



Oregon

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May 2, 2011

Via Electronic Filing or U.S. Mail

OREGON PUBLIC UTILITY COMMISSION
ATTENTION: FILING CENTER
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SALEM OR 97308-2148

**RE: Docket No. UM 1489 – In the Matter of FISH MILL LODGES WATER SYSTEM
Application for an Order Authorizing Abandonment of Water Service.**

Enclosed for electronic filing in the above-captioned docket is Staff's Direct
Testimony in Docket UM 1489.

/s/ Kay Barnes

Kay Barnes

Regulatory Operations Division

Filing on Behalf of Public Utility Commission Staff

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c: UM 1489 Service List (parties)

**PUBLIC UTILITY COMMISSION
OF OREGON**

UM 1489

**STAFF TESTIMONY
OF**

**KATHY MILLER
PHIL BOYLE**

**In the Matter of
FISH MILL LODGES WATER SYSTEM
Application for an Order Authorizing Abandonment
of Water Service.**

May 2, 2011

CASE: UM 1489
WITNESS: Kathy Miller

**PUBLIC UTILITY COMMISSION
OF
OREGON**

STAFF EXHIBIT 100

Direct Testimony

May 2, 2011

1 **Q. PLEASE STATE YOUR NAME, OCCUPATION, AND BUSINESS**
2 **ADDRESS.**

3 A. My name is Kathy Miller. My business address is 550 Capitol Street NE Suite
4 215, Salem, Oregon 97301-2551.

5 **Q. PLEASE DESCRIBE YOUR EDUCATIONAL BACKGROUND AND WORK**
6 **EXPERIENCE.**

7 A. I have been with the Public Utility Commission of Oregon (Commission) since
8 1987 and have participated in over 100 water utility dockets involving rate
9 filings, finance applications, property dispositions, exclusive service territories,
10 adequacy of service investigations, water and wastewater rulemakings, formal
11 complaints, and affiliated interest matters.

12 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

13 A. The purpose of my testimony is to provide evidence to support my
14 recommendation that the Commission deny Fish Mill Lodge Water System's
15 (Fish Mill or the Company) application for an order authorizing abandonment of
16 the water system.

17 Alternatively, Staff would support abandonment of the water system
18 conditioned upon Fish Mill's conveyance of all necessary assets, rights, and
19 easements of the water system to the three residential customers or a new
20 owner. This transfer should occur no later than December 31, 2011. During
21 this interim timeframe, the Commission should appoint a Regent to operate and
22 manage the water system.

23

1 **Q. WHO ARE THE PARTIES IN THIS DOCKET?**

2 A. The parties in UM 1489 are: Judy Bedsole, owner of Fish Mill; Don Durland,
3 Bonnie Lucas, Dennis and Barbara Varenas (customers and interveners); and
4 Commission Staff (Staff).

5 **Q. DID YOU PREPARE AN EXHIBIT FOR THIS DOCKET?**

6 A. Yes. I prepared Exhibit Staff/101, consisting of 22 pages.

7 **Q. HOW IS YOUR TESTIMONY ORGANIZED?**

8 A. My testimony is organized as follows:

9	Issue 1, -----The Current Application Before the Commission.....	2
10	Issue 2, -----Fish Mill Description and Regulatory History	5
11	Issue 3, -----Staff’s Analysis of Fish Mill’s Application	7
12	Issue 4, -----New Developments	15
13	Issue 5, ----- Customer Concerns	20
14	Issue 6, -----Other Abandonment Cases	22
15	Issue 7, -----Alternative Resolution.....	24

16

17 **ISSUE 1, THE CURRENT APPLICATION BEFORE THE COMMISSION**

18 **Q. PLEASE SUMMARIZE FISH MILL’S CURRENT APPLICATION BEFORE**
19 **THE COMMISSION TO ABANDON ITS WATER SERVICE.**

20 A. On July 12, 2010, Fish Mill filed a request to terminate water service to the
21 current customers on the water system. The application was docketed as
22 UM 1489. The customers of the water system include three residential
23 customers and one commercial customer, Fish Mill’s affiliate, Fish Mill Lodges
24 and RV Park (the Resort). The Company lists the following reasons for seeking
25 to abandon its water service:

- 26 1) Financial constraints associated with the operation of a water utility;

- 1 2) The inefficiency and burden to provide regulated water utility service to
2 such a small number of customers;
- 3 3) The legal and regulatory costs the water utility is unable to pass on to its
4 customers; and
- 5 4) Abuses, complaints, and disputes with customers.

6 The Company states that the customers can obtain alternative water service
7 by drilling a well or drawing water from Siltcoos Lake.

8 **Q. THE COMPANY IS CURRENTLY SERVING THREE RESIDENTIAL**
9 **CUSTOMERS AND THE RESORT. IS FISH MILL REQUESTING TO**
10 **ABANDON SERVICE TO ITS AFFILIATE THE RESORT?**

11 A. The application is confusing as to which customers Fish Mill is requesting to
12 abandon water service. The application states that the “affected water utility
13 property consists of lots 5, 6, 7, and 8 of block 28 plat, Westlake, Oregon.”
14 Staff understands that Block 28 plat, lots 5, 6, 7 and 8 are property owned by
15 the Resort. This would lead one to think that the Company is requesting to
16 abandon water service only to the Resort.

17 However, the application also alludes to the termination of the residential
18 customers. The application states that customer abuses, complaints, and
19 disputes have led the Company “to be unable to properly administer and
20 regulate the service of water to the residences as required by Oregon law and
21 regulation.¹ The Company also cites a filed frivolous and unwarranted

¹ Application at page 1.

1 restraining order against a representative of the water system.² It is hard to
2 imagine that the Company is referring to the Resort as the customer in these
3 instances. In addition, Staff understands that the Resort has drilled a new well.
4 Fish Mill stated in an email to the Oregon Health Authority's Drinking Water
5 Program (DWP), sent April 21, 2011, that as of Saturday afternoon (April 23,
6 2011), the Resort will be officially disconnected from Fish Mill's water system.
7 See Staff/101, Miller/1.

8 Staff concludes that the Company is requesting to abandon service to only
9 its three residential customers.

10 **Q. PLEASE BRIEFLY RESTATE YOUR RECOMMENDATION CONCERNING**
11 **THE ABANDONMENT.**

12 **A.** I recommend that the Commission disapprove Fish Mill's application for an
13 order authorizing abandonment of water system. Furthermore, because the
14 Company continues to provide unsafe and inadequate water service and has
15 not corrected the existing water system problems, Staff has requested the
16 Department of Justice begin drafting an administrative complaint against Fish
17 Mill seeking civil penalties of up to \$500 per day per violation until such time the
18 water system problems are corrected bringing Fish Mill into compliance with the
19 Commission's rules and regulations or the water system is conveyed to a new
20 owner. See ORS 756.310 and OAR 860-036-0380.

21 I also recommend that the Company be allowed to abandon water service if
22

² Application at page 1.

1 it conveys all rights, assets, and easements to the natural spring water source,
2 storage, pumps, piping (transmission lines), and other plant used to deliver
3 water to the three residential customers or a new owner. This transfer should
4 occur no later than December 31, 2011. During this interim timeframe, the
5 Commission should appoint a Regent to operate and manage the water
6 system.

7 It should be noted that because the Company has drilled a well to supply its
8 affiliate, the Resort, Fish Mill no longer needs this asset to operate its affiliate
9 business.

10 **ISSUE 2, FISH MILL DESCRIPTION AND REGULATORY HISTORY**

11 **Q. PLEASE DESCRIBE FISH MILL'S WATER SYSTEM.**

12 A. Fish Mill is a small water system owned by Ms. Judy Bedsole. The water
13 system provides natural spring water to its customers near Dunes City, Oregon.
14 The water system is a rate and service regulated public utility subject to the
15 Commission's jurisdiction and authority.

16 The existing spring is captured via a 42" well casing that sits over the spring
17 and is recessed into the ground approximately 7 feet and extends 5 feet above
18 the surface. The spring gravity feeds a 3,000 gallon storage tank. The storage
19 tank is a clear plastic tank located on the top of an old redwood tank floor, the
20 latter of which is deteriorating. The distribution system is composed of 1 ½ inch
21 transmission lines that feed three residential homes and, until recently, the
22 Resort.

1 **Q. PLEASE SUMMARIZE FISH MILL'S REGULATORY HISTORY.**

2 A. The Commission has a long history with Fish Mill beginning in 1996. A list of
3 dockets associated with Fish Mill is attached as Staff/101, Miller/2-4. The
4 Commission currently has six open dockets involving Fish Mill. Below is a brief
5 description of Fish Mill's more significant regulatory activities.

- 6 • In 1996, the Company contacted Commission Staff seeking help with an
7 easement dispute. The Commission provided mediation services to resolve
8 the dispute (ADR 3); however, no resolution was reached.
- 9 • In 1999, Fish Mill filed an application to abandon service to its customers
10 (UW 64). The Commission denied the application in the abandonment case
11 (UW 64) and granted Fish Mill an exclusive service territory (WA 7) as part
12 of a stipulation to resolve the issues in both cases. In the stipulation, the
13 Commission agreed not to adjudicate claims for the right to Fish Mill's water
14 (based on property law) put forth by property owners who were not Fish Mill
15 customers. Fish Mill agreed to provide service to the three residential
16 customers and the Resort under an exclusive service territory.
- 17 • In 2007, Fish Mill filed a petition with the Commission requesting rate
18 regulation (WJ 16), which the Commission granted. Fish Mill then filed for a
19 general rate increase (UW 123) on September 17, 2007. On April 24, 2008,
20 the Commission issued Order No. 08-235, approving a 294.6 percent
21 revenue increase, resulting in annual revenues of \$4,546 with a 9.5 percent
22 rate of return on a rate base of \$1,736.

23

- 1 • In 2010, four formal customer complaints against Fish Mill were filed with
2 the Commission, three of which remain open.
- 3 • In addition to UM 1489, Fish Mill's request to abandon service, Fish Mill has
4 filed two formal complaints against its three residential customers seeking to
5 permanently disconnect service (UM 1528 on March 7, 2011, and UCR 135
6 on February 2, 2011).

7 **ISSUE 3, STAFF'S ANALYSIS OF FISH MILL'S APPLICATION**

8 **Q. PLEASE DESCRIBE STAFF'S ANALYSIS OF FISH MILL'S APPLICATION**
9 **TO ABANDON WATER SERVICE TO ITS CUSTOMERS.**

10 A. In its application, Fish Mill lists four reasons for abandoning water service to its
11 customers. Staff has investigated the reasonableness of the Company's four
12 claims, which are listed individually below along with Staff's analysis.

13 **CLAIM NO. 1: FINANCIAL CONSTRAINTS**

14 In its application Fish Mill states it:

15 . . . desires to abandon the water utility service due to financial
16 constraints associated with the operation of a water utility.

17

18 Staff will demonstrate that the Company's financial operation necessary to
19 run the water system does not result in a financial hardship to the Company.
20 The operational expenses include operation and maintenance, repairs, and
21 labor expenses (operational expense).

22 To analyze the Company's operational expenses, Staff requested Fish Mill's
23

1 last 12 months of expenses. Fish Mill provided 12 months of expenses totaling
 2 \$35,754 for the year ending July 31, 2010 (reported time period). It should be
 3 noted, that the expenses provided by Fish Mill have not been verified to be
 4 prudent or accurate. Of the \$35,754 in expenses, Fish Mill claims \$24,926 in
 5 legal expense.

