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**BEFORE THE ARIZONA CORPORATION COMMISSION**

Arizona Corporation Commission

COMMISSIONERS

**DOCKETED**

MARC SPITZER, Chairman  
WILLIAM A. MUNDELL  
JEFF HATCH-MILLER  
MIKE GLEASON  
KRISTIN K. MAYES

JUL - 9 2004

DOCKETED BY NR

IN THE MATTER OF THE APPLICATION OF ARIZONA WATER COMPANY, AN ARIZONA CORPORATION, TO EXTEND ITS EXISTING CERTIFICATE OF CONVENIENCE AND NECESSITY WITHIN THE TOWN OF PINETOP-LAKESIDE, NAVAJO COUNTY, ARIZONA.

DOCKET NO. W-01445A-04-0013

DECISION NO. 67107

**OPINION AND ORDER**

DATE OF HEARING: June 2, 2004

PLACE OF HEARING: Phoenix, Arizona

ADMINISTRATIVE LAW JUDGE: Amanda Pope

APPEARANCES: Robert Geake, Vice President and General Counsel, on behalf of Arizona Water Company;

Nicholas J. Enoch, LUBIN & ENOCH, P.C., on behalf of the Local No. 387, International Brotherhood of Electrical Workers, AFL-CIO; and

Gary Horton, Staff Attorney, Legal Division, on behalf of the Utilities Division of the Arizona Corporation Commission.

**BY THE COMMISSION:**

On January 13, 2004, Arizona Water Company ("AWC" or "Applicant"), filed an application for an extension of its Certificate of Convenience and Necessity ("Certificate") with the Arizona Corporation Commission ("Commission") to provide public water utility service to various parts of Pinetop-Lakeside, Navajo County, Arizona ("Application").

By Procedural Order dated April 19, 2004, a hearing was scheduled for June 2, 2004 and other dates were set for service of notice and procedural filing by parties to the proceeding.

On April 30, 2004, AWC filed a Certificate of Notice, which indicates that on April 29, 2004, public notice of the hearing was mailed to all property owners in the proposed expansion area.

On May 19, 2004, the Commission's Utilities Division Staff ("Staff") filed a Staff Report

1 recommending approval of the Application subject to certain conditions.

2 On May 25, 2004, Local Union 387, International Brotherhood of Electrical Workers, AFL-  
3 CIO ("IBEW Local 387") filed an Application to Intervene.

4 On June 1, 2004, AWC filed its Opposition to International Brotherhood of Electrical  
5 Workers, Local No. 387 Application to Intervene, which essentially argues that IBEW Local 387  
6 should not be permitted to intervene as it is not directly and substantially affected by the proceeding.

7 On June 1, 2004, IBEW Local 387 filed its Reply in Support of IBEW Local 387's  
8 Application to Intervene, which argues that the employees it represents are impacted by the  
9 proceeding as they are to be the employees serving the proposed expansion area and cites Article XV,  
10 § 3 of the Arizona Constitution as standing for the proposition that the Commission is granted the  
11 power to make rules, regulations, and orders for not only patrons but also for employees of public  
12 service corporations.

13 On June 2, 2004, a full public hearing was convened before a duly authorized Administrative  
14 Law Judge of the Commission at its offices in Phoenix, Arizona. AWC and Staff appeared with  
15 counsel, and IBEW Local 387 was represented by counsel.

16 Arguments were taken on IBEW Local 387's Application to Intervene, and intervention was  
17 granted.

18 At the conclusion of the hearing, the matter was taken under advisement pending submission  
19 of a Recommended Opinion and Order to the Commission.

20 \* \* \* \* \*

21 Having considered the entire record herein and being fully advised in the premises, the  
22 Commission finds, concludes, and orders that:

23 **FINDINGS OF FACT**

24 1. AWC is an Arizona corporation which is engaged in the business of providing water  
25 service to approximately 67,000 customers in portions of Gila, Navajo, Cochise, Maricopa, Pima,  
26 Yavapai, Coconino and Pinal Counties in Arizona. AWC was granted its Certificate in Decision No.  
27 28794 (March 1955).

28 2. On January 13, 2004, AWC filed an application for an extension of its Certificate for-

1 its Lakeside system in the Town of Pinetop-Lakeside ("Town") to provide service to two adjoining  
2 areas which are more fully described in Exhibit A, which is attached hereto and incorporated herein  
3 by reference.

4 3. Notice of the application was provided in accordance with the law.

