

BEFORE THE PUBLIC UTILITY COMMISSION OF OREGON

UW 120

IN THE MATTER OF)
CROOKED RIVER RANCH WATER) CROOKED RIVER RANCH WATER
COMPANY) COMPANY RESPONSE TO STAFF
AND INTERVENOR MOTION TO
STRIKE)
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COMES NOW Crooked River Ranch Water Company and submits a response to the Staff Motion to Strike an Intervenor, Craig Soule, Motion to Strike.

BACKGROUND

Crooked River Ranch Water Company maintains the assertion proffered in Crooked River Ranch Water Company's Motion to Quash Subpoenas issued in this case that purported Administrative Law Judge Patrick Power is without the legal authority to issue orders binding upon Crooked River Ranch Water Company as Patrick Powers' orders issued and work performed constitutes the unauthorized practice of law. In the interests of making an appropriate record, Crooked River Ranch Water Company responds as follows to the Motions to Strike submitted by

1-CROOKED RIVER RANCH WATER COMPANY RESPONSE
TO STAFF, INTERVENOR MOTION TO STRIKE

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PUC staff and Intervenor, Craig Soule.

All written material submitted by James Rooks constitutes rebuttal testimony. The contention that PUC staff's data requests have not been properly responded to is false and represents only the subjective opinion of PUC Staff Analyst, Michael Dougherty, and Staff Attorney, Jason Jones. After the first set of Staff Data Requests were received, DR1 through 58, Crooked River Ranch Water Company filed a Motion for Protective Order to have the Administrative Law Court make a determination as to the relevancy of the requested data and the limits of the PUC's investigative authority. Crooked River Ranch Water Company's motion was denied without hearing. Crooked River Ranch Water Company filed a Motion for Reconsideration which again was denied without hearing and without proper legal analysis. Although not specifically stated, the message communicated was that the PUC's investigative authority is unlimited and all requests submitted would be deemed relevant. To date no ruling has been made inconsistent with that position, however, common sense and well established legal principles dictate that such is not the case.

In the Staff Motion to Strike, footnote 2, scratch date "in this motion, staff has not provided a copy of each data request sent nor the insufficient data response in the circumstances where response was provided. Staff will be prepared and intends to offer the data requests and responses, where any, at the evidentiary hearing." Likewise, Crooked River Ranch Water Company will not furnish the individual data requests and responses which are disputed as part of this Motion. Crooked River Ranch Water Company will be prepared at the evidentiary hearing to address the relevancy of, existence of, and access to the information that is the subject of all disputed data requests.

Crooked River Ranch Water Company is compelled to address some of the disputed data

2-CROOKED RIVER RANCH WATER COMPANY RESPONSE
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requests as they relate to testimony which staff seeks to have stricken. The first section of testimony which PUC staff seeks to have stricken is in regards to Crooked River Ranch Water Company's assertion that the proposed PUC rates and budget fails to provide for fire protection to the community of Crooked River Ranch. In support of the Motion to Strike this section of Crooked River Ranch Water Company's testimony, PUC Staff Attorney, Jason Jones, cites numerous data requests which allegedly have not been complied with.

1. Data Request 129(i) and 130(e) ask the identical question regarding the alleged subsidization of non-water company customers living on Crooked River Ranch. Although the General Manager has already answered this question and common sense dictates a substantial portion of it, Crooked River Ranch Water Company's response that Crooked River Ranch Water Company are the primary beneficiary of Well # 3 and that benefits conferred on unintended or ancillary beneficiaries is simply a reality of life.
2. Data Request 130(c) ask for documentation on the increase in insurance class, Well #3 does not go into effect by October 1, 2008. Does the PUC really need documentation to figure out that an insurance company will raise its rates if adequate fire protection is not provided?
3. Question 138, to be properly objected to as argumentative at an evidentiary hearing which would be the appropriate forum for inquiry regarding the rebuttal testimony submitted by Crooked River Ranch Water Company. This contention holds true for many of data requests submitted by PUC staff that

3-CROOKED RIVER RANCH WATER COMPANY RESPONSE
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constitutes inquiries based on rebuttal testimony submitted.

4. Question 139(a) has already been answered through James Rooks' explanation that during the last wild fire season water resources reached critical levels thereby threatening the property and safety of those persons living on Crooked River Ranch.
5. Question 139(b) was likewise explained by James Rooks in his rebuttal testimony where explained how the additional well would provide for a gravity flow system that would reduce electrical costs and would be more economical in the long term.

The next section which PUC staff seeks to strike is in regards to the \$8 assessment levied by Crooked River Ranch Water Company. Many of the data requests cited have been answered several times. Most notably Crooked River Ranch Water Company has painstakingly explained to the PUC about the loans made from the general fund to the special assessment fund. The fact that the PUC staff cannot comprehend simple concepts, requires several different explanations of the same idea or is simply not satisfied with the answer provided partly constitutes noncompliance with data requests by the Crooked River Ranch Water Company.

