

CLAIRE SHARP, ISB #8026
Deputy Attorney General
State General Counsel & Fair Hearings Division
Public Utilities Commission
11331 W. Chinden Blvd., Building 8, Suite 201-A
Boise, ID 83714
Telephone: (208) 334-0357
E-mail: claire.sharp@puc.idaho.gov

Attorney for Commission Staff

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)	POST-HEARING RESPONSE TO
COMMISSION REPORTING AND FISCAL)	THE COMPANY’S AFFIDAVITS
REQUIREMENTS)	
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COMES NOW, the Idaho Public Utilities Commission Staff (“PUC Staff” or “Staff”), by and through its attorney of record, Claire Sharp, Deputy Attorney General, in response to Island Park Water Company’s (“Island Park” or “Company”) affidavits. These affidavits were filed March 27, 2023, two days before the March 29, 2023, Show Cause Hearing (“Hearing”), and include three affidavits from Dorothy McCarty (“First Affidavit”, “Second Affidavit” and “Third Affidavit” respectively, or “Affidavits” collectively). At the Hearing, the parties requested the Commission allow time for a post-Hearing response from Staff and a Company reply period, which the Commission granted in Order No. 35725.

Staff respectfully disagrees with many of the Company’s representations in the Affidavits. The Company’s representations do not excuse the Company from penalties under *Idaho Code* §§ 61-706, 61-707, and 61-709 for failing to timely provide the Commission with adequate responses to its Audit Request (“AR”) Nos. 1, 3, 4, 6, 7, 9, and 10; improper customer billing; improper handling of customer complaints; failure to provide safe and reliable service; and the threats of retaliation against customers. These are serious violations of the Commission’s rules in Staff’s opinion.

**Island Park Water Company Failed to Timely Respond to
Staff’s Audit Requests 1, 3, 4, 6, 7, 9, and 10.**

The Company failed to timely respond to AR Nos. 1, 3, 4, 6, 7, 9, and 10, after months of communication between Staff and the Company. This led Staff to recommend the Commission hold a Show Cause Hearing. On February 1, 2023, the Commission issued Notice to Show Cause (“Notice”) based on the Company’s failure to respond to Staff’s Audit Requests (“First Notice”). Order No. 35675. On February 17, 2023, the Commission amended the First Notice to include additional issues of noncompliant handling of customer complaints, customer billing, the obligation to provide safe and reliable service, and substantiated threats of retaliation against customers (“Second Notice”) based on additional information received after the First Notice. Order No. 35682.

On February 15, 2023, the Company supplemented their responses to the ARs.

AR Nos. 1 & 6

The Company provided a customer list (AR No. 1) and a description of its plant-in-service (AR No. 6) prior to the Show Cause Hearing.

Staff believes that the Company has complied with AR No. 1 and 6.

AR No. 3

The Company did not provide a schedule showing all non-recurring fees charged to customers in 2020 and 2021 (AR No. 3). The Company’s response is not credible. Customers have submitted bills showing non-recurring fees.

Staff believes the Company is noncompliant on AR No. 3.

AR No. 4

The Company did not provide a copy of all bills sent to customers in 2020 and 2021 (AR No. 4). Staff is unpersuaded by the Company’s explanations of why it could not provide the bills, as discussed below.

In 2020, the Commission ordered 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. Because of problematic billing practices beginning in 2010, the Commission previously issued emergency Order No. 32268 directing the Company to:

- (1) cease all billing practices that conflict with the Tariff; (2) refrain from terminating service to customers who did not pay annual bills that conflict with the Tariff; (3) send corrected invoices to all customers who were billed incorrectly and simultaneously provide copies to the Commission; (4) repay customers for any amounts collected based on a rate exceeding the rate allowed by the Tariff; (5) send a copy of its current customer list to the Commission; and (6) provide Staff with a specific date and time that the Commission's auditors may visit the Company.

Nearly three years later, the Company has not provided customer bills for Staff's review. The Company's failure is unacceptable.