6 By comparison, in its 2009 Annual Report, Fish Mill reported total 2009
 7 annual expense of \$6,808, of which \$4,824 were legal fees.³

8 In the reported time period, Fish Mill claimed 17.43 hours of labor per week.
 9 In the table below, Staff imputed a reasonable cost for labor at a pay rate of
 10 \$15 for maintenance hours and \$10 per hour for administrative/office and
 11 customer satisfaction service hours. Using those rates, Staff calculates a total
 12 labor expense of \$9,269.

13 **Table 1 – Weekly Operational Hours**

Weekly Operational Hours	Hours	Pay/Hr	Total
Maintenance	0.80	\$15	\$12.00
Administrative/Office	12.25	\$10	\$122.50
Customer Satisfaction	4.38	\$10	\$43.75
Totals	17.43		\$178.25
Multiplied by 52 weeks	52		52
Annual Amounts	406.36		\$9,269.00

14 By comparison, Fish Mill reported only 120 hours of labor for 2009 in its
 15 Annual Report to the Commission. At an average pay rate of \$12.50, labor
 16 expense for 2009 equals only \$1,500.
 17
 18

³ Staff removed \$61.50 for other utilities that did not appear to be related to the water system.

1 Below Staff compares Fish Mill operational expense for 1) the reported time
2 period, 2) 2009, and 3) recoverable in rates in its last rate case.

3 **Table 2 – Operational Expenses**

OPERATIONAL EXPENSE	REPORTED TIME PERIOD	2009 ANNUAL REPORT	RECOVERABLE IN RATES IN UM 123
Operation & Maintenance (O&M)	\$495	\$284	\$114
Labor	\$9,269	\$188	\$1,037
Repairs	\$0	\$0	\$1,015
Total	\$9,764	\$472	\$2,166

4
5 Staff has charted all the Company's unverified expenses for the reported
6 time period in Staff/101, Miller/5. The chart compares the Company's
7 expenses for the reported time period to Fish Mill's expenses allowed in its
8 general rate case, UW 123.

9 The major difference between the expenses recoverable in rates allowed in
10 UW 123 and the Company's reported time period expenses are the excessive
11 legal and labor expenses claimed by the Company. Fish Mill can file for higher
12 rates if the Company believes its rates are inadequate to cover costs.

13 Staff has compared Fish Mill's current operational expense recoverable in
14 rates with the current recoverable operational expense of nine other rate-
15 regulated water utilities. These nine utilities have the smallest customer base.

16 The table below shows each utility's operational expenses (O&M, repairs,
17 labor/ wages) as approved in their most recent water rate cases. The total
18 operational expense and the total cost per customer are also calculated.

19

1 **Table 3 – Comparisons with Other Small Rate-Regulated Water Utilities**

Water Utility	# of Customers	Annual Revenue	O&M	Repairs	Labor/Wages	Total O&M, Repairs, Labor/Wages	Cost per Customer
Fish Mill Lodges & RV Park (UW 123)	3	\$4,546	\$114	\$1,015	\$1,037	\$2,832	\$722
Angler's Cove Shady Cove Heights Water Company (UW 126)	36	\$29,068	\$56	\$495	\$12,000	\$12,551	\$349
Clearwater Source LLC (UW 130)	20	\$8,691	\$0	\$442	\$0	\$442	\$22
Hillview Water (UW 83)	13	\$7,510	\$150	\$1,760	\$1,200	\$3,110	\$239
Mill Mar Estates (UW 131)	25	\$15,262	\$120	\$161	\$3,049	\$3,330	\$133
North Hill Water Corporation (UW 128)	28	\$22,566	\$0	\$365	\$480	\$845	\$30
Old Sheep Ranch Water Association (UW 129) (NP)	39	\$12,355	\$0	\$3,861	\$0	\$3,861	\$99
Pelican Bay Heights Water System (UW 143)	21	\$20,046	\$63	\$344	\$6,420	\$6,827	\$325
Whispering Pines Estates Water (UW 146)	21	\$21,269	\$0	\$646	\$4,200	\$4,846	\$231
Wilderness Canyon Water (UW 82)	20	\$9,864	\$350	\$2,000	\$1,450	\$3,800	\$190

2
3 As shown in the table above, Fish Mill has the highest annual operational
4 expense per customer at \$722. The next highest annual operational expense
5 per customer is Angler's Cove/Shady Cove Heights at \$349 per customer. The
6 rate case gives Fish Mill a higher cost per customer for operational expense.
7 This is appropriate because of its small customer base.

1 The discussions above demonstrates that the operational expense
2 necessary to run the water system does not result in a financial hardship to the
3 Company, as its operational expense is recovered in rates. As demonstrated,
4 Fish Mill's excessive and unverified legal and labor expenses are the principal
5 factors driving Fish Mill's financial hardship claims. Staff discusses Fish Mill's
6 legal expense in detail later in its testimony.

7 **CLAIM NO. 2: INEFFICENCY AND BURDEN TO PROVIDE TO SUCH A**
8 **SMALL CUSTOMER BASE**

9 In its application Fish Mill states:

10 It is inefficient and overly burdensome on the water system to
11 continue to provide regulated water utility service to such a small
12 number of customers.

13
14 ORS Chapter 757, which regulates private or investor-owned water utilities,
15 does not contain a statutory minimum threshold for the number of customers.
16 By law, the size of the customer base is not a factor in determining jurisdiction
17 and regulation by the Commission. ORS 757.020 provides that Fish Mill has a
18 statutory duty to provide adequate and safe service.

19 In addition, Fish Mill has an exclusive service territory, which it agreed to in
20 a settlement of issues in Dockets WA 7 and UW 64. See *Orders No. 00-738*
21 *and 00-739*. Pursuant to ORS 758.305 and OAR 860-036-0930, Fish Mill has
22 an obligation to provide service to the customer properties included in its
23 exclusive service territory.

24 Finally, the property land easements for the three residents included in Fish
25 Mill's exclusive service territories (who are the current residential customers)

1 state that the Company agreed to maintain the water system and that the
2 customers have perpetual use of all reasonably necessary water flowing
3 through the pipeline as long as the pipeline flows adjacent to customer
4 property.

5 In summary:

- 6 1) The number of customers served by Fish Mill is not relevant to regulation,
- 7 2) The Company requested and was granted an approved exclusive service
8 territory that includes service to the resort and the three residential
9 customers it is currently serving,
- 10 3) Fish Mill has a statutory obligation in ORS 758.305 to provide service
11 within its exclusive service territory, and
- 12 4) The customers have a legal right to the water from the spring through their
13 easements. That legal right cannot be terminated by the Commission.

14 **CLAIM NO. 3: LEGAL AND REGULATORY COSTS**

15 In its application Fish Mill states:

16 The legal and regulatory costs, which the water utility is unable to
17 pass on to its customers, have caused the water system to lose
18 money in the last several years.

19
20 In Docket UW 123, Fish Mill requested \$3,570 in legal fees. Staff
21 recommended that 25 percent of the Company's reported legal expense be
22 disallowed because the company failed to demonstrate that the legal costs
23 were prudent, necessary, reoccurring, and relative to the water system. During
24 UW 123, Staff requested legal information in three different data requests
25 asking the Company to identify the purpose and reason for Fish Mill's legal

1 expense. Fish Mill had the burden of proof to justify its requested increase.
 2 Fish Mill's data responses did not provide any new evidence or clarify the
 3 reasons for the legal fees in question. Fish Mill did not meet its burden of proof
 4 for its requested legal expense. Staff allowed legal expense of \$2,631
 5 amortized over three years at \$877 per year.

6 During the reported time period, Fish Mill claimed annual legal expense of
 7 \$24,926. In an actual rate case, each individual line item expense would be
 8 investigated and verified as being prudent, necessary, reoccurring, and relative
 9 to the water system. For example, Fish Mill may have incurred \$4,095 in legal
 10 expense during the reported time period associated with a stalking charge.
 11 However, if the legal fees were incurred because of inappropriate behavior on
 12 the part of the Company, such costs would not be allowed in rates. Customers
 13 are not obligated to pay for legal fees not directly related to water service or
 14 impudently incurred.

15 The table below is a comparison of the annual legal expense currently
 16 allowed in rates for Fish Mill and the other nine regulated water utilities with the
 17 smallest customer base.

18 **Table 4 – Legal Expenses**

Water Utility	# of Customers	Annual Revenue	Allowed Legal Expense	Percentage of Total Revenue	Cost Per Customer
Fish Mill Lodges & RV Park (UW 123)	3	\$4,546	\$877	19.29%	\$292
Angler's Cove Shady Cove Heights Water Company (UW 126)	36	\$29,068	\$500	1.72%	\$14
Clearwater Source LLC (UW 130)	20	\$8,691	\$0	0.00%	\$0

Water Utility	# of Customers	Annual Revenue	Allowed Legal Expense	Percentage of Total Revenue	Cost Per Customer
Hillview Water (UW 83)	13	\$7,510	\$0	0.00%	\$0
Mill Mar Estates (UW 131)	25	\$15,262	\$215	1.41%	\$9
North Hill Water Corporation (UW 128)	28	\$22,566	\$0	0.00%	\$0.00
Old Sheep Ranch Water Association (UW 129)	39	\$12,355	\$1,133	9.17%	\$29
Pelican Bay Heights Water System (UW 143) ⁴	21	\$20,046	\$0	0.00%	\$0
Whispering Pines Estates Water (UW 146)	21	\$21,269	\$0	0.00%	\$0
Wilderness Canyon Water (UW 82)	20	\$9,864	\$0	0.00%	\$0

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This comparison shows that Fish Mill's annual cost per customer already recoverable in rates is \$292 per customer. This is 10 times higher than the next highest legal fee per customer of \$29. Based on Fish Mill's annual legal fees claimed in the reported time period of \$24,926, the annual cost per customer would be \$8,309. Fish Mill legal fee claims are extremely out of proportion for its size.

The Commission provides both informal and formal complaint processes to resolve customer and company disputes. These processes can be used in lieu of expensive legal fees.

The Company also cites regulatory costs as a reason to abandon service. According to the Commission's records, Fish Mill has paid regulatory fees to the Commission of \$10 per year. The regulatory fee recoverable in rates is \$10

⁴ Although not listed in Account 633, *Contract Services-Legal*, Staff recommends \$3,153 in Account 666, *Amortization of Rate Case Expenses*, for legal cost incurred during the rate application.

1 per year. The regulatory fee is paid by the customers through rates; therefore,
2 regulatory costs do not cause a financial hardship to the Company.

3 **CLAIM NO. 4: CUSTOMER ABUSES**

4 In its application, Fish Mill states:

5 . . . customer abuses, complaints, and disputes have led to the
6 Applicant [Company] to be unable to properly administer and
7 regulate the service of water to the residences as required by
8 Oregon law and regulation.
9

10 This issue is discussed in depth by Phil Boyle in his Direct Testimony.

11 **ISSUE 4, NEW DEVELOPMENTS**

12 **Q. EXPLAIN WHAT HAS TAKEN PLACE SINCE THE COMPANY FILED ITS**
13 **ABANDONMENT CASE ON JULY 12, 2010.**

14 A. Two major events have taken place since Fish Mill filed its application to
15 abandon service: 1) Contamination of the water system and 2) Fish Mill has
16 drilled a new well.⁵

17 **WATER CONTAMINATION**

18 On September 16, 2010, a routine water sample taken from the Resort's
19 Cabin No. 5 tested positive for total coliforms. Four additional samples were
20 taken on September 21, 2010. These samples confirmed the presence of total
21 coliforms and E. coli.

