

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE APPLICATION)
OF KOOTENAI HEIGHTS WATER) **CASE NO. KHW-W-05-01**
SYSTEM, INC. FOR A CERTIFICATE OF)
PUBLIC CONVENIENCE AND NECESSITY) **ORDER NO. 30138**
)

On September 1, 2006, the Commission issued a final Order granting the request of Kootenai Heights Water System, Inc. (Kootenai Heights, Company) for a Certificate of Public Convenience and Necessity. Order No. 30122. The Commission also issued, on September 1, 2006, a Notice of Proposed Order and Proposed Order regarding the rates, charges, rules, and regulations of the Company.

On September 22, 2006, Kootenai Heights filed a pleading titled "Comments and Objections to Proposed Order and Request for Evidentiary Hearing." In this pleading the Company objects to the jurisdiction of the Commission and states that the Company is not a public utility. Kootenai Heights' Comments and Objections, p. 1.

FINDINGS/DISCUSSION

Any person interested in a final order or any issue decided in a final order of the commission may petition for reconsideration within 21 days of the service date of the order. Rule 331, IDAPA 31.01.01.331.01; *Idaho Code* § 61-626. The Commission may grant reconsideration upon the petition of any interested person or upon its own motion. Rule 332, IDAPA 31.01.01.332; *Idaho Code* §§ 61-624, 61-626.

Kootenai Heights has objected to the Commission's jurisdiction and states that it is not a public utility. This is the subject matter of Order No. 30122, the Commission's final Order granting the Company's request for a Certificate of Public Convenience and Necessity. It is unclear why the Company would file an Application seeking the issuance of a Certificate authorizing it to be a regulated public utility, and then after such Certificate is granted as requested, object to the jurisdiction of the Commission. The Company did not set forth the specific grounds as to why it contends it is not a public utility and why the Commission does not have jurisdiction over it. *See* Rule 331. Neither did the Company make any reference to any particular provision of statute, rule, order, notice, or any other controlling law upon which it bases its statements. Although the Company did not phrase its "Comments and Objections" in

the form of a Petition for Reconsideration, the Commission will treat the Company's objection to the Commission's jurisdiction as a Petition for Reconsideration of Order No. 30122, and hereby grant the same. Rule 332, *Idaho Code* §§ 61-624, 61-626.

Reconsideration is hereby granted as to the sole issue of whether Kootenai Heights Water System, Inc. is a public utility under the jurisdiction of the Idaho Public Utilities Commission. We find that the grounds upon which reconsideration is hereby granted present only issues of law. Rule 332. Therefore, we direct that the issue of the Commission's jurisdiction be considered by the submission of written briefs and/or legal memoranda. *Id.*

The Proposed Order of the Commission regarding the proper rates, charges, rules, and regulations of Kootenai Heights will remain a Proposed Order unless and/or until it is adopted or revised by Order of the Commission. *See* Rule 312.

ORDER

IT IS HEREBY ORDERED that the Commission grants reconsideration of final Order No. 30122, based upon Kootenai Heights Water System Inc.'s objection to the Commission's jurisdiction.

IT IS FURTHER ORDERED that the Company shall file a legal brief or memorandum setting forth the specific grounds as to why it contends it is not a public utility and why the Commission does not have jurisdiction over it, including specific reference to particular provisions of statute, rule, order, notice, case law, or any other controlling law upon which it bases its statements. The Company's legal brief or memorandum shall be filed with the Commission Secretary no later than October 23, 2006.

IT IS FURTHER ORDERED that Commission Staff and other interested persons shall be entitled to respond to the Company's filing by written legal brief or memorandum no later than November 6, 2006.

DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 3rd
day of October 2006.



PAUL KJELLANDER, PRESIDENT

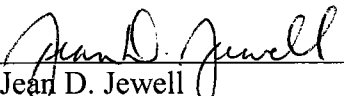


MARSHA H. SMITH, COMMISSIONER



DENNIS S. HANSEN, COMMISSIONER

ATTEST:



Jean D. Jewell
Commission Secretary

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