Dean J. Miller
McDEVITT & MILLER LLP
420 West Bannock Street
P.O. Box 2564-83701
Boise, ID 83702
Tel: 208.343.7500
Fax: 208.336.6912
joe@mcdevitt-miller.com

Attorneys for Applicant

RECEIVED ☒
FILED ☐

2005 AUG 23 PM 1:40

IDAHO PUBLIC
UTILITIES COMMISSION

ORIGINAL

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE APPLICATION OF UNITED WATER IDAHO INC. FOR AUTHORITY TO INCREASE ITS RATES AND CHARGES FOR WATER SERVICE IN THE STATE OF IDAHO	**Case No. UWI-W-04-04** **UNITED WATER IDAHO'S PETITION FOR RECONSIDERATION**

COMES NOW United Water Idaho Inc., ("United," the "Company,") and pursuant to IPUCRP 331 and Idaho Code 61-626 respectfully Petitions for Reconsideration of certain aspects of Commission Order No. 29838, service dated August 3, 2005 ("the Order") as more fully set forth below. The Company requests reconsideration of Order No 29838 because those parts of the Order set forth below are unreasonable, unlawful, erroneous, unduly discriminatory and not in conformance with the facts of record and/or applicable law, resulting in a revenue requirement and rates which are confiscatory. More specifically, Company requests that the Commission reconsider its decision on the following issues:

I. Thirteen Month Average Rate Base;

II. Water Right Lease Revenue;

III. AFUDC on Initial Butte Water Right;

IV. Calculation of Pension Expense;

V. Early Retirement and Enhanced Severance Costs;

VI. Deferred Power Costs;

VII. Water Quality Testing;

VIII. Rate Case Expense;

IX. Business Insurance;

With regard to issues II (water rights) and VIII (rate case expense), the Company requests that the Commission accept into the record critical evidence that was unavailable at the time of the hearing, and on the basis of that evidence, reconsider its decision on those issues. The Company requests that the other issues be reconsidered based on briefs.

This Petition is based on the following reasons and upon the following grounds:

I.

CALCULATION OF THE COMPANY'S RATE BASE WITH A THIRTEEN MONTH AVERAGE RATE BASE IS UNREASONABLE, UNLAWFUL, ERRONEOUS, UNDULY DISCRIMINTORY AND NOT IN CONFORMANCE WITH THE FACTS OF RECORD AND/OR APPLICABLE LAW.

United calculated its proposed rate base using the "year end" methodology, as it has done in its prior cases since 1993, resulting in a proposed rate base of $140,148,049. Staff proposed use of a "thirteen month average" methodology resulting in a proposed rate base of $125,652,848. (Order, pg.5).

With slight modification, the Commission accepted Staff's proposal, resulting in a final rate base of $126,824,685, after other adjustments. (Order, pg. 2, Attachment 1). In consequence, Company is denied a return on rate base investment that is admittedly used and useful totaling $13,323,364. ($140,148,049 - $125,652,848).

A. **Legal Error.**

As acknowledged in the Order, United Water has used, and the Commission has approved, a year end test year with pro-forma adjustments and additions in each of its four rate cases since 1993 (Order, pg. 5). The Order observes that in those cases the year end method was not contested and then concludes, "That history, along with United Water's review of the Commission's final orders in the recent Idaho Power and Avista Cases, provided the Company with adequate notice of the Commission's preference for the average rate base methodology." (Order, pg. 6).

