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Attorney for the Commission Staff

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

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

COMMISSION STAFF (“STAFF”) OF the Idaho Public Utilities Commission, by and through its Attorney of record, Michael Duval, Deputy Attorney General, submits the following comments.

BACKGROUND

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

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.

issued a new CPCN, the Application requested that the Commission recognize that Farko is operating the system as a not-for-profit organization; and supplemental information related to this request was attached to the Application.

On March 26, 2024, Staff attended a water user meeting in Sagle, ID. The meeting had several objectives: should water users take control of the water system; what assistance is available; current status of the water system; and to replace the current Farko Water Board (“Board”). The meeting was attended, either in person or by Microsoft Teams, by 36 individuals that represented 25 water connections². Also in attendance was Commission Staff, Idaho Rural Water Association (“IRWA”), and Idaho Department of Environmental Quality (“IDEQ”).

On May 21, 2024, the Commission issued Order No. 36188 establishing a comment date of June 12, 2024, and a reply date of June 20, 2024.

STAFF ANALYSIS

Staff has completed its review and recommends that the Commission recognize PTE’s transfer to Farko and cancel CPCN No. 393. In making its determination, Staff reviewed similar Commission cases and orders dealing with small water company regulation. Staff has compiled a list of non-exclusive criteria to make its recommendation. Additionally, Staff believes the list of non-exclusive criteria can be used for a final determination in this case:

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

Farko is on record with the Idaho Secretary of State as a not-for-profit organization and is organized as such in the State of Idaho. Farko is operated by the Board of Directors (“Board”) and its by-laws. The Board members are water users elected at its annual meeting. The Board is given the authority to control its rates and the operations and maintenance of the water system.

² Each individual property parcel with its associated drinking water connection is given a membership certificate and has one vote.

On March 26, 2024, the current board was replaced by newly elected Board members. Accordingly, the water users have control of rates and the operations and maintenance of the water system. The new board consists of nine individuals in various roles. Each Board member will be in their respective role for one year with new members being elected at the annual meeting. Given that Farko has elected water users to the Board, the customers will bear the responsibility for making decisions for the benefit of the system’s users.

In making its recommendation, Staff reviewed prior Commission cases. In Case No. MUR-W-14-01, Murray Water became a not-for-profit association of water users—where every customer became a member of the association. In Case No. CCH-W-15-01, Country Club Hills became a water and sewer district where the directors were voted in by the customers in the district. In Case No. PKS-W-15-01, Packsaddle Estates was converted to a not-for-profit organization, and the Commission ruled in Order No. 33603 against further regulation because, the Company “Has customers who are members of the Company, with each customer having one vote. . . .” Order No. 33603 at 6. In Case No. GNR-U-22-03, Sunnyside Park Utilities transitioned into a not-for-profit organization of water users, and the Commission ruled in Order No. 35737 that the Company is “not subject to the Commission’s regulatory authority because, it is organized and operated for service at cost and not for profit.” Order No. 35737 at 7. In each of these cases, the Commission either cancelled or declined to issue a CPCN.

Financial Review

Farko provided bank statements for 2021, 2022, and 2023 that showed Farko is not operating for profit. During those years, Farko did not receive revenues greater than they were authorized by the Commission and Staff found no other evidence that Farko was paying its Board members. Thus, Farko is currently organized and operated for service at cost and is not making a profit.

CUSTOMER COMMENTS

As of June 12, 2024, no comments have been received from customers by Staff.

CUSTOMER RELATIONS

On March 26, 2024, a customer-initiated meeting was held from 5:00 to 7:00 pm at the Sagle, Idaho, Senior Center.

There was strong attendance, including representatives from Staff, IRWA, IDEQ, as well as 36 people in person and six people attending online, that represented 25 community households of Farko.

The intent of this meeting was for Farko to answer questions of the attendees and to determine if the community wished to take over management of Farko. If so, the goal was to elect a new board and proceed with necessary documentation and develop a path forward. The consensus from the customers was that placing a new management board of Farko and maintaining the existing not-for-profit organization would be in the customers' best interest.

Several customers volunteered for each of the board positions and were then voted on by the customers present.

The new board of directors, as voted on by customers of the water system are as follows:

Chairman: Cody Freer

Co-Chairman: John Kuba

Secretary: Stephani Blackburn

Co-Secretary: Nick Pignotti,

Treasurer: Brenny Ross

Board Member: Marte Cellura

Board Member: Daniel Valdez

Support from the IRWA was offered to assist and to provide training to the new board. Additionally, there were six individuals identified that were interested in becoming licensed operators to ensure a seamless transition. It was noted by the new Board of Directors that business will run as usual as the new board is brought on board and any future changes will be voted on by the water customer members.

STAFF RECOMMENDATION

Staff recommends the Commission recognize PTE's transfer to Farko and cancel CPCN No. 393.

Respectfully submitted this 12th day of June 2024.



Michael Duval
Deputy Attorney General

Technical Staff: Travis Culbertson
Jon Kruck

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT I HAVE ON THIS 12TH DAY OF JUNE, 2024, SERVED THE FOREGOING COMMENTS OF THE COMMISSION STAFF, IN CASE NO. PTE-W-24-01, BY E-MAILING A COPY THEREOF, TO THE FOLLOWING:

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