

1 of Commission rulings and Court of Appeals Orders, this proceeding is to go forward.
2 CRRWC's attempts to delay or avoid these proceedings should not be rewarded by granting it
3 additional delay.

4 CRRWC also states that it could not have anticipated the volume of Staff testimony.
5 While the exhibits to Staff's testimony are voluminous, the Staff testimony itself is not.
6 Furthermore, the exhibits, while voluminous, are largely previously known to the CRRWC. For
7 example, more than half of the exhibits are the DOJ investigatory report with attachments, the
8 attachments are largely the CRRWC's Quick Books files. Likewise, other attachments are not
9 the creation of Staff or other parties, but documents that the CRRWC is already aware of, or
10 Company documents.

11 CRRWC's second contention is that Staff's exhibits were corrected after the February 16,
12 2010 filing date. For clarity, the testimony and exhibits were timely filed on February 16, 2010.
13 On February 17, page numbers were added to Staff/402 and Staff/302 which were replaced
14 because the Staff/302 did not show up well on each page of the exhibit. On February 18, a
15 correction was provided adding page numbers to the first 50 pages of Staff/302 at the direction of
16 Administrative Hearings. As a result, when CRRWC refers to "corrections," there were no
17 substantive corrections to the testimony and exhibits. Rather, there were corrections to some
18 page numbers and unclear markings. The CRRWC had the substantive documents on February
19 16, and that testimony and exhibits were not substantively corrected.²

20 CRRWC's third contention is that the General Manager "is obligated to participate in
21 training between February 22-26 and is unavailable to respond to Staff testimony during that
22 time period." CRRWC offers no details on what the training is, why it was unknown at the time
23 the schedule was adopted, or why it is necessary at this time. Staff does not find this simple
24

25

26 ² On February 25, 2010, CRRWC counsel brought it to Staff's attention that documents provided from the
bankruptcy court as redacted were not appropriately redacted and are included in Staff/302. Staff will be working
with the CRRWC to correct this mistake and provide any appropriate corrections.

1 contention without any detailed support, in conjunction with the history of this litigation, to be
2 persuasive as good cause for a four week extension exists.

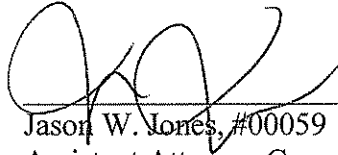
3 Staff does not believe good cause exists for a four week extension. If the Commission is
4 inclined to entertain an extension, Staff alternatively recommends an extension of one to three
5 days. Although the substance of the testimony and exhibits were timely filed, this would give
6 CRRWC a few more days for any confusion the corrected exhibit numbering and marking may
7 have caused. Staff also notes that one to three days would mitigate CRRWC's third contention
8 that the General Manager has training for five days.

9 For the foregoing reasons, Staff respectfully requests that CRRWC's Motion be denied.
10 In the alternative, Staff requests that an extension of one to three days be given for CRRWC to
11 file its responsive testimony and exhibits.

12
13 DATED this 1st day of March 2010.

14 Respectfully submitted,

15 JOHN R. KROGER
16 Attorney General

17 
18 _____

19 Jason W. Jones, #00059
20 Assistant Attorney General
21 Of Attorneys for the Public Utility Commission
22 of Oregon
23
24
25
26

860125 ARV0047-09

v. rd JCL

IN THE COURT OF APPEALS OF THE STATE OF OREGON

CROOKED RIVER RANCH WATER COMPANY,
Petitioner,

v.

PUBLIC UTILITY COMMISSION OF OREGON,
Respondent.

CROOKED RIVER RANCH WATER COMPANY,
Petitioner,

v.

PUBLIC UTILITY COMMISSION OF OREGON,
Respondent.

CROOKED RIVER RANCH WATER COMPANY,
Petitioner,

v.

PUBLIC UTILITY COMMISSION OF OREGON, G. T., and T. T.,
Respondents.

