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APR 26 2007

Public Utility Commission of Oregon
Administrative Hearing Division

UW 119

**Testimony of
David N. Westoby**

**In the Matter of
Agate Water Company
Application for Rate Increase**

April 24th 2007

DOCKETED

Question:

What is my Name, Occupation and Address

Answer:

My name is David N. Westoby, I am an ASE certified auto mechanic and reside with my family at 19244 Baker Road, Bend, Oregon

Question:

Briefly summarize your education background and work history.

Answer:

I have a high school education, supplemented with several trade related courses, certifications and general knowledge of a service-oriented industry and the need for positive communications and progressive thinking to foster good customer relations. I have been a professional in the automotive service industry for 30 years.

Question:

What is your interest in this case?

Answer:

I live in the Agate Water Company service area, and have been a customer of theirs since 1998. I find it hard to believe that a 45.7% rate increase would even be considered a viable request after receiving a 30.8% increase less than two years ago.

Additionally, having been one of many Agate water customers that have paid the \$2500 "System Development Charge", I feel that these recent rate increase requests are not founded by needs of further system development, but by the needs of a poorly managed company. My system development fee was paid to Agate water Company ten years ago. This water system has already been developed. Additional costs for maintenance of the system should be a comparatively nominal amount. The current customer base should not have to fund any further development required by Agate Water Company through these exorbitant rate increases.

Question:

Do you have specific concerns regarding the manner in which UW 119 is being handled?

Answer:

Yes I do. Based on documentation supplied through the PUC and research of online information, done by other interveners in this case, and myself, as well as a review of testimony from Lawrence Riser, Tim Kelly and Corine Fraser, I have several concerns regarding how UW 119 is being handled.

Question:

How do you intend to present your testimony in this case?

Answer:

I intend to submit testimony as items #'s 1 through 8

Question:

Do you have documentation supporting your concerns regarding UW 119?

Answer:

Yes I do. In this testimony, I intend to refer to documentation I have received from the PUC, other interveners in the matter of UW 119, customers of Agate water Company, and information found (or not found) at the PUC web site for public viewing. Additionally, I have documents supplied by an Agate Water company customer that was hand delivered to me on Tuesday, April 17, 2007. I have this documentation organized and included as exhibits "A" through "C", as well as referrals to written testimony from other interveners in this case.

Item #1

Preface:

Agate water Company office and facilities are real property owned by shareholders of Agate water Company. These facilities are rented to the Company on a monthly basis by Agate water Company at the rate of \$1000 per month. (Reference: exhibit "A" notice from Agate Water Company regarding PUC order number 05-204 dated June 16th 2006) This equates to \$12,000 per year for rental of real property by Agate Water Company. To my knowledge, there has been no further notice of increased or decreased rental rates by the shareholders.

Question:

Since for some reason, Staff has decided to use 2005 as a test year, would the new rental rates in exhibit "A" be reflected in the 2006 year financials?

Preface:

In reference to Staff's analysis of Agate water Company's revenue requirements (Page 1, line 30, column A) rental of building/real property costs = \$15,600 (or \$1300 a month).

(Line 52, column A) refers to property tax costs = \$14,427

Question 1:

If Agate water Company is renting the real property on which its facilities are located from its shareholders (Claude and Lynn Johnson), then why is Agate water Company also claiming to pay the property taxes? Shouldn't the owners of the property pay these taxes?

Additionally, it is my understanding that up to three businesses owned by or disbursing funds to, Agate water Company shareholders, may be operating from the above-mentioned real property.

Question 2:

Has staff presented its analysis of Agate water Company's request for a rate increase based on "face value reporting" of expenses and revenues by the Company, or has there been a thorough investigation into whether expenses claimed by Agate water Company are in fact used solely for the purpose of Agate water Company's operations and administration?

Qualification: Are Agate water Company customer rates paying for rental of property and equipment that is benefiting other companies in the area that are not directly affiliated with Agate water Company?

Item #2**Question:**

Is staff basing their analysis of Agate Water Company's requested rate increase on clear concise documentation of salaries and wages of its employees?

Example 1: Agate water representatives claim in their UW 119 application that their office is open 160 hours a month. Their actual hours of operation are as follows: Monday through Thursday = 7 1/2 hours daily. Friday = 4 hours daily. Saturday and Sunday, they are closed. This equates to 136 hours per month that their office is open. It would seem that someone is receiving 24 hours worth of pay without having to produce any work.

