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OREGON PUBLIC UTILITY COMMISSION

UW-123

In the Matter of
FISH MILL LODGES WATER SYSTEM

REQUEST FOR A GENERAL RATE
INCREASE,

FISH MILL LODGES WATER SYSTEM
MOTION FOR RECONSIDERATION

Fish Mill Lodges Water System (the "Water System") moves for reconsideration of the Public Utility Commission's Order of May 19, 2008.¹ Specifically, the Water System requests reconsideration of the amortization of contract labor expenses over three years and the reduction in legal fees and the amortization of those fees over three years. The decision on both of these expenses is based on errors of fact essential to the decision, and new evidence, and are therefore subject to reconsideration under OAR 860-014-0095. This motion is supported by the Supplemental Testimony of Shawn Bedsole and the Declaration of William J. Ohle filed herewith.

I. Factual Background and Procedural History.

As noted in the direct testimony of Kathy Miller, Senior Utility Analyst, the Water System is a very small water utility with essentially four customers, the Fish Mill Lodges & R.V. Park (Fish Mill Lodges), which is also the ultimate owner of the utility, and three private residences that have historically received service from the Water System. The utility started out

¹ The Commission's May 19, 2008, Order incorporates the findings, discussion and conclusion in the Commission's earlier Order No. 8-235 of April 24, 2008.

1 as a simple arrangement between neighbors, but became the subject of regulation when
2 intervention by the Commission was required to assist in what has become an ongoing dispute
3 between the Water System and one of its neighbors, Lawrence Gunn. This came to a head in late
4 1997 when there was a system outage and Mr. Gunn blocked access to the utility system
5 necessary to make repairs. Legal action and the intervention of law enforcement authorities and
6 the Commission became necessary just for the Water System to do its job. (Dir. Test. of Miller
7 pp. 2-3).

8 Even though the Water System has been under the Commission's jurisdiction since 1997,
9 the Water System did not request rate regulation until mid-2007. This request eventually led to
10 the opening of the present docket and the issuance of the order subject to this motion for
11 reconsideration. It is important to note that prior to the 2007 request to be rate-regulated -- and
12 most notably during the test year of 2006 -- the Water System has never gone through a rate case
13 procedure nor has it had the need for legal assistance with its rates. In fact, the Water System
14 went through the entire rate case without the benefit of legal representation and only
15 subsequently retained counsel a little over a week prior to the filing of the present motion. (Ohle
16 Dec. ¶ 2). Because of the lack of representation, although having done an admirable job *pro se*,
17 the Water System lacked the advice necessary on how and what testimony was relevant and
18 should be presented. *Id.* As such, the Water System requests at this time that the Commission
19 accept the Supplemental Testimony of Shawn Bedsole and the Declaration submitted by William
20 J. Ohle.

21 It is also important to note that historically Fish Mill Lodges has subsidized the operation
22 of the utility by providing administrative services and maintenance without accounting for the
23 expense. (Supp. Test. of Bedsole p. 3). The day to day operation, billing, trouble calls, customer
24 disputes, and dealing with the regulatory authorities have all been provided by Fish Mill Lodges
25 free of charge. No where in the current Order is compensation for those services reflected, yet
26 they are essential to the operation of the utility. Fish Mill Lodges will now be billing the utility

1 for those expenses, which until included in the rates will show as a deficit for recoupment in
2 future rate cases. To the extent that actual contract and legal expenses are also incurred and not
3 compensated for in current rates, they also will accumulate as a deficit on the utility's books.

4 **2. the Administrative Expenses and Brush Clearing will Not be Covered in the**
5 **Annual Repairs and Maintenance Account and Should be Allowed Under**
6 **Contract Labor Services**

