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IDAHO PUBLIC
UTILITIES COMMISSION

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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 PETITION FOR RECONSIDERATION

Applicant, Donald Sorrells submits his Petition for Reconsideration of ORDER NO. 35737 (and earlier interlocutory Orders) on the following grounds and for the following reasons.

This action began when the District Court in Bonneville County, Idaho, ruled that disputes between Donald Sorrells and SPU were within the jurisdiction of the IPUC and must be resolved in that forum, not the District Court. See attached Memorandum Decision of March 2, 2022 citing IDAPA regulations, etc.

1.(a). When this action began, Sunnyside Park Utilities, Inc. ("SPU") was a water corporation subject to the jurisdiction and orders of the Idaho Public Utilities Commission ("IPUC"). That fact was found by the IPUC and proved by SPU's own admissions. See *Declaration of Counsel in Response to Petition for Review of Interlocutory Order and Petition for Stay and Petition to Designate Order as Final* (submitting letter from SPU acknowledging those facts) (received by the IPUC on February 9, 2023, Jan Noriyuki, Commission Secretary). Also see ORDER NO. 35737, p. 5, lines 1-2. "SPU argued that it was entitled to the full due process rights afforded under the Commission's Rules and Regulations."

1.(b). That fact and finding was also made by the IPUC. "June 13, 2022, . . . SPU represented that it was in the process of taking the necessary steps to qualify for exemption from the Commission's regulatory authority." ORDER NO. 35513, p. 7 (second full paragraph). "The Commission has jurisdiction over this matter and the issues in this case under Title 61 of Idaho Code." ORDER NO. 35513, p. 7 (Commission Findings and Decision, first sentence). "The Commission finds that the Company is a public utility and subject to regulation by the Commission." "Specifically, at the time of the initial Complaint, SPU was not recorded as a not-for-profit or non-profit organization with the Secretary of State."

2. Mr. Sorrells demands that *his* due process rights as the Applicant be honored.

2.(a). It is obvious from a reading of each of the ORDERS issued by the IPUC in this matter, that Mr. Sorrells' rights have been ignored and denied. First, the ORDERS

recite numerous *ex parte* contacts between the Commission "staff" and the "Company."

2.(b). The ORDERS and Staff comments but do not even acknowledge evidence submitted by Mr. Sorrells other than quoting the Notice of Compliance he filed. That filing was supported by the Declaration of Don Sorrells filed with the IPUC on July 5, 2022. It attests to the following: 1. All invoices received from SPU for water and sewer services have been paid; 2. The Water meter is accessible; 3. The Lock was removed; 4. The Frost-free hydrant was capped; and, 5. The Toilet leak was fixed by a professional plumber (replacement of the entire toilet). Nevertheless, the Staff continued to recommend a determination that Mr. Sorrells had not cured what SPU alleged as past problems upon which the Company could base a denial of water service. A copy of the Declaration and Exhibits is attached hereto, though there is one in your file.

As stated in the Notice of Compliance, each of the criteria given by your Staff which would result in an Order determining that, while the IPUC had jurisdiction over the dispute raised by Mr. Sorrells, he was entitled to such a determination upon proper proof – proof that was supplied but ignored, perhaps due to all the *ex parte* communications with "the Company."

3. When Mr. Sorrells filed his Application with the IPUC, he invoked its role and powers as an adjudicatory body over a disputed claim. In no other forum of an adjudicatory body is the *ex parte* communication allowed between a body (or any of its staff) and only one party. Each time there were *ex parte* communications between SPU

and the Commission or any of its staff, Mr. Sorrells was denied due process – the right to notice and an opportunity to be heard.

4. Due to actions by SPU, which in any other forum would be "gaming the system," the Commission found that it no longer had jurisdiction over SPU. That does not change the fact that the IPUC did rightly have jurisdiction over SPU and over the question of whether Mr. Sorrells' past actions would allow SPU to terminate the water service to his commercial property.

5, Reconsideration is necessary to remedy the lack of due process and to apply the law – the IPUC regulations governing whether SPU, before its conversion to a bona fide non-profit corporation, could use those past actions as justification to terminate the Sorrells water service. Mr. Sorrells is entitled to reconsideration of the manner in which the IPUC disposed of this matter. That is, the IPUC should assess the sworn evidence Mr. Sorrells submitted against mere allegations by SPU, and issue an ORDER that determines any attempts to terminate the Sorrells water service based on past actions that *were* under IPUC jurisdiction, would be prohibited, i. e. unlawful.

DATED this 2nd day of May, 2023.

HOPKINS RODEN CROCKETT
HANSEN & HOOPES, PLLC

By _____
Paul B. Rippel, Esq.
Attorneys for Don Sorrells

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served upon the person(s) named below as indicated.

DATED this 2nd day of May 2023.

Beth Humphrey

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Seventh Judicial District, Bonneville County
Penny Manning, Clerk of the Court
By: Deputy Clerk - Yates, Emmy

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE

SUNNYSIDE PARK UTILITIES, INC., an Idaho Corporation, Petitioner, vs. DONALD SORRELLS, an individual, Respondent.	**Case No. CV10-21-6624** **MEMORANDUM DECISION ON RESPONDENT'S MOTION TO DISMISS**

INTRODUCTION

Before the Court is Respondent's Motion to Dismiss Petitioner's Petition for Declaratory Judgment. Petitioner is a water utility for a private business park. Respondent is the owner of buildings in the concerned business park serviced by Petitioner. Respondent's Motion provides affirmative defenses under Idaho Rules of Civil Procedure 12(b)(1) citing lack of subject matter jurisdiction and 12(b)(2) citing a failure to state a claim upon which relief can be granted.

Therefore, the crux of the immediate decision lies in the applicability of a party's duty to exhaust administrative remedies and this Court's subject matter jurisdiction over the concerning matters.

Following oral argument, the Court took this matter under advisement to issue a written opinion and address the issues at hand. Herein are the findings of the Court.

FACTUAL AND PROCEDURAL BACKGROUND

In the matter before this Court, there has been no argument or disagreement between the parties regarding the underlying facts or occurrences described by Petitioner in its Petition for Declaratory Judgment. As such, the Court accepts and adopts the following points as described in the Petition.

Petitioner, Sunnyside Park Utilities, Inc., (hereinafter "Sunnyside") is an Idaho corporation, organized and existing under the laws of the State of Idaho with its principal place of business in the County of Bonneville, State of Idaho, with the principal purpose of providing water and sewer service to commercial properties in Sunnyside Industrial and Professional Park according to the Sunnyside Park Utilities Rules and Regulations proffered and adopted by Sunnyside. *Petition* at ¶1. Sunnyside is a water corporation as defined by Idaho Sections 61-125 and 61-129. *Id.* At *Ex. E* p.2. Respondent, Donald Sorrells (hereinafter "Sorrells") is the owner of Lot 4, Block 4, Sunnyside Industrial & Professional Park, located in Bonneville County, Idaho (hereinafter "the Property"). *Id.* at ¶2.

On August 23, 2018, Sunnyside issued a "Will Serve" letter to Sorrells, based on representations that Sorrells would install two (2) restrooms on the Property, with no other water or sewer needs. *Id.* at ¶3.

In October-November 2018, Sorrells obtained commercial building permits from Bonneville County to construct several buildings on the Property, only one of which was identified as requiring a sewer permit. *Id.* at ¶4. Sorrells was authorized to install only two (2) bathrooms

on the Property under the Bonneville County building permit and his agreement with Sunnyside. *Id.* However, Sorrells established additional connections, including but not limited to a washer/dryer connection, an RV septic connection, and ten (10) frost-free hydrants on multiple buildings on the Property. *Id* at 5. Sorrells' installation of the additional water and septic connections was not authorized by Sunnyside and was not permitted by Bonneville County Zoning and Building Department. *Id.* at ¶6.

