

**PUBLIC UTILITY COMMISSION
OF
OREGON**

WJ 34

STIPULATING PARTIES EXHIBIT 100

Joint Testimony in Support of the Stipulation

January 2, 2019

1 **Q. Who is sponsoring this testimony?**

2 A. This testimony is jointly sponsored by Oregon Public Utility Commission
3 (Commission) Staff (Staff), Aspen Lakes Estates Owners Inc. (HOA) and Aspen
4 Lakes Utility Company, LLC (Aspen Lakes or Company) (collectively, Stipulating
5 Parties).

6 **Q. Please provide your names and qualifications.**

7 A. Our names are Joan Grindeland, Charles Fadeley and Matt Cyrus. The
8 qualifications of Ms. Grindeland, the sponsor for Staff, are set forth in Staff/101,
9 Grindeland/1. The qualifications for Mr. Fadeley, the sponsor for the HOA, are
10 set forth in HOA/100. The qualifications for Mr. Cyrus, the sponsor for Aspen
11 Lakes, are set forth in ALU/100.

12 **Q. What is the purpose of this testimony?**

13 A. The purpose of this testimony is to describe and support the Stipulation entered
14 into by the Stipulating Parties in Docket WJ 34, which resolves all disputed
15 issues in this proceeding.

16 **Q. Please provide a summary of the background in this case.**

17 A. On January 22, 2018, the HOA for the development served by Aspen Lakes, filed
18 a petition for rate regulation with the Commission, requesting that the
19 Commission assert rate regulation over the Company because the required
20 number of petitions had been timely filed and because the Company was
21 charging above the threshold established by the Commission. The HOA also
22 asserted that the rates charged by the Company are not fair, just and
23 reasonable, non-discriminatory or based on principles of cost-causation.

1 On January 26, 2018, the HOA filed an amended petition that included redacted
2 exhibits.

3 On February 15, 2018, Aspen Lakes filed a response to the HOA's
4 Petition, in which it denied that the Company's rates were discriminatory and
5 non-transparent, and requested that the Commission reject the HOA's
6 petition because it was untimely, the rate threshold was not met, and the
7 petitions were unverified.

8 On July 20, 2018, the HOA filed Opening Testimony. On
9 August 23, 2018, Staff and the Company filed Reply Testimony. A
10 settlement conference was held on October 5, 2018, that led to the
11 settlement included in this Stipulation. The Stipulating Parties participated in
12 that settlement conference, and as a result of those discussions, a settlement
13 was reached on all issues.

14 **Q. Please provide a summary of the Stipulating Parties' recommendation**
15 **in this case.**

16 A. The Stipulating Parties agree that the Commission has the authority to assert
17 rate regulation over Aspen Lakes, and recommend that the Commission do so in
18 this case. The Stipulating Parties further agree that rate regulation is in the
19 public interest and is in the best interest of the Company, its customers and the
20 public. In support of these conclusions and recommendations, Staff and the
21 HOA recommend that the Commission make the following factual and legal
22 conclusions, which are not contested by the Company:

- 1 • The \$45 annual average monthly threshold, found in
2 OAR 860-036-1910(2), is applicable in this case.
- 3 • The Company’s annual average monthly rate exceeds the \$45 threshold.
- 4 • At least 20 percent of the customers petitions submitted are valid.
- 5 Further, the Stipulating Parties agree to the following process with regard
6 to rate regulation:
- 7 ○ Aspen Lakes will file Affiliated Interest Agreements with all appropriate
8 entities within 45 days of a Commission order asserting rate regulation
9 over Aspen Lakes.
- 10 ○ The Company will file a general rate case in compliance with
11 OAR 860-036-2020 within six months of the date of the Stipulation or
12 within 30 days of a Commission order asserting rate regulation,
13 whichever is later.

14 **ISSUE 1 --- CALCULATION OF ANNUAL AVERAGE MONTHLY CHARGE /**
15 **THRESHOLD LEVEL**

16 **Q. Please provide a brief explanation regarding the applicable annual average**
17 **monthly threshold amount in this case.**

18 A. Staff and the HOA agree that the applicable average annual monthly charge
19 threshold is \$45, which is the threshold that applies to residential water service
20 provided through 1-inch or smaller meters. The Company does not contest this
21 assertion. Under the Commission’s current administrative rules, “residential
22 service” is defined as “water service provided for domestic or irrigation purposes

1 in a residential area and is not considered a commercial service.”¹ Neither
2 “domestic” nor “irrigation” are further defined in the rules.

3 **Q. Please explain the agreed upon calculation of the Company’s annual**
4 **average monthly threshold.**

5 A. Staff and the HOA agree that the Company’s annual average monthly charge
6 exceeds \$45 per month, but did not stipulate to a particular methodology as part
7 of the settlement in this case; the Company does not contest this assertion.

8 In its testimony, Staff recommended calculating the annual average
9 monthly rates as considering all rates charged for service which includes base
10 rate commodity rates for domestic service and stand-by fire protection; there is
11 not a base rate associated with irrigation service. These rates include a base
12 rate of \$22 per month for residential service with a 3,000 gallon monthly
13 allowance for domestic use with a \$2.00 charge for each 1,000 gallons of
14 additional domestic water used plus a charge of \$2.00 for per 1,000 gallons used
15 for irrigation, and a flat charge of \$22 per month for fire protection.² Using the
16 consumption data provided by the Company from April 1, 2017 through
17 April 1, 2018,³ the total commodity charges billed to domestic and irrigation
18 customers were \$55,601.73. Using the entire 115 available lots the monthly
19 average for water usage only is \$40.19. That, combined with the base rate of
20 \$22 per month, plus the \$22 per month fire protection charge, puts the monthly
21 rate above the \$45 threshold that triggers rate regulation. Even if the \$22 per

¹ OAR 860-036-1010(7).

