

**BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION**

**IN THE MATTER OF THE APPLICATION            )**  
**OF UNITED WATER IDAHO INC. TO            )** **CASE NO. UWI-W-05-1**  
**AMEND AND REVISE ITS CERTIFICATE        )**  
**OF PUBLIC CONVENIENCE AND                )** **ORDER NO. 29785**  
**NECESSITY NO. 143                            )**

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On March 15, 2005, United Water Idaho Inc. filed an Application to amend and revise its Certificate of Public Convenience and Necessity in order to expand its service territory. The Commission issued a Notice of Modified Procedure seeking comments regarding the Company's Application as well as the use of Modified Procedure. Comments were filed by Commission Staff and the City of Meridian (City). United Water filed reply comments. In this Order the Commission grants the Company's Application, as amended by their Reply.

**THE APPLICATION**

According to the Application, Black Rock LLC, an Idaho corporation, requests that United Water provide domestic water and fire protection service to a proposed residential subdivision, approximately 44 acres in size and located within an area generally bounded by Eagle Road, Amity Road, Lake Hazel Road, and Locust Grove Road, Ada County. Black Rock LLC is prepared to execute a Water Main Extension Agreement. A map depicting the location of the Black Rock Development, United Water's current certificated boundary, and United Water's proposed certificated boundary is attached to the Company's Application as Exhibit A.

The Company states that the area it proposes to serve is not within the authorized territory of any other public utility water corporation under the jurisdiction of the Commission and is covered by United Water's Rules and Regulations. The Application states that there are no known public utilities, persons, or corporations with whom the expansion is likely to compete, and the requested expansion would not interfere with the operation of any other water utility. United Water proposed to provide service pursuant to its Tariff No. 1, General Metered Service, and in all respects will provide service pursuant to its Rules and Regulations as approved by the Commission.

## **STAFF COMMENTS**

Staff filed comments on April 15, 2005 and recommended that the Company be granted approval to expand its certificated area to include all of the area identified in its Application that is not located within the City of Meridian's Area of Impact.

Staff pointed out that the development requesting service, Black Rock, is only a portion of the entire area requested by United Water in its Application. Black Rock is outside of the city limits of Meridian, and is immediately adjacent to the City's Area of Impact. Attachment A to Staff's Comments shows the location of the City's Area of Impact, the Black Rock development, and United Water's proposed expanded service territory. Staff contacted the City of Meridian prior to the City filing its comments. Staff's understanding was that the City would be opposing the Application, but that it would be unable to provide service to Black Rock or adjacent areas for several years into the future.

Staff stated that if the Commission were to deny the Company's Application it would effectively deny water service to Black Rock for an indefinite period of time. Given the fact that the development is outside the City's Area of Impact, Staff recommended that the Commission approve the Application to, at the least, serve the Black Rock development. Additionally, Staff recommended that it is reasonable and in the public interest for the Commission to approve expansion of the Company's certificated area to include the requested area adjacent to Black Rock that is not within the City's Area of Impact. With regard to the requested area that is actually within the City's Area of Impact, Staff recommended that the Commission carefully weigh the expected arguments from both the City and the Company regarding the ability and the legal authority of each to provide service.

## **CITY OF MERIDIAN COMMENTS**

The City of Meridian filed comments on April 21, 2005. The City requests that United Water's Application be denied.

The City does not object to a small portion of United Water's requested area, the area east of the line ¼ mile west of Cloverdale Road. The City objects to the remaining requested area because one portion is within the City's Area of Impact, and the remaining portion has been within the City's sewer master planning area since 1993. The City stated that in 1997 it requested that Ada County include this entire area within its Area of Impact, but was denied because the County believed the City would not be able to provide services to the area within 20

or more years. The City goes on to say that although the rate of growth in southern Meridian has proven that belief to be false, the City cannot at this time provide sewer service to the proposed Black Rock development. The City also stated that it intends to proceed this year with additional sewer and water master planning in the area requested by United Water's Application. The City stated that the presence of United Water in the subject area may restrict it from extending water and sewer service there in the future. Attached to the City's comments are two maps: one depicting the City's Area of Impact, and the other showing a 2003 Sewer Master Plan Update.

