

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE APPLICATION)
OF MAYFIELD SPRINGS WATER) CASE NO. MSW-W-08-01
COMPANY FOR A CERTIFICATE OF)
PUBLIC CONVENIENCE AND NECESSITY) ORDER NO. 30656
)

On August 26, 2008, the Commission issued Order No. 30628 granting Mayfield Springs Water Company a Certificate of Public Convenience and Necessity and setting rates for the provision of water service to its customers. On September 15, 2008, Gerald Corvino (the only intervenor in the case) filed a one-page Petition for Reconsideration raising four points. Without elaboration, Mr. Corvino requested that reconsideration be granted by “written briefs, comments and interrogatories.” On September 22, 2008, Mayfield Springs filed a timely answer to the Petition for Reconsideration. In its answer, Mayfield responded to two issues and requested that the Commission deny reconsideration on all four issues.

On September 16, 2008, Mayfield Springs filed a Petition to Alter or Amend the Commission’s final Order No. 30628. More specifically, the Company requested that the Commission authorize two reconnection charges that were not addressed in the final Order.

After reviewing the Petitions and the final Order, the Commission grants in part and denies in part the Petition for Reconsideration. Reconsideration shall be granted by written comment pursuant to the schedule set out in this Order. The Commission also grants Mayfield Springs’ Petition regarding the reconnection charges.

MAYFIELD’S PETITION TO ALTER OR AMEND

In its Petition, Mayfield Springs requests that the Commission authorize two reconnection charges: (1) a \$35 reconnection fee during normal office hours (8 a.m. to 5 p.m.); and (2) a \$70 reconnection fee after normal business hours. Petition at 2. The Company explained that the charges were based upon its certified water system operator’s hourly rate of \$35 per hour for general labor. The Company maintains that these proposed charges were included in Exhibit G of its Amended Application filed on April 25, 2008, but the Commission did not address them in its final Order No. 30628. The Staff and the intervenor did not address these charges in their comments.

Commission Findings: We grant Mayfield's Petition to amend our prior decision in Order No. 30628 pursuant to *Idaho Code* § 61-624 by authorizing Mayfield Springs to charge a \$35 reconnection fee during normal office hours, and a \$70 reconnection fee after normal business hours. Based upon the record, these charges are reasonable and will be effective on the service date of this Order. The Company shall file an updated tariff reflecting these approved charges within seven days of the service date of this Order.

ISSUES ON RECONSIDERATION

In his Petition for Reconsideration, Mr. Corvino asserts that the Commission's final Order "is unreasonable and not in conformity with the law." More specifically he raises four issues in his Petition:

1. The Order contradicts the requirements of Idaho [Code] 61-701 in that the Commission takes no action to ensure Idaho statutes are "enforced and obeyed" as required.
2. The Order authorizes a windfall profit for the Company in the collection of connection fees that the Commission found to be unreasonable.
3. The Order authorizes the Company to collect interest on late charges the Commission ruled "excessive" in the cases where customers refused to pay the "excessive charges."
4. The Order ignores the actions taken by the Company prior to February 5, 2008 effectively encouraging the Company and the other 4,000 water companies (according to PUC spokesman) operating without a CPCN to continue to do so.

As set out in greater detail below, Mayfield's answer to the Petition for Reconsideration responds to issue Nos. 2 and 3. Mayfield requests that the Commission specifically deny reconsideration on these two issues.

A. Standards for Reconsideration

Reconsideration provides an opportunity for a party to bring to the Commission's attention any question previously determined and thereby affords the Commission with an opportunity to rectify any mistake or omission. *Washington Water Power Co. v. Kootenai Environmental Alliance*, 99 Idaho 875, 879, 591 P.2d 122, 126 (1979); *see also Eagle Water Company v. Idaho PUC*, 130 Idaho 314, 317, 940 P.2d 1133, 1136 (1997). The Commission may grant reconsideration by rehearing if it intends to take additional argument. If

reconsideration is granted, the Commission must complete its reconsideration within 13 weeks after the deadline for filing petitions for reconsideration. *Idaho Code* § 61-626(2). If reconsideration is granted, the Commission must issue its order upon reconsideration within 28 days after the matter is finally submitted. *Id.*

Consistent with the purpose of reconsideration, the Commission's Procedural Rules require that petitions for reconsideration "set forth specifically the ground or grounds why the petitioner contends that the order or any issue decided in the order is unreasonable, unlawful, erroneous or not in conformity with the law." IDAPA 31.01.01.331.01. Rule 331 further requires that the petitioner provide a "statement of the nature and quantity of evidence or argument the petitioner will offer if reconsideration is granted." *Id.* A petition must state whether reconsideration should be conducted by "evidentiary hearing, written briefs, comments, or interrogatories." IDAPA 31.01.01.331.03 (emphasis added).

