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IDAHO PUBLIC
UTILITIES COMMISSION

Attorneys for the McKay Construction Co., Inc. and Schmidt Construction Co. Inc.

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

MCKAY CONSTRUCTION CO., INC.,)	CASE NO. UWI-W-08-01
COMPLAINANT)	
and)	PETITION FOR CLARIFICATION OF
SCHMIDT CONSTRUCTION CO., INC.,)	ORDER NO. 26898, CASE NO. UWI-W- 96-4
COMPLAINANT)	96-4.
vs.)	
UNITED WATER IDAHO INC.,)	
RESPONDENT)	

Pursuant to Rule 53 of the Rules of Procedure of the Idaho Public Utilities Commission (the "Commission"), McKay Construction Co. Inc. ("McKay") and Schmidt Construction Co. Inc., ("Schmidt") by and through their attorney of record, Peter J. Richardson, hereby petitions the Commission for a clarification of Order No. 26898, Case No. UWI-W-96-4 In the Matter of the Connection Fees of United Water Inc. and Other Related Issues Including Rate Design (the "Order").

Order and Tariff at Issue in this Petition

On April 23, 1997, the Commission issued Order No 26898 (Case No. UWI-W-96-4) approving a settlement agreement allowing United Water ("United") to implement a Labor in

Lieu of Cash Program for installation of water facilities within residential subdivisions.

Paragraph 6(B) of the stipulation provides that:

United Water shall implement such systems and procedures as are necessary to monitor the implementation of a labor in lieu of cash program to insure that implementation of this program does not result in increased administrative and inspection costs for United and its customers generally

Rule 67 of United's Rate Schedules and Rules and Regulations Governing the Rendering of Water Service and Water Main Extensions (the "Tariff") provides that, "applicant contractors shall comply with Section 1 and Section 2 of the Company's Requirements for Labor in Lieu of Cash Contractors (the "Rules"). In general, areas covered are requirements for inspection, monitoring of construction, acceptance and handling of materials, documentation of costs, correction of faulty installation, insurance, bonding, license requirements, experience, and equipment availability. Nothing in the United's Tariffs or Rules address the question of a capped list of approved contractors. When the Commission first approved the concept of a labor in lieu of cash program the question of a cap on the number of approved contractors was apparently not at issue, so this is a question of first impression for the Commission. In addition, Order No. 26898 is silent on the question of whether United is authorized to cap the number of approved contractors.

Facts

Beginning in 1997, pursuant to the above Order, United Water implemented an approved contractor list for residential developers to choose from for their water facilities construction. This list began with six approved contractors and has grown to include ten contractors. In January of 2008 United Water decided to cap the number of approved contractors at ten. In doing so United Water declined to review the submitted applications of six contractors for

addition to the list. Petitioners McKay and Schmidt were two of the excluded applicant contractors. [United Water Statement of Position, Case No UWI-W-08-01].

Although Petitioner McKay was an approved contractor from 1997 through 2005, it was arbitrarily denied reinstatement to the list after having secured the required insurance coverage. Despite McKay's having an AAA Public Works License from the State of Idaho and its having 30 years of experience working on United Water projects it was informed it would need to reapply as a new applicant. In August 2005 McKay was informed that all it needed to do to be reinstated on the approved contractor list was to meet the minimum insurance requirements. See attached Exhibit A. Breaking that promise, in January 2008 United Water informed McKay their application would not be reviewed citing the general administrative burden of approving, training, and monitoring a new, inexperienced contractor. [Staff Decision Memorandum, April 11 2008]. In addition, McKay Construction is well respected and its services are in demand for this type of work as is evidenced by letters from the Harris Family Limited Partnership, Park Pointe Development Inc., and the G.L. Voigt Development Company all attached as Exhibit B hereto.

Petitioner Schmidt applied for addition to the approved contractor list between October and December 2007. In February 2008 United Water informed Schmidt its application would not be considered, citing the same administrative burden of approving, training, and monitoring a new, inexperienced contractor. Schmidt carries an AAA Public Works License from the State of Idaho and has over 25 years of experience in the water facilities construction industry in the Treasure Valley including experience directly with United Water's construction documentation and oversight procedures. [Schmidt Formal Complaint Letter of February 14, 2008 as included in the Staff Decision Memorandum of April 11, 2008]. In addition, Schmidt Construction is well

respected and its services are also in demand for this type of work as is evidenced by letters from Hubble Homes, Tennant Enterprises, Inc. and the City of Meridian's Public Works Inspector all attached as Exhibit C hereto.

Relief Requested

Petitioners hereby respectfully request this Commission to issue its order clarifying whether the administration of the list of approved contractors is an appropriate issue for this Commission to consider. If the answer is in the affirmative, then your Petitioners respectfully urge this Commission to declare that a cap on the list of approved contractors is contrary to the best interests of United's ratepayers and order the company to permit all qualified contractors to participate in the labor in lieu of cash program. If the answer is in the negative then your Petitioners respectfully request this Commission issue its order declaring that the administration of the list of approved contractors is beyond the jurisdictional reach of the Commission.

