

ORDER NO. 11 060  
ENTERED FEB 18 2011

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

WJ 8, UW 120, UI 281, UI 282, & UCR 100

In the Matters of

CROOKED RIVER RANCH WATER  
COMPANY

An Investigation Pursuant to ORS 756.515  
to Determine Jurisdiction (WJ 8)

ORDER

and

Request for a General Rate Revision  
(UW 120)

and

Affiliated Interest Application with  
James Rooks (UI 281)

and

Affiliated Interest Application with  
Jacquie Rooks (UI 282)

and

G.T. and T.T.<sup>1</sup>

Complainants

v.

CROOKED RIVER RANCH WATER  
COMPANY Defendant (UCR 100)

<sup>1</sup> The Commission uses the Complainants' initials in consumer complaint cases to protect consumer privacy. The posting of this order as it related to the consumer complaint case represents a policy change intended to increase the precedential value of such decisions.

DISPOSITION: JURISDICTION ASSERTED; PROCEEDINGS REOPENED; RATES SET; STAY ORDERED

In this order, we find that good cause exists to regulate the Crooked River Ranch Water Company (Crooked River) and reassert jurisdiction under ORS 757.063.<sup>2</sup> Upon asserting jurisdiction, we also address the status of outstanding orders in related dockets, the effects of which have been stayed pending a final determination of jurisdiction.

### I. BACKGROUND

In early 2006, customers of Crooked River filed petitions asking the Commission regulate the water company. The Commission tracked those petitions to determine whether the 20 percent statutory threshold had been met, and verified the petitions by confirming that the address on each of the petitions matched that of a current Crooked River member.

After finding that the 20 percent of the customers had signed the petitions, the Commission sent to Crooked River a "NOTICE OF INTENT TO ASSERT FINANCIAL AND SERVICE REGULATORY AUTHORITY." The notice advised Crooked River of its right to dispute the whether the 20 percent threshold had been met, and to request a hearing.

On May 24, 2006, Crooked River requested a hearing to dispute whether the 20 percent threshold had been met. Crooked River also argued that it was exempt from Commission regulation because it had been operating as a cooperative under ORS chapter 62 (although registered with the Secretary of State as a nonprofit corporation). On July 5, 2006, Crooked River submitted filings with the Secretary of State, purporting to effectuate its reorganization as a cooperative.

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<sup>2</sup> ORS 757.063 provides:

(1) Any association of individuals that furnishes water to members of the association is subject to regulation in the same manner as provided by this chapter for public utilities, and must pay the fee provided by this chapter for public utilities, and must pay the fee provided for in ORS 756.310, if 20 percent or more of the members of the association file a petition with the Public Utility Commission requesting that the association be subject to such regulation.

(2) The provisions of this section apply to an association of individuals even if the association does not furnish water directly to or for the public. The provisions of this section do not apply to any cooperative formed under ORS chapter 62 or to any public body as defined by ORS 174.109.

After hearing and legal briefs, the Commission issued Order No. 06-642 and asserted jurisdiction over Crooked River. The Commission found that sufficient signatures had been received, and that ORS 757.063(1) conferred jurisdiction on the Commission upon the Commission's receipt and verification of the threshold number of signatures. Accordingly, the Commission held that Crooked River's attempt to reorganize itself as a cooperative was without legal effect.

Crooked River appealed the Commission's decision to the Oregon Court of Appeals. The court upheld the Commission's finding that it had received the sufficient number of valid signatures to meet the 20 percent threshold under ORS 757.063(1): The court further concluded, however, that the Commission erred in finding that its jurisdiction first became effective when the Commission had confirmed and verified its receipt of the threshold number of signatures. The Court held that "\* \* \* in light of the text, context, and legislative history of ORS 757.063, the legislature intended an association to be 'subject to regulation' only after the PUC issues an order pursuant to ORS 756.515 determining whether the 20 percent threshold has been satisfied.<sup>3</sup> The Court remanded this matter to the Commission to "\* \* \* complete the process contemplated by its notice in light of a correct interpretation of ORS 757.063."

## II. DISCUSSION

The court's remand of Commission Order No. 06-642 presents two issues. First, the Commission must decide whether Crooked River is a cooperative exempt from jurisdiction under ORS 757.063(2). Second, having found that 20 percent of Crooked River's members have filed petitions for regulation, the Commission must determine if "there is reason to provide oversight."

