ORDER NO. 01-719

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BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

DR 23

In the Matter of the Petition of NW Natural Gas Company for a Declaratory Ruling Pursuant to ORS 756.450 Regarding Whether Joint Bypass to Two or More Industrial Customers Violates ORS 758.400 *et seq*.	)))))	ORDER

DISPOSITION: ORDER RECONSIDERED AND AFFIRMED

On June 9, 2000, the Commission issued Order No. 00-306 in this docket concluding that a pipeline arrangement described in an assumed set of facts presented by NW Natural Gas Company (NW Natural or the Company) does not violate ORS 758.450(2). On August 7, 2000, NW Natural filed an Application for Reconsideration and a request for oral argument before the Commission. PUC Staff filed a response supporting reconsideration but opposing the request for oral argument. Oremet-Wah Chang and Northwest Industrial Gas Users filed a response opposing the application.

On October 5, 2000, we issued Order No. 00-617 granting reconsideration of Order No. 00-306. The Administrative Law Judge conducted a conference on November 13, 2000, to resolve procedural issues. On February 26, 2001, NW Natural renewed its request for oral argument. The Administrative Law Judge granted the request on March 23, 2001. Oral argument was presented to the Commission and the Administrative Law Judge on April 12, 2001.

Discussion

In its Amended Petition for Declaratory Ruling, NW Natural asked the Commission to rule that "the construction and operation of an interstate pipeline bypass, that is shared by privately-owned industrial consumers and is within the territory allocated to NW Natural . . . violates ORS 758.450(2). NW Natural seeks declaratory rulings on the applicability of ORS 758.450(2) to two particular states of fact concerning condominium bypass distribution systems, as well as the generic fact pattern [referred to as the Assumed Facts in Order No. 00-360 and in this order] for a condominium bypass distribution system as set forth below."

As we noted in Order No. 00-306, the participants in this matter did not agree on the "facts" set out by NW Natural in the "two particular states of facts" referred to in the Amended Petition. Thus, we limited our ruling to the Assumed Facts asserted by NW Natural. Our reconsideration is limited to the Assumed Facts.

Review of Order No. 00-306

For a violation of ORS 758.450 to occur, four elements must be established by the Assumed Facts: The entity or entities must be "persons" as defined in Subsection (2) of ORS 758.400; the arrangement involved must constitute "utility service" as defined in Subsection (3) of ORS 758.400; the "utility service" must be in an allocated territory; and none of the exemptions set out in Subsection (4) of ORS 758.450 must apply. We concluded in Order No. 00-360 that the Assumed Facts do not violate ORS 758.450(2) because the arrangement is not "utility service." We did not base it on any of the other factors noted above.

We explained our decision at some length. First, we discussed the territorial allocation law. We noted that it is designed to allow utility companies to resolve allocation disputes and to provide for enforcement of agreed-upon allocations. We further concluded that the territorial allocation scheme is "not aimed at the provision by customers of utility products to themselves as set out in the Assumed Facts."

We then explained in detail our conclusion regarding the "utility service." We noted that the participants are co-owners of part of the condominium bypass and may be sole owners of other parts. The co-owners are not employed by each other, but are involved in a mutually beneficial arrangement. They do not sell utility product or service to each other or anyone else. They offer no service to the general public or to each other. The facilities do not benefit or serve anybody but the co-owners. The co-owners are not a utility and its customers. Each is a sole customer who happens to have arranged for service to itself through an arrangement with another coequal customer.

Next, the order concludes that the arrangement is "not inconsistent with the purposes of ORS 758.405: 'the elimination and future prevention of duplication of utility facilities,' and the promotion of the 'efficient and economic use and development and the safety of operation of utility services while providing adequate and reasonable service to all territories and customers.'"

