

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF ISLAND PARK)
WATER COMPANY’S FAILURE TO) CASE NO. ISL-W-23-01
COMPLY WITH IDAHO PUBLIC UTILITIES)
COMMISSION REPORTING AND FISCAL)
REQUIREMENTS) ORDER NO. 35817
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This case comes before the Idaho Public Utilities Commission (“Commission”) based on Commission Staff’s (“Staff”) investigation of the operations of Island Park Water Company, Inc. (“Island Park” or “IPWC” or the “Company”). During this investigation Staff learned the Idaho Department of Environmental Quality (“DEQ”) was also investigating the Company for noncompliance with its authorities. The Commission issued an Amended Notice of Hearing and Order to Show Cause on March 14, 2023, ordering Island Park to appear before the Commission to show cause why it should not impose penalties on the Company for its continued violations of requirements under state law and the Commission Rules of Procedure. *See* Order No. 35707.

Island Park is a water utility regulated by the Commission. The Company operates under Certificate of Public Convenience and Necessity No. 317 (“CPCN”), and has seven water systems—Aspen Subdivision, Goose Bay Estates Public Water System, Shotgun Cherokee Subdivision 5, Shotgun Kickapoo Subdivision 6 Public Water System, Shotgun North Public Water System, Shotgun South Stevens Lane, and Valley View Subdivision. Island Park’s service area includes over 300 customers in Fremont County, Idaho.

After a careful review of the record in this case, the Commission finds that the Company has repeatedly and continuously violated the Commission’s authorities and its duty to provide safe, adequate, and reliable service to its customers. Based on the Commission’s findings set forth below the Commission finds it fair, just, and reasonable to impose penalties on the Company for these violations. Further, the Commission provides notice that if these violations are not remedied the Commission will have no choice but to revoke Island Park’s CPCN.

BACKGROUND

On July 14, 2022, Staff sent audit requests (“ARs”) to the Company. *See* Order 35682 at 2.¹ Island Park did not respond timely or adequately to these ARs despite multiple demands made by Staff to the Company.² *Id.* at 2-3.

On August 1, 2022, Staff’s counsel sent a demand letter to Island Park alerting the Company of its failure to submit its 2021 Gross Intrastate Revenues Report (“GIOR”). *Id.* This letter was sent to the Company’s address of record at the Commission but was returned as undeliverable. *Id.* at 2.

On August 29, 2022, Staff’s counsel sent another demand letter to the Company through a process server.³ *Id.* The August 29, 2022, letter alerted the Company of its responsibility to update its address of record with the Commission, the legal requirements to submit the 2021 GIOR and to respond to Staff’s ARs. *Id.*

On September 12, 2022, Staff received the Company’s 2021 GIOR. *Id.* On September 14, 2022, Staff mailed an invoice for the late GIOR form.⁴ *Id.*

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 owner. *Id.* at 3.

On October 4, 2022, Staff’s counsel responded to the Company’s extension request by letter reminding 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. *Id.* at 3. Further, counsel advised the Company that its responses to ARs were overdue.⁵ *Id.*

On November 28, 2022, the Company filed its 2020 and 2021 annual reports. *Id.* Staff again reminded Island Park that it needed to respond to the ARs. *Id.* Despite this reminder the Company continued to fail to respond in full to the ARs. *Id.*

¹ The “Background” section of Order No. 35682 takes and cites facts from Staff’s January 31, 2023, Decision Memorandum and Exhibits.

² Staff communicated by email, telephone and sent at least three demand letters to Island Park requesting that it reply to Staff’s ARs. *See* Staff’s January 31, 2023, Decision Memorandum, Exhibits 1-5, 7 & 8. Two of the demand letters advised the Company that failure to respond to the ARs could lead to the imposition of penalties under *Idaho Code* § 61-706.

³ The process server confirmed delivery of the demand letter on September 7, 2022.

⁴ The Company submitted payment of the invoice for the GIOR on September 29, 2022.

⁵ AR No. 2 requested that the Company file its annual reports for 2020 and 2021. *See Idaho Code* § 61-405.

On December 27, 2022, Staff's counsel sent another demand letter, via process server, notifying 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 full and complete responses to the ARs within ten days. *Id.*

On January 3, 2023, the Company acknowledged receipt of the December 27, 2022, demand letter. *Id.* On January 9, 2023, the Company notified Staff counsel that its responses to the ARs were being sent to the Commission. *Id.*

On or around January 10, 2023, Staff received the Company's AR responses. *See* "Exhibit A" filed by the Company on March 27, 2023; *see also* Staff's Exhibit 11 admitted at the March 29, 2023, Show Cause Hearing.

For AR No. 1 ("[p]lease provide a customer list broken out by subdivision"), the Company stated that "[t]he list of accounts for each of the subdivisions was previously provided to you in the previous audit and was not returned to Island Park Water per our request. Please refer to that which was provided to you in 2020 with in (sic) the previous audit." *See* Exhibit A filed by the Company on March 27, 2023, at 1; *see also* Staff's Exhibit 11 admitted at the March 29, 2023, Show Cause Hearing at 3. The Company then requested that Staff contact Ms. McCarty via email. *Id.*

For AR No. 2 ("[p]lease provide annual reports for the years ending 2020 and 2021"), the Company stated that "[t]hese were provided to the PUC and are on file with the PUC. Second copy enclosed of 2020 and 2021. Please return copies provided to Island Park Water Company." *See* Company's Exhibit A at 2; *see also* Staff's Exhibit 11 at 4.

For AR No. 3 ("[p]lease provide a schedule showing all non-recurring fees charged to customers in 2020 and 2021"), the Company stated "[t]here is 'no schedule showing non-recurring fees charged for 2020 and 2021' per our understanding of what you are requesting." *Id.*

For AR No. 4 ("[p]lease provide a copy of all bills sent to customers in 2020 and 2021"), the Company stated it "[e]nclosed is a copy of the form for the billings sent for 2021 and 2022. We do not maintain copies and no ability to attach copy to an account." Company's Exhibit A at 34; Staff's Exhibit 11 at 36. The bill form does not provide a due date, limits water to "approximately 3 people per connection" and states that "Water is a privilege –Not a right!" *Id.*

For AR No. 5 ("[p]lease provide a copy of the minutes for every Board of Directors Meeting from 2020 to present"), the Company stated "Island Park Water Company gives

permission to read only. Permission NOT granted to copy, scan, duplicate or retain a copy.” Company’s Exhibit A at 2; *see also* Staff’s Exhibit 11 at 4.

For AR No. 6 (“[p]lease provide a listing of plant-in-service for the Company as of the end of 2021”), the Company stated “[t]here had been no change to the plant-in-service previously provided to you in previous audits.” *Id.*

For AR No. 7 (“[p]lease provide a list of all customer complaints receive (sic) in 2020 and 2021, along with each complaint’s resolution”), the Company stated “[t]he list of customer complaints is on file with the PUC including resolution. Unfortunately, IPWC did not maintain a written separate copy given it was understood the Compliance officer who contacted IPWC had retained such record.” Company’s Exhibit A at 3; *see also* Staff’s Exhibit 11 at 5.

For AR No. 8 (“[p]lease provide a copy of the Company’s budgets for the years 2020 and 2021”), the Company stated “IPW (sic) does not set budgets and there was no budget for the year 2020 and 2021.” *Id.*

For AR No. 9 (“[p]lease provide an accounts receivable aging for the years ending 2020 and 2021”), the Company stated: “Unable to provide as IPWC does NOT have a ‘receivable aging’ nor is there any way to produce per our knowledge.” *Id.*

For AR No. 10 (“[p]lease provide all Company bank statements for 2020 and 2021”), the Company stated, “[t]he requested Company Bank Statements are attached as a file on the USB Drive for 2020 and 2021 per instructions from previous audit and located in a folder on the USB Drive provided for read/review only per your previous instructions.” *Id.* The Company’s Bank Statements were redacted and payees on most checks were obscured. *Id.*

Staff reviewed the Company’s responses and determined that responses to three of the ten ARs were adequate (Responses Nos. 2, 5, and 8). Order No. 35682 at 3. 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). *Id.* Due to inadequacy of Island Park’s responses to ARs Staff recommended the Commission issue a Notice of Hearing and Order to Show Cause. *Id.*; *see also* Staff’s February 10, 2023, Decision Memorandum at 1.

