

OPEN MEETING ITEM



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

ORIGINAL



ARIZONA CORPORATION COMMISSION

DATE: June 24, 2005
DOCKET NO: W-04304A-05-0072
W-01577A-05-0072

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:

OAK CREEK PUBLIC SERVICE COMPANY
(TRANSFER OF CC&N)

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 6, 2005

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 Open Meeting to be held on:

July 12 and 13, 2005

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.

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BRIAN C. McNEIL
EXECUTIVE SECRETARY, Arizona Corporation Commission

DOCKETED

JUN 24 2005

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1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 COMMISSIONERS

3 JEFF HATCH-MILLER, Chairman
4 WILLIAM A. MUNDELL
5 MARC SPITZER
6 MIKE GLEASON
7 KRISTIN K. MAYES

8 IN THE MATTER OF THE APPLICATION OF
9 OAK CREEK PUBLIC SERVICE COMPANY FOR
10 APPROVAL OF THE TRANSFER OF ITS
11 CERTIFICATE OF CONVENIENCE AND
12 NECESSITY.

DOCKET NO. W-01577A-05-0072
DOCKET NO. W-04304A-05-0072

DECISION NO. _____

13 OPINION AND ORDER

14 DATE OF HEARING: May 26, 2005
15 PLACE OF HEARING: Phoenix, Arizona
16 ADMINISTRATIVE LAW JUDGE: Marc E. Stern
17 APPEARANCES: Mr. William E. Jackson, on behalf of Oak Creek
18 Public Service Company; and
19 Mr. David M. Ronald, Staff Attorney, Legal
20 Division, on behalf of the Utilities Division of
21 the Arizona Corporation Commission.

22 **BY THE COMMISSION:**

23 On February 4, 2005, the Estate of Pauline K. Smith, nee Jackson ("Estate") dba Oak Creek
24 Public Service Company¹ ("Applicant" or "Company") filed with the Arizona Corporation
25 Commission ("Commission") an application requesting the Commission's approval for the issuance
26 of a Certificate of Convenience and Necessity ("Certificate") to operate a public water utility in
27 various parts of Yavapai County, Arizona.²

28 On February 18, 2005, the Commission's Utilities Division ("Staff") issued a letter of
insufficiency which stated that the application had not met the sufficiency requirements of A.A.C.
R14-2-402(C). Staff found the Company's application insufficient because, in order for Applicant to

¹ The Applicant is not related to, or affiliated with, Oak Creek Utility Corporation, which provides water and wastewater service to approximately 30 customers in an area east of Oak Creek along Highway 89A in Coconino County.

² The application was filed by William E. Jackson, Jr., Mrs. Smith's son and the Personal Representative of the Estate, which is currently operating Applicant.

1 comply with Decision No. 67514 (January 20, 2005), the Company had been ordered to file an
2 application for the transfer of its Certificate to a legal business entity, in this case, Oak Creek Public
3 Service, LLC ("Oak Creek LLC").³

4 On March 16, 2005, the Company filed an amended application which requests Commission
5 approval to transfer its assets and Certificate to Oak Creek LLC.

6 On March 30, 2005, Staff issued a notice of sufficiency which stated Applicant had met the
7 sufficiency requirements of A.A.C. R14-2-402(C).

8 On April 14, 2005, by Procedural Order, the Commission scheduled a hearing to commence
9 on May 26, 2005.

10 On May 4, 2005, Staff filed its Staff Report recommending approval of the application.

11 On May 16, 2005, Applicant filed certification that notice had been provided pursuant to the
12 Commission's Procedural Order.

13 On May 26, 2005, a full public hearing was convened before a duly authorized Administrative
14 Law Judge of the Commission at its offices in Phoenix, Arizona. Applicant appeared through the
15 Personal Representative of the Estate and Staff appeared with counsel. At the conclusion of the
16 hearing, the matter was taken under advisement pending submission of a Recommended Opinion and
17 Order to the Commission.

18 * * * * *

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

21 **FINDINGS OF FACT**

22 1. Pursuant to the authority granted by the Commission, the Company provides public
23 water utility service in the vicinity of Cornville, Yavapai County, Arizona.

24 2. On January 20, 2005, the Commission issued Decision No. 67514, which approved an
25 application by the Company for a rate increase conditioning the effective date for rates to increase
26 upon the Company's filing an application found sufficient to transfer its utility assets and Certificate
27 "to a designated legal business organization."
28

³ Presently, the sole member of Oak Creek LLC is the Estate.

1 3. On March 16, 2005, in order to comply with Decision No. 67514, the Company filed
2 an amended application requesting the Commission's authorization for the transfer of its assets and
3 its Certificate to Oak Creek LLC. Oak Creek LLC, an Arizona limited liability company, was
4 organized on February 24, 2005, and is managed by Mr. Jackson, but upon the completion of probate,
5 the Estate's interest will be deleted and new members of Oak Creek LLC will be added consisting of
6 Mr. Jackson and his four siblings who will share equally in the entity's ownership.

7 4. The Company has been operated by the Estate since Mrs. Smith died in September
8 2001. The Estate is going through probate proceedings in the Yavapai County Superior Court and its
9 Personal Representative, Mr. Jackson, believes that probate proceedings will be concluded within the
10 next year at which time the utility will be operated by Oak Creek LLC if the Commission approves
11 the transfer of assets and Certificate as requested herein.

