

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

OPEN MEETING ITEM



ORIGINAL



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ARIZONA CORPORATION COMMISSION

DATE: June 5, 2006

DOCKET NO: W-01445A-05-0701

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Yvette Kinsey. The recommendation has been filed in the form of an Opinion and Order on:

ARIZONA WATER COMPANY
(CC&N EXTENSION)

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:

JUNE 14, 2006

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 the Commission's Open Meeting to be held on:

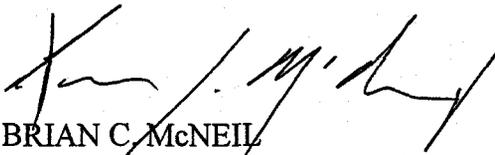
JUNE 27 AND 28, 2006

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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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
ARIZONA WATER COMPANY FOR AN
EXTENSION OF ITS CERTIFICATE OF
CONVENIENCE AND NECESSITY.

DOCKET NO. W-01445A-05-0701
DECISION NO. _____

OPINION AND ORDER

9 DATE OF HEARING: April 6, 2006
10 PLACE OF HEARING: Phoenix, Arizona
11 ADMINISTRATIVE LAW JUDGE: Yvette B. Kinsey
12 APPEARANCES: Robert W. Geake, on behalf of Arizona Water
13 Company; and
14 Mr. David Ronald, Staff Attorney, Legal Division, on
15 behalf of the Utilities Division of the Arizona
Corporation Commission.

16 **BY THE COMMISSION:**

17 On October 4, 2005, Arizona Water Company ("AWC" or "Applicant"), filed with the
18 Arizona Corporation Commission ("Commission") an application for an extension of its Certificate
19 of Convenience and Necessity ("Certificate" or "CC&N") to provide additional water service within
20 its Superstition System, in Pinal County, Arizona.

21 On November 3, 2005, the Commission's Utilities Division ("Staff") filed an Insufficiency
22 Letter listing the areas in the application that Staff determined did not meet the sufficiency
23 requirements set forth in the Arizona Administrative Code ("A.A.C.").

24 On December 12, 2005, AWC submitted additional information in response to Staff's
25 Insufficiency Letter.

26 On January 9, 2006, Staff filed a Sufficiency Letter in this docket indicating that the
27 Applicant's application has met the sufficiency requirements as outlined in the A.A.C.

28 On January 12, 2006, a Procedural Order was issued setting the hearing to commence on

1 March 28, 2006, on the application and also setting associated procedural deadlines including the
2 publication of notice of the hearing.

3 On January 19, 2006, Applicant filed a Motion to Continue the scheduled hearing, stating a
4 scheduling conflict and that Staff did not oppose the continuance.

5 On February 1, 2006, by Procedural Order, the Motion to Continue was granted, the time-
6 clock was extended and a new hearing was scheduled to commence on April 6, 2006.

7 On March 3, 2006, AWC filed its Affidavit of Publication and Proof of Mailing.

8 On March 9, 2006, Staff filed its Staff Report recommending approval of the application to
9 extend the CC&N to provide water utility service, subject to certain conditions.

10 On April 6, 2006, a full public hearing was held before a duly authorized Administrative Law
11 Judge of the Commission at its offices in Phoenix, Arizona. AWC and Staff appeared through
12 counsel and presented evidence and testimony. No members of the public appeared to give public
13 comment. At the conclusion of the hearing, pending a late-filed exhibit discussing the use of
14 reclaimed water in the proposed extension area, all matters were taken under advisement.

15 On May 15, 2006, AWC filed its Notice of Filing Late-Filed Exhibit.

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. AWC is an Arizona corporation that provides water utility service to approximately
21 75,000 customers in eight counties in Arizona. AWC was granted its Certificate in Decision No.
22 28794 (March 1955).

23 2. AWC is an Arizona Corporation, in good standing with the Commission's Corporation
24 Division.

25 3. According to Staff's Report, AWC provides water utility service to customers in
26 portions of Cochise, Coconino, Gila, Maricopa, Navajo, Pima, Pinal and Yavapai Counties.¹

27 _____
28 ¹ According to Staff's Report, AWC is a wholly-owned subsidiary of Utility Investment Company, which is a
wholly-owned subsidiary of United Resources, Inc.

1 4. On October 4, 2005, AWC filed an application for an extension of its existing CC&N
2 for its Superstition System to add one square mile to its existing 140 square-miles of certificated area.
3 The legal description for the proposed extension area is set forth as Exhibit A attached hereto and
4 incorporated herein by reference. The requested extension area includes approximately 640 acres, to
5 be developed into a master planned community.

