



BEFORE THE ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission

DOCKETED

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COMMISSIONERS

- JEFF HATCH-MILLER, Chairman
WILLIAM A. MUNDELL
MIKE GLEASON
KRISTIN K. MAYES
GARY PIERCE

IN THE MATTER OF THE APPLICATION OF BEAVER VALLEY WATER COMPANY FOR APPROVAL OF THE SALE OF ITS ASSETS AND FOR THE TRANSFER OF ITS CERTIFICATE OF CONVENIENCE AND NECESSITY TO MICHAEL DAVOREN.

DOCKET NO. W-02015A-03-0724

DECISION NO. 69244

OPINION AND ORDER

DATE OF HEARING: June 29, 2006 (Procedural Conference); September 21, 2006 (Public Comments); and October 5, 2006 (Evidentiary Hearing)

PLACE OF HEARING: Phoenix, Arizona

ADMINISTRATIVE LAW JUDGE: Yvette B. Kinsey

APPEARANCES: Mr. Michael Davoren, on behalf of Beaver Valley Water Company; Mr. David Ronald, Staff Attorney, Legal Division, on behalf of the Utilities Division of the Arizona Corporation Commission.

BY THE COMMISSION:

On October 1, 2003, Beaver Valley Water Company ("BVWC") filed with the Arizona Corporation Commission ("Commission") an application for approval of the sale of its assets and the transfer of its Certificate of Convenience and Necessity ("Certificate" or "CC&N") to Mr. Michael Davoren.

On August 17, 2005, in Decision No. 68083, the Commission conditionally granted the sale of assets and the transfer of the CC&N to Mr. Michael Davoren.

On April 13, 2006, the Commission's Utilities Division ("Staff") opened a new docket (W-02015A-06-0223) and filed a Complaint and Order to Show Cause against BVWC citing failure to comply with Commission Decision Nos. 66388, 68083 and Arizona Administrative Code ("A.A.C.") R14-2-411(D) (4).

1 On April 21, 2006, Mr. Michael Davoren filed an Answer to the Complaint and Order to
2 Show Cause.

3 On May 3, 2006, the matter was presented at the Commission's Open Meeting. At the request
4 of Staff, the Commission granted the parties an additional three weeks time or until the May 31,
5 2006, Open Meeting, to resolve the issues.

6 On May 25, 2006, during the regularly scheduled Open Meeting and after discussions with
7 the parties and a representative from Arizona Department of Environmental Quality ("ADEQ"), the
8 Commission decided to reopen the record in this matter, pursuant to A.R.S. § 40-252 and directed the
9 Hearing Division to conduct any proceedings necessary to resolve the outstanding issues.

10 On June 8, 2006, by Procedural Order, Staff was ordered to file a procedural recommendation
11 regarding the outstanding issues.

12 On June 15, 2006, a Procedural Order was issued setting a Procedural Conference for June 29,
13 2006. At the Procedural Conference, a date was set for hearing along with other deadlines.

14 On July 3, 2006, by Procedural Order, a hearing was scheduled to commence on September
15 21, 2006.

16 On August 11, 2006, Staff filed a Request for Extension of Time until August 17, 2006 to file
17 its Staff Report.

18 On August 16, 2006, by Procedural Order, Staff's Request was granted.

19 On August 17, 2006, Staff filed its Staff Report in this matter.

20 On September 5, 2006, BVWC filed an Affidavit of Publication pursuant to the July 3, 2006
21 Procedural Order.

22 On September 6, 2006, Staff filed a Motion to Continue the September 21, 2006 hearing due
23 to witness unavailability.

24 On September 13, 2006, by Procedural Order the hearing was reset to commence on October
25 5, 2006 and the September 21, 2006 hearing date was reserved for public comment only.

26 On September 21, 2006, public comment was taken in this matter; however, no members of
27 the public appeared.

28 On October 5, 2006, a full public hearing was held by the Commission at its offices in

1 Phoenix, Arizona before a duly authorized Administrative Law Judge of the Commission. Staff
 2 appeared through counsel. Mr. Michael Davoren appeared and presented testimony. At the
 3 conclusion of the hearing, the matter was taken under advisement pending submission of a
 4 Recommended Opinion and Order to the Commission.

