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IDAHO PUBLIC UTILITIES COMMISSION

BEFORE THE

IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF PONDEROSA TERRACE )  
ESTATES WATER SYSTEM, INC.'S FAILURE )  
TO COMPLY WITH COMMISSION ORDERS. )

CASE NO. PTE-W-03-1

DIRECT TESTIMONY OF MICHAEL FUSS

IDAHO PUBLIC UTILITIES COMMISSION

APRIL 1, 2003

1 Q. Please state your name and business address for  
2 the record.

3 A. My name is Michael Fuss. My business address  
4 is 472 West Washington Street, Boise, Idaho.

5 Q. By whom are you employed and in what capacity?

6 A. I am employed by the Idaho Public Utilities  
7 Commission as a Staff engineer.

8 Q. What is your educational and professional  
9 background?

10 A. I have a Bachelor of Science Degree in Civil  
11 Engineering from Washington State University and a Master  
12 of Business Administration Degree from Boise State  
13 University. I am a licensed Civil Engineer in the states  
14 of Idaho, Oregon, and Washington. I am a past president  
15 of the Southern Idaho Section of the American Society of  
16 Civil Engineers and have been a member of various  
17 professional affiliations and service organizations.

18 I have over 14 years of Civil Engineering  
19 Experience in Municipal, Utility, and Development Civil  
20 Engineering and consulting.

21 While at the Idaho Public Utilities Commission,  
22 I have attended the National Association of Regulatory  
23 Utility Commissioners (NARUC) Basic Training Program at  
24 New Mexico State University and the Northwest Public  
25 Power Association's course on Unbundled Cost of Service &

1 Rate Design.

2 Q. What is the purpose of your testimony in this  
3 proceeding?

4 A. The purpose of my testimony is to outline  
5 Ponderosa Terrace Estates (PTE) Water System, Inc.'s  
6 (Ponderosa; Company) current failure to comply with Idaho  
7 Public Utility Commission (Commission) Orders and to show  
8 a history of Ponderosa's disregard for the Commission's  
9 authority.

10 Q. Would you please summarize your testimony?

11 A. Certainly. My testimony provides a factual  
12 record that shows Ponderosa Terrace Estates Water System,  
13 Inc. is currently in violation of Commission Orders. My  
14 testimony also documents the Company's history of non-  
15 compliance and disregard for the Commission's authority.  
16 Taking this into consideration, I recommend that the  
17 Commission require Ponderosa to comply with previous  
18 Commission Orders and follow proper rules of procedure  
19 for regulated water companies.

20 If Ponderosa continues to act contrary to  
21 Commission Orders and/or fails to appear at the Show  
22 Cause hearing, I further recommend that the Commission  
23 consider exercising the civil and criminal remedies  
24 available through the judicial system. This may include:  
25 1) seeking a civil penalty of \$2,000 per day for each day

1 the utility has failed to comply with Commission Orders  
2 pursuant to Idaho Code §§ 61-706 and 61-707; 2)  
3 petitioning the 1<sup>st</sup> Judicial District for an injunction  
4 prohibiting Ponderosa from charging rates different than  
5 those ordered by the Commission; 3) requesting the court  
6 place the Company in receivership; or 4) filing criminal  
7 misdemeanor charges under *Idaho Code* §§ 61-708 and 61-709  
8 for failure to comply with a Commission Order.

9 Q. Please describe Ponderosa Terrace Estates Water  
10 System, Inc.

11 A. PTE Water System, Inc. operates a small water  
12 system that serves approximately 80 lots or parcels of  
13 property primarily within the Ponderosa Terrace Estates  
14 Subdivision south of Sandpoint and east of the community  
15 of Sagle in Bonner County, Idaho. The Company delivers  
16 water through a looped unmetered system from two supply  
17 wells that produce a combined capacity of 25 gallons per  
18 minute. Robaer Cobott and his wife, Zaderea Raphael, own  
19 Ponderosa including its piping, wells and 10,000 gallons  
20 of storage.

21 Q. How did Ponderosa come to be regulated by the  
22 Commission?

23 A. The Commission received several complaints from  
24 Ponderosa customers who received a May 30, 2001 letter  
25 from the Company announcing a significant rate increase.

