

DECISION MEMORANDUM

TO: COMMISSIONER KJELLANDER
COMMISSIONER SMITH
COMMISSIONER REDFORD
COMMISSION SECRETARY
COMMISSION STAFF

FROM: DONOVAN E. WALKER

DATE: MAY 25, 2007

SUBJECT: KOOTENAI HEIGHTS WATER – STIPULATION REGARDING RATES,
CHARGES, AND CUSTOMER RULES AND REGULATIONS – CASE NO.
KHW-W-05-01

On January 10, 2007, the Commission directed Staff and Kootenai Heights Water Company (Company) to conduct an informal prehearing conference, where they were to discuss the remaining issues in this case relating to rates, charges, rules, and regulations exploring any possibilities for agreement. Order No. 30219. The Parties met on February 20, 2007, reached agreement on the outstanding issues, and executed a Stipulation memorializing that agreement.

On May 24, 2005, the Parties filed a joint Motion for Approval of Stipulation as well as the Stipulation. The Parties ask that the Commission approve the Stipulation in its entirety, and authorize the Company to file conforming tariffs within 30 days of the Commission's Order.

PROCEDURAL HISTORY

On August 22, 2005, Kootenai Heights filed an Application for a Certificate of Public Convenience and Necessity (Certificate) with the Commission. On September 30, 2005, the Commission issued a Notice of Application and Modified Procedure establishing a deadline for written comments of November 10, 2005. Order No. 29877. On November 1, 2005, the Parties executed a Stipulation asking the Commission to suspend the written comment deadline so that alternative organizational structures for the Company could be explored. The Commission suspended the comment deadline, and directed the Parties to report back to the Commission in 60 days. Order No. 29909.

On January 20, 2006, Commission Staff reported that the Company wished to proceed with its original Application. The Commission issued a Second Notice of Application

and Modified Procedure, setting a comment/protest deadline of March 9, 2006. Order No. 29960. Commission Staff was the only party to file comments, and recommended that the Company be granted a Certificate of Public Convenience and Necessity. Staff also made several recommendations pertaining to the Company's rates, billing, charges, and customer rules.

On September 1, 2006, the Commission issued a final Order granting Kootenai Heights 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. The Notice of Proposed Order commenced a 21-day comment period on the Proposed Order.

On September 22, 2006, Kootenai Heights filed "Comments and Objections to Proposed Order and Request for Evidentiary Hearing." The Company objected to the jurisdiction of the Commission and stated that the Company was not a public utility. Kootenai Heights' Comments and Objections, p. 1.

On October 3, 2006, the Commission, in response to Kootenai Heights' objection to its jurisdiction, granted reconsideration of its final Order No. 30122, which granted Kootenai Heights' request for a Certificate of Public Convenience and Necessity authorizing it to operate as a public utility in the State of Idaho. Order No. 30138. On January 10, 2007, after the submission of legal briefs by the Parties, the Commission affirmed Order No. 30122, granting Kootenai Heights a Certificate and finding the Company to be a public utility subject to the Commission's jurisdiction. Order No. 30219. The Commission reiterated that the Proposed Order issued on September 1, 2006, had not been adopted and remained proposed pending further proceedings. The Commission also directed the Parties to conduct an informal prehearing conference, where they were to discuss the remaining issues relating to rates, charges, rules, and regulations exploring any possibilities for agreement. *Id.*

The Parties met on February 20, 2007, to conduct the informal prehearing conference and settlement discussions. The Parties reached agreement on the outstanding issues and have executed this Stipulation memorializing that agreement.

THE STIPULATION

The Stipulation was drafted in such a way as to propose changes/additions to the Commission Proposed Order, issued on September 1, 2006. Additionally, the provisions of the

Company's Water Service Agreement/Contract that do not conflict with the Commission's Proposed Order, as modified by the Stipulation, are also submitted for approval.

The Parties agreed that the Company's rates would be: \$38.50 per month up to 10,000 gallons, and \$3.10 per month for every 1,000 gallons used over 10,000 gallons, which is slightly less than what the Company's rates are currently. The Agreement also proposes a \$50.00 reconnection fee and \$10.00 late payment fee, and provides for semi-annual billing during April and October each year. The Agreement states that the Company will adopt and implement the Commission's Utility Customer Relations Rules, Customer Information Rules, and an accounting system consistent with the information required by the Commission's annual report for small water companies.

