

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UW 120

In the Matter of)	
)	
CROOKED RIVER RANCH WATER)	
COMPANY)	ORDER
)	
Request for rate increase in total annual)	
revenues from \$806,833 to \$868,453, or)	
8.13 percent.)	

**DISPOSITION: CROOKED RIVER RANCH WATER COMPANY
FOUND TO HAVE FAILED TO COMPLY WITH
ORDER NO. 07-527; COMPANY DIRECTED TO
DISTRIBUTE SURCHARGE ACCOUNT FUNDS**

I. BACKGROUND

By motion dated March 7, 2008, the Staff of the Public Utility Commission of Oregon requests an order confirming that Crooked River Ranch Water Company (Crooked River) is in violation of Commission Order No. 07-257, specifically Ordering Paragraphs 4, 5, and 6. Together with its motion, Staff filed a declaration of James (J.R.) Rooks (Rooks) provided by Crooked River to Staff on January 28, 2008, and Staff's Report on the outcome of contempt proceedings involving the Company's failure to respond to earlier discovery during the general rate case proceedings.

As noted by Staff, in Order No. 07-527 the Commission ordered Crooked River, among other things, to:

4. Not later than 30 days from the date of this order, Crooked River Ranch Water Company shall submit any contracts between itself and its General Manager James Rooks and members of Rooks' family, along with supporting testimony, to this Commission for approval.
5. Not later than 30 days from the date of this order Crooked River Ranch Water Company shall file an accounting of its collection of funds through its special assessment surcharge and the disposition of such funds, from the inception of the fund to the present.

6. Not later than 30 days from the date of this order, Crooked River Ranch Water Company shall file a report stating its need for funds for new capital improvements, including the intended projects, the estimated cost of each such project, and the time that each investment would be required.

Crooked River did not request an extension of time to comply with the Commission's order. Nor did the Company make any filings with the Commission in response to these ordering paragraphs of Order No. 07-527.

II. STAFF'S MOTION

A. Introduction

Staff contends that Crooked River has failed to comply with these ordering paragraphs. Staff reports that it did inquire of Crooked River regarding its compliance with the Commission order, receiving from the Company the Rooks' Declaration in response. In his declaration, Rooks explains the Company's alleged compliance with the order. Staff believes that the actions described in the Rooks' Declaration do not satisfy the requirements of the order.

B. Ordering Paragraph 4

As noted above, by Ordering Paragraph 4, Crooked River was directed to file any contracts between itself and its General Manager, Rooks, as well as any contracts between the Company and other members of the Rooks family. In his declaration, Rooks claims that his employment contract was "terminated by Commission Order 07-527 and is no longer in effect." Likewise, he claims that his maintenance and repair contract with the Company was "effectively terminated" by the order. He further explains that his wife, Jackie Rooks, is an "at-will employee," and not under an employment contract, while his daughter no longer works for the Company.

Staff argues that Rook's Declaration does not comply with Ordering Paragraph 4 of Order No. 07-527. Contrary to the Company's claim, Order No. 07-527 did not "terminate" any contracts. The Company submitted no testimony or other evidence to prove that the contracts have been terminated. Meanwhile, Rooks apparently remains on the Board, and both Rooks and his wife apparently are still employed by the Company.

C. Ordering Paragraphs 5 and 6

The Commission initiated contempt proceedings in the Jefferson County Circuit Court (Circuit Court) relating to Crooked River's failure to comply with discovery orders relating to Staff data requests in the general rate case before the Commission. On January 8, 2008, Crooked River provided information to Staff pursuant to an order of the Circuit Court. In his declaration, Rooks asserts that the information provided to Staff on January 8, 2008, satisfies the Company's obligation to

file the accounting required by Ordering Paragraph 5 and the Report required by Ordering Paragraph 6.

Staff argues that Crooked River failed to file the accounting or report as required by Ordering Paragraphs 5 and 6, respectively. Staff considers the filings of the accounting and report to be unrelated to the Company's duty to produce the information requested through discovery.

D. Relief Sought

Staff argues that the Company "should be made to comply" with Ordering Paragraphs 4, 5, and 6 of Order No. 07-527. Staff proposes that the consequences of the Company's failure to comply with the order should be visited on the Crooked River Board of Directors (the Board), "because it is the members of the Board of Directors who are responsible for complying (in this case, not complying) with the Commission's Order."

