

**PUBLIC UTILITY COMMISSION OF OREGON
STAFF REPORT
PUBLIC MEETING DATE: July 28, 2020**

REGULAR **CONSENT** **EFFECTIVE DATE** Upon approval

DATE: July 1, 2020

TO: Public Utility Commission

FROM: Malia Brock

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

SUBJECT: SUN COUNTRY WATER, LLC:
(Docket No. UM 1598)
Staff's Status Report on Compliance with Order No. 19-086 and Response to Order No. 20-092.

STAFF RECOMMENDATION:

Staff recommends that the Public Utility Commission of Oregon (Commission) amend Order No. 19-086 to extend the quarterly reporting requirements adopted in that order through July of 2021, and convert the required quarterly reports to an annual report for an additional two-year period ending in July of 2023. The combined effect of these amendments would be to extend the reporting requirements contained in item two of the Staff report adopted in Order No. 19-086.

Staff also recommends that the above recommended amendment to Order No. 19-086 be recognized by the Commission as reflecting Staff's directed response to Commission Order No. 20-092 in Docket No. UCR 196.

DISCUSSION:

Issue

Whether the Commission should amend its Order No. 19-086, to extend the requirement for filing periodic status reports regarding operations, maintenance and billing, and whether any additional action is warranted in response to Order No. 20-092, which directed Staff to propose penalties or other action to address certain deficiencies cited in a formal customer complaint.

Background

For the period August 2013 through August 2018, Sun Country Water, LLC (SCW) was operated under a regency established by the Commission in Order No. 13-293. On March 13, 2019, in Order No. 19-086, the Commission determined that performance of administrative, operational, maintenance, and billing functions of SCW by Mr. Dean Rogers (Mr. Rogers), owner, resulted in adequate service, did not pose a threat to the health or safety of customers, and did not threaten the financial viability of the water utility, thereby negating the need for a regent to operate and manage SCW. The Commission also directed Mr. Rogers to provide quarterly reports to convert to two years of annual reports and information to Commission Staff, as requested, in a timely manner. As part of Staff's review in developing a recommendation to release the regent requirement, Mr. Rogers had confirmed in writing that he was both operating the system in accordance with applicable laws and Commission rules and that he would continue to meet all obligations.

Despite Mr. Rogers' assurance that he would meet all the obligations for the operations of SCW, Mr. Rogers did not provide Staff with the required quarterly reports mandated by Order No. 19-086, nor did he continue to bill SCW customers. In Staff's view, these failures put the soundness of the determination underlying the removal of the regency in jeopardy.

On January 15, 2020, a formal complaint was filed with the Commission in which the complainant asserted that the defendant (SCW) has not been billing customers, as required. That complaint was docketed as UCR 196. In Order No. 20-092 in that docket, the Commission directed Staff to propose, in a separate filing or complaint against the defendant, appropriate penalties or other action to address the issues associated with the complaint in Docket No. UCR 196, and other informal complaints received regarding SCW.

In the intervening period, operational changes have been made by SCW. Mr. Rogers has employed his son and daughter-in-law to take over the administrative and meter reading functions for SCW. As a result of those operational changes, significant recent improvements have occurred, which cause Staff to believe that Mr. Roger's past non-compliance with Order No. 19-086 will be cured in the future. As explained below, Staff believes those improvements will also address the billing deficiencies cited in Order No. 20-092.

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.

ORS 756.568 provides the Commission with authority to rescind, suspend, or amend any of its orders at any time, upon notice to the utility and after an opportunity to be heard as provided in ORS 756.500 to ORS 756.610.

In Order No. 20-092 in Docket No. UCR 196, the Commission directed Staff to propose, in a separate filing or complaint against the defendant, appropriate penalties or other action to address the issues associated with the complaint that initiated Docket No. UCR 196, and other informal complaints received regarding SCW.

Analysis

Removal of Regency

SCW is a small service-only-regulated water utility located in Bend, Oregon that serves approximately 100 customers. Due to past difficulties with Mr. Rogers' operation of the system, 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. At that time, Avion returned operation of SCW to Mr. Rogers and he has been operating the system since September 2018.

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 would continue to meet these obligations negating the necessity for a regent to operate SCW. On January 9, 2019, Mr. Rogers returned a signed copy of the letter, wherein he agreed to the assertions and obligations set forth in Staff's letter. See Order No. 19-086, signed March 13, 2020, Attachment 1.

