BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF CAPITOL WATER CORPORATION'S PETITION REQUESTING AN INVESTIGATION INTO FLYING H TRAILER RANCH, INC.	))))))	**CASE NO. CAP-W-24-03** **ORDER NO. 36760**

On November 12, 2024, Capitol Water Corporation ("Capitol") petitioned[1] the Commission to investigate the Flying H Trailer Ranch, Inc. ("Flying H"). Capitol alleged that Flying H is an unregulated public utility operating a water system that serves a mobile home park within Capitol's certificated service area in Ada County. Capitol claimed that Flying H's unlawful service of customers in the mobile home park deprived Capitol of those customers, financially harming Capitol. According to Capitol, it can serve all the water users in the mobile home park. Capitol requested that the Commission open a formal investigation into Flying H and find that it is a public utility operating unlawfully in Capitol's certificated service area. Capitol further requested that this matter be processed via Modified Procedure.

On December 9, 2024, the Commission issued a Notice of Investigation, directing Commission Staff ("Staff") to investigate Capitol's allegation that Flying H is operating as a public utility within Capitol's service territory.

On June 6, 2025, Staff submitted written comments, presenting its preliminary findings and recommendation that Flying H be found not to be a public utility subject to Commission regulation.

On July 3, 2025, Flying H filed reply comments, generally supporting Staff's recommendations.

Having reviewed the record in this case, including the comments of the parties, we now issue this Final Order concluding that Flying H, despite being a water corporation, is not operating as a public utility subject to Commission regulation.

[1] The Company styled its petition as an application. However, it is properly designated as a petition because it requests the initiation of a proceeding, but does not request a right, certificate, permit or authority from the Commission. *See* IDAPA 31.01.01.052—.053.

STAFF COMMENTS

Staff recommended that the Commission find Flying H is a water corporation, but not currently operating as a public utility. This is because, despite owning and operating a water system for compensation, Staff does not believe Flying H has devoted its water system to public use or is it holding itself out as ready, able, and willing to serve some portion of the public. However, Staff cautioned that Flying H could come under Commission jurisdiction if circumstances change in the future. Staff's supporting analysis for its conclusions is provided below.

Public utilities are specific types of businesses that are "devoted to public use" or hold themselves "out as ready, able and willing to serve the public or some portion of the public." *See Grever v. Idaho Tel. Co.*, 94 Idaho 900, 902, 499 P.2d 1256, 1258 (1972). This includes "water corporations," which are defined in *Idaho Code* § 61-125 as companies that own, control, or operate a water system for compensation. Thus, when a water corporation is devoted to serving the public or holds itself out as able and willing to do so, it becomes a public utility subject to Commission regulation. *See Idaho Code* § 61-129(1).

After reviewing Flying H's responses to discovery requests and other supplemental information it provided, Staff determined that Flying H owns and operates a mobile home park within Capitol's service area. Flying H owns the land on which the mobile home park sits and leases lots to tenants. As part of the lease, Flying H provides utility services—including water—which are included in a tenant's monthly rent. Water service is provided only to tenants connected to Flying H's private water system on land it owns. Flying H owns the pipes, wells, and water rights used to serve most of its tenants. However, Flying H does not provide water service to all its tenants. During the last few years, Flying H asked Capitol to assist with fire protection and installed a fire hydrant in the park. In return, Capitol is allowed to serve 22 water connections within the park.

Staff observed that certain business entities do not fall within the statutory definition of "corporation" under the Public Utilities Law. Specifically, entities like mutual nonprofits, cooperatives, or utilities that operate at cost and not for profit, are not corporations and cannot, as relevant to this case, be a water corporation under the Public Utilities Law. *See Idaho Code* § 61-104. Flying H does not meet any of these exceptions to the statutory definition of corporation—it is not registered as a nonprofit, does not operate at cost, and is not a municipal corporation, cooperative, or mutual nonprofit. Accordingly, Staff believed that Flying H is a water corporation

under the Public Utilities Law. Having concluded that Flying H is a water corporation, Staff turned to the critical question of whether Flying H had devoted its water system to public use or is holding itself out as ready, able, and willing to serve some portion of the public.

Staff noted that at least two courts outside of Idaho have held that mobile home parks are public utilities. In *Public Water Supply Company, Inc. v. DiPasquale, et al.*, 802 A.2d 929 (Del. 2002), a Delaware court found that the state Environmental Appeals Board erred in concluding that a mobile home developer supplying large amounts of water to tenants was not operating as a public utility.

The court applied a two-part test to reach this conclusion. First, the court asked whether the developer was selling a "regulated commodity." The court held that even though water charges were bundled with general upkeep fees, the developer was still selling water—a regulated public commodity. *Id.* at 935–36.

