

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

DONALD SORRELLS,)	
)	CASE NO. GNR-U-22-03
COMPLAINANT,)	
)	
vs.)	ORDER NO. 35798
)	
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 (“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 that the Commission prohibit SPU from terminating his water service. Sorrells further requested the Commission find that SPU was a regulated public utility subject to the regulatory authority of the Commission.

After reviewing the record and the arguments of the parties, on August 23, 2022, the Commission issued Order No. 35513. The Commission found that, based upon the evidence submitted, SPU was subject to the Commission’s regulatory authority as a public utility. The Commission gave SPU until September 23, 2022, to file for a Certificate of Public Convenience and Necessity (“CPCN”).

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

On September 26, 2022, the Commission issued Order No. 35534 granting SPU’s petition for review, motion to amend, and petition to stay. After reviewing the record and the arguments of the parties, on December 27, 2022, the Commission issued Order No. 35645 affirming Order No. 35513 and ordering SPU to file an Application for a CPCN.

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

On March 20, 2023, SPU filed additional evidentiary documents in support of its claim of exemption from Commission jurisdiction. SPU represented that pursuant to Order No. 35681, SPU worked with Staff regarding its submission.

On April 12, 2023, the Commission issued Order No. 35737. After it reviewed the record, the arguments of the parties, all submitted evidence, and the particular facts and circumstances of this case, the Commission found that SPU was not subject to the Commission's regulatory authority under *Idaho Code* § 61-104 because SPU was organized and operated for service at cost and not for profit. Based on its analysis, the Commission determined that it lacked jurisdiction over the substantive issues in the Complaint and dismissed the Complaint.

Petition for Reconsideration

On May 2, 2023, Sorrells filed a Petition for Reconsideration ("Petition"). Sorrells argues that reconsideration is necessary to remedy the lack of due process and to apply the Commission's regulations governing whether SPU, before its conversion to a bona fide non-profit corporation, could use Sorrells' past actions as justification to terminate Sorrells' water service.

Sorrells argues that he is entitled to reconsideration of the way the Commission disposed of this matter and that the Commission should assess the sworn evidence Sorrells submitted against SPU's allegations. Sorrells contends that the Commission should issue an order that determines any attempts to terminate Sorrells' water service based on past actions that were under the Commission's jurisdiction are unlawful and prohibited.

Answer to Petition

On May 9, 2023, SPU filed an Answer to Petition for Reconsideration ("Answer"). SPU argues that Sorrells' request for reconsideration should be denied. SPU contends that it has established that it is organized and operated at cost and not for profit, and that the Commission lacks jurisdiction. SPU argues that Sorrells has not provided any evidence or argument to

contradict SPU's non-profit status, and that SPU was never under the Commission's jurisdiction because it has never operated for profit.

SPU concludes that Sorrells has failed to establish, or even argue, any basis for the Commission to exercise jurisdiction over SPU, nor has Sorrells established that he has been deprived of any due process right.

COMMISSION FINDINGS AND DECISION

The Commission finds that the petition does not meet the substantive requirements for a petition for reconsideration. Idaho Public Utilities Commission Rule of Procedure 331 provides:

Petitions for reconsideration must set forth specifically the ground or grounds why the petitioner contends that the order or any issue decided in the order is *unreasonable, unlawful, erroneous or not in conformity with the law*, and a statement of the nature and quantity of evidence or argument the petitioner will offer if reconsideration is granted.

IDAPA 31.01.01.331.01 (emphasis added). Further, "the petition . . . must state whether the petitioner . . . requests reconsideration by evidentiary hearing, written briefs, comments, or interrogatories." IDAPA 31.01.01.331.03.

Sorrells fails to provide argument or authority to show that the Commission's determination on the issue of jurisdiction was "unreasonable, unlawful, erroneous or not in conformity with the law." Further, Sorrells does not state whether he is requesting reconsideration by "evidentiary hearing, written briefs, comments, or interrogatories." Based upon these substantive deficiencies, the Commission denies the Petition.

