

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE APPLICATION OF)	
UNITED WATER IDAHO, INC. FOR AN)	CASE NO. UWI-W-04-3
AMENDMENT TO ITS CERTIFICATE OF)	
PUBLIC CONVENIENCE AND NECESSITY NO.)	
142 AND FOR AN ACCOUNTING ORDER.)	ORDER NO. 29625
)	

On August 9, 2004, United Water Idaho, Inc. (United Water; Company) filed an Application with the Idaho Public Utilities Commission (Commission) requesting authority to remove the Carriage Hill Subdivision from the Company’s certificated service area and for an accounting order regarding distribution of proceeds from the sale of the Carriage Hill domestic water system by United Water to the City of Nampa. On August 25, 2004, the Company filed supporting testimony for its Application.

Background

On March 29, 1999, Commission Order No. 27976 approved an expansion of United Water’s certificated service area to include the Carriage Hill Subdivision in Canyon County, Idaho near the City of Nampa. The expansion was pursuant to a Non-contiguous Water System Agreement between the Company and Carriage Hill dated November 20, 1998. At approximately the same time, the Company’s corporate parent, United Waterworks, entered into a separate agreement with the Carriage Hill developers that United Waterworks would loan the developers up to \$350,000 to finance the construction of the Carriage Hill source of supply system only.

As initially constructed, the Carriage Hill development had only one well to serve as the source of supply. In the spring of 2002, the developer embarked on Phase 2 of the distribution system that would add 20 lots to the original 27 in Phase 1. Eventually, 25 lots would be connected, the maximum permitted by the Idaho Department of Environmental Quality (DEQ) for a system with only one source well. Under DEQ requirements, a second source of supply is required for a water system serving more than 25 connections.

In early 2003, the Carriage Hill developers informed United Water that they did not have funds to construct a second source of supply or to continue payments to United

Waterworks. Without a second source of supply Carriage Hill is not able to expand. Without expansion, Carriage Hill developers are unable to generate funds to finance a new well or to pay United Waterworks.

On August 15, 2003, the City of Nampa entered into negotiations with United Water and Carriage Hill in connection with the ownership, operation and maintenance of the Carriage Hill domestic water system and the connection of the system to Nampa's Municipal Water System.

On August 25, 2003, Carriage Hill requested a waiver from the Idaho Department of Environmental Quality to allow an additional ten lots in the subdivision to be connected to the water system prior to the installation of a second source of supply. The proposed second source of supply would be connection to Nampa's Municipal Water System. As of the date of the Application approximately 30 lots in the Carriage Hill Subdivision have been connected to the domestic water system.

Purchase Agreement—United Water/City of Nampa

United Water (Seller) entered into a Purchase Agreement (Agreement) with the City of Nampa (Buyer) dated March 12, 2004. As reflected in the Agreement, the purchase price is \$375,000. A portion of the purchase price, approximately \$36,000, is to be paid to United Water Idaho. The remainder of the purchase proceeds, approximately \$338,000, is to be paid to United Waterworks, Inc., to repay the Design-Build Promissory Note that is the joint and several obligation of Carriage Hill LLC.

United Water contends that acquisition of the Carriage Hill domestic water system by the City of Nampa is consistent with the Public Convenience and Necessity because:

- Nampa has adequate source of supply and operational capability to provide safe and reliable water service to the subdivision;
- The connection of Nampa's distribution system to the Carriage Hill domestic water system will provide a second source of supply as required by DEQ rules thus insuring reliable water supply to the subdivision and permitting further expansion of the subdivision; and
- The rates charged by Nampa for domestic water service are lower than the rates charged by United Water, and customers within the subdivision will therefore experience a decrease in the cost of domestic water service.

United Water's proposed journal entries account for the \$36,000 to be received by United Water at closing. They include Advanced Plant in Service of \$354,906 and Contributed Plant in Service of \$177,439. The advanced plant reflects the source of supply portion of the system and was provided by the developer. The contributed plant reflects the distribution portion of the system and was fully funded by the developer. Because advanced plant and contributed-plant are not included in the Company's rate base, United Water states that customers have not, through their rates, paid any return on those investments. It is the Company's contention that its customers have not acquired any financial or equitable interest for which they should be compensated upon sale of the Carriage Hill assets. United Water contends that the Company's accounting proposal is consistent with established regulatory accounting principles and requests that the Commission approve it.

On September 1, 2004, the Commission issued a Notice of Application and Modified Procedure in Case No. UWI-W-04-3. The deadline for filing written comments was September 27, 2004. Comments were filed by Commission Staff and a Carriage Hill customer. Reply Comments were filed by the Company on October 12 and the City of Nampa on October 26.

Staff does not object to the sale of the Carriage Hill Water System to the City of Nampa. Staff contends, however, that United Waterworks has no legal claim to any portion of the proceeds from the sale of the Carriage Hill Water System. Staff contends that the interests of ratepayers in advanced or contributed property is equivalent to that of the Company and should be treated as such in an equitable distribution of sale proceeds. Staff proposes that the proceeds from the sale be accounted for in a different manner than recommended by the Company. Staff adjusts the journal entry amounts required to make the Company whole from the Company-proposed \$36,000 to a Staff calculated \$38,744. Staff notes further that the proposed distribution to United Waterworks includes a \$28,138 premium over and above the \$308,118 outstanding obligation amount (principal and accrued interest as of October 15, 2004). Staff proposes three alternative allocation methods: (1) a risk-reward analysis; (2) depreciation ratios; and (3) a combination of the first two.

