

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE EAGLE WATER)
COMPANY'S REQUEST FOR A) CASE NO. EAG-W-05-2
TEMPORARY SURCHARGE)

) ORDER NO. 29969

On October 27, 2005, the Commission issued Order No. 29903 authorizing Eagle Water Company to implement a temporary rate surcharge. The Commission allowed Eagle Water to recover \$85,395 in engineering, accounting and legal expenses but reserved judgment on the Company's request to recover an additional \$40,027 expended to replace an 8-inch water main. The Commission ordered Eagle Water to submit additional information to substantiate recovery of this latter amount. Order No. 29903 at 7-8.

The Company submitted its supplemental information on November 25, 2005. Based upon our review of the information submitted by the Company, the Commission authorizes the Company to recover \$2,511 of the \$40,027. The Commission determines that Eagle Water did not adequately demonstrate that the balance of its replacement costs were reasonable.

BACKGROUND

A. Low Water Pressure

Eagle Water serves more than 2,500 customers in and around the City of Eagle. Low water pressure has been a recurring problem for Eagle Water and particularly its customers located in the Eagle Springs Estates subdivision. The Eagle Springs subdivision is generally located on the east side of Horseshoe Bend Road (Old Highway 55) and north of Hill Road. During the last six years, there have been several causes of low water pressure in the system. In July 2000, a well pump failed resulting in low water pressure, especially for customers in the Eagle Springs subdivision. The Company repaired the well pump and installed a separate "booster" pump to primarily serve Eagle Springs. Order No. 29903 at 1, 28513 at 1-2. The 12-inch mainline that supplied the booster pump is in a "temporary easement" located in a gravel pit to the west of the booster.

In 2004 the 12-inch mainline serving the booster pump was "undermined" when the gravel pit operator "exposed the line while digging into the north bank of [the] gravel pit." Order No. 29903 at 1. To prevent a catastrophic loss of service, Eagle Water shut off the 12-inch mainline

serving the booster pump. Because gravel operations were continuing, Eagle Water then constructed a new 8-inch line to supply the booster pump. Eagle Water Exh. 1. The new 8-inch mainline did not traverse the gravel pit. Order No. 29903 at 2.

In the summer 2005, customers in the Eagle Springs subdivision again experienced poor water pressure. The Commission and the Idaho Department of Environmental Quality (DEQ) received numerous complaints regarding the lack of pressure from customers at the highest elevations of Eagle Springs and the Staff of the nearby Veterans Cemetery. Eagle Springs' customers complained that they were unable to flush toilets, take showers, wash their hands, operate their dishwashers or irrigate their yards. Order No. 29840 at 1. Based upon the customer complaints, Commission Staff requested that Eagle Water monitor and report water pressure in its system serving the highest elevation of Eagle Springs.

B. Procedural History

On August 3, 2005, the Commission issued an emergency Order directing Eagle Water to "use all deliberate speed" to increase the deficient water pressure in the Eagle Springs subdivision. Order No. 29840 observed that the Company's monitoring reports showed that water pressure at times was below DEQ standards. This Order also directed Eagle Water to file a surcharge application to recover the costs of: (1) the immediate system improvements to correct the low-pressure condition; (2) preparing a comprehensive engineering report analyzing the Company's existing system and future demand; and (3) the legal, accounting and engineering expenses incurred in the preparation of the surcharge application. Order No. 29840 at 3.

On August 24, 2005, Eagle Water filed its Surcharge Application. In its Application, the Company maintained that it had alleviated the low-pressure problems by replacing the 8-inch line serving the booster with a 12-inch mainline across the gravel pit. The Company sought to recover \$125,422 broken down into the following areas.

Cost Item	Amount
Install 12-inch line to replace 8-inch line	\$ 40,027 ¹
Prepare engineering report	\$ 79,895
Legal, accounting and engineering expenses	<u>\$ 5,500</u>
TOTAL	\$125,422

Order No. 29903 at 2.

¹ The \$40,027 includes: \$4,334 for labor; \$7,324 in equipment; \$18,388 for materials; \$2,511 in legal expenses; and \$7,470 for engineering. Exh. 2.

Although the Commission allowed Eagle Water to recover the costs for the engineering report, legal and accounting expenses, the Commission was not persuaded that recovery of the \$40,027 for replacing the 8-inch mainline was reasonable. Order No. 29903 at 7. The Order questioned the placement of utility infrastructure in temporary easements “and whether other entities might be liable for undermining the 12-inch line” that serves the booster pump. *Id.* The Order stated that

Eagle Water shall file a report addressing at a minimum: (1) the reasonableness of using a temporary easement for a 12-inch mainline; (2) whether the easement agreement provided for adequate notification regarding gravel operations which might affect the mainline; (3) what is the basis for the \$2,511 in legal costs; and (4) whether [Eagle Water] has adequately explored seeking recovery of damages to the mainline from other parties.

Id. (emphasis added).

EAGLE WATER’S RESPONSE AND COMMISSION FINDINGS

On November 28, 2005, Eagle Water filed its report responding to the Commission’s Order. Attached to the two-page response was a copy of the temporary easement executed in February 2000 when the initial 12-inch line was installed in the gravel pit. The report also contained an invoice supporting the legal fees and a diagram showing the location of the booster pump.

