
PUBLIC UTILITY COMMISSION
OF OREGON

UW 123

SUPPLEMENTAL TESTIMONY
OF
SHAWN BEDSOLE

In the Matter of
FISH MILL LODGES WATER SYSTEM
Request for a General Rate Increase
July 17, 2008

Q: Please state your name, occupation, and address.

A: My name is Shawn Bedsole and I am the operator of the Fish Mill Water System and an employee of the Fish Mill Lodges & R.V. Park, located at 4844 Fish Mill Way, Westlake, Oregon. The owner of Fish Mill Lodges & R.V. Park is my mother, Judy Bedsole. Fish Mill Lodges & R.V. Park owns the Fish Mill Water System. While I am the operator of the system, I have never been compensated for my work for the Fish Mill Water System other than what I receive under my employment with Fish Mill Lodges & R.V. Park.

Q: Please explain the history of the Fish Mill Water System.

A: The Fish Mill Lodges & R.V. Park has been in my family since 1989 when my mother purchased the property and is comprised of vacation cabins and recreational vehicle spaces on Siltcoos lake on the Oregon Coast a few miles south of Florence, Oregon. The Fish Mill Water System, which is comprised of a spring, pump, storage tank, and distribution system, started out serving the Fish Mill Lodges and through cooperation with neighboring households, provided water to those households under an informal arrangement. Currently, the water system has, in addition to Fish Mill Lodges, three legitimate residential customers. However, it has recently come to my attention that a fourth, unauthorized, connection has been in operation for what could have been years and will require Fish Mill Lodges to take on yet another uncompensated administrative duty for the water system in an attempt to collect for back-owed fees. Regardless of the situation it now finds itself in, it was never the intent of Fish Mill Lodges to enter into the utility business.

The cooperative arrangement to provide water services to neighboring households became complicated when, in 1997, a neighboring property owner, Lawrence Gunn, over whose property the main distribution line passes, began new

construction, damaged the line, refused to cooperate and allow access and threatened the easement and integrity of the system. This eventually led to the intervention of the Oregon Public Utility Commission and local law enforcement.

Historically, Fish Mill Lodges has never recovered the total cost of running the water system from its customers – which in addition to the lodge includes just three other households. Fish Mill Lodges has provided free of charge administration of the system, that being billing, arranging for all maintenance, responding to trouble calls, dealing with the ongoing dispute with Mr. Gunn, and now dealing with rate regulation. Further, Fish Mill Lodges has historically provided free maintenance to the system in the form of keeping the facilities accessible, which includes the clearing of brush and specifically dealing with the consistent interference and threats by Mr. Gunn and his son who also resides on the Gunn property.

Q: Please explain the operation of the Fish Mill Water System and the maintenance historically provided by Fish Mill Lodges free of charge.

A: Historically there was no need to separate the functions of the Lodges from the Water System; that has changed due to regulation. The system itself consists of a spring, pump and storage tank located on a separate tract of land, owned by Fish Mill Lodges, but physically removed from the tract upon which the Lodges are located. The area of the spring and facilities quickly becomes over grown with vegetation and to maintain access for any possible repairs that may be needed would require yearly removal of brush. Historically, this has not been done yearly, but as required for repairs or maintenance. However, it is my understanding that the repairs required of the system by the Drinking Water Program will require continued access to the facilities and thus the regular clearing of brush.

Again, historically, the clearing of brush has been provided for free by Fish Mill Lodges. This may no longer be practical because of security concerns, and regardless, this service is for the benefit of the utility and Fish Mill Lodges pays the utility for its service. The Lodges should not, in addition to paying for its utility service, be providing free labor, which merely translates into additional and undocumented rate subsidies for other customers.

I have no reason to doubt that the cost of clearing brush, as identified by Staff Member Kathy Miller, of \$3,111 is inaccurate.

Q: Please explain the “security concerns” you have regarding the ability for Fish Mill Lodges to provide services to the water system.

