

**BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION**

**IN THE MATTER OF PONDEROSA** )  
**TERRACE ESTATES WATER SYSTEM,** ) **CASE NO. PTE-W-03-1**  
**INC.'S FAILURE TO COMPLY WITH** )  
**COMMISSION ORDERS.** ) **ORDER TO SHOW CAUSE**  
)  
) **NOTICE OF HEARING**  
)  
) **ORDER NO. 29212**

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*Idaho Code* § 61-501 vests the Idaho Public Utilities Commission with the power and jurisdiction to supervise and regulate every public utility within the State of Idaho. The Commission is also empowered by law to investigate and fix rates and regulations of any public utility, including water corporations. *Idaho Code* §§ 61-502; -503; and -129. Idaho law generally defines a “water corporation” as a person or corporation that owns or operates property or infrastructure that facilitates the supply, distribution, or sale of water for compensation. *Idaho Code* §§ 61-124 and -125. In September 2001, we determined that Ponderosa was operating as a public utility and water corporation such that it fell within this Commission’s regulatory jurisdiction. Order No. 28845.

Mr. Robaer Cobott owns Ponderosa Terrace Estates Water System, Inc. (Ponderosa or Company) and operates it as a for-profit water system. Located south of Sandpoint and east of the community of Sagle in Bonner County, Idaho, the Company serves approximately 20 full-time residences connected to the system and a total of approximately 90 lots within the area. This system has been in place since approximately 1969. In this Order, the Commission directs Ponderosa to appear at a hearing and show cause why it has failed to comply with prior Commission Orders. The Show Cause Hearing is set for April 28, 2003 at 9:30 a.m. at the Bonner County Courthouse in Sandpoint, Idaho.

**BACKGROUND**

On August 8, 2002, the Commission authorized Ponderosa Terrace Estates Water System to collect monthly rates in the amount of \$48 for Full-Time and Part-Time customers and

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\$25 for Active Service customers with above-ground access to water for service rendered on or after August 1, 2002. Order No. 29086. In its Order on Reconsideration, the Commission directed Ponderosa and Commission Staff to submit a report detailing customer class inventory (membership) changes once the grace period expired on October 15, 2002, and the impact these changes may have on Ponderosa's revenues. Order No. 29123.

The subsequent report filed by Staff indicated that even though Ponderosa was under-collecting its revenue requirement, neither Staff nor Ponderosa recommended a change in rates at that time. Report at 2. Based on a number of inquiries received by the Commission, it was apparent that some confusion existed regarding the implementation of the Commission's Orders and the Company's treatment of seasonal disconnections. Because Staff and the Company did not agree on the treatment of seasonally disconnected customers, Staff requested clarification of Order No. 29086 in that regard so that it could properly advise customers and the Company. *Id.*

In response to these concerns about seasonal disconnection, the Commission in December 2002 clarified Order No. 29086 and authorized Ponderosa to involuntarily move a customer to the Inactive Service customer class if the customer remained disconnected from the system for longer than eight full months. Order No. 29172. If the customer later sought to resume service after the eight months had passed, the Commission directed Ponderosa to retain the following information to justify imposition of a \$2,500 hook-up fee: 1) its customer payment and disconnection records and 2) proof that notice of Ponderosa's intent to move the customer to Inactive Service and require a \$2,500 hook-up fee upon reconnection was sent via certified mail. *Id.*

#### **STAFF CHARGES**

On March 6, 2003, the Commission Staff advised the Commission that several customers had received a letter from the Company dated January 2, 2003. The letter (Attachment A) advised customers that the "Ponderosa Terrace Estates Water System Inc. is no longer going to be involved with the Idaho Public Utilities Commission." Mr. Cobott, Ponderosa's owner and author of the letter, noted that "since P.U.C. has been involved in my water system I have lost many customers" who have drilled wells or withdrawn from the system. He further informed customers that this had reduced Ponderosa's annual revenues by \$9,200 from the \$26,600 Commission-authorized revenue requirement. As a result of Order No. 29172

issued in December 2002, Ponderosa asserted that the Commission's decision to allow Part-Time and Active Service customers to pay for just a four-month minimum of water reduced the Company's revenue by \$6,400. Consequently, the Company's annual revenues are now less than \$10,000.

Mr. Cobott wrote, "this water system cannot operate under the current condition that P.U.C. is trying to impose" and that he is going to try to save the water company for those customers needing service. Effective January 1, 2003, Mr. Cobott informed customers that only two customer classes – Resident and Non-Resident – would exist, as he had "before the P.U.C. got involved." Under his plan, Resident (a customer "who lives on his property all year") pay \$48 per month and Non-Resident ("part-time use or no use at all") pay \$25 per month.