1. The Reasonableness of Using a Temporary Easement. Eagle Water asserted that it was reasonable to use a temporary easement because it was “the most cost-effective route . . . to construct the east-west mainline. . . .” Eagle Water Response at 1. The Company acknowledged that the 2000 easement was only temporary “until the gravel in that portion of [the] gravel pit could be mined, at which time a permanent easement was to be executed.” *Id.* Because the easement contained a 60-day notice provision, Eagle Water claimed that this would be plenty of time “to relocate its 12-inch mainline in the event the gravel in that portion of the gravel pit needed to be mined.” *Id.*

Commission Findings: Based upon our review of the Company’s response, we are not persuaded that placing a major water line in a temporary easement² is reasonable in this instance for

² An “easement” is the right to use land of another for a specific purpose and passes with the title to the property. A “license” is a permissive use of land by the owner that is revocable or expires upon the death of either party. *Rowan v. Riley*, 139 Idaho 49, 72 P.3d 889 (2003).

three reasons. First, the Company claims that the temporary easement was “the most cost-effective route” but did not provide any supporting detail why this was the most cost-effective route. The response offers no explanation beyond the conclusory statement. The Company’s response does not indicate what other routes were explored and why this particular route was chosen. Moreover, the Company did not disclose and the easement document does not reveal the “consideration” that Eagle Water gave to obtain the easement. Consequently, there is no analysis of the costs of obtaining a permanent easement versus the use of this temporary easement.

Second, Eagle Water’s response fails to address the underlying issue: i.e., is it reasonable and prudent to put a major water line in a temporary easement? Eagle Water apparently relies upon the 60-day notice provision that would “allow Eagle Water plenty of time to relocate its 12-inch mainline in the event that the gravel in that portion of the gravel pit needed to be mined.” Apparently, Eagle Water anticipated that the line in the gravel pit might have to be relocated. As demonstrated by the facts in this case, it is unreasonable to use a temporary easement where there is a real possibility that the mainline would have to be moved.

Finally, there is the potential cost to ratepayers. As indicated here, relocating a major water line is an expensive undertaking. There is the initial cost of installing the 12-inch line in the gravel pit in 2000, then the cost of installing a new 8-inch line in an entirely different location, and finally the replacement cost of installing a 12-inch line back in the gravel pit in 2005. We find it is unreasonable for ratepayers to potentially be responsible for three installations. We remain unconvinced by Eagle Water’s response that using a temporary easement in this case was reasonable.

2. Adequate Notification. Eagle Water states that the 60-day notice provision provides “plenty of time to relocate” the line if gravel operations adversely affected the mainline.

Commission Findings: The 60-day notice provision is contained in Section 5 of the easement document. This section entitled “Termination” provides that the temporary easement “may be terminated by [the gravel pit] upon sixty (60) days written notice to [Eagle Water]. In such an event, [Eagle Water] shall within a reasonable time after such termination, remove all water line and installed artifacts from the easement area and shall restore the easement area to its original condition.” Exh. A, Page 2, § 5 (emphasis added). The 60-day notice allows the gravel pit to terminate the temporary easement and then Eagle Water must remove its water line. Receiving 60 days notice might have avoided the 2005 low-pressure problems. Instead, Eagle Water received

four days notice (Response at ¶ 2). A 60-day notice does not support the use of the temporary easement.

3. Legal Costs. To support recovery of the \$2,511 in legal fees, Eagle Water submitted the billing statements from its attorney. The Company explained that these costs addressed the 2005 low-pressure problems.

Commission Findings: These billing statements and the Company's response adequately demonstrate that these fees were incurred in the present and preceding cases (EAG-W-05-1 and 05-2). Consequently, we find it is reasonable to allow the Company to recover these costs.

4. Recovery of Relocation Costs from Other Parties. The Commission also required Eagle Water to indicate whether any of the \$40,027 in replacement costs might be offset by recovering damages from other persons. In its response, Eagle Water noted that it was in the process of completing negotiations for a permanent easement from the gravel pit operator. Consequently, Eagle Water stated that it is not prudent to consider legal action against [the operator] for not providing the 60-day notice or undermining the mainline until such negotiations are completed. Eagle Water Response at 2.

Commission Findings: The Commission appreciates Eagle Water's dilemma, especially when it is trying to negotiate for a permanent easement with the very party that undermined the mainline. This is the same party that Eagle Water relied upon to provide adequate notice. The result is that the Company has little hope for recovering the replacement costs from others.

In summary, we find that Eagle Water's response fails to adequately support the reasonableness of using the temporary easement. We further find that ratepayers should not be exposed to paying the cost of installing mainlines more than once without an adequate and reasonable cause. Accordingly, we find that the surcharge should recover \$87,906 (\$85,395 + \$2,511). Using the gross-up factor for taxes of 1.2788, we find that the Company's surcharge should recover \$112,414.

In Order No. 29903, we approved a surcharge of approximately 43% for water usage over 600 cubic feet. This surcharge was designed to recover \$160,389 over a 12-month period. Rather than reducing the surcharge percentage, we find it reasonable to leave the surcharge at its present level but shorten the surcharge period. Consequently, once the Company has recovered \$112,414 in surcharge revenue, then it will cease to collect the surcharge. We again direct the Staff

to audit the surcharge account to ensure that the Company does not misuse or over-collect the authorized surcharge amount.

ORDER

IT IS HEREBY ORDERED that Eagle Water Company's request to recover \$40,027 is denied in part and approved in part.

IT IS FURTHER ORDERED that Eagle Water is authorized to recover an additional \$2,511 in expenses. With this addition, Eagle Water is authorized to recover a total gross-up amount of \$112,414. Once this amount is recovered, the Company shall cease collecting the surcharge.

THIS IS A FINAL ORDER FOR THE RESERVED ISSUE. Any person interested in this Order (or the reserved issue) may petition for reconsideration within twenty-one (21) days of the service date of this Order with regard to any final 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 6th day of February 2006.



PAUL KJELLANDER, PRESIDENT



MARSHA H. SMITH, COMMISSIONER



DENNIS S. HANSEN, COMMISSIONER

ATTEST:


Jean D. Jewell
Commission Secretary

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