On February 1, 2023, the Commission issued a Notice of Hearing and Order to Show Cause requiring the Company appear on February 22, 2023, and explain why it should not face penalties under *Idaho Code* §§ 61-706, 61-707, and 61-709, “for its continued, willful violations of

regulatory requirements under state law and the Commission’s Rules of Procedure that include failing to submit adequate responses to [ARs].” Order No. 35675 at 1.

On February 10, 2023, Staff recommended that the Commission vacate and reset the Show Cause Hearing to address additional allegations of improper customer billing, improper handling of customer complaints, threats of retaliation against customers, and the failure to provide safe and reliable services. *See* Staff’s February 10, 2023, Decision Memorandum.

On February 15, 2023, Island Park submitted supplemental responses to the ARs and requested that the Show Cause Hearing be dismissed because it believed that it had adequately responded to the ARs.⁶ Company’s Correspondence dated February 14, 2023.⁷ Further, the owner of the Company, Dorothy McCarty, also advised in this correspondence that she was suffering from certain medical issues that would prevent her from attending the Show Cause Hearing in Boise, Idaho. *Id.*

For AR No. 1 (“[p]lease provide a customer list broken out by subdivision”), the Company included lists of customers for Goose Bay Estates, Valley View Ranches, Aspen Ridge Estates, and Shotgun Village Estates by submitting a form with the account names, e.g., “GB-02-05-007, GB-02-05-012 -013-014” without additional identifiers, such as the names, legal description, or contact information of the customers. Company’s February 15, 2023, Supplemental Response.

For AR No. 2 (“[p]lease provide annual reports for the years ending 2020 and 2021”), the Company stated, “[t]hese were previously mailed to the Idaho PUC and are on file.” *Id.* at section 2.

For AR No. 3 (“[p]lease provide a schedule showing all non-recurring fees charged to customers in 2020 and 2021”), the Company stated it “only bills a yearly water tariff for \$280” and enclosed “printouts”—not actual bills—of its billing for 2020 and 2021. *Id.* The Company’s supplemental response to AR No. 9 included documentation of unspecified charges to customers in addition to the yearly tariff of \$280. *Id.* at section 3.

⁶ The Commission denied the Company’s request to dismiss the Show Cause Hearing on March 1, 2023. *See* Order No. 35691.

⁷ The Company submitted a hard copy of its February 15, 2023, response, and admitted this document at the Company’s Exhibit B to the Show Cause Hearing. Even though the Commission encourages parties to submit filings and exhibits electronically, the Company did not submit an unredacted, electronic version of its February 15, 2023, Supplemental Response; the Company submitted a redacted, electronic version which referenced the complete and unredacted hard copy provided to the Commission, which will be referred to the “Company’s February 15, 2023, Supplemental Response.”

For AR No. 4 (“[p]lease provide a copy of all bills sent to customers in 2020 and 2021”), the Company included blank copies of bill forms, which were different than the previous bill forms the Company filed on January 11, 2023. While the forms kept the \$280 annual tariff charge, the Company adjusted its restrictions on water usage to “4 people per connection per day” and modified the notification section’s instructions on reporting water leaks and providing contact information to the Company for emergencies. *Id.* at section 4.

The Company enclosed a list of customers’ names, account numbers, and the amount billed. *Id.* This time, the Company’s customer billing records showed customers being billed the tariff amount, and some customers being billed an amount double or quadruple the approved tariff amount. *Id.* The document also showed charges for reasons unspecified by the Company, e.g., two separate charges of \$200 for Customer on Account No. SV-04-XX-XXX, and a charge of \$376.80 for the Customer on Account No. GB-02-XX-XXX, and many other customer charges. *Id.* The Company’s 2020 Billing records show at least 29 instances of customers who were (1) billed for multiple lots and/or (2) billed more than the tariff. The Company’s 2021 Billing records show 43 instances of customers who were (1) billed for multiple lots and/or (2) billed more than the tariff. *Id.*

For AR No. 5 (“[p]lease provide a copy of the minutes for every Board of Directors Meeting from 2020 to present”), the Company provided copies of its minutes for 2020 and 2021. *Id.* at section 5.

For AR No. 6 (“[p]lease provide a listing of plant-in-service for the Company as of the end of 2021”), the Company provided surveys of the subdivisions within its service area. *Id.* at section 6.

For AR No. 7 (“[p]lease provide a list of all customer complaints receive (sic) in 2020 and 2021, along with each complaint’s resolution”), the Company stated:

As previously noted, IPWC presumed that the PUC kept these on file. I was informed by an employee of PUC that the log is to be maintained for one year only.

We do not consider inquiry calls as ‘complaint calls’ and do not maintain a record of calls received. The only way to produce copies would be a list of calls per the cellular provider. I contacted the company and was told they do not retain this.

As to the response that it was presumed that the IPUC maintained any “Complaints” we were contacted and the resolution was made via email. I have requested from my email provider to search for correspondence from the PUC as these were saved

on a hard drive back up that unfortunately the IT person I had come look at, said the files were corrupted and can't access.

To resolve this in the future a separate log will be maintained. Thank you.

Id. at section 7.

For AR No. 8 (“[p]lease provide a copy of the Company’s budgets for the years 2020 and 2021”), the Company maintained that it had not made or set a budget for 2020 or 2021. *Id.* at section 8.

For AR No. 9 (“[p]lease provide an accounts receivable aging for the years ending 2020 and 2021”), the Company provided a detailed accounts receivable report showing fees on customer accounts. *Id.* at section 9. The Company’s accounts receivable report did not include the customers’ names with their accounts or elaborate on the reasons for these fees. *Id.* There were multiple accounts showing invoices for less than \$10, but notably one customer’s account showed an invoiced amount of “\$2,270.73” in 2020. *Id.*

For AR No. 10 (“[p]lease provide all Company bank statements for 2020 and 2021”), the Company provided unredacted bank statements for the years 2020 and 2021. *Id.* at section 10. The Company explained it redacted the bank statements for privacy of the accounts, “[p]er the prior instructions of the PUC Auditor Island Park Water Company was told to redact any personal information, including account numbers and personal identification for security and privacy of the account.” *Id.*

The Company’s unredacted bank records showed payments from the Company to Ms. McCarty totaling \$36,575 in 2020 and 2021, and payments to “McCarty Management Services” totaling \$51,630.80 in 2020 and 2021. *Id.* In addition, the bank statements showed frequent expenditures at Costco totaling around \$15,000, and payments to individuals and businesses with the “McCarty” name. *Id.*

Staff stated the Company had responded adequately to AR Nos. 2, 5, and 8. Staff’s February 10, 2023, Decision Memorandum.

On February 17, 2023, the Commission issued Order No. 35682 vacating the Show Cause Hearing. Order No. 35682 also provided amended notice that the Commission had reset the Show Cause Hearing for March 13, 2023, in Boise, Idaho. Order No. 35682 required the Company to be prepared to respond to a variety of matters including the new allegations raised by Staff’s February 10, 2023, Decision Memorandum. *See* Order No. 35682 at 9.

On March 6, 2023, the Company filed a motion to continue the Show Cause Hearing or allow the hearing by Zoom or Webex (“Motion”).

On March 14, 2023, the Commission issued Notice of Customer Hearing, Order Vacating Show Cause Hearing and Amended Notice of Hearing and Order to Show Cause. *See* Order No. 35707. In Order No. 35707 the Commission found that the Customer and Show Cause Hearings would be set for March 29, 2023, in the Company’s service territory. Order No. 35707 at 1. The Commission ordered Island Park to appear and explain why the Commission should not require the Company to:

- 1) Immediately provide the Commission with adequate responses to its Audit Request Questions 1, 3, 4, 6, 7, 9, and 10⁸;
- 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.

Order No. 35707 at 3-4.

⁸ Staff considered the Company’s responses to AR Nos. 2, 5, and 8 to be adequate, and the Commission did not include those ARs in its Order No. 35707.

On March 27, 2023, Ms. McCarty filed three affidavits⁹ and associated exhibits. Because these materials were filed two days before the Show Cause Hearing, the Commission allowed the parties to submit post hearing briefing. *See* Order No. 35725.

On March 29, 2023, the Commission held a Show Cause Hearing (“Hearing”) in Island Park, Idaho. Ms. McCarty, represented by counsel, and Mr. Buchanan testified on behalf of the Company. The Commission also held a Customer Hearing on this same day where eight individuals testified on the record.