By focusing solely on what the Company should have been able to discern or intuit from prior orders regarding the Commission's general preferences, the Order falls into error because it fails to take into account the deficiencies of the thirteen month average rate base method as applied to the specific facts of this case. As the Company demonstrated, both in rebuttal testimony and its post-hearing brief, the thirteen month average rate base method should not be applied in this case for at least three reasons:

First, the rates produced by the thirteen month average rate base methodology will, as a matter of mathematical certainty, be insufficient to allow the Company an opportunity to earn its allowed return. The Commission's rate base calculation treats all post test year additions in service as of December 31, 2004 as though they were placed in service in July, the end of the historical year. The effect is to allow recovery of only one-thirteenth of those projects, all of which were providing service to customers over seven months before the Commission's Order establishing the new rates. More importantly, by averaging a test year that is already historical, only one-thirteenth of projects in service in July 2004, over one year before the Order, will be recovered under the new rates. Even projects placed in service in October 2003, almost *two* *years* before the new rates became effective, are not fully recovered under the Commission's averaging methodology. By allowing only a fraction of the total costs of construction projects actually in service at the end of the historical year, and by excluding post test year investment, the revenue produced by allowed rates will produce a return at least 80 basis points below the allowed return. (Tr., pg. 1038-1040. Ex. 17, Post Hearing Brief, pg. 7-9). Rates that will not produce the rate of return found to be reasonable are illegal. *See Idaho Power v. Idaho Public Utilities Commission*, 99 Idaho 374, 582 P.2d 720 (1978).

Second, use of the thirteen month average rate base methodology violates United Water's legal entitlement to have included in rate base investments that are known and measurable. The Idaho Supreme Court has made clear that the utility is entitled to a return on post test year investments that are known and measurable. In *Utah Power v Idaho Public Utilities Commission,* 102 Idaho 282, 629 P.2d 678 (1981) the court said: "The Commission should include in the rate base all items which are proven with reasonable certainty to be justifiably used by the utility in providing services to its customers." (*See Also,* Post Hearing Brief, pg. 5-6).

Third, the cost characteristics of United Water justify use of a year-end test year. United Water is highly capital intensive and its growth in rate base per customer is at a rate much greater than customer and usage growth. Unlike electric utilities, for which incremental rate base investment per customer is less than system average rate base, United Water must make higher than average cost additions to rate base to meet its growing load. (Tr., pg. 1034-1037, Post Hearing Brief, pg. 4-5).

For these reasons, the Order is erroneous. And, by failing to consider and discuss these objections to the thirteen month average rate base method, the Order, contrary to established law, fails to adequately explain the reasons for departing from the year end method. "If, however, the

IPUC decides a case in a manner contrary to prior IPUC rulings the Court will consider whether the IPUC has adequately explained the departure from prior rulings so that a reviewing court can determine that the decisions are not arbitrary and capricious". *Rosebud Enterprises v.; Idaho Public Utilities Commission*, 128 Idaho 609, 618 917 P.2d 766 (1996). Further, the United States Supreme Court has cautioned that an un-explained switching back and forth between rate methodologies has constitutional implications. "Consequently, a State's decision to arbitrarily switch back and forth between methodologies in a way which required investors to bear the risk of bad investments at some times while denying them the benefit of good investments at other would raise serious constitutional questions." *Duquesne Light Co. v. Barasch*, 488 U.S. 299 (1989).

B. Revenue Mismatch.

In conjunction with its proposal to use a year end test year, the Company proposed to increase test year revenues annualized at existing rates from July 31, 2004 through May 31, 2005. (Tr., pg. 18). Staff accepted this revenue projection, but grafted it onto its 13-month average rate base methodology.

The Order incorrectly concludes, "...and so the evidence on the adjustments as a means to correct the mismatch is uncontroverted." (Order, pg. 6). In fact, United Water argued strongly that while using projected revenue was appropriate for the year end methodology, it was inappropriate when using the 13-month method. Dr. Pesseau testified:

> Q. Has, in fact, Staff failed to properly match its proposed thirteen-month expense and rate base estimates with corresponding revenues?
>
> A. Yes. This can be demonstrated by determining that Staff used essentially the same level of annualized revenues, those for the period ending May 31, 2005 that are contained in the Company's filing. In following its suggestion to use the thirteen-month average rate base, Staff should also have reduced the May 31,

