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BEFORE THE ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission

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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 LIVCO WATER COMPANY FOR AN EXTENSION OF ITS CERTIFICATE OF CONVENIENCE AND NECESSITY FOR THE PROVISION OF WATER SERVICE IN PORTIONS OF APACHE COUNTY, ARIZONA.

DOCKET NO. W-02121A-06-0316

IN THE MATTER OF THE APPLICATION OF LIVCO SEWER COMPANY FOR AN EXTENSION OF ITS CERTIFICATE OF CONVENIENCE AND NECESSITY FOR THE PROVISION OF WASTEWATER SERVICE IN PORTIONS OF APACHE COUNTY, ARIZONA.

DOCKET NO. SW-02563A-06-0316

DECISION NO. 69258

OPINION AND ORDER

DATE OF HEARING: November 14, 2006
PLACE OF HEARING: Phoenix, Arizona
ADMINISTRATIVE LAW JUDGE: Marc E. Stern
APPEARANCES: Mr. Richard L. Sallquist, SALLQUIST, DRUMMOND & O'CONNOR, P.C., on behalf of Livco Water Company and Livco Sewer Company; and Mr. Kevin Torrey, Staff Attorney, Legal Division, on behalf of the Utilities Division of the Arizona Corporation Commission.

BY THE COMMISSION:

On May 4, 2006, Livco Water Company ("LWC") and Livco Sewer Company ("LSC") (collectively "Companies" or "Applicants"), filed a joint application for an extension of their Certificates of Convenience and Necessity ("Certificate") with the Arizona Corporation Commission ("Commission") to provide public water and public wastewater utility service to various parts of Apache County, Arizona.

On June 1, 2006, the Commission's Utilities Division ("Staff") issued a notice of insufficiency which indicated that the Companies' applications had not met the sufficiency

1 requirements of A.A.C. R14-2-411(C), and A.A.C. R14-2-610(C).

2 On September 7, 2006, Staff issued a letter of administrative completeness to Applicants.

3 On September 11, 2006, pursuant to A.A.C. R14-3-101 and A.A.C. R14-3-109, the
4 Commission issued a Procedural Order to govern the preparation and conduct of these proceedings,
5 scheduling a hearing on November 14, 2006.

6 On October 18, 2006, Staff filed its report recommending conditional approval of the
7 application by LWC and LSC.

8 On October 19, 2006, Applicants filed certification that public notice had been given pursuant
9 to the Procedural Order.

10 On October 25, 2006, the Companies filed objections to a portion of the Staff Report.

11 On November 14, 2006, a full public hearing was convened before a duly authorized
12 Administrative Law Judge of the Commission at its offices in Phoenix, Arizona. The Companies and
13 Staff appeared with counsel. At the conclusion of the hearing, the matter was taken under
14 advisement pending submission of a Recommended Opinion and Order to the Commission.

15 * * * * *

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

18 **FINDINGS OF FACT**

19 1. Pursuant to authority granted by the Commission, LWC and LSC are Arizona
20 corporations in good standing that are engaged in providing public water and wastewater treatment
21 service in the unincorporated area of Concho approximately 18 miles southwest of St. Johns, Apache
22 County, Arizona.

23 2. On June 5, 2006, the Commission issued Decision No. 68751, the Companies' recent
24 rate case, which found that the Company was providing water in areas in close proximity to, but
25 outside of LWC's existing certificated service area and ordered LWC to file an application for an
26 extension of its Certificate to provide water service in those areas.¹ Although LSC was also ordered

27 ¹ The areas sought to be certificated for water service herein contain old subdivisions which in several sections
28 were subdivided in 1970 prior to the enactment of the 1980 Groundwater Act ("1980 GA") which established, among
other things, that developers were required to secure from the Arizona Department of Water Resources ("ADWR"), a

1 to file for an extension its Certificate in Decision No. 68751, there is no evidence that LSC was
2 providing sewer service outside of its certificated service area.

3 3. In anticipation of Decision No. 68751, on May 4, 2006, the Companies filed the
4 application for the extension of their Certificates to provide public water and public wastewater
5 treatment service to the areas which are more fully described in Exhibit A, attached hereto and
6 incorporated herein by reference.

7 4. The Companies' president, Mr. Rick Kautz testified in support of the Companies'
8 applications.

9 5. On October 19, 2006, pursuant to the Commission's Procedural Order, the Companies
10 filed certification that public notice had been given of the proceedings and hearing thereon.

