BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UW 120

In the Matter of CROOKED RIVER RANCH WATER COMPANY Request for Rate increase resulting in total annual revenues of $868,453.	STAFF'S OPENING BRIEF

Consistent with Administrative Law Judge (ALJ) ruling dated November 1, 2007, the Public Utility Commission of Oregon Staff (Staff) respectfully submits its opening brief. The brief is organized as follows:

1. Comparison of Crooked River Ranch Water Company's (CRRWC or Company) Current and Requested Revenue / Rates and Staff's Recommended Revenue / Rates;
2. Discovery of Crooked River Ranch Water Company's Books and Records;
3. Revenue Adjustments;
4. Operations and Maintenance Expenses;
5. Capital Plant, Contributions in Aid of Construction, Construction Work in Progress, and Depreciation;
6. Rate of Return;
7. Alternate Recommendation Concerning Wages;
8. CRRWC's Failure to Produce Requested Information

Comparison of CRRWC's Requested Revenue / Rates and Staff's Recommended Revenue / Rates

As presented as testimony in Staff/100, Dougherty/3, the following table highlights CRRWC's current revenue / rates, proposed revenue / rates, and Staff's proposed revenue / rates:

	CRRWC Current	**CRRWC Proposed**	**Staff Proposed**
Total Revenue	$806,803	$868,453	$525,295
Total Revenue Reductions	$760,191	$817,868	$499,901
Net Income	$46,642	$50,585	$25,394
Base Rate	$35.50	$36.50	$18.58

Commodity Rate per 100 cf	$0.72	$0.80	$0.86
Average Rate	$38.16	$45.05	$27.73

	CRRWC Current	**CRRWC Proposed**	**Staff Proposed**
Connection Charge	$1,500	$1,735	$450 or cost (if cost > $450
Membership Fee	$0	$150	$0

Staff's lower revenue is primarily the result of:

1. Recommended disallowance on the $8 per month surcharge;
2. Recommended lower level of wage expense;
3. Recommended lower level of O&M supplies expense;
4. Recommended lower level of repair expense;
5. Recommended lower level of legal expense;
6. Recommended disallowance of contracted labor expense;
7. Recommended lower level of workers' compensation expense;
8. Recommended disallowance of system capacity expense;
9. Recommended lower depreciation expense; and
10. Recommended lower calculated rate of return.

Although Staff recommended certain disallowances and lowering of certain expenses, Staff also recommended higher levels of expense in certain cases (power, testing, postage, payroll taxes). In addition, Staff's recommended rate base is higher than the rate base calculated by the Company's contracted accountant.

Under Staff's recommendation, a customer that uses the calculated average monthly use of 1,066 cubic feet (cf) will experience a $10.40 decrease (27.27 percent) in their monthly bill. Although this is a significant decrease, users at lower consumption levels will actually experience a greater percentage decrease in their monthly bills as a result of the 47.7 percent decrease in the base rate.

Despite claims by the Company, Staff's analysis was not subjective, but based on actual data included in the Company's rate application and obtained through discovery. Staff thoroughly reviewed all invoices and documentation submitted by the Company. In addition, Staff conducted two settlement conferences to allow the Company to provide additional data to support its case. Staff based its analysis on factual data, audited data.

The Company would like the Commission to accept unaudited annual financial statements as a basis for operating expenses and plant. During the October 25/26, 2007, UW 120 Evidentiary Hearing, the Company's accountant acknowledged that the financial statements were unaudited and that he never conducted a full audit of the Company's expenses. *See* Transcript at 83.[1] Staff does not support the use of unaudited financial statements as a basis for rates just as Staff would not support blind acceptance of all costs in an energy utility's FERC Form 1 as a basis for rates.

In developing recommendations for the Commission, Staff is required to critically examine all pertinent positions and facts presented by the utility and other parties. By conducting a full audit (although severely limited by the Company's lack of and inadequate responses to data requests)[2], Staff properly classified expenses as utility operations and maintenance (O&M), plant, and non-utility. As a result, Staff's analysis is based on actual, factual data, and should be accepted by the Commission for determining CRRWC's revenue requirement and rates.

