

1 **BEFORE THE PUBLIC UTILITY COMMISSION**

2 **OF OREGON**

3 WJ 9

4 In the Matter of  
5 RICE HILL WATER DISTRICT  
6 Assertion of Jurisdiction Pursuant to ORS  
7 Chapter 757.

STAFF'S REPLY TO APPLICATION FOR  
RECONSIDERATION, REHEARING AND  
WITHDRAWAL OF ORDER NO. 06-675.

8 **INTRODUCTION**

9 The Public Utility Commission of Oregon Staff ("Staff") do not oppose the Rice Hill  
10 Owner's Association, Inc.'s ("RHOA") application for reconsideration and rehearing and  
11 withdrawal of Order No. 06-675 ("Application") to the extent that it purports there is new  
12 evidence, not available at the time the Order was issued. Staff opposes RHOA's Application to  
13 the extent that it asserts that Order No. 06-675 contains errors of law and opposes withdrawal of  
14 Order No. 06-675, unless reconsideration and rehearing is granted and the Commission issues a  
15 new order.

16 **PROCEDURAL BACKGROUND**

17 On December 19, 2006, the Commission issued Order No. 06-675, which asserts  
18 jurisdiction over the Rice Hill Water District ("Company") based upon receiving petitions from  
19 more than 20 percent of the customers and the fact that the Company charges in excess of the  
20 Commission-established threshold of \$24 per month. On February 20, 2007, the RHOA filed an  
21 Application for Reconsideration, Rehearing, and Withdrawal of Order No. 06-675.

22 **DISCUSSION**

23 Staff's Investigation

24 As noted in RHOA's Application, no hearing was held in this matter. Rather, the  
25 Commission's Order was based upon Staff's investigation and receipt of evidence.

1           When Staff was first made aware of the entity called Rice Hill Water District (“RHWD”),  
2 it performed a search on the Oregon Secretary of State, Corporation Division’s data base to  
3 determine the entity status of RHWD. This search was performed to ensure that RHWD was not  
4 a public utility district organized in Douglas County. When Staff was unable to find a listing for  
5 RHWD, Staff contacted Douglas County to determine if RHWD was a district organized in  
6 Douglas County. Staff was informed by Douglas County that no such public utility district or  
7 water district in the vicinity of Rice Hill was registered by Douglas County.

8           As a result, Staff furthered its investigation by calling Daniel M. Webb (Mr. Webb), the  
9 purported owner of RHWD. Mr. Webb verified that he and Ellis E. Emory (Mr. Emory) were  
10 owners of the water system. Mr. Webb did not distinguish between the two systems, but inferred  
11 the systems were owned by both him and Mr. Emory. After a discussion of the system’s  
12 engineering (including wells, pumps, and piping), Mr. Webb referred Staff to his former  
13 attorney, John Fisher. Mr. Fisher informed Staff that Mr. Webb and Mr. Emory had a long  
14 history of conflict, including issues surrounding the water system. Mr. Fisher explained to Staff  
15 that there was a series of documents that outline control of the water system. However, Mr.  
16 Fisher explained that the two entities who own rights to the system are unincorporated  
17 individuals and that the rights to the water arise from various Declarations of Covenants and  
18 Restrictions of three associations including the Rice Hill West Subdivision (West Subdivision),  
19 Addition the Rice Hill West Subdivision (Addition), and the Truck Stop Property.

20           After additional inquiries, Staff was informed by Mr. Webb that water was delivered to  
21 the Truck Stop Property by the system controlled by Mr. Emory, water was delivered to the West  
22 Subdivision by the system controlled jointly by Mr. Webb and Mr. Emory, and water was  
23 delivered to the Addition by the system controlled by Mr. Webb.

24           To verify this information, Staff examined the Department of Human Services, Drinking  
25 Water Program’s (DWP) online data base. Staff was able to extract information from DWP’s

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1 database that listed the West Subdivision. The data base also indicated that the West Subdivision  
2 system was receiving water from Rice Hill Owner's Association ("RHOA") wells and an  
3 additional well #2.<sup>1</sup> During the February 13, 2007, Rice Hill Water District meeting conducted  
4 by Staff, representatives of the RHOA verified that the water system included four wells, and  
5 that these wells were contributed to RHOA by Mr. Webb.