22 On September 26, 2010, Fish Mill wrote a letter to Katrinka Danielson of
23 Lane County Environmental Health (LCEH) stating that the Commission has
24 depleted all of Fish Mill's funds and the Company was not able to pay for more

⁵ Staff/101, Miller page 1

1 water samples or to address the problem any further. Staff received the
2 same letter on September 28, 2010; however, the date of the letter was
3 October 26, 2010. Staff/101, Miller/6. Ms. Bedsole wrote to Ms. Danielson
4 stating:

5 OPUC has repeated ignored FMLWS complaints and request for
6 emergency funding, feasibility study and legal expenses needed
7 to correct these problems that keep creating the expense of water
8 samples OPUC has successfully depleted all funds for FMLWs in
9 doing so, eliminating the ability for FMLWS to pay for any more
10 water samples or to address this problem any further.

11
12 Ms. Bedsole goes on to say:

13 Since The OPUC has repeatedly refused FMLWS the ability, the
14 funding, and the funds for legal service required to solve these
15 problems and since it is FMLWS duty to provide safe and reliable
16 service the OPUC must immediately grant FMLWS request that is
17 already before the OPUC. The request to terminate service for
18 lack of economic feasibility for the publics health and safety, of
19 which this a perfect example.

20
21 It does no good to continue taking water samples, shocking the
22 system, forcing the long term users of FLMWS to consume toxins
23 in the form of needlessly chlorinating the system without address
24 the problems.

25
26 Ms. Danielson offered to take the samples at Lane County's expense.

27 Ms. Bedsole initially agreed to allow Ms. Danielson to take the samples.

28 Ms. Danielson scheduled a visit to the system to collect the samples on
29 October 4, 2010.⁶

30 In an email dated September 30, 2011, Staff/101, Miller/7, Ms. Bedsole
31 notified Ms. Danielson that she was cancelling the October 4, 2010, site visit

⁶ Staff/101, Miller page 9

1 and Ms. Danielson would not be collecting the required repeat samples.

2 Ms. Bedsole stated:

3 After digesting our conversation and your email I have decide not
4 to take the 5 repeat samples. I looked up the attached water use
5 agreement; I am not responsible for the Water System expenses
6 and cannot be held responsible for its lack of funds.⁷
7

8 On October 27, 2010, DWP issued a Notice of Intent to Impose Civil Penalty
9 of \$1,000 to Ms. Bedsole of Fish Mill Lodges because the Company 1) failed
10 to perform the confirmation tests, 2) took no immediate corrective action, and
11 3) did not correct or isolate the source of the contamination as required by
12 OAR Chapter 333, Division 061.⁸

13 Ms. Danielson did visit the water system source on November 22, 2010,
14 where she found several possible reasons why E. coli might be present.

15 DWP issued an Amended Notice March 2, 2011, and a hearing was
16 scheduled. DWP attempted to settle the penalty by reducing the penalty to only
17 \$100 if Ms. Bedsole agreed to correct deficiencies found at the water system.
18 Ms. Bedsole refused; therefore, the settlement never took place. A hearing
19 was held on March 21, 2011, and a proposed order fining Ms. Bedsole and Fish
20 Mill for \$1,000 has been drafted. A copy of the proposed order is attached in
21 Staff/101, Miller/8-15. Ms. Bedsole has stated she intends to object to the
22 order. She has 30 days from April 18, 2011, to submit her objection.

23 According to Ms. Bedsole, new water samples taken on March 30, 2011,
24 indicate that the water system is still contaminated. On April 1, 2011, Fish Mill

⁷ Staff/101, Mille page 7.

⁸ Staff/101, Miller page 8.

1 sent a letter to the three customers stating that there is a high probability that
2 the water they are receiving is contaminated with E. coli or coliform bacteria.
3 Ms. Bedsole further states in her letter that it is not in the customers' best
4 interest to use the product, and that she and Fish Mill and Fish Mill Lodges and
5 RV Park accept no liability if the customers choose to continue to use the
6 product. The letter is attached as Staff/101, Miller/16.

7 **THE NEW WELL**

8 Fish Mill recently drilled a new well on its property. According to Ms. Bedsole,
9 the Resort was disconnected from the spring water system on April 23, 2011.
10 The actual disconnection of the Resort from the spring water system has not
11 been confirmed.

12 According to Ms. Bedsole, the spring water system now serves only the
13 three residential customers. Because of that change, the DWP has reclassified
14 the water system from a Transient Non Community, which is subject to the
15 federal EPA standards, to a state regulated water system with less DWP
16 oversight.⁹

17 Fish Mill's three remaining customers continue under a boil water notice.

18 This violates ORS 757.020 and OAR 860-036-0310.

19 **Q. WHAT IS FISH MILL'S OBLIGATION AND DUTY TO SERVE POTABLE**
20 **WATER?**

⁹ Staff/101, Miller page 1.

1 A. Fish Mill is regulated by two separate agencies for quality of water, the
2 Commission and the DWP. The Commission's statutes and administrative rule
3 are listed below:

4 **757.020 Duty of utilities to furnish adequate and safe service at**
5 **reasonable rates.**

6 Every public utility is required to furnish adequate and safe service,
7 equipment and facilities, and the charges made by any public utility for any
8 service rendered or to be rendered in connection therewith shall be
9 reasonable and just, and every unjust or unreasonable charge for such
10 service is prohibited.

11
12 **860-036-0310 Purity of Water Supply for Domestic Purposes**

13 (1) A water utility delivering water for domestic purposes shall furnish a
14 supply that shall at all times be free from bodily injurious physical
15 elements and disease-producing bacteria. A water utility shall make such
16 tests and take precautions as will ensure the constant purity of its water
17 supply. A water utility shall keep a record of all such tests and reports.

18 (2) A water utility delivering water for domestic purposes shall furnish a
19 supply that shall be reasonably free from elements that cause physical
20 damage to customer's or applicant's property including but not limited to
21 pipes, valves, appliances, and personal property. A water supply that
22 causes such damage must be remedied within a reasonable time unless
23 the conditions are such as to not reasonably justify the necessary
24 investment. The water utility shall bear the burden of demonstrating that
25 remedying the condition is not reasonably justified.

26
27 **860-036-0325 Water Supply**

28 (1) Every water utility shall exercise due diligence to furnish a continuous
29 and adequate supply of water to its customers.

30
31 The DWP administrative rules lay out the responsibilities of a water supplier
32 found in OAR 333-061-0025. Below is the rule's preamble:

33 **333-061-0025 Responsibilities of Water Suppliers**

34 Water suppliers are responsible for taking all reasonable precautions to
35 assure that the water delivered to water users does not exceed maximum
36 contaminant levels, to assure that water system facilities are free of public
37 health hazards, and to assure that water system operation and
38 maintenance are performed as required by these rules.
39

1 Fish Mill, by its own admission, has refused to provide potable water and
2 conduct the required tests in a timely manner. The Company claims that the
3 water is contaminated at the source, but provides no evidence or proof of the
4 cause of the contamination. It appears that Fish Mill is using the contamination
5 of the water system as a reason to no longer serve its customers.

6 Contaminated water does not give the Company the right to abandon service.

7 The appropriate response of the Company is to fix the contamination.

8 **ISSUE 5, CUSTOMER CONCERNS**

9 **Q. PLEASE DESCRIBE THE CUSTOMERS' CONCERNS REGARDING**
10 **THEIR WATER SITUATION.**

11 A. According to Fish Mill's customers, they believe that the contamination is due to
12 poor maintenance of the water system. Ms. Bedsole has stated to both DWP
13 and Commission Staff that "she can't do it." In her closing arguments in a
14 hearing held on April 20, 2011, in Dockets UM 1528 and UCR 135, Ms.

15 Bedsole stated:

16 And if the PUC wants to take responsibility for the water and the
17 quality and the liability that . . . because I can't do it. I can't solve
18 the problem. And I don't know what else to tell you. I can't even
19 get up there to look at the well. And I don't know if I'd know what I
20 was looking at if I got there. Cause I can't see that well.

21
22 DWP stated in its proposed order that:

23 Judy Bedsole testified that efforts were made to resolve the
24 problems, but there are two problems with her testimony. First,
25 she testified that she was unable to go to the site because of a
26 physical condition. If that is true, then she did not have personal
27 knowledge of the conditions at the source and her testimony is
28 suspect. Second, it was apparent from Bedsole's testimony that
29 she was unclear about when changes were made at the water

1 source. She testified about changes being made, but the context
2 suggests that those changes took place after Danielson's
3 November 22, visit, if at all.¹⁰
4

5 Fish Mill does not have a good history of maintaining and repairing the
6 system. In UW 123, Staff directed the Company to complete the following
7 repairs. The total of these repairs was estimated at \$4,907, of which \$2,868
8 were for residential meters. The cost of the repairs was based on an estimate
9 by Oregon Water Services for the same work. A list of the needed repairs is
10 provided below:

- 11 • Seal the spring collection box watertight.
- 12 • Install a screen on the storage tank vent.
- 13 • Install a lock on the spring collection box hatch.
- 14 • Install a bottom drain and shutoff valve on the spring collection box.
- 15 • Draft an Emergency Response Plan, submit the Proof of Completion form
16 to the DWP as required on OAR 333-051-0054.
- 17 • Create a coliform sampling plan using the DWP sampling plan template.
- 18 • Clean the interior and exterior of the stage tank.
- 19 • Set up an annual tank cleaning date to be adhered to.
- 20 • Investigate the feasibility of installing some type of permanent disinfection
21 and provide Commission Staff and Casey Lyons (DWP) with a written
22 proposal including the estimated costs to complete such an improvement.
- 23 • Install a master water meter at the spring.
- 24 • Install meters at each of the three residential customers.

¹⁰ Staff/101, Miller pages 12-13.

- Install a meter at the line running to the lodge.

The actual prudent cost of the repairs would have been included in rates; however, Fish Mill did not make the improvements or provide a plan to make the improvements during rate case. As a result, Staff did not include these costs in rates.

Concerning more overarching system improvements, the Company, in its application, provided an Engineering Survey from HBH Consulting that lists total recommended system improvements at approximately \$137,183. To Staff's knowledge, the Company has not completed or even started these improvements.

It should be noted that any prudent and needed plant improvements would be recommended by Staff to be included in rates should the Company file an application for cost recovery. However, because of the small customer base, the financial effect of the system improvements may result in water service becoming unaffordable. As a result, customers on their own initiative and actions may have sought alternate sources of water.

ISSUE 6, OTHER ABANDONMENT CASES

Q. PLEASE DESCRIBE OTHER CASES IN WHICH THE COMMISSION HAS APPROVED ABANDONMENT OR TERMINATION OF WATER SERVICE.

A. Attached as Staff/101, Miller/17-18 is a list of dockets in which the Commission approved requests to abandon or terminate water service. The most recent case differs greatly from the Fish Mill situation. In the case (UP 244) of Westland Estates (Westland), the well water was contaminated with high levels

1 of nitrates in violation of the maximum contaminant level. The system did not
2 have the requisite water rights from the Oregon Water Resources Department
3 (OWRD) for an alternative water source. As a result, the current well could not
4 be used and Westland could not legally drill another well, leaving the Company
5 without a water source or any way to obtain a water source.

