

Service Date: March 6, 2019

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of Determining the Proper
Classification of:

SUNRISE ACRES WATER SERVICES,
LLC

DOCKET UW-180886

ORDER 02

INITIAL ORDER CLASSIFYING
RESPONDENT AS A WATER
COMPANY; REQUIRING FILING
OF INITIAL TARIFF OR SALE
AGREEMENT

BACKGROUND

- 1 **Nature of Proceeding.** On January 2, 2019, the Washington Utilities and Transportation Commission (Commission) initiated this special proceeding to determine if Sunrise Acres Water Services, LLC (Sunrise Acres or Respondent) is subject to regulation under Chapter 80.28 of the Revised Code of Washington (RCW) and is performing any act requiring Commission approval without securing such approval. The Commission alleges that Sunrise Acres may be engaged in business as a water company, as defined by RCW 80.04.010 and Washington Administrative Code (WAC) 480-110-255, without having filed a tariff, as required by RCW 80.28.050 and WAC 480-110-433.
- 2 **Background and Procedural History.** William “Tom” Harrison is the owner of Sunrise Acres. Mr. Harrison also owns Harrison-Ray Water Company, Inc., (Harrison-Ray) and Harrison Water Company/Kiona, LLC (Kiona), both of which are subject to Commission jurisdiction.¹ Commission staff (Staff) currently is investigating Harrison-Ray and Kiona for violations of the Commission’s consumer protection rules.²
- 3 On February 1, 2018, Staff requested from Sunrise Acres a list of all Washington state customers for whom Sunrise Acres currently provided utility services; Sunrise Acres was required to provide this information by March 7, 2018.³ Sunrise Acres requested and was

¹ Paul, Exh. No. SP-1 at 4.

² *Id.* at 8.

³ *Id.* at 5.

**Pursuant to RCW 80.01.060(3)
This packet is the final
Order in this docket.**

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granted an extension until March 8, 2018, to provide the data, but did not do so until October 8, 2018.⁴

- 4 On April 9 and 10, 2018, Staff met with Mr. Harrison to provide technical assistance on the tariff filing requirements set out in WAC 480-110.⁵ Staff provided Mr. Harrison with a template tariff for Sunrise Acres and communicated with the Respondent's certified public accountant, Traci McClure, after the meeting regarding the tariff filing.⁶ Staff and Sunrise Acres agreed to a June 1, 2018, tariff filing date. On April 30, 2018, Staff inquired of Ms. McClure about the status of the tariff. In response to Ms. McClure's inquiry regarding the tariff filing process, Staff explained that the tariff would need to be reviewed by Mr. Harrison and filed at the Commission along with a cover letter, income statement, and balance sheet for Sunrise Acres. Staff also provided Ms. McClure with a link to online filing instructions,⁷ and explained that Sunrise Acres would need to provide a notice to its customers stating that it will be regulated.⁸ As of the date of this order, Sunrise Acres has not filed a tariff with the Commission.
- 5 On January 2, 2019, the Commission issued an Order Instituting Special Proceeding; Subpoena; and Notice of Hearing (Hearing Notice), setting a hearing date of February 4, 2019, for Mr. Harrison to give testimony and evidence as to Sunrise Acres' ownership and operations. The Commission later rescheduled the hearing for February 28, 2019.
- 6 The Commission convened an evidentiary hearing on February 28, 2019, in Olympia, Washington before Administrative Law Judge Nelli Doroshkin. Harry Fukano, Assistant Attorney General, Olympia, Washington, represents Staff.⁹ During the hearing, Staff presented the testimony of Susie Paul, compliance investigator. Tom Harrison represents Sunrise Acres, *pro se*. Mr. Harrison testified on behalf of Sunrise Acres, as did Paul Christensen, the parent of a potential purchaser of Sunrise Acres.

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *Id.* at 5-6.

⁸ *Id.* at 6.

⁹ In formal proceedings, such as this, the Commission's regulatory staff participates like any other party, while an administrative law judge and the Commissioners make the decision. To assure fairness, the Commissioners, the presiding administrative law judge, and the Commissioners' policy and accounting advisors do not discuss the merits of this proceeding with the regulatory staff, or any other party, without giving notice and opportunity for all parties to participate. *See* RCW 34.05.455.