Second, the court examined whether selling the commodity affected the public interest protected by the regulatory agency. *Id.* at 936–37. The court reasoned that Delaware Public Service Commission is responsible for ensuring efficient, adequate service at reasonable rates. The court emphasized that the key issue was whether the developer's actions significantly impacted this public interest, such as preventing poor service or unfair pricing. *Id.* The court then pointed to several unique factors that supported regulation: (1) the development had nearly 730 lots, representing a substantial number of consumers; (2) tenants rarely moved due to long, 12-year lease terms, making them dependent on the landlord for utilities; and (3) the development diverted a large volume of water.

Although Flying H serves fewer customers than the park in *DiPasquale*, it still serves a significant number of customers. In response to discovery requests, Flying H revealed it owns all the land upon which the mobile home park is located and provides water to about 130 of its 152 tenants (Capitol serves the remaining 22). Assuming an average of three people per unit, Flying H supplies water to around 390 residents. However, Staff did not have information about how long tenants stay or how much water Flying H uses.

In *Gosar's Unlimited Inc. v. Wyoming Public Service Commission*, 305 P.3d 1152 (2013), the Wyoming Supreme Court held that a mobile home park was subject to regulation by the Wyoming Public Service Commission. However, the court did not closely examine whether the park was serving the public by providing water service. Instead, it focused on whether the park

met the statutory definition of a public utility under Wyoming law. Because the park was separately metering and billing tenants for water, the court found it qualified as a public utility. *Id.* at 1157. Staff believed that this case has limited relevance to Flying H, as Idaho's legal definition of a public utility differs from Wyoming's, and Flying H does not separately meter water use for its tenants.

Unlike the courts in the cases discussed above, at least two state utility regulatory commissions have held that mobile home parks are not subject to regulation as public utilities. In *Enberg v. Park City Mobile Home, Inc.*, 1994 WL 120881 (1994), the Illinois Commerce Commission dismissed a tenant's complaint claiming that his mobile home park was operating as a public utility by providing water and sewer service. The Commission rejected the claim, finding that the park was not a public utility because it only supplied these services within its own property, not to the public at large.

The Public Utilities Commission of Ohio reached a similar conclusion in *Inscho v. Shroyer's Mobile Homes*, Opinion and Order (Feb. 27, 1992). In that case, the Commission applied a three-part test to determine whether the mobile home park was acting as a public utility. It looked at whether the landlord had shown intent to operate as a utility by seeking benefits like a franchise, certificate of public convenience, eminent domain powers, or access to public rights of way. It also considered whether the utility service was offered to the general public rather than just tenants, and whether providing the service was merely incidental to the landlord's primary business.

Applying this analysis, Staff reasoned that Flying H is not acting as a public utility. Flying H has not claimed any of the benefits available to utilities, provides water only to its own tenants, and water service appears secondary to its main business of renting mobile home lots. The park does not meter tenants' water usage or charge separately for it; instead, water costs are included in the lot rental price. There is also no indication that Flying H charges more for water than similarly situated public utilities. That said, Staff observed that any material change—such as beginning to meter usage, separately billing for water, or serving people outside the park—could suggest Flying H's water service is no longer ancillary to its business, potentially bringing it under Commission jurisdiction.

COMPANY REPLY COMMENTS

Flying H agreed with Staff's recommendation that the Commission determine Flying H is not a public utility and, therefore, is not subject to the Commission's regulatory jurisdiction.

Furthermore, Flying H represented that it does not plan to change its ownership structure or make water system upgrades that would affect this conclusion.

To further support Staff's recommendation, Flying H provided some additional information and legal analysis. Notably, Flying H asserted that it had provided water to mobile home tenants since 1955, before Capitol existed, without objection from Capitol until recently. Additionally, according to Flying H, its leases do not exceed 12 months—implying that the length of its leases militates in favor of concluding that it is not subject to regulation.

Flying H further asserted that the Idaho Supreme Court's decision in *Stoehr v. Natatorium Co.*, 34 Idaho 217, 200 P. 132 (1921) supports the conclusion that it is not a public utility. In *Stoehr*, the Court reasoned that holding "a water corporation is a public utility because it receives compensation for water owned by it and furnished to a limited number of the inhabitants of Boise within a limited area would be an unreasonable interpretation of the [statutory definitions of public utility and water corporation]." *Id.*

Flying H further argued that the Commission's decision from *In Re Kootenai Heights Water Sys., Inc.*, No. 30219, 2007 WL 1467299 (Jan. 10, 2007), indicates that it is not a public utility. In *Kootenai Heights*, the Commission identified several factors relevant to determining whether it has regulatory authority over a company. These include the company's primary purpose, whether it presents itself as a utility, whether it serves the general public or more than a single customer, whether customers have control over the company's operations or rates, and whether they have alternative service options.

