

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

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| IN THE MATTER OF FALLS WATER CO., |) | CASE NO. FLS-W-19-02 |
| INC.'S APPLICATION TO AMEND |) | |
| CERTIFICATE OF PUBLIC CONVENIENCE |) | ORDER NO. 34614 |
| AND NECESSITY NO. 236 |) | |
| |) | |

On December 2, 2019, Falls Water Co., Inc. (“Falls Water” or “Company”) applied to the Commission to amend the Company’s certificate of public convenience and necessity (“CPCN”) to add 13 areas contiguous to its current certificated service area, and to remove one area from its certificated service area. The Company also requested approval of a transaction with the City of Idaho Falls.

On December 27, 2019, the Commission issued a Notice of Application and Notice of Modified Procedure, setting a March 11, 2020 comment deadline and a March 18, 2020 reply deadline. Order No. 34517.

On February 4, 2020, Commission Staff recommended to the Commission that Case No. FLS-W-19-02 be bifurcated to allow the Company’s transaction with the City of Idaho Falls to be considered as a separate case. The Commission bifurcated the case and created Case No. FLS-W-20-01, issuing a final order in that case on February 25, 2020. Order No. 34561.

Commission Staff filed comments in Case No. FLS-W-19-02, and the Company filed reply comments.

THE APPLICATION

The Company requested approval to amend its CPCN to add 13 areas contiguous to its certificated service area. The Company stated it serves customers in Areas 1 through 8 and Area 13. Falls Water expects to serve Areas 9 through 11. The Company requested approval to remove Area 14, which has been annexed by the City of Idaho Falls, from its certificated service area.

The Company asked to add Area 12 (“Honey Bee Acres”) to its certificated service area. Honey Bee Acres is a separate water system surrounded by Falls Water’s certificated territory. The Company stated Honey Bee Acres’ operator contacted Falls Water about connecting the Honey Bee Acres system to Falls Water’s system.

To the extent necessary, Falls Water requested Commission approval of a memorandum of understanding (“MOU”) it intends to sign with the City of Idaho Falls. The MOU

would help Falls Water and the City of Idaho Falls plan the expansion of their water systems to avoid unnecessary duplication of infrastructure.

COMMENTS

Staff Comments

Staff recommended the Commission approve Falls Water’s proposal to amend the Company’s CPCN to add Areas 1 through 11 and Area 13. Likewise, Staff recommended approval of the Company’s proposal to remove Area 14 from Falls Water’s certificated service area, as this area has been annexed by the City of Idaho Falls. However, Staff recommended the Commission reject the Company’s proposal to include Honey Bee Acres in the Company’s certificated service territory as being premature.

Staff reviewed the proposed service territory for accuracy, compliance with procedural Rules 112.02 through .03 (IDAPA 31.01.01.112.02 through 03), and to ensure the expansion would not overlap or otherwise interfere with other water utilities’ territories or expansion plans. Staff reviewed the maps and legal descriptions of the 13 areas the Company plans to add to its certificated service area and is satisfied the descriptions accurately represent the proposed service area. The maps and legal descriptions also complied with IDAPA 31.01.01.112.02 through 03. Staff found the expansion would not interfere with any nearby water system.

While Staff recommended Areas 1 through 11 and Area 13 be added to Falls Water’s certificated service area, it opposed the inclusion of Area 12—Honey Bee Acres. Staff noted the Company has not yet executed an agreement with Honey Bee Acres. Staff pointed out that without a signed agreement, it cannot determine whether the transaction would be fair to Honey Bee customers and Falls Water’s existing customers. Additionally, Staff noted that “[a]s long as Honey Bee continues to serve the area as a separate entity, Staff believes Falls Water does not have an exclusive right to serve the area.” Staff Comments at 4. Therefore, Staff recommended the Commission not include Honey Bee Acres in Falls Water’s certificated service area at this time.

