

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE INVESTIGATION) CASE NO. GNR-W-17-01
INTO WHETHER VP, INC. IS A PUBLIC)
UTILITY SUBJECT TO REGULATION BY)
THE IDAHO PUBLIC UTILITIES) ORDER NO. 35998
COMMISSION)
)

In 2017, the Idaho Public Utilities Commission (“Commission”) received an inquiry regarding the regulatory status of VP, Inc. (“VP”) a private water and sewer company located near Sandpoint, Idaho. VP was viewed at that time as part of the neighborhood association and, therefore, was not subject to Commission regulation. Consequently, VP does not operate under a Certificate of Public Convenience and Necessity (“CPCN”). An initial investigation led Commission Staff (“Staff”) to conclude that VP might be operating as a public utility and request that the Commission investigate further. Order No. 33929 at 1. We found it reasonable to investigate VP’s operations and directed Staff to determine if it should be considered a regulated utility under the Idaho Code and if any steps were needed to comply with Idaho law. However, protracted litigation between VP and Valiant Idaho, LLC, (“Valiant”) over ownership of the underlying water system and service obligations stalled Staff’s investigation for years.

On February 6, 2023, Gem State Water Company, LLC, (“Gem State”) applied to the Commission for approval of its acquisition of the assets of the water supply system of Valiant and another business entity in Case No. GSW-W-23-01. This sale resolved many of the legal issues impeding Staff’s investigation of VP.

On March 9, 2023, the Commission issued a Notice of Continuing Investigation of VP, directing the Company to respond to discovery requests from Staff, and notifying VP that Staff would recommend (1) whether VP should be deemed a regulated public utility; (2) whether a CPCN is required; and (3) whether any further action related to the adequacy of service or rate setting is necessary. Order No. 35700.

On July 3, 2023, the Commission issued a Notice of Modified Procedure, establishing dates for public comment and the Company’s reply. Order No. 35842.

On July 25, 2023, Staff filed the only comments to which the Company did not reply.

Having reviewed the record, we conclude that VP is a water corporation subject to regulation as a public utility and, therefore, direct it to take further action as described below.

STAFF COMMENTS

Staff recommended that the Commission regulate VP as a public utility. In making this recommendation, Staff indicated that VP owns and operates both a private water system providing 64 customers in the Hidden Lakes subdivision near Sandpoint, Idaho, with potable water and the sewer system for the subdivision. Because VP's financial statements indicated that VP is operating that water system for compensation, Staff reasoned that it was both a "water corporation" and "public utility" as defined in the Idaho Code. Accordingly, Staff recommended the Commission order VP to apply for a CPCN within 60 days of a final order recognizing VP as a public utility. Staff further recommended that VP be ordered to establish clearer service territory boundaries, demonstrate the separation of its water system from that of Valiant as directed in *Genesis Golf Builders, Inc., v. Pend Oreille Bonner Development, LLC*, Case No. CV-2009-1810 (1st Dist. Bonner) (2017) ("Case No. CV-2009-1810"), and provide other documentation described below with its CPCN application.

1. Service Territory and System Specifications

Despite believing that VP's current water system¹ could supply existing customers, Staff expressed concern that the system had been expanded pursuant to a 2018 development plan. Staff indicated that, based on VP's responses to production requests, it was unclear whether this system expansion was sold to Gem State Water or VP was still operating it. Staff further noted that, prior to issuing a CPCN to VP, the Commission should obtain assurance that VP's water system does not overlap with any other systems operating in the area. Consequently, Staff recommended that the Commission order VP to submit a comprehensive list of assets required to serve its customers along with a legal description and system map of its proposed service territory, showing the location of its infrastructure, current customers, and any potential expansion within its service territory, when applying for a CPCN.²

¹ Staff described the water system as consisting of two metered wells used for groundwater pumping, and two in-ground concrete water storage tanks which act as storage reservoirs for system capacity and help maintain system pressure. The water system is also chlorinated and operated by licensed operators.

² Staff indicated that, in response to its production requests seeking a legal description of VP's service area, VP referenced subdivision additions and parcel numbers for the Hidden Lakes subdivision. Staff believed this response was an inadequate legal description of the service area for purposes of applying for a CPCN.

In addition to inadequately describing VP's actual service territory, Staff indicated that VP's discovery responses were insufficient to establish that the water system was installed in compliance with local ordinances using standard industry practices. To determine whether VP's water system can reasonably provide reliable service to customers, Staff recommended that the Commission order VP to provide complete documentation of the system's design and installation.

2. Water System Separation

Staff noted that, in Case No. CV-2009-1810, VP and Valiant were ordered to physically separate their respective water systems. According to Staff, the written order directing this separation provides, in pertinent part:

d. VP and Valiant shall cooperate to allow Valiant, and its agents, engineers, contractors, and/or employees, to disconnect and separate, as efficiently and cost effectively as reasonably possible, the water system for the real properties within The Idaho Club's PUD ("PUD Water System"), which shall thereafter be operated and maintained by Valiant, from the water system for the real properties that are not within The Idaho Club's PUD ("Hidden Lakes' Water System"), which shall thereafter be operated and maintained by VP;

e. Valiant and VP shall cooperate to disconnect and separate the PUD Water System from the Hidden Lakes' Water System in such a manner that it will cause as little disruption as is reasonably possible in water services to existing residents/customers, properties, and/or any other recipients.

