

WELDON B. STUTZMAN  
DONOVAN E. WALKER  
DEPUTY ATTORNEYS GENERAL  
IDAHO PUBLIC UTILITIES COMMISSION  
PO BOX 83720  
BOISE, IDAHO 83720-0074  
(208) 334-0318 AND (208) 334-0357  
IDAHO BAR NOS. 3283 AND 5921

RECEIVED  
FILED  
2005 AUG 30 PM 12: 01  
IDAHO PUBLIC  
UTILITIES COMMISSION

Street Address for Express Mail:  
472 W. WASHINGTON  
BOISE, IDAHO 83702-5983

Attorneys for the Commission Staff

**BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION**

**IN THE MATTER OF THE APPLICATION )**  
**OF UNITED WATER IDAHO INC. FOR )** **CASE NO. UWI-W-04-4**  
**AUTHORITY TO INCREASE ITS RATES )**  
**AND CHARGES FOR WATER SERVICE IN )**  
**THE STATE OF IDAHO )** **COMMISSION STAFF'S**  
**)** **ANSWER TO UNITED WATER**  
**)** **IDAHO'S PETITION FOR**  
**)** **RECONSIDERATION**

---

The Commission Staff, pursuant to IPUC Rule of Procedure 331.05, files this Answer to United Water Idaho's Petition for Reconsideration. United Water filed its Petition for Reconsideration on August 23, 2005, asking the Commission to reconsider parts of its final Order No. 29838 issued August 3, 2005. The Commission Staff files this Answer in part to address inaccuracies contained in United Water's Petition regarding the Commission's rate base methodology.

**The Commission Should Not Grant Reconsideration on its Rate Base Methodology**

United Water first asks the Commission to reconsider its decision to utilize a thirteen-month average rate base to establish the Company's test year rate base. The Company argues the average rate base methodology should not be used in this case for three reasons: (1) the Company maintains that 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; (2) United Water argues the rate base methodology violates the Company's

entitlement to have included in rate base investments that are known and measurable; (3) United Water contends the capital intensive characteristics of the Company justify use of a year-end test year. United Water also now argues the Company's adjustment to test year revenue and expenses, which was supported by Staff and approved by the Commission, was appropriate only if used in conjunction with a year-end test year methodology.

In support of its first argument, that the average base rate methodology will not allow the Company an opportunity to earn its authorized return, the Company implies the Commission excluded from the test year rate base all capital investment made after December 31, 2004. United Water states: "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." United Water Petition for Reconsideration, p. 3 (italics added). Clearly, the Commission included in rate base post-test year additions after December 31, 2004. The Commission stated that, "rather than limit post-test year additions to those capital expenditures incurred by December 31, 2004 as proposed by Staff, we find it reasonable in this case to allow into rate base the post-test year capital expenditures *incurred by March 31, 2005*, as detailed in Company witness Rhead's Revised Rebuttal Exhibit No. 16, Schedule 8." Order No. 29838, p. 6 (italics added). It is erroneous to imply the Commission excluded from rate base all post-test year investment incurred after December 31, 2004. In particular, the Commission allowed all Columbia Water Treatment Plant (CWTP) costs in rate base, even though it was not substantially completed until March 2005.

United Water then argues that "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 of at least 80 basis points below the allowed return." The Company cites the transcript at pages 1038 through 1040 and its Exhibit 17 in support of this statement. Again, it is inaccurate to imply the Commission excluded all post-test year investment; in fact, the Commission specifically allowed post-test year investment that was made as of March 31, 2005, even though the Company's selected test year ended July 31, 2004. Second, the record at pages 1038 through 1040 does not support the conclusion argued by the Company. The citation to the transcript is to the testimony of the Company's witness on rebuttal. The witness testified that the rate base calculated by *Staff*, using a thirteen-month average rate base, would cause United Water to "suffer rate of return

attrition.” Tr. p. 1038. The witness’s entire discussion is focused on Staff’s proposal. For example, the witness testified that “*Staff’s* proposal ensures an overall rate of return shortfall of 88 basis points, the difference between the proposed 8.10% overall rate of return and the 7.22% rate of return that results solely from not including the ending rate base investment.” Tr. p. 1039. Of course, the Commission rejected Staff’s rate base calculation and determined to include in rate base additional post-test year plant made by the Company. The Company’s testimony in the record does not support its argument that the *Commission’s* rate base calculation will, “as a matter of mathematical certainty, be insufficient to allow the Company an opportunity to earn its allowed return.” United Water Petition, p. 3. There simply is no evidence in the record to support United Water’s argument, and the Company does not propose to present additional evidence to provide an estimated rate of return calculation based on the Commission’s determination of an appropriate rate base.