Example 2: Claude Johnson is a shareholder and represents himself as a salaried full-time employee of Agate water Company. He is also the owner of C. A. Johnson Enterprises, a backflow testing business that operates independently of Agate water Company. (In reference to C. A. Johnson Enterprises independent status, a verbal statement by Lynn Johnson at the Feb. 22nd 2007 prehearing conference was made attesting to the fact that C. A. Johnson Enterprises is a separately owned and operated business independent of Agate water Company.) There was a court recorder present at the above-mentioned conference, so I believe Lynn Johnson's comment is documented and recorded.

Question:

If Claude Johnson is a full-time employee of Agate water Company, and he is conducting backflow tests for C. A. Johnson Enterprises during normal business hours, wouldn't this be considered as receiving compensation from two separate businesses simultaneously?

Answer:

As a salaried employee of Agate water Company, Claude Johnson should be performing business operations pertinent to the needs of Agate water Company during normal business hours. Any deviation from this, i.e. work performed for a separate Company while on Agate water Company time should be viewed as a conflict of interest.

Additionally, it would be possible for both businesses to operate independently, if Claude Johnson was paid on an hourly basis, and provided accurate documentation (time clock data) of actual time spent working for Agate water Company as compared to time devoted to C. A. Johnson Enterprises.

Question:

Has staff received and thoroughly reviewed a statement or documentation from Agate water Company attesting to the ratio of actual hours worked per month by individual employees of Agate water Company in comparison to their monthly salaries, and what their hourly wages would be?

Item #3*Preface:*

While I have already established that Agate water Company and C. A. Johnson Enterprises are two separate businesses, I do feel that certain individuals involved in the management/ownership levels of both of these companies display business practices and ethics that may transcend the boundaries of both companies.

It is on this basis that I would like to introduce in support of my testimony,

(Exhibit B.) containing a letter to the PUC from Agate water customer Anne Lippert regarding her concerns and experiences in dealing with Mr. Claude Johnson of C. A. Johnson Enterprises. (Please make note of Mrs. Lippert's closing paragraph in her letter, and the attached copy of her check that had been processed through Mr. Johnson's banking institution.)

Question:

How Come Agate Water Company can mail out notices of annual backflow tests required, with threats of disconnects for noncompliance, and allow a backflow testing Company who fails to provide services for monies received to operate on its system?

Answer:

Two separate companies of conflicting interests that have actually demonstrated a common interest: additional money charged for less (or in some cases, no) services received.

Question:

If an investigation were conducted on the electronic filing and storage media (hard drive) of the computer purchased/owned by Agate water Company (reference to: status analysis of Agate water Company's application for a general rate increase, Page 1, line 33, column A), would the investigation reveal the bookkeeping records of Agate water Company as well as bookkeeping records of C. A. Johnson Enterprises? *Qualification: Are Agate water Company customer rates paying for equipment used by C. A. Johnson Enterprises?*

Item #4*Preface:*

As I recall, those of us attending the Feb. 16th 2007 public comment meeting and prehearing conference were told that we could obtain a copy of Agate water Company's application for a rate increase regarding UW 119 via a request for information from the PUC, or by visiting the PUC web site, and searching the "edockets" area and searching under "Open Dockets"

Question:

Why isn't this information available for public review on the PUC web site?

My observation:

(Reference to: Exhibit C., Page 1) this page was printed from the PUC web site after searching by Company, entering "Agate water Company" and clicking on the "Open Dockets" link on April 22nd, 2007. Please note that while reference to item No. CA12 is available for review, there are no links for UW 119 present.

Question:

On the above-mentioned date, wasn't UW 119 still considered an open docket, available for public review?

Item #5

Concerns:

Availability of information, and timely release of information to all parties involved regarding UW 119. (Reference to Exhibit C. Page 1, and three page document item No. CA12, also included in exhibit C.)

Preface:

I discovered information referred to in item No. CA12 while searching for online documentation regarding UW 119. According to online documentation and discussion within the document, the filing date for CA12 was March 21st 2007. The reporting date for this document was April 11th 2007. Please note that both of these dates precede the April 12 2007 settlement conference held at Elk Meadow Elementary School in Bend, Oregon. Having visited the PUC web site several times prior to April 22nd 2007, this was the first time I had seen information regarding this issue.

