

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 23A-0128W

IN THE MATTER OF THE APPLICATION OF PAPASON LLC DBA BAXTER WATER AND SERVICES FOR AUTHORITY TO TRANSFER ALL ASSETS, CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY AND ACCOMPANYING WATER AND WELL RIGHTS FROM GREENWELL ENERGY INC AKA GREENWELL ENERGY LLC AKA OCTAL RESOURCES INC DBA ONEAL WATER WORKS AKA ONEAL WATER INC AKA ONEAL WATER TO PAPASON LLC DBA BAXTER WATER AND SERVICES.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
AVIV SEGEV
APPROVING UNANIMOUS COMPREHENSIVE
SETTLEMENT AGREEMENT, GRANTING
APPLICATION, AND VACATING HEARING**

Mailed Date: September 18, 2023

I. STATEMENT

A. Background

1. On March 16, 2023, Papason LLC, doing business as Baxter Water & Services (Baxter Water or Applicant) filed with the Commission its Application (Application), seeking approval of the transfer of all assets, Certificate of Public Convenience and Necessity (CPCN), and accompanying water and well rights held by Greenwell Energy Inc, doing business as O'Neal Water (O'Neal Water) from O'Neal Water to Baxter Water. This filing commenced Proceeding No. 23A-0128W.

2. On March 17, 2023, the Public Utilities Commission (Commission) issued its Notice of Application Filed (Notice).

3. On April 6, 2023, the Staff of the Public Utilities Commission (Staff) timely noticed its intervention of right and requested a hearing. Staff raised concerns regarding whether it is in the public interest that the CPCN allowing O'Neal Water to operate as in investor-owned utility be transferred to Baxter Water. In addition, Staff has noted concerns regarding details of the financial statements and viability of O'Neal Water and Baxter Water.

4. On April 19, 2023, the Commission deemed the Application complete and referred this matter to an Administrative Law Judge (ALJ) by minute entry.

5. By Decision No. R23-0329-I, issued May 17, 2023, the ALJ, among other things, adopted a procedural schedule and scheduled an evidentiary hearing in this matter for September 19, 2023. The procedural schedule was modified by Decision No. R23-0439-I, issued July 5, 2023 (hereinafter, Procedural Schedule).

6. On August 11, 2023, Applicant and Staff (the parties) filed their Joint Motion for Approval to Amend Procedural Schedule (Joint Motion). In the Joint Motion, the parties, among other things, stated that they have been able to reach a settlement in this matter.

7. By Decision No. R3-0539-I, issued on August 14, 2023, the ALJ, among other things, directed the parties to file the settlement along with testimony supporting the settlement on or before September 7, 2023.

8. On September 6, 2023, the parties filed the Unanimous Comprehensive Settlement Agreement (Settlement Agreement) with supporting documents.

II. SETTLEMENT AGREEMENT

9. The Settlement Agreement, attached to this Recommended Decision as Appendix A, is intended to resolve all issues raised by the parties in this proceeding with respect to the March

16, 2023 Application.¹ The Settlement Agreement is comprised of four main sections: Attestation, Annual Customer Notice, Quarterly Reporting, and Future Rate Case.²

a. Attestation

10. The parties agree that anyone with an ownership interest, including but not limited to Robert Jardon and Brandon Jardon, must sign and attest with an affidavit indicating that they have read and understood the Commission Rules and obligations of operating a regulated water utility. It is the obligation of Baxter to comply with Commission Rules including any future updates to those rules. This obligation includes the filing of water reports in the appropriate PUC proceeding.

b. Annual Customer Notice

11. To properly inform Baxter's existing customers of this proceeding and to ensure that new and existing customers continue to receive relevant information on an ongoing basis, Baxter shall mail yearly customer notices, which shall include:

- Contact information of Baxter (address and phone number);
- Contact information for the Commission (with explanation of PUC's oversight of billing, service reliability and disconnection issues);
- Contact information for the Colorado Department of Public Health and Environment (CDPHE);
- A reference to the PUC water rules (<https://puc.colorado.gov/waterrules>);
- Terms and conditions under which the utility may shut off service to a customer;
- Other terms and conditions of billing (such as billing cycles, bill due date, late payment fees);

¹ Hearing Exhibit 200 at 1.

² Hearing Exhibit 200 at 3-4.

