



**DEPARTMENT OF JUSTICE**  
GENERAL COUNSEL DIVISION

February 11, 2016

Patrick Power  
Administrative Law Judge  
Public Utility Commission of Oregon  
201 High Street SE, Suite 100  
Salem, OR 97301

Re: Status Report  
OPUC Docket UM 1745 – Mt. Shadows Utilities Company

Dear ALJ Power:

Staff has prepared this status report to advise the Commission on Staff's understanding of the actions necessary to complete the sale of Mountain Shadows, the public utility status of the new entity, and other regulatory considerations.

**STATUS**

On January 12, 2016, the Public Utility Commission of Oregon ("PUC") held a prehearing conference in this docket. The parties informed Staff that Mountain Shadows Utilities, LLC ("Mountain Shadows") executed an agreement on January 11, 2016 to sell the water utility to Mt. Shadows Home Owners Association ("HOA"). Sia Rezvani, counsel for Mountain Shadows, provided Staff with a copy of the asset purchase and sale agreement ("sale agreement"), which recognized that the completion of the sale is contingent upon Commission approval.

On February 9, 2016, Staff hosted a conference call with the parties to share information about the PUC process necessary to complete the sale and address questions from the parties. Charlotte Branton and Sia Rezvani appeared for Mountain Shadows Utilities; Dennis Chaney for the HOA; Jim and Laura Parr, and Jan Neuman for the Parrs; and Stephen Hayes and Kaylie Klein for PUC Staff. The parties noted several water rights and easement issues in the current sale agreement that require clarification and agreed to work together to make amendments to the sale agreement that will clarify all of the parties' existing rights. Staff supported this approach and recommended the parties file a Sale of Property Application with the amended sale agreement when it is finalized.

As for next steps, Mr. Chaney may file a letter expressing the HOA's desire to withdraw its petition for an order excluding it from Mountain Shadows' service territory, which will close

the UM 1745 docket. Mr. Rezvani indicated that he would file the Sale of Property Application and amended agreement once the parties have finalized any amendments. Staff suggests opening a new docket for the sale agreement once it is filed. Staff also notes that Mountain Shadows should be aware of the 60-day notice requirement prior to the closing date of a sale and should address it as soon as possible. Mr. Chaney indicated that the HOA would file the Service Territory Transfer Application after the sale agreement is amended and finalized.

## **PROCESS REQUIRED AT PUC**

### File a Sale of Property Application

The Commission approves the sale of water utilities under Oregon Revised Statutes (ORS) 757.480(5), applying a no harm standard. Typically the seller files a Sale of Property Application with the PUC that includes the requirements set forth in Oregon Administrative Rules (OAR) 860-036-0710 and OAR 860-036-0715(1). The rules require Mountain Shadows to give its customers and the Commission notice of the sale 60 days prior to the closing date, along with other specific information. See OAR 860-036-0710. Staff understands that this requirement may have not been met; therefore, the rules indicate that a request for waiver of the rule for good cause shown should accompany the application. This application is subject to Commission approval.

### File a Service Territory Transfer Application

Please see OAR 860-036-0925(4)-(5) for Service Territory Transfer Application requirements and notice requirements. This application is subject to Commission approval.

### File a Document Seeking Dismissal of Pending Petition

File a letter indicating that the HOA seeks to withdraw its petition for an order excluding it from Mountain Shadow's service territory.

## **REGULATORY CONSIDERATIONS**

### Public Utility Status

Mountain Shadows was a public utility and will remain a public utility as defined in 757.005(1)(a)(A) after it is purchased by the HOA. OAR 860-036-0010(2) ("An association providing water service to a nonmember customer is considered a public water utility as defined in ORS 757.005.").

### Rights and Obligations

The HOA utility is required to serve all customers within its service territory. OAR 860-036-0930 (see OAR 860-036-0080 for exceptions where refusal of service is permitted). This includes existing non-HOA customers and all future non-HOA customers that apply for service and are located within the HOA utility's service territory. On the conference call, Mr. Chaney stated that he believes that the HOA members, Snowbird residents, and the Parrs are all located within Mountain Shadows' exclusive service territory. Appendix A of Order No. 02-646 provides a metes and bounds description of Mountain Shadows' exclusive service territory. Staff

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will investigate and confirm that the Snowbird residents and the Parrs are within the service territory.

As a public utility, the HOA utility has a duty to provide adequate and safe service to its customers, including non-HOA customers and future non-HOA applicants within its service territory, at just and reasonable rates. *See* ORS 757.020. These obligations include, but are not limited to, providing specific information to customers and applicants, following deposit payment rules, installing water service connections, etc. *See* OAR 860-036-0015 et seq.

Sincerely,



Kaylie Klein  
Assistant Attorney General  
Business Activities Section

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cc: Service List