Question:

Why wasn't this information made available to UW 119 intervener's at the April 12 2007 settlement conference?

Qualification:

Since information in item No. CA12 (Docket No. UI 263) clearly states on Page one "Coincident with the UW 119 final order", it would seem that the decision-making process regarding UI 263 would be relevant to the UW 119 case, therefore making this information available to all parties in the UW 119 case of utmost importance. Had I not "stumbled onto" this information at the PUC web site, yet another decision would have been made without the input from UW 119 intervener's. I also noticed that the public meeting date and location regarding UI 263 was set for April 24th 2007 in Salem, Oregon. Keep in mind, this is only two days after I discovered this information at the PUC web site. Unfortunately, I will not be able to attend the meeting in person, but I have contacted the commission in opposition to item No. CA12 via E-mail. (Reference to Exhibit C., Page 2)

Item #6*Preface:*

At the public comment meeting and prehearing conference held in Bend Oregon on Feb. 16th 2007, when questioned about why Fred Schilling wasn't present for any of the public meetings, Lynn Johnson verbally stated that Fred Schilling was retiring. (Once again, a court recorder was present at this conference, so her comment should be documented and recorded)

Question:

Why is it that one month and five days after Lynn Johnson made the aforementioned comment, Agate water Company applied for an affiliated interest contract to negotiate the future salary of Fred Schilling? (Exhibit C., item No. CA12, Page 2)

Answer:

To quote Kathy Miller's comment made at the April 12 settlement conference "Saying something doesn't make it true". This is just my observation, but I can't think of another company more deserving of Miss Miller's comment.

Item #7

(In reference to Exhibit C., item No. CA12)

(Docket No. UI 263) Staff recommendations regarding Agate water Company's application for an affiliated interest contract between Agate water Company and Fred Schilling.

Preface: In a e-mail response which I received from Marion Anderson on Monday, April 23rd, 2007, Miss Anderson stated: "Kathy Miller is in charge of the concurrent rate case, UW 119, and needs the salary matter resolved in order to finalize the revenue requirement."

Question:

Why is it that staff in both UW 119 and UI 263 deem the importance of resolving Fred Schilling's wages so important as to place the overall scope of UW 119, and its effects to Agate water customers rates a secondary consideration?

Qualification: in reference to item No. CA12, Page 3 (2) "the contract will not harm customers and is not contrary to the public interest with the recommended conditions"

My Observation:

While the contract may not *harm* Agate water customers, it will definitely *affect* Agate water customers and the rates they are required to pay. This is after all, the reason Agate water Company is continually asking for substantial rate increases.

Question:

Why does the PUC seem to continually stand on behalf of Agate water Company at public hearings?

Qualification: To my knowledge, I have attended all of the hearings, meetings and conferences pertaining to UW 119 in the central Oregon area. It has been my observation, as well as that of others in attendance, that staff in this case persistently stands in defense of Agate water company's position and requests, with little regard to the position of, and questions raised by interveners in the case. This became predominantly evident during the April 12 2007 settlement conference, when intervener Dave Anderson, while stating his concerns regarding UW 119 was verbally "shut down "by Kathy Miller. In addition, once it was determined that the attending interveners were not in agreement to staffs stipulation to the rate increase, it was determined that this case would proceed to the evidentiary hearing. Intervener Tim Kelly requested that the hearing be scheduled sometime in the late afternoon or evening if possible, because many of the interveners have jobs that require our attention during normal business hours. Mr. Kelly's request was met with a comment from Kathy Miller, pointing out that the settlement conference was scheduled in the evening, and staff was required to drive to Bend for an evening meeting. While I do appreciate the efforts to make these meetings available to us, I was very uncomfortable with the undertones of Miss Miller's statement. It would seem that this case is being treated as a huge inconvenience for the PUC. I would like to point out that Agate water customers are not the people continually asking for these inflated rate increases. We are simply end-users placed in a very tough position, and we would like to remind the commission of their obligation to Agate water Company's customers, as well as Agate water Company. I feel that given the history of Agate water Company's practices and conduct, it is extremely important for PUC closely examine and scrutinize all aspects of the application filed by Agate water Company regarding UW 119. *Because of these concerns, I would like to state that I am in full agreement with intervener Tim Kelly's testimony questioning the PUC stipulating to the rate increase prior to reviewing interveners testimony and documentation.*

Item #8

(Exhibit C. item No. CA12, Page 2)

Under the heading: Scope of Agreement. There are several comments in a statement alone, that I am confused about.