Flying H contended that application of these factors demonstrate that it is not a public utility. Flying H asserted that its main business is operating a mobile home park—not providing utility services. It has never claimed to be a utility, it supplies water only within its own property boundaries to serve its tenants, and it does not charge separate water rates. Flying H further reasoned that, even if the tenants are viewed as "customers," their alternative is simply to rent elsewhere if they prefer different pricing or amenities. Accordingly, Flying H urged the Commission to adopt Staff's recommendation that Flying H is not a public utility subject to regulation.

COMMISSION FINDINGS AND DECISION

Based on our review of the record, we find that, despite being a water corporation, Flying H is not operating as a public utility. The Commission has the limited authority to "supervise and

regulate every public utility" in Idaho. *Idaho Code* § 61-501. A "water corporation" is a "public utility" when it is "devoted to public use or [holding] itself out as ready, able and willing to serve the public or some portion of the public." *Idaho Code* § 61-129; *see also Grever v. Idaho Tel. Co.*, 94 Idaho 900, 902, 499 P.2d 1256, 1258 (1972). As defined in *Idaho Code* § 61-125, a "water corporation" is "every corporation . . . owning, controlling, operating or managing any water system for compensation" within Idaho. Based on the financial information provided to the Commission, it appears Flying H is operating a water system for compensation. It is undisputed that Flying H owns and operates the water system servicing its tenants. Although tenants are not charged separately for this water service, a portion of their rent is used to operate and maintain the water system. Moreover, Flying H would not be able to operate as a trailer park without tenants receiving water service. Thus, to at least some degree, Flying H can charge tenants more to rent a lot than it otherwise would by providing them with water service. That Flying H does not separately charge tenants for water service does not change the reality that it is operating its water system for compensation. Because Flying H owns and operates a water system for compensation, we find that it is a water corporation under *Idaho Code* § 61-125.

We next consider whether Flying H is operating as a public utility. As stated, to be a public utility Flying H must be "devoted to public use or [holding] itself out as ready, able and willing to serve the public or some portion of the public." *Idaho Code* § 61-129; *see also Grever v. Idaho Tel. Co.*, 94 Idaho 900, 902, 499 P.2d 1256, 1258 (1972). Under both Idaho Supreme Court precedent and the analysis used in our prior decisions, we find that Flying H is not currently operating as a public utility. Flying H's primary business is the leasing of lots to mobile home owners. Although the provision of water service to tenants is necessary for its operations, Flying H's tenants could be served by a nearby regulated water utility instead of Flying H. Indeed, Capitol is already serving some of Flying H's tenants and asserts that it is capable of serving all of them. In other words, the provision of water is incidental to Flying H's primary business.

Additionally, Flying H is not providing water service to the general public; it serves only those tenants renting lots it owns within the boundaries of its property. Nor does the record indicate that Flying H is holding itself out as ready and willing to serve the general public.

Finally, although tenants lack direct control over Flying H's operations or the amount charged for water service, their one-year lease agreements give them some indirect leverage. Tenants could choose not to renew their leases if rent becomes unreasonably high due to water

service costs or if the quality of service declines. Accordingly, we conclude that, under the narrow circumstances of this case, that Flying H and its water system are not devoted to public use, nor are they held out as ready, able, and willing to do so. Consequently, Flying H is not currently operating as a public utility.

In sum, Flying H is not currently a public utility under Idaho law, but this conclusion is based on the specific facts of this case and should not be taken as a blanket rule for all mobile home parks. Although Flying H may appear to function like a public utility, the necessary fact-specific inquiry conducted above led to the contrary conclusion. However, small changes—such as metering and separately charging for water service or expansion of the water system to serve customers outside the mobile home park—could lead to a different determination. Each case depends on its unique facts.

ORDER

IT IS HEREBY ORDERED that, having concluded that Flying H is not a public utility, the Commission Secretary is directed to close this docket.

THIS IS A FINAL ORDER. Any person interested in this Order may petition for reconsideration within twenty-one (21) days of the service date of this Order about any matter decided in this Order. Within seven (7) days after any person has petitioned for reconsideration, any other person may cross-petition for reconsideration. *See Idaho Code* § 61-626.

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DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 15th day of September 2025.

EDWARD LODGE, PRESIDENT

JOHN R. HAMMOND JR., COMMISSIONER

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ATTEST:

Monica Barrios-Sanchez
Commission Secretary
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