

OPEN MEETING ITEM

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

ARIZONA CORPORATION COMMISSION

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AZ CORP COMMISSION  
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DATE: July 13, 2004  
DOCKET NO: W-01737A-04-0274  
TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Marc E. Stern. The recommendation has been filed in the form of an Opinion and Order on:

NEW RIVER UTILITY COMPANY  
(CC&N EXTENSION)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00 p.m.** on or before:

JULY 22, 2004

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Working Session and Open Meeting to be held on:

AUGUST 3 AND 4, 2004

For more information, you may contact Docket Control at (602)542-3477 or the Hearing Division at (602)542-4250. For information about the Open Meeting, contact the Executive Secretary's Office at (602) 542-3931.

Arizona Corporation Commission

DOCKETED

JUL 13 2004

DOCKETED BY

BRIAN C. McNEIL  
EXECUTIVE SECRETARY

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**BEFORE THE ARIZONA CORPORATION COMMISSION**

COMMISSIONERS

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

IN THE MATTER OF THE APPLICATION OF  
NEW RIVER UTILITY COMPANY FOR AN  
EXTENSION OF ITS EXISTING CERTIFICATE  
OF CONVENIENCE AND NECESSITY IN  
MARICOPA COUNTY, ARIZONA.

DOCKET NO. W-01737A-04-0274

DECISION NO. \_\_\_\_\_

**OPINION AND ORDER**

DATE OF HEARING: June 24, 2004  
PLACE OF HEARING: Phoenix, Arizona  
ADMINISTRATIVE LAW JUDGE: Marc E. Stern  
APPEARANCES: FENNEMORE CRAIG, by Jay Shapiro, on behalf of New River Utility Company; and  
Mr. Jayson Gellman, Staff Attorney, Legal Division, on behalf of the Utilities Division of the Arizona Corporation Commission.

**BY THE COMMISSION:**

On April 9, 2004, New River Utility Company (“Company” or “Applicant”), filed with the Arizona Corporation Commission (“Commission”) an application for an extension of its Certificate of Convenience and Necessity (“Certificate”) to provide public water utility service to various parts of Maricopa County, Arizona.

On April 28, 2004, the Commission’s Utilities Division (“Staff”) issued a notice that the application had met the sufficiency requirements of A.A.C. R14-2-411(C).

On May 14, 2004, Staff filed its Staff Report.

On May 19, 2004, by Procedural Order, a hearing was scheduled for June 24, 2004.

On June 7, 2004, Applicant filed a response to the Staff Report.

On June 8, 2004, the Company filed certification that it had provided notice of the application and hearing in accordance with the Commission’s Procedural Order.

On June 24, 2004, a full public hearing was convened before a duly authorized Administrative

1 Law Judge of the Commission at its offices in Phoenix, Arizona. The Company and Staff appeared  
2 with counsel. At the conclusion of the hearing, the matter was taken under advisement pending  
3 submission of a Recommended Opinion and Order to the Commission.

4 \* \* \* \* \*

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

7 **FINDINGS OF FACT**

8 1. Pursuant to authority granted by the Commission in Decision No. 33131 (May 24,  
9 1961), the Company is an Arizona corporation which is engaged in the business of providing water  
10 service to approximately 2,575 customers in the City of Peoria ("Peoria"), Maricopa County,  
11 Arizona.

12 2. On April 9, 2004, the Company filed an application for an extension of its Certificate  
13 in various parts of Maricopa County to provide service to an area which is described in Exhibit A,  
14 attached hereto and incorporated herein by reference.

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

16 4. On May 14, 2004, Staff filed its Staff Report recommending denial of the application  
17 until the Company was able to file evidence that Applicant was in compliance with the requirements  
18 of the Maricopa County Environmental Service Department ("MCESD") and that the Company file,  
19 within 90 days of the effective date of this Decision, or by December 31, 2004, whichever comes  
20 first, with the Utilities Division Director ("Director"), its arsenic treatment plan.

