

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

**Docket WJ-\_\_**

In the Matter of

PETITION

Request for Rate Regulation of Aspen Lakes  
Utility, LLC

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**I. Introduction and Relief Requested**

The Aspen Lakes development is located in the vicinity of Sisters, Oregon. The development consists of 81 improved residential lots and 34 unimproved lots around a golf course. The residential lots and the golf course receive water services from Aspen Lakes Utility Company, LLC (“Aspen Lakes Utility” or “Company”).

The purpose of this Petition is to ask the Public Utility Commission of Oregon (“Commission”) to exercise its rate regulation authority over Aspen Lakes Utility.

Petitioner in this proceeding is Aspen Lakes Estates Owners, Inc. (“HOA”), the homeowners’ association for the development, which is a customer of the Company. Petitioner has concerns over the rising costs and fairness of the water service it and its members receive from Aspen Lakes Utility. For example, the HOA believes that the Company charges at least one customer – the entity that owns the golf course and which appears to be affiliated with the Company – a lower rate than it charges other unaffiliated customers using the same water for similar purposes. The HOA has had little success in obtaining information from the Company that would demonstrate the rates are fair, just, reasonable, and non-discriminatory, or that the rates are grounded in traditional principles of cost causation. Because Petitioner has no control or

ownership over Aspen Lakes Utility, its only recourse for testing the validity of the Company's rates is through the Commission.

## **II. Parties**

Petitioner is the following:

Aspen Lakes Estates Owners, Inc.  
16900 Aspen Lakes Dr.  
Sisters, OR 97759

Petitioner is represented in this proceeding by:

Tommy A. Brooks  
Chad M. Stokes  
Cable Huston LLP  
1001 SW Fifth Ave.,  
Suite 2000  
Portland, Oregon 97204-1136  
(503) 224-3092 (phone)  
tbrooks@cablehuston.com  
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Petitioner is not aware if the Company is represented by legal counsel. Based on information appearing in Commission records, the contact information for Aspen Lakes Utility is as follows:

Matt Cyrus  
17204 HWY 126  
Sisters, OR 97759  
(541) 549-3660

## **III. Basis for the Requested Relief**

Under the Commission's rules, small water utilities serving fewer than 500 customers are generally exempt from Commission regulation.<sup>1</sup> That exemption dissolves, however, if the water utility imposes residential rates that exceed certain dollar thresholds. Depending on the amount of the average annual residential rate and other factors, a water utility may become subject to service

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<sup>1</sup> OAR 860-036-1900(1).

regulation,<sup>2</sup> or it may become subject to rate and service regulation.<sup>3</sup> Aspen Lakes Utility is already subject to service regulation. The relief Petitioner requests in this proceeding is that the Commission extend its regulation of the Company to rates in addition to service.

The specific authority for the Commission to exercise rate regulation over Aspen Lakes Utility is OAR 860-036-1900(3). Pursuant to that rule, a water utility serving fewer than 500 customers is subject to rate and service regulation if the utility also provides wastewater services inside a city or if the utility requests that it be rate regulated. That rule also subjects water utilities to rate regulation if:

The water utility proposes to charge a monthly rate that exceeds the threshold level set forth in OAR 860-036-1910 and at least 20 percent of the customers petition the Commission requesting the water utility be subject to rate and service regulation.<sup>4</sup>

As established in this Petition, Aspen Lakes Utility has proposed to charge a monthly rate that exceeds the threshold level set forth in OAR 860-036-1910 and at least 20 percent of the customers have now petitioned the Commission to exercise its rate regulation authority over the Company.

**A. Aspen Lakes Utility's Rates Exceed the Threshold Level in the Rules**

Pursuant to OAR 860-036-1910(2) and (3), utility customers have the right to petition the Commission for rate regulation if the utility proposes to charge residential and commercial customers an annual average monthly charge of \$45 for metered customers with a meter diameter one inch or less.

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<sup>2</sup> OAR 860-036-1900(2).

<sup>3</sup> OAR 860-036-1900(2).

