

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF ATOMIC WATER) **CASE NO. ATW-W-23-01**
WORKS APPLICATION FOR A)
CERTIFICATE OF PUBLIC CONVENIENCE)
AND NECESSITY) **ORDER NO. 35973**
_____)

On January 31, 2023, Atomic Water Company, LLC, (“Company”) applied to the Idaho Public Utilities Commission (“Commission”) for a Certificate of Public Convenience and Necessity (“CPCN”), to provide water service in the unincorporated town of Atomic City in Bingham County, Idaho (“Bingham County”).

On March 9, 2023, the Commission issued a Notice of Application and established a 21-day intervention period. Order No. 35698. No intervenors appeared.

On April 28, 2023, the Commission issued a Notice of Modified Procedure establishing public comment and Company reply deadlines. Order No. 35760.

On June 8, 2023, Commission Staff (“Staff”) filed comments. The Company did not file a reply. No public comments were filed.

Having reviewed the record, the Commission issues this final Order granting the Company a CPCN and setting rates and terms for the water services the Company intends to provide to its customers.

BACKGROUND

The Company recently purchased the water system providing service in the unincorporated town of Atomic City.¹ The Company provides water service to approximately 31 customers within Atomic City. Prior to the Company’s purchase of the water system, Bingham County operated it following the disincorporation of Atomic City.

THE APPLICATION

The Company requests that the Commission issue a CPCN authorizing it to provide water service to domestic and commercial customers. The Company’s proposed rate schedule for residential customers is a flat rate of \$55 monthly per residential connection, with a non-flowing

¹ At the time the Commission issued the Notice of Application in this case, Order No. 35698, it was unclear who owned the water system. Staff researched the Company and determined that Atomic Water, LLC is an assumed business name of BVL Farms LLC, which is a limited liability company wholly owned by Vickie O’Haro. Staff Comments at 2.

rate of \$27.50 monthly per residential connection. *See* Application Attachment 19. The Company’s proposed rate schedule for commercial customers is a flat rate of \$111 per month. *See* Application Attachment 19. The Company provided notice of its purchase and the Application for a CPCN to customers on October 25, 2022. *See* Application Attachment 22.

STAFF COMMENTS

Staff recommended the Commission approve the Company’s request for a CPCN. Additionally, Staff recommended that the Commission (1) establish an annual revenue requirement of \$17,096; (2) order the Company to discontinue paying street lighting for Atomic City under the Company’s name; (3) approve rates as outlined in Staff’s Comments; (4) approve a \$20.00 returned transaction fee and the other non-recurring charges as filed; and (5) direct the Company to submit a signed updated tariff within 30 days of the effective date of the Commission’s Order.

Staff noted that the Company provides water service to 31 customers relying on one operational well among its two groundwater well sources and a 75,000-gallon potable water storage tank. *Id.* A sanitary survey published by DEQ in March 2023 found deficiencies and recommended several improvements. *Id.* Staff also reviewed the 2022 Atomic City Water System Facility Planning Study (“Water Study”)² published by Bingham County, which assessed and identified the water system’s present and future needs. *Id.*

Staff relied on the Water Study to confirm the boundaries of the Company’s water rights and recommended the CPCN service area be:³ “the W½ of Section 3 Township 1 North, Range 31 East Boise Principal Meridian Idaho” Based on the information provided, Staff calculated that the Company’s water rights allow a total diversion amount of 237 gallons-per-minute (“GPM”), within the proposed service area. *Id.* Staff indicated that the Company’s current water rights provide adequate supply of potable water for the existing demand and any near-term potential growth. *Id.*

Staff observed that the Company requested a revenue requirement of \$19,848, but only supported up to \$16,051 in its Application. *Id.* at 4. Based on its calculations, Staff recommended a revenue requirement of \$17,096. *Id.*; Attachment B to Staff’s Comments. Staff also recommended an operations and maintenance (“O&M”) expense of \$15,601. Staff Comments at 4; Attachment C to Staff’s Comments. Because the Company has only been operating since

² The Company provided a copy of the Water Study in response to Staff’s requests for production.

³ Staff included a map of the territory in Attachment A to its comments.

November 2022, Staff annualized expenses provided and projected the expected amount needed, including recovery of \$4,260 for annual power costs. Staff Comments at 4.

