DECISION MEMORANDUM

TO:COMMISSIONER HANSEN

COMMISSIONER NELSON

COMMISSIONER SMITH

MYRNA WALTERS

TONYA CLARK

DON HOWELL

STEPHANIE MILLER

DAVE SCHUNKE

TERRI CARLOCK

RANDY LOBB

BOB SMITH

DAVID SCOTT

WORKING FILE

FROM:SCOTT WOODBURY

DATE:JULY 29, 1997

RE:CASE NO. CAP-W-97-1

CAPITOL WATER CORP v. COLE ROAD COMPANY, ET. AL.

On May 30, 1997, Capitol Water Corporation (Capitol Water; Company) filed a Complaint with the Idaho Public Utilities Commission (Commission) against Cole Road Company, LLC, dba Signature Point and Construction Partners, Inc. (Respondents).  A Summons was mailed by the Commission to each Respondent on June 2, 1997.  On June 20, 1997, Construction Partners, Inc. filed its answer with the Commission.  On June 23 (26), 1997, an answer (and amended answer) was filed by Cole Road Company, LLC, dba Signature Point.

Capitol Water contends that during 1994 at the Respondents’ request the Company agreed to and did extend its main service lines to a development known as Signature Point.  The Company contends that the Respondents were advised that they would be required to contribute the costs of the main extension including an amount to cover the related income taxes Capitol Water would be obligated to pay on the value of the contributed facility.  The Company contends that on

July 12, 1996, the Respondents were notified by letter that the income tax portion of the main extension charge currently owing to Capitol Water was $32,470.88.  Capitol Water contends that despite repeated attempts to collect said amount, the Respondents have refused to pay.

Capitol Water requests that the Commission issue an order

1.Finding that in accordance with the Commission’s orders implementing the Uniform Main Extension Rule and the Commission’s Order No. 21933 (attached), Respondents are jointly and severally obligated to pay the costs relating to the income tax on the CIAC of the Signature Point development; and

2.Ordering Respondents to pay Capitol Water the outstanding balance in the amount of $32,470.88 attributable to the income tax on CIAC of the Signature Point development.

Respondent Construction Partners, Inc. denies that it was a developer for Signature Point and requests dismissal and an award of attorney fees and court costs.

Respondent Cole Road Company, LLC denies that there exists any privity between the parties, contends that there was no valid contractual agreement, and alleges that there was no consideration for any contract alleged to exist.  Cole Road further denies the existence of any tariff requiring payment of income taxes by any party to this case, or obligation of Capitol Water to collect CIAC (taxes) pursuant to the Tax Reform Act of 1986.  Cole Road denies that the income tax amounts requested were properly calculated and contends that Capitol Water should be estopped from collecting any income tax payment for failing to adequately and timely notify them of such a requirement.  Cole Road requests that the Complaint be dismissed.

Commission Decision

Staff recommends that a prehearing conference in CAP-W-97-1 be scheduled to explore the nature of relief requested by Capitol Water, and as pertains to same the statutory jurisdiction of the Commission and related Commission powers of enforcement.  Staff also suggests the appropriateness of requiring the Company to demonstrate why alternative judicial forums for relief are not appropriate in an action to recover monies owed.

The Commission is apprised that the Company has filed two additional complaints with the Commission requesting relief.  Reference Case No. CAP-W-97-2, Capitol Water Corp. v. John S. Esposito, dba Whispering Pines Apartments ($20,173.61), and CAP-W-97-3, Capitol Water Corp. V. Greg Unruh, dba Certified Dental ($3,427.58).  The records clerk was advised by the undersigned attorney to hold off on the issuance of Summons in those cases pending the Commission’s procedural decision in the instant case.

Should a prehearing conference be scheduled?  If not, what is the Commission’s preference?

Scott Woodbury

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