6 Customers and Staff were not aware of all the complexities concerning the relationship  
7 with, contributions to, and interactions of Mr. Webb and Mr. Emory. In researching the status of  
8 RHWD, Staff made its determination based on information provided by customers and Mr.  
9 Webb, who still owned part of the system.<sup>2</sup>

10 While Staff does not oppose the Application's request to consider new evidence, the new  
11 evidence supplied to date does not change the legal conclusions in Order No. 06-675.

12 However, the additional information provided by Mr. Emory and his attorney, does not  
13 change the fact that the water is still being pumped from the wells under control of RHOA and  
14 being delivered to customers of RHWD through piping owned by Mr. Webb; therefore, RHOA  
15 is providing water to the public (customers living in the West Subdivision, who are not members  
16 of the RHOA) and, therefore, RHOA is subject to the Commission's jurisdiction.

17 Although, RHOA states that no "legal entity"<sup>3</sup> titled "Rice Hill Water District" exists,  
18 customers who petitioned the Commission received bills from RHWD and made payments to  
19 RHWD. Whether RHWD was an unincorporated entity, a "doing business as" (DBA), or an  
20 "also known as" (AKA), the fact is that customers petitioned the Commission based on long-  
21 standing service problems. In addition, ORS 757.005 refers to any "*corporation, company,*  
22 *individual, association of individuals...*" As such, a public utility does not have to be a  
23 corporation registered with the Oregon Secretary of State. The Order referred to RHWD because

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25 <sup>1</sup> The data base is somewhat outdated since there are actually four wells serving the system.

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1 that was the entity that billed customers. In addition, Staff properly verified that the petitioners  
2 were customers of the system, received billing information from an accountant contracted by Mr.  
3 Webb, and sent the Notice of Jurisdiction to both Mr. Webb and Mr. Emory, based on the  
4 relevant information gathered by Staff. The facts demonstrate that the customers petitioned the  
5 Commission for jurisdiction over an entity referred to as RHWD.

6 DECLARATIONS OF COVENANTS AND RESTRICTIONS

7 RHOA's Exhibit 5, Declaration of Covenants and Restrictions, dated September 21,  
8 1988, and Exhibit 6, Easement Agreement and First Amendment to Declaration of Covenants  
9 and Restrictions (DC&R), dated September 13, 1993, demonstrate that the Webb's and the  
10 Emory's were the only members of the RHOA. The DC&R further states that the RHOA  
11 operates a Water Supply System and a Sewer Discharge System on real property that is  
12 described in Declaration of Covenants and Restrictions dated September 21, 1988 (RHOA's  
13 Exhibit 5). This real property appears to describe the West Subdivision. Section 3 of Exhibit 6  
14 also describes easements that appear to indicate the beginning of the ownership separation, but  
15 not physical separation of the water system.

16 Section 6 (iv) is an amendment to Article V, Section 13 of the DC&R, and states certain  
17 fees for nonmember connections to the water sewer system. Although it is uncertain if these fees  
18 were consistently assessed, if assessed at all, it indicates that the customers in the West  
19 Subdivision are not members of RHOA. Because these customers are not members of the  
20 RHOA, RHOA is supplying water to the public and is subject to the Commission's jurisdiction.

21 Section 6 (iv) of Exhibit 6 also clarifies why the RHOA was not charging Mr. Webb for  
22 water. Exhibit 6 states:

23 During the longer of the Declarants' (*Webbs'*) lives, the Association shall provide  
24 full water and sewer service to Declarants' existing residence without any charge,  
25 including any costs, charges, or expenses for acquisitions, maintenance,  
operations, taxes, or insurance of the association.

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1 RHOA's Exhibit 3, refers to the full ownership separation of Westside Water System  
2 (which is the RHWD) and the RHOA system. Again, there is no apparent physical separation of  
3 the system.

4 The Commission's Order No. 06-675 does not contain errors of law and should not be  
5 withdrawn, unless replaced upon reconsideration and rehearing.

