

**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: APPLICATION FOR RECONSIDERATION OF ORDER NO. 08-177 DENIED; COMPANY ORDERED TO FILE CONTRACTS FOR APPROVAL AND ORDERED TO DISTRIBUTE \$130,656.26 TO MEMBERS; RATE CASE REOPENED

I. Introduction

By Order No. 08-177, dated March 24, 2008, the Public Utility Commission of Oregon (Commission) addressed the failure of Crooked River Ranch Water Company (Crooked River or the Company) to comply with Ordering Paragraphs 4, 5, and 6 of Order No. 07-527, the decision in the Company’s general rate case.¹ The Commission ordered the Company to cure its failures within 15 days, and also ordered the distribution of the remaining special assessment fund balance (\$118,028) to its current shareholders (while reserving the issue of the true fund balance).

On March 26, 2008, Crooked River submitted an “application for reconsideration” of Order No. 08-177, requesting both a stay of the order that it distribute the funds and a hearing regarding whether the funds should be distributed. By Order No. 08-181, dated March 28, 2008, the distribution of the funds was stayed.

¹ Ordering Paragraph 4 provided that the Company must submit contracts with members of the Rooks family for the Commission’s approval. Ordering Paragraph 5 required the Company to file an accounting of its collection of funds through its special assessment surcharge. Ordering Paragraph 6 directed the Company to file a report stating its need for funds for new capital improvements.

On April 8, 2008, the Company submitted its materials in an attempt to comply with Order No. 08-177.² In its filing the Company addressed the nature of its contractual relationships with J. R. Rooks and his wife, Jacquie, including a Crooked River Board of Directors (the Board) resolution that confirms Rooks' status as General Manager of the Company. It also provided an accounting of the assessment fund balance.³

On April 4, 2008, the Commission Staff (Staff) filed a response to the Company's application for reconsideration. On April 8, 2008, Staff filed a supplemental response to the Company's application.

On April 28, 2008, intervenors Soule and Nichols (Intervenors) filed a response to the Company's application for reconsideration.

II. Contract Approval

In Order No. 07-527 the Commission ordered Crooked River to file with the Commission its contracts with Rooks family members for approval, pursuant to ORS 757.495. The Company filed no response within the allowed time, and its most recent filing does not satisfy the conditions of the Order.

In Ordering Paragraph 4 the Commission directed the Company to file with the Commission the contracts, "along with supporting testimony." The Company has not yet submitted any testimony to explain and defend the contracts.

Intervenors argue that the Board resolution is ambiguous regarding Rooks' relationship with the Company. They also argue that the resolution is invalid, because a legal quorum of directors did not sign it.

The conditions for approval of contracts between utilities and affiliated interests are set forth in OAR 860-036-0730. That rule specifies the contents of an application for approval of transactions between affiliated interests. Crooked River is directed to file its application pursuant to OAR 860-036-0730 within 15 days of the date of this order.⁴

We note that this requirement to seek approval of the contracts is not a "surprise" to Crooked River. When it submitted its original application, using the standard form for testimony supplied by the Commission, the Company answered: "Yes,

² Through apparent inadvertence, some information was not provided until April 14, 2008.

³ In Order No. 08-177 the Commission found that the Company's submission of a Declaration by Rooks to Staff on January 28, 2008, constituted effective compliance with Ordering Paragraph 6.

⁴ Whether the Board resolution is invalid is a matter that may be heard in conjunction with the Company's application for approval of the contracts. Given Crooked River's past failure to respond to discovery, the Company is warned that its failure to comply with discovery requests regarding its Board's action will be taken as an admission that the Board's action was invalid.

oral or written contracts do exist, but have not been approved by the PUC, between the utility and its owners and affiliated interests.” The Company witness testified that he had attached “a copy of these contracts, along with a cover letter requesting approval of these contracts” to the application. However, the contracts were not provided.

III. Special Assessment Fund Balance

In Order No. 07-527, the Commission terminated Crooked River’s collection of a special assessment surcharge that had been authorized by a Board resolution dated March 29, 2004. The Commission deferred any disposition of the remaining fund balance until the Company provided further information regarding its need for additional capital (Ordering Paragraph 6).