7 The current Order contains no expense allocation for Salaries or Wages. Traditionally,
8 administrative services and general house keeping, like the clearing of brush from the facilities,
9 has been provided to the Water System by Fish Mill Lodges at no cost to the utility. (See Supp.
10 Test. of Bedsole p. 3). The 2006 Test Year, however, demonstrated the true cost of at least some
11 of those services, contracted labor expenses of \$4,512, that Staff admits was primarily for the
12 clearing of brush at the facilities necessary to make repairs. (Dir. Test. of Miller p. 12). The
13 Commission, however, based on Staff's testimony, reduced the expenses to \$1,037, amortized
14 over three years, and only for the purposes of recovering past expenses. the Commission's
15 conclusion that the annual cost for the clearing of brush is somehow included in the annual \$780
16 allocation for repairs and maintenance is contradicted by Staff's own finding – the clearing of
17 brush at the facilities actual costs \$3,111. Order, at p. 3 (April 24, 2008); (Dir. Test. of Miller p.
18 12.) The clearing of brush is not a one time expense, but it is a continuing necessity for the
19 upkeep of the facility and for the repairs required by the Drinking Water Program. (Supp. Test.
20 of Bedsole pp. 4-5). There is nothing in the record to support Staff's conclusion that this brush
21 clearing activity should be a one-time expense or how the amounts allowed for Repairs and
22 Maintenance would cover this activity. Presumably, Staff assumed that Fish Mill Lodges should
23 continue to provide this service for free, along with the general administration of the utility.
24 This, however, is a legitimate expense and it should be allowed annually. For the integrity of the
25 system, and for access when necessary to make repairs, there is nothing in the record to dispute
26 that this activity should be undertaken at least once yearly, and likewise there is nothing in the

1 record to indicate that the \$3,111 incurred is not a reasonable amount for that service.

2 Further, as discussed in detail below in the next section, it may be impossible for Fish
3 Mill Lodges to continue to provide maintenance services to the utility requiring all of those
4 services to be outsourced. The threats by Mr. Gunn have made it dangerous for Fish Mill Lodges
5 personnel to service the facilities. To the extent that the Order is based on the assumption that
6 Fish Mill Lodges can or should continue to provide resources to the utility free of charge, this
7 may no longer be a practical alternative. The requirement that work be outsourced will create
8 expenses that cannot be deferred, and if not included in the rates now, will require Fish Mill
9 Lodges to make actual cash loans to the Water System in order for it to make payment to its third
10 party contractors.

11 Finally, accounting for the total labor costs for keeping the facilities clear and accessible
12 will help off-set the deficit now being created by the failure of the current Order to take into
13 account the other administrative functions provided to the utility by Fish Mill Lodges. At some
14 point in time, hopefully the next rate case, the Water System will be in a position to present its
15 total costs, including all administrative costs and labor costs now being funded solely by Fish
16 Mill Lodges. Presently, these expenses will show as deficit spending by the utility and will
17 eventually need to be paid and recovered in rates.

18 Therefore, the Water System requests that its tariffs be adjusted to reflect the proper cost
19 of contract labor.

20 **3. The Water System' Legal Expenses Have in the Past and Will Continue into the**
21 **Foreseeable Future, Exceed the Amount Allowed by the Commission.**

22 As noted above, the present rate proceeding of 2007/2008 is a first for the Water System.
23 The previously incurred legal expenses, those documented from the 2006 Test Year, deal
24 particularly with the ongoing property dispute with Mr. Gunn that is an unfortunate, but
25 unavoidable, expense necessary for the reliable operation of the utility. In fact, Mr. Gunn
26 continues to be an impediment to the operation of the utility in two specifics:

1 (1) Mr. Gunn does not voluntarily allow access to his property to inspect and
2 maintain the line as it crosses his property. Whenever access to Mr. Gunn's property is required,
3 the Water System must first obtain a Writ of Assistance from the Circuit Court, deliver the Writ
4 to local law enforcement, and pay local law enforcement to escort the utility employees onto the
5 property for their own safety. (Supp. Test. of Bedsole pp. 4-7);

6 (2) There has been in the past and continues to be a threat of physical harm to the
7 employees and property of Fish Mill Lodges when servicing the pump house and storage tank
8 requiring the outsourcing of such service. the only access to the utility facilities, the pump and
9 storage tank, require passing in front of the Gunn household and has in the past provoked
10 violence and threats to person and property. As a result, Fish Mill Lodges can no longer provide
11 services to the utility for free, but for their own safety must outsource those services or again,
12 seek through the legal system the assistance of law enforcement. *Id.*

13 Resolving the tensions between Mr. Gunn and the Water System and Fish Mill Lodges is
14 something completely beyond the control of the Water System short of abandoning the property
15 and the system and the Water System and Fish Mill Lodges should not be required to pay from
16 its own resources for the services required to keep their own personnel and contractors safe in
17 their jobs. (Supp. Test. of Bedsole pp. 5-6; Ohle Dec. ¶ 3).