COMMISSION DECISION

Does the Commission wish to grant the Parties' Motion, accepting and approving the Parties' Stipulation?

If so, does the Commission wish to implement the Stipulation by making the proposed changes to its previously issued Proposed Order, and issue a final Order?

Alternatively, does the Commission wish to have a comment period regarding the Stipulation prior to deciding whether or not to accept/approve the same?

A handwritten signature in black ink, appearing to read "Don E. Walker", written over a horizontal line.

Donovan E. Walker

DONOVAN E. WALKER, ISB #5921
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UTILITIES COMMISSION

Attorney for Commission Staff

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) MOTION FOR APPROVAL
) OF STIPULATION
)**

Staff of the Idaho Public Utilities Commission (Staff) and Kootenai Heights Water System, Inc. (Kootenai Heights; Company), collectively referred to as the Parties, hereby moves the Commission for an Order accepting the Settlement Stipulation filed herewith. This Motion is based on the following:

1. On August 22, 2005, Kootenai Heights filed an Application for a Certificate of Public Convenience and Necessity (Certificate) with the Commission. The Application was processed by Modified Procedure with a comment deadline of March 9, 2006. On September 1, 2006, the Commission issued a final Order granting Kootenai Heights 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 October 3, 2006, the Commission, in response to Kootenai Heights' objection to its jurisdiction, granted reconsideration of its final Order No. 30122. On January 10, 2007, after the submission of legal briefs by the Parties, the Commission affirmed Order No. 30122, granting Kootenai Heights a Certificate and finding the Company to be a public utility subject to the Commission's jurisdiction. Order No. 30219. The Commission directed the Parties to conduct an informal prehearing conference, where they were to discuss the remaining issues relating to rates, charges, rules, and regulations, exploring any possibilities for agreement. *Id.*

2. The Parties met on February 20, 2007, to conduct the previously ordered, informal prehearing conference and settlement discussions. The Parties reached agreement on the outstanding issues and have executed a Stipulation memorializing that agreement. A copy of the signed Settlement Stipulation is filed herewith and enclosed as Attachment 1.

3. The Parties recommend that the Commission grant this Motion and approve the Stipulation in its entirety, without material change or condition, pursuant to RP 274.

NOW, THEREFORE, the Parties respectfully request that the Commission issue its Order:

1. Granting this Motion and accepting Attachment 1, the Stipulation, in its entirety, without material change or condition; and

2. Authorizing the Company to file its tariff schedules consistent with the Stipulation and the Commission's final Order within 30 days of the Commission's Order granting this Motion.

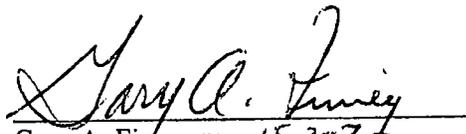
Respectfully submitted this 11th day of April 2007.

Idaho Public Utilities Commission Staff



Donovan E. Walker
Attorney for Commission Staff

Kootenai Heights Water System, Inc.



Gary A. Finney *may 15, 2007*
Attorney for Kootenai Heights Water

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Attorney for Commission Staff

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) SETTLEMENT STIPULATION
)**

This Stipulation is entered into by Kootenai Heights Water System, Inc. (Kootenai Heights; Company) and the Staff of the Idaho Public Utilities Commission (Staff) collectively referred to as the Parties.

I. INTRODUCTION

1. The terms and conditions of this Stipulation are set forth herein. The Parties agree that this Stipulation represents a fair, just, and reasonable compromise of the issues raised in this proceeding and that this Stipulation is in the public interest. The Parties maintain that the Stipulation and its acceptance by the Idaho Public Utilities Commission (Commission) represent a reasonable resolution of multiple issues identified in this matter. The Parties, therefore, recommend that the Commission, in accordance with RP 274, IDAPA 31.01.01.274, approve the Stipulation and all of its terms and conditions without material change or condition.