"Fred Schilling has a breadth of experience in the 27 years he has worked full-time at Agate"

Question:

I believe Agate water Company has only been in business since 1983. (24 years) Why our claims of 27 years with Agate water Company being made?

"His new status will be as a hybrid part-timer (manager/operator/officer with 24/7 availability for emergencies and questions) with regular contact with the system operator."

Question:

What *exactly* is a "hybrid part timer" I realize some attempt at a brief description was made in item No. CA12, but I would like to see a more in-depth breakdown of the duties and responsibilities of a "hybrid part timer"

Question:

Is there some government/PUC document describing the responsibilities of a "hybrid part timer"? If so, where would I be able to obtain a copy of this document for review?

Question:

What *exactly* is the breakdown of the pay scale in relation to a "hybrid part timer"? Would this documentation be available also?

Qualification: many occupations which require a "standby status" have a dual, or multiple rate pay scale. An employee sitting around waiting for something to happen would be paid a much lower rate than an employee this actually physically or logistically dealing with an issue for their employer.

My observation:

\$55,800 per year seems excessive for *any* part timer (hybrid or otherwise)

(In reference to: item No. CA12, Page 2)

"His new status will be as a hybrid part timer (manager/operator/officer with 24/7 availability for emergencies and questions) with regular contact with the system operator."

Preface:

It is my understanding that Fred Schilling has property in eastern Oregon, and spends much of his time there. (This is evident in testimony submitted by Mr. Lawrence Riser, reference to Riser testimony exhibit C.) upon examination of these documents, you'll find several expenses where Fred Schilling is purchasing fuel and spending much of his time in eastern Oregon.

Question:

How can someone be considered in the capacity mentioned above, while not being physically available for the above-mentioned duties during the above-mentioned times?

Qualification: if Fred Schilling's 24/7 availability is only via electronic means of communication, wouldn't he be nothing more than a consultant?

Summary:

There are many other issues I would like to address, but they're just isn't enough time to include these before I submit my testimony.


I would however encourage the commission to take a close look at Mr. Lawrence Riser's testimony, as I feel that he has devoted a great deal of time to research the validity of Agate water Company's requests an application. Additionally, land in agreement with Mr. Riser's position regarding his request that the commission appoint a Regent for an interim period to determine an accurate analysis operate requirements by Agate water Company.

There are several interveners concerns that have been discussed verbally, and I'm sure will be submitted to the commission prior to the April 30th 2007 deadline. Please review them carefully, and hopefully we can come up with a workable solution at the upcoming evidentiary hearing.

Thank you for your time.

Respectfully submitted,

David N. Westoby



Intervener (UW 119)

11944 Baker Road

Bend, Oregon 97702

541-388-3946

westoby@bendcable.com

UW 119

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Public Utility Commission of Oregon
Administrative Hearing Division

Testimony of
David N. Westoby

Supplemental Addendum

In the Matter of
Agate Water Company
Application for Rate Increase

April 24th 2007

DOCKETED

This document is supplemental to testimony of David N. Westoby in the matter of Agate water company application for rate increase.

Preface:

While compiling and preparing my testimony regarding UW 119, I came upon some information online regarding UI 263. While there were definite issues on UI 263 that needed to be addressed, it did draw my attention from a couple of items that I want to address in my testimony.

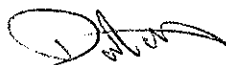
Question:

How Come the PUC continually asserts that rate comparisons to other similar water companies are not relevant when it comes to the PUC's decision-making process regarding Agate water company?

Qualification: I noticed online several instances where comparisons were made to other utility companies regarding their operating procedures, as well as procedures that the PUC would utilize to determine the feasibility of rate increases. Also, there are several comparisons made in UW 108 (Page 3) under the topic: Intervener Issues.

