

**BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION**

**IN THE MATTER OF ISLAND PARK ) CASE NO. ISL-W-23-01**  
**WATER COMPANY’S FAILURE TO )**  
**COMPLY WITH IDAHO PUBLIC UTILITIES ) NOTICE OF HEARING AND**  
**COMMISSION REPORTING AND FISCAL ) ORDER TO SHOW CAUSE**  
**REQUIREMENTS )**  
**) ORDER NO. 35675**  
**)**

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This matter came before the Idaho Public Utilities Commission (“Commission”) on the Commission Staff’s (“Staff”) request that we order Island Park Water Company, Inc. (“Island Park” or “Company”) to appear and show cause why the Commission should not impose penalties for the Company’s continued, willful violations of regulatory requirements under state law and the Commission’s Rules of Procedure that include failing to submit adequate responses to audit requests.

The Commission now provides this Notice of Hearing and Order to Show Cause why the Commission should not impose penalties as discussed below.

**JURISDICTION**

Island Park operates a water system as a water corporation as defined by *Idaho Code* §§ 61-124 and 61-125 and is a public utility under *Idaho Code* § 61-129. The Company operates under Certificate of Public Convenience and Necessity No. 317. Island Park’s service area comprises seven separate water systems located in Fremont County, Idaho. The Commission has jurisdiction over Island Park and the issues in this case under the Public Utilities Law, *Idaho Code* §§ 61-101 *et seq.*, including *Idaho Code* § 61-501 (vesting the Commission with the “power and jurisdiction to supervise and regulate every public utility in the state and to do all things necessary to carry out the spirit and intent of” the Public Utilities Law), and *Idaho Code* § 61-701 *et seq.* (directing the Commission as to enforcement, penalties, and interpretation of Public Utilities Law).

**BACKGROUND**

On July 14, 2022, Commission Staff (“Staff”) sent an Audit Request (“Audit Request”) to the Company. *See Staff’s January 31, 2023, Decision Memorandum* at **Exhibits 1-2**. The Company did not respond despite multiple communications from Staff about the Audit Request.

On August 1, 2022, Counsel mailed a demand letter alerting the Company of its failure to submit its 2021 Gross Intrastate Revenues Report (“GIOR”) and to respond to Staff’s Audit Request. *Id.* at **Exhibit 3**. The August 1, 2022, demand letter was sent to the Company’s address of record at the Commission but was returned as undeliverable.

On August 11, 2022, and August 18, 2022, Staff communicated with the Company through email about complying with the Commission’s Audit Request. *Id.* at **Exhibit 4**. The Company did not respond.

On August 29, 2022, Counsel sent a demand letter entitled, **Re: Gross Intrastate Operating Revenue & Audit Request – Notice of Possible Legal Action** via process server to the Company.<sup>1</sup> *Id.* at **Exhibit 5**. The August 29, 2022, letter alerted the Company of its responsibility to update its address of record with the Commission and the legal requirements to submit the 2021 GIOR and respond to Staff’s Audit Request.

On September 12, 2022, Staff received the Company’s 2021 GIOR. On September 14, 2022, Staff mailed an invoice for the late GIOR form.<sup>2</sup> The Company did not respond to the outstanding Audit Request.

On September 19, 2022, Island Park informally requested a 90-day extension of time from Staff to become compliant with the regulatory requirements due to the personal circumstances of the operator. *Id.* at **Exhibit 6**.

On October 4, 2022, Counsel responded to the Company’s extension request through another demand letter entitled **Re: Failure to Respond to Audit Request – Notice of Possible Legal Action**. *Id.* at **Exhibit 7**. Counsel reminded the Company that its request for an extension was untimely under the Commission’s Rule of Procedure 225.03, IDAPA 31.01.01.225.03, and that the Company responses were “overdue on these statutorily required reports.” *Id.*

On October 13, 2022, Staff and Counsel had a telephone call with the owner of the Company where challenges the Company is facing were discussed, Staff’s previously requested information, and a path forward to ensure regulatory compliance. During the call, the Company’s owner indicated that it would become compliant.

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<sup>1</sup> The process server confirmed delivery of the letter on September 7, 2022.

