



July 8, 2015

VIA EMAIL (puc.filingcenter@state.or.us) **and FIRST CLASS MAIL**

Public Utilities Commission of Oregon
Attn: Filing Center
3930 Fairview Industrial Drive SE
P.O. Box 2148
Salem, Oregon 97308

Re: *In the Matter of Sunriver Water LLC Request for Approval of an Affiliated Interest Agreement with Sunriver Environmental, LLC*
OPUC Docket No. UI 355

Dear Sir or Madam:

Enclosed with this letter are written comments from The Sunriver Owners Association (“SROA”) regarding Sunriver Water LLC’s June 11, 2105 application for a waiver of the requirements of OAR 860-036-0739 in the above-referenced proceeding. SROA respectfully requests that the staff of the Public Utility Commission of Oregon (“Commission”) consider its comments in formulating their recommendation to the Commission and that the Commission consider its comments in determining whether to approve the requested waiver and the affiliated interest agreements submitted by Sunriver Water, LLC in the above-referenced proceeding.

Please contact me if you have any questions or would like any additional information relating to SROA’s initial comments.

Respectfully yours,

A handwritten signature in blue ink, appearing to read 'Josh Newton', with the word 'for' written below it.

JOSH NEWTON
JN/jsh

Enclosure

cc: UI 355 Service List

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SUNRIVER OWNERS ASSOCIATION

MAINTAINING SUNRIVER AS A PREMIER RESIDENTIAL AND RESORT COMMUNITY PROTECTING
AND ENHANCING ITS QUALITY OF LIFE, NATURAL ENVIRONMENT AND PROPERTY VALUES.

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Re: In the Matter of Sunriver Water LLC (OPUC Docket No. UI 355)
The Sunriver Owners Association – Supplemental Written Comments

Dear Sir or Madam:

On March 2, 2015, Sunriver Water, LLC (“SRW”) filed an affiliated interest application seeking approval of two lease agreements with Sunriver Environmental, LLC (“SRE”), which SROA refers to as the Office Lease and the Reservoir Lease. The proposed leases must be priced at the lower of the affiliate’s cost or at market rate. *See* OAR 860-036-0739(4)(e). The Commission, however, may waive that rule “for good cause shown.” OAR 860-036-0001(1). The party seeking waiver has the burden for establishing the reason for the waiver, and the Commission may only grant such a request if the waiver is in the public interest. *In re Rulemaking to Update Waiver Provisions in the Commission’s Administrative Rules*, AR 554, Order No. 11-346, 4 (Sept. 8, 2011). SRW has requested such a waiver, but from SROA’s perspective, SRW has failed to show good cause for waiver of the rule.

SRW has conceded that if SRE is required to charge its cost to provide leased space to SRW, “the amount would be extremely low, if not zero.” The Office Lease and Reservoir Lease rental rates, thus, must be priced at or near zero absent a waiver of OAR 860-036-0739(4)(e). SRW primarily relies on In the Matter of Roats Water System, Inc., UI 326, Order No. 13 066 (February 26, 2013) (“Roats Order”) to support its waiver request. However, the Roats Order is materially distinguishable from SRW’s proposed leases. A careful review of the Roats Order, including the staff report, shows why it was reasonable and in the public interest to waive OAR 860-036-0739(4)(e) in that case but not here.

I. The Office Lease.

In the Roats case, the company's founder "donated" certain properties rent-free for use by the company. Roats Order at 2. By 2013, however, the founder contended that he could "sell or rent the property" for greater than its cost. See W.K. Roats Letter to OPUC, dated February 13, 2013. The founder thus requested a waiver of OAR 860-036-0739(4)(e) to allow him to charge the company rent. OPUC staff only supported waiver in that "very specific instance" because the company had "*not previously included any costs*" of the properties in rates. Roats Order at 3 (emphasis added). The Commission adopted that recommendation.

Unlike the Roats Case, there is a substantial question as to whether SRW's ratepayers have paid for some or all lease premises associated with the Office Lease via lot sales from the original developer of Sunriver. See generally *In the Matter Sunriver Utilities Company*, UW 29. SROA raised that issue in its initial comment letter, and SRW, in its waiver request, did not meaningfully address the issue. In order to meet its good cause burden, SRW must show that the ratepayers have not already paid for the lease premises by purchasing lots in Sunriver.

