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Attorney for the Commission Staff

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE APPLICATION OF)
PACKSADDLE WATER SYSTEMS, INC. FOR) **CASE NO. PKS-W-15-01**
APPROVAL OF ITS PURCHASE OF THE)
WATER SYSTEM AND A CORRESPONDING) **COMMENTS OF THE**
NAME CHANGE) **COMMISSION STAFF**
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)
)

COMES NOW the Staff of the Idaho Public Utilities Commission, by and through its attorney of record, Neil Price, Deputy Attorney General, and in response to the Notice of Application and Notice of Modified Procedure issued in Order No. 33525, submits the following comments.

BACKGROUND

Packsaddle Water Systems, Inc. (“Packsaddle” or “Company”) has submitted an Application requesting Commission approval of its purchase of the water system, formerly owned by Packsaddle Estates Water Corporation, and corresponding name change.

Packsaddle argues that because it functions in a manner similar to a homeowners association (“HOA”) and is a “mutual non-profit organization represented by board members in a democratically-run corporation,” the Commission may approve its purchase of the water system without a Certificate of Public Convenience and Necessity (“CPCN”) transfer. As a

non-profit corporation, Packsaddle believes that it should not be classified as a public utility subject to Commission regulation.

Packsaddle estimates that the former owner, Packsaddle Estates Water Corporation, operated the water system for the subdivision named Packsaddle Creek Estates for nearly 40 years. The subdivision is located in Teton County, Idaho.

Packsaddle explained that the previous owner of the water system was a for-profit corporation run by a single person. According to Packsaddle, the for-profit corporation did not permit the subdivision's water customers a vote or have input concerning the operation of the water system.

Packsaddle's Application includes a copy of its Articles of Incorporation filed with the Idaho Secretary of State. The Company states that it has no By-Laws. The Company alleges that each of its customers is a voting member. The Company states that it has a four-member Board of Directors and Officers serving without compensation.

Packsaddle explained in its Application that the formation of the new corporation was necessary due to the poor health of the previous owner who was unable to attend to the maintenance and operation of the water system. Packsaddle states that the former owner requested that the residents assume those responsibilities.

Packsaddle states in its Application that the new corporation serves the same functions as a homeowners association ("HOA").

The Company included a copy of the Purchase/Sales Agreement and Quitclaim Deed transferring the pump house and the land upon which it is situated to Packsaddle.

Packsaddle claims that 100% of all fees collected from approximately 30 subdivision customers will be used for the operation and maintenance of the water system. The Company believes that this will allow for the growth of a fund for emergencies and capital improvements at the rate of approximately \$500 per month.

Packsaddle attached a copy of a letter it sent to all customers giving them notice of the purchase of the water company by the new non-profit corporation.

Packsaddle states that it is aware of all Idaho Department of Environmental Quality (IDEQ) environmental requirements and has access to individuals with the requisite knowledge and expertise to maintain compliance with said requirements.

STAFF ANALYSIS

Staff reviewed the documents provided by Packsaddle in the Application and in response to Staff production requests. Staff believes the Company's request to approve the transfer and determine if the new entity is a utility not regulated by the Idaho Public Utilities Commission (IPUC) should be evaluated based on the requirements in *Idaho Code* § 61-328, the structure of the entity and the level of voting power by customers.

***Idaho Code* § 61-328**

Staff evaluates all sales or transfers based on the intent of *Idaho Code* § 61-328.¹ In this case, Staff believes the intent has been satisfied. There is only one water system serving this area and the prior owner was no longer willing and able to operate or maintain the system. Packsaddle Water Systems, Inc. has purchased the water system and has been operating it since October 1, 2015. Customer rates are not at issue in this case and will not increase due to the transfer. In fact, customer payments will be available to operate, maintain and improve the system rather than pay management or potential income taxes. Staff believes the sale and transfer is in the public interest and Packsaddle Water Systems, Inc. has the intent and financial ability to operate the water system.

Amended and Restated Articles of Incorporation

Article III of the Amended and Restated Articles of Incorporation expresses the Company's intent to provide fiscally responsible operation and dedicate all money to operation, repair and improvements to the water systems. Article III does not give the corporation power to assess its members or enforce assessments.

Article VII of the Amended and Restated Articles of Incorporation states each customer is a member and each member has one vote for each issue addressed at a public meeting. A

¹ *Idaho Code* § 61-328 establishes that state-regulated utilities must obtain approval from the Commission before the sale or transfer of ownership in any generation, transmission, or distribution plant. Section 61-328 provides the Commission authority to authorize the sale or transfer of ownership upon the finding that: (a) the transaction is consistent with the public interest; (b) the cost of and 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 said property in the public service.

simple majority prevails. Staff analysis and customer comments question the adequacy of this level of input. The ability to vote on Board members is addressed under Article X.

