

Docket No. UW-180886 - Vol. II

In the Matter of: Sunrise Acres Water Services, LLC

June 12, 2019



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BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of Determining the) DOCKET UW-180886
 Proper Carrier Classification of:)
)
)
 SUNRISE ACRES WATER SERVICES, LLC)
)
)

BRIEF ADJUDICATIVE PROCEEDING, VOLUME II

Pages 35 - 53

NELLI DOROSHKIN, ADMINISTRATIVE LAW JUDGE

June 12, 2019

10:12 a.m.

Held at:
 Washington Utilities and Transportation Commission
 1300 South Evergreen Park Drive SW, Room 206
 Olympia, Washington

REPORTED BY: PAMELA J. NELSON, RPR, CCR License No. 2948

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ADMINISTRATIVE LAW JUDGE: MS. NELLI DOROSHKIN
UTILITIES AND TRANSPORTATION
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ALSO PRESENT: MS. SUSIE PAUL
STAFF WITNESS

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1 P R O C E E D I N G S

2 Wednesday, 10:12 a.m.

3 --ooOoo--

4

5 JUDGE DOROSHKIN: Okay. We will be on the
6 record. The time is approximately 10:12 a.m. We were
7 initially scheduled to begin at 9:30, but we do have a late
8 start due to Mr. Harrison's availability. Mr. Harrison is
9 here with us now.

10 So this is a hearing in Docket No. UW-180886, in the
11 matter of the Commission's complaint for penalties against
12 Sunrise Acres Water Services, LLC and to enforce Order 02
13 entered in this docket on March 6th, 2019. The purpose of
14 this hearing is to determine whether Sunrise Acres violated
15 Order 02; and if so, what the proper penalty should be for
16 the violation.

17 My name is Nelli Doroshkin, and I'm the administrative
18 law judge presiding over this proceeding.

19 So we will begin by taking appearances from the parties
20 beginning with Commission Staff.

21 MR. FUKANO: Good morning, Judge Doroshkin. I'm
22 Harry Fukano, Assistant Attorney General with the Utilities
23 and Transportation Commission, and I'm here on behalf of
24 Commission Staff.

25 JUDGE DOROSHKIN: Mr. Harrison, could you please

1 state and spell your first and last name?

2 MR. HARRISON: Tom Harrison, H-A-R-R-I-S-O-N.

3 JUDGE DOROSHKIN: Okay. And is there anyone else
4 in the hearing room or on the bridge line who would also
5 like to give an appearance? (No response.) No? Okay.

6 So as noted earlier, this is a hearing initiated by the
7 Commission alleging that Sunrise Acres violated Order 02
8 issued in this docket. If we determine today that a
9 violation has occurred, then we may assess a penalty for
10 this violation.

11 Staff will present its case first. And Mr. Harrison,
12 you'll have an opportunity to ask the Staff witness
13 questions based on what the Staff witness has said. After
14 that, you'll be able to present your case and testify
15 regarding your compliance with Order 02, and then Mr. Fukano
16 will have the chance to ask you questions.

17 So Staff will present its case first. And Mr. Fukano,
18 you may make any preliminary remarks and call your first
19 witness.

20 MR. FUKANO: Thank you.

21 Under RCW 80.04.380, every public service company and
22 all officers, agents, employees -- and employees are
23 required to obey, observe, and comply with every order made
24 by the Commission so long as such order remains in effect.

25 On March 6, 2019, the Commission issued Order 2 in

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1 Docket 180886, which required Sunrise Acres to either file a
2 water company tariff or a sale agreement documenting that
3 Tom Harrison no longer owns the company. Staff intends to
4 show through its witness, Susie Paul, that Sunrise Acres has
5 failed to comply with this condition of Order 2, and
6 requests the Commission impose appropriate penalties.

7 And I'd like to call Susie Paul.

8 JUDGE DOROSHKIN: Do you swear or affirm the
9 testimony you give today is the truth and the whole truth?

10 THE WITNESS: Yes.

11 JUDGE DOROSHKIN: Thank you.

12 MR. FUKANO: And permission to approach
13 Mr. Harrison just to distribute --

14 (Mr. Harrison's cell phone
15 makes sounds.)

16 JUDGE DOROSHKIN: Yes.

17 Mr. Harrison, could you also please silence your cell
18 phone? I don't know if you just turned off a call, but if
19 you could turn off the sound entirely.

20 MR. HARRISON: Okay.

21 JUDGE DOROSHKIN: Thank you.

22 MR. HARRISON: I keep getting calls from the
23 water company, so...

24 (Continued on next page.)

