

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19

**WASHINGTON UTILITIES AND TRANSPORTATION
COMMISSION,
COMPLAINANT,
VS.
AMERICAN WATER RESOURCES, INC.,
RESPONDENT.**

DOCKET NOS. UW-031284/UW-010961 (CONSOLIDATED)

**DIRECT TESTIMONY
OF VIRGIL R. FOX
ON BEHALF OF AMERICAN WATER RESOURCES, INC.**

February 19, 2004

1 **Q: PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

2 A. My name is Virgil R. Fox. My business address is 921-B Middle Fork
3 Road, Onalaska, Washington 98570.

4 **Q. WHO IS YOUR EMPLOYER AND WHAT ARE YOUR DUTIES?**

5 A. I am President, CEO, and General Manager of American Water
6 Resources, Inc (AWRI). I am responsible for all facets of management and long-range
7 planning as well as all details of day-to-day operations. I also spend a portion of my
8 time in the field, assisting my field technicians in analyzing problems, system
9 requirements and operational issues

10 **Q. WHAT IS YOUR BACKGROUND?**

11 A. My business background includes past ownership, management and
12 operation of a plumbing company, three construction companies, a general tool rental
13 business, a printing business and numerous real estate development and management
14 activities ranging over a period of forty-five years. My current activities include:
15 President of AWRI, President of Birchfield Winery, Inc, managing director of V. R.
16 Fox Company, LLC, United Utilities, LLC and management of various real estate
17 development and ownership activities.

18 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

19 A. The purpose of my testimony is to dispute testimony filed by the
20 Utilities and Transportation Commission (UTC) staff, and present facts that will
21 support my position.

1 **Q. WHAT ISSUES WILL YOU ADDRESS?**

2 A. I will address the mischaracterization and bias placed on a multitude of
3 minor details and facts, and I will specifically and in greater detail describe how that
4 bias has been applied to the sale of the Birchfield Water System and the View Royal
5 Water System. I will address the issue of why I requested Docket #UW-031596 be
6 consolidated with Dockets #UW-031284 and #UW-010961. I will also present a
7 general overview of AWRI’s past history and current status.

8 **Q. DID YOU PREPARE ANY EXHIBITS RELATING TO THIS TEXT?**

9 A. Yes. I respectfully offer the following as exhibits:

- 10 VRF-2 UTC Proposed Rates
- 11 VRF-3 AWRI Survival Budget
- 12 VRF-4 Engineer’s Proposal No. 1338
- 13 VRF-5 Group B Permits
- 14 VRF-6 County Review for Group B Systems
- 15 VRF-7 Summary of Surcharge Bids
- 16 VRF-8 Summary of Impound Funds
- 17 VRF-9 Present Day Pictures of Systems in Need of Repair
- 18 VRF-10 Present Day Pictures of New Systems
- 19 VRF-11 DOH Birchfield Approval
- 20 VRF-12 Group B designations and map of systems
- 21 VRF-13 DOH Designation of Group A Systems
- 22 VRF-14 DOH Approval to 25 connections
- 23 VRF-15 DOH Approval to 37 connections

1 **Q. DO YOU HAVE ANY INITIAL COMMENTS?**

2 A. The fact that we are conducting this review process before the WUTC is
3 clearly indicative of inherent problems with the current system of oversight.
4 Reasonable people would have worked out their differences long before
5 reaching the necessity for this cumbersome and expensive mode of dispute
6 resolution. The UTC staff has become totally inflexible and unreasonable to
7 the detriment of its stated objective of protecting the public, which has resulted
8 in an incredibly slow and expensive process to solve relatively simple problems.
9 The real tragedy in this case is that an individual with the best of intentions, a
10 proven track record, impeccable reputation, and sufficient capital has been
11 totally distrusted, demoralized and forced to the point of near bankruptcy. It's
12 not surprising why this state is rife with small, poorly managed, decaying water
13 systems. There is a genuine need for government officials to intercede in the
14 interests of the general public before the few remaining small business owners
15 lose the desire to provide this vital service. Perhaps the Commission's view is
16 that I am just an old, tired, cynical and devious individual. If you really want to
17 get rid of me, the course is simple. Just allow me to recover a little of my
18 investment, enough to at least cover a portion of my debt, by treating rate base
19 in a manner that former UTC employees, Richard Finnigan and Julia Parker,
20 believe is fair, just, reasonable and appropriate, and I will gladly bow out within
21 a few months.

22 As I re-read the above sentiments, I realize that they may seem overly
23 emotional for this venue. However, having said that, I cannot find better words

1 to express my complete and utter frustration and emotional stress in dealing
2 with this entire process at such length and expense, merely to accomplish what
3 we are all after...quality service for the public at reasonable rates.

4 **Q. WHAT MISCHARACTERIZATION DO YOU BELIEVE HAS**
5 **OCCURRED?**

6 A. I believe that due to historical and ongoing prejudices, the UTC staff has
7 prevented AWRI from doing the job that best serves it's customers. It has also
8 caused AWRI unreasonable expense and financial losses. I also feel that staff
9 has consistently gleaned bits and pieces of data from various sources that they
10 have compiled to create an atmosphere that is contrary to the real truth and the
11 customer's best interests. To fully understand my position, one must review the
12 total history of American Water Resources in a broad context. The following is
13 my true belief and best explanation of that history.

14 American Water Resources, Inc (AWRI) has been under UTC
15 jurisdiction for the last seven years. The following testimony will show that
16 AWRI has been consistently treated in a manner that is not in the best interest of
17 the consumers that the UTC is charged with protecting and in a manner that is
18 derogatory, caustic and personally punitive to me. At a time when AWRI is
19 struggling to retain qualified employees, keep up with new regulations, while
20 also paying past due obligations, the UTC is proposing to cut AWRI's rates by
21 \$10.22 per customer per month, a recommendation that will certainly destroy
22 this company.

1 AWRI's accountant, (a former UTC accountant), has determined that in
2 order for the company to stay alive, rates must be increased by a minimum of
3 \$10.79. When you factor in the need to respond to new regulations, catch up
4 on deferred maintenance, as well as ongoing operational and employee needs, a
5 larger increase is needed. To document these assertions, I offer
6 Exhibit__(VRF-2), UTC Proposed rates, and Exhibit__(VRF-3), AWRI
7 Survival Budget. As an example of new costs that are coming, compliance with
8 HB 1338, which passed in the 2003 session, will cost AWRI an estimated
9 \$52,500 in engineering costs alone. To document this point, I offer Exhibit__
10 (VRF-4), Engineer's Proposal for 1338 Compliance Work.

11 Further, Pierce County has recently notified us of a new change
12 requiring permit fees on Group B systems. At the rate of \$55 per system,
13 multiplied by our 38 Group B systems in Pierce County, creates a further
14 expense of \$2090 annually. Exhibit ____ (VRF-6).

15 This does not address the most recent dictate that the counties review all
16 Group B systems (Exhibit__(VRF-6)). This change, being described as a free
17 service, is in reality not free at all. We are obligated to assist in these
18 inspections. Each will probably entail most of a day, counting scheduling,
19 travel time and communication with county personnel. Therefore, the
20 inspection costs alone will exceed \$20,000 (112 systems x one day @ \$25.00
21 p/hr = \$22,400). It is inevitable that these inspections will precipitate the
22 demand for significant repairs, particularly in view of the physical condition of
23 many of our systems discussed herein and shown in Exhibit__(VRF-9).

