

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE PETITION TO)	CASE NO. ISL-W-24-01
CANCEL CPCN NO. 317 FOR ISLAND PARK)	
WATER COMPANY)	
)	ORDER NO. 36463
)	

On October 15, 2024, the Commission received a petition to cancel Island Park Water Company, Inc.’s (“Island Park”) Certificate of Public Convenience and Necessity (“Petition”).

On December 4, 2024, the Commission issued a Notice of Petition and Notice of Modified Procedure establishing deadlines for public comments and the Company’s reply. Order No. 36410. Staff and two members of the public filed comments to which no replies were filed.

The Commission now issues this Final Order cancelling CPCN No. 317.

THE PETITION

The law firm Rigby, Andrus & Rigby Law (“Rigby Law”) informed the Commission that Island Park had been judicially dissolved under the direction of the Receiver, Big Springs Water Company, LLC.¹ To wind up outstanding matters related to Island Park, Rigby Law requested the Commission cancel Certificate of Public Convenience and Necessity No. 317, which Island Park operated under prior to dissolution.

Rigby Law noted that Island Park’s assets had been transferred to Caldera Water Company, Inc. (“Caldera”), an Idaho non-profit corporation, which is not subject to this Commission’s regulation. Caldera will operate and maintain the seven water systems formerly owned and operated by Island Park.

STAFF COMMENTS

Staff recommended the Commission cancel CPCN No. 317. Staff confirmed that Caldera is a non-profit and operating at cost, which places Caldera outside of the Commission’s jurisdiction.

Staff noted that the 7th Judicial District in Bonneville County approved the transfer of Island Park’s remaining assets to Caldera. Staff reviewed Caldera’s bylaws and information on the Idaho Secretary of State’s website. Staff compared Caldera’s non-profit status to the Commission’s

¹ On October 3, 2024, in Case No. CV10-23-3252, an order was entered in the 7th Judicial District allowing the receiver to transfer the assets of Island Park to Caldera Water Company, Inc.

jurisdiction in Title 61 of Idaho Code and believed the Company was organized in a manner that allowed it to operate outside the Commission’s jurisdiction. Specifically, Staff identified *Idaho Code* §§ 61-104 and -129. *Idaho Code* § 61-104 defines a corporation for the purposes of Commission regulation and exempts several entities including municipal corporations, non-profits, cooperatives, and “any other public utility organized and operated for service at cost and not for profit.” Staff Comments at 2 quoting *Idaho Code* § 61-104. *Idaho Code* § 61-129 applies the definition of a corporation (including a water corporation) to the activities engaged by a public utility subject to the Commission’s authority.

Staff reviewed the protections provided in Caldera’s bylaws. Staff noted that as a non-profit registered with the Idaho Secretary of State, Caldera’s assets would be distributed to another non-profit or governmental entity in the event of dissolution and no assets can be distributed to officers or directors. Additionally, earnings will not be shared with any officers or directors and Caldera cannot provide loans to either group. Based on the separations and restrictions contained in Caldera’s bylaws, Staff believed Caldera fit within the exemptions provided in *Idaho Code* § 61-104.

Staff described the amount of infrastructure repair required by the systems that Caldera will serve. Staff reasoned that Caldera will have better access to grants and subsidized loans as a non-profit which should help with the required repairs.

Finally, Staff stated that since Island Park was still operating as a regulated entity in 2024, timely Gross Intrastate Operating Revenue and Annual reports as well as assessment fees must be filed.

PUBLIC COMMENTS

Two members of the public filed comments expressing their reservations about the lack of Commission oversight over Caldera if the CPCN was cancelled and there is no longer Commission involvement in setting rates. Both comments warned that Caldera would be operated as a non-profit by a board unelected by the customers. The comments cited a lack of ability to influence the non-profit’s decisions on rates and assessments as a reason for continued Commission oversight. Specifically, one comment cited that customers had already been notified of an assessment being collected by Caldera in addition to a large rate increase. One comment advocated for changing Calderas’ bylaws to allow customers an opportunity to vote in elections where directors are chosen.

COMMISSION DISCUSSION AND FINDINGS

The Commission has jurisdiction over this matter and the issues in this case under Title 61 of Idaho Code. The Commission regulates “public utilities,” including “water corporations” that serve the public or some portion thereof for compensation. *Idaho Code* §§ 61-125, -129, and -501.

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.” *Id.* A “water corporation” is “every corporation” that owns, controls, operates or manages a water system for compensation. *Idaho Code* § 61-125. “The term ‘corporation’ . . . does not include . . . mutual nonprofit or cooperative . . . water . . . corporation or any other public utility organized and operated for service at cost and not for profit . . .” *Idaho Code* § 61-104.

Idaho Code § 61-104 provides three exceptions to the Commission’s regulatory authority over “corporations.” The Commission does not regulate “mutual nonprofits,” “cooperative corporations,” nor “any other public utility organized and operated for service at cost and not for profit.” *Idaho Code* § 61-104. Pursuant to *Idaho Code* § 61-104, the Company must show that it is “organized” for service at cost and not for profit, and that it is “operated” for service at cost and not for profit.

We understand and appreciate the tremendous amount of work the parties have done to ensure the former Island Park water systems can deliver customers safe and reliable water. The Commission finds that Caldera is not subject to the Commission’s regulatory authority under *Idaho Code* § 61-104 because it is organized and operated for service at cost and not for profit.

However, we are troubled that the organization of Caldera’s bylaws does not contemplate a voice for the customers; the same customers who will be responsible for paying for the necessary water system upgrades. We agree with the public comments that customers deserve the opportunity to vote in the election of directors. Allowing customers to elect the board of directors provides an opportunity to be represented in Caldera’s decision-making process. This would act as a safety mechanism from possible abuse that could occur under a tightly controlled non-profit like Caldera. We are acutely aware that improving the former Island Park water systems will be capital intensive and those costs, at least the costs not covered by potential grants, will be recovered from customers through rates or assessments. Not allowing the customers to be involved in choosing the leadership of Caldera poses a risk to them as Caldera will not be rate regulated by this Commission.

ORDER


IT IS HEREBY ORDERED that CPCN No. 317 is cancelled.

IT IS FURTHER ORDERED that timely Gross Intrastate Operating Revenue and Annual reports as well as assessment fees must be filed with the Commission. Caldera should work with Commission Staff to determine the scope of these requirements.

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

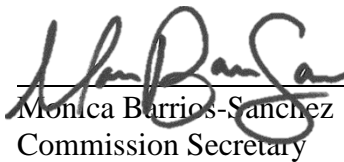
DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 13th day of February 2025.


EDWARD LODGE, PRESIDENT


JOHN R. HAMMOND JR., COMMISSIONER

Recused
DAYN HARDIE, COMMISSIONER

ATTEST:


Monica Barrios-Sanchez
Commission Secretary

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