### A. Crooked River's Corporate Status

In its response to the original notice to assert jurisdiction, and throughout much of these proceedings, Crooked River claimed that it reorganized as a "cooperative formed under ORS chapter 62" and is therefore exempt from the Commission's jurisdiction pursuant to ORS 757.063(2). That position has now been abandoned by the Company.

During the pendency of these proceedings the issue of Crooked River's corporate status was raised in Jefferson County Circuit Court (Circuit Court) in the case of *Nichols v. Crooked River Ranch Water Company*. By ruling dated July 13, 2010, Crooked River's claim was rejected by the Jefferson County Circuit Court, which found that "the dissolution of the Crooked River Ranch Water Company and the creation of the Crooked River Ranch Water Cooperative was invalid."<sup>4</sup>

<sup>3</sup> Slip Opinion, pg. 4.

<sup>4</sup> Letter Opinion of the Honorable Gary Williams (July 13, 2010).

Following the Circuit Court's ruling on the cooperative formation issue, the parties to *Nichols* entered into a partial settlement of the underlying litigation. That partial settlement was approved by the Circuit Court in a "Limited Judgment" entered August 23, 2010. A condition of that settlement was that the Company hold a "fair" election for a new board of directors. That election has occurred, and a new board of directors has taken office. The new board of directors has reversed the course taken by earlier management. Instead of resisting Commission jurisdiction, the new board now solicits it.

This Commission takes official notice of the Jefferson County Circuit Court's ruling on the cooperative formation issue and the "Limited Judgment" entered by the Circuit Court on August 23, 2010. Based on the Circuit Court's holding, the Commission finds that Crooked River's attempted reorganization as a cooperative was ineffective and is not a defense to this Commission's assertion of jurisdiction.

## **B. Reasons to Provide Oversight**

### ***1. Position of Parties***

Besides the widespread customer/member dissatisfaction that led to the filing of the original petitions, the Commission has a record of financial mismanagement, inappropriate ratemaking practices, and mistreatment of customers that fully support (compel) the Commission's assertion of jurisdiction. However, the recent change in Crooked River's board of directors has resulted in a change in the Company's management and a change in the Company's position regarding Commission jurisdiction. The new board unanimously supports Commission jurisdiction over Crooked River.

In written testimony filed by Crooked River, all five board members claim that Commission jurisdiction over its operations would be in the public interest. The board members note that each of them campaigned for the board "in part on a platform supporting Commission oversight of the Company." It is their view that by their votes "the Members (of the Company) demonstrated a collective desire for Commission oversight through their choice of Board members."

The board members also note that one of the conditions of the settlement was that the new board specifically determine whether to reorganize the company as a cooperative. At its first regular meeting the new board determined that it did not wish to become a cooperative. "The Board members decided to keep the Company as a mutual benefit non-profit corporation so that the Commission can provide oversight as desired by the Members."

The board members provide additional grounds for the Commission to assert jurisdiction. They note that, when the new board first took office, all of the Company's employees had resigned. "As the Company rebuilds its management structure, oversight by the Commission will help ensure the Company Members that the Company's actions in the meantime are prudent."

Further, the new board reports that it has not been able to locate reliable financial information from the prior operations. The new board will have to undertake a large effort to assess the system's needs and the appropriate rates to support those needs. "Oversight by the Commission will help to ensure the Company's Members that the ultimate outcome of that effort is reasonable and prudent."

The Company witnesses note that the original petitions did not require that members signing the petition state the specific reason for signing. According to the witnesses, "it is more likely that those individuals still feel that Commission oversight is necessary."

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Finally, they state that "the hall mark of a well-run utility is stability and certainty." Commission oversight will provide a consistent process and outcome-driven approach that the Company's Members can rely on for the prudent operation and continued development of the Company's water system, regardless of the particular make-up of the Company's Board at any given time.

The Commission Staff waived its right to file reply testimony and stated that it "generally agreed that the public interest supports asserting jurisdiction over the Company." Staff stated that it had no cross-examination of the Company witnesses and proposed that the hearing be canceled.