1 Additionally, once the systems have been brought up to standard, it's likely we
2 will be mandated to maintain them in the improved mode, which I feel is fair
3 and reasonable, but we need sufficient revenues in order to accomplish those
4 tasks. staff has always insisted that we cannot establish a reserve account for
5 this kind of issue. None of these very significant issues have been addressed in
6 staff's budget (reference Exhibit __ (VRF-2)). Such items keep coming up each
7 year. If we cannot budget for them, cannot set up a reserve account and cannot
8 recover losses in the following year, how can we be expected to survive?

9 To fully understand how wide the chasm is, and how incredibly absurd
10 the situation has become, one must review the total history and current
11 condition of AWRI; why we are under-funded and financially non-viable and in
12 the condition that we are. Washington State Department of Health (DOH) rules
13 dictate that we must be and remain financially viable. We are not financially
14 viable today for reasons that I will explain, and a reduction of \$10.22 per month
15 will make continued operation absolutely impossible, to say nothing of DOH
16 compliance, accomplishing AWRI's stated goals, completing it's capitol
17 improvement program mandated by DOH and providing customers with an
18 acceptable and deserved level of service.

19 **Q. WHY DO YOU BELIEVE THESE THINGS?**

20 A. AWRI was incorporated on March 21, 1995, with the initial business
21 focus on the management of several small systems related to property I was
22 developing. In fulfilling this objective, it became evident that the degree of
23 knowledge, expertise and attention required to do an adequate job of water

1 system management was not feasible when dealing with only 10, 20 or 50
2 connections. Therefore, AWRI was faced with the option of growing to a size
3 that would reasonably warrant and support proper staffing and management,
4 relinquish the systems to some other potentially unqualified entity, or find a
5 qualified management company to assume the task.

6 In searching for a credible management company, AWRI identified an
7 obvious unfulfilled need for comprehensive management service throughout the
8 region. At this time DOH was also expanding their Satellite Management
9 Agency Program (SMA). I reviewed these issues with DOH and was told that
10 centralized management of small systems was a step that they would welcome.
11 In response, AWRI expanded its horizons and embarked on a more ambitious
12 course and over the first four years expanded to ownership of 157 systems
13 serving approximately 2000 residences. AWRI at that time had also taken on
14 the management of a number of other non-owned systems. AWRI's corporate
15 goals originally were and continue to be as follows: (Reference AWRI's 1996
16 Water System Plan, on file with DOH)

- 17 1) To build a water utility that will continue to be responsible and viable
18 and that will provide a continuity of management on a long-range basis,
19 while maintaining a reliable system of high quality.
- 20 2) To conduct a scope and volume of business, strongly supported by
21 management and staff, paying particular attention not only to the letter
22 of DOE, DOH and UTC regulations, but to do so in a sense of

1 cooperation and mutual benefit to the consumers, Regulatory Agencies,
2 and the utility.

3 3) To create a financially sound business venture, large enough to have a
4 scale of economy, employ competent personnel, function professionally,
5 and provide a rate of return incentive for its management and
6 shareholders, from a long-range viewpoint.

7 4) To provide a higher than normal degree of customer-orientated and
8 conservation-minded service while maintaining an acute awareness of
9 the Safe Drinking Water Act and other regulatory requirements.

10 In AWRI's investigation of possible water systems to purchase or
11 manage, it became abundantly clear that most small systems were being
12 poorly managed. Most had been through several ownerships or
13 repossessions and many were out of compliance with DOH
14 requirements.

15 It is AWRI's belief that this situation existed partly because of operator
16 lack of training and competence, but more significantly because the original
17 owners were developers or homeowners who had no incentive or expertise to be
18 in the water business. In addition, the prospect for a small investor-owned
19 utility being able to cope with the complexity of ever changing regulations
20 creates major challenges to overcome.

21 In 1997, because of AWRI's acquisition of about 60 small systems
22 previously owned and operated by various other purveyors, AWRI came under
23 the purview of the UTC. After a couple of years, this unexpectedly resulted in

1 an ongoing battle to achieve rates that will allow AWRI to serve it's customers
2 properly and in a manner compatible with the long range goals stated herein.
3 This process has been seriously flawed due to staff's interpretation of regulatory
4 theories that often conflict with the normal practices and operations of small
5 business operations. AWRI's rapid growth has now been brought to a virtual
6 standstill because of DOH and UTC's belief that AWRI has expanded more
7 rapidly than it could manage. While we disagree with this perspective, AWRI
8 has, at a significant loss of business, voluntarily agreed to curtail further
9 expansion until such a time as it is acknowledged to be in compliance with
10 DOH health related rules. Additionally, the company will not look to expand
11 until it has completed updating it's water system plan, which is currently
12 underway, and until AWRI can come back into a viable financial condition, the
13 latter of which cannot be accomplished under staff's current UTC regulatory
14 interpretations.

15 While I'm critical of UTC's policies and practices, and find the situation
16 very frustrating, I do not intend to be caustic. I believe the staff is attempting to
17 do its best, but a co-operative spirit necessary to achieve satisfactory results no
18 longer exists; objectivity has been lost. Therefore, all parties involved have
19 suffered. This belief is, I'm confident, displayed in the numerous references in
20 my testimony and the testimony of Julie Parker.

1 **Q. YOU SEEM TO BE AT CONSIDERABLE ODDS WITH UTC’S**
2 **EVALUATION AND CONCLUSIONS. WHAT INVESTIGATION OF**
3 **UTC REGULATIONS DID YOU CONDUCT PRIOR TO EMBARKING**
4 **IN THE WATER BUSINESS?**

5 A. Prior to embarking in the water business, I met with several other water
6 purveyors, bankers, and other experienced business advisors. Because of the
7 horror stories of other water purveyors, I went to the UTC and met with Fred
8 Ottavelli and Herta Ingram, the auditors it was believed AWRI would be
9 dealing with. They seemed reasonable and encouraged me. They pointed out
10 that the reason most people find themselves at odds with the UTC is due to
11 focusing primarily on financial returns without ever making a significant
12 investment. I pointed out that this was not my intent, and explained my
13 financial commitment, detailed elsewhere in this testimony. They also assured
14 me that UTC expected all Investor Owned Utilities (IOU) to make a reasonable
15 profit.

16 I have extensive business experience, but because of my lack of specific
17 water business experience, I hired Richard Finnigan as my attorney; a man who
18 has vast experience working both for the UTC and later as a private attorney,
19 primarily representing utility companies before the UTC..

20 In addition, in order to better understand UTC accounting practices, I
21 hired Julia Parker, who worked for the UTC as an accountant for several years
22 before embarking on her own accounting business. She also makes accounting
23 for IOUs one of her specialties. I prepared to invest about \$300,000 in water

1 system acquisitions, while also loaning the company another \$500-700,000 for
2 needed upgrades.

3 **Q. YOU HAVE STATED THAT STAFF DISTRUSTS YOU. WHAT LEADS**
4 **YOU TO BELIEVE THIS?**

5 A. The general concept among the UTC staff seems to be one of
6 monumental distrust with me. UTC staff seems to believe that my only goal is
7 to achieve a huge financial gain at the customer's expense. Nothing could be
8 further from the truth. To prove that, let's review what AWRI has done
9 financially for me personally over the past 9 years.

