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BEFORE THE ARIZONA CORPORATION COMMISSION

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Company

COMMISSIONERS

Arizona Corporation Commission

DOCKETED

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

JAN - 4 2005

DOCKETED BY
HR

IN THE MATTER OF THE APPLICATION OF
UTILITY SOURCE, L.L.C. FOR A CERTIFICATE
OF CONVENIENCE AND NECESSITY TO
PROVIDE WATER SERVICE IN COCONINO
COUNTY, ARIZONA.

DOCKET NO. WS-04235A-04-0073

IN THE MATTER OF THE APPLICATION OF
UTILITY SOURCE, L.L.C. FOR AUTHORITY TO
ISSUE PROMISSORY NOTE(S) AND OTHER
EVIDENCES OF INDEBTEDNESS PAYABLE AT
PERIODS OF MORE THAN TWELVE MONTHS
AFTER THE DATE OF ISSUANCE.

DOCKET NO. WS-04235A-04-0074

DECISION NO. 67446

OPINION AND ORDER

DATE OF HEARING: October 12, 2004

PLACE OF HEARING: Phoenix, Arizona

ADMINISTRATIVE LAW JUDGE: Amanda Pope¹

APPEARANCES: Mr. Timothy J. Sabo, Staff Attorney, Legal Division, on behalf of the Utilities Division of the Arizona Corporation Commission; and

Mr. Richard L. Sallquist, Sallquist & Drummond, P.C., on behalf of Utility Source, L.L.C.

BY THE COMMISSION:

On January 30, 2004, Utility Source, L.L.C. ("Utility Source" or "Company") filed with the Arizona Corporation Commission ("Commission") an Application for a Certificate of Convenience and Necessity ("CC&N") to Provide Water and Wastewater Service in Coconino County, Arizona ("CC&N Application"). On January 30, 2004, Utility Source also filed an Application for Authority

¹ Administrative Law Judge Amanda Pope conducted the hearing in this matter. Administrative Law Judge Dwight Nodes drafted the Recommended Opinion and Order.

1 to Issue Promissory Note(s) and Other Evidences of Indebtedness in the amount of \$575,000
2 (“Financing Application”).

3 On February 17, 2004, the Commission’s Utilities Division Staff (“Staff”) filed a letter
4 indicating that Utility Source’s CC&N Application had not met the sufficiency requirements outlined
5 in the Arizona Administrative Code.

6 Utility Source submitted additional records and documentation to Staff on March 30, April 6,
7 and July 13, 2004 and, on July 20, 2004, Staff filed a letter stating that Utility Source’s CC&N
8 Application was deemed sufficient.

9 On August 2, 2004, Utility Source filed a Motion to Consolidate the above referenced dockets
10 based upon the fact that the Financing and CC&N Applications rely upon the same law, facts, and
11 witnesses.

12 By Procedural Order dated August 23, 2004, the above captioned matters were consolidated,
13 and a hearing in the consolidated matter was set for October 12, 2004. Utility Source was directed to
14 provide notice of the hearing to affected property owners and to publish the requisite notice in a local
15 newspaper.

16 On September 22, 2004, Staff filed its Staff Report in the consolidated docket recommending
17 approval of Utility Source’s application for a wastewater CC&N, but denial of Utility Source’s
18 application for a water CC&N and for financing authorization.

19 On September 28, 2004, Utility Source filed an Affidavit of Publication and an Affidavit of
20 Mailing in accordance with the August 23, 2004 Procedural Order.

21 On October 6, 2004, Utility Source and Staff separately filed in this docket a list of witnesses
22 intended to be called at the October 12, 2004 hearing and a description of their areas of testimony.

23 A hearing on the consolidated matters was held as scheduled on October 12, 2004 before a
24 duly authorized Administrative Law Judge of the Commission. Utility Source and Staff appeared and
25 were represented by counsel. No members of the public appeared to provide public comment. At the
26 conclusion of the hearing, the matter was taken under advisement pending submission of a
27 Recommended Opinion and Order to the Commission. However, the record remained open to allow
28

1 for Utility Source's submission of a Physical Availability Demonstration ("PAD") issued by the
2 Arizona Department of Water Resources ("ADWR").

3 On October 27, 2004, Utility Source filed the PAD from ADWR for "Phase I" of the Flagstaff
4 Meadows development. However, the Company stated that an amended legal description needed to
5 be prepared for the Phase I properties.

6 On November 5, 2004, a Procedural Order was issued directing Staff to submit a clarification
7 of its position with respect to the Phase I properties and compliance with certain drinking water
8 requirements of the Arizona Department of Environmental Quality ("ADEQ"). The November 5,
9 2004 Procedural Order also suspended the timeclock in the consolidated dockets until the additional
10 necessary documents could be filed.

11 On November 19, 2004, Utility Source filed an amended legal description for the Phase I
12 properties.

13 In accordance with the November 5, 2004 Procedural Order, on November 22, 2004 Staff
14 filed its Statement of Position with respect to the Phase I properties, among other things.

15 On December 2, 2004, Staff filed a Notice of Resolution of Arizona Department of
16 Environmental Quality Issues indicating that the ADEQ drinking water issues had been resolved to
17 Staff's satisfaction.

18 On December 6, 2004, Utility Source filed a pleading requesting that a Recommended
19 Opinion and Order be issued as soon as possible, waiving the 10-day exception period, and
20 requesting that the Commission schedule the matter for consideration at its scheduled December 13,
21 2004 (sic) Open Meeting.

22 On December 9, 2004, counsel for Utility Source submitted a letter stating that, because a
23 Recommended Order would not be issued prior to the December 13, 2004 (sic) Open Meeting, a
24 Special Open Meeting should be scheduled before the next regularly scheduled Open Meeting (on
25 January 11, 2005) following the expedited issuance of a Recommended Opinion and Order.

26 * * * * *

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

1 **FINDINGS OF FACT**

2 **Background of Utility Source, LLC, Operations**

3 1. Utility Source is an Arizona Limited Liability Company ("LLC") that is owned by Mr.
4 Lonnie McCleve (80 percent) and Mr. Gary Bulechek (20 percent). Mr. McCleve testified that he has
5 operated a water system for a truck stop north of Route 40 in Bellemont, Arizona since 1995.
6 Sometime thereafter, Mr. McCleve purchased approximately 137 acres of land and began to develop
7 the property. Utility Source, LLC's assets are owned by Fuelco Travel Center, LLC ("Fuelco"), and
8 Greenfield Land Development, LLC ("Greenfield"), both of which are also owned 80 percent by Mr.
9 McCleve and 20 percent by Mr. Bulechek².

10 2. The area being developed is called Flagstaff Meadows which, at full build out, would
11 include approximately 675 residential lots and 10 commercial lots (Ex. S-1, at 1). Currently 201
12 residential homes have been built in Flagstaff Meadows and are provided water and wastewater
13 service by Utility Source without a CC&N³. The Flagstaff Meadows development includes a one
14 acre lake with waterfalls and a creek flowing into another holding pond. The development also has a
15 park with turfgrass irrigated by reclaimed water from the lake (Tr. 83-86).

16 3. According to the Staff Report, ADWR reported on February 17 and March 17, 2004
17 that water supplies for the Company's development were inadequate. On March 22, 2004, Staff
18 informed Utility Source that as a public service company operating without a CC&N and without an
19 adequate water supply, the Company was prohibited from connecting additional customers to its
20 system. By letter from the Company's counsel to Staff sent April 2, 2004, Utility Source advised
21 Staff that it proposed to continue operating under a "wholesale" arrangement with the HOA because
22 "customers are properly and adequately protected" during the transition from the HOA's operations
23 to public service company status. On April 9, 2004, Staff informed the Company that given its
24 unresolved regulatory issues, Staff intended to inform ADWR, ADEQ, and the Arizona Department

25 ² Empire Development, a California corporation or LLC, owned by Mr. Jim Prevaty, owns a portion of the development
26 and is building townhomes on its property (Tr. 63-64).