On April 5, 2023, the Commission issued a Notice of Post-Hearing Schedule setting a Staff Post-Hearing Response deadline of April 12, 2023, and a Company Post-Hearing Reply deadline of May 3, 2023. On April 12, 2023, Staff filed a Post-Hearing Response, and the Company filed a Post-Hearing Reply on May 3, 2023. Additionally, on April 12, 2023, DEQ filed the Affidavit of Kelsey Carter, Drinking Water Compliance Officer at the Idaho Falls, Idaho DEQ office.

The Commission also received 30 written, public comments.

COMMISSION DECISION AND FINDINGS

The Commission has jurisdiction over this matter under *Idaho Code* §§ 61-119, -129, -101, -302, -406, -501, -515, and -701. The Company is a water corporation as defined in *Idaho Code* § 61-125, and a public utility as defined in *Idaho Code* § 61-129. The Commission has authority to supervise and regulate every public utility within the State of Idaho and do all things necessary to carry out the spirit and intent of the Public Utility Law. *Idaho Code* § 61-501. The Commission has the authority to enforce Public Utility Laws and impose penalties upon utilities for failing to act in accordance with those laws. *Idaho Code* §§ 61-406 and -701. As a public utility furnishing water to customers within the State of Idaho, the Company must furnish, provide, and maintain such service, instrumentalities, equipment, and facilities that are adequate, efficient, just, and reasonable and promote the safety, health, comfort, and convenience of its patrons, employees, and the public. *Idaho Code* § 61-302. The Commission has authority to “require every public utility to maintain and operate its line, plant, system, equipment, apparatus and premises in such manner as to promote and safeguard the health and safety of its employees, customers and the public” and “require the performance of any other act which the health or safety of its employees, customers or the public may demand.” *Idaho Code* § 61-515.

⁹ One of the affidavits is unsigned.

1. Introduction to Commission Findings

When reviewing the record, the Commission weighs the evidence, including conflicting evidence, and considers the credibility of the individuals who have provided this evidence. As to witnesses, Idaho Courts have found that the substantive credibility of a witness “may be judged on the ground of numerous inaccuracies or conflicting facts,” and observational credibility “goes to the demeanor of the [witness] on the witness stand and it requires that the Commission actually be present for the hearing in order to judge it.” *Clark v. Shari’s Management Corp.* 155 Idaho 576 (2023) (citing *Moore v. Moore*, 152 Idaho 245, 254, 269 P.3d 802, 811 (2011)).

After observing the witnesses at the hearing and comparing their testimony against the other evidence in the record, the Commission finds the weight of the evidence presented by Ms. McCarty is in many cases questionable and her credibility is suspect. The Commission had the opportunity first-hand to see how Ms. McCarty handles customer complaints. At the customer hearing on March 29, 2023, customers testified to the issues they experienced with the services provided by the Company. During these customers’ testimony Ms. McCarty sat in the front row of the audience and noticeably shook her head disagreeing with these witnesses’ testimony and appeared to be making comments. Ms. McCarty’s behavior interrupted one customer mid-testimony, as the customer described the Company’s failure to address a water outage. Customer Hearing Tr. at 41/15-18. Such conduct is unprofessional and corroborates the many comments filed in this case from customers who complained about how Ms. McCarty treated them when they reported issues with their water service. In contrast, there were two customers who testified favorably about the Company. *Id.* at 24/3-25/21 and 34/11-36/8. Marlin Glans testified that she received a personal phone call from Ms. McCarty when there was a boil order, and Kelli Vollweiler testified her husband helped run the Company for 30 years and she has not had problems with water freezing or water quality. *Id.* It is not enough for the Company to provide preferential treatment to a select few of its customers where other customers face significant water outages, are not receiving notices of boil orders, are billed in excess of the tariff, and face hostile behavior for raising legitimate concerns with the water service—all of which have been reported to the Commission.

Specifically, the Company denied charging non-recurring fees while its customers submitted documentation of Company bills showing non-recurring, unapproved fees. *See* The

Company's February 15, 2023, Supplemental Response¹⁰; Customer Hearing Tr. at 9/2-12; 27/1-28/10; 41/8-18; *see e.g.*, Staff's Exhibits 12, 14, and 28 to the Show Cause Hearing. The Company's billing records showed the Company charged some customers an amount double the approved tariff and charging one customer an amount quadruple the approved tariff. Company's February 15, 2023, Supplemental Response at section 4. The Company had unspecified charges *e.g.*, two separate charges of \$200 for Customer on Account No. SV-04-XX-XXX, and a charge of \$376.80 for the Customer on Account No. GB-02-XX-XXX, and many other customer charges. *Id.* In another instance, the Company did not provide copies of all customer bills but provided a print-out of its "billed amounts." *Id.* Customers testified about the Company's billing practices and submitted actual bills from the Company showing charges in excess of the Company's approved tariff, threats of penalties, and interest in excess of the tariff—all of which were inconsistent with the Company's disclosures. *Id.*; Customer Comments. The Company delayed providing bank statements for 2020 and 2021 arguing that it needed to make redactions for security and privacy; however, the unredacted documentation showed that the Company had covered payments the Company made to Ms. McCarty personally, Ms. McCarty's management company, Ms. McCarty's family members, and closely affiliated McCarty family businesses. Company's February 15, 2023, Supplemental Response at Section 10. There were frequent Company expenditures at Costco totaling around \$15,000, and little to no documentation on how these expenditures are being used to maintain the water system. *Id.*; Show Cause Hr. Tr. at 26/8-21. The Commission has not reviewed these expenditures for prudence and has not found them to be just and reasonable.

This case originally came before the Commission upon Staff's allegation that Island Park had failed to provide full and complete responses to ten ARs Staff sent the Company and failed to file annual reports with the Commission. It is undisputed these ARs were received by the Company. Further, the Company is required by *Idaho Code* §§ 61-401 and 61-406 to submit annual reports to the Commission. It is also undisputed that Staff requested that the Company respond to the ARs and file its annual report on multiple occasions. *See* Staff's Exhibits to the Show Cause Hearing 1-9. The record clearly demonstrates the Company failed to timely and adequately

¹⁰ The Company's February 15, 2023, Supplemental Response was entered as the Company's Exhibit B to the March 29, 2023, Show Cause Hearing.

respond to Staff's requests as will be discussed more below. *Id.*; the Company's Exhibit A; and the Company's February 15, 2023, Supplemental Response.

As this case proceeded the matters under consideration expanded to include allegations of improper customer billing, improper handling of customer complaints, threats of retaliation against customers, and failure to provide safe and reliable services. Each of these matters under consideration by the Commission are important especially those which concern whether the Company is providing safe, adequate, and reliable service to its customers. As is discussed in more detail below, the record in this case demonstrates that the Company is not providing safe, adequate, or reliable service to its customers. We also take notice of the March 15, 2023, Notices of Disapproval, where the DEQ disapproved the Company's seven water systems for the Company's failure to "address significant deficiencies under IDAPA 58.01.08.303.06" and for "failure to provide tier 2 public notification of water users under IDAPA 58.01.08.150.02." Exhibits to the Show Cause Hearing 21-27. DEQ may assign a disapproved designation to a public water system for defects, operating procedures which constitute a health hazard, quality that falls below the requirements for safe drinking water, the failure to adhere to monitoring requirements, the use of an unapproved source of drinking water, or the nonpayment of the annual water system fee. IDAPA 58.01.08.07. In addition, the affidavit of DEQ Investigator Kelsey Carter raised serious allegations about the Company's conduct and documented the Company's compliance failures.

Customers rely on the Company for their water services regardless of the time of year and these customers have suffered through multiple extended outages, contaminated water, and the Company's failure to keep its customers informed about their services amongst other problems. Island Park is at a critical crossroads; if it chooses to continue its noncompliance with the Commission's regulatory authorities the consequences will be severe. Those consequences though could pale in comparison to the potential liabilities the Company and its owner may face in the courts of the State of Idaho if its customers are injured by the Company's failure to provide of safe, adequate, and reliable service to its customers.

Below, the Commission makes findings and imposes penalties for the foregoing violations of Commission regulatory authorities.

2. Legal Authority for Penalties for Violations of the Public Utilities Law under Idaho Code § 61-701 et. seq.

Pursuant to *Idaho Code* § 61-706, “[a]ny 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.”

Pursuant to *Idaho Code* § 61-707, “[e]very 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.”

Pursuant to *Idaho Code* § 61-709, “[e]very 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.”

