

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 2280

In the Matter of

SUN COUNTRY WATER, INC.

Investigation into Billing Practices and
Functions of a Water Utility.

ORDER

DISPOSITION: PENALTIES ASSESSED

I. SUMMARY

In this order, we assess penalties against Sun Country Water, Inc. (Sun Country). The company is directed to pay a penalty in the amount of \$500 per day for each day that it has failed to file a general rate revision. These penalties, however, may be waived in the event that Sun Country is sold to a new owner or Sun Country permanently transfers operations.

II. INTRODUCTION

On April 13, 2023, Staff of the Public Utility Commission issued a notice of proposed penalties to Sun Country for failure to file a general rate revision and failure to bill monthly and accurately. In this notice, Staff argued that Sun Country failed to file a general rate revision within 90 days from the date of Order No. 22-462.¹ Staff also stated that it had received four complaints since June 2022 regarding monthly billing and argued that Sun Country failed to bill monthly for base charges as required by Order No. 12-189 and Order No. 19-086.² Staff proposed a financial penalty of \$100 per day for each day that the company has failed to file its request for a general rate revision and

¹ *In the Matter of Sun Country Water, LLC, An Investigation Pursuant to ORS 756.515 to Determine Jurisdiction*, Docket No. WJ 45, Order No. 22-462 (Nov. 30, 2022).

² *In the Matter of Public Utility Commission of Oregon, Investigation Under ORS 756.515 into Sun Country Water Inc.'s Billing Practices*, Docket No. UM 1598, Order No. 12-189 (May 23, 2012); *In the Matter of Sun Country Water, Inc., Staff's Request to Remove the Regency and to Return Operation of the System to Dean Rogers, Owner*, Docket No. 1598, Order No. 19-086 (Mar. 13, 2019).

\$100 per day for each billing cycle starting January 1, 2023. Staff also stated in the notice that it is investigating the appointment of a regent under OAR 860-036-1700.^{3,4}

On April 16, 2023, Sun Country filed a request for a hearing to challenge the proposed financial penalties. On May 4, 2023, Administrative Law Judge Sarah Spruce issued a ruling and memorandum granting the request for a hearing and establishing a schedule for the proceeding, including deadlines for testimony and briefs and the date for a hearing. On May 26, 2023, Staff submitted the pre-filed testimony of witness Russ Beitzel. The Commission held a hearing on June 5, 2023. Staff submitted a brief on July 3, 2023. Sun Country did not submit any pre-filed testimony or briefs in these proceedings, but its representatives appeared at the June 5 hearing.

III. BACKGROUND

In 2004, Dean Rogers, the current owner of Sun Country, purchased the company as a service regulated company.⁵ In 2010, the Commission's Consumer Services Division received a customer complaint against Sun Country alleging that the company was not sending bills and that bills received were inaccurate.⁶ After multiple attempts to resolve the issue with the company, Staff and Sun Country ultimately entered into a stipulation that required Sun Country to bill its customers on a monthly basis, using accurate meter readings and a correct billing format. Sun Country agreed to read the meters on approximately the same day each month and bill customers on the first of the month.⁷ The stipulation also provided that Sun Country could use estimated meter readings consistent with the Commission's rules as necessary during the winter when the meter is not accessible. The stipulation noted that if Sun Country failed to comply with the

³ OAR 860-036-1700 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."

⁴ At a public meeting held June 25, 2023, Staff requested that the Commission open an investigation under ORS 756.515 regarding the need to appoint a regent to operate Sun Country and to identify and review other water companies owned or operated by Mr. Rogers that are subject to Commission regulation. The Commission opened this investigation at the meeting and heard from Staff. Mr. Rogers did not speak at the public meeting. As a result of the public meeting investigation, the Commission accepted Staff's recommendation to appoint a regent to operate Sun Country and directed Staff to open an investigation to identify all other water companies owned or operated by Mr. Rogers that are subject to Commission regulation and review their operations.

