

**BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION**

<b>IN THE MATTER OF SUNBEAM WATER</b>	)	<b>CASE NO. SNB-W-22-01</b>
<b>COMPANY’S FAILURE TO COMPLY WITH</b>	)	
<b>IDAHO PUBLIC UTILITIES COMMISSION</b>	)	<b>ORDER NO. 35680</b>
<b>REPORTING AND FISCAL</b>	)	
<b>REQUIREMENTS</b>	)	

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This matter came before the Idaho Public Utilities Commission (“Commission”) on the Commission Staff’s (“Staff”) request to order Sunbeam Water (“Sunbeam” or “Company”) to appear and show cause why the Commission should not impose penalties for the Company’s continued, willful violations of its requirements under state law and the Commission’s rules. These violations include failing to submit required annual reporting and fiscal documents to the Commission. Specifically, the Company failed to submit five years of Annual Reports including income statements beginning with 2017 through 2022, failed to file its annual Gross Intrastate Operating Revenue (“GIOR”) reports for years 2017 through 2021, and failed to pay several years of regulatory fees, with interest, as required by *Idaho Code* §§ 61-1001 through 61-1005. *See* Exhibit 1, Affidavit of Nancy Ashcraft attached to Staff’s November 22, 2022, Decision Memorandum.<sup>1</sup>

On January 5, 2022, the Commission ordered a Show Cause Hearing (“SCH”). No Company representative attended the SCH. As described below, the Commission now imposes penalties and orders that several remedial actions be taken to ensure compliance.

Having reviewed the record in this case, we issue this Order denying the Company’s Petition, directing the Company to file its Annual Reports for certain years, directing Staff to audit the Company’s financials, directing Staff to hold a Public Workshop for Sunbeam customers, and imposing penalties against the Company.

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<sup>1</sup> The Company filed its 2017 through 2021 annual GIOR statements on January 4, 2023. The 2022 GIOR will not be due until April 15, 2023. *Idaho Code* § 61-405.

## BACKGROUND

On August 24, 2022, Staff communicated with the Company's General Manager, Michael Parrish ("Mr. Parrish"), through email<sup>2</sup> and scheduled a conference call with him to discuss how the Company might come into compliance with the Commission's requirements.

On August 25, 2022, Staff conducted a conference call with Mr. Parrish. Some of what was discussed on this call was outlined in a subsequent letter from Staff. *Id.* at Exhibit 2. During the call, Staff discussed how neither the Company nor its preceding entity (Sunbeam Water Company, Inc.) had filed appropriate financial statements or statements that depict the Company's GIOR for multiple years. Staff also heard Mr. Parrish's concerns about coming into compliance with the Commission's rules and regulations.

Following the August 25, 2022, call, several written communications were sent to Mr. Parrish. On August 30, 2022, Staff emailed Mr. Parrish, a detailed account of which documents and fees the Commission needed from Mr. Parrish. Staff's email also provided a step-by-step process (including hyperlinks) illustrating what the Company needed to do to become compliant with the Commission's requirements. Staff's August 30, 2022, email also contained six relevant attachments. *Id.* at Exhibit 3.<sup>3</sup>

On September 1, 2022, Staff emailed, and sent via certified mail, the letter referenced above as Exhibit 2. The letter reiterated many of the same things as the August 30, 2022, email in addition to ways that Mr. Parrish might bring the Company into regulatory compliance.

Since sending the September 1, 2022, letter, Staff continued to email Mr. Parrish reminders of his need to comply with the Commission's regulatory requirements. More than one of these emails included the instructions on becoming compliant included in Exhibit 3.<sup>4</sup>

On December 9, 2022, pursuant to Staff's recommendation, the Commission issued a Notice of Hearing and Order to Show Cause requiring Mr. Parrish to appear physically before the Commission on January 5, 2023, and explain why he should not be required to immediately

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<sup>2</sup> All of Staff's subsequent emails to Mr. Parrish were sent to the address that Mr. Parrish had responded from to coordinate the call.