5 * * * * *

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

8 **FINDINGS OF FACT**

9 1. BVWC is a water utility company serving 192 customers in an area north of Payson,
 10 Arizona.

11 2. BVWC received Commission authority to provide water utility service in Commission
 12 Decision No. 38565 (July 5, 1966).

13 3. On April 28, 2003, BVWC filed an application with the Commission requesting
 14 authority to increase its rates and charges.

15 4. In reviewing BVWC's application for a rate increase, Staff's Report stated since
 16 January 2003, the company's operations were being conducted by Mr. Michael Davoren, the on-site
 17 manager, and not the company's owner¹. Staff's Report further noted that neither Mr. Delaney nor
 18 Mr. Davoren, had filed an application with the Commission for approval to sell BVWC's assets or to
 19 transfer its CC&N.

20 5. On October 6, 2003, the Commission approved BVWC's application to increase its
 21 rates and charges, subject to the Commission first approving an application for BVWC to transfer its
 22 CC&N and sale of its assets to a fit and proper entity; and BVWC filing documentation from ADEQ
 23 that the water system has no maximum containment level ("MCL") violations and the water meets
 24 water quality standards as required by the Arizona Administrative Code ("A.A.C").²

25 6. On October 1, 2003, BVWC filed an application with the Commission for approval of

26 ¹ Mr. Edgar Delaney.

27 ² Commission Decision No. 66388 (October 6, 2003). Additionally, Decision No. 66388 conditioned BVWC's new rates
 28 on BVWC installing a well meter, reconnecting its existing well to the system as a back up source, constructing a 20,000
 gallon storage tank to comply with ADEQ and submitting a copy of its Certificate of Approval of Construction to the
 Utilities Division, no later than December 1, 2004.

1 the sale of its assets and the transfer of its Certificate to Mr. Michael Davoren, a sole proprietorship.

2 7. On August 17, 2005, in Decision No. 68083, the Commission, subject to conditions,
3 granted BVWC's application for the sale of its assets and the transfer of its Certificate to Mr.
4 Davoren.

5 8. On April 13, 2006, Staff filed a Compliant and Order to Show ("OSC") against
6 BVWC, alleging BVWC was in violation of Commission Decision Nos. 66388, 68083 and A.A.C.
7 R14-2-411(D) (4).

8 9. On May 12, 2006, Staff docketed a filing by Mr. Davoren, dated April 27, 2006,
9 which proposed amending Commission Decision Nos. 66388 and 68083.

10 10. At the regularly scheduled open meeting on May 3, 2006, the OSC and Complaint
11 were discussed and the Commission decided to grant Staff's request for three additional weeks to
12 resolve some of the compliance issues with BVWC.

13 11. On May 22, 2006, Staff filed its Response to BVWC's Motion to Amend Decision
14 Nos. 66388 and 68083 and recommended amending Decision No. 68083 to reflect the following:

15 1) The transfer of CC&N and sale of assets to Mr. Davoren, a sole proprietorship,
16 effective August 17, 2005.

17 2) Michael Davoren, a sole proprietorship, shall agree to refund to customers
18 credits as outlined in the Decision and shall continue until all overcharges from the
19 period of November 2003 thru August 2005 have been refunded. These refunds shall
20 be completed by November 30, 2007.

21 3) The rates and charges conditionally approved in Decision No. 66388 shall be
22 effective as of the date of the sale of assets and transfer of the CC&N effective August
23 17, 2005.

24 4) Michael Davoren, a sole proprietorship, shall file with the Commission
25 BVWC's required annual report for the year 2005, by June 30, 2006. Due to the
26 unique circumstances such as Mr. Davoren not being recognized as the legitimate
27 owner, the Commission shall not require an annual report from Mr. Davoren for the
28 years of 2003 and 2004.

1 5) Michael Davoren, a sole proprietorship, will attain full compliance with the
2 ADEQ Notice of Violation requirements by September 30, 2006.

3 6) If Michael Davoren does not comply with the requirements and timeframes
4 contained in item Nos. 2, 4, and 5, above, Mr. Davoren shall pay a fine of \$20,000.00,
5 unless Mr. Davoren can show good cause why such a fine should not be imposed.

