

ORDER NO. 23-378

ENTERED Oct 20 2023

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UP 423

In the Matter of

HIGHLAND WATER CORP
SUBSIDIARIES,

Approving the Sale of Assets and Transfer
of Exclusive Serve Territory to
SUNSTONE WATER , LLC.

ORDER

DISPOSITION: STAFF'S RECOMMENDATION ADOPTED

At its public meeting on October 17, 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. CA9

**PUBLIC UTILITY COMMISSION OF OREGON
STAFF REPORT
PUBLIC MEETING DATE: October 17, 2023**

REGULAR _____ **CONSENT** X **EFFECTIVE DATE** October 18, 2023

DATE: September 26, 2023

TO: Public Utility Commission

FROM: Scott Shearer and Russ Beitzel

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

SUBJECT: HILAND WATER CORPORATION:
(Docket No. UP 423)
Requests Approval of the Sale of Assets and Transfer of Exclusive Service Territory to Sunstone Water, LLC.

STAFF RECOMMENDATION:

Staff recommends the Commission approve the sale of Hiland Water Corporation's (Hiland) assets and transfer of exclusive service territory to Sunstone Water, LLC (Sunstone), subject to conditions.

Staff recommends the following conditions:

- 1) Sunstone shall provide the Commission access to all books of account as well as all documents, data, and records that pertain to the transfer of properties or to transactions with Hiland or any other affiliate.
- 2) Sunstone shall notify the Commission of any substantive changes made to the Asset Purchase Agreement (APA). Any substantive changes to the APA terms that alter the intent or extent of the APA from those approved herein shall be submitted for approval in an application for a supplemental order (or other appropriate form) in this docket.
- 3) Sunstone shall provide notice to the Commission no more than 10 days after the close of the sale.
- 4) The Commission reserves the right to review, for reasonableness, all financial aspects of this arrangement in any rate proceeding.

- 5) Sunstone, and its affiliates, will ensure its and Hiland's books and records are available in accordance with the applicable uniform system of accounts or, as appropriate, generally accepted accounting principles.
- 6) Sunstone will file in this Docket, no later than 60 days after the issuance of a Commission order, a revised exclusive service territory map(s) and description(s), for all the newly acquired systems.
- 7) Sunstone will:
 - a) Withhold from including in rates allocations from any new corporate entity (i.e. indirect charges) to any rate regulated Hiland system for a period of 12 months after the close of the transaction; and
 - b) Not raise rates for any service regulated system, over the Commission approved threshold, for a period of 12 months after the close of the transaction, and
- 8) Sunstone and its affiliates agree not to request rate recovery on any acquisition adjustment due to its purchase of Hiland assets.

Conditions 1–6 are considered standard for UP dockets and allow the Commission access to all records related to the transaction and protect all parties, including customers, from changes to the APA. Staff includes Conditions 7 and 8 to ensure no harm to customers, that allocations should be lower in the future due to economies of scale provided by Sunstone, and to financially protect customers from any unnecessary rate changes until Sunstone has operated and managed the collective systems for a consistent period of time as the Hiland owned companies are currently well managed and not in financial distress but may require significant investments in some of the systems in the near term.

DISCUSSION:

Issues

- 1) Whether the Commission should approve Sunstone's acquisition of the assets; and
- 2) Whether the Commission should approve Sunstone's request to transfer the exclusive service territory of Hiland and its affiliates.

Applicable Rule or Law

ORS 757.480(5), ORS 757.485(1), OAR 860-036-2120(1), and OAR 860-036-2120(3) require water utilities doing business in Oregon to obtain Commission approval prior to

selling, purchasing, or otherwise disposing of a water utility. While typically filed by the seller, the application may be filed by the seller, buyer, or jointly by the parties. The Commission has traditionally applied a public interest "no harm" standard when considering whether or not to approve such a transaction.

OAR 860-036-2120(4), calls for the utility to provide the Commission and its customers with notice of a sale, no less than 60 days prior to the closing date of the transaction.

OAR 860-036-1840, sets the standards for transfer of service territory, specifically, it must be approval of the Commission, demonstrate the transfer is in the public interest, include any modifications, and that the designated service territory will not be altered solely as the result of a change in ownership or form of ownership.

Analysis

NW Natural Holdings

NW Natural Holdings is a publicly traded company, listed on the New York Stock Exchange under the symbol "NWN," with significant financial resources and access to capital markets to support the capital needs of its subsidiaries. NW Natural Holdings has a market capitalization of approximately \$1.5 billion and has revolving credit facilities totaling approximately \$200 million in the aggregate¹.