The Company's billing practices have been problematic since 2010, leading to the Commission's emergency Order No. 32268, and the Commission's 2020 Order No. 34719, that directed the Company to immediately correct its billing practices and cooperate with Staff's audit requests. Accurate customer billing remains the Company's responsibility, and the Company's reasons for not providing customer bills lack credibility. The Company admitted at the Hearing that it uses Quickbooks as its accounting software, and that software program maintains billing records such that the Company could reproduce its customer bills and submit them for Staff's review.

Staff recommends an ongoing investigation to identify customers who have been overcharged in 2020 and 2021.

Staff believes the Company is noncompliant on AR No. 4.

AR No. 7

The Company failed to maintain a customer complaint log as required by Commission Customer Relation's rule 402, IDAPA 31.21.01.402. The Company testified that it had started keeping the required customer complaint log, but did not provide a log as requested by Staff because it had not been maintaining one.

The Company's failure to maintain a complaint log violates Order No. 30668 and IDAPA 31.21.01.402.

AR No. 9

The Company denied having an accounts receivable aging report, yet customers testified and submitted documentation that they have been charged late fees. *See* Exhibits 12, 14, 28. If the Company has charged late fees, then a report of which customers are behind on payments must be

available, naturally. This inconsistency casts doubt on the substantive credibility of Mrs. McCarty's testimony on the Company's financial management and practices.

The Company agreed at the Hearing to provide Staff with accounting reports for Staff's audit of the Company's accounts receivable aging.

Staff believes the Company was noncompliant for failing to respond to AR No. 9.

AR No. 10

The Company did not timely provide bank statements for 2020 and 2021 (AR No. 10), arguing that redactions caused the delay.

Staff disagrees. The Company's initial redactions obscured the payments the Company made to Mrs. McCarty personally, Mrs. McCarty's management company, closely-affiliated McCarty family businesses, or Mrs. McCarty's family members who have been "consultants" for the Company.

Staff believes the Company was noncompliant on AR No. 10.

Island Park Water Company Failed to Properly Handle Customer Complaints

The Company's Affidavit testimony depicts unprofessionalism in handling customer complaints, including an unflattering description of a specific customer as "very difficult" and sending a "barrage of late calls and endless texts wanting everything her way." Second Affidavit at 18-19. Staff is concerned about the poor relationship between the Company and many of its customers. Staff expects the Company to accurately bill its customers, provide safe and reliable service, and refrain from retaliating against customers. The Company continues to deny the significance of its customer relations problems. *Id.* at 19. The Company currently has over twelve open informal complaints and numerous complaints describing poor or threatening communications.

First, the Company admitted that it failed to maintain a log of customer complaints as required under IDAPA 31.21.01.402.

Second, the Company has not shown it is appropriately resolving customer complaints regarding correct billing. For example, Staff identified a customer who was overcharged for the years 2021 and 2022. The Company agreed to issue a reimbursement check and represented a check was sent on February 24, 2023. The customer disputed receiving any reimbursement payment, and the Company has not shown proof that the customer was reimbursed. The record

contains several examples of pending customer complaints concerning the Company's billing practices.

Third, the Company has not resolved complaints about the Company's failure to provide safe and reliable service. Customers are understandably concerned with access to safe drinking water, and many describe the Company as being difficult to work with, unavailable to address concerns, or unwilling to make necessary repairs. This is an unacceptable approach to legitimate customer concerns. It is unacceptable to dismiss customer concerns and defer repairs, leaving customers without water service for months.

Staff believes the Company is not handling customer complaints appropriately.

Island Park Water Company Improperly Billed Customers

The Company's Affidavits reinforce instances of improper billing found in the Company's Exhibit B and customer reports. The Company admitted to billing a specific customer \$1,400/year for water service based on an "agreement made between the original owners of the two lots/structures and the water company years ago" to bill the customer "five units to be billed at the current water tariff for each unit." First Affidavit at 9-10. This is a per se violation of Commission Orders and the approved tariff. The customer disputed having an "agreement" with the Company. The customer explained that they have paid \$1,400 annually since 2018 because that is what "[the Company] told them they owed." Exhibit 14 at 1. The Affidavit testimony does not persuade Staff the Company has resolved improper billing practices.