27 ³ According to the Company, it has provided "wholesale" water and wastewater services to the Flagstaff Meadows
28 Homeowners Association ("HOA") since April 2003 under an arrangement whereby the HOA provides retail service to
the residential customers under a rebilling arrangement. However, there is no written agreement between the developer
and the HOA and Mr. McCleve conceded that as the owner/developer of the property, the HOA remains under his
effective control (Tr. 67, 78), including with respect to the provision of service to customers.

1 of Real Estate ("ADRE") that Utility Source was operating without the required CC&N (Ex. S-1, at
2 1-2).

3 4. On June 3, 2004, ADRE informed Mr. McCleve that his public report for the
4 development was invalid and, until the pending water issues were resolved with the Commission,
5 ADWR, and ADEQ, ADRE would not authorize any binding sales (*Id.* at 2).

6 5. On July 19, 2004, Utility Source provided Staff with additional water source
7 information and indicated that ADWR was expected to issue a letter of water adequacy within 90
8 days. Staff issued its sufficiency letter on July 20, 2004 as a result of the information provided by the
9 Company (*Id.*).

10 6. On August 19, 2004, ADEQ informed Mr. McCleve that the necessary approvals for
11 sanitary facilities were suspended due to unresolved issues. ADEQ separately informed Staff that
12 ADEQ's initial approval to the developer was based in part on the developer's reliance on an existing
13 water system serving the Bellemont Travel Center, which is a "transient non-community water
14 system." ADEQ determined that the water system would need to be reclassified and comply with all
15 state regulations before it could be used to provide service to the public (*Id.*).

16 7. On August 20, 2004, ADRE advised Mr. McCleve that no new sales could be made
17 until all of the water issues were resolved. On September 7, 2004, Utility Source requested that Staff
18 issue a letter informing other state agencies that the Company was required to continue to serve
19 existing customers. On September 15, 2004, Staff informed Utility Source that an existing customer
20 was considered to be a person receiving service prior to March 22, 2004 and that such definition was
21 conditioned on the developer's disclosure of the ADWR inadequacy letters and disclosure that the
22 rates being charged were not authorized by the Commission (*Id.* at 3).

23 **Utility Source, LLC, Water System and Regulatory Requirements**

24 8. Pursuant to A.R.S. §40-281, a public service corporation is prohibited from beginning
25 construction of a "line, plant, service or system, or any extension thereof, without first having
26 obtained from the commission a certificate of convenience and necessity." There is no dispute that
27 Utility Source failed to obtain a CC&N prior to construction of a water and wastewater system that,
28 according to the record, is currently serving 201 customers.

1 9. Utility Source is proposing a water system that would ultimately consist of three deep
2 wells (107 gpm total capacity) and three shallow wells (44 gpm total capacity), two storage tanks, a
3 booster system, and a distribution system that would serve approximately 650 customers within the
4 first five years of operation. According to a report prepared by the developer's consulting engineers,
5 seven wells have been drilled on the Bellemont property, five of which are at depths of 65 to 300 feet.
6 These five wells have produced a total of approximately 35 gpm, while two other wells drilled to the
7 Coconino Sandstone at depths of 2,440 and 2,100 feet produce 14 gpm and 18 gpm, respectively (*Id.*
8 at 3).

9 10. Subsequent to the hearing, Utility Source obtained a Physical Availability
10 Demonstration letter from ADWR, dated October 19, 2004, for "Phase I"⁴ of the Flagstaff Meadows
11 development which certifies 100-year availability of approximately 110 acre feet per year. The PAD
12 certification is sufficient to serve the demand associated with Phase I only. In its October 19, 2004
13 letter, ADWR states that it allowed Utility Source, pursuant to A.A.C. R12-15-717(B)(1)(e), to use
14 water obtained from deep wells for demonstrating physical availability (the normal requirement
15 limits well depths to 1200 feet for PAD purposes). According to the ADWR letter, wells drilled to
16 lower depths may be permitted for purposes of proving water availability if groundwater is available
17 at lower depths and the applicant has demonstrated the financial capability to access the water at the
18 lower depths. The October 19, 2004 ADWR letter also indicates that although Utility Source is
19 currently in compliance with ADEQ drinking water requirements, the well source is located within
20 one mile of the Navajo Army Depot DOD superfund site, which is subject to ongoing monitoring by
21 ADEQ due to potential underground migration of hazardous elements from the site (October 19, 2004
22 ADWR letter).

23
24 ⁴ During the hearing, the Company clarified that it was seeking in this proceeding a conditional CC&N (*i.e.*, a permanent
25 CC&N subject to compliance with various Staff conditions) only for the following areas of the overall Flagstaff Meadows
26 subdivision: Flagstaff Meadows Unit I (133 lots); Flagstaff Meadows Unit II (87 lots); and townhomes at Flagstaff
27 Meadows Unit I (105 units). These 325 dwelling units (which include the 201 customers currently being served), plus the
28 Bellemont Truck Center and adjacent hotel and restaurant, have become known as "Phase I" for purposes of ADWR
certification. "Phase II" is comprised of the remainder of the overall development which includes Flagstaff Meadows
Unit III (including the second phase of the townhomes), the Bellemont commercial parcel, and other undeveloped parcels
(*See*, November 19, 2004 letter from Mr. Sallquist). For the Phase II parcels, Utility Source is seeking an "Order
Preliminary" from the Commission pursuant to A.R.C. §40-282(D) (*See* discussion below regarding the "Order
Preliminary" concept).

1 11. The U.S. Environmental Protection Agency ("EPA") has reduced the arsenic
2 maximum contaminant level ("MCL") in drinking water from 50 parts per billion ("ppb") to 10 ppb,
3 effective January 23, 2006. Staff notes that the Company's current well sources produce water with
4 arsenic levels of only 2 ppb, well within the new EPA requirements. However, Staff recommends
5 that Utility Source be required to file a report, within 60 days, on the actual arsenic levels in its well
6 fields since not all of the Company's production wells are currently in service (Ex. S-1, at 5).

7 12. Utility Source's water supply is provided by the Bellemont Travel Center Public
8 Water System, which was previously considered by ADEQ rules to be a transient non-community
9 water system. In accordance with Staff's recommendation, Utility Source requested, and received, a
10 determination from ADEQ that the Company meets the technical, managerial and financial criteria
11 for drinking water Capacity Development for Flagstaff Meadows and that Utility Source satisfies the
12 Community Water System requirements (*See*, October 7, 2004 letter from ADEQ). Staff's
13 recommendation has therefore been satisfied.

14 13. Staff also recommended that Utility Source be required to submit a copy of the
15 Company's initial Approval to Construct ("ATC") from ADEQ within 12 months of the date of a
16 Decision in this matter. Attached to the Company's October 27, 2004 post hearing filing were the
17 remaining ATCs for Utility Source's water and wastewater systems. In accordance with its
18 December 2, 2004 filing, Staff believes this recommendation has been satisfied.

19 **Curtailment and Cross Connection/Backflow Tariffs**

20 14. A curtailment tariff is a tool that allows a company to manage its water resources
21 during periods of shortages due to drought, equipment breakdowns, or other unforeseen events. A
22 cross connection/backflow tariff provides for the installation of backflow devices and allows a
23 company to take corrective action when cross connection hazards exist. Staff recommended that
24 Utility Source be required to file within 45 days of a Decision in this proceeding conforming
25 curtailment and cross connection/backflow tariffs (Ex. S-1, at 5). The Company does not oppose this
26 recommendation.

27 **Off-Site Facilities Hook-Up Fee**

28 15. Utility Source proposes in this proceeding to be authorized to assess water and

1 wastewater hook-up fees of \$1,000 and \$1,800, respectively, in order to help offset backbone plant
2 costs (Tr. 38). Staff points out that, although hook-up fees may be appropriate in some situations,
3 Staff believes they are inappropriate for new CC&Ns. Staff therefore recommends denial of the
4 Company's proposal (Ex. S-1, at 6).

5 16. We agree with Staff that the Company's hook-up fee proposal should be denied. As
6 Staff witness Jim Fisher testified, Utility Source has the ability to enter into main extension
7 agreements whereby, pursuant to A.A.C. R14-2-406, developers could contribute or advance funds
8 for backbone plant (Tr. 118-119). However, in this case, the utility company and the developer are
9 one and the same, and the developer has, to this point, apparently chosen to install the entirety of the
10 system without using advances or contributions, thereby inflating the Company's rate base and thus
11 rates that may ultimately be paid by customers. We believe it is inappropriate to allow the
12 Company/developer to benefit further from imposition of hook-up fees where the Company has made
13 no effort to mitigate the potential rate effect on customers through the use of main extension
14 agreements allowed under Commission rules. Utility Source's hook-up fee proposal is therefore
15 denied.

