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IDAHO PUBLIC
UTILITIES COMMISSION

Attorneys for Applicant

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE
APPLICATION OF MAYFIELD
SPRINGS WATER COMPANY, INC.,
FOR A CERTIFICATE OF PUBLIC
CONVENIENCE AND NECESSITY

CASE NO. MSW-W-08-01
RESPONSE TO PETITION OF
RECONSIDERATION OF
INTERVENOR GERALD J. CORVINO

COMES NOW, Mayfield Springs Water Company, Inc., (the "Company") by and through its counsel, Fisher Pusch & Alderman LLP and files its Response to the Petition for Reconsideration of Intervenor Gerald J. Corvino (the "Petition"). The Company is filing this Response only to respond to grounds two and three of the Petition and respectfully requests that the Commission deny Mr. Corvino relief on each.

RESPONSE

1. The Commission should deny ground two of the Petition in the interests of judicial economy and because granting the relief requested could result in retroactive ratemaking

In ground two of the Petition, Mr. Corvino asserts that Final Order No. 30628 "authorizes a windfall profit for the Company in the collection of connection fees that the Commission found to be unreasonable."

ORIGINAL

The Commission stated that "the District Court in its Memorandum Decision dated August 4, 2008 has essentially granted Mr. Corvino's request for a refund of any and all monies requested before the date Mayfield filed its Application for a Certificate." Order No. 30628 at p. 17. The District Court in its Memorandum Decision is currently considering what level of refunds/damages, which would necessarily include any hookup fees paid if any, customers should receive. To reopen this instant matter would duplicate the proceedings currently ongoing in the District Court and create the possibility that the forums could reach differing results. In addition, the added cost of defending the same issue in two forums puts further financial strain on the Company, a small water company with a possible rate of return of \$1,615.00 annually.¹ Accordingly, in the interests of judicial economy the Company respectfully requests that the Commission defer to the District Court on this issue and deny ground two of Mr. Corvino's Petition for Reconsideration.²

In addition, the Company still asserts that to order refunds would amount to retroactive ratemaking. See *Arkansas Louisiana Gas Company v. Hall et al.*, 453 U.S. 571, 101 S.Ct. 2925, 60 L.Ed.2d 856 (1981) ("the Commission itself has no power to alter a rate retroactively. When the Commission finds a rate unreasonable, it "shall determine the just and reasonable rate . . . to be thereafter observed and in force." § 5 (a), 52 Stat. 823, 15 U.S.C. § 717d (a) (emphasis added). See, e. g., *FPC v. Tennessee Gas Co.*, 371 U.S. 145, 152-153 (1962); *FPC v. Sierra*

¹ Litigating these issues in two forums will undoubtedly cost the Plaintiffs in the District Court to incur additional costs as well.

² To the extent consideration of whether to award refunds is analogous to awarding damages see *Utah Power & Light Co., v. Idaho Public Utilities Commission*, 107 Idaho 47, 49, 685 P.2d 276, __ (1984) quoting the Commission:

[t]he statutes governing rehearing, appeal and stay of our orders, and the general prohibitions against setting rates based upon previous periods of unreasonably high or unreasonably low rates, admit no other construction. We are a regulatory Commission, not a court of law, and have no authority to award damages except as given to us by statute.

Pacific Power Co., 350 U.S. 348, 353 (1956). This rule bars "the Commission's retroactive substitution of an unreasonably high or low rate with a just and reasonable rate." *City of Piqua v. FERC*, supra, at 12, 610 F.2d, at 954.") Further, in the event the Commission decides to consider this issue the refund period should only date back to the date on which the Company filed its original Application and it was put on notice that its rates were being investigated through Commission Order No. 30512. *Public Utilities Commission of the State of California v. F.E.R.C.*, 462 F.3d 1027, 1062 (9th Cir. 2006) ("If FERC finds a rate unjust and unreasonable pursuant to a § 206 complaint, it must order imposition of a just and reasonable rate; however, the refund is limited to periods subsequent to the "refund effective date" established by FERC.")