6 12. On May 25, 2006, the matter appeared on the regularly scheduled open meeting and
7 the Commission voted to reopen the matter and directed the Hearing Division to conduct an
8 evidentiary hearing on the matter.

9 13. On August 4, 2006, BVWC docketed a filing stating that the reconnection of the well
10 and installation of the storage tank was not economically feasible.

11 14. On August 17, 2006, Staff filed a memorandum in this docket which updated
12 BVWC's compliance issues in Decision Nos. 66388 and 68083.

13 15. In regards to Decision 66388, Staff reported that as of August 17, 2006, BVWC had
14 failed to reconnect its existing well to its system as a backup source and failed to construct and install
15 a 20,000 gallon storage tank to its system. In its memorandum, Staff recommended that BVWC's
16 time to comply should be extended to December 31, 2007.

17 16. At hearing, Staff's engineering witness indicated that Staff believed BVWC would be
18 able to adequately serve its customers in the future if BVWC added an additional water source and
19 storage tank to increase capacity. (Tr. Pg. 17, lines 1-9) Staff further indicated that considering
20 BVWC currently has 192 customers hooked up to its system and there is no other water company to
21 serve the CC&N area it is best to keep the company going by giving them more time to comply. (Tr.
22 Pg. 21 lines 6-15) Additionally, Staff's witness testified that if the Commission agrees with the
23 recommendation to allow the rates and charges that were conditionally granted and the sale of assets
24 to Mr. Davoren, "that will allow him to seek financing options through either the Water Infrastructure
25 Authority of Arizona ("WIFA") or a rate case or some other means that might be available to him" to
26 get the storage tank and well issue resolved. (Tr. Pg. 12, lines 4-19)

27 17. Staff also reported that the company was in compliance with Decision No. 66388 in
28 regards to providing verification that it is using the NARUC Uniform System of Accounts for water

1 utilities; filing an application requesting the transfer of its CC&N and sale of assets to Mr. Davoren
2 and providing proof that it is delivering water that meets water quality standards as required by
3 A.A.C.

4 18. Staff recommended that the transfer of CC&N and sale of assets to Mr. Davoren and
5 the revised rates and charges conditionally granted in Decision No. 66388, should be approved
6 effective August 17, 2005.

7 19. In regards to BVWC's compliance with Decision No. 68083, Staff reported that
8 BVWC is in compliance with the following: filing documentation from ADEQ that the water system
9 has no MCL violations and the water meets water quality standards; providing proof that the
10 company was transferred free and clear to Mr. Davoren; providing notice and calculating over
11 charges for each customer; and beginning to refund customer credits for the overcharges.

12 20. At hearing, Staff's witness testified that Mr. Davoren began issuing customer credits
13 in January 2006 and it is expected all refunds should be completed within 22 months or by October
14 2007. (Tr. Pg. 11 lines 6-14) Staff's witness further testified that Staff "collected the books and
15 records from Mr. Davoren and took the new rates that were conditionally approved and compared
16 them to the original rates" to come up with individual customer credit amounts. (Tr. Pg. 11, lines 15-
17 25 and pg. 12, lines 1-3)

18 21. Staff recommends that BVWC be in full compliance with the refund credits to
19 customers by December 31, 2007.

20 22. Pursuant to A.A.C R14-2-411(D)(4) all utilities must file an annual report with the
21 Commission on or before April 15th for the proceeding calendar year. In Staff's May 22, 2006
22 memorandum, Staff recommended that BVWC be ordered to file an annual report only for the year
23 2005 by June 30, 2006, because there was no information available for the years 2003 and 2004.
24 According to Staff's August 2006 memorandum, BVWC complied with filing its 2005 annual report
25 on May 25, 2006.

26 23. In summary, based on the updated information reported in Staff's August 2006
27 memorandum, Staff recommends that Decision No. 68083 be amended to reflect the following:

28 1.) That the transfer of assets and CC&N to Mr. Michael Davoren, a sole

1 proprietorship, be approved effective August 17, 2005.

