

**DECISION MEMORANDUM**

**TO: COMMISSIONER REDFORD  
COMMISSIONER SMITH  
COMMISSIONER KEMPTON  
COMMISSION SECRETARY  
LEGAL  
WORKING FILE**

**FROM: CURTIS THADEN**

**DATE: APRIL 11, 2008**

**RE: FORMAL COMPLAINT OF SCHMIDT CONSTRUCTION SEEKING  
REVERSAL OF UNITED WATER IDAHO, INC. DECISION TO NOT  
ADD ADDITIONAL CONTRACTORS TO APPROVED CONTRACTOR  
LIST.**

On February 20, 2008, the Commission received a "Formal" Complaint (Attachment A) from Mr. Peter Wilson on behalf of Schmidt Construction against United Water Idaho Inc. (UWI). Mr. Wilson objects to the decision of UWI to not add new contractors to its Approved Contractor List for 2008. Mr. Schmidt was unsatisfied with the outcome of the informal procedures to resolve his complaint and has filed this Formal Complaint as a result. Mr. Schmidt requests that the Commission require UWI to evaluate Schmidt Construction's Application to be included on the Approved Contractor List. If the Company does not meet the necessary requirements set forth by UWI, Mr. Wilson asks that UWI provide "detailed reasons why Schmidt Construction is not fit to install United Water Systems."

**BACKGROUND**

In October of 2007, Mr. Wilson, Project Manager for Schmidt Construction, contacted UWI to request a pre-qualification package because he wanted Schmidt Construction to be added to the Approved Contractor List. In December 2007 Mr. Wilson submitted the required paperwork to UWI. In February 2008 Mr. Wilson was notified by letter that UWI was not going to add any new contractors to the Approved Contractor List in 2008.

In response to Schmidt Construction's informal complaint, UWI sent a written response (Attachment B) to the Commission. In summary, UWI maintains that because of the costs associated with administering new contractors, the length of training, the recent decrease in construction, and the lack of projected projects in 2008, it is not going to add new contractors to the Approved Contractor List in 2008.

Mr. Wilson filed a "Formal" Complaint on February 20, 2008. Mr. Wilson provides reasons why he believes Schmidt Construction meets UWI's qualification requirements and maintains that if a contractor meets the requirements, it should be added to the Approved Contractor List.

Because of UWI's decision to not add new contractors to its Approved Contractor List, Mr. Wilson states that Schmidt Construction is at a disadvantage when bidding on a project with a developer because most developers want the same contractor to install both the sewer and water system. Mr. Wilson also believes that by limiting the number of contractors on the Approved Contractor List, the supply and demand theory applies and the cost to install water systems might actually increase.

Staff notes that in Order No. 26898, Case No. UWI-W-96-4, the Commission approved a Stipulation and Settlement Agreement that put into place a process allowing developers to choose from a list of approved contractors to install facilities within residential subdivisions. The Agreement allows contractors to install water mains and services if they meet certain requirements. UWI was ordered to implement a system of procedures to monitor the Labor in Lieu of Cash program to ensure that the program does not result in an increase in costs to UWI and its customers. Neither the Stipulation nor Order places a limit on the number of contractors who can participate in the program. Likewise, there are no limits specified in UWI's tariff. UWI decided earlier this year to not add more contractors to the current list consisting of 10 contractors. Prior to this Order, UWI facilities were exclusively installed by one contractor; UWI did not allow other contractors to participate.

#### **STAFF RECOMMENDATION**

Schmidt Construction was not satisfied with the outcome of the Informal Complaint. Consequently, Mr. Wilson filed a "Formal" Complaint. See Rules 23, 25 and 54, IDAPA 31.01.01.023, .024 and .054.

Staff recommends that the Commission issue a Summons to United Water Idaho directing the Company to file a response to the Complaint.

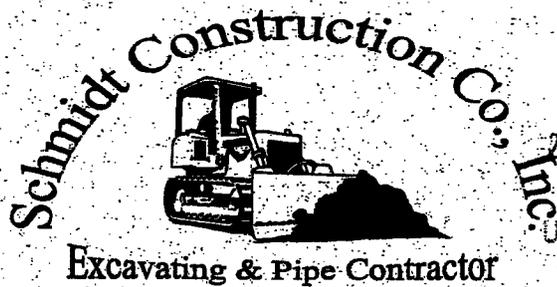
**COMMISSION DECISION**

Does the Commission wish to accept Mr. Wilson's "Formal" Complaint? Does the Commission want to issue a Summons or proceed under Modified Procedure?

