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BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF EAGLE WATER COMPANY'S APPLICATION FOR AUTHORITY TO IMPLEMENT A CUSTOMER SURCHARGE.	)	**CASE NO. EAG-W-09-1**
	)	**COMMENTS OF THE COMMISSION STAFF**

COMES NOW the Staff of the Idaho Public Utilities Commission, by and through its Attorney of record, Donald L. Howell, II, Deputy Attorney General, and submits the following comments in response to Order No. 30878 issued on August 12, 2009.

BACKGROUND

On January 22, 2009, Eagle Water Company filed an Application to implement an immediate surcharge on customers' water usage in excess of 600 cubic feet per month. The Company also requests permission to access existing funds in its surcharge account. The new surcharge and the balance remaining in the previous surcharge account would be used by Eagle Water to defray the costs of several capital improvement projects and expenses totaling about $1.5 million. Application at 3-5. The Company states in its Application that the surcharge will be subject to refund if the requested expenses are "not ultimately approved by the Commission for Surcharge recovery." *Id.* at 7 (emphasis added). Eagle Water requests that its Application be processed via Modified Procedure.

On February 23, 2009, the Commission issued Order No. 30734 granting the Company's request for surcharge, subject to refund. The Commission also set a deadline for interested persons to intervene in this case. No Petitions to Intervene were filed. Consequently, the Company and the Staff recommended that the case be processed under Modified Procedure. The Commission agreed, and ordered that the case proceed under Modified Procedure. Order No. 30878. In these comments, Staff is recommending that the Company recover $953,435: $351,297 being added to rate base and $602,138 from the surcharge.

THE APPLICATION

In its Application, Eagle Water sought to recover the costs of constructing several capital projects that are either complete or under construction. In addition, the Company requested recovery of its $10,000 per month "tie-in" expense with the City of Eagle[1], $600 in accounting fees, and approximately $37,500 in legal fees. The costs of the capital improvements and other expenses are outlined below.

Capital Improvements Completed	Cost
Well No. 7	$605,988
Floating Feather Pressure Reducing Valve	$ 43,630
Tie-In to City of Eagle	$ 22,347
Rebuild Well No. 4	$ 59,755
Sub Total	$731,720

Capital Improvements in Progress	Cost
Main Booster Station (Motor & Generator)	$175,100
Well No. 8	$636,520
Sub Total	$811,620

Expenses	Cost
Legal & Accounting Fees	
Prior Surcharge Application Legal Fees	$ 6,048
Engineering Report Legal Fees	$16,554
Surcharge Extension Applic. Legal Fees	$14,906
Surcharge Extension Accounting Fees	$ 600
Legal & Accounting Fees Sub Total	$38,108
Eagle City Tie-In Expense ($10,000/month)	$60,000
Sub Total	$98,108

[1] In Case No. EAG-W-08-01, the Company agreed to pay the City of Eagle $10,000 per month so that the utility could serve the Floating Feather Mobile Home Park.

The combined total for the capital improvement projects is $1,543,340 ($731,700 + $811,620) and the total for expenses is $98,108. See Order No. 30878 at 2.

To defray the costs set out above, the Company proposed to borrow $995,500 from the Idaho Banking Company. According to the proposed terms of the bank loan, Eagle Water will borrow $995,500 at 6.75% over a term of seven years. Application, Exh. E. To repay the loan, the Company proposed to implement an immediate surcharge of 48.075% for usage above 600 cubic feet per month.

In addition to the surcharge, the Company also requested permission to access the remaining balance in the surcharge account. At the time of the Application, the Company reported the current balance in the surcharge account is approximately $218,000. Application at n. 3. The Company proposed to use these surcharge account funds to complete work on the main booster pump and Well No. 8. *Id.* at 6. Completion of Well No. 8 would allow the Company to terminate its tie-in agreement with the City of Eagle, thereby saving $10,000 per month.

