

1 **BEFORE THE PUBLIC UTILITY COMMISSION**
2 **OF OREGON**

3 UM 2280

4 In the Matter of
5 Sun Country Water, Inc.,
6 Investigation into Billing Practices and
7 Functions of a Water Utility.

STAFF OPENING BRIEF

8 **I. Notice of Proposed Financial Penalties issued to Sun Country Water.**

9 This case concerns Notice of Proposed Financial Penalties (Notice) under OAR 860-036-
10 1270, ORS 757.994, and OAR 860-36-1700 issued to Sun Country Water, Inc. (hereinafter
11 “SCW”) on March 24, 2023, for failure to file a general rate case and failure to bill on a monthly
12 basis. The proposed penalties for failure to file a general rate case are \$100.00 per day starting
13 the day after the Commission-ordered due date for SCW’s general rate case, which is March 1,
14 2023. The proposed penalties for failure to bill monthly are \$100.00 per billing cycle starting
15 January 1, 2023.

16 For Staff, the purpose of the Notice of Proposed Financial Penalties is in large part to
17 ascertain why SCW had not complied with the Commission’s order to file a general rate case and
18 to obtain an explanation from SCW regarding complaints of irregular billing to determine
19 whether the circumstances warranted Staff moving forward with a request to the Commission to
20 appoint a regent to operate SCW. Staff had previously offered to assist SCW with the rate case
21 filing and contacted SCW with reminders to make the filing but offers of assistance and
22 reminders have not worked. Staff thought the imposition of penalties for failure to file may be
23 enough to incent SCW to make the necessary filing, but that has proved to not be the case.

24 Fourteen weeks have passed since the Notice of Penalties was issued to SCW for failure
25 to file a general rate and more than three weeks have passed since SCW stated on the record in
26 the June 5, 2023 hearing in this docket SCW would file a general rate case, and no case has been

1 filed. At this point, it appears to Staff the appropriate next step is to investigate other options for
2 operation of SCW. One of those options is to ask the Commission to appoint a regent that will
3 be able to perform the tasks expected of a water utility, such as prepare a general rate case to
4 ensure the utility generates sufficient revenue to keep operating.

5 Considering Staff’s proposed next step, Staff does not recommend that the Commission
6 issue an order requiring SCW immediately pay penalties for the failure to file a general rate case.
7 Staff recommends the Commission issue an order imposing suspended penalties to be effective
8 in one year if Mr. Rogers is still operating SCW. If SCW is sold, or operation turned over to
9 someone else within that one year including through the appointment of a regent, the suspended
10 penalties would be dismissed. If, however, Mr. Rogers continues to operate SCW despite the
11 difficulties he has in doing so, Mr. Rogers should be subject to the obligations of a rate regulated
12 water utility and held accountable for failure to adhere to the Commission’s orders.

13 With respect to the Notice of Proposed Financial Penalties for billing irregularities, Staff
14 withdraws the allegations. Accordingly, the only questions presented to the Commission in this
15 docket is whether SCW failed to file a general rate case by March 1, 2023, and whether financial
16 penalties should be imposed for this failure.

17 **II. Facts underlying proposed violations.**

18 SCW is a privately owned, community water system that provides water service to
19 approximately 110 customers in Bend, Oregon. The owner is Dean “Butch” Rogers. All SCW
20 customers are currently served through meters with a diameter of one inch or less.¹ Under ORS
21 757.061, water utilities are subject to rate regulation if certain criteria are met: (1) the utility
22 meets the definition of “public utility,” (2) the water utility serves less than 500 customers, (3)
23 the water utility proposes to charge a rate for water service that exceeds the maximum rate
24 threshold established by the Commission under ORS 757.061(5)(a), and (4) 20 percent or more
25 of the customers of the water utility file a petition with the Commission requesting that the water

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¹ Staff/100, Beitzel/2.

1 utility be subject to rate regulation. The maximum rate threshold established by the Commission
2 for metered customers served with a meter diameter of one inch or less is an annual average
3 monthly charge of \$45 per customer.

4 On August 22, 2022, SCW notified its customers of its intention to raise rates and the
5 customers' right to petition the Commission for rate regulation. SCW proposed to increase the
6 Monthly Base Fee from \$37.50 to \$63.50 and the Usage Rate from \$1.00 per cubic foot to \$2.00
7 cubic foot.² This proposed rate increase would have exceeded the maximum rate threshold
8 identified above. Subsequently, 60 out of 110 SCW customers petitioned the Commission to
9 assert rate regulation of SCW.³

10 Upon receipt of these petitions, Staff prepared and filed a Public Meeting Memorandum
11 recommending the Commission assert rate regulation over SCW. The Commission adopted
12 Staff's recommendation at its November 22, 2022 Regular Public Meeting, asserting rate
13 regulation over SCW and ordering SCW to file, within 90 days of the order, a general rate
14 revision consistent with OAR 860-036-2020.⁴ The Commission issued its Final Order on
15 December 1, 2022, making the general rate case filing due no later than March 1, 2023.⁵

16 Staff reached out to SCW on multiple occasions during the 90-day period to offer
17 assistance with the filing.⁶ SCW did not take Staff up on its offer to help. SCW failed to meet
18 the 90-day deadline for filing a general rate request or explain why it was not making the filing.
19 As a consequence, the Commission issued the Notice of Proposed Penalties for SCW's failure to
20 file the general rate request. This Notice included separate allegations that SCW had failed to

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23 ² Staff/100, Beitzel/3.