United's implementation of the contractor list unduly increases costs to all ratepayers – triggering this Commission's regulatory authority

The primary argument United uses to enforce a cap on the list of approved contractors is to "contain the cost of administering the labor in lieu program."¹ It also argues that the question of the size of the approved contractor pool is a business judgment decision which is beyond the reach of this Commission's jurisdiction.² However, as shown below, the Company's implementation of the cap has direct and widespread rate impacts on existing customers. In addition, the remedy for removing those impacts completely undermines the Company's argument that elimination of the cap will increase costs.

¹ United Statement of Position at p. 2.

² Id. at p. 5.

United allocates the costs associated with managing its approved list of contractors to all of its ratepayers. According to United's Statement of Position:

None of this added administrative time and cost is passed on to any specific developer simply because there is no particular associated developer project against which the charges could apply. These costs therefore become part of the overall construction overhead charged to all capital improvement projects resulting in increased rate base and eventually increased rates for all customers.³

Leaving aside the question of whether administrative time and training costs, that are not associated with any particular "developer project", may properly be included in ratebase⁴ – the immediate issue is the prudence of allocating the costs that are directly caused by new subdivision construction to all ratepayers. The prudence of United's allocation of the costs of administering the contractor list to all ratepayers is relevant in this case because it is the primary justification United relies on for capping the contractor list in the first place. Were the costs of training and monitoring contractors directly assigned to each contractor or each project on which the various contractors work, then United's other ratepayers would be held harmless - regardless of how many contractors were on the list and regardless of the costs of training and monitoring.

United's claim that the costs of the labor in lieu program cannot be attributed to any specific development is simply untenable. United's claim that the costs of oversight and review of approved contractors can only be recovered through rate base is unreasonable and directly results in unnecessarily increased costs to rate payers generally. United Water offers no explanation or evidence as to why the costs associated with reviewing, approving, and training an applicant contractor cannot be recovered from the applicant through an application fee.

Likewise, United Water offers no explanation or evidence why the training, monitoring,

³ Id. at 7, emphasis provided.

⁴ Because line extension rules are designed to prevent water utilities from inflating their ratebase with plant used to serve individual subdivisions, the Commission may find that an investigation into United's practices is warranted by the Company's admission that it adds these administrative costs to its overall ratebase.

inspecting, and review of newly approved applicants cannot be allocated to the specific project for which the newly approved contractor is hired for. Alternatively, United offers no explanation why the costs of approving and training contractors cannot be directly assigned to the contractors being approved and/or trained.

United's argument that the administration of the approved contractor list is a business judgment beyond the reach of the Commission's jurisdiction is belied by the Company's admission that it allocates the costs of administering this program to all of its ratepayers and not to just the development that is causing the costs. When business judgments harm the ratepayers, it is incumbent upon the Commission to exercise its jurisdiction to prevent that harm. Here the administrative costs of maintaining the approved contractor list are spread to all ratepayers rather than specifically identified and assessed against the contractor or developer who actually are responsible for the costs. In effect, the ratepayers are subsidizing contractor caused expenses. This is, indeed, a matter that calls for Commission supervision.

The Commission has an obligation to actively supervise the monopolistic actions of the utilities it regulates

Use of the phrase "applicant contractors" in the tariff clearly suggests that the Commission envisioned multiple applicants. It also clearly does not limit the number of applicants. In implementing this Commission approved tariff language, United has decided to restrict the workings of freely competitive markets by arbitrarily deciding that ten contractors are sufficient to "promote price competition".⁵

The concept of business judgment permits utilities to freely select vendors and suppliers. However when, as here, those judgments create unnecessary cost increases, the Commission's intervention is warranted and appropriate. Your Petitioners concede the Commission is free to

⁵ Supra at p. 5.

cure the ratemaking improprieties identified herein while still allowing United to maintain a cap on its approved contractor. It may do so by simply disallowing rate recovery of the costs of administrating the list. But in doing so, the Commission will have completely undermined United's sole argument for maintaining a cap in the first place.

As a regulated monopoly United accepts a special relationship with the public that is unique in our economic system. It is also given the power to control access to its system by third party vendors. United has decided to limit that access in this case to a select few contractors – and it has done so without any direct supervision by this Commission. It has implemented the cap arbitrarily and without competitive bidding or any other standard mechanism to insure that the costs are reasonable. This Commission, in its role as the regulator of the monopolist ought to take a keen interest in United's arbitrary decision to prevent the free market from policing its anti-competitive actions.