The next paragraph of our order notes that the pipeline arrangement does not duplicate utility facilities "because the pipeline arrangements created by customers are not utility facilities. The statute is aimed at preventing wasteful duplication of facilities used by utilities, not at preventing duplication of facilities that customers may use to provide service to themselves." We noted that in Order No. 98-546, we stated that the statutes "reflect a desire to avoid contests between utilities." The next sentence of Order No. 00-306 says that even if these facilities were utility facilities, the record would not establish that these arrangements would involve "greater duplication of facilities than would sole-bypass by individual customers."[1] The next sentences state that the

[1] NW Natural seriously misrepresents the import of this sentence, as we note below.

purpose of the duplication provision is to guard against utility customers having to pay for duplication of facilities which do not benefit them and that there is no risk of that here.

The next paragraph states that the pipeline arrangements described in the Assumed Facts do not interfere with the efficient and economic use of utility services because NW Natural's facilities are still useful. The final paragraph dismisses the safety issue by noting that these arrangements are subject to safety requirements and that the customers involved have an "overriding incentive as well as a legal duty to make sure that the facilities do not create a safety hazard."

Commission Disposition on Reconsideration

We conclude that Order No. 00-306 reached the correct conclusion on the facts presented. We incorporate in this order the bases for the conclusions we set out in that order. We address in this order new or amplified arguments made by NW Natural in its application for reconsideration.

NW Natural states four bases for reconsideration. First, that the order sets "a dangerous precedent"; second, that it "fails to give guidance"; third, that the procedure followed did not allow for "adequate consideration of the issue"; fourth, that the order is "wrong." We will briefly comment on the second and third of these, then focus on the key issue: whether the order is right or wrong. We will then return to the first issue: the supposed "precedent" represented by our order.

The Issuance of "Guidance"

We believe the second ground, that the order fails to give guidance, needs no lengthy response. NW Natural claims that the Commission failed to provide "a declaration on the meaning" of the relevant statutes, and that the Commission's conclusions are not "moored" to the words of the statutes.

NW Natural's claim in this regard does not take into account the purpose of a declaratory ruling. As requested by NW Natural in this case, the declaratory ruling procedure is designed to obtain from the Commission a ruling on the application of a statute or rule to an assumed set of facts presented by the petitioner. It is not a vehicle for the agency to announce abstract interpretations of statutes and rules. NW Natural's request was specifically whether the operation of a condominium bypass system as described in the Assumed Facts violates ORS 758.400 et seq. We answered that question quite clearly, although not as NW Natural had hoped. In doing so, we applied the statutes to the Assumed Facts. We also remind NW Natural that a declaratory ruling is not a vehicle for determining disputed facts. In this case, NW Natural's description of the Willamette and Oremet systems was challenged on factual grounds by the other parties. The Commission will not assume the accuracy of the factual claims of one or the other participant in a declaratory ruling case. We will, instead, as we did in Order No. 00-306, rule on an assumed set of facts, as the statute dictates. If the Assumed Facts do not mirror a real world set of facts, the declaratory ruling may be of little use to the petitioner.

The order very explicitly applies ORS 758.450(2) and ORS 758.400(3) to the Assumed Facts presented by NW Natural. The order explains why the arrangement presented is not utility service under 758.400(3). We understand that NW Natural does not like that explanation. However, it is not at all accurate to assert that it is not "moored" to the statute. We believe it is indeed tightly moored and that it does provide a "test," although not one that NW Natural would prefer. NW Natural's claim that the order only applies to "two" participants and not to "*more*" than two seems a bit disingenuous. The Commission clearly stated that it was ruling on the Assumed Facts. The Assumed Facts apply to *two or more* participants (that is what the Assumed Facts state), and that is the fact situation to which the Commission intended its decision to apply.

The Issue of "Adequate Consideration"

NW Natural's third claim, that the procedure did not allow for adequate consideration of the issue, is apparently moot. It is based on a claim that the order "was not issued in proposed form, with an opportunity for exceptions." NW Natural is advised that it has not been Commission practice to issue proposed or draft orders. We have done so on occasion, usually in cases that involve pure policy issues or where requested by a party, and we may do so in the future. However, we find no request from NW Natural that we issue a proposed order in this case. In any event, the request for reconsideration by NW Natural provides essentially the same opportunity to challenge an order as would exceptions to a proposed order.

