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Attorney for the Commission Staff

**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>REPLY COMMENTS OF</b>
	)	<b>THE COMMISSION STAFF</b>
<b>SUNNYSIDE PARK UTILITIES, INC.,</b>	)	
	)	
<b>RESPONDENT</b>	)	

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**COMES NOW** the Staff of the Idaho Public Utilities Commission (“Staff”), by and through its Attorney of record, Chris Burdin, Deputy Attorney General, and submits the following reply comments.

**BACKGROUND**

On March 9, 2022, Donald Sorrells (“Sorrells” or “Complainant”) filed a Formal Complaint (“Complaint”) against Sunnyside Park Utilities (“SPU” or “Company”), an unregulated 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 disconnecting his service. Sorrells further requested the Commission find that SPU is a regulated utility under the regulatory authority of the Commission. On March 29, 2022, the Commission

issued a Summons to SPU. On April 21, 2022, the Company filed its Answer to Complaint (“Answer”).

## **OVERVIEW OF SUNNYSIDE INDUSTRIAL PARK & SPU WATER SYSTEM**

SPU provides water and sewer service to 19 commercial and industrial customers within the Sunnyside Industrial and Professional Park (“SIPP”). The developed properties are located just south of Idaho Falls, Idaho on the east side of South Yellowstone Highway. According to SPU, the water source for water service is a metered well capable of providing 80 to 100 gallons per minute. SPU provides sewer service to SIPP using a single septic tank and drain field system.

Sorrells originally purchased the developed lot on August 6, 2018, and subsequently constructed 5 buildings on the site. Currently the property is identified as the Teton Business Park, which appears to lease or rent out a total of 18 individual commercial spaces.

## **STAFF RESPONSE**

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), in the event that the Commission determines that SPU should be regulated.

The following are Staff’s responses to each of Sorrells’ nine relief requests contained in his Complaint.

**1. A determination that Respondent SPU is a regulated utility under the regulatory authority of the IPUC pursuant to Idaho Code Title 61 and IDAPA 31.21.01. et seq.**

The primary question before the Commission is whether SPU should be regulated by the Commission as a Public Utility. Staff believes the Commission should find that SPU is a Public Utility that is subject to the Commission’s authority. Staff recommends that the Commission order the Company to file for a Certificate of Public Convenience and Necessity (“CPCN”) to become a regulated water company.

A “public utility” is an entity that is dedicated to serving the general public in its service area. *See 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.

In making its recommendation, Staff reviewed several similar Commission cases and orders dealing with small water company regulation.<sup>1</sup> Staff has compiled a list of non-exclusive factors it believes the Commission may 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, and under the totality of the circumstances, Staff believes that the Company should be regulated by the Commission.

**A. Is the Company a Non-Profit or Co-op?**

Based on Staff’s investigation, SPU is not recorded as a not-for-profit organization with the Secretary of State. Staff questioned SPU’s owner, Doyle Beck, and confirmed that SPU was incorporated as a general corporation. Staff believes this factor weighs toward regulation.

**B. Does the Company operate for the service of the customers and not for profit?**

Despite being incorporated as a general corporation, the Commission may consider whether SPU was operated for profit. 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 pp. 3-4. Similarly, Staff spoke with Mr. Beck about SPU’s operation, and he stated that he has never taken a salary or a dividend from the Company. However, Staff has reviewed the “Third Party Beneficiary Utility Agreement” (“Agreement”) between SPU and Sunnyside Park Owners Association, Inc. (“Owners Association”), and there are no protections in the Agreement that would prevent shareholders from receiving a dividend or paying the owners for services rendered. While the Commission may take SPU at its word that it has never been run for profit, based on the submitted evidence, Staff believes there are no protections against that happening at some point in the future. Staff believes that this factor weighs toward regulation.

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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.

**C. Is the Company owned by the customers?**

Staff believes that the Company is not owned by the customers. SPU stated the Company has twenty-two (22) shares of ownership. Answer p. 3. One share is owned by Kirk Woolf, one is owned by Mr. 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 evidence shows that there is no ownership stake granted to the customers. In addition, Mr. Woolf was the president of the Owners Association and SPU at the time of signing the Agreement and signed as both parties to the Agreement. Staff believes that this factor weighs toward regulation.

**D. Do the customers have control over the rates that the Company charges?**

Staff reviewed Section 7 of the Agreement, which states that should the Company wish to change rates in either the water or sewer service, it must first send notice to each customer. If more than half of the customers file a protest in writing the rate increase will then be sent to arbitration. The arbitrators will make written recommendations within ninety days. If there is a written objection to the arbitrators’ proposal, then the rates will go to court for resolution. Based on the Agreement, Staff believes that the customers do have significant control over the rates SPU charges. Staff believes that this factor weighs against regulation.

