

1 This is a situation where the Intervenor has misunderstood the role of water regulation
2 and taken a portion of the Commission's mission statement out of context. While direct access
3 regulation and certain telecommunications regulation involve fostering the use of competitive
4 markets, rate setting for water utilities is based on the monopolistic nature of water service.

5 2. Staff conducted a rigorous and independent review in developing the rates that were
6 presented (and agreed to by the Company) at the settlement conference.

7 Intervenor testimony suggests that Staff supports the Company at public meetings and
8 implies that Staff is biased towards the Company. In fact, Staff thoroughly reviewed the
9 Company's financial information, including a rigorous review of actual documentation. *See*
10 *Staff/100, Miller-Dougherty/15; Id. at 20-26; Id at 39-40.*

11 Further, Staff attempted to explain the process at both the prehearing and settlement
12 conference. Unfortunately, it appears the Intervenor believes that this constitutes supporting the
13 Company. It does not. Staff relies on its thorough review and testimony to demonstrate the
14 independence and reasonableness of the stipulated rates.

15 3. The settlement conference is an opportunity for the parties to discuss informal
16 resolution of the issues.

17 Based upon Intervenor testimony, there seems to be a misunderstanding about the nature
18 and procedure for settlement conferences. The settlement conference is not a public meeting in
19 the legal sense. Instead, the settlement conference is an opportunity for the parties to attempt to
20 informally resolve their issues and determine whether full or partial settlement can be reached.

21 While Staff would not normally discuss the settlement conference, it does so only to
22 respond to Intervenor testimony. In fact, and as is the case in all water settlement conferences,
23 Staff began by discussing the settlement process, settlement options, and the fact that statements
24 made in efforts to reach settlement were for settlement purposes only and could not be used in
25 testimony. Settlement discussions are intended to be confidential to allow for frank discussions
26 that may lead to the informal resolution of issues.

1 In the proper context, it is obvious why the settlement conference was not a public
2 meeting and why minutes would be inappropriate. Staff is concerned that the confidential
3 settlement discussions have been cited in Intervenor testimony. Nonetheless, and instead of
4 moving to strike the Intervenor's testimony, Staff took this opportunity to expound on the
5 purpose of settlement discussions.

6 4. Settlements between some, but not all, of the parties are appropriate and legal.

7 At the settlement conference and after several hours of discussion, the Company agreed
8 with Staff's settlement proposal. Considering that the settlement options were discussed at the
9 beginning of the meeting, it is curious that Intervenor testimony suggests that Staff should not
10 have settled before reading its testimony.

11 In preparing for the settlement conference, Staff conducted an extensive discovery
12 process. Through that discovery process and the Company's application, Staff prepared an
13 extensive settlement proposal. At the settlement discussion, Staff discussed in detail its
14 settlement proposal and attempted to answer any questions regarding the settlement proposal.
15 Additionally, all the parties present had the opportunity to participate and offer their own
16 settlement positions.

17 There simply is no requirement that all testimony be published before a stipulation can be
18 entered into by some of the parties. *See* OAR 860-036-0085(1). In fact, such a requirement
19 would severely hamper settlement discussion and allow one party to delay or prevent settlement
20 from occurring at all. Furthermore, Staff's entering into a partial settlement was not only legal,
21 but appropriate. The discovery process and settlement conference provided each party an
22 opportunity to develop a recommendation. In this case, the Company stipulated to Staff's
23 recommendation. Under these circumstances, it was appropriate for Staff to stipulate with the
24 Company.

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1 5. Overall rate comparisons between water companies are not relevant for establishing
2 cost of service rates.

3 Intervenor testimony questions why rate comparisons to other water companies are not
4 relevant. As discussed above in Section 1, rates are established based upon a traditional
5 ratemaking formula. This formula establishes rates based upon the individual water company's
6 cost of service and return of and on rate base. Because each water system has unique
7 characteristics, each water system's cost of service and investment is different. *See* Staff/100,
8 Miller-Dougherty/19, lines 2-4; *Id.* at 37, lines 15-23; *Id.* at 38, lines 1-2. While comparisons to
9 other water companies have some potential to provide direction in certain areas, such
10 comparisons are not sufficient or determinative in establishing the specific cost of service and
11 investment of a particular company.

12 6. Docket UI 263 is a separate docket that involves affiliated interest matters.

13 Initially, Intervenors raised concerns over the ownership of the Company. As Staff will
14 testify, Fred Shilling owns the Company as a 100 percent shareholder. Docket UI 263 is an
15 affiliated interest docket that considers the affiliated interest contract for Mr. Shilling's wages.
16 While Docket UI 263 is related to this case to the extent that they involve the same Company, it
17 involves different issues and has a separate Staff analyst. To assist the parties and record, Staff
18 has attached a copy of Staff's public meeting memorandum, which recommends approval of the
19 affiliated interest contract, as Attachment A.¹

20 Docket UI 263 involves whether an affiliated interest contract should be approved.
21 Because an affiliated interest contract exists and bargaining at arms length is a potential issue,
22 Staff reviews the contract to determine whether it meets the lower of cost to market tests. If an
23 affiliated interest contract is approved by the Commission, the expenses or investment *may* be
24 recognized in rates. *See* ORS 757.495(3). While approval of affiliated interest contracts allows

25 ¹ Staff requests that the Commission take official notice of the public meeting memorandum pursuant to OAR 860-
26 014-0050(e). To the extent that the Commission does not take official notice of Attachment A, Staff will move for
its admission at the evidentiary hearing. At the Commission's public meeting on May 8, 2007, the Commission
approved the affiliated interest contract, as conditioned in Staff's public meeting memorandum.

1 the expenses or investment to be included in rates, the appropriate level of recoverable expenses
2 or investment is determined in a rate proceeding, which in this case is Docket UW 119.

3 7. The Company's proposed 2005 test year, as adjusted by Staff, is appropriate for
4 establishing rates in this proceeding.

5 The Company filed for a 2005 test year stating that it was the most recent annual
6 information available at the time of filing, October 31, 2006. Some Intervenors alleged that 2005
7 was not a normal year and, therefore, Staff should have used a 2006 test year.

8 Regardless of the Company's filing, Staff did determine and use 2006 revenue in its
9 stipulated analysis. As typical in reviewing a utility test year, Staff made adjustments based
10 upon known and measurable changes to expenses. Additionally, income from 2006, as adjusted,
11 was used as a base for income, including the addition of income to reflect the increased number
12 of customers. *See* Staff/100, Miller-Dougherty/34, lines 3-8.

13 8. The stipulated rental and property taxes are correct.

14 Intervenors raised concerns regarding the rental of the office and surrounding property,
15 including the property taxes associated with that property. The Company only leases the
16 building and property at the office location; it does not own the real property. The property taxes
17 for the office building are not included in the stipulated rates. *See* Staff/100, Miller-
18 Dougherty/23, lines 4-11.

