

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UI 261

In the Matter of)	
)	
PETE'S MOUNTAIN WATER COMPANY, INC.)	ORDER
)	
Application Requesting Approval of an Affiliated Interest Agreement between Pete's Mountain Water Company and Terry L. Webber.)	

DISPOSITION: APPLICATION APPROVED WITH CONDITIONS

On February 12, 2007, Pete’s Mountain Water Company, Inc. (the Company) filed an application with the Public Utility Commission of Oregon (Commission) pursuant to ORS 757.015, ORS 757.495 and OAR 860-036-0730, requesting approval of an employment agreement between the Company and Terry L. Webber, 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 March 13, 2007, the Commission adopted Staff’s recommendation.

OPINION

Jurisdiction

ORS 757.005 defines a "public utility," and the Company 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. The Company 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 Pete’s Mountain Water Company, Inc. to enter into an affiliated interest agreement with Terry L. Webber is approved, subject to the conditions further stated in Appendix A.

Made, entered, and effective MAR 15 2007.

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 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.

PUBLIC UTILITY COMMISSION OF OREGON
STAFF REPORT
PUBLIC MEETING DATE: March 13, 2007

REGULAR X CONSENT _____ EFFECTIVE DATE _____ NA _____

DATE: February 26, 2007

TO: Public Utility Commission

FROM: Michael Dougherty ^{MD}

THROUGH: Lee Sparling and Marc Hellman ^{li} ^{MH by MC}

SUBJECT: PETE'S MOUNTAIN WATER COMPANY: (Docket No. UI 261)
Application Requesting Approval of an Affiliated Interest Agreement
between Pete's Mountain Water Company and Terry L. Webber.

STAFF RECOMMENDATION:

The Commission should approve Pete's Mountain Water Company's (Pete's Mountain or Company) affiliated interest agreement with Terry L. Webber (Mr. Webber), subject to 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 Terry L. Webber.
2. The Commission reserves the right to review, for reasonableness, all financial aspects of this transaction in any rate proceeding or alternative form of regulation.
3. Total annual compensation payments to Terry L. Webber shall not exceed a blended rate of \$25 an hour or \$2,000 for calendar year 2007.
4. Pete's Mountain shall notify the Commission in advance of any substantive changes to the contract, including any material change in price over 10 percent of the levels in the original application. Any such change shall be submitted in an application for a supplemental order (or other appropriate format) in this docket.

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DISCUSSION:

Pete's Mountain filed this application on February 12, 2007, pursuant to ORS 757.495 and OAR 860-036-0730. Mr. Webber, jointly with his wife Suzanne Webber, owns two-thirds (2/3) of the outstanding stock of Pete's Mountain and therefore, Mr. Webber and Pete's Mountain are affiliated interests pursuant to ORS 757.015.

In Commission Order No. 06-657 (UW 117), dated December 4, 2006, 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. 06-657, 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).

Mr. Webber, as an officer, director, and employee of the Company, is receiving wages and benefits from the Company. Staff reviewed Mr. Webber's wages in UW 117 and recommended that Mr. Webber receive an annual salary of \$2,000 based on 80 hours per year in employment services at \$25 per hour. In addition to the annual salary, Staff recommended that the Webbers be allowed \$12,144 for medical, dental, and vision insurance, and a small amount of life insurance as an expense in rates. UW 117 was suspended by the Commission for a period of three months in Order No. 06-657 to allow more time to complete the investigation of rates prior to the conclusion of the initial suspension period, which expired on December 5, 2006.

In the affiliated interest filing, Pete's Mountain requests the Commission to approve the compensation agreement between the Company and Mr. Webber as follows:

1. Duties as a certified water operator - \$25/hour; and
2. Duties as a corporate officer - \$50/hour.

The estimated annual payments to Mr. Webber for maintenance, service, and repair are \$2,000. In the application, the Company states that the rates for employment services may be adjusted annually based on changes in the Consumer Price Index in the Portland Metropolitan Area.

According to the application, Mr. Webber's employment will be on an "at will" basis and Mr. Webber will:

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1. Perform maintenance, service and repair of the system’s wells, pumping equipment, water lines, meters, and other facilities and property. Perform the duties of a certified water operator if Mrs. Webber is unavailable or unable to perform those duties. Be available and on call at all times to respond to customer complaints that cannot be handled by Mrs. Webber, and to take care of emergencies that may arise needing immediate attention.
2. Perform corporate management, planning and governance as required of a president and director of a corporation.

