

ENTERED Aug 11 2020

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UP 407

In the Matter of

BETHEL PARK COMMUNITY WATER
SYSTEM/WEST COAST HOME
SOLUTIONS LLC,

Application for Approval of Sale to Merrill
Water Systems LLC.

ORDER

DISPOSITION: STAFF'S RECOMMENDATION ADOPTED

At its public meeting on August 11, 2020, the Public Utility Commission of Oregon adopted Staff's recommendation in this matter. The Staff Report with the recommendation is attached as Appendix A.

BY THE COMMISSION:



A handwritten signature in blue ink, appearing to read "Nolan Moser".

Nolan Moser
Chief Administrative Law Judge

A party may request rehearing or reconsideration of this order under 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 860-001-0720. A copy of the request must also be served on each party to the proceedings as provided in OAR 860-001-0180(2). A party may appeal this order by filing a petition for review with the Circuit Court for Marion County in compliance with ORS 183.484.

ITEM NO. CA11

**PUBLIC UTILITY COMMISSION OF OREGON
STAFF REPORT
PUBLIC MEETING DATE: August 11, 2020**

REGULAR ☐ **CONSENT** ☒ **EFFECTIVE DATE** Upon Approval

DATE: July 29, 2020

TO: Public Utility Commission

FROM: Russ Beitzel

THROUGH: Bryan Conway, Michael Dougherty, and Bruce Hellebuyck **SIGNED**

SUBJECT: WEST COAST HOME SOLUTIONS, LLC:
(Docket No. UP 407)
Requests Approval for the Sale of Bethel Park Community Water System
to Merrill Water Systems, LLC.

STAFF RECOMMENDATION:

Staff recommends that the Public Utility Commission of Oregon (Commission) approve the sale of Bethel Park Community Water System (Bethel) from West Coast Home Solutions, LLC (WC or Seller) to Merrill Water Systems, LLC (Merrill or Buyer) subject to the following conditions:

1. Buyer shall provide the Commission access to all books of account as well as all documents, data, and records that pertain to the transfer of properties or to transactions with Buyer or any other affiliate.
2. Buyer shall notify the Commission if substantive changes are made to the Purchase and Sales Agreement (PSA). Any substantive changes to the PSA terms that alter the intent or extent of the PSA from those approved herein shall be submitted for approval in application for a supplemental order (or other appropriate form) in this docket.
3. Buyer shall provide notice to the Commission within 10 days of the close of the sale.
4. The Commission reserves the right to review, for reasonableness, all financial aspects of this arrangement in any rate proceeding.

Bethel Park Community Water System
July 29, 2020
Page 2

5. Approval of this transaction does not constitute a prudence finding with respect to Buyer investments not yet included in rates.
6. Buyer will file any and all needed Affiliated Interest applications pursuant to ORS 757.495 and OAR 860-036-2210 within 90 days of closing for any transactions involving affiliates.
7. Following the sale, Buyer and its subsidiary business interests shall remain separate legal entities.
8. Buyer will maintain separate financial statements for Bethel on a stand-alone basis, though Buyer's financials may include Bethel in the consolidated financial statements for financial reporting purposes.
9. Buyer's books and records shall be available in accordance with the applicable uniform system of accounts, or, as appropriate, generally accepted accounting principles.
10. Buyer shall not issue, secure, or guarantee the debt of Merrill, or any other affiliate of Merrill, with Bethel assets as defined in ORS 757.015 without prior approval of the Commission.
11. Buyer shall not make any short-term loans to any affiliate, except as allowed pursuant to the Commission's affiliated interest statutes and rules.
12. Buyer will comply with OARs 860-036-2200, -2210, and -2230 when recording affiliate transactions on its books and records.
13. Buyer shall maintain its assets and liabilities, and books and records relating thereto, in such a manner that ascertaining or identifying its individual assets and liabilities as separate and distinct from those of its other business interests will not entail significant costs or difficulty.
14. Buyer commits that it will not advocate for a higher cost of capital than would have prevailed for Seller absent Buyer ownership.
15. Buyer will maintain structural and procedural safeguards to ensure customers do not bear costs directly associated with operations outside of the utility.
16. Buyer shall ensure that it has adequate capital to fulfill all of its public utility service obligations.

Bethel Park Community Water System
July 29, 2020
Page 3

17. Buyer will track and exclude costs related to this transaction from rates and will provide a yearly report of transaction related costs to the Commission until a general rate case is completed.
18. Buyer will maintain structural and procedural safeguards to ensure customers do not bear costs directly associated with operations outside of the state of Oregon.
19. Buyer will install or replace all meters in Bethel before the second general rate case filed following the close of the sale.
20. Pursuant to Order No. 19-384, Buyer will file a general rate case within 90 days of the close of the sale or March 31, 2020, whichever is later.

