your client the best you can.

25 MR. BROWN: Yeah.

0066

1           JUDGE MACE:  And you do what you feel is  
2 appropriate.  Regardless of that fact, I want to talk  
3 about scheduling.

4           MR. BROWN:  Okay.

5           JUDGE MACE:  Because what I have on my  
6 calendar is a schedule we talked about some time ago,  
7 which called for you to file a tariff on July 29th.  
8 However, when I read Staff's arguments and pleadings  
9 with regard to these -- the motion for summary  
10 judgment, Staff suggested a period of 30 days from  
11 the date of a ruling for the filing of the tariff.  
12 So I'm not certain where the parties are with regard  
13 to scheduling, and I would like to set a schedule  
14 that would allow for the filing of the tariff and for  
15 a hearing.

16           MR. BROWN:  Well, that's why I just said all  
17 that stuff I just said, because however that impacts  
18 scheduling, I say let's schedule it for tomorrow, if  
19 necessary, and get it done, and I will stipulate that  
20 your ruling has this result and -- so we can move on.  
21 That's --

22           JUDGE MACE:  I'm not sure what you mean by  
23 that.  The company would have to file a tariff.  That  
24 would be the first step.

25           MR. BROWN:  Okay.

0067

1           MR. THOMPSON: Well, let me just add this.  
2 In order to exhaust your administrative remedies, the  
3 way it ordinarily works is that the ALJ would issue  
4 an initial determination, and if you weren't happy  
5 with that, you would have the ability to seek  
6 administrative review of that with the Commissioners.  
7 And then, assuming you weren't satisfied with that,  
8 then the provisions for seeking judicial review of an  
9 agency determination come into play.

10           One thing you could do is waive an initial  
11 order and -- I believe, and the ALJ could take the  
12 matter directly to the Commissioners for their  
13 determination.

14           MR. BROWN: How about bifurcating the  
15 jurisdiction and rate issues?

16           MR. THOMPSON: Well, they're one and the  
17 same. If the company is subject to jurisdiction,  
18 it's required to file a tariff. We want an order  
19 that says you are subject to jurisdiction and you  
20 must file a tariff by X date. You know, you have to  
21 decide how you want to deal with that at that point,  
22 whether that would be, you know, in terms of --

23           MR. BROWN: Well, maybe that's an appealable  
24 order. I don't know. What I'm just -- what I'm  
25 trying to do is offer to strip away --

0068

1           MR. THOMPSON: I think it's fairly simple  
2 already. I don't think there's much to strip away.  
3 If the company, in our view, if the company is  
4 subject to jurisdiction, then it's required to file a  
5 tariff in compliance with the statutes. That's the  
6 issue. There is the rate complaint, as well, which I  
7 would agree is not -- doesn't have to be resolved --  
8 I guess I would just -- I haven't really thought  
9 about it. I'll say this tentatively. It doesn't  
10 seem like that would have to be resolved before the  
11 decision on jurisdiction could be appealed. That  
12 would be my, just sitting here, my thought.

13           JUDGE MACE: Yeah, I wouldn't want to hazard  
14 a --

15           MR. THOMPSON: I hesitate to do so, also,  
16 but that's --

17           JUDGE MACE: Yeah, I --

18           MR. BROWN: If counsel --

19           JUDGE MACE: If you waive the initial order,  
20 I can try to take it to the Commissioners and get a  
21 final order, rather than an initial order that would  
22 then -- you would then have an opportunity for  
23 interlocutory -- appeal of the interlocutory order.

24           I'm just looking at the calendar to see when  
25 reasonably such an order could come out, because that

0069

1 would take some additional time, since I need to talk  
2 with the Commissioners about it prior to entering an  
3 order. And again, I'm not willing to leave the room,  
4 whatever we decide, until I have some kind of  
5 schedule for determining filing date for the tariff  
6 and for determining what further procedure we'll have  
7 after that.

8 I don't know what -- you know, I don't know  
9 what's going to happen as a result of any  
10 opportunities you take for review. I want to set a  
11 schedule.