19 9. The Company's application and documents gathered through discovery, while
20 including inconsistencies and missing information, were adequate to determine just
21 and reasonable rates.

22 Intervenor testimony raised concerns regarding incomplete documentation. While it is
23 generally true that water utility documentation is not as perfect as Staff would desire, it is not
24 uncommon, and in this case it did not prevent Staff from developing recommendations for just
25 and reasonable rates. *See* Staff/100, Miller-Dougherty/37, lines 5-14.

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1 11. Intervenor testimony regarding the difference between 2005 and 2006 water
2 consumption is incorrect based upon Staff's review.

3 An Intervenor alleges that the difference between 2005 and 2006 water consumption is
4 3,795,274 cubic ft (cf). As Staff will testify, based upon its review, the actual difference in water
5 consumption between 2005 and 2006 is 1,549.043 cf.

6 12. Appointing a regent to run the Company is inappropriate.

7 Intervenors generally contend that the Company is poorly managed. Some Intervenors
8 go further and argue that the Commission should appoint a regent to operate the system.
9 Initially, Staff notes that the Commission regulates the rates and service of the Company. If the
10 water customers have complaints regarding service or a potential violation of Commission rules,
11 they should contact the Consumer Services Division.

12 The Commission's authority to appoint a regent is reserved for the most serious of
13 situations. The Commission does not have the legal authority to appoint a regent simply because
14 its customers do not approve of the management. *See* Staff/100, Miller-Dougherty/38, line 7
15 through Miller-Dougherty/39, line 15.

16 13. The stipulated rate design is just and reasonable.

17 Intervenors oppose the stipulated rate design because they contend that the difference in
18 the two tiers consumption charge is too great. Additionally, some Intervenors aver that there
19 should be some amount of water included in the base rate. In its review, Staff considered
20 numerous rate designs to determine the most equitable rate design for all customers.
21 Furthermore, the Commission's policy does not generally include any usage in the base rate
22 because the purpose of the base rate is to recover the utility's *fixed* costs. *See* Staff/100, Miller-
23 Dougherty/10, line 10 through Miller-Dougherty/14, line 16. The stipulated rate design is
24 equitable and results in just and reasonable rates for all customers.

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1 14. If customers have concerns regarding low pressure, they should contact the Company,
2 and if not resolved, the Commission's consumer services section so the issue can be
3 investigated.

4 As discussed at the prehearing conference, customers should call the Company, and if not
5 resolved, then contact the Commission consumer service section regarding low pressure
6 concerns. *See* Staff/100, Miller-Dougherty/5, lines 9-17.

7 15. The law allows water utilities to include costs of certain system improvements before
8 they are used and useful.

9 While it is correct that other regulated utilities cannot include property that is not used
10 and useful in rates, water utilities are the exception based upon the fact that it is more difficult
11 for water utilities to attract capital. Specifically, ORS 757.355(2) allows the Commission to
12 include the costs of specific capital improvements in water rates if the additional revenues are
13 solely for the purpose of completing the specific, identified capital improvement. *See* Staff/100,
14 Miller-Dougherty/36, line 5 through Miller-Dougherty/37, line 4.

15 16. The stipulated expenses are just and reasonable.

16 The Intervenors have expressed concern over several of the stipulated expense amounts.
17 At the evidentiary hearing, Staff will testify regarding the expenses as follows:

18 Communication Expense

19 An Intervenor points to a Unicef receipt for the number 541-408-5607 that states "detail
20 for Joe." While Joe has not worked for the Company since 2005, that cell number is the
21 Company's emergency number. The name "Joe" was assigned to the phone number to readily
22 identify the cell numbers. The emergency number remains the same; the name associated with
23 the number simply had not been updated.

24 An Intervenor also questions communication charges from outside the Bend area by Fred
25 and Beth Schilling. As noted earlier, Mr. Shilling is the 100 percent shareholder of the
26 Company. In Staff's experience, it is not unusual for executives and employees to call in when
27 they are out of the immediate area. The level of the stipulated communication expense is just
28 and reasonable.

1 Materials and Supplies Expense

2 An Intervenor notes that the stipulated materials and supplies expense is more than the
3 Company requested. However, the stipulated materials and supplies expense includes both the
4 deductions for removal of non-utility items along with the inclusion of items that were moved
5 from other accounts (or changes based upon actual receipts). *See* Staff/100, Miller-
6 Dougherty/25, Table 10.

7 Computer/Electronic Expense

8 An Intervenor alleges that once computers and software is purchased the future need is
9 reduced. The stipulated computer/electronic expense include repairs, extended software
10 maintenance fees, water bill cards, and uncapitalized software. *See* Staff/100, Miller-
11 Dougherty/25, Table 12.

12 Bad Debt Expense

13 The total uncollectibles from 2003 to 2006 was \$9,875.24. The total collected for the
14 same period was \$1,120.86. Thus, the total outstanding collectibles for the period was
15 \$8,754.38. To arrive at the bad debt expense, the stipulated expense averages the outstanding
16 total of the four-year period, which results in an average expense of \$2,188.60. In analyzing this
17 expense, Staff reviewed documentation from Cascade Credit Consulting, Inc.

18 Small Tools Expense

19 The actual small tools expense was \$568 in 2003; \$633 in 2004; \$319 in 2005; and \$148
20 in 2006. Because the purchase of small tools is cyclical since old tools need to be replaced, the
21 stipulated rates include a four-year average expense of \$417.

22 Transportation Expense

23 An Intervenor asserts that the stipulated transportation expense should be lowered by
24 \$4,000, based upon their belief that gas cards were used inappropriately. In performing its
25 analysis, Staff removed \$2,563.48 in the 2006 fuel costs based upon fuel purchased outside of
26 the Bend area and other personal use, which was paid for by personal checks. Further, the

1 stipulated rates removed \$3,281.73 from the 2005 receipts; and \$5,350 from the 2004 total
 2 receipts. In order to arrive at the stipulated transportation expense, and after removing the
 3 amounts discussed above, the stipulated rates take a three-year average of the revised receipts,
 4 which is \$17,128. The calculation of the stipulated transportation expense is shown in the
 5 following table:

6 **Table 1 – Staff Adjusted Transportation Expense for 2004-2006 and 3-Year Avg.**

7 <u>Transportation</u> 8 <u>Expense</u>	2004	2005	2006	Total	Average 3 yr
9 Total Fuel	\$11,624.50	\$ 14,545.17	\$ 14,797.96	\$ 40,967.63	\$ 13,655.88
10 Total Parts, 11 Repair & Maint.	\$7,261.45	\$ 2,490.16	\$ 665.05	\$ 10,416.66	\$ 3,472.22
TOTAL	\$18,885.95	\$ 17,035.33	\$15,463.01	\$ 51,384.29	\$17,128

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1 **CONCLUSION**


2 The stipulation entered into between Staff and the Company establishes overall just and
3 reasonable rates. Staff takes this opportunity to file a trial brief in order to further illuminate the
4 analysis underlying the stipulated rates. In addition, Staff takes this opportunity to respond to the
5 questions raised in Intervenor testimony.

