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IDAHO PUBLIC
UTILITIES COMMISSION

Attorneys for Applicant

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE
APPLICATION OF MAYFIELD
SPRINGS WATER COMPANY, INC.,
FOR A CERTIFICATE OF PUBLIC
CONVENIENCE AND NECESSITY

CASE NO. MSW-W-08-01

**MAYFIELD SPRINGS WATER
COMPANY, INC.'S REPLY
COMMENTS**

COMES NOW Mayfield Springs Water Company, Inc., an Idaho corporation (the "Company" or "Mayfield"), by and through its counsel, Fisher Pusch & Alderman LLP, and files its Reply Comments in response to the comments of the Idaho Public Utilities Commission Staff ("Staff") and Intervenor Gerald J. Corvino. The Company, with the consent of the parties to the case, has filed its comments two days after the date prescribed for filing rebuttal comments.

BACKGROUND

Mayfield is an Idaho corporation engaged in conducting a general water business in the Arrowrock Ranch Subdivision near Kuna, Ada County, Idaho. This is the Company's and its shareholders first private water system. The Company has 54 residential customers or connections and 8 commercial customers or connections. The Company is approved to provide water service to the public by the Idaho Department of Environmental Quality ("DEQ"). *See Exhibit 27.* The Company began providing water service to the public in June of 2006 when the

first home in the subdivision was occupied. However, the Company did not bill for water service until January of 2007. In January of 2007, the Company sent its first monthly bills to its customers in the amount of \$100.00 for one month of water service provided. In March of 2007, the Company sent correspondence to its customers stating that it had met with Staff and anticipated filing an application with the Commission within 120 days. *See Exhibit 205*, Intervenor Testimony (Gerald J. Corvino). As a result of its meetings with Staff, the Company believed in good faith that it was appropriate to continue to charge for water service and that when its application for a certificate of public convenience and necessity (“CPCN”) and to set rates was filed, reviewed and approved by the Commission, its rates would be adjusted as necessary. The Company also was delayed in filing its CPCN in part because it had to devote its limited resources to defending itself due to the allegations raised against it in a complaint filed in District Court by 14 of its customers.

In May of 2007 the Company notified its customers that it was reducing the rate for water service to \$50.00 per month retroactive to January of 2007 and was waiving all fees imposed for late or non-payment of water service bills. *See Exhibit 207* at p. 2, Intervenor Testimony (Gerald J. Corvino).

Application and Amended Application

On January 25, 2008, counsel for the Company in these proceedings, who was not representing Mayfield at the time, was contacted by Deputy Attorney General Scott Woodbury who requested that the Company file an application for a CPCN. After being hired by the Company, counsel assisted Mayfield in filing its application for a CPCN on February 5, 2008.¹

¹ Previously, Mayfield was known as Idaho Springs Water Company, Inc., an Idaho corporation. The Company changed its name to Mayfield in early May of 2008 because the name “Idaho Springs Water Company” conflicted with the federally registered trademark “Idaho Springs” that is owned by Idaho Springs, LLC, a completely separate entity with no connection to Mayfield. Notice of this name change was mailed to each customer.

In its Application, Mayfield also requested that the Commission authorize the Company to charge the following interim rates for water service pending final Commission order concerning rates: 1) \$50.00 per month for each residential customer; 2) \$25.00 per month for connections to the water system for lots on which construction of a residential dwellings was occurring (service billed only between the months of April 1 through October 1); and, 3) \$800.00 a month to water common areas in the Arrowrock Ranch Subdivision between the months of April 1 and September 31.² On March 3, 2008, the Commission authorized the Company to continue to charge its customers these interim rates for water service. *See Order* No. 30512 at p. 3.