A: The Fish Mill Water System continues to have a dispute with the neighboring property owner, Mr. Lawrence Gunn, who also has a son living with him on the property. The only way to access the facilities is to cross in front of Mr. Gunn’s property. On more than one occasion I have been physically threatened by Mr. Gunn and his son, and given the history of the dispute and the need to involve law enforcement, I have good reason to fear for my personal safety and that of my property. Again the only way to access the system is to leave your vehicle near the Gunn property and hike approximately one-eight a mile to the facilities.

As a result of these safety concerns, Fish Mill Water System anticipates the need to hire a third party contractor to perform all services, including the clearing of brush, at the facilities.

Q: Please explain what further actions are required of the Fish Mill Water System to deal with the dispute with Mr. Gunn.

A: The distribution line for the system crosses Mr. Gunn’s property. He has in the past damaged the system and due to the water quality problems and my

observations of damp ground around Mr. Gunn's property in the location of the line, I have reason to believe that the line is again damaged. Mr. Gunn, however, continues to refuse any access to his property by Fish Mill. Access to his property to inspect the line or to make repairs requires that Fish Mill retain an attorney, obtain a Writ of Assistance from a court, give the Writ to local law enforcement, who will enforce the Writ and accompany representatives of the utility onto the property, but only for a fee. To further complicate matters, the Writ can only be executed, and access provided, if Mr. Gunn is present to receive service. Mr. Gunn can easily avoid service and thus prevent the assistance of law enforcement.

In the end, Fish Mill has no control of Mr. Gunn's actions and it must seek the only legal remedies it has in order to maintain the integrity of the water system. This not only takes retaining legal services, but also requires hours of administrative time by Fish Mill Lodges, that has never been charged to the water utility.

Q: Do you have any reason to doubt the reasonableness or the necessity of the legal expenses incurred by Fish Mill in the past due to Mr. Gunn's interference?

A: No.

Q: What are the foreseeable options for resolving the dispute with Mr. Gunn?

A: The only way to completely resolve the dispute with Mr. Gunn is for Fish Mill to abandon its property. Fish Mill is exploring the cost of relocating the water line, but this will require not only reconstructing the line but also cooperation with the City to allow relocation of the line in the public right-of-way. Finally, as long as Mr. Gunn remains a physical threat to anyone servicing the spring and related

facilities, there is no way the utility can continue to operate without addressing, and paying the related costs arising from, his continuing interference and threats.

Q: Please explain when and why you decided to retain legal representation in the rate case before the Oregon Public Utility Commission.

A: The current rate case, UW 123, is the first time that anyone at Fish Mill has been involved in a rate proceeding of any kind. It has been an immense learning experience for me and Fish Mill. It did not become apparent to me that Fish Mill would benefit from legal representation in the proceeding until after the Commission issued its Order limiting the amount Fish Mill could recover in the way of costs. From my research of attorneys in the area, it became apparent to me that the expertise needed for a rate proceeding could only be obtained from out-of-town counsel, and that most attorneys with utility law experience in Oregon are in the Portland area. I had in the past spoken with Mr. William J. Ohle, but Fish Mill did not retain his services until the week of July 7, 2008.

Q: Does this conclude your supplemental testimony.

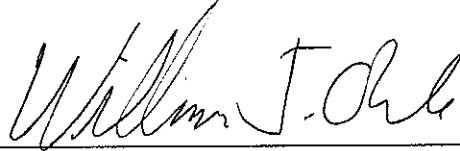
A: Yes



Shawn Bedsole
Fish Mill Water System

CERTIFICATE OF SERVICE

I hereby certify that on the 18th day of July, 2008, I served the foregoing SUPPLEMENTAL TESTIMONY OF SHAWN BEDSOLE upon all parties of record in this proceeding by mailing a copy properly addressed with first class postage prepaid or by electronic mail pursuant to OAR 860-13-0070.



