

**PUBLIC UTILITY COMMISSION OF OREGON
STAFF REPORT
PUBLIC MEETING DATE: June 18, 2002**

REGULAR **CONSENT** **EFFECTIVE DATE** _____

DATE: June 11, 2002

TO: John Savage through Marc Hellman and Rebecca Hathhorn

FROM: Kathy Miller

SUBJECT: FIRST ON THE HILL WATER COMPANY: Request the Commission to order water company owner to provide documentation supporting a claim on surplus funds.

STAFF RECOMMENDATION:

Staff recommends the Commission notify Darrell and Vicki Lee, owners (the owners or the Lees) of First On The Hill Water Company or First Hill Water, Inc. (FHW) that they have thirty days from the issuance of the Commission's order to provide substantive documentation supporting their claim for surplus funds (funds) associated with the Interim Operating Agreement for FHW. If supporting documentation is provided, staff shall review the documentation and report back with its recommendations to the Commission at a regularly scheduled Public Meeting within 45 days of receipt. If no supporting documentation is provided within 30 days, staff will notify the Commission as such in writing and recommend the Commission approve an immediate disbursement of the funds to the customers of FHW whose water service payments generated such funds.

DISCUSSION:

On January 8, 2002, PUC received a claim from the owners of FHW. The claim form submitted by the Lees alleges they are entitled to receive \$125,000 from surplus funds (funds) generated during the time period the PUC contracted for the operation and administration of the water system under an Interim Operating Agreement (IOA). This action was necessary due to the owners' refusal to operate the system.

Attachment A outlines a brief, but more detailed, history of FHW. During the time period the IOA was in force, the rate collected from FHW customers for water service produced an excess of funds. Staff let the surplus funds accumulate to offset any repairs that might be required during the interim period.

Staff's final accounting of the total revenue received during the IOA time period minus total expense resulted in a surplus of \$10,089.71. The Commission has held the funds in trust, in an interest bearing account pursuant to Order No 01-151, issued February 2, 2001. As of June 2, 2002, the account balance plus interest equals \$10,373.72. The account has two outstanding expenses totaling \$606.29 resulting in a total disbursement of \$9,767.43.

Staff has calculated an equitable disbursement schedule of the funds based upon the amount paid per individual customer during the IOA time period. Attachment B shows staff's recommendation for disbursement of the funds, updated to include all interest accumulated to date.

Staff's letter of December 26, 2001, to all parties, interested parties, and former customers of FHW explained that the revenues collected while the IOA was in place resulted in surplus funds (funds). The letter included an explanation and attachment showing staff's recommended disbursement schedule. A claim form was also provided should someone disagree with staff's disbursement proposal.

On January 8, 2002, PUC received a claim from the owners of FHW. The claim form submitted by the Lees states they are entitled to receive \$125,000 allegedly because:

- 1) During the IOA time period FHW property taxes had not been paid.
- 1) During the IOA time period FHW income taxes had not been paid.
- 3) The water distribution system was wrongfully taken from the Lees.

The Lees did not provide any supporting documentation with the claim. Below I will address each issue stated in the Lees' claim.

PROPERTY AND INCOME TAXES

In correspondence dated February 27, 1999, Darrell Lee brought the issue of federal, state, and property tax to staff's attention. The letter stated the Lees had received letters from the Internal Revenue Service, the Oregon Department of Revenue, and the Deschutes County tax assessor indicating that the corporation's property tax and income tax returns had not been filed nor paid.

Staff's letter of response, dated March 19, 1999, stated that PUC had not received any tax documents and requested copies of such documents be forwarded to staff so appropriate action could be taken. As a precaution, a second copy of the letter was sent to the Lees by certified mail. On April 7, 1999, Vicki Lee signed for the delivery of the certified mail. The Lees did not provide any documents regarding income taxes or property tax, nor were any bills forwarded to staff for payment.

WATER DISTRIBUTION ASSETS

The owners claim that the PUC "took" the system from them. The PUC did not "take" any assets from the owners. PUC simply contracted for the operation, maintenance, and administration of the system because the owners refused to meet their obligation to do so. The physical assets of the corporation still remain where the owners originally placed them. The owners can retrieve the pipes/equipment for salvage if they choose.