However, even if the Commission were to consider the arguments that are contained in the Petition, the Commission would still deny the Petition.

Sorrells argues that:

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.

Petition at 1 (emphasis added). This assertion is incorrect.

The District Court in Bonneville County reasoned that the Commission retains original jurisdiction over interpreting rules and resolving formal complaints where Idaho water corporations are concerned. *Id.* at 18. Specifically, the court stated:

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.

Id. at 19. As the Commission has determined that SPU is not a water corporation that is subject to the Commission's regulatory authority, all arguments concerning the application of the Commission's rules and regulations have become moot, and any arguments with respect to the contractual relationship between Sorrells and SPU concerning the provision of water services are not matters within the Commission's power to adjudicate.

In paragraphs 1(a) and 1(b), Sorrells argues that when this action began, SPU was a water corporation subject to the jurisdiction and orders of the Commission. Sorrells contends that fact is confirmed by the Commission's own orders and SPU's own admissions. *Id.* at 2. Sorrells is incorrect.

Statements of parties and the representations made between parties do not create jurisdiction. Regardless of whether SPU or Sorrells indicate or even openly states that SPU is a water corporation under the Commission's jurisdiction, that is a determination that can only be made by the Commission. In this case, after reconsidering all previous interlocutory orders, the Commission issued a final order and determined that SPU does not fall under the Commission's jurisdiction.

In paragraphs 2(a), 2(b), and 3, Sorrells argues that his due process rights have been violated. Sorrells contends that there have been numerous *ex parte* contacts between Staff and SPU, and that Staff ignored his evidentiary submissions. *Id.* at 2-3. Sorrells' arguments are without merit.

Sorrells presents no authority for his assertions regarding due process and *ex parte* communications. Sorrells contends, without support, that the Commission and Staff are considered a singular entity for the purposes of *ex parte* communication. That assertion is incorrect. Idaho Public Utility Commission Rule of Procedure 37 provides that: "Commission Staff may appear in any Commission proceeding as an impartial representative of the public interest with all rights of participation as a party would have. If counsel is desired, a Deputy Attorney General for the Commission represents the Staff." Communication between Staff and other parties in a case does not constitute *ex parte* communication.

Sorrells was provided with notice and an opportunity to respond to every motion, petition, pleading, interlocutory order, and final order contained in the record. There was no violation of Sorrells' due process rights.

Additionally, Sorrells' arguments concerning his evidentiary support relate only to acts that would be analyzed under the Commission's rules and regulations. As noted above, all arguments concerning the application of the Commission's rules and regulations have become moot, and any arguments with respect to the contractual relationship between Sorrells and SPU concerning the provision of water services are not matters within the Commission's power to adjudicate.

Finally, in paragraph 4 of the Petition, Sorrells argues that the Commission "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." *Id.* at 4. This assertion is without merit and contradicted by the record. Sorrells does not present any authority for this assertion. As explained above, the Commission determined that it does not have jurisdiction over SPU in this case.


Thus, the Commission denies the Petition.

ORDER

IT IS HEREBY ORDERED that the Petition is denied.

THIS IS A FINAL ORDER DENYING RECONSIDERATION. Any party aggrieved by this Order or other final or interlocutory Orders previously issued in this case may appeal to the Supreme Court of Idaho within forty-two (42) days pursuant to the Public Utilities Law and the Idaho Appellate Rules. *Idaho Code* § 61-627; I.A.R. 14.

DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 30th day of May 2023.



ERIC ANDERSON, PRESIDENT

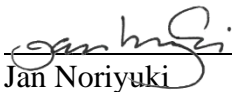


JOHN R. HAMMOND JR., COMMISSIONER



EDWARD LODGE, COMMISSIONER

ATTEST:



Jan Noriyuki
Commission Secretary

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