3. The Company Violated its Obligation to Fully Respond to Staff’s ARs.

Pursuant to *Idaho Code* § 61-401, “[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.” Commission Rule of Procedure 227 allows the Commission or its Staff to “inspect the books, records and premises of regulated utilities and carriers pursuant to statute” and information obtained “may be used in formal proceedings or for any regulatory purpose.” Finally, the Commission has ordered the Company to respond to the ARs. *See* Order Nos. 35675 and 35682.

a. AR No. 1 and 6 (No Penalties)

Staff’s Counsel agreed at the Show Cause Hearing that the Company had satisfactorily responded to AR No. 1 (“[p]lease provide a customer list broken out by subdivision”) and AR No. 6 (“[p]lease provide a listing of plant-in-service for the Company as of the end of 2021”), and asked additional questions related to the Company’s plant-in-service at the Show Cause Hearing for clarification. Show Cause Hr. Tr. at 11/24-12/7; 17/3-10. The Company did not have a complete response to AR No. 1 and 6 until its February 15, 2023, Supplemental Response, which was untimely; however, the Commission will not assess a penalty for the Company’s late but satisfactory responses to AR Nos. 1 and 6.

b. AR 3 (\$2,000 Penalty)

For AR No. 3, (“[p]lease provide a schedule showing all non-recurring fees charged to customers in 2020 and 2021”), the Company’s January 11, 2023, Response denied the Company had a schedule “showing non-recurring fees charged for 2020 and 2021 per our understanding of what you are requesting.” Company’s Exhibit A at 4. The Company’s February 15, 2023, Supplemental Response stated it “only bills a yearly water tariff for \$280” and enclosed printouts—not actual bills—of its billing for 2020 and 2021. Company’s February 15, 2023, Supplemental Response at section 3.

Idaho Code §§ 61-401 and 606 and Commission Rule of Procedure 227 require the Company to produce the information requested by AR No. 3. The Company’s response to AR No. 3 was inadequate for (1) denying a schedule of non-recurring fees existed; and (2) for the late production of Company bills with invoices that contradict the earlier representations with invoiced charges for amounts other than the tariff amount.

For example, the Company’s February 15, 2023, Supplemental Response showed charges for reasons unspecified by the Company. Customers also provided credible testimony about the Company charging non-recurring fees through their comments, testimony at the Customer Hearing

and in Staff's Exhibits 12, 14, and 28 to the Show Cause Hearing. The following are excerpts from the customer comments submitted about billing:

- A customer noted receiving a double assessment and being threatened with \$627 in penalties one year, and \$694.40 in penalties with a \$560 unpaid water assessment for 2022 with \$134.40 in interest.
- We have been double billed a few times and reported a constant leak at a neighbor's main shut off valve and nothing was done by the company.
- We [received] a bill August 2018 for \$884.80, and [the Company] said she could charge me whatever—she could charge me an \$1100 illegal hookup fee if I wanted to argue or send notice to disconnect or just cut the spigot; [the bill] stated we owed \$480 . . . every subsequent bill has placed strict conditions and stipulations on water usage. . . Throughout all summer last year (2022), our water smelled so horrible that we did not want to use it.
- I have four clients that have been overcharged, charged for no water connection and paid. Held a [real estate] closing for ransom of \$2k because Dorothy didn't have a record of the water being connected years before my client purchased the property; told another buy it was \$1700 to connect a stubbed line when according to the tariffs it's \$200.
- My parents were overcharged for water . . . I paid the outstanding balance.
- I've attempted for nearly a year to obtain approval for connection on the Island Park Water system; My daughter fought to connect to the system two years ago. . . also being pushed out for a year. During this phone conversation with Dorothy, on Sunday, Dorothy told her she'd undercharged her for her connection and that it should have been \$1,100: It has been a costly and time-consuming nightmare dealing with Dorothy and Island Park.
- Dorothy billed me \$1,236 for it . . . I was given no notice that the water was turned off & Dorothy didn't care. Also I was told I can't have more than 2 people at my cabin at a time. It has been a nightmare regarding water so I have bought jugs & bottles or water for personal use on many of my trips to the cabin.
- For at least the last 8 years I have been billed incorrectly and threatened to have my water turned off.
- Dorothy has refused water rights, repairs, and we can cite many improper billing conducts.

Testimony at the Customer Hearing held on March 29, 2023, provided that current customers paid for previous customer arrearages and customer accounts were not credit for payments accurately. Customer Hearing Tr. at 12/8-13/2, 27/21-23 and 41/8-18. Based on the above, the Commission finds the Company's response denying non-recurring fees is not well-taken. The Commission finds the Company failed to appropriately respond to AR No. 3 and is subject to a penalty of \$2,000 under *Idaho Code* § 61-706.

c. AR No. 4 (\$2,000 Penalty)

For AR No. 4, (“[p]lease provide a copy of all bills sent to customers in 2020 and 2021”), the Company’s January 11, 2023, response stated that the Company did “not maintain copies” and could not produce copies of its bills. Company’s Exhibit A at 2; Staff’s Exhibit 11 to the Show Cause Hearing at 4. The Company’s January 11, 2023, response included a “bill form” stating a \$280 annual tariff charge, a 12% late fee, a due date of April 1st, and Company restrictions on customers’ property to three people per household. Company’s Exhibit A at 34; Staff’s Exhibit 11 at 36. The Company’s supplemental February 15, 2023, response to AR No. 4 had a different bill form, which kept the annual \$280 tariff charge, the 12% late fee, the April 1st due date but adjusted the restriction on customers’ household size to four people. Company’s February 15, 2023, Supplemental Response at section 4. This discrepancy between the billing forms alone is concerning, as there should not be multiple versions of the Company’s bills; however, the greater concern is the discrepancy between the approved tariff and the amounts the Company has charged its customers, as demonstrated through the customer comments, *supra*, and the other persuasive evidence provided to the Commission. *See e.g.*, Staff’s Exhibits 12, 14, and 28 to the Show Cause Hearing; Customer Comments, *supra*. Under the “filed-rate doctrine,” codified in Idaho Code § 61-313, a “utility cannot charge more, and also ... cannot charge less than” its approved rates and charges on file with the Commission. Order No. 30431 at 6; *Idaho Code* §§ 61-313, 61-315. This is not the first time the Company has charged customers rates different from those contained in its Commission approved Tariff. *See* Order Nos. 32268 and 34719, Case No. ISL-W-11-01. In this case the Commission directed the Company to bill its customers “only as specified in its approved Tariff.” Order No. 34719 at 2.

Idaho Code §§ 61-401 and 606, Commission Rule of Procedure 227 require the Company to produce the information requested by AR No. 4. The Company’s response to AR No. 4 was inadequate because the Company did not provide a copy of all bills sent to customers in 2020 and 2021. At the Show Cause Hearing, the Company explained that its practice was to send letters to customers, and that its software could “pull up [a customer’s] account and regenerate a statement for them.” Show Cause Hr. Tr. at 32/8. Despite admitting the ability to “regenerate a statement” with its accounting software, the Company never provided these statements to the Commission. The Commission will discuss instances of improper customer billing further below.

Based on the record, the Commission finds the Company's response to AR No. 4 is incomplete, lacks credibility, and is untimely. The Company is subject to a penalty of \$2,000 under *Idaho Code* § 61-706.

d. AR No. 7 (\$2,000 Penalty)

For AR No. 7 (“[p]lease provide a list of all customer complaints received[d] in 2020 and 2021, along with each complaint’s resolution”), the Company did not provide a complaint log, because it did not have one. The Company testified that it had started keeping the required customer complaint log at the Show Cause Hearing. Show Cause Hearing Tr. at 11/8-14.

Idaho Code §§ 61-401 and 606, Commission Rules of Procedure 227 require the Company to produce the information requested by AR No. 7. A public utility is required under Customer Relations Rule 402 to “keep a written record of complaints” and maintain “for a minimum of one (1) year.” IDAPA 31.21.01.402.01 “These written records are to be readily available upon request by the concerned customer, the customer’s agent possessing written authorization, or the Commission.” *Id.* Further, the utility “must, at the Commission’s request, submit a report to the Commission that states and classifies the number of complaints made to the utility pursuant to Rules 400 and 401, and the general subject matter of the complaints.”

