

MEMORANDUM

February 9, 2005

TO: Chairwoman Showalter
Commissioner Hemstad
Commissioner Oshie
Carole Washburn
Chris Rose
Bob Wallis (w/attachments)
Sally Johnston (w/attachments)
Glenn Blackmon (w/attachments)
Marilyn Meehan
Gene Eckhardt

FROM: Mike Sommerville, Records Center

SUBJECT: Paul A. Bitar, a single man, dba Cougar Ridge Water System v.
Washington Utilities and Transportation Commission
(UW-040367)
Petition for Review
No. 04-2-01699-8

A petition for review has been filed in Superior Court of Washington for Grays Harbor County, on December 15, 2004, by Thomas A. Brown, representing Petitioner listed above. The petition was received by the Commission on December 22, 2004.

The petition was served on the attorney of record (Jonathan Thompson), but not on the Commission itself through Records Center. Although atypical, this was not improper because of a recent revision to the APA stating that service on the attorney of record constitutes service on the agency. Jonathan did not realize that Records Center had not been served.

Please contact the Records Center if you would like copies of the attachments.

RECEIVED

DEC 22 2004

ATTY GEN DIV
WUTC

COPY

COPY

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
26
27
28
29
30
31
32

SUPERIOR COURT OF WASHINGTON FOR GRAYS HARBOR COUNTY

PAUL A. BITAR, a single man, dba
COUGAR RIDGE WATER SYSTEM,

Petitioner,

vs.

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Respondent.

No. 04-2-011699-8

SUMMONS

TO THE RESPONDENT WASHINGTON UTILITIES AND TRANSPORTATION
COMMISSION:

A lawsuit has been started against you in the above-entitled Court by the above-named
Petitioner. Petitioner's claim is stated in the written Petition for Review, a copy of which is
served upon you with this Summons.

In order to defend this lawsuit, you must respond to the Petition for Review by stating
your defense in writing, and serve a copy upon the undersigned attorney within 20 days after
service of this Summons, excluding day of service, or within 60 days if this Summons was
served on you outside the State of Washington, or within 60 days after the date of the first
publication of this Summons, or a default judgment may be entered against you without notice.
A default judgment is one where Petitioner is entitled to what he asks for because you have not
responded. If you serve a notice of appearance upon the undersigned person, you are entitled to
notice before a default judgment may be entered.

You may demand that the Petitioner file this lawsuit with the Court. If you do so, the
demand must be in writing and must be served upon the undersigned person. Within 14 days

BROWN LEWIS JANHUNEN & SPENCER

A PROFESSIONAL SERVICE CORPORATION

ATTORNEYS AT LAW

BANK OF AMERICA BUILDING

SUITE 501

101 EAST MARKET STREET

POST OFFICE BOX 1806

ABERDEEN, WASHINGTON 98520

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
26
27
28
29
30
31
32

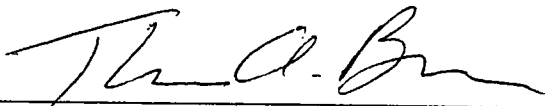
after you serve the demand, the Petitioner must file this lawsuit with the Court, or the service on you of this Summons and Petition for Review will be void.

If you wish to seek the advice of an attorney in this matter, you should do so promptly so that your written response, if any, may be served on time.

This Summons is issued pursuant to Rule 4 of the Superior Court rules of the State of Washington.

DATED: December 15TH, 2004.

BROWN LEWIS JANHUNEN & SPENCER
Attorneys for Petitioner

By 
Thomas A. Brown, WSB #4160

RECEIVED

DEC 22 2004

ATTY GEN DIV
WUTC

COPY

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
26
27
28
29
30
31
32

SUPERIOR COURT OF WASHINGTON FOR GRAYS HARBOR COUNTY

PAUL A. BITAR, a single man, dba
COUGAR RIDGE WATER SYSTEM,

Petitioner,

vs.

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Respondent.

No. 04-2-011699-8

PETITION FOR REVIEW

COMES NOW the Petitioner, by and through his attorney, Thomas A. Brown of the law firm of BROWN, LEWIS, JANHUNEN & SPENCER, and presents the following petition pursuant to RCW Ch. 34.05, and other applicable portions of the Revised Code of Washington and the Washington Administrative Code.

1. The name and mailing address of the Petitioner is as follows:

Paul A. Bitar dba Cougar Ridge Water System
444 8th Street
Hoquiam WA 98550

BROWN LEWIS JANHUNEN & SPENCER

A PROFESSIONAL SERVICE CORPORATION

ATTORNEYS AT LAW
BANK OF AMERICA BUILDING
SUITE 501

101 EAST MARKET STREET
POST OFFICE BOX 1806
ABERDEEN, WASHINGTON 98520

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
26
27
28
29
30
31
32

2. The name and mailing address of the Petitioner's attorney is as follows:

Thomas A. Brown
Brown, Lewis, Janhunen & Spencer
101 East Market St, Suite 501
P.O. Box 1806
Aberdeen WA 98520

3. The name and mailing address of the agency whose action is at issue is as follows:

Washington State Utilities and Transportation Commission
1300 South Evergreen Park Drive SW
P.O. Box 47250
Olympia WA 98504-7250

4. The agency action at issue is entitled: **"ORDER GRANTING PETITION FOR INTERLOCUTORY REVIEW; AFFIRMING IN PART AND REVERSING IN PART, INTERLOCUTORY ORDER; ESTABLISHING FILING SCHEDULE"** which is also identified as Order No. 03, under Document No. UW-040367. A copy is attached hereto and incorporated herein by reference.