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

During the discovery period, Staff sent 144 data requests to the Company.[3] Staff also requested, and the ALJ issued, three motions to compel to the Company to provide information requested in certain data requests.[4] The Company was also served with a Subpoena Duces

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[1] As used herein, "Tr." refers to the official transcript of the evidentiary hearing.

[2] These invoices and documentation, coupled with the Company's inadequate responses to certain data requests were provided to the ALJ during the October 25/26, UW 120 Hearing.

[3] Staff/100, Dougherty/9 originally listed 128 data requests. Staff updated this number of data requests to 144 during the October 25/26 UW 120 Evidentiary Hearing.

[4] Staff requested motions to compel on June 7, 2007, August 9, 2007, and September 27, 2007. The ALJ issued the motions to compel on June 26, 2007, August 27, 2007, and October 3, 2007.

Tecum on October 8, 2007, to produce documents on October 12, 2007, at the Jefferson County Courthouse. The Company did not comply with the three motions to compel and the Subpoena Duces Tecum. As a result, Staff has not received complete or adequate responses for data requests nos. 3, 15, 47, 49, 50, 51, 52, 53, 60, 67, 68, 81, 101a, 102b, 103b, 110, 114, 120, 121(d), 122(d), 128, 137, 138, 139, 140, 141, 142, 143, and 144.[5] Because this information has not been provided, the Commission issued an Order to Show Cause For Failure to Obey Subpoena Duces Tecum, which has been docketed by the Jefferson County Circuit Court as Case No. CV07-0150.

CRRWC's failure to respond to or provide complete responses resulted in Staff having to use data from a mix of years in order to determine test year results. Ideally, Staff would have based its analysis on 2006 data adjusted to 2007 levels because the Company filed for a 2007 test year in April of 2007. However, and in many cases, Staff did not have sufficient 2006 or previous years' data and was required to use and annualize 2007 data based on information provided. In addition, since information for multiple years was not provided for many accounts, Staff could not trend expenses over multiple years to determine if any normalization of expenses was required

In water rate applications review, Staff will normally perform both a "macro" review (examining expenses over three to four years) and a "micro" review (reviewing all test year expenses for used and usefulness in utility operations). The "micro" review is used to verify the "macro" review. *See* Tr. at 146. The two types of review resulted in critical and rigorous examination of all water utility revenue, expenses, and plant.

During the October 25/26, 2007, UW 120 Evidentiary Hearing, the Company's accountant conceded that it is common practice for Staff to look at financials at a more detailed level. *See* Tr. at 86. But because the Company did not provide adequate responses, Staff made

[5] In response to a November 5, 2007, Subpoena Duces Tecum served on the members of CRRWC's Board of Directors, the Company provided responses to Staff data requests nos. 15, 50, 68, and 81.

the best use of information received. Staff examined all information provided in an objective manner to build as complete a record as possible. As a result, Staff's analysis should be accepted by the Commission for determining CRRWC's revenue requirement and rates.

Revenue Adjustments

As presented in written testimony, Staff made three significant adjustments to the Company's requested revenue. The first being removal of miscellaneous revenue ($48,746) associated with events such as hook-up fees and cost causative events such as disconnections, reconnections, late charges, etc. Hook-up fees are excluded from revenue because the corresponding costs should be booked as contributions in aid of construction (CIAC), which are not in rates. Because the expenses are not reflected in rates, the revenues should not be reflected in rates. The removal of cost causative charges is standard practice of Staff in water rate cases.

Staff's second significant adjustment was the inclusion of $8,100 in rental revenue. The rental revenue is a result of cellular and Internet leases for equipment installed on the Company's reservoir tower. Rental revenue includes $6,900 from T-Mobile and an imputed $1,200 from Webformix, the Company's Internet provider.

The third significant adjustment was the removal of $142,430 in revenue collected from the $8 per month capital assessment. In its application, the Company moved the assessment into the base charge. The $8 per month capital assessment is collected for future projects. According to a March 29, 2004, Board Resolution, funds are being collected for:

- Drilling of Well No. 3, and plumbing to accommodate a chlorination system;
- Upgrading the Cistern and building a new pump house;
- Re-plumb and add a chlorination station to Well No. 1 (formerly Well No. 4); and
- Pay-off the loan on the office building.

