

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

**PUBLIC UTILITY COMMISSION
OF
OREGON**

APPLICANT'S CLOSING BRIEF

May 14, 2007

JAMES A. COX
ATTORNEY AT LAW
1530 RAINIER ROAD.
WOODBURN, OREGON 97071
TELEPHONE/FAX 503-982-4039

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON
UW 117

In the Matter of
PETE'S MOUNTAIN WATER CO., INC.
Request for an increase in total annual
revenues from \$111,079 to \$212,300

APPLICANT'S CLOSING BRIEF

This brief will analyze, from the viewpoint of the applicant (PMWC), the evidence and testimony submitted at the hearing on April 30, 2007, together with the evidence previously in the record from the October 30, 2006 hearing.

SUZANNE WEBBER'S EMPLOYMENT

Based on the total evidentiary record of the two hearings, there is little doubt that Ms. Webber's job as general manager is a full time position. In its order of December 4, 2006, the Commission said, "The record also provides little evidence to fully justify the need to employ Ms. Webber on a full time basis." That deficiency has been remedied.

As noted by the Commission, at the time of the October hearing Ms. Webber did not have time records to substantiate what it was that she did in order to justify or explain her salary predicated on full time employment. This was not through any attempt to bilk the ratepayers, but simply because she had never been asked to keep such records. She knew that she worked essentially at a full time job. PMWC presented good evidence of the various job duties and responsibilities, but no evidence other than Ms. Webber's inexact recollection as to the time spent on each task on a day-to-day basis. The Staff, presumably familiar with what was reasonable and necessary to run a small water company, was satisfied that the duties and

1 responsibilities of her job justified the requested level of salary and benefits. Those amounts
2 were included in the stipulation. Unfortunately, her reconstruction from memory of the amounts
3 of time she spent doing various things did not hold up well under rigorous cross-examination by
4 the intervenor, Kenneth Roberts. Inconsistencies and errors became evident. This is probably
5 not surprising considering that she was being asked to “wing it” without records from which to
6 detail her recollection. Think for a moment about the realities of any salaried job in either the
7 private or public sector that involves multiple tasks and responsibilities. Unless for some reason
8 the employer has required that detailed time records be maintained, an employee is not going to
9 be able to accurately recollect the time spent on each task over a period of, say, a year. The
10 author could not do it; the Commission Chairman could not do it; and the President of PGE
11 could not do it. This does not mean the employee is not working hard—and full time.

12 The lack of time records has been corrected. The record now includes such records,
13 kept on a contemporaneous basis over a seven-month period. The full-time equivalency of the
14 job is now well substantiated—although Ms. Webber's recollection of the time spent on each
15 task has changed considerably. A summary of the time records was introduced at the April
16 hearing, and copies of the actual log sheets from which the summary was prepared were
17 produced.

18 Mr. Roberts has complained that Ms. Webber's testimony about her job duties is self-
19 serving. See intervenor's “Opposition to Motion for Extension of Time and to Reopen the
20 Record,” p.2, where he characterizes her statements in the affiliated interest application as
21 “a rehash of the self-serving assertions made at the hearing.” He surely will make the same
22 charge against the time summary and the log sheets. The fact is that anything Ms. Webber
23 says or does in this regard could be so characterized—as is the case with any testimony offered
24 in his or her behalf by any participant in a contested proceeding. That does not make it untrue

1 or fraudulent. Short of assigning an auditor to directly oversee Ms. Webber's work over an
2 extended period, there is no way to independently verify exactly what she does on an hour-by-
3 hour basis. Of course, if the Commission believes Ms. Webber is being untruthful and
4 deceptive in her testimony and record keeping, the PMWC will lose on these issues.

5 There are, however, other ways to crosscheck the reasonableness, and therefore the
6 believability, of Ms. Webber's evidence. The crosschecks are in the record in a couple of
7 different ways.

