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DEPARTMENT OF JUSTICE
GENERAL COUNSEL DIVISION

November 18, 2016

Oregon Public Utility Commission
ATTN: Filing Center
201 High Street SE, Suite 100
Salem, OR 97301

**RE: Docket UM 1769
Mountain Home Water District Application to Terminate Service**

Dear Filing Center:

Enclosed for electronic filing please find Staff's Cross-Answering Testimony (Exhibit 200).

Thank you.

Sincerely,

Sommer Moser
Assistant Attorney General
Business Activities Section

Enclosure

CASE: UM 1769
WITNESS: C. Hari

**PUBLIC UTILITY COMMISSION
OF
OREGON**

**Mountain Home Water District
Application to Terminate Service and Abandon
Water Utility**

UM 1769

Staff Cross-Answering Testimony

November 18, 2016

1 **Q. Please state your name, occupation, and business address.**

2 A. My name is Celeste Hari. I am a Water Utility Analyst in the
3 Telecommunications and Water Division of the Utility Program for the Oregon
4 Public Utility Commission (Commission). My business address is 201 High St.
5 SE Suite 100, Salem, OR 97301.

6 **Q. Have you previously provided testimony in this case?**

7 A. Yes, my previous testimony is Staff/100.

8 **Q. What is the purpose of your testimony?**

9 A. I am responding to issues related to Intervenors Mel and Connie Kroker's
10 (Intervenor) testimony submitted to the Commission on November 2, 2016. Mel
11 and Connie Kroker are current customers of the Company, and the sole
12 intervenors in this case.

13 **SUMMARY OF INTERVENORS' TESTIMONY**

14 **Q. Please summarize Intervenors Mel and Connie Kroker's testimony**
15 **submitted on November 2, 2016.**

16 A. Mr. John Lambie, a Principal Groundwater Hydrologist at E-PUR, LLC,
17 submitted testimony on behalf of Mel and Connie Kroker in this proceeding.¹
18 Witness Lambie's testimony generally focused on his analysis of the six water
19 supply wells located within and around the Mountain Home Water District and
20 the groundwater pressure and available water in the area.

21 Although Mr. Lambie did not offer specific recommendations to the
22 Commission, his testimony included several of his observations. First, Mr.

¹ See Intervenors/100.

1 Lambie discussed the groundwater conditions that could lead to well
2 interference between different wells and how to determine the health of an
3 aquifer.² In regard to the water system at issue in this case, Mr. Lambie
4 concluded that “[e]xtraction of groundwater over the past 43 years by the
5 District’s wells and other wells nearby have not lowered groundwater pressures
6 and thus water is and should remain available to all current users of
7 groundwater in the area.”³

8 Second, Mr. Lambie asserted that the attempted repair of the original well⁴
9 was not done in accordance with Oregon well construction standards⁵ and
10 failed due to mistakes made by the well drilling company.⁶ Mr. Lambie also
11 testified that the original well could be rehabilitated back to a “legal and
12 functioning” well, which could provide the Company with a redundant water
13 supply.⁷

14 Finally, Mr. Lambie testified that the replacement well,⁸ which is currently
15 serving customers, is a suitable replacement for the original well.⁹

16 Mel Kroker also submitted testimony on behalf of himself and his wife,
17 Connie Kroker. First, Mr. Kroker’s testimony raised questions as to the true
18 legal owner of the utility’s property and the potential failure of the Company to

² Intervenors/100, Lambie/2-3.

³ Intervenors/100, Lambie/4.

⁴ Staff’s Reply Testimony called the well previously serving customers, drilled by Dale Belford in 1972, the “original well.” Staff/100, Hari/2. Intervenors call this well “Well 3.” Intervenors/100, Lambie/4.

⁵ Intervenors/100, Lambie/12.

⁶ Intervenors/100, Lambie/12-13.

⁷ Intervenors/100, Lambie/14.

⁸ Staff’s Reply Testimony called the well drilled by Dr. Ironsides the “permanent replacement well.” Staff/100, Hari/2-3. Intervenors call this well “Well 5.” Intervenors/100, Lambie/4.

⁹ Intervenors/100, Lambie/13.

