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UI 281

HARRANG LONG GARY RUDNICK P.C.
ATTORNEYS & COUNSELORS AT LAW

PORTLAND OFFICE

September 12, 2008

RECEIVED

SEP 15 2008

Public Utility Commission of Oregon
Administrative Hearing Division

VIA CERTIFIED MAIL

ARTICLE NO. 7007 2680 0000 2884 5337

Court Administrator
OREGON COURT OF APPEALS
Supreme Court Building
1163 State Street
Salem, OR 97301-2563

Re: *Crooked River Ranch Water Co. v. Public Utility of Oregon*
PUC Case No. UI 281
Oregon Court of Appeals Case No. _____

Dear Administrator:

Enclosed for filing please find the original Petition for Judicial Review.

Also enclosed is this firm's check in the amount of \$212.00, for the filing fee.

Sincerely,

HARRANG LONG GARY RUDNICK P.C.



Jackie Wilkes
Legal Assistant

/jw

Encls.

c: Mary Williams, Esq. (w/encl.)
Timothy R. Gassner (w/encl.)
Crooked River Ranch Water Co. (w/encl.)

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DOCKETED

UI 281

IN THE COURT OF APPEALS OF THE STATE OF OREGON

In the Matter of

**CROOKED RIVER RANCH WATER
COMPANY**

**Affiliated Interest Application with James
Rooks,**

Petitioner,

v.

**THE PUBLIC UTILITY COMMISSION
OF OREGON,**

Respondent.

Public Utility Commission
Case NO. UI 281

CA A _____

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SEP 15 2008

Public Utility Commission of Oregon
Administrative Hearing Division

PETITION FOR JUDICIAL REVIEW

Petitioner seeks judicial review of the final order on reconsideration of the Public Utility Commission, in case number UI 281, Order No. 08-375, dated July 16, 2008, and the order underlying the order on reconsideration, Order No. 08-347 dated June 30, 2008.

The parties to this review are:

Crooked River Ranch Water Company
P.O. Box 1388
Crooked River Ranch, OR 97760

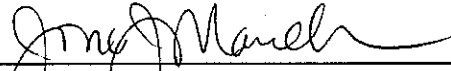
Public Utility Commission of Oregon
P.O. Box 2148
Salem, OR 97308

DOCKETED

- A. Attached to this Petition are copies of the orders for which judicial review is sought.
- B. Petitioner was a party to the administrative proceeding which resulted in the orders for which review is sought.
- C. Petitioner is not willing to stipulate that the agency record may be shortened.

Dated this 12th day of September, 2008.

HARRANG LONG GARY RUDNICK, P.C.



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Attorneys for Petitioner

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UI 281

In the Matter of)	
)	
CROOKED RIVER RANCH WATER)	ORDER
COMPANY)	
)	
Affiliated Interest Application with James)	
Rooks.)	

DISPOSITION: APPLICATION APPROVED WITH CONDITIONS

On May 20, 2008, Crooked River Ranch Water Company (the Company) filed an application with the Public Utility Commission of Oregon (Commission) pursuant to ORS 757.015, ORS 757.495, and OAR 860-036-0730, requesting approval of an affiliated interest contract with James Rooks (Rooks). A description of the filing and its procedural history is contained in the Staff Report, attached as Appendix A, and incorporated by reference.

Based on a review of the application and the Commission's records, the Commission finds that the application satisfies applicable statutes and administrative rules. At its Public Meeting on June 25, 2008, the Commission adopted Staff's recommendation.

OPINION

Jurisdiction

ORS 757.005 defines a "public utility," and the Company is a public utility subject to the Commission's jurisdiction.

Affiliation

An affiliated interest relationship exists, as defined under ORS 757.015.

Applicable Law

ORS 757.495 requires public utilities to seek approval of contracts with affiliated interests within 90 days after execution of the contract.

ORS 757.495(3) requires the Commission to approve the contract if the Commission finds that the contract is fair and reasonable and not contrary to the public interest. However, the Commission need not determine the reasonableness of all the financial aspects of the contract for ratemaking purposes. The Commission may reserve that issue for a subsequent proceeding.

