

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

WJ 8

In the Matter of)	
)	
CROOKED RIVER RANCH WATER)	ORDER
COMPANY)	
)	
An Investigation Pursuant to ORS 756.515)	
to Determine Jurisdiction.)	

DISPOSITION: JURISDICTION ASSERTED

In this proceeding, the Public Utility Commission of Oregon (Commission) concludes that the Crooked River Ranch Water Company (CRRWC) is a regulated water utility under ORS 757.063. We base this conclusion on a finding that more than 20 percent of CRRWC’s members filed a petition requesting that the company be subject to regulation. We also conclude that, because CRRWC became a regulated water utility at the time the petitions were received and verified, the company’s subsequent efforts to reorganize as a cooperative were invalid. CRRWC shall file appropriate tariffs within 60 days of this order.

Based on the record in this proceeding, we make the following:

FINDINGS OF FACT

CRRWC is a non-profit corporation organized as a “Nonprofit Corporation, Mutual Benefit with Members,”¹ and provides domestic water to Crooked River Ranch, a planned development community in central Oregon. CRRWC currently serves 1,552 members.

In February 2006, the Commission began receiving petitions from members of CRRWC seeking rate regulation. With the exception of two pages containing 17 signatures, all petition sheets were either titled: “TO: PUBLIC UTILITY COMMISSION, STATE OF OREGON,” or “Petition for Regulation by the OREGON PUC.”² Cover sheets submitted with the petitions further stated that:

The undersigned members and customers of the Crooked River Ranch Water Company request that the Public Utility Commission take jurisdiction over Crooked River Ranch Water Company and require that its management and operations

¹ Secretary of State File No. 120921. Staff/200, Dougherty/2.

² See Staff/101.

comply with the laws and regulations applicable to public utilities providing water service in the State of Oregon.³

Using CRRWC's billing records, which include the member's name, account number, and mailing/service address, the Commission Staff (Staff) verified receipt of approximately 400 valid signatures, exceeding 20 percent of CRRWC's 1,552 members. Staff also contacted "over 100 CRRWC members verifying addresses."⁴

On April 18, 2006, the Commission sent a letter to CRRWC stating: "The Commission has received petitions from more than 20 percent of the association members that request regulation of CRRWC. This letter is notification of the Commission's intent to assert its authority to regulate CRRWC for rates and service."⁵

On May 24, 2006, CRRWC requested a hearing to challenge the validity of the petitions. On July 5, 2006, CRRWC submitted filings with the Secretary of State purporting to reorganize the company as a cooperative.⁶

CONCLUSIONS OF LAW

CRRWC opposes regulation and raises three primary challenges to Commission jurisdiction. First, CRRWC contends that the customers' petitions seeking regulation are invalid. Second, CRRWC asserts that it is a cooperative exempt from regulation. Third, CRRWC contends that ORS 757.063 is unconstitutional. We address each argument separately.

I. Petitions

Positions of the Parties

ORS 757.063 provides that water associations are subject to regulation "if 20 percent or more of the members of the association file a petition with the Public Utility Commission requesting that the association be subject to such regulation." The Commission has received a petition signed by more than 20 percent of CRRWC's members. The company, however, has challenged the validity of the petitions. Commission rules governing the petitioning process require that petitions "be in writing, state the purpose of the petition, and include the member's name, address, *telephone number*, and signature." OAR 860-036-0412(3) (emphasis added).

CRRWC notes that less than five percent of the members who signed the petition provided a telephone number. Staff does not dispute this fact. Rather, it explains that the Commission will accept a petition that does not contain telephone numbers

³ *Id.*

⁴ Staff/100, Miller/6.

⁵ Staff/202, Dougherty/1.

⁶ *See* CRRWC's Exs. 1-3.

because some members are reluctant to provide that information. Staff acknowledges that this practice is not in compliance with Commission rules, but contends that the lack of telephone numbers does not invalidate a petition.