In the event the Commission desires to investigate ground two of the Petition for Reconsideration further, the Company reserves all defenses including the right of set off. Previously, the Company stated in its Reply Comments that it would not seek the recovery of any deficiency in collections for water service that would result if the Commission authorized rate exceeded the interim rate of \$50.00 per month. *Reply Comments* at p. 13. The Company in the interest of customer relations made the decision to not seek recovery of any resulting deficiency back to February 8, 2005. However, due to customers' repeated requests for refunds the Company must now withdraw its offer, to the extent necessary, on this issue in order to preserve the defense of set-off. To the extent the Commission considers whether refunds should be issued to customers for connection fees the Company respectfully requests that: 1) the Commission recognize that many customers were not billed for services for several months prior to January 2007 and as such a value for these services should be calculated as a setoff against any potential refunds; 2) the Commission should allow the Company to recalculate all customer rates, including for the common area, back to the date service was first provided

based upon the Commission approved rates for service as set forth in Order No. 30628; and, 3) the cost per connection would likely have been higher than the Commission approved amount during times when construction and lot sales were booming in the Treasure Valley causing high demand for services and equipment leading to higher costs for development.

Based on the foregoing the Company respectfully requests that the Commission deny Mr. Corvino relief on ground two of his Petition.

2. The Company will not assess interest on the portion/amount of a customer's late and outstanding account balance for water service specifically related to late fees that may have been previously assessed by the Company.

In ground three of the Petition, Mr. Corvino asserts that Final Order No. 30628 "authorizes the Company to collect interest on late charges the Commission ruled "excessive" in the cases where customers refused to pay the 'excessive' charges.

The Company will not seek to assess the Commission approved 1% late fee on the amount of any late fees (any amount charged other than 1%) that may have been assessed on customers for their failure to pay for water service. The Company reserves its right to assess the Commission approved late fee on all past due accounts (not including amounts for previously imposed late charges) back to the date on which the Company first began billing for its services.

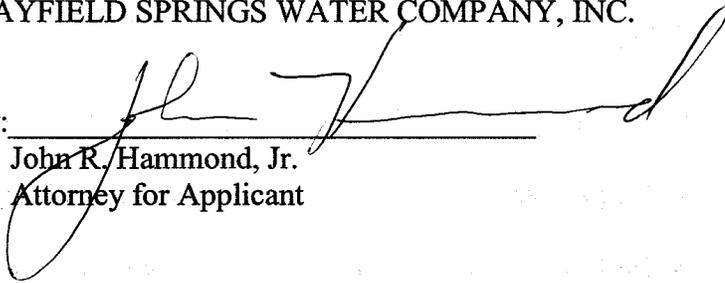
CONCLUSION

Based on the foregoing, the Company respectfully requests that the Commission deny grounds two and three of Intervenor Gerald Corvino's Petition for Reconsideration.

DATED THIS 2 day of September, 2008.

MAYFIELD SPRINGS WATER COMPANY, INC.

By: _____


John R. Hammond, Jr.
Attorney for Applicant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 27 day of September, 2008, a true and correct copy of the foregoing document was served on the following individuals by the method indicated below:

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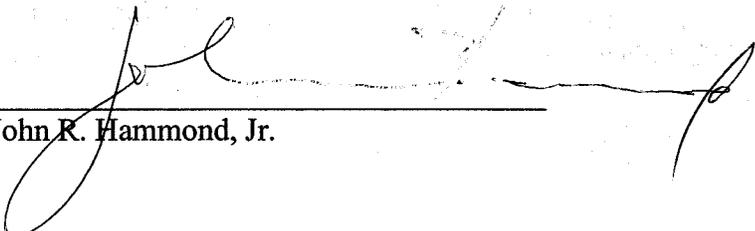
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