Is the Order "Wrong"

We turn to the question of whether the order is "wrong." First, we will restate the issue posed in this case. NW Natural has alleged that the arrangement described in the Assumed Facts violates ORS 758.450(2). As we noted above, for a violation to occur, four elements must be established: The entity or entities must be "persons"; the arrangement involved must constitute "utility service"; the utility service must be in an allocated territory; and none of the exemptions set out in Subsection (4) can apply. We concluded in Order No. 00-360 that the Assumed Facts do not violate ORS 758.450(2) because the arrangement is not "utility service." We did not base our conclusion on any of the other elements set out in the statute. We did not, as NW Natural argues, base it on a determination that the participants in the condominium bypass were not "persons"; nor, contrary to NW Natural's assertions, did we base it on a conclusion that the arrangement fits into one of the exemptions or into some sort of "new" exemption created by the Commission.

Our conclusion was arrived at through application of the principles of statutory construction. Before we turn to that analysis in detail, however, we will respond to a specific criticism made by NW Natural. NW Natural claims that the statutes are "barely quoted, much less analyzed." Then, it asserts the following:

> Most astonishingly, the Order states that "[e]ven if we were to consider the customer's facilities to be utility facilities," *no violation of ORS 758.450(2) would exist because there would be*

> *no* "greater duplication of facilities than would [be the case with] sole-bypass by individual customers. (Italics added.)

NW Natural summarizes its analysis of this paragraph as follows: "To put it boldly, the Order seems to say that even if a violation of the statute existed, there would be no violation of the statute."

This is a serious mischaracterization of the order, one which cannot easily be rationalized. What the order actually says is this:

> Even if we were to consider the customer's facilities to be utility facilities, *there is insufficient basis in the record for us to conclude that the arrangements described in the Assumed Facts would involve* greater duplication of facilities than would sole-bypass by individual customers. (Italics added.)

A comparison of the emphasized portion of our sentence with NW Natural's italicized remake of it exposes the Company's distortion. The order at this point is analyzing the purposes of the territorial allocation law, one of which is the avoidance of duplication. Our discussion of the issue of duplication at this point merely supports our conclusion that our interpretation of the term "utility service" is not in conflict with the purposes established in ORS 758.405: avoidance of duplication and the economic and efficient use of utility services. If, however, the service were utility service, and the other elements of the violation were present, a violation of the statute would exist, regardless of whether there were a duplication of utility facilities.

We now turn to the application of the principles of statutory construction. As NW Natural notes, the Oregon Supreme Court has set out the process for statutory construction in *PGE v. Bureau of Labor and Industries*, 317 Or 606, 859 P2d 1143 (1993). To determine legislative intent, the court first looks at the text of the statute, using rules of construction which bear directly on how to read the text. At this first level, the court also considers the context of the statute, including the total statute itself and related statutes, using rules of construction which relate to context. If the intent is clear from the text and context, the analysis goes no further. If the court's review of the text and context does not resolve the matter, however, the court will consider legislative history, along with the text and context, to determine legislative intent. If the intent is still unclear, the court will refer to general maxims of construction to make its decision on legislative intent.

NW Natural appears to allege that our conclusion in Order No. 00-306 did not apply the *PGE v. BOLI* analysis, as described above. However, our decision in that order was based on an analysis of the text and context of the statutes in question, in conformance with that case. We concluded that the text and context establish that the arrangement described in the Assumed Facts does not constitute a violation of the statute in question. We have considered NW Natural's arguments upon reconsideration and conclude that our original analysis and conclusion were correct. We will restate that analysis here and amplify it to specifically respond to NW Natural's petition for reconsideration and its oral argument.