Clarification

NOW THEREFORE; your Petitioners respectfully request this Commission issue its order requiring United Water to take such steps as are necessary to add McKay Construction Co and the Schmidt Construction Co. to its list of approved contractors.

RESPECTFULLY SUBMITTED THIS 21st day of July 2008.

RICHARDSON & O'LEARY PLLC

By: 
Peter J. Richardson, ISB #3195
Attorneys for McKay Construction Co.,
Inc and Schmidt Construction Co., Inc.,

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 21st day of July, 2008, a true and correct copy of the foregoing PETITION FOR CLARIFICATION OF MCKAY CONSTRUCTION CO., INC., AND SCHMIDT CONSTRUCTION CO., INC., was served by U.S. Mail, postage prepaid to:

United Water of Idaho
Gregory P. Wyatt, President
PO Box 190420
Boise, Idaho 83719-0420

Dean J. Miller
McDevitt & Miller
420 West Bannock
Boise, Idaho 83702


Peter Richardson

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

MCKAY CONSTRUCTION CO., INC.,) **CASE NO. UWI-W-08-01**
COMPLAINANT)
and)
SCHMIDT CONSTRUCTION CO., INC.,) **PETITION FOR CLARIFICATION**
COMPLAINANT) **OF ORDER NO. 26898, CASE NO.**
vs.) **UWI-I-96-4.**
UNITED WATER IDAHO INC.,)
RESPONDENT)

Exhibit A

United Water



United Water Idaho Inc.
8248 W. Victory Road
P.O. Box 180420
Boise, ID 83719-0420
telephone 208 362 7300
facsimile 208 362 3858

August 22, 2005

McKay Construction, Co, Inc.
Mr. McKay
PO Box 2450
Eagle, ID 83616

Dear Mr. McKay:

Thank you for your response to my request for updated insurance information. The information, which you sent to us, indicates that you do not have the minimum insurance necessary to be an approved United Water Contractor.

When you are able to meet the required insurance coverage minimums you will be allowed to perform construction on United Water Idaho projects.

If you have any questions, please feel free to call.

Sincerely,

John Lee
Construction Coordinator

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
<ul style="list-style-type: none">■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.■ Print your name and address on the reverse so that we can return the card to you.■ Attach this card to the back of the mailpiece, or on the front if space permits.	<p>A. Signature <input type="checkbox"/> Agent <input type="checkbox"/> Addressee <i>[Signature]</i></p> <p>B. Received by (Printed Name) <input type="checkbox"/> Date of Delivery <i>BOB TENNY</i></p>
<p>1. Article Addressed to:</p> <p>Mr. McKay McKay Construction, Inc PO Box 2450 Eagle, ID 83616</p>	<p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes <input type="checkbox"/> No if YES, enter delivery address below:</p> <p>3. Service Type <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.</p> <p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>
<p>2. Article Number (Transfer from service label) 7003 3110 0001 1948 8723</p>	
<p>PS Form 3811, August 2001 Domestic Return Receipt ZACPR1-03-P-4081</p>	

SVGZ

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

MCKAY CONSTRUCTION CO., INC.,) **CASE NO. UWI-W-08-01**
COMPLAINANT)
and)
SCHMIDT CONSTRUCTION CO., INC.,) **PETITION FOR CLARIFICATION**
COMPLAINANT) **OF ORDER NO. 26898, CASE NO.**
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UNITED WATER IDAHO INC.,)
RESPONDENT)

Exhibit B



P.O. Box 2044, Idaho Falls, Idaho 83403, (208) 524-6000

June 23, 2008

Idaho Public Utilities Commission
Jean Jewell
PO Box 83720
Boise, ID 83720-0074

Dear Jean,

We are sending this letter in reference to McKay Construction. Our firm has utilized McKay construction as a general contractor for construction of residential developments in Ada County. Our relationship with McKay Construction over the years has been nothing but positive and the construction consistently met all specifications and quality requirements.

We currently are in process of completing a comprehensive plan change and are moving forward with the preliminary platting process on our Boxwood project at Cloverdale and Columbia roads, which is in United Water's coverage area. We have requested McKay Construction complete the required steps necessary to be able to do work within United Water's area so they can continue to provide us with their services on this project, as well as others we have coming up in the future.

Sincerely,

A handwritten signature in black ink, appearing to read "Eric Guanell", with a long horizontal flourish extending to the right.

Eric Guanell
Vice President
G.L. Voigt Development Co.



PARK POINTE™
DEVELOPMENT

June 20, 2008

Idaho Public Utilities Commission
Ms. Jean Jewell
PO Box 83720
Boise, ID 83720-0074

Dear Jean,

We have recently acquired a large parcel of land located in east Boise within United Water's service area. McKay Construction has been our sole general contractor for several years with most work negotiated, and at this time we feel that with our relationship, we do not foresee changing the way we do business in the future. Therefore, we are very interested in having McKay Construction being added to the United Water's approved contractor list so we can continue our relationship.