The Commission finds the Company failed to respond to AR No. 7, and its failure to maintain a complaint log violates Order No. 30668 and IDAPA 31.21.01.402. The Commission finds the Company is subject to a penalty of \$2,000 under *Idaho Code* § 61-706.

e. AR No. 9 (\$2,000 Penalty)

For AR No. 9 (“[p]lease provide an accounts receivable aging for the years ending 2020 and 2021”), the Company initially denied having this report. The Company’s February 15, 2023, Supplemental Response at section 9 included an accounts receivable report showing fees on customer accounts, and effectively contradicts the Company’s earlier denial of having an account receivable report.

Idaho Code §§ 61-401 and 606 and Commission Rule of Procedure 227 require the Company to produce the information requested by AR No. 9.

The Company’s response to AR No. 9 is inadequate because of its initial denial of an accounts receivable report, the persuasive testimony of customers on being charged late fees, and the subsequent production of a report showing these charges. Customer Hearing Tr. at 12/8-18.

The Company should have disclosed this information in its initial response to AR No. 9. *See e.g.*, Staff’s Exhibits 12, 14, and 28 to the Show Cause Hearing.

The Commission finds the Company failed to provide a complete and timely response to AR No. 9, and the Company is subject to a penalty of \$2,000 under *Idaho Code* § 61-706.

f. AR No. 10 (\$2,000 Penalty)

For AR No. 10 (“[p]lease provide all Company bank statements for 2020 and 2021”), the Company’s January 11, 2023, response had significant redactions that obscured the payees in many transactions. The Company explained these redactions were necessary for security and privacy and submitted unredacted bank statements for 2020 and 2021 in its February 15, 2023, Supplemental Response to AR No. 10.

Idaho Code §§ 61-401 and 606, Commission Rule of Procedure 227 requires the Company to produce the information requested by AR No. 10.

The Company’s response to AR No. 10 was inadequate because the redactions were unnecessary and obscured payments to Ms. McCarty personally, Ms. McCarty’s management company, closely affiliated McCarty family businesses, or Ms. McCarty’s family members who have been “consultants” for the Company. The Commission finds this is an unacceptable reason to withhold or delay disclosing the financial information requested. Additionally, the Commission is troubled by the amount of the payments made by the Company to Ms. McCarty and her familial associates.

Therefore, the Commission finds the Company failed to provide a timely response to AR No. 10 and is subject to a penalty of \$2,000 under *Idaho Code* § 61-706.

4. Failure to Properly Handle Customer Complaints (\$24,000 Penalty)

As found above, the Company did not maintain the customer complaint log as required under IDAPA 31.21.01.402 and Order No. Order No. 30668.

As set forth in the Commission’s Customer Relations Rules the Company is required to “keep a written record of complaints” and retain them “for a minimum of one (1) year.” IDAPA 31.21.01.402.01. “These written records are to be readily available upon request by the concerned customer, the customer’s agent possessing written authorization, or the Commission.” *Id.* Further, the utility “must, at the Commission’s request, submit a report to the Commission that states and classifies the number of complaints made to the utility pursuant to Rules 400 and 401, and the general subject matter of the complaints.” IDAPA 31.21.01.402.02. In 2008 the Commission found

that the Company was required by Commission authorities to maintain a register of customer complaints but did not. *See* Order No. 30668 at 13, Case No. ISL-W-08-01. At that time, the Commission ordered the Company to implement Staff recommendations on complaint records, including “establish[ing] and maintain[ing] a Call Log in addition to the required complaint record and make the documents available for review.” *Id.*

While the Company has testified it has started keeping the required complaint log, the Company must also appropriately respond to customer complaints. Customer Relations Rule 400, IDAPA 31.01.01.400, requires a utility to “promptly, thoroughly and completely investigate the complaint, notify the customer or applicant of the results of the investigation and make a good-faith attempt to resolve the complaint.”

At the Customer Hearing, customers and the City Clerk for the City of Island Park persuasively testified that the Company did not respond to their concerns or promptly make repairs. Wade Wilcox testified the Company did not respond to his multiple requests to repair a line that he believed was causing a “spring” in his front yard in early 2017. Customer Hearing Tr. at 9/20-10/15. Mr. Wilcox testified the repair occurred in late 2019, and the repair technicians “confirmed that the ‘spring’ stopped when [the Company] shut the water off to do the repair.” *Id.* at 10/16-25; 11/1-12. Mr. Wilcox testified that the excess water from the unrepaired “spring” caused “\$10,000 in damage to [his] snowmobile trailer, along with a wrecker bill to get the truck and trailer out” and the “constant flooding” caused his garage to settle. *Id.* at 11/13-12/12. Mr. Wilcox stated his expectation that the Company provide the service he is paying for, rather than waiting years to repair water lines. *Id.* at 13/10-23.

Rees Rumsey testified the Company initially responded promptly to customer complaints— “to Dorothy’s and Roger’s credit, they answered the phone, they did respond, they seemed concerned”—but that responsiveness faded and the Company has “refuse[d] to update and modernize any lines, any wells, any element of technology in those systems” to ensure consistent service. *Id.* at 15/18-17/2. Rumsey testified the Company relied on customers to make repairs or troubleshoot issues with the wells, and had “never seen a [no trespassing sign] [and] there’s never been a lock on the . . . wells” because neighbors receive calls from the Company to “look at the well when there’s an issue.” *Id.* at 16/2-12. Ms. Rumsey further testified: So as a homeowner that drinks that water, we are advocating that there has to be a change. Later on as the call would come that there’s a break, there’s an issue with the well, the quick response that we used to get from Dorothy and Roger turned into bullying and making stuff up that we knew was completely not true as far as what we could and what we couldn’t do on our property. So the restrictions had started to come where, well, you can only have one person in the house, you got to

pull your washer and dryer out, you got to pull your dishwasher out, you got to do your laundry 30 miles away because you're a drain on the well.

Well yes, we are a short term—we have a permit for a short term rental, but we also as a family, we have our family that comes that we've blocked out and access the cabin and have our time. But, you know, things are being thrown at us that—Island Park Water Company has no authority whatsoever to dictate to us whether or not we have a washing machine, whether we have a dishwasher, how many people can actually show up and participate in our house. So when we would get back on some of these requests that's when it started turning into the bullying, and, you know, the name calling and the threats and . . . that's essentially the bulk of it.

Id. at 17/24-18/24.

Winter Mickelberry who owns four properties in Island Park, testified about being “charged a \$200 connection fee, even though [the property] was already connected and the previous owners had already paid the bill, . . . and [Ms. McCarty] said it didn't matter, anybody switching to Island Park Water has to pay that \$200 connection fee.” *Id.* at 27/1-9. When purchasing a new property in the neighborhood, the Company told them “it was behind in payments and I was going to be responsible for payment all of those” and “I was also —because it was a rental—or if she found out it was a rental she could turn our water off.” *Id.* at 27/10-28/10. After moving to Island Park as a full-time resident, these customers “didn't have water until June 17th. So we had small—you know, our kids and us up here living full time with no water.” *Id.* at 28/13-15. Ms. Mickelberry described a flood into her yard due to a burst pipe and a “huge hole in [her] driveway for 11 weeks” that went unresolved until she “threatened [the Company] with a lawsuit if one of [her] kids fell in and hurt themselves.” *Id.* at 29/1-8. Ms. Mickleberry further testified that:

I've been able to talk with Dorothy on the phone, and if she knows my water might be going out she will text me and let me know. But my fear was that it will go back to me not being able to have civil conversations with her and that I would start to get threatened again about turning my water off and stuff like that. So this was a hard choice for me to come in and bring this up, . . . I've also been told that we should only have two or three people living in our house, but we are a family of five, so that was an issue. It's also written on our bills that we—that we need to limit our usage to approximately three people per connection.

Id. at 29/25-30/18.

Reeca Marotz, City Clerk for the City of Island Park, testified about water outages and the multiple complaints the City of Island Park receives about the Company:

[B]ecause of the closeness of the name, Island Park Water Company, people assume that it is governed by the City of Island Park. Because of that . . . I get numerous complaints all times of the year, we have no water, our water is frozen, how do we get our water unfrozen. . . . As you know, we have several short-term rental properties within the Island Park area. A family had come from out of state, parents, six children, arrived at their rental, no water. They had not been informed that there would be no water. They contacted the property manager, who was also unaware that there was no water. She told them that normally people aren't at home during the day, so if they need to flush the toilet they were going to have to purchase water, and they would have to purchase water to drink for the remainder of their stay. They were here for six and a half days with no water. No attempt was made—this is the conversation that was relayed to me, because they called to complain to me because they thought it was city water. No attempt was made to rectify that situation. I probably get, in a summer, ten calls.