In other cases the information requested by the PUC simply does not exist and Crooked River Ranch Water Company is not capable of producing that information which does not exist. Case in point, Data Request 134(a) and 134(c) which are cited as authority for striking the rebuttal testimony regarding the need for radio read meters. Data Request 134(a) asks for all Workers Compensation Claims concerning meter reading from 2004 through 2007. Fortunately, no Crooked River Ranch

4-CROOKED RIVER RANCH WATER COMPANY RESPONSE
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Water Company employees have been injured in their meter reading duties resulting in a Workers Compensation Claims. Nonetheless, the liability exposure for the Company is readily apparent by James Rooks' explanation that the roads on Crooked River Ranch have no shoulders, curbs or sidewalks and often the meter reader has to go over embankments to get to the meter. During the winter months snow and ice cause significant safety hazards for employees. Obviously, if a work injury had taken place and a Workers Compensation Claim made details would be provided. However, that has not stopped the PUC from requesting information under DR 134(a) which does not exist and then citing lack of information as authority for striking any testimony regarding the need for radio read meters. Likewise with DR 134(c), no written information is available regarding customer complaints about meter readings. The only other justification asserted for striking this section of testimony is Data Request 141(b) which PUC staff acknowledges is not due at the time of their filing of the Motion to Strike.

The foregoing Data Requests which were specifically addressed are characteristic of the justifications provided by the PUC to strike important and relevant testimony in their motion. As previously stated, Crooked River Ranch Water Company stands ready to address relevancy, existence of and availability of information requested for each Data Request at the evidentiary hearing. The PUC staff's attempt to keep relevant information from the PUC Commissioners arise their motivation and goal to implement a budget and rates which will not allow the Water Company to function at which point the PUC could replace the existing Board of Directors and Company Management with persons they selected, as was the case with Juniper Water Company.

Neither PUC attorneys nor Intervenor Craig Soule have cited any legal authority for their

5-CROOKED RIVER RANCH WATER COMPANY RESPONSE
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request to strike portions to Crooked River Ranch Water Company's rebuttal testimony. Section 183.450 of the Administrative Procedures Act provides that subsection 2 provides that all evidence shall be offered and made a part of the record in contested cases. Subsection 5 provides that no sanctions shall be imposed or order be issued except upon consideration of the whole record or such portions thereof as may be cited by any party, and as supported by in accordance with, reliable, probative and substantial evidence. As set forth above the allegations made PUC staff to justify striking testimony on either reliable, probative or substantial. The proper remedy for any failure to provide information by Crooked River Ranch Water Company is for the Commission to consider the weight of any evidence proffered by Crooked River Ranch Water Company in light of the Commission's opinion on whether or not satisfactory level of information has been provided to support Crooked River Ranch Water Company's testimony.

Regarding the Motion to Strike followed by Intervenor Craig Soule, none of the grounds alleged by Craig Soule as justification for striking Crooked River Ranch Water Company testimony are legally sufficient. Ex-parte communication is not a justification for the sanction of striking testimony, even if Crooked River Ranch Water Company has failed to effect proper service on Craig Soule, that too would not be a justification for striking Crooked River Ranch Water Company's testimony, however, that is not the case. As reflected in the Certificate of Service for Crooked River Ranch Water Company rebuttal testimony all parties listed on Docket UW120 for physical service were served with Crooked River Ranch Water Company testimony and exhibits.

Regarding the data requests submitted by Craig Soule, Crooked River Ranch Water Company has explained several times that they will not assist Mr. Soule in promulgating gossip and innuendo

6-CROOKED RIVER RANCH WATER COMPANY RESPONSE
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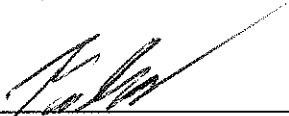
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against the Crooked River Ranch Water Company. Mr. Soule has a demonstrated a history of making unsupported allegations against Crooked River Ranch Water Company's employees, Board of Directors and counsel without regard to the truth, factual basis or legal basis for the accusations. Crooked River Ranch Water Company opposed Craig Soule's Petition to Intervene in this case on that very basis. The granting of Craig Soule's Petition to Intervene reflects a violation of Section 2-108 and 1-101(A) of the Code of Ethics for Administrative Law Judges.

DATED THIS 24 day of October 2007.

GLENN, SITES, REEDER & GASSNER, LLP



TIMOTHY R. GASSNER, OSB 02309
Of Attorneys for Crooked River Ranch Water Company

7-CROOKED RIVER RANCH WATER COMPANY RESPONSE
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