Staff removed this amount for two reasons:

First, the three projects are future construction. ORS 757.355 requires that costs of property not providing utility service be excluded from rate base. The Commission may allow rates for a water utility that include the costs of a specific capital improvement if the water utility is required to use the additional revenues solely for completing the capital improvement. Staff routinely only allows inclusion of this construction work in progress (CWIP) if the equipment is used and useful for utility operations and if the water utility is able to provide specific costs and approximate in-service dates. Staff normally recommends CWIP in rates if the in-service date is within six months or an approved timeline estimates completion soon afterwards.

As presented during the October 25/26, 2007, UW 120 Evidentiary Hearing, the Company does not have an in-service date for the well (*See* Tr. at 38), has not presented Staff a project timeline for the well (*See* unanswered data request no. 143*)*, and has not presented Staff total estimated costs of the well (*See* unanswered data request no. 143*)*. In addition, the well is currently being delayed due to litigation with the Crooked River Ranch Club and Maintenance Association concerning easements and access. *See* Tr. at 35.

The second reason that Staff removed the capitol assessment fund is that the Company is under cost-of-service regulation. In cost-of-service regulation, the Company is allowed an opportunity to earn a return on and recovery of its investment. As a result of cost-of-service regulation, the Company cannot make a special assessment for future costs that may or may not come to fruition.

As for the office building, the loan amount is included in the Cost of Capital calculations and depreciation expense was aligned to the term of the loan. This allows for recovery of principal and interest of the loan.

In Staff/100, Dougherty/43, Staff also presented two options concerning the balance of funds that customers paid into the capital assessment account. The first method was to amortize the balance of the fund over a three-year period and deduct the amortized amount, calculated at $45,982 per year, from the Company's revenue requirement. Staff points out that this deduction, although significant, would neither result in a reduction in final revenue requirement nor a reduction in rates. This is because the revenue-sensitive adjustment based on Staff's recommended level of expenses and net income was a significant decrease of $97,631.

The $97,631 revenue-sensitive deduction is higher than the proposed adjusted amount of $45,982. As stated in Staff/100, Dougherty/43, if Staff removed $45,982 from customer adjusted revenue, the adjusted revenue requirement would be $576, 943. This adjusted amount would cause the revenue-sensitive adjustment to be reduced from $97,631 to $51,649. However, the final proposed results for residential/commercial customers would still equal $517,194 ($576,943 - $51,649 (revenue sensitive change) - $8,100 (rents)). As a result, recommended rates would not change.

If the calculated revenue-sensitive adjustment was actually lower than the $45,982 amortized amount or if the recommended deduction amount was higher than $97,631 (this would require no amortization of the fund balance, but a deduction of the complete $137,945 balance), then the revenue adjustment would have reduced rates. Staff did not deduct the whole balance of the fund from revenue because the funds were collected over a three-year period. Subtracting the total fund balance amount in a one-year period would be asymmetrical considering the funds were collected over a three-year period.

Staff correctly made these adjustments. Final revenue requirement was calculated from Staff's analysis and recommendation on expenses, rate base, and rate of return. As a result, Staff's analysis should be accepted by the Commission for determining CRRWC's revenue requirement.

Operations and Maintenance Expenses

As previously mentioned, Staff based its level of operations and maintenance (O&M) expenses on actual, factual data submitted by the Company, not on the unaudited annual financial statements presented by the Company. *See* Staff/100, Dougherty/17-33. Although Staff's level of O&M expenses are approximately $281,443 lower than the Company's requested amount, these adjustments were based on a thorough review of Company-provided documentation. 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." ORS 757.210.

Additionally, the amount recommended by Staff compares favorably to two other Class "B" water utilities of similar size or staffing in the Central Oregon region. The two companies used as a comparison are Roats Water System, Inc. and Agate Water Company. In UW 107 - Roats (Commission Order No. 05-811), the total operating expense allowed in rates was $424,195. In UW 119 – Agate (Commission Order No. 07-359), the total operating expense allowed in rates was $369,790. As can be seen by the comparison, Staff's recommended $436,153 in operating expenses, based on a review of documentation received, is actually higher than the two comparable companies.

In its testimony, CRRWC indicates that Staff has not allowed sufficient funds for operations and states (*See* Rebuttal to PUC Testimony at 14):

> This company has, nor never will, use guesses and assumptions that co-op members will have to support. And we have no intention of using Michael Dougherty's budget in this co-op.