On April 25, 2008, the Company filed an Amended Application proposing a monthly base rate of \$81.60 for the first 10,000 gallons of customer usage, and \$0.000651 for each gallon used by a customer in excess of 10,000 gallons.³ Based on past water consumption data for the system, Mayfield estimated the average residential customer would pay \$101.45 per month for water service. The consumption data used to determine this amount was submitted to the Commission Staff as **Exhibit 20** in response to Staff's Production Request No. 24 and is attached hereto. The Company also proposed eliminating the interim \$25.00 rate class described above and to require these customers to pay the same rates and charges for water service Mayfield proposed its residential customers should pay. The Company also proposed charging the customers watering the common areas and taking water for sewage treatment (The Arrowrock Ranch Subdivision Homeowner's Association) the same rates and charges for water service as proposed for residential customers. The Company also requested authorization to charge a one

² Notice of the Company's Application was sent to each customer in the form of **Exhibit H** attached to the Application.

³ The Company provided notice of its Amended Application by news media releases and by mailing a notice in the form of **Exhibit 9** attached to the Amended Application to each customer as a bill stuffer in their bills sent to them on April 30-31, 2008.

time \$2,500.00 fee to new customers who were connecting to the system to cover the costs of making the physical connection and expenses incurred related to certain water capacity charges assessed by the city of Meridian.⁴

In its Application and Amended Application, the Company also requested that the Commission authorize it to provide service within the service territory identified in **Exhibit B** attached to the Application. Finally, the Company agreed in its pleadings to be bound by the Commission's rules and applicable authorities and proposed to adopt the most recent version of the Commission's "General Rules and Regulations for Small Water Companies".

COMMENTS

Staff Comments: In its comments at pages 3-6, Staff made several recommendations which the Company finds reasonable and appropriate regarding certain expenses that should be included in Mayfield's revenue requirement. Specifically, these recommendations are for the recovery of expenses for: 1) power costs; 2) using a certified operator; 3) labor performed by the certified operator; 4) meter reading; 5) accounting and billing; 6) water testing; 7) professional fees; 8) well inspection fees; 9) maintenance and repairs; 10) office supplies; and 11) depreciation expense. As the Company believes these recommendations are reasonable they will not be discussed further.

Although the Company believes the above recommendations are reasonable, it asserts that the following adjustments should be made to certain of Staff's other recommendations concerning Mayfield's expenses and revenue requirement.

⁴ The other proposed charges for services, such as for disconnections and reconnections, are contained within **Exhibit 8**, attached to the Company's Amended Application.

Reply Comments on Expenses Adjusted by Staff:

1. Telephone Expenses. The Company appreciates Staff's willingness to allow the Company to include the costs for a telephone line for customer service calls in its revenue requirement in the amount of \$300.00. To verify that this amount is sufficient, the Company reviewed its most recent phone bills. Currently customers can contact the Company by calling 888-9946 ext. 104. The Company shares this phone line with its affiliate and the monthly bills for this line exceed \$500.00 monthly. For obvious reasons, this amount of cost should not be passed on to rate payers. The Company then compared Staff's recommendation against the cost which Intermountain Sewer who provides service to the Arrowrock Ranch Subdivision pays for its customer service line and found that it pays for this single business line per year than \$300.00. The Company asserts the bills of the sewer company provide an accurate measurement of the cost which Mayfield will incur for a customer service line. *See* phone bills attached hereto as **Exhibit 28**. Therefore, the Company respectfully requests that \$236.00 be added to Staff's recommendation of \$300.00 for this annual expense to be included in Mayfield's revenue requirement.

2. Licenses and Permits. Mayfield also appreciates Staff's willingness to provide funds through rates to cover the cost of obtaining necessary licenses and permits. Staff has recommended that \$300.00 be included in the Company's revenue requirement. In reviewing the costs for necessary licenses and permits, the Company asserts that it will actually pay \$400.00 a year for necessary DEQ and Commission licenses and permits. The Company estimates that its regulatory fee owed to the Commission will be approximately \$125.00 and it will owe \$275.00 per year to DEQ for regulatory fees. *See Idaho Code § 61-1004; see also Correspondence of Courtney E. Beebe, Natural Resources Division, Environmental Quality Division,* attached

hereto as **Exhibit 29**. Based on the foregoing the Company respectfully requests that \$100.00 be added to the amount of \$300.00 proposed by Staff for this annual expense.

3. Attorney's Fees. Staff has recommended that the Company be allowed to include \$750.00 in legal fees annually in its revenue requirement. *Staff Comments* at p. 5. The Company's understanding from informal discussions with Staff is that this amount is for legal fees that will be annually incurred by the Company in order to comply with all corporate requirements in the State of Idaho. Mayfield asserts that this is a reasonable recommendation for these matters.