We turn first to the text of the statute. NW Natural assures us that the meaning of ORS 758.450(2) is "clear from its text" and requires a conclusion that the arrangement described in the Assumed Facts is a violation of ORS 758.450(2). It notes that the term "person" is used broadly in ORS 758.400(2) and encompasses the entities involved in the arrangement described in the Assumed Facts. From this, NW Natural moves to what it acknowledges is the key to this case: the term "utility service." It notes that that term is defined under the statute as service provided by "any" equipment, plant, or facility. Thus, it claims, the statute does not apply just to facilities owned by public utilities. NW Natural also observes that the statute uses the word "consumers," which it defines as "one who consumes." Therefore, the Company asserts, one can provide utility service to oneself and still be a "consumer."

NW Natural then moves to what it believes to be the two "critical" issues in determining if the arrangement provides utility service: whether the facilities constitute a "distribution system" and, if so, whether that distribution system is "connected or interrelated." Distribution occurs, NW Natural claims, when gas which has come from a transmission or other common source is divided and distributed to more than one user. The distribution system, according to the Company, is connected or interrelated if it is a "stand alone" system; that is, it works by itself, is not connected to some other distribution system, and its parts have a mutual or reciprocal relation to each other. NW Natural relies on *Webster's Third New International Dictionary* for its interpretation of "interrelated" and notes that the Oregon Supreme Court has approved such use to ascertain the meaning of statutory terms.

From this, and other textual clues, NW Natural asserts that utility service is defined by the characteristics of the facilities involved, not by the "characteristics of who provides the service." Accordingly, NW Natural claims, the arrangements set out in the Assumed Facts provide utility service and thus violate the statute.

NW Natural buttresses its conclusions by reference to the "context" of the provision in question. It notes that there are several exceptions to the statute set out in Subsection (4) of ORS 758.450, including certain associations of individuals. The inclusion of certain associations, NW Natural argues, means that no other "associations of individuals" are exempted. Moreover, since (4)(b) exempts associations providing energy to "fewer than 20 residential customers" so long as it serves "only residential customers," the service provided in the Assumed Facts cannot be lawful because it involves industrial customers. NW Natural also notes that (5) of ORS 758.450 provides that the exceptions do not prohibit third party financing of acquisition or development by a customer of energy resources. This provision, according to NW Natural, makes clear that a particular combination of two entities—a financing entity and a provider of utility service—is not subject to the restrictions of the statute. Therefore, according to NW Natural, other two-entity combinations are within the scope of the prohibition.

NW Natural also asserts that the explicit purposes of the territorial allocation law, as set out in ORS 758.405, support its conclusions. All the stated purposes—prevention of duplication and promotion of efficient, safe, and economic use of facilities to provide adequate and reasonable service—are served, according to NW Natural, by its interpretation of ORS 758.450. Finally, the Company claims that its arguments are supported by the very

raison d'être of the territorial allocation law: maintenance of the integrity of Oregon's system of regulating public utilities as monopoly providers of heat, light, water, or power. Bypass arrangements such as those at issue in this case conflict with the exclusive character of allocated territories and monopoly status and therefore must be within the prohibition intended by the Legislature in ORS 758.450.

We are not persuaded. We first reiterate that our decision was not based on a conclusion that the entities described in the Assumed Facts were not "persons" as defined under ORS 758.400(2) or on a conclusion that the arrangement constitutes an exception under ORS 758.450(4). Thus, we focus on the issue of whether the arrangement is "utility service" under ORS 758.400(3).

We do not agree with NW Natural's textual or contextual analyses. They do not, in our view, properly consider the statutory context of the territorial allocation law as a whole. We conclude that our analysis of text and context is more thoroughgoing and objective. We reiterate it here.

