

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

WJ 8, UW 120, UI 281, UI 282, UM 1381, and UCR 100

In the Matters of

CROOKED RIVER RANCH WATER COMPANY

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

Request for rate increase in the total annual revenues
from \$806,833 to \$868,453, or 8.13 percent.
(UW 120)

Affiliated Interest Applications with James and
Jacquie Rooks. (UI 281 and 282)

**CROOKED RIVER RANCH
WATER COMPANY'S
OBJECTIONS TO
COMMISSION'S NOTICE OF
CERTAIN ALLEGED FACTS**

THE PUBLIC UTILITY COMMISSION OF
OREGON,

Complainant,

v.

CROOKED RIVER RANCH WATER COMPANY,
et al.,

Defendants. (UM 1381)

G.T. & T.T.,

Complainants,

v.

CROOKED RIVER RANCH WATER COMPANY,

Defendant. (UCR 100)

Pursuant to OAR 860-014-0050(2), Crooked River Ranch Water Company (“CRRWC”) objects to the Commission’s “taking of official notice” of all of its files in UW 120 and UCR 100, as set out in PUC Order No. 09-391. The Commission’s action is objectionable for the following reasons:

1. Taking notice of new evidence exceeds the scope of the Court of Appeals’ remand in Court of Appeals case no. A134177.

In the Court of Appeals’ decision in case number A134177, dated December 24, 2008, the court concluded that the Commission erroneously interpreted applicable law when it asserted jurisdiction over CRRWC. *Crooked River Ranch Water Company v. Public Utility Commission of Oregon*, 224 Or App 485, 198 P3d 967 (2008). In disposing of the appeal, the Court of Appeals “remanded for reconsideration.” *Id.* at 492. The Commission exceeded the scope of the Court of Appeals’ remand by considering new evidence. *See* Attorney General’s Administrative Law Manual at 168-69 (“Reconsideration occurs when, *based on the existing record* in the case, an agency examines the factual or legal basis for its order or reexamines the adequacy of its findings. * * * Rehearing occurs when an agency either holds an entirely new hearing and re-decides the case based solely on the new hearing record, or the agency holds a supplementary hearing and re-decides the case based on the original record and the record developed at the supplementary hearing.”) (emphasis added).

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2. The Commission is not permitted to take evidence after the conclusion of taking evidence without providing notice to the affected parties and opportunity to respond.

The taking of evidence in the jurisdiction case concluded at some point prior to the entry of the original jurisdiction order. State law prohibits the Commission from reopening the record after the taking of evidence is concluded unless the Commission gives the parties a reasonable opportunity in which to respond. ORS 756.558(1) (“At the conclusion of the taking of evidence, the Public Utility Commission shall declare the taking of evidence concluded. Thereafter no additional evidence shall be received except upon the order of the commission and a reasonable opportunity of the parties to examine any witnesses with reference to the additional evidence and otherwise rebut and meet such additional evidence.”). The Commission erred by issuing an order without complying with ORS 756.558(1) with respect to the newly accepted evidence.

3. CRRWC disputes the Commission’s averments of improper conduct by CRRWC personnel.

The Commission’s decision to take notice of voluminous documents, without providing copies to CRRWC or making specific findings of fact with respect to specific

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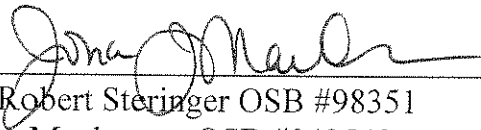
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allegations, prevents any meaningful rebuttal. Nevertheless, CRRWC notes for the record that it disputes any averments of improper conduct by CRRWC personnel that the Commission intends to suggest by citing those documents.

Dated: October 20, 2009

GLENN SITES REEDER & GASSNER LLP
Timothy R. Gassner, OSB #023090

HARRANG LONG GARY RUDNICK P.C.



C. Robert Steringer OSB #98351
Jona Maukonen, OSB #043540
Of Attorneys for Crooked River Ranch Water
Company

CERTIFICATE OF FILING AND SERVICE

I certify that on October 20, 2009, I filed the foregoing **CROOKED RIVER WATER COMPANY'S OBJECTIONS TO COMMISSION'S NOTICE OF CERTAIN ALLEGED FACTS** on the Public Utility Commission by email and first class mail, postage prepaid, addressed as follows:

Public Utility Commission of Oregon
Attn: Filing Center
P.O. Box 2148
Salem, OR 97308-2148
PUC.FilingCenter@state.or.us

I further certify that on October 20, 2009, I served a true and accurate copy of the foregoing document by email and first class mail, postage prepaid, addressed as follows:

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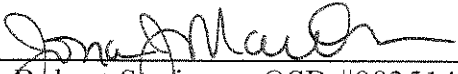
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Of Attorneys Crooked River Ranch Water
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(UW 120)

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**DECLARATION OF JAMES
ROOKS IN SUPPORT OF
OBJECTION TO
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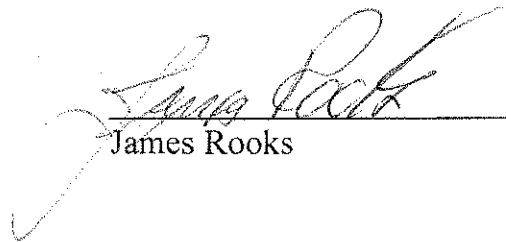
I, JAMES ROOKS, declare and state as follows:

1. I am the General Manager for the Crooked River Ranch Water Company ("CRRWC") and I make this declaration based upon my personal knowledge and in support of CRRWC's Objection to Commission's Notice of Certain Alleged Facts.

2. In PUC Order No. 09-391, the Commission purports to take official notice all of its files in UW 120 and UCR 100. Although the Commission fails to identify or make a finding on any alleged fact within those documents, making it impossible to respond to the Commission's "official notice" of those voluminous documents, I dispute for the record any insinuation by the Commission that any employee, manager or director of CRRWC engaged in any form of wrongdoing against CRRWC or its members.

I hereby declare that the above statement is true to the best of my knowledge and belief, and that I understand it is made for use as evidence in court and is subject to penalty of perjury.

Dated this 20th day of October, 2009



James Rooks

CERTIFICATE OF FILING AND SERVICE

I certify that on October 20, 2009, I filed the foregoing **DECLARATION OF JAMES ROOKS IN SUPPORT OF OBJECTION TO COMMISSION'S NOTICE OF CERTAIN ALLEGED FACTS** on the Public Utility Commission by email and first class mail, postage prepaid, addressed as follows:

Public Utility Commission of Oregon
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