10 **Q. WHAT PROFIT HAVE YOU AND/OR AWRI MADE OVER AWRI'S**
11 **HISTORY?**

12 A. I must answer that question in several parts to be comprehensive:
13 1) While working at least 60 to 80 hours per week for the first 6 or 7 years
14 and/or more normal 40 +/- hours since that time my total gross wage per
15 UTC dictates has been:

16	1996	\$40,000
17	1997	\$60,000
18	1998	\$60,000
19	1999	\$46,000
20	2000	\$23,213
21	2001	\$45,000
22	2002	\$24,000
23	2003	\$24,000

1 During 1997 and 1998, because of the job that I was doing and the long
 2 hours worked, I raised my salary to \$60,000 per year. UTC forced me to
 3 reduce it to \$24,000, a wage I believe to be totally inappropriate and
 4 punitive.

5 2) Since I am the sole stockholder we also need to look at the corporate
 6 earnings:

	<u>Per UTC Annual Report</u>	<u>Per AWRI's corporate tax return</u>
8	1996 (\$112,621)	(\$111,388)
9	1997 (\$123,835)	(\$110,465)
10	1998 \$ 58,668	\$ 79,039
11	1999 (\$ 2,003)	\$ 27,670
12	2000 (\$231,352)	(\$147,323)
13	2001 \$ 10,082	\$80,768
14	2002 \$342,401	\$344,572
15	2003	<u>Still being calculated</u>
16	Cumulative Profit (Loss) (\$58,660)	(\$162,873)

17 The 2001 income was from the sale to Penn Light and was impounded and
 18 use was limited by restrictions of the UTC. The income in 2002 was from
 19 the sale of View Royal, every cent of which went to pay off Company debt.
 20 Please note that even though there were positive results in 1998, 1999 and
 21 2001 in the corporate tax return column, no income tax was paid as a result
 22 of prior years loss carry forward, a feature of the tax laws that the
 23 Commission does not seem to recognize.

3) Interest income: During the early days, after investing \$330,131 as paid-in-capital, I made loans to the company maxing out at about \$931,126. For this I paid myself less than market interest and diverted these funds from much more profitable investments. Because of UTC chastisement of me for paying myself any interest at all, I felt I was forced to sell our best and most profitable system, View Royal, and arrange personally guaranteed bank loans to eliminate all debt and interest payments to me. While I was trying to respond to UTC criticisms of having too much debt and having too much in the way of shareholder loans, since then UTC staff has chastised me for having done so, and even insisted that the profit on the sale belonged to the customers. As further explained below, my interest income since AWRI's founding has been:

	<u>Maximum loaned</u>	<u>Interest earned</u>	<u>Effective Return</u>
1996	337,426	0	0
1997	931,126	\$79,757.	8.56%
1998	951,126	\$110,734.	11.64%
1999	878,400	\$77,063.	8.77%
2000	449,531	\$55,077.	8.16%
2001	550,000	\$64,596.	11.74%
2002	520,029	\$ 7,808.	1.5%
2003	0	0	
	<u>Total</u>	<u>\$395,035.</u>	<u>Average: 8.55%</u>

These funds, invested in other ventures would have earned substantially

1 greater returns. It should also be recognized that while UTC claims that I
2 was making an unreasonable profit, the exact opposite is true. The loans
3 were all from my own funds, much of which I had borrowed on my own
4 credibility, personal guarantee, and track record. Loans from standard
5 banking sources are never available to a company constantly losing money,
6 as was the case here. The only other possible source was the sub-standard
7 loan market where we would have had to pay 16 – 18% interest plus large
8 fees. While I am very familiar with the rationale of interest rate evaluation,
9 having sat on a bank loan committee for several years, I know that my
10 personal loans were subsidizing the AWRI customers. However, I was
11 charging about 2% over what I was paying on my personal line of credit. I
12 still contend that this was extremely fair. When Rick Finnigan told me that
13 the UTC would not see it that way, I reduced my rate and further subsidized
14 the company.

- 15 4) Related company work: During 1999, a number of essential projects were
16 completed. Because of the extensive experience of V.R. Fox Company and
17 my ability to control their schedules at a very busy time in the construction
18 industry, V.R. Fox Company, LLC, which I also own, completed these jobs
19 at a very substantial savings of approximately \$121,435 to AWRI
20 customers. Exhibit__(VRF-7). While this arrangement was very beneficial
21 to the customers, UTC staff criticized me for this inter-company
22 arrangement, again with the apparent view that I was overcharging the
23 customers. They demanded that any job over \$10,000 should be put out for

1 bid. I did not object to this, however they also dictated that if V. R. Fox
2 Company was going to bid, the threshold was lowered to \$5,000. Even this
3 was tolerable, but then they complained that I awarded the jobs to the low
4 bidder (Fox Co.), even though when possible I insisted that the bids be
5 sealed and opened at my engineer or attorney's offices. Because of the
6 pressure exerted by DOH to get the job done quickly, some of the water jobs
7 were done on a negotiated basis by V.R. Fox Company. UTC staff then
8 audited every detail of Fox Company's income, expense and profit and was
9 unable to find any errors or unreasonable expenses, suggested no changes
10 and disallowed no charges. Yet, I was still criticized for trying to meet
11 customer needs in what I thought was a reasonable fashion.

12 5) In 2001, an arrangement was made to purchase a new phone system where I
13 was able to purchase the system when AWRI had no funds, spread the cost
14 between AWRI and VR Fox Company and thus improve service to the
15 customers at a reasonable cost. UTC again criticized this effort, which
16 forced me to 'undo' this arrangement at the customer's expense. This action
17 did not actually increase total expenditures, but did impact available capital
18 funds.

19 6) Since our beginning, I have leased space to AWRI. I provide office space,
20 parking spaces, covered storage area for parts and equipment and shop space
21 as well as refuse disposal facilities, all at a below market price of
22 \$900/month, or about of 1.2% of our annual budget and less than most

1 businesses budget for rent. While UTC has allowed this expense, I mention
2 it as part of a full disclosure of my financial gain/loss related to AWRI.

3 I believe this compilation is abundant proof that I have not profited
4 unduly and in fact have lost money. AWRI has proven in fact to be a terrible
5 investment and the worst personal financial disaster of my life. The exact
6 amount of losses becomes a matter of viewpoint, but the corporate losses and
7 substandard wage is indisputable and more than sufficient to prove my
8 assertions.

9 **Q. YOU ASSERT THAT THE UTC MISTRUSTS AND MISTREATS YOU**
10 **TO THE DETRIMENT OF BOTH YOU AND THE CUSTOMERS. WHY**
11 **DO YOU BELIEVE THIS HAS OCCURRED?**

12 A. I will have to admit that in the beginning our bookkeeping was clearly
13 inadequate, not because of lack of effort, but rather problems of getting
14 organized and assimilating UTC's unique regulations. It seems that this would
15 have been an ideal time for staff to help AWRI understand any shortcomings
16 and what it needed to do. However, staff criticized and then stood back and
17 waited for more mistakes so they could chastise again. The lack of co-operation
18 that I have mentioned here is indicative of the negative attitude I refer to
19 throughout this testimony.

20 There was also some mishandling of funds intended for the surcharge
21 and facilities charge accounts, partly because of improper understanding of the
22 importance of strict and absolute requirements, but mostly because the funds
23 were simply not available when the proper time of transfer occurred. Our staff

1 discussed this issue at the time with UTC staff, and no suggestions were
2 offered. This seems to have again been an ideal time for co-operation and
3 constructive criticism if staff had any intention of criticizing this at a later date.
4 I'm sorry that this happened, but absolutely none of the funds were diverted to
5 my personal use or misspent. All were used to pay legitimate and pressing bills.