6 For the foregoing reasons, Staff respectfully urges the Commission to adopt the
7 stipulation in its entirety.

8 DATED this 10th day of May 2007.

9 Respectfully submitted,

10
11 HARDY MYERS
12 Attorney General

13 
14 _____
15 Jason W. Jones, #00059
16 Assistant Attorney General
17 Of Attorneys for Staff of the Public Utility
18 Commission of Oregon
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23
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26

ITEM NO. 2

PUBLIC UTILITY COMMISSION OF OREGON
STAFF REPORT
PUBLIC MEETING DATE: May 8, 2007

REGULAR X CONSENT _____ EFFECTIVE DATE _____ Coincident with the UW 119 Final Order

DATE: April 30, 2007

TO: Public Utility Commission

FROM: Marion Anderson and Michael Dougherty

THROUGH: Lee Sparling, Marc Hellman

SUBJECT: AGATE WATER COMPANY: (Docket No. UI 263) Application for an affiliated interest contract between Agate Water Company and Fred Schilling.

STAFF RECOMMENDATION:

The Public Utility Commission (Commission) should approve the application of Agate Water Company, Inc. (Agate or Company) for an affiliated interest agreement with the following conditions.

1. The Company shall provide the Commission access to all books of account, as well as all documents, data, and records that pertain to any payments to Fred Schilling.
2. The Commission reserves the right to review, for reasonableness, all financial aspects of this arrangement in any rate proceeding or earnings review under an alternative form of regulation.
3. The Company shall notify the Commission in advance of any substantive changes to the agreement, including any material changes in any cost. Any changes to the agreement terms that alter the intent and extent of activities under the agreement from those approved herein, shall be submitted for approval in an application for a supplemental order (or other appropriate format) in this docket.
4. Total annual compensation payments to Fred Schilling shall not exceed \$55,800.

DISCUSSION:

This application was filed on March 21, 2007, pursuant to ORS 757.015 and 757.495, and OAR 860-036-0730. Mr. Schilling's affiliation arises from his ownership of the Company. This application is an outgrowth of the ongoing rate case, UW 119, and a revision to traditional Staff policy on owner utility employment. Precedent was established for the revised Staff policy in Docket UW 117, Order No. 06-657, dated December 4, 2006.

In Commission Order No. 06-627, the Commission clarified the requirements relating to situations where owners of water utilities were also employed by the utility. Staff had historically not requested an affiliated interest filing in such circumstances and instead rigorously reviewed the compensation expense during general rate reviews. In Order No. 06-627, the Commission found that the plain, natural, and ordinary meaning of the affiliated interest statute mandates that payment of wages and benefits to an owner of a utility requires an affiliated interest filing, pursuant to ORS 757.495(1).

Utility and Consumer Services Staff have received objections by several customers concerning this application. Staff has been in contact with many of the customers and applicable correspondence is attached. The attachment includes comments offered by Agate's customers regarding Mr. Schilling's compensation, as well as Staff's responses to customer's questions.

The following issues were investigated:

- Scope of the Agreement
- Transfer Pricing
- Determination of Public Interest Compliance
- Records Availability, Audit Provisions, and Reporting Requirements

Scope of the Agreement

Fred Schilling has a breadth of experience in the twenty-seven years he has worked full time at Agate.¹ This experience includes well and mainline installation, hook-ups, system operation, contract negotiation, cost estimation and bid development, staff management, corporate governance, and customer contacts. Mr. Schilling's new status will be as a hybrid part timer (manager/operator/officer with 24/7 availability for emergencies and questions) with regular contact with the system operator.

¹ This time includes his experience and ownership in Apache Water Company that was established in 1980. The merger of Agate and Apache was approved by the Commission in Commission Order No. 02-889 (UP 198), dated December 24, 2002.

Transfer Pricing

Pursuant to OAR 860-036-0739, Allocation of Costs by a Water Utility, when services or supplies are sold to a water utility by an affiliate, sales shall be recorded in the water utility's accounts at the affiliate's cost or the market rate whichever is lower. Given the nature of this application between the Company and a majority stockholder, Staff's review will focus on market rate analysis since cost and market are essentially the same.

To determine employee wages for Mr. Schilling, Staff used the Oregon Labor Market Information System (OLMIS) Deschutes County Prevailing Wages and the American Water Work Association (AWWA) 2006 Water Utility Compensation Survey adjusted for years of service.

The normal annual hours figure is 2,076. The 2006 Crook/Deschutes/Jefferson regional wages for General and Operations Managers analysis shows the following:

10th	25th	50th (median)	75th	90th	Average Hourly Rate	Annual Average
\$19.06	\$24.36	\$33.06	\$43.15	\$63.19	\$37.22	\$77,402

The AWWA Compensation yields the following:

	Minimum Average Salary	Middle Average Salary	Maximum Average Salary
Top Operations & Maintenance Executive	\$37.47	\$45.14	\$48.66

The average of the two wages used by Staff (90th percentile for OLMIS and maximum average salary for AWWA) is \$55.93.

Given the aforementioned employment description (with the time estimate uncertainty), experience, and utility size, this level of remuneration meets the requirements as set forth in statutes and Commission rules.

Mr. Schilling's considerable experience would most likely place him in the 75th or 90th OLMIS percentile in wages. During Mr. Schilling's ownership and management, the Agate/Apache customer base grew from approximately a dozen customers to the current 1,116 customers. In addition to lower than market wages, because of cash flow, Agate has not been able to provide health, life insurance, or pension benefits to Mr. Schilling.

Determination of Public Interest Compliance

Wages are an ordinary and necessary expense incurred in the operation of a business. In addition, wages to an owner should not be supplanted by the Company's net income that results from a return on plant investment, or by cash flow that partially results from the return of investment (non-cash depreciation expense).

In the case of this application, Agate is paying the majority shareholder a rate that meets the Commission's Transfer Pricing Policy and a rate that is most likely less than a rate that the Company would pay a third-party corporate officer and certified water operator.

Additionally, recommended Order Condition No. 2, reserves the right for the Commission to review, for reasonableness, all financial aspects of this transaction in any rate proceeding or alternative form of regulation. This condition is extremely relevant since UW 119 has not been decided and wages are an issue in contention between the Parties.

In essence, this submittal of an affiliated interest application satisfies the requirement of Commission Order No. 06-627; however, the actual determination of wage amounts in rates will be determined in the Commission's final order in the matter of UW 119. This agreement is fair, reasonable, and not contrary to the public interest.

Records Availability, Audit Provisions, and Reporting Requirements

Staff Recommendation Condition No. 1 affords necessary access to any relevant records.