16 Depreciation Rates

17 17. Staff recommends that Utility Source be required to implement water and wastewater
18 plant depreciation rates on an individual account basis pursuant to National Association of
19 Regulatory Utility Commissioners ("NARUC") guidelines. The NARUC depreciation rates are set
20 forth in the Staff Report by account (Ex. S-1, at 6-7 and 10-11). Utility Source does not oppose
21 Staff's recommendation on this issue.

22 Wastewater System

23 18. Utility Source's wastewater treatment system is comprised of a 37,500 and 100,000
24 gpd SANTEC activated sludge process with de-nitrification. Wastewater treatment includes a flow
25 equalization chamber, aeration basins, anoxic basins, and re-aeration in the secondary clarifier,
26 influent pump stations, head works, and chlorination/dechlorination basins. The Company's system
27 has two lift stations and one evaporation lagoon. Staff states that the Company's wastewater
28 facilities appear to be appropriate and adequate for the needs of the planned development. Utility

1 Source has received its final permit from ADEQ for the wastewater treatment system (*Id.* at 9-10).

2 **Financing Application**

3 19. Utility Source seeks authority through its Financing Application to incur debt in the
4 amount of \$575,000 for a revolving line of credit through 2014 that the Company intends to use for
5 ongoing working capital purposes (*Id.*, Attach. C, at 4). Staff states that Utility Source has also
6 indicated an intent to borrow \$3,202,554 to finance portions of the development project, but the
7 Company did not identify the source of those funds; nor did the Company seek Commission
8 authorization to borrow that amount (*Id.*). Staff recommends denial of the \$575,000 financing
9 request due to its concern with “the problematic nature of the utility, its customer base, [and] revenue
10 and expense levels” (Ex. S-1, at 10).

11 20. We agree with Staff that the Financing Application should be denied. As set forth in
12 A.R.S. §40-302(A), loans or other indebtedness approved by the Commission may not be used for
13 purposes that are “reasonably chargeable to operative expenses or to income.” Therefore, the
14 Company’s stated use for the financing, for working capital purposes, would be improper even if
15 Utility Source could otherwise support its ability to service the proposed debt.

16 21. Further, as stated above, Utility Source has not availed itself of the opportunity to
17 negotiate main extension agreements but by its actions has, instead, pursued a development strategy
18 that will potentially have the effect of saddling the Company’s customers with unduly burdensome
19 rates. We do not believe it is appropriate to add an additional financial burden on the Company’s
20 customers by approving a financing proposal that further insulates the utility company/developer
21 from risk.

22 22. In addition, Staff stated that it did not calculate a times interest earned ratio (“TIER”)
23 or debt service coverage ratio because earnings projections for Utility Source are negative. However,
24 using the Company’s projections, and based on a 10-year amortization of the proposed \$575,000
25 loan, Staff points out that the TIER would be slightly over 1.0 and the DSC would be below 1.0. We
26 agree with Staff that these ratios demonstrate a lack of sufficient cash flows to support the financing
27 (Ex. S-1, Attach. C, at 5).

28

1 **Order Preliminary**

2 23. As noted above, Utility Source seeks an "Order Preliminary" from the Commission,
3 pursuant to A.R.S. §40-282(D), for "Phase II" of the Flagstaff Meadows development. Under the
4 Company's proposal, as agreed to by Staff, the requested Order Preliminary would impose certain
5 requirements on Utility Source that must be satisfied (e.g., obtaining a PAD from ADWR for the
6 Phase II area) prior to issuance of a subsequent Commission Order formally granting a CC&N for
7 Phase II. Staff supports the Order Preliminary concept in this case because Staff believes the
8 necessity for a subsequent Order will make it clear whether, and when, the Company has a valid
9 CC&N for the requested area (*See*, Tr. 13-14). A.R.S. §40-282(D) provides:

10 If a public service corporation desires to exercise a right or privilege under
11 a franchise or permit which it contemplates securing, but which has not
12 yet been granted to it, the corporation may apply to the commission for an
13 *order preliminary* to the issue of the certificate. The commission may
14 make an order declaring that it will thereafter, upon application, under
15 rules it prescribes, issue the desired certificate, upon terms and conditions
16 it designates, after the corporation has obtained the contemplated franchise
17 or permit or may make an order issuing a certificate on the condition that
18 the contemplated franchise or permit is obtained and on other terms and
19 conditions it designates. If the commission makes an order preliminary to
20 the issuance of the certificate, upon presentation to the commission of
21 evidence that the franchise or permit has been secured by the corporation,
22 the commission shall issue the certificate. (emphasis added)

18 24. Although the statute permits the issuance of an Order Preliminary, the process
19 apparently has not been used by the Commission for a number of years. In recent years, the
20 Commission has followed the practice of granting so-called "Conditional CC&Ns" whereby a
21 company is granted a CC&N for a given territory subject to compliance with certain conditions set
22 forth in the Order. Under the Conditional CC&N policy, no further action by the Commission is
23 necessary because the CC&N automatically becomes effective upon satisfaction of the conditions, or
24 becomes null and void if the conditions are not met within the time period designated in the Order.
25 As described above, Utility Source is requesting a traditional Conditional CC&N for "Phase I" of the
26 Flagstaff Meadows development and an Order Preliminary with respect to "Phase II."

27 25. Although we agree with Staff that there may be situations where issuance of an Order
28

1 Preliminary is appropriate, we do not believe the facts of this case present such a situation. Utility
2 Source has obtained a PAD from ADWR with respect to Phase I, but there is no assurance that the
3 Company will be able to secure sufficient supplies of water for Phase II of the project. Indeed, the
4 Company was forced to drill two wells at depths nearly twice the ADWR standard depth-to-water
5 limit of 1200 feet to secure a PAD for Phase I (*See*, October 19, 2004 letter from ADWR), and
6 ADWR twice reported that water supplies for the Company were inadequate (Ex. S-1, at 1). We
7 believe that it would be inappropriate under the facts of this case to grant preliminary approval of a
8 CC&N area to an entity that improperly commenced operations without required regulatory
9 approvals. Accordingly, we will require Utility Source to submit a subsequent CC&N extension
10 application for the Phase II area, and will consider granting such application only if the Company is
11 able to provide credible evidence that sufficient water is available in accordance with ADWR
12 requirements. The Company must also be in full compliance with requirements established by
13 ADEQ and all other applicable regulations.

14 **Water and Wastewater Rates**

15 26. The fact that Staff and the Commission are now placed in a position of setting "initial"
16 rates for a company that is already serving more than 200 customers demonstrates why it is critical
17 for start-up water and wastewater companies to seek preliminary CC&N approval and rate
18 authorization prior to building their systems and connecting customers. Here, it appears that the
19 developer induced customers to purchase homes with water and wastewater rates that will be
20 insufficient to support the construction and long-term operations of water and wastewater systems for
21 the planned development. Although we do not ascribe any malicious intent to the developer's
22 actions, the net effect of those actions cannot help but lead to extremely unhappy customers who may
23 be left to pay for utility systems at costs that significantly exceed the rates they expected to pay when
24 they purchased their homes. The rate burden on customers is likely to be exacerbated by the
25 Company's failure to use advances and contributions as a means of reducing the Company's rate base
26 to reasonably sustainable levels. We are therefore left with the unenviable task of setting initial rates
27 that must, to the extent possible, balance the equities between the Company and its customers.

