

PUBLIC UTILITY COMMISSION OF OREGON
STAFF REPORT
PUBLIC MEETING DATE: August 28, 2018

REGULAR _____ CONSENT X EFFECTIVE DATE _____ N/A _____

DATE: August 21, 2018

TO: Public Utility Commission

FROM: Malia Brock ^{MB} _{by BK}

THROUGH: Jason Eisdorfer, ^{EJM} Bryan Conway, ^{BK} and Bruce Hellebuyck ^{BH by BK}

SUBJECT: GOVERNMENT CAMP WATER COMPANY: (Docket No. UP 375)
Requests Approval for the Transfer of a Water Utility to Lesli Ann Bekins, and
Waiver of OAR 860-036-2120(4).

STAFF RECOMMENDATION:

Staff recommends that the Commission approve the transfer of Government Camp Water Company (Government Camp, GCW, or the Company) to Lesli Bekins and grant the Company's request to waive OAR 860-036-2120(4), subject to the following conditions:

1. Ms. Bekins will hold the Company's existing customers harmless from the results of this Transfer.
2. The Commission reserves the right to review for reasonableness all financial aspects of this transaction in future rate proceedings to determine appropriate ratemaking treatment.

DISCUSSION:

Issue

Whether the Commission should approve the transfer of Government Camp from Maryanne Hill to Lesli Bekins and grant the request for waiver of the Commission's 60-day notice requirement.

Applicable Rule or Law

Under ORS 757.005(1)(a), a "public utility" includes any individual that owns, operates,

manages or controls plant or equipment that is used for the transmission, delivery and furnishing of water to the public. Public utilities doing business in Oregon are subject to ORS 757.480(1), which requires Commission approval before the public utility disposes of any of the following: property with a value in excess of \$100,000 that is necessary and useful, the right to maintain and operate the utility or its property, or the right to perform any service as a public utility. Additionally, ORS 757.480(5) and OAR 860-036-2120(1) require water utilities doing business in Oregon to obtain Commission approval before disposing of any of the following: water utility property with a value in excess of \$10,000, the right to maintain and operate such water utility or water utility property, or the right to perform any service as a water utility. The Commission has traditionally applied a public interest “no harm” standard when considering whether or not to approve such transactions.¹

Pursuant to OAR 860-036-2120(4), the utility must provide the Commission and the utility’s customers with written notice of the transaction no less than 60 days prior to the closing date of the transaction. The contents of the notice are listed in OAR 860-036-2120(4) and OAR 860-036-1100(2). However, under OAR 860-036-0000(3), the Commission may waive any of its Water Division rules for good cause shown.

Analysis

Background

Government Camp is a small family investor owned, rate and service regulated water utility located in Government Camp, Oregon. It is structured as an S corporation. As there is no municipal water system in this small, unincorporated winter resort community located near Mt. Hood, the Company is the major water provider in this area. The Company provides domestic residential water service to serve approximately 660 homes and businesses. An estimated 190-260 of these homes are permanent residents of Government Camp. The source of Government Camp’s water service is a captured artesian well that supplies gravity fed water, with a water right dating back to September of 1908, and which is located on federal land.

The Transaction

Maryanne Hill has owned the Company since she purchased it in 1961. On May 12, 2014, Ms. Hill transferred all of the Company’s underlying stock to her daughter, Lesli Bekins, as a gift. As a result of the transaction, all property of the Company was assigned to Ms. Bekins.²

The Company did not seek Commission approval at the time of the transaction. The transaction came to Commission Staff’s attention during the Company’s currently pending rate case in Docket No. UW 174. After discussions with Staff, the Company filed this application

¹ See *In re Cline Butte Water, LLC*, OPUC Docket No. UP 345, Order No. 17-156 at 3-4 (May 1, 2017) (“[W]e apply a ‘no harm’ standard in approving water utility transfer applications”).

² OPUC Docket No. UP 375, Application at 2, Response to Question 3.

requesting the Commission's approval of the transfer on June 5, 2018. The Company also requests a waiver or extension of the 60-day notice requirement for water utility transactions found in OAR 860-036-2120(4).

Reason for the Sale

According to the Company's application, in May 2014, Ms. Hill had a health situation that initiated the transfer of ownership of the Company from Ms. Hill to Ms. Bekins.³ The Company asserts in its application that Ms. Hill subsequently recovered and continued to run the Company.⁴ In other filings in other dockets, Ms. Bekins has identified herself as the Owner and Corporate Secretary of GCW.⁵ The application explains that Ms. Hill's plan has always been to transfer ownership of the family business to Ms. Bekins at the appropriate time, and that upon completion of the Company's current rate case, Ms. Hill will retire, and Ms. Bekins will assume the duties and responsibilities of President and Chief Executive Officer.⁶

Staff's Review

Staff issued four information requests and reviewed the following aspects of the Company's application: scope and terms of the transfer, transfer pricing, and public interest compliance. Staff also reviewed the Company's request for a waiver or extension of the 60-day notice period and worked with the Company to issue a notice that would minimize customer confusion and make clear when the transaction would be considered by the Commission.

1. Scope and Terms of the Transfer

The terms are \$0 for the 100 percent gift of Government Camp stock from Ms. Hill to Ms. Bekins.⁷ The Application states that the net book value of the water system is \$474,722, for which the Company cites the PUC Staff's rate model. Staff reviewed the Assignment of Interest and noted no unusual or restrictive terms in the assignment.

