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**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UW 71

In the Matter of the Tariffs for Water)	ORDER
Service in the State of Oregon Filed by)	
South Fork Water.)	

DISPOSITION: MOTION FOR CLARIFICATION GRANTED;
INTERIM OPERATION ORDERED

A. Background

South Fork Water (“South Fork” or “Applicant”) filed an application on October 22, 1999, for the purpose of increasing the Applicant’s residential flat base rate from \$25.00 per month to \$35.00 per month, effective November 19, 1999. Prior to this time, South Fork had not been regulated by the Commission as a utility. However, during 1999, the Applicant raised its metered residential basic rate¹ beyond the \$24 exemption threshold set forth in OAR 860-036-0030(1)(a) pursuant to ORS 757.061(2). Furthermore, the Commission received petitions from more than 20 percent of the homeowners served by South Fork Water asking that the utility be regulated by the Commission. Discussions between the Commission Staff and John Atkinson resulted in the filing of the application noted above. (Mr. Atkinson had overseen the operation of the water system since he developed the property served by it). At its November 16, 1999 public meeting, the Commission ordered suspension of the tariff sheets’ effectiveness pending an investigation.

Among the petitions to intervene subsequently received by the Commission was a Motion filed on behalf of Mr. Atkinson, personally. In that Motion, he took the position that he was not personally responsible for the operation of the water utility. He stated that he had resigned any office relating to the Applicant, and had no ownership interest superior to that of any other lot owner; he was intervening because there is a possibility of personal liability, an interest in need of protection. His Motion was opposed by the Commission Staff.

¹ See Applicant’s PUC Form 765 (11000) Rev. (08/99) Page 11. Response to Question 19.A.

B. The Scope of the January 31, 2000 Ruling

In our Ruling of January 31, 2000, we granted in part and denied in part both Mr. Atkinson's Petition and the Staff Opposition. In so doing, we fashioned a procedural framework for Mr. Atkinson to be a participant in the proceedings without creating an inference as to how we would ultimately rule on the questions of ownership and operational responsibility for the water utility, two of the issues that could be raised in prefiled testimony and at the evidentiary hearing.

However, in that same Ruling, we noted that "such a procedural solution does not resolve the dilemma that may ultimately deprive us of the means for exploring the issues raised in this proceeding," *i.e., whether or not the Applicant should be granted an increase from \$25 to \$35/month for residential basic metered service*. That was due to the fact that, as a matter of law, the failure of any party to come forward to prosecute the application or Mr. Atkinson's formal withdrawal of or failure to prosecute the tariff filing would terminate this proceeding. The Ruling did *not* state that the Commission would be deprived of jurisdiction over the Applicant in the event the application was withdrawn or went unprosecuted.

At the time the Ruling was issued, there was reason to suspect that Mr. Atkinson might seek to abandon responsibility for the operation of the system before the Commission had rendered a final decision in this case. However, we were not in a position to make any ruling on such potential action for two reasons: first, there was no direct evidence that Mr. Atkinson would, indeed, act in such a manner and, second, no party had formally brought a request for declaratory ruling or injunctive relief before us.

C. Recent Events Provide a Basis for Prompt Commission Action

That situation has now changed. On February 1, 2000, the day after our Ruling in the above matter, the Office of the General Counsel of the Department of Justice received a facsimile copy of a letter dated January 25, 2000 (affixed to this Ruling as Attachment A). That letter, addressed to the members of the South Fork Ranch Owners, Inc. and signed by Mr. Atkinson as President, stated, in part:

"I will not do [the basic maintenance of the system] much longer, so it is now time for the corporation to assume responsibility for the system. I will be out of the area from February 15 until late April 2000, and hopefully the corporation will have assumed maintenance and billing responsibilities by that time. I believe I have discharged any responsibility I may have had to operate the corporation."

The foregoing statement, along with the remainder of the letter's contents, shows a clear intention on Mr. Atkinson's part to abandon any and all responsibility for the provision of water service to the customers of South Fork Water on or before February 15, 2000. On February 8, 2000, the Staff filed the instant Motion for Clarification and Temporary Ruling.

D. Operation of the Water Utility While the Commission's Investigation is Ongoing

As noted above, the monthly residential basic rate increase to \$25 by South Fork Water during 1999, when coupled with the petitions from customers received by the Commission seeking regulated status for South Fork Water, as a matter of law, gives the Commission jurisdiction over the operations of the Applicant. That jurisdiction is unaffected by any actions taken by any party with respect to the instant application to further increase rates.

We have not yet made ultimate findings on the relationship between Mr. Atkinson and South Fork Water. However, relying only upon statements made by counsel for Mr. Atkinson at the public meeting and prehearing conference held in Roseburg on December 9, 1999, and the application itself, we find a *prima facie* case has been made that there is an identity of interest, authority and control between Mr. Atkinson and South Fork Water. Such being the case, the Commission has the authority, pursuant to ORS 757.480, to require that Mr. Atkinson obtain its permission before he disposes of his duty to operate South Fork Water or perform any service related to it. No such permission has been sought by or granted to Mr. Atkinson.

Unless the Commission acts immediately, a substantial likelihood exists that the customers of South Fork Water will be without an operator for an indefinite period. Such a circumstance is contrary to the public interest and the Commission's mandate "to protect such customers, and the public generally, from unjust and unreasonable exactions and practices and to obtain for them adequate service at fair and reasonable rates." ORS 756.040(1). "The commission is vested with power and jurisdiction to supervise and regulate every public utility...in this state, and to do all things necessary and convenient in the exercise of such power and jurisdiction." ORS 756.040(2).

ORDER

IT IS ORDERED that:

1. The Staff Motion for Clarification and Temporary Ruling is granted.
2. John R. Atkinson, either personally, or through his agents, shall operate and maintain the facilities of South Fork Water so as to provide adequate service at its currently charged rates, pending the completion of all necessary proceedings before the Commission.

Made, entered, and effective _____.

Ron Eachus
Chairman

Roger Hamilton
Commissioner

Joan H. Smith
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 of 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. A party may appeal this order to a court pursuant to ORS 756.580.