Staff disagrees that the Company's practice of charging more than its Tariff can be justified due to multiple connections or multiple lots. First Affidavit at 8-9; *See Third Affidavit at 116, nos. 123-125.* As stated in Section 9.1 of the Company's Tariff:

The service connection is the property of the Company and as such, the Company is responsible for its installation and maintenance. It consists of piping, curbside and valve or meter box and a meter, if the system is metered. The service connection transmits water from the Company's water main to a valve or meter box generally located near the Customer's property line. All piping, valves or appliances beyond this point shall be the property and responsibility of the Customer."

Staff disagrees the language of the tariff permits a separate connection charge for each structure, hydrant, and spigot on a single lot. It is Staff's opinion that uses beyond the property boundary should not be determined by the water Company, but rather the property owner if service can be maintained for those uses. No restrictions other than those defined in the Utility Customer Relation

Rules (“UCRRs”), Utility Customer Information Rules (“UCIRs”), the Company’s Tariff, or from other regulatory agencies are enforceable.¹ Staff does agree that water should not be conveyed from one assessed lot to another assessed lot, even if owned by the same owner.

Staff does not argue that a single connection could be diverted between multiple lots. Staff has provided the Company with Fremont County, Idaho Tax Assessor map and legal description of a customer’s lot to dispute the Company’s claim of multiple lots.²

In response to Mrs. McCarty’s statements about her printed customer bills³, Staff maintains it has requested Mrs. McCarty print only information required in the UCRRs. The Company continues to provide information on her bills not supported by her Tariff, the UCRRs, or the UCIRs. Exhibit B at 50. Staff has encouraged the Company to provide only relevant and required billing information and suggested on numerous occasions that other information be provided under separate cover or in newsletters, because the Company cannot disregard its Tariff by changing billing cycles, rates, rules, or definitions without Commission approval. This being stated, much of the information found on the bills is not supported by Commission granted authority, but rather Mrs. McCarty’s opinion.⁴

The Commission’s instruction since 2020 has expressly been to follow its Tariff and repay customers for amounts collected beyond the rate allowed by the Tariff. *Id.* This has not occurred yet. The Company simply does not have the authority to bill customers more than the Tariff. The

¹ Mrs. McCarty’s assertions in the Third Affidavit page 17, no. 129 are misleading and contrary to the tariff. Mrs. McCarty’s incorrect definition of a “cross-connection” does not relate to the Environmental Protection Agency (EPA) definition. Furthermore, Mrs. McCarty’s definition does not correlate to the description in the tariff (Section 13.1) which states: “No customer shall permit any person from another premises to take water from his or her water service or tap for more than (1) week without the written permission and consent of the Company.” Mrs. McCarty’s definition appears to be that any connection, such as multiple hydrants, structures, or connections on the Customer’s property is a separate connection. Mrs. McCarty has been instructed on numerous occasions that the Company’s authority ends at the property boundary, curbsstop, or meter. The Company is not allowed to dictate what happens on the Customer side of the property boundary, curbsstop, or meter (if present). Staff believes Mrs. McCarty continues to inappropriately misstate the definition of a cross-connection.

² According to the Fremont County, Idaho Assessor’s office, there are two different tax rates on this lot based upon usage. This does not mean that there are two separate lots according to Fremont County. The Shotgun Bar property is still identified as Shotgun Village Estates, Division #4, Lot 1. Shotgun Village Estates, Division #4, Lot 2 of the subdivision is owned by different people, yet Mrs. McCarty continues to misread the legal description and charge for multiple lots.

³ First Affidavit at 8, no. 111-113; Third Affidavit at 17, no. 131.

⁴ PUC staff has never stated that the Company cannot send out letters. First Affidavit at 9, nos. 114-116. PUC staff has requested copies of the Company’s billing statements as the Commission has received numerous copies of bills that are not compliant with the tariff and UCRRs. The Commission has requested more than ten times over the last two months for the Company to provide a copy of its bill for Commission approval. All requests have been completely ignored by the Company.

Company has disregarded the Commission’s order to “cease all billing practices that conflict with the Tariff.” Order No. 34719.