In closing, I just like to stay my position regarding staffs recommendation concerning the new tiered rate with just two tiers above the base rate. \$2.75 is a considerable jump from \$1.04 for the first tier (up to 2000 cubic feet), I strongly oppose the new rate proposal that staff is requesting. Please take your time to review all information and submitted testimony in-depth before making any kind of decision

Respectfully Submitted

 4-24-07

David N. Westoby (intervener UW 119)

**Westoby Testimony
in opposition to:
UW 119**

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Public Utility Commission of Oregon
Administrative Hearing Division

Exhibit "A"

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AGATE WATER COMPANY

June 16, 2006

Re: **Affiliated Interest Transactions**

To Whom It May Concern:

Name of affiliated/party transaction with

Agate Water Company and Claude and Lorna (Lynn) Johnson

Purpose of the transaction

Agate Water Company rents property owned by the Claude and Lynn Johnson whom are also employees of the water company.

Commission Order Number

Order number 05204

The dollar amount of the transaction

\$1000.00 a per month (\$12,000.00 a year)

Date of execution of the transaction

1997

Sincerely,

Lynn Johnson
Office Manager
Agate Water Company

60107 MINNETONKA LANE • BEND OREGON • 97702
PHONE: 541-382-2855 • FAX: 541-617-1368

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UI 238

In the Matter of)	
)	
AGATE WATER COMPANY)	ORDER
)	
Application for Approval of a Rental)	
Agreement with an Affiliated Interest.)	

DISPOSITION: APPLICATION APPROVED WITH CONDITIONS

On March 30, 2005, Agate Water Company (Agate) filed an application with the Public Utility Commission of Oregon (Commission) pursuant to ORS 757.495 and OAR 860-036-0730, requesting approval of a rental agreement between Agate Water Company and Claude and Lorna Johnson, affiliated interests. A description of the filing and its procedural history is contained in the Staff Report, attached as Appendix A, and incorporated by reference.

Based on a review of the application and the Commission's records, the Commission finds that the application satisfies applicable statutes and administrative rules. At its Public Meeting on April 19, 2005, the Commission adopted Staff's recommendations.

OPINION

Jurisdiction

ORS 757.005 defines a "public utility" and Agate is a public utility subject to the Commission's jurisdiction.

Affiliation

An affiliated interest relationship exists, as defined under ORS 757.015.

Applicable Law

ORS 757.495 requires public utilities to seek approval of contracts with affiliated interests within 90 days after execution of the contract.

ORS 757.495(3) requires the Commission to approve the contract if the Commission finds that the contract is fair and reasonable and not contrary to the public interest. However, the Commission need not determine the reasonableness of all the financial aspects of the contract for ratemaking purposes. The Commission may reserve that issue for a subsequent proceeding.

CONCLUSIONS

1. Agate is a public utility subject to the jurisdiction of the Commission.
2. An affiliated interest relationship exists.
3. The agreement is fair, reasonable, and not contrary to the public interest.
4. The application should be granted, as modified herein, including certain conditions and reporting requirements.

ORDER

IT IS ORDERED that the application of Agate Water Company to enter into an affiliated interest transaction with Claude and Lorna Johnson is approved, subject to the conditions further stated in Appendix A.

Made, entered, and effective APR 29 2005

BY THE COMMISSION:



Becky L. Beier
Becky L. Beier
Commission Secretary

A party may request rehearing or reconsideration of this order pursuant to ORS 756.561.
A party may appeal this order to a court pursuant to ORS 756.580.

PUBLIC UTILITY COMMISSION OF OREGON
STAFF REPORT
PUBLIC MEETING DATE: April 19, 2005

REGULAR _____ CONSENT X EFFECTIVE DATE _____ N/A

DATE: April 4, 2005

TO: Public Utility Commission

FROM: Marion Anderson

THROUGH: Lee Sparling, Marc Hellman, and Rebecca Trujillo

SUBJECT: AGATE WATER SYSTEM: (Docket No. UI 238) Application for Approval of Buildings Rentals from Claude and Lorna (Lynn) Johnson, Affiliated Interests.

STAFF RECOMMENDATION:

The Commission should approve Agate Water System's (Agate) application for a property rental agreement with Claude and Lorna (Lynn) Johnson, (the Johnsons) affiliated interests, with the following conditions:

1. Agate shall provide the Commission access to all books of account, as well as all documents, data and records of Agate and the Johnsons that pertain to transactions between the two.
2. The Commission reserves the right to review, for reasonableness, all financial aspects of this arrangement in any rate proceeding or earnings review under an alternative form of regulation.
3. Agate shall notify the Commission in advance of any substantive changes to the agreement, including any material changes in any cost. Any changes to the agreement terms that alter the intent and extent of activities, under the agreement from those approved herein, shall be submitted for approval in an application for a supplemental order (or other appropriate format) in this docket.