Finally, and most importantly on this point, the assumptions and resulting calculations made by the Company’s witness to support his testimony about a rate of return shortfall are significantly flawed. In his calculation, the witness compared adjusted test year revenue to the total rate base investments expected to be made by the Company. The total rate base investment, of course, includes significant plant added well after the test year. To reach his conclusion of under-earning, the witness did not make any revenue and expense adjustments for the late added plant. It is unreasonable to assume new plant will not have an impact on Company revenues or expenses. In fact, the Company’s witness himself testified in an earlier case before the Commission that “utilities generally do not make additional investments or increase their expenses unless they can generate additional revenues and profits, either by serving additional customers, or by cutting costs or increasing margins.” Exhibit 137, p. 925. It is the mismatch problem long recognized by the Commission when late plant additions are included in the test year. The Commission has addressed the issue in part by using the average rate base methodology.

In support of its second argument regarding the thirteen-month average rate base methodology, the Company contends it is unlawfully prevented from including in rate base investments that are known and measurable. The Company states “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 support of its statement, the Company references and quotes from *Utah Power*

*and Light v. Idaho Public Utilities Commission*, 102 Idaho 282, 629 P.2d 678 (1981), where 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.” United Water Petition, p. 4.

Again, it is important to point out that the Commission allowed a majority of United Water’s post-test year investment in the test year rate base. It is true the average rate base methodology reduces the impact of post-test year plant addition, but that necessarily results from selections made by the Company for its test year and the timing of its rate case filing. Second, the broad statement in the 1981 *Utah Power* case cited by United Water was repeated by the Supreme Court in a later *Utah Power* case, and then was set aside by the state legislature when it enacted *Idaho Code* § 61-502A in 1984. At issue in the 1981 case was a post-test year plant addition called the Huntington Plant. *Utah Power* argued the plant costs were known and measurable and thus should have been included in rate base, and the Supreme Court agreed, with the statement quoted by United Water. *Utah Power & Light v. IPUC*, 102 Idaho 282, 284. The identical issue was raised in a 1983 *Utah Power* case. In fact the Supreme Court referenced its earlier decision where “we held that the value of the Huntington plant under construction was required to be included in the rate base, since it was not a conjectural or speculative adjustment.” *Utah Power & Light v. IPUC*, 105 Idaho 822, 825, 673 P.2d 422, citing *Utah Power & Light v. IPUC*, 102 Idaho at 284, 629 P.2d at 680. Noting the similarity between the two cases, the Court stated “[w]e see no reason that the same rule should not apply in the instant [1983] case.” *Id.*

The Idaho Legislature enacted *Idaho Code* § 61-502A in response to the Court’s ruling in the 1983 *Utah Power* case. Section 61-502A precludes post-test year plant from rate base unless it is short-term work in progress; i.e., it will be completed within twelve months. In a statement of legislative intent unusual for its specificity, the Legislature declared its intent “that this act should overrule that portion of the decision of the Supreme Court of Idaho entitled *Utah Power and Light Company v. Idaho Public Utilities Commission*, issued December 14, 1983, which authorized or required construction work in progress or property held for future use to be included in a utility’s rate base or otherwise authorized or required the commission to grant a return on such property, and that the commission be prohibited from following the precedent of that case in any order issued after the effective date of this act.” 1984 S.L., Ch. 21, Section 2, p. 24-25. Staff is not implying the Commission violated Section 61-502A by including in rate base

capital investments that were made outside the test year, recognizing the section allows for (but does not require) a return on short-term construction work in progress. Nonetheless, the broad proposition for which United Water cites the 1981 *Utah Power* case was overruled, clearly demonstrating a legislative intent that out-of-test year investment should be carefully scrutinized or limited if it is going to be included in a test year rate base. The Commission's use of a thirteen-month rate base methodology addresses this legislative concern.

The third argument United Water makes to justify use of a year-end test year is the capital intensive cost characteristics of the Company. The Company's evidence on this point was clearly refuted in the record and was rejected by the Commission in its final Order.

Finally, United Water argues that a revenue mismatch occurs if the Company's adjustment to test year revenues is adopted along with a thirteen-month average rate base methodology. The Company states, "*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.*" United Water Petition, p. 5 (italics added). The Company thus implies it made an adjustment to test year revenues because it proposed use of a year-end test year. United Water in its Petition quotes its rebuttal testimony criticizing Staff for accepting the Company's test year revenue adjustment and also using an average rate base methodology. On that evidence, the Company states the Commission incorrectly concluded "the evidence on the adjustments as a means to correct the mismatch is uncontroverted." United Water Petition, p. 5.