Staff has reviewed these conditions with both the Buyer and Seller, and neither expressed any objections to the above conditions.

DISCUSSION:

Issue

Whether the Commission should approve the sale of Bethel Park Water System to Merrill Water System, LLC.

Applicable Rule or Law

ORS 757.480(5) and OAR 860-036-2120(1) require water utilities doing business in Oregon to obtain Commission approval prior to selling or otherwise disposing of the water utility. The Commission has traditionally applied a public interest “no harm” standard when considering whether or not to approve such a transaction.¹

OAR 860-036-2120(3) requires the water utility or other party to the transaction to request authorization for the sale using the application form available on the Commission’s website. Typically, the seller files the application for approval of the sale; however, it is permissible for the buyer to file the application on behalf of the seller, or a joint filing can be made as well.

Pursuant to OAR 860-036-2120(4), the utility must provide the Commission and its customers with notice of the sale no less than 60 days prior to the closing date of the transaction.

¹ See e.g. *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”).

Bethel Park Community Water System
July 29, 2020
Page 4

Analysis

Background

The Seller is a privately owned, rate-regulated water utility serving approximately 64 customers in the vicinity of Brooks, Oregon. Bethel came under rate regulation in Order No. 19-384² on Nov 7, 2019.

On September 25, 2019, the Buyer and Seller signed a PSA, which sets forth the agreement for Buyer to purchase from Seller all assets associated with the water system and owned by Seller for \$1.

The Application also states that the effective date of the transaction is not to exceed 30 days after approval by the Public Utility Commission.

In this docket, Staff issued 16 Information Requests (IRs). Staff also reviewed the joint buyer and seller Application, purchaser's financial position, scope and terms of the PSA, issues related to the proposed future expansion of Bethel by Seller, public interest compliance, service impact, rate impact, affiliated interest protection, ring-fencing protection, the availability of records and proposed capital improvements. Staff's analysis in each of these areas is discussed below.

The Application

On October 31, 2019, both the Buyer and Seller filed a jointly signed application for the sale to the Commission. On October 28, 2018, all customers were notified of the pending sale by Seller,³ in compliance with OAR 860-036-2120(4).

All utility property currently owned by Bethel is included in this transaction. This includes five wells, two water permits, one water certification, pump house, equipment and controls for the supply system as well as distribution piping, service laterals, real estate associated with running Bethel, an easement and meters.⁴

Financial Position of Purchaser

The Buyer, Merrill Water Systems, LLC, currently maintains, manages, or operates thirteen water and wastewater systems in Oregon.⁵ Merrill was founded in 1978 as Merrill Well Drilling and has transitioned into water system management over the past forty years.⁶

² WJ 35.

³ Merrill's response to Staff's Information Request 15.

⁴ Application, Attachments 2, 3 and 4.

⁵ Merrill's response to Staff's Information Request 04.

⁶ Merrillwater.com.

Bethel Park Community Water System
July 29, 2020
Page 5

Staff reviewed the confidential financial documents provided by Merrill in its original application and information provided in IRs 11-16 and is satisfied that the financial resources are available to properly operate Bethel.

Scope and Terms of the Purchase and Sales Agreement

This transaction is a privately-negotiated, non-auction sale between the Buyer and Seller. All utility property currently owned by West Coast Home Solutions, LLC is included in this transaction.

Staff reviewed the PSA and noted one restrictive term to the Agreement. Bethel is currently using all or near its “legally allowable water capacity.”⁷ The original application states that Seller intends to expand the community by adding “60 homes and 60 duplex units”.⁸ As part of that expansion, Seller agrees to assume all expenses related to enhancing Bethel to handle the additional capacity demands. This includes, but is not limited to, paying for water rights transfers, adding water treatment capability, and any new infrastructure necessary. If Seller is unable to make the appropriate upgrades, Bethel will refuse to connect any new customers.⁹

Transfer Pricing and Allocation of Gain

The Buyer is purchasing the utility for \$1; Consistent with Condition 17, Staff expects no costs associated with the sale will be included in the next general rate case. Consistent with Condition 13, the Buyer shall maintain its books and records in a manner that identifies individual assets and liabilities. The Buyer stated, “Bethel Park Water will become a separate legal entity named Bethel Park Water, LLC.”¹⁰

Additionally, the Seller has confirmed that there are no outstanding liabilities or claims against Bethel that could financially harm the Buyer in the future.¹¹

Public Interest Compliance

Service Impacts: Both the Seller and Buyer expect the proposed transaction to be seamless from the customers’ perspectives, and assert that customers will experience no interruption in service due to the Buyer’s acquisition.

