

1 **BEFORE THE PUBLIC UTILITY COMMISSION**
2 **OF OREGON**

3 UW 117

4 In the Matter of

5 PETE'S MOUNTAIN WATER CO., INC.

6 Request for an increase in total annual
7 revenues from \$111,079 to \$212,300

STAFF'S CLOSING BRIEF

8 INTRODUCTION

9 The Public Utility Commission of Oregon Staff ("Staff") recommends that the Public
10 Utility Commission of Oregon ("Commission") adopt the filed Stipulation, which was entered
11 into among Staff, Pete's Mountain Water Company ("Pete's Mountain" or "Company"), and
12 Intervenors, David and Kay Pollack (collectively the "Parties") in its entirety.

13 The testimony demonstrates that the Stipulation is just and reasonable and should be
14 adopted. In response to Staff's thorough review of all the issues in this proceeding, Ken Roberts,
15 Intervenor, asserts that certain expenses, primarily the expense for salaries and wages, are
16 unreasonable and unlawful. In addition, Intervenor Jo Becker asserts that the Stipulation does
17 not result in fair and reasonable rates for irrigation customers.

18 For reasons discussed in more detail below, Ken Roberts' assertions regarding affiliated
19 interest contracts and the effect they have in rate proceedings are legally incorrect. Furthermore
20 and in the context of an overall stipulation, the stipulated salaries and wages expense are
21 reasonable and supported by the evidence in the record. Nonetheless, Mr. Roberts incorrectly
22 suggests that the Commission must micro-manage every minute of employee time spent working
23 on Company business but utterly failed to demonstrate that the overall salary and wage expense
24 was unjust and unreasonable.

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1 DISCUSSION

2 **A. No Affiliated Interest Contract is required in order to adopt the Stipulation, which**
3 **includes a reasonable expense, based upon a historic test year, for salaries and**
4 **wages.**

5 1. The salaries and wages expense is not an affiliated interest contract.

6 Mr. Roberts apparently contends that the salaries and wage expense included in the
7 stipulation is an affiliated interest contract pursuant to ORS 757.495. Because an affiliated
8 interest application was not filed for the salaries and wages expense, Mr. Roberts argues that the
9 Commission must exclude the expense from the stipulation.

10 ORS 757.495(1) provides in pertinent part:

11 When any public utility doing business in this state enters into any contract to
12 make any payment, directly or indirectly, to any person or corporation having an
13 affiliated interest, for service, advice, auditing, accounting, sponsoring,
14 engineering, managing, operating, financing, legal or other services, . . . which
15 shall be recognized as an operating expense . . . the contract shall be filed with the
16 Public Utility Commission within 90 days of the execution of the contract. The
17 contract shall be deemed to be executed on the date the parties sign a written
18 contract or on the date the parties begin to transact business under the contract,
19 whichever date is earlier.

20 Mr. Roberts claims that the salaries and wages expense falls within this statute because
21 Pete's Mountain is a public utility and Suzanne Webber is a person having an affiliated interest.
22 The statute, however, is more specific on what type of contracts must be filed. The statute
23 contemplates the filing of contracts for services where there is a relationship akin to an employer
24 and an independent contractor with an affiliated interest. In this situation, the relationship is one
25 more akin to an employer and employee. This type of relationship is not reviewed as an
26 affiliated interest contract but rather through a review of test year expenses. According to the
plain, natural, and ordinary meaning of the statute, employment services in an employer and
employee relationship are not services included in ORS 757.495. *See PGE v. BOLI*, 317 Or 606,
611 (1993).

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1 2. There is no contract and, therefore, nothing to file under ORS 757.495

2 Mr. Roberts has not, and cannot, point to any contract to make payment for employment
3 services. In fact, it appears that Mr. Roberts has a fundamental misunderstanding regarding the
4 differences between contracts for certain services and the inclusion of reasonable expenses in a
5 rate proceeding.

6 In this proceeding, the stipulation includes a reasonable expense for salaries and wages.
7 Mr. Roberts incorrectly claims that the Company must file an affiliated interest application for
8 this contract. However, there is no contract identified in the record. Instead, the stipulation
9 includes a reasonable salaries and wages expense in order to recommend an overall revenue
10 requirement.

11 In fact, Mrs. Webber's salary may be more or less than that included in the stipulation.
12 The Company is simply not requesting the approval of a stated salary level to be paid to Mrs.
13 Webber. Instead, they are requesting a reasonable level of salaries and wages expense based
14 upon a historic test year.

15 3. If an affiliated application were required, the appropriate remedy would not be to
16 exclude otherwise reasonable expenses from a rate case proceeding.