Staff Comments at 6-7 citing *Genesis Golf Builders, Inc., v. Pend Oreille Bonner Development, LLC*.

Staff further observed that the Idaho Department of Environmental Quality ("DEQ") requires physical separation of water systems under IDAPA 58.1.08.542(2)(d)-.543. After VP represented that valves separate its water system from Valiant's, Staff learned that DEQ does not consider valves to constitute adequate physical separation. Because VP did not provide evidence demonstrating adequate physical separation of the water systems, Staff recommended that VP provide such evidence and DEQ acknowledgement of the separation when applying for a CPCN.

3. Tariff

Staff recommended that the Commission order VP to include a tariff containing proposed rates along with an Explanation of Rates and Annual Rules Summary with its CPCN application. Staff indicated it would assist VP in creating a tariff—including rules and regulations based upon the most recent Model Tariff—to ensure compliance with the Commission's rules and regulations.

4. Customer Notice and Documentation

Staff also recommended that VP notify its customers upon applying for a CPCN, either through a separate mailing, a message on bills, or as an insert sent with regular customer billing. Despite not being required under the Commission's Rules of Procedure, such a notice would facilitate customer participation in the application process. Staff indicated its willingness to assist VP in creating notices and press releases. Similarly, Staff indicated its willingness to work with VP to ensure that its billing notices, collection documents, and other company materials are updated to comply with the Utility Customer Relations Rules.

DISCUSSION AND FINDINGS

Based on our review of the record, we find that VP is a water corporation subject to regulation as a public utility. The Commission has the authority to “supervise and regulate every public utility” in Idaho. *Idaho Code* § 61-501. A “water corporation” is a “public utility.” *Idaho Code* § 61-129. As defined in *Idaho Code* § 61-125, a “water corporation” is “every corporation . . . owning, controlling, operating or managing any water system for compensation” within Idaho. Based on the financial statements provided to the Commission, it appears VP is operating a water system³ for compensation near Sandpoint, Idaho. Accordingly, VP falls within the statutory definition of a public utility subject to regulation by the Commission.

Public Utilities must obtain a CPCN from the Commission. *Idaho Code* § 61-528. As previously stated, VP does not currently operate under a CPCN. Accordingly, because we have concluded VP is a public utility, it must apply for a CPCN. When considering whether to grant a CPCN, the Commission may consider both the financial ability of the applicant and the necessity of additional service in the community. *Id.* We find it reasonable to require VP to take the additional steps described below in applying for a CPCN.

Evaluation of the necessity of VP's water system within the community it services will require clear definition of its service territory. To ensure that its water system does not overlap with any other systems—regulated or not—operating in the area, VP must submit a comprehensive list of assets required to serve its customers along with a legal description and system map of its

³ Under *Idaho Code* § 61-124, a “water system” is, with the exception of certain canal and projects, “all reservoirs, tunnels, shafts, dams, dikes, headgates, pipes, flumes, canals, structures and appliances, and all other real estate, fixtures and personal property, owned, controlled, operated or managed in connection with or to facilitate the diversion, development, storage, supply, distribution, sale, furnishing, carriage, apportionment or measurement of water for power, irrigation, reclamation or manufacturing, or for municipal, domestic or other beneficial use for hire.”

proposed service territory that shows the location of its infrastructure, current customers, and any potential expansion within its proposed service territory. Similarly, evaluation of VP's financial ability to provide safe and reliable service to customers requires clarity regarding the extent and status of its water system. Accordingly, VP must provide complete documentation of the design and installation of its water system along with evidence demonstrating adequate physical separation of its water system from that of Valiant and DEQ acknowledgement of the separation when applying for a CPCN.

Additionally, one function of the Commission is to ensure that rates and charges collected by public utilities are just and reasonable. *Idaho Code* § 61-502. Accordingly, we find it reasonable to require VP to include in its application for CPCN a tariff containing proposed rates and an Explanation of Rates and Annual Rules Summary.

ORDER

IT IS HEREBY ORDERED that VP apply to the Commission for a CPCN to provide water service to its customers in Idaho as a regulated utility within 60 days of the service date of this order.

IT IS FURTHER ORDERED that VP submit with its application for a CPCN (1) evidence of the physical separation of its water system from that of Valiant; (2) acknowledgement of the separation by the DEQ; (3) a comprehensive list of assets required to serve its customers; (4) a legal description and system map of its proposed service territory that shows the location of its infrastructure, current customers, and any potential expansion within its proposed service territory; (5) complete design documentation and installation drawings of its water system; and (6) a tariff containing proposed rates and an Explanation of Rates and Annual Rules Summary.

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 14th day of November 2023.



ERIC ANDERSON, PRESIDENT

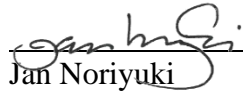


JOHN R. HAMMOND JR., COMMISSIONER



EDWARD LODGE, COMMISSIONER

ATTEST:



Jan Noriyuki
Commission Secretary

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