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BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

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| IN THE MATTER OF THE APPLICATION OF UNITED WATER IDAHO INC. FOR APPROVAL OF AN AGREEMENT TO EXCHANGE SERVICE AREAS AND TO AMEND AND REVISE CERTIFICATE OF CONVENIENCE AND NECESSITY NO. 143. | )  )  )  )  )  )  )  ) | CASE NO. UWI-W-95-2  ORDER NO.  26367 |

On July 31, 1995, United Water Idaho Inc. (United Water; UWI; Company), a public utility providing domestic water service, filed an Application with the Idaho Public Utilities Commission (Commission) for approval of a Service Area Exchange Agreement (Exchange Agreement, Agreement) with the City of Garden City and a related amendment and revision to its Certificate of Convenience and Necessity No. 143, relinquishing a portion of its certificated area.  By this Order and for reasons set forth below, the Commission denies the Application of United Water.

Exchange Agreement

The Exchange Agreement, dated July 20, 1995, provides for an exchange of service areas between United Water and Garden City whereby the Company agrees to provide service to the “North State Area” and Garden City agrees to provide service to the “Millstream Area.”  The Agreement was proposed by Garden City to comply with mutual promises and agreements set forth in an underlying Memorandum of Understanding (MOU) between Garden City and the City of Boise.  The net effect of the Agreement is that Garden City would provide water service to areas lying within its corporate boundaries and area of impact and would no longer provide water service to areas lying within the Boise city limits and Boise area of impact.

Garden City presently serves approximately 771 customers in the “North State Area,” which is defined as the area lying north of State Street and (generally) south of Hill Road and between Gary Lane on the west and Pierce Park Lane on the east. Under the Agreement Garden City agrees to convey to the Company its transmission and distribution system located within the North State Area.  Garden City agrees to supply water to the Company for an initial two-year period, and at the Company’s option for succeeding one-year periods not to exceed a total of ten years.  The City agrees to deliver the water to the Company at the City’s present connection point on the north side of the Boise River, at the Plantation Subdivision on East 52nd Lane.  The amount of water delivered to the Company by Garden City to serve the North State Area would be determined from the water readings of customers in the North State Area.  Payment would be at the following rates:  A. $.35 per 1000 gallons delivered from October 1 to April 30.

B. $.45 per 1000 gallons delivered from May 1 to September 30.

United Water presently serves approximately 382 customers residing in the “Millstream Area” which lies in an area north of Chinden Boulevard, west of Glenwood Street and south of the Boise River.  Under the Exchange Agreement, United Water agrees to convey to Garden City its water utility property in the Millstream Area, consisting of a transmission and distribution system, its Millstream well and the water rights pertaining to said well.

In further consideration of the exchange of service areas and water utility plants and facilities, the Company has agreed to pay Garden City $593,250.  Pursuant to an amended Application filed October 10, 1995, the Company requests authority to include the consideration paid to Garden City under the Exchange Agreement in the Company’s rate base.

The proposed exchange of service areas would have immediate economic consequences to the affected customers.  Upon becoming United Water customers, existing Garden City residential customers with 3/4 inch meters in the North State Area would see rate increases ranging from 20% for high winter consumption to 49% for high summer consumption.  Existing United Water residential customers with 3/4 inch meters in the Millstream Area would see rate decreases ranging from 37% for high winter consumption to 65% for low summer consumption upon becoming Garden City customers.

The Exchange Agreement is subject to the approval of the Commission and if not approved, the Exchange Agreement by its terms shall be deemed null and void and of no further effect.

Hearing

Public hearing in Case No. UWI-W-95-2 was held in Boise, Idaho on January 22, 1996.  As a preliminary matter, Boise city, although previously granted intervening party status was, pursuant to Motion, permitted to withdraw.  The remaining parties to the case appeared and participated by and through their respective counsel:

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| United Water Idaho Inc.:  Neighborhood Associations:  Coventry Neighborhood Association  Gary Lane Meadows Homeowners Association  Pierce Park Meadows Homeowners Association  Commission Staff: | Kenneth G. Berquist  Barton L. Kline  Scott D. Woodbury |
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Public testimony was taken in an evening hearing on the same date.

The Commission has reviewed the filings of record in United Water Case No. UWI-W-95-2 including the transcript of proceedings and related correspondence.  The Commission has also, pursuant to request, taken official notice of Order No. 24109 in Case No. BOI-W-91-2.  Tr. p. 301.