6 Early on, I admittedly did several things that were contrary to UTC's
7 wishes, even though, after thorough analysis by myself and my advisors, they
8 were believed to be wise business decisions and in the best interest of the AWRI
9 customers:

- 10 a) In 1997, I purchased two water systems from a company called H2O.
11 Together they consisted of approximately 300 customers. While the
12 purchase made very good financial sense, and the purchase price was
13 well below reasonable market value, the seller insisted that if he could
14 not get the proposed price, he would simply 'bleed it until it dropped'
15 and then give it back to the customers. UTC staff did not agree with the
16 purchase and not only disallowed a large part of my purchase price, but
17 has repeatedly reiterated their dissatisfaction. These two systems today
18 comprise AWRI's best and most profitable systems.
- 19 b) In 1998, I proposed to purchase a company called "The Country" for
20 \$190,000. The UTC staff said that I could not do so at the purchase
21 price we proposed. Knowing that it was an excellent investment, I
22 defied them and purchased the stock, a method that they could not
23 control. While this infuriated the UTC staff, the wisdom of my decision

1 was proven out when, in 1999, I sold this system for \$420,000, the total
2 proceeds of which I plowed back into loans to American Water
3 Resources. The contracts proving this assertion are a matter of UTC
4 record.

5 c) Another point that has drawn UTC staff criticism is the fact that AWRI
6 purchased or took over a number of systems with serious problems and
7 deficiencies. This was part of the business plan and was discussed with
8 both UTC and DOH. Before I bought them, service was bad, physical
9 condition was horrible and, in some cases, water quality was out of
10 compliance. There was really no place for customers to turn for help.
11 Often rates were unreasonably low. After AWRI bought the systems,
12 we moved as fast as possible to bring conditions up to standards and
13 asked for rates to support the effort. We were granted a small and
14 inadequate increase and therefore could not bring conditions up to par
15 quickly enough, thus precipitating further complaints now that the
16 customers had someone available to complain to. Instead of UTC staff
17 keeping the long-range view, I was further chastised for not satisfying
18 all customer needs in the short term. Although UTC did grant a part of
19 the requested rate relief, we were still left half-crippled and the event
20 continually tainted staff's perception of AWRI.

21 d) As I have discussed in numerous places throughout this testimony, using
22 some funds out of the Docket account was inappropriate, frustrating to
23 staff, and the subject of the penalty. I am sorry for this, but I must

1 repeat that I had no alternative and am very willing to listen to any
2 possible alternative that I could have followed.

3 I believe that these events were somehow misunderstood and used or
4 distorted by UTC staff to develop a vendetta attitude and, ever since, each and
5 every small event has been (intentionally or unintentionally, I don't know) used
6 against the company. AWRI has not been able to pay its bills on time for over
7 three years. AWRI is constantly dodging threats by vendors to shut-off power,
8 testing services, and legal and accounting services. AWRI cannot buy adequate
9 supplies or maintain its vehicles or systems. Staff's attitude is clearly negative
10 and demeaning. This "spin" is constantly present in both verbal and written
11 communications. Jim Ward's testimony of Dec. 16, 2003 is a prime example.
12 In the interest of brevity, I will not present numerous examples, but I can and
13 will do so if requested.

14 To be fair, the first couple of requests AWRI made were approved in
15 quick order, but starting in 1998, things went downhill.

16 After investing more than \$330,000, I applied to UTC on 2/27/1998 for
17 an obviously necessary and anticipated rate increase, to sustain the required
18 personnel and supplies, critical testing and other necessities that these systems
19 had been deprived of under prior ownership.

20 The process at the UTC took eleven months and then resulted in
21 allowing only \$47,263 of the requested \$84,596 in January of 1999. This lack
22 of vital rate support and continued obstructionist attitude has thrown the
23 company into an ever-worsening tailspin. AWRI had to cut expenses to

1 unrealistic levels just to remain solvent, prompting the UTC staff to then say
2 ‘see, we told you that you didn’t need that money’. The losses precipitated by
3 UTC staff’s lack of comprehension of system needs and small business
4 operations, plus its interminable delays, depleted capital and eroded our debt to
5 worth ratio.

6 **Q. WHAT ATTEMPTS HAVE YOU MADE TO COMPLY WITH STAFF’S**
7 **RECOMMENDATIONS AND DIRECTIVES?**

8 A. Again, I will answer this question in several parts:

- 9 1) In an attempt to satisfy UTC’s complaints about our bookkeeping and
10 other records, I hired Herta Ingram, also an experienced and former
11 UTC auditor, to manage my in-house accounting and office activities.
12 Although she was highly qualified, she could not satisfy the UTC, even
13 though she spent an inordinate amount of her time trying to help UTC
14 auditors understand the reality of our problems. Budget and our ever-
15 worsening financial condition ultimately forced me to terminate her and
16 leave her position unfilled.
- 17 2) In 1999, after hearing repeated criticism from UTC about our accounting
18 being in disarray, I reluctantly hired Moss-Adams, a national accounting
19 firm, thinking their additional expertise and reputation would satisfy
20 UTC’s complaints. This turned out to be a terrible decision. Their
21 knowledge of UTC rules and accounting was far inferior to Julia
22 Parker’s and their fees were much higher. UTC staff was still not
23 satisfied, and I ultimately changed back to Julia Parker and UTC staff

1 deemed Moss Adam's fees an improper expense and allowed no
2 recovery in rates while the company was still legally obligated to pay
3 \$37,187.

4 3) Upon UTC's insistence that I could not be both the owner and general
5 manager, an assertion that I still do not understand, I hired Mitch Myers,
6 a thoroughly experienced manager in the water industry. His integrity
7 and management ability was well known to me. This again turned out to
8 be a mistake in UTC's viewpoint and I finally had to terminate him.
9 While included as a cost of service in the test period used in the last
10 case, the staff believed his wages were a one-time expense and therefore
11 these wages were never recovered in rates. This forced me to take over
12 the general management duties again.

13 4) For the last 2 – 2 ½ years, due to UTC staff's constant criticism of my
14 decisions and expenditures, I developed a policy of never making any
15 significant expenditures or decisions without Julia Parker and/or Rick
16 Finnigan's approval. I continue in that mode today. Their fees, of
17 course, have added to our operating cost, creating another financial
18 impact. And despite these changes, the UTC continues to be critical of
19 their decisions. Because of the dictates of DOH and UTC, we have not
20 purchased any new systems since January 1999. UTC's rationale has
21 been that we expanded too fast and were under-capitalized. This is not
22 true. The reality is that we had sufficient capital to finance our planned
23 expansion, but did not suspect that we would be denied rate adjustments

1 needed to support a level of service required to serve the needs of our
2 customers. Our funds intended for capital improvements were eaten up
3 by financing operations, battling with UTC and sustaining the related
4 losses while trying to obtain livable rates. UTC to this day has not
5 acknowledged the difference in operational costs of serving 133 systems
6 rather than four, five or ten. While they claim to understand, their
7 actions prove that they do not. Until or unless the UTC faces this
8 reality, we will remain under-capitalized and financially non-viable, will
9 not be able to give our customers the service they deserve, and will
10 ultimately go bankrupt. The multitude of small, ill-managed systems
11 throughout the region simply cannot be properly served in a manner
12 significantly different or less costly than we have proposed.

