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BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON

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In the Matter of the Application by)
Skyview Acres Water Company Inc. for) ORDER
Allocation of Exclusive Territory to)
Provide Water Service, Pursuant to ORS)
758.300 Through ORS 758.320.)

DISPOSITION: APPLICATION DISMISSED

On February 22, 2000, Skyview Acres Water Company Inc. (Applicant) filed an application with the Public Utility Commission of Oregon (Commission) seeking allocation of exclusive territory for the provision of water service, pursuant to OAR 860-036-0900. Applicant is seeking allocation of the service territory it adequately and exclusively served on October 23, 1999. See ORS 758.300 and Or Laws 1999, ch 695 § 2 to 4. (Chapter 695.) The territory sought is described in Appendix A. (See attached). The Commission gave notice of the application on March 14, 2000, as required by Chapter 695. No requests for hearing were filed.

FINDING OF FACTS

On February 22, 2000, applicant was operating as a cooperative providing water service to approximately 72 customers near Sandy, Oregon. All Applicant's customers are members of the cooperative.

OPINION

In our view, we do not have jurisdiction to designate exclusive territory to provide water service to a cooperative.

Oregon law requires "a water utility providing water service" to "make application ... to the Public Utility Commission for an order designating the territory that it served ... as its exclusive service territory." Or Laws 1999, ch 695 § 2. A water utility is defined as:

"any corporation, company, individual or association of individuals, or its lessees, trustees or receivers that owns, operates,

manages or controls all or 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." ORS 758.300(3).

In 1967, the Oregon Attorney General addressed the issue of whether a cooperative is a public utility, as defined in ORS 757.005(1)(a)(A).¹ The Attorney General concluded:

It is generally accepted that a cooperative which renders a utility service to its members only is not rendering service "to or for the public." (Citations omitted.) OAG 6263, March 21, 1967.

ORS 758.300(3) is substantially similar to 757.005(1)(a)(A).² Both encompass entities delivering or furnishing water to the public. The Commission is satisfied that the Attorney General's conclusion regarding ORS 757.005(1)(a)(A) is applicable to the definition of water utility, under ORS 758.300(3).

Furthermore, OAR 860-036-0010(8) provides that the definition of a public utility does not include People's Utility Districts, municipalities, or cooperatives and homeowner associations that provide service solely to their membership. OAR 860-036-0010(4) defines cooperative or association as a cooperative corporation, unincorporated association, or homeowner association that provides water solely to its membership.

¹ORS 757.005(1)(a)(A) provides:

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 heat, light, water or power, 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. "Public utility" includes a privately owned water utility that provides wastewater services to the public inside the boundaries of a city, either directly or through an affiliate, regardless of the number of customers receiving wastewater services.

²We note that the last sentence of ORS 758.300(3), excludes municipal corporations from the definition of water utility. That sentence is analogous to ORS 757.005(1)(b)(A), which provides that the definition for public utility as used in ORS Chapter 757, does not include, "Any plant owned or operated by a municipality."

Disposition

In this case, applicant is a cooperative and all the customers are members. Applicant is not providing service to or for the public. Consequently, we conclude that we do not have jurisdiction to designate exclusively served territory to Skyview Acres Water Company Inc.

CONCLUSIONS

1. The Company is not a public utility subject to the service territory jurisdiction of the Public Utility Commission of Oregon.
2. The Application should be dismissed.

ORDER

IT IS ORDERED that the application of Skyview Acres Water Company Inc., for exclusive service territory is dismissed.

Made, entered, and effective _____.

Roy Hemmingway
Chairman

Lee Beyer
Commissioner

Joan H. Smith
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.