

BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UI 263

In the Matter of)	
)	
AGATE WATER COMPANY)	ORDER
)	
Application for an affiliated interest contract)	
between the company and Fred Schilling.)	

DISPOSITION: APPLICATION APPROVED WITH CONDITIONS

On March 21, 2007, Agate Water Company, Inc. (Agate or company) filed an application with the Public Utility Commission of Oregon (Commission) pursuant to ORS 757.015, 757.495 and OAR 860-036-0730, requesting approval of an affiliated interest compensation agreement between the company and Fred Schilling. Mr. Schilling’s affiliation arises from his ownership of the company. A description of the filing and its procedural history, as well as several comments filed by customers of Agate, 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 May 8, 2007, the Commission adopted Staff’s recommendation.

OPINION

Affiliation

An affiliated interest relationship exists under ORS 757.015.

Applicable Law

ORS 757.495 requires a public utility 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 will examine that issue in the pending ratemaking proceeding, docket UW 119.

CONCLUSIONS

1. An affiliated interest relationship exists.
2. The agreement is fair, reasonable, and not contrary to the public interest.
3. The application should be granted, as modified herein, including certain conditions.

ORDER

IT IS ORDERED that the application of Agate Water Company, Inc. for approval of the compensation agreement between Agate Water Company Inc. and its owner, Fred Schilling, is approved, subject to the conditions stated in the Staff Report attached as Appendix A.

Made, entered, and effective MAY 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: May 8, 2007

REGULAR X CONSENT _____ EFFECTIVE DATE _____ Coincident with the UW 119 Final Order

DATE: April 30, 2007

TO: Public Utility Commission

FROM: Marion Anderson and Michael Dougherty *MSA* *MD*

THROUGH: *LS* Lee Sparling, *MH* Marc Hellman

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 (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.

Docket No. UI 263
April 30, 2007
Page 2

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. 06-657, 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).

Utility and Consumer Services Staff have received objections by several customers concerning this application. Staff has been in contact with many of the customers and applicable correspondence is attached. The attachment includes comments offered by Agate's customers regarding Mr. Schilling's compensation, as well as Staff's responses to customer's questions.

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.¹ This experience includes well and mainline installation, hook-ups, system operation, contract negotiation, cost estimation and bid development, staff management, corporate governance, and customer contacts. Mr. Schilling's 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.

¹ This time includes his experience and ownership in Apache Water Company that was established in 1980. The merger of Agate and Apache was approved by the Commission in Commission Order No. 02-889 (UP 198), dated December 24, 2002.

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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.

To determine employee wages for Mr. Schilling, Staff used the Oregon Labor Market Information System (OLMIS) Deschutes County Prevailing Wages and the American Water Work Association (AWWA) 2006 Water Utility Compensation Survey adjusted for years of service.

The normal annual hours figure is 2,076. 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

The AWWA Compensation yields the following:

	Minimum Average Salary	Middle Average Salary	Maximum Average Salary
Top Operations & Maintenance Executive	\$37.47	\$45.14	\$48.66

The average of the two wages used by Staff (90th percentile for OLMIS and maximum average salary for AWWA) is \$55.93.

Given the aforementioned employment description (with the time estimate uncertainty), experience, and utility size, this level of remuneration meets the requirements as set forth in statutes and Commission rules.

Mr. Schilling's considerable experience would most likely place him in the 75th or 90th OLMIS percentile in wages. During Mr. Schilling's ownership and management, the Agate/Apache customer base grew from approximately a dozen customers to the current 1,116 customers. In addition to lower than market wages, because of cash flow, Agate has not been able to provide health, life insurance, or pension benefits to Mr. Schilling.

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Determination of 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, Agate is paying the 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 corporate officer and certified water operator.

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 119 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 119. This agreement is fair, 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.

Oregon Public Utility Commission

Specialist: RIOS-THISSELL, DEANNA

Name: RISER, LAWRENCE

Addresses: P O BOX 7156, BEND OR 97708-7156 (MAIL) (INVOLVED)

E-Mail: lriser5000@cs.com

DOCKET #: UI 263

Phones: (541) 382-2213 (RESI)

Subject: UW 119

COMPLAINT RATE PROTEST

PENDING REQUEST

Company:

0018 W AGATEW

Open: 4/23/2007

drios INET

Close: 4/26/2007 drios

TELE

Call Taken: 4/23/2007

Taken By: BURKE, LESLIE S

Open Date: 4/23/2007

Opened By: RIOS-THISSELL, DEANNA

Disconnect Notice Due:

Disconnected:

Out of Service:

4/22/2007

CODE DETAIL

Complaint - Rate Protest - Pending Request: Lawrence Riser contacted the Commission regarding his concerns and opposition in the affiliated interest contract between Agate Water and Fred Schilling.