Following Sorrells' connection to the Sunnyside system, Sunnyside noted repeated instances where excessive discharge was directed into Sunnyside's septic system from Sorrells's Property. *Id.* at ¶7. Sunnyside notified Sorrells of these recurring issues and was routinely assured that the problem would be addressed. *Id.*

On or about August 21, 2019, Sunnyside sent a notice of violation to Sorrells regarding the additional connections. *Id.* at ¶8. Sunnyside alleged that Sorrells was in direct violation of the multiple sections of the Sunnyside Park Utility Rules and Regulations (hereinafter "Rules and Regulations"). Along with the notice of violation, Sunnyside identified a defective toilet that was discharging a continuous flow into the Sunnyside system. *Id.* Sunnyside requested remediation of the defective toilet and indicated that services would be terminated if not repaired. *Id.*

On or about September 5, 2019, a second notice was sent to Sorrells' regarding a constant flow of discharge coming from Sorrell's Property. In addition to the notice, Sunnyside again requested that Sorrells remedy the problem. *Id.* at ¶9.

On or about February 12, 2021, Sunnyside sent a third notice of violation of Rules and Regulations through counsel, in which it requested that the frost-free hydrants be removed and that a cement plug be placed in the RV septic system dump sewer line. *Id.* at ¶10.

Based on a belief that the Sorrells was acting in good faith in negotiating a compromise, Sunnyside did not immediately terminate services to Sorrells' property. *Id.* at ¶11. Sunnyside believed that the RV septic system dump sewer line had been plugged, but Sunnyside has not been allowed to verify this fact directly. *Id.*

On April 5, 2021, counsel for Sorrells submitted a letter stating that "the toilet drainage/leaking issue has been remedied." *Id.* at ¶12.

On April 16, 2021, counsel for Sunnyside identified numerous legal requirements with which Sorrells failed to comply, including the following: (1) failure to provide an inspection and certification report by a licensed Idaho Professional Engineer stating that the water and sewer lines were up to county standards; (2) failure to provide as-built drawings for the water and sewer lines for all buildings; (3) failure to identify changes to site plans submitted to the Bonneville County Public Works Department; (4) failure to provide Sunnyside Park Utilities with the architectural plans for Buildings 2-5; (5) failure to provide evidence of an appropriate backflow prevention device; and (6) failure to allow Sunnyside to inspect the water and sewer service lines prior to covering. *Id.* at ¶13.

On June 17, 2021, a water meter was installed at Sunnyside's cost to monitor water consumption on Sorrell's Property. The water meter remains the property of Sunnyside. *Id.* at ¶14.

On October 25, 2021, at approximately 9:30 p.m., Sunnyside discovered that Sorrells' toilet was again continuously running and discharging into the Sunnyside system. *Id.* at ¶15. As a result, Sunnyside shut off water to the Property to prevent the continuous flow from overloading the septic system. *Id.*

On October 26, 2021, counsel for Sunnyside informed counsel for Sorrells of the repeated excessive discharge issue and stated that "water will be turned back on when proof is provided that a new toilet has been installed and a monitoring plan acceptable to Sunnyside Park Utilities is submitted by Mr. Sorrells on how he will manage his sewage discharge in the future." *Id.* at ¶16.

During the evening of October 26, 2021, Sunnyside again noticed excessive discharge into its septic system and found that Sorrells, or his agent, had turned on the water without Sunnyside's authorization. *Id.* at ¶17. Sunnyside again turned off the water and installed a lock on the water meter to prevent Sorrells from restarting the water until Sorrells verified that the problem had been remedied and would no longer risk overloading the Sunnyside septic system. *Id.*

On October 27, 2021, Sorrells sent a text message to Sunnyside, stating in part: "...this is a formal notice that if you or anyone representing you enters my property for any reason again you will be removed by force if necessary. The water meter is fully owned and paid for by me and is on my property. Do not TOUCH AGAIN!! The toilets have been repaired and there is no water flow. BACK OFF!!!" *Id.* at ¶18.

On October 27, 2021, Finish Line Plumbing, Inc., invoiced Sorrells $471.90 to repair the leaking toilet. *Id.* at ¶19.

On October 27, 2021, counsel for Sorrells notified counsel for Sunnyside that the toilet had again been repaired and requested that water service resume immediately. *Id.* at ¶20. Upon receipt of this request, Sunnyside went to the water meter to resume service and found that Sunnyside's lock had been removed, the water had again been turned on without authorization, and a new lock had been placed to prevent Sunnyside from being able to turn off the water at Sunnyside's water meter. *Id.* at ¶21.

On October 29, 2021, counsel for Sunnyside provided a notice to Sorrells' counsel that water service would be terminated based upon Sorrells' interference with Sunnyside's access to the water meter by means of the unauthorized lock and threats to forcibly remove any representative of Sunnyside who attempted to access the meter as allowed under Idaho Public Utilities Commission regulations set forth in IDAPA 31.21.01.602.01 and IDAPA 31.21.01.302.01(e). *Id.* at ¶22.

On November 1, 2021, counsel for Sorrells stated that the lock would be removed "on condition that [Sunnyside] follow the rules for notice provided in [Sunnyside's] own rules and regulations in the future." *Id.* at ¶23. As of the date of the Petition's filing, the lock had not been removed, and Sorrells had not rescinded his threats of forcible removal. *Id.*

Since the October 27, 2021 toilet repair, Sunnyside has conducted daily readings of the water meter and daily inspections of the sewer discharge from Sorrells' Property. *Id.* at ¶24. Between the evening of October 29, 2021, and the morning of November 9, 2021, a total of 12,168 gallons were consumed by the Sorrells property, which averages out to nearly 50 gallons per hour for a property that was only authorized to have two restrooms. *Id.* at ¶25.

On November 2, 2021, Sunnyside notified Sorrells' contractor regarding the excessive consumption of water and was informed that a frost-free hydrant was leaking and was in the process of being repaired. *Id.* at ¶26. Sorrells' contractor was unaware of the extent of the leak, as only a minor leak is noticeable from the hydrant itself. Sorrells' contractor turned off the water line to the hydrants and informed Sorrells of the leak. *Id.* Sorrells informed the contractor that Sorrells would continue to use the water service and allow tenants or agent(s) to regulate the water to the hydrants as needed. *Id.*

It appears the water was shut off during the evenings between November 2-3 and 3-4, but otherwise, the leak has continued unabated based upon water meter readings. *Id.* at ¶29.

Pursuant to Rules and Regulations, Article II, Section 4(e), Sunnyside prohibits the discharge of unusual or excessive volume of flow or concentration of wastes. *Id.* at ¶30.

Pursuant to the Third Party Beneficiary Utility Agreement, recorded as Bonneville County Instrument No. 1272911, Section 4, "[Sunnyside] 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 [Sunnyside] through which all water supplied to the consumer shall pass and to which [Sunnyside] shall have access at reasonable times for the purpose of taking meter readings and keeping said meters in repair." *Id.* at ¶32.

On December 20, 2021, Sorrells filed Respondent's Motion to Dismiss.

On February 24, this Court heard oral argument on Respondent's Motion to Dismiss and, following the hearing, took the matter under advisement to issue a written decision in this matter in due course.