<sup>3</sup> These communications show that (1) the Company had the direct correspondence from the Commission telling the Company what was expected of it, (2) the Company had step-by-step instructions that illustrated how the Company could come into compliance, (3) that the Company had the ability to correspond with Staff should the Company have wished for additional help, and (4) that the Company had more than four months to utilize all of this information before the SCH.

<sup>4</sup> Staff emailed Mr. Parrish on September 26, 2022, October 11, 2022, and November 1, 2022, asking for documents to ensure compliance with Commission requirements.

provide the Company's required documentation and why the Commission should not impose a penalty of \$2,000 a day for non-compliance with filing requirements. Mr. Parrish was served via certified mail on December 19, 2022. Order No. 35619.

On January 3, 2023, Staff communicated telephonically with Mr. Parrish. Affidavit of Travis Culbertson, at p. 2, ¶ 7. During this phone call, Mr. Parrish informed Staff that he had completed the requested GIOR's. (A draft of which Mr. Parrish sent to Staff after the phone call via email.) *Id.* Mr. Parrish's Counsel, Craig Parrish ("Counsel"), filed a motion to continue ("Petition") the SCH. Neither Mr. Parrish nor his Counsel attended the SCH on January 5, 2023.

### **JURISDICTION**

Sunbeam provides water service to the Garden Grove Estates Subdivision in Power County, Idaho. The Company is a water corporation operating a water system as defined by *Idaho Code* §§ 61-124 and 61-125. As such, the Company is a public utility subject to the jurisdiction of the Commission. *Idaho Code* § 61-129. The Commission has jurisdiction over Sunbeam and the issues in this case under the Public Utilities Law, *Idaho Code* §§ 61-101 *et seq.*, including *Idaho Code* § 61-501 (vesting the Commission with the "power and jurisdiction to supervise and regulate every public utility in the state and to do all things necessary to carry out the spirit and intent of" the Public Utilities Law), and *Idaho Code* § 61-701 *et seq.* (directing the Commission as to enforcement, penalties, and interpretation of Public Utilities Law).

#### **1. *Idaho Code* §§ 61-401 and 61-406**

*Idaho Code* § 61-401 states, "[e]very public utility shall furnish to the commission, in such form and such detail as the commission shall prescribe, all tabulations, computations and all other information required by it to carry into effect any of the provisions of this act and shall make answers to the best of their knowledge, to all questions submitted by the commission." Further, *Idaho Code* § 61-406 states, "[e]very public utility shall obey and comply with each and every requirement of every order, decision, rule, or regulation made or prescribed by the commission in the matters herein specified, and shall do everything necessary or proper in order to secure compliance with and observance of every such order, decision, direction, rule, or regulation by all of its officers, agents and employees."

As outlined above and detailed in Exhibit A the Company has repeatedly failed to meet its statutory duties and violated the Commission's rules and regulations by failing to timely file its annual reports and failing to regularly and fully pay its utility assessments on time.

**2. Idaho Code § 61-1001**

*Idaho Code* § 61-1001 requires the Company to pay the Commission an annual regulatory fee based on its annual verified return. The Company failed to file timely annual verified returns beginning in 2017 and going through the available material for 2022. Each failure to file creates a distinct and unique cause of action. *Idaho Code* § 61-707. Also, the Company has failed to timely fully pay its annual regulatory fee for several years, as detailed in Exhibit A. The Commission assessed \$50 per year (the minimum regulatory fee the Commission may assess) because Staff could not calculate an accurate assessment amount due to the Company's failure to submit annual verified returns. This amount could be adjusted once Staff obtains copies of Sunbeam's verified returns based upon the information contained therein.

