

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON  
UW 120**

In the Matter of  
  
CROOKED RIVER RANCH WATER  
COMPANY  
  
Request for Rate increase resulting in total  
annual revenues of \$868,453.

INTERVENOR – CRAIG SOULE  
  
MOTION TO STRIKE  
CROOKED RIVER RANCH WATER  
COMPANY'S  
REBUTTAL TESTIMONY, STATEMENTS  
AND EXHIBITS

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**INTRODUCTION**

Pursuant to OAR 860-013-0031 and Administrative Law Judge (ALJ) Power's October 5, 2007 Memorandum, Intervenor Craig Soule (Soule) submits this Motion to Strike the "Challenge to the Qualifications of Michael Dougherty", "Rebuttal Statement", "Rebuttal Testimony and Exhibits" submitted by James Rooks – General Manager - Crooked River Ranch Water Company (CRRWC) and the "Rebuttal Testimony and Exhibit" of Wesley Price - CPA partner, Harrigan, Price, Fronk & Co. LLP (collectively "CRRWC's Rebuttal Testimony"). CRRWC's Rebuttal Testimony was filed by Tim Gassner - Glenn, Sites, Reeder & Gassner LLP, on behalf of CRRWC, on September 21, 2007, in Oregon Public Utility Commission (PUC) Docket Number UW 120.

Soule requests that CRRWC's Rebuttal Testimony be stricken on the following grounds:

- CRRWC's failure to provide full and complete discovery to the parties in the proceeding.
- Prior ruling regarding discovery issued by ALJ Power August 21, 2007.
- CRRWC's failure to serve the parties with complete copies of the subject testimony/exhibits.
- CRRWC conducting ex parte communication with the PUC Commissioners.

**DISCUSSION**

**Discovery**

Soule has served 6 sets of data requests on CRRWC consisting of 66 separate questions/requests for information. CRRWC has failed to provide responses to data requests numbers 1 to 26 in spite of granted motions to compel for data requests numbers 1 to 26, and subpoenas for data requests numbers 1 to 15.

On October 14, 2007 Soule requested a subpoena be issued for data requests numbers 16 to 26. As of the date of this filing, the subpoena has not been issued.

Responses to data requests numbers 27 to 66 are required by October 19, 2007. As of the date of filing this motion (October 19, 2007) a response to the subject data request has not been received. It is unlikely CRRWC will provide responses to the data requests numbers 27 to 66, given their history of failure to provide full and complete responses to past data requests, and public statements indicating they will not provide responses to intervenor's data requests.

Soule will provide a statement on the response status of data requests numbers 27 to 66 after the response deadline of October 19, 2007 has passed.

The ruling granting a motion to compel issued by ALJ Power August 21, 2007 states in part,

*"The schedule allows for discovery on the Company's rebuttal testimony. In the event the Company does not respond fully to discovery by Staff and Intervenors, the Company's rebuttal testimony will be stricken".*

If CRRWC does not fulfill their obligation to provide responses to the data request numbers 27 to 66, in conjunction with their failure to respond to the previous data requests, Soule is requesting that CRRWC's Rebuttal Testimony be stricken in its entirety, based on the portion of the August 21, 2007 ruling noted above and the unfair prejudice created by CRRWC's failure to provide complete discovery to the parties.

#### **ALJ Ruling**

The ruling granting a motion to compel issued by ALJ Power August 21, 2007 states in part,

*"The Company's rebuttal case will be limited to information that has been provided to parties through discovery".*

The data requests that have been served on CRRWC by Soule in this proceeding prior to the filing of CRRWC's Rebuttal Testimony have requested discovery inquiring into numerous aspects of CRRWC. Specifically, data requests regarding waterline extensions, fire flows, fire hydrants, standpipes, non-profit status, equipment/vehicle purchase/use/status, employee compensation, employee certification/licenses, commercial water rates, fire protection water rates, donation to Crooked River Ranch Rural Fire Protection District, fire suppression facilities, land acquisition/utilization, future well development, easements from the Crooked River Ranch Club and Maintenance Association, litigation/attorneys, office building loan, amendments to the Bylaws & Article of Incorporation, non-profit status of the Co-operative and employee use of CRRWC assets.

Further, the data requests have requested copies of CRRWC responses to the PUC's data/information requests. The PUC's data/information requests delve into similar aspects of CRRWC's operation as the subject data requests, in addition to all aspects of the financial condition of CRRWC.

