

CHRIS BURDIN  
DEPUTY ATTORNEY GENERAL  
IDAHO PUBLIC UTILITIES COMMISSION  
PO BOX 83720  
BOISE, IDAHO 83720-0074  
(208) 334-0314  
IDAHO BAR NO. 9810

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Street Address for Express Mail:  
11331 W CHINDEN BLVD, BLDG 8, SUITE 201-A  
BOISE, ID 83714

Attorney for the Commission Staff

**BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION**

<b>DONALD SORRELLS,</b>	)	
<b>COMPLAINANT,</b>	)	<b>CASE NO. GNR-U-22-03</b>
<b>vs.</b>	)	
<b>SUNNYSIDE PARK UTILITIES, INC.,</b>	)	<b>COMMENTS OF THE</b>
<b>RESPONDENT.</b>	)	<b>COMMISSION STAFF</b>

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

**BACKGROUND**

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.

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, the Company was subject to the Commission’s regulatory authority. The Commission gave the Company until September 23, 2022, to file for a Certificate of Public Convenience and Necessity (“CPCN”).

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 non-profit 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.

#### **STAFF REVIEW**

Staff has reviewed the Company’s amended answer and all submitted documents. Based upon its review, Staff continues to recommend that Sunnyside 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, and listed below, Staff believes the Company’s amended answer does not meet three of those criteria and the Company should be regulated by the Commission.

- 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?

The Company represented that it changed its corporate structure to that of a non-profit. Staff believes the Company’s amended answer addresses only two of the criteria above. The Company intends to operate as a non-profit (Criteria A) and the Company’s bylaws prevents the members of the Board of Directors (“Board”) from receiving any stated salary, which Staff

believes provides some protections to customers that the Company will operate solely for the service of the customers and not its Board (Criteria B). *See* Bylaws, Article 1, Section 11.

However, the Board manages the Company's operations. The new bylaws state that the next Board will be voted in by the current Board, thus bypassing customers completely. Therefore, the customers have no say on who is on the Board and who will direct the operations of the Company. Further, under the bylaws, directors can serve in other capacities and receive compensation. Such compensation is set by the Board under Article 4 Section 1 of the Company's bylaws. Given that the Board is not elected or represented by customers, Staff believes this clause could be used as a back door method for members of the Board to receive direct benefits.

If the Company were to change the bylaws so that every customer would be a member of the non-profit and have the ability to vote on members of the Board, Staff would recommend that the Company not be regulated by the Commission.


In making its recommendation, Staff reviewed prior Commission cases. In Case No. MUR-W-14-01, Murray Water became a non-profit association of water users, where every customer became a member of the association. In Case No. CCH-W-15-01, Country Club Hills became a water and sewer district, where the directors were voted in by the customers in the district. In both cases, the Commission cancelled the utilities' Certificate of Public Convenience and Necessity ("CPCN") declaring both companies no longer need to be regulated. In Case No. PKS-W-15-01, Packsaddle Estates was converted to a non-profit. Staff opposed the cancellation of the CPCN due to concerns that the Board of Directors would be able to manipulate the company to their advantage. However, the Commission ruled in Order No. 33603 against further regulation because, the Company "Has customers who are members of the Company, with each customer having one vote..." Order No. 33603 at 6.

While the Company represents itself as a non-profit, Staff does not believe that the new bylaws allow the customers to have any vote or ability to determine the members of the Board. Additionally, customers do not have any real ability or authority to have an influence on the operations of the Company; the Company is not owned by the customers; the process by which rates are changed remains the same; and customers have no control over the operations and capital expenditures of the Company. Therefore, Staff continues to recommend that the Commission find that SPU is a regulated utility under the regulatory authority of the IPUC pursuant to Idaho Code Title 61.

**STAFF RECOMMENDATION**

Staff recommends the Commission affirm Order No. 35513, finding that SPU is a regulated utility under the regulatory authority of the IPUC pursuant to Idaho Code Title 61. Staff further recommends the Commission lift the stay on Order No. 35513, and order SPU to file for a CPCN to become a regulated water company within 30-days of the lifting of the stay.

Respectfully submitted this 13<sup>th</sup> day of October 2022.

  
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Chris Burdin  
Deputy Attorney General

Technical Staff: Joe Terry

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## CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT I HAVE THIS 13<sup>TH</sup> DAY OF OCTOBER 2022, SERVED THE FOREGOING **COMMENTS OF THE COMMISSION STAFF**, IN CASE NO. GNR-U-22-03, BY E-MAILING A COPY THEREOF, TO THE FOLLOWING:

PAUL B RIPPEL ESQ  
AUSTIN O ALLEN ESQ  
HOPKINS RODEN CROCKETT  
428 PARK AVE  
IDAHO FALLS ID 83402  
E-MAIL: [paulrippel@hopkinsroden.com](mailto:paulrippel@hopkinsroden.com)  
[austinallen@hopkinsroden.com](mailto:austinallen@hopkinsroden.com)

MARK R FULLER  
DANIEL R BECK  
PAUL L FULLER  
FULLER & BECK  
410 MERORIAL DR., SUITE 201  
PO BOX 50935  
IDAHO FALLS ID 83405-0935  
E-MAIL: [paulfuller.law@gmail.com](mailto:paulfuller.law@gmail.com)  
[fullerandbeck@gmail.com](mailto:fullerandbeck@gmail.com)

  
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SECRETARY

CERTIFICATE OF SERVICE