



0000024573

BEFORE THE ARIZONA CORPORATION COMMISSION
DOCKETED

WILLIAM A. MUNDELL
CHAIRMAN
JIM IRVIN
COMMISSIONER
MARC SPITZER
COMMISSIONER

DEC 19 2002

DOCKETED BY [Signature]

IN THE MATTER OF THE APPLICATION OF
POTATO PATCH OWNERS CORPORATION,
DBA POTATO PATCH COMMUNITY WATER
UTILITY FOR AN ADJUDICATION NOT A
PUBLIC SERVICE CORPORATION.

DOCKET NO. W-04096A-02-0233
W-01936A-02-0233

IN THE MATTER OF THE APPLICATION OF
POTATO PATCH WATER SERVICE, INC. FOR
THE APPROVAL OF THE SALE OF ASSETS
AND TRANSFER OF ITS CC&N TO POTATO
PATCH OWNERS CORPORATION DBA
POTATO PATCH COMMUNITY WATER
UTILITY.

DOCKET NO. W-01936A-02-0677

DECISION NO. 65465

OPINION AND ORDER

DATE OF HEARING: November 21, 2002
PLACE OF HEARING: Phoenix, Arizona
PRESIDING ADMINISTRATIVE LAW JUDGE: Marc E. Stern
APPEARANCES: Potato Patch Owners Corporation, dba Potato Patch Community Water Utility, by Darren Frame, Vice-President; and
Mr. David Ronald, Staff Attorney, Legal Division, on behalf of the Utilities Division of the Arizona Corporation.

BY THE COMMISSION:

On March 25, 2002, Potato Patch Owners Corporation ("PPOC") dba Potato Patch Community Water Utility ("PPCWU")¹ filed with the Arizona Corporation Commission ("Commission") an Application for Adjudication Not a Public Service Corporation ("Adjudication Application").

On September 9, 2002, Potato Patch Water Service, Inc. ("PPWS") filed an Application for Approval for the Sale of Assets and Transfer of the Certificate of Convenience and Necessity

¹ Homeowners within the Potato Patch subdivision often refer to PPOC in the alternative as Potato Patch Owners Association.

1 (“Certificate) to PPOC (“SAT Application”).

2 On October 15, 2002, the Commission’s Utilities Division (“Staff”) filed a Motion for
3 Consolidation stating that the issues in the above-referenced matters were related.

4 On October 16, 2002, Staff issued its Staff Report.

5 On October 21, 2002, pursuant to A.A.C. R14-3-101, the Commission issued a Procedural
6 Order consolidating the applications for purposes of hearing and scheduled a hearing on November
7 21, 2002.

8 On or about November 4, 2002, PPOC provided notice of the proceeding. In response
9 thereto, no protests were filed with the Commission.

10 On November 21, 2002, a full public hearing was held before a duly authorized
11 Administrative Law Judge of the Commission at its offices in Phoenix, Arizona. PPOC dba PPCWU
12 appeared through its vice-president who is also the chairman of PPCWU’s Water Board. Staff
13 appeared with counsel. PPWS did not enter an appearance. At the conclusion of the hearing, the
14 matter was taken under advisement pending submission of a Recommended Opinion and Order to the
15 Commission.

16 * * * * *

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

19 **FINDINGS OF FACT**

20 1. Pursuant to authority granted by the Commission in Decision No. 35237 (May 28,
21 1964), PPWS provides public water utility service to an area that is primarily a vacation home
22 subdivision in Yavapai County located near Lynx Lake east of Prescott, Arizona.

23 2. PPWS’ service area consists of a 133 lot subdivision which has 90 lots that have had
24 residences constructed on them and receive water service. The remaining 43 lots, some of which are
25 not buildable, have not yet had homes built on them. Only three residences are occupied on a full-
26 time basis.

27 3. PPWS’ water production facilities have previously been very limited in terms of water
28 production and its distribution system is old and in need of costly repairs.

1 4. On or about February 20, 2002, PPWS sold its water utility assets for \$105,000 to
2 PPOC, an Arizona non-profit corporation, dba PPCWU which had been formed to purchase and
3 operate the water utility for the benefit of the lot owners in the Potato Patch subdivision.

