

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) ORDER VACATING ORDER TO
COMMISSION REPORTING AND FISCAL) SHOW CAUSE HEARING
REQUIREMENTS)
) AMENDED NOTICE OF
) HEARING AND
) ORDER TO SHOW CAUSE
)
) ORDER NO. 35682
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On January 31, 2023, at the Commission’s regularly schedule Decision Meeting, Staff requested 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 or timely responses to Staff’s audit requests.

On January 31, 2023, the Commission issued a Notice of Hearing and Order to Show Cause directing the Company appear at the Commission’s office in Boise, Idaho on February 22, 2023, to explain why it should not face penalties under *Idaho Code* §§ 61-706, 61-707, and 61-709, for failure to provide the Commission with adequate responses to its Audit Request Questions 1, 3, 4, 6, 7, 9, and 10. Order No. 35675. **Exhibits 1-11.**

Staff’s continuing investigation of Island Park subsequently revealed allegations of improper customer billing, improper handling of customer complaints, failure to provide safe and reliable services and threats of retaliation against customers—all in violation of *Idaho Code* §§ 61-301 and 61-302. **Exhibits 12-20.**

The Commission now provides this Order Vacating Show Cause Hearing and Amended 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. **Exhibits 1-2.** The Company did not respond despite multiple communications from Staff about the Audit Request.¹

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. **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. **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.² **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.³ The Company did not respond to the outstanding Audit Request with its GIOR or subsequent payment.

¹ The Company mailed Staff updated audit responses that arrived on February 16, 2023, Staff has not had time to review those responses as of the service date of this Order.

² The process server confirmed delivery of the letter on September 7, 2022.

³ The Company submitted payment of the invoice for the GIOR on September 29, 2022.

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. **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. 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." **Exhibit 7.**

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.

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. 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. **Exhibit 8.**

On January 3, 2023, the Company acknowledged receipt of the December 27, 2022, demand letter. **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). **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).

ADDITIONAL ISSUES⁴

Customer Billing Discrepancies. Staff requested copies of actual customer bills in its Audit Request. However, the Company failed or refused to provide Staff with actual customer bills, and the ledger and statement provided to Staff did not show enough detail to reconcile the accounts. As part of an ongoing investigation of Company practices, Staff received several customers' bills and statements that discredit the Company's Audit Response which Staff believes show the Company has been charging customers rates that are not approved in its tariffs. **Exhibits 12-16.**

The Commission has received 26 informal customer complaints related to Company billing issues since 2016, and the Idaho Department of Environmental Quality ("DEQ") Survey yielded nine billing complaints. **Exhibit 13.** Additionally, Staff learned that some customers who disagree with or question the Company's fees are allegedly threatened with termination of water service. **Exhibits 12, 14.**

Staff believes if the Company has overcharged customers and refused to provide its bills for review, it is likely other customers have been overcharged and may be entitled to refunds if an investigation proves these statements are true.

Customer Complaints Log

Staff asked the Company to provide a copy of its complaint log for all customer complaints. The Company failed or refused to provide any documentation of customer complaints. Multiple customers complained that the Company refuses to discuss or resolve customer service issues, including concerns about billing, water quality, and safe and reliable service. **Exhibits 12-13.**

Staff noted that the Company was required to document complaints in Order Nos. 30668 and 32268. Notwithstanding these Orders, Staff has obtained numerous informal complaints from customers that the Company has not disclosed and were only apparent after the customer escalated the matter to the Commission. **Exhibit 12.**

Staff believes the Company has failed its responsibility to follow Commission Order Nos. 30668 and 32268 and the Customer Relations Rules under IDAPA 31.21.01.

Failure to Provide Safe and Reliable Services

The most pressing complaint from customers is that the Company is not providing safe and reliable service, such that customers have had months of interruptions in their water service and

⁴ This Section discusses additional issues Staff uncovered during its continued investigation that were unknown when Order No. 35675 was issued.

have been forced to transport their own water to their property. Even though the Commission-approved rate design for the Company included funding for repairs and maintenance of the Company's system, the Company has not appropriately addressed or remedied these interruptions or safety concerns. Order No. 30668. Customers have also complained that they do not have water and the water—if available—has unusual smells and must occasionally be boiled before use.

Exhibit 12.

Staff, in its Audit Requests, has asked the Company to provide documentation of appropriate testing and maintenance of its water system, including the hydrogen sulfide tests that the Company stated it had performed. The Company failed to provide test results or address the maintenance issues that prevent its customers from having safe and reliable water.

The Company has also refused new connections within its approved service area. **Exhibit 17.** Staff identified at least three customers within the Company's service area who have been denied water connection.

