

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

WJ 34

In the Matter of

ASPEN LAKES UTILITY COMPANY,
LLC,

An Investigation Pursuant to ORS 756.515
to Determine Jurisdiction.

ORDER

DISPOSITION: STIPULATION ADOPTED

I. SUMMARY

In this order we adopt the parties' stipulation and find that Aspen Lakes Utility Company, LLC (Aspen Lakes) is subject to rate regulation jurisdiction under ORS 757.061(c).

II. INTRODUCTION

On January 22, 2018, the Aspen Lakes Estates Owners, Inc. (HOA) filed a petition for rate regulation of Aspen Lakes under OAR 860-036-1900(3).¹ As grounds for its petition, HOA alleged that Aspen Lakes is a water utility that serves fewer than 500 customers that charges a monthly rate that exceeds the threshold level set forth in OAR 860-036-1910 and that at least 20 percent of its customers had petitioned the Commission requesting the water utility be subject to rate and service regulation.

In its answer, Aspen Lakes denied that its monthly rate exceeds the applicable threshold level, and claimed that the petition was untimely. Parties participating in this matter are HOA, Aspen Lakes, and the Staff of the Public Utility Commission of Oregon.

Following opening and reply testimony, the parties reached settlement on all issues and filed a stipulation for our approval, supported by joint testimony. The stipulation is

¹ The rule implements the provisions of ORS 757.061(d).

attached as Appendix A, and both the stipulation and testimony are received into evidence.

III. BACKGROUND

Aspen Lakes provides domestic and irrigation water services to the Aspen Lakes development, located in the vicinity of Sisters, Oregon. Aspen Lakes serves 117 residential lots in the Aspen Lakes development. Eighty residential customers are connected to the company's distribution system and pay the full rate for water service; the remainder are undeveloped lots charged \$22 per month for stand-by fire service, regardless of whether the lot is developed or receives other water service. The company also serves two commercial domestic customers and two commercial irrigation customers. The commercial customers include a golf course and the HOA recreation facility and pool.

Most Aspen Lakes residents are provided with domestic and residential irrigation service through separate, one-inch pipes with the exception of one or two customers who are provided water for domestic and irrigation purposes from the same one inch pipe. The monthly residential domestic and irrigation base rate for each one-inch meter is \$22.00, with a 3,000 gallon monthly allowance for domestic use. There is a \$2.00 charge for each 1,000 gallons of additional domestic water used. Customers are also charged \$2.00 for per 1,000 gallons used for irrigation with no base rate charge.

Aspen Lakes also charges each lot in the community (whether developed or not) a stand-by fire protection charge fee of \$22 per month that covers the expenses for constructing and maintaining the community's fire hydrants and associated facilities. The \$22 stand-by fire protection charge is "often combined on invoices and show[s] as a monthly charge of \$44" when combined with the residential base rate.²

IV. DISCUSSION

A. Applicable Law

ORS 757.061(c) specifies that a water utility that serves fewer than 500 customers is subject to rate regulation if the utility proposes to charge a rate that exceeds a maximum rate set by this commission, where 20 percent or more of its customers have filed a petition requesting that the utility be subject to rate regulation.

² STAFF/102, Aspen Lakes' response to Staff DR 6 (Aug 23, 2018).

B. Stipulation

The parties agree that Aspen Lakes meets the statutory standard for rate regulation for a water utility serving fewer than 500 customers. They further agree that rate regulation is in the best interest of the company, its customers, and the public.

Staff and the HOA recommend that we make the following factual and legal conclusions, which are not disputed by Aspen Lakes:

- OAR 860-036-1910(2), which establishes a \$45 annual average monthly threshold for rate regulation of small water utilities, applies to Aspen Lakes.
- Aspen Lakes charges an annual average monthly rate that exceeds the \$45 threshold.
- At least 20 percent of the customers' petitions submitted are valid.

