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BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

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| IN THE MATTER OF THE APPLICATION OF EAGLE WATER COMPANY, INC. FOR AUTHORITY TO EXPAND ITS CERTIFI­CATED AREA AND AMEND ITS CERTIFI­CATE OF PUBLIC CONVENIENCE AND NECESSITY NO. 278.                                                                                           | ))))))) | CASE NO. EAG-W-95-1ORDER NO. 26338 |

On August 22, 1994, United Water Idaho Inc. (formerly Boise Water Corporation and referred to herein as United Water or UWI) filed an Application with the Idaho Public Utilities Commission (Commission) in Case No. EUW-W-94-1 for an amended Certificate of Public Convenience and Necessity to expand its operation as a water corporation and public utility in and near the City of Eagle, Idaho, and for approval of related rates and charges.  On February 21, 1995, United Water amended its Application to include additional territory.

On July 18, 1995, Eagle Water Company, Inc. (Eagle Water) filed an Application with the Commission in Case No. EAG-W-95-1 for authority to amend its Certificate of Public Convenience and Necessity No. 278 (Second Amended) and to expand its certificated area of service by enlarging and extending its boundaries.

Finding a significant overlap in the certificate service areas requested by United Water and Eagle Water, the Commission for the purpose of economy and efficiency and to avoid building redundant records issued Order No. 21670 and consolidated the cases for hearing.

Public hearing in Case Nos. EUW-W-94-1 and EAG-W-95-1 was held in Boise, Idaho on January 10, 1996.  The following parties appeared by and through their respective counsel.

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| United Water Idaho, Inc. | Michael T. SpinkJoAnn C. Butler |
| Eagle Water Company | Robert L. Aldridge |
| City of Eagle | John McFadden |
| Commission Staff | Scott D. Woodbury |

Public testimony was taken in Eagle, Idaho on the same date.  Post hearing briefs were submitted on January 24, 1996, by United Water, Eagle Water and Commission Staff.

The Commission has reviewed the filings of record in United Water Case No. EUW-W-94-1 including the transcript of proceedings and post hearing briefs.  The Commission has also reviewed the amended Certificate filing of Eagle Water Company in Case No. EAG-W-95-1 and the related filings of record.  The Commission finds it reasonable in its deliberations to consider the records together for the same reason the Commission combined the cases for public hearing, i.e., an overlap in the certificate services area requested.  Reference Tr. Exhibit Nos. 101, 102.  The filings of record and testimony can be summarized as follows:

United Water

The certificated area requested by United Water is that area generally depicted in Tr. Exh. 101 and more particularly described in UWI Application Exhibits 1 and 1A.  See also Tr. Exh. 6.

United Water provides general water service to approximately 56,000 customers and  operates an extensive and integrated water system in Ada County, Idaho.  Tr. pp. 21, 35.  The service area requested in the Eagle area is not contiguous to United Water’s existing area of operation and will be operated as an isolated system for several years.  Tr. p. 36.  Part of the area requested by United Water abuts the authorized certificated service territory of Eagle Water Company.  United Water has received several requests for service within the Eagle area, both from approved and planned development, and also from existing water users.  Included are the Redwood Creek Subdivision in northern Eagle with 12 customers, and the Island Wood Subdivision in southern Eagle with 58 customers both of which presently receive water operation and management services from Engineering, Management and Maintenance, Inc. (EM²), an affiliate of United Water.  Tr. p. 36.  Neither system has reservoir or backup capability.  Tr. p. 39.  Also included within the requested area are the newly constructed Eagle Middle and High Schools, both of which receive water service now from EM².  Tr. pp. 81, 86.

United Water owns four wells in the Eagle area, the two wells serving Island Woods, one well at Redwood Creek and the Floating Feather well.  Tr. pp. 44, 45.  United Water plans to utilize existing wells and distribution systems within the requested area to provide water, and fire protection services.  United Water also proposes to install remote monitoring equipment and backup capability for power outages.  Tr. pp. 189-191.  United Water believes the purchase, acquisition and construction of facilities in the Eagle area for the provision of water services should be considered a normal expansion of UWI, and not the creation of a new entity.  Tr. p. 132.  United Water represents that it is possessed of the financial resources required to provide quality water service to the area.  Tr. p. 159.  United Water contends that extension into this area is not only consistent with, but necessary in the ordinary course of business, and is required by the public convenience and necessity.

