



STATE OF ALABAMA
PUBLIC SERVICE COMMISSION
P.O. BOX 304260
MONTGOMERY, ALABAMA 36130

TWINKLE ANDRESS CAVANAUGH, PRESIDENT

JOHN A. GARNER, EXECUTIVE DIRECTOR

JEREMY H. ODEN, ASSOCIATE COMMISSIONER

CHRIS "CHIP" BEEKER, JR., ASSOCIATE COMMISSIONER

**GENERIC PROCEEDING TO DETERMINE WHETHER
CERTAIN WATER PROVIDERS
ARE SUBJECT TO REGULATION
BY THE COMMISSION**

DOCKET 33192

ORDER

BY THE COMMISSION:

The Commission initiated this generic proceeding to determine whether certain unregulated water providers meet the statutory definition of "utility" which would subject them to Commission regulation. Under Ala. Code § 37-4-1, the term "utility," relevant to water service, is defined as "every person, not engaged solely in interstate business, that now or may hereafter own, operate, lease, or control... [a]ny plant, property, or facility for the supply, storage, distribution, or furnishing to or for the public of water for manufacturing, municipal, domestic, or other uses." The Alabama Supreme Court has found that an important distinction of a utility is that it holds itself out as providing service to every person in the public who requires service.¹

During this proceeding, which included a comment period, the Commission sought to address any jurisdictional questions regarding water providers. Following the comment period, on June 27, 2022, the Commission issued an order clarifying the criteria for utility status. Among other things, the Commission found that a nonprofit water service provider is presumed not to be a utility providing service "to or for the public" if it meets the following two-prong test: 1) the entity shows, through corporate governance documents or other evidence, that it only provides water to its own members; and 2) its corporate governance documents show that that its members have the right to select and remove the leadership of the entity. Based on this presumption and documents provided by water providers, the Commission found that several water providers that participated in this proceeding are not public utilities.

The June 27, 2022 Order also required that any water provider that failed to submit sufficient documentation during this proceeding either file for a certificate of convenience and necessity as a public utility or submit evidence

¹ *Coastal States Gas Transmission Co. v. Alabama Pub. Serv. Comm'n*, 524 So. 2d 357, 361 (Ala. 1988).

that it is not a public utility. In response, Freemanville Water System, Inc. and Mexia Water System, Inc. both submitted documentation to show that they are non-profit corporations that provide water service only to their own members, not to the general public. They also submitted their corporate governance documents as evidence that their members elect and may remove their board members. Pursuant to Ala. Code § 37-4-1, relevant caselaw, and the findings in the June 27, 2022 Order, the submitted information shows that Freemanville Water System, Inc. and Mexia Water System, Inc. are not public utilities and therefore not subject to Commission regulation.

IT IS SO ORDERED BY THE COMMISSION that based on provided documents, Alabama law, and the findings in the June 27, 2022 Order, Freemanville Water System, Inc. and Mexia Water System, Inc. are not public utilities and therefore not subject to Commission regulation.

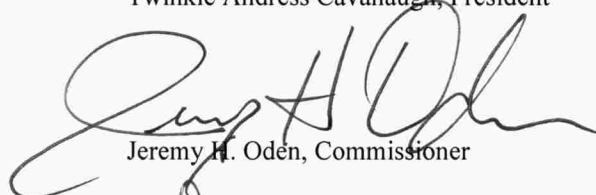
IT IS FURTHER ORDERED that jurisdiction in this cause is hereby retained for the issuance of any further order or orders as may appear to be just and reasonable in the premise.

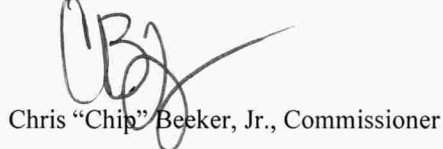
IT IS FURTHER ORDERED that this Order shall be effective as of the date hereof.

DONE at Montgomery, Alabama, this 20th day of September, 2022.

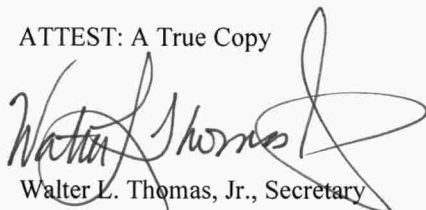
ALABAMA PUBLIC SERVICE COMMISSION


Twinkle Andress Cavanaugh, President


Jeremy H. Oden, Commissioner


Chris "Chip" Beeker, Jr., Commissioner

ATTEST: A True Copy


Walter L. Thomas, Jr., Secretary