DECISION MEMORANDUM

TO:COMMISSIONER HANSEN

COMMISSIONER NELSON

COMMISSIONER SMITH

MYRNA WALTERS

TONYA CLARK

DON HOWELL

STEPHANIE MILLER

DAVE SCHUNKE

BOB SMITH

RANDY LOBB

DAVID SCOTT

WORKING FILE

FROM:SCOTT WOODBURY

DATE:SEPTEMBER 21, 1998

RE:CASE NOS.GNR-W-97-2 (HIDDEN SPRINGS WATER CO. LLC)

UWI-W-97-3 (UNITED WATER IDAHO)

CERTIFICATE APPLICATION—HIDDEN SPRINGS

On June 16, 1997, United Water Idaho Inc. (United Water; Company) filed an Application in Case No. UWI-W-97-3 with the Idaho Public Utilities Commission (Commission) requesting authorization to amend and revise its Certificate area service boundaries in Ada County to include the proposed Hidden Springs Community, an area in the Dry Creek Valley and contiguous to its present system and certificated territory.  Reference Application Exhibit A, Map of Proposed Boundary Expansion and Exhibit C, Legal Description; Idaho Code 61-526; Commission Rules of Procedure, IDAPA 31.01.01.112.

On November 10, 1997, Hidden Springs Water Co., LLC (Hidden Springs) filed a competing Application in Case No. GNR-W-97-2 requesting a Certificate of Public Convenience and Necessity to provide water service to the same area.  Reference Application Exhibits D & E, Maps of Proposed Community and Service Area; Exhibit B, Legal Description; Idaho Code § 61-526; Commission Rules of Procedure, IDAPA 31.01.01.111.

The Hidden Springs Community, the requested service area in Case Nos. UWI-W-97-3 and GNR-W-97-2, will consist of approximately 915 residential units, a limited amount of commercial development (approximately 100,000 square feet), and public facilities including a school, community center, park, playing fields and fire station.

The Commission consolidated Case Nos. UWI-W-97-3 and GNR-W-97-2 in Order No. 27239 issued November 26, 1997.  Pursuant to notice issued December 19, 1997 a public hearing in consolidated Case Nos. UWI-W-97-3 and GNR-W-97-2 was scheduled for February 24, 1998.  At the request of the parties on February 20, 1998 the scheduled hearing date was vacated.  The Commission was apprised that the parties were negotiating a settlement which they expected to present to the Commission for its consideration and approval.

On June 2, 1998, United Water and Hidden Springs filed a Motion with the Commission requesting approval of a submitted Stipulation and Settlement.  (Attached) reference IDAPA 31.01.01.056 (Motions); .271 (Passive Settlements); .274 (Consideration of Settlements).  As represented, the parties have entered into a Water Infrastructure Extension and Construction Cost Refund Agreement (Agreement).  Among other things the Agreement:

1.Provides that United will, following construction of the domestic water system, be the provider of domestic water service to Hidden Springs community.

2.Provides that Hidden Springs will, subject to the supervision of United, construct the necessary and appropriate water system infrastructure necessary to meet the needs of the Hidden Springs community.

3.Establishes a method by which United will refund Hidden Springs a portion of the costs incurred to construct the domestic water system.

Pursuant to Stipulation, the parties represent as follows:

United and Hidden Springs represent to the Commission that the Agreement furthers the public interest, is a fair and equitable resolution of this dispute and that the Agreement will result in service to the Hidden Springs community upon terms that are just and reasonable:

United possesses the technical and managerial expertise to provide water service to the Hidden Springs community thus ensuring that the residents of the area will receive safe and reliable utility service at rates and upon terms subject to control by the Commission.  Further, this Stipulation avoids the possibility an additional water utility would be created in Ada County, with  the associated customer confusion that often accompanies service to customers by adjacent utilities.

The investment necessary for construction of the water system will be borne, in the first instance, by Hidden Springs thereby insulating United’s existing customers from any speculative risk.  Thereafter, United will make refunds to Hidden Springs as customers are connected.  This ensures that United will not be obligated to make refunds until there are revenues to support the investment.  The refunds are calculated based on a formula intended to compensate United for investment in source of supply and are thus consistent with existing Commission policy.

While United believes the Agreement is consistent with the intent and spirit of its existing Line Extension Rules, the existing rules do not specifically provide for materials in lieu of cash; nor do the existing rules specifically identify circumstances in which arrangements similar contained in the Agreement would be made available to other developers.  Accordingly, upon approval hereof, United will file for approval of necessary changes to its existing rules.

Approval of the Agreement furthers the public interest in many respects, not the least of which being that it resolves the issue of service to Hidden Springs development in a timely manner and without protracted and costly litigation.  Such a resolution is obviously beneficial in its own right; however it has also been official in that it will allow the timely completion of an environmentally friendly development, which focuses on quality of life force and habitants,  without the uncertainty which accompanies contested procedures.