STANDARD OF REVIEW

A 12(b)(6) motion looks only at the pleadings to determine whether a claim for relief has been stated. *Taylor v. McNichols*, 149 Idaho 826, 833, 243 P.3d 642, 649 (2010). "The issue is not whether the plaintiff will ultimately prevail, but whether the party is entitled to offer evidence to support the claims." *ABC Agra, LLC v. Critical Access Grp., Inc.,* 156 Idaho 781, 783, 331 P.3d 523, 525 (2014). "A motion to dismiss for failure to state a claim should not be granted unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim that would

entitle the plaintiff to relief." *Clark v. Jones Gledhill Fuhrman Gourley, P.A.*, 163 Idaho 215, 220, 409 P.3d 795, 800 (2017).

"The grounds for a Rule 12(b)(6) dismissal comprise only the pleadings and no more." *Taylor,* 149 Idaho 833. "Idaho Rules of Civil Procedure Rule 8 requires a complaint to contain a short and plain statement of the claim showing that the pleader is entitled to relief." *Idaho Wool Growers Ass'n, Inc. v. State*, 154 Idaho 716, 720, 302 P.3d 341, 345 (2012). Further, the District Court draws all reasonable inferences in favor of the non-moving party. *Id.* Therefore, "[u]nder Rule 12(b)(6), after viewing all facts and inferences from the record in favor of the non-moving party, the Court will ask whether a claim for relief has been stated. *Munden v. Bannock Cty.*, No. 47978, 2022 WL 386057, at *6 (Idaho Feb. 9, 2022). "Dismissal for failure to state a claim should not be granted unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim that would entitle him to relief." *Id.*

Pertaining to the underlying Petition, "[a] declaratory judgment can only be rendered in a case where an actual or justiciable controversy exists." *Harris v. Cassia Cty.,* 106 Idaho 513, 516, 681 P.2d 988, 991 (1984). "A justiciable controversy must be a real and substantial controversy admitting of specific relief through a decree of a conclusive character, as distinguished from an opinion advising what the law would be upon a hypothetical state of facts. *Ada Cty. Highway Dist. v. Idaho Pub. Utilities Comm'n*, 151 Idaho 1, 4, 253 P.3d 675, 678 (2011). "Idaho has adopted the constitutionally based federal justiciability standard." *Paslay v. A&B Irrigation Dist.*, 162 Idaho 866, 869, 406 P.3d 878, 881 (2017). "Standing is an essential element of a justiciable claim [and] requires (1) a distinct injury in fact, (2) fairly traceable to the conduct from which a plaintiff seeks relief, and (3) a substantial likelihood that the requested relief will remedy

or prevent the injury." *Id.* Further, "[t]he controversy must be definite and concrete, touching the legal relations of parties having adverse legal interests." *Harris,* 106 Idaho 516.

Under Idaho Admin. Code r. 31.21.01.009, the Public Utilities Commission "reserves the authority to issue orders interpreting these rules and utility tariffs and resolving formal complaints."

In reaching its decision on a motion to dismiss, the court does not consider the total record in the underlying matter before it; instead, considering only the pleadings of the immediate concerning matter. If the court were to consider the record in its totality, it would engage in a summary judgment analysis instead of analysis under Rule 12(b)(6). *Paslay v. A&B Irrigation Dist.*, 162 Idaho 866, 872, 406 P.3d 878, 884 (2017). "A court can dismiss an action under Rule 12(b)(6) if it considers only the complaint, despite whether a party has submitted additional materials to the record." *Id.*

Sorrells further pleads an affirmative defense under Idaho Rule of Civil Procedure 12(b)(1), asserting that this Court does not have subject matter jurisdiction over matters involving a public water utility. "Jurisdiction over the subject matter is the right of the court to exercise judicial power over that class of cases; not the particular case before it, but rather the abstract power to try a case of the kind or character of the one pending; and not whether the particular case is one that presents a cause of action, or under the particular facts is triable before the court in which it is pending, because of some of the inherent facts that exist and may be developed during trial. *Troupis v. Summer*, 148 Idaho 77, 79–80, 218 P.3d 1138, 1140–41 (2009). Article V, § 20 of the Idaho Constitution provides that the district court shall have original jurisdiction to hear all cases, both at law and in equity. *Bach v. Miller*, 144 Idaho 142, 145, 158 P.3d 305, 308 (2007). District Courts in Idaho have adopted a presumption that District Courts are courts of general

jurisdiction and therefore "have subject matter jurisdiction unless a party can show otherwise."*Troupis,* 148 Idaho 80. (citing *Borah v. McCandless*, 147 Idaho 73, 78, 205 P.3d 1209, 1214 (2009)).

ANALYSIS

Sunnyside's Petition includes a prayer for relief on two primary issues. First, Sunnyside requests the Court for a Declaratory Judgment "[d]eclaring that Sorrells is a persistent and continued violator of the Rules and Regulations applicable to the subject property." *Petition* at 9. Further, Sunnyside prays for a Declaratory Judgment from this Court "[d]eclaring that Sorrells is in violation of IDAPA 31.21.01.602.01, by reason of his interference with [Sunnyside]'s access to [Sunnyside]'s water meter and by his willfully wasting water provided by [Sunnyside]." *Id.*

In response, Sorrells articulates affirmative defenses to the underlying Petition for Declaratory Judgment wherein he motions to dismiss the Petition in its entirety through the application of affirmative defenses. Sorrells' affirmative defenses have a basis arising from and existing within Idaho Rule of Civil Procedure 12(b) and center around Sunnyside's choice not to seek administrative remedies through the Idaho Public Utilities Commission (IPUC) before seeking a Declaratory Judgment by this Court. The first affirmative defense relies on this Court not having subject-matter jurisdiction, and the second affirmative defense for Sunnyside's failure to state a claim upon which relief can be granted.

In response to Sorrells' Motion to Dismiss, Sunnyside principally argues that the duty to exhaust all administrative remedies does not apply in this circumstance.

Sunnyside further argues that exhaustion of administrative remedies requires a precipitating agency action and that in the underlying matter, there has not been a precipitating action on the part of any agency or commission.

This Court will take up the dismissal of Sunnyside's principal prayers for relief separately below.

1. SUNNYSIDE PROVIDED SUFFICIENT PLEADINGS WHEREBY PLAINTIFF MAY YET PROVE A SET OF FACTS IN SUPPORT OF ITS CLAIM THAT WOULD ENTITLE IT TO RELIEF.

In its Petition, Sunnyside seeks a Declaratory Judgment declaring Sorrells a persistent and continuing violator of the Sunnyside Park Utility Rules and Regulations applicable to the subject property. Thereby, this Court must determine if the District Court has subject matter jurisdiction over these matters and whether Sunnyside's Petition sufficiently stated a claim upon which relief might be granted. "Generally, in determining whether to grant a declaratory judgment, the criteria is whether it will clarify and settle the legal relations at issue, and whether such declaration will afford a leave from uncertainty and controversy giving rise to the proceeding." *Schneider v. Howe*, 142 Idaho 767, 773, 133 P.3d 1232, 1238 (2006).

Nevertheless, in a motion to dismiss under Idaho Rule of Civil Procedure 12(b), the Court may only consider the pleadings before the Court. It may not consider extrinsic evidence or the entirety of the underlying record in the matter and must draw all inferences in favor of the non-moving party. Therefore, the issue for the Court at this stage is whether it appears beyond a doubt that Sunnyside can prove no set of facts in support of its claim that would entitle Sunnyside to relief based solely upon the facial analysis of the pleadings before the Court. Further, through its Petition for Declaratory Judgment, Sunnyside's pleadings must sufficiently support a justiciable

controversy that must be definite and concrete, touching the legal relations of parties having adverse legal interests. This provides Sunnyside, as the Petitioner, with a relatively low requirement to survive Sorrells' Motion to Dismiss the Petition.

