

ORDER NO. 19-086

ENTERED Mar 13 2019

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 1598

In the Matter of

SUN COUNTRY WATER, INC.,

Staff's Request to Remove the Regency and to
Return Operation of the System to Dean
Rogers, Owner.

ORDER

DISPOSITION: STAFF'S RECOMMENDATION ADOPTED

At its public meeting on March 12, 2019, 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:



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. 4

PUBLIC UTILITY COMMISSION OF OREGON
STAFF REPORT
PUBLIC MEETING DATE: MARCH 12, 2019

REGULAR X CONSENT EFFECTIVE DATE Upon approval

DATE: January 30, 2019

TO: Public Utility Commission

FROM: Joan Grindeland

THROUGH: Jason Eisdorfer, Bryan Conway, and Bruce Hellebuyck

SUBJECT: SUN COUNTRY WATER INC.: (Docket No. UM 1598) Oregon Public Utility Commission Staff request to remove the regency for the administration, operations, maintenance, and billings of Sun Country Water Inc. and return the operation of the system to Dean Rogers, owner.

STAFF RECOMMENDATION:

Staff recommends that the Public Utility Commission of Oregon (Commission):

1. Determine that performance of administrative, operational, maintenance, and billing functions of Sun Country Water (SCW) by Mr. Dean Rogers, owner, results in adequate service, does not pose a threat to the health or safety of customers, and does not threaten the financial viability of the water utility, thereby negating the need for a regent to operate and manage SCW.
2. Direct Mr. Rogers to report quarterly on the status of operations, maintenance and billing for the customers of SCW for a period of one year, which will then convert to annual reports for a period of two years.
3. Direct Mr. Rogers to continue to provide information to Commission Staff, as requested, in a timely manner.

DISCUSSION:

Issue

Whether the Commission should determine that performance of administrative, operational, maintenance, and billing functions of SCW by Mr. Dean Rogers, owner, results in adequate service, does not pose a threat to the health or safety of customers,

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and does not threaten the financial viability of the water utility, thereby negating the need for a regent to operate and manage SCW.

Applicable Law

Under ORS Chapters 756 and 757, the Commission regulates certain water utilities providing service directly or indirectly to or for the public. See ORS 757.005. The legislature has conferred to the Commission the authority to protect all customers of a public utility, and the public generally, from unjust and unreasonable exactions and to obtain for them adequate service at fair and reasonable rates. See ORS 756.040. In addition to customer rates, the Commission also regulates the quality of service being provided: every public utility is required to furnish adequate and safe service, equipment and facilities. See ORS 757.020.

The Commission's administrative rules provide for the appointment of a regent to operate and manage a water utility under certain circumstances. See 860-036-1700. The rule states: "If the Commission determines that a water utility's ownership or management results in inadequate service, threatens the health or safety of the customers, or threatens the financial viability of the water utility, then the Commission may appoint a regent to operate and manage the water utility."

Analysis

SCW is a small service-only-regulated water utility located in Bend, Oregon that serves approximately 100 customers. Avion Water Company (Avion) was appointed as regent of SCW and carried out the terms of its regency contract for a period of five years, until its expiration on August 24, 2018. Avion ceased acting as the regent as of August 24, 2018, in accordance with its obligations under the regent contract, and performed its last routine field tasks and limited office functions as of September 5, 2018. At that time, Avion returned the keys to SCW to Mr. Rogers and he has been running the system since September 2018.

At the June 19, 2018 public meeting, the Commission adopted Staff's recommendation to work with the PUC procurement specialist and all necessary agencies, including DAS, to issue a solicitation for a new five year regent contract to provide the administration, operations, and maintenance of SCW, and for Staff to award and execute the contract pursuant to the terms of the solicitation and PUC procurement laws and rules.

In accordance with the Commission's order, memorialized in OPUC Order No. 18-232, Staff prepared and issued three RFPs through October 5, 2018.