8 First, the testimony and analysis of Michael Dougherty supports the conclusion that Ms.
9 Webber's compensation is reasonable and appropriate. See: Staff Exhibit 300, Dougherty, pp.
10 2-3, and 5-7.

11 Second, the testimony of Larry Martin and Linda DeCoss, respectively the Mayor and
12 the Treasurer of the City of Scotts Mills, establishes that the labor costs of operating a municipal
13 water system, very similar in size to PMWC's system, are on a par with PMWC's costs. There
14 are, of course, differences between Scotts Mills' system and PMWC's system. These
15 differences tend to make the comparison between the systems more favorable to PMWC. Scotts
16 Mills is a municipal system and does not have the obligation, and therefore does not have the
17 cost, of complying with PUC regulation. Scotts Mills' system is compactly located in and serves
18 a small city with an area of 0.3 square miles. PMWC's system is widely spread out over several
19 miles (over 11 miles of driving to read the meters), and its water plant and water system are of
20 necessity located about 15 miles from the company's office. Scotts Mills contracts out all of its
21 locate requests, so these expenses do not show up in its labor costs, whereas Ms. Webber
22 personally performs most of the requested locates for PMWC at an estimated annual saving of
23 over \$5,000 in contracted services. The supervision and planning for Scotts Mills' system is
24 done by an unpaid Mayor and Council. In addition, a lot of maintenance work for Scotts

1 Mills is done by community volunteers, including the Mayor and Council members. It is the
2 author's recollection that Mayor Martin testified on the telephone that he estimated the value of
3 the volunteer maintenance work to be at least \$1,000 a month. Volunteer labor for
4 management or labor is not an option for PMWC. Even with whatever cost advantages Scotts
5 Mills may have, both the Mayor and the Treasurer were convinced that operating Scotts Mills'
6 system is equivalent to a full time job.

7 The Staff's testimony in which annual salaries were given for Senior/Lead Water
8 Treatment Plant Operators for utilities with under 25 employees is useful. But it can become
9 misleading when this salary is broken down to an average rate of \$25.10 per hour. Staff Exhibit
10 301, Dougherty p. 17, is a list of the typical duties of a small water system operator. Ms.
11 Webber performs most of those duties for PMWC. In addition to the listed duties, she reads
12 meters and she handles billing, collections, banking, bookkeeping, purchasing, etc.; she
13 handles all communications by telephone or by other methods; and she has a responsibility for
14 corporate governance and planning. Could a part time certified water operator be found to
15 commute to Pete's Mountain to do the purely "water system operator" functions, and to be on
16 call 24/7? There is no evidence, and we seriously doubt, that the job pool contains such a
17 person, and if so that he/she would be willing to work for \$25.10 per hour. Even if the
18 hypothetical he/she could be hired, PMWC would still have to contract with an answering
19 service and a bookkeeping/billing service. Ms. Webber would then have to supervise and
20 coordinate these various employees/contractors. PMWC would have to arrange for a water
21 system operator to be on call to cover vacations, illness or other unavailability of the hired
22 operator. Ms. Webber would still have the responsibility of her corporate governance role. Ms.
23 Webber would be entitled to be paid for all of the items that could not be done by an employee
24 or contracted out. Thus, although an hourly rate for a water system operator may be useful for

1 some purposes, there is no indication that breaking the job down into components (hourly or
2 otherwise) and farming them to out others would result in operational efficiencies, better service,
3 or cost savings to PMWC.

4 In other words, other than Kenneth Roberts' nit picking on cross-examination, there is no
5 evidence that Ms. Webber's job is not full time; and, now that the evidentiary record has been
6 supplemented, there is ample evidence to show that hers is indeed a full time job, and that her
7 requested compensation is reasonable.