Even with the surcharge, Eagle Water asserted that its overall rates "would remain well below those of the City of Eagle and United Water of Idaho." Application, Exh. H. Eagle Water maintained that an immediate surcharge (subject to refund) is necessary to ease its cash flow restrictions "brought about by the need to complete Well No. 7 and the City of Eagle tie-in in order to satisfy DEQ regulatory requirements and lift the sanitary restrictions moratorium." Application at 7. The current constriction of the Company's cash flow severely limits Eagle Water's "ability to meet current demands for payment of other capital improvements that are underway." *Id.* The Company requested that the surcharge take immediate effect. *Id.*

THE COMMISSION'S PRIOR ORDER

In Order No. 30734 issued February 23, 2009, the Commission allowed Eagle Water to implement its surcharge subject to refund. The Commission observed that because the surcharge is subject to refund, "ratepayers are protected until the Commission has completed its review of the reasonableness and prudency of the Company's capital costs and expenses set out in its Application." Order No. 30734 at 4. The Commission also noted that the impact of implementing the surcharge now would be mitigated because the irrigation season has not started. *Id.*

The Commission also found it was reasonable to allow the Company to execute the bank loan and access the remaining balance in the previous surcharge account. The Commission

observed that completing Well No. 8 would allow Eagle Water to terminate its tie-in agreement with the City of Eagle, thereby terminating a $10,000 per month expense. *Id.*

STAFF COMMENTS AND ANALYSIS

A. Brief System Description and Operational Issues

According to Eagle Water's 2008 Annual Report, the Company currently serves 2,955 residential and 445 commercial accounts for a total of 3,400 customers. Its water supply is currently provided from six wells (Well Nos. 1, 2, 3, 4, 6 and 7). A seventh well (Well No. 8) has been recently drilled but is not yet completed or operational. In the past, there have been operational issues in the water distribution system, such as low operating pressures in some areas (i.e., Eagle Springs subdivision) and the system's non-compliance with existing Idaho Rules for Public Drinking Water Systems (IRPDWS) promulgated by the Idaho Department of Environmental Quality (DEQ) (i.e., mechanical redundancy requirements, maintaining minimum water pressure at peak hour flow, etc.). Consequently, DEQ placed a development moratorium on the Company's certificated service area until remedial actions were taken to bring the system into compliance with the rules.

On August 1, 2005, DEQ issued a "Notice of Violation" (NOV) to Eagle Water citing the Company's failure to maintain minimum water pressure in portions of the Company's water distribution system. On August 3, 2005, the Commission issued an emergency Order directing Eagle Water to immediately address the deficient water pressure in the affected areas. Order No. 29840, Case No. EAG-W-05-01. The Order also directed the Company to prepare an engineering report for its entire system to address near- and long-term pressure problems. On February 17, 2006, DEQ entered a Consent Order with Eagle Water to perform several actions related the NOV.

B. Engineering Report

As contained in Order No. 29840, page 3, the Commission directed Eagle Water to assemble an engineering report that:

> ...shall include a comprehensive analysis of the existing system including projected water needs out to 2010. The analysis will consider all possible options including additional water supply, storage, booster pumps and additional mainlines necessary to meet the existing and projected water requirements. The report shall include the recommended system improvements, construction

schedule and estimated costs of each individual project. Eagle Water and its engineer shall work closely with the Commission Staff in preparation of this report.

The engineering study evaluated and modeled different options for improving system operations, and developed a list of recommendations. The recommendations were divided into various categories such as "Completed Actions", "Mandatory Actions", "Future Actions" and "Suggested Actions". Completed Actions are recent improvements that have enhanced current water system operations. Mandatory Actions are those immediately required to bring the system into compliance with DEQ regulations. Future Actions are recommendations required to support future development. Suggested Actions are items that would optimize the water system but were not required.

C. Completed Actions

Eagle Water indicated in its Application that several of the system improvements as recommended by the June 2007 Final Engineering Report have been completed and some are in the process of being completed. These projects have a total cost of about $1.54 million. The completed projects include construction and interconnection of Well No. 7 and repair of Well No. 4. Eagle Water states that because these capital expenditures are in the public interest, the Company is requesting an Order from the Commission finding that the investments are prudent and recoverable from customers through a surcharge.