1 On July 31, 2001, the Commission found it reasonable to  
2 conduct an investigation to determine whether Ponderosa  
3 Terrace Estates Water System, Inc. was a water  
4 corporation as defined by *Idaho Code* §§ 61-124 and  
5 61-125. Order No. 28803 (Exhibit No. 1).

6 On September 13, 2001, the Idaho Public  
7 Utilities Commission issued Order No. 28845 (Exhibit No.  
8 2) in which it found that Ponderosa was operating in such  
9 a manner as to fall within the Commission's jurisdiction.  
10 Reference *Idaho Code* §§ 61-124--Water Systems; 61-125--  
11 Water Corporation and 61-129--Public Utility. The  
12 Commission also found that the Company's customers had no  
13 say regarding the operation and management of the Company  
14 or the prices it charged for water and related services.  
15 Consequently, the Commission ordered Ponderosa to file an  
16 Application for a Certificate of Public Convenience and  
17 Necessity and propose rate schedules with supporting  
18 documentation.

19 Q. How did the Commission set Ponderosa's initial  
20 rates for service?

21 A. When the Company did not file the required rate  
22 schedules or otherwise respond to Order No. 28845  
23 (Exhibit No. 2), on November 28, 2001 the Commission  
24 established a \$20 per month flat-rate charge for  
25 residential customer water usage effective December 1,

1 2001 in Order No. 28903 (Exhibit No. 3). Reference *Idaho*  
2 *Code* §§ 61-501; 61-502; 61-503. This \$20 per month rate  
3 comported with the state average flat rate for regulated  
4 water companies. The Company was further prohibited from  
5 assessing any other fees or charges without first  
6 providing justification for such charges/fees and  
7 obtaining Commission-approved tariffs.

8 Q. Did Ponderosa have an opportunity to respond to  
9 the \$20 per month rate set in Order No. 28903 (Exhibit  
10 No. 3)?

11 A. Yes. On December 6, 2001, the Commission set a  
12 December 17, 2001 Show Cause hearing date in Sandpoint,  
13 Idaho to provide the Company and Robaer Cobott the  
14 opportunity to show cause why: 1) the \$20 per month  
15 flat-rate residential water rate charge established in  
16 Order No. 28903 (Exhibit No. 3) was not reasonable and  
17 should not continue, and 2) why the Company should not be  
18 required to refund/credit customers the difference  
19 billed/received since the date of Commission Order No.  
20 28845 (Exhibit No. 2). Order No. 28911 (Exhibit No. 4).

21 Despite mailing the Commission Notices and  
22 Orders to the Company's registered office as reflected in  
23 its corporate filing with the Idaho Secretary of State,  
24 the Commission found that Robaer Cobott may have been  
25 out-of-state and personally unaware of the scheduled

1 hearing. The Commission issued Order No. 28917 (Exhibit  
2 No. 5) on December 14, 2001 to vacate the previously  
3 scheduled December 17, 2001 show cause hearing.

4 Q. When did Ponderosa next communicate with the  
5 Commission?

6 A. After months of no communication from  
7 Ponderosa, the Commission received a letter from  
8 Ponderosa dated May 6, 2002, that stated "Ponderosa  
9 Terrace Estates Water System Inc. is going to have to go  
10 out of business because of the water rates imposed on  
11 this company by Idaho Public Utilities Commission."  
12 (Exhibit No. 6). The Commission had also received  
13 communications from several customers that were concerned  
14 that the Company was not billing them. The customers  
15 indicated that they would not make payments unless they  
16 receive a bill. Staff verified in a telephone  
17 conversation with Mr. Cobott that Ponderosa had not, and  
18 would not, mail bills to customers with the \$20 per month  
19 charge approved by the Commission. Mr. Cobott indicated  
20 that he did not agree with that rate and would not send a  
21 bill that made it appear as if he accepted the  
22 Commission's authorized rates.

23 Q. How did the Commission respond to the May 6,  
24 2002 letter from Ponderosa (Exhibit No. 6)?

25 A. Staff filed a Decision Memorandum on May 10,

1 2002 that outlined the Company's financial situation and  
2 recommended a rate increase. The Commission issued Order  
3 No. 29024 on May 14, 2002 that solicited written comments  
4 and gave notice of the proposed increase in rates  
5 (Exhibit No. 7).