II. BACKGROUND

2. On August 22, 2005, Kootenai Heights filed an Application for a Certificate of Public Convenience and Necessity (Certificate) with the Commission. On September 30, 2005, the Commission issued a Notice of Application and Modified Procedure establishing a deadline for written comments of November 10, 2005. Order No. 29877. On November 1, 2005, the Parties executed a Stipulation asking the Commission to suspend the written comment deadline so that alternative organizational structures for the Company could be explored. The

Commission suspended the comment deadline, and directed the Parties to report back to the Commission in 60 days. Order No. 29909.

3. On January 20, 2006, Commission Staff reported that the Company wished to proceed with its original Application. The Commission issued a Second Notice of Application and Modified Procedure, setting a comment/protest deadline of March 9, 2006. Order No. 29960. Commission Staff was the only party to file comments, and recommended that the Company be granted a Certificate of Public Convenience and Necessity. Staff also made several recommendations pertaining to the Company's rates, billing, charges, and customer rules.

4. On September 1, 2006, the Commission issued a final Order granting Kootenai Heights 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. The Notice of Proposed Order commenced a twenty-one (21) day comment period on the Proposed Order.

5. On September 22, 2006, Kootenai Heights filed "Comments and Objections to Proposed Order and Request for Evidentiary Hearing." The Company objected to the jurisdiction of the Commission and stated that the Company was not a public utility. Kootenai Heights' Comments and Objections, p. 1.

6. On October 3, 2006, the Commission, in response to Kootenai Heights' objection to its jurisdiction, granted reconsideration of its final Order No. 30122, which granted Kootenai Heights' request for a Certificate of Public Convenience and Necessity, authorizing it to operate as a public utility in the State of Idaho. Order No. 30138. On January 10, 2007, after the submission of legal briefs by the Parties, the Commission affirmed Order No. 30122, granting Kootenai Heights a Certificate and finding the Company to be a public utility subject to the Commission's jurisdiction. Order No. 30219. The Commission reiterated that the Proposed Order issued on September 1, 2006, had not been adopted and remained proposed pending further proceedings. The Commission also directed the Parties to conduct an informal prehearing conference, where they were to discuss the remaining issues relating to rates, charges, rules, and regulations, exploring any possibilities for agreement. *Id.*

7. The Parties met on February 20, 2007, to conduct the informal prehearing conference and settlement discussions. The Parties reached agreement on the outstanding issues

and have executed this Stipulation memorializing that agreement. The Parties have agreed to the following:

III. TERMS OF THE STIPULATION

8. The Parties agree that the following terms shall be submitted to the Commission for approval as additions to the Company's Water Service Agreement and the Commission's Proposed Order. The following terms will replace the corresponding terms in the Commission's Proposed Order. The provisions of the Company's Water Service Agreement/Contract that do not conflict with the Commission's Proposed Order, as modified by the terms of this Stipulation, are also submitted to the Commission for approval.

9. Rates. The Parties agree that Kootenai Heights shall be allowed to charge the following rates: \$38.50 per month up to 10,000 gallons, and \$3.10 per month for every 1,000 gallons over 10,000 gallons.

10. Customer Fees. The Parties agree that the Company may charge a \$50.00 reconnection fee, and a \$10.00 late payment fee.

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11. Customer Billing. The Parties agree that the Company will bill on a semi-annual basis, ^{during} April ~~X~~ and ^{during} October ~~X~~ each year. Any water usage over 10,000 gallons per month will be billed semi-annually. Monthly usage in excess of 10,000 gallons per month will be determined by dividing the total usage by the months of usage in the billing. Similarly, payment for usage in excess of 10,000 gallons per month will be divided equally over the six-month billing period.

12. Customer Rules and Regulations. The Company will adopt and implement the Commission's Utility Customer Relations Rules (IDAPA 31.21.01.000 *et seq.*), the Commission's Customer Information Rules (IDAPA 31.21.02.000 *et seq.*), and an accounting system consistent with information required by the Commission's annual report for small water companies (*Idaho Code* § 61-405).

