

BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON

UW 117

In the Matter of	)	
	)	
PETE’S MOUNTAIN WATER CO., INC.	)	Closing Argument
	)	By Intervener Following
	)	Second Hearing
Request for an increase in total annual	)	
Revenues from \$111,079 to \$212,300	)	
	)	

A Second Hearing was held on April 30, 2007 before Administrative Law Judge Michael Grant in connection with the above matter. Judge Grant allowed the parties the opportunity to submit supplemental written Arguments on or prior to May 14, 2007. This submittal is in response to that invitation.

**Supplemental Arguments**

The undersigned urges the Commission to again review this Intervener Closing Argument submitted shortly following the October 30, 2006 initial hearing in this matter. Tellingly, virtually every argument against approving any rate increase included in that submittal continues to be valid today. While Pete’s Mountain Water Company (“PMWC”) has, in the intervening six months, filed Affiliated Contracts with the Commission to remedy technical non-compliance with ORS 757.495, in extending the suspension of any rate increase, the Commission stated that:

“More importantly, we preliminary agree with many of the arguments raised by the Interveners questioning whether PMWC has established the reasonableness of: (1) the salary paid to, and estimated hours of work performed by, Ms. Webber; (2) the health care benefits paid to both Mr. and Ms. Webber; and (3) transportation costs.”

“While making no final determination on final rates for PMWC, **we conclude that there is insufficient evidence to support the rates proposed in stipulation.** We believe that all parties may be better served with extended proceedings that would allow further examination of these disputed costs. **Such proceedings would provide an opportunity for PMWC to provide additional evidence to support or revise its request,** as well as an opportunity for Staff and the customer interveners to respond to any new filing.” *Commission’s December 4, 2006 Order No. 06-657 at 2 and 3.* (emphasis added)

## **No New Probative Evidence Presented**

The issues are clearly set out in the above referenced Order. And the purpose of the second hearing is equally as clear. Noting the Commission had “....concluded that the stipulating parties had failed to provide sufficient evidence to support the rates proposed in the stipulation”, the Chief Administrative Law Judge permitted PMWC this second hearing to “...provide additional evidence to support or revise its request..” *Order No. 07-063 at 1; Order No. 06-657 at 3.*

That PMWC has failed to do.

### **Is this a full time job?**

Does Ms. Webber spend “full time” on PMWC business? Ms. Webber once again merely asserts that this is a full time job without any corroborating evidence. Her summary differs little from what she presented in October. It does nothing to refute her testimony given then including her acknowledgement that a portion of her office hours is “just waiting” to be engaged type of stuff, or can be considered additional “...evidence to fully justify the need to employ Ms. Webber on a full time basis.” *Order No. 06-657 at 3.*

At the October hearing, this Intervener made much of the company’s failure to provide primary evidence of what she does do. At the time, she was just starting to keep daily time records but did testify that there was a “log” in the pump house on which she made entries each time she visited and that she had records of the service call and water line locate requests received. However, none of those were brought by her to the October hearing.

Ms. Webber testified at the April hearing that, yes, she is now keeping daily time records and has done so since September 2006. And in preparation for the second hearing, Staff sent data request No. 68 which read “Please provide copies of Suzanne’s entries in her work hour log as recorded since September 2006.” And this Intervener requested a copy of “anything provided to the Staff.” Yet only a one page summary was provided. (Staff testimony) With her time the principle issue involving the largest disputed expense, the company inexplicably continues to elect not to submit any of these original source documents to the Staff or in this proceeding. Indeed, it was not that the time records where not available or too voluminous to produce, copies were brought by PMWC to the hearing but not submitted or entered into the record.

There can be little doubt why these records were not introduced in the hearing or made available to the Staff. Simply, the documents did not support the company’s request.

This Intervener requests that Ms. Webber’s summary time entries submitted as an exhibit to Applicant Exhibit 702 be stricken from the record as inadmissible, as well as all testimony based upon such summary information. While the best evidence rule permits the use of summaries in certain circumstances, the Company must show both that the original source materials upon which the summary is based are admissible and that the underlying materials were made available to the other parties prior to trial. This PMWC failed to do. *Amarel v.*

*Connell, 102F.3d 1494, 1516 (9<sup>th</sup> Cir. 1996); Shepard v. Kenwishes, 273 Ore. 331, 349; 541P.2d 439, 448 (1975)*

The Staff's testimony provides no collateral support. Its submittal and written testimony is premised upon this being a full-time job but Mr. Dougherty acknowledged that the "documents demonstrating" the total hours worked (Dougherty at 8) was the summary and nothing more. Staff's document request specifically asked for the time records but Staff elected to just accept as gospel Ms. Webber's self-serving summary once again.