2005[1] annualized revenues in the Company's filing back to the actual test year revenues centered at January, 2004. But Staff did not. The test year revenues used by Staff are actually the very same test year revenues developed by the Company for its end of period method, with one very small exception. On Company Exhibit 8, Page 2 of 2, proposed test year revenues are $31,534,832. To verify that Staff's case calculates annualized revenues identically to the end of period May 31, 2005 calculated by the Company, I refer to Staff Exhibit 126. On this exhibit (column (6), line (12)) appears the same annualized revenue levels of $31,543,832.[2] In other words, Staff mismatches rate base and expenses on a thirteen-month average basis, with a higher level of revenues calculated on a forward annualized period May 31, 2005. Thus there is a gross mismatch. Contrastingly, the Company's filing is consistent, in that it matches the higher level of end of period May 31, 2005 revenues with its end of period expenses and rate base. Staff, on the other hand, mismatches these components by using the smaller than actual rate base, its thirteen month average, with the higher level of end of period revenues. This is a mismatch that eventually guarantees an under recovery of revenues sufficient to earn the allowed rate of return. (Tr., pg. 1030-1032).

And, in its post hearing brief United Water argued:

> In contrast, Staff's case fails to properly match its proposed thirteen-month and rate base estimates with corresponding revenues. As demonstrated by Staff Exhibit 126, Staff used the same level of annualized revenues, those for the period ending May 31, 2005, that are contained in the Company's filing. To be consistent with its suggestion to use the thirteen-month average rate base, Staff should also have reduced the May 31, 2005 annualized revenues in the Company's filing back to the actual test year revenues centered at January 2004. (Peseau Reb. Tr., pg. 1031). Thus, Staff mismatches rate base on a thirteen-

---

[1] These May 31, 2005 annualized revenues are derived by adjusting twelve-month ending July 31, 2004 revenues for South county, weather normalization and growth through May 31, 2005.
[2] This figure is adjusted by $5,628 for Carriage Hill on Staff Exhibit 111, Page 2 of 2.

month average basis, with a higher level of revenues calculated on a forward annualized period ending May 31, 2005.

For the foregoing reasons the Commission should grant reconsideration on this issue.

II.

IMPUTING REVENUE FROM A WATER RIGHT LEASE AND ASSOCIATED ADJUSTMENT OF PURCHARED WATER EXPENSE IS UNREASONABLE, UNLAWFUL, ERRONEOUS, UNDULY DISCRIMINTORY AND NOT IN CONFORMANCE WITH THE FACTS OF RECORD AND/OR APPLICABLE LAW.

The Order imputes to the Company's annual revenue an amount of $152,584, representing revenue from a lease of water under the Initial Butte water right. (Order, pg. 10). The Order further reduces the Company's normalized purchase water expense from $185,484 to $160,366, without explanation for the amount of the reduction. (Order, pg. 20). The net effect of these adjustments is to reduce the annual net allowance for purchased water to $7,782. This, despite undisputed testimony that the Company's estimated purchased water expense during 2005 will be $274,982. (Tr., pg. 150). Reconsideration should be granted with respect to this portion of the Order to (a) correct an error in logic and (b) take into account new facts that have developed since the time of hearing.

A. <u>Error in Logic.</u>

As noted, the Order imputes $152,584 to the Company's annual revenue as if that lease revenue will recur in each year of the rate period. In fact, the evidence established that 2005 is a unique year from a water supply perspective and future leases are unlikely to recur. (Tr., pg. 169-171, 213-214). The Order then, mistakenly, justifies the annual imputation on the assumption that, "When lease revenues are not received and the Snake River rights are exchanged for Boise River rights, purchased water transactions should be reduced." (Order, pg. 10-11). This, in fact, is not the case. The normalized cost of the 13,454 acre feet of water necessary to operate the Columbia and Marden treatment plants is $185,484. Lease revenues do not somehow go to the Company's bottom line as net income; they are used to offset only a portion of the additional cost of the other water necessary to meet the Columbia and Marden requirements, which are not met by the Initial Butte right.