6 In the current open docket UP 261, Eastridge Water System was foreclosed
7 upon by a bank. The bank filed an application to terminate water service. In its
8 application, it offered several options to the customers such as: 1) selling the
9 real property parcel containing the wells, storage, and equipment to the
10 customers at 3.75 percent interest with a five-year balloon; 2) deeding one acre
11 of land adjacent to the customer property and financing a water exploration
12 process of \$50,000 at six percent interest for five years; or 3) spending \$10,000
13 to drill a well on customer property and financing the new water system at six
14 percent. Although the bank was taken over by another bank, the second bank
15 has made similar offers to the customers and is in the process of negotiating a
16 settlement. Eastridge serves approximately 28 customers.

17 Fish Mill has not offered its customers any similar financial incentives. In
18 fact, Fish Mill stated in its application that the customer could obtain water from
19 either drilling a well or from Siltcoos Lake. The company estimated that the cost
20 to lay pipe and obtain water from Siltcoos Lake would be less than \$2,000.
21 However, the customers would be paying for inferior water compared to the
22 spring water. Siltcoos Lake is subject to toxic algae.

1 a Regent to operate and manage the water system. The approval of the
2 abandonment would be conditioned upon Fish Mill providing:

- 3 1) An agreement to turn over the operation and maintenance of the water
4 system to a regent to be appointed by the Commission, while the
5 Commission finds a new owner.
- 6 2) An agreement to turn over ownership of the water system to the new
7 owner or to the residential customers.
- 8 3) Unfettered easements and access to the water system operator,
9 laborers, and owner.
- 10 4) An agreement by Judy Bedsole and her two sons (Shawn Bedsole and
11 Chris Bedsole), and Fish Mill Lodges and RV Park not to harass or
12 cause harassment to the customers, operator, laborers, or owner of the
13 water system.
- 14 5) The water system is conveyed in the same or better condition as of
15 May 2, 2011.
- 16 6) Continued water service to the three customers until a regent is hired by
17 the Commission or the transaction transferring the system is executed.
- 18 7) An agreement that all legal action will cease and desist against the
19 customers.

20 **Q. ARE THESE CONDITIONS NECESSARY?**

21 A. Yes. The conditions are necessary to grant abandonment of service. The
22 Commission has spent a considerable amount of resources regulating Fish Mill

1 over the last fourteen years. An abbreviated history of the Commission's
2 involvement with Fish Mill is attached as Staff/101, Miller/19-22.

3 Fish Mill has been involved in fifteen Commission dockets. The Company
4 has refused to serve the residential premises when the properties have been
5 sold to new owners. The customers have complained about harassment and
6 intimidation by Ms. Bedsole's sons. Fish Mil has disconnected customers
7 illegally. The Company has filed repetitive complaints against its customers
8 and Staff. The Commission has investigated complaints, held hearings, issued
9 orders, and taken legal action against Fish Mill.

10 **Q. WHY DOESN'T STAFF JUST RECOMMEND APPROVAL OF THE**
11 **ABANDONMENT AND BE DONE WITH FISH MILL?**

12 A. It is clear that Fish Mill does not want to own and operate a water system. It
13 would be easier on the Commission, Staff, and the Department of Justice not to
14 regulate Fish Mill; however, the Commission by law has a duty to protect these
15 customers. Fish Mill is a water service provider. It has a duty to provide safe
16 and adequate service. It cannot simply abandon service to the three customers
17 just because its owners do not want to provide service. The recourse for a
18 utility owner that no longer wants to provide service is to sell or transfer the
19 system to another owner. The recourse for a utility owner with a water system
20 that is contaminated is to fix the contamination.

21 In order for the Commission to fulfill its statutory obligation, it must secure
22 safe and adequate service at just and reasonable rates for customers.

1 **Q. WHAT OTHER ACTION ARE YOU RECOMMENDING THE COMMISSION**
2 **TAKE?**

3 A. I recommend the Commission seek civil penalties of up to \$500 per day per
4 violation against Fish Mill for providing unsafe and inadequate water service
5 until such time as Fish Mill resolves the water quality problems and brings the
6 water system into compliance with the Commission's rules and regulations or at
7 such time that Fish Mill executes the transfer of the water system over to the
8 three residential customers or a new owner.

9 **Q. DOES THIS CONCLUDE YOUR DIRECT TESTIMONY?**

10 A. Yes

CASE: UM 1489
WITNESS: Kathy Miller

**PUBLIC UTILITY COMMISSION
OF
OREGON**

STAFF EXHIBIT 101

**Exhibits in Support
Of Direct Testimony**

May 2, 2011

Staff/101
Miller/1

From: Casey LYON [casey.lyon@state.or.us]
Sent: Thursday, April 21, 2011 5:54 PM
Cc: MACPHERSON James.R; CARLSON Joseph.R; KELLEY Karen E; MILLER Kathy
Subject: Fish mill update

Hi Judy, It sounds like you got your test results back from the well and it is absent for coliform bacteria, that's great! Your water system has changed classification from a Transient Non Community to a NP or state regulated water system based on the information you provided to me a couple weeks ago. I still need to make the change in SDWIS. As I mentioned in my previous email, this will not change anything significantly for you as you will still be monitoring for coliform bacteria quarterly and Nitrate annually.

It sounds like you are going to start using the new well this Saturday. That is fine by us, as long as the water quality is clean for coliform, arsenic and Nitrate. I have cc'ed Jay Macpherson on this email as he is doing your plan review and will need the additional information such as test results, plot plan, well log, etc. Please send Jay all the information he requested in your conditional approval letter dated 3/4/11.

Thanks, Casey.

Casey Lyon, R.E.H.S.
Natural Resource Specialist
Office of Environmental Public Health
Public Health Division, Oregon Health Authority
Phone: 541-726-2587 ext. 31
Fax: 541-726-2596
Email: casey.lyon@state.or.us

>>> "Judy Bedsole" <fishmill1@charter.net> 4/21/2011 4:46 PM >>>
Hi Casy

We just got our final test results in for Fish Mill Lodges and RV Parks new well and it was absent of any contaminants so we will officialy be disconnected from Fish Mill Lodges Water System By the operator of Daves pump on Saturday afternoon so if it is at all possable could you please let me know of FMLWS new classification on Monday morning so I can present it to the Oregon Public Utilities Commission hearing scheduled on Monday afternoon. Thank you for your help casy out of all the county and state employees and representatives I have dealt with in the history of FMLWS, you were the only one who help the utility rather than trying to complicate and make the situation impossable to comply with. I complement you for your professionalism and help through out all the years we have work together.

Judy Bedsole

Fish Mill Lodges Resort and RV Park

CURRENT OPEN DOCKETS & OTHER COMPLAINTS

- 3/7/2011 Docket UM 1528 Fish Mill files complaint to permanently disconnect Bonnie Lucas and Dennis and Barbara Varenas as customers of Fish Mill.
Schedule adopted:
May 10, 2011 Fish Mill Testimony
June 1, 2011 Defendants Testimony
June 22, 2011 Fish Mill's Rebuttal
July 22, 2011 Hearing in Florence
Fish Mill files emergency disconnect notices for Lucas and Varenas. Lucas has a disconnect date of 4/21/11. Varenas has no disconnect notice due to injunction from UCR 122.
Emergency Hearing schedules April 20, 2011, at 3:00 p.m. (Joint UM 1528 and UCR 135)
- 3/7/2011 Internal Investigation Fish Mill files complaint against staff: Kathy Miller and Phil Boyle.
- 2/2/2011 Docket UCR 135 Fish Mill files complaint against Don Durland seeking to permanently disconnect his service for failure to pay and tampering. Prehearing telephone conference schedules for March 11, 2011, 1:30 p.m.
Schedule adopted:
4/15/11 Company testimony/exhibits due
5/2/11 Defendant's testimony/exhibits due
5/13/11 Fish Mill rebuttal testimony due
6/2/11 Hearing by telephone 10:00 tentative
Fish Mill files emergency disconnect notices on Durlands, with a disconnect date of April 22, 2011.
Emergency Hearing scheduled April 20, 2011, at 3:00 p.m. (Joint UM 1528 and UCR 135)
- 11/19/2010 Docket UCR 133 Varenas files complaint against Fish Mill for providing contaminated water service.
- 7/2/2010 Docket UM 1489 Fish Mill files application to abandon service to residential customers. Staff motion to hold the schedule in abeyance for 45 days to continue good faith settlement discussions.
- 3/30/2010 Docket UCR 123 Varenas files complaint against Fish Mill for property damage.
- 3/23/2010 Docket UCR 122 Varenas files complaint against Fish Mill. FM disconnects Varenas service without a legitimate cause and without proper notice. On 4-7-2010

Commission order #10-133 was issued requiring FM to reconnect service until they followed proper procedure for disconnection. FM refuses to comply with this Commission order, so Dept. of Justice files a complaint against FM in Lane County Circuit Court.

4/24/2010 Lane County Circuit Court Case #121008922

Due to the failure of FM to comply with Commission Order #10-133 in UCR 122, a complaint was filed in Lane County Circuit Court on April 22, 2010, seeking a preliminary injunction against Fish Mill, and ordering it to comply with the Commission order. The preliminary injunction was granted by the court. FM ordered to reconnect service to Varenas, and was prohibited from disconnecting service again without an order from the PUC or court. The preliminary injunction is still in place. Dept. of Justice offered FM a stipulated settlement, Company refused to respond.

Judge grants a 90-day extension of the injunction based on good faith negotiations going on between PUC and Fish Mill that would resolve all issues. Negotiations unsuccessful.

Fish Mill request hearing on PUC Civil Complaint, 4/6/2011 judge denies request.

The Drinking Water Program of the Oregon Health Authority (DWP) currently has an open civil penalty case against Fish Mill. On September 21, 2010, water samples taken at Fish Mill tested positive for e-coli. On September 30, 2010, Fish Mill notified Lane County Environmental Health Department that it was not going to collect confirmation samples as required by DWP's administrative rules. On October 27, 2010, DWP issued a NOTICE OF INTENT TO IMPOSE CIVIL PENALTY for total of \$1000. On March 2, 2011, DWP issued an AMENDED NOTICE OF INTENT TO IMPOSE CIVIL PENALTY for \$50 per violation for a period of ten days, 2 violations per day, for a total penalty of \$1,000. It also state that if the violations continue, Fish Mill may be subject to subsequent civil penalties of \$50 per day per violation. Fish Mill has requested a hearing on the matter. The time and place of the hearing has been scheduled. Fish Mill is currently under a boil water notice.

DWP attempted to settle the penalty by reducing the penalty to only \$100 if Judy Bedsole agreed to correct deficiencies found at the water system, but she refused, and the settlement never took place.

CLOSED DOCKETS

4/30/2010	Docket UI 297	Fish Mill files affiliated interest application for water use agreement with Bedsole Family Trust. Application approved with conditions.
3/3/2010	Docket UCR 121	Varenas files billing dispute against Fish Mill. Varenas has been making regular monthly payments to FM, but FM has not cashed all of the checks and has subsequently turned Varenas over to multiple collection agencies. On 3/2/2011, ALJ Pines issued Commission Order #11-073 which resolves this complaint. Varenas is ordered to make checks payable to Fish Mill Lodges & RV Park rather than Fish Mill Lodges Water System. FM has agreed to cash checks made out in this manner and to recall the debt from the collection agencies. Reconsideration denied.
2/5/2009	Docket UCR 108	Varenas files first formal complaint against Fish Mill for utility's refusal to provide Varenas an application for service. Order No. 09-123 orders FM to provide Varenas with an application for service.
1/5/2009	Docket UW 133	Fish Mill files application for company/customer agreement, application withdrawn by company.
9/17/2007	Docket UW 123	Fish Mill files application for a general rate increase. Commission approves a 294.6 percent revenue increase.
8/16/2007	Docket WJ 16	Fish Mill files request for rate regulation. Commission asserts rate regulation.
3/6/1999	Docket UW 64	Fish Mill files application to abandon service to customers. Commission denies application as part of stipulation of UW 64 and WA 7.
1/24/2000	Docket WA 7	Fish Mill files application for exclusive service territory. Commission approves exclusive service territory as part of stipulation of UW 64 and WA 7.
12/31/1997	Docket ADR 3	PUC mediates to resolve easement dispute with Lawrence Gunn. No resolution determined.

