0035

1 BEFORE THE WASHINGTON

2 UTILITIES AND TRANSPORTATION COMMISSION

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4 In the Matter of Determining the ) DOCKET UW-180886

Proper Carrier Classification of: )

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6 SUNRISE ACRES WATER SERVICES, LLC )

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9 BRIEF ADJUDICATIVE PROCEEDING, VOLUME II

10 Pages 35 - 53

11 NELLI DOROSHKIN, ADMINISTRATIVE LAW JUDGE

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14 June 12, 2019

15 10:12 a.m.

16

Held at:

17 Washington Utilities and Transportation Commission

1300 South Evergreen Park Drive SW, Room 206

18 Olympia, Washington

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

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1 A P P E A R A N C E S

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3 ADMINISTRATIVE LAW JUDGE: MS. NELLI DOROSHKIN

UTILITIES AND TRANSPORTATION

4 COMMISSION

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12 FOR SUNRISE ACRES: MR. TOM HARRISON

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PASCO, WA 99302

14

15 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--

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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

0039

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

0040

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

0041

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

0042

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.

0043

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

0044

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

0045

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

0046

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

0047

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

0048

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

0049

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

0051

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?

0052

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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4 I, PAMELA J. NELSON, the undersigned Washington Court

5 Reporter pursuant to RCW 5.28.010 authorized to administer oaths

6 and affirmations in and for the State of Washington, do hereby

7 certify that the foregoing proceedings were reported by me and

8 thereafter transcribed by me by means of computer-aided

9 transcription;

10 I further certify that the said transcript of proceedings,

11 pages 1 to 19, as above transcribed, is a full, true and correct

12 transcript of the aforementioned matter and prepared pursuant to

13 Washington Administrative Code 308-14-135, the transcript

14 preparation format guideline;

15 I further advise you that as a matter of firm

16 policy, the stenographic notes of this transcript will be

17 destroyed three years from the date appearing on this Certificate

18 unless notice is received otherwise from any party or counsel

19 hereto on or before said date;

20 DATED and SIGNED this 19th day of June 2019.

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\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

23 PAMELA J. NELSON

Certified Court Reporter

24 License No. 2948 in and for the

State of Washington, residing

25 at Lacey, WA