6 5. According to Staff's Report, AWC's Superstition System is comprised of the Apache
7 Junction and Superior service areas and consists of nine wells producing 10,855 gallons per minute
8 ("GPM"), 21.08 million gallons of storage capacity, and a distribution system serving 20,354 service
9 connections.

10 6. According to the AWC's application, AWC has received a request to provide water
11 utility service from Echo Holdings, LLC ("Echo"). At hearing, AWC's witness testified that Echo
12 owns all 640 acres in the proposed extension area and that the developer has plans for a master
13 planned community primarily consisting of one acre residential lots.

14 7. Staff's Report shows that based on historical growth rates, AWC's current service area
15 could grow to approximately 23,800 connections at the end of five years. Additionally, AWC predicts
16 that it will add 50 new connections in the proposed CC&N extension area at the end of five years.

17 8. Staff concluded that AWC's existing water system could serve approximately 24,700
18 connections and therefore could adequately provide production and storage for both its existing and
19 proposed customer base within a five year planning period and that AWC can be reasonably expected
20 to develop additional production and storage as required in the future.

21 9. Staff's Report states that AWC proposes to finance the required utility facilities
22 through advances in aid of construction or Main Extension Agreements ("MXAs").

23 10. Staff recommends that AWC file with Docket Control, as a compliance item in this
24 Docket, a copy of the fully executed MXAs for the water facilities in the extension area, within two
25 years of a Decision in this matter, for Staff's review and approval.

26 11. The Applicant proposes to install on-site and off-site water facilities to serve the
27 proposed service area at an anticipated cost of \$2,488,032. Staff reviewed the proposed costs and
28 found them to be reasonable, but did not make a "used and useful" determination of the proposed

1 plant facilities for rate making or rate base purposes.

2 12. At hearing, AWC's witness testified that a "package" wastewater plant will be
3 installed to serve the development in the proposed extension. In the Applicant's late-filed exhibit, it
4 also stated that the developer plans to "discharge the effluent from the treatment plant to the lake near
5 the golf course", . . . and "use all of the available effluent to water the golf course".

6 13. According to Staff's Report, AWC has not submitted to the Arizona Department of
7 Environmental Quality ("ADEQ") its Certificate of Approval to Construct ("ATC") for the facilities
8 to serve the extension area. Therefore, Staff recommends that AWC file with Docket Control, as a
9 compliance item in this docket, a copy of the ADEQ ATC for the facilities needed to serve the
10 requested areas within two years of the effective date of an Order in this matter.

11 14. ADEQ has reported that AWC is currently delivering water that meets the water
12 quality standards required by the A.A.C.

13 15. AWC is located in the Phoenix and Pinal Active Management Areas ("AMAs") and
14 according to Staff's Report is in compliance with AMA requirements.

15 16. Staff recommended that AWC file with Docket Control, as a compliance item in this
16 docket, a copy of its Certificate of Assured Water Supply ("CAWS"), for the extension area, within
17 two years of the effective date of a Decision in this matter.

18 17. According to Staff's Report, the Utilities Division Compliance Section found no
19 outstanding compliance issues for AWC.

20 18. The U.S. Environmental Protection Agency ("EPA") has reduced the arsenic
21 maximum containment level ("MCL") from 50 micrograms per liter (" $\mu\text{g}/\text{l}$ ") or parts per billion
22 (" ppb ") to 10 $\mu\text{g}/\text{l}$ effective January 23, 2006. According to Staff's Report, AWC has arsenic levels
23 ranging from 6 ppb to 26 ppb in its wells, but that AWC is in the process of developing a treatment
24 plan after being granted Commission authority to implement an arsenic recovery mechanism, for its
25 Superstition system, in Decision No. 66849 (March 19, 2004).

26 19. AWC has an approved Curtailment Plan Tariff ("CPT") on file with the Commission
27 for all services areas, which was approved in Decision No. 66235 (July 23, 2004).

28 20. AWC will provide service to the extension area at its existing rates and charges on file

1 with the Commission.

2 21. The extension area described in AWC's application is located in an unincorporated
3 area of Pinal County adjacent to an area already certificated to and served by AWC. AWC submitted
4 in this docket a copy of its franchise agreement with Pinal County.

5 22. Staff recommends approval of AWC's application for extension of its CC&N to
6 provide water service in Pinal County subject to the following conditions:

7 1. That AWC charge its authorized rates and charges in the extension area;

8 2. That AWC file with Docket Control, as a compliance item in this docket, a
9 Notice of Filing indicating AWC has submitted for Staff's review and approval, a
10 copy of the fully executed main extension agreements for water facilities for the
11 extension area within two years of a Decision in this matter.