1. Well No. 7

Eagle Water completed the development of Well No. 7 as an additional water supply to meet growing summer demand and provide a backup water source in compliance with DEQ Rules for Public Drinking Water Systems, APA 58.01.08. Transmission piping was also installed to connect Well No. 7 to the existing Eagle Water distribution system. Because Well No. 7 is a new water source, the IRPDWS requires that it be provided with a standby power supply. Therefore, the Well is equipped with a dedicated, standby 365-kw diesel-powered generation unit to comply with current DEQ regulations. Well No. 7 is equipped with a 200-hp vertical turbine pump and a variable frequency drive (VFD) which can operate from zero flow to a maximum of 1,900 gpm.

The well was completed on March 5, 2006 and DEQ conditionally approved Well No. 7 to serve Eagle Water customers on August 8, 2006.

Staff inspected this project during the Eagle Water system inspection on May 22, 2009 and found it pumping approximately 700 gpm at a discharge pressure of 105 psi. Staff believes it was appropriate for the Company to undertake the construction of Well No. 7 with the standby power unit to provide additional summer peaking capacity and comply with drinking water regulations. This specific project is considered by Staff to be "used and useful."

The Company initially requested in its Application to recover a total cost of $605,988 for the construction of Well No. 7. In response to Staff Production Request No. 1, the Company provided Staff with the costs broken down into various categories. After Staff's review of invoices and discussions with the Company concerning the costs presented, the Company again revised its estimates with the following cost breakdown:

Land purchase	$ 48,782.50
Well drilling/development	$115,624.00
Pump and motor	$ 34,659.00
Electrical controls	$ 27,958.96
Variable frequency drive	$ 13,230.00
Appurtenances	$ 25,030.00
Pump facility building	$ 89,894.24
Back-up generator	$ 89,914.60
Mainline tie-in	$114,023.97
Engineering cost	$ 17,535.54
TOTAL	$576,952.81

Staff reviewed the cost of various work elements required to construct Well No. 7, to determine if they were reasonable. In Production Requests No. 6, 10, 14, 19, 28 and 34, Staff asked the Company to explain cost control efforts applied by the Company in contracting and/or paying for project work elements. Eagle Water indicated that its 35 years of experience made the Company more capable of managing and completing construction of necessary water system infrastructure more reliably and cost effectively than third-party contractors. The Company explained that instead of hiring a general contractor to perform the tasks needed to complete all of the projects, including Well No. 7, the Company managed and coordinated the work and used Eagle Water Construction Company to provide the equipment and labor. Robert DeShazo, President of Eagle Water, is also the owner of the construction company. The total cost paid by Eagle Water to the Construction

Company includes the labor, use of the Construction Company's equipment, cost of materials, and profit and overhead of 15% of the total cost of labor, equipment and materials. It is not unusual for owners of small public water systems to use affiliated construction companies to provide labor and other services to the water companies that they own. Staff believes this is appropriate as long as the cost is competitive to unaffiliated alternatives. The Commission has allowed this practice in previous cases.

The Company did hire contractors to perform specialized tasks such as drilling and developing the well, installing the VFD, pump and motor, and other electrical controls. Drilling and development of Well No. 7 was put out for bids, however only one bid was received due to high demand for well drillers during the construction boom. Eagle Water Company continued to rely on vendor(s) that had provided the same products and services to the Company in the past to supply engineering, pumps, motors, VFD and electrical controls.

Staff believes that the costs incurred by the Company to complete most of the project elements for Well No. 7 were reasonable compared to other jobs of similar size and scope. Staff also believes that the Company spent considerably less money than it would have spent if it had hired third-party contractors to complete project construction.

However, Staff believes the 365-kW standby power generation unit is overdesigned to operate the 200-hp pumping unit for Well No. 7. Staff researched industry practices concerning sizing of a standby power generation unit and obtained recommendations for a 200-hp water pumping unit equipped with variable speed drive for a public water system. Staff was informed by industry representatives that several factors are involved in sizing the unit but as a general rule, the recommended size for backup power supply for this application would range from 180-kW to 230-kW. Using the upper range of the recommended size (230-kW), Staff believes the Company oversized stand-by power generation (365-kW) by 135-kWs. The Company failed to provide justification for over-sizing the unit, although Staff was informed that when the Company was looking for a back-up generator, it coincided with the Hurricane Katrina disaster and it was very difficult to get generators available in the market. The Company decided to purchase a used generator. Staff does not disagree with the Company's decision to purchase a used generator but disagrees with the size of the generator it purchased. Staff does not believe that the Company's customers should have to pay the extra cost of an oversized generation set. Therefore, Staff proposes an adjustment of $10,356 ($28,000/365 kW x 135 kW) to the total cost of Well No. 7.

