

**BEFORE THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS**

In the Matter of the Recommendation to Initiate)
a Show Cause Proceeding as to why)
Sundowner, Inc. should not be Required to) Docket No. 24-SUNW-590-SHO
Obtain a Certificate of Public Convenience)
and Necessity to Operate as a Potable Water)
Utility, and an Emergency Order Enforcing)
Cold Weather Rules for Meter Disconnections)
within Sundowner, Inc.'s Water Distribution)
System.)

**NOTICE OF FILING OF STAFF'S
REPORT AND RECOMMENDATION**

COMES NOW, the Staff of the State Corporation Commission of the State of Kansas ("Staff" and "Commission," respectively), and files its Report and Recommendation regarding is recommendation to initiate a Show Cause proceeding against Sundowner, Inc.

The Public Affairs and Consumer Protection Division of the Commission has received complaints relating to a water system owned by a business entity named Sundowner, Inc. (Sundowner). The Sundowner water system serves the Sundowner West Meadows and Sundowner West Mobile Home Park subdivisions in Saline County, Kansas. Sundowner does not have a Certificate of Convenience and Necessity to operate as a public utility. Additionally, the Commission has not determined public utility status for Sundowner. However, Staff asserts that there is evidence to suggest Sundowner is a public utility, as is demonstrated in the Analysis section herein.

Staff recommends the Commission order Sundowner to Show Cause as to why Sundowner should not be required to file an application for a Certificate of Convenience and Necessity. Additionally, Staff recommends that the Commission notify Sundowner that the rates being charged for water service are to be considered interim and subject to refund until the Commission

reaches a decision on the public utility status of the system and a permanent rate can be established for water service.

WHEREFORE, Staff submits its Report and Recommendation for Commission review and consideration and for such other relief as the Commission deems just and reasonable.

Respectfully submitted,

/s/ Carly R. Masenthin

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**REPORT AND RECOMMENDATIONS
UTILITIES DIVISION**

TO: Chair Andrew J. French
Commissioner Dwight D. Keen
Commissioner Annie Kuether

FROM: Paul Owings, Deputy Chief Engineer
Leo M. Haynos, Chief Engineer
Jeff McClanahan, Director Utilities Division

DATE: February 23, 2024

SUBJECT: Docket No. 24-SUNW-590-SHO
Recommendation to Initiate a Show Cause Proceeding as to why Sundowner, Inc. should not be Required to Obtain a Certificate of Public Convenience and Necessity to Operate as a Potable Water Utility, and an Emergency Order Enforcing Cold Weather Rules for Meter Disconnections within Sundowner, Inc.'s Water Distribution System.

EXECUTIVE SUMMARY:

The Public Affairs and Consumer Protection Division of the Commission has received complaints relating to a water system owned by a business entity named Sundowner, Inc. (Sundowner). The Sundowner water system serves the Sundowner West Meadows and Sundowner West Mobile Home Park subdivisions (Service Area) in Saline County, Kansas. Recommendations presented herein are in response to complaints received by consumers within the Service Area relating to the Sundowner water system.

Sundowner does not have a Certificate of Convenience and Necessity (COC). Additionally, the Commission has not determined public utility status for Sundowner. However, evidence suggests Sundowner is a public utility, as is demonstrated in the Analysis section of this Report and Recommendations (R&R).

Therefore, Staff recommends the Commission order Sundowner to Show Cause as to why Sundowner should not be required to file an application for a COC. Additionally, Staff recommends that the Commission notify Sundowner that the rates being charged for water service are to be considered interim and subject to refund until the Commission reaches a decision on the public utility status of the system and a permanent rate can be established for water service. If the

Commission finds the Sundowner's water system is a public utility, Staff further recommends that the Commission order Sundowner to file the necessary information to begin investigating the reasonableness of the company's current water rates.

If Sundowner is a public utility, Staff asserts that Sundowner is in violation of Commission Billing Standards including the Cold Weather Rule (CWR).¹ Staff considers CWR violations a potential health and safety concern. Staff recommends the Commission order Sundowner to comply with provisions of the CWR and complete the following concurrently with the Show Cause Proceeding:

- Provide a list of all disconnected meters to Staff since November 1, 2023 within two days of notification.
- Provide documentation to Staff establishing whether disconnections were made in accordance with Billing Standards or are unjustified within two days of notification.
- Sundowner shall restore service for all disconnected meters within 24-hours of notification until documentation has been provided justifying disconnection of the meter.
- Justify future disconnections by providing Staff sufficient documentation prior to disconnecting the water meter.