DISCUSSION:

This application was filed on March 30, 2005 under ORS 757.015, 757.495, and OAR 860-036-0730. The Johnsons are employees of Agate and Lynn Johnson is the daughter of Agate's owner.

The following issues were investigated:

- ◆ Scope of the Agreement
- ◆ Transfer Pricing
- ◆ Determination of Public Interest Compliance
- ◆ Records Availability, Audit Provisions and Reporting Requirements

Scope of the Agreement

This application covers the rental of an 1100 square foot office facility with outbuildings for equipment, work area, and storage of 720 square feet.

Transfer Pricing

A verbal contract was made in 1997 between the application's parties at the current monthly charge. Agate has been made aware of the need to timely file any future related party activities for Commission review (OAR 860-036-0737). Property improvements were made by the owners in 1999. In order to determine compliance with the lower of cost or market dictate of OAR 860-036-0739(3)(e), staff contacted five Bend commercial property management companies on March 31, 2005, and requested estimated square footage cost quotations on the buildings at issue. Three companies complied. All of the estimations resulted in charges higher than the application's \$1,000 charge per month.

Determination of Public Interest Compliance

This agreement is fair and reasonable and not contrary to the public interest.

Records Availability, Audit Provisions, and Reporting Requirements

Staff Recommendation 1 affords the Commission adequate access to records and provides for the auditing of transactions regarding this matter between Agate and the Johnsons.

UI 238
April 4, 2005
Page 3

ORDER NO. 05-204

PROPOSED COMMISSION MOTION:

Agate Water System's buildings rentals from Claude and Lorna (Lynn) Johnson be approved.

UI 238

**Westoby Testimony
in opposition to:
UW 119**

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Public Utility Commission of Oregon
Administrative Hearing Division

Exhibit "B"

DOCKETED

P.O. Box 2148
Salem, Oregon 97308

60044 Hopi Rd
Bend, Or.
97702
February 12, 2007

To Whom It May Concern:

Thank you for informing the community of the rescheduling of this very important prehearing conference of Agate water Company's request for a 45.7% raise in rates. Although I and many others were present for the cancelled meeting on January 17th, previous commitments prevent me from attending the Feb. 16th meeting in person.

I do believe my concerns, at least most of them, will be those shared by others in the Descutes River Woods area. My first concern has already been resolved: where do we turn for help when there is an issue with this company. Ironically, two calls to the Bend Council failed to produce either a name or phone number of the P.U.C. I actually found out how to reach you by calling another water company in the area, Avion.

In the eleven years I have lived at my present location, I have seen all other utility bills gradually increase in a modest way as the cost of living rises. This seems justifiable. However, Agate is asking for an increase of almost 46%.

These are the three questions I have: 1. If that increase, or a portion of it, is granted, what added services can the public expect? 2. If I now pay an estimated bill of \$28.25 per month, what could I expect to pay if this request is granted in full? 3. How often can this utility ask for an increase? Two years ago they received an increase, and I was not even notified of a hearing. Is there no cap on how often an increase may be requested?

Other issues are related to the unprofessional behavior of the company. Other utility bills arrive with a return envelope, a statement of services used, and a thank you. Agate's bills come on a postcard, and the date they arrive is very erratic, varying as much as two weeks.

I choose to pay my bills the day they arrive, but it is usual for Agate to take two to three weeks for even these local checks to cash, prompting me to worry if the company received them.

The "office" has no sign outside and no posting of hours.

Rudeness and failure to return calls are subjective issues difficult to prove and perhaps not shared in the viewpoint of other clients.

The annual backflow test notice arrived in July, and as I have done every year since moving here, I issued a check on July 25, 2006, to Mr. Claude A. Johnson of Agate Water Co. for this service. The check was cashed in early August, and when the report of the service failed to arrive by mid September, I attempted to call the Agate office for information.

Three calls requesting an answer if there was a delay or a specific problem were never returned or addressed. I went to the company in person; a very rude lady in the office came outside and once again I was told, "He'll get back to you." I was not even asked to come into the office.

