

**BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION**

<b>DONALD SORRELLS,</b>	)	
	)	<b>CASE NO. GNR-U-22-03</b>
<b>COMPLAINANT,</b>	)	
	)	
<b>vs.</b>	)	<b>ORDER NO. 35513</b>
	)	
<b>SUNNYSIDE PARK UTILITIES, INC.,</b>	)	
	)	
<b>RESPONDENT.</b>	)	
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On March 9, 2022, Donald Sorrells (“Complainant” or “Sorrells”) filed a complaint (“Complaint”) against Sunnyside Park Utilities (“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 terminating his service. 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 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 p. 17.*

### **STAFF COMMENTS**

Staff reviewed Sorrells' Complaint and SPU's Answer to evaluate whether SPU should be a regulated utility. Additionally, Staff reviewed whether SPU could 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 similar Commission cases and orders dealing with small water company regulation<sup>1</sup>, and 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. Thus, under the totality of the circumstances, Staff believed that the Company should be regulated by the Commission.

Staff next considered each of Sorrells' requests for relief in turn and provided the analysis on each claim.

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<sup>1</sup> See Case No. PKS-W-15-01, Order No. 33603; Case No. CCH-W-15-01, Order No. 33384; Case No. MUR-W-14-01, Order No. 33351.

**1. A determination that Complainant has not provided information that is materially false or materially misrepresents Sorrells status.**

SPU presented two arguments that Sorrells provided materially false information; one with respect to Sorrells' status as a customer and lack of standing to bring the Complaint; and one with respect to the number of connections Sorrells requested upon connection of service.

**A. Customer Status**

Staff believed that Sorrells met the definition of a customer under Rule 005.02, and Staff believed that Sorrells did not provide materially false information or materially misrepresented Sorrells' status in filing the Complaint.

**B. Additional Connections**

Staff believed that a regulated utility does not have the authority to control what the customer does on their side of the meter. While it is possible that adding extra connections could be a violation of ordinances (city/county), building codes, or other state agency rules, Staff did not believe that adding extra connections would constitute grounds for termination of service on its own under Rule 303.03.

**2. An interpretation of the term "access" under IDAPA 31.21.01.302.01(e).**

Staff's suggested interpretation of the term "access" under Rule 302.01 (e), implies that a utility must have the unimpeded ability to physically: read the meter; inspect the meter; replace the meter; test for leaks; repair the meter; and disconnect/reconnect service.

**3. A determination that Sorrells has not denied or willfully prevented SPU's access to the subject water meter.**

Due to the threats SPU claimed regarding access to the meter, and the installation of the lock on the meter by Sorrells, Staff believed Sorrells attempted to deny SPU access to the water meter. Staff recommended that the Commission find that Sorrells denied or willfully prevented SPU's access to the water meter in violation of Rule 302.01(e).

**4. An interpretation of the phrase "willfully wasting or interfering with service" under IDAPA 31.21.01.302.01(f).**

Staff's suggested interpretation of the phrase "willfully wasting or interfering with service" under Rule 302.02(f) is when a customer obtains knowledge that a leak exists, either through their own actions or the actions of another, and the customer either refuses to take action to address the leak, or fails to act to address the leak in a reasonably timely manner.

**5. A determination that Applicant has not willfully wasted or interfered with water service.**

Staff would not support an action to terminate service due to a leaky toilet or frost-free hydrant(s). However, consistent with Staff's interpretation of Rule 302.02(f), Staff believed a customer who refused to take action to address a leak, or act to address the leak in a reasonably timely manner, could be terminated from service. Alternatively, Staff believed the Company could bill the customer for excessive usage identified via meter readings. Based on the evidence presented, Staff believed Sorrells willfully wasted water because Sorrells had knowledge of the leaks, repairs were not timely, and the problems had not been fully resolved. Staff recommended that the Commission find Sorrells in violation of Rule 302.02(f).

**6. Alternatively, a determination that any alleged violations of IDAPA 31.21.01.302 have been cured or satisfied.**

Staff did not believe the alleged violations have been cured or satisfied. Staff believed that Sorrells' lock was still on the water meter in violation of Rule 302.01(e). Furthermore, it was Staff's understanding that there still existed a known leak of a frost-free hydrant. Staff believed that constituted a continued willful wasting of water in violation of Rule 302.01(f).

**7. 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.**

Staff believed SPU had sufficient grounds to terminate service. Staff noted that if Sorrells' lock was removed from the meter, SPU regained unimpeded access to the meter, all known leaks were fixed, and Sorrells account was paid up to date, then Staff did not believe there would be any remaining grounds for termination of service under Commission rules.

