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MEMORANDUM

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ARIZONA CORPORATION COMMISSION  
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DATE: September 29, 2003

RE: STAFF REPORT FOR SUNRISE WELL ASSOCIATION, INC., AN ARIZONA  
NON-PROFIT CORPORATION, FOR ADJUDICATION NOT A PUBLIC  
SERVICE CORPORATION (DOCKET NO. W-04154A-02-0848)

Attached is the Staff Report for Sunrise Well Association, Inc., application for adjudication not a public service corporation. Staff recommends the Commission deny unless certain conditions are met.

EGJ:JEF:hml

Originator: Jim Fisher

Arizona Corporation Commission

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Docket No. W-04154A-02-0848

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**STAFF REPORT  
UTILITIES DIVISION  
ARIZONA CORPORATION COMMISSION**

**SUNRISE WELL ASSOCIATION, INC  
AN ARIZONA NON-PROFIT CORPORATION**

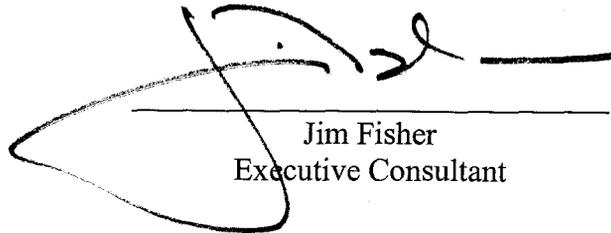
**DOCKET NO. W-04154A-02-0848**

**APPLICATION FOR ADJUDICATION  
NOT A PUBLIC SERVICE CORPORATION**

**SEPTEMBER 2003**

## STAFF ACKNOWLEDGMENT

The Staff Report for Sunrise Well Association, Inc. (Docket No. W-04154A-02-0848) was the responsibility of Jim Fisher. Jim Fisher was responsible for the review and analyses of the Company's application.



Jim Fisher  
Executive Consultant

**EXECUTIVE SUMMARY**  
**SUNRISE WELL ASSOCIATION, INC.**  
**(DOCKET NO. W-04154A-02-0848)**

On November 14, 2002, Sunrise Well Association, Inc. ("Sunrise") an Arizona Non-Profit Corporation, which provides potable water service to seven residents in remote Mohave County, filed an Application for an Adjudication Not a Public Service Corporation with the Arizona Corporation Commission ("ACC" or "Commission").

The criteria to determine that a provider is not a public service corporation within the meaning of Article XV, Section 2, of the Arizona Constitution was reviewed by the Arizona Supreme Court in Natural Gas Service Company v. Serv-U Cooperative, Inc. The Court provided eight review criteria for the Commission to review. The Commission issued a policy directive for the evaluation of applications for adjudication not a public service corporation on May 7, 1987, in Decision No. 55568. The Utilities Division was directed to ensure that all such applications complied with the following seven criteria.

Sunrise is incorporated as an Arizona nonprofit corporation and submitted the application, based on a resolution by the Governing Board of Sunrise. Sunrise has also provided a petition signed by all members of Sunrise requesting it be adjudicated not a public service company. The members of Sunrise are the customers of Sunrise. Sunrise has identified a 15 acre parcel to serve, which is not within the service area of a municipal or ACC regulated water provider. Membership in Sunrise is restricted to 15 total shareholders and the Sunrise Corporate By-laws preclude any further subdivision of existing properties.

Sunrise does not, however, provide clear evidence that the required utility facilities will be owned by the association. Sunrise also provides voting rights in the association based on acres owned. As such, the 15 votes available in Sunrise are currently held by seven members, which does not ensure one vote per member.

Staff recommends the Commission deny the Sunrise Well Association, Inc., application for adjudication that it is not a public service corporation. However, if certain conditions are met, Staff believes that Sunrise may be adjudicated not a public service corporation.

Therefore, Staff further recommends that the Commission deny adjudication of the Sunrise Well Association, Inc. not a public service corporation unless the following conditions are met:

1. That Sunrise Well Association, Inc. provide evidence that each member/customer of has equal voting rights in the association.
2. That Sunrise Well Association, Inc. provide evidence that the association retains direct ownership of the water production, storage and distribution assets necessary to serve the customers/members.
3. That the Sunrise Well Association, Inc. file for a Certificate of Convenience and Necessity in the event the association fails to comply with the above conditions.

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## **Introduction**

On November 14, 2002, Sunrise Well Association, Inc. ("Sunrise") an Arizona Non-Profit Corporation, filed an Application for an Adjudication Not a Public Service Corporation with the Arizona Corporation Commission ("ACC" or "Commission"). Sunrise is a non-profit association providing potable water service to seven residents in a small portion of Mohave County. Sunrise is requesting a determination that it is not a public service corporation for purposes of utility regulation by the ACC.

## **Background**

Sunrise is seeking ACC adjudication that its water service to eight connections, with a possible expansion of a maximum of 15 residential properties, is not a public service corporation for purposes of utility regulation by the ACC. Sunrise is serving its members/customers within a 15 acre parcel in northwestern Mohave County.