FISH MILL LODGES WATER SYSTEM

Item	Cost	Auto/ Travel	Prof/ Legal	O&M	Postage	Tools	Office Sup- plies	PUC Regula- tory Fee	Electric	Testing	Labor	Prop- erty Tax	Chem- icals	Repairs	General Liability	Com- puter/ Elec- tronic	Amorti- zation of Rate Case Exp	Fed Tax	State Tax	Annual Depre- ciation Exp	
Auto - for court appearance	\$18	\$18																			
Parking - for court appearance/stalking	\$18	\$18																			
Travel - court appearance/stalking	\$98	\$98																			
Travel - court appearance/stalking	\$79	\$79																			
Prof & Legal Fees - representation stalking	\$4,095		\$4,095																		
Additional Prof & Legal	\$20,831		\$20,831																		
Maintenance - see Company Exhibit C	\$495			\$495																	
Water related - 495.06																					
Postage - stamps	\$58				\$58																
PO Box annual rental	\$42				\$42																
Postage	\$16				\$16																
Supplies - miscellaneous	\$16						\$16														
Tools	\$2					\$2															
PUC regulatory fee	\$10							\$10													
Water Electricity	\$314								\$314												
Water testing	\$156								\$156												
Labor	\$9,269									\$9,269											
Property Tax spring 2 acres #1056884	\$237											\$237									
Tax-Taxes - 236.55																					
Real Property - 236.55																					
Resort Tax #0873669 - 236.55																					
Utilities water, gas, electric - 479.79																					
Water Central Lincoln PUD - 479.79																					
NOT WATER SYSTEM RELATED																					
TOTAL ANNUAL EXPENSE	\$213	\$24,926	\$495	\$117	\$2	\$2	\$16	\$10	\$314	\$156	\$9,269	\$237	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
ANNUAL EXPENSES RECOVERABLE IN RATES	\$0	\$877	\$114	\$20	\$60	\$0	\$10	\$270	\$218	\$1,037	\$272	\$70	\$1,015	\$32	\$0	\$259	\$32	\$16	\$16	\$80	
Difference	(\$213)	(\$24,049)	(\$381)	(\$97)	\$58	(\$16)	\$0	(\$44)	\$62	(\$8,232)	\$35	\$70	\$1,015	\$32	\$0	\$259	\$32	\$16	\$16	\$80	
REMOVING LEGAL AND LABOR EXPENSES	\$213	\$0	\$495	\$117	\$2	\$16	\$10	\$314	\$156	\$0	\$237	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	
ANNUAL EXPENSES IN UW 123	\$0	\$877	\$114	\$20	\$60	\$0	\$10	\$270	\$218	\$1,037	\$272	\$70	\$1,015	\$32	\$0	\$259	\$32	\$16	\$16	\$80	
Difference	(\$213)	\$877	(\$381)	(\$97)	\$58	(\$16)	\$0	(\$44)	\$62	\$1,037	\$35	\$70	\$1,015	\$32	\$0	\$259	\$32	\$16	\$16	\$80	
REPLACING LEGAL AND LABOR EXPENSES WITH	\$213	\$877	\$495	\$117	\$2	\$16	\$10	\$314	\$156	\$1,037	\$237	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	
ALLOWABLE EXPENSE IN RATES	\$213	\$877	\$495	\$117	\$2	\$16	\$10	\$314	\$156	\$1,037	\$237	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	

\$3,474

\$4,382

\$35,754

\$1,560

\$4,382

\$2,822

DHS-Drinking water program
444 A. st. Springfield, Or 97477
Environmental Health Specialist
Katrinka.DANIELSON@co.lane.or.us

RECEIVED

2010 SEP 28 A 10: 07

Judy Bedsole
Fish Mill Lodges & RV Park
4844 Fish Mill Way
Westlake, OR 97493

OPUC

October 26, 2010

Re: Fecal coliform [or E. coli] bacteria were found in the water supply Boil water notice have been posted.
Att: Katrinka Danielson,

Katrinda,

OPUC has repeatedly ignored FMLWS complaints and request for emergency funding, feasibility study and legal expenses needed to correct these problems that keep creating the expence of water samples OPUC has successfully depleted all funds for FMLWs in doing so, eliminating the ability for FMLWS to pay for any more water samples or to address this problem any further. It would also be illegal for me to address this problem any further because it is a violation of Oregon state law to operate a business with out a business license, it is also illegal to not pay an employee at least minimum wage. So I must now insist the laws be observed.

Since The OPUC has repeatedly refused FMLWS the ability, the funding, and the funds for legal service required to solve these problems and since it is FMLWS duty to provide safe and reliable service the OPUC must immediately grant FMLWS request that is already before the OPUC. The request to terminate service for lack of economic feasibility for the publics health and safety, of which this a perfect example.

It does no good to continue taking water samples, shocking the system, forcing the long term users of FMLWS to consume toxins in the form of needlessly chlorinating the system with out addressing the problems.

Judy Bedsole
Cc OPUC Sent by Mail
550 Capitol Street NE, Suite 215
PO Box 2148
Salem OR 97308-2148

Ben Kearney Sent by email

From: Judy Bedsole [mailto:fishmill1@charter.net]
Sent: Thursday, September 30, 2010 5:59 PM
To: 'DANIELSON, Katrinka L'
Subject: Fish Mill Lodges Water System

Hi Katrinka,

I do appreciate your time and effort in trying to help me with this situation.

After digesting our conversation and your email I have decide not to take the 5 repeat samples. I looked up the attached water use agreement; I am not responsible for the Water System expenses and can not be held responsible for its lack of funds.

I want to cancel the water systems inspection arranged for Monday October 4, 2010. I will not be available.

Once again thank you,
Sincerely,
Judy Bedsole

C S
10/2

**BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF OREGON
for the
PUBLIC HEALTH DIVISION
DEPARTMENT OF HUMAN SERVICES**

IN THE MATTER OF) **PROPOSED ORDER**
CLAIMANT)
) OAH Case No. 20103001
FISH MILL LODGES)
Judy Bedsole, Owner)

HISTORY OF THE CASE

On October 27, 2010, the Department of Human Services (Department) issued a Notice of Intent to Impose Civil Penalty (Notice) to Judy Bedsole of Fish Mill Lodges (claimant).¹ Claimant timely requested a hearing and the matter was referred to the Office of Administrative Hearings (OAH) on November 18, 2010. It was assigned to Administrative Law Judge (ALJ) Rick Barber. Hearing was scheduled for March 17, 2011.

Summary Determination. On January 5, 2011, the Department filed a Motion for Summary Determination in the case. Claimant filed a response on January 25, 2011, but I did not receive it before issuing my letter ruling of January 25, 2011, denying the motion. On January 27, 2011, after reviewing Claimant's response, I again denied the motion.

Hearing. Hearing was held by telephone on March 17, 2011, with ALJ Barber presiding. Claimant was present and represented by Judy Bedsole, who testified. Charles and Shawn Bedsole also testified. The Department was represented by Senior Assistant Attorney General Shannon O'Fallon. Lane County Environmental Health employee Katrinka Danielson and Drinking Water Program (DWP) Enforcement Coordinator Brad Daniels testified for the Department. The hearing record closed on March 17, 2011.²

ISSUE

1. Whether claimant failed to perform follow-up water testing after a positive test for coliforms, thereby violating OAR 333-161-0036(6)(s) and OAR 333-161-0025(1).

2. Whether claimant failed to take immediate corrective action after a positive test for coliforms, thereby violating OAR 333-161-0025(2).

¹ An Amended Notice was sent out on March 2, 2011, and is the notice at issue in this case.

² Claimant sent additional documents to the OAH after the hearing record closed. Because there was no agreement to hold the record open for additional evidence, I have not reviewed or considered any additional information.

3. Whether, if the violations above are shown, claimant should be required to pay civil penalties in the aggregate amount of \$1,000.

EVIDENTIARY RULINGS

Exhibits A1 through A18, offered by the Department, were admitted into evidence without objection. Claimant offered Exhibits C1 through C14 before the hearing, and then indicated her intent to additionally rely on the exhibits she had submitted for the Motion for Summary Determination. I have marked the summary determination documents as Exhibit C15.

The Department objected to Exhibits C1-3 and C6-10 on relevance grounds, and Exhibit C11, an audio recording, because it was recorded illegally. The relevance objections were overruled, and the objection to Exhibit C11 was sustained. Therefore, all offered documents other than Exhibit C11 have been admitted into evidence.

FINDINGS OF FACT

1. Fish Mill Lodges (claimant) operates a public water system with approximately 23 connections, serving water to the Lodge's renters and to three residences nearby in Lane County. The water originates in a spring (groundwater) with a pump house some distance from claimant's location. (Test. of Daniels, Ex. A1).

2. On September 16, 2010, a routine water sample was taken from claimant's Cabin 5. When tested, the sample showed that total coliforms were present but E. coli was absent. (Ex. A2). Four additional samples taken on September 21, 2010 confirmed the presence of both total coliforms and E. coli in claimant's water supply. (Ex. A3-A6).

3. Lane County Environmental Health manages the Drinking Water Program in Lane County under state contract. Katrinka Danielson manages the program for the county. When Judy Bedsole contacted Danielson about the positive samples, Danielson told her she needed to immediately take five confirmation samples from the water source. Bedsole told her she could not afford to take the samples, so Danielson offered to take the samples at Lane County's expense. Bedsole initially agreed to allow the samples to be taken, and the visit to take samples was scheduled for October 4, 2010. (Test. of Danielson).

4. On September 30, 2010, Bedsole sent an email to Danielson, stating:

Hi Katrinka,

I do appreciate your time and effort trying to help me with this situation.

After digesting our conversation and your email I have decide[d] not to take the 5 repeat samples. I looked up the attached water use agreement; I

am not responsible for the Water System expenses and can not be held responsible for its lack of funds.

I want to cancel the water systems inspection arranged for Monday October 4, 2010. I will not be available.

(Ex. A9 at 1). As a result, the water samples were not taken by Lane County or claimant, and the matter was referred to the Department to address. (*Id.*; Test. of Danielson).

5. The repeat samples are supposed to be done within 24 hours of a positive test. In practice, the Department gives the water provider 14 days to do repeat tests. (Test. of Danielson, Daniels).

6. Brad Daniels is the Enforcement Coordinator for the Department's Drinking Water Program; it is his job to conduct investigations and, if appropriate, issue notices to water suppliers for rule violations. After claimant informed the Department of the contamination in the tests on September 24, 2010, Daniels office informed claimant that it needed to do three things: 1) collect the five confirmation samples; 2) issue and post "boil water" notices immediately; and 3) take immediate action to isolate and correct the contamination. (Test. of Daniels).

7. Claimant posted the "boil water" notices and contacted those relying on system water about the problem. Claimant did not perform the five confirmation tests, and had not corrected or isolated the source of the contamination as of November 22, 2010, almost two months after the contamination was found. (Test. of Danielson; Test. of J. Bedsole).

