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**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

UCB 11

In the Matter of LAVA NURSERY, INC.	)	
	)	ORDER
Complainant,	)	
	)	
vs.	)	
	)	
PARKDALE WATER COMPANY,	)	
	)	
Defendant.	)	

**DISPOSITION: COMPLAINT DENIED**

On March 24, 2003, Jeffrey L. Snyder filed this complaint on behalf of Lava Nursery, Inc., (Lava Nursery) against Parkdale Water Company (Parkdale). Parkdale responded on April 7, 2003. A prehearing conference was held on April 29, 2003, and a hearing was held over the telephone on November 14, 2003. Mr. Jeffrey Snyder appeared for Lava Nursery and Mr. Jerry Branton appeared for Parkdale.

**The Complaint**

Lava Nursery asserts that it was overcharged for the cost and installation of its meter at its service connection. It submitted a bill from Parkdale dated September 23, 1999, for \$2,175.64 that it asserts is for a meter to serve a two-inch line. Lava Nursery seeks recovery of payment it made to Parkdale in excess of what is allowed by law.

In response, Parkdale stated that the charge was not for the meter, but for a backflow prevention device, meter set, and untangling "the plumbing mess that the Complainant had created" by adding another user, installing extra pipe, and constructing a building with a concrete floor over the pipe. Parkdale also noted that it had refunded Lava Nursery \$210 on costs that it had negotiated down with the subcontractor. Parkdale contended that it charged Lava Nursery for the actual cost of the non-standard service connection:

The problem [of the non-standard service connection] was compounded by the fact that the Middle Fork Irrigation District had built the service line, installed it underneath the concrete floor of your pump building, and extended their own service from that point on the discharge side of your pump without permission or even the knowledge of the Parkdale Water Company. It involved a considerable amount [of] plumbing to get the problem resolved. The other factor, that of the installation of the backflow preventer, which where you are using a pressurized system at a pressure greater than the main delivery pressure, was almost a necessity.

Parkdale stated that the bill was appropriate because it did not unlawfully charge for the meter or overcharge for a standard service connection, but instead charged the actual cost of the service connection and backflow prevention device.

### **Applicable Law**

***Jurisdiction and Regulation.*** The Commission has no jurisdiction over water utilities owned or operated by municipal or quasi municipal entities, ORS 757.005(1)(b)(A), or over utilities meeting all four of the following criteria: serving fewer than 300 customers, charging an annual average monthly residential rate of no more than \$18 per customer; providing nondiscriminatory service, and providing adequate service, ORS 757.005(1)(b)(E).<sup>1</sup>

Water utilities that meet the definition of a public utility in ORS 757.005 *and* are not exempt because they do not meet the criteria set out above are subject to service regulation, although not necessarily rate regulation. All public water utilities must pay Commission gross revenue fees. Parkdale is a public utility within the meaning of ORS 757.005(1)(b)(E), because it charges its customers more than \$18 per month.<sup>2</sup> As a public utility, Parkdale is subject to service regulation.

For a water utility to be rate regulated, it must meet the definition of a public utility in ORS 757.005 and either serve more than 500 customers *or* meet the following criteria: serve fewer than 500 customers, charge or propose to charge an annual average monthly residential rate above a threshold established by the Commission, and twenty percent of the customers have petitioned the Commission for rate regulation. *See* ORS 757.061. OAR 860-036-0030 sets out the threshold levels of rates and charges for water utilities serving fewer than 500 customers. Currently, the threshold rate is \$24. Because no petition has ever been submitted by Parkdale customers, Parkdale is not subject to rate regulation.

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<sup>1</sup> A new law subsequently changed the standards determining which water companies are subject to regulation, effective January 1, 2004. Oregon Laws 2003, ch 82, § 4.

<sup>2</sup> In response to a 1999 Staff survey, Parkdale reported that it charged a flat \$24 monthly residential rate.

The exception to rate regulation encompasses more than just freedom from regulation of monthly rates. ORS 757.061(2) states, "The commission shall adopt rules establishing maximum rates for water utilities \* \* \* for the purpose of determining whether such utilities are subject to regulation under" ORS 757.061(1). OAR 860-036-0030 establishes maximum rates "[p]ursuant to ORS 757.061(2)," including the maximum rate for a standard service connection. Because Parkdale is not subject to ORS 757.061(1) as a rate regulated water utility, the limit on service connection charges in OAR 860-036-0030 does not apply to Parkdale.<sup>3</sup>

### **Conclusions of Fact and Law**

The bill submitted by Lava Nursery shows that Parkdale did not charge for the cost or installation of the meter. Lava Nursery asserts that the charges under the bill must be limited by Commission rules related to service connections. However, we do not have jurisdiction over the amounts charged by Parkdale for services that it provides to its customers. Because we do not have jurisdiction over the bill, we deny this complaint.

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<sup>3</sup> Parkdale is only limited by the thresholds set in OAR 860-036-0030 in that if it charges more than those limits, it is required to notify its customers that they have the right to petition the Commission for rate regulation.

**ORDER**

IT IS ORDERED that the complaint is denied.

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.