

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

**UW 120**

In the Matter of	)	
	)	
CROOKED RIVER RANCH WATER	)	CRRWC REPLY BRIEF
COMPANY	)	
	)	
	)	

COMES NOW Crooked River Ranch Water Company, and submits its Reply Brief

**INTRODUCTION**

In its Reply Brief CRRWC will address the arguments made by Staff as they appear in Staff's Opening Brief.

**ARGUMENT**

Comparison of Crooked River Ranch Water Company's Current and Requested Revenue / Rates  
and Staff's Recommended Revenue / Rates

Staff's assertion in their opening brief that their recommended rate base is higher than the rate base calculated by the Company accountant may be accurate but it is grossly misleading. The same is true of the statement that Staff recommended higher levels of expense for power, testing, postage and payroll taxes. These minor increases in the budget for Company expenses are a drop in the bucket compared to the other budget expenses which were slashed in Staff's recommendations. If there is any number which is telling it is the Staff proposed \$499,901 reduction in total revenue.

## Discovery of Crooked River Ranch Water Company's Books and Records

Staff's assertion in their Opening Brief that the analysis was not subjective cannot be believed in light of the examples of subjective analysis provided in CRRWC's Opening Brief such as Used and Usefulness of Land for Dirt Storage, the General Manager's pay classification and the compliance with Data Requests.

Staff is quick to point out that two settlement conferences were conducted in this case. What they left out is that Staff Analysis was not provided until the day of the first settlement conference making intelligent discourse of the analysis impossible for CRRWC. This was a reason in part for CRRWC requesting the second settlement conference. In preparing for the second settlement conference it became clear that it would not be productive without the presence of Company Accountant, Wes Price. When CRRWC requested to reset the second settlement conference for a time that Mr. Price would be available Staff refused. Staff's obstinance is the primary reason for the fact that this case remains contested, not any failure to produce info by CRRWC.

In their Opening Brief Staff characterized use of unaudited compilation reports from Company accountants as "blind acceptance" of financial information. This too is misleading. The data provided in the year end compilation reports are reliable, valid and relevant. Staff has yet to point out any OAR which requires audited financial statements as a basis for rate making. Even if such an OAR existed, Staff has already demonstrated their willingness to disregard OAR's when it suits them or perhaps they forgot about the waiver of the phone number requirement on petitions under ORS 757.063.

If Staff had really examined all information provided in an objective manner to build as

complete a record as possible then they would have used the year end compilation reports from the Company Accountant. Staff cannot fault CRRWC for allegedly not providing adequate responses when Staff refused to cooperate with CRRWC on time lines for production or accept CRRWC's assertions that requested information did not exist because prior record keeping procedures were not set up for PUC regulation.

### Revenue Adjustments

Staff asserts that removal of cost causative charges is standard practice of Staff in water rate cases. Cost causative events such as disconnections, re-connections and late charges cost CRRWC money. The OAR's are very specific as to the methods of re-connection, disconnection and late charges and what can be charged to the customer for these events. What about the actual cost of such things? Where will the money come from? The Commission should defer to the historical costs and approve CRRWC's revenue request in this regard.

Staff contends in their opening brief that the \$8 assessment should be disallowed under ORS 757.355 for the Well No. 3 project as not "used and useful" because the company does not have an in-service date for the well, total costs have not been tallied and the project is delayed by litigation over easements and access. The Well No. 3 project would be in a more advanced stage were it not for the amount of time expended by Company personnel in contending with the proceeding to establish jurisdiction, WJ8 and the current rate making proceeding. The \$8 assessment was instituted by the Board of Directors with the expectation that the project would not be stalled out by administrative proceedings. When asked if he knew how much the well project would cost the General Manager, James Rooks responded that if he was provided with information about how much prices would go up in the next year he could provide an answer.

(Tr. At 69). It is the PUC that is responsible for CRRWC inability to fix a date and costs associated with Well No.3.

As further justification for the disallowance of Well No. 3 in rate base Staff asserts that the well project is currently being delayed due to litigation with the Crooked River Ranch Club and Maintenance Association. In their “critical and rigorous” review of Water Company operations Staff has either ignored or failed to recognize the value of the Well No. 3 project to prove up on CRRWC’s water rights. If CRRWC does not true up on its water rights then the Crooked River Ranch Club and Maintenance Association will attempt to capture those water rights. Arguably, this is the reason for the litigation with the Crooked River Ranch Club and Maintenance Association over the easements and access. It is no coincidence that the same persons who support the Club and Maintenance Association are part of the Water Watch Dogs who sponsored the PUC’s assertion of jurisdiction over CRRWC.

#### Operations and Maintenance Expenses

In making a recommendation for the level of operations and maintenance (O&M) expenses’ Staff gave no consideration for the normalization of operating expenses. As justification for the fact that Staff has recommended an O & M budget that does not allow CRRWC to function properly Staff asserts that CRRWC bears “the burden of showing that the rate or schedule of rates proposed to be established or increased or changed is just and reasonable under ORS 757.210.” As explained under the section of this Brief captioned “Discovery of Crooked River Ranch Water Company’s Books and Records,” CRRWC has provided the information that is available and Staff chose to ignore it.