18 The Commission's conclusion that a less expensive resolution to this dispute is available
19 is wholly unsupported by the record. Order at p. 4 (April 24, 2008). There is no supportable
20 basis for the opinion of Staff that the dispute should have been resolved 10 years ago and is
21 contradicted by the Supplemental Testimony of Shawn Bedsole. (Supp. Test. of Bedsole pp. 5-
22 6). These legal expenses will continue to be incurred for the operation of the utility and the
23 utility is entitled to compensation for those amounts. The Water System is under a legal
24 obligation to provide service, and without the intervention of the courts and law enforcement
25 with this ongoing access dispute, the Water System cannot fulfill those obligations. Until
26 Mr. Gunn decides to be more reasonable, the Water System has no other option.

1 Regardless, and even if no additional legal fees are allowed for the ongoing disputes with
2 Mr. Gunn, nowhere in the rate case has there been any allocation for legal expenses for
3 assistance in the rate case. In this regard, the Water System has been put into a no-win situation:
4 the Water System's rates have been historically far too low and as a result, the Water System had
5 no resources upon which to hire an attorney to assist it during the rate proceeding; as such, the
6 Water System lacked an advocate in the proceeding and as a result, insufficient revenues were
7 included in the rates to cover the expense of legal representation in a rate proceeding. This cycle
8 would have continued but for the commitment of Fish Mill Lodges of its own resources which
9 have now allowed the Water System to retain counsel to advocate for the inclusion of revenue
10 sufficient to cover the legal expenses of being a regulated entity. (Ohle Dec. ¶ 11).

11 The \$754 annually allowed in legal expenses would pay for approximately 2 ½ hours of
12 legal representation per year. This is woefully inadequate to properly provide legal
13 representation to a regulated utility, let alone deal with Mr. Gunn. Even assuming that the \$754
14 per year is adequate to deal with Mr. Gunn and other possible disputes – such as the illegal
15 connection recently discovered by the operators of the system (Supp. Test. of Bedsole p. 2) –
16 proper regulatory representation is conservatively estimated at \$2,480 per year, which would pay
17 for representation during one rate proceeding every three years and allow a qualified attorney to
18 provide three days (24 total hours) of service. (Ohle Dec. ¶¶ 3-8). Expecting any regulated
19 utility to appear before the Commission without legal representation places the utility at a severe
20 and unfair disadvantage over the Commission and Staff, which has unfettered access to the its in-
21 house attorneys as well as those at the Department of Justice.

22 At a minimum, the Water System should be allowed \$3,234 per year for legal
23 representation – that being \$754 plus \$2,480 – however to fully account for the legal costs to the
24 Water System it should be allowed the amount document to deal with Mr. Gunn during the test
25 year (\$3,506) plus the cost of regulatory representation (\$2,480), for a total of \$5,986. Under the
26 current Order, the Water System can be expected to run a significant deficit requiring the

1 continued subsidy by Fish Mill Lodges of its operation. This is improper, if not illegal.
2 Therefore, the Water System should be allowed an increase in annual legal fees sufficient to pay
3 its expenses on an ongoing basis.

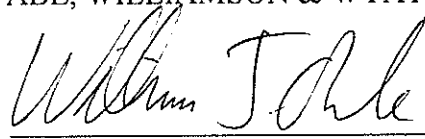
4 **4. Conclusion.**

5 For the reasons stated above, the Water System requests that its tariffs be modified to
6 reflect the full \$3,111 for annual contract labor expenses and for an allocation of \$5,986 for
7 annual legal expenses.

8 Respectfully submitted,

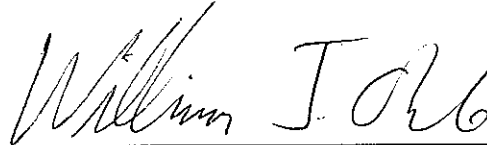
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SCHWABE, WILLIAMSON & WYATT, P.C.

By: 
William J. Ohle, WSBA #21714
wohle@schwabe.com
Facsimile: 503.796.2900
Of Attorneys for Fish Mill Lodges Water
System

CERTIFICATE OF SERVICE

I hereby certify that on the 18th day of July, 2008, I served the foregoing FISH MILL LODGES WATER SYSTEM MOTION FOR RECONSIDERATION upon all parties of record in this proceeding by mailing a copy properly addressed with first class postage prepaid or by electronic mail pursuant to OAR 860-13-0070.



William J. Ohle