4/22/2007 9:40:00 PM EMAIL FROM CONSUMER TO PUC COMMISSION OFFICE

From: Lriser5000@cs.com [mailto:Lriser5000@cs.com]

Sent: Sunday, April 22, 2007 9:40 PM

To: Commission PUC

Subject: Agenda Item CA12 Agate Water Company

My name is Lawrence Riser

I reside in Bend, Oregon

I am an intervenor in rate case UW119

I have not previously expressed interest in this item because i did not know of it until i found it listed on puc web site. At this date I am unable to attend the public meeting in person. As Agate Water Company has applied for an affiliated interest contract with Mr. Fred Schilling, I have concerns over the commission granting the application.

1. Mr. Schilling has only owned the company since 1983, which is only 24 years ago, so I question the 27 years stated on application. The water system was origionally constructed in

March of 1981 by Mr. Carl Smelsher. (reference Utility testimony UW108 lines 11 and 12.

2. I question why an affiliated interest contract was not applied for when last rate increase was granted. (reference UW108 Order no 05-1087 that was signed on October 13 2005) Mr. Schillings wages were the same at that time as presented now so shouldn't ORS 757.495 (1) have applied at that time?

3. I do not believe that the records show sufficient evidence to fully justify the need to employ Mr. Schilling on a full time basis. (I.E. time reports or other documentation) Both the previously approved UW108 and the presently applied for UW119 Show Mr. Schilling working as a full time employee.

4. I believe that the commission should not approve this application until such a time as when all the pertinent testimony on the pending rate case (UW119) has been presented at the evidentiary hearing has been presented. I believe that that hearing is set for sometime in early May of this year.

Respectfully yours
Lawrence Riser
P.O.Box 7156
Bend, Oregon 97708-7156

4/23/2007 10:14:00 AM
FWD'D TO

EMAIL FROM COMMISSION OFFICE - COMMENTS
UTILITY STAFF

From: ZASTOUPIL Cherie
Sent: Monday, April 23, 2007 10:14 AM
To: CONSUMER PUC
Cc: SCOTT Allen R.; GRANT Michael; GR-AHD SUPPORT.
Subject: FW: Agenda Item CA12 Agate Water Company

FYI, more comments received related to UW 119 (see below).
Already forwarded to utility.
Thank you,
--Cherie

4/25/2007 1:29:00 PM

CALL TO CUSTOMER TO CLOSE

I called Lawrence to let him know we received his email. I explained the public meeting had been removed from the Consent Agenda on 4/24/07. I told him his comments/concerns will be forwarded to the appropriate staff for further review.

Additionally, I explained the reason he was not notified about this public hearing, even though he is an intervener on UW 119, is because he would also need to be listed as an interested party for UI 263, which deals with the affiliated interest contract. I asked if he wanted me to have him added as an interested party. He said he would like that. I told him I would have that taken care of and we ended our call.

Oregon Public Utility Commission

Specialist: RIOS-THISSELL, DEANNA

Name: ANDERSON, DAVE

E-Mail: casman8815@aol.com

DOCKET #: UI 263

Phones: (541) 317-9791 (WORK)

Subject: UW 119

COMPLAINT RATE PROTEST

PENDING REQUEST

Company:
drios INET

0018 W AGATEW
Close: 4/26/2007 drios

Open: 4/24/2007
TELE

Call Taken: 4/23/2007

Taken By: BURKE, LESLIE S

Open Date: 4/24/2007

Opened By: RIOS-THISSELL, DEANNA

Disconnect Notice Due:

Disconnected:

Out of Service:

4/23/2007

CODE DETAIL

Complaint - Rate Protest - Pending Request: Dave Anderson contacted the Commission to include his comments in docket UI 263 regarding. He stated he strongly opposes approval of the affiliated interest contract between Agate Water and John Fred Schilling.