Mayfield respectfully asserts that it will incur additional legal fees annually for legal service that it will receive to assist it with navigating the regulatory requirements of the Commission, including but not limited to the drafting of termination notices, bill contents, and all other notices to customers required by Commission or DEQ rules. The Company also believes it will incur annual legal fees for legal services provided to evaluate whether new proceedings should be initiated to update its rates. It is extremely important for small water companies with limited resources to keep rates current to ensure good financial health. Consistent with this, Staff recognized the probable need for further rate review, including review of the rate design approved by the Commission in the next year. *Staff Comments* at p. 12. Based on the foregoing, the Company respectfully requests that an additional \$600.00 to \$750.00 in annual legal fees be added to overall legal fee expenses. This amount is calculated by multiplying four to five hours of annual time for these legal services at a rate of \$150.00 an hour.

In addition, the Company respectfully requests that it be allowed to recover certain legal expenses it incurred for legal services provided to it in 2007 by Spink Butler, LLP, a Boise law firm. During 2007 the Company and other individuals and entities were billed for more than

\$30,000.00 in legal services by this firm. The Company proposed recovering \$10,000.00 worth of these expenses per year. Staff disagreed with the Company's proposal alleging that most of these fees were not reoccurring and related to the defense of the Company and other entities and individuals from various legal actions, including litigation brought by 14 homeowners living in the Arrowrock Ranch Subdivision in Case No. CV OC 0708918, *Borgeau et al., v. Johnson et al.*, District Court, Fourth Judicial District, State of Idaho, County of Ada.⁵ The Company strongly believes that at least some of these costs should be allowed to be recovered annually in rates because they were incurred in defending the Company in regard to matters concerning Commission authorities. Further, the time entries as recorded by Spink Butler, LLP demonstrate that at least 7.9 hours of legal service was provided to the Company in regard to matters concerning the water company and Commission matters, including CPCN issues at a total cost of \$1,597.50. Spink Butler's invoices have been submitted by the Company under separate cover as they contain information protected by attorney/client privilege. **See Confidential Exhibit 30.** Based on the foregoing, the Company requests that it recover an additional \$1,250.00 annually to recoup these legal fees. The Company's request represents a significant reduction in the amount of legal fees which Mayfield wishes to recover for these services.

In conclusion, Mayfield requests authorization to add an additional \$2,000.00 in legal expenses to its revenue requirement raising the overall total for this expense category to \$2,750.00.

4. Engineering Fees. During the test year, the Company spent \$3,480.00 in professional engineering fees to maintain the health and integrity of the water system. As Staff stated, some of these fees were related to the initial installation of the system. However, during 2007, the system had been installed and operating for at least six months and the costs of the

⁵ At this time the water company was being operated under the name Arbor Ridge, LLC.

engineering firm were related to the ongoing day-to-day issues of system management and not the initial installation of the system as shown by invoices for these services. In addition, SPF Engineering, the firm employed by the Company roughly estimates that annual engineering fees related to maintaining the system will average \$2,500.00 rather than the \$250.00 as Staff recommends. *See Exhibit 31.* Based on the foregoing, the Company respectfully requests that \$2,250.00 be added to Staff's recommendation for the Company's revenue requirement for additional, annual engineering expenses.

5. Sinking Fund. Staff has recommended that the Commission deny the Company's request for the establishment of a sinking fund to be used for future water system needs. The Company understands that the Commission has not approved such a request in the past unless it is tied to a specific, identifiable need. However, small water companies, even new ones, often have insufficient funds to respond to emergencies, to replace or upgrade any failing infrastructure to insure the safe operation of the system, to add plant to accommodate growth or for compliance with federal and state drinking water regulations. The Company has proposed that it be allowed to include \$13,080.00 annually in its revenue requirement for this sinking fund. The Company calculated this amount based on the cost expected to be incurred for replacing the two pumps in the system in ten years, costs which are reasonably ascertainable. *See Response to Staff Request for Production 10* incorporated herein by reference.

