DECISION MEMORANDUM

TO:COMMISSIONER NELSON

COMMISSIONER SMITH

COMMISSIONER HANSEN

MYRNA WALTERS

TONYA CLARK

DON HOWELL

STEPHANIE MILLER

DAVID SCHUNKE

BOB SMITH

GARY RICHARDSON

WORKING FILE

FROM:BRAD PURDY

DATE:MARCH 13, 1996

RE:CASE NO. GNR-W-94-1:  APPLICATION OF GOLDAN WATER COMPANY FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

On October 17, 1994, Goldan, Inc. (Goldan), an unregulated water company, filed a set of financial statements with the Commission requesting a “permit” to operate as a public utility.  At issue in this case are two non-connected water systems; Algoma Village and Sagle Valley Estates, both located in northern Idaho.  As will be discussed later, the identity of the owners of these two systems is not yet known and may ultimately be the subject of civil litigation. The Commission also received, independently, several letters from concerned customers of the two water systems expressing dissatisfaction with the quality of service that they have received as well as Goldan’s attempts to increase rates for that service.

The October 17, 1994 filing was signed by Leo J. McGavick; one of the shareholders of Goldan.  Immediately following Goldan’s filing, Staff began an informal investigation and was informed by Mr. McGavick that Goldan’s preference was to convey ownership and operation of the two water systems to the respective homeowners and to not become certificated as a public utility.  In light of Goldan’s desire, the matter was put on informal stay pending an attempt by the owners of the Company to transfer the water systems to the homeowners.  In addition, several of the more vocal homeowners indicated that it was their desire as well to acquire legal ownership to the system and to avoid regulation by this Commission.  In fact, a water and sewer district has been formed for that purpose. It does not, however, have any assets with which to purchase the systems.

In the year and half subsequent to Goldan’s filing, there ensued a chaos from which Staff was unable to determine what the respective consensus and desires of the owners and homeowners were.  It appeared that some portion of the homeowners desired to have the systems regulated by the Commission while others did not.  It also appeared that several of the owners of the two systems wished to convey them to the homeowners while the remainder preferred to retain ownership.  In addition, it became increasingly difficult to communicate with and obtain information from the owners of the systems as evidenced by Order No. 26074 compelling a response to discovery issued by the Commission in June 1995.  In that Order, the Commission explicitly found that the two water systems in question constituted “public utilities” pursuant to Title 61 of the Idaho Code, and that the Commission was, therefore, exercising its jurisdiction over those systems.

As set forth in the Staff report attached hereto as Appendix A, Staff believes that both the Algoma and Sagle Valley water systems are “public utilities” as defined in Title 61 of the Idaho Code and are, therefore, subject to the Commission’s jurisdiction.  Staff is unsure at this juncture, however, who the legal owners of the two systems are.  As discussed on page 3 of the report, even the principals involved are unsure of the rightful ownership.  Staff is informed that the owners are currently involved in arbitration to resolve the matter.

As the report also indicates, Staff believes that the rates currently being charged customers on the two systems are excessive.  As summarized on page 15 of the report and detailed on Exhibit Nos. 3 and 7, Staff believes that rates on the Sagle Valley Estates system should be reduced from $26 per month to $14.63.  Rates on the Algoma system should be reduced for residential customers from $26 per month to $14.52 and commercial rates should be reduced from $41.60 to $23.23.

This case involves a convoluted set of facts, particularly with respect to ownership of the system, and quite possibly may end up in civil litigation.  Furthermore, Staff believes and has expressed to the owners and homeowners that small water systems such as the two involved here are often run more efficiently and cost effectively through homeowners’ associations rather than as regulated public utilities.  Although there appears to be a general acquiescence to this notion, the parties have, nonetheless, failed to resolve their differences and accomplish a conveyance of ownership to the homeowners.  It appears that unless the Commission takes action, this situation will continue to stagnate indefinitely.  Staff recommends, therefore, that the Commission schedule a formal hearing for the purpose of setting rates, charges and general tariffs for the two systems and to afford the customers an opportunity to provide any input they may have regarding the operation of the systems and the quality of service being provided.  Staff acknowledges that this course of action will not, by itself, resolve the uncertainty of the ownership of the two systems.  Staff believes, however, that this should not prevent the Commission from exercising what authority it does have which is to set the rates and determine the quality of service applicable to the two systems.  It is possible that this action by the Commission may also have the affect of spurring on the owners’ attempts to determine legal title to the systems.

COMMISSION DECISION

Does the Commission wish to schedule a formal hearing in this case for the purpose of setting rates, charges and general tariffs for the two water systems and for receiving public input?  Any other thoughts?

Brad Purdy

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