This transaction will not cause harm to the public as customers will not be materially affected by this transaction, as the day-to-day operations of the utility will continue to be

⁷ Application page 8 (PSA page 2).

⁸ Application pages 7-9 (PSA pages 1-3).

⁹ Merrill’s response to Staff’s Information Request 02.

¹⁰ Merrill’s response to Staff’s Information Request 16.

¹¹ Merrill’s response to Staff’s Information Request 08.

Bethel Park Community Water System
July 29, 2020
Page 6

managed by Merrill, which is currently operating the system.¹² In addition to the day-to-day operations, Merrill is currently providing the maintenance and billing for Bethel.¹³

Customers will benefit from utility ownership whose core business is utility focused. In the application, Seller states that, "rather than continue as owners of a rate-regulated water utility, WC decided to sell the system to an experienced operator and to focus instead on its core mission, real estate development."¹⁴ Phillip Merrill, current manager of operations and Direct Responsible Charge (DRC) for Bethel, has 22 years of water industry experience and holds numerous industry licenses and certifications.¹⁵

Rate Impacts: As previously stated, Bethel is now a rate regulated utility. It is required to file a rate case "within 90 days following the close of the sale of the utility to Merrill Water Systems, LLC, or March 31, 2020, whichever is later."¹⁶ Staff expects this approach will help to ensure that the rates established in the general rate proceeding will accurately reflect costs under new ownership, and will enable any operating efficiencies gained in the sale to be reflected in rates going forward.

Affiliated Interest Protection: Several items address protections relating to affiliated interests to provide transparency and ensure customers will not be harmed by the transaction. The Buyer will abide by applicable Oregon law and Commission rules when recording affiliate interest transactions, and will file applications of all affiliated interests within 90 days following the close of sale. The Commission will have access to review all of the utility's books and records related to its affiliated interest transactions with Buyer, which will be reviewed in the next rate case.

Ring-Fencing Protection: Ring-fencing provisions are addressed and include requirements that Merrill Water Systems, LLC and Bethel Park Community Water System (or the newly formed Bethel Park Water, LLC) remain separate legal and financial entities, with separate books and records. Further, Bethel will not issue short-term loans to Merrill or its affiliates except as allowed under the Commission's affiliated interest statutes and rules and shall not issue, secure, or guarantee the debt of Merrill or its affiliates without prior approval of the Commission. This will help ensure utility customers will not be harmed by circumstances affecting Merrill and its other operating interests.

Records Availability, Audit Provisions and Reports: The Commission will have access to review all utility books and records relating to its affiliated interest transactions with

¹² Merrill's response to Staff's Information Request 04.

¹³ Merrill's response to Staff's Information Request 04.

¹⁴ Application page 3, Question 5.

¹⁵ Merrill's response to Staff's Information Request 03.

¹⁶ Order No. 19-384.

Bethel Park Community Water System
July 29, 2020
Page 7

the Merrill or any other affiliate. All utility books and records shall be available in accordance to applicable systems of accounts or generally accepted accounting principles. Buyer agrees to notify the Commission of any substantive changes.

Safeguards are also present to ensure Bethel does not bear costs directly associated with Merrill operations unrelated to the utility. The terms are designed to ensure Merrill maintains separate legal entities and records for Bethel, as well as maintaining separate financial statements showing its assets and liabilities on a standalone basis. The Conditions for approval of the sale afford the necessary Commission examination of all records concerning the sale.

Proposed Capital Improvements

Merrill intends to install a back-up generator soon after the purchase is approved, as "the water system currently does not have an alternate source of electricity..."¹⁷ As with all utility investments, the appropriateness of the asset will be determined in the next rate case.

Staff notes that small water utilities often have very limited access to capital when compared to larger utilities. As such, Staff agrees that the new utility owner has the financial resources available to properly operate Bethel.

Customer Issues

Seller provided notice to customers of the proposed sale October 28, 2019.¹⁸ As of the date that this memo was published, Commission Staff has received no customer complaints pertaining to the proposed sale of Bethel.

Conclusion

Staff finds that the sale will cause no harm to customers and not result in diminished service. Rates will be determined in the required general rate case and, while they may increase, it is not directly related to the sale. The Buyer appears to possess the necessary expertise and financial stability to ensure that Bethel will continue to provide safe and reliable service at fair, just and reasonable rates following the transfer of ownership. Consequently, Staff finds that the sale meets the public interest, no harm standard, and should be approved.

¹⁷ Merrill's response to Staff's Information Request 01.

¹⁸ Merrill's response to Staff's Information Request 15.

Bethel Park Community Water System
July 29, 2020
Page 8

PROPOSED COMMISSION MOTION:

Approve the sale of Bethel Park Community Water System to Merrill Water Systems, LLC subject to Staff's recommended conditions.

UP 407 Bethel Park Sale