

MATT HUNTER
DEPUTY ATTORNEY GENERAL
IDAHO PUBLIC UTILITIES COMMISSION
PO BOX 83720
BOISE, IDAHO 83720-0074
(208) 334-0318
IDAHO BAR NO. 10655

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Street Address for Express Mail:
11331 W CHINDEN BLVD, BLDG 8, SUITE 201-A
BOISE, ID 83714

Attorney for the Commission Staff

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

**IN THE MATTER OF FALLS WATER CO.,)
INC.'S APPLICATION FOR APPROVAL OF) CASE NO. FLS-W-20-04
ACQUISITION OF THE ASSETS OF)
MORNING VIEW WATER COMPANY)
)
) COMMENTS OF THE
) COMMISSION STAFF
)
)**

COMES NOW the Staff of the Idaho Public Utilities Commission, by and through its attorney of record, Matt Hunter, Deputy Attorney General, and in response to the Notice of Application, Modified Procedure, Public Workshop and Public Hearing issued in Order No. 34774 on September 9, 2020, in Case No. FLS-W-20-04, submits the following comments.

BACKGROUND

On July 31, 2020, Falls Water Co., Inc. ("Falls Water") applied for Commission approval of Falls Water's acquisition of the water system assets of Morning View Water Company ("Morning View"). Falls Water also asked for approval to transfer Morning View's certificate of public convenience and necessity ("CPCN") to Falls Water.

Falls Water is a Commission-regulated water corporation holding CPCN No. 236. Falls Water has operated a water system near Idaho Falls since 1958 and serves approximately 5,500 customers. Falls Water is a direct subsidiary of NW Natural Water of Idaho, LLC, which through its parent companies is owned by NW Natural Holdings.

Morning View is a Commission-regulated water corporation serving about 118 residential customers under CPCN No. 314. Morning View's service territory is in and around Rigby and is about 9 miles from Falls Water's office location.

Under the proposed transaction, Falls Water will acquire Morning View's water system assets. Falls Water states that its employees will operate the Morning View water system.

On July 2, 2020, Falls Water and Morning View signed an Agreement governing the transaction. The Agreement is conditioned upon Commission approval of all requests in the Application.

Falls Water asserts it "is not requesting any change to rates, rate structure, or other charges in this Application," and that "[a]ny future changes will be based on prudently incurred capital expenditures and other accepted ratemaking principles." Application at 4. Falls Water requests CPCN No. 314 be transferred to Falls Water.

STAFF ANALYSIS

Idaho law does not specifically address the acquisition of water companies. As it has done in previous water company acquisition cases, Staff relied on the standards outlined in *Idaho Code* § 61-328 related to the sale of electric utilities. Those standards dictate that:

- a. The transaction must be consistent with the public interest;
- b. The cost of and rates for supplying service must not be increased by reason of such transaction; and
- c. The applicant for such acquisition or transfer must have the bona fide intent and financial ability to operate and maintain the system in the public service.

Based on its review of the *Idaho Code* § 61-328 requirements, the Application, responses to production requests, and Department of Environmental Quality ("DEQ") surveys, Staff recommends approval of Falls Water's acquisition of Morning View assets. Staff also recommends Morning View's CPCN No. 314 be transferred to Falls Water.

During the investigation Staff discovered that CPCN No. 314 contained an error and recommends that the CPCN be corrected to include the territory currently served by Morning View.

A. The Transaction is Consistent with the Public Interest.

Staff notes that NW Natural Water Company, LLC, in conjunction with its parent companies, is actively seeking to expand its operations in Idaho. NW Natural Water Company, LLC and associated companies have shown commitment to their growth plan through the acquisition of Falls Water (FLS-W-18-01), Spirit Lake East/Lynnwood Water (SPL-W-19-01), Diamond Bar Estates (DIA-W-19-01), Bar Circle S Water (BCS-W-19-01), Taylor Mountain Water and Sewer District (FLS-W-19-01), Happy Valley Water/Bitterroot Water (GSW-W-19-01), and the submission of this Application. The acquisition of Morning View by Falls Water may provide benefits through operational efficiencies and economies of scale. Falls Water will be able to provide safe and reliable service to Morning View customers without adding new employees.

Additionally, Falls Water Company's professional and licensed employees, who are based near Morning View's current location, have the business experience and water system expertise to operate and maintain the Morning View Water business assets. Because of the location, Falls Water will be able to provide 24-hour response to repairs or water quality issues.