Aspen Lakes also agrees to file all necessary affiliated interest agreement applications under OAR 860-036-2210 within 45 days of the entered date of this order. Aspen Lakes also agrees to file a request for a general rate revision under OAR 860-036-2020 within six months of the date of the stipulation or within 30 days of the entered date of this order, whichever is later.

C. Commission Resolution

Based on the record in these proceedings, we adopt the parties' proposed factual and legal conclusions, find that the stipulation is consistent with our statutory authority over water utilities, and conclude that the stipulation should be adopted in its entirety.

V. ORDER

IT IS ORDERED that:

1. The stipulation between Aspen Lakes Utility Company, LLC, the Aspen Lakes Estates Owners, Inc., and the Staff of the Public Utility Commission of Oregon, attached as Appendix A, is adopted.
2. Aspen Lakes Utility Company, LLC is found to be subject to rate regulation jurisdiction under ORS 757.061(c).

3. Aspen Lakes Utility Company, LLC shall file all necessary affiliated interest agreement applications under OAR 860-036-2210 within 45 days of the entered date of this order.
4. Aspen Lakes Utility Company, LLC shall file a request for a general rate revision under OAR 860-036-2020 no later than June 11, 2019.

Made, entered, and effective Jan 07 2019.

Megan W Decker

Megan W. Decker
Chair

S Bloom

Stephen M. Bloom
Commissioner

Letha Tawney

Letha Tawney
Commissioner



A party may request rehearing or reconsideration of this order under ORS 756.561. A request for rehearing or reconsideration must be filed with the Commission within 60 days of the date of service of this order. The request must comply with the requirements in OAR 860-001-0720. A copy of the request must also be served on each party to the proceedings as provided in OAR 860-001-0180(2). A party may appeal this order by filing a petition for review with the Court of Appeals in compliance with ORS 183.480 through 183.484.

BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

WJ 34

In the Matter of Aspen Lakes Utility)
Company, LLC, Jurisdictional) STIPULATION
Investigation)
)

This Stipulation is between Aspen Lakes Utility Company, LLC (Aspen Lakes or Company), Staff of the Public Utility Commission of Oregon (Staff) and the Aspen Lakes Estates Owners, Inc. (HOA) (collectively, Stipulating Parties).

On January 22, 2018, the HOA for the development served by Aspen Lakes, filed a petition for rate regulation with the Commission, requesting that the Commission assert rate regulation over the Company because the required number of petitions had been timely filed and because the Company was charging above the threshold established by the Commission. The HOA also questioned whether the rates charged by the Company are fair, just and reasonable, non-discriminatory and based on principles of cost-causation. On January 26, 2018, the HOA filed an amended petition that included redacted exhibits.

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

1 A procedural schedule was subsequently set in this case. On July 20, 2018,
2 the HOA filed Opening Testimony. On August 23, 2018, Staff and the Company
3 filed Reply Testimony. A settlement conference was held on October 5, 2018, that
4 led to the settlement included in this Stipulation. The Stipulating Parties
5 participated in this settlement conference, and as a result of those discussions, a
6 settlement was reached on all issues.

7 1.

8 Staff and HOA assert that the \$45 annual average monthly rate found in
9 OAR 860-036-1910(2) is applicable in this case. Aspen Lakes Company will not
10 contest this assertion.

11 2.

12 Staff and HOA assert that the Company's annual average monthly rate
13 exceeds the \$45 threshold for purposes of OAR 860-036-1910(2). Aspen Lakes
14 Company will not contest this assertion.

15 3.

16 Staff and HOA assert that at least 20 percent of the customers filed valid
17 petitions in this case for purposes of ORS 757.061. Aspen Lakes Company will
18 not contest this assertion.

19 4.

20 The Stipulating Parties agree that the Commission has the authority to
21 assert rate regulation over Aspen Lakes, and recommend that the Commission do
22 so in this case. The Stipulating Parties further agree that rate regulation is in the
23 best interest of the Company, the customers, and the public.

1 5.