13 5) We have been chastised for having some of the highest rates and yet
14 there's been no recognition that we are managing the most difficult and
15 expensive set of systems in the Investor Owned Utility business. It could
16 be argued that, under these circumstances, our rates should be the
17 highest. A few of the facts that should be considered here are:

- 18 a) The effort to develop a Water System Plan for 133 systems
- 19 b) Maintain 133 pump houses
- 20 c) File 133 Consumer Confidence Reports
- 21 d) Do 133 susceptibility assessments

22 and numerous other tasks, while being something less than 133 times
23 one, is something approaching that multiple. The UTC, our customers,

1 and AWRI would all be better served if UTC had faced the reality and
2 cost of good service early on and supported us in the granting of realistic
3 rates and encouraging our expansion to reclaim additional defunct
4 systems for the betterment of all concerned. Current actions are
5 perpetuating this oversight. UTC's concern seems to be that we might
6 over earn. Based on the facts and explanation presented herein, I cannot
7 comprehend such an event. The history amply proves the contrary.

- 8 6) UTC's micro management: When I ask questions of UTC staff, the
9 common answer is "we don't tell you how to manage your business" and
10 I repeatedly hear that rates are supposed to be 'fair, just, reasonable and
11 sufficient'. This of course means staff's viewpoint of 'fair, just,
12 reasonable and sufficient'. The fact that my qualified advisors and I
13 strongly disagree is totally immaterial. The staff does in fact 'micro-
14 manage' my business by their absolute control of where and how every
15 penny is spent. We are constantly admonished if we spend differently
16 than staff wishes. We have approximately \$126,435 impounded in
17 special funds that we can only spend for specific issues, while on the
18 other hand we can't pay our legitimate bills. Exhibit__ (VRF-8). When
19 I paid income tax out of one of these funds, only because there was no
20 other choice, and after consultation with my lawyer and accountant, who
21 agreed there was no other choice, the UTC penalized me personally (Ref
22 Docket #UW031596 discussed herein), even though the income tax
23 liability was created, in part, by the very existence of this fund. This

1 issue relates directly to my pre-hearing testimony contention that the
2 issues should be consolidated and I thank ALJ Caille for recognizing
3 this reality. The simple fact is that the conditions put on the company in
4 Docket #010961 were entirely too stringent. Once the View Royal
5 System was sold, we simply could not adhere to the order. AWRI
6 requested these conditions be reviewed and changed, but UTC staff
7 would not discuss the matter.

8 7) As examples to the micro managing, staff has stood in my office when
9 all phone lines were busy and said that we have too many phone lines. I
10 was criticized for paying \$2500 for a used copy machine. I was told that
11 our 800-phone number and newsletters to our customers were
12 unnecessary expenses, even though many of our customers are outside
13 the local calling area and DOH encouraged the publication of a
14 newsletter. I was therefore forced to terminate these services and bear
15 the customer complaints. We are told how much we can pay our
16 employees, and how much we can spend on vehicles critical to our
17 service. We are chastised for legal and accounting expenses relating to
18 attempts to sell the business (see Exhibit ___ (JAW-1T), pages 13-15),
19 despite the fact that the UTC staff has made operating this business
20 successfully an impossible task. The list goes on and on. I could provide
21 voluminous examples upon request. Our combined total loss over 8
22 years of operation has been (\$58,660), as outlined above, to say nothing
23 of the other items delineated. How can this be construed as 'fair, just,

- 1 reasonable and sufficient’, or of me taking unreasonable advantage of
2 the customers?
- 3 8) Debt to worth ratio: From the beginning the UTC staff has questioned
4 our debt to worth ratio. While it has been UTC’s system and policies
5 moving at glacial speed, and their reluctance to acknowledge real
6 operational costs by granting appropriate rate adjustments that has
7 caused our continuing losses and therefore deterioration of our capital
8 structure, UTC fails to recognize that no amount of capital can be
9 sufficient when a company is forced to continually operate at a loss
10 every year. UTC staff seems to believe that we have been fighting for
11 better rates to fill our own pockets; the history has proven them wrong.
12 If we are hiding excess profits, as is often implied, documented proof
13 should be provided.
- 14 9) After all other attempts to satisfy UTC staff had failed, and our financial
15 situation continued to deteriorate, I decided to accept the advice of
16 counsel and attempt to sell the company at a significant loss. After two
17 separate sales agreements had been fully negotiated and settled upon by
18 both myself and the buyer, first to Washington Water, secondly to The
19 Water Company of Washington, LLC, the UTC staff effectively killed
20 both deals by interpreting rate base (in other words the price that I could
21 sell for) in a manner totally contrary to both my accountant’s and
22 attorney’s calculations and interpretation of applicable rules for
23 establishing rate base and an amount less than one half of the agreed

1 upon and fair market price. A third fully negotiated agreement to sell a
2 portion of the systems to Trident Utilities was likewise thwarted by the
3 UTC staff in the same manner. Again, the documentation for this is a
4 matter of UTC record.

5 The end result of all of this is that UTC staff criticizes every
6 move that I make, even when I abandon my own better judgment just to
7 satisfy staff, and when I actually operate in concert with and under the
8 direction of my qualified advisors, whom staff themselves have declared
9 to be very capable.

10 **Q. DO YOU HAVE OTHER COMMENTS OR ISSUES THAT RELATE TO**
11 **THIS MATTER?**

12 A. Yes, I have several. They are:

13 1) Rate base discussions: One of the major issues in this case is the
14 proposed adjustment to rate base. While not an expert on this issue it is my
15 understanding that all of the staff's adjustments are directed towards
16 penalizing the company for what the staff perceives as poor decisions on the
17 part of management. This is apparent in the vast difference between Staff's
18 proposed rate base of \$165,352 and that proposed in Julia Parker's
19 testimony of \$814,247. Staff has not attempted to include in its adjustments
20 to rate base items previously discussed in prior commission cases including
21 items which would reduce rate base lower than the level proposed in the
22 staff's case.

1 The proposal to reduce rate base for the purported “gain” on the sale
2 of the Birchfield water system is just one example of where staff did not
3 investigate the entire circumstances before making their recommendation.
4 As I discuss later in my testimony, and also thoroughly discussed by Julia
5 Parker in her testimony, this adjustment is completely unwarranted and only
6 one more effort on the part of staff to keep rates as low as they can. The
7 staff also makes an adjustment to reduce rate base by the amount of gain
8 realized when the View Royal water system was sold to Valley Water
9 District. There was no consideration for the fact that the entire proceeds of
10 the gain were reinvested into the company by paying off all of the debt
11 owed to me. This debt and its affect on the capital structure of the company
12 was one of the major causes for criticism by the staff.

13 The adjustment by staff to reduce rate base further by the amount of
14 collections received under the \$4.40 set aside from the last case is just one
15 more way the staff is trying to penalize the company for its efforts in
16 complying with the Commission’s orders. The staff makes the adjustment
17 under the rationale that the company flagrantly misused the funds in blatant
18 disregard of the terms of the Commissions order. In my testimony and also
19 in the testimony of Julia Parker we clearly show that the operations of the
20 company changed drastically after the Commission order so that the
21 conditions that were placed on the use of the funds were too restrictive for
22 the company to utilize causing further problems to develop.

1 2) UTC's Attitude towards deferred maintenance: UTC's attitude
2 toward and treatment of deferred maintenance is totally unrealistic and a
3 major factor in our current financial and physical condition. When I started
4 purchasing systems, many at very little cost, some at no cost, I fully realized
5 that two things would be required:

6 a) Investment of additional funds to deal with the capital
7 improvement issues. This I had planned for and had capital
8 available (a minimum of \$300,000). I planned to augment that
9 funding with a surcharge, a UTC normally acceptable method of
10 financing, as well as a personal loan of up to \$700,000.