25

1 EXAMINATION

2 BY MR. FUKANO:

3 Q Would you please state your name and spell your last name for
4 the record?

5 A My name is Susie Paul, and my last name is P-A-U-L.

6 Q Please state the name of your employer.

7 A I'm employed by the Washington Utilities and Transportation
8 Commission.

9 Q And what is your position with the Commission?

10 A I'm a compliance investigator.

11 Q And how long have you been in that position?

12 A I've been with the Commission since April of 2013.

13 Q And what qualifications do you have for that position?

14 A I am -- I have a bachelor's degree in criminal justice, and
15 I've been an investigator with the regulatory industry for
16 14, 15 years, approximately. I'm a certified Washington
17 State investigator, and I've taken the required training,
18 core and advance training for investigators.

19 Q I would now like to discuss the matter at issue in today's
20 hearing.

21 Are you familiar with Sunrise Acres?

22 A Yes, I am.

23 Q And how are you familiar with Sunrise Acres?

24 A I was the investigator assigned to Sunrise Acres.

25 Q Have you previously participated in a hearing involving

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1 Sunrise Acres?

2 A Yes.

3 Q And what hearing was that?

4 A That was a classification hearing to determine whether or not
5 Sunrise Acres was a water company that falls under Commission
6 jurisdiction.

7 Q And I am showing you what has been previously labeled as
8 proposed Exhibit SP-3.

9 MR. FUKANO: And there are two copies at the
10 bench for the judge and records.

11 A Okay.

12 Q (By Mr. Fukano) What is this exhibit?

13 A This is Order 02, which is an initial order classifying
14 Sunrise Acres as a water company and requiring the company to
15 file an initial tariff or a sale agreement.

16 Q And are you familiar with this exhibit?

17 A Yes, I am.

18 Q Would you please turn to page 6 of SP-3.

19 A Okay, I'm there.

20 Q What does paragraph 23 say?

21 A It says, by April 8th, 2019, Sunrise Acres Water Services,
22 LLC must file with the Commission either a tariff pursuant to
23 the requirements set out in WAC 480-110-433 or,
24 alternatively, a sale agreement documenting that Tom Harrison
25 no longer owns Sunrise Acres Water Services, LLC.

1 MR. FUKANO: And I would ask the judge to take
2 official notice of this exhibit pursuant to WAC 480-07-495.

3 JUDGE DOROSHKIN: I will take official notice. I
4 will not be admitting the document as an exhibit.

5 Q (By Mr. Fukano) Ms. Paul, I am showing you what has been
6 labeled as proposed Exhibit SP-2. What is this exhibit?

7 A This is a declaration -- my declaration concerning Sunrise
8 Acres Water Services.

9 Q And are you familiar with this exhibit?

10 A Yes. I wrote this declaration.

11 Q And why -- for what purpose did you create this declaration?

12 A I'm going to glance over it really quick. (Perusing.)

13 This declaration was written because Sunrise Acres had
14 failed to meet the order that was set out for Mr. Harrison to
15 either file a tariff or produce a sale agreement.

16 Q And what does paragraph 5 of SP-2 state?

17 A It states that on April 23rd, 2019, I contacted Mr. Harrison
18 by telephone and inquired about the status of a tariff or
19 sale agreement filed at the Commission. Mr. Harrison stated
20 that they were out of town and as a result he could not file
21 the sale agreement. I explained to Mr. Harrison that he is
22 the current owner of Sunrise Acres and that he would need to
23 file a tariff in the absence of a sale agreement. I also
24 explained the severity of not complying with a Commission
25 order and that it may result in enforcement action, to

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1 include assessed penalties. Mr. Harrison said that he would
2 get to it next week.

3 MR. FUKANO: I would move to admit SP-2.

4 JUDGE DOROSHKIN: So there is already an exhibit
5 designated as SP-2 filed in this docket.

6 MR. FUKANO: I see. May it be redesignated as
7 SP-2B?

8 JUDGE DOROSHKIN: Why don't you -- can we
9 redesignate this as SP-4? Let's do that instead.

10 MR. FUKANO: Very good.

11 JUDGE DOROSHKIN: And then, Mr. Harrison, do you
12 have any objection to the admission of this exhibit?

13 MR. HARRISON: No.

14 JUDGE DOROSHKIN: Okay. So then it is admitted
15 as SP-4.

16 (Exhibit SP-4 admitted.)

17 Q (By Mr. Fukano) Ms. Paul, as of this hearing, do you know
18 whether Sunrise Acres has filed either a water company tariff
19 or a sale agreement documenting that Tom Harrison no longer
20 owned Sunrise Acres?