6 After reviewing customer comments and  
7 additional analysis, the Commission issued Order No.  
8 29046 (Exhibit No. 8) on June 6, 2002 that scheduled both  
9 a Public Hearing and Technical Hearing for June 20, 2002.  
10 The Order also provided an additional opportunity for  
11 parties to intervene, and extended the public comment  
12 deadline.

13 Q. Did the Commission increase Ponderosa's rates  
14 as was proposed in its Notice?

15 A. Yes. Based on the hearing testimony and  
16 evidence in the record, the Commission established an  
17 annual revenue requirement for Ponderosa Terrace Estates  
18 Water System in the amount of \$26,604 on August 8, 2002.  
19 Order No. 29086 (Exhibit No. 9). To collect this amount,  
20 the Commission authorized Ponderosa to collect monthly  
21 rates in the amount of \$48 for Full-Time and Part-Time  
22 customers and \$25 for Active Service customers.  
23 Customers that do not have above ground access to water  
24 were not to be charged for service.

25 Q. Was Order No. 29086 (Exhibit No. 9) the last



1 Commission Order to address Ponderosa's Rates?

2 A. No. On September 25, 2002, the Commission  
3 denied a Petition for Reconsideration filed by Mr. Lyle  
4 Peterson and the Cross-Petition filed by Ponderosa in  
5 Order No. 29123 (Exhibit No. 10). The Order also  
6 required that PTE Water and Commission Staff to submit a  
7 report to the Commission no later than November 25, 2002,  
8 detailing changes to the number of customers in each  
9 class and the impact these changes would have on  
10 Ponderosa's revenues.

11 Q. Has the Commission further clarified Order No.  
12 29086 (Exhibit No. 9)?

13 A. Yes. In response to concerns about seasonal  
14 disconnection and after Staff filed the required report,  
15 the Commission clarified Order No. 29086 (Exhibit No. 9)  
16 on December 20, 2002. This order authorized Ponderosa to  
17 involuntarily move a customer to the Inactive Service  
18 customer class if the customer remained disconnected from  
19 the system for longer than eight full months. Order No.  
20 29172 (Exhibit No. 11). If the customer later sought to  
21 resume service after the eight months had passed, the  
22 Commission directed Ponderosa to retain the following  
23 information to justify imposition of a \$2,500 hook-up  
24 fee: 1) its customer payment and disconnection records,  
25 and 2) proof that notice of Ponderosa's intent to move

1 the customer to Inactive Service and require a \$2,500  
2 hook-up fee upon reconnection was sent via certified  
3 mail. *Id.*

4 Q. Did Ponderosa give any indication that it did  
5 not intend to comply with Commission Orders?

6 A. Yes, several customers sent Staff a copy of a  
7 Company letter dated January 2, 2003. The letter  
8 (Exhibit No. 12) advised customers that the "Ponderosa  
9 Terrace Estates Water System Inc. is no longer going to  
10 be involved with the Idaho Public Utilities Commission."  
11 Mr. Robaer Cobott, Ponderosa's owner and author of the  
12 letter, noted that "since P.U.C. has been involved in my  
13 water system I have lost many customers" who have drilled  
14 wells or withdrawn from the system. He further informed  
15 customers that this had reduced Ponderosa's annual  
16 revenues by \$9,200 from the \$26,600 Commission-authorized  
17 revenue requirement. As a result of Order No. 29172  
18 (Exhibit No. 11) issued in December 2002, Ponderosa  
19 asserted that the Commission's decision to allow Part-  
20 Time and Active Service customers to pay for just a four-  
21 month minimum of water reduced the Company's revenue by  
22 \$6,400. Consequently, the Company's annual revenues were  
23 less than \$10,000.

24 Mr. Cobott wrote, "this water system cannot  
25 operate under the current condition that P.U.C. is trying

1 to impose" and that he was going to try to save the water  
2 company for those customers needing service. Effective  
3 January 1, 2003, Mr. Cobott informed customers that only  
4 two customer classes - Resident and Non-Resident - would  
5 exist, as he had "before the P.U.C. got involved." Under  
6 his plan, Residents (a customer "who lives on his  
7 property all year") pay \$48 per month and Non-Residents  
8 ("part-time use or no use at all") pay \$25 per month.  
9 Ponderosa further allowed customers that were not  
10 currently making monthly water payments 30 days from the  
11 date of the letter to decide whether to be part of the  
12 system or "be withdrawn from any future use from this  
13 system."

