

**PUBLIC UTILITY COMMISSION OF OREGON
STAFF REPORT
PUBLIC MEETING DATE: June 19, 2018**

REGULAR X CONSENT EFFECTIVE DATE June 20, 2018

DATE: June 4, 2018

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 appoint a regent to continue the administration, operations, and maintenance of Sun Country Water Inc.

STAFF RECOMMENDATION:

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

1. Appoint a regent to operate and manage Sun Country Water (SCW), and
2. Direct Staff to work with the PUC procurement specialist and all necessary agencies, including DAS, to issue a solicitation for a 5-year regent contract to continue 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.

DISCUSSION:

Issue

Whether the Commission should (1) appoint a regent to operate and manage SCW because the current ownership (when not served by a regent) results in inadequate service to customers, and (2) direct Staff to work with the PUC procurement specialist and all necessary agencies, including DAS, to issue a solicitation for a 5-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.

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 Appointment of Regent to Operate and Manage a Water System. 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. At the May 22, 2012 Regular Public Meeting, Staff requested that the Commission open an investigation into the billing practices of SCW and approve a stipulation to resolve the billing issues, Docket No. UM 1598. The stipulation was adopted by the Commission.

After the Stipulation was adopted, the owner of SCW stopped responding to Staff and Consumer Services' emails and telephone calls, and failed to follow the terms of the stipulation. At the August 6, 2013 Regular Public Meeting, Staff requested to reopen Docket No. UM 1598 and appoint a regent to perform all administrative, managerial, and operational functions of SCW until a permanent solution could be found to correct the failure of SCW to provide the following: establish consistent customer billing practices, address low water pressure, provide adequate customer service, to make repairs, and timely responses to calls and complaints. Consistent with the State procurement practices, the regent contract was limited to a term of five years. Avion Water Company (Avion) was appointed as regent of SCW and has carried out the terms of the contract since it was executed. To be clear, when a regent is appointed, there is no transfer of utility ownership to the regent; rather, the regent simply carries out the terms of the contract, which governs the responsibilities regarding operation and maintenance of the utility in the interim.

The current regent contract with Avion expires August 14, 2018. Unfortunately, the primary issue of SCW providing inadequate service to its customers without the assistance and intervention by a regent has not improved and Staff has been unable to reach the owner of SCW. Consequently, Staff believes the customers of SCW will be harmed through inadequate service, and Staff also questions the financial viability of the utility, if a regent does not continue to operate the system at this time.

Staff recognizes that appointment of a regent is designed to be a temporary solution. Generally, one would expect an owner to correct the identified deficiencies and reestablish themselves as the operator, hire someone to run the company permanently, or otherwise dispose of the company pursuant to Commission statutes. However, it does not appear that SCW's owner intends to take any of these steps. Deschutes County has also attempted to reach the owner for matters related to property taxes and has been unsuccessful. Staff continues to be in contact with both the current Commission-appointed-regent and the county in an attempt to work toward a long-term solution for SCW customers. However, pursuant to Oregon's Public Contracting Code, Staff must prepare the solicitation for a regent contract now in order to have a new contract in place by the current August 14 expiration date. Therefore, the best option at this time is for the Commission to appoint a regent for a subsequent term because it will provide for the continued safe and reliable operation of the water utility and provide Staff with the necessary time to explore more permanent options for resolution.

Conclusion

The circumstances of SCW ownership and its inability to adequately run the water utility remain unchanged from the last time the Commission determined it was appropriate to appoint a regent in order to provide adequate service to SCW customers. The Commission's rules provide a temporary solution for the exact situation that SCW faces so that service quality is maintained at adequate levels when the current owner is unable to perform their duties. Therefore, the Commission should appoint a regent for SCW and direct Staff to work with the PUC procurement specialist and all necessary agencies, including DAS, to issue a solicitation for a 5-year regent contract to perform all administrative, managerial, and operational functions of the utility, in accordance with all rules and regulations. Further, the contract recipient (regent) is to be selected by Staff in accordance with the selection criteria included in the solicitation, and Staff is to execute the contract with the regent.

PROPOSED COMMISSION MOTION:

Determine that a regent should be appointed pursuant to OAR 860-036-1700 to operate and manage Sun Country Water (SCW), and Direct Staff to work with the PUC procurement specialist and all necessary agencies, including DAS, to issue a solicitation for a 5-year regent contract to continue the administration, operations, and maintenance of SCW, and for Staff to award and execute the contract pursuant to the terms of the solicitation and procurement laws and rules.