21 A As of this morning when I checked with records, a sale
22 agreement nor a tariff has been filed.

23 Q Thank you.

24 MR. FUKANO: No further questions.

25 JUDGE DOROSHKIN: Mr. Harrison, do you have any

1 questions for Ms. Paul?

2 MR. HARRISON: No.

3 JUDGE DOROSHKIN: Okay. Mr. Harrison, you'll now
4 have the opportunity to speak. Is anyone else going to be
5 speaking on behalf of Sunrise Acres?

6 MR. HARRISON: Just myself.

7 JUDGE DOROSHKIN: Okay. So let's swear you in.
8 Please stand and raise your right hand.

9 Do you swear or affirm that the testimony you give
10 today is the truth and the whole truth?

11 MR. HARRISON: Yes, I do.

12 JUDGE DOROSHKIN: Thank you.

13 You may go ahead and speak as to Sunrise Acres
14 compliance with Order 02 and whether any penalties should be
15 assessed.

16 MR. HARRISON: Okay. I'm still in the process.
17 One of the purchasers is in Ireland and the other one is in
18 Oregon. They haven't got their act together. I gave them
19 all the pertinent profit and loss statements, and that was
20 two or three weeks ago.

21 I'm still in limbo, so I've just got to face the Court,
22 as -- as you may, you know. Whether I start the process and
23 they complete the sale, I don't -- I don't know which will
24 come first.

25 JUDGE DOROSHKIN: Mr. Fukano, do you have any

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1 questions for Mr. Harrison?

2 MR. FUKANO: Not at this time.

3 JUDGE DOROSHKIN: Okay. And then, Mr. Harrison,
4 have you looked into the possibility of filing a tariff?

5 MR. HARRISON: I have. I can start that process,
6 but I was hoping to complete the sale. It's hard to sell a
7 little 39-unit water company. Not too many purchasers are
8 looking for it, so... The other possibility is just to give
9 it to the Sunrise Acres people.

10 JUDGE DOROSHKIN: And how long do you anticipate
11 filing a tariff would take?

12 MR. HARRISON: Well, I can start the process. It
13 just seemed futile at first, you know, but I didn't think
14 they were going to take this long.

15 JUDGE DOROSHKIN: So when would you anticipate
16 closing on a sale?

17 MR. HARRISON: Well, I talked to them on the way
18 over, and that's when I found out that the financial guy is
19 in Ireland, you know, on a vacation. They didn't tell me
20 that was going on. You know, so I thought we could get it
21 done before, you know, I got here, but that's not the case.

22 JUDGE DOROSHKIN: Okay. And so this phone call
23 you had, is this a final step in the sale process? Where in
24 the sale process are you now?

25 MR. HARRISON: Yes, they were -- they were

1 supposed to go over the financials and write an agreement
2 with me.

3 JUDGE DOROSHKIN: Okay. And so, do you have
4 any --

5 MR. HARRISON: I have no papers at all since the
6 last time he was here with me.

7 JUDGE DOROSHKIN: So you have no documentation of
8 the sale as --

9 MR. HARRISON: I do not.

10 JUDGE DOROSHKIN: Any documentation of the
11 negotiations?

12 MR. HARRISON: No, besides the fact I've given
13 them all of my information, you know, financial-wise, you
14 know, to Mr. Christensen.

15 JUDGE DOROSHKIN: And how long would it take to
16 file a tariff?

17 MR. HARRISON: I -- I would have to refer to the
18 Commission.

19 Do you know how long it takes to start the process and
20 file it? You know, a couple weeks?

21 MS. PAUL: Well, that's really a question for
22 Regulatory Services, but it would have to be approved. It
23 could be a month. I really don't know how long the process
24 would take.

25 We went through this with Mr. Harrison last time we

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1 were in the hearing room to start the process, and that has
2 not started yet.

3 JUDGE DOROSHKIN: All right. That's all the
4 questions I had for you, Mr. Harrison.

5 I did have one --

6 MR. FUKANO: Would it be possible to take a brief
7 recess to discuss the matter with Staff?

8 JUDGE DOROSHKIN: Okay.

9 MR. FUKANO: Thank you. It will probably be no
10 more than five minutes.

11 JUDGE DOROSHKIN: Okay.

12 (Recess taken from 10:26 a.m. to
13 10:34 a.m.)

14 JUDGE DOROSHKIN: And we will be back on the
15 record.

16 First, I would like to ask Staff to submit a new
17 exhibit list with the updated designation. So this is
18 exhibit -- proposed SP-2, and we are redesignating it as
19 SP-3, not SP-4. I just want to correct that.

20 (Exhibit SP-4 redesignated as
21 Exhibit SP-3.)