28

27. Utility Source is seeking initial water rates for 3/4 inch meter customers⁵ of \$6.48 per month with commodity rates of \$2.83 per 1,000 gallons for 1 to 5,000 gallons per month; \$3.32 per 1,000 gallons for usage of 5,001 to 15,000 gallons per month; and \$4.71 per 1,000 gallons in excess of 15,000 gallons per month (See, Application, Proposed Tariff, at 2)⁶. According to the Staff Report, Staff is concerned that the Company's proposed rates understate water production costs for existing and future customers. Staff therefore recommends initial rates with a monthly minimum charge for residential customers with a 3/4 inch meter of \$24.37. Staff's recommended usage rates would also be significantly higher than those proposed by the Company, with a first tier rate of \$6.47 per 1,000 gallons (up to 4,000 gallons); a second tier rate of \$9.70 per 1,000 gallons (4,001 to 12,000 gallons); and a third tier rate of \$11.64 per 1,000 gallons (in excess of 12,000 gallons) (Ex. S-1, at 6). Based on usage of 4,740 gallons per month (*Id.*, Attach. C, at 3), under the Company's current and proposed rates an average customer would pay \$19.90 per month for water service. Under Staff's proposed rates, an average customer would pay \$57.43, an increase of approximately 189 percent. The full schedule of proposed water rates and charges for Utility Source and Staff are as follows:

WATER

	Proposed Rates	
	<u>Company</u>	<u>Staff</u>
<u>MONTHLY USAGE CHARGE:</u>		
5/8" x 3/4" Meter	N/A	\$24.37
3/4" Meter	\$6.48	24.37
1" Meter	8.02	61.47
1 1/2" Meter	9.62	121.87
2" Meter	14.00	194.99
3" Meter	N/A	365.61
4" Meter	58.00	609.35
6" Meter	89.80	1,218.70
<u>All classes except irrigation</u>		
<u>Commodity Charge per 1,000 Gallons</u>		
From 1 up to 6,000 gallons	\$2.83	N/A
From 6,0001 up to 15,000 gallons	3.32	N/A
In excess of 15,000 gallons	4.71	N/A
From 1 to 4,000 gallons		\$6.47

⁵ The Company has no 5/8 x 3/4 inch meter customers.

⁶ The proposed rates are the same as the current unauthorized rates charged to end-use customers through the HOA arrangement. Mr. McCleve testified that these rates mirror those in effect for residents of the City of Flagstaff (Tr. 78).

1	From 4,001 to 12,000 gallons		9.70
	All gallons over 12,000 gallons		11.64
2	<u>Irrigation Meters</u>		
3	Charge per 1,000 gallons for usage	N/A	\$11.64
4	Standpipe or bulk water per 1,000 gallons	\$6.00	11.64
5	Construction Water	6.00	11.64
6	<u>Hook-up Fees</u>		
	5/8" X 3/4"	n/a	0.00
7	3/4"	\$1,000	0.00
	1"	1,666	0.00
8	1 1/2"	3,333	0.00
	2"	5,330	0.00
9	3"	N/A	0.00
10	4"	16,660	0.00
	6"	33,320	0.00
11	<u>SERVICE CHARGES:</u>		
12			
13	Establishment of Service	\$20.00	\$20.00
	Establishment (After Hours)	40.00	40.00
14	Re-establishment of Service	**	**
	Reconnection of service	50.00	50.00
15	Charge for moving meter at customer request		
16	After hours service charge	40.00	40.00
17	Minimum Deposit	*	*
	Meter Reread	10.00	10.00
18	Charge for NSF check	20.00	20.00
	Late Payment charge for delinquent bill	1.50%	1.50%
19	Deferred Payment Finance Charge	1.50%	1.50%
20	Deposit Interest, per annum	*	*
21	<u>SERVICE LINE AND METER INSTALLATION CHARGES:</u>		
	(Refundable pursuant to A.A.C. R14-2-40-5)		
22			
23	5/8" x 3/4" Meter	\$0.00	\$520.00
	3/4" Meter	575.00	575.00
24	1" Meter	660.00	660.00
	1 1/2" Meter	900.00	900.00
25	2" Meter Turbo	1,525.00	1,525.00
	2" Meter Compound	0.00	2,320.00
26	3" Meter Turbo	0.00	2,275.00
	3" Meter Compound	0.00	3,110.00
27	4" Meter Turbo	3,360.00	3,360.00
28	4" Meter Compound	0.00	4,475.00

6" Meter Turbo	6,035.00	6,035.00
6" Compound	0.00	8,050.00

- * Per Commission Rule (A.A.C. R14-2-403(B)).
- ** Months off system times the minimum (A.A.C. R14-2-403(D)).

28. For wastewater service, Utility Source proposes initial residential rates of \$2.73 per 1,000 gallons of water usage, with varying charges per 1,000 gallons based on the type of customer served. There is no monthly minimum charge for wastewater service under the current and proposed rate structure. The Company's proposed rates are the same as the current unauthorized rates being charged to end use customers under the HOA arrangement. Staff recommends an initial flat residential wastewater rate of \$40.64 per month without a usage charge (Id. at 10). Based on usage of 4,740 gallons of water per month, under the Company's current and proposed rates an average customer would pay \$12.94 per month for wastewater service. Under Staff's proposed rates, an average customer would pay \$40.64, an increase of approximately 214 percent. The full schedule of proposed wastewater rates and charges for Utility Source and Staff are as follows:

WASTEWATER

	Proposed Rates	
	<u>Company</u>	<u>Staff</u>
<u>MONTHLY MINIMUM CHARGE</u>		
Residential – all sizes	N/A	\$40.64
Commercial – all sizes	N/A	401.75
Rate per 1,000 gal. water usage		
Residential	\$2.73	N/A
Car washes, Laundromats, commercial, manufacturing	2.67	N/A
Hotels, motels	3.58	N/A
Restaurants	4.42	N/A
Industrial Laundries	3.92	N/A
Waste Haulers	80.00	N/A
Restaurant Grease	70.00	N/A
Treatment Plant Sludge	80.00	N/A
Mud Sump Waste	250.00	N/A
Treated Effluent per Acre Foot		
<u>Hook-up Fees</u>		N/A
Service Lateral Size		

1	4"	\$1,800.00	N/A
	6"	3,500.00	N/A
2	<u>SERVICE CHARGES:</u>		
3	Establishment of Service	\$20.00	\$20.00
	Establishment of Service after hours	40.00	40.00
4	Re-establishment of Service	*	*
	Reconnection Service	\$50.00	**
5	After hours service charge, per hour	40.00	40.00
6	Minimum deposit	***	***
	Charge for NSF check	20.00	20.00
7	Late payment charge for delinquent bill	****	****
	Deposit Interest	3.00%	6.00%
8	Deferred Payment Finance Charge	1.50%	1.50%
9	Main Extension and additional facilities agreements****	Cost	Cost
10	Service Lateral Connection Charge - Residential	500.00	500.00
11	Service Lateral Connection Charge - Commercial	Cost	Cost
12	All revenue related taxes will be charges customers		

- 14 * R-14-2-603(D).
- 15 ** R14-2-603(D)
- 16 *** R14-2-603(B)
- 17 **** R14-2-608(F)
- 18 ***** R14-2-606(B)

19 29. Staff determined the Company's rate base for water plant in service to be \$2,768,846
 20 and rate base for wastewater plant in service to be \$1,499,224 (*Id.*, Attach. C, at 5). Utility Source
 21 did not dispute Staff's rate base determination; nor did the Company oppose approval of Staff's
 22 recommended rates. Accordingly, we find Utility Source's water rate base to be \$2,768,846 and its
 23 wastewater rate base to be \$1,499,224.

24 30. We recognize that the normal process undertaken by Staff when setting rates for an
 25 area to be served by a new CC&N is to assume a five-year build out of physical plant, and Staff's
 26 recommended rates are based on projected revenues, expenses, and number of customers at the end of
 27 that five-year period. Since Staff's initial rate recommendation is usually based on projected
 28 operations, Staff also typically recommends that the applicant not be required to file a rate application
 until it has five years of operational experience. In this case, Utility Source built a significant amount

1 of plant and commenced operations in violation of Arizona law without obtaining a CC&N and
2 approved rates. As a result, Staff recommended that Utility Source be required to file a rate
3 application by May 1, 2006 based on a 2005 test year (See discussion below in Future Rate
4 Application section).

