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IDAHO PUBLIC UTILITIES COMMISSION

DONALD SORRELLS, an individual,

Applicant,

vs.

SUNNYSIDE PARK UTILITIES, INC., an
Idaho Corporation,

Respondent.

Case No. GNR-U-22-03

DECLARATION OF COUNSEL IN RESPONSE
TO PETITION FOR REVIEW OF
INTERLOCUTORY ORDER AND PETITION
FOR STAY AND PETITION TO DESIGNATE
ORDER AS FINAL

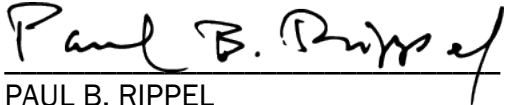
PAUL B. RIPPEL declares as follows:

1. I am legal counsel for the Applicant in the above-captioned action. The information contained in the Declaration is formed from my personal knowledge.
2. I am over the age of eighteen (18) years of age and competent to testify to all matters stated in this Declaration. I am not under any testimonial disability.
3. Attached hereto as Exhibit A is a letter from Sunnyside Park Utilities, Inc.'s counsel, sent to and received by Sorrell's previous counsel, dated October 29,

2021, wherein on page 2 of the letter, SPU's counsel expressly states they are a water corporation that is governed by the Idaho Public Utilities Commission.

Pursuant to Idaho Code § 9-1406, CERTIFICATION OR DECLARATION UNDER PENALTY OF PERJURY. I certify (or declare) under penalty of perjury pursuant to the law of the State of Idaho that the foregoing is true and correct.

DATED this 8th day of February 2023.


PAUL B. RIPPEL

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ATTORNEYS AT LAW

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Amanda G Hebesha
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October 29, 2021

RE: Our Client: Sunnyside Park Utilities, Inc.
Your client: Don Sorrells
Notice of Intention to Terminate

Dear Ms. Hebesha,

I am in receipt of your letter dated October 27, 2021. Your office has provided us with evidence that the toilet has been repaired, and current discharge from the Sorrell building indicates that at least for now the repair has been successful. Historic water usage on the Sorrells property has been 103 gallons per day for August and September. I instructed my client to return to the location to turn the water on as you requested, and he found that his lock had been cut off by Mr. Sorrells or his agent, the water had been turned back on at the meter and at the curbstop, and that a new lock had been installed on the meter preventing access by my client. (See attached photograph) My client's action was in direct obedience to your request: "Please direct your client to immediately resume service to the subject property," and did not constitute a trespass by reason of your express direction. However, your earlier paragraph indicates a continue assertion that the water meter is located on your client's property.

This letter is to provide Notice of Intention to Terminate the water service to the Sorrells' property unless my client is given access to the utilities water meter within the next 7 days. Meter readings October 1 through 25 show total flow of 10,600 gallons, or 442 gpd. This exceeds Aug/Sept usage of 103 gpd by 339 gpd or 7513 gallon excess. Sunnyside's representative witnessed water running at night at the rate of 2880 gallons per day on October 24. On multiple occasions Mr. Sorrells has shown he is unable to monitor his excess sewage discharge. These flows are unacceptable and detrimental to Sunnyside's system. As this is a continual and habitual problem, we have determined that Mr. Sorrells is willfully wasting and interfering with our service to his property and other customers through improper equipment and/or maintenance. Additionally, Mr. Sorrells has denied and willfully prevented our access to our meter.

The Third Party Beneficiary Utility Agreement, recorded August 7, 2007 as Instrument Number 1272911, Section 4(a) states as follows:

The company reserves and has the right to establish and collect as a charge or charges for water furnished and consumed by the owners or occupants of each of the buildings, and other

EXHIBIT A

improvements at the rates as prescribed and permitted herein. The company shall have the right to install on the premises of each of the individual buildings, and other improvements a water meter to be maintained by the company through which all water supplied to the consumer shall pass and to which the company shall have access at reasonable times for the purpose of taking meter readings and keeping said meters in repair. The company may charge the cost to the customer of any materials used, equipment rented or the equivalent rate for the companies equipment used and labor expenses incurred in making any connections or in making any repair which is the responsibility of an owner.

This Third Party Beneficiary Utility Agreement was recorded many years before your client came to own the property and he was placed a notice of such terms at the time he purchased the property. Sunnyside Park Utilities is a water corporation as defined by Idaho Code Section 61-125 and is therefore governed by applicable regulations issued by the Idaho Department of Public Utilities. All water corporations are defined as public utilities pursuant to Idaho Code Section 61-129.

In July, 2021 the Idaho Public Utilities Commission issued administrative regulations set forth in IDAPA 31.21.01 regarding customer relations rules for water public utilities. Rule 302.01(e) allows for termination of service when “the customer or applicant denied or willfully prevented the utility’s access to the meter.” This provision is expressly applied to industrial and commercial customers pursuant to IDAPA 31.21.01.602.01.

The purpose of this letter is to place Don Sorrells on notice that Sunnyside Park Utilities intends to terminate his service within seven calendar days unless the lock which he placed on the meter is removed and Sunnyside Park Utilities is allowed access to its meter, regardless of the meter’s location, at all reasonable times for the purpose of taking meter readings and keeping said meter in repair. The meter is the property of Sunnyside Park Utilities and it insists on access to all meters within the industrial park, regardless of location. The following items are required to continue service:

1. Remove your padlock and agree to allow unrestricted access.
2. Agree to never manipulate and/or control our valves or meter without permission.
3. Pay all our costs associated with this incident.
4. Provide an acceptable written plan to manage and control your flows into our system to prevent any future overflows.

If such action is not taken within the seven calendar days provided, and your threat of trespass withdrawn, Sunnyside Park Utilities will take action to terminate the service or will apply to an appropriate court for an

order authorizing termination of service. Please confirm your receipt of this Notice and respond indicating the steps taken by Mr. Sorrells to remove the lock and allow my clients unrestricted access to their water meter within the time period set forth in the regulation.

Very truly yours,

A handwritten signature in black ink that reads "Mark R. Fuller". The signature is written in a cursive, flowing style.

Mark R. Fuller
Attorney at Law

Enclosure
CC: Client

