

OPEN MEETING ITEM
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COMMISSIONERS
JEFF HATCH-MILLER - Chairman
WILLIAM A. MUNDELL
MIKE GLEASON
KRISTIN K. MAYES
GARY PIERCE



ARIZONA CORPORATION COMMISSION

22

DATE: FEBRUARY 23, 2007

Arizona Corporation Commission

DOCKETED

DOCKET NO: W-01961A-06-0037

FEB 23 2007

TO ALL PARTIES:

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

LUCKY HILLS 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 ten (10) copies of the exceptions with the Commission's Docket Control at the address listed below by 4:00 p.m. on or before:

MARCH 5, 2007

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 Working Session and Open Meeting to be held on:

MARCH 13, 2007 and MARCH 14, 2007

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 Secretary's Office at (602) 542-3931.

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BRIAN C. McNEIL
EXECUTIVE DIRECTOR

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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

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

IN THE MATTER OF THE APPLICATION OF
LUCKY HILLS WATER COMPANY FOR AN
EXTENSION OF ITS CERTIFICATE OF
CONVENIENCE AND NECESSITY.

DOCKET NO. W-01961A-06-0037

DECISION NO. _____

OPINION AND ORDER

DATE OF HEARING:

January 11, 2007

PLACE OF HEARING:

Tucson, Arizona

ADMINISTRATIVE LAW JUDGE:

Jane L. Rodda

APPEARANCES:

Mr. Steve Wene, Moyes Storey Ltd., on
behalf of Lucky Hills Water Co.; and

Ms. Robin Mitchell, Staff Attorney,
Legal Division, on behalf of the Utilities
Division of the Arizona Corporation
Commission.

BY THE COMMISSION:

* * * * *

Having considered the entire record herein and being fully advised in the premises, the
Arizona Corporation Commission ("Commission") finds, concludes, and orders that:

FINDINGS OF FACT

1. On January 23, 2006, Lucky Hills Water Company ("Lucky Hills" or "Company")
filed with the Commission an Application to Extend its Certificate of Convenience and Necessity
("CC&N" or "Certificate") in Cochise County.
2. Lucky Hills is seeking Commission authority to extend its service territory to include
140 acres comprising a new subdivision, known as Walnut Valley Ranch, and an area of
approximately 3.5 square miles to consolidate its existing service areas into one larger area.
3. On February 21, 2006, the Commission's Utilities Division Staff ("Staff") notified the

1 Company that its application was not sufficient pursuant to the Arizona Administrative Code.

2 4. Lucky Hills provided additional documentation on October 4, 2006.

3 5. On November 2, 2006, Staff notified the Company that its application was sufficient.

4 6. By Procedural Order dated November 13, 2006, the matter was set for hearing at the
5 Commission's offices in Tucson, Arizona, and procedural guidelines and deadlines were established.

6 7. On January 4, 2007, Lucky Hills filed an affidavit certifying that it mailed notice of
7 the hearing on December 8, 2006, as directed by the November 13, 2006 Procedural Order. On
8 January 8, 2007, Lucky Hills filed an Affidavit of Publication that the Notice was published in the
9 *Sierra Vista Herald* and *Bisbee Daily Review* on December 11, 2006 and December 20, 2006.

10 8. On December 22, 2006, Staff filed its Staff Report recommending approval of the
11 extension to include the Walnut Valley Ranch subdivision with conditions, but recommending denial
12 of that portion of the requested extension area where there have been no requests for service.

13 9. On January 11, 2007, the hearing in this matter convened before a duly authorized
14 Administrative Law Judge.

15 10. Lucky Hills is an Arizona corporation, in good standing with the Commission's
16 Corporations Division, and provides water service to approximately four customers in an area near
17 Tombstone, Cochise County,

18 11. The Commission approved the original CC&N for Lucky Hills in Decision No. 35615
19 (December 30, 1964).

20 12. Lucky Hills received a request for service from the developer of the Walnut Valley
21 Ranch subdivision, which will have 42 single family lots ranging from 2.5 to 4.5 acres. The
22 Company has not received a request for service from any land owners in the rest of its requested
23 extension area.

24 13. On January 10, 2007, Lucky Hills filed an Amendment to its Application, revising its
25 requested extension area to eliminate that portion of its original request in which it has not received a
26 request for service. The legal description of the revised requested extension area is attached hereto as
27 Exhibit A, and incorporated herein.

28 14. Lucky Hill's existing water system consists of a well producing approximately 5

1 gallons per minute ("GPM"), a 1,000 gallon pressure tank, and a distribution system serving four
2 connections. Staff concludes the current system is adequate to serve the existing four customers, but
3 Staff recommends that the Company install a storage tank of at least 2,000 gallons on its existing
4 system within one year of the effective date of this Order. Staff further recommends that the
5 Company file with Docket Control, as a compliance item in this docket, a copy of the Arizona
6 Department of Environmental Quality ("ADEQ") Approval of Construction ("AOC") for this new
7 storage facility within 12 months of the effective date of the Order in this case.