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On June 27, 2018, RFP PUC-1020-18 was put into the ORPIN system with a closing date of July 18, 2018. At the close of the solicitation Staff was informed there had been no bids submitted, and on July 19, 2018, the RFP was extended to July 26, 2018. On July 26, 2018, Avion submitted the only proposal received.

After negotiations that lasted from July 27, 2018 through August 30, 2018, Avion and Staff came to an impasse regarding holding the Commission harmless and insurance issues, which led Avion to withdraw its bid.

On September 5, 2018, a new RFP, PUC-1023-18, was issued by Rich Palmer. Subsequently the due date of September 19, 2018, was extended to October 3, 2018. Finally, on October 5, 2018, the RFP was closed with no proposals received.

During the interim period, from the ending of the original contract and the closing of the RFP, Staff attempted contact with Mr. Rogers, owner, a number of times with no success. Avion also reported that it had been unsuccessful in contacting Mr. Rogers. On September 27, 2018, Staff was informed that Mr. Rogers had been given the keys to the SCW system by Avion at the end of their regent contract. Mr. Rogers has been operating the system since that time.

Staff made its first contact with Mr. Rogers in a phone call on October 10, 2018.¹ Subsequent to that time, Staff has been working with Mr. Rogers to ensure the safe and reliable operation of the SCW system. Mr. Rogers has complied with all of Staffs requests and has met all requirements including monthly billing, being responsive to all maintenance and operation issues, and establishing all requirements going forward to ensure adequate and safe service, equipment, and facilities at fair and reasonable rates.

On January 7, 2019, Staff sent Mr. Rogers a letter seeking confirmation of certain information and soliciting several commitments for ongoing operations and maintenance in order to confirm that he was both currently operating the system in accordance with applicable laws and Commission rules, and to continue to meet these obligations such that a regent is no longer necessary for SCW. On January 9, 2019, Mr. Rogers returned a signed copy of the letter (Attachment 1), wherein he agreed to the assertions and obligations set forth in Staff's letter.

In addition to the above items, Mr. Rogers has agreed, in writing, to begin billing for the base rate on a monthly basis with a true-up of consumption usage after winter

¹ Email confirmation of phone call from Joan Grindeland to Dean Rogers dated October 10, 2018.

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weather conditions improve.² Mr. Rogers notified his customers in January of this new procedure. As SCW is a service regulated utility only, with rates well below the rate regulation threshold trigger, Staff has agreed that this is an appropriate way to keep his customers apprised of the situation, continue to bill on a regular basis, and to keep a revenue stream coming in to help defray the costs of operating the system.

Conclusion

The circumstances of SCW ownership and its ability to adequately run the water utility have changed from the time the Commission determined it was appropriate to appoint a regent in order to provide adequate service to SCW customers. As stated previously the Commission's rules provide a temporary solution for the exact situation that SCW was facing so that service quality was maintained at adequate levels when the current owner was unable to perform their duties.³

Under the current circumstances, Mr. Rogers has made what Staff believes to be an honest and true effort to adequately operate the system that he owns. He has been responsive to Staff's inquiries, calls, and suggestions as well as his customers' questions and concerns. He has provided Staff with a redacted copy of his current billings and Staff has spoken to two of his customers recently to verify the information received was valid. As described earlier, Mr. Rogers has also signed a letter attesting to the fact that he is operating the system in compliance with the Commission's rules and understands the consequences should he not follow through with his promises and actions.

In discussions with Mr. Rogers, he has expressed that he truly is happy to have his system back now that he has taken care of the issues that caused the problems resulting in the original regent appointment. Mr. Rogers has continually stated that he is willing to do whatever the Commission instructs in order to have the Regency issue resolved, allowing him to own and operate his Company by furnishing adequate and safe service, equipment, and facilities at fair and reasonable rates.