William J. Ohle

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OREGON PUBLIC UTILITY COMMISSION

UW-123

In the Matter of
FISH MILL LODGES WATER SYSTEM

REQUEST FOR A GENERAL RATE
INCREASE,

DECLARATION OF WILLIAM J. OHLE IN
SUPPORT OF MOTION FOR
RECONSIDERATION

I, William J. Ohle, do declare under penalty of perjury:

1. I am an attorney with 17 years of experience with the Portland law firm of Schwabe, Williams & Wyatt. I was retained by the Fish Mill Lodges Water System during the week of July 7, 2008, to seek reconsideration of the Commission's May 19, 2008, Order setting new general rates for the utility.

2. While the Fish Mill Water System did an admirable job *pro se* before the Commission in the rate case, Docket No. UW-123, it did not have the advantage of legal advice during the process, and specifically in presenting relevant testimony and argument in the rate proceeding, and cross-examining other party witnesses.

3. It is unclear to me how the Fish Mill Lodges Water System could, or can in the future, resolve the dispute it currently has with its neighboring property owner, Lawrence Gunn. The resolution of that dispute appears to be within the sole control of Mr. Gunn. If Mr. Gunn continues to interfere with the operation of the utility by blocking access to the utility easement that crosses his property, Fish Mill Water System has no option but to engage the services of an attorney to seek the proper writs and process necessary to legally enforce the necessary access.

4. The \$754 per year in legal expenses allowed under the current Order is woefully

1 inadequate to allow Fish Mill to both contend with the interference of Mr. Gunn and retain
2 adequate representation before the Commission. The preparation and filing of the Motion for
3 Reconsideration alone will take approximately five hours of my time, and will not include every
4 hour spent reviewing the history of the utility and gathering background from the utilities
5 operators, for which I am not charging Fish Mill but would be legitimate billable time.

6 5. The practice of utility law is highly specialized. I have specifically practiced
7 utility law for over ten years, including five years in-house with a full service electric, water, and
8 sewer municipal utility. Still, my billing rate of \$310 per hour falls below the 75 percentile in
9 the Oregon State Bar 2007 Economic Survey for attorneys with my years of experience in the
10 City of Portland (relevant pages attached hereto as Exhibit A).

11 6. The Motion for Reconsideration alone will cost the utility approximately \$1,550
12 (5 x \$310). I estimate that competent representation throughout a rate proceeding would involve
13 at least 24 hours (which equates to only three, eight hour, days worth of work) and would equal
14 approximately \$7,440. This amount would allow of only one day for preparation of testimony
15 and exhibits and the response to data requests; one day for the attendance in a work
16 session/mediation session (and would not include any travel time from Portland to the location of
17 the session); and one day for a hearing before the Commission and all other post-order briefing
18 and proceedings (again, without any allowance for travel time). This is a very conservative
19 estimate and assumes that the attorney is an experienced utility lawyer in Oregon and includes no
20 time for researching utility law or getting up-to-speed on Commission procedure.

21 7. Amortized over three years, this \$7,440 for regulator attorney representation
22 comes to \$2,480 per year.

23 8. Adding the \$754 per year allowed by the Commission for the property dispute,
24 the total legal requirements of the utility, absent any other issues, is \$3,234.

25 9. This estimate of annual legal fees makes no account for other legal issues and, as
26 the operator of the utility recently learned, there is an illegal connection to the system that could

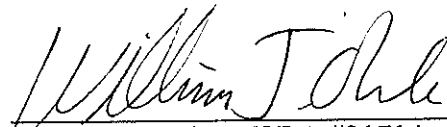
1 necessitate an attorney's involvement, especially if private property rights are involved and
2 access to private property is necessary to remedy the illegal nature of the connection.

3 10. Between the dispute with Mr. Gunn, the regulatory requirements of the utility,
4 and the illegal connect, Fish Mill Water System's legitimate legal expenses could easily exceed
5 the \$3,500 requested by the utility. The requested amount by the utility equates to less than 12
6 hours of attorney time to the utility per year. Requiring the utility to operate on less than three
7 hours of legal advice per year would deprive the utility of adequate representation before the
8 Commission in rate proceedings and would not provide sufficient funds for the utility to protect
9 its interests against those presented by Mr. Gunn and the illegal connections.