4/23/2007 3:59:00 PM

EMAIL FROM CUSTOMER

From: casman8815@aol.com [mailto:casman8815@aol.com]

Sent: Monday, April 23, 2007 3:59 PM

To: BEIER Becky; westoby@bendcable.com; Commission PUC

Cc: tar-55@juno.com; timkelley369@cs.com; lrisher5000@cs.com; joelsteph@peoplepc.com; rc14fraser@msn.com

Subject: Re: In the matter of staff recommendation pertaining to item No. CA12

scheduled for discussion at public meeting April 24th 2007

My Name is Dave Anderson and I am an intervener in Agate Water Company's application for rate increase (UW 119). It has been brought to my attention that on April 24th, there is a public meeting of the PUC. On the consent agenda, item CA12 involves a major participant (John Fred Schilling) in UW 119. I would like to state my strong opposition to any approval at this time in CA12. A final decision on this application at this time would be premature considering the substantial outstanding evidence and opposition to UW 119. Please allow the UW 119 intervenors to present our testimony at the evidenciary hearing, scheduled for May 10th, before reaching a conclusion on CA12.

I would like to also add the interveners to Agate water Docket UW119 were not notified of this Proceeding, As a past and current Agate water intervener-I believe Agate water Interveners are supposed to be contacted on all PUC matters regarding Agate water, furthermore I was personally involved in a lengthy phone conversation about Mr Shilling and his involvement or lack there of and questioned his involvement with Agate Water Co with a PUC Staff member Kathy Miller last Wednesday, April 18th, at no point in our lengthy phone conversation on this matter did she advise or make aware to me that this proceeding was in process, I would like to ask if Mrs. Miller was unaware of this proceeding.

Thank you for your assistance,
Dave Anderson

4/23/2007 4:10:00 PM
COMMENTS

EMAIL FROM COMMISSION OFFICE - ADD

From: BEIER Becky
Sent: Monday, April 23, 2007 4:10 PM
To: ANDERSON Marion; HELLMAN Marc
Cc: CONSUMER PUC; SCOTT Allen R.
Subject: FW: In the matter of staff recommendation pertaining to item No. CA12 scheduled for discussion at public meeting April 24th 2007

Another party heard from on this matter.

4/25/2007 12:22:00 PM

VOICE MAIL TO CUSTOMER TO CALL ME

I left a detailed voice mail message for Dave telling him we received his comments regarding CA 12. I informed him the item had been removed from the Consent Agenda on 4/24/07 for further investigation by our staff.

Additionally, I explained the reason he was not notified about the public meeting, even though he is an intervener on UW 119, is because he is not listed as an interested party or intervener on UI 263. If he would like to be added as either an interested party or an intervener for future meetings on this docket, he can call me back.

Lastly, I told him I could not speak for Kathy Miller as to why she did not mention the public

meeting to him that had been scheduled for 4/24/07. I told Dave she was not the staff person assigned to UI 263.

I advised Dave his comments have been forwarded to the appropriate staff for review. I left our toll-free number for him to call me if he wants to be added to the service list for UI 263.

4/26/2007 3:15:00 PM CLOSING NARRATIVE

The customer has not returned my call to be added to the interested persons list for UI 263, so I am closing the complaint. If he should contact me, his request can be forwarded to AHD at that time.

Oregon Public Utility Commission

Specialist: CHIPPS, CAROL

Name: MICHELSEN, STEPHANIE

Email: joelsteph@peoplepc.com

DOCKET #: UI 263

Subject: UW 119

COMPLAINT RATE PROTEST

PENDING REQUEST

Company:
cchiggs INET

0018 W AGATEW Open:4/24/2007
Close:4/25/2007 **cchiggs TELE**

Call Taken: 4/23/2007

Taken By: GILBRETH, ASHLEY

Open Date: 4/24/2007

Opened By: CHIPPS, CAROL

Disconnect Notice Due:

Disconnected:

Out of Service:

4/23/2007

CODE DETAIL

COMPLAINT/RATE PROTEST/PENDING REQUEST - Ms. Michelsen is an intervenor in the

pending rate case and is opposed to Item CA12 on the consent agenda. She would like the intervenors to be able to give their testimony at the evidentiary hearing tentatively scheduled for May 10 before considering approval of CA12 of the consent agenda.

