

PUBLIC UTILITY COMMISSION OF OREGON
STAFF REPORT
PUBLIC MEETING DATE: February 21, 2006

REGULAR X CONSENT _____ EFFECTIVE DATE April 1, 2006

DATE: February 14, 2006

TO: Public Utility Commission

FROM: Michael Dougherty

THROUGH: Lee Sparling and Marc Hellman

SUBJECT: AVION WATER COMPANY: (UW 115/Advice No. 06-12) Requests a revision to Residential and Commercial Metered Rates tariff and a waiver of the "spreading" provisions of OAR 860-036-0745 concerning a 3 percent franchise fee adopted by the City of Bend and imposed on the Company.

STAFF RECOMMENDATION:

The Commission should approve Avion Water Company's (Avion) proposed Residential and Commercial Metered Rates tariff and request for a waiver of the "spreading" provisions of OAR 860-036-0745 concerning a 3 percent franchise fee adopted by the City and imposed on the Company.

DISCUSSION:

Background

Avion filed this request for a rate change on January 31, 2006. The rate change would result in City of Bend (Bend or City) residents paying a 3 percent City franchise fee on billed water sales. The tariff would become effective April 1, 2006.

The request resulted from a petition¹ by Avion, Roats Water System, and the City (hereon referred to as the "Petitioners"), dated January 12, 2006, for a waiver of the "spreading"² provisions of OAR 860-036-0745. By waiving this provision, customers of

¹ Originally docketed as UM 1242.

² By "spreading" the franchise fee, the typical treatment is that a portion of the fees that are assessed on utility revenues from service to customers residing within the city limits is included as a general operating expense for ratemaking purposes, resulting in all customers, inside and outside the city limits, paying for that portion of the fee in their rates.

Avion who have service connections outside the city limits of Bend would not be required to pay increases in costs associated with Bend charging a 3 percent franchise fee.

The Franchise Fee

On September 21, 2005, the Bend City Council approved an ordinance placing a 3 percent franchise fee on its private water companies. The franchise fee is also being assessed on City water customers and will be used for improvements in the City's transportation system.

To date, Avion and Roats are the only private water companies that serve Bend residents.³ According to the Petitioners, this resulted from an annexation of large portions of both the Avion and Roats service territories into the City in 1999.

According to the Petitioners, many customers of the water companies are remotely located from Bend,⁴ and assessing the fees on these customers would be unfair. Additionally, the Petitioners believe that spreading the franchise fee to non-City residents may have unintended consequences, although the Petitioners have not described to Staff what these consequences may be.

OAR 860-036-0745 Relating to City Fees, Taxes, and Other Assessments

OAR 860-036-0745 states, in part:

"1) The aggregate amount of all business or occupation taxes, licenses, franchise or operating permit fees, or other similar exactions imposed upon water utilities by any city in Oregon for engaging in business within such city or for use and occupancy of city streets and public ways, which does not exceed 3.5 percent, applied to gross revenues as defined herein, shall be allowed as operating expenses of such water utilities for rate-making purposes and shall not be itemized or billed separately.

(2) Except as otherwise provided herein, "gross revenues" means revenues received from utility operations within the

³ Although there are currently only two private water companies that serve residents in the City limits, there are other private water companies (e.g., Agate and Long Butte Water System) that are located in the Bend area.

⁴ Only about 30 percent of Avion's customers are located within Bend city limits. Avion has customers in Redmond, Crook County, and other areas outside Bend. Approximately 80 percent of Roats' customers are located within the City.

city less related net uncollectibles. Gross revenues shall not include proceeds from the sale of bonds, mortgage or other evidence of indebtedness, securities or stocks, sales at wholesale by one utility to another when the water utility purchasing the service is not the ultimate customer.”

The water rule is consistent in language with OAR 860-022-0040, Relating to City Fees, Taxes, and Other Assessments Imposed Upon Electric, Gas, and Steam Heat Utilities.

If the waiver is approved by the Commission, the treatment of the City franchise fee would be handled in a similar manner to fees collected pursuant to OAR 860-036-0750, Relating to Local Government Fees, Taxes, and Other Assessments, which states in part:

“(1) If any county in Oregon, other than a city-county, imposes upon a water utility any new taxes or license, franchise, or operating permit fees, or increases any such taxes or fees, the water utility required to pay such taxes or fees shall collect from its customers within the county imposing such taxes or fees the amount of the taxes or fees, or the amount of increase in such taxes or fees. However, if the taxes or fees cover the operations of a water utility in only a portion of a county, then the affected water utility shall recover the amount of the taxes or fees or increase in the amount thereof from customers in the portion of the county that is subject to the taxes or fees. "Taxes," as used in this rule, means sales, use, net income, gross receipts, payroll, business or occupation taxes, levies, fees, or charges other than ad valorem taxes.

(2) The amount collected from each water utility customer pursuant to section (1) of this rule shall be separately stated and identified in all customer billings.”

Gross Operating Revenue

The rule defines gross operating revenue as revenues received from utility operations within the city less related net uncollectibles. The City defines gross operating revenue as revenue used in ratemaking purposes. Currently, this would only include residential and commercial water sales for Avion.

Staff recommends that the City's interpretation of gross revenues be recognized as the City will only assess the franchise fee on residential and commercial water sales. Rates for Avion's residential and commercial customers were determined consistent with this basis. Other miscellaneous customer specific revenue (disconnection fees, service connections fees, etc.) will not be used in the calculation of the franchise fee. Avion and the City agree to this treatment.

Additionally, the Petitioners and Staff realize that, based on future operations and regulatory requirements, components of the gross operating fees per the City's definition may change at a future date. If this occurs, the Petitioners and Staff will discuss this issue and commit to coming to an agreement concerning revenue that is used to determine the franchise fee consistent with legal requirements.

The fee will result in an *annual* increase of approximately \$14 dollars for Avion customers residing within the City.⁵ Based on Avion's 2004 Annual Report,⁶ Avion would pay the City approximately \$36,775 annually. Avion agreed to change its applicable rate schedule, Residential and Commercial Metered Rates to state:

"A franchise fee of 3% of gross monthly sales to the City of Bend residents shall be charged to the City of Bend residents. This fee is applicable to City of Bend residents only and will be charged monthly."

Avion has the means to apportion franchise fee charges solely to those customers located within City limits. Additionally, no significant increase in administrative and bookkeeping costs are anticipated from this change.

Public Interest

The Petitioners believe that strict application of the spreading provision of the rule is not in the public interest. According to the Petitioners, excluding customers who do not reside in the City limits will promote fairness and be in the public interest because the fee charged by the City benefits users inside the City limits more than they benefit users outside the City limits.

Because the City is the main driver behind this petition, and the City is accountable to its residents, Staff recommends that the waiver be approved. Pursuant to OAR 860-036-0001(1), the Commission can relieve a water utility of any obligation under Division 36 rules, Regulation of Water Utilities and Associations.

⁵ If the franchise fee is spread between all customers of Avion (inside and outside of the City), Avion's annual rate would increase by approximately \$4 per customer.

⁶ Staff has not yet received the 2005 Annual Report, which is due on April 1, 2006.

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PROPOSED COMMISSION MOTION:

Avion's proposed Residential and Commercial Metered Rates tariff and request for a waiver of the "spreading" provisions of OAR 860-036-0745 concerning a 3 percent franchise fee adopted by the City and imposed on the Company, be approved.