The Company respectfully suggests that the more appropriate accounting treatment would be to book the extraordinary lease revenue as a deferred credit and amortize the credit over a reasonable period of time of three to five years. This treatment would recognize that the lease is an event not likely to recur, consistent with the Company's intention to use the Initial Butte right for its own supply needs whenever possible.

B. New Facts.

At the time of hearing the final lease document contemplated with respect to the Initial Butte right had not been signed, and any proceeds from the lease was a projected amount. The Company herewith introduces evidence to show that since the time of hearing the lease negotiations have been concluded and the amount of lease revenue has been fixed at the sum of $48,114, not the $152,584 imputed by the Order. As established by the Affidavit of Scott Rhead, filed herewith, the reduction in lease proceeds has occurred because the lease agreement was conditional upon Idaho Department of Water Resources (IDWR) review of eligibility criteria set forth in the Snake River Basin Water Right Acquisition Program set forth in the Invitation for Offers to Sell dated December 7, 2004. At the time of the hearing the proposed amount was 11,992 acre feet. IDWR only approved 3,240 acre feet as eligible for payment on July 29, 2005.

For the foregoing reasons the Commission should grant reconsideration with respect to this issue.

III.

DISALLOWANCE OF AFUDC WITH RESPECT TO ACQUISITION OF THE INITIAL BUTTE WATER RIGHT IS UNREASONABLE, UNLAWFUL, ERRONEOUS, UNDULY DISCRIMINTORY AND NOT IN CONFORMANCE WITH THE FACTS OF RECORD AND/OR APPLICABLE LAW.

The Order accepts Staff's recommendation not to permit accrual of an allowance for funds used during construction (AFUDC) with respect to water rights, resulting in a reduction to rate base in the amount of $393,348. (Order, pg. 12).

The Company does not object to the disallowance of $3,331 of AFUDC pertaining to minor water right activity. The Company does object to the disallowance of AFUDC with respect to The Initial Butte Water Right acquisition in the amount of $390,017.

The Staff, without citing any authority or reasoning other than its own opinion, contends that water rights are not construction work in progress because no physical construction is actually taking place. "Water rights are not Construction Work in Progress. No *physical* construction is actually taking place." (Tr., pg 533) (Emphasis added).

A focus on the presence or absence of "physical construction" improperly limits the application of AFUDC. Like, land, water rights are interests in real property. Idaho Code 55-101 provides:

> **Real Property defined.**—Real property or real estate consists of:
> 1. Lands, possessory rights to land, *and water rights*, and mining claims, both lode and placer. (Emphasis added).[3]

Costs associated with the acquisition of the tangible asset of land are indisputably subject to AFUDC accrual. Simply because water rights are less tangible, less "physical", than land does not change their nature as real property, and the AFUDC treatment should be no different than

[3] *See Also,* 1996 Uniform System of Accounts for Class A Water Companies, National Association of Regulatory Utility Commissioners, accounting instruction No. 24, which includes water rights as land rights.

for the tangible asset of land. And, the ownership of adequate water rights is just as essential to the operation of the Company's surface water treatment plants as is the land upon which they are constructed.

The implications of limiting AFUDC to physical assets are potentially far reaching. Utility plant such as land, computer software, plant components delivered to the job site and simply integrated into a project, among other examples, may not qualify for AFUDC under Staff's approach. The Company asserts that a far better test of the appropriateness of applying AFUDC to any project is the nature and purpose of the concept of AFUDC. AFUDC should provide an allowance in recognition of temporarily unproductive capital used in the development of a facility based on an approximation of the return that would have been available had the funds been included as a component of rate base. Whether the component of the facility is tangible bricks and mortar or the less tangible legal interest of water rights should be immaterial.