- A brief description of service expectations; and
- Customer comment cards that can be returned to Baxter for customers to provide feedback regarding services provided.

c. Quarterly Reporting

12. Baxter shall file quarterly reports with the PUC, into this CPCN proceeding, for the first three years of operation immediately following Commission approval of this CPCN. Baxter shall include the following information in each quarterly filing:

- Number of customers served;
- Type of services provided, including estimated revenues from any non-standard services (e.g., bottled water delivery, tank refill, etc.);
- Number of shutoffs performed in the preceding quarter;
- A list of complaints received during the preceding quarter, including the nature of each complaint, the status of resolution, and brief summary of the resolution terms;
- Revenue received during the quarter;
- A description of capital improvements made and estimated costs;
- A description of participation in professional organizations; and
- List of any training or professional development activities completed during the preceding quarter.

d. Future Rate Case

13. Baxter is precluded from filing a rate case before January 1, 2024, one year after the transfer of ownership occurred, and Staff acknowledges Baxter may seek interim rates in the near future. In the present proceeding, Staff takes no position on this forthcoming filing and reserves the right to evaluate and provide recommendations as may be necessary.

III. FINDINGS OF FACT, DISCUSSION AND CONCLUSIONS

14. O'Neal Water operated and maintained the water utility service pursuant to a CPCN that was issued by the Commission.³

15. Baxter Water is a Colorado limited liability company in good standing with its principal place of business located at P.O. Box 7565, Pueblo West, Colorado 81007.

16. On January 20, 2023, Baxter Water acquired the assets of O'Neal Water, including O'Neal Water's CPCN.

17. Following the sale of O'Neal Water's assets to Baxter Water, Baxter Water began operating a water system and providing water services to approximately 172 customers in the area of the Baxter Community of Pueblo County, Colorado.⁴

18. The Application seeks retroactive⁵ approval of the transfer of all assets, CPCN and accompanying water and well rights from O'Neal Water to Baxter Water.

19. Baxter Water currently employs the same water rate structure as O'Neal Water employed.

20. Baxter Water plans to make system upgrades to its water system improve delivery and access to potable water services to existing customers and new customers in the area.⁶

21. O'Neal Water was cited with three deficiencies under Colorado Public Health Department standards prior to the transfer to Baxter Water. Baxter Water is in the process of

³ See Decision Nos. R99-544 and C99-1120, issued May 28, 1999 and October 20, 1999, respectively, in Proceeding No. 98A-088W; Application at 2 and 3; Hearing Exhibit 200 at 3; and Hearing Exhibit 201 at 4 and 7.

⁴ See Application at 3.

⁵ I.e., as of January 20, 2023, the date on which Baxter Water acquired the assets of O'Neal Water.

⁶ See *id* at 5-6, and Attachment E to the Application.

remediating these deficiencies, including preparing a grant proposal, in order to bring the system and services into compliance.⁷

22. Baxter Water plans to improve delivery and access to potable water services to existing customers and new customers in the area, by offering additional potable water services to the Baxter Community that are not currently available.⁸

23. The Application demonstrates that Baxter Water has the financial, operational, and technical wherewithal to provide water utility service in the area for which the CPCN covers, and Staff does not dispute that Baxter Water is so qualified.⁹

24. Following the approval of the Application, Baxter Water will submit additional, detailed analysis of the proposed system upgrades and cost implementation timeline for updating its distribution system and tariff rates.¹⁰

25. Consistent with Rule 5104(d) of the Rules Regulating Water, and Combined Water Sewer Utilities, 4 *Code of Colorado Regulations* 723-5, Baxter Water will file a tariff adoption notice and post the tariff adoption notice in a prominent public place in each local office and principal place of business, as ordered below.

26. Baxter Water and Staff have reached a comprehensive settlement agreement as to all issues that were raised by the parties in this Proceeding, the terms and conditions of which settlement are set forth in the Settlement Agreement.¹¹

⁷ See *id.* at 6.

⁸ See *id.* at 5-6, and Attachment E to the Application.

⁹ See Attachments A, B, C, E and F to Application.

¹⁰ Application at 6.

¹¹ See Hearing Exhibit 200 at 3-5.