When disagreement arose over the DR’s submitted to CRRWC, CRRWC filed a Motion

for a Protective Order under ORCP 36 to have a determination made regarding Staff's refusal to cooperate with CRRWC regarding production of information. That motion was denied without hearing on the original filing and again on reconsideration. The short opinion issued by ALJ, Patrick Power, was nothing more than a regurgitation of Staff's arguments against the motion. When counsel for CRRWC inquired as to why no hearing was allowed the ALJ refused to address the inquiry. (TR. 12). The ALJ responsible for that decision as well as many other important rulings in this proceeding are now under investigation by the Oregon State Bar for the unauthorized practice of law. The attorney assigned to make the investigation, Ronald M. Somers has made a preliminary finding that ALJ Powers committed the unauthorized practice of law in this case subject to further investigation.

The comparisons made to Roats Water System, Inc. and Agate Water Company are not valid, as both companies are different in size, ownership, etc. The operations of both Roats and Agate are considerably smaller than CRRWC. Using Roats customer counts on UW 107 there are 1182 customers with cost of service \$424,195 per year. On a per customer basis that equals \$358.88 per year, per customer. In this case Staff is recommending \$436,153 in total operational costs to provide service to 1554 customers which works out to \$280.66 per customer, per year. Using the Roats model CRRWC should have an operating expense budget of \$358.88 per/year multiplied by the 1554 customers which equals \$557,699 which does not compare reasonably as Staff asserts.

Capital Plant, Contributions in Aid of Construction, Construction Work in Progress and

## Depreciation

Of the ten items which Michael Dougherty chose not to include in Capital Plant many have already been addressed. Mr. Dougherty provides no explanation as to why he did not include new construction for 2005, 2006 and 2007 other than the allegation that the Company did not provide documentation of the costs. Why these years? Why start in 2005? Jurisdiction was not established until late 2006. All 2007 records for new construction have been provided. This is simply Mr. Dougherty making unilateral decisions based on his subjective opinion.

How the purchase of the crane was handled has been explained again and again and is another case of Staff's obstinance. The hammer attachment works on any excavator. The hammer attachment has been used by CRRWC in countless projects on behalf of customers and was purchased for that purpose.

It is clear that Mr. Dougherty does not understand the entries into CRRWC's depreciation schedule. Mr. Dougherty uses the term "embedded" when referencing the costs of equipment. Capitalized interest and construction draws are properly added to the original cost not subtracted. Unfortunately, Mr. Dougherty declined the opportunity to meet with the Company accountant and clarify.

Contrary to Staff's assertion, CRRWC's business entity status is very important to the treatment of CIAC in that CRRWC has not always been a regulated utility. System development charges and charges to customers for line extensions prior to PUC regulation are not CIAC. Unregulated revenue generated by CRRWC used to build an infrastructure cannot be treated as CIAC and must be included in rate base. This does not equate to customers paying twice for an

asset.

### Rate of Return

The questionable analogy made by Michael Dougherty to an electric company to get the appropriate rate of return was previously addressed in CRRWC's Opening Brief. On Staff's analysis of the weighted cost of debt it appears that no consideration was made of the borrowing rate. Furthermore, there is no evidence that this has been reviewed by PUC financing staff.

In addressing CRRWC's cash flow needs Staff compares CRRWC to Metolius Meadows Property Owner's Association. This is not a valid comparison as Metolius Meadows is a small association compared to CRRWC. Staff acknowledges that the cash flow allowed under their recommendations may not be sufficient in the event of "actual casualty or need." Staff suggests that CRRWC submit a financing application to the Commission to obtain a loan from a bank or other source and concurrently submit a rate application requesting interim rates to service the loan. This process takes between 90 and 180 days. Staff's recommendations contain no allowance for genuine emergency and put the customers of CRRWC at risk.

When presented with the reality that not-for-profit organizations are charged premium interest rates when borrowing money Staff gave testimony on the availability of lower than market rate sources for loans, such as the State Drinking Water Revolving Loan Fund as if this money was readily available. The fact is that the criteria to get a loan from such a program are both limited and time consuming.

### Alternate Recommendation Concerning Wages

This section in Staff's Opening Brief is an obvious attempt to minimize Michael Dougherty's recommendation concerning the General Manager's wage after Mr. Dougherty

blatantly allowed his personal bias to affect his professional judgment in this rate making proceeding.

### CRRWC's Failure to Produce Requested Information

CRRWC welcomes the hearing on December 13, 2007, where CRRWC will finally get to appear before an impartial magistrate and have an opinion rendered as to CRRWC's compliance with Staff's requests for information. While CRRWC looks forward to being validated the December 13, 2007, hearing is pointless. It is uncontroverted that in any instance where Staff allegedly did not receive the information it needed no allowance was made in the budget for that expense. Staff could not possibly recommend a lower rate proposal. Any information that Staff contends exists and has not been provided should be the subject of CRRWC's next rate case proposal or on the potential reconsideration of this rate making proceeding.

### **CONCLUSION**

As stated in CRRWC's Opening Brief, the struggle on behalf of both CRRWC and PUC Staff to exchange information in a format new to both parties resulted in a rate proposal that is grossly inadequate to sustain CRRWC operations. Additionally, numerous decisions affecting the proceeding were made by an ALJ who is now under investigation for the unauthorized practice of law. The nature of this proceeding resulted in substantial bias to CRRWC as such the Commission should give deference to CRRWC and adopt CRRWC's requested budget and rate proposal.

Dated this 19 th day of November 2007.

\_\_\_\_\_/s/ Timothy R. Gassner\_\_\_\_\_  
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Of Attorneys for CRRWC

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