

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

UI 246

In the Matter of	)	
	)	
SEVENTH MOUNTAIN GOLF VILLAGE	)	ORDER
WATER COMPANY	)	
	)	
Application for Approval of a Land Rental	)	
Agreement with Braber Properties, LLC, an	)	
Affiliated Interest.	)	

**DISPOSITION: APPLICATION APPROVED WITH CONDITIONS**

On October 25, 2005, 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, requesting approval of a land rental agreement between SMGV and Braber Properties, LLC, affiliated interests. 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 January 10, 2006, the Commission adopted Staff's recommendations.

**OPINION**

**Jurisdiction**

ORS 757.005 defines a "public utility," and SMGV 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. SMGV 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 an affiliated interest transaction with Braber Properties, LLC is approved, subject to the conditions further stated in Appendix A.

Made, entered, and effective JAN 17 2006.

BY THE COMMISSION:



Becky L. Beier  
**Becky L. Beier**  
Commission Secretary

A party may request rehearing or reconsideration of this order pursuant to ORS 756.561. A request for rehearing or reconsideration must be filed with the Commission within 60 days of the date of service of this order. The request must comply with the requirements in OAR 860-014-0095. A copy of any such request must also be served on each party to the proceeding as provided by OAR 860-013-0070(2). A party may appeal this order by filing a petition for review with the Court of Appeals in compliance with ORS 183.480-183.484.

ITEM NO. CA4




PUBLIC UTILITY COMMISSION OF OREGON  
STAFF REPORT  
PUBLIC MEETING DATE: January 10, 2006

REGULAR \_\_\_\_\_ CONSENT X EFFECTIVE DATE January 1, 2006

DATE: December 28, 2005

TO: Public Utility Commission

FROM: Marion Anderson 

THROUGH:  Lee Sparling,  Marc Hellman, and  Michael Dougherty

SUBJECT: SEVENTH MOUNTAIN GOLF VILLAGE WATER COMPANY: (Docket No. UI 246) Application for Approval of a Land Rental Agreement with Braber Properties, LLC, an Affiliated Interest.

**STAFF RECOMMENDATION:**

The Commission should approve the application of Seventh Mountain Golf Village Water Company (SMGV) with the following conditions for a land rental agreement with Braber Properties, LLC (Braber), an affiliated interest.

1. SMGV shall provide the Commission access to all books of account, as well as all documents, data and records that pertain to any transactions with Braber.
2. The Commission reserves the right to review, for reasonableness, all financial aspects of this arrangement in any rate proceeding or earnings review under an alternative form of regulation.
3. SMGV shall notify the Commission in advance of any substantive changes to the agreement, including any material changes in any cost. Any changes to the agreement terms that alter the intent and extent of activities under the agreement from those approved herein shall be submitted for approval in an application for a supplemental order (or other appropriate format) in this docket.
4. This approval does not recognize any Commission authorized utility expense for land rental since the land has no assessed valuation.

UI 246  
December 28, 2005  
Page 2

**DISCUSSION:**

This application was filed on October 25, 2005, under ORS 757.495 and OAR 860-036-0730. Dale Bernards is the owner/president of SMGV and acting authority for Braber, as the members are his minor children. As a result, there is an affiliated relationship pursuant to ORS 757.015.

The following issues were investigated:

- Scope of the Agreement
- Transfer Pricing
- Determination of Public Interest Compliance
- Records Availability, Audit Provisions, and Reporting Requirements

Scope of the Arrangement: This contract covers the lease of land, owned by Braber, upon which water utility assets are located for a period from January 1, 2006 through December 31, 2026. SMGV takes responsibility for all operating expenses. Section 3(e) of the contract provides for a contingent property management administration fee of \$1,000. The property management application is dealt with in concurrently pending Docket UI 217(1). With reference to Staff's recommendation in that docket, the contingent fee, if needed, shall not exceed \$830 per month for calendar year 2006 and the annual escalation factor applied thereafter shall equal the lesser of the CPI or 2.5 percent.

Transfer Pricing: The requested beginning annual rent for the land is \$5,169 with provision for a maximum 2.5 percent year to year escalation. The lower of cost or market principle pursuant to OAR 860-036-0739(3)(e) is applicable to the underlying asset in this application – the land designated Tract A. According to the Statutory Bargain and Sale Deed submitted with the application, there was no consideration given for the conveyance of ownership of Tract A. Further, as appraised by intervener Robert J. Selder in his November 1<sup>st</sup> correspondence, Tract A has no assessed valuation or 2006 property tax assessment. I confirmed this information by telephone with the Deschutes County Assessor's Office on November 14, 2005.

Given that the underlying asset (the land) has no value and OAR 860-036-0739(3)(e) requires services be recorded at the lower of the affiliate's cost or the market rate, a zero value for rent is justified. Therefore, the terms of the filed agreement are not just and reasonable. SMGV is hereby notified that consistent with ORS 757.495(3), a zero allowance for land rental is proposed.

UI 246  
December 28, 2005  
Page 3

Determination of Public Interest Compliance: With the aforementioned caveats, no issue is raised with respect to the contract's terms and conditions.

Records Availability, Audit Provisions, and Reporting Requirements: Staff Recommendation Condition No. 1 affords necessary access to any relevant records.

Based on the review of this application, Staff concludes the following:

1. The arrangement's scope is reasonable.
2. Potential transactions, as qualified, will not harm customers and are not contrary to the public interest with the recommended conditions.
3. Necessary records are available.

**PROPOSED COMMISSION MOTION:**

SMGV's application for a land rental agreement with Braber, an affiliated interest, be approved, subject to the four recommended conditions.

UI 246