Staff has a long documented history of the Lees' lack of cooperation in resolving FHW's issues. Staff recommends the Commission provide the Lees with a final 30 days to provide verifiable evidence supporting their claim. Should the Lees not provide such evidence within 30 days, staff requests the Commission approve the immediate disbursement of the funds pursuant with staff's recommended allocation shown in Attachment B.

PROPOSED COMMISSION MOTION:

The Commission notify Darrell and Vicki Lee, owners of First Hill Water, Inc, that they have 30 days from the date of the Commission's order to provide substantive documentation supporting their claim for surplus funds associated with the Interim Operating Agreement for FHW. If supporting documentation is provided, staff shall review the documentation and report back with its recommendations to the Commission at a regularly scheduled Public Meeting within 45 days of receipt. If no supporting documentation is provided within 30 days, staff will notify in writing the Commission as such and recommend the Commission approve an immediate disbursement of the funds to the customers of FHW whose water service payments generated such funds.

BRIEF HISTORY OF FIRST HILL WATER, INC. (FHW)

- In its May 7, 1997, UW 54/UM 857 testimony on FHW's 1996-1997 general rate case, staff documented that the owners of FHW failed to fulfill their statutory obligations as a public utility to operate the water system.
- Commission Order No. 97-240 ordered staff to 1) find a person(s) and contract for the operation of the water system, and 2) set up and monitor an account for the water system's expenditures, billings/collections, and deposit of revenues.
- On November 7, 1997, the Commission issued Order No. 97-432 appointing Butch Rogers as the operator of FHW and Karen Gilbride, a customer, to perform the administrative functions of the water system under an Interim Operating Agreement (IOA).
- On September 16, 1998, in PUC Order No. 98-377, the Commission ordered the IOA to continue, but transferred the contract to Ridgeline Water Company, Inc.
- Darrell Lee's letter of February 27, 1999, brought the issue of federal, state, and property tax to staff's attention. He stated they (the Lees) had received letters from the Internal Revenue Service, the Oregon Department of Revenue, and the Deschutes County tax assessor indicating that the corporation's property tax and income tax returns had not been filed nor paid.
- Staff's letter dated March 19, 1999, stated that PUC had not received any tax documents and requested copies of such documents be forwarded to staff so appropriate action could be taken.
- As a precaution, a second copy of the March 19, 1999 letter was sent to the Lees by certified mail. On April 7, 1999, Vicki Lee signed for the delivery of the certified mail.
- The Lees did not provide any documents regarding income taxes or property tax, nor were any bills forwarded to staff for payment.
- On August 30, 1999, staff received copies of petitions from a majority of FHW customers requesting the City of Bend (City) create a Local Improvement District and construct a City water system to provide water service to FHW customers.
- By November 2000, all customers were connected to the City's water system; thus, the IOA was no longer necessary. Pursuant to the Commission's instructions in Order No. 97-240, staff closed the operating account and began a final accounting of the monies collected and expensed for FHW during the pendency of the IOA.

- Commission Order No. 01-151, issued February 2, 2001, adopted staff's recommendation that the surplus revenues be placed in an interest-bearing account until final disbursement could be made.

- Staff's letter of December 26, 2001, to all parties, interested parties, and former customers of FHW explained that the revenues collected, while the IOA was in place, resulted in surplus funds (funds). The letter included an explanation and attachment showing staff's recommended disbursement schedule based upon the total amount of revenue paid per customers while the IOA was in force. A claim form was also provided should someone disagree with staff's disbursement proposal.

- On January 8, 2002, the Commission received its only claim for the funds. Darrell Lee's claim submitted to PUC contends they are entitled to receive \$125,000 because:

- 1) During the IOA time period FHW property taxes had not been paid.
- 2) During the IOA time period FHW income taxes had not been paid.
- 3) The water distribution system was wrongfully taken from the Lees.

- The Lees did not provide any supporting documentation with the claim though the claim form stated that, "DOCUMENTATION SUPPORTING YOUR CLAIM MUST BE INCLUDED WITH THIS FORM."