<sup>4</sup> OAR 860-036-1900(3)(c).

The residential customers in the Aspen Lakes development are metered and the meter size is one inch.

The Commission recently revised the rate threshold in its rules. Prior to the date the new rules took effect in January 2017, the threshold for smaller metered customers was \$36 per customer. Aspen Lakes Utility's rates exceeded that threshold throughout 2016.

In early January 2017, prior to the effective date of the new rules, the Company again raised its rates. The new rates established a monthly base charge of \$44 for residential customers, and doubled the per-gallon rate to \$2.00/thousand gallons (with 3,000 gallons/month included in the base charge), bringing the average monthly charge – after taking into account actual usage – above both the then-existing threshold amount and the threshold amount that would go into effect a few weeks later.

Based on the foregoing, the Company's rates have exceeded, and continue to exceed, the rule-based threshold amount giving customers the right to petition for rate regulation.

**B. 20% of Aspen Lakes Utility's Customers Have Petitioned the Commission for Rate Regulation**

Aspen Lakes Utility has 115 residential customers in the Aspen Lakes development. 81 customers are connected to the Company's distribution system and pay the full rate for water service. 34 undeveloped lots are charged \$22/month for "Standby Fire Service." For the Commission to exercise jurisdiction under OAR 860-036-1900(3)(c) based on the number of current customers, it would need to receive petitions from 23 customers. Attached as Exhibit A are 45 petitions representing 50 customers, each of which seeks rate regulation.

**C. The Petitions Included with this Petition are Timely Filed**

When a small, unregulated water utility seeks to raise rates above the threshold established in OAR 860-036-1910(2), it must take certain actions. Among those actions, the utility must

provide a separate written notice to all customers of the proposed increase.<sup>5</sup> The required notice is intended, in part, to alert customers of their right to petition the Commission for rate regulation.<sup>6</sup>

The notice requirements set forth in the rule indicate that petitions for rate regulation must be received by the Commission within 45 days of the notice of proposed increase sent to customers.<sup>7</sup> Aspen Lakes Utility's customers, however, have never received timely notice of proposed rate increases that exceed the threshold in the rule – this is true both for current rates under the revised threshold in the rules and for past rates that were in effect under the former rules. Aspen Lakes Utility did send a rate increase notice on March 9, 2017, but that notice occurred after the rates had already gone into effect. Had that notice alerted customers of proposed rates, petitions for rate regulation would have been due to the Commission by April 24, 2017. However, several factors exist which demonstrate why the March 9<sup>th</sup> notice was not effective.

First, the Company did not send its notice to customers within the time period required by the Commission's rules. Specifically, OAR 860-036-1920(1) requires the notice to be sent to customers prior to when rates above the rule threshold go into effect. Similarly, OAR 860-036-1920(2)(f) expressly states that “[t]he effective date must be at least 60 calendar days from the date of the notice....” (Emphasis added). The Company's current rates went into effect on January 1, 2017, more than three months prior to the date the Company sent the required notice on March 9, 2017. Thus, by the time customers received the notice, the higher rates were already in effect and had been included in charges to customers.

Second, the contents of the notice were deficient. The Commission's rules require the notice to include “a comparison of the current rates and the proposed rates for each affected

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<sup>5</sup> OAR 860-036-1920(1)(a).

<sup>6</sup> OAR 860-036-1920(2)(h).

<sup>7</sup> Id.

customer classes.”<sup>8</sup> Attached as Exhibit B to this Petition is a copy of the Company’s notice, which does not include the rate comparison the rules require.

Third, while Commission Staff informed customers that it treated the March 9<sup>th</sup> letter as notice for purposes of starting the 45-day clock to submit petitions, customers were not informed of a unilateral change in the deadline for when the Commission would stop accepting petitions. Attached as Exhibit C is a series of communications between a customer and Staff with the Commission’s Consumer Services Section. In those communications, the customer sought clarity regarding the due date for petitions. It was not confirmed until April 14, 2017 that the 45-day clock for submitting petitions was in effect as of March 9, 2017, and that the due date for petitions would be ten days later, leaving customers very little time, if they chose to, to work with other customers to obtain and submit petitions.

