

BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON

UW 120

In the Matter of)
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CROOKED RIVER RANCH WATER) TESTIMONY OF JAMES ROOKS
COMPANY)
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My name is James Rooks. I am the General Manager and Operations Manager for Crooked River Ranch Water Company.

OTHER DOCKETS BETWEEN CRRWC AND PUBLIC UTILITY COMMISSION

PUC Staff filed a Complaint for Civil Penalties against CRRWC Board of Directors for alleged noncompliance with paragraphs 4, 5 and 6 of Commission Order 07-527. The final order from the Public Utility Commission (PUC) has not been issued on this matter, however, based on the limited order already issued it is likely that the final order will be appealed to a higher court. Staff filing of a Complaint for Civil Penalties represents a blatant attempt at intimidation and coercion of Board of Directors for CRRWC.

PUC Staff filed a Motion and Order to Show Cause for Contempt against James Rooks and Crooked River Ranch Water Company, Jefferson County Circuit Court case CV 07 0150. As a result of the December 13, 2007, hearing, requested information was produced to the PUC subject to a Protective Order. The contempt proceeding was subsequently dismissed on April 29, 2008. It should be noted that CRRWC had previously requested protective orders for information provided

and these requests were denied by ALJ Power and the PUC.

CRRWC has appealed the PUC order in docket WJ8 asserting jurisdiction over CRRWC. Court of Appeals case A134177. CRRWC has filed with the Court of Appeals with the State of Oregon for an appeal of PUC Order 08-243, Court of Appeals case number A138805.

CRRWC has petitioned the Jefferson County Circuit Court for a Writ of Mandamus, Jefferson County Circuit Court case 08 CV 0055.

CRRWC ORGANIZATIONAL STATUS

CRRWC has an active registration with the Oregon Secretary of State Corporation Division as a cooperative. CRRWC's organizational status is an issue on appeal to the Court of Appeals who will make a final ruling on CRRWC's organizational status subject to potential appeal to the State Supreme Court.

CRRWC'S WATER SYSTEM

Staff's "analysis" is based on Staff's review of an outdated master plan and projections for Company operations. The "analysis" is performed by a Staff person who has yet to make any physical inspection of CRRWC plant and operations.

The current cistern and pump station cannot handle the 800 gallons per minute pumped from Well 2. In addition Well 2 is pumping uphill which causes a sharp increase in Company power bills. These are among the many reasons why CRRWC had planned the construction of a third well prior to the PUC's erroneous decision to withhold funds for that project. With only two operational wells there is no mechanism provided for shutdown and necessary repair and maintenance for each individual well. With either of the two wells shut down for repair, the other operational well cannot keep the customers with adequate water supply or fire protection. Additionally, the Water Company will not be able to perfect its five CFS water permit without the addition of a third well.

CRRWC CUSTOMER COMPLAINTS

Staff has made allegation of 50 telephone calls regarding CRRWC, 40 of which have are deemed as complaints. CRRWC was not made aware of the specific nature of these calls and has not had the opportunity to respond. If Staff intends to allege a “high percentage for a company of this size,” CRRWC should be informed of the specific nature and have the opportunity to respond before liability is determined. Staff’s unsubstantiated allegations in this regard represent a violation of due process rights for CRRWC.

Staff alleges violation of Statute or Administrative Rule by CRRWC. This demonstrates the obvious hypocrisy and prejudice by Staff as their violation of the OAR’s and ORS which they promulgated is the basis in part for the appeal to the Court of Appeals which may result in the termination of Staff jurisdiction. The comparison of CRRWC to Agate and Roats is likewise disingenuous as both companies have less customers than CRRWC, necessarily resulting in less customer complaints. CRRWC suspects that of the alleged 40 customer complaints many of them have been made by the same persons who have openly demonstrated their animosity towards CRRWC and its employees. However, because the nature of the complaints have not been shared with CRRWC, CRWWC has not had the opportunity to respond they cannot be deemed as legitimate.

DATA REQUESTS

CRRWC has responded to all PUC Data Requests.

Data Request 157 - Data Request 157 asked for copy of check which was not in CRRWC’s possession. CRRWC promptly requested a copy of the check from the bank.

Data Request 162-163 - Information responsive to 162 and 163 was provided in another format. It should be noted that PUC Staff often request the same information in several different

formats, then alleges noncompliance when the identical information is not repeatedly provided.

Data Request 167 - CRRWC responded and provided information which was already available to the PUC as a matter of public record. Information not provided in response to DR 167 (a-e) represented information which was subject to a legal privilege.

