

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

**IN THE MATTER OF THE APPLICATION)
OF SPIRIT LAKE EAST WATER COMPANY) CASE NO. SPL-W-06-01
FOR AUTHORITY TO INCREASE ITS)
RATES AND CHARGES FOR WATER) ORDER NO. 30315
SERVICE IN THE STATE OF IDAHO)**

On April 3, 2007, the Commission issued Order No. 30279 in this case approving a modest rate increase for Spirit Lake East Water Company. The Commission also found that “Spirit Lake is not currently maintaining the facilities necessary to ‘promote the safety, health, comfort and convenience of its patrons, employees and the public, and as shall be in all respects adequate, efficient, just and reasonable’ as required by Idaho law.” Order No. 30279 p. 12 quoting *Idaho Code* § 61-302. The Commission accordingly found it reasonable and appropriate “to adjust the Company’s return on equity until such time as the improvements are made to the system to solve the problems identified by Staff and customers.” Order No. 30279 p. 10. The Commission approved a rate of return on equity of 6%, but stated “if Spirit Lake were providing an adequate, reliable water supply to its customers, the Commission would approve a return on equity of 12%.” Order No. 30279 p. 10.

The Commission also disallowed the cost of a back-up generator in rate base. The generator is intended to operate in the event of a power outage to power three booster pumps that pump water from a reservoir tank. The Commission did not allow the cost of this generator in rate base, however, as it was “undisputed that Spirit Lake could not provide a cost basis for the generator because it originally was part of a larger purchase by Hanson Industries,” the major shareholder of Spirit Lake. Order No. 30279 p. 10. There was also evidence the generator failed to operate when needed on several occasions. Order No. 30279 pp. 3-4. We noted, especially in an affiliate transaction, the utility has the burden to provide clear evidence of the cost of an item to include it in rate base. *Id.*

On April 24, 2007, Spirit Lake filed a Petition for Reconsideration and a Petition to Amend Final Order No. 30279. In its Petition for Reconsideration, Spirit Lake requests that the Commission reconsider its decision to disallow any cost for the generator in the Company’s rate base. In its Petition to Amend Final Order No. 30279, the Company asks the Commission to

amend the final Order to provide “that in the event of a Commission approved transfer of ownership of the Spirit Lake water system to a third party, the return on equity for the new owner will be raised from 6% to 12%, or, in the least, that the Commission will entertain a new owner’s request to raise the return on equity to 12%.” Petition to Amend Final Order No. 30279 p. 2.

The Commission in this Order denies the Petition for Reconsideration and the Petition to Amend Final Order No. 30279. We also direct the Company to file a specific plan to complete necessary system improvements. The plan must provide dates for starting and completing identification and repair of system leaks and to complete installation of a new generator.

PETITION FOR RECONSIDERATION

In its Petition for Reconsideration, Spirit Lake argues that the Commission’s determination to not include a rate base value for the generator is “unreasonable, unlawful, erroneous, unduly discriminatory and not in conformance with the facts of record and/or applicable law, resulting in a revenue requirement and rates which are confiscatory.” Petition for Reconsideration p. 1. In support of its argument, Spirit Lake noted that installation of the generator was approved by the Department of Environmental Quality following water system outages in 2004. Installation of the generator was complete by April 28, 2006. Spirit Lake obtained the generator from Hanson Industries, Inc., which had previously obtained the generator from Kaiser Aluminum as part of Kaiser’s Chapter 11 bankruptcy proceeding. The generator was purchased as part of a larger transaction, and Spirit Lake conceded that “no specific cost value for the generator was set forth in the purchase and sale agreement or for any fixture, improvement or item of personal property” in the transaction between Hanson Industries and Kaiser Aluminum.

Spirit Lake asserts that when the generator was transferred from Hanson Industries to Spirit Lake, the parties assigned a value of \$12,360 to the generator. The Company states in its Petition for Reconsideration that it “in good faith attempted to demonstrate the reasonableness of this value by submitting estimates for the cost Spirit Lake would incur if it were to obtain a generator of similar capacity from another source.” Petition for Reconsideration p. 3. Spirit Lake attached exhibits to its Petition for Reconsideration to support its argument that the

generator was placed in service as part of the Company's discussions with DEQ, and documents demonstrating the transaction between Hanson Industries and Kaiser Aluminum.

The Commission finds that the additional argument and documents provided by Spirit Lake do not demonstrate that its determination to disallow a value for the generator in rate base was erroneous. The Commission did allow in rate base costs associated with installing and repairing the generator because the record established that those costs were actually incurred by the Company. See Order No. 30279 pp. 9-10. It is undisputed, however, that there is no evidence in the record demonstrating that Spirit Lake actually paid anything for the generator. No cost or value was placed on the generator when Hanson Industries obtained it as part of a much larger real estate and personal asset transaction with Kaiser Aluminum. When Hanson Industries, the majority shareholder of Spirit Lake, provided the generator to Spirit Lake, the parties assigned a value to it of \$12,360. Petition for Reconsideration p. 3. The Company did not provide evidence it paid Hanson Industries for the generator at the time of transfer. Spirit Lake did provide evidence that the generator has a replacement value some where between \$6,000 and \$12,000. There is no evidence, however, that Spirit Lake paid that amount, or any amount, when it obtained the generator from Hanson Industries.