After two weeks and still no calls back, I contacted the P.U.C.

I shared the circumstances on the phone with a very polite secretary, within a day an equally courteous agent called me back, and a short time later Mr. Claude A. Johnson sent me a refund along with a very terse note telling me to get somebody else to do the backflow test in the future. Rest assured I did, and once again, thank you, P.U.C. for helping me.

Yours Truly,
Anne Hippert

**Westoby Testimony
in opposition to:
UW 119**

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Public Utility Commission of Oregon
Administrative Hearings Division

Exhibit "C"

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[Agencies A-Z](#)

[Accessibility](#)



[Advanced Help](#)



Public Utility Commission

Exh. C
Page 1
D.N.W.

eDockets

Docket Summary

Docket No: UI 263 **Docket Name:** AGATE WATER COMPANY

[Print Summary](#)

Subject Company: AGATE WATER COMPANY

In the Matter of AGATE WATER COMPANY Application for an affiliated interest contract between the company and Fred Schilling. Filed by Lorna Lynn Johnson. (Conditionally accepted until receipt of electronic version.)

Filing Date: 3/21/2007

Case Manager: MARION ANDERSON **Phone:** (503) 378-4362 **Email:** marion.anderson@state.or.us

If you experience problems with the above 'Email Service List' links, please try one of these:
[Service List Popup \(semi-colon delimited\)](#) [Service List Popup \(comma delimited\)](#)

<u>ACTIONS</u>	<u>SERVICE LIST</u>	<u>SCHEDULE</u>
<p>Date: 4/20/2007 Action: OTHER FILING/PLEADING</p> <p>Description Staff report for April 24, 2007 Public Meeting (Item No. CA12); filed by Marlon Anderson. (Electronic version available at: www.puc.state.or.us/Public Meetings/Public Meeting Agenda).</p>		
<p>Date: 3/21/2007 Action: INITIAL (APPLICATION, COMPLAINT, PETITION)</p> <p>Description In the Matter of AGATE WATER COMPANY Application for an affiliated interest contract between the company and Fred Schilling. Filed by Lorna Lynn Johnson. (Conditionally accepted until receipt of electronic version.)</p>		

Exhibit C
Page 2
DNW.

D. Westoby

From: D. Westoby [westoby@bendcable.com]
Sent: Sunday, April 22, 2007 9:06 PM
To: Oregon Public Utility Commission
Cc: Tim Rogers; Tim Kelly; Larry & Vera Riser; Joel & Stephanie Michelsen; Dave Anderson; Dave & Barb Westoby; Corine Fraser
Subject: In the matter of staff recommendation pertaining to item No. CA12 scheduled for discussion at public meeting April 24th 2007

Hello,

My name is David N. Westoby, and I am an intervener in the matter of Agate water Company's application for rate increase (UW 119). After reviewing staff recommendation and related comments found on item No. CA12, I have noticed several discrepancies in accuracy of reporting, as well as inclusion of all pertinent data regarding Agate water Company's request. While I do not have access to the actual application filed by Agate water Company, I see several statements in staff's proposal (item No. CA12) and I do not agree with. Since this proposal is coincident with the UW 119 final order, I would urge the commission to please refrain from any final decisions regarding item No. CA12 until testimony has been entered and discussed in the UW 119 evidentiary hearing. This would allow the commission to take into account all of the information pertinent to Agate water Company's operating procedures and requirements. Thank you very much for your time

Respectfully Submitted,

David N. Westoby

PUBLIC UTILITY COMMISSION OF OREGON
STAFF REPORT
PUBLIC MEETING DATE: April 24, 2007

REGULAR CONSENT EFFECTIVE DATE Coincident with the
UW 119 Final Order

DATE: April 11, 2007

TO: Public Utility Commission

FROM: Marion Anderson

THROUGH: Lee Sparling, Marc Hellman, and Michael Dougherty

SUBJECT: AGATE WATER COMPANY: (Docket No. UI 263) Application for an affiliated interest contract between Agate Water Company and Fred Schilling.

STAFF RECOMMENDATION:

The Public Utility Commission (PUC or Commission) should approve the application of Agate Water Company, Inc. (Agate or Company) for an affiliated interest agreement with the following conditions.

