

1 **BEFORE THE PUBLIC UTILITY COMMISSION**
2 **OF OREGON**

3 UW 123

4 In the Matter of

5 FISH MILL LODGES WATER SYSTEM

6 Request for General Rate Increase
7

STAFF'S RESPONSE TO MOTION FOR
RECONSIDERATION

8 **INTRODUCTION**

9 On July 21, 2008, Fish Mill Lodges Water System ("Fish Mills") filed a Motion for
10 Reconsideration ("Motion"). The Public Utility Commission of Oregon Staff ("Staff")
11 respectfully request that Fish Mill's Motion be denied.

12 **DISCUSSION**

13 Fish Mill's Motion requests reconsideration of the amortization of contract labor
14 expenses over three years and the reduction in legal fees and the amortization of those fees over
15 three years. *See* Motion at 1. In support of its Motion, Fish Mills includes Supplemental
16 Testimony of Shawn Bedsole and the Declaration of William J. Ohle. *See Id.* Fish Mills asserts
17 that reconsideration is appropriate because the Public Utility Commission of Oregon's
18 ("Commission") orders in the rate proceeding are based on errors of fact essential to the decision
19 and new evidence. *See Id. citing* OAR 860-014-0095.

20 OAR 860-014-0095(3) provides in relevant part:

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

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

24 * * *

25 (c) An error of law or fact in the order which is essential to the decision.
26

1 Fish Mill's Motion and supporting testimony does not meet either criterion for
2 reconsideration. While the Motion states that the Commission orders contain errors of fact, it
3 does not point to any. Rather than point to any factual errors, it reargues the litigated issues and
4 states its disagreement with the Commission's factual conclusions.

5 While Fish Mill's does offer new testimony by the inclusion supplemental testimony of
6 Shawn Bedsole and the declaration of William J. Ohle, it utterly fails to demonstrate the
7 information was unavailable and not reasonably discoverable before the issuance of the order. In
8 fact, the very nature of the offered testimony demonstrates it was available before the issuance of
9 the orders.

10 Although Fish Mill's Motion is couched in terms of a request for reconsideration based
11 upon new evidence that was unavailable and not reasonably discoverable before the issuance of
12 the orders and errors of law, it seems clear that the real basis of the request is that Fish Mills
13 chose not to retain counsel until after the Commission orders were issued. In such a
14 circumstance, Fish Mills should file a rate application and not a motion for reconsideration.

15 Because Fish Mill's Motion does not meet the reconsideration criteria, the Commission
16 should not establish a practice of allowing reconsideration to be used in lieu of rate filings.
17 Furthermore, if Fish Mill's Motion was granted when the reconsideration criteria is not met it
18 could set precedent for other parties to inappropriately argue that failure to retain legal counsel is
19 a valid reason to grant reconsideration.

20 Staff does not oppose revisiting the issues raised in Fish Mill's Motion. However, the
21 appropriate procedure for doing so is through a rate filing where a complete record can be
22 developed on the overall just and reasonableness of the rates. For example, Fish Mill's Motion
23 argues that a high level of legal expenses is ongoing. In response to new testimony from Fish
24 Mills, Staff will want to offer correspondence from the Fish Mill file on past legal disputes and
25 Commission arbitration to expand on the prudence of continuing high levels of legal expenses
26

1 for such a very small water utility. Because the last rate filing is so recent, Staff should be able
2 to expedite a future filing and focus on the issues raised in the Motion.

3 CONCLUSION

4 For the foregoing reasons, Staff respectfully requests that the Commission deny Fish
5 Mill's Motion. Instead, Fish Mills should be directed to file a rate filing. Staff agrees to
6 expedite its review of a new rate application.

7 DATED this 4th day of August 2008.

8 Respectfully submitted,

9 HARDY MYERS
10 Attorney General

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12 s/Jason W. Jones
13 Jason W. Jones, #00059
14 Assistant Attorney General
15 Of Attorneys for Staff of the Public Utility
16 Commission of Oregon

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1 **CERTIFICATE OF SERVICE**

2 I certify that on August 4, 2008, I served the foregoing RESPONSE upon all parties of
3 record in this proceeding by delivering a copy by electronic mail and by mailing a copy by
4 postage prepaid first class mail or by hand delivery/shuttle mail to the parties accepting paper
5 service.

6 **FISH MILL LODGES WATER SYSTEM**

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9 **PUBLIC UTILITY COMMISSION**

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