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Attorney for the Commission Staff

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

NICOLE BURBANK,)
) **CASE NO. ROC-W-21-01**
COMPLAINANT,)
)
vs.) **COMMENTS OF THE**
) **COMMISSION STAFF**
ROCKY MOUNTAIN UTILITY COMPANY,)
INC.)
)
RESPONDENT.)

COMES NOW the Staff of the Idaho Public Utilities Commission (“Staff”), by and through its attorney of record, John R. Hammond, Jr., Deputy Attorney General, submits the following comments.

BACKGROUND

On June 1, 2021, Nicole Burbank, filed a formal complaint (“Complaint”) against the Rocky Mountain Utility Company, Inc. (“Company”), a water corporation and public utility, alleging that she has never contracted with the Company for water utility service, and it is committing fraud and extortion through its billing practices. Ms. Burbank submitted additional information to the Commission about the Complaint on July 28, and August 17, 2021.

Before filing the Complaint, Ms. Burbank registered an informal complaint with the Idaho Public Utilities Commission's consumer assistance staff ("Staff") about the Company. Staff could not informally resolve the dispute between Ms. Burbank and the Company.

On September 27, 2021, the Commission issued a Summons requiring the Company to answer the allegations of the Complaint and to address additional questions raised by the Commission in the Summons. The Company filed a response on November 1, 2021. Ms. Burbank filed a Declaration and Response to Respondent's Answer.

FORMAL COMPLAINT

Ms. Burbank alleges the Company has committed fraud and extortion. Formal Complaint at 1. Ms. Burbank asserts that the Company failed to give her a "*Terms of Agreement* or *Contract*" for water service. *Id.* Ms. Burbank further asserts that the Company never gave her a written contractual agreement for water service. *Id.* Ms. Burbank claims that her builder hooked into the Company's water system without giving her notice and due to confusion "moneys were paid to [the Company]". *Id.* Ms. Burbank also represents she has not received invoices from the Company. *Id.* Ms. Burbank states she received copies of Company invoices through interaction with Staff. *Id.* Ms. Burbank states these invoices were a "mess" and wrongly labeled. *Id.* Ms. Burbank claims that the Company billed her a customer deposit, but labeled it as a hook-up fee so it would not violate the Commission's Customer Relations Rules. *Id.* Ms. Burbank also alleges that the Company violated the Customer Relations Rule 102 by basing the deposit on her sex, marital status, and children.¹ *Id.* Ms. Burbank also alleges that the Company increased her water bill every month and added multiple line items to it without approval from the Commission. *Id.* Ms. Burbank asserts that one of these line items is for "septic". *Id.* Ms. Burbank asserts the Company has used the nonpayment of these line items to threaten to shut off water service to her residence. *Id.*

Ms. Burbank asserts that the Company has violated its Commission approved tariff by increasing the cost for water service "by adding line items in the water (utility) bill" and that this violates the Commission's rules and procedures. *Id.* Ms. Burbank also asserts that the Company's billing practices, and actions have violated the following Customer Relations Rules 201.01(a-i), 202.01, 203.01-.03 and 206.01 through 207. *Id.*

¹ No specific facts are given to support this allegation.

Ms. Burbank also asserts that the Company has overcharged her for a customer deposit in the amount of \$850.00 and then billed her \$97.50 in the same month. *Id.* Ms. Burbank also asserts that the Company has wrongfully charged her \$58.00 monthly. *Id.* Ms. Burbank also asserts that the Company violated Rule 109.02 because the Company created “NEW” documents. *Id.* Ms. Burbank argues the Company’s billing practices do not comply with the Commission’s rules. Ms. Burbank alleges that the Company has not disclosed the terms and conditions for water usage to her. *Id.* Ms. Burbank also argues that she does not have a meter on her property for water usage or for water pressure and that “[n]o one has investigated the water pressure to this day.” (Emphasis added in the original document). *Id.*

Ms. Burbank requests that all over payments for monthly services and the customer deposit be refunded to her or applied against future water service charges. *Id.* Ms. Burbank requests that the Company follow the Commission’s rules and that her bill for utility services be sent to:

Nicole Burbank
3890 East Ash Lane
Rigby, Idaho 83442
Email: nursenikki0818@gmail.com