8 **STAFF'S PRIMARY FINDINGS SHOULD NOT BE COMPROMISED**

9 Staff's testimony first concludes, by all of the applicable standards, that Ms. Webber's
10 requested compensation is reasonable and proper. Staff then says it would be supportable to
11 reduce PMWC's allowable labor cost from \$44,192 to \$38,668. This is done by calculating Long
12 Butte Water System's 2.5 FTE employees for 250 customers and arriving at 1.0 FTE per 100
13 customers; then by comparing LBWS's 250 customers to PMWC's 91 customers; and
14 concluding therefrom that PMWC is entitled to 0.91 FTE employees. This would reduce
15 PMWC's allowable wages (for both Mr. and Mrs. Webber) to \$38,668. With all respect to Mr.
16 Dougherty's knowledge and ability—and with considerable admiration for his ingenuity—this is
17 an example of the old adage that numbers and statistics can be made to say just about
18 anything. Mr. Dougherty made it clear, both in his direct testimony and on cross-examination,
19 that he stands by his first conclusions. But, he said, he felt it appropriate—in light of the doubts
20 expressed by the Commission in its December order—to come up with a less expensive
21 alternative. In other words, Mr. Dougherty thought the pressure was on Staff to come up with
22 something else.

23 Our position is that the Commission did not have the full evidentiary picture before it
24 when the Order was made. Now, based on the additional evidence adduced through the

1 subsequent proceedings, the requested wages are adequately documented and supported. It
2 would be a mistake to back down from the findings and recommendations of Staff simply to
3 reach a compromise or to allay the Commission's concerns that were expressed on an
4 incomplete record.

5 The methodology used to reach the alternative labor costs is tortured. Mr. Dougherty
6 has stated throughout that no two water companies are the same, and it is a mistake to make
7 direct comparisons of one system's costs with another's. Comparing the FTE needs and costs
8 of a 250-customer system with the FTE needs and costs of a 91-customer system to arrive at a
9 precise mathematical formula is inappropriate. Even if the two systems were the same except
10 for the number of customers (which we do not know to be the case), this approach ignores the
11 apparent economies of scale of a larger system. And the comparison of LBWS to PMWC
12 disregards the labor cost per customer of the two systems. It may well be that LBWS's labor
13 costs per customer—if its managerial employees are highly compensated—is more than
14 PMWC's labor costs per customer. Instead, in seeking to justify his alternative labor cost
15 amount, Mr. Dougherty uses the labor costs of a smaller system, Scotts Mills. This in turn
16 ignores the differences between PMWC and Scotts Mills. Scotts Mills' labor costs do not
17 include the value of the uncompensated work of the Mayor, Council and citizen volunteers—an
18 amount which is thousands of dollars a year, and which would have to be quantified in a PUC
19 rate case by a private corporation. Nor does the comparison of PMWC and Scotts Mills take
20 into account the amount Scotts Mills saves in labor costs by contracting out all of its locate
21 requests. See the discussion on pp. 5-6 for more detail on the labor cost differences between
22 Scotts Mills and PMWC.

TRANSPORTATION COSTS

24 PMWC has substantially decreased its transportation expenses by leasing a smaller

JAMES A. COX
ATTORNEY AT LAW
1530 RAINIER ROAD.
WOODBURN, OREGON 97071
TELEPHONE/FAX 503-982-4039

1 pickup truck to replace the truck on which the lease expired. In the company's judgment, the
2 new truck is about the least that could be used to meet the year-round needs. The truck is used
3 exclusively for PMWC purposes, not personal use. No suitable personal vehicle is available,
4 and even if there were, the annual transportation cost considering the mileage driven would be
5 higher if PMWC paid the Webbers the IRS rate for use of private vehicles for business
6 purposes.