Staff's argument that they just "don't audit" time records prior to the rate case ruling is inexplicable. Staff inserted a requirement in the original Stipulation that time records would be kept which they would audit twice a year but elected not to do so at this most critical juncture – prior to the rate hearing. If true that is not their practice or procedure, its flawed. Mr. Dougherty acknowledged that the Staff has the authority to conduct such an audit at any time and could have done so prior to the hearing.

Time constrains are of no issue. It has been more than six months since the initial Order, seven months since the first hearing and over a year since the initial filing of the rate increase request. While not asked and answered, surely an audit or review of the time records would be but a small portion of the time Staff and PUC counsel has committed in preparing the many submittals, testimony and arguments advanced in this matter.

**Even if the time records did show Ms. Webber spent "full time" at the job, the company failed to provide probative evidence the job required full time.**

No new probative evidence was submitted. Ms. Webber added nothing to her prior testimony and Mr. Dougherty confirmed his earlier testimony that her duties were not materially different from those of the other Class C companies including those with between 50 and 200 customers listed in Intervener's Exhibit 400 submitted in October.

PUC counsel elicited testimony from Mr. Dougherty that if owners do not ask for compensation, the Staff/Commission would not include them in the rate base, as if that explained the reason for the absence of such expenses for those Class C Companies listed in Intervener's Exhibit 400. These are all privately owned companies and if any presumption can be made from the annual reports from those companies, it is not that they all elected to just absorb and incur those costs out of the goodness of their heart but, rather, there was no basis for such a claim.

The only new information submitted were the statements from the City of Scotts Mills officials and reference to the UW 110 Rate Case for Long Butte Water System.

First Scotts Mills. The city operates a water district which apparently constitutes a significant part of its activities. It is unregulated and files nothing with the PUC. What its citizens or city council approves is up to them but serves as no relevancy to the rate setting standards of the PUC. From testimony of the mayor, citizens "laying new distribution lines" (clearly a plant capitalized cost) just underscores the non-comparability of this system. What was interesting was that no employee received health, dental or other benefits, the only vehicle

they owned for a 130 customer system was an old “1980’s water truck,” and the average customer pays \$46.15 per month (calculated from revenue data included in Applicant’s Exhibit 701), compared to \$101.72 per month for PMWC customers under the current rate structure or \$130.06 (or nearly 300% higher) under the rates proposed by the Staff at the second hearing..

Long Butte Water System. Staff references this rate case as support for paying health benefits but did acknowledge it was the largest Class C water company under its supervision with 250 customers. While the rate case did approve of health coverage for the two full time employees and included spousal coverage, it should be noted that the two full time employees **were** husband and wife so it was essentially a single policy. No coverage was provided for part time employees. Total vehicle expenses approved in this rate case were significantly lower for this 250 customer system than for PMWC with but 91 customers. Even with the recent rate increase approved for Long Butte, the average water bill per customer is less than one-half of that proposed by Staff in this case.

### **Unnecessary time and expenses incurred.**

Because Ms. Webber wants to make this a full time job, she has a disincentive to reduce her time. At the first hearing, this Intervener asked if she had looked into installing additional monitors in the pump house that could be monitored from her home computer (she said “no”) and introduced a description of just such a monitor as Intervener Exhibit No. 600. When asked if she had looked in to installing monitors in the intervening six months, she said she asked her son what it would cost, and he said it would be “over \$1,000.” That apparently was the end of her inquiry.

And to eliminate the need to drive to and from the post office and the bank, this Intervener asked if she ever considered installing a metal locked mailbox. Remarking that “even locked mailboxes” can be broken into, she dismissed their use even though it is fair to presume that the box is on a public road and could be emptied each day.

Well, let’s do the math. The company spends over \$10,000 to support a new leased pickup truck used primarily to visit the pump house, the bank and the post office, and based upon her summary time records, **over one-half** of her time is committed to those three tasks. The rate payers are asked to pay over \$63,000 for her employment and transportation costs, **each year**. But PMWC made no efforts to seriously consider installing equipment that could save tens of thousands of dollars each year because the equipment might cost “over \$1,000.”

### **Medical, Dental, Vision and Life Insurance**

Staff points to the Long Butte Water System (UW 110) as support for this benefit. First, this is a system with 250 customers. Second, the proposed health insurance for Long Butte is a total of \$12,674 or \$50.70 per customer, while the proposed cost to PMWC customers would be \$114.92 per customer. And no other Class C water company pays any such benefits. (See Intervener Exhibit 400 – Dougherty testified Willamette was sold and no longer is in this class.)

## **Burden of Proof**

The statute is unequivocal: the company has the burden of proof to show the proposed rates are "....fair, just and reasonable."