Although this rate structure is similar to the one approved by Order No. 29086 issued in August 2002, Staff alleges that these rates or the application of these rates deviate from the Commission's seasonal disconnection directives in Order No. 29172. The letter also threatened customers that "if you do not pay a monthly charge to help maintain this system then you will not be able to hookup to the system in the future." Thus, Non-Residents must pay a monthly charge of \$25 per lot to keep water service. Ponderosa allowed customers that are not currently making monthly water payments 30 days from the date of the letter to decide whether to be part of the system or "be withdrawn from any future use from this system." Under these conditions, Mr. Cobott believes that the Company will still be operating \$10,000 under the Commission-authorized revenue requirement if every customer pays their bill.

After receiving calls from customers and a copy of the letter described above, Staff engineer Michael Fuss sent a letter (Attachment B) to Mr. Cobott on January 23, 2003. Although noting that some of the statements in the Company's January letter were contrary to the Commission's Order, Staff indicated that Ponderosa's rate alternative may have some merit given the Company's current financial situation. Staff requested Mr. Cobott's assistance in gathering specific information that Staff could use to file an updated report with the Commission. This report would examine the Company's financial status and determine if it had deteriorated since October. The report would also evaluate whether Ponderosa's rate proposal might improve the Company's financial status. Staff requested that Mr. Cobott provide the requested information no later than February 18, 2003. Although Staff emphasized that

continued communication with the Commission was the best approach for Mr. Cobott and his customers, as of this date Mr. Cobott had not responded to Staff's letter and information request.

In early February, Staff received a copy of a customer bill (Attachment C) in which Ponderosa charged a customer that had seasonally disconnected two Non-Resident lots last fall for water service rendered the month of January 2003. The customer paid Company employee Larry Fairfax \$50 "upfront" to shut off the valves to these lots several months ago. Because the customer was seasonally disconnected and did not request water service during the month of January, Staff alleges the amount charged was contrary to Order No. 29172. The customer told Staff that he intended to pay the bill but that if the billing was improper the Commission could return the payment to him.

### **ORDER TO SHOW CAUSE**

Based upon the Staff's representations, the Commission finds that there is probable cause to believe that Ponderosa has failed, omitted or neglected to obey, observe or comply with Commission Orders, rules, direction, or requirements as required by Chapter 7 Title 61 of the Idaho Code. More specifically, Ponderosa:

1. Made material misrepresentations to customers regarding the Commission's involvement in regulating the Company;
2. Made material misrepresentations to customers regarding rates to be charged for seasonal disconnections;
3. Threatened to disconnect customers in a manner inconsistent with prior Commission Orders and administrative Rules; and
4. Billed customers for usage (or lack thereof) in a manner inconsistent with prior Commission Orders.

IT IS HEREBY ORDERED that the Company show cause why the Commission should not formally find that the utility has failed to comply with Commission Orders, rules, direction, and/or requirements. The Company shall appear before the Commission's Hearing Examiner at the Bonner County Courthouse, located at **215 SOUTH FIRST AVENUE, SANDPOINT, IDAHO, AT 9:30 A.M. ON MONDAY, APRIL 28, 2003.**

IT IS FURTHER ORDERED that the Company appear at the time and place above to show cause why the Commission should not: 1) seek a civil penalty of \$2,000 per day for each

day the utility has failed to comply with Commission Orders pursuant to *Idaho Code* § 61-706; 2) petition the First Judicial District for an injunction prohibiting Ponderosa from charging rates different than those ordered by the Commission; 3) request the court place the Company in receivership; and/or 4) file criminal misdemeanor charges under *Idaho Code* § 61-709 for failure to comply with a Commission Order.

IT IS FURTHER ORDERED that all hearings and prehearing conferences in this matter will be held in facilities meeting the accessibility requirements of the Americans with Disabilities Act. Persons needing the help of a sign language interpreter or other assistance of the kind that the Commission is obligated to provide under the Americans with Disabilities Act in order to participate in or to understand the testimony and argument at a public hearing may ask the Commission to provide a sign language interpreter or other assistance at the hearing. The request for assistance must be received at least five (5) working days before the hearing by contacting the Commission Secretary at:

IDAHO PUBLIC UTILITIES COMMISSION  
PO BOX 83720  
BOISE, IDAHO 83720-0074  
(208) 334-0338 (Telephone)  
(208) 334-3762 (FAX)  
E-Mail: [secretary@puc.state.id.us](mailto:secretary@puc.state.id.us)

IT IS FURTHER ORDERED that all proceedings in this matter will be conducted pursuant to *Idaho Code* § 62-619 and the Commission's Rules of Procedure, IDAPA 31.01.01.000 *et seq.*

IT IS FURTHER ORDERED that prior to holding an evidentiary hearing in Sandpoint, Staff shall prefile testimony outlining Ponderosa's failure to comply with Commission Orders by April 1, 2003. No later than April 21, 2003, the Company shall file testimony that explains:

1. Why the Commission should not seek imposition of civil and/or criminal penalties for non-compliance with Commission Orders;
2. Why the Commission's current rates are inadequate to recover Ponderosa's expenses; and
3. What rates Ponderosa believes should be implemented. Staff may offer "live" rebuttal testimony at the hearing, if necessary.