Retaliation

The Company has reportedly threatened customers with termination of service if the customers raise concerns with billing or water quality. **Exhibits 12-14, 18.** Between the customer surveys and informal customer complaints, there were multiple complaints about lack of maintenance, poor or threatening communication, and refusal of service. **Exhibits 12, 14.** Customers described the Company's management as dismissive, combative, and unavailable.⁵ **Exhibit 12, 14.** Customers who express concerns are allegedly told that they can "drill their own wells" with Company threats of shutting off customer access to water for inappropriate reasons. **Exhibit 12 at 68, 74; Exhibit 14.** A customer stated "[the Company] threatened me if we were to have more than 2 people at my cabin at a time using the water. [The Company] threatened me and my family saying she is cutting off our water for repair bills that she owed to maintain the well." **Exhibit 14 at 6.** The Company has also asked DEQ about "just disconnect[ing] individuals and then they would no longer be part of the water system" rather than address the legitimate problems customers are experiencing. **Exhibit 18.** The Company reportedly tried to "contact the power company to have the power turned off to Well #3 in Valley View subdivision" to deprive

⁵ Customer T reported they "have been harassed, threatened and lied to multiple, multiple times" and "[t]he list of problems would take pages." Exhibit 12 at 37.

individuals and families of drinking water. *Id.* The Company is misrepresenting its authority and must immediately cease these aggressive tactics with its customers.

STAFF’S RECOMMENDATION

Based on the new documentation received, Staff recommended the Commission vacate the Show Cause Hearing scheduled for February 22, 2023, by issuing an Amended Notice of Hearing and Order to Show Cause establishing an amended date for March 13, 2023, directing the Company to appear and address the initial allegations and additional allegations of improper customer billing, improper handling of customer complaints, failure to provide safe and reliable services in violation of *Idaho Code* §§ 61-301 and 61-302, and threats of retaliation against customers. Staff argued the Company should also address why it should not be subject to a \$2,000 penalty per day under *Idaho Code* §§ 61-706 and 61-707, and possible additional penalties under *Idaho Code* § 61-709, for these additional issues.

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 1-20, 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, improper customer billing, improper handling of customer complaints, failing to provide safe and reliable services and threatening retaliation against customers.

2. Idaho Code § 61-301

Idaho Code § 61-301 states,

[a]ll charges made, demanded or received by any public utility, or by any two (2) or more public utilities, for any product or commodity furnished or to be furnished or any service rendered or to be rendered shall be just and reasonable. Every unjust or unreasonable charge made, demanded or received for such product or commodity or service is hereby prohibited and declared unlawful.

3. Idaho Code § 61-302

Idaho Code § 61-302 states, “[e]very public utility shall furnish, provide and maintain such service, instrumentalities, equipment and facilities as shall promote the safety, health, comfort and convenience of its patrons, employees and the public, and as shall be in all respects adequate, efficient, just and reasonable.”

4. 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 past and continuing 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.

AMENDED NOTICE OF HEARING AND ORDER TO SHOW CAUSE

YOU ARE HEREBY NOTIFIED that the Commission will hold a hearing in this matter on **March 13, 2023, at 11:00 A.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. Those interested in listening only can call **1-415-655-0001 and enter meeting number 24529555371 when prompted** or visit **idahogov.webex.com, and enter meeting number 24529555371.**

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

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.

ORDER

IT IS HEREBY ORDERED that Island Park shall appear before the Commission on March 13, 2023, at 11:00 A.M local time in the Commission's Hearing Room to show cause why the Commission should not summarily impose all possible penalties discussed herein.


Those interested in listening only can call **1-415-655-0001** and enter meeting number **24529555371** when prompted or visit **idahogov.webex.com**, and enter meeting number **24529555371**.

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) Immediately provide a customer complaint log;
- 3) Immediately provide Company billing information, including actual customer bills;
- 4) Immediately cease and desist from charging customers in excess of its approved tariff and the Company shall submit documentation of refunds for customers who were overcharged;
- 5) Immediately provide its current written protocol or notification plan that describes the protocol for scheduled, emergency and temporary service interruptions and a written plan for customer notifications and status updates;
- 6) Immediately meet its obligation to provide safe and reliable service to its customers, and resolve the interruptions in water service and water quality concerns through appropriate testing and maintenance of its system;
- 7) Immediately refrain from retaliating against customers;
- 8) 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
- 9) Face any additional penalties under *Idaho Code* § 61-709 against the Company and its employees or officers, for untimely and incomplete responses to the Audit Request that were late in breach of its statutory duty.

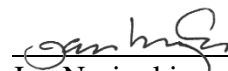
DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 17th day of February 2023.


ERIC ANDERSON, PRESIDENT


JOHN R. HAMMOND JR., COMMISSIONER


EDWARD LODGE, COMMISSIONER

ATTEST:


Jan Noriyuki
Commission Secretary

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