Staff also asserts that while water rights are being pursued, amounts expended can be charged to Preliminary Survey and Investigation Charges. Once the water rights have been secured, they should be booked to the sub account Land and Land Rights in the Plant in Service Records. (Tr., pg. 533). The acquisition of Initial Butte water rights does not fit this model. The Company expended $1,123,571 in June of 2002 plus an additional $124,841 in October of 2002 to acquire the water rights themselves, as diverted on the Snake River. Although the Company owned the water rights, they were not yet used and useful, nor were they plant held for future use. The Company then immediately filed a request with the Idaho Department of Water Resources to transfer the water right diversion point from the Snake to the Boise River, as was done with the prior acquisition of the Wilson water right, at which time, if successful, the water right would become a used and useful asset to the Company. However, due to unforeseen obstacles including protests to the Company's proposed transfer of the diversion point, it took the Idaho Department of Water Resources nearly two years, until May 11, 2004 to approve the exchange. At that point, the Company put the water right in Plant in Service and was able to use the water right to provide raw water for the Marden Water Treatment Plant. The initial costs of the water right, plus the costs of legal resources utilized in the process of seeking IDWR approval represented funds that were unproductive for nearly two years and thus appropriate for the application of AFUDC.

For the foregoing reasons the Commission should grant reconsideration with respect to this issue.

IV.

USE OF THE ERISA MINIMUM CONTRIBUITON LEVEL FOR CALCULATION OF PENSION EXPSENSE IS UNREASONABLE, UNLAWFUL, ERRONEOUS, UNDULY DISCRIMINTORY AND NOT IN CONFORMANCE WITH THE FACTS OF RECORD AND/OR APPLICABLE LAW.

As approved by the Commission in United Water's past several rate cases, the Company proposed to calculate its allowed pension expense in accordance with the methodology provided by Statement of Financial Accounting Standards No. 87 (FAS 87). The amount of expense calculated under this method is $637,046. The Order adopts Staff's proposal, made for the first time in this case, to allow only an amount represented by the ERISA minimum contribution level of funding of $162,454, as opposed to the Company's expense claim of $637,046 based on FAS 87. (Order, pg. 18). The Order is inconsistent with this Commission's prior decisions on this issue in all of the Company's rate cases since 1993. Additionally, this decision is inconsistent with the Commission's decision to permit, for this case and prior United Water cases, the use of the same methodology for United Water's calculation of its Other Post Employment Benefits (OPEB) under FAS Statement No. 106. (Brief, pg. 12)

The Order (pg. 18) states that a danger exists in allowing recovery of the FAS 87 amount with no contribution by the Company, "resulting in an unjustified windfall for the Company…". This is the method that has been in place and approved by this Commission for many prior years without the Company realizing any windfall. In fact, due to the strict rules contained in FAS 87 the Company sees no additional profits from this method of accounting. The Company's Actuary must calculate the difference between the funded status of the pension plan and the fair value of the plan assets. If the plan is not funded to the level of the plan assets, the Company is required to record an additional minimum liability. When a cash contribution is made it is treated as a retirement of the pension liability. This liability is a real expense owed by the Company to its employees that must ultimately be reduced. There is no windfall; on the contrary, if the recorded expense is not recovered, the Company will be unable to earn its allowed rate of return. (Brief, pg. 12)

Staff's recommendation rests on the premise that since no cash is paid, the Company has no obligation. This simply is not true. Furthermore, another safeguard exists in the FAS 87 rules that prevent the windfall discussed in this Order. The safeguard is that when or if the intangible pension asset that was created from the minimum liability exceeds that liability, a negative entry must be made to the shareholder's equity. Therefore, the shareholder cannot profit from this method of accounting. No issue is taken with the allowance of depreciation expense, which is also not a cash expense. However, funds must be available to replace plant when needed. No windfall profit results since depreciation expense is recorded and recovered, with no impact on profits. In the same way, funds must be available to the Company to meet future pension liabilities. No windfall results since under FAS 87, the expense is recorded and if not recovered, will result in an immediate erosion of the rate of return.