CRRWC's statement is incorrect for numerous reasons. First, CRRWC is not a cooperative, but a Nonprofit Corporation, Mutual Benefit with Members. In Order No. 06-642, the Commission was clear on the organizational status of CRRWC and stated on page 5:

> Furthermore, because jurisdiction presumptively attached at that time, CRRWC became a regulated utility subject to laws administered by the Commission. Those laws require, among other things, that a utility obtain Commission approval prior to the disposal of utility property. *See* ORS 757.480. Contrary to CRRWC's arguments, the dissolution, transfer, and reorganization of a water company's assets requires approval under this statute. Having failed to obtain that approval, CRRWC's efforts to reorganize as a cooperative under ORS Chapter 62 are without legal effect.

Second, Staff did not guess at any amount. Staff's analysis was based on actual, factual data, and documentation presented by the Company. For certain expenses (O&M Supplies, Repairs, Small Tools), Staff was required to annualize amounts as a result of lack of documentation that should have been provided by CRRWC.

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Third, Staff does not set a budget. The Commission in Order No. 07-359 (UW 119) states (pages 5-6):

> A rate case sets only one amount: the rates the utility may charge its customers. The rates are designed to allow recovery of reasonable amounts of expenses and provide a reasonable return on investment. Employee salaries are an expense included in the computation at a level deemed reasonable. That level is what will be recovered. If a utility decides to pay a salary at a higher rate than used to compute the rates, it is free to do so, but the amount in excess of the figure used to compute the rates will not be paid by the customers. Another way of putting it would be to say that a rate case does not establish a "budget" for a regulated utility. The utility may incur expenses at any level different from those used in the rate case, but it cannot raise rates to do so.

During the October 25/26, 2007, UW 120 Evidentiary Hearing, the Company's Counsel (*See* Tr. at 168; 183) attempted to infer that the Commission would be responsible if the Company could not operate on Staff's recommended amount. The Company's Board of Directors has a fiduciary duty to its members and is required to make the correct decisions concerning operations of CRRWC. Second, the Commission has investigatory powers and Staff will investigate any charge or claim concerning inadequate funds for system operations, including similar actions as taken during this rate application, such as data requests, requests for motions to compel, requests for subpoenas, and requests for contempt filings against the Board of Directors. As a result of Staff's thorough review of O&M expenses, the Commission should accept Staff's recommend level of O&M expenses.

Additionally, at the October 25/26, 2007, UW 120 Evidentiary Hearing, Staff stated that if necessary, the Company can submit a finance application for a loan for capital improvements and/or a rate application requesting interim rates. See Tr. at 205-6. It is important to note, contrary to Company Witness Price (*See* Tr. at 118), in rate-regulated utilities, there is a revenue stream for borrowing and this revenue stream is embedded in rates through the rate of return and depreciation expense of the asset purchased through debt.

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

Staff's recommendation for CRRWC's net utility plant is $543,506, which is an upward adjustment from the $500,549 revenue requirement provided by the Company's accountant. As stated in Staff/100, Dougherty/34-35, Staff did not include the following in plant:

1. Original contributions in aid of construction (CIAC) that occurred during the development of the subdivision (this amount was also excluded by the Company's accountant);
2. Mainline extensions that were paid for by customers receiving the service from the extensions, which are also considered CIAC;
3. Meters, which were paid for by customers, and are also considered CIAC;
4. New construction for 2005, 2006, and 2007, for which the Company has not provided documentation of the costs;
5. Costs for a crane that appears to have been purchased twice by the Company (once through operating funds and once through the capital assessment funds);
6. A hammer attachment for the excavator owned by the General Manager;
7. Three entries in the Company's depreciation schedule, two for capitalized interest and one for a construction draw as these amounts should have been embedded in the costs of the applicable equipment;
8. Land for Well No. 3 that is not currently used and useful for utility operations;
9. Land for future development (Staff allowed one-third of the costs based on Company claims that dirt and gravel is being stored on the land); and
10. Equipment that was actually disposed of or sold in 2006.

CRRWC tries to argue that CIAC should be included in plant because the Company is an association. *See* Tr. at 86-91. The Company's business entity status should have no bearing on the treatment of CIAC. Customers should never have to pay twice for an asset.