UW 54/UM 857 First Hill Water, Inc.
June 11, 2002

Customer	1997	1998	1999	2000	Total	Weight %	Refund \$
Aherns	108				108	0.003	\$32.41
Anderson	108				108	0.003	\$32.41
Bauer	108	216	216		540	0.017	\$162.03
Bridges	54	216	216		486	0.015	\$145.82
Brown	108	216	216	162	702	0.022	\$210.63
Calkins		180	216	162	558	0.017	\$167.43
Chastain		216	216	162	594	0.018	\$178.23
Cole	108	216	216	162	702	0.022	\$210.63
Coyle	108	216	216	162	702	0.022	\$210.63
Darrow		162	216	162	540	0.017	\$162.03
Dyer	108		216	162	486	0.015	\$145.82
Edwards		216	216	162	594	0.018	\$178.23
Elliott			162	162	324	0.010	\$97.22
Feldmann	108	216	216	162	702	0.022	\$210.63
Fitzsimmons-Stevens		216			216	0.007	\$64.81
Geary			36	162	198	0.006	\$59.41
Gilbride	108	216	216	162	702	0.022	\$210.63
Gingerich	108	216	216	162	702	0.022	\$210.63
Goodman	108	216	216	162	702	0.022	\$210.63
Gossack			54		54	0.002	\$16.20
Grant		216			216	0.007	\$64.81
Griffin		90	216	162	468	0.014	\$140.42
Griffin, Ralph/Laura			108	162	270	0.008	\$81.01
Guzman		180	216	162	558	0.017	\$167.43
Halderman	108	216	216	162	702	0.022	\$210.63
Himsworth	108	216	216	162	702	0.022	\$210.63
Hopkins	108	216	216	162	702	0.022	\$210.63
Huff	108	216	108		432	0.013	\$129.62
Humcke	108	216	216	162	702	0.022	\$210.63
Ireland	108				108	0.003	\$32.41
Jamieson	108	216	216	180	720	0.022	\$216.03
Jenkins	108	216	216	162	702	0.022	\$210.63
Laferriere	81				81	0.002	\$24.30
Laing	108	216	216	162	702	0.022	\$210.63
Liddiard (sold) Guzman	108	36			144	0.004	\$43.21
Lofguist, Jr.	108	216	216	141	681	0.021	\$204.33
Lofguist, Sr. -2 Lots	216	432	432	324	1404	0.043	\$421.27
McConell	108	216			324	0.010	\$97.22
McKinley		108	216	162	486	0.015	\$145.82
Neveras	108	216	216	162	702	0.022	\$210.63
Niva				162	162	0.005	\$48.61

UW 54/UM 857 First Hill Water, Inc.
June 11, 2002

Customer	1997	1998	1999	2000	Total	Weight %	Refund \$
Oblizalo	108	216	216	162	702	0.022	\$210.63
Pedersen	108	216	216	162	702	0.022	\$210.63
Randall	108	216	180		504	0.015	\$151.22
Rankin	108	216	72		396	0.012	\$118.82
Reitan	108	216	216	162	702	0.022	\$210.63
Schiebel	108	216	216	165	705	0.022	\$211.53
Seibold			54	162	216	0.007	\$64.81
Sheeter	108	216	216	162	702	0.022	\$210.63
Sherr	108	216	216	162	702	0.022	\$210.63
Spores		162	216	162	540	0.017	\$162.03
Stevens	108		144		252	0.008	\$75.61
Stoefen	108	216	216	162	702	0.022	\$210.63
Talbot		36	216	162	414	0.013	\$124.22
Trojak	108	216			324	0.010	\$97.22
Trojak-Grant-2 lots			432	324	756	0.023	\$226.84
Turley	108	216	216	162	702	0.022	\$210.63
Veach	108	216	216	162	702	0.022	\$210.63
Wagnon			72	162	234	0.007	\$70.21
Wahlberg			180	162	342	0.011	\$102.62
Wheater			18	162	180	0.006	\$54.01
White*	108	216	216	162	702	0.022	\$210.63
Wolf			504	162	666	0.020	\$199.83
Phillips				18	18	0.001	\$5.40
TOTAL						1.00	\$9,767.43
# of Customer	41	46	53	47	63		
Total Paid \$	\$4,455	\$9,378	\$10,764	\$7,938	\$32,553		
Bank Ending Balance							\$9,767.43
Balance & Interest as of 6/02/02							\$10,373.72
Minus Accounts Payable							\$606.29
Total Refund Due							\$9,767.43

*Wolf paid \$360 in April 99 for Jul 97-Mar 99