

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)	
COMMISSION REPORTING AND FISCAL)	ORDER NO. 35875
REQUIREMENTS)	
)	
)	

INTRODUCTION

The Idaho Public Utilities Commission (“Commission”) Staff (“Staff”) investigated Island Park Water Company (“Island Park” or “Company”) and Dorothy McCarty (“McCarty”) following Staff’s report that the Company failed to provide adequate or timely responses to Staff’s audit request and the allegations of improper customer billing, improper handling of customer complaints, threats of retaliation against customers, and failure to provide safe and reliable services—all in violation of *Idaho Code* §§ 61-301 and 61-302.

On June 14, 2023, Commission Order No. 35817 found that the Company failed to submit timely and complete responses to Audit Request (“AR”) Nos. 3, 4, 7, 9 and 10, and was subject to a penalty of \$2,000 for each violation, amounting to a penalty of \$10,000. The Commission also found the Company: (1) improperly handled customers’ complaints, amounting to a penalty of \$24,000; (2) improperly billed its customers, amounting to a penalty of \$144,000; (3) retaliated against customers, amounting to a penalty of \$46,000; and (4) failed to provide safe and reliable service to customers for each of the seven water systems, amounting to a penalty of \$210,000. The Commission also directed the Company to refund customers who were charged in excess of the tariff.¹

PETITION FOR RECONSIDERATION

On July 5, 2023, the Company petitioned the Commission to reconsider enforcement of Order No. 35817 to allow time to resolve matters between the Company and the Idaho Department of Environmental Quality (“DEQ”) (“Petition”). The Company argued the Commission’s Order

¹ The Company made several refunds on June 22, 2023. However, the Commission is concerned that additional customers are entitled to refunds. The Commission committed to prosecute “any additional substantiated occurrences of improper customer billing as allowed under Commission authorities.” Order No. 35817 at 24. The Commission directed IPWC to “cooperate with Staff’s ongoing audit of its billing practices by providing copies of customer bills, and to immediately cease and desist from billing in excess of its tariff.” *Id.*

functions as a “taking” and will render the Company insolvent. The Company’s Petition also raised concerns with fairness, insolvency, undercapitalization, and a heavy-handed approach from the Commission.

STAFF’S REPLY TO PETITION FOR RECONSIDERATION

On July 13, 2023, Staff filed a reply to the Company’s Petition. Staff argued the Commission should reject the Company’s Petition for failing to show that the Commission’s Order was *unreasonable, unlawful, erroneous, or not in conformity with the law* as required by Commission Rule of Procedure 331.01, IDAPA 31.01.01.331.01. Staff contended the true inequity in the matter has been to the customers who have been without safe and reliable water for months, or potentially years.

Staff’s reply also criticized Ms. McCarty for transferring potentially valuable properties from the Company to herself after the Commission had levied penalties against the Company and argued that the transfers were fraudulent. Staff argued Ms. McCarty should be held personally liable for the penalties because her self-dealings pierced the Company’s corporate veil.

Staff proposed delaying enforcement of the penalties levied in Order No. 35817 for a limited time if the Commission established a path forward requiring the Company to provide safe and reliable water service to its customers on an expedited basis or if the Company agrees to the transfer operation and management responsibilities—or the actual Company—to an individual or entity that can bring the water systems into compliance with the Commission’s rules and regulations.

COMMISSION FINDINGS AND DECISIONS

Island Park operates a “water system” as a “water corporation” as defined by *Idaho Code* §§ 61-124 and 61-125 and is a public utility subject to the jurisdiction of the Commission under *Idaho Code* § 61-129. The Company operates under Certificate of Public Convenience and Necessity No. 317. Island Park’s service area comprises seven separate water systems located in Fremont County, Idaho.

The Commission has the authority to grant or deny reconsideration pursuant to *Idaho Code* § 61-626(2). Reconsideration allows any interested person to bring to the Commission’s attention any question previously determined, and it affords the Commission an opportunity to rectify any mistakes or omissions. *Washington Water Power Co., v. Kootenai Environmental Alliance*, 99 Idaho 875, 879, 591 P.2d 122, 126 (1979). Commission Rule of Procedure 331.01 provides:

Petitions for reconsideration must specify (a) why the order or any issue decided in it is *unreasonable, unlawful, erroneous or not in conformity with the law*, and (b) the nature and quantity of evidence or argument the petitioner will offer if reconsideration is granted.

IDAPA 31.01.01.331.01 (emphasis added).