⁵ Docket No. UM 1598, Order No. 12-189, App. A, at 1. Under ORS 757.061, water utilities serving fewer than 500 customers are generally not subject to rate regulation and are only subject to regulation of their service. The Commission may assert rate regulation over a water utility not otherwise subject to rate regulation if the utility serves fewer than 500 customers, the utility proposes to charge a rate for water service exceeding the Commission's maximum rates, and at least 20 percent of the utility's customers file a petition requesting rate regulation. ORS 757.061(3)(d).

⁶ Docket No. UM 1598, Order No. 12-189, App. A at 1.

⁷ Docket No. UM 1598, Order No. 12-189, App. A, Att. A. at 3.

stipulation Staff would take further legal actions, such as requesting a regent for the company. The Commission approved this stipulation at a public meeting held May 22, 2012.

On August 14, 2013, the Commission issued an order finding that Sun Country had failed to comply with the stipulation regarding customer billing and other service obligations. The Commission also determined that an emergency situation existed that affected the public interest and financial security of the company. The Commission appointed Avion Water Company, Inc., to act as regent under OAR 860-036-1720 and to fulfill all operational, administrative, and maintenance duties for Sun Country.

On June 19, 2018, the Commission issued an order adopting the recommendation of Staff to continue the regency for Sun Country and to issue a solicitation for a regent contract. In its recommendation, Staff stated that the issue of inadequate service had not improved and that it had been unable to reach Mr. Rogers. Staff further stated that it questioned the financial viability of the utility without a regent operating the system. Staff was unable to secure an additional contract with a regent, and Sun Country began operating without a regent on August 24, 2018.⁸

On March 13, 2019, the Commission issued an order adopting the recommendation of Staff to remove the regency and return operation of the system to Mr. Rogers.⁹ Staff stated that, in the time that Sun Country had operated without a regent, Staff once again struggled to contact Mr. Rogers and was unable to reach him until October 10, 2018. Staff stated that following this contact, Mr. Rogers complied with all Staff's requests, met all Staff's requirements, and agreed in writing to begin billing the base rate on a monthly basis with a true-up of consumption usage after winter weather conditions improved. Staff stated that it believed Mr. Rogers had made an honest and true effort to adequately operate the Sun Country system and recommended that the Commission remove the regency. Staff further recommended that the Commission impose a quarterly reporting requirement for the first year, which would convert to an annual requirement for an additional two years. Staff also recommended that the Commission direct Mr. Rogers to respond to information requests from Staff in a timely manner. The Commission adopted both recommendations.

On January 6, 2020, the Commission received a formal complaint against the company from a Sun Country customer regarding failure to bill and failure to read meters.¹⁰ The Commission served this complaint on Sun Country on January 17, 2020, and set a

⁸ Order No. 19-086, App. A at 2.

⁹ Order No. 19-086, App. A at 1.

¹⁰ *L.C.B. and T.M.B. v. Sun Country Water*, Docket No. UCR 196, Initial Application (Jan. 17, 2020).

deadline to answer the complaint of February 6, 2020. Sun Country did not file an answer to the complaint. On March 20, 2020, the Commission issued an order finding the defendant in default and directing Staff to propose appropriate penalties in a separate filing or complaint.¹¹

On July 30, 2020, the Commission issued an order adopting a Staff recommendation to amend Order No. 19-086 to extend the quarterly reporting requirements through July 2021 and the annual report requirement through July 2023.¹² Staff stated that since the prior order, Sun Country had failed to provide Staff with the required quarterly reports mandated by Order No. 19-086 and failed to bill customers as required. Staff stated that since the Commission's order directing Staff to propose penalties, Sun Country had made operational changes, including hiring Mr. Roger's son and daughter-in-law to assist with administration and meter reading. Staff stated that it had seen improvements to billing and responsiveness to customers since Sun Country had added the new employees. Staff also stated that it viewed the reports required by Order No. 19-086 as essential to ensuring operation continues to meet adequate service standards and that there was good cause to extend the dates for which those reports are required through June 30, 2023. Because the billing issues appeared to be resolved, Staff stated that no additional penalties were necessary to address the customer complaint in the earlier docket.