Ms. Burbank alleges that Staff’s initial Decision Memorandum about her Complaint was inaccurate. *See July 28, 2021, Correspondence.* Additionally, Ms. Burbank asserts that since filing her Complaint she has received multiple harassing letters from the Company threatening to shut off her water service. *Id.* The Company disconnection notices attached to this correspondence demanding that she pay past due sewer and water service charges to avoid having her water service disconnected. *Id.* Burbank contends that Company has been warned not send these letters by the “Idaho Public Utilities Commission”.² Ms. Burbank states the threats to shut off her water come with demands to pay ever changing amounts. *Id.*

Ms. Burbank asserts that the Company “has extorted over 100 residents in our neighborhood for years.” *Id.* Ms. Burbank asserts that she provided documents from other residents in the subdivision to counsel for Staff that included line item increases on water bills to

² Staff has notified the Company not to disconnect Ms. Burbank’s water service.

allegedly pay for a “new water Well” that she contends never happened.³ Ms. Burbank further complains that “low water pressure that has never been investigated”. *Id.* Last, Ms. Burbank asserts that automatic withdrawal payments show going into a horse racing business owned by the same person that owns the Company. Ms. Burbank asserts that Staff has refused to give these documents to the Commission.

On August 17, 2021, Ms. Burbank filed additional correspondence advising the Commission that on August 16, 2021, her “water was temporary [sic] shut off”. *See August 17, 2021, Correspondence.* Ms. Burbank also alleges that on this same day the owner of the Company came to her house unannounced threatened to dig up the water and septic lines if she didn’t pay her bill. *Id.* In addition, Ms. Burbank attached disconnection notices she received from the Company and her bill that contained amounts charged for water and septic usage. *Id.*

COMPANY RESPONSE

The Company asserts that information about its hookup fees is included on its website. The Company attached a copy of information it received from a title company “about fees, Warranty Deed, and a check for the hookup fee and first month’s utilities.” *Response* at 1. The Company represents that generally title companies either verbally or email “an assessment for information.” *Id.* at 1. The Company represents that it was verbally contacted by First American Title Company on February 10, 2020, with questions about the hookup fee and monthly utility bill. The Company alleges that someone (unknown to it) “said it was okay to pay through escrow.” *Id.* The Company attached a handwritten description of the charges to its Response that were assessed to Ms. Burbank beginning from the first date of service for water. *Id.* at Exhibit 1. It is unclear who prepared this document contained in the Company’s Response. This summary purports to show that \$850.00 was charged for a hookup fee and an additional \$97.50 for monthly dues. *Id.* The summary also states that the “\$97.50 = (82.50 month + temp. fee \$15.00 for septic)”. *Id.* The Company has attached a copy of Check No. 29924 it received from First

³ Ms. Burbank has accused Staff of refusing to give the Commission invoices from other alleged customers of the Company. These customers have not registered informal complaints with Staff. However, the invoices for these customers are substantially like Ms. Burbank’s invoices, which in her case show that she was billed \$39.50 and \$58.00 monthly for water and septic services respectively. Ms. Burbank also submitted screenshots of bank account information belonging to a third party. Without the consent of this individual Staff does not believe it has authority to possess this bank account information and has deleted it.

American Title Company in the amount of \$947.50 for File No. 818616-RI, Re: 3890 East Ash Lane. *Id.* at Exhibit 1B.

The Company also attached an itemized statement for monthly water service that began being delivered in April of 2020 to Ms. Burbank's residence at 3890 East Ash Lane. *Id.* at Exhibit 2. The itemization shows that Ms. Burbank made four \$39.50 payments for water service totaling \$158.00. *Id.* The itemization also shows that Ms. Burbank has not made a payment for water service since August of 2020. *Id.* As a result, the Company contends Ms. Burbank has a past due balance of \$592.50 for this period through the October billing period. *Id.*

The Company also asserts that it can separate invoices for water and sewer service. The Company implemented this change on September 2, 2021.