Mr. Rogers' signed letter, attached to Order No. 19-086, asserted compliance with the following requirements:

- 1) Two staff had been hired to assist with running Sun Country; a meter reader and a bookkeeper (Attachment 1, item 2).
- 2) An operating billing system was in place with meters to be read at the beginning of each month and bills sent out to customers on a monthly basis (Attachment 1, item 3).

- 3) The billing system included all items required by OAR 860-036-1400 (parameters of customer billings) (Attachment 1, item 4).
- 4) A bank had been established account in Sun Country's name (Attachment 1, item 5).
- 5) Mr. Rogers was an Operator 1 licensed in the State of Oregon and had 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 (Attachment 1, item 6).
- 6) A phone number for customer contact was listed on the bills sent to customers so that customers can reach Mr. Rogers (or leave a message) 24 hours a day at the number. Mr. Rogers was 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 (Attachment 1, item 7).
- 7) A location had been established within the service territory where SCW customers could pay their bills in person (Attachment 1, item 8).
- 8) Mr. Rogers was willing to work with OPUC Staff to provide the information necessary to ensure a regent was not needed with respect to Sun Country Water, Inc. and to demonstrate the water system was being operated in a safe and reliable manner (Attachment 1, item 9).
- 9) Mr. Rogers would provide a true redacted copy of customer billings and verify that SCW customers were receiving bills (Attachment 1, item 10).

Accordingly, on March 13, 2019, in Order No. 19-086, the Commission determined that performance of administrative, operational, maintenance, and billing functions of SCW by Mr. Rogers, owner, resulted in adequate service, did not pose a threat to the health or safety of customers, and did not threaten the financial viability of the water utility, thereby negating the need for a regent to operate and manage SCW.

The Commission imposed conditions in Order No. 19-086 requiring Mr. Rogers to submit quarterly reports for a period of one year, on the status of operations, maintenance and billing for the customers of SCW. After the first year, the reports were to convert to annual reports for two years. Additionally, Mr. Rogers was directed to continue to provide information to Commission Staff, as requested, in a timely manner.

Staff views the above reports and Mr. Roger's continuing provision of information to Staff as essential to ensuring that Mr. Roger's continued operation SCW 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—the criteria the Commission determined had been met when negating the regency.

Performance after Regency

Staff began contacting Mr. Rogers in August of 2019 to remind him of the reporting requirement and request that he submit the required quarterly report. Over the next five months, despite Mr. Rogers' many assurances to Staff that he would begin billing his customers and submit the required reports, the reports did not materialize.

In Staff's documented contacts with Mr. Rogers by email and phone over the subsequent months, Mr. Rogers informed Staff that he had been unable to retain the services of his bookkeeper and was neither billing SCW customers nor able to get the meters read.¹ Mr. Rogers advised Staff he was working toward affecting necessary repairs of a pump replacement that required an electric transformer replacement that would cost \$6,300 and that he had completed one line extension to ensure adequate water pressure (measured as pounds per square inch or PSI), and had another line extension project to complete that was necessary to ensure multiple other customers also had adequate PSI. Mr. Rogers advised that, in addition to this work, he is running the operations for several other water companies in the area through his pump business and therefore was unable to replace his bookkeeper or focus on meter reading and billing Sun Country customers. As no money was coming in from customers to pay the Sun Country bills, Mr. Rogers advised Staff he was paying bills for Sun Country from the proceeds of his other business. Staff advised him that he must read the meters and bill SCW customers monthly per the conditions of Order No. 19-086 as well as submit the required quarterly reports.

During these five months of Staff contact with Mr. Rogers, Mr. Rogers ended conversations with his assurances that he would read the meters, bill his customers and submit the quarterly reports. Despite his repeated assurances, while it appears that meters were read in November of 2019, customers were not billed for their water service and the required Commission quarterly reports failed to materialize. Given

¹ Email from Malia Brock to Dean Rogers dated August 21, 2019.

¹ Email confirmation of phone call from Malia Brock to Dean Rogers dated September 16, 2019.

¹ Email from Dean Rogers to Malia Brock dated September 16, 2019.

¹ Email confirmation of phone call from Malia Brock to Dean Rogers dated October 28, 2019.

¹ Phone call from Malia Brock to Dean Rogers week of November 18, 2019.

¹ Email confirmation of phone call from Malia Brock to Dean Rogers dated December 11, 2019.

the lack of funding to support the water system, Staff grew increasingly concerned about the continued viability of the Company.