14 Q. How do these statements differ from Commission  
15 Orders?

16 A. Although this rate structure is similar to the  
17 one approved by Commission Order No. 29086 (Exhibit No.  
18 9) issued in August 2002, Mr. Cobott's statements deviate  
19 from the Commission's seasonal disconnection directives  
20 in Order No. 29172 (Exhibit No. 11). The letter  
21 threatens customers that "if you do not pay a monthly  
22 charge to help maintain this system then you will not be  
23 able to hookup to the system in the future." Thus, Non-  
24 Residents must pay a monthly charge year-round of \$25 per  
25 lot to keep water service. The statements also deviate

1 from Order No. 29086 (Exhibit No. 9) by requiring payment  
2 from customers that do not have above ground access to  
3 water.

4 Q. Did the Company take any of the actions  
5 described in the January 2, 2003 letter (Exhibit No. 12)?

6 A. Yes, in early February Staff received a copy of  
7 a customer bill (Exhibit No. 13) in which Ponderosa  
8 charged a customer that had seasonally disconnected two  
9 Non-Resident lots last fall for water service purportedly  
10 rendered the month of January 2003. The customer paid  
11 Company employee Larry Fairfax \$50 "upfront" to shut off  
12 the valves to these lots several months ago. Because the  
13 customer was seasonally disconnected and did not request  
14 water service during the month of January, the amount  
15 charged was contrary to Order No. 29172 (Exhibit No. 11).  
16 The customer told Staff that he intended to pay the bill  
17 but he expected the Commission to return the payment to  
18 him if the billing was improper.

19 Q. Has the Commission Staff tried to address the  
20 issue with the Company by means other than this Show Cause  
21 hearing?

22 A. Yes, after receiving calls from customers and a  
23 copy of the letter described above, Staff sent a letter  
24 (Exhibit No. 14) to Mr. Cobott on January 23, 2003.  
25 Although noting that some of the statements in the

1 Company's January 2003 letter (Exhibit No. 12) were  
2 contrary to the Commission's Orders, Staff indicated that  
3 Ponderosa's rate alternative may have some merit given  
4 the Company's current financial situation. Staff  
5 requested Mr. Cobott's assistance in gathering specific  
6 information that Staff could use to file an updated  
7 report with the Commission. This report would examine  
8 the Company's financial status and determine if it had  
9 deteriorated since October 2002. The report would also  
10 evaluate whether Ponderosa's rate proposal might improve  
11 the Company's financial status. Staff requested that Mr.  
12 Cobott provide the requested information no later than  
13 February 18, 2003.

14 Q. Did Mr. Cobott reply to Staff's letter?

15 A. No, although Staff emphasized that continued  
16 communication with the Commission was the best approach  
17 for Mr. Cobott and his customers, as of March 31, 2003,  
18 Mr. Cobott has not responded to Staff's letter and  
19 information request.

20 Q. Has Mr. Cobott sent other letters in the past  
21 that indicated unwillingness to operate as a regulated  
22 water company?

23 A. Yes. On December 30, 2001 Mr. Cobott sent a  
24 letter to landowners served by the Company stating that he  
25 planned to convert Ponderosa from a privately owned water

1 system to a water system association that would be owned  
2 and operated by the landowners (Exhibit No. 15). While  
3 Staff believes an association is an acceptable method of  
4 water system ownership, Staff was unaware of any customers  
5 that desired to become members of the association either  
6 before or after the letter was sent. The association  
7 appeared to be offered only as a way to avoid regulation.

8 On May 1, 2002, Mr. Cobott sent another letter  
9 to landowners served by the PTE Water System (Exhibit No.  
10 16), which is not to be confused with the previously  
11 referenced May 6, 2002 letter (Exhibit No. 6) sent to the  
12 Commission. The May 1<sup>st</sup> letter (Exhibit No. 16) indicated  
13 his frustration with the Public Utilities Commission and  
14 further stated "Ponderosa Terrace Estates Water System  
15 Inc., a public water system, will discontinue doing  
16 business as a public water system on May 5, 2002." He  
17 noted that revenues received by Ponderosa were down 90%  
18 under the jurisdiction of the PUC. He then stated, "I am  
19 going to start a privately owned water system on May 10,  
20 2002. This water system will be called Ponderosa Terrace  
21 Estates Privately Owned Water System Inc."

