

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UW 123

In the Matter of)	
)	
FISH MILL LODGES WATER SYSTEM)	ORDER
)	
Request for a general rate increase.)	

DISPOSITION: APPLICATION FOR RECONSIDERATION DENIED

Fish Mill Lodges Water System (Fish Mill or Company) seeks reconsideration of orders establishing new rates for its three residential customers and its own business, Fish Mill Lodges and a Recreational Vehicle Park (Lodge).¹ Specifically, Fish Mill seeks reconsideration of decisions made to establish test-year expenses for labor and legal expenses. Fish Mill contends the decisions were based on errors of fact and supports its request with supplemental testimony of Shawn Bedsole and a declaration of its attorney, William Ohle.

On August 4, 2008, the Staff of the Public Utility Commission (Commission) filed a response opposing Fish Mill’s request. Staff contends the request does not meet the requirements for reconsideration and should be denied. Staff adds that it does not oppose revisiting the issues raised by Fish Mill, but contends that the proper forum for doing so is through a new rate filing--not a request for reconsideration.

DISCUSSION

Position of the Parties

Fish Mill begins its request for reconsideration noting that it had never previously been through a rate proceeding and that it was without the benefit of legal representation during the case. For this reason, Fish Mill claims it lacked the necessary advice on what testimony was relevant and how it should be presented.

Now that it has retained counsel, Fish Mill presents supplemental testimony in an effort to demonstrate that decisions on two test year expenses were in error. First, Fish Mill challenges our conclusion that contracted labor expenses of \$3,111 were non-recurring

¹ Fish Mill first requested reconsideration via an e-mail sent on July 7, 2008. It subsequently filed a formal request on July 18, 2008. The request seeks reconsideration of two Commission orders: Order No. 08-235, which first established new rates; and Order No. 08-257, which corrected an error in the prior order. Because Order No. 08-257 incorporated the findings, discussion, and conclusion of the Order No. 08-235, Fish Mill’s request for reconsideration is timely under ORS 756.561.

and should be amortized over three years. We explained our adjustment to that test year expense as follows:

Staff identified \$3,111 in Contract Labor Expense, but concluded that a large majority of those costs were related to clearing brush away from the facilities and, consequently, were nonrecurring. Accordingly, to determine test year expenses, Staff amortized the \$3,111 over a three-year period.

Fish Mill opposes the amortization of the Contract Labor Expense. It states that, without amortization, the Company would receive increased revenues to facilitate system improvements in a timelier manner.

We agree with Staff that the Contract Labor Expense incurred during the 2006 test year should be amortized over three years for purposes of setting rates. While we acknowledge Fish Mill's need to make improvements to its water system, customer rates must be established based on the utility's reasonable expenses. As noted, the Contract Labor Expense during the test year was unusually high due to the need to clear away brush to gain access to the water facilities. This level of activity should not be required in the future with routine maintenance, as contemplated by Staff's recommendation that includes an annual \$780 in Repairs and Maintenance Expense.²

Fish Mill presents supplemental testimony to demonstrate that brush clearing is a continuing necessity and that the full expense of the labor costs should be allowed annually. It also claims that there is nothing in the record to indicate that the \$3,111 incurred is not a reasonable amount for that service.

Second, Fish Mill challenges our decision to reduce its legal expenses and amortize that reduced amount over a three-year period. We explained our adjustments to that test-year expense as follows:

In its filing, Fish Mill requested recovery of \$3,507.68 in legal fees. Given the small number of customers, Staff found the amount to be excessive and repeatedly requested that Fish Mill provide information explaining the purpose and reason for the legal expenses. Based on the incomplete information the Company did provide, Staff identified \$2,631 as appropriate legal expenses, and amortized that amount over a three-year period.

Fish Mill contends that all its reported legal expenses were prudent and relevant either to deal with the interference of water system maintenance or to prepare for this rate proceeding. Accordingly, it

² Order No. 08-235 at 3.

seeks recovery of the entire \$3,507.68 on an annual, unamortized basis.

