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Attorney for the Commission Staff

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF INVESTIGATION)	
INTO DRY CREEK WATER COMPANY,)	CASE NO. DRY-W-24-01
LLC, OWNER OF A WATER SUPPLY AND)	
DISTRIBUTION SYSTEM)	
)	REDACTED COMMENTS OF
)	THE COMMISSION STAFF
)	
)	

COMMISSION STAFF (“STAFF”) OF the Idaho Public Utilities Commission, by and through its Attorney of record, Adam Triplett, Deputy Attorney General, submits the following comments.

BACKGROUND

Dry Creek Water Company, LLC (“Company”), is a water utility located north-west of Boise. The Company owns and operates a water system that serves residents in the Dry Creek Ranch development. The Company provides water to the Dry Creek Ranch Homeowners Association (“HOA”) that in turn distributes water to the homes that have been constructed at

Dry Creek Ranch. The Company claims to serve only one customer—the HOA¹ through a contractual agreement between the two entities.

As of December 2023, 381 connections are being served. When fully built out, the system is projected to serve approximately 1,800 connections. The Company is not currently regulated by the Idaho Public Utilities Commission (“Commission”) and does not possess a Certificate of Public Convenience and Necessity (“CPCN”). Based on Staff’s review of complaints filed informally and information provided by the Company, Staff believed that a formal investigation was necessary to review whether the Company is operating as a public utility that should be regulated by the Commission. Staff recommended that the Commission open a docket initiating a formal investigation to review if the Company should be regulated, and if so, recommend further action to comply with applicable laws.

PROCEDURAL BACKGROUND

In 2021, Staff received complaints from members of the HOA regarding increasing water bills. While reviewing these complaints, Staff informally investigated the Company’s operational structure.

On November 17, 2022, Staff sent a letter to the Company requesting additional information about its ownership and structure. Over the course of 16 months, Staff and Company exchanged information and Staff reviewed the Company’s financial information.

On April 11, 2024, Staff sent a letter to the Company stating that Staff may request the Commission to open a formal docket to review whether the Company is subject to the Commission’s regulatory jurisdiction pursuant to Title 61 of Idaho Code.

On May 7, 2024, Staff filed a Decision Memorandum recommending the Commission open an investigation and directing Staff to review whether the Commission should regulate the Company.

On May 24, 2024, the Commission issued Order No. 36195, opening a docket directing Staff to investigate whether the Company should be regulated by the Commission, set a public comment date of June 12, 2024, and set a reply comment date of June 26, 2024.

¹ In a letter to Staff dated December 5, 2022, the Company stated that it: “provides water to a single customer, Dry Creek Ranch Homeowner’s Association (HOA).” (Attachment No. 1)

STAFF ANALYSIS

Staff has completed its investigation and recommends that the Commission (1) find that the Company is a water corporation operating as a public utility in Idaho; and (2) issue the Company a CPCN. In making its determination, Staff reviewed the Company's confidential financial statements² and similar Commission cases and orders dealing with small water company regulation. Staff has compiled a list of non-exclusive criteria to make its recommendation. Additionally, Staff believes the list of non-exclusive criteria can be used for a final determination in this case:

- a. Is the Company a Non-Profit or a Co-op?
- b. Does the Company operate for the service of customers at cost and not for compensation?
- c. Is the Company owned by its customers?
- d. Do the customers have control of the rates charged by the Company?
- e. Do the customers control the operations and capital expenditures of the Company?

As stated previously, the Company owns and operates a water system in Idaho. The Company is not registered with the Idaho Secretary of State as a non-profit organization. Rather the Company is registered as a limited liability corporation. The Company claims that it only has one customer, the HOA and, despite charging a fee for the water distributed to this customer, does not operate for a profit.³ The HOA in turn delivers water to the homes within its boundaries and charges each connection for its usage. Currently, members of the HOA have no input into the operations of the Company or the rates it charges for water services. Given that the water users lack input in the operations of the Company, or the rates charged by the Company to the HOA (which are passed on), water users have no other means of protection from excessive billing other than regulation as provided for in Title 61 of the Idaho Code.

In making its recommendation, Staff reviewed prior Commission cases. In Case No. MUR-W-14-01, Murray Water became a non-profit association of water users, where every customer became a member of the association. In Case No. CCH-W-15-01, Country Club Hills became a water and sewer district, where the directors were voted in by the customers in the

² Company and Staff signed a Protective Agreement November 28, 2023.

³ The Company made this claim in a letter dated December 5, 2022, a copy of which is attached to these comments.

district. In Case No. PKS-W-15-01, Packsaddle Estates was converted to a non-profit, and the Commission ruled in Order No. 33603 against further regulation because, the Company “[h]as customers who are members of the Company, with each customer having one vote...” Order No. 33603 at 6. In Case No. GNR-U-22-03, Sunnyside Park Utilities transitioned into a non-profit corporation of water users, and the Commission ruled in Order No. 35737 that the Company is “not subject to the Commission’s regulatory authority because, it is organized and operated for service at cost and not for profit.” Order No. 35737 at 7. In each of these cases, the Commission either cancelled or declined to issue a CPCN because the Company did not meet the requirements to be a regulated utility.

