

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

WJ8

In the Matters of

CROOKED RIVER RANCH WATER  
COMPANY

**OBJECTION TO RECEIPT OF  
NEW EVIDENCE**

**By Crooked River Ranch Water  
Cooperative**

An Investigation Pursuant to ORS 756.515 to  
Determine Jurisdiction

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Crooked River Ranch Water Company (“Company”), nka Crooked River Ranch Water Cooperative (“Cooperative”) (collectively “CRRWC”) objects to the receipt of new evidence by the Public Utility Commission (“PUC”) for the hearing currently scheduled for July 20, 2010.

**I. INTRODUCTION.**

PUC has scheduled a hearing for July 20, 2010, to take official notice of files in UW 120 and UCR 100. CRRWC objects to the receipt of new evidence because it exceeds the scope of the Court of Appeals remand in this case and is inconsistent with relying on petitions for regulation filed in 2006.

**II. ARGUMENT.**

**A. Taking new evidence is beyond the scope of the Court of Appeals remand in this case.**

In *Crooked River Ranch Water Co. v. Public Utility Comm’n*, 224 Or App 485, 492, 198 P3d 967 (2008), the Court of Appeals specifically remanded this case to

PUC “for reconsideration.” By taking new evidence, PUC is doing far more than reconsidering its decision.

“Reconsideration” is distinct from a “rehearing” with respect to an agency decision. *Gritter v. Adult & Family Servs Div.*, 182 Or App 249, 255, 48 P3d 195, *vacated on other grounds*, 183 Or App 578, 53 P3d 469 (2002) (vacated as moot). When an agency reconsiders an order, it may supplement its reasoning, modify its analysis or retreat from a previous position; but it must make any of those changes on the existing record. *Id.* In *Gritter*, the court explained that the term “reconsideration” indicates that the agency is “limited to rethinking its decision based on the existing record.” *Id.* The court described the distinction between “reconsideration” and a “rehearing” in part by reference to the Attorney General’s Administrative Law Manual (2001). The court quoted from the manual: “Reconsideration occurs when, *based on the existing record in the case*, an agency examines the factual or legal basis for its order or reexamines the adequacy of its findings. \* \* \* Rehearing occurs when an agency either holds an entirely new hearing and re-decides the case based solely on the new hearing record, or the agency holds a supplementary hearing and re-decides the case based on the original record and the record developed at the supplementary hearing.” *Gritter*, 182 Or App at 255 (quoting the Oregon Attorney General’s Administrative Law Manual (2001) at 156).<sup>1</sup> Accordingly, “reconsideration,” as

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<sup>1</sup> The 2008 edition of the Attorney General’s Administrative Law Manual contains the same quoted language at pages 168-69.

opposed to “rehearing,” presumes that the decision will be made on the existing record.

**B. Additional evidence should not be received for rehearing on reconsideration because the underlying petitions for regulation expired four years ago.**

In addition to the fact that it would be outside the scope of remand, the PUC should not reopen its case to take additional evidence because it is asserting jurisdiction based on petitions that were filed in 2006 and are no longer valid. PUC is asserting jurisdiction based on ORS 757.063 and its receipt, in 2006, of petitions from 20% of a water association’s members. Under PUC’s own rule, OAR 860-036-0410(2), those petitions were valid for only six months, presumably based on a recognition that the membership and sentiments of a water organization are subject to change over time. If the PUC relies on petitions that were submitted in 2006, it should limit its reconsideration on remand to the evidence that was in the possession of the PUC while those petitions were effective. If that position is rejected, the PUC should at least limit its reconsideration on remand to evidence of facts that had occurred while those petitions were in effect.

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### **III. CONCLUSION.**

PUC should not take additional evidence, including taking official notice of the files in other cases, because doing so is beyond the scope of remand and is inconsistent with relying on petitions for regulation filed four years ago.

Dated: July 13, 2010.

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## CERTIFICATE OF FILING AND SERVICE

I certify that on July 13, 2010, I filed the foregoing **OBJECTION TO RECEIPT OF NEW EVIDENCE**, on the Public Utility Commission by email and first class mail, postage prepaid, addressed as follows:

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I further certify that on July 13, 2010, I served copies of the foregoing **OBJECTION TO RECEIPT OF NEW EVIDENCE** addressed to the following email addresses:

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I further certify that on July 13, 2010, I served copies of the foregoing **OBJECTION TO RECEIPT OF NEW EVIDENCE** addressed to the following, via first class mail, postpaid, as follows:

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