

DECISION MEMORANDUM

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

FROM: ADAM TRIPLETT
DEPUTY ATTORNEY GENERAL

DATE: APRIL 9, 2024

SUBJECT: INVESTIGATION INTO VALIANT IDAHO, INC. AND TIC UTILITIES, LLC, OWNERS OF A NORTHERN IDAHO WATER SUPPLY AND DISTRIBUTION SYSTEM; CASE NO. GNR-W-24-01.

Valiant Idaho, Inc. (“Valiant”) and TIC Utilities, LLC (collectively 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.¹ Valiant obtained the water system assets along with an undeveloped portion of the Idaho Club and land comprising the golf course in a 2016 sheriff sale. *See* Case No. GNR-W-17-01 (Sept. 14, 2017, Decision Memo at 1). Ownership of the water system assets and service to the parcels Valiant owns has been the subject of litigation in state court. *See Genesis Golf Builders v. Pend Oreill Bonner, et al.*, Case No. cv-2009-0001819 (Idaho 1st Dist., April 2017) (order granting injunction).

On April 11, 2022, Commission legal counsel sent a letter (“Letter”) to the Companies, inquiring into the system’s status. The Letter asked: “Does Valiant and/or Tic intend to provide water to customers as a Commission regulated utility?” In a subsequent email to Staff, a representative of Valiant expressed the intent to operate the system as a Commission regulated utility. However, the Companies did not subsequently apply for a Certificate of Public Convenience or Necessity as they entered negotiations to sell the system to Gem State Water Company, LLC (“Gem State”). *See* Case No. GSW-W-23-01 (Application for Approval of Acquisition at 1). Although the Commission approved the Gem State’s acquisition of the water system in Order No. 35971, Gem State subsequently filed a notice indicating it had terminated

¹ According to prior communications with the Companies, Valiant Idaho, Inc. owns the water system assets and TIC Utilities, LLC operates the system.

the agreement to purchase the system and the sale would not proceed. The Commission responded by issuing Order No. 36099 which released Gem State from any further obligations in the proceeding, and directed Staff to contact the Companies regarding their regulatory status.

On March 25, 2024, following an initial telephone conversation with Staff and Staff's counsel, the Companies' counsel represented that the Companies had elected "to sell and transfer the Idaho Club water system to the Idaho Club Homeowners Association." The email further indicated the Companies had put the purchase of the water system on the HOA agenda and fully expected the HOA Members to approve the sale and transfer which would be completed by July 31, 2024. However, Staff subsequently received information that called the likelihood of the sale being completed into question.

STAFF RECOMMENDATION

Staff believes that there is sufficient evidence to merit an investigation into the Companies to determine whether they are operating as a public utility subject to Commission regulation. Considering this new information and the Companies' prior unsuccessful attempts to sell the system, Staff recommends initiating this investigation without delay. An investigation would include data requests to the Companies, and request to examine company records, concluding in a recommendation to the Commission for further action, if any.

COMMISSION DECISION

Does the Commission wish to direct Staff to open an investigation into Valiant Idaho, LLC and TIC Utilities LLC to determine if they should be regulated by the Commission?



Adam Triplett
Deputy Attorney General