Requirements to be a Regulated Utility

According to Staff’s investigation, the Company is not operating for service at cost and likewise is not a mutual nonprofit, municipal corporation, or a cooperative. The Company is a public utility as defined in *Idaho Code* § 61-129(1). A public utility is an entity that is dedicated to serving the general public in its service area. The term “public utility” is defined to include “water corporations.” A “water corporation” according to *Idaho Code* § 61-125 includes every corporation “owning, controlling, operating, or managing a water system for compensation” in Idaho. *Idaho Code* § 61-125. Exceptions for corporations that do not qualify as a public utility include mutual nonprofits, cooperatives, or any other public utility that operates for service at cost and not for profit. *Idaho Code* § 61-104. The Company operations do not fit any of the exceptions created in Idaho Code Title 61.

Therefore, Staff recommends that the Commission find that the Company is a public utility under its regulatory jurisdiction pursuant to Idaho Code Title 61 and issue the Company a CPCN. To accomplish this, Staff recommends that the Commission direct the Company to work with Staff to submit a compliance filing containing any additional information necessary to issue a CPCN.

Financial Review

The Company provided confidential profit and loss statements for 2021, 2022, and 2023 showing [REDACTED]. During those years, the Company elected to use a different depreciation method than the Commission

uses for other regulated public utilities. Under *Idaho Code* § 61-525, the Commission is vested with the authority to require any and all public utilities to carry a proper and adequate depreciation account, and each public utility shall conform its depreciation accounts to the rates so ascertained. Depreciation expense is included in established rates as a means for the utility to recover its capital investments over the same time period in which customers are receiving a benefit from those investments.

[REDACTED]


According to the Commission’s Rules of Procedure, in issuing CPCNs 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 and excluded from rate base. IDAPA Rule 31.36.01.102. The presumption of contributed capital rule protects customers of a water system from paying twice for the system’s capital investments: once through the inflated value of the land at sale, and again via the rates charged by the utility. Under regulatory accounting, the contributed capital will offset the original cost of the contributed assets and the Company would be ineligible to earn a return on those investments.

STAFF RECOMMENDATION

Staff recommends the Commission issue Dry Creek Water Company, LLC a CPCN. Staff further recommends the Commission order the Company to file a compliance filing and to work with Staff to submit the following: (1) tariffs; (2) a notice to customers regarding

regulation; (3) a full legal description of the location and boundaries of the area to be served (i.e. metes and bounds); and (4) a map of suitable scale corresponding with the legal description. Lastly, Staff recommends the Commission order Staff to open another docket to evaluate whether its rates are fair, just, and reasonable.

Respectfully submitted this 12th day of June 2024.



Adam Triplett
Deputy Attorney General

Technical Staff: Travis Culbertson

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IDAHO PUBLIC
UTILITIES COMMISSION

December 5, 2022

Mr. Dayn Hardie
Deputy Attorney General
Idaho Public Utilities Commission
PO Box 83720
Boise, ID 83720-0074

Dear Mr. Hardie,

The intent of this letter is to respond to your letter dated November 17, 2022 and the questions therein. Dry Creek Water Company, LLC ("Company") is a limited liability corporation organized in the State of Idaho.

The Company does not intend to provide water to customers as an Idaho Public Utilities Commission ("Commission") regulated utility. Your letter states that a water corporation "is a regulated public utility if it performs a service or delivers a commodity directly to the public." The Company does neither. It does not perform services directly for the public and does not deliver water directly to the public. Accordingly, the Company is not a regulated public utility. Instead, the Company provides water to a single customer, Dry Creek Ranch Homeowner's Association (HOA). We understand that the HOA is not a regulated public utility. Water is supplied to the HOA through a contractual agreement between the Company and the HOA.

The Company intends to continue serving only one customer, which is the HOA. The Company will not supply water to the public.

Please direct any questions to Ann Dickey at 208-297-9808.

Sincerely,



James H. Hunter
Manager

Attachment No. 1
Case No. DRY-W-24-01
Comments
June 12, 2024



CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT I HAVE ON THIS 12TH DAY OF JUNE, 2024, SERVED THE FOREGOING **REDACTED COMMENTS OF THE COMMISSION STAFF**, IN CASE NO. DRY-W-24-01 TO THE FOLLOWING AS INDICATED BELOW:

James H. Hunter
Manager Dry Creek Water Company
923 S. Bridgeway Place
Eagle, ID 83616
Via U.S. Mail

Norman Semanko
Parsons Behle & Latimer
800 W. Main St., Ste. 1300
Boise, ID 83702
nsemanko@parsonsbehle.com
Via E-Mail


PATRICIA JORDAN, SECRETARY