Counsel for Staff sent Mr. Rogers and SCW's registered agent a letter on February 28, 2020, advising that failure to comply with Order No. 19-086 could result in Staff's recommendation to the Commission to investigate and impose monetary penalties for failure to comply with Order No. 19-086 under the provisions of ORS 756.990 and ORS 757.994. The letter advised Mr. Rogers to submit the required reports no later than March 13, 2020. The letter was delivered via email to Mr. Rogers on February 28, 2020, with an original paper copy mailed via Certified Mail the same day to both Mr. Rogers and SCW's registered agent. See Attachment 2. Neither Staff nor counsel for Staff received a response from Mr. Rogers or on behalf of SCW. The certified letter was successfully delivered to David Smiley, the registered agent of SCW, on March 3, 2020; on March 26, 2020, the certified letter sent to Mr. Rogers was returned to the Department of Justice as "return, unable to forward." On March 27, 2020, Staff contacted Mr. Rogers by phone to discuss the returned letter and ensure Mr. Rogers was still operating the system. Mr. Rogers advised Staff that he was still operating the system and thought he may have received DOJ's email.

Customer Billing Complaints

Meanwhile, on January 15, 2020, a formal complaint was filed with the Commission in which the complaint asserted that the defendant (SCW) has not been billing customers, as required. That complaint was docketed as UCR 196. On March 20, 2020, the Commission issued Order No. 20-092 in Docket UCR 196 in which it 1) found SWC in default because it had not responded to the complaint and, 2) directed Staff to propose, in a separate filing or complaint against the defendant, appropriate penalties or other action to address the issues associated with this complaint, and other informal complaints received regarding the defendant.

Other Issues

In response to an informal complaint filed with Consumer Services by an SCW customer on August 18, 2019, Staff contacted Oregon Health Authority (OHA), Drinking Water Services (DWS), to see whether Mr. Rogers had addressed issues DWS had raised in a warning letter. DWS staff advised Staff that the issue involving the well casing sanitary seal had been corrected and that there were no outstanding compliance issues at that time. Compliance with water testing and DWS have remained current throughout Mr. Dean Rogers' oversight as water operator. Staff confirmed with DWS that SCW did not have any outstanding violations or compliance issues on February 18, 2020,² and again by referencing the DWS website on

² Email reply to Malia Brock from OHA DWS, Abbie Spielman dated February 18, 2020.

May 19, 2020. Additionally, Mr. Rogers' daughter-in-law, Julie Rogers, confirmed on behalf of SCW with Box R Water Analysis Laboratory in Prineville that SCW's water tests are current, and has arranged for Box R Water Laboratory to compile and mail SCW's Consumer Confidence Report³ which is due in July 2020 per the DWS website.

Staff contacted Deschutes County and was advised on May 21, 2020, that the SCW's property taxes remain unpaid and no arrangements have been made for payment. As of December 16, 2019, the outstanding balance was \$34,508.25.⁴

Recent Improvements

In a March 27, 2020, phone conversation, Mr. Rogers advised Staff that Ms. Rogers, would be taking over billing functions for customers and that his son, Raymond Rogers, would be reading meters while Mr. Rogers would continue to act as water operator. Mr. Rogers expected customers would be billed and meters read by April 1, 2020, and he was willing to provide customers several months to pay for the unknown number of months of retroactive billing this would entail. Mr. Rogers advised Staff he had maintained a separate bank account for SCW, that all water tests were current and that Ms. Rogers would be paying the SOS reinstatement fee to retain his Company's name. Staff sent Mr. Rogers an email confirming that conversation and included a copy of the returned DOJ letter.⁵

On March 30, 2020, Staff received an email from Ms. Rogers advising Staff that she was taking over the billing and her husband the meter reading functions.⁶ Staff called Ms. Rogers, who advised Staff she was in the process of sorting through SCW's mail and working toward mailing out bills to SCW customers for water service through last May of 2019. Ms. Rogers advised Staff she and her husband, Mr. Raymond Rogers, had taken over all the administrative and meter reading functions of SCW and her father-in-law would continue his role as water operator. As SCW's billing was now eleven months in arrears, Mrs. Rogers began working toward organizing SCW's administrative functions as well as resolving other issues relating to customers having moved and water service that was not in the current tenant's name.

Ms. Rogers has been very responsive and Staff continues to work with her; since the involvement of Julie and Raymond Rogers, meters have been read and customers have been billed monthly. Since Staff's initial contact with Ms. Rogers on March 30, 2020,

³ Email from Julie Rogers to Malia Brock dated April 22, 2020.

⁴ Emails between Malia Brock from David Doyle, Deschutes County Legal Counsel, dated December 16, 2019, May 19, 2020 and May 21, 2020.