5 4. On May 19, 2004, Staff filed its Staff Report recommending conditional approval of  
6 the application following a hearing.

7 5. The Applicant has received requests from PK Development, LLC and Gentuc, LLC<sup>1</sup>  
8 to provide water service to an additional one-sixteenth square mile parcel in the Town. The parcel is  
9 adjacent to Applicant's existing certificated service area.

10 6. Applicant projects that future customer growth in the extension area will result in  
11 approximately 92 new customers at build-out.

12 7. To serve the requested area, the Applicant testified that pipeline from the existing  
13 system to the proposed developments will be required, and these off-site improvements will be  
14 funded by main extension agreements with the developers.

15 8. Staff indicated, and AWC testified, that the existing water system can accommodate  
16 approximately 3,000 additional connections.

17 9. Staff reviewed the water production and storage capacity of Applicant's Pinetop-  
18 Lakeside system and believes that it has adequate facilities and the technical expertise to provide  
19 service in the requested extension area.

20 10. No other municipal or public service corporations provide water service in the  
21 proposed service area described in Exhibit A.

22 11. AWC does not provide water service to the Town of Pinetop-Lakeside pursuant to a  
23 franchise. Rather, AWC provides water service to the Town pursuant to permits issued by the Town.

24 12. In conjunction with its Application, AWC submitted a letter from the Town's  
25 Superintendent of Streets and Roads, which confirms the Town's policy of permitting AWC's  
26 provision of water service pursuant to the issuance of a permit.

27

28 <sup>1</sup> On June 3, 2004, AWC filed Gentuc LLC's request for service dated November 19, 2003.

1 13. AWC testified that it will apply for the necessary Town permit when it has established  
2 firm plans for this project.

3 14. The Applicant will provide service to the extension area at its existing rates and  
4 charges on file with the Commission for its Pinetop-Lakeside system.

5 15. The U.S. Environmental Protection Agency ("EPA") has reduced the arsenic  
6 maximum contaminant level ("MCL") in drinking water from 50 micrograms per liter (" $\mu\text{g}/\text{l}$ ") to 10  
7  $\mu\text{g}/\text{l}$ . The date for compliance with the new MCL is January 23, 2006.

8 16. According to the Staff Report, the most recent lab analysis by AWC indicated that the  
9 wells in the Pinetop-Lakeside system meet the new arsenic MCL.

10 17. The Staff Report further indicates that the Applicant is in full compliance with the  
11 rules of the Arizona Department of Environmental Quality ("ADEQ") and is providing water which  
12 meets the requirements of the Safe Drinking Water Act.

13 18. The Applicant is current on the payment of its property and sales taxes, and is in  
14 compliance with its operating and filing requirements which are subject to the Commission's  
15 jurisdiction.

16 19. Applicant testified that it has filed a curtailment tariff with the Commission for which  
17 approval is pending.

18 20. Staff believes that there is a public need and necessity for water service to the  
19 requested extension area and that the issuance of an extension to Applicant's Certificate is in the  
20 public interest.

21 21. Staff recommended that the Commission approve the Applicant's application subject  
22 to the following conditions:

- 23 (a) that the Applicant charge its existing rates and charges for its Pinetop-Lakeside  
24 system in the proposed extension area;
- 25 (b) that the Applicant file, within 365 days of the effective date of this Decision, with  
26 the Commission's Utilities Division Director ("Director"), a copy of an executed  
27 main extension agreement associated with the proposed extension area;
- 28 (c) that the Applicant file, within 365 days of the effective date of this Decision, with  
the Director, a copy of the Certificate of Approval to Construct issued by the  
Arizona Department of Environmental Quality for the construction of mains in  
the extension area; and

(d) that the Applicant file, within 365 days of the effective date of this Decision, with the Director, a copy of the right-of-way permit issued by the Town of Pinetop-Lakeside authorizing AWC to provide water service to the requested extension area.

22. Staff further recommends that the Commission's approval of an extension of the Applicant's Certificate should be rendered null and void without further Order from the Commission should the Applicant fail to meet any of the above conditions within the time specified.

23. IBEW Local 387 stated that based on the materials reviewed, it fully supports AWC's Application.

24. Staff's recommendations in Findings of Fact Nos. 21 and 22 are reasonable.

**CONCLUSIONS OF LAW**

1. Applicant is a public service corporation within the meaning of Article XV of the Arizona Constitution and A.R.S. §§ 40-281, 40-282 and 40-252.