Staff believes the Company has improperly billed customers under *Idaho Code* §§ 61-706 to 61-707.

Island Park Water Company Failed to Provide Safe and Reliable Service

Staff contends the Company has inexcusably failed to provide year-round water access for its customers, and the interruptions jeopardize the health and safety of its customers. Mrs. McCarty testified that the water system was historically “designed to be seasonal in operation⁵,” the Valley View Ranch, Inc., was “designed for “summer usage” as “winter access into the development is impossible by normal means in the winter;” and the “number of connections in Valley View make it impossible to pay for the actual costs of keeping the wells operational.” First Affidavit at 3-6. Staff believes that the Company has downplayed the interruptions in water service, and that the Company has been out of compliance since October 2022 due to a line break in the Valley View subdivision which has not been repaired and the Company’s failure to maintain water pressure at 40 psi or above throughout the system. Third Affidavit at 2; 17 no. 135. The Commission should not hold, as a matter of law, that it is impossible in the State of Idaho for families to receive year-round safe and reliable water service in Island Park, Idaho.

Customers testified that they have been without water for extended periods or faced significant interruptions in service and did not receive timely boil notices. Exhibits, 12, 14. Rather than productively address these system failures, Mrs. McCarty has devoted considerable efforts to shift responsibility elsewhere—from trying to persuade the Commission that she is not the legal owner of Well #3 and that she should not be held responsible for its operation, to the weather—when her efforts should focus on promptly restoring safe and reliable service to her customers.⁶ In

⁵ The Company stated that Mr. Benson “pass on” his architectural committee control to Mrs. McCarty. First Affidavit at 7, nos. 90, 92; Second Affidavit at 2 no. 10. Staff could not verify this statement in the PC&Rs, which lists the property owner as members. Further, the PC&Rs do not govern the design of the water system.

⁶ Mrs. McCarty outlined the history of the subdivision development and her involvement in the company. First Affidavit at 1-2. Mrs. McCarty then asserts that there are only six water systems “taken to completion” and that Valley View Ranch “could not be deeded to Island Park Water Company until completed.” *Id* at 2-6; *See* Second Affidavit at 3. Mrs. McCarty’s assertions that there are only six water systems are not persuasive and contrary to the Company’s representations since 2008 that there are seven systems and Staff’s belief that the Company has paid taxes on the disputed water system. *See* Order No. 30668. Staff notes that the application for the Certificate of Public Convenience and Necessity (CPCN No. 317 – Case No. GNR-W-90-1) and the subsequent rate cases included this system. Order No. 30558. In response to Mrs. McCarty’s assertions in First Affidavit page 2, No. 14, Staff reviewed the Idaho Secretary of State filings, and found that Valley View Ranch, Inc., was dissolved on June 29, 2010. Staff could not find a “Sawtelle, Inc.” company to explain ownership.

contrast to her testimony, customers have stated that the Company asked them to repair well issues and cycle or flip the breakers to operate it. Second Affidavit at 5, no. 30. The Company's assertions about "seasonal usage" evince a lack of commitment to provide safe and reliable water services year-round to her customers of the inability to address significant interruptions in service delivery.

On March 15, 2023, the Idaho Department of Environmental Quality ("IDEQ") sent Notices of Disapproval for the following:

- Aspen Ridge 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
- Valley View Subdivision

Exhibits 21-27.

These Notices of Disapproval cite Island Park for "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 21-27. To Staff, these Notices of Disapproval cannot be dismissed as a misunderstanding between the Company and IDEQ about paperwork. The Company has been on notice of significant issues since the IDEQ's October 2022 Sanitary Survey. To date, the Company has not brought its system into compliance.