Staff proposes an adjusted total cost of $566,297 for this project. The Company's original cost request as indicated in the Application, the Company's revised project cost, Staff's recommended cost adjustment and Staff's recommended cost recovery for Well No. 7 is summarized in Attachment 1. Briefly, Staff recommends that $351,300 be added to rate base and $215,000 be recovered by the surcharge. The Attachment also includes proposed cost recovery for the other projects discussed later in these comments.

2. Rebuilding Well No.4

It is Staff's understanding that during the development of the Final Engineering Report, Well No. 4 was already being rebuilt. Well No. 4 is currently the largest well in the system with a designed flow of 3,046 gpm. The Well No. 4 rebuild was completed in the summer of 2008. At the time Staff inspected Well No. 4 on May 22, 2009, it was operating at a flow rate of approximately 1,500 gpm with a discharge pressure of 120 psi.

The original purpose of rebuilding Well No. 4 was to improve the capacity of the system (Final Engineering Report, p.14). DEQ staff concurred that increasing the capacity of Well No. 4 would help solve the summer capacity problems but would not necessarily provide the backup water supply required for the system. According to DEQ, the Company was initially advised to drill another well (Well No. 8) that would resolve both the capacity problem and the requirement for backup water supply.

In response to Staff Production Request No. 17, Eagle Water explained that the original pump capacity of Well No. 4 was 2,800 to 3,000 gpm in 1993. In 2006, the pump capacity dropped to 1,700 gpm. The well pump and motor were removed and inspected in 2008. It was determined by the Company's engineer at that time that additional pumping equipment needed to be installed with a larger 300-hp motor. The Company claims that the rated capacity is now back to 3,000 gpm.

Based on information provided by the Company, pumping unit in Well No. 4 required rehabilitation because it was operating inefficiently. Staff requested a copy of the engineering evaluation performed by the consulting engineer hired by the Company but no written evaluation was available. There was no report indicating that the original pump or motor was operating improperly. There are several factors that can affect pump performance; one of the most common is worn impellers. The preferred solution would have been to retain the existing motor and replace the inefficient pump with a new pump operating at the original pumping characteristics. A simple

pump efficiency test would have provided valuable information to confirm the inefficient performance of the pumping unit. The Company, instead, opted to add an additional bowl and then replaced the original motor (250 hp) with a motor of higher horsepower (300 hp). Staff believes that this action made by the Company resulted in a less efficient pumping system with higher operational costs in the future. It also incurred higher incremental capital cost for the oversized electric motor. Staff believes that Eagle Water customers should not be required to bear the extra cost for this action and recommends reducing the cost of motor by $4,078 ($24,470/300 hp x 50 hp).

The cost to rehabilitate the pumping unit at Well No. 4 was $60,738 including engineering cost. This was the amount originally claimed by the Company in its Application. Subtracting $4,078 for adjustment as noted above, Staff recommends that the Company be allowed to recover $56,660 for the rehabilitation of Well No. 4.

D. Mandatory Actions

1. Tie-in to Eagle City Water System

Interconnection with either United Water or the City of Eagle water system were two of the options recommended by the Final Engineering Report to satisfy the mandatory pressure and emergency flow redundancy requirements for the Eagle Water system. The tie-in option was approved by DEQ in its July 6, 2007 approval of the Final Engineering Report (FER). Interconnection would ensure a sufficient supply of supplemental water that would satisfy system pressure and flow requirements with the largest (most critical) Eagle Water supply source out of service. Eagle Water decided to interconnect with the City of Eagle Water system. Eagle Water signed a water system Intertie Agreement with the City of Eagle on July 12, 2008. As part of Intertie Agreement, Eagle Water is obligated to pay $10,000 per month commencing on the date the interconnection is completed and approved by DEQ. This intertie project was completed in the summer of 2008 and was approved by DEQ on July 25, 2008. By the time the Company filed its present application on January 22, 2009, it had already incurred a total of $60,000 in monthly payments to the City of Eagle. Application at 3.

