

PUBLIC UTILITY COMMISSION OF OREGON
STAFF REPORT
PUBLIC MEETING DATE: January 26, 2016

REGULAR _____ CONSENT X EFFECTIVE DATE February 1, 2016

DATE: January 13, 2016

TO: Public Utility Commission

FROM: Celeste Hari *CH*

THROUGH: Jason Eisdorfer, Bryan Conway, and Bruce Hellebuyck *BAC* *BH by BAC*

SUBJECT: SUN MOUNTAIN WATER SYSTEMS, INC.: (Docket No. UP 336)
Request for Approval of Sale of Property and Request for Waiver of
OAR 860-036-0710(2).

STAFF RECOMMENDATION:

Staff recommends that the Commission approve the sale of Sun Mountain Water Systems, Inc. (Sun Mountain or Company) to Brandt, LLC and grant the request for waiver of OAR 860-036-0710(2).

ISSUE:

Should the Commission approve the sale of Sun Mountain and grant a waiver of the 60-day notice requirement?

RULE:

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 a notice of the sale 60-days prior to the closing date, but OAR 860-001-0000(2) allows the Commission to waive any of its rules for good cause shown.

ANALYSIS:

The Sale - Sun Mountain filed an application for approval of the sale of the company on January 12, 2016. Sun Mountain is a privately owned, service-only regulated water utility serving approximately 292 customers in Bend, Oregon. The Company seeks Commission approval to sell all assets of the Company to Brandt LLC, a limited liability

company formed for the sole purpose of purchasing Sun Mountain. Brandt, LLC consists of two members, James Hildebrandt and Kelle Hildebrandt. Brandt, LLC is registered and is active with the Secretary of State Corporation Division. Upon finalization of the sale, Sun Mountain will dissolve as an entity and the system will proceed to operate as Brandt, LLC doing business as Sun Mountain Water System, Inc.

Scope and Terms of the Asset Purchase Agreement

The sellers are the sole owners of and have title to all shares of Sun Mountain. The seller owns all of the shares free and clear of all encumbrances and there are no limitations or restrictions on the seller's right to transfer the assets pursuant to the sales agreement.

Transfer Pricing and Allocation of Gain

The sale price of the Company is \$305,000, with \$250,000 financed through an owner-held Promissory Note (Note). The Note is for ten years at six percent interest. Monthly payments are calculated to be \$2,775.51. No prepayment of the Note is allowed. Brandt, LLC will sign a personal guaranty for the Note upon final execution of the sales contract. The sale is scheduled to close on February 1, 2016.

Public Interest Compliance

The owner desires to retire and the purchaser is financially able and willing to take over and operate the utility property. The purchaser has recently been running the day-to-day operations of the Company. The purchaser is a current customer of Sun Mountain, has 32 years of experience operating another small water system, is a certified backflow tester, and lives in the community. The current staff is remaining with the Company, there will be no interruption of service, and the rates will remain the same. The sale should be a seamless transition for customers.

Records Availability, Audit Provisions, and Reporting Requirements

Sun Mountain is a service-only regulated water utility and will remain so after the sale is final. However, Staff notes that the Commission retains the ability to review all rates related to property sales of the Company during a general rate case should the Company become rate-regulated.

The Waiver - OAR 860-001-000(2) states that the Commission may waive any of its rules for "good cause shown." OAR 860-036-0710(2) requires the Company to send notice of the intent to sell to all customers and the Commission 60-days prior to the closing date of the proposed sale. The customer notice was mailed on January 6, 2016. Commission Staff received the notice via email the same day. There was a misunderstanding of the timing required for the notice and consequently, it did not get

sent before the 60 day requirement. There was no intent to withhold information regarding the pending sale from the customers.

In fact, customers have been aware of the desire of the owner to sell the Company since at least 2014, when it was stated in the Company's annual newsletter. The desire to sell was also included in the Company's Consumer Confidence Report for 2015, which all customers received. The Company provided Staff a copy of these documents to demonstrate that customers were informally given notice more than 60 days prior, of the intent to sell, even if the formal notice went out less than 60 days prior to the closing date.

Immediately upon learning of the requirement for Commission approval prior to closing of the sale and the notification requirements, both parties involved in the sale worked diligently and cooperatively with Staff to get a notice out and an application filed in time for this public meeting. Staff appreciates their efforts.

CONCLUSION:

Staff recommends the sale of Sun Mountain to Brandt LLC be approved, as it appears that customers will not be harmed and will have a seamless transition. In addition, Staff supports the request for waiver of ORS 860-036-0710(2) because customers had effective notice of the proposed sale and granting the waiver will not harm customers or the Commission. Furthermore, the Company acted in good faith and diligence in complying with Staff requests.

PROPOSED COMMISSION MOTION:

Sun Mountain's application for the sale of the company to Brandt LLC be approved and the request for waiver of OAR 860-036-0710(2), the 60-day notice period, be granted.