**E. Do the customers have control over the operations and capital expenditures of the Company?**

After reviewing the Agreement, Staff believes there is no place in the Agreement that allows the customers to have any influence on the operations or capital expenditures of the Company. At best, Section 5 of the Agreement provides that if the Company fails to operate or maintain the water supply systems, then the customers have the right to take the Company to court. In contrast, Section 6 expressly states that the Company has the right to establish and revise rules and regulations that are binding upon the customers. There is no review process or voting that allows customers to have input or control over any of the operations or capital expenditures. Staff believes that this factor weighs toward regulation.

Based upon the above analysis, Staff believes the Commission should find that SPU is a Public Utility that is subject to the Commission’s authority, and Staff recommends that the Commission order the Company to file for a CPCN to become a regulated water company.

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

SPU presents 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**

Sorrells argues that he has not provided any information to SPU that was materially false or materially misrepresented his "true" status. In response, SPU contends that Donald and Meri Sorrells purchased Lot 4, Block 4, Sunnyside Industrial & Professional Park located in Bonneville County, Idaho ("Subject Property") on or about August 6, 2018, and that on March 10, 2020, Sorrells transferred the Subject Property to the Donald Dail Sorrells and Meri Sorrells Living Trust ("Trust"). SPU claims the Trust did not apply for service and that Sorrells never notified SPU of the transfer of ownership. As a result, SPU argues that Sorrells no longer qualifies as a customer under IDAPA 31.21.001.005.02 and lacks standing to file a complaint against SPU. Additionally, SPU contends that because Sorrells failed to identify the "true" status of ownership of the Subject Property, and that omission constitutes grounds for termination of service under IDAPA 31.21.01.302 (d).

**Staff Position**

Rule 302.01(d) provides that "[a] utility may deny or terminate service to a customer . . . [after] . . . [t]he utility has determined that information provided by the customer or applicant is materially false or materially misrepresents the customer's or applicant's true status." IDAPA 31.21.01.302.01(d). Rule 5.02 defines "customer" as "any person who has applied for, has been accepted by the utility and is . . . [r]eceiving service from a utility; or [h]as assumed responsibility for payment of service provided to another or others." IDAPA 31.21.01.005.02(a), (c). "If the person receiving service is not the same person as the person assuming responsibility for payment of service, the latter is the customer for purposes of obtaining or terminating service, receiving refunds, or making changes to the account." *Id.*

Staff believes that long standing policy for any given regulated utility, and Staff's own interpretation of UCCR Rule 005.02, is that bill responsibility is based on the name on the utility bill. The owner of a property is under no obligation to have service in their name, nor could they be held responsible for service that was not in their name. Staff believes that Sorrells meets the definition of a customer under Rule 005.02, and Staff finds no evidence that Sorrells provided

materially false information or materially misrepresents Sorrells' status in filing the Complaint. Staff recommends that the Commission find that Sorrells has standing as a customer to bring the Complaint.

### **B. Additional Connections**

Regarding SPU's request that Sorrells remove all unauthorized plumbing, Sorrells claims that he did not provide any materially false information or make any false misrepresentation to SPU maintaining his status with respect to alleged number of restrooms. In response, SPU argues that on August 23, 2018, it issued a "Will Serve" letter to Sorrells based on representations that Sorrells would only install two restrooms on the Subject Property, and that no other water or sewer needs will be required. SPU claims that Sorrells installed a washer/dryer connection, an RV septic/water connection, and ten (10) frost free hydrants on multiple buildings on the Subject Property. SPU contends such actions are grounds for termination under IDAPA 31.21.303.03.

#### **Staff Position**

Rule 303.03 provides that "[a] utility may deny or terminate service without prior notice to the customer or applicant and without the customer's or applicant's permission . . . [if] . . . [t]he service is obtained, diverted or used without the authorization or knowledge of the utility." IDAPA 31.21.01.303.03.

Staff believes 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 does not believe that adding extra connections would constitute grounds for termination of service on its own under Rule 303.03. Staff is unaware of any written agreement regarding the number of restrooms that would be installed on the property; therefore, it does not believe that Sorrells provided information that is materially false or material that misrepresents Sorrells status under Rule 302.01(d).

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

Rule 302.01(e) provides that "[a] utility may deny or terminate service to a customer . . . [after] . . . [t]he customer or applicant denied or willfully prevented the utility's access to the meter." 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.

