

December 5, 2018

Lawrence H. Reichman
LReichman@perkinscoie.com
D. +1.503.727.2019
F. +1.503.346.2019

VIA EMAIL

Administrative Law Judge Patrick Power
Public Utility Commission of Oregon
201 High Street SE, Suite 100
Salem, OR 97301-3396

Re: Docket UP 384; Sale of Sunriver Water LLC to NW Natural Water

Dear Judge Power:

The Sunriver Owners Association (“SROA”) filed a petition to intervene in this proceeding on November 19, 2018 (the “Petition”). In its Petition, the SROA indicated that the issues that it planned to raise were limited to ensuring the SROA “and its members receive safe and adequate service at fair and reasonable rates” and “assist[ing], as appropriate, the investigation of issues raised by the Commission staff and other parties in the proceeding.” *See* Petition at ¶5. Based on the SROA’s representation of the scope of issues it proposed to address in this proceeding, NW Natural Water of Oregon, LLC (“Oregon Water”) and Sunriver Water, LLC (“Sunriver Water”) (collectively, “Joint Applicants”) did not object to SROA’s participation in this proceeding.

While the SROA noted that its interest in this proceeding includes its belief that it has “a right of first refusal or a first offer right in SROA of the ownership interests in Sunriver Water LLC” (Petition at ¶4), the SROA did not state that it intends to raise any issues in this proceeding relating to this alleged right of first refusal or a first offer right (“ROFR”). *See* Petition at ¶5. However, on November 28, 2018, the SROA’s attorneys sent a letter to Sunriver Water’s attorneys (attached as Exhibit A), stating that “SROA intends to avail itself of discovery rights to locate additional information relating to the right of first refusal.” Exhibit A at 2.

Neither the SROA nor Sunriver Water has been able to locate an executed ROFR, and Sunriver Water does not believe that one exists. Regardless of whether a ROFR exists, contractual issues relating to the existence or alleged breach of a ROFR are not within the Commission’s jurisdiction. Nor are they relevant to the ultimate issue before the Commission in this case, which is whether Oregon Water’s acquisition of Sunriver Water will result in “no harm” to Sunriver Water’s customers. If the SROA intends to pursue claims relating to the ROFR, it must do so in court and not in this proceeding.

The Joint Applicants understand that this proceeding will be handled as a contested case, and recommend that the parties address the proper scope of SROA’s participation in this proceeding

Administrative Law Judge Patrick Power
December 5, 2018
Page 2

at the prehearing conference. While the Joint Applicants do not object to SROA's participation in this proceeding with respect to legitimate and relevant issues, the Joint Applicants would request that the ALJ limit the scope of their intervention to the issues identified in the Petition at ¶5 and to rule that issues relating to the existence or enforcement of an alleged ROFR are outside the scope of this proceeding. The Joint Applicants respectfully request that the ALJ advise the parties as to whether this issue is best handled at the prehearing conference or through an objection to the Petition. In the event that the ALJ intends to rule on the SROA's Petition before a prehearing conference is scheduled, the Joint Applicants respectfully request an extension of time through Wednesday, December 12, 2018 to file an objection to the SROA's Petition.

Sincerely yours,



Lawrence H. Reichman

I.HR:dma



November 28, 2018

Via Email Only

Christopher Hall
Perkins Coie
1120 NW Couch Street
Portland, OR 97209-4128

Re: Sale of Sunriver Environmental LLC and Sunriver Water LLC – Right of First Refusal

Dear Mr. Hall:

Thank you for your correspondence dated November 8, 2018 in response to the inquiry by Sunriver Owners Association (“SROA” or “Association”) into the records of your client, Sunriver Resort Limited Partnership (“SRLP”), and its affiliated entities in regards to a signed copy of a right of first refusal or first offer right granted by Lowe Development Corporation (“Lowe”) to SROA of the ownership interests in both Sunriver Environmental LLC and Sunriver Water LLC.

SROA is the governing body for Sunriver. As indicated in my earlier correspondence, an article dated January 1994 in the paper of record for the community quoted SROA’s General Manager as saying that the Association “declined to purchase Sunriver Utilities [pursuant to SROA’s right of first refusal] at th[e] time [Sunriver Resort was sold by Connecticut Mutual] and it was subsequently taken over by Lowe. Lowe has, in turn, also extended to us a similar right of first refusal should they decide to sell.” This article explains that SROA had valuable legal rights in the form of a right of first refusal and was willing to forego exercising those rights which facilitated the sale to Lowe Development, provided SROA was granted a right of first refusal by Lowe for any subsequent sale.

While SROA has been unable to locate a signed right of first refusal agreement, this newspaper account is confirmed by other records in SROA’s files that track the following chronology:

October 1992: Under the terms of a Right of First Refusal Agreement, dated August 3, 1977 by and among Sunriver Properties Oregon Inc., Sunriver Utilities Company and Sunriver Owners Association, Sunriver Properties Oregon Ltd. notified the Association of its agreement with Lowe for the sale and purchase the Sunriver Utilities among other assets and of SROA’s right of first refusal on that sale.

5539.109\ Letter to C. Hall re Right of First Refusal

November 28, 2018

Page 2

November 1992: The Association's legal counsel prepared a Board of Directors Resolution whereby SROA agreed not to exercise its right of first refusal "upon the understanding that Lowe shall enter into a Right of First Refusal Agreement with SROA granting to SROA a right of first refusal [to] purchase either the Assets or the Stock, which Agreement shall become effective upon Lowe's acquisition of the stock, and which Agreement shall be binding upon the Assets and the Stock." At the same time a draft "Right of First Refusal" appears to have been developed by the Association's legal firm.

December 15, 1992: Correspondence confirms that the Association "decided against a 'preemptive' exercise of the existing right of first refusal in reliance on Lowe's promise of a good faith proposal."

June 1993: Fax correspondence from SRLP's legal counsel to the Association of a "First Offer Agreement."

Given the foregoing evidence of robust consideration, engagement of legal counsel to assist the parties on this issue and the subsequent newspaper article, it is unlikely that the parties did not complete this transaction of granting a right of first refusal or first offer agreement to the Association.

SROA's Board owes its members a fiduciary duty to fully understand and evaluate its rights with respect to the sale. To that end, SROA has petitioned to intervene in In the Matter of: Sale of Sunriver Water LLC To NW Natural Water, Oregon Public Utilities Commission Case No. UP 384. We understand that the Commission intends to handle UP 384 as a contested case hearing. SROA intends to avail itself of discovery rights to locate additional information relating the right of first refusal.

We would like to coordinate the discovery process, and suggest that we schedule a call to confer regarding the discovery issues. My partner Josh Newton and John Stephens of Esler, Stephens & Buckley are counsel of record for SROA in UP 384 and would participate in the call.

We are generally available the remainder of this week if there is a time that works for you.

Kind regards,



ELLEN H. GROVER

EHG/njh

Enclosures

cc: Josh Newton John Stephens