8 15. The developer of the Walnut Valley Ranch subdivision is proposing to construct a
9 potable water system consisting of two new wells producing approximately 34 GPM, a 40,000 gallon
10 storage tank, booster system, and distribution system to serve the subdivision. The total cost of the
11 new system is expected to be approximately \$275,500. The developer will construct the new water
12 system and contribute it to the Company. The Walnut Valley Ranch subdivision is not contiguous to
13 the existing Lucky Hills system, being approximately ¼ mile away from existing boundaries, and the
14 new system will be a stand alone system.

15 16. Staff concludes the new proposed system to the serve the Walnut Valley Ranch
16 subdivision will be adequate to serve the expected 42 residential units. Staff has reviewed the
17 proposed new plant-in-service and finds the plant facilities and cost to be reasonable and appropriate.
18 Staff cautions, however, that its recommended approval of the CC&N extension does not imply any
19 particular treatment for determining rate base in a subsequent proceeding. Staff has made no "used
20 and useful" determination of the proposed plant-in-service, and states no conclusions should be
21 inferred for rate making or rate base purposes in the future.

22 17. The ADEQ Certificate of Approval to Construct ("ATC") for facilities needed to serve
23 the requested area has not been submitted by Lucky Hills.

24 18. Staff recommends that Lucky Hills be required to file with Docket Control, as a
25 compliance item in this docket, a copy of the ATC for the water facilities needed to serve the
26 extension area within two years of the effective date of this Order in this case.

27 19. Lucky Hills states there are no plans for golf courses, water features, or artificial lakes
28 in the subdivision, and the lots will have individual septic tank systems.

1 20. Lucky Hill's existing system is a semi-public system and currently has no ADEQ
2 monitoring or reporting requirements or compliance status to report.

3 21. Lucky Hills is not located in an Active Management Area ("AMA"), and consequently
4 is not subject to reporting and conservation rules.

5 22. Staff states that a letter from the Arizona Department of Water Resources ("ADWR")
6 indicates that 13.49 acre feet per year of groundwater will be physically and continuously available
7 which would be adequate to serve the Walnut Valley Ranch subdivision at build-out. Staff
8 recommends that Lucky Hills be ordered to file with Docket Control, as a compliance item, copies of
9 the developer's Letter of Adequate Water Supply, stating that there is adequate water, not later than
10 180 days of the Decision granting the CC&N extension. There was evidence presented at the hearing
11 that Lucky Hills was seeking to obtain a Designation of Adequate Water Supply from ADWR. Staff
12 agreed that by filing a copy of a Designation of Adequate Water Supply that indicates there is
13 adequate water to serve the Walnut Valley Ranch subdivision, the Company would satisfy Staff's
14 recommendation.

15 23. According to the Utilities Division Compliance Section, Lucky Hills has no
16 outstanding Commission compliance issues.

17 24. The U.S. Environmental Protection Agency ("EPA") has reduced the arsenic
18 maximum contaminant level ("MCL") in drinking water from 50 micrograms per liter (" $\mu\text{g/l}$ ") to 10
19 $\mu\text{g/l}$. The date for compliance with the new MCL was January 23, 2006. Lucky Hills reports an
20 arsenic concentration of 7.3 $\mu\text{g/l}$ for its existing well. Based on this arsenic concentration, the
21 Company is in compliance with the new arsenic MCL.

22 25. A Curtailment Plan Tariff ("CPT") is an effective tool to allow a water company to
23 manage its resources during periods of shortages due to pump breakdowns, droughts, or other
24 unforeseeable events.

25 26. Lucky Hills does not have a CPT. Therefore, Staff recommends that the Company file
26 a curtailment tariff within 45 days of the effective date of the Commission's Decision in this case.
27 Staff states that the tariff should be docketed as a compliance item under this docket number for the
28 review and certification of Staff. Staff further recommends that the tariff should generally conform

1 to the sample tariff found on the Commission's website at [www.cc.state.us/utility/forms/Curtailment-](http://www.cc.state.us/utility/forms/Curtailment-std.pdf)
2 [std.pdf](http://www.cc.state.us/utility/forms/Curtailment-std.pdf). Staff recognizes that the Company may need to make minor modifications to the sample
3 tariff according to its specific management, operational, and design requirements as necessary and
4 appropriate.

5 27. Lucky Hills proposed to provide water service to the extension area using a different
6 rate and charges schedule than was approved for the existing system in the Company's last rate case.
7 See Decision No. 59939 (December 19, 1996). Staff states that it has been the Commission's normal
8 procedure to require companies proposing to extend their CC&Ns to charge their existing tariffed or
9 authorized rates and charges in the requested extension area. Staff believes that any requests for a
10 rate increase and/or separate rates for the proposed Walnut Valley Ranch water system would be
11 better addressed in a rate proceeding. As such, staff recommends that Lucky Hills be required to
12 charge its authorized rates and charges in the extension area.

