

McDevitt & Miller LLP
Lawyers

(208) 343-7500
(208) 336-6912 (Fax)

420 W. Bannock Street
P.O. Box 2564-83701
Boise, Idaho 83702

Chas. F. McDevitt
Dean J. (Joe) Miller

March 16, 2007

Via Hand Delivery

Ms. Jean Jewell, Secretary
Idaho Public Utilities Commission
472 W. Washington
Boise, ID 83720

Re: UWI-W-07-02

Dear Ms. Jewell:

Enclosed for filing in the above matter please find the original and seven (7) copies of the following:

Reply Comments;
Affidavit of Greg Wyatt;
Affidavit of Scott Rhead; and
Affidavit of Ramon Yorgason

An additional copy of the document and this letter is included for return to me with your file stamp thereon.

Thank you for your assistance.

Very truly yours,

McDEVITT & MILLER LLP



Dean J. Miller

DJM/hh
Enclosures

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Dean J. Miller (ISB No. 1968)
MCDEVITT & MILLER LLP
420 West Bannock Street
P.O. BOX 2564-83701
Boise, Idaho 83702
Tel: 208-343-7500
Fax: 208-336-6912
joe@mcdevitt-miller.com

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BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE APPLICATION)
OF UNITED WATER IDAHO INC., TO) **CASE NO. UWI-W-07-02**
AMEND AND REVISE CERTIFICATE OF) **REPLY COMMENTS**
CONVENIENCE AND NECESSITY NO 143)

COMES NOW United Water Idaho Inc., (“United Water”) and submits the following Reply Comments in response to the letter from counsel for the City of Eagle dated February 23, 2007 (“Letter Comments”) and the Staff Comments dated March 7, 2007 (“Staff Comments”).

Introduction

United Water is filing contemporaneously with these Reply Comments three Affidavits prepared by Gregory P. Wyatt, United Water’s General Manager, Scott Rhead, United Water’s Director of Engineering and J. Ramon Yorgason, the President of Capital Development, Inc, the entity that is developing the Lanewood Estates Subdivision (“Lanewood Development”). As, discussed in more detail below, these Affidavits address various points raised in the Letter Comments and the Staff Comments.

Based on these Affidavits, United Water contends that the un-verified assertions of counsel in the Letter Comments are insufficient to establish the genuine existence of disputed facts which would require an evidentiary hearing. Accordingly, United Water continues to

believe that Modified Procedure is appropriate for this proceeding and that the matter may be decided by the Commission on the existing record.

Previous Discussions Between United Water and the City Are Minimally Relevant

The Letter Comments (Pg. 1) assert the existence of previous discussions between United Water and the City regarding service territories.

The Affidavit of Gregory P. Wyatt fully describes the extent of these discussions which occurred in meetings on June 8, June 16, July 19 and September 26, 2006. Mr. Wyatt did not learn of Capital Development's interest in developing the Lanewood Project until November 11, 2006 and United Water did not receive a formal request for service until December 26, 2006. It appears inconceivable that the Lanewood Project could have been discussed before Mr. Wyatt knew of its existence. In any event, there was never an agreement that United Water would not serve the Lanewood Development and United Water's Application is not in violation of any agreement between United Water and Eagle.

The Developer of the Lanewood Development Requires Service in the Immediate Future and the Developer Desires Service from United Water.

The Letter Comments (Pg. 2) criticize United Water's Application for failing to be specific with respect to the developer's required time line for the provision of water service.

The Affidavit of J. Ramon Yorgason establishes that land use approvals from Ada County are expected in May and that construction is planned to commence in July of 2007. Mr. Yorgason, based on 30 years of experience in residential real estate development, expresses the opinion that Eagle will be unable to build-out its domestic water system to meet that timeline. Further, Mr. Yorgason explains other legitimate reasons for preferring service from United Water.

The City's Planning Intentions for the Future are Minimally Relevant to the Present Request for Service

The Letter Comments note that the location of the Lanewood Development is within the City's Area of Impact and the City's Comprehensive Plan.

As indicated by the Affidavit of Mr. Yorgenson, it is expected that Ada County will approve the proposed sub-division within the near future. If this occurs as expected, the relevant land-use approval agencies will have spoken and it would not be within the province of the Commission to substitute its judgment for that of agencies with land-use regulation authority.