4 5. On March 25, 2002, PPOC dba PPCWU filed the Adjudication Application.

5 6. On September 9, 2002, PPWS filed the SAT Application requesting the Commission's
6 authorization for the sale of its assets and transfer of its Certificate to PPOC dba PPCWU which had
7 been operating the utility which supplies water to the Potato Patch subdivision since February.

8 7. On or about November 4, 2002, PPOC mailed notice of the SAT application, the
9 Adjudication Application and the hearing thereon and in response thereto, no protests have been
10 received by the Commission.

11 8. Prior to the purchase, PPOC secured the approval of 79 percent of the lot owners in
12 the subdivision to proceed with the purchase.

13 9. In order to fund the purchase of PPWS' assets, PPOC collected \$1,675 from each
14 metered lot owner or the metered lot owner signed a five-year note for the amount due. After
15 \$112,000 had been collected, PPOC paid the agreed purchase price to PPWS. Additionally, PPOC
16 secured from Wells Fargo Bank a \$150,000 line of credit which is to be utilized for repairs and
17 system upgrades.

18 10. During the hearing, PPCWU's chairman testified that many system repairs had already
19 been made and that two new wells had been drilled to improve water service in the future.

20 11. PPOC will not require lot owners in the subdivision to pay the assessment paid by the
21 metered lot owners until they request service.

22 12. PPOC has retained a certificated operator that will assist in its operation.

23 13. Pursuant to Decision No. 58582 (April 6, 1994), PPWS was authorized a base charge
24 of \$22.50 inclusive of 1,000 gallons with additional gallonage at \$3.00 per 1,000 gallons. However,
25 according to the last annual report filed by PPWS, the utility experienced a \$3,000 operating loss.

26 14. Subsequent to acquiring the assets of PPWS, PPOC began charging a rate not
27 authorized by the Commission to homeowners in the subdivision. As of April 18, 2002, PPOC began
28 charging its customers a base rate of \$30 per month inclusive of 2,000 gallons with additional

1 gallonage priced at \$4.50 per 1,000 gallons. The PPOC made this increase to ensure that the water
2 utility would not operate at a loss².

3 15. PPOC has refunded all security deposits and no refunds are due for main extensions.
4 Additionally, it will also assume the obligation for refunds on meters and service lines.

5 16. According to the Staff Report, PPOC is in compliance with the water testing
6 requirements of the Arizona Department of Environmental Quality ("ADEQ") and its water meets the
7 standards of the Safe Drinking Water Act. PPOC is also current on its property taxes.

8 17. With respect to the Adjudication Application, Staff cited Commission Decision No.
9 55568 (May 7, 1987), in which the Commission issued a policy directive regarding applications for
10 adjudication not a public service corporation, and provided the following criteria for its evaluation of
11 such applications:

- 12 1. the application must be submitted by a non-profit homeowners' association;
- 13 2. the application is a bona fide request by a majority of the membership of the
14 association through a petition signed by 51 percent or more of the then-existing
15 members;
- 16 3. that all such associations making an application have complete ownership of the
17 system and the necessary assets;
- 18 4. that every customer is a member/owner with equal voting rights and that each
19 member is or will be a customer;
- 20 5. that the service area involved encompasses a fixed territory which is not within the
21 service area of a municipal utility or public service corporation, or if it is, that the
22 municipal utility or public service corporation is unable to serve;
- 23 6. that there is a prohibition against further sub-division evidenced by deed
24 restrictions, zoning, water restrictions, or other enforceable governmental
25 regulations; and
- 26 7. that the membership is restricted to a fixed number of customers, actual or

27
28 ² As a result of the increase in rates by PPOC prior to approval of the Adjudication Application herein, at least \$5,400 has
been over collected by PPOC from its owners/customers.

1 potential.

2 18. PPOC is a nonprofit corporation formed as a homeowners' association to manage and
3 maintain common areas of the subdivision and to act in unison to promote the common interests of
4 the lot owners in the requested adjudication area.