The Company is responsible for providing year-round, safe and reliable water service to its customers. Staff has also provided Mrs. McCarty with information to aid in addressing the many issues with the water systems. In early March, Mr. Kruck sent an email to Mrs. McCarty stating the following:

I was recently at the Idaho Rural Water Association Spring Conference and was thinking about your concerns and a way to help. During that conference I discussed the issue of freezing meters with six different meter vendors. All of the vendors I spoke with have meters installed in your area and into Montana and do not have freezing issues if the meters are installed properly. These installations typically include an insulated meter box, 6" foam plug above the meter and insulators around the meter and piping within the meter box. The vendors all stated that they have

Staff is interested in reviewing the written agreements, deeds, and conveyances to support her claims. While the Company may wish to initiate a proceeding to surrender ownership, that seventh system it remains part of the Company's system, and Mrs. McCarty is obligated to operate it. Any subsequent proceeding related to ownership would not excuse the Company from penalties for present failures to provide safe and reliable service.

not had any failures due to freezing for any of the correct installations. If you would like a list of the vendors, it is available on the IRWA website.

Kruck's March 15, 2023 email to Mrs. McCarty.

Staff agrees that if water lines are not installed correctly by contractors, the service lines will freeze. However, it is the Company's responsibility to maintain its system so that customers receive safe and reliable service.

Staff believes the Company is noncompliant for failing to provide safe and reliable water under *Idaho Code* §§ 61-706 to 61-707.

Island Park Water Company Retaliated Against its Customers

The Company denies retaliating against its customers. First Affidavit at 6, no. 75. Staff disagrees. The Company has asserted it can arbitrarily limit customers' water usage⁷, restrict short-term rentals or the number of individuals allowed to reside or visit a private residence, or exclude specific customers within its service area. First Affidavit at 8-9, no. 108-113. Customers have also testified about denial of services, threats of disconnection (at the owner's expense), and reconnection charges beyond the Tariff, threats of "violations," restriction of full and unencumbered use of their properties, legal action, and statements that "Water is a privilege – Not a right." The Company does not have the authority to enforce covenants or deprive customers of the right to enjoy their properties.

Mrs. McCarty has created a hostile environment where customers are intimidated into "going along to getting along" to maintain their water service. Staff observed Mrs. McCarty in attendance at the March 29, 2023, customer hearing. Mrs. McCarty sat in the front row, shook her head at customers while they testified, and emoted her disagreement with customers' testimony.

⁷ Even if a legitimate concern with water usage exists, the Company understands it does not have individual metering for its customers and has not been able to measure any customer's water usage. Mrs. McCarty's assertions on p. 17 No. 133-134 about current meter technologies are incorrect. Current meter technologies that do not require a direct visual reading of meters. Advanced Metering Infrastructure ("AMI") provides numerous benefits to water utilities. AMI improves a utility's ability to collect frequent and accurate water usage data to improve billing, leak detection, and water resource management. The types of water meters used by utilities have evolved over time. Older technology required that utilities send meter readers to individual sites (such as homes) to physically read meters. As technology changed, meters that allowed for automated meter reading (AMR) became more prevalent. This provided some savings to utilities as meter readers could collect data by, for example, simply driving their truck down a street and remotely getting data from meters as they passed by. This made it possible for utilities to reduce the staff time needed to read all meters and bill more frequently. As water utilities look to replace older water meters, another option has emerged. AMI meters provide for remote collection of water use data - in real time. This supports more frequent billing, but more importantly also allows a utility to quickly identify excessive water use that could be the result of leaks.

This behavior makes it difficult for customers to testify against the Company or make reports to IDEQ.

Staff believes the Company is noncompliant for retaliating against customers under *Idaho Code* §§ 61-706 to 61-707.

Idaho Department of Water Resources (“IDWR”)

The Company’s assertions about the IDWR have not been corroborated. First Affidavit at 8, nos. 102-105; Third Affidavit at 13, no. 118. While not at issue for the Hearing, Staff attempted to clarify the question of commercial and domestic uses with the Company. Staff has not stated that the water company is “required” to provide 13,000 gallons per day. The IDWR water rights define domestic water usage as “up to 13,000-gallons per day, per lot.” That does not mean the water is actually available but does allow for usage up to that amount if it is available. Mr. Kruck has repeatedly stated to Mrs. McCarty that if the Company wishes to regulate usage, the only way possible is to install meters, at the Company’s expense, as stated in the Company’s tariff and request a Metered Rate Schedule.

IDEQ

The Company’s assertions about the IDEQ have not been corroborated. Third Affidavit at 4, no. 17.