1 make the appropriate filing with the Commission prior to the dispensation of
2 property.¹⁰ Second, Mr. Kroker's testimony relayed his personal knowledge
3 related to the historical background and construction of the water system.¹¹
4 Third, Mr. Kroker offered testimony and evidence in support of his claim that he
5 and his wife have "an enforceable right to receive water from the water
6 system."¹² Next, Mr. Kroker's testimony questioned the failure of the original
7 well, expressing skepticism regarding the lack of compelling evidence provided
8 by the Company.¹³ Finally, Mr. Kroker discusses the Company's assertions
9 regarding alternatives for water supply made by the Company and the financial
10 hardship associated with drilling a well on his property, and posits appropriate
11 financial responsibility for the costs of continuing service.¹⁴

12 **Q. What are Intervenors Mel and Connie Kroker requesting the Commission**
13 **do in this case?**

14 A. This is unclear from the Reply Testimony submitted. Although the Krokers'
15 testimony questions the ownership of the bulk of utility property in light of Dr.
16 Ironsides' alleged transfer of utility property to his daughter, Valerie Meyer, the
17 Krokers do not make a recommendation to the Commission regarding this
18 issue. The Krokers also assert that they have an enforceable right to receive
19 water from the Company, but stop short of explicitly asking the Commission to
20 take action related to that issue. The Krokers also question the abandonment

¹⁰ Intervenors/200, Kroker/3-4.

¹¹ Intervenors/200, Kroker/5.

¹² Intervenors/200, Kroker/5-6.

¹³ Intervenors/200, Krokers/7-10.

¹⁴ Intervenors/200, Krokers/10-11.

1 of the original well, and discuss the financial hardship associated with drilling
2 their own well, but again do not include specific recommendations to the
3 Commission related to the abandonment of the water system.

4 In their Petition to Intervene and in data requests, the Krokors expressed
5 concerns related to both the timing for abandonment and the drilling of their
6 own well, including the financial hardship and securing an easement for access
7 to a drilled well on their property. They also expressed the belief that they were
8 entitled to some type of compensation from the Company.¹⁵

9 Staff assumes that the Krokors' primary request is for the Commission to
10 deny the Company's Application. Staff further assumes that in the event that
11 the Commission permits the Company to abandon its system and duty to serve,
12 the Krokors seek ample time to secure an alternative water source, a condition
13 that the Company be required to execute the appropriate document permitting
14 access for drilling and maintaining a well on their property, and potentially
15 monetary compensation related to their alleged enforceable right to receive
16 water from the Company.

17 **STAFF'S ANALYSIS OF INTERVENORS' TESTIMONY**

18 **Q. What does Staff consider relevant when evaluating whether the**
19 **Commission should grant a utility's application for abandonment of utility**
20 **property and/or duty to serve?**

21 A. As indicated in its Reply Testimony, Staff first considers whether the utility has
22 complied with the requirements in OAR 860-036-0708 for the termination of

¹⁵ See Staff/100, Hari/12-13 and 14-15.

1 water service, abandonment, or disposal of a water utility. As discussed in
2 Staff's Reply Testimony, Staff concludes that the Company has met the
3 requirements in the Rule.

4 Staff also considers the availability of alternatives for water supply available
5 to customers,¹⁶ concerns raised by customers,¹⁷ and the circumstances that
6 spurred the Company to request abandonment.¹⁸ In this case, the Company
7 cited regulatory compliance issues, financial constraints, and personal
8 circumstances of the owner as reasons for seeking abandonment.¹⁹ Staff's
9 recommendation to the Commission is based upon considering the totality of
10 the circumstances present in the case.

11 **Q. Did Intervenors offer testimony regarding the Company's compliance**
12 **with applicable OWRD usage restrictions?**

13 A. No. Intervenors' testimony did not address this issue.

14 **Q. Did Intervenors' testimony address the alleged financial hardship of**
15 **continued operation of the system?**

16 A. Yes. Mr. Kroker's testimony took issue with the Company's assertion that
17 continued operation of the system imposed financial hardship on the Ironsides
18 family. Mr. Kroker stated that he "has always paid bills as requested and on
19 time. Any financial constraint on the part of the Petitioner appears to be from

¹⁶ Staff/100, Hari/10-12.

¹⁷ Staff/100, Hari/12-16.