To facilitate the filing of exhibits, the Commission assigns the Commission Staff exhibit numbers 1-100 and Ponderosa exhibit numbers 101-200.

IT IS FURTHER ORDERED that the Commission Secretary will have this Order to Show Cause served upon the person designated to receive Notices of Summonses and Complaints (IDAPA 31.01.01.016) and upon the person designated by the utility to receive legal service in Idaho <sup>by</sup> U.S. mail and certified mail.

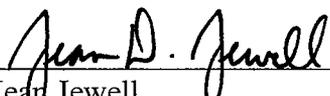
DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho, this 24<sup>th</sup> day of March 2003.

  
\_\_\_\_\_  
PAUL KJELLANDER, PRESIDENT

  
\_\_\_\_\_  
MARSHA H. SMITH, COMMISSIONER

  
\_\_\_\_\_  
DENNIS S. HANSEN, COMMISSIONER

ATTEST:

  
\_\_\_\_\_  
Jean Jewell  
Commission Secretary

O:PTEW0301\_in

# P.T.E. WATER SYSTEM INC.

2625 Wendover Loop Road  
Sandpoint, Idaho 83864

Telephone 208-263-2720

January 2, 2003

Dear Landowners

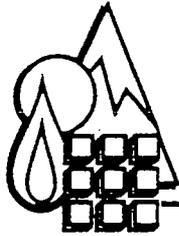
This letter is to serve notice to landowners that the Ponderosa Terrace Estates Water System Inc. is no longer going to be involved with the Idaho Public Utilities Commission. The P.U.C. has made me conform to all their demands including taking all my invoices on the operation of the water system to Boise so they could come up with a yearly operating cost to operate the water system. I disagreed with their finding so there was a formal hearing in June 2002 in Sandpoint Idaho to try and resolve the problems. Before the hearing the P.U.C. said that the operating expense was \$24,000 plus and after the hearing the expenses were determined to be \$26,000 plus. The P.U.C. put all landowners in different classes determined by their water hookup on their lot. This gave the P.U.C. the ability to charge the different landowner based on how they had classed them. The P.U.C. did this and I was told that to charge the different classes so that the revenue received would take care of the expenses. Since P.U.C. has been involved in my water system I have lost many customers. Some have put in their own well and others have just withdrawn from the systems. Did you know that if a landowner puts in a well and your lot is next to his that your lot will probably be considered worthless. This information I received from the Panhandle Health Dept. which states that a septic system can not be put in any closer than 100 feet in all directions. On October 30, 2002 Michael Fuss came up to the water system and took a customer class inventory and came up with over a \$6000.00 loss in revenue which reduced the annual revenue to less than \$20,000.00. Since October I have lost more customers which totals \$3200.00 in loss revenue. Then the P.U.C. changes their mind and states that all part time dwelling, and active service customers only have to pay for water payment 4-months of the year. This reduces the revenue another \$6400.00 a year. At this time the revenue to operate the system has been reduced to less than \$10,000.00 per year. Because of the above I have decided to handle this problem myself. There will be 2 classes of customers like I had before P.U.C. got involved. Resident and Non-Resident. Resident customers will be charged \$48.00 per month and Non-Resident customers will be charged \$25.00 per month. Resident is a customer that lives on his property all year. Non-Resident is part time use or no use at all. Non-Resident cannot be used for resident use. If you as landowners, resident or non-resident, do not pay a monthly charge to help maintain this system then you will not be able to hookup to the system in the future. It's not fair for a few to pay for all the upkeep and the rest can come and go as they please. This water system can not operate under the current condition that P.U.C. is trying to impose. I'm going to try to save this water company for all of you my customers that need this service. If you want to put in your own well please check first on all the different cost and what your monthly electric charge will be to operate the well. You will be surprised. Landowners that are not making monthly water payments at present have 30 days from the date of this letter to decide to be part on the system or not. If I don't hear from you by letter or phone during this time period then you will be withdrawn from any future water use from this system.

ATTACHMENT A  
PAGE 1 of 2

There is one thing that everybody forgets about and that is I Robaer Cobott own this water system. I will make this system survive for you my customers and for myself. If everybody pays I still will be operating \$10,000.00 a year under what the P.U.C. said I needed. I don't know if I can make this work but I'm going to try. Last year P.U.C. caused the water system to lose more than \$20,000.00 and they don't care. P.U.C. lied to me, they told me that when their decision was made it was final. P.U.C. are the ones that said that the operating cost per year had to be \$26,600.00. What gives them the right to destroy this company and put the landowner into a situation that might eliminate their water service. In order to keep water service to your lot or lots you are going to have to pay a monthly charge of \$25.00 per lot for all Non-Resident owners. If payments are not made you will be eliminated permanently from the water system. These new conditions described in this letter will go into effect on January 1, 2008.