First, the key terms in ORS 758.400 and 758.450 are not "clear" on their face, as NW Natural argues. Several of them are general terms which have several meanings, depending on the situation: "utility," "service," "distribution," "system," "facilities," "interrelated," and others. Mere reference to a dictionary to determine their meaning, as NW Natural proposes, although potentially useful, will not necessarily provide a sound answer. For example, the Company uses a dictionary definition of "interrelated" (having a "mutual or reciprocal relation or parallelism") to conclude that the system in the Assumed Facts is interrelated because "the lateral pipelines have no functional value except as connected or related to the bypass pipeline and individual plant meters are used to apportion consumption with the system." We do not find this argument responsive to the issues in the case. To avoid an arbitrary conclusion as to the meaning of these terms, it is absolutely necessary to refer to their context to determine legislative intent.

Context for interpreting a statute, as the Court states in *PGE v. BOLI, supra,* is provided by the entirety of the statute in question and by related statutes. In this case, the statutes in question, ORS 758.400 and 758.450, are part of a distinct and unified set of statutes relating to territorial allocation (ORS 758.400 through 758.475; called "territorial allocation law" herein). That coherent structure gives us an explicit framework for our contextual analysis. Any conclusion we arrive at as to the specific statutes in question must be consistent with the function and purposes of the territorial allocation law. Moreover, some of the key terms at issue in this case, such as those referred to above, are used in more than one place in the territorial allocation law. Since it is reasonable to assume (absent legislative direction otherwise) that the meaning intended for a term is consistent throughout a discrete set of statutes, any meaning adopted for a term used in the key statutes must not result in incongruous results when applied in other portions of that statutory scheme.

The territorial allocation law sets out a process by which allocation of territory and customers may be carried out in an orderly fashion. In ORS 758.400, the statute providing definitions for the remainder of the territorial allocation law, "allocated territory" is an area

established by contract approved by the Commission between persons providing a similar "utility service" or established by order of the Commission approving an application for the allocation of territory. Other portions of the territorial allocation law then set out the process by which the allocation occurs: how amendments may be effected, how contracts may be enforced, and the import of the allocation, among other related matters. The "purpose" statute, ORS 758.405, explains the goals of this comprehensive scheme: to avoid duplication of utility facilities; to promote efficient, economic, and safe utility service; and to provide adequate and reasonable service "to all territories and customers." This provision concludes that to achieve these purposes, it is necessary to "regulate" all persons and entities providing utility service as provided in the territorial allocation law.

Thus, the territorial allocation law, as reflected in the structure of the law and the explicit purposes noted, allows the Commission to decide two of the paramount issues it must deal with: who serves what area and which customers. We recognized that goal in Order No. 92-557, where we noted that the territorial allocation law was created to address the duplication of services by PP&L and PGE in Portland (at 2). We noted that the territorial allocation statutes:

> . . . establish two ways in which the Commission may approve exclusive service territory allocations. ORS 758.410 to 758.425 establish the first method: a utility and its neighboring utility may agree to a mutual service territory boundary and execute a contract allocating territories and customers between them. . . . ORS 758.435 to 758.440 establish the second method: if a utility is the exclusive provider of utility service in an area, the utility may unilaterally file an application with the Commission to obtain exclusive service territory (at 3).

We see nothing in this statutory scheme that indicates it was designed to allow, or require, the Commission to prevent consumers from arranging for service to themselves. That is what NW Natural is asking us to do in this case, however it couches its position. As we said in Order No. 00-306:

> Under the Assumed Facts, the participants in a so-called condominium bypass system are co-owners of part of the facilities involved and may be sole owners of other parts. The co-owners are not employed by each other, but are operating to provide service to themselves through a mutually beneficial arrangement. They do not sell utility product or service to each other. They are not offering service of any sort to the general public. The facilities they have created do not benefit or serve anybody but themselves. The fact that they may appoint one of the co-owners as the receiving party or that one of the co-owners may perform management duties does not change the fact that the arrangement is one involving co-owners and not a utility and its customers. Each of the co-owners is, in fact, a sole customer who happens to

> have arranged for service to itself through an arrangement with another coequal customer.

