

1 **BEFORE THE PUBLIC UTILITY COMMISSION**  
2 **OF OREGON**

3 UW 110

4 In the Matter of

5 LONG BUTTE WATER SYSTEM, INC.

6 Application for authorization to increase the  
7 Company's total annual revenues by  
8 \$97,354,00 or 78 percent

STAFF REPLY TO MOTION FOR INTERIM  
RELIEF AND RATE INCREASE

9 **INTRODUCTION**

10 On September 27, 2005, Long Butte Water System, Inc. ("Long Butte Water") filed a  
11 motion requesting that the Public Utility Commission of Oregon ("Commission") authorize an  
12 interim rate schedule pending resolution of this docket. Previously, the Commission issued  
13 Order No. 05-820, which suspended Long Butte Water's requested rate increase for a period of  
14 six months from August 1, 2005. Therefore, under the current schedule Long Butte Water will  
15 have Commission-approved rates no later than January 31, 2006. In its original requested rate  
16 increase, Advice No 05-032, Long Butte Water did not request, nor did the Commission  
17 authorize, interim rates pursuant to ORS 757.215(5). For the reasons discussed below, Staff  
18 concludes that an interim rate increase is unwarranted. As a result, Staff respectfully requests  
19 that the interim rate tariff filed by Long Butte Water be permanently suspended.

20 **DISCUSSION**

21 **1. Interim rates under ORS 757.215(5) may only be authorized in a suspension order.**

22 ORS 757.215(5) states in relevant part:

23 The Commission may in a suspension order authorize an interim rate or rate  
24 schedule under which the utility's revenues will be increased by an amount  
25 deemed reasonable by the commission, not exceeding the amount requested by  
the utility.

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1 According to the plain language of the statute, the Commission can only authorize  
2 interim rates in a suspension order. Typically, a utility will request interim rates when it files its  
3 general rate case. In this particular proceeding, Long Butte Water did not ask for interim rates in  
4 its rate case filing, Advice No. 05-032. Rather, it has filed a separate motion, with attached  
5 tariffs, requesting interim rates pursuant to ORS 757.215(5) several months into the process of  
6 reviewing its general rate filing.

7 While this situation is atypical, Staff notes that the Commission would have the authority  
8 to amend its original suspension order, Order No. 05-820.<sup>1</sup> Although the Commission could  
9 amend its earlier suspension order and order interim rates, Long Butte Water's request, as  
10 discussed in more detail below, does not meet the standards for interim relief. Therefore, Staff  
11 recommends that the request for interim relief be denied and the tariffs permanently suspended.  
12 In the event the Commission decides to allow interim rates, it should do so subject to refund. *See*  
13 ORS 757.215(5).

14 **2. Long Butte Water's request does not meet the criteria for authorizing interim rates**  
15 **for water utilities.**

16 As an initial matter, Staff recognizes that the Commission policy for utilities, other than  
17 water utilities, is to only grant interim rate relief when the utility can demonstrate that it faces  
18 severe financial distress, such that the continuing operation of the utility is in jeopardy. Unlike  
19 larger utilities, a water utility can more easily become cash deficient because water utilities  
20 generally have more limited access to capital markets than larger utilities. As a result of these  
21 different circumstances, the Commission has created a different standard in granting water  
22 utilities interim rate relief.<sup>2</sup> In this case, however, Long Butte Water does not meet the standard

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23 <sup>1</sup> ORS 756.568 provides the Commission authority, upon notice to the public utility and an opportunity to be heard,  
24 to amend its orders at any time.

25 <sup>2</sup> In UW 106, the Commission granted interim rates because the water utility had depleted its cash flow due to  
26 capital expenditures. In UW 102, the Commission also granted interim relief because the water utility had to change  
its water source from a corrosive well and faced immediate and substantial increases in its purchased water expense.  
In UW 91, the Commission granted interim relief to a water utility because the utility faced having the water shut off  
by the City for nonpayment of purchased water. In UW 81, the Commission again approved interim rates for a  
water utility that faced increases in purchased water.

1 for interim rates because there is no evidence demonstrating that interim rates are needed to  
2 ensure safe and adequate service and protect the financial integrity of the utility. Interim rates  
3 are not, and should not be, used as an expeditious method to implement a proposed rate increase.