United Water estimates that its investment  in the Eagle area over the next five years will be $3.7 million.  This includes its existing investment of $1.47 million.  Tr. pp. 159, 193, Tr. Exh. 106.  United Water states that it will meet its need for capital by utilizing internal funds either generated by operations or donated by customers or developers.  Tr. p. 124.  Should its proposed service area be approved, United Water anticipates immediate revenue from the approximately 70 existing customers within United Water’s proposed certificated area and the two schools.  Based on Ada County Planning and Zoning Commission and Eagle Sewer District projections, United Water estimates a growth in customer base over the next five years of between 200 and 250 customers per year in the Eagle area.  Tr. p. 194; Tr. Exh. 1 p. 5.  The reasonableness of the Company’s expectation that it will realize or capture all the actual Eagle area growth for itself was disputed by Eagle Water.  Tr. pp. 204, 258, 276.  Testimony of Eagle City and Eagle Water reflects that the number of actual new hookups and rate of growth may be affected by zoning density, the availability of sewer, and the City’s ability to treat and/or dispose of waste water.  Tr. pp. 197, 248, 249, 276.

Commission Staff, based on an analysis of project economics, area growth and projected revenue, characterizes United Water’s investment in the Eagle area as speculative.  Tr. pp. 334, 335.  United Water admits that Eagle area revenue in the near term may be insufficient to cover Eagle area investment.  Tr. p. 133.  Existing UWI customers, United Water nevertheless assures the Commission, will not be asked to subsidize the new customers in the Eagle area.  Tr. pp. 71, 93, 107.  United Water agrees to absorb any revenue shortfall related to a phase-in of rates or any associated costs.  Tr. pp. 83, 130.  The costs of establishing service in the Eagle area, United Water states, will be dealt with in its next rate case.  Tr. pp. 107, 138. United Water contends that to facilitate future accounting analysis, it is possible for its administrative staff to isolate direct expenses associated with Eagle, and also possible to use reasonable methods and factors to allocate indirect expenses.  Tr. p. 134.  Staff recommends that United Water be required to account for the Eagle area system in a manner that allows the Eagle system assets, liabilities, revenues and expenses (including allocated common costs) to be separated and looked at on a stand-alone basis for rate proceedings.  Tr. p. 369.

In United Water’s most recent general rate case, the Commission determined the Company had a rate base of $67,218,005 and a capital structure that was 52% debt, 8% minority interest and 40% common equity.  Tr. p. 367.  As indicated by Staff, United Water is entirely owned by General Waterworks Corporation, which is wholly-owned by United Water Resources.  United Water receives 100% of its financing from its parent corporation.  United Water uses budgets to account for needed capital, planned maintenance and system improvements.  United Water has the apparent ability to finance facility improvements or expansion with or without developer participation.  There is no indication, Staff states, that United Water or its parent has any debt problems.  Tr. pp. 340, 367, 368.

United Water requests a phase-in of the higher rates for existing and future customers in the Eagle area.  Tr. pp. 82, 83.  The Commission Staff opposes phased-in rates and argues that United Water has failed to demonstrate that lower rates for water service in the Eagle area are nondiscriminatory, justified or reasonable.  Tr. p. 335.  Staff further contends that lower rates are not economically justified and could further diminish the Company’s ability to earn its authorized return.  Tr. p. 335.  United Water represents to the Commission that it would be difficult for the existing 70 residential customers of EM²  in Island Woods and Redwood Creek to handle an immediate and full increase to United Water’s present rates.  Tr. pp. 69, 91.  The rates presently charged by EM² have remained unchanged since 1987.  Tr. p. 89. United Water estimates that the residential customers of Island Woods and Redwood Creek pay about $135 per year for water.  At United Water’s existing water rates, the annual amount paid by these customers would double.  Tr. p. 92.  The rates proposed by United Water for existing and future Eagle area customers are set forth in Transcript Exhibit 7.  Tr. p. 104.  The rates proposed would be lower than United Water’s existing rates until at least January 1999 and would continue at that level for an indeterminate period until changed in a general rate case.  Tr. pp. 82, 83.  United Water argues that the requested phase-in of rates will temper the “rate shock” to existing customers and will enable them to better budget and plan for the increase.  Tr. pp. 91, 128, 130, 137.

Eagle Water

The certificated area requested by Eagle Water is that area generally depicted in Tr. Exh. 102 and more particularly described in ¶ 1 of Eagle Water’s Application.

