

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF EAGLE WATER)
COMPANY'S ENGINEERING REPORT AND) CASE NO. EAG-W-07-01
APPLICATION TO CONTINUE THE)
EXISTING SURCHARGE) ORDER NO. 30667
)

On October 7, 2008, the Commission issued final Order No. 30654 partially granting Eagle Water Company's request to recover professional fees (engineering, legal and accounting) for the preparation of its final Engineering Report and supporting Application. In its final Order, the Commission authorized the Company to recover an additional \$146,635 in professional fees from the surcharge account. Order No. 30654 at 13. After allowing the Company to recover its professional fees, the Order also directed Eagle Water to discontinue its monthly surcharge. *Id.*

On October 16, 2008, Eagle Water filed a timely Petition for Reconsideration. In its Petition, Eagle Water requested the Commission reconsider three issues: (1) allow the Company to take out a new bank loan for well #8 and utilize the existing balance in the surcharge account as collateral for the loan; (2) continue the surcharge so the Company will have a dedicated source of revenue to pay the costs of new capital improvements; and (3) allow the Company to bill and collect the monthly surcharge for usage during the month of October.

After reviewing the Company's Petition and the record in this proceeding, the Commission denies reconsideration as set forth in greater detail below.

BACKGROUND

The history of this case is contained in Order Nos. 30266 and 30654. Briefly, in August 2005 the Commission ordered Eagle Water to immediately correct low-pressure issues and prepare an Engineering Report to address present and future water needs in its system. To recover the costs of correcting the low-pressure problems and of preparing the engineering study, the Commission authorized the Company to implement "a temporary rate surcharge" in October 2005. Order No. 29903. Among other things, the temporary surcharge was to recover the legal, accounting and engineering expenses incurred in the preparation of the Engineering Report and the accompanying surcharge application. "The surcharge funds shall be booked in a separate account and Eagle Water's use of the surcharge funds is restricted to [recovering the] costs of

system improvements for water pressure,¹ the engineering report,” and preparation of the supporting Applications. Order No. 29840 at 3 (Aug. 3, 2005) (footnote added).

While Eagle Water was preparing the Engineering Report, the Company entered into an “Asset Purchase Agreement” with the City of Eagle on July 10, 2007. The Purchase Agreement would allow the City to purchase the utility. Under the Agreement, “any system improvements accomplished by Eagle Water will be recouped by Eagle Water as part of the Purchase Price.” Application at ¶ 22. Although the parties anticipated that the transaction would close by the end of 2007, the parties were unable to complete the transaction and the Agreement expired on March 31, 2008.

On August 6, 2007, the Company filed its final Engineering Report and an Application to recover the professional fees (engineering, legal and accounting) for preparation of the Report and the Application. The Company attributed the two-year delay in preparing the Report primarily to the lengthy Department of Environmental Quality (DEQ) review process and the Company’s need to engage another engineering firm in the preparation of the Report. Order No. 30654 at 3. Although the Company initially estimated that the Engineering Report would cost approximately \$80,000, Eagle Water ultimately requested authority to recover more than \$200,000 in professional fees. Order No. 30654 at 2-3.

FINAL ORDER NO. 30654

In Order No. 30654, the Commission observed that its task was to determine whether the professional fees for the Engineering Report and supporting Application were reasonable and prudent. Order No. 30654 at 8. Based upon the comments of the parties, the Commission allowed Eagle Water to recover \$27,440 in legal and accounting fees from the surcharge account. *Id.* at 9. The Commission also authorized the Company to recover \$87,226 in engineering fees. Taken together and grossed-up for taxes, the Commission allowed Eagle Water to recover an additional \$146,635 from the surcharge account.² *Id.* at 12. After Eagle Water recovered its professional fees and expenses, the Commission noted that the surcharge account had a balance of approximately \$120,000. *Id.* at 13.

¹ The emergency system improvements to increase water pressure consisted primarily of replacing an 8-inch water line with a 12-inch water line. Order No. 29969 at 2.

² In Order Nos. 29903 and 29969, the Commission initially authorized Eagle Water to recover \$112,414 from the surcharge account to pay for the system improvements and preparation of the Engineering Report.

Having finished its review of the engineering issues, the Commission found that “there was no further need for the surcharge at this time.” *Id.* The Commission observed that “[a]s evident in our prior Orders, the Commission intended that the surcharge remain in place only long enough to collect the revenue necessary to defray the Company’s reasonable expenses in correcting the low-pressure problems and in preparing the Engineering Report.” *Id.* at 12-13. The Commission did not order the surcharge balance be returned to customers because “Eagle Water has indicated that it intends to file a new application seeking recovery of capital expenses for system improvements identified in the Engineering Report. The balance in the surcharge account will be available to defray Commission-approved costs in the Company’s next case.” *Id.* at 3. Consequently, the Company was directed to discontinue collecting its monthly surcharge.