5 19. The Adjudication Application was based on a petition signed by a majority of the lot
6 owners in the subdivision.

7 20. PPOC will have complete ownership of the well and water utility facilities that will
8 provide water service to its members.

9 21. According to the Adjudication Application, every member of PPOC will have equal
10 voting rights.

11 22. PPOC's service area encompasses a fixed area that is not within the service area of a
12 municipal utility or the service area of a public service corporation.

13 23. The CC&Rs prohibit further subdivision of the lot parcels, and water service to the
14 lots in the service area of PPOC has been limited to the existing lots.

15 24. The membership in PPOC is restricted to a fixed number of actual or potential
16 customers based on the ownership of the lots in the subdivision.

17 25. Staff has recommended the following: that the SAT Application of PPWS be
18 approved; that PPOC's Adjudication Application be approved; that the Commission order PPOC to
19 notify its owners/customers of the difference in the rates and offer them a refund if requested; and
20 that the Certificate of PPWS be cancelled.

21 26. Mr. Frame stipulated that PPOC agrees with Staff's recommendations with the
22 exception of the refund requirement.

23 27. Under the circumstances herein, we concur with Staff's recommendations.

24 **CONCLUSIONS OF LAW**

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

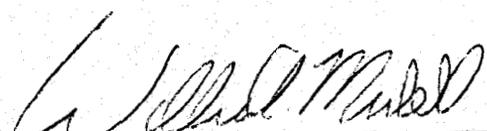
27 2. The Commission has jurisdiction over PPWS and PPOC and the subject matter of the
28 applications.

1 IT IS FURTHER ORDERED that Potato Patch Owners Corporation dba Potato Patch Community
2 Water Utility is hereby advised of its continuing obligations under the applicable laws, regulations
3 and orders of other regulatory agencies, including but not limited to the Arizona Department of
4 Environmental Quality, the Arizona Department of Water Resources and Yavapai County.

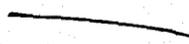
5 IT IS FURTHER ORDERED that Decision No. 35237 be, and is hereby, rescinded and the
6 Certificate of Convenience and Necessity granted therein be, and is hereby, cancelled.

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

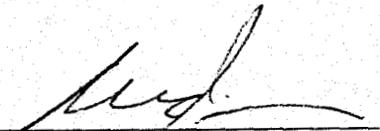
8 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

9
10 

11 CHAIRMAN

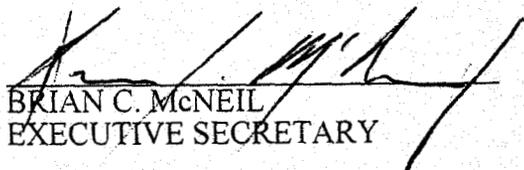
10 

11 COMMISSIONER

10 

11 COMMISSIONER

12
13 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive
14 Secretary of the Arizona Corporation Commission, have
15 hereunto set my hand and caused the official seal of the
16 Commission to be affixed at the Capitol, in the City of Phoenix,
17 this 19th day of December, 2002.

17 
18 BRIAN C. McNEIL
19 EXECUTIVE SECRETARY

19 DISSENT _____

20 MES:mlj

21
22
23
24
25
26
27
28

1 SERVICE LIST FOR: POTATO PATCH OWNERS CORPORATION, et al.

2 DOCKET NO. W-04096A-02-0233, et al.

3
4 Susan Corey
5 System Coordinator
6 7336 South Heather Drive
7 Tempe, AZ 85283
8 Potato Patch Owners Corporation dba Potato Patch Community Water Utility

9 Robert Hannay
10 Potato Patch Water Service, Inc.
11 15 Highland Terrace
12 Prescott, AZ 86305

13 Christopher Kempley, Chief Counsel
14 Legal Division
15 ARIZONA CORPORATION COMMISSION
16 1200 West Washington Street
17 Phoenix, AZ 85007

18 Ernest G. Johnson, Director
19 Utilities Division
20 ARIZONA CORPORATION COMMISSION
21 1200 West Washington Street
22 Phoenix, Arizona 85007

23
24
25
26
27
28