21 5. On June 7, 2004, the Company filed a response to the Staff Report and attached a  
22 MCESD Public Water System Compliance Status Report ("Status Report") dated June 2, 2004, which  
23 indicates Applicant's compliance with the requirement of the MCESD and that all deficiencies noted  
24 in an April 12, 2004 report had been corrected although an enforcement action is pending.<sup>1</sup>

25 6. The Company's witness indicated that the enforcement action, if one is brought, may  
26 or may not result in a financial penalty, which Applicant is willing and able to pay.

27 <sup>1</sup> The enforcement action relates to previous water quality monitoring/reporting deficiencies cited in the April  
28 2004 Status Report. The Company's witness testified MCESD has not indicated if it will actually proceed with an  
enforcement action.

1           7.       The Company has been requested to provide water service to approximately a 9.4 acre  
2 parcel of land owned by Rencor Development, the developer of what is to be the Arrowhead Ranch  
3 Office Park ("ARO"), which is to be a 36 unit office condominium project. The Rencor parcel is  
4 contiguous to Applicant's existing service area, and is located at 78<sup>th</sup> Avenue and Deer Valley Road.

5           8.       Applicant projects that future customer growth will result in approximately 36  
6 commercial connections in the area described in Exhibit A.

7           9.       To provide its present customers with service, Applicant utilizes six existing wells  
8 with a production capacity of 4,497 gallons of water per minute ("GPM") and 3,000,000 gallons of  
9 storage capacity. These facilities are adequate to service all of the prospective customers in the  
10 extension area described in Exhibit A.

11          10.      To meet the needs of its expanding service area, Applicant is also planning the  
12 addition of eight and six inch distribution lines, fire hydrants and service connections.

13          11.      No other municipal or public service corporations provide water service in the  
14 proposed service area described in Exhibit A.

15          12.      The Company has provided Staff with a copy of a March 15, 2004, main extension  
16 agreement between Rencor and the Company with projected costs of \$313,715, a portion of which  
17 will be financed through a refundable advance from the developer of ARO. Staff found the  
18 agreement to be in conformity with A.A.C. R14-2-406 and is recommending approval in this  
19 proceeding.

20          13.      The Company has provided Staff with an April 6, 2004 copy of its Utility Services  
21 Operating Agreement with Peoria which includes the extension area described in Exhibit A and  
22 authorizes Applicant to conduct operations in Peoria's public right of ways prior to obtaining a  
23 franchise. The Company has also filed copies of the Certificates of Approval to Construct for ARO  
24 issued by the MCESD on April 27, 2004, for the Company's water service and wastewater service  
25 which will be provided by the City of Tolleson Wastewater District.

26          14.      The Company will provide service to the extension area at its existing rates and  
27 charges on file with the Commission.

28          15.      The Company is current on the payment of its property and sales taxes, and is in

1 compliance with its filing requirements with the Commission.

2 16. According to the Staff Report at the time it was filed, the Company was not in full  
3 compliance with the rules of the MCESD and was not providing water which met the requirements of  
4 the Safe Drinking Water Act and the MCL requirements. Staff believed these problems were major  
5 deficiencies. Further, several of Company's water wells exceeded the new maximum standard of 10  
6 parts per billion for arsenic.

7 17. Subsequently, after Staff received a copy of the June 2, 2004 MCESD Status Report,  
8 Staff revised its earlier recommendation and now recommends approval of the Company's  
9 application. Staff believes that there is a public need and necessity for water service to the requested  
10 extension area and that the approval of an extension to Applicant's Certificate is in the public interest.

11 18. Since commercial service will only be provided in the extension area, a Certificate of  
12 Assured Water Supply is not required for the development of the area described in Exhibit A.

13 19. Staff is recommending that the Commission approve the Company's application  
14 subject to the following conditions:

- 15 • that the Company charge its existing rates and charges for the proposed  
16 extension area; and
- 17 • that the Company file, within 90 days of the effective date of this Decision or  
18 December 31, 2004, whichever comes first, with the Director of the  
Commission's Utilities Division, a report which describes its arsenic treatment  
plan.