Currently, United Water Idaho has a minimum liability recorded on its financial statement in the amount of $1.8 million that represents the level of under funding of the pension assets necessary to pay future benefits to its employees. The amount of expense calculated under the FAS 87 method is $637,046, which can be used to reduce the liability when required. Staff's ERISA method only calculates the required cash needed now, without recognition of the liability that must be funded at some future point. The FAS 87 amount, which must be recorded on the Company's books, correctly reflects both the cash required and the future liability.

For the foregoing reasons the Commission should grant reconsideration with respect to this issue.

V.

DISALLOWANCE OF DEFERRED EARLY RETIREMENT AND ENHANCED SEVERANCE COSTS IS UNREASONABLE, UNLAWFUL, ERRONEOUS, UNDULY DISCRIMINTORY AND NOT IN CONFORMANCE WITH THE FACTS OF RECORD AND/OR APPLICABLE LAW.

Consistent with Commission accepted practice in the Company's last rate case, (Case No. UWI-W-00-1, Order No. 28505, issued September 6, 2000) the Company proposed a 60-month amortization of deferred ERP expenses resulting in annual expenses of $257,734 (ERP) and $49,751 (ESP). In the UWI-W-00-1 case the Commission accepted deferral and amortization of ERP and ESP costs even though the Company had not previously applied for an accounting order. Notwithstanding prior Commission acceptance of this approach, the current Order disallows both expenses because the Company did not previously make formal application for approval of the deferral. (Order, pg. 19).

As discussed in section I, above, a change in regulatory policy, unaccompanied by any reasoned explanation is arbitrary. *See Rosebud Industries v. Idaho Public Utilities Commission, supra.* Here, the Order does not explain how these costs were, in 1999, not enough of a significant nature so as to require application for deferral but suddenly in 2000 they were so significant as to require application for deferral.

The Order's reliance on Order Nos. 25880 and 28097 is perplexing. Those Orders, issued in 1995 and 1999, respectively, were, obviously, in existence prior to the Commission's decision in the UWI-W-00-1 case. Those Orders were not understood at that time by the Commission to require prior application for deferral of ERP/ESP costs. It is not clear why those Orders should mean something different today.

If the Commission were to provide prospective guidance as to the meaning of "significant" for purpose of determine when a formal deferral application is required, the Company would certainly comply. However, a shifting definition of "significant"—wherein costs incurred in one year are not significant, but identical costs incurred in a subsequent year are significant—is arbitrary and susceptible to opportunistic application.

For the foregoing reasons the Commission should grant reconsideration on this issue.

VI.

DISALLOWANCE OF DEFERED POWER COSTS IN RATE BASE IS UNREASONABLE, UNLAWFUL, ERRONEOUS, UNDULY DISCRIMINTORY AND NOT IN CONFORMANCE WITH THE FACTS OF RECORD AND/OR APPLICABLE LAW.

The Order accepts the Company's proposal for a three year amortization of $1,469,292 of deferred power costs but disallows rate base treatment of the unamortized deferred amounts and further, does not provide for the computation of a reasonable carrying charge in the revenue requirement. (Order, pg. 21-22). The Commission finds the amount on the Company's books of $1,469,292 to be appropriate for recovery. However, this amount excludes any carrying cost and therefore is not included in the revenue requirement. Further, the Order states that the Company and Staff agree that a 1% carrying charge would be appropriate. (Order, pg. 21)

The Company has requested rate base treatment of this deferral along with rate of return recognition on monies paid as with any other deferral. The Company and Staff are not in agreement that a 1% carrying charge is appropriate and the Company's position was clearly stated in its rebuttal testimony (Tr., pg. 883-886). The Order authorizes an amortization of the deferred amount that excludes any carrying charge in setting the revenue requirement and then states that a 1% carrying charge is appropriate without including it in the revenue requirement. Therefore, the Company will not be able to recover anything but its currently recorded costs. Even if the Commission were to authorize a mechanism to record the carrying costs, the Company has no means to recover them since the interest is not considered in the Company's revenues. This deferral should be afforded traditional rate base treatment and not be subject to any carrying charge. It is not equal to a power cost adjustment that varies from year to year in small amounts and is subject to changes in interest rates over each year. This was a sizeable expense incurred over time with no recovery of the cost or interest on any of the expended funds.