⁵ Email confirmation of phone call from Malia Brock to Dean Rogers dated March 27, 2020.

⁶ Email from Julie Rogers to Malia Brock dated March 30, 2020.

Ms. Rogers has updated staff on the status of the Company and has advised Staff that she will continue to work with Staff to supply the quarterly reports going forward. Customer bills were mailed to customers on April 7, 2020, for eleven months of the monthly base rate at \$16 per month, totaling \$176 to each customer for the eleven retroactive months of the base rate for water service. Ms. Rogers provided Staff a copy of a redacted water bill that includes a statement that SCW is under new management and how to contact her. Ms. Rogers billed SCW customers for their water consumption use beginning with the most recent meter reading in April 2020 and customers were billed for water consumption use in their May bills for usage over the 500 cubic feet already included in the monthly base rate. The company has decided to forgo retroactive billing for customer consumption that was consumed over the amount included in the base rate due to the hardship customers may be experiencing now with coronavirus and the company having not provided bills to its customers for the past 11 months.⁷ OAR 860-036-1440(3) allows a utility that has not collected an amount owed to retroactively bill up to 12 months of the amount owed within two years of discovering the error. Ms. Rogers advised Staff she was willing to work with any customers that required payment arrangements on the retroactive April billing in adherence to time payment arrangements set forth in OAR 860-036-1440(5).

Ms. Rogers also resolved a customer billing inquiry received by Consumer Services to the customer's satisfaction after the April 2020 bills were received by SCW customers and Staff is not aware of any outstanding customer billing issues at this time. Ms. Rogers advised Staff she will continue to work with customers regarding any issues with bills and payments. Customers were provided with Ms. Rogers contact information for billing on the April 2020 bills and contact information will remain on subsequent bill cycles.⁸ Mr. Rogers' cell phone number for 24/7 customer access will be printed on customer bills beginning with the May 2020 bills to enable customers to report issues with their water service. A drop box for ease of customer payments has been bolted to the pavement at the ingress/egress point of the Saddleback subdivision served by SCW. As SCW is service-only regulated only, customer rates are not regulated. Staff plans to continue to work with Ms. Rogers on future required reports.⁹

Ms. Rogers reviewed with Staff Mr. Rogers' signed letter attached to Order No. 19-086 and acknowledged that although SCW was out of compliance regarding the administrative functions and meter reading, with Julie and Raymond Rogers' involvement, SCW is once again in compliance with all conditions, with the exception of the timeliness of the reports for which the deadlines have passed.¹⁰

⁷ Email from Malia Brock to Julie Rogers on 5-4-2020 and subsequent phone conversation on 5-5-2020.

⁸ Email thread between Julie Rogers and Malia Brock between 4-20-2020 and 4-22-2020.

⁹ Email from Malia Brock to Julie Rogers on 5-4-2020 and subsequent phone conversation on 5-5-2020.

¹⁰ Email from Malia Brock to Julie Rogers on 5-4-2020 and subsequent phone conversation on 5-5-2020.

Consumer Services has received eight complaints regarding Mr. Rogers' failure to bill customers since he became SCW's water operator, including the formal complaint described above in UCR 196. Staff believes the progress SCW has made regarding billing will adequately address the issues raised in these complaints.

Staff contacted Secretary of State's (SOS) Corporation Division by email regarding the inactive status of Sun Country Water, LLC in February, 2020. The Corporation Division advised Staff that Sun Country Water, LLC did not submit their annual report or the necessary fees for 2019 and therefore it had been administratively dissolved. After discussions with Ms. Rogers, Staff confirmed with the SOS website that the Sun Country business name is now active on their website and was renewed on May 15, 2020.

Conclusion

Although SCW initially experienced some difficulties meeting the requirements of Order No. 19-086, Staff considers that SCW's continued outlook in performing its duties to consumers is promising with the involvement of Julie and Raymond Rogers. Staff once again believes that the performance of administrative, operational, maintenance, and billing functions of SCW by Mr. Dean Rogers (Mr. Rogers), owner, results in adequate service, will not pose a threat to the health or safety of customers, and will not threaten the financial viability of the water utility.

As discussed above, Staff views the reports required under Order No. 19-086 as essential to ensuring that Mr. Roger's continued operation SCW continues to meet those standards. Accordingly, Staff believes there is good cause for amending Order No. 19-086 under ORS 757.568 to extend the dates for which those reports are required through June 30, 2023.