Id. at 20/13-21/25. The Commission appreciates the testimony of the City of Island Park's City Clerk on the volume and extent of complaints made against the Company, and finds the testimony corroborates customers' reports on the Company's poor and inadequate responses to complaints.

As discussed, *supra*, there were numerous complaints about the Company's billing practices in the comments and in Staff Exhibits to the Show Cause Hearing 12-14. Staff's Exhibit 13 to the Show Cause Hearing has 54 complaints of no water/low pressure; 23 complaints of not being alerted to boil/low pressure; 11 complaints about water quality; 9 complaints on billing; 2 complaints of refusal of service; 16 complaints of poor or threatening communication; and 7 complaints of lack of maintenance for the Company's Valley View, Aspen Ridge, and Goose Bay areas alone. There were other complaints about the Company not allowing a customer to water their lawn; the Company's time-of-day restrictions on water usage, and the customer hauling water due to poor water quality.

The Commission acknowledges the positive, but limited testimony about the Company's responsiveness to customer complaints but finds such testimony should be given less weight because one individual was employed at the Company and another individual had a "private well" which is a distinct situation from those customers solely reliant on the Company to provide safe and reliable water service. *See* Customer Hearing Tr. at 34/8-36/9; April 17, 2023, public comment.

The Commission finds the Company's conduct falls far below reasonable expectations for handling customer complaints and providing safe and reliable service, and the Commission finds the Company needs to demonstrate a willingness to accept responsibility for its systems, and

address customers' complaints in a professional manner in order to ensure that safe, adequate, and reliable service is provided to the Company's customers.

Based on the Company's improper handling of customer complaints on at least twelve occasions, the Commission finds the Company is subject to a penalty of \$24,000 under *Idaho Code* § 61-706. The Commission will defer assessing daily penalties under *Idaho Code* § 61-707.

5. Improperly Billing Customers (\$144,000 Penalty)

Staff requested copies of actual customer bills in AR No. 4. *Idaho Code* §§ 61-401 and 606, and Commission Rule of Procedure 227 require the Company to produce the information requested by AR No. 4. The Company did not provide actual customer bills, and Staff's investigation revealed credible allegations of improper billing.

The Company is required under *Idaho Code* § 61-301 to be "just and reasonable" with "all charges made, demanded or received" for "any product or commodity furnished or to be furnished or any service rendered or to be rendered . . ." and "[e]very unjust or unreasonable charge made, demanded or received for such product or commodity or service is hereby prohibited and declared unlawful." Per *Idaho Code* § 61-313, "no public utility shall charge, demand, collect or receive a greater or lesser or different compensation from any product or commodity furnished or to be furnished or for any service rendered or to be rendered than the rates, tolls, rentals and charges applicable to such product or commodity or service as specified in its schedules on file and in effect at the time." The Company must not bill more than the Commission approved tariff, and the Company's tariff only allows for an annual charge of \$280, for the year of June 1st to May 31st.

The Company's historical billing practices led to the Commission's emergency Order No. 32268 in 2010, and Order No. 34719 in 2020; both orders directed the Company to immediately correct its billing practices and cooperate with Staff's audits. The Commission's 2020 Order directed the Company to "bill its customers only as specified in its approved tariff" as permitted by *Idaho Code* § 61-313 and "allow Staff at all reasonable times to inspect the Company's books and records, meet with its employees and to enter its premises as part of Staff's new audit." Order No 34719; *see also* Order No. 32268 at 2.

Here, the record contains the Company's admission it charged a customer five times the approved tariff, customers' testimony about being charged for "unpaid bills from previous property owners"; 72 discrepancies in the Company's 2020 and 2021 billing records between the tariff and the amount the Company charged the customer; customers' comments on improper billing

described above, including a specific complaint that the Company failed to send an agreed upon refund, and a billing form that was not approved by the Commission. *See e.g.*, Show Cause Hearing at 63/1-10; 103/13-104/5; Customer Hearing at 9-12; 41; the Company's February 15, 2023, Supplemental Response; customer comments; and Staff's Exhibit 11 to the Show Cause Hearing at page 36.

First, the Company admitted charging a customer five times the approved tariff amount. Show Cause Hearing at 103/13-104/5. That same customer complained of being charged a hook-up fee of \$2,800. Staff's Exhibit 12 to the Show Cause Hearing.

Second, customers at the Customer Hearing testified about the Company demanding payments above the tariff amount for past due bills. Wade Wilcox testified that the Company demanded he pay for years of unpaid bills from the previous property owner. Customer Hearing Tr. at 9/2-19. The Company notified him:

[T]he previous owner had not paid water for three years prior to us purchasing the property, absolutely unbeknownst to us. Quite honestly, I didn't feel that was my responsibility. We worked with Ms. McCarty through the red stuff taking property because of nonpayment of water, et cetera. We finally reached an agreement and we paid the back water that was prior to my purchase of the property.

Id. at 9/9-18. Wilcox testified to the Company repeatedly demanding payment for that which he had already paid:

every year I would get—we would pay the water bill, the next year we would get a water bill saying that we were in arrears for the year previous, so we owed two years plus all the interest and late fees. We would go through sending canceled checks, et cetera, go through all the motions to prove that it had been paid, and then the next year you'd turn around it and it would be the same thing.

Id. at 12/11-18.

Kim Thompson testified the Company charged her \$480 because “the people didn't pay the following year.” Customer Hearing Tr. at 41/8-18.

Third, the customers' comments on billing, discussed *supra*, reflect the Company has charged above the tariff amount. In addition, one customer, Carma Markin, commented that the Company failed to issue an agreed upon refund check for charges in excess of the tariff. April 4, 2023, public comment. The Company's reply showed a copy of the check, but no proof that the check had been sent to the customer. Company's May 3, 2023, Reply at Exhibit 1.

Fourth, the Company's billing records from its February 15, 2023, Supplemental Response showed charges that cannot be reconciled with the approved tariff. For example, the Company had two separate charges of \$200 for Customer on Account No. SV-04-XX-XXX, and a charge of \$376.80 for the Customer on Account No. GB-02-XX-XXX, and many other customer charges that cannot be explained by the tariff. Company's February 15, 2023, Supplemental Response. The Company had multiple entries for its billing of customers totaling amounts above the tariff without persuasive documentation that these entries could be justified by the customer having multiple lots. *Id.* Overall, the Company's billing records had 72 entries that could not be reconciled with the tariff.

The Company submitted a copy of its "bill form" which the Commission has not approved. Staff's Exhibit 11 to the Show Cause Hearing at page 36. The bill form purports to charge a \$280 annual tariff, a due date of April 10th, late fees of 12%, and a restriction against the customer's usage. *Id.*

Based on the evidence, the Commission finds the Company's "agreement" to charge a customer an amount five times the approved tariff is prohibited under the Idaho Public Utilities Law, and the Commission is persuaded this customer was charged an amount five times the tariff and a hook-up fee of \$2,800. The Commission orders the Company to immediately refund the customer the amount charged in excess of the tariff, and the hook-up fee of \$2,800.

The Commission finds the customer testimony and comments persuasive; the Company's billing records show charges that cannot be reconciled with the tariff and show a systemic problem with the Company's billing. In addition, the Commission is not persuaded that the Company has shown it sent customer Carma Markin a refund as agreed upon, because a picture of a check image does not establish the same was mailed to the customer. Finally, because the Company failed to produce actual copies of its bills, the Commission remains concerned with the Company's billing practices and notifies the Company it intends to fully prosecute any additional substantiated occurrences of improper customer billing as allowed under Commission authorities.

Based on the evidence before us, the Commission finds the Company has improperly billed customers on at least 72 occasions and is subject to a penalty of \$2,000 for each instance under *Idaho Code* § 61-706, amounting to a penalty of \$144,000. The Company is directed to cooperate with Staff's ongoing audit of its billing practices by providing copies of customer bills, and to immediately cease and desist from billing in excess of its tariff.

6. Failure to Provide Safe and Reliable Service (\$210,000 Penalty)

The Company is obligated to provide safe and reliable service to the public and “furnish, provide and maintain such service, instrumentalities, equipment and facilities as shall promote the safety, health, comfort and conveniences of its patrons, employees and as shall be in all respects adequate, efficient, just and reasonable.” *Idaho Code* § 61-302. When a water utility does not comply with these statutory mandates, the Commission has broad powers to “do all things necessary to carry out the spirit and intent of the provisions” of the Public Utilities Law, including requiring “additions, extensions, repairs or improvements” as reasonable. *Idaho Code* §§ 61-501; 61-508; and 61-515. The Commission may also revoke a CPCN for noncompliance with provisions of the Idaho Public Utilities Law and assess penalties under *Idaho Code* § 61-706 and 61-707.