Issues

Staff investigated the following issues:

1. Transfer Pricing
2. Public Interest Compliance
3. Records Availability, Audit Provisions, and Reporting Requirements

Transfer Pricing

Pursuant to OAR 860-036-0739, Allocation of Costs by a Water Utility, the amount paid by a utility to an affiliated interest is required to be at cost or the market rate, whichever is lower. Given the nature of the proposed contract - between the Company and a majority shareholder, Staff’s review will focus on analyzing the market rate since in this case the terms “market” and “cost” are the same given the uniqueness of this affiliated interest relationship and its human capital services.

To perform this analysis, Staff used both the Oregon Employment Department’s Oregon Labor and Market Information System (OLMIS - www.olmis.org) and the American Water Works Association (AWWA) Water Utility Compensation Survey for a proxy to determine the market rate. The following table highlights OLMIS wages for various positions that are akin to the employment services that Mr. Webber would be performing for Pete’s Mountain.

Table 1 – OLMIS Wages (Hourly Rate – Region 15, Clackamas County)

Occupation	50 th Percentile	75 th Percentile	Average
Water and Liquid Waste Treatment Plant and System Operators	\$20.75	\$24.54	\$20.93

The following table highlights AWWA wages for various positions that are akin to the employment services that Mr. Webber would be performing for Pete’s Mountain.

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Table 2 – AWWA Wages (Under 25 Employees shown as an Hourly Rate)

Occupation	50 th Percentile	Average
Water Treatment Plant Operator	\$20.73	\$21.35

The average of the averages of the rates shown in the two above tables is \$21.14. In UW 117, Staff recommended a blended rate of \$25 per hour. This rate is higher than the average of the averages, but considerably less than the approximately \$50.00 per hour that Staff was quoted from two qualified water operators that perform work for various small water companies on a contract basis. Based on Mr. Webber's considerable experience, it is reasonable for his hourly wage to closely align with the OLMIS 75th Percentile level of \$24.54.

Additionally, in UW 110, Long Butte Water System, Commission Order No. 06-075, dated February 1, 2006, Staff recommended and the Commission accepted a rate of \$31.06 per hour (10 hours per month) for services that are performed by a corporate officer of a small water utility.

As can be seen from the AWWA and OLMIS surveys and additional information provided above, Staff's UW 117 recommended rate of \$25 per hour, which includes services performed as a corporate officer, meets the Commission's Transfer Pricing Policy.

The application states that the estimated annual payments to Mr. Webber for maintenance, service, and repair will be \$2,000. However, Staff recommends that total compensation be limited to \$2,000. This is Staff's recommended amount in UW 117.

Although in the application the Company states that the rates for employment services may be adjusted annually based on changes in the Consumer Price Index (CPI) in the Portland Metropolitan Area, recommended Order condition No. 3 would require the Company to file a supplemental application if the price of the contract as a result of CPI escalations, exceeds 10 percent.

Public Interest Compliance

Wages are an ordinary and necessary expense incurred in the operation of a business. In addition, wages to an owner should not be supplanted by the Company's net income that results from a return on plant investment, or by cash flow that partially results from the return of investment (non-cash depreciation expense).

In the case of this application, Pete's Mountain is paying a majority shareholder a rate that meets the Commission's Transfer Pricing Policy and a rate that is most likely less than a rate that the Company would pay a third-party certified water operator.

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Additionally, recommended Order Condition No. 2 reserves the right for the Commission to review, for reasonableness, all financial aspects of this transaction in any rate proceeding or alternative form of regulation. This condition is extremely relevant since UW 117 has not been decided and wages are an issue in contention between the Parties.

In essence, this submittal of an affiliated interest application satisfies the requirement of Commission Order No. 06-657; however, the actual determination of wage amounts in rates will be determined in the Commission's final order in the matter of UW 117.

Records Availability, Audit Provisions, and Reporting Requirements

Order Condition Number 1, listed above in the Staff recommendation, affords the necessary Commission examination of Pete's Mountain records concerning this application.

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

1. The application involves an affiliated interest transaction that is fair and reasonable and not contrary to the public interest, with the inclusion of the proposed ordering conditions.
2. Necessary records are available.

PROPOSED COMMISSION MOTION:

Pete's Mountain Water Company's application be approved subject to the four recommended conditions.

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