

**PUBLIC UTILITY COMMISSION OF OREGON
STAFF REPORT
PUBLIC MEETING DATE: August 16, 2005**

REGULAR CONSENT EFFECTIVE DATE August 17, 2005

DATE: July 28, 2005

TO: Public Utility Commission

FROM: Michael Dougherty

THROUGH: Lee Sparling and Marc Hellman

SUBJECT: SEVENTH MOUNTAIN GOLF VILLAGE WATER COMPANY: (Docket No. UP 221) Application for Approval to Sell Seventh Mountain Golf Village Water Company to Bernards LLC.

STAFF RECOMMENDATION:

The Commission should approve the transfer of two-thirds ownership of Seventh Mountain Golf Village Water Company (SMGV or Company) to Bernards LLC (Bernards), an affiliated interest, subject to the following conditions:

1. Bernards shall provide the Commission access to all books of account, as well as documents, data, and records that pertain to the sale of SMGV.
2. The Commission reserves the right to review, for reasonableness, all financial aspects of this transaction in any rate proceeding or alternative form of regulation.
3. Bernards shall notify the Commission in advance of any substantive changes to the sale. Any such change shall be submitted in an application for a supplemental order (or other appropriate format) in this docket.
4. Bernards shall continue to adhere to all Commission orders, conditions, and reporting requirements that currently pertain to SMGV. Bernards shall ensure financial reports are submitted in a timely and accurate manner.
5. Bernards should schedule and conduct quarterly meetings between customers and the water operator and annual meetings between customers and Bernards.

6. Bernards shall properly submit any subsequent sale or transfer of SMGV pursuant to ORS 757.480 and OAR 860-036-0715.

DISCUSSION:

Background

SMGV filed this request on April 5, 2005, pursuant to ORS 757.480. SMGV seeks a Commission order authorizing the transfer of two-thirds ownership of SMGV to Bernards.

SMGV is a rate regulated water utility that serves one commercial, one irrigation, and 150 residential customers in Bend, Oregon. SMGV, which is a registered corporation in the State of Oregon, is one-third owned by Dale Bernards. Bernards, which is also a registered corporation in the State of Oregon, is one-half owned by Dale Bernards; therefore the two entities are affiliated interests under ORS 757.015.

Yamazoe International, which owns two-thirds of SMGV, agreed to transfer its two-thirds ownership of SMGV and all property belonging to SMGV to Bernards effective June 5, 2005. The consideration for this transfer is the services rendered by Dale Bernards for the management of SMGV during the past five years. The agreement for the transfer was dated March 17, 2005.

History of SMGV

SMGV was originally owned by an entity known as SMGV Associates, which was part of the Inn of the Seventh Mountain Resort. In October 1989, SMGV Associates separated the golf course and water company. The water company and golf course became SMGA Partnership. One of the partners of SMGA Partnership was Yamazoe International (Yamazoe).

On November 23, 1990, SMGV filed Articles of Incorporation with the Oregon Secretary of State, Corporations Division, and became a corporation. On December 15, 1994, SMGA Partnership deeded the property (the golf course and the water company) to Yamazoe. Dale Bernards entered into a business relationship with Yamazoe in 1994, and in October 1995, Yamazoe appointed Dale Bernards the President and Registered Agent for SMGV. In 1999 Dale Bernards, as Bernards LLC, purchased a one-third interest in the golf course and water company.

From 1999 until December 2004, the golf course and SMGV was one-third owned by Bernards and two-thirds owned by Yamazoe. The property that the water company

actually occupies is owned by B&B Properties (also Dale and Karen Bernards) and part of the assets now occupy land owned by the golf course.

The golf course (Widgi Creek) filed for Chapter 7 Bankruptcy in 2004 going into Receivership early in March 2004. The golf course was auctioned in December 2004, and purchased by Barry Helm. SMGV remained and is still a separate entity from the golf course. As a result of the purchase of the golf course, some of the assets of SMGV are now on Widgi Creek land and some of the assets of Widgi Creek are on SMGV land. The property is currently being re-platted and an Easement Agreement will be drawn up to allow appropriate access by both parties. Meanwhile, both parties are cooperating to accomplish the routine procedures for water property maintenance.

As a result of the sale of the golf course, Yamazoe has deeded its interest in SMGV to Bernards in return for the services Dale Bernards has rendered on their behalf of both SMGV and the golf course.

Issues

Staff investigated the following issues:

1. Scope and Terms of the Agreement
2. Public Interest Compliance
3. Customer Workshop Concerning the Sale
4. Potential Subsequent Sale of SMGV
5. Records Availability, Audit Provisions and Reporting Requirements

Scope and Terms of the Agreement – Based upon Staff's analysis of the Agreement, there appears to be no unusual or restrictive terms that will harm customers. Yamazoe has deeded its interest in SMGV to Bernards in return for the services Dale Bernards has rendered on their behalf of both SMGV and the golf course.

Public Interest Compliance – Dale Bernards has been president and registered agent of SMGV since 1999. The consolidation of ownership locally will allow the Company to respond to customers and the Commission in a timelier manner, no longer needing to confer with the majority owner, Yamazoe, which is located in Japan.

Commission Order No. 04-156 (UW 95), dated March 15, 2004, adopted a stipulation concerning a general rate increase requested by SMGV. The stipulation included several actions, including rate refunds required to be performed by SMGV. Additionally, various Commission orders concerning affiliated interest contracts contain specific conditions that require SMGV compliance. Pursuant to recommended condition No. 4

of this memo, Bernards shall continue to adhere to all Commission orders, conditions, and reporting requirements that currently pertain to SMGV.

Customer Workshop Concerning the Sale

During the May 31, 2005, Public Meeting, the Commission directed Staff to conduct a workshop in Bend to receive additional customer input concerning the sale. The workshop was held as directed and was attended by Staff, Counsel for Staff, Administrative Law Judge Christina Smith, the Company, and customers. Approximately twenty-six individuals attended the Workshop. As part of the Workshop, certain customers submitted written statements.

Numerous issues were discussed during the workshop including the Commission standards for property sales and affiliated interest transactions, Bernards' financial and managerial ability to operate the Company, back taxes owed to Deschutes County by Bernards, capitalization of SMGV, and previous water operations and other practices performed by Bernards.

As a result of the workshop, Staff sent, and the Company responded to, eleven data requests. Although there are discrepancies between different financial reports, Staff believes that the Company adequately addressed the issues discussed at the workshop and that Bernards is financially capable of ensuring the proper operation of the Company.

Based on the Workshop discussions, Staff believes Bernards should:

1. Improve its communications with customers;
2. Improve the quality of financial reporting; and
3. Resolve all property tax issues with Deschutes County.

Potential Subsequent Sale of SMGV

In a July 13, 2005, e-mail to the Homeowners Association (HOA) Water Committee, the owner of the golf course, and other individuals, Bernards indicated that he is willing to look at offers for SMGV from other local water companies, the golf course and the HOA. Staff informed the Company that a subsequent sale could not be made until the Commission approves this application.

Records Availability, Audit Provisions and Reporting Requirements – The proposed ordering condition No. 1 provides the necessary records access to SMGV's relevant books and records.

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After review of the filing, Staff concludes that the application is fair and reasonable and not contrary to the public interest.

PROPOSED COMMISSION MOTION:

SMGV's UP 221 application for authority to sell SMGV to Bernards, including the six recommended conditions, be approved.