As a result of completing this intertie with the City of Eagle water system, the specific mandatory requirement, as noted in Action Item A.3 of the DEQ July 6, 2007 FER approval letter, addressing the DEQ pressure and flow requirements, has been satisfied. In addition, the completion

of the intertie project also relieves service connection restrictions imposed by DEQ on the Eagle Water system. After the Intertie Project was activated and the moratorium on new connections to Eagle Water's system was lifted, the Company connected the Floating Feather Mobile Home Park as a new customer. The manually operated butterfly valve will be opened only to provide fire flows within the area served by the Company.

Staff notes that this is only a short-term solution to the problem. The long-term solution is to develop another alternative source or sources or water supply that could both satisfy system pressure and flow requirements. DEQ asserted in its July 6, 2007 FER approval letter that the interconnection must be operated and maintained until such time as an alternative water source or sources of water are provided. As discussed later, the construction and development of Well No. 8 would also solve the pressure problem and emergency flow requirements for the Eagle Water system. When Well No. 8 is eventually connected to the Eagle Water's mainline and fully operational, the Company plans to terminate the Intertie Agreement with the City of Eagle and deactivate the Intertie between the two water systems.

The Company is asking to recover a total capital cost of $22,805 ($22,347 was originally submitted in the Application) for this project. The total cost includes $13,369 for labor and materials, $290 for engineering cost (to MTC, Inc.) and $9,147 as payment to the City of Eagle. The payment to the City of Eagle was for separate engineering services provided by Holiday Engineering such as hydraulic modeling for the interconnection project. Based on its review of the installation costs, Staff believes that the amounts incurred are reasonable. Staff agrees with the Company that the Intertie Project was a mandatory action that needed to be completed to comply with IRPDWS rules. Staff believes this project is considered "used and useful."

At the time the Company filed its Application, it had already incurred a total monthly charge for this intertie in the amount of $60,000 ($10,000 x 6 months). Staff believes this is an appropriate and necessary expenditure as contained in the agreement between Eagle Water and the City of Eagle and should be reimbursed through the surcharge.

2. Installation of Pressure Regulator/Sustaining Valve (PRSV)

The Final Engineering Report identifies the installation of an automatic pressure reducing/sustaining valve as a mandatory action (FER, p.7) required by the DEQ in its July 6, 2007 FER approval letter (Item A.3.b.). The FER specifies that if the option selected by Eagle Water is

to interconnect with the City of Eagle water system, the Intertie Project as described above must be located upstream of the PRSV. The automatic PRSV would provide a more consistent hydraulic grade line in the upper pressure zone of the water system. The preliminary engineering report and specific plans to install the PRSV were approved by DEQ on August 14, 2007 and construction was completed in the summer of 2008.

The Company is seeking to recover a total cost of $43,765 ($43,630 was originally submitted in the Application) to complete the project. The total cost includes $42,646 for labor, equipment and materials, and $1,118 for engineering. The initial estimate to complete this project as presented in the 2007 Engineering Report was $43,120. Staff inspected the completed project on May 22, 2009. Pressure reading at the upstream and downstream side of the PRSV during the project inspection was 75 psi and 65 psi, respectively. It appears the PRSV project is operating as planned. Staff concurs with the Company that completion of this PRSV project is needed and necessary. Staff believes that the cost incurred in completing this project ($43,765) is reasonable and subject to recovery through surcharge.

3. Main Booster Pump Modification

The Application states that modifying Well No. 2 Booster Station is one of the system improvements recommended by the 2007 FER and that the status of this project is currently in progress. Application at 2. In addition, the notice sent to Eagle Water customers indicated that modification to the Well No. 2 booster pump station is one of the mandatory system improvements required by DEQ. Exhibit H of Application. However, the mandated construction project in progress is an upgrade to the Main Booster Station as listed on page 4 of the Application, not the Well No. 2 Booster Station. In response to Staff's Production Request, the Company clarified that the 2007 Final Engineering Report contained an incorrect pumping capacity for the Well No. 2 booster pump. Once the Well No. 2 booster pump capacity error was discovered, it was determined that no rehabilitation was needed for that pump. The Company also confirmed that the "mandatory" reference to the Well No. 2 Booster Station in the Customer Notice was in error. The booster pump that is actually being rehabilitated is the Main Booster Station close to the Farmers Union Canal between Horseshoe Bend Road and Highway 55. Therefore, the cost presented in the Application refers to the Main Booster Pump Rehabilitation Project. Application at 4.