Discussion

Parties at the Commission public meeting discussed the meaning of "condition 4" of the Staff report regarding the amount of Rooks' compensation to be allowed in rates. The Commission advised the parties that approval of Staff's condition does not limit the Company's right to seek recovery of all of its compensation payable to Rooks in any subsequent general rate case, or prejudice the Commission's decision if the issue is raised.

CONCLUSIONS

1. The Company is a public utility subject to the jurisdiction of the Commission.
2. An affiliated interest relationship exists.
3. The agreement is fair, reasonable, and not contrary to the public interest.
4. Staff's "condition 4" does not limit the Company's right to seek recovery of all of its compensation payable to Rooks in a subsequent general rate case.
5. The application should be granted, as modified herein, including certain conditions and reporting requirements.

ORDER

IT IS ORDERED that the application of Crooked River Ranch Water Company to enter into an affiliated interest contract with James Rooks is approved, subject to the conditions further stated in Appendix A.

Made, entered, and effective JUN 30 2008

BY THE COMMISSION:



Becky L. Beier

Becky L. Beier
Commission Secretary

A party may request rehearing or reconsideration of this order pursuant to ORS 756.561. A request for rehearing or reconsideration must be filed with the Commission within 60 days of the date of service of this order. The request must comply with the requirements in OAR 860-014-0095. A copy of any such request must also be served on each party to the proceeding as provided by OAR 860-013-0070(2). A party may appeal this order by filing a petition for review with the Court of Appeals in compliance with ORS 183.480-183.484.



PUBLIC UTILITY COMMISSION OF OREGON
STAFF REPORT
PUBLIC MEETING DATE: June 25, 2008

REGULAR CONSENT EFFECTIVE DATE _____ NA _____

DATE: June 9, 2008

TO: Public Utility Commission

FROM: Michael Dougherty 

THROUGH:  Lee Sparling and  Marc Hellman

SUBJECT: CROOKED RIVER RANCH WATER COMPANY: (Docket No. UI 281) Affiliated interest application with James Rooks.

STAFF RECOMMENDATION:

The Commission should approve the application of Crooked River Ranch Water Company (CRRWC or the Company) for an affiliated interest agreement with James Rooks subject to the following conditions:

1. CRRWC shall provide the Commission access to all books of account, as well as all documents, data, and records that pertain to any transactions with affiliates.
2. The Commission reserves the right to re-review, for reasonableness, all financial aspects of this arrangement in any rate proceeding or earnings review under an alternative form of regulation.
3. CRRWC shall notify the Commission in advance of any substantive changes to the agreement, including any material changes in any cost. Any changes to the agreement terms that alter the intent and extent of activities under the agreement from those approved herein, shall be submitted for approval in an application for a supplemental order (or other appropriate format) in this docket.
4. Assuming 2007 as the base year, the maximum that the Commission should allow in rates concerning the employment contract with Mr. Rooks is \$66,868 in total compensation (wages and benefits). Subsequent years should be escalated by the consumer price index (CPI-U). Any overage above this amount should be disallowed for ratemaking purposes.

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June 9, 2008
Page 2

5. CRRWC shall file a written employment contract for Mr. Rooks within 15 days of the June 25, 2008, Public Meeting date. In addition, CRRWC shall file all associated Board of Director's minutes and resolutions concerning Mr. Rooks' employment and pay with CRRWC within 15 days of the June 25, 2008, Public Meeting date.

DISCUSSION:

This application was filed on May 20, 2008, pursuant to ORS 757.015, 757.495 and OAR 860-036-0730. Docket UW 120, Order No. 08-243 dated May 2, 2008, stated that:

Crooked River Ranch Water Company shall file with the Public Utility Commission of Oregon its application for approval of its contracts with James and Jacquie Rooks within 15 days of the date of this order.

Calendar days are normative for Commission purposes in this determination unless some other specification is made. Therefore, this filing is overdue. James Rooks is the General Manager of CRRWC. The filing arises from UW 120 Order No. 07-527, dated November 29, 2007, page 2.¹

Because the General Manager also is a member of the Board, and because he has relatives that are also employed by Crooked River, we treat the manager and his family as "affiliated interests" and require that the Company file any contracts with the manager and his family for Commission approval.

In its application, Crooked River states:

Crooked River Ranch Water Company ("CRRWC") submits this application under compulsion by the PUC without waiving its position that the PUC has no authority to demand the filing of this application and that CRRWC is under no legal obligation to obtain PUC's approval of the employment relationship described herein.