11 6. There are no municipal or public water or wastewater utilities operating nearby or
12 within the areas sought to be certificated by the Companies.

13 7. LWC is seeking an extension of its Certificate to provide water service to three
14 sections of land in Apache County in Township 12 North, Range 26 East as follows: all of Sections 7
15 (aka Concho Valley Unit One) and 33 (aka Concho Valley Unit 33), and all of Section 29 (aka
16 Concho Valley Unit Three) except the area previously certificated to LWC. In these three sections,
17 which were subdivided in the past, LWC has approximately 168 customers that were connected to its
18 water distribution system previously. These customers are located in the old residential subdivisions
19 and are able to utilize septic service in these areas for their waste treatment, and will not require
20 wastewater service from LSC.

21 8. With their application, LWC and LSC are requesting the Commission's approval to
22 provide both water and wastewater treatment service to the new 23 acre Concho West Shore
23 ("Concho West") subdivision that is being subdivided into 46 small residential lots. The developer of
24 this parcel, which is located in portions of both Sections 7 and 18 in Township 12 North, Range 26
25 East, has requested water and wastewater service from LWC and LSC, respectively, for the new
26 subdivision.

27

28 Letter of Adequate Water Supply ("LAWS") before the creation of a new subdivision. Based on the record, it does not appear that, prior to the 1980 GA, LAWS were issued to developers by ADWR.

1 9. LWC and LSC expect to add approximately 50 new connections to their systems over
2 five years with the addition of the expected customers in Concho West.

3 10. At the hearing, Mr. Kautz testified that the developer is hoping to proceed with the
4 development of the parcel in early 2007.

5 11. According to Mr. Kautz, currently, LWC provides water service to a total of
6 approximately 360 customers and LSC provides wastewater service to approximately 23 customers in
7 the communities of Concho Valley and the old Concho Townsite.

8 12. LWC has two wells which produce 391 gallons of water per minute with total storage
9 capacity of 275,000 gallons. A third well that is not utilized currently will be utilized to
10 accommodate expected growth in the future.

11 13. LSC's wastewater treatment plant ("WWTP") was originally constructed to serve
12 1,500 customers and while it has been reduced in size, it has ample capacity to accommodate more
13 than its 23 existing customers.

14 14. It is projected that the main extension to serve Concho West with water will cost
15 \$181,382.

16 15. The Arizona Department of Environmental Quality ("ADEQ") has previously issued
17 Certificates of Approval to Construct ("ATC") for the water facilities to serve the requested areas in
18 Concho Valley Units One, Three and 33 and Concho West.

19 16. According to the Staff Report, LWC's water system has no deficiencies and its water
20 meets the requirements of the Safe Water Drinking Act. Additionally, the arsenic content of LWC's
21 water is considerably below the new allowable maximum content level for arsenic of 10 parts per
22 billion.

23 17. LWC's curtailment tariff and its backflow prevention tariff were previously approved
24 in May 2005 and are on file with the Commission.

25 18. LWC is in compliance with the Commission's rules and prior Commission Orders.

26 19. LWC is current on the payment of its property and sales taxes.

27 20. LWC and LSC stipulated to Staff's recommendations in the Staff Report with the
28 exception that LWC objected to Staff's recommendation that LWC be required to file copies the

1 developers' LAWS for Units One, Three, 33 and the Concho West. Mr. Kautz testified that LWC
2 submitted a copy of an ADWR letter dated January 15, 1985, which was attached to LWC's
3 objections to the Staff Report, to satisfy the LAWS requirement for Concho Valley Unit 33. He also
4 pointed out that with regard to Concho Valley Units One and Three, which were subdivided in 1970,
5 that ADWR provided him with a computer database print-out with the notation "Ret-Sub" as to their
6 status. It is Mr. Kautz's understanding that this notation was used by ADWR prior to the adoption of
7 the 1980 GA. Mr. Kautz was told that the notation referred to the "retired status" of the section and
8 is the equivalent of the currently used LAWS. He stated that neither LWC nor ADWR have any
9 other evidence concerning these units' status with respect to an adequate water supply. Mr. Kautz
10 indicated further that LWC will file a copy of the developer's LAWS for Concho West upon its
11 receipt from the developer. LWC proposed that, as an alternative to filing copies of LAWS for Units
12 One and Three, that LWC would contact ADWR to seek a letter clarifying the status of the two old
13 subdivisions and whether the "Ret-Sub" language on the printout satisfies the LAWS requirements.