4/23/2007 2:51:00 PM EMAIL FROM CUSTOMER

From: Joel Michelsen [mailto:joelsteph@peoplepc.com]
Sent: Monday, April 23, 2007 2:51 PM
To: Commission PUC
Cc: Stephanie Michelsen; Tim Kelley; Tim Rogers; Larry Riser; Corine Fraser; Dave Westoby; Dave Anderson
Subject: Staff Recommendation CA 12; Docket No. UI263

Dear PUC Staff:

My name is Stephanie Michelsen and I am an intervenor in Agate Water Company's application for rate increase (UW 119). It has been brought to my attention that on April 24th, there is a public meeting of the PUC. On the consent agenda, item CA12 involves a major participant (John Fred Schilling) in UW 119. I would like to state my strong opposition to any approval at this time in CA12. A final decision on this application at this time would be premature considering the substantial outstanding evidence and opposition to UW 119. Please allow the UW 119 intervenors to present our testimony at the evidentiary hearing, scheduled for May 10th, before reaching a conclusion on CA12.

Thank you for your consideration.

Respectfully,
Stephanie Michelsen

Account Name: MICHELSEN, STEPHANIE
Open Date: 4/24/2007
Analyst: CHIPPS, CAROL

4/23/2007 2:54:00 PM EMAIL FROM BECKY - COMMISSION OFFICE

From: BEIER Becky
Sent: Monday, April 23, 2007 2:54 PM
To: SPARLING Lee; ANDERSON Marion; HELLMAN Marc; SCOTT Allen R.
Cc: BAILEY-GOGGINS Vikie; BARNES Kay; GR-CONSUMER; HAYES Jenny; ZASTOUPIL Cherie
Subject: FW: Staff Recommendation CA 12; Docket No. UI263

Another email regarding CA 12. Let us know what you plan to do.

4/23/2007 3:00:00 PM EMAIL TO CUSTOMER - ACKNOWLEDGEMENT

From: CONSUMER PUC
Sent: Monday, April 23, 2007 3:00 PM

To: 'joelsteph@peoplepc.com'
Subject: RE: Staff Recommendation CA 12; Docket No. UI263

Thank you for your e-mail to the Public Utility Commission of Oregon. It has been forwarded to one of our staff in the Consumer Services Division.

4/24/2007 8:22:00 AM REVIEWED W/KATHY MILLER

She said the public meeting has been changed to May 8 due to comments from intervenors. I said that would still be before intervenors make their presentation if the customer has it correctly. She said in her email that they would be presenting their testimony at the evidentiary hearing on May 10. Kathy said she will look into this further and get back to me.

4/25/2007 10:55:00 AM CALL TO KATHY MILLER/UPDATE?

I asked if she was looking into changing the date for John Fred Schilling (UI 263) to AFTER May 10th when the intervenors have an opportunity to make THEIR presentation. She said at this time, UI 263 has been rescheduled to May 8 but it would not be up to her to make a change in this schedule. The date for the intervenors is tentative (Dockets shows May 9 and customers calling are saying May 10--this was explained by Kathy later. She said Jason will be having the date changed to May 10--it just isn't reflected in the docket yet). I told Kathy I would tell this customer that her rate protest will be noted in the record and referred to Hearings and Water staff for their information. However, the schedule for UI 263 is set for May 8 and I do not know if that will be changed or not to come after the evidentiary hearing in UW 119.

4/26/2007 10:46:00 AM VOICE MAIL TO MS MICHELSEN TO CLOSE

I left a detailed VM message for Ms Michelsen on her cell phone that her opposition to the rate increase was noted and that the hearing originally scheduled for April 24 (UI 263) was changed to May 8 at this time. I could not tell her if that date would again be changed to come AFTER the evidentiary hearing scheduled for May 10 (UW 119) per her request. I asked her to call me if she had questions, but advised I was closing her case and forwarding copies of it to staff working on UI 263 and UW 119.

4/26/2007 12:07:00 PM REVIEWED W/DEANNA RIOS-THISSEL

Deanna also has an Agate complaint regarding CA12. She said she talked to Marion Anderson and since affiliated interest cases are what he does, he would like copies of any complaints regarding CA12 (UI 263) and Kathy Miller would like them as well. At the time we looked at dockets, UI 263 had not been assigned to a Hearings Officer so I will send a copy to Carol Hulse.

Marion also said it is a possibility that UI 263, the affiliated interest case, may just be made a part of UW 119, the rate case.

