

DECISION MEMORANDUM

TO: COMMISSIONER KJELLANDER
COMMISSIONER RAPER
COMMISSIONER ANDERSON
COMMISSION SECRETARY
COMMISSION STAFF
LEGAL

FROM: BRANDON KARPEN
DEPUTY ATTORNEY GENERAL GNR-W-17-01

DATE: SEPTEMBER 14, 2017

SUBJECT: INVESTIGATION INTO VP, INC., AN UNREGULATED NORTHERN IDAHO WATER COMPANY

VP, Inc., is a private water and sewer company located near Sandpoint, Idaho. The Company has been viewed as part of the neighborhood association and thus has not been regulated by the Commission and does not possess a certificate of public convenience and necessity. The operating conditions of the Company have changed in recent years and Staff believes that a review to determine if the Company's business should be regulated is appropriate. Accordingly, Staff is requesting that the Commission direct the Staff to open an investigation into VP to determine if the Company should be regulated, and if so, recommend further action to comply with applicable law.

BACKGROUND

VP serves a residential development and golf club called the Idaho Club. In 2016, a large undeveloped portion of the development, and land holding the golf course, and certain sewage and water infrastructure, was purchased by Valiant Idaho, LLC in a Sheriff's sale. The sewage infrastructure in Valiant-owned land includes the system's wastewater lagoon and underground piping. With regard to water infrastructure, two large storage reservoirs, several booster pumps and piping is located in the same area. VP owns and operates two groundwater wells, and associated plant, and provides service to a number of residential properties that were not part of the Sheriff's sale. The water and sewer system are completely interconnected.

Among other issues, the subject of plant ownership and service to the Valiant parcels has been the subject of litigation in state court. *See Genesis Golf Builders v Pend Oreille Bonner, et al.*, Case No. cv-2009-0001810 (Idaho 1st Dist., April 2017) (order granting injunction). There, it

was ordered that VP construct all necessary infrastructure to isolate the sewer and water systems, and that Valiant continue to provide sewer service to VP customers until the systems are isolated. *Id.* At 2-4. As the owner/operator of the system's two wells, VP was also ordered to provide the Valiant parcels with water service until Valiant constructs its own well. VP was also ordered to comply with "all applicable rules and regulations of the IDEQ and/or the Idaho Public Utilities Commission." *Id.* At 6.

Valiant has inquired with Commission Staff about VP's status with the Commission, and after finding out that VP was not currently regulated, indicated that VP is not being run as an entity of the neighborhood association, but rather it is being run for profit and should fall under Commission jurisdiction. Valiant has asserted that VP is charging exorbitant rates to the owners of the Valiant parcels, and requested that the Commission look into whether or not VP should be regulated by the Commission.

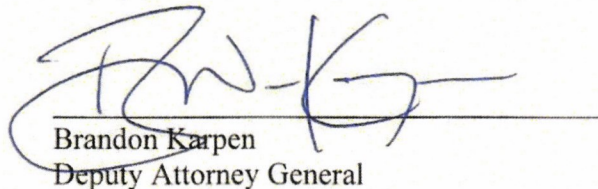
STAFF RECOMMENDATION

Staff believes that, with the complaints from Valiant and the district court order, there is sufficient evidence to merit an investigation into VP. An investigation would include data requests to VP, and request to examine company records, concluding in a recommendation to the Commission for further action, if any.

Due to the nature of the shared system, the associated litigation, and other factors, Staff believes that this investigation may not be completed for some time. Staff will continue to update the Commission of progress in the investigation, and provide recommendations for further action if necessary. Staff further notes once the water system is divided, a similar investigation into Valiant may be appropriate.

COMMISSION DECISION

Does the Commission wish to direct Staff to open an investigation into VP to determine if the utility should be regulated by the Commission, and recommend further action, as outlined above?


Brandon Karpen
Deputy Attorney General

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