7 On March 1, 2019, Staff filed its response to Bench Request No. 1, issued by the presiding officer at the February 28, 2019, hearing. The response contains redacted customer lists for Sunrise Acres, Harrison-Ray, and Kiona that Mr. Harrison had previously provided to Staff via email. The lists show 39 customers for Sunrise Acres, 213 customers for Kiona, and 242 customers for Harrison-Ray, for a total of 494 customers.¹⁰ Mr. Harrison confirmed the accuracy of these customer numbers at the hearing.

DISCUSSION AND DECISION

8 **Applicable Law.** The Commission is authorized by statute to institute special proceedings to determine whether a person or corporation is performing any act requiring registration with the Commission without securing the registration, and to issue orders declaring the activities to be subject to, or not subject to, the provisions of title 80 RCW.¹¹

9 A “water company” includes every corporation, company or person owning, controlling, operating, or managing any water system for hire within Washington State.¹² For purposes of Commission jurisdiction, “water company” does not include any water system serving less than one hundred customers where the average annual gross revenue per customer does not exceed three hundred dollars per year; the measurement of customers or revenues must include all portions of water companies having common ownership or control, regardless of location or corporate designation.¹³ Every water company operating in Washington is required to file with the Commission a standard tariff that shows, *inter alia*, rates and charges made by the water company.¹⁴

10 **Classification.** At the hearing, Staff argued that Sunrise Acres is a “water company” because it shares common ownership, through Tom Harrison, with Harrison-Ray and Kiona, and the total number of customers for the three companies exceeds 100 customers. Staff argues that Sunrise Acres should be required to file a tariff with the Commission.

¹⁰ Staff response to Bench Request No. 1.

¹¹ RCW 80.04.015.

¹² RCW 80.04.010 and WAC 480-110-255.

¹³ *Id.*

¹⁴ RCW 80.28.050 and WAC 480-110-433.

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- 11 Mr. Harrison's common ownership of Sunrise Acres, Harrison-Ray, and Kiona is undisputed.¹⁵ Staff and Mr. Harrison also agree that: (1) Sunrise Acres has at least 39 customers; (2) Harrison-Ray has 242 customers; and (3) Kiona has 213 customers.
- 12 The Commission determines that Sunrise Acres is a water company subject to Commission jurisdiction. Tom Harrison is the owner of Sunrise Acres, Harrison-Ray, and Kiona, and the three companies have well over 100 customers in total. Thus, as a water company subject to Commission jurisdiction, Sunrise Acres must file a tariff with the Commission.
- 13 Mr. Harrison asserts that he is in the process of selling Sunrise Acres to Paul Christensen's daughter.¹⁶ Mr. Christensen owns a water system subject to Commission jurisdiction; he testified that his daughter is interested in buying Sunrise Acres, and is interested in using a satellite agency to manage the company.¹⁷
- 14 Mr. Christensen testified that the process for the sale of Sunrise Acres began in the first part of January 2019, *i.e.*, shortly after the Commission issued the Hearing Notice in the captioned docket. Mr. Christensen also testified that his discussions with Mr. Harrison regarding the sale of Sunrise Acres began approximately six months prior to the hearing date, or approximately seven months after Staff began its investigation of Sunrise Acres. According to Messrs. Harrison and Christensen, Staff was not informed of the potential sale until a few weeks before the hearing. In response to questions from the bench, Mr. Christensen testified that a closing date for the proposed sale of Sunrise Acres had not been established and that there were no emails documenting the sale negotiations, which had occurred in person.¹⁸

¹⁵ See Paul, Exh. SP-1 at 10 (Office of the Secretary of State Corporations and Charities Filing System entry for Sunrise Acres) and 11-12 (Water Facilities Inventory Form for Sunrise Acres filed with the Washington State Department of Health); Exh. SP-2 (equivalent documents for Harrison-Ray and Kiona).

¹⁶ Mr. Christensen's daughter did not attend in person or call in to the hearing in this case. Neither Mr. Harrison nor Mr. Christensen mentioned Mr. Christensen's daughter when testifying about previous discussions on the proposed sale of Sunrise Acres.

¹⁷ Under RCW 80.04.010(30)(c), a satellite agency does not own or control a water company for purposes of determining Commission jurisdiction.