17 Mr. Roberts contends that the salaries and wages expense must be removed in its entirety
18 because no affiliated interest application was filed. However, there is no provision in the statute
19 or related statutes for such a remedy. ORS 757.495(3) provides in relevant part:

20 If, after such investigation, the commission determines that the contract is not fair
21 and reasonable in all its terms and is contrary to the public interest, the
22 commission shall enter findings and an order accordingly and serve a copy thereof
23 upon the public utility, and, except as provided in subsection (4) of this section, it
24 shall be unlawful to recognize the contract for the purposes specified in this
25 section.

26 This subsection, however, deals with a situation where a contract has been filed,
investigated, and found to be not fair and reasonable and contrary to the public interest. In this
case, no contract has been identified. Furthermore, the evidence establishes that Staff did find

1 that the expense was not only just and reasonable but also fair and reasonable and not contrary to
2 the public interest.

3 Even assuming that there was an employment contract, the remedy for not filing such a
4 contract is not the automatic exclusion of a reasonable operating expense. Because the salaries
5 and wages expense, as discussed in more detail below, is just and reasonable, as well as fair and
6 reasonable and not contrary to the public interest, the Commission should adopt the Stipulation
7 in its entirety.

8 If for the sake of argument, an affiliated interest agreement had been filed, Staff would
9 have performed the same analysis concerning the affiliated interest standard and transfer pricing
10 policy that was completed during the rate application review. The result would have been the
11 same; the salary and hours worked would have been considered by Staff to be fair, reasonable,
12 and not contrary to the public interest. As such, Staff would have recommended that the
13 Commission approve the agreement. Again, Staff could not locate a Commission precedence
14 requiring an affiliated interest application for water utility owners to pay salary or wages.

15 **B. The Stipulation's expenses, rate base, revenue requirement, rate spread, and rate**
16 **design have been thoroughly reviewed and are just and reasonable and, therefore,**
the Stipulation should be adopted.

17 Mr. Roberts seems to contend that the stipulated rates are not just and reasonable because
18 rates and expenses are higher than other water utilities with less than 200 customers. Mr.
19 Roberts also asserts that current rates should remain in effect. As Staff demonstrated through
20 testimony and oral arguments, Mr. Roberts' assertions are without merit.

21 1. The stipulated rates are correctly based upon the cost of service of the Company.

22 Mr. Roberts fails to recognize that every water utility has unique costs, cost
23 considerations, service territories, demographics, and organizational structure. Because of the
24 distinctive nature of a particular company, a one-size-fits-all approach to rate setting does not
25 work. Rates should not be determined based on established or average rates of differing
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1 companies. As a result, Staff must examine each company's cost of service ensuring all costs are
2 prudent, used, and useful for utility operations.

3 The Company's revenue requirements, which is the amount of money needed for Pete's
4 Mountain to operate and maintain facilities, cover capital expenses, and provide an opportunity
5 to earn a profit, were thoroughly evaluated by Staff. During the review process, Staff diligently
6 examined every cost category. Staff's review was not limited as suggested in Mr. Roberts'
7 written statement:

8 "In completing its review, the PUC Staff reclassified certain amounts expended
9 by the Utility to ensure they were properly accounted for..."¹

10 "However, the Staff failed to complete any analysis or make any determination
11 whether such historic expenditures or proposed expenditures were "...just and
reasonable".²

12 In its review, Staff not only reduced the requested increase of revenue from 91.1 percent
13 to 34.6 percent (\$212,300 to \$152,880), Staff also reduced the amount of requested operating
14 expenses by approximately 33.7 percent (\$164,837 to \$109,066) and more than halved the
15 requested plant in service (\$428,057 to \$211,176). These actions by Staff were hardly a
16 reclassification of expenses. Staff's investigation resulted in only allowing costs that were just
17 and reasonable for the continued operation of the Company.

18 During the UW 117 Hearing, Mr. Roberts used a cost comparison between utilities that
19 serve fewer than 200 customers to demonstrate that the expenses of Pete's Mountain are
20 unreasonable; however, he did not consider the underlying considerations of each company for
21 determining organizational structure and cost categories. As previously mentioned, companies
22 are uniquely structured, contain plant of differing ages, and have separate cost considerations.
23 Just because a water company is not structured to pay salaries and benefits, this company does
24 not set the bar or precedence for other water companies. Each water company is distinctive in its
25 operations.

26 ¹ In the Matter of Pete's Mountain Water Co, Inc., UW 117, dated October 17, 2006.

² *Ibid.*

1 Staff recognizes that the Company's overall expense per customer is the highest of all the
2 financially regulated water utilities. However, just because the expenses are higher than other
3 companies, does not in itself, make the expenses unjust and unreasonable. Salary and benefits
4 are a cost that the Commission has previously and consistently considered just and reasonable
5 when properly reviewed by Staff.