5 31. Although Staff's recommended rates may accurately reflect allowance of a reasonable
6 return on the Company's projected plant, revenues, and expenses at the end of the five-year period,
7 the approval of such rates in this proceeding would result in an unconscionable increase for existing
8 customers. As discussed above, initial rates are normally set based entirely on projected information
9 because the system has not yet been constructed and no customers are being served. Here, however,
10 residents in the Flagstaff Meadows development are being charged unauthorized rates pursuant to an
11 informal agreement between the developer and the HOA, which the developer also controls.

12 32. It appears from the record that the existing Flagstaff Meadows customers were not
13 provided notice that the rates they are currently being charged were subject to being increased as a
14 result of the Company's CC&N application, because the Staff Report recommending higher "initial"
15 rates was issued after the Company undertook its notification of customers pursuant to the August 23,
16 2004 Procedural Order. Staff's letter dated September 15, 2004 provides that:

17
18 Staff's agreement is expressly conditioned on the agreement of the developers in
19 question to fully disclose the situation to all of their customers whose sales have not yet
20 closed. Such disclosure must include . . . that the rates currently charged are not
21 authorized by the Commission and may have to be substantially increased. Staff's
22 agreement is further condition[ed] on the agreement of the developers in question to
23 cancel any sales contract or other commitment if the customer so desires.

24 This requirement partially addresses our concern. But we note that it applies only to customers
25 whose sales had not closed as of September 15, 2004. The remaining customers did not receive
26 notice of the potentially increased rates. Given this lack of notice that higher "initial" rates may
27 potentially result from this CC&N proceeding, we do not believe it would be appropriate to increase
28 rates above the level currently being paid by end use customers in Flagstaff Meadows. The initial
rates for Utility Source should therefore be set at the current level until an investigation can be
undertaken in a full rate case to determine the cost of plant that is used and useful in the provision of
service to customers, as well as an appropriate level of revenues and expenses.

1 33. In a CC&N case where the applicant has existing rates, the Commission can require
2 the applicant to continue charging its existing rates until the next rate case. *See Residential Utility*
3 *Consumer Office v. Arizona Corp. Comm'n*, 199 Ariz. 588, 592 ¶¶ 15-18, 20 P.3d 1169, 1173 (2001)
4 (discussing *Pueblo Del Sol Water Co. v. Arizona Corp. Comm'n*, 160 Ariz. 285, 772 P.2d 1138
5 (1988)). As we have noted, Utility Source and Staff analyzed the rates using the normal methods for
6 CC&N applications, which involve estimating figures for rate base and expenses for five years. In
7 CC&N cases, this is done because the utility normally does not have any plant "in the ground" or
8 ongoing operations. Here, Utility Source violated the law by putting plant in the ground and
9 conducting utility operations without Commission authorization. Because Utility Source has plant in
10 the ground and ongoing utility operations, we find that it is not appropriate to set rates using 5 year
11 projections. Instead, it is appropriate to set rates in this matter using traditional rate case methods,
12 which look to the actual expenses and rate base of the Company. We do not have sufficient
13 information in the record regarding the actual expenses and rate base of the Company to be able to set
14 rates at this time. Because we lack sufficient information to change the Company's rates, we will
15 direct the Company to use its existing rates until such time as the Company files a rate case, which it
16 may do at any time, but not later than May 1, 2006, based on a 2005 test year.

17 34. Accordingly, water rates for a $\frac{3}{4}$ inch residential water customer shall be: \$6.48 per
18 month with a three-tier commodity rate of \$2.83 per 1,000 gallons for the first 5,000 gallons per
19 month; \$3.32 per 1,000 gallons for usage between 5,001 and 15,000 gallons per month; and \$4.71 per
20 1,000 gallons for usage in excess of 15,000 gallons. Wastewater rates shall also be set at the current
21 rates of \$2.73 per 1,000 gallons of water usage, with no monthly minimum charge, for residential
22 customers. The remainder of the applicable initial rates and charges for both water and wastewater
23 service are set forth below. As discussed above, the Company's request to impose hook-up fees on
24 new connections is denied.

25 35. Based on the record developed in this proceeding, it is not clear whether Utility
26 Source, LLC, owns all or any of the assets that have been acquired or constructed in the requested
27 CC&N area. Due to this lack of clarity, we believe it is necessary and appropriate to require that all
28 assets to be used in the provision of water and wastewater service to customers in the requested

1 CC&N area must be transferred to Utility Source, if such assets are not already owned by the
2 Company. This transfer of assets, if necessary, must be completed prior to the Phase I CC&N
3 becoming effective, and the Company shall file documentation within 30 days verifying that all
4 utility assets are under the ownership and control of Utility Source, LLC.

5 **Future Rate Application**

6 36. In the Staff Report, Staff recommended that Utility Source be required to file a rate
7 application by no later than May 1, 2006 based on a 2005 test year. The Company opposed this
8 request and suggested that a rate application should not be required until the Company has five full
9 years of operating experience. Utility Source claimed that it was willing to file a "short form"
10 application in the time frame recommended by Staff in order to provide Staff with the Company's
11 basic operating data.

12 37. We agree with Staff that Utility Source should be required to file a full rate application
13 by no later than May 1, 2006 with a 2005 test year. This prompt filing is especially important given
14 the interim nature of the initial rates established herein. We expect Utility Source to comply with this
15 rate filing requirement and cooperate fully with Staff's investigation in the rate case docket.

16 38. We also believe it is appropriate to require Utility Source to notify all existing and
17 future customers that: the water and wastewater rates currently in effect were not approved by the
18 Commission because the Company commenced operations without the Commission's authorization;
19 the Company is required to file a rate application by May 1, 2006 that may result in higher rates; and
20 that customers will be given an additional notice after the filing of the rate application and informed
21 that they will have an opportunity to be heard regarding the application. The notice shall include an
22 estimate of the level of rates that may be proposed by Staff in the subsequent rate proceeding. Utility
23 Source shall send such notice, in a form approved by Staff, to all existing Flagstaff Meadows
24 customers within 30 days of the effective date of this Decision, and shall provide the same notice to
25 all prospective customers as part of its required real estate disclosure documents.

26 **Performance Bond**

27 39. In situations where a public service company is commencing operations as part of a
28 new development with little or no operating experience, the Commission has often required the utility

1 company to obtain a performance bond as a measure of protection for customers. *See, e.g., Palo*
2 *Verde Utilities Co. and Santa Cruz Water Co.*, Decision No. 61943 (September 17, 1999); Decision
3 No. 66394 (October 6, 2003). Here, a performance bond is especially appropriate due to the
4 Company's lack of experience in operating water and wastewater systems. Mr. McCleve admitted
5 that he has no experience in operating utility systems and, other than employing a certified operator,
6 the Company's sole employee will be working on only a part time, as-needed basis (Tr. 104-105).

7 40. Requiring a performance bond is also appropriate given the Company's prior non-
8 compliance with numerous regulatory requirements, not the least of which is the failure of the
9 developer to obtain a CC&N and rate authorization prior to commencing operations. Although Mr.
10 McCleve stated that he was unaware that he was required to obtain a CC&N from the Commission,
11 ignorance of applicable regulations is not a reasonable excuse for failing to obtain all necessary
12 approvals. Indeed, it appears that Mr. McCleve failed to comply with the regulations of multiple
13 agencies, including those of this Commission, ADWR, ADEQ, and ADRE, prior to beginning
14 development of his property and selling homes. We will therefore require Utility Resource to secure
15 a performance bond of \$250,000 prior to its CC&N for the parcels included in Phase I becoming
16 effective, and to maintain such bond until otherwise ordered by the Commission.

17 **Penalty for Failure to Comply with Arizona Laws and Regulations**

18 41. Because Utility Source constructed a significant portion of its water and wastewater
19 systems, and proceeded to connect customers prior to being granted a CC&N in violation of A.R.S.
20 §40-281, we believe it is necessary and appropriate to impose a penalty for violating Arizona law and
21 Commission rules. The Company's actions, as detailed in the record of this proceeding, constitute
22 one of the most egregious examples of unauthorized preemptory operations ever confronted by the
23 Commission. Therefore, as a condition of approval of the requested CC&N, Utility Source shall pay
24 \$20,000, based on a penalty of \$100 for each of its approximately 200 customers that were connected
25 to the Company's system prior to issuance of a CC&N. The imposition of such a penalty is
26 appropriate under the facts of this case and is consistent with a recent Commission Order approving
27 an initial CC&N for a company that commenced operations prior to being granted its CC&N. *See,*
28 *Coyote Wash Utilities, LLC.*, Decision No. 67157 (August 11, 2004).