On August 22, 2022, Sun Country notified its customers under OAR 860-036-1920 that it intended to raise its monthly base rate from \$37.50 per 500 cubic feet to \$63.50 per 500 cubic feet and its usage rate to \$2.00 per cubic foot. Following this notice, 60 of the company's 110 customers submitted petitions for the Commission to assert rate authority over Sun Country, exceeding the 20 percent of customers threshold necessary for the Commission to assert rate regulation. In its recommendation to the Commission, Staff stated it had discussed the petitions with Sun Country and that the company understood the process and did not dispute the assertion of rate regulation. On November 30, 2022, the Commission issued an order asserting rate regulation over Sun Country and directing the company to file a general rate revision consistent with OAR 860-036-2020 within 90 days of the date of the order.¹³

Sun Country's failure to file the general rate revision, as well as the customer complaints discussed above, led to Staff's April 13, 2023, notice of proposed penalties that we take up here.

¹¹ Docket No. UCR 196, Order No. 20-092 (Mar. 20, 2020).

¹² Order No. 20-241, App. A at 1 (Jul. 30, 2020).

¹³ *In the Matter of Sun Country Water, LLC, An Investigation Pursuant to ORS 756.515 to Determine Jurisdiction*, Docket No. WJ 45, Order No. 22-462 (Nov. 30, 2022).

IV. POSITIONS OF THE PARTIES

Staff states that it issued the notice of proposed financial penalties to Sun Country in part to determine why the company had not filed its request for a general rate revision, to obtain an explanation about the complaints around irregular billing, and to determine whether it was necessary to appoint a regent. Staff also maintains that it proposed these penalties in the hopes that it would encourage the company to file the request for general rate revision.

Staff argues that Sun Country's testimony at the June 5 hearing demonstrates that the company lacks the resources to operate. Staff maintains that the record, including the testimony of Ms. Coffman at the hearing, shows that Sun Country is in serious financial trouble and that there is little hope that the company will improve its situation. Staff notes that Mr. Rogers and Ms. Coffman operate six other water utilities in addition to Sun Country and that Ms. Coffman appears to be unable to fulfill the duties placed upon her with respect to the management and operation of the company. Staff argues that Sun Country cannot increase its revenue without filing the rate case and that even if it could obtain a rate increase, history indicates the company will be unlikely to efficiently manage the company.

Staff argues that because Sun Country has still not filed for its general rate revision since the notice of penalties were proposed, the appropriate next step is to investigate other options, such as appointing a regent to operate the company. Staff recommends that the Commission issue an order imposing suspended penalties in the amount of \$500 a day for failure to file a general rate revision that would not become effective until one year after the order. Staff proposes that the penalties be dismissed if Sun Country sells or otherwise transfers operation of the company within that year, including to a regent.

The company did not file a brief in these proceedings. At the hearing, Ms. Coffman testified that the company was working to comply with the Commission's rules and orders regarding billing and the requirement for a general rate revision but that she was generally overwhelmed and trying to catch up.¹⁴ Ms. Coffman also testified that the company billed using estimated meter reads for four consecutive months and billed the minimum amount for the subsequent fifth month due to winter weather or storm conditions.¹⁵ Ms. Coffman maintained Staff had told her that it was okay to estimate bills in the winter if they were unable to read the meters.¹⁶

¹⁴ Tr. at 25-34.

¹⁵ Tr. at 34-38.

¹⁶ Tr. at 35.

V. RESOLUTION

The Commission has received complaints and evidence casting doubt on Sun Country's ability to provide adequate service and meet its compliance obligations for over a decade. Each time that we have addressed these issues with Sun Country, the company has eventually agreed to bill monthly and fix any other issues that Staff identified, including responding to Staff requests and customers in a timely fashion, before returning to its prior behavior. At this point, Sun Country has agreed to stipulations it is unable or unwilling to comply with and was previously placed under regency in an attempt to remedy its service issues to no avail.