PETITION FOR RECONSIDERATION

In its Petition, Eagle Water generally requests the Commission reconsider three points. First, the Company requests that the Commission approve a new bank loan from the Idaho Banking Company. *Id.* at 4-5. The Company reports that it has had preliminary discussions with the bank to borrow \$500,000 which is to be secured by surcharge account funds, “assuming the continued collection of the current surcharge fee at historic levels.” *Id.* at 4; Petition Exh. No. 2. The Company would use the loan to defray the costs of developing well #8.³ *Id.* at 4. Although Eagle Water concedes that the Commission has not previously reviewed the merits and reasonableness of well #8, the Company proposes that any funds withdrawn from the surcharge account would be subject to refund in the event that the Commission subsequently denies recovery of expenditures from the surcharge account. *Id.* at 4-5.

The Company maintains that the current economic state of affairs regarding the national credit markets “makes it impossible for the Company to secure additional financing to pay for well #8 improvements as they become due.” *Id.* at 3. As soon as well #8 is connected to the system, then the Company can discontinue its intertie arrangement with the City of Eagle.⁴ *Id.*

³ The Company notes that well #8 has been approved by DEQ as well as the Idaho Department of Water Resources and “has been drilled. It is expected that the well and related infrastructure will be completed by mid-November 2008.” Petition at 4, n.1.

⁴ The Company asserts that it is contractually bound to pay the City of Eagle \$10,000 per month for the intertie between “Eagle Water’s system and the City’s new reservoir to provide an interim solution to any system pressure deficiency in the event of the failure of one of the Company’s wells.” Petition at 3.

Second, the Company requests that the monthly surcharge be continued. Continuing the surcharge will provide an eventual source of funds from which the Company can recover the costs of its recent capital improvements including: Constructing well #7 (\$600,000); rebuilding well #4 (\$33,500); installing a pressure relief valve (\$42,000); purchasing a backup generator (\$93,500); constructing well #8 (\$720,000); and the intertie with the City (\$15,235). The Company states that several of these capital improvements were required by DEQ as “action items” in its July 6, 2007 letter, which approved the final Engineering Report. Eagle Water Reconsideration Exh. No. 1. The Company also asserts that continuing the surcharge is “critical to securing the proposed [bank] financing.” The Company insists that a new application seeking authority to recover the costs of the listed capital expenditures (as well as legal, engineering and accounting fees) “will be submitted to the Commission upon the conclusion of the current case.” *Id.* at 4.

Third, the Company requests permission to collect its surcharge from customers for usage which has occurred during the month of October. The Company customarily bills its customers between the end of the month and the 15th of the following month. Given the press of time, the Company requests that the Commission issue an interim Order authorizing it to collect the October surcharge, subject to refund.

DISCUSSION AND FINDINGS

Reconsideration provides an opportunity for a party to bring to the Commission’s attention any issue previously determined and provides the Commission with an opportunity to rectify any mistake or omission. *Washington Water Power Co. v. Kootenai Environmental Alliance*, 99 Idaho 875, 591 P.2d 122 (1979); *see also Eagle Water Co. v. Idaho PUC*, 130 Idaho 314, 490 P.2d 1133 (1997). Eagle Water’s Petition did not seek reconsideration by evidentiary hearing but it contained one new exhibit: The October 16, 2008 letter from the Idaho Banking Company. Thus, our review shall be based upon the existing record and prior Orders in this matter. IDAPA 31.01.01.331.03. The Commission first addresses the bank loan for well #8.

1. Bank Loan. Eagle Water first requests authorization from the Commission to borrow funds for well #8 and the loan to be “secured by the surcharge account, subject to refund.” Petition at 4-5. After reviewing the Petition and the record in this case, we find the Company’s request for a bank loan is first raised on reconsideration and is beyond the scope of this case. *Idaho Code* § 61-626 provides that parties may seek reconsideration “in respect to any

matter determined” in the Commission’s final Order. A review of our final Order demonstrates that the Commission did not make any determination regarding the merits of a loan for well #8. We further find the Company’s August 2007 Application does not mention a bank loan for well #8. Simply put, the bank loan is a new issue and was not part of this proceeding. In fact, the letter from the Idaho Banking Company identified as Exhibit No. 2 is dated October 16, 2008 – the same date as the Petition for Reconsideration.

Although Eagle Water listed its “necessary” capital improvements (including well #8) in its Application, it did not seek to recover these costs in this case. The Company stated that it would recover these costs from the City of Eagle as part of the Asset Purchase Agreement. *See* Application ¶ 22. We find the primary focus of the Company’s Application and of our prior Order No. 30654 was an examination of the Company’s professional fees for the Engineering Report, not recovery of its capital improvements. Indeed, the Company’s Application notes that Eagle Water “is reserving its rights to request recovery of [capital] improvements pending the outcome of its transaction with the City of Eagle.” *Id.* at ¶ 22. After the Purchase Agreement with the City expired, Eagle Water neither filed an amended application seeking recovery of well #8 costs nor mentioned this issue in its reply comments. We further observe that the Company itself is “cognizant of the fact that the Commission is not prepared at this time to render a decision regarding the propriety of the afore-mentioned expenditures. . . .” Petition at 4. Based upon the foregoing, we conclude that the Company’s request to borrow funds for well #8 is a new matter and outside the scope of reconsideration in this case.

