



State of New Jersey
DEPARTMENT OF THE PUBLIC ADVOCATE
DIVISION OF RATE COUNSEL
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August 30, 2007

Via Hand Delivery and US Mail

Kristi Izzo, Secretary
State of New Jersey Board of Public Utilities
Two Gateway Center, 11th Floor
Newark, New Jersey 07102

Re: In the Matter of the Verified Petition of East Coast Oakwood Apartments Sewage, LLC for Approval of a Transfer of Control of Oakwood Village Sewerage Associates, L.L.C.
BPU Docket No. WM07070535

Dear Secretary Izzo:

Please accept for filing an original and ten copies of the Division of Rate Counsel's ("Rate Counsel") comments regarding the above-referenced matter. Enclosed is one additional copy. Please date stamp the copy as "filed" and return it to the courier. Thank you for your consideration and attention to this matter.

BACKGROUND

On July 17, 2007 East Coast Oakwood Apartments Sewage, LLC, ("Petitioner") a Delaware limited liability company, having an address c/o AIG Global Real Estate Investment Corp., 70 Pine Street, 4th Floor, New York, New York 10270, filed a Petition with the New Jersey Board of Public Utilities ("Board") requesting approval under N.J.S.A. 48:2-51.1 and

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N.J.A.C. 14:1-5.14 to acquire a one hundred percent (100%) ownership interest in Oakwood Village Sewerage Associates, L.L.C. (“OVSA”), a public utility regulated by the Board.¹

Petitioner’s membership interests are held by East Coast Residential Associates, LLC (ECRA”) a Delaware limited liability company having an address c/o AIG Global Real Estate Investment Corp., 70 Pine Street, 4th Floor, New York, New York 10270. ECRA’s membership interests are held by AIG Global Real Estate Investment Corp. and MPM Acquisition Corp. AIG Global Real Estate Investment Corp., is a member company of American International Group, Inc. (“AIG”), which is a part of AIG Global Real Estate, a group of international real estate companies that actively invests in and manages real estate for clients and AIG member companies in over 50 countries around the world. AIG Global Real Estate is affiliated with AIG Investments. MPM Acquisition Corp., a Pennsylvania Corporation, is wholly owned by Morgan Properties. Morgan Properties is a real estate investment, development, and management company which owns and manages apartment communities with nearly 14,000 units in Pennsylvania, Delaware, New Jersey, Ohio, Indiana, Maryland, South Carolina, Virginia, and Nebraska.²

On June 24, 2007, ECRA and Westminster Management along with other affiliated entities(“Westminster”) entered into a Purchase and Sale Agreement by which Petitioner will be purchasing eighty-six (86) major rental properties from Westminster.³ Oakwood Village Apartment complex (“Oakwood”), consisting of 1,224 one and two bedroom units located in Mount Olive Township, Morris County, New Jersey, is among the properties being purchased by

¹ Petition, Introduction, pg 1.

² Petition, para, 1.

³ Petition, para, 2; OE-3 and OE-10 Attachment.

ECRA. The property upon which the apartments are located is owned by Oakwood Garden Associates, L.L.C.⁴

Sewerage collection and treatment service is provided to Oakwood by OVSA. OVSA is one hundred percent (100%) owned by Oakwood Apartments, LLC. Dara Estates Homeowners Association, Inc., is a non-equity member of OVSA with a zero percent (0%) ownership interest in OVSA. The members of Oakwood Apartments, L.L.C., are Oakwood Residential Corp. (the Managing Member), Westminster Holdings, L.L.C., a Kushner affiliate, and various members of the Kushner family, as well as individually named trusts formed for the benefit of such family members.⁵

On August 16, 2007 a public hearing in this matter was held at the Mount Olive Public Library, located in Flanders, New Jersey before Hearing Officer Joseph Quirolo, Esq. No members of the public appeared.

ANALYSIS

OVSA provides sewerage collection and treatment service pursuant to its Board authorized Tariff, approved by Board Order dated December 19, 2002 in Docket No. WE00120986 and a ninety-nine year lease dated July 1, 2003 between OVSA, as tenant, and Oakwood Garden Associates, L.L.C., as assignee of Oakwood Apartments, L.L.C. The Lease demises to OVSA the sewerage treatment plant, including the building and plant equipment, the septic fields, appurtenant parking and access, and the right to flow sewerage to the plant through the existing sewerage mains in Oakwood Village Apartments complex.⁶

⁴ Petition, para. 3.

⁵ Petition, para. 4.

⁶ Petition, para. 5 and Exhibit B to the Petition.

The wastewater treatment plant is located on Route 206 in Flanders, New Jersey on approximately 40 acres. The treatment plant services the 1,224 apartments at Oakwood as well as 34 residential homes at Millbrook Estates. The plant is currently managed by Applied Water Management, by virtue of an Operations, Maintenance and Management Agreement (“Operating Agreement”) effective as of April 1, 2003. The wastewater treatment plant was built in 1972 and upgraded by Applied Water Management in 1997.⁷ Subsequent to this transaction, OVSA will remain a sewer utility subject to the Board’s jurisdiction and Applied Water Management will continue to operate the sewerage treatment plant and collection system.⁸ The Petitioner represents that it intends to utilize the services of Applied Water Management or a similarly qualified operations firm when the term of the current Operating Agreement expires on April 1, 2008.⁹

In addition, OVSA is subject to an Operating Agreement for Oakwood Village Sewerage Associates, L.L.C., dated July 1, 2003, between Oakwood Apartments L.L.C. and Dora Estates Homeowners Association, Inc. (“Financial Operating Agreement”). The Financial Operating Agreement specifies, among other things, that capital contributions under certain circumstances are to be made by Oakwood Apartments L.L.C. to OVSA (“Article VII”) and operating expenses are to be provided to OVSA by both parties (“Article VIII”).¹⁰

The Petition provides that at closing, East Coast Oakwood Village, LLC, an entity created by ECRA proposes to take title to Oakwood, the wastewater treatment plant, and the property on which the wastewater treatment plant is located from Oakwood Garden Associates,

⁷ Petition, para. 6.