**8. Any other determinations and/or interpretations that are deemed proper and appropriate.**

SPU has alleged that a frost-free hydrant leak is likely seeping into the ground and may lead to future problems on the Subject Property and adjacent property. Staff did not believe that it had been presented with sufficient argument or evidence to make any recommendations regarding a potential violation of Rule 303.01, or what, if any, potentially dangerous conditions may develop; however, Staff noted the potential for significant issues in the future if SPU's allegations were true.

## STAFF RECOMMENDATION

Ultimately, Staff recommended the Commission find:

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

Additionally, Staff recommended that the Commission order SPU to file for a Certificate of Public Convenience and Necessity ("CPCN") to become a regulated water company within 30-days of issuance of the order.

## ADDITIONAL 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.

### **COMMISSION FINDINGS AND DECISION**

The Commission has jurisdiction over this matter and the issues in this case under Title 61 of Idaho Code. Specifically, 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.

The primary question before the Commission is whether SPU should be regulated by the Commission as a Public Utility. The Commission has reviewed the record, the arguments of the parties, the Complaint, and the Answer. 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. The Commission notes that on June 13, 2022, SPU emailed a copy of an Acknowledgement of Conversion Certificate to Commission’s legal counsel. The Certificate indicated that SPU was converted from a General Business Cooperation to a Non-Profit Corporation; however, the Certificate was never filed with the

Commission and no articles of incorporation or bylaws were submitted in support of any such conversion.

Based upon the Company's submissions, the Commission considered whether SPU is operated for profit, or may be considered a cooperative or nonprofit. In its Answer, SPU claims that "SPU is organized as a general corporation, however it is operated at cost and no distributions have ever been made to the owners and no wages have been paid to the owners." *Answer* at pp. 3-4. However, after reviewing the "Third Party Beneficiary Utility Agreement" ("Agreement") between SPU and Sunnyside Park Owners Association, Inc. ("Owners Association"), the Commission finds that there are no protections in the Agreement that would prevent shareholders from receiving a dividend or paying the owners for services rendered.

The Commission also considered whether the Company was owned by the customers. In its pleadings, SPU stated the Company has twenty-two (22) shares of ownership. *Answer* at p. 3. One share is owned by Kirk Woolf, one is owned by Doyle Beck, and the other twenty (20) shares are owned by Sunnyside Industrial and Professional Park, LLC ("Sunnyside"). The Annual Report for Sunnyside shows that the managing director is Mr. Beck, and the submitted evidence shows that there is no ownership stake granted to the customers. The Commission finds that SPU is not owned by its customers.

Finally, the Commission finds that there is no place in the Agreement that allows the customers to have any influence on the operations or capital expenditures of the Company. The Commission notes that Section 5 of the Agreement provides that if the Company fails to operate or maintain the water supply systems, then its customers have the right to take the Company to court; however, Section 6 expressly states that the Company has the right to establish and revise rules and regulations that are binding upon the customers.

Based upon the submitted material and the above analysis, the Commission cannot find that the Company may be considered a cooperative or nonprofit<sup>2</sup>; thus, the Commission finds that the Company is a public utility and subject to be regulated by the Commission.<sup>3</sup>

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<sup>2</sup> The Commission notes that on July 5, 2022, the Company filed additional documents in this case. The Commission believes those documents were submitted to support the Company's June 13, 2022, unfiled claim that it has been converted into a nonprofit. However, those documents were not accompanied by any motion, nor were they timely submitted as part of the Company's Answer. The Commission did not consider those documents in this Order.

<sup>3</sup> Nothing in this Order shall prohibit any party from petitioning for review of this interlocutory order pursuant to Commission Rule of Procedure 322.

**ORDER**

IT IS HEREBY ORDERED that the Company shall file an Application for a CPCN to become a regulated water company within 30-days of issuance of this order.

IT IS FURTHER ORDERED the Commission shall suspend consideration of the remaining substantive issues, as outlined in the Complaint and Answer, until SPU is granted or denied a CPCN.

IT IS FURTHER ORDERED that parties comply with Order No. 35375, issued April 21, 2022. Generally, all pleadings should be filed with the Commission electronically and will be deemed timely filed when received by the Commission Secretary. *See* Rule 14.02. Service between parties should continue to be accomplished electronically when possible. However, voluminous discovery-related documents may be filed and served on CD-ROM or a USB flash drive.

DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 23<sup>rd</sup> day of August 2022.



ERIC ANDERSON, PRESIDENT

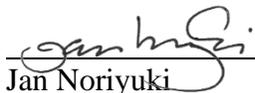


JOHN CHATBURN, COMMISSIONER



JOHN R. HAMMOND JR., COMMISSIONER

ATTEST:



Jan Noriyuki  
Commission Secretary

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