If the Commission approves this request the Company proposes that any expenditure from such funds (including interest earned thereon) would be subject to prior approval by the Commission and would be treated for rate-making purposes as contributed capital. Further, the Company also proposes that all funds collected for a sinking fund and interest earned must be held in a separate account by the Company specifically for the benefit of its customers. Such

funds would not become the property of the Company or its owners and may not be disbursed, alienated, attached, or otherwise encumbered by the Company or its owners. In the event of a sale or transfer of the Company, the trust obligations established by these requirements regarding any unspent sinking funds would be transferred to the new owner of the Company solely for the benefit of the customers. Finally, the Company proposes to report the following information to the Commission on a quarterly or semiannually basis: 1) the beginning balance of the account; 2) amounts received, detailed by source; 3) amounts spent, detailed by project or expense; 4) ending balance; and 5) reconciliation of bank balance to general ledger.

Based on the foregoing, the Company respectfully requests that the Commission approve the inclusion of a sinking fund in the Company's revenue requirement as requested.

6. Rate Case Costs. The Company has incurred substantial costs in preparing its Application and Amended Application and providing information to the Commission and others relating to this proceeding. In the past, the Commission has allowed for the recovery of amortized rate case costs. In this case the Company has incurred significant costs in order to provide the information the Commission and others needed to process this case in a timely and appropriate matter. The Company respectfully requests recovery of \$7,500.00 of these costs, an amount far less than the actual amounts incurred, over five years to partially reimburse Mayfield for rate case costs which would add \$1,500.00 annually to its revenue requirement. The invoices to substantiate legal rate case costs incurred by the Company are being submitted under separate cover as **Confidential Exhibit 32**. The invoices for accounting fees incurred for rate case costs are available for review to show their appropriateness.

Staff Comments on Rate Base and Revenue Requirement: Staff also found that the Company had a net rate base of \$13,477.00 and that a 12% rate of return was recommended.

Staff Comments at p. 6. Staff also stated that this return must be grossed-up to account for federal and state taxes that would need to be paid on this revenue at a net to gross multiplier of 127.3%. *Id.* at p. 6-7. Adding these amounts to its position on the Company's annual expenses produced an annual revenue requirement of \$39,435.00. *Id.* at p. 7.

Reply Comments: The Company believes the Staff's recommendations concerning its rate base and the level of the rate of return thereon are reasonable and appropriate. However, due to the Company's requested adjustments to Staff's position on Company expenses above, Mayfield respectfully requests that its annual revenue requirement be raised to \$58,601.00 (\$2,059 rate of return + \$58,545.00 in annual expenses which includes 13k for a sinking fund).

Staff Comments on Proposed Service Territory: Staff also recommended that the Company only be granted a CPCN for the existing improved residential areas included in Arrowrock Subdivisions No. 1 and No. 2.

Reply Comments: Mayfield finds this recommendation reasonable.

Staff Comments on Rate Design: Staff also proposed a rate design in its comments consisting of a base rate and variable rate.

Reply Comments: The Company is generally in agreement with the proposed rate design except for one concern. The base rate is significantly below the amount requested in the Company's Application and Amended Application. The Company respectfully requests that if the Commission determines that a higher revenue requirement is needed than Staff has proposed, that the additional amounts be added to the base rates and the variable charge be left where proposed by Staff at \$.29 per 1,000 over 10,000 gallons consumed. This will allow the Company to collect sufficient revenue to cover its expense obligations during the fall, winter and spring months where usage is typically or could be below 10,000 gallons per month.

Staff Comments on Hook-up Fees: The Company does not disagree with Staff's finding that it costs \$725.00 to connect a new customer to the water system based on its analysis. However, Staff's calculations do not take into account fees that are incurred by the Company resulting from water capacity charges assessed by the City of Meridian. **See Exhibit 33.**

Comments of Gerald J. Corvino

Corvino Comments on Customers: Mr. Corvino first proposed that there should be two rate classes for customers of the Company, active and inactive. Mr. Corvino defined "inactive customers" as owners of lots within the subdivision not currently connected to the water system and not currently receiving water from the Company. Mr. Corvino defined "active customers" as those lots connected to the system with water available regardless of the status of home construction on the lot. Mr. Corvino also argues that the Arrowrock Ranch Subdivision Homeowners Association and Intermountain Sewer be excluded from having to pay charges for water service despite receiving service.