27. Pertinently, the Settlement Agreement addresses: the attestation of Baxter Water's owners that they have read and understood the Commission Rules and understand the obligations of operating a regulated water utility; the requirements on Baxter Water to properly inform Baxter Water's existing customers of this Proceeding and to ensure that new and existing customers continue to receive relevant information on an ongoing basis; the requirement on Baxter Water to file with the Commission quarterly reports in this Proceeding; and the prohibition against Baxter Water to file with the Commission a permanent rate case before January 1, 2024.¹²

28. The parties have the burden of proving by a preponderance of the evidence that the Settlement Agreement is just and reasonable and in the public interest.¹³ The Commission is not bound by the parties' agreement. The Commission may do what the Commission deems necessary to ensure that the result in a Commission proceeding is just, reasonable, and in the public interest, provided the record supports the result.¹⁴

29. The Commission has an independent duty to determine matters that are within the public interest.¹⁵

30. The undersigned ALJ reviewed the full administrative and evidentiary record, including the parties' settlement testimony and the terms and conditions of the Settlement Agreement. The ALJ has duly considered the positions of all parties in this matter and weighed the evidence presented.

¹² See *id.* at 1-2.

¹³ See Decision No. R17-0028 in Proceeding No. 16A-0512EG, issued January 12, 2017 at 23.

¹⁴ *Id.* at 23-24.

¹⁵ See *Caldwell v. Public Utilities Commission*, 692 P.2d 1085, 1089 (Colo. 1984).

31. Based on the entire record, the ALJ finds that the CPCN transfer, as requested in the Application, is not contrary to the public interest.

32. The ALJ further finds that the parties have established by a preponderance of the evidence that the Settlement Agreement is just, reasonable, in the public interest, and should be accepted by the Commission. The Settlement Agreement proposes a fair and timely resolution of all contested issues and substantial evidence shows that its terms will benefit Baxter Water and its customers.

33. In accordance with § 40-6-109, C.R.S., the ALJ transmits to the Commission the record in this proceeding along with this written recommended decision and recommends that the Commission enter the following order.

IV. ORDER

A. It is Ordered That:

1. The Unanimous Comprehensive Settlement Agreement, filed as Hearing Exhibit 200 on September 6, 2023 (Settlement Agreement) is approved without modification, consistent with the discussion above. The Settlement Agreement is Attached to this Decision as Appendix A.

2. Papason LLC, doing business as Baxter Water & Service's (Baxter Water) Application for authority to transfer all assets, Certificate of Public Convenience and Necessity (CPCN) and accompanying water and well Rights from O'Neal Water to Baxter Water (Application) is granted, consistent with the discussion above.

3. Baxter Water shall continue to provide service under the tariff currently in effect and on file with the Colorado Public Utilities Commission (Commission).

4. Baxter Water shall properly inform Baxter Water's existing customers of this Proceeding and to ensure that new and existing customers continue to receive relevant information on an ongoing basis, as further set forth in § II of Appendix A to this Decision.

5. For the first three years of operation immediately following Commission approval of the transfer of the CPCN at issue herein, Baxter Water shall file quarterly reports with the Commission, under this CPCN Proceeding, as further set forth in § III of Appendix A to this Decision.

6. Baxter Water shall not file a permanent rate case with the Commission prior to January 1, 2024.

7. Within ten days of the Commission approval of the transfer of the CPCN at issue herein, Baxter Water shall file a tariff adoption notice and post the tariff adoption notice in a prominent public place in each local office and principal place of business consistent with the requirements set forth in Rule 5104(d), 4 *Code of Colorado Regulations* 723-5.

8. Baxter Water shall comply with, and make all filings required by, the terms and conditions of the Settlement Agreement and the terms and provisions of this Recommended Decision.

9. The hearing scheduled for September 19, 2023, is vacated.

10. Proceeding No. 23A-0128W is closed.

11. This Recommended Decision shall be effective on the day it becomes the Decision of the Commission, if that is the case, and is entered as of the date above.

12. As provided by § 40-6-109, C.R.S., copies of this Recommended Decision shall be served upon the parties, who may file exceptions to it.

- a. If no exceptions are filed within 20 days after service or within any extended period of time authorized, or unless the decision is stayed by the Commission upon its own motion, the recommended decision shall become the decision of the Commission and subject to the provisions of § 40-6-114, C.R.S.
- b. If a party seeks to amend, modify, annul, or reverse basic findings of fact in its exceptions, that party must request and pay for a transcript to be filed, or the parties may stipulate to portions of the transcript according to the procedure stated in § 40-6-113, C.R.S. If no transcript or stipulation is filed, the Commission is bound by the facts set out by the administrative law judge and the parties cannot challenge these facts. This will limit what the Commission can review if exceptions are filed.

13. If exceptions to this Decision are filed, they shall not exceed 30 pages in length, unless the Commission for good cause shown permits this limit to be exceeded.

(S E A L)



ATTEST: A TRUE COPY

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

AVIV SEGEV

Administrative Law Judge

Rebecca E. White,
Director