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BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

WA 37

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

ORDER

DISPOSITION: APPLICATION GRANTED

On March 1, 2000, Salmon Valley Water 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 15, 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 165 customers in the area bounded by Arrah Wanna Boulevard, East Birdie Lane, the Salmon River, Salmon River Road, the Sandy River, and Highway 26, in Welches, 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 section had a record of eleven complaints on Salmon Valley in the period from June 1994 through May 2000, all satisfactorily resolved. There are nearly five hundred current customers.

2) Water Quality

The Oregon Department of Human Services Drinking Water Program reported eight coliform violations for Salmon Valley from April 1992 through July 2001 (split evenly between non-reporting and insufficient reporting), and six instances of chemical non-reporting from January 1999 through December 2001. The only enforcement record shows a return to compliance notation as of December 2001. Reporting compliance will become a condition of the order approving the service territory award.

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

3) Water Capacity

Salmon Valley had 407 residential and 54 commercial/industrial customers during the last year reported on in the application. Average demand is 187,097 gallons per day (gpd). Peak demand is 238,355 gpd. The utility owns the water rights to 1,206,720 gpd of ground water, drawn from three wells. The water rights prohibit the use of two wells during July and September, which reduces the amount of water available during those months to 884,160 gpd. In addition, the company's pumping capacity is 312,000 gpd (240,000 gpd in July and September) and it has a total of 473,000 gallons of storage capacity. During times of average demand, approximately 16 percent of the available water rights is in use (21 percent in July and September). Approximately 20 percent of Salmon Valley's available water rights is in use (27 percent in July and September) during times of peak demand. The utility utilizes 60 percent of its maximum pumping capacity during times of average demand (78 percent in July and September) and 76 percent during times of peak demand (99 percent in July and September).

4) Technical Ability

Lon Goff, the system's water operator, is certified with the Oregon Health Division as a Cross Connection Control Inspector and Tester, and has five years experience in all phases of the Salmon Valley operation.

5) Exclusive Service

Property tax statements and easements' documentation were submitted for the wells and holding tanks in the system. An extensive search of records failed to uncover any ownership or easement documentation for the distribution lines. However, the system has been in use since the late 1960's. Under the legal concept of "adverse possession", Staff believes that continued transmission is insured and accepts the documentation submitted as sufficient to demonstrate the right for continued service. This concept confers access/usage when such access/usage has occurred over a long period of time without contest.

6) Reasonable Rates

Salmon is a fully regulated public utility. The Commission last approved rates under Docket UW 49 in Order 96-108, dated April 25, 1996.

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.

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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

IT IS ORDERED that:

1. The application of Salmon Valley Water Company for exclusive service territory as allocated to the applicant and set forth in Appendix A is granted.
2. Salmon Valley Water Company must comply with the provisions of OAR 333-061-0036 on water sampling and analytical requirements.

Made, entered, and effective _____.

Lee Beyer
Chairman

John Savage
Commissioner

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 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 Salmon Valley Water Company's exclusive service territory:

The service boundaries are contained within the following map coordinates: Sections 32, 8, 33, T2.5, R.7E., and Sections 4, 5, 88, 9, T.3S. R.7E., Clackamas County, Oregon.

Driving east on Highway 26, the western boundary of the distribution system is the intersection of Arrah Wanna Boulevard and Highway 26. The service area continues eastward on both sides of Highway 26, with its eastern boundary ending at the intersection of Highway 26 and Salmon River Road.

The service area north of Highway 26 runs from the intersection with Welches Road and the intersection with Salmon River Road to the Sandy River.

Moving south from Highway 26, the southern boundary follows the Salmon River to the intersection of Welches Road and East Birdie Lane. It continues eastwardly to the intersection with Salmon River Road and completes the loop returning to Highway 26.