

ORDER NO. 02-282

ENTERED APR 19 2002

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

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In the Matter of the Application by Hat)
Rock Water Company, Inc. for)
Allocation of Exclusive Territory to)
Provide Water Service, Pursuant to)
ORS 758.300 Through ORS 758.320.)

ORDER

DISPOSITION: APPLICATION GRANTED

On January 10, 2000, Hat Rock Water Company, Inc. (applicant) filed under Oregon Administrative Rule 860-036-0900 an application with the Public Utility Commission (Commission) for an allocation of exclusive territory for the provision of water service. Applicant is requesting allocation of the service territory it adequately and exclusively served on October 23, 1999. See ORS 758.300, and Section 2 to 4, Chapter 695, Oregon Laws 1999. The territory sought is described in Appendix A. The Commission gave notice of the application on January 19, 2000, as required by Chapter 695, Oregon Laws 1999, Section 2(2). No requests for hearing were filed.

Applicant is an investor owned utility that provides water service to approximately 34 customers in the vicinity of the Hat Rock Subdivision, Hermiston, Oregon.

Based on its investigation, the Commission finds that the applicant was adequately and exclusively serving the territory described in Appendix A and covered by the current service territory application on October 23, 1999.

FINDING OF FACTS

Merits of the Application

Staff's analysis of the company's application indicates that the company has met the criteria required to demonstrate that the company adequately and exclusively provided water service to its current service territory as required in OAR 860-036-0900 through OAR 860-036-0930.

The criteria are:

1) Service Quality

The Commission Consumer Services Division had no record of complaints on Hat Rock. A Commission survey was sent to the thirty-four customers listed as current customers by the utility to determine the level of service quality being provided. Twenty-five responses were received. There were only two below average responses. One customer gave a range response on water pressure from above average to below average with an explanation. Another customer gave a below average response on communication between the utility and customers. PUC staff sent explanatory letters on the required procedure for consumer complaints to the two dissatisfied respondents.

2) Water Quality

The Oregon Health Division website showed seventeen violations from June 1992 through October 2001. Fourteen pertain to routine or repeat coliform level reporting insufficiency and two result from exceeding the coliform maximum contamination level. The last violation is for exceeding the acute fecal coliform or E.Coli maximum contamination level and resulted from a major pipe replacement project. One public notice request from November 20, 1995, is the only enforcement action taken.

Hat Rock must comply with the provisions of OAR 333-061-0036 on water sampling and analytical requirements.

3) Water Capacity

Hat Rock is an unmetered system. Average demand, peak demand, and pumping capacity figures are unavailable. The system has a flow meter and it shows a current usage maximum of .579 cubic feet per second. This converts to 260 gallons per minute. Hat Rock owns a water right (permit S-52968) with a maximum capacity of 356 gallons per minute. A 17,000-gallon reservoir provides backup storage. The system appears adequate.

- 4) Technical Ability
Hat Rock customers provide all the requirements of the system on a volunteer basis.
- 5) Exclusive Service
Hat Rock submitted a photocopy of an easement from the Department of the Army.
- 6) Reasonable Rates
The rates averaged approximately \$19.00 per customer per month over the two years reported on in the application.

OPINION

Jurisdiction

ORS 757.005 defines a public utility as “ any corporation, company, individual, association of individuals, or its lessees, trustees or receivers, that owns, operates, manages or controls all or a part of any plant or equipment in this state for the production, transmission, delivery or furnishing of . . . water . . . directly or indirectly to or for the public.”

ORS 758.300 defines a water utility as " any corporation, company, individual or association of individuals, or its lessees, trustees, or receivers, that owns, operates, manages or controls all or a part of any plant or equipment in this state for the production, transmission, delivery or furnishing of water, directly or indirectly to or for the public, whether or not such plant or equipment or part thereof is wholly within any town or city. 'Water utility' does not include a municipal corporation.”

Applicable Law

The 1999 Oregon Legislature enacted ORS 758.300 through 758.320, which provide that all public water utilities must file an application with the Commission seeking an order designating the service territory that the utility served adequately and exclusively on October 23, 1999, as exclusive service territory.

On April 11, 2000, the Commission adopted rules (AR 370) governing the allocation of exclusive service territory to water utilities. Oregon Administrative Rules 860-036-0900 through OAR 860-036-0930 specify the service territory application requirements and processes necessary to meet the requirements of ORS 758.300 through ORS 758.320.

Under ORS 758.305 (4) the Commission may decrease an exclusive service territory upon a showing that the water utility is not providing adequate service to

its customers. If the Commission may decrease an exclusive territory because a water utility fails to provide adequate service, it is only fair that the Commission declare, to the extent possible, the level of service it expects when it acts on a petition for designated exclusive service territory. The Commission, therefore, has authority to set service quality standards when it grants a petition.

Disposition

Applicant has met the service territory requirements and processes set out in OAR 860-038-0900 through OAR 860-036-0930 and is entitled to the exclusive territory described in Appendix A.

CONCLUSIONS

1. The Company is a public utility subject to the service territory jurisdiction of the Public Utility Commission.
2. The utility meets the requirements set out in OAR 860-036-0900 through OAR 860-036-0930.
3. The Company meets the requirements of ORS 758.300 through ORS 758.320.
4. The Application should be granted.

ORDER

1. The application of Hat Rock Water Company, Inc. for exclusive service territory as allocated to the applicant and set forth in Appendix A is granted.

2. Hat Rock Water Company, Inc. must comply with the provisions of OAR 333-061-0036 on water sampling and analytical requirements.

Made, entered, and effective _____.

Roy Hemmingway
Chairman

Lee Beyer
Commissioner

Joan H. Smith
Commissioner

A party may request rehearing or reconsideration of this order pursuant to 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 of OAR 860-014-0095. A copy of any such request must also be served on each party to the proceeding as provided by OAR 860-013-0070(2). A party to a hearing may appeal this order to a court pursuant to applicable law.

APPENDIX A

Description of Hat Rock Water Company, Inc.'s exclusive service territory:

Taken from aerial photo map No. N2-19-64, Zoning Map of the Umatilla County, State of Oregon, adopted 7-19-72. Maps No. 5N 29 15Aa and 5N 29 15Ab.

Hat Rock Tracts Blks 1-7, 8, 9, 10. NE $\frac{1}{4}$ NE $\frac{1}{4}$ Sec. 15 T.5N. R.29 E.W.M.