12 MR. BROWN: Okay.

13 JUDGE MACE: Mr. Thompson.

14 MR. THOMPSON: Well, I --

15 JUDGE MACE: You said 30 days from the date  
16 of the order in your motion.

17 MR. THOMPSON: That's right, we said that,  
18 and I think that's reasonable, particularly in light  
19 of the fact this company's never been subject to  
20 regulation. They need to figure out how to comply  
21 with the Commission's requirements for an initial  
22 tariff filing, and so I think probably -- and that  
23 includes not only the tariff itself, but the -- but  
24 supporting materials required in the rule for filing  
25 of initial tariffs.

0070

1           Whether Staff would proceed with a complaint  
2 against the level of those rates really remains to be  
3 seen, because, you know, we haven't seen the tariff  
4 itself and the supporting documentation.

5           JUDGE MACE: That's something -- you'd have  
6 to determine that after looking at the tariff.

7           MR. THOMPSON: Right.

8           JUDGE MACE: But then I'd like to know --  
9 let's say that the tariff will be filed August 23rd,  
10 gives you a month from the end of this week, and that  
11 with -- by September 23rd, September 24th, Staff will  
12 make some determination about what it's going to do  
13 with regard to those rates, and I'll expect -- I'll  
14 set a status conference for September 24th, and we'll  
15 see where we are at that point.

16           MR. BROWN: And the previous discussion of  
17 it being 30 days from the date of something, that  
18 date would be -- that date would have been -- I know,  
19 I understand -- it would have been what? What would  
20 that -- the date of blank, and I didn't understand  
21 what blank was. Your order --

22           JUDGE MACE: Yes, the end of this week is  
23 July 23rd, and I'm thinking that my order -- I  
24 haven't clarified with you yet whether you're waiving  
25 the initial order or not.

0071

1           MR. BROWN: Okay. But what would it have  
2 been? What would it have been? What would blank  
3 have been had I kept my mouth shut?

4           JUDGE MACE: Well, blank would have been 30  
5 days from the date I enter an order on the question  
6 of jurisdiction, and that could be as soon as the  
7 21st of July, which is Wednesday this week.

8           I was thinking that if there was a waiver of  
9 the initial order, that it might take longer, and in  
10 fact, I guess the truth is it may even take longer  
11 than the 23rd if you waive the initial order, because  
12 the Commissioners' overall schedules, and mine.

13          MR. BROWN: All right. I wasn't clear.

14          JUDGE MACE: So what I could do -- go ahead.

15          MR. BROWN: Here's what I'm trying to find  
16 out.

17          JUDGE MACE: Yeah.

18          MR. BROWN: Before there was any discussion,  
19 it was clear in both of your minds that an order  
20 would be issued, and I'm trying to find out what that  
21 order is or would have been or is contemplated to be.

22          JUDGE MACE: Okay. As a result of the  
23 motion for summary judgment and our argument -- the  
24 arguments that I heard here today --

25          MR. BROWN: Okay.



0072

1           JUDGE MACE:  -- I was going to enter an  
2 initial order as a result of this hearing granting  
3 jurisdiction, granting the order for summary  
4 judgment, granting the motion for summary judgment.

5           MR. BROWN:  Okay.

6           JUDGE MACE:  Which would require -- which  
7 would indicate that Cougar Ridge is jurisdictional  
8 and is therefore required to file a tariff pursuant  
9 to the statute, and that tariff would have to be  
10 filed 30 days from the date of entry of that order.

11          MR. BROWN:  Okay.

12          JUDGE MACE:  That order can be an initial  
13 order, which would be an order over my signature,  
14 which could be appealed to the Commission, or you can  
15 waive the initial order and I could simply take the  
16 arguments to the Commissioners and ask them to enter  
17 a final order on the motion for summary judgment.

18          MR. BROWN:  Okay, all right, I got it.  And  
19 you're telling me that the whole waiver procedure  
20 would probably end up taking longer.  Did I  
21 understand that correctly?

