

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE APPLICATION)
OF UNITED WATER IDAHO INC. TO) **CASE NO. UWI-W-06-04**
AMEND AND REVISE CERTIFICATE OF)
CONVENIENCE AND NECESSITY NO. 143) **ORDER NO. 30367**
)

On April 26, 2006, United Water Idaho Inc. (United Water; Company) filed an Application with the Idaho Public Utilities Commission (Commission) for authority to amend and revise its Certificate of Public Convenience and Necessity No. 143, as amended. Reference *Idaho Code* § 61-526; IDAPA 31.01.01.112. United Water seeks to add an area known as the Trailhead Community to its certificated service territory. The area of expansion (approximately 520 acres) is located in Ada County north of the City of Eagle in an area more particularly described as: A parcel of land being all of the West 1/2 of the Southwest 1/4 of Section 27 and all of Section 28, Township 5 North, Range 1 East, Boise Meridian, Ada County, Idaho. The Commission in this Order approves the Company's Application to amend its certificated area of service and authorizes the Company to provide water service to the Trailhead Community.

Procedural Background

On May 8, 2006, the Commission issued a Notice of Application in Case No. UWI-W-06-04 and established a deadline for comments. On May 10, 2006, the City of Eagle (City) filed letter comments apprising the Commission of the City's intent to serve the Trailhead Community and objecting to United Water's Certificate Application. In a May 31, 2006 letter filing the City requested a hearing. Pursuant to agreement of the parties, what followed was an informal stay of proceedings.

On February 21, 2007, Kastera Development LLC (Kastera), the developer of Trailhead Community, filed letters with the Commission indicating that negotiations between the City of Eagle and Kastera regarding annexation were unsuccessful. Kastera renewed its request for water service from United Water.

On March 6, 2007, United Water filed a Motion requesting that the Commission convene a prehearing conference to discuss the scheduling of further proceedings.

Hearing and Commission Findings

On May 30, 2007, a public hearing in Case No. UWI-W-06-04 was held in Boise, Idaho. The following parties appeared by and through their respective counsel of record:

United Water Idaho Inc.	Dean J. Miller
City of Eagle	Bruce M. Smith
Kastera Development LLC	Tom C. Morris
Commission Staff	Scott D. Woodbury

The Commission has reviewed the filings of record in Case No. UWI-W-06-04 including the filed comments of parties and transcript of proceedings. We base our decision on the established record, Title 61 of the Idaho Code, the Constitution, statutory and local government authority cited by the parties, and the Commission’s related Rules of Procedure.

In considering the Application of United Water for an expansion of its authorized service area to serve 520 acres of Kastera’s Trailhead Community Development, the Commission has reviewed the statutory requirements of *Idaho Code* § 61-526 (Certificate of Convenience and Necessity), *Idaho Code* § 61-528 (Certificate of Convenience and Necessity – Conditions) and the Commission’s related Rules of Procedure, Rule 112 (Application for Certificates of Convenience and Necessity – Form and Contents – Existing Utility).

The positions of the parties and Commission findings in this case can be summarized as follows:

The Commission is presented in this case with two water providers that desire to serve Trailhead, United Water and the City of Eagle. Of the two, only one is regulated by this Commission, i.e., United Water. The City of Eagle is a municipal water provider and is not subject to the Commission’s jurisdiction. *Idaho Code* § 61-104. This Commission does not doubt the City’s intent and desire to provide municipal water service to Trailhead. Tr. p. 189. Of the two, however, we find that United Water is the only utility that has the present ability to serve Trailhead. We cannot conclude that the City of Eagle is “ready, willing and able” to provide water service to Trailhead. The proposed area of service, 520 acres north of Homer Road, is not within the City’s corporate boundaries and also lies outside its designated area of impact. This we find presents the City with statutory and jurisdictional constraints on its ability to serve Trailhead. Idaho Constitution Art. 12, Section 2; *Idaho Code* § 50-323.

The record reflects that it has been the practice of the City of Eagle to not annex an area unless requested by the owner/developer. Tr. p. 198. Kastera explored the possibility of annexation and rezone with the City and in February 2007 notified the City that it was withdrawing its application for annexation and rezone. Tr. pp. 20, 153. The proposed area of service we find also lies outside the operational boundaries of the City's Master Water Plan and Comprehensive Plan. Tr. pp. 25, 26. We make no determination regarding the City's physical capability to provide service nor the related costs of providing such service. Our decision regarding the City's ability to provide water service is based on the City's area of municipal authority. The City, we note, states that it will likely participate in Kastera's County application process and recommend that the County disallow Kastera's application and direct the developer to file a request for annexation and use City water services. Tr. p. 195. Although we find this statement to be an indication of the City's resolve, it has no bearing on the City's present municipal authority regarding the provision of water service to Trailhead.

