

## **DECISION MEMORANDUM**

**TO:           COMMISSIONER ANDERSON  
COMMISSIONER HAMMOND  
COMMISSIONER LODGE  
COMMISSION SECRETARY  
COMMISSION STAFF  
LEGAL**

**FROM:       CHRIS BURDIN  
DEPUTY ATTORNEY GENERAL**

**DATE:       JANUARY 31, 2023**

**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” 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, the Company was subject to the Commission’s regulatory authority as a public utility. 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 motions to amend its answer, to stay Order No. 35513, and 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 motions and amended answer.

On September 26, 2022, the Commission issued Order No. 35534 granting the Company’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 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.

### **LEGAL STAFF RECOMMENDATION**

The Deputy Attorney General assigned to the case (“Legal Staff”) reviewed the Company’s motions and recommends as follows:

#### **A. Petition to Review Interlocutory Order**

Pursuant to the Idaho Public Utilities Commission Rule of Procedure 322:

Any person may petition to review any interlocutory order. The Commission may rescind, alter or amend any interlocutory order on its own motion, but will not on its own motion review any interlocutory order affecting any party’s substantive rights without giving all parties notice and an opportunity for written comment.

IDAPA 31.01.01.322.

It is recommended that the Commission grant SPU’s petition for review of Order No. 35645 and establish a new comment period for Commission Staff and parties to provide additional comments. It is recommended that the Commission set an initial party comment deadline of February 17, 2023, and a Company reply deadline of February 24, 2023.

#### **B. Petition to Stay**

Pursuant to the Idaho Public Utilities Commission Rule of Procedure 324:

Any person may petition the Commission to stay any order, whether interlocutory or final. Orders may be stayed by the judiciary according to statute. The Commission may stay any order on its own motion.

IDAPA 31.01.01.324.


It is recommended that the Commission grant SPU’s motion to stay Order No. 35645 for ninety (90) days unless the Commission issues a new order on the issue.

#### **C. Petition to Designate Order as Final**

It is recommended that the Commission continue to designate orders as Final, or Interlocutory, as provided for by the Commission’s Rules of Procedures.

## COMMISSION DECISION

1. Does the Commission wish to grant SPU's motion to review Order No. 35645 and set an initial comment deadline of February 17, 2023, and a Company reply deadline of February 24, 2023?
2. Does the Commission wish to stay Order No. 35645 for ninety (90) days unless the Commission issues a new order on the issue?



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Chris Burdin  
Deputy Attorney General

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