Oregon Administrative Rule 860-036-0756(3) specifically requires that CIAC to be separated from utility plant and accounted for and depreciated on a separate schedule outside the ratemaking process. If CIAC is not removed from rates, customers would be paying twice for the plant equipment, once when the equipment is purchased and again through the recovery of equipment costs in rates. As Staff illustrated during the October 25/26, 2007, UW 120

Evidentiary Hearing, Staff included in rates all assets that were purchased through loans or purchased as a result of collection of rates. *See* Tr. at 160-163. Staff's analysis concerning CIAC is based on actual, factual data and should be accepted by the Commission for determining CRRWC's net utility plant.

In addition, Staff effectively demonstrated in testimony (*See* Staff/100, Dougherty/41*)* and during the October 25/26, 2007, UW 120 Evidentiary Hearing that the recovery of and return on plant is more than sufficient to cover recent historical investment (*See* Tr. at 182; 206) and that the Company does not need the inclusion of CIAC in rate base to increase its earnings.

CRRWC also attempts to argue that plant that has not been purchased and does not currently exist should be included in rate base. The two major plant items are radio read meters and Well #3. Concerning the radio read meters, this equipment has not been purchased and has not been installed. In addition, the approximate cost of the radio read meter project is $611,810, which the Company cannot currently finance due to insufficient funds. At the October 25/26, 2007, UW 120 Evidentiary Hearing, the Company accountant admitted that the Company does not have sufficient funds to purchase these meters. *See* Tr. at 99. As a result, the Commission should accept Staff's recommendation that radio read meters not be included in CRRWC's rate base.

The nonexistent Well #3 should also not be included in plant. As presented during the October 25/26, 2007, UW 120 Evidentiary Hearing, the Company does not have an in-service date for the well (*See* Tr. at 38), has not presented Staff a projected timeline for the well (*See* unanswered data request no. 143*)*, and has not presented Staff total estimated costs of the well (*See* unanswered data request no. 143*)*. Additionally, the well is currently being delayed due to litigation with the Crooked River Ranch Club and Maintenance Association concerning easements and access. *See* Tr. at 35.

For inclusion in rates, CRRWC argues that:

> The primary function of the water company is not domestic water. It is and has always been fire protection, which was not addressed in Mr. Dougherty's rates. (*See* Rebuttal to PUC testimony at 9).

This is incorrect for two reasons. First, the CRRWC's Articles of Incorporation (dated April 1977) state, "The corporation is organized for the purpose of providing domestic and irrigation water to portions of Crooked River Ranch." The Company admits during the October 25/26, 2007, UW 120 Evidentiary Hearing, that it is not their place to change the Articles of Incorporation. *See* Tr. at 43.

Second, as was demonstrated during the October 25/26, 2007, UW 120 Evidentiary Hearing, the Company currently has sufficient pressure, storage, and capability to meet the State of Oregon Fire Marshal's requirements for both residential structure fire (1,000 gallons per minute (gpm) for 2 hours) and commercial structure fire (1,500 gpm for 2 hours). As admitted during the October 25/26, 2007, UW 120 Evidentiary Hearing (*See* Tr. at 179; 182), the Company's current plant configuration allows for approximately 1,300 gpm continuously and 1,500 gpm for approximately four hours. This is sufficient water flow to combat residential and commercial structural fires.

Also revealed during the October 25/26, 2007, UW 120 Evidentiary Hearing was that a limiting factor for not having 1,600 gpm fire flow was a 500 gpm booster pump that moves water from the lower system to the upper system. *See* Tr. at 32. As Staff points out in testimony, the two existing wells have a capacity rating of 800 gpm each for a total of 1,600 gpm. *See* Staff/100, Dougherty/5; Tr. at 179. This capacity is sufficient for current domestic water, irrigation, and fire flow needs of the Company.

The Company also states that Well #3 is needed to receive its Certificate of Beneficial Use from the Oregon Water Resources Department (OWRD). This certificate would allow the Company to perfect its current water right permit of 5.0 cubic foot per second (cfs) and 3.23 million gallons per day (MGD). Part of the Company's plan to achieve the beneficial use was to include instantaneous fire flow in the calculations concerning demand projections. However, during the October 25/26, 2007, UW 120 Evidentiary Hearing, the Company admitted that an October 24, 2007, e-mail from OWRD stated that OWRD would not consider emergency fire fighting as a justification for demand projections. *See* Tr. at 35.

