

ORDER NO. 23-276

ENTERED Jul 25 2023

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 2297

In the Matter of

SUN COUNTRY WATER, INC.

Request for Appointment of a Regent.

ORDER

DISPOSITION: STAFF'S RECOMMENDATION ADOPTED

At its public meeting on July 25, 2023, 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.

ITEM NO. RA2

**PUBLIC UTILITY COMMISSION OF OREGON
STAFF REPORT
PUBLIC MEETING DATE: July 25, 2023**

REGULAR X CONSENT _____ EFFECTIVE DATE _____ N/A

DATE: July 18, 2023

TO: Public Utility Commission

FROM: Russ Beitzel and Stephanie Andrus

THROUGH: Bryan Conway and Marc Hellman **SIGNED**

SUBJECT: SUN COUNTRY WATER, INC.:
Summary Investigation under ORS 756.515 and Appointment of Regent to Operate Sun Country Water, Inc.

STAFF RECOMMENDATION:

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

1. Sun Country Water, Inc. shall be subject to appointment of a regent;
2. Staff of the Public Utility Commission shall work with Commission procurement specialists to contract with a regent to continue the administration, operations, and maintenance of Sun Country Water, Inc. for a period of no more than five years, subject to termination if ownership of the utility changes; and
3. Staff shall identify all water companies owned or operated by Mr. Rogers that are subject to Commission rate or service regulation, review the operations and management of those companies, and present Staff's findings at a public meeting after it has had a chance to thoroughly review and investigate.

DISCUSSION:

Issue

Whether the Commission should order that Sun Country Water, Inc., should be operated by a regent and direct Staff procure a licensed operator to act as regent.

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Applicable Rule or Law

Under ORS 756.515(1), the Commission may summarily investigate inadequate utility service or any matter relating to any public utility commission, with or without notice. May on motion summarily investigate any such matter, with or without notice.

The Commission may, after making an investigation on the Commission's motion, but without notice or hearing, make such findings and orders as the commission deems justified or required by the results of such investigation. Subject to a person's right to request a hearing to challenge the Commission's action, such findings and orders have the same legal force and effect as any other finding or order of the commission. ORS 757.515(4).

Under ORS 756.515(5), any party aggrieved by an order entered pursuant to ORS 756.515(4) may request the Commission to hold a hearing to determine whether the order should continue in effect. Any such request for hearing shall be submitted to the Commission not later than 15 days after the date of service of the order, and the Commission shall hold the hearing not later than 60 days after receipt of such a request for hearing.

If the Commission receives a request for hearing pursuant to ORS 756.515(5), the order is suspended pending the outcome of the hearing unless the commission finds that the order is necessary for the public health or safety or to prevent the dissipation of assets of a business or activity subject to the Commission's regulatory jurisdiction.

OAR 860-036-0365 provides that "[i]f 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

Background

Dean "Butch" Rogers has owned Sun Country Water, Inc. (SCW) since 2004. SCW serves approximately 110 customers in the Bend area and all customers are served through pipe with a diameter of one inch or less. SCW has been service regulated by the Commission since purchased by Mr. Rogers and became rate regulated by a Commission order issued in December 2022.

In May 2012, after a series of complaints regarding SCW's billing practices, the Commission approved a stipulation between SCW and Staff under which SCW agreed

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to bill customers monthly using accurate meter readings.¹ SCW did not comply with the stipulation and in 2013, Staff returned to the Commission to request appointment of a regent to operate the utility. As Staff noted in the memorandum, SCW's failure to properly bill its customers put the system and customers at risk:

It is imperative that SCW consistently and accurately bill its customers. Without revenues the infrastructure of the water system will fall into disrepair. SCW has experienced three years of declining revenues. Staff's experience has shown that lack of revenues results in deferred maintenance and repairs. Without proper maintenance and repairs the water infrastructure will begin to fail. Sew will experience increasing repairs and emergencies without sufficient revenue to handle them. Without proper revenue to operate and maintain the water system, the customers and their water service are at risk.²