Commission Findings

●  Cities’ Memorandum of Understanding

The details of the Exchange Agreement as set forth in the Company’s Application and as described above were generally supported by the testimony of Company witnesses.  United Water contends that the areas of acquisition and divestment have been the source of community problems and confusion between Garden City and Boise for 20 years and that the exchange is consistent with a Memorandum of Understanding between the cities and will enhance harmony, eliminate confusion and allow orderly development patterns for Boise and Garden City to emerge.  However, we note that neither city participated in the Commission’s hearing in this case.

It also appears that neither city provided a forum for customers to express their views on the proposed exchange. Garden City did issue a notice of the exchange agreement on September 7, 1995, but it appears from testimony of the public at our hearing that there was not a hearing or public forum for affected customers to express their views to the city.

We are not persuaded that the political implications of the exchange for Garden City or the City of Boise should dictate an outcome in this case.  The underlying Memorandum of Understanding between Garden City and Boise apparently resolves the problem of city and area-of-impact boundaries and water-service competition between Garden City and United Water.  We find no significant operational or service problems presented by continuation of the present water service arrangement to the North State and Millstream Areas.

 The Commission analysis in this case focuses on an assessment of the relevant exchange benefits to the North State Area customers, the Millstream customers and the Company’s remaining customers.

●  Service Quality in the North State Area

The North State Area is within Boise city limits and within United Water’s current certificated service area.  Tr. p. 20.  The Garden City distribution system in this area is relatively new, with the oldest main being installed 14 years ago.  Based on its engineering review, United Water anticipates minimal maintenance costs should the acquisition be approved.  Tr. pp. 69, 70.

The North State Area customers who now receive water service from Garden City have water pressure and water quality problems.  Under the exchange agreement,  North State customers transferred to United Water will continue to be served for the next two to ten years from the same distribution system and Garden City water supply source but will be charged the United Water rates.  The annual rate impact to typical residential customers in the North State Area would be approximately $68.59 per year or approximately a 34% increase.    Tr. p. 183.  The Neighborhood Associations participating in this case argued that unless United  Water can offer a definite improvement in water quality, there is not customer benefit from the rate increase proposed in the exchange and the Commission should reject the exchange.  They also advocate that if the Commission approves the exchange, rate increases ought to be phased in and tied to service quality improvement.  United Water opposes the phased-in rates suggested by the Homeowner Associations because the North State Area customers will receive essentially the same services as the Company’s other customers and because phased-in rates would not provide sufficient revenues to support the investment in the system.  Tr. p. 33.

United Water testified that the aquifer system in the northwest area of Boise is prone to low capacity, low quality water with high concentrations of iron and manganese and in some cases, high temperature.  This makes development of good quality sources of supply very difficult.  The Company has considered many alternatives such as sequestering agents, aquifer storage, filtration, flushing, etc., but has yet to identify a final solution.  Tr. pp. 274, 275.  The resolution of these water quality problems will require further analysis and the Company anticipates a solution within two years.  Tr. pp.  32, 282.  Should the Application in this case be approved, the Company pledges to launch an immediate evaluation of the North State Area system—engineering, microbiology, hydro geology, etc. to see how service might be improved.

The customers testifying at our hearing have legitimate concerns about the quality of water currently received from Garden City.  The evidence shows that a change in service providers would not be an immediate remedy for these concerns.  United Water has promised to study a number of alternatives and to try a regular flushing program to attempt to improve the water quality.  No one can predict whether it will be effective.

We have no doubt United Water would carry through on its commitment to provide the North State Area customers with the best quality water service that it is capable of providing.  However, the record reflects that as presently structured, the North State customers will not immediately benefit from the exchange.  This situation is caused, in part by the water supply arrangement that the Company has struck which ties supply to Garden City wells for a minimum of two years up to a maximum of ten years.  It appears that customers may pay higher rates for years before seeing a significant improvement in water quality.

Based on monitoring performed by United Water, the Company concludes, that fluctuating water pressure (35-80 psi) in the North State Area is a concern for both quality of service and for fire protection.  Tr. pp. 71, 80.  The minimum pressure presently required by the state Division of Environmental Quality is 35 psi.  Tr. p. 81.  The Company identifies three potential resolutions to the water pressure problem.

1.  Stated plans of Garden City to improve the system in 1996.

2.Intertie the North State system with the UWI distribution system and pump the water needed to serve the North State Area from Garden City through the existing booster pump(s) at UWI Gary Lane Well/booster station.