To improve the operation of the system, the 2007 FER recommended the installation of another pump at the Main Booster Station to provide pumping redundancy. (FER, p.12). The Company installed a 100-Hp pump in parallel with the existing 60-Hp pump. This particular component of the project was already operating when the Staff inspected the project on May 22, 2009. Incoming pressure at the booster station was 70 psi and the discharge side of the booster pumps was set at 95 psi. Staff believes that this installation improves operational efficiency of the system and is considered "used and useful." The total cost of the additional main booster pump is $99,400.

Two additional components of the project are still pending completion: a) flow recorder; and b) standby power generation. The Company's initial cost request of $175,100 included $70,000 for a back-up power generation unit but excluded the cost of the flow monitor. In response to Staff Production Request No. 21, the Company explained that no backup power generator is actually required for the Main Booster Power Station. The Company also provided a revised actual cost of $93,809 for the pumping facilities. The Company explained that a standby power unit is not required by DEQ until demand for supply expands in the area by 25%. Therefore, the Company has agreed not to include the $70,000 for the backup generator until it is actually required by DEQ. However, the installation of the recording flow monitor at the Main Booster Station is one of the recommendations contained in the Final Engineering Report (p.12) and mandated by DEQ.

In response to Staff Production Request No. 22, the estimated cost for the inline recorder is $8,000 to $10,000. Responding to Staff's follow-up request, the Company provided a more detailed and firm cost estimate of $8,000 to purchase and install the flow recorder. Consequently, the total project cost requested for recovery, including pump installation, flow meter installation and engineering, is $107,400. Staff believes that this cost is reasonable when compared to other projects of similar size and scope and should be recovered through the surcharge. Staff also agrees that the cost of installing a back-up generator be excluded from cost recovery until it is needed or required by the DEQ.

E. System Improvements in Progress

1. Development of Well No. 8

The 2007 Final Engineering Report identified and recommended the development of a new well equipped with emergency power (FER, p.8) as a water supply alternative to interconnection

with another public water system. This alternative was also noted by DEQ in its July 6, 2007 FER approval letter (Items A.3.a. and A.4.a). Staff understands that development of Well No.8, with standby power backup will address several system deficiencies and comply with the IRPDWS rules. The new well will eliminate the need for the Company's current distribution intertie with the City of Eagle's water system. It will also provide enhanced water system pressure in the lower pressure zone of the Company's service area. Finally, it will satisfy the system demand forecast for future growth through 2010. Because Well No. 8 is a new water source, the IRPDWS rules require that the well be equipped with a back-up power supply.

According to the well logs, installation of Well No. 8 was completed on November 5, 2008. During Staff inspection conducted on May 22, 2009, Staff found that Well No. 8 had been installed and tested. However, the well is temporarily capped and a stop work order was issued to the Company by the City of Eagle. In response to Staff's Production Request Nos. 36 and 37, the Company explained that the time line for full completion of Well No. 8 is unknown at this time as the Company is awaiting the City of Eagle's approval of the Company's well house design plans to continue construction. Completion of Well No. 8 has been delayed since February 2009 due to the City of Eagle's rejection of the original proposed Well House design, which was identical to the Well House for Well No. 7.

