

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UW 120

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

DISPOSITION: ORDER 08-177 STAYED IN PART PENDING
FURTHER REVIEW

I. Introduction

By Order No. 08-177, dated March 24, 2008, the Commission ordered Crooked River Ranch Water Company (Crooked River), among other things, to “distribute \$118,028 to its current shareholders in a lump-sum amount on an equal share basis, not later than its next billing dates for its customers.” By “Application for Reconsideration of PUC Order No. 08-177”, filed March 26, 2008, Crooked River asks that the Commission extend its time to comply with the order to distribute the fund balance and requests a hearing in regard to this matter.

In support of its motion, Crooked River states that the order to distribute the funds was beyond the scope of the Commission Staff’s (Staff’s) motion that was addressed in Order No. 08-177. The company claims it had no notice or opportunity to be heard regarding the disposition of the surcharge fund. In a declaration submitted by James Rooks (Rooks), “General Manager,” the company claims that the distribution of the fund balance would mean that “it will have no funds available for either planned or unanticipated capital improvements. Crooked River also asserts that it faces administrative difficulties in complying with the order in the (relatively) short time frame allowed.

In his Declaration, Rooks states that the Company “will not draw on (the surcharge) funds” without Commission approval pending a hearing or further order on its application. The Company “is willing to execute documentation . . . to memorialize that agreement.”

II. Discussion

Crooked River’s petition for reconsideration (petition) reflects a strained reading of Order No. 07-527, the interim decision in the company’s general rate case. In that Order the Commission terminated the collection of the surcharge and found that the Company held the remaining funds in a “constructive trust,” pending the Company’s filing of a full accounting of the proceeds of the surcharge and a report regarding its need for new capital improvements.

As noted in Order No. 08-177, the Company filed neither the accounting, nor the report. However, on January 28, 2008, the Company did supply to Staff a declaration from Rooks that included the statement that “no new construction or capital improvements are in progress or planned at the current time as the funds are not available.”

In Order No. 08-177 the Commission chose to treat Rooks’ January 28th Declaration as the report regarding the need for new capital that the Company was required to file pursuant to Order No. 07-527. The Commission elected to accept the Declaration as the report, even though the declaration was not filed with the Commission, and despite questions as to Rooks’ authority to speak on behalf of the Company.

In the face of Rooks’ declaration to the effect that “no new construction or capital improvements are in progress or planned at the current time,” the Commission concluded in Order No. 08-177 that there no longer is any reason for the Company to retain the funds collected through the surcharge. Thus, the Commission ordered the distribution of the remaining assessment fund balance to the shareholders. No further notice or opportunity for Crooked River to be heard is required.

The Commission ordered the distribution of \$118,028, because that was the known amount of the funds remaining as of November, 2007, as of the date of Order No. 07-527, according to Staff’s report. The Commission ordered Crooked River to confirm the fund balance within 48 hours, because of concerns that the funds had been misappropriated. That concern arose on account of Rooks’ statement to the effect that capital improvement funds “are not available,” suggesting that the Company had squandered the funds that it may have collected through the special assessment surcharge.

The Commission did not rely on Staff's report in ordering the distribution of the \$118,028 to shareholders. The Commission relied on Crooked River's response to Staff's motion, where the Company proffered Staff's report as its compliance with Ordering Paragraph 5 of Order No. 07-527.

In its petition, Crooked River argues that it needs to retain the special assessment fund revenues to pay for planned and unanticipated capital expenditures. The Company relies on Rooks' second Declaration to support its claim that it needs funds on hand to pay for well repair, cistern maintenance, and unforeseen events, such as a major line break.

To the extent that Crooked River's petition is a collateral attack on the general rate case decision (Order No. 07-527) it will be denied. Any evidence to be received in support of its petition is limited to changed circumstances arising after November 29, 2007, the date of the order.

Crooked River is granted a stay of Order 08-177 that it distribute \$118,028 to its shareholders, based on its report that it has on hand \$233,889 in funds remaining from the special assessment surcharge. The Company was ordered (again) to provide an accounting of the special assessment surcharge funds. That filing is due not later than April 8, 2008. At that time the Company also may file such evidence as it chooses to support its claim that the remaining fund balance should be retained by the Company. Once all filings have been received, the Commission will decide whether a hearing is necessary.

In its petition, the Company raises two administrative issues regarding the immediate distribution of the surcharge funds. First, some of the funds are in accounts where the Company would pay a penalty for early withdrawal. Second, the timing of the Commission's order (next billing date – March 28, 2008) is not adequate for the Company to comply. These factors have been taken into account in granting this stay.

The Company's petition also raises an issue regarding the amount of the fund balance and the use of the funds to pay off existing loans, as contemplated by Order No. 05-527. The Company's accounting should explain how the Company has proceeded with respect to the outstanding loan balances.

Rooks' status as "General Manager" is put in question by the Company's posture with respect to Rooks' status as an employee of the Company. According to documents filed earlier by the Company, there is no contractual relationship between itself and Rooks, suggesting that he has no authority to act on the Company's behalf. Thus, his pledge that the Company will not draw on the surcharge funds is not sufficient absent the necessary filings establishing that a contractual relationship exists between Mr. Rooks and the Company. Accordingly, this order staying the Commission's order will be vacated unless the Company supplies a Board resolution to the same effect not later than April 8, 2008.

ORDER

IT IS ORDERED that the motion filed by Crooked River Ranch Company, seeking a stay of that portion of Order No. 08-177 directing it to distribute \$118,028 to its shareholders, is granted. The remainder of the order is unchanged.

Made, entered, and effective on MAR 28 2008.



Michael Grant
Chief Administrative Law Judge
Administrative Hearings Division



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