Here, Sunnyside alleges that Sorrells is a "persistent and continuing violator of the Rules and Regulations applicable to the subject property." *Petition* at 9. In its Petition, Sunnyside presents multiple claims of Sorrells violating the Rules and Regulations of the subject property. *Petition* at ¶¶ 31-36. The Court finds Sunnyside has provided pleadings that address a justiciable controversy of concrete happenings and not simply the possibility of a hypothetical occurrence regarding violations of the Rules and Regulations of the subject property.

The Court further finds that the pleadings touch upon the relation of the parties having adverse legal interests. Here, Sunnyside is the public water utility, and Sorrells is the commercial water customer. If Sunnyside can present further evidence in a later hearing to whereby prove the allegations upon which it will be entitled to relief, that relief will be directly adverse to the legal interests of Sorrells as a commercial customer in that Sunnyside desires to terminate utility services to Sorrells buildings and places of business.

In drawing all inferences in favor of the non-moving party, it is the findings of this Court that, at this stage of the litigation, Sunnyside has provided sufficient pleadings to show that there exists the possibility that Sunnyside may present further facts and evidence sufficient to prove the support of its claim for persistent violations of the Sunnyside Park Utility Rules and Regulations. The District Court is a court of general jurisdiction and therefore "maintains a presumption that it has subject matter jurisdiction unless a party can show otherwise." *Troupis,* 148 Idaho 80. Here, the alleged violation is based upon the Sunnyside Park Utility Rules and Regulations and is not based on Idaho Administrative Rules. Therefore, it is the finding of this Court that Sorrells'

Motion to Dismiss is Denied in part as it pertains to Sunnyside's first enumerated prayer for relief concerning Sorrells being a "persistent and continuing violator of the [Sunnyside Park Utilities] Rules and Regulations pertaining to the subject property." *Petition* at 9.

2. IDAHO PUBLIC UTILITIES COMMISSION RETAINS ORIGINAL JURISDICTION OVER INTERPRETING RULES AND RESOLVING FORMAL COMPLAINTS WHEREIN IDAHO WATER CORPORATIONS ARE CONCERNED.

The second issue in Sunnyside's prayer concerns Sorrells' violation of applicable Idaho Administrative Code provisions. As argued in Sorrells' Motion to Dismiss, the concerning issue is whether the District Court has subject-matter jurisdiction over the enforcement of the alleged violations of the Idaho Administrative Code provisions listed in Sunnyside's Petition and Sorrells' Motion.

Under Idaho Code § 61-125, "[t]he term water corporation when used in this act includes every corporation or person, their lessees, trustees, receivers or trustees, appointed by any court whatsoever, owning, controlling, operating or managing any water system for compensation within this state." Further, under Idaho Code Ann. § 61-129, "[t]he term public utility when used in this act includes every common carrier, pipeline corporation, gas corporation, electrical corporation, telephone corporation and water corporation, as those terms are defined in this chapter, and each thereof is hereby declared to be a public utility and to be subject to the jurisdiction, control and regulation of the commission and to the provisions of this act." Finally, under Idaho Admin. Code r. 31.21.01.009, "[t]he Commission reserves the authority to issue orders interpreting these rules and utility tariffs, and resolving formal complaints."

Sunnyside prays the Court for Declaratory Judgment "declaring that Sorrells is in violation of Idaho Admin Code r. 31.21.01.602.01, by reason of his interference with Sunnyside's access to Sunnyside's water meter and by his willfully wasting water provided by Sunnyside.

It is undisputed between the parties that Sunnyside is a water corporation incorporated within and under the statutes of the state of Idaho. Under Idaho provisions, all water corporations incorporated in Idaho are declared to be public utilities and therefore subject to the "jurisdiction, control and regulation of the [IPUC] and to the provisions of this act." I.C. § 61-129. Further, the [IPUC] specifically reserves the authority to issue orders interpreting rules pertaining to public utilities and therein resolving formal complaints. Idaho Admin Code r. 31.21.01.009. Sunnyside is a water corporation and therefore operation as a public utility and is subject to the original subject matter of jurisdiction of the IPUC.

Therefore, in the matter concerning whether Sunnyside is in Violation of Idaho Admin Code r. 31.21.01.602.01, it is the finding of this Court that the District Court does not have subject matter jurisdiction over this matter and that the IPUC specifically reserves and therein retains the authority in this matter to reach a final judgment in the matter. Consistent with the findings of this Court, Sorrells' Motion to Dismiss for lack of subject matter jurisdiction is therefore GRANTED in part pursuant to Idaho Rules of Civil Procedure 12(b)(1).

CONCLUSION

HEREBY, it is the finding of the Court that Sorrells' Motion to Dismiss is GRANTED in part and DENIED in part consistent with findings of this Court above.

IT IS SO ORDERED.

Dated this 15 day of March 2022.

Bruce L. Pickett
District Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on March 2, 2022, the foregoing MEMORANDUM DECISION was entered, and a true and correct copy was served upon the parties listed below by mailing, with the correct postage thereon, or by causing the same to be delivered to their courthouse boxes

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Penny Manning

Clerk of the District Court

Bonneville County, Idaho

By _____

Deputy Clerk

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Attorneys for Applicant Donald Sorrells

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.

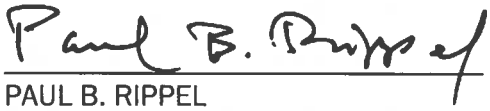
2. I am over the age of eighteen (18) years of age and competent to testify to all matters stated in this Declaration. I am not under any testimonial disability.

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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Amanda G Hebesha
Wanger Jones Helsley PC
265 E. River Park Circle, Suite 310
Fresno, CA 93720

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 you 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,

Mark R. Fuller
Attorney at Law

Enclosure
CC: Client

Office of the Secretary
Service Date
April 12, 2023

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

DONALD SORRELLS,	)	
	)	**CASE NO. GNR-U-22-03**
COMPLAINANT,	)	
	)	
vs.	)	**ORDER NO. 35737**
	)	
SUNNYSIDE PARK UTILITIES, INC.,	)	
	)	
RESPONDENT.	)	
	)	

On March 9, 2022, Donald Sorrells ("Complainant" or "Sorrells") filed a complaint ("Complaint") against Sunnyside Park Utilities, Inc. ("Company" or "SPU"), an un-regulated small water company, with the Idaho Public Utilities Commission ("Commission"). Sorrells alleged that SPU had notified him that it intended to terminate his water service pursuant to violations of IDAPA 31.21.01.302, and Sorrells requested the Commission prohibit SPU from doing so. Sorrells further requested the Commission find that SPU was a regulated utility under the regulatory authority of the Commission.

At the March 29, 2022, decision meeting, Commission Staff ("Staff") recommended the Commission accept the Complaint but hold it in abeyance until the Commission could investigate whether SPU should be regulated by the Commission. The Commission agreed. On that same date a Summons was issued to SPU requesting:

1. an explanation, to include documentation, explaining the Parties' belief that the Idaho Public Utilities Commission ("Commission") has jurisdiction over this dispute. Please include the Court Order directing the Parties to file this dispute with the Commission.
2. a copy of Mr. Sorrells' contract with Sunnyside Park Utilities.
3. an explanation, to include any documentation, of why Sunnyside Park Utilities desires to terminate water service to Mr. Sorrells.
4. an explanation, to include any documentation, of how Mr. Sorrells is currently wasting water provided through improper equipment.
5. an explanation, to include any documentation, of why Sunnyside Park Utilities failed to apply for a Certificate of Convenience and Public Necessity with the Commission to deliver water to its current customers.

Summons at 1-2.

SPU was given twenty-one (21) days in which to file an answer to the Complaint, and the Summons provided that Staff would have twenty-one (21) days after the answer was filed to file reply comments. On April 21, 2022, SPU filed its answer ("Answer") to the Summons and Complaint, and on May 12, 2022, Staff filed its reply comments.