Article X of the Amended and Restated Articles of Incorporation establishes the initial Board of Directors and describes the election, compensation and replacement of individuals serving on the Board of Directors. The Initial Board of Directors has four members and each serves without pay, salary or compensation. The number of Directors may be increased by a majority vote of the existing directors. If a Director resigns, all the remaining Directors must agree on a replacement. To be a utility not regulated by the IPUC, Staff believes the Board of Directors must be elected by the members to allow adequate member control. Article X does not require Directors to be elected by member votes. Staff does not believe Packsaddle Water Systems, Inc. qualifies as a utility exempt from regulation by the IPUC and recommends Packsaddle Water Systems Inc. remain a regulated utility. This recommendation is also consistent with comments from customers.

Regulatory Items

If the Commission accepts Staff recommendations, there are several important accounting items that Packsaddle should know as a regulated utility. These items do not directly impact the decision to regulate Packsaddle or transfer the Certificate so they are included as Attachment A.

Customer Notification

On May 20, 2016, the Commission issued a press release regarding Packsaddle Water System's Application. The Company provided email addresses for the majority of its customers to the Commission Staff. On May 24, 2016, Commission Staff sent an email containing links to the Commission press release, the public case file, and the formal case comment form using the email list provided by the Company.

Customer Comments

As of June 9, 2016, six written comments from five different customers have been received. Customers objected to the formation of the Company and stated that the attendees at the meeting held by the Company in July 2015 following formation of the Company in May 2015 did not represent a majority of the homeowners. All customer comments maintained that

“there is no homeowner’s association” or “organization ‘like’ a homeowner’s association” as indicated in the Company’s Application and the Commission’s press release.

Customer Complaints and Inquiries

Since March 2015, the Commission has received six separate complaints and inquiries regarding the continued operation of the system and the sale and transfer of the system by Packsaddle Estates Water Company. One of Packsaddle Water System’s incorporators asked for further information regarding the Commission’s formal case process. Three customers identified themselves as seasonal customers who live out of state. They expressed concerns about the newly-created Company and asked whether the Commission would continue to provide oversight.

A complaint filed in April 2016 was from a customer who had been notified by letter that the Company had decided it would no longer allow customers to disconnect and later reconnect service on a seasonal basis. Instead, all customers would be required to maintain service year-round and pay the required monthly charge. Seasonal customers can choose under the current tariff to have service disconnected and pay the Seasonal Customer Reconnect Fee when they choose to re-establish service. Staff contacted the Company and explained that it could not change its rates or policies without approval of the Commission. The Company stated that there were only two customers who chose to pay the Seasonal Customer Reconnect Fee rather than pay the monthly fee year-round. The Company contacted the affected customers to explain that the seasonal disconnection option would remain in effect as approved by the Commission.

In May 2016, in response to the Commission’s press release, a customer called to discuss the transfer and sale of the Company and the possibility that the Company would no longer be regulated. The customer was concerned that the new Company would not be regulated.

Tariff Revisions and Other Required Documents

The Packsaddle Estates Water Company tariff currently on file with the Commission has an effective date of January 9, 1996. Since then there have been changes in the Commission’s Rules and Regulations. If the Commission decides to transfer the Certificate of Public Convenience and Necessity from Packsaddle Estates Water Corporation to Packsaddle Water Systems, Inc., the new Company will need to file an updated tariff under the new name. Neither Packsaddle nor Staff is recommending rate changes. Commission Staff is willing to work with

the Company directly to revise the Company tariff, including its Rules and Regulations, as well as its Explanation of Rates, Rules Summary and billing and collection documents to ensure compliance with the Commission's Utility Customer Relations Rules.

Summary

Staff recognizes that there has been confusion about the regulatory status of the newly-formed water company. While it appears that the incorporators of Packsaddle Water Systems intentions were to assume management of an aging water company from an owner with failing health and operate it as a not for profit company, its representation that the company's operation would be similar to that of a homeowners' association implied that customers were involved with and supported creation of the new company. However, based on the complaints, inquiries and comments the Commission has received, it is apparent that customers have concerns about the company and whether the Commission's regulatory oversight will continue.

Staff also recognizes that the new company is not familiar with standard regulatory accounting practices, the Commission's Rules and Regulations, or operation of a water utility in general, but that it has been willing to accept guidance from Staff and has taken reasonable steps to maintain water service to customers.

Based on its consideration of all of these factors, Staff recommends that the Commission approve the sale of Packsaddle Estates Water Company to Packsaddle Water System and transfer the existing CPCN to Packsaddle Water System. Staff also recommends that the rates and policies of the Company not be changed at this time. The Commission Staff is willing to work with the Company to help it fulfill its regulatory obligations. The Commission Staff is also willing to provide assistance if the Company wishes to involve customers in further discussions about utility regulation, modification of existing rates and policies, or other issues of concern to customers.

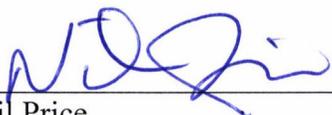
RECOMMENDATIONS

1. Staff recommends that the Commission approve the sale and transfer of the Company.
2. Staff recommends the Commission find Packsaddle Water Systems, Inc. continues to be a regulated utility, subject to the jurisdiction of the Idaho Public Utilities Commission and transfer CPCN No. 320 to Packsaddle Water Systems, Inc.