3.Intertie North State system with UWI distribution system and pump the water needed to serve North State Area from Garden City through new booster pump(s) located on the water main currently serving the area.

Under alternatives 2 and 3, the Company would also tie into the new UWI Hidden Hollow Reservoir located on Seamans Gulch Road.  The Company states that tying into a gravity feed storage reservoir,  would further stabilize pressures, improve fire protection and also provide a back up supply in case of a power outage.  Tr. pp. 71, 72, 87-89, 273, 274.

We conclude that apart from water pressure problems, which it seems both Garden City and United Water are capable of remedying, the exchange agreement does not offer North State customers the outcome they most desire, a solution to their water quality problems.

●  Financial Considerations of the Agreement

In the Exchange Agreement United Water agreed to pay Garden City $593,250 and transfer its Millstream production and distribution facilities with an estimated net book value of $104,431.  Tr. pp. 21, 22, 209, 264.  In return, the City would convey North State Area facilities with a depreciated installation cost of $1,088,000 and related customers.  Tr. p. 209.  The agreed upon cash price was based on 912 customers in the North State Area.  The record reflects that the actual number of customers may be closer to 771.  If Garden City has less than 912 customers, United Water states that it will proportionately reduce the amount that it will pay Garden City.  Tr. pp. 45, 119, 254-256.  The Company’s identified gross investment would be $697,431.  Exhibit 102; Tr. pp. 201, 208.  This level of investment does not include costs of interconnection, a new supply well or additional costs related to technical studies or community outreach.  Tr. pp. 45, 46.  The Company’s appraisal and inspection of the North State Area facilities consisted of a drive-through and random sampling of different lots and meters.  No independent appraisal was performed.  Tr. p. 48.

The Exchange Agreement is contingent upon our authorizing recovery of the purchase price  by UWI.  Tr. pp. 44, 129.  United Water maintains that the agreed upon consideration represents the cost of assets “first devoted to utility service,” and is thus appropriately included in rate base.  Tr. pp. 109, 110.  The contribution of facilities by developers to Garden City, the Company contends, should have no bearing on the Company’s proposed rate base treatment.  Tr. p. 110.  The Company admits that its proposal runs contrary to established regulatory policy but suggests that the exchange merits special consideration.  Tr. p. 292.

The Commission Staff contends that the North State Area facilities were first devoted to utility service by Garden City.  Tr. pp. 173, 194.  Based on Company responses to production requests, Staff contends that the entirety of North State Area facilities was contributed, that the presumption is that the cost of the contributed plant was collected by the developers in the sale of lots, and that the $697,431 gross investment figure is an “acquisition premium” which the Company should not be permitted to recover from its customers.  Tr. pp. 172, 185, 190, 201.  Staff contends that the Company has failed to provide and quantify related benefits or offer proof that existing ratepayers will not be harmed.  Tr. pp. 181, 182.

Based on its financial analysis, United Water contends that operating revenues from North State Area customers will be sufficient to support the level of investment required by the exchange, and that United Water’s existing customers will not be adversely affected.  Tr. pp. 22, 114.  United Water bases its revenue projections on a presumption that the proper customer number to use in determining whether or not the revenue requirement will be met is the total number of North State Area customers.  Staff contends that the number of North State Area customers must be offset in this calculation by the number of Millstream customers that will go to Garden City.  If the net increase is not used, Staff reasons that the Company will be under-earning in the overall system and a subsidy may be required.  Tr. pp. 188, 199.  Staff further contends that if projected interconnection and other variable costs are included, the Company will be under-earning its rate of return.  Tr. pp. 187, 188, 194, 214, 215, 223, 224.

Although the Company maintains that its existing customers will not be adversely affected by the exchange, it is clear that the Company is not inclined to absorb any revenue shortfall or calculated subsidy requirement based on exchange-related costs.  The record reflects that the Exchange Agreement is contingent upon authorized recovery of the Company’s investment.  Tr. p. 296.

We find that many questions remain unanswered in the Company’s case such as an actual verified number of customers in the North State Area, total exchange-agreement costs including acquisition price, a reasonable estimate of other foreseeable exchange-related costs and direct and indirect expenses. The Company suggests that it would be proper for the Commission to approve the exchange in principal and wait for the details.  We cannot do so and fulfill our statutory obligations.  Despite a recitation of reasons for approval, the Company has failed to demonstrate that the exchange is in the public interest or will benefit either the Company, the affected customers or the Company’s existing customers.  Although the Millstream customers would experience a rate decrease and arguably, thereby, realize a benefit, this alone is not a sufficient basis for approval.

