

**BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION**

**IN THE MATTER OF GEM STATE WATER ) CASE NO. GSW-W-23-01**  
**COMPANY’S APPLICATION FOR )**  
**APPROVAL OF ACQUISITION OF THE )**  
**ASSETS OF THE WATER BUSINESS OF ) ORDER NO. 35971**  
**VALIANT IDAHO, LLC )**  
**)**

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On February 6, 2023, Gem State Water Company, LLC, (“Company” or “Gem State”) applied to the Idaho Public Utilities Commission (“Commission”) for approval to acquire the assets of the water supply system of Valiant Idaho, LLC (“Valiant”) and TIC Utilities, LLC (“TIC”) (collectively the “Selling Parties”).

On February 27, 2023, the Commission issued a Notice of Application and Notice of Intervention Deadline. Order No. 35690. No one intervened.

On May 11, 2023, the Commission issued a Notice of Modified Procedure establishing deadlines for public comments and the Company’s reply. Order No. 35779. Staff filed comments to which the Company replied. Four public comments were also filed.

On July 10, 2023, the Company filed supplemental documents.

Having reviewed the record, we approve the acquisition of the Selling Parties’ water system assets by Gem State and conditionally approve the request to amend Certificate of Public Convenience and Necessity (“CPCN”) No. 293 to include the area currently served by the Selling Parties as set forth below.

**THE APPLICATION**

Gem State operates as a regulated public utility providing water service to customers in northern Idaho. Gem State seeks to purchase a water system from the Selling Parties that is not Commission-regulated. Application at 1. The Selling Parties’ water system serves approximately 150 residential customers in Bonner County, Idaho, and is adjacent to Gem State’s certified service territory. *Id.* at 3.

On December 9, 2022, Gem State and the Selling Parties executed a water system asset purchase agreement that is contingent upon Commission approval (“Agreement”). Under the Agreement, Gem State will acquire the Selling Parties’ water supply and distribution assets, including all water rights (“Transaction”). If the Commission approves the Transaction, Gem State proposes to serve the Selling Parties’ customers as a regulated public utility. *Id.* at 3–4.

According to the Company, the Transaction is in the public interest because the water system would be operated as a regulated public utility by a Company with expertise operating water systems with expanded access to capital for maintenance and improvements. *Id.* Gem State represented that its employees will assume the responsibilities currently fulfilled by the Selling Parties' owner and independent contractors and that it does not seek to change rates, rate structure, or other charges in this case. *Id.* Gem State also requested amendment of CPCN No. 293, to include the area currently served by the Selling Parties' water system, or alternatively the issuance of a new CPCN authorizing Gem State to provide water service to the service area. *Id.* at 8.

### STAFF COMMENTS

#### 1. Idaho Code § 61-328

Staff recommended the Commission approve the Transaction. In making this recommendation, Staff noted that Idaho law does not specifically address the acquisition of water companies, but that it relied on the statute governing sales of electric utilities—*Idaho Code* § 61-328—to analyze the Transaction. Staff Comments at 3–4. Before approving asset acquisitions by electric utilities, *Idaho Code* section 61-328(3) requires the Commission to find: a) the transaction is consistent with the public interest, b) the cost of the rates for supplying service will not be increased by reason of such transaction, and c) the applicant for such acquisition or transfer has the bona fide intent and financial ability to operate and maintain the system in the public interest.

Staff believed the Transaction is consistent with the public interest. *Id.* at 4. Staff observed that Gem State and its parent companies have a demonstrated commitment to expanding operations in Idaho through prior water company acquisitions and that continuing this expansion through the acquisition of the Selling Parties' water system may provide benefits through operational efficiencies and economies of scale. Additionally, Staff noted that Valiant is not operating as a Commission-regulated utility. If the Transaction is approved, however, the Selling Parties' water system would subsequently be operated by a regulated public utility within Idaho. *Id.*

Staff noted Gem State's assertion that it will maintain existing rates and charges following the Transaction, and that it will not seek to include expenses associated with the Transaction in rates. *Id.* Rather, Gem State indicated that any future rate increases would arise from prudent capital investment or other cost increases. Palfreyman Direct Testimony at 7. Staff indicated that when "Gem State Water eventually files a general rate case, Staff will ensure that the requested rate increase was not driven by the transaction, and that rates will not be higher than

they would have been absent the transaction.” *Id.* at 4. To facilitate this, Staff recommended that, if the Application is approved, Gem State create a separate rate schedule for the Selling Parties’ water system so that costs related to the Transaction are not incorporated in rates. *Id.* at 8. Staff also believed that existing rates are a reasonable starting point for the water system, satisfying the requirement under *Idaho Code* § 61-328(3)(b) that rates not increase due to the transaction. In making this recommendation, Staff assumed that all current plant-in-service is contributed capital and excluded from rate base.

Concluding its analysis under *Idaho Code* § 61-328(3), Staff believed that Gem State Water has the bona fide intent and financial ability to continue reliably operating the water system. Staff noted that if the Transaction is approved, Gem State employs a licensed water system operator who will run the Selling Parties’ water system and that Gem State committed “to provide safe and reliable service and to meet the infrastructure needs of Valiant [customers].” *Id.* at 5. Staff also observed that Gem State, through its parent companies, has access to capital that will likely lower financing costs for system repairs and upgrades. *Id.* at 5–6.