Based on the review of this application, Staff concludes the following:

1. The arrangement's scope is reasonable.
2. The contract will not harm customers and is not contrary to the public interest with the recommended conditions.
3. Necessary records are available.

PROPOSED COMMISSION MOTION:

Agate Water Company's affiliated interest agreement with Fred Schilling be approved, subject to the recommended conditions.

Oregon Public Utility Commission

Specialist: RIOS-THISSELL,

DEANNA

Name: RISER, LAWRENCE

Addresses: P O BOX 7156, BEND OR 97708-7156 (MAIL) (INVOLVED)

E-Mail: lriser5000@cs.com
263

DOCKET #: UI

Phones: (541) 382-2213 (RESI)

Subject: UW 119

COMPLAINT RATE PROTEST

PENDING REQUEST

Company:

0018 W AGATEW

Open: 4/23/2007

Close: 4/26/2007

drios

TELE

Call Taken: 4/23/2007

Taken By: BURKE, LESLIE S

Open Date: 4/23/2007

Opened By: RIOS-THISSELL, DEANNA

Disconnect Notice Due:
Service:

Disconnected:

Out of

4/22/2007

CODE DETAIL

Complaint - Rate Protest - Pending Request: Lawrence Riser contacted the Commission regarding his concerns and opposition in the affiliated interest contract between Agate Water and Fred Schilling.

4/22/2007 9:40:00 PM EMAIL FROM CONSUMER TO PUC COMMISSION OFFICE

From: Lriser5000@cs.com [mailto:Lriser5000@cs.com]

Sent: Sunday, April 22, 2007 9:40 PM

To: Commission PUC

Subject: Agenda Item CA12 Agate Water Company

My name is Lawrence Riser

I reside in Bend, Oregon

I am an intervenor in rate case UW119

I have not previously expressed interest in this item because I did not know of it until I found it listed on puc web site. At this date I am unable to attend the public meeting in person. As Agate Water Company has applied for an affiliated interest contract with Mr. Fred Schilling, I have concerns over the commission granting the application.

1. Mr. Schilling has only owned the company since 1983, which is only 24 years ago, so I question the 27 years stated on application. The water system was originally

constructed in March of 1981 by Mr. Carl Smelsher. (reference Utility testimony UW108 lines 11 and 12.

2. I question why an affiliated interest contract was not applied for when last rate increase was granted. (reference UW108 Order no 05-1087 that was signed on October 13 2005) Mr. Schillings wages were the same at that time as presented now so shouldn't ORS 757.495 (1) have applied at that time?

3. I do not believe that the records show sufficient evidence to fully justify the need to employ Mr. Schilling on a full time basis. (I.E. time reports or other documentation) Both the previously approved UW108 and the presently applied for UW119 Show Mr. Schilling working as a full time employee.

4. I believe that the commission should not approve this application until such a time as when all the pertinent testimony on the pending rate case (UW119) has been presented at the evidentiary hearing has been presented. I believe that that hearing is set for sometime in early May of this year.

Respectfully yours
Lawrence Riser
P.O.Box 7156
Bend, Oregon 97708-7156

4/23/2007 10:14:00 AM
COMMENTS FWD'D TO

EMAIL FROM COMMISSION OFFICE -
UTILITY STAFF

From: ZASTOUPIL Cherie
Sent: Monday, April 23, 2007 10:14 AM
To: CONSUMER PUC
Cc: SCOTT Allen R.; GRANT Michael; GR-AHD SUPPORT.
Subject: FW: Agenda Item CA12 Agate Water Company

FYI, more comments received related to UW 119 (see below).
Already forwarded to utility.
Thank you,
--Cherie

4/25/2007 1:29:00 PM

CALL TO CUSTOMER TO CLOSE

I called Lawrence to let him know we received his email. I explained the public meeting had been removed from the Consent Agenda on 4/24/07. I told him his comments/concerns will be forwarded to the appropriate staff for further review.

Additionally, I explained the reason he was not notified about this public hearing, even though he is an intervener on UW 119, is because he would also need to be listed as an interested party for UI 263, which deals with the affiliated interest contract. I asked if he wanted me to have him added as an interested party. He said he would like that. I told him I would have that taken care of and we ended our call.

Oregon Public Utility Commission

Specialist: RIOS-THISSELL,

DEANNA

Name: ANDERSON, DAVE

E-Mail: casman8815@aol.com
263

DOCKET #:UI

Phones: (541) 317-9791 (WORK)

Subject: UW 119

COMPLAINT RATE PROTEST

PENDING REQUEST

Company:

0018 W AGATEW

Open:4/24/2007

drios INET Close:4/26/2007

drios TELE

Call Taken: 4/23/2007

Taken By: BURKE, LESLIE S

Open Date: 4/24/2007

Opened By: RIOS-THISSELL, DEANNA

Disconnect Notice Due:
Service:

Disconnected: Out of

4/23/2007

CODE DETAIL

Complaint - Rate Protest - Pending Request: Dave Anderson contacted the Commission to include his comments in docket UI 263 regarding. He stated he strongly opposes approval of the affiliated interest contract between Agate Water and John Fred Schilling.

4/23/2007 3:59:00 PM

EMAIL FROM CUSTOMER

From: casman8815@aol.com [mailto:casman8815@aol.com]
Sent: Monday, April 23, 2007 3:59 PM
To: BEIER Becky; westoby@bendcable.com; Commission PUC
Cc: tar-55@juno.com; timkelley369@cs.com; lrisher5000@cs.com;
joelsteph@peoplepc.com; rc14fraser@msn.com

Subject: Re: In the matter of staff recommendation pertaining to item No. CA12 scheduled for discussion at public meeting April 24th 2007

My Name is Dave Anderson and I am an intervener in Agate Water Company's application for rate increase (UW 119). It has been brought to my attention that on April 24th, there is a public meeting of the PUC. On the consent agenda, item CA12 involves a major participant (John Fred Schilling) in UW 119. I would like to state my strong opposition to any approval at this time in CA12. A final decision on this application at this time would be premature considering the substantial outstanding evidence and opposition to UW 119. Please allow the UW 119 intervenors to present our testimony at the evidenciary hearing, scheduled for May 10th, before reaching a conclusion on CA12.

I would like to also add the interveners to Agate water Docket UW119 were not notified of this Proceeding, As a past and current Agate water intervener I believe Agate water Interveners are supposed to be contacted on all PUC matters regarding Agate water, furthermore I was personally involved in a lengthy phone conversation about Mr Shilling and his involvement or lack there of and questioned his involvement with Agate Water Co with a PUC Staff member Kathy Miller last Wednesday, April 18th, at no point in our lengthy phone conversation on this matter did she advise or make aware to me that this proceeding was in process, I would like to ask if Mrs. Miller was unaware of this proceeding.

