

DECISION MEMORANDUM

TO: COMMISSIONER ANDERSON
COMMISSIONER CHATBURN
COMMISSIONER HAMMOND
COMMISSION SECRETARY
COMMISSION STAFF
LEGAL

FROM: TAYLOR R. BROOKS
DEPUTY ATTORNEY GENERAL

DATE: MARCH 29, 2022

SUBJECT: IN THE MATTER OF DONALD SORRELL'S COMPLAINT AGAINST
SUNNYSIDE PARK UTILITIES; CASE NO GNR-U-22-03.

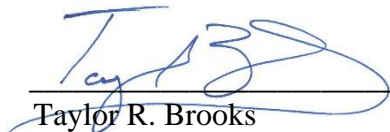
On March 9, 2022, Donald Sorrells ("Complainant") filed a complaint ("Complaint") against Sunnyside Park Utilities ("SPU"), an un-regulated small water company with the Idaho Public Utilities Commission ("Commission"). Complainant alleges that SPU has notified him that it intends to terminate his water service pursuant to violations of IDAPA 31.21.01.302, and Complainant requests the Commission prohibit SPU from doing so. Complainant further requests the Commission find that SPU is a regulated utility under the regulatory authority of the IPUC.

STAFF RECOMMENDATION

Staff recommends the Commission accept the Complaint but hold it in abeyance until the Commission can investigate whether SPU should be regulated by the Commission. Currently, SPU is structured as a Not-for-Profit Idaho corporation and it services water to approximately 35 customers on a single well and water system. Accordingly, the Commission has preliminary jurisdiction under *Idaho Codes* §§ 61-124, 64-125, 61-129, 61-501, and 61-503.

COMMISSION DECISION

Does the Commission wish to accept Donald Sorrells Formal Complaint, but hold it in abeyance until it can investigate whether SPU is a small water company that should be regulated by the Commission?


Taylor R. Brooks
Deputy Attorney General

MAR 09 2022

Boise, Idaho

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Attorneys for Applicant Donald Sorrells

IDAHO PUBLIC UTILITIES COMMISSION

DONALD SORRELLS, an individual,

Applicant,

vs.

SUNNYSIDE PARK UTILITIES, INC., an
Idaho Corporation,

Respondent.

Case No.

FORMAL COMPLAINT

Applicant, Donald Sorrells, by and through his counsel of record, Paul B. Rippel, Esq., and Austin O. Allen, Esq., of the law firm HOPKINS RODEN CROCKETT HANSEN & HOOPES, PLLC, of Idaho Falls, Idaho, and for this Formal Complaint hereby states and alleges as follows:

1. Applicant, Donald Sorrells, is the owner of Lot 4, Block 4, Sunnyside Industrial & Professional Park, located in Bonneville County, Idaho (hereinafter "the Property").

2. Respondent, Sunnyside Park Utilities, Inc. (hereinafter “SPU”), is an Idaho corporation organized and existing under the laws of the state of Idaho with its principal place of business in the County of Bonneville, state of Idaho. SPU provides water and sewer service to lots in Sunnyside Industrial and Professional Park, including the Property.

3. SPU is a water corporation that provides public utilities to the Property as defined under I.C. §§ 61-125 and -129.

JURISDICTION AND VENUE

4. The Idaho Public Utilities Commission (hereinafter “the IPUC”) has jurisdiction over this matter pursuant to I.C. § 61-129 as it concerns rules and regulations SPU holds itself out to be controlled by.

5. The IPUC has jurisdiction over this matter pursuant to Idaho Admin. Code r. 31.21.01.009 as it seeks an order interpreting IPUC rules and regulations as well as seeks to resolve a formal complaint filed pursuant to Idaho Admin. Code r. 31.21.01.401.

GENERAL ALLEGATIONS

6. Applicant realleges paragraphs 1 through 5 as though fully incorporated herein.

7. On or about March 3, 2022, Mr. Sorrells received a letter from SPU’s counsel notifying Mr. Sorrells of SPU’s intent to terminate water service on March 10, 2022, for allegedly violating Idaho Admin. Code r. 31.21.01.300 et seq. A true and correct copy of the March 3, 2022, letter is attached hereto as Exhibit A.

8. In the March 3, 2022, letter, SPU alleged that Mr. Sorrells engaged in conduct in violation of Idaho Admin. Code r. 31.21.01.300 *et seq.* as follows:

- a. "IDAPA 31.21. 01.302.01(d) - At the time of initial connection, Sunnyside Park Utilities, Inc. ("SPU") was informed that service to the property would only include connections for two restrooms. It has since been determined that this information was materially false, in that additional connections were made, including connections for washer/dryer, connection for RV use, and additional water hydrants located throughout the property."
- b. "As IDAPA 31.21.01.302.01(e) - The customer has denied or willfully prevented access to SPU's water meter by placing a lock on the meter and by providing written communication that anyone entering the property would be removed by force."
- c. "IDAPA 31.21.01.302.01(f) - SPU has determined that the customer has been and is currently willfully wasting water provided through improper equipment. The customer has continually utilized a defective toilet, and water flows indicate that there is a leak in the customer's system, which customer refuses or has otherwise failed to remedy."

