BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE APPLICATION OF)CASE NO. FLS-W-95-1

FALLS WATER COMPANY, INC. TO SURREN-)

DER ITS CERTIFICATE OF PUBLIC CONVE-)NOTICE OF APPLICATION

NIENCE AND NECESSITY NO. 236.)NOTICE OF INVESTIGATION

)ORDER NO. 25909

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YOU ARE HEREBY NOTIFIED that on February 6, 1995, Falls Water Company, Inc. notified the Commission that it has amended its Articles of Incorporation and is now organized as a nonprofit corporation under the Idaho Nonprofit Corporation Act.  Falls Water serves approximately 1,250 customers near Idaho Falls, Idaho.

Under Idaho Code § 61-129, the term “public utility” includes “every water corporation, . . . as [that] term is defined in this chapter . . . .”  Idaho Code § 61-125 defines “water corporation” as “every corporation or person . . . owning, controlling, operating or managing any water system for compensation within this state.”  The term “corporation” does not include “a municipal corporation, or mutual nonprofit or cooperative . . . water . . . corporation or any other public utility organized and operated for service at cost and not for profit, . . .”  I.C. § 61-104.

Idaho Code § 61-501 vests the Commission “with power and jurisdiction to supervise and regulate every public utility in the state and to do all things necessary to carry out the spirit and intent of the provisions of this act.”  Furthermore, I.C. § 30-3-23(2) of the Nonprofit Corporation Act provides that a “corporation engaging in an activity that is subject to regulation under another statute of this state may incorporate under this act only if incorporation . . . is not prohibited by the other statute.  The corporation shall be subject to all limitations of the other statute.”

We currently do not have sufficient information to determine whether Falls Water is “organized and operating for service at cost and not for profit.”  I.C. § 61-104.

Therefore, YOU ARE HEREBY NOTIFIED that before the Certificate of Public Convenience and Necessity issued to Falls Water is cancelled, an investigation must be made into whether or not it is operating as a public utility within the state of Idaho.  To that end, the Commission Staff is hereby directed to issue production requests, written interrogatories and other forms of discovery as well as pursue its statutory right to examine and audit the records of Falls Water Company as they relate or pertain to the sale of water.

O  R  D  E  R

IT IS HEREBY ORDERED that the Commission investigate whether Falls Water Corporation is operating as a public utility within the state of Idaho.

DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this              day of March 1995.

MARSHA H. SMITH, PRESIDENT

RALPH NELSON, COMMISSIONER

DENNIS S. HANSEN, COMMISSIONER

ATTEST:

Myrna J. Walters

Commission Secretary

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