Staff cites ORS 757.994, which provides for civil penalties for violations of commission orders. Each "person" who violates a commission order is subject to a civil penalty of up to \$500 for each violation. Staff argues that, because the Crooked River Board is responsible for the operation of the Company, each of its members should be held accountable for the Company's failure to comply with Order 07-527.

Staff argues that the Company's noncompliance with each of the three aforementioned ordering paragraphs constitutes a separate violation. The penalties accrue each day that the Company fails to comply. Staff proposes that the Commission issue an order that confirms that the Company is in violation of Order No. 07-527 and states that the Commission intends to seek civil penalties against each of the Board Members if the Company does not comply within a stated time. Staff recommends that the amount of the penalty that would be imposed should be \$1500 per day, \$500 per separate violation.

III. CROOKED RIVER'S RESPONSE

A. Ordering Paragraph 4

Regarding Ordering Paragraph 4, Crooked River states that "no employment contracts written or otherwise exist between any family member of James Rooks" and the Company. The Company states that it previously provided information on its agreement with Rooks to provide for maintenance and repair work. It claims that no additional information is available "in any form."

With respect to its contract with Rooks in his capacity as General Manager, Crooked River states that this contract "was rendered null and void by Commission Order 07-527 (which) set forth compensation for Rooks which was not consistent with James' Rooks' employment agreement."

Crooked River argues that Staff has taken the words “any contract” in Ordering Paragraph 4 out of context. The Company states that it understood the term to mean “those contracts which (Crooked River) sought the Commission’s approval of.” Because “there were no contracts for the Commission to approve, no contracts were submitted.”

Crooked River dismisses Staff’s argument that the Company failed to offer any testimony to prove that its contracts with Rooks have been terminated. The Company cites Rooks’ Declaration to that effect and argues that no Board resolution was necessary to terminate the contracts – such a resolution “would have been an unnecessary waste of precious time and resources.”

B. Ordering Paragraph 5

Regarding Ordering Paragraph 5, Crooked River argues that “Staff has once again isolated several words from Section 5 of that Order.” Staff alleged that the Company failed to “file an accounting.” Crooked River states that the term “accounting” has not been defined, and the Company has no guidance regarding what it is required to produce.

According to Crooked River, in its discovery document production it provided spreadsheets that show “all special assessment funds collected, all disbursements made from the Special Assessment Fund and how those funds were spent.” The Company refers to the Staff Report filed with Staff’s motion and argues that Staff’s use of the information “conclusively demonstrates that the information requested was provided as it contains several pages of analysis of that information.”

C. Ordering Paragraph 6

Regarding Ordering Paragraph 6, Crooked River observes that the paragraph itself includes four elements – a) new capital improvements; b) intended projects; c) estimated cost of each project; and d) time when each investment would be required. The Company cites Rooks’ Declaration, where he states “no new construction or capital improvements are in progress or planned at the current time as the funds are not available.” When the Company prepares its request for a rate increase, it will prioritize necessary capital improvements and present supporting evidence.

D. Conclusion

Crooked River argues that the Board of the Company has fully complied with Order No. 07-527. Neither the Board nor the General Manager has willfully violated any provision of the order and there should be no penalty assessed.

IV. CROOKED RIVER'S SUPPLEMENTAL RESPONSE

On March 21, 2008, the Commission received Crooked River's "Supplemental Response" to Staff's motion. In its Supplemental Response the Company states it disagrees with certain findings made by Staff in its report submitted to the Commission together with this motion.

Crooked River states that, in its earlier response, it addressed Staff's findings that were directly relevant to Staff's Motion. However, the Company claims that it "has not had the opportunity to respond to or correct the factual record underlying the findings in the Staff Report that are beyond the scope of the Staff's Motion."

According to Crooked River, the findings in Staff's Report could have a significant impact on Crooked River's operations. The Company requests that it be afforded the opportunity for a hearing before any action is taken directly on the Staff's Report. Crooked River objects to the Commission issuing an order that addresses any issue that is outside the subject matter of Staff's Motion.

Crooked River states that it "was required to file a response to Staff's Motion within five days" pursuant to an order of the Administrative Law Judge (ALJ). The Company argues that five days was not a sufficient time to compile a complete response to the Staff report.