¹ At the time of the Commission order, Mr. Rooks also maintained an equipment maintenance contract with CRRWC. However, CRRWC and Mr. Rooks suspended this contract and Mr. Rooks is no longer receiving payment from CRRWC for these services.

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June 9, 2008
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CRRWC is factually wrong concerning its legal obligation to obtain the Commission's approval. The Commission asserted jurisdiction of CRRWC in Commission Order No. 06-642 dated November 11, 2006. Because the Commission clearly has jurisdiction over CRRWC, the Company is obligated to follow the Commission's statutes and rules. As a result, Staff takes no recognition of the application's disclaimers of Commission authority concerning this filing.

For the purposes of this application, Mr. Rooks is presumably a Director of CRRWC. However, the "Bylaws for Crooked River Ranch Water Company" dated September 24, 2004,² would result in Mr. Rooks being ineligible to be a Director since Mr. Rooks, as an employee, is prohibited from being a Director.

Additionally, at least two Board Members do not appear to meet the qualifications of membership of CRRWC, which would disqualify them from being Board members and not authorized to make employment and wage resolutions concerning Mr. Rooks. With that said, these issues are not addressed by Staff in this docket as they are more appropriately reviewed in UW 120, or other forums as deemed more appropriate by the Commission.

However, based on the Commission order to file an application for an affiliated interest agreement, the following issues were investigated:

- Scope of the Agreement
- Transfer Pricing
- Determination of Public Interest Compliance
- Records Availability, Audit Provisions, and Reporting Requirements

Scope of the Agreement

No written agreement was submitted with the application. According to the application, Mr. Rooks' duties include administrative oversight, plant maintenance, and regulatory compliance responsibilities.

Transfer Pricing

The application requests an annual salary of \$83,500 plus medical and dental benefits.

² CRRWC amended its Bylaws as a Cooperative on June 30, 2006; however, Commission Order No. 06-642 was clear that CRRWC's reorganization as a cooperative was invalid. As a result, the September 24, 2004, Bylaws are recognized by Staff as being the Bylaws in effect.

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 June 9, 2008
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Pursuant to OAR 860-036-0739, Allocation of Costs by a Water Utility, the amount paid by a utility to an affiliated interest is required to be at cost or the market rate, whichever is lower. Given the nature of the proposed contract - between the Company and a Director, Staff's focus was on analyzing the market rate.

To perform this analysis, Staff took the average of the Oregon Employment Department's Oregon Labor and Market Information System (OLMIS - www.olmis.org) 50th Percentile Rate for General and Operations Managers and the American Water Works Association (AWWA) Water Utility Compensation Survey Average Rate for Water Operations Managers as a proxy to determine the market rate.

The 2007 American Water Works Association Water Utility Compensation Survey weighted average salary for water utilities' Water Operations Manager is \$53,153 (\$25.60 per hour).

The OLMIS 50th Percentile Rate for General and Operations Managers in Crook/Deschutes/Jefferson Counties is \$33.35 per hour. As a result, the lower of cost or market rate for Mr. Roops should be set as \$29.48 an hour or \$61,190 annually. This amount is \$21,600 less than the requested amount.

In UW 120, Staff examined the Company's costs concerning medical and dental benefits. Staff recommended and the Commission accepted a Company amount of \$28,390 for 5 Full-time Employees (FTE). As a result, \$28,390 divided by 5 FTE equals \$5,678 for medical and dental benefits for each FTE.

The aforementioned calculations result in the following:

<u>Position</u>	<u>Hourly Wage</u>	<u>Benefits Cost</u>	<u>Annual Compensation</u>
General Manager	\$29.48	\$5,678	\$66,868

It is noted that \$61,900 in salary and \$66,868 in total compensation for Mr. Roops is the maximum that the Commission should allow in rates. Subsequent years should be escalated by the consumer price index (CPI-U).

Determination of Public Interest Compliance

This agreement with Staff's recommended conditions is presumed fair and not unreasonable and therefore not demonstrably contrary to ratepayer interest. However, Staff notes that the Commission set a lower level of pay (Senior/Lead Water Treatment Plant Operator) for Mr. Roops in UW 120.