22          JUDGE MACE:  The whole waiver?

23          MR. BROWN:  If I waived --

24          JUDGE MACE:  Oh, yes, yes.  If you waived  
25 the initial order, it would take longer, simply

0073

1 because I'd have to coordinate with the Commissioners  
2 and my own schedule over the next two to three weeks,  
3 and because of absences, vacations, conferences, et  
4 cetera, it's not clear that I could get an order out  
5 that quickly.

6 MR. BROWN: Okay. All right. So yeah, then  
7 I think it's a good idea to just issue an initial.

8 JUDGE MACE: Right.

9 MR. BROWN: And I don't -- I'll admit to not  
10 totally understanding all of your procedures. In  
11 normal litigation, if the judge issued an order  
12 granting a motion for summary judgment, then there  
13 would be something later to convert that into  
14 something that's actionable, in other words, like a  
15 judgment or something on which people can proceed.

16 It sounds to me like the order you're  
17 contemplating issuing not only grants the motion for  
18 summary judgment, but also authorizes the Commission  
19 Staff to proceed.

20 JUDGE MACE: It does authorize Staff to  
21 proceed, and if you do not appeal the initial order  
22 to the Commission, that's the effect of it.

23 MR. BROWN: Got it, okay.

24 JUDGE MACE: In other words, you're  
25 basically agreeing with the initial order and you

0074

1 participate in the process. If you appeal the  
2 initial order, then the Commission takes it on and  
3 enters a final order.

4 MR. BROWN: Got it.

5 JUDGE MACE: And that you can take -- my  
6 understanding of administrative procedure is that  
7 that you can take to court, that final order.

8 MR. BROWN: Okay. Well, maybe that's the  
9 solution, then. That sounds to be like the solution.

10 JUDGE MACE: Well, and let me just offer  
11 another solution. I sense that, although in terms of  
12 if you want to call it a monetary amount, this is not  
13 a large case, it appears to me that the issues --  
14 that the parties are very divided on the issues. The  
15 Commission does have the possibility of offering  
16 dispute resolution facility. There could be another  
17 judge who could come in and talk with both sides to  
18 see if there was a way that this could be resolved so  
19 that there would be less cost both to the Commission  
20 and to your client --

21 MR. BROWN: Right.

22 JUDGE MACE: -- you know, and avoid appeals,  
23 et cetera.

24 MR. BROWN: Well, actually, you mentioned  
25 that the first time we met, and I said I was all for

0075

1 it, and that was kind of -- I haven't heard anything  
2 since, so --

3 JUDGE MACE: Well, you can't just say that.  
4 You have to -- I mean, in a general way, we're all  
5 for dispute resolution.

6 MR. BROWN: It was more than that. I was  
7 told that it was not likely to produce -- am I --

8 MR. THOMPSON: Well, you know, I don't think  
9 -- I don't think this is a case for alternative  
10 dispute resolution.

11 MR. BROWN: Yeah, that's what --

12 MR. THOMPSON: I think there is just a  
13 fundamental difference of, well, should they be  
14 required to file a tariff or should they not.

15 JUDGE MACE: Yeah, I mean, it is a legal  
16 issue whether jurisdiction attaches or not. So I  
17 agree with that. I guess maybe down the road, in  
18 terms of tariffs and that type of thing, there might  
19 be some opportunity for it, but perhaps you are  
20 correct. I mean, not every -- it is true that not  
21 every issue's capable of that kind of --

22 MR. BROWN: I even argued it as a budgetary  
23 matter, said why in the world would you want to pick  
24 up another system, but that didn't wash, either.

25 JUDGE MACE: Well, be that as it may -- very

0076

1 well. Is there anything else we need to discuss  
2 right now? Then let me just make sure that I'm  
3 clear. I'll be entering an initial order, and that  
4 will come out, more than likely, within the next  
5 couple of days, unless there's something that I'm not  
6 aware of now in terms of support staff or any other  
7 thing, and at that point, whoever wants to appeal  
8 that is -- the Commission rules allow it, and there's  
9 a certain period of time. I think the order will --  
10 the initial order will indicate what the period of  
11 time is in which you have to request review, and  
12 we'll go from there.