22 In a letter dated May 4, 2002 (Exhibit No. 17),  
23 Mr. Cobott also informed customers of the cost to  
24 purchase a share of the proposed privately-held water  
25 system, as well as some proposed rates for water service.

1 The letter also included an application form for the  
2 landowner to purchase a share of the water system. Mr.  
3 Cobott proposed that ownership of the privately-held  
4 water company would be comprised of 300 shares for Robaer  
5 Cobott and his wife, Zaderea Raphael, and a maximum of  
6 100 shares for the remaining landowners.

7 Q. How did the Commission reacted to these  
8 letters?

9 A. On January 4, 2002, Scott D. Woodbury, Deputy  
10 Attorney General for the State of Idaho, sent Mr. Cobott a  
11 letter (Exhibit No. 18) notifying him that the Orders of  
12 the Commission - including those approving rates - are law  
13 until changed by the Commission through subsequent  
14 Commission Orders. Mr. Woodbury's letter further stated  
15 that his continued failure to comply with Commission  
16 Orders would result in a complaint being filed against him  
17 in District Court. As set forth in Chapter 7, Title 61 of  
18 the *Idaho Code*, each separate failure to comply with  
19 Commission Orders, requirements and directives is subject  
20 to a civil penalty of not more than \$2,000. *Idaho Code*  
21 § 61-706. Every violation is a separate and distinct  
22 offense, and in the case of a continuing violation each  
23 day's continuance thereof shall be deemed a separate and  
24 distinct offense. *Idaho Code* § 61-707. Every officer,  
25 agent or employee of any public utility who fails to obey,

1 observe or comply with any Commission order, decision,  
2 rule, direction, demand or requirement or any part or  
3 provision thereof, may be guilty of a misdemeanor  
4 punishable by a fine not exceeding \$1,000 or by  
5 imprisonment in a county jail not exceeding one year, or  
6 by both such fine and imprisonment. Idaho Code § 61-709.

7 The Commission had no need to act on the May 1<sup>st</sup>  
8 (Exhibit No. 16) and May 4<sup>th</sup> (Exhibit No. 17) letters sent  
9 to customers because it initiated a formal rate  
10 proceeding upon receipt of the previously mentioned  
11 May 6<sup>th</sup> (Exhibit No. 6) letter.

12 Q. Are you confident that the Company is aware of  
13 the Commission's Rules and Orders?

14 A. Yes. The Company indicated that it was aware  
15 of Commission Orders when it filed a cross-petition on  
16 reconsideration of Order No. 29086 (Exhibit No. 9).  
17 Moreover, the Company's January 2003 letter (Exhibit No.  
18 12) clearly addressed the seasonal disconnection issue  
19 addressed in Order No 29172 (Exhibit No. 11).

20 Even though the Company had been provided with  
21 the documents previously, on May 30, 2002 Staff provided  
22 additional copies of the Utility Customer Relation Rules,  
23 the Customer Information Rules, the Policies for Small  
24 Water Companies, the Rules of Procedure, and all Orders  
25 and correspondence in the case up to that point (Exhibit



1 No. 19). Staff also sent the Company copies of  
2 approximately 20 regulated water company annual reports  
3 and the Commission's, 2001 Annual report (Exhibit No.  
4 20). Mr. Cobott further acknowledged receipt of these  
5 documents under oath at the technical hearing held on  
6 June 20, 2002. Tr. 171-182 at 180 (Exhibit No. 21).  
7 Therefore, I am confident that the Company is aware of  
8 Commission's Rules and Orders.

9 Q. How does Staff recommend this show cause  
10 proceeding be resolved?

11 A. Staff has attempted to work with Ponderosa to  
12 address the Company's concerns about the seasonal  
13 disconnection rates set forth in Order No. 29172 (Exhibit  
14 No. 11) to no avail. The Company is non-responsive to  
15 Staff inquiries and customers are uncertain whether they  
16 should pay the amounts billed by Ponderosa or the amounts  
17 authorized by Commission Order.

