DECISION MEMORANDUM

TO:COMMISSIONER HANSEN

COMMISSIONER NELSON

COMMISSIONER SMITH

MYRNA WALTERS

TONYA CLARK

DON HOWELL

STEPHANIE MILLER

DAVE SCHUNKE

TERRI CARLOCK

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RICK STERLING

GEORGE FINK

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DAVID SCOTT

WORKING FILE

FROM:SCOTT WOODBURY

DATE:AUGUST 17, 1998

RE:CASE NO. UWI-W-97-6

PETITION FOR RECONSIDERATION

On July 6, 1998, the Idaho Public Utilities Commission (Commission) issued final Order No. 27617 in United Water Idaho Inc. (United Water; Company) Case No. UWI-W-97-6 authorizing a 7.15% increase in rates and charges on a calculated revenue deficiency of $1,581,989.  By Order No. 27630 issued July 14, 1998, the Commission correcting a computational error in response to a July 8, 1998, United Water Petition for Reconsideration increased the calculated revenue deficiency by $333,964 (from $1,581,989 to $1,915,953) and related change in rates and charges from 7.15% to 8.66%.  The Company reserved the right to file a further Petition for Reconsideration within the allowed statutory time frame.  The Commission adopted the Company proposal that it be permitted to file tariffs to collect the corrected revenue requirement, subject to refund and pending the Commission’s final Order on Reconsideration in this case.

On July 27, 1998, the Company filed a further Petition in Case No. UWI-W-97-6 requesting additional reconsideration of the Commission’s Order No. 27617.  Specifically, the Company requests reconsideration of the following two issues:

1.  Northwest Pipeline, Floating Feather Well (Order No. 27617, pp. 10-12; 13-14).

2.  Amortization of Boise River intake (Order No. 27677, pp. 18-20).

As more particularly described below:

1.  Northwest Pipeline, Floating Feather Well

As represented by the Company, in Order No. 27617 the Commission denied United Water’s request to earn a return on the Company’s investment of $940,000 in transmission main facilities known as the “Northwest Pipeline” and the Company’s net investment of $357,670 in an associated source of supply known as the “Floating Feather Well.”

The Commission made the following specific findings regarding the Northwest Pipeline:

The Company has failed to persuasively demonstrate that its decision to construct a pipeline was for its customers a prudent decision, that it was the best economic and planning alternative available to it or that it was even needed at this time.  It is undisputed that by completing the pipeline the Company is able to transport surplus water from the Eagle area to Hidden Hollow Reservoir; that its ability to do so provides it with an additional resource to reduce or mitigate capacity deficiencies in the main service level; that it provides a benefit to customers outside the Eagle area; and that it is otherwise “used and useful.”  It is also undisputed that the Floating Feather well waters will provide the Company with a supply of high quality water for its main service level, water without elevated levels of iron and/or manganese.

Despite the foregoing findings, our decision in this matter is directed by the Company’s failure to avail itself of what we find to be other, more economic alternatives.  We refer of course to the Company’s decision to forego contractual rights in its Garden City supply contract; to  forego the use during critical periods of peak demand of its Swift No. 1 well; to ignore the additional main service level well capacity brought on line since 1997, capacity additions which most certainly had to have been planned; to forego the full utilization of water transport capability between service levels; to fully recognize that the main service level supply deficiency would be mitigated to a large degree by the planned 1999 Marden expansion; to forego the planned use of demand conservation measures (e.g., alternate day sprinkling) to bridge what can be reasonably perceived to be a short-term supply deficiency.

Although the Commission will not allow the investment to be rate based at this time, we will allow the Company to recover amortization of its investment in recognition that it is used.  Embedded in the Company’s case is $18,800 of depreciation expense that we will allow to remain for this purpose.

Order No. 27617, pp. 10-12.

United Water requests that this issue be reconsidered by evidentiary hearing and proposes to present “additional evidence” of post-hearing facts, events and operational decisions which the Company contends will demonstrate the need for the disallowed investments.

United Water represents that this summer it has experienced a sustained peak in demand, not merely a single day peak.  The use of alternate day sprinkling, although encouraged by the Commission as an example of a demand conservation measure to bridge what the Commission noted could reasonbly be perceived to be a short-term supply deficiency, the Company contends, would have been inadequate to meet the demands of this sustained peak, and in the absence of adequate supply (e.g., Northwest Pipeline and Floating Feather Well), United Water states that it would have been forced to call for curtailment by customers.

The Company represents that it has been unable to produce and purchase in excess of 82 million gallons per day (MGD).  On July 22, 1998, the Company represents that it experienced a record system-wide consumption of 82.2 million gallons.  Despite the Commission’s criticism in Order No. 27615 of its decision “to forego the use during critical periods of peak demand of its Swift No. 1 well”, on that date the Company elected to forego the production capabilities of all of its Swift Wells (4.0 MGD).  To meet demand requirements, as part of its production, contract and reservoir supply resources, the Company obtained 1.69 million gallons from the Northwest Pipeline and Floating Feather Well.