14 21. According to the Staff Report, LSC has adequate capacity to handle the projected
15 growth or can add to its treatment capacity as needed. It is projected that the extension of LSC's
16 wastewater collection system will cost approximately \$244,913 which will be funded by means of a
17 main extension agreement with the developers of Concho West.

18 22. LSC is in compliance with ADEQ requirements and was issued a General Permit for
19 construction authorization for facilities to serve Concho West on May 8, 2006. ADEQ also issued
20 LSC an Aquifer Protection Permit in 1992.

21 23. LSC is in compliance with the Commission's rules and prior Commission Orders.

22 24. LSC is current on the payment of its property taxes.

23 25. Mr. Kautz indicated that LWC and LSC will secure an Apache County franchise for
24 the extension areas described in Exhibit A, and file a copy of same with the Commission.

25 26. In its report, Staff recommended approval of the Companies' application to provide
26 water and wastewater service for the areas described in Exhibit A be limited to an Order Preliminary
27 for LWC and LSC in each instance and subject to the following conditions:

28

- 1 1. that LWC charge its authorized rates and charges in the extension areas;
- 2 2. that LWC file within two years of the effective date of this Decision
- 3 granting the Order Preliminary, with the Commission's Docket Control, as
- 4 a compliance item in this docket, a copy of the developer's LAWS for
- 5 Units One, Three, 33 and Concho West;
- 6 3. that LWC file, within two years of the effective date of this Decision
- 7 granting the Order Preliminary, with the Commission's Docket Control, as
- 8 a compliance item in this docket, a copy of the Apache County franchise
- 9 agreement for the extension areas which covers specifically all of Sections
- 10 7, 29 and 33, and Concho West in Section 18, all in Township 12 North,
- 11 Range 26 East;
- 12 4. that LSC charge its authorized rates and charges in the extension area;
- 13 5. that LSC file within two years of the effective date of this Decision
- 14 granting the Order Preliminary, with the Commission's Docket Control, as
- 15 a compliance item in this docket, a copy of the Apache County franchise
- 16 agreement for the extension areas which covers specifically all of Sections
- 17 7, 29 and 33, and Concho West in Section 18, all in Township 12 North,
- 18 Range 26 East; and
- 19 6. that upon LWC and LSC complying with conditions two, three and five
- 20 above, the Companies shall file a Motion for the issuance of a Certificate to
- 21 each utility. Within 30 days of this filing, Staff shall file a recommended
- 22 Order for Commission approval to grant a Certificate to each utility as soon
- 23 as possible after Staff's filing that confirms the Companies' compliance
- 24 with conditions Two, Three, and Five above.

25 27. During the hearing, Staff's witness, Ms. Blessing Chukwu, acknowledged and agreed
 26 that the ADEQ January 15, 1985, letter presented in evidence by LWC with Exhibit A-5 (the
 27 Companies' Objections to Staff Report) satisfied that portion of condition Two relating to Concho
 28 Valley Unit 33 with respect to filing a copy of a LAWS for that subdivision in Section 33.² Ms.
 Chukwu indicated, in light of LWC's witness' testimony concerning the computer database print-out
 concerning Concho Valley Units One and Three with the notation "Ret-Sub", Staff is willing to
 accept a letter from ADWR that the notation is the equivalent of a LAWS for these Units which were
 subdivided in 1970 prior to the effective date of the 1980 GA when the use of the LAWS was begun.

28 28. Ms. Chukwu further indicated, under the circumstances, since LWC is already an

² Based on Ms. Chukwu's admission, LWC has met the requirements to file a copy of the developer's LAWS for Concho Valley Unit 33.

1 existing certificated and complaint water utility which already has water customers in Concho Valley
 2 Units One, Three and 33, that Staff does not oppose LWC being granted a conditional Certificate to
 3 provide water service to the old subdivisions rather than an Order Preliminary as is recommended for
 4 Concho West, provided that LWC is able to provide documentation from ADWR that its computer
 5 database with the notation "Ret-Sub" is the equivalent of a LAWS for Concho Valley Units One and
 6 Three.

7 29. After our review of the evidence in this matter, due to the uncertainty with the ADWR
 8 documentation possibly being unavailable, with respect to Concho Valley Units One and Three, we
 9 believe that the application of LWC and LSC to provide water and wastewater service for the areas as
 10 described in Exhibit A should be granted for Orders Preliminary alone. We also believe that Staff's
 11 other recommendations with respect to LWC's and LSC's applications are reasonable and should be
 12 approved.