Also at issue in this proceeding are the events precedent to the order described above, along with the burdensome **"PROCEDURAL RULES"** adopted by the Respondent as Ch. 480-07, **WASHINGTON ADMINISTRATIVE CODE**.

5. The individuals who were parties to the adjudicative proceedings that led to the order at issue here included the following persons:

- Paul A. Bitar (owner of the water system)
- Jim Ward (regulatory analyst - WUTC)
- Gene Eckhardt (Asst. Director – Water and Transportation, WUTC)
- Jonathan Thompson (Asst. Attorney General - WUTC)

BROWN LEWIS JANHUNEN & SPENCER
A PROFESSIONAL SERVICE CORPORATION
ATTORNEYS AT LAW
BANK OF AMERICA BUILDING
SUITE 501
101 EAST MARKET STREET
POST OFFICE BOX 1806
ABERDEEN, WASHINGTON 98502

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
26
27
28
29
30
31
32

- Marilyn Showalter (Chair – WUTC)
- Richard Hemstead (Commissioner – WUTC)
- Patrick Oshie (Commissioner – WUTC)

6. The facts that demonstrate that the Petitioner is entitled to obtain judicial review are as follows:

- a. The Petitioner did not fall within the jurisdiction of the Washington Utilities and Transportation Commission (WUTC), within the meaning of the statute (RCW 80.04.010) and that statute was erroneously interpreted by the Commission and its employees both in the rule making process and in the handling of this particular case.
- b. The members of the Commission, the Administrative Law Judge, the assistant attorney general, and the staff of the Commission all regularly engaged in a pattern of conduct that is in violation of RCW 34.05.455, by discussing and dealing with the matters before the Commission, in a way that prejudices the rights of the Petitioner herein and citizens in general.
- c. The Commission has promulgated a burdensome and oppressive set of procedural rules, which purport to supercede RCW Ch. 34.05, and resulted in discovery violations that prejudiced the Petitioner herein.
- d. The Commission and its staff continues to adhere to the provisions of RCW Ch. 80.04, relating to administrative procedures, notwithstanding the specific and compelling directives of RCW 34.05, the Administrative Procedure Act of the State of Washington.
- e. The Respondent WUTC incorrectly and improperly considered extraneous information (service connection fees) in determining whether it had jurisdiction over the Petitioner.

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
26
27
28
29
30
31
32

7. Petitioner believes that review should be granted here because the Respondent, WUTC has improperly interpreted the law, both in its handling of this case and in the issuance of regulations in violation of the law; the Respondent WUTC has created an internal procedural system that violates the tenets of the Administrative Procedure Act, RCW Ch. 34.05; the WUTC, its staff and Commissioners improperly communicated with each other during the handling of this case; and the WUTC and its staff improperly denied discovery to the Petitioner during the handling of this case.

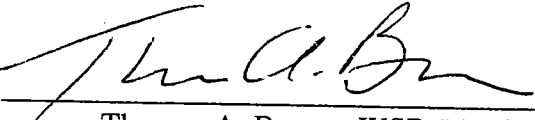
8. The Petitioner herein requests the following relief:
- a. Reversal of Order No. 03, attached hereto;
 - b. An order directing the WUTC to reevaluate the determination of jurisdiction over the Petitioner, directly applying the language of RCW 80.04.010 to comply with the intention of the legislature that this determination be made on the basis of **calendar** years;
 - c. An order directing the WUTC to cease and desist from using extraneous charges, such as connection charges, to determine whether water companies have crossed the jurisdictional threshold.
 - d. An order invalidating the "procedural rules" of the WUTC, and directing the WUTC to cease and desist from enforcing those rules in its dealings with this Petitioner and with the public in general.
 - e. An order directing the WUTC to cease and desist from enforcing the provisions of RCW Ch. 80.04 that are in conflict with the Administrative Procedure Act of the State of Washington, RCW Ch. 34.05.
 - f. An order directing the WUTC to cease and desist in its practices of *ex parte* communications among staff, commissioners, attorneys, and administrative law judges related to pending cases;

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
26
27
28
29
30
31
32

- g. The issuance of an immediate stay, staying the proceedings before the WUTC, while the court addresses the issues raised in this proceeding;
- h. Such other and further relief as the court deems proper.

DATED: December 15TH, 2004.

BROWN LEWIS JANHUNEN & SPENCER
Attorneys for Petitioner

By 
Thomas A. Brown, WSB #4160