

**PUBLIC UTILITY COMMISSION OF OREGON  
STAFF REPORT  
PUBLIC MEETING DATE: August 5, 2014**

REGULAR \_\_\_\_\_ CONSENT X EFFECTIVE DATE August 5, 2014

DATE: July 23, 2014

TO: Public Utility Commission

FROM: Malia Brock <sup>UB</sup> *[Signature]*

THROUGH: Jason Eisdorfer, Bryan Conway, and Bruce Hellebuyck *[Signature]* *[Signature]*

SUBJECT: WASHINGTON FEDERAL/EASTRIDGE WATER COMPANY: (Docket No. UP 304) Requests approval to sell the real property and other assets of the defunct Eastridge Water Company, and Staff requests to remove Commission regulation and authority.

**STAFF RECOMMENDATION:**

Staff recommends approval of the sale of the real property and other assets of Eastridge Water Company (Eastridge), which are currently owned by Washington Federal, to Indian Trail Water Users' Association, Inc. (Association). Staff also requests the Commission remove all regulation and jurisdiction as the Association no longer meets the definition of a water utility under Oregon Revised Statutes (ORS) 757.061.

**DISCUSSION:**

**History:**

Eastridge was a small, privately held, service-regulated water utility providing service to seven four-unit apartment buildings owned by six landlords<sup>1</sup> in an area called Indian Trails in Shady Cove, Oregon. Eastridge's owner, Mr. Eric Artner, lost the water system and real property in August 2009, when Home Valley Bank (HVB) foreclosed on the property owned by Sunridge, LLC,<sup>2</sup> of which Mr. Artner was the managing member.

<sup>1</sup> One of the six landlords has since drilled a well and is no longer receiving water service from the Eastridge system.

<sup>2</sup> On July 5, 2006, Artner Investment Properties, LLC took title of the real property. Eric Artner signed a Bargain and Sale Deed for the property and sold the property to Sunridge, LLC. Sunridge, LLC borrowed funds from HVB to purchase the property, including tax lot 1116 (which is the current location where the water system assets are located). A Deed of Trust was signed by Artner July 6, 2006, as a Member of Sunridge, LLC (grantor) and Home Valley Bank (lender). HVB stated that Eastridge Water Company, Inc. was wholly owned by Eric Artner, the managing member of Sunridge, LLC.

On May 11, 2010, the Commission received an application from HVB to terminate water service effective May 15, 2011, docketed UP 261. In its application, HVB offered the landlords three options to purchase the water system's real property and assets. No agreement was reached.

On July 23, 2010, South Valley Bank and Trust (SVBT) assumed the asset-related liabilities of HVB. SVBT's attorney, Dennis D. James, confirmed on September 3, 2010, that SVBT desired to pursue Docket UP 261. SVBT offered two purchase options to the landlords.

On November 3, 2011, SVBT wrote the Commission stating that it had agreed to sell the property that contained the well and two fire suppression tanks to the landlords. SVBT also stated, "This transaction will negate the need for Docket UP 261 and transfer water service to the owners of the Indian Trails." The docket was closed without an order on November 29, 2011. At that time, ORS 757.061 exempted service-regulated water utilities from ORS 757.480 – which addresses the sale of utility property, and no Commission approval of the sale was required.

On April 7, 2014, Staff was informed that the proposed sale of Eastridge's assets to the landlords was never executed. Washington Federal became the owner of the real property and other assets associated with Eastridge through a series of bank mergers. Washington Federal filed an application to abandon water service on April 29, 2014, docketed UM 1691.<sup>3</sup>

Subsequently, Washington Federal and the landlords agreed upon a purchase option of the assets. ORS 757.061 no longer contains the exemption from the requirements of ORS 757.480 for service-regulated water utilities which was previously included in the statute, as referenced above. Therefore, the sale now requires Commission approval.

**Current Application:**

On June 27, 2014, Washington Federal filed an application for approval of the sale to the landlord's recently formed Association, subject to ORS 757.480, ORS 757.485, and Oregon Administrative Rules (OAR) 860-036-0710, and OAR 860-036-0715. ORS 757.480 and ORS 757.485 require approval of the sale by the Commission but do not explicitly express a standard. The Commission has interpreted these statutes as requiring a no harm standard. See Order No. 01-778.

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<sup>3</sup> According to Washington Federal, Eastridge declared bankruptcy several years ago and was administratively dissolved by the Oregon Secretary of State on or about March 12, 2010. Staff's investigation yielded evidence of Mr. Artner's bankruptcy.

Washington Federal is a national association and acquired Eastridge's assets through foreclosure. Washington Federal states that it is not in the business of operating water utilities and desires to execute this transaction.

**Scope and Terms of the Agreement:**

Staff investigated the sale. That agreement was signed by both parties. The property sold consists of a one-acre parcel of land containing one well; associated equipment including well pumps, a metal storage building, metal storage tanks, water delivery lines, and an easement providing access to the other well located on a separate piece of property.

The easement agreement included in the sale terminates on June 30, 2017. The Association plans to drill a second well and move the associated storage tanks and storage building onto the one acre parcel included in the sale.

The sale price was \$8,000. Eastridge was never a rate-regulated water utility. Therefore, the net book plant of the water system is unknown. Staff believes the terms of the sale are fair and reasonable and the sale meets the no harm standard.

**Commission Regulation:**

For rate-regulated water utilities, Staff also reviews the utility's records availability, audit provision, reporting requirements, and may recommend conditions to the sale. However, the new purchaser is an association providing service only to its membership. As such, the Association is not a public utility because it does not provide service "directly or indirectly to or for the public."<sup>4</sup> Therefore, upon approval of the sale, the Commission will no longer have authority to review the Association's records, require reports, enforce conditions, or audit the Association. Review of these issues is not necessary.

Chapters ORS 756 and ORS 757 grant the Commission jurisdiction and authority to regulate public utilities if they meet the definition of a public utility under ORS 757.005.

**757.005 Definitions.** (1)(a) As used in this chapter, except as provided in paragraph (b) of this subsection, "public utility" means:

(A) Any corporation, company, individual, association of individuals, or its lessees, trustees or receivers, that owns, operates, manages or controls all or a part of any plant or equipment in this state for the production, transmission, delivery or furnishing of heat, light, water or

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<sup>4</sup> The regulation of an association is allowed only upon petition of its members pursuant to ORS 757.063.

power, directly or indirectly to or for the public, whether or not such plant or equipment or part thereof is wholly within any town or city.

The Commission should remove its regulation and jurisdiction of the water system and Washington Federal as the system owner. According to OAR 860-036-0425(1) “when a regulated water utility is reorganized into a municipality or quasi-municipal entity or association through the sale, merger, or transfer of a water system . . . the regulated water utility no longer meets the definition of a public utility per ORS 757.005. The Commission’s regulation and jurisdiction must be removed by Commission order.”

**PROPOSED COMMISSION MOTION:**

Indian Trail Water Users’ Association, Inc., purchase of the real property and other assets associated with Eastridge Water Company, currently owned by Washington Federal, be approved in accordance with ORS 757.480, ORS 757.485, OAR 860-036-0710, and OAR 860-036-0715, and Commission’s jurisdiction and authority be removed in accordance with OAR 860-036-0425.