² Staff/100, Grindeland/8.

³ Aspen Lakes Answer at Exhibit A, pg. 3; Staff/102 - Aspen Lakes’ response to Staff DR 5 and DR 6.

1 month fire protection rate were not included in the calculation, the average
2 monthly rate would still be well over the \$45 threshold.

3 In its testimony, the HOA recommended calculating the annual average
4 monthly rate using two components. The first component is the base charge to
5 a customer, including a base charge for a specified amount of water usage. The
6 second component is an amount that is based on the annual total gallons of use
7 (minus an amount for leakage) that is above any usage included in a base
8 charge. That amount is then multiplied by the usage rate, divided by the
9 number of customers, and then divided by 12 to obtain an annual monthly
10 average charge for that usage. The two components are added together to
11 determine the total annual monthly average. Using that calculation, the HOA
12 asserted that the rate is \$77.95, above the Commission's threshold.⁴

13 The HOA also calculated the annual monthly average using various
14 scenarios that removed certain charges, or that factored in a different number of
15 properties based on which properties actually received service. Regardless of
16 the methodology, the HOA calculated that the rate is no less than \$45.68, which
17 still exceeds the threshold.⁵

⁴ HOA/200, Thompson/2-3.

⁵ HOA/200, Thompson/4.

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ISSUE 2 --- PETITIONS

Q. Please summarize the Stipulating Parties position regarding petitions filed by customers of Aspen Lakes.

A. Staff and the HOA agree that at least 20 percent of Aspen Lakes' customers submitted valid petitions for rate regulation. The Company does not contest this assertion.

ISSUE 3 --- OTHER ISSUES

Q. Are there any issues that were addressed in testimony that are not addressed by this Stipulation?

A. No. This Stipulation either resolves all issues in this case, or provides for a mechanism to address concerns in future filings. Other than rate regulation, two additional issues were the subject of testimony in this case—the relationship between entities with common ownership and the rates charged thereto, and general concerns over potential discriminatory rates.

Regarding entities with common ownership, there were questions regarding the relationship between the Company and other limited liability corporations owned by the Cyrus family, such as the golf course, and the rates charged to and transfer of money between, these corporations. For rate regulated utilities, affiliated interest relationships are appropriately reviewed by the Commission. As such, the Stipulating Parties have agreed that Aspen Lakes will file the appropriate affiliated interest applications with the Commission within 45 days of the Commission issuing an order asserting rate regulation. Staff

1 envisions using the information in these filings to inform rates in the Company's
2 general rate case.

3 Similarly, there were concerns about the rates charged to some
4 customers, such as the golf course, that raised questions regarding
5 discriminatory treatment among customers and whether charges were occurring
6 in accordance with stated rates. The Stipulating Parties agree that these issues
7 are appropriately and substantively addressed through a general rate case, in
8 which an annual revenue requirement would be set, and the Commission would
9 adopt rates for each customer class that are fair, just and reasonable.

10 **ISSUE 4 --- SUMMARY OF RECOMMENDATIONS**

11 **Q. Why does Aspen Lakes support the Stipulation?**

12 A. Aspen Lakes supports the Stipulation because it resolves the ongoing dispute
13 between the Company and its Customers and it provides for a transparent
14 system of setting rates, and resolving future rate disputes that ensures the
15 Company will recover its operational costs, maintenance and capital
16 expenses, and provide for a return on its investment as provided by law.

17 **Q. Why does the HOA support the Stipulation?**

18 A. The HOA supports the Stipulation because it provides for a mechanism to
19 ensure that charges for water service are transparent and based on cost of
20 service principles. When the Commission rate regulates a water company, all
21 customers have a more robust opportunity for observing or participating in the
22 rate-setting process. At a minimum, participation in that process allows
23 customers to better understand why the rates are set where they are. In other

1 cases, participation in that process will allow customers to actually assist the
2 Commission in determining what those rates should be. Overall, customers
3 will have more confidence that the system that provides their water service
4 will be reliable long into the future.

5 **Q. Why does Staff support the Stipulation?**

6 A. Staff supports the Stipulation as it follows Commission precedent, current
7 administrative rules, and treats each customer class equitably and provides
8 for fair, just, and reasonable rates and services. As stated earlier, the
9 Stipulation represents a compromise in the positions of the Stipulating Parties
10 and is in the best interest of all customers.

11 **Q. Please summarize the recommendations agreed to by the Stipulating**
12 **Parties.**

13 A. The Stipulating Parties recommend that the Commission adopt the Stipulation in
14 its entirety and assert rate regulation over the Company consistent with the
15 terms of the Stipulation. Staff and the HOA recommend that the Commission
16 make its decision based on the following conclusions and recommendations,
17 which are not contested by the Company:

- 18 • The \$45 annual average monthly threshold should be used in this case.
- 19 • The Company's annual average monthly rate exceeds the \$45 threshold.
- 20 • At least 20 percent of the customers petitions submitted are valid.

21 Further, the Stipulating Parties recommend that the Commission adopt the
22 Stipulating Parties' recommendations related to several procedural matters
23 related to establishing rates:

- 1 ○ Aspen Lakes be ordered to file Affiliated Interest Agreements for all
2 related entities within 45 days of the Commission order;
- 3 ○ Aspen Lakes be ordered to file a general rate case in compliance with
4 OAR 860-036-2020 within six months of the date the Stipulation was
5 filed or within 30 days of the Commission's order in this case,
6 whichever is later.

7 **Q. Does this conclude your testimony?**

8 A. Yes.