THE COMPLAINT AND ANSWER

Sorrells presented multiple issues in the Complaint, and requested relief as follows:

1. A determination that Respondent SPU is a regulated utility under the regulatory authority of the IPUC pursuant to Idaho Code Title 61 and Idaho Admin. Code r. 31.21.01. *et seq;*
2. A determination that Applicant has not provided information that is materially false or materially misrepresents Applicant's status;
3. An interpretation of the term "access" under Idaho Admin. Code r. 31.21.01.302.01(e);
4. A determination that Applicant has not denied or willfully prevented SPU's access to the subject water meter;
5. An interpretation of the phrase "willfully wasting or interfering with service" under Idaho Admin. Code r. 31.21.01.302.01(f);
6. A determination that Applicant has not willfully wasted or interfered with water service;
7. Alternatively, a determination that any alleged violations of Idaho Admin. Code r. 31.21.01.302 have been cured or satisfied;
8. A determination that Respondent SPU lacks sufficient grounds to terminate Applicant's water services and therefore is not authorized to terminate water services to the subject real property; and
9. Any other determinations and/or interpretations that are deemed proper and appropriate.

Complaint at 7-8. In its Answer, SPU requested an order from the Commission:

a. Denying Sorrells Formal Complaint and dismissing this proceeding for the reason that Sorrells does not own the Subject Property and has no standing to pursue this action.

b. Declaring that Sorrells is a persistent and continuing violator of the Rules and Regulations applicable to the Subject Property.

c. Declaring that Sorrells is in violation of IPUC Rules by reason of (1) material misrepresentations, (2) failure of The Trust to apply for SPU's services, (3) obtaining, diverting or using SPU's services without SPU's knowledge or authorization, (4) interference with SPU's access to SPU's water meter, (5) failure to comply with pertinent legal requirements during

construction of buildings on the Subject Property, and/or (6) by willfully wasting of water provided by SPU.

d. Declaring that SPU is authorized to terminate water services to Lot 4, Block 4, Sunnyside Industrial and Professional Park.

e. Granting SPU such further relief as the IPUC deems just and proper.

Answer at 17.

INITIAL STAFF COMMENTS

Staff reviewed Sorrells' Complaint and SPU's Answer to evaluate whether SPU should be a regulated utility. Additionally, Staff reviewed whether SPU would be justified to terminate service under Utility Customer Relation Rules ("UCCR") (IDAPA 31.21.01), if the Commission determined that SPU should be regulated. Staff believed the Commission should find that SPU was a public utility that was subject to the Commission's authority. In making its recommendation, Staff reviewed several similar Commission cases and orders dealing with small water company regulation,[1] and Staff compiled a list of non-exclusive factors it believed the Commission might consider when reaching its final determination in this case:

A. Is the Company a Non-Profit or a Co-op?
B. Does the Company operate for the service of the customers and not for profit?
C. Is the Company owned by the water users?
D. Do the customers have control of the rates that the Company charges?
E. Do the customers have control of the operations and capital expenditures of the Company?

After considering each factor, Staff believed: (1) that SPU was not recorded as a not-for-profit organization with the Secretary of State; (2) that the "Third Party Beneficiary Utility Agreement" ("Agreement") between SPU and Sunnyside Park Owners Association, Inc. provided no protections that would prevent shareholders from receiving a dividend or paying the owners for services rendered; (3) that the evidence showed that there was no ownership stake granted to the customers; (4) that the customers did have significant control over the rates SPU charges; and (5) there was no place in the Agreement that allowed the customers to have any influence on the operations or capital expenditures of the Company.

Staff recommended the Commission find:

(1) SPU is a regulated utility under the regulatory authority of the IPUC pursuant to Idaho Code Title 61;

[1] Staff reviewed Case No. PKS-W-15-01, Order No. 33603; Case No. CCH-W-15-01, Order No. 33384; and Case No. MUR-W-14-01, Order No. 33351.

(2) Sorrells meets the definition of a customer under Rule 5.02, IDAPA 31.21.01.005.02;

(3) Sorrells has not provided information that is materially false or materially misrepresents Sorrells' status;

(4) Sorrells has prevented SPU's access to the water meter;

(5) Sorrells has willfully wasted water;

(6) Sorrells has not cured or satisfied the alleged violations of Rules 302.01(e) and (f), IDAPA 31.21.01.302.01(e), (f); and

(7) SPU is authorized to terminate water service.

ADDITIONAL COMPANY FILINGS AND COMMUNICATIONS

On May 23, 2022, Sorrells filed a Notice of Compliance and Demand for Determination of Water Rate ("Notice"). The notice provided:

> We are writing this letter as notice of Donald Sorrells's compliance with Commission rules as identified in the Reply Comments of the Commission Staff dated May 12, 2022 ("the Comments"). As explained in the Comments, SPU is not authorized to terminate water services as long as the following steps are taken: (1) Mr. Sorrells's lock is removed from the water meter; (2) SPU regains unimpeded access to the water meter; (3) all known leaks are fixed; and (a) Mr. Sorrells's account is paid up to date. All steps have been satisfied. Mr. Sorrells has removed the lock from the water meter, SPU may access the meter as defined under the Comments, all leaks have been repaired, and the account is paid up to date. Where the steps are satisfied, we believe the Commission has supported a finding that SPU is not authorized to terminate water services at this time.
>
> Additionally, as per the Comments, a proper water rate must be established to bill for "excessive use." To date, none of the invoices received by Mr. Sorrells have identified the base water rate to calculate usage or, by extension, excessive use of water services. Thus, we ask that SPU provide the water rate on all invoices moving forward, as well as provide the supporting documents, measurements, and other materials used to determine the water rate upon which previous determinations of "excessive use" were billed.
>
> In light of the foregoing, we believe that this matter has been resolved with regard to water services. Please advise as to your client's plans to establish a proper water rate and provide amended invoices demonstrating usage against such rate.

Notice at 1-2.

In response, SPU filed a Motion to Strike the Notice. SPU argued that IDAPA 31.01.01 did not allow the Complainant to file a "Notice" in response to Staff's recommendations and unilaterally declare that Sorrells was in compliance with the Commission's Rules and Regulations, that no controversy remained, and that no sanction was appropriate for the years of alleged

violations committed by Complainant. SPU argued that it was entitled to the full due process rights afforded under the Commission's Rules and Regulations.

On June 13, 2022, SPU sent the Commission's counsel an email with an attached copy of an Acknowledgement of Conversion Certificate that SPU received from the Secretary of State's office, confirming that Sunnyside Park Utilities, Inc. was converted into a non-profit corporation. SPU represented that it was in the process of taking the necessary steps to qualify for exemption from the Commission's regulatory authority.

ORDER NO. 35513

On August 23, 2022, the Commission issued Order No. 35513. The Commission ordered the Company to file an Application for a CPCN to become a regulated water company within 30-days of issuance of the order. The Commission suspended consideration of the remaining substantive issues until after the Company was granted or denied a CPCN.

ORDER NO. 35534

On September 7, 2022, the Company filed a motion to amend its answer, a petition to stay Order No. 35513, and a petition to review Order No. 35513. The Company represented that it had transitioned into a nonprofit corporation that was statutorily exempt from Commission regulation. The Company submitted new documentation in support of its motion, petitions, and amended answer.

On September 20, 2022, the Commission considered the Company's motion and petitions during the Commission's decision meeting and, upon motion therein, granted the Company's motion to amend its answer; granted the Company's petition to review Order No. 35513, setting an initial comment deadline of October 13, 2022, and a Company reply comment deadline of October 20, 2022; and granted the Company's petition to stay Order No. 35513 for ninety (90) days, or the Commission issues an earlier order.

