

**This is an electronic copy. Format and font may vary from the official version.
Attachments may not appear.**

BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UI 215

In the Matter of)	
)	ORDER
SEVENTH MOUNTAIN GOLF VILLAGE)	
WATER COMPANY)	
)	
Application for Approval of Affiliated Interest)	
Transactions between WIDGI CREEK GOLF)	
COURSE, ELKAI MANAGEMENT,)	
SEVENTH MOUNTAIN GOLF VILLAGE)	
WATER COMPANY, and)	
B&B PROPERTIES.)	

**DISPOSITION: APPLICATION APPROVED WITH CONDITIONS
AND REPORTING REQUIREMENTS**

On May 14, 2003, Seventh Mountain Golf Village Water Company (SMGV or the Company) filed an application with the Public Utility Commission of Oregon (Commission) pursuant to ORS 757.495 and OAR 860-036-0730, requesting approval of a lease agreement with B&B Properties, an affiliated interest. A description of the filing and its procedural history is contained in the Staff Report, attached as Appendix A, and incorporated by reference.

Based on a review of the application and the Commission's records, the Commission finds that the application satisfies applicable statutes and administrative rules. At its Public Meeting on August 20, 2003, the Commission adopted Staff's recommendations.

OPINION

Jurisdiction

ORS 757.005 defines a "public utility" and the Company is a public utility subject to the Commission's jurisdiction.

Affiliation

An affiliated interest relationship exists, as defined under ORS 757.015.

Applicable Law

ORS 757.495 requires public utilities to seek approval of contracts with affiliated interests within 90 days after execution of the contract.

ORS 757.495(3) requires the Commission to approve the contract if the Commission finds that the contract is fair and reasonable and not contrary to the public interest. However, the Commission need not determine the reasonableness of all the financial aspects of the contract for ratemaking purposes. The Commission may reserve that issue for a subsequent proceeding.

CONCLUSIONS

1. The Company is a public utility subject to the jurisdiction of the Commission.
2. An affiliated interest relationship exists.
3. The agreement is fair, reasonable, and not contrary to the public interest.
4. The application should be granted, as modified herein, including certain conditions and reporting requirements.

ORDER

IT IS ORDERED that the application of Seventh Mountain Golf Village Water Company, to enter into affiliated interest transactions in a lease agreement with B&B Properties, is approved, subject to the conditions and reporting requirements, as further stated in Appendix A.

Made, entered, and effective _____.

BY THE COMMISSION:

Becky L. Beier
Commission Secretary

A party may request rehearing or reconsideration of this order pursuant to ORS 756.561. A party may appeal this order to a court pursuant to ORS 756.580.

**PUBLIC UTILITY COMMISSION OF OREGON
STAFF REPORT
PUBLIC MEETING DATE: August 20, 2003**

REGULAR _____ CONSENT X EFFECTIVE DATE _____

DATE: August 8, 2003

TO: John Savage through Marc Hellman and Rebecca Hathhorn

FROM: Carla Owings and Michael Dougherty

SUBJECT: Seventh Mountain Golf Village Water Company: (Docket No. UI 215)
Application for Approval of a Lease Agreement between Seventh
Mountain Golf Village Water Company and B&B Properties.

STAFF RECOMMENDATION:

The Commission should approve Seventh Mountain Golf Village Water Company's (SMGV or Company) application for approval of a Lease Agreement between the Company and B&B Properties, an affiliated interest, subject to the following conditions:

1. The Agreement cost does not exceed \$4,800 for calendar year 2003 and the annual escalation rate for contract renewals for subsequent years does not exceed 2.5%.
2. SMGV shall provide the Commission access to all books of account, as well as documents, data, and records of SMGV and B&B Properties' affiliated interests that pertain to this transaction.
3. Within 60 days of approval of the Application, SMGV will provide to the Commission, an updated Lease Rental Agreement, updated Master Plan, updated Legal Description and updated Preliminary Title Report for the leased land.
4. The Commission reserves the right to review for reasonableness all financial aspects of this transaction in any rate proceeding or alternative form of regulation.

5. SMGV shall notify the Commission in advance of any substantive changes to the Lease Agreement including any change in the land used for water utility improvements and any material change in price other than the escalation increase. Any such change shall be submitted in an application for a supplemental order (or other appropriate format) in this docket.

DISCUSSION:

Background

SMGV filed this application on May 14, 2003, pursuant to ORS 757.495 and OAR 860-036-0730. The application was filed in compliance with a recommendation in Order 03-384 (UM 1067). SMGV is an approved corporation in the State of Oregon whose stock is wholly owned by Dale and Karen Bernards. B&B Properties is also an approved corporation in the State of Oregon and is wholly owned by Dale Bernards; therefore the two corporations are affiliated interests under ORS 757.015.

SMGV requests authorization from the Commission for the Lease Agreement (Agreement). Under the Agreement, SMGV would pay \$1,500 per month (\$18,000 annually) for approximately .78 acres of land where water utility improvements are located. The Lease Agreement was executed June 1, 2003, and is a 20-year term beginning June 1, 2003 and running until May 30, 2013. After discussions with Staff, SMGV revised the area of land included in the lease to .70 acres.

The basis of the lease amount is determined in the Agreement as follows: "The base rental shall be established as the amount representing a 9% return based upon the current market value of the property. Both parties agree to re-establish the value each year on or before June 1."

Issues

Staff investigated the following issues:

1. Terms and Conditions of the Lease Rental Agreement
2. Public Interest Compliance
3. Records Availability, Audit Provisions and Reporting Requirements

Lease Rental Agreement

Staff disagrees with SMGV's estimation of land required for utility operations. Staff calculates that .53 acres of land is actually used and useful for utility operations. This .53 acres includes 8,139 ft² of land where the cistern and wells are located, 2,700 ft² for

the utility building and surrounding land and 12,248 ft² for additional land where installed equipment (transformers, vaults, other electrical equipment, piping) is located.

Public Interest Compliance

Staff disagrees with SMGV's statement of market value of the land. SMGV used a market value for the highest and best use of the land (\$200,000 for .78 acre which equals \$256,410 per developed acre), while Staff used the replacement cost of land (\$100,000 per acre). The land that contains the water utility equipment cannot be developed for residential usage and as a result, the "highest and best use" standard does not apply to this area of land.

Staff does not agree that SMGV's statement of lease payments is the lower of cost or market and recommends that the Agreement not exceed \$400 per month (\$4,800 annually) for 2003. Staff also recommends that annual escalation costs be limited to 2.5%. Staff computed the escalation rate (2.5%) based on the U.S. Department of Labor, Bureau of Labor Statistics, Consumer Price Index, All Urban Consumers (CPI-U) average for the years 1993 – 2002. The CPI-U ten-year average is 2.23%.

Staff agrees that the 9% return included in the Agreement is a reasonable return.

Records Availability, Audit Provisions and Reporting Requirements

The proposed ordering conditions No. 2 and 3 provide the necessary records access to SMGV's relevant books and records.

The Company agreed to Staff's findings and recommendations and therefore, Staff concludes the following:

1. With the inclusion of Condition No. 1, SMGV has met the requirements of the Commission's transfer pricing policy for affiliate transactions;
2. The Commission will have the necessary records access to SMGV's books and records; and,
3. The application involves an affiliated interest transaction that is fair and reasonable and not contrary to the public interest, with the inclusion of the proposed ordering conditions.

PROPOSED COMMISSION MOTION:

Staff recommends the Seventh Mountain Golf Village affiliated interest application, UI 215, be approved subject to the five recommended conditions stated in this memorandum.