19 20. Staff further recommends that the Commission approve Applicant's main extension  
20 agreement with the developer, Rencor Development.

21 21. Staff's recommendations in Findings of Fact Nos. 19 and 20 are reasonable.

### 22 CONCLUSIONS OF LAW

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

25 2. The Commission has jurisdiction over the Company and the subject matter of the  
26 application.

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

28 4. There is a public need and necessity for water utility service in the proposed service

1 area described in Exhibit A.

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

3 6. The application to extend the Certificate for the area described in Exhibit A should be  
4 granted subject to the conditions set forth in Findings of Fact No. 19 above.

5 7. Applicant's Main Extension Agreement with Rencor Development should be  
6 approved.

7 **ORDER**

8 IT IS THEREFORE ORDERED that the application of New River Utility Company for an  
9 extension of its Certificate of Convenience and Necessity for the operation of a water utility in the  
10 area more fully described in Exhibit A be, and is hereby approved, provided that New River Utility  
11 Company complies with the conditions as set forth in Findings of Fact No. 19 hereinabove.

12 IT IS FURTHER ORDERED that New River Utility Company's Main Extension Agreement  
13 with Rencor Development is hereby approved.

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

15 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

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18 CHAIRMAN COMMISSIONER COMMISSIONER

19  
20 COMMISSIONER COMMISSIONER

21 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive  
22 Secretary of the Arizona Corporation Commission, have  
23 hereunto set my hand and caused the official seal of the  
24 Commission to be affixed at the Capitol, in the City of Phoenix,  
25 this \_\_\_\_ day of \_\_\_\_\_, 2004.

26 \_\_\_\_\_  
BRIAN C. McNEIL  
EXECUTIVE SECRETARY

27 DISSENT \_\_\_\_\_

28 DISSENT \_\_\_\_\_

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SERVICE LIST FOR: NEW RIVER UTILITY COMPANY

DOCKET NO. W-01737A-04-0274

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That portion of the Northwest Quarter of the Northeast Quarter of Section 23, Township 4 North, Range 1 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, described as follows: Commencing at the North quarter corner of said Section 23;

Thence North 89 degrees 36 minutes 41 seconds East, along the North line of said Northeast Quarter, 665.89 feet to the Northwest corner of the Northeast Quarter of the Northwest Quarter of the Northeast Quarter of said Section 23, and the point of beginning of the herein described parcel;

Thence continuing North 89 degrees 36 minutes 41 seconds East, along said North line, 665.69 feet to the Northeast corner of the Northeast Quarter of the Northwest Quarter of the Northeast Quarter of said Section 23;

Thence South 00 degrees 12 minutes 23 seconds West, 660.70 feet to the Southeast corner of the Northeast Quarter of the Northwest Quarter of the Northeast Quarter of said Section 23;

Thence South 89 degrees 39 minutes 55 seconds West, 665.24 feet to the Southwest corner of the Northeast Quarter of the Northwest Quarter of the Northeast Quarter of said Section 23;

Thence North 00 degrees 09 minutes 01 second East, 660.07 feet to the point of beginning;

Except the West 25 feet; and

Except the South 22 feet of the North 55 feet, thereof, as conveyed to Maricopa County, a political subdivision of the State of Arizona in Deeds recorded in Document No. 01-965229 and Document No. 01-966003 and Document No. 01-965340; and

Except beginning at the point of intersection of the East line of the West 25 feet, and the South line of the North 55 feet, of the West half of the West half of the Northeast quarter of the Northwest quarter of the Northeast quarter of said Section 23;

Thence Southerly, 30 feet, along said East line of the West 25 feet ;

Thence in a Northeasterly direction to a point on said South line of the North 55 feet that is 30 feet Easterly from said point of intersection;

Thence Westerly, 30 feet to said point of beginning, as conveyed to Maricopa County, a political subdivision of the State of Arizona by Deed recorded in Document No. 01-965229; and

Except all coal, oil, gas and other mineral deposits as reserved in the Patents to said land recorded in Docket 1791, page 376, and Docket 1585, page 483.