Any person may petition the Commission to clarify an order under Commission Rule of Procedure 325, IDAPA 31.01.01.325. A petition for clarification may be combined with a petition for reconsideration. *Id.*

During the pendency of this case before the Commission, the DEQ filed a request for preliminary injunction against the Company and Ms. McCarty, individually, in the Seventh Judicial District in Bonneville County. DEQ also requested a temporary restraining order against the Company. On July 13, 2023, the court granted DEQ's request for a temporary restraining order and set a show cause hearing for July 27, 2023, to determine whether the temporary restraining should not continue as a preliminary injunction pending the final determination of the case. On July 26, 2023, DEQ and the Company filed a joint stipulation that allows the DEQ access to the Company's water systems for sampling purposes and gives the DEQ responsibility for providing public notice to customers. The Company agreed it would not contest being placed into receivership, which would be done in coordination with the Commission. The probable receivership of the Company represents a significant development in the matter and could impact future proceedings before the Commission and any enforcement actions the Commission pursues against the Company, and Ms. McCarty, individually.

With respect to the Company's arguments on reconsideration, the Commission is not persuaded. The Company's discussions with DEQ do not demonstrate that Order No. 35817 was unreasonable, unlawful, erroneous, or not in conformity with the law as required by IDAPA 31.01.01.331.01. The Company agreed that DEQ disallowed their systems from March 15, 2023, to March 29, 2023, and the Commission's Order is further supported by substantial and competent evidence on the record, including the testimony from customers about the Company's failures to provide safe and reliable water, the failure to properly handle customer complaints, the improper billing practices, retaliation against customers, and the failures to respond to Staff's audit requests.

Further, the Commission is not persuaded that alleged insolvency that could result from the penalties assessed in Order No. 35817 demonstrates the Commission's Order was unreasonable, unlawful, erroneous, or not in conformity with the law. The penalties were

appropriate under the factual circumstances and were an appropriate exercise of the Commission's statutory authority under Idaho Code Title 61. *Idaho Code* §§ 61-701 *et seq.*

The Commission is also not persuaded that Ms. McCarty's personal circumstances show that the Commission's Order No. 35817 was unreasonable, unlawful, erroneous, or not in conformity with the law as required by Commission Rule of Procedure 331.01. The health of the Company's owner should not impact the service received by the customers. Ms. McCarty is responsible, as the owner of the Company, to arrange for a competent manager and operator in the event she is unable to perform those duties. The record clearly shows she is and has been unable to operate the system according to the standards set by this Commission and the DEQ. We are not convinced at this time that her health issues should justify our reconsideration of Order No. 35817. The Commission is also not persuaded that the Company's affidavits, and arguments on restrictive covenants, and water permit usages, were overlooked. The Commission considered and weighed these arguments and found the Company's position unpersuasive. To the extent the covenants of the various subdivisions include restrictions, it is not this Commission's prerogative to determine because we set rates and establish tariffs for, in this case, the water service to those customers. It is beyond our authority to interpret covenants that apply to homeowners who also happen to be customers of the Company. Therefore, the Commission denies the Company's request for reconsideration.

As discussed above, the Commission notes that the Company has stipulated with DEQ to being operated under a receivership. If a receivership is established, the Commission could pursue enforcement of the penalties assessed in Order No. 35817 through the receiver, and against Ms. McCarty, individually, in the district court proceeding. The Commission maintains its statutory authority to enforce the penalties against the Company, and pursue its claim against Ms. McCarty, in her individual capacity. The Commission also has authority to reduce, suspend, or compromise penalties to protect the public interest. *See Idaho Code* § 61-712B. Based on Staff's arguments in its reply to the Company's Petition and the ongoing proceedings between DEQ and the Company, the Commission finds it reasonable to hold the penalties assessed by Order No. 35817 in abeyance, pending further proceedings in the District Court and the potential of establishing a receiver to operate the Company before a transaction occurs. Therefore, Commission grants Staff's request to delay enforcement of the penalties levied against the Company pending the outcome of the district court proceeding.

ORDER

IT IS HEREBY ORDERED that the Company's Petition is denied.

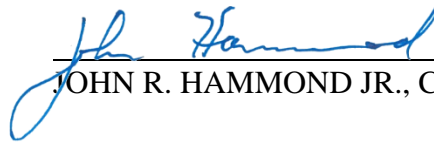
IT IS FURTHER ORDERED that Staff's request to delay enforcement of the penalties is granted.

THIS IS A FINAL ORDER DENYING RECONSIDERATION. Any party aggrieved by this Order or other final or interlocutory Orders previously issued in this case may appeal to the Supreme Court of Idaho within forty-two (42) days pursuant to the Public Utilities Law and the Idaho Appellate Rules. *Idaho Code* § 61-627; I.A.R. 14.

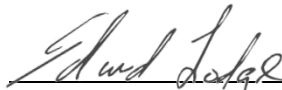
DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 2nd day of August 2023.



ERIC ANDERSON, PRESIDENT

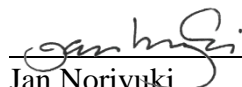


JOHN R. HAMMOND JR., COMMISSIONER



EDWARD LODGE, COMMISSIONER

ATTEST:



Jan Noriyuki
Commission Secretary

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