B. The Cost of and Rates for Supplying Service will Not Increase Due to the Transaction.

Falls Water will maintain Morning View's existing rates and charges post-acquisition. Application at 9. However, Falls Water has requested additional regulatory treatment regarding this acquisition. Falls Water considers Morning View to be a "distressed small water utility." Application at 17. To make this acquisition economically viable, Fall Water requests that the Commission treat prudently incurred capital expenditures as 100% equity for ratemaking purposes until Morning View reaches a 50/50 debt and equity capital structure.

In the Morning View's most recent rate case (Case No. MNV-W-19-01) the capital structure was approved at 99.76% Debt and 0.24% Equity due to a large Idaho Drinking Water Revolving Loan. See Order No. 34542. This heavy weighting towards debt has been a concern for Staff and illustrates how Morning View can be considered as a "distressed small water utility."

Staff reviewed the proposed regulatory treatment based on the impact to customers and what would closely align with the requirement in *Idaho Code* § 61-328(3)(b). In addition to the proposed treatment, Staff reviewed other options such as an acquisition adjustment or a hypothetical rate structure. When comparing these options, Staff found Falls Water's proposal

minimizes future rate impacts to customers while adhering to *Idaho Code* § 61-328(3)(b) since any capital expenditures subject to this treatment would be incurred outside of this proceeding. For these reasons, Staff supports Falls Water's request to treat prudently incurred capital expenditures as 100% equity until a more reasonable capital structure is obtained.

C. Falls Water has the Bona Fide Intent and Financial Ability to Operate and Maintain the System in the Public Service.

Falls Water has demonstrated its bona fide intent and financial ability to provide continued operation of the system and reliable service. Falls Water has committed in its Application to provide safe and reliable service and to meet the infrastructure needs of Morning View customers. If the transaction is approved, Falls Water employees will assume the roles previously undertaken by the current owners of Morning View. The licensed water system operator for Falls Water will serve as the licensed water system operator for Morning View.

Water systems routinely require repair, replacement, and extension of infrastructure to provide reliable and ample water service to customers. Financing this infrastructure at a reasonable cost is a challenge for smaller water systems. Falls Water, through its parent company, Northwest Natural Holdings, has the necessary access to capital markets to proactively address Morning View's infrastructure needs in a timely manner and at a competitive cost. Northwest Natural Holdings has an A2 credit rating from Moody's and an AA- credit rating from Standard and Poor's. Northwest Natural Holdings' market capitalization exceeds \$2 billion. Improved access to capital markets usually helps lower financing costs that ultimately are passed on to customers.

Capital Projects

Although Falls Water has not definitively identified any specific capital expenditures or improvements for the Morning View water system, it has identified three potential capital improvement projects. In its Application, and in response to Staff's Production Request Nos. 1 and 2, Falls Water may need to upgrade one of Morning View's well pumps, conduct a system-wide leak check, and either acquire additional water rights or implement a water conservation plan.

According to Falls Water, one of Morning View's three well pumps is inoperative and may need to be replaced at an estimated cost of about \$10,000. Falls Water Response to Staff

Production Request No. 1. The 7.5 horsepower pump is located in a small, 6" diameter well with insufficient capacity to serve as a back-up well in the event the Company's primary well were to become inoperative. Staff has not identified an immediate need for this well; however, its capacity could be used to support future expansion of the Morning View water system.

Falls Water has also stated that it may conduct a system-wide leak check at an estimated cost of approximately \$6,000. Falls Water Response to Staff Production Request No. 2. Morning View's 2019 Annual Report indicates that there is a substantial discrepancy between the quantity of water pumped by the Company (43,583,526 gallons) and the quantity sold (29,721,000 gallons). Staff has identified similar discrepancies in Morning View annual reports dating back to 2017, the first year that water was metered. These discrepancies are not necessarily due to leaks, and it is possible that the production or consumption meters may be improperly calibrated; however, best practices dictate that the system operator investigate, identify, and correct the source of the discrepancy between production and sales data. This investigation may require a leak check.

Falls Water has also stated that it may be necessary to either acquire additional water rights, or to implement a conservation plan. According to Falls Water, the total amount of water sold and the system diversion rate may have exceeded the maximum allowed under Morning View's water rights. According to Morning View's 2016 Annual Report, the Company sold 222-acre feet (72,419,000 gallons) in 2016, which is considerably greater than the Company's 156-acre foot annual water right. Staff cautions, however, that there appear to be many errors in the Company's annual reports. For example, although the Company claims to have sold 72,419,000 gallons in 2016, it only claims to have pumped 48,965,000 gallons during the same year. Staff agrees with Falls Water that a data-driven assessment of the Company's water usage can only take place after Falls Water assumes responsibility for operating the Morning View water system.