12 5. Applicant is presently providing public water utility service to approximately 255
13 residential customers.⁴

14 6. Presently, Mr. Jackson's wife is in charge of the Company's day to day operations.
15 All required maintenance is performed by Mr. Jackson and his brother.

16 7. The Company employs a certified operator who handles water sampling and related
17 activities for the system. He is to continue in this capacity after the transfer is approved by the
18 Commission.

19 8. On May 16, 2005, Applicant filed certification that notice of the proposed transfer of
20 assets and Certificate had been provided as required by the Commission's Procedural Order.

21 9. Any obligations due for refunds and/or deposits from the Company's existing
22 customers will be assumed and paid by Oak Creek LLC.

23 10. Oak Creek LLC will charge the rates and charges previously authorized for the
24 Company by the Commission in Decision No. 67514.

25 11. A county franchise enabling the utility to operate its system in county rights of way
26 has been issued by the Yavapai County Board of Supervisors.

27 12. Applicant is current on Commission filings and is current on the payment of its sales
28

⁴ Approximately 150 more lots remain available for development in the Company's certificated service area.

1 and property taxes.

2 13. The Company is experiencing customer growth of approximately six new connections
3 a year.

4 14. According to Mr. Jackson, the Company experiences only minimal water loss.

5 15. Applicant has three well sites, but it is making use of only one well which produces
6 250 gallons of water per minute.

7 16. Of the Company's other two well sites, one is an artesian well which is not utilized to
8 provide water service. The Company is planning to bring its remaining well on line to resolve a
9 storage issue raised in its last rate proceeding which resulted in Decision No. 67514. The Company
10 also has a 48,000 gallon storage tank and one 2,500 gallon pressure tank utilized to provide water
11 service.

12 17. With respect to arsenic content in the water, Mr. Jackson indicated that Applicant's
13 primary well has arsenic content of no more than 10 parts per billion ("ppb") based on a recent
14 arsenic test conducted pursuant to ADEQ's Map Program. This falls within the new maximum
15 standard of 10 ppb effective in January 2006.

16 18. Staff is recommending conditional approval of the application.

17 19. According to the Staff Report, Applicant is providing water which meets ADEQ
18 requirements and meets the standards of the Safe Drinking Water Act.

19 20. The Company has previously filed a Backflow Prevention Tariff and Curtailment
20 Tariff, both of which were approved by the Commission.

21 21. Staff is recommending the approval of the Company's application subject to the
22 following conditions:

- 23
- 24 • that the Commission require Oak Creek LLC to charge the authorized rates and
charges of Oak Creek Public Service Company;
 - 25 • that the Commission require Oak Creek LLC to file with Docket Control, within 30
26 days of the Estate's release from probate proceedings, a notice of such release⁵; and
 - 27 • that the Commission require Oak Creek LLC to file with Docket Control, within 30
days of the Estate's release from probate proceedings, a list of Oak Creek LLC's

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⁵ Mr. Jackson estimated that the Estate would complete probate proceedings within twelve months from the date of hearing.

members and their respective membership interests.

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2 22. Staff further recommends that the Commission's Decision approving the transfer of
3 Certificate and assets to Oak Creek LLC be considered null and void without further Order from the
4 Commission should Oak Creek LLC fail to meet the second and third conditions listed above.

5 **CONCLUSIONS OF LAW**

6 1. Applicant is a public service corporation within the meaning of Article XV of the
7 Arizona Constitution and A.R.S. §§ 40-281, 40-282 and 40-285.

8 2. The Commission has jurisdiction over the Company and of the subject matter of the
9 application.

10 3. There is a continuing need for the provision of water utility service to the public in the
11 Company's certificated service area.

12 4. Oak Creek LLC is a fit and proper entity to receive the assets and Certificate of the
13 Company.

14 5. Notice of the Company's application as described herein was given in the manner
15 prescribed by law.

16 6. The conditions as set forth in Findings of Fact No. 21 are reasonable and should be
17 adopted.

18 **ORDER**

19 IT IS THEREFORE ORDERED that the application of the Estate of Pauline K. Smith, nee
20 Jackson dba Oak Creek Public Service Company for approval of the transfer of utility assets and
21 transfer of its Certificate of Convenience and Necessity to Oak Creek Public Service, LLC is hereby
22 approved.

23 IT IS FURTHER ORDERED that Oak Creek Public Service, LLC shall continue to charge
24 water customers the existing rates and charges until further Order by the Commission.

25 IT IS FURTHER ORDERED that Oak Creek Public Service, LLC shall comply in all respects
26 with Findings of Fact No. 21 and Conclusion of Law No. 6 or the approval granted hereinabove shall
27 be null and void.

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IT IS FURTHER ORDERED that the authorization granted hereinabove shall be null and void without further Order by the Commission if Oak Creek Public Service, LLC fails to timely file the documentation required to be filed in Findings of Fact No. 21.

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

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

CHAIRMAN

COMMISSIONER

COMMISSIONER

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 the Commission to be affixed at the Capitol, in the City of Phoenix, this ____ day of _____, 2005.

BRIAN C. McNEIL
EXECUTIVE SECRETARY

DISSENT _____

DISSENT _____

MES:mj

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SERVICE LIST FOR:

Oak Creek Public Service Company

DOCKET NOS.:

DOCKET NO. W-01577A-05-0072 and
W-04304A-05-0072

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