6 RHOA asserts that it is exempt from regulation pursuant to ORS 757.005(1)(b)(B) and  
7 ORS 757.061(5). Both assertions are incorrect.

8 ORS 757.005 states in relevant part:

9 (1)(a) As used in this chapter, except as provided in paragraph (b) of this  
10 subsection, "public utility" means:

11 (A) Any corporation, company, individual, association of individuals, or its  
12 lessees, trustees or receivers, that owns, operates, manages or controls all or a part  
13 of any plant or equipment in this state for the production, transmission, delivery  
14 or furnishing of heat, light, water or power, directly or indirectly to or for the  
15 public, whether or not such plant or equipment or part thereof is wholly within  
16 any town or city.

17 Concerning its argument around ORS 757.005(1)(b)(B), it appears that RHOA is  
18 focusing on "without profit to itself" and its registration as a Domestic Non-profit entity with the  
19 Oregon Secretary of State. However, this section does not apply in this case since the customers  
20 in the West Subdivision are not members of RHOA. As a result, the RHOA is serving the public  
21 and is a public utility pursuant to ORS 757.005 and ORS 757.061.

22 Staff did not note any section of the Exhibits 5 and 6 where Mr. Webb was no longer a  
23 member of RHOA. So although the billing statements were labeled RHWD, it was Mr. Webb's  
24 establishment, participation, and investment in the RHOA, along with additional investments that  
25 resulted in the entity referred to as RHWD. RHWD may not be registered with the Oregon  
26 Secretary of State, but the water system directly resulted from Mr. Webb's participation in  
27 RHOA.

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1           The fact that RHOA is not charging the West Subdivision for water appears to stem from  
2 previous self-serving DC&R agreements between Mr. Webb and Mr. Emory. However, the  
3 residential customers have been receiving water indirectly from RHOA and paying the RHWD  
4 for monthly water charges. Again, this demonstrates the complexities of the system's  
5 organization. Customers petitioned for Commission jurisdiction over RHWD because of low or  
6 no water pressure during peak times of high usage months. The customers believed that their  
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9 however, the uncertainty of the organizational structure and the long-standing service quality  
10 issues were relevant to the customers' petitioning. Because the average monthly bill was over  
11 the OAR 860-036-0030 threshold of \$24, the water system was brought under financial  
12 regulation of the Commission upon receiving a sufficient number of customer petitions.

13           RHOA's argument concerning ORS 757.061(5) is also incorrect. Although the RHOA  
14 states it has not charged a fee to Mr. Webb for his Westside Water System (because of the  
15 DC&Rs), residential customers were paying Mr. Webb for water service (approximately \$30.45  
16 per month for the 12-month period of October 2005 through September 2006).<sup>4</sup> As previously  
17 mentioned, RHOA did not charge Mr. Webb for water service because of self-serving provisions  
18 in the DC&Rs. However, the \$5,000 connection fee referenced in the amendments to the DC&R  
19 also exceeds the threshold amount in OAR 860-036-0030. As a result, RHOA is subject to the  
20 Commission's jurisdiction pursuant to ORS 757.061.

21           Because customers petitioned for regulation pursuant to OAR 860-036-0410, and RHOA  
22 controls the system that the customers referred to as RHWD, the Commission should assert  
23 jurisdiction over RHOA. Staff would not object to correcting the name of the RHOA, but  
24

25 \_\_\_\_\_  
26 <sup>4</sup> Mr. Webb indicated to Staff that he built much of the water system and based his rates on the City of Yoncalla  
rates

1 remains convinced that the Commission's Order was correct in concluding that the entity is a  
2 public utility.

3 Separate Systems

4 Although RHOA points out that RHOA is classified as a separate water system by the  
5 Public Health Department, Drinking Water Program (DWP), the Department of Human Services,  
6 Douglas County Environmental Health and Social Services, and the Douglas County Planning  
7 Department, this classification does not affect the Commission statutes concerning public  
8 utilities. The fact is that RHOA is supplying water to customers who are not members of RHOA  
9 and; therefore, the RHOA is a public utility pursuant to ORS 757.005 and ORS 757.061. The  
10 vast majority of water systems regulated by DWP are not regulated by the Commission, and  
11 there can be situations where the Commission may regulate a small utility (3 or less customers)  
12 that would not be regulated by DWP. The fact that DWP considers the two systems separate is  
13 not a relevant consideration to determine Commission regulation.

