

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

Before Commissioners: Andrew J. French, Chairperson
 Dwight D. Keen
 Annie Kuether

In the Matter of Initiating a Show Cause)
Proceeding Against Sundowner, Inc. to)
Obtain a Certificate of Public Convenience)
and Necessity to Operate as a Water Utility) Docket No. 24-SUNW-590-SHO
and to Enforce Cold Weather Rules for Meter)
Disconnections within Sundowner, Inc.'s)
Water Distribution System.)

SHOW CAUSE ORDER

This matter comes before the State Corporation Commission of the State of Kansas (Commission). Having examined its pleadings and records, the Commission concludes the following:

1. On February 26, 2024, Commission Staff (Staff) filed a Report and Recommendation, requesting the Commission issue a Show Cause Order to Sundowner, Inc. Sundowner, which operates a water system serving two private home subdivisions in Saline County, Kansas, has been the subject of numerous complaints.¹ In investigating the complaints, Staff discovered that Sundowner does not have a Certificate of Convenience and Necessity (COC) to operate as a public utility.² While the evidence suggests that Sundowner is operating a public utility, Staff has found no record of Sundowner applying for a COC as a water utility or seeking approval of its rates or charges.³ Accordingly, Staff seeks a Commission order directing Sundowner to Show Cause why it should not be required to file an application for a COC.⁴

¹ Staff Report and Recommendation, Feb. 23, 2024, p. 1.

² *Id.*

³ *Id.*, p. 4.

⁴ *Id.*, p. 1.

2. Based on Staff's belief that as a public utility, Sundowner is in violation of Commission Billing Standards including the Cold Weather Rule (CWR), it seeks a Commission order directing Sundowner to comply with provisions of the CWR.⁵ To ensure compliance with the CWR, Staff believes that within 2 days of receiving a request from Staff, Sundowner should be required to provide Staff: (1) a list of all disconnected meters since November 1, 2023; and (2) documentation establishing whether disconnections were made in accordance with Billing Standards.⁶ Within 24 hours of notification, Staff believes Sundowner should be required to restore service for all disconnected meters until it can justify disconnection.⁷ Staff suggests requiring Sundowner to provide sufficient documentation prior to future disconnections and that Sundowner is not entitled to reconnection fees for unjustified disconnections.⁸

3. Staff also recommends the Commission direct Sundowner to file information to allow Staff to investigate the reasonableness of its rates.⁹

4. Based on Staff's Report and Recommendation, there are sufficient grounds to issue a Show Cause Order giving Sundowner 30 days to explain why it should not be required to apply for a COC.

5. Until Sundowner's rates have been approved by the Commission, its rates are considered interim and subject to refund. Accordingly, the Commission directs Sundowner to notify its customers in writing that their current rates are considered interim and subject to refund. The Commission also directs Sundowner to provide necessary documentation to Staff to review existing rates within 30 days of the issuance of this Show Cause Order.

⁵ *Id.*, p. 2.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

6. To allow Staff to investigate whether Sundowner is violating the CWR, within 2 days of a Staff request to Sundowner, Sundowner shall provide Staff: (1) a list of all meters disconnected since November 1, 2023, and (2) documentation supporting that the disconnections complied with Billing Standards.

7. To protect customers while Staff conducts its investigation, Sundowner shall restore service for all disconnected meters within 24-hours of receiving a request from Staff. Before any further disconnects, Sundowner shall provide documentation to Staff justifying the proposed disconnections.

8. Staff's Report and Recommendation does not include any penalty recommendation, other than advising Sundowner that pursuant to K.S.A. 66-138, it may be subject to a civil penalty of at least \$100 per day for failing to comply with the public utility statutes.¹⁰

THEREFORE, THE COMMISSION ORDERS:

A. Sundowner has 30 days from the issuance of this Order to explain why it should not be required to apply for a COC.

B. Sundowner shall immediately restore service for all disconnected meters.

C. Until Sundowner's rates have been approved by the Commission, its rates are considered interim and subject to refund. Sundowner shall notify its customers in writing that their current rates are considered interim and subject to refund.

D. Sundowner shall provide necessary documentation to Staff to review existing rates within 30 days of the issuance of this Order.

¹⁰ *Id.*, p. 5.

E. Within 2 days of a Staff request to Sundowner, Sundowner shall provide Staff: (1) a list of all meters disconnected since November 1, 2023, and (2) documentation supporting that the disconnections complied with Billing Standards.

F. Sundowner shall provide documentation to Staff justifying future disconnections in advance of any future disconnections.

G. Any party may file and serve a petition for reconsideration pursuant to the requirements and time limits established by K.S.A. 77-529(a)(1).¹¹

H. Electronic service shall be used in this proceeding, including this Order.

BY THE COMMISSION IT IS SO ORDERED.

French, Chairperson; Keen, Commissioner; Kuether, Commissioner

Dated: 03/05/2024



Lynn M. Retz
Executive Director

BGF

¹¹ K.S.A. 66-118b; K.S.A. 77-503(c); K.S.A. 77-531(b).

CERTIFICATE OF SERVICE

24-SUNW-590-SHO

I, the undersigned, certify that a true copy of the attached Order has been served to the following by means of electronic service on 03/05/2024.

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