Oregon Public Utility Commission

Specialist: BOYLE, PHIL

Name: WESTOBY, DAVID

E-Mail: westoby@bendcable.com

DOCKET #:UI 263

Subject: RELATED TO UW 119

COMPLAINT RATE PROTEST

PENDING REQUEST

Company:
pjboyle INET

0018 W AGATEW Open:4/23/2007
Close:4/24/2007 pjboyle TELE

Call Taken: 4/23/2007
Open Date: 4/23/2007

Taken By: BURKE, LESLIE S
Opened By: BOYLE, PHIL

Disconnect Notice Due:

Disconnected:

Out of Service:

4/22/2007

CODE DETAIL

Rate Protest - Pending Request

Mr Westoby is an intervener in Docket UW 119. He has concerns about the staff recommendation relating to item CA12 that he wants taken into consideration before the commission issues its' final order. He says there are statements made by staff that he does not agree with, and wants the commission to refrain from issuing a final order until testimony has been entered and discussed in an evidentiary hearing.

4/22/2007 9:06:00 PM
OFFICE

EMAIL FROM CONSUMER TO PUC COMMISSION

From: D. Westoby [mailto:westoby@bendcable.com]
Sent: Sunday, April 22, 2007 9:06 PM
To: Commission PUC
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

4/23/2007 10:12:00 AM

**EMAIL FROM COMMISSION OFFICE FORWARDING
CONSUMER EMAIL**

From: ZASTOUPIL Cherie

Sent: Monday, April 23, 2007 10:12 AM

To: CONSUMER PUC

Cc: SCOTT Allen R.; GRANT Michael; GR-AHD SUPPORT.

Subject: FW: In the matter of staff recommendation pertaining to item No. CA12 scheduled for discussion at public meeting April 24th 2007.

FYI, comments received related to UW 119 (see below).

Already forwarded to utility.

Thank you,

--Cherie

4/24/2007 11:33:00 AM

EMAIL TO CUSTOMER - ACKNOWLEDGEMENT

From: CONSUMER PUC

Sent: Tuesday, April 24, 2007 11:33 AM

To: 'westoby@bendcable.com'

Subject: Your comments regarding UW 119

Thank you for your e-mail to the Public Utility Commission of Oregon. It has been forwarded to one of our staff in the Consumer Services Division.

4/24/2007 2:15:00 PM

EMAIL TO ANNETTE TAYLOR - CLOSED CASE

From: BOYLE Phil

Sent: Tuesday, April 24, 2007 2:15 PM

To: TAYLOR Annette

Subject: UW 119

Annette,
Here is the closed case file for additional comments from intervener David Westoby.

From: D. Westoby [mailto:westoby@bendcable.com]
Sent: Wednesday, April 25, 2007 12:23 AM
To: ANDERSON Marion
Subject: RE: Docket UI 263

Hello Marion,

My apologies for taking so long to reply to your e-mail regarding docket UI 263. I have had my hands full with preparing my testimony in regards to UW 119, as well as my responsibilities at a full-time job. I usually don't even get to check my e-mail until 6:00 or 7:00 PM.

At this time, I would actually be interested in suspending discussion regarding UI 263 until after the evidentiary hearing for UW 119, based on the proposed maximum allowable salary for Fred Schilling. If the filing does take place on the 8th, I believe we would be able to get some intervenors to attend via telephone, but I think at this point we are all in agreement that the amount stipulated in item No. CA12 is excessive, given the scope of Mr. Schilling's actual duties.

Also, would there be any possibility of obtaining a transcript of discussion regarding this item at the meeting?

Thank you for your time.
Respectfully submitted,
David N. Westoby

-----Original Message-----

From: ANDERSON Marion [mailto:Marion.Anderson@state.or.us]
Sent: Tuesday, April 24, 2007 1:54 PM
To: Lriser5000@cs.com; westoby@bendcable.com; joelsteph@peoplepc.com;
casman8815@aol.com; tar-55@juno.com; timkelley369@cs.com; rc14fraser@msn.com

Subject: Docket UI 263

Intervenors,

I am again enclosing the public meeting memorandum that was removed from today's consent agenda.

<<UI 263.doc>>

By the close of business today, April 24th, I will need to let the Commission Office know whether the Agate affiliated interest filing will be scheduled for the May 8th Public Meeting. Should that filing take place on May 8th, please let me know if you are interested in offering comments either in person or by telephone.