Reply Comments: The Company respectfully disagrees with these recommendations. First, only customers connected to the system should be charged for water service. Second, the Company does not agree that the Arrowrock Ranch Homeowner's Association which counts as 8 commercial customers (7 meters to water common areas and 1 meter for the sewage treatment facility) should not be charged for service. These customers are connected to and actively use the Company's resources causing resulting costs which must be recovered.

Corvino's Comments Regarding Operation of the System: Mr. Corvino also asserts that the Company was operating illegally as a for profit water company without Commission authorization from September 29, 2005 through February 3, 2008 and misrepresented to its

customers when it would file for a CPCN.⁶ Mr. Corvino acknowledges that the first resident of Arrowrock Ranch Subdivision moved into their home on June of 2006 and that residents were not billed for water service until January 30, 2007. *See Corvino Comments* at p. 5. Mr. Corvino points to a Court ruling in *Borgeau et al. v. Johnson, et al.*, finding that “from the statute and regulations, a certificate of necessity and convenience was required before the construction of the water system at all.” Despite this finding, though the Court found “that little to no briefing or oral argument addressed the subject of an appropriate remedy, whether that relief is an injunction, damages, or some other some other remedy” and that “[a] further hearing, upon the request of either party, will be necessary before any such relief will be granted by the Court.”

Based on the foregoing, Mr. Corvino requests that the Commission order the Company to repay all parties served any and all monies collected by it including connection and service fees, late charges and any other charges collected prior to February 5, 2008 as relief. In addition, Mr. Corvino requests that the Commission impose a penalty of \$1,716,000.00 on the Company.

Reply Comments: The Company respectfully asserts that based on the record in this matter, refunds to customers are not warranted as the rates resulting from Staff’s and Company’s recommendations if adopted by the Commission would generate average customer rates higher than the amount Mayfield’s customers have been requested to pay for water service. Further,

⁶ Mr. Corvino states that a condition of approval of the Arrowrock Ranch Subdivision final plat around September of 2005 was that it must receive written approval from the Commission regarding the establishment of non-contiguous service area. *See Exhibit 202* at p. 2, Intervenor Testimony. As stated on page 3 of *Exhibit 202* it was found that “*the applicant has demonstrated compliance with the above referenced conditions.*” The Company asserts its understanding of this requirement, which appears to be contained as a condition in most approvals of final plats, is that if the Company was going to operate as a public utility it needed approval from the Commission. At this time and continuing for sometime forward, Mayfield was exploring whether to sell the water system to United Water Idaho, to vest it in the homeowner’s association or some other non-regulated entity, or to operate the system as a public utility. *See Exhibit 209 Affidavit of Timothy L. Farrell* attached to Intervenor Testimony (Gerald J. Corvino). Thus, it was uncertain whether the operation of the water system would ultimately fall under the jurisdiction of the Commission. This was communicated to Ada County through information contained on the plats and operations manuals lodged with it by the Company and its engineer, SPF Engineering. Based on this information, the Company asserts that the Ada County accepted this as compliance with this condition.

even if refunds were allowable, many customers have accumulated significant balances for failing to pay for water service which has put serious financial strain on the resources of the Company. The Company also asserts that refunding past charges for service is also not allowable due to restrictions prohibiting retroactive ratemaking and the prohibition on the Commission awarding damages. Finally, the Company respectfully requests that the Commission deny Mr. Corvino's recommendation that it seek to impose a large penalty on Mayfield because the Company has been providing quality service to its customers, customers have suffered little or no harm, the Company has not benefited economically from its actions surrounding this matter, it is actively attempting to come into compliance with any and all regulatory authorities, past Commission precedents do not justify possible recommendation of a penalty and the totality of the circumstances do not require that a penalty be sought.