For water operator services, the Company contracts with a certified water operator. *Id.* Staff believed the \$700 monthly fee for these services was reasonable and explained that the Company should be mindful of standard accounting practices on additional fees from the water operator, *i.e.*, repairs performed by the water operator to extend the life of the water system could be capitalized as plant-in-service. *Id.*

Staff further noted that, while Bingham County operated the water system, the costs for street lighting in Atomic City were billed to the water system's electric bill. *Id.* Staff recommended the Company separate the street lighting costs from the water system's account. *Id.* at 4–5. Staff also included an additional \$595 for assessment fees, property taxes, DEQ fees, federal and state taxes, and other fees. *Id.* at 5; Attachment C to Staff's Comments.

Staff explained its rate base calculation methodology and recommended a rate base of \$1,950, which is comprised of \$1,950 in a working capital allowance and \$0 in plant-in-service under the presumption of IDAPA 31.36.01.102. *Id.* at 5. Staff recommended a return on equity of 11 percent, based on similarly situated water utilities. *Id.* at 6. Because the Company does not have any authorized debt, Staff's proposed return on equity is the same as the overall rate of return. *Id.*

Staff recommended the Company generally keep its current rate design with a few changes. Currently, the Company charges a flat monthly rate for its customers with three classes—residential, non-flowing, and commercial. *Id.* Staff recommended the Company maintain the flat rate design but remove the non-flowing class. Additionally, Staff recommended that the Company start reading meters for consumption data to inform future rate design options in its next general rate case. *Id.* Based on its adjustments, Staff proposed a residential monthly charge of \$55 and a commercial monthly charge of \$123, as outlined in Attachment D to Staff's Comments. *Id.* at 7. This represents a 48.6 percent increase for residential customers and a 10.8 percent increase for commercial customers. *Id.* at 7.

Staff also addressed non-recurring charges the Company imposes. Generally, Staff agreed with the Company's proposed non-recurring fees, supporting a \$75 fee for reconnections during normal business hours, a \$150 fee for reconnections after normal business hours, a \$20 shut-off charge for voluntarily disconnections during normal business hours, a \$40 shut-off charge for after business hours, a late payment charge of one percent monthly on unpaid balances at the time of the next billing date, and a \$200 hookup fee, as requested by the Company. *Id.* However, ORDER NO. 35973

Staff recommended a reduction of the Company's returned check charge from \$37 to \$20 to ensure consistency with *Idaho Code* § 28-22-105. *Id.* Staff also recommended the Company update its tariff after the Commission's final order and agreed to collaborate with the Company on this process. *Id.*

DISCUSSION AND FINDINGS

Based on our review of the record and the nature and manner of control exercised by the Company in the operation and management of the water system servicing those within Atomic City, we find it reasonable to assert formal regulatory jurisdiction over Atomic Water and its water system. Accordingly, we have jurisdiction over Atomic Water, a water utility, and the issues presented in Case No. ATW-W-23-01 pursuant to *Idaho Code*, Title 61, and the Commission's Rules of Procedure, IDAPA 31.01.01.000, *et seq.*

1. CPCN

We find it reasonable to grant the Company's request for a CPCN to provide water services within the unincorporated town of Atomic City in Bingham County, Idaho, as present and future public convenience and necessity requires issuance of such a certificate. The Company's service area is the W½ of Section 3 Township 1 North, Range 31 East Boise Principal Meridian Idaho.

As a regulated utility, the Company is required to adopt the Commission's Utility Customer Relations Rules (UCRR; IDAPA 31.21.01 *et seq.*) and Utility Customer Information Rules (UCIR; IDAPA 31.21.02 *et seq.*). These Rules provide a guide for just, reasonable, and nondiscriminatory treatment of customers. The Commission also requires the Company to adopt an accounting system consistent with the information required by the Commission's Annual Report for Small Water Companies.

2. Revenue Requirement

Although the Company requests an increase in rates to generate \$19,848 in annual revenue, the Application only supports a revenue requirement of \$16,051. Despite this, and as discussed more thoroughly below, we find an annual revenue requirement of \$17,096 to be fair, just, and reasonable.

The Company provided only three to four months of expenses as it had operated the water system only since November 2022. Staff annualized these actual expenses, generating an annual O&M expense of \$15,601. A large expense for the Company is purchased power, for which Staff recommended the Company should be allowed to recover \$4,260. The Company also

contracts with a certified water operator for \$700.00 per month. Although we find this base fee reasonable, the Company should assess any additional charges for proper accounting treatment. The Company did not provide information about Commission assessment fees, property taxes, DEQ fees, federal and state taxes, and other fees associated with providing water in its Application. Accordingly, based upon Staff's calculations, we find it reasonable to include an additional \$595 to be recovered in rates.