IV. DISCUSSION

A. Ordering Paragraph 4

While Crooked River's exact position with regard to Ordering Paragraph 4 cannot be discerned from its filings, the Company appears to argue that oral contracts are exempt from the provisions of ORS 757.495. Such a construction would render the statute meaningless, as it would allow for utilities to deal freely with persons with affiliated interests without Commission oversight. ORS 757.495(3) requires that the Commission investigate all contractual relationships between a utility and its affiliates to determine whether each contract is "fair and reasonable and not contrary to the public interest." As ordered by Order No. 07-527, Crooked River must submit any contracts between itself and Rooks and members of the Rooks family for Commission approval. If it's the Company's point that any contract has not been reduced to writing, it is the Company's obligation to offer a narrative statement that explains and defends all contract terms.

In his declaration, Rooks does not characterize his own relationship with the Company. Rooks does not identify himself as General Manager or otherwise indicate that he is affiliated with the Company in any respect.¹ Based on Rooks'

¹ For this reason, we question whether Rooks' Declaration may be received as a declaration by Crooked River. While Rooks is on the Crooked River Board, no board member may speak for a Company except

declaration and the Company's response to Staff's motion, one cannot determine what exactly is Rooks' role. Is he General Manager? Does he receive a salary? Is he paid an hourly wage? Is he paid overtime? Does he receive benefits? These are all questions that must be addressed by the Company.

B. Ordering Paragraph 5

Regarding Ordering Paragraph 5, Crooked River's alleged inability to understand what the Commission intended the Company to file would have been suitable content for a motion for clarification that could have been filed on a timely basis. The Company's failure to file either the accounting or a motion establishes its lack of good faith.

Even if we were to agree that "an accounting" plausibly is a vague term, we could not agree that the information furnished by Crooked River to Staff in discovery to settle the contempt proceeding would satisfy the Company's obligation pursuant to Ordering Paragraph 5 of Order No. 07-527.

From the Staff Report, we learn that Crooked River did provide Staff with records that allowed Staff to perform a partial accounting of the Company's collection of funds through its special assessment surcharge and the disposition of such funds. The Company cannot rely on Staff's work in compiling that information into a useful report to satisfy its obligation to submit a full accounting of the amounts collected and their disposition.

Staff's report shows that the Company collected \$476,682 in surcharge funds. According to Staff, it was able to account for \$131,081 of funds expended for the purposes intended for the surcharge. It also accounted for \$75,777 in funds expended for unintended purposes (enumerated by Staff). According to Staff, the actual balance in the fund, as of November, 2007, was \$118,028. That leaves \$140,881 of funds not accounted for.

In its response, the Company argued that Staff's report "conclusively demonstrates that the information requested was provided as it contains several pages of analysis of that information." Based on the Staff Report, the amount of unspent funds collected from the surcharge is \$269,824. Crooked River must account for the full amount of the funds collected.

C. Ordering Paragraph 6

Regarding Ordering Paragraph 6, we accept at face value Rooks' statement that the Company does not plan any new capital investment in the near term. However, that does not excuse the Company's failure to comply with Ordering Paragraph 6 and report to the Commission regarding its need for new capital.

as has been authorized by corporate bylaws, and we are not able to assume that Rooks has authority to speak on behalf of the Company, where he is neither General Manager nor Chairman of the Board.

The import of Ordering Paragraph 6 was that the Company's response would determine the disposition of the funds collected through the surcharge (that are accounted for in Ordering Paragraph 5). As the Commission stated in Order No. 07-527, "if the plant additions are not likely to be undertaken within a reasonable time, or in a sufficient amount, the Commission may consider other disposition of the fund balance." Based on Crooked River's response, no plant additions are likely to be undertaken "within a reasonable time." Thus, the Commission will provide for disposition of the fund balance.

We find that Rooks' Declaration satisfied the Company's obligation to file a report pursuant to Ordering Paragraph 6. However, that submission was 28 days after the report was due. We do not excuse the Company's late filing.

D. Liability of Board Members

In its motion Staff proposed that the Commission issue an order directed at the Board Members, with the intent that each Board Member would be held personally liable for the Company's further failure to comply with the Commission's order. We do not share Staff's belief that a separate order directed expressly at the Board Members is necessary.

Crooked River's Board is ultimately responsible for conducting the Company's business, and its Board Members are jointly responsible for any failure to comply with the Commission's order. For purposes of assessing any penalty, that liability attaches first to the Board, not to its members, per se. It is the Board that would pay whatever fine that would be imposed in a civil proceeding to enforce the Commission's order. Thus, pursuant to ORS 757.994, the maximum penalty that might be assessed under Staff's proposal would be \$1500 per day for the period of time Crooked River fails to comply with all three of the ordering paragraphs.

