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BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

WA 74

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|---------------------------------------|---|-------|
| In the Matter of |) | |
| |) | |
| HILAND WATER CORP. |) | ORDER |
| |) | |
| Application for Allocation of Current |) | |
| Service Territory. |) | |

DISPOSITION: APPLICATION DENIED

On April 18, 2002, Hiland Water Corp., St. Helens, Oregon, filed an application for an allocation of exclusive territory to provide water service. The Public Utility Commission (Commission) provided notice of the application by arranging for notice of the application to be published in the local newspaper, *The Chronicle*, on September 11 and September 18, 2002. On October 9, 2002, McNulty Water Association filed a protest to the application and requested that the Commission hold a hearing.

Lowell Bergen, an Administrative Law Judge (ALJ), presided over procedural conferences on November 15, 2002, and January 10, 2003. He also presided over the hearing in St. Helens on April 4, 2003. Melvin Olson represented Hiland, Leslie M. Roberts, Attorney at Law, represented McNulty, and Jason Jones, an Assistant Attorney General, represented the Commission's Staff.

This order is based on the preponderance of the evidence received at the hearing.

FINDINGS OF FACT

McNulty Water Association began providing water service to an area in and near St. Helens in 1962. It began operations as a water association and is now in the process of changing its status to become a Public Utility District. It obtains water from five wells and has the capacity to store 900,000 gallons in reservoirs. It currently provides service to approximately 850 customers. Among the areas it has historically served is the Barger Road region. It has sufficient pipes and other equipment to serve its customers, including present and former customers in the Barger Road region.

ORDER NO.

Melvin Olson owns Hiland Water Corp. He also owns a house and several rental properties on Barger Road near St. Helens. At one time he was the operator/manager of McNulty. While working in that capacity in 1996, he constructed a water system in the Barger Road region. He incorporated the system as Hiland Water Corp. It consists of a well, a 12,000-gallon reservoir, and the necessary ancillary pipes and equipment to provide water service. Hiland provides water service to the properties Mr. Olson owns next to Barger Road.

Hiland's application for an exclusive territorial allocation does not contain a written description of the area it seeks to serve. Instead, it describes the location of the well and the equipment used by Hiland to provide service. However, during the hearing McNulty provided an exhibit showing tax lot numbers of the properties Hiland proposes to serve. The tax lots include the properties Mr. Olson owns and other properties he does not own in that general area.

Both McNulty and Hiland provide water service in the Barger Road region. Neither company has received an exclusive territorial allocation from the Commission or a municipality.

The Commission's Staff did not present evidence at the hearing, but stated in closing argument that applicant had not met the statutory requirements for an exclusive territorial allocation.

OPINION

ORS 758.305 provides that designated service territories of a water utility approved by the Commission shall be exclusive. The 1999 Oregon Legislative Assembly enacted Chapter 695 relating to the regulation of applications for water territorial allocations. Section 3 requires the Commission to find that an applicant for a service territory is providing adequate and exclusive service to the territory applied for before the Commission is authorized to approve the application. Commission Rule OAR 860-036-0905 specifies what must be included in an application for an exclusive territorial allocation for water service. Subsection (g) requires that the application include a complete and accurate written description of the water utility's current service territory.

Hiland is not providing exclusive water service in the area for which it seeks an exclusive territorial allocation. The statutes quoted above require that Hiland's application be denied because its service is not exclusive in the territory requested. Also, considering the application from a public interest standpoint, the residents in the Barger Road area will be better served by having McNulty available for service. McNulty already has equipment there to serve the public. It also has substantial capacity that could be used in an emergency.

ORDER NO.

CONCLUSIONS

Hiland has not shown that it meets the statutory requirements for the Commission to grant it an exclusive territorial allocation for water service. Its application should therefore be denied.

ORDER

IT IS ORDERED that the application filed by Hiland Water Corp. for a territorial allocation to provide exclusive water service to the Barger Road area near St. Helens, Oregon, is denied.

Made, entered, and effective _____.

Roy Hemmingway
Chairman

Lee Beyer
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 in 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 may appeal this order to a court pursuant to applicable law.