8. In the process of setting the appointment to take samples and to otherwise inform claimant about how to resolve the problem, Danielson provided several documents with written suggestions about identifying and repairing the source of contamination. Claimant received them. The recommendations included clearing away brush from the source, making sure no animal carcass had made its way into the water supply, and closing up any avenues of ingress into the source. (Ex. A8, A9). When Danielson visited the water source on November 22, 2010, she found several possible reasons why E. coli might be present. None of her recommendations had been followed by claimant. (Test. of Danielson).

CONCLUSIONS OF LAW

1. Claimant failed to perform follow-up water testing after a positive test for coliforms, thereby violating OAR 333-161-0036(6)(s) and OAR 333-161-0025(1).
2. Claimant failed to take immediate corrective action after a positive test for coliforms, thereby violating OAR 333-161-0025(2).
3. Claimant must pay civil penalties in the aggregate amount of \$1,000.

OPINION

The Department contends that claimant violated two of its responsibilities under the Drinking Water Program, and proposes to assess an aggregate civil penalty of \$1000 against claimant. As the proponent of those positions, the Department has the burden to present evidence in support of its case. The Department must prove its case by a preponderance of the evidence. *Sobel v. Board of Pharmacy*, 130 Or App 374, 379 (1994), *rev den* 320 Or 588 (1995) (standard of proof under the Administrative Procedures Act is preponderance of evidence absent legislation adopting a different standard). Proof by a preponderance of the evidence means that the fact finder is persuaded that the facts asserted are more likely true than not. *Riley Hill General Contractor v. Tandy Corp.*, 303 Or 390 (1987).

Claimant, a "transient non-community water system" under OAR 333-061-0020(197),³ has various responsibilities under the laws of the Drinking Water Program, OAR 333-061-0025 sets forth the responsibilities of water suppliers, including the following:

Responsibilities of Water Suppliers

Water suppliers are responsible for taking all reasonable precautions to assure that the water delivered to water users does not exceed maximum contaminant levels, to assure that water system facilities are free of public health hazards, and to assure that water system operation and maintenance are performed as required by these rules. This includes, but is not limited to, the following:

- (1) *Routinely collect and submit water samples* for laboratory analyses at the frequencies prescribed by OAR 333-061-0036;
- (2) *Take immediate corrective action* when the results of analyses or measurements indicate that maximum contaminant levels have been exceeded and report the results of these analyses as prescribed by OAR 333-061-0040[.]

(Emphasis added). The emphasized portions of the rule are the portions the Department accuses claimant of violating.

The Water Samples. Subsection (1) of the rule quoted above requires the water system to routinely collect water samples "at the frequencies prescribed in OAR 333-061-

³ That rule states:

(197) "Transient Non-Community Water System (TNC)" means a public water system that serves a transient population of 25 or more persons.

0036. That rule, in turn, describes what is expected when there has been a positive coliform/E. coli test:

Beginning on December 1, 2009, if the Department does not require corrective action as prescribed by OAR 333-061-0032(6)(b) for an E. coli -positive source water sample collected in accordance with subsection (6)(r) of this rule and not invalidated as prescribed by subsection (6)(x) of this rule, *the water system must collect five additional source water samples from the same groundwater source within 24 hours of being notified of the E. coli-positive sample.*

OAR 333-061-0036(6)(s)(emphasis added). Interestingly, although the rule requires a retest within 24 hours, the standard in the industry is to retest within 14 days.

Therefore, combining the rule and the industry standard, claimant was required to take five additional source water samples within 14 days of the positive E. coli sample. Claimant did not do so.

Bedsole told Danielson that claimant did not have the financial ability to pay for the additional testing, and Danielson offered to do the testing at no charge. Claimant initially agreed, but Ms. Bedsole later inexplicably declined to allow the county to take the five additional samples.

Consequently, the Department has established that claimant violated the administrative rule and failed to take the five additional samples required.

Immediate Corrective Action. The phrase “immediate corrective action” is not defined in the administrative rules, so I give the words in the phrase their plain meaning in the English language. The word “immediate” signifies that what occurs must occur right away, while the word “corrective” indicates that the action must be intended to resolve the problem—in this case, the contamination problem. Finally, the word “action” refers to the necessity to “act.” To act is to do something.

In this case, claimant took no apparent action, immediate or otherwise. Claimant did not correct the contamination problem despite Danielson’s offer to assist and despite the wealth of information she provided to claimant. When Danielson visited the water source on November 22, 2010, the possible sources of E. coli were evident but none of her recommendations to resolve the problems had been implemented by claimant.

One of Bedsole’s sons testified that the brush had been cleared away from the water source, but Danielson’s testimony demonstrates that it was still there in November. Judy Bedsole testified that efforts were made to resolve the problems, but there are two problems with her testimony. First, she testified that she was unable to go to the site because of a physical condition. If that is true, then she did not have personal knowledge of the conditions at the source and her testimony is suspect.

Second, it was apparent from Bedsole's testimony that she was unclear about when changes were made at the water source. She testified about changes being made, but the context suggests that those changes took place after Danielson's November 22 visit, if at all. Those changes, if they in fact occurred, were not immediate enough to meet the terms of the administrative rule. Consequently, claimant violated this provision as well.

The Sanction. ORS 448.285 states in part:

Penalty schedule; factors to be considered in imposing penalty; rules.

(1) The Director of the Oregon Health Authority shall adopt by rule a schedule or schedules establishing the amount of civil penalty that may be imposed for a particular violation. No civil penalty shall exceed \$500 per day, except that a violation at any water system that serves more than 10,000 people shall be subject to a civil penalty not to exceed \$1,000 for each day of violation.

(2) The director may impose the penalty without hearing but only after the notice required by ORS 448.280 (2). In imposing a penalty pursuant to the schedule or schedules adopted pursuant to this section, the director shall consider the following factors:

(a) The past history of the person incurring a penalty in taking all feasible steps or procedures necessary or appropriate to correct any violation.

(b) Any prior violations of statutes, rules, orders and permits pertaining to the water system.

(c) The economic and financial conditions of the person incurring the penalty.

(3) The penalty imposed under this section may be remitted or mitigated upon such terms and conditions as the Oregon Health Authority considers proper and consistent with the public health and safety.

(4) In adopting rules or imposing penalties under this section for violations of ORS 448.280 (1)(b), the director shall collaborate with the accrediting authority.

This statute provides the basis for civil penalties in this case, allowing for daily penalties for continued violations.

Under the administrative rules interpreting this statute, the amount of civil penalties is based upon the population served by the water system. For systems serving between 10 and 100 customers daily, the maximum civil penalty for a violation is \$50 per day. OAR 333-061-0290(5).

The Department determined that claimant violated both of its noted responsibilities under the rules (water sampling and immediate correction) each day, for a total of \$100 in penalties each day. The Department limited its assessment of penalties to ten days, although the violations clearly continued beyond that ten-day period. The Department's assessment of civil penalties is reasonable, and is supported by the law and the facts. The Amended Notice of March 2, 2011 should be affirmed.

ORDER

I propose that the Department make the following ruling in this case:

That the Amended Notice of Intent to Impose a Civil Penalty, dated March 2, 2011, should be AFFIRMED.

Rick Barber,
Administrative Law Judge
Office of Administrative Hearings

EXCEPTIONS

This is the administrative law judge's Proposed Order. If the Proposed Order is adverse to you, you have the right to file written exceptions and argument to be considered by the Administrator in issuing the Final Order. Your exceptions and argument must be received by the 30th day from the date of service. Send them to:

Katherine Bradley, Administrator
800 NE Oregon Street, Suite 825
Portland, OR 97232

The Administrator or designee will issue a Final Order that will explain your appeal rights.

CERTIFICATE OF MAILING

On the 15th day of April 2011, I mailed the foregoing PROPOSED ORDER in Reference No. **20103001**.

BY FIRST CLASS MAIL:

Fish Mill Lodges
PO Box 95
Westlake, OR 97493

Brad Daniels
800 NE Oregon St., Ste 640
Portland, OR 97232

BY ELECTRONIC MAIL:

Shannon O'Fallon, AAG
Oregon Department of Justice
1515 SW 5th Avenue #410
Portland, OR 97201

Misty Fragua
Hearing Coordinator

Staff/101
Miller/16

Fish Mill Lodges and RV Park
PO Box 95
4844 Fish Mill Way
Westlake, OR 97493

April 1, 2011

RE: Fish Mill Lodges Water System

NOTICE: There is a high probability that the water you are receiving is contaminated with E-coli and or Coliform bacteria.

I, Judy Bedsole as the operator of Fish Mill Lodges Water System have determined that it is my duty to inform you that it is not in your best interest to use this product.

Since this utility and its operator are not able to terminate this product from being delivered to your home, because of the Oregon Public Utilities Commissions refusal to allow this utility the ability to terminate or refuse service to its customers as well as an injunction placed on FMLWS by the O.P.U.C. in spite of the possibility of health risk to you and to anyone or any animal you may allow to consume or come into contact with the water that this utility is being forced to continue delivering to your home. Therefore by receipt of this letter you have formally been put on notice that I Judy Bedsole, Fish Mill Lodges Water System and Fish Mill Lodges and RV Park accept no liability if you chose to continue to use this product which we are being force to deliver to your home, **USE WATER AT YOUR OWN RISK!**



Judy Bedsole

Cc: Bonnie Lucas
PO Box 87
Westlake, OR 97493

Mr. & Mrs. Don Durland
123 Oasis Drive
Denison, TX 75020

Dennis L. & Barbara J. Varenas
721 Old Garden Valley Rd.-
Roseburg, OR 97471-9546

GRANTING OF TERMINATION OF WATER SERVICE BY COMMISSION

UP 244 Westland Estates Water System, Inc. - Order No. 08-360, July 7, 2008

Signed by Commissioners Lee Beyer, John Savage, and Ray Baum. Application filed March 12, 2008. The Commission approved termination of water service to approximately 22 customers due to well nitrate contamination and the company's inability to drill a new well due to water right restrictions. The Company was required to provide service until May 31, 2009, or earlier if all customers had secured alternative water service.

UP 183 Vista Dale Water Company - Order No. 02-044, Issued January 24, 2002

Signed by Becky L. Beier, Commission Secretary. The Application was filed on November 13, 2000. The Commission approved termination of water service to approximately 25 customers because the system had long been inadequate, represented a future health hazard, and its close proximity to septic systems gave no assurance that a new well would produce safe water. Vista Dale was completely surrounded by Junction City so an alternative water source was available. The Commission required Vista Dale to continue to provide water until September 30, 2003.

UW 41 Western Estates Water Company - Order No. 93-545, Issued April 14, 1993

Signed by Ron Eachus, Roger Hamilton, Joan Smith. Application filed October 21, 1992. The Commissions allowed the company to terminate service to 62 customers. The customers were surrounded by the City of Keizer and the city was willing and able to accept the customers. The Commission required the company to provide service until all customers were connected with Keizer or for 90 days from the date of the order, whichever came first.

UM 303 Marastoni Water Company - Order No. 91-32, Issued January 9, 1991

Signed by Ron Eachus, Myron Katz, Joan Smith. Application filed April 23, 1990. The Commission allowed the company to terminate service because of the age and health of the system owner and because there were alternative water supply options available. Marastoni served eight customers. The Commission gave the customers until April 1991 to find an alternative water source.

UW 23 Cleawox Acres Water Company - Order No. 90-879, Issued June 5, 1990

Signed by Ron Eachus, Nancy Ryles, Myron Katz. Application filed October 4, 1988. The Commission suspended the request to terminate service for six months. The suspension was extended twice more until November 29, 1989. On March 21, 1990, the ownership was transferred to the customers. The Commission ordered termination of Cleawox water service on June 5, 1990.

