

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF FARKO WATER) CASE NO. PTE-W-24-01
SYSTEM’S PROPOSED CANCELLATION)
OF PONDEROSA TERRACE ESTATES)
WATER SYSTEM’S, CERTIFICATE OF) ORDER NO. 36259
PUBLIC CONVENIENCE AND NECESSITY)
NO. 393)
)

On January 18, 2024, an application (“Application”) was submitted to the Commission which stated that Ponderosa Terrace Estates Water System, Inc. (“PTE”) was sold to Farko Water System Inc. (“Farko”)¹ on October 1, 2016. While the Application’s heading requested a transfer of PTE’s Certificate of Public Convenience and Necessity (“CPCN”), the body of the Application clearly requested that PTE’s CPCN be cancelled. Rather than ask that Farko be issued a new CPCN, the Application requested that the Commission recognize that Farko is operating the system as a not-for-profit organization (“non-profit”). Supplemental information related to this request was attached to the Application.

On February 16, 2024, the Commission issued a Notice of Application and Notice of Intervention Deadline. Order No. 36093. No parties intervened.

On May 21, 2024, the Commission issued a Notice of Modified Procedure establishing public comment and reply deadlines. Order No. 36188. Commission Staff (“Staff”) filed the only comments in this case.

Having reviewed the record, the Commission issues this Order approving the Application subject to a compliance filing as described below.

THE APPLICATION

The Application stated that Farko supplies water and operates a water system which serves an area east of Sagle, Idaho.

¹ While the Application indicates that the word “Company” is used in both PTE’s and Farko’s company names, according to the Idaho Secretary of State, both companies actually use the word “System” instead of “Company” in their respective titles.

The Application alleged that Farko is a non-profit with an elected Board of Directors (“Board”) and president.² The supplemental materials include several filings with the Idaho Secretary of State which Farko included to support its claim of not-for-profit status.

STAFF COMMENTS

Staff recommended that the Commission cancel CPCN No. 393 and recognize PTE’s transfer to Farko. Staff also reviewed analogous cases and created a non-exclusive list of criteria including whether the entity qualified or operated as a non-profit or co-op and whether the users owned or controlled the entity—including control of its rates, operations, and capital expenditures.

Staff noted that Farko is registered as a non-profit with the Idaho Secretary of State and that Farko is governed by an elected Board. The Board members are customers of the system and control the rates charged. Staff also provided information outlining the roles and election of the Board. Staff referred to a list of cases where regulated companies properly transitioned into non-profits. Staff also reviewed Farko’s financial information and determined that it is not operating for profit. Staff outlined Farko’s process to engage the public relative to the creation of the new Board. Staff noted that the Idaho Rural Water Association offered to assist and train the new Board and that there were also six individuals who were interested in becoming licensed operators to assist with the transition of the system’s operations.

COMMISSION FINDINGS AND DECISION

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.

² PDF pages 52-53 of the Application outlined Farko’s purported “By-Laws” and process for elections. Essentially, each system connection (for drinking water) would be a “Member” of the organization, and each Member would have one vote in electing the organization’s governing board. The “By-Laws” also outline the responsibilities of the other individuals who would be involved with the organization in maintaining the system.

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.

The Commission has reviewed Farko’s by-laws and is satisfied that the voting structure (whereby each customer has one vote in Board elections) ensures the customers’ interests to be sufficiently safeguarded by the Board. To completely verify the non-profit’s corporate structure, the Commission orders Farko, which is currently operating in PTE’s certificated area, to submit the following items in a compliance filing: 1) a copy of the non-profit by-laws signed by all serving on the Board; and 2) a signed copy of the minutes of the meeting where the Board was elected. This filing shall be made within 30 days of the publication of this Order. Once the filing is accepted by the Commission, the Commission will cancel PTE’s CPCN No. 393—which was not transferred to Farko when PTE’s assets were transferred to it.

The Commission has reviewed all submitted materials and the particular facts and circumstances of this case. Once Farko’s compliance documents have been accepted as satisfactory by the Commission, it will not be subject to the Commission’s regulatory authority under Idaho Public Utilities Law. *Idaho Code* § 61-101 *et seq.*

ORDER

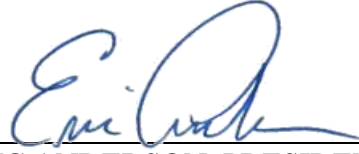
IT IS HEREBY ORDERED that Farko Water System Inc.’s request for authority to operate as a non-regulated non-profit water company is granted—subject to the conditions described above.

IT IS FURTHER ORDERED that within 30 days of the service date on this Order, Farko Water System Inc. must file compliance filing with a copy of the non-profit by-laws that has been signed by the Board of Directors as well as a signed copy of the minutes of the meeting in which the Board of Directors were elected. Upon the satisfactory filing of these documents, CPCN No. 393 shall be cancelled.

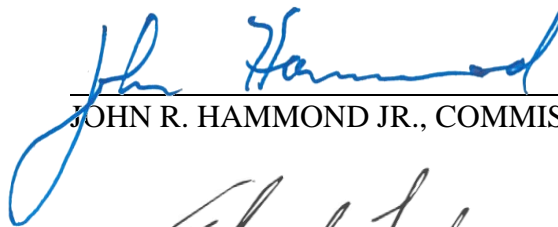
THIS IS A FINAL ORDER. Any person interested in this Order may petition for reconsideration within twenty-one (21) days of the service date of this Order about any matter

decided in this Order. Within seven (7) days after any person has petitioned for reconsideration, any other person may cross-petition for reconsideration. *See Idaho Code* § 61-626.

DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 15th day of July 2024.



ERIC ANDERSON, PRESIDENT



JOHN R. HAMMOND JR., COMMISSIONER



EDWARD LODGE, COMMISSIONER

ATTEST:



Monica Barrios-Sanchez
Commission Secretary

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