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Attorney for the Commission Staff

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

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

STAFF OF the Idaho Public Utilities Commission (“Staff”), by and through its Attorney of record, Claire Sharp, Deputy Attorney General, submits the following comments:

BACKGROUND

Beginning in 2017, the Idaho Public Utilities Commission (“Commission”) received an inquiry regarding the regulatory status of VP, Incorporated (“the Company” or “VP”), a private water and sewer company located near Sandpoint, Idaho. The Company has not been regulated by the Commission and does not possess a certificate of public convenience and necessity (“CPCN”). The Commission directed the Staff, pursuant to its statutory authority and jurisdiction under the Idaho Public Utilities Law, specifically *Idaho Code* §§ 61-612 and 61-501, to investigate whether or not the Company is operating as a public utility and if any steps should be taken by the Company to comply with Idaho law. Order No. 33929 at 1.

Ongoing litigation concerning ownership of the water system and service obligations between the Company and Valiant Idaho, LLC, stalled Staff's investigation. Now, with the recent development regarding Valiant Idaho, LLC's and TIC Utilities, LLC's sale of certain water system assets, many of the legal issues have been resolved allowing for the investigation to resume.

In Order No. 35700, the Commission directed the Company to respond to discovery questions and inquiries made by Staff, and notified the Company that Staff would make a recommendation to the Commission regarding the Company's status, a requirement of a CPCN, and any further recommendations regarding the adequacy of service, and rate setting.

STAFF ANALYSIS

Staff recommends that the Company be regulated by the Commission. In order to do so, Staff recommends the Commission order the Company to file a CPCN application containing clearer boundaries of their service territory, evidence of separation from the Valiant Water System, and complying documents.

Requirements to be a Regulated Utility

Upon review of the Company's financial statements, Staff believes that the Company is a corporation that operates a water system for compensation. A "public utility" is an entity that is dedicated to serving the general public in its service area. *Idaho Code* § 61-129(1). The term "public utility" is defined to include "water corporations." A "water corporation" is "every corporation" that owns, controls, operates, or manages a water system for compensation. *Idaho Code* § 61-125.

Exceptions for corporations that do not qualify as a public utility include nonprofits, cooperatives, or any other public utility that operates for service at cost and not for profit. *Idaho Code* § 61-125. Staff could not find any evidence that the Company operated as any of these exceptions; therefore, Staff recommends that the Commission order the Company to be regulated.

System Description

VP owns and operates a private water system within the Hidden Lakes subdivision located near Sandpoint, Idaho.¹ The potable water system provides service to 64 customers within the subdivision. Groundwater for the system is sourced through two metered wells, identified as wells #1 and #2.² Individual well pumps discharge water directly into the distribution system which also includes two large in-ground concrete water storage tanks. The two in-ground water storage tanks are set at higher elevations relative to the supply system allowing the tanks to act both as a reservoir for providing system capacity and for maintaining pressure to the system through hydrostatic head pressure. The design allows well pumps to be cycled on and off. The lower elevation tank is sized at 45,000 gallons and the upper tank is sized at 12,000 gallons.³ System water is chlorinated using a dilute mixture of 12.5% sodium hypochlorite. The Company states the system operators are licensed by the Idaho Division of Occupational and Professional Licenses.⁴

Water System Separation

In *Genesis Golf Builders, Inc., v. Pend Oreille Bonner Development, LLC*, the court ordered the public water systems of Valiant and VP to be physically separated. *Genesis Golf Builders, Inc., v. Pend Oreille Bonner Development, LLC*, Case No. CV-2009-1810 (1st Dist. Bonner) (2017) (order modifying injunction entered April 28, 2017).

The relevant part of the Order states:

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

¹ Note: The Company also within the Hidden Lakes subdivision owns and operates the sewer system.

² Idaho Department of Water Resources Well ID 269850 and 338799.

³ See response to Production Request No. 10(d).

⁴ See response to Production Request No. 11(b).

disruption as is reasonably possible in water services to existing residents/customers, properties, and/or any other recipients;

Id.

In addition to the Court Order, The Idaho Department of Environmental Quality (“DEQ”) requires the systems to be physically separated from each other.⁵ On March 30, 2023, the owner of the of the VP system asserted that valves separate the systems. *See* Response to Staff Production Request No. 3. Staff questioned if valves are sufficient separation in terms of DEQ requirements and learned that valves are not considered to be adequate physical separation.⁶ VP has not provided evidence that the systems have been physically separated in compliance with the Court Order and DEQ requirements.

Given that no evidence of physical system separation has been provided, Staff recommends that the Company provide evidence and DEQ acknowledgement of physical separation of the systems within its application for a CPCN.

CPCN

If the Commission rules that VP. should be operated as a regulated water utility, Staff recommends that the Company be ordered to apply for a CPCN and to provide a legal description of its proposed service territory and a comprehensive list of the assets needed to serve its customers.

