

**BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION**

<b>IN THE MATTER OF UNITED WATER</b>	)	
<b>IDAHO'S TARIFF ADVICE TO INCREASE</b>	)	<b>CASE NO. UWI-W-03-1</b>
<b>CUSTOMER RATES TO RECOVER THE CITY</b>	)	
<b>OF BOISE'S 4% FRANCHISE FEE.</b>	)	<b>ORDER NO. 29423</b>
	)	

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On December 18, 2003, United Water Idaho filed a Motion to Alter Order No. 29359 issued November 3, 2003 in the above referenced case. The Company requested that the Commission delete the provision in that Order that requires United Water to seek a court decision to determine whether the City of Boise's 1995 Ordinance No. 5623 and a recent 1% increase in the City's franchise fee are legally valid. As explained in the Motion, the City recently repealed the 1% increase.

As part of its Motion, United Water proposed to refund approximately \$50,000 in collected franchise fees to customers by issuing billing credits against future franchise fees. This amount represents the difference between the former 3% franchise fee and the increased franchise fee of 4% that became effective October 1, 2003. Finally, the Company also submitted a revised Tariff Schedule No. 8 reflecting the repeal of the 1% increase and a return to the 3% franchise fee effective December 17, 2003. The Company requested the Commission to "accept for filing" the revised tariff page.

**BACKGROUND**

The background events concerning this matter are contained in Order No. 29359. Briefly, the City of Boise enacted franchise Ordinance No. 5623 in April 1995 but made it retroactive to November 1994. During this interval, the Legislature enacted *Idaho Code* § 50-329A that states in "no case shall [a city's] franchise fee exceed three percent," with exceptions not pertinent here. The statute became effective in March 1995. The City's 1995 Ordinance provided that Boise may increase the United Water franchise fee from 3% to 4%, and from 4% to 5% "upon passage of a resolution." In July 2003, the City increased the United Water franchise fee to 4% effective October 1, 2003. Order No. 29359 at 1-7.

In Order No. 29359 the Commission examined the United Water tariff that implemented the collection of the 1% increase in the City's franchise fee. In that Order, the

Commission recognized that the Commission Staff raised significant questions regarding the validity of the City's 1995 franchise fee Ordinance and the recent 1% increase. Order No. 29359 at 12. However, the Commission declined to initiate an investigation to examine these issues. Instead, the Commission found that "these questions should be addressed and answered by a court of law." *Id.* at 13. Consequently, the Commission directed United Water to "initiate a case in a court of competent jurisdiction to resolve these questions." *Id.* In addition, the Commission placed the Company on notice that the 1% increase effective October 1, 2003, "is subject to refund if a court invalidates the [franchise fee] ordinance or franchise fee increase. United Water shall provide the Commission with the Court's opinion within twelve (12) months from the date of this Order." *Id.* There were no petitions for reconsideration.

### UNITED WATER'S MOTION

In its Motion, United Water requested that the Commission eliminate that provision in Order No. 29359 that requires the Company to seek a court determination regarding the legality of the 1995 Ordinance and the 1% franchise fee increase. In support of its Motion, United Water disclosed that the City recently adopted Resolution No. 17959 on December 16, 2003. In essence, the December 16 Resolution repeals Resolution No. 17692 that authorized the 1% increase in October 2003. The December Resolution states that the City and United Water "have determined the potential costs associated with continuing to collect the franchise fee increase warrant the repeal of the fee increase." Resolution No. 17959 (Dec. 16, 2003). Consequently, the repeal of Resolution No. 17692 returns the franchise fee to 3%.

Given the City's repeal of its 1% increase, United Water asserted that the Commission's prior directive in Order No. 29359 to seek a court determination is moot. Motion at 2. "Because the 4% fee has been rescinded a judicial determination as to its validity would have no practical effect on the outcome." *Id.* Thus, United Water requested pursuant to *Idaho Code* § 62-624, that the Commission amend its Order No. 29359 and delete the requirement that the Company seek a court decision.

As part of its Motion, United Water also sought authority to refund the 1% franchise fees that it collected from customers since October 1, 2003. The Company estimated that the 1% fee represents approximately \$50,000 in collected fees. It calculated the average refund per customer would be about 50¢ but could be as much as \$1.50. Consequently, the Company

requested that it be authorized to return these funds to its customers in the form of a bill credit against future franchise fees rather than issue refund checks. *Id.* at 2.

Finally, the Company prepared revisions to its Tariff Schedule No. 8, Sheet 10B showing that Boise's franchise fee is reduced to 3% effective December 17, 2003. The Company asked that its revised tariff be accepted for filing.

#### STAFF COMMENTS

Although the Staff believed that rescission of the franchise fee increase does not address the underlying legality of the City's 1995 Ordinance No. 5623, the Staff did not oppose the Motion. Staff supported the Company's proposal to refund the collected franchise fee increase to customers in the form of a credit against future franchise fees. The Staff also recommended that the Commission "accept for filing" the Company's revised Schedule No. 8, Sheet 10B.