We applaud the efforts of Garden City and Boise to resolve their long standing territorial disputes.  We cannot find on the evidence before us that the Memorandum of Understanding between the cities is a sufficient basis to require approval of the exchange proposed.  In the abstract it makes sense to have the service areas of Garden City and United Water realigned to reflect the political boundaries that have been established.  The proposal before us in this case, however, is one that we cannot approve.  Any subsequent proposals to the Commission to achieve this desired realignment must provide benefits to the affected customers in the North State Area as part of the exchange and should not negatively affect existing customers.

Intervenor Funding

On February 5, 1996, the Neighborhood Associations (Associations) filed an Application for intervenor funding in Case No. UWI-W-95-2.  Reference Idaho Code § 61-617A; Commission Rules of Procedure Rules 161-165.  No parties challenged the petition.  As reflected in their filing, the itemized expenses and costs incurred by the Associations related to their participation in this case, total $1,822.26.  They represent that the expenses and costs of such magnitude constitute a financial hardship on the respective nonprofit Associations which purportedly have no ability to implement a special assessment to fund their participation in this case.

The Associations represent that in contrast to Staff, they presented the concerns of the North State Area residents that would be directly affected by the exchange.  The Associations addressed the issues of “rate shock,” water service, water quality and water pressure through their witness in the technical proceeding and through their members at the public hearing at night.  The Associations’ witnesses testified that they did not believe the exchange was in the public interest.  Should the Commission, however, approve the exchange, the Associations recommended that there be some phase-in of rates or some linkage between the rate increase and improved water quality and service.  It is the contention of the Associations that their “testimony and participation addressed issues of concern to the general body of users or consumers and, as such, any intervention expenses awarded should be chargeable to all of United Water’s customer classes.”

The Commission notes that the statute providing for an award of costs of intervention (Idaho Code § 61-617A) was expressly enacted to incur participation in utility cases before the Commission.  The direct and active participation of the Neighborhood Associations in the technical proceeding and their ability to turn out North State Area customers in the public hearing provided this Commission with the unique perspective of affected North State Area customers.  While Staff addressed North State Area concerns in general terms, the Neighborhood Associations were able to personalize the issues in a manner that no other party could.  As we have previously indicated, we encourage existing organizations to seek competent legal representation for the hearing room.  (Case No. U-1034-122, Order No. 20151.)  The North State Area customers were not included in the process that resulted in the Exchange Agreement.  In this proceeding their voices were heard.  In granting the Neighborhood Associations intervention rights in this case, the Commission determined that they had a direct and substantial interest in these proceedings.

We find that the testimony of the Neighborhood Associations materially contributed to our understanding of the issues addressed by that testimony and the decision finally reached.  We find that the Neighborhood Associations’ case and recommendations were of concern to all users of water because of the effect the Company’s proposal would have on the general body of ratepayers and not any particular class.  We find the itemized cost of intervention to be reasonable in amount and further find that although it is a relatively small sum of money, it would nevertheless constitute a significant financial hardship for these intervenors.  We find that the Application for Intervenor Funding complies with the letter and spirit of Idaho Code § 61-617A.  We therefore find it fair, just and reasonable to allow the intervenor Neighborhood Associations to recover its costs and expenses in the sum of $1,822.26.  We further find that it is reasonable for the Company to recover the sum awarded as an allowable business expense in its next rate case.

O R D E R

In consideration of the foregoing and as more particularly described above, IT IS HEREBY ORDERED and the Commission does hereby deny the Application of United Water in Case No. UWI-W-95-2.

IT IS FURTHER ORDERED and the Commission does hereby award the intervenor Neighborhood Associations intervenor funds in the sum of $1,822.26.  Pursuant to Commission Rule of Procedure 165.02, United Water is directed to pay such amount within twenty-eight (28) days of the date of this 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                  day of March 1996.

                                                                                                                                      RALPH NELSON, PRESIDENT

                                                                                           MARSHA H. SMITH, COMMISSIONER

DENNIS S. HANSEN, COMMISSIONER

ATTEST:

Myrna J. Walters

Commission Secretary

Vld/O:UWI-W-95-2.sw2

**COMMENTS AND ANNOTATIONS**

Text Box 1:

**TEXT BOXES**

Office of the Secretary

Service Date

March 14, 1996