4 Long Butte Water states that interim rates are required to “adequately meet the  
5 operational services” and that its “application and tariff sheets amply support the requested  
6 increased rate schedule.”<sup>3</sup> While Long Butte Water’s application may support a rate increase,  
7 the right level of that increase has not been determined and Staff and other parties are still  
8 performing its analysis of the application. Furthermore, certain aspects of Long Butte Water’s  
9 projected operating expenses (*e.g.* salaries, officer salaries, payroll taxes, health benefits) are  
10 future events that have not yet occurred. Therefore, Long Butte Water does not yet require  
11 additional operating costs to meet those projected expenses. In addition, Long Butte Water’s  
12 infrastructure fee becomes contributions in aid of construction. Thus, Long Butte Water is not  
13 currently making any major capital improvements that require additional cash flow.

14 Long Butte Water’s request is inconsistent with the Commission’s policy on interim rates  
15 for water utilities. Unlike situations where the Commission has authorized interim rate requests,  
16 Long Butte Water does not purchase water and does not have significant accounts payable or  
17 immediate increases in operating expenses. Further, Long Butte Water is not undergoing  
18 significant capital expenditures nor does it cite to any cash flow shortages that it is experiencing.

19 Based upon Staff’s review of Long Butte Water’s application and supporting  
20 documentation and the Commission policy of interim rates for water utilities, Staff does not  
21 support Long Butte Water’s request for interim rate relief. Interim rates are not intended to  
22 replace the traditional role of tariff suspension and review. While the standards for water utilities  
23 are more relaxed than standards for other utilities, the water utility still needs to demonstrate that  
24 it does not have ready cash to provide safe and adequate service or to fund needed capital  
25 improvements.

26 <sup>3</sup> Long Butte Water Motion for Interim Relief and Rate Increase at 1.

1 Long Butte Water’s Motion fails to demonstrate that interim rates are appropriate and its request  
2 should be denied.

3 **3. Long Butte Water has not been unduly burdened or prejudiced as a result of**  
4 **continuances received by Intervenors.**

5 At this time, any continuances received by Intervenors have not resulted in an extension  
6 of this docket. Because the suspension was effective for a six-month period effective August 1,  
7 2005, the suspension does not expire until January 31, 2006. Thus, the Commission still has  
8 approximately four months to issue a final order prior to termination of the suspension period,  
9 which is more than adequate time for the Commission to review the facts and issue its final  
10 decision. While there may be some changes to some aspects of the schedule, those changes have  
11 not resulted in a burden or prejudice to Long Butte Water because the Commission still has  
12 adequate time to complete its review and issue an order within the initial suspension timeframe.<sup>4</sup>

13 **4. Whether or not ORS 757.215(5) adequately “protects” customers is irrelevant to the**  
14 **initial determination of whether interim rates are warranted.**

15 The refund provisions of ORS 757.215(5) protect customers in the event that interim  
16 rates are authorized. However, following a policy of simply approving proposed interim rate  
17 requests because customers are “protected” by refund provisions ignores the traditional role of  
18 rate regulation and standards for approving interim relief. As described above, there are criteria  
19 for granting interim rate relief for water utilities. In addition, water utilities largely control the  
20 timing of general rate filings. Interim rate relief has never been intended to replace the normal  
21 regulatory procedures of suspension and review. Rather, interim rate relief acts as a safety valve  
22 in circumstances where the criteria are met and there is an important reason for deviating from  
23 the normal rate suspension and review process. Long Butte Water’s request does not meet the  
24 interim rate criteria. Therefore, the subject to refund provisions of ORS 757.215(5) are not

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26 <sup>4</sup> Staff notes that the Commission may further suspend the rate or rate schedule for not more than three months. *See*  
ORS 757.215(1). While further suspension for up to three months is legally possible, Staff has not requested nor has  
the Commission proposed to extend this schedule beyond the initial six-month suspension period.

1 relevant and should not be used to make the normal suspension and review procedures  
2 meaningless.

3 **CONCLUSION**

4 For the foregoing reasons, Staff respectfully requests that Long Butte Water's Motion for  
5 Interim Relief be denied. Furthermore, Staff requests that the interim rate tariff be permanently  
6 suspended.

7 DATED this 5<sup>th</sup> day of October 2005.

8 Respectfully submitted,

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10 **HARDY MYERS**  
Attorney General

11  
12 /s/ Jason W. Jones  
13 Jason W. Jones, #00059  
14 Assistant Attorney General  
Of Attorneys for the Public Utility Commission  
of Oregon

1 **CERTIFICATE OF SERVICE**

2  
3 I certify that on October 5, 2005, I served the foregoing upon the parties hereto by  
4 sending a true, exact and full copy by regular mail, postage prepaid and by electronic mail to:

5

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