9. The March 3, 2022, letter indicated that any attempt to turn water back on by Mr. Sorrells or his tenants or agents after March 10, 2022, without prior authorization from SPU would be treated as "theft of services and will be reported to

local authorities.” Ex. A, p. 1.

10. The March 3, 2022, letter indicated that Mr. Sorrells could avoid termination of water services by performing the following:

- a. “Removing all unauthorized plumbing and providing proof satisfactory to SPU that the only water lines are located in the two restrooms as originally authorized by SPU.”
- b. “Removing the lock on the water meter and providing adequate written assurance that customer and his tenants and agents will no longer interfere with water meter.”
- c. “Providing written verification from an SPU approved plumber that all leaks have been repaired and that the water system is functioning consistent with all applicable statutes, codes and regulations.”
- d. “Establishing monitoring protocols, approved by SPU, which will provide assurance that future violations will not occur or will be discovered and repaired promptly. This must include, but not limited to, providing daily monitoring by Mr. Sorrells (or a designated agent(s)) and reporting to SPU daily. These monitoring protocols will be utilized until such time as SPU believes there is no longer a need for monitoring.”
- e. “Payment of all the fees and costs incurred by SPU in addressing Mr. Sorrells’ violations. An amount will be calculated and provided upon request. **SPU is willing to make payment arrangements.**” Ex. A, pp. 1-

2 (emphasis in original).

COMPLAINT TO COMMISSION
IDAPA 31.21.01.401

11. Applicant realleges paragraphs 1 through 10 as though fully incorporated herein.

12. Respondent SPU should be prohibited from terminating water services pursuant to Idaho Admin. Code r. 31.21.01.300 *et seq.*, as SPU's proffered reasons and resolutions have no basis in law or fact.

13. With regard to SPU's allegation that Mr. Sorrells is in violation of Idaho Admin. Code r. 31.21.01.302.01(d), Mr. Sorrells has not provided any information that was materially false or materially misrepresents Mr. Sorrell's "true status". SPU has not identified any information provided by Mr. Sorrells, only that it was informed by an unidentified person/entity. Mr. Sorrells has made no materially false statements or representations to SPU.

14. With regard to SPU's allegation that Mr. Sorrells is in violation of Idaho Admin. Code r. 31.21.01.302.01(e), the water meter in question is not the property of SPU, and Mr. Sorrells has not restricted SPU's access to the water meter for the purpose of obtaining readings. Mr. Sorrells purchased the water meter in question.

15. With regard to SPU's allegation that Mr. Sorrells is in violation of Idaho Admin. Code r. 31.21.01.302.01(f), Mr. Sorrells has not willfully wasted water.

16. Further, Mr. Sorrells has repeatedly fixed or caused to be fixed any toilets found to be in a defective condition.

17. SPU threatens to terminate water services without basis.

18. In addition to threatening termination of water service without basis, SPU's proposed resolution to avoid termination of services includes remedies and actions not permitted under Idaho Admin. Code r. 31.21.01.300 *et seq.*

19. With regard to the request that Mr. Sorrells "Remov[e] all unauthorized plumbing and provid[e] proof satisfactory to SPU that the only water lines are located in two restrooms as originally authorized by SPU", Mr. Sorrells did not provide any materially false information or make any material misrepresentation to SPU pertaining to his "status" with respect to alleged authorized number of restrooms. This request is without basis in fact.

20. With regard to the request that Mr. Sorrells "Remov[e] the lock on the water meter and provid[e] adequate written assurance that customer and his tenants and agents will no longer interfere with water meter", the water meter in question is the property of Mr. Sorrells, and he does not have a duty prescribed by rule, regulation, or statute that he leave his water meter unlocked.

21. With regard to the request that Mr. Sorrells "Provid[e] written verification from an SPU approved plumber that all leaks have been repaired and that the water system is functioning consistent with all applicable statutes, codes and regulations", Mr. Sorrells has already provided notice regarding repairs on alleged leaks, and the request from SPU appears designed to merely harass Mr. Sorrells.

22. With regard to the request that Mr. Sorrells "Establish[] monitoring protocols, approved by SPU" which "must include . . . providing daily monitoring by Mr. Sorrells", such a request is unduly burdensome, cumbersome, and appears designed

merely to harass Mr. Sorrells.

23. With regard to the request that Mr. Sorrells “Pay[] of all the fees and costs incurred by SPU in addressing Mr. Sorrells’ violations,” such a request is without foundation or authority under Idaho Admin. Code r. 31.21.01.300 *et seq.*

PRAYER FOR RELIEF

WHEREFOR Applicant prays for 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.

DATED this 9th day of March, 2022.