United Water represents that it will be able to demonstrate at hearing that the other “more economic alternatives” and supply options identified by the Commission, either individually or taken as a whole, would not be sufficient to meet United Water’s system demand and do not constitute a viable alternative to the Well and Pipeline; and that a finding of same is contrary to the evidence and unsupported by the record.

United Water contends also that the Commission employed an incorrect legal standard in evaluating the evidence relating to these investments.  Despite a finding of “used and usefulness” the Commission, the Company states, disallowed a rate basing of the investment finding

“The Company has failed to persuasively demonstrate that its decision to construct a pipeline was for its customers a prudent decision, that it was the best economic and planning alternative available or that it was even needed at this time . . . our decision in this matter is directed by the Company’s failure to avail itself of what we find to be other, more economic alternatives.” . . .

Order No. 27617 p. 12.

The well established rule, the Company contends, is that when the utility demonstrates “that property is used and useful in service to the public, reasonable in cost, and based on sound and prudent system planning, the burden shifts to other parties to demonstrate that the project should not receive rate recognition.”  (Citing Boise Water v. IPUC, 97 Idaho 832 (1976).  The cited authority discusses the burden of proof regarding reasonableness of operating expenses.)  This rule, the Company states, recognizes the policy that Public Utility Commissions will not engage in micro managing the utility or in second guessing of management decisions.  The utility, the Company contends, is not required to prove a decision was, in retrospect, the best possible decision.

The Commission, the Company contends, recognized, and correctly applied, this rule in connection with vehicle leasing when it rejected a Commission assertion that other, less costly options were available:

We are satisfied that the attendant costs and benefits were considered and weighed by the Company.  Owning and leasing are both reasonable and viable alternatives.  Although the related expenses may vary, we find that the Company is not legally constrained to choose the least cost alternative.

Order No. 27615 at p. 22.

Noting that the reasons cited for disallowing seem to be ones that might appear with equal force in a subsequent general rate case in which United Water might seek inclusion of the investment, United Water states that it perceives itself to be at risk that a subsequent request might be considered as an improper collateral attack on Order No. 27617.

2.  Amortization of Boise River Intake

In its Order No. 27617 the Commission made the following findings:

The Company in this case presents us with no physical evidence or documentation of a “mandate from government” of such a nature that we could find the “extreme emergency” exception to Idaho Code § 61-502(a) exists.  Its professed belief that it was subject to such a mandate and that it would have been precluded in the future from ever installing facilities at the Highway 21 cut is not supported by persuasive evidence.  Based on Company demand forecasts there will be no need for the facilities until the year 2005.  This is a pipe that goes nowhere and is not hooked up to anything.  The Company’s investment is not presently “used and useful.”  Rate basing is therefore prohibited under Idaho Code § 61-502(A).

We find, however, that the Company’s decision to install facilities now may be of future benefit to its customers.  We do not wish to discourage the Company from making decisions that make good business sense.  Certainly, in this instance, the opportunity to share construction costs and utilize an existing diversion with others was an incentive to action.  We, therefore, find it reasonable to allow amortization of the Company’s present investment in the Boise River intake project so that this investment will be recovered.  We note that the Company’s calculation of depreciation expense in this case includes an allowance for this project, of $37,651.  That expense allowance is approved in this Order to provide for the recovery of this investment.

United requests that the Commission reconsider the accounting treatment of permitting amortization of the investment.  Such treatment, the Company argues, does not achieve the Commission’s stated goal of rewarding, or at least not discouraging, decisions that make good business sense.  Requiring amortization, the Company contends, has the effect of reducing the rate base value of the investment, and will have no positive impact on the Company’s earnings since the allowed expense will simply offset that which must be recorded on the Company’s books.  Thus, at such time in the future when the investment is permitted in rate base, the Company contends, United Water will have foregone the opportunity to earn a return on the difference on the amount of the original investment and the depreciated value of the investment.  The Company’s current shareholders under the Commission’s decision, the Company contends, are thus being compelled to absorb this lost opportunity to earn.

A more equitable treatment, better aimed at achieving the Commission’s stated goal, the Company suggests, would be to permit continued accrual of AFUDC.  This, the Company states, would have the effect of not increasing rates now, but of shifting responsibility for the investment to future customers, who the Commission has found to be beneficiaries of this investment.  At the same time, the Company would be kept whole and would have the opportunity to earn on the full value of its investment.  The Company contends that both Staff and the Idaho Citizens Coalition supported or recognized the fairness of such treatment.

Commission Decision

The Company has requested reconsideration on two issues:

1.  Northwest Pipeline/Floating Feather Well

Is the Commission inclined to grant reconsideration?

Is the Commission inclined to permit further evidence of post-hearing facts, events and operational decisions?

Is the Commission inclined to clarify its opinion regarding what standard will be applied in future requests for rate basing this investment?

Is the Commission inclined to comment on the Company’s statement regarding “collateral attack?”

2.  Amortization of Boise River Intake

Is the Commission inclined to grant reconsideration and permit the Company to record this as AFUDC?

The Commission has already provided interim reconsideration relief in Order No. 27630.  Does the Commission wish to reconsider its decision on final Order?

How does the Commission wish to proceed in this matter

Scott Woodbury

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