Data Request 171 - DR 171 was responded to by CRRWC to the extent that the resolution requested by the PUC did not exist. CRRWC routinely provides information when that information is available but not subject to a legal privilege. PUC Staff has consistently requested copies of documents which do not exist and then alleges noncompliance when they are informed as such. This was the case with many of the requests for information which were brought before the Jefferson County Circuit Court in CV 07 0150, at which time Judge Hendrix ruled in dicta that CRRWC was not required to manufacture documents or other tangible items when they did not already exist. Unfortunately, PUC Staff has continued to disregard that ruling.

Data Request 173-175 - CRRWC responded to these inquiries, with the well founded objection that the information requested predates the assertion of jurisdiction by the PUC and is therefore not relevant.

Data Request 192 - PUC Staff requested a copy of CRRWC's IRS Form 990 (2007). CRRWC responded that the information was currently unavailable. Staff's allegation of noncompliance with DR 192 represents a classic failure of logic, common sense and reason on the part of PUC Staff. Form 990 is prepared by CRRWC's company accountants. CRRWC cannot provide a form which has not yet been completed, hence the response "currently unavailable." Staff's shortcomings in logical reasoning should not be interpreted as non-compliance by CRRWC.

Data Request 192-203 - The information provided excepting the response to DR 192 involved a considerable amount of copying and printing. Most of the information had previously

been provided, however, the same information was resubmitted as quickly as possible. CRRWC has a limited staff with full time responsibilities to approximately 3,500 people. The unreasonable number of DR's submitted is an attempt to micro manage Company operations and create excessive legal expenses is the reason why the information requested was not provided by the date requested.

COMPANY EXPENSES

Staff's "analysis" of Company expenses, Staff has once again proposed rates and budget that provide for a zero percent rate of return on the rate base. This analysis and PUC Order upon which it is based disregards well established business principles. While there should be a difference in the rate of return between a for profit business entity and a non-profit business entity, no business can survive with a zero rate of return on its money. Businesses whether for profit or not for profit cannot remain stagnate. No upgrades or major repairs have been done at CRRWC since the PUC's rates were implemented and the physical plant and Company structure is decaying. Water utilities are either making progress by repairing and upgrading or in the process of decay. Any water utility company that operates 24-hours a day, seven-days a week requires substantial maintenance and inevitable upgrades which have been ignored by the Staff budget proposed.

GENERAL MANAGER'S WAGE

Staff's recommendation for the appropriate AWWA classification ignores the obvious distinction between a water operations manager and a general manager/operations manager. In recommending lower wages for the General Manager for CRRWC, Staff has manifested its personal enmity towards the General Manager. CRRWC believes that this unfortunate position is the result of Staff's whole hearted and unquestioned adoption of the lies perpetrated by a small but committed group of Water Company detractors. Staff's inability to remain objective has created a situation where the PUC Staff has conducted themselves in manner that is outside of what their position and

scope of responsibility would reasonably require.

There are no management deficiencies at CRRWC. The difference of opinion between Company management and PUC Staff, as well as the legal arguments between Staff attorneys and counsel for CRRWC are not tantamount to management deficiencies. Any alleged deficiencies are the product of inflexibility and obstinance demonstrated by PUC Staff.

EMPLOYEE PENSION AND BENEFITS

The employment agreements between CRRWC and the employees who receive benefits provide that the monthly premiums are the responsibility of CRRWC. Staff's recommendation would impair the contractual obligations of CRRWC and the rights of employees. Staff is aware that the only employees who currently receive these benefits are James and Jacquie Rooks and this recommendation is a deliberate attack by Staff on those individuals.

TELECOMMUNICATIONS

Staff continues to ignore communication expense for On-Star telephone service in the vehicle operated by the General Manager. As explained, several times, previously the General Manager has severe hearing impairment and more importantly there are areas on Crooked River Ranch where no cell phone reception is available. The General Manager must remain available by telephone at all times in the event of emergencies. The service has not been overused and is necessary for operations of CRRWC.

LEGAL SERVICES

Staff's "analysis" of contract legal services, Staff removed legal services which in the subjective opinion of Staff were not prudent to the operation of the utility. Staff's deduction of the \$10,280 in legal expenses associated with *State v. Rooks* and \$13,483 legal expenses for the suit against J. R. Rooks by Ruby Berrey represents a legal conclusion made by Staff. It is uncontested

that Michael Dougherty is not a licensed attorney, has no legal education or training, consequently, Michael Dougherty is not qualified to make a decision about whether the conduct of the General Manager in *State v. Rooks* and *Ruby Berrey v. James Rooks* was within the course and scope of the General Manager's employment.