Acceptance of NW Natural's view would mean that customers who provide service to themselves under the circumstances set out in the Assumed Facts would be subject to all the provisions of the territorial allocation law in which the term "utility service" is used, including those relating to contracts between persons who provide utility service (ORS 758.410), and applications for allocation of exclusively served territory. It would mean that ORS 758.405 authorizes the Commission to "regulate" those who are serving only themselves and who otherwise have no connection to the Commission's regulation except as customers of those who are under regulation. We do not accept these propositions.

As we pointed out in Order No. 00-306, at 12-13, our conclusions are not inconsistent with the purposes stated in ORS 758.405 and with the overall structure of the territorial allocation law as we described it above. Our conclusions are also consistent with the common usage of terms such as "utility," "utility service," "utility facilities," "distribution," and "service" that are used in the relevant statutes. Our view of the statute and key terms also does not lead to unreasonable results when applied throughout the territorial allocation law. In contrast, NW Natural's interpretations of terms used in ORS 758.400 and 758.450 would, in some cases, lead to unquestionably dubious results if applied in other portions of this statutory scheme. The term "utility service" provides an example. ORS 758.400(1) defines an allocated territory as an area "established by a contract between persons furnishing a similar utility service and approved by the Public Utility Commission . . . ." ORS 758.410 permits a person providing a utility service to contract with another person providing a similar utility service to allocate territories. ORS 758.450(1) requires that territories serviced by more than one person providing similar utility service may "only become an allocated territory by a contract approved by the Public Utility Commission." If NW Natural's interpretation of "utility service" is correct, the participants in a condominium bypass are providing utility service and are thus subject to all these statutory provisions, and others in territorial allocation law. They could therefore contract with NW Natural, or whatever public utility was operating in the territory in question, to divide up the allocated territory. This is a farfetched and unacceptable result and indicates that NW Natural's analysis has not properly considered the context of the statutes in question.

The interpretation we make leads to a more sensible reading of the intent behind the purposes set out in ORS 758.405 than does NW Natural's. Under NW Natural's view, for example, the "elimination and future prevention of utility facilities," would include privately owned facilities, such as those described in the Assumed Facts, operated by customers or consumers only for their own benefit and use. It is implausible that such a task would be assigned to the Commission. Similarly, the statutory purpose of promoting "the efficient and economic use and development and the safety of operation of 'utility service' while providing adequate and reasonable service to all territories and customers . . ." cannot reasonably be viewed as authorizing interference by the Commission in arrangements among customers to obtain service for themselves, as NW Natural's view would require.

We do not find persuasive NW Natural's argument that we should interfere with the arrangements described in the Assumed Facts because they could lead to a loss of revenues to the Company. We have not viewed protection of utilities from self-provision of utility service as one of the aims of our regulation. As we note above, the territorial allocation law has the aim of regulating the division of territories and customers among utilities, not the protection of utilities from loss of customers who provide service to themselves.

For the reasons stated in this order and Order No. 00-306, we conclude that the arrangements described in the Assumed Facts do not violate ORS 758.405.

Is the Order a "Dangerous Precedent"

We now turn to NW Natural's claim that Order No. 00-306 sets a "dangerous precedent." The Company asserts that the order would allow "cooperative utilities" to impinge on the allocated territory of a utility. The Company even goes so far as to say that the order "suggests that these utilities [cooperatives] can now extend services into the allocated territory of a competitor . . ." This claim is without merit. Cooperatives were not discussed at all in the order. To say that we "suggested" that cooperatives were included in our ruling is farfetched. We find no such "suggestion" in the order.