MS. BURBANK'S DECLARATION AND RESPONSE TO THE COMPANY'S ANSWER

Ms. Burbank reiterates her assertions about the Company's owner showing up at her home on August 16, 2021. *Declaration* at 1. Ms. Burbank also asserts that her water service was temporarily shut off on August 16, 2021, September 1, 10 and 24, 2021 and October 14, 2021, without notice of cause. *Id.* at 2. Ms. Burbank asserts the Company is retaliating against her by shutting off her water. *Id.* Ms. Burbank also asserts that she deposited a large sum of money into escrow with First American Title Company for closing costs and miscellaneous expenses. *Id.* Ms. Burbank claims she never agreed to pay the Company for a "hook-up" fee but the money was still taken from escrow for this. *Id.* Ms. Burbank also asserts that at the time she purchased her home she did not receive any documentation from the escrow company, nor did she receive information from the Company or sign anything agreeing to pay the Company a bill. *Id.* Ms. Burbank also asserts that the handwritten document attached to the Company's Responses makes no sense and she has not seen it before. *Id.* Ms. Burbank also asserts that she has not seen a bill yet that separates water service from sewer service since September 1, 2021.

Ms. Burbank prays that the Commission stop the Company from extorting her. *Id.* Ms. Burbank also requests that the Commission "correct the fraud that has been committed against [herself]" and prevent the Company from retaliating against her. *Id.* Ms. Burbank also requests that the Commission require regular testing of the water pressure and that this testing be performed by third party with no affiliation to RMUCI. *Id.*

STAFF COMMENTS

The Company is a water corporation and a public utility, as defined under Title 61 of the Idaho Code, and provides water service to its customers in Idaho. *Idaho Code* §§ 61-125, and -129. The Commission has jurisdiction over the Company and this matter under Idaho Code §§ 61-501, -502, -503, -507, -520, -523, and -622. The Company provides water service to customers, including Ms. Burbank, in the Pepperwood Crossing Subdivision located four miles south of Rigby, Idaho. The Company's system is unmetered. The Company also provides sewer services to its customers, which the Commission does not regulate.

1. The Hook-Up Fee

Idaho's Public Utilities Law requires that all charges "made, demanded or received by any public utility ... be just and reasonable." *Idaho Code* § 61-301. Under the filed rate doctrine a "utility cannot charge more, and also ... cannot charge less than" its approved rates and charges on file with the Commission. *Idaho Code* § 61-313.

The Commission approved the Company's Hook-Up Fee of \$150.00 to connect to its water system. *See Rocky Mountain Utility Company Sheet 2 Revision, Non-Recurring Charges* (effective January 1, 2009, approved by Order No. 30703). The Company contends that an \$850.00 fee was paid when Ms. Burbank closed the purchase for her residence at 3890 East Ash Lane to connect her to the Company's water and sewer systems. The payment came through Check No. 29924 it received from First American Title Company in the amount of \$947.50 for File No. 818616-RI, Re: 3890 East Ash Lane. *See Exhibit 1B* attached to the Response. The Company contends it charges \$150.00 to connect to its water system and cites its webpage for this information. *See rockymountainutility.com/water-ratesfees/*. The Company also provided a summary of Company charges sent to Ms. Burbank that show that a "Hook up Fee" of \$850 was billed to Ms. Burbank and paid with reference to #29924 (the same number of the check sent from First American Title). *See Affidavit of Jolene Bossard* at Exhibit B. The \$850.00 was not split into separate amounts for the water and sewer system on this Company summary. Ms. Burbank contends that she paid the \$850.00 fee through Escrow when she closed on the transaction for her residence. *See July 29, 2021, Correspondence*. However, Ms. Burbank has not provided any evidence to support that allegation like a copy of a Buyer's Settlement Statement that would show

whether she paid this \$850.00 fee or not out of her funds that were in escrow. Staff has received a copy of the “ALTA Settlement Statement-Seller” for the entity (Higley Developments, LLC) that sold the residence at 3890 East Ash Lane to Ms. Burbank. This statement shows that Higley Developments, LLC paid the \$850.00 “Hook-Up Fee to Rocky Mountain Utility”. See *Supplemental Affidavit of Jolene Bossard*. If Ms. Burbank did not pay the “Hook-Up Fee” she does not have standing to contest this issue. Staff has informally requested that Ms. Burbank release the closing documents for her purchase of 3890 East Ash Lane. Staff has also prepared a Production Request to be sent to Ms. Burbank requesting this information if she does not respond to Staff’s informal request.