13 MR. THOMPSON: There is one other thing.

14 JUDGE MACE: And I said we were going to try  
15 to develop the schedule.

16 MR. THOMPSON: That is what I -- the  
17 schedule as it stands, I just -- I don't think it's  
18 going to be workable, just given the steps that are  
19 involved in the initial order and appeal of that and  
20 so forth, so -- and it's also unclear whether Staff  
21 would even proceed with a complaint against the level  
22 of rates, assuming that the company were to file a  
23 tariff and supporting materials.

24 So I think probably the best thing to do is  
25 just to -- we could pick a status conference date,

0077

1 maybe, and figure out what to do on September 24th,  
2 for example, when Staff has had an opportunity,  
3 hypothetically, to review the tariff filing, and at  
4 that point Staff could indicate whether it intends to  
5 proceed with a rate level case.

6 MR. BROWN: If he's saying let's make the  
7 September 24th status conference the do all and be  
8 all for scheduling, that's fine with me.

9 JUDGE MACE: Okay. And the order, whichever  
10 order, will indicate -- will probably indicate that a  
11 tariff needs to be filed within 30 days, or something  
12 to that effect. The initial order may say that. And  
13 if there's a review and, depending on what happens  
14 with the issue as it goes up on review to the  
15 Commissioners, I'm sure the final order will also  
16 indicate a tariff filing date.

17 And so in view of that, you know, it's  
18 possible that that September 20 -- I'll put September  
19 24th down as a status conference date, but that may  
20 change, depending on how things go and how long it  
21 takes.

22 MR. BROWN: Okay. Let me ask a procedural  
23 question, again demonstrating my own lack of  
24 knowledge about this. I heard you say before about  
25 you talking to the Commissioners. If you issue an

0078

1 initial order and we decide to appeal that, is that  
2 something that, between now and then, you feel free  
3 to talk to the Commissioners about?

4 JUDGE MACE: I will not talk to the  
5 Commissioners before issuing an initial order.

6 MR. BROWN: How about after?

7 JUDGE MACE: I more than likely will not  
8 talk to the Commissioners until this comes up for  
9 review.

10 MR. BROWN: And I'm not totally --

11 JUDGE MACE: I mean, I'll talk to the  
12 Commissioners on a number of other matters.

13 MR. BROWN: Oh, I understand.

14 JUDGE MACE: But I wouldn't be talking to  
15 them about this case.

16 MR. BROWN: Okay. That's what I'm trying to  
17 get clear in my head, is whether they'll get previews  
18 of this case from other people, including you and  
19 them. Do other people gotalk to them? I --

20 JUDGE MACE: Once a case has started,  
21 there's an ex parte wall that's put up.

22 MR. BROWN: I read the statute.

23 JUDGE MACE: Now, because I'm a judge and I  
24 act for the Commissioners, that doesn't really apply  
25 to me, but it does apply to the parties.

0079

1 MR. BROWN: Okay.

2 JUDGE MACE: And at that point, Staff and  
3 everyone else can't go to the Commissioners and talk  
4 to them about a case.

5 MR. BROWN: Okay. So yeah, I had read the  
6 statute. So in your case, you kind of honor that,  
7 notwithstanding the fact it probably doesn't apply to  
8 you?

9 JUDGE MACE: Well, it's an initial order and  
10 it's an ALJ-only case. So I would be entering the  
11 order and then there would be a matter that would --  
12 you know, I'm assuming you're going to file a  
13 petition for review. And at that point the  
14 Commissioners would be brought into the loop, because  
15 it will be their decision at that point.