The criteria to determine that a provider is not a public service corporation within the meaning of Article XV, Section 2, of the Arizona Constitution was reviewed by the Arizona Supreme Court in Natural Gas Service Company v. Serv-U Cooperative, Inc. The Court provided eight review criteria for the Commission to review.

1. What the corporation actually does.
2. Whether the service is dedicated to a public use.
3. That the articles of incorporation evidence authorization and purposes.
4. Whether the corporation is dealing with the service of a commodity in which the public has been generally held to have an interest.
5. Whether the corporation is monopolizing or intending to monopolize a territory with a public service commodity.
6. Whether the corporation is accepting of substantially all requests for service.
7. That service is under contract and reserving the right to discriminate is not always controlling.
8. Whether the corporation will have actual or potential competition with other corporations whose business is clothed with the public interest.

The Commission issued a policy directive for the evaluation of applications for adjudication not a public service corporation on May 7, 1987, in Decision No. 55568. The Utilities Division was directed to ensure that all such applications complied with the following seven criteria.

1. Adjudication applications must be submitted by a non-profit homeowners association.
2. The application for adjudication not a public service corporation is a bona fide request by a majority of the membership of the association through a petition signed by 51 percent or more of the then existing members.
3. That all such associations making such application have complete ownership of the system and necessary assets.
4. That every customer is a member/owner with equal voting rights and that each member is or will be a customer.
5. That the service area involved encompasses a fixed territory, which is not within the service area of a municipal utility or public service corporation; or if in such territory, that municipal utility or public service corporation is unable to serve.
6. That there is a prohibition against further sub-division evidenced by deed restrictions, zoning, water restrictions or other enforceable governmental regulations.
7. That the membership is restricted to a fixed number of customers actual or potential.

Sunrise incorporated as an Arizona nonprofit corporation on July 22, 2002. Sunrise, as a non-profit homeowners' association submitted the application. The members of Sunrise comprise the current membership of Sunrise. On September 10, 2002, the Governing Board of Sunrise adopted corporate resolution authorizing this application for adjudication. Also on September 10, 2002, all of the members of Sunrise signed a petition supporting the request to the ACC that Sunrise be adjudicated not a public service company. (See Guideline #1 and #2 above)

Sunrise has provided a copy of the proposed By-laws of the association. The Sunrise Articles of Incorporation identify the specific purpose of the Association is "to maintain, furnish, provide or otherwise contract utility services to its members" and "to construct, own or lease, and maintain pipe lines and other water ways for culinary purposes." The Articles also state: "to own, lease or otherwise contract for and maintain equipment, property and facilities that shall

become necessary to provide water utility services.” Sunrise has not demonstrated that the association retains “complete ownership of the water production and distribution assets. (See Guideline #3 above)

Sunrise does not have equal voting rights for the members. Sunrise has apportioned the voting rights of the Association based on one vote per acre, with 15 acres specifically identified as the service area. As such, seven members control the 15 votes based on current land ownership ratios, not at one member, one vote. The Sunrise By-laws ensure all members are customers, and that all customers are members by requiring that membership in the association automatically transfers upon the transfer of title of the parcel. The by-laws also require that “a member is entitled to receive water service.” (See Guideline #4)

Sunrise has identified a small fixed territory to provide service, which is not within the service area of a municipal or ACC regulated water provider. (See Guideline #5)

The Sunrise Corporate By-laws preclude any further subdivision of existing properties. Article III, Section 1. Membership specifically designates the affected parcels, assigns the number of shares based on acreage, and requires that “Each membership shall be associated with a parcel of not less than one acre. (See Guideline #6 above.)

Membership in Sunrise is restricted to 15 total shareholders per Article IV of the Articles of Incorporation. Membership is further restricted by the Bylaws of the Sunrise Well Association, Inc., Article III, Section 1, which provides a legal description of the affected parcels. Membership in the association is appurtenant to the parcel and may not be separated from the parcel, nor may it be split. (See Guideline #7 above)

### **Summary**

Sunrise has properly filed for and met the majority of criteria for adjudication not a public service corporation. Sunrise is a non profit corporation, with a resolution to request the adjudication, and petitions signed by more than 51 percent of the members requesting the adjudication. Water service will be from a non-profit organization whose customers are its members. No municipal or private utility is seeking to serve the area, and the association will not be in competition with any provider. Additionally, property owners are prohibited from any further subdivision of the existing parcels.

However, the application does not demonstrate that Sunrise retains complete ownership of the water production, storage and distribution necessary to serve the members. The application also does not demonstrate that all members have equal voting rights. Staff recommends that the Commission require Sunrise to evidence equal voting rights and ownership of the water production and distribution assets before granting Sunrise’s request for adjudication.

**Recommendations**

Staff recommends the Commission deny the Sunrise Well Association, Inc., application for adjudication that it is not a public service corporation. However, if certain conditions are met, Staff believes that Sunrise may be adjudicated not a public service corporation. These conditions are:

1. That Sunrise Well Association, Inc. provide evidence that each member/customer of has equal voting rights in the association.
2. That Sunrise Well Association, Inc. provide evidence that the association retains direct ownership of the water production, storage and distribution assets necessary to serve the customers/members.
3. That the Sunrise Well Association, Inc. file for a Certificate of Convenience and Necessity in the event the association fails to comply with the above conditions.