

May 5, 2004

TO ALL PARTIES IN UW 96:

On April 20, 2004, I received a letter from the Commission Staff reporting on a calculation error in Staff's testimony. The letter indicates that its estimate of the revenue requirement for the infrastructure fee has increased from \$241,139 to \$489, 539.

After reviewing the letter and the record, I have concluded that Staff must refile its testimony. At this point, the Staff testimony does not support its conclusion that \$6,900 is a fair and reasonable infrastructure fee for Long Butte Water System (LBWS). In fact, the record in this case does not support any infrastructure fee that meets the just and reasonable standard. Mr. Brorby's proposed rate is based on Staff's initial estimate of the system cost.

The most significant problem is the lack of documentation for the cost of the system. LBWS and Staff have indicated that many of the records supporting the cost of the system are missing. Nonetheless, the Commission must make its determination based on the original cost of the system or, at least, the best possible approximation of the original cost of the system. The testimony in this case contains what appear to be Mr. Hodge's recollections of what it cost to build the system, some original cost data, and extensive reliance on comparisons to recent City of Bend construction projects and independent contractors' estimates.

There is little evidence on the record to support Mr. Hodge's recollections. In fact, Mr. Brorby has raised a number of unanswered questions regarding labor costs and the cost of equipment to perform the work. On cross-examination, Mr. Hodges's inability to recall details about the construction project raises doubt about the reliability of his estimates.

Further, there is no evidence that relates to the cost structures of the City of Bend or the independent contractors to the actual costs faced by LBWS. In addition, there has been no effort to discount the cost estimates back to the time when the costs were actually incurred. The Commission requires better documentation.

A second area of concern is the number of customers needed to recover the negative balance in the infrastructure account. Staff indicated that a reasonable estimate of the number of additional customers that would be served is 325 customers. However, in the April 20, 2004 letter, Staff indicates, without explanation, that the number should be 313. The change makes a significant difference in the infrastructure fee. Such a change in position must be explained.

Another problem with the record is LBWS's failure to supply reliable documentation to support its proposed rate. Ultimately, it is LBWS's burden to demonstrate the reasonableness of the proposed rate. While I understand LBWS may have destroyed documents from 12

years ago, some persuasive documentation should still exist. For example, in LB-1, the company describes the financing for the project. There are no dollar figures associated with the categories that indicate the company actually incurred the \$2,923,715 that it claims to have spent on the project. One category missing from the list is any financing from banks or the Small Business Administration. Documentation, including notes and mortgages, might be useful in establishing the cost of the project. Furthermore, LBWS chose not to submit tax records into the record. While the Commission will not require such documentation, the company could offer these records to show that it claimed substantial expenses on its tax return.

Finally, I am concerned about including the costs of constructing a second reservoir in rates. Staff has included about \$60,000 for the cost of building this reservoir. ORS 757.355(1) prohibits any public utility from including in rates the “costs of construction, building, installation or real or personal property not presently used for providing utility service to the customer.” Because the second reservoir has not yet been constructed, it appears that the Commission would violate ORS 757.355(1) if it were to include the costs of the second reservoir in rates. Subsection (2) provides an exception for water utilities that may be helpful. Under the exception, the Commission must specify that the additional revenues be used solely to complete the capital improvement. At this point, I need further guidance for the parties on how to structure a rate that meets the statutory requirement.

Because of my concerns about the record and Staff's letter acknowledging that the record does not support a revenue requirement of \$489,539, I am giving Staff and LBWS an opportunity to file additional testimony. Most importantly, I urge LBWS to supply the Commission with documentation to support its proposed infrastructure fee.

Unfortunately, this additional round of testimony, and possible hearing, places a substantial burden on all the parties, especially Mr. Brorby. Mr. Brorby has gone to great effort to explain his position to the Commission and to support his conclusion that the proposed rate is unsupported. His contribution to the record is significant. Despite the additional burden, the Commission must set rates based on a complete record that supports its decision. At present, the record in this case is inadequate. As a result, parties should submit additional testimony according to the following schedule:

LBWS and Staff initial testimony	
Intervenors reply testimony	
LBWS and Staff rebuttal testimony	
Hearing, if necessary	

If there are additional questions, please contact me.

Thomas G. Barkin  
 Administrative Law Judge