Pursuant to ORS 757.355, public utilities generally may not recover in rates the costs of capital improvements not presently used to provide utility service. However, ORS 757.355(2) allows the Commission to include in water utility rates the costs of a specific capital improvement if the water utility is required to use the additional revenues solely for the purpose of completing the capital improvement. The purpose of Ordering Paragraph 6 was to elicit information from the Company regarding its need for capital to complete “a specific capital improvement.”

The Commission accepted Rooks’ declaration as submitted to Staff on January 28, 2008, as effective compliance with Ordering Paragraph 6. In his declaration Rooks stated: “no new construction or capital improvements are in progress or planned at the current time as the funds are not available.” Finding that the Company has no need for the special assessment fund balance, the Commission ordered the distribution of the fund to its shareholders.

Despite its affirmation that it has no current need for the assessment fund for new capital improvements, Crooked River now asks the Commission to reverse the order to distribute the funds, or stay the order until after the Company “has had a full and fair opportunity to present evidence and argument on the issue.” In support of its request, Crooked River offers Rooks’ declaration to the effect that, if it distributes the funds, “it will have no funds available for either planned or unanticipated capital improvements.” He cites several possible instances where funds may be required – Well #1 may need bearings; the cistern may collapse; a line might break.

In its reply to the Company’s request for reconsideration of Order No. 08-177, the Commission Staff (Staff) notes that the rates set in Order No. 07-527 include amounts for repairs and depreciation sufficient to make capital repairs, without the Company needing to use the capital assessment fund for such purposes. In its supplemental reply, Staff also reports that recent financial statements obtained from the Company indicate that it currently has \$375,268 on hand (including the assessment fund balance). The Company’s claims of financial hardship are rebutted by its actual financial statements, which have only become available to the Commission after

contempt proceedings were initiated to enforce discovery orders. We note that Rooks had testified “We’re a non-profit corporation. We don’t usually have a lot of money left over. In fact, right now I’m about \$10,000 in the hole.”

Staff recommends that the Commission order the Company to distribute the remaining balance of the assessment fund to its current shareholders. Staff states that the payment need not be tied to the monthly billing.

Intervenors argue that the accounting submitted by the Company is deficient in material respects. They cite entries that they believe are vague or otherwise inadequate to explain the purpose of the expenditures. They ask the Commission to find that the Company has failed to provide a full and complete accounting of the funds.

We deny Crooked River’s application for reconsideration of Order No. 08-177. Contrary to its assertions, the Company had notice and multiple opportunities to be heard regarding the disposition of the surcharge fund.

First, capital requirements are among the matters examined in a general rate case. The Company had a full opportunity to prove its claims and to rebut Staff’s showing to the contrary.

The matters cited by the Company are all matters that were raised, or could have been raised, in its testimony in the general rate case, and were taken into account by the Commission in issuing Order No. 07-527. The Company did not file an application for rehearing or reconsideration of that order, and has waived any claim that rates adopted in that order are not fully compensatory.

Second, in Order No. 08-181 the Commission invited Crooked River to offer evidence of its need for capital, “limited to changed circumstances arising after November 29, 2007” (the date of Order No. 07-527). The Company offered no new evidence.

Crooked River is mistaken when it posits that the order to distribute the special assessment fund balance was procedurally improper because it was beyond the scope of Staff’s motion that was addressed in Order No. 07-527. Staff’s motion addresses the Company’s failure to comply with Ordering Paragraphs 4, 5, and 6 of Order No. 07-527. The order to distribute the fund balance is based on the unique circumstances of the Company, as described in Order No. 07-527. The only relationship between Staff’s motion and Order No. 08-177 is that Ordering Paragraph 6 ordered the Company to report to the Commission regarding its need for capital. When that report was (finally) filed – and the Company reported that it has no short term need for new

capital – the Commission determined that the fund balance should be distributed to shareholders of the Company.⁵

In its testimony in the general rate case, Staff offered two alternative treatments of the assessment fund balance. It proposed either setting aside the fund for future capital improvements, or distributing the funds over three years as a deduction from revenues for ratemaking purposes. As discussed above, the Company does not need the funds for any specific capital improvements. The distribution of the fund balance to shareholders is consistent with Staff's recommendation that the fund balance be used as an offset to revenues for ratemaking purposes.

In Order No. 07-527, the Commission made two findings that are central to this order:

11. The capital assessment surcharge fund is an equity interest in the Company held collectively by its owners.

22. Crooked River owners have no equity interest in the company that can be reclaimed in any form.

Given the equity position of its shareholders, their interest is best served by paying out the assessment fund balance to themselves. There is no shareholder benefit to preserving the fund.

