

DECISION MEMORANDUM

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

**FROM: CHRIS BURDIN
DEPUTY ATTORNEY GENERAL**

DATE: FEBRUARY 7, 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 for the Commission to grant the Company an additional thirty (30) days to present evidence in support of its claimed exemption from Commission jurisdiction pursuant to *Idaho Code* § 61-104. It is further recommended that the Commission direct the Company to work with Commission Staff during that thirty (30) day period to receive advice and assistance in submitted any such evidence.

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.

D. Request for Regulatory Taking Analysis

Pursuant to *Idaho Code* § 67-8003:


An owner of private property that is the subject of such action may submit a written request with the clerk or the agency or entity undertaking the regulatory or administrative action. Not more than twenty-eight (28) days after the **final decision** concerning the matter at issue, a state agency or local governmental entity shall prepare a written taking analysis concerning the action.

Idaho Code § 67-8003 (emphasis added).

It is recommended that the Commission suspend consideration of the Company's request for a regulatory takings analysis until such time as the Commission issues a final decision on the issue of jurisdiction that is unfavorable to the Company.

COMMISSION DECISION

1. Does the Commission wish to grant SPU's motion to review Order No. 35645?
2. Does the Commission wish to grant the Company an additional thirty (30) days to present evidence in support of its claimed exemption from Commission jurisdiction pursuant to *Idaho Code* § 61-104?
3. Does the Commission wish to direct the Company to work with Commission Staff during that thirty (30) day period to receive advice and assistance in submitted any such evidence?
4. Does the Commission wish to stay Order No. 35645 for ninety (90) days unless the Commission issues a new order on the issue?
5. Does the Commission wish to suspend consideration of the Company's request for a regulatory takings analysis until such time as the Commission issues a final decision on the issue of jurisdiction that is unfavorable to the Company?



Chris Burdin
Deputy Attorney General