CRRWC also contends the petitions fail to adequately “state the purpose of petition.” The company contends that the Commission should follow rules adopted by the Secretary of State to govern the petition and initiative process. Among other things, those rules require that the purpose of the petition be clearly stated on every page that contains signature lines. Here, CRRWC points out that many petition sheets contained only signature lines. The company also asserts that the omission of such information allowed persons gathering signatures to misrepresent the purpose of the petition.⁷

Discussion

ORS 757.063 provides Commission oversight to a group of customers who make up 20 percent or more of the membership of an association and who have filed petitions seeking regulation. Nothing in ORS 757.063 requires a petition to contain telephone numbers. While the Commission has authority, under its general rulemaking statute, to require telephone numbers for the convenience of verifying signatures, we may not impose that requirement as a means to preclude application of ORS 757.063 to petitioners who fail to provide a telephone number. We will not, as CRRWC suggests, read our rule to invalidate signatures and find, based on a technicality, that there was no valid petition.

Instead, we read the rule to be consistent with the spirit of ORS 757.063 and to meet the needs of the agency. While the inclusion of telephone numbers would have helped verify the signatures, Staff was able to obtain additional information to confirm that a sufficient number of valid petitions had been filed. Moreover, there is no indication that the rights of CRRWC were prejudiced by the absence of telephone numbers. This interpretation of OAR 860-036-0412(3) is consistent with the wording of the rule itself and its statutory context. *See Don't Waste Oregon v. Energy Facility Siting Council*, 320 Or 132 (1994).

We similarly reject CRRWC’s claim that the petitions failed to adequately state the purpose of the petition. As noted above, all but two petition sheets were clearly addressed to this Commission, and most were accompanied by a cover sheet that expressly indicated the petitions were seeking Commission jurisdiction of CRRWC. These statements sufficiently advised the signatories of the purpose of the petitions. Moreover, nothing in OAR 860-036-0412 requires that each sheet contain specific information as to the purpose of the petition and, as CRRWC acknowledges, this Commission is not bound by rules governing the petitioning and initiative process set forth in ORS Chapters 250 and 260.

⁷ CRRWC also introduced evidence at hearing questioning the validity of approximately 20 signatures. The company, however, did not pursue that argument in briefs. Even if we were to invalidate those signatures, those remaining exceed the 20 percent threshold required by ORS 757.063.

II. Cooperative v. Mutual Benefit Corporation

Positions of the Parties

In a prior investigation, the Commission concluded that CRRWC was a non-profit corporation organized as a mutual benefit association for the purpose of providing domestic water to Crooked River Ranch. *See* Order No. 03-116. In this proceeding, CRRWC contends that it is actually a cooperative exempt from the petitioning process set forth in ORS 757.063.⁸ CRRWC first supports this assertion by claiming that the company has filed federal taxes for the last 27 years as a cooperative under Internal Revenue Code (IRC) 501(c)(12). Next, it claims that any question as to its status as a cooperative was eliminated on July 5, 2006, when it filed with the Secretary of State Articles of Dissolution as a non-profit corporation, Articles of Incorporation as a cooperative, and Restated Articles of Incorporation as Crooked River Ranch Water Cooperative.

Staff responds that CRRWC was not, and is not, a cooperative for purposes of ORS 757.063. First, Staff contends the company's reliance on federal tax rules is misplaced, because the Internal Revenue Service (IRS) has never distinguished the terms "mutual" or "cooperative" for purposes of IRC 510(c)(12). Second, Staff contends that, under a plain reading of ORS 757.063, the Commission assumes jurisdiction once it receives petitions from 20 percent of the members. Because CRRWC became a regulated utility upon receipt and verification of the petitions in April 2006, any subsequent attempt to reorganize without Commission approval under ORS 757.480 is invalid.