Thank you for your assistance,
Dave Anderson

4/23/2007 4:10:00 PM
COMMENTS

EMAIL FROM COMMISSION OFFICE - ADD

From: BEIER Becky
Sent: Monday, April 23, 2007 4:10 PM
To: ANDERSON Marion; HELLMAN Marc
Cc: CONSUMER PUC; SCOTT Allen R.
Subject: FW: In the matter of staff recommendation pertaining to item No. CA12 scheduled for discussion at public meeting April 24th 2007

Another party heard from on this matter.

4/25/2007 12:22:00 PM

VOICE MAIL TO CUSTOMER TO CALL ME

I left a detailed voice mail message for Dave telling him we received his comments regarding CA 12. I informed him the item had been removed from the Consent Agenda on 4/24/07 for further investigation by our staff.

Additionally, I explained the reason he was not notified about the public meeting, even though he is an intervener on UW 119, is because he is not listed as an interested party or intervener on UI 263. If he would like to be added as either an interested party or an intervener for future meetings on this docket, he can call me back.

Lastly, I told him I could not speak for Kathy Miller as to why she did not mention the public meeting to him that had been scheduled for 4/24/07. I told Dave she was not the staff person assigned to UI 263.

I advised Dave his comments have been forwarded to the appropriate staff for review.

I left our toll-free number for him to call me if he wants to be added to the service list for UI 263.

4/26/2007 3:15:00 PM

CLOSING NARRATIVE

The customer has not returned my call to be added to the interested persons list for UI 263, so I am closing the complaint. If he should contact me, his request can be forwarded to AHD at that time.

Oregon Public Utility Commission

Specialist: CHIPPS, CAROL

Name: MICHELSEN, STEPHANIE

E-Mail: joelsteph@peoplepc.com
263

DOCKET #:UI

Subject: UW 119

COMPLAINT RATE PROTEST

PENDING REQUEST

Company:

0018 W AGATEW

Open:4/24/2007

cchipp

INET

Close:4/25/2007 cchipp TELE

Call Taken: 4/23/2007

Taken By: GILBRETH, ASHLEY

Open Date: 4/24/2007

Opened By: CHIPPS, CAROL

Disconnect Notice Due:
Service:

Disconnected:

Out of

4/23/2007

CODE DETAIL

COMPLAINT/RATE PROTEST/PENDING REQUEST - Ms. Michelsen is an intervenor in the pending rate case and is opposed to Item CA12 on the consent agenda. She would like the intervenors to be able to give their testimony at the evidentiary hearing tentatively scheduled for May 10 before considering approval of CA12 of the consent agenda.

4/23/2007 2:51:00 PM

EMAIL FROM CUSTOMER

From: Joel Michelsen [mailto:joelsteph@peoplepc.com]
Sent: Monday, April 23, 2007 2:51 PM
To: Commission PUC
Cc: Stephanie Michelsen; Tim Kelley; Tim Rogers; Larry Riser; Corine Fraser; Dave Westoby;
Dave Anderson
Subject: Staff Recommendation CA 12; Docket No. UI263

Dear PUC Staff:

My name is Stephanie Michelsen and I am an intervenor in Agate Water Company's application for rate increase (UW 119). It has been brought to my attention that on April 24th, there is a public meeting of the PUC. On the consent agenda, item CA12 involves a major participant (John Fred Schilling) in UW 119. I would like to state my strong opposition to any approval at this time in CA12. A final decision on this application at this time would be premature considering the substantial outstanding evidence and opposition to UW 119. Please allow the UW 119 intervenors to present our testimony at the evidentiary hearing, scheduled for May 10th, before reaching a conclusion on CA12.

Thank you for your consideration.

Respectfully,
Stephanie Michelsen

Account Name: MICHELSEN, STEPHANIE
Open Date: 4/24/2007
Analyst: CHIPPS, CAROL

4/23/2007 2:54:00 PM

EMAIL FROM BECKY - COMMISSION OFFICE

From: BEIER Becky
Sent: Monday, April 23, 2007 2:54 PM
To: SPARLING Lee; ANDERSON Marion; HELLMAN Marc; SCOTT Allen R.
Cc: BAILEY-GOGGINS Vikie; BARNES Kay; GR-CONSUMER; HAYES Jenny;
ZASTOUPIL
Cherie
Subject: FW: Staff Recommendation CA 12; Docket No. UI263

Another email regarding CA 12. Let us know what you plan to do.

4/23/2007 3:00:00 PM

EMAIL TO CUSTOMER - ACKNOWLEDGEMENT

From: CONSUMER PUC
Sent: Monday, April 23, 2007 3:00 PM
To: 'joelsteph@peoplepc.com'
Subject: RE: Staff Recommendation CA 12; Docket No. UI263

Thank you for your e-mail to the Public Utility Commission of Oregon. It has been forwarded to one of our staff in the Consumer Services Division.

4/24/2007 8:22:00 AM

REVIEWED W/KATHY MILLER

She said the public meeting has been changed to May 8 due to comments from intervenors. I said that would still be before intervenors make their presentation if the customer has it correctly. She said in her email that they would be presenting their testimony at the evidentiary hearing on May 10. Kathy said she will look into this further and get back to me.

4/25/2007 10:55:00 AM

CALL TO KATHY MILLER/UPDATE?

I asked if she was looking into changing the date for John Fred Schilling (UI 263) to AFTER May 10th when the intervenors have an opportunity to make THEIR presentation. She said at this time, UI 263 has been rescheduled to May 8 but it would not be up to her to make a change in this schedule. The date for the intervenors is tentative (Dockets shows May 9 and customers calling are saying May 10--this was explained by Kathy later. She said Jason will be having the date changed to May 10--it just isn't reflected in the docket yet). I told Kathy I would tell this customer that her rate protest will be noted in the record and referred to Hearings and Water staff for their information. However, the schedule for UI 263 is set for May 8 and I do not know if that will be changed or not to come after the evidentiary hearing in UW 119.

4/26/2007 10:46:00 AM VOICE MAIL TO MS MICHELSEN TO CLOSE

I left a detailed VM message for Ms Michelsen on her cell phone that her opposition to the rate increase was noted and that the hearing originally scheduled for April 24 (UI 263) was changed to May 8 at this time. I could not tell her if that date would again be changed to come AFTER the evidentiary hearing scheduled for May 10 (UW 119) per her request. I asked her to call me if she had questions, but advised I was closing her case and forwarding copies of it to staff working on UI 263 and UW 119.

4/26/2007 12:07:00 PM

REVIEWED W/DEANNA RIOS-THISSEL

Deanna also has an Agate complaint regarding CA12. She said she talked to Marion Anderson and since affiliated interest cases are what he does, he would like copies of any complaints regarding CA12 (UI 263) and Kathy Miller would like them as well. At the time we looked at dockets, UI 263 had not been assigned to a Hearings Officer so I will send a copy to Carol Hulse.

