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BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UI 215(1)

In the Matter of)	
)	ORDER
SEVENTH MOUNTAIN GOLF VILLAGE)	
WATER COMPANY)	
)	
Application for Approval of the updated Lease)	
Agreement between Seventh Mountain Golf)	
Village Water Company and B&B Properties.)	

DISPOSITION: APPLICATION APPROVED WITH CONDITION

On December 2, 2003, Seventh Mountain Golf Village Water Company (SMGV) filed an application with the Public Utility Commission of Oregon (Commission) pursuant to ORS 757.495 and OAR 860-036-0730. The application was filed in compliance with condition Nos. 3 and 5 of Order No. 03-516 (docket No. UI 215). Condition No. 3 required SMGV to submit an updated Lease Agreement (Agreement), updated Master Plan, updated Legal Description and updated Preliminary Title Report for the leased land. Condition No. 5 required SMGV to notify the Commission in advance of any substantive changes to the Agreement. An updated Agreement was submitted with the Application, and has two substantive changes from the current Agreement concerning management service fees and property taxes.

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 January 6, 2004, the Commission adopted Staff's recommendation and approved the Agreement, with conditions. Staff's recommendation report is attached as Appendix A and incorporated by reference.

ORDER

IT IS ORDERED that the Seventh Mountain Golf Village affiliated interest application, UI 215(1), is approved subject to the recommended condition stated in the Staff Memorandum attached as 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: January 6, 2004**

REGULAR _____ CONSENT X EFFECTIVE DATE _____ N/A _____

DATE: December 24, 2003

TO: Lee Sparling through Marc Hellman and Rebecca Hathorn

FROM: Michael Dougherty

SUBJECT: SEVENTH MOUNTAIN GOLF VILLAGE WATER COMPANY: (Docket No. UI 215(1)) Application for Approval of the updated 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 the updated Lease Agreement between the Company and B&B Properties, an affiliated interest, subject to the following condition:

1. The Company shall continue to comply with the five listed conditions stated in Commission Order 03-516 (UI 215) dated August 25, 2003.

DISCUSSION:

Background

SMGV filed this application on December 2, 2003, pursuant to ORS 757.495 and OAR 860-036-0730. The application was filed in compliance with condition Nos. 3 and 5 of Order 03-516 (UI 215). Condition No. 3 required SMGV to submit an updated Lease Agreement (Agreement), updated Master Plan, updated Legal Description and updated Preliminary Title Report for the leased land. Condition No. 5 required SMGV to notify the Commission in advance of any substantive changes to the Agreement. An updated Agreement was submitted with the application, and had two substantive changes from the current agreement concerning management service fees and property taxes.

Dale Bernards owns one-third of SMGV, which is a registered corporation in the State of Oregon. B&B Properties is not a registered corporation in the State of Oregon; however, B&B Properties is one-half owned by Dale Bernards; therefore the two entities are affiliated interests under ORS 757.015. This is a correction to

the stated ownership of SMGV in Order 03-516 (UI 215). SMGV previously represented to Staff that Dale and Karen Bernards owned one hundred percent of SMGV. This one hundred percent ownership by Dale Bernards was also reported in SMGV's Annual Reports for 2000 - 2002. As a result of further inquiries by Staff, SMGV explained the correct ownership of the utility.

Issues

Staff analyzed the "Operating Expense" section of the Agreement. The Agreement stated, "For the purposes of this lease, Lessee shall be responsible for any and all Operating Expenses. Operating Expenses shall mean all expenses paid or incurred by Lessee (or on Lessee's behalf) as reasonably determined by Lessee to be necessary or appropriate for the efficient operation of the facility and appropriate maintenance of the Land." Included in this section was:

- a. Salaries, wages, payroll taxes and related expenses for any employee of SMGV,
- b. The cost of all utilities furnished to the property,
- c. The cost of all charges for insurance of the property,
- d. The cost of all supplies or equipment related to the maintenance of the property,
- e. The cost of the management service contract, and
- f. Any and all real and personal property taxes and assessments levied or imposed by any governmental authority with respect to the land, building, fixtures or improvements on the property.

Sections (a) to (d) are utility operating expenses that are currently being reviewed as part of SMGV's rate case submission, UW 95. Section (e), which is also an operating expense, was addressed in Commission Order 03-663 (UI 217), which approved the management service agreement between Canterbury Property Management LLC (also owned by Dale Bernards) and SMGV. Condition No. 1 of this order stated, "The Agreement cost does not exceed \$360 per month for calendar year 2003 and the annual escalation rate for contract renewals for subsequent years does not exceed 2.5%." SMGV is required to comply with this condition, even though the updated Lease Agreement includes a cost basis that is different from the Commission approved cost for management services.

Section (f) is also an operating expense and SMGV is currently paying property taxes for utility equipment and property. These expenses are also being reviewed as part of SMGV's rate case submission, UW 95. Because property taxes are currently being paid by the utility, SMGV should not be allowed to collect, from ratepayers, any additional property taxes on the leased land. The land leased to SMGV was assessed in 2003 at the land's "highest and best use," which is residential property.

Staff spoke to a Deschutes County assessor on December 5, 2003, and per the assessor, SMGV has yet to submit an updated Statement of Property that reports this land as being used for utility operation. In conversations with the assessor, the most probable outcome of the filing with Deschutes County is that the land used for utility operations would be considered common property and would likely be assigned no additional value for tax purposes.

The Company and Intervenors to UW 95 agreed to Staff's findings. Staff concludes 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 condition.

PROPOSED COMMISSION MOTION:

Staff recommends the Seventh Mountain Golf Village affiliated interest application, UI 215(1), be approved subject to the recommended condition stated in this memorandum.

PMM – UI 215(1) – Approval of Lease Agreement