⁸ Petition, paras. 9,10.

⁹ RCR-7 and RCR-8.

¹⁰ Petition, para,7; Exhibit D to the Petition.

L.L.C.. By virtue of this transaction, East Coast Oakwood Village, L.L.C. would become Lessor under the Lease.¹¹

In addition, at closing East Coast Oakwood Apartments Sewage LLC proposes to acquire from Oakwood Apartments, L.L.C. its 100% ownership interest in OVSA and to assume the obligations of Oakwood Apartments, L.L.C. under the Financial Operating Agreement.¹² Dara Estates Homeowners Association, Inc has consented to the assignment to East Coast Oakwood Apartments Sewage LLC of the Oakwood Apartments, L.L.C.'s membership interests in Oakwood Village Sewerage Associates, L.L.C.¹³

Subsequent to closing, Petitioner represents that it will assume the responsibilities of Oakwood Apartments, L.L.C.'s and it's obligations under the Financial Operating Agreement, thereby assuring the continued financial support of OVSA.¹⁴

The Petitioner will acquire the 100% membership interest in OVSA for \$802,666.54.¹⁵

Regarding this transaction, the Petitioner states:¹⁶

This transaction represents an opportunity for AIG and Morgan Properties to expand their asset base in multi-family residential properties. This type of asset appeals to institutional investors such as AIG because multi-family residential properties represent stable predictable cash flows with relatively low risk as compared to other real estate investments. The properties being purchased from Kushner are located in stable east coast marketplaces which have experienced dramatic growth in the past few years and enable AIG and Morgan to further position themselves as both owners and managers of prime multi-family assets in these areas.

¹¹ Petition, para, 8.

¹² *Id.*

¹³ RCR-9.

¹⁴ Petition, para, 11.

¹⁵ OE-5.

¹⁶ OE-10 Attachment.

The Petitioner asserts that its acquisition of a controlling interest in OVSA is consistent with all the criteria delineated in N.J.S.A. 48:2-51.1 and with the “positive benefits” requirements of N.J.A.C. 14:1-5.14(c).

Specifically, the proposed acquisition of control of OVSA will have no impact on competition. OVSA will remain a stand-alone sewer utility with a new entity, Petitioner, holding a controlling interest. There will be no impact on rates charged OVSA’s customers as OVSA will continue to operate under its current Board-approved Tariff. The proposed transaction will have no impact on OVSA’s employees since OVSA has no employees. In addition, while the Petitioner has no expertise in operating or managing wastewater systems, it states that the proposed transaction will have no adverse impact on the provision of safe, adequate and proper service. The system will continue under the operational control of Applied Water Management in accordance with the Operating Agreement. The Petitioner represents that its owners are fully capable of funding through Petitioner or otherwise any necessary repairs or improvements required for the sewer system. In addition, financial and accounting services will be provided by Morgan Properties.¹⁷

RECOMMENDATION

The Division of Rate Counsel (“Rate Counsel”) has reviewed the Petition and responses to interrogatories. Based upon that review, Rate Counsel is not opposed to approval of the transfer of control of OVSA to Petitioner in accordance with N.J.S.A. 48:2-51.1 and N.J.A.C. 14:1-5.14(c). There is no current rate impact as a result of the change in control. OVSA will continue to exist as the regulated entity and Applied Water Management will continue to operate the sewerage treatment plant and collection system. While there have been several compliance

¹⁷ Petition, paras, 15, 16, 17, 18, 19 and RCR-7.

issues regarding DEP rules and permits, these have been, or are being addressed by Applied Water Management.¹⁸ The proposed change in control brings a more substantial owner in charge of the system. Additionally, it also brings a professional on-site manager (Morgan Properties) that has not previously existed. There is no indication that environmental performance shall be degraded as a result of the transaction. The presence of a full-time on-site manager and a fiscally substantial owner can only improve future performance.

Approval of the Petition should not include authorization to include in rate base the specific assets that will be acquired as a result of this Petition. The determination of any assets to be included in rate base should be addressed in a future base rate proceeding. Rate Counsel therefore recommends that any Board Order approving the Petition contain the following language:

1. This Order shall not be construed as directly or indirectly fixing for any purposes whatsoever any value of any tangible or intangible assets now owned or hereafter to be owned by the Petitioner.
2. This Order shall not affect nor in any way limit the exercise of the authority of this Board or of this State, in any future Petition or in any proceedings with respect to rates, franchises, service, financing, accounting, capitalization, depreciation, or in any other matter affecting the Petitioner.

These provisions will satisfy the concerns of Rate Counsel that BPU approval is limited to the acquisition of control of OVSA by the Petitioner, and should not indicate authorization to include any specific assets or amounts in rate base, or indicate authorization for any other ratemaking treatment. With these caveats, Rate Counsel is not opposed to approval of the Petition

¹⁸ RCR-1, RCR-2 and OE-7.

Respectfully submitted,

RONALD K. CHEN
PUBLIC ADVOCATE OF NEW JERSEY

Kimberly K. Holmes
Acting Director, Rate Counsel

By /s/: **Debra F. Robinson**
Debra F. Robinson
Deputy Public Advocate