In addition, if CRRWC does not respond to data requests numbers 27 to 66 the following areas were not addressed in discovery: accountant qualifications, member financial ownership of CRRWC, co-operative, fire insurance rates, loss of time injuries, PUC Jurisdiction Appeal, water demand, ulterior motives of intervenors, petition to become intervenor, intervenor introduction of irrelevant subjects to prolong the proceeding, public participation in the proceeding, Oregon State Bar Complaint, rebuttal testimony, PUC setting CRRWC budget, attorney representation, CRRWC audits, unpaid accounts, CRRWC income, satellite phone, year end financial statement, test year, water system damage, liability insurance, recertification/training, property taxes, plan of improvements, water rights, resource for fire protection, reserve account, current management, special contracts, general manger qualifications, in-house repairs/construction, radio read meters, original development of water system, 20 year master plan, cross flow connection and criminal investigation.

As of the date of this motion, no responses to Soule's data requests have been received. Since CRRWC's Rebuttal Testimony addresses issues raised by Staff's and Soule's un-fulfilled data requests, Soule is requesting that CRRWC's Rebuttal Testimony be stricken in it's entirety, based on the section of the August 21, 2007 ruling noted above.

### **Service of Parties**

Under OAR 860-013-0070, a party filing a document with the Commission must serve copies of the document on all parties on the Commission's official service list. Tim Gassner - Glenn, Sites, Reeder & Gassner LLP, on behalf of CRRWC, on September 24, 2007, in Oregon Public Utility Commission Docket Number UW 120, served an electronic copy of the subject rebuttal testimony on Soule (attached), however; the electronic filing did not include the exhibits referenced in the rebuttal testimony of James Rooks - General Manager CRRWC. A hard copy of the subject rebuttal testimony and exhibits was not received by Soule.

On October 4, 2007, Intervenor - Craig Soule served data request number 27 to 66 on Crooked River Ranch Water Company (CRRWC). Data Request number 33 states,

*"CRRWC's rebuttal testimony filing refers to several exhibits. The exhibits were not included in the emailed subject rebuttal testimony filing. A hard copy of the subject rebuttal testimony was not received by Intervenor Soule. Please provide the exhibits referenced in the documents filed 9/21/07."*

A response to the data request was required by October 19, 2007. As of October 19, 2007 no response or other communication to the data request has been received.

Soule has not been given the opportunity to review CRRWC's Rebuttal Testimony in the context of the exhibits that were not provided, therefore, Soule is requesting that CRRWC's Rebuttal Testimony be stricken in its entirety.

### **Ex Parte Communication**

On October 12, 2007, James Rooks – General Manager CRRWC sent a letter with attachments directly to the PUC Commissioners without providing a copy to the other parties. The letter concerns the rate/tariff proceeding UW 120 and included a copy of CRRWC's Rebuttal Testimony. The mailing constitutes an ex parte communication.

CRRWC providing a copy of their Rebuttal Testimony to the PUC Commissioners before the other parties had the opportunity to cross examination, protest or strike portions of the subject rebuttal testimony has the potential to unfairly prejudice the proceeding. Although, OAR 860-12-0015(7) allows a party to file a written rebuttal to the ex parte communication. A written rebuttal would not necessarily outweigh the potential prejudice to the proceeding by the ex parte communication.

Soule is requesting that CRRWC's Rebuttal Testimony be stricken in its entirety, since the ex parte communication has the potential to unfairly prejudice the proceeding.

### **CONCLUSION**

The probative value of CRRWC's Rebuttal Testimony is substantially outweighed by the unfair prejudice caused by CRRWC's numerous failings and actions in this proceeding as stated above; therefore, Intervenor Craig Soule respectfully requests that CRRWC's Rebuttal Testimony be stricken in its entirety.

DATED this 19th day of October 2007.

Respectfully submitted,

  
Craig Soule – Intervenor UW 120

## CERTIFICATE OF SERVICE

I certify that on October 19, 2007, I served a true and correct copy of the foregoing motion to strike on all parties of record in this proceeding by delivering a copy by electronic mail to:

**STEVEN COOK**  
sewfab4u@hotmail.com

**CHARLES G NICHOLS**  
charlien@blazerind.com

**CROOKED RIVER RANCH WATER COMPANY**  
**JAMES R ROOKS - GENERAL MANAGER**  
jr@crrwc.com

**PUBLIC UTILITY COMMISSION OF OREGON**  
**MICHAEL DOUGHERTY**  
michael.dougherty@state.or.us

**OREGON DEPARTMENT OF JUSTICE**  
**JASON W. JONES - ASSISTANT ATTORNEY GENERAL**  
jason.w.jones@state.or.us

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I certify that on October 19, 2007, I served the following entity, by placing in the US Mail with postage prepaid, a true and correct copy of the foregoing motion to strike:

**CROOKED RIVER RANCH WATER COMPANY**  
**BRIAN ELLIOT - PRESIDENT BOARD OF DIRECTORS**  
PMP 313 - 1604 S Hwy 97 # 2  
Redmond, Oregon 97756

  
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CRAIG SOULE