In *State v. Rooks* the General Manager was doing fire protection for CRRWC which is clearly within the course and scope of his job duties as Operations Manager and he was falsely accused of criminal mischief. A jury of Mr. Rooks' peers determined that no criminal conduct had taken place. CRRWC should be responsible for his legal expenses as conduct which led to the criminal charge was performed in the course and scope of his employment. It should be noted that unfounded criminal complaint was brought by the same Water Company detractors whose lies and unfounded allegations are routinely adopted and reproduced by PUC Staff.

In the case of *Ruby Berrey v. James Rooks*, once again the General Manager was on the job doing construction when he was unjustly accused of Assault and Intentional Infliction of Emotional Distress. This matter is currently set for trial in January of 2009.

If CRRWC's legal costs are properly regarded as high, they are that way due to the obstinance of the PUC Staff. It is in fact PUC Staff who are working against the best interests of the members of CRRWC.

VEHICLE INSURANCE

Staff has recommended a decrease in vehicle insurance, however, the rates for the vehicle insurance have not decreased and Staff fails to explain the proposed decrease for the recommended costs.

TRAINING AND CERTIFICATION

Zero dollars for training and certification is grossly inappropriate. CRRWC personnel need

to renew flagger certifications this year in 2008. This is not provided free of charge. Additionally, the General Manager must earn continuing education units (CEU's) in order to maintain the WD 1 license. To not allow any training monies is irresponsible on the part of the PUC. With constantly changing laws and rules employees need to be able to attend appropriate training when they are available. Every attempt is made by CRRWC to attend local sessions, however, they are few and far between in Central Oregon.

PROPERTY TAX

CRRWC provided verification of property tax in the prior rate case. However, the PUC excluded it. The amount allowed for in the present rate case should be doubled to compensate for money which was not provided for in rates previously.

NET UTILITY PLANTS

The Company responded to Data Request 178 and 181 regarding the backhoe and dump truck. Disallowance of costs associated with the repair and maintenance of these vehicles is irresponsible by Staff as they are integral to maintaining Water Company operations. Staff should submit the reference information used to determine the book values for the dump truck and back hoe as the amounts proffered by Staff are completely unrealistic. Furthermore, the back hoes identified by Staff and corresponding serial numbers are not the correct make, model and serial numbers for the equipment owned by CRRWC. The back hoes owned by CRRWC are a 1995 590 Super L, id: JJG0208671 and 1995 590 SL, id: JJG019624. In addition, CRRWC has two dump trucks; a 1994 International, number 2HSFBJ2R1RC086258, purchased in 2005 and a 1980 Ford, number F70HVJD8898 purchased in 1994. Staff has previously been provided with copies of titles for these vehicles.

CIAC

The inquiry under DR 193 was made “for any new additions to capital plant in ‘07 and ‘08. Please provide invoices that show the cost of the new equipment and please provide the amount of labor hours performed by CRRWC personnel for these projects.” The question asked for new equipment, CRRWC did not purchase any equipment. The answer regarding labor hours was made in response to the “equipment.” The question was poorly stated which resulted in an inaccurate response.

WELL NO. 3

Staff though their second and third sources of information, totally misconstrued the General Manager’s statement to the Jefferson County Planning Commission. Having enough water to serve two 10-space RV parks is a far cry from the needs of the community on minimum one acre parcels with homes, families, yards, livestock, etc. Staff conclusion that the third well is not required based on a statement made to the Jefferson County Planning Commission further demonstrates Staff’s lack of experience and ignorance in proffering its opinion on the necessity of a third well.

REVENUE REQUIREMENTS AND RATE

Staff’s “proposed” revenue and rates is not acceptable to CRRWC. OAWU stated in a rule making hearing (AR 527) that a company this size needs a minimum of \$50 per month to survive. Staff is half that amount. Every Staff proposal submitted demonstrates a lack of knowledge and understanding about the requirements of successful operation for CRRWC. An “alternate” proposal should not be considered in any way, shape or form by the PUC.

The hypocrisy perpetrated by the PUC Staff is nothing short of astounding. PUC Staff filed a Complaint against the Water Co. Management and Board then finds fault with the amount

of legal fees spent on the defense of the allegations they brought! Despite PUC Staff efforts to drive out the current management and Board at the behest of a small group of Water Company detractors, the Board and Management have continued to provide quality service or have continued to do so despite PUC Staff efforts to thwart Water Company operations. The fact remains that PUC is involved with CRRWC because a small minority of CRRWC membership signed a petition after being misled by an even smaller group known as the Water Watch Dogs and their associates. PUC Staff should represent the interests of the Water Company Customers as a whole and not a select group who ultimately wants to control the Water Co. themselves.

Dated this 2nd day of September, 2008

/s/ James Rooks
James Rooks
Operations Manager/General
Manager CRRWC