<sup>2</sup> The Company submitted payment of the invoice for the GIOR on September 29, 2022.

On November 28, 2022, the Company filed its 2020 and 2021 annual reports. Staff again reminded the Company of the outstanding response to the Audit Request. The Company did not respond to the Audit Request.

On December 27, 2022, Counsel sent another demand letter via process server, entitled **Re: Second Notice of Failure to Respond to Audit Request – Notice of Possible Legal Action**. *Id.* at **Exhibit 8**. Counsel notified the Company that it would recommend a show cause hearing and penalties under *Idaho Code* §§ 61-706, 61-707, and 61-709, unless the Company submitted a full and complete response to the Audit Request within ten days. *Id.* at **Exhibit 8**.

On January 3, 2023, the Company acknowledged receipt of the December 27, 2022, demand letter. *Id.* at **Exhibits 9-10**. On January 9, 2023, the Company notified Counsel that its Audit Request responses were being sent to the Commission via “tracked mail.”

On or around January 10, 2023, Staff received the Company’s Audit Request responses. Staff reviewed the Company’s responses and determined that only three responses to the ten audit requests were adequate (Responses Nos. 2, 5, and 8). *Id.* at **Confidential Exhibit 11**. Additionally, three responses incompletely addressed the requests (Responses Nos. 6, 7 and 10) and four responses failed to address the substance of the requests (Responses Nos. 1, 3, 4 and 9).

#### **STAFF’S RECOMMENDATION**

Staff and Counsel spent a considerable amount of time and energy encouraging the Company’s compliance, without success. The Company failed to provide the needed information for Staff to complete its responses to the Audit Request. Counsel notified the Company on several occasions that failure to comply with the requests for information may result in the imposition of penalties under *Idaho Code* §§ 61-706 and 61-707, and that employees and officers can also be personally subject to penalties under *Idaho Code* § 61-709.

Staff believes that the factual circumstances, along with the adequate notices provided to the Company, warrant a Notice of Hearing and Order to Show Cause as to why the Company should not be subject to a \$2,000 penalty per day, and all accrued interest, under *Idaho Code* §§ 61-706 and 61-707, and possible additional penalties under *Idaho Code* § 61-709.

#### **COMMISSION DISCUSSION AND FINDINGS**

##### **1. *Idaho Code* §§ 61-401 and 61-406**

*Idaho Code* § 61-401 states, “[e]very public utility shall furnish to the commission, in such form and such detail as the commission shall prescribe, all tabulations, computations and all other

information required by it to carry into effect any of the provisions of this act and shall make answers to the best of their knowledge, to all questions submitted by the commission.” Further, *Idaho Code* § 61-406 states, “[e]very public utility shall obey and comply with each and every requirement of every order, decision, rule, or regulation made or prescribed by the commission in the matters herein specified, and shall do everything necessary or proper in order to secure compliance with and observance of every such order, decision, direction, rule, or regulation by all of its officers, agents and employees.”

As outlined above and detailed in Exhibits 1-11, the Company has repeatedly failed to meet its statutory duties and violated the Commission’s rules and regulations by failing to timely and satisfactorily respond to Staff’s Audit Request.

**2. *Idaho Code* § 61-701, et seq.**

The Company may be liable for civil penalties for violations of the above-referenced statutes. Specifically, *Idaho Code* § 61-706 states:

Any public utility which violates or fails to comply with any provisions of the constitution of this state or of this act, or which fails, omits or neglects to obey, observe or comply with any order, decision, decree, rule, direction, demand or requirement or any part or provision thereof, of the commission, under this act, in a case in which a penalty has not hereinbefore been provided for, such public utility is subject to a penalty of not more than \$2,000 for each and every offense.

Furthermore, *Idaho Code* § 61-707 states:

Every violation of the provisions of this act or of any order, decision, decree, rule, direction, demand, or requirement of the commission, under the provisions of this act, or any part or portion thereof, by any public utility, corporation or person is a separate and distinct offense, and in case of a continuing violation each day’s continuance thereof shall be and be deemed to be a separate and distinct offense.