While the Staff agreed with the proposed credit methodology, it expressed concern that former customers who are no longer served by United Water may not receive their refunds. The Company was unable to provide the Staff with the exact number of customers who have departed between October 1 and December 17, 2003. The Company indicated that it would have to develop a special program to generate this information. However, United Water estimated that 2,600 "final" bills were rendered during this period – with some of those customers leaving the system and others moving to a new location within the Company's service territory. The Company maintained that many final accounts do routinely relocate within the system. Thus, the credit would be issued to these relocated customers.

In instances where United Water has information about the whereabouts of former customers, Staff suggested the Company refund the credit accordingly. If the Company is unable to issue a refund credit, Staff offered two alternatives. First, it may be appropriate to treat such un-refunded amounts as unclaimed property per *Idaho Code* §§ 14-501 *et seq.* Second, the Company could follow the refund procedures set out in *Idaho Code* § 61-628 (Accounting on Appeal). In cases where a utility has collected rates that are the subject to refund on appeal, any overcharges are to be promptly returned to customers. After publishing a list of customers that have not received their refund, all monies not claimed within three months of the notice shall be paid into the State's General Fund. Under either alternative, Staff concluded that it was

unreasonable for United Water to retain funds that were designated by the Commission as “subject to refund.”

### **THE STIPULATION**

On January 21, 2004, United Water and Staff filed a Stipulation addressing refunds for former customers who are no longer served by the Company. In their Stipulation, the parties agreed that United Water will publish a newspaper notice advising former customers that they may be eligible for a refund of the Boise City franchise fee. For a period of 60 days after the newspaper publication, United Water will make refunds to former customers. After the 60-day period, United Water “shall calculate the un-refunded amount of franchise fee collections in excess of 3% and report that amount to the Staff. United Water will then credit that amount to Account No. 904000, Bad Debt Expense.” Stipulation at 2. The parties estimate that the total amount owing to former eligible customers would be less than \$2,000. *Id.*

### **DISCUSSION AND FINDINGS**

*Idaho Code* § 61-624 provides that the Commission may rescind, alter or amend any prior Order or decision issued by the Commission. This section also provides that the affected utility must be notified and provided an opportunity “to be heard” before amending a prior Order. In this case, it is the utility requesting that the Commission rescind a provision in a prior Order.

After reviewing the Company’s Motion and the Stipulation, we find it is reasonable to rescind the provision in Order No. 29359 requiring United Water to seek a Court determination regarding the legality of the franchise fee Ordinance and the 1% increase. Although the City’s 1995 Ordinance was not been amended and still contains the provisions for increasing the franchise fee above 3%, the net effect of repealing Ordinance No. 17692 is to return United Water’s franchise fee to the maximum authorized by *Idaho Code* § 50-329A. In addition, United Water has moved to refund the 1% fee increase (approximately \$50,000) to customers in the form of a credit against future franchise fees. Consistent with our prior Order that the 1% fee is subject to refund, we find it appropriate to refund the 1% franchise fee collected from United Water customers between October 1, 2003 and December 16, 2003.

Turning the parties’ Stipulation, we accept it in part. IDAPA 31.01.01.276. We agree with the parties that it is reasonable to apply any un-refunded franchise credit to Account

No. 904000. However, we find that it is unnecessary to publish the refund notice and to issue checks when the average amount of the refund is estimated to be \$.50. We find that applying any un-refunded amount to the bad debt account is an appropriate disposition of the remaining refund balance. Accordingly, we accept for filing the Company's revised Schedule No. 8, Sheet No. 10B effective December 17, 2003.

### **ORDER**

IT IS HEREBY ORDERED that United Water's Motion to Alter Order No. 29359 is granted as set out in greater detail above. United Water shall refund the 1% franchise fee collected between October 1, 2003 and December 16, 2003 to customers in the form of a billing credit against future franchise fees.

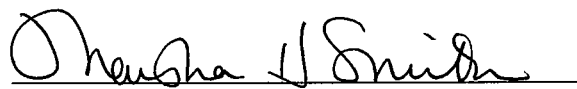
IT IS FURTHER ORDERED that no later than April 2, 2004, United Water shall inform the Commission Staff of the number of accounts or former customers that did not receive a refund and the remaining un-refunded credit amount. United Water shall credit this un-refunded amount to Account No. 904000 (Bad Debt Expense).

IT IS FURTHER ORDERED that the Company's revised Schedule No. 8, Sheet No. 10B is accepted for filing effective December 17, 2003.

THIS IS A FINAL ORDER. Any person interested in this Order (or in issues finally decided by this Order) or in interlocutory Orders previously issued in this Case No. UWI-W-03-1 may petition for reconsideration within twenty-one (21) days of the service date of this Order with regard to any matter decided in this Order or in interlocutory Orders previously issued in this Case No. UWI-W-03-1. Within seven (7) days after any person has petitioned for reconsideration, any other person may cross-petition for reconsideration. See *Idaho Code* § 61-626.

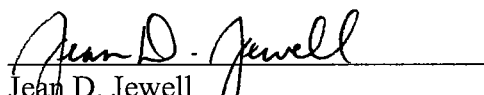
DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this ~~2nd~~<sup>February</sup>  
day of ~~January~~ 2004.

  
PAUL KJELLANDER, PRESIDENT

  
MARSHA H. SMITH, COMMISSIONER

  
DENNIS S. HANSEN, COMMISSIONER

ATTEST:

  
Jean D. Jewell  
Commission Secretary

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