An important aspect to note is that the two existing wells have more than enough capacity to supply current and projected customers. Staff/100, Dougherty/6 demonstrates that actual peak demand in August 2006 was 927,182 gallons per day (gpd); and this usage aligns with the Company's 20-Year Master Plan, which lists peak demand of 970,362 gpd. *See* Tr. at 180.

As Staff/100, Dougherty/5 states, each well has a capacity of 1,152,000 gpd. Because of the limitation of the booster pump, the Company's system is capable of supplying approximately 1,872,000 gpd, almost two times the actual peak demand in August 2006. Additionally, Staff/100, Dougherty/16-17 points out that CRRWC considers the aquifer from which it draws drinking water both adequate and reliable, and therefore, CRRWC does not anticipate future restrictions on this supply. In addition, Staff pointed out in the October 25/26, 2007, UW 120 Evidentiary Hearing, that the Company's Management and Conservation Plan projects growth of the Company to 1,764 customers in the year 2023, and that the Company has sufficient capacity to serve this growth.[6] *See* Tr. at 179-180. Because of the numerous issues surrounding the nonexistent Well #3, the Commission should accept Staff's recommendation that Well #3 not be included in CRRWC's rate base.

Another concern of the Company (*See* Testimony of Wes Price, Rebuttal to Staff 100/34-36*)* was that Staff added and removed assets based on criteria that Staff never saw a depreciation schedule outside the utility rate-setting arena. This is misinformed as Staff added numerous plant items such as a vehicle (Chevrolet Silverado), a computer, phone system, pup trailer, photo printer, typewriter, and other items that clearly belong in plant. These additions increased the Company's net utility plant, which in turn contributed to an increase in the CRRWC's net income.

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[6] Company witness Wes Price stated during the October 25/26, 2007, UW 120 Evidentiary Hearing that future growth will be 2,600 and stated it was a Staff provided number (See Tr. at 111). Staff footnoted that number from the Company's 20-Year Plan when discussing water rights. See Staff/100, Dougherty/6. The 2,600 is full build-out of Crooked River Ranch and not full build-out of CRRWC.

The Company was also concerned that Staff removed capitalized interest and construction draws. As previously mentioned, Staff removed three entries in the Company's depreciation schedule, two for capitalized interest and one for a construction draw as these amounts should have been embedded in the costs of the applicable equipment. *See* Staff/100, Dougherty/35. Because Staff could not identify what equipment the capitalized interest was for, and if that equipment was still being depreciated, Staff correctly removed these entries from rate base. Although at the October 25/26, 2007, UW 120 Evidentiary Hearing, the Company's accountant was aware of the concept of allowance for funds used during construction,[7] he didn't know how it applied for the circumstance of CRRWC. *See* Tr. at 103.

Concerning depreciation expense and accumulated depreciation, Staff correctly used average service lives consistent with the method that was originally developed by the National Association of Regulatory Utility Commissioners (NARUC). At the October 25/26, 2007, UW 120 Evidentiary Hearing, Company witness Wes Price acknowledged the standard used by Staff and stated that he tried to move asset lives to this standard. *See* Tr. at 99-100.

Staff's review of CRRWC's plant, depreciation, and accumulated depreciation, was extremely thorough, factually based, and should be accepted by the Commission for determining the Company's revenue requirement.

Rate of Return

In its Application, the Company requested an 8.48 percent return on a rate base of $596,743. The 8.48 percent return resulted in a possible net income of $50,585. The Company admitted during the October 25/26, 2007, UW 120 Evidentiary Hearing that it did not perform an analysis, but basically assigned a return on equity equivalent to that of an investor-owned utility to achieve its requested rate of return. *See* Tr. at 122.

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[7] Allowance for funds used during construction (AFUDC or AFDC) is a component of construction costs representing net costs of borrowed funds and a reasonable rate of other funds used during the period of construction. AFUDC is capitalized until the project is placed in operation by concurrent credits to the income statement.

Staff recommended a 4.13 percent rate of return (ROR). When this 4.13 percent ROR is applied to Staff's recommended rate base of $615,453, the resulting net income equals $25,394.

