DECISION MEMORANDUM

TO:COMMISSIONER NELSON

COMMISSIONER SMITH

COMMISSIONER HANSEN

MYRNA WALTERS

TONYA CLARK

DON HOWELL

STEPHANIE MILLER

DAVE SCHUNKE

DON OLIASON

TERRI CARLOCK

MARGE MAXWELL

GARY RICHARDSON

WORKING FILE

FROM:SCOTT WOODBURY

DATE:MAY8, 1996

RE:CASE NO.  FLS-W-95-1

FALLS WATER COMPANY

On February 6, 1995, Falls Water Company, Inc.  (Falls Water; Company) notified the Idaho Public Utilities Commission (Commission) that it had changed its corporate status from “for profit” to “not for profit.”  Falls Water sought to surrender its Certificate of Public Convenience and Necessity No. 236.  Falls Water believed that changing corporate status to nonprofit would permit it to operate free of Commission jurisdiction, control and regulation.

On March 3, 1995, the Commission in Order No. 25905 stated that further investigation was required to determine whether or not Falls Water was operating as a public utility within the state of Idaho.  To that end, Staff was directed to conduct an investigation and audit of Falls Water Company.

Staff’s investigation revealed that Falls Water was continuing to operate as a public utility.  Pursant to discussions with the Company  a letter was sent to Falls Water on October 13, 1995, expressing Staff’s position as to what changes would be required of Falls Water to avoid regulation (attached).  As stated, it was Staff’s position that “a nonprofit corporation to avoid regulation must be structured in such a manner that the customers, not the developer, have ultimate control of the Company, its operations and management, and the pricing of its water and related services.”  The Company was directed to inform Staff as to whether Falls Water was structured in such a manner as to satisfy Staff’s concerns.  If not, Staff requested the Company’s preferred procedure for processing its Application.  The Company failed to respond.

On February 26, 1996, Staff sent a follow-up letter to Falls Water inquiring as to the appropriateness of a dismissal (attached).  On March 20, 1996, Falls Water by E-mail communication indicated to Commission Staff that it had no objection to a dismissal of the case and stated its intent to send a formal request for dismissal.  (Attached).  A formal request was never filed.

Commission Decision

Does the Commission concur that a dismissal in Case No. FLS-W-95-1 is appropriate?  Does the Commission have any other thoughts in this matter?

Scott Woodbury

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