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OPEN MEETING ITEM  
MEMORANDUM

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FROM: Utilities Division

AZ CORP COMMISSION  
DOCUMENT CONTROL

DATE: September 1, 2000

RE: IN THE MATTER OF THE COMPLAINT AND ORDER TO SHOW CAUSE ON  
GEORGE M. PAPA WATER COMPANY (DOCKET NO. W-01894A-00-0654)

George Papa is the sole proprietor of a public service corporation<sup>1</sup> known as the George Papa Water Company ("Papa Water") operating in Navajo County, Arizona. On July 10, 1963, the Commission, pursuant to Decision No. 34647 authorized the granting of a Certificate of Convenience and Necessity ("CC&N") to Papa Water to provide water service in three separate service areas in the communities of Linden, Pinedale, and Clay Springs, located in Navajo County, Arizona.

Pursuant to the grant of authority contained in Decision No. 34647, Papa Water is obligated to maintain domestic water utility service in the above-mentioned areas. Arizona Department of Revenue ("ADOR") subsequently seized these water utility assets of Papa Water pursuant to Arizona Revised Statute ("A.R.S.") § 42-1201, for delinquent Department of Revenue taxes (sales tax). On February 23, 2000, these assets were sold at public auction to Mr. and Ms. William Parker. Pursuant to A.R.S. §12-1281, Mr. Papa had until August 23, 2000, to pay all back taxes and applicable fees and interest in order to redeem these assets. Mr. Papa failed to redeem by the specified time and as a result, title to the assets has passed to Mr. and Mrs. Parker. Mr. and Mrs. Parker have formed Mountain Glen Water Company ("Mountain Glen") and have a pending CC&N application before the Commission to provide water service to the same area certificated to Papa Water in Decision No. 34647.

Pursuant to A.R.S. §40-361, every public service corporation is required to furnish and maintain service, equipment and facilities to promote safety, health, comfort and convenience of the public. As a result of the auction sale and passing of the redemption period, Papa Water no longer has the equipment and facilities to furnish and maintain service pursuant to A.R.S. §40-361. Pursuant to A.R.S. Const. Art. 15, §3 and A.R.S. §§ 40-202, 246, 281, 282, 361, the Commission may institute a Complaint proceeding to rescind a CC&N if such rescision is in the

<sup>1</sup> Utilities operated as sole proprietorships constitute public service corporations and are under the jurisdiction of the Arizona Corporation Commission, Van Dyke v. Geary, 218 F.111 Aff'd 244 U.S. 39 (1917).

public interest.<sup>2</sup> Because Papa Water no longer has the equipment and facilities to furnish and maintain service pursuant to A.R.S. §40-361, the Commission has the authority to rescind Papa Water's CC&N.<sup>3</sup> Staff, therefore, requests that the Commission rescinds the CC&N granted to Papa Water pursuant to Decision No. 34647.

*for*  
  
Deborah R. Scott  
Director  
Utilities Division

DRS:MAD:lh\RJM

ORIGINATOR: Mark A. DiNunzio

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<sup>2</sup> See, James P. Paul Water Company v. Arizona Corporation Commission, 137 Ariz. 426 671 P.2d 404 (1983) "The Corporation Commission's authority to delete and reassign a parcel of land under a certificate of convenience and necessity is controlled by the public interest."

<sup>3</sup> "Once granted, a certificate of convenience and necessity confers upon its holder an exclusive right to provide the relevant service for as long as the grantee can provide adequate service as reasonable rates." Id. 137 Ariz. at 429.

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**BEFORE THE ARIZONA CORPORATION COMMISSION**

CARL J. KUNASEK  
Chairman  
JIM IRVIN  
Commissioner  
WILLIAM A. MUNDELL  
Commissioner

ARIZONA CORPORATION COMMISSION, )  
 )  
COMPLAINANT, )  
 )  
v. )  
 )  
GEORGE M. PAPA WATER COMPANY, )  
 )  
RESPONDENT. )

DOCKET NO. W-01894A-00-0654  
DECISION NO. \_\_\_\_\_  
**COMPLAINT  
AND  
ORDER TO SHOW CAUSE**

Open Meeting  
September 12 and 13, 2000  
Phoenix, Arizona

**BY THE COMMISSION:**

**FINDINGS OF FACT**

The Arizona Corporation Commission ("Commission") for its Complaint against Respondent alleges:

1. Complainant is a governmental agency of the State of Arizona, existing by virtue of Article 15 of the Arizona Constitution.
2. Respondent is the sole proprietor of a public service corporation<sup>1</sup> known as the George Papa Water Company ("Papa Water") operating in Navajo County, Arizona.
3. The Commission, pursuant to Decision No. 34647 (July 10, 1963), authorized the granting of a Certificate of Convenience and Necessity ("CC&N") to Papa Water to provide water service in three separate service areas in the communities of Linden, Pinedale, and Clay Springs, located in Navajo County, Arizona.

