

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 DENYING THE
COMMISSION REPORTING AND FISCAL) COMPANY’S REQUEST
REQUIREMENTS) TO VACATE THE ORDER TO
) SHOW CAUSE HEARING
)
)
) ORDER NO. 35691
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On February 15, 2023, Island Park Water Company (“Island Park” or “Company”) filed a request to vacate the Order to Show Cause Hearing set for February 22, 2023, by Order No. 35675 (“Motion”). The Company’s request was filed by its owner Dorothy McCarty and president. Ms. McCarty alleges that she has submitted additional documentation on behalf of the Company to satisfy the Commission Staff’s (“Staff”) Audit Requests and that she has a medical hardship that will prevent her from attending the Show Cause Hearing on February 22, 2023.

At the Commission’s February 21, 2023, Decision Meeting, Staff presented a decision memorandum advocating that Ms. McCarty is acting as an unlicensed attorney by filing the Motion in a quasi-judicial matter, in violation of the Commission’s Rule of Procedure 43.02, IDAPA 31.01.01.43.02. Staff explained that Rule of Procedure 43.02 requires a corporation to be represented by a licensed attorney in quasi-judicial proceedings. Staff noted that this would not prevent Ms. McCarty from appearing at a show cause hearing as a witness.

The Commission now issues this Order denying the Company’s Motion for reasons described below.

JURISDICTION

Island Park operates a water system as a water corporation as defined by *Idaho Code* §§ 61-124 and 61-125 and is therefore a public utility under *Idaho Code* § 61-129. 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*

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§ 61-701 *et seq.* (directing the Commission as to enforcement, penalties, and interpretation of Public Utilities Law).

BACKGROUND

On February 1, 2023, the Commission issued a Notice of Hearing and Order to Show Cause directing Ms. McCarty to appear before the Commission at a February 23, 2023, Show Cause Hearing to explain why she had not responded to Staff's Audit Requests and filed required accounting reports. Order No. 35675. On February 15, 2023, Ms. McCarty filed her Motion requesting that the Commission vacate the February 22, 2023, Show Cause Hearing. On February 17, 2023, the Commission vacated and reset the date of the Show Cause Hearing independent of the arguments in the Motion. Specifically, the Commission vacated and reset the Show Cause Hearing so that Staff and the Commission could more fully investigate the initial allegations raised against the Company and to have additional time to investigate new allegations that the Company was retaliating against customers, handling customer complaints improperly, engaged in improper and inconsistent billing practices, and failing to provide safe, reliable, and adequate service. *See* Order No. 35682.

COMMISSION DISCUSSION AND FINDINGS

The Commission vacated the Show Cause Hearing set for February 22, 2023, and reset the matter for March 13, 2023. Accordingly, the Motion's request to vacate the Show Cause Hearing is moot. Order No. 35682. Ms. McCarty's Motion also requests that we dismiss this matter. The Commission finds this request is without merit. Currently, there are still outstanding questions about whether the Company has provided adequate responses to Staff's Audit Requests and submitted all required financial reports. Additionally, there are new allegations leveled against the Company that it is retaliating against customers, improperly handling customer complaints, improperly billing customer sand failing to provide safe, and reliable service. *See* Order No. 35682 at 9. Due to these issues the Commission finds it fair, just and reasonable, and in the public interest, to hold the March 23, 2023, Show Cause Hearing. Accordingly, the request to vacate this case entirely is denied.

Another issue raised by Staff is whether Ms. McCarty can represent and file pleadings on behalf of the Company in this quasi-judicial proceeding. In quasi-judicial proceedings Commission Rule of Procedure 43.02.b. requires a partnership or corporation to be represented by a licensed attorney. IDAPA 31.01.01.43.02.b.; *see also Indian Springs, L.L.C. v. Indian Springs*

Land Investment, L.L.C., 147 Idaho 737, 215 P.3d 457, 464-465 (2009) (representation of another person before a public agency or service commission constitutes the unauthorized practice of law where the proceedings before those tribunals are held for purposes of adjudicating the legal rights or duties of a party). Based on the foregoing, we find that Ms. McCarty cannot represent the Company in this case because she is not a licensed attorney in the state of Idaho.

Staff has informed Ms. McCarty that she may contact the Idaho State Bar for further information about obtaining legal counsel, and that Staff cannot provide the Company with legal advice or representation.