12 3. That AWC file with Docket Control, as a compliance item in this docket, a
13 copy of the ADEQ ATC for facilities needed to serve the requested areas within two
14 years of the effective date of an Order in this proceeding.

15 4. That AWC file with Docket Control, as a compliance item in this docket, a
16 copy of the developer's CAWS, where applicable or when required by statute within
17 two years of the effective date of the final Decision and Order issued pursuant to this
18 application.

19
20 23. Staff further recommended that if AWC fails to comply with conditions 2, 3, and 4
21 stated above within the required time-frames the CC&N should be considered null and void, after due
22 process.

23 24. Staff recommendations in Findings of Fact Nos. 22 and 23 are reasonable and should
24 be adopted.

25 25. Because an allowance for the property tax expense is included in AWC's rates and
26 will be collected from its customers, the Commission seeks assurances from AWC that any taxes
27 collected from ratepayers have been remitted to the appropriate taxing authority. It has come to the
28 Commission's attention that a number of water companies have been unwilling or unable to fulfill

1 their obligation to pay the taxes that were collected from ratepayers, some for as many as twenty
2 years. It is reasonable, therefore, that as a preventive measure AWC shall annually file, as part of its
3 annual report, an affidavit with the Utilities Division attesting that the company is current in paying
4 its property taxes in Arizona.

5 **CONCLUSIONS OF LAW**

6 1. AWC is a public service corporation within the meaning of Article XV of the Arizona
7 Constitution and A.R.S. § 40-281 *et seq.*

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

9 3. Notice of the application was provided in accordance with law.

10 4. There is a public need and necessity for water utility services in the proposed
11 extension area as set forth in Exhibit A attached hereto and incorporated herein by reference.

12 5. AWC is a fit and property entity to receive an extension of its water Certificate which
13 encompasses the area more fully described in Exhibit A attached hereto.

14 6. Subject to compliance with the above-stated conditions, AWC is a fit and proper entity
15 to receive extension of its water Certificate, for the proposed extension area in Pinal County set forth
16 in Exhibit A.

17 7. Staff's recommendations, as set forth herein are reasonable and should be adopted.

18 **ORDER**

19 IT IS THEREFORE ORDERED that the application of Arizona Water Company for an
20 extension of its Certificate of Convenience and Necessity to provide water utility service in Pinal
21 County and as described in Exhibit A, attached hereto and incorporated herein by reference, is
22 approved subject to the conditions and requirements recommended by Staff and outlined in the
23 following ordering paragraphs:

24 IT IS FURTHER ORDERED that Arizona Water Company shall charge its existing rates and
25 charges currently on file with the Commission in the extension area, until further Order of the
26 Commission.

27 IT IS FURTHER ORDERED that Arizona Water Company shall file with Docket Control as
28 a compliance item in the docket, a Notice of Filing indicating it has submitted for Staff's review and

1 approval, a copy of the fully executed main extension agreements for water facilities for the
2 extension area within two years of the Decision in this matter.

3 IT IS FURTHER ORDERED that Arizona Water Company shall file with Docket Control, as
4 a compliance item in this docket, a copy of the Arizona Department of Environmental Quality
5 Certificate of Approval to Construct for facilities needed to serve the extension area within two years
6 of the effective date of this Decision.

7 IT IS FURTHER ORDERED that Arizona Water Company shall file with Docket Control, as
8 a compliance item in this docket, a copy of the developer's Certificate of Assured Water Supply,
9 where applicable or when required by statute within two years of the effective date of this Decision.

10 IT IS FURTHER ORDERED that if Arizona Water Company fails to comply with the above
11 stated conditions within the required time-frames the Certificate of Convenience and Necessity
12 conditionally granted herein shall become null and void, after due process.

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IT IS FURTHER ORDERED that Arizona Water Company shall annually file as part of its annual report, an affidavit with the Utilities Division attesting that it is current on 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 _____, 2006.

BRIAN C. McNEIL
EXECUTIVE DIRECTOR

DISSENT _____

DISSENT _____

YBK:mj

1 SERVICE LIST FOR: ARIZONA WATER COMPANY

2 DOCKET NO.: W-01445A-05-0701

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4 Arizona Water Company
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All of Section 20, Township 2 South, Range 11 East of the Gila and Salt River Base and Meridian, Pinal County, Arizona.

EXHIBIT A

DECISION NO. _____