CONCLUSIONS OF LAW

1
2 1. Utility Source, LLC, is a public service company within the meaning of Article XV of
3 the Arizona Constitution and A.R.S. §§40-281, 40-282 and 40-285.

4 2. The Commission has jurisdiction over Utility Source, LLC, and the subject matter of
5 the application.

6 3. Notice of the Company's application was given in the manner described herein.

7 4. The public convenience and necessity require, and the public would benefit by,
8 issuance of a Certificate of Convenience and Necessity to Utility Source, LLC, to provide water and
9 wastewater service to the area described herein as "Phase I" of the Flagstaff Meadows development,
10 as more fully described in Attachment A hereto.

11 5. Utility Source, LLC, shall charge the initial rates and charges set forth below for water
12 and wastewater services, until a Commission Order is issued pursuant to a determination of
13 permanent rates in the Company's rate application to be filed no later than May 1, 2006 based on a
14 2005 test year.

15 6. The Company's application for a CC&N for "Phase I" of the Flagstaff Meadows
16 development, as more fully described in Attachment A hereto, should be approved subject to
17 compliance with all requirements and conditions described herein.

18 7. Issuance of an Order Preliminary to Utility Source, LLC, for the "Phase II" areas of
19 the Flagstaff Meadows development, pursuant to A.R.S. §40-282(D), is not in the public interest
20 given the Company's prior non-compliance with Arizona law and regulations and the lack of
21 demonstrated water adequacy in the area.

22 8. Utility Source, LLC, violated A.R.S. §40-281 by failing to obtain a CC&N from the
23 Commission prior to constructing a water and wastewater system and beginning to serve customers.

24 9. Utility Source, LLC, should submit copies of all documentation required herein, post a
25 \$250,000 performance, and pay a penalty of \$20,000 for providing active water and wastewater
26 utility service prior to application for and receipt of a CC&N.

27 10. The Financing Application submitted by Utility Source, LLC, is denied as being
28 contrary to the public interest and because the stated purpose of the debt, to be used for working

capital purposes, is inconsistent with the requirements of A.R.S. §40-302(A).

ORDER

IT IS THEREFORE ORDERED that the application of Utility Source, LLC, for a Certificate of Convenience and Necessity for the provision of water and wastewater service in "Phase I" of the Flagstaff Meadows development, as more fully described in Attachment A be, and is hereby, approved.

IT IS FURTHER ORDERED that Utility Source, LLC, shall charge customers in the "Phase I" area of the Flagstaff Meadows development, as more fully described in Attachment A, the following rates and charges:

WATER

MONTHLY USAGE CHARGES:

5/8" x 3/4" Meter	N/A
3/4" Meter	\$6.48
1" Meter	8.02
1 1/2" Meter	9.62
2" Meter	14.00
4" Meter	58.00
6" Meter	89.80

COMMODITY CHARGE PER 1,000 GALLONS:

From 1 to 5,000 gallons	\$2.83
From 5,001 to 15,000 gallons	3.32
In excess of 15,000 gallons	4.71

**Multi-Family Mobile Home,
Commercial**

All consumption per 1,00 gallons	\$2.97
----------------------------------	--------

Irrigation Meters

Charge per 1,000 gallons for usage	N/A
Standpipe or bulk water per 1,000 gallons	\$6.00
Construction Water	6.00

SERVICE CHARGES:

Establishment of Service	\$20.00
Establishment (After Hours)	40.00
Re-establishment of Service	30.00

1	Reconnection of service	50.00
2	Charge for moving meter at customer request	
3	After hours service charge	40.00
4	Minimum Deposit	
5	Meter Reread	10.00
6	Charge for NSF check	20.00
7	Late Payment charge for delinquent bill	1.50%
8	Deferred Payment Finance Charge	1.50%
9	Deposit Interest, per annum	3%

10 SERVICE LINE AND METER INSTALLATION

11 CHARGES:

12	5/8" x 3/4" Meter	\$0.00
13	3/4" Meter	575.00
14	1" Meter	660.00
15	1 1/2" Meter	900.00
16	2" Meter Turbo	1,525.00
17	2" Meter Compound	0.00
18	3" Meter Turbo	0.00
19	3" Meter Compound	0.00
20	4" Meter Turbo	3,360.00
21	4" Meter Compound	0.00
22	6" Meter Turbo	6,035.00
23	6" Compound	0.00

24 WASTEWATER

25 COMMODITY CHARGES:

26	Rate per 1,000 gallons water usage	
27	Residential	\$2.73
28	Car washes, Laundromats, commercial, manufacturing	2.67
29	Hotels, motels	3.58
30	Restaurants	4.42
31	Industrial Laundries	3.92
32	Waste Haulers	80.00
33	Restaurant Grease	70.00
34	Treatment Plant Sludge	80.00
35	Mud Sump Waste	250.00

36 SERVICE LINE CONNECTION

37 CHARGES:

38	Establishment of Service	\$20.00
39	Establishment of Service after hours	40.00
40	Re-establishment of Service	*
41	Reconnection Service	50.00

1	After hours service charge, per hour	40.00
	Minimum deposit	***
2	Charge for NSF check	20.00
	Late payment charge for delinquent bill	****
3	Deposit Interest	3.00%
	Deferred Payment Finance Charge	1.50%
4	Main Extension and additional	
5	facilities agreements****	Cost
	Service Lateral Connection Charge -	
6	Residential	500.00
	Service Lateral Connection Charge -	
7	Commercial	Cost
8	All revenue related taxes will be charges customers	

9 * R-14-2-603(D).

10 ** R14-2-603(D)

11 *** R14-2-603(B)

12 **** R14-2-608(F)

13 ***** R14-2-606(B)

14 IT IS FURTHER ORDER that Utility Source, LLC, shall file, by no later than May 1, 2006, a rate application based on a 2005 test year.

15 IT IS FURTHER ORDERED that approval of the CC&N for Utility Source, LLC, in "Phase
16 I" of the Flagstaff Meadows development, as more fully described in Attachment A, shall be
17 expressly conditioned upon the Company's filing with Docket Control in this Docket, within 30 days
18 of the effective date of this Decision, a copy of a form of performance bond in the amount of
19 \$250,000 to insure that Utility Source, LLC, shall meet its obligations arising under its CC&N; and
20 that the performance bond shall be maintained and copies of the same filed annually on the
21 anniversary date of the initial filing until further Order of the Commission.

22 IT IS FURTHER ORDERED that as a condition of receipt of the requested CC&N, Utility
23 Source, LLC, shall pay a \$20,000 penalty, within 30 days of the effective date of this Decision, said
24 payment to be made payable to the State of Arizona and presented to the Arizona Corporation
25 Commission.

26 IT IS FURTHER ORDERED that all assets to be used in the provision of water and
27 wastewater service to customers in the requested CC&N area must be transferred to Utility Source,
28

1 LLC, if such assets are not already owned by the Company. This transfer of assets, if necessary,
2 must be completed prior to the Phase I CC&N becoming effective, and the Company shall file
3 documentation within 30 days of the effective date of this Decision verifying that all utility assets are
4 under the ownership and control of Utility Source, LLC.

5 IT IS FURTHER ORDERED that Utility Source, LLC, shall file, within 30 days of the
6 effective date of this Decision, with the Utilities Division Director, a tariff consistent with the rates
7 and charges set forth hereinabove as authorized by the Commission.

8 IT IS FURTHER ORDERED that Utility Source, LLC's request to impose off-site facilities
9 hook-up fees is denied.

10 IT IS FURTHER ORDERED that Utility Source, LLC's request for authority to borrow
11 \$575,000 in the form of a long-term revolving line of credit is denied.

12 IT IS FURTHER ORDERED that Utility Source, LLC, shall file within 45 days of this
13 Decision curtailment and cross connection/backflow tariffs in the form recommended by Staff.