13 30. Because an allowance for the property tax expenses of LWC and LSC are included in
 14 their rates and will be collected from their customers, the Commission seeks assurances from the
 15 Companies that any taxes collected from ratepayers have been remitted to the appropriate taxing
 16 authority. It has come to the Commission's attention that a number of utility companies have been
 17 unwilling or unable to fulfill their obligation to pay the taxes that were collected from ratepayers,
 18 some for as many as twenty years. It is reasonable, therefore, that as a preventive measure, LWC and
 19 LSC should annually file, as part of their annual reports, affidavits with the Utilities Division
 20 attesting that the Companies are current in paying their property taxes in Arizona.

21 CONCLUSIONS OF LAW

22 1. LWC and LSC are public service corporations within the meaning of Article XV of
 23 the Arizona Constitution and A.R.S. §§40-252, 40-281 and 40-282.

24 2. The Commission has jurisdiction over the Companies and the subject matter of the
 25 application.

26 3. Notice of the application and the hearing thereon was given in accordance with the
 27 law.

28 4. The public convenience and necessity require the issuance of Orders Preliminary to

1 LWC and LSC authorizing them to provide water and wastewater service, respectively, to the public
2 in the areas described in Exhibit A.

3 5. The Companies are fit and proper entities to provide water and wastewater service to
4 the public and to receive Orders Preliminary which encompass the areas more fully described in
5 Exhibit A.

6 6. The Companies' applications for Certificates to provide water and wastewater service
7 should be granted subject to Orders Preliminary being issued prior to the Certificates and subject to
8 Staff's recommendations and the Companies' timely compliance with conditions two, three and five
9 as set forth in Findings of Fact No. 26.

10 **ORDER**

11 IT IS THEREFORE ORDERED that pursuant to A.R.S. § 40-282(D), Livco Water Company
12 and Livco Sewer Company are each granted an Order Preliminary to the issuance to each of a
13 Certificate of Convenience and Necessity and upon completion of the requirements contained in
14 paragraph nos. two, three, five and six of Findings of Fact No. 26, Livco Water Company and Livco
15 Sewer Company shall each file a Motion in this docket for the issuance of a Certificate of
16 Convenience and Necessity authorizing the respective utility to construct, maintain and operate
17 facilities to provide water and wastewater service to the public in the areas more fully described in
18 Exhibit A.

19 IT IS FURTHER ORDERED that upon the Motions of Livco Water Company and Livco
20 Sewer Company and verification by Staff that the requirements have been satisfied for the issuance to
21 each utility of a Certificate of Convenience and Necessity, Staff shall prepare and docket an Order
22 which recommends that each utility be granted a Certificate of Convenience and Necessity by the
23 Commission.

24 IT IS FURTHER ORDERED that Livco Water Company and Livco Sewer Company shall
25 timely comply with the following conditions:

- 26
- 27 • that Livco Water Company file within two years of the effective date of
28 this Decision granting the Order Preliminary, with the Commission's
Docket Control, as a compliance item in this docket, a copy of the

1 developer's LAWS for Units One, Three and Concho West or
2 documentation from ADWR that its computer database with the
3 notation "Ret-Sub" is the equivalent of a LAWS for Concho Valley
4 Units One and Three;

- 5 • that Livco Water Company file, within two years of the effective date
6 of this Decision granting the Order Preliminary, with the Commission's
7 Docket Control, as a compliance item in this docket, a copy of the
8 Apache County franchise agreement for the extension areas which
9 covers specifically all of Sections 7, 29 and 33, and Concho West in
10 Section 18, all in Township 12 North, Range 26 East; and
- 11 • that Livco Sewer Company file within two years of the effective date of
12 this Decision granting the Order Preliminary, with the Commission's
13 Docket Control, as a compliance item in this docket, a copy of the
14 Apache County franchise agreement for the extension areas which
15 covers specifically all of Sections 7, 29 and 33, and Concho West in
16 Section 18, all in Township 12 North, Range 26 East;

17 IT IS FURTHER ORDERED that if Livco Water Company and Livco Sewer Company do
18 not timely comply with the above ordering paragraphs then the Orders Preliminary approved herein
19 shall be deemed null and void. In such event, Staff shall file a memorandum to close this docket.

