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ATTORNEY FOR RESPONDENT

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

DONALD SORRELLS,)	Case No. GNR-U-22-03
)	
Complainant,)	
)	
v.)	SUNNYSIDE PARK UTILITIES'
)	ANSWER TO PETITION FOR
)	RECONSIDERATION
SUNNYSIDE PARK UTILITIES,)	
INC.,)	
)	
Respondent.)	
_____)	

COMES NOW the Respondent, Sunnyside Park Utilities, Inc. ("SPU"), by its counsel of record, Paul L. Fuller, pursuant to IPUC Rule 331.05, and submits the following Answer to Petition for Reconsideration, submitted by Donald Sorrells.

1. Response to Paragraph 1.

Mr. Sorrells argues that SPU has admitted that it is subject to IPUC regulation. SPU contests such a claim.

a. Mr. Sorrells relies upon a letter sent to Amanda Hebesha on October 29, 2021, prior to the initiation of litigation and prior to the filing of any Complaint

before the IPUC. Ms. Hebesha is not a licensed attorney in Idaho and the letter was **not** part of litigation. Having conducted additional research and discovery, SPU has since learned that Idaho Code Section 61-125 is not as all inclusive as originally thought. Simply put, SPU's statement in October 29, 2021 was in error, as has been established by the IPUC determination.

b. Mr. Sorrells also relies upon Order No. 35737, claiming that SPU asserted its full due process rights under the IPUC Rules and Regulations. This assertion was in response to Mr. Sorrells' claims that all violations had been cured and that there was no need for the IPUC to further address his Complaint. SPU did **not** assert that IPUC had jurisdiction in its Motion to Strike, only that the Complaint could not be summarily dismissed prior to addressing jurisdiction and, if jurisdiction was established, proceeding in accordance with proper procedure governing Complaints. Mr. Sorrells' attempt to sidestep IPUC Rules and Regulations, by claiming he is now in compliance, was properly ignored by the IPUC because the question of jurisdiction had yet to be determined.

c. Mr. Sorrells also relies upon prior Orders issued by the IPUC, all of which have been reconsidered and are of no

further force and effect. At all times, SPU has been a utility organized and operated for service at cost and not for profit. SPU made some changes to its governing documents to ease IPUC staff concerns that at some point **in the future** SPU could operate for profit. Prior decisions by the IPUC finding that SPU was subject to its jurisdiction were based upon SPU's failure to provide sufficient evidence to establish that SPU qualified for the exceptions identified in Idaho Code Section 61-104. Once the proper evidence was provided, the IPUC correctly found that SPU is not subject to its jurisdiction.

2. Response to Paragraph 2.

a. Mr. Sorrells asserts that his due process rights have been ignored. However, a pre-condition to the IPUC addressing Mr. Sorrells' Complaint was a determination that the IPUC had jurisdiction. As noted in Order No. 35737, "[a]t 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." See Order No. 35737, p. 1 (emphasis added). The IPUC was required to first determine if the IPUC had jurisdiction

over SPU prior to addressing the merits of the Complaint. Having found the IPUC lacked jurisdiction, the IPUC has no authority to consider the substance of Mr. Sorrells' Complaint. Mr. Sorrells has no due process rights under the IPUC because the IPUC has no jurisdiction over SPU.

3. Response to Paragraph 3.

- a. Mr. Sorrells complains of *ex parte* communication between SPU and IPUC Staff. *Ex parte* communication in administrative proceedings is governed by Idaho Code Section 67-5253, which prohibits the "presiding officer" from communicating directly with any party. SPU never communicated with any of the IPUC Commissioners. Sorrells provides no evidence to show *ex parte* communication occurred. All communication by SPU counsel was with IPUC's attorney, and did not violate any prohibition on *ex parte* communication. Although IPUC colloquially refers to its assigned attorney as "Staff", the attorney is actually employed by the Office of the Idaho Attorney General, not the Idaho Public Utility Commission, further divesting such communication from any *ex parte* prohibition.

4. Response to Paragraph 4.

- a. SPU objects to Mr. Sorrells' assertion that SPU was

"gaming the system". As previously discussed, at all times SPU was organized and operating at cost and not for profit. All changes made by SPU were to reflect this reality, not alter the reality for "gaming" purposes. During review of each reconsidered Order, the IPUC never asserted that SPU was a for-profit corporation, only that SPU had failed to establish that the non-profit exception applied. Once SPU was able to properly identify IPUC's concerns regarding future transactions, SPU provided the IPUC with the information necessary to establish that SPU was and would remain a non-profit entity and that there was no risk of SPU directors pursuing profits in the future. The investigative process worked to establish the non-profit exception applied to SPU.

5. Response to Paragraph 5.

- a. Mr. Sorrells' request for reconsideration should be denied. SPU has established that it is organized and operated at cost and not for profit, precluding IPUC jurisdiction. Mr. Sorrells has provided no evidence or argument to contradict SPU's non-profit status. Absent evidence from Mr. Sorrells that SPU is operated for profit, the IPUC has no jurisdiction. Mr. Sorrells cannot provide such evidence because none exists. SPU

was never under the IPUC's jurisdiction because SPU has never operated for profit.

CONCLUSION

It is requested that the IPUC deny Mr. Sorrell's Motion for Reconsideration. Mr. Sorrells fails to establish or even argue any basis for the IPUC to exercise jurisdiction over SPU or that he has been deprived of any due process right.

DATED this 9th day of May, 2023.

/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 9th day of May, 2023:

Document Served: SUNNYSIDE PARK UTILITIES' ANSWER TO PETITION FOR RECONSIDERATION

Persons Served:

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