

PUBLIC UTILITY COMMISSION OF OREGON
STAFF REPORT
PUBLIC MEETING DATE: May 19, 2015

REGULAR _____ CONSENT X EFFECTIVE DATE Upon Approval

DATE: May 8, 2015

TO: Public Utility Commission

FROM: Jim Stanage *JS*

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

SUBJECT: HILAND WATER CORPORATION: (Docket No. UP 320) Application for Authorization to Purchase Shady Cove Waterworks, LLC.

STAFF RECOMMENDATION:

Staff recommends that the Commission approve the sale of the Shady Cove Waterworks, LLC, to Hiland Water Corporation by AmericanWest Bank be approved with conditions.

DISCUSSION:

This application was filed on March 10, 2015, pursuant to ORS 757.480(5). The statute requires that the Commission be notified within 60 days following the sale date, but this transaction occurred on June 9, 2014. Commission staff advised Hiland that Commission approval of the sale was necessary.

ISSUE:

Should the sale of Shady Cove Waterworks, LLC, to Hiland Water Corporation be approved by the Commission?

RULE:

Under ORS 757.480(5), the Commission generally applies a public interest "no harm" standard" in considering whether or not to approve the transaction.

Hiland purchased Shady Cove from AmericanWest Bank (Seller). According to Hiland, neither they nor the Seller were aware of the changed law requiring Commission approval for the sale of service regulated water systems.

The Seller had taken possession of Shady Cove through the acquisition of PremierWest Bank in late 2012, which had previously repossessed Shady Cove from its builder. Over the course of roughly 18 months, the Buyer and Seller negotiated an agreement to transfer ownership of Shady Cove to Hiland, which made Hiland the sole owning member of Shady Cove and its assets. Hiland states that "due to the nature of the circumstances surrounding Shady Cove, the Seller and Buyer agreed to keep the Membership Purchase Agreement and its material information confidential." Therefore, the purchase price of Shady Cove is the subject of a protective order and not included in this public meeting memorandum, but has been provided to the Commission.

The reason the Seller desires to sell, transfer, or otherwise dispose of its utility property is that it is a bank, which is not in the business of owning water systems. Shady Cove was initially acquired by the bank through foreclosure.

Scope and Terms of the Asset Purchase Agreement

The Seller is the sole owner of and has title to all of the Membership Interests of the Shady Cove. The Seller owns all of such Membership Interests free and clear of all encumbrances and there are no limitations or restrictions on the Seller's right to transfer such membership interests pursuant to the sales agreement.

Transfer Pricing and Allocation of Gain

The purchase price of the property is designated as confidential under the applicable protective order, but has been provided to the Commission. That agreement was signed by both parties on June 9, 2014. The property to be sold consists of an intake from the Rogue River, a surface water treatment plant, a 528,000 gallon reservoir, and a distribution system. The water system provides service to twelve current customers, which was also the case at the time of the property sale.

Hiland is a financially stable company with access to employees certified in all facets of water operation and water quality.

Staff believes the terms of the sale are fair and reasonable.

Public Interest Compliance

The current customers could benefit from this transaction in several ways: (1) Their water utility would be operated by a professional water company that operates other water systems during the regular course of business; (2) Hiland maintains an office with

regular office hours dedicated to customer service; (3) The company also maintains a website where customers can pay online and find other information related to water; and (4) Hiland possesses a staff of water operation professionals dedicated to providing quality service and safe drinking water.

The purchasers are financially able and willing to take over and operate the utility property. The Commission has approved Hiland purchases several times in the past for water systems acquisitions elsewhere, including Northridge Water and Whispering Pines in Shady Cove along with water systems in other areas of Oregon.

Hiland has owned and operated water systems for over 17 years. Currently, Hiland is responsible for small water systems around the State serving approximately 3,500 equivalent dwelling units. Hiland has several experienced and certified water operators on staff. It is a growing water utility and desires to acquire the water system.

Records Availability, Audit Provisions, and Reporting Requirements

Proposed conditions 1 and 2, below, provide the necessary access to Hiland's financial records.

Staff notes that the Commission retains the ability to review all rates related to property sales of the company through general rate case filings.

Conclusion

Staff concludes that the sale of Shady Cove to Hiland meets the public interest no harm standard and should be approved.

PROPOSED COMMISSION MOTION:

The sale of the Shady Cove Waterworks, LLC, to Hiland Water Corporation by AmericanWest Bank be approved with the following conditions:

1. Hiland shall provide the Commission access to all books of account as well as documents, data, and records that pertain to the sale and reporting requirements.
2. The Commission reserves the right to review for reasonableness all financial aspects of the arrangement in any rate proceeding or earnings review.
3. Hiland must maintain a toll-free emergency number and a toll-free office number available to the customers.