DECISION MEMORANDUM

TO:COMMISSIONER HANSEN

COMMISSIONER NELSON

COMMISSIONER SMITH

MYRNA WALTERS

TONYA CLARK

DON HOWELL

STEPHANIE MILLER

RANDY LOBB

DAVID SCOTT

WORKING FILE

FROM:SCOTT WOODBURY

DATE:JANUARY 8, 1999

RE:CASE NO. UWI-W-98-5

CERTIFICATE AMENDMENT (SPURWING/FOXTAIL)

On November 4, 1998, United Water Idaho Inc. (United Water; Company) filed an Application in Case No. UWI-W-98-5 with the Idaho Public Utilities Commission (Commission) requesting authorization to amend and revise its Certificate of Public Convenience and Necessity No. 143 (as amended) by enlarging and extending its certification service area boundaries to include the Ada County residential subdivisions of Spurwing and Foxtail and immediately surrounding areas in close proximity thereto, an area noncontiguous to its present system and certificated territory.  Ref. Application-Exhibit C legal description; Idaho Code 61-526; Commission Rules of Procedure, IDAPA 31.01.01.112.

United Water contends that the area requested is not within the authorized territories of any other public utility water corporation under the jurisdiction of the Commission and will not interfere with the operation of any water utility corporation under the Commission’s jurisdiction.  The Company contends that there are no known public utilities, persons or corporations with whom the expansion is likely to compete.

United Water represents that the developers of Spurwing and Foxtail Subdivisions have requested that United Water provide water service.  A copy of the developers’ request is attached to the Company’s Application.  United Water represents that it has an adequate source of supply to serve the area.  Construction of facilities will be pursuant to the Company’s Rules and Regulations covering non-contiguous expansion and pursuant to Rules 74 through 78 of the Company’s Rules relating to Water Main Extensions.  United Water contends that the requested expansion is consistent with the public convenience and necessity.

Commission Notices of Application and Modified Procedure issued on November 20, 1998.  The deadline for filing written comments was December 11, 1998.  The Commission Staff was the only party to file comments (attached).  Reply comments were filed by the Company on January 6, 1999 (attached).

Staff

Staff notes that the Company’s Application for certificate expansion actually includes three distinct areas of development and approximately 1500 acres of currently undeveloped land.  The first area is contiguous to United Water’s existing territory and includes about 320 acres west of Eagle Road between Chinden Boulevard and McMillan Road.  Approximately 40 acres consist of a development generally known as Bristol Heights Subdivision.  The other two areas known as Spurwing and Foxtail Subdivision are approximately two miles west of United Water’s existing certificated service territory.

The 70 lot Spurwing residential subdivision currently has 20 existing customers with unmetered potable water service provided by a Homeowners Association.  The water facilities consist of a distribution system and a single well and variable speed pump rated at 2,000 gallons per minute (gpm).  Irrigation water is provided through a separate pressurized system.

The 15 lot Foxtail Subdivision, located approximately one and one-half miles east of Spurwing along Chinden Boulevard, currently has five existing residences served by individual private wells.  The central potable water system is also unmetered and consists of distribution facilities and a single well and pump with a rated capacity of 900 gpm.

United Water contends in its Application that it is acquiring Spurwing and Foxtail pursuant to its recently approved non-contiguous expansion tariff.  Staff disputes the Company’s contention, concluding that the proposed service arrangements represent a significant deviation from the tariffs.

The Company’s non-contiguous tariffs require that all distribution facilities be contributed by the developer to the Company and all supply facilities be advanced to the Company subject to refund.  When a customer commits and utilizes the supply facilities within or without the subdivision, the Company pays $800 to the developer until the advanced supply costs are fully refunded.  That way, Staff contends, the Company makes no investment until there are customers generating revenue.  As part of the agreement to provide service to Spurwing, the Company has agreed to interconnect the two subdivisions with a 12" main line to provide a redundant source of supply for both developments.  The cost of this 7100 foot main line is $276,901 of which $150,000 will be contributed by the Spurwing developer.  The remaining $127,000 will be borne by the Company.  In explaining its deviation from tariff, the Company indicates that the investment will be made by the Company rather than the developer in exchange for future refunds that the developer would have received for the advanced cost of supply facilities.  The Company also indicates that a portion of the main line cost is for oversizing to meet future demand ($                    ).

Connecting the Spurwing and Foxtail wells will satisfy DEQ’s requirement of Spurwing that it have a second well.  Foxtail with no customers at the time of the agreement was not required to contribute to the main line cost.  Staff notes that according to the non-contiguous tariffs and the agreement, Foxtail can receive refunds from “late comers” (customers outside the subdivision) that utilize its water supply.  Although Staff interprets the language as capable of requiring refunds to Foxtail for all of the current and future Spurwing customers, at least up to the cost or capacity of the advanced Foxtail well, the Company assures Staff that Foxtail agrees that no refunds will be required for Spurwing customers.  The Company’s comments are silent on this issue.

Staff contends that the Spurwing and Foxtail agreements deviate so significantly from the Company’s existing non-contiguous expansion tariff, that they should properly be viewed untariffed special contracts.  By interconnecting the two subdivisions and significantly deviating from existing tariffs, Staff contends that serious questions arise regarding the economic impact of the acquisition on existing customers, the appropriate cost recovery of Company investment and the equitable application of Company tariffs in the future.

Staff believes the requested certificate expansion is needed and recommends approval.  Service has been requested, no other public water corporations under the jurisdiction of the Commission are providing service in the area, and the requested areas within the county served by the Company.

Staff does not believe that the Company’s proposal to serve Spurwing and Foxtail is pursuant to existing non-contiguous expansion tariffs.  Staff recommends that the Company make application to acquire these non-contiguous systems under special agreement.

United Water

In reply United Water explains the rationale underlying the agreements and provides additional information to demonstrate that approval of the requested expansion of service territory is appropriate.  The Company states that “while there are arguably minor deviations from the formula contained in the non-contiguous rules, the end result is reasonable and does not result in harm to existing customers.”  Stating that it “understands Staff’s concern about agreements that are not in strict conformance with the tariffs”, the Company pledges to present such agreements in the future for approval as special agreements.

Commission Decision

As represented by Staff, the non-contiguous expansion tariff although primarily intended for new subdivisions before customers are actually connected, can be applied on a case-by-case basis to existing systems and in such instances provides some flexibility in applying the standard rules.  Staff in this case contends that deviation from the tariff is so significant that the agreements should be considered as special agreements, and not a non-contiguous tariff expansion.  Staff expresses concern regarding precedent if this expansion (the first under the non-contiguous rules) is treated as a Rule 74-78 non-contiguous extension.

●Does the Commission in reviewing the Company’s Application and filed comments find that an extension of certificate service area to include the non-contiguous Foxtail/Spurwing areas and the identified contiguous areas (including Bristol Heights Subdivision) is reasonable?

●Does the Commission find that the Application is a Rule 74-78 non-contiguous expansion filing?

If not, does the Commission find it reasonable to characterize the filing as a request for approval of a special agreement?

If so, does the Commission find the agreement reasonable?

Scott Woodbury

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