However, as noted in Order No. 07-527, the unique corporate structure of Crooked River² requires that the Commission recognize that measures that might be suitable in the ordinary course of Commission business do not fit the Crooked River example.

In the ordinary course, the Commission would impose a penalty on the Board, knowing it would be shareholders that would bear the penalty, because our ratemaking authority would protect the ratepayers from having the amount of the penalty passed through in rates. In this case the shareholders and ratepayers are the same.

Thus, in this case we intend that, if it is the Board that will have incurred any penalty, it is the Board Members themselves that will be responsible for its payment.

² "Unique," in the sense that this Commission typically regulates investor-owned utilities, while Crooked River's owners are also its customers.

We intend that each of the Board Members will be jointly and severally liable for payment of the penalty.

We note that ORS 757.994 allows the Commission to assess penalties against “a person who violates any . . . order of the Public Utility Commission related to water utilities.” ORS 756.010 defines “person” to include “corporations and associations or their officers. . . .” We will provide notice of the penalty proceedings to each of the Board members, as required by ORS 183.745.

Whether to assess a penalty for failure to comply with the Commission’s order is only one of the issues to be resolved in this phase of the proceeding. The Company’s failure to file an accounting leaves open the question of whether Crooked River has properly accounted for the proceeds of the special assessment surcharge. To the extent that funds are not accounted for or have otherwise been misappropriated, the Commission will take further action to recover such funds from the Board Members of the corporation.

E. Supplemental Response

In its Supplemental Response, Crooked River asks that the Commission take no action on Staff’s report beyond the scope of Staff’s motion. The Company alleges errors in certain Staff findings. Crooked River does not indicate what findings it deems erroneous. On that basis its response is ineffective.

However, this Order is based on Staff’s motion and does not rely on extraneous information in Staff’s report. Crooked River itself offered Staff’s accounting of the assessment fund surcharge balance as evidence that the Company did comply with Ordering Paragraph 5.

Regarding the ALJ’s order shortening time, Crooked River likely references the ALJ’s ruling, dated August 21, 2007, where he stated: “In light of the Company’s actions, I shorten time for the Company to reply to any further motions to compel to five days.” Staff’s motion “regarding violations of Order No. 07-527” is not a motion to compel, so the ALJ’s ruling shortening time for Crooked River to reply does not apply.

VI. RESOLUTION

We will immediately convene a penalty phase of this proceeding, pursuant to ORS 757.994.

We order Crooked River to file, within fifteen days of this order, a full and complete explanation of its relationship with Rooks and other members of the Rooks family, from November 29, 2007, to the date of the filing. The filing should include records of all payments made by the Company to Rooks, and any family members, and should explain the basis for each such payment. If any employment relationship exists between Crooked River and Rooks or any family member, the Company must also

submit declarations specifying the terms of any such relationship for Commission approval, as required by ORS 757.495.

We further order Crooked River to file, within fifteen days of this order, a full and complete accounting of all funds collected from the special assessment surcharge and the disposition of such funds, from the inception of the fund to the present. As noted above, Staff found that the Company collected \$476,682 in surcharge funds. Staff found that the Company expended \$131,081 for purposes intended for the surcharge. According to Staff, if the Company properly used the funds solely for their intended purpose, the remaining balance as of November 30, 2007, should have been \$345,601. The actual remaining balance was \$118,028. The filing must account for, explain and defend the \$227,574 of surcharge account funds that have been spent by the Company.

The accrual of additional penalties to be collected from the Board Members will cease with the filing of adequate responses to these directives.

Crooked River does not challenge Staff's calculation that the Company had on hand \$118,028 that it collected through the surcharge. Based on Rook's Declaration to the effect that the Company has no need for capital, now, or in the near future, we order Crooked River to pay out that amount to its shareholders in a one-time lump-sum amount on an equal share basis to all current shareholders as of the date of this decision.

However, based on the Company's inability or unwillingness to account for substantial funds, we direct the Company to report to the Commission within two working days of this order the remaining balance of the fund. In the event that the amount reported is less than the \$118,028 shown in the Staff report, the Company simultaneously shall file an accounting showing the disposition of all such funds.