ADDITIONAL STAFF COMMENTS

Staff reviewed the Company's amended answer, and all submitted documents. Based upon its review, Staff continued to recommend that the Company be regulated by the Commission. The Company represented that it changed its corporate structure to a non-profit; however, based upon the criteria Staff included in its Reply Comments filed on May 12, 2022, Staff believed the Company's amended answer did not meet three of those criteria and the Company should be regulated by the Commission.

COMPANY COMMENTS

The Company argued that it was not a Corporation under *Idaho Code* § 61-104 because it was a nonprofit entity organized and operating at cost. The Company contended that it is not a Water Corporation under *Idaho Code* § 61-125, as interpreted by the Idaho Supreme Court, because the Company had never expressed clear, unequivocal intent to dedicate itself to public use. Further, the Company argued that all potential abuse concerns raised by Staff were mitigated by the provisions of the Idaho Nonprofit Corporation Act, which imposes specific duties on the Company's Board of Directors and were designed to protect the customers from abuse by the Directors. The Company contended that none of the issues of potential abuse raised by Staff were based upon customer complaints, and Staff had already conceded that the Company's customers have significant control over the Company's rate changes. The Company requested that the Commission determine that the Commission did not have jurisdiction over the water system operated by Sunnyside Park Utilities and dismiss Sorrells' Complaint.

ORDER NO. 35645

On December 7, 2022, the Commission issued Order No. 35645 affirming Order No. 35513 and ordering the Company to file an Application for a CPCN.

On January 17, 2023, the Company filed a petition for review of Order No. 35645, a petition to stay Order No. 35645, a petition to designate order as final, and a request for a regulatory taking analysis.

ORDER NO. 35681

On February 17, 2023, the Commission issued Order No. 35681 granting the Company's petition to review Order No. 35645 and granting the Company an additional thirty (30) days to present additional evidence in support of its claim of exemption from Commission jurisdiction. The Commission ordered the Company to work with Commission Staff ("Staff") to receive advice and assistance in submitting any additional evidentiary support.

EVIDENTIARY SUBMISSION

On March 20, 2023, the Company filed additional evidentiary support pursuant to Order No. 35681. The Company represented that it had worked with Commission Staff regarding the modification of its bylaws, and the Company submitted the amended bylaws in support of its claim of exemption from Commission jurisdiction.

COMMISSION FINDINGS AND DECISION

The Commission has jurisdiction over this matter and the issues in this case under Title 61 of Idaho Code. The Commission regulates "public utilities," including "water corporations" that serve the public or some portion thereof for compensation. *Idaho Code* §§ 61-125, -129, and -501.

A "public utility" is an entity that is dedicated to serving the general public in its service area. *Idaho Code* § 61-129(1). The term "public utility" is defined to include "water corporations." *Id.* A "water corporation" is "every corporation" that owns, controls, operates or manages a water system for compensation. *Idaho Code* § 61-125. "The term 'corporation' . . . does not include . . . mutual nonprofit or cooperative . . .water . . . corporation or any other public utility organized and operated for service at cost and not for profit . . .." *Idaho Code* § 61-104.

Idaho Code § 61-104 provides three exceptions to the Commission's regulatory authority over "corporations." The Commission does not regulate "mutual nonprofits," "cooperative corporations," nor "any other public utility organized and operated for service at cost and not for profit." *Idaho Code* § 61-104. Pursuant to *Idaho Code* § 61-104, the Company must show that it is "organized" for service at cost and not for profit, and that it is "operated" for service at cost and not for profit.

In its petition to review Order No. 35645, the Company represents that it has transitioned into a nonprofit corporation. The Company claims that it is now exempt from Commission regulation. Specifically, the Company argues that it is not a "corporation" under *Idaho Code* § 61-104 because it is a nonprofit entity organized and operating for service at cost and not for profit.

Having reviewed the record, the arguments of the parties, all submitted evidence, and the particular facts and circumstances of this case, the Commission finds that SPU is not subject to the Commission's regulatory authority under *Idaho Code* § 61-104 because it is organized and operated for service at cost and not for profit.

The Commission notes that under Article 1, Section 1, of its bylaws: "[t]he purpose of the Corporation is to provide water and sewer services to its customers, and to operate at cost and not for profit." Further, under Article 8 of the bylaws, SPU is prohibited from making distributions unless authorized by Idaho Code. SPU's bylaws also provide for only commercially reasonable compensation and require that the Company's financial records be available for inspection by the Company's customers. Finally, the Commission notes that as a nonprofit, the Company and its

customers are subject to the restrictions and protections found in the nonprofit statutes of Idaho Code.

Having found that SPU is not subject to the Commission's regulations, the Commission lacks the jurisdiction to consider the substantive issues in this Complaint.

ORDER

IT IS HEREBY ORDERED that the Complaint is dismissed.

THIS IS A FINAL ORDER. Any person interested in this Order may petition for reconsideration within twenty-one (21) days of the service date upon this Order regarding any matter decided in this Order. Within seven (7) days after any person has petitioned for reconsideration, any other person may cross-petition for reconsideration. *Idaho Code* §§ 61-626 and 62-619.

DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 12th day of April 2023.

ERIC ANDERSON, PRESIDENT

JOHN R. HAMMOND JR., COMMISSIONER

EDWARD LODGE, COMMISSIONER

ATTEST:

Jan Noriyuki
Commission Secretary

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Attorneys for Applicant Donald Sorrells

IDAHO PUBLIC UTILITIES COMMISSION

DONALD SORRELLS, an individual, Applicant, vs. SUNNYSIDE PARK UTILITIES, INC., an Idaho Corporation, Respondent.	Case No. DECLARATION OF DONALD D. SORRELLS IN SUPPORT OF FORMAL COMPLAINT

I, Donald D. Sorrells, having first been duly sworn under oath, declare and testify as follows:

1. I am at over eighteen (18) years of age and am competent to testify in this matter;

2. I am the named Applicant in this matter, and my testimony is based upon my personal knowledge unless otherwise specified;

3. I have reviewed the allegations made within the Answer provided by

Respondent, Sunnyside Park Utilities, Inc. ("SPU"), and the Reply Comments of the Commission Staff in this matter. I make this affidavit to provide information and documents to support the positions made within my Formal Complaint; to refute the allegations made within SPU's answer; and to clarify matters addressed within the Reply Comments.

4. The water meter at issue in this matter was purchased by me. I purchased the water meter and paid for its installation from DDR Contractor, Inc., on July 29, 2021. Attached hereto as Exhibit A is a true and correct copy of the invoice from DDR Contractor, Inc., reflecting the sale and installation of the subject water meter.

5. For as long as I have been a customer of SPU, I have never received an invoice for water or sewer services that shows a water rate against a base unit of measurement. Specifically, all invoices I have received from SPU indicate a water rate of $22.00, but do not indicate a base unit of measurement for quantity. I am without notice of what SPU alleges my water usage was for any given month, and I do not know the base rate for a set monthly use quantity. I have attached hereto as Exhibit B a true and correct copy of a standard water and sewer service invoice from SPU.

6. For as long as I have been a customer of SPU, I recall having been charged an "excess water charge" only four times.

7. The first time I was charged for alleged "excess water" was on October 31, 2021. I was charged $2.48 for an alleged excess water usage at an unspecified rate of 0.67. The invoice did not indicate what the regular water rate was, nor what the

unit of measurement for quantity was. The invoice merely identified two individual meter readings – 10/01/21 at an unspecified 13500, and 11/01/21 at an unspecified 29200. A true and correct copy of the November 30, 2021 invoice is attached hereto as Exhibit C.