1. The Company shall provide the Commission access to all books of account, as well as all documents, data, and records that pertain to any payments to Fred Schilling.
2. The Commission reserves the right to review, for reasonableness, all financial aspects of this arrangement in any rate proceeding or earnings review under an alternative form of regulation.
3. The Company shall notify the Commission in advance of any substantive changes to the agreement, including any material changes in any cost. Any changes to the agreement terms that alter the intent and extent of activities under the agreement from those approved herein, shall be submitted for approval in an application for a supplemental order (or other appropriate format) in this docket.
4. Total annual compensation payments to Fred Schilling shall not exceed \$55,800.

DISCUSSION:

This application was filed on March 21, 2007, pursuant to ORS 757.015 and 757.495, and OAR 860-036-0730. Mr. Schilling's affiliation arises from his ownership of the Company. This application is an outgrowth of the ongoing rate case, UW 119, and a revision to traditional Staff policy on owner utility employment. Precedent was established for the revised Staff policy in Docket UW 117, Order No. 06-657, dated December 4, 2006.

In Commission Order No. 06-627, the Commission clarified the requirements relating to situations where owners of water utilities were also employed by the utility. Staff had historically not requested an affiliated interest filing in such circumstances and instead rigorously reviewed the compensation expense during general rate reviews. In Order No. 06-627, the Commission found that the plain, natural, and ordinary meaning of the affiliated interest statute mandates that payment of wages and benefits to an owner of a utility requires an affiliated interest filing, pursuant to ORS 757.495(1).

The following issues were investigated:

- Scope of the Agreement
- Transfer Pricing
- Determination of Public Interest Compliance
- Records Availability, Audit Provisions, and Reporting Requirements

Scope of the Agreement

Fred Schilling has a breadth of experience in the twenty-seven years he has worked full time at Agate: well and mainline installation, hook-ups, system operation, contract negotiation, cost estimation and bid development, staff management, and customer contacts. His new status will be as a hybrid part timer (manager/operator/officer with 24/7 availability for emergencies and questions) with regular contact with the system operator.

Transfer Pricing

Pursuant to OAR 860-036-0739, Allocation of Costs by a Water Utility, when services or supplies are sold to a water utility by an affiliate, sales shall be recorded in the water utility's accounts at the affiliate's cost or the market rate whichever is lower. Given the nature of this application between the Company and a majority stockholder, Staff's review will focus on market rate analysis since cost and market are essentially the same.

The Oregon Labor Market Information System (OLMIS) was used for market valuation determination. The normal annual hours figure is 2,076. Halving that figure (1,038 hours) and dividing the proposed \$55,800 annual salary thereby yields a \$53.76 hourly rate for Mr. Schilling. Using a presumed 75% factor (1,557 hours) yields a \$35.84 hourly rate for Mr. Shilling. The 2006 Crook/Deschutes/Jefferson regional wages for General and Operations Managers analysis shows the following:

10th	25th	50th (median)	75th	90th	Average Hourly Rate	Annual Average
\$19.06	\$24.36	\$33.06	\$43.15	\$63.19	\$37.22	\$77,402

Given the aforementioned employment description (with the time estimate uncertainty), experience, and utility size, Staff does not object to this level of remuneration. Mr. Schilling's considerable experience would most likely place him in the 75th or 90th OLMIS percentile in wages.

Determination of Public Interest Compliance

This agreement is fair and reasonable and not contrary to the public interest.

Records Availability, Audit Provisions, and Reporting Requirements

Staff Recommendation Condition No. 1 affords necessary access to any relevant records.

Based on the review of this application, Staff concludes the following:

1. The arrangement's scope is reasonable.
2. The contract will not harm customers and is not contrary to the public interest with the recommended conditions.
3. Necessary records are available.

PROPOSED COMMISSION MOTION:

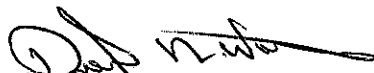
Agate Water Company's affiliated interest agreement with Fred Schilling be approved, subject to the recommended conditions.

CERTIFICATE OF SERVICE

UW 119

I certify that I have this day served the foregoing document upon all parties of record in this proceeding by delivering a copy in person or by mailing a copy properly addressed with first class postage prepaid, or by electronic mail pursuant to OAR 860-13-0070, to the following parties or attorneys of parties.

Dated at Bend, Oregon, this 24th day of April, 2007.

 4-24-07

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**UW 119
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