3. Staff recommends that the Packsaddle Water Systems, Inc. file a revised and updated tariff incorporating the currently approved rates and charges and reflecting the change in Company name.

4. Staff recommends that the Company submit its Explanation of Rates, Rules Summary and billing and collection documents for Staff review and approval.

Respectfully submitted this  day of June 2016.



Neil Price
Deputy Attorney General

Technical Staff: Chris Hecht
John Nobbs

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ATTACHMENT A REGULATORY ITEMS

Packsaddle Water Systems, Inc.

Transactions Involving Regulated Assets

Transactions with regulated assets are not widely understood. Generally, the status of a regulated asset is subject to regulatory jurisdiction and follows the asset during its life. In this purchase, Packsaddle received several regulated assets including Plant in Service. In responses to Staff Production Requests, various terms such as deposits, funds, cash or other information were used to describe specific regulated assets. In the following sections, Staff identifies each asset, describes the available information, summarizes the history leading to its regulatory status prior to the sale and identifies the status of each asset after the sale.

Plant in Service

In Order No. 26296, the Commission found the initial water system plus the cost of Well No. 2 installed in 1994, totaled \$21,341.43 and was expected to be recovered through the sale of lots. Staff notes this finding establishes a Contribution in Aid of Construction (CIAC) account. To determine Rate Base, CIAC is a reduction to Plant in Service. The Annual Reports of Packsaddle Creek Estates Water Company erroneously reported Depreciation Expenses using an Income Tax Depreciation Life equaling seven years. The seven years may represent a tax life but is not long enough to determine regulatory depreciation rates.

On April 6, 2015, Staff was contacted by the previous owner requesting guidance in recording and reporting customer contributions to replace a defective well pump. Staff was informed a replacement pump was required for customers to receive water and the Contractor doing the installation required an \$8,000 deposit.

Pump Surplus Funds

Asset No. 4 on Company Exhibit A of the Purchase and Sale Agreement is described as surplus from the pump repair totaling \$2,700. Staff notes the letter to customers, dated October 1, 2015, solicited customer contributions of \$250 for the pump. When contributions are used to purchase Plant in Service, these funds will be accounted for as CIAC. Staff recommends Packsaddle maintain a list of contributors with the amounts and dates. Staff notes Packsaddle will be required to maintain a separate General Ledger subaccount for all CIAC funds. Staff recommends a member of management contact Staff Auditors for information on CIAC and the calculation of Revenue Requirement.

In Response to Staff's First Production Request No. 3, Packsaddle states the previous owner had "... no deposits on hand at the time of the sale but did have funds on hand collected from customers for monthly water use." In the sale, this \$2,700 was identified as part of the initial pump contributions and was transferred to Packsaddle as part of the sale. The evidence identifies these funds as CIAC or as a liability for future water service. Staff believes Mr.

Vostrejs' description is reasonable. Staff believes this \$2,700 is a liability for future water service. Staff recommends the Company contact Staff for information on the appropriate accounting if needed.

Prepaid Fees

Asset No. 5 on Company Exhibit A describes this amount as "... prepaid fees to be credited to customers on account." Prepaid Fees are a liability for future water service. Packsaddle Water Systems, Inc. must maintain the regulatory accounting for these funds with the \$650.56 remaining a liability for water service. The Company is encouraged to contact Staff Auditors for additional information as needed.

Revenue Requirement

Packsaddle Water Systems, Inc. is a non-profit corporation. Although Staff recommends to Company remain regulated, a return on Rate Base and potential income taxes would not be included in the Revenue Requirement. At this time there also is no Depreciation Expense included in the Revenue Requirement since all Plant in Service is reduced to zero by CIAC. Staff believes the Revenue Requirement will produce Total Annual Revenues approximately equal to estimated cash operating expenses. Staff also believes the Company's expressed anticipation of accumulating funds for future use is a worthwhile goal. The information in the Application reveals all administrative and accounting functions are performed without pay or compensation and will allow a reserve to be established. Packsaddle Water Systems, Inc. has contracted for maintenance service.

Tariff rates

The current tariff was effective on June 3, 1996, and contains recurring and non-recurring charges. One of the non-recurring charges is the Seasonal Customer Reconnection Fee equaling \$130. The purpose of this fee is to recover portions of operating expenses not collected from seasonal customers through regular monthly rates. Staff's analysis of the anticipated Expenses indicates annual fixed charges for 32 full time customers is approximately \$140. The current rates will be retained unless a subsequent case is filed with the IPUC requesting changes.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT I HAVE THIS 9TH DAY OF JUNE 2016, SERVED THE FOREGOING **COMMENTS OF THE COMMISSION STAFF**, IN CASE NO. PKS-W-15-01, BY MAILING A COPY THEREOF, POSTAGE PREPAID, TO THE FOLLOWING:

ROBERT A VOSTREJS
TREASURER
PACKSADDLE WATER SYSTEMS
PO BOX 71
DRIGGS ID 83422



SECRETARY