14 IT IS FURTHER ORDERED that Utility Source, LLC, shall file within 60 days of this
15 Decision a report on the actual arsenic levels in its well fields.

16 IT IS FURTHER ORDERED that Utility Source, LLC, shall notify all existing and future
17 customers that: the water and wastewater rates currently in effect were not approved by the
18 Commission because the Company commenced operations without the Commission's authorization;
19 the Company is required to file a rate application by May 1, 2006 that may result in higher rates; and
20 that customers will be given an additional notice after the filing of the rate application and informed
21 that they will have an opportunity to be heard regarding the application. Utility Source shall send
22 such notice, in a form approved by Staff, to all existing Flagstaff Meadows customers within 30 days
23 of the effective date of this Decision, and shall provide the same notice to all prospective customers
24 as part of its required real estate disclosure documents.

25 IT IS FURTHER ORDERED that the rate application notice shall include an estimate of the
26 level of rates that may be proposed by Staff in the subsequent rate proceeding.

27 IT IS FURTHER ORDERED that Utility Source, LLC, shall maintain its books and records in
28 accordance with the NARUC Uniform System of Accounts for Water and Wastewater Utilities.

1 IT IS FURTHER ORDERED that Utility Source, LLC, shall adopt Staff's recommended
2 depreciation rates as set forth in the Staff Report.

3 IT IS FURTHER ORDERED that the Commission's Decision granting this Certificate of
4 Convenience and Necessity to Utility Source, LLC, for the area described in Exhibit A, shall be null
5 and void without further Order by the Commission if the Company fails to timely file or provide
6 evidence of the following: a copy of its tariff consistent with the authorized rates and charges set
7 forth hereinabove; a copy of its performance bond in the amount of \$250,000 or a similar alternative
8 as ordered hereinabove; and payment of \$20,000 penalty in the form described above.

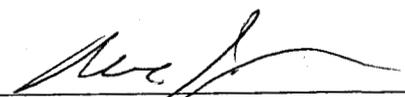
9 IT IS FURTHER ORDERED that Utility Source, LLC's request for an Order Preliminary
10 with respect to the areas encompassed within "Phase II" of the Flagstaff Meadows development, as
11 described above, is denied. Utility Source, LLC, must submit an application for extension of its
12 CC&N once it has secured adequate water supplies for the "Phase II" area in accordance with ADWR
13 requirements, and must also be in compliance with ADEQ and all other applicable regulations
14 pertaining to provision of water and wastewater services within its service area and the requested
15 CC&N extension area.

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1 IT IS FURTHER ORDERED that Utility Source, L.L.C. shall not use ground water for the
2 filling of artificial (man-made) lakes, ponds, creeks, or any other ornamental water features.

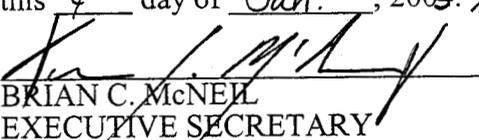
3 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

4 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

5
6   
7 CHAIRMAN COMMISSIONER COMMISSIONER

8
9  
10 COMMISSIONER COMMISSIONER

11
12 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive
13 Secretary of the Arizona Corporation Commission, have
14 hereunto set my hand and caused the official seal of the
15 Commission to be affixed at the Capitol, in the City of Phoenix,
16 this 4th day of Jan., 2005. *Kim*

17
18 
19 BRIAN C. McNEIL
20 EXECUTIVE SECRETARY

21
22 DISSENT _____

23
24 DISSENT _____

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26 DDN:mlj

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SERVICE LIST FOR: UTILITY SOURCE, L.L.C.

DOCKET NO.: WS-04235A-04-0073 et al.

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LEGAL DESCRIPTION
 FLAGSTAFF MEADOWS I & II, TOWNHOMES I, SEWER
 TREATMENT PLANT, AND FIRESTATION

A PORTION OF THE NORTHEAST QUARTER OF SECTION 1, TOWNSHIP 21 NORTH, RANGE 5 EAST OF THE GILA RIVER BASE AND MERIDIAN, COCONINO COUNTY, ARIZONA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTH QUARTER CORNER OF SAID SECTION 1, SAID POINT BEING A FOUND ALUMINUM CAP STAMPED LS #14671, THENCE NORTH 89°58'34" EAST ALONG THE NORTH LINE OF SAID SECTION 1, A DISTANCE OF 2649.06 FEET;
 THENCE SOUTH 00°33'42" EAST ALONG THE EAST LINE OF SAID NORTHEAST QUARTER OF SECTION 1, 2649.29 FEET TO A FOUND GLO BRASS CAP;
 THENCE NORTH 89°58'18" WEST ALONG THE EAST-WEST MID-SECTION LINE, 436.63 FEET;
 THENCE NORTH 60°03'20" WEST 1054.40 FEET;
 THENCE NORTH 27°47'14" EAST 339.37 FEET;
 THENCE SOUTH 60°13'33" EAST 277.14 FEET;
 THENCE NORTH 00°12'57" EAST 367.81 FEET;
 THENCE NORTH 46°08'35" WEST 1967.51 FEET;
 THENCE SOUTH 43°51'27" WEST 226.12 FEET;
 THENCE SOUTH 89°49'53" WEST 176.16 FEET;
 THENCE NORTH 00°10'15" WEST 362.63 FEET TO THE POINT OF BEGINNING.



UTILITY SOURCE
WATER PARCEL

A PORTION OF THE SOUTHWEST QUARTER OF SECTION 36, TOWNSHIP 22 NORTH,
RANGE 5 EAST OF THE GILA RIVER BASE AND MERIDIAN, COCONINO COUNTY, ARIZONA,
MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID SECTION 36;
THENCE NORTH 78°37'21" EAST A DISTANCE OF 620.91 FEET TO THE POINT OF
BEGINNING;

THENCE NORTH 07°48'54" EAST 210.70 FEET;
THENCE SOUTH 82°26'29" EAST 183.15 FEET;
THENCE SOUTH 18°50'15" WEST 12.65 FEET;
THENCE SOUTH 15°14'56" WEST 82.50 FEET;
THENCE SOUTH 89°13'20" WEST 32.80 FEET;
THENCE SOUTH 00°54'39" WEST 30.02 FEET;
THENCE SOUTH 21°03'14" WEST 47.43 FEET;
THENCE SOUTH 20°11'26" EAST 45.04 FEET;
THENCE SOUTH 25°00'11" WEST 45.81 FEET;
THENCE NORTH 60°11'06" WEST 75.87 FEET;
THENCE NORTH 66°43'52" WEST 70.17 FEET TO THE POINT OF BEGINNING.

WELL 1

A PORTION OF THE SOUTHWEST QUARTER OF SECTION 36, TOWNSHIP 22 NORTH, RANGE 5 EAST OF THE GILA RIVER BASE AND MERIDIAN, COCONINO COUNTY, ARIZONA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID SECTION 36;
 THENCE NORTH 80°58'33" EAST A DISTANCE OF 491.35 FEET TO THE POINT OF BEGINNING;
 THENCE NORTH 25°43'26" EAST 10.00 FEET;
 THENCE SOUTH 64°16'34" EAST 10.00 FEET;
 THENCE SOUTH 25°43'26" WEST 10.00 FEET;
 THENCE NORTH 64°16'34" WEST 10.00 FEET TO THE POINT OF BEGINNING.

WELL 2

A PORTION OF THE SOUTHWEST QUARTER OF SECTION 36, TOWNSHIP 22 NORTH, RANGE 5 EAST OF THE GILA RIVER BASE AND MERIDIAN, COCONINO COUNTY, ARIZONA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID SECTION 36;
 THENCE NORTH 83°04'00" EAST A DISTANCE OF 698.88 FEET TO THE POINT OF BEGINNING;
 THENCE NORTH 25°43'26" EAST 10.00 FEET;
 THENCE SOUTH 64°16'34" EAST 10.00 FEET;
 THENCE SOUTH 25°43'26" WEST 10.00 FEET;
 THENCE NORTH 64°16'34" WEST 10.00 FEET TO THE POINT OF BEGINNING.

