

EXCEPTION ORIGINAL



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Arizona Corporation Commission

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AZ CORP COMMISSION
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BEFORE THE ARIZONA CORPORATION COMMISSION

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IN THE MATTER OF THE APPLICATION OF)
VIRGIN MOUNTAIN UTILITIES COMPANY)
FOR AN EXTENSION OF ITS CERTIFICATE OF)
CONVENIENCE AND NECESSITY TO)
PROVIDE WATER SERVICE IN MOHAVE)
COUNTY, ARIZONA AND APPROVAL OF A)
HOOK-UP FEE TARIFF.)

DOCKET NO. W-03551A-04-0325

EXCEPTIONS TO THE
ADMINISTRATIVE LAW
JUDGE'S
RECOMMENDED ORDER

Virgin Mountain Utilities Company (the "Company" or "Applicant") herewith submits its Exceptions to the Administrative Law Judge's Recommended Order dated June 24, 2005.

The Company excepts to the discussion and conclusions in the Recommended Order, which led to the recommended denial of the requested Certificate of Convenience and Necessity ("CC&N"). The first exception is regarding the alleged lack of Company distribution facilities; second, as to the Company's delay in obtaining certain approvals, and finally the conclusion that there is no demonstrated need for service at this time.

As to the first two exceptions that relate to the timing of the Company's starting service, the Commission must recognize where this Company is located, or where it is not located. This Company is not in central Arizona where growth is phenomenal, if not chaotic. This Company is located in rural Mohave County where development is less frantic. It is submitted that many companies to whom the Commission has granted CC&N's have taken several years to commence first service to a customer. This Company is hardly the exception.

The Company does have adequate facilities to provide service. This is acknowledged in the Staff Report where it states;

1 “Staff concludes that the existing system has adequate production and
2 storage capacity to serve the proposed CC&N area within a conventional five-
3 year planning period and can reasonably be expected to develop additional
4 storage and production as required in the future.”

5 Obviously, the distribution facilities to serve the extension area have not yet been
6 constructed by the Company. That would be both speculative and presumptive on the
7 Company's part to anticipate the Commission's approval. Further, the appropriate approvals for
8 those facilities cannot be obtained prior to the customer's arrival. The record in this proceeding
9 is clear. With the newly arrived demand, approval can be obtained. The Company has obtained
10 the Arizona Department of Environmental Quality ("ADEQ") Approval to Construct for the well
11 facilities which was admitted as Exhibit A-7. There is nothing in the record to indicate that a
12 request for service has been delayed or denied because of the Company's lack of facilities or
13 approvals. To the contrary, the Company intentionally delayed constructing certain facilities
14 because the demand was not present and the appropriate approvals could not be obtained. The
15 Company should not be penalized for following the rules or for a slow-down in the 1999-2004
16 real estate market.

17 The market has now returned to this area. The Company has over 100 Requests for
18 Service. Judge Stern apparently thought there was some merit to the Company's case as he
19 ordered the Staff to submit Alternative Recommendations for his consideration. Those
20 Alternatives were submitted on May 27, 2005 and the Company provided its Comments on June
21 9, 2005, with the Staff responding on June 14, 2005. Copies of those documents are attached
22 hereto for your convenience.

23 The Company urges the Commission to adopt those Alternative Recommendations as
24 modified by the Company's Comments. It is submitted that the Recommendations adequately

1 protect the public and provide the Company with an opportunity to serve the present and
2 expanded CC&N areas.

3 Specifically regarding Alternative Recommendation 2, the Company has received a
4 Letter of Physical Availability Demonstration from the Arizona Department of Water Resources
5 ("ADWR") dated March 26, 2002. That letter was attached to the Application as Exhibit H and
6 is also appended hereto. As indicated above, the Approval to Construct contemplated in
7 Alternative Recommendation 3 has been submitted as Exhibit A-7 and attached hereto. The
8 Approval to Construct for the new approximate 15,000 linear feet of transmission line (most of
9 which is in the new area) cannot even be submitted to ADEQ until it is within the Company's
10 CC&N. It is submitted that the Commission normally does not require an Approval to Construct
11 for plant in expansion areas at the time of the hearing. Such approval is certainly a legitimate
12 condition of a CC&N, but should not be required at the hearing. Mr. Stoddard has stated that he
13 would not get ahead of the process, but would comply with the appropriate rules and submit the
14 plans to ADEQ upon issuance of the Commission's decision.

15 As stated in the Company's Comments on the Staff Alternative Recommendation 4, the
16 requirement of Requests for Service from ALL property owners is not reasonable and is
17 unprecedented for an extension area with over 400 property owners. The Company's form of
18 Request for Service should be acceptable. It clearly indicates the property owners request to be
19 in the certificated area, which creates a reasonable presumption of their desire for service. If the
20 Staff desires a precise form of request, they should publish it for use by all applicants. We
21 submit that it is reasonable to believe that signatories of those letters want service now, maybe
22 not all of them, but certainly many of them.

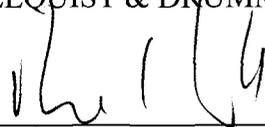
23 That being said, if the Commission desires a more definitive Request for Service from
~ property owners in this proceeding, the Company would be willing to work with the Staff to

1 develop a form of letter demonstrating the public need and submit those requests as a compliance
2 filing. The Company is of the opinion that it is unneeded, unrealistic and unprecedented to
3 expect ALL property owners to formally demand immediate service prior to the Certificate being
4 issued.

5 The Company respectfully requests that the Commission adopt in this Opinion and Order
6 the Alternative Recommendations filed by Staff, incorporating the Company's Comments.

7 Respectfully submitted this 5th day of July 2005.

8 SALLQUIST & DRUMMOND, P.C.

9 By: 
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13 The original and fifteen copies of
14 the foregoing were filed this 5th
day of July, 2005:

15 Docket Control
16 Arizona Corporation Commission
17 1200 W. Washington St.
18 Phoenix, AZ 85007

1 Copies of the foregoing were mailed
this 5th day of July 2005 to:

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3 Judge Marc Stern
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