

**PUBLIC UTILITY COMMISSION OF OREGON  
STAFF REPORT  
PUBLIC MEETING DATE: January 10, 2006**

**REGULAR**  **CONSENT**  **EFFECTIVE DATE** January 1, 2006

**DATE:** December 28, 2005

**TO:** Public Utility Commission

**FROM:** Marion Anderson

**THROUGH:** Lee Sparling, Marc Hellman, and Michael Dougherty

**SUBJECT:** SEVENTH MOUNTAIN GOLF VILLAGE WATER COMPANY: (Docket No. UI 246) Application for Approval of a Land Rental Agreement with Braber Properties, LLC, an Affiliated Interest.

**STAFF RECOMMENDATION:**

The Commission should approve the application of Seventh Mountain Golf Village Water Company (SMGV) with the following conditions for a land rental agreement with Braber Properties, LLC (Braber), an affiliated interest.

1. SMGV shall provide the Commission access to all books of account, as well as all documents, data and records that pertain to any transactions with Braber.
2. The Commission reserves the right to review, for reasonableness, all financial aspects of this arrangement in any rate proceeding or earnings review under an alternative form of regulation.
3. SMGV shall notify the Commission in advance of any substantive changes to the agreement, including any material changes in any cost. Any changes to the agreement terms that alter the intent and extent of activities under the agreement from those approved herein shall be submitted for approval in an application for a supplemental order (or other appropriate format) in this docket.
4. This approval does not recognize any Commission authorized utility expense for land rental since the land has no assessed valuation.

## **DISCUSSION:**

This application was filed on October 25, 2005, under ORS 757.495 and OAR 860-036-0730. Dale Bernards is the owner/president of SMGV and acting authority for Braber, as the members are his minor children. As a result, there is an affiliated relationship pursuant to ORS 757.015.

The following issues were investigated:

- Scope of the Agreement
- Transfer Pricing
- Determination of Public Interest Compliance
- Records Availability, Audit Provisions, and Reporting Requirements

Scope of the Arrangement: This contract covers the lease of land, owned by Braber, upon which water utility assets are located for a period from January 1, 2006 through December 31, 2026. SMGV takes responsibility for all operating expenses. Section 3(e) of the contract provides for a contingent property management administration fee of \$1,000. The property management application is dealt with in concurrently pending Docket UI 217(1). With reference to Staff's recommendation in that docket, the contingent fee, if needed, shall not exceed \$830 per month for calendar year 2006 and the annual escalation factor applied thereafter shall equal the lesser of the CPI or 2.5 percent.

Transfer Pricing: The requested beginning annual rent for the land is \$5,169 with provision for a maximum 2.5 percent year to year escalation. The lower of cost or market principle pursuant to OAR 860-036-0739(3)(e) is applicable to the underlying asset in this application – the land designated Tract A. According to the Statutory Bargain and Sale Deed submitted with the application, there was no consideration given for the conveyance of ownership of Tract A. Further, as appraised by intervener Robert J. Selder in his November 1<sup>st</sup> correspondence, Tract A has no assessed valuation or 2006 property tax assessment. I confirmed this information by telephone with the Deschutes County Assessor's Office on November 14, 2005.

Given that the underlying asset (the land) has no value and OAR 860-036-0739(3)(e) requires services be recorded at the lower of the affiliate's cost or the market rate, a zero value for rent is justified. Therefore, the terms of the filed agreement are not just and reasonable. SMGV is hereby notified that consistent with ORS 757.495(3), a zero allowance for land rental is proposed.

Determination of Public Interest Compliance: With the aforementioned caveats, no issue is raised with respect to the contract's terms and conditions.

Records Availability, Audit Provisions, and Reporting Requirements: Staff Recommendation Condition No. 1 affords necessary access to any relevant records.

Based on the review of this application, Staff concludes the following:

1. The arrangement's scope is reasonable.
2. Potential transactions, as qualified, will not harm customers and are not contrary to the public interest with the recommended conditions.
3. Necessary records are available.

**PROPOSED COMMISSION MOTION:**

SMGV's application for a land rental agreement with Braber, an affiliated interest, be approved, subject to the four recommended conditions.