11 b) Additional operating revenue to fund personnel, repair parts,
12 tools, testing, and other expenses to operate and care for the
13 systems as they should be. This would obviously and properly
14 come from rates. When UTC stalled, would not recognize these
15 legitimate operational costs and timely need for same, and vastly
16 reduced our request for sufficient operating funds, the spiral of
17 losses was inevitable.

18 To further display this total disregard for funding of our
19 deferred maintenance, we should look at our 1999 surcharge
20 request. We had prepared a capital improvement budget as
21 required by DOH (Detailed in our 1996 Water System Plan on
22 file with DOH) and we identified over 90 needed upgrades.
23 UTC staff dictated that only the few (13) projects that were

1 directly health related should be funded. The remainder had to
2 be left as time bombs waiting to explode. No rationale or
3 explanation was presented.

4 UTC staff has toured many of our systems, beginning in 1997,
5 and are fully aware of the existing neglectful condition. Included
6 as Exhibit__(VRF-9) are present day pictures of a number of our
7 systems that we have had neither funds nor personnel to upgrade.

8 Many of them are in the same condition staff viewed in 1997. I
9 am ashamed of these conditions, but the issue there is simply
10 general repair and maintenance, which we cannot afford. As bad
11 as these systems look, they are in total compliance health-wise.

12 Therefore, UTC has no interest in allowing us sufficient
13 personnel to paint, install repair parts, do building or grounds
14 maintenance or provide a budget to keep these systems
15 maintained in the manner that customers legitimately expect.

16 Would you like for your water to come from this type of facility?

17 I have also included as Exhibit__(VRF-10), pictures of some of
18 the newer systems that we have built. I believe these are good
19 examples of how water systems should look, but our lack of
20 personnel is making the continued maintenance of even these
21 systems nearly impossible and their general condition is slipping.

22 Staff has accused us of building ‘Cadillacs’. This is nonsense.

1 Simple inspection of our systems, and the pictures, proves my
2 point.

3 3) Prior to the 1999 surcharge issue, my rapport with all DOH personnel had
4 been excellent. Relationships became strained due to the UTC's delays in
5 funding the surcharge, refusal to even consider other necessary capital
6 improvements, badmouthing AWRI to DOH and constant criticism of our
7 actions and financial condition. Through UTC's conversation with, and
8 complaints to DOH, our relationship with DOH deteriorated rapidly.

9 We met with DOH in early 1999 (March 22, I believe). Because they
10 wished to have a schedule for completing the 13 surcharge projects, I stated
11 that they would be completed before the end of the year, whereupon Sean
12 Orr, DOH planner, stated, "If that happens, DOH will be dancing in the
13 streets." But it was not long before DOH had penalized us for not acting
14 quickly enough (Ref DOH order #99-007).

15 4) DOH training classes and seminars: In order to maintain my operator
16 certification, I am required by DOH to attend continuing education classes. I
17 agree with this system and note that the following items are always stressed
18 during these classes:

19 a) How to keep sufficient records to document testing, maintenance
20 compliance and other issues.

21 b) Constant discussion of upcoming new regulations and the need to
22 study, understand, and comply.

23 c) Customer communication is vitally important, as are the

1 methods to accomplish that.

2 We understand and agree with this advice, but we do not have and

3 cannot afford sufficient staff to scratch the surface on these issues.

4 5) Purpose of CIP: DOH rules demand that a water company develop and
5 periodically update a Capital Improvement Program (CIP). This is a
6 reasonable demand, but one that UTC staff seems unwilling to comprehend.

7 A CIP necessarily has two financial components:

8 1) The initial capital to complete the needed improvements. This can
9 only come from three sources:

10 a) Re-investing Profits

11 b) Infusing new capital

12 c) Surcharge or conventional bank loans

13 I have been ready, willing and able to deal with each of these methods.

14 However, one cannot reinvest profits if there are none. Investors are
15 plentiful if a profit is reasonably predicted, but non-existent if losses are
16 imminent. Surcharge loans are not possible unless approved by UTC. This

17 has been rejected. Conventional loans are readily available for a company
18 showing a profit and totally unavailable when showing a consistent loss.

19 Therefore, under present rate conditions, AWRI has no possible option to
20 complete its CIP.

21 2) Operating revenue: Even if capital improvements can be made
22 they require continuing maintenance. This includes inspections,
23 servicing, painting, vegetation control, building maintenance,

1 component replacement and numerous other expenses. This
2 converts to rate support, so we are again blocked from executing
3 even a modest CIP.

- 4 6) UTC budget: To even propose a budget such as UTC staff has,
5 Exhibit__(VRF-2), is very puzzling to me. While staff may not agree with
6 the need to maintain our systems at a level we deem appropriate, it's hard to
7 believe that they are totally ignorant of the general conditions, lack of
8 profitability, and difficulty in keeping up with our expenses. Reducing the
9 budget is to me unthinkable. Is this proposal then an intentional ploy to
10 drive us into bankruptcy? What other conclusion can we reach? How can
11 any of this be in the best interests of the customers?

12 We have never had rates that were sufficient to maintain our systems, let
13 alone sufficient to yield a “reasonable compensation for the service
14 rendered”, and the various points that I have brought up in this testimony
15 clearly demonstrate this.

- 16 7) Disallowed legal expense: When UTC rules, policies, and dictates make
17 operating an IOU so impossible that selling out at a loss is the only possible
18 option, what rule dictates that the related legal expense is not allowable? If
19 we do not prepare documents in a legal manner, we would, I am sure, be
20 criticized.

- 21 8) Owner as general manager: UTC staff has asserted that because I am the
22 owner, I cannot pay myself a reasonable wage for the work that I do. What
23 logic can be involved here? A small business owner is the company's most

1 important and active employee, and is vital to the success of the company.
2 Any small business expects to make a profit on their investment and most
3 do so to stay alive, as well as a wage if they work in the business. UTC staff
4 personnel told me that an owner cannot have the customer's welfare in
5 mind; they believe only a manager can address this concern. How myopic
6 can one be? Any half-competent owner knows that his and the company's
7 interest is best served by treating the customer well and giving them fair
8 value that they deserve and have paid for. What logic or rule disputes this
9 approach?

- 10 9) In March 2002, I established a new LLC called United Utilities, LLC. This
11 was done because of UTC staff's criticism of the inherent (in their opinion)
12 bookkeeping complication related to managing non-owned systems versus
13 owned systems. I transferred the management of all non-owned systems to
14 United Utilities to simplify the AWRI accounting. Again, UTC staff today
15 seems to imply that I have done something devious. UTC and DOH have
16 consistently refused to allow United Utilities to gain approval as a Satellite
17 Management Agency (SMA). My attorney insists this is an untenable
18 position and I would likely win the argument in Superior Court, but lack the
19 funds to fight that battle. This lack of SMA approval has caused United
20 Utilities to suffer very significant losses in potential new business and
21 therefore the related loss of potential profit.

1 **Q. SINCE YOU CLAIM THAT STAFF DISTRUSTS YOU, WHAT**
2 **EVIDENCE CAN YOU PRESENT THAT WOULD SUGGEST THAT**
3 **YOU ARE CREDIBLE?**

4 A. In reading this testimony and history, any intelligent reader must
5 question my credibility and motivation, so that is a legitimate question,
6 particularly since I am being very critical of the UTC. Am I just a chronic mal-
7 content? First let me say that I am very reluctant to be so critical of the UTC
8 and have very serious fears of further recrimination, but I believe the story has
9 to be told. Based upon my past personal experiences, it is my belief that staff
10 will again distort the facts in an effort to prove me wrong. This statement will
11 likely precipitate further reprisals, but I believe my position must be stated.

