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BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON

WA 3

In the Matter of the Application by)
Elderberry Nehalem Water System for)
Allocation of Exclusive Territory to)
Provide Water Service, Pursuant to)
ORS 758.300 Through ORS 758.320.)

ORDER

DISPOSITION: APPLICATION GRANTED

On February 22, 2000, Elderberry Nehalem Water System (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 9, 2000 as required by Chapter 695, Oregon Laws 1999, Section 2(2). No requests for hearing were filed.

Applicant is a community water system that provides water service to approximately 42 customers in the vicinity of the Elderberry Nehalem home sites located near Grannel Road and Highway 26, Seaside, 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

A Commission survey was sent to the forty-four customers listed as current customers by the utility to determine the level of service quality being provided. Twenty-five responses were received with no system-wide service quality problems indicated. Two customer responses rated the same four categories as below average. Explanatory letters on the required procedure for consumer complaints were sent. The Commission Consumer Services section has no record of complaints on Elderberry in the past two years.

2) Water Quality

The Oregon Health Division reports that Elderberry is in compliance with all applicable drinking water regulations.

3) Water Capacity

Elderberry has forty-two residential and two commercial/industrial customers. Average demand is 9,050 gallons per day (gpd). Peak demand is unknown. The utility owns the water rights to .15 cubic feet per second (96,948 gpd) of ground water, drawn from two wells. During times of average demand, approximately 9 percent of the available water rights is in use. The system pressure is gravity dependent. There are two storage tanks with a 50,000-gallon capacity in the system.

4) Technical Ability

The Oregon Health Division does not require operator certification for a system of this size. The system manager has attended some operator training classes.

5. Exclusive Service

A copy of the waterline easement from the State of Oregon's Board of Forestry was submitted. The rights granted by the easement are for the installation, maintenance and repair of water pipeline and related facilities. Elderberry appears to have the authority necessary to serve the territory exclusively.

5) Reasonable Rates

The average monthly residential rate for Elderberry customers is \$14.99. This is below the Commission established threshold for reasonable rates.

OPINION

Jurisdiction

ORS 757.005 defines a public utility as “ any corporation, company, individual, association of individuals, or its lessees, trustees, or receivers that own, 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.”

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 Elderberry Nehalem Water System for exclusive service territory as allocated to the applicant and set forth in Appendix A is granted.

Made, entered, and effective _____.

Phil Nyegaard
Acting 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 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. A party to a hearing may appeal this order to a court pursuant to 756.580.

APPENDIX A

Description of Elderberry Nehalem Water System's exclusive service territory:

Lot 12 (NW $\frac{1}{4}$ NW $\frac{1}{4}$) Lot 13 (SW $\frac{1}{4}$ NW $\frac{1}{4}$) NW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 3; Lot 7 (NE $\frac{1}{4}$ NE $\frac{1}{4}$) Lot 11 (SE $\frac{1}{4}$ NE $\frac{1}{4}$) Lot 12 (NE $\frac{1}{4}$ SE $\frac{1}{4}$) Section 4 Township 4 North, Range 7 West, WM.