#### **UNITED WATER'S REPLY COMMENTS**

On April 28, 2005, United Water filed reply comments. The Company states, "in order to avoid, to the extent possible, conflict with the City, United hereby consents to a re-definition of the expansion to eliminate that portion of the expansion area that overlaps with the City's Area of Impact." The Company attached a map labeled Exhibit B depicting United Water's re-defined proposed area of expansion after eliminating the area that was within the City's Area of Impact. The Company otherwise agrees with Staff's analysis and recommendation.

With regard to the City's comments, the Company stated that elimination of the portion of requested territory that falls within the Area of Impact satisfies the legitimate interests of the City. The Company points out that the City admits that Ada County denied its request to expand its Area of Impact into this territory, and thus the City does not have the legal ability to annex property within the area or to control patterns of growth. *Citing* Ada County Code 9-4-2; City of Meridian 2002 Comprehensive Plan.

The Company also stated that as a practical matter it will be some time into the future before the City could actually provide service to the area, and the map accompanying the City's comments indicates that the City does not have water distribution facilities any where near the Black Rock development. By contrast, United Water has the capability of providing service now and Black Rock is requesting service now, not several years into the future. The Company stated that Black Rock is proceeding diligently to obtain the necessary approvals, and has filed applications and plans with Ada County, Ada County Highway District, and the Idaho Department of Environmental Quality.

## COMMISSION FINDINGS

The Idaho Public Utilities Commission has jurisdiction over United Water Idaho Inc., its Application to amend and revise its Certificate of Public Convenience and Necessity, and the issues involved in this case by virtue of Title 61, Idaho Code, specifically *Idaho Code* §§ 61-129, 61-124, 61-125, 61-526, and the Commission's Rules of Procedure, IDAPA 31.01.01.000 *et seq.*

*Idaho Code* § 61-526 addresses the expansion of a water utility's certificated area. It states, in pertinent part, as follows:

No . . . water corporation shall henceforth begin the construction of . . . a line, plant, or system or of any extension of such . . . line, plant, or system, without having first obtained from the commission a certificate that the present or future public convenience and necessity require or will require such construction: provided, that this section shall not be construed to require such corporation to secure such certificate for an extension within any city or county, within which it shall have theretofore lawfully commenced operation, or for an extension into territory whether within or without a city or county, contiguous to its . . . line, plant, or system, and not theretofore served by a public utility of like character, or for an extension within or to territory already served by it necessary in the ordinary course of its business: and provided further, that if any public utility in constructing or extending its line, plant, or system, shall interfere or be about to interfere with the operation of the line, plant or system of any other public utility already constructed, or if public convenience and necessity does not require or will require such construction or extension, the commission on complaint of the public utility claiming to be injuriously affected, or on the commission's own motion, may, after hearing, make such order and prescribe such terms and conditions for the locating or type of the line, plant or system affected as to it may seem just and reasonable . . .

We find that expansion of United Water's service territory as requested in its reply comments will not interfere or be about to interfere with the operation of the line, plant or system of any other public utility already constructed, and that the present public convenience and necessity requires such expansion.

Although the City of Meridian expresses interest in eventually having some planning authority over this area, we find it is currently unable to provide the requested water service to this area and will not be able to provide service until some time in the future. Furthermore, the entire area requested by the Company in its reply comments, depicted by Exhibit B, is outside of the City's actual Area of Impact. Because United Water withdrew its request to expand its certificated area into the portion directly south of Amity Road that overlapped a portion of the

City's Area of Impact, it is not necessary for us to make a determination as to the merits of that request.

**ORDER**

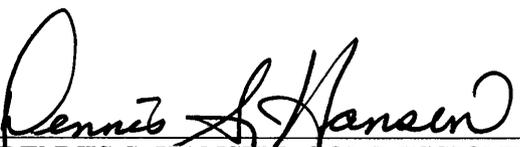
IT IS HEREBY ORDERED that United Water's Application to amend and revise its Certificate of Public Convenience and Necessity is granted as amended by the Company's reply. The expanded certificated boundary shall include the area requested by the Company in its Reply Comments, depicted on the map attached as Exhibit B, which excludes the area directly south of Amity Road which is within the City of Meridian's current Area of Impact.

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 with regard to any matter decided in 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 12<sup>th</sup> day of May 2005.

  
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PAUL KJELLANDER, PRESIDENT

  
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MARSHA H. SMITH, COMMISSIONER

  
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DENNIS S. HANSEN, COMMISSIONER

ATTEST:

  
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Jean D. Jewell  
Commission Secretary

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