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<sup>1</sup> Utilities operated as sole proprietorships constitute public service corporations and are under the jurisdiction of the Arizona Corporation Commission, Van Dyke v. Geary, 218 F.111 Aff'd 244 U.S. 39 (1917).

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- 4. Pursuant to the grant of authority contained in Decision No. 34647, Papa Water is obligated to maintain domestic water utility service in the above-mentioned areas.
- 5. The water utility assets of Papa Water were seized by Arizona Department of Revenue (“ADOR”) pursuant to Arizona Revised Statute (“A.R.S.”) § 42-1201, for delinquent Department of Revenue taxes (sales tax).
- 6. These assets were sold at public auction on February 23, 2000.
- 7. The assets were purchased by Mr. and Ms. William Parker.
- 8. Pursuant to A.R.S. § 12-1281, Mr. Papa had until August 23, 2000, to pay all back taxes and applicable fees and interest in order to redeem these assets.
- 9. Mr. Papa failed to redeem by the specified time and as a result, title to the assets has passed to Mr. and Mrs. Parker.
- 10. Mr. and Mrs. Parker have formed Mountain Glen Water Company (“Mountain Glen”) and have a pending CC&N application before the Commission to provide water service to the same area certificated to Papa Water in Decision No. 34647.
- 11. Pursuant to A.R.S. § 40-361, every public service corporation is required to furnish and maintain service, equipment and facilities to promote safety, health, comfort and convenience of the public.
- 12. Papa Water no longer has the equipment and facilities to furnish and maintain service pursuant to A.R.S. § 40-361.

**RELIEF REQUESTED**

- 13. Pursuant to Ariz. Const. Art. XV, § 3, and A.R.S. §§ 40-202, -246, -252, -281, -282, -361, the Commission may institute a Complaint proceeding to rescind a CC&N if such rescision is in the public interest.<sup>2</sup>

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<sup>2</sup> See, James P. Paul Water Company v. Arizona Corporation Commission, 137 Ariz. 426 671 P.2d 404 (1983) “The Corporation Commission’s authority to delete and reassign a parcel of land under a certificate of convenience and necessity is controlled by the public interest.”

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14. Because Papa Water no longer has the equipment and facilities to furnish and maintain service pursuant to A.R.S. § 40-361, the Commission has the authority to rescind Papa Water's CC&N<sup>3</sup> pursuant to A.R.S. § 40-282(c).<sup>4</sup>

15. Staff, therefore, requests that the Commission rescind the CC&N granted to Papa Water in Decision No. 34647.

**ORDER**

THEREFORE, IT IS ORDERED that Respondent, Papa Water, appear before the Arizona Corporation Commission at a time and place designated by the Hearing Division, and show cause, if any exists, why the Commission should not grant the relief requested by this Order.

IT IS FURTHER ORDERED that this Order shall become effective immediately.

**BY ORDER OF THE ARIZONA CORPORATION COMMISSION**

CHAIRMAN

COMMISSIONER

COMMISSIONER

IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive Secretary of the Arizona Corporation Commission, have hereunto, set my hand and caused the official seal of this Commission to be affixed at the Capitol, in the City of Phoenix, this \_\_\_\_ day of \_\_\_\_\_, 2000.

\_\_\_\_\_  
BRIAN C. McNEIL  
Executive Secretary

DISSENT: \_\_\_\_\_

DRS:MAD:lh

3 "Once granted, a certificate of convenience and necessity confers upon its holder an exclusive right to provide the relevant service for as long as the grantee can provide adequate service at reasonable rates." *Id.* 137 Ariz. at 429.

4 "The Commission's authority to grant a certificate of convenience and necessity is controlled by public interest, A.R.S. § 40-282(c). Therefore, its authority to delete and reassign a parcel of land is controlled by the same because reassignment is equivalent to granting a certificate anew." *Id.* 137 Ariz. at 428.