United Water has the Present Ability to Provide Safe and Reliable Service; the City's Ability is Less Certain

The Letter Comments (Pg. 2) criticize United Water's Application for not providing specific information regarding United Water's ability to provide service to the Lanewood Development.

The Affidavit of Scott Rhead provides specific details relating to the adequacy of United Water's existing source of supply to serve the Lanewood Development. And, as illustrated by the map (Exhibit A) attached to the Rhead Affidavit, the Lanewood Development will be connected directly to United Water's existing integrated and extensive transmission system, insuring redundancy in source of supply and fire protection.

Staff Comments concur in Mr. Rhead's analysis:

"Staff believes that United Water has the present ability to serve Lanewood Estates. The Company has an existing 12-inch main that fronts Lanewood Estates along Linder Road. The water required by Lanewood Estates can be provided by United Water without additional investment in source of supply. All of the lots will be served by an alternative source for irrigation water." (Staff Comments, Pg. 2).

As also illustrated by Exhibit A the City does not have any existing transmission facilities in the area surrounding the Lanewood Development. To meet supply redundancy requirements the City would have to complete the conversion of its two test wells to meet DEQ municipal well requirements and construct transmission mainline facilities from the wells to the Lanewood Development.

United Water has not attempted to quantify the cost to the City of upgrading its test wells and extending mainline facilities to the Lanewood Development, and United Water has not attempted to determine how those costs would be allocated between the Lanewood developer and Eagle City residents. It, however, does not require any special expertise to examine Exhibit A to the Rhead affidavit and conclude that the overall cost of service by Eagle would be substantially greater than cost of service by United Water. And, service by the City would only be accomplished by the un-necessary duplication of United Water facilities already capable of providing service.

It has long been recognized that the concept of “public convenience and necessity” carries with it an aversion to un-necessary duplication of facilities and associated economic waste. In the very first appeal of a Commission decision to the Idaho Supreme Court, the Court said:

“If more than one instrumentality is to be sustained when one is amply sufficient, the actual cost to the public served is not only necessarily greater than it would be under one system, but also less convenient. If public convenience and necessity do not demand a duplication of power systems, why should the public be burdened with the expense of maintaining such duplicate systems, and the annoyance of perpetual solicitation to make or break contract for service, and the inconvenience to the people of the occupation of

streets and alleys of a town or city by such corporations in constructing and keeping in repair the two systems?" *Idaho Power v. Blomquist*, 141 Pac. 1083, 26 Idaho 222, 249 (1914). See Also *Cambridge Telephone v. Pine Telephone*, 109 Idaho 875, 712 P.2d 576 (1985).¹

Conclusion

As discussed herein, the Letter Comments contain only a series of un-verified assertions by counsel for the City. In light of the Affidavits filed with these Reply Comments the assertions in the Letter Comments are insufficient to establish the existence of material disputed facts that would require evidentiary hearing. The Affidavits establish the following facts, which, United Water suggests, no amount of evidence could change:

--United Water has the present ability to serve the Lanewood Development, without duplication of facilities and at the least cost to society;

--The City does not have the present ability to serve;

--The Lanewood developer, for legitimate reasons, desires service by United Water.

These established facts are sufficient to permit expansion of United Water's certificate of public convenience and necessity.

Accordingly, the Commission should:

1. Continue to process the matter by Modified Procedure;
2. Consider the matter based on the record established to date;
3. Grant to United Water the relief requested in the Application on file herein.

¹ While these cases involved conflict between two regulated utilities, the underlying principle is applicable here. The public interest would not be served by denying a regulated utility to opportunity to serve when the alternative is service by a municipal utility at a higher cost.

Dated this 14 day of March, 2007.

UNITED WATER IDAHO INC.

By: 
Dean J. Miller
Attorneys for United Water Idaho, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on the 10th day of March, 2007, I caused to be served, via the method(s) indicated below, true and correct copies of the foregoing document, upon:

Jean Jewell, Secretary
Idaho Public Utilities Commission
472 West Washington Street
P.O. Box 83720
Boise, ID 83720-0074
jjewell@puc.state.id.us

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

Bruce M. Smith
MOORE SMITH BUXTON & TURCKE
225 N. 9th Street, Suite 420
Boise, ID 83702

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

Heather Hule, Legal Staff.
MCDEVITT & MILLER, LLP