HOPKINS RODEN CROCKETT
HANSEN & HOOPES, PLLC

By /s/ Austin O. Allen
Austin O. Allen, Esq.
Attorneys for Donald Sorrells

FULLER & BECK LAW OFFICES, PLLC.

ATTORNEYS AT LAW

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NOTICE OF INTENT TO TERMINATE SERVICE

Via E-mail

March 3, 2022

Paul B. Rippel
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Donald Sorrells
3341 N. Emperor
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3887 S. American Way, Unit 'A'
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RE: Our Client: Sunnyside Park Utilities, Inc.
Your Client: Don Sorrells

Dear Counsel,

Pursuant to the Memorandum Decision on Respondent's Motion to Dismiss, entered March 2, 2022, the Court determined that jurisdiction regarding your client's violations of IDAPA 31.21.01.602.01 must be first addressed by the Idaho Public Utility Commission ("IPUC"), however the Court has jurisdiction regarding your client's violation of Sunnyside Park Utilities' Rules and Regulations for Sewer Service. Based on this decision, Sunnyside Park Utilities, Inc. hereby provides notice of intent to terminate water service pursuant to IDAPA 31.21.01.300, et. seq.

Service will be terminated based upon Mr. Sorrells' violations of the following provisions:

1. IDAPA 31.21.01.302.01(d) - At the time of initial connection, Sunnyside Park Utilities, Inc. ("SPU") was informed that service to the property would only include connections for two restrooms. It has since been determined that this information was materially false, in that additional connections were made, including connections for washer/dryer, connection for RV use, and additional water hydrants located throughout the property.
2. IDAPA 31.21.01.302.01(e) – The customer has denied or willfully prevented access to SPU's water meter by placing a lock on the meter and by providing written communication that anyone entering the property would be removed by force.
3. IDAPA 31.21.01.302.01(f) – SPU has determined that the customer has been and is currently willfully wasting water provided through improper equipment. The customer has continually utilized a defective toilet, and water flows indicate that there is a leak in the customer's system, which customer refuses or has otherwise failed to remedy.
4. IDAPA 31.21.01.303.03 or 602.03 – Water services provided by SPU have been diverted and used by Mr. Sorrells without SPU authorization by adding additional water lines to buildings located on the property.

Service will be terminated on or after March 10, 2022. At time of termination, SPU will take a water meter reading in order to calculate final payment amount and will turn off the water supply at the curb stop. Any attempt by Mr. Sorrells or his tenants or agents to restart the water without prior authorization from SPU will be treated as a theft of services and will be reported to local authorities. SPU will take additional steps to ensure that future theft of water will not occur.

Pursuant to IDPA 31.21.01.305.01(b), Mr. Sorrells may avoid termination by doing the following:

EXHIBIT A

1. Removing all unauthorized plumbing and providing proof satisfactory to SPU that the only water lines are located in the two restrooms as originally authorized by SPU.
2. Removing the lock on the water meter and providing adequate written assurance that customer and his tenants and agents will no longer interfere with water meter.
3. Providing written verification from an SPU approved plumber that all leaks have been repaired and that the water system is functioning consistent with all applicable statutes, codes and regulations.
4. Establishing monitoring protocols, approved by SPU, which will provide assurance that future violations will not occur or will be discovered and repaired promptly. This must include, but not limited to, providing daily monitoring by Mr. Sorrells (or a designated agent(s)) and reporting to SPU daily. These monitoring protocols will be utilized until such time as SPU believes there is no longer a need for monitoring.
5. Payment of all the fees and costs incurred by SPU in addressing Mr. Sorrells' violations. An amount will be calculated and provided upon request. **SPU is willing to make payment arrangements.**

Pursuant to IDAPA 31.21.01.305.01(d), an informal or formal complaint concerning termination may be filed with SPU or the Idaho Public Utility Commission, and service will not be terminated on the ground relating to this dispute between the customer and the utility before resolution of the complaint. SPU can be reached through our office, and the IPUC may be reached at the following address/phone number:

P.O. Box 83720
Boise, ID 83720-0074

11331 W. Chinden Blvd. Building 8, Suite 201-A
Boise, ID 83714

Phone: 208.334.0300

In the event Mr. Sorrells' files a complaint directly with the Commission, it is requested that a copy of such complaint be provided to our office to prevent termination pending resolution of the complaint.

For purposes of termination, partial payments will be applied toward utility service charges first, unless Mr. Sorrells request otherwise. Charges for non-utility services cannot be used as a basis for termination.

Given that Mr. Sorrell's violations do not involve a residential customer the notice requirements of IDAPA 31.21.01.305(c) is not applicable.

In order to comply with the requirements of IDAPA 31.21.01.304.01, this notice will also be mailed directly to Mr. Sorrells as customer of Sunnyside Park Utilities, Inc.

SPU intends to continue to pursue its claims as allowed by the District Court's decision.

Very truly yours,

/s/ Paul L. Fuller

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

Cc: IPUC