UW 12 Fruitdale Water Utility - Order 88-255, Issued March 10, 1988

Signed by Ron Eachus, Paul Cook, Nancy Ryles. On September 17, 1986, Fruitdale filed for termination of water service to approximately 180 customers. On September

24, 1986, Fruitdale was notified that it was required to provide water service "until all reasonable alternatives had been explored and a practical solution" had been found. By July 1988, all but six customers had made arrangements for alternative water service with the city or other Local Improvement Districts. The Commission found that the remaining six customers had been presented with several reasonable water service alternatives and had been given sufficient time to make a decision. The Commission granted termination of water service to all customers, including the six undecided customers, when the last eight customers (who agreed to go with the city) switched to city water.

ABBREVIATED HISTORY OF FISH MILL LODGES WATER SYSTEM

October 29, 1996 - Call from Shawn Bedsole. He identified himself as representing Fish Mill Lodges (FM), a fishing resort, that owns a water system. Bedsole stated that the owner of water system and resort are the same. Called regarding problems with water lines and a building that is being built over the water lines.

August 27, 1997 - Letter from Staff to FM (per Shawn Bedsole's request) stating Fish Mill is "an investor-owned public water utility operating in the State of Oregon. FMLWS currently meets the definition of a public utility as defined in ORS 757.005... and is subject to the jurisdiction of the PUC."

November 5, 1997 WATER OUTAGE - Phone Call to Shawn Bedsole revealed that the water system had stopped running at approximately 3:00 a.m. Tuesday.

November 7, 1997 WATER SERVICE RESTORED - With help from State Police.

December 31, 1997 Docket ADR 3 - Parties agree to PUC mediation to resolve easement dispute.

February 6, 1998 Docket ADR 3 - All parties met at the Dunes City -City Hall to mediate a resolution to the problem. No resolution was reached.

February 18, 1998 Docket ADR 3 - ADR 3 Closed without an Order.

March 6, 1999 Docket UW 64 - FM files application to terminate water service to customers.

November 4, 1999 Docket UW 64 - Prehearing conference and public comment hearing held in Florence.

January 24, 2000 Docket WA 7 - FM files application for an exclusive service territory.

February 9, 2000 Docket UW 64 - AU suspends UW 64 schedule to allow parties to pursue settlement options. FM represented by Dave Gordon, Atty.

November 20, 2000 Commission Order No. 00-738 (WA 7) - Approved FM service territory. Territory includes 3 residential customers and Fish Mill Lodges (the fishing resort).

November 20, 2000 Commission Order No 00-739 - Dismisses UW 64 due to negotiated stipulation between AAG Graham and Fish Mill attorney. FM agrees to withdraw UW 64 as soon as the Commission grants Fish Mill service territory. In return, Commission agrees not to adjudicate claims by property owners, who are not FM customers, who claim rights to FM water based on property law.

January 3, 2005 - Judy Thibedeau files informal complaint. FM states is still refusing to serve new customers if Judy sells her house.

January 12, 2005 - Letter from AAG, FM has duty to serve when Thibedeau's property is sold.

December 21, 2006 - Don and Suzanne Durland file informal complaint. Durland's purchased home and FM refuses to serve.

March 20, 2007 - Joseph & Dorothy Morris file informal complaint. FM states it will not serve new customers when Morris' house is sold.

August 16, 2007 Docket WJ 16 - FM requests Commission rate regulation.

September 10, 2007 WJ 16 Commission Order No. 07-391 - Commission asserts rate regulation.

April 24, 2008 UM 123 Commission Order No. 08-235 - Commission approves new rates, 294.6% revenue increase, annual revenues of \$4,546, and a 9.5% rate of return on a rate base of \$1,736.

May 19, 2008 UW 123 Commission Order No. 08-257 - Makes correction to Order No. 08-235.

July 2, 2008 UW 123 - FM files Motion for Reconsideration.

August 22, 2008 UW 123 Commission Order No. 08-430 - Application for reconsideration denied.

December 16, 2008 - Dennis and Barbara Varenas file informal complaint. Varenas purchased home, FM says it won't serve Varenas.

January 5, 2009 Advice No. 09-1 - FM files application for adoption and grandfathering of customer agreement.

February 3, 2009 - Commission regular public meeting, Staff requests 6 month suspension of customer agreement.

February 3, 2009 - Letter (undated) from Shawn Bedsole to Rick Willis, PUC Executive Director, complaint against PUC staff Phil Boyle and Kathy Miller.

February 4, 2009 - Letter from Rick Willis, Executive Director, addressing Fish Mill complaint against Phil Boyle and Kathy Miller, PUC staff.

February 5, 2009 - Fish Mill letter to Lee Beyer, complaint against Kathy Miller, PUC staff.

February 5, 2009 UCR 108 Formal Complaint - Filed by Dennis and Barbara Varenas for FM's refusal to accept an application for service, although water was still connected.

February 6, 2009 Docket UW 133 Order No 09-047 - Agreement suspended until August 4, 2009.

February 9, 2009 Expedited Hearing - RE: Varenas complaint. FM threatening to d/c service to Varenas in FM letter of Feb 2, 2009. D/c to take place Feb 10, 2009. AU presides. FM agrees not to d/c until UCR 108 is finished.

February 13, 2009 - FM files complaint, in part, against PUC regulation, filed by Atty Wm. Ohle, submitted to Julie Rutherford, Oregon Dept. of Justice.

March 3, 2009 Prehearing Conf UW 133 - RE: FM customer agreement. Wm. Ohle represents company. Ohle request time to confer with Staff, amend agreement. Staff status response to discussion due March 17, 2009.

March 3, 2009 Prehearing Conf UCR 108 - Wm. Ohle represents company. His testimony due March 17. Staff testimony due -April 8.

March 13, 2009 - Telephone Conference with Atty Ohle, Jason Jones, Mike Dougherty, & Kathy Miller. Mr. Ohle will request UW 133 to be withdrawn. Answered questions re: service territory. FM must serve the three residential customers, but is not required to serve any new development. Copy of UW 64 order sent to Mr. Ohle.

March 3, 2010 Formal Complaint UCR 121- Filed by Dennis and Barbara Varenas. Complaint: Varenas has requested that FM send him a bill for water services. FM refuses to remit billing and requires payment in advance.

March 23, 2010 Formal Complaint UCR 122 - Filed by Dennis and Barbara Varenas. Complaint: On March 18, Shawn Bedsole went to pump house and turned water off to customer with no explanation or notice as required. Water was not restored until approximately 7:45 on March 19. FM would not answer the telephone.

March 30, 2010 Formal Complaint UCR 123 - Filed by Dennis and Barbara Varenas. Complaint: On March 26, 2010, Varenas was working on driveway when Shawn Bedsole came over with camera onto Varenas property. Varenas told Bedsole twice to leave. Bedsole kicked box that covers water filter & turn off valve, and broke several bushes.

April 5, 2010 Formal Complaint UCR 123 (supplemental filing) - Filed by Dennis and Barbara Varenas. Complaint: On March 30, Shawn Bedsole entered Varenas' private property and cut out a section of customer service line without authority or provocation, disconnecting water service. No prior notice provided.

April 6, 2010 Expedited Hearing UCR 121, 122, 123 - Regarding Varenas' water service, issues limited to reconnection of service.

April 7, 2010 Commission Order No. 10-133 - FM ordered to restore Varenas water service by 5:00 p.m., Friday, April 9, 2010.

April 22, 2010 Lane County Circuit Court Case #121008922 - Due to the failure of FM to comply with Commission Order #10-133 in UCR 122, a complaint was filed in Lane County Circuit Court seeking a preliminary injunction against Fish Mill and ordering it to comply with the Commission order. The preliminary injunction was granted by the court. FM was ordered to reconnect service to Varenas and was prohibited from disconnecting service again without an order from the PUC or court. The preliminary injunction is still in place. Legal counsel offered FM a stipulated settlement, but the Company refused to respond. The Judge granted a 90-day extension of the injunction so Commission staff could pursue good faith negotiations with Fish Mill that would resolve all issues. The negotiations are unsuccessful. Fish Mill requested a hearing on PUC's Civil Complaint 4/6/2011 the judge denies Fish Mill's request.

April 30, 2010 Affiliated Interest Application UI 297 - FM files a water use agreement with the Bedsole Family Trust

July 12, 2010 Abandonment Application UM 1489 - Fish Mill files application to abandon service to residential customers. Staff motion to hold the schedule in abeyance for 45 days to continue good faith settlement discussions.

July 15, 2010 Commission Order No. 10-267 – The Commission approves Fish Mill's Affiliated Interest Application water use agreement with the Bedsole Family Trust.

September 2010 Water Contamination – September 26, 2010, water samples tested positive for total coliforms and E. coli.

March 2, 2011 Commission Order 11-073 – Commission issues order resolving UCR 121 (billing dispute).

March 7, 2011 Complaints Filed Against Staff - Fish Mill files complaint against staff Kathy Miller and Phil Boyle.

March 7, 2011 Permanent Disconnection Application UM 1528 - Fish Mill files complaint to permanently disconnect Bonnie Lucas and Dennis and Barbara Varenas as customers of Fish Mill. Schedule adopted:
May 10, 2011, Fish Mill Testimony
June 1, 2011, Defendants Testimony
June 22, 2011, Fish Mill's Rebuttal
July 22, 2011, Hearing in Florence

April 6, 2011 Commission Order 11-104 – Commission issues order denying applications for reconsideration UCR 121 (billing dispute).

April 14, 2011 Emergency Disconnect Notices - Fish Mill files emergency disconnect notices for Lucas, Durland, and Varenas.

April 19, 2011 Emergency Hearing Notice – ALJ Power schedules April 20, 2011, hearing on emergency disconnects (Joint UM 1528 and UCR 135).

April 22, 2011 Commission Order 11-131 – Commission issues order denying Fish Mill's request to disconnect or terminate water service/

CASE: UM 1489
WITNESS: Phil Boyle

**PUBLIC UTILITY COMMISSION
OF
OREGON**

STAFF EXHIBIT 200

Direct Testimony

May 2, 2011

1 **Q. PLEASE STATE YOUR NAME, OCCUPATION, AND BUSINESS**
2 **ADDRESS.**

3 A. My name is Phil Boyle. I am the Manager of Consumer Services at the Oregon
4 Public Utility Commission (Commission). My business address is 550 Capitol
5 Street NE Suite 215, Salem, Oregon 97301-2551.

6 **Q. PLEASE DESCRIBE YOUR EDUCATIONAL BACKGROUND AND WORK**
7 **EXPERIENCE.**

8 A. I have a Bachelor’s Degree in Education from Portland State University.
9 Previously, I worked for Pacific Power, a local investor-owned utility, for 23
10 years. I have worked at the Oregon Commission for the last five and one half
11 years, four years as Manager of Consumer Services.

12 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

13 A. Fish Mill Lodges Water System (Fish Mill or Company) states in its application:
14 ...customer abuses, complaints, and disputes have led to the
15 Applicant [Company] to be unable to properly administer and
16 regulate the service of water to the residences as required by
17 Oregon law and regulation.

18
19 The purpose of my testimony is to discuss the claims of customer abuse,
20 complaints, and disputes raised by Fish Mill Lodges Water System (Fish Mill or
21 Company) in its application to abandon service to its three retail customers.