22 JUDGE DOROSHKIN: And I understand that during
23 the recess there was a discussion between Staff and
24 Mr. Harrison regarding the timing of a tariff filing?

25 MR. FUKANO: Not between Mr. Harrison but between

1 myself and Staff.

2 JUDGE DOROSHKIN: Okay.

3 MR. FUKANO: And Staff has informed me that an
4 order to file a tariff would only take a matter of days, but
5 while the process itself might take up as long as 30 days,
6 as identified by Ms. Paul. So the filing could be done
7 relatively rapidly, although the approval may take a bit
8 more time.

9 JUDGE DOROSHKIN: Okay.

10 MR. FUKANO: Staff has prepared a template water
11 company tariff that it has provided to Mr. Harrison, and it
12 would be willing to provide it again to assist in that
13 effort.

14 JUDGE DOROSHKIN: Okay.

15 And Ms. Paul, you can testify to that?

16 MS. PAUL: Yes, Mr. Harrison was provided a
17 template, and we can do that again.

18 JUDGE DOROSHKIN: Okay. All right. And then one
19 more question for you. Do you have a recommended penalty
20 amount?

21 MS. PAUL: Yes.

22 MR. FUKANO: Staff's recommended penalty would
23 be, given that the violation has run for 65 days and each
24 day may constitute a separate violation, Staff would propose
25 an imposed penalty of \$5,000, with an additional 25,000

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1 suspended.

2 JUDGE DOROSHKIN: And that's from the date of
3 April 8th through...?

4 MR. FUKANO: This day.

5 JUDGE DOROSHKIN: Through this day? Okay.

6 Mr. Fukano, would you like to summarize Staff's
7 recommendations?

8 MR. FUKANO: Yes.

9 Under RCW 80.04.380, every public service company and
10 all officers, agents, and employees of any public service
11 company shall obey, observe, and comply with every order,
12 rule, direction or requirement made by the Commission under
13 authority of this Title, Title 80, so long as the same shall
14 be and remain in force.

15 That same statute states that a public service company
16 that fails to obey a Commission order is subject to a
17 penalty of up to \$1,000 for each offense, and that each day,
18 in the instance of a continuing violation, shall constitute
19 a separate offense.

20 In Order 2, the Commission ordered Sunrise Acres to
21 either file a water company tariff or a sale agreement
22 documenting that Tom Harrison no longer owns Sunrise Acres
23 by April 8th, 2019. As of today, June 12th, Sunrise Acres
24 has failed to comply with Order 2 for 65 days. Therefore,
25 Staff requests that Commission impose Staff's requested

1 penalty for failure to comply with Order 2, and that
2 Sunrise Acres be ordered to file a water company tariff as
3 soon as by the end of this week.

4 Staff would also submit that a sale at this time of a
5 water company having been classified in Order 2,
6 Sunrise Acres, that is, would be subject to RCW 80.12.020,
7 which may subject the sale of a water company, depending on
8 who it is being sold to or what entity it is being sold to,
9 to Commission approval. And so Staff would also suggest
10 that a potential sale at this time would be subject to
11 further Commission approval depending on who the sale is to.

12 JUDGE DOROSHKIN: Okay. And Mr. Harrison, do you
13 have any final remarks that you'd like to make, particularly
14 in regard to the proposed penalty and the Staff's testimony
15 regarding the filing of the tariff, the timing of the
16 filing?

17 MR. HARRISON: I guess not, because the severity
18 is way more than what the little company is worth. You
19 know, it only has \$4,000 in a checking account.

20 JUDGE DOROSHKIN: Thank you, Mr. Harrison.

21 So I will take this matter under advisement and issue
22 an order.

23 Is there anything else ?

24 MR. FUKANO: Just to clarify, how would you -- or
25 when would you like the revised exhibit list filed by?

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1 JUDGE DOROSHKIN: Within 48 hours, if you could,
2 please.

3 MR. FUKANO: Understood. Thank you.

4 JUDGE DOROSHKIN: Thank you.

5 We are adjourned.

6 (Adjourned at 10:40 a.m.)

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I, PAMELA J. NELSON, the undersigned Washington Court Reporter pursuant to RCW 5.28.010 authorized to administer oaths and affirmations in and for the State of Washington, do hereby certify that the foregoing proceedings were reported by me and thereafter transcribed by me by means of computer-aided transcription;

I further certify that the said transcript of proceedings, pages 1 to 19, as above transcribed, is a full, true and correct transcript of the aforementioned matter and prepared pursuant to Washington Administrative Code 308-14-135, the transcript preparation format guideline;

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DATED and SIGNED this 19th day of June 2019.

PAMELA J. NELSON
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