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BEFORE THE PUBLIC UTILITY COMMISSION**

**OF OREGON**

WA 36

In the Matter of	)	
	)	
WILLAMETTE WATER COMPANY.	)	ORDER
	)	
Application for an Allocation of Current	)	
and Expanded Service Territory.	)	

**DISPOSITION: STAY OF ORDER NO. 02-573 REMOVED**

On February 9, 2000, Willamette Water Company (WWC) applied to the Public Utility Commission of Oregon (Commission) for the designation of an exclusive service territory. The Eugene Water and Electric Board (EWEB), the City of Eugene (City) and the Lane County Local Government Boundary Commission (Boundary Commission) participated as parties.

On August 21, 2002, the Commission granted WWC's request, in part, and denied it, in part.<sup>1</sup> The order recognized that the Commission has concurrent jurisdiction with the Lane County Boundary Commission (Boundary Commission), which has independent authority to allocate territory to WWC under ORS 199.464(4). At the time of the order, WWC had an application for allocation of territory pending before the Boundary Commission. See also, Order No. 01-797. The Commission stayed implementation of Order No. 02-573, pending action by the Boundary Commission. On October 18, 2002, WWC filed a final application incorporating the Commission's decisions in Order No. 02-573. In addition, on November 12, 2002, Commission Staff completed the review of WWC's service quality required in the order and concluded the service was adequate.

On April 3, 2003, the Boundary Commission denied WWC's application for allocation of service territory.<sup>2</sup> On September 2, 2003, WWC requested that the Commission remove the stay and enter a final order. On September 23, Commission Staff and EWEB filed comments. On October 3, 2003, WWC responded to the comments. On October 17, 2003, the City filed its comments.

<sup>1</sup> Order No. 02-573 (August 21, 2002).

<sup>2</sup> Staff, Boundary Commission Staff, WWC, and the City note that the Boundary Commission action was based on different standards than the ones that we applied in Order No. 02-573.

**COMMENTS ON WWC’S REQUEST TO REMOVE THE STAY**

In this order, we must determine what actions, if any, are necessary to reconcile our decision with that of the Boundary Commission.

Commission Staff proposes that the Commission amend Order No. 02-573 to require that WWC obtain the approval of the Boundary Commission to serve new connections within the territory allocated in our order. Staff notes that the Boundary Commission retains authority to review and approve new water extensions or connections that lie outside territory allocated by the Boundary Commission. In other words, even though we granted an allocated territory, the Boundary Commission must still approve new connections, unless it too allocated the territory.<sup>3</sup>

Staff notes that the utility statutes require a water utility to serve all applicants for service within its designated territory.<sup>4</sup> The only exceptions are those specifically enumerated by Commission rule. Our rules do not carve out an exception for water utilities that have been denied authority to serve an applicant by a boundary commission. See OAR 860-036-0080(7). Consequently, WWC could be put in the position of not being able to meet our requirement to serve a customer by virtue of the Boundary Commission's action. Staff concludes that our order should be amended to reconcile this apparent conflict. Staff would require that WWC seek review and approval of the Boundary Commission upon the request of a customer located in the designated territory.

WWC opposes Staff's recommendation. It asserts that there is no conflict in the requirement that the Boundary Commission approve new connections. It notes that there are ordinances and regulations from many government agencies with which a potential customer must comply, such as the need to obtain a building permit from the county. WWC argues that it should be the customer's obligation to obtain the Boundary Commission's approval, not WWC's. This obligation should be similar to the customer's requirement to satisfy other conditions before it can build on a site.

The City observes that the Boundary Commission's continuing oversight of the expansion of water services in WWC's service territory satisfies its concerns about development of urban services outside the urban growth boundary. The City is not

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<sup>3</sup> The Boundary Commission derives its authority to approve such new connections under ORS 199.464(4):  
Except as provided in subsection (5)(d) of this section, within territory subject to the jurisdiction of a boundary commission, no person may \*\*\* extend a water line \*\*\* without commission approval. \*\*\*

Subsection (5)(d) provides:

A community water supply system to which service territory has been allocated \*\*\* may extend or establish water lines within the territory without further approval by the commission.

<sup>4</sup> ORS 758.305(2) provides:

A water utility \*\*\* shall serve all applicants for service within its designated territory. The water utility may refuse service only as provided by commission rule.

requesting that the Commission's final order conform to the Boundary Commission order.

EWEB does not oppose entry of a final order. It requests, however, that the Commission ensure that changes submitted in WWC's revised application are fully incorporated in the final order. EWEB points to the Revised Application, dated October 18, 2002, at Section A.14 and notes WWC acknowledges that any grant of exclusive territory does not affect EWEB's rights and obligations under its supply agreement with WWC. In addition, EWEB asks that this order incorporate those provisions of the interim order that abstain from any interpretation of the EWEB-WWC supply agreement.

### **CONCLUSION**

We recognize that the current regulatory scheme may put WWC in an impossible position. Our rules may require the company to provide service, which the company is prohibited from providing under the Boundary Commission's statutes. To reconcile that conflict, we will amend our rules to allow WWC to refuse service if it is prohibited from serving a customer by law. We believe this approach better addresses the problem identified by Staff than an amendment to the order.

In docket number AR 476, we will adopt this rule change as a temporary rule, so it goes into effect immediately. We find that that this conflict between our rules and the Boundary Commission statutes must be resolved immediately. In addition, we will initiate a second proceeding for a permanent rule. See docket AR 477.

Furthermore, as requested by EWEB, we once again acknowledge that this territory allocation does not impose, or even suggest, any changes in the contractual relationship between WWC and EWEB.

We remove the stay of Order No. 02-573.

**ORDER**

IT IS ORDERED that:

1. The stay of Order No. 02-573 is removed.
2. The application for exclusive allocation of territory to WILLAMETTE WATER COMPANY, as set forth in the final application filed with the Commission on October 18, 2002, is granted.

Made, entered, and effective \_\_\_\_\_.

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**Lee Beyer**  
Chairman

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**John Savage**  
Commissioner

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**Ray Baum**  
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.