10 11. The only way that Fish Mill Water System was able to afford counsel at this stage
11 in the proceeding was for Fish Mill Lodges, one of the utility customers, to personally pay the
12 cost of the representation.

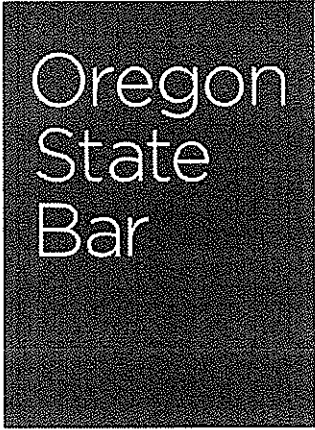
13 SCHWABE, WILLIAMSON & WYATT, P.C.

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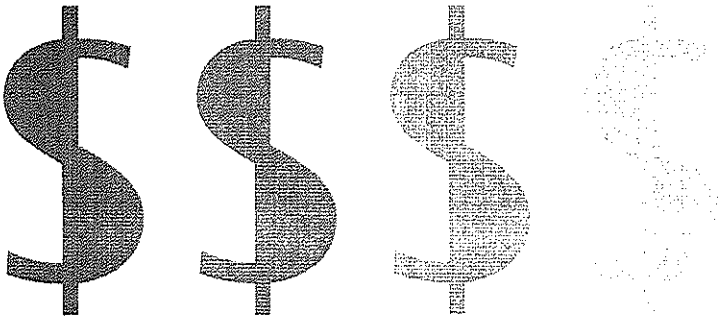


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Of Attorneys for Fish Mill Water System

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**OREGON STATE BAR
2007 ECONOMIC SURVEY**



DECEMBER 2007

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BILLING RATE

The average, median, low, 25th, 75th, and 95th percentiles, and high hourly billing rates are included in the following table. This data includes attorneys in private practice working full-time, part-time by choice, or part-time Due to Lack of Legal Work. For Oregon, the average and median billing rates of \$213 and \$200 per hour compare to \$174 and \$165 in the 2002 survey.

Hourly Billing Rate All Respondents – Private Practice

Hourly Billing Rate	Oregon	Portland	Tri-County	Upper Valley	Lower Valley	Southern Oregon	Eastern Oregon	Oregon Coast
Average	\$213	\$244	\$207	\$178	\$184	\$180	\$185	\$177
Median	\$200	\$230	\$200	\$175	\$180	\$175	\$180	\$173
Low	\$25	\$25	\$40	\$30	\$40	\$110	\$50	\$125
25th Percentile	\$165	\$185	\$175	\$150	\$150	\$150	\$150	\$150
75th Percentile	\$250	\$298	\$250	\$200	\$210	\$200	\$200	\$185
95th Percentile	\$350	\$375	\$326	\$275	\$258	\$297	\$275	\$294
High	\$575	\$575	\$500	\$300	\$310	\$300	\$425	\$300

TOTAL YEARS ADMITTED TO PRACTICE

Average and median hourly billing rates by total years admitted to practice are presented in the following table. This data includes attorneys in private practice working full-time, part-time by choice, or part-time Due to Lack of Legal Work. For Oregon, the average and median billing rates were generally higher with more years admitted to practice. Regional data exhibits some variations, but generally follows the trend of higher rates as years of experience increase.

Hourly Billing Rate by Total Years Admitted to Practice – Private Practice

Years Admitted	Oregon	Portland	Tri-County	Upper Valley	Lower Valley	Southern Oregon	Eastern Oregon	Oregon Coast	
0-3 Years	Average	\$165	\$177	\$172	\$141	\$150	\$148	\$127	n/a
	Median	\$165	\$180	\$165	\$150	\$150	\$140	\$130	n/a
	25th Percentile	\$150	\$162	\$125	\$125	\$130	n/a	n/a	n/a
	75th Percentile	\$185	\$190	\$192	\$160	\$155	n/a	n/a	n/a
	95th Percentile	\$215	\$216	\$388	\$207	\$200	n/a	n/a	n/a
4-6 Years	Average	\$174	\$188	\$172	\$159	\$162	\$151	\$164	\$156
	Median	\$175	\$185	\$175	\$150	\$175	\$150	\$150	\$150
	25th Percentile	\$150	\$170	\$150	\$150	\$125	\$130	\$150	\$142
	75th Percentile	\$200	\$210	\$195	\$175	\$192	\$165	\$175	\$174
	95th Percentile	\$235	\$240	\$229	\$250	\$200	\$200	\$200	\$185