13 28. Every applicant for a CC&N and/or CC&N Extension is required to submit to the
14 Commission evidence showing that the applicant has received the required consent, franchise or
15 permit from the proper authority. If the applicant operates in an unincorporated area, the company
16 has to obtain a franchise from the county. Lucky Hills filed, in the docket, a copy of the certified
17 Minutes of the Cochise County June 20, 2006 board meeting, which reference Cochise County
18 Resolution No. 06-45, granting a franchise to Lucky Hills. Staff recommends that the Company file
19 with Docket Control, as a compliance item in the docket, a copy of the franchise agreement from
20 Cochise County for Walnut Valley Ranch subdivision within one year of the Decision in this case.

21 29. Staff further recommends that the CC&N granted in this case be null and void, after
22 due process, if Lucky Hills fails to comply with Staff's recommendations within the time frames
23 specified.

24 30. The Company has agreed to all of Staff's recommendations. The Company states that
25 it would likely be filing a rate case after the new facilities are in place, and would have filed a rate
26 case regardless of the current additions. Staff notes that according to the Company's Annual Report
27 for the year ended December 31, 2005, the Company reported an annual revenue of \$1,623, expenses
28 of \$1,559 and a net income of \$63.72.

1 and charges within the approved extension area.

2 IT IS FURTHER ORDERED that Lucky Hills Water Company shall file with Docket Control
3 as a compliance item in this docket, a copy of the ADEQ Approval to Construct the facilities needed
4 to serve the requested extension area within two years of the effective date of this Decision.

5 IT IS FURTHER ORDERED that Lucky Hills Water Company file with Docket Control, as a
6 compliance item in this Docket a copy of its Designation of Adequate Water Supply, or the
7 developer's Letter of Adequate Supply from ADWR that indicates there is adequate water available
8 to serve for the requested extension area, within 180 days of the effective date of this Decision.

9 IT IS FURTHER ORDERED that Lucky Hills Water Company shall file in this docket, as a
10 compliance item, a curtailment tariff within 45 days of the effective date of this Decision, for the
11 review and certification of Staff. The tariff shall generally conform to the sample tariff found on the
12 Commission's website at www.cc.state.us/utility/forms/Curtailment-std.pdf, but Lucky Hills Water
13 Company may need to make minor modifications to the sample tariff according to its specific
14 management, operational, and design requirements as necessary and appropriate.

15 IT IS FURTHER ORDERED that Lucky Hills Water Company shall with Docket Control, as
16 a compliance item in the docket, a copy of the franchise agreement from Cochise County for the
17 proposed expansion area within one year of the effective date of Decision.

18 IT IS FURTHER ORDERED that Lucky Hills Water Company shall file with Docket
19 Control, as a compliance item in this docket, a copy of the Approval of Construction for a new 2,000
20 gallon storage facility to serve its existing service area, within 12 months of the effective date this
21 Decision.

22 IT IS FURTHER ORDERED that this Decision granting the requested CC&N extension be
23 considered null and void, after due process, should Lucky Hills Water Company fail to meet the
24 above conditions within the times specified.

25 IT IS FURTHER ORDERED that Lucky Hills Water Company shall annually file as part of
26 its annual report, an affidavit with the Utilities Division attesting that the Company is current in
27 paying its property taxes in Arizona.

28 ...

1 IT IS FURTHER ORDERED that in light of the on-going drought conditions in Arizona and
2 the need to conserve groundwater, Lucky Hills Water Company is prohibited from selling
3 groundwater for the purpose of irrigating any golf course, or any ornamental lakes or water features
4 located in the common areas of the certificated expansion area.

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

6 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

7
8 _____
CHAIRMAN COMMISSIONER

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10 _____
11 COMMISSIONER COMMISSIONER COMMISSIONER

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
Commission to be affixed at the Capitol, in the City of Phoenix,
15 this ____ day of _____, 2007.

16 _____
17 BRIAN C. McNEIL
EXECUTIVE DIRECTOR

18 DISSENT _____

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20 DISSENT _____

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SERVICE LIST FOR:

LUCKY HILLS WATER COMPANY

DOCKET NO.:

W-01961A-06-0037

Steve Wene
Moyes Storey, Ltd
185o N. Central Ave., Ste. 1100
Phoenix, Arizona 85004
Attorneys for Lucky Hills Water Company

Mr. Christopher Kempley, Chief Counsel
Legal Division
ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, Arizona 85007

Mr. Ernest Johnson, Director
Utilities Division
ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, Arizona 85007

EXHIBIT A

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