14 Because the RHOA is currently unable to segregate the system into two distinct systems,  
15 RHOA is providing the West Subdivision with water and is subject to the Commission's  
16 jurisdiction pursuant to ORS 757.005 and ORS 757.061.

17 Lack of Notice to the Applicants

18 OAR 860-036-0410(5) states that a water utility will be notified in writing of its change  
19 in status to a rate-regulated water utility. Staff notified both Mr. Webb and Mr. Emory in writing  
20 as required by the rule on December 21, 2007. Although Staff previously spoke to Mr. Webb on  
21 a few occasions, there was no requirement to do so. However, because of the complexity of the  
22 organizational structure, Staff would have been unable to act on the customers' petitions without  
23 obtaining a basic, albeit incomplete, understanding of the system. During its initial research of  
24 the water system, Staff was not required to act as a mediator between two owners who do not  
25 communicate with each other.

26

1 Mr. Emory was named on the letter because of Staff's research on his involvement with  
2 the water system. As President of the RHOA, it was appropriate that his name was included in  
3 Staff's December 21, 2007, letter.

4 There is no requirement that a water system must be registered by the Secretary of State  
5 to become regulated by the Commission. As previously mentioned, ORS 757.005 broadly  
6 discusses the type of entities, including individuals, that can be a public utility. If a registered  
7 name were required for Commission regulation, any public utility would be able to avoid  
8 Commission regulation by having a "doing business as" or an "also know as" name.

9 In this case, all the Commission has to do is "follow the water." The water being  
10 supplied to the West Addition customers is coming from wells controlled by RHOA. As Staff  
11 previously presented, RHWD existed as a result of Mr. Webb's establishment, participation, and  
12 investment in the RHOA. In addition and as previously mentioned, customers in the West  
13 Addition are not members of RHOA. Therefore, the RHOA is a public utility subject to the  
14 Commission's jurisdiction pursuant to ORS 757.005 and ORS 757.061.

## 15 **CONCLUSION**

16 While Staff continues to maintain that Commission Order No. 06-675 contains the  
17 correct legal conclusion, Staff also understands the importance of a complete record. Because of  
18 the nature of this proceeding, there has not been a hearing and Staff did not have all the  
19 information that has since been provided. Therefore, Staff does not oppose the Application to  
20 the extent that it requests reconsideration and rehearing for the purpose of seeking to offer new  
21 evidence for the record. If the Commission were to grant reconsideration for this purpose, it may  
22 desire to establish an evidentiary process to add this new information to the record.

23 Nonetheless and based upon all the evidence supplied to date, Staff remains convinced  
24 the legal conclusions in Order No. 06-675 are correct. Therefore, Staff opposes the Application  
25



1 to the extent that it asserts that the Commission Order contains errors of law and should be  
2 withdrawn.

3 For the foregoing reasons, Staff does not object to the Commission reconsidering Order  
4 No. 06-675 to supplement the record with the new information provided, or set up an evidentiary  
5 process to do so. Furthermore, Staff urges the Commission to deny the Application as it relates  
6 to a request to reconsider and rehear based upon errors of law. Finally, Staff requests that the  
7 Commission deny the Application to withdraw Order No. 06-675, unless it is replaced upon  
8 reconsideration or rehearing, or both.

9  
10 DATED this 6th day of March 2007.

11 Respectfully submitted,

12 HARDY MYERS  
13 Attorney General

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16 Jason W. Jones, #00059  
17 Assistant Attorney General  
18 Of Attorneys for Public Utility Commission of  
19 Oregon Staff

1 **CERTIFICATE OF SERVICE**

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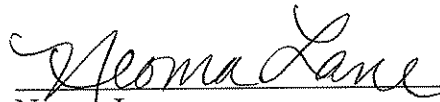
3 I certify that on March 6, 2007, I served the foregoing upon all parties of record in this

4 proceeding by delivering a copy by electronic mail and by mailing a copy by postage prepaid

5 first class mail or by hand delivery/shuttle mail to the parties accepting paper service.