7 **THE EFFECT OF METER SIZE ON BASE RATES**

8 In Ms. Webber's testimony PMWC stated its position on Staff's recommendation that the
9 base rate be graduated based on the size of the customer's water meter. Based on what came
10 out at the April hearing, PMWC has become concerned about the effect on company revenues if
11 customers were economically pressured into installing smaller meters or into installing
12 restrictors in the water line (if this were to be allowed) to get the advantage of a lower base rate.
13 All other things remaining equal, such changes would reduce revenues below the necessary
14 projected level. Already, since the prior hearing in October, five customers in the Stafford Hill
15 Ranch subdivision have drilled wells. Although those customers remain on PMWC's system as
16 this is written, it seems apparent that they have drilled the new wells because of concerns about
17 PMWC's rates and/or stability. The full effect of these new wells will not be seen until the
18 irrigation season arrives or until the graduated meter size base rates go into effect. It seems
19 probable that some or all of these customers will disconnect from the system and will use their
20 wells for all their water needs (at least until such time as the individual wells may pump dry).

21 PMWC still contends that graduated base rates for meters of one-inch or less are unfair
22 and counterproductive. Staff has recommended this distinction because of AWWA standards.
23 However, in order to make the graduated rate more palatable, Staff has deviated so far from the
24 actual recommendations of AWWA that they are practically unrecognizable. And in the real

1 world, there is no greater potential demand on the system from a one-inch meter in Stafford
2 Hills Ranch than there is from a 5/8-inch meter elsewhere in PMWC's territory. "Potential
3 demand" on the system does not refer to overall usage. Usage is paid for by the water that
4 goes through the meter, and in the case of heavy users the rate per hundred cubic feet will be
5 higher than for smaller users. So, if the one-inch meter customers are using more water, they
6 will be paying for it, and will be paying a higher rate per hundred cubic feet if they use large
7 amounts. PMWC accepts the fairness and, in the interest of conservation the necessity, of a
8 graduated rate, but does not accept the fairness or necessity of a graduated base rate based on
9 meter size. If the base rate is adjusted to treat all customers of one-inch or smaller meters the
10 same, it will require a simple calculation by Staff to make the change revenue neutral. Ms.
11 Sloan explained that she could easily do this, and she estimated that the increase in the base
12 rate for all customers would only be a few cents a month.

13 **CONCLUSION**

14 In conclusion, PMWC requests that the labor and transportation costs be allowed as
15 requested and supported by the Staff's testimony, without reduction for the inadequately
16 supported alternative level of labor costs contained outlined in Staff's secondary findings made
17 in response to questions raised in the Commission's earlier order. PMWC further requests that
18 if a graduated base rate, based on the size of customer's water meter, is implemented, that it
19 treat the same all meters of one-inch or less; and that the base rate of all customers be
20 recalculated to make the change revenue neutral.

21 Respectfully submitted,

22 _____
23 /s/ James A. Cox
24 James A. Cox, OSB No. 57019
Attorney for Applicant

JAMES A. COX
ATTORNEY AT LAW
1530 RAINIER ROAD.
WOODBURN, OREGON 97071
TELEPHONE/FAX 503-982-4039

CERTIFICATE OF SERVICE

STATE OF OREGON

County of Marion; ss.

I certify that I served the foregoing document on the following parties or attorneys by electronic mail addressed as follows on May 14, 2007:

Jason W. Jones, PUC Staff attorney – Jason.w.jones@doj.state.or.us

Kenneth E. Roberts, intervenor – robek@fosterpdx.com

Jo Becker, intervenor – jojobkr@aol.com

David and Kay Pollack, intervenors - dapollack@aol.com;

and by United States mail deposited in the Post Office at Woodburn, Oregon on April 2, 2007:

Jason W. Jones
Assistant Attorney General
Regulated Utility & Business Section
1162 Court St NE
Salem Or 97301-4096

Kenneth E. Roberts
2700 SW Schaeffer Rd
West Linn OR 97068

David and Kay Pollack
2120 SW Schaeffer Rd
West Linn Or 97068

Jo Becker
23661 SW Stafford Hill Dr
West Linn Or 97068

JAMES A. COX, OSB # 57019
Attorney for Applicant

JAMES A. COX
ATTORNEY AT LAW
1530 RAINIER ROAD.
WOODBURN, OREGON 97071
TELEPHONE/FAX 503-982-4039