## 2. CPCN

Staff indicated that, prior to issuance of a CPCN authorizing Gem State to operate the Selling Parties’ water system, the Commission should require Gem State to submit a comprehensive legal description of the service area managed by the Selling Parties. In particular, the description show that the service area Gem State proposes for a new CPCN does not overlap with the service territory of any other water utilities.<sup>1</sup>

In addition to leaving the proposed service territory unclear, Staff indicated that Gem State’s responses to Staff’s Production Requests were insufficient to establish that the water system was complied with local ordinances using standard industry practices. To determine whether the water system can provide reliable service to customers, Staff recommended that the Commission order Gem State to provide complete documentation of the system’s design and installation.

## 3. Water System Separation

Staff noted that, in *Genesis Golf Builders, Inc., v. Pend Oreille Bonner Development, LLC*, Case No. CV-2009-1810 (1st Dist. Bonner) (2017), Valiant and VP, Inc.<sup>2</sup> (“VP”) were

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<sup>1</sup> In response Staff’s Production Request #3, seeking a legal description of the Selling Parties’ service area, Gem State referenced a development map. Staff opined that the response was inadequate for describing a service area in a CPCN. Staff Comments at 6.

<sup>2</sup> VP is a private water and sewer company located near Sandpoint, Idaho.

ordered to physically separate their water systems. Staff Comments at 6-7. According to Staff, the written order directing this separation provides, in pertinent part:

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

*Id.*

Staff further observed that the Idaho Department of Environmental Quality ("DEQ") requires physical separation of water systems.<sup>3</sup> After the owner of VP represented that valves separate the VP water system from that of Valiant, Staff investigated further and learned that DEQ does not consider valves an adequate physical separation. *See* Staff Comments at 4 in Case No. GNR-W-17-01. Because neither VP nor Valiant have provided evidence demonstrating adequate physical separation of their systems, Staff recommended issuance of a new or amended CPCN be contingent on the provision of such evidence and DEQ acknowledgement of the separation. Staff Comments at 7.

#### 4. Customer Notice and Documentation

Staff noted that Gem State published notice of Agreement to purchase the Selling Parties' water system in the Bonner County Daily Bee on February 28, 2023, and subsequently submitted a copy of the notice and invoice for publication. *Id.* at 8. Staff recommended that Gem State provide another direct notice to customers, with updated contact, billing, and payment information, if the Commission approves the Transaction. *Id.* Staff also expressed willingness to work with Gem State to update its billing and collection documents along with its Explanation of Rates and Annual Rules Summary, which it recommended directing Gem State to file within three months of the issuance of a final order in this case.

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<sup>3</sup> IDAPA 58.1.08.542(2)(d)-.543.

## PUBLIC COMMENTS

Four public comments were filed. One customer stated the Selling Parties lack authority to sell the water system. Other customers objected to increases in monthly charges.

## COMPANY REPLY COMMENTS

Gem State replied indicating that most of Staff's recommendations were feasible and expressing that it would address existing information gaps. Reply Comments at 1. Specifically, Gem State did not disagree with Staff's recommendation that issuance of a new or amended CPCN be contingent upon submission of the following materials within six months of a final order approving the Transaction: (1) written acknowledgement from DEQ that its system meets DEQ's physical-separation requirements; (2) a legal description of the proposed service area demonstrating that it does not overlap with adjacent water systems; and (3) complete design documentation and installation drawings for the Selling Parties water system. *Id.*

Likewise, Gem State agreed with the recommendations that it create a separate tariff and provide another direct notice to customers. However, Gem State disagreed with Staff's recommendation that a new CPCN be issued, opining that amending CPCN No. 293 to include the new proposed service area for the Selling Parties' system would be more efficient.

Despite recognizing the presumption that plant-in-service for small water companies constitutes contributed capital, Gem State disagreed with Staff's recommendation for exclusion of all plant-in-service from rate base. To the contrary, Gem State contends the presumption set forth in IDAPA 31.36.01.102 has been rebutted and requests the Commission include \$1,160,869 for plant-in-service. *Id.* at 4. Despite acknowledging that the Selling Parties' system has "less than ideal" recordkeeping and operating practices, Gem State provided supplemental invoices showing expenses related to the water system are not contributed capital. *See* Supplemental Invoices Included with Company Reply Comments. The Company argues that recognizing this amount for plant-in-service within rate base benefits customers over the long-term, particularly considering the condition of the Selling Parties' water system, the circumstances facing the system, its small size, "the regulatory issues it faces", expenditures required in diligence, and other factors. Company's Reply at 4. The Company contends that its acquisition supports long-term viability of the water system for customers, but acknowledges that the terms need to be economically viable. *Id.* Alternatively, the Company requests a determination that it has rebutted the presumption regarding contributed capital under IDAPA 31.36.01.102 and that the amounts detailed in

supplemental invoices it provided be included within rate base during the next rate case for the system. *Id.* at 4–5.