20 IT IS FURTHER ORDERED that Livco Water Company and Livco Sewer Company shall
21 charge water and wastewater customers in the areas described in Exhibit A their existing rates and
22 charges pursuant to Decision No. 68751 until further Order by the Commission.
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24
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1 IT IS FURTHER ORDERED that Livco Water Company and Livco Sewer Company shall
2 file, as part of their annual reports, affidavits with the Utilities Division attesting that the Companies
3 are current on paying their 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-Dreier*
8 CHAIRMAN

William M. Wells
9 COMMISSIONER

10 *Lance Wilson*
11 COMMISSIONER

Timothy J. ...
12 COMMISSIONER

Greg ...
13 COMMISSIONER

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

Brian C. McNeil
19 BRIAN C. McNEIL
20 EXECUTIVE DIRECTOR

21 DISSENT _____

22 DISSENT _____

1 SERVICE LIST FOR: LIVCO WATER COMPANY and LIVCO SEWER
2 COMPANY

3 DOCKET NOS.: W-02121A-06-0316 and SW-02563A-06-0316

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EXHIBIT A

LIVCO WATER COMPANY AND LIVCO SEWER COMPANY
DOCKET NOS. W-02121A-06-0316 AND SW-02563A-06-0316
AMENDED LEGAL DESCRIPTION

REQUESTED WATER EXPANSION AREA**Parcel 1**

Concho West Shore Subdivision – A portion of Sections 7 and 18, Township 12 North, Range 26 East, Gila and Salt River Base and Meridian, Apache County, Arizona, more particularly described as follows:

Commencing at a point marking the Northeast corner of said Section 18;

THENCE South 86° 00' 07" West along the common boundary between Sections 7 and 18, a distance of 1,874.18 feet to the TRUE POINT OF BEGINNING;

THENCE South 00° 50' 31" West, a distance of 1,378.86 feet to a point on the South boundary of the Northwest Quarter of the Northeast Quarter of Section 18, said point lying South 86° 24' 11" West, a distance of 426.43 feet from the Northeast 1/16 Section corner;

THENCE South 86° 24' 11" West along said 1/16 Section line, a distance of 898.76 feet to a point on the Easterly right-of-way boundary of State Highway 61;

THENCE North 18° 33' 42" East along the highway right-of-way, a distance of 1,437.83 feet to a point of curvature;

THENCE Northerly along the right-of-way boundary and along a curve being concave to the East, having a radius of 3,745 feet, through a central angle of 05° 14' 54", a distance of 343.05 feet;

THENCE South 69° 00' 28" East, a distance of 361.78 feet;

THENCE South 00° 50' 31" West, a distance of 118.16 feet to the TRUE POINT OF BEGINNING.

Containing 23.04 acres, more or less

Subject to any existing easements or restrictions

Parcel 2

All of Section 7 except Parcel 1 and those areas previously certificated to the Company

Parcel 3

All of Section 29 except those areas previously certificated to the Company

Parcel 4

All of Section 33

All located in Township 12 North, Range 26 East, G&SRB&M, Apache County, Arizona

DECISION NO. 69258

DOCKET NOS. W-02121A-06-0316 AND SW-02563A-06-0316
AMENDED LEGAL DESCRIPTION

REQUESTED SEWER EXPANSION AREA

Parcel 1

Concho West Shore Subdivision – A portion of Sections 7 and 18, Township 12 North, Range 26 East, Gila and Salt River Base and Meridian, Apache County, Arizona, more particularly described as follows:

Commencing at a point marking the Northeast corner of said Section 18;

THENCE South 86° 00' 07" West along the common boundary between Sections 7 and 18, a distance of 1,874.18 feet to the TRUE POINT OF BEGINNING;

THENCE South 00° 50' 31" West, a distance of 1,378.86 feet to a point on the South boundary of the Northwest Quarter of the Northeast Quarter of Section 18, said point lying South 86° 24' 11" West, a distance of 426.43 feet from the Northeast 1/16 Section corner;

THENCE South 86° 24' 11" West along said 1/16 Section line, a distance of 898.76 feet to a point on the Easterly right-of-way boundary of State Highway 61;

THENCE North 18° 33' 42" East along the highway right-of-way, a distance of 1,437.83 feet to a point of curvature;

THENCE Northerly along the right-of-way boundary and along a curve being concave to the East, having a radius of 3,745 feet, through a central angle of 05° 14' 54", a distance of 343.05 feet;

THENCE South 69° 00' 28" East, a distance of 361.78 feet;

THENCE South 00° 50' 31" West, a distance of 118.16 feet to the TRUE POINT OF BEGINNING.

Containing 23.04 acres, more or less

Subject to any existing easements or restrictions