DECISION MEMORANDUM

TO:COMMISSIONER NELSON

COMMISSIONER SMITH

COMMISSIONER HANSEN

MYRNA WALTERS

TONYA CLARK

DON HOWELL

STEPHANIE MILLER

DAVID SCHUNKE

MADONNA FAUNCE

RANDY LOBB

JUDY STOKES

GARY RICHARDSON

WORKING FILE

FROM:SCOTT WOODBURY

DATE:APRIL 16, 1996

RE:CASE NO. EUW-W-94-1, FINAL ORDER NO. 26337

CASE NO. EAG-W-95-1, FINAL ORDER NO. 26338

UNITED WATER PETITION FOR RECONSIDERATION

EAGLE WATER CROSS-PETITION FOR RECONSIDERATION/OPPOSITION TO UWI PETITION

CITY OF EAGLE CROSS-PETITION FOR RECONSIDERATION

UNITED WATER ANSWER TO EAGLE WATER’S CROSS-PETITION

On March 5, 1996, the Commission issued final Order No. 26337 (attached) in Case No.  EUW-W-94-1 certifying and authorizing United Water to provide water service to identified areas in the Eagle area of Ada County, Idaho.

On March 5, 1996, the Commission issued final Order No. 26338 (attached) in Case No. EAG-W-95-1 certifying and authorizing Eagle Water to provide water service to identified areas in the Eagle area of Ada County, Idaho.

On March 26, 1996, United Water filed a Petition for Reconsideration (attached) in Case Nos. EUW-W-94-1 and EAG-W-95-1.  United Water contends that the Commission’s Order is not in conformity with law to the extent it awards any additional certificated area to Eagle Water without making express findings of Eagle Water’s present and future financial ability to serve the new areas awarded to Eagle Water.  United Water contends that the Commission’s Order is unreasonable to the extent it awards any certificated area to Eagle Water, especially north of Floating Feather Road, and the area immediately surrounding the Eagle municipality water system.

Order No. 26337 requires UWI to account for the Eagle area system in a manner that  allows the operation to be “separated and looked at on a stand alone basis for rate proceedings.”  United Water understands this not to be a requirement for a separate and distinct set of books, but rather as a requirement that the information be maintained in a fashion that allows it to be separated

for presentation and analysis at the time of any rate proceedings.  United Water requests that the Commission confirm or clarify this understanding.  If the Commission intends that a separate set of books be maintained the Company requests reconsideration, as separate information the Company contends can be made available without the expense of maintaining complete separate records.

United Water requests reconsideration by comment.

On April 2, 1996, Cross-Petitions for Reconsideration were filed by Eagle Water (attached) and the City of Eagle (attached).

Eagle Water disputes the contentions of United Water that the record is devoid of evidence demonstrating that Eagle Water can maintain and expand its system.  Eagle Water contends that the Commission specifically found

that Eagle Water is a provider of satisfactory and adequate water service, that its service has improved significantly in recent years, and that it has creatively met challenges to provide replacement, repair, and maintenance services and responded to unforseen circumstances.  The Commission also correctly noted that while Company size and financial capability is a factor for consideration, it is not controlling.

Eagle Water contends that it presented evidence at the hearing that it presently has the capacity to serve twice as many customers as it presently serves, and also presented evidence of its plans for additional wells and a million-gallon reservoir.  Eagle Water’s long established presence in the area, its improvement in service, its proven ability to meet the challenges of growth, and the overwhelming public support for its Application, it states, more than adequately justified the Commission’s award for additional certificated area.

Eagle Water rejects United Water’s arguments for awarding United Water the area north of Floating Feather Road and disputes significance of EM2’s water service contract with the City of Eagle.

Noting United Water’s request for clarification, Eagle Water states that it understands the Commission’s Order to require a separate accounting of United Water’s Eagle operations.

Eagle Water by way of “cross-petition” asserts that some identified areas awarded to United Water should logically and naturally remain uncertificated buffer zones (i.e., uncertificated area west of Eagle Road between Floating Feather Road and Beacon Light Road should be extended further west to Ballantine Road; some of the area immediately south of the Boise River).  Eagle Water requests that an additional hearing be scheduled for public comment and to demonstrate the justification for increasing the uncertificated buffer zones between its operations and United Water’s.

The City of Eagle believes the service territory north of Floating Feather Road should be left uncertificated.  In this way, it states, the ability to serve, financial ability, the necessity for additional service in the community, and the desires of future customers in the uncertificated territory can be taken into account at the time a certificate is applied for.

Expressing continued concern about the financial ability of Eagle Water to provide service, the City of Eagle requests that the Commission specifically require an adequate and competent financial plan for all areas to be served by Eagle Water.  Alternately the City requests that the area north of Floating Feather Road be left uncertified until such time as Eagle Water provides to the Commission an adequate and competent financial plan demonstrating its financial ability to serve the area.

On April 4, 1996, United Water filed an Answer to Eagle Water’s Cross-Petition (attached).  With respect to Eagle Water’s contentions regarding certificated areas granted to United Water, United Water maintains that Eagle Water’s request is untimely filed and is beyond the scope of a cross-petition for reconsideration—reference IDAPA 31.01.01.331.02, i.e., a cross-petition for reconsideration must be “in response to any issues raised in the petition for reconsideration.”

The intent of United Water’s Petition for Reconsideration, United Water states, “is to have the Commission reconsider the area north of Floating Feather Road and east of Eagle Road which surrounds Lexington Hills and the City of Eagle municipal system.”  If the Commission were so inclined, United Water contends that designation of that area as a buffer zone would be appropriate.

COMMISSION DECISION:

The deadline for Commission action or decision as to whether to grant or deny the petition for reconsideration is April 23, 1996.  Further opportunity for comment and briefing is requested by United Water.  United Water’s comments regarding the scope of Eagle Water’s petition constitute a reasonable reading of applicable statutes and rules.  Should reconsideration be granted?  What is the Commission’s procedural preference?

Scott D. Woodbury

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