6

7 **ATTORNEY AT LAW LLC**  
8 JOHN A HUDSON  
9 NORTHBANK PROFESSIONAL OFFICES  
66 CLUB RD STE 200  
EUGENE OR 97401-2459  
jahudson@jahudson.com

10   
11 Neoma Lane  
12 Legal Secretary  
13 Department of Justice  
14 Regulated Utility & Business Section

**BEFORE THE PUBLIC UTILITY COMMISSION  
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In the Matter of  
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Assertion of Jurisdiction Pursuant to ORS  
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STAFF’S REPLY TO APPLICATION FOR  
RECONSIDERATION, REHEARING AND  
WITHDRAWAL OF ORDER NO. 06-675.

**INTRODUCTION**

The Public Utility Commission of Oregon Staff (“Staff”) do not oppose the Rice Hill Owner’s Association, Inc.’s (“RHOA”) application for reconsideration and rehearing and withdrawal of Order No. 06-675 (“Application”) to the extent that it purports there is new evidence, not available at the time the Order was issued. Staff opposes RHOA’s Application to the extent that it asserts that Order No. 06-675 contains errors of law and opposes withdrawal of Order No. 06-675, unless reconsideration and rehearing is granted and the Commission issues a new order.

**PROCEDURAL BACKGROUND**

On December 19, 2006, the Commission issued Order No. 06-675, which asserts jurisdiction over the Rice Hill Water District (“Company”) based upon receiving petitions from more than 20 percent of the customers and the fact that the Company charges in excess of the Commission-established threshold of \$24 per month. On February 20, 2007, the RHOA filed an Application for Reconsideration, Rehearing, and Withdrawal of Order No. 06-675.

**DISCUSSION**

Staff’s Investigation

As noted in RHOA’s Application, no hearing was held in this matter. Rather, the Commission’s Order was based upon Staff’s investigation and receipt of evidence.

1           When Staff was first made aware of the entity called Rice Hill Water District (“RHWD”),  
2 it performed a search on the Oregon Secretary of State, Corporation Division’s data base to  
3 determine the entity status of RHWD. This search was performed to ensure that RHWD was not  
4 a public utility district organized in Douglas County. When Staff was unable to find a listing for  
5 RHWD, Staff contacted Douglas County to determine if RHWD was a district organized in  
6 Douglas County. Staff was informed by Douglas County that no such public utility district or  
7 water district in the vicinity of Rice Hill was registered by Douglas County.

8           As a result, Staff furthered its investigation by calling Daniel M. Webb (Mr. Webb), the  
9 purported owner of RHWD. Mr. Webb verified that he and Ellis E. Emory (Mr. Emory) were  
10 owners of the water system. Mr. Webb did not distinguish between the two systems, but inferred  
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13 attorney, John Fisher. Mr. Fisher informed Staff that Mr. Webb and Mr. Emory had a long  
14 history of conflict, including issues surrounding the water system. Mr. Fisher explained to Staff  
15 that there was a series of documents that outline control of the water system. However, Mr.  
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17 individuals and that the rights to the water arise from various Declarations of Covenants and  
18 Restrictions of three associations including the Rice Hill West Subdivision (West Subdivision),  
19 Addition the Rice Hill West Subdivision (Addition), and the Truck Stop Property.

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22 Subdivision by the system controlled jointly by Mr. Webb and Mr. Emory, and water was  
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24           To verify this information, Staff examined the Department of Human Services, Drinking  
25 Water Program’s (DWP) online data base. Staff was able to extract information from DWP’s

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1 database that listed the West Subdivision. The data base also indicated that the West Subdivision  
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5 that these wells were contributed to RHOA by Mr. Webb.

