

**BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION**

**IN THE MATTER OF THE INVESTIGATION ) CASE NO. GNR-W-24-01**  
**INTO VALIANT IDAHO, INC. AND TIC )**  
**UTILITIES, LLC, OWNERS OF A )**  
**NORTHERN IDAHO WATER SUPPLY AND ) ORDER NO. 36312**  
**DISTRIBUTION SYSTEM )**  
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On April 23, 2024, the Commission issued a Notice of Investigation of Valiant Idaho, Inc. (“Valiant”) and TIC Utilities, LLC (“TIC”) (collectively the “Companies”), directing the Companies to respond to discovery requests from Staff and providing notice that Staff would recommend (1) whether Valiant or TIC should be deemed a regulated public utility; (2) whether a Certificate of Public Convenience and Necessity (“CPCN”) is required; and (3) whether any further action related to the adequacy of service or rate setting is necessary. Order No. 35998.

On July 8, 2024, the Commission issued a Notice of Modified Procedure, setting public comment and Company reply deadlines. Order No. 36254. The Commission Staff (“Staff”) and five members of the public filed comments to which the Companies replied.

Having reviewed the record, the Commission issues this Final Order finding that Valiant is a public utility, issuing it a CPCN, and directing it to submit additional documentation described below.

**BACKGROUND**

The Companies own and operate a water supply and distribution system that serves customers in a development and golf club called the Idaho Club in or near Bonner County, Idaho. Valiant obtained the water system assets, an undeveloped portion of the Idaho Club, and land comprising of the golf course in a 2016 sheriff sale.

The Commission initially sent a letter to the Companies inquiring into their regulatory status in 2022. Subsequently, a representative of Valiant expressed in an email to Staff the intent to operate the system as a Commission regulated utility. However, the Companies did not apply for a CPCN as they were negotiating to sell the system to Gem State Water Company, LLC (“Gem State”). Although the Commission approved Gem State’s acquisition of the water system in Order No. 35971, Gem State subsequently filed a notice indicating it had terminated the purchase

agreement. The Commission then issued an order releasing Gem State from any further obligations in the proceeding and directing Staff to contact the Companies regarding their regulatory status. Order No. 36099.

After receiving conflicting information regarding a potential sale of the water system to the Idaho Club Homeowners Association (“HOA”), Staff presented a decision memorandum during the Commission’s April 9, 2024, decision meeting recommending the Commission open this investigation. The Commission ultimately issued the aforementioned Notice of Investigation and directed Staff to investigate if one or both Companies should be a regulated utility under the Idaho Code and if any steps should be taken by the Companies to comply with Idaho Public Utilities Law.

### **STAFF COMMENTS**

Staff believed that Valiant should be regulated under Title 61 of the Idaho Code and recommended the Commission issue it a CPCN. Through discovery Staff learned, Valiant owns the water system and contracts with TIC to operate and maintain it. Accordingly, Staff’s investigation focused on Valiant. In reaching the conclusion that Valiant should be regulated, Staff used the following non-exclusive list of criteria:

- a. Is the Company a Non-Profit or a Co-op?
- b. Does the Company operate for the service of the customers and not for profit?
- c. Is the Company owned by the water users?
- d. Do the customers have control of the operations and capital expenditures of the Company?
- e. Do the customers have control of the rates that the Company charges?

Staff noted that Valiant is neither organized nor registered with the Idaho Secretary of State as a non-profit, municipal corporation, or a cooperative. Nor does Valiant provide water service at cost. Indeed, Staff noted that Valiant’s bylaws do not limit distributions of company assets to its owner, which Staff asserts is a primary indicator that the Company is operating for profit. Because Valiant owns the water system and is not providing service to customers at cost, Staff asserted that Valiant falls within the statutory definition of a “water corporation.”<sup>1</sup> *See Idaho Code* § 61-125. Furthermore, because Valiant serves the general public in its service area, but not as a mutual

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<sup>1</sup> Under *Idaho Code* § 61-125, a “water corporation” is any corporation that owns, controls, operates, or manages a water system for compensation.

nonprofit, cooperative, or other organization providing service at cost and not for profit, Staff argued that Valiant is a “public utility” under *Idaho Code* § 61-104 and, therefore, subject to Commission regulation.<sup>2</sup> Staff further observed that Valiant’s customers do not own it and have no input into its service rates or operations. Accordingly, Staff asserted that Valiant’s customers are vulnerable to excessive billing if Valiant remains unregulated.

Staff acknowledged that Valiant has expressed the intent to sell the water system to the HOA. Such a sale could put the water system outside the Commission’s jurisdiction, and Valiant has previously sought to delay the determination of its regulatory status to confirm that the HOA wished to purchase the system. However, due to concerns regarding the sincerity of the Company’s overtures to the HOA, Staff believed the potential sale of the water system was not reason to delay issuing Valiant a CPCN. Moreover, Staff asserted that issuing Valiant a CPCN will not prevent it from selling or transferring the water system, noting that the Commission has cancelled CPCNs for water companies that have transferred ownership of the water system or reorganized as a non-regulated entity in several cases.

Staff further recommended that, if Valiant is determined to be a public utility subject to regulation, the Commission should direct it to cooperate with Staff to submit the following documents as a compliance filing: (1) tariffs; (2) a notice to customers regarding regulation; (3) a full legal description of Valiant’s proposed service territory; and (4) a map showing the location of Valiant’s utility service. Additionally, Staff further recommended that the Commission open a separate docket to evaluate whether Valiant’s rates are fair, just, and reasonable.

