

ORDER NO. 02-284

ENTERED APR 19 2002

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BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

WA 10

In the Matter of the Application by)
Hellberg Water System for Allocation)
of Exclusive Territory to Provide Water)
Service, Pursuant to ORS 758.300)
Through ORS 758.320.)

ORDER

DISPOSITION: APPLICATION GRANTED

On January 31, 2000, Hellberg Water System (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 February 4, 2000, as required by Chapter 695, Oregon Laws 1999, Section 2(2). No requests for hearing were filed.

Applicant is a sole proprietorship that provides water service to approximately eight customers in the area generally described as bordered by Nevada Avenue and Nevada Extension, the West Extension Relocation Canal, and Third Street, Irrigon, 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 Hellberg. A Commission survey was sent to the eight customers listed as current customers by the utility to determine the level of service quality being provided. Two responses were received. One response indicated unacceptable water quality (see 2. below), and below average customer confidence in management/operator and communication between utility and customers. PUC staff sent an explanatory letter on the required procedure for consumer complaints to the dissatisfied respondent.

2) Water Quality

The Oregon Health Division website recorded fifteen violations from June 1991 through September 2000. Fourteen violations pertain to routine or repeat coliform level reporting insufficiency. The other listing is a nitrate maximum contamination level violation based on the average of samples. No enforcement action has been taken indicating later voluntary compliance with the violations requirements.

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

3) Water Capacity

Hellberg is an unmetered system with average demand and peak demand figures unavailable. The system taps two wells under water right (permit 4105718) with a daily pumping capacity of 150 gallons per minute. Given the lack of complaints, the system appears adequate.

4) Technical Ability

The owner/operator stated the following: "...I simply collect and send in the water samples, provide materials to fix broken mainlines, call the local pump shop when repairs are needed, provide the quarterly water bills, and collect on those accounts when necessary. I receive no salary and have no certifications."

5) Exclusive Service

The owner stated in the application that there are no recorded easements for the mainlines across the water users' property. The arrangement is maintained by verbal agreement only, but the system has operated since 1979.

6) Reasonable Rates

The electricity bill is divided among the customers. A \$9 service fee is then added to each statement to cover bacteria and nitrate monitoring and pump replacement.

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 Hellberg Water System for exclusive service territory as allocated to the applicant and set forth in Appendix A is granted.

- Hellberg Water System 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 Hellberg Water System's exclusive service territory:

In Township 5 North Range 26 East Section 25 and cover maps 25C and 25D, the property is bordered on the north side by Nevada Avenue and Nevada Extension, east of Second Street; and bordered on the south by the West Extension Relocation Canal. It is basically a triangular-shaped piece with its eastern boundary at a point that is the intersection between Nevada Extension and the Relocation Canal. It is bordered on the west side by Third Street.

Included in the western boundary are tax lots 600, 1600, and 1400. Sagebrush Road and that portion of Second Street south of the intersection with Nevada are included within the service territory. Tax lots included within the service territory are 600, 1200-1600, and 1800.