Acting on that short deadline, some customers then worked to obtain and to submit the correct number of petitions to the Commission. According to records provided by the Commission, 16 petitions were received by April 24, 2017,<sup>9</sup> but (according to PUC Staff) 22 petitions were needed for the Commission to exercise its authority and begin rate regulation of the Company. However, when some customers received a response from the Commission that it had not received the requisite number of petitions, that response indicated that the deadline for petitions had been extended to May 1, 2017,<sup>10</sup> although that extension was never communicated to customers. Had customers been aware of the extended deadline, they would have been able to collect a sufficient number of petitions. In fact, they have now done so, as demonstrated by the petitions included with Exhibit A.

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<sup>8</sup> OAR 860-036-1920(2)(f).

<sup>9</sup> The original petitions submitted to the Commission are included as Exhibit D to this Petition.

<sup>10</sup> A copy of the Commission’s response is included as Exhibit E to this Petition.

If the Commission determines that the Company's March 9<sup>th</sup> letter was valid notice of a proposed rate increase under the rule – which it should not do – Petitioner requests in the alternative that the Commission waive the rule requirement that petitions for rate regulation must be submitted within 45 days.

Pursuant to OAR 860-036-1000(3), the Commission has authority to waive rules in OAR 860-036 for good cause. As explained in more detail above, there is good cause to waive the 45-day requirement under the limited circumstances presented in this Petition. Aspen Lakes Utility's customers have experienced rate increases beyond the Commission's rule-based threshold without clear notice of their opportunity for seeking rate regulation. Even when the Company has attempted to provide the required notice, the process has been riddled with errors preventing customers from exercising their rights to seek rate regulation.

As further evidence of good cause for waiving the rule requirement, Petitioner notes that OAR 860-036-1930 provides a separate process whereby 20% of the members of an association may petition the Commission at any time to exercise rate regulation. The rules provide no distinction for why members of an association have that ability but that customers of a private water company can only submit petitions in the face of an impending rate increase. Members of an association typically have more protection over rates because they already own, operate, provide, manage, or control the water system.<sup>11</sup> Customers like those of Aspen Lake Utility, however, have no direct recourse because they have no relationship with the utility other than as a customer. By waiving the time period for submitting petitions in this case, the Commission will be providing those customers with at least the same level of opportunity and protection as that granted to members of an association.

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<sup>11</sup> OAR 860-036-1930(1).

**IV. Conclusion**

Aspen Lakes Utility has for years charged rates that exceed the Commission's rule-based threshold triggering potential rate regulation. The Company's customers, however, have not had a clear, sufficient opportunity for petitioning the Commission to begin exercising rate regulation over the Company.

Taking into account the petitions for rate regulation included with this Petition, a substantial number of the Company's customers have now expressed their intent to have the Commission rate regulate Aspen Lakes Utility. Based on those petitions and the information provided in this Petition, Petitioner respectfully requests the Commission issue an order as follows:

1. Accepting the petitions included with this Petition for purposes of exercising rate regulation pursuant to OAR 860-036-1900(3)(c);
2. Directing Aspen Lakes Utility to file a rate case within three months for the Commission to establish rates consistent with state law; and
3. If necessary, finding good cause to waive the 45-day requirement imposed by OAR 860-036-1920(2)(h) for receiving petitions seeking rate regulation;

Dated this 22nd day of January 2018.

Respectfully submitted,



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Of Attorneys for Petitioner



**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I have this day served the foregoing document by mailing a copy properly addressed with first class postage prepaid to the following:

Aspen Lakes Utility Company  
Matt Cyrus  
17204 Hwy 126  
Sisters, OR 97759

Commission Staff  
c/o Sommer Moser  
Oregon Department of Justice  
1162 Court St NE  
Salem, OR 97301

Dated in Portland, Oregon this 22nd day of January 2018.

Respectfully submitted,



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