

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF SUNBEAM WATER)	CASE NO. SNB-W-22-01
COMPANY’S FAILURE TO COMPLY WITH)	
IDAHO PUBLIC UTILITIES COMMISSION)	ORDER NO. 36102
REPORTING AND FISCAL)	
REQUIREMENTS)	

This matter came before the Idaho Public Utilities Commission (“Commission”) on the Commission Staff’s (“Staff”) request to order Sunbeam Water (“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.

On February 16, 2023, after the Company failed to appear at the Show Cause Hearing (“Hearing”) scheduled for January 5, 2023, the Commission issued Order No. 35680 imposing penalties and ordering that several remedial actions be taken to ensure compliance. Order No. 35680 gave the Company (1) 30 days to submit its annual reports and pay its associated assessment fees;¹ and (2) 45 days to pay the penalties assessed in that Order.

On March 28, 2023, the Company petitioned for reconsideration of Order No. 35680. On April 18, 2023, the Company’s petition was denied. Order No. 35749.

On April 25, 2023, Staff submitted audit requests to the Company—with responses due by May 16, 2023. The Company provided the required documentation.

On May 30, 2023, the Commission issued a Notice of Public Workshop which took place on June 28, 2023. Prior to the workshop, Staff inspected the premises and the plant—as required by Order No. 35680. *See* Order No. 35797.

On July 31, 2023, the Company submitted a Second Motion to Reconsider Penalties (“Petition”) and an Affidavit in Support of the Second Motion to Reconsider Penalties (“Affidavit”). On August 28, 2023, the Commission held the Company’s penalties in abeyance while reiterating the requirement for the Company to pay its statutorily mandated assessment fees

¹ The Company filed its 2017 through 2021 annual Gross Intrastate Operating Revenue (“GIOR”) statements on January 4, 2023. While not explicitly ordered in Order No. 35680, the Company also met its statutory duty and filed its 2022 GIOR in a timely manner. The Company likewise filed its 2017 through 2022 annual reports on March 17, 2023.

and associated interest. Order No. 35905 at 5. The Company subsequently paid the total amount due, including the required interest, for its late assessment fees.

On February 2, 2024, Staff filed a report that outlined the case history and detailed the Staff’s assessment of the Company’s compliance with Commission mandates, system condition, and financial situation. Staff noted that an increase in rates through a general rate case may be needed to ensure adequate operation of the water system.

The sole unresolved issue for the Commission is the determination of the Company’s penalties—which are held in abeyance per Order No. 35905.

LEGAL STANDARDS

a. Altering an Order After Reconsideration

Commission Rule of Procedure 332 provides that the “Commission may grant reconsideration upon petition of any interested person or upon its own motion.” IDAPA 31.01.01.332. “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” (emphasis added). IDAPA 31.01.01.331.01. “Grounds for, or issues on reconsideration not supported by specific explanation may be dismissed.” IDAPA 31.01.01.332.

Idaho Code § 61-624 also allows for the Commission to rescind, alter, or amend a decision “at any time” provided those affected have had an opportunity to be heard. Citing this statute, Commission Rule of Procedure 326 states that “[a]ny person may petition [the Commission] to rescind, alter, or amend a final order under *Idaho Code* § 61-624” if that party can state their circumstances have changed, new information has become available, or show that “other good and sufficient reasons exist” supports changing a previous order (emphasis added). IDAPA 31.01.01.326.01(b). Commission Rule of Procedure 326 likewise allows the Commission to change an order on its own motion if all interested parties have a chance to weigh on the matter—whether such occurs through an evidentiary hearing or written filings. IDAPA 31.01.01.326.02.

b. Determination of the Company’s Penalties

The Commission has broad discretion to grant or refuse the Company’s request to waive the penalties previously imposed in this case. The penalties were imposed in the Commission’s February 16, 2023, Final Order. *See* Order No. 35680. That Order gave the Company 21 days to

petition for reconsideration.² However, *Idaho Code* § 61-626(3) gives the Commission wide latitude to change an order—even after the reconsideration period—if the Commission determines that conditions justify changing a previous order.³ Therefore, granting or denying the Company’s requested relief relative to the Company’s penalties is within the Commission’s powers, but is not required.

COMMISSION FINDINGS AND DISCUSSION

The Commission has jurisdiction over the Company and the issues in this case under Title 61 of the Idaho Code. Specifically, the Commission regulates “public utilities,” including “water corporations” that serve the public or some portion thereof for compensation. *See Idaho Code* §§ 61-125, -129, and -501.