12 If one would interview other IOUs, they would be similarly critical if
13 absolute anonymity was guaranteed. The fear of recrimination is very prevalent
14 throughout the IOU industry. However, my attorney and accountant have
15 repeatedly asserted that I am a “special” case.

16 I pride myself in having built a solid reputation of being honest and
17 straightforward. I have owned and operated many successful businesses over an
18 approximate span of 45 years. I can supply unlimited personal, business,
19 character and credit references, and will be happy to do so upon request. I wish
20 for this history to become a part of the public record and I am not only willing,
21 but in fact, anxious to testify under oath that all of the facts and depictions
22 presented herein are to the best of my ability true and accurate.

1 **Q. DO YOU AGREE WITH STAFF’S TREATMENT OF BIRCHFIELD**
2 **WATER SYSTEM?**

3 A. No, I do not, for the following reasons. I believe that staff has missed
4 the point and has mischaracterized the entire transaction. I believe further that
5 this particular event is a prime example of my previous answer concerning staff
6 mischaracterizations.

7 In 1988, when I purchased my Onalaska Property, there was one well
8 and various minor water rights and claims. Since my long-range objective was
9 to develop the property, I drilled two additional wells and requested and
10 received additional water rights from the Department of Ecology (DOE).

11 In 1995, before AWRI existed, I submitted my initial Water System Plan
12 to the Washington State Department of Health (DOH). This plan was approved
13 on April 28, 1995 and envisioned 100 connections with existent water rights
14 and an ultimate build-out of 500 connections. Exhibit__(VRF-11).

15 During the early 1990’s, I was developing small residential projects
16 around Lewis County and that precipitated the development of Lewis County
17 Utility Corporation (LCUC). During this time I also requested and received
18 approval from Lewis County for a twenty-unit mobile home park and expanded
19 the water system to serve the first part of this park. There are currently four
20 manufactured homes in place and being served. When the decision was made to
21 expand AWRI as described earlier and I came under UTC jurisdiction, I was
22 given to understand that UTC would not allow me to own both regulated and
23 unregulated systems. Therefore, I transferred the Birchfield System (the system

1 serving the four manufactured homes) into Lewis County Utility Corporation,
2 as has been documented in the company books and UTC records. At about this
3 time, because of it's expanded service area; LCUC was changed to American
4 Water Resources, Inc. (AWRI).

5 When Birchfield was transferred into AWRI, I did not receive one dollar
6 of compensation and have not received any compensation to date. The amount
7 that I had spent to construct the system up until that time did become the rate
8 base for AWRI, approximately \$61,143. Although AWRI has continually lost
9 money from it's inception to date, it could theoretically earn on that rate base.
10 The system at that time was considered a Group B system and served five
11 connections, the area defined in the sketch attached as Exhibit__(VRF-12). In
12 September 2001, by the direction and approval of DOH, the Birchfield System
13 was changed to a Group A system. Exhibit__(VRF-13).

14 As my development plans unfolded, I personally, not using AWRI funds
15 or personnel, began to build portions of the infrastructure to ultimately be
16 included in the Lewis County Water and Sewer District #5 water system.
17 Therefore, I proceeded to personally spend several hundred thousand dollars
18 during 1997, 1998 and 1999 to construct water system infrastructure. Because
19 of my plan to begin initial residential construction, in 2002 I requested and
20 received approval from DOH to expand the number of connections, up to 25
21 connections. Exhibit__(VRF-14). I received this approval and the system has
22 been since that time viewed as a Group A system. Again, in accord with my
23 development plan, I requested and received approval for up to 37 connections in

1 November of 2002. Exhibit__ (VRF-15). During this time, Lewis County
2 Water & Sewer District #5 (LCWSD5), a public water district, had been
3 developed and approved by Lewis County to serve the upcoming needs of the
4 Birchfield Development.

5 In 2002, because I had resigned myself to selling AWRI and moving
6 ahead with the Birchfield Development, I proceeded to transfer the Birchfield
7 System from AWRI to LCWSD5 in the manner Richard Finnigan and Julia
8 Parker believed acceptable to UTC. I again received absolutely no
9 compensation related to this transfer. Simultaneously, under the direction of
10 Rene Remund (Vanderstoep, Remund, Kelly & Blinks), the attorney for
11 LCWSD5, I personally transferred the additional infrastructure not associated
12 with or connected to the Birchfield System except for pressure testing and
13 chlorination through a temporary intertie, to LCWSD5. I again did not receive
14 one dollar worth of compensation for this transfer. I did however agree with
15 LCWSD5 to receive approximately 90 future water connections as partial
16 repayment for my investment of approximately \$300,000. While this
17 transaction was totally outside of AWRI, the UTC was made aware of the
18 arrangement. I believed this was appropriate, as I did not wish to do anything
19 that could be somehow construed as self-serving.

20 With the normal ‘spin’ that UTC staff has been applying to everything
21 that I do, the whole transaction is now somehow being viewed as underhanded
22 and self-serving. Note such statements as “He was on both sides of the
23 transaction” (Exhibit ____ (JAW-1T), page 27, lines 2-3). True to form, staff is

1 alleging that I have somehow profited from the transaction. This is totally false.
 2 Because of staff's attitude and desire to paint me as sinister, they have failed to
 3 do their research, have not read the contract I provided, and tried to tie unrelated
 4 events together and penalize me for my actions. Why is it that when it's
 5 convenient, staff testifies that Virgil Fox and AWRI and/or other entities are
 6 totally separate and unrelated, and when it suits their cause testifies that they are
 7 inextricably entwined? This is simply the latest round of attempts to vilify me,
 8 and a graphic example of staff's attitude.

9 The Lewis County Water & Sewer District #5 is operating under the
 10 guidance of a separate attorney from that of AWRI, and I will no longer be
 11 involved in ownership or management of the water or sewer systems or
 12 LCWSD#5 once sufficient property owners exist for takeover. I have not and
 13 will not receive any compensation beyond the trade of connections as partial
 14 repayment for the investment made.

15 **Q. DO YOU AGREE WITH STAFF'S TREATMENT OF THE 'VIEW**
 16 **ROYAL' SALE?**

17 A. No, I do not, and I strongly object to the staff implication that I
 18 somehow underhandedly sold the View Royal System immediately after settling
 19 the last rate case. The last thing I wanted to do was to sell off my biggest, best
 20 and most profitable system, but I had no choice. We could not pay our bills and
 21 the bank was closing in on me. I simply had to raise money. The only ways I
 22 could imagine were:

- 23 1) Raise rates – obviously impossible

1 reviewing and modernizing their management policies and practices, is
2 imperative. I will expound on my suggestions:

3 1) UTC staff: Staff could be instructed to be helpful to the Investor Owned
4 Utilities, helpful in a productive manner that would also best serve the
5 consumer, rather than confrontational and unduly expensive. In most of
6 the business world and even dealing with government agencies such as
7 the IRS that most people feel are difficult, all small matters can usually
8 be discussed and amicably resolved without resorting to a court
9 proceeding mode and incredible cost and delay, all of which represent
10 excessive cost to the consumers and the tax payers as well as the water
11 purveyor. Experience has taught me that there is no point in me
12 discussing issues with UTC staff. The attitude is consistently caustic,
13 demeaning and punitive. I have been forced to let my accountant and
14 attorney conduct all UTC communication, their fees again adding to
15 operational costs. Unfortunately, their results are little, if any, better
16 than mine. This manner of doing business is simply not reasonable or
17 appropriate. As it is, staff functions with virtually unlimited dictatorial
18 power, and the small water purveyor has nowhere to turn to seek balance
19 and/or reasonableness. This mode creates tremendous delays as well as
20 extra legal and accounting expenses and is most certainly not in the
21 customer's best interest. UTC commissioner's objective investigation,
22 evaluation and re-direction of UTC staff's objectives and operating

1 procedures could be accomplished virtually immediately. I would be
2 more than willing to provide additional input.