We continue to have concerns regarding Sun Country's ability to bill monthly and to respond to both Commission outreach and customer inquiries. Both our rules and prior orders are clear that the company must bill monthly using accurate meter reads, with certain limited exceptions for estimated meter reads during winter months when meters are inaccessible. The stipulation adopted in Order No. 12-189 specifically states that bills are to be issued on the first of the month, with exceptions for weekends and holidays, and meters should be read on approximately the same day each month. Ms. Coffman testified that she is getting bills out monthly, but the evidence provided by Staff indicates that there are significant inconsistencies in the billing cycle.¹⁷ For example, one bill issued on July 8, 2022, was for 39 days of usage while another issued on February 28, 2023, covered 21 days of usage.¹⁸ This same set of bills supports the conclusion that the company billed for estimated meter reads for four consecutive months in violation of OAR 860-036-1370, and the fifth month following this was billed for the minimum.¹⁹ At the hearing, Ms. Coffman offered to provide records in support of the company's billing efforts, but no one at the company ever filed these records.²⁰ Taking at face value that the bills Staff submitted with its testimony were issued on the dates provided on the bills, the evidence supports that the company is not meeting its obligation to bill on the first of the month using meter reads as close to the same day as possible each month.

We also have serious concerns about the company's ability to provide adequate service to its customers. Over the course of this proceeding, we received comments from customers alleging that the company was unresponsive to requests, that the company was difficult to reach, and that the phone number led to a full voicemail account.²¹ At the hearing, Ms. Coffman testified that neither the company's office phone line nor its computer were

¹⁷ Staff/100, Beitzel/1-14.

¹⁸ Staff/102, Beitzel/3, 10, 14

¹⁹ Staff/100, Beitzel/6-10.

²⁰ Tr. at 8.

²¹ Comments of T.B. (May 23, 2023); Comments of J.B. (Apr. 27, 2023); Comments of S.Z. (May 19, 2023)

working properly, though she stated that customers did have both her and Mr. Roger's cellphone numbers.²² Ms. Coffman also stated that these cellphone numbers had been added to the bills.²³ Ms. Coffman further testified that she works approximately 25 hours a week on Sun Country matters covering everything from billing to general office operation, in addition to her work with at least four other water companies also owned or operated by Mr. Rogers.²⁴ Ms. Coffman has since left the company.²⁵ While we appreciate and believe that Ms. Coffman was working hard to fix the issues with Sun Country, it is also clear that the amount of work necessary to fix Sun Country's issues exceeds the capacity of Sun Country's current management, particularly now that Ms. Coffman has left the company.

Further, we agree with Staff that there are serious concerns with Sun Country's financial viability. Staff witness Mr. Beitzel testified that he had talked to Deschutes County and confirmed that Sun Country owed approximately \$45,000 in unpaid taxes accrued over the last 12 years.²⁶ Ms. Coffman and Mr. Rogers testified that Sun Country does have outstanding debt with Deschutes County, though they disputed the specific amount and accrual time period, as well as debt with a company it had contracted for well work, though they again stated that they disagreed with the amount owed.²⁷ Ms. Coffman and Mr. Rogers testified that they need a rate increase to pay these debts, but as of the time of the hearing, this request for a rate increase had not been filed.²⁸ At the hearing, Ms. Coffman testified that Sun Country would file the request for a rate revision by June 14, 2023.²⁹ Sun Country has yet to file a request for a rate revision. The evidence overwhelmingly supports that Sun Country has serious financial difficulties and that it is unable to take actions that could improve its financial situation.

We have little confidence that holding off on imposing penalties or other consequences will lead to lasting improvement. At the same time, it is not clear that imposing penalties will encourage a lasting change in the company's behavior, as Sun Country is already struggling to pay debts. The Commission's options for addressing Sun Country's inadequate service and noncompliance, however, are limited primarily to imposing penalties consistent with ORS 757.994 and OAR 860-036-1720 and to appointing a

²² Tr. at 44-45, 59, 61-62, 64.

²³ Tr. at 59-60.

