

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UW 120

In the Matter of)	
)	
CROOKED RIVER RANCH WATER)	
COMPANY)	RULING
)	
Request for rate increase in total annual)	
revenues from \$806,833 to \$868,453 or)	
8.13 percent.)	

DISPOSITION: MOTION DENIED

On May 13, 2008, Crooked River Ranch Water Company (Crooked River) filed a request for an extension of time to comply with two provisions of Order No. 08-243. Those provisions require Crooked River to: (1) submit contracts for James and Jacquie Rooks for approval under ORS 757.495, and (2) file an accounting of the special assessment surcharge funds. Crooked River seeks a 15-day extension to submit those filings, which are currently due May 19, 2008.¹

Crooked River cites three primary reasons in support of its request. First, it states that the information required to make a filing under ORS 757.495 is extensive, and the company needs more time to compile the necessary data. Second, Crooked River states that its legal counsel has a prior commitment that will take him out of the office between May 14 and May 21, 2008. Third, regarding the need for an accounting, Crooked River states that the Commission failed to acknowledge that the company previously provided an accounting and did not identify in what way the prior accounting was deficient.

Under ORS 756.055, the Commission has delegated the Chief Administrative Law Judge the authority to modify time lines specified in a Commission order. *See* Order No. 06-197. For the reasons set forth below, I deny Crooked River's motion.

¹ Because Order No. 08-243 required Crooked River to make the filings within 15 days of the order's May 2, 2008, effective date, the company identifies May 17, 2008, as the prescribed filing date. But because May 17 is a Saturday, the actual due date is the next business day, May 19, 2008. *See* OAR 860-013-0037(2).

Affiliated Interest Filings

The Commission has ordered Crooked River to file its employment contracts with the Rooks on three separate occasions. It first required Crooked River to file the contracts for approval, pursuant to ORS 757.495, on November 29, 2007. Specifically, in Order No. 07-527, the Commission concluded that, because Mr. Rooks is both the Director and General Manager of Crooked River, an affiliated interest exists between the company and the Rooks family. The Commission stated:

Given Mr. Rooks' status as a Board member, we deem any contracts between the Company and members of Rooks family to be subject to ORS 757.495(1) and order the Company to file any such contracts with the Commission.²

Later, in Ordering Paragraph 4, the Commission stated:

Not later than 30 days from the date of this order, Crooked River Ranch Water Company shall submit any contracts between itself and its General Manager Mr. Rooks and members of Rooks' family, along with supporting testimony, to this Commission for approval.³

Subsequently, in Order No. 08-177, the Commission concluded that Crooked River had failed to comply with this requirement and again ordered the company to comply with Ordering Paragraph 4. The Commission rejected Crooked River's apparent excuse that no written agreements existed and that oral contracts are exempt from the provisions of ORS 757.495. The Commission explained:

ORS 757.495(3) requires that the Commission investigate all contractual relationships between a utility and its affiliates to determine whether each contract is 'fair and reasonable and not contrary to the public interest.' As ordered by Order No. 07-527, Crooked River must submit any contracts between itself and Rooks and members of the Rooks family for Commission approval. If it's the Company's point that any contract has not been reduced to writing, it is the Company's obligation to offer a narrative statement that explains and defends all contract terms.⁴

In Order No. 08-243, the Commission concluded, yet again, that Crooked River has failed to comply with Ordering Paragraph 4. Although Crooked River had finally provided basic employment information for the Rooks, including pay, benefits,

² Order No. 07-527 at 34.

³ *Id.* at 39.

⁴ Order No. 08-177 at 5.

and job duties, the Commission concluded the filing did not satisfy the conditions of the order. The Commission explained:

The conditions for approval of contracts between utilities and affiliated interests are set forth in OAR 860-036-0730. That rule specifies the contents of an application for approval of transactions between affiliated interests. Crooked River is directed to file its application pursuant to OAR 860-036-0730 within 15 days of the date of this order.⁵

The Commission also noted that the requirement to seek approval of the employment contracts was not a surprise to Crooked River. The Commission observed that the company stated in its original application that “oral or written contracts do exist, but have not been approved by the PUC, between the utility and its owners and affiliated interests.”⁶

Given the history of this case, Crooked River obviously knew of its obligation to comply with ORS 757.495. Moreover, in its various orders, the Commission explained that this obligation included the need to “reduce any oral contracts to writing,” to provide “supporting testimony,” and to “offer a narrative statement that explains and defends all contract terms.”