Furthermore, Staff believes Sundowner shall not be entitled to reconnection fees for unjustified water meter disconnections.

BACKGROUND

The business entity Sundowner, Inc. (Sundowner) was incorporated in July of 1970.² Frank C. Norton was listed as the registered agent within the Articles of Incorporation and on all annual filings through the 2016 Annual Filing. The authorized agent changed to Monte Shadwick on the 2017 Annual Filing.³ The authorized agent of Sundowner changed to Scott Kolling on the 2021 Annual Filing.⁴ Scott Kolling was also listed on the 2022 filing as well, however, a 2023 filing is not available through the Secretary of the State's website. Staff believes, but does not have evidence, that Mr. Kolling remains the exclusive owner of the Sundowner, Inc.

The Kansas Department of Health and Environment (KDHE) provided documentation suggesting the Sundowner water system was put into service in 1974.⁵ The Sundowner water system serves the Sundowner West Meadows and Sundowner West Mobile Home Park area (Service Area). The Service Area is located west of Salina in Saline County, Kansas approximately 0.5 miles north of the intersection of I-70 and North Hedville Road. Attachment 1 shows the Service Area extents. The Service Area is not within or a served by an incorporated municipality.⁶ KDHE provided

¹ Kansas Corporation Commission Electric, Natural Gas and Water Billing Standards (Effective: January 20, 2012)

² Articles of Incorporation of Sundowner, Inc.

³ 2017 Annual Filing

⁴ 2021 Annual Filing

⁵ Sundowner History and Timeline, Received from Jennifer Nichols, KDHE, by email on February 8, 2024

⁶ Sundowner West Meadows Map

documentation suggesting the water system permit was changed on May 25, 2018 to reflect Mr. Shadwick's ownership.⁷ KDHE documentation also suggested that Mr. Kolling purchased the water components on August 26, 2021 and became the water system permittee.

The potable water system primarily consists of four wells (only two are operational), chemical feed systems, a water distribution system, and water meters. The wells are located within Sundowner West Meadows subdivision property. Water is pumped through a controls/chemical feed building. Sodium hypochlorite is added as a primary and secondary disinfectant. The water contains high levels of iron and manganese. A phosphate solution is added to sequester iron and manganese. The extent, size, and location of water distribution piping is unknown to staff at the time of writing this R&R. Staff believes a majority of water distribution piping is original to the water system. The water system has approximately 69 water meters/customers which was deduced based on Attachment 1 and conversations with the operator (the map shows all 911 addresses some of which are currently not served by Sundowner's water system).

The water distribution system does not have water storage tank(s). Well pumps are operated on a pressure feedback loop to maintain system pressure. If well pumps fail to operate, system pressure drops rapidly due to the lack of storage. System pressures below 20 pounds per square inch (PSI) are a violation of Kansas Department of Health and Environment (KDHE) standards and constitute a health and sanitation risk. KDHE has recently issued boil orders due to inadequate pressure. The operator indicated both well pumps are necessary to meet system demands. The system has a propane standby generator which can be utilized during power outages.

During the polar vortex from January 12, 2024 to January 16, 2024 one of the well pumps failed to operate. The apparent cause of the failure was electrical component failure in the well house. Sundowner maintenance staff claim the problem occurred on Friday, January 12, 2024. Sundowner maintenance staff claim they tried to repair the pump control system through the weekend but were unable to acquire necessary parts. Sundowner maintenance staff claim the control system was repaired January 15, 2024. KDHE provided a similar timeline, but suggested adequate pressure was not restored until January 17, 2024. Some customers claim water service was inadequate for weeks.⁸

The Public Affairs and Consumer Protection Division of the Commission has received twelve complaints relating to the Sundowner water system following the loss of service during the polar vortex, which is over 17% of customers. The following list summarizes complaints:

1. Loss of water during the polar vortex.
2. Poor water quality at times brown in color with a sulfur smell.
3. Poor water quality at times over chlorinated.
4. Poor water aesthetic with taste and odor problems.

⁷ Sundowner History and Timeline, Received from Jennifer Nichols, KDHE, by email on February 8, 2024

⁸ Verbal complaint from Misty Holmes during site visit

5. Poor communication from the owner.
6. Inability to drink or cook with the water due to quality.
7. Rude behavior from the owner.
8. Inconsistent billing practices in terms of duration between bills.
9. Poor billing practices in terms of tracking accounts receivable (individuals claim to be billed for water after paying for the water on previous bills).
10. Belief that bills are inaccurate.
11. Belief that late charges are being inappropriately applied.
12. Poor water quality with sediment which ruins appliances.
13. Sundowner inappropriately disconnects meters from service.