The risk to the public health and safety arising from a water utility’s failure to provide safe and reliable service to its customers cannot be overstated and the Commission has both the statutory authority and the mandate under the Idaho Public Utilities Law to act promptly to address failures to provide safe and reliable service.

Here, Staff’s investigation revealed customer concerns with the safety, quality, and reliability of the Company’s drinking water. *See e.g.*, Staff’s Exhibits to the Show Cause Hearing 12, 14, and 19. Staff also learned that DEQ was investigating the Company for noncompliance and deficiencies identified in surveys performed in the fall of 2022 under DEQ’s statutory authority.

Kelsey Carter, DEQ Drinking Water Compliance Officer and/or Drinking Water Analyst described DEQ’s investigation of the Company, and concerns with significant, ongoing deficiencies in the Company’s water systems. Affidavit of Kelsey Carter. First, beginning around October 19-20, 2022, DEQ completed sanitary surveys and found “ninety-three (93) significant deficiencies documented with the seven PWSs [public water systems].” *Id.* at 2. Per IDAPA 58.01.08.003.131, a significant deficiency may “cause, or have the potential to cause, risk to health or safety or that could affect the reliable delivery of safe drinking water.” *Id.* Ms. Carter represented that DEQ found an additional 46 deficiencies and made 37 recommendations to the Company to correct these deficiencies. *Id.* at 2; Exhibit C to Affidavit of Kelsey Carter.

Ms. Carter stated that the Company had several unplanned and planned depressurizations of its systems, and that depressurization events have public health risks of “pathogen contamination” and “back flow of sewage effluent to backflow into drinking water.” Affidavit of

Kelsey Carter at 3. Ms. Carter also stated that the Company never showed it had followed notification procedures, sent boil water notices or “do not drink” advisories for any of its systems to its customers within the last five years as required by IDAPA 58.01.08.150.03. *Id.* DEQ documented customer concerns with retaliation and ongoing issues with pressurization and access to drinking water. *Id.* at 6-7.

On March 15, 2023, DEQ issued Notices of Disapproval for each of the Company’s seven water systems. DEQ may assign a disapproved designation to a public water system for defects, operating procedures which constitute a health hazard, quality that falls below the requirements for safe drinking water, the failure to adhere to monitoring requirements, the use of an unapproved source of drinking water, or the nonpayment of the annual water system fee. IDAPA 58.01.08.07.

Consistent with DEQ’s investigation and Ms. Carter’s Affidavit, customers submitted testimony and comments about experiencing water outages, concerns about the safety and quality of their drinking water to the Commission, and fears of Company retaliation.

For example, Ann Anthony testified that she had been without water for almost a month as of March 29, 2023. Customer Hearing Tr. at 37/19-20. She also testified about caring for a neighbor who “lost water in [his] home, I want to say before Christmas. And when we moved him out into a nursing home, his water was still out; and I believe that was in April.” *Id.* at 39/3-15. Kim Thompson testified that she has been without water in the months of March for two consecutive years due to frozen lines, and the Company failed to respond for weeks. *Id.* at 41/19-42/5. The following are excerpts from the customer comments submitted regarding the issue of safe and reliable service:

- We would love to be able to use our home year round but inevitably every year our lines freeze, break, and that is not possible; the Company sent a notice of the subdivision restricting us to only 4 people allowed in our homes and threatening fines and penalties if we were caught breaking the rules; never one time have we received a water boil notice when water is finally restored; Dorothy McCarty is a bully and a liar who should never be allowed to own and operate a public utility company and will only continue to threaten and retaliate against homeowners.
- . . . Throughout all summer last year (2022), our water smelled so horrible that we did not want to use it.
- [The Company] shut off their water because she felt she had the authority to do so when these people just bought the property. . . [t]hings need to change.

- Around February, 2021, we had no water. . . we finally go[t] water around the middle of May, 2021. Around the first of March 2022, we had no water again.; I was never informed [of the water boil order.]
- I was given no notice that the water was turned off & Dorothy didn't care. Also I was told I can't have more than 2 people at my cabin at a time. It has been a nightmare regarding water so I have bought jugs & bottles of water for personal use on many of my trips to the cabin.
- We need our water in our homes 12 months of the year.
- For at least the last 8 years I have been billed incorrect and threatened to have my water turned off.
- Dorothy has refused water rights, repairs, and we can cite many improper billing conducts.
- Dorothy become (sic) hostile, retaliatory and nonsensical
- she told me, these subdivisions were built for summertime use and we had to wait until spring for it to thaw; On the bottom of the Water Tariff Notice Dorothy has put a quote stating: 'water is a privilege—Not a right!' . . . we pay for this water service, and it should be functioning properly, year-round.
- I told her I had not [received notification from the Company regarding a boil order]; We don't want anyone getting sick.
- Most important, we need safe and reliable water year a round (sic). This past month we stayed at a hotel because we were concerned about water issues, and that shouldn't be the case.
- There is never notice given, in advance, for disruption in service; We've experienced orange-brown water that tastes horrible during the winter and has caused sickness; I've seen leaks fun for as long as two weeks before they're addressed/repared, causing a huge loss of water, damaging roads, etc.; contacting Ms. McCarty, the only known officer, or employee, of IP Water can be difficult, even during an emergency with days between responses; boil order notices are not communicated.

At the March 29, 2023, Show Cause Hearing, Counsel for Staff asked the Company about its obligation to provide safe and reliable services, year-round water service, and the March 15, 2023, DEQ Notices of Disapproval for each of the Company's seven water systems. Show Cause Hearing Tr. at 48/13-55/9. The Company admitted to interruptions in water service for Island Park customers, specifically in Shotgun Kickapoo, Shotgun Estates, and Aspen Ridge, but "[didn't] recall the exact numbers" and stated that one of the service interruptions occurred while "nobody was in the subdivision at the time" and described that water would be turned off to allow for construction and repairs. *Id.* at 39/17-41/17. The Company agreed that it had been required to send

boil notices by DEQ. *Id.* at 52/3-55/12. The Company agreed that it was aware of DEQ’s “disapproval of all seven of the systems” and had not resolved the issues with DEQ. *Id.* at 52/3-55/9; 56/6-57/23.

The Commission finds the Company’s inability to recall the instances of service interruptions and its statements minimizing the impact on customers to be unacceptable. The record demonstrates that customers have endured extensive water outages, unexpected interruptions in water service, low water pressure per DEQ testing data, and poor water quality and some have resorted to regularly purchasing water for “drinking and toilet flushing” or they are unable to use their homes due to the lack of water service. The Commission finds the Company has unacceptably failed to provide safe and reliable service, and demands the Company undertake immediate efforts to address the issues impacting the safety, reliability, and adequacy of the service the Company provides to its customers.

Following the Commission’s Show Cause Hearing, on May 11, 2023, DEQ issued a press release and boil water order for customers in Valley View, Goose Bay Estates, and Aspen Ridge Subdivisions, because samples of the Company’s public drinking systems tested positive for *E. coli* contamination, which “is an indicator that fecal contamination has occurred in the drinking water system.”¹¹ On May 18, 2023, DEQ issued a press release and a boil water order for customers in the Shotgun Cherokee Subdivision for *E. coli*.¹²

Since March 15, 2023, the date of the DEQ disapprovals, the Commission finds the Company has failed to provide safe and reliable service and is subject to a penalty of \$2,000 under *Idaho Code* § 61-706, for each of the seven water systems that were disapproved. The Company’s violations subject them to a daily accrual of the penalty from March 15, 2023, to March 29, 2023—15 days. The Commission reserves the right to assess additional penalties for the Company’s continued failure to provide safe and reliable water service, as allowed by its statutory authority, in a subsequent proceeding.

¹¹ May 11, 2023, DEQ issued boil water orders for Valley View Subdivision, Goose Bay Estates, and Aspen Ridge Subdivision, Island Park, Accessed at <https://www.deq.idaho.gov/deq-issues-boil-water-orders-for-valley-view-subdivision-goose-bay-estates-and-aspen-ridge-subdivision-island-park/>; May 18, 2023, DEQ issues boil water order for Shotgun Cherokee Subdivision, Island Park. <https://www.deq.idaho.gov/deq-issues-boil-water-order-for-shotgun-cherokee-subdivision-island-park/>

¹² May 18, 2023, DEQ issues boil water order for Shotgun Cherokee Subdivision, Island Park. Accessed at <https://www.deq.idaho.gov/deq-issues-boil-water-order-for-shotgun-cherokee-subdivision-island-park/>.