1. Refunds. In its Order No. 30512, the Commission authorized the Company to continue to charge its current and interim rates subject to refund until such time as final rates and charges are approved by the Commission. Prior to February 5, 2008, the Company was charging its residential customers the same amount as the interim residential rate approved by the Commission. Comparing this rate with the average customer rate resulting from Staff's proposed revenue requirement in this case of nearly \$55.00 reveals the Company has likely been collecting insufficient revenues to cover its costs for a significant time period. Accordingly, the Company asserts that the evidence in this case demonstrates that customers would not be entitled to any refunds on monthly charges for water service. If either Staff's or the Company's proposed rates are adopted despite undercollecting on charges for service, Mayfield does not intend to seek additional funds from its customers to make up for this deficiency.

Mr. Corvino also asserts that the Company should be required to refund all connection fees. Rather, according to the Company's billing records, very few of the Company's customers paid this fee to the Company. Rather, in most cases, builders of the houses in the Arrowrock Ranch Subdivision paid this connection fee to the Company and not the ultimate purchasers or residents of completed homes. **See Exhibit 34.** Further, even where a customer actually paid this fee, it was justified based on the cost incurred through assessments for water capacity charges by the city of Meridian, labor to complete the connection and costs for any necessary equipment.

In the alternative, the Company also asserts that principles of retroactive ratemaking and the Commission's lack of jurisdiction to award damages (which refunds would essentially equate to particularly in light of the same request for relief having been made by the Plaintiffs in the complaint filed against the Company) would prohibit the Commission finding that refunds are warranted. *See Utah Power & Light Co. v. Idaho Public Utilities Commission*, 107 Idaho 47, 49, 685 P.2d 276 (1984).

Although the Company is not requesting recovery of any under collected fees resulting from any difference between interim rates and those ultimately set by Commission order, it still must recover all past due charges for water service billed at the authorized interim rates. There is no dispute that the Company has continuously provided water service to its customers and that it began billing for service in January of 2007. Since this time, many of the Company's customers have substantially or completely failed to pay for water services provided. As admitted by Mr. Corvino in his Intervenor Testimony, at least two customers have only paid for one month of service and four have never paid for water service. In addition, the Company's billing records indicate that the majority of the 14 homeowner's suing the Company has never paid for any

water service despite in many cases being provided with service for more than two years.⁷ *See Exhibit 35.* These past due accounts dramatically impact the Company's financial health and its ability to continue to provide safe and adequate service. Despite these customers failing to pay for service, the Company has never shut off any of its customer's water service. It is time for these customers to bring their accounts current. Accordingly, Mayfield respectfully requests that all customers with past due accounts be required to bring their accounts current on or before 90 days from the date of a Commission order establishing rates and charges for water service. After this time period, the Company requests that it be allowed to take action to collect these past due amounts in compliance with all applicable Commission statutes and rules.

2. Penalties. Mayfield respectfully asserts that despite some delays in filing its Application since its first contact with Staff in March of 2007, the Company has always intended on fully complying with Commission authorities. Accordingly, the Company asserts that penalties are not warranted in this case. In the event the Commission considers this issue further, the Company respectfully suggests that it consider some or all of the following factors in its analysis: 1) the severity of the economic or physical harm and any economic benefit gained by the violator caused by a violation; 2) the utility's conduct to rectify the violation; 3) past Commission precedents; 4) the utility's financial resources; 5) any willfulness of intent to commit the violations; and, 6) the totality of the circumstances

a. Harm, Benefit and Financial Resources.

Despite the Court's finding that Commission's authorities had been violated, the harm caused by this violation has been minimal and the Company certainly has gained no economic benefit. As discussed above, the Company provided water service to its customers for free

⁷ Based on the Company's billing records, Plaintiffs Abercrombies, Grables, Koyles and Johnson have made payments for water service.

between June of 2006 until January of 2007. After it began billing, many customers failed to pay for their water service greatly impacting the financial ability of the Company to cover its operating expenses. **See Exhibit 34.** Despite this, the Company has never terminated any customer's water service for failure to pay or for any other reason. Other factors demonstrating that no gain was received by the Company and little or no harm caused to its customers are that: 1) the Company waived all late fees incurred by customers for failure to pay between January 2007 and May 2007; and, 2) the revenue requirement recommended by Staff if approved by the Commission generates an estimated average rate of over \$50.00 per customer, higher than the authorized interim rate and the rate charged by the Company between January of 2007 until February 3, 2008. In addition, small water companies often have limited resources like the Company. Whereas here, where the Company has at first subsidized and then under charged for its service which may customer have never paid for, the imposition of a financial penalty would further harm Mayfield's already precarious financial state.

b. Company's Actions to Comply and Past Precedent.