For the foregoing reasons the Commission should grant reconsideration with respect to this issue.

VII.

ALLOWANCE OF ONLY $12,000 IN ANNUAL EXPENSE FOR WATER QUALITY TESTING IS UNREASONABLE, UNLAWFUL, ERRONEOUS, UNDULY DISCRIMINTORY AND NOT IN CONFORMANCE WITH THE FACTS OF RECORD AND/OR APPLICABLE LAW.

The Order allows a recovery of $12,000 annual expense for the Long Term 2 Enhanced Surface Water Treatment Rule (LT2ESWTR) water quality testing expense amortized over a five-year period, or $2,400 in the annual revenue requirement. (Order, pg. 22). The Order states, "this test is required to be administered every two months for two years, 2005 and 2006, at an **annual** expense of $12,000". The Company requested the full $12,000 annual cost of

LT2ESWTR be included in its annual revenue requirement. Staff objected, stating the Company's accounting treatment would allow the Company to recover this increased amount from customers after 2006 when the test is no longer required, hence Staff recommended the five-year amortization treatment of $12,000. Both Staff and the Commission acknowledge the total cost of the mandatory testing requirement imposed by the LT2ESWTR is $12,000 in each year: $12,000 incurred in 2005 and an additional $12,000 in 2006 for a total of $24,000. The correct amount to be include in annual expense is thus $24,000 amortized over a five year period or $4,800, twice the amount the Order provides in the annual revenue requirement.

For the foregoing reasons the Commission should grant reconsideration with respect to this issue.

VIII.

ALLOWANCE OF ONLY $236,467 FOR RATE CASE EXPENSE IS UNREASONABLE, UNLAWFUL, ERRONEOUS, UNDULY DISCRIMINTORY AND NOT IN CONFORMANCE WITH THE FACTS OF RECORD AND/OR APPLICABLE LAW.

The Order allows rate case expense of $236,467, representing the Company's originally requested amount of $245,000, less $8,533 for a split of public information campaign expenses. (Order, pg. 24). Company Exhibit 15 Schedule 3 documented $224,116 of rate case expense through April, 2005 and projected another $80,833 to allow for additional expense through the hearing and post hearing procedures.[4]

Filed herewith is the Affidavit of Jeremiah Healy which attaches a copy of the Company's July 2005 Balance Sheet indicating deferred rate case expense incurred through July 2005 of $358,392.07 and an update of deferred rate case expense in the same format as the

[4] Exhibit 15 Schedule 3 makes an allowance for intervenor funding to be amortized with other rate case expense. For unknown reasons, the Order includes the intervenor funding allowance in the Company's revenue requirement as if it were a recurring annual expense. (Order pg. 29).

aforementioned Exhibit 15 Schedule 3, shows that the actual incurred expense since April 2005 is significantly in excess of the estimated $80,833 and is actually the sum of $134,225

In addition, the Company has already processed for payment three additional invoices in August 2005 (intervenor funding awarded to CAPAI and Idaho Rivers United per the Order totaling $11,942.09 as well as an AON Consulting invoice for $22,500, totaling $34,442.09. (See Affidavit of Jeremiah Healy). The August billings bring the actual cost to date to a grand total of $392,834.16.

The increased expense since April, 2005 is not surprising given the "numerous complex and technical issues" presented by this case. *See* Order No. 29810.

It is unreasonable to exclude recognition of costs incurred to prepare the Company's rebuttal, participation in hearings, post-hearing briefs and post-order implementation that included significant additional unanticipated expenses incurred to employ the services of two expert witnesses to provide arguments against Staff's approach to the 13 month average rate base and pension expense treatment.

