

OPEN MEETING ITEM  
ORIGINAL



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



ARIZONA CORPORATION COMMISSION

DATE: October 4, 2005  
DOCKET NO: W-02054A-97-0127 and W-03340A-97-0127  
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 Order on:

HO-TYE WATER COMPANY  
(CC&N TRANSFER)

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:

OCTOBER 13, 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:

OCTOBER 18 AND 19, 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 Director's Office at (602) 542-3931.

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AZ CORP COMMISSION  
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BRIAN C. McNEIL  
EXECUTIVE DIRECTOR

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 HO-TYE WATER COMPANY FOR APPROVAL  
10 OF SALE OF ASSETS AND/OR TRANSFER OF  
11 ITS CERTIFICATE OF CONVENIENCE AND  
12 NECESSITY TO WOODY'S ENTERPRISES, LTD.

DOCKET NO. W-02054A-97-0127  
DOCKET NO. W-03340A-97-0127

DECISION NO. \_\_\_\_\_

**ORDER**

13 Open Meeting  
14 October 18 and 19, 2005  
15 Phoenix, Arizona

16 **BY THE COMMISSION:**

17 On March 12, 1997, Ho-Tye Water Company ("Applicant" or "Company") filed with the  
18 Arizona Corporation Commission ("Commission") an application for approval of the sale of its assets  
19 and transfer of its Certificate of Convenience and Necessity ("Certificate") to Woody's Enterprises,  
20 Ltd. ("WEL").

21 On April 18, 1997, the Company filed certification that public notice of the application had  
22 been delivered to all four customers of the Company and also published in a newspaper of general  
23 circulation. In response thereto, no protests were received by the Commission.

24 On August 22, 2005, by Procedural Order, the Commission's Utilities Division ("Staff") was  
25 directed to file a response or request the administrative closure of this docket not later than  
26 September 12, 2005.

27 On September 12, 2005, Staff filed its response in the form of a Staff Report which  
28 recommends approval of the sale of assets and transfer of the Company's Certificate to WEL.

On September 15, 2005, by Procedural Order, the Company and/or WEL were ordered to re-  
notice the public of the application by mailing, to each of its customers, a copy of the Commission's  
Procedural Order and a copy of the Staff Report. The Procedural Order stated that if no objections  
were received, the matter would be presented for Commission approval without a hearing. The

1 Company and/or WEL were also ordered to file, by September 29, 2005, certification that the public  
2 had been re-noticed pursuant to the Commission's Procedural Order.

3 On September 27, 2005, WEL filed certification that re-notice had been provided to each of  
4 its customers pursuant to the Commission's Procedural Order. There have been no protests or  
5 responses filed with the Commission in opposition to the application.

6 After a review of the application and the facts as related in the Staff Report, the matter was  
7 taken under advisement and submitted as a Recommended Order to the Commission its  
8 consideration.<sup>1</sup>

9 \* \* \* \* \*

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

12 **FINDINGS OF FACT**

13 1. Pursuant to authority granted by the Commission, the Company has provided public  
14 water utility service in the vicinity of Wickieup, Mohave County, Arizona.

15 2. On March 12, 1997, the Company filed an application requesting the Commission's  
16 authorization for the sale of its assets and transfer of its Certificate to WEL, an Arizona corporation,  
17 which, according to its corporate records, is engaged in retail sales.

18 3. WEL has been operating the water utility for approximately eight years and provides  
19 four customers with water service since taking over the Company's operations in 1997.

20 4. Although public notice of the application was given on or about April 18, 1997,  
21 neither the Company nor WEL pursued the processing of the application. No protests were filed  
22 subsequent to the notice given in 1997.

23 5. On August 22, 2005, by Procedural Order, Staff was directed to make an updated  
24 filing or request administrative closure of the docket.

25 6. On September 12, 2005, Staff filed its Staff Report which recommends approval of the  
26 application for the sale of assets and transfer of the Company's Certificate to WEL.

27 \_\_\_\_\_  
28 <sup>1</sup> Staff recommended that the Commission's Open Meeting where the matter is considered be the hearing in this case.

