

**PUBLIC UTILITY COMMISSION OF OREGON
INTEROFFICE CORRESPONDENCE**

DATE: November 21, 2006

TO: Administrative Hearings Division

FROM: Paul Rossow
Rates & Tariff Division

SUBJECT: Emerald People's Utility District UA 92.

This memo provides information regarding Emerald People's Utility District (Emerald) modification of application filed on September 14, 2006, with Public Utility Commission of Oregon for exclusively served territory and adjacent unserved territory.

Background

On or about October 1, 2001, Emerald filed with the Public Utility Commission of Oregon (PUC) an application docketed as UA 92. The application requested allocation of exclusive rights to an area that Emerald currently served, but which is outside of Emerald's certified metes and bounds. Then on January 20, 2002, Springfield Utility Board (SUB) filed an application docketed as UA 94 with the PUC requesting allocation of exclusive rights to unserved territory adjacent to SUB's existing territory, which included portions of the same area Emerald's application sought. SUB's filing created a competitive application with Emerald's application.

Emerald opposing SUB's application and SUB opposing the allocation of a portion of this territory to Emerald, proceedings were consolidated and a hearing on the allocation request occurred before Judge Thomas Barkin on August 30, 2002. Judge Barkin delayed resolving the applications to allow the parties to stipulate to certain facts and to await the conclusion of litigation between the parties on their competing rights to serve.

The litigation questioned the authority of a city to annex property that was allocated to a People's Utility District (PUD) under the Territorial Allocation Law, and to then expel the PUD from the territory under ORS 221.420. Eventually, the Oregon Court of Appeals and the Oregon Supreme Court determined that SUB lacked the authority to exclude Emerald from its allocated territory.

Description of Modification

After the Oregon Supreme Court ruling, Emerald and SUB were able to settle their differences. Both companies entered into a June 22, 2006 Intergovernmental Agreement (IGA). Under the IGA both companies agreed to modify their respective territorial allocation applications to reduce the territories for which allocation orders are sought.

Upon approval of Emerald's application, SUB will transfer to Emerald all facilities and development charges billed or collected within the Jasper Meadows Subdivision (Phases 1 and 2), as well as the customer accounts served by those facilities. Sub will not charge Emerald for

the costs of any of these facilities, except to the extent that the cost of the facilities has not been paid for by affected persons and developer fees and charges. As a result of the IGA, each party withdraws any opposition to the other party's territory allocation request docketed as UA 92 and UA 94.

Conclusion

With Emerald's support of the amended allocation request and SUB's withdrawal of opposition to the allocation of amended territory to Emerald, I find that Emerald can economically provide service to these territories due to Emerald's ability to provide exclusive electric utility service within modified areas preventing the duplication of facilities. Thus, based on my review I find the Territory Allocation modifications acceptable and is not contrary to the public interest.