The Commission Staff on June 16, 1998 filed an Objection and Related Comments to United Water and Hidden Springs Motion to Approve Stipulation and Settlement.  (Attached)  On September 4, 1998, United Water and Hidden Springs filed a joint Response to Staff’s objection together with related comments.  (Attached)

The filed comments of Staff, United Water and Hidden Springs can be summarized in the following fashion.  Staff contends that the submitted Extension Agreement deviates from the Company’s existing line extension tariff in several significant ways:  (1) it allows “materials” as well as “labor-in-lieu of cash”; (2) it provides for developer refunds of contributed construction costs based on a revenue stream formula; and (3) it provides a waiver of all Company construction overheads associated with a project. Staff notes that the potential problems arising from tariff deviation might be resolved by minor modifications to existing line extension tariffs and clarification within the Extension Agreement.

Materials in Lieu of Cash

Staff recommends that the Company’s line extension tariffs be modified to allow materials as well as labor in lieu of cash for all developers requesting water service.  The Company has stated in its Stipulation on page 4 that it will file for approval of necessary changes to allow materials in lieu of cash.  The Company on September 4, 1998 proposed amendment to Rule 67 and 73 of its rules and regulations governing water main extensions to allow developers of subdivisions to provide materials necessary for the installation of water facilities.

Developer Refunds

The Extension Agreement between United Water and Hidden Springs requires that the developer provide the contractor, obtain all materials and otherwise pay most of the costs associated with the extension of water facilities to the Hidden Springs development.  The facilities consist of four components which include an off-site transmission main, storage and booster facilities, an on-site transmission main and on-site distribution facilities.  Once the facilities are completed, the developer will receive a refund from the Company for each new Hidden Springs customer connected to the system.  The initial refund is $450 and can increase or decrease depending upon the actual annual revenue generated by customers over a 36 month period.

Staff supports the developer advance and subsequent refund for supply, storage and booster facility costs.  Staff does not support refund provisions for any on-site or off-site main lines/distribution facilities (except vested interest refunds) and in no instance Staff contends should refunds exceed the amount advanced for the special facilities.  Staff recommends that the special facilities portion of the Company’s line extension rules be modified to require a developer advance and refund based on the formula proposed for Hidden Springs.  In discussions subsequent to their filed response the Company has agreed to insert language into its proposed UWI-W-98-4 tariff amendment which would provide for individual case by case assessment and review.  Staff also recommends that Extension Agreement be modified to limit total refunds to the actual costs of the special facilities contributed.  This is still an area of contention as the Extension Agreement continues to provide for refund of transmission costs.

Company Overheads

The existing tariffs require that Company overheads for the projects such as engineering review and inspection be contributed by the developer.  However, the Extension Agreement does not explicitly require any such contribution from the Hidden Springs for these fees.  The agreement indicates that the Company overheads are somehow factored into the calculation of the refund amount and therefore should be not collected from the developer.  While Staff does not necessarily oppose incorporating special facility overheads into the refund formula, it does not support a waiver or refund of overhead fees associated with main line/distribution facilities.  The overhead fees, Staff contends, associated with main line/distribution facilities are designed to reimburse the Company for expenses it incurs and are not refundable.  If these costs are not collected from the developer, then the general body of ratepayers, Staff contends, will have to pay.  Staff in its comments recommended that the Extension Agreement be modified to distinguish between Company overheads associated with special facilities and those associated with main line/distribution facilities.  Following their filed response and a meeting with United Water and Hidden Springs, Staff believes that such a distinction is no longer necessary.  Given the relatively limited nature of Company involvement for this project Staff agrees that the costs of Company overheads is less than it would otherwise be.  Staff had recommended that overhead fees associated with main line/distribution facilities be collected from Hidden Springs at the same time they would be collected from any other developer.  Staff now agrees that the Company’s overhead costs in this case are adequately recovered by the proposed refund formula and that no further or additional contribution is required.

Commission Decision

Pending before the Commission is the submitted Stipulation and Settlement Agreement between United Water and Hidden Springs.  The underlying basis of the Stipulation and Settlement Agreement is the Water Infrastructure Extension and Construction Costs Refund Agreement.  Should the Commission approve the Stipulation and Settlement Agreement service to Hidden Springs would be provided by United Water with Hidden Springs agreeing to withdraw its certificate application.  As reflected above, the Company’s proposal to serve Hidden Springs complies with its line extension tariffs (assuming approval of proposed tariff modification in Case No. UWI-W-98-4) with the exception of proposed refund for transmission facilities. Staff believes that refunds for transmission facilities is inappropriate.  United Water and Hidden Springs have indicated that they are willing to tender the matter to the Commission on the basis of written filings.  Should the Commission desire an oral presentation United Water and Hidden Springs would be more than willing to appear.  United Water requests Commission authorization to serve Hidden Springs in accordance with the Stipulation and Settlement Agreement.  Should the Stipulation and Settlement Agreement be approved?  With or without modification?  Does the Commission desire an oral presentation from parties?  What is the Commission’s preference?

Scott Woodbury

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