CPCN Describes the Wrong Parcel

Falls Water requests that CPCN No. 314, currently held by Morning View, be transferred to Falls Water. Application at 7. During its investigation, Staff found an error in the property description of CPCN No. 314. As currently written, CPCN No. 314 describes a location approximately six miles west of the territory being served by Morning View. Staff believes that the property description in CPCN No. 314 should be amended to:

N 1/2, NE 1/4, Section 30 T04N R039 E BM

Company Tariff

If the sale is approved and Falls Water wishes to create a single, combined tariff for Falls Water, Staff recommends that the Company work with Staff to create separate rate schedules for Morning View.

Company Documents

Falls Water will need to update customer billing documents to include the new phone numbers, emergency contact numbers, mailing address, and office location. Staff is willing to work with Falls Water to update its billing and collection documents, Explanation of Rates, and Annual Rules Summary. Staff recommends that Falls Water work with Staff to make any necessary revisions within three months of issuance of the final order in this case.

2020 Annual report and 2020 Calendar Year Annual Assessment

To determine the responsibilities of the 2020 Annual Report and IPUC annual assessment after the sale, Staff requested if Falls Water and Morning View had an agreement on who would be responsible for the Annual report and assessment. Falls Water confirmed that it will be responsible for both the 2020 Annual Report and the IPUC annual assessment for the calendar year 2020.

CUSTOMER NOTIFICATION AND CUSTOMER COMMENTS

Rule 125 of the Commission's Rules of Procedure does not require direct customer notification unless the Company is requesting a rate change. IDAPA 31.01.01.125. In its Application, Falls Water stated its intention to publish a customer notice in the local newspaper regarding its agreement to purchase Morning View.

On September 29, 2020, the company stated that it had sent Morning View customers a direct notice on August 6, 2020. The notice offered contact information for Northwest Natural, Morning View, and the Commission; however, it did not include Falls Water contact information.

If the Commission approves the sale of the system, Staff recommends that Falls Water provide another direct notice to customers of the purchase—either through a separate mailing, a message on bills, or as an insert sent with bills. Staff also recommends that Falls Water include the new contact information, including telephone numbers, emergency phone numbers, mailing address, and billing and payment information.

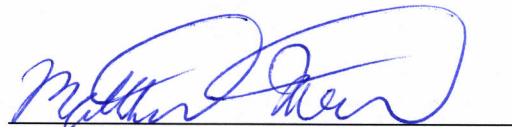
As of the October 13, 2020, there have been no comments submitted to this case. No questions were asked at the online customer workshop held on September 30, 2020.

STAFF RECOMMENDATION

Staff recommends the Commission:

1. Approve Falls Water's acquisition of Morning View water system assets;
2. Approve the regulatory treatment that all prudently incurred capital expenditures are treated as 100% equity for ratemaking purposes until the Morning View reaches a more reasonable capital structure;
3. Approve the property description in CPCN No. 314 be amended to: N ½, NE ¼, Section 30, T04N, R039E BM;
4. Order Falls Water to notify the customers directly of the sale of Morning View to Falls Water, either through a separate mailing, a message on bills, or as a bill insert;
5. Order Falls Water to work with Staff to create separate rate schedules following issuance of the final order in this case; and
6. Order Falls Water to work with Staff to make any necessary revisions to its billing and collection documents, Explanation of Rates, and Annual Rules Summary within three months of issuance of the Commission's final order in this case.

Respectfully submitted this 15th day of October 2020.



Matt Hunter
Deputy Attorney General

Technical Staff: Joseph Terry
Bentley Erdwurm
Michael Morrison
Chris Hecht

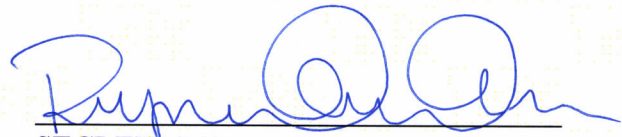
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT I HAVE THIS 15th DAY OF OCTOBER 2020, SERVED THE FOREGOING **COMMENTS OF THE COMMISSION STAFF**, IN CASE NO. FLS-W-20-04, BY E-MAILING A COPY THEREOF, TO THE FOLLOWING:

PRESTON CARATER
CHARLIE BASER
601 W BANNOCK ST
BOISE ID 83702
E-MAIL: prestoncarter@givenspursley.com
charlebaser@givenspursley.com
kendra@givenspursley.com

ERIC W NELSEN
SR REGULATORY ATTORNEY
NW NATURAL
220 NW 2ND AVE
PORTLAND OR 97209
E-MAIL: eric.nelsen@nwnatural.com



SECRETARY