

DECISION MEMORANDUM

**TO: COMMISSIONER KJELLANDER
COMMISSIONER SMITH
COMMISSIONER HANSEN
COMMISSION SECRETARY
COMMISSION STAFF
LEGAL**

FROM: SCOTT WOODBURY

DATE: AUGUST 20, 2003

**RE: CASE NO. BIT-W-03-1 (Bitterroot Water)
SALE—PURCHASE OF WATER UTILITY**

On June 17, 2003, documentation was filed with the Idaho Public Utilities Commission (Commission) pertaining to the sale/purchase of the Bitterroot Water Company. The Bitterroot Water Company (Bitterroot) is a regulated public utility maintaining and operating a water system and water supply and providing water service to approximately 101 customers in Kootenai County, Idaho in an area more particularly described as Silver Meadow subdivision located in Township 53 North, Range 03 West, Sections 20 and 29, Boise-Meridian, Kootenai County, Idaho, as recorded in the Kootenai County Recorder Office, Record No. 1375350. Certificate of Public Convenience and Necessity No. 319 was issued to Bitterroot Water Company, Inc. by the Commission on December 14, 1995. Reference Case No. GNR-W-95-2, Order No. 26268.

As reflected in the second amended Purchase Agreement filed with the Commission on July 7, 2003, the Seller, Bruce Burnett, agrees to sell Kenneth and Cathy Rickel of Kootenai County, Idaho, hereinafter called Purchasers, the Company stock of Bitterroot Water Company, Inc., consisting of 100,000 shares of stock for the purchase price of \$50,000. Pursuant to terms of payment, Seller acknowledges receipt of \$25,000 for 50,000 shares of stock. The balance of the purchase price for the remaining 50,000 shares is payable at 8% per annum commencing June 1, 2003. Payments shall be \$303.32 per month with the first payment being due on the 15th day of the month following Commission approval of this stock transfer. Payments will be due month to month until the balance is paid in full. The unpaid balance is secured by a promissory note. Seller will retain possession of the balance of the shares until the note is paid.

The addresses of Seller and Purchasers are:

Seller: Bruce Burnett, 4240 Old Seward Highway, Suite 13, Anchorage, AK 99503

Purchasers: Kenneth and Cathy Rickel, PO Box 1261, Hayden Lake, ID 83835

The Sale/Purchase Agreement recites that the underlying Certificate No. 319 for Bitterroot Water Company, Inc. will not change as a result of this transaction. No change in rates has been requested.

As reflected in the initial filing, the attorney for the Purchasers states that while this is not to be a consolidation of water companies, his clients, the Rickels, currently own the contiguous water company that bears their name. (Rickel Water Company – Commission Certificate No. 324.) Both parties to the sale/purchase agree that it only makes economies of scale and logistical sense that the companies be owned by local people. Further, it is recited that the companies share a communal reservoir and some infrastructure.

On July 25, 2003, Commission Notices of Application and Modified Procedure were issued in Case No. BIT-W-03-01. The deadline for filing written comments was August 14, 2003. Commission Staff was the only party to file comments. Staff recommends (1) that the Commission approve the sale of Bitterroot Water Company, Inc.'s stock to Kathy and Kenneth Rickel; (2) prohibit the Company from recording any costs of this transaction on the books of the corporation; (3) direct the Company to attain full compliance with DEQ certified operator requirements; and (4) direct the Company to file amended tariff pages reflecting the change of *ownership* and a new tariff for the Staff-recommended \$25 reconnection charge.

As reflected in Staff's comments, the proposed owners, Ken and Kathy Rickel, currently own and operate the Rickel Water Company adjacent to, and interconnected with, the Bitterroot water system. The Rickels, Staff contends, have an established history of successfully operating the Rickel Water Company in compliance with Commission requirements.

Staff notes that as a developer-owned and operated system, the physical plant of Bitterroot is considered contributed property to the water corporation (IDAPA 31.36.01.103) and therefore has no net value (rate base) for ratemaking purposes. Staff has informed the Rickels that the plant valuation of Bitterroot will be carried forward at its existing zero net value for ratemaking purposes and that the \$50,000 stock purchase price should not be recorded on the books of Bitterroot Water Company. The stock purchase is a personal investment by the Rickels and as such is not recoverable from ratepayers.

Staff states that it has contacted the Idaho Department of Environmental Quality (DEQ) to ensure that both the Rickel and the Bitterroot systems are in compliance with DEQ regulations. DEQ informed Staff that both systems are in compliance except that neither system currently has a certified operator. DEQ requires that each system have not one but two certified operators. (Reference IDAPA 58.01.08.554-561). Mrs. Rickel told Staff that her husband Ken and his brother would be taking a certification course in the near future. With common ownership, the Rickels themselves will be able to satisfy the requirement for both the Bitterroot and the Rickel water systems.

Staff notes that both corporations are in good standing with the Idaho Secretary of State Office. Staff believes that this sale of stock will not adversely impact the customers of either water system and further believes that common ownership and management of the two water systems may provide operational efficiencies that currently do not exist.

Staff reminds the Company that although a rate change is not requested at this time, should a request occur in the future it will require proper customer notification and an additional application with the Commission. Staff recommends that the Commission's Order make it clear that the Commission sets water rates after an audit and investigation of the Company's income and expenses during a rate case. Customers will have an opportunity to review any future rate change Application and offer comments prior to the Commission's final decision.

Staff notes that on July 1, 2003, Bitterroot provided its customers with individual notice regarding the proposed sale of the water system to Ken and Kathy Rickel. Staff has received no comments from Bitterroot customers regarding the proposed sale.

Staff notes that both Rickel Water Company and Bitterroot Water Company are in general compliance with the rules and regulations of the Commission, including the Utility Customer Relations Rules (IDAPA 31.21.01), Utility Customer Information Rules (IDAPA 31.21.02), and Small Water Company Policies (IDAPA 31.36.01). Staff states that it will work with the Companies to make minor revisions to the annual rule summaries pursuant to Commission rule changes, that became effective in May of this year.

Additionally, Staff notes that the rule summary for Bitterroot Water Company indicates there is a reconnection fee of \$25. However, Bitterroot has no approved tariff for a \$25 reconnection charge. The Company has never imposed the unauthorized fee because it has never disconnected a customer. Because a \$25 fee is reasonable and comparable with other approved

reconnection charges, Staff recommends the Commission approve a \$25 reconnection charge even though it was not included in the Application. Staff further recommends that the Commission allow the reconnection charge to be included with the full set of replacement tariffs to be submitted by the new owners after the sale is approved.

Commission Decision

Commission approval is requested of the proposed sale and purchase of Bitterroot Water Company stock. Staff recommends that the sale/purchase be approved with the admonitions and recommendations set forth above. Does the Commission find it reasonable to approve the sale of Bitterroot Water Company, Inc.'s common stock; apprise the Company that the transaction costs should not be recorded on the books of the corporation; direct the Company to attain full compliance with DEQ's certified operator requirements; and direct the Company to file amended tariff pages reflecting the change of ownership and a new tariff for the Staff-recommended \$25 reconnection charge?

Scott Woodbury

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