16 MR. BROWN: Okay. And I'm not saying this  
17 to be nosy or disrespectful, but I'm wondering, do  
18 you, after that happens, you don't, like, wander down  
19 the hall into Commissioner Showalter's office and  
20 say, Let's talk about this case? That doesn't  
21 happen?

22 JUDGE MACE: At what point?

23 MR. BROWN: After your order is issued,  
24 either before or after your order's issued.

25 JUDGE MACE: I can't see any reason that I



0080

1 would do that. The reason that I would talk with  
2 them after an initial order was issued is because  
3 there's a petition for review or something that comes  
4 up with regard to that order that they have to rule  
5 on. Otherwise, the initial order is the law of the  
6 case.

7 MR. BROWN: Okay. What if they say -- what  
8 if one of them says to you, Hey, what's this all  
9 about?

10 JUDGE MACE: They may do that.

11 MR. BROWN: Is that something that happens  
12 in the hallway?

13 JUDGE MACE: But it's highly unlikely. They  
14 have so much on their plate, let me tell you. They  
15 have so much to do that I -- I can't envision them  
16 ever asking me that question about this case.

17 MR. BROWN: Okay. You understand my  
18 problem. I mean, these people have already seen a  
19 memorandum about this case. I mean, you know, I'm  
20 from another planet in terms of legal arenas here,  
21 and --

22 JUDGE MACE: You know, and I see your  
23 concern. The fact is this is -- you know, it's a  
24 legal question. It's does the Commission have  
25 jurisdiction or doesn't the Commission have

0081

1 jurisdiction. It's the statute and it's the rule.  
2 And ultimately, the Commission is going to rule one  
3 way or the other on that, and if you don't like it,  
4 you're going to take it up on appeal. I mean, I'm  
5 just struggling with, you know, where your concern  
6 is.

7 MR. BROWN: I just want to know who's going  
8 to talk to them between now and the time they rule.

9 JUDGE MACE: I probably will, but I'll talk  
10 to them because you filed a petition for review.

11 MR. BROWN: Okay. And would you talk to  
12 them about the merits of the case?

13 JUDGE MACE: Absolutely, because you're  
14 going to bring them up and I have to talk to them  
15 about them. I'm going to help them write the order.

16 MR. BROWN: Okay. Fair enough. I mean --

17 JUDGE MACE: I mean, it's --

18 MR. BROWN: I'm not saying I like that, but  
19 I just want to know how the procedure works.

20 JUDGE MACE: No, but it's the procedure at  
21 the Commission.

22 MR. BROWN: I just want to know how the  
23 system works. Okay. A little CLE for me.

24 JUDGE MACE: All right. Anything else?

25 MR. BROWN: Nope.

0082

1 JUDGE MACE: Then we are adjourned.

2 MR. BROWN: Okay.

3 JUDGE MACE: Thank you.

4 MR. BROWN: Thank you.

5 (Discussion off the record.)

6 JUDGE MACE: You know, let's go back on the  
7 record. I want to make sure I'm not -- haven't been  
8 out of bounds here. I, in a case where there is  
9 interlocutory review, I would meet with -- it's my  
10 case, and I would meet with the Commissioners with  
11 regard to the issues. In an issue where it's, you  
12 know, an interlocutory situation. I want to make  
13 sure this is clear.

14 If I wrote an initial order, I'm going to  
15 check this with my supervisor to make sure that, as a  
16 result of the initial order in this case, I would be  
17 the one who would talk with the Commissioners, and I  
18 will advise you whether or not and what happens. In  
19 the situation where I write an initial order  
20 disposing of a case, I do not deal with the matter as  
21 it goes up to the Commissioners, but usually that's  
22 in the context of a full-blown contested hearing and  
23 an order and initial order, and then there's a  
24 request for review.

25 And I want to make sure that I haven't

0083

1 incorrectly characterized my role here, because this  
2 is on a motion. Typically, it's a little different,  
3 but I will check and clarify that to make sure that  
4 I've correctly indicated what the process is.

5 MR. BROWN: Okay.

6 (Proceedings adjourned at 11:08 a.m.)

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24