B. The Four Reconsideration Issues

1. The Order does not ensure that Idaho statutes are enforced. Mr. Corvino's first argument on reconsideration is that the Commission's final Order is contrary to *Idaho Code* § 61-701. In particular, he asserts that the Commission's Order fails to ensure that public utility statutes are "enforced and obeyed."

Commission Findings: Commission Rule 331 governs petitions for reconsideration. IDAPA 31.01.01.331. This rule requires that petitions for reconsideration describe "specifically the ground or grounds why the petitioner contends that the Order or any issue decided in the Order is unreasonable, unlawful, erroneous or not in conformance with the law, and [set forth] a statement of the nature and quantity of evidence or argument the petitioner will offer if reconsideration is granted." IDAPA 31.01.01.331.01 (emphasis added). We find that the Petition for Reconsideration fails to meet the requirements of Rule 331 for this issue. In particular, Mr. Corvino has failed to specify the grounds why he contends that the Order is unlawful.

Idaho Code § 61-701 provides that it is the duty of the Commission to see that the provisions of the Constitution and statutes of this State affecting public utilities "are enforced and obeyed, and that violations thereof are promptly prosecuted and penalties due the state therefore recovered and collected. . . ." In its Order, the Commission recognized the District Court's determination that Mayfield had violated *Idaho Code* § 61-526 by beginning the

construction of its water system without first having obtained a CPCN from the Commission. Order No. 30628 at 3.

In Order No. 30628, the Commission observed that Mr. Corvino dedicated most of his comments to his request that the Commission impose a civil penalty of \$1.76 million based upon a \$2,000 per day civil penalty (starting September 29, 2005 through February 3, 2008) pursuant to *Idaho Code* §§ 61-706 and 61-707. *Id.* at 16. The Commission declined his request for two reasons. First, the Commission noted that it is an agency of limited jurisdiction and that the Public Utilities Law does not permit the Commission to impose a civil penalty. Order No. 30628 at 16. Only an Idaho district court can impose a civil penalty. *Idaho Code* § 61-712.

Second, when either a court is determining the amount of a civil penalty or the Commission is considering whether to compromise a penalty, it is to consider several factors. These factors include: “the appropriateness of the penalty to the size of the business . . . , the gravity of the violation, and the good faith of the person charged in attempting to achieve compliance” once notified. *Idaho Code* § 61-712B. In this case, the Commission determined that Mayfield is a small water company and the amount of “the requested civil penalty in this instance is excessive and not supported by the evidence.” *Id.* at 17. Mayfield submitted its CPCN Application about a week after the Staff pressed the Company to do so. Reply Comments at 2. Based upon the facts of this case and the relief provided by the District Court, the Commission determined that pursuit of a civil penalty was not warranted. In enforcement proceedings, the Commission’s primary focus is to bring the utility into compliance.

Mr. Corvino asserted that the utility was operating without a Certificate and that its rates were not reviewed and approved by the Commission. The Commission exerted jurisdiction over Mayfield and set rates. After a public hearing and extensive public participation, the Commission set the utility’s rates and issued a limited Certificate. We fail to see how our prior Order is inconsistent with our authority to grant Certificates, set rates and enforce the Public Utilities Law. *Idaho Code* §§ 61-502, 61-507, and 61-526. Accordingly, we deny reconsideration on this issue.

2. Mayfield received a windfall profit when the Commission declined to order the Company to refund the connection or hookup fees. Mr. Corvino next seeks reconsideration because the Order “authorizes a windfall profit for the Company in the collection of connection fees that the Commission found to be unreasonable.” The Company’s initial assessment for

connection or hookup was \$2,500. In comparison, the Commission's Order found that \$725 was the reasonable hookup fee. Order No. 30628 at 14. Although the Commission declined Mr. Corvino's request for a refund of all charges prior to February 5, 2008, the Order did not directly address a refund of the difference between what was charged and what was found to be reasonable. *Id.* at 17-18.