The Company in Reply Comments notes that in attempting to structure a solution to the dilemmas presented by the Carriage Hill situation, the Company did not proceed based on a

rigid analysis of the legal rights and obligations of the various parties. Rather the Company looked for a practical solution that did not harm any ratepayers and that unwound the financial obligations in a way that all parties were made whole. What the Company did may not be required from a strict legal point of view, but neither, it contends, is it prohibited. By focusing only on parties who have a strict legal entitlement to sale proceeds, the Company contends that Staff overlooks the reality of the circumstance—the proposed allocation results in all parties being made whole without harm to ratepayers. The Company presents what it contends is a unique situation to a unique set of circumstances.

The City of Nampa contends that it is important to the City that when the Carriage Hill water system is transferred to the City that all debts associated with system are extinguished. The City cautions that if the transaction does not close as contemplated by the Purchase and Sale Agreement, there could be a number of undesirable consequences. Further development of the Carriage Hill Subdivision could be halted; at least, it states, until the second source of supply requirement could be resolved. Further, as the City continues expanding its municipal water system, the Carriage Hill area could become an island served by one utility, but surrounded by another. And finally, the City notes that if the transaction does not close as proposed, the relationship among the parties, which are presently harmonious, could become adverse, to the probable detriment of all concerned. The City of Nampa has approved the Purchase Agreement and already established a Local Improvement District for future development on lands contiguous to the Carriage Hill Subdivision. Without the transfer of the Carriage Hill system to Nampa, the City contends that water service to the expansion area will be uncertain.

COMMISSION FINDINGS

The Commission has reviewed the filings of record in Case No. UWI-W-04-3 including the comments and recommendations of Commission Staff, the Reply Comments of United Water and the City of Nampa and the filed testimony and affidavit of Greg Wyatt, United Water's General Manager. We also heard and considered the November 1, 2004, oral argument of the Company and Commission Staff and considered the written comments of the Carriage Hill customer. We continue to find it reasonable based on our review of the record to process this case pursuant to Modified Procedure, i.e., by written submission rather than by hearing.

We find the public interest arguments advanced by the Company and the City to be persuasive and dispositive. Carriage Hill is a non-contiguous water system geographically

remote from United Water's remaining service areas. We find that the City of Nampa has the financial, technical and managerial capacity to serve and provide potable drinking water to the customers of Carriage Hill and at rates that are lower than United Water's. The Commission finds that the \$375,000 purchase price was the result of arms length negotiations and is reasonable. We further find that the City has the ability to provide the second source of water supply needed to allow further Carriage Hill development. While the commenting customer expresses concern regarding the water quality provided by the City, we are satisfied that the water provided will meet the safety and testing requirements of the Idaho Department of Environmental Quality. Under the unique facts of this case, we find it reasonable and in the public interest to approve the proposed sale and transfer.

Both Staff and the Company present proposals for the allocation of the sale proceeds. While other allocation methods have merit, we find the Company's proposal to simply unwind the financial obligations to be reasonable. In so doing, we find it unnecessary to address the legal and property right arguments advanced by Staff and the Company. We find the Staff adjusted journal entry amount of \$38,744 to be reasonable and accepted by the Company. We further find it reasonable and direct United Water to book the \$28,138 amount originally proposed as a risk premium distribution to United Waterworks as regulated revenue to be passed through to customers in the Company's upcoming general rate case. With such accounting, we find that the Company's remaining customers are held harmless.

Approving the proposed transfer in the manner reflected above, the Commission finds it reasonable following the transaction closing to authorize the amendment of United Water's Certificate of Public Convenience and Necessity No. 142 by eliminating the Carriage Hill Subdivision therefrom.

CONCLUSIONS OF LAW

The Idaho Public Utilities Commission has jurisdiction over United Water Company, a water utility, pursuant to the authority granted under Title 61 of the Idaho Code and the Commission's Rules of Procedure, IDAPA 31.01.01.000 *et seq.*

ORDER

In consideration of the foregoing and as more particularly described and qualified above, IT IS HEREBY ORDERED and the Commission does hereby approve the sale by United Water Idaho of the Carriage Hill water system to the City of Nampa for the purchase price of \$375,000. The Company is directed to account for same as more particularly described above.

IT IS FURTHER ORDERED and the Commission hereby authorizes following the transaction closing an amendment to United Water's Certificate of Public Convenience and Necessity No. 142 eliminating the Carriage Hill Subdivision therefrom. The Company is directed to file an amended Certificate reflecting the change in service area.

THIS IS A FINAL ORDER. Any person interested in this Order may petition for reconsideration within twenty-one (21) days of the service date of this Order. 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 9th day of November 2004.


PAUL KJELLANDER, PRESIDENT


MARSHA H. SMITH, COMMISSIONER


DENNIS S. HANSEN, COMMISSIONER

ATTEST:


Jean D. Jewell
Commission Secretary

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