Also unlike the Roats Case, until 1998, the water utility and sewer utility assets, including substantially all of the Office Lease premises, were owned by a single entity, Sunriver Utilities Company ("SRUC")¹. See generally *In the Matter of Sunriver Utilities Company for an Order Authorizing the Transfer of Utility Property to Sunriver Water, LLC*, UP 148. At that time, SRUC applied for Commission permission to transfer its water utility assets to SRW and its sewer utility assets to SRE.

In its report dated March 4, 1998, the Commission staff expressed concern regarding the "proper allocation of any costs associated with the proposed property transfer and the appropriate division and recording of the assets." OPUC Order No. 98-110 (March 24, 1998). The Commission staff observed that it was important to provide "appropriate safeguards in order to ensure that customers are not harmed by the requested transaction." *Id.* While the Commission staff recommended approval of the transaction, it did so subject to certain conditions, including reserving to staff the ability to make "necessary adjustments" to the allocation of assets among SRW and SRE. *Id.*

To SROA's knowledge, the substantial majority of the leased premises described in the Office Lease were in-service in 1998. SROA is troubled that SRUC did not convey a portion of the premises to SRW as part of the property transfer, particularly given the fact that water utility personnel and equipment appear to have used the premises at that time. SROA has also not found any evidence regarding any request by SRUC or SRE to charge SRW rent after the property transfer. SROA wonders if the Commission would have approved such an arrangement

¹ In 1998, SRUC was wholly-owned by Sunriver Resort Limited Partnership ("SRLP"). See OPUC Order No. 98-110 (March 24, 1998).

at that time. SROA does not believe so and does not think that the Commission should do so now.

SROA asks that the Commission staff recommend that the Commission deny SRW's requested waiver of OAR 860-036-0739(4)(e), because SRW has failed to establishing good cause for such a waiver. SROA also encourages Commission staff to exercise the Commission's continuing jurisdiction in Order No. 98-110 to develop an evidentiary record for the purpose of determining whether there are any necessary adjustments to the allocations of assets among SRW and SRE that are needed to more accurately reflect SRW's interest in the office, shop and storage areas at the time of the transfer.

II. The Reservoir Lease

The circumstances surrounding the Reservoir Lease differ from the Office Lease. SRE acquired the premises described in the Reservoir Lease from the United States Forest Service in 2000. To SROA's knowledge, SRUC did not own the premises, making it less likely that SRW customers paid for the Reservoir Lease premises. Regardless, SRW still has the burden of establish good cause for waiver of OAR 860-036-0739(4)(e), and the Commission must find that it is in the public interest to grant such a waiver. From SROA's perspective, SRW has failed to establish good cause.

Unlike the Roats case, SRE has not established a viable opportunity cost associated with allowing SRW to locate a reservoir on its property. Given the nature and character of SRE's reservoir site, it is difficult to conceive of "other revenue producing uses" for the property that would be precluded by the proposed Reservoir Lease. Thus, there does not seem to be any reason for granting a waiver of OAR 860-036-0739(4)(e) in this case.

Even if the Commission staff were to grant such a waiver for the Reservoir Lease, SROA questions whether SRW has provided sufficient evidence of "market rate," which is the lowest price that is available from nonaffiliated suppliers for comparable services or supplies." OAR 860-036-0739(2)(f). In my April 29, 2015, I enclosed a copy of a Water Line Easement that SROA granted at no cost to SRW for the reservoir project. SROA believes that the Water Line Easement is the most direct evidence of the market rate for the premises identified in the Reservoir Lease and establishes that the market rate is at or near zero, similar to SRE's cost of providing services to SRW.

For the foregoing reasons, the Commission staff should recommend that the Commission deny SRW's requested waiver of OAR 860-036-0739(4)(e). In the alternative, the Commission staff

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should determine that the market rate for the leased premises is at or near zero based on Water Line Easement granted by SROA to SRW in connection with this reservoir project.²

III. Conclusion

Thank you for the opportunity to provide the foregoing comments. If you have any questions, please direct them to SROA's legal counsel, Josh Newton at Karnopp Petersen LLP, 1201 NW Wall Street, Suite 200, Bend, Oregon 97701; phone number 541 382 3011; and email: jn@karnopp.com.

Respectfully yours,



Hugh Palcic,
General Manager
Sunriver Owners Association

cc: UI 355 Service List

² SROA also briefly repeats its concern that a lease agreement is the wrong instrument for this transaction. Rather, SRW should acquire fee title or a perpetual utility easement for the reservoir site and for the pipes, valves and other fixtures located on SRE property. SROA understands that SRE has not offered the property for sale. SRW, however, has statutory authority to condemn SRE property, which it should consider as an alternative to the lease transaction. *See generally* ORS 772.210.