Based on the records that Staff received from the Company, it failed to itemize this \$850.00 charge into separate items for connecting to its water and sewer systems. The Company has asserted that it only charged \$150.00 to connect Ms. Burbank’s residence to its water system, but its records and invoices create confusion about what was ultimately charged. At a minimum, Staff recommends that the Commission direct the Company to modify its invoices and webpage to clearly inform new customers that the Hook-up Fee to connect to the Company’s water system for water service is \$150.00 for a new customer. Staff also recommends that the Commission direct the Company to modify its webpage to accurately describe what the \$700 connection fee listed there is for.

2. Monthly Charges for Water Service

On May 10, 2021, Staff spoke with a Company representative who advised that a “new service” for Ms. Burbank’s residence was established on March 20, 2020, and payments were made for water service until August 4, 2020. *Affidavit of Jolene Bossard* at Confidential Exhibit A (Confidential Exhibit). The Company asserted that it sent out an invoice every month and that notices were mailed to Ms. Burbank. *Id.* The Company further advised that it had sent disconnect notices to Ms. Burbank, but the Company preferred not to disconnect customers in the winter. *Id.* The Company also advised Staff that its technician recently spoke with Ms. Burbank and talked with her about disconnecting service. *Id.*

On May 10, 2021, Staff requested that the Company provide it with, 1) a copy of Ms. Burbank’s last bill; 2) a copy of the Final Notice; and 3) payment and billing history for Ms. Burbank. *Id.* Staff also asked the Company whether invoices are sent to a standard mail address and if it was the same as the service address for the customer. *Id.* Staff also asked what payment

arrangement the Company would propose for Ms. Burbank to pay off any past due amount. *Id.* The Company responded to Staff on the same day by providing Staff with copies of Ms. Burbank's last bill, final notice, and payment/billing history. *Id.* at Exhibit B. Ms. Burbank's billing and payment history confirms there was a "Hook up fee" of \$850 billed by the Company which does not indicate what it is for. *Id.* This billing history also shows that the Company billed Ms. Burbank \$39.50 for water and \$58.00 for septic monthly for \$97.50 each month.⁴ *Id.* The Company billed Ms. Burbank for these services on the same invoice. *Id.* The Company claimed that all invoices were sent to Ms. Burbank's home address. *Id.* The Company also represented that it was open to payment arrangements of any kind. *Id.*

Based on the record, Ms. Burbank has been receiving water service from the Company since April of 2020. Ms. Burbank does not deny this. Ms. Burbank paid for water service for April, May, June, and July 2020, but has not made any payments since that time. *See* Company Response at Exhibit 2. Ms. Burbank argues that due to confusion, she paid money to the Company. Complaint at 1. Ms. Burbank also asserts that she thought she was paying Rocky Mountain Power and not the Company. *See July 28, 2021, Correspondence.* According to the Company's Response, Ms. Burbank has a past due balance of \$592.50 for water service. *Response* at Exhibit 2. Assuming Ms. Burbank is still a customer of the Company, an additional \$39.50 would have been billed to Ms. Burbank in November of 2021 for water service.

One issue in this case is that the Company billed its water and sewer services on the same invoice. Although there may be some cost savings by billing both services on one invoice, Staff believes the clarity provided by billing water service on a separate invoice will help customers. The Company has represented in its Response that it is now separating these services. Staff believes the Commission should direct the Company to continue this practice of sending a separate bill to its customers for water service. Although some confusion could have arisen due to the Company billing water and sewer service on the same invoice, the documentation provided to Staff by the Company demonstrates that Ms. Burbank was billed the Commission approved amount of \$39.50 per month for water service. Ms. Burbank contends she never agreed to pay these charges or entered a contract with the Company. The Company contends that a new customer information packet was sent to Ms. Burbank, which she denies receiving. Based on the

⁴ The Company's Commission approved Rate Schedule 1 – All customers (Residential & Commercial) provides that it charges its customers a flat rate of \$39.50 for water service.

facts provided by the parties, water service was provided by the Company to Ms. Burbank. Ms. Burbank paid for this service for four months so it seems extremely likely she was receiving an invoice or other information from the Company. Ms. Burbank continues to receive water service from the Company, but refuses to pay for it.

Staff believes the Company has charged Ms. Burbank for water service consistent with its Tariff. Further, Staff believes Ms. Burbank should make arrangements with the Company to pay off the past due balance for the water service she has received and so that she may continue to receive water service from the Company.