Marion also said it is a possibility that UI 263, the affiliated interest case, may just be made a part of UW 119, the rate case.

Oregon Public Utility Commission

Specialist: BOYLE, PHIL

Name: WESTOBY, DAVID

E-Mail: westoby@bendcable.com
263

DOCKET #:UI

Subject: RELATED TO UW 119

COMPLAINT RATE PROTEST

PENDING REQUEST

Company:
pjboyle INET

0018 W AGATEW Open:4/23/2007
Close:4/24/2007 pjboyle TELE

Call Taken: 4/23/2007
Open Date: 4/23/2007

Taken By: BURKE, LESLIE S
Opened By: BOYLE, PHIL

Disconnect Notice Due:
Service:

Disconnected: Out of

4/22/2007

CODE DETAIL

Rate Protest - Pending Request

Mr Westoby is an intervener in Docket UW 119. He has concerns about the staff recommendation relating to item CA12 that he wants taken into consideration before the commission issues its' final order. He says there are statements made by staff that he does not agree with, and wants the commission to refrain from issuing a final order until testimony has been entered and discussed in an evidentiary hearing.

4/22/2007 9:06:00 PM
COMMISSION OFFICE

EMAIL FROM CONSUMER TO PUC

From: D. Westoby [mailto:westoby@bendcable.com]
Sent: Sunday, April 22, 2007 9:06 PM
To: Commission PUC
Cc: Tim Rogers; Tim Kelly; Larry & Vera Riser; Joel & Stephanie Michelsen; Dave Anderson; Dave & Barb Westoby; Corine Fraser
Subject: In the matter of staff recommendation pertaining to item No. CA12 scheduled for discussion at public meeting April 24th 2007

Hello,

My name is David N. Westoby, and I am an intervener in the matter of Agate water Company's application for rate increase (UW 119). After reviewing staff recommendation and related comments found on item No. CA12, I have noticed several discrepancies in accuracy of reporting, as well as inclusion of all pertinent data regarding Agate water Company's request. While I do not have access to the actual application filed by Agate water Company, I see several statements in staff's proposal (item No. CA12) and I do not agree with. Since this proposal is coincident with the UW 119 final order, I would urge the commission to please refrain from any final

decisions regarding item No. CA12 until testimony has been entered and discussed in the UW 119 evidentiary hearing. This would allow the commission to take into account all of the information pertinent to Agate water Company's operating procedures and requirements. Thank you very much for your time

Respectfully Submitted,

David N. Westoby

**4/23/2007 10:12:00 AM
FORWARDING**

**EMAIL FROM COMMISSION OFFICE
CONSUMER EMAIL**

From: ZASTOUPIL Cherie
Sent: Monday, April 23, 2007 10:12 AM
To: CONSUMER PUC
Cc: SCOTT Allen R.; GRANT Michael; GR-AHD SUPPORT.
Subject: FW: In the matter of staff recommendation pertaining to item No. CA12 scheduled for discussion at public meeting April 24th 2007

FYI, comments received related to UW 119 (see below).
Already forwarded to utility.
Thank you,
--Cherie

4/24/2007 11:33:00 AM

EMAIL TO CUSTOMER - ACKNOWLEDGEMENT

From: CONSUMER PUC
Sent: Tuesday, April 24, 2007 11:33 AM
To: 'westoby@bendcable.com'
Subject: Your comments regarding UW 119

Thank you for your e-mail to the Public Utility Commission of Oregon. It has been forwarded to one of our staff in the Consumer Services Division.

4/24/2007 2:15:00 PM

EMAIL TO ANNETTE TAYLOR - CLOSED CASE

From: BOYLE Phil
Sent: Tuesday, April 24, 2007 2:15 PM
To: TAYLOR Annette
Subject: UW 119

Annette,
Here is the closed case file for additional comments from intervener David Westoby.

From: D. Westoby [mailto:westoby@bendcable.com]

Sent: Wednesday, April 25, 2007 12:23 AM

To: ANDERSON Marion

Subject: RE: Docket UI 263

Hello Marion,

My apologies for taking so long to reply to your e-mail regarding docket UI 263. I have had my hands full with preparing my testimony in regards to UW 119, as well as my responsibilities at a full-time job. I usually don't even get to check my e-mail until 6:00 or 7:00 PM.

At this time, I would actually be interested in suspending discussion regarding UI 263 until after the evidentiary hearing for UW 119, based on the proposed maximum allowable salary for Fred Schilling. If the filing does take place on the 8th, I believe we would be able to get some intervenors to attend via telephone, but I think at this point we are all in agreement that the amount stipulated in item No. CA12 is excessive, given the scope of Mr. Schilling's actual duties.

Also, would there be any possibility of obtaining a transcript of discussion regarding this item at the meeting?

Thank you for your time.

Respectfully submitted,

David N. Westoby

-----Original Message-----

From: ANDERSON Marion [mailto:Marion.Anderson@state.or.us]

Sent: Tuesday, April 24, 2007 1:54 PM

To: Lriser5000@cs.com; westoby@bendcable.com; joelsteph@peoplepc.com; casman8815@aol.com; tar-55@juno.com; timkelley369@cs.com; rc14fraser@msn.com

Subject: Docket UI 263

Intervenors,

I am again enclosing the public meeting memorandum that was removed from today's consent agenda.

<<UI 263.doc>>

By the close of business today, April 24th, I will need to let the Commission Office know whether the Agate affiliated interest filing will be scheduled for the May 8th Public Meeting. Should that filing take place on May 8th, please let me know if you are interested in offering comments either in person or by telephone.

Thank You,

Marion Anderson

503-378-4362

From: DOUGHERTY Michael
Sent: Monday, April 30, 2007 3:58 PM
To: 'tkelly369@cs.com'; 'westoby@bendcable.com'; 'joelsteph@peoplepc.com';
'lriser5000@cs.com'; 'casman8815@aol.com'; 'tar-55@juno.com'; 'rc14fraser@msn.com'
Cc: MILLER Kathy; 'Jones Jason W'; HELLMAN Marc; ANDERSON Marion
Subject: Responses to Questions

Mr. Kelley,

You asked a series of questions to Marion Anderson concerning UI 263. Since many of the questions deal with UW 119, I will answer your questions as Marion is not involved in this docket.

Q. 1. Why is the P.U.C. delaying the UI263 / CA12 hearing, but still placing it before our hearing on May 10, 2007? On May 10th the evidence regarding your case will be made evident.

PUC Staff is not delaying the UI 263 hearing. Pursuant to Oregon Revised Statute (ORS) 757.495, an order concerning an affiliated interest application must be entered in 90 days after the matter has been submitted to the Commission. The application was filed March 21, 2007. We moved this matter to the May 8 public meeting so that the Commissioners would have more time to consider any comments offered by the customers of Agate.

