

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UW 117

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

**DISPOSITION: RATE SCHEDULE SUSPENDED FOR AN
ADDITIONAL PERIOD OF TIME**

Introduction

On May 5, 2006, Pete’s Mountain Water Company, Inc., (PMWC) filed revised tariffs seeking to increase rates for water service, effective June 5, 2006. On May 23, 2006, we found good and sufficient cause to investigate the propriety and reasonableness of the proposed rates and ordered they be suspended for a six-month period of time. *See* Order No. 06-249.

PMWC, the Commission Staff (Staff), and six customer intervenors participated in the rate investigation. After settlement negotiations, PMWC, Staff, and two customer intervenors entered into a stipulation proposing the Commission approve a \$41,801 rate increase for the company. Two other customer intervenors (Intervenors) challenge the stipulation, and presented evidence and argument in opposition at a hearing held on October 30, 2006. The parties subsequently filed post-hearing briefs on November 9, 2006.

Discussion

Based on a review of the evidence and argument presented, we conclude that there is not sufficient time to complete this investigation prior to the conclusion of the initial suspension period, which expires on December 5, 2006. Accordingly, the suspension should be extended for an additional period not exceeding three months. *See* ORS 757.215(1).

For reasons further discussed below, however, we believe that all parties may benefit from a longer suspension period to allow additional proceedings and further review of PMWC’s rates. At the outset, we agree with the Intervenors that PMWC must file affiliated interest contracts under ORS 757.495 for the wages and salaries paid to Terry and Suzanne Webber before we can complete our review of the requested rate increase. There is no dispute that the Webbers, who collectively own 66 percent of PMWC, have an affiliated interest relationship with the company. ORS 757.015(1) defines “affiliated interest” as every “person

owning or holding directly or indirectly five percent or more of the voting securities of such public utility.” ORS 757.495(1) provides:

When any public utility doing business in this state enters into any contract to make any payment, directly or indirectly, to any person or corporation having an affiliated interest, for service, advice, auditing, accounting, sponsoring, engineering, managing, operating, financing, legal or other services, or enter any charges therefor on its books, which shall be recognized as an operating expense or capital expenditure in any rate valuation or any other hearing or proceeding, the contract shall be filed with the Public Utility Commission within 90 days of execution of the contract. The contract shall be deemed to be executed on the date the parties sign a written contract or on the date the parties begin to transact business under the contract, whichever date is earlier.

Here, PMWC has an agreement to make payments to the Webbers for employment services that will be recognized as an operating expense of the company. Such an agreement must be codified and filed for review by the Commission. We acknowledge that the structure and operation of a small, family controlled utility like PMWC is different than that of a large, publicly traded utility. In the latter, it would be unusual for an owner of the utility to also serve as an employee. Nonetheless, under the facts presented here, an affiliated interest relationship exists between PMWC and the Webbers, thus requiring the need for the filing and approval of an affiliated interest contract under ORS 757.495(1). While the Commission may not have applied the statute under such circumstances in the past, the plain, natural, and ordinary meaning of the statute mandates that result. *See PGE v BOLI*, 317 Or 606 (1993).¹

More importantly, we preliminarily agree with many of the arguments raised by the Intervenors 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. The Intervenors have conclusively demonstrated that PMWC has significantly higher employee and transportation costs than all but one of the other regulated water utilities with 200 or fewer customers. While rates must be based on an examination of each company’s unique cost of service, the costs incurred by these other utilities may be relevant in determining whether PMWC’s operating costs are prudent and reasonable.

Given the testimony that PMWC’s operations are not substantially different than those of other water utilities, the stipulating parties have failed to present evidence to explain why PMWC’s employee and transportation costs are so high. While the parties note that Ms. Webber’s hourly rate is comparable to the median wage for a Water and Liquid Wastewater Treatment Plant system operator in Clackamas County, there is no evidence to

¹ The Intervenors also assert that PMWC is required to file an affiliated interest contract that addresses transportation costs associated with the lease of a Ford F250. That lease arrangement, however, is between PMWC and a third party financial institution. Accordingly, no affiliated interest relationship exists under ORS 757.495.

show that Ms. Webber's duties, which include six hours of office work, are comparable to those performed by a plant systems operator. The record also provides little evidence to fully justify the need to employ Ms. Webber on a full-time basis. As the Intervenor note, PMWC provided no time reports or other documentation to support the duration of her work activities. While the Stipulation requires Ms. Webber to keep time-cards on a going forward basis, the future requirement provides no support for the current request. Moreover, the list of job duties provided by Ms. Webber fails to provide any analysis to establish that her duties performed for PMWC constitute a full-time job. Indeed, her testimony at hearing that a portion of the six hours in the office is "just waiting-to-be-engaged-type stuff" suggests the contrary conclusion.

The record also fails to establish that the expense for health and life insurance coverage of the Webbers is reasonable. The only reason offered to support the expense is testimony that both Mr. and Ms. Webber have health problems that require continued coverage under Mr. Webber's prior policy. The particular health needs of the owners of the company, however, cannot serve as the basis to establish reasonable operating costs. In addition, PMWC does not address the need to provide full health care coverage and life insurance for Mr. Webber, who works an estimated 6.67 hours per month.

Similarly, the record fails to fully justify the reasonableness of transportation costs, comprised primarily by the lease of a new Ford F250. While Ms. Webber testified that she needs the full-time use of a large truck to carry "a lot of tools and a lot of equipment" that she takes with her "all the time in case of an emergency," (Tr. p. 142, lines 2-7) there is no evidence that she performs emergency repairs or is even capable of using the equipment. In addition, the record does not support the assertion that the truck is driven 15,000 miles for work. Daily trips to the pump house (a 27.4 mile round trip) and occasional trips to the bank or post office leaves one short of 15,000 miles (30 miles x 365 days = 10,950 miles).

Conclusion

While making no final determination on final rates for PMWC, we conclude that there is insufficient evidence to support the rates proposed in stipulation. While it is conceivable that this Commission could, once the affiliated interest contracts are filed and approved, proceed and complete the rate review prior to the expiration of the new, three-month suspension period, 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 intervenors to respond to any new filing.

Under the statutory framework governing the filing rate schedules, this Commission cannot, unilaterally, extend these proceedings beyond the additional three-month period. *See* ORS 757.215. Consequently, the decision as to how we proceed with this investigation rests with PMWC. The company may agree to extend the period of suspension beyond the additional three-month period to allow the additional proceedings described above. *See* ORS 757.215(2). Absent such agreement, we will complete this rate

investigation following the filing and approval of the affiliated interest contracts, and establish just and reasonable rates based on the evidence contained in this record.

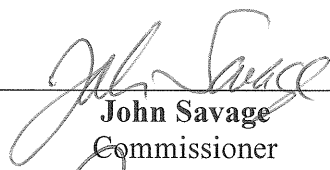
ORDER

IT IS ORDERED that Advice No. 06-21, filed by Pete's Mountain Water Company, Inc., is suspended for an additional period of time, not to exceed three months.

Made, entered, and effective DEC 04 2006



Lee Beyer *LB*
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.