¹⁸ In a 2011 water company classification proceeding, the Commission assessed an \$8,400 penalty for failure to file a tariff where the water company's owner asserted that the water company was in the midst of being sold, stating "[e]ven assuming that the Company was engaged in such [sale] negotiations, it still chose to disregard the Commission's rules requiring it to file a tariff for over one year." *In re Lowper, Inc. d/b/a Lowper Corp., a/k/a Lowper Water Co. and Iliad Inc. d/b/a Lowper Water Sys.*, Docket UW-091006, Order 03 at ¶ 18 (May 18, 2011)

15 **Filing requirement.** Sunrise Acres must file a tariff with the Commission no later than April 8, 2019. Although the record evidence does not support a finding that Mr. Harrison’s sale of Sunrise Acres is imminent, Mr. Harrison may alternatively file a sale agreement documenting that Mr. Harrison does not own Sunrise Acres. Mr. Harrison testified that he would be able to file a tariff for Sunrise Acres within 30 days; he later amended this estimate to 90 days. April 8, 2019, is 33 days from the date of this order and 92 days from the service date of the Hearing Notice. An April 8, 2019, tariff filing deadline is more than sufficient, given that Staff provided a template tariff and other technical assistance for complying with the tariff filing requirements in WAC 480-110-431 to Mr. Harrison in April 2018.¹⁹ In comparison, under RCW 34.05.110, agencies must provide seven calendar days to correct paperwork violations before imposing fines, civil penalties, or administrative sanctions for a violation of a state law or agency rule by a small business.²⁰

FINDINGS AND CONCLUSIONS

- 16 (1) The Commission is an agency of the State of Washington, vested by statute with authority to regulate rates, rules, regulations, practices, and accounts of public service companies, including water companies.
- 17 (2) Sunrise Acres is a “public service company” and a “water company,” as those terms are defined in RCW 80.04.010 and as those terms are used in Title 80 RCW. Sunrise Acres supplies utility services and commodities to the public for compensation in Washington.
- 18 (3) The Commission has jurisdiction over the subject matter of this proceeding and over Sunrise Acres.
- 19 (4) Sunrise Acres is owned by Tom Harrison, who also owns Harrison-Ray and Kiona.
- 20 (5) Sunrise Acres, Harrison-Ray, and Kiona have a combined total of over 100 customers.

(hereinafter Lowerper). The water company at issue in Lowerper provided emails documenting the sale negotiations to the Commission. *Id.*

¹⁹ Paul, Exh. SP-1 at 5.

²⁰ See also Lowerper at ¶¶ 26-28 (Lowerper, Incorporated filed its tariff 11 calendar days after entering into a stipulation with Staff agreeing to do so).

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- 21 (6) Sunrise Acres should be directed to file a tariff in accordance with WAC 480-110-433.

ORDER

THE COMMISSION ORDERS THAT:

- 22 (1) Sunrise Acres Water Services, LLC is classified as a water company.
- 23 (2) By April 8, 2019, Sunrise Acres Water Services, LLC must file with the Commission either a tariff pursuant to the requirements set out in WAC 480-110-433 or, alternatively, a sale agreement documenting that Tom Harrison no longer owns Sunrise Acres Water Services, LLC.
- 24 (3) The Commission retains jurisdiction to effectuate the terms of this Order.

DATED at Olympia, Washington, and effective March 6, 2019.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

NELLI DOROSHKIN
Administrative Law Judge

NOTICE TO PARTIES

This is an Initial Order. The action proposed in this Initial Order is not yet effective. If you disagree with this Initial Order and want the Commission to consider your comments, you must take specific action within the time limits outlined below. If you agree with this Initial Order and you would like the Order to become final before the time limits expire, you may send a letter to the Commission waiving your right to petition for administrative review.

WAC 480-07-825(2)(a) provides that any party to this proceeding has 20 days after the entry of this initial order to file a petition for administrative review (Petition). Section (2)(b) of the rule identifies what you must include in any Petition as well as other requirements for a Petition. WAC 480-07-825(2)(c) states that any party may file a response to a Petition within 10 days after service of the Petition.

WAC 480-07-830 provides that before the Commission enters a final order any party may file a petition to reopen a contested proceeding to permit receipt of evidence that is essential to a decision, but unavailable and not reasonably discoverable at the time of hearing, or for other good and sufficient cause. The Commission will give other parties in the proceeding an opportunity to respond to a motion to reopen the record, unless the Commission determines that it can rule on the motion without hearing from the other parties.

RCW 80.01.060(3) provides that an Initial Order will become final without further Commission action if no party seeks administrative review of the Initial Order and if the Commission does not exercise administrative review on its own motion.

Any Petition or response must be electronically filed through the Commission's web portal, as required by WAC 480-07-140(5).