The Company has partially completed the project and is seeking recovery of the projected cost of $637,535 ($636,520 was originally submitted in the Application) with the following cost breakdown:

Land purchase	$ 63,150
Well drilling/development	$148,350
Pump and motor	$ 63,100
Variable frequency drive	$ 56,000
Electrical controls	$ 48,800
Appurtenances	$ 27,000
Site improvements/building	$ 68,300
Back-up generator	$ 85,000
Mainline tie-in	$ 47,000
Engineering cost	$ 30,835
TOTAL	$637,535

Because the project is only partially completed and the remaining cost for completing the project is not known with certainty, Staff recommends that Well No. 8 cost recovery through the surcharge be denied at this time. While Staff agrees that development of Well No. 8 will likely be a

cost effective alternative to system interconnection with the Eagle City's water system and could meet future growth related water demands, the project currently does not meet the "used and useful" criteria for recovering costs. Staff recommends the Company renew its request for cost recovery through the surcharge when the project is fully completed, operational and cost and benefits are fully known. In the mean time, Staff believes that the costs for the land ($63,150) and the well drilling ($148,350) can be classified as plant held for future use.

F. Legal, Accounting, and Tie-In Expenses

In the Application, the Company has requested to recover certain legal fees, accounting fees, and the monthly expenses associated with the tie-in to the City of Eagle's water system. Staff will address each expense category separately.

1. Legal Fees

The Company has requested to recover the following legal fees:

a. Case No. EAG-W-05-02 $ 6,048
b. Case No. EAG-W-07-01 $16,572 (revised from $16,554)
c. Case No. EAG-W-07-01 $14,905
d. Case No. EAG-W-09-01 $15,000 (estimated).

a. On page 5 of the Company's Application, it requested additional legal fees of $6,047 for legal services performed in case EAG-W-05-02. As the Company explains in a footnote, the Company conceded it did not seek this amount of legal fees in the prior case because it "made a clerical error in calculating the amount of fees billed as of August 6, 2007 for EAG-W-05-02." Given this oversight, the Company now seeks recovery of this amount. Staff recommends that the Company's request to recover these legal fees from a prior case should be disallowed because the time for requesting these legal fees was in October 2008 via a Petition for Reconsideration. The sequence of events is set out below.

In August 2007, the Company filed an Application seeking to recover legal fees for the original surcharge application (Case No. EAG-W-05-02) in the amount of $10,945; and legal fees for the preparation of the Company's engineering report in the amount of $16,232. See Application at ¶¶ 12, 15. Adding these two sets of legal fees together, the Company sought $27,177. Staff concurred and recommended that the Company be allowed to recover $27,177 in legal fees. See

Order No. 30654 at 4. Based upon its review "of the Application and comments of the parties, [the Commission] found these [legal] fees to be reasonable" and allowed the Company to recover these fees from the surcharge account. *Id* at 9.

On October 16, 2008, Eagle Water filed a timely Petition for Reconsideration. Conspicuously absent from that Petition for Reconsideration was any request for the $6,048 in legal fees. Consequently, the Company did not seek this additional amount in legal fees on Reconsideration but has now included these fees in its request in the present case.

In support of its request to recover the $6,048 in legal fees, the Company submitted an exhibit purporting to show the correct balance of legal fees. The Company correctly notes that it submitted this "Exhibit A" in its Application of August 2007 (denoted in the earlier case as Exhibit 2). In its present application, the Company insists that this exhibit shows "the correct amount billed for legal services associated with the 2005 surcharge case is $16,933." Application at 5, note 2. However, even a cursory review of this billing statement dated July 15, 2007, does not reveal the figure "$16,933.16" appearing anywhere on either page of the two page statement. In addition, the two page billing shows that the Company incurred finance charges from November 2005 through July 2007. Staff asserts that finance charges and late payment fees should not be recovered from customers.

As the Commission has stated many times, reconsideration provides an opportunity for a party to bring to the Commission's attention any issue previously determined and provides the Commission with an opportunity to rectify any mistake or omission. *See, e.g.,* Order No. 30667 at 4. To allow the Company to recover its past legal fees now would constitute retroactive ratemaking. Consequently, Staff recommends that the Commission disallow recovery of $6,047 for customers.

b. and c. Staff recommends that the actual legal fees for the engineering report and the surcharge extension application fees be approved for recovery from the surcharge. Staff recommends that the legal fees be recovered but not the late-fee finance charges appearing on the legal bills.

It has been a long-standing policy of the Commission that expenses such as late payment fees and penalty fees not be recovered from the customers. *See, e.g.,* Order No. 30667 at 3. Staff is aware of the Company's assertion that the legal fees are past due as a result of cash flow constrictions brought on by the need to expend all available resources on critical capital