ORS 757.210 Hearing to establish new schedules; alternative regulation plan. (1)(a) Whenever any public utility files with the Public Utility Commission any rate or schedule of rates stating or establishing a new rate or schedule of rates or increasing an existing rate or schedule of rates, the commission may, either upon written complaint or upon the commission's own initiative, after reasonable notice, conduct a hearing to determine whether the rate or schedule is fair, just and reasonable. The commission shall conduct the hearing upon written complaint filed by the utility, its customer or customers, or any other proper party within 60 days of the utility's filing; provided that no hearing need be held if the particular rate change is the result of an automatic adjustment clause. **At the hearing the utility shall bear the burden of showing that the rate or schedule of rates proposed to be established or increased or changed is fair, just and reasonable.** The commission may not authorize a rate or schedule of rates that is not fair, just and reasonable. (Emphasis added)

It is not incumbent for the Interveners to "prove" the charges are unreasonable and indeed, we do not have access to the information probative to many of these issues. But the utility has or could generate the information to support its request but failed to present credible support for its request. The conclusion is clear, the request is not supportable.

## **What was not presented.**

PMWC was well advised of its obligation to carry the burden of proof well before even the first hearing. Yet what is telling is its failure or inability (and that of the Staff that is advocating on its behalf) to present probative evidence.

- No time records submitted
- No audit performed by Staff
- No testimony from any comparable regulated water company personnel
- No showing that alternatives to reduce hours and miles driven are not available or viable
- Still no response on why the average PMWC residential water customer should pay more than twice that of any other customer in Oregon

Rather, Staff introduces written testimony (Staff Exhibit 300) accepting as gospel the alleged hours worked, then presents a series of questions and answers which are at best irrelevant and, since submitted in support of the rate case, are misleading. Mr. Dougherty, while repeatedly saying he didn't determine the level of wages based upon such analysis, could not explain why the supporting arguments starting with the second question on page 7 through page 12, have anything to do with the Commission's analysis. Such questions and answers which confuse operating expenses with capital investments, earnings with cash flow, and continue to mix apples

and oranges should concern the Commission. They appear to be included to give the appearance of supporting the rate case while in fact providing no relevant evidence or argument.

**What is the “right” revenue base?**

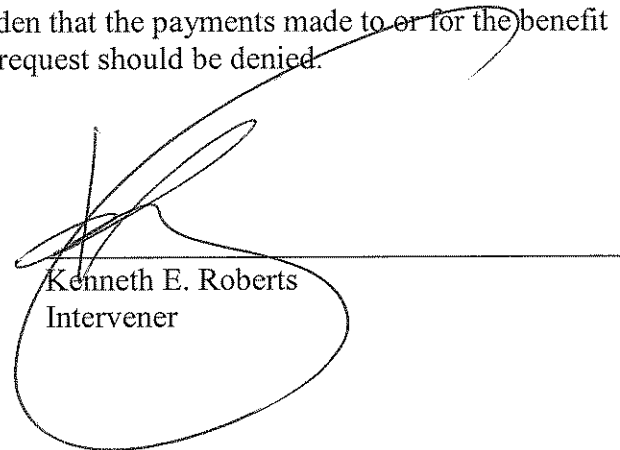
While the Commission should deny the rate increase request for the failure to sustain the burden of proof, there is ample evidence in the record showing the current rates are adequate. Staff's Supplemental Direct Testimony (Staff Exhibit 300 - Dougherty at pg 9-10), rather than supporting the rate increase, actually confirms the current fairness. The analysis shows that at half-time wages (but even with the full cost of their new leased pickup truck and full health benefits for Ms. Webber and her husband), the current rate base provides a 9.97% rate of return, well over the 8.0% sought. (Mr. Dougherty confirmed in testimony that this analysis failed to reduce FICA and other payroll taxes by the 50% and agreed that that adjustment would increase the rate of return to close to 11%.)

This Intervener does not believe the transportation costs or health benefits are justified, particularly for something less than a full time position, but is not seeking a rate case reduction.

**Conclusion**

The company has failed to sustain its burden that the payments made to or for the benefit of the owners are fair or just or reasonable. The request should be denied.

Dated this 14<sup>th</sup> day of May 2007



Kenneth E. Roberts  
Intervener

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on May 14, 2007, I served the foregoing upon all parties of record in this  
3 proceeding by delivering a copy by electronic mail to the parties accepting paper service.  
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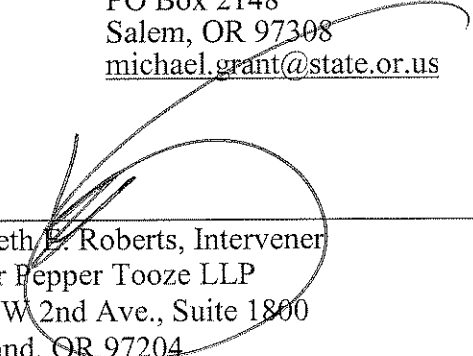
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