Furthermore, *Idaho Code* § 61-709 states:

Every officer, agent or employee of any public utility, who violates or fails to comply with, or who procures, aids or abets any violation by any public utility of any provision of the constitution of this state or of this act, or who fails to obey, observe or comply with any order, decision, rule, direction, demand or requirement or any part or provision thereof, of the commission under the provisions of this act, or who procures, aids or abets any public utility in its failure to obey, observe and comply with any such order, decision, rule, direction, demand or requirement, or any part or provision thereof, in a case in which a penalty has not hereinbefore been provided for, such officer, agent or employee, is guilty of a misdemeanor and is punishable by a fine not exceeding \$1000, or by imprisonment in a county jail not exceeding one (1) year, or by both such fine and imprisonment.

Accordingly, failure to comply with its statutorily enumerated duties exposes Island Park to up to \$2,000 *per day* for *each* of Island Park's violations. The exact amount of any penalty is within the discretion of the Commission as discussed above. Under *Idaho Code* § 61-709, Island Park's officers, agents, or employees may also face criminal misdemeanor charges for failure to comply with a Commission directive.

### NOTICE OF HEARING

YOU ARE HEREBY NOTIFIED that the Commission will hold a hearing in this matter on **February 22, 2023, at 1:00 P.M. local time in the Commission's Hearing Room at 11331 W. Chinden Blvd., Building #8, Suite 201-A, Boise, Idaho 83714.** The purpose of this hearing is to allow the Company to explain why the Commission should not impose penalties as permitted by Idaho law.

YOU ARE FURTHER NOTIFIED that all hearings and prehearing conferences in this matter will be held in facilities meeting the accessibility requirements of the Americans with Disabilities Act (ADA). Persons needing the help of a sign language interpreter or other assistance to participate in or to understand testimony and argument at a public hearing may ask the Commission to provide a sign language interpreter or other assistance at the hearing. The request for assistance must be received at least five working days before the hearing by contacting the Commission Secretary at:

IDAHO PUBLIC UTILITIES COMMISSION  
PO BOX 83720  
BOISE, IDAHO 83720-0074  
(208) 334-0338 (Telephone)  
(208) 334-3762 (FAX)  
[secretary@puc.idaho.gov](mailto:secretary@puc.idaho.gov)

YOU ARE FURTHER NOTIFIED that all proceedings in this matter will be conducted pursuant to the Commission's Rules of Procedure, IDAPA 31.01.01.000 *et seq.* A copy of the rules is available for review at the Commission's offices during regular business hours, and on the Commission's website at [www.puc.idaho.gov](http://www.puc.idaho.gov).

### ORDER

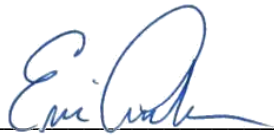
IT IS HEREBY ORDERED that Island Park shall appear before the Commission on February 22, 2023, at 1:00 P.M local time in the Commission's Hearing Room to show cause why the Commission should not summarily impose all penalties discussed herein.

NOTICE OF HEARING AND  
ORDER TO SHOW CAUSE  
ORDER NO. 35675

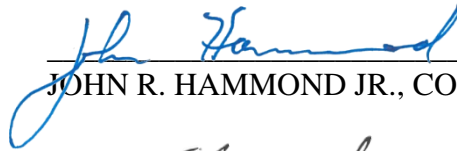
At this hearing Island Park shall appear and be prepared to explain why it should not be required to:

- 1) Immediately provide the Commission with adequate responses to its Audit Request Questions 1, 3, 4, 6, 7, 9, and 10;
- 2) Pay up to a \$2,000 penalty per day, and all accrued interest, under *Idaho Code* §§ 61-706 and 61-707, for each day that each response was late in breach of a statutory duty; and
- 3) Face any additional penalties under *Idaho Code* § 61-709 against Company employees and officers, for untimely and incomplete responses to the Audit Request that were late in breach of its statutory duty.

DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 1<sup>st</sup> day of February 2023.



ERIC ANDERSON, PRESIDENT

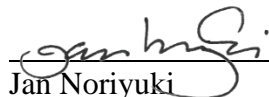


JOHN R. HAMMOND JR., COMMISSIONER



EDWARD LODGE, COMMISSIONER

ATTEST:



Jan Noriyuki  
Commission Secretary

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