NW Natural, here, as throughout its filings, seems to have forgotten that the effect of a declaratory ruling is limited to the agency and the petitioner. ORS 756.450. Moreover, our analysis of the matter is narrow. The determinative issue in Order No. 00-306 was whether the service described in the Assumed Facts is utility service. Any entity claiming to come within the ambit of the conclusions set out in that order (and this order) would have to show that it is not providing "utility service." As we noted in our summary of the order set out above, the issue of service to the "public" (which NW Natural focuses on in its claim regarding cooperatives) is only one of the facts we mentioned in our conclusions. A cooperative or any other entity claiming that an arrangement it is involved in is not utility service would have to show that what it is doing is materially the same as what is described in the Assumed Facts or is otherwise outside the definition of utility service. Thus, NW Natural's apocalyptic claim that cooperatives would be able to ignore the territorial allocation law if Order No. 00-306 stands is false.

We note here NW Natural's argument that allowing condominium bypass systems to operate would raise other customers' rates because of loss of contribution by the bypassing customers. It is clear, however, that if our application of the statutes is correct, we must do as they direct us and cannot ignore their meaning because of such potential consequences. Of course, the potential loss of industrial load is an issue that comes before the Commission frequently where a utility requests permission to enter into a special contract to retain an industrial customer. In those situations, we are performing our regulatory role of deciding how a public utility may act to retain load. Here, NW Natural is suggesting something quite different: that we limit what customers may do to serve themselves based on the impact on the utility's other customers. That same economic issue may, of course, arise any time a customer leaves a utility, for whatever reason. We do not have the authority to attempt to prevent such a departure simply because it may have an impact on the utility's rates.

In a related matter, the Commission acknowledges the issues raised by the existence of a condominium bypass system involving Oregon Steel Mills. It appears from what has been presented in this case that that system is materially the same as the hypothetical systems described in the Assumed Facts. Even if that is true, it has no impact on our decision here. We make no comment on what action we might take with respect to the Oregon Steel Mills condominium bypass if our decision on the law were different. Similarly, the fact that NW Natural may have argued to the Commission that it should be permitted to enter into a special contract with an industrial user on the basis that the customer could lawfully bypass the utility through a condominium bypass arrangement does not enter into our decision. We do not believe that any such arguments by NW Natural are binding on the Company in this proceeding.

NW Natural asserts that the legislative history of the statutes in question, including the 1985 amendment to ORS 758.450(4) discussed above, supports its position. Of course, NW Natural notes that, under *PGE v. BOLI, supra*, legislative history is not consulted if the first analytic steps, reference to text and context, reveal legislative intent. NW Natural asserts that the text and context are clear. It thus provides the argument based on legislative history as an alternative should the Commission feel that text and context are not sufficient for the task. We have, however, concluded that the text and context do tell us how to apply the statute. Nevertheless, we have reviewed the arguments made by the Company and conclude that nothing it has shown us indicates that the conclusions we reached above are suspect.

NW Natural argues that the legislative history of SB 487, which created the territorial allocation law, indicates that it was designed to prohibit invasion of allocated territories by other "serving agencies." It then argues that the change in the exemptions in ORS 758.450(4) made in 1985 was requested by the Commission and was designed "to prevent loss of industrial loads by competing serving agencies," by ensuring that "when a number of industrial customers combine to jointly create a serving agency within allocated territory, they violate ORS 758.450(2)." Assuming that this is an accurate summary by the Company, it does not help its cause, because, as we have stated above, the entities involved are not providing utility service.

Northwest Industrial Gas Users has argued that cases in other jurisdictions support its position that the arrangements described in the Assumed Facts do not violate the territorial allocation law. These cases, based upon different statutory schemes, have limited bearing on the case at hand. It appears that the conclusions in those cases center on the question of whether the entities involved are "public utilities." We have not drawn such a conclusion. Moreover, in its amended petition, NW Natural withdrew from our consideration the question as to "whether the operator of such a system [as described in the petition] is a 'public utility' under ORS 757.005." For these reasons, those cases are not helpful to us in deciding this matter.

ORDER

IT IS ORDERED that Order No. 00-306 is affirmed.

Made, entered, and effective _____.

_____
Roy Hemmingway
Chairman

_____
Roger Hamilton
Commissioner

_____
Joan H. Smith
Commissioner

A party may appeal this order to a court pursuant to applicable law.