1           7.     Staff indicates that it has been in contact with WEL's general manager who confirmed  
2 that the sale and transfer were completed years ago.

3           8.     In its report, Staff notes that no complaints have been logged against either the  
4 Company or WEL in the past three years and there are no compliance delinquencies.

5           9.     Additionally, WEL is in good standing with the Commission's Corporations Division  
6 and has filed timely Utilities Division Annual Reports with Staff with respect to the operation of the  
7 utility.

8           10.    Staff bases its recommendation for approval primarily on the fact that there have been  
9 no complaints against the Company for a number of years and on the fact that the Company in large  
10 part has been operated in a compliant fashion according to the Compliance Section of the Utilities  
11 Division.

12          11.    On September 15, 2005, by Procedural Order, the Company and/or WEL were ordered  
13 to re-notice each of its customers of the application and provide them with a copy of the Staff Report.  
14 The Procedural Order stated that if no objections were received, the matter would be presented to the  
15 Commission for approval without a hearing.

16          12.    On September 27, 2005, WEL filed certification that it had provided re-notice of the  
17 application and Staff's recommendation to its customers on September 20, 2005, by certified mail. In  
18 response thereto, the Commission has not received any protests.

19          13.    According to the Company's application, there were no obligations due for refunds  
20 and/or deposits to the Company's existing customers when WEL took over the operation of the  
21 utility.

22          14.    WEL has been charging the rates and charges previously authorized for the Company  
23 by the Commission in Decision No. 58073 (November 12, 1992).

24          15.    Based on documentation in its 2004 Utilities Division Annual Report filed in April  
25 2005, it appears that WEL is current in the payment of the utility's property taxes.

26          16.    According to the Staff Report, WEL is experiencing very little customer growth, and  
27 since WEL has less than 15 customers, WEL is not subject to the jurisdiction of the Arizona  
28 Department of Environmental Quality ("ADEQ") and is not subject to the new arsenic standard

1 effective in January, 2006.

2 17. Because an allowance for the property tax expense of WEL is included in the  
3 Company's rates and will be collected from its customers, the Commission seeks assurances from the  
4 Company that any taxes collected from ratepayers have been remitted to the appropriate taxing  
5 authority. It has come to the Commission's attention that a number of water companies have been  
6 unwilling or unable to fulfill their obligation to pay the taxes that were collected from ratepayers,  
7 some for as many as twenty years. It is reasonable, therefore, that as a preventive measure WEL shall  
8 annually file, as part of its annual report, an affidavit with the Utilities Division attesting that the  
9 company is current in paying its property taxes in Arizona.

10 18. Under the circumstances, the transaction is reasonable and the matter can be addressed  
11 adequately at the Commission's Open Meeting on this matter.

12 **CONCLUSIONS OF LAW**

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

15 2. The Commission has jurisdiction over the Company and WEL and of the subject  
16 matter of the application.

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

19 4. WEL is a fit and proper entity to receive the assets and Certificate of the Company.

20 5. Notice of the Company's application as described herein was given in the matter  
21 prescribed by law.

22 6. Staff's recommendation is reasonable and should be adopted.

23 ...

24 ...

25 ...

26 ...

27 ...

28 ...

**ORDER**

IT IS THEREFORE ORDERED that the application of Ho-Tye Water Company for approval of the transfer of water utility assets and transfer of its Certificate of Convenience and Necessity to Woody's Enterprises, Ltd. is hereby approved.

IT IS FURTHER ORDERED that Woody's Enterprises, Ltd. shall continue to charge the rates authorized in Decision No. 58073 until further Order by the Commission.

IT IS FURTHER ORDERED that Woody's Enterprises, Ltd. shall annually file as part of its annual report, an affidavit with the Utilities Division attesting that the Company is current in paying its property taxes in Arizona.

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 Director 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 DIRECTOR

DISSENT \_\_\_\_\_

DISSENT \_\_\_\_\_

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SERVICE LIST FOR:

Ho-Tye Water Company

DOCKET NOS.:

W-020564A-97-0127 and W-03340A-97-0127

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