24 ³ Staff/100, Beitzel/3.

25 ⁴ OAR 860-036-2020 describes the requirements of a general rate request filed by a water utility.

26 ⁵ *In the Matter of Sun Country Water, LLC, An Investigation Pursuant to ORS 756.515 to Determine Jurisdiction*, WJ 45, Order No. 22-462 (December 1, 2022).

⁶ June 30, 2023 Transcript (TR) at 20.

1 comply with the Commission’s orders regarding billing, based on customer complaints received
2 by the Commission’s Consumer Services Division.⁷

3 Following SCW’s Request for Hearing regarding the proposed penalties, Administrative
4 Law Judge (ALJ) Spruce established a procedural schedule that allowed parties opportunity to
5 file written testimony and exhibits, a hearing, and opportunity to file a post-hearing brief. Staff
6 filed testimony on May 26, 2023, regarding the violations alleged in the Notice. SCW did not.
7 However, SCW offered direct testimony at the hearing held on June 5, 2023, mostly under the
8 questioning of ALJ Spruce and Chief ALJ Moser.

9 **III. SCW has failed to file a general rate case as required by Order No. 22-462.**

10 At the June 5, 2023 hearing, the office manager of SCW acknowledged that SCW had not
11 filed a general rate case in compliance with Commission Order No. 22-462. A review of filings
12 with the PUC Filing Center reflects that SCW has not filed a general rate case in the weeks since
13 the hearing. Accordingly, it is unequivocal that SCW has not complied with Order No. 22-462.

14 **IV. Staff recommendation regarding imposition of penalties.**

15 SCW’s testimony at the hearing reflects SCW does not have the resources to operate
16 SCW, financially or otherwise. SCW concedes the system is in need of maintenance and that
17 SCW does not generate sufficient revenue to cover the maintenance, or to meet all its financial
18 obligations.⁸ SCW office manager, Victoria Coffman, testified that SCW did need a rate case to
19 generate revenue:

20 [W]e do need a -- we do need a rate increase. And when we sat down
21 with the Homeowners Association. we told them, like we can’t afford --
22 we can’t -- you know, we can’t afford to drill a new well or, you know,
anything like that because Sun Country Water hasn’t financially been
able to, you know[.]⁹

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25 ⁷ Staff/100, Beitzel/6-7.

26 ⁸ June 5, 2023 TR at 26-27, 29.

⁹ June 5, 2023 TR at 26-27.

1 And I don't think that if we were to have a penalty imposed upon us that
2 that's going to help us at all because we're not -- you know, we can't
3 afford to pay that, you know? As you can tell, we have back taxes which
4 is why we need a rate increase. And, you know, not just back taxes, but
5 maintenance of the well repairs and, you know, things like that. And we
6 can't-- you know, it's -- we can't afford a -- I am motivated to get Sun
7 Country back on track."¹⁰

8 In fact, the record reflects SCW is in a serious financial hole. SCW owes a private
9 contractor approximately \$40,000 and owes Deschutes Country for 12 years of property taxes.¹¹
10 There appears to be little hope SCW will dig out of the financial hole. The owner of SCW, Mr.
11 Rogers, and the SCW office manager, Ms. Coffman, operate six other water utilities in addition
12 to SCW. The officer manager appears to have overwhelming demands on her time; so
13 overwhelming, she has been unable to prepare and file a rate case. Without a general rate case
14 filing, SCW cannot increase the amount of revenue it collects from its customers. And, based on
15 the delay in filing a rate case and delays in performing maintenance to date as well as regulatory
16 history that includes two separate orders establishing a regency over SCW since 2013,¹² it does
17 not appear SCW has the wherewithal to move SCW into an efficiently managed water utility
18 even if it could obtain a rate increase.

19 Notwithstanding SCW's failure to comply with Order No. 22-462, Staff does not
20 recommend the Commission issue an order immediately imposing the penalties for the failure.
21 Instead, Staff recommends the Commission find the SCW has failed to comply with Order No.
22 22-462 and impose "suspended" penalties in the amount of \$500.00, to become effective in one
23 year if SCW is still operating SCW. If within the one-year period SCW is sold to another owner
24 or some other arrangement is made for the operation of SCW, including appointment of a regent,
25 the suspended penalties would be dismissed. If, however, Mr. Rogers continues to operate SCW
26 despite the difficulties he has in doing so, Mr. Rogers should be subject to the obligations of a

25 ¹⁰ June 5, 2023 TR at 29.

26 ¹¹ Staff/100, Beitzel/11.

¹² Order Nos. 13-293 and 19-086; Staff/100, Beitzel/9-10.

1 rate regulated water utility and held accountable for failure to adhere to the Commission's
2 orders.

3 **CONCLUSION**

4 For the reasons state above, recommends the Commission find SCW has violated Order
5 No. 22-462 by not filing a general rate case and impose suspended penalties in the amount of
6 \$500.00, to be effective one year from the date of the Commission's order if Mr. Rogers is still
7 operating SCW.

8 SIGNED this 3rd day of July, 2023.

9 Respectfully submitted,

10 ELLEN F. ROSENBLUM
11 Attorney General

12 */s/ Stephanie S. Andrus*

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14 Stephanie S. Andrus, OSB No. 925123
15 Sr. Assistant Attorney General
16 Of Counsel for Attorneys of Oregon Public
17 Utility Commission Staff