Sincerely,

Matt Schwehr
Project Manager
Park Pointe Development Inc.

copy

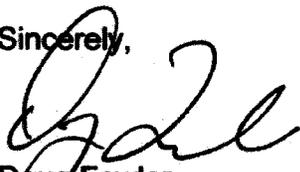
Idaho Public Utilities Commission
Jean Jewell – Secretary
PO Box 83720
Boise, ID 83720-0074

June 20, 2008

Dear Jean,

As the project management company for Harris Ranch, we are in the process of requesting bids for two segments of this master planned community, with the intent to issue a notice to proceed this construction season. McKay Construction has made our short list of qualified contractors. We are very interested in Mc Kay Construction being placed back on the approved United Water Idaho contractor list so they can provide this development (which consists of 2,567 residential units and 1,039,00 square feet of commercial/retail space) with their services for these two segments, as well as future phases.

Sincerely,

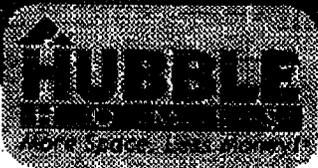


Doug Fowler
President
LeNir Ltd.
Project Manager
Harris Family Limited Partnership

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

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SCHMIDT CONSTRUCTION CO., INC.,)	OF ORDER NO. 26898, CASE NO.
COMPLAINANT)	UWI-I-96-4.
vs.)	
UNITED WATER IDAHO INC.,)	
RESPONDENT)	

Exhibit C



701 South Allen St. P: 208-433-8800
Suite 104 F: 208-378-0329
Meridian, ID 83642

hubblehomes.com

June 18, 2008

Jean Jewell – Secretary
Idaho Public Utilities Commission
PO Box 83720
Boise, ID 83720-0074

RE: Case No. UWI-W-08-01

Dear Ms. Jewell

This letter is in regard to the formal complaint against United Water filed by Pete Wilson of Schmidt Construction.

We are planning on starting a subdivision in July and we have contracted Schmidt Construction for all utility installation. The subdivision is in United Water's jurisdiction and we are aware that Schmidt Construction is not an approved contractor, however we would like to have Schmidt construct the water main. We believe that since this subdivision is our private project and we are paying for the construction, we should be able to contract any qualified contractor we choose to complete the work.

Schmidt Construction has completed other subdivisions for us in different jurisdictions throughout the Treasure Valley with complete satisfaction by the applicable agencies and Hubble Homes. If we are not able to have Schmidt Construction complete the water for this project we will incur additional costs for the project itself which we feel are not warranted. Your consideration on this matter is greatly appreciated.

Respectfully,

A handwritten signature in black ink, appearing to read "Chad Hamel". The signature is written in a cursive style with a long horizontal stroke at the end.

Chad Hamel
Director of Land Development
Hubble Homes
701 Allen Street
Meridian, ID 83642

June 18, 2008

Jean Jewell - Secretary
Idaho Public Utilities Commission
PO Box 83720
Boise, ID 83720-0074

RE: Case No. UWI-W-08-01

Dear Ms. Jewell

I own some property in South Boise that I intend on developing soon. I have dealt with Schmidt Construction on some small projects in the past and I would like to utilize their services for this subdivision that I am planning. There is a significant amount of off-site water main as well as all the on-site water to construct.

Schmidt Construction is a quality driven company. Bill Schmidt and his project manager Pete Wilson whom I have maintained a professional relationship with for a number of years have proven over time that they will meet or exceed all expectations. This proven level of consistent quality is what motivates me to request your consideration of approval of Schmidt Construction to perform the construction of all of the water service I will be required to build for the approved Grovecrest Estates Subdivision in Southwest Boise. I have confirmed they have all the personnel and equipment needed to proficiently install water lines as well or better as anyone else in their field.

Thank you for your consideration of this matter.

Sincerely,



Scott Tennant
President/C.E.O.
Tennant Enterprises Inc.
Boise, Idaho 83709
Call: 208 944-4699
Fax: 208 562-0341
scott.tennant@teoi.com



Mayor Tammy de Weerd
City Council Members:
Keith Bird
Joe Borton
Charles Rountree
David Zaremba

June 24, 2008

Jean Jewell – Secretary
Idaho Public Utilities Commission
PO Box 83720
Boise, ID 83720-0074

RE: Case No. UWI-W-08-01

Dear Ms. Jewell

I work for the City of Meridian as a Public Works Inspector. I have personally inspected water main projects that Schmidt Construction has installed. Schmidt Construction installed these systems in a professional manner while continually maintaining the utmost consideration for quality.

I believe Schmidt Construction is more than qualified to be included on the United Water approved contractor list.

Sincerely,

A handwritten signature in black ink, appearing to read "Tom Johnson", written over a horizontal line.

Tom Johnson
City of Meridian