  
Curtis Thaden

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4662 Henry Street, Suite B  
Boise, Idaho 83709



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2008 FEB 20 AM 8:08

IDAHO PUBLIC  
UTILITIES OFFICE (208) 362-7227  
Fax (208) 362-7286

February 14, 2008

Jean Jewell – Secretary  
Idaho Public Utilities Commission  
PO Box 83720  
Boise, ID 83720-0074

Dear Ms. Jewell

I am writing this letter in regards to United Water's policy on Approved Contractors. Currently United Water must approve of a specific construction company prior to any installation of domestic water transmission lines in United Water's jurisdiction. I believe United Water does need to approve the contractors that install their facilities for consistence and quality control; however, I don't believe it is appropriate that one contractor receive favored status while an equally qualified contractor is excluded.

My concern with this practice is two fold. One, that the procedure is arbitrary, and two, that the justification for adopting the procedure suggests something is startling unique about United water, something that other water systems in the valley either do not have or have learned to deal with.

Concerning the policy being arbitrary, United Water has no published criteria for their selection process. There is no way for an outside observer to know what is needed to qualify, or if an applicant selected was indeed more qualified than another rejected applicant. Indeed, if two equal applicants present themselves, how would United Water pick one and reject another? Perhaps they determine the favored company by who applied first, or a skeptic might wonder what other inducements could be involved to be appointed favored status. The selection process and criteria needs to be open to examination and criticism or any contractor that fits a specified list of criteria, should be approved to work on United Water Projects.

One has to question too, whether reducing the supply of contractors to install United Water systems, does not put pressure to raise prices, as supply/demand theory would imply. In their response, to the PUC, United Water says "The ten contractors have been able to provide the development community with competitive pricing during the recent building boom." How can they know this if they have no bids outside their approved

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few? Can United Water show that their savings are not offset in higher installation costs? Are the ratepayers truly helped by limiting competition?

As justification for their policy, United Water points to savings through the efficiency of their selected contractors in executing United Water projects. They make the extravagant claim that "United Water has learned that each newly approved contractor will go through a two year learning curve before the contractor becomes efficient in the United Water Process." They add, that a new contractor causes significantly more cost in inspections and management than an approved contractor. There are well run water systems all over the Treasure Valley that allow many contractors to install their systems. What is it about United Water's system that is so utterly unique that a contractor that has installed systems for Meridian Water is incapable of efficiently installing one for United Water? If these distinctions exist, the PUC may be interested in checking to see if the ratepayer is well served by those unique criteria. If there is nothing unique about United Water, then what is so byzantine in their projects that it takes 2 years to master? If United Water is properly documenting its design criteria, installation requirements, inspection procedures then any company experienced in installing water systems in the valley, should be able to anticipate those needs and after one project, have a thorough understanding of United Water's expectations.

The development community today, looks for a contractor that can complete the entire project, not one to do the sewer work and a separate to do the water. They can get better prices when one contractor can do the entire project. That is why Schmidt Construction is at a disadvantage, not being allowed on the approved list. Schmidt Construction should have the same opportunity as an equally qualified approved contractor to bid on private developments that are in United Water's jurisdiction. If a private developer wants to use Schmidt Construction to build a project, with his own funds, paying United Water for the standard inspection fee's and permits and paying Schmidt Construction with private funds. How can United Water discriminate in that situation?

United Water is prohibiting Schmidt Construction from being included on the approved list, even though Schmidt Construction has over 25 years of experience in this industry and carries a AAA Public Works License. Schmidt Construction can see no reasonable reason for United Water denying us qualification. United Water might try and back out of this by saying that they can only accept new contractors around the first of every year and they would consider us next December. That will not be acceptable, Schmidt Construction worked very diligently, submitting the application on time in November 2007 for the December review and Approval process in January. Unless they are laying



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off inspectors and engineers, the current slow down present a great opportunity to break in new contractors

Schmidt Construction requests that United Water start the approval process immediately or provide detailed reasons why Schmidt Construction is not fit to install United Water Systems.

Furthermore, we believe the PUC needs to investigate United Water's approval practice to assure the rate payers are well served by the policy.

Sincerely,

A handwritten signature in black ink, appearing to read "Pete Wilson", with a long horizontal flourish extending to the right.

Pete Wilson  
Schmidt Construction  
4662 Henry Street, Ste. B  
Boise, ID 83709

JOHN LEE  
Construction Coordinator

UNITED WATER IDAHO INC.  
8248 West Victory Road, Boise, ID 83709  
P.O. Box 190420, Boise, ID 83719-0420  
Tel: 208.362.7329 • Fax: 208.362.3858  
john.lee@unitedwater.com



2/7  
Curt  
**United Water**  
SVEZ

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2008 FEB -7 AM 8:17

IDAHO PUBLIC  
UTILITIES COMMISSIC.

February 5, 2008

Mr. Curtis Thaden  
Idaho Public Utilities Commission  
PO Box 83702  
Boise, ID 83702-0074

Dear Mr. Curtis:

United Water has received your letter regarding complaints from Mckay Construction and Schmidt Construction. We want you to know why United Water did not add these contractors to the approved list and that United Water believes it made its decisions based on what we believe is best for our customers.