There is no "irreparable injury" to shareholders because of the distribution of the fund. There is no "injury" to shareholders. Distribution of the fund is a benefit to shareholders.

The immediate distribution of the funds to shareholders is necessary because of the Company's willful refusal to comply with Commission orders, its propensity for paying excessive compensation to affiliated parties, and its withholding of financial information. Irreparable harm may indeed be the result if the fund balance is not distributed immediately.

The actual balance of the assessment fund has been difficult to establish, even before a full accounting. Staff reported that the balance was \$118,028 as of November 2007, and that was the amount that was ordered to be distributed in Order No. 08-177.

⁵ We use the phrase "short-term" to mean "prior to a decision in a subsequent general rate case." In the event that the Company believes that it does need to raise capital, it can file a general rate case to press that point.

However, in its “application for reconsideration” of Order No. 08-177, the Company reported that the special assessment fund balance is \$233,889, citing Rooks’ declaration to the effect that the fund balance “is currently on deposit in local banks.” That claim was one of the grounds on which the Commission stayed the order.

However, in its April 8, 2008, filing, the Company claims the “actual balance of the account” is \$130,656.26. According to the Company, the difference between this balance and its earlier reported balance results from different accounting treatment of specified expenditures.⁶ That amount – \$130,656.26 – is the amount that the Commission adopts for the distribution to shareholders at this time. Further funds also may be distributed, pending the outcome of an accounting of the Company’s use of the fund.

The Commission reaffirms its order that the Company distribute the remaining special assessment funds to its shareholders. For purposes of this decision, the Commission adopts the Company’s stated fund balance of \$130,656.26. A final determination of the fund balance is deferred, pending an accounting.

The Company has requested that the distribution be deferred, to avoid penalties on early withdrawals of certificates of deposit. We decline to postpone the distribution. Staff’s supplemental response shows that the Company has sufficient unencumbered funds to make the distribution without financial hardship.

The Company shall make the distribution within 15 days of the date of this order. Within five days thereafter the Company shall report to the Commission the manner in which it distributed the fund, including the number of shareholders receiving payment and the amount of the payment.

IV. Accounting

Staff and the Company disagree as to whether some of the funds spent by the Company are properly charged to the special assessment fund account. Intervenor also challenge the sufficiency of the accounting. Accounting issues must be resolved so that the Company’s accounts are in order and the true fund balance is established.

The special assessment surcharge was instituted pursuant to a Board resolution, dated March 29, 2004. The resolution specified the following projects:

- Drilling of Well #3 (Crater Loop and Tower Road) and plumbing to accommodate a chlorination system
- Upgrading of the Cistern and building a new pump house

⁶ In its resolution provided by the Company in support of its April 8 filing, the Board states that it has placed the sum of \$233,889 in an emergency reserve status, apparently to indicate that the money will not be misspent, pending further action by the Commission.

- Replumb and add a chlorination station to Well #1 (formerly #4) located at Cinder Drive and Lower Ridge
- Pay off loan on office building

The resolution further stated: “These projects all have a large price tag, and I (Rooks) want to keep this on a pay as you go basis.”

The money was collected for these specific projects. Any use of the funds for other purposes is beyond the scope of the enabling resolution and inappropriate.

Based on the Company’s response, it is possible that all of the surcharge funds spent by the Company have been spent for corporate purposes. However, given the large (previously undisclosed) account balances held by the Company, it also is possible that some of the funds charged by the Company to the assessment account should have been charged to other accounts.

The Company shall file an accounting of the special assessment surcharge funds consistent with the purposes of the surcharge as stated in the enabling Board resolution. The Company shall file that accounting within 15 days. Thereafter, Staff or any interested party may file comments on the Company’s accounting. The Commission will decide what further actions are necessary at that time. Additional proceedings will be conducted as part of the reopened rate case, as discussed below.

V. Rate Case Reopened

Staff reports that Crooked River maintains numerous accounts, including an “operating” account, “capital” account, “WAMU Contingency” account, and numerous certificates of deposit, with a cumulative balance of \$375,268, including the special assessment fund balance. With the distribution of the \$130,656.26 to its members, the Company will have about \$245,000 on hand (pending the final accounting of the assessment fund).