Moreover, while Crooked River is correct that an affiliated interest filing requires more than basic employment information, the provisions of OAR 860-036-0730 are not so extensive as to prohibit a timely filing. That rule sets forth 13 required items, including:

- The company’s name, address, and contact information
- A statement describing the affiliated relationship and the amount of voting securities held by the affiliate
- A list of officers and directors of the affiliate who are also officers and directors of the company
- The pecuniary interest of any officer or director who is a party to the contract
- A description of the goods and services to be provided, the market value of those services, and the method for pricing those services
- An annual estimate of costs under the contract
- The reasons for procuring the goods or services from the affiliate and benefits, if any, to the customers
- A description of the procurement process used
- A copy of the contract

⁵ Order No. 08-243 at 2.

⁶ *Id.*

Most, if not all, of these requirements may be answered by information that has been subject to this ongoing rate proceeding. Indeed, the salary paid to the Rooks family and the relationship between Mr. Rooks and the company have been disputed issues since the early stage of this rate proceeding.

Accounting

The Commission also has repeatedly ordered Crooked River to file an accounting of its special assessment fund. In Order No. 07-527, the Commission included the following Ordering Paragraph 5:

Not later than 30 days from the date of this order Crooked River Ranch Water Company shall file an accounting of its collection of funds through its special assessment surcharge and the disposition of such funds, from the inception of the fund to the present.

In Order No. 08-177, the Commission found that Crooked River had failed to comply with this requirement and identified questions raised by Staff's own attempt to account for the funds. The Commission stated:

We further order Crooked River to file, within fifteen days of this order, a full and complete accounting of all funds collected from the special assessment surcharge and the disposition of such funds, from the inception of the fund to the present. As noted above, Staff found that the Company collected \$476,682 in surcharge funds. Staff found that the Company expended \$131,081 for purposes intended for the surcharge. According to Staff, if the Company properly used the funds solely for their intended purpose, the remaining balance as of November 30, 2007, should have been \$345,601. The actual remaining balance was \$118,028. The filing must account for, explain and defend the \$227,574 of surcharge account funds that have been spent by the Company.

The Commission again addressed the need for an accurate accounting in Order No. 08-243. Contrary to the company's assertion, the Commission did acknowledge that Crooked River had attempted to file an accounting.⁷ It also noted certain inconsistencies between the filing and information previously provided by the company, and that disagreements existed as to whether some of the funds spent by Crooked River were properly charged to the special assessment fund account. Specifically, the Commission explained:

⁷ *Id.*

The special assessment surcharge was instituted pursuant to a Board resolution, dated March 29, 2004. The resolution specified the following projects:

- Drilling of Well #3 (Crater Loop and Tower Road) and plumbing to accommodate a chlorination system
- Upgrading of the Cistern and building a new pump house
- Replumb and add a chlorination station to Well #1 (formerly #4) located at Cinder Drive and Lower Ridge
- Pay off loan on office building

The resolution further stated: 'These projects all have a large price tag, and I (Rooks) want to keep this on a pay as you go basis.'

The money was collected for these specific projects. Any use of the funds for other purposes is beyond the scope of the enabling resolution and inappropriate.

Based on the Company's response, it is possible that all of the surcharge funds spent by the Company have been spent for corporate purposes. However, given the large (previously undisclosed) account balances held by the Company, it also is possible that some of the funds charged by the Company to the assessment account should have been charged to other accounts.

The Company shall file an accounting of the special assessment surcharge funds consistent with the purposes of the surcharge as stated in the enabling Board resolution. The Company shall file that accounting within 15 days.⁸

Again, contrary to the company's assertions, the Commission identified the deficiency of the filing and expressly requested Crooked River to file an accounting that reconciled the previously undisclosed balance and identify the amount and purpose of all expenditures from the fund.

Conclusion

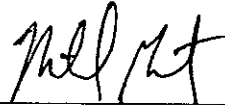
I find that Crooked River has failed to provide any sufficient justification for the company's inability to make the required filings by the original due date, May 19, 2008. I recognize that a prior commitment has limited the availability of one of its counsel from assisting during the period immediately preceding the filing deadline. Nonetheless, because it was a prior commitment—as opposed to an unexpected one—

⁸ *Id.* at 6-7.

Crooked River has failed to show that counsel was similarly unable to assist the company with its filing during the 11-day period from the date Order No. 08-243 was issued to the beginning of the May 14 conflict.

Crooked River Ranch Water Company's motion for an extension of time is denied.

Dated this 16th day of May, 2008, at Salem, Oregon.



Michael Grant
Chief Administrative Law Judge

UW 120 Ruling 5/16/08