8. The second time I was charged for alleged "excess water" was on November 30, 2021. I was charged $0.44 for an alleged excess water usage at an unspecified rate of 0.66. The invoice did not indicate what the regular water rate was, nor what the unit of measurement for quantity was. A true and correct copy of the November 30, 2021 invoice is attached hereto as Exhibit D.

9. The third time I was charged for alleged "excess water" was on March 31, 2022. I was charged $8.29 for an alleged excess water usage at an unspecified rate of 0.67. Once again, the invoice did not indicate what the regular water rate was, nor what the unit of measurement for quantity was. A true and correct copy of the March 31, 2022 invoice is attached hereto as Exhibit E, with privileged attorney-client communications redacted.

10. The fourth time I was charged for alleged "excess water" was on April 30, 2022. I was charged $9.44 for an alleged excess water usage at an unspecified rate of 0.67. Once again, the invoice did not indicate what the regular water rate was, nor what the unit of measurement for quantity was. A true and correct copy of the April 30, 2022 invoice is attached hereto as Exhibit F, with privileged attorney-client communications redacted.

11. All invoices received from SPU for water and sewer services have been

paid.

12. An invoice of $653.49 was delivered to me on October 29, 2021, seeking payment for inspections and attorneys fees. Such charges were not pursuant to any agreement for water or sewer services. A true and correct copy of the October 29, 2021 Invoice is attached at Exhibit G.

13. On or about May 31, 2022, I received an invoice seeking $7,024.24. This exorbitant amount included $5,417.50 for an alleged one hundred and ninety-seven "water meter checks" without any explanation of when the alleged meter checks occurred, what the meter readings were, and the basis for charging meter checks. Additionally, the Invoice sought $850.00 for 10 instances of non-descript "Account management" by Doyle Beck. There is not explanation for these charges and no water use agreement has been signed which allows for the assessment of such charges. A true and correct copy of the May 31, 2022 Invoice is included as Exhibit H.

14. SPU does not normally provide me written meter readings on my monthly invoices, nor have they provided me a description of total water use, the unit of measurement for such use for any given month, or a description of my monthly usage allotment. The only time I recall having received a written meter reading was the readings listed on the October 31, 2021 invoice in Exhibit C.

15. SPU's allegation that I have restricted its access to my water meter is without basis. The water meter is accessible, readable, and capable of receiving maintenance and being shut off/turned on. Further, the alleged lock described in SPU's Answer has been removed.

16. SPU's allegation that there is a leaking frost-free hydrant is without basis. The frost-free hydrant alleged in this matter was capped in or around March of 2022, and was subsequently repaired by DDR Contractor, Inc the same month.

17. All alleged toilet leaks have been fixed. To my knowledge, no additional leaks exist. Attached hereto as Exhibit I is a true and correct copy of the October 27, 2021 invoice from Finish Line Plumbing, Inc., for the repairs to the alleged leaking toilets.

I, Donald D. Sorrells, hereby declare in accordance with Idaho Code section 9-1406 that the foregoing statements are true and correct to the best of my knowledge.

Dated July 5, 2022.

/s/ Donald Sorrells
Donald D. Sorrells

DDR CONTRACTOR INC

4583 S Ammon Rd
Idaho Falls, ID 83406

Invoice

Date	Invoice #
7/29/2021	781

Bill To
Don Sorrells

P.O. No.	Terms	Project
	Due on receipt	

Quantity	Description	Rate	Amount
1	Mobilization	700.00	700.00
1	Excavator labor and Forman	1,770.00	1,770.00
1	1.5 meter pit and fittings	2,218.83	2,218.83
1	Flange meter	746.32	746.32

WATER METER PURCHASE + INSTALL
3887 AMERICAN WAY
IDAHO FALLS, ID. 83404

Total	$5,435.15

Sunnyside Utilities Inc

P.O. Box 1768
Idaho Falls, ID 83403-1768
208-529-9891

Invoice

Date	Invoice #
2/28/2022	3426

Bill To
Donald Sorrells 3341 N Emperor Ave. Fresno, CA 93737

P.O. No.	Terms	Project

Quantity	Description	Rate	Amount
	Water Service	22.00	22.00
	Sewer Service	24.00	24.00
	Block 4 Lot 4 Sunnyside Industrial and Professional Park		

Payed
ch. # 60610
3-13-22

	Total	$46.00

Sunnyside Utilities Inc

P.O. Box 1768
Idaho Falls, ID 83403-1768
208-529-9891

Invoice

Date	Invoice #
10/31/2021	3342

Bill To
Donald Sorrells 3341 N Emperor Ave. Fresno, CA 93737

P.O. No.	Terms	Project

Quantity	Description	Rate	Amount
	Water Service	22.00	22.00
	Sewer Service	24.00	24.00
3.7	Excess Water Charge: Reading 10/01/21 13500 11/01/21 29200	0.67	2.48
	Block 4 Lot 4 Sunnyside Industrial and Professional Park		
	Doyle Beck Invoice 101-21	653.49	653.49

Total $701.97

Invoice

Sunnyside Utilities Inc

P.O. Box 1768
Idaho Falls, ID 83403-1768
208-529-9891

Date	Invoice #
11/30/2021	3364

Bill To
Donald Sorrells 3341 N Emperor Ave. Fresno, CA 93737

Payed 12-18-21 ck. # 60556

P.O. No.	Terms	Project

Quantity	Description	Rate	Amount
	Water Service	22.00	22.00
	Sewer Service	24.00	24.00
0.66	Excess Water Charge	0.67	0.44
	Block 4 Lot 4 Sunnyside Industrial and Professional Park		

Total	$46.44

Sunnyside Utilities Inc

P.O. Box 1768
Idaho Falls, ID 83403-1768
208-529-9891

Invoice

Date	Invoice #
3/31/2022	3444

Bill To
Donald Sorrells 3341 N Emperor Ave. Fresno, CA 93737

P.O. No.	Terms	Project

Quantity	Description	Rate	Amount
	Water Service	22.00	22.00
	Sewer Service	24.00	24.00
12.38	Excess Water Charge	0.67	8.29
	Block 4 Lot 4 Sunnyside Industrial and Professional Park		
	[redacted]		
		Total	$54.29

Sunnyside Utilities Inc

P.O. Box 1768
Idaho Falls, ID 83403-1768
208-529-9891

Invoice

Date	Invoice #
4/30/2022	3463

Bill To
Donald Sorrells 3341 N Emperor Ave. Fresno, CA 93737

P.O. No.	Terms	Project

Quantity	Description	Rate	Amount
	Water Service	22.00	22.00
	Sewer Service	24.00	24.00
[redacted] 14.09	Excess Water Charge	0.67	9.44
	Block 4 Lot 4 Sunnyside Industrial and Professional Park		

Total $55.44

INVOICE

Doyle Beck
P.O. Box 1768
Idaho Falls, Idaho 83403

DATE: October 29, 2021
INVOICE # 101-21

BILL TO:
Sunnyside Park Utilities Inc.
3655 Professional Way
PO Box 1768
Idaho Falls, ID 83402

DESCRIPTION		RATE	AMOUNT
10/25/21: Inspect sewer / followed manholes to flow source / determined to be Don Sorrells Property / retrieved shutoff key/ shut off water valve at meter.	2.00	85.00	$ 170.00
10/26/21: Inspected sewer / followed manholes to flow source / determined to be Don Sorrells Property / determined shut off valve had been reopened / sewer flow was evident / retrieved shutoff key shut off water valve at meter / installed padlock.	2.00	85.00	170.00
10/27/21: Went to open and unlock water valve per Don Sorrells Attorney's letter / found lock that had been installed missing / New lock from others had been installed / Lock was installed to keep water meter valve open.	0.50	85.00	42.50
10/29/21: Consult with attorney to obtain cooperation from Donnald Sorrells.	3.00	85.00	255.00
Master lock	1.00	15.99	15.99
		SUBTOTAL	$ 653.49
		TAX RATE	
		SALES TAX	-
		OTHER	
		TOTAL	$ 653.49

Total due in 15 days. Overdue accounts subject to a service charge of 1.5% per month.