For these reasons, Staff finds that the basis set forth in OAR 860-036-1700 for appointment of a regent are no longer present, and that Mr. Rogers' operation and management of SCW results in adequate service, does not threaten the health or safety of the customers, and does not threaten the financial viability of the water utility.

² Email from Butch to Staff dated 1/10/19.

³ See 860-036-1700 Appointment of Regent to Operate and Manage a Water System.

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PROPOSED COMMISSION MOTION:

Determine that performance of administrative, operational, maintenance, and billing functions of SCW by Mr. Dean Rogers, owner, results in adequate service, does not pose a threat to the health or safety of customers, and does not threaten the financial viability of the water utility, thereby negating the need for a regent to operate and manage SCW.

Direct Mr. Rogers to report quarterly on the status of operations, maintenance, and billing for the customers of SCW for a period of one year, which will then convert to annual reports for a period of two years.

Direct Mr. Rogers to continue to provide information to Commission Staff, as requested, in a timely manner.

UM 1598



Oregon

Kate Brown, Governor

RECEIVED

JAN 14 2019

P.U.C.

January 7, 2019

Mr. Dean Rogers
Sun Country Water, Inc.
22648 Nelson Road
Bend, Oregon 97701

Public Utility Commission
201 High St SE Suite 100
Salem, OR 97301
Mailing Address: PO Box 1088
Salem, OR 97308-1088
Consumer Services
1-800-522-2404
Local: 503-378-6600
Administrative Services
503-373-7394

Dear Mr. Rogers:

We are sending this letter to follow-up on the October 24, 2018 letter from Oregon Public Utility Commission (OPUC) Staff person Joan Grindeland, in which we requested that you respond with the information discussed in that letter. To date, OPUC Staff has not received a response to the October 24, 2018 letter. As such, we are sending this letter as a follow-up and request that you carefully review each of the items below. If you are in agreement with the statements, we request that you sign this letter on the last page and return to the address above, to my attention, along with a sample copy of your customer billings, by January 14, 2019. If you find that additional clarification is necessary, or do not agree with one or more statements listed below, please provide a written response to this letter explaining your position by January 14, 2019.

1. Effective September 10, 2018, you assumed operational control of the Sun County system from Avion, the Commission-appointed Regent, when electricity was changed to your name and you received the keys from Avion.
2. You have hired two staff to assist you with running Sun Country; a meter reader and a bookkeeper.
3. There is an operating billing system currently in place, and meters will be read at the beginning of each month, with bills sent out to customers on a monthly basis.
4. Regarding the operating billing system, you confirmed that it includes the items as required by OAR 860-036-1400.
5. You have set up a new bank account in Sun Country's name.
6. You are an Operator 1 licensed in the State of Oregon, and you have an active water testing laboratory contract in place with Box R Water Laboratory in Prineville, OR that can perform the water testing required by Oregon law.
7. Your phone number for customer contact is listed on the bills sent to customers, and customers can reach you (or leave a message) 24 hours a day at this number. You are able to respond to customer contacts regarding a water failure or emergency within one hour and all other customer contacts within one business day as required by OAR 860-036-1110.

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8. You have established a location within the service territory where your customers can pay their bills in person.
9. You are willing to work with OPUC Staff going forward to provide the information necessary ensure a regent is not needed with respect to Sun Country Water, Inc. and to demonstrate you are consistently operating the system in a safe and reliable manner.
10. You will attach a true copy of a monthly bill sent to a customer (with customer specific information blacked out) since you resumed operations.

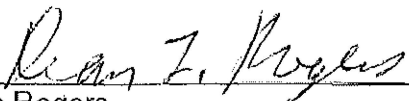
Please feel free to contact me with any issues or questions.

Sincerely,



Bryan Conway
Administrator
Telecommunications and Water Division
Oregon Public Utility Commission
503-378-6200
Bryan.Conway@state.or.us

I agree with all the above statements. I have attached a sample copy of the new bills that are being sent to customers on a monthly basis.



Dean Rogers

1/9/2019
Date