

PUBLIC UTILITY COMMISSION OF OREGON  
STAFF REPORT  
PUBLIC MEETING DATE: August 30, 2016

REGULAR \_\_\_\_\_ CONSENT X EFFECTIVE DATE September 1, 2016

DATE: August 18, 2016

TO: Public Utility Commission

FROM: Stephen Hayes 

THROUGH: Jason Eisdorfer, Bryan Conway, and Bruce Hellebuyck   

SUBJECT: MOUNTAIN SHADOWS UTILITIES COMPANY: (Docket No. UP 341)  
Application for the Sale, Transfer, or Merger of a Water Utility to Mt.  
Shadows Homeowners Association and Request for Waiver of  
OAR 860-036-0710(2).

**STAFF RECOMMENDATION:**

Staff recommends that the Commission approve the sale of Mountain Shadows Utilities, LLC (Mountain Shadows or Seller) to Mt. Shadows Home Owners Association (Association or Purchaser) and grant the Seller's request for waiver of OAR 860-036-0710(2).

**DISCUSSION:**

Issue

Whether the Commission should approve the sale of the water utility and grant a waiver of the requirement that utility customers and the Commission be given notice of the proposed sale 60-days prior to the closing date of the transaction.

Applicable Law

The Commission approves the sale of water utilities under ORS 757.480(5), applying a no harm standard. OAR 860-036-0710 provides that the water utility must give the Commission and its customers notice of the sale 60-days prior to the closing date of the transaction. However, OAR 860-036-0001(1) allows the Commission to waive any of the Division 36 rules for good cause shown.

Discussion and Analysis

Mountain Shadows Utilities, LLC is a service regulated water utility with 26 total customers. It is located in Hood County east of Mount Hood and west of Highway 35. Hood River is the nearest city approximately 23 miles to the north. The Utility serves a Commission approved exclusive service territory that encompasses the Mountain Shadows Home Owners Association and several homes not part of the Association. Six customers of Mountain Shadows Utility own homes that are not part of the Home Owners Association.

1. The Sale

Mountain Shadows and the Association entered into an Asset Purchase and Sale Agreement for the sale of the water utility on January 11, 2016. Reaching agreement to sell the water utility to the Association resolved the issues between the parties in Docket No. UM 1745 (Mt. Shadows Home Owners Association Petition for an Order Excluding an Association From Exclusive Service Territory of a Water Company). Given the successful settlement of the issues in Docket No. UM 1745, the Association's petition in Docket No. UM 1745 was dismissed and the docket was closed by Order of ALJ Powers on March 15, 2016. However, the parties to UM 1745 noted concerns in the Asset Purchase and Sale Agreement regarding water rights and easements and agreed to file an application for sale of the water utility for Commission approval upon resolving any outstanding issues in the Sale Agreement.

On June 16, 2016, Mountain Shadows filed an Application for Sale of a Water Utility, along with the amended Sale Agreement and request to waive the 60-day notice rule for sale of a water utility. Although the Asset Purchase and Sale Agreement is dated January 11, 2016, the Agreement recognizes that the sale is subject to the approval of the Commission. Staff recommends a Commission approval date of September 1, 2016.

Scope and Terms of the Asset Purchase Agreement

The water utility is privately owned by Seller Charlotte Branton, the sole owner of Mountain Shadows. The Purchaser is the Association, an Oregon non-profit, mutual benefit corporation. There are no known encumbrances, limitations, or restrictions on the Seller's right to transfer the assets pursuant to the Asset Purchase and Sale Agreement. The Agreement includes terms for the temporary use of facilities and the well on Mrs. Branton's personal property until the Buyer establishes a new well to supply the system or until December 31, 2020 (with an extension option until 2022), whichever is earlier. However, based on information from the Buyer, this term may be moot as the Buyer has established a new well and equipment to serve customers.

#### Transfer Pricing and Allocation of Gain

The sales price of the water utility is five thousand dollars (\$5,000.00). The owner of Mountain Shadows, Charlotte Branton, will also receive water service at no cost for a limited time and receive a one-time credit of two thousand five hundred dollars (\$2,500.00) toward future water system improvements. Given that the original water supply, pump, and other necessary equipment to serve customers are located on Mrs. Branton's property, Staff believes the terms of the Agreement are reasonable. The assets of the water utility are minimal and fully depreciated, except for the facilities that will be replaced by improvements currently underway. Staff has been informed that the Association has already drilled a new well and installed a new pump. Further, the Association plans to complete a new concrete reservoir in September 2016. There is no allocation of gain issue as the company is only service-regulated at this time.