THANK YOU

  
Robaer Cobott, President



# IDAHO PUBLIC UTILITIES COMMISSION

Dirk Kempthorne, Governor

P.O. Box 83720, Boise, Idaho 83720-0074

Paul Kjellander, President  
Marsha H. Smith, Commissioner  
Dennis S. Hansen, Commissioner

January 23, 2003

Robaer Cobott  
Ponderosa Terrace Estates Water System  
2626 Wrenco Loop Lane  
Sandpoint, Idaho 83864

RE: Customer Letter Dated January 2, 2003

Dear Mr. Cobott:

The Commission has received inquiries from several customers regarding your January 2, 2003 letter. I understand your frustrations and can sympathize with your situation. As more customers continue to drill wells and other customers refuse to pay their bills, it appears likely that Ponderosa will be unable to collect its \$26,600 revenue requirement. This factual situation is usually referred to as a "death spiral" – as rates go up to meet the revenue needs of the utility, more and more customers leave the system, thereby causing a revenue shortfall.

If this occurs, the Ponderosa system may not be financially viable as a public water system. The expenses are too high, the revenue from too few customers is too low, and the infrastructure is too strained. Even though some of the statements in your January 2 letter are contrary to the Commission's Order, Staff believes your rate alternative may have merit given the current financial situation. Consequently, with your assistance we would like to file an updated report with the Commission describing how much the financial status of the system has deteriorated since October and how your rate proposal might improve the financial situation.

In order for us to accurately and persuasively present this information to the Commission, we will need detailed information from you. We need to know, to the best of your knowledge:

1. Which customers have drilled their own wells and what lots are likely to leave the system as a result of the well drilling. We've heard different estimates from a number of customers, but as the owner of the system you are in the best position to assess how many lots have left the water system.
2. How many customers remain in each rate classification. Please provide a summary of the water payments that were made for each month from August to December of 2002. We need this information to demonstrate to the Commission in concrete numbers the declining status of your system.
3. Please provide the amount of monthly revenue you expect to receive from your proposed rate alternative.

ATTACHMENT B  
PAGE 1 of 2

Located at 472 West Washington Street, Boise, Idaho 83702

Telephone: (208) 334-0300 Facsimile: (208) 334-3762

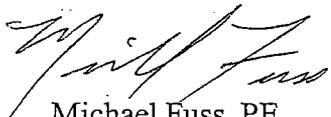
Robaer Cobott  
January 23, 2003  
Page 2

Once the information detailing Ponderosa's current financial situation is provided and described in a Staff report, the Commission will have an opportunity to review the current conditions, consider your rate proposal and perhaps modify its prior Order. Absent a request by you and/or the Staff to modify the Order based on new information, the only alternatives are to comply with the existing Commission Order or consider alternatives to regulation. In any case, the Commission needs to have a clear understanding of Ponderosa's current financial situation. We believe that continued communication with the Commission is the best approach for you and your customers.

Please provide the above requested information and any other financial information that you think might help your case at your earliest convenience or not later than February 18, 2003. We will then promptly complete the report and submit it to the Commission. If you have any questions regarding these tasks, please do not hesitate to contact me directly at (208) 334-0366.

It is my hope that we can work together to improve Ponderosa's financial situation.

Sincerely,



Michael Fuss, PE

u:mfuss:PTE water/011003

P. T. E. WATER SYSTEM, INC.  
 2626 Wrenco Loop  
 Sandpoint, ID 83864  
 208-263-2720

# Statement

DATE  
 2/3/'03

TO:  
 [REDACTED]  
 [REDACTED]  
 [REDACTED]  
 Non-Resident  
 Blk. [REDACTED] Lots [REDACTED]

		AMOUNT DUE	AMOUNT ENC.		
		50.00			
DATE	TRANSACTION	AMOUNT	BALANCE		
1/2/'03	Balance forward		0.00		
1/3/'03	INV # [REDACTED]	73.00	73.00		
1/13/'03	PMT # [REDACTED]	-73.00	0.00		
2/3/'03	INV # [REDACTED]	50.00	50.00		
THIS STATEMENT IS FOR THE PREVIOUS MONTH'S WATER BILL					
CURRENT	1-30 DAYS PAST DUE	31-60 DAYS PAST DUE	61-90 DAYS PAST DUE	OVER 90 DAYS PAST DUE	AMOUNT DUE
50.00	0.00	0.00	0.00	0.00	50.00