13. The Parties agree that this Stipulation represents a compromise of the positions of the Parties in this case. As provided in RP 272, other than any testimony filed in support of the approval of this Stipulation, and except to the extent necessary for a Party to explain before the Commission its own statements and positions with respect to the Stipulation, all statements made and positions taken in negotiations relating to this Stipulation shall be confidential and will not be admissible in evidence in this or any other proceeding.

14. The Parties submit this Stipulation to the Commission and recommend approval in its entirety pursuant to RP 274. The Parties shall support this Stipulation before the Commission, and no Party shall appeal a Commission Order approving the Stipulation or an issue resolved by the Stipulation. If this Stipulation is challenged by any person not a party to the Stipulation, the Parties to this Stipulation reserve the right to file testimony, cross-examine witnesses and put on such case as they deem appropriate to respond fully to the issues presented, including the right to raise issues that are incorporated in the settlements embodied in this Stipulation. Notwithstanding this reservation of rights, the Parties to this Stipulation agree that they will continue to support the Commission's adoption of the terms of this Stipulation.

15. If the Commission rejects any part or all of this Stipulation, or imposes any additional material conditions on approval of this Stipulation, each Party reserves the right, upon written notice to the Commission and the other Party, within 14 days of the date of such action by the Commission, to withdraw from this Stipulation. In such case, no Party shall be bound or prejudiced by the terms of this Stipulation, and each Party shall be entitled to seek reconsideration of the Commission's order, file testimony as it chooses, cross-examine witnesses, and do all other things necessary to put on such case as it deems appropriate. In such case, the Parties immediately will request the prompt reconvening of a prehearing conference for purposes of establishing a procedural schedule for the completion of the case. The Parties agree to cooperate in the development of a schedule that concludes the proceeding on the earliest possible date, taking into account the needs of the Parties in participating in hearings and preparing briefs.

16. The Parties agree that this Stipulation is in the public interest and that all of its terms and conditions are fair, just, and reasonable.

17. No Party shall be bound, benefited, or prejudiced by any position asserted in the negotiation of this Stipulation, except to the extent expressly stated herein, nor shall this Stipulation be construed as a waiver of the rights of any Party unless such rights are expressly waived herein. Execution of this Stipulation shall not be deemed to constitute any acknowledgment by any Party of the validity or invalidity of any particular method, theory, or principle of regulation or cost recovery. No Party shall be deemed to have agreed that any method, theory, or principle of regulation or cost recovery employed in arriving at this Stipulation is appropriate for resolving any issues in any other proceeding in the future. No

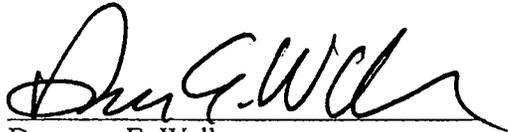
findings of fact or conclusions of law other than those stated herein shall be deemed to be implicit in this Stipulation.

18. The obligations of the Parties under this Stipulation are subject to the Commission's approval of this Stipulation in accordance with its terms and conditions and upon such approval being upheld on appeal by a court of competent jurisdiction.

19. This Stipulation may be executed in counterparts and each signed counterpart shall constitute an original document.

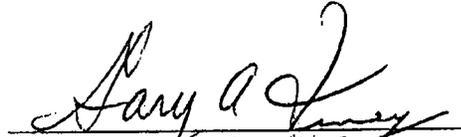
DATED this 24th day of ~~April~~ May 2007.

Idaho Public Utilities Commission Staff



Donovan E. Walker
Attorney for Commission Staff

Kootenai Heights Water System, Inc.


Gary A. Finney May 15, 2007
Attorney for Kootenai Heights Water

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT I HAVE THIS 24th DAY OF MAY 2007,
SERVED THE FOREGOING MOTION FOR APPROVAL OF STIPULATION AND
SETTLEMENT STIPULATION, IN CASE NO. KHW-W-05-01, BY MAILING A
COPY THEREOF, POSTAGE PREPAID, TO THE FOLLOWING:

FLOYD N McGREE PRESIDENT
KOOTENAI HEIGHTS WATER SYSTEM
INC.
PO BOX 1925
SANDPOINT ID 83864

GARY A FINNEY
FINNEY FINNEY & FINNEY PA
120 E LAKE ST SUITE 317
SANDPOINT ID 83864



SECRETARY