As noted, Bingham County operated the water system serving Atomic City prior to the Company purchasing it. During this time, Idaho Power billed the costs for street lighting in Atomic City to the same account as the water system. It is not the Company's obligation or responsibility to provide street lighting within Atomic City. The Company shall remove the billing for street lighting from the metered billing account for the water system. If residents and businesses within the Company's service territory wish to maintain street lighting for the area, then they should work separately with Idaho Power to find another means of payment, but street lighting expenses unrelated to a water utility's operations is not prudently incurred for rate making purposes.

3. Rate Base

Rate base is the asset base from which a utility provides service (*i.e.*, the sum of its net plant-in-service and working capital). Commission Rule 103 for small water companies (Policies & Presumptions for Small Water Companies, IDAPA 31.36.01.103) establishes a presumption that capital invested in the water system by the developer is considered contributed capital and is excluded from rate base. Rule 103 states:

In issuing certificates for a small water company or in setting rates for a small water company, it will be presumed that the capital investment in plant associated with the system is contributed capital, *i.e.*, that this capital investment will be excluded from rate base.

Because contributed capital funds the water system, the Company does not have plant-in-service that qualifies for rate base treatment. Nor did the Company request recovery of the purchase price or plant assets. However, the Company's daily operations require some working capital. We find Staff's recommended working capital allowance of \$1,950 with a return on equity of 11.0 percent reasonable.

4. Rate Design

The Company proposes charging a flat rate for 31 customers based on three classifications. Currently, the Company's rate structure has three classes: (1) residential, (2)

residential non-flowing, and (3) commercial. However, only those receiving services from the water system should pay for its operation. Consequently, the Company cannot charge “non-flowing” customers if they are not connected to the water system. Accordingly, we find it reasonable to eliminate the current “residential non-flowing” class, leaving only the existing residential and commercial classes in place. We further find monthly rates of \$55 for residential users and \$123 for commercial users are reasonable and will allow the Company to meet its revenue requirement.

5. Non-Recurring Charges

The Idaho Code grants the Commission authority to set rates (which includes fees) that are fair, just, and reasonable. *See Idaho Code* §§ 61-501 and -502. We have reviewed the documents submitted by Staff and the Company and find that the Company’s proposed reconnection fee of \$75 for reconnections during business hours and \$150 for reconnections outside of normal business hours to be fair, just, and reasonable. Similarly, we find the Company’s requested \$20 shut-off charge for voluntary disconnections during normal business hours and \$40 for disconnections occurring outside normal business hours reasonable. We also find the requested \$200 hook-up fee reasonable. However, the Company’s requested \$37 returned check charge must be reduced to \$20, consistent with *Idaho Code* § 28-22-105.

6. Tariff and Customer Notices

The Company submitted copies of its proposed tariff, including a schedule of non-recurring charges, that are based on the Commission’s Model Tariff. Similarly, the Company submitted copies of other required documents such as late notices, disconnection notices, the annual explanation of rates, and the annual rules summary. Staff reviewed the documents and is willing to work with the Company to ensure these documents meet Commission requirements. We direct the Company to work directly with Staff to update its tariff following issuance of this order.

ORDER

IT IS HEREBY ORDERED that the Company’s Application for a CPCN authorizing it to operate as a water utility within the State of Idaho, as described herein, is approved. The Company is authorized to collect a total revenue requirement of \$17,096 from its customers, with expenses, rate base, return on equity, rate design, and fees as approved and described more fully in this Order.

IT IS FURTHER ORDERED that the fees, rates, and charges for water service approved herein shall become effective upon the service date of this Order.

IT IS FURTHER ORDERED that the Company shall discontinue paying for street lighting within Atomic City.

IT IS FURTHER ORDERED that the Company shall work in a cooperative manner with Staff to revise its existing billing statement and rate schedules in order that they comply with the General Rules and Regulations for Small Water Utilities, the Uniform Main Extension Rules, and the Commission's rules and procedures.

IT IS FURTHER ORDERED that the Company shall submit tariffs in compliance with the rates and charges set forth and approved by this Order no later than 30 days from the service date of this Order.

THIS IS A FINAL ORDER. Any person interested in this Order may petition for reconsideration within twenty-one (21) days of the service date of this Order. Within seven (7) days after any person has petitioned for reconsideration, any other person may cross-petition for reconsideration. *See Idaho Code §§ 61-626.*

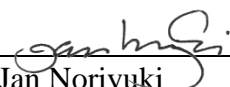
DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 31st day of October 2023.


ERIC ANDERSON, PRESIDENT


JOHN R. HAMMOND JR., COMMISSIONER


EDWARD LODGE, COMMISSIONER

ATTEST:


Jan Noriyuki
Commission Secretary

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