Customers are currently receiving bills and Ms. Julie Rogers is responsive to customers and Staff. The lack of customer billing and meter reading by SCW that formed the basis of the formal complaint, UCR 196, appear to be resolved. As described above, Order No. 20-092 directs Staff to propose, in a separate filing or complaint against the defendant, appropriate penalties or other action to address the issues associated with that complaint, and other informal complaints received regarding the defendant. As UCR had its genesis in the billing issues that appear to be resolved, as evidenced by the lack of recent related informal complaints and improved billing activity, Staff believes no additional actions are necessary at this time. Staff views the above amendment of Order No. 19-086 to extend required periodic reporting dates to allow Staff to continue to monitor progress at SCW as sufficient action at this time.

Staff is concerned that Mr. Rogers' has not paid the property taxes on the water company, however, Deschutes County is best positioned to address that issue.

Staff will continue to monitor SCW's operation and billing through the required reports. In the event SCW does not continue to meet its required reporting obligations or continue to provide administrative and meter reading functions and responding to its customers, Staff will take appropriate actions, including bringing new issues to the Commission's attention.

PROPOSED COMMISSION MOTION:

Amend Order No. 19-086 as described above to direct Mr. Dean Rogers to continue to report quarterly on the status of operations, maintenance, and billing for the customers of SCW through July of 2021, at which time the report converts to an annual report for a period of two years, through July of 2023.



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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January 7, 2019

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



Date

ELLEN F. ROSENBLUM
Attorney GeneralFREDERICK M. BOSS
Deputy Attorney General**DEPARTMENT OF JUSTICE**
GENERAL COUNSEL DIVISION

February 28, 2020

via Email and Certified MailDean Rogers
Sun Country Water
22648 Nelson Road
Bend, OR 97701
suncountrywater@msn.com**RE: Failure to Comply with Public Utility Commission of Oregon Order No. 19-086**

Dear Mr. Rogers:

On March 12, 2019, in Order No. 19-086, the Public Utility Commission of Oregon (Commission) directed you, as the owner of Sun Country Water (Sun Country), to file quarterly reports on the status of operations, maintenance and billing for the customers of Sun Country for a period of one year, and annual reports for a period of two years following that initial period. The Commission also directed you, as the owner of Sun Country, to continue to provide information to Commission staff, as requested, in a timely manner. I have enclosed a copy of Order No. 19-086, which was also served on you on March 13, 2019, for your reference.

As of today, you have neither filed any of the required quarterly reports nor provided information to staff of the Commission in a timely manner in response to staff's requests. As a result, you are currently out of compliance with the requirements of Order No. 19-086.

Under ORS 756.990, any public utility or person subject to Commission jurisdiction may be subject to monetary penalties for each time that it fails to obey a lawful Commission order. Such a penalty is at least \$100 but not more than \$10,000 for each infraction. Additionally, under ORS 757.994, a person who violates a Commission order related to water utilities is subject to a civil penalty of up to \$500 for each violation. Commission staff is considering recommending that the Commission impose penalties under ORS 756.990 and/or ORS 757.994.

Please send all overdue quarterly reports by March 13, 2020, to:**Malia Brock
Sr. Utility Analyst
Telecommunications and Water Division
Oregon Public Utility Commission
201 High St. SE
Salem, OR 97301**

Dean Rogers
February 28, 2020
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Fax: 503-378-5505
Email: Malia.Brock@state.or.us

Please be advised that if you do not send the overdue reports by March 13, 2020, Staff will recommend that the Commission investigate and impose monetary penalties for your failure to comply with Order No. 19-086.

Thank you for your attention to this matter.

Sincerely,



Elizabeth Uzelac
Assistant Attorney General
Business Activities Section

EU1/pjr/#10122853

Enclosure

c w/enc: David Smiley, Registered Agent, Sun Country Water (*via* certified mail)
Jason Jones, Commission Counsel (*via* email)
Bryan Conway, Administrator (*via* email)
Malia Brock, Senior Utility Analyst (*via* email)

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.

ORDER NO. 19-086

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 *JG*

THROUGH: Jason Eisdorfer *JE*, Bryan Conway *BC*, and Bruce Hellebuyck *BH*

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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January 30, 2019
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weather conditions improve.² Mr. Rogers notified his customers in January of this new procedure. As SWC 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

Attachment 1
ORDER NO. 19-086

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.

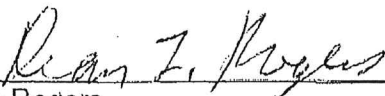
Please feel free to contact me with any issues or questions.

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