**3. Idaho Code §§ 61-706 and 61-707**

The Company may be liable for civil penalties for violations of the above-referenced statutes. Specifically, *Idaho Code* § 61-706 states:

Any public utility which violates or fails to comply with any provisions of the constitution of this state or of this act, or which fails, omits or neglects to obey, observe or comply with any order, decision, decree, rule, direction, demand or requirement or any part or provision thereof, of the commission, under this act, in a case in which a penalty has not hereinbefore been provided for, such public utility is subject to a penalty of not more than \$2,000 for each and every offense.

Furthermore, *Idaho Code* § 61-707 states:

Every violation of the provisions of this act or of any order, decision, decree, rule, direction, demand, or requirement of the commission, under the provisions of this act, or any part or portion thereof, by any public utility, corporation or person is a separate and distinct offense, and in case of a continuing violation each day's continuance thereof shall be and be deemed to be a separate and distinct offense.

Accordingly, failure to comply with its statutorily enumerated duties exposes Sunbeam to up to \$2,000 *per day* for *each* of Sunbeam's numerous late filings. A utility's failure to comply with a Commission order is also a violation. The Commission can also impose a penalty on the Company of \$2,000 for failure to comply with Order No. 35619. The exact amount of any penalty is within the discretion of the Commission as discussed above.

**STAFF RECOMMENDATION**

Mr. Parrish sent his GIORs for the requested years to the Commission Secretary on January 4, 2023. Mr. Parrish worked with Staff to ensure that his GIOR forms provide the statutorily required information. Accordingly, the reasons for the Commission to penalize the Company for

failing to submit its GIOR reports have been mitigated according to Staff. From the unverified documents provided by Mr. Parrish, Staff calculated that the Company has averaged a net loss of \$5,288 per year over the last five years. Culbertson Affidavit, at p. 2, ¶ 10. While the Company provided some of the raw data required in the annual reports, it failed to file complete annual reports. At \$2,000 a day per violation<sup>5</sup> related to the annual reports alone, Staff determined that the Company could face the imposition of a significant financial penalty as a result.<sup>6</sup>

Staff recommended that the Commission order an audit of Sunbeam so it can verify the information submitted, visit the service area, and schedule a public workshop with Sunbeam's customers. *Id.* at ¶ 12. To Complete this audit, Staff needs the following: “[a] list of water system assets, [the relevant] depreciation schedule, installation date[s], well meter reading data (if applicable) [a] customer list, and a copy of disconnection notice(s).” *Id.* at ¶ 9. Mr. Parrish has stated that Sunbeam has no depreciable assets. *Id.*

### **COMMISSION FINDINGS AND DISCUSSION**

The Commission finds it necessary to audit the Company's financial records. To ensure Staff can complete its audit in a timely fashion, the Commission orders Sunbeam to submit its completed annual reports, and all associated fees, within 30 days of the service date of this Order. Sunbeam shall also timely respond to requests from Staff relevant to the audit.

The Commission finds it necessary for Staff to physically visit the service area and inspect the premises; this will also allow the Staff to hold a public workshop with customers within the service area. Staff should visit the service area at least once and may conduct follow up visits if necessary. Sunbeam has expressed concerns about coming into compliance with its statutory mandates and operating in a financially sustainable manner in the future. At least one inspection and public workshop will allow the Commission to develop an understanding of Sunbeam's situation to best assist Sunbeam going forward. Staff should report to the Commission results from its inspection.

The Commission finds that the imposition of penalties is necessary in this case. For months Staff tried repeatedly to contact Mr. Parrish using contact information that Mr. Parrish had responded from previously. The Commission then ordered a SCH to take place on January 5, 2023. Physically appearing before the Commission to explain the Company's failure to comply with the

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<sup>5</sup> A violation would consist of each late day past April 15 of each year for each report. *Idaho Code* § 61-405.

<sup>6</sup> For example, if the maximum penalty of \$2,000 per day was imposed by the Commission for each ongoing violation of the Commission's authorities committed by the Company such penalties could be in the millions of dollars.

Commission's regulatory authority was mandatory. *See* Order No. 35619. When a utility fails to meet its statutory duty for years the imposition of penalties is appropriate. The SCH was the Company's opportunity to provide the Commission with something, on the record, that the Commission could potentially use to justify *not* penalizing the Company for ignoring Commission mandates. The Company did not attend the SCH. Further, the Company's last-minute Request to Continue the SCH did not present sufficient justification to reschedule the SCH and does not dissuade this Commission from imposing penalties for noncompliance with its regulatory authorities.

As discussed above, the record provides numerous reasons that support the imposition of penalties; despite the Company being offered an opportunity to provide its own rationale on the record. Instead, we have a record that provides no convincing reason why penalties should not be imposed. Therefore, pursuant to *Idaho Code* §§ 61-706 and 61-707, the Commission imposes a penalty of \$2,000 on the Company for its failure to file its 2021 annual report by April 16, 2022.<sup>7</sup> The Commission also finds it appropriate to impose an additional penalty of \$2,000 upon the Company for its failure to physically attend the SCH as directed in Order No. 35619. The Commission requires the documents previously requested to fulfill the Commission's statutory mandates. The Company is reminded that any continuing failure to comply with Commission authorities and orders will lead to the imposition of additional penalties on the Company.

### **COMMISSION DECISION**

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

IT IS FURTHER ORDERED that within 30 days of the issuance of this Order, the Company shall provide the Commission Secretary with its complete annual reports and associated fees for 2017, 2018, 2019, 2020, and 2021.

IT IS FURTHER ORDERED that Staff shall audit the Company's financials. The Company will respond in a timely manner should Staff request any necessary information or documentation necessary to complete this audit.

IT IS FURTHER ORDERED that Staff shall visit the Company's service area to inspect the premises and plant and hold a public workshop. Staff may conduct subsequent visits to the extent that it deems necessary.

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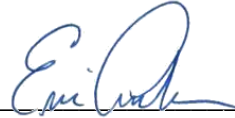
<sup>7</sup> The Commission is penalizing the Company for one day of its failure to submit its 2021 annual report. This penalty does not resolve or negate the Company's need to submit its annual reports. Likewise, this penalty does not limit the Commission's ability to impose further penalties in the future for the remaining days that the Company failed to timely submit its annual reports.

IT IS FURTHER ORDERED that the Company shall pay a penalty of \$2,000 for failing to submit its 2021 annual report by April 16, 2022. The Company shall also pay a penalty of \$2,000 for failing to attend the January 5, 2023, SCH as ordered by the Commission. Order No. 35619. The Company shall have 45 days from the issuance of this Order to pay these penalties.

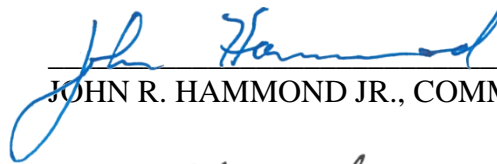
IT IS FURTHER ORDERED that parties comply with Order No. 35375, issued April 21, 2022. Generally, all pleadings should be filed with the Commission electronically and will be deemed timely filed when received by the Commission Secretary. *See* Rule 14.02. Service between parties should continue to be accomplished electronically when possible. However, voluminous discovery-related documents may be filed and served on CD-ROM or a USB flash drive.

THIS IS A FINAL ORDER. Any person interested in this Order may petition for reconsideration within twenty-one (21) days of the service date of this Order with regard to any matter decided in this Order. Within seven (7) days after any person has petitioned for reconsideration, any other person may cross-petition for reconsideration. *See Idaho Code* § 61-626.

DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 16<sup>th</sup> day of February 2023.



ERIC ANDERSON, PRESIDENT

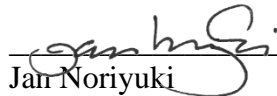


JOHN R. HAMMOND JR., COMMISSIONER



EDWARD LODGE, COMMISSIONER

ATTEST:



Jan Noriyuki  
Commission Secretary

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