

DECISION MEMORANDUM

TO: COMMISSIONER ANDERSON
COMMISSIONER HAMMOND
COMMISSIONER LODGE
COMMISSION SECRETARY
COMMISSION STAFF
LEGAL

FROM: RILEY NEWTON
DEPUTY ATTORNEY GENERAL

DATE: MARCH 7, 2023

SUBJECT: IN THE MATTER OF THE INVESTIGATION INTO VP, INC., AN
UNREGULATED NORTHERN IDAHO WATER COMPANY; CASE NO.
GNR-W-17-01.

BACKGROUND

On September 14, 2017, Commission Staff (“Staff”) submitted a Decision Memo recommending the Idaho Public Utilities Commission (“Commission”) open an investigation into VP, Incorporated¹ (“VP”), “a private water and sewer company located near Sandpoint, Idaho”, after concerns that it was illegally operating as a public utility. 2017 Decision Memo at 1, Case No. GNR-W-17-01.

Staff noted that VP “serve[d] a residential development and golf club called the Idaho Club.” *Id.* Staff further noted that, in 2016, Valiant Idaho, LLC (“Valiant”) had purchased “land holding the golf course” and part of the residential development as well as “certain water and sewage infrastructure.” *Id.* However, as Staff stated, “the subject of plant ownership and service to the Valiant parcels has been the subject of litigation in state court.” *Id.*

Staff noted that VP served other parts of the residential development, including parcels owned by Valiant, using a portion of the same water and sewage infrastructure Valiant owned. *Id.* Valiant alleged that VP was overcharging owners of Valiant parcels for water and recommended the Commission investigate whether VP should be regulated by the Commission. *Id.* a 2.

¹ “VP, Incorporated” was referred to as “VP, Inc.” by the Commission and Commission Staff inconsistently with the Idaho Secretary of State filing, and the Idaho Supreme Court published case, *Valiant Idaho, LLC v. VP Inc.*, 164 Idaho 314, 429 P.3d 855 (2018).

Although Staff recommended the Commission open an investigation into VP, Staff recognized that, “[d]ue to the nature of the shared system, the associated litigation, and other factors, Staff believe[d] that this investigation may not be completed for some time.” *Id.*

On November 17, 2017, the Commission directed Staff to investigate “the status of VP, Inc.” Order No. 33929 at 1. Staff’s investigation was to include the issuance of production requests, written interrogatories, and other powers, and determine “whether or not VP, Inc. is a public utility and should be issued a Certificate of Public Convenience and Necessity, and what further steps, if any, the utility should take to comply with Idaho law.” *Id.* The Commission ordered Staff, at the appropriate time, to “provide a recommendation to the Commission for further action, if any.” *Id.*

In the years since Order No. 33929, litigation involving Valiant and VP has been to the Idaho Supreme Court, *Valiant Idaho, LLC v. VP Inc.*, 164 Idaho 314, 429 P.3d 855 (2018). The last entry in the record of events in the corresponding Idaho State District Court case, *Genesis Golf Builders, Inc vs. Pend Oreille Bonner Development, LLC, et. al.*, CV-2009-1810, shows that a “Motion for Reconsideration” was filed, approximately 18 months ago, on September 24, 2021. In another corresponding Idaho State District Court case, *VP, Incorporated, vs. TIC Property Management, LLC*, CV09-20-1602, there is an entry showing the case was closed on 8/16/2022, and that a motion hearing to correct a judgment was scheduled for August 18, 2022, but vacated.

On April 11, 2022, Commission legal counsel sent a letter (“Letter”) to VP’s President, Richard Villelli, inquiring into the system’s status. The Letter asked: “(1) Does VP intend to provide water to customers as a commission regulated utility?” On April 22, 2022, Mr. Villelli responded, via email, that “VP Inc. would like to respond to your letter that we would like to proceed as outlined under your question numbered (1). We look forward to working with the PUC and appreciate any help the staff can offer.”

However, subsequent email communications between Staff and VP indicated that, until ongoing litigation between Valiant and VP was resolved, VP did not wish to pursue the regulation process with the Commission.

On February 6, 2023, Gem State Water Company, LLC (“Gem State”) filed an Application seeking Commission approval of the “acquisition of the assets of the water supply and distribution

system . . . of various parties associated with Valiant Idaho, Inc. and TIC Utilities, LLC [(“TIC”)]
... .”²

STAFF’S RECOMMENDATION

Staff believes that, based on the recent developments with the Valiant/TIC system, and the lack of recent events in Case Nos. CV-2009-1810 and CV09-20-1602, many of the issues related to the litigation between VP and Valiant have been resolved. Staff has not received any communication from VP regarding the status of the system. Staff believes a formal investigatory process, including issuing production requests, written interrogatories or other forms of discovery, would best apprise the Commission of the status of VP and resolve the question of whether it is operating as a utility that should be within the Commission’s jurisdiction.

COMMISSION DECISION

Does the Commission wish to continue its directive to Staff to investigate VP, through the formal investigatory process, to determine whether VP is operating as a utility within the Commission’s jurisdiction?



Riley Newton
Deputy Attorney General

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² *In the Matter of Gem State Water Company LLC’s Application for Approval of Acquisition of the Assets of the Water Business of Valiant Idaho, LLC*, Case No. GSW-W-23-01, Application at 1. (Feb. 6, 2023).