22 **Q. HOW IS YOUR TESTIMONY ORGANIZED?**

23 A. My testimony is organized as follows:

24 Issue 1, Customer Abuses..... 2
25 Issue 2, Complaints/Disputes 4
26

ISSUE 1, CUSTOMER ABUSES

Q. FISH MILL LISTS CUSTOMER ABUSES, COMPLAINTS, AND DISPUTES AS PART OF ITS JUSTIFICATION FOR ABANDONING WATER SERVICE. PLEASE DESCRIBE YOUR ANALYSIS OF FISH MILL'S CLAIMS OF CUSTOMER ABUSES.

A. Fish Mill cites specific incidents that it is claiming as abuse, which cause the Company to not be able to administer and regulate the service of water it is required to provide. I will describe each incident and provide my analysis of the claims.

Claim No. 1:

Fish Mill claims that it was trying to document potential water system problems. One of its representatives entered a customer's property and was taking photos, attempting to document several potential problems with the water system. The potential problems include a possible broken water line caused by heavy excavation equipment and spraying chemicals to kill lawns that they claimed could possibly contaminate the water system.

Analysis of Claim No. 1

Fish Mill does not name the customer or specifically what "abuse" the customer is alleged to have committed. However, I believe they are referring to an incident with Mr. Dennis Varenas where Fish Mill personnel came onto the Varenas' property without permission and without announcing that they were there for water company business. Mr. Varenas considered that the person was trespassing on his property and demanded that he leave.

1 There is nothing in the Oregon Administrative Rules that allows any utility
2 unlimited and unannounced access to a customer's private property beyond the
3 disconnection point. OAR 860-036-0205 (3) does allow utilities to inspect a
4 customer's premises if they believe that a health or safety hazard exists.

5 In April 2008, Fish Mill contacted the Commission to ask for a definition of
6 OAR 860-036-0205 (3) and (7), the Grounds for Disconnection rules. I spoke
7 with Ms. Judy Bedsole at the time. She stated she believed one of their
8 customers had tapped the Company's water line to illegally extend service to
9 an adjacent property. I informed Ms. Bedsole that the Company had a right to
10 inspect the customer premises, and that failure by the customer to allow such
11 an inspection was grounds for disconnection, as long as the company provided
12 proper notice.

13 I now believe Ms. Bedsole was referring to the property that is presently
14 owned by Mr. Varenas, but the incident occurred prior to the Varenas' purchase
15 of the property. Mr. Varenas claims to have no knowledge of an illegal water
16 line. It is unknown whether Fish Mill pursued the issue, as they did not
17 communicate with Staff on this issue any further.

18 **Claim No. 2:**

19 Fish Mill claims that on or about April 14, 2010, Mr. Varenas filed a stalking
20 complaint against representatives of Fish Mill and requested a restraining
21 order. The charges were summarily dismissed by the court on or about June 7,
22 2010.

23 **Analysis of Claim No. 2:**

1 Fish Mill claims that on or about April 14, 2010, Mr. Varenas filed a completely
2 baseless restraining order and stalking charge against Fish Mill
3 representatives. Whether the charges were legitimate or not, this was a civil
4 matter which does not fall within the scope of Commission authority. This issue
5 should not be a consideration in the request to abandon service.

6 **ISSUE 2, COMPLAINTS AND ABUSES**

7 **Q. FISH MILL LISTS CUSTOMER COMPLAINTS AND DISPUTES AS PART** 8 **OF ITS JUSTIFICATION FOR ABANDONING WATER SERVICE. PLEASE** 9 **DESCRIBE YOUR ANALYSIS OF FISH MILL'S CUSTOMER** 10 **COMPLAINTS AND DISPUTES.**

11 A. Fish Mill discusses several incidents regarding customer complaints and
12 disputes that cause the Company to not be able to administer and regulate the
13 service of water it is required to provide. I will describe each incident and
14 provide my analysis of the claims.

15 **Claim No. 1:**

16 Fish Mill states Mr. Varenas refuses to sign a water use agreement.

17 **Analysis of Claim No. 1:**

18
19 In January of 2009, Fish Mill filed an application with the Commission seeking
20 to implement a water use agreement with customers. Commission Staff
21 opposed the application because it appeared to violate several administrative
22 rules and the utility's own tariffs. After consultation with staff, Fish Mill withdrew
23 their application. The Varenas' refused to sign a water use agreement which
24 was never approved by the Commission.

1 **Claim No. 2:**

2 Fish Mill claims that Mr. Varenas has a lateral water line that serves a different
3 tax lot in violation of Fish Mill policies and Commission rules.

4 **Analysis of Claim No. 2:**

5 Mr. Varenas has repeatedly denied any knowledge of a lateral line running from
6 his property to an adjacent lot. This appears to be the same issue that Judy
7 Bedsole raised in April 2008 (as previously discussed).

8 Mr. Varenas first applied for service with Fish Mill in December 2008. If a
9 previous owner of the property was providing illegal service to an adjacent
10 property, there is no reason to believe that Mr. Varenas was aware of this. Fish
11 Mill has been unable to provide the Commission with any substantiation of their
12 claim.

13 If Fish Mill can provide evidence that Mr. Varenas is knowingly diverting
14 service, it should provide such evidence to Commission Staff for review. This
15 issue is not proper grounds for abandonment of service.

16 **Claim No. 3:**

17 Fish Mill claims multiple late payments from customers as grounds for
18 abandonment.

19 **Analysis of Claim No. 3:**

20 To my knowledge, the customers have made payments to Fish Mill. The
21 customers have provided copies of checks they have written to Fish Mill. Fish
22 Mill did not cash the checks, claiming that the checks were made out
23 incorrectly. In Docket UCR 121, it became apparent that customers had been

1 making their checks payable to Fish Mill Lodges Water Company. The
2 Company claimed that its bank refused to honor the checks because they were
3 not made out to Fish Mill Lodge & RV Park. Fish Mill did not notify customers
4 that checks were being made out to the incorrect entity. Rather, they simply
5 turned customers over to a collection agency to seek payment.

6 To Staff's knowledge, once the customers became aware of this, they made
7 out checks correctly. This is not grounds for abandonment of service.

8 **Claim No. 4:**

9 Fish Mill cites Commission Docket No. UCR 108, filed February 4, 2009, as
10 grounds for abandonment.

11 **Analysis of Claim No. 4:**

12 Docket No. UCR 108 was a formal complaint heard by the Commission over
13 Fish Mills' refusal to provide Mr. Varenas with an application for service. The
14 Commission ordered Fish Mill to provide the Varenas' with an application for
15 service.

16 **Claim No. 5:**

17 Fish Mill cites a complaint received from the Commission dated January 2,
18 2010, which references OAR 860-036-0120 (Meter Reading and Bill Forms).
19 Fish Mill states that it does not have water meters.

20 **Analysis of Claim No. 5:**

21 A customer filed a complaint with the Commission claiming that Fish Mill would
22 not send them a bill for their water service. Staff sent the complaint to Fish Mill
23 on January 6, 2010, citing OAR 860-036-0120, which discusses meter readings

1 and billings. While it is true that Fish Mill does not have meters, the reference
2 to this rule was intended to show that Fish Mill is still required to bill their
3 customers for service. Fish Mill has maintained that Commission Staff told
4 them that they did not have to send monthly bills, but I have been unable to find
5 any documentation to support their claim. Regardless, a utility is required to
6 send their customers a bill. The fact that I cited this rule is not grounds for
7 abandonment of service. In any event, Fish Mill ignored the informal complaint,
8 which eventually led to the customer filing a formal complaint.

9 **Claim No. 6:**

10 Fish Mill refers to Docket No. UCR 121, dated March 3, 2010, which was a
11 formal complaint filed by Mr. Varenas for the Company's failure to provide a
12 water bill, as grounds for abandonment.

13 **Analysis of Claim No. 6:**

14 This is the same issue as mentioned in the prior question. As previously
15 stated, the rules require a utility to provide a bill to its customers. The fact that
16 the customer wishes to receive a bill, and the Commission agrees with this, is
17 not grounds for abandonment of service.

18 **Claim No. 7:**

19 Fish Mill cites Docket No. UCR 122, dated March 23, 2010, a formal complaint
20 filed by Mr. Varenas for turning the water service off improperly, as grounds for
21 abandonment of service. The formal complaint alleges Fish Mill turned off the
22 water for 24 hours to all customers, without prior notice, and did not respond to
23 phone calls while water was disconnected.

1 Analysis of Claim No. 7:

2 In this complaint, Fish Mill shut the customers' water off on a Friday. Shutting
3 off water service on a Friday is a violation of OAR 860-036-0220. In addition,
4 shutting water service off without prior notice is a violation of OAR 860-036-
5 0245. If Fish Mill was claiming an emergency disconnection under OAR 860-
6 036-0215, they did not notify the Commission as required. In Order No. 10-
7 133, the Commission ordered immediate reconnection of the water service.
8 Fish Mill's repeated violation of administrative rules is not grounds for
9 abandonment of service.

10 **Claim No. 8:**

11 Fish Mill cites Docket No. UCR 123, dated March 26, 2010, a formal complaint
12 against Fish Mill for alleged trespassing and vandalism, as grounds for
13 abandonment of service. On March 26, 2010, UCR 123, Varenas' Formal
14 Consumer Complaint, alleges a representative from Fish Mill came onto his
15 property, ignored requests that he leave, kicked a box covering the water filter,
16 turned off the filter valve, and damaged bushes. Fish Mill states that while a
17 representative from the Company did enter Mr. Varenas' property in accordance
18 with its easement, all of the other charges were patently false.

19 Analysis of Claim No. 8:

20 Fish Mill claims that they were entering the property legally according to their
21 easement, and they deny that they caused vandalism. This is the same issue
22 previously discussed under Customer Abuses, Claim #1. Regarding an alleged
23 easement that allows Fish Mill access to the customers' property, Staff is

1 unaware of such an easement. Even if such an easement existed, it would fall
2 outside of the Commission's jurisdiction, so this cannot be grounds for
3 abandonment of service. With regard to the alleged vandalism, Mr. Varenas
4 provided Staff with photographs he claims shows the damage to his property
5 caused by the Company. Again, these are not grounds for abandonment of
6 service.

7 **Q. DOES THIS CONCLUDE YOUR DIRECT TESTIMONY?**

8 A. Yes.

CERTIFICATE OF SERVICE

UM 1489

I certify that I have this day served the foregoing document upon all parties of record in this proceeding by delivering a copy in person or by mailing a copy properly addressed with first class postage prepaid, or by electronic mail pursuant to OAR 860-001-0180, to the following parties or attorneys of parties.

Dated this 2nd day of May, 2011 at Salem, Oregon.

Kay Barnes

Kay Barnes
Public Utility Commission
Regulatory Operations
550 Capitol St NE Ste 215
Salem, Oregon 97301-2551
Telephone: (503) 378-5763

UM 1489
Service List (Parties)

DON DURLAND	123 OASIS DR DENISON TX 75020-8857
BONNIE LUCAS (W)	PO BOX 87 WESTLAKE OR 97493 bonnie337@oregonfast.net
DENNIS AND BARBARA VARENAS (W)	721 OLD GARDEN VALLEY RD ROSEBURG OR 97470 varenas4@msn.com
FISH MILL LODGES WATER SYSTEM JUDY BEDSOLE (W) OWNER	PO BOX 1373 FLORENCE OR 97439 fishmill1@charter.net
PUC STAFF--DEPARTMENT OF JUSTICE JASON W JONES (W) ASSISTANT ATTORNEY GENERAL	BUSINESS ACTIVITIES SECTION 1162 COURT ST NE SALEM OR 97301-4096 jason.w.jones@state.or.us