

ORDER NO. 02-646

ENTERED SEP 16 2002

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BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

WA 24

In the Matter of the Mountain Shadows)
Utilities Company Application for)
Allocation of Exclusive Territory)
Provide Water Service, Pursuant to)
ORS 758.300 Through ORS 758.320.)

ORDER

DISPOSITION: APPLICATION GRANTED

On February 24, 2000, Mountain Shadows Utilities Company (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 March 5, 2001, 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 28 customers within the Mountain Shadows Subdivision in Hood River, 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 Mountain Shadows. A Commission survey was sent to the twenty-eight customers listed as current customers by the utility to determine the level of service quality being provided. Sixteen responses were received. Five respondents gave below average and unacceptable evaluations in several areas. Explanatory letters on the required procedure for consumer complaints were sent to all.

2) Water Quality

The Oregon Department of Human Services Drinking Water Program's website showed 13 violations from September 1991 through December 2001. The 1991 violation was for exceeding the maximum contamination level for coliform. There were three violations for insufficient coliform reporting; four violations for lack of any coliform reporting; and four violations for lack of nitrate reporting. No enforcement action was necessary.

3) Water Capacity

Mountain Shadows has permits 7601 and 36149 for surface water. The latter source is no longer utilized. The daily pumping capacity is 360,000 gallons. The application's average daily usage is 1,027 gallons with yearly peak daily demand of 6,000 gallons. There is a 12,000-gallon storage tank.

4) Technical Ability

"Owner/operator Donald J. Branton is Ore. Reg. Prof. Engineer #4112 with 45 years experience in the design, construction and maintenance of municipal water systems. He is and has been since 1959 CEO of Tenneson Engineering Corporation and as such, is responsible for all business aspects of the Corporation. System was built under his supervision in 1971 and has been operated by him since that date."

- 5) Exclusive Service
Documentation supporting the public utility easements, road right-of-way permits, and privately deeded easements for the utility was submitted.
- 6) Reasonable Rates
The rates averaged \$22.50 and \$23.62 per household 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.

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

IT IS ORDERED that the application of Mountain Shadows Utilities Company for exclusive service territory as allocated to the applicant and set forth in Appendix A is granted.

Made, entered, and effective _____.

John Savage
Director
Utility Program

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

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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 Mountain Shadows Utilities Company's exclusive service territory:

Section 30, Township 1 South, Range 10 East, Willamette Meridian: That portion of the Southeast $\frac{1}{4}$ of the Southwest $\frac{1}{4}$ lying within a strip of land being 500 feet on either side of the Cooper Spur Road. The Southwest $\frac{1}{4}$ of the Southeast $\frac{1}{4}$, less and except the North-Center 10 acres thereof.

Section 31, Township 1 South, Range 10 East, Willamette Meridian: Mountain Shadows Subdivision, Hood River Country, Oregon, all and a strip of land 1,000 feet wide lying 500 feet on either side of the Cooper Spur Road between the South boundary and the North boundary of said Section 31.

Section 6, Township 2 South, Range 10 East, Willamette Meridian: Snowbird Tracts Subdivision, Hood River County, all and that portion of the Northwest $\frac{1}{4}$ of said Section 6 lying westerly of and within 500 feet of the West right-of-way line of the Cooper Spur Road.