As the Commission may be generally aware, in the absence of self-reporting by a water company, there is no mechanism by which it becomes aware of the existence of a small water company. Often the Commission becomes aware of small water systems upon receipt of a complaint from rate-payers and consumers of such system. A review of past Commission precedent reveals there are few, if any, cases in which the Commission sought the imposition for a water utility providing service prior to obtaining a CPCN. *See Strand v. Idaho Public Utilities Commission*, 111 Idaho 342, 723 P.2d 885 (1986), Order No. 29016, Case No. GNR-W-01-01; *see also* Order No. 28110, GNR-W-97-1. In these cases the Commission Staff and the Commission have worked with the utility to bring it into compliance with the Commission's

Customer Relations Rules and to establish rates in accordance with standard rate making principles. While not diminishing the importance and necessity of voluntarily and timely complying with all applicable regulations, the Company asserts that it a reasonable regulatory choice for the Commission to focus on insuring prospective compliance rather than on punishing prior behavior of a utility particularly where such utility is in good faith pursuing certification from the Commission.

c. Intent.

Upon receiving complaints from customers regarding billing for water service in early 2007, Mayfield met with the Commission Staff to seek guidance on whether it needed to file an application for a CPCN. Based on its meeting with Staff in March of 2007, the Company believed in good faith that it was necessary to continue operating the system and appropriate and reasonable to bill for its services pending the filing of an application for a CPCN. Mayfield believed, based on these contacts with Staff, that prior to filing for a CPCN it was appropriate and necessary to establish some operating history in order to more accurately determine the revenue necessary to operate the Company in a manner that insured its financial health. At this time the Company represented to its customers that it anticipated filing its application for certification with the Commission within 120 days. Admittedly, the Company filed its Application after this timeframe but there was no intention to mislead its customers. Rather, during this time Mayfield was working actively with its accountant and engineers to determine the Company's costs, revenue requirement and rate design for its future filing and defending litigation in *Borgeau, et al. v. Johnson, et al.* In late January of 2008, counsel for the Company who had not been hired to represent it at that time, was contacted by the Commission Staff who

requested that the Company file an application for a CPCN. On February 5, 2008, the Company filed its Application and later its Amended Application.

d. Totality of the Circumstances

As stated previously, the Company has been providing service to its customers in compliance with all DEQ requirements to ensure that safe and reliable service is being provided to its customers. See **Exhibit 27**. The water system providing service to the Arrowrock Ranch Subdivision was designed and constructed through the services of two well-regarded, local engineering firms, SPF Water Engineering and Treasure Valley Engineers. After reviewing as-built drawings of the water system and physically inspecting it, Staff approved of the Company's water system stating:

[t]he overall water system appears to be well designed and constructed and is expected to be more than adequate for the number of customers to be served. The installation of a 30 kW generator is a good insurance for electrical interruptions in the area. The variable speed drive increases the efficiency of electrical usage, avoids frequent repeated cycling of pumping units, reduces wear and extends life of the equipment.

Staff Comments at p. 9. Since the first delivery of water service to a customer, the Company has employed the services of Tom Mehiel/Valley Hydro, Inc. to operate and maintain the system in compliance with all applicable health and safety standards with the assistance of the Company's engineers. Mr. Mehiel has a Distribution Operator Class III License in the State of Idaho. The quality of the system and the expertise of its hired, certified operator demonstrate the Company's commitment to its customers to furnish, provide and maintain such service and facilities that provide for their safety, health, comfort and convenience. Combine these facts with the other factors discussed in Sections a-c above, and the Company respectfully asserts that no penalty is warranted. However, due to the Commission's existing regulatory authorities and the disputes which arose between the Company and its customers, it understands that is vitally important to