18 Staff recommends that the Commission require  
19 Ponderosa to comply with Commission Orders and to follow  
20 the procedural rules required of regulated water  
21 companies. If Ponderosa pre-files testimony that clearly  
22 outlines its concerns and justifies a rate proposal,  
23 Staff recommends the Hearing Examiner consider  
24 Ponderosa's rate proposal and Staff's rebuttal testimony  
25 at the Show Cause hearing.

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If Ponderosa continues to act contrary to Commission Orders and/or fails to appear at the Show Cause hearing, Staff recommends that the Commission consider exercising the civil and criminal remedies available through the judicial system. This may include: 1) seeking 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 and 61-707; 2) petitioning the 1<sup>st</sup> Judicial District for an injunction prohibiting Ponderosa from charging rates different than those ordered by the Commission; 3) requesting the court place the Company in receivership; or 4) filing criminal misdemeanor charges under *Idaho Code* §§ 61-708 and 61-709 for failure to comply with a Commission Order.

Q. Does this conclude your direct testimony in this proceeding?

A. Yes, it does.

**BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION**

**IN THE MATTER OF THE INVESTIGATION )  
 INTO WHETHER PONDEROSA TERRACE )  
 ESTATES WATER SYSTEM, INC. IS A )  
 PUBLIC UTILITY SUBJECT TO REGULA- )  
 TION BY THE IDAHO PUBLIC UTILITIES )  
 COMMISSION. )**

**CASE NO. GNR-W-01-01**

**NOTICE OF INVESTIGATION**

**ORDER NO. 28803**

The Idaho Public Utilities Commission (Commission) has received several complaints in response to a May 30, 2001 letter announcing a significant increase in rates by Ponderosa Terrace Estates Water System, Inc. (Ponderosa; Company). Ponderosa operates a water system located south of Sandpoint and east of the community of Sagle in Bonner County. There are approximately 20 full-time residences connected to the system and a total of approximately 90 properties within the area served by the water system. This system has been in place since approximately 1969. The current owner is Robaer Cobott.

Ponderosa Terrace Estates Water System, Inc. is an Idaho for profit corporation located at 2626 Wrenco Loop Road, Sandpoint, Idaho 83864 (telephone (208) 263-2720).

Initial inquiry leads Commission Staff to conclude that the Company's customers have no say regarding operation and management of the Company or the prices it charges for water. The Commission notes that Ponderosa Terrace Estates Water System, Inc. does not possess a Certificate of Public Convenience and Necessity to provide water service and operate as a public utility. Reference *Idaho Code* §§ 61-526, -527, -528. We find it reasonable to conduct an investigation pursuant to our statutory authority and jurisdiction under Title 61 of the Idaho Code, commonly known as Public Utilities Law, specifically *Idaho Code* §§ 61-612 and 61-501. The purpose of our investigation is to determine whether Ponderosa Terrace Estates Water System, Inc. is a water corporation as defined by *Idaho Code* §§ 61-124 and 61-125:

61-124 Water System—the term “water system” when used in this act includes all reservoirs, tunnels, shafts, dams, dikes, headgates, pipes, flumes, canals, structures and appliances, and all other real estate, fixtures and personal property, owned, controlled, operated, or managed in connection with or to facilitate the diversion, development, storage,

supply, distribution, sale, furnishing, carriage, apportionment or measurement of water for power, irrigation, reclamation or manufacturing, or for municipal, domestic or other beneficial use for hire....

61-125 Water Corporation—the term “water corporation” when used in this act includes every corporation or person, their lessees, trustees, receivers or trustees, appointed by any court whatsoever, owning, controlling, operating or managing any water system for compensation within this state.

and a public utility as defined by *Idaho Code* § 61-129:

61-129 Public Utility—the term “public utility” when used in this act includes every common carrier, pipeline corporation, gas corporation, electrical corporation, telephone corporation, **water corporation**, and wharfinger, as those terms are defined in this chapter and each thereof is hereby declared to be a public utility and to be subject to the jurisdiction, control, and regulation of the Commission and to the provisions of this act: provided, that the term “public utility” as used in this act shall cover cases both where the service is performed and a commodity delivered directly to the public or some portion thereof, and where the service is performed or the commodity delivered to any corporation or corporations, or any person or persons, who in turn, either directly or indirectly or mediately or immediately, performs the services or delivers such commodity to or for the public or some portion thereof.

