

ISSUED: January 26, 2011

**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

PREHEARING CONFERENCE  
MEMORANDUM

**DISPOSITION: SCHEDULE ADOPTED**

A prehearing conference was held in this matter on January 25, 2011. Representatives of the Staff of the Public Utility Commission of Oregon (Commission) appeared in person. Representatives of Crooked River Ranch Water Company (Crooked River or the Company) appeared *via* telephone.<sup>1</sup>

This matter has been the subject of extensive proceedings before this Commission and before the Court of Appeals. Based on a May 10, 2010, ruling by the Court of Appeals (the Court), the evidentiary scope of this proceeding was sharply circumscribed. The Court limited the receipt of "additional evidence" to "that evidence officially noticed by the agency," the "files in two other related dockets – UW 120 and UCR 100." The Court further held that Crooked River "may submit rebuttal evidence at the hearing to take additional evidence."

Meanwhile, related issues have been the subject of judicial proceedings in the Circuit Court in Jefferson County (Circuit Court). The Circuit Court litigation has resulted in a monumental change in the management of the Company, as reflected in the views of the Company expressed at the prehearing conference. The Company now solicits this Commission's assertion of jurisdiction.

In an earlier memorandum (dated January 8, 2010), I identified two issues to be decided in this phase of the proceedings: *first*, whether "there is reason to provide oversight," and *second*, whether Crooked River is a cooperative exempt from jurisdiction under ORS 757.063(2). Regarding the second issue, the Commission is aware of a ruling

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<sup>1</sup> Tommy A. Brooks of Cable Huston, et. al., entered appearance as Counsel for the Company in this proceeding on December 10, 2010. Members of the new Board of Directors participated, as well as Company counsel Robert Steringer.

by the Circuit Court that the attempted reorganization was not legally effective. I direct Commission Staff to file a request that the Commission take Official Notice of the Circuit Court's ruling.

As noted above, the Court of Appeals had limited the scope of "additional evidence" to files in related dockets. Given the change in Crooked River's management and in light of its posture at the prehearing conference, the materials in those files are no longer relevant to the resolution of the first issue (reason to provide oversight) and official notice will not be taken.

The Court of Appeals did allow Crooked River the opportunity to offer "rebuttal" evidence. I believe that it is within the scope of the remand proceeding to allow Crooked River to offer evidence with respect to the first issue, without regard to whether the evidence to be offered fits the technical definition of "rebuttal evidence."

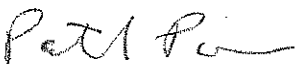
Follow an off-the-record discussion, the parties proposed a schedule for the completion of this phase of the proceeding. Their proposed schedule is adopted below.

<b>Event</b>	<b>Date</b>
Staff Files Request for Official Notice	February 1, 2011
Company Files Testimony	February 4, 2011
Staff Files Response to Company	February 14, 2011

In its response Staff may propose that the matter be submitted based on the receipt of Crooked River's evidence without a hearing. If Staff proposes the matter be submitted without a hearing, Staff shall also propose a schedule for the parties to submit briefs or oral argument to have the matter decided by the Commission. If Staff proposes a hearing, the Commission will schedule another prehearing conference to set the date for the hearing.

At the prehearing conference the parties discussed the status of pending matters at the Court of Appeals that are subject to a deadline for further Commission action. Not later than February 4, 2011, the parties shall file a joint proposal for how the Commission should respond.

Dated at Salem, Oregon this 26<sup>th</sup> day of January, 2011.

  
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Patrick Power  
Administrative Law Judge

Attachment: Notice of Contested Case Rights and Procedures

## NOTICE OF CONTESTED CASE RIGHTS AND PROCEDURES

Oregon law requires state agencies to provide parties written notice of contested case rights and procedures. Under ORS 183.413, you are entitled to be informed of the following:

**Hearing:** The time and place of any hearing held in this proceeding will be noticed separately. The Commission will hold the hearing under its general authority set forth in ORS 756.040 and use procedures set forth in ORS 756.518 to 756.610 and OAR Chapter 860, Division 001. Copies of these statutes and rules may be accessed via the website at [www.puc.state.or.us](http://www.puc.state.or.us). The Commission will hear issues as identified by the parties.

**Right to Attorney:** As a party to this hearing, you may be represented by counsel. Should you desire counsel but cannot afford one, legal aid may be able to assist you; parties are ordinarily represented by counsel. The Commission staff, if participating in the case, will be represented by the Department of Justice. Once a hearing has begun, you will not generally be allowed to postpone the hearing to obtain counsel.

**Administrative Law Judge:** The Commission has delegated the authority to preside over hearings to Administrative Law Judges (ALJs). The scope an ALJ's authority is defined in OAR 860-001-0090. The ALJ make evidentiary and other procedural rulings, analyze the contested issues, and present legal and policy recommendations to the Commission.

**Hearing Rights:** You have the right to respond to all issues identified, and present evidence and witnesses on those issues. See OAR 860-001-0450 to OAR 860-001-0490. You may obtain discovery from other parties through depositions, subpoenas, and data requests. See ORS 756.538 and 756.543; OAR 860-001-0500 to 860-001-0540.

**Evidence:** Evidence is generally admissible if it is of a type relied upon by reasonable persons in the conduct of their serious affairs. See OAR 860-001-0450(1)(b). Objections to the admissibility of evidence must be made at the time the evidence is offered. Objections are generally made on grounds that the evidence is unreliable, irrelevant, repetitious, or because its probative value is outweighed by the danger of unfair prejudice, confusion of the issues, or undue delay. The order of presenting evidence is determined by the ALJ. The burden of presenting evidence to support an allegation rests with the person raising the allegation. Once a hearing is completed, the ALJ will not generally allow the introduction of additional evidence without good cause.

**Record:** The hearing will be recorded, either by a court reporter or by audio/digital tape, to preserve the testimony and other evidence presented. Parties may contact the court reporter about ordering a transcript or request the Commission for a copy of the tape for a fee set forth in OAR 860-001-0060(3)(e)(B). The hearing record will be made part of the evidentiary record that serves as the basis for the Commission's decision and, if necessary, the record on any judicial appeal.

**Final Order and Appeal:** After the hearing, the ALJ will prepare a draft order resolving all issues and present it to the Commission. The ALJ's draft order is not open to party comment. The Commission will make the final decision in the case and may adopt, modify, or reject the ALJ's recommendation. If you disagree with the Commission's decision, you may request reconsideration of the final order within 60 days. See ORS 756.561 and OAR 860-001-0720. You may also file a petition for review with the Court of Appeals within 60 days. See ORS 756.610.