It is further unreasonable for the Commission to expect the Company's estimate of rate case expense, $245,000, provided in direct testimony to be accurate in a case that contained numerous technical issues. Indeed, the Company incurred 91% of this amount as of the end of April, prior to filing its rebuttal testimony, prior to the hearings and post-hearing briefing.

For the foregoing reasons the Commission should grant reconsideration with respect to this issue.

IX.

THE ORDER'S ALLOWANCE FOR BUSINESS INSURANCE EXPENSE IS UNREASONABLE, UNLAWFUL, ERRONEOUS, UNDULY DISCRIMINTORY AND NOT IN CONFORMANCE WITH THE FACTS OF RECORD AND/OR APPLICABLE LAW.

The Order reduces the Company's projected $1,083,000 allowance for business insurance to $899,036, finding that projected additions over test year amounts are not known and measurable and that the record demonstrates amounts paid by the parent company but does not clearly indicate those values on a United Water Idaho level. (Order, pg. 25). The Company presented evidence in its rebuttal demonstrating that the Company supplied both the United Water Resources level insurance amounts and the United Water Idaho level actually billed to the Company. (See Exhibit 15, Schedule 12). The Order's reliance on only the parent level expense without consideration of the United Water Idaho level evidence is erroneous. These charges were known and measurable and billed to the Company and therefore should have been included in the Company's revenue requirement.

For the foregoing reasons, reconsideration should be granted with respect to this issue.

CONCLUSION

Based on the reasons and authorities cited herein, the Company respectfully requests that this Petition for Reconsideration be granted as more fully set forth above.

Dated this 23 day of August, 2005.

McDEVITT & MILLER LLP

Dean J. Miller
Attorneys for United Water Idaho Inc.

CERTIFICATE OF SERVICE

I hereby certify that on the 23rd day of August, 2005, I caused to be served, via the method(s) indicated below, true and correct copies of the foregoing document, upon:

Brad M. Purdy
Attorney for the Community Action Partnership Association of Idaho
2019 North 17th Street
Boise, Idaho 83702
Fax: 208.384.8511
bmpurdy@hotmail.com

Hand Delivered	☐
U.S. Mail	☐
Fax	☐
Fed. Express	☐
Email	✓

William M. Eddie
Advocates for the West
P.O. Box 1612—83701
1320 West Franklin Street
Boise, Idaho 83702
Fax: 208.342.8286
billeddie@rmci.net

Hand Delivered	☐
U.S. Mail	☐
Fax	☐
Fed. Express	☐
Email	✓

Bill Sedivy
Idaho Rivers United
P.O. Box 633
Boise, Idaho 83701
Fax: 208.343.9376
iru@idahorivers.org

Hand Delivered	☐
U.S. Mail	☐
Fax	☐
Fed. Express	☐
Email	✓

Sharon Ullman
9627 West Desert Avenue
Boise, Idaho 83709
Fax: 362-0843
sharonu@cableone.net

Hand Delivered	☐
U.S. Mail	☐
Fax	☐
Fed. Express	☐
Email	✓

Chuck Mickelson
Boise City Public Works
P.O. Box 500—83701
150 North Capitol Boulevard
Boise, Idaho 83702
Fax: 208.384.7841
cmickelson@cityofboise.org

Hand Delivered	☐
U.S. Mail	☐
Fax	☐
Fed. Express	☐
Email	✓

Douglas K. Strickling
Boise City Attorney's Office
P.O. Box 500—83701
150 North Capitol Boulevard
Boise, Idaho 83702
Fax: 208.384.4454
dstrickling@cityofboise.org

Hand Delivered	☐
U.S. Mail	☐
Fax	☐
Fed. Express	☐
Email	✓

Scott L. Campbell
Moffatt Thomas
101 South Capitol Blvd., 10th Floor
P.O. Box 829—83701-0829
Boise, Idaho 83702
Fax: 208.385.5384
slc@moffatt.com

Hand Delivered ق
U.S. Mail ق
Fax ق
Fed. Express ق
Email ق

Legal Assistant