It is convenient, but inaccurate, for the Company to now characterize its test year revenue adjustment as a means to correct a mismatch that occurs by using a year-end rate base methodology. It is clear in the record, and Order No. 29838, that United Water made adjustments to test year revenue and expenses to correct a mismatch that occurs by including all Columbia Water Treatment Plant (CWTP) costs in rate base, even though it was not completed until eight months after the test year. The Company in its direct testimony "acknowledged the Commission's concern about a mismatch between plant investment and revenue and expenses when post-test year plant is included in the test year as if in place during the entire year," and so "the Company proposed an adjustment to revenue and expenses *associated with including the CWTP.*" Order No. 29838, p. 4 (italics added). The Commission's Order quotes several relevant portions of Company testimony, including that it "used its best efforts in proposing adjustments that both increase revenues and decrease expenses *as a result of the addition of the CWTP.*"

Order No. 29838, p. 4 (italics added). The specific revenue adjustment “*attributable to the CWTP* made by United Water was to increase test year revenue ‘by \$462,480 to account for additional customers, annualized at existing rates, from July 31, 2004, the end of the test year, through May 31, 2005.’” Order No. 29838, p. 4, quoting from Tr. p. 18 (italics added). The Company also adjusted expenses by reducing power and chemical expenses “to reflect changes in system operation *caused by use of the CWTP.*” *Id.* The Commission noted that Staff, “[t]o address the mismatch created by including the CWTP in the test year rate base, . . . proposed to accept the *CWTP related expense and revenue adjustments* made by United Water.” Order No. 29838, p. 4-5 (italics added).

There can be no doubt that United Water, in response to Commission concerns about a mismatch created when post test-year plant is included in the test year, made adjustments to test year revenue and expenses because it proposed including all CWTP costs in rate base. The Commission noted that “[b]oth Staff and the Company included the CWTP in the test year as if it were completed for the entire year.” Order No. 29838, p. 6. Including this major post-test year plant in the test year creates a revenue mismatch, and so “United Water addressed the Commission’s concern of a mismatch created by including the CWTP in rate base by making adjustments to its test year revenue and expenses.” *Id.* Staff and the Company agreed on the revenue and expense adjustments made to accommodate the CWTP in rate base, and no other party objected to the test year adjustments. The Commission thus concluded, because “Staff testified in support of the corresponding revenue and expense adjustments, . . . the evidence on the adjustments as a means to correct the mismatch . . . is uncontroverted.” *Id.* It was, accordingly, entirely accurate for the Commission to state that the evidence on the adjustments as a means to correct the mismatch *created by including the CWTP in rate base* was uncontroverted.

Finally, the Idaho Supreme Court has already affirmed use of an average rate base methodology as within the discretion of the Commission. Utah Power argued in the 1983 case that a year-end test year rather than an average test year should have been used. The Commission used an average test year because it “better matched the company’s revenues to expenses, since the commission determined that Utah Power’s data submitted on the basis of a year end rate base contained certain mismatches between costs and revenues.” *Utah Power & Light v. IPUC*, 105 Idaho at 825, 673 P.2d at \_\_\_\_\_. The Court affirmed the Commission’s

average rate base methodology, stating: “We hold that the use of the average year rate base was and is permissible and within the discretion of the commission. That discretion of the commission will not be disturbed.” *Id. See also Citizens Util. Co. v. Idaho Public Utilities Commission*, 99 Idaho 164, 579 P.2d 110 (1978) (approving Commission’s use of average year rate base formula).

### CONCLUSION

United Water does not provide in its Petition for Reconsideration a valid reason to grant reconsideration on the Commission’s use of a thirteen-month average rate base methodology. The Commission should deny reconsideration of that issue.

Respectfully submitted this 30<sup>th</sup> day of August 2005.



---

Weldon B. Stutzman  
Deputy Attorney General

b1s/N:UWIW0404\_ws\_Staff Answer

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT I HAVE THIS 30<sup>th</sup> DAY OF AUGUST 2005, SERVED THE FOREGOING **COMMISSION STAFF'S ANSWER TO UNITED WATER IDAHO'S PETITION FOR RECONSIDERATION**, IN CASE NO. UWI-W-04-04, BY MAILING A COPY THEREOF, POSTAGE PREPAID, TO THE FOLLOWING:

MARK GENNARI  
UNITED WATER  
200 OLD HOOK RD  
HARRINGTON PARK NJ 07640

DEAN J MILLER ESQ  
McDEVITT & MILLER LLP  
PO BOX 2564  
BOISE ID 83701

DOUGLAS K STRICKLING  
BOISE CITY ATTORNEY'S OFFICE  
150 N CAPITOL BLVD.  
PO BOX 500  
BOISE ID 83701

CHUCK MICKELSON  
CITY OF BOISE  
150 N CAPITOL BLVD.  
PO BOX 500  
BOISE ID 83701

WILLIAM M. EDDIE  
ADVOCATES FOR THE WEST  
PO BOX 1612  
BOISE ID 83701

BILL SEDIVY  
IDAHO RIVERS UNITED  
PO BOX 633  
BOISE ID 83701

BRAD M. PURDY  
ATTORNEY AT LAW  
2019 N 17<sup>TH</sup> STREET  
BOISE ID 83702

SHARON ULLMAN  
9627 W. DESERT AVE  
BOISE ID 83709

SCOTT L. CAMPBELL  
101 S CAPITOL BLVD., 10<sup>TH</sup> FLOOR  
PO BOX 829  
BOISE ID 83701

  
SECRETARY