7. Customer Retaliation (\$46,000 Penalty)

Staff's investigation revealed concerns the Company retaliated against customers. *See* Staff's Exhibits 12-13 to the Show Cause Hearing.

Idaho Code § 61-301 states "all charges made, demanded, or received . . . "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." Customer retaliation, including behavior that may deter a reasonable person from the rights outlined in the Idaho Public Utilities Law, is prohibited and contrary to a public utility's statutory duties.

The Company denied retaliating against its customers in its Post-Hearing Reply. However, the persuasive evidence establishes the Company has retaliated against its customers.

Ms. McCarty's behavior at the Customer Hearing, customer testimony and comments, and the Company's bill form show otherwise. At the Customer Hearing, the Commission observed Ms. McCarty shaking her head, as if in disagreement with testimony that was unflattering or critical of the Company. Ms. McCarty's behavior interrupted one customer mid-testimony, as the customer described the Company's failure to address a water outage. Customer Hearing Tr. at 41/8-18. Fortunately, the customer continued to testify; however, other customers wished to remain anonymous, fearing retaliation and described Ms. McCarty as threatening and hostile. *See* Staff's Exhibits 12-13 to the Show Cause Hearing.

Staff's Exhibit 13 to the Show Cause Hearing has 16 complaints of poor or threatening communication for the Company's Valley View, Aspen Ridge and Goose Bay areas alone.

The following are excerpts from the customer comments submitted regarding the issue of customer retaliation:

- We would love to be able to use our home year round but inevitably every year our lines freeze, break, and that is not possible; the Company sent a notice of the subdivision restricting us to only 4 people allowed in our homes and threatening fines and penalties if we were caught breaking the rules; never one time have we received a water boil notice when water is finally restored; Dorothy McCarty is a bully and a liar who should never be allowed to own and operate a public utility company and will only continue to threaten and retaliate against homeowners.
- [The Company] shut off their water because she felt she had the authority to do so when these people just bought the property. . . [t]hings need to change.
- . . . I was given no notice that the water was turned off & Dorothy didn't care. Also I was told I can't have more than 2 people at my cabin at a time. It has been a

nightmare regarding water so I have bought jugs & bottles of water for personal use on many of my trips to the cabin.

- For at least the last 8 years I have been billed incorrect and threatened to have my water turned off.
- Dorothy has refused water rights, repairs, and we can cite many improper billing conducts.
- Dorothy become (sic) hostile, retaliatory and nonsensical
- she told me, these subdivisions were built for summertime use and we had to wait until spring for it to thaw; On the bottom of the Water Tariff Notice Dorothy has put a quote stating: ‘water is a privilege—Not a right!’ . . . we pay for this water service, and it should be functioning properly, year-round.
- There is never notice given, in advance, for disruption in service; We’ve experienced orange-brown water that tastes horrible during the winter and has caused sickness; I’ve seen leaks fun for as long as two weeks before they’re addressed/repared, causing a huge loss of water, damaging roads, etc.; contacting Ms. McCarty, the only known officer, or employee, of IP Water can be difficult, even during an emergency with days between responses; boil order notices are not communicated.

The Company’s bill form, *supra*, asserts a limitation on usage to “3 people per connection” and describes water service as a “privilege—Not a right!”. Ann Anthony testified that she objected to the Company’s limitation to three people per connection. Customer Hearing Tr. at 30.

The Commission is persuaded by customer testimony credibly describing Ms. McCarty’s retaliatory behavior, including threats or unreasonable demands for additional payment to maintain water service, disconnections at the customers’ expense, charging reconnection fees beyond the tariff, threatening customers with “violations” and legal actions, and the Company’s attempt to restrict customers from the full and unencumbered use of their properties, which this Commission did not authorize. The Commission finds it unacceptable for the Company to dictate an encumbrance on private property or the number of occupants in a home as stated on bills the Company sent to its seven systems.

Therefore, the Commission finds the Company is subject to a penalty for the sixteen credible complaints of customer retaliation and for the Company’s unjustified encumbrance on private property rights in its bill forms sent to its seven systems, amounting to a \$46,000 penalty under *Idaho Code* § 61-706.

8. Penalties for Violations by Officers and Employees under *Idaho Code* § 61-709

The Commission remains disturbed by the Company's conduct and finds it untenable to allow the risks to public health and safety to continue in addition to the well-documented reliability issues. The Commission advises the Company that it may pursue other actions, including but not limited to, the remedies available under *Idaho Code* § 61-709, revoking the Company's Certificate of Public Convenience and Necessity ("CPCN"), or imposing a receivership to serve the public interest.

ORDER

IT IS HEREBY ORDERED that the Commission finds the Company failed to submit timely and complete responses to AR Nos. 3, 4, 7, 9, and 10, and is subject to a penalty of **\$2,000** for each violation, amounting to a total penalty of **\$10,000**.

IT IS FURTHER ORDERED that the Commission finds the Company has improperly handled customers' complaints and is subject to a penalty of **\$24,000**.

IT IS FURTHER ORDERED that the Commission finds the Company improperly billed its customers and is subject to a **\$2,000** penalty for each of the 72 instances of improper billing, amounting to a total penalty of **\$144,000**. The Commission orders the Company to cooperate with Staff's ongoing audit of its billing practices by providing current copies of customer bills, and to immediately cease and desist from billing in excess of its tariff. The Company must show proof of customer refunds for the 2020 and 2021 charges in excess of its approved tariff **within thirty (30) days** of the service date of this Order.

IT IS FURTHER ORDERED that the Company shall immediately refund the customer charged five times the tariff amount for 2020 and 2021, and the unauthorized hook-up fee of \$2,800, and submit proof of this refund to the Commission, **within ten days** of the service date of this Order.

IT IS FURTHER ORDERED that the Company shall immediately refund customer "CM", and submit proof of this refund, **within ten days** of the service date of this Order.

IT IS FURTHER ORDERED that the Company is directed to address customers' testimony about paying the Company for prior owner's bills and/or for "new connections" for properties already connected to the Company's water system **within ten days** of the service date of this Order, by producing a full and unredacted history of the transactions between the parties.

IT IS FURTHER ORDERED that the Commission finds the Company failed to provide safe and reliable service to customers and is subject to a **\$2,000** daily penalty for each of the seven systems from March 15, 2023, to March 29, 2023, amounting to a total penalty of **\$210,000**.

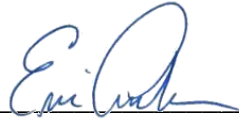
IT IS FURTHER ORDERED that the Commission reserves the right to assess additional penalties for the Company's failure to provide safe and reliable water service, as allowed by its statutory authority, in a subsequent proceeding.

IT IS FURTHER ORDERED that the Commission finds the Company retaliated against its customers and finds the Company is subject to a **\$2,000** penalty for each of the 16 credible complaints of retaliation and **\$2,000** for the Company's unauthorized encumbrance on private property rights in its bill forms sent to its seven systems, amounting to a **\$46,000** penalty.

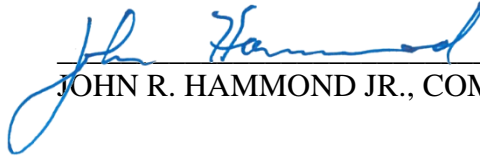
IT IS FURTHER ORDERED that the Commission finds that the total amount of the penalties above under *Idaho Code* §§ 61-706 and 61-707 is **\$434,000**. The Company shall pay this penalty or provide proof to the Commission that it has satisfactorily cured each and every one of violations resulting in penalties as set forth in this Order, **within twenty-one (21) days** of the service date of this Order.

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 regarding 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. *Idaho Code* § 61-626.

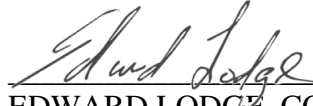
DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 14th day of June 2023.



ERIC ANDERSON, PRESIDENT

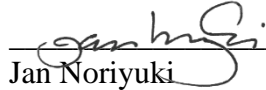


JOHN R. HAMMOND JR., COMMISSIONER



EDWARD LODGE, COMMISSIONER

ATTEST:



Jan Noriyuki
Commission Secretary

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