What the record in this case reveals is that both the City's Mayor and the Company's general manager agree that it is in the public interest for area water providers to cooperate in water planning and area of service decisions. Tr. pp. 52, 200. Yet it appears from the testimony of those with responsibility for planning for each water provider that such cooperation does not take place, not even discussions. Tr. pp. 202, 244. Is the public interest being equally well served by not engaging in planning discussions? We suspect not.

This Commission finds that United Water has adequately planned for and has a fully integrated water system with sufficient and multiple sources of supply and is capable of providing safe and reliable water service to the 520 acres of Trailhead Community property located north of Homer Road and outside the City of Eagle's area of impact boundary. Tr. pp. 22, 24, 61, 62, 82, 84, 126. Under the Company's existing line extension rules, we find that the cost of additional facilities required to serve Trailhead will be contributed by the developer without refund. Tr. pp. 22, 23. Any booster stations and storage reservoirs that may be required will be constructed pursuant to a Special Facilities Agreement and a developer advance with related refund eligibility. Tr. pp. 84-86. We find that service to Trailhead by United Water will be in the public interest and that the same can be provided without adversely affecting the Company's other water customers.

Motion for Continuance – City of Eagle

The City of Eagle at hearing raised two procedural matters for Commission consideration, both of which the Commission took under advisement. Rules of Procedure 56, 252, 253, and 256. At the start of the hearing the City questioned whether a hearing to consider United Water's Certificate Application might be premature given that Kastera had yet to make application to Ada County and that so little was known about its proposed development. Tr. pp. 10, 11. At the conclusion of Kastera's testimony and revelation that a draft application to the County by Kastera was largely complete (Tr. p. 154), the City requested that the Commission continue proceedings at the conclusion of the hearing to allow the City time to look at Kastera's County application and to determine if the City needed to ask further questions of Kastera.

Both procedural matters relate to the details and information provided (or not provided) by Kastera regarding its development plans and the respective planning approaches of the City and United Water. As summarized by the City's engineer, the Trailhead development "has no plan, no design, no approvals, not even an application." Tr. p. 238. Clearly the City believes more information is required. "At least a concept level plan" is needed, it states, "so that we can actually talk about the parameters of service." Tr. p. 245.

United Water stands prepared to commit to service on the basis of much less information. Indeed, the Company's engineer contends "it is not unusual for a developer to confirm that there is a secure source of water supply before undertaking the expense and effort of developing a design and seeking other government approvals." Tr. p. 90. The City engineering firm, Holladay Engineering, based on its experience and representation of 13 cities in southwest Idaho, finds just the opposite to be true. Tr. pp. 244, 245.

United Water submitted its Certificate Application based on a developer-provided estimate of 500 to 700 homes depending on zoning and conditions of approval. Tr. pp. 20, 164, 165. Kastera, we note, has filed no detailed development plan with either the City, County or United Water. Tr. pp. 43, 46. The City calculated that current zoning rules limited Trailhead development to a maximum of 108 units. Tr. p. 212. Under the conceptual plan announced at the hearing, the County application of Kastera will seek approval of 104 homes under the County's non-farm cluster zoning. Tr. p. 161.

We find that Kastera's date of hearing revelation was not of such a nature as to merit a continuation of proceedings. The types of questions enumerated by the City that it might seek

to ask (Tr. pp. 179, 180) as indicated at the hearing, are not of the general kind the Commission would consider when deciding whether or not to grant a Certificate expansion (e.g., what types of lines might be necessary; where those lines might be constructed; how the service rendered would be provided, etc.) but instead as we stated would be part of a later investment prudence decision. Tr. p. 180.

CONCLUSIONS OF LAW

The Commission has jurisdiction over United Water Idaho Inc., a water utility, and the issues raised in Case No. UWI-W-06-04 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.*

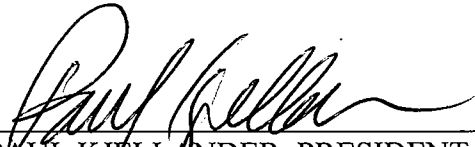
ORDER

In consideration of the foregoing and as more particularly described above, IT IS HEREBY ORDERED that the Motion of the City of Eagle to continue proceedings in this case is denied.

IT IS FURTHER ORDERED and the Commission does hereby approve United Water's Application to amend its certificated area of service and authorizes the Company to provide water service to the Trailhead Community. The Company is directed to file an amended Certificate No. 143 conforming with the Commission's Order.

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 3rd
day of August 2007.



PAUL KJELLANDER, PRESIDENT

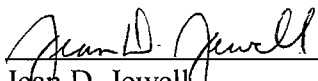


MARSHA H. SMITH, COMMISSIONER



MACK A. REDFORD, COMMISSIONER

ATTEST:



Jean D. Jewell
Commission Secretary

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