3. Disconnection Notices.

The Company has sent disconnection notices to Ms. Burbank providing that her water service would be shut off if she did not pay past due balances for water and sewer service. *See Exhibit A attached to Formal Complaint; see also attachments to July 28, 2021, Correspondence.*

The Company may terminate a customer's service consistent with the requirements of the Commission's Customers Relations Rules for Gas, Electric, and Water Public Utilities ("UCRR") for a customer failing to pay for water service. *See Rules 302.01.ii, 304 and 305.* Staff believes that the Company cannot include past due charges for sewer service in its termination notices as Rule 310 of the UCRR provides that a utility will not terminate service or provide notice of intent to terminate service if the bill cited for termination is for the purchase of non-utility goods or services. IDAPA 31.01.01.310.01.c. Accordingly, Staff recommends that the Commission direct the Company to revise its disconnection or termination notices for water service that it sends to customers for failure to pay to only include past due charges for water service.

4. Termination of Service

After Ms. Burbank opened an informal complaint with the Commission the Consumer Assistance Staff advised the Company that it could not terminate Ms. Burbank's service while her informal complaint and then formal complaint was pending. On November 19, 2021, Ms. Burbank filed her Declaration asserting that her service was temporarily shutoff 5 times in August through October of 2021. Staff does not have information from the Company concerning these alleged temporary shutoffs. Staff is sending Production Requests to the and requested information about these allegations. Staff wishes to verify whether these shutoffs occurred, the reasons for any shutoffs and what notice may have been provided to Ms. Burbank. Once it receives the Company's

Responses Staff will be in a better position to provide a recommendation to the Commission on this issue.

5. Water Pressure

Ms. Burbank has asserted that no one has investigated the water pressure on the Company's system. *Complaint* at 2. In her July 28, 2021, correspondence, Ms. Burbank complains that "[l]ow water pressure that has never been investigated". See July 28, 2021, correspondence at p. 2.

Idaho Code § 61-301 provides that every public utility shall furnish service that is "adequate, efficient, just and reasonable." *Idaho Code* § 61-515 provides that the Commission has the power upon a complaint "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[.]" As a public drinking water system, the Company must comply with the rules for Public Drinking Water Systems promulgated by Idaho Department of Environmental Quality. IDAPA 58.01.08. As a general rule, a public water system shall maintain a minimum pressure of 20 psi throughout its distribution system, at ground level, as measured at the service connection or along the property line adjacent to the consumer's premises. IDAPA 58.01.08.552.01.b. ii. In addition, when water pressure falls below 20 psi, the Company must notify [DEQ], provide public notice to the affected customers within twenty-four (24) hours, and disinfect or flush the system as appropriate. IDAPA 58.01.08.552.01.b.ii.(1).

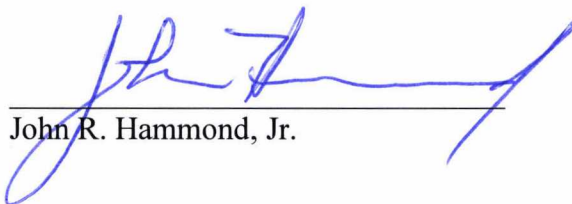
In response to a Staff inquiry related to complaints about low water pressure, the Company represented that the Company's system is at a constant 70 psi and that water pressure is checked daily. See *Supplemental Affidavit of Jolene Bossard*.

Based on the current record in this case Staff cannot determine whether there are water pressure issues on the Company's system. In an abundance of caution, Staff recommends that the Company provide the Commission with a daily water pressure report from appropriate locations on the Company's water system for fourteen days from the date of any Commission Order ruling on Ms. Burbank's Complaint.

Respectfully submitted this

30th

day of November 2021.



John R. Hammond, Jr.

Rocw21.ljh comments

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT I HAVE THIS 30th DAY OF NOVEMBER 2021, SERVED THE FOREGOING **COMMENTS OF THE COMMISSION STAFF**, IN CASE NO. ROC-W-21-01, BY E-MAILING A COPY THEREOF, TO THE FOLLOWING:

NICOLE BURBANK
3890 EAST ASH LANE
RIGBY ID 83442
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JIM BERNARD
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SECRETARY