(text box: 1)BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

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| CAPITOL WATER CORPORATION  Complainant,  vs.  JOHN ESPOSITO DBA WHISPERING PINES APARTMENTS  Respondent. | )  )  )  )  )  )  )  )  )  )  ) | CASE NO. CAP-W-97-2  ORDER NO.  27205 |

On July 16, 1997, Capitol Water Corporation (Capitol Water; Company) filed a complaint with the Idaho Public Utilities Commission (Commission) against John Esposito dba Whispering Pines Apartments (Respondent).  Capitol Water contends that during 1994 at the Respondent’s request, the Company agreed to and did extend its main service lines to a housing development known as Whispering Pines Apartments.  The Company contends that the Respondent was advised that it would be required to contribute the costs of the main extension including an amount to cover the related federal income taxes Capitol Water would be obligated to pay on the value of the contributed facilities (CIAC).  The Company contends that on July 12, 1996, the Respondent was notified by letter that the income tax portion of the main extension charge currently owing Capitol Water was $20,173.61.  Capitol Water contends that despite repeated attempts to collect said amount, the Respondent has refused to pay.

Capitol Water requests that the Commission issue an Order:

1.  Finding that Respondent is obligated to contribute the costs of the main extension to the development in accordance with Commission Order No. 21933 (Reference Case No. U-1500-176—In the matter of the investigation of the effects of revisions of the federal income tax code upon the Commission’s policies concerning contributions in aid of construction); and

2.  Ordering Respondent to pay Capitol Water the outstanding balance in the amount of $20,173.61 attributable to the income tax on materials and labor furnished by Capitol Water.

Commission Findings

The Commission has reviewed the filings of record in Case No. CAP-W-97-2, its prior Order No. 21933 in Case No. U-1500-176 and the Uniform Main Extension Rule for Water Utilities approved by the Commission in Case No. U-1500-22.

The Commission has also reviewed its Order No. 27179 issued October 29, 1997 in Case No. CAP-W-97-1, a case in which the Company is requesting similar relief.  In that Order, we found as follows:

The existence or non existence of a contract in this case or verification of underlying costs or expenses is a matter that more appropriately rests with the courts.  The Commission cannot provide the full relief requested.  As a recognized by Capitol Water, the Commission is not a collection agency.  Accordingly, the Commission finds it reasonable to dismiss the complaint of Capitol Water. . . .

Order No.  27179 at pp. 6, 7.

For the procedural, jurisdictional and policy reasons expressed by the Commission in Case No. CAP-W-97-1, Order No. 27179, which we hereby adopt by reference, we find it reasonable to dismiss the Company’s complaint in Case No. CAP-W-97-2.

CONCLUSIONS OF LAW

The Idaho Public Utilities Commission has jurisdiction over Capitol Water Corporation, a water corporation and public utility, pursuant to Title 61 of the Idaho Code, and the Commission’s Rules of Procedure, IDAPA 31.01.01.000 et seq.  The authority of the Commission is restricted to that expressly and by necessary implication conferred upon it by the Legislature.  Idaho Code 61-501.  Generally, construction and enforcement of contract rights are matters within the jurisdiction of the  courts and not the Commission.  If the matter is a contractual dispute it should be heard by the courts.  Lemhi Telephone Company v. Mountain States Tel & TelCo, 98 Idaho 692, 571 P.2d 753 (1977).  The Commission is not a court of justice as defined in Idaho Constitution, Article I, Section 18, and has no authority to issue or enforce an order for recovery and collection of any monies owing Capitol Water Company by John Esposito dba Whispering Pines Apartments, the ultimate relief requested by Capitol Water in Case No. CAP-W-97-2.

          O R D E R

In consideration of the foregoing and as more particularly described above, IT IS HEREBY ORDERED that the complaint of Capitol Water Corporation in Case No. CAP-W-97-2 be dismissed and the case docket closed.

THIS IS A FINAL ORDER.  Any person interested in this Order may petition for reconsideration within twenty-one (21) days of the service date of 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                  day of November 1997.

                                                                                                                                      DENNIS S. HANSEN, PRESIDENT

                                                                                           RALPH NELSON, COMMISSIONER

MARSHA H. SMITH, COMMISSIONER

ATTEST:

Myrna J. Walters

Commission Secretary

vld/O:CAP-W-97-2.sw

**COMMENTS AND ANNOTATIONS**

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**TEXT BOXES**

Office of the Secretary

Service Date

November 5, 1997