Mayfield Springs urges the Commission to deny reconsideration on this issue "in the interest of judicial economy and because granting the relief requested could result in retroactive ratemaking." Answer at 1. Mayfield argues that to grant relief on this matter would "duplicate the proceedings currently ongoing in the District Court and creates the possibility that the [Court and the Commission] could reach differing results." *Id.* at 2. In its August 4, 2008 decision, the Court granted the plaintiff's motion for summary judgment as to the return of funds collected for water services and ordered an accounting by the defendants.

Mayfield further asserts that ordering refunds "would amount to retroactive ratemaking." *Id.* The Company maintains that if the Commission decides to reconsider refunding the difference between \$2,500 and the approved \$725, then the "refund period should only date back to the date on which the Company filed its original application," i.e., February 5, 2008. Finally, the Company observed that although it previously stated it would not seek to recover any deficiency if the Commission-authorized rate exceeded the interim flat rate of \$50 per month, Mayfield Springs "must now withdraw its offer, to the extent necessary, on this issue in order to preserve the defense of set-off." *Id.* at 3. If the Commission grants reconsideration on this issue, Mayfield suggests it should:

1. Recognize that many customers were not billed for services for several months prior to January 2007 and the value for service prior to this date should be available as a set off against any potential refunds;
2. Allow the Company to recalculate all customer rates back to the date service was first provided based upon the Commission approved rates for services; and
3. Recognize the "cost per connection" would likely have been higher than the Commission approved amount of \$725 during the time when construction and lot sales were booming in the Treasure Valley.

Answer at 3-4.

Commission Findings: As set out in greater detail below, we grant reconsideration on this issue. In our Notice of Application, the Commission stated “that the Company’s existing rates shall serve as interim rates, until the Commission approves final rates. The interim rates shall be subject to refund.” Order No. 30512 at 2 (emphasis added). In our final Order, the Commission found that the reasonable hookup fee for new service shall be set at \$725 for new homes. Order No. 30628 at 14. On reconsideration, no party has disputed the reasonableness of the \$725 amount. However, the final Order authorized an effective date for Mayfield’s “rates and charges” of August 30, 2008. *Id.* at 19.

Given the differences in our initial Notice and final Order we grant reconsideration to more fully examine this issue. Reconsideration is limited to the issue of refunding the difference between \$2,500 and \$725 for residential hookup fees¹ collected prior to August 30, 2008. The Commission grants reconsideration on this issue by written comment. In granting reconsideration, we shall require Mr. Corvino to state with greater clarity his argument regarding this limited issue. We shall also require Mayfield Springs to provide the Commission with a copy of the certified accounting that Mayfield and its codefendants provided to the District Court. In addition, Mayfield Springs shall provide a detailed report indentifying: each customer who paid (or has not paid) the \$2,500 hookup fee; each customer who is a plaintiff in the District Court case; each customer who has separately sought a refund of the hookup fee in any court of competent jurisdiction; the date each customer paid the hookup fee; and who the customer paid the hookup fee to (e.g., water company, developer, builder, etc.). In their comments, the parties may address reasons why customers or group(s) of customers should not receive refunds for hookup fees paid prior to August 30, 2008.

The parties shall comply with the following schedule.

Action	Deadline
Mayfield provides a copy of the accounting provided to the District Court and the detailed report of the hookup fee for all residential customers.	October 24, 2008
Mr. Corvino’s Comments on Reconsideration	November 3, 2008
Staff Comments on Reconsideration	November 14, 2008

¹ The only non-residential customers of the Company were the sewer company and the common area irrigation customers. Order No. 30628 at 12.

Mayfield Reply Comments	December 3, 2008
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3. The collection of interest on “excessive” late fees. Mr. Corvino next asserts that the Commission’s Order authorizes Mayfield Springs to collect interest on late charges that the Commission ruled were “excessive.” Prior to issuance of the Order, Mayfield had imposed a late fee of \$15 (and previously \$30) on delinquent accounts. Order No. 30628 at 14. In its final Order the Commission found that the \$15 late fee was excessive and set a reasonable late fee of 1% per month on delinquent balances. *Id.* at 15.

In response to this issue, Mayfield Springs states that it will not assess the Commission approved 1% late fee on previously charged \$15 and \$30 late fees. Answer at 4. In other words, the Company will not apply its 1% late fee on the previously unreasonable \$15 or \$30 late fee but reserves its right to assess the Commission-approved late fee (1%) on all past-due accounts.