## 2. *Discussion*

The compelling public interest grounds for the Commission's assertion of jurisdiction over Crooked River have been obviated by the Company's change in management. The earlier record is stale and cannot be relied for a finding that Commission jurisdiction is in the public interest.

However, the testimony sponsored by the new board members provides a number of grounds for the Commission to exercise its discretion to assert jurisdiction. The board has taken over a company that has been mismanaged financially and operationally. The new board serves its members' interest in striving to provide for the long term viability of the company by requesting Commission jurisdiction.

For these reasons, we find sufficient grounds to assert jurisdiction over Crooked River Ranch Water Company pursuant to ORS 757.063.

### III. COMPANION PROCEEDINGS

#### A. Introduction

The Commission, having earlier asserted jurisdiction over Crooked River, opened several other related dockets that have been held in abeyance, pending the outcome of this proceeding. The Commission again having asserted jurisdiction, the Commission must address the status of these other proceedings.

On February 11, 2011, Crooked River and Staff filed a joint proposal regarding further Commission actions in these other dockets. On February 15, 2011, Crooked River and Staff filed a supplement to their joint proposal. We adopt the proposals of Crooked River and Staff, which are summarized by dockets below.

#### B. Docket UW 120

In docket UW 120, the Commission decided a Crooked River general rate case (Order No. 07-527). The Commission also issued two orders (Order Nos. 08-177 and 08-243) regarding the treatment of the monies (\$130,656.26) in a special assessment fund collected by the Company for capital improvements.

The Commission vacates each of these orders. The special assessment funds shall be released to Crooked River. The Company's present rates shall remain in effect until further order of the Commission.

The uncertainty over Crooked River's financial condition should be resolved before the Company files a request for a rate revision (as necessary). Crooked River and Staff shall concur and file a joint statement within 60 days of the date of this order regarding the financial status of the Company and a plan for filing a general rate case (if necessary).

#### C. Docket UCR 100

In docket UCR 100 the Commission issued Order Nos. 08-379 and 08-383 ordering Crooked River to connect a certain residential customer to its system and to collect a specified connection charge. Crooked River appealed these orders to the Court of Appeals, arguing that the Commission had no jurisdiction to order the customer connected (or to set the hookup fee).

Having reasserted jurisdiction over Crooked River, the Commission reaffirmed its orders. The Commission is advised that the new board will dismiss the Company's appeal of these orders.

In their supplemental report Crooked River and Staff state that the customer is connected and the matter of the connection charge is resolved. The Commission adopts the parties' recommendation that the decisions be vacated.

**D. Dockets UI 281 and UI 282**

In these dockets, the Commission approved the affiliated interest applications of James Rooks and Jacquie Rooks. Because these individuals no longer are employed by Crooked River, their affiliated interest applications are moot and are dismissed.

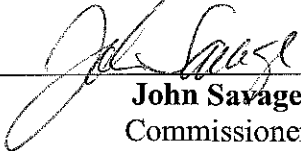
**IV. ORDER**

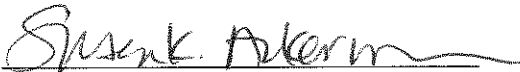
IT IS ORDERED that:

1. The Public Utility Commission of Oregon has jurisdiction over Crooked River Ranch Water Company, pursuant to ORS 757.063.
2. Commission Order Nos. 07-527, 08-177 and 08-243 in docket UW 120 are vacated.
3. Commission Order Nos. 08-379 and 08-383 in docket UCR 100 are vacated.
4. Commission Order Nos. 08-347, 08-375, 08-353, and 08-378, are vacated and dockets UI 281 and UI 282 are dismissed.

5. Crooked River Ranch Water Company shall confer with the Public Utility Commission of Oregon Staff and the parties shall file a joint statement within 60 days of the date of this order regarding the financial status of Crooked River Ranch Water Company and a plan for filing a request for a general rate revision (as necessary).

Made, entered, and effective FEB 18 2011.

  
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**John Savage**  
Commissioner

  
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**Susan K. Ackerman**  
Commissioner



A party may request rehearing or reconsideration of this order under 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 860-001-0720. A copy of the request must also be served on each party to the proceedings as provided in OAR 860-001-0180(2). A party may appeal this order by filing a petition for review with the Court of Appeals in compliance with ORS 183.480 through 183.484.