Hourly Billing Rate by Total Years Admitted to Practice – *Private Practice* *Continued*

Years Admitted	Oregon	Portland	Tri-County	Upper Valley	Lower Valley	Southern Oregon	Eastern Oregon	Oregon Coast	
7-9 Years	Average	\$202	\$239	\$194	\$162	\$160	\$168	\$155	\$160
	Median	\$200	\$225	\$180	\$162	\$158	\$150	\$150	\$150
	25th Percentile	\$150	\$200	\$150	\$115	\$135	n/a	n/a	n/a
	75th Percentile	\$234	\$275	\$225	\$205	\$198	n/a	n/a	n/a
	95th Percentile	\$317	\$360	\$299	\$235	\$250	n/a	n/a	n/a
10-12 Years	Average	\$206	\$235	\$200	\$156	\$162	\$162	\$194	\$150
	Median	\$200	\$250	\$218	\$170	\$158	\$160	\$188	\$150
	25th Percentile	\$152	\$165	\$169	\$132	\$140	n/a	\$156	n/a
	75th Percentile	\$252	\$290	\$250	\$182	\$191	n/a	\$220	n/a
	95th Percentile	\$325	\$334	\$323	\$235	\$210	n/a	\$275	n/a
13-15 Years	Average	\$207	\$225	\$208	\$186	\$185	\$177	\$191	\$179
	Median	\$200	\$230	\$208	\$190	\$180	\$175	\$175	\$180
	25th Percentile	\$175	\$180	\$176	n/a	\$150	\$172	\$150	\$158
	75th Percentile	\$250	\$275	\$250	n/a	\$222	\$182	\$225	\$200
	95th Percentile	\$294	\$330	\$292	n/a	\$225	\$190	\$350	\$200
16-20 Years	Average	\$221	\$267	\$208	\$191	\$177	\$152	\$189	\$155
	Median	\$200	\$275	\$200	\$180	\$175	\$158	\$185	\$150
	25th Percentile	\$169	\$200	\$175	\$155	\$150	n/a	\$165	n/a
	75th Percentile	\$275	\$325	\$250	\$210	\$222	n/a	\$210	n/a
	95th Percentile	\$375	\$387	\$365	\$285	\$245	n/a	\$290	n/a
21-30 Years	Average	\$238	\$277	\$226	\$211	\$208	\$192	\$188	\$173
	Median	\$225	\$275	\$220	\$180	\$200	\$190	\$198	\$165
	25th Percentile	\$180	\$225	\$180	\$175	\$180	\$166	\$175	\$142
	75th Percentile	\$275	\$325	\$250	\$265	\$225	\$208	\$206	\$182
	95th Percentile	\$378	\$399	\$367	\$285	\$308	\$300	\$252	\$300
Over 30 Years	Average	\$232	\$287	\$218	\$207	\$206	\$205	\$190	\$203
	Median	\$210	\$300	\$200	\$200	\$202	\$200	\$178	\$190
	25th Percentile	\$180	\$239	\$175	\$179	\$179	\$169	\$150	\$175
	75th Percentile	\$275	\$350	\$250	\$256	\$242	\$220	\$200	\$234
	95th Percentile	\$390	\$461	\$362	\$300	\$284	\$300	\$425	\$300

CERTIFICATE OF SERVICE

I hereby certify that on the 19th day of July, 2008, I served the foregoing DECLARATION OF WILLIAM J. OHLE IN SUPPORT OF MOTION FOR RECONSIDERATION upon all parties of record in this proceeding by mailing a copy properly addressed with first class postage prepaid or by electronic mail pursuant to OAR 860-13-0070.



William J. Ohle