

DECISION MEMORANDUM

**TO: COMMISSIONER KJELLANDER
COMMISSIONER SMITH
COMMISSIONER HANSEN
COMMISSION SECRETARY
COMMISSION STAFF
LEGAL**

FROM: SCOTT WOODBURY

DATE: SEPTEMBER 14, 2007

**SUBJECT: CASE NO. UWI-W-07-02 (United Water) – LANEWOOD ESTATES
MOTION TO VACATE HEARING (SCHEDULING) – CITY OF EAGLE**

On January 31, 2007, United Water Idaho Inc. (United Water; Company) filed an Application with the Idaho Public Utilities Commission (Commission) requesting authority to amend and revise its Certificate of Public Convenience and Necessity No. 143, as amended, to include an area in Ada County, Idaho identified as Lanewood Estates. *Idaho Code* § 61-526; IDAPA 31.01.01.112. On March 1, 2007, the City of Eagle filed letter comments with the Commission apprising the Commission of the City's intent to serve Lanewood Estates, objecting to United Water's Certificate Application and requesting a hearing.

This matter was originally set for hearing on May 24, 2007. As reflected in the transcript of proceedings, the City of Eagle and Capital Development requested "that the Commission stay this matter and notice it for a hearing after [the Commission's] first available date occurring after August 24, 2007." Tr. p. 9. On August 30, 2007, the Commission issued Notice of Additional Scheduling and Second Notice of Hearing. The Commission established a September 17, 2007, simultaneous prefile date for supplemental testimony (i.e., changes that have occurred subsequent to May 24, 2007). The Commission also established a September 24, 2007 public hearing date.

Motion to Vacate – City of Eagle

On September 13, 2007, the City of Eagle filed a Motion with the Commission requesting that the September 17, 2007 prefile date and the September 24, 2007 hearing date be vacated. The City requests expedited consideration and pursuant to RP 256.02.b has provided

actual notice of the Motion by contacting counsel for all parties by telephone and by personal delivery of the Motion.

Noting that this matter was originally set for hearing on May 24, 2007, the City recites that the request for stay at that time by the City of Eagle and Capital Development until the first available hearing date after August 24, 2007 was based on the fact that on May 23, 2007 the City of Eagle and Capital Development reached agreement (Annexation and Cooperation Agreement) on settling this matter. See Motion Exhibit 1. This Agreement was a memorialization of proceedings at a City of Eagle City Council meeting on May 22, 2007 and continuing to May 23, 2007, during which Capital Development agreed to annex into the City and utilize city water services. See Motion Exhibit 2, Meeting Minutes.

Under the Agreement, the City of Eagle was to withdraw its objections to the applications filed by Capital Development at Ada County and to provide periodic updates to Capital Development about the status of water service plans for the development. Capital Development, in turn, was to “promptly file” an annexation application with the City upon approval of its applications with the County and to submit “all improvement plans” and “plans for water service” to the City for expeditious review.

Upon approval of the settlement, the City relates that it immediately filed a letter with Ada County on May 24, 2007, withdrawing its objections to the applications filed with the county. On July 11, 2007, the City states that the county approved Capital Development’s preliminary plat and related applications. In the intervening period, the City contends that it has provided status reports on development of water services to Capital Development on approximately a two-week schedule as set forth in the Agreement.

To date, however, the City reports that Capital Development has not filed any application for annexation with the City nor submitted any development plans for the City to review, and specifically has submitted no plan for water services. The City by letter dated September 13, 2007 has requested Capital Development to submit those plans and the annexation application. Motion Exhibit 3. In its letter to Capital Development the City states: “The City of Eagle has . . . undertaken in good faith to ensure it had sufficient water rights to serve the development. This is notice that the City has those water rights and will meet its commitment to provide service consistent with the Agreement.”

The City of Eagle considers Capital Development to be in breach of the Agreement entered into in settlement of the present case before the Commission. The City contends that if the testimony prefile date is maintained and the hearing proceeds, the parties will be required to incur needless expense. If the Commission chooses to not vacate the testimony prefile date and hearing date, the City requests that the hearing date be continued for 45 days so that the City may undertake discovery in the form of depositions of Capital Development, and if necessary, United Water so that the City may file appropriate testimony in this matter and prepare for hearing.

United Water and Capital Development – Initial Replies

On September 14, 2007, Initial Replies were filed by United Water and Capital Development. Both parties urge the Commission to

- Require that prefiled supplemental testimony be filed on Monday, September 17, as previously ordered;
- Require that full replies to Eagle’s Motion be filed by Wednesday, September 19, 2007; and
- Thereafter enter its Order determining whether to vacate the hearing scheduled for September 24, or alternatively, to receive additional oral argument on September 24.

In its reply, United Water states: as will “be revealed by Supplemental Pre-filed Testimony and a full reply to the Motion,”

The City’s Motion is an attempt to divert attention away from the central fact that the City has been unable to obtain from the Idaho Department of Water Resources a final non-appealable order approving a water right permit to serve the Lanewood Development and, in consequence, the City has no present ability to serve the development.

COMMISSION DECISION

The City of Eagle has filed a Motion to Vacate Scheduling and Hearing in Case No. UWI-W-07-02 and has requested expeditious consideration of its Motion. Reply comments were filed by United Water and Capital Development. The respective requests of each are set forth above. How does the Commission wish to act on the City of Eagle’s Motion?

Scott Woodbury

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