

BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON

UP 384

In the Matter of)
) **SUNRIVER OWNERS ASSOCIATION’S**
SUNRIVER WATER, LLC) **MEMORANDUM IN OPPOSITION TO**
) **JOINT APPLICANTS’ RESPONSE TO**
) **SROA’S PETITION TO INTERVENE**
)

Sunriver Owners Association (SROA) is an owners association located in Sunriver. SROA has 4188 members consisting of 4176 residential units, 9 commercial entities, and 3 resort entities. SROA is organized to provide for the management, maintenance, protection, and preservation of Sunriver, and to promote the health, safety, and welfare of its members. Petition to Intervene (Nov. 19, 2018).

SROA’s members constitute a significant percentage of the customers of Sunriver Water, and SROA is itself a significant customer of Sunriver Water. SROA filed a petition to intervene in this proceeding, as it has in past Sunriver Water and Sunriver Utilities proceedings, to protect its interests and the interests of its members.

SROA has not determined what issues it will pursue in this proceeding, but, obviously, its interests are substantial. Intervention should be granted. As the Administrative Law Judge has already ruled, the Joint Applicants are, in effect, asking for an “advisory opinion on the merits of an unripened discovery question.” Ruling, at 2. If discovery is sought by SROA about the right of first refusal and an objection is made, the

ALJ will have a crystallized dispute before him. The relationship of the discovery to the issues, and the burden on the parties will be clear. The ALJ can then rule “in the ordinary course” (*id.*), and will not be making a ruling “in the dark.”

Although this is not a matter the ALJ needs to determine now, SROA would point out that under the no harm standard, transferring ownership where the owner does not have the right to transfer ownership could detrimentally affect utility operations. Suppose an owner, in breach of a right of first refusal agreement, transfers ownership of a utility to a transferee who is on notice of the impairment. Suppose, thereafter, it becomes clear to the transferee that a court is reasonably likely to set aside the transfer. Suppose, at the same time, the water utility is in need of a capital investment in order to provide adequate and safe service at just and reasonable rates. ORS 757.020. It may well be that the transferee will be unwilling to throw good money after bad. Under these circumstances, customers would be harmed.

This is not an issue the ALJ needs to decide now. It is appropriate to wait. Intervention should be granted without particular conditions.

DATED this 14th day of December, 2018.

ESLER, STEPHENS & BUCKLEY

By: /s/ John W. Stephens
John W. Stephens

Of Attorneys for Sunriver Owners Association