The Commission appointed Avion Water Company (Avion) as the regent of SCW³ and Avion operated SCW for five years. At the conclusion of a five-year agreement to operate SCW, Avion declined to continue as regent. After Staff attempted unsuccessfully to reach Mr. Rogers, the Commission issued a second order in June 2018 appointing a regent and directing Staff to work with its procurement specialist and all necessary agencies to issue a solicitation to find a regent.⁴

However, in the meantime after Avion stopped acting as regent, in August 2018, Mr. Rogers resumed operational control of SCW in September 2018. As the process for procuring a regent was ongoing, Staff worked with Mr. Rogers to ensure the safe and reliable operation of the SCW system. During this period, Mr. Rogers complied with all of Staff requests and 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.⁵ Subsequently, when no willing operator could be secured as regent, Mr. Rogers executed a document agreeing to several conditions of operating SCW, including monthly meter readings, except in winter months, and monthly billings in all months.

After finding no regent to operate SCW and becoming satisfied that the performance of

¹ *In the Matter of Investigation under ORS 756.515 into Sun Country Water Inc.'s Billing Practices* (UM 1598), Order No. 12-189 (May 22, 2012).

² *Id.*, Order No. 13-293, Att. A, p. 5 (August 14, 2013).

³ *Id.*, p. 1.

⁴ *In the Matter of Sun Country Water, Inc. Request to Appoint a Regent to Continue the Administration, and Operations*, (UM 1598), Order No. 18-232 (June 19, 2018).

⁵ *In the Matter of 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* (UM 1598), Order No. 19-086 (March 13, 2019).

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administrative, operational, maintenance, and billing functions of SCW by Rogers would result 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, Staff recommended the Commission remove the regency over SCW, which the Commission did.⁶

SCW Becomes Rate Regulated

On August 22, 2022, SCW notified its customers of its intention to raise rates and the customers' right to petition the Commission for rate regulation. SCW proposed to increase the Monthly Base Fee from \$37.50 to \$63.50 and the Usage Rate from \$1.00 per cubic foot to \$2.00 cubic foot. This proposed rate increase would have exceeded the maximum rate threshold established by the Commission. Subsequently, 60 out of 110 SCW customers petitioned the Commission to begin rate regulation of SCW.

Upon receipt of the petitions from customers, Staff prepared and filed a Public Meeting Memorandum recommending the Commission assert rate regulation over SCW. The Commission adopted Staff's recommendation at its November 22, 2022, Regular Public Meeting and ordered SCW to file a general rate revision consistent with OAR 860-036-2020 within 90 days of the date of the Final Order issued on December 1, 2022.⁷

Circumstances Leading To Current Recommendation For Appointment Of A Regent

SCW did not file a rate case prior to the deadline imposed by the Commission. In fact, SCW still has not filed a rate case. Further, complaints filed with the Commission's Consumer Services Division reflect SCW is not billing monthly as required by the stipulation previously approved by the Commission and the conditions Mr. Rogers agreed to after resuming operating SCW in 2018.

In response to both SCW's failure to file a rate and to issue monthly bills, Staff issued a Notice of Proposed Financial Penalties to SCW for both the failure to file the rate case and to bill monthly. SCW requested a hearing to contest the proposed penalties, which was held on June 5, 2023.

The record in the docket opened to address the Notice of Proposed Financial Penalties against SCW, Docket No. UM 2280, reflects the utility is in a serious financial hole. As stated in Staff's opening testimony in UM 2280, Staff has contacted Deschutes County and confirmed Sun Country owes approximately \$45,000 in unpaid taxes accrued over the last 12 years. Also, according to the testimony of SCW at the June 5 hearing, SCW owes a contractor for work done on a well in SCW's system. On June 22, 2023, John Blankfort submitted comments in Docket No. UM 2280 stating, "Aiken Drilling sued

⁶ *Id.*, Att. 1.

⁷ *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).

