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IDAHO PUBLIC UTILITIES COMMISSION

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ATTORNEY FOR RESPONDENT

**BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION**

DONALD SORRELLS,	)	<b>Case No.</b> GNR-U-22-03
	)	
Complainant,	)	
	)	
v.	)	<b>MOTION TO STRIKE AND REQUEST</b>
	)	<b>FOR PREHEARING CONFERENCE</b>
	)	
SUNNYSIDE PARK UTILITIES,	)	
INC.,	)	
	)	
Respondent.	)	
	)	

COMES NOW the Respondent, by its counsel of record, Paul L. Fuller, in response to the "Notice of Compliance and Demand for Determination of Water Rate", filed with the IPUC on May 23, 2022, and pursuant to IDAPA 31.01.01.265 Moves the Commission to Strike such Notice as being improper under the Rules and Regulations of IPUC and Idaho's Rules of Evidence.

At the outset, it appears that Mr. Sorrells misunderstands the Reply Comments submitted by the Commission Staff, treating such as "Commission rules", rather than staff recommendations to the Commission. Under IPUC Rule 038, the Commission Staff is

treated as a third party, which may present evidence to the Commission and participate in hearings. No determination has been made by the Commission regarding this action, and the staff recommendations are just that, recommendations. Complying with the staff recommendations does not on its own, resolve this matter. Respondent is still entitled to its due process rights afforded under IPUC Rules and Regulations, which allow time for discovery and an opportunity to be heard at a hearing before the Commission, as outlined in IDAPA 31.01.01.

Further, the allegations and facts asserted by Mr. Sorrells' counsel in their Notice have not been properly presented to the Commission. Under IPUC Rule 057.02(b): "The complainant or Complainant must offer evidence of its allegations regardless of whether the complaint or petition is answered or denied." Pursuant to IPUC Rule 261, the IPUC generally follows the Idaho Rules of Evidence. Idaho Rules of Evidence do not allow an attorney to submit a statement containing hearsay information and unilaterally declare that the conflict has been resolved. The information provided is not such that the Commission could take Official Notice as allowed under Rule 263.

Further, the statements contained in the Notice are not verified. The Commission should not give any weight to unverified hearsay statements from the Complainant or his counsel. If Complainant intends to rely on the averments and statements

contained in the May 22, 2022 letter at the hearing, the Complainant should be required to put those statements in the form of an affidavit or declaration. The Commission should also require evidence supporting the statements. For example, Complainant asserts that "all known leaks are fixed", but does not identify what steps were taken to determine the existence of leaks. This statement does not address steps taken to verify the existence of unknown leaks, which have been asserted by SPU or any corrective action to prevent and timely repair future leaks.

The "Notice" filed by Mr. Sorrells' counsel does not constitute an allowed printed filing under Rule 061. In the event Mr. Sorrells argues that the Notice was a "statement of position", Rule 260 is clear that such statements or summaries are for the benefit of the public "and will not be allowed as evidence..."

#### **CONCLUSION**

IDAPA 31.01.01 does not allow Complainant to file a "Notice" in response to staff recommendations and unilaterally declare that Complainant is now in compliance with IPUC Rules and Regulations, that no further controversy exists, and that no sanction is appropriate for the years of violations committed by Complainant. SPU is entitled to the full due process rights afforded under IPUC's Rules and Regulations. It is requested that this Commission strike the Notice improperly submitted by Mr. Sorrells and proceed with a Prehearing Conference as allowed under Rule 214.

DATED this 26th day of May, 2022.

/s/ Paul L. Fuller  
Paul L. Fuller  
Attorney for Sunnyside Park Utilities, Inc.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I served a true and correct copy of the following described pleading or document on the persons listed below on this 26th day of May, 2022:

Document Served:

MOTION TO STRIKE AND REQUEST FOR  
PREHEARING CONFERENCE

Persons Served:

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/s/ Paul L. Fuller  
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