Commission Findings: Based upon Mayfield’s assertion that it will not assess interest on the Company’s initial late fees that the Commission found unreasonable, we find that this issue is moot. More specifically, the Company stated that it will not apply the Commission-approved 1% late fee on the previous \$15 or \$30 late fees that the Commission found unreasonable. Based upon Mayfield’s position, we find that there is no need for the Commission to reconsider this issue. A case becomes moot when the issue presented is “no longer live or the parties lack a legal cognizant interest in the outcome.” *Idaho Sch. for Equal Educ. Opportunity v. Idaho State Bd. of Education*, 128 Idaho 276, 281, 912 P.2d 644, 649 (1996) quoting *Bradshaw v. State*, 120 Idaho 429, 432, 816 P.2d 898 (1991).

4. The Order encourages Mayfield and 4,000 other water companies to operate without a Certificate. Finally, Mr. Corvino argues that by not addressing the Company’s actions before February 5, 2008, the Commission’s Order is “effectively encouraging the Company and the other 4,000 water companies² (according to PUC spokesperson) operating without a CPCN to continue to do so.” (Footnote added.)

² The reference to the 4,000 water companies is apparently based upon a newspaper article in the *Idaho Statesman* dated April 18, 2008, which quotes the Commission’s public information officer as saying there is no way the Commission can regulate “4500 separate water companies.”

Commission Findings: We deny reconsideration on this issue for several reasons. First, Mr. Corvino's reliance on the 4,000 water companies is misplaced. According to the Commission's 2007 Annual Report, there are approximately 2,100 drinking "water systems" throughout the State. The Annual Report notes that most of these water systems are not subject to the Commission's jurisdiction because they are "operated by homeowners associations, water districts, co-ops, and cities." www.puc.idaho.gov/ar2007/water.pdf. Out of this total number of water systems, the Commission regulates only about 27 water companies. Pursuant to *Idaho Code* § 61-104, the Commission's jurisdiction is limited to water corporations that operate for profit. *See also Idaho Code* § 61-125.

Second, we reject his assertion that the Commission's Order ignores actions taken by the utility prior to February 5, 2008. The Commission recognized in the Order that Mayfield's action prior to February 5 is a matter currently before the District Court. The District Court found "a clear basis under the law for it to award the Plaintiffs any amounts paid for water service before the Defendants filed their Application for Convenience & Necessity." Memorandum Decision at 8. The Court ordered that defendants provide a certified, complete accounting of all charges and amounts paid for service and hookup fees by the plaintiffs.

Third, this case serves as an example of the perils of a utility operating without a CPCN. Here, the plaintiff customers obtained a judicial determination for the refund of all monies paid prior to certification. We also find that this issue lacks the specificity required by Rule 331 and fails to state a position upon which relief could be granted. IDAPA 31.01.01.331. Accordingly, the Commission denies reconsideration on this issue.

ORDER

IT IS HEREBY ORDERED that Mr. Corvino's Petition for Reconsideration is granted in part and denied in part. More specifically, reconsideration is granted on issue No. 2 as restated in this Order and denied on all remaining issues. Reconsideration shall be considered by written comments.


IT IS FURTHER ORDERED that the parties shall conform to the reconsideration schedule set out in the body of this Order.

IT IS FURTHER ORDERED that Mayfield Springs Water Company's Petition to Alter or Amend Final Order No. 30628 is granted. Within seven days of the service date of this Order, the Company shall file updated tariffs reflecting the two reconnection charges authorized

in this Order. The Company's two reconnection fees shall be effective on the service date of this Order.

THIS IS A FINAL ORDER ON RECONSIDERATION EXCEPT FOR THE RESTATED ISSUE NO. 2. Any party aggrieved by this Order or other final or interlocutory Orders previously issued in this Case No. MSW-W-08-01 may appeal to the Supreme Court of Idaho pursuant to the Public Utilities Law and the Idaho Appellate Rules. See *Idaho Code* § 61-627.

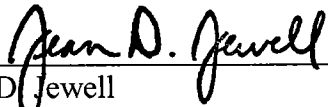
DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 10th day of October 2008.


MACK A. REDFORD, PRESIDENT


MARSHA H. SMITH, COMMISSIONER


JIM D. KEMPTON, COMMISSIONER

ATTEST:


Jean D. Jewell
Commission Secretary

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