2. Continuing the Surcharge. The Company next asks us to reconsider our decision to terminate the monthly surcharge. The Company “requests that the surcharge be continued pending further application from the Company for recovery” of its capital improvements. Petition at 4 (emphasis added). We find discontinuance of the surcharge is a proper issue for reconsideration. However, based upon our review, there are several reasons why we deny the Company’s Petition to continue the surcharge.

First, the surcharge was intended to be a temporary and short-term measure. Once the Commission completed its examination of the Company’s request for professional fees, there was no need to continue the surcharge. The Commission’s final Order states:

as evident in our prior Orders, the Commission intended that the surcharge remain in place only long enough to collect the revenue necessary to defray the Company’s reasonable expenses in correcting the low-pressure problems

and in preparing the Engineering Report. Having finally decided the engineering issues above, there is no further need for the surcharge at this time.

Order No. 30654 at 12-13 (emphasis added); *see also* Order Nos. 29903 (“we authorize a one-year surcharge”); 29969 (“implement a temporary rate surcharge”). In addition, the surcharge was intended to recover only the costs of three items: (1) the immediate improvements; (2) the Engineering Report; and (3) the professional fees. Order No. 30160 at 3; Order No. 30266 at 1, 3; 30331 at 1.

Second, the Company’s request to recover the costs of its capital projects from the surcharge account (subject to refund) was not decided in Order No. 30654. This final Order focused upon the prudence and reasonableness of the Company’s claimed engineering fees. Moreover, Eagle Water’s Petition states that there will be a “further application” to recover the capital improvements. Thus, the Company recognizes that the Commission has not made any determination regarding the merits of the capital improvement projects. Petition at 4. In essence, Eagle Water wants the Commission to allow the Company to recover its project costs before the Company files an application and before the Commission reviews the costs.

We find that the Company’s request to recover these costs in its Petition for Reconsideration is not well-founded. *Idaho Code* § 61-626 provides that parties may seek reconsideration “in respect to any matter determined” in the Commission’s final Order. The Commission has yet to review the merits of the capital improvements because Eagle Water has not filed its “further application.”

Although the surcharge was ordered discontinued, the Commission noted the surcharge account had a balance of approximately \$120,000. We did not direct the surcharge balance be refunded to customers. We stated the surcharge balance will be available to defray Commission-approved costs in the Company’s next case. Order No. 30654 at 13. The Commission ordered that the remaining “balance in the surcharge account will remain sequestered until the Commission expressly authorizes the Company to withdraw funds from this account.” *Id.* We look forward to the Company’s application to recover its costs of the capital improvements.

3. The October Surcharge. We next address Eagle Water’s request to collect surcharge revenue for usage during the month of October 2008. Based on the reasons set forth

above, the Commission declines to grant reconsideration on this issue. Even if the surcharge were continued, it applies only to water usage in excess of 600 cubic feet. Order No. 29969 at 5. With the end of the 2008 irrigation season, the actual revenues from the surcharge will decline significantly. Consequently, the balance of the surcharge account will not significantly increase during the winter months. Taken together, we are not persuaded that it is reasonable for the surcharge to continue, or that the Company should collect the surcharge for the month of October.

While we are sympathetic to the Company's needs for capital and its difficulty in obtaining capital in this market, the appropriate course of action is for the Company to file an application seeking recovery of its capital projects. The Company lost valuable time waiting for the outcome of the Purchase Agreement. Without addressing the merits of the next application, the Commission will expeditiously process the case.

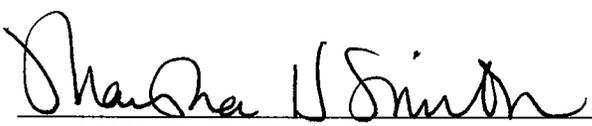
ORDER

IT IS THEREFORE ORDERED that Eagle Water Company's Petition for Reconsideration is denied.

THIS IS A FINAL ORDER DENYING RECONSIDERATION. Any party aggrieved by this Order or other final or interlocutory Orders previously issued in this Case No. EAG-W-07-01 may appeal to the Supreme Court of Idaho pursuant to the Public Utilities Law and the Idaho Appellate Rules. See *Idaho Code* § 61-627.

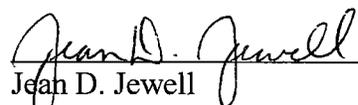
DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 5th day of November 2008.


MACK A. REDFORD, PRESIDENT


MARSHA H. SMITH, COMMISSIONER


JIM D. KEMPTON, COMMISSIONER

ATTEST:


Jean D. Jewell
Commission Secretary

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