In a general rate case, the Commission looks at all financial aspects of a utility’s operations, including its cash reserves. In this case Crooked River withheld information regarding these accounts (and, possibly, other accounts). These funds were not accounted for in Order No. 07-527.

The rate case is reopened to consider the ratemaking treatment of the Company’s surplus capital (in excess of the amount recognized in Order No. 07-527). That action will be coordinated with the accounting of the surcharge balance as addressed above. With its comments of the Company’s assessment fund balance, the Staff also shall make a recommendation for the ratemaking treatment of the remaining funds.

VI. Appointment of Regent

In Order No. 08-177 the Commission indicated that it would consider Crooked River's response to that order "decisive in terms of whether the Commission determines that a regent should be appointed." Intervenors argue that the Company's response demonstrates that the current management and Board of Directors are not capable of effectively operating and managing the water system to provide safe and adequate service to customers, in compliance with Oregon statutes.

We take seriously the concerns expressed by intervenors. Again we will consider the Company's compliance with the order as a factor to be taken into account in deciding whether to appoint a regent. We defer consideration of whether to appoint the regent, pending further proceedings as prescribed in this order.

FINDINGS OF FACT

1. Crooked River has contracts with James Rooks and his wife Jacquie to provide services to the Company.
2. James Rooks is a member of the Board of Directors of Crooked River.
3. Crooked River has failed to present its contracts with Rooks family members to the Commission for approval.
4. Crooked River has no need for funds for new construction or capital improvements.
5. Crooked River's customers are its owners.
6. The capital assessment surcharge fund is an equity interest in the Company held collectively by its owners.
7. Crooked River owners have no equity interest in the Company that can be reclaimed in any form.
8. Distribution of the fund balance to shareholders is a benefit to shareholders.
9. Given their unity of interest as shareholders and customers, Crooked River's customers are not harmed by the distribution of the fund balance to shareholders.
10. The immediate distribution of the funds to shareholders is necessary because the Company's willful refusal to comply with Commission orders, its propensity

for paying excessive compensation to affiliated parties, and its withholding of financial information.

11. Shareholders may be irreparably harmed if the fund balance is not distributed immediately.

12. The amount of the assessment fund balance is \$130,656.26.

13. The Crooked River Board resolution of March 29, 2004, specifies four specific projects for the application of the surcharge assessment funds.

14. Any use of funds for other purposes is unauthorized by the Board.

15. Crooked River has reported \$375,268 in various accounts and certificates of deposit.

CONCLUSIONS OF LAW

1. The application for reconsideration of Order No. 08-177 filed by Crooked River should be denied.

2. Crooked River should file with the Commission an application under OAR 860-036-0730 for approval of its contracts with James and Jacquie Rooks.

3. Crooked River should distribute \$130,656.26 to its shareholders and report to the Commission the manner in which the funds were distributed.

4. The assessment fund balance should be determined, based on the terms of the Board's enabling resolution.

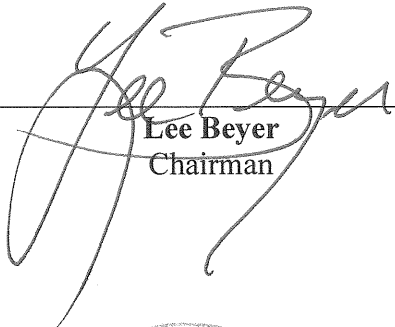
5. Surplus funds should be accounted for in ratemaking.

ORDER

IT IS ORDERED that:

1. The application for reconsideration of Order No. 08-177 filed by Crooked River Ranch Water Company is denied.
2. Crooked River Ranch Water Company shall file with the Public Utility Commission of Oregon its application for approval of its contracts with James and Jacquie Rooks within 15 days of the date of this order.
3. Crooked River Ranch Water Company shall distribute \$130,656.26 to its current shareholders in a lump-sum amount of an equal share basis, not later than 15 days from the date of this order.
4. Within five days of making the distribution to its shareholders, Crooked River Ranch Water Company shall report to the Commission the manner in which it distributed the funds, including the number of shareholders receiving payment and the amount of the payment.
5. Crooked River shall submit an accounting of the special assessment surcharge funds consistent with the purposes of the surcharge as stated in the enabling Board resolution within 15 days of the date of this order.

Made, entered, and effective MAY 02 2008 .



Lee Beyer
Chairman



John Savage
Commissioner



Ray Baum
Commissioner

