

**PUBLIC UTILITY COMMISSION OF OREGON
STAFF REPORT
PUBLIC MEETING DATE: March 27, 2007**

REGULAR CONSENT EFFECTIVE DATE _____ N/A _____

DATE: March 14, 2007

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 257) Affiliated interest application between the Company and Braber Properties, LLC.

STAFF RECOMMENDATION:

The Public Utility Commission (PUC or Commission) should approve the application of Seventh Mountain Golf Village Water Company (SMGV or the Company) for an affiliated interest agreement covering the leasing of land owned by Braber Properties, LLC (Braber) with the following conditions:

1. The Company shall provide the Commission access to all books of account, as well as all documents, data, and records that pertain to any transactions with affiliates.
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. The Company 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. The 2007 annual rent shall not exceed \$1,487. In addition, an annual submission of the Real Property Tax Statement shall be submitted to support any rent increase.

DISCUSSION:

This application was filed on January 11, 2007, pursuant to ORS 757.015 and 757.490, and OAR 860-036-0730. Dale Bernards wholly owns SMGV and is the agent for Braber, owned by Mr. Bernards' sons Brandt and Braden.

To provide a historical perspective, the lease of this land was approved in three previous dockets: UI 215, UI 215(1), and UI 246. In UI 215, Order No. 03-516 dated August 25, 2003, the PUC approved the lease contract at a rate not to exceed \$4,800 for calendar year 2003 with an annual escalation rate for contract renewals for subsequent years that does not exceed 2.5 per cent.

Docket UI 215(1), was opened in compliance with Condition Nos. 3 and 5 of Order No. 03-516 (UI 215) and resulted in Order No. 04-023 dated January 12, 2004. Condition No. 3 of UI 215 required the Company to submit an updated lease agreement; updated master plan; updated legal description; and updated preliminary title report for the leased land. Condition No. 5 required the Company to notify the Commission in advance of any substantive changes to the agreement. The updated agreement submitted with the application had two substantive changes concerning management service fees and property taxes.

During the analysis of UI 215(1), Staff spoke to a Deschutes County assessor on December 5, 2003. The assessor stated that the land used for utility operations would likely be considered common property and therefore assigned no additional value for tax purposes.

Finally, in Docket UI 246, Order No. 06-017 dated January 17, 2006, this land rental agreement was approved subject to the recognition of zero allowance for that rental due to a no value of land designation by Deschutes County.

The following issues were investigated in this application:

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

Scope of the Agreement: SMGV assets necessary to the utility operation are located on the subject parcel of land. However, Staff disagrees with the agreement's terms as explained below.

Transfer Pricing: In its application, the Company submitted a copy of the 2006-2007 Real Property Tax Statement for this land that listed a Real Market Value (RMV) of \$29,800 and an Assessed Value of \$15,650. The application claims that the Commission previously increased rental cost to 20 per cent of the land value. This information is used to support a Company proposed 2007 annual rent of \$5,960.

Staff is unaware of any record of the Commission increasing the rental cost to 20 percent of the value. In UI 215, Staff used a 9 percent return on the market value to determine the rental cost. No change in the 9 percent return was made in UI 215(1). In UI 246, this land rental agreement was approved subject to recognition of zero allowance due to a no value of land designation by Deschutes County.

Pursuant to OAR 860-036-0739(3)(e), the lower of cost or market principle is applicable to this application. In the last rate case Docket UW 116, Order No. 06-501, the authorized rate of return on rate base is 9.5 per cent. Based on the above 2006-2007 tax statement, Staff calculates an annual rent of \$1,487. This amount was obtained by multiplying the 9.5 percent rate of return by the assessed value of \$15,650. Staff used the assessed value and not the RMV because the assessed value was determined by Deschutes County and the land can only be used for utility purposes.

In addition, Staff performed a cost analysis based on information originally obtained in UI 215 and updated information concerning the utility property. The cost analysis resulted in an annual rent of \$2,364. Because of the lower of cost or market principle, Staff recommends an annual rent of \$1,487.

An escalation rate is not recommended because Staff does not have any authoritative source for raw land appreciation in Deschutes County applicable to this property.

Determination of Public Interest Compliance: The terms and conditions of the contract, as qualified by Staff's conditions, are considered just and reasonable.

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.

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PROPOSED COMMISSION MOTION:

The land lease agreement between Seventh Mountain Golf Village Water Company and Braber Properties, LLC be approved subject to the four recommended conditions.