2. The Commission has jurisdiction over the Applicant and the subject matter of the application.

3. Notice of the application was provided in accordance with the law.

4. There is a public need and necessity for water utility service in the proposed service area described in Exhibit A.

5. Applicant is a fit and proper entity to receive an extension of its Certificate.

6. The application to extend the Certificate for the area described in Exhibit A should be granted subject to the conditions set forth in Findings of Fact Nos. 21 and 22 above.

**ORDER**

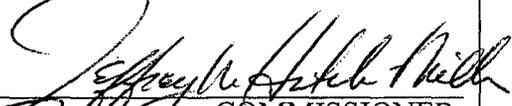
IT IS THEREFORE ORDERED that the application of Arizona Water Company for an extension of its Certificate of Convenience and Necessity for the operation of a water utility in the area more fully described in Exhibit A is hereby approved, provided that Arizona Water Company complies with the conditions as set forth in Findings of Fact No. 21 hereinabove.

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...

1 IT IS FURTHER ORDERED that in the event that Arizona Water Company does not timely  
2 file copies of the required documentation as described in Findings of Fact No. 21 as required by the  
3 preceding ordering paragraph, then the extension of its Certificate of Convenience and Necessity  
4 shall be deemed to be null and void without further Order of the Arizona Corporation Commission.

5 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

6 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

	_____	
CHAIRMAN	COMMISSIONER	COMMISSIONER
		
COMMISSIONER	COMMISSIONER	

11 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive  
12 Secretary of the Arizona Corporation Commission, have  
13 hereunto set my hand and caused the official seal of the  
14 Commission to be affixed at the Capitol, in the City of Phoenix,  
15 this 9<sup>th</sup> day of July, 2004.

  
BRIAN C. McNEIL  
EXECUTIVE SECRETARY

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SERVICE LIST FOR: ARIZONA WATER COMPANY

DOCKET NO. W-01445A-04-0013

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## EXHIBIT A

**PARCEL 1**

A parcel of land lying in the Southwest quarter of Section 25, Township 9 North, Range 22 East of the Gila and Salt River Base and Meridian, Navajo County, Arizona, and being a part of the unsubdivided areas of WONDERLAND ACRES subdivision as recorded in Book 7, Page 22 of Plats, and filed in the Navajo County Recorder's office and being more particularly described as follows:

Beginning at the South quarter corner of said Section 25;  
Thence N25°41'02"E, a distance of 713.03 feet to the corner of Lot 179, said corner being the TRUE POINT OF BEGINNING for this parcel;  
Thence N71°04'23"W, a distance of 495.98 feet;  
Thence N53°17'24"W, a distance of 866.93 feet;  
Thence N89°11'19"E, a distance of 1,500.30 feet;  
Thence S01°02'14"E, a distance of 605.30 feet;  
Thence N63°45'00"W, a distance of 127.30 feet to a point on a curve;  
Thence southwesterly along said curve to the left, having a radius of 121.42 feet, through a central angle of 75°45'23", an arc length of 160.54 feet;  
Thence S40°29'37"W, a distance of 85.26 feet to a point on a curve;  
Thence southwesterly along said curve to the left, having a radius of 162.55 feet, through a central angle of 22°56'22", an arc length of 65.08 feet to the TRUE POINT OF BEGINNING for this parcel.

**PARCEL 2**

A parcel of land lying in the Southwest quarter of Section 25, Township 9 North, Range 22 East of the Gila and Salt River Base and Meridian, Navajo County, Arizona, and being a part of the unsubdivided areas of WONDERLAND ACRES subdivision as recorded in Book 7, Page 22 of Plats, and filed in the Navajo County Recorder's office and being more particularly described as follows:

Beginning at the South quarter corner of said Section 25;  
Thence S89°27'28"W, along the South line of said Section 25, a distance of 315.76 feet to the TRUE POINT OF BEGINNING for this parcel;  
Thence continuing, S89°27'28"W, a distance of 2,157.68 feet;  
Thence N00°20'19"W, a distance of 493.41 feet;  
Thence N20°17'09"E, a distance of 115.74 feet;  
Thence N76°13'11"E, a distance of 246.79 feet;  
Thence N82°27'11"E, a distance of 751.35 feet;  
Thence S70°28'31"E, a distance of 292.84 feet;  
Thence S53°17'24"E, a distance of 1,072.57 feet back to the TRUE POINT OF BEGINNING for this parcel.