As we noted in Order No. 30279, transactions between affiliate companies will be carefully scrutinized to assure ratepayers that only necessary and reasonable expenses are included for recovery in rates. See Order No. 30279 p. 9, citing *Boise Water Corp. v. Idaho Public Utilities Commission*, 97 Idaho 832, 555 P.2d 163 (1976). In any affiliate transaction, "the burden is on the utility to provide clear evidence of the cost of an item to include it in rate base." Order No. 30279 p. 10, citing *General Telephone Co. of the Northwest, Inc. v. Idaho Public Utilities Commission*, 109 Idaho 942, 712 P.2d 643 (1986). On the record in this case, where there is no evidence Spirit Lake incurred a cost when it acquired the generator in an affiliate transaction, we cannot conclude that the decision to disallow any value for the generator in rate base was erroneous.

PETITION TO AMEND FINAL ORDER NO. 30279

In its Petition to Amend Final Order No. 30279, Spirit Lake states that it is investigating the possibility of transferring its water system to a qualified party. The Company asked the Commission to amend its final Order to provide that in the event of a transfer of ownership to a third party, the return on equity for a new owner will be raised from 6% to 12%,

or, at the least, the Commission will consider a new owner's request to raise the return on equity to 12%.

The Commission stated in Order No. 30279 that "if Spirit Lake were providing an adequate, reliable water supply to its customers, the Commission would approve a return on equity of 12%." Order No. 30279 p. 10. Because of considerable problems with water delivery and reliability, the Commission determined "to adjust the Company's return on equity until such time as the improvements are made to the system to solve the problems identified by Staff and customers." *Id.* Accordingly, it should be clear that a return on equity of 12% may be approved when necessary improvements are made to the system, whether the improvements are made by Spirit Lake or a new owner of the system. We stated that the Commission "expects Spirit Lake to promptly address the leakage and generator problems, and the Commission will respond as quickly as possible if the Company requests recovery of the costs in rates after making the necessary improvements." Order No. 30279 p. 11. The Commission stated the rate of return on equity may be reset to 12% "when service improves to an acceptable level." *Id.*

The Commission in Order No. 30279 provided a lengthy discussion of the considerable evidence demonstrating that Spirit Lake is not providing the level of service required by Idaho law. See Order No. 30279 pp. 3-7. It was solely the deficiencies in Spirit Lakes' level of service that led to the decision to allow a 6% return of equity instead of a 12% return on equity. It should be clear that correction of the water system deficiencies, so that Spirit Lake has facilities to provide "adequate, efficient, just and reasonable" water service to its customers, may justify a return on equity of 12%. See Order No. 30279 p. 12, quoting *Idaho Code* § 61-302.

PLAN OF CORRECTION

The Commission directed Spirit Lake in Order No. 30279 to "provide a written plan to the Commission within 14 days of the service of this Order, explaining its plan to install a new generator and to address the system leaks." Order No. 30279 p. 12. Spirit Lake did file a written response within the 14 days, but that response falls short of the specifics the Commission expects in a plan to correct system deficiencies. The response, filed April 17, 2007, is dated February 8, 2007 and appears to include only information previously provided. Specifically, the statement provided by Spirit Lake fails to demonstrate a definite commitment to complete a leak analysis by a specific date, or to install a new generator by a specific date. The Commission directs the

Company to provide such a plan to the Commission within seven days from the service date of this Order. If Spirit Lake fails to provide a plan that demonstrates a commitment to complete necessary improvements within a specific time period, the Commission will issue an Order to Show Cause why remedies authorized by statute, including daily fines, should not be entered against the Company. See *Idaho Code* §§ 61-706, 61-707.

ORDER

IT IS HEREBY ORDERED that the Petition for Reconsideration and the Petition to Amend Final Order No. 30279 are denied.

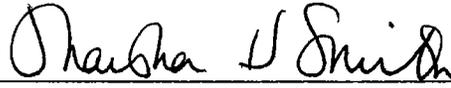
IT IS FURTHER ORDERED that Spirit Lake is directed to file a detailed written plan and schedule showing start and completion dates within seven days of the service date of this Order, demonstrating a commitment to install a new generator and address system leaks as directed by the Commission in Order No. 30279.

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. SPL-W-06-01 may appeal to the Supreme Court of Idaho pursuant to the Public Utilities Law and the Idaho Appellate Rules. See *Idaho Code* § 61-627.

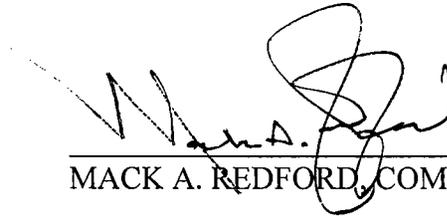
DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 14th
day of May 2007.



PAUL KJELLANDER, PRESIDENT

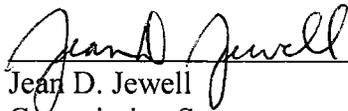


MARSHA H. SMITH, COMMISSIONER



MACK A. REDFORD, COMMISSIONER

ATTEST:



Jean D. Jewell
Commission Secretary

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