Discussion

At the outset, we reject CRRWC's claim that it is a cooperative by virtue of its filing of federal taxes under IRC 510(c)(12). As Staff points out, the IRS does not distinguish between "mutual" and "cooperative," and does not require a cooperative to organize as such under state law to file under IRC 501(c)(12). Accordingly, CRRWC has been able to file under IRC 501(c)(12) because it is a Nonprofit Corporation, Mutual Benefit with Members, not because it was a cooperative.

Next, we agree with Staff that ORS 757.063 confers jurisdiction upon Commission receipt and verification of signatures from 20 percent of a water association's members. ORS 757.063 provides, in part, that: "Any association of individuals that furnishes water to members of the association *is subject to regulation* * * * if 20 percent or more of the members of the association file a petition[.]" (Emphasis supplied.) While the Commission has provided CRRWC a right to a hearing to challenge those petitions, jurisdiction presumptively attached when the Commission verified a sufficient number of signatures had been received by April 18, 2006.

⁸ ORS 757.063(2) provides, in part: "The provisions of this section do not apply to any cooperative formed under ORS chapter 62[.]"

Furthermore, because jurisdiction presumptively attached at that time, CRRWC became a regulated utility subject to laws administered by the Commission. Those laws require, among other things, that a utility obtain Commission approval prior to the disposal of utility property. *See* ORS 757.480. Contrary to CRRWC's arguments, the dissolution, transfer, and reorganization of a water company's assets requires approval under this statute. Having failed to obtain that approval, CRRWC's efforts to reorganize as a cooperative under ORS Chapter 62 are without legal effect.

III. Constitutionality of ORS 757.063

Positions of the Parties

CRRWC contends that the 20 percent threshold required for jurisdiction under ORS 757.063 is unconstitutional by allowing an unelected and unrepresentative portion of a recognized association to act for the majority. CRRWC argues that, because the company has determined that 51 percent of its members constitutes a quorum for matters as to how it conducts business, any statute that allows just 20 percent of the members to act for the majority violates the United States and Oregon Constitutions.

Staff counters that the Oregon Legislative Assembly has the authority to regulate certain businesses affected by the public interest, and that Commission should presume all acts exercising that authority are constitutional.

Discussion

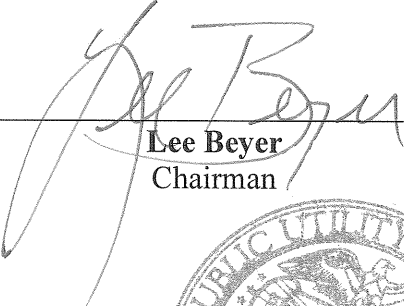
State agencies have the authority to review the constitutionality of statutes that it may administer; however, such authority should be exercised infrequently and always with care. *See Nutbrown v. Munn*, 311 Or 328 (1991). Here, we find nothing in ORS 757.063 that violates either the United States or Oregon Constitutions. CRRWC does not dispute the legislature's authority to regulate businesses providing essential services, such as water. Accordingly, rather than enacting the petitioning process in ORS 757.063, the legislature could have simply imposed regulation on all water providers, including associations like CRRWC, with no customer input. Here, the legislature chose, instead, to limit its authority to instances where a certain percentage of members sought regulation. Such limit of its authority does not, as CRRWC alleges, violate constitutional safeguards.

ORDER

IT IS ORDERED that:

- (1) The Crooked River Ranch Water Company is a regulated utility pursuant to ORS 757.063, and
- (2) The Crooked River Ranch Water Company shall file appropriate tariffs within 60 days of the date of this order.

Made, entered, and effective NOV 20 2006.



Lee Beyer
Chairman



John Savage
Commissioner



Ray Baum
Commissioner



A party may request rehearing or reconsideration of this order pursuant to ORS 756.561. A request for rehearing or reconsideration must be filed with the Commission within 60 days of the date of service of this order. The request must comply with the requirements in OAR 860-014-0095. A copy of any such request must also be served on each party to the proceeding as provided by OAR 860-013-0070(2). A party may appeal this order by filing a petition for review with the Court of Appeals in compliance with ORS 183.480-183.484.