The disposition of funds to shareholders is a partial distribution of the funds collected through the special assessment fund surcharge. Depending on the review of the Company's accounts, we may provide for an additional distribution to shareholders, including the unaccounted for funds, as well as some or all of the funds accounted for, but spent for purposes not authorized by the enabling resolution.

The Company's filings will be received at the hearing convened for the purpose of assessing penalties against Board Members, convened pursuant to ORS 757.994 and ORS 183.745.

Crooked River's actions and posture suggest "an unwillingness or incapacity or refusal to effectively operate and manage the water system to provide safe and adequate service to its customers in compliance with Oregon statutes." Such a finding by the Commission may constitute grounds for appointment of a regent to operate and manage the water system pursuant to OAR 860-036-0365. Given the Company's willful refusal to comply with a Commission order suggests that appointment of a regent should be considered. A regent also may be necessary if the

Company cannot fully account for the funds collected through the surcharge. Financial mismanagement by the General Manager or the Board of Directors would constitute grounds for appointment of a regent.

An appointed regent may be responsible for not only the daily operations of the water utility, but also restoring confidence in management. The regent might convene a timely election of a board of directors, leading to the hiring of a successor general manager to run the Company. The regent also might be responsible for collecting any shareholder funds that may have been misappropriated by current management, including any misfeasance on the part of the Board Members.

Crooked River's response to this Order will be decisive in terms of whether the Commission determines that a regent should be appointed.

Findings of Fact

1. Crooked River failed to file evidence of any contracts that it has with Rooks or other members of the Rooks family.
2. Crooked River failed to file an accounting of funds collected through its special assessment surcharge.
3. Crooked River failed to file a report regarding its needs for new capital.
4. Rooks' Declaration, submitted to Staff on January 28, 2008, addresses the need for new capital.
5. Based on the Rooks Declaration, Crooked River needs no capital in the near term.
6. Because Crooked River needs no new capital, the balance in the special assessment fund should be paid out to shareholders.
7. Crooked River Board Members are responsible for the Company's failure to comply with Ordering Paragraphs 4, 5, and 6 of Order No. 07-527.

Conclusions of Law

1. Crooked River failed to comply with Ordering Paragraphs 4, 5, and 6 of Order No. 07-527.
2. Crooked River should pay out the surcharge account fund balance to its shareholders not later than the date of its next customer billings, after the date of this Order.

3. Within two working days of the date of this Order, Crooked River shall report to the Commission the amount of funds remaining from its special assessment surcharge.

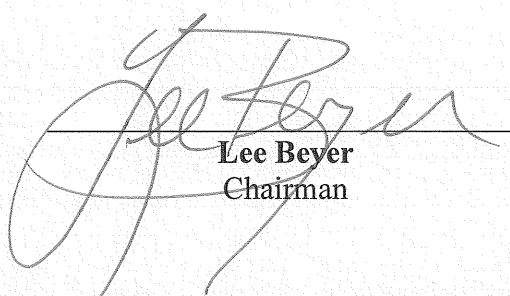
4. The Commission should initiate enforcement actions against the Board Members pursuant to ORS 757.994.

ORDER

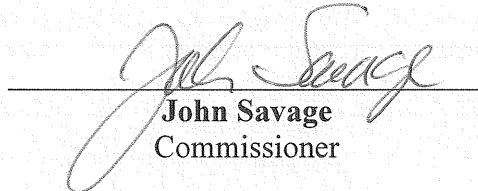
IT IS ORDERED that:

1. Crooked River Ranch Water Company shall file its response to this Order within 15 days of the date of this order.
2. Crooked River Ranch Water Company shall distribute \$118,028 to its current shareholders in a lump-sum amount of an equal share basis, not later than its next billing dates for its customers.
3. Within two working days of the date of this Order, Crooked River Ranch Water Company shall report to the Commission the amount of funds remaining from its special assessment surcharge.


Made, entered, and effective MAR 24 2008 .



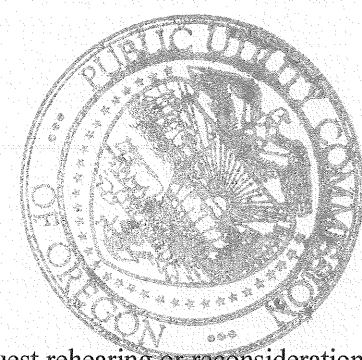
Lee Beyer
Chairman



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.