

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

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

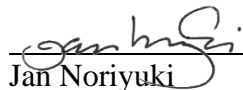


JOHN R. HAMMOND JR., COMMISSIONER



EDWARD LODGE, COMMISSIONER

ATTEST:



Jan Noriyuki
Commission Secretary

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