WELL 3

A PORTION OF THE SOUTHWEST QUARTER OF SECTION 36, TOWNSHIP 22 NORTH, RANGE 5 EAST OF THE GILA RIVER BASE AND MERIDIAN, COCONINO COUNTY, ARIZONA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID SECTION 36;
 THENCE NORTH 29°10'52" EAST A DISTANCE OF 726.88 FEET TO THE POINT OF BEGINNING;
 THENCE NORTH 25°43'26" EAST 10.00 FEET;
 THENCE SOUTH 64°16'34" EAST 10.00 FEET;
 THENCE SOUTH 25°43'26" WEST 10.00 FEET;
 THENCE NORTH 64°16'34" WEST 10.00 FEET TO THE POINT OF BEGINNING.

WELL 4

A PORTION OF THE SOUTHWEST QUARTER OF SECTION 36, TOWNSHIP 22 NORTH, RANGE 5 EAST OF THE GILA RIVER BASE AND MERIDIAN, COCONINO COUNTY, ARIZONA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID SECTION 36;
 THENCE NORTH 25°06'48" EAST A DISTANCE OF 545.23 FEET TO THE POINT OF BEGINNING;
 THENCE NORTH 25°43'26" EAST 10.00 FEET;
 THENCE SOUTH 64°16'34" EAST 10.00 FEET;
 THENCE SOUTH 25°43'26" WEST 10.00 FEET;
 THENCE NORTH 64°16'34" WEST 10.00 FEET TO THE POINT OF BEGINNING.

WELL 5

DOCKET NO. WS-04235A-04-0073 et a

A PORTION OF THE SOUTHWEST QUARTER OF SECTION 36, TOWNSHIP 22 NORTH, RANGE 5 EAST OF THE GILA RIVER BASE AND MERIDIAN, COCONINO COUNTY, ARIZONA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID SECTION 36;
THENCE NORTH 01°17'51" EAST A DISTANCE OF 634.61 FEET TO THE POINT OF BEGINNING;

THENCE NORTH 64°16'34" WEST 10.00 FEET;
THENCE NORTH 25°43'26" EAST 10.00 FEET;
THENCE SOUTH 64°16'34" EAST 10.00 FEET;
THENCE SOUTH 25°43'26" WEST 10.00 FEET TO THE POINT OF BEGINNING.

WELL 6

A PORTION OF THE SOUTHWEST QUARTER OF SECTION 36, TOWNSHIP 22 NORTH, RANGE 5 EAST OF THE GILA RIVER BASE AND MERIDIAN, COCONINO COUNTY, ARIZONA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID SECTION 36;
THENCE NORTH 51°25'31" EAST A DISTANCE OF 266.25 FEET TO THE POINT OF BEGINNING;

THENCE NORTH 25°43'26" EAST 10.00 FEET;
THENCE SOUTH 64°16'34" EAST 10.00 FEET;
THENCE SOUTH 25°43'26" WEST 10.00 FEET;
THENCE NORTH 64°16'34" WEST 10.00 FEET TO THE POINT OF BEGINNING.

WELL 7

A PORTION OF THE SOUTHWEST QUARTER OF SECTION 36, TOWNSHIP 22 NORTH, RANGE 5 EAST OF THE GILA RIVER BASE AND MERIDIAN, COCONINO COUNTY, ARIZONA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID SECTION 36;
THENCE NORTH 62°06'24" EAST A DISTANCE OF 466.09 FEET TO THE POINT OF BEGINNING;

THENCE NORTH 08°03'08" EAST 14.13 FEET;
THENCE SOUTH 81°51'35" EAST 14.12 FEET;
THENCE SOUTH 07°37'28" WEST 14.17 FEET;
THENCE NORTH 81°40'53" WEST 14.22 FEET TO THE POINT OF BEGINNING.

WELL 8

A PORTION OF THE SOUTHWEST QUARTER OF SECTION 36, TOWNSHIP 22 NORTH, RANGE 5 EAST OF THE GILA RIVER BASE AND MERIDIAN, COCONINO COUNTY, ARIZONA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID SECTION 36;
THENCE NORTH 74°15'54" EAST A DISTANCE OF 1436.97 FEET TO THE POINT OF BEGINNING;

THENCE NORTH 02°32'09" WEST 12.00 FEET;
THENCE NORTH 87°27'51" EAST 10.00 FEET;
THENCE SOUTH 02°32'09" EAST 12.00 FEET;
THENCE SOUTH 87°27'51" WEST 10.00 FEET TO THE POINT OF BEGINNING.

DECISION NO. 67446

MICROTEL HOTEL

A PARCEL OF LAND LOCATED IN THE SOUTHWEST QUARTER OF SECTION 36, TOWNSHIP 22 NORTH, RANGE 5 EAST, COCONINO COUNTY, ARIZONA, DESCRIBED AS FOLLOWS:

COMMENCING FOR REFERENCE AT THE SOUTHWEST CORNER OF SAID SECTION 36;

THENCE NORTH $01^{\circ}04'20''$ WEST, 226.39 FEET TO A FOUND ARIZONA HIGHWAY DEPARTMENT (AHD) BRASS CAP MARKED "3+97.25" ON THE NORTHERLY RIGHT-OF-WAY LINE OF U.S. INTERSTATE HIGHWAY 40, AS SHOWN ON SHEET 27, PROJECT NO.I-40-3 (14) 175 OF THE RIGHT-OF-WAY PLANS OF THE ASHFORK - FLAGSTAFF HIGHWAY

THENCE NORTH $01^{\circ}04'20''$ WEST, 436.71 FEET ALONG THE WEST LINE OF SAID SECTION 36, TO A FOUND U.S.D.A. FOREST SERVICE BRASS CAP MARKED "S-S 1/64S35/S36 RLS 9431, 1989"

THENCE SOUTH $89^{\circ}48'40''$ EAST, 1334.47 FEET TO A FOUND $5/8''$ REBAR.

THENCE SOUTH $00^{\circ}21'26''$ EAST, 302.00 FEET TO THE POINT OF BEGINNING.

THENCE SOUTH $89^{\circ}58'08''$ EAST A DISTANCE OF 172.00 FEET;

THENCE SOUTH $00^{\circ}21'26''$ EAST A DISTANCE OF 357.00 FEET;

THENCE NORTH $89^{\circ}58'08''$ WEST A DISTANCE OF 172.00 FEET

THENCE NORTH $00^{\circ}21'26''$ WEST A DISTANCE OF 357.00 FEET TO THE POINT OF BEGINNING.

TRUCK STOP

A PORTION OF THE SOUTHWEST QUARTER OF SECTION 36, TOWNSHIP 22 NORTH, RANGE 5 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, COCONINO COUNTY, ARIZONA. MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID SECTION 36;
THENCE SOUTH 89°59'03" EAST ALONG THE SOUTH LINE OF SAID SECTION 36 A DISTANCE OF 1141.93 FEET TO THE POINT OF BEGINNING;

THENCE NORTH 02°26'22" WEST, 24.10 FEET;
THENCE NORTH 89°56'17" WEST, 211.55 FEET;
THENCE NORTH 60°51'50" WEST, 65.03 FEET;
THENCE NORTH 37°03'51" WEST, 84.38 FEET;
THENCE SOUTH 69°11'35" WEST, 67.83 FEET;
THENCE NORTH 20°13'10" WEST, 45.04 FEET;
THENCE NORTH 21°01'30" EAST, 47.43 FEET;
THENCE NORTH 00°52'55" EAST, 30.02 FEET;
THENCE NORTH 89°11'37" EAST, 32.80 FEET;
THENCE NORTH 15°13'12" EAST, 82.50 FEET;
THENCE NORTH 13°15'20" EAST, 374.43 FEET;
THENCE SOUTH 89°48'40" EAST, 469.77 FEET;
THENCE SOUTH 01°13'25" EAST, 265.86 FEET;
THENCE SOUTH 70°36'40" WEST, 55.29 FEET;
THENCE SOUTH 00°21'26" EAST, 374.64 FEET TO A POINT ON THE SOUTH LINE OF SAID SECTION 36;
THENCE NORTH 89°59'03" WEST ALONG THE SOUTH LINE OF SAID SECTION 36 A DISTANCE OF 184.23 FEET TO THE POINT OF BEGINNING;