6 The Parties also note that it has been nineteen years since the Company's last rate
7 increase. Although the 34.6 percent increase in revenue is fairly significant, it is still
8 considerably lower than the inflationary increase of 68.1 percent for the time period of 1987 to
9 2005.

10 During the October 30, 2006 hearing, Mr. Roberts also objected to the transportation
11 costs associated with a lease of Ford F250 truck because of affiliated interest considerations.
12 However, the lease agreement is between the Company and a third party financial institution. As
13 a result, an affiliated interest relationship does not exist and the Company is not required to file
14 an affiliated interest application for the Commission's approval of the truck lease. During the
15 rate case review, Staff determined that the lease payments to the third party financial institution
16 were properly recorded and that the truck was necessary for the Company's operations. Mr.
17 Roberts argued that the Company could have leased a less expensive vehicle. However, the
18 Parties agreed that the Company needed a truck for its operations and the Company was in the
19 best position to determine the size and type of truck required.

20 2. The stipulated rate design is fair and reasonable.

21 Intervenor, Jo Becker, during the October 30, 2006, UW 117 Hearing, stated that Staff's
22 rate design did not result in fair and reasonable rates for irrigation customers. In actuality, Staff
23 softened the rate increase for irrigation customers by reducing the AWWA factor for 2" lines by
24 a divisor of four (from a multiple of 8 to a multiple of 2). If modified factors were not developed
25 by Staff, the increase to irrigation customers would have been significantly greater.

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1 As previously mentioned, Staff used modified factors for customers having 1” or greater
2 size meters. The following table compares the AWWA factors to those used by Staff:

Meter Size	AWWA Factor	Staff Modified Factor
5/8” and 3/4”	1	1
1”	2.5	1.2
1.5”	5	1.25
2”	8	2

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7 As illustrated in the table above, increases for the larger size meters were significantly
8 reduced by the modified factors Staff proposed as compared to a strict application of the AWWA
9 factors. The Parties agreed that using the modified factors was reasonable because:

- 10 ■ AWWA factors were not previously used by the Company;
- 11 ■ The rate increase to larger user meters would not be acceptable especially when
12 considering the increased expense recovery the Company requested. As an
13 example, if the 2” meter was increased by the actual AWWA factor of 8, the
14 base rate for irrigation customers would have been \$287.72 instead of the
15 proposed \$70.18;
- 16 ■ The use of modified AWWA factors would still take into account that larger
17 meters place a greater potential demand on the water system, and customers
18 with larger meters should pay higher base rates because of this potential
19 demand; and
- 20 ■ If Staff ignored the factors completely, customers with smaller meters (5/8”
21 and 3/4”) would pay more in base rates than the potential demand they place on
22 the system.

23 As Staff stated in testimony, if the irrigation customers choose to reduce the size of their
24 meters in order to reduce costs, then they can arrange with Pete’s Mountain for a new connection
25 and pay the Company for the costs of a new connection. Changing to a smaller meter would
26 significantly reduce the water costs to the irrigation customers.

27 In addition to using the modified AWWA factors, the Parties worked in earnest to create
28 a rate design that would have the least impact on a typical user. The agreed upon rate designed
29 included a continuation of a 600 cubic feet (cf) consumption allowance and established a two-tier
30 rate structure. As a result of the rate design, an average user of a 3/4” meter would only

1 experience a 15.7 percent increase in their monthly bill. The effect of the two-tier commodity
2 rate structure is that customers who use low or average amounts of water will pay less; customers
3 using excessive volumes will pay relatively more when they exceed average use. If a customer
4 desires to reduce their average monthly bill, the customer has the option to decrease
5 consumption.

6 CONCLUSION

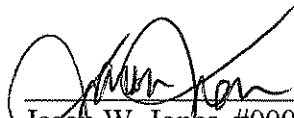
7 Staff recommends that the Commission adopt the Pete's Mountain UW 117 Stipulation,
8 entered into by the Parties in its entirety. Staff's review was thorough and the resultant rates are
9 just and reasonable.

10 For the foregoing reasons, Staff respectfully urges the Commission to adopt the
11 Stipulation in its entirety.

12 DATED this 8th day of November 2006.

13 Respectfully submitted,

14 HARDY MYERS
15 Attorney General

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17 Jason W. Jones, #00059
18 Assistant Attorney General
19 Of Attorneys for Staff of the Public Utility
20 Commission of Oregon

1 **CERTIFICATE OF SERVICE**

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3 I certify that on November 8, 2006, I served the foregoing upon all parties of record in
4 this proceeding by delivering a copy by electronic mail and by mailing a copy by postage prepaid
5 first class mail or by hand delivery/shuttle mail to the parties accepting paper service.

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