2 2.) That Mr. Michael Davoren, a sole proprietorship, refund to BVWC's
3 customers credits as outlined in Decision No. 68083 and should continue the
4 refund process until all overpayments are refunded for the period of November
5 2003 through August 2005. Further, Staff recommends that all refunds should
6 be completed by December 31, 2007.

7 3.) That the rates and charges conditionally approved in Decision No. 66388
8 become effective as of August 17, 2005.

9 4.) That Mr. Michael Davoren, a sole proprietorship, attain full compliance with
10 ADEQ notice of violations requirements by December 31, 2007.

11 5.) That Mr. Michael Davoren, a sole proprietorship, reconnect the existing well to
12 the BVWC system and install an additional 20,000 gallons of storage by
13 December 31, 2007.

14 6.) That if Mr. Michael Davoren does not comply with the requirements and
15 timeframes contained in items number 2, 4, and 5, Mr. Davoren should be
16 required to pay a fine of \$20,000 unless he can show cause why such a fine
17 should not be imposed.

18 24. Staff further recommends that if the Commission approves the sale of assets and
19 transfer of CC&N, that BVWC conduct research to determine if it needs to:

- 20 1.) File a rate application
21 2.) Apply for financing through WIFA
22 3.) Or apply for any grant (or other) monies specifically available via the rural
23 financing marketplace.

24 25. At hearing, Staff's witness indicated that Staff believed the imposition of a \$20,000
25 fine was reasonable because Commission Decision No. 68083 previously imposed a \$10,500 fine if
26 BVWC failed to timely comply. Since Staff is recommending additional time to comply with the
27 previous Decision, Staff believes that the penalty should be harsher.

28 26. Staff's recommendations as set forth above are reasonable and should be adopted.

1 IT IS FURTHER ORDERED that rates and charges conditionally approved in Commission
2 Decision No. 66388 are hereby effective as of August 17, 2005.

3 IT IS FURTHER ORDERED that Mr. Michael Davoren, a sole proprietorship, shall attain full
4 compliance with the Arizona Department of Environmental Quality Notice of Violation requirements
5 by December 31, 2007.

6 IT IS FURTHER ORDERED that Mr. Michael Davoren, a sole proprietorship, shall reconnect
7 the existing well to the Beaver Valley Water Company system as a back up source and install an
8 additional 20,000 gallon storage tank by December 31, 2007.

9 IT IS FURTHER ORDERED that Mr. Michael Davoren, a sole proprietorship, shall file
10 documentation showing the well was reconnected, the storage tank was installed, refunds to
11 customers were completed and that the company has attained full compliance the Arizona
12 Department of Environmental Quality Notice of Violation requirements, with Docket Control as a
13 compliance item in this docket, no later than January 15, 2008.

14 IT IS FURTHER ORDERED that Mr. Michael Davoren, a sole proprietorship, shall within
15 365 days of the Decision in this matter, conduct research to determine if a rate case, financing
16 through Water Infrastructure Authority of Arizona, or if grant monies specifically available via the
17 rural financing marketplace is needed.

18 IT IS FURTHER ORDERED that if Mr. Michael Davoren, a sole proprietorship does not
19 comply with the above stated requirements within the timeframes specified a fine of \$20,000 shall be
20 imposed unless Mr. Davoren can show cause why such a penalty should not be imposed.

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1 IT IS FURTHER ORDERED that Mr. Michael Davoren, a sole proprietorship, shall annually
2 file as part of its annual report, an affidavit with the Utilities Division attesting that the Company is
3 current in paying its property taxes in Arizona.

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

5 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

6
7 Jeffrey M. Hatch-Neils William Miller
8 CHAIRMAN COMMISSIONER
9 Louise Gleason [Signature] [Signature]
10 COMMISSIONER COMMISSIONER COMMISSIONER
11

12 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive
13 Director of the Arizona Corporation Commission, have
14 hereunto set my hand and caused the official seal of the
15 Commission to be affixed at the Capitol, in the City of Phoenix,
16 this 19th day of Jan., 2007.

17 [Signature]
18 BRIAN C. McNEIL
19 EXECUTIVE DIRECTOR

20 DISSENT _____

21 DISSENT _____

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1 SERVICE LIST FOR:

BEAVER VALLEY WATER COMPANY

2 DOCKET NO.:

W-02015A-03-0724

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