Staff believes the current water system as described above is more than adequate to provide service to its existing customers. However, through discovery, the Company included a plan developed in 2018 to expand the system including additional capital investment and service to future customers not being served at that time. *See* Response to Staff Production Request No. 14. Staff believes that some of this plan was constructed but is unclear whether it is being used by VP or if it is part of the assets being sold to Gem State Water as part of the Valiant TIC sale. *See* Case No. GSW-W-23-01. Because of these uncertainties, Staff recommends that the Company provide a comprehensive list of all of its assets and infrastructure used to serve its current customers and a system map and legal description of its proposed service territory

⁵ IDAPA 58.1.08 542 FACILITY AND DESIGN STANDARDS – DISTRIBUTION SYSTEM 02. D. and IDAPA 543 FACILITY AND DESIGN STANDARDS: CROSS CONNECTION CONTROL

⁶ IDAPA 58.1.08 542 FACILITY AND DESIGN STANDARDS – DISTRIBUTION SYSTEM 02. D. and IDAPA 543 FACILITY AND DESIGN STANDARDS: CROSS CONNECTION CONTROL

showing the location of its infrastructure, current customers, and any potential expansion within its proposed territory.

Staff requested a legal description of the service area attributed to the VP water business.⁷ In response, the Company referenced subdivision additions and parcel numbers for the Hidden Lakes subdivision. *See* Response to Staff Production Request No. 2. Staff believes the Company's response is inadequate for legally describing the service area for the purpose of a CPCN.

Staff is also aware of legal issues related to asset ownership with the Valiant and TIC water system,⁸ which is currently an unregulated water utility operating adjacent to VP. Prior to the Commission issuing a CPCN to VP, the Commission must be assured there is no overlap between the two water systems or any other systems operating in the area. The Company must provide validation that the proposed service territory does not overlap with any other non-Company owned water utilities operating adjacent to the VP system. Once the required information has been provided and validated, one of the main requirements for issuing a CPCN required by Idaho regulated utilities will be satisfied.

In addition to the information related to establishing the service territory, Staff recommends the Commission direct the Company to provide complete design documentation and installation drawings for the VP system to assure the system was installed using industry standard practices, and that the installed system complies with local ordinance as part of the CPCN application. Staff requested this information, but the information provided in response was incomplete. To understand whether the system can reasonably provide reliable service, the Company must provide complete documentation of the system's design and installation.

Tariff

The system is not currently operated as a regulated utility. The Commission website provides a water company information packet including a Model Tariff previously approved by the Commission for use with small water companies who may not have the skill and expertise necessary to create their individual documents. The Model Tariff includes a template for Rate

⁷ See Production Request No. 2.

⁸ See GSW-W-23-01 Gem State Water's Application for Approval of Acquisition of the Assets of the Water Business of Valiant Idaho, LLC.

Schedules for both recurring and non-recurring charges. The General Rules and Regulations portion of this template should be kept as written. Any additional rules adopted by the Company and approved by the Commission shall be appended to the end of this Tariff as an attachment. Staff will assist the Company to create a Tariff including Rules and Regulations based on the most recent Model Tariff to ensure compliance to the final order and the Commission's rules and regulations.

Customer Notification and Documentation

Certificate of Public Convenience and Necessity

When the Company submits its application for the CPCN, Staff recommends that the Company also provide a direct notice to customers, either through a separate mailing, a message on bills, or as an insert sent with customer billing. Though not required under Rule 111 and 125 of the Commission's Rules of Procedure, IDAPA 31.01.01.111 and .125 The notice allows customers to participate in the process. Staff is willing to assist the Company in creating a notice and press release.

Documentation

Included in the Commission's Water Company Information packet, which is available on the Commission website, are templates for billing documents and collection notices, including the initial and final notices prior to disconnection. Staff is willing to work with the Company to update its billing and collection documents and ensure all Company documents meet the requirements of the Utility Customer Relations Rules ("UCRR").

Available templates also include an Explanation of Rates and the Annual Rules Summary, as required under Rule 700 of the UCRR, IDAPA 31.21.01.700. They also include a summary of all rates and charges approved by the Commission regarding billing, collection, and availability of payment arrangements. These annual mailings provide information to the customer that is further explained in the UCRR. Staff recommends that the Company work closely with Staff to ensure the documentation is included with the application for a CPCN.

Customer Comment

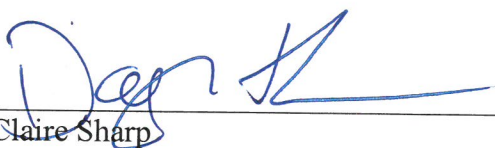
As of July 25, 2023, no customer comments have been received.

STAFF RECOMMENDATION

Staff recommends the Company be regulated by the Commission and the Commission:

- Order the Company to submit an application within 60 days requesting a CPCN to provide water service to its customers as a regulated utility within the State of Idaho.
- Order the Company within its application, to submit evidence of physical separation from Valiant Water.
- Order the Company within its application, to submit a full and complete legal description of the VP service area which validates that its service area does not overlap with any non-Company owned water business which may border the Company's service area. Only after this validation is complete should the Commission issue a CPCN.
- Order the Company within its application, to provide complete design documentation and installation drawings for the VP water system.
- Order the Company to include in its application a tariff containing proposed rates and Explanation of Rates and Annual Rules Summary.

Respectfully submitted this 25th day of July 2023.

For: 
Claire Sharp
Deputy Attorney General

Technical Staff: Joseph Terry
Rick Keller
Chris Hecht
Kevin Keyt

i:umisc/comments/gnrw17.01jtrkchkk comments

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT I HAVE THIS 25th DAY OF JULY 2023, SERVED THE FOREGOING **COMMENTS OF THE COMMISSION STAFF**, IN CASE NO. GNR-W-17-01, BY E-MAILING A COPY THEREOF, TO THE FOLLOWING:

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