Staff supported removal of Area 14 from Falls Water’s certificated service area, noting that the area has been annexed by the City of Idaho Falls. Regarding the Company’s proposed MOU with the City of Idaho Falls, Staff noted that “[b]ecause the Idaho Falls MOU does not deal with the transfer of customers, assets, or other issues that have an identifiable impact on rates, Staff believes that it is unnecessary for the Company to seek Commission approval of the Idaho Falls MOU.” Staff Comments at 4.

Finally, Staff recommended the Commission order the Company to work with Staff to update and file conforming documents with the Commission within three months of the final order's issuance.

Falls Water's Reply Comments

In its reply comments, Falls Water supported all of Staff's recommendations. Regarding Staff's last recommendation, the Company stated it "is prepared to work with Staff to file documents conforming to changes to the CPCN following issuance of the final order in this case." Falls Water Reply Comments at 2.

COMMISSION FINDINGS AND DECISION

The Commission has jurisdiction and authority over Falls Water and the issues raised in this case, pursuant to Title 61 of the Idaho Code and the Commission's Rules of Procedure, IDAPA 31.01.01.000, *et seq.* Based on our review of the record, we approve the addition of Areas 1 through 11 and Area 13 to Falls Water's certificated service area, and approve the removal of Area 14 from the Company's certificated service area. But we reject Falls Water's proposal to include Area 12, Honey Bee Acres, in the Company's certificated service area.

The certificated service area of a public utility represents the area which only that public utility may serve. This is part of the regulatory compact between a public utility and a regulator. No other water utility—whether regulated by this Commission or not—should exist within the certificated service area of a Commission-regulated water corporation. It is for this reason we reject Falls Water's proposal to include Honey Bee Acres within its certificated service area. The Honey Bee Acres water system serves 18 residential customers. While the Company appears to be negotiating the sale of the Honey Bee Acres assets to Falls Water, the record indicates no agreement has yet been reached with the owner(s) of Honey Bee Acres. Therefore, it would be premature for us to add Honey Bee Acres to the Company's certificated service territory at this time.

Areas 1 through 8 and Area 13 are already being served by Falls Water, and Areas 9 through 11 are areas in which Falls Water will likely provide service in the future. Adding these areas to Falls Water's certificated service territory is in the public interest and will not interfere with the operations of any other public utility.

The MOU with the City of Idaho Falls does not require our approval as it does not deal with the transfer of customers, assets, or other issues that would impact rates. However, the MOU

may be material to future cases before this Commission. If the Company executes an MOU with the City of Idaho Falls, it should provide a copy of the signed MOU and all related agreements to the Commission.

ORDER

IT IS HEREBY ORDERED that CPCN No. 236 be amended to include Areas 1 through 11 and Area 13. However, Falls Water's proposal to include Area 12 in its CPCN is rejected.

IT IS FURTHER ORDERED that CPCN No. 236 be amended to remove Area 14.

IT IS FURTHER ORDERED that Falls Water file conforming documents regarding the changes to its CPCN with the Commission within 60 days from the date of issuance of this Order.

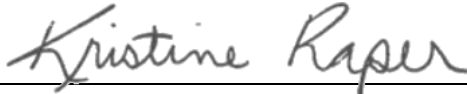
THIS IS A FINAL ORDER. Any person interested in this Order may petition for reconsideration within twenty-one (21) days of the service date of this Order. Within seven (7) days after any person has petitioned for reconsideration, any other person may cross-petition for reconsideration. See *Idaho Code*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

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DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 2nd day of April 2020.



PAUL KJELLANDER, PRESIDENT

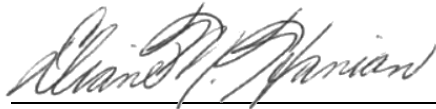


KRISTINE RAPER, COMMISSIONER



ERIC ANDERSON, COMMISSIONER

ATTEST:



Diane M. Hanian
Commission Secretary

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