IDEQ has addressed the Company’s testimony in the Affidavit of Kelsey Carter, Drinking Water Analyst with IDEQ’s regional office in Idaho Falls.

The Company’s Finances

The Company asserted it is financially difficult to repair the system and Staff discouraged the Company from filing a rate case. Second Affidavit at 4. Staff disagrees. The Company has not requested a rate change since 2008. The Company may bring a rate case to address its Tariff when it chooses, and the Commission routinely handles rate cases for small and large utilities.

Mrs. McCarty has stated that she had to subsidize the Company to keep it operational. First Affidavit at 6, No. 85. The statement in the First Affidavit is contrary to its AR Responses. The Company’s response to AR No. 10 shows payments to Dorothy McCarty of \$36,575 total between 2020 and 2021, and payments totaling \$51,630.80 to McCarty Management services in those years. The Company has not submitted any loan documents to the Commission, and no loan has been reviewed or approved by the Commission as required under *Idaho Code* §§ 61-901-909.

Mrs. McCarty also asserts she has discussed selling the Company to prospective buyers. First Affidavit at 7, nos. 88-89. Any transfer of ownership must be brought before the Commission for approval.

Mrs. McCarty represented that she has consulted with water system engineers on repair costs. First Affidavit at 7, nos. 89; 9, nos. 128-130. Staff has not seen any estimates or calculations or supporting documents to support the claims on the projected costs to maintain or repair the system. The Company was advised in Order Nos. 30668 and Order No. 32268 to prepare an Engineering Upgrade Study and \$2,000.00 per year was allocated to Rate Design for this study. To date, the Company has received money in its Tariff charges from the Customers but failed to conduct the ordered study. Had the study been performed, a systematic method of upgrading each system could have been achieved already.

Staff does not believe that the Company has persuasively shown that its financial priorities are the repair, maintenance, or operation of its system. The Company's financial records show thousands of dollars spent for "management services" to "McCarty Management" which is owned by Dorothy McCarty, presumably related to a loan which has never been reviewed or approved by the Commission as required under *Idaho Code* §§ 61-901 *et seq.*; thousands of dollars paid to Mrs. McCarty's relatives and their affiliated companies, and large expenditures to Costco and Hobby Lobby totaling over \$15,000 in a single year—amounts that far exceed any documented expenses for repairs or maintenance of the water system. Again, the Company can address concerns about its Tariff through the filing of a rate case.


Conclusion

The Company explained that difficult medical and personal circumstances of Mrs. McCarty have made it difficult to manage the Company. Second Affidavit at 6 no. 36. On October 4, 2022, Staff indicated that the Company needed to immediately implement a plan if Mrs. McCarty's medical issues were "expected to persist such that the Company is unable to meet its statutory responsibilities under *Idaho Code* § 61-302." Exhibit 7. The Company did not create or submit an alternative management plan to address these issues, and these personal circumstances do not excuse the Company from its legal obligations.

Staff recommends the Commission direct it to investigate the Company's financial, billing, operational, and customer service practices and report its findings to the Commission. The findings would discuss whether the Company is currently operating as a viable utility, and if not, how the

Company could become viable. Staff also recommends the Commission direct the Company to resolve the instances of improper handling of customer complaints, improper customer billing, the failure to provide safe and reliable service, and customer retaliation complaints immediately and to comply with Staff's audit request.

Respectfully submitted this 12th day of April, 2023.



Claire Sharp
Deputy Attorney General


CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT ON THIS 12TH DAY OF APRIL, 2023, I SERVED THE FOREGOING **POST-HEARING RESPONSE TO THE COMPANY'S AFFIDAVITS**, IN CASE NO. ISL-W-23-01, IN THE MANNER INDICATED, TO THE FOLLOWING:

Attorneys for Island Park Water Company

Via E-Mail:

Marvin M. Smith
Hawley Troxell Ennis & Hawley LLP
2010 Jennie Lee Drive
Idaho Falls, ID 83404
mmsmith@hawleytroxell.com
CVandermeulen@hawleytroxell.com



KERI J. HAWKER
Legal Administrative Assistant