Because of the rate case, I instructed Marion to have it presented to the Commission prior to May 9, 2007. UI 262 and UW 119 are separate dockets. The requirement for the application was established in Docket UW 117, Order No. 06-657, dated December 4, 2006.

In Commission Order No. 06-627, the Commission clarified the requirements relating to situations where owners of water utilities were also employed by the utility. Staff had historically not requested an affiliated interest filing in such circumstances and instead rigorously reviewed the compensation expense during general rate reviews. In Order No. 06-627, the Commission found that the plain, natural, and ordinary meaning of the affiliated interest statute mandates that payment of wages and benefits to an owner of a utility requires an affiliated interest filing, pursuant to ORS 757.495(1).

By filing the application, Agate was complying with the Commission's order. Letters of notification were sent to water utility owners/employees on January 31, and March 19, 2007, to file the affiliated interest (AI) applications. This docket satisfies the affiliated interest filing requirement for the Mr. Schillings wages. Reasonableness in rates will be determined in UW 119.

Q. 2. Why then, given the above would the P.U.C. push through UI263 / CA12 without reviewing ALL the intervener's evidence and testimony in the concurrent UW119 case?

These are two distinct dockets. UI 263 requests approval of the contract. Final determination of rates is decided in UW 119. These are two different standards that should not be confused.

UW 119 testimony by all parties is to be filed by April 30, 2007. Although Staff may chose to respond to intervener's testimony if received early, it is the Commission that will decide the appropriate amount of wages in rates. Staff only makes a recommendation based on its independent analysis, and all testimony submitted will be considered by the Commission.

However, please be aware that Staff's UI 263 analysis concerning the level of wages is the same as the UW 119 analysis.

Q. 3. Is the P.U.C. going to review the testimony and evidence of the interveners of UW119 in the Docket UI263 / CA12 matter? Based on your actions it appears you would rather move forward without our input. This is contrary to your obligation under law as set forth in your operating guidelines.

These are two separate dockets. Staff will attach intervener correspondence, including this e-mail, concerning UI 263 to its public meeting memo. The Administrative Law Judge will review all UW 119 testimony by interveners as part of the hearing process.

Q. 4. Why is the P.U.C. placing an undue hardship on the interveners in requesting that they take additional time off work to participate redundantly in a parallel matter such as UI263 / CA12? Staff is getting paid for their time. The interveners are losing income as a result of our participation. It appears the P.U.C. is trying to exacerbate the intervener's loss of wages by placing UI263 / CA12 before the May 10, 2007 evidentiary hearing.

As stated above, the Commission is required to act on an AI filing within 90 days. UI 263 and UW 119 are separate dockets. The Commission conducts public meetings generally every other Tuesday in Salem. The dates and times of public meetings are published well ahead of time. You can chose to participate in person, by telephone, or by written statements.

I plan to attach your questions and my responses to your questions to the public meeting memo so it will be in the UI 263 record. Please note that the UW 119 Prehearing Conference (6:00), Settlement Conference (6:30), and Hearing (5:00) have all been scheduled as to allow participation by interveners.

A. The P.U.C.'s concealment from the interveners and handling of the UI263 / CA12 case, along with the bias shown Agate throughout these proceedings appears to be, in and of itself, a gross breach of the P.U.C.'s responsibility to the tax paying public.

There has been no concealment of this docket. Staff was and is always willing to respond to any parties' concerns. These are separate dockets. UI 263 requests approval of the owner-employee relationship, UW 119 will determine the level of wages in rates.

Additionally, I am concerned that if the P.U.C. is acting under the legal advice of the D.O.J., the D.O.J. may want to review their advice given.

Specifically, the P.U.C., under the counsel of the D.O.J. at the April 12, 2007 settlement conference, stipulated to the rate increase prior to receiving or reviewing the intervener's testimony.

Testimony is submitted as part of a stipulation, or as evidence in an evidentiary hearing if a hearing is conducted. The following UW 119 schedule was noticed by the Administrative Law Judge (ALJ) on February 22, 2007:

Deadline for Petitions to Intervene March 7, 2007

- Settlement Conference April 11, 2007, in Bend
- Deadline for Data Requests April 13, 2007
- Deadline for Data Responses April 20, 2007
- Staff and Intervenor Direct Testimony due April 30, 2007
- Hearing May 9, 2007, in Bend (Changed to May 10, 2007)

Staff performed its analysis and presented it at the settlement conference. No other parties at the settlement conference presented a specific analysis. Staff's examination was thorough and Kathy Miller brought invoices, receipts, etc. to the conference and made it available for review.

Q. 5. Why did the D.O.J. advise the P.U.C. to stipulate prior to the manifestation of the evidence?

Staff believes the settlement reached will result in rates that are fair and reasonable. With regards to the nature of settlement, the following link is from the Commission's web-site concerning settlement:

http://www.puc.state.or.us/PUC/admin_hearings/guidelines_settle.shtml

Q. 6. Twice in separate meetings, I asked staff if Agate Water was in compliance with the Sarbanes Oxley bill that was made into law. No one in the meeting knew of Sarbanes Oxley even though it applies to a large percentage of businesses in the United States.

Most private companies, not-for-profit organizations, and government agencies are not required to comply with SOX. Agate is not registered with the SEC since

it is not a publicly-traded company, and does not fall under the requirements of SOX.

During audits of energy utilities, I will routinely look at a utility's compliance with SOX and I am generally familiar with its requirements.

Since Agate Water has stocks issued, is it in compliance with Sarbanes Oxley and why was the D.O.J. unaware of the mandatory compliance requirement for Sarbanes Oxley, since many of the companies the P.U.C. governs must comply by law with Sarbanes Oxley?

As previously mentioned, Agate is not a publicly-traded company, not registered with the SEC and does not fall under SOX. Additionally, our AAG is well-versed in business combinations, SOX, and other aspects of publicly-traded companies.

A. The D.O.J. and P.U.C. is responsible for knowing the laws of the country. It appears Sarbanes Oxley was not implemented into P.U.C. and D.O.J. training parameters.

PUC Staff and DOJ are very familiar with Commission statutes and rules, and related utility regulations. Please keep in mind, that different Staff work in and specialize in different areas of utility regulation.

Given the questionable legal advice made to the P.U.C. by the D.O.J., and the fact the D.O.J. and P.U.C. were not aware of what a "White Waiver" was or what Sarbanes Oxley was or if it applied to this case, I am hereby calling for some oversight intervention directly from the P.U.C. and D.O.J. and their governing authority. Please request this be implemented at this time.

As previously mentioned, Kathy Miller duties does not require a knowledge of SOX. Again, if the question was addressed to me, I would have told you that most private companies, not-for-profit organizations, and government agencies are not required to comply with SOX. Agate is not registered with the SEC since it is not a publicly-traded company and does not fall under the requirements of SOX.