Eagle Water Company, Inc. operates an integrated water system in Ada County, Idaho, generally in the Eagle and surrounding area and provides water service to approximately 1240 customers.  Tr. pp. 275, 338.  With present wells and water supply Eagle Water has the supply capability of adequately serving about 2500 customers.  Tr. pp. 269, 270, 295, 326, 338.  There remain approximately 382 undeveloped lots in the Company’s present certificated area.  Tr. p. 295.  The area requested by Eagle Water expands and is generally contiguous to its existing area of operation.  Eagle Water has received several requests for service for planned development within its requested area.  Although Eagle Water has historically requested expansion of its certified area on an individual service request basis only as a result of growth, not in anticipation of growth, its Application in EAG-W-95-1, it explains, is more comprehensive and was prompted by the certificate request of United Water to extend into and also provide water service in the Eagle area.  Tr. p. 283.  Eagle Water states that its requested expansion will permit it to provide for future, natural and logical growth, will permit it to expand in an efficient manner and will enable it to protect existing customers.  Tr. p. 268.  Eagle Water, as in the case of many small water companies, must rely on contract labor for engineering, planning and technical expertise.  Tr. pp. 88, 340.   To address future expansion, increased fire flow capability and provide additional reservoir backup, Eagle Water explained its plans to drill two additional wells.  The Company contends it already has funds on hand for this purpose.  Tr. p. 291.  It also plans to construct a one-million gallon gravity feed reservoir.  Tr. pp. 252, 253, 271, 272, 327.

Although Staff recommends that Eagle Water be allowed some ability to expand, Staff questions whether Eagle Water has the financial capability to serve the entire area requested.  Tr. p. 334.  Based on a limited audit of 1994 financial data, Staff reports that Eagle Water has a negative rate base of $65,499.  Tr. Exh. 112, Tr. p. 369.  Records reviewed reflect Eagle Water’s capital structure consists of unsecured long-term debt, notes payable and long-term debts secured by a surcharge hook-up fee in the total amount of $146,818; and common equity, like its rate base, in a negative position of approximately $47,400.  Tr. p. 369.  Staff contends that without rate base or equity and with its credit history, Eagle Water may find it difficult to obtain conventional financing for capital improvements, extraordinary replacement or maintenance.  Tr. p. 370.  Eagle Water, Staff contends, is undercapitalized and has no internal way of raising funds to continue expansion.  Tr. pp. 338, 373.  The Company’s ability to obtain financing capital for expansion, replacement or repair without increasing rates is seemingly dependent on continued growth, developer contributions, and related hook-up fee surcharges.  Tr. pp. 270, 296.  When growth slows or stops, Staff contends that Eagle Water Company may be challenged to find sources of capital for needed repairs and replacement.  Tr. pp. 358, 373.  Staff recommends that Eagle Water develop a financial plan for replacing existing facilities.  Tr. p. 334.  Eagle Water states that it has never refused to provide water service (Tr. pp. 269, 270), and has expanded cautiously, in a manner approved by the Commission and the Staff, and without cost to existing ratepayers.  Tr. p. 280.

Public Testimony

The Commission received testimony at hearing from 21 public witnesses.  Additionally, many letters were filed.  The City of Eagle, a formal party to the proceedings, through its witness, expressed on behalf of the City Council, a preference for United Water as service provider to the Eagle area.  Tr. pp. 219-229.  In making its choice, the City stated that it focused not on rates, but the need for a gravity feed backup reservoir, system quality and the financial capabilities of the provider to cope with area growth, unforeseen circumstances and emergencies.  Tr. pp. 241, 242.  While selecting United Water, the City also expressly recognized that the service of Eagle Water had improved considerably over the last two to three years.  Tr. p. 243.  The City supports Staff’s recommendation that Eagle Water be required to provide the Commission with a detailed system resource plan that presents both financial and physical plant information.  Tr. p. 230.

The Chamber of Commerce representing 93 Eagle area businesses expressed concern about United Water entering the Eagle area and supported the Application of Eagle Water.  The Chamber cautioned against severely limiting the growth potential of Eagle Water and severely restricting if not eliminating Eagle Water’s future ability to address and alleviate problems.  Tr. pp. 453-455.  While Eagle Water’s methods of financing its system, expansion and improvement may be perceived in some circles as unorthodox and not “the way the big guys do it,” the methods used, the Chamber of Commerce contends, have kept the Company alive and brought it to the brink of sustained success and a sounder financial future with low cost to its patrons.

Both utilities have the backing of individual developers.  The great majority of those testifying were customers of Eagle Water and favored the Application of Eagle Water.

