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August 4, 2004

Ms. Carole J. Washburn, Secretary
Washington Utilities & Transportation Commission
1300 South Evergreen Park Drive S.W.
P O Box 47250
Olympia, WA 98504-7250

RE: WUTC vs. Cougar Ridge Water System
Docket No. UW-040367
Our File No. 03-346-B

Dear Ms. Washburn:

Enclosed for filing are the original and 12 copies of a Petition For Review of Interlocutory Order and Petition For Administrative Review.

By copy of this letter, we are providing a copy of the Petition to Jonathan C. Thompson, the Assistant Attorney General handling this matter.

Cordially,



THOMAS A. BROWN

TAB:ck
Enclosures

cc Jonathan C. Thompson (w/encl.)
Paul A. Bitar (w/encl.)

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BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND)	
TRANSPORTATION COMMISSION,)	DOCKET NO. UW-040367
)	
Complainant,)	PETITION FOR REVIEW OF
)	INTERLOCUTORY ORDER AND
v.)	PETITION FOR ADMINISTRATIVE
)	REVIEW
COUGAR RIDGE WATER SYSTEM,)	
)	
Respondent.)	

COMES NOW the Respondent, COUGAR RIDGE WATER SYSTEM, by and through its attorney, Thomas A. Brown, of the firm of Brown Lewis Janhunen & Spencer, and hereby petitions for review of the Interlocutory Order dated July 30, 2004.

The Respondent has titled this Petition both as a Petition for Review of Interlocutory Order, pursuant to WAC 480-07-810(3), and also as a Petition for Administrative Review, pursuant to WAC 480-07-825. The reason for this is while the Order dated July 30, 2004, is denominated as an "Interlocutory Order" it clearly fits the definition of an "Initial Order" pursuant to WAC 480-07-820(1)(a), because it granted a dispositive motion, and also resolved contested issues.

PETITION FOR REVIEW OF INTER-
LOCUTORY ORDER AND PETITION
FOR ADMINISTRATIVE REVIEW - 1

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The arguments made by the Administrative Law Judge in her "Interlocutory Order" are not persuasive. Although she is correct in stating that the dictionary is one of the references that can be looked to for statutory interpretation, the dictionary references supplied by the Attorney General's Office actually supported the position of the Respondent here.

The Administrative Law Judge's ruling relating to statutory interpretation is incorrect, and should be overruled.

(2) The Interlocutory Order incorrectly recounts the history of the meetings, and incorrectly holds that the meetings were proper.

The record in this case is rife with misunderstandings by the staff, by the staffs' counsel, by the Commissioners, and even by the Administrative Law Judge as to what contacts are proper during a contested case. Even at the conclusion of the July 19th hearing, the Administrative Law Judge admitted that she was unsure whether contact would be permitted between herself and the Commissioners in this situation.

The record is clear that the staff employees discussed this case with the Commissioners prior to and during the proceedings.

(3) The ruling relating to discovery is wrong and should be overruled.

The Commission goes to great efforts to distinguish between the Commission and its "staff" in all of these proceedings. Unfortunately, that distinction is only one that is celebrated, but not obeyed.

In this case, counsel for the staff has freely communicated with, and shared so-called "privileged" materials with the Commission itself, in connection with this very case.

1 When the Respondent demanded production of the documents that were shared with the
2 Commission by counsel and by staff, access to those documents was denied on the basis of
3 privilege.
4

5 The staff and its counsel have a “floating”, changeable definition of what is
6 privileged and what is not.
7

8 In this case, a member of the staff communicated both with the public and
9 internally with other members of the staff, indicating that the Attorney General’s Office had
10 advised that there was no jurisdiction over this Respondent.
11

12 Without allowing us to discover what was and was not said, they simply brush
13 that aside now, claiming that the staff member misunderstood what the Attorney General’s
14 Office told him.
15

16 It is obvious that not only has the privilege been breached, but the Attorney
17 General’s Office is participating in the formation of staff policy, and then hiding its
18 participation behind a claim of privilege.
19

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22 (4) The record is clear that the reason that the staff became involved in this case,
23 and the reason they asserted jurisdiction at all is that they were pressured by members of the
24 public, who were upset with the connection fees—not the monthly rates. Again, the record is
25 rife with references to this problem, and it is clearly the reason that the Commission staff got
26 involved, and clearly the reason they decided to assert jurisdiction.
27

28
29 (5) The method that the staff uses to calculate the “annual” fee is so complex that
30 even the staff cannot do it properly. In the course of making the calculations relating to
31 Cougar Ridge, the staff miscalculated the “annual” fee at least two times. These
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1 miscalculations were born of the artificial, unwieldy criterion that the rule contemplates;
2 namely, the selection at random of any twelve month period, rather than simply using calendar
3 years.
4

7 Summary

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9 The Respondent seeks the following relief:

10
11 1. Reversal of the Order of the Administrative Law Judge, interpreting the
12 meaning of the statute, with reference to "annual" payments used to determine jurisdiction.
13

14 2. Reversal of the Administrative Law Judge's Order relating to discovery, and
15 ordering free and open discovery of all Commission files and documents relating to this
16 proceeding.
17

18 3. Reversal of the Administrative Law Judge's Order relating to the "privilege"
19 existing between counsel and staff, determining that that "privilege" (if it ever existed) has
20 been waived in a variety of ways.
21

22 4. Reversal of the Administrative Law Judge's Order, with a clear delineation of
23 what does and does not constitute a violation of this Commission's own *ex parte* rules relating
24 to proceedings such as this.
25

26 5. Reversal of the Administrative Law Judge's ruling relating to the relevance of
27 the connection fees to this proceeding.
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30 In general, this is a case where a small water system inadvertently began charging a
31 monthly amount that would have exceeded the jurisdictional threshold. When this was
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brought to the attention of the water system, the water system reduced its monthly payments, to stay beneath the threshold.

The Commission staff, determined to assert jurisdiction over this small system because of the complaints of the public about the connection fees, calculated the fees paid during a random twelve month period, and asserted that the jurisdictional threshold had been exceeded. This calculation was based upon policies and regulations that are inconsistent with the statute governing the affairs of the Commission. It is also inconsistent with good fiscal sense and good common sense, in increasing the regulatory burden of the Commission to include a small system that has existed for many years without regulation.

DATED: August 4, 2004

BROWN LEWIS JANHUNEN & SPENCER
Attorneys for Respondent

By 
THOMAS A. BROWN, WSB #4160