### COMMISSION FINDINGS AND DECISION

The Commission has jurisdiction over this matter and the issues in this case under Title 61 of Idaho Code. Specifically, the Commission regulates “public utilities,” including “water corporations” that serve the public or some portion thereof for compensation. *See Idaho Code* §§ 61-125, -129, and -501. The Commission has an established practice of evaluating the transfer of water systems under the criteria found in *Idaho Code* § 61-328(3). Gem State is a privately held water corporation and public utility as defined in these laws that seeks to acquire a water system it intends to operate for compensation. Having reviewed the record, we find the Transaction fair, just, reasonable, and in the public interest. Consequently, we approve Gem State’s Application for approval of its acquisition of the assets of the Selling Parties’ water system.

Gem State Water will provide organizational support, access to capital, and economies of scale for the Selling Parties’ water system. It is in the public interest for an experienced owner and operator of public utility infrastructure in Idaho to acquire this system. Gem State has demonstrated the financial ability and bona fide intent to operate the system in the public service according to this Commission’s standards. Gem State is a member of a family of companies that arose from the reorganization of Northwest Natural Gas Company and its affiliates (“Northwest Natural”). Northwest Natural has a \$400 million revolving line of credit, a net income of \$86.3 million from continuing operations in 2022, cash flow from operations of \$147.7 million, an Baa1 credit rating from Moody’s, and an A+ credit rating from Standard and Poor’s. *See Staff Comments* at 5–6.

The bona fide intent to operate the system in the public interest is demonstrated by Gem State’s commendable operation of its existing systems, and the Company’s strategic plan to purchase and operate multiple small water companies in the region. Finally, customer rates will not increase because of the transaction. Any future rate increases will be the result of prudent expenditures to improve the respective systems.

However, based upon the information provided, we find that Gem State has failed to overcome the presumption of contributed capital under IDAPA 31.36.01.102. For example, the evidence in the record does not show that the Selling Parties or any other entity involved in the construction of the water system have not recovered the cost of this endeavor through the sale of lots in the area that it serves. Consequently, all current plant-in-service of the Selling Parties’ water

system shall be excluded from rate base. Accordingly, Gem State may use the Selling Parties' current rates, which can be adjusted via a future general rate case which addresses the issue of contributed capital.

Additionally, Gem State's request to amend CPCN No. 293 to include the area served by the Selling Parties' water system is conditionally granted. This grant is contingent upon Gem State submitting the following materials within 180 days of the issuance of this Order. First, Gem State must submit written documentation of the water system's compliance with DEQ's requirements on physical separation. Second, Gem State shall provide a complete and comprehensive legal description of the Selling Parties' service area, validating that the requested service does not intrude upon any other adjacent water utility. Finally, Gem State shall submit construction documentation and installation drawings for the Selling Parties' water system demonstrating that the system was installed using industry standard practices in compliance with local ordinances. Following the submission of these materials, CPCN No. 293 will be amended in accordance with the legal description provided by Gem State.

We also direct Gem State to notify the Selling Parties' customers directly of the acquisition after the Transaction closes. This notice may be a separate mailing, a message on bills, or a bill insert. Likewise, we find it reasonable to require Gem State to establish a separate tariff for the Selling Parties' water system once the Transaction closes, rather than combining a rate schedule with Gem State's other systems. This will help ensure that acquisition costs for the water system are not incorporated into rates. We further direct Gem State to work with Staff to make any necessary revisions to its customer documents within three months of the service date of this Order.

### **ORDER**

IT IS HEREBY ORDERED that Gem State's Application is approved.

IT IS FURTHER ORDERED that Gem State's request to amend CPCN No. 293 to include the area served by the Selling Parties' water system is conditionally granted, contingent upon Gem State submitting within 180 days of the issuance of this Order: (1) written documentation of the water system's compliance with DEQ's requirements on physical separation; (2) a complete and comprehensive legal description of the Selling Parties' service area, validating that the requested service does not intrude upon any other adjacent water utility; and (3) construction documentation and installation drawings for the Selling Parties' water system demonstrating that the system was installed using industry standard practices in compliance with

local ordinances. Following the submission of this information, CPCN No. 293 will be amended in accordance with the legal description provided by Gem State.

IT IS FURTHER ORDERED that Gem State notify the Selling Parties' customers of the acquisition—either through a separate mailing, a message on bills, or as a bill insert after the Transaction closes.

IT IS FURTHER ORDERED that Gem State establish a separate tariff for the Selling Parties' water system within 90 days after the Transaction closes.

IT IS FURTHER ORDERED that Gem State work with Staff to make any necessary revisions to its customer documents within 90 days after the Transaction closes.

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.*

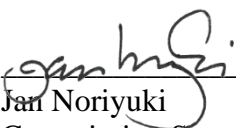
DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 27<sup>th</sup> day of October 2023.

  
ERIC ANDERSON, PRESIDENT

  
JOHN R. HAMMOND JR., COMMISSIONER

  
EDWARD LODGE, COMMISSIONER

ATTEST:

  
Jan Noriyuki  
Commission Secretary

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