Commission Findings

Both United Water and Eagle Water request amended Certificates of Convenience and Necessity pursuant to the provisions of Idaho Code §§ 61-526 and 61-528, and the Commission’s  Rules of Procedure, IDAPA 31.01.01.112.  We find that the respective filings and records satisfy the underlying statutory and procedural requirements for certificate applications.  Our decision, with respect to which areas should be certified to United Water and Eagle Water is based on a review of the filings of record, including the transcript of proceedings and post-hearing briefs.

The Commission recognizes, as Staff concludes, that United Water is the more financially and technically capable of the two companies before us seeking certificates.  Tr. p. 334.  We have every reason to believe that United Water can provide quality water service in every sense of the term, that it has the ability to serve present and future growth in the Eagle area, that it has the ability to address critical water supply issues such as fire protection and backup capability, and that it has the ability and wherewithal to accommodate unforeseen circumstances and emergencies.

The Commission further finds, however, that Eagle Water is a provider of satisfactory and adequate water service, and indeed, we find that the quality of its service has improved significantly over the last few years.  Eagle Water Company is a small water company that has long provided service to the Eagle area.  This Commission has a duty to ensure that the present and future viability of Eagle Water is not threatened or impaired.  Although we find that Eagle Water’s capability to fund future expansion, replacement repair and maintenance, and unforeseen circumstances and emergencies may continue to present it with creative challenges, we also recognize that Eagle Water has achieved some degree of success in rising to and meeting that challenge.  The prospect of area growth slowing or flattening dictates that Eagle Water develop a financial plan for repairing and replacing existing facilities.

While the preference of individual customers, school districts and the community is to be given some weight in the choice of a service provider, we do not find it controlling.  Nor do we find it controlling or significant that United Water through an unregulated affiliate has a presence in the area.  A regulated water  utility is at risk in extending into, acquiring property and investing in noncontiguous areas without a prior certificate.  The risk is greater when it encroaches on the service territory of another provider.  The public interest, convenience and necessity is the determinate of which utility capable of providing adequate service should be allowed to serve.  Between two competing utilities, as in this case, the present and future ability to provide adequate and satisfactory service at reasonable rates is the major consideration.

Our decision in this case about which company should serve starts with a recognition that Eagle Water has an established presence in the Eagle area and that United Water’s request for the area south of the Boise River has not been challenged.  While the disparity in company size and technical and financial capability is not controlling, it is nevertheless a factor for consideration.  We find that the presence of United Water in the Eagle area and the many services it provides may indirectly benefit the community as a whole.

We find it reasonable to allow Eagle Water some contiguous area for continued growth and expansion beyond the undeveloped areas in its present certificated area.  It is also reasonable to  permit United Water to provide exclusive regulated water service in a portion of the Eagle area south of the Boise River (including Island Woods Subdivision) and north of the Boise River (including Redwood Creek Subdivision and the Eagle Middle and High Schools).  The certificated areas of service for Eagle Water and United Water that we find necessary to grant for present and future public convenience and necessity are those areas generally described and reflected in Attachment 1 to this Order.

Those areas currently served by the municipal water system are specifically excluded from the area granted to either utility.  Also excluded, are two presently uncertified buffer areas more particularly described as follows:

The uncertificated area north of Floating Feather Road and west of Eagle Road and generally described as the east half of Section 5, Township 4 North, Range 1 East, Boise Meridian.

The uncertificated area south of Floating Feather Road and east of Ballantine Lane extended and generally described as the east quarter of Section 7, Township 4 North, Range 1 East, Boise Meridian.

We find it reasonable not to certificate these areas between the United Water and Eagle service areas where service has not yet been requested.  Leaving this “buffer zone” will allow the service provider decision for these areas to be made in the future when specific requests for service are pending and better information will be available to use in determining which company should serve.

Our determination in this case of certificated areas for United Water and Eagle Water acknowledges our finding that the present and future public convenience and necessity requires such an award of service areas.

O R D E R

In consideration of the foregoing and as more particularly described above, IT IS HEREBY ORDERED that the Certificate of Public Convenience and Necessity of Eagle Water Company, Inc. be amended to reflect the addition of the particular areas described and reflected in Attachment 1 to this Order.  Eagle Water Company, Inc. is directed to prepare and file an amended Certificate for Commission approval.

Eagle Water Company IS FURTHER ORDERED to prepare and file a financial plan for repairing and replacing existing facilities and to provide the Commission with a proposed time line for preparation of such plan within 30 days.

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

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**COMMENTS AND ANNOTATIONS**

Text Box 1:

**TEXT BOXES**

Office of the Secretary

Service Date

March 5, 1996