Ms. McCarty's Participation in Administrative Proceedings

The Commission finds that the Company does not need an attorney for Ms. McCarty to appear before the Commission as a witness to respond to the matters set forth in Order No. 35682. Order No. 35682 at 9. The Commission expects Ms. McCarty will provide detailed responses to the issues set forth in Order No. 35682 at 9 on behalf of the Company at the March 13, 2023 Show Cause Hearing.

The Commission has been informed that Staff is reviewing the supplemental audit responses Ms. McCarty submitted on February 15, 2023. As a result, it is not known yet whether the Company has sufficiently responded to Staff's Audit Requests. As stated above, the Commission has received evidence of additional issues related to the Company's billing practices, handling of customer complaints, alleged failure to provide safe and reliable water, and concerns with Company retaliation against its customers, that it is requiring Ms. McCarty to respond to as a Company witness at the upcoming March 13, 2023, Show Cause Hearing.

Ms. McCarty's Health Concerns

Ms. McCarty stated that she has a medical issue that prevents her from traveling to Boise, Idaho for the Show Cause Hearing. The Commission has notified Ms. McCarty that all persons in need of "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." Order Nos. 35675 and 35682. The Commission has an Americans with Disabilities Act (ADA) Coordinator who will make reasonable accommodations to ensure people with disabilities have an equal opportunity to participate. The Commission encourages Ms. McCarty to reach out to the Commission's ADA Coordinator and discuss reasonable accommodations and options for participating in the Order to Show Cause Hearing set for March 13, 2023.

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Ms. McCarty may also contact the Commission Secretary to request accommodation at:

IDAHO PUBLIC UTILITIES COMMISSION
PO BOX 83720
BOISE, IDAHO 83720-0074
(208) 334-0338
secretary@puc.idaho.gov

The request for assistance must be received at least five working days before the hearing.

The Commission's Americans with Disabilities Act Notice is available on its website at <http://www.puc.idaho.gov> under the IPUC Guidance Documents Tab.

ORDER

IT IS HEREBY ORDERED that the Company's request to vacate the February 22, 2023, Order to Show Cause hearing, is denied as moot. The Commission has vacated the February 22, 2023, Show Cause Hearing, and reset the matter for March 13, 2023, in Order No. 35682. Additionally, the Commission denies the Motion as the Commission finds that holding the reset Show Cause Hearing on March 13, 2023, is in the public interest for the reasons set forth in our findings.

IT IS FURTHER ORDERED that Ms. McCarty is prohibited from representing the Company at the Show Cause Hearing or filing substantive motions on behalf of the Company for the Show Cause Hearing. Ms. McCarty, as the Company's president, shall continue to respond to audit requests, and may participate in administrative proceedings described in IDAPA 31.01.01.43.01. Further, Ms. McCarty can testify on behalf of the Company as its witness to respond to the matters that must be addressed as set forth on page 9 of Order No. 35682 at the March 13, 2023, Show Cause Hearing.

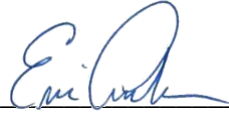
IT IS FURTHER ORDERED that Ms. McCarty is encouraged to reach out to the Commission's ADA Coordinator to discuss assistance she may require at the Order to Show Cause Hearing set for March 13, 2023.

IT IS FURTHER ORDERED that parties comply with Order No. 35375, issued April 21, 2022. Generally, all pleadings should be filed with the Commission electronically and will be deemed timely filed when received by the Commission Secretary. *See* Rule 14.02. Service between

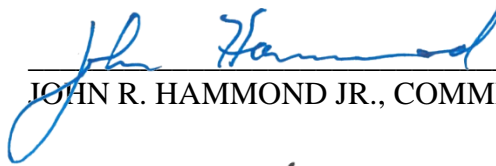
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parties should continue to be accomplished electronically when possible. However, voluminous discovery-related documents may be filed and served on CD-ROM or a USB flash drive.

DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 1st day of March 2023.



ERIC ANDERSON, PRESIDENT

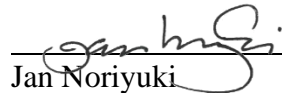


JOHN R. HAMMOND JR., COMMISSIONER



EDWARD LODGE, COMMISSIONER

ATTEST:



Jan Noriyuki
Commission Secretary

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