Thank You,

Marion Anderson
503-378-4362

From: DOUGHERTY Michael
Sent: Monday, April 30, 2007 3:58 PM
To: 'tkelly369@cs.com'; 'westoby@bendcable.com'; 'joelsteph@peoplepc.com'; 'Iriser5000@cs.com'; 'casman8815@aol.com'; 'tar-55@juno.com'; 'rc14fraser@msn.com'
Cc: MILLER Kathy; 'Jones Jason W'; HELLMAN Marc; ANDERSON Marion
Subject: Responses to Questions

Mr. Kelley,

You asked a series of questions to Marion Anderson concerning UI 263. Since many of the questions deal with UW 119, I will answer your questions as Marion is not involved in this docket.

Q. 1. Why is the P.U.C. delaying the UI263 / CA12 hearing, but still placing it before our hearing on May 10, 2007? On May 10th the evidence regarding your case will be made evident.

PUC Staff is not delaying the UI 263 hearing. Pursuant to Oregon Revised Statute (ORS) 757.495, an order concerning an affiliated interest application must be entered in 90 days after the matter has been submitted to the Commission. The application was filed March 21, 2007. We moved this matter to the May 8 public meeting so that the Commissioners would have more time to consider any comments offered by the customers of Agate.

Because of the rate case, I instructed Marion to have it presented to the Commission prior to May 9, 2007. UI 262 and UW 119 are separate dockets. The requirement for the application was established 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).

By filing the application, Agate was complying with the Commission's order. Letters of notification were sent to water utility owners/employees on January 31, and March 19, 2007, to file the affiliated interest (AI) applications. This docket satisfies the affiliated interest filing requirement for the Mr. Schillings wages. Reasonableness in rates will be determined in UW 119.

Q. 2. Why then, given the above would the P.U.C. push through UI263 / CA12 without reviewing ALL the intervener's evidence and testimony in the concurrent UW119 case?

These are two distinct dockets. UI 263 requests approval of the contract. Final determination of rates is decided in UW 119. These are two different standards that should not be confused.

UW 119 testimony by all parties is to be filed by April 30, 2007. Although Staff may chose to respond to intervener's testimony if received early, it is the Commission that will decide the appropriate amount of wages in rates. Staff only makes a recommendation based on its independent analysis, and all testimony submitted will be considered by the Commission.

However, please be aware that Staff's UI 263 analysis concerning the level of wages is the same as the UW 119 analysis.

Q. 3. Is the P.U.C. going to review the testimony and evidence of the interveners of UW119 in the Docket UI263 / CA12 matter? Based on your actions it appears you would rather move forward without our input. This is contrary to your obligation under law as set forth in your operating guidelines.

These are two separate dockets. Staff will attach intervener correspondence, including this e-mail, concerning UI 263 to its public meeting memo. The Administrative Law Judge will review all UW 119 testimony by interveners as part of the hearing process.

Q. 4. Why is the P.U.C. placing an undue hardship on the interveners in requesting that they take additional time off work to participate redundantly in a parallel matter such as UI263 / CA12? Staff is getting paid for their time. The interveners are losing income as a result of our participation. It appears the P.U.C. is trying to exacerbate the intervener's loss of wages by placing UI263 / CA12 before the May 10, 2007 evidentiary hearing.

As stated above, the Commission is required to act on an AI filing within 90 days. UI 263 and UW 119 are separate dockets. The Commission conducts public meetings generally every other Tuesday in Salem. The dates and times of public meetings are published well ahead of time. You can chose to participate in person, by telephone, or by written statements.

I plan to attach your questions and my responses to your questions to the public meeting memo so it will be in the UI 263 record. Please note that the UW 119 Prehearing Conference (6:00), Settlement Conference (6:30), and Hearing (5:00) have all been scheduled as to allow participation by interveners.

A. The P.U.C.'s concealment from the interveners and handling of the UI263 / CA12 case, along with the bias shown Agate throughout these proceedings

appears to be, in and of itself, a gross breach of the P.U.C.'s responsibility to the tax paying public.

There has been no concealment of this docket. Staff was and is always willing to respond to any parties' concerns. These are separate dockets. UI 263 requests approval of the owner-employee relationship, UW 119 will determine the level of wages in rates.

Additionally, I am concerned that if the P.U.C. is acting under the legal advice of the D.O.J., the D.O.J. may want to review their advice given.

Specifically, the P.U.C., under the counsel of the D.O.J. at the April 12, 2007 settlement conference, stipulated to the rate increase prior to receiving or reviewing the intervenor's testimony.