The lower ROR is calculated from the two outstanding loans (Building - $110,000 and 2006 Chevrolet truck - $29,987) and an imputed cost of equity. The cost of equity was calculated in the method prescribed by Commission Order No. 07-137 (AR 506), *In a Matter of a Rulemaking to Amend and Adopt Permanent Rules in OAR 860, Division 24 and 28, Regarding Pole Attachment Use and Safety* (page 16). In that order, the Commission believed that capital contributed by customers through rates should be treated like equity. The Commission accepted a Staff-recommended method of adding 100 basis points to the utility's embedded cost of long-term debt. Although the Order dealt with pole attachments and entities such as cooperatives and municipalities, Staff believes that the same concept can be applied to CRRWC, which is a Nonprofit Corporation, Mutual Benefit with Members.

The weighted cost of debt was calculated using the original loan amounts and not the loan balances. Although using loan balances (and not original loan amounts) is the accepted method for investor-owned water utilities, Staff was concerned about available cash flow for the Company to service its two outstanding loans. Total annual payments for the two loans (building and Silverado pick-up truck) are $17,616. The annual depreciation expense for the building and the Silverado pick-up truck is $3,390 and $5,560 respectively for a total of $8,950. When Staff originally used the loan balances in the Cost of Capital calculations, the weighted cost of debt equaled 1.08 percent. Applying this weighted cost of debt to the Company's net plant, resulted in $5,870. When the $5,870 is added to the depreciation expense of the building and Silverado pick-up truck, the amount the Company has an opportunity to earn through the weighted cost of debt to service the two loans, $14,739, was $2,877 less than the actual payments of $17,616. By using the original loan amounts, the amount the Company has an opportunity to earn through the weighted cost of debt to service the two loans is $19,422. Although this amount is $1,806 greater than the annual payments, it allows sufficient cash flow to service the debt portion of the

Company’s plant investment.

Although the Company stated that Staff’s calculations result in an income that is not sufficient for future plant expansion, Staff/100, Dougherty/40-41, points out otherwise. In its analysis, Staff included a depreciation expense of $43,991 in rates. When adding the recommended net income of $25,394 to the calculated depreciation expense, total “cash flow” for future investments is $69,385. *See* Tr. at 206.

The Company’s Assessment Fund lists approximately $62,128 that has been used for future plant expansion since establishment of the fund in 2004. As a result, the annual depreciation expense and net income is greater than the three-year historical expenditures and should allow enough funds for future plant expansion. As Staff/100, Dougherty/41 points out, this method of using depreciation expense as the main source of cash flow was previously accepted by the Commission in UW 113, Metolius Meadows Property Owners Association, Commission Order No. 06-442, entered in January 24, 2006. *See* Tr. at 187.

During the October 25/26, 2007, UW 120 Evidentiary Hearing, Staff testified that if the Company needed additional funds as a result of an actual casualty or need, the Company could 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. *See* Tr. at 205-206.

During the October 25/26, 2007, UW 120 Hearing, Staff also testified on the availability of lower than market rate sources for loans, such as the State Drinking Water Revolving Loan Fund. *See* Tr. at 143. Additionally, during the October 25/26, 2007, UW 120 Evidentiary Hearing, the Company’s accountant admitted that he never ran the revenue requirement model to determine if a loan would be more cost effective for customers than assessing an $8 surcharge. *See* Tr. at 96.

As a result of the above information, Staff’s recommended ROR is set at a level that recognizes the Company’s need for funds for future improvements. As a small mutual benefit, nonprofit corporation, CRRWC does not have the same access to capital as larger utilities and being able to service its debt (both principal and interest) and have sufficient funds for future investment is a reality that the Company must face. Although using original loan balances and an imputed cost of equity is a different paradigm from investor-owned utilities, the overall affect is fairly minimal based on the Company's capital structure and allows for servicing of debt and additional funds for investment.

If the Commission believes that Staff should not have applied a different paradigm for a mutual benefit by using the original loan balances to compute the Cost of Capital, the calculated rate of return when using the outstanding loan balances and the method prescribed in Commission Order No. 07-137 (AR 506) would equal 2.85 percent. The resulting net income would equal $17,566, reducing total revenue requirement from $525,295 to $517,448. This reduction in revenue would result in a decrease of the monthly average customer rate from $27.73 to $27.31.