We have reviewed the information provided by Fish Mill in support of its legal expenses and agree with Staff that the Company has failed it burden to establish that all these legal expenses were prudent and related to the provision of water service. As Staff notes, the majority of expenses appear to be related to a 1997 dispute with a former customer. That dispute should have been resolved years ago, and is nonrecurring in nature. We adopt Staff's recommendation to disallow 25 percent of the legal expenses, given the uncertainty of the prudence and relevance of such costs, and to amortize the remaining amount over a three-year period.³

In its request for reconsideration, Fish Mill contends that its legal expenses will continue into the foreseeable future and exceed the amount allowed for recovery. It claims that the ongoing property dispute is an unfortunate but unavoidable expense necessary for the reliable operation of the utility. Fish Mill presents evidence that the referenced customer continues to be an impediment by refusing to allow access to his property and by threatening employees when serving the pump house and storage tank.

In its response, Staff does not address the merits of Fish Mill's allegations. Rather, it contends that Fish Mill has failed to establish that any of this new evidence was not reasonably available before the issuance of the rate orders. Moreover, while the request states that the orders contain errors of fact, Staff points out that the Company does not identify any such errors. Rather, Staff concludes, Fish Mill reargues the litigated issues and states its disagreement with the Commission's factual findings. For these reasons, Staff contends that the new evidence is more properly evaluated in the context of a new rate proceeding—not a request for reconsideration.

Resolution

We agree with Staff that Fish Mill has failed to meet the requirements for reconsideration. As relevant here, OAR 860-014-0095(3) provides that:

The Commission may grant an application for rehearing or reconsideration if the applicant shows that there is:

- (a) New evidence which is essential to the decision and which was unavailable and not reasonably discoverable before issuance of the order;

* * * * *

³ *Id.*

(c) An error of law or fact in the order which is essential to the decision.

While Fish Mill offers new evidence by including supplemental testimony and the declaration of its attorney, it fails to demonstrate that any of this evidence was unavailable and not reasonably discoverable before the issuance of the challenged rate orders. As Staff points out, the very nature of the offered testimony demonstrates that it was available before the issuance of the orders. Moreover, Fish Mill has failed to identify any error of fact that was essential to the decision.

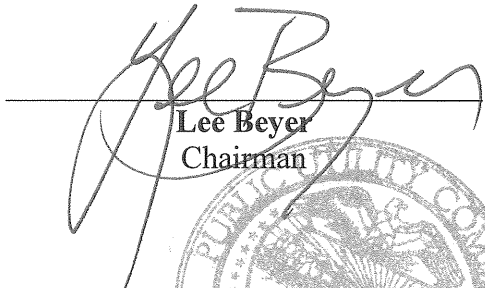
If Fish Mill desires to pursue the issues raised in its request, we suggest the Company file a new rate proceeding so that a complete record can be developed on the overall just and reasonableness of rates. This would allow our Staff or any customer intervenor the opportunity to fairly evaluate the supplemental evidence and address the prudence of the levels of such expenses for a small water utility.

Finally, we note that Fish Mill’s claim that it lacked legal representation during the rate proceeding is refuted by its own evidence offered at hearing. In a written response to Staff’s direct testimony, Judy Bedsole, owner of the utility, claimed: “All legal expenses were prudent and relevant either to deal with the interference and repair or counsel and *assistance in preparing for PUC UW 123.*”⁴ Moreover, Fish Mill attached a listing of legal invoices which included multiple listings for “PUC rate increase consultation” and “PUC rate increase document review/research (ongoing).”⁵


ORDER

IT IS ORDERED that the application for reconsideration, filed by Fish Mill Lodges Water System, is denied.

Made, entered, and effective AUG 22 2008.



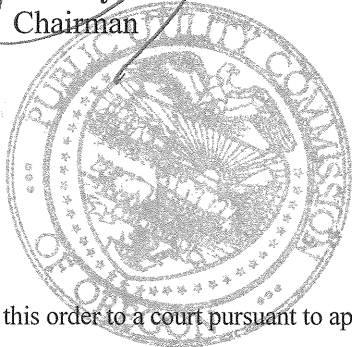
 Lee Beyer
 Chairman



 John Savage
 Commissioner



 Ray Baum
 Commissioner



A party may appeal this order to a court pursuant to applicable law.

⁴ Fish Mill Exhibit 1, page 2. (Emphasis supplied.)

⁵ *Id.* at 4.