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With that said, additional inquiry into the Board membership and effect on the contract should continue to be examined in UW 120.

Records Availability, Audit Provisions, and Reporting Requirements

Staff Recommendation Condition No. 1 affords necessary access to any relevant records.

PROPOSED COMMISSION MOTION:

The affiliated interest application for the employment contract between James Rooks and Crooked River Ranch Water Company be approved subject to the five recommended conditions.

UI 281

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UI 281

In the Matter of)	
)	
CROOKED RIVER RANCH WATER)	ORDER ON RECONSIDERATION
COMPANY)	
)	
Affiliated Interest Application with James)	
Rooks.)	

**DISPOSITION: APPLICATION FOR RECONSIDERATION GRANTED;
ORDER NO. 08-347 CORRECTED**

In Order No. 08-347, the Public Utility Commission of Oregon (Commission) approved an affiliated interest agreement between Crooked River Ranch Water Company (Crooked River or Company) and James Rooks. In that order, the Commission identified ORS 757.005 as the basis for its jurisdiction over Crooked River as a water utility.

On July 8, 2008, Crooked River filed an application for reconsideration of Order No. 08-347. Crooked River correctly states that the reference to ORS 757.005 was incorrect. Crooked River is subject to jurisdiction under ORS 757.063.

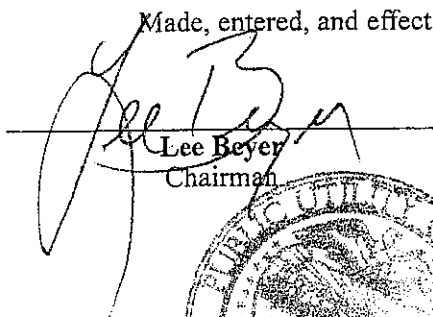
Accordingly, Crooked River's application for reconsideration is granted. The first sentence under the heading of "Jurisdiction" in Order No. 08-347 should be deleted and replaced with the following:

The Company is subject to Commission jurisdiction pursuant to ORS 757.063. See Order No. 06-642.

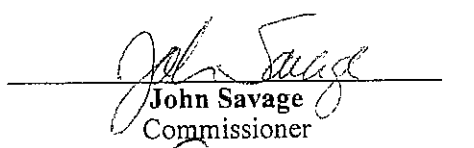
The remainder of the order is unchanged.

IT IS SO ORDERED.


Made, entered, and effective JUL 16 2008



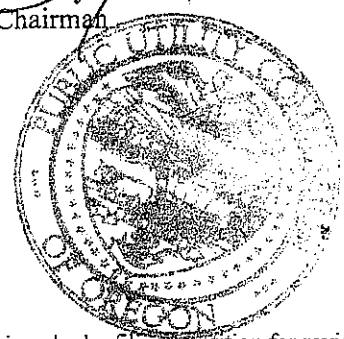
 Lee Beyer
 Chairman



 John Savage
 Commissioner



 Ray Baum
 Commissioner



CERTIFICATE OF FILING AND SERVICE

I certify that on September 12, 2008, I filed the original of the foregoing PETITION FOR JUDICIAL REVIEW via certified mail, at Portland, Oregon, addressed to the following:

State Court Administrator
OREGON COURT OF APPEALS
Records Section
Supreme Court Building
1163 State Street
Salem, OR 97301-2563

I further certify that on September 12, 2008, I served a copy of the foregoing document, via First Class Mail, postage prepaid, at Portland, Oregon, addressed to the following:

Attorney General of the State of Oregon
Office of the Solicitor General
400 Justice Building
1162 Court Street NE
Salem, OR 97301-4096

Mary Williams, Solicitor General
OREGON DEPARTMENT OF JUSTICE,
APPELLATE DIVISION
1162 Court Street, NE
Salem, OR 97301

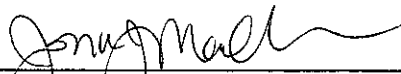
Of Attorneys for Respondent, Public
Utility Commission of Oregon

Public Utility Commission of Oregon
P.O. Box 2148
Salem, OR 97308-2148

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205 SE 5th St.
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Of Attorneys for Petitioners

HARRANG LONG GARY RUDNICK P.C.



C. Robert Steringer, OSB #983514
Jona J. Maukonen OSB #043540
Of Attorneys for Petitioner