THANK YOU FOR YOUR BUSINESS!

Statement

Sunnyside Utilities Inc
P.O. Box 1768
Idaho Falls, ID 83403-1768
208-529-9891

Date
5/31/2022

To:
Donald Sorrells
3341 N Emperor Ave.
Fresno, CA 93737

Amount Due	Amount Enc.
$7,024.24	

Date	Transaction	Amount	Balance
09/29/2021	Balance forward		0.00
09/30/2021	INV #3324. Due 09/30/2021.	46.00	46.00
	--- H2O $22.00		
	--- SWR $24.00		

	--- Block 4 Lot 4 Sunnyside Industrial and Professional Park		
10/14/2021	PMT #60516.	-46.00	0.00
10/31/2021	INV #3342. Due 10/31/2021.	701.97	701.97
	--- H2O $22.00		
	--- SWR $24.00		
	--- H2O Excess. 3.7 @ $0.67 = 2.48		
	--- Block 4 Lot 4 Sunnyside Industrial and Professional Park		
	--- Service Call $653.49		
11/19/2021	PMT #60533.	-46.67	655.30
11/30/2021	INV #3364. Due 11/30/2021.	46.44	701.74
	--- H2O $22.00		
	--- SWR $24.00		
	--- H2O Excess. 0.66 @ $0.67 = 0.44		
	--- Block 4 Lot 4 Sunnyside Industrial and Professional Park		
12/31/2021	INV #3384. Due 12/31/2021.	46.00	747.74
	--- H2O $22.00		
	--- SWR $24.00		

	--- Block 4 Lot 4 Sunnyside Industrial and Professional Park		
01/07/2022	PMT #60556.	-46.44	701.30
01/26/2022	PMT #60574.	-46.00	655.30
01/31/2022	INV #3405. Due 01/31/2022.	46.00	701.30
	--- H2O $22.00		
	--- SWR $24.00		

	--- Block 4 Lot 4 Sunnyside Industrial and Professional Park		
02/23/2022	PMT #60592.	-46.00	655.30

CURRENT	1-30 DAYS PAST DUE	31-60 DAYS PAST DUE	61-90 DAYS PAST DUE	OVER 90 DAYS PAST DUE	Amount Due
0.00	6,313.50	55.44	0.00	655.30	$7,024.24

Statement

Sunnyside Utilities Inc
P.O. Box 1768
Idaho Falls, ID 83403-1768
208-529-9891

Date
5/31/2022

To:
Donald Sorrells 3341 N Emperor Ave. Fresno, CA 93737

Amount Due	Amount Enc.
$7,024.24	

Date	Transaction	Amount	Balance
02/28/2022	INV #3426. Due 02/28/2022. --- H2O $22.00 --- SWR $24.00 --- --- Block 4 Lot 4 Sunnyside Industrial and Professional Park	46.00	701.30
03/25/2022	PMT #60610.	-46.00	655.30
03/31/2022	INV #3444. Due 03/31/2022. --- H2O $22.00 --- SWR $24.00 --- H2O Excess. 12.38 @ $0.67 = 8.29 --- Block 4 Lot 4 Sunnyside Industrial and Professional Park	54.29	709.59
04/26/2022	PMT #99009.	-54.29	655.30
04/30/2022	INV #3463. Due 04/30/2022. --- H2O $22.00 --- SWR $24.00 --- H2O Excess. 14.09 @ $0.67 = 9.44 --- Block 4 Lot 4 Sunnyside Industrial and Professional Park	55.44	710.74
05/31/2022	INV #3500. Due 05/31/2022. --- H2O $22.00 --- SWR $24.00 --- H2O Excess $0.00 --- Block 4 Lot 4 Sunnyside Industrial and Professional Park	46.00	756.74
05/31/2022	INV #3517. Due 05/31/2022. --- Misc., 197 @ $27.50 = 5,417.50 --- Misc., 10 @ $85.00 = 850.00	6,267.50	7,024.24

CURRENT	1-30 DAYS PAST DUE	31-60 DAYS PAST DUE	61-90 DAYS PAST DUE	OVER 90 DAYS PAST DUE	Amount Due
0.00	6,313.50	55.44	0.00	655.30	$7,024.24

Sunnyside Utilities Inc

P.O. Box 1768
Idaho Falls, ID 83403-1768
208-529-9891

Invoice

Date	Invoice #
5/31/2022	3517

Bill To
Donald Sorrells 3341 N Emperor Ave. Fresno, CA 93737

P.O. No.	Terms	Project

Quantity	Description	Rate	Amount
197	WATER METER CHECK $55.00 HR @.50	27.50	5,417.50
10	ACCOUNT MANAGEMENT- DOYLE BECK	85.00	850.00
		Total	$6,267.50

Sunnyside Utilities Inc

P.O. Box 1768
Idaho Falls, ID 83403-1768
208-529-9891

Invoice

Date	Invoice #
5/31/2022	3500

Bill To
Donald Sorrells 3341 N Emperor Ave. Fresno, CA 93737

P.O. No.	Terms	Project

Quantity	Description	Rate	Amount
	Water Service	22.00	22.00
	Sewer Service	24.00	24.00
0	Excess Water Charge	0.67	0.00
	Block 4 Lot 4 Sunnyside Industrial and Professional Park		

Total	$46.00

Sunnyside Utilities Inc

P.O. Box 1768
Idaho Falls, ID 83403-1768
208-529-9891

Invoice

Date	Invoice #
4/30/2022	3463

Bill To
Donald Sorrells 3341 N Emperor Ave. Fresno, CA 93737

P.O. No.	Terms	Project

Quantity	Description	Rate	Amount
	Water Service	22.00	22.00
	Sewer Service	24.00	24.00
14.09	Excess Water Charge	0.67	9.44
	Block 4 Lot 4 Sunnyside Industrial and Professional Park		

	Total	$55.44

Sunnyside Utilities Inc

P.O. Box 1768
Idaho Falls, ID 83403-1768
208-529-9891

Invoice

Date	Invoice #
10/31/2021	3342

Bill To
Donald Sorrells 3341 N Emperor Ave. Fresno, CA 93737

P.O. No.	Terms	Project

Quantity	Description	Rate	Amount
	Water Service	22.00	22.00
	Sewer Service	24.00	24.00
3.7	Excess Water Charge: Reading 10/01/21 13500 11/01/21 29200	0.67	2.48
	Block 4 Lot 4 Sunnyside Industrial and Professional Park		
	Doyle Beck Invoice 101-21	653.49	653.49

Total $701.97

Invoice

Finish Line Plumbing Inc
1081 Midway Avenue
Idaho Falls, ID 83406 US
finishlineplumbing1@gmail.com

BILL TO
Don Sorrells

INVOICE #	DATE	TOTAL DUE	DUE DATE	TERMS	ENCLOSED
426	10/27/2021	$486.16	11/26/2021	Net 30	

DATE	ACTIVITY	DESCRIPTION	QTY	RATE	AMOUNT
10/27/2021	**Parts**	Curb box key, and water closet flappers.	1	111.90	111.90
	Labor	2 Man labor, for replacement of Flappers, and turning on water and testing.	2	180.00	360.00
	Late fee	1.5% - Applied on Nov 28, 2021			7.08
	Late fee	1.5% - Applied on Dec 28, 2021			7.18
		BALANCE DUE			**$486.16**