The owner of Sundowner has admitted to locking out meters during cold weather months for the 2023-2024 winter. Sundowner's owner provided several water bills with hand written notification of impending water meter lockout. Meter bills ranged from approximately \$485 to \$1,107. The owner of Sundowner provided inadequate information to verify if meter disconnections occurred in accordance with Billing Standards.

ANALYSIS

K.S.A 66-104 defines a public utility to include any company that furnishes water service. Furthermore, K.S.A. 66-131 requires all public utilities to obtain a Certificate of Public Convenience and Necessity (COC) prior to transacting the business as a public utility. In addition to obtaining a COC to operate as a public utility, K.S.A. 66-117 requires public utilities to seek approval for any rates or charges to its customers. Statutes provide exceptions for municipalities and certain nonprofit entities.

Staff asserts that Sundowner meets the definition of a public utility and is therefore under the jurisdiction of the Commission for the following reasons:

- Sundowner is providing water service to multiple customers who own their own property and houses.
- Sundowner is privately held and not part of a government or rural water structure.
- Sundowner serves an unincorporated area.
- Sundowner is not under the control of a Home Owners Association (HOA) or other group under the control of customers.

Staff has found no record of Sundowner applying for a COC as a water utility or seeking approval of its rates or charges.

Public utilities including water are subject to Billing Standards. Section IV of the Billing Standards stipulates requirements for discontinuance of utility service including establishment of reasonable installment payments and a 10 days written notice before discontinuing service. Section V, Cold Weather Rule (CWR), of the Billing Standards prohibits disconnection of service unless specific

circumstances occur between November 1 and March 31. Sundowner has apparently disconnected services during the 2023-2024 winter. Sundowner has not provided sufficient evidence of compliance with Section IV and Section V of the billing standards.

RECOMMENDATIONS

Evidence suggests that Sundowner is a public utility without a COC. Therefore, Staff recommends the Commission order Sundowner to Show Cause as to why Sundowner should not be required to file an application for a COC within 30-days. If Sundowner is determined to be a public utility as a result of the Show Cause Proceedings, Staff recommends the Commission notify Sundowner of the following requirements and observations:

- Sundowner shall submit an Application requesting issuance of a COC within 30-days.
- Sundowner's utility rates are considered interim and subject to refund until the Commission has approved the utility rates.
- Sundowner shall notify customers that utility rates are considered interim and subject to refund until the Commission has approved the utility rates.
- Sundowner shall provide necessary documents to review existing rates including but not limited to items in Attachment 2 within 30-days.

Staff considers CWR violations a potential health and safety concern. Staff believes Sundowner is in violation of the CWR. Therefore, Staff recommends the following be complete concurrently with other recommendations:

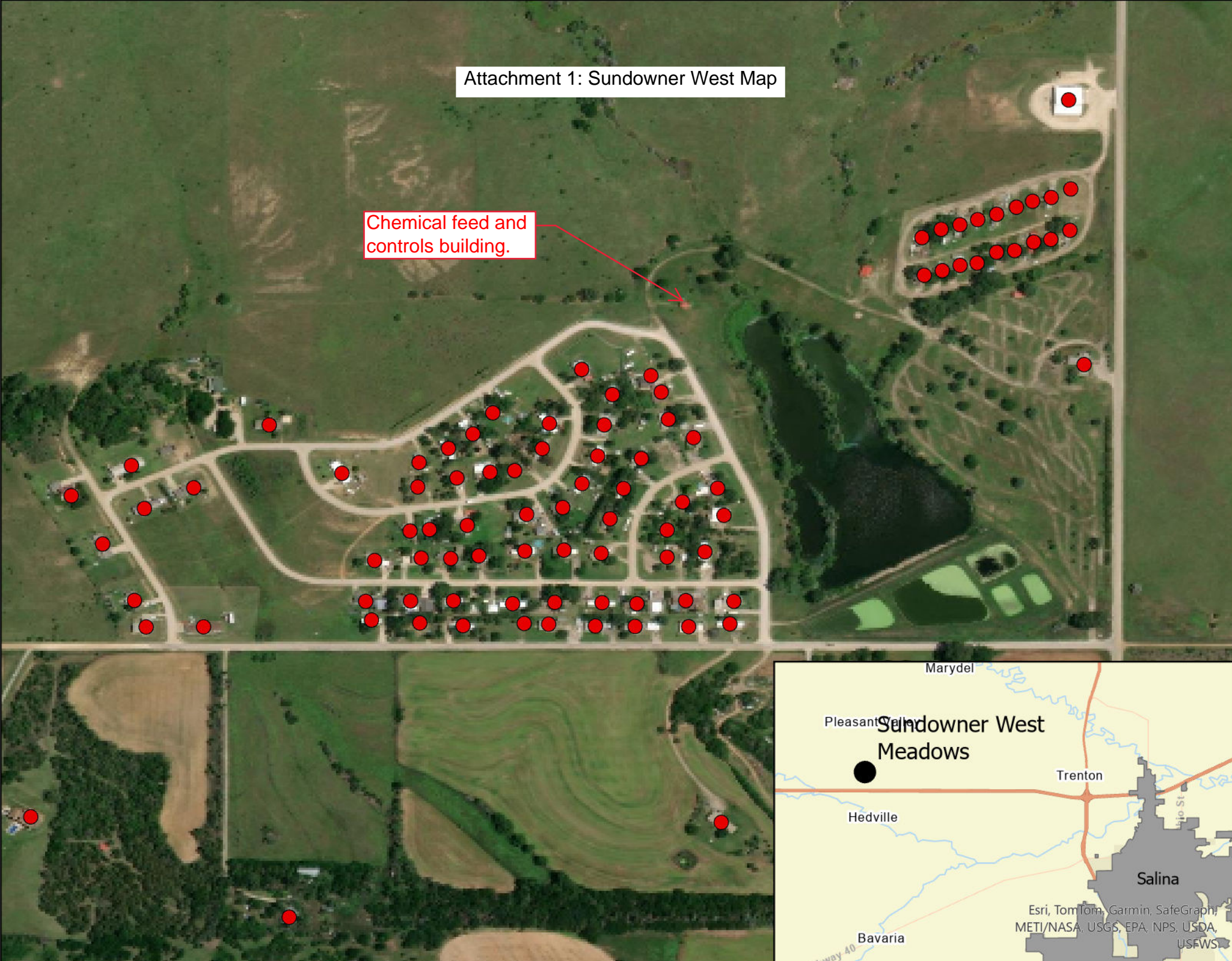
- Sundowner shall provide Staff a list of all disconnected meters since November 1, 2023 within 2-days of notification.
- Sundowner shall provide documentation to Staff establishing whether disconnections were made in accordance with Billing Standards or are unjustified within 2-days of notification.
- Sundowner shall restore service for all disconnected meters within 24-hours of notification until documentation has been provided justifying disconnection of the meter.
- Sundowner shall justify future disconnections by providing Staff sufficient documentation prior to disconnecting the water meter.

Furthermore, Staff believes Sundowner shall not be entitled to reconnection fees for unjustified water meter disconnections.

Although K.S.A. 66-138 prescribes a civil penalty of not less than \$100 per day for which a water public utility fails to comply with a provision of the public utilities statutes, Staff does not recommend the Commission impose a penalty on Sundowner at this time. Staff however recommends that the Commission notify Sundowner that beginning at least from August 26, 2021 a \$100 per day civil penalty may be applied for non-compliance.

Attachment 1: Sundowner West Map

Chemical feed and controls building.



Attachment 2:

List of Items Necessary to Begin an Evaluation of the Reasonableness of the Water Rates of Sundowner's Water System

- Water Sales for the latest 12-month period, and the previous 12-month period. This data should be provided by month, and by customer. Any special customer class or type should be designated for each customer.
- An income statement for the water system for the most recent 12-month period and the most recent calendar year.
- A balance sheet for the water system for the most recent 12-month period and the most recent calendar year.
- Audited financial statements for the Water system (if available) for the most recent three calendar years.
- A statement explaining in detail any significant changes in investment, expense levels, or operations during the last three years.
- If available, a list of property plant and equipment owned by/used by the water system, including the date the equipment was purchased or installed, the original cost of the equipment, and the working condition of the equipment.
- The availability and annual cost of any employees (full or part time) or any contractual services that are in place to provide operation and maintenance activities for the water system.

CERTIFICATE OF SERVICE

24-SUNW-590-SHO

I, the undersigned, certify that a true copy of the attached Notice has been served to the following by means of first class mail and electronic service on February 26, 2024.

Scott Kolling
SUNDOWNER
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Salina, KS 67401

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/S/ Kiley McManaman
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