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

Sorrells claims the water meter is not SPU's property because he purchased the meter, and Sorrells denies having restricted SPU's access to the meter for the purpose of readings. In response, SPU provided an invoice paid in full for the purchase of a water meter and the cost to install the meter in the right of way, on or about June 17, 2021, to measure water consumption on the Subject property. SPU claims the water meter is the property of the Company. Further, SPU contends that on October 25, 2021, while an employee was taking a meter reading, a tenant of the Subject Property informed the SPU employee that the employee was not allowed to access the water meter. SPU also claims that Sorrells sent a text message to SPU stating in part, "...this is a formal notice that if you or anyone representing you enters my property for any reason again you will be removed by force if necessary." Answer p.10. Additionally, on October 27, 2021, SPU claims it discovered that its lock was removed, the water was turned on, and that Sorrells had installed a new lock in its place.

**Staff Position**

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

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

Rule 302.01(f) provides that "[a] utility may deny or terminate service to a customer ... [after] . . . [t]he utility determines that the customer is willfully wasting or interfering with service to the customer or other customers through improper equipment or otherwise." 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.



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

Sorrells argues that he is not in violation of Rule 302.02(f) and has not willfully wasted water because he claims he repeatedly repaired or had repaired any toilet that was found to be defective. In response, SPU claims that after Sorrells was connected to SPU's water/septic system, SPU noted repeated instances of excessive water discharge originating from the Subject Property. SPU contends that it repeatedly notified Sorrells of the issues and Sorrells routinely assured SPU that the issue would be addressed.

**Leakage Events**

SPU claims that on or about August 21, 2019, SPU sent a violation notice regarding a leaky toilet that was continuously discharging water into SPU's septic system and the additional connections. SPU requested remediation or service would be terminated. Subsequently, SPU mailed a second notice of violation letter on or about September 5, 2019, and a third letter was mailed on or about February 12, 2021, regarding the same issue. On or about April 5, 2021, counsel for Sorrells notified SPU, claiming that the toilet issue and drainage/leaking issue had been remediated.

On October 25, 2021, SPU discovered that the toilet was continually running and shut the water off to the subject property. On October 26, 2021, SPU again noticed excessive flow of water from the Subject Property; therefore, SPU returned to the water meter where it discovered that the water had been turned back on without SPU's knowledge. SPU again turned the water off and installed a lock on the meter.

On October 27, 2021, SPU was contacted by Sorrells council who requested the water be turned back on because the toilet was repaired. Upon return to the water meter, SPU discovered that SPU's lock was removed, water was turned on, and a new lock was installed by Sorrells.

On November 2, 2021, SPU claims that it was informed via a response given by Sorrells contractor that a frost-free hydrant was leaking and would be fixed but until it was fixed, Sorrells would continue to use the water service. SPU claims that, with the exception of November 2-4, 2021, when water appears to have been shut off during the evening, the leak has continued unabated.

**Staff Position**

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) above, Staff believes



a customer who refuses 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 believes the Company could bill the customer for excessive usage identified via meter readings if a proper water rate is established. Based on the evidence presented, Staff believes Sorrells willfully wasted water because Sorrells had knowledge of the leaks, repairs were not timely, and the problems have not been fully resolved. Staff recommends that the Commission find Sorrells in violation of Rule 302.02(f).

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

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

**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.**

Based upon the analysis above, Staff believes SPU has sufficient grounds to terminate service at this time. Staff notes that if Sorrells' lock is removed from the meter, SPU regains unimpeded access to the meter, all known leaks are fixed, and Sorrells account is paid up to date, then Staff does not believe there would be any remaining grounds for termination of service under Commission rules.

**9. 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. Rule 303.01 provides that: "[a] utility may deny or terminate service without prior notice . . . [when] . . . [a] condition immediately dangerous or hazardous to life, physical safety, or property exists, or if necessary to prevent a violation of federal, state or local safety or health codes. IDAPA 31.21.01.303.01.

Staff has not 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 notes the potential for signification issues in the future if SPU's allegations are true.

## STAFF RECOMMENDATION

Staff recommends 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 recommends that the Commission order SPU to file for a Certificate of Public Convenience and Necessity to become a regulated water company within 30-days of issuance of the final order.

**Respectfully** submitted this *12th* day of May 2022.



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[i.umisc/comments/gnru22.3cbdk](https://i.umisc/comments/gnru22.3cbdk) reply comments

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT I HAVE THIS 12<sup>TH</sup> DAY OF MAY 2022, SERVED THE FOREGOING **REPLY COMMENTS OF THE COMMISSION STAFF**, IN CASE NO. GNR-U-22-03, BY E-MAILING A COPY THEREOF, TO THE FOLLOWING:

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