Testimony is submitted as part of a stipulation, or as evidence in an evidentiary hearing if a hearing is conducted. The following UW 119 schedule was noticed by the Administrative Law Judge (ALJ) on February 22, 2007:

Deadline for Petitions to Intervene March 7, 2007

- Settlement Conference April 11, 2007, in Bend
- Deadline for Data Requests April 13, 2007
- Deadline for Data Responses April 20, 2007
- Staff and Intervenor Direct Testimony due April 30, 2007
- Hearing May 9, 2007, in Bend (Changed to May 10, 2007)

Staff performed its analysis and presented it at the settlement conference. No other parties at the settlement conference presented a specific analysis. Staff's examination was thorough and Kathy Miller brought invoices, receipts, etc. to the conference and made it available for review.

Q. 5. Why did the D.O.J. advise the P.U.C. to stipulate prior to the manifestation of the evidence?

Staff believes the settlement reached will result in rates that are fair and reasonable. With regards to the nature of settlement, the following link is from the Commission's web-site concerning settlement:

http://www.puc.state.or.us/PUC/admin_hearings/guidelines_settle.shtml

Q. 6. Twice in separate meetings, I asked staff if Agate Water was in compliance with the Sarbanes Oxley bill that was made into law. No one in the meeting knew

of Sarbanes Oxley even though it applies to a large percentage of businesses in the United States.

Most private companies, not-for-profit organizations, and government agencies are not required to comply with SOX. Agate is not registered with the SEC since it is not a publicly-traded company, and does not fall under the requirements of SOX.

During audits of energy utilities, I will routinely look at a utility's compliance with SOX and I am generally familiar with its requirements.

Since Agate Water has stocks issued, is it in compliance with Sarbanes Oxley and why was the D.O.J. unaware of the mandatory compliance requirement for Sarbanes Oxley, since many of the companies the P.U.C. governs must comply by law with Sarbanes Oxley?

As previously mentioned, Agate is not a publicly-traded company, not registered with the SEC and does not fall under SOX. Additionally, our AAG is well-versed in business combinations, SOX, and other aspects of publicly-traded companies.

A. The D.O.J. and P.U.C. is responsible for knowing the laws of the country. It appears Sarbanes Oxley was not implemented into P.U.C. and D.O.J. training parameters.

PUC Staff and DOJ are very familiar with Commission statutes and rules, and related utility regulations. Please keep in mind, that different Staff work in and specialize in different areas of utility regulation.

Given the questionable legal advice made to the P.U.C. by the D.O.J., and the fact the D.O.J. and P.U.C. were not aware of what a "White Waiver" was or what Sarbanes Oxley was or if it applied to this case, I am hereby calling for some oversight intervention directly from the P.U.C. and D.O.J. and their governing authority. Please request this be implemented at this time.

As previously mentioned, Kathy Miller duties does not require a knowledge of SOX. Again, if the question was addressed to me, I would have told you that most private companies, not-for-profit organizations, and government agencies are not required to comply with SOX. Agate is not registered with the SEC since it is not a publicly-traded company and does not fall under the requirements of SOX.

Q. Will the P.U.C. allow the UW119 testimony of the interveners towards its decision of CA12?

The emails sent to the Commission regarding the CA12 will be considered by the Commission. As previously mentioned, determination of the level of rates will be determined in UW 119. All filed testimony for UW 119 will be reviewed and considered by ALJ and presented to the Commission.

A. In an email sent from Becky Beier and subsequently from Marion Anderson to Larry Riser, See Exhibit "F" attached, you state,

"Kathy Miller is in charge of the concurrent rate case Uw199 and needs the salary matter resolved in order to finalize the revenue requirements".

Reasonableness in rates is determined in UW 119. Agate was required to file the contract based on Commission Order No. 06-627.

I take exception to your statement that this matter must be resolved prior to finalizing the financial requirements. This appears to be another bias towards Agate Water by the P.U.C.

There is no bias towards Agate. The reasonableness of the level of wages will be determined in UW 119, which you have submitted testimony.

See Exhibit "G" which is attached. This exhibit is several pages from the lengthy Oregon Administrative Rules handbook. This "Exhibit" has been abbreviated as a paper reduction effort. Please be advised the entire Oregon Administrative Rules booklet shall hereby be entered into evidence, if it has not been already. It is assumed a reasonable person who works for the P.U.C. and the D.O.J. has the entire booklet in their possession.

The ALJ and Commission have access to the rules and work with various rules on a daily basis.