In particular, this investigation will seek to establish answers to the following questions:

1. Whether Ponderosa Terrace Estates Water System, Inc. is a public utility and is engaged in selling water for compensation without having a Certificate of Convenience and Necessity from the Public Utilities Commission? Reference *Idaho Code* §§ 61-526, -527, -528, I.C. § 61-125.
2. Whether Ponderosa Terrace Estates Water System, Inc. is demanding unjust or unreasonable charges for its water service? Reference *Idaho Code* 61-301.
3. Whether Ponderosa Terrace Estates Water System, Inc. furnishes, provides and maintains service, instrumentalities, equipment and facilities as shall promote the safety and health of its patrons, employees and the public and as shall be in all respects adequate, efficient, just and reasonable? Reference *Idaho Code* 61-302.

4. Whether Ponderosa Terrace Estates Water System, Inc. has failed to file with the Commission tariff schedules showing all rates, charges and classifications collected or in force, or to be collected or in force, together with all rules, regulations, contracts, privileges and facilities which in any manner reflect or relate to rates, classifications or service? Reference *Idaho Code* § 61-305.

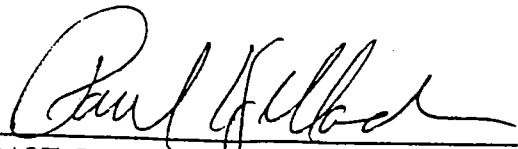
We direct the Company to address these questions by formal written answer in this case on or prior to **Wednesday, August 15, 2001**. If the Company answers (1) and (4) in the affirmative, or if our investigation reveals such, we will direct the Company to file for a Certificate of Public Convenience and Necessity (Reference IDAPA 31.01.01.111 Application for Certificates—Form and Contents) and will conduct an investigation into the adequacy of its service and the justness and reasonableness of its rates.

#### ORDER

In consideration of the foregoing, IT IS HEREBY ORDERED that Ponderosa Terrace Estates Water System, Inc. respond to the foregoing questions regarding compliance with Title 61 of the Idaho Code on or prior to August 15, 2001.

The Company is Further Ordered and directed to cooperate with the Commission Staff's investigation of this matter. Commission Staff is directed to issue production requests, written interrogatories or other forms of discovery as well as pursue its statutory right to examine and audit the records of Ponderosa Terrace Estates Water System, Inc. as they relate or pertain to the sale of water.

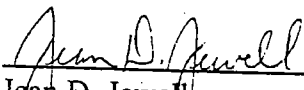
DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this  
31<sup>st</sup> day of July 2001.

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

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

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

ATTEST:

  
\_\_\_\_\_  
Jean D. Jewell  
Commission Secretary

vid/O:GNR-W-01-01\_sw

**BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION**

<b>IN THE MATTER OF THE INVESTIGATION )          INTO WHETHER PONDEROSA TERRACE )          ESTATES WATER SYSTEM, INC. IS A )          PUBLIC UTILITY SUBJECT TO REGULA- )          TION BY THE IDAHO PUBLIC UTILITIES )          COMMISSION. )</b>	<b>CASE NO. GNR-W-01-1</b>  <b>ORDER NO. 28845</b>
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The Idaho Public Utilities Commission (Commission) received several complaints from customers in response to a May 30, 2001 letter announcing a significant increase in rates and charges by Ponderosa Terrace Estates Water System, Inc. (Ponderosa; Company). Ponderosa is an Idaho for-profit corporation located at 2626 Wrenco Loop Road, Sandpoint, Idaho 83864 (Telephone (208) 263-2720).

Ponderosa operates a water system located south of Sandpoint and east of the community of Sagle in Bonner County. There are approximately 20 full-time residences connected to the system and a total of approximately 90 properties within the area served by the water system. This system has been in place since approximately 1969. The current owner is Robaer Cobott.