#### Public Interest Compliance

The Seller desires to retire and the Purchaser is willing to take over and operate the water utility and will serve all current customers, including non-Association customers, as well as all future customers in Mountain Shadow's exclusive service territory. The Purchaser has recently been running the day-to-day operations of the water utility. In its application for sale of the water utility, the Seller and Purchaser provided evidence of the Association's experience needed to run a water system, including its financial aspects. There will be no interruption of service to customers. Additionally, significant improvements to the water supply and storage are necessary and the Association intends to make these improvements. All customers are aware of the deferred maintenance and have been anticipating the necessary improvements to the system, which is one of the reasons the Association pursued purchasing the water utility. Staff concludes that the sale is in the public interest and will not result in harm to customers.

#### Records Availability, Audit Provisions and Reporting Requirements

Mountain Shadows is a service-only regulated water utility. After the sale to the Association is complete, the water utility will remain a public utility that is service-regulated by the Commission. ORS 757.005(1)(a)(A); OAR 860-036-0010(2). Staff notes that the Commission retains the ability to review all rates related to property sales during a general rate case should the Association become rate-regulated.

#### 2. The Waiver

OAR 860-036-0001(1) states that the Commission may waive any of its rules governing the regulation of water utilities and associations for "good cause shown." OAR 860-036-0710(2) requires Mt. Shadows to send notice of its intent to sell the water utility to all customers and to the Commission 60-days prior to the closing date of the proposed sale. The customer notice was mailed on June 16, 2016. Commission Staff received the notice as part of the application for sale, as well as during the resolution of

UM 1745 in January of 2016. Further, the Association membership had authorized negotiations to purchase the water utility as far back as October 12, 2013 (as recorded in Association minutes). Thus, Association customers were aware of the negotiations to purchase the utility since October of 2013. The Seller also confirmed that many of the non-Association customers were aware of the sale and some participated in the negotiation of the Sale Agreement. Since the customer notice was officially mailed on June 16, 2016, no customers have opposed the sale.

### 3. Abeyance of UA 169

On March 22, 2016, in advance of the Seller's filing of an application for approval of a sale of a water utility, the Association filed an application for transfer of Mountain Shadows' exclusive service territory<sup>1</sup> to the Association. On March 24, 2016, ALJ Powers issued a ruling that the Association's filing was premature given that a sale application had not yet been filed, and ordered that the UA 169 service territory transfer application be held in abeyance until a sale application was filed by Mountain Shadows.

The Sale Agreement transfers the rights and obligations relating to the exclusive territory allocation<sup>2</sup> which includes the obligation to serve all current customers and any new customers located within the exclusively allocated service territory. Commission approval of Mountain Shadows' application for sale of the water utility will satisfy OAR 860-036-0925(2). Consequently, a separate application to transfer approved service territory (UA 169) is not necessary.

### Conclusion

Based on Staff's analysis and the information provided by Mountain Shadows and the Association, Staff concludes that the transaction is in the public interest. Staff recommends that the sale of Mountain Shadows be approved, as customers will not be harmed and customers will benefit from improvements made by the Buyer that will increase system dependability and the provision of safe and reliable water service to customers.

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<sup>1</sup> Mountain Shadows' exclusive territory was approved by Commission Order No. 02-646 on September 16, 2002 (Docket No. WA 24).

<sup>2</sup> Mountain Shadows' Asset and Sale Agreement, 1.Assets (a), "...as well as the rights and obligations relating to the Company's "exclusive service territory"...."

Docket No. UP 341  
August 18, 2016  
Page 5

Staff also concludes that Mountain Shadows has shown good cause for waiver of ORS 860-036-0710(2), given that all customers have been effectively noticed of the proposed sale and no concerns or complaints have been received. Furthermore, Mountain Shadows and the Association acted in good faith and diligently in complying with Staff's information requests.

**PROPOSED COMMISSION MOTION:**

Approve Mountain Shadows' application for sale of the water utility to the Association and grant Mountain Shadows' request for waiver of the 60-day notice rule.

UP 341 Mountain Shadows