Public Utility Commission of Oregon
WJ8, UW120, UCR100, UI281, UI282

A141283

**ORDER GRANTING MOTION FOR RECONSIDERATION AND MOTION FOR LEAVE
TO WITHDRAW ORDER FOR REHEARING PURSUANT TO ORS 183.482(5)**

Respondent, the Public Utility Commission (the PUC), filed a motion for leave to withdraw the revised order in this judicial review proceeding for rehearing pursuant to ORS 183.482(5). Before petitioner Crooked River Ranch Water Company (CRR) had an opportunity to respond to that motion, on December 2, 2009, the Appellate Commissioner entered an Order Acknowledging Withdrawal of Order for Reconsideration and Denying Motion for Stay. The commissioner erroneously stated that the PUC was withdrawing the revised order pursuant to subsection (6) of ORS

**ORDER GRANTING MOTION FOR RECONSIDERATION AND MOTION FOR LEAVE
TO WITHDRAW ORDER FOR REHEARING PURSUANT TO ORS 183.482(5)**

REPLIES SHOULD BE DIRECTED TO: State Court Administrator, Records Section,
Supreme Court Building, 1163 State Street, Salem, OR 97301-2563

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Attachment 1
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APPELLATE DIVISION
SALEM, OR 97301

183.482. Based on that error, the commissioner took no action on the motion for leave to withdraw the revised order because subsection (6) of ORS 183.482 allows an agency to withdraw an order for reconsideration without leave of the court. The motion for reconsideration is granted. The commissioner erred in his characterization of the PUC's motion and his determination that the court need not take any action on that motion.

The question presented at this juncture is whether the PUC's motion to withdraw the revised order pursuant to ORS 183.482(5) should be granted. CRR argues that the motion should be denied for two reasons, neither of which the court finds persuasive.

First, CRR argues that holding a supplementary evidentiary hearing violates the scope of this court's remand in *Crooked River Ranch Water Company v. PUC*, 224 Or App 485, 198 P3d 967 (2008). In that case, the court remanded for the PUC to complete the process of determining whether CRR is subject to regulation under ORS 757.063 in light of the correct interpretation of that statute. *Id.* at 492. When an appellate court disposes of a judicial review by remanding for reconsideration, the agency has plenary authority to consider additional evidence and to hold a hearing for the purpose of receiving that evidence unless the appellate court clearly limits the agency's discretion. It does not appear that the court in *Crooked River Ranch*, 224 Or App 485, specifically limited the proceedings on remand or the PUC's discretion to consider additional evidence. Therefore, for purposes of deciding the PUC's motion for leave to withdraw the revised order, the court rejects CRR's position. CRR may raise its argument regarding the scope of the remand in *Crooked River Ranch*, 224 Or App 485, in its brief on the merits as it deems appropriate.

Second, CRR argues that the PUC has not shown that the additional evidence is material and that there were good and substantial reasons for failing to present it initially as is required by ORS 183.482(5). The PUC has shown that the additional evidence is material to the question of whether and when CRR effectively changed its status to a cooperative, an issue that was not resolved in *Crooked River Ranch*, 224 Or App 485. Moreover, the PUC explains that it initially concluded that it could take official notice of the evidence in question without a hearing but now realizes that it was mistaken in doing so. Therefore, the PUC has shown good cause for its failure to properly consider the evidence in the first instance. Finally, the court notes that CRR filed an objection to the revised order and asked this court for a stay on the basis that the PUC improperly relied on new evidence without affording CRR notice or a hearing. The PUC's motion for leave to withdraw the revised order pursuant to ORS 183.482(5) remedies that alleged error. Assuming that CRR's objection to the procedure utilized by the PUC in issuing the revised order is meritorious, there is nothing to be gained by preventing the supplementary evidentiary hearing from taking place until after this judicial review is completed.

On reconsideration, the court's order of December 2, 2009, is modified to reflect that the PUC's motion to withdraw the revised order for rehearing was made under ORS

ORDER GRANTING MOTION FOR RECONSIDERATION AND MOTION FOR LEAVE TO WITHDRAW ORDER FOR REHEARING PURSUANT TO ORS 183.482(5)

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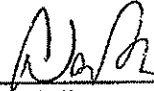
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Attachment 1
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183.482(5) and that the court has determined that the requirements of that subsection are satisfied. The PUC's motion for leave to withdraw the revised order for rehearing is granted. As so modified, the order of December 2, 2009, is affirmed.

FEB 17 2010

DATE



David V. Brewer, Chief Judge

c: Timothy Richard Gassner
Judy C Lucas ✓
Jona Jolyne Maukonen

DB/A141283OAGR100209

**ORDER GRANTING MOTION FOR RECONSIDERATION AND MOTION FOR LEAVE
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1 **CERTIFICATE OF SERVICE**

2 I certify that on March 1, 2010, I served the foregoing Response upon all WJ 8 and
3 UW 120 parties of record in this proceeding by delivering a copy by electronic mail to those
4 parties with email addresses, and upon all WJ 8 parties only, by mailing a copy by first class
5 postage prepaid mail or by hand delivery/shuttle mail to the parties accepting paper service.

6 WJ 8:

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10 **W**

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