NW Natural Water

NW Natural Water is a wholly-owned subsidiary of Northwest Natural Holdings, which, through its subsidiaries, currently owns and operates water and wastewater utility systems in five states (Oregon, Arizona, Idaho, Texas and Washington).

NW Natural Water of Oregon

NW Natural Water of Oregon is a wholly-owned subsidiary of NW Natural Water Company, LLC, set up to facilitate operations in its Oregon jurisdiction.

Sunstone Water

Sunstone Water is a wholly-owned subsidiary of NW Natural Water of Oregon, which is set up for owning and operating regulated utility assets in Oregon.

¹ Sunstone and Hiland's Joint Application, pages 3 and 4.

Hiland Water

Hiland Water is water company that owns and operates 24 systems (Systems) in Oregon. This consists of 5 fully regulated systems: Hillview, Shadow Wood, Westwood and Wilderness Canyon (collectively, Rate Regulated Systems); One fully-regulated water and wastewater system: Illahe Estates; and, 18 service-regulated systems: Barger, Bear Creek, Boulder Creek, College Park, Echo Mountain, Fryer Hill, Heritage, JJ, Laurelwood (two systems), Lombard, Lorna, Penticton Estates, Quaker Meadows, Riverbend, Shady Cove, Stables at Coyote Run and Wyland (collectively, Service Regulated Systems). Hiland, was founded in 1997 for the purpose of serving a single, small water system. Through its various systems, Hiland has grown to serve over 5,000 homes and businesses in different areas throughout the State of Oregon.²

Application

Related to the sale of the Hiland, Staff has reviewed the scope and terms of the APA, purchaser's background and financial position, transfer pricing and allocation of gain, public interest compliance, joint buyer and seller Application, affiliated interest, ring-fencing and other provisions, and customer issues associated with the proposed transaction.

Staff issued nine information requests related to the application and advice filing, in addition to the records provided in the filings.

1. Asset Purchase Agreement

On May 8, 2023, Sunstone and Hiland signed the APA, which sets forth the agreement for Sunstone to purchase, from Hiland, all assets associated with the Systems owned by Hiland. The parties state the sale will complete after approval by the Commission.

This transaction is a privately negotiated, non-auction sale between Sunstone and Hiland. Per the Application, all utility property currently owned by Hiland is included in this transaction. Staff reviewed the APA and noted no unusual or restrictive terms to the Agreement.

2. Purchaser Background and Financial Position

NW Natural and its affiliates operate numerous water utilities in five states, including approximately over 20,000 customers in Oregon³. NW Natural has the financial and operational ability to acquire Hiland. NW Natural maintains a A+ Corporate credit rating with Standard & Poor's rating agency with a stable outlook⁴. As a result, Sunstone has access to capital to finance the current operations and future capital expenditure

² <https://hilandwater.com/FAQ.html>.

³ This number includes NW Natural's minority ownership share with Avion Water Company, See Docket Nos. UF 4330 and UF 4338.

⁴ Per NW Natural 2022 Shareholder letter and annual report, <https://ir.nwnaturalholdings.com/home/default.aspx>.

requirements. Additionally, NW Natural's Annual Report to the Commission for year ending 2022,⁵ shows sufficient capital and capacity to acquire Hiland without undue financial concern on its other system affiliates.

3. Transfer Pricing and Allocation of Gain
Sunstone states it will not seek rate recovery related to any potential acquisition adjustment in its purchase of Hiland's assets.⁶ This is also reflected in Staff's Recommended Condition 8.

4. Public Interest Compliance cause
As described in this memo, Sunstone, through its affiliates, has extensive experience in running water systems in multiple states and jurisdictions. Additionally, the current management of the Hiland systems will move over to new Company and continue to manage operations. Also, all current Hiland employees will be offered similar positions in the new company, reducing the need to train new staff. The parties expect the proposed transaction to be seamless from the customers' perspectives and assert that customers will experience no interruption in service due to the acquisition. This transaction will not cause harm to the public as customers' service will not be materially affected by this transaction.

Recommendation and Conclusion

Staff believes this transaction, with the recommended conditions, meets the public interest, no harm standard and recommends the Commission approve the application. Hiland is not requesting consolidation of any companies in this filing. If such a request is made in the future, Commission approval would be required under ORS 757.480.

The Company has reviewed a draft of this memo and voiced no concerns.

PROPOSED COMMISSION MOTION:

Approve the sale of Hiland Water Corporation's assets and transfer of exclusive service territory to Sunstone Water, LLC, subject to the Staff listed conditions.

UP 423 Sale of Hiland Assets to NWN.Sunstone

⁵ See Docket No. RG 37, Supplemental Application filed May 1, 2023.

⁶ Sunstone and Hiland's Joint Application, page 7.