

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

WJ 8

In the Matter of

CROOKED RIVER RANCH WATER
COMPANY

An Investigation Pursuant to ORS 756.515 to
Determine Jurisdiction

RULING

DISPOSITION: MOTION TO STAY ORAL ARGUMENT DENIED

I. INTRODUCTION

A hearing in this matter is set for July 20, 2010. At the end of the hearing, this matter is to be submitted on oral argument. By motion filed January 15, 2010, Crooked River Ranch Water Company (Crooked River or the Company) requests that the oral argument and hearing be stayed. In view of the short time remaining before the hearing, I rule on this motion before any response has been filed.

II. CROOKED RIVER'S MOTION

As grounds for its motion, Crooked River cites a letter opinion issued by a Jefferson County Circuit Court judge in the case of *Charles Nichols, et al, v. Crooked River Ranch Water Co., et al.* According to the Company, that decision is "dispositive" of the "key issue" in this case: "whether Crooked River is a cooperative exempt from jurisdiction under ORS 757.063(2)." Crooked River argues that a final decision on this issue in the *Nichols* case will have "preclusive effect" on this Commission under the standards for both issue and claim preclusion.

Crooked River acknowledges that it raised these same issues in an earlier motion to dismiss – filed before the circuit court judge's ruling. According to the Company, "the circuit court has ruled on that issue [formation of a cooperative] and is now 'ahead' of the PUC." Crooked River argues that, absent a stay of this proceeding, the Company will be required to defend against the same cause of action – that its conversion and transfer of assets to the Cooperative was invalid – in more than one proceeding. The Company argues that the Commission should stay this proceeding, pending final resolution of the *Nichols* case.

III. DISCUSSION

As noted in an earlier ruling, this matter was remanded to the Commission by the Court of Appeals for the Commission to "complete the process" initiated when it received the requisite number of petitions from customers of Crooked River. The hearing and oral argument set for July 20, 2010, is for the purpose of submitting this matter, so that the Commission may complete the process.

The hearing was set for the purpose of allowing Crooked River to submit rebuttal testimony regarding the Commission stated intent to take official note of its records in two Commission proceedings.

The issue addressed by the circuit court judge's letter opinion is one of the issues before the Commission in this proceeding – that is, whether Crooked River is a cooperative exempt from Commission jurisdiction. There is, however, another issue that must be decided, whether "there is reason to provide oversight" of the Company by the Commission.

The disposition of each of these issues relates to the ultimate issue before the Commission: whether to assert jurisdiction over Crooked River in the manner of a public utility. The circuit court has no authority to decide the ultimate issue. An order of the circuit court finding that Crooked River did not reorganize itself as a cooperative would not, in and of itself, confer jurisdiction on this Commission. Only the Commission can make such a determination, subject to judicial review.

In its motion Crooked River states that the Commission "asserts it has regulatory authority over" the Company. Crooked River is mistaken. The Commission has withdrawn any assertion of jurisdiction over the Company, pending a decision in this case.

The motion to stay the oral argument and hearing set for July 20, 2010 is denied.

Dated at Salem, Oregon this 15th day of June, 2010.



Patrick Power
Administrative Law Judge