

**PUBLIC UTILITY COMMISSION OF OREGON
STAFF REPORT
PUBLIC MEETING DATE: April 30, 2024**

REGULAR X **CONSENT** **EFFECTIVE DATE** May 1, 2024

DATE: April 1, 2024

TO: Public Utility Commission

FROM: Russ Beitzel

THROUGH: Bryan Conway **SIGNED**

SUBJECT: SUN COUNTRY WATER SYSTEM:
(Docket No. UP 427)
Requests Approval of the Sale of Assets and Transfer of Exclusive Service Territory to Avion Water Company, Inc.

STAFF RECOMMENDATION:

Staff recommends the Commission approve the sale of Sun Country Water System's (SC) assets and transfer of exclusive service territory to Avion Water Company, Inc (Avion), subject to conditions.

Staff recommends the following conditions:

- 1) Avion 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 SC or any other affiliate.
- 2) Avion 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) Avion 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) Avion, and its affiliates, will ensure its and SC's books and records are available in accordance with the applicable uniform system of accounts or, as appropriate, generally accepted accounting principles after the sale.
- 6) The exclusive service territory for Sun Country Water will be added to Avion's exclusive service territory. Avion will file revised service territory maps no later than the end of 2024, for all systems acquired since the maps were last updated.
- 7) Avion will bill the previous customers of SC at the current tariff rates of Avion depending on the meter size starting at the next billing cycle after the signed contract between Avion and SC.

DISCUSSION:

Issues

- 1) Whether the Commission should approve Avion's acquisition of the assets; and
- 2) Whether the Commission should approve Avion's request to transfer the exclusive service territory of SC.

Applicable Rule or Law

ORS 757.480(5), ORS 757.485(1), OAR 860-036-2120(1), and OAR 860-036-2120(3) require public 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.

ORS 758.310(1) provides that the rights acquired by the designation of an exclusive service territory to a water utility may be assigned or transferred only with the approval of the Public Utility Commission after a finding that the assignment or transfer is in the public interest.

OAR 860-036-1840 sets the standards for transfer of service territory, specifically, it must have the 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

Background

The Parties

Avion Water

Avion Water is a public water utility that provides water to approximately 14,290 residential customers, 580 commercial customers and 950 irrigation customers. The water utility service territory includes areas from near the Deschutes-Jefferson County line in the north, south of the La Pine area, east into Crook County in the Powell Butte/Alfalfa area and west to the Sisters area.¹

Sun Country

SC is a public water utility with approximately 109 residential customers, just West of Bend, Oregon.²

Application

Related to the sale of SC, 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.

1. Asset Purchase Agreement

On February 2, 2024, Avion and SC signed the APA, which sets forth the agreement for Avion to purchase, from SC, all assets associated with and owned by SC. The parties state the sale will complete after approval by the Commission.

This transaction is a privately negotiated, non-auction sale between Avion and SC. Per the Application, all utility property currently owned by SC 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 Oregon.³ NW Natural, via Avion, has the financial and operational ability to acquire SC. NW Natural maintains an A+ Corporate credit rating with Standard & Poor's rating agency with a stable outlook.⁴ As a result,

¹ Avion and Sun Country Joint Application, page 2.

² Id.

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>.

Avion has access to capital to finance the current operations and future capital expenditure requirements. Additionally, NW Natural's Annual Report to the Commission for year ending 2022⁵ shows sufficient capital and capacity to acquire SC without undue financial concern on its other system affiliates.

3. Goodwill

There are very unique circumstances for this acquisition. The previous owner had effectively abandoned the utility. The utility is in desperate need of both minor and major repairs or upgrades. As Staff understands, due to the age of the system, most of the assets in use are effectively fully depreciated, leaving little value in the purchase. The utility was in significant debt and over a decade in arrears on taxes. The billing practices of the previous owner were erratic and often incorrect, leaving the utility with no cash available.

Because of SC's debt and in the interest of establishing safe and reliable drinking water for the customers, Avion did purchase the utility at above the asset value which created goodwill.

Without setting any precedent, Staff is willing to allow goodwill into rates during Avion's next filed general rate case, based on the table below.⁶ Goodwill will be amortized over a 10-year period.

Land	\$ 50,000		
Mains (new)	\$ 7,123		
Mains(old)	\$ 14,400		
meters	\$ 397		
Water right	\$ 5,000		
Goodwill	\$ 23,080		
	<u>\$100,000</u>		

4. No harm and public interest standards

SC and Avion must show the sale of SC assets will result in no harm to SC customers and that the transfer of SC's exclusive territory to Avion is in the public interest. As already noted, the utility was essentially abandoned and was not being managed nor maintained. With Avion purchasing SC and acquiring the service territory of SC under ORS 758.310, the customers will be served by a well-established, highly capable utility with a long history of water utility management. Avion has extensive experience in running water systems in the Bend area.

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

⁶ Avion's response to Staff IR 1 – OPUC 1 Purchase Price Allocation 2024-03-25.

Additionally, and as part of the Goodwill consideration, the Company expects the purchase of the Water Right to benefit all Avion's customers as explained in response to Staff's IR:

One of the assets purchased from Sun Country Water is a water right with a priority date of 1974 that does not require mitigation. Mitigation for water rights are scarce within the Deschutes Basin and older water rights are less likely to be curtailed in a drought situation. Avion intends to certificate the right and then convert it to a quasi-municipal water right. Once converted, Avion can then add places of use and appropriation as needed for the benefit of all Avion customers.⁷

The parties expect the proposed transaction to be seamless from the customers' perspectives and assert that customers will experience an improvement in service due to the acquisition. Staff believes the circumstances are sufficient to satisfy both the no harm and public interest standards of the sale of assets and transfer of exclusive territory.⁸

5. Waiver of Notice

OAR 860-036-2120(4) requires 60 days' notice to customers prior to the closing of the transaction. As described in the application, SC is a distressed system in need of significant investments, specifically to upgrade the primary well, that the Commission and other state agencies have been urgently trying to appoint a regent or force the sale of the system. Due to the severely poor conditions of the system and the very publicly known SC customer requests for remediation or sale of the system, Staff finds Avion's request for a waiver of customer notice acceptable in these circumstances. Customers were informed of the sale on February 29, 2024. As of the date of this memo, no SC customers have filed comments in opposition of the sale.

Recommendation and Conclusion

Staff believes this transaction, with the recommended conditions, meets the public interest and no harm standards of ORS 758.310 and ORS 757.480 and recommends the Commission approve the application.

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

⁷ Avion's response to Staff IR 2 – OPUC 2.

⁸ Avion and Sun Country Joint Application, pages 3-4.

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PROPOSED COMMISSION MOTION:

Approve the sale of Sun Country Water System's assets and transfer of exclusive service territory to Avion Water Company, Inc, subject to the Staff listed conditions.

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