In the Idaho Public Utilities Commission Case No. UWI-W-96-4 1997 Stipulation and Settlement Agreement United Water was ordered by the Commission to "implement such systems and procedures as are necessary to monitor the implementation of a labor in lieu of cash program to insure that implementation of the program does not result in increased administrative and inspection costs for United and its customers generally".

In the labor in lieu program the contractor works directly for the developer and is frequently more interested in serving the developer's desire of lower initial cost than trying to achieve lower future operation and maintenance cost, therefore from past experience United Water has learned that newer, less experienced contractors will lower the quality of installation which often increases future operation and maintenance costs. When a new contractor is add to the approved list United Water administration must invest a significant amount of time and effort training the contractor in estimating, in construction standards, and in providing as-built information which is all necessary before the contractor can even provide developers with accurate bids base on United Water standards. Once a contractor knows the process and begins their initial project on a United Water installation the United Water inspector will often be required to spend two or three times more than the normal inspection time for similar projects. This is because newer contractors are not familiar with United's specifications for installation from a hands-on perspective.

There were initially six contractors approved in 1997 when the labor in lieu program was implemented. Since then, based on contractor performance, United Water has dropped some and added some so that now there are ten approved contractors on the list. The ten contractors have been able to provide the development community with competitive pricing during the recent building boom.

Through this past experience United Water has learned that each newly approved contractor will go through a two year learning curve before the contractor becomes efficient in the United Water processes. During this two year time frame United Water incurs more administrative and inspection time.

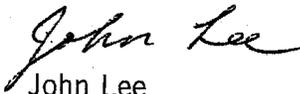
Taking all this into account and due to the recent housing market downturn and lack of anticipated projects for 2008, and the associated cost of administrating new contractors, United Water decided not to add any new contractors to our approved list in 2008.

The following are answers to your specific questions:

- 1.) At the end of December 2007 United Water made its decision not to add contractors and thus did not invest the time to review the six pre-qualification packages which were submitted to United Water in December of 2007. Therefore we have not made any determination as to if McKay Construction and Schmidt Construction meet all requirements. McKay Construction was previously an approved contractor but chose not to keep United Water insurance requirements and was dropped off of the approved list in October of 2005 (See enclosed correspondence with McKay Construction).
- 2.) During any given year United Water will receive requests through out the year from contractors wishing to become approved United Water Idaho contractors. In order to efficiently implement the labor in lieu program United Water will give the pre-qualification package to any contractor requesting the information and at the same time, tell the contractor that United Water does not review completed packages until January of the next year and may or may not add contractors.
- 3.) All six of the contractors submitting completed pre-qualification packages were notified in writing with a letter stating that United Water is not adding any contractors to the approved list in 2008. Some contractors phoned and inquired about approvals and were informed of the decision prior to the written letter.
- 4.) United Water currently has ten approved contractors.

If you have any questions, please feel free to call me.

Sincerely,



John Lee  
Construction Coordinator

CC: Patty Foss, Scott Rhead, Greg Wyatt

United Water



United Water Idaho Inc.  
8248 W. Victory Road  
P.O. Box 190420  
Boise, ID 83719-0420  
telephone 208 362 7300  
facsimile 208 362 3858

July 15, 2005

McKay Construction, Inc.  
Mr. Mike McKay  
PO Box 3066  
Boise, Id 83703

Dear Mr. McKay:

United Water is in the process of revising our pre-qualification contractor requirements for installing water mains in the United Water Idaho's certificated area. Previously approved contractors will not be affected by the new pre-qualification requirements.

Along with the new pre-qualification requirements we are also implementing an annual review process for all contractors. We will evaluate each contractor on each project. I am enclosing a copy of the evaluation form. The form is intended to smooth the flow of projects and capitalize on both Contractor's and United Water's time. You will be rated on a scale from one to five on various stages of your projects. Five is a favorable rating anything below four is unacceptable. These forms will aid us in our annual review process.

We also need to have updated information regarding the insurance requirements that United Water contractors are required to carry. I am enclosing a copy of page 3 of our standard contract that refers to the insurance coverage amounts. Please send us your insurance coverage information by July 27<sup>th</sup>, 2005.

If you have any questions, please feel free to call.

Sincerely,

John Lee  
Construction Coordinator

Enc: Evaluation Form  
Page 3 Main Extension Contract

United Water



United Water Idaho Inc.  
8248 W. Victory Road  
P.O. Box 190420  
Boise, ID 83719-0420  
telephone 208 362 7300  
facsimile 208 362 3858

August 16, 2005

McKay Construction  
Mr. McKay  
PO Box 3066  
Boise, ID 83703

Dear Mr. McKay:

On July 15<sup>th</sup> I requested information from you regarding proof of insurance coverage necessary to become an approved United Water contractor. As of this date I have not received any proof of insurance from you.