Additionally, if the Commission disagrees with Staff's use of an imputed cost of equity, the calculated rate of return (using outstanding loan balances) would be 1.08 percent, resulting in a net income of $6,655. As a result, recommended revenue requirement would be reduced from $525,295 to $506,509; and recommended rates would decrease from $27.73 to $26.73. However, Staff believes that the method used resulted in just and reasonable rates and recognized the financial realities of a small mutual benefit water utility.

Staff also realizes that as a result of ORS 757.063, additional mutual benefits and associations may fall under the Commission's jurisdiction. As a result, Staff will continuously analyze the financial needs and differences between investor-owned utilities and associations/mutual benefit companies. With that said, Staff firmly believes that the method and results of the Cost of Capital calculations allows the Commission to balance the interests of the members as customers, and the members as owners of CRRWC.

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Alternate Recommendation Concerning Wages

In its written testimony, Staff makes an alternate recommendation concerning the General Manager's wages. Staff's recommendation lowers the wage classification to a level (Senior/Lead Water Treatment Plant Operator) that is lower than the primary recommendation of Water Operations Manager due to the high number of customer complaints and lack of responsiveness during discovery. *See* Staff/100, Dougherty/48.

As Staff/100, Dougherty/48 demonstrates, this adjustment would reflect that during both the time jurisdiction was asserted and the discovery process, the General Manager has not conducted himself in a manner that his position and scope of responsibility would reasonably require. As Staff testified to at the October 25/26, 2007, UW 120 Evidentiary Hearing, that this is only a recommendation, that the Commission may or may not accept. See Tr. at 153; 171-172.

CRRWC's Failure to Produce Requested Information

As discussed above, CRRWC has not fully complied with Subpoenas Duces Tecum.[8] A hearing is currently scheduled for December 13, 2007, regarding Mr. James Rooks' failure to provide documentation requested in the Subpoena Duces Tecum. As a result, the record does not contain all the information that Staff requested in order to perform its rate analysis. In Staff's reply brief, it will update the Commission if any further information responsive to the Subpoenas Duces Tecum is received.

Under the current schedule, CRRWC rates will be effective December 1, 2007. Thus, it is possible that Staff will not have received the subpoena information prior to the end of the suspension period. Staff feels very strongly that the Commission should continue to seek the requested information and not allow a utility to ignore the Commission's authority and power. However, Staff also feels strongly that rates should be effective as soon as practical. As Staff's testimony demonstrates, the new rates should be substantially lower than existing rates. The rate

[8] A Subpoenas Duces Tecum was issued first to Mr. James Rooks. Subpoenas Duces Tecum were later issued to the other CRRWC Board Members.

payers of CRRWC should not be penalized by paying higher rates because of CRRWC's failure to abide with discovery requests.

While the Commission has the authority to further suspend the rates (*See* ORS 757.215(1), Staff would prefer that rates go into effect on December 1, 2007, or as soon after, as practical. Staff notes that the Commission's authority is different than a court's authority in that the Commission has continuing jurisdiction. *See generally* ORS 756.568. Staff further notes that the Commission has the general and investigatory authority to continue to seek the requested information. *See* ORS 756.040; ORS 756.070 through ORS 756.115; *see also* ORS 756.515. Regardless of the direction the Commission follows, it should continue to vigorously seek the requested documents.

Conclusion

As a result of the thorough investigation into CRRWC's revenue and rates, the Commission should accept Staff's recommendations concerning revenue requirement and rates. Staff's analysis was factual, complete, and thoroughly substantiated. CRRWC has not presented any substantial evidence that contradicts Staff's analysis.

For the foregoing reasons, Staff respectfully requests that the Commission adopt Staff's recommendations.

DATED this 13th day of November 2007.

Respectfully submitted,

HARDY MYERS
Attorney General

s/Jason W. Jones______________
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Of Attorneys for the Public Utility Commission of Oregon

CERTIFICATE OF SERVICE

I certify that on November 13, 2007, I served the foregoing upon all parties of record in this proceeding by delivering a copy by electronic mail and by mailing a true and exact copy by postage prepaid first class mail or by hand delivery/shuttle mail.

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