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Butch Rogers for \$36,303.00, Mr. Rogers failed to respond and Aiken got a default judgment.”⁸ Mr. Blankfort attached a docket summary from the Deschutes County Circuit Court showing entry of the judgment against Mr. Rogers.⁹

At the hearing on the proposed penalties, the office manager testified that SCW needed to increase rates to raise revenue:

[W]e do need a – we do need a rate increase. And when we sat down with the Homeowners Association. We told them, like we can’t afford – 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[.]¹⁰

The office manager testified on June 5, 2023, that she was doing her best to file the rate case as ordered. Since June 5, the office manager notified the Commission she had left SCW, meaning, it is extremely unlikely SCW will ever file a rate case. Furthermore, the office manager was SCW’s only licensed operator. Now that she has left, there is no licensed operator at SCW.

The Commission has received additional customer complaints since the hearing in Docket No. UM 2280 regarding low water pressure, lack of water, inability to reach Mr. Rogers, and repairs needed to the system. In June 2023, a customer reported to the OPUC a fire hydrant connected to the SCW system was leaking and affecting the water pressure of some SCW customers. SCW did not repair the hydrant, which puts customers at risk of low water pressure, raising the potential health and safety issues as well as the reservoir running dry. After several weeks with no successful repair, Chief Administrative Law Judge Nolan Moser and Bryan Conway of Staff contacted the operator of Avion to perform the repair, which it began within 24 hours of the conversation.

Additionally, per Oregon Health Authority, Drinking Water Services (DWS) records,¹¹ the company is out of compliance on filing the following:

1. Filing of Consumer Confidence Reports for 2022;
2. Multiple losses of system pressure requiring boil water notices that were never filed; and
3. Failure to complete routine sampling for Coliform.

⁸ Docket No. UM 2280, June 22, 2023 Comments of John Blankfort.

⁹ *Id.*, Att.

¹⁰ June 5, 2023, TR at 26-27.

¹¹ <https://yourwater.oregon.gov/inventory.php?pwsno=00123>.

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Also, DWS Staff is considering recommending DWS issue an order against Sun Country for violation of OAR 333-061-0025, for not taking all reasonable actions to assure water system facilities are free from public health hazards, and OAR 333-061-0025(7), which requires 20 psi at all service connections at all times.

Conclusion

There are multiple operational problems with SCW, including issues with the water system itself and with the billing of customers. It is imperative that SCW consistently and accurately bill its customers. Without revenues the infrastructure of the water system will fall into disrepair. The information reviewed by Staff and discussed in this memorandum indicates the lack of revenues is taking a toll on the SCW system. Furthermore, SCW's former office manager, Ms. Coffman, testified at the June 5 hearing in UM 2280 that she did the metering reading and billing for SCW. Her absence means it is even less likely the billing issues at SCW would improve without intervention by the Commission.

Under ORS 756.515(4), the Commission may summarily investigate any matter within its jurisdiction and issue orders the Commission deems justified or required by the results of such investigation. Staff recommends, based on information presented in this memorandum, the Commission issue an order under ORS 756.515(4) establishing that operation of SCW should be done by a regent and that operations of SCW will be turned over to the regent as soon as one can be found by Staff.

Further, Staff recommends the Commission direct Staff to identify all water companies owned or operated by Mr. Rogers that are subject to Commission rate or service regulation, review the operations and management of those companies, and present Staff's findings at a public meeting after it has had a chance to thoroughly review and investigate.

Staff notes that since the order in this matter will be issued under ORS 756.515(4) it is necessary that any order state that SCW has fifteen days in which to request a hearing to challenge the Commission's order, and that if requested the hearing must be held within 60 days of the request.

PROPOSED COMMISSION MOTION:

Approve the following actions and findings:

1. Sun Country Water Inc. shall be subject to appointment of a regent;

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2. Staff of the Public Utility Commission shall work with Commission procurement specialists to contract with a regent to continue the administration, operations, and maintenance of Sun Country Water, Inc. for a period of no more than five years, subject to termination if ownership of the utility changes; and
3. Staff shall identify all water companies owned or operated by Mr. Rogers that are subject to Commission rate or service regulation, review the operations and management of those companies, and present Staff's findings at a public meeting after it has had a chance to thoroughly review and investigate.