3 2) Time frame for response: When UTC brings a customer complaint to an
4 IOU, they must respond within 48 hours. When UTC presents a data
5 request, we are expected to answer within a few days. When we ask
6 UTC a question, it is most likely never answered, we get one of the
7 flippant answers mentioned above, or an answer is delayed for, at times,
8 as long as eleven months through lengthy Commission proceedings.
9 While statutory time frames set for big companies may exist, there is no
10 reason staff management couldn't direct the prompt handling of small
11 IOU issues.

12 3) Different rules for small companies: By and large, UTC rules and
13 processes are designed for large companies that have a bevy of attorneys
14 and other staff to deal with them, as well as larger cash flow and
15 financial reserve capabilities, with the risk of ownership spread over
16 hundreds if not thousands of investors. To a small business, the rules
17 are intolerably complex, slow, cumbersome, irrelevant and
18 unreasonable.

19 4) Inability to recover investment: It is UTC's policy that if an IOU loses
20 money one year, that it cannot be recovered in future years. This policy
21 should be changed. Mine is a good case to use as an example of the
22 punitive nature. UTC's actions are the cause of our loss, not our
23 inability to manage. We should be allowed to recover this loss. In the

1 early years, I maintain that workable rates should have been approved
2 much more quickly and these losses would not have occurred. The only
3 alternative would be that I invest even more money operating at a loss
4 while I am waiting for UTC to catch up. If this additional loss can never
5 be recovered, why would any prudent businessperson pursue this
6 course? At first, I did invest more capital, with the hope of receiving
7 adequate rate treatment in a reasonable time frame. I have no more
8 funds to invest today.

9 5) Outside audit: When issues cannot be quickly and reasonably resolved,
10 an individual/firm (IOU) could be given the right to call for an outside
11 audit to be performed by an unbiased individual on a UTC/IOU shared
12 cost basis or a loser pays cost basis. This would add an element of
13 fairness in decisions, as well as give UTC some incentive to work
14 towards an amicable solution to forestall this step.

15 6) Agency confidence report: IOUs are required to poll customers,
16 develop, and publish a Consumer Confidence Report. A similar process
17 could be developed whereby the UTC had to make a similar report to all
18 concerned. This process would necessitate the removal of the present
19 fear of recrimination factor to be effective. The primary rationale for the
20 UTC to exist is to protect consumers from monopolistic businesses. To
21 the IOUs, the UTC is the ultimate and unreasonable monopoly. They
22 for all intents and purposes report to no one and have virtually total
23 dictatorial power.

1 I am confident that other improvements could be devised. I would be
2 willing to work with any interested party towards this end. For AWRI,
3 improvement must come very soon if at all.

4 **Q. DO YOU HAVE ANY OTHER SUGGESTIONS RELATING TO THIS**
5 **CASE?**

6 A. Yes. The slow and cumbersome process of dealing with even very small
7 issues in a formal proceeding format and finally bringing disputed issues before
8 an Administrative Law Judge (ALJ) may work for big companies with their
9 staff of lawyers and accountants, but for a small IOU it is incredibly slow,
10 expensive, beyond reason and terribly frustrating. I wish to be very clear that I
11 am commenting on the process and would certainly not wish to criticize the
12 ALJ involved in this case, an individual of whom I have virtually no
13 knowledge. In today's world, we concern ourselves with not only fairness, but
14 also the appearance of fairness. I ask how can an ALJ on the UTC staff,
15 receiving their wage from the UTC, spending their days in constant
16 communication and association with other UTC staff, be expected to render a
17 fair and unbiased decision, much less create the appearance of fairness?
18 Elementary logic dictates that this approach cannot work, no matter how
19 conscientious the ALJ may try to be. I must accept that ALJs are strong enough
20 to rule against the person signing their paycheck when appropriate, and rise
21 above the influence of day-to-day exposure, but I believe this is asking too
22 much of them and under the best of conditions the appearance of fairness cannot
23 be provided. I would propose that a co-operative rapport be built between UTC

1 staff and the IOU that should resolve most problems without need for such
2 intervention. When problems cannot be resolved, the issue should go straight to
3 mandatory, unbiased arbitration or the Superior Court, or at least to an ALJ
4 from a different venue without all of the preconditioning influences inherent in
5 the same staff environment.

6 **Q. DO YOU HAVE ANYTHING FURTHER TO ADD?**

7 A. Yes. I would like to apologize for any perceived past mistakes and
8 critical tone that I have not found a way to avoid and establish a new, co-
9 operative work atmosphere with UTC staff; an atmosphere in which the UTC
10 staff and I could communicate informally and formally in a manner that would
11 allow us to expedite decisions and to make a small profit, but more importantly
12 provide the customers with top service and high quality water in a cost effective
13 manner.

14 **Q. DO YOU HAVE ANY ADDITIONAL COMMENTS?**

15 A. I wish to thank the UTC staff for their handling of the accounting
16 petition on the Davenport easement lawsuit and take this as a glimmer of hope
17 for the future. I do, however, point out that the process was unduly
18 cumbersome and expensive. We filed a first petition in the fall and staff
19 opposed it. Staff did not talk to us or tell us what they thought might be
20 appropriate, but merely filed their formal opposition, leaving it up to us to come
21 up with another proposal and hope that they would support this one. I do
22 appreciate the support of the second try.

1 **Q. AT THE DOCKET UW-013596 PRE-HEARING CONFERENCE, YOU**
2 **STATED THAT YOU DID NOT THINK YOU SHOULD BE**
3 **PENALIZED. DO YOU STILL BELIEVE THAT?**

4 A. Yes, I believe that very strongly.

5 **Q. WHY DO YOU BELIEVE THAT YOU SHOULD NOT BE PENALIZED?**

6 A penalty, as the word implies, is punishment for wrongdoing. If one
7 creates an infraction out of defiance or arrogance, I believe a punishment is
8 clearly appropriate. If one creates an infraction out of sheer ignorance, at least
9 some punishment is likely appropriate. However, in this case, the infraction
10 occurred after thorough and thoughtful discussion with the company's
11 accountant and attorney. The borrowing or infusion of more funds was
12 impossible as discussed elsewhere in this testimony. There simply was no
13 alternative.

14 Additionally, on the recommendation of a penalty, the UTC staff's
15 proposal was excessively punitive and based on erroneous information as
16 already acknowledged by the Commission's order to lower the proposed penalty
17 to \$3,700.

18 I believe the Commission has reasonable latitude in the imposition of
19 penalties, based on their evaluation of the facts surrounding the particular
20 incident and that the imposition of a penalty would discourage further
21 infractions. The facts in this instance are that I not only had no malicious
22 intent, but also recognized the importance of the order and did everything
23 possible to avoid the infraction. If staff's past actions had not forced AWRI

1 into our current financial condition, this event would never have occurred.

2 Therefore, I respectfully request that the imposition of a penalty be dropped.

3 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

4 A. Yes, at least for now.