Following initial inquiry into this matter, the Commission Staff concluded that the Company's customers have no say regarding operation and management of the Company or the prices it charges for water. On July 31, 2001, the Commission issued a Notice of Investigation in Case No. GNR-W-01-01. In our Notice, we made the following findings:

- Ponderosa Terrace Estates Water System, Inc. does not possess a Certificate of Public Convenience and Necessity to provide water service and operate as a public utility. Reference *Idaho Code* §§ 61-526, -527, -528.
- We find it reasonable to conduct an investigation pursuant to our statutory authority and jurisdiction under Title 61 of the *Idaho Code*, commonly known as public utilities law, specifically *Idaho Code* §§ 61-612 and 61-501.
- The purpose of our investigation is to determine whether Ponderosa Terrace Estates Water System, Inc. is a water corporation as defined by *Idaho Code* §§ 61-124 and 61-125 and a public utility as defined by *Idaho Code* § 61-129.

• In particular, we noted that our investigation would seek to establish answers to the following questions:

1. Whether Ponderosa Terrace Estates Water System, Inc. is a public utility and is engaged in selling water for compensation without having a Certificate of Public Convenience and Necessity from the Public Utilities Commission? Reference *Idaho Code* §§ 61-125, -526, -527, -528.
2. Whether Ponderosa Terrace Estates Water System, Inc. is demanding unjust or unreasonable charges for its water service? Reference *Idaho Code* § 61-301.
3. Whether Ponderosa Terrace Estates Water System, Inc. furnishes, provides and maintains service, instrumentalities, equipment and facilities as shall promote the safety and health of its patrons, employees and the public and shall be in all respects adequate, efficient, just and reasonable? Reference *Idaho Code* § 61-302.
4. Whether Ponderosa Terrace Estates Water System, Inc. has failed to file with the Commission tariff schedules showing all rates, charges and classifications collected or in force, or to be collected or in force, together with all rules, regulations, contracts, privileges and facilities which in any manner reflect or relate to rates, classifications or service? Reference *Idaho Code* § 61-395.

The Commission directed the Company to address the questions posed by formal written answer prior to Wednesday, August 15, 2001. Pursuant to direction, the Commission received a letter response from Mr. Robaer Cobott, president of PTE Water System, Inc. Mr. Cobott responded to the Commission's questions as follows:

*Question 1*

Ponderosa Terrace Estates Water System is engaged in selling water for compensation and I don't think there ever was a Certificate of Convenience ever issued. Until I got the call from the Idaho Public Utilities Commission during July 2001, I had never heard of this Commission. This water system has been operating since 1969 (32 years). All of my contacts have been with DEQ in Coeur d'Alene. DEQ has controlled and instructed all parts of this water system. DEQ never once mentioned that there was a Idaho Public Utilities



Commission. I asked DEQ many times about the rate increase and for their help. Again, they never mentioned the Commission.

*Question 2*

I was told by DEQ that I had the right to increase the rates to get back the monies spent to bring the system up to the new standards enforced by DEQ. They told me that it was up to me what I charge.

*Question 3*

The system has operated and maintained under the watchful eyes of DEQ.

*Question 4*

Ponderosa Terrace Estates Water System, Inc. has failed to file with the Commission tariff schedules because until July 2001 it knew nothing of this Commission.

### COMMISSION FINDINGS

The Commission has reviewed the filings of record in Case No. GNR-W-01-01 including the Company's response to the questions posed by the Commission in the Company's Notice of Investigation. Based on the Company's response, we find that Ponderosa is operating in such manner as to fall within this Commission's jurisdiction. Reference *Idaho Code* §§ 61-124—Water Systems; 61-125—Water Corporation and 61-129—Public Utility. Of significance, we find that the Company's customers have no say regarding the operation and management of the Company or the prices it charges for water and related services.

Although DEQ may have been providing the Company with some informal guidance through the 32 years of its operation, we must note that this Commission is the State agency with statutory jurisdiction over the Company's water service, rates and charges.

Based on the filed responses of Ponderosa Terrace Estates Water System, Inc., this Commission finds it reasonable to direct the Company to file for a Certificate of Public Convenience and Necessity. Reference *Idaho Code* § 61-526; IDAPA 31.01.01.111. Along with its Certificate Application, the Company is also directed to file proposed tariffs for customer rates and charges with supporting documentation justifying the reasonableness of said rates and charges.

We further find it reasonable that Ponderosa Terrace Estates Water System, Inc. be required to adopt and implement the Commission's Consumer Relations Rules, the