2 Aspen Lakes agrees to file all necessary affiliated interest agreement
3 applications under OAR 860-036-2210 with the Commission within 45 days of the
4 date of a Commission order asserting rate regulation over the Company.

5 6.

6 Aspen Lakes agrees to file a request for a general rate revision under
7 OAR 860-036-2020 within six months of the date of this Stipulation or within 30 days
8 of a Commission order asserting rate regulation, whichever is later.

9 7.

10 The Stipulating Parties have negotiated this Stipulation in good faith and
11 recommend that the Commission adopt the Stipulation in its entirety.

12 8.

13 This Stipulation will be offered into the record in this proceeding as evidence
14 pursuant to OAR 860-001-0350(7). The Stipulating Parties agree to support this
15 Stipulation throughout this proceeding and in any appeal and provide witnesses to
16 support this Stipulation (if specifically required by the Commission) and
17 recommend that the Commission issue an order adopting the settlements
18 contained herein. The Stipulating Parties agree that the Stipulation represents a
19 compromise in the positions of the Stipulating Parties. By entering into this
20 Stipulation, no Stipulating Party shall be deemed to have approved, accepted, or
21 consented to the facts, principles, methods, or theories employed by any other
22 Stipulating Party in arriving at this Stipulation.

1 9.

2 The Stipulating Parties agree that this Stipulation represents a compromise
3 in the positions of the Stipulating Parties. The Stipulating Parties agree that
4 without the written consent of all Stipulating Parties, evidence of conduct or
5 statements, including but not limited to term sheets or other documents created
6 solely for use in settlement conferences in this docket, and conduct or statements
7 made at settlement conferences, are confidential and not admissible in the instant
8 or any subsequent proceeding, unless independently discoverable or offered for
9 other purposes allowed under ORS 40.190.

10 10.

11 The Stipulating Parties have negotiated this Stipulation as an integrated
12 document. If the Commission rejects all or any material part of this Stipulation, or
13 adds any material condition to any final order that is not consistent with this
14 Stipulation, each Stipulating Party reserves its right: (i) to withdraw from the
15 Stipulation, upon written notice to the Commission and the other Parties within five
16 business days of service of the final order that rejects this Stipulation, in whole or
17 material part, or adds such material condition; (ii) pursuant to OAR 860-001-
18 0350(9), to present evidence and argument on the record in support of the
19 Stipulation, including the right to cross-examine witnesses, introduce evidence as
20 deemed appropriate to respond fully to issues presented, and raise issues that are
21 incorporated in the settlements embodied in this Stipulation; and (iii) pursuant to
22 ORS 756.561 and OAR 860-001-0720, to seek rehearing or reconsideration, or
23 pursuant to ORS 756.610 to appeal the Commission's final order. Nothing in this

1 paragraph provides any Stipulating Party the right to withdraw from this Stipulation
2 as a result of the Commission's resolution of issues that this Stipulation does not
3 resolve.

4 11.

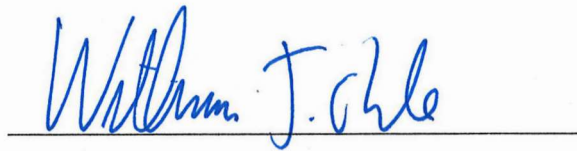
5 This Stipulation may be executed in any number of counterparts, each of
6 which will be an original for all purposes, but all of which taken together will
7 constitute one and the same agreement.

DATED this 10th day of December, 2018.



Sommer Moser, OSB No. 105260
Assistant Attorney General
Of Attorneys for PUC Staff

DATED this 6th day of December, 2018.

A handwritten signature in blue ink, reading "William J. Ohle", is written over a horizontal line.

William Ohle, OSB No. 913866
Schwabe, Williamson & Wyatt
Attorney for Aspen Lakes Utility

DATED this 5th day of December, 2018.

A handwritten signature in blue ink, appearing to read 'T. Brooks', is written above a horizontal line.

Tommy Brooks, OSB No. 076071
Cable Huston LLP
Attorney for Aspen Lakes Homeowners Association