If you disagree with this statement, please advise so I may mail in copies of the entire booklet. Please compensate me for the copy and mailing fees, since the document was published by the state.

The rules are on our web-site, and there is no need for you to send them.

Specifically, see page 44 – Div. 036 under 860-036-0815. This refers to requirements regarding annual reports. Additionally, it calls for the annual report to be presented by April 1, 2007.

Agate has not filed its annual report. Staff is aware of this. However, please keep in mind that the level of review in UW 119 is much more detailed than that in the annual report. With this said, letters were previously drafted and will be sent this week to all companies that are currently late on the annual report submission.

It is my contention this annual report shall be made available to all the interveners.

When Agate submits the report, it will be made available. Please keep in mind, that the requirements of a rate case, including discovery is very time-consuming for an utility.

Notwithstanding the above, please use this document to finalize Kathy Miller's revenue requirements aspect and address the concurrent classification of Mr. Schilling's job description.

As previously mentioned, Kathy Miller's review was separate from UI 263 and is much more detailed than what will be in the annual report.

Please do this rather than granting Agate a last minute legal maneuver in the late hour we are in.

There was/is no last-minute legal maneuvering. Agate was directed by Staff to file the AI application.

In the above referenced Exhibit "F" please address the concerns listed by Larry Riser as the E mail reply is self serving and answers no questions or points raised.

Q. Is Agate Water owned by both Mr. and Mrs. Schilling under the laws of the state of Oregon regarding community property?

Agate is registered with the Secretary of State Corporations Division as a domestic business corporation. Attached is a link:

http://egov.sos.state.or.us/br/pkg_web_name_srch_inq.do_name_srch?p_name=AGATE%20WATER&p_regist_nbr=&p_srch=PHASE1&p_print=FALSE&p_entity_status=ACTINA

Q. Why is Fred Schilling's job description being requested to be changed during the proceedings.

It isn't.

A. It appears this too is a self serving effort on Agate's behalf.

Q. 860-036-0705 paragraph #5 states:

(5) Whenever these rules require the filing of financial statements, they shall be prepared as of the latest date available. The income statement shall be for the most recent 12-month period.

According to the above referenced rule, why not evaluate the last 12 month period which by law was to have been received on April 1, 2007?

The rate application was submitted on October 31, 2006, as such 2005 was the most current year to use as a test year. On request of customers, Kathy Miller used 3 - 4 years of data when determining many of the expenses. Additionally, adjustments were made on any costs that are known and measurable.

Q. If CA12 is applying for Fred Schilling to become a "Hybrid" employee, will he resume his director status and activity?

Mr. Schilling's wages are based on duties as an officer and operator.

If he is not director, who is or will become the director of Agate Water Company under CA12?

Mr. Schilling has 100 percent of the shares of the Company. UI 263 requests approval for the payments to Mr. Schilling. UW 119 determines the reasonableness in rates.

Q. Is Agate Water in full compliance under the Oregon Administrative Rules. See:

- 1. Hours of operations – 860-036-0015 paragraph 9 & 10**
- 2. Testing water meters - 860-036-0110**
- 3. Maintenance – 860-036-0305 Paragraph 4**

Please be more specific on your concerns. The Consumer Services Section reports that from March 2005 to December 2005, the Commission received 8 service complaints; during 2006, the Commission received only four service complaints; and to date in 2007, the Commission has received only one service complaint.

A. It is my understanding that my meter has never been tested. Nor have I been notified of any flushing of our dead end line.

Please see OAR 860-036-0115 on requesting a meter test. The Company can provide you with flushing dates and schedules.

Q. Are the violations by Agate Water provided under not only my testimony, but all the points made by the other interveners just cause to invoke per 036-0365, the installation of a regent?

The specific purpose of the rule is to provide a recourse the Commission may use should a company exhibit egregious behavior, such as refusal to operate the system. The Commission has used this remedy only once. Agate demonstrates no such egregious behavior.

It is willing and able to operate and manage the water system to provide safe and adequate service to its customers in compliance with Oregon statutes, rules, and standards. As previously mentioned, the Commission's Consumer Services Section received eight service complaints from March to December 2005, four service complaints in 2006, and only one service complaints in 2007 so far. The low number of complaints, considering the customer count of 1,116, shows a strong commitment to service by the Company.

A. Yes. Please set a regent in place to access this matter and business correctly.

Staff will not recommend a regent.

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