Q. Will the P.U.C. allow the UW119 testimony of the interveners towards its decision of CA12?

The emails sent to the Commission regarding the CA12 will be considered by the Commission. As previously mentioned, determination of the level of rates will be determined in UW 119. All filed testimony for UW 119 will be reviewed and considered by ALJ and presented to the Commission.

A. In an email sent from Becky Beier and subsequently from Marion Anderson to Larry Riser, See Exhibit "F" attached, you state,

"Kathy Miller is in charge of the concurrent rate case Uw199 and needs the salary matter resolved in order to finalize the revenue requirements".

Reasonableness in rates is determined in UW 119. Agate was required to file the contract based on Commission Order No. 06-627.

I take exception to your statement that this matter must be resolved prior to finalizing the financial requirements. This appears to be another bias towards Agate Water by the P.U.C.

There is no bias towards Agate. The reasonableness of the level of wages will be determined in UW 119, which you have submitted testimony.

See Exhibit "G" which is attached. This exhibit is several pages from the lengthy Oregon Administrative Rules handbook. This "Exhibit" has been abbreviated as a paper reduction effort. Please be advised the entire Oregon Administrative Rules booklet shall hereby be entered into evidence, if it has not been already. It is assumed a reasonable person who works for the P.U.C. and the D.O.J. has the entire booklet in their possession.

The ALJ and Commission have access to the rules and work with various rules on a daily basis.

If you disagree with this statement, please advise so I may mail in copies of the entire booklet. Please compensate me for the copy and mailing fees, since the document was published by the state.

The rules are on our web-site, and there is no need for you to send them.

Specifically, see page 44 – Div. 036 under 860-036-0815. This refers to requirements regarding annual reports. Additionally, it calls for the annual report to be presented by April 1, 2007.

Agate has not filed its annual report. Staff is aware of this. However, please keep in mind that the level of review in UW 119 is much more detailed than that in the annual report. With this said, letters were previously drafted and will be sent this week to all companies that are currently late on the annual report submission.

It is my contention this annual report shall be made available to all the interveners.

When Agate submits the report, it will be made available. Please keep in mind, that the requirements of a rate case, including discovery is very time-consuming for an utility.

Notwithstanding the above, please use this document to finalize Kathy Miller's revenue requirements aspect and address the concurrent classification of Mr. Schilling's job description.

As previously mentioned, Kathy Miller's review was separate from UI 263 and is much more detailed than what will be in the annual report.

Please do this rather than granting Agate a last minute legal maneuver in the late hour we are in.

There was/is no last-minute legal maneuvering. Agate was directed by Staff to file the AI application.

In the above referenced Exhibit "F" please address the concerns listed by Larry Riser as the E mail reply is self serving and answers no questions or points raised.

Q. Is Agate Water owned by both Mr. and Mrs. Schilling under the laws of the state of Oregon regarding community property?

Agate is registered with the Secretary of State Corporations Division as a domestic business corporation. Attached is a link:

http://egov.sos.state.or.us/br/pkg_web_name_srch_inq.do_name_srch?p_name=AGATE%20WATER&p_regist_nbr=&p_srch=PHASE1&p_print=FALSE&p_entity_status=ACTINA

Q. Why is Fred Schilling's job description being requested to be changed during the proceedings.

It isn't.

A. It appears this too is a self serving effort on Agate's behalf.

Q. 860-036-0705 paragraph #5 states:

(5) Whenever these rules require the filing of financial statements, they shall be prepared as of the latest date available. The income statement shall be for the most recent 12-month period.

According to the above referenced rule, why not evaluate the last 12 month period which by law was to have been received on April 1, 2007?

The rate application was submitted on October 31, 2006, as such 2005 was the most current year to use as a test year. On request of customers, Kathy Miller

used 3 - 4 years of data when determining many of the expenses. Additionally, adjustments were made on any costs that are known and measurable.

Q. If CA12 is applying for Fred Schilling to become a "Hybrid" employee, will he resume his director status and activity?

Mr. Schilling's wages are based on duties as an officer and operator.

If he is not director, who is or will become the director of Agate Water Company under CA12?

Mr. Schilling has 100 percent of the shares of the Company. UI 263 requests approval for the payments to Mr. Schilling. UW 119 determines the reasonableness in rates.

Q. Is Agate Water in full compliance under the Oregon Administrative Rules. See:

- 1. Hours of operations – 860-036-0015 paragraph 9 & 10**
- 2. Testing water meters - 860-036-0110**
- 3. Maintenance – 860-036-0305 Paragraph 4**

Please be more specific on your concerns. The Consumer Services Section reports that from March 2005 to December 2005, the Commission received 8 service complaints; during 2006, the Commission received only four service complaints; and to date in 2007, the Commission has received only one service complaint.

A. It is my understanding that my meter has never been tested. Nor have I been notified of any flushing of our dead end line.

Please see OAR 860-036-0115 on requesting a meter test. The Company can provide you with flushing dates and schedules.

Q. Are the violations by Agate Water provided under not only my testimony, but all the points made by the other interveners just cause to invoke per 036-0365, the installation of a regent?

The specific purpose of the rule is to provide a recourse the Commission may use should a company exhibit egregious behavior, such as refusal to operate the system. The Commission has used this remedy only once. Agate demonstrates no such egregious behavior.

It is willing and able to operate and manage the water system to provide safe and adequate service to its customers in compliance with Oregon statutes, rules, and standards. As previously mentioned, the Commission's Consumer Services Section received eight service complaints from March to December 2005, four service complaints in 2006, and only one service complaints in 2007 so far. The low number of complaints, considering the customer count of 1,116, shows a strong commitment to service by the Company.

A. Yes. Please set a regent in place to access this matter and business correctly.

Staff will not recommend a regent.

Michael Dougherty
Program Manager
Corporate Analysis & Water Regulation
Oregon Public Utility Commission
(503) 378-3623
michael.dougherty@state.or.us

1 **CERTIFICATE OF SERVICE**

2
3 I certify that on May 10, 2007, I served the foregoing upon all parties of record in this
4 proceeding by delivering a copy by electronic mail and by postage prepaid first class mail or by
5 hand delivery/shuttle mail to the parties accepting paper service.

6 DAVID ANDERSON
19780 FOSTER LANE
7 BEND OR 97702
casman8815@aol.com

TIMOTHY A ROGERS
60194 CINDER BUTTE RD
BEND OR 97702-8959
tar-55@juno.com

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11 BEND OR 97702
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agateh2o@bendbroadband.com

12 STEPHANIE MICHELSEN
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13 BEND OR 97702
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PUBLIC UTILITY COMMISSION
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15 60251 WINNEBAGO LN
16 BEND OR 97702
lriser5000@cs.com

17
18 
19 _____
Neoma Lane
20 Legal Secretary
21 Department of Justice
22 Regulated Utility & Business Section
23
24
25
26