The application further advises that all easements and the water use right allowing appropriation by Government Camp are held by the Company, therefore no transfer of the easements or water right is necessary in connection with this transfer.⁸

2. Transfer Pricing and Allocation of Gain

The Company advises that its finances did not change with the transfer to Ms. Bekins and that no purchase cost is associated with this transaction.

³ OPUC Docket No. UP 375, Application at 2, Response to Question 5.

⁴ OPUC Docket No. UP 375, Application at 2, Response to Question 5.

⁵ OPUC Docket No. UW 174, Government Camp Opening Testimony at 2, Response to Question 5.

⁶ OPUC Docket No. UP 375, Application at 2, Response to Question 5.

⁷ OPUC Docket No. UP 375, Application at 2, Response to Question 4.

⁸ OPUC Docket No. UP 375, Application at 4, Response to Question 9.

The Company has proposed no change in treatment of the Company's assets for ratemaking purposes as a result of this transaction. Staff makes no recommendation as to the proper ratemaking treatment of the transferred assets at this time; rather, that issue will be reviewed in an appropriate ratemaking proceeding consistent with Staff's proposed Condition 2.

3. Public Interest Compliance

The Company maintains that this transaction was seamless to customers, transferring the water company to the third generation of a family business. It also states that customers will benefit by ownership remaining in the family that has served them for decades, and that Ms. Bekins has a unique combination of knowledge, education, and experience that makes her the best person to understand the water system, customer needs, and utility management.⁹

Based on Staff's review of confidentially provided financials, Staff believes that Ms. Bekins has the financial ability to operate the water system after this transfer. Additionally, Staff's review of the terms and conditions of the transfer confirms that the transfer did not result in additional debt for the Company.

Staff notes that attendees at the prehearing conference for the Company's current rate case in Docket No. UW 174 raised questions about the effect of the transfer on the Company's costs and rates. Staff reserves for ratemaking proceedings any ratemaking-related issues, consistent with Staff's proposed Condition 2. Further, Staff notes that an affiliated interest application relating to Ms. Bekin's future salary is also the subject of currently pending Docket No. UI 404.

Staff also notes Ms. Bekins holds an 18 percent interest in Charlomont Hill, LLC, which holds the company's debt in the form of a loan taken out prior to Commission regulation of the Company.¹⁰ The Commission should therefore review any changes to this affiliated interest agreement. Staff reserves for ratemaking proceedings any ratemaking-related issues related to this loan, consistent with proposed Condition 2.

4. Compliance with Commission Rules and OAR's

The Company did not seek approval of this transaction in 2014 because it did not at the time believe that the Commission's rules on property transfers clearly applied to this transaction. That view is inconsistent with ORS 757.480. As the individual that owned, operated, and managed Government Camp, which includes plant and equipment that is used for the transmission, delivery and furnishing of water to the public, Ms. Hill falls under the definition of "public utility" under ORS 757.005(1)(a). She is therefore subject to ORS 757.480(1), which requires Commission approval before the disposal of any of the following: a public utility's property in excess of \$100,000 that is necessary and useful, the right to maintain and operate

⁹ OPUC Docket No. UP 375, Application at 2, Response to Question 7.

¹⁰ Response to Information Request No. 2. See Attachment A.

the utility or its property, or the right to perform any service as a public utility. She is also subject to ORS 757.480(5), which requires water utilities doing business in Oregon to obtain Commission approval before disposing of any of the following: water utility property with a value in excess of \$10,000, the right to maintain and operate such water utility or water utility property, or the right to perform any service as a water utility.

As the Company did not believe this ownership transfer required Commission approval, it did not notify its customers in advance of the transfer in 2014. Nor did the Company notify its customers of the transfer at the time it filed this application. Instead, the Company requested a waiver or extension of the 60-day notice period.

With Staff's input, the Company completed the mailing of a notice via United States Postal Service pursuant to OAR 860-036-2120(4) on August 9, 2018, to notify its customers of the transfer. The contents of the notice should mitigate customer confusion regarding the date of the transfer by explaining when the transaction came to the attention of Commission Staff. The contents of the notice also should mitigate the harm of the notice period being less than 60 days, as the notice clearly identified that the Commission would consider this application at its August 28, 2018, public meeting. Customers had just under three weeks to engage in the approval process and knew when the Commission would likely make a decision. Staff additionally notes that customers may have received additional notice of the transaction in the Company's current rate case, as the Company mentioned this transfer briefly in its rate case filing.¹¹ Staff does not view that mention as sufficient to supplant the notice requirement under OAR 860-036-2120(4), but believes it mitigates some of harm caused by a shorter notice period here.

The length of time that has passed since 2014 make notice issues awkward in this case. Staff believes the notice gave customers adequate notice and opportunity to voice concerns regarding the sale given in the period, including by participating in the public meeting. Staff therefore recommends that the Commission partially waive the 60-day notice requirement.

Conclusion

Staff concludes that the transfer of GCW meets the public interest, no harm standard, and should be approved subject to Staff's conditions. Staff also recommends that the Commission grant the request to waive the 60-day notice requirement for good cause shown.

¹¹ OPUC Docket No. UW 174, Government Camp Opening Testimony at 4, Response to Question 17.

UP 375
August 21, 2018
Page 6

PROPOSED COMMISSION MOTION:

Approve the transfer of Government Camp Water Company to Lesli Bekins, subject to Staff's proposed conditions, and waive the 60-day notice period for good cause shown.

UP 375 Government Camp Transfer

IR 02

Please explain Lesli Bekins' relationship to and interest in Charlomont Hill, LLC.

RESPONSE:

Lesli Bekins owns 18% of Charlomont Hill, LLC. She is a member of the LLC.