¹⁸ Staff/100, Hari/7-10.

¹⁹ Staff/100, Hari/7-10.

1 mismanagement of the District, something which should not be the cause of
2 approval for abandonment of the water system.”²⁰

3 **Q. Did Intervenor provide any evidence that the Company has mismanaged**
4 **its finances?**

5 A. No, Intervenor did not offer evidence that the Company has mismanaged its
6 finances. However, the Company offered evidence that amounts collected
7 through rates, which are currently \$80 per month, were not enough to cover
8 even ongoing operating expenses.²¹

9 **Q. If the Commission denies the Company’s Application, could it raise rates**
10 **to recover its prudently incurred costs?**

11 A. Yes, the Company could raise rates in order to recover its prudently incurred
12 costs. Although the Company is currently above the Commission’s threshold
13 level for rates and charges for utilities serving fewer than 500 customers, the
14 Company is a service-only regulated utility.²² Absent petitions from 20 percent
15 or more of the Company’s customers, the Company would remain a service-
16 only regulated utility.²³ This means that the Company could assess a
17 surcharge, or otherwise increase rates without prior Commission approval, to
18 cover costs associated with the attempted repair of the original well, the costs
19 of drilling the replacement well, on-going costs of running the utility, rate of
20 return, capital expenditures associated with repairing and/or replacing the aging

²⁰ Intervenor/200, Kroker/10-11.

²¹ See Staff/100, Hari/9.

²² Mountain Home Customers were made aware in 2007 of their right to petition for rate regulation .
However, no customer filed such a petition with the Commission. Staff/102, Hari/19-20.

²³ OAR 860-036-0410.

1 distribution system, etc. Because the Company's customer-base has
2 decreased substantially—with the Krokors potentially being the only remaining
3 paying customers on the system,²⁴ the Krokors could be assessed much more
4 than 1/6th of the cost for the replacement well, as was contemplated in their
5 testimony.²⁵ Even splitting the cost between the Krokors and the Ironsides
6 would have the Krokors paying upwards of \$35,000 for the cost of the
7 replacement well alone, and does not take into account the ongoing costs of
8 operating and maintaining the system. Even if the Company were to become
9 rate-regulated, all prudently incurred costs would be passed on to the
10 Company's customers as determined by the Commission.

11 **Q. The Intervenors also assert that they have an “enforceable right to**
12 **receive water from the water system.”²⁶ Did Intervenors provide**
13 **testimony regarding the Commission's authority to enforce this right?**

14 A. No. Intervenors have provided no testimony or evidence to support the notion
15 that the Commission has the authority to adjudicate and/or enforce property
16 rights, including water rights, or to determine compensation related to any
17 potential loss of those rights.

18 **Q. Did Intervenors' Reply Testimony address the viability of a well on their**
19 **property or a shared well?**

20 A. No. Other than general statements about the cost of drilling their own well in
21 comparison to costs paid by the Company to repair and ultimately replace the

²⁴ Staff/103, Hari/5.

²⁵ Intervenors/200, Kroker/10.

²⁶ Intervenors/200, Kroker/5.

1 original well, the Krokors did not offer testimony regarding whether a well could
2 be drilled on their property or shared with a neighbor, nor did they offer
3 testimony on a feasible timeline to do so.

4 **STAFF'S RECOMMENDATION**

5 **Q. What is your recommendation regarding the abandonment?**

6 A. Staff's review of Intervenor Mel and Connie Kroker's testimony has not caused
7 it to change its recommendation in this proceeding. Even if the Company were
8 to continue providing service, Staff concludes that the financial benefit for
9 Intervenors, if any, does not outweigh the financial, personal and regulatory
10 burdens of continued operation, in light of the availability of water supply
11 alternatives. Accordingly, Staff continues to recommend that the Commission
12 approve the Company's request to abandon service, subject to the conditions
13 that the Company be required to continue providing water service until the
14 earlier of August 1, 2017, or when the last customer has made alternative
15 arrangements for water supply, and that the Company be required to execute a
16 written instrument demonstrating that the Krokors have permanent access from
17 Buckman Road for construction and maintenance of their well.

18 **Q. Does this conclude your cross-answering testimony?**

19 A. Yes.