DECISION MEMORANDUM

TO:COMMISSIONER HANSEN

COMMISSIONER NELSON

COMMISSIONER SMITH

MYRNA WALTERS

TONYA CLARK

DON HOWELL

STEPHANIE MILLER

DAVE SCHUNKE

BOB SMITH

RICK STERLING

ROSE SCHULTE

DAVID SCOTT

WORKING FILE

FROM:SCOTT WOODBURY

DATE:MARCH 20, 1998

RE:CASE NO. GNR-W-96-1

VALLEY VIEW—FINAL ORDER NO. 27328

PETITION TO RECONSIDER

CROSS PETITION AND OBJECTION TO PETITION TO RECONSIDER

On February 10, 1998, the Idaho Public Utilities Commission (Commission) issued final Order No. 27328 in Case No. GNR-W-96-1.  In its Order, the Commission found that Valley View Subdivision, Inc. (Valley View; Company) was operating as a public utility subject to Commission jurisdiction.  The Commission issued Certificate of Convenience and Necessity No. 338 to Valley View, established approved rates and charges, and required adoption of general service provisions.

By document dated, faxed and mailed March 3, 1998, pursuant to Commission Rules of Procedure No. 331.04, Valley View timely filed what it designates as a “Petition to Reconsider” (attached).  In particular, Valley View requests the following:

1.With respect to the Commission finding in the third paragraph on page 5 relative to sewer charges, Valley Subdivision, Inc., petitions the Commission to specifically state that, since the Commission does not regulate sewer services, that this decision by the Commission does not, in any way, reflect upon the sewer charges by Valley View, whether past or future.  The reason for this is that Valley View is presently attempting to collect delinquent sewer charges from a variety of people and said people are going to attempt to defeat the collection efforts by suggesting to the court that Valley View’s status as a regulated utility precludes such collection efforts;

2.With respect to the Commission finding in the fourth paragraph on page 5 relative to past charges for water, Valley View Subdivision, Inc., petitions the Commission to specifically state that the decision by the Commission in this matter does not, in any way, reflect upon the validity or collectability of delinquent past water charges by Valley View.  The reason for this is that Valley View is presently attempting to collect delinquent water charges from a variety of people and said people are going to attempt to defeat the collection efforts by suggesting to the court that Valley View’s status as a regulated utility, and this decision by the Commission, are a determination as to what Valley View should have been charging for water services in the past.  During the period of time leading up to the hearing in this matter, the Commission Staff repeatedly assured the undersigned that the decision by the Commission in this matter would have absolutely no effect on the past charges of Valley View;

3.With respect to the Commission’s finding in paragraph 4, page 5 of the decision with respect to the appropriate rate to charge for water services, Valley View petitions the Commission to include language allowing Valley View to seek a rate increase which may be necessary to finance any work which is necessary to make any improvements recommended by an engineer to certify that the system will support additional lots;

4.With respect to the Commission’s finding in paragraph 2 on page 6 of the decision with respect to the connection fee, Valley View petitions the Commission to insert language allowing Valley View to reach an agreement with new customers whereby the customer can, with the agreement of Valley View, hire a third party to perform the connection.  The purpose of this is to allow Valley View to have the customer privately contract the connection if experience shows that Valley View cannot economically perform the connection for the $500 amount specified by the Commission;

5.With respect to the Commission’s finding in paragraph 3 of page 6 of the decision with respect to notification of a desire to switch to “vacation rate”, Valley View petitions the Commission to insert language requiring the written notice be delivered to Valley View by the customer no less than thirty (30) days prior to the desired start date of the “vacation rate.”

On March 9, 1998, the intervenor, Mernita McDonald (McDonald), filed a Cross-Petition and Objection to Petition to Reconsider (attached).  McDonald contends first that the Valley View Petition is untimely.  (Contra IDAPA 331.04).  McDonald then proceeds to set out her objections, numbered in the same manner as in the Valley View petition.  Her objections can be generally summarized as follows:

1.  McDonald contends that the Commission’s finding that “the Commission does not regulate sewer services” is a concise statement of its jurisdiction and that it should not be altered or expanded.  Ms. McDonald suggests that Valley View requests further comment of the Commission to aid it in separate litigation in other forums.

2.  McDonald seemingly attempts to characterize delinquent water rate charges assessed prior to regulation as charges not permitted by Idaho law and contends that it would be inappropriate for the Commission to offer an opinion or statement regarding procedures for collecting said amounts.  Citing Utility Customer Relation Rules, IDAPA 31.21.300-400.

3.  Regarding engineer recommended improvements, McDonald contends that the Commission cannot give prior authorization for recovery of an unknown and undetermined expense amount.  An application regarding same would have to be made.

4.  No objection.

5.  No objection.

Staff Analysis

Valley View in its petition does not contend that the Commission’s Order is “unreasonable, unlawful, erroneous or not in conformity with law.”  Reference I.C. 61-626; IDAPA 31.01.01.331.  It is suggested that the petition of Valley View, as reflected above, is not a true Petition for Reconsideration but is instead a Petition for Clarification.  Reference IDAPA 31.01.01.325.

Commission Decision

●How does the Commission wish to treat the above referenced filings of the parties?

● Should the petition of Valley View be regarded as a Petition for Reconsideration or a Petition for Clarification?

●If the Commission regards the matter as a true Petition for Reconsideration, how does the Commission wish to process the petition?  It does not appear that either party requests further hearing.  Ms. McDonald in this regard however suggests that it is inappropriate for Valley View counsel to attempt to enter into the record representations of the Commission Staff which may not be of record.

●How does the Commission wish to respond to the points raised by Valley View and Mernita McDonald?

●Is any change or augmentation to the Commission’s Order appropriate?

●If the petition of Valley View is to be regarded as a Petition of Clarification, does the Commission desire that the matter be Noticed for Comment?

Scott Woodbury

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