DECISION MEMORANDUM

TO:COMMISSIONER HANSEN

COMMISSIONER NELSON

COMMISSIONER SMITH

MYRNA WALTERS

TONYA CLARK

DON HOWELL

STEPHANIE MILLER

DAVE SCHUNKE

RANDY LOBB

BOB SMITH

ROSE SCHULTE

DAVID SCOTT

WORKING FILE

FROM:SCOTT WOODBURY

DATE:APRIL 27, 1998

RE:CASE NO. HVW-W-98-1

HAPPY VALLEY WATER SYSTEM

REQUEST FOR TRANSFER OF CERTIFICATE

On March 17, 1998, Ivan Dunnick, agent for Jon and Richard Dunnick, filed an Application with the Idaho Public Utilities Commission (Commission) in Case No. HVW-W-98-1 requesting a transfer of Certificate of Public Convenience and Necessity No. 328.  Reference IDAPA 31.01.01.052.  Mr. Dunnick represents that as a result of an assignment, default and contractual remedies perfected pursuant to terms of the August 29, 1996, Earl H. Reamy, Jr.—Coyote Coeur d’Alene Corp. (Lawrence W. (Zeke) Davis) sales contract, ownership of the Happy Valley Water System (HVW) was on February 24, 1998, transferred to Mr. Dunnick’s sons, Jon and Richard.  Mr. Dunnick’s Application is accompanied by copies of related documents filed with the Kootenai County Recorder’s Office in Coeur d’Alene, Idaho and is augmented by the supporting affidavit of Michael B. McFarland, a Coeur d’Alene attorney who provides his legal opinion regarding chain of title and ownership of the Happy Valley Water System.

On April 3, 1998, the Commission in Case No. HVW-W-98-1 issued Order No. 27447 and Notices of Application, Modified Procedure, and Show Cause Hearing.  In its Order the Commission made the following findings:

The Commission has reviewed and considered the filings of record in Case No. HVW-W-98-1 and has considered the related reports of its counsel and Commission Staff.  We find that the documentation and affidavit filed in this case present prima facie evidence of a change in ownership of the Happy Valley Water System and present reasonable grounds to suspend the HVW management and operation rights of Mr. Davis and to appoint Mr. Dunnick as interim operator and manager of the Happy Valley Water System.  We note that any dispute regarding ownership of the water system is a matter for the courts and not this Commission.  Should Mr. Davis clearly assert any rights of ownership in this proceeding, we will require that title be resolved by judicial quiet title action.

The deadline for filing written comments or protests with respect to the proposed transfer of Certificate No. 328 and the Commission’s use of Modified Procedure in Case No. HVW-W-98-1 was Friday, April 17, 1998.  The only comments received were filed by Kootenai Electric Cooperative (attached).  Kootenai Electric apprises the Commission that on March 1, 1998, the electric account for the Happy Valley Water System was changed over from Coyote Coeur d’Alene Corp. to Jon and Richard Dunnick.  Kootenai Electric further requests assistance in collecting the outstanding balance owed by Coyote Coeur d’Alene Corp. related to pumping and electric costs for service to the Happy Valley Water System.

A show cause hearing was held in Boise, Idaho on April 21, 1998, to provide Coyote Coeur d’Alene Corp. and Lawrence W. (Zeke) Davis and/or any other interested party the opportunity to appear and show cause (if any) why the requested transfer of Certificate of Public Convenience and Necessity No. 328 should not occur.  The Commission’s attorney, Deputy Attorney General Scott D. Woodbury, was the only party to appear.  Mr. Woodbury suggested that rather than a transfer of Certificate No. 328, the Commission consider a cancellation of the existing Certificate No. 328 and issuance of a new certificate to the Dunnicks.

Commission Decision

Based on the established record in Case No. HVW-W-98-1, the Commission’s prior finding that there exists prima facie evidence of a change in ownership of the Happy Valley Water System, the fact that no party either by written comment or protest filed pursuant to Modified Procedure or by appearance at show cause hearing before the Commission has asserted or claimed any competing rights of ownership or challenge to the Dunnick’s claim of title to the Happy Valley Water System, does the Commission find it reasonable to grant the requested transfer of Certificate No. 328?  Alternatively, does the Commission find it reasonable to cancel the Certificate of Coyote Coeur d’Alene Corp. and issue a new Certificate to Jon and Richard Dunnick?  If not, what is the Commission’s preference?  Any comment regarding Kootenai Electric?

Scott Woodbury

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