Our files indicate that we have not received any insurance information from you since January of 2004. It is imperative that you send your proof of insurance by September 1, 2005. United Water will not allow McKay Construction to start any new projects until we have received information from your insurance agent that proves McKay Construction meets the necessary limits.

I am enclosing a copy of my previous request and the insurance liability minimums required.

If you have any questions, please feel free to call.

Sincerely,

John Lee  
Construction Coordinator

Enc: Letter Dated July 15, 2005  
Page 3 Main Extension Contract

# United Water



United Water Idaho Inc.  
8248 W. Victory Road  
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Boise, ID 83719-0420  
telephone 208 362 7300  
facsimile 208 362 3858

August 22, 2005

McKay Construction, Co, Inc.  
Mr. McKay  
PO Box 2450  
Eagle, ID 83616

Dear Mr. McKay:

Thank you for your response to my request for updated insurance information. The information, which you sent to us, indicates that you do not have the minimum insurance necessary to be an approved United Water Contractor.

When you are able to meet the required insurance coverage minimums you will be allowed to perform construction on United Water Idaho projects.

If you have any questions, please feel free to call.

Sincerely,

John Lee

Construction Coordinator

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
<ul style="list-style-type: none"><li>Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.</li><li>Print your name and address on the reverse so that we can return the card to you.</li><li>Attach this card to the back of the mailpiece, or on the front if space permits.</li></ul>		<p>A. Signature <input type="checkbox"/> Agent <input checked="" type="checkbox"/> Addressee</p> <p>B. Received by (Printed Name) <input type="checkbox"/> C. Date of Delivery</p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes if YES, enter delivery address below: <input type="checkbox"/> No</p>	
1. Article Addressed to:		<p>3. Service Type</p> <p><input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail</p> <p><input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise</p> <p><input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.</p> <p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>	
Mr. McKay McKay Construction, Inc PO Box 2450 Eagle, ID 83616			
2. Article Number (Transfer from service label)		7003 3110 0001 1948 8723	
PS Form 3811, August 2001		Domestic Return Receipt 2ACPRI-03-P-4081	

SVEZ

United Water



United Water Idaho Inc.  
8248 W. Victory Road  
P.O. Box 190420  
Boise, ID 83719-0420  
telephone 208 362 7300  
facsimile 208 362 3858

September 19, 2005

Mr. McKay  
McKay Construction, Inc.  
P.O. Box 2450  
Eagle, ID 83616

Dear Mr. McKay:

We still have not received verification from either you or your insurance provider that your company carries the minimum insurance required by United Water Idaho to be an approved contractor. If we do not receive verification of the necessary insurance minimums by September 30, 2005, we will have no alternative but to remove McKay Construction, Inc. from our approved contractor list.

If you have any questions, please feel free to call.

Sincerely,

John Lee  
Construction Coordinator

Enc: Letter Dated August 22, 2005

# United Water



United Water Idaho Inc.  
8248 W. Victory Road  
P.O. Box 190420  
Boise, ID 83719-0420  
telephone 208 362 7300  
facsimile 208 362 3858

October 4, 2005

Mr. McKay  
McKay Construction, Co, Inc.  
PO Box 2450  
Eagle, ID 83616

Dear Mr. McKay:

The letter is to inform you that McKay Construction, Inc. has been removed from United Water Idaho's list of approved contractors. This decision results from a failure to provide our office with a Certificate of Insurance from your insurance carrier guaranteeing minimum insurance coverage as required by the contract. As stipulated in our September 19, 2005 letter to you, this Certificate of Insurance was to be in our office by September 30, 2005.

If you have any questions, please feel free to call.

Sincerely,

John Lee  
Construction Coordinator

Enclosure: Letter Dated September 19, 2005

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
<ul style="list-style-type: none"><li>■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.</li><li>■ Print your name and address on the reverse so that we can return the card to you.</li><li>■ Attach this card to the back of the mailpiece, or on the front if space permits.</li></ul>	<p>A. Signature: <i>[Handwritten Signature]</i> <input type="checkbox"/> Agent <input type="checkbox"/> Addressee</p>
<p>1. Article Addressed to:</p> <p><i>Mr. McKay McKay Construction P.O. Box 2450 Eagle, ID 83616</i></p>	<p>B. Received by (Printed Name): <i>ROBERT TENNY</i> C. Date of Delivery</p>
	<p>D. Is delivery address different from item B? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If YES, enter delivery address below.</p> <p><i>ENG/D</i> <b>OCT 6 2005</b> 386 IN 1902</p>
	<p>3. Service Type</p> <p><input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.</p> <p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>