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MEMORANDUM

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TO: Docket Control Center 2006 MAY 22 P 4: 12

FROM: Ernest G. Johnson *E.G.J.* AZ CORP COMMISSION
Director DOCUMENT CONTROL
Utilities Division

DATE: May 22, 2006

RE: BEAVER VALLEY WATER COMPANY – STAFF’S RESPONSE TO THE
COMPANY’S MOTION TO AMEND DECISION NO. 68083 (DOCKET NO.
W-02015A-03-0724)

Background

Beaver Valley Water Company (“BVWC” or “Company”) is a small water utility company serving 187 customers in an area approximately 10 miles north of Payson, Arizona. On April 28, 2003, BVWC filed an application with the Commission requesting authority to increase its rates and charges. The subsequent Staff Report indicated that the BVWC system was being operated by Mr. Michael Davoren, the former on-site manager. Neither Mr. Davoren, (who assumed operational control in January 2003) nor Mr. Edgar Delaney (the owner), filed an application for Commission approval of a sale of assets or transfer of BVWC’s Certificate of Convenience and Necessity (“CC&N”).

On October 6, 2003, the Commission issued Decision No. 66388 which ordered that the BVWC rates and charges in that order should be effective for all service provided on the first day of the month following the date that both of the following have occurred: 1) the Commission has approved an application for transfer or sale of the BVWC’s assets and transfer of its CCN to a fit and proper entity; and 2) BVWC file written documentation from Arizona Department of Environmental Quality (“ADEQ”) stating that its system has no maximum contaminant level violations and is serving water that meets the water quality standards required by Arizona Administrative Code, Title 18, Chapter 4.

In addition to the above compliance which conditionally determined the application of the new rates, BVWC was also ordered to:

- A) Install a well meter and to reconnect its existing well to the system as a backup source no later than December 1, 2004.
- B) Construct a 20,000 gallon storage tank project to comply with ADEQ requirements as soon as possible and submit a copy of the Certificate of Approval of Construction issued by ADEQ for the project to the Director of the Utilities Division no later than December 1, 2004.

On October 1, 2003, BVWC filed an application for approval of the sale of its assets and the transfer of its CCN to Michael Davoren, a Sole Proprietorship.

On August 17, 2005, the Commission issued Decision No. 68083 which approved BVWC's application for sale of its assets and transfer of its CC&N to Michael Davoren. The Commission's approval was subject to BVWC's timely compliance with Commission orders stating that:

- 1) BVWC shall demonstrate that the company is transferred free and clear.
- 2) BVWC shall file evidence of ADEQ water quality compliance no later than November 17, 2005.
- 3) BVWC shall calculate the rate overcharge amount for each customer for each month after November 2003 no later than November 17, 2005.
- 4) BVWC shall notice its customers of the overcharges and the manner in which credits will be applied, in a form acceptable to the Commission's Utilities Division Staff, by means of an insert in its regular monthly billing no later than November 17, 2005.
- 5) BVWC shall refund to its customers credits and the overcharge shall be terminated as of the date of the Decision (August 17, 2005).
- 6) Failure to demonstrate compliance with the above stated conditions by November 17, 2005 shall result in the imposition of a penalty against BVWC in the amount of \$10,500.

Order to Show Cause

On April 13, 2006, Staff filed a complaint and petition for order to show cause ("OSC") against BVWC. The complaint was filed due to the failure of BVWC to comply with Commission Decision Nos. 66388, 68083 and A.A.C. R14-2-411(D)(4).

On April 21, 2006, Respondent Michael Davoren filed a response to the Complaint and Petition for Order to Show Cause.

The matter was presented before the Commission at Open Meeting on May 3, 2006. Staff requested that the Commission delay this matter for an additional three weeks in order to give the Company additional time to attempt to resolve compliance issues related to water quality.

After consideration, the Commission rescheduled the matter for presentation at the May 25, 2006 Open Meeting.

Conclusion and Recommendations

Staff has worked very closely with Mr. Michael Davoren over the last six months to assist BVWC in its outstanding compliance issues. In summary, Staff recommended the OSC because of the uncertainty over water quality and several other compliance issues. Due to the specifics of the Commission decisions, BVWC cannot come into Commission compliance without demonstrating ADEQ water quality compliance. Unfortunately, the Company's lack of compliance paperwork in the area of water testing had resulted in ADEQ being unable to verify the quality of the water being delivered to customers. The OSC was driven secondarily by the inability to come to resolution with other compliance items, including overcharges of rates and the imposition of a fine for failure to timely comply.

Since the filing of the OSC, Staff has met with Mr. Davoren regarding the situation and has made progress in the primary area of water quality. Staff agrees with Mr. Davoren that the sale of assets and transfer of the CC&N should be finalized and that the rates and charges are necessary for BVWC to operate effectively. Staff has received water sampling documentation from Mr. Davoren and has received confirmation from ADEQ on May 12, 2006, that BVWC is delivering water that meets water quality standards.

On April 27, 2006, Staff received a request from Mr. Davoren, to amend Decision Nos. 66388 and 68083. This request, docketed on May 12, 2006, came as a result of an April 24, 2006 meeting held with Mr. Davoren and members of Staff to attempt to assist BVWC in fulfilling its compliance requirements. The request asked that the decisions be modified to the extent necessary to reflect:

- 1) That the transfer be deemed approved as of the date of Decision No. 68083.
- 2) That BVWC agrees to continue the overcharge credits to customers through August 2005.
- 3) That the Commission allow the "new rates" approved in Decision No. 66388 to be applied in the months after August 17, 2005.
- 4) That BVWC will file the 2005 annual report.
- 5) That BVWC will be in total compliance with ADEQ requirements cited in the post inspection report and Decision Nos. 66388 and 68083 by September 30, 2006.
- 6) That BVWC will agree to pay a fine of up to \$20,000 to the Commission if the above items are not completed by September 30, 2006.

In general, Staff agrees with the items listed in Mr. Davoren's proposal and recommends that the Commission amend Decision No. 68083 to reflect the following:

- 1) The transfer of assets and Certificate of Convenience and Necessity to Michael Davoren, a sole proprietorship, is hereby approved effective August 17, 2005.
- 2) Michael Davoren, a sole proprietorship, shall agree to refund to the customers credits as outlined in the Decision and shall continue until all overcharges from the period of November 2003 thru August 2005 have been refunded. These refunds shall be completed by November 30, 2007.
- 3) The rates and charges conditionally approved in Decision No. 66388 shall be effective as of the date of the sale of assets and transfer of the CC&N – effective August 17, 2005.
- 4) Michael Davoren, a sole proprietorship, shall file the Commission required annual report for 2005, by June 30, 2005. Due to the unique circumstances such as Mr. Davoren not being recognized as the legitimate owner, the Commission shall not require an annual report from Mr. Davoren for 2003 and 2004.
- 5) Michael Davoren, a sole proprietorship, will attain full compliance with ADEQ Notice of Violation requirements by September 30, 2006.
- 6) If Michael Davoren does not comply with the requirements and timeframes contained in Item Nos. 2, 4 and 5, above, Mr. Davoren shall pay a fine of \$20,000.00, unless Mr. Davoren can show good cause why such a fine should not be imposed.

EGJ:KDB:lhm\DR

Originator: Kimberly D. Battista