²⁴ Tr. at 31-32, 55-56. It is not entirely clear how many water companies Mr. Rogers owns, operates, or otherwise provides services to. It is our expectation that Staff will investigate to determine what water companies under our regulatory authority are owned, operated, or provided service by Mr. Rogers.

²⁵ Ruling on Official Notice, Attachment 3 at 2 (July 13, 2023).

²⁶ Exhibit Staff/100, Beitzel/11; Tr. at 21.

²⁷ Tr. at 47-48, 53-54.

²⁸ Tr. at 29, 53.

²⁹ Tr. at 34.

regent consistent with OAR 860-036-1700.³⁰ On balance, given the seriousness of the deficiencies and the limited options available to us, we determine that the company's chronic failure to operate its system adequately and in compliance with the Commission's rules and orders warrants a meaningful financial penalty.

Based on the record in this proceeding, we impose penalties in the amount of \$500 per day for each day that the company did not file a request for a general rate revision as required by Order No. 22-462, starting on March 1, 2023. As of the date of this order, Sun Country continues to violate its obligation to file a request for a general rate revision. This violation is considered ongoing, and penalties will continue to accrue at \$500 a day for each day that the company fails to file the request for a general rate revision.

Regarding Staff's request to penalize Sun Country for failure to meet its billing obligations, we do not impose penalties at this time. As discussed above, we find that Sun Country is failing to meet its billing obligations, but in light of the relative size of the penalty we impose for failure to file a general rate revision, we do not find it necessary to impose any additional penalties at for billing this time. To the extent that Sun Country continues to bill inappropriately, we may impose penalties for violation of Commission orders and regulations in the future.

Penalties accrued through the date that this final order is issued shall be paid within ten days of the order; between March 1, 2023, and the date of this order, the total accrual is \$73,000. If Sun Country fails to pay these penalties as ordered, then the Commission may seek to impose a lien on the company's property consistent with ORS 757.994 and ORS 183.745. We impose these penalties on Sun Country as currently constituted with Mr. Rogers as the owner and operator of the company and intend to waive these penalties if the company's ownership or operations are permanently transferred to an entity that we determine can effectively provide service to customers.

While we appreciate Staff's suggestion to suspend the penalties for one year, we find that it is in the interest of Sun Country's customers to ensure that the company understands that its failure to meet its obligations is a serious matter and that the company must take immediate action. We are not persuaded that waiting an additional year to impose the penalties provides sufficient motivation for Mr. Rogers to reconsider whether the company can provide adequate service to Sun Country's ratepayers under his ownership and operation. Nor do we adopt Staff's recommendation to remove the penalties if a temporary regent is appointed to operate the company. Previous short-term attempts to reform Sun Country's operations, including five years of operation under a regent, have

³⁰ Commission Staff can and does informally work and coordinate with other agencies to address issues associated with inadequate service.

not resulted in long-term improvements by the company's current management, and we are not convinced that suspending penalties for a temporary regent provides sufficient incentive to the company's management to make long-term improvements or sell the company to an owner who can make such improvements.

Although we will not suspend the penalties for one year as Staff suggested, we intend to waive the penalties if the company's ownership or operations are permanently transferred to an entity that we have confidence can effectively provide service to customers. We request that Staff take appropriate informal actions to support Sun Country's management in an effort to arrive at an acceptable long-term solution.

VI. ORDER

IT IS ORDERED that within ten days of this order, Sun Country Water, Inc. shall pay a penalty in the amount of \$500 per day starting March 1, 2023, for failure to file a general rate revision consistent with Commission orders, which shall continue to accrue until such rate revision is filed.

Made, entered, and effective Jul 25 2023.



Megan W. Decker
Chair

COMMISSIONER TAWNEY WAS
UNAVAILABLE FOR SIGNATURE

Letha Tawney
Commissioner



Mark R. Thompson
Commissioner

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 Court of Appeals in compliance with ORS 183.480 through 183.484. A party may request a hearing on the decision to appoint a regent within 15 days of the date of service of this order.