6 Customers and Staff were not aware of all the complexities concerning the relationship  
7 with, contributions to, and interactions of Mr. Webb and Mr. Emory. In researching the status of  
8 RHWD, Staff made its determination based on information provided by customers and Mr.  
9 Webb, who still owned part of the system.<sup>2</sup>

10 While Staff does not oppose the Application’s request to consider new evidence, the new  
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3 Separate Systems

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6 Douglas County Environmental Health and Social Services, and the Douglas County Planning  
7 Department, this classification does not affect the Commission statutes concerning public  
8 utilities. The fact is that RHOA is supplying water to customers who are not members of RHOA  
9 and; therefore, the RHOA is a public utility pursuant to ORS 757.005 and ORS 757.061. The  
10 vast majority of water systems regulated by DWP are not regulated by the Commission, and  
11 there can be situations where the Commission may regulate a small utility (3 or less customers)  
12 that would not be regulated by DWP. The fact that DWP considers the two systems separate is  
13 not a relevant consideration to determine Commission regulation.

14 Because the RHOA is currently unable to segregate the system into two distinct systems,  
15 RHOA is providing the West Subdivision with water and is subject to the Commission's  
16 jurisdiction pursuant to ORS 757.005 and ORS 757.061.

17 Lack of Notice to the Applicants

18 OAR 860-036-0410(5) states that a water utility will be notified in writing of its change  
19 in status to a rate-regulated water utility. Staff notified both Mr. Webb and Mr. Emory in writing  
20 as required by the rule on December 21, 2007. Although Staff previously spoke to Mr. Webb on  
21 a few occasions, there was no requirement to do so. However, because of the complexity of the  
22 organizational structure, Staff would have been unable to act on the customers' petitions without  
23 obtaining a basic, albeit incomplete, understanding of the system. During its initial research of  
24 the water system, Staff was not required to act as a mediator between two owners who do not  
25 communicate with each other.

26

1 Mr. Emory was named on the letter because of Staff's research on his involvement with  
2 the water system. As President of the RHOA, it was appropriate that his name was included in  
3 Staff's December 21, 2007, letter.

4 There is no requirement that a water system must be registered by the Secretary of State  
5 to become regulated by the Commission. As previously mentioned, ORS 757.005 broadly  
6 discusses the type of entities, including individuals, that can be a public utility. If a registered  
7 name were required for Commission regulation, any public utility would be able to avoid  
8 Commission regulation by having a "doing business as" or an "also known as" name.

9 In this case, all the Commission has to do is "follow the water." The water being  
10 supplied to the West Addition customers is coming from wells controlled by RHOA. As Staff  
11 previously presented, RHWD existed as a result of Mr. Webb's establishment, participation, and  
12 investment in the RHOA. In addition and as previously mentioned, customers in the West  
13 Addition are not members of RHOA. Therefore, the RHOA is a public utility subject to the  
14 Commission's jurisdiction pursuant to ORS 757.005 and ORS 757.061.

15 **CONCLUSION**

16 While Staff continues to maintain that Commission Order No. 06-675 contains the  
17 correct legal conclusion, Staff also understands the importance of a complete record. Because of  
18 the nature of this proceeding, there has not been a hearing and Staff did not have all the  
19 information that has since been provided. Therefore, Staff does not oppose the Application to  
20 the extent that it requests reconsideration and rehearing for the purpose of seeking to offer new  
21 evidence for the record. If the Commission were to grant reconsideration for this purpose, it may  
22 desire to establish an evidentiary process to add this new information to the record.

23 Nonetheless and based upon all the evidence supplied to date, Staff remains convinced  
24 the legal conclusions in Order No. 06-675 are correct. Therefore, Staff opposes the Application  
25

1 to the extent that it asserts that the Commission Order contains errors of law and should be  
2 withdrawn.

3 For the foregoing reasons, Staff does not object to the Commission reconsidering Order  
4 No. 06-675 to supplement the record with the new information provided, or set up an evidentiary  
5 process to do so. Furthermore, Staff urges the Commission to deny the Application as it relates  
6 to a request to reconsider and rehear based upon errors of law. Finally, Staff requests that the  
7 Commission deny the Application to withdraw Order No. 06-675, unless it is replaced upon  
8 reconsideration or rehearing, or both.

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10 DATED this 6th day of March 2007.

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Respectfully submitted,

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HARDY MYERS  
Attorney General

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14

/s/ Jason W. Jones  
Jason W. Jones, #00059  
Assistant Attorney General  
Of Attorneys for Public Utility Commission of  
Oregon Staff

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