### **PUBLIC COMMENTS**

Five public comments were filed in this case. Three comments were filed by Valiant’s customers expressly urging the Commission to find that Valiant is a public utility subject to Commission regulation. Notably, one of the comments alleged that Valiant’s owner has retaliated against customers who opposed the HOA purchasing the water system. Specifically, the comment indicated that Valiant’s owner has revoked at least one person’s membership in the Idaho Club, retained his \$12,500 application fee, and threatened further legal action against him and another HOA member. Another comment that was filed anonymously stated that some members of the public have refrained from filing comments out of fear of having their golf, tennis, and social

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<sup>2</sup> Although water corporations generally fall within the statutory definition of a “public utility,” mutual nonprofits, cooperatives, or any other public utility that is organized to operate for service at cost and not for profit do not. *See Idaho Code* § 61-104.

privileges at the Idaho Club revoked—indicating that this has already happened at least twice. The final public comment contained a list of five questions related to the regulation of the Companies and the ratemaking process.

### **COMPANY REPLY**

Valiant agreed that it is subject to Commission regulation and, therefore, did not object to Staff's recommendation that it be issued a CPCN. Valiant further expressed the intent to file an application for a CPCN, but did not indicate when this filing would occur.

### **DISCUSSION AND FINDINGS**

Based on our review of the record and the nature and manner of control exercised by the Company in the operation and management of the water system servicing those within the Idaho Club, we find it reasonable to assert formal regulatory jurisdiction by finding that Valiant operates its water system as a public utility. Accordingly, we have jurisdiction over Valiant, a water utility, and the issues presented in Case No. GNR-W-24-01 pursuant to Idaho Code, Title 61, and the Commission's Rules of Procedure, IDAPA 31.01.01.000, *et seq.*

#### **1. CPCN**

As a public utility, Valiant must have a CPCN from the Commission. *See Idaho Code* § 61-526. Although Valiant has indicated that it intends to apply for a CPCN, we find it reasonable and more efficient to immediately issue Valiant a CPCN as we have already determined it is operating as a public utility. However, to issue a CPCN to Valiant, a full and accurate legal description of Valiant's service territory is necessary to ensure that it does not overlap with that of another public utility. Accordingly, we find it reasonable to direct Valiant to cooperate with Staff to submit a full legal description of Valiant's proposed service territory as a compliance filing in this case.

Moreover, as a regulated utility, Valiant is required to adopt the Commission's Utility Customer Relations Rules (UCRR; IDAPA 31.21.01 *et seq.*) and Utility Customer Information Rules (UCIR; IDAPA 31.21.02 *et seq.*). The Commission also requires the Company to adopt an accounting system consistent with the information required by the Commission's Annual Report for Small Water Companies.

Considering the allegations of retaliation against customers asserted in public comments, we encourage Valiant's owner to carefully review and abide by UCRRs and UCIRs as they are intended to provide a guide for just, reasonable, and nondiscriminatory treatment of

customers. Although the alleged retaliation associated with this case ostensibly occurred via entities outside Commission jurisdiction, allegations of a regulated utility retaliating against customers are a very serious matter and could result in the imposition of penalties. *See* Order No. 35817 at 32.

## **2. Tariff and Other Documents**

As a regulated entity, Valiant also must submit certain documentation required under the UCRR for Commission review and approval, including a tariff, various customer notices, and an annual rules summary. We find it reasonable to direct Valiant to cooperate with Staff to submit these required documents as a compliance filing in this case. Staff has indicated it is willing to work with the Company to ensure these documents meet Commission requirements.

## **3. Rates and Charges**

Considering the current lack of clarity surrounding the Company's financial situation, we find Staff's recommendation to open a separate docket to investigate the Company's rates. Accordingly, we direct Staff to open a separate docket to evaluate whether the Company's rates are fair, just, and reasonable.

## **ORDER**

IT IS HEREBY ORDERED that, based upon the determination that it is a public utility, Valiant is issued a CPCN.

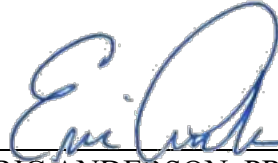
IT IS FURTHER ORDERED that Valiant shall cooperate with Staff to submit within the next 30 days the following documents as a compliance filing: (1) tariffs; (2) a notice to customers regarding regulation; (3) a full legal description of Valiant's proposed service territory; and (4) a map showing the location of Valiant's utility service.

IT IS FURTHER ORDERED that the Staff open a separate docket to evaluate whether Valiant's rates are fair, just, and reasonable.

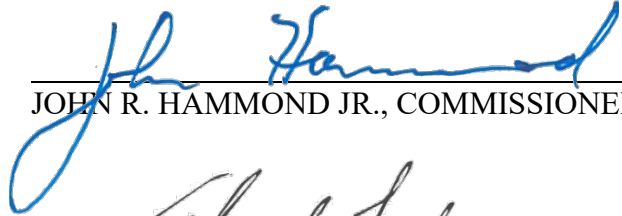
THIS IS A FINAL ORDER. Any person interested in this Order may petition for reconsideration within twenty-one (21) days of the service date of this Order. Within seven (7) days after any person has petitioned for reconsideration, any other person may cross-petition for reconsideration. *See Idaho Code* § 61-626.

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DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 6<sup>th</sup> day of September 2024.



ERIC ANDERSON, PRESIDENT

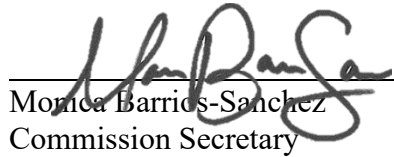


JOHN R. HAMMOND JR., COMMISSIONER



EDWARD LODGE, COMMISSIONER

ATTEST:



Monica Barrios-Sanchez  
Commission Secretary

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