The Commission has broad discretion to either grant or deny this petition if the Commission determines that any portion of Order No. 35680 “should be changed.” *Idaho Code* § 61-626(3). Accordingly, the Commission believes that the factual setting of this specific case warrants a waiver of the Company’s penalties imposed by Commission Order No. 35680—where we assessed penalties for the Company’s failure to attend the Show Cause Hearing and its failure related to timely reporting. The Commission agrees with Staff’s position that the Company has complied with the Commission’s requirements imposed in Order No. 35680. We find that the Company cooperated with Commission Staff in coordinating an on-site visit and public workshop as required by the Commission in Order No. 35680. We also find that the Company supplied the information necessary for Staff to audit the Company’s financials. The Company’s GIOR reports from 2017 onward have been filed and are a part of the record for this case. While the Company has had issues making timely filings, the Company appears to have a better understanding of Commission requirements and has been increasingly responsive. For example, the Company filed its 2022 GIOR statement and annual report on time without a Commission order specifically directing it to do so. Likewise, it is not lost on the Commission that the Company appears to have operated at a net loss averaging \$5,288 annually for the last five years. Culbertson Affidavit at 2.

The Company previously requested that its penalties be waived. *Idaho Code* §§ 61-624, 61-626(3) and IDAPA 31.01.01.326 give the Commission wide latitude to waive the Company’s

² The Company petitioned twice for reconsideration. Despite denying the Company’s first petition the Commission placed the penalties in abeyance in Order No. 35905.

³ *See also* Commission Rules of Procedure 325 and 326. IDAPA 31.01.01.325 and .326.

penalties if it so chooses. While reiterating the need for the Company to pay its assessment fees and accrued interest, Order No. 35905 conditionally held the Company's penalties in abeyance "in recognition of [the Company's] efforts" to comply with Commission mandates to that point. Order No. 35905 at 4. The Commission further stated that the determination regarding the Company's unpaid assessment fees and associated interest would be determined by a future Commission Order. *Id.* at 5. The Company has paid its assessment fees and all accrued interest.

While the Commission is here approving a waiver, we note with concern that no Company representative attended the Commission's Hearing on January 5, 2023. This was a serious and avoidable error by the Company. The Notice of Hearing and Order to Show Cause—issued on December 9, 2022—stated that the Hearing would be held "in the Commission's Hearing Room" in Boise. Order No. 35619 at 5. The Company's absence at the Hearing was unacceptable. The Company's last-minute January 4, 2023, request for a change in the proceedings—which was not granted—did not redeem the Company's absence. For these reasons, the Commission was hesitant to waive the Company's penalties even after the Company had come into compliance; likewise, the Commission warns other public utilities not to depend on the waiver being granted in this narrow instance.

The Commission believes it is appropriate to waive the Company's penalties for specific reasons that are unique to this case. Of note, the Company is operating at a documented average net loss exceeding five thousand dollars per year. This is not to say that any utility operating at a loss will receive a waiver of penalties from the Commission. However, the Commission notes that, despite noteworthy losses in operating a small system, the Company has since worked with Staff and complied with Commission mandates to pay its assessment fees and interest as described above and illustrated an ability to meet its legal standards on its own initiative. The Company has also communicated with Staff regarding Staff's suggestions for the system.

Ultimately, the Commission's responsibility is to protect the citizens of the State of Idaho by ensuring the utilities it regulates deliver safe and reliable utilities at fair, just, and reasonable prices. *Idaho Code* § 61-302. While there was no reasonable excuse for the absence of a Company representative at the Hearing, the Company's subsequent actions gives this Commission optimism that the Company will continue to seek to appropriately serve its customers and comply without the need for punitive actions by the Commission. The Commission hopes that waiving the penalties assessed in Order No. 35680 will allow the Company to turn its attention to the current needs of

the system and ensure safe and reliable service to the Company's customers. Based on the Company's more recent efforts to come into compliance and work with Staff, we believe the circumstances have changed sufficiently from when we issued Order No. 35680. The Company's penalties are waived accordingly.

COMMISSION DECISION

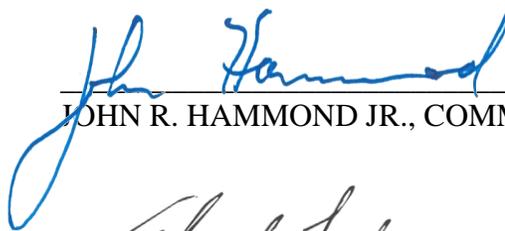
IT IS HEREBY ORDERED that the penalties imposed upon the Company in Order No. 35680 are hereby waived pursuant to *Idaho Code* §§ 61-624, 61-626(3) and IDAPA 31.01.01.326